

1 Introduction

To what extent can oblivion underpin justice? Is it possible for oblivion, which has traditionally been viewed in a negative light as the enemy of truth and recollection, to instead become a necessary instrument in the process of healing, the acquisition of knowledge, or the rebirth of politics? The present paper investigates the fundamental paradox inherent in ancient Greek mythology, literature and legal history, concerning the ambivalent relationship between memory and oblivion as two kinds of φάρμακον, that is to say, as remedy and poison, simultaneously a means of salvation and a source of peril.

Rather than considering memory and oblivion as simple opposites – with memory being a form of preservation and oblivion a form of erasure – this study aims at exploring their intricate interdependence. The argument is developed through an examination of the mythological figures of Mnemosyne and Lethe, the philosophical reflections of Plato, the ritual practices of Orphism and mystery cults, and the concrete political and legal frameworks of classical Athens. It is posited that the concepts of memory and forgetting are not merely coexistent, but actively shape each other. The Athenian amnesty of 403 BC is particularly noteworthy as a paradigm of oblivion that was not merely passive erasure, but rather a deliberate, strategic, and foundational act for the rebirth of democratic life together with a selective memory of the past.

The paper is divided into four sections, with each section addressing the memory-oblivion dynamic from a distinct viewpoint. Firstly, an exploration of the mythological and philosophical roots of recollecting and forgetting is provided, with a subsequent highlighting of their ambiguous moral and epistemic roles in early Greek thought. Secondly, the ways in which myth, poetry, and truth were intertwined with recollection and repression are examined, culminating in a deeper understanding of archaic ἀλήθεια as ‘non-oblivion.’ Thirdly, the text examines how political institutions embraced the rationale of oblivion, illustrating how the couple ‘amnesty and memory’ functioned as an instrument of peace, cooperation, harmonisation and legitimacy. Finally, an analysis of the legal implementation of oblivion and recollection of the past in post-civil strife Athens is presented, where the ban on recalling wrongs together with the republication of laws constituted a profound interrelation between oblivion and memory in service of the polis.

Ultimately, it is argued that oblivion, far from being a void, is understood as a cultural and legal construction, a performative act with the capacity to purge, regenerate, and shape collective identity. In the contemporary moment, marked by contentious memory politics and debates over historical justice, a return to these

ancient formulations may offer both cautionary narratives and unexpected resources.

2 Memory and Oblivion as Ambivalent φάρμακα

Within the Western tradition, memory and oblivion are concepts drawing their origins from ancient Greek mythology, philosophy and politics. From a functional perspective, these two concepts – reliant upon symbolic representations of the past – have played a pivotal role, as Jan Assmann has lucidly demonstrated and explained in his works, in the formation of cultural identity and unity, as well as in the promotion of self-understanding, as opposed to an individualistic or communicative perspective.¹

It is a commonly held view that these entities are perceived as diametrically opposed and distinct: the positive and the negative; the venerable and the despicable. Nevertheless, on occasion, they have also been interpreted as two intertwined experiences whose boundaries are not always clear-cut, but rather blurred:² if, on the one hand, λήθη (whose root expresses the idea of non-mindfulness) is not the absence of light, but the shadow that envelops light; on the other hand, its antonymous, ἀλήθεια, embodies the light which is hidden by the veils of oblivion and emerges as the truth of whatever is memorable and absolutely unforgettable (bearing the root μνη- the idea of mindfulness).³ Furthermore, they have been posited as two foundational elements in the shaping and re-shaping, structuring and de-structuring of our past, alongside the paradoxical ambivalence linking the so-called ‘archive fever’ with the ‘archivolithic drive’.⁴ As a matter of fact, if, on the one

1 Cf. Jan Assmann, *Cultural Memory and Early Civilization* (Cambridge: Cambridge University Press, 2011), 15 ff.; Jan Assmann, “Collective memory and cultural identity,” in *New German Critique* 65 (1995): 125–133.

2 Cf. Marc Augé, *Oblivion*, Engl. trans. (London–Minneapolis: University of Minnesota Press, 2004), 15, who assumes that oblivion is «a component of memory itself».

3 Gregory Nagy, “About Greek *alētheia* ‘truth’: Marcel Detienne challenges Martin Heidegger,” in *Classical Inquiries* (https://nrs.harvard.edu/urn-3:hul.eresource:Classical_Inquiries, 2018).

4 Jacques Derrida, *Archive Fever* (Chicago: University of Chicago Press, 1996), 11 ff. Derrida’s conception of the archive is predicated on the notion that it functions not merely as a repository for memory (anamnesis). The concept of «archivolithic drive» is defined as the technical and material structures that shape and transform memory. Derrida’s argument is that the archive, despite its association with capturing the past, only exists so that we may compensate for the loss of memory, and can «never be either memory or anamnesis as spontaneous, alive and internal experience». The phenomenon of archive fever can be defined as the compulsive desire to archive, collect and preserve traces of the past. This fervent impetus, however, is not merely a quest for historical precision. This is also a response to the inherent instability of memory and the fear of forgetting. Concurrently, the

side, there has been no doubt about the salvific function of memory *per se* and the debate has focussed on which instruments are most effective in the act of remembering,⁵ on the other hand, the negative evaluation of forgetting has from time to time been superseded by a positive approach,⁶ since functional or collective oblivion has been conceived of as an inherent part of the process aiming at «the store of knowledge from which a group derives an awareness of its unity and peculiarity».⁷

For instance, in Plato's *Timaeus*, the Egyptians – embodying the prototype of fixed and sacred civilisation – are portrayed as more authoritative than Solon and his fellow Greeks, whose attitude appears comparatively immature; yet, due to the firm reliance on hieroglyphs as a means of recollection, the Egyptian priest is unable to recount the story of Atlantis without the aid of writing. By contrast, the Greeks – positively characterised as an image of dynamic and performative cultures – benefit from the advantage of their youth and demonstrate a remarkable disposition to memory, as evidenced by the rise of Greek oral tradition as a

archiviolithic drive alludes to a destructive force inherent within the archive itself, operating to erase or efface its own traces while concurrently endeavouring to preserve them. This notion is closely associated with Derrida's concept of archive fever, which refers to the obsessive desire to collect, preserve, and organise historical information. This archiviolithic force, a kind of archive-destroying impulse, is not merely concerned with forgetting or destruction, but rather constitutes a fundamental aspect of the way in which the archive functions. The concept under scrutiny is characterised by a constant negotiation between the need to preserve and the inherent instability and incompleteness of any archive. Indeed, any preliminary discourse on the subjects of memory and oblivion must, by necessity, evoke the notion of Spurs. In this study, Derrida examines the phrase «I have forgotten my umbrella», which was discovered in Nietzsche's unpublished manuscripts. This analysis, conducted in Nietzsche's *Styles*, explores the potential implications of this seemingly innocuous phrase within the context of Nietzsche's philosophical oeuvre. Applying this phrase as a focal point, Derrida explores themes of forgetfulness, memory and the nature of style in Nietzsche's work. The conventional perspective of forgetfulness as merely a deficiency in memory is challenged by the philosopher, who proposes instead that it is a creative and affirmative force. The concept of the 'forgotten umbrella' is employed to illustrate the way Nietzsche uses the concept of forgetfulness to challenge established notions of history and existence.

5 See Jens Brockmeier, "Remembering and Forgetting: Narrative as Cultural Memory," in *Culture and Psychology* 8 (2002): 15–24. Cf. Liedeke Plate, "Amnesiology: Towards the study of cultural oblivion," in *Memory Studies* 9.2 (2016): 143–155, who rightly points out that the problem with forgetting is not just that it is defined in negative terms, but that «if we want to talk about what is forgotten, we stumble upon a fundamental lacuna»; this is clear when we compare the sentence 'The process of remembering produces memories' with 'The process of forgetting produces –': what we do not remember cannot be accessed in our minds or expressed in language.

6 See Paul Ricoeur, *Memory, History, Forgetting* (Chicago: University of Chicago Press, 2004); Harald U. Weinrich, *Lethé: The Art and Critique of Forgetting* (Ithaca, NY: Cornell University Press, 2004).

7 Assmann, "Collective memory and cultural identity," 130.

consequence of the loss of writing during the Dark Ages.⁸ Accordingly, Plato appears to emphasise both the Greeks' capacity for an effective type of recollection and the link between this capacity and their historical oblivion, as well as to associate oral cultures with cultures of the memorable.⁹ Such an idea is also explored in the dialogue *Phaedrus*, in which the philosopher not only praises poetic inspiration but, criticising Thot's invention of writing, portrays it as a φάρμακον, an ambivalent word which here plausibly means more a poison than a therapy.¹⁰

To elaborate further, the conventional instruments of memory enable the process of forgetting, whereas forgetting itself serves as a catalyst for memory. The myths themselves describe the paradoxical relation between memory and oblivion, μνημοσύνη and λήθη, in terms of common lineage. In the works of the pseudo-Homer and Hesiod, Mnemosyne, the Titan of memory, is depicted as the progenitor of the nine Muses. The Muses, nine golden divinities, are said to be the source of inspiration for art and poetry, and they preside over those who partake in symposia and delight in song. Euripides states that they are themselves oblivion of evils and remedy for concerns.¹¹

From a further and alternative perspective, this intriguing ambivalence is exemplified by the frontispiece of Paul Ricoeur's monograph on the philosophy of history, which features a marble sculpture realised in the 18th century for the library of the Wiblingen monastery, in Ulm. The core of the scene is Khronos, a prominent deity in Greek mythology and in the Orphic tradition: he is depicted as an aged and winged figure tearing the pages of a book, and symbolising the fleeing of time, the

8 See Plato *Timaeus* 22b-26c; Plato *Phaedrus* 275a; cf. Jacques Derrida, "Plato's Pharmacy," in *Dissemination* (Chicago: University of Chicago Press, 1981), 61–171, who deconstructs Plato's critique of writing by examining the concept of φάρμακον (which in ancient Greek can mean both poison and remedy): Derrida's argument is that in Plato's dialogue *Phaedrus*, writing is presented as a perilous supplement that endangers memory and knowledge. Indeed, writing can be regarded as having a dual nature, serving as both a means of preserving cultural memory and a form of personal oblivion. This is due to the fact that conventional instruments of memory facilitate the process of forgetting, whereas forgetting itself serves as a catalyst for memory. However, this duality is also applicable to memory and oblivion, albeit with a distinct perspective and nuance. As human creations and forms of history, each of such concepts can be viewed as a φάρμακον, which is a substance that has the dual properties of being both a remedy and a poison, whether each is compared to the other or is considered in isolation.

9 «In a civilization in which communication occurred solely by word of mouth, as had been the case in Greece before the 8th century BC, the transmission of the memorable took a narrative form that, since Plato, we have come to call myths» (Luc Brisson, *How Philosophers Saved Myths. Allegorical Interpretation and Classical Mythology* [Chicago: Chicago University Press, 2004], 162).

10 Plato *Phaedrus* 274c-277a.

11 [Homer] *hymn. Hermes* 5.42; Hesiod. *Theog.* 55, 915 ff.; Eur. *Heracl.* 1043 (cf. *Troad.* 606 and *Suppl.* 86); Pseudo-Apollodorus *Bibl.* 1.3; cf. Aristoph. *Lys.* 1248; Plato *Euthydemus* 275d2; *Theaetetus* 191d4; *Critias* 108d2.

destruction of memory and its associated records.¹² The young woman shown above Khronos is the muse Clio: in her right hand she holds the instruments traditionally used to measure time, record memories, and prevent forgetting (a book, an inkwell and a stylus), whereas with her left hand she attempts to restrain the destructive action of the god, ready to re-write what has been irretrievably lost.¹³ In accordance with the title of his book, Ricoeur posits that between the forces of memory and oblivion there is the mastery of history: as he explains in a brief hand-written commentary under the photograph of the statue reproduced a second time in the first pages of his book, this Baroque allegory is set ‘between the laceration (*déchirure*) by the wings of time and the writing of history and its stylus’.

Nevertheless, going beyond Ricoeur’s interpretation, historiography itself – if not history – can be perceived as both a kind of *ars memoriae* and, at the same time, an implementation of *ars oblivionalis*. If the former, together with different further types of recollection such as the *lieux de mémoire*, is traditionally regarded as the art of ‘blocking the work of forgetting’,¹⁴ by contrast, the latter would not seek to examine the shortcomings of memory; rather, it would suggest that cultural oblivion amounts to a human phenomenon that is actively and deliberately constructed. From this standpoint, Clio’s endeavours to avert the eradication of memories are analogous to her rewriting process, wherein she employs a wide range of techniques, including omissions, silences, repression, misrepresentations and censorship, to create real ‘acts of forgetting’.¹⁵ In a scene from Milan Kundera’s *Jacques and his*

12 The concepts of memory and oblivion are phenomena that emerge and are shaped by the passage of time. The way in which time is perceived and confronted significantly impacts on these concepts, or rather on what is remembered and what is forgotten: cf. Arist. *EN* 1168a16; *EN* 1096b4; *Phys.* 221a33.

13 Ricoeur, *Memory, History, Forgetting*, sub ‘frontispiece’, followed by this note: «in a special place in the library of the monastery there stands a superb baroque sculpture. It is the dual figure of history. In the foreground, Kronos (*sic*), the winged god. An old man with wreathed brow: his left hand grips a large book, his right-hand attempts to tear out a page. Behind and above, stands history itself. The gaze is grave and searching; one foot topples a horn of plenty from which spills a cascade of gold and silver, sign of instability; the left hand checks the act of the god, while the right displays history’s instruments: the book, the inkpot, and the stylus».

14 Cf. Pierre Nora, “Between Memory and History: Les Lieux de Mémoire,” in *Representations* 26 (1989): 7–24, who believes that the so-called *lieu de mémoire* compensates for the lack of a natural process of memory, as such places «originate with the sense that there is no spontaneous memory, that we must deliberately create archives, maintain anniversaries, organize celebrations, pronounce eulogies, and notarize bills because such activities no longer occur naturally».

15 In contrast to a proper *ars memoriae*, an authentic *ars oblivionalis* (an art of forgetting) appears impossible from both a communicative and an individual perspective. This is because, in the present day, there are no voluntary or coercive devices for forgetting (see Umberto Eco, “An *ars oblivionalis*? Forget it!” in *PMLA* 103.3 [1988]: 254–261; a notable example of this is the film *Eternal Sunshine of the Spotless Mind*, in which Joel Barish decides to undergo a procedure to forget his girlfriend Clementine after discovering that she has had him erased from her memory). However, all this is not valid when

master, the main character of this ingenious play (a re-writing of Diderot's *Jacques le fataliste*) puts it concisely: 'One day all past culture will be completely rewritten and completely forgotten behind the rewrite'; 'Everything that's ever happened here below has been rewritten hundreds of times, and no one ever dreams of finding out what really happened'.¹⁶

3 The Myth as the Memorable, the Truth as the Non-oblivion

Prior to the advent of history, myths, that is 'necessary narrations of *Bedeutsamkeit*' and main devices for evoking and/or revoking the past, played a pivotal role in the establishment, preservation and dissemination of cultural memory in its most proper sense.¹⁷ In this vein, it may be posited that there is a tendency to elevate memory to a venerable and sacred entity, and that there is an explicit (if not absolute) preference for it over oblivion. Indeed, it is within this framework that the early manifestations of Orphism (and thus Platonism) can be appreciated: these intellectual movements, from differing viewpoints, equated memory with learning, creativity, knowledge and even with the immortality of the soul through the process of anamnesis (recollection of forms and true entities).¹⁸

If myth – as already pointed out – can be defined as the act of conveying the memorable, that is to say what is significant and necessary from a 'collective view-point', then it can be argued that the act of remembering and recalling is also the very condition of possibility for avoiding oblivion and, what is the same, for founding and shaping a form of mythic knowledge. The memorable is what must be preserved through myth because the passage of time can diminish its significance, and thus human beings, susceptible to the effects of time, can forget it. Furthermore,

considering the concept of functional and collective memory, an idea which encapsulates the process of forgetting and its associated strategies.

¹⁶ Milan Kundera, *Jacques and His Master*, Engl. trans. (New York: Harper & Row, 1986), 8, 96. This duality of memory and oblivion finds modern parallels in digital culture, where archival technologies promise perfect recall yet engender new forms of forgetting. The tools that facilitate the preservation of memory, such as the practice of writing in the Platonic tradition or contemporary cloud-based storage systems, inherently introduce external factors and contribute to the destabilisation of living memory.

¹⁷ Cf. Walter Burkert, *Structure and History in Greek Mythology*, Engl. trans. (Berkeley: University of California Press, 1979), 23.

¹⁸ Plato *Phaedo* 72e-73; *Phaedrus* 249b-252b; *Meno* 81c-d, 86c; *Theaetetus* 191d4 (see also 172c-177c); cf. Olym. In *Platonis Phaedonem commentaria* 10.3 and 7.10. Indeed, such process, to be more precise, inevitably comes with the oblivion of earthly realities, even if focussed on recollection.

what is memorable is often so heinous, so cruel, so awful that human beings desire to forget it and allow it to be eroded by the effects of time. This, as made clear by Nietzsche, can be expressed as follows: ‘A thing must be burnt in so that it stays in memory: only something that continues to hurt stays in memory’.¹⁹ Thus, it can be concluded that disturbing and traumatic events, which are defining ingredients of Greek mythology, are inextricably linked with memory: if it is an innate human tendency to overlook what is perceived as beautiful and good, conversely, unpleasant and deeply alarming experiences are so persistent and profound that they are almost impossible to erase from the mind.

Within the framework of this early oral tradition, what was deemed memorable was conveyed as truth through poetry and epic in the form of authoritative mythical narration.²⁰ Concurrently, wisdom was identified with a distinct form of ‘oracular’ memory, wherein the σοφοί, that is ‘wise men’ (such as kings, poets, shamans), were not mere professionals of wisdom, akin to the later class of sophists, but rather ‘masters of truth’, that is ‘masters of ἀλήθεια’ (in the sense of ‘masters of μνήμη’).²¹

19 Friedrich Nietzsche, *On the Genealogy of Moral*, Engl. trans. (Cambridge: Cambridge University Press, 1994), 38.

20 It is noteworthy that in Homeric diction there is no opposition between ἀλαθής λόγος and μῦθος, as, on the contrary, Pindar attests for later phases (*Olymp.* 1.29-30, *Nem.* 7.23-25): it is only when the terms implying the idea of truth start to be marked in opposition to μῦθος, that the meaning of the latter – in turn becoming unmarked within the framework of such opposition – shifts into something like ‘tale’, that is something referring to the contrary of ‘truth’. In Martin’s working definition, myth is a speech-act both «associated with narrating from memory», and «indicating authority»: see Richard Martin, *The Language of Heroes: Speech and Performance in the Iliad* (Ithaca: Cornell University Press, 1989), 12, 44.

21 Cf. Marcel Detienne, *The Masters of Truth in Archaic Greece*, Engl. trans. (New York: Zone Books, 1996), 141, ntt. 31, 37, 217; Gregory Nagy, *Homeric Questions* (Austin: University of Texas Press, 1996), 122 ff., in which he summarises his previous linguistic analysis of ἀλήθεια. This analysis was used by Detienne to support the view that the earliest recoverable meaning of ἀλήθεια conveyed the quality of being memorable and unforgettable. However, Nagy rightly clarifies that the word ‘ἀλήθεια’ explicitly excludes ‘λήθη’, meaning ‘lapse of consciousness/mind’, whereas the former identifies ‘no lapse of consciousness/mind’ (Gregory Nagy, *Pindar’s Homer: The Lyric Possession of an Epic Past* [Baltimore: Johns Hopkins University Press, 1990], 58 ff.; Gregory Nagy, “Autorité et auteur dans la Théogonie hésiodique,” in Fabienne Blaise, Pierre Judet de La Combe, and Philippe Rousseau [eds.], *Le métier du mythe: lectures d’Hésiode* [Villeneuve d’Ascq: Presses Universitaires, 1996], 41–52). This is indeed an alternative and less well-known interpretation of the noun ἀλήθεια, which is presented in opposition to Heidegger’s objective view. In his 1927 book *Sein und Zeit*, the German philosopher provides an explanation for the origins of the Greek word, highlighting its etymology from the verb λανθάνειν, with the sense of ‘escaping the notice of’. Accordingly, Heidegger’s understanding of the fundamental meaning of ἀλήθεια is *Unverborgenheit*, which is commonly translated as ‘unconcealedness’. In other words, in his opinion, ἀλήθεια represents what is not hidden, what is and is perceived in nature, rather than being simply the truth: see Martin Heidegger, *Being and Time*, Engl.

More exactly, such designations suggest that the σοφοί would totally control the art of ‘recalling and narrating from memory’ (μνήμη) and would absolutely overcome the effects of λήθη (oblivion, lapse of consciousness), thereby ensuring the success of their ‘acts of recollection and remembrance’ (μῦθοι).²² It is noteworthy that the Greek term for truth, ἀλήθεια – which is generally associated with the fundamental ideas of ‘disclosure’ and ‘unveiling’ – can be qualified in terms of ‘absence or privation of oblivion’, that is, in terms of ‘ultimate assertion of what is memorable through an act of removal’. This is because the noun, by connecting the negative prefix ‘α-’ with the semantic implication of the stem ληθ-, both identifies the denial of forgetting and amounts to the affirmation of remembering (μνήμη implying the act of recovering *le fond de l'être*, that is the reality that lies beyond the barriers of human perception and the dimension of time).²³ In other words, within the context of mythic and religious beliefs, ἀλήθεια – the truth as the absence of λήθη, and therefore ‘no lapse of consciousness’ – exists in a state of dynamic tension between the implied pole of memory and the explicit pole of oblivion. The way in which poets, kings and shamans establish truth through recollection and narration from memory simultaneously denounces and eradicates oblivion as an obstacle to truth and a cause of failure in mythic speech acts, even as it evokes it in negative terms at the same time.

Against this backdrop – to quote Brockmeier – the notion of truth, that is what is absolutely memorable, emerges as «the radiant hero in the limelight», while oblivion becomes «the shady villain lurking behind the scenes». The Orphic traces of this discourse are clear.²⁴ The sacred speeches attributed to Orpheus represent the most explicit instances of poetic and fictional reworking of both memory and oblivion, in accordance with the traditional line of archaic Greek thought. The most tangible and substantial evidence can be found in the renowned archaeological discovery known as the Orphic Gold Tablets.²⁵ The brief texts were written in hexameters, exhibiting

trans. (New York: Harper & Row, 1962), § 44; cf. Thomas Cole, “Archaic Truth,” in *Quaderni Urbinati di Cultura Classica* 13 (1983): 7–28.

22 Cf. Hom. *Il.* 1.273, 9.527 and 9.259.

23 Cf. Jean-Pierre Vernant, *Myth and Thought Among the Greeks* (New York: Zone Books, 2006), 115 ff.

24 See Brockmeier, “Remembering and Forgetting: Narrative as Cultural Memory,” 15. Yet, it has also been argued that there would be an overlap between ἀλήθεια and λήθη, as well as ἀλήθεια and ψεύδεα (William G. Thalmann, *Conventions of Form and Thought in Early Greek Epic Poetry* [Baltimore: Johns Hopkins University Press, 1984], 148): this is because no act of remembering could be entirely free of forgetting, and no telling of the truth could be entirely free of deception. However, it seems preferable to argue that, whereas the concept of ‘remembering’ includes an element of ‘forgetting’, the noun ‘ἀλήθεια’ does not appear to be inclusive in the same way.

25 See Alberto Bernabé, Ana Isabel Jiménez San Cristóbal, *Instrucciones para el más allá. Las laminitas órficas de oro. Apéndice iconográfico de R. Olmos, ilustraciones* (Madrid: Ediciones clásicas, 2001); Alberto Bernabé, Ana Isabel Jiménez San Cristóbal, *Instructions for the Netherworld. The Orphic Gold Tablets* (Leiden – Boston: Brill, 2008); Fritz Graf, Sarah Iles Johnston, *Ritual Texts for the*

spelling errors, and inscribed on small pieces of gold foil to be placed in the hands or mouths of initiates as an offering to Charon during their κατάβασις, the ritual descent towards a final transition to a new life. These texts were supposed to be protected, maybe even dictated by Mnemosyne (a goddess who represents memory and gives the initiate the instructions revealed when alive). They were like a password or guide for getting around in the underworld. A voice – supposedly either Orpheus or Mnemosyne herself – advises the initiate’s soul along the path across the realm of the dead to avoid an unnamed spring marked by a ‘bright’ cypress to the left of the entrance to Hades: this spring is easily identifiable as the River Lethe.²⁶ Thus, following the voice’s advice, the initiates head to a second spring, known as Lake of Mnemosyne, where they must face the unavoidable questioning from its guardians and ask for water to quench their thirst.²⁷

Afterlife: Orpheus and the Bacchic Gold Tablets (London – New York: Routledge, 2007); Alberto Bernabé, *Poetae Epici Graeci. Testimonia et Fragmenta*, Pars II, *Orphicorum et Orphicis similibus testimonia et fragmenta*, I-III (Munich – Leipzig: Teubner, 2004–2007); Radcliffe G. Edmonds III (ed.). *The ‘Orphic’ Gold Tablets and Greek Religion: Further Along the Past* (Cambridge: Cambridge University Press, 2011).

26 In the *Orphic Hymn* addressed to Mnemosyne (77.9-10), the supposed function of the goddess implied in the Orphic gold leaves is made explicit. She is required to help the initiates remember how to perform the ritual: ἀλλά, μάκαιρα θεά, μύσταις μνήμην ἐπέγειρε / εὐιέρου τελετῆς, λήθην δ’ ἀπὸ τῶν <δ> ἀπόπεμπε (but, o blessed goddess, awaken memory for the initiates of the noble and sacred ritual, and reject oblivion from them); cf. Bernabé, Jiménez San Cristóbal, *Instrucciones para el más allá*, 61 ff.; Bernabé, Jiménez San Cristóbal, *Instructions for the Netherworld*, 37 ff. The river Lethe was associated with the dark waters of oblivion, unlike memory, which was traditionally seen with great prestige: for instance, in early Greek writings, such as those of Hesiod and Pindar, Lethe is the cursed child of Eris, as well as a companion of Neikos (see Hesiod. *Theog.* 227; Pindar. *Nem.* 8.24-25). In later sources, the Orphic and Platonic traditions seem to have been overemphasised, leading to a definitively negative assessment: in fact, in contrast to Mnemosyne, Lethe emerges as the symbol of the body (which is itself cause of oblivion); Lethe is moreover described in terms of insanity and ignorance, and represented as the source of evil or even as the evil itself (see Plotin. *Enn.* 4.3[27].26.55; *Corpus Hermeticum* 10.15; Iambl. *de Myst. Aegypt.* 3.20).

27 Cf. Tablet of Petelia, 1–5 [Bernabé, Jiménez San Cristóbal, *Instrucciones para el más allá*, no. L3; Bernabé, *Orphicorum et Orphicis similibus testimonia et fragmenta*, fr. 476; Graf, Johnston, *Ritual Texts for the Afterlife*, no. 2; Edmonds III, *The ‘Orphic’ Gold Tablets*, B1]; Εὐρήσει{σ}εις <δ> Αἴδαιο δόμων ἐπ’ ἀριστερὰ κρήνην, / πᾶρ δ’ αὐτῆι λευκὴν ἔστηκυῖαν κυπάρισσον / ταύτης τῆς κρήνης μηδὲ σχεδὸν ἐμπελάσεις. / εὐρήσεις δ’ ἑτέραν, τῆς Μνημοσύνης ἀπὸ λίμνης / ψυχρὸν ὕδωρ προρέον· φύλακες δ’ ἐπίπροσθεν ἕασιν; Tablet of Pharsalos [Bernabé, Jiménez San Cristóbal, *Instrucciones para el más allá*, no. L4; Bernabé, *Orphicorum et Orphicis similibus testimonia et fragmenta*, fr. 477; Graf, Johnston, *Ritual Texts for the Afterlife*, no. 25; Edmonds III, *The ‘Orphic’ Gold Tablets*, B2]; Εὐρήσεις Αἴδαιο δόμοις ἐνδέξια κρήνην, / πᾶρ δ’ αὐτῆι λευκὴν ἔστηκυῖαν κυπάρισσον / ταύτης τῆς κρήνης μηδὲ σχεδὸθεν πελάσησθα / πρόσσω δ’ εὐρήσεις τὸ Μνημοσύνης ἀπὸ λίμνης / ψυχρὸν ὕδωρ προρέον· φύλακες δ’ ἐπύπερθεν ἕασιν (In the halls of Hades, you will find a spring on your left, and nearby a bright cypress

4 The Ambivalence of Oblivion: from Vice and Error to Amnesty

In light of the foregoing, an alternative line of thinking, as evidenced in certain passages of the Platonic dialogues, posits that memory and oblivion may function in tandem, with the process of forgetting assuming a therapeutic role (thereby counteracting some of the inherent dangers associated with recollection).²⁸ Indeed, this notion appears to transcend the pragmatic and utilitarian perspectives already present in Iliad as well as in Hesiod's works (in terms of convenient oblivion of ills, pains and misfortunes), where some of the lines allude to the benefits of forgetting past evils and misfortune and thus suggest that Lethe can provide relief, solace and pleasure for the present and the future.²⁹ Conversely, this more sophisticated perspective emphasises the concept of oblivion as a key aspect – even considered for its sacred value – of knowledge, political identity, and integration of memory.

For instance, Pausanias explains how to access the rituals performed at the sanctuary of Trophonios at Lebadeia, near Delphi, a place that seems to have been designed as an oracle and a mystery cult where the practice of divination relied on Lethe and Mnemosyne.³⁰ The candidate is accompanied by two priests on a journey through the River Hercyna, where they reunite with the regenerative waters of Lethe and Mnemosyne. Unlike the Orphic κατάβασις, here it is necessary to drink from the two springs in a specific order: from the first spring, that of Oblivion, one must drink to forget all memories; the second one, that of Mnemosyne, helps to keep the

tree. Do not approach this spring. You will find another, from the Lake of Memory, from which cold water flows. But there are guardians nearby).

28 This resonates with Jorge Luis Borges's paradoxical tale *'Funes, el memorioso'*. Ireneo Funes develops an impeccable memory in the aftermath of an incident, becoming capable of recalling and retaining every detail of every experience. However, this faculty, far from being a gift, evolves into a curse, leading to a state of isolation from reality and humanity, until the death of the protagonist.

29 Plato *Phaedrus* 250a-b; Hom. *Il.* 15.70, 24.525-533; Hesiod. *Theog.* 55, 98-103; Eur. *Ba.* 282; Plut. *Mor. fr.* 128 [Sandbach]; Eur. *Heracl.* 1043 (cf. *Troades* 606 and *Supplices* 86).

30 Paus. *Hell.* 9.39.8: ἐνταῦθα δὴ χρὴ πιεῖν αὐτὸν Λήθης τε ὕδωρ καλούμενον, ἵνα λήθῃ γένηταί οἱ πάντων ἃ τέως ἐφρόντιζε, καὶ ἐπὶ τῷδε ἄλλο αὖθις ὕδωρ πίνειν Μνημοσύνης: ἀπὸ τούτου τε μνημονεύει τὰ ὀφθέντα οἱ καταβάντι. θεασάμενος δὲ ἄγαλμα ὃ ποιῆσαι Δαίδαλόν φασιν – ὑπὸ δὲ τῶν ἱερέων οὐκ ἐπιδείκνυται πλὴν ὅσοι παρὰ τὸν Τροφώνιον μέλλουσιν ἐρχεσθαι – τοῦτο τὸ ἄγαλμα ἰδὼν καὶ θεραπεύσας τε καὶ εὐξάμενος ἐρχεται πρὸς τὸ μαντεῖον, χιτῶνα ἐνδεδουκῶς λινοῦν καὶ ταινίας τὸν χιτῶνα ἐπιζωσθεὶς καὶ ὑποδησάμενος ἐπιχωρίας κρηπίδας. See Pierre Bonnechere, *Trophonios de Lébadée: Cultes et mythes d'une cité béotienne au miroir de la mentalité antique* (Leiden: Brill, 2003); Pierre Bonnechere, "Trophonius of Lebadea. Mystery aspects of an oracular cult in Boeotia," in Michael B. Cosmopoulos (ed.), *Greek Mysteries: The Archaeology and Ritual of Ancient Greek Secret Cults* (London – New York: Routledge, 2003), 169–192.

experiences that follow. Only after that, the initiate is allowed to contemplate the deity crafted by Daedalus. Similarly, in the dialogue *Phaedrus*, Plato presents a complex and nuanced viewpoint, establishing an intriguing and ambivalent correlation between memory and oblivion. After dedicating an authentic hymn to praise memory, Socrates describes the noble feelings experienced by the initiated when, at the sight of beauty, he completely forgets the material world; such phenomenon of ‘oblivion’ is directly associated with the process of ‘ἀνάμνησις’, since according to the philosopher the sight of beauty – contrary to what happens to the corrupt man – evokes the soul’s memory of realities from before birth: forgetting the earthly dimension, in other words, enables recollection of the metaphysical realm.³¹

Nevertheless, the strategic use of oblivion is not limited to initiatory rituals or metaphysical knowledge. As Alcaeus himself appears to suggest in one of his poems, the establishment or re-establishment of the political order hinges on the call to forget past wrath, which pits a polis divided by faction and internal strife against a new beginning.³² Myths also assume that politics can arise where resentment ceases. Following Athena’s triumph over Poseidon (who, according to Plutarch, was praised for his lack of anger), an altar to Lethe was erected in the Acropolis and the anniversary of the divine conflict was officially removed from the calendar.³³ Thus,

31 Plato *Phaedrus* 251d-252b: πᾶσα κεντουμένη κύκλω ἡ ψυχὴ οἰστρᾷ καὶ ὀδυνᾶται, μνήμην δ’ αὖ ἔχουσα τοῦ καλοῦ γέγηθεν ... ὅθεν δὴ ἐκοῦσα εἶναι οὐκ ἀπολείπεται, οὐδέ τινα τοῦ καλοῦ περὶ πλείονος ποιεῖται, ἀλλὰ μητέρων τε καὶ ἀδελφῶν καὶ ἐταίρων πάντων λέλυσται, καὶ οὐσίας δι’ ἀμέλειαν ἀπολλυμένης παρ’ οὐδὲν τίθεται, νομίμων δὲ καὶ εὐσχημόνων, οἷς πρὸ τοῦ ἐκαλλωπίζετο, πάντων καταφρονήσασα δουλεύειν ἐτοιμὴ καὶ κοιμᾶσθαι ὅπου ἂν ἔᾳ τις ἐγγυτάτω τοῦ πόθου· πρὸς γὰρ τῷ σέβεσθαι τὸν τὸ κάλλος ἔχοντα ἱατρὸν ἠϋρῆκε μόνον τῶν μεγίστων πόνων. τοῦτο δὲ τὸ πάθος, ὃ παῖ καλέ, πρὸς δὲν δὴ μοι ὁ λόγος, ἀνθρωποὶ μὲν ἔρωτα ὀνομάζουσιν. See Andrea Capra, *Plato’s Four Muses. The Phaedrus and the Poetics of Philosophy* (Cambridge – London: Harvard University Press, 2014), 75 ff.

32 Alc. fr. 70 [Campbell]: ἐκ δὲ χόλω τῶδε λαθοίμεθ’ αὔ / χαλάσσομεν δὲ τὰς θυμοβόρω λύας / ἐμφύλω τε μάχας. See Giuseppe Lentini, “Non è meglio eliminare la *stasis*? (Alc. fr. 70 e 130b Lib.),” in *Eikasmos* 34 (2023): 13–45. For an in-depth analysis of the use of the so-called ‘amnesty strategy’ beyond Athens, see the case study of Dikaia by Serena Barbutto, “Le amnistie di Dikaia e il giuramento nella riconciliazione post-*stasis*,” in *Dike* 25 (2022): 151–202.

33 Plut. *Mor.* 741b (ἐνταῦθα γοῦν καὶ νεῶ κοινωνεῖ μετὰ τῆς Ἀθηνᾶς, ἐν ᾧ καὶ βωμός ἐστι Λήθης ἰδρυμένος, καὶ ὁ Ὑλας ὡσπερ ἠδίων γενόμενος, ἐκεῖνο δὲ σε, εἶπεν, ὦ Μενέφυλε, λέληθεν, ὅτι καὶ τὴν δευτέραν τοῦ Βοηδρομιῶνος ἡμέραν ἐξαιροῦμεν οὐ πρὸς τὴν σελήνην, ἀλλ’ ὅτι ταύτη δοκοῦσιν ἐρίσαι περὶ τῆς χώρας οἱ θεοί, πάντα, εἶπεν ὁ Λαμπρίας, ὅσω τοῦ Θρασυβούλου γέγονε Ποσειδῶν πολιτικώτερος, εἰ μὴ κρατῶν, ὡς ἐκεῖνος ...); 489b-c (Ἀθηναῖοι δὲ τὸν περὶ τῆς ἐριδος τῶν θεῶν μῦθον ἀτόπως πλάσαντες ἐπανάρθωμα τῆς ἀτοπίας οὐ φαῦλον ἐνέμιξαν αὐτῶν: τὴν γὰρ δευτέραν ἐξαιροῦσιν αἰεὶ τοῦ Βοηδρομιῶνος, ὡς ἐν ἐκείνῃ τῷ Ποσειδῶνι πρὸς τὴν Ἀθηνᾶν γενομένης τῆς διαφορᾶς. τί οὖν κωλύει καὶ ἡμᾶς διαφορᾶς ποτε πρὸς οἰκείου καὶ συγγενεῖς γενομένης ἐν ἀμνηστία τὴν ἡμέραν ἐκείνην τίθεσθαι καὶ μίαν τῶν ἀποφράδων νομίζειν, ἀλλὰ μὴ πολλῶν καὶ ἀγαθῶν ἐν αἷς συνετράφημεν καὶ συνεβίωσαμεν ἡμερῶν διὰ μίαν ἐπιλανθάνεσθαι).

the new political order was symbolically grounded in the constitutive value of oblivion: the venerable, voluntary forgetting of the past, the undisputed counterpart of ἀλήθεια.

The essence of politics lies in the eradication of hatred, ensuring that it does not persist, as clearly emerges from the spirit of Solon's reforms,³⁴ and, as Homer himself suggests, from the closing scene of the *Odyssey*.³⁵ After Odysseus triumphs over the suitors, after Eupheithes, taken by an unforgettable pain, calls for revenge on the murderers, Zeus, talking with Athena, proclaims: 'after [the people of Ithaka] have cut trusty oath-offerings, let [Odysseus] always be king and let us instill total ἐκκλησις for the sons and brothers he slew'. Following the conventional interpretation, in this context ἐκκλησις means 'oblivion, forgetfulness', and suggests that Zeus, as an almost plenipotentiary god, would obliterate the memory of the slaughter perpetrated by Odysseus this implying the annulment of the pursuit of vengeance by Eupheithes and his followers.³⁶ However, according to a new thought-provoking re-examination of the lines at issue, ἐκκλησις might be understood as a legal and political principle of *tabula rasa*, representing a form of 'deliberate forgetting' sealed by oaths and sacrifices, more than a sort of resolatory intervention by a *deus ex machina*. This new interpretation would appear to be consistent with the settlement between Odysseus and the families of the slain suitors, irrespective of the fact that it is patently a lopsided and imbalanced settlement, giving the victors an advantage and negating

34 Plut. *Sol.* 21.1: καὶ πολιτικὸν ἀφαιρεῖν τῆς ἔχθρας τὸ αἶδιον.

35 Hom. *Od.* 24.485-487: ὄρκια πιστὰ ταμόντες ὁ μὲν βασιλευέτω αἰεὶ, / ἡμεῖς δ' αὖ παίδων τε κασιγνήτων τε φόνιοιο / ἐκκλησιν θέωμεν ('after [the people of Ithaka] have cut trusty oath-offerings, let [Odysseus] always be king and let us instill total ἐκκλησις for the sons and brothers he slew').

36 Nicole Loraux, *The Divided City: On Memory and Forgetting in Ancient Athens* (New York: Zone Books, 2002), 151, and cf., *amplius*, 97 ff., 143 ff.; Nicole Loraux, "Amnesty and its Opposite," in *Mothers in Mourning* (Ithaca, NY Cornell University Press, 1998), 83–109. Indeed, in her book *La cité divisée: L'oubli dans la mémoire d'Athènes*, Nicole Loraux reassesses the concept of ancient amnesty, proposing that collective forgetting of wrongs forms the basis of any society and is a means of making peace. This would be decreed by Zeus in Hom. *Od.* 24.485-487, following Odysseus's massacre of the suitors. The ritual of cutting 'trusty oath-pieces' would be performed by the survivors, and the king would be regarded as the sole ruler. At the same time, all the sons and brothers killed by the hero would be consigned to total oblivion (ἐκκλησις). In a manner analogous to that of Loraux, who contends that Athens was founded on the strategy of oblivion, Donatella Di Cesare (*Democrazia e anarchia. Il potere nella 'polis'* [Torino: Einaudi, 2024]) advances the proposition that democracy, in its essence, is inextricably associated with anarchy (i.e., the absence of principle, tradition, founded and uncontroversial power). She posits that in its purest form, democracy necessitates a radical departure from the concepts and mechanisms implied by the notion of ἀρχή, thereby engendering an environment wherein power is not merely inherited or divinely ordained, but rather collectively held and exercised, as well as dynamically advancing. But if this were truly the case, it would be necessary to explain from a legal and historical perspective the Demosthenic definition of νόμος (Dem. 25.16) together with its implications, such as the principle '*lex anterior derogat posteriori*'.

the losses incurred by the capitulating faction. More precisely, in the context of establishing a new order and pursuing reconciliation, the families of the suitors would be required to renounce their grievances in exchange for reunification. In this case the sworn ἔκκλησις – i.e., a sworn pact of oblivion – would merely amount to a practical device for protecting the ‘winner party’ and the regime.³⁷

Nevertheless, the innovative reinterpretation at issue would introduce a rudimentary version of the concept of ‘amnesty,’ a noun clearly derived from the Greek term ‘ἀμνηστία’. This was still used in the 4th century in a general sense of what is forgotten or lost in obscurity and only later it started meaning the act of granting oblivion for past offences, so approaching the current sense of (political and

37 Edwin Carawan, “The Amnesty at the End of the *Odyssey*,” in *Greek, Roman, and Byzantine Studies* 64.2 (2024): 131–146. Carawan’s article challenges the long-held assumption regarding the meaning of ἔκκλησις in *Odyssey* 24.483–485, which has traditionally been interpreted as referring to a supernatural wiping away of memory of the suitors’ slaughter, as attested in Fitzgerald’s, Cook’s, Fagles’s translations and even in earlier Latin glosses: according to this view, Zeus’s stratagem would entail the imposition of a collective amnesia on the Ithakans, thereby ensuring their oblivion of their fallen kin. By contrast, Carawan puts forward an alternative interpretation of ἔκκλησις, arguing that it should be understood as ‘amnesty’ in a legal and political sense, i.e., as a binding and sworn agreement recognised by an archaic Greek audience. The following points are made by the author: the term ἔκκλησις is unique to Homer and is not attested elsewhere until much later, and therefore its meaning must be inferred from context and from related terms such as ‘ἐκλανθάνειν’, a verb which typically describes the phenomenon of forgetting driven out by more pressing concerns, rather than absolute erasure of memory; Homeric rituals suggest a resolution of blood-feuds through oaths, with full awareness of the transgression, and subsequent commitment to the forfeiture of grievances, with the *caveat* of divine sanction; the *Odyssey* repeatedly depicts a social order that depends on oath-bound reconciliations, rather than total magical oblivion; Homeric justice is marked by the balancing of claims of ποινή (blood-price), rather than their complete eradication through mystical means. Accordingly, the argument is posited that the archaic audience would have understood ἔκκλησις as a deliberate, god-sanctioned accord to relinquish any further pursuit of vengeance, a commitment enforced by the prospect of divine retribution – that is to say, an amnesty. Such view is daring and challenging and deserves serious consideration. However, it remains open to some doubt. Throughout the *Odyssey*, the gods intervene directly and miraculously (e.g., Athena repeatedly wipes away or alters memories, see *Od.* 13.383–385). Consequently, the notion of a divine ‘spell of forgetting’ aligns coherently with the poem’s narrative style. Furthermore, the narrative of the *Odyssey* culminates in a pivotal divine intervention that thwarts the pursuit of vengeance. The passage explicitly states the gods will put ἔκκλησις (θέωμεν ἔκκλησιν), suggesting an act performed by the gods, rather than merely a social agreement. Carawan emphasises that the term ἔκκλησις is unique and therefore requires reinterpretation. However, it could be argued that the uniqueness of this case lies precisely in its description of a supernatural event, which is not commonly associated with conventional social or legal reconciliation. The rarity of this phenomenon corresponds with the notion of divine intervention, which is considered to be of an extraordinary nature. It is evident that epic poetry is characterised by its preference for vivid and decisive endings. It can be argued that magic forgetting is a more dramatically powerful way to achieve final peace than a long oath-based negotiation, which might have required a more elaborate poetic construction.

legal) amnesty.³⁸ As a political and legal instrument for the resolution of conflicts and for the facilitation of transitions to peace, amnesty would ‘bury the past’ between warring sides or disputants, not only by barring prosecution and penalties, but also by annihilating the very perpetration of the wrongs.³⁹ As the Minister of Charles X, King of France, the Count of Peyronnet, pointed out, recalling that Thrasybulus, after

38 See, for instance, Plato *Menex.* 239c. Starting with Hinrichs and Großer, the common opinion has treated the terms ‘ἀμνηστία’ and ‘μὴ μνησικακεῖν’ as equivalent, resulting in the conclusion that the ban on remembering past wrongs, enacted in 403 BC, primarily prohibited retribution in the courts: Richard Großer, *Die Amnestie des Jahres 403 v. Chr.* (Munich: Progr. Minden, 1868); Eduard Ph. Hinrichs, *De Theramenis, Critiae et Thrasybuli virorum tempore belli Peloponnesiaci inter Graecorum illustrium rebus et ingenio commentatiuncula* (Hamburg: Ex officina J.A. Meissneri, 1820). In contrast, Carawan has argued that the former only became associated with our modern legal and political concept of amnesty in treaties dating from the 2nd century BC, that is to say, during the era of Roman imperialism (see, for instance, the treaty between Miletos and Magnesia on the Maeander and Priene in SIG³ 588.60-64 [= *Milet.* I 3, 148]; the treaty between Miletos and Herakleia in SIG³ 633.36-39 [*Milet.* I 3, 150]; the Knidos arbitration of the dispute between Temnos and Klazomenai in SEG 29.1130 bis, esp. lines 20-22). Conversely, in 4th-century Athens (and prior to this), ‘μὴ μνησικακεῖν’ would present a quite different and much more limited meaning (see Edwin Carawan, *The Athenian Amnesty and Reconstructing the Law* [Oxford: Oxford University Press, 2013], 43 ff.). Nevertheless, if one considers the cases from the 2nd century, the term ‘ἀμνηστία’ would appear to convey a directive to relinquish all recollections of past hostilities or previous claims arising from the war, whether public or private, in pursuit of fostering permanent political collaboration. It is evident that such a scheme, predicated upon the cessation of grievances and the eradication of the memory of the past, appears to be in alignment with earlier treaties that sought to engender cohesion and preserve unity, incorporating the phrase ‘μὴ μνησικακεῖν’ (for example, the treaty between Athens and Bottiaea: IG I³ 76 = Tod 68). See, for a positive evaluation of the amnesties, Xen. *Hell.* 2.4.42-43; [Arist.] *Ath. Pol.* 40.2-3; Plato *Menex.* 243e-244b.

39 And. 1.90 (φέρει δὴ τοῖσιν, οἱ ὄρκοι ὑμῖν πῶς ἔχουσιν; ὁ μὲν κοινὸς τῇ πόλει ἀπάση, ὃν ὁμωμόκατε πάντες μετὰ τὰς διαλλαγάς, ‘καὶ οὐ μνησικακήσω τῶν πολιτῶν οὐδενὶ πλὴν τῶν τριάκοντα καὶ τῶν δέκα καὶ τῶν ἑνδεκα: οὐδὲ τούτων ὡς ἂν ἐθέλη εὐθύνας δίδόναι τῆς ἀρχῆς ἧς ἤρξεν’. ὅπου τοῖσιν αὐτοῖς τοῖς τριάκοντα ὠμυτε μὴ μνησικακήσειν, τοῖς μεγίστων κακῶν αἰτίοις, εἰ διδοῖεν εὐθύνας, ἧ που σχολῆ τῶν γε ἄλλων πολιτῶν τινι ἠξιοῦτε μνησικακεῖν); [Arist.] *Ath. Pol.* 39.6 (τῶν δὲ παρεληλυθότων μηδενὶ πρὸς μηδένα μνησικακεῖν ἐξεῖναι, πλὴν πρὸς τοὺς τριάκοντα καὶ τοὺς δέκα καὶ τοὺς ἑνδεκα καὶ τοὺς τοῦ Πειραιεῶς ἄρξαντας, μηδὲ πρὸς τούτους, ἐὰν διδώσιν εὐθύνας); cf. Xen. *Hell.* 2.4.43 (ὁμόσαντες ὄρκους ἧ μὴν μὴ μνησικακήσειν, ἔτι καὶ νῦν ὁμοῦ τε πολιτεύονται καὶ τοῖς ὄρκοις ἐμμένει ὁ δῆμος). Cf. Gerhard Thür, “Amnestie,” in *DNP* 1 (1996): 602–603, who defines amnesty «Gesetzsmässig festgesetzter Verzicht auf Anklage, Wiederaufnahme von Verfahren, Urteilsvollstreckung und Strafvollzug als Mittel, die streitenden Parteien nach internen oder externen Krisen zu versöhnen». Against the idea of amnesty as a means of reconciliation and harmonisation ‘among pairs’, see Martin Dreher, “Die Herausbildung eines politischen Instruments: Die Amnestie bis zum Ende der klassischen Zeit,” in Kaja Harter-Uibopuu and Fritz Mitthof (eds.), *Vergeben und Vergessen? Amnestie in der Antike* (Wien: Holzhausen, 2013), 71–94; Lene Rubinstein, “Forgive and Forget? Amnesty in the Hellenistic Period,” in Harter-Uibopuu and Mitthof (eds.), *Vergeben und Vergessen?*, 127–161; Csaba A. La’da, “Amnesty in Hellenistic Egypt: A Survey of the Sources,” in Harter-Uibopuu and Mitthof (eds.), *Vergeben und Vergessen?*, 163–209.

he had driven out the 30 Tyrants, enacted a law of amnesty forbidding the recollection of past wrongs: amnesty is abolition and forgetting; amnesty does not remit, 'erases'; amnesty turns to the past and annihilates it; amnesty leaves behind no legitimate grounds for resentment; amnesty, by dispensing with punishment, dispenses with the humiliation of mercy.⁴⁰

5 The Athenian Amnesty as the Foundation of the Restored Democracy

The specific concept of Homeric ἐκκλησις, when re-examined as a form of ἀμνηστία/ἀμνηστία and in conjunction with the re-establishment of the kingdom of Ithaka from a sacred and political standpoint, focuses our attention on the most renowned amnesty in the Greek world, occurring after the military defeat of Athens, the tyranny's unbridled regime, and a bloody civil strife:⁴¹ the ban on recalling past wrongs

40 Pierre Denis de Peyronnet, *Pensées d'un Prisonnier (Préface par le Comte J. de Ressaiguier* [Bruxelles: Louis Hauman, 1835]), 123 f.: «Amnistie, c'est abolition et oubli; grâce, ce n'est que pitié et pardon. Quand Thrasybule eut chassé les trente tyrans, il porta une loi que les Athéniens nommèrent d'oubli (amnestia), et qui défendait de troubler qui que ce fût pour ses actions passées. C'est de là que nous est venu l'acte et même le nom. L'amnistie ne remet point; elle efface. La grâce n'efface rien; elle abandonne et remet. L'amnistie retourne vers le passé, et y détruit jusqu'à la première trace du mal. La grâce ne va que dans l'avenir, et conserve dans le passé tout ce qu'il a souffert ou produit. La grâce suppose le crime et la condamnation; une certaine régularité dans la condamnation et une certaine justice. L'amnistie ne suppose rien, si ce n'est pourtant l'accusation ... Il y a dans cet acte, bien plus que dans l'acte de grâce, un air de générosité et de force qui impose au peuple, et met le prince en renom. Il a, de plus que l'acte de grâce, de ne laisser après lui aucun motif légitime de ressentiment. Il a de plus, qu'en dispensant de la peine, il dispense en outre de l'humiliation de la grâce». Cf., on the divide and the contact between forgetting and forgiving, Maurizio Bettini, "Sul perdono storico. Dono, identità, memoria e oblio," in Marcello Flores (ed.), *Verità senza vendetta. L'esperienza della commissione sudafricana per la verità e la riconciliazione* (Roma: Manifestolibri, 1999), 20–43.

41 The recent work of Christopher J. Joyce, *Amnesty and Reconciliation in Late Fifth-Century Athens. The Rule of Law under Restored Democracy* (Edinburgh: Edinburgh University Press, 2022) represents a significant contribution to the existing literature on the topic, particularly in terms of the legal and political consequences of the reaffirmation of democracy, since it focuses more on these aspects than on the well-known series of facts occurred, according to varying perspectives and accounts in our sources, in the years 404–403 BC: the Athenian amnesty, in its most peculiar sense, might be defined as a political, legal and religious measure that engendered favourable outcomes in terms of the system's stability, being at the same time a concrete application of the 'tabula rasa' device and a source of pacific and harmonic coexistence among different factions, *pace* Claude Mossé, "L'amnistie de 403: une illusion politique," in Marta Sordi (ed.), *Amnistia, perdono e vendetta nel mondo antico* (Milano: Vita e Pensiero, 1997), 53–58. This, on the one hand, was achieved by means of a prohibition on recalling past wrongs and by establishing the violation of the oath as a severe infraction, even if, on

which sealed, as a general oath, the democratic reconciliation of 403 BC, that is four years prior to the trial of Socrates.⁴² Following almost three decades of protracted conflict, the Peloponnesian War culminated in the catastrophic capitulation of Athens to Sparta in the autumn of the year 404. Consequently, the Athenian people dismantled their defensive barriers and granted the ‘30 Tyrants,’ a Spartan-backed authority, the autonomy to govern the city, undertake a comprehensive review of its ancestral laws, and devise a novel constitution. In the summer of the following year, during the violent and gruesome civil conflict between the democrats, also known as ‘Those of Piraeus,’ and the oligarchs, also known as ‘Those of the City,’ Sparta took the initiative to intervene in order to achieve reconciliation between the two parties and to remove the regime of the 30, which was undeniably characterised by incompetence, instability and pointless violence.⁴³

the other hand, it should be noted that about one-sixth of the speeches in Lysias’s corpus contain accusations of collaboration brought against the opponent party: see Dino Piovani, *Memoria e oblio della guerra civile. Strategie giudiziarie e racconto del passato in Lisia* (Pisa: ETS, 2013); see B.S. Strauss, “Ritual, Social Drama and Politics in Classical Athens,” in *American Journal of Ancient History* 10 (1985): 67–83; Antonio Natalicchio, “Μὴ μνησικακεῖν: l’*Amnistia*,” in Salvatore Settis (ed.), *I Greci. Storia, cultura, arte, società*, II, *Una storia greca*, II, *Definizione* (Torino: Einaudi, 1997), 1305–1322; Marta Sordi, “La fortuna dell’*amnistia* del 403/2 a.C.,” in Sordi (ed.), *Amnistia, perdono e vendetta nel mondo antico*, 79–90; Fabio Roscalla, ‘*Biaios didaskalos*’. *Rappresentazioni della crisi di Atene della fine V secolo* (Pisa: ETS, 2005), 15 ff.; Mauro Moggi, “Strategie e forme della riconciliazione: μὴ μνησικακεῖν,” in Silvio Cataldi (ed.), *Salvare le ‘poleis’, costruire la concordia, progettare la pace* (Alessandria: Edizioni dell’Orso, 2012), 133–160.

⁴² For further bibliography, references to ancient sources and legal comments, see Carlo Pelloso, *Presupposti e forme del processo a Socrate: una prospettiva a-politica e a-filosofica*, in Carlo Pelloso, Marta Beghini and Isabella Zambotto (eds.), *Il processo a Socrate. Lezioni e materiali* (Alessandria: Edizioni dell’Orso, 2023), 9–65. In this regard, it is worth mentioning the significant and personal contribution to the field by François Ost: indeed, in *Le congrès, et autres contes juridiques* (Paris: Dalloz, 2024), the initial two texts evoke, from two different perspectives and within two different historical contexts, the Trial of Socrates. In the former, the trial that led to the sentencing of Socrates to death in the city of Athens in 399 BCE is envisioned, with the words of the ancient Greek philosopher confronting his disciples as well as his accusers. In relation to the latter, the author’s focus is directed towards the Onassis Foundation, which undertook the responsibility of organising the event on two separate occasions, in 2011 and 2012. The underlying objective of this initiative was to enhance the standing of Athenian democracy at a time when the credibility of Greek democracy was being undermined by the substantial levels of public debt and the imminent threat of the nation’s withdrawal from the eurozone.

⁴³ Xen. *Hell.* 2.3.11–12, 2.4.38; [Arist.] *Ath. Pol.* 38.4. Cf. Wilfried Nippel, “Bürgerkrieg und Amnestie: Athen 411–403,” in Gary Smith and Avishai Margalit (eds.), *Amnestie und Politik der Erinnerung in der Demokratie* (Frankfurt am Main: Suhrkamp, 1997), 103–119, esp. 107.

However, it was not as simple as such a conclusion might have suggested. The spectre of civil strife proved difficult to dispel. The fleet was lost, and the walls were in a state of disrepair, with some sections in ruins and others demolished. The economy was in a state of disrepair, and the empire was a distant memory for the oldest citizens and a mere fantasy for the youngest. Apparently no individual or group could be considered as having emerged as a clear ‘victor’ or ‘vanquished’; nevertheless, all survived not only the devastation of war, but also the challenges posed by foreign occupation and urban guerrilla warfare. Despite their differences, they were not merely enemies, but ‘brothers’ and co-citizens who, within the span of a single day, transitioned from fighting each other to having the opportunity to share their lives within the same community. On one side were the men of the demos, and on the other were the loyal followers of the 30 and those citizens who, either by explicit support or passive acquiescence, had aligned themselves with or become associated with the overthrown tyrannical regime. Tensions were reaching a heightened state. It was therefore inevitable that mutual resentment, hatred and dissatisfaction would accumulate to a point where they would reach a critical mass, potentially leading to an explosive eruption. The situation presented two different potential courses of action. The path towards peaceful coexistence, albeit between two disparate factions with an impulse for retaliation on both sides, was not without its challenges. Alternatively, the path that entailed further bloodshed aimed at normalising the double-headed city by removing one of the two heads. The solution to this dilemma, as demonstrated by the history of ancient Athens in the 4th century, was a daunting call for non-violence that proved both wise and challenging. The primary objective was to restore order under the banner of continuity and the sworn ban on recalling the past, in the name of Athens’s safety.⁴⁴

Following negotiations facilitated and overseen by the Spartans themselves, the two political factions came to an agreement by concluding and ratifying a comprehensive package of clauses aimed at fostering peaceful coexistence, as well as

44 [Arist.] *Ath. Pol.* 40.2 (ἐπεὶ τις ἤρξατο τῶν κατεληλυθότων μνησικακεῖν, ἀπαγαγὼν τοῦτον ἐπὶ τὴν βουλὴν καὶ πείσας ἄκριτον ἀποκτείνειν, λέγων ὅτι νῦν δεῖξουσιν, εἰ βούλονται τὴν δημοκρατίαν σῶζειν καὶ τοῖς ὄρκοις ἐμμένειν: ἀφέντας μὲν γὰρ τοῦτον προτρέψειν καὶ τοὺς ἄλλους, ἐὰν δ’ ἀνέλωσιν, παράδειγμα ποιήσιν ἅπασιν. ὅπερ καὶ συνέπεσεν: ἀποθανόντος γὰρ οὐδεὶς πώποτε ὕστερον ἐμνησικάκησεν, ἀλλὰ δοκοῦσιν κάλλιστα δὴ καὶ πολιτικώτατα ἀπάντων καὶ ἰδία καὶ κοινῇ χρῆσασθαι ταῖς προγεγενημέναις συμφοραῖς); *Lys.* 30.9 (ἔτι δὲ εἶναι θαυμαστὸν νομίζω Νικόμαχον ἑτέροις ἀδίκως μνησικακεῖν ἀξιοῦν, ὃν ἐγὼ ἐπιβουλεύσαντα τῷ πλήθει ἀποδείξω); *Anh.* 1.81 (ἐπειδὴ δ’ ἐπανάληθε ἐκ Πειραιῶς, γενόμενον ἐφ’ ὑμῖν τιμωρεῖσθαι ἐγνωτε ἔαν τὰ γεγενημένα, καὶ περὶ πλείονος ἐποιήσασθε σῶζειν τὴν πόλιν ἢ τὰς ἰδίας τιμωρίας, καὶ ἔδοξε μὴ μνησικακεῖν ἀλλήλοις τῶν γεγενημένων. δόξαντα δὲ ὑμῖν ταῦτα εἴλεσθε ἄνδρας εἰκοσι: τούτους δὲ ἐπιμελεῖσθαι τῆς πόλεως, ἕως ἂν1 οἱ νόμοι τεθεῖεν: τῆς δὲ χρῆσθαι τοῖς Σόλωνος νόμοις καὶ τοῖς Δράκοντος θεσμοῖς).

promoting reunification and reconciliation (διαλλαγáι, διαλύσεις, συνθήκα).⁴⁵ Thanks to the initiative of Thrasybulus, the Athenians succeeded in their goal of restoring and enhancing democracy, despite the presence of the Spartan commission. The focus was on the present, but they also acknowledged the necessity of not only voluntary compliance, but also burying past issues and preventing a return to civil conflict. The two political communities needed to learn to live side by side (i.e., a restored democracy in Athens and an oligarchy in Eleusis, where the oligarchs had seized land and could reside without renouncing their citizenship rights).⁴⁶

A significant number of covenants were sworn by democrats and oligarchs on the 12th of the month Boedromion.⁴⁷ Consequently, each particular pledge,⁴⁸ even

45 And. 1.90; Lys. 6.39, 12.53, 13.88, 25.23, 28.34; Xen. *Hell.* 2.4.38; [Arist.] *Ath. Pol.* 39.1-5; Isoc. 18.29; IG II, 2 10 (l. 6) (= SEG 30.54); IG XII, 5 109 (ll. 6-14); RO 39 (ll. 17, 27-28, 33, 36, 40-41, 48-49, 60-61, 69, 77).

46 Xen. *Hell.* 2.4.38-43, to be compared with And. 1.90; [Arist.] *Ath. Pol.* 41.2; Diod. 14.33.5-6; Lys. 12.58-60. In a series of persuasive articles published prior to his monograph on the Athenian reconciliation, Joyce has offered analytical and compelling counterarguments to recent interpretations proposed by Carawan, who interprets the treaty as the cancellation of verdicts of ἀτιμία issued under the oligarchy, views the amnesty as a mere formalisation of a pre-existing set of contractual clauses, uses the fact that the entire population, and not one faction, swore the oaths, to rule out any possibility of annulment, believes that the oath did not provide immunity for all past offences, but stipulated that specific liabilities, once wiped out, were not to be pursued further. This was implemented to safeguard the rights of former ἄτιμοι who had been reinstated as citizens and to prevent their prosecution for any misdeeds that had already been adjudicated and punished (Carawan, *The Athenian Amnesty and Reconstructing the Law*, esp. 43 ff). Joyce has shown that Carawan's view is dependent on one solitary allusion in the first speech of Andocides's *On the Mysteries*, whose motivations are entirely misrepresented, to earlier examples where citizens' rights stripped by decree were granted back to them (And. 1.107-8): see Christopher J. Joyce, "The Athenian amnesty and scrutiny of 403," in *CQ* 58 (2008): 507-518; Christopher J. Joyce, "Μὴ μνησκακεῖν and 'all the laws' (Andocides *On the Mysteries* 81-2): a reply to E. Carawan," in *Antichthon* 48 (2014): 37-54; Christopher J. Joyce, "Oaths (ὄρκου), covenants (συνθήκα) and laws (νόμοι) in the Athenian reconciliation agreement of 403 BC," in *Antichthon* 49 (2018): 24-49.

47 Plut. *Mor.* 349f; cf. And. 1.90, who indicates that the oligarchs took part in the reconciliation agreement and in the oaths (which took place in the archonship of Euclides: [Arist.] *Ath. Pol.* 39.1).

48 «No one is to remember past wrongs against anyone, except the 30, the 10 and the 11, even if those belonging to these three boards are protected if they submit to accountings» ([Arist.] *Ath. Pol.* 39.6; Xen. *Hell.* 2.4.38; And. 1.90); «According to the ancestral customs, the sanctuary of Demeter at Eleusis is controlled by the Kerykes and the Eumolpidae, and is common to both parties; those of the city are allowed to emigrate to Eleusis, retaining their full rights, and are entitled to derive income from property elsewhere; those of city are prohibited from going to the Eleusis, except for the Mysteries; those of Eleusis must fund the alliance; natives of Eleusis can only stay if they are permitted to do so; if anyone leaves and takes a house there, they must persuade the owner, but if they cannot come to an agreement, each party must choose three assessors; there are rules concerning registration for those who reside in Attica and abroad; no one from Eleusis is allowed to hold office in the city before re-registration; homicide trials take place in Athens according to ancestral customs; everyone must pay off loans taken out during the war; items confiscated under the 30 may be recovered if they have not

corroborated by the taking of collective oaths and with the backing of a popular decree, would not function as a mere moral commitment, but as a legal and sacred rule. As evidenced by ancient sources, the most prominent, important and peculiar of these covenants is the one that prohibited all Athenians, and not one particular faction only, from *μνησικακεῖν*,⁴⁹ that is to say, mandated the pursuit of wisdom.⁵⁰ Plutarch himself, when addressing the question of how statesmen can influence and correct the characters of contemporaries by drawing upon examples from the past, makes reference to the so-called *ψήφισμα τῆς ἀμνηστίας* (the ‘popular decree’ of universal amnesty passed after the downfall of the 30 Tyrants) and even confronts it with the fines imposed on the tragic poet Phrynichus for presenting the utterly poignant and unbearable account of capture of Miletus.⁵¹

This is a challenging and contentious expression that, to a Greek of the 5th and 4th centuries BC, conveyed a meaning that was, at the very least, similar to one of the following list: ‘Forgetting past wrongs,’ ‘not remembering misfortunes,’ ‘not holding a grudge,’ ‘not venting grudges,’ ‘not recalling past wrongs,’ and ‘not revisiting past

been sold to third parties» ([Arist.] *Ath. Pol.* 39.1-6; Xen. *Hell.* 2.4.38; Lys. *Against Hippotheres* 34–48); see, moreover, the clause included in [Arist.] *Ath. Pol.* 39.6 (characterised by textual emendation): «those ruling in Piraeus appear before courts in Piraeus; those in the city offering sureties before courts of men; those who do not have to migrate»; and Isoc. 18.20: «anyone who has informed against or denounced someone under the 30 is immune from criminal prosecution».

49 If, on the one hand, Andocides and the author of the *Athenaion Politeia* attest that the treaty included a specific amnesty clause, on the other hand, Nep. *Thr.* 3.2 appears to believe that an amnesty came about by a separate law passed when Thrasybulus returned from Piraeus: the short Aristotelian version gains full support from the more articulated account included in And. 1.81-90, whose chronology makes it clear that an oath of amnesty was sworn in 403. Finally, Xenophon is aware of an oath of amnesty, but dates it to 401 after the fall of Eleusis, and his version is followed by Justin and Orosius (Xen. *Hell.* 2.4.43; Just. 5.10.11; Oros. 2.17.15). In the light of all this, the *communis opinio* speaks of only one multi-clause reconciliation agreement which was strengthened by a series of sworn oaths in 403, and then was re-affirmed in 401; against the view that the amnesty was just an extra-legal commitment with no expression in legal terms, see Joyce “Oaths (ὄρκου), covenants (συνθήκαι) and laws (νόμοι) in the Athenian reconciliation agreement of 403 BC,” 26 ff.; cf. Alfred P. Dorjahn, *Political Forgiveness in Old Athens. The Amnesty of 403 BC* (Evanston: Northwestern University, 1946), 14; Thomas C. Loening, *The Reconciliation Agreement of 403/2 BC in Athens* (Stuttgart: Franz Steiner, 1987), 23, 27 ff.

50 Dem. 23.193.

51 See Plut. *Mor.* 814b; Hdt. 6.21; Schol. ad Aristoph. *Pl.* 1146; Dion. Hal. *Lys.* 32; Vell. 2.58.4; Val. Max. 4.1.4; Nep. *Thr.* 3.2. It is therefore plausible that, in 403, the Athenians decreed to swear an oath of amnesty (as well as to publish the oaths and covenants), even though the preceding covenants apparently did not entail a decree: see, *amplius*, Elisabetta Grisanzio, *Un mito di rifondazione. L’‘amnistia’ ateniese del 403 a.C.* (Bologna: il Mulino, 2021), 54 ff.

grievances'.⁵² It is manifest that such general prohibition, capable of superseding any distinction from the 'Piraeus faction' and the 'City faction' was designed to forestall cycles of retaliatory justice, pledging not to pursue events that happened in the past. However, this was not its sole objective. All citizens, regardless of their political views or their place of residence, by swearing this oath, promised they would neither seek personal retribution nor engage in private feuds or retaliation; nevertheless, they also pledged that they would not use the lawcourt to punish offences committed prior to the enactment of the amnesty itself.⁵³ A small number of exceptions were introduced; indeed, the crimes committed by the 30 and the few other leaders of the tyrannical regime who had survived were expressly excluded from the general amnesty.

The establishment of amnesty, rather than pardon or forgiveness, constituted the foundational event for the restored community of Athenians. The past was to be legally 'erased';⁵⁴ once erased, it would be rendered irrelevant in the present; the

52 Excluding sources that focus on the period 403-402 BC, the phrase 'μή μνησικακεῖν' is well attested between the 5th and 4th centuries BC and is associated with positive connotations (contrary to the verb μνησικακεῖν): see Hdt. 8.29.2; Thuc. 4.74.2, 8.73.6; Ar. *Lys.* 590; Ar. *Nub.* 999; Isoc. 15.14; And. 1.73-80, 107-108; IG I³ 76; SEG 38.852 (= IG XII, 5 109); RO 39; SEG 57.576; IPArk 5 (= RO 101); cf. Eur. *Phoen.* 461-464; Aesop. 51.3.

53 Cf. Isoc. 18.2 (ἐπειδὴ γὰρ ἐκ Πειραιεύς κατελθόντες ἐνίους ἐωρᾶτε τῶν πολιτῶν συκοφαντεῖν ὠρμημένους καὶ τὰς συνθήκας λύειν ἐπιχειροῦντας, βουλόμενοι τούτους τε παῦσαι καὶ τοῖς ἄλλοις ἐπιδείξει αὐτὰς οὐκ ἀναγκασθέντες ἐποιήσασθ' αὐτὰς ἀλλ' ἠγούμενοι τῇ πόλει συμφέρειν, εἰπόντος Ἀρχίνου νόμον ἔθεσθε, ἂν τις δικάζηται παρὰ τοὺς ὄρκους, ἐξεῖναι τῷ φεύγοντι παραγραφᾶσθαι, τοὺς δ' ἄρχοντας περὶ τούτου πρῶτον εἰσάγειν, λέγειν δὲ πρότερον τὸν παραγραφάμενον); 23 (Θρασύβουλος καὶ Ἄνυτος μέγιστον μὲν δυνάμενοι τῶν ἐν τῇ πόλει, πολλῶν δ' ἀπεστερημένοι χρημάτων, εἰδότες δὲ τοὺς ἀπογράφαντας, ὅμως οὐ τολμῶσιν αὐτοῖς δίκας λαγχάνειν οὐδὲ μνησικακεῖν, ἀλλ' εἰ καὶ περὶ τῶν ἄλλων μᾶλλον ἐτέρων δύνανται διαπράττεσθαι, ἀλλ' οὖν περὶ γε τῶν ἐν ταῖς συνθήκαις ἴσον ἔχειν τοῖς ἄλλοις ἀξιοῦσιν. καὶ οὐχ οὔτοι μόνοι ταῦτ' ἤξιώκασιν, ἀλλ' οὐδ' ὑμῶν οὐδεὶς τοιαύτην δίκην εἰσελθεῖν τετόλμηκεν); And. 1.104 (εἰ οὖν γνώσονται ὑμᾶς ἀποδεχομένους τὰς κατηγορίας τῶν πρότερον γεγενημένων, τίνα αὐτοὺς οἴεσθε γνώμη ἔξειν περὶ σφῶν αὐτῶν; ἢ τίνα αὐτῶν ἐθελήσιν εἰς ἀγῶνας καθίστασθαι ἔνεκα τῶν πρότερον γεγενημένων; φανήσονται γὰρ πολλοὶ μὲν ἐχθροὶ πολλοὶ δὲ συκοφάνται, οἱ καταστήσουσιν αὐτῶν ἕκαστον εἰς ἀγῶνα. ἤκουσι δὲ νυνὶ ἀκροασόμενοι ἀμφοτέρου); cf. Dio Cassius, who interprets the clause of the agreement (seen, at the same time, as an imperative and legal amnesty) in the following sense: 'to forget... to bring no charge... nor to recall wrong against anyone' (Dio 44.26: ... διομολογήσασθαι τῶν τε συμβεβηκότων σφίσι, πολλῶν που καὶ δεινῶν ὄντων, ἐπιλήσασθαι, καὶ μὴδὲν τὸ παράπαν ὑπὲρ αὐτῶν μῆτε ἐγκαλέσειν ποτὲ μῆτε μνησικακήσειν τινί). See Loening, *The Reconciliation Agreement of 403/2 BC in Athens*, 26 f., who rightly understood the μή μνησικακεῖν pledge as a legal and sacred ban which prohibited everyone from starting legal actions for earlier offences.

54 See Loraux, *The Divided City: On Memory and Forgetting in Ancient Athens*, 151: «political memory is expressed both symbolically and concretely... Erasure then takes place on two levels: some decrees are actually erased, this entirely preventive erasure has no other goal than the ban on μνησικακεῖν, and no other aim than to avoid trials» (cf. Loraux, "Amnesty and its Opposite," 89 ff). [Arist.] *Ath. Pol.*

present would provide the basis for building a new shared and cohesive future. It was clearly unfeasible to eradicate fierce sentiments of resentment lurking beneath the surface. If memory can be the object of an imperative, it is impossible for oblivion to be formulated in an imperative form, given that the enunciation of the law of oblivion makes its fulfilment unthinkable. The ‘μὴ μνησκακεῖν’ sworn clause did not – and could not – prohibit the retention of resentful grudges. The pledge was principally designed to prevent Athenians from initiating legal proceedings against wrongs perpetrated prior to Euclid’s archonship, during the eight months of the tyrannical regime under the 30 and those brutally marked by the civil strife. Divisions and conflicts within the city were expurgated from history, whereas – according to a sort of selective memory – the restored democracy excluded the 30 and their immediate cohorts from oblivion.⁵⁵

40.3, after recounting how Archinos set an example by punishing a violator who had started to bring up past wrongs, praises the Athenians for ‘erasing charges regarding prior events’. According to Loraux, these last words can be interpreted both literally, as referring to the actual erasure of official documents (as in [Arist.] *Ath. Pol.* 36.2, 47.5, 48.1, and, moreover, 1.76), and metaphorically, as signifying a general amnesty that banished grievances from memory and conversation, thus removing the grounds for litigation. At first glance, all this could appear to link Loraux’s personal reconstruction to a particular form of ‘cancel culture’ (currently a social boycott increasingly pointing the finger at the ancient world, accusing it of complicity in crimes perpetrated by the West, from colonialism and the marginalisation of women to the supremacy of white people, and calling for Greek and Latin texts to be removed from school and university curricula, publishers’ catalogues and the imagination of our societies). If, in general terms, forgetting is not merely the absence of memory but an active process whereby events, public figures and ideas are removed from the dominant narrative (as well as their monuments being erased or torn down), and if the removal of items from public discourse helps shape collective memory by selecting what to remember and what to forget, often in ways that reflect and reinforce existing power structures (or incoming dominant ideals) together with their interpretations of the past, then ‘cancel culture’ and ‘μὴ μνησκακεῖν culture’ could even be interpreted as two examples of the same phenomenon. However, should one choose to delve deeper into the prevailing trends of thought, it becomes evident that the similarities between the Athenian oblivion culture and contemporary cancel culture are merely superficial. On the one side, the latter is a dangerous and disturbing trend that risks eliminating one of the fundamental pillars of our cultural tradition, while promoting a new conformism based on censoring any dissenting opinion (see, among others, Mario Lentano, *Classici alla gogna. I Romani, il razzismo e la cancel culture* [Roma: Salerno Editore, 2023]); Alessandro Carrera, *Sapere* [Bologna: il Mulino, 2023], 105 ff). On the other side, far from destroying the past materially and psychologically, the 4th-century Athenian society founded on the oath of ‘not remembering past wrongs’ preserved it by deactivating it: this is because such founding oblivion was operational, not denying what had happened at the historical level, but rendering it irrelevant in the present from legal, political, and sacred points of view.

55 The restored democracy did not fail to preserve official records of the oligarchic regime. The identities of the collaborators and the gains they had made were common knowledge. The ban on μνησκακεῖν erased neither materially nor symbolically the faults and blame attributed to the

The Athenian reconciliation, which was generally based on agreements and oaths and specifically founded on a commitment to forget past wrongs (with the term ‘amnesty’ often being used in contemporary discourse to refer to the events of 403 BC rather than the more precise technical imperative ‘μὴ μνησικακεῖν’), had a significant impact on historical events, so that there were numerous instances that echoed this provision in both form and substance. It is sufficient to note, on the one hand, that the Romans themselves conceived of such a provision as a shining and noble example of what amounted to a statutory ‘*sempiterna oblivio discordiarum*’ (or, more simply, to ‘*oblivio praeteritarum rerum*’), as evidenced by Cicero and Nepos in the aftermath of Caesar’s killing.⁵⁶ On the other hand, the role of amnesty in peace settlements throughout the 17th, 18th and 19th centuries further illustrates all this. Following the conclusion of the 30 years’ War, one of the most devastating armed conflicts in modern European history, negotiations between the belligerents resulted in the Westphalia Peace Treaties. The second article integrated a stipulation of ‘oblivion’ and ‘amnesty’ for all actions committed since the inception of the conflict,

tyrants and their officials: for example, as shown by David M. Lewis, “The Epigraphical Evidence for the End of the 30,” in Marcel Piérart (ed.), *Aristote et Athènes* (Freiburg: De Boccard, 1993), 223–229, the treasurers of Athena in 404–403 BC presented their accounts and handed over their inventories without encountering any disruption; moreover, Andocides (1.95) suggests that councillors under the Thirty’s regime were readily identified.

56 This reference to the settlement that saved Athens was accompanied by the fairly common belief that it had been promoted by the democratic leader, Thrasybulus. See Cicero *Phil.* 1.1. (*ieci fundamenta pacis Atheniensiumque renovavi vetus exemplum, Graecum etiam verbum usurpavi, quo tum in sedandis discordiis usa erat civitas illa atque omnem memoriam discordiarum oblivione sempiterna delendam censui*); Nep. *Thras.* 3.2 (*[Thrasybulus] legem tulit, ne quis ante actarum rerum accusaretur neve multaretur, eamque illi ‘oblivionis’ appellarunt*); Vell. 2.58 (*et illud decreti Atheniensium celeberrimi exemplum, relatum a Cicerone, oblivionis praeteritarum rerum decreto patrum comprobatum est*); cf. Val. Max. 4.1 ext. 4 (*plebis enim scitum interposuit [Thrasybulus] ne qua praeteritarum rerum mentio fieret. Haec oblivio, quem Athenienses ἀμνηστίαν vocant, concussum et labentem civitatis statum in pristinum habitum revocavit*); see also Plut. *Mor.* 814b and Dion. Hal. *Lys.* 32; for an implicit and vague reference see Cic. *ad Atticum* 332 (8.3). For modern discussions of how Cicero understood contents and targets of the Athenian amnesty, see Theodor Mommsen, *Römisches Strafrecht* (Leipzig: Duncker & Humblot, 1899), 458; Sordi, “La fortuna dell’amnestia del 403/2 a.C.,” 79 ff.; Philip Scheibelreiter, “Nicht Erinnern und Übles vergessen: Zum Amnestiebegriff im klassischen Griechenland,” in Oliver Brupbacher et alii (eds.), *Erinnern und Vergessen. Tagungsband des europäischen Forums junger Rechtshistorikerinnen und Rechtshistoriker* (Munich: Peter Lang, 2007), 365–384; Philip Scheibelreiter, “*Atheniensium vetus exemplum*: Zum Paradigma einer antiken Amnestie,” in Harter-Uibopuu and Mitthof (eds.), *Vergeben und Vergessen?*, 95–126; Joyce, *Amnesty and Reconciliation in Late Fifth-Century Athens*, 181 ff.

included words, writings, outrageous actions, violence, hostilities, damages, and expenses: these actions should be forgotten, and those who had carried out them should be granted amnesty (*sit utrinque perpetua oblivio et amnestia omnium eorum*).⁵⁷ Moreover, after the events of the French Revolution and the rise and fall of

57 See Peace Treaties of Westphalia (October 14/24, 1648), Article 2 of Peace Treaty of Osnabrück between Emperor Ferdinand III and Queen Christina of Sweden and their respective allies (Osnabrück): *Sit utrinque perpetua oblivio et amnestia omnium eorum, quae ab initio horum motuum quocunq[ue] loco modove ab una vel altera parte ultro citroque hostiliter facta sunt, ita ut nec eorum nec ullius alterius rei causa vel praetextu alter alteri posthac quicquam hostilitatis aut inimicitiae, molestiae vel impedimenti quoad personas, statum, bona vel securitatem per se vel per alios, clam aut palam, directe vel indirecte, specie iuris aut via facti, in Imperio aut uspiam extra illud (non obstantibus ullis prioribus pactis in contrarium facientibus) inferat vel inferri faciat aut patiat, sed omnes et singulae hinc inde tam ante bellum quam in bello verbis, scriptis aut factis illatae iniuriae, violentiae, hostilitates, damna, expensae absque omni personarum rerumve respectu ita penitus abolitae sint, ut quicquid eo nomine alter adversus alterum praetendere posset, perpetua sit oblivione sepultum* («That there be on both sides a perpetual Oblivion and Amnesty of all that has been done since the beginning of these Troubles, in what Place or in what Manner soever Hostilities may have been exercis'd by the one or the other Party; so that neither for any of those things, nor upon any other Account or Pretext whatsoever, any Act of Hostility or Enmity, Vexation or Hindrance shall be exercis'd or suffer'd, or caus'd to be exercis'd, either as to Persons, Condition, Goods or Security, either by one's self or by others, in private or openly, directly or indirectly, under form of Right of Law, or by open Deed, either within, or in any Place whatsoever without the Empire, notwithstanding all former Compacts to the contrary; but that all Injuries, Violences, Hostilities and Damages, and all Expences that either side has been oblig'd to be at, as well before as during the War, and all Libels by Words or Writing shall be entirely forgotten, without any regard to Persons or Things; so that whatever might be demanded or pretended by one against another upon this account, shall be bury'd in perpetual Oblivion»). Indeed, until the German-Russian peace treaty of Brest-Litovsk in early 1918, amnesty provisions were so common that jurists – adopting a Kantian perspective (cf. Immanuel Kant, *Die Metaphysik der Sitten* [Frankfurt am Main: Suhrkamp, 1977], 471 [§58]) – believed they were implicitly agreed upon, even when not formally included in a treaty. However, this enduring tradition of amnesty as a peace-making instrument began to decline with the Treaty of Versailles following the First World War (even if, even after the end of WWII, Churchill himself took up this tradition in his speech in Zurich on 19 September 1946, in which he called for a «blessed act of oblivion»: cf. Robert Rhodes James [ed.], *Winston S. Churchill: His Complete Speeches 1897–1963*, VII, 1943–1949 [New York–London: Chelsea House, 1974], 7381): notably, such treaty made no mention of amnesty, as the signatories were intent on pursuing a different course of action, i.e., putting the German Emperor on trial for alleged transgressions against international morality and the sanctity of treaties: see Wolfgang Reinhard, “Geschichte als Delegitimation,” in *Jahrbuch des Historischen Kollegs* (2002): 27–37; Helmut Quaritsch, “Über Bürgerkriegs- und Feind-Amnestien,” in *Der Staat* 31 (1992): 389–418; Peter Hoeres, *Krieg der Philosophen: Die deutsche und die britische Philosophie im Ersten Weltkrieg* (Paderborn: Ferdinand Schöningh, 2004); Peter Hoeres, “Der Versailler Vertrag: Ein Frieden, der kein Frieden war,” in *Aus Politik und Zeitgeschichte* 15 (2019): 38–44. However, it was in the aftermath of the Second World War that political and legal discourse concerning the merits and extent of amnesty as an institution emerged. Therefore, while some proponents advocate amnesty as the culmination of law and justice (see Erik Doxtader, “Easy to Forget or Never [Again] Hard to Remember? History, Memory and the

the Napoleonic Empire, King Louis XVIII ascended the throne in 1814 under the banner of union (of the French people) and *oubli* (of the Revolution and Napoleon); in this context, Article 11 of the *Charte constitutionnelle – octroyée* by the king on the 4th of June – both explicitly prohibited all investigations on opinions and votes given prior to the Restoration, and barred the ‘courts and citizens’ from recalling the revolutionary period.⁵⁸

6 Memory of the Laws and Oblivion of the Crimes as Two Intertwined Ideas at the Dawn of Democracy

If the Athenian amnesty was primarily a political figure that had entered into contractual and sacred commitments, it was also necessary for it to be enshrined in a

‘Publicity’ of Amnesty”, in Charles Villa-Vicencio and Erik Doxtader [eds.], *The provocations of amnesty* [Trenton–Asmara: Africa World Press, 2003], 121–155, esp. 129; Carl Schmitt, “Amnestie oder die Kraft des Vergessens,” in Carl Schmitt, *Staat, Großraum, ‘Nomos’* [Berlin: Dencker & Humblot, 1995], 218–221), others have voiced opposing views, likening it to the political actions by weak or morally compromised victors. Moreover, some scholars have argued that amnesty is presumptively illegitimate (see Pier Paolo Portinaro, *I conti con il passato. Vendetta, amnistia, giustizia* [Milano: Feltrinelli, 2010], 141, 143; Christine Bell, “The ‘New Law’ of Transitional Justice,” in Kai Ambos et alii [eds.], *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development* [Berlin–Heidelberg: Springer, 2009], 105–126). Cf., on all these philosophical, political and historical aspects, Christian Meier, *Das Gebot zu vergessen und die Unabweisbarkeit des Erinnerns: Vom öffentlichen Umgang mit schlimmer Vergangenheit* (Munich: Siedler, 2010); Aleida Assmann, *Formen des Vergessens* (Göttingen: Wallstein, 2016); David Rieff, *In Praise of Forgetting: Historical Memory and Its Ironies* (New Haven–London: Yale University Press, 2017).

58 *Charte Constitutionnelle* (1814), Article 11: «Toutes recherches des opinions et votes émis jusqu’à la restauration sont interdites. Le même oubli est commandé aux tribunaux et aux citoyens». The French Constitution of 1814 was the result of a compromise between absolutism and liberalism, and between the ‘monarchical principle’ and the ‘representative principle’: this act marked the beginning of the era of the so-called ‘liberal conservative’ constitutionalism, alongside the 1830 Constitution, and paved the way for the system of ‘limited monarchy’ (cf. Pierre Rosanvallon, *La monarchie impossible. Les Chartes de 1814 et de 1830* [Paris: Fayard, 1994]). As for the text, see Alain Laquièze, *Les origines du régime parlementaire en France 1814–1848* (Paris: PUF, 2002), 60–66, on the discrepancies between the version of the Charter published in the *Moniteur Universel* on 5 June 1814 and the original version kept at the *Archives Nationales de France* [273.Mi/1, n. 7]; cf. Dieter Gosewinkel and Johannes Masing (eds.), *Die Verfassungen in Europa 1789–1949* (Munich: Beck, 2006), 283.

more precise legislative form.⁵⁹ This framework was readily adopted and adapted, resulting in the transformation of the amnesty into a measure that reflected the effects of legal rules over time, rather than the intention of forgiveness and leniency. In this regard, the Athenians held the view that Lethe, the goddess of oblivion, had to operate in conjunction with Mnemosyne, the goddess of memory. Indeed, in accordance with the principle of selectivity, they determined which aspects of their past were worthy of recollection in order to make the pledge ‘not remembering past offences’ binding and enforceable from a legal standpoint.

On the one hand, the Athenian Assembly voted to proceed, first, to the *δοκιμασία* of the νόμοι, and, second, to their *ἀναγραφή* (that is to say, a continuation of a process which had been initiated, but not completed, under the democracy in 410): namely, the specific aims pursued by the Assembly – after the new Council was formed and a first board of νομοθέται was elected – were to revise the body of general and abstract legal rules from those of Draco and Solon, to submit them to the Assembly for approval, and finally to get them inscribed.⁶⁰ This ambitious and challenging

59 The need for supplementary laws emerged once difficulties brought about by the amnesty came to light. On the one side, according to the chronological scheme emerging from And. 1.81-90, after those of Piraeus prevailed over the men of the City; after the people as a whole swore *μὴ μνησικακεῖν*, after it turned out that many were liable for offences under existing laws; after all that, a legal scrutiny directed to republication followed, and some new supplementary laws were immediately introduced. On the other side, Xenophon refers the *μὴ μνησικακεῖν* pledge to the facts of 401, when Eleusis was reintegrated and new (or rather: re-affirmed) oaths were sworn (Xen. *Hell.* 2.4.43). Cf., against the view of two separate amnesties, Johannes M. Stahl, “Über athenische Amnestiebeschlüsse,” in *RM* 46 (1891): 251–286; Loening, *The Reconciliation Agreement of 403/2 BC in Athens*, 23, 26–27; Julia L. Shear, *Polis and Revolution: Responding to Oligarchy in Classical Athens* (Cambridge: Cambridge University Press, 2011), 198 f. On the contrary, the view put forward by Carawan fails to separate the preliminary phase of the *συνθήκαι* and the subsequent one of the laws passed after the oath was sworn (Carawan, *The Athenian Amnesty and Reconstructing the Law*, esp. 86 ff.); against the idea of two separate peace proposals in 403, cf. Peter J. Rhodes, *A Commentary on the Aristotelian Athenion Politeia* (Oxford: Oxford University Press, 1993), 463; Shear, *Polis and Revolution: Responding to Oligarchy in Classical Athens*, 190 f.; Scheibelreiter, “*Atheniensium vetus exemplum*: Zum Paradigma einer antiken Amnestie,” 101.

60 And. 1.81-82: *δόξαντα δὲ ὑμῖν ταῦτα εἴλεσθε ἄνδρας εἴκοσι. τούτους δὲ ἐπιμελεῖσθαι τῆς πόλεως, ἕως ἂν οἱ νόμοι τεθεῖεν*, τῶς δὲ χρῆσθαι τοῖς Σόλωνος νόμοις καὶ τοῖς Δράκοντος θεσμοῖς. ἐπειδὴ δὲ βουλὴν τε ἀπεκληρώσατε νομοθέτας τε εἴλεσθε, εὐρίσκοντες τῶν νόμων τῶν τε Σόλωνος καὶ τῶν Δράκοντος πολλοὺς ὄντας οἷς πολλοὶ τῶν πολιτῶν ἔνοχοι ἦσαν τῶν πρότερον ἔνεκα γενομένων, ἐκκλησίαν ποιήσαντες ἐβουλευσάσθε περὶ αὐτῶν, καὶ ἐψηφίσασθε, δοκιμάσαντες πάντας τοὺς νόμους, εἴτ’ ἀναγράψαι ἐν τῇ στοᾷ τούτους τῶν νόμων οἱ ἂν δοκιμασθῶσι. καὶ μοι ἀνάγνωθι τὸ ψήφισμα. In the sections of his defence speech (81-90), Andocides differentiates between the stages of reconciliation. The initial phase of the negotiations, termed *διαλλαγὰι*, preceded the formalisation of peace agreements (90). Subsequently, the following oath occurred: *μὴ μνησικακεῖν* (81). Thereafter, objections were raised by citizens still bound by the old laws (82), and the laws were subsequently subjected to scrutiny and publication (82-85). Once the revised laws had been formalised, a series of

undertaking – with a history of notable endeavours, including those undertaken by oligarchs – was fully realised after approximately three years from its inception in 403-402 BC.⁶¹ To be more precise, firstly, the entire corpus of Athenian laws,⁶² which had accumulated and evolved over time from the end of the 7th to the end of the 5th century BC, had to be reviewed and assessed. Secondly, only that component of the scrutinised laws that was evaluated as still relevant and current had to be submitted to the people in view of republication by means of transcription, with the objective of shaping a new, compact and coherent system of legal rules as point of reference and beginning of the era. The consequence of this was that, at the dawn of the new and radical democracy, only written, general and abstract norms that had been approved and republished could serve as the basis for initiating private actions or public prosecutions. This recent legal consolidation functioned as a written memory of the past, whereas, on the contrary, all legislation that had not been recalled in public memory was effectively abrogated, or better, forgotten and submerged in the waters of Lethe.

On the other hand, following the completion of the aforementioned double and preliminary task with the approval and subsequent entry into force of the laws,⁶³ the first nomothetic board – that is a legislative committee, which had already been elected during the period in which the 20 were provisionally administering the city – was tasked with the enactment of additional νόμοι.⁶⁴ The purpose of this board was to address a series of crucial questions that had been a source of concern for the Athenians in the immediate aftermath of the amnesty; in other words, this set of new laws was devised as a further refinement to the pledge *μη μνησικακεῖν*, with the objective of providing a more precise legal definition to the practical and purely legal problems which the amnesty clause triggered, due to its general and open wording, and which a reading in the sense of a total eradication of the past inevitably entailed.

Firstly, as Andocides attests, archons were prohibited from pursuing claims or accusations based either on laws that had not been approved and rewritten or on customary rules that had never been written (or, as is almost self-evident, on decrees

new laws were enacted (85–89). It proves futile to attempt to summarise the copious extant literature on the republication of ancient Athenian laws between 410 and 403 BC (excluding the tyrannical interval) in this context. For a more comprehensive overview, see Mirko Canevaro–Edward M. Harris, “The Documents in Andocides’ *On the Mysteries*,” in *CQ* 62 (2012): 98–129, esp. 110 ff., and Joyce, *Amnesty and Reconciliation in Late Fifth-Century Athens*, 90 ff.

61 Peter J. Rhodes, “The Athenian code of laws, 410-399 BC,” in *JHS* 111 (1991): 87–100.

62 Elene Volonaki, “The re-publication of the Athenian laws,” in *Dike* 4 (2001): 137–167.

63 Cf. *IG* I³ 104 and, for a full account, Lysias’ speech *Against Nicomachus* (30.2-5).

64 And. 1.81, 85, 89.

approved by the Council or by the Assembly containing only particular and concrete provisions):⁶⁵ the only legal basis for cases to bring into courts, within the framework of the new nomic democracy, was to be the laws that had been recalled from the past.⁶⁶

65 See And. 1.87, 89: ψήφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι; Dem. 23.218, 24.30 and Hyp. Ath. 5.22. A clear distinction was thus established between νόμοι and ψήφισματα: laws were rules of a higher order, capable of overriding decrees but not of being overridden by them. This reform effectively put an end to the interchangeable use of νόμος and ψήφισμα that had characterised the 5th century, and two pioneering essays by Hansen have shown that throughout the 4th century the Athenians carefully respected both this distinction and the hierarchy it implied: see Mogens H. Hansen, “*Nomos and Psephisma in Fourth-Century Athens*,” in *GRBS* 19 (1978): 315–330; Mogens H. Hansen, “*Did the Athenian Ecclesia Legislate after 403/2 BC?*,” in *GRBS* 20 (1979): 27–53. The distinction between νόμοι and ψήφισματα was of substantive and procedural nature: a special process of law-making was set up through the board of νομοθέται in order to renew the body of laws currently in force. Such new process forms part of a wider programme. Indeed, the New Athenian Democracy intended to strengthen the role of popular judges, preserve consistency between applicable regulatory provisions and adapt the legal system to changing social demands; the programme also aimed to allow for the repeal of any new laws found to be ‘unsuitable’ in relation to the resulting legal corpus, as well as counteracting similarly inappropriate legislative proposals: see, for the re-assessment of the steps along the process of νομοθεσία in the 4th century, Mirko Canevaro, “The authenticity of the document at Dem. 24.20-3, the procedures of νομοθεσία and the so-called ἐπιχειροτονία τῶν νόμων,” *Klio* 100 (2018): 70–124; Mirko Canevaro, “The Procedure of Demosthenes’ Against Leptines: How to Repeal [and Replace] an Existing Law,” in *JHS* 136 (2016): 39–58; Mirko Canevaro, “Laws against laws. The Athenian ideology of legislation,” in C. Carey, I. Giannadaki and B. Griffith-Williams (eds.), *Use and Abuse of Law in Athenian Courts* (Leiden: Brill, 2018), 271–292; Mirko Canevaro, “On Dem. 24.20-23 and the So-Called ἐπιχειροτονία τῶν νόμων: Some Final Clarifications in Response to M. H. Hansen,” in *Klio* 102 (2020): 26–35; Mirko Canevaro – Alberto Esu, “Extreme democracy and mixed constitution in theory and in practice: *Nomophylakia* and fourth-century *nomothesia* in the Aristotelian *Athenaion Politeia*,” in Cinzia Bearzot et alii (eds.), *Athenaion Politeiai tra storia, politica e sociologia: Aristotele e pseudo-Senofonte* (Milano: Giuffrè, 2018), 106–145.

66 And. 1.85, 87, 89: ἀγράφω δὲ νόμῳ τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περὶ ἐνόχ. Mogens H. Hansen, *The Athenian Democracy in the Age of Demosthenes. Structures, Principles and Ideology* (Oxford: Oxford University Press, 1991), 253, reads the prohibition in the sense that judges, unlike magistrates, could have continued to resort to unwritten laws and customs. Differently, according to Mario Talamanca, “Ἐθὴ ε νόμος ἀγραφος nel *Corpus oratorum Atticorum*,” in Lucio Bove (ed.), *Prassi e diritto. Valore e ruolo della consuetudine* (Napoli: Jovene, 2008), 64, nt. 167, only magistrates could be punished for the offence of εἰσάγειν of the case to the court in εὐθύνα. Therefore, it is essential to correctly assess the role played by the archon in the Athenian bipartite trial. If an action was brought on the basis of a νόμος ἀγραφος, it was such magistrate who, presiding at the preliminary stage of the trial, had to declare it inadmissible. Speakers cite provisions or principles of ‘common law’ or ‘divine law’ *ad adiuvandum* before the courts, albeit sporadically (cf. Dem. 18.275, 23.70, 25.65-66; Lys. 6.10). Therefore, from 403 BC onwards, magistrates vested with pre-judicial powers were authorised to εἰσάγειν private and popular legal proceedings, only when claims and accusations were based on the written ‘nomic’ system. The body of νόμοι resulting from the δοκιμασία (examination) and the ἀναγραφή (publication) provided the essential frame of reference for any judicial action. A case could only be

Secondly, it was determined that the sworn pledge of amnesty was ineffective in stopping all final convictions from being enforced.⁶⁷ On the one hand, all enforcement procedures, as well as all condemnatory or declaratory legal proceedings started or completed during the oligarchic era, were deemed invalid. Conversely, judgements delivered by courts in public and private cases, as well as arbitration awards issued before Euclid's archonship but during the democratic era, were considered final and enforceable, even during the radical democratic period that followed the restoration.

Eventually, it was stipulated that upon republication, the laws or at the very least, those that were incriminating in nature, were to apply from the year of

brought before the popular court (or other courts) if one of the νόμοι from the 6th or 5th century BC, as published following the aforementioned examination and publication, had been produced and allegedly violated. The obligation placed on the prosecution and the plaintiff to cite the written νόμος that had allegedly been violated corresponded to the prohibition placed on the ἀρχαί to deem 'anomic' cases admissible. During an ordinary trial, the logographic argument presented to the judges could only be corroborated by further relevant νόμοι ἄγραφοι (common provisions of principle or rules of non-human origin not formally included in the written 'nomic' corpus) after passing the admissibility test conducted in ἀνάκρισις. Although νόμος ἄγραφος is formally opposed to νόμος γεγραμμένος rather than ἀναγεγραμμένος (as noted by Kevin Clinton, "The nature of the late fifth-century revision of the Athenian law code," in *Hesperia Suppl.* 19 [1982]: 27–34, esp. 34; Mirko Canevaro, *Demostene, Contro Leptine. Introduzione, Traduzione e Commento Storico* [Berlin–Boston: Brill, 2016], 347 ff.; Canevaro–Harris, "The Documents in Andocides' On the Mysteries," 116, nt. 98), the reference to a ψήφισμα ἄγραφον in And. 1.86 suggests that, in this context, the adjective 'ἄγραφος' (unwritten) should be understood as synonymous with 'οὐκ ἀναγεγραμμένος' (not transcribed/not published). In other words, only claims or accusations based on a νόμος – written or unwritten prior to 403 BC – that had been transcribed were admissible. Cf. Laura Pepe, "Nomos agraphos, nomos gegrammenos: osservazioni su 'leggi non scritte' e 'leggi scritte' nell'ordinamento ateniese," in *Rivista di diritto ellenico* 7 (2017): 109–137; Carlo Pelloso, "Nomos basileus e potere giudicante nell'Atene del IV secolo a.C.," in *Rivista di diritto ellenico* 7 (2017): IX–XXXVI.

67 See And. 1.87, 88 (τὰς μὲν δίκας, ὧ ἄνδρες, καὶ τὰς διαίτας ἐποιήσατε κυρίας εἶναι, ὅποσαι ἐν δημοκρατουμένη τῇ πόλει ἐγένοντο) and cf. the documents included in Dem. 24.56 (τὰς δίκας καὶ τὰς διαίτας, ὅσαι ἐγένοντο ἐπὶ τοῖς νόμοις ἐν δημοκρατουμένη τῇ πόλει, κυρίας εἶναι ... ὅποσα δ' ἐπὶ τῶν τριάκοντα ἐπράχθη ἢ δίκη ἐδικάσθη, ἢ ἰδίᾳ ἢ δημοσίᾳ, ἄκυρα εἶναι). The objective of this initiative was to overrule any judicial decisions, whether public or private, that had been made under the 30. The corollary stipulated that any and all decisions, whether private or public, made during the period of democracy, would be upheld. It can be argued that the phrase τὰς δίκας καὶ τὰς διαίτας may be interpreted as referring exclusively to private matters. However, when considered in conjunction with subsequent discourse, clearly the scope may extend to encompass public verdicts as well. There is no compelling reason to restrict the reference to 'τὰς μὲν δίκας' exclusively to judgments in private lawsuits (Canevaro–Harris, "The Documents in Andocides' On the Mysteries," 117). It is evident that this phrase encompasses public cases, given that the objective of the law is to invalidate any δίκη that ἐδικάσθη under the 30, regardless of whether it was public or private (ἢ ἰδίᾳ ἢ δημοσίᾳ): see Joyce, *Amnesty and Reconciliation in Late Fifth-Century Athens*, 118 f.

Eucleides' archonship.⁶⁸ The implications of this stipulation are evident in their indisputable practical significance. No individual could be prosecuted for offences that occurred prior to 403 BC, as the new system was oblivious to offences committed before democracy was restored. This rule would apply to both offences that were covered by the laws implicitly repealed and excluded from republication, as well as offences that were covered by the laws in force prior to and following Euclid's term of office.

Once the amnesty had been ratified and the additional statutory measures implementing the reconciliation agreement had been enacted, one of the following perplexing scenarios could be envisaged. Assuming that an individual had committed a criminal act prior to the summer of 403 BC but the case had never been brought before a court, that person was no longer subject to criminal prosecution.⁶⁹ And what if someone was either convicted or acquitted under the oligarchic regime? Such a conviction is not legally binding, and a trial resulting in a verdict in favour of the defendant cannot be repeated. By contrast, what if someone was either convicted or acquitted during the democratic period that preceded 403 BC? If a case was tried and a conviction was reached, the conviction can be enforced, and its effects cannot be contested. Similarly, an acquittal is to be considered final.

68 See And. 1.87, 89, 93 (τοῖς δὲ νόμοις τοῖς κειμένους χρῆσθαι ἀπ' Εὐκλείδου ἀρχοντος); Aesch. 1.39; Isae. 6.47 and 8.43; cf. Dem. 24.42 (quoting the law of Diocles, which shows that after the return of democracy laws dating from before 404 BC were held as valid as those passed after 403). According to Douglas Macdowell, *Andocides. On the Mysteries* (Oxford: Oxford University Press, 1962), 128 f., the meaning of this new rule is that laws cannot be applied to wrongdoing perpetrated prior to the archonship of Eucleides, and not that only laws enacted from the archonship of Eucleides are to be valid. In other words, on the basis of this persuasive view, it is apparent that also this new rule, embodying the principle of non-retroactivity, was directed to make the reconciliation agreement enforceable, so that only a wrongdoing committed after 403 could be brought to trial.

69 From the time of Archinus' law, if litigation contravened the terms of the amnesty, the defendant became entitled to present a παραγραφή against the claimant. In the opening statement of the prosecution's case under the new formal plea rule, the speaker of Isoc. 18.1-4 attests that, upon returning from Piraeus, the democrats acknowledged that reconciliation alone was insufficient to prevent litigants from attempting to overturn the terms of the amnesty by initiating frivolous prosecutions. Consequently, Archinus proposed a new law, enacted by the Assembly around 401-400 BC. Under this law, if anyone started a legal action contrary to the amnesty, the defendant would be entitled to a παραγραφή and, accordingly, to speak first rather than second. Moreover, the unsuccessful party – either the defendant or the claimant – would incur severe financial penalties: see Edward M. Harris, *The Rule of Law in Action in Democratic Athens* (Oxford: Oxford University Press, 2013), 72 ff.

7 Key Takeaways

In 403 BC, Athens underwent reconstruction and restoration as a law-abiding democratic society, and the intertwining of memory and oblivion constituted a strategic ingredient of this multilayered process. The amnesty oath, corroborated by the supplementary laws, together with the republication of the reviewed laws jointly embodied the theoretical and practical nexus between memory and oblivion. Taking into consideration the insights gleaned from the preceding exploration and interpretation of mythological and literary materials from ancient Greece, three points may be put forward for further consideration.

Firstly, as already seen, in the aftermath of Athena's triumph over Poseidon in the contest for dominion over Athens, an altar was constructed to honour Lethe and the annual commemoration of the conflict was formally removed from the official calendar. In a similar manner, the city of Athens placed its trust in the regenerative and foundational power of the political, sacred and legal concept of oblivion tactically linked with memory. If the erection of the temple served to establish a visible and tangible monument to the concept of oblivion, then the introduction, on the political and sacred level, as well as the reinforcement, on the legal level, of the pledge 'not remembering past offences' formalised and materialised the Athenian strategies of oblivion in official acts. Moreover, the selection and republication of some of the laws of the past, resulting in their display on the wall of the stoa, also functioned as an implicit obliteration of what was unwritten and thus consigned to oblivion.

Secondly, as previously stated, the Greek myth designated Mnemosyne as the mother of the nine Muses, who personified the oblivion of evils. Within this paradigm, the concept of memory itself can be understood as encompassing, embodying and engendering oblivion, which, in turn, is implied within the very process of memory itself. In a similar fashion, the Athenians in 403 appeared to comply with a proviso of the same kind. The 'μη μνησικακεῖν' pledge was considered a crucial element in establishing and reforming the rule of law and democracy. However, on the one hand, such an objective was fully achieved on the grounds of the inscribed memory of the laws which, once selected from the past and approved in the present, represented the only enforceable ones with a view to the future; on the other hand, the sacred and political oblivion of the past was legally implemented through supplementary laws which, creating a bridge between past and present, provided greater precision regarding the contents, limits and methods of operation of the amnesty, thereby reinforcing the concept that functional oblivion could not lead to the complete rejection of memory.

Thirdly, in accordance with the Platonic tradition and the initiation wisdom, oblivion is regarded as a cornerstone of the journey towards a renewed life and knowledge. Put differently, the formation of a new memory is contingent upon the strengthening of oblivion. This notion was of pivotal significance for the Athenians' endeavours, both in constructing their present and in paving the way for future memories. Indeed, the political interplay of memory and oblivion was foundational to Athens' rebirth, echoing an ancient view which – contrary to Orphism – associated initiation and wisdom with the forgetfulness of the past.

Dante conveyed the essence of these concepts through lines of unparalleled complexity and beauty. It is precisely with such lines that I would like to conclude my essay (so that, under the shadow of the Poet, the shortcomings of my work may be consigned to oblivion, while its merits may be better remembered): «Da questa parte con virtù discende / che toglie altrui memoria del peccato; / da l'altra d'ogne ben fatto la rende. / Quinci Letè; così da l'altro / Eunoè si chiama, e non adopra / se quinci e quindi pria non è gustato: / a tutti altri sapori esto è di sopra».⁷⁰

Bionote

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⁷⁰ Dante *Purg.* XXVIII, 129–133: «Upon this side with virtue it descends, / Which takes away all memory of sin; / On that, of every good deed done restores it. / Here Lethe, as upon the other side / Eunoë, it is called; and worketh not / If first on either side it be not tasted. / This every other savour doth transcend» (Engl. trans. by Henry W. Longfellow).