

Aristobulus I: A Mild Person or an Able, Ruthless Ruler?

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I

Josephus' accounts of the deeds and reign of Aristobulus I constitute the only extant source about this Hasmonaean ruler. In the *Jewish War* (hereafter *BJ*) he reports that on the death of John Hyrcanus, his eldest son Aristobulus I transformed the regime into a kingship, assumed the diadem and imprisoned his brothers, except for Antigonus who was a little younger than himself and whom he loved and considered worthy of equal honour. He also bound his mother — who contested his rule and whom John Hyrcanus had left mistress of the state — in chains and starved her to death mercilessly. Subsequently, persuaded by false calumnies and a court intrigue, in which his wife participated, that his brother conspired to depose him and take power, he had Antigonus executed. Feeling guilt and full of remorse, Aristobulus fell seriously ill and died in great agony (1.70-84). The Jewish historian relates the same story, almost identical in details and language, about the short rule of Aristobulus in the *Jewish Antiquities* (13.301-318; hereafter *AJ*), adding the following information (13.318-9):

Calling himself Philhellene, [Aristobulus] conferred many benefits on his country, for he made war on the Ituraeans and acquired a good part of their territory for Judaea and compelled the inhabitants, if they wished to remain in their country, to be circumcised and to live in accordance with the laws of the Jews. He had a kindly nature (*physis epieikēs*) and was wholly given to modesty, as Strabo also testifies on the authority of Timagenes, writing as follows: 'this man was a kindly person (*epieikēs ... anēr*) and very serviceable (*chrēsimos*) to the Jews, for he acquired additional territory for them, and brought over to them a portion of the Ituraean nation, whom he joined to them by the bond of circumcision'.¹

It is generally held that the story told by Josephus in the *BJ* is based on an account that he found in the *Histories* of Nicolaus of Damascus;² in the *AJ* he simply narrated again what he had written in his early work, introducing only a few stylistic changes. Still, he found it appropriate to present another version about the reign of Aristobulus, which he had read in the great historical work of Strabo (*Ta meta Polubion*);³ Strabo's source for this topic was, as Josephus tells us, Timagenes of Alexandria (first century BCE), the

¹ R. Marcus' translation in Loeb Classical Library (hereafter *LCL*), with a few changes.

² On Nicolaus of Damascus as Josephus' sole source for the Hasmonaean and Herodian history in the *BJ* see Hölscher 1904, 4-19. This view is generally accepted, except for the period of the religious persecution and the Hasmonaean revolt, and see Bar-Kochva 1989, 186-90 (with the bibliography there cited). See also Stern 1991, 459-63.

³ On Strabo (c. 63 BCE-after CE 20) see Dueck 1999 (with the bibliography there cited).

author of a historical work entitled *Kings*, probably organized in sections dealing with royal houses and dynasties.⁴ The information provided by this fragment of Strabo/Timagenes is usually construed as expressing a favourable judgement of Aristobulus by these historians. Josephus thus balances here the pejorative picture of the Hasmonaean ruler portrayed by Nicolaus as a cruel, typical tyrant. Some argue that the Greek historian was prompted by his close relationship with Herod to draw this groundless portrayal.⁵ Others claim that the negative account was an invention of the Pharisees, Aristobulus' political opponents.⁶

To resolve the discrepancy, not necessarily a contradiction, between the two accounts — one conveying a negative image of the Hasmonaean ruler and the other a favourable one — is the goal of the present article. One may regard the two accounts as an example belonging to the category of the Tacitean *ira et studium* explanation for the rise of biased and diametrically opposing historiographic narratives. Indeed, former treatments of the Josephan evidence are akin to this kind of explanation. There is, however, another line of enquiry, presumably more profitable and instructive, one that examines the usage of the term *epieikēs* in the Greek sources, particularly in historiographical works. The elucidation of the meanings of the term and its cognates, the examination of the historical figures that are characterized by it and the reasons for their earning it — will help understand the considerations which led Timagenes, and Strabo, to apply it to Aristobulus and to form their judgement of his foreign policy. It will be argued that the characterization of Aristobulus as *epieikēs anēr* does not refer to his being a mild person, but to the way he conducted his expansionist policy. If so, Nicolaus of Damascus' account need not be construed to stand in contrast to that of Timagenes. The image of the Hasmonaean ruler they portray probably reflects two different, not necessarily incompatible, aspects of Aristobulus' deeds and policy.

II

The adjective *epieikēs* and its cognates are attested in Greek as early as Homer and occurs subsequently in all sorts of sources: historiographical, rhetorical and philosophical, epigraphical, papyrological, technical, etc. — and in a variety of meanings, including: suitable, fitting; fair, equitable; kind, mild, gentle; able, capable; lenient, gracious; reasonable, considerate, moderate, clement.⁷ That the word is vague and hard to translate is widely recognized, explicitly or implicitly.⁸ Generally speaking,

⁴ On Timagenes see Sordi 1982; Stern 1974, 222-6; *idem* 1993 (all three with ample bibliography).

⁵ See, e.g., Efron 1987, 173; Stern 1991, 463; *idem* 1993, 8.

⁶ See Bloch 1879, 95; Schürer 1973, 218; J. Klausner, in Schalit 1972, 234. For an outright rejection of the view that the pejorative version is based on Jewish tradition see Stern 1991, 463.

⁷ See LSJ 1940, s.v. *epieikeia* and *epieikēs*; Spicq 1947, 333-7; *idem* 1978, 263-7; D'Agostino 1973; Triantaphyllopolis 1985, esp.17-25 (with the notes — a rich, somewhat chaotic collection of sources and scholarly works).

⁸ See, e.g., Romilly 1974, 96; Hornblower 1991, 431. Several instances are given below. For the methodological problem see Herman 2006, 202-3.

a distinction may be made between cases where the term is related to the innate qualities of individuals and cases where it concerns political, social or cosmological order or conditions, assumed to be existing or prescribed; sometimes there is an intrinsic connection between the particular, personal and the public, universal aspects and ramifications of the case. The term is also used to characterize things, deeds, manners, notions, ideas etc., and such cases may often be instructive. The following is a selective survey of the evidence relevant to the present article.⁹

Homer

Underlying the Homeric usage of *epieikēs*¹⁰ is the belief in the prevailing of a fixed, rightful position of human beings and gods, each with what is due to him according to his status, and of a set of definite values conforming to that order of things. For instance, Achilles orders the construction of a ‘fitting tomb’ (*epieikēs tumbos*) for Patroclus, one that is not too large, that is, according to what is due to his fallen comrade; it will be raised and widened on Achilles’ death, obviously corresponding to what he deserves (*Il.* 23.245-8). Helios demands (*Od.* 12.382) that Odysseus’ companions who slaughtered his cattle should pay ‘fitting recompense’ (*epieikēs amoibē*), and accordingly Zeus destroys Odysseus’ ship and they are drowned. Despite his notorious wrath, Achilles at long last recognizes Agamemnon’s prerogative to bestow or withhold the gifts, ‘as is fitting’ (*hōs epieikes*), which is a reference to Agamemnon’s position at the top of the social and ruling hierarchy (*Il.* 19.146-8).¹¹ Alcinous calls upon the leaders of the Phaeacians to give Odysseus, his guest, a host’s gift (*xeinēion*), ‘as is fitting’ (*hōs epieikes*; *Od.* 8.387-9). And indeed, gift-giving was an important custom, instructive from various respects, in the Homeric society.¹² In sum, the adjective *epieikēs* (the noun *epieikeia* is not attested in Homer), which mostly occurs in the neuter,¹³ conveys, in a number of cases, the notion of conformity with the accepted order, traditional customs and norms of behaviour and action prevailing in human society and among the gods. It is

⁹ I give a few examples of cases not directly relevant to the purpose of this article. Herodotus says (1.85, 1) that Croesus’ son was mute, but *epieikēs* in all other respects, that is, ‘normal’. On one occasion Xenophon employs the word in the superlative (*Hell.* 1.1.30) to denote the most capable of the trierarchs, pilots and marines (Spicq 1947, 333 n. 4 is not persuasive on this passage). The adjective is used, in the superlative, by Isocrates in the sense of ‘the most cultured’, or ‘the most educated’, among the Greeks (*Panath.* 263). *tous epieikeis andras* means ‘the good (or virtuous) men’ in Arist. *Poet.* 1252b34. In Arist. *Pol.* 1274a13-15 the *epieikeis* are the political opponents of the populace and the demagogues. In one passage of the *Ath. Pol.* (26.1) that is ascribed to Aristotle, the *epieikeis* are the citizens capable to arm themselves; politically they are moderate. Cf. D’Agostino 1973, 6-7.

¹⁰ See Nordheider 1987.

¹¹ Cf. *Il.* 8.430-31: Hera concedes Zeus’ right to control the battle between the Greeks and the Trojans, ‘as is fitting’ (*hōs epieikes*). Of course Agamemnon’s inability to impose his will over Achilles is indication of the discrepancy between his seemingly over-all supremacy and the realities prevailing in the political community as described by Homer.

¹² On gift-giving in Homeric society see Finley 1978, s.v. gifts. See also Saltow 2013.

¹³ See Kelly 2007, 334.

worthwhile pointing out that the term concerns things beyond the sphere of law or justice.¹⁴

One exceptional occurrence of the phrase *hōs epieikes* is significant and deserves special attention. In the chariot-race held in honour of Patroclus, Diomedes comes first, followed by Antilochus, Menelaus and Meriones, with Eumelus bringing up the rear. Taking pity on Eumelus, the best rider who has come last, Achilles calls on the Achaeans to give him a prize — the second, ‘as is fitting’ (*hōs epieikes*), and to award Diomedes, who has arrived first, the first prize (*Il.* 23. 534-8). His proposal is applauded by the audience, thus showing their approval. Obviously, Diomedes is entitled to the first prize because the prizes are conventionally awarded according to the order of the competitors’ arrival to the finish line. If so, on what grounds does Achilles think that it is proper to award Eumelus the second prize? The answer is twofold: first, Achilles, aware of Eumelus’ excellence, holds that in awarding the prizes the true merits of the competitors are at least as important as the outcome of the race; second, he thinks that because of the special circumstances of the competition — Athene causing Eumelus, who was leading the race, to fall from his chariot (*Il.* 23.391-7) — Eumelus deserves to get the second prize. That is to say, Achilles’ *hōs epieikes* expresses a point of view that takes into consideration factors other than the accepted conventions, for instance, true and not apparent facts, virtues or ethical values beyond the prevailing system etc. Although in this particular case Achilles yields to Antilochus’ protest and agrees to abide by the conventional rules, he also finds a way to reward Eumelus, namely at his own expense. Given Achilles’ point of view, accepted by the audience, and Antilochus’ insistence on the accepted order, it emerges that the term might be utilized to represent different, even contradictory systems of values or political and social outlooks.¹⁵

Herodotus

The Father of History uses *epieikēs* four times only,¹⁶ each time in a different sense. In one case the sense is in a way akin to that adopted by Achilles, but the encounter between the two principles or criteria of behaviour involved is more manifest and with wider implications. In his old age, Periander, the tyrant of Corinth, summons his son Lycophron to take over the rule, but the son, who had broken off all communications with Periander because the latter had killed his mother, turns down the invitation. The tyrant then sends his daughter to Corcyra to persuade Lycophron to accept the offer. In their meeting she tells Lycophron:

Brother, do you want the rule (*turannis*) to fall into others’ hand, and the house of our father to be torn apart rather than come here and possess it yourself? Come home; stop punishing yourself. Pride is a very poor sort of possession. Do not cure ill with ill. Many men set clemency (*ta epieikesterā*) above strict justice (*ta dikaia*), and many, before this,

¹⁴ See D’Agostino 1973, 3-4; Romilly 1979, 53.

¹⁵ According to Romilly 1979, 54, we have here a latent conflict between strict justice and humanity; the *epieikeia* ‘corrige avec succès ce que la stricte justice avait de peu satisfaisant’. See also D’Agostino 1973, 4-5.

¹⁶ Hdt. 1.85, 1; 2.22, 1; 3.53, 4; 2.92, 3 (adverb). Cf. Powell 1938, 134.

have sought their mother's interest and so have lost their father's possessions.¹⁷ Rule (*turannis*) is a treacherous thing; there are many who lust after it.¹⁸

Other translations of the term *ta epieikestera* (comparative plural of *to epieikes*) in this case include: 'equity',¹⁹ 'the more reasonable equity',²⁰ 'the reasonable'²¹ and 'the useful'.²²

To understand the import of *ta epieikestera* one has to consider above all the goal of the mission of Lycophron's sister. That pardon for his crime is not Periander's aim can be learnt from his subsequent offer that he himself would go to Corcyra and his son come to Corinth as 'successor of the tyranny', an offer accepted by Lycophron (3.53.6-7). Pardon and reconciliation are no part of this solution for the incurable estrangement between the son and the father, and hence 'clemency' as the sense of *ta epieikestera* is ruled out. Some commentators who posit here the sense of 'equity' find support in Aristotle's discussion of the nature of *epieikeia*.²³ However, as is shown below, for Aristotle *epieikeia*, or *to epieikes*, concerns rules not specifically mentioned in general laws, that is, it completes, not supplants the laws. Conversely, in Lycophron's sister's appeal to her brother, *ta epieikestera* stands in sharp contrast to *ta dikaiā*; it is not close to justice nor does it complete it; rather, it supplants justice altogether. Moreover, the whole tenor of the story makes it clear that what is at stake is the rule of the house of Periander over Corinth, and that rule cannot be supported by an appeal to the principle of 'equity'.²⁴ On the other hand, given Periander and his daughter's goal, an appeal to the principle of 'the reasonable', and certainly to 'the useful', gives the right sense. For to prefer this principle over the principle of justice in this case stands in harmony with Lycophron's acceptance of the rule over Corinth — without compromising his inveterate hostility to his father — and with Periander's attaining his goal. Speaking more generally, it appears that one major sense of *to epieikes* concerns the ruler's or the state's interests, namely to secure or further those interests is to act according to 'the reasonable', or 'the useful', whatever are the means appropriate for the specific occasion, including, if necessary, acting contrary to justice or the accepted conventions.

¹⁷ Romilly is of the opinion that this is an allusion to the motif of vengeance associated with the myths about the line of Atreus (1979, 55). More persuasive is Asheri's view that the background is the Athenian law of succession (Asheri and Fraschetti 1990, 271).

¹⁸ Hdt. 3.53.3-4. The translation is Grene's 1987, 215, with a few changes.

¹⁹ How and Wells 1912, 1, 270; D'Agostino 1973, 7; Asheri in Asheri and Fraschetti 1990, 271.

²⁰ Romilly 1979, 55 ('l'équité plus raisonnable'); cf. D'Agostino 1973, 7 n. 23.

²¹ Fraschetti in Asheri and Fraschetti 1990, 77.

²² Shimron and Zelnick-Abramovitz 1998, 194 (Hebrew: 'ha-mo'il').

²³ How and Wells 1912, 1, 270; Asheri in Asheri and Fraschetti 1990, 271; cf. Stein 1857, 55-6.

²⁴ All these points are overlooked by Romilly who takes Herodotus' story as a prime example to argue that the word *epieikes* acquired two new senses in the fifth century, namely 'la vraie justice, ou équité', and 'modération' (1979, 55). The new senses are indeed evident in the other examples adduced by Romilly (ibid. 55-7), but they are totally extraneous to the story of Periander and Lycophron.

Thucydides

Four instances of *epieikeia* and five of the adjective *epieikēs/es* occur in Thucydides' work,²⁵ and in most cases the term concerns Athens' relations with other *poleis*. In the first instance the Athenian envoys to Sparta, speaking before the Spartan assembly, claim that there are good reasons for Athens' holding her empire, which had its origins in her achievements and leadership in the wars against Persia (1.73-5). They then argue that since it has always been the established practice that the weaker is subdued by the stronger, praise is due to those who refrain from ruling others — although capable of doing so, they are more just than their actual power enables them to be. They also argue that the Athenians, even though they treat their allies with mildness (*metriazomen*), 'have unreasonably encountered disrepute rather than praise from their *epieikes*'.²⁶ It follows that, given their actual power, from their point of view the Athenians could have justly used force, and it is clear that in not doing so they expected, wrongly in hindsight, to achieve a certain goal, namely, praise and goodwill on the part of the allies.²⁷ In other words, the application of the principle of *to epieikes* means the subordination or adaptation of the use of force to political considerations, whether in particular circumstances, or as part of a general strategy. 'Moderation',²⁸ 'fairness'²⁹ and 'generosity'³⁰ are some of the translations of *epieikes* in this case,³¹ and each of these is more or less suitable — provided one is conscious of the underlying practical motives for the Athenians' choice of this way of behaviour with their allies.

The meaning 'moderate'/'moderation', taking into account the specific circumstances of a given case or of a certain general policy, is evident in several other instances. Worsted in a naval engagement with the Athenians, the Mytileneans ask for talks with the Athenian commanders, seeking to attain the withdrawal of the Athenian fleet on 'any moderate truce';³² the commanders comply with their request, and Mytilenean envoys are sent to Athens to convince the Athenians of their innocence and to get them to recall the fleet. From the point of view of the Athenian commanders, whose real goal was to subdue Mytilene (3.3.2-3), the truce is moderate or reasonable because they are aware of their incapability to cope with Mytilene, now supported practically by the whole of Lesbos. For the Mytileneans the truce is moderate or

²⁵ Thucydides is the first author known to us to have used the noun *epieikeia*.

²⁶ Thuc. 1.76. Athens' confrontation with the allies is spelled out in 1.77.

²⁷ Perhaps also honour is implied, one of the three basic motives that determine people's behaviour, as is averred twice in this very speech; 1.75.3: fear (*deos*), honour (*timē*), and advantage (*ōphelia*); 76.2: honour, fear, and advantage. On the Athenians' desire for fame, renown and honours cf. Romilly 1963, 79.

²⁸ D'Agostino 1973, 38. He construes the Athenians expectation of praise on account of their *epieikeia* as 'una richiesta ai dominate di sanzione del dominio stesso nel suo generoso esercizio'.

²⁹ Romilly 1975, 97.

³⁰ Hallevy 1959, 38 (Hebrew: 'nedivut').

³¹ The translation 'equity' (R. Crawley in Strassler 1996, 44) is another possibility, which would allude to the Athenian claim to have treated their allies justly.

³² Thuc. 3.4.2: *homologia tis epieikēs*. Another possibility is 'reasonable'.

reasonable because they do not have to give up their preparations for open confrontation with Athens. In brief, the truce is *epieikēs* as a result of the political and strategical considerations of the two sides.

For the second debate in Athens concerning the fate of Mytilene, Thucydides provides two speeches, one by Cleon who urges the Athenians to ratify the original decree to execute the defeated adult Myteleneans and enslave the rest of the population (3.37-40), and the other by Diodotus who advises the assembly to draw a line between the common people of Mytilene who deserve to be spared and those guilty of the secession, who should be brought to trial (3.41-48). Both speakers use reasons of *Realpolitik* to establish the appropriateness of their proposals, both are concerned not only with the case of Mytilene but mainly with the issue of how to secure the Athenian empire, and each one argues that his is the best expedient way to attain that goal: Cleon by a policy of punishment and terrorization, Diodotus by leniency and winning the goodwill of the allies. These speeches, both featuring skilful rhetorical techniques, are acknowledged as essential to Thucydides' analysis of the phenomenon of imperialism in general and particularly of the Athenian imperialism.³³

According to Cleon (3.40.2), three things are most disadvantageous to the empire: pity (*oiktos/eleos*), pleasure of speeches (*hēdonē logōn*), and *epieikeia* that here can be rendered as 'moderation',³⁴ 'indulgence'³⁵ or 'clemency'.³⁶ Pleasure of speeches, a reference to the new tricky sophistic rhetoric, has already been deprecated by Cleon,³⁷ and he slips it here in between pity and moderation in order to buttress his claim that the two latter are harmful to the administering and safeguarding of the empire.³⁸ Cleon's is a radical criticism of the Athenian policy, pursued by Pericles, which applies *eleos* and *epieikeia* in treating the allies; this is wrong, argues Cleon, because the Athenian empire, being a tyranny over unwilling subjects, cannot win their goodwill (*eunoia*) and loyalty and should use force to coerce them into obedience.³⁹ Yet he goes on to state that 'Compassion (*eleos*) is justly given to those like ourselves, not to those who will never have compassion on us in turn but are inevitably our perpetual enemies', and that 'Moderation (*epieikeia*) is shown more appropriately to those who will be our friends in future than to those who will remain just as they are, our enemies no less than they are now'.⁴⁰ It emerges that although Cleon rejects the feasibility of conducting an effective

³³ See Hornblower 1991, 420-22, with the literature there cited.

³⁴ Rhodes 1994, 83.

³⁵ R. Crawley in Strassler 1996, 178.

³⁶ Macleod 1978, 72. Other translations include 'reasonableness', 'fairness', 'decency' and 'humanity' (Winnington-Ingram 1965, 75; Hornblower 1991, 431). Gomme, who prefers 'humanity', regards *epieikeia* as 'a quality of mind rather than a habit' (1956, 309); if so, an action generated by *epieikeia* is based on a well thought out consideration.

³⁷ See esp. Stevens 1944, 2-3, 19-22.

³⁸ See esp. Winnington-Ingram 1965, 75; Macleod 1978, 68 and 72.

³⁹ Thuc. 3.37.2. See Kagan 1975, 82-4, and on Pericles and the Athenian empire as tyranny Romilly 1963, 124-8; Raaflaub 1979, esp. 241-2; Tuplin 1986, esp. 352-7.

⁴⁰ Thuc. 3.40.3 (transl. by Rhodes 1994, 83). On the topic of *eleos*, with which *epieikeia* is associated in Greek rhetoric and literature, and on the useful, practical aspects of the employment of these motives see Stevens 1944, 3-19.

imperial policy by the use of pity and moderation, he admits that in certain circumstances they can serve as useful means, notably to consolidate political cooperation and friendship with those who are not inveterate enemies.

Diodotus claims, at the end of his speech, that he is no more than Cleon in favour of pity or *epieikeia*, and that the decision about the Mytileneans should not be influenced by these motives (3.48.1). He then argues that his proposal ‘will be beneficial to the future, and will inspire fear in your enemies now, for the man who adopts a wise policy towards his opponents is stronger than the one who attacks them foolishly with violent actions’.⁴¹ In view of Cleon’s position that leniency and softness constitute an erroneous policy and his insinuation that those who advocate them are probably involved in corruption or even treason, Diodotus’ disassociation of himself from pity and moderation is good tactics.⁴² Also, in this way it is easier for him to expose the fallacy of Cleon’s arguments on the effectiveness of force and punishment⁴³ and to persuade his audience that his proposal is based on calculations of expediency.⁴⁴ However, the proposal to exonerate the Mytileneans from the charge of revolt, save for those prisoners supposed to be responsible for it whom he proposes to bring to trial, is a moderate and not only expedient proposal, certainly in comparison with Cleon’s proposal. In other words, Diodotus ostensibly discards *epieikeia*, but in reality advises the Athenians to adopt a policy underpinned by this idea.⁴⁵

In sum, these and several other cases reported by Thucydides indicate the familiarity of fifth-century Greeks with the notion that to employ *epieikeia* in the sphere of interstate relations is not only a moderate, fair and human policy but may well also be safer, wiser and useful in the long run.⁴⁶ Pericles apparently pursued this kind of policy, but later the Athenians renounced it, and chose to manage the Peloponnesian war by inflicting harsh conditions and using violent actions in their treatment of their allies and subject *poleis*, as well as their enemies, on the whole with severe and even disastrous consequences for themselves.

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The use of *epieikes/epieikeia* in contradistinction to justice occurs in the writings of Greek authors from the fifth century onwards. For instance, in his *Funeral Oration* Gorgias praises certain dead Athenians who attained excellence, often preferring ‘to

⁴¹ Thuc. 3.48.2 (transl. by Rhodes 1994, 95).

⁴² See Kagan 1975, 85.

⁴³ See Winnington-Ingram 1965, 78.

⁴⁴ See Kagan 1975, 85.

⁴⁵ Cf. Romilly 1974, 98 n. 4: ‘If [Diodotus] hadn’t kept so closely to the realistic view of politics which rhetoric had helped to make a fashion of, he could have said that *epieikeia* may turn out useful’.

⁴⁶ The *epieikes* motive is used by Spartan envoys sent to Athens to negotiate a fair and moderate peace in 424 (4.17-20, esp. 19, 2) and by the Melians in the Melian dialogue (5.86 and 90), and the refusal of the Athenians to employ *epieikeia* is at the background of Nicias’ underscoring the fragility of the treaty with Sparta, a result of its being compulsory and shameful for the latter (6.10, 2). See on this topic Romilly 1974, 98-9.

praon epieikes tou authadous dikaiou, which G. Kennedy translates as ‘gentle fairness to inflexible justice’.⁴⁷ Obviously Gorgias enunciates a critical view of justice, which is sharply highlighted in Romilly’s translation: ‘la douce équité à la justice brute (ou brutale)’.⁴⁸ As she explains, *epieikes* denotes true justice, that is, equity, in contrast to strict, remorseless justice, and hence stands for moderation, indulgence, fairness and the like.⁴⁹ Other writers who use the term in this sense include Sophocles, Euripides, Antiphon, Isocrates, Lysias and Demosthenes.⁵⁰ What is, then, more specifically *to epieikes* in contrast to *to dikaion* or, put in another way, what has the first to offer that is not found in the second?

Aristotle

Aristotle deals with these and other questions concerning the nature of justice, equity and law in the *Nicomachean Ethics* and the *Rhetoric*.⁵¹ His discussion of this topic in the *Nicomachean Ethics* begins with the following statement: ‘We have next to speak of *epieikeia* (“equity”) and *to epieikes* (“the equitable”) and to show how *epieikeia* is related to *dikaion* (“justice”) and *to epieikes* to *to dikaion* (“the just”): for on examination it appears that they are neither absolutely identical nor generically different’.⁵² This kind of relation between these two pairs of terms, respectively, is then explained by introducing another factor, namely law, but only after Aristotle has made clear that *to dikaion* and *to epieikes* are the same thing for they are both good, and yet *to epieikes* is the better. Now for the explanation:

The reason of the difficulty (*aporia*) is that though *to epieikes* is *dikaion*, it is not *dikaion* in accordance to law, but a rectification of legal justice; and this distinction is due to the fact that law (*nomos*) is always a general statement, whilst there are some cases for which it is not possible to provide in a statement which is general ... Wherefore [*to epieikes*] is *dikaion*, and better than one sort of *dikaion*, that is, not better than the general statement of *dikaion* but better than the erroneous decision to which its generality leads. Thus *to epieikes* is a correction of law where it fails by reason of its generality.⁵³

The deficiencies of law in securing justice are also discussed in the *Rhetoric*,⁵⁴ and there too the equitable serves as a remedy for cases uncovered or not treated adequately by law, a result of the lawgivers’ incapability to conceive of all eventualities or of their

⁴⁷ See Sprague 1972, 48. For the Greek text see Diels and Kranz 1952, 285.

⁴⁸ Romilly 1979, 56; cf. the translation of Diels and Kranz (previous note): ‘oftmals zogen sie ja die milde Billigkeit dem schroffen Recht vor’.

⁴⁹ Romilly 1979, 55.

⁵⁰ See Romilly 1979, 57-61.

⁵¹ There is no place here for a comprehensive account of Aristotle’s thought on *epieikes/epieikeia*, only for a brief presentation of what is essential for the present article. For some detailed discussions see D’Agostino 1973, 55-100; Romilly 1979, 189-96; Sherman 1989, 13-22. Triantaphyllopolis (1985, 17-23, with the notes) provides ample literature.

⁵² *Eth. Nic.* 1137a31-35; transl. by Jackson 1973, 57, with a few changes.

⁵³ *Eth. Nic.* 1137b12-16, 26-29; transl. by Jackson 1973, 59, with a few changes.

⁵⁴ *Rh.* 1373b1-1375a21.

compulsory resort to general statements, being unable to provide precise definitions. The explanation and enumeration of these cases follow the statement that ‘For the equitable (*to epieikes*) seems to be just, and equity is the justice that goes beyond the written law’ (1374a26-27). Hence, it is equitable to excuse people for misfortunes and errors committed not out of wickedness; that is, when one takes into consideration not the law but the intention (*dianoia*) of the lawgiver, not the action but the purpose behind it, not the part but the whole matter, not what a person is at present but what he has always or mostly been, etc. Furthermore, it is preferable to go to arbitration than to a law court for the arbitrator looks at the equitable for guidance while the juror at the law; indeed for that reason arbitration was devised, namely, in order that the equitable shall prevail (1374b2-23).

Having elucidated the essence of the concept of the equitable in the *Nicomachean Ethics*, Aristotle proceeds to define what an equitable person is:

And from this it is plain also what the *epieikēs* person is: one who deliberately chooses and does what is *epieikes*; one who does not insist on his rights but puts up with a smaller share though the law is on his side, is *epieikēs*.⁵⁵

The topic is discussed again in the *Magna Moralia* (1198b24-33), an early third-century work based on Aristotle’s lectures. Here too the *epieikēs* person is one who is ready to take less than the rights due to him by law. This disposition of the equitable person is construed as resulting from the fact that the lawgiver has to be content with a general statement in cases for which he is unable to provide a precise definition. Obviously this is a repetition of what Aristotle has to say on this topic in the other two works. The sequence (1198b34-1199a3), however, sheds light on an instructive aspect of *epieikeia* and *epieikēs* by pointing out their close connection with *eugnōmosynē* (‘considerateness’, ‘good judgement’, ‘prudence’) and *eugnōmōn* (‘considerate’, ‘sensible’, ‘prudent’). Firstly, both pairs of terms are concerned with matters of justice (*dikaia*) that have been left imprecisely defined by the lawgiver. Secondly, ‘there is not really *eugnōmosynē* without *epieikeia*: judging belongs to the *eugnōmōn* and acting in accordance with the judgement to the *epieikēs*’. It emerges that the actions performed by someone who is *epieikēs* entail considerateness, good judgement or prudence, as the case may be.

All in all, two points should be underlined. First, Aristotle argues that, because of various reasons, the law is essentially incomplete and that *epieikeia*/equity serves to amend, not to supplant the existing law, by qualifying or complementing it according to circumstances and particular cases. Second, the *epieikēs* person of Aristotle does not endeavour to take full advantage of his legal rights.⁵⁶ Aristotle’s thought on *epieikeia* is, as usual, systematic and comprehensive, and yet it does not introduce completely new ideas, as a brief re-capitulation of the use of the term can show. In Homer *epieikēs* and *hōs epieikes* usually express the notion of conformity with the accepted social and political order, traditional customs and norms of behaviour. Achilles’ *hōs epieikes*,

⁵⁵ *Eth. Nic.* 1137b34-1138a3; transl. by Jackson 1973, 61, with a few changes.

⁵⁶ Cf. Adkins 1990, 265, on the use of *eugnōmōn* in the sense of someone who has power or strict rights over another and chooses not to exercise them harshly.

however, represents a different system of values, one that stands in contrast to and challenges the conventional system. The use of the term *ta epieikestera* by Lycophron's sister in Herodotus' story about Periander and his son, has the sense of 'the reasonable', or 'the useful', and is contrasted with justice (*ta dikaia*). To act according to 'the reasonable', and contrary to justice, in order to secure the ruler's or state's interests, is advocated in this story. In Thucydides' work several speakers argue that an *epieikeia*-policy that refrains from harsh exercise of power because of realistic and human considerations, can repay political gains. Finally, the use of *epieikeia* in the sense of equity, in contrast to strict justice or law, is attested in the works of Gorgias and several other writers of the fifth and fourth century.

One aspect of the variety of the senses of *epieikēs* and its cognates is particularly significant for the purpose of this article. The way the term is used is relevant to the normative values and accepted customs of the society and to the policy conducted by the state, the rulers or statesmen. In the cases discussed above, it concerns the affairs of the society and the state, not the personal traits of individuals. Furthermore, according to a prevailing strand of view, to apply *epieikeia* in foreign politics is a means to promote the good of the state, whether this involves acting contrary to justice, giving up legal rights or refraining from the employment of legitimate power. The following historical cases demonstrate that this was not merely theoretical thinking.⁵⁷

III

Generally speaking, terming a person *epieikēs* without any additional details tells very little about his other traits or personality, behaviour and deeds, as can be learnt from the following examples. We are told by Diodorus Siculus that Ptolemy I was *epieikēs* (18.33.3); so were also, according to Dionysius of Halicarnassus, the shepherd Faustulus (1.79.9), king Servius Tullius (4.40.3), and Arruns Tarquinius — depicted as very different from his brother Tarquinius Superbus (4.40.3). Josephus likens the prophet Samuel to an *epieikēs* father (*AJ* 6.92), deems king David *epieikēs* (*AJ* 7.391), notes the *epieikeia* of the Seleucid king Antiochus VII (*AJ* 13.245), characterizes Hyrcanus II as *epieikēs* (*AJ* 15.182) and considers himself *epieikēs* for his treatment of the Tiberian foes he captured (*Vita* 176). Plutarch attributes *epieikeia* to many historical figures, including Peisistratus (*Sol.* 29.2), Pyrrhus (*Pyrrh.* 8.4), Ti. Gracchus (*Ti. Gracch.* 2.4), and Q. Hortensius the famous orator (*Cat. Min.* 25.2), and in a fragment of Diodorus (38.16) this characteristic is attributed to Sulla. According to Cassius Dio, Cato the Younger was *epieikēs* (38.3. 1) and so was the emperor Claudius (60.12.1). Needless to say, all these people differed from one another in many respects, and the *epieikeia* of the one is not necessarily identical with that of the other. Hence, although the adjective *epieikēs* can

⁵⁷ Although the argument here focuses on the role of *epieikeia* in foreign policy, I give one example in order to illustrate that it was considered highly effective in domestic affairs as well. In his work *on Justice*, Heraclides Ponticus wrote that because of the growth of economic polarity and lack of *to epieikes* in Miletus, the affluent and the ordinary citizens became embroiled in fierce *stasis* and cruelly killed each other in turns (*Athen.* 12.523f-524a). In other words, the ability to maintain moderation is essential for the safeguarding of a state from internal destructive conflicts.

indeed mean kind, fair, mild etc., it is often used to refer to persons with some specific talent or certain capabilities or to convey a nuanced meaning; the right sense has to be decided by the context.⁵⁸ Diodorus characterizes the Egyptian king Amasis as *ton tropōn epieikēs kai dikaios* (1.95.1), which is translated by C.H. Oldfather (LCL) ‘in disposition virtuous and right’. This is said by Diodorus in connection with Amasis’ administrative arrangements, that is, there were sound, practical consequences to Amasis being ‘virtuous and right’. Ptolemy I succeeded in increasing his power thanks to his being gracious (*epieikēs*), indulgent (*sungnōmikos*) and benefactor (*euergetēs*).⁵⁹ According to Pseudo-Aristeas, Ptolemy II was a great king because he surpassed all men in *epieikeia kai philanthrōpia* (*Letter of Aristeas* 288). The notion that *epieikeia* is a better means than fear to win the love of a people resenting oppressive rule is enunciated by Josephus in his rewritten version of the encounter between king Rehoboam and the Israelites.⁶⁰ Cassius Dio remarks, in connection with Scipio Africanus’ success to win over the Celtiberians by acts of generosity after the conquest of New Carthage, that Scipio was fearful in exercising his military command and *epieikēs* in his social relations; the implication is that Scipio’s *epieikeia* was instrumental in attaining political goals (16.42 and 48). This may well hold good for the *epieikeia* of Sulla reported by Diodorus.⁶¹ Polybius’ judgment of the policy Philip II adopted after the battle of Chaeronea is clear and instructive:

Again Philip, who first raised their kingdom to the rank of great power and the royal house to a position of splendour, did not, when he conquered the Athenians in the battle of Chaeronea, obtain so much success by his arms as by the leniency and humanity of his character (*dia tēs epieikeias kai philanthrōpias tōn tropōn*).⁶²

Diodorus Siculus pronounces precisely the same positive view of Philip in connection with his behaviour after the battle of Chaeronea, and claims that Alexander, too, exploited *epieikeia* to his own advantage (32.4.1-3). In another fragment of Diodorus, this view of *epieikeia* as a calculated policy that pays off is given a generalized formulation:

Those whose object is to gain dominion (*hēgomonía*) over others use courage and intelligence to get it, moderation and consideration (*epieikeia kai philanthrōpia*) for others to extend it widely, and particularly terror to secure it against attack. The proofs of these propositions are to be found in consideration of the history of such empires as were created in ancient times as well as of the Roman domination that succeeded them.⁶³

⁵⁸ For some examples see n. 9 above.

⁵⁹ Diod. Sic. 19.82.3; cf. 18.28.6; 33.2.

⁶⁰ *AJ* 8.213; cf. 15.375 — the advice given to Herod by the Essene Menahem how to manage his rule; 19.334 — Agrippa I’s view on the means to use in dealing with opposition. On *epieikēs* and *epieikeia* in Josephus see also Feldman 1998, 248-9.

⁶¹ On Sulla see Dowling 2000.

⁶² Polyb. 5.10.1 (W.R. Paton’s translation in LCL). For a discussion of the meaning of *epieikeia* see Romilly 1979, 53-61 (250 on the present passage).

⁶³ Diod. Sic. 32.2 (F.R. Walton’s translation in LCL). Cf. Diodorus’ account of Dionysius I’s treatment of his subject (14.45). For Rome see also 32.4.4. On *epieikeia* (alongside *philanthrōpia* and *euergesia*) as a way to maintain empires, in Diodorus, see Sacks 1990,

As we have seen, the notion that *epieikeia* (sometimes combined with *philanthrōpia* or *praotēs*), in the sense of calculated political moderation, is a preferred and advantageous method to establish hegemony or personal rule on an enduring basis, was expressed and advocated as early as Thucydides. Polybius' and Diodorus' remarks and observations on the useful aspect of political moderation suggest that this view came to prevail in Hellenistic historiography, and this aspect became particularly relevant when historians and other thinkers were faced with Caesar's *clementia* and had to evaluate it, a striking example of the use of leniency as a political tool.⁶⁴

IV

Back to Timagenes and Aristobulus I: As a teacher of rhetoric, a 'writer of history',⁶⁵ and an eyewitness to Caesar's *clementia*, Timagenes will have been familiar with the exploitation of leniency by statesmen, generals and rulers as a means to win over enemies and achieve political goals, as well as with the treatment in the Greek, and Roman, political thought of the various aspects, particularly the practical ones, of *epieikeia*. In the case under discussion Timagenes' judgement was clearly determined by his evaluation of the political achievements of Aristobulus I, not by a moral assessment of his personal traits. Considering the context and the combination with *chrēsimos*, the first part of the fragment should be translated: 'this man [i.e. Aristobulus] was an able and greatly serviceable person to the Jews' (*epieikēs te egeneto houtos ho anēr kai polla tois Ioudaiois chrēsimos*). The sequence supplies the details. Aristobulus expanded the territory of the Hasmonaean kingdom and increased the Jewish population by converting to Judaism a part of the Ituraeans.⁶⁶ Since what we have is only Josephus' citation from

42-5, 78-9; that this is Diodorus' own view, and not that of his sources, is more than doubtful in my opinion. For instance, *pace* Sacks (1990, 45 n. 91), Diodorus (32.4.1) renders precisely (not 'somewhat') Polybius' words (5.10.1) on Philip II, and what he says on Rome he could have derived from Polybius. Also, contrary to Sacks' assertion (43 n. 82, concerning the idea of *epieikeia* in Isocrates), Isocrates does use *epieikōs* (e.g. *Nicoles* 4; for a list see Preuss 1904, 80). See also Romilly 1979, 235-49.

⁶⁴ See Romilly 1974; *eadem* 1977, 64-6. *Epieikeia* renders the Latin *clementia*, as does Plutarch when relating to Caesar's leniency as a political means to try to win over his enemies (*Caes.* 57.3). For discussions see Weinstock 1971, 233-43 (with references to earlier literature); Griffin 1976, 144-66; Dowling 2006, esp. chap.1. Note that *clementia* was also a virtue attributed to Augustus (*RG.* 34.2). Hengel (2001, 23) misses all these aspects of Timagenes' characterization of Aristobulus I as *epieikēs*.

⁶⁵ Seneca, *De Ira* 3.23. 4: *Timagenes historiarum scriptor*. Quintilian praised the historical writing of Timagenes (*Inst. Or.* 10.1.75).

⁶⁶ Kasher's view that the Ituraeans converted of their own free will (1988, 79-83; cf. Rappaport 1965, 80-2; Cohen 1999, 117-8) seems wrong to me, but this is not the place to deal with this issue. Nor can I treat here the questions raised by Rappaport in his discussion of the reign of Aristobulus I (2013, 298-302), particularly the ethnical composition of the Galilaeen population, the Ituraean expansion to the Galilee and the extent of the territory conquered by Aristobulus. Suffice it to say that, *pace* Kasher and Rappaport, there is no reason to assume that Timagenes' account had no foundation at all and that he fabricated the two main points it includes, that is, successful expansionist policy based on the use of arms and forcible

Strabo's excerpt from the work of Timagenes, it is quite possible that Timagenes included a more detailed account of the deeds of Aristobulus in his work.⁶⁷ At any rate, to follow the cases presented above, it appears that it was not because of the gentle character of Aristobulus I that Timagenes considered him *epieikēs* but, rather, in appreciation of his foreign policy.⁶⁸ Intelligent readers, or listeners, will have encountered no difficulty in understanding what was meant by this piece of information. Political power depended to a great extent on the acquisition of territory and the increase of population, as witnessed particularly by the way Rome acquired her rule over the Mediterranean, and it is for his achievements in this respect that Timagenes presented a positive, realistic evaluation of Aristobulus I. Moral, religious or cultural considerations are absent in the surviving fragment and, it seems, had nothing to do with the evaluation.

What is then the answer to the question posed in the title of this article? The survey of the usage of the words *epieikēs* and *epieikeia* from Homer to Cassius Dio shows that Timagenes, Strabo's source, did not mean by its application to Aristobulus I that the latter was a mild person. Now, our knowledge of the reign of Aristobulus I depends on what Josephus chose, or managed, to extract from the narratives of Nicolaus of Damascus and Strabo, the latter (or his source Timagenes) seemingly concentrating on the foreign policy of the Hasmonaean ruler and the former on domestic problems. In fact, one cannot be sure that Timagenes completely ignored the way Aristobulus handled his relations with his family, and Nicolaus the expansionist wars. Be that as it may, there is not really a contradiction between the ruler who vigorously and ably aggrandized the Hasmonaean state during his short reign and the ruler who ably took harsh measures, apparently with a few or no inhibitions, to secure his rule against family members who actually or potentially entertained claims on the throne.⁶⁹ In sum, Aristobulus the ruthless ruler complements rather than supplants the able ruler, and both fatally undermine the image of the Hasmonaean ruler as a mild person.

conversion. Note that Syncellus, an independent source, speaks of war and subjugation, thus implying forcible conversion, and reports an Ituraean revolt under Alexander Jannaeus; see Syncellus 1, 559 (Dindorf).

⁶⁷ That fragments 'are often very inadequate mirrors of what the lost historians actually wrote' is persuasively argued by Brunt 1980 (citation from p. 477).

⁶⁸ As the context of Josephus' portrayal of Hyrcanus II shows (*AJ* 14.13; see also 15.177 and 182), his *epieikeia* means, in contrast to that of Aristobulus I, mildness of character, a mark of weakness, not of political sagacity and resolution.

⁶⁹ Josephus relates that when Alexander Jannaeus took power he executed his brother who aspired to the throne (*BJ* 1.85; *AJ* 14.323). The absence of any criticism of Jannaeus on this score may point to tacit recognition of the necessity to eliminate the claimant in order to secure a stable government. It is not difficult to realize that this is relevant to the perspective one should adopt in judging the behavior of Aristobulus.

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