

# Sophistic Interpretations and Greek Treaties

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OATHS played an important rôle in Greek private and public life, and particularly in international relations.<sup>1</sup> No promise, contract, agreement, truce, or treaty had binding force without its validation by a sworn oath.<sup>2</sup> Oaths, however, not only validated agreements but also guaranteed them, for oaths were taken in the name of the gods who were thought to punish the perpetrators of perjury, bad faith, and oath breaking as well as their families and descendants.<sup>3</sup> To break an oath meant waging war with the gods, and even gods could suffer from committing perjury.<sup>4</sup> Condemnation of *mala fides* in international agreements is seen already in Homer, and oaths continued to be an indispensable component of treaties until the eighteenth century.<sup>5</sup>

So much is general knowledge. The books of Hirzel and Plescia, however, pay little attention to epigraphical evidence. Oaths preserved in inscribed treaties can include such words and phrases as *ἀδόλως, οὐδὲ τέχνη οὐδὲ μηχανῆ,* and *ἀδόλως καὶ ἀβλαβέως,* whose functions have been only cursorily examined.<sup>6</sup> Are such phrases merely routine formulas confirming *bona fides*, or does their inclu-

<sup>1</sup> The following will be cited by author's name alone: Elias J. BICKERMAN, "An Oath of Hannibal," *TAPA* 75 (1944) 87–102; Rudolf HIRZEL, *Der Eid: ein Beitrag zu seiner Geschichte* (Leipzig 1902); Coleman PHILLIPSON, *The International Law and Custom of Ancient Greece and Rome* (London 1911); Joseph PLESCIA, *The Oath and Perjury in Ancient Greece* (Tallahassee 1970); Peter SIEWART, *Der Eid von Plataiai* (Vestigia 16 [1972]).

<sup>2</sup> Thuc. 2.5.5–6; Dem. 7.33–37; Phillipson I 406–07; Plescia 59. In addition to Plescia and Hirzel for general studies of oaths, see E. Ziebarth, *RE* 5 (1905) 2076–83 s.v. "Eid"; A. Steinwenter, *RE* 10 (1918) 1253–60 s.v. "Iusiurandum."

<sup>3</sup> Hdt. 6.86; Phillipson I 389.

<sup>4</sup> Waging war with the gods: Xen. *Anab.* 2.5.7, *Hell.* 3.4.11; perjury of gods: Hes. *Theog.* 783–806; Plescia 3–4.

<sup>5</sup> *Il.* 3.276–91, 4.234–37, 7.351–53. The last instance of the use of an oath to confirm an international treaty was in the French-Swiss alliance of 1777 sworn at the cathedral of Solothurn: L. Oppenheim, *International Law I*<sup>7</sup>, ed. H. Lauterpacht (London 1948) 835; Arthur Nussbaum, *A Concise History of the Law of Nations* (New York 1954) 126; J. H. W. Verzijl, *International Law in Historical Perspective I* (Leiden 1968) 389.

<sup>6</sup> Siewart 33–34, *cf.* 38–40; Bickerman 96; Paul Grätzel, *De pactionum inter Graecas civitates factarum ad bellum pacemque pertinentium appellationibus formulis ratione* (Halle 1885) 32 n.2.

sion indicate a genuine fear of treachery or circumvention? These phrases, which I shall term 'anti-deceit clauses', usually occur within the oath rather than among the stipulations of the agreement, as the oath validates and guarantees those stipulations; if the oath is abused or circumvented, then the entire pact loses its binding force. The terms of these anti-deceit clauses are suggestive. δόλος, τέχνη, μηχανή, although generic words for trickery and deception in many contexts, also belong to the more specialized vocabulary of stratagems and sophistry.<sup>7</sup> The intent of anti-deceit clauses in Greek treaties needs to be examined from a ruse perspective.

Anti-deceit clauses imply a fear of deception. How do they relate to sophistic interpretations of oaths, or what the Greeks called a ὄρκος σοφιστικός?<sup>8</sup> A sophistic interpretation involved neither perjury, *i.e.* swearing something false, nor breaking an oath, but rather an overly literal interpretation of the wording of the oath or agreement, or playing on some ambiguity of meaning to produce an interpretation contrary to that intended and obvious, whereby the sophistic interpreter can, in any event, still claim fidelity to what was actually sworn. Probably the most famous sophistic interpretation is in Shakespeare's *Merchant of Venice* (IV.i.305–12, 324–25): a pound of flesh but not one drop of blood. As a genre of anecdotes in classical literature, sophistic interpretations have never been systematically collected or studied from the perspective of international relations.<sup>9</sup> Naturally the interpretation of international agreements and the desire to avoid ambiguity were of the utmost importance in antiquity, as they are today,<sup>10</sup> and it should not surprise if Greek treaties reflect this concern.

While a Roman interest in prevention of sophistic interpretation of treaties has been noted,<sup>11</sup> the Greek evidence has not been discussed

<sup>7</sup> The Greek vocabulary of stratagems has received no detailed discussion from the standpoint of military affairs or international relations. As an introduction see Luitgard Camerer, *Praktische Klugheit bei Herodot: Untersuchungen zu den Begriffen μηχανή, τέχνη, σοφία* (Tübingen 1965). For the Latin side a survey is found in Antonio Carcaterra, *Dolus Bonus/Dolus Malus: Egesesi di D. 4.3.1.2–3* (Naples 1970) 34–54.

<sup>8</sup> See 259 *infra*. Of course an interpretation and an oath are not the same thing; I have coined the phrase 'sophistic interpretation' as a blend of ancient and modern expressions for this phenomenon, which in the tradition of modern international law is called an 'interpretation'. Cf. Oppenheim (n.10 *infra*).

<sup>9</sup> Hirzel's concern (41–52) is not international relations, and Plescia (86) is even more brief and cursory. Also see K. Latte, *RE* 15 (1931) 348 s.v. "Meineid."

<sup>10</sup> Oppenheim (*supra* n.5) 858–62 lists fifteen rules for how to avoid sophistic interpretations. Cf. U.S. Department of the Army, *The Law of Land Warfare* (Washington 1956, rev. 1976) 170, where prevention of sophistic interpretation in the terms of capitulation is strongly implied.

<sup>11</sup> Friedrich Lammert, *RE* Suppl. 6 (1935) 1356 s.v. "Kriegsrecht."

in any detail. Thus Siewart (33–34) has connected anti-deceit clauses with deterring circumvention of oaths, but without seeing the relationship to sophistic interpretation and its genre of anecdotes. It is this relationship which this paper seeks to establish more clearly: the kind of interpretation illustrated by these anecdotes is precisely what in most cases an anti-deceit clause seeks to prevent, and comparison of Greek anti-deceit clauses with Roman formulaic practice will demonstrate that the Greek clauses are not simply formulaic. Sophistic interpretations of agreements were perceived as a real and present danger, as we shall see demonstrated in the collected exempla, in Cicero's condemnation of such interpretations, and in their theoretical discussion in the Anonymous Byzantine's *Rhetorica militaris*.

## I

The investigation of anti-deceit clauses in Greek treaties will be limited in this section to the period from the seventh through the third century B.C., for which the texts are conveniently collected in the *Staatsverträge des Altertums* series. Although most are not preserved on stone (compare the first two columns in the table below), only epigraphically attested treaties involving a Greek party will be considered here, since those preserved in literary sources may reflect textual and stylistic contamination, and with few exceptions they lack anti-deceit clauses. The statistical evidence is best presented in tabular form.

Century	Treaties	Treaties on stone	Anti-deceit clauses in treaties on stone
VII	6	0	0
VI	11	3	1
V	91	33	8
IV	170	64	6
III	110	66	8
Total	388	166	23

The results initially appear inconclusive: of the 166 treaties on stone only twenty-three (13.9%) contain anti-deceit clauses.<sup>12</sup> The

<sup>12</sup> These are *Staatsvertr.* 120 (Sybaris and the Serdaei, before 510 B.C.), 154 (Athens and Eretria, 446/5), 155 (Athens and Chalcis, 446/5), 162 (Athens and Rhegium, 433/2), 163 (Athens and Leontini, 433/2), 184 (Athens and Halieis, 424/3), 186 (Athens, Perdiccas, and Arrhabaeus, 423/2), 187 (Athens and the Bottiaeans, 422), 204 (Thasos and Neapolis, after 411), 260 (Mausolus and Phaselis, 377–352), 289

meager evidence from the sixth century would imply a rate of 33.3% of the treaties, while the subsequent centuries show a decrease in the percentages as the volume of evidence increases (24.2, 9.4, and 12.1% for the fifth, fourth, and third centuries). Use of anti-deceit clauses is clearly the exception, not the rule. This is puzzling, especially when viewed against a background, from the fifth century on, of increasing awareness of stratagems in historians and military writers, and of their simultaneous rise to prominence in Greek warfare.<sup>13</sup> Do these figures show that the official instruments of Greek *ius gentium* have little concern for this problem?

Our epigraphical evidence is admittedly fragmentary, and it is impossible to know the extent to which chance of preservation has affected these statistics. Moreover, from the standpoint of power politics not all extant treaties have equal value: some involve major powers of the Greek world and others small or insignificant *poleis*. Yet given the volume of evidence from the fifth century on, we should probably trust the percentages revealed by the stones. Inasmuch as anti-deceit clauses appear so infrequently, their inclusion could be significant evidence of mistrust and suspicion between the contracting parties. But infrequency is not the only reason for thinking that such clauses are not rote formulas.

The evolving language of the anti-deceit clauses is instructive. Anti-deceit clauses are found neither in Homeric conventional oaths nor in the alleged treaties of the seventh century known from later literary sources.<sup>14</sup> The earliest clause, ἄδολος ('without trick'), first appears in the alliance of Sybaris and the Serdaeii concluded before 510 B.C., and ἄδολος or one of its variants, usually the adverb ἀδόλως, continues into the third century B.C. as the most frequent form of the clause, occurring in thirteen of the twenty-three epigraphical examples.<sup>15</sup> The second most frequent form, οὐδὲ τέχνη οὐδὲ μηχανή ('and not with craft nor with stratagem'), first occurs in the mid

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(Athens and Ceos, 362), 297 (Arcadian Orchomenos and Euaemon, 360–350), 308 (Philip and the Chalcidians, 357/6), 309 (Athens and Cetriporis, Lyppeius, and Grabus, 356), 403 (Corinthian League, 338/7), 463 (Aetolians and Boeotians, 292 [?]), 481 (Eumenes I and his troops, 263–241), 492 (Smyrna and Magnesia by Sipylos, after 243), 551 (Rhodes and Hierapytna, ca 200), 552 (Rhodes and Olus, ca 200), 578 (Itanos and Hierapytna [?], third century), 581 (Praesos and Lyttos), 584 (Cnossos and Dreros, ca 200).

<sup>13</sup> I shall treat this topic in detail elsewhere.

<sup>14</sup> Phillipson I 385–87; *Staatsvertr.* 101–06. On the concept of perjury in Homer and Hesiod see Plescia 83–85.

<sup>15</sup> *Staatsvertr.* 120, 162, 163, 184, 186, 187, 260, 308, 309, 463, 551, 578, 581.

fifth century, and is found in nine of the twenty-three examples.<sup>16</sup> Although some variation of these two phrases is found by the late fifth century,<sup>17</sup> the introduction of new phrases and much greater variations begin *ca* 360 B.C.: ἀψευδήων ('may I be true', *i.e.* not lie or deceive), ἀδόλως καὶ ἀτεχνῶς ('without trickery and without craft'), οὐδὲ κακοτεχνήσω περὶ τὸν ὄρκον τοῦτον οὐθὲν οὔτε τέχνη οὔτε παρευρέσει οὐδεμιᾶ ('and I shall devise nothing fraudulent about this oath, neither by craft nor by any false pretext'), and ἀδόλως καὶ ἀπροφασίστως ('without trick and without evasion').<sup>18</sup>

Two trends can thus be discerned in the statistics: decreased incidence of anti-deceit clauses over time, as the number of extant treaties and the concern for trickery in international affairs increase, and the appearance *ca* 360 B.C. and later of new phrases or greater variations in the language. The first trend becomes even more obvious if the four centuries are grouped in pairs: anti-deceit clauses occur in 28.75% of the treaties of the sixth and fifth centuries combined (or 24.2% for the fifth century alone) by comparison with only 10.8% for the fourth and third centuries combined.

In the light of these figures (especially if we exclude the one item from the sixth century), we may examine the origins of the treaties. All the fifth-century evidence for anti-deceit clauses is Athenian and concerns either the Athenian empire or one of its former members, whereas only two of the fourteen examples from the fourth and third centuries occur in Athenian treaties. Variations in the language after 360 could thus reflect the greater diversity of the contracting parties (*i.e.* most are not Athenian) and also perhaps the natural evolution of the Greek language in later centuries. On the other hand, it seems

<sup>16</sup> *Staatsvertr.* 154, 155, 204, 289, 308, 403, 481, 492, 584. The oath of the heliasts preserved in Dem. 24.149–50 and allegedly of Solonian date contains the phrase οὔτε τέχνη οὔτε μηχανῆ, which as we have seen is not epigraphically attested in treaties before the fifth century. From this point of view the Solonian date of the oath, at least in the form given in Demosthenes, seems in doubt. For literature on attempts to reconstruct the oath of the heliasts see Plescia 26 n.30.

<sup>17</sup> Thuc. 5.18.3 (Peace of Nicias in 421), τὰς σπονδὰς . . . ἀδόλους καὶ ἀβλαβεῖς καὶ κατὰ γῆν καὶ κατὰ θάλασσαν, *cf.* 5.18.9; 5.47.8 (alliance of Athens, Argos, Mantinea, and Elis in 420), ἐμμενῶ τῇ ξυμμαχίᾳ κατὰ τὰ ξυγκείμενα δικαίως καὶ ἀβλαβῶς καὶ ἀδόλως, καὶ οὐ παραβήσομαι τέχνη οὐδὲ μηχανῆ οὐμεδιά, *cf.* 5.23.2 and *Staatsvertr.* 260. The phrase ἀνευ τε δόλου καὶ ἀπάτης in proposals of alliance occurs three times in Herodotus (1.69.2, 8.140a.4, 9.7a); Bickerman 96 n.48 claims Herodotus' phrase is a standard formula of oriental diplomacy, but cites no evidence except Herodotus. Anti-deceit clauses are not found in oriental treaties: see Dennis J. McCarthy, *Treaty and Covenant: A Study in Form in the Ancient Oriental Documents and in the Old Testament* (AnalBibl 21 [1963]).

<sup>18</sup> *Staatsvertr.* 297, 308, 481, 551.

fair to add that the burdens of empire and also the interests of the sophists have produced in fifth-century Athenian treaties (of which all containing anti-deceit clauses date after 450) a clear concern about stratagems, circumvention, and trickery.

Still another factor that could affect the frequency of anti-deceit clauses is the degree of faith in the religious bond of the oath. It has been thought that from the fifth century on the confidence that the gods punish perjury and oath-breaking, and belief in the very existence of the gods, waned under the influence of the individualism and rationalism of the sophists; oaths in general, and not just in treaties, lost their previous authority.<sup>19</sup> Pritchett and Lonis, however, argue that the sophistic movement did not abolish faith in religious practices, which continued to exert strong influence on military and international affairs.<sup>20</sup> Lonis nonetheless concedes that by the fourth century oaths lost their value as guarantees of international pacts and that the use of hostages did not prove a better means to insure fidelity to agreements.<sup>21</sup> The depreciated religious force of the oath is further seen in the Hellenistic philosophical schools: both the Epicureans and the Stoics sought to replace the religious sanction with an ethical regard for justice and *bona fides* itself.<sup>22</sup>

Thus it could be argued that if the religious value of the oath had become nil, insertion of an anti-deceit clause would be futile verbiage in a legal/religious mechanism that was already a dead letter: hence the infrequency of Greek anti-deceit clauses. Oaths, however, whether as a true religious sanction or as a conventional element, continued to be an essential component in Greek treaties; and whatever the cause of their increasing diversity of formulation, anti-deceit clauses likewise continued to be used. These clauses are framed not to prohibit perjury (which was thought punishable by the gods) but rather the strictly legitimate if ethically dubious circumvention through interpretation; so the explanation of waning religious faith in

<sup>19</sup> Plescia 86–87, cf. Hirzel 79–104.

<sup>20</sup> W. Kendrick Pritchett, *The Greek State at War* (Berkeley 1971–1979) III esp. 2–10; Raoul Lonis, *Les usages de la guerre entre grecs et barbares* (Paris 1969) 130 and *Guerre et religion en Grèce à l'époque classique* (Paris 1979) 50, 55–57.

<sup>21</sup> Lonis, *Les usages* (*supra* n.20) 108–11, 150, 133, 139; “La valeur du serment dans les accords internationaux en Grèce classique,” *DHA* 6 (1980) 267–86; “Les otages dans les relations internationales en Grèce classique,” *Mélanges offerts à Léopold Sédar Senghor* (Dakar 1977) 215–34.

<sup>22</sup> Cic. *Fam.* 7.12, cf. *Plut. Mor.* 1112c; Cic. *Off.* 3.102, 104. Cf. *Curt.* 7.8.29: *iurando gratiam Scythas sancire ne credideris; colendo fidem iurant. Graecorum ista cautio est, qui pacta consignant et deos invocant; nos religionem in ipsa fide ponimus. qui non reverentur homines, fallunt deos* (a Stoic sentiment placed in the mouths of Scythians).

oaths cannot be wholly satisfactory. The infrequency of anti-deceit clauses thus remains problematic.

## II

It is widely agreed that the function of anti-deceit clauses is to deter circumvention of the oath,<sup>23</sup> and we have hypothesized that circumvention should be identified with sophistic interpretations. Before examining the epigraphical evidence linking anti-deceit clauses to this type of circumvention, we should consider ancient definitions and examples of sophistic interpretations.

Eustathius (*ad Od.* 19.396 [1870–71]) offers the most detailed definition of sophistic interpretation, or in Greek terms a ὄρκος σοφιστικός or σοφισματώδης:<sup>24</sup>

ὄρκος δὲ νῦν οὐχὶ ὁ κατ' ἐπιρκίαν· τοῦτο γὰρ οὔτε ἐσθλοῦ ἀνδρός, οὔτε κοσμεῖ ἀνθρωπον, καὶ οὐδὲ θεὸς δίδωσιν· ἀλλὰ ὁ ἐν καιρῷ σοφίζομενος, ὅτε δηλαδὴ αὐτὸς μὲν τις εὐορκῶν ἐστί, τοὺς δὲ ἐπικλόπῳ αὐτῷ ἐγκαλοῦντας παραλογίζεται οἷα μὴ ἔχοντας νοεῖν τὸ σόφισμα. οὕτω πως καὶ Ὀδυσσεὺς ἀνόπιν ἐσοφίσσατο τὴν Πηνελόπην ὄρκῳ ἐν τῷ . . . τοιοῦτος δὲ τις ὄρκος πρὸς ἄλλοις μυρίοις, ἤγουν σοφιστικός, καὶ ὁ τῶν ὁμοσάντων τόσας ἡμέρας ἄγειν σπονδάς, ἐν δὲ τῷ μέσῳ νύκτωρ ἐπιθεμένων τοῖς ἐχθροῖς, ὡς δῆθεν τῆς συμβάσεως τῶν σπονδῶν ἡμερῶν μεμνημένης, οὐ μὴν καὶ νυκτῶν . . . καὶ οὗτοι μὲν ὄρκοι σοφισματώδεις, ὁποίοις φαίνεται χεῖρ καὶ Σίσυφος.

In Eustathius' view the swearer of a sophistic oath does not commit perjury or break the oath but remains εὐορκος, as other sources also attest.<sup>25</sup> The outrage of the deceived party is quite apparent in Eustathius and the scholiast, but Polybius, who identifies Antiochus IV's sophistic interpretation of a truce in the capture of Pelusium as a

<sup>23</sup> Lammert (*supra* n.11) (Roman evidence) and Siewart 33–34.

<sup>24</sup> The Romans never developed a suitable Latin expression for sophistic interpretation and remained content with periphrastic phrases: Cic. *Off.* 1.33, *calumnia quadam et nimis callida, sed malitiosa iuris interpretationes*; Val. Max. 7.3.4, *improbo . . . praestigiarum genere*; Tac. *Hist.* 4.41.2, *trepidus et verba iuris iurandi per varias artes mutandibus*; Gell. 6.18.6, 10, *commenticio consilio . . . fraudulenta callidas*. Cf. Hirzel 47 n.1.

<sup>25</sup> Schol. *Od.* 19.396, *οὐκ ἐπιρκῶν, ἀλλὰ σοφίζομενος τοὺς ὄρκους, αὐτὸς μὲν εὐορκος διέμεινε, τοὺς δὲ ἐγκαλοῦντας διὰ τῆς ἐπινοίας ἐπειθεν*; Ael. *VH* 12.8, *λέγων μὴ παρασπονδεῖν μηδὲ ἐπιρκεῖν*; Polyae. 6.53, *ὁ δὲ οὐδὲν ἔφη ἀδικεῖν*. In Polybius and Pausanias sophistic interpretation is expressed succinctly by *σοφίζεσθαι* and *σόφισμα*: Polyb. 6.58.12, *τὸν δὲ σοφισάμενον πρὸς τὸ λῦσαι τὸν ὄρκον*; Paus. 10.30.2, *τοῦ ἐπὶ τῷ ὄρκῳ μετασχόντα σοφίσματος*; cf. Hirzel 44 n.2.

stratagem, stresses that, like sycophants in the law courts, Antiochus observed the letter of the law although without regard for justice.<sup>26</sup> *aequitas* and *iustitia* aside, none of the sources defining sophistic interpretation question its legitimacy from a strictly legal point of view. The *sophisma* of a sophistic interpretation lies in the ambiguity of what was sworn, the ἀμφιβολία or ὁμωνυμία, as the Anonymous Byzantine puts it.<sup>27</sup> Indeed Camerer's definition of a sophistic trick states the basic principle of sophistic interpretation: "Es handelt sich um die Fähigkeit, den Partner dadurch zu übertölpeln und einzuschüchtern, dass man eine Vereinbarung trifft, bei der irgendein unauffälliger, unbedeutender Umstand vom Partner unbeachtet bleibt, aber später gegen ihm verwendet wird."<sup>28</sup>

Since the oath lends a religious sanction to an agreement, we should note Greek religious lore about the chicanery of sophistic interpretations. Homer's gods often practise deception, but subsequent generations honored more moral divinities. Yet even Zeus, the god of justice, had the epithet ἐπικλόπειος, probably derived from his deceptions of Hera and his extramarital affairs.<sup>29</sup> Thus it is no surprise that his son Hermes should have a great reputation for trickery and deceit.<sup>30</sup> In fact Hermes might be said to have sworn the first sophistic oath, when as an infant he stole Apollo's cattle, hid them in a cave, and craftily swore to Zeus that he had not driven them home.

<sup>26</sup> Polyb. 28.18, with F. W. Walbank, *A Historical Commentary on Polybius* (Oxford 1957–1969) III 352. Diod. 30.18.1–2: προσηκόντως ἂν τις ἀποφάνηται τὸν Ἀντίοχον, καθάπερ τοὺς ἀπὸ τῶν δικαστηρίων συκοφάντας, τὸ μὲν ῥητὸν τοῦ νόμου τετηρηκένοι μετὰ τὰς ἀνοκὰς τὴν κατάληψιν πεποιημένον, τὸ μέντοι γε δίκαιον καὶ καλόν, δι' ὧν ὁ πάντων συνέχεται βίος, μὴ τετηρηκένοι. διὰ γὰρ τὴν συγγένειαν ὀφείλων φείδεσθαι τοῦ μειρακίου, καθάπερ αὐτὸς ἔφησε, τὸναντίον ἐξαπατήσας ἐπεβάλετο τοῖς ὅλοις σφῆλαι τὸν πεπιστευκότα. Cf. Val. Max. 7.3.4: *ceterum etsi circumventi Nolan ac Neapolitani queri nihil potuerunt secundum ipsorum demonstrationem dicta sententia*. See n.65 *infra* for Antiochus' stratagem as a sophistic interpretation.

<sup>27</sup> Anon. Byz. *Rhet.mil.* 2.2. On this source see n.37 *infra*.

<sup>28</sup> Camerer (*supra* n.7) 67. Since a sophistic interpretation is not perjury, we need not enter into the Peripatetic and Stoic controversies on the definition of perjury. On these debates see Plescia 84–85, Hirzel 75–79, and the general discussion of perjury in Latte (*supra* n.9) 346–57. Likewise the *verba/voluntas* problem, seen in Euripides' famous "My tongue swore, not my mind" (*Hipp.* 612), has little bearing on our discussion. Even in Roman law this issue is post-classical: Erich Hans-Kaden, "Die Lehre von Vertragsschluss im klassischen römischen Recht und die Rechtsregel: *Non videntur qui errant consentire*," in *Festschrift Paul Koschaker I* (Weimar 1939) 334–57; Fritz Schultz, *Geschichte der römischen Rechtswissenschaft* (Weimar 1961) 155–57.

<sup>29</sup> See Karl Deichgräber, *Der listensinnende Trug des Gottes* (Göttingen 1952); Hesych. s.v. ἐπικλόπειος; Hirzel 42 n.5.

<sup>30</sup> Deichgräber (*supra* n.29) 109–13; Chr. Sherer, *Roscher Lex.* I 2371 s.v. "Hermes"; cf. Marcel Detienne and Jean-Pierre Vernant, *Cunning Intelligence in Greek Culture and Society*, tr. J. Lloyd (Atlantic Heights 1978) 23 n.3; S. Eitrem, *RE* 8 (1922) 755, 780–81 s.v. "Hermes 1."



It is significant that Zeus felt no anger but only amusement at his son's cunning.<sup>31</sup>

Hermes passed on his sophistic skill at oaths to Autolycus, Odysseus' maternal grandfather, who according to Homer (*Od.* 19.395f) ἀνθρώπους ἐκάκαστο κλεπτοσύνη θ' ὄρκω τε and whom later sources call a son of Hermes. His fame as a trickster eventually passed into the stratagematic tradition, although in our evidence it is only Eustathius who first clearly associates his use of oaths with sophistic interpretation.<sup>32</sup> Much the same can be said about Sisyphus, whose trickery has Homeric roots and a rich development in later authors, but whom Eustathius again first directly connects with sophistic oaths, even asserting that he could not be outwitted by Autolycus.<sup>33</sup>

Eustathius' favorable view of sophistic interpretations thus belongs to a strong Greek tradition. They were legitimate (*i.e.* neither perjury nor oath-breaking); a good man (ἔσθλός) could use them; and it was a skill not only given by a god but approved of with humor by Zeus. Taking advantage of another's oversight or gullability in this way did not provoke divine wrath.<sup>34</sup>

*bona fides*, however, which does not have its roots exclusively in legality or religion, forms the basis of any viable system of international relations. Dissenting voices to the view seen in Eustathius had to shape their reproaches on moral and ethical grounds.<sup>35</sup> The Stoic condemnation of sophistic interpretations is summarized in Cicero:

*existunt etiam saepe iniuriae calumnia quadam et nimis callida, sed malitiosa iuris interpretatione. ex quo illud summum ius summa iniuria factum est iam tritum sermone proverbium. quo in genere etiam in re*

<sup>31</sup> *Hymn.Hom.Merc.* 62–495: the sophistic phrase at 379 and Zeus' amusement at 389–90.

<sup>32</sup> *Pl. Resp.* 334A–B; Polyæn. 1 praef. 6; Eust. 1870–71.

<sup>33</sup> *Il.* 6.153; *Ar. Ach.* 391 and schol.; Polyæn. 1 praef. 5; Phrynichus Arabicus in *Anecd.Bekk.* I 64; Eust. 1870–71; Wilsch, *Roscher Lex.* IV 958–72 s.v. "Sisyphos." For Autolycus' attempted deception of Sisyphus see *Suda* s.v. Σίσυφος.

<sup>34</sup> Hirzel 43, 45.

<sup>35</sup> *Pl. Resp.* 334A–B; schol. *Ar. Ach.* 391; Diod. 30.18.1–2 (Polybius); Phrynichus (*supra* n.33). Plato's approval of Autolycus is ironic, but he emphasizes Autolycus' thievery. The scholiast and Phrynichus characterize Sisyphus with the pejorative πάνουργος, although it cannot be argued that this is aimed specifically at Sisyphus' use of sophistic oaths. Polybius' objection based on justice is essentially the same as that raised by the Stoics (see *infra* n.36). Does Eustathius express his own view, or reflect earlier sources? His approval of sophistic interpretations could reflect the rather liberal Byzantine view of stratagems seen in the Anon. Byz. *De re strategica*, Maurice, Leo, and other military texts: cf. *ad Il.* 15.541 (1030), δόλος οὐ ψεκτός οἷα στρατιωτικός (his defense of Teucer killing Cleitor with a shot in the back). On stratagems in Byzantine military thought see most recently Walter E. Kaegi, Jr, *Some Thoughts on Byzantine Military Strategy* (Brookline 1983).

*publica multa peccantur . . . quocirca in omni est re fugienda talis sollertia.*<sup>36</sup>

Stoics did not have the last word on the subject in antiquity, and the pendulum eventually swung in the opposite direction. An unknown Greek, probably in the age of Justinian, composed a treatise on statesmanship, of which the practical military side is discussed in the *De re strategica*. In a companion treatise on the verbal aspects of statesmanship, the less well known *Rhetorica militaris*, the author encourages the use of sophistic interpretation to gain advantage over foreign nations (2.2–3.1): both written and unwritten public speeches in domestic and military affairs demand clarity, as do letters to subjects. But ambiguity and equivocation present the opportunity for profit when writing to the rulers of foreign nations, and the Anonymous Byzantine supports his argument with two examples, one defensive and one offensive.<sup>37</sup> Eustathius' favorable view of sophistic oaths had a theoretical as well as many practical precedents.

The catalogue of forty-five sophistic interpretations given in the Appendix is intended to illustrate the extent of this practice in antiquity, with no claim of comprehensiveness. Most examples are derived from historical and other prose sources, as these rather than the deceptions of tragedy, comedy, and romance seem more relevant to an assessment of sophistic oaths in treaties. The historicity of all the examples is not guaranteed; certainly some are the inventions of propaganda or dubious traditions, while others may be folktales and proverbs. For our purposes the significance of these forty-five examples lies in their distribution in time from Homer to Procopius and in the pervasiveness and awareness of sophistic interpretation in the ancient psyche that they reflect. The contrasting views of the Stoics and the Anonymous Byzantine represent a real debate on a practical issue.

In these examples, who perpetrates the sophistic oaths, and how many concern chicanery in military and international affairs? Barbarians are seen to swear sophistically in nine of the forty-five cases,

<sup>36</sup> *Off.* 1.33, cf. 3.113–15 and *Caecin.* 51–52. Whether *Off.* 1.33 and 3.113–15 are Cicero's own opinion or derive from Panaetius or Poseidonius directly or from Panaetius through Poseidonius is immaterial here. For a recent assessment of the problem see Horst-Theodor Johann, *Gerechtigkeit und Nutzen: Studien zur ciceronischen und hellenistischen Naturrechts- und Staatslehre* (Heidelberg 1981).

<sup>37</sup> See Appendix nos. 9 and 21. On the Anonymous Byzantine see H. Köchly and W. Rüstow, *Griechische Kriegsschriftsteller* II.2 (Leipzig 1855) 2–40, who give the only printed edition of the *Rhetorica militaris*. Their grouping of the *Rhetorica* with the *De re strategica* goes back to Lucas Holsten and is accepted in Alphonse Dain, "Les stratégistes byzantins," *Travaux et mémoires* 2 (1967) 343–44.

Romans also in nine, and Greeks in twenty-seven.<sup>38</sup> Only eleven of the forty-five examples do not concern military or international affairs in some respect.<sup>39</sup> This sampling of the evidence thus yields that Greeks are three times as likely as Romans or barbarians (60% versus 20%) to perpetrate sophistic interpretations; and that three of every four instances of sophistic interpretation involve military or international affairs.

### III

We have seen that anti-deceit clauses use the language of stratagems and that the two most frequent forms are *ἄδολος* and *οὐδὲ τέχνη οὐδὲ μηχανή*. If these clauses often appeared as isolated elements, *i.e.* seemed to be inserted routinely in the oaths, this would support the proposition that they are rote formulas. In fact the opposite is the case. *ἄδολος* and its variants occur in only thirteen of the 166 treaties on stone and in isolation only four times. It is most frequently coupled with a reinforcing element, such as a form of *πιστός* (four examples) or with *ἀβλαβέως* (three examples). Similarly, *οὐδὲ τέχνη οὐδὲ μηχανή* is found in only nine of the 166 treaties and in isolation only once.<sup>40</sup>

The aim of an anti-deceit clause is of course to close all avenues to circumvention, and we have seen that these clauses exhibit a tendency toward greater elaboration and variety. Such supplements, often addressing diverse contingencies and even specific acts, are first attested in Athenian treaties of the fifth century and reflect Athenian fear of revolt among its allies. It was no longer sufficient to swear *οὐδὲ τέχνη οὐδὲ μηχανή*; one also had to renounce hostile action by word or deed, *οὐδ' ἔπει οὐδὲ ἔργω*.<sup>41</sup> During the Peloponnesian War we find for the first time the specification that oaths cover operations both on land and on sea, *κατὰ γῆν καὶ κατὰ θάλασσαν*, as in the Peace of Nicias and first epigraphically recorded in the League of Corinth. By the third century a stipulation of both night and day (*μήτε ἐν νυκτὶ μήτε πεδ' ἀμέραν*) first appears, which matches precisely a species of sophistic interpretation found four or five times in the cata-

<sup>38</sup> Barbarians: nos. 4, 7, 9, 23, 27, 33, 36, 38–39; Romans: 1, 3, 6, 17, 26, 29, 30, 40, 44; Greeks: 2, 5, 8, 10–16, 18–22, 24–25, 28, 31–32, 34–35, 37, 41–43, 45.

<sup>39</sup> Nos. 1, 3, 12, 19–20, 22, 35, 38, 40–41, 45.

<sup>40</sup> *ἄδολος* in isolation: *Staatsvertr.* 184, 309, 463, 578; with *πιστός*: 120, 162, 184 (restored), 187; with *ἀβλαβέως*: 163, 186, 260; *οὐδὲ τέχνη κτλ.* in isolation: 289.

<sup>41</sup> *Staatsvertr.* 154, 155, *cf.* 204.

logue.<sup>42</sup> We should note that Philip II, who achieved so much by chicanery, had it sworn in the treaty of the League of Corinth (if the various restorations are correct) that no member of the League would capture a city, fort, or harbor of another member by craft or stratagem.<sup>43</sup>

Certainly *ἄδολος*, *τέχνη*, and *μηχανή* are general terms, but the vocabulary of some treaties of the fourth and third centuries points more explicitly to sophistic interpretation. Words such as *παρεύρεσις* ('pretext'), *ἀπροφασίστως* ('without evasion'), and *κακοτεχνέω* ('deal fraudulently'), although by no means new in the Greek language, are new variations in anti-deceit clauses; in this application they cannot be traditional formulas, mere regional preferences in language, or even hollow routine verbiage without a more immediate and relevant purpose.<sup>44</sup>

If we may cross briefly the lower chronological *terminus* set for this study and consider the second century, we find in Crete a good example of the close connection between anti-deceit clauses in treaties and stratagems in international relations. Cretan treaties are relatively numerous in the late third and second centuries. Indeed four of our last five epigraphical examples of anti-deceit clauses in the third century come from Crete, and this tendency continues in the second: without claiming an exhaustive search, I find that of six treaties employing anti-deceit clauses four are from Crete.<sup>45</sup> A new variant form of anti-deceit clause appears in all four Cretan texts, *ἀπλόως κἀδόλως* ('openly and without trickery'). This is reminiscent of an Athenian treaty of the fifth century, unfortunately mostly restored and thus not secure evidence: *πιστὰ καὶ ἄδολα καὶ ἡ[απλᾶ]* (*Staatsvertr.* 162.11f). Furthermore, Hierapytna's treaty of *isopoliteia* with an unknown city contains one of the most extensive anti-deceit clauses attested (*I.Cret.* III iii 5): *ἐμμενῶ ἐν τοῖς συγκειμένοις καὶ οὐ κακοτεχνησῶ οὐθὲν τῶν ἐν ταῖδε ταῖ ἰσοπολιτεῖαι γεγραμμένων οὔτε λόγῳ οὔτε ἔργῳ, οὐδὲ ἄλλῳ ἐπιτραψῶ ἐκῶν καὶ γινώσκων παρ-ευρέσει οὐδεμᾶι οὐδὲ τρόπῳ οὐθενί.*

This flourishing of anti-deceit clauses in Cretan documents of the late third and second centuries is illuminated by the historical back-

<sup>42</sup> By land and by sea: Thuc. 5.18.3, *Staatsvertr.* 403, *I.Cret.* IV 186b (Gortyn and Lappa, II B.C.). Night and day: *Staatsvertr.* 584, cf. Appendix nos. 7–10 and 31.

<sup>43</sup> *Staatsvertr.* 403; cf. 309.40–43, where the subsequent clause (*οὐ προκαταλύσομαι τὸν πόλεμον ἄν[εν Κερτιπόριος κτλ.]*) can be seen as a partial explanation of *ἀδόλως*.

<sup>44</sup> *Staatsvertr.* 481, 551, 552, cf. *I.Cret.* IV 186b.

<sup>45</sup> Third century: *Staatsvertr.* 551, 578, 581, 584. Second: *I.Cret.* IV 174 (Gortyn, Hierapytna, and Priansos), IV 186b (Gortyn and Lappa), III iii 3b (Hierapytna and Lyttos), III iii 5 (Hierapytna and an unknown city), *Milet* III 149 (Miletus and Pidasa); *Syll.*<sup>3</sup> 633 (Miletus and Heraclea).

ground known from literary sources. Cretans, notorious as pirates in this period, were seen not only as treacherous liars, but also as frequent users of stratagems and sophistic interpretations.<sup>46</sup> Polybius' boyhood hero Philopoemen campaigned in Crete during 200–192, the very period from which at least some of these Cretan anti-deceit clauses derive, and Plutarch's description of Philopoemen's activities probably has its source in Polybius' three-book encomium of the Achaean general:<sup>47</sup>

ἐν δὲ τῇ Κρήτῃ συνεπολέμει τοῖς Γορτυνίοις, οὐχ ὡς Πελοποννήσιος ἀνὴρ καὶ Ἄρκας ἀπλοῦν τινα καὶ γενναῖον πόλεμον, ἀλλὰ τὸ Κρητικὸν ἦθος ἐνδὺς καὶ τοῖς ἐκείνων σοφίσμασι καὶ δόλοις κλωπείαις τε καὶ λοχισμοῖς χρώμενος ἐπ' αὐτοὺς ταχὺ παῖδας ἀπέδειξεν ἀνόητα καὶ κενὰ πρὸς ἐμπειρίαν ἀληθινὴν πανουργοῦντας.

The Cretan anti-deceit clauses and the contemporary style of warfare on the island fit together like hand in glove.

A document of the third century, although preserved in a literary source, also supports our thesis about anti-deceit clauses. Hannibal's oath confirming his alliance with Philip V of Macedon in 215 B.C. is found in Polybius 7.9. As Bickerman demonstrated, Polybius' text is a Greek translation of a Punic document produced in Hannibal's chancellery, and the problems of the Carthaginian translator in rendering the Punic into suitable legal Greek are revealing.<sup>48</sup> The anti-deceit clause reads (7.9.8):

οὐκ ἐπιβουλευσομεν οὐδὲ λόχῳ χρησόμεθα ἐπ' ἀλλήλοις· μετὰ πάσας δὲ προθυμίας καὶ εὐνοίας ἄνευ δόλου καὶ ἐπιβουλῆς ἐσόμεθα πολέμοι τοῖς πρὸς Καρχηδονίους πολεμοῦσι . . .

Instead of the two most common forms of anti-deceit clauses, οὐδὲ τέχνη οὐδὲ μηχανῇ and ἄδολος, the Carthaginian translator presents a quite literal rendering of the idea expressed by the former, specifically referring to plotting against each other and the use of ambush, and approximates the latter with ἄνευ δόλου, a phrase without parallel in Greek treaties.<sup>49</sup> The poetic λόχος had been replaced by ἐνέδρα in Thucydides, which became the standard prose word for 'ambush' thereafter, although here the translator probably took λό-

<sup>46</sup> See Appendix no. 5; Callim. *Jov.* 8; Polyb. 4.8.10–11, 6.47.5, 8.19.5, 21.5; Plut. *Lys.* 20.2, *Aem.* 23.6. For Cretan piracy see most recently P. Brulé, *La piraterie crétoise hellénistique* (Paris 1978).

<sup>47</sup> Plut. *Phil.* 13.6, cf. Polyb. 10.21.5–6.

<sup>48</sup> See Bickerman, and his "Hannibal's Covenant," *AJP* 73 (1952) 1–23. Cf. Walbank (*supra* n.26) II 42–56.

<sup>49</sup> Bickerman 96 with n.48.

χος to mean trickery in general as well as ambush, just as *insidiae* in Latin.<sup>50</sup>

Explicit references to plotting against the other party do not occur in Greek treaties on stone except as *ex post facto* promises not to repeat such behavior when it has already occurred, and this is really the language of civic loyalty oaths rather than international conventions.<sup>51</sup> The point is best illustrated in the agreement between Eumenes I and his mercenaries after their mutiny, which includes a promise not to plot against the king (*Staatsvertr.* 481.31), but an anti-deceit clause for the oath separately (45f). Of course deterrence of deception, *i.e.* secret plotting against the other party, is the purpose of an anti-deceit clause, and the overly literal renderings of the Carthaginian translator with their explicit mention of plotting and trickery lay bare the essential nature of anti-deceit clauses, which the more subtle Greek usage leaves somewhat vague.

Lacking Punic evidence, we cannot know whether the Carthaginian translator was attempting to render a Punic legal formula by a Greek anti-deceit clause—which, I have argued, is not a routine feature of Greek treaties and reflects a more immediate concern about trickery. There is no lack of evidence, however, if we compare Greek and Roman usage; and the linguistic connection of Greek δόλος with Latin *dolus* offers an excellent instance for study.

Hirzel argued that in antiquity the border between adherence to an oath and perjury was more fluid than modern standards permit and that the Greeks had greater freedom to interpret oaths than the Romans, as Greek oaths lacked formulas such as *ex animi sententia iurare* and *si sciens fallo*.<sup>52</sup> I would add to this list of Roman formulas absent from Greek *dolus malus* and *sine dolo malo*, for which δόλος and ἀδόλωσ offer linguistic but not, we shall see, legal equivalents. That *dolus malus* is a legal formula is general knowledge and requires no demonstration; its frequency is such as even to merit an epi-

<sup>50</sup> See Pritchett (*supra* n.20) II 178.

<sup>51</sup> Bickerman 96 with n.47. Loyalty oaths: *Syll.*<sup>3</sup> 360 (Tauric Chersonesus, ca 300–280), *I.Cret.* III iv 7–8 (Itanos, ca 300), *cf. Hesperia* 5 (1936) 422 (honorific decree for Kephisodorus, 196/5, who thwarted plots against Athens). *Ex post facto* promise: *IosPE* I<sup>2</sup> 402 (oath of Pharnaces I of Pontus, 179; he had attempted to conquer Chersonesus and was checked by Bithynia, Pergamum, and Cappadocia: M. Rostovtzeff, *CAH* IX [1932] 218; Édouard Will, *Histoire politique du monde hellénistique* II [Nancy 1967] 242–44; a redating of the inscription to 155 B.C. is proposed by S. M. Burstein, “The Aftermath of the Peace of Apamea: Rome and the Pontic War,” *AJAH* 5 [1980] 1–12).

<sup>52</sup> Hirzel 22, 41, 48; Cic. *Off.* 3.108, *Luc.* 146; Liv. 22.53.11; additional references in Latte (*supra* n.9) 354. For modern standards of interpretation see Oppenheim (*supra* n.10).

graphical abbreviation, *d.m.*<sup>53</sup> *dolus* belongs to the Roman vocabulary of stratagems, just as *δόλος* does to that of the Greeks, but *dolo malo* or *sine dolo malo* in a Roman document is unquestionably a rote formula about malicious intent rather than a pointed and immediate guard against stratagem or circumvention. Clear proof is found in the *Lex Iulia maiestatis* (Dig. 48.4.4):

*cuiusque dolo malo iureiurando quis adactus est, quo adversus rem publicam faciat: cuiusve dolo malo exercitus populi Romani in insidias deductus hostibusve proditus erit: factumve dolo malo cuius dicitur, quo minus hostes in potestatem populi Romani veniant: cuiusve opera dolo malo hostes populi Romani commeatu armis tellis equis pecunia aliave qua re adiuti erunt: utve ex amicis hostes populi Romani fiant: cuiusve dolo malo factum erit, quo rex exterae nationis populo Romano minus obtemperet.*

Certainly these treasonous acts could be seen as stratagems from one point of view, but *dolo malo* characterizes the performance of these acts with evil intent and not with regard for the deception of a stratagem.

The Roman clarity of *dolo malo* as a formula does not exist in *ἄδολος* or *ἀδόλως*. Romans were of course just as aware of sophistic interpretation as the Greeks and desired just as much to avoid it. The fetial oath for treaties demonstrates this: *ut illa palam prima postrema ex illis tabulis cerave recitata sunt sine dolo malo, utique hic hodie rectissime intellecta sunt, illis legibus populus Romanus prior non deficiet.*<sup>54</sup> The real anti-deceit clause, however, is not *sine dolo malo* but *utique hic hodie rectissime intellecta sunt*.

If *ἄδολος* or *ἀδόλως* were a legal formula in Greek treaties, we should expect them in translations of the Latin formula as the most obvious legal as well as linguistic equivalent. The epigraphical and some literary evidence suggests otherwise. The Romans translate their *dolus malus* and *sine dolo malo* as *δόλος πονηρός* and *ἄνευ*

<sup>53</sup> The literature is voluminous. See e.g. Carcaterra (*supra* n.7); Alfred Pernice, *Laqueo: römisches Privatrecht im ersten Jahrhundert der Kaiserzeit* II.1.2 (Halle 1895); Kleinfeller, *RE* 5 (1903) 1292–94 s.v. “Dolus 4”; Adolf Berger, “Dolo malo,” *Encyclopedic Dictionary of Roman Law* (TAPhS 43.2 [1953]) 440; Andreas Wacke, “Zum *dolus*-Begriff der *actio de dolo*,” *RIDA* 27 (1980) 349–86. The abbreviation: e.g. *ILS* 6085.

<sup>54</sup> Liv. 1.24.7. The archaic date of the oath has been questioned by R. M. Ogilvie, *A Commentary on Livy, Books 1–5* (Oxford 1965) 109–10. On the significance of formulas in early Roman law see Schultz (*supra* n.28) 28–30. From Liv. 38.11.2 and Hdt. 1.69.2 (*cf.* n.56 *infra* and *supra* n.17), Erich S. Gruen has concluded that Roman use of *sine dolo malo* in treaties is an imitation of Greek anti-deceit clauses: *The Hellenistic World and the Coming of Rome* (Berkeley 1984) I 29 n.85. The point is not argued in detail, and the evidence studied here indicates that it is invalid.

δόλου πονηροῦ.<sup>55</sup> Bickerman (102) holds that ancient chancelleries emphasized strict literalness in translation of legal texts and cites δόλος πονηρός as an example, but this explanation does not seem convincing when such a close verbal equivalent as ἄδολος was available, unless ἄδολος was not felt as a legal formula.

Bickerman's point, however, carries no weight for an author, especially one who knew both Roman practice and Hellenistic Greek very well. When Naravas, a Numidian chieftain, enters Hamilcar Barca's camp during the mercenaries' revolt to offer his alliance, Polybius records that the crafty barbarian's proposal was given ἀδόλως, a usage perfectly consistent with anti-deceit clauses in inscriptions. On the other hand, when Polybius gives the terms of the Roman-Aetolian treaty of 189, he translates *sine dolo malo* as χωρὶς δόλου rather than ἀδόλως. He thus uses, to indicate a Roman legal formula, an expression that has no precedent in Greek treaties, which suggests once again that ἀδόλως, the most obvious verbal counterpart, was not a legal formula.<sup>56</sup> Furthermore, the author of *I Maccabees*, in recounting the alleged treaty of 161 between Rome and the Jews (8.28), renders *sine dolo malo* as οὐ μετὰ δόλου, a phrase paralleled in the Rome-Methymna treaty (*IG XII.2 510*) but in no treaty between Greeks.<sup>57</sup>

<sup>55</sup> Some examples: *IG XII.2 510* with *Suppl.* p.116 (Rome and Methymna, ca 129, or as late as the 90's [Gruen (*supra* n.54) II 741]); Sherk, *Roman Documents* 16 (Rome and Astypalaea, 105); *SEG 3.378c* (piracy law, ca 100); *I.Délos 1511* (piracy law, 67); Sherk 58 (Rome and Rhosus, 30's); 73 (Mytilene, date unknown); *OGIS 629* (Palmyra, A.D. 137). The preposition may vary: ἄνευ *I.Délos 1511*, *SEG 3.378c*; μετὰ *IG XII.2 510*; χωρὶς *OGIS 629*. But none of these phrases occurs in inscribed treaties before the second century or outside a Roman context. I do not understand Bickerman's assertion (90 n.13) that the word δόλος disappears after composition of the Septuagint, is lacking in Hellenistic papyri and inscriptions, and reappears in legal Greek as a translation of *dolus*; ἀδόλως certainly occurs in Cretan inscriptions of the second century (*supra* n.45). We should also note Nep. *Ages.* 2.4, where Nepos translates the ἀδόλως of Xen. *Hell.* 3.4.5–6 as *sine dolo*. As neither passage is a legal text, my argument is not affected. It cannot be determined if Nepos (erroneously in my view) saw ἀδόλως as a legal formula and thus rendered it *sine dolo*, or simply offered the most obvious Latin translation. The uncertainties of such cases in literary sources explain and justify the emphasis on epigraphical evidence in this study.

<sup>56</sup> Polyb. 1.78.7, 21.32.7, cf. Liv. 38.11.2, 5. *sine dolo malo* occurs twice in Livy's version of the treaty; a lacuna is found in Polyb. 21.32.2 where the first instance of a Greek equivalent of *sine dolo malo* should occur. Various restorations have been proposed, but it seems clear from 21.32.7 that only χωρὶς δόλου can be correct. Some scholars assume that Livy's version is a Latin translation of Polybius, which is questionable. In any event, Polybius apparently translated from a Latin text. For the problem see Walbank (*supra* n.26) III 131–32. We do find ἀδόλως equated with *sine dolo malo* in a Roman-Vandal treaty of 478 (Malchus fr.13 [*FHG IV 120*]), but Late Roman practice has little validity for the period under consideration here.

<sup>57</sup> For bibliography and an argument for the treaty's historicity see Gruen (*supra* n.54) I 43–44.



We can conclude that ἄδολος and Greek anti-deceit clauses in general are not routine formulas to confirm good faith. Greek practice in treaties differs from the explicit formulas and the consistency of Roman usage. Any rote formula should be found on the stones far more often than it is (13.9% over four centuries), particularly when the issue involved is trickery in international relations. The anti-deceit clauses we find in Greek treaties were occasioned by real and immediate concern about deception and especially sophistic interpretation.

## APPENDIX: A Catalogue of Sophistic Interpretations

The forty-five examples gathered here, though doubtless not exhaustive, will illustrate the range of sophistic interpretations to be found in our literary evidence. They are classified according to theme or similarity of the incidents; the seventh and largest group contains all the examples that defy more specific categorization.

### I. Religion

1. Ov. *Fast.* 3.285–354
2. Paus. 10.18.5
3. Macrob. *Sat.* 1.7.35  
1–3 involve sophistic interpretations of a vowed or demanded sacrifice, so as to permit a substitution.
4. Procop. *Bel.* 1.3.17–22  
The Sassanid king Peroz outwits the Ephthalite king by sealing his oath with obeisance to the rising sun according to the rite of the Magi, while the Ephthalite thinks that the obeisance is to him.<sup>58</sup>

### II. Arbitration

5. Zenob. 4.62; cf. Diog. 5.58, 5.92, Apostol. 10.7, *Suda s.v. Πρὸς Κρήτα κρητίζειν*.
6. Liv. 3.71–72, Dion. Hal. *Ant.Rom.* 11.52; cf. Cic. *Off.* 1.33, Val. Max. 7.3.4<sup>59</sup>  
In both cases the arbiter of a dispute, having sworn to choose the deserving party, adds himself to the parties and chooses himself.

<sup>58</sup> In the Persians' version as given in Tabari no sophistic interpretation is found and Peroz's renewal of the war and his subsequent defeat and death are seen simply as breaking faith and its just reward. See Th. Nöldeke, tr., Tabari, *Geschichte der Perser und Araber zur Zeit der Sasaniden* (Leiden 1879) 124–25.

<sup>59</sup> The contesting parties are Ardea and Aricia in Livy and Dionysius but Nola and Neapolis in Cicero and Valerius.

## III. Days and Nights

7. Strab. 9.2.4 (Ephorus *FGrHist* 70F119), Polyæn. 7.43, *Suda* s.v. *Θρακία παρέυρεσις*, Zenob. 4.37; cf. *Suda* s.v. *Θραῦκες ὄρκια οὐκ ἐπίστανται*, Zenob. 4.32, Diog. 5.25, Apostol. 8.91
8. Cic. *Off.* 1.33; Plut. *Mor.* 223A–B
9. Photius and *Suda* s.v. *Φοινίκων συνθήκαι* (Demon *FGrHist* 327F13); Anon. Byz. *Rhet.mil.* 2.4; Diog. 8.67; Macar. 8.74, cf. Strab. 6.1.15; Dion. Hal. *Ant.Rom.* 19.3<sup>60</sup>
10. Polyæn. 6.53, cf. Thuc. 4.102.3  
All four play on the ambiguity of the terms ‘day’ or ‘day and night’.

## IV. Hiding Gold

11. Ath. 8.360E–61C (Ergias of Rhodes *FGrHist* 513F1, Polyzelus 521F6)<sup>61</sup>
12. Stob. *Anth.* 3.28.21 Hense  
Both cases are attempts to avoid surrender of gold: to the victor of a siege (11) or to a foreigner who deposited it with a friend (12).

## V. Eliciting an Enemy Commander under Siege

13. Thuc. 3.34.3; Polyæn. 3.2
14. Polyæn. 2.6<sup>62</sup>
15. Polyæn. 2.19  
In 13–15 a besieged commander agrees to a parley in the besiegers’ camp. His town is then taken by assault; the commander is returned safe to the town in accordance with the agreement, but then killed. In 14 the commander’s life is threatened at the parley and he is returned after agreeing to open the gates to the enemy.
16. Dio. 17.84.1–5; Polyæn. 4.3.20, cf. Plut. *Alex.* 59.6–7; Arr. *Anab.* 4.27.3–4  
Alexander massacres an Indian garrison after its surrender: he had sworn that they could leave the fort, but not that they were released or were his friends.

<sup>60</sup> Strabo and Dionysius attribute the incident to the foundation of Metapontum and Callipolis respectively, while the other sources give Carthage.

<sup>61</sup> This case is unique in containing two sophistic interpretations, one to counter the other. The surrendering party circumvents one stipulation of the terms of capitulation, while the victors reply in kind with chicanery on another point.

<sup>62</sup> This sophistic interpretation of Dercyllidas is especially interesting because of his nickname Sisyphus, whose trickery in oaths Eustathius directly connects with sophistic interpretations: Xen. *Hell.* 3.1.8; Ephorus *FGrHist* 70F71; *supra* n.33. How he acquired the nickname is unknown; his other two recorded stratagems do not concern oaths: Xen. *Hell.* 3.1.17–19; Jul. Afric. *Cest.* 7.1.11 (attributed to Clearchus in Polyæn. 2.2.9).

## VI. Returning Half

17. Val. Max. 7.3.4

18. Polyæn. 6.15

A stipulation to return half of something to the enemy results in ships (17) and arms (18) being cut in half.<sup>63</sup>

## VII. Unclassified Examples

19. *Od.* 19.303–07; Eust. *ad Od.* 19.396 (1870–71)

Odysseus tricks Penelope.

20. Ath. 8.338c; Eust. 1870–71

Hiding a stolen fish with another person: the one who took it did not have it and *vice versa*.

21. Anon. Byz. *Rhet.mil.* 2.3

Besiegers receive the golden reflection of sunlight on the city's image rather than the gold from the city's cult statue—a play on the word *εἰκῶν*.

22. Paus. 10.30.2

Cretan Pandareos' sophistic oath after stealing the golden dog of Zeus.<sup>64</sup>

23. Hdt. 4.201; Polyæn. 7.34

An oath is taken over a concealed trench with stipulation of the oath's validity as long as the earth stands.

24. Ael. *VH* 12.8

Cleomenes I gains power with the aid of Archonides, swearing to “do nothing without his head” (without consulting him); he then decapitates Archonides and keeps the embalmed head with him during state business.

25. Polyb. 12.6.3–5; Polyæn. 6.22

The Locrians swear an oath that is to last as long as they tread on earth and have heads on their shoulders; but they have put earth in their shoes and heads of garlic on their shoulders under their clothing.

26. *HA Aur.* 22.5–23.3

Aurelian, besieging Tyana, vows not to leave even a dog alive if he takes the town; successful, he repents and kills the dogs but not the people.

27. Tac. *Ann.* 12.47

Murder is committed by smothering, since poison or a sword is prohibited in an oath.

<sup>63</sup> A similar trick occurs in no. 11, where ships without rudders, sails, and oars are given, since the agreement stated only ships. Cf. Macrob. *Sat.* 2.6.2; *Dig.* 50.16.242.

<sup>64</sup> See M. van der Kolf, *RE* 18 (1949) 501.

28. Frontin. *Str.* 4.7.17  
An army surrenders with an oath to lay down their swords (*fer- rum*); they are slaughtered because they retained iron clasps on their cloaks.
29. Liv. 22.58.4–61.10; Cic. *Off.* 3.113–15; Polyb. 6.58.2–12; Gell. *NA* 6.18  
Ten Roman prisoners from the battle of Cannae are sent by Hannibal to negotiate ransom; one circumvents the oath to return by going back to camp immediately on the pretext of having forgotten something.
30. Dion. Hal. *Ant.Rom.* 2.40.2; Fab. Pict. *HRR* I<sup>2</sup> fr.8; Liv. 1.11.6–8; Val. Max. 6.9.1; Plut. *Rom.* 17, *Mor.* 309B–C; Serv. *ad Aen.* 8.348; Zonar 7.3  
Tarpeia betrays Rome upon the Sabines' oath to give her what is on their left arms; rather than give her their armbands, they crush her with their shields.
31. Diod. 30.18.1–2  
Antiochus IV's capture of Pelusium apparently involved the soph- istic interpretation of a truce.<sup>65</sup>
32. Thuc. 3.52.2–53.2, 68.1  
The Spartans lure the Plataeans into voluntary surrender by stip- ulating that only the guilty will be punished and no one contrary to justice; at the trial justice is defined as service to Sparta dur- ing the war.
33. Polyæn. 6.14  
An agreement of the Samnites with their enemies to remove one row of stones from the Samnite walls is executed by remov- al of the bottom row, thus demolishing the walls.
34. Polyæn. 5.12.2  
Timoleon gains the surrender of the Syracusan tyrant by promis- ing not to prosecute him; on taking the city he demands of the assembly (rather than in court) that the tyrant be killed, saying that this is not a prosecution.
35. Hdt. 4.154  
Themison throws the daughter of Etearchus into the sea as sworn, but she is attached to a rope and is retrieved.

<sup>65</sup> Cf. *supra* n.26. No source explicitly states the nature of Antiochus' stratagem, but Polybius' reference (preserved in Diodorus) to observance of the letter of the law without regard for justice fits the pattern of a sophistic interpretation. The truce seems to have lasted some months before some Egyptian officers, impressed by Antiochus' generosity after the battle near Mt Casius, assisted in the capture of Pelusium. If the terms stated that the truce would last so many days, without reference to nights, then Antiochus' stratagem may have involved a night attack in conjunction with the treachery of the Egyptian officers. This type of sophistic interpretation is seen in the catalogue (nos. 7–10), in Eustathius' discussion of sophistic oaths (1870–71), and also in treaties (*Staatsvertr.* 584). On the capture of Pelusium see Diod. 30.14; Walbank (*supra* n.26) III 352; Otto Mørkholm, *Antiochus IV of Syria* (Copenhagen 1966) 64–77.

36. Amm. Marc. 27.5.9  
The Goth Athanaricus, under oath not to set foot on Roman territory, makes peace with the Romans from boats in the middle of the Danube.
37. Plut. *Dem.* 4, cf. Serv. *ad Aen.* 3.402  
Bound by an oath of silence, Demetrius writes a message on the ground.
38. Judges 21; Jos. *AJ* 5.155, 169–74; Ambros. *De off.* 3.19  
The Hebrews, having sworn not to give their daughters to the Benjaminites, arrange for the Benjaminites to steal them.
39. App. *Lib.* 1.1  
The Phoenicians swear only to take as much African territory as an ox-hide encompasses; they then cut the hide into a thin rope and surround what is later the citadel of Carthage.
40. Tac. *Hist.* 4.41.1–2  
Senators devise circumventions to the oath that they neither harmed a citizen nor profited during the civil war of 69–70.
41. Clem. Al. *Strom.* 3.6.50.4–51.1; Ael. *VH* 10.2  
An athlete in a foreign city promises to take a woman home with him and later departs with her picture.<sup>66</sup>
42. Polyæn. 5.5.1  
When the Megarians wish to settle at the Chalcidian colony of Leontini, held jointly with the Sicels, Theocles says he cannot drive out the Sicels because of his oath to them. But he opens the gates by night to the Megarians, who expel the Sicels.
43. Polyæn. 8.66; Plut. *Mor.* 244F–45B  
In a war with Erythrae the Chians agree to surrender Leuconia and depart from the city with only a cloak and tunic. The Chian women, however, recall the ancient custom to call a spear a cloak and a shield a tunic. Thus the Chians depart armed from the city.
44. Polyb. 20.9–10; Livy 36.27–28  
The famous confrontation of *πίστις* and *fides*. In 191 B.C. Acilius Glabrio tries to trick the Aetolians into a quick surrender by urging them to enter into *fides* (*πίστις*), but without making clear that *fides* and *deditio* are the same.<sup>67</sup>

<sup>66</sup> The name of the athlete is Aristotle in Clement and Eubatas in Aelian.

<sup>67</sup> Gruen has argued that Polybius and modern historians have misinterpreted this incident, which in his view reveals no sharp differences between Greek *πίστις* and Roman *fides* or between Greek and Roman values: “Greek *πίστις* and Roman *Fides*,” *Athenaeum* 60 (1982) 50–68, cf. Gruen (*supra* n.54) 28 n.80, where he seems more cautious about *deditio*, *fides*, and *πίστις*. Despite his arguments in 1982, not all of which convince equally, the incident as told by Polybius has a sophistic interpretation of the term *fides* as its basis. If, as Gruen argues, the Aetolians understood Roman *fides*, if *πίστις* and *fides* were indistinguishable, and if *fides* and *deditio* were not synonyms, then Glabrio’s ‘trick’ was no trick at all and Polybius’ clear equation of *fides* and *deditio* (20.9.12) is blatantly wrong.

45. Hdt. 6.62–63.1

A man in love with another's wife confirms an agreement with him by oath that each will give whatever the other asks. The second must give up his wife, as he did not suspect that his married friend would demand his spouse.<sup>68</sup>

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<sup>68</sup> The sophistic interpretation is misunderstood by W. W. How and J. Wells, *Commentary on Herodotus I* (Oxford 1912) 89.

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