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A History of the *nomos empsychos* Idea

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Contents

Aims	3
Methods.....	7
Findings.....	9
Relevant publications	13

Aims

In my dissertation, I propose to investigate whether there is any merit in that prevailing medievalist claim according to which the νόμος ἔμψυχος idea together with its translation, the *lex animata* topic, made any significant contribution to the development of Western political thinking in general, and eventually some early-modern theories of sovereignty in particular? In my opinion, this claim is constituted of three interrelated assertions all of which need to be dully considered. The first assertion is that the νόμος ἔμψυχος idea was some sort of a commonplace argument in ancient politics. Second, that the expressions, νόμος ἔμψυχος and *lex animata*, convey virtually the same meaning. And third, that this idea contributed to the formulation of the Western theory of state at large.

The first and the second assertions are mostly discussed together; it is generally believed that the idea that the ruler is incarnate law or law embodied was a familiar topic of Classic and Hellenistic politics which came to be propounded in several works, some of which are considered historically and philosophically significant, like Plato's *Laws* (875c–d) and *Statesman* (294a), or Aristotle's *Nicomachean Ethics* (1132a) and *Politics* (1284a; 1288a), and some of which have fallen into oblivion, such as the Archytean *On Law and Justice* (Stob. 4.1.135), or pseudo-Diotogenes's *On Kingship* (Stob. 4.7.61). At any rate, a host of eminent scholars of ancient and medieval political thought, namely, Erwin Goodenough,¹ Artur

¹ E. R. Goodenough, *The Political Philosophy of Hellenistic Kingship*. In Austin M. Harmon (ed.), *Yale Classical Studies*. Vol. 1. New Haven: Yale University Press, 1928, pp. 55–102, pp. 100–101.

Steinwenter,² Ernst Kantorowicz,³ Michael Wilks,⁴ Gerhard Aalders,⁵ John Procopé,⁶ Donald Nicol,⁷ Joseph Canning,⁸ and Francis Oakley,⁹ argue to various extent that it was this Hellenistic idea which started to overshadow the classical Roman idea of rulership, and it was this idea which was finally adopted by Justinian's Code. Their view is best summarised by Ernst Kantorowicz who, in his monumental study, *The King's Two Bodies*, claims that the 'concept of the Prince as the "animate Law" was a denizen with regard to Roman legal thought. The notion itself, νόμος ἔμψυχος, derived from Greek philosophy; it was blended with the idea of the Roman Emperor being the embodiment of all Virtues and all else worth the living; and perhaps it was not free from Christian influence either'.¹⁰

However, the whole of the initial claim according to which a dominant Hellenistic idea of rulership, expressed in the term, νόμος ἔμψυχος, transformed the classical Roman legal and political thinking into something which centres around the emperor being law embodied and superior to

² A. Steinwenter, ΝΟΜΟΣ ΕΜΨΥΧΟΣ. Zur Geschichte einer politischen Theorie. *Anzeiger Akademie der Wissenschaften in Wien Philosophisch-historische Klasse*, Bd. 83, (1946), pp. 250–268.

³ E. Kantorowicz, *The King's Two Bodies. A Study in Mediaeval Political Theology*. With a new preface by William Chester Jordan. Princeton, New Jersey: Princeton University Press, 1997, pp. 127–137.

⁴ M. J. Wilks, *The Problem of Sovereignty in the Later Middle Ages*. Cambridge: Cambridge University Press, 1963, pp. 152–163.

⁵ G. J. D. Aalders, ΝΟΜΟΣ ΕΜΨΥΧΟΣ. In Peter Steinmetz (Hrsg.), *Politeia und Res Publica. Beiträge zum Verständnis von Politik, Recht und Staat in der Antike*. Wiesbaden: Franz Steiner Verlag, 1969, pp. 315–329, pp. 326–329.

⁶ J. Procopé, Greek and Roman political theory. In J. H. Burns (ed.), *The Cambridge History of Medieval Political Thought c. 350–c. 1450*. Cambridge: Cambridge University Press, 1988, pp. 21–36, pp. 26–28.

⁷ D. M. Nicol, Byzantine political thought. In J. H. Burns (ed.), *The Cambridge History of Medieval Political Thought c. 350–c. 1450*. Cambridge: Cambridge University Press, 1988, pp. 49–80, pp. 64–65.

⁸ J. Canning, *A History of Medieval Political Thought. 300–1450*. London – New York: Routledge, 1996, p. 8.

⁹ F. Oakley, *Kingship. The Politics of Enchantment*. Oxford: Blackwell, 2006, p. 48.

¹⁰ Kantorowicz 1997, p. 127.

positive law is nothing but a mere supposition, founded on very scarce textual evidence. The only place in which Justinian invokes the νόμος ἔμψυχος idea does clearly support such a reading, yet it does not follow that it was the novelists, or their supposed source, Themistius, the Byzantine orator, who absorbed some ready-made Greek idea, and it is not the other way around, namely that it was Themistius, or the novelists who distorted and corrupted a Hellenistic topic of a different sense for their own purposes.

At present, there is simply no answer to the question whether there existed a νόμος ἔμψυχος idea at all, and we cannot know what the relation is, if there is any, between the senses Justinian's *Novellae* and the other ancient sources employ the expression either. In order to be able to assume a position from which these questions may be addressed, a thorough and highly unbiased analysis of the sources is verily warranted; hence, the formative history of the idea deserves, I think, a fuller discussion than those currently at hand.

In my dissertation, I argue at length that the νόμος ἔμψυχος idea was far from being a commonplace argument of some vague origin; rather, it looks like that the expression was first coined in a debate closely associated with the so-called νόμος and φύσις problem, and that it originated with the fourth-century B.C. Pythagorean, Archytas of Tarentum, who applied the term to distinguish between two distinct constitutional scenarios. At some point, this Archytean distinction made its way to a doxographic collection, and by the first century B.C. it was surely known to a wider range of readership.

Afterwards, in the second and third parts of my discussion, I endeavour to substantiate the above claim first by outlining the authenticating strategy

devised by the author of the pseudo-Diotogenean *On Kingship* which mostly capitalises on some Archytean overtones, and second, by explicating the intriguing similarities between Cicero's *Laws* (3.2), Philo's *On Moses* (2.4–5), and Musonius Rufus's first-century A.D. testimony.

As a result of my above inquiry, I am prepared to assert with much certainty that the early tradition of the νόμος ἔμψυχος idea is fairly reconstructable up until the second century A.D., and that there definitely existed not one, but several senses of the idea. Though, these several senses seem to be somewhat intermingled, they are still formulated with a view to a peculiar problem, and so, they convey senses distinctive to their context. In order to highlight these differences, I divided my discussion into three parts, each introducing one of the peculiar modes of application in details.

First, there was the Archytean genesis which was most likely coined by mere chance as, in my opinion, the Archytean application does not understand the expression to constitute a technical term of some kind. Next, there was pseudo-Diotogenes's Neopythagorean synthesis by which I have meant to describe a forger's attempt to mask his Middle Platonic discussion as a genuine piece of ancient Pythagorean politics. And finally, there was the Philonic metamorphosis, signifying that unlike his predecessors, Philo thought it fit to employ the term for Biblical figures who do not quite qualify to be called kings in the ordinary sense of the word.

In Chapter 6, I even attempted to trace with some modest success the sources of the subsequent late antique loci and to sketch an overall stemma of the idea. However, due to the proliferation of possible sources and the scarcity of accessible information, this latter endeavour was destined to operate on mere probabilities and hypotheses; hence, I do not deem to regard the initiated work utterly completed.

Methods

Unlike most of the previous scholarly works on the history of the νόμος ἔμψυχος, I intend not to commit those methodological fallacies which Quentin Skinner characterises as the ‘mythology of doctrines’;¹¹ for this reason, it might raise some eyebrows that throughout my study, I, too, speak of *the* νόμος ἔμψυχος idea, its genesis, synthesis, and metamorphosis. My answer to this question of research methodology is twofold. Obviously, there are certain involuntary paths which are designated by the study’s subject matter: it concerns some texts of ancient Greek prose; hence, textual criticism and the nature of manuscript transmission must inevitably be taken into consideration.¹² Both are being indispensable tools for any study endeavouring to recollect the intended meaning of thinkers long since past. The intended meaning of some ancient philosopher was, however, not necessarily one with the sense his ideas were taken, and it was certainly at odds with the subsequent receptions of his thought. At this point, to me, it seems we are presented with the difficulty of either sacrificing historicity to generalisation, or generalisation to historicity. From a particularly historical methodological stance, it would be fallacious and misleading to suppose, then, that the authors concerned could somehow be in such a position to knowingly formulate their ideas with any deliberate reference to *the* νόμος ἔμψυχος idea; thus, making our former classification cogent. Nevertheless, I do believe that classifications

¹¹ Quentin Skinner, *Visions of Politics*. Vol. 1: Regarding Method. Cambridge: Cambridge University Press, 2002, pp. 57–89.

¹² See Martin L. West, *Textual Criticism and Editorial Technique applicable to Greek and Latin texts*. Stuttgart: Teubner, 1973, pp. 9–15.

of this sort are still justified, as long as they are kept strictly in retrospect for the purpose of explicating the driving forces and rational behind the changes of meaning within some philosophic ideas, at present, the νόμος ἔμψυχος idea.

This study considers, then, those ancient Greek sources that make mention of the νόμος ἔμψυχος idea with a dual objective at sight. First, it wishes to restore the historical context, and so the supposed meaning of the loci concerned. And second, it tries to collate the sources and account for the subsequent changes of meaning and emphasis. In identifying these loci, I have resorted to a full corpus search in the TLG database which came up with a total number of 29 search results from the works of 15 distinct authors for the period. These places, I have amended with the two additional extra-TLG finds of Artur Steinwenter (Isidore of Pelusium) and Gerhard Aalders (Procopius of Gaza), making a total of 31 loci derived from 17 distinct authors. Of these various sources, I have decided to focus predominantly on the idea's early tradition from the most crucial formative centuries of fourth century B.C. to first century A.D. Thus, the study's proper scope is the history of the νόμος ἔμψυχος idea from its Archytean genesis to its Philonic metamorphosis which, in effect, reduces the number of loci to be considered to but 6, occurring in 4 distinct works of three philosophers, namely: Archytas of Tarentum (Stob. 4.1.135.7–14), pseudo-Diotogenes (Stob. 4.7.61.2–7; 4.7.61.31–39), and Philo of Alexandria (*Abr.* 1.5.1–8; *Mos.* 1.162 and 2.4.1–5.1).

Findings

I have organised my discussion into three parts with two chapters each. In the first part, I consider the genesis of the νόμος ἔμψυχος idea which, I believe, is closely associated with the late fifth- and early fourth-century debates over the intrinsic value of social justice, often expressed with reference to the so-called νόμος–φύσις problem. In order to attain a position of grasping the broad context of the idea’s genesis, and to support my subsequent chronological claims, I have decided to dedicated Chapter 1 to a brief enumeration of the known sources of the said problem, discussing its occurrence by Protagoras, the Anonymus Iamblichi, Thucydides, Antiphon, and the *Gorgias*’s Callicles and the *Republic*’s Thrasymachus and Glaucon.

In Chapter 2, I address the actual question of the νόμος ἔμψυχος idea’s Archytean origin which, again, necessitates a thorough analysis of the locus’ Archytean context. After stating some general remarks on Archytas’s life and his ethical and political theory, I argue for his participation in a debate with the Syracusan hedonist, Polyarchus, over the rational for νόμοι and the goodness of law-abidingness which was likely to have centred around the disparity of their respective sentiment towards ἀρετή. Based quintessentially on the parallels between these testimonia (Ath. *Deipn.* 12.64–65; Cic. *Senect.* 12.39–41) and a genuine fragment of Archytas (Stob. 4.1.139) and the passages of *On Law and Justice*, I claim that the νόμος ἔμψυχος idea was first coined by either Archytas himself, or his fourth-century Peripatetic biographer, Aristoxenus, and it reflects a genuinely Archytean distinction between the rule of a king and that of an inferior magistrate.

In the second part, after elucidating some general aspects of the Pythagorean pseudepigrapha in Chapter 3, I proceed in Chapter 4 with reflecting on pseudo-Diotogenes's Neopythagorean synthesis. Accordingly, in Chapter 3, I endeavour to substantiate that some pseudepigraphic Pythagorean treatises started to appear from as early as the third century B.C. and that by the first century B.C. the circulation of several treatises under the names of supposedly ancient Pythagoreans was attested both in Italy and in the Eastern Mediterranean. After reviewing some evidence for these pieces' early tradition and after a thorough analysis of the lemmata in Stobaeus's *Anthology*, I claim that some collection of pseudopythagorica might have existed by the first century A.D., and it looks like that both loci of the νόμος ἔμψυχος idea, namely pseudo-Diotogenes's *On Kingship* and the Archytean *On Law and Justice* were admitted to the same collection.

In Chapter 4, I consider, then, pseudo-Diotogenes's application of the νόμος ἔμψυχος term which I have characterised as some Neopythagorean synthesis. Based on certain external evidence, *On Kingship*'s doctrinal content, and, above all, on my theory of pseudo-Diotogenes's authenticating strategy, I argue that Diotogenes is a pseudonym adopted by some obscure Neopythagorean writer who lived sometime between the late first century B.C. and the early first century A.D. Unlike most Neopythagorean forgers, pseudo-Diotogenes devised a minutely sophisticated and deceitful authenticating strategy, a part of which was his employment of the Archytean νόμος ἔμψυχος and νόμιμος ἄρχων distinction. However, the Diotogenean sense of the idea is distinctly un-Archytean; the Archytean elements in *On Kingship* are mere superficial colourings, designed to lend some authenticity to this piece of forgery.

In the third part, I turn to discuss the idea's Philonic metamorphosis together with its late antique *Nachleben*. In Chapter 5, after stating some basic information on Philo and his writings, I endeavour to introduce his system of law and relate his peculiar understanding of νόμος ἔμψυχος to this system. As a result of my inquiry, I argue for a genuinely Archytean sense in the Philonic loci, and, based quintessentially on Philo's unique ἔμψυχός τε καὶ λογικός syntax and some fascinating parallels between Philo's *Mos.* 2.4–5 and Cicero's *De legibus* 3.2, I claim that both places constitute a paraphrase of some lost Pythagorean passage which is most likely derived from a doxographic paraphrase of the Archytean *On Law and Justice*.

Finally, in the last chapter, I briefly consider the νόμος ἔμψυχος idea's *Nachleben* which, according to my understanding, is constituted of two major traditions. On the one hand, seven early Church Fathers elaborate mostly on Philo's semantic revolution of applying the term to some Biblical figures of the Old Testament, while, on the other hand, distinct late antique Byzantine figures made use of the previously outlined doxographic sense in various contexts. And it is this latter tradition which encompasses Justinian's famous locus which, in turn, seems to be relying on the fourth-century court orator, Themistius.

In conclusion, I observe that the principal claim according to which there existed some kind of a general theory of rulership which came to be expressed with reference to the νόμος ἔμψυχος idea has no merit at all. What is more, the sense in which Themistius and later the Justinian *Novellae* employs the νόμος ἔμψυχος idea is far removed from the idea's Archytean, pseudo-Diotogenean, and Philonic sense; hence, the continuity thesis is also falsified. After all, it appears to me that it was Themistius who

first started to use the νόμος ἔμψυχος idea as a commonplace argument for expressing the emperor's supremacy over positive law, and it was this sense which eventually influenced the medieval juristic idea of legal supremacy.

This conclusion is, however, but one side of a coin in terms of enumerating the present study's findings, since, down the way of charting a terra incognita of ancient Greek political thought, I have found myself in need of addressing a variety of collateral issues as well. First and foremost, I have managed to successfully demonstrate that the so-called νόμος and φύσις problem, one of the most fertile topics of Classic moral and political thinking, was not confined to late fifth- and early fourth-century Athens but it occupied the thoughts of the Tarantine Archytas as well, whose mathematical solution for this problem offers an alternative to the Platonic theory of ideas. Moreover, I have established the Archytean origin of *On Law and Justice* which, besides providing a glimpse into the formative centuries of the natural law tradition, could therefore be used to construct the intellectual context wherein Plato and Aristotle operated. Furthermore, my analysis of the Pythagorean pseudepigrapha in general, and pseudo-Diotogenes's *On Kingship* in particular may contribute to a better understanding of an undeservedly neglected part of Middle-Platonic ethics and politics, that is the Neopythagoreans. And finally, by way of relating the νόμος ἔμψυχος idea to Philo's general framework of law, the findings of Chapter 5 may provide some additional insights to the Philonic system of law and to his distinction between natural law, unwritten law, Torah, and the patriarchs.

Relevant publications

List of the candidate's relevant publications in the subject of the dissertation.

Ákos Tussay, Philo of Alexandria on the *nomos empsychos* Idea. In Panagiotis Christias, Sébastien Morlet & Panos Christodoulou (eds.), *Greek and Jewish Thought during the Antiquity*. Orient & Méditerranée. Leuven: Peeters Publishers. In Press.

Tussay Ákos, Tarentumi Arkhüasz a nomosz-phüszisz antitéziszről. In Pongrácz Alex (szerk.), *Ünnepi tanulmányok a 65 éves Cs. Kiss Lajos tiszteletére : Ut vocatio scientia*. Budapest: Ludovika Egyetemi Kiadó, 2021, pp. 525–532.

Tattay Szilárd & Tussay Ákos, A szuverenitás előképei: Baldus de Ubaldis. Az uralkodói hatalom *de facto* és teokratikus igazolása Baldusnál. *Iustum Aequum Salutare*, Vol. 14, No. 3 (2018), pp. 119–129.

List of the candidate's relevant conference presentations in the subject of the dissertation.

2022

UK-IVR 2022 Annual Conference: Law, Rationality and Practical Reason: Ancient and Contemporary Perspectives (Surrey, June 10–11). *Nomos and logismos in the Tarantine Archytas's thought.*

British Society for the History of Philosophy Annual Conference (Edinburgh, April 21–23). *Nomos empsychos. Brief historiography of the Greek living law ideal.*

4th International Conference in Greek Philosophy (Madrid, April 25–27). *Archytas's Idea of Rulership.*

2021

On the Break of History and Perspectives: Some Contemporary Approximations of the Natural Law Tradition (Budapest, May 28). *Archytas of Tarentum on the nomos-physis antithesis.*

2019

1st International Conference of Hellenic Studies: Hellenic Political Philosophy and Contemporary Europe (Herceg Novi, September 29–October 4). *The Description of the Ideal Ruler in the pseudo-Pythagorean Περί Βασιλείας treatises.*

10th Meetings on Ethics & Political Philosophy (Braga, June 13–15). *The relation between law and justice in Archytas's Περὶ νόμου καὶ δικαιοσύνης.*

2018

Greek Philosophy and Jewish Thought: Accommodations and Appropriations (Cyprus, November 23–25). *The pseudo-Pythagorean Περὶ Βασιλείας treatises as possible sources of Philo's politics.*