

# Studies on Greek Law, Oratory and Comedy

Douglas M. MacDowell

Edited by Ilias Arnaoutoglou,  
Konstantinos Kapparis and Dimos Spatharas

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Douglas M. MacDowell (1931–2010) was a scholar of international renown and the articles included here cover a significant area of classical scholarship, discussing Athenian law, law-making and legal procedure, Old Comedy, comedy and law, politics and lexicography. All of these articles, published between 1959 and 2010, bear the characteristic marks of his scholarship: precision, balanced judgement, brevity and deep learning; they are rational and sober accounts of complicated and controversial issues. Many of these essays are virtually inaccessible as they were originally published in celebratory volumes or article collections which are now out of print or difficult to find outside major libraries. This collection of MacDowell's articles will make these works available to a broad scholarly audience, and make it easier to bring this scholarship to the classroom as part of courses in Classics, ancient history, legal history and theatre studies. The volume includes a biography of MacDowell by Christopher Carey, based on the testimony of his closest colleagues and personal friends, which was presented to the British Academy.

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# Preface

The academic legacy of Douglas M. MacDowell consists of more than 10 volumes, and a substantial number of articles and book reviews published over a period of 50 years (1959 to 2010). His scholarly production crosses over three main areas of classical scholarship, Comedy, Oratory and Athenian law and offers rich discussions in Law-making and Legal Procedure, Old Comedy, Law and Comedy, Law and Sexuality, Law, Society, and Economy, Law and Crime, Politics, and Lexicography. Moreover, MacDowell was one of the best editors of classical texts in the 20th century. In many ways he revolutionized the textual editions of Greek prose. His meticulous, careful and conservative editorial tactics, based on the close scrutiny of the manuscripts not only produced some excellent editions in the Attic Orators, but also introduced a methodology for the textual editions of Greek prose, which was contrary to the spirit of 19th and early 20th century editions, and strongly emphasized the importance of the manuscripts in the process. Beyond the major editions which MacDowell published he contributed to the editing of classical texts with a number of scholarly articles proposing emendations or defending the authority of the manuscripts. His methodology in deciding which of the documents included in the speeches of the Attic Orators are authentic and which are forgeries has set a golden rule. His detailed and rational approach to scholarship, where assertions and claims need to be proven with precise and specific references to classical authors, offers inspiration to young classicists. All the articles of MacDowell bear the characteristic marks of his scholarship: precision, rational and sober accounts of complicated and controversial issues, balanced judgement, attention to detail, brevity and deep learning. His works remain tremendously useful to students of Classics, Ancient History, History of Athenian Law, Greek Comedy, Aristophanic studies, and Drama Studies, Attic Oratory, and if the long shelf life of his earlier works is any indication, MacDowell will continue to have a high impact upon classical scholarship for many years to come.

The elegant simplicity of his style offers an excellent example of how top-notch scholarship can be accommodated in a style which makes it accessible even to first-year undergraduate students and laypersons, while at the same time expresses very complex ideas. Like a 21st-century Lysias MacDowell chose elegant simplicity, precision and stylistic perfection, over verbal grandeur, in order to bring

the fascinating world of classical Athens to a broad audience. He was not fond of flowery but imprecise words, and he would rather have a simple word work hard to convey the required meaning. His students always knew that if they tried to impress him with some fanciful term or trendy neologism, most likely they would be asked to clarify precisely what they mean in simple terms, until it became apparent to them that there was no escape from clarity and precision.

The significant virtues of MacDowell's work, make it a highly valuable teaching tool. It is no exaggeration to say that MacDowell will continue to teach young classicists for many years to come, and while some of his articles would be too scholarly for the classroom, and useful only to researchers, especially those on textual criticism, the majority of his work would be ideal for the undergraduate classroom, as well as the bibliography of a graduate seminar. Just to single out one example, his article entitled "Greek Law" would be the perfect introduction of a student to the subject. A primary purpose of this collection is to allow classicists easier access to these works. Many of MacDowell's articles have been published in collections which are now out of print, or specialized journals only found in major libraries, and not easily accessible to a wider audience. This volume brings all his articles together in one place. Another important goal is for the volume to function as an important methodological tool for students and scholars. We are convinced that the sum total of its educational value is greater than the scholarship contained in each individual article, and we hope that the volume will create a momentum for the future study of all three areas which this great Hellenist so passionately loved and pursued.

During the process of reformatting the articles for this volume we have chosen to adhere to the habits of the originals, and to add or alter nothing beyond what was necessary for the formatting process. We have not tried to unify or update the referencing system; instead we have elected to respect and preserve the editorial preferences of each article. We have only corrected the occasional spelling mistake in the originals.

We wish to thank several people, who made this volume possible. From the University of Glasgow and the MacDowell Foundation we received strong encouragement for this project, and we need to thank Professor Costas Panayotakis, Dr. Ronald Knox, Dr. Ian Ruffell, and Professor Alec Garvie for their support and encouragement in the early stages of the project. We are very grateful to Professor Chris Carey and the British Academy for granting permission to reprint as an introduction to this collection his excellent tribute to D.M. MacDowell, published in the *Proceedings of the British Academy*. We also wish to thank Mr. D. Newall (Secretary of Court, University of Glasgow), Ms. Richella Doyle (Society for the Promotion of Hellenic Studies), Ms. Lisbeth Triska (Austrian Academy of Sciences), Professor J.-F. Gerkens (*Revue Internationale des Droits de l'Antiquité*), Professor G. Thür (Gesellschaft für griechische und hellenistische Rechtsgeschichte), Bas. Petrakos (Secretary of the Academy of Athens), Dr. Susanne Biegert (Habelt Verlag), Ms Stephanie Aulbach-Stankovic (J.D. Sauerländers Verlag), Ms. Linda Nicol (Cambridge University Press), Ms. Laura Westbrook (Koninklijke Brill), and Ms. Anna Lops (Levante Editori), for granting permission

to reprint the articles included in this volume. Last but not least, we owe a big debt of gratitude to Michael Greenwood, the editor of Routledge overseeing this volume, for his unwavering support and faith in the project from the outset. While for the broader community of classical scholars, ancient historians, and students of Greek law this volume represents a useful and beneficial research and teaching tool, for the editors of this volume it is more than that: It is a fitting tribute to a great teacher who taught and guided us with care, patience, skill, and good humour through many cold Glasgow mornings.

Every effort has been made to contact the copyright holders. For any inadvertently missed the editors and publishers will be pleased to add an acknowledgement in any future editions.

# Note on abbreviations

Abbreviations of names and works of Greek authors are according to the Liddell-Scott Jones Lexicon (*LSJ*).

All abbreviations of journals follow the conventions of *L'Année philologique*.

# Introduction

Douglas Maurice MacDowell  
1931–2010

*Christopher Carey*

(Originally published in the *Proceedings of the British Academy*  
172 [2011] 233–48)

DOUGLAS MAURICE MACDOWELL, who died on 16 January 2010, was one of the most distinguished students of Greek oratory, law and comedy of the late twentieth and early twenty-first centuries.

He was born on 8 March 1931, the only child of Maurice Alfred MacDowell and his wife Dorothy Jean, née Allan. Both parents were of Scottish/Northern Irish extraction. His father worked for the London office of the Northern Assurance Company in Moorgate. His mother was a shorthand typist before giving up work on becoming a mother. One side benefit of his mother's previous occupation was that Douglas had learned to type (as well as to read and write) at the age of four.

His parents had no profound influence on his ultimate career choice. Neither parent had the opportunity to go to university and neither had ever studied Latin or Greek. His father, with whom he had a difficult and distant relationship throughout his life, had no sympathy with his intellectual interests, and indeed never attended school prize-giving or subsequent degree ceremonies. His mother, though always puzzled by Douglas's academic and professional activities, was invariably supportive and her visits with him to the theatre were later to pay dividends. He remained close to his mother and in adulthood continued to visit her until her death in 1990. His upbringing was secure and his childhood solitary and contented, disrupted only briefly at the age of eight by the war. He never developed a love of games and much preferred activities such as reading. This quietness remained with him throughout his life. In adult life he developed strong friendships but remained shy and was always more comfortable in his own company than with others.

He attended Keeble Preparatory School for Boys, with an interval at Elgin Academy and Madras College St Andrews (when his father was sent by the RAF to Lossiemouth and Leuchars during the war), and then Highgate School. He later observed that he learned more English grammar at Elgin than anywhere else. His interest in Classics, as is often the case, was ultimately due to a good school teacher. His Classics master at Highgate School, the Revd C. H. Benson, was an ideal

teacher for a bookish boy like Douglas. A poor disciplinarian but a good scholar, he was good at bringing on those students who were able and inclined to listen. It is at this point that the footprint for much of the later MacDowell is laid down. He particularly enjoyed the more technical and demanding aspects of the study of Classics. He enjoyed prose and verse composition in both languages but especially in Greek. He was particularly taken by the lyrics of Horace, not (he later said) for their literary quality but for the skill with which Horace was able to fit recalcitrant Latin words into complex and demanding alien metres. He also enjoyed ancient history, and especially fifth-century Athens. The other piece in the jigsaw is supplied by Aristophanes, whom (primed by his affection for Lewis Carroll and a fondness for Gilbert and Sullivan derived from his mother) he came to love, though (unlike most schoolboys) more for the wit than for the vulgarity; the editions through which he encountered Aristophanes were the expurgated ones at that stage (in the era before Kenneth Dover) considered fit for growing minds. At this time he also became interested in acting, an interest which continued into his university years. His most important parts were Mr Twigg in *Badger's Green* and Sir Andrew Aguecheek in *Twelfth Night*. Shy people frequently enjoy acting for the opportunity it gives to assume a role in public and Douglas felt later that his time on the stage had been of great benefit to him. It stimulated a performative side to his nature which he was later to let loose in lectures. And (with an irony which will not have been lost on a man who later came to love Demosthenes, who famously – at least in the later biographical tradition – struggled to bring on a weak voice) it taught him to develop and project a naturally quiet speaking voice.

In 1948 he was awarded a *Domus* Exhibition at Balliol College, Oxford (to which he had applied against the wishes of his school), and left school earlier than anticipated in March 1949 in order to complete his eighteen months of National Service (suddenly raised from twelve months) in time to commence his studies at Oxford in autumn 1950. He disliked National Service, though he was aware of the benefit alongside the tedium. Even the basic training, he felt, was not without value for a bookish young man from a sheltered and comfortable middle-class background, since it exposed him to kinds of people he would otherwise never have encountered. After his basic training he was made a sergeant instructor in the Army Apprentices School at Chepstow, and his duties consisted largely of teaching English to schoolboys. He felt that the experience was useful for his later career.

He found Oxford liberating. It gave him not just his own space but the opportunity to devote his time to the academic study he enjoyed, together with congenial intellectual company. His tutors included W. S. Watt, Kenneth Dover and Russell Meiggs. He learned more, he felt, from the Balliol tutors than from the Oxford lectures, which (at least in language and literature) he found 'dull' (Dodds) and (for the accent) 'largely unintelligible' (Fraenkel); on the whole he preferred the ancient history lectures (Andrewes, Brunt, Meiggs, Sherwin-White, Wade-Gery). Apart from stints as secretary, then chairman, of the Classical Society, his only other activity apart from study was drama. As the slave Xanthias in Aristophanes' *Frogs* he rode a thoroughbred pantomime donkey, one half of

which was Robert Ogilvie, later Professor of Humanity at St Andrews. Though he saw himself (with typical modesty) as less gifted than some of his contemporaries (Ogilvie, Frederiksen), he took firsts in both Mods and Greats.

Despite this success, his progress into academic life was neither obvious nor inevitable. By the time he graduated he had begun to contemplate a career in the academy. Russell Meiggs was not encouraging and advised him to take the civil service exam, which he failed (he recalled later that he made a mess of the interview). Like many before and after him he then drifted into school teaching, first at Allhallows School, Rousdon, and then at Merchant Taylors'. He enjoyed teaching bright students at sixth form level but (again like many before and since) not the lower forms and by 1958 he had decided that this was not what he wanted out of life. He returned to the idea of university teaching, encouraged by his former classics teacher, Revd Benson. Early applications brought no interviews and he began to suspect that his referee, Meiggs, was not supportive, a suspicion reinforced when he substituted Dover for Meiggs and was successfully interviewed at Manchester in 1958. The feeling that Meiggs had been a lukewarm referee stayed with him, so that he never felt entirely comfortable with Meiggs afterward. But teaching now at a level more to his taste, he enjoyed life at Manchester and rose rapidly from assistant lecturer to lecturer (1961–8), then senior lecturer (1968–70) and reader.

He was appointed to the chair of Greek at Glasgow at the age of forty in 1971. Throughout his life he felt – sincerely – that this was a great honour. He was conscious of the distinguished line of predecessors who had occupied the chair, including Richard Jebb, Gilbert Murray and A. W. Gomme. When he moved to Glasgow, it was to a separate department of Greek, though in 1988 the separate departments for ancient world studies were merged into a single department of Classics. The world he entered was a very traditional one and left undisturbed the subjects would have slid quietly into obsolescence. He was (justly) proud of two innovations he introduced. The first was the teaching of Greek language from scratch, which (aware both of its importance and of its demands) unlike some senior academics he taught personally rather than passing it off to junior colleagues. The second was the class in Greek civilisation taught in translation, of a kind he had taught in Manchester. Both teaching in translation and *ab initio* language teaching have played a major role both in reversing the decline in numbers studying Classics visible throughout the UK from at least the late nineteenth century; they have also helped the discipline not only to survive in a highly competitive higher education environment but also to shrug off the elitist image which had plagued it on its long retreat from its heyday as the basis for a gentlemanly education and underpinning of empire. These were however the most radical changes in the curriculum for a hundred years at Glasgow and (there as elsewhere in the UK) met with resistance. They were however accepted and colleagues who worked with him both then and later recognise them as an important step in the evolution of Classics teaching in its modern form and an important part of his legacy to the department. His impact was also felt in the revival of the Glasgow branch of the Classical Association of



Scotland. Though it never had the impact he wanted at high school level (largely because of the decline in Classics in the state sector), it was important not just for Classics in Glasgow but also for the larger Classics community in Scotland. He was chairman of the Scottish Hellenic Society, and of the Classical Association of Scotland and its Glasgow branch; he was also secretary of the UK Council of University Classical Departments. His commitment to Scotland, not just Glasgow, was shown in the publication series he instigated, *Scottish Classical Studies*, intended to raise the profile of research in Classics in Scotland. In the area of what we now call academic management he regarded himself as no more than a competent organiser. Certainly administrative duties gave him no great pleasure and he never sought them out. But he had an accurate sense of what needed to be done and a capacity to make things happen which he underrated.

If higher education is vulnerable to the financial climate, small departments are especially so. Classics departments throughout the UK felt under threat during the 1980s (a threat partly alleviated but not removed by the amalgamations late in the decade in the wake of the Barron report) and MacDowell was anxious that Classics might be closed down. Aberdeen did in fact close their department in the 1970s, reducing university teaching and research in Classics in Scotland by 25 per cent at a stroke. The worst never happened at Glasgow, partly headed off by the merger of the departments of Greek and Humanity into Classics; but obtaining even senior replacements was a struggle. MacDowell's own post was one of the counters in the game. Under the terms of his appointment he had the right to retire at 70. Despite encouragement from the Principal, Graeme Davies, to retire earlier, he elected to stay on, unconvinced that he would be replaced, and finally retired in 2001 after 30 years in post (an achievement of which he was proud, and one not equalled since Lushington in 1875). His argument for staying on reflected not just his commitment to the chair and the department but his habitual modesty; acknowledging that a younger professor was more desirable, he reflected that 'even an elderly professor of Greek was better than none at all'. It was the same concern for the department that led him to apply for (and obtain) the Oxford D.Litt. in 1992; in an age when the doctorate had become the norm for anyone entering an academic career, he felt that it would add in a small way to the department's HR statistics (which as the then Head of Department he had to compile). In the same way, part of his pleasure in being admitted to the Royal Society of Edinburgh in 1991 and the British Academy in 1993 was the boost it might give to the standing of the department in the eyes of the university.

He was in the end proved right about the chair. He was not replaced on retirement. The strength of his own commitment was underlined by a remarkable gesture in his will; he left Glasgow University £2m, the bulk of his estate, to support the chair of Greek. He evidently (astutely) held off to the last in the hope that against all the signs the university might still invest its own money; despite the frustration and profound disappointment, it must have given him consolation to be in a position to do something to rescue a chair which he was proud to have occupied. At the time of writing the university has yet to declare publicly whether it will accept the

money and appoint to the chair; it would be sensible to do so and to name it in his honour.<sup>1</sup>

He brought to his teaching the gifts which made his research so accessible, a serious commitment to getting it right and a rare capacity for making complex problems intelligible without superficiality. Lecturing also allowed an outlet for his histrionic side. He had discovered in the 1960s (at a time when lecturing was a dry business) a talent for presenting Aristophanes in a theatrical way, acting out the parts in a range of voices; this had proved popular in public lectures and he used it to good effect in his lectures on comedy at Glasgow. Both for colleagues and for students he maintained an open door policy. He is remembered by former students as a generous teacher in every sense. A remorselessly rigorous researcher himself, who could be unforgiving with inaccuracies, inconsistencies or superficiality from professionals, he was patient with students struggling to find their way, though unsympathetic to mere show. One of his former students recalls a seminar in which MacDowell asked a question and a student gave an answer which was not just wrong but also totally irrelevant to the question. To the amusement of a visiting academic who was present Douglas patiently replied ‘not quite’, before proceeding to steer the discussion in the right direction. He was passionate about the value of a classical education and went to extraordinary lengths to support promising students. A member of the Senior Honours class of 1992 recalled that he bought everyone in the class (‘and I’m pretty sure all Senior Honours students every year’) a subscription to *Journal of Hellenic Studies*. He was equally generous with time. Douglas Cairns, now Professor of Greek at Edinburgh, recalls: ‘When I was in my first year, on the grounds that I needed to read more Greek than was read in the Ordinary syllabus, we met once a week in his room to read the *Acharnians* together.’ When the department started to recruit postgraduate students in the late 1980s and after, he made a point of holding a weekly reading class on Aristophanes with them. Graduate students in financial difficulties would find that an anonymous donor had been found to assist with their costs. Only the most perceptive guessed that the donor was MacDowell himself. This was part of a large pattern of quiet philanthropy.

At the time of his first appointment at Manchester he had undertaken no research at all. Immediately on taking up the job he set about making good the lacuna. The direction he took was in part – but only in part – a matter of chance. Both at school and at university he had always been interested in Greek history. While teaching at Merchant Taylors’ he had picked up a copy of the selection of texts from the Athenian orators which Sir Richard Jebb had produced for school use in 1880 (a book ironically, as MacDowell later noted, dedicated to ‘the Greek class at the University of Glasgow’). He had never studied the orators in any depth and he immediately recognised both the potential of the corpus as a way into the social and political history of ancient Athens from a direction distinct from and complementary to the historians and the lacuna in twentieth-century British scholarship. So he decided to write a commentary on an oratorical text. He was encouraged in the enterprise by Dover, whose own interests included Greek prose

of the classical period. The nineteenth and early twentieth centuries had seen some very good commentary work on Greek oratory in the UK (including a clutch of commentaries from J. E. Sandys) but interest had largely fizzled out. The lack of interest was reinforced by a tendency to think in discipline terms, with Plato left largely to the philosophers and orators and historiographers to the ancient historians. The orators had effectively become subsidiary material in larger works on political history, or, worse, models of style for Greek prose composition. The blight did not affect Continental and American scholarship. The Budé series in France and the Loeb series in the USA patiently plugged the gaps in the works of the orators. MacDowell's interest in the orators was ahead of its time in British classical scholarship. But though he can claim the credit for stimulating a resurgence of interest in the Greek orators in the United Kingdom, there was no rush to follow. In fact it was not until the eighties (two decades after his first book) that MacDowell's commentary work found successors in the UK, with the appearance of Edwards–Usher, *Antiphon and Lysias*,<sup>2</sup> and *Demosthenes: Selected Private Speeches* by Carey–Reid.<sup>3</sup> From then on interest in the Greek orators has burgeoned to the point that it is difficult to recollect a time when MacDowell was almost alone (apart from Stephen Usher at Royal Holloway) in the field in the UK.

The author and text he chose for his first book, *Andokides On the Mysteries* (Oxford, 1962), reflected his sense of the potential of the orators as a complement to historiography. *On the Mysteries* deals at one remove with the notorious incident of the mutilation of the herms (stone tetragonal columns with a human head and genitals) which took place overnight not long before the sailing of the Athenian expedition against the city of Syracuse in Sicily in 415 BC. The atrocity (both because it had the potential to blight the expedition as a bad omen and because it smacked of conspiracy) triggered a witch hunt which had a convulsive effect on Athenian political life and probably doomed the expedition by removing the talented and mercurial Alkibiades from command. The incident is told briefly in the sixth book of Thucydides' history. Andokides was a whistleblower who revealed the names of some of the perpetrators and his speech *On the Mysteries* (which was written not at the time of the original affair but for a subsequent political trial fifteen years or so later) both complements and disagrees with Thucydides on some key points.

MacDowell's work on Andokides led by a (retrospectively) natural route to his second project, which added a complementary strand to his research. While working on his commentary, he was reading the speeches of Andokides' contemporary, Antiphon (the Robespierre of Athenian politics), one of the key instigators of the coup which overthrew the Athenian democracy in 411. Antiphon was a professional writer of speeches for the courts and the corpus which survives is devoted to homicide cases. His reading alerted MacDowell to a gap both in the scholarship and in his own knowledge. He reflected that there was no book available to explain the intricacies of Athenian homicide law, a fascinating blend of religious and legal ritual remarkable for its complexity in a system which was characterised both by its relative simplicity and by its efficiency. The result was his second book,

Athenian Homicide Law in the Age of the Orators (Manchester, 1963). The combination of oratory and law in MacDowell's interests bridges a perceptible divide in the scholarship. Though the orators are our most important source for the reconstruction of the Athenian legal system both in principle and in practice, there is a tendency for people to opt for oratory (often with rhetoric) or law as the primary focus of their study. MacDowell unusually was interested in and equally strong in both.

Of both these volumes, produced in a period of four years, he was later to recall with pride and amusement that they had been typed on a portable typewriter balanced on a coffee table (there was no desk) in his lodgings in Manchester. He subsequently felt that they had been written too hastily. Certainly by the standards of his later commentaries the Andokides volume is slim. It remains however the standard English language commentary after almost five decades (though Edwards's Aris and Phillips commentary has appeared in the interval to update the discussion and to make the text available to a wider audience<sup>4</sup>). And it is marked by MacDowell's careful attention to detail and his strong sense of historical context. The book on Athenian homicide law is tiny compared with the larger word counts in subsequent books on the subject. It is however a gem of a book, still read, still cited and an invaluable work to place in the hands of students. MacDowell always had a gift for presenting challenging subjects in lucid English which makes his work accessible to the novice without surrendering either grasp of detail or rigour of argument. It also inadvertently opened up a debate which was to run for decades, about the right to prosecute in Athenian homicide cases. The wisdom was, and is, that this right was confined to blood relatives of the victim (or masters in the case of slaves). MacDowell argued that while the obligation to prosecute was confined to blood relatives, the right was open to anyone. His view has stimulated a number of refutations (and some very good research) over four decades or so, including a monograph devoted to the subject.<sup>5</sup> The difficulty of delivering a single knock-down blow to MacDowell's suggestion serves as a useful reminder of the slender base for even (perhaps especially) our most confident and persistent statements about the ancient world. The debate also illustrates two aspects of MacDowell's character. The first is a willingness to grasp nettles. The second is a good-humoured acceptance of the provisionality of research (more rare than it should be); he was later to decide that the early MacDowell was wrong.

The homicide book was important in a more fundamental sense than its contribution to the study of a particular aspect of Athenian law. When MacDowell wrote, there was scarcely anyone writing on ancient Greek law in the UK, except for A. R. W. Harrison and (from a constitutional angle) Peter Rhodes. There is a long and distinguished tradition in mainland Europe. The towering works are in German (Lipsius, Ruschenbusch, Wolff), Italian (Paoli) or French (Gernet). All – and this is significant were operating in an environment informed by the European systems of civil law. The USA had produced excellent researchers in the field of ancient law, particularly Bonner and Calhoun; but these were in the early decades of the twentieth century. The UK had had scholars working on the orators from a legal background (like Charles Rann Kennedy) but interest in law in itself was

largely absent. In the past two decades scholars working in the Anglo-American common law system have established a distinct place in the discipline. MacDowell did not create this trend. But he did blaze a trail in recognising and demonstrating the intrinsic interest of Athenian law as a subject worthy of study for itself. And it is difficult to imagine the current level of interest in Athenian law without his intervention.

The book on homicide law was followed after a long interval by a more widely focused book which confirmed his lasting place in the study of Greek law. The first volume of A. R. W. Harrison's *The Law of Athens* had appeared in 1968.<sup>6</sup> This book, which deals with property, is magnificent. The second volume on procedure was incomplete on his death in 1969. MacDowell had agreed to write a book on Greek law for Scullard's *Aspects of Greek and Roman Life* series and was due to spend a term as Visiting Fellow at Merton College, which would offer an opportunity to discuss his ideas with Harrison, who was Warden there. Harrison's death ruled this out and MacDowell spent his time at Merton assembling Harrison's papers for publication as Volume 2 of *The Law of Athens*, which appeared in 1971. He was offered but declined the opportunity to complete the book as Harrison's co-author. He found Harrison's approach (derived from Roman law) uncongenial and old-fashioned and he preferred to continue with his own book as an independent project. The decision to go it alone was the right one. MacDowell's *The Law in Classical Athens* (London, 1978) is still three decades later the first port of call for anyone wishing to get a grip on the basics of the Athenian legal system. The book itself however is anything but basic. It is deeply grounded in the evidence (as the rich endnotes demonstrate) and covers the whole gamut of procedure and substance. But it wears its learning unostentatiously. MacDowell preferred lucidity to adornment. Though it goes unnoticed by the reader, this was a difficult book to write, far harder than it would be today, when anglophone scholarship on Athenian law has mushroomed. There was little available in English and MacDowell had to work through a substantial bibliography in German, a language for which he professed no great facility. The book on Athenian law was followed after a long interval by a volume on Spartan law in the Scottish Classical Studies series which MacDowell had instigated.<sup>7</sup> Reliable sources for Sparta are few (far fewer than Athens, our best – but still inadequately – documented state for the classical period) and reviews of the book were more mixed. MacDowell felt afterwards that his judgement had been correct but he did not return either to Spartan history or to Spartan law. The decades after the book on Athenian law saw a steady stream of articles and chapters on law. But his lasting monument in this field is the 1978 book, which still offers a no-nonsense introduction to the beginner or non-specialist while also remaining an essential point of reference for the expert. He was disappointed that the UK publisher did not opt for a paperback reprint. But it was published in paperback in the USA (Ithaca, NY, 1986), which has ensured its availability as a coursebook and its place on reading lists. His eminence in the field of ancient Greek law was recognised in invitations from Hans Julius Wolff from the 1970s to participate in the triennial

(subsequently biennial) international colloquia on ancient law (published as the Symposium series) which he initiated and which MacDowell attended frequently from 1982.

Among the papers on Athenian law, one in particular is worth singling out as showing the calm nettle-grasping side of MacDowell. It is a piece produced while he was preparing the Athenian law book.<sup>8</sup> It was destined to have a long and controversial shelf-life. For most readers of ancient Greek texts, *hybris* was (often still is) predominantly a theological notion, the pride which comes from excessive prosperity, prompting a man to misprise his own significance and offend against the gods. The notion has entered the collective consciousness and is now ineradicable. But it is derived largely from tragedy and is actually applicable only to a small minority of surviving plays. And it is not the way the word works in most contexts, especially but not exclusively lawcourt speeches. The reference is usually secular and relates to dealings between humans; it generally covers abusive, frequently but not inevitably physical (especially violent), mistreatment (including sexual abuse). In classical Athens it was a crime, but notoriously one which the law left to common-sense definition by the juries (the law said: ‘If someone commits *hybris* . . .’). MacDowell’s 1976 paper in *Greece and Rome* sought to revise this picture and relocate *hybris* within inter-human conduct and within the legal system. Nick Fisher, who had independently been working on a monograph on *hybris*,<sup>9</sup> also published on *hybris* in the same volume of *Greece and Rome*,<sup>10</sup> offering an alternative interpretation. As Stephen Todd has memorably observed,<sup>11</sup> where MacDowell located *hybris* in the psychology of the perpetrator (excessive behaviour caused by surfeit – of money, drink, energy), Fisher located it in the sociology of the victim (loss of face in an honour-sensitive society). As well as good evidentiary support, both positions have their limitations (especially when one tries to turn fine differences into subjective law in a legal system where precise definitions play only a very circumscribed role) and subsequent writers have tended to look for a middle ground. But these papers continue to form the frame within which the debate takes place.

As with law, Athenian oratory (especially Demosthenes) remained a passionate interest. In 1990 he published a commentary on the speech against Meidias (*Demosthenes, Against Meidias (Oration 21)*) with Oxford University Press (subsequently reprinted by Bristol Classical Press in 2002). Like his other work this commentary blends meticulous scholarship with accessibility. Unusually for its day (but almost obligatory now) it included a translation facing the Greek text. As well as allowing the commentary to do its work more efficiently (since translation is often the best comment on linguistic minutiae), this move also acknowledged that the work would be used by readers with limited Greek or even with no Greek at all. The scholarship is visible not only in the detailed comments on matters of language, style, text, law and history but also in the care devoted to producing the text. Collations of manuscripts in previous editions had been limited. Acknowledging that it was not feasible to collate all, MacDowell still consulted forty-seven of the medieval manuscripts. He also devoted part of the introduction

to the still contentious issue of the authenticity of the evidentiary documents (laws, depositions etc.) which survive in the medieval manuscripts of some Demosthenic forensic speeches (and intermittently in the manuscripts of other orators). The topic had received no serious attention since the nineteenth century. MacDowell revisited the subject of the line numbering which survives in some manuscripts to conclude (as had others) that the documents were added to the text after the stichometric edition was completed. The documents (which were read out by the clerk during the hearing, not by the litigant) appeared to have been introduced from another (possibly archive) source. His further conclusion (typically sensible) echoed that of Drerup at the end of the nineteenth century that there is no single answer to the question of authenticity; each document has to be taken on its merits. A second and equally impressive commentary on *Demosthenes, On the False Embassy*, was published (again with Oxford University Press) in 2000. The commentary covers the speech delivered by Demosthenes in 343 BC in his prosecution of his enemy Aischines for (allegedly) betraying Athens' interests as envoy to Philip II of Macedon in 346. Here as often before MacDowell was drawn to the gaps in the research; he selected the speech because it receives less attention than the later *On the Crown* (considered since antiquity to be Demosthenes' masterpiece). The book shares the strengths of its predecessor, including both a chalcenic engagement with and a magisterial treatment of the medieval manuscripts. A smaller commentary (again with translation) on the *Encomium of Helen* by Gorgias of Leontinoi was published by Bristol Classical Press in 1982. Though on a more modest scale than his other commentaries, the work reflects both his capacity to reach different audiences and his continuing concern to provide for teaching needs (it arose from a course on oratory which he taught at Glasgow). He also found time to contribute two volumes to the series of annotated translations of the Greek orators edited by Michael Gagarin and published through University of Texas Press, the first volume with Gagarin in 1998 (on Antiphon and Andokides,<sup>12</sup> of which he contributed the Andokides section, revisiting his first research project), and a further volume on speeches 27–38 of the modern editions of Demosthenes (devoted to the cases relating to his own inheritance and a number of private actions for which he acted as professional speechwriter), which appeared in 2004.<sup>13</sup>

His final work was again on oratory and was devoted to Demosthenes.<sup>14</sup> It was produced at a time when his health was already poor and he was often tired, a testimony (as a former student observes) to his 'inner steel'. Two recent anglophone books have addressed the corpus of fifth- and fourth-century oratory in its entirety.<sup>15</sup> But Demosthenes certainly merits a dedicated volume. He has of course attracted a great deal of interest from the direction of political history. But the only recent monograph on the speeches was devoted to style.<sup>16</sup> In depth MacDowell's *Demosthenes* sits in the tradition of the monumental *Die attische Beredsamkeit* of Friedrich Blass. The book eschews the option of following Demosthenes' career as a simple chronological narrative, though introductory chapters deal both with Athenian oratory in general and Demosthenes' life and work in particular. The

bulk of the volume is organised thematically by type of case/occasion, offering background information, summary and comments on the argument of each speech. Part of Demosthenes' career was spent as a hired speechwriter (logographos) for the courts; this trade (though popular with litigants, as the number of surviving examples suggests) was subject to a degree of disapproval in a system which viewed legal professionalism with suspicion and aspired to equality before the law (whatever the reality) and the speeches were generally written anonymously. As a result the Demosthenic corpus contains a number of speeches whose authorship is contentious, some of which are probably or certainly spurious. MacDowell's book addresses the whole corpus, including contentious speeches whose authenticity he accepts (such as the funeral oration allegedly delivered for the dead in the battle of Chaironeia), those on which he is agnostic or suspicious (as the *Erotikos* which appears as the sixty-first speech in modern editions) and even those where he accepts modern arguments for misattribution (especially the set of speeches certainly or probably delivered – and written – by Apollodoros the son of Pasion). It is a fitting last work, since it distils his reading of and on Demosthenes, who had established himself as MacDowell's favourite orator (as he was for most readers in antiquity); like all of his preceding work, it is written with the reader and not the writer in mind and is designed to offer an introduction in each case to aid the reading of the text. It is destined to remain the gateway to Demosthenes' oratory (as distinct from his politics) for anglophone students for the next three decades or more.

The third strand of his research reflected his early interests at school and university. In 1971 he published a commentary on Aristophanes' *Wasps* in a series for which Kenneth Dover was general editor.<sup>17</sup> Fifth-century comedy is so inseparably embedded in its context that it cannot be read without constant recourse to its social and political environment. So Aristophanes also appealed to MacDowell's interest in Athenian history. There had been some uncertainty whether his project would be *Wasps* or *Lysistrata*. The outcome was the right one. Editing and annotating *Wasps* with its plot focus on the Athenian legal system played to MacDowell's established research strengths; the sexual theme of *Lysistrata* was less to his taste. Good commentaries have a long life and the *Wasps* commentary, now forty years old, has weathered handsomely. It deals lucidly and succinctly with text, staging, humour, style, historical and legal Realia. Here as in his work on the orators the textual judgements show the hallmark MacDowell style as an editor and textual critic. His approach is essentially common-sense conservatism, marked by a readiness to accept the manuscript tradition in defiance of dogma where it can be made to yield sense, neither cavalier nor credulous. As with oratory and law, the love of Aristophanes stayed with him throughout his career. It continued in a steady stream of articles and reviews over the years, to culminate in a monograph, *Aristophanes and Athens* (Oxford, 1995). The volume offers (after a chapter on the early lost plays, elusive but important both for our sense of Aristophanes' development and for our understanding of the evolution of fifth-century comedy) a reading of each of the surviving plays in chronological order.



The title reflects his interests – not just Aristophanes but Aristophanes in his historical context. Comic scholarship is prolific. But there are very few books like this which one can place in the hands of a student to take them into the text and context in a readable and approachable way without either superficiality or flash.

Many would be satisfied to have made the mark he did in any one of the fields which he researched. To achieve the scale and quality of Douglas MacDowell's output in three distinct fields of classical scholarship is a remarkable achievement. The long shelf-life of his early research and the guaranteed longevity of his subsequent scholarship is a legacy which speaks for itself.

The love of theatre fostered by his mother remained with him throughout his life and he would regularly visit the London theatres. In his youth he had travelled little: a family holiday with his parents to Norway in 1948, a three-week holiday in Gibraltar as a prize for an essay competition run by the Overseas League in 1950, a trip to Greece while still an undergraduate with Martin Frederiksen in 1953. He made up for this in later life. Apart from travel on academic business, one of his favourite pastimes was to visit museums and art-galleries and (importantly) opera houses in the major cultural centres of Europe – Rome, Florence, Venice, Vienna, Verona, Paris, as well as Covent Garden in London – especially in the company of his close friend and colleague, Costas Panayotakis. He remained firmly European in focus, with visits to the USA confined to academic conferences and otherwise a trip to Tangier from Gibraltar in 1950 his only ventures beyond.

Though his early shyness never left him, he was a generous friend and a kind and courteous host. The word 'gentleman' recurs in comments from those who encountered him. Though he was both aware and justifiably proud of his achievements, he was always (unduly) modest about his abilities, despite his eminence. He was (without affectation) both surprised by and appreciative of the evidence of esteem he received, not only the election to the Royal Society of Edinburgh and to the British Academy but also and especially – and more personally – the conference held in his honour on his retirement (whose proceedings were subsequently published), which was attended by colleagues from around the world, including to his great pleasure his former research students and his teacher of fifty years previously, Sir Kenneth Dover. He remained to the end a private man who knew how to keep his counsel. A researcher who interviewed him toward the end of his life was struck by the contrast between the discreet MacDowell and the brutal honesty of Kenneth Dover, observing: 'When I talked to MacDowell I felt I was facing Alec Guinness/George Smiley: I was telling him everything, he was telling me nothing.' I think Douglas would have been both amused and pleased.

Douglas Maurice MacDowell, MA, D.Litt., FBA, FRSE. Born 8 March 1931; died 16 January 2010.

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## Notes

- 1 The University accepted the donation in 2011, and Jan Stenger was appointed to the MacDowell Chair of Greek in 2012.
- 2 M. Edwards and S. Usher, *Greek Orators I. Antiphon and Lysias* (Warminster 1985).
- 3 C. Carey and R.A. Reid, *Demosthenes: Selected private speeches* (Cambridge 1985).
- 4 M. Edwards, *Andocides* (Warminster, 1995).
- 5 A. Tulin, *Dike phonou: the right of prosecution and Attic homicide procedure* (Stuttgart, 1996).
- 6 A. R. W. Harrison, *The Law of Athens*, 2 vols (Oxford, 1968, 1971).
- 7 *Spartan Law (Scottish Classical Studies No. 1)* (Edinburgh 1986).
- 8 ‘“Hybris” in Athens’, *Greece and Rome*, 23 (1976), 14–31.
- 9 N. R. E. Fisher, *Hybris: A Study in the Values of Honour and Shame in Ancient Greece* (Warminster, 1992).
- 10 N. R. E. Fisher, ‘Hybris and dishonour I’, *Greece and Rome*, 23 (1976), 177–93.
- 11 S. C. Todd, *A Commentary on Lysias, Speeches 1–11, Part 1* (Oxford, 2007), p. 92, n. 8.
- 12 M. Gagarin and D. M. MacDowell, *Antiphon and Andocides* (Austin, TX, 1998).
- 13 *Demosthenes, Speeches 27–38* (Austin, TX, 2004).
- 14 *Demosthenes* (Oxford, 2009).
- 15 S. Usher, *Greek Oratory: Tradition and originality* (Oxford, 1999) and M. Edwards, *The Attic Orators* (London, 1994).
- 16 L. Pearson, *The Art of Demosthenes* (Meisenheim am Glan, 1976).
- 17 *Law, Rhetoric and Comedy in Classical Athens*. Essays in honour of Douglas M. MacDowell, edited by D. L. Cairns and R. A. Knox (Swansea, 2004).

**Part 1**

**Drama and comedy**



# Aristophanes and democracy

(Originally published in Adrados, F. R. and Sakellariou, Michael B. [eds] *Démocratie athénienne et culture*. Athens 1988, Académie d'Athènes: 189–97)

Athenian democracy is generally considered to have reached its peak in the second half of the fifth century BC. In the age of Perikles all the citizens attended meetings of the *Ekklesia* and voted to decide all the most important questions. They voted too to elect military commanders and envoys to other states. Most of their other officials were selected by lot, so that every citizen had a chance of participating in the administration for a year. This was government by the people in fuller measure than any modern state has ever achieved. That, at least, is the theory.

But the second half of the fifth century was also the age of Aristophanes. Aristophanes was a comic dramatist and a satirist, who saw it as his function, not just to make people laugh, but to look critically at public affairs and public personalities, to show not just the theory of Athenian democracy, but the weaknesses and faults of the way the democratic institutions worked in practice. His plays help us to see what was wrong with Athenian democracy, and by implication they show some of its merits too. Every one of his plays contributes something to this subject, but today I do not have time to discuss them all, and I shall concentrate on the two earliest that survive: *Acharnians*, performed in the year 425, and *Knights*, performed in 424.

In *Acharnians* the chief character is an old countryman named Dikaiopolis, who has had to take refuge in the town because of the Spartan invasion of Attica during the Peloponnesian War. He wants peace to be made, so that he may return to his home in the country; so at the beginning of the play he goes to the meeting of the *Ekklesia* on the Pnyx in order to vote for peace. This scene has a special interest for us, because it is the only one in which a meeting of the *Ekklesia* is actually shown on-stage. The first problem is that the citizens do not turn up for the meeting. When the play begins, we see Dikaiopolis sitting there entirely alone. It is enough to make him weep. He says:

4 *Drama and comedy*

But, never, since I first began to wash,  
Have I so smarted in the eyes from soap  
As now: the main *Ekklesia* is due  
At dawn, and yet the Pnyx here is deserted.  
They're chattering in the Agora; up and down  
They run, avoiding the red-painted rope.  
Even the *Prytaneis* haven't yet arrived;  
They'll get here late, then jostle one another  
Like anything, to get to the front bench,  
All streaming down together. They don't care  
A scrap for making peace. Oh City, City!

(Acharnians, 17–27)

So even the *Prytaneis*, the fifty councillors who have the duty of presiding over the meeting, arrive late, and it is difficult to get other citizens to attend at all. The reference to the red-painted rope is interesting. Apparently a rope covered with red paint was stretched out and carried across the Agora towards the Pnyx, to round up citizens who were loitering for shopping or gossip; anyone found to be smeared with red paint was fined. It sounds a desperate method of obtaining a quorum, and it implies that there was regularly difficulty in getting enough citizens to attend, even though Aristophanes is presumably indulging in comic exaggeration when he makes no one at all turn up on time except Dikaiopolis.

Eventually the *Prytaneis* and some other citizens do arrive, and the meeting begins. But does it discuss peace, as Dikaiopolis wishes? Not a bit of it. All the time is taken up by the reports of envoys, one group who have been on a mission to the king of Persia and another man who has been to the king of Thrace. Both were sent to try to obtain assistance for the Athenian war effort, in the shape of money from Persia and soldiers from Thrace, but both have been enjoying a thoroughly luxurious time, although they try to make out that it was full of hardship. Here is the beginning of the first envoy's report; Dikaiopolis interjects a sardonic comment after each sentence.

ENVOY. You sent us to His Majesty the King, Drawing two  
drachmas' stipend every day, When Euthymenes was arkhon.

DIKAIOPOLIS. Oh, those drachmas!

ENVOY. And we were quite worn out with travelling Across  
Kaystrian plains, as under awnings

We lay on cushions in the carriages;

It was killing.

DIKAIOPOLIS. I meanwhile was safe and sound:

I lay in rubbish by the battlements!

ENVOY. And then our hosts kept forcing us to drink

From crystal glasses and from golden cups

Sweet undiluted wine.

DIKAIOPOLIS. Oh rugged city,  
Look how these envoys are deriding you!

(*Acharnians*, 65–76)

Euthymenes was *archon* in 437/6, so that (if anyone in the audience bothers to calculate) these envoys have been away from Athens for eleven years. That is a ridiculous notion, but it is clear that Aristophanes thinks that some recent envoys in real life are vulnerable to the gibe that they have been spinning out an enjoyable jaunt at public expense. He is exaggerating, but no doubt it was true that some envoys were well entertained by the potentates to whom they were sent, and enjoyed the opportunity to see foreign parts without having to pay the cost of travel themselves.

Later in *Acharnians* the same point is made again in a scene in which Dikaiopolis confronts Lamachos. Dikaiopolis accuses Lamachos of making money from office, scuttling off to Thrace or Persia or Chaonia or Sicily, while ordinary citizens had to serve in the ranks. Modern scholars have often assumed that this refers to Lamachos' appointment as a general (*strategos*). But that cannot be right, for two reasons: one reason is that generals were not paid at this period, as far as is known; the second reason is that Athenian generals were not sent to places like Persia and Chaonia, when the war was going on elsewhere. So, although Lamachos certainly held a military position at the time of *Acharnians*, the reference in this passage must be to his appointment as an envoy in a previous year. Lamachos protests 'I was elected', but Dikaiopolis completes his sentence 'by three cuckoos' (line 598), meaning that the votes of three citizens, repeating their usual silly tune, were enough to get Lamachos appointed, because the attendance at the *Ekklesia* was so small.

So, according to *Acharnians*, the democratic *Ekklesia* is being exploited by a few prominent men. These men can get themselves elected to lucrative posts by a few supporters, because most of the ordinary citizens do not turn up to vote; and they can dominate the proceedings at the meetings, so as to prevent consideration of proposals which they do not wish to be considered. Of course this is comic exaggeration by Aristophanes. Yet there must be some degree of truth in it; otherwise the original audience at the play would not have found it funny, but merely silly.

I now pass on to the next play, *Knights* or *Horsemen*. This play is an attack on Kleon, who was the most prominent politician in Athens at the time. Kleon was a loud and domineering orator, not at all in the aristocratic manner of Perikles and other statesmen of earlier generations, and he had also recently had one striking military success: when a Spartan force was being besieged on the island of Sphakteria, near Pylos, and the Athenian general in command there, Demosthenes, had seemed unable to bring the siege to a successful conclusion, Kleon had gone out and within a few days stormed the island and brought a number of Spartans back to Athens as prisoners. So in this play Aristophanes is attacking Kleon at the height of his glory.

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The play takes the form of an allegory. It tells a story about the slaves of a householder named Demos. Demos means the people, not as a number of individuals, but in the *sense* of the political community of Athens, manifested in the meetings on the Pnyx. This character in the play is a personification of democracy in action. He does not appear on-stage until half-way through the play, but early on he is described by one of his slaves.

The master we two have  
Is country-tempered, bean-eating and prickly –  
Demos of Pnyx, a cantankerous old boy,  
And hard of hearing.

(*Knights*, 40–3)

How are we to interpret this description? It is obviously not true that all Athenian citizens attending meetings of the *Ekklesia* were old and came from the country. It is true that several Aristophanic heroes share these features (including Dikaiopolis), but that seems an insufficient reason for portraying democracy in this way. Rather, this is Aristophanes' attempt to characterize the manner in which the *Ekklesia* received speeches and events. Though many individual Athenians might be young and urbane, if you wanted to win over the *Ekklesia* as a whole you had to speak as you would to a crotchety old country-man, explaining your points loudly and clearly and taking care not to give offence.

As the play begins, two of Demos' slaves come on-stage yelling with pain because they have just been beaten. They complain about a newly-bought slave named Paphlagon who keeps getting the other slaves beaten, and presently one of them turns to the audience to explain the situation more fully. He begins with the description of their master, which I have already quoted, and then goes on:

At the last New Moon  
He bought a slave, a tanner, Paphlagon,  
Very villainous and very slanderous.  
This tanner-Paphlagon, when he'd seen through  
The old man's ways, bowed down before the master  
And fawned and cringed and flattered and deceived him  
With odds and ends, and said this sort of thing:  
'Come, Demos, first just try one case; then take  
A bath, tuck in, sup, eat, accept three obols!  
Shall I serve you supper?' Then he snatches up  
Something that one of us got for the master,  
And Paphlagon gets the thanks! The other day  
I made a cake, a Spartan one, at Pylos;  
That pesky perpetrator popped in, pinched it,  
And served it up himself, the cake I made!  
He keeps us away, and won't let someone else



Attend on the master; standing with a strap  
At dinner, he whisks away the politicians.

(*Knights*, 43–60)

It is obvious that the slaves of Demos are an allegorical representation of the politicians serving the Athenian state, and that Paphlagon represents Kleon. That is made clear by calling him a tanner at the start of the description: no normal household slave would be a tanner, but Kleon was well known to be involved in the leather trade. Several other words show how the allegory is to be applied to real-life Athens: the reference to trying a case for a fee of three obols alludes to the fact that Kleon had recently got the pay of jurors increased to this amount; and the reference to Pylos alludes to the recent campaign, which had been conducted by Demosthenes until Kleon arrived just in time to claim the credit for capturing the Spartans. (Thus it is clear that the slave speaking these lines, who claims that *he* made the Spartan cake at Pylos, represents the general Demosthenes.) So the main points of the allegory are clear: Kleon has secured the trust and favour of the democratic *Ekklesia* by flattery and by proposing small benefits for the citizens, such as an increase in the pay of jurors; he tries to prevent other politicians from winning popularity by serving Athens, and to divert to himself any credit which should really go to others.

These themes are developed later in the action. The play is primarily about Kleon, who is represented throughout as a pushful bully; but today I want to concentrate on Demos, the personification of Athenian democracy. He eventually appears on-stage half-way through the play. Just as he was described, he has the appearance of an old countryman. He is not very quick-witted, and sometimes he does not quite understand what is going on; but there is no doubt that he is the master, and it is the function of the servants, or politicians, to satisfy him, not the other way about. In this part of the play we see a contest between Paphlagon, alias Kleon, and his rival, who is a sausage-seller, both vying to obtain the favour and patronage of Demos. Paphlagon boasts of the achievements and policies that Kleon actually did pursue in real life, while the sausage-seller points out that those policies were designed to bring profit to Kleon himself rather than to Athens as a whole; he says that Demos has been deceived by Kleon's clever speeches. Then they each quote some oracles from which they claim support; here Aristophanes is making fun of the obscure poetic form of utterances from Delphi, and he is also implying that the Athenian people are too willing to credit the religious support which politicians, especially Kleon, claimed to have. And then the two rivals each compete in bringing Demos gifts, small titbits of food and other comforts. This is a satirical allegory of the way in which Kleon and other politicians curried popular favour by proposing small distributions of food or money to the populace. Paphlagon loses the contest after it is discovered that what he has given to Demos is far less than what he has kept for himself.

The characterization of Athenian democracy here seems to be rather unfavourable. It is implied that the people are not very intelligent, that they are easily deceived by politicians' speeches, that they are credulous of oracles, and

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that they are so short-sighted that they accept small benefits without considering long-term disadvantages and without realizing that politicians are profiteering at their expense. Yet the picture also has a more optimistic side. Towards the end of the contest there is a choral interlude which puts the situation in a different light. The chorus sings:

O Demos, you exercise  
A glorious rule indeed,  
When all are afraid of you  
As if of a tyrant.  
And yet you are gullible;  
You like being flattered and  
You're easily led astray.  
You gape in amazement at  
Each speaker; you mind, though here,  
Is gone on its travels!

*(Knights, 1111–20)*

But Demos sings a reply:

That hair on your head has no  
Intelligence underneath  
If you believe I'm a fool:  
I do it on purpose!  
I'm really enjoying all  
This nannying every day.  
I like to maintain a man  
As leader in thievery,  
Until, when he's full right up,  
I hoist him and thrash him!

*(Knights, 1121–30)*

The later part of the song makes clear that 'I hoist him and thrash him' is a metaphor referring to condemnation in a lawcourt for theft. What Aristophanes is saying here is that under democratic rule politicians who defraud the state are eventually caught and punished. It is hard for us to say whether this was really true in Aristophanes' time. It is not known that Kleon was ever actually convicted of theft. Perhaps it is a kind of wishful thinking: Aristophanes considers that the citizens ought to take steps to punish fraudulent politicians, and hopes that an assertion that they do so will encourage them to live up to it.

At the end of play, when Paphlagon has been defeated in the contest, Demos is restored by a kind of magic to the form which he had in the past. He wears dress of the kind that was customary in the days of the Persian Wars, complete with the cicada brooch that was fashionable then. This symbolizes Aristophanes'

belief that, without Kleon, Athenian politics will revert to an older and better style. Demos has gone back half a century not only in appearance but in mental attitude. There are two faults in particular from which he is now freed. One is his gullibility. The other is that he used to vote in favour of spending public money on pay for jurors and others in preference to building warships. Now, since his transformation, Demos is ashamed of those faults. Here is part of the dialogue between him and the sausage-seller.

DEMOS. What was I, and what did I do before?

SAUSAGE-SELLER. When anyone in the *Ekklesia* Said 'Demos, I'm your lover and your friend And I alone take care and thought for you', When anyone began his speech like that, You flapped your wings and tossed your horns.

DEMOS. I did?

SAUSAGE-SELLER. And so he cheated you and got away.

DEMOS. What are you saying?

Did they *do* that, without my noticing?

SAUSAGE-SELLER. Yes, and your ears would spread out wide, by Zeus, And close again, just like a parasol.

DEMOS. Had I become such an old fool as that?

SAUSAGE-SELLER. And if two politicians made proposals,

One wanting to construct long trireme ships,

And one to spend the money on public pay,

The pay man soon outstripped the trireme man.

Hey you! Why hang your head and turn away?

DEMOS. My former errors make me so ashamed.

SAUSAGE-SELLER. But never mind; it wasn't you, it was

The men deceiving you who were to blame.

*(Knights, 1339–57)*

The reference to spending money on pay instead of triremes reminds us of a different decision taken nearly sixty years earlier. In 483/2, when the revenue from the silver mines was exceptionally large, it was proposed to distribute this windfall among the citizens, ten drachmas each; but Themistokles persuaded the *Ekklesia* to use it for building ships instead, and it was this great increase in the navy which enabled them to defeat the Persians at Salamis, one of the most glorious achievements in Athenian history. But the Demos of Aristophanes' time fails to maintain that tradition. Now, when it is proposed to spend money on building new ships, the citizens vote instead to use it for pay. This must mean primarily the pay for jurors, recently increased to three obols a day. Six thousand citizens served as jurors; so this was the kind of pay which cost the most, and from which the largest number of individuals benefited. In voting to use the money for pay, they put their own individual profit before the success and glory of Athens. 'But never mind', says Aristophanes through the mouth of the sausage-seller; 'it wasn't you, it was

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the men deceiving you who were to blame'. To soften his criticism, Aristophanes puts the blame on the politicians, especially Kleon; but he clearly wants the Athenians to think for themselves, and to take a less selfish and a more patriotic view.

So these are the weaknesses of democracy, as Aristophanes sees them. In *Acharnians* the focus is on the failure of citizens to attend meetings in order to elect suitable men to office and support sensible policies. That particular criticism is not made again in *Knights*; possibly there had in fact been some improvement in attendances at the *Ekklesia* during the excitement of the Pylos affair. But now Aristophanes makes further criticisms: the citizens at the *Ekklesia* believe too easily what they are told by the politicians, especially Kleon; they fail to check profiteering and corruption; and they allow themselves to be won over by trivial personal benefits, instead of giving priority to the long-term advantages of Athens. Yet Aristophanes does not really blame Demos for all this. Demos is honest and well-meaning; he is fundamentally sensible; and he possesses a certain shrewdness, if he will only apply it. There is no suggestion here that Demos should cease to be the head of the household and the master of the slaves.

Aristophanes, in other words, does not even hint at any possibility that democracy might be replaced by oligarchy or any other form of government. Democracy is the right form of government, and the citizens of Athens are quite capable of making it successful, if they will only take the trouble to do it. And Aristophanes' advice is surely the right advice, not only for ancient democracy but for modern democracy too.

# The number of speaking actors in old comedy

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The number of speaking actors in Old Comedy has been much discussed, but no consensus has been reached.<sup>1</sup> The old assumption that the number was three, as in tragedy, was shaken when it was realized that some scenes of Aristophanes have four characters on-stage at once, all taking part in the dialogue: for example, in *Lys.* 77–253 we have Lysistrate, Kalonike, Myrrhine, and Lampito, and in *Frogs* 1414–81 we have Dionysos, Aiskhylos, Euripides, and Plouton. Rees therefore argued that there was no fixed number,<sup>2</sup> but that view was not generally accepted. A more widely held view is that there were three principal actors with additional performers for small parts.<sup>3</sup> However, there is no evidence contemporary with Aristophanes which distinguishes three actors from the others in this way, and it is probable that writers of later periods who mention three actors are referring to their own times and did not have authentic information about the fifth century. The passage which *DFA*, p. 149, seems to regard as the most trustworthy is in a brief account of comedy attributed to Tzetzes: ἐπιγεγνόμενος δὲ ὁ Κρατῖνος κατέστησε μὲν πρῶτον τὰ ἐν τῇ κωμῳδίᾳ πρόσωπα μέχρι τριῶν, στήσας τὴν ἀταξίαν.<sup>4</sup> *DFA* paraphrases this as Cratinus reduced the disorderliness and, in some sense, fixed the number of regular actors at three'. But πρόσωπα means 'masks' or 'characters'; it does not mean 'actors' (for which the Greek word is ὑποκριταί). What the writer meant by saying that Kratinos settled the masks or characters in comedy at 'up to three' is not clear, but his statement is useless as evidence for the number of actors.

A further objection to distinguishing principal actors from those playing small parts is that it is not clear how small the small parts would have to be. Lampito and Plouton, for example, are significant roles. Dover, *Comedy*, pp. 26–7, in a brief but effective discussion, points out that, when we distribute the parts of a play among four actors, we can if we wish give as little as possible to the fourth, but there is no evidence that this is what Aristophanes actually did. Dover accepts that there were four actors, but argues against any greater number, drawing attention to three passages (*Lys.* 85–92, *Clouds* 886–7, *Thesm.* 929–46) in which no more than four appear to be available. His argument seems convincing, until he comes

to *Akharnians*, where he allows the use of a fifth actor to play Pseudartabas. This concession weakens his case: if a fifth actor can speak two lines as Pseudartabas, why can he not also speak a couple of lines as the Boiotian woman in *Lys.* 85–9?

More recently Henderson, *Lys.* pp. xlii – xliii, has not accepted the limit of four. He postulates a fifth actor to play unnamed women at three points in *Lysistrate* (136, 447–8, 760–1), but admits that it is hard to account for his presence: ‘Since the fifth actor’s role is so small and inessential, it may be that Ar. for some reason had to accommodate him or that he was a novice’. He seems to imply that Aristophanes would have preferred to use only four actors, but does not explain why that might be so.

It appears to me, rather, that a dramatist would naturally prefer to have a separate actor for each role in a play, if external constraints permitted, for two reasons: it would enable him to have as many characters as he wished on-stage at the same time, and it would enable him to cast in each role an actor who was suited to it in physical characteristics and in acting ability. If in fact Aristophanes restricted himself to four actors (or to any other specific number), why did he do so? In the modern theatre, in plays having a large number of characters, such as Shakespeare’s, parts are frequently doubled, and the motive is financial: the manager cannot afford, or does not wish, to pay more actors than are necessary. But this does not mean that the same number is used in every play; some managers are more lavish than others. If Aristophanes observes the same restrictive limit in every play, that cannot be because every *khoregos* was mean to exactly the same degree. It must be because there was some generally imposed constraint, by which no comedy was allowed to use more than a certain number of actors. The reason for such a rule may have been financial, if actors were paid by the state; but there is no evidence that actors were paid in Aristophanes’ time. The other possible reason, perhaps more probable, is that the use of more actors was thought to give a competitive advantage. If there had been no limit, ambitious poets and rival *khoregoi* might have recruited larger and larger casts to overwhelm the audience with diverse characters and spectacle. It was therefore desirable to have a fixed number of performers: just as there was a fixed number of choristers (fifty for a dithyrambic chorus, fifteen for a tragedy, twenty-four for a comedy), so also there was a fixed number of actors.

If it is right to conclude that the number of actors in a comedy was fixed by the rules of the contest, an important consequence follows: the rules must have been adhered to. One thing that we do know about the dramatic and choral competitions in Athens is that they were keenly contested. Aristophanes himself expresses his dismay at losing (*Clouds* 520–6, *Wasps* 1043–8). Rivalry was apparently so intense that a law laid down a specific procedure for accusing and removing a chorister who was suspected of being ineligible to perform.<sup>5</sup> If disputes could arise even over a single chorister smuggled in to improve a performance, all the more would they be likely if an additional solo actor was brought in contrary to the rules. Every rival *khoregos* would be ready to pounce.

Thus, if the number of actors was limited by the rules to four, it was limited to four; or if the limit was five, five could be used. What we must not accept is that

the limit was four but a fifth actor was sometimes used. With this in mind I propose now to re-examine briefly the passages of Aristophanes which may have something to tell us about the number of actors, taking the plays in chronological order.

### ***Akharnians* 43–175**

As it happens, the earliest play presents us with the most difficult problem. At the meeting of the Ekklesia, Dikaiopolis is on-stage throughout, and the Herald must also be on-stage continuously from his opening announcement (43) until he proclaims the adjournment (173). The Envoy who has recently returned from Persia is on-stage from 64 until Dikaiopolis orders him to leave in 110;<sup>6</sup> Pseudartabas, the King's Eye, is on-stage from 94 to 125; and Theoros is on-stage from 134 to 173.

Amphitheos makes more than one appearance. He first speaks in 45, and is arrested by the archers in 55. At that point the text does not make quite clear whether the archers take him off-stage or remain holding him on-stage. But it is more likely that he is taken off; for in 129, when Dikaiopolis calls for him and he answers, there is nothing to suggest that he tears himself away from the archers holding him. Presumably they are not still holding him but have simply ejected him, leaving him free to slip back into the meeting when they are not looking. After being on-stage from 129, he certainly exits after 132 and reappears at 175.

If only four speaking actors are available, some very quick changes are involved. The least difficult arrangement seems to be to have one actor playing Amphitheos and the Envoy, changing parts between 55 and 64 and again between 110 and 129, and one actor playing Pseudartabas and Theoros, changing parts between 125 and 134. Whether it was practicable to change within nine lines is something that we cannot know for certain, for two reasons: we do not know whether any stage business or other pauses occurred at those points, and we do not know how difficult the costumes were to put on and take off. If an actor had only to take off a mask, put on another mask, and either take off or put on a long cloak which covered the costume underneath, it may have been possible to complete a change within nine lines.

The explanation that Pseudartabas is played by an extra because he speaks only two lines of gibberish<sup>7</sup> should be rejected. An extra is an actor; if he speaks, he is a speaking actor. It is not credible that the rules of the contest stated "Five speaking actors may be used, provided that one of them is hard to understand", or "... provided that one of them makes verbal mistakes." Such a rule would be unenforceable. If a rival *khoregos* raised an objection, how would it be decided whether a character made enough mistakes, or was sufficiently unintelligible, for the performer to be called an 'extra' and not an actor? Anyway, Pseudartabas is not unintelligible, for in 104–7 Dikaiopolis finds that he can understand him only too well. The performer of Pseudartabas is, therefore, a speaking actor.

If Aristophanes and his director Kallistratos were free to use as many speaking actors as they wished, they would surely have found it more convenient to use five or six for this scene. But if only four were allowed, performance by four may have been possible.

***Akharnians 824–8***

A Megarian brings his two Daughters for sale to Dikaiopolis, and is denounced by a Sycophant. All five are on-stage from Dikaiopolis' reappearance at 824 until the Sycophant runs off at 828. Are five actors necessary here?

It is commonly held that the roles of children were played by boys who were not counted in the number of actors.<sup>8</sup> *DFA*, p. 144, goes so far as to say that young children 'obviously cannot have been played by grown-up actors'. In fact this is not self-evident. An audience which accepted the convention of women played by male actors may have accepted the convention of children played by adult actors. However, I do not think it likely that the Megarian's Daughters were played by adults. They both get into a sack at 745 and remain there until one emerges at 765 and the other at 788. A sack containing two adults seems improbable.

The Daughters may have been played by small boys, but another possibility which should be considered is that they are very young children represented by dolls. An explanation of this kind is given for *Lys.* 879, where Kinesias' baby cries *μαμμία, μαμμία, μαμμία*: 'The infant was probably represented by a doll and its cries made by Kin.'<sup>9</sup> The Megarian's Daughters say nothing but *πεπρᾶσθαι, πεπρᾶσθαι* (735) and a few squeals of *κοῖ κοῖ*. Perhaps these were actually uttered by the actor playing the Megarian.

If the Daughters are dolls, only three actors are needed in this scene. If they are played by boys, five persons are needed, whether the boys are to be counted as actors or not. For the moment I leave this question open.

***Knights 234***

It has been asserted that *Knights* can be performed by only three actors, though different scholars note possible problems about this in different places in the text.<sup>10</sup> At line 234 the Sausage-seller and Demosthenes<sup>11</sup> are on-stage. Nikias, who has been off-stage, shouts a warning, and Paphlagon appears. The most obvious way to perform this is for Nikias to rush out of the house to warn Demosthenes and the Sausage-seller, and then run away in another direction as Paphlagon comes out; this requires four actors. The use of a fourth actor can be avoided only if Nikias shouts his line from off-stage, so that the same actor can immediately appear as Paphlagon. That would indeed be possible; but had Aristophanes any reason to make the same actor play Paphlagon and Nikias?

***Knights 1203–5***

ΑΛΛΑΝΤΟΠΩΛΗΣ: τὸ μὲν νόημα τῆς θεοῦ, τὸ δὲ κλέμμ' ἐμόν.

ΔΗΜΟΣΘΕΝΗΣ: ἐγὼ δ' ἐκινδύνευσ'.

ΠΑΦΛΑΓΩΝ: ἐγὼ δ' ὄπτησά γε.

ΔΗΜΟΣΘΕΝΗΣ: ἄπιθ'· οὐ γὰρ ἀλλὰ τοῦ παραθέντος ἡ χάρις.

This assignment of lines to speakers is due to Rogers,<sup>12</sup> and I believe it to be right. The Sausage-seller has just filched a dish of hare's meat brought by Paphlagon,



and has presented it to Demos. The joke is that he gets the better of Paphlagon by doing what Paphlagon (Kleon) himself does: throughout *Knights* it is alleged that Kleon filched from Demosthenes the credit for the victory at Pylos, and one of the principal themes of the play is that the Sausage-seller defeats Paphlagon by using the same dirty tricks by which Paphlagon (Kleon) defeated the other slaves (politicians). Here the sequence is: Demosthenes hunted the hare (fought the campaign at Pylos), Paphlagon (Kleon) cooked the hare (completed the campaign), but then the Sausage-seller served it up.

Other editors assign ἐγὼ δ' ἐκινδύνευσ' to Paphlagon or to the Sausage-seller, but neither alternative suits the wording. ἐγὼ δ' should mark a change of subject in each case, contrasted with the preceding words. Therefore, since the Sausage-seller speaks 1203, he cannot say ἐγὼ δ' ἐκινδύνευσ', and if Paphlagon says ἐγὼ δ' ἐκινδύνευσ', he cannot say ἐγὼ δ' ὄπτησά γε: yet Paphlagon must say ἐγὼ δ' ὄπτησά γε, because Demos' retort to it is ἄπιθ', which must be addressed to Paphlagon.

I conclude that Demosthenes is on-stage in this scene. The text does not show when he appears, but most probably he comes out of the house with Demos at 728. It was usual for a prosperous citizen to be accompanied by a slave when he went out, and such a slave would not necessarily be spoken to or commented on: so it need not surprise us that there is no reference to Demosthenes between 728 and 1204. Four actors, then, are required here.

### ***Knights* 1254–6**

Demos has ordered Paphlagon to hand over his garland to the Sausage-seller, the Sausage-seller is triumphant, and someone else then hails him as the victor and says "Remember that you've become a man because of me!" and asks for a job as his secretary. Manuscripts and editors are divided: some assign 1254–6 to Demosthenes (or First Slave), others to the chorus. The attribution to Demosthenes must surely be right, for two reasons: a well-to-do cavalryman of the chorus would not want a job as a secretary writing out indictments; and it was Demosthenes who earlier in the play persuaded the Sausage-seller to challenge Paphlagon and told him that he would become a man (177–8).

Russo's objection to having Demosthenes speak 1254–6 is that Aristophanes would not bring a character on-stage merely for this one speech.<sup>13</sup> But if Demosthenes speaks also in 1204, that objection falls, or at least is weakened. If Aristophanes was allowed to use four speaking actors in *Knights*, there is no evident reason why he should have made efforts to avoid doing so. I conclude that he probably did. Nikias and Demos could conveniently be played by the same actor, with a separate actor for each of the Sausage-seller, Paphlagon, and Demosthenes.

### ***Clouds* 886–1104**

As is well-known, our text of *Clouds* is not the one originally performed; it has been partly revised, but the revision seems to be incomplete, and it is unlikely that

it was performed as we now have it. Thus we cannot be sure that it conforms to the requirements for performance. Still, as it stands, it is clear that four actors are needed from 889 to 1104 for Strepsiades, Pheidippides, and the Better and Worse Arguments. In 886–7 Sokrates, after telling Strepsiades and Pheidippides that the Better and Worse Arguments will appear before them, says abruptly ‘I shan’t be here’. It is hard to see any reason for him to exit so suddenly, except that the actor is needed to play one of the Arguments because no more actors are available; and Dover has convincingly argued that there should be a choral song at this point, allowing him time to change his costume and mask.<sup>14</sup> This suggests that Aristophanes did not expect to be able to use more than four speaking actors.<sup>15</sup>

### ***Clouds* 1493–1509**

As the text stands (though here too we cannot be certain that the revised text was performed or performable) four actors are needed to play Strepsiades, Sokrates, and two Students (whether we call one of the Students Khairephon or not).<sup>16</sup>

### ***Wasps* 230–414**

Besides Philokleon, Bdelykleon, and Xanthias there is a Boy who arrives with the chorus at 230 and departs with the other (non-speaking) boys at 414. Nothing shows whether the performer was a boy or an adult; in either case there is no obvious reason why he should not be regarded as a fourth speaking actor.

### ***Wasps* 1412–16**

Philokleon and Bdelykleon are on-stage; as the Bread-seller departs, an unnamed Accuser immediately arrives. Clearly four actors are necessary.

### ***Peace* 1264–7**

It is now generally agreed that only one Arms-dealer converses with Trygaios, while the Helmet-maker and Spear-maker are silent.<sup>17</sup> As the Arms-dealer leaves, some boys appear, of whom two, Lamakhos’ son and Kleonymos’ son, sing and speak. If the performers of those two roles are counted as actors, four actors are needed here.

### ***Birds* 84–92**

Peisthetairos and Euelpides are on-stage. The Servant-bird exits at 84 and Tereus the hoopoe appears at 92. If the same actor played these two roles, he would have to make a very quick change. It would be more convenient if different actors played them, making a total of four actors in this scene.

### ***Birds 837–47***

In the first half of the play *Peisthetairos* and *Euelpides* are inseparable companions, but in 837–47 *Peisthetairos* sends *Euelpides* off “to the air” to perform various tasks; and, although he tells him to return when he has done them, *Euelpides* never in fact reappears. The absence of this major character from the second half of the play is hard to explain except by the hypothesis that the number of actors was limited, and the actor of this part was wanted to play other parts later.

### ***Birds 1565–1693***

*Peisthetairos*, *Poseidon*, *Herakles*, and the *Triballian* god require four actors. The *Triballian* utters only three very short speeches in bad Greek, but the last of them at least is quite intelligible (1678–9),<sup>18</sup> and there is no good reason why the actor who speaks them should not be regarded as a speaking actor.

### ***Lysistrata 77–92***

*Lysistrata*, *Kalonike*, *Myrrhine*, and *Lampito* are on-stage, so that four actors are needed. *Lampito* has brought a *Boiotian* and a *Corinthian* woman with her. When *Lysistrata* asks who they are, the answers come from *Lampito*, not from themselves. The other women comment on their physique and even look inside their dresses, but they utter not a word of protest (contrast *Lampito*’s reaction in 79–84), presumably because no more speaking actors were available to play these parts.

### ***Lysistrata 128–36***

*Lysistrata*, *Kalonike*, *Myrrhine*, and *Lampito* are still all on-stage. *Lysistrata* has just revealed her plan for a sex-strike, but the others are reluctant. ‘Why do you hesitate?’ she asks. *Kalonike* and *Myrrhine* each in turn say that they will not do it, ‘but let the war go on’. *Lysistrata*’s retort ‘Is that what you say, flounder? And just now you said you would even cut yourself in half!’ (131–2) must be addressed to the woman who said that she was willing to cut herself in half like a flounder (115–16), assumed by editors to be *Myrrhine*. It is therefore most natural that it should be *Myrrhine*, rather than *Kalonike* as editors assume, who replies in 133–5, saying ‘Anything else you wish! I’m willing to walk through fire if necessary . . .’ Then *Lysistrata* turns away from *Myrrhine* to someone else: 136 τί δὲ σὺ; ‘What will you do?’ The reply is ‘I’m willing to walk through fire too’. There is no reason why this should not be spoken by *Kalonike*; indeed the balance of the dialogue makes it desirable that she and *Myrrhine* should each offer a positive alternative, just as in 113–16 they each made an offer, and in 129–30 they each gave a negative reaction to *Lysistrata*’s proposal. *Henderson* attributes the response in 136 to another woman who is otherwise silent throughout the scene; but that gives a less satisfactory balance to the dialogue, and would be a less

probable arrangement even if enough actors were available for it. So there is no good reason to postulate a fifth actor here.

### ***Lysistrate* 424–49**

The Proboulos is on-stage, and in 424 he calls for crowbars to lever open the gates of the Akropolis. At this point he addresses one slave only (φέρε); in 426 he turns to a second (ποῖ δ' αὖ σὺ βλέπεις;). In 428–30 he orders the slaves to lever under the gates on one side (ἐντεῦθεν), while he himself will help by levering on the other side (ἐνθενδί); no doubt this means that the slaves are to lever under one leaf of the double gate while the Proboulos levers under the other leaf. This division of labour makes sense only if the total number of men is three, so that having two on one side and one on the other is the most equal division possible; there cannot be more than two slaves on one side while the Proboulos works alone on the other. Furthermore the Proboulos, one of the most senior officials in Athens, presented in this play as a rather self-important character, would not allow other slaves to stand by idle while he himself performed this labour. It follows that there are no Skythian archers or any other slaves on-stage doing nothing;<sup>19</sup> the Skythian archers addressed a few lines later are themselves the slaves who are to do the levering – and there are only two of them.

The realization that there are only two archers makes it easier to understand what happens next. No levering of the gates is actually done, because Lysistrate opens them herself from inside and comes out. The Proboulos is determined to arrest her, and calls for an archer: 433 ποῦ ἔστι τοξότης;<sup>20</sup> She protests (435–6), and he orders the second archer to assist the first (438 καὶ σὺ μετὰ τούτου). Thus at the end of 438 both archers are taking hold of Lysistrate, intending to tie her hands behind her back, when another woman appears and speaks 439–40; I assume that this is Kalonike.<sup>21</sup> The Proboulos calls for another archer (441), and tells him (442 ξύνδησον is singular) to bind Kalonike first. What is the point of προτέραν (442)? All commentators seem to have overlooked the significance of this word. It can only be that this archer is one of the two who had been about to bind Lysistrate. If it were a different archer, as editors generally assume, there would be no reason for him to be told to bind Kalonike before binding Lysistrate.

A third woman, whom I assume to be Myrrhine, then appears and speaks (443–4), and again the Proboulos calls for an archer and orders him to take hold of her (445). This will be the other archer who had been holding Lysistrate. So now one archer holds Kalonike and one holds Myrrhine, and Lysistrate is left free. Thus Lysistrate, not another woman newly appearing, speaks 447–8, and the Proboulos finds that he has no archer available to hold her: 449 ἐπιλέλοιψ' ὁ τοξότης. He has only two archers to arrest three women, and the farcical element of the passage is that the two archers rush to and fro but inevitably always leave one woman free to threaten them. Thus the passage uses a total of four speaking actors (the Proboulos, Lysistrate, Kalonike, Myrrhine) and two silent ones (Skythian archers), not, as Henderson would have it,<sup>22</sup> five speaking and six or more silent.

### ***Lysistrate 727–61***

Lysistrate is on-stage deploring the women's unwillingness to stay in the Akropolis, and three women in succession emerge with various excuses for going home: the First Woman says that she wants to spread out some fleeces on the bed (727–34), the Second that she wants to scutch some flax (735–41), and the Third that she is pregnant and must leave the Akropolis to give birth (742–57). The first two are told by Lysistrate to 'come back' (731) or 'come back here' (738), and evidently obey, but it is not quite clear whether each immediately returns into the Akropolis, going offstage at the end of 734 and 741 respectively, or remains on-stage beside Lysistrate; 'here' (738 δεῦρ) may possibly imply the latter.

The Third Woman does not go off-stage immediately after 757, for she must speak 758–9, 'But I can't even sleep (*or* But also I can't sleep) in the Akropolis, ever since I once saw the guardian snake'. The particles ἀλλ' . . . οὐδὲ . . . show that this is not another woman newly appearing, but the same woman producing a second excuse. Her first excuse refers to an activity (giving birth) which needs to take place elsewhere; her second excuse refers to a difficulty arising in the Akropolis.

Then some other woman chimes in with a similar excuse: 'And I'm dying of insomnia – poor me! – because of the owls calling all the time' (760–1). The words ἐγὼ δ' mark a change of speaker; so this is not the Third Woman continuing. If the First Woman goes off-stage at the end of 734, the same actor could reappear before 760 with a different mask. However, δ' in 760 implies that the speaker is adding to a conversation to which she has been listening, not making a fresh start. It therefore seems more likely that the First and Second Women have remained on-stage, and one of them now adds a second excuse to her earlier one. Henderson says, in his note on 760–1, 'There is no reason why Wife A or Wife B should add this final excuse to the ones they have already given'. On the contrary, since the Third Woman gives two excuses, there is no reason why the First or Second Woman should not do so too. As in the Third Woman's case, her first excuse refers to an activity (spreading out fleeces or scutching flax) which needs to take place elsewhere, and her second excuse refers to a difficulty arising in the Akropolis.

So this passage too is best explained as using a total of four speaking actors (Lysistrate and three other women), not five.

### ***Thesmophoriazousai 457–8***

At the women's meeting Euripides' Relative ('Mnesilokhos') is present, one woman acts as herald, and two other women make speeches (380–432, 443–58); thus four actors are on-stage.<sup>23</sup> The woman who makes the second speech concludes by saying unexpectedly that she must now go to the Agora to make some garlands (457–8). One would expect all the women to stay for the whole meeting, and there seems to be no dramatic reason for Aristophanes to make this woman leave – except that Kleisthenes is going to arrive presently (at 571) to address the meeting. The obvious inference is that the actor playing the garland-maker has to play Kleisthenes too, and thus that no fifth actor is available.

***Thesmophoriazousai* 929–46**

Euripides' Relative and a woman (Kritylla) are on-stage, Euripides exits at the end of 927, and the Prytanis and a Skythian archer enter at 929. However, it is not essential to use five speaking actors, because the archer says nothing in this scene. He can be played by a silent actor here; he exits at 946 (cf. 930 εἰσάγων), and when he reappears at 1001 he can be played by the actor who was previously the Prytanis.<sup>24</sup> The fact that he says nothing in 929–46 is another indication that a fifth speaking actor was not available.

***Frogs* 164–80**

Dionysos and Xanthias are on-stage. Herakles disappears at 164; the Corpse arrives at 170 and departs at 177; Kharon arrives at 180. Even if Dionysos and Xanthias spend some time between lines plodding around the *orkhestra*, it seems unlikely that one actor could change quickly enough to play all three of the other parts. So four actors are probably needed here; five would be more convenient, but are not absolutely essential.

***Frogs* 549–78**

Four actors are required to play Dionysos, Xanthias, the Innkeeper, and Plathane.

***Frogs* 830–1481**

Four actors are required to play Dionysos, Aiskhylos, Euripides, and Plouton.<sup>25</sup> It may seem surprising that Xanthias is not on-stage. In the first half of the play he accompanies Dionysos and is a major character; in the second half one might expect Dionysos still to have his slave with him, but in fact Xanthias never appears after 813. Presumably the actor of Xanthias plays one of the other characters afterwards, and this is another indication that a fifth actor was not available.

***Ekklesiazousai* 1111–12**

The Young Man is dragged off-stage by the Second and Third Old Women, and immediately Praxagora's Slave appears; four actors are therefore necessary at this point.<sup>26</sup> One may wonder why the Young Woman, who successfully saw off the First Old Woman (1037–48), does not try to argue with the Second and Third Old Women too. She seems to disappear after 1055 for no explicit reason. Presumably Aristophanes has no fifth actor available, so that the actor of the Young Woman has to change into the Slave.

***Wealth* 624–6**

Khremylos and Blepsidemos are on-stage, and Khremylos calls to his slave Karion to come out of the house bringing Wealth with him. It is true that Karion and

Wealth say nothing at this point, and so could be played by non-speaking actors for this appearance; but it seems more likely that four speaking actors were used.<sup>27</sup> In later scenes of this play the number of actors required is difficult to ascertain, because of doubt about when the choral interludes occur. Without a choral interlude, five actors would be needed at 1094–7 and four at 1168–72. But editors are probably right to insert XOPOY, at least in the first of those two places, giving actors time to change costumes and masks.

## Conclusion

If we leave aside *Akharnians*, it appears that every extant play of Aristophanes certainly or probably needs four speaking actors, but none needs more than four. In six plays (*Clouds*, *Birds*, *Lys.*, *Thesm.*, *Frogs*, *Ekkkl.*) there is some indication that Aristophanes is manipulating the action or dialogue to avoid using a fifth actor, either by making one character exit before another appears or by keeping silent a character who might be expected to speak. This evidence seems sufficient to establish that the number of speaking actors in a comedy at this period was fixed at four by the rules of the contest. There is no adequate reason to believe that exceptions were made for barbarians, children, or small parts. *Akharnians*, however, remains problematic, since it has two scenes which may be thought to require five actors. It seems that we have to accept one (or more) of the following possibilities.

- 1 These scenes were actually performed without a fifth actor, by making very quick changes in the scene with Amphytheos and the Envoy, and by using dolls for the Megarian's Daughters.
- 2 The rules of the contest were worded so as to permit boys and actors playing barbarians to speak in addition to the fixed number of four speaking actors.
- 3 The rules of the contest were changed in 425 BC; the number of speaking actors allowed in a comedy was five until that year, and four thereafter.
- 4 The text of *Akharnians* which we have is not exactly the script which was performed.

None of these possibilities is really attractive. My own preference is to plump for (1) and to suppose that the number of speaking actors in Old Comedy was always four; but on the evidence which we have the other possibilities cannot be definitely excluded.

## Notes

- 1 I use the following abbreviations for the principal recent discussions. *DFA* = A. W. Pickard-Cambridge, *The Dramatic Festivals of Athens*, second edition revised by J. Gould and D. M. Lewis (Oxford, 1968; reprinted with addenda, 1988). Dover, *Clouds* = K. J. Dover, *Aristophanes: Clouds* (Oxford, 1968). Dover, *Comedy* = K. J. Dover, *Aristophanic Comedy* (London, 1972). Henderson, *Lys.* = J. Henderson, *Aristophanes: Lysistrata* (Oxford, 1987). Russo, *Aristofane* = C. F. Russo, *Aristofane*

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- autore di teatro* (Florence, 1962; reprinted with addenda, 1984). Thiery, *Aristophane* = P. Thiery, *Aristophane: fiction et dramaturgie* (Paris, 1986).
- 2 K. Rees, *The So-called Rule of Three Actors in the Classical Greek Drama* (Chicago, 1908).
  - 3 Russo, *Aristofane*, pp. 150–5; *DFA*, pp. 149–53. This view is held in its most elaborate form by Thiery, *Aristophane*, pp. 40–67. He maintains that the three actors formed a hierarchy, with the Protagonist playing the most important parts, the Deuteragonist the next most important, and the Tritagonist the less important, and that a character who speaks much in one scene and little in another scene (such as Pheidippides in *Clouds*) will accordingly have been played by different actors in the different scenes. No evidence supports this.
  - 4 Now printed, without the attribution to Tzetzes, in *Scholia in Aristophanem, pars I fasc. IA: Prolegomena de Comoedia* (ed. W. J. W. Koster; Groningen, 1975), p. 14. On this passage see also N. C. Hourmouziades, *GRBS* 14 (1973), 186–7.
  - 5 Dem. 21.56–61. For discussion of the law see D. M. MacDowell, *Demosthenes: Against Meidias* (Oxford, 1990), pp. 276–7.
  - 6 On the question of when the Envoy exits, see K. J. Dover, *Maia* 15 (1963), 8–9, reprinted in his *Greek and the Greeks* (Oxford, 1987), p. 290.
  - 7 *DFA*, p. 150; cf. Dover, *Comedy*, p. 27 and *Maia* 15 (1963), 9 n. 8, reprinted in *Greek and the Greeks*, p. 290 n. 8.
  - 8 Russo, *Aristofane*, pp. 226–7, suggests that the roles of children were taken by boys who were specialists in singing. But the Megarian's Daughters do no singing.
  - 9 Henderson, *Lys.* p. 177.
  - 10 Russo, *Aristofane*, pp. 139–40, and *DFA*, p. 150 n. 1, comment on lines 1254–6; Dover, *Comedy*, p. 94, comments on line 234; Thiery, *Aristophane*, p. 43, comments on both those passages.
  - 11 Here for convenience I use the names Demosthenes and Nikias for the two slaves who appear at the beginning of the play, without entering into discussion of the question how far they are to be identified with the generals of those names. At any rate 54–7 implies some degree of identification of one of them with Demosthenes.
  - 12 B. B. Rogers, *The Knights of Aristophanes* (London, 1910), p. 168.
  - 13 Russo, *Aristofane*, pp. 139–40.
  - 14 Dover, *Clouds*, pp. lxxvii, xcii – xciii, 208, and *Comedy*, pp. 26–7.
  - 15 Thiery, *Aristophane*, p. 45, suggests that Strepsiades exits at 888 and reappears at 1105, enabling this actor to play the other Argument; this means postulating the loss of another choral song between 1104 and 1105. The partly-revised state of *Clouds* makes it impossible to rule out this suggestion, but the text as we have it does not indicate that Strepsiades exits here.
  - 16 Dover, *Clouds*, pp. lxxvii, 266–7.
  - 17 See the commentaries of M. Platnauer (Oxford, 1964) and A. H. Sommerstein (Warminster, 1985) at line 1210.
  - 18 *DFA*, p. 151, is wrong to call them 'nonsense'.
  - 19 An anonymous referee for *CQ* objects that Skythian archers could not do this work because they would be carrying weapons: bows and arrows, and possibly whips and swords (cf. *Thesm.* 933, 1125–7). But this is unconvincing; they can easily lay their weapons down, and it is much more likely that they do so than that the Proboulos labours to save them the trouble.
  - 20 This expression, almost exactly repeated in 441 and 445, does not mean that he does not know where the archers are. 77015 is used with a person in the nominative as an order, meaning 'Come here!', e.g. *Lys.* 184, 1114, *Clouds* 633, *Wasps* 935, 976, *Peace* 1295, *Birds* 353, 863, *Frogs* 1305, *Ekkl.* 734. With a thing it means 'Bring!', e.g. *Wasps* 995, *Peace* 1059.
  - 21 There is no strong reason why the speakers of 439–40 and 443–4 should not be respectively Kalonike and Myrrhine, the same speaking characters who entered the



Akropolis with Lysistrate at 253. It is no real objection that one of them is later addressed as an old woman (506 ὄ γράῳ), since the Proboulos there is being rude to her. We can, if we wish, imagine Kalonike as being in her forties; she still enjoys sex and smart dressing (51, 133–5, etc.), but she is probably older than Lysistrate, whom she addresses affectionately as ‘child’ (7). So I assume that the speakers of 439–40 and 443–4 are Kalonike and Myrrhine, as do Rogers and Coulon in their editions. But it makes no difference to the rest of my argument if any reader prefers to assume, with Henderson and Sommerstein in their editions, that they are two other women.

- 22 Henderson, *Lys.* pp. xlii, 117, 123. On p. 126, and earlier in *ZPE* 34 (1979), 31, Henderson even envisages the presence of a ‘troop’; but that is incompatible with the Proboulos’ complaint in 449 that he has run out of archers.
- 23 Dover, *Comedy*, p. 167, rightly rejects the possibility that the herald is the leader of the chorus.
- 24 Cf. Russo, *Aristofane*, pp. 153–4; *DFA*, p. 152; Dover, *Comedy*, p. 27.
- 25 Plouton must appear by 1414 at the latest. In *CQ* 9 (1959), 261–2, I postulated the loss of about three lines including an announcement of his arrival at that point, but Dover, *Aristophanes: Frogs* (Oxford, 1993), p. 295, argues that he is present from 830 onwards.
- 26 Thiery, *Aristophane*, p. 49, accepts Bergk’s conjecture that a choral interlude has been lost from the text after 1111, enabling one of the actors who exit at that point to change into the Slave. But there is no manuscript evidence for this, and it should probably be rejected; cf. M. Vetta, *Aristofane: Le Donne all’assemblea* (Milan, 1989), p. 267.
- 27 *DFA*, p. 153, attempts a distribution of all the parts in this play to only three actors, assuming that the part of Wealth was divided between two actors, but admits that a four-actor distribution is more likely.

# Clowning and slapstick in Aristophanes

(Originally published in Redmond, J. [ed] *Themes in drama, X: Farce*, 1–13, Cambridge 1988)

The chief character of Aristophanes' *Wasps* is an old man named Philokleon ('Love Kleon'), who has a strange passion for sitting on juries. His son Bdelykleon ('Loathe Kleon') is trying to cure him of this passion, or at least prevent him from indulging it; and at the beginning of the play he has shut his father up in their house to stop him going to the lawcourt. The door is barred; nets cover the windows. The time is early morning. Two slaves, Xanthias and Sosias, are on guard, or are supposed to be on guard, outside the door; they have been dozing off at intervals, and also chatting so as to make the situation clear to the audience. Bdelykleon, the son, has been sleeping on the flat roof; from there, when he gets up, he has a bird's-eye view of the whole establishment, including the yard and the kitchen, which are at the back of the house, out of sight of the audience. At line 136 he stands up on the roof and calls down to the slaves on the ground outside the door.<sup>1</sup>

*Bdelykleon.* Hey, Xanthias! Sosias! Are you asleep?

*Xanthias.* O-o.

*Sosias.* What is it?

*Xanthias.* Bdelykleon's getting up.

*Bdelykleon.* Look sharp there, one of you, and run round here.

My father's just gone out into the kitchen.

He's crouching down and scuttling like a mouse:

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He'll get out through the waste-hole of the sink!

You, lean against the door there.

*Xanthias.* Right you are, sir.

*Bdelykleon.* Good heavens! What's that noise the chimney's making?

Hey, who are you?

*Philokleon.* Me? Just a puff of smoke.

*Bdelykleon.* You, smoke? What wood are you from?

*Philokleon.*

Syco-more.<sup>2</sup>

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*Bdelykleon.* Oh yes, that is the sharpest kind of smoke!  
 Go back in, won't you! Where's the chimney-board?  
 Get down! I'll put a log on you as well.  
 There now! You'll have to think up something else!  
 But really, I'm the unluckiest man alive: 150  
 People will say that I'm the son of Smoky!<sup>3</sup>  
*Philokleon.* Hey, boy!  
*Xanthias.* He's pushing at the door.  
*Bdelykleon.* Press hard  
 And strong against it; I'm just coming too.  
 And take care of the fastening and the bar:  
 See that he doesn't gnaw out the locking-pin! 155  
*Philokleon.* What are you doing? You scoundrels, let me go  
 To try Drakontides,<sup>4</sup> or he'll get off!  
*Xanthias.* Would that upset you?  
*Philokleon.* Yes! The oracle  
 At Delphi once predicted that, if I  
 Let anyone get off, I'd shrivel up! 160  
*Xanthias.* Apollo save us! What a prophecy!  
*Philokleon.* I implore you, let me out – or else I'll burst!  
*Xanthias.* Never, not on your life, Philokleon!  
*Philokleon.* Well then, I'll gnaw the net through with my teeth.  
*Xanthias.* You haven't any teeth.  
*Philokleon.* Oh, woe is me! 165  
 How shall I slay thee, how? Give me a sword  
 Without delay – or else a sentence-tablet.  
*Bdelykleon.* Malice aforethought, that's what this man has!  
*Philokleon.* Oh, not at all. I want to take the donkey  
 And sell it, with its panniers as well. 170  
 It's market-day.  
*Bdelykleon.* But I can go myself  
 And sell it, can't I?  
*Philokleon.* Not as well as I can.  
*Bdelykleon.* Much better.  
*Philokleon.* All right, take the donkey out.  
*Xanthias.* What an excuse, real disingenuous,  
 To make you let him out!  
*Bdelykleon.* He didn't catch 175  
 A fish this time though; I saw through his trick!  
 I'd better bring the donkey out myself,  
 So that the old man can't peep out again.  
 Why are you crying, Neddy? Just because  
 You're being sold today? Gee up! Why grumble? 180  
 Unless you're carrying an Odysseus!<sup>5</sup>

*Xanthias.* Blimey!  
 He has got someone underneath, down here!  
*Bdelykleon.* What! Let me see.  
*Xanthias.* There.  
*Bdelykleon.* What on earth is this?  
 Who are you, sir?  
*Philokleon.* No-man.  
*Bdelykleon.* No-man? From where?  
*Philokleon.* From Ithaka; son of MacRunaway. 185  
*Bdelykleon.* No-man indeed! You'll get no joy from that!  
 Pull him from under there at once!  
 The scoundrel, To get down there! He looks to me as if  
 A summons-witness<sup>6</sup> had produced a foal!  
*Philokleon.* Leave me alone, or else I'll fight you for it! 190  
*Bdelykleon.* Fight us for what, then?  
*Philokleon.* For a donkey's shadow.<sup>7</sup>  
*Bdelykleon.* A bad'un, you – far gone in skill, no chicken!  
*Philokleon.* Me, bad? No, I'm in prime condition now!  
 Can't you tell that? You will, though, when you taste  
 An undercut of an old juryman! 195  
*Bdelykleon.* Get back indoors, you and the donkey too!  
*Philokleon.* Help, fellow-jurymen and Kleon! Help!  
*Bdelykleon.* We'll shut the door, and you can shout inside.  
 Here, you, pile lots of stones against the door,  
 And put the locking-pin back in the bar, 200  
 And when you've got that on the door, look sharp  
 And roll the mortar up against it.  
*Xanthias.* Ow!  
 Where did that clod of earth fall on me from?  
*Bdelykleon.* Perhaps a mouse just dropped it down on you.  
*Xanthias.* A mouse. Not likely! It's some animal 205  
 Under the tiles up there, a jury-roofster!  
*Bdelykleon.* Oh dear! The man's converted to a sparrow!  
 He'll fly away! Where, where's my bird-net gone?  
 Shoo! Shoo! Get back! Shoo! It would be less trouble  
 To guard Skione<sup>8</sup> than to guard this father! 210  
 (Aristophanes, *Wasps* 136–210)

This scene, like many scenes in Aristophanes, is a compound of several elements, each of which will repay study. First, there are the elements of plot and character, and the contribution which this scene makes to the development of the play as a whole. The main theme of *Wasps* is the conversion of Philokleon; and this scene is vital to its development, because it is here that his character before conversion is first displayed to the audience. Secondly, there are the literary allusions, especially the parody of tragic fury (line 166). Thirdly, there is the verbal

humour, such as the puns in, lines 145 and 589. Fourthly, there are the topical allusions, including references to well-known individuals who were probably in the audience when the play was performed, such as Kleon (line 397) and Drakontides (line 157). In this paper I am leaving aside all those aspects of the scene in order to concentrate on a fifth one, the comic movements and activities of the characters.

This is in some ways the hardest one to study, because of the lack of evidence. The preserved texts of ancient plays have (with very few exceptions) no stage directions. They tell us what the actors said or sang; they do not tell us what the actors did. No doubt the director of the performance (who in most cases was the author himself) gave the actors oral instructions about their movements, but no written record of them survives. That of course is the reason why the stage action of Greek drama was largely ignored until quite recently. The texts of Greek plays have been carefully studied by classical scholars ever since the Renaissance, but they have generally been studied as poetry, for their linguistic and literary qualities. In the twentieth century more attention has been paid to their content, moral or religious or political or social; but it is only in the last twenty years or so that they have begun to be analysed from a theatrical point of view. Such analysis is, we now see, essential for a proper understanding of the plays. Greek dramatists wrote their plays for performance. They were not writing for readers; they intended their work to be heard and seen, and at certain points in a play a dramatic effect may be obtained by action rather than by words. That applies sometimes even in a tragedy: for example, the mere appearance of Medea in her dragon chariot shows her triumph far more effectively than any of the words that she speaks from it. But it applies much more often in a comedy, and most of all in a farcical scene like this passage of *Wasps*.

The main point which Aristophanes wishes to convey to the audience in this scene is that Philokleon is a lively old man whose energy and ability are misdirected and hard to suppress; and Aristophanes wishes not merely to make this point clear, but to make it funny. The point is stated in words, certainly; but in performance it is the action which makes it most forcibly and most effectively. The audience sees Philokleon trying to get out, and Bdelykleon and the slaves making frantic efforts to keep him in. Most people take things in through their eyes more immediately than through their ears; and so an audience understands the point of this scene primarily from watching what the characters do, and only secondarily from the words which we now have in writing. It is the activity which is dramatically the most important part of this scene, and also the funniest part, and which makes it a brilliant piece of farce.

As readers, then, we must try to reconstruct the activity. First, at line 137, the two slaves, who have been sitting or lying on the ground, have to jump up and rush about when Bdelykleon shouts to them; this draws the audience's attention and creates a sense of urgency and expectancy. Sosias at line 141 rushes away to the back of the house (and does not reappear in this scene); Xanthias at line 142<sup>9</sup> rushes to the front door and leans against it as if he can hardly keep it shut. We expect to see somebody bursting out of the door, but what happens? Instead of

popping out of the door Philokleon pops out of the chimney, pretending to be smoke. Bdelykleon, on the roof, rushes over to the chimney, pushes Philokleon back inside, puts a chimney-cover on top of him, puts a piece of wood on top of that – and immediately Philokleon is starting to burst out of the door again (line 152). Xanthias rushes back to the door, and Bdelykleon starts coming down from the roof (after line 155); but before he reaches the ground, Philokleon has already left the door and is looking out of the first-floor window (line 156). We can tell from the text that he must be looking out of the window, because his egress is obstructed by the net covering the window (line 164); and we know the window must be on the first floor, not on the ground floor, because in a later scene, when he actually does get out of the window, he has to let himself down by a rope (lines 379–80).

So far we have a type of activity which I call ‘jack-in-the-box clowning’. A man pops up into view, is pushed back, and immediately pops out again. Putting a lid on someone is a very effective type of clowning, and in this connection Aristophanes’ idea of using the chimney-board is brilliant. A chimney-board was evidently a lid put on top of a chimney to keep out the rain and the wind when the fire was not alight. When Bdelykleon puts this lid on top of Philokleon (line 47), and then puts a piece of wood on top of that (line 148), that gives a physical and visual impression that Philokleon is being squashed down into the house bit by bit.

But there is more to it than this: it is not just straightforward jack-in-the-box clowning, because Philokleon does not always pop up in the same place. This adds an element of surprise, because you never quite know where he is going to be next. First he is out of sight at the back of the house (line 139); then he is rattling the front door (line 142). Where will he be next? The window seems the most obvious other place; but no, he’s popping out of the chimney (line 144). Well, surely the next place must be the window – no, he’s back at the door again (line 152); that caught you out, because you didn’t realize he might try the same place twice. If he’s going to and fro like that, the next place ought to be the chimney again – no, now at last he is at the window after all (line 156)! All this movement from one point to another means that the audience is kept in a continuous state of suspense and expectancy, wondering just where Philokleon’s next appearance is going to be. It also means that Bdelykleon and the slaves, instead of standing still, are continually rushing about, so that the stage picture presented to the audience is not a static but a lively one.

Next follows the passage with the donkey. Philokleon urges Bdelykleon to take the donkey out to market (line 173). The donkey is evidently kept in the yard, or in a stable opening off the yard. The door of the house, which the audience can see, is the door from the street into the yard (the rooms of the house being grouped around the yard); so this door is the one by which the donkey must be brought out. At the end of line 178 Bdelykleon unbars and opens the door. Bdelykleon goes in, and immediately comes out again leading the donkey.

The first thing to notice about the donkey is that, in performance, it is not a real donkey; it is two actors inside a donkey costume. This must be so, because it has

to bray on its cue to prompt Bdelykleon's question 'Why are you crying, Neddy?' (line 179) and a real donkey could not be relied on to do that.<sup>10</sup> So it is a 'pantomime donkey', and that by itself would look grotesque and laughable. But it is not by itself; it is carrying Philokleon, who somehow or other is clinging to its underside.

How can a man cling to the underside of a donkey? I suppose Philokleon may perhaps have his feet through the donkey's harness at the front end; with his hands he holds on to the panniers on each side; and his head hangs back, so that he looks upside down between the donkey's back legs. That, or something like that, seems to be the way in which he could hold on. In this position he conducts the polite conversation of lines 184–6. His position is quite exceptionally awkward and uncomfortable; but he has to stay there, because if he did not he would ruin his plan of escape. So the funniest aspect of this passage is not the dialogue (though the parody of the Homeric joke about No-man is quite amusing) but the appearance both of the donkey and of Philokleon, involving two types of clowning: actors dressed up in a grotesque costume, and a man stuck in an awkward position which he can't get out of.

Philokleon is pulled away from the donkey and pushed back inside the house (line 198), but after that he makes yet another attempt to escape by slipping under the tiles of the roof. But this is not just another instalment of the jack-in-the-box clowning which we saw earlier in the scene. The emphasis is different, because after line 198 the audience does not see Philokleon. Visually the centre of attention is Xanthias, who is bombarded first with orders and then with dirt. He is told to collect some stones and pile them up against the door (line 199). He starts out to do that, but before he has had time to do it he is told to put the bar and pin back in place (line 200). He stops in his tracks and comes back to do that, but then he is told to go and fetch the big mortar to set against the door (line 202). Before he has had time to do that, he has been hit on the head by a lump of dirt (line 203). The fun here is in seeing Xanthias rushing about, first one way and then another, achieving nothing at all, not knowing where he is going, what he is doing, or what's hit him. Bdelykleon all this time is just standing by doing nothing, with his hands (so to speak) in his pockets. He shows no sympathy at all, even when Xanthias has been hit on the head: 'Perhaps a mouse just dropped it down on you' (line 203). The clowning which we have here is in fact another instance of a man in an uncomfortable situation. Philokleon underneath the donkey was in an uncomfortable static position, from which he could not move; Xanthias is uncomfortable because he is made to run this way and that and suffers aerial bombardment too; but in both cases it is the character's unenviable situation which makes the audience laugh.

By line 207 Bdelykleon and Xanthias can apparently both see Philokleon: they say that he is creeping about under the tiles of the roof, that he is turning into a sparrow and is going to fly away. The audience cannot see him though. We can be sure of this, both because he is specifically stated to be under the tiles, not on them (line 206), and also because he speaks no lines at this point; if Philokleon were in view, we may be sure he would not keep his mouth shut. So all that the

audience can see is Bdelykleon and Xanthias gaping upwards. Bdelykleon calls for a bird-net, but of course nobody brings him one, so that he and Xanthias just have to wave their arms about and shout 'Shoo! Shoo!' If the audience could see Philokleon this might be quite amusing, but it is funnier when all that the audience sees is two men excitedly waving their arms about and shouting 'Shoo!' at nothing at all. A perfectly normal and reasonable action looks funny if you remove its object. So here we have yet another type of clowning, the type in which a man solemnly devotes a great deal of attention and energy to something which isn't there.

So far all my comments have been directed at one scene, and I have been trying to show that even a single scene may contain clowning of several distinct types. Now I want to fit this scene into a wider context by alluding briefly to some scenes of clowning in other plays of Aristophanes, and by making some general comments about the types of clowning which he uses.

The commonest and most basic type of clowning in Aristophanes is hitting. There is hardly any of his plays in which someone does not at some point beat someone else. In *Clouds*, for instance, Strepsiades attacks one of his creditors with a goad (lines 1297–1302). In *Frogs* there is a scene in which Aiakos flogs Dionysos and Xanthias alternately to discover which of them feels pain (lines 635–73). In *Birds* Peisthetairos beats up a whole series of intruders into Clouduckooland. Besides the passages of straightforward hitting there is a nice variation at one point when he is bothered by two intruders simultaneously, an inspector' and a decree-seller; whenever he beats and chases away one of them, the other reappears behind him, so that he has to keep dashing from one side to the other, beating them each in turn (lines 1044–55). When we read these scenes, or discuss them in a lecture room, they sometimes seem unfunny or even coarse. But in performance there can be no question about their power to amuse an audience. Later drama too has found hitting an effective ingredient of comedy, all the way from Shakespeare (for example, Falstaff getting beaten on Gadshill in *I Henry IV* II, ii) down to the Punch and Judy show, which contains a great deal of hitting and has been popular for a very long time. But why is it effective? Why does it amuse people to see someone hitting someone else on a stage?

This is a psychological question, and an interesting attempt to answer it has been made by Eric Bentley in *The Life of the Drama*. He refers to Freud's explanation of jokes, and he propounds a theory of what he calls 'comic catharsis', by which he means a release from inhibitions. Farce, he says, 'offers a special opportunity: shielded by delicious darkness and seated in warm security, we enjoy the privilege of being totally passive while on stage our most treasured unmentionable wishes are fulfilled before our eyes'.<sup>11</sup> It is easy for a classicist to shoot a few holes in this description. In answer to the comment about delicious darkness and warm security, one may point out that all the plays of Aristophanes were performed in an open-air theatre, at a cold time of year (either the winter or the early spring), in broad daylight, so that the spectators could see one another as well as the actors. More importantly, the term 'catharsis' in this context is vague and misleading. 'Catharsis' means 'cleansing' or 'purgation', and,



as everyone knows, it was first used in connection with drama by Aristotle, who says that tragedy produces a purgation of pity and fear. What Aristotle wrote about comedy is lost, but from later Greek writers who probably followed his views it seems likely that he said that comedy produced a purgation of enjoyment and laughter.<sup>12</sup> There is no evidence that Aristotle associated this with a release from inhibitions.<sup>13</sup>

Nevertheless, if we leave aside the expression 'comic catharsis', Bentley's theory that farce gives the audience a release from inhibitions is a valuable one. I should rephrase it like this. In ordinary life we (that is, normal adults) have learned to restrain the expression of our feelings, especially aggressive feelings and sexual wishes. For example, we should like to hit people who have power over us, because they are officials, or because they are our creditors, or because they are experts in a field in which we ourselves are ignorant; we should like to hit them, but we do not, we inhibit ourselves. In a farce we can see such hitting being done on the stage: we see Peisthetairos beating the pompous officials, and we see Strepsiades beating his creditor, and this relieves our feelings, so that we do not need to behave like that ourselves. If we did behave like that in real life we should feel guilty, but when we know it is only a play we need not feel guilty. We have no qualms about the outcome, not only because the actors are just pretending, but also because in a farce the characters are never seriously hurt. A man who is knocked down in real life may break his leg, but a man who is knocked down in a farce just bounces up again like a ping-pong ball.

But although this theory of release from inhibitions seems plausible when applied to scenes in which one character hits another, there are other types of clowning in Aristophanes which it does not fit so well. Take the prologue of *Peace*: Trygaios sitting astride a flying beetle, suspended in mid-air by the stage machine, wobbling precariously. He seems about to fall off at any moment; but in fact he does not, he lands safely. This is a splendid piece of clowning, which many people find the most memorable incident in the whole of that play. But here it is hardly convincing to say that we laugh because the sight releases our pent-up feelings of aggression. To meet this kind of case the Bentley theory must be, if not entirely abandoned, at least drastically modified.

Perhaps we may seek an explanation along these lines. In ordinary life we sometimes find ourselves in difficult or unpleasant situations, either because of circumstances beyond our own control or because we ourselves have done something stupid. In a farce we see other people in such situations. This makes us feel comfortable, and superior, and pleased that we are not in that situation ourselves. 'Thank goodness I've never had to balance in mid-air on the back of a beetle!' And so it is with several other well-known Aristophanic scenes. In *Clouds* we see Socrates suspended in his basket to look at the sun: we may say to ourselves 'Thank goodness I've never been so silly as to do that!' Dionysos, in *Frogs*, tries to row Charon's boat, gets into a muddle, and sits on top of his oar: 'Well,' says the spectator to himself, 'I may not be a rowing blue, but at least I'm not that incompetent.' This kind of clowning is effective because it gives the audience a feeling of comfortable superiority.

Some of these scenes get their comic effect not so much from the activity of the characters as from their appearance when stationary; and, as another aspect of comic appearance, it is worth noting that a comic dress can make an important contribution to clowning and to farce in general. Aristophanes probably made much use of comic costumes. One great asset which he could exploit was the Athenian tradition of animal choruses and characters.<sup>14</sup> An actor dressed as an animal can very easily produce an absurd effect. I have already mentioned Philokleon's donkey in *Wasps*; a later scene of the same play has leading parts for two dogs, and there is another donkey in *Frogs*. Then there are all the bird characters in *Birds*, and the chorus of frogs in *Frogs* – at least, I think so; some editors maintain that this chorus is only heard from behind the scenes, but I am convinced that the frogs were actually visible, clumsily hopping about, and that this was a major element in the comic entertainment.<sup>15</sup>

For farcical purposes, however, the more significant kind of dressing-up is the kind by which a human character changes his appearance in the course of the play. It may signify that the character himself changes in some way; thus Philokleon in *Wasps* puts on expensive and luxurious clothes when he gives up his old way of life as a juror. More often the change of costume does not mark an actual change in the character, but is a deliberate disguise: he wants people to think he is someone else, and a farcical situation develops because his behaviour does not fit his appearance and the disguise is a hopeless failure. The two best examples are the cowardly Dionysos dressed as the fearless Herakles in *Frogs*, and the old man dressed as a woman in *Thesmophoriazousai*.

It is also possible for a character to change his appearance without changing his costume. This brings me to another type of clowning which has always been very popular, one that I call 'custard-pie slapstick'. This is the type in which one character throws at another something harmless, soft, and messy. It is not necessarily a custard pie; it can be anything liquid or splodgy. The essential thing is that it drastically changes the appearance of the victim, and leaves him looking very uncomfortable, without doing him any actual injury.

The Athenians did not have custard. They did have some milk products fairly similar to custard, but at the time of the Peloponnesian War I suppose those were too scarce and expensive to be thrown about. Nevertheless there is one scene in Aristophanes which does clearly contain clowning of the custard-pie type. It is a most interesting example, not least because it is performed entirely by the chorus, not by individual characters. It is in *Lysistrata*, and it is the chorus's entrance scene, the *parodos*.

The chorus of *Lysistrata* is a divided one; half of it consists of old men, the other half of old women. First we see the old men. They come trudging along, carrying logs of wood and fire in braziers. They explain, in song and in conversation with one another, how they have heard that a gang of women (brazen hussies!) have occupied the Akropolis and barricaded the Propylaia. The younger men presumably are all away at the war, and so instead these old men have come to burn down the wooden doors of the gateway and force the women out. They put down their logs and start trying to set light to the doors. But then along come the

old women, carrying buckets of water. They know that the younger women have occupied the Akropolis, and now they have heard that the old men are intending to set fire to it; so here they come to the rescue! With water slopping out of their buckets as they struggle along, they totter into and across the *orkhestra* until they come face to face with the old men. And the following dialogue ensues, with, I imagine, one man and one woman speaking on behalf of all the rest.<sup>16</sup>

- Men.* Well, here's an unexpected thing appeared on the horizon:  
A swarm of women, don't you see? They're coming to the rescue!
- Women.* You've got the wind up have you? Why? You ain't seen  
nothing so far!  
There's more of us to come, you know – ten thousand times this  
number! 355
- Men.* Here, Phaidrias, shall we allow these women's noise and chatter?  
I think someone should wallop them, and break his stick upon them.
- Women.* We'd better put our buckets down, and stand them on the  
ground here.  
If someone's going to start a fight, we'll need to have our hands free.
- Men.* What they should have is two or three good slaps on all their  
faces, 360  
Like Boupalos'<sup>17</sup> once got, remember? That would stop their talking.
- Women.* All right then, someone, hit me! I'll stand here and let you do it.  
When next a bitch meets *you*, she'll find you've got no more virility!
- Men.* You hold your tongue, or with my stick I'll knock out your senility!
- Women.* Just take one step and touch Stratyllis with your little  
finger – ! 365
- Men.* What if I smash her with my fist? What damage will you do me?
- Women.* I'll use my teeth to reap a crop: I'll bite your lungs and guts out!
- Men.* Of all the poets on this earth, Euripides is wisest:  
There really is no creature quite as shameless as a woman!
- Women.* I think it's time we picked our water-buckets up, Rhodippe. 370
- Men.* And why, you fiend, have you thought fit to come up here with  
water?
- Women.* And why have you with fire, you tomb? To get yourself  
cremated?
- Men.* My purpose is to light a pyre and burn up your companions.
- Women.* My purpose is to quench your pyre; this water's meant for  
dousing.
- Men.* You think you're going to douse my fire?
- Women.* You'll soon see what will happen. 375
- Men.* I shan't waste time; I've half a mind to take this torch and  
roast you.
- Women.* Have you some soap by any chance? I'll go ahead and  
bath you.
- Men.* You're going to bath me, you old hag?

*Women.* Just like a blushing bridegroom.  
*Men.* You hear the brazen things she says?  
*Women.* I'm just as free as you are.  
*Men.* I'll make you stop this shouting now.  
*Women.* You're not on jury service. 380  
*Men.* Set fire now to the woman's hair!  
*Women.* It's your turn, river-water!  
*Men.* Oh bloody hell!  
*Women.* It wasn't warm?  
*Men.* What, warm? Stop! What are you doing now?  
*Women.* I'm watering you, to make you grow.  
*Men.* I'm shivering and withering! 385  
*Women.* How lucky that you've got a fire! Just what you want  
for warming.

(Aristophanes, *Lysistrata* 352–86)

The dialogue here makes the action quite clear. After a steady crescendo of abuse, the women pick up their buckets, they say they are going to give the men a bath, the men bluster and advance, and then – sploosh! and the men are wet through, with their clothes clinging to them, and water trickling from their hands on to the ground, howling and shivering.<sup>18</sup>

The sight of a man who is soaking wet is funny. It is funny because he is obviously very uncomfortable, and yet we know that it is not going to do him any serious harm, especially in a sunny climate, where he will dry off in a few minutes. Water in fact is a very suitable substance for custard-pie slapstick. There are plenty of modern films in which it is used in this way. In a modern indoor theatre water is more inconvenient to use, because it may leave you with puddles on the stage for the rest of the play with no sun to dry them up. Still it is used in modern theatres sometimes, for instance in Henry Livings' play *Eh?*, in which the chief character empties a bucket of water over his wife.<sup>19</sup> In *Lysistrata* it is the other way round: the women throw water over the men. And this perhaps is better; the men are physically stronger, and it is more satisfying to see the weaker party getting the best of it. If you have ever secretly wished to empty a bucket of water over some pompous blustering person, you will get great enjoyment and satisfaction from seeing it done at a performance of *Lysistrata*. And since the main theme of the play is the women's rebellion against the men, this scene is a clear example of a piece of slapstick used not just to provide incidental amusement, but to convey visually an important dramatic point.

There are of course many other passages of clowning and slapstick in Aristophanes which I have not mentioned; this paper is not to be taken as a comprehensive account of the subject. But even from these few examples I think it is possible to see how it may be studied and analysed. The aim of Aristophanes was to entertain and impress his audience; and when he included some clowning or slapstick in a play, he did so because he believed that it would have that effect. If we ask why it was effective, that is a psychological question about the audience.

Strictly it is a question about the ancient Athenian audience; but in this matter I see no reason to suppose that there was any great difference between an ancient audience and a modern one, and I believe that we can attempt to answer the question by observation of modern audiences, including ourselves when we go to see a farce.

Clowning or slapstick always involves someone having an unpleasant experience, and Aristophanes, it has been said, is a master of comic suffering.<sup>20</sup> But the nature and cause of the suffering vary. It may be inflicted on him by another character, who hits him or squashes him down (jack-in-the-box clowning) or throws something at him (custard-pie slapstick). Alternatively he may bring the experience on himself by his own clumsiness or stupidity, by putting on inappropriate clothes or by mishandling some physical object (like Dionysos making his incompetent attempt to row the boat) or by getting into a precarious location (like Philokleon hanging on to the donkey). The spectator laughs out of a sense of relief and superiority, because he is not in the uncomfortable situation himself. When the unpleasant experience is inflicted by another character, the spectator may feel a sense of identity with the aggressor, and so feel a release from the inhibitions which generally repress his own aggressiveness (by what Bentley calls ‘comic catharsis’); but that cannot be true in the cases in which there is no aggressor. What is true in every case, however, is that the victim does not suffer any lasting harm; a victim who did suffer lasting harm would evoke sympathy rather than laughter. These are features of clowning and slapstick in modern plays too; and the fact that we find them already present in Aristophanes justifies us in calling him the father of farce.

## Notes

- 1 The translation is based on my own edition of the Greek text (Oxford University Press, 1971). A few different readings are adopted in the edition by A. H. Sommerstein (Warminster: Aris and Phillips, 1983, with a prose translation), but they do not affect the matters discussed in this article. Comment on details of the scene may be found both in my edition and in Sommerstein’s. On the demands made on the actor playing Philokleon, see K. McLeish, *The Theatre of Aristophanes* (London: Thames and Hudson, 1980), pp. 115–17.
- 2 The Greek is a pun on ‘fig-wood’ (σύκινος) and ‘sycophant’ (a mercenary or malicious prosecutor). The translation ‘sycomore’ is taken from H. Van Daele’s French translation of the play in the Budé series (Paris, 1924).
- 3 ‘Smoky’ was the nickname of an earlier comic dramatist, Ekphantides.
- 4 Drakontides was evidently a man awaiting trial in 422 BC, but his identity is uncertain.
- 5 Lines 179–85 parody the myth of the escape of Odysseus from the Cyclops, best known from Book 9 of the *Odyssey*.
- 6 The Greek is a pun on κλητήρ, meaning both ‘donkey’ and ‘summons-witness’.
- 7 ‘A donkey’s shadow’ was a proverbial phrase for something not worth arguing about.
- 8 Skione, a town in northern Greece, was at present being besieged by the Athenians.
- 9 I assume here that it is correct to attribute to Xanthias all the lines in 142–210 which are spoken by a slave. This cannot in fact be proved. There are many passages of Aristophanes in which the attribution of lines to speakers is problematical, and often a problem of attribution is entangled with a problem of staging. If Sosias should be

thought to reappear here (after line 155, for example), that would affect details of my reconstruction but not the general principles.

- 10 Cf. P. D. Arnott in *Greece & Rome*, 6 (1959), 178–9.
- 11 Eric Bentley, *The Life of the Drama* (London: Methuen, 1965), p. 229.
- 12 See especially the *Tractatus Coislinianus* (in *Prolegomena de Comoedia*, ed. W. J. W. Koster, Groningen, 1975, p. 64): κωμωδία . . . δι' ἡδονῆς καὶ γέλωτος περαίνουσα τὴν τῶν τοιούτων παθημάτων κάθαρσιν. Cf. Richard Janko, *Aristotle on Comedy* (London: Duckworth, 1984), pp. 143–4 and 156–60.
- 13 Purgation of anger or hatred was probably regarded by Aristotle as a function of tragedy, not of comedy. Cf. Janko, *Aristotle on Comedy*, pp. 160–1. The best attempt to apply the notion of 'comic catharsis' to Aristophanes is that of D. F. Sutton, *Self and Society in Aristophanes* (Washington: University Press of America, 1980), pp. 69–82.
- 14 Cf. G. M. Sifakis, *Parabasis and Animal Choruses* (London: Athlone, 1971).
- 15 I have discussed the appearance of the chorus of frogs in *Classical Review*, 22 (1972), 3–5. A different opinion is maintained by R. H. Allison in *Greece & Rome*, 30 (1983), 8–20; cf. also D. A. Campbell in *Journal of Hellenic Studies*, 104 (1984), 163–5.
- 16 The translation is based on V. Coulon's edition of the text in the Budé series (Paris, 1928). The metre is intended to represent the iambic tetrameters of the original.
- 17 Boupalos was a sculptor at Klazomenai in the sixth century BC, lampooned in the poems of Hipponax. The reference here is probably to one of those poems.
- 18 There is no doubt that all the men get soaked, not just their one spokesman; that is clear from lines 399–402.
- 19 Henry Livings, *Eh?* (London: Methuen, 1965), p. 81.
- 20 E. Olson, *The Theory of Comedy* (Bloomington, Ind.: Indiana University Press, 1968), p. 75.

# The nature of Aristophanes' *Akharnians*

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The problem which in recent years has generally been regarded as the main problem about *Akharnians* is: has the play a political purpose? Fifty years ago, I suppose, no one doubted that the play did have two purposes. One was to entertain the audience and make them laugh. The other was a purpose of extreme seriousness, to persuade the audience that the Peloponnesian War, now in its sixth year, was a terrible mistake, and peace ought to be made as soon as possible. This view is associated especially with the name of Gilbert Murray, who in 1897 wrote, simply as a statement of fact, 'It is political in its main purpose, and is directed against Cleon and Lamachus, as representing the war party'.<sup>1</sup> In his later monograph on Aristophanes, he still holds this view; *Akharnians* is, he says, 'a definite plea for peace'.<sup>2</sup> But in 1938 A. W. Gomme published an important article on Aristophanes and politics, in which he maintains that the question 'What were Aristophanes' political views?' is not relevant to the interpretation and criticism of his plays, and that we cannot tell from *Akharnians* whether he was in favour of peace or not.<sup>3</sup> That is a non-committal position, almost a defeatist one. But more recently two scholars have gone much further in opposing the old view that the play is a plea for peace. W. G. Forrest considers that no one could have made a plea for peace in Athens in 425 BC; at that date the Athenians, he thinks, were so fully engaged in the war that making peace was completely out of the question.<sup>4</sup> And a similar view is adopted by Sir Kenneth Dover, who declares '*Acharnians* is not a pill of political advice thickly sugared with humour, but a fantasy of total selfishness'.<sup>5</sup>

That marks the extreme of the non-political interpretation of the play. Now the pendulum has begun to fall back. G. E. M. de Ste. Croix has examined the military situation in 425, and maintains that in this play Aristophanes is indeed putting forward an argument 'that Athens too is partly to blame for the war and should now swallow her pride and open negotiations for peace'.<sup>6</sup> Then I myself defended Murray's view of the play in a paper delivered to the Classical Association, published in summary form;<sup>7</sup> and the latest editor of the play, A. H. Sommerstein, states firmly in his introduction that the insistence that the war should be ended

'is the main message of *Acharnians*'.<sup>8</sup> Lowell Edmunds too affirms at the outset of his discussion of the play: 'Aristophanes has a clear "program". The play is thoroughly political.'<sup>9</sup> But I think there is still something more to be said on this question. Edmunds' discussion is concerned largely with Aristophanes' use of imagery and other literary effects, and he does not really argue a case for the political interpretation; neither he nor Sommerstein even mentions the very different view of Forrest and Dover. On the other hand, H.-J. Newiger accepts Dover's view,<sup>10</sup> and A. M. Bowie believes that to discern a serious intent behind the comedy 'is not possible'.<sup>11</sup> Clearly the question is not yet closed.

I believe that what is needed is careful examination of the text of the play itself, scene by scene, or even line by line, concentrating on the question 'How does Aristophanes expect his audience to react to this passage?' In interpreting Aristophanes I take two principles as axiomatic. First, what we are dealing with is the script of a performance given before the Athenian audience on a particular day in 425; it was intended to have its effect on that day, and Aristophanes was not writing a text for people to read and study subsequently. Secondly, every moment of the performance must have had some point. The performance included much more than just the words; it included music, dancing, slapstick, and costume, and at some moments in the play one or more of those elements, rather than the words, will have been the focus of the audience's attention. But when we seem not to be at one of those moments, then we must find the point in the words themselves. I believe it is possible to proceed by asking of each line, or each sentence, a series of questions. Is this a line which merely fills up time while the audience is mainly concentrating on the music or dancing or something else? If the answer to that is no, then is this a line whose purpose is to carry forward the story of the play, by explaining an incident in the plot or describing one of the characters? If the answer to that is also no, then is this line a joke, put in to make the audience laugh? If we find a residue of lines for which that question also must be answered in the negative, then we have prima-facie evidence for saying that Aristophanes has some further purpose, though we still have the problem of determining what that further purpose is.

Of course there is not room in this article to go through every line of *Acharnians* posing each of those questions in turn; that would need a full-scale commentary on the play. Here I must take some short cuts. I shall select certain passages of the play, and I shall quite often go straight to the explanation which I think right, without necessarily stopping to raise and reject in turn every other explanation which might in theory be considered. Still, the principles which I have mentioned can be kept in mind and appealed to in difficult cases.

The play begins with the appearance of the chief character on his own. His name, Dikaiopolis, is not given to the audience until much later (line 406). So nothing in the earlier scenes can possibly depend for its interpretation on the meaning of the name, and at this stage we need not consider what the name means, or take any notice of it; if I use the name when discussing the character, that is just for convenience, because it is awkward to discuss a character without a name. Dikaiopolis, then, simply appears in front of the audience and says:<sup>12</sup>



How often have I been bitten to my heart!  
My pleasures have been few, very few, just four;  
My pains have numbered sand-hundred-and-plenty.  
Let's see, what pleasures had I, worth 'rejoicement'?  
I know what cheered my spirit when I saw it:  
It was those five talents vomited up by Kleon.  
That brightened me up; and I just love the knights  
For doing that – 'a fitting deed for Greece'!  
But then I had a pain, a tragic one,  
When I was all agape for Aiskhylos  
And heard 'Theognis, bring your chorus on!'  
What a shock do you suppose that gave my heart?  
Another pleasure was when, after Moskhos,  
Dexitheos entered with a Boiotian song.  
What killed me this year – and made me squint as well –  
Was Khairis sidling on for the Orthian.

(1–16)

There is no doubt about one of the purposes of that passage. It is a comedian's warming-up, intended to get the audience into a state of good-humoured receptiveness by allusions to several well-known people and recent events. The lines are not exactly jokes; they are perhaps more the sort of thing which in a modern radio or television programme evokes a round of applause from the studio audience for its topicality. But what should be noticed particularly is that the allusions are to things which have happened in the theatre. The incidents in lines 13–16 are clearly recent musical performances. In lines 9–12 we have an occasion when a performance of an Aiskhylos play was expected, but a play by Theognis was performed instead because the order of the programme was changed without notice to the audience. So I have no doubt that the occasion when Kleon vomited up five talents was also an incident in the theatre, and the scholiast is wrong to take it as an actual but otherwise unknown historical event; it is a scene in some recent comedy.<sup>13</sup> Dikaiopolis has seen all these recent performances, and he is speaking here as a member of the Athenian audience: 'What a lot of rotten performances we've had in this theatre lately, with only an occasional good one!' That is the first point to be made about this character; he is identified to the audience as one of themselves, sharing their experiences, before he is given a name or any other characteristics whatever. He is simply one of the Athenians chatting to the others.

But then he goes on immediately:  
But never, since I first began to wash,  
Have I so smarted in the eyes from soap  
As now: the main Ekklesia is due  
At dawn, and yet the Pnyx here is deserted!  
They're chattering in the Agora; up and down  
They run, avoiding the red-painted rope.

Even the Prytaneis haven't yet arrived;  
 They'll get here late, then jostle one another  
 Like anything, to get to the front bench,  
 All streaming down together. But how peace  
 Can be made, they don't care. O city, city!  
 I'm always first at the Ekklesia;  
 I come and sit, and then, when I'm alone,  
 I sigh, I yawn, I stretch myself, I fart,  
 I'm bored, I draw, I pull out hairs, I count,  
 And look towards the country, longing for peace,  
 Hating the town and yearning for my deme,  
 Which never said 'Buy coal!', 'Buy vinegar!',  
 'Buy olive oil!' It didn't know the word.  
 It gave us everything; no 'buy'-man there.  
 So now I'm here, all ready and prepared  
 To heckle, shout, and boo the orators  
 Who speak to us of anything but peace.

(17–39)

These lines give the audience the place and time of the first scene: it is the Pnyx, on a day when a meeting of the Ekklesia is due to be held. They also give some information about the character of Dikaiopolis and the theme of the play. He is a countryman, one of those who have been forced by the war to leave their homes and come and live in the town. He hates living in the town and longs to be back in his village, and for that reason he wants peace to be made. So he comes to meetings of the Ekklesia to support any action which would lead to peace, but he finds that no one else seems to be interested in it. It is clear, then, that at the start of the play Dikaiopolis wants peace to be made between Athens and Sparta by normal constitutional means. Now, Gomme and others have warned us that we must not assume that the opinion of a character in a play is necessarily the opinion of the author. Nevertheless, it seems to me quite clear that the audience is expected, if not to agree, at least to take seriously the view which is being presented here. It is not presented in such a way as to make it seem ridiculous or preposterous. Although some of the lines are mildly humorous, none of it is uproariously funny. There will have been many people in the audience who agreed that life in the country was better than life in the town, and who would think that a citizen who arrived early for the Ekklesia was more praiseworthy than Prytaneis who arrived late. Besides, it would have been very poor dramatic technique for Aristophanes to open his play with a long speech presenting a point of view which he expected the audience to regard as rubbish. I conclude that in this opening speech Aristophanes wishes the audience to listen to Dikaiopolis sympathetically.

After the opening speech, we have the meeting of the Ekklesia, in the course of which the Athenian ambassadors who have returned from Persia and from Thrace make their reports and introduce some comic foreigners, while Dikaiopolis

dispatches Amphytheos to Sparta to make a private peace treaty for himself and his family. This is a favourite scene, often quoted as an example of political comedy, and so I shall not discuss it in detail here; but I do just want to draw attention to certain features of it. The first is an aspect of the staging. Who act the parts of the citizens attending the meeting? It is exceedingly unlikely that Aristophanes had enough non-speaking actors at his disposal to make a convincing assembly, and the obvious way to perform the scene is to use the audience in the theatre to represent the citizens on the Pnyx; the ambassadors just make their speeches directly to the audience. After all, that simply means treating the Athenian citizens as themselves. But if that is right, it reinforces the identification of Dikaiopolis with the audience. For he is one of the citizens attending the Ekklesia, and his comments and interruptions, from line 56 onwards, are uttered in that capacity. That means that in this scene Dikaiopolis sits beside or among the audience, and keeps popping up from the audience to make objections on their behalf. And the audience are expected to agree with Dikaiopolis' comments. The scene is obviously a satirical attack on ambassadors who enjoy high pay and luxurious living without doing any work to earn it. Even those scholars who say that we cannot be sure whether Aristophanes agreed with a view expressed by one of his characters have not suggested that, when he wrote this scene, he might have thought the ambassadors' conduct quite right and proper and have disagreed with the comments which he put into the mouth of Dikaiopolis. So here we undoubtedly have a passage in which the audience is encouraged to agree with Dikaiopolis' view of public affairs. Now, at least one of the ambassadors, Theoros, was a real person. Whether the conduct of Theoros and other ambassadors was in historical fact of a kind to justify criticism is another question, which will not be discussed in this article; for my present purpose it is sufficient if it is agreed that Aristophanes does encourage his audience to take that view. In this scene Dikaiopolis is quite clearly presented as patriotic. I should like to emphasize this point particularly, because it has been alleged that Dikaiopolis is a selfish character, but the evidence of this scene will not support that view. He is trying to braggartries of the ambassadors; notice especially lines 75–6, 'O rugged city, do you see how the ambassadors deride you?' Above all, what he wants the Ekklesia to do is to make a peace treaty for the whole of Athens; the Prytaneis, in arresting 'the man who wished to make a treaty for us', are wronging the Ekklesia, not merely Dikaiopolis individually (56–8). It is only because he fails to get a treaty made for Athens as a whole that he resorts to a private treaty for his own family. That is not a selfish preference; it is merely the best he can manage.

In the central part of the play Dikaiopolis confronts the chorus of old Akharnians. These belligerent old men want to carry on the war to punish the Spartans for cutting down their vines, and they think it outrageous that Dikaiopolis has made a peace treaty. First they chase him and throw stones at him, but then they are induced to listen to what he has to say, in a passage containing several allusions to Euripides' *Telephos*. Dikaiopolis visits Euripides to borrow Telephos' ragged costume from him; and when he has got the costume on, he makes a great

speech, lines 497–556. This is where he expounds his reasons for believing that the war against Sparta is a mistake. It is generally agreed that, if Aristophanes is making serious points about the war anywhere in this play, he is doing so in this place; and those who believe that this play has no serious political content have to show that there is no serious content in this speech. But I cannot see that it is possible to dismiss the serious element here.

Do not resent it, men of the audience,  
 If I, a beggar, address the Athenians  
 About the city in a comedy.  
 For even comedy knows what is right,  
 And what I'll say, though startling, will be right.  
 For this time Kleon can't accuse me of  
 Running down the city when foreigners are here.  
 We're by ourselves; it's the Lenaion contest;  
 No foreigners are here yet, for the tribute  
 And allies from the cities have not come.

(497–506)

Who it was that Kleon previously accused of running down the city is a question which I need not consider here, because I have discussed it elsewhere;<sup>14</sup> I just remark in passing that I do not know why Kleon should have accused anyone at all for something said in a comedy unless he for one thought that what had been said had some serious implication. But altogether these lines, including the distinction between the Lenaia and the Dionysia, are clearly a sober and reasoned statement that, however frivolous comedy may be, there are some occasions when it says something serious and true, and this speech is going to be one of them. In lines 500–1 ἐγώ is virtually identified with τρυγῶδία. Dikaiopolis is not speaking just as one character in the play; he is speaking for comedy, representing the author and producer and performers and everyone who is present at the festival.<sup>15</sup> And line 501 says 'what I am going to say will be right'. How can that sentence be taken in any other way than literally? Let me pose the sequence of questions which I suggested earlier in this article. Are these lines merely filling up time while the audience's attention is occupied by dancing or slapstick? No. Do they carry forward the story of the play? No, not these particular lines; although it may be necessary for the story that Dikaiopolis should make a speech in favour of peace, the story does not require this elaborate preamble about saying what is right. Then are the lines a joke, put in to raise a laugh? No, there is nothing funny in them at all. What then is the point of them? We can be sure that Aristophanes would not have written them without a point. I can see no point unless we simply take them as meaning what they say, that the rest of this speech is going to say what is right.

But, it has been claimed, this speech is parody, and parody does not count. Forrest has maintained that 'the speech is parody from start to finish. We cannot with confidence take it seriously'.<sup>16</sup> That interpretation has been rejected by

de Ste. Croix,<sup>17</sup> and I agree with much of what he says. It is of course possible for serious points to be made by means of a parody. But in the present instance it is possible to cut short a good deal of the argument simply by noticing that it is not true that the speech is parody from start to finish.

Of course it is true that the spectators here are expected to recollect the scene in Euripides' *Telephos* in which Telephos, disguised as a beggar, argued before the Greek leaders that Telephos and the Mysians were not responsible for the previous war between the Mysians and the Greeks, and that it would not be right for the Greeks to make a further attack on the Mysians.<sup>18</sup> This must have been a famous tragic scene, and it is obvious that it was that scene, rather than anything else in Euripides' play, which gave Aristophanes the idea of making Dikaiopolis imitate Telephos. Dikaiopolis urging the bellicose Akharnians, and the Athenians in general, that the war against Sparta is not justified, can be compared to Telephos urging the Greeks that the war against Telephos and the Mysians is not justified. To emphasize the similarity, Aristophanes makes Dikaiopolis put on rags like Telephos, and then begin his speech at line 497 with almost the same words. The first two lines of Telephos' speech were:

μή μοι φθονήσητ', ἄνδρες Ἑλλήνων ἄκροι,  
εἰ πτωχὸς ὦν τέτληκ' ἐν ἐσθλοῖσιν λέγειν.

(fr. 703 Nauck = 109 Austin)<sup>19</sup>

Dikaiopolis alters that to:

{ΔΙ.} Μή μοι φθονήσητ', ἄνδρες οἱ θεώμενοι,  
εἰ πτωχὸς ὦν ἔπειτ' ἐν Ἀθηναίοις λέγειν  
μέλλω . . .

(497–9)

But how much more of Dikaiopolis' speech is taken from Euripides? I believe that the extent of the borrowing has been overestimated. The evidence is of three kinds:

- (a) The scholia on *Akharnians* tell us that certain lines are taken from Euripides, either exactly or with only slight alteration. These are (besides 497–8): the first half of 540 (ἐρεῖ τις, οὐ χρῆν), the second half of 543 (ἧ πολλοῦ γε δεῖ), and part of 555–6 (τὸν δὲ Τήλεφον οὐκ οἰόμεσθα;). The scholia do not tell us that any other part of the speech is a quotation. The scholiast, whoever he was (probably a Hellenistic commentator), obviously had a copy of Euripides' play in front of him, and if checked through the two speeches of Telephos and Dikaiopolis carefully enough to notice that such an ordinary phrase as ἧ πολλοῦ γε δεῖ was common to both of them, it is unlikely that he missed any other quotations. However, one must acknowledge the possibility that not all his notes have got copied out into the surviving medieval manuscripts.

- (b) A few words used in the early part of the speech are used also in the early part of *Thesm.* 466–519, the speech in defence of Euripides made by his relative (Mnesilokhos) in the guise of a woman. These are: the first half of 504 (αὐτοὶ γὰρ ἐσμεν), the verb of 509 (μισῶ), and part of 514 (τί ταῦτα . . . αἰτιώμεθα); cf. *Thesm.* 470–73. Perhaps the reason is that Aristophanes in both places is quoting from *Telephos*.<sup>20</sup> But it is not certainly so; the words are all common, and the similarity of the situations and arguments in the two speeches (urging the abandonment of hostility towards an old enemy) could have led Aristophanes to use similar wording in both places without even realizing that he was doing so.
- (c) The word σκάφος is generally poetic, and so it has been inferred that line 541, where ἐκπλεύσας σκάφει seems out of place in the logic of Dikaiopolis' argument, is partly quoted from *Telephos*.<sup>21</sup>

These quotations do not amount to a great deal. It is misleading to say that the whole of Dikaiopolis' speech is a parody of Euripides. What Aristophanes has done is to put the speech into the setting of Telephos' speech by dressing Dikaiopolis in Telephos' costume, and by putting in a few words from Telephos' speech at the beginning and end, and in one sentence or so in between. That is enough to suggest the general similarity between the two, in that each is arguing against war before a hostile audience. But the specific arguments used in the central part of the speech are not the same. Although we do not know what Telephos' arguments were, obviously he cannot have talked about sycophants denouncing Megarian shawls, and a prostitute named Simaitha, and Perikles' decree, and so on. It is not plausible to say that those things have been put in for the sake of imitating Euripides.

But some people say that they have been put in for the sake of imitating Herodotos. At the beginning of Book 1, Herodotos says that according to the Persians it was the Phoenicians who were responsible for the origin of the conflict between the Greeks and the barbarians, because they kidnapped Io, daughter of the king of Argos; then some Greeks kidnapped Europa, daughter of the king of Tyre, and others kidnapped Medea, daughter of the king of Kolkhis; and in a later generation Paris carried off Helen, which led to the Trojan War.<sup>22</sup> It has frequently been said that this part of Herodotos is parodied by Aristophanes in lines 524–9.<sup>23</sup> But I cannot find any good reason for believing that. I do not know whether Herodotos' book was published before or after the performance of *Akharnians*; opinions differ about its date. But even if it was before, it is most unlikely that many Athenians were familiar enough with it to be able to recognize a parody of one particular part of it unless Aristophanes had given very obvious signals indeed to warn them that a parody of Herodotos was coming. But in fact there are no such signals.<sup>24</sup> Dikaiopolis does not mention the name of Herodotos; nor does he mention the Persians or the Phoenicians or the Trojans or any of the other people who occur in Herodotos' opening pages. He mentions three prostitutes, but that would hardly have made the Athenians think of all those daughters of kings. Above all, Dikaiopolis does not use any Herodotean vocabulary or turns of phrase.

Whereas the beginning and end of the speech do quote a few words from Euripides, the middle does not quote any words from Herodotos. There is really nothing in the speech which bears any resemblance to Herodotos at all.

So it is not plausible to maintain that the material in this speech has been put there by Aristophanes just for the sake of making amusing parodies. Although he uses a light touch for most of the speech, deliberately mentioning homely or vulgar items such as cucumbers and prostitutes, nevertheless he does seem to expect his audience to accept that the Peloponnesian War resulted from the series of events which he recounts. But, you may wish to object, surely no one could believe that the war started in this way; it is not what Thucydides says. But are we so sure that it is not what Thucydides says? Here are two extracts from Thucydides' account of the events which led to the war.

Among others who came forward and made various complaints of their own were the Megarians; they pointed out a considerable number of disagreements, and in particular that they were excluded from harbours in the Athenian Empire and from the Athenian Agora, in contravention of the treaty.

(Thucydides 1.67.4)

On the first embassy, such were the demands which the Spartans made, and received in reply, concerning the expulsion of the accursed. On a later visit to the Athenians they told them to withdraw from Poteidaia and to let Aigina be independent; and most emphatically and plainly declared that there would not be war if the Athenians annulled the decree about the Megarians, in which they were forbidden to use the harbours in the Athenian Empire and the Athenian Agora. But the Athenians neither accepted the other demands nor annulled the decree, accusing the Megarians of cultivating sacred and unowned land and of receiving runaway slaves.

(1.139.1–2)

Now compare Dikaiopolis' more detailed account.

Some men of ours – and I don't say the city;  
Remember this, that I don't say the city,  
But just some johnny-rascals, mis-struck coins,  
Disfranchised, and mis-minted, and mis-foreign,  
Were sycophants: 'From Megara, those shawls!'  
Wherever they saw a cucumber or hare  
Or piglet or garlic or some lumps of salt,  
Those were 'Megarian', and were sold that day.  
Now that was just a little local matter;  
But a prostitute, Simaitha, was stolen away  
From Megara by some young men, kottabos-drunk.  
So the Megarians, garlic-puffed with pain,  
Stole two of Aspasia's prostitutes instead.

From that beginning, then, the war broke out  
 All over Greece, because of those three strumpets.<sup>25</sup>  
 Then in anger Perikles the Olympian  
 Lightened and thundered and confounded Greece  
 And made laws in the style of drinking-songs:  
 ‘Megarians banned on land, in the Agora,  
 And on the sea and on the continent.’  
 Then the Megarians, starving step by step,  
 Entreated the Spartans to get the decree reversed,  
 The one resulting from the strumpet-girls;  
 But we refused, though they asked us many times;  
 And after that arose the clatter of shields.

(515–39)

The sequence of events which *Dikaiopolis* presents may be transposed into more pedestrian language as follows. First, some disreputable Athenians hampered the sale of Megarian goods in Attika by constant accusations that some law or regulation was being infringed (515–22). We do not know what law it was. But it is unlikely that there was an otherwise unknown decree, passed earlier than the well-known one, that excluded Megarian goods specifically. More probably customs duties were payable by law on all goods imported to Attika from any source, and Megarian farmers and weavers, who lived so near that they could easily slip into Attika by land, had been in the habit of bringing their products across the frontier and selling them without paying the duties. Suddenly some people started trying to enforce the law; but *Dikaiopolis* regards the accusers as unreasonable and disreputable, and therefore calls them sycophants and not proper citizens.<sup>26</sup>

Next, according to *Dikaiopolis*, some young Athenians, when drunk, carried off from Megara a girl called Simaitha. The Megarians were annoyed, and in retaliation some of them carried off from Attika two girls in whom Aspasia was interested. Presumably all three girls were slaves. *Dikaiopolis* makes the incidents sound like kidnapping. But in affairs of love ‘steal’ does not have to imply the use of physical force, and if the two girls belonging to Aspasia were merely inveigled away, it may be possible to identify this incident with ‘receiving runaway slaves’ in Thucydides 1.139.2. In any case it may be included among the ‘considerable number of disagreements’ mentioned in Thucydides 1.67.4. Thucydides says there were οὐκ ὀλίγα διάφορα, which is a perfectly good phrase for what *Dikaiopolis* describes in 515–27.

Then Perikles, indignant on Aspasia’s behalf, proposed the decree excluding Megarians from the Agora and from harbours in the Athenian Empire; the Megarians and the Spartans several times asked the Athenians to rescind the decree, but the Athenians refused, and so the war began (530–39). ‘Perikles the Olympian lightened and thundered’ just means that he behaved as if he were Zeus, controlling the whole universe, and ‘in the style of drinking-songs’ is a reference to songs that list numerous items, and probably to a particular song by Timokreon of



Rhodes, which the scholiast quotes for us;<sup>27</sup> the implication is that the decree was very sweeping and comprehensive. The plural νόμων in 532 need not bother us; in the fifth century the Athenians did not distinguish sharply between a law and a decree, and a single decree could be called 'laws' in the plural if it included several clauses, for instance one about the Agora and another about the harbours. In 530 ἐντεῦθεν means after the stealing of Aspasia's girls, not after the outbreak of war, because 539 shows that Perikles' decree preceded the outbreak of war; 528–9 is just an introductory summary of 530–39. In 538 the 'many times' that the Megarians and the Spartans asked the Athenians to rescind the decree<sup>28</sup> cannot all be identified exactly, but there need not have been more than three occasions: perhaps one direct approach by the Megarians to the Athenians (there surely must have been at least one such, though Thucydides does not mention it), the Spartan request recorded in Thucydides 1.139.1, and the final one mentioned in Thucydides 1.139.3 (which was taken by the Athenians as referring to the Megarian decree; cf. 1.140.3–4). So nothing in this part of Dikaiopolis' speech conflicts significantly with Thucydides' summary of the events concerning the Megarian decree.

Dikaiopolis clearly means to say that the Athenians' refusal to annul the decree was the thing which caused the Spartans to declare war. Thucydides too makes clear that this was what the Spartans said: 'they declared that there would not be war if the Athenians annulled the decree about the Megarians' (1.139.1). Now, it is well known that Thucydides considered that 'the truest cause' of the war was not the Megarian decree, but Spartan fear of the growth of Athenian power; in his view the decree was merely the catalyst which precipitated the real cause.<sup>29</sup> But Dikaiopolis too says something which is not very different from that. In 540 he points out that the incidents which he has been describing may be thought an inadequate reason for fighting; but he goes on to say that if the Athenians had had similar provocation, if some Spartan had taken not some slaves, nor all the produce imported from some ally, but merely one little dog from Seriphos (one of the least important places in the Athenian Empire), the Athenians would have reacted with even more military and naval fuss. That is as much as to say that the reason for the Spartans' declaration of war was really that they were sensitive to Athenian encroachment on their own sphere of influence.

So Dikaiopolis' account of the outbreak of war, though expressed in a manner suitable to comedy, is not inconsistent with the account given by Thucydides; it is not illogical or incredible; the comic context is not of a kind to invalidate it; and I see no reason why it should not be essentially true. Some recent writers have been very timid about using Aristophanes as evidence for historical events, but there is no reason why he should not be so used, provided that he is interpreted correctly;<sup>30</sup> and *Akharnians* 515–39 is a piece of evidence of great importance. Of course it does not tell us everything. In particular, Aspasia's loss of her two girls may not have been the only reason why Perikles proposed the Megarian decree; he may have had a strategic or political reason too. Nevertheless it must be admitted that modern scholars have had great difficulty in discovering a strategic or political reason, and have not succeeded in reaching general agreement about what it was.

Aristophanes' suggestion, that Perikles was induced by a personal motive to take an action for which the strategic and political justification was weak, therefore deserves serious consideration.

That all this is meant to be taken seriously, as a convincing argument, is confirmed by what happens afterwards. Neither the chorus of Akharnians nor any other character contradicts what Dikaiopolis has said. In some other plays of Aristophanes we find a debate, in which two speakers present opposite sides of a case, one refuting the other; but in this play Aristophanes does not present any opposite view for consideration. What happens is that the chorus splits into two halves, one half accepting what Dikaiopolis has said, the other half annoyed at it.

- A. Do you, a beggar, dare speak so of us  
     And, if someone *was* a sycophant, blame us?  
 B. Yes, by Poseidon! Every single thing  
     He says is right, and none of it's untrue.  
 A. And if it's right, was he the man to say it?

(558–62)

562 is clearly an admission that what Dikaiopolis said was in fact right. Subsequently an argument develops between Dikaiopolis and Lamakhos, the soldier, but that is mostly on a different subject, the election of ambassadors and other paid officials. As far as war and peace are concerned, the chorus go on to give their conclusion in 626–7: 'The man is victorious with his speech, and he convinces the people about the treaty.' That is the opening of the *parabasis*, and it is the author's statement that Dikaiopolis convinces not just other characters in the play but the people – that is, the people of Athens who are the audience in the theatre. It is the kind of pronouncement which is intended to assist its own fulfilment. Aristophanes says in effect 'You all believe now that the war is a mistake and it is right to make peace', and he hopes that that will help to make the audience think they do believe it.

The main anapaestic speech of the *parabasis* (628–64) is taken up with a defence of the dramatist's policy. For my present purpose it makes no difference whether the audience took the producer and poet to be Kallistratos (as I believe)<sup>31</sup> or Aristophanes; in either case the plays being commented on here are ones which were in fact written by Aristophanes, and especially the one performed at the Dionysia of the previous year, *Babylonians*. He says he wishes to answer criticisms which have been made of him, and this is another passage which gives every appearance of being intended to make a serious point. 'The poet says that he deserves to receive many benefits from you' (633),<sup>32</sup> and 'he has been responsible for many benefits which you have received' (641). His services to Athens have taken two forms. One is that he has shown up the way in which foreign ambassadors pull wool over the Athenians' eyes by flattering them when they address the Ekklesia.<sup>33</sup> The other is that he criticizes the Athenians and points out their faults; that is what his opponents called 'insulting the people' (631), but

Aristophanes prefers to express it by saying 'he ventured to tell the Athenians what is right' (645). That line obviously recalls 501. Whereas showing up foreign ambassadors was evidently a special theme of *Babylonians*, telling the Athenians what is the right thing for them to do is something which this poet regularly does. It is the feature which distinguishes him from other comic dramatists; and that is illustrated by the next few lines (646–54) about the king of Persia and the Spartans. The king enquired which side in the war, the Athenians or the Spartans, had this poet to abuse them, because he said those people had become much better and would easily win the war when they had this poet as their adviser. 'And that's why the Spartans make you offers of peace and ask to have Aigina back; they don't really care about that island, but it's in order to take this poet away from you.' Those few lines are jocular; we should not take them as evidence that the king of Persia had ever heard of either Aristophanes or Kallistratos. But the joke would have no point if it were not true that a comedy could convey advice which could influence public opinion and policy. The passage proceeds: 'But don't you ever let him go, for he'll put in his comedies what is right. He says that he'll teach you a lot of good things, and so make you happy' (655–6). The belief that one of the functions of a poet is to teach is a familiar one in Greek literature, and it applies to comic poets as well as others.

Skipping over the rest of the *parabasis*, I turn next to the scene with the Megarian. Dikaiopolis, who is now at peace, sets up his private market, and a Megarian is the first man who arrives to trade in it. In real life, we must remember, the Megarians were on the enemy side and were widely regarded as being responsible for starting the war. In an Athenian play we might expect a Megarian to be treated in a thoroughly hostile manner; we might expect the Athenian audience to laugh gleefully at his starvation and other sufferings. But what we find in this play is just the opposite: the audience is encouraged to sympathize with the Megarian and regard him as a friend.

When he appears, his first words are a greeting to the Agora.

Hail, Athens' Agora, that Megarians love!  
By the god of friendship, I missed you like a mother!

(729–30)

Is this just cupboard love, and does the Megarian love the Athenian market because he can exploit Athenian customers and make a profit out of them? No, that is not the right interpretation, because Aristophanes has not put in any words to hint at that. He could very easily have done so. He does in fact do something like that in *Birds* 37–8, for example, where an Athenian character commenting on Athens, says that it is 'a great and happy place, and free for all to spend their money in'. Aristophanes could easily have given *Akharnians* 730 a similar twist in its tail, but he has not done so. The Megarian does not say 'I missed you, a place free for us all to make a profit in'; he says 'By the god of friendship, I missed you', which puts his motive in a favourable light.

In the next few lines there is much emphasis on the fact that the Megarians are starving, but I do not see much evidence that the audience is expected to laugh at that fact. The laughs come rather from the comic dressing-up of the little girls as pigs, and later from the notorious pun on χοῖρος. I shall not discuss those in this article,<sup>34</sup> but I should like instead to draw attention to the few lines in which Dikaiopolis enquires about the state of affairs at Megara.

DIKAIOPOLIS. What else are you doing in Megara?

MEGARIAN. What we do.

When I was leaving there, the men who are  
Probouloi for the city were trying to find  
The quickest way of getting us to ruin.

DIKAIOPOLIS. Your troubles will soon be ended then.

MEGARIAN. That's right.

DIKAIOPOLIS. What else at Megara? What's the price of corn?

MEGARIAN. With us it's like the dear gods – very dear.

DIKAIOPOLIS. You've brought salt?

MEGARIAN. You yourselves control it, don't you?

DIKAIOPOLIS. Or garlic then?

MEGARIAN. What garlic? You yourselves,

Whenever you invade, are like field mice:

You dig out every clove of it with sticks.

(753–63)

In the first half of the play, especially in the opening speech, we heard about the troubles Dikaiopolis and other Athenians were having because of the war, and the blame for them was put firmly on the government, the Prytaneis. Now in the second half of the play, in the opening scene after the parabasis, we hear about the troubles the Megarians are having because of the war, and the blame for them is put on the Megarian government, the Probouloi. There is a clear parallelism here, suggesting that countrymen on both sides should make common cause against warmongering leaders. It is quite unconvincing to suggest that the audience is expected to sympathize with Dikaiopolis but laugh gleefully at the plight of the Megarian. Their hardships are presented as being essentially similar, though the lines about the Athenians taking the Megarians' salt and garlic do suggest that the Megarians are even worse off than the Athenians, and that the Athenians ought not to be so hard on them. At the end of the scene, when the Megarian is denounced by a sycophant, Dikaiopolis sides with the Megarian and chases the sycophant away. In 820–21 we are reminded that sycophants began the series of disputes which led to the outbreak of war: 'That's it! Here comes again the thing from which our troubles all began' is a reference back to 519. Aristophanes wants the audience to agree with the Megarian's remark 'Ah, what an evil thing this is in Athens!' (829), another line which has no point at all unless it is taken seriously.

The later scenes of the play are largely devoted to showing how much more enjoyable peace is than war. By the end of the play Dikaiopolis is enjoying himself

as hard as he can go, winning a drinking contest and carrying on with two girls simultaneously. Does that show that he is a selfish character? I believe not. Certainly he enjoys himself, but he does not wish to prevent other people from enjoying themselves too. In the early part of the play it is made quite clear that he wants the Ekklesia to make peace for Athens as a whole, and it is not until that has been found impossible that he takes steps to make a private peace. When he has his treaty, it is not he who refuses to share it with the Akharnians; it is the Akharnians who furiously condemn it. He does share it with the Peloponnesians, Megarians, and Boiotians, in the sense that he is willing to trade with them, and Lamakhos is the only Athenian who is banned from his market (623–5, 720–22). Later he gives some peace to a bride who asks for it, 'since she's a woman and doesn't deserve the war' (1062). Towards the end of the play the impression is increasingly given that nearly everyone is joining in the peace. In 971–99 the members of the chorus say that they will not let war into their house any more, and they make plans for a life with *Diallage*, reconciliation; so it is clear that they are now at peace. The drinking contest which *Dikaiopolis* wins is not one in which he is the only participant; it is open to the whole population (1000).

There are in fact only three persons with whom he refuses to share his peace.<sup>35</sup> One is *Lamakhos* the warrior. Another is the bridegroom who tries to bribe him; but he in effect gets peace in the end, since it is given to his bride to keep him at home (1048–66). The only other person who is refused a share in the peace is a farmer whose two oxen have been taken by Boiotian raiders.

FARMER. Alas, alas!

DIKAIOPOLIS. O *Herakles*, who's that?

FARMER. An unlucky man!

DIKAIOPOLIS. Go on your own way, then.

FARMER. Dear friend, since you alone have got a treaty,  
Lend me a bit of peace! Five years will do.

DIKAIOPOLIS. What's wrong?

FARMER. I'm ruined; I've lost my pair of oxen.

DIKAIOPOLIS. Where from?

FARMER. From *Phyle*; the Boiotians took them.

DIKAIOPOLIS. O thrice unlucky! And you're wearing white?

FARMER. And they're the two that kept me stocked with all  
The dung I wanted!

DIKAIOPOLIS. And what are you asking now?

FARMER. I've cried my eyes out over those two oxen.

If you're a friend of *Derketes* of *Phyle*,  
Be quick and put on my eyes some drops of peace.

DIKAIOPOLIS. You wretched man, I'm not a public doctor.

FARMER. Do, please; perhaps I'll get my oxen back.

DIKAIOPOLIS. Impossible. Go and weep at *Pittalos*'s!

Please let me have a single drop of peace.

Just drip it here, inside this little reed.

DIKAIOPOLIS. Not a twitter! Go and wail somewhere else!  
Alas, unlucky! My poor two farm oxen!

(1018–36)

Who is this man Derketes? The scholiasts and editors who have attributed the lines to speakers call him a farmer, but he is not actually called that in the dialogue, and no doubt they have simply made a deduction from the fact that he had a pair of farm oxen. It is a perfectly reasonable deduction; but it leads into a puzzle. For a long time I used to find this passage the most baffling in the play. If this character is simply a farmer, why is Dikaiopolis so unsympathetic towards him? He is a countryman himself; would one not expect him to be sorry for a farmer who has suffered from enemy attacks? Here we do seem, at first sight, to have evidence to support the view that Dikaiopolis is a thoroughly selfish character.

But I now think that that conclusion is wrong. The key to this passage, overlooked by authors of books on Aristophanes and commentators on *Akharnians*,<sup>36</sup> is that Derketes of Phyle is not a fictional character invented by Aristophanes, but a real person, like Lamakhos and Theoros in other scenes of the play. The evidence is in two inscriptions of the first half of the fourth century, which mention a man named Derketes of the deme Phyle (*IG* ii<sup>2</sup> 75.7, 1698.5–6). Derketes is a very uncommon name, and the coincidence of the same deme as well as the same name is most unlikely to be accidental. Either Derketes of Phyle in the inscriptions, who lived early in the fourth century, is the same man as Aristophanes has introduced into his play, or else he is another member of the same family, perhaps a son or grandson. In any case we should accept that Derketes in *Akharnians* was a real person. This tells us nothing about his personality or activities, but it does enable us to guess that the reason why his complaints and wails about losing his pair of oxen are expected to amuse the audience lies in something which the audience already knows about him. For example, possibly the real Derketes made a speech in the Ekklesia in favour of continuing the war, and then at the next meeting of the Ekklesia made another speech moaning at inordinate length that the Boiotians had snatched two of his oxen, and wanting a peace treaty to be made. Thus Aristophanes may have brought him into the play to satirize men who were all in favour of war except when they themselves suffered some personal loss by it; such men deserve no sympathy. That is just my guess, and you may well be able to think of a better alternative guess about what the real Derketes did. But at any rate it appears that the reason why Dikaiopolis sends Derketes off with a flea in his ear is not necessarily mere selfishness on the part of Dikaiopolis.

Finally we should consider Dikaiopolis' name. The audience is not expected to discover his character from his name; his name is not mentioned until line 406, by which time his character is already well established. Nevertheless, there his name is, and it is repeated at intervals through the play (748–9, 823, 959, 1048, 1085, 1196). Aristophanes will not have chosen a name which was unsuitable for the character or inconsistent with it. What does the name mean, then? It is a combination of δίκαιος and πόλις, but the form of the compound does not make

clear the relationship between the two parts. It might mean 'just towards the city' or 'having a just city' or 'making the city just', and other instances of -πόλις compounds in Greek poetry do not enable us to make a confident choice among these possibilities.<sup>37</sup> I suspect that Aristophanes may not have intended the audience to get any really precise sense out of the name; it just gives a general impression that the man has something to do with right behaviour in public affairs. But I do not see how Aristophanes could have given this name to a character who was selfish and unpatriotic.

So I adhere to the view that *Akharnians* has not only a comic purpose but a serious one too. Aristophanes wants the spectators to enjoy watching Dikaiopolis' fantastic pleasures, but also to be convinced that he has right on his side and that the pursuit of the Peloponnesian War is a mistake. The method by which he does this involves first identifying Dikaiopolis as closely as possible with the spectators, making them feel that he is really just one of themselves, and then, once their sympathies are thoroughly engaged with him, letting him turn round and give them a straight talking-to, telling them what is right. Then the case is completed by making the opposition look conceited and stupid, and making Dikaiopolis' policy lead to success and pleasure. That is how Aristophanes uses comedy to teach the Athenians (656): φησὶν δ' ὑμᾶς πολλὰ διδάξειν ἀγάθ' ὅστ' εὐδαίμονας εἶναι.

## Notes

- 1 *A History of Ancient Greek Literature* (London, 1897), pp. 281–2.
- 2 *Aristophanes, a study* (Oxford, 1933), p. 27.
- 3 *CR* 52 (1938), 97–109, reprinted in his *More Essays in Greek History and Literature* (Oxford, 1962), pp. 70–91.
- 4 *Phoenix* 17 (1963), 1–12.
- 5 *Aristophanic Comedy* (London, 1972), p. 88.
- 6 *The Origins of the Peloponnesian War* (London, 1972), p. 366.
- 7 *Proc. Cl. Ass.* 76 (1979), pp. 32–3.
- 8 Edition of *Acharnians* (Warminster, 1980), p. 32
- 9 *YCS* 26 (1980), 1.
- 10 *YCS* 26 (1980), 220–24.
- 11 *CQ* N.S. 32 (1982), 40.
- 12 This and other quotations are from my own unpublished translation of the play, based on Coulon's text in the Budé series.
- 13 Cf. Starkie's edition of the play (London, 1909), pp. 241–3. Starkie attributes this interpretation to Lübke, whose work I have not seen.
- 14 *CQ* N.S. 32 (1982), 21–6.
- 15 Cf. Dover, *Maia* 15 (1963), 15.
- 16 *Phoenix* 17 (1963), 8–9.
- 17 *Op. cit.*, pp. 369–70.
- 18 For reconstruction of *Telephos* see E. W. Handley and J. Rea, *The Telephus of Euripides* (*BICS* Supplement 5, 1957); F. Jouan, *Euripide et les legendes des chants cypriens* (Paris, 1966), pp. 222–55; P. Rau, *Paratragodia* (Munich, 1967), pp. 19–42.
- 19 Fragments of *Telephos* may be found in A. Nauck, *Tragicorum Graecorum fragmenta*, reprinted with a supplement by B. Snell (Hildesheim, 1964), and in C. Austin, *Nova fragmenta Euripidea in papyris reperta* (Berlin, 1968).
- 20 Cf. Starkie's notes on 504 and 514.

54 *Drama and comedy*

- 21 Cf. the note on 541–2 in Rennie’s edition of the play (London, 1909) and Wilamowitz, *Kleine Schriften* iv. 297, following whom the words φέρ’εἰ < > ἐκπλεύσας σκάφει are listed as fr. 708a Snell = 116 Austin.
- 22 Hdt. 1.1–5.
- 23 E.g. Forrest, *Phoenix* 17 (1963), 8; Rau, *Paratragodia*, p. 40; Dover, *Aristophanic Comedy*, p. 87; Edmunds, *YCS* 26 (1980), 13; Newiger, *ibid.*, 222.
- 24 Cf. C. W. Fornara, *JHS* 91 (1971), 28–9.
- 25 For a more precise interpretation of λαϊκάστρια see H. D. Jocelyn, *PCPS* 206 (1980), 12–66.
- 26 Cf. de Ste. Croix, *op. cit.*, pp. 383–6.
- 27 ὄφελέν σ’ ὄ τυφλὲ Πλοῦτε  
μήτε γῆ μήτ’ ἐν θαλάσση  
μήτ’ ἐν ἠπείρῳ φανῆμεν  
ἀλλὰ Τάρταρόν τε ναίειν  
κ’ Ἀχέροντα· διὰ σὲ γὰρ πάντ’  
αἰὲν ἀνθρώποις κακά.
- (Text from N. G. Wilson’s edition of the scholia on *Akharnians*, line 532.)
- 28 I am puzzled by Dover, *Aristophanic Comedy*, pp. 86–7, who finds line 538 ambiguous. It appears to me obvious that, since ‘we’ is the subject of ‘refused’, that implies that the object of ‘asked’ is ‘us’.
- 29 Cf. T. E. Wick, *Ant. Cl.* 46 (1977), 90.
- 30 Cf. de Ste. Croix, *op. cit.*, pp. 232–6; G. A. H. Chapman, *Acta Classica* 21 (1978), 59–70.
- 31 Cf. *CQ* N.S. 32 (1982), 21–6.
- 32 I retain the manuscripts’ reading ἄξιος.
- 33 This passage refers to ambassadors sent to Athens by cities in the Athenian Empire (636 ἀπὸ τῶν πόλεων, cf. 643 οὐκ τῶν πόλεων τὸν φόρον ὑμῖν ἀπάγοντες). It has nothing to do with the Athenian ambassadors sent to foreign countries who appeared earlier in *Akharnians*; here I disagree with A. M. Bowie, *CQ* N.S. 32 (1982), 30–31.
- 34 For detailed exposition of the pun see Dover, *Aristophanic Comedy*, pp. 63–5.
- 35 Lines 1037–9 have been misunderstood to mean that Dikaiopolis will not let anyone share in the peace treaty. It is better to understand τὸ ἡδύ, not τὰς σπονδάς, as the object of μεταδώσειν. At this point Dikaiopolis is cooking the delicious food which he got from the Boiotian. The members of the chorus envy his meal, which he refuses to share with them (1044–6, cf. 1008–17); I take this to imply only that they will have to do their own shopping and cooking, not that they cannot make peace.
- 36 Sommerstein in his note on 1028 mentions the inscriptions but draws no conclusion from them. However, Dr. L. P. E. Parker, after hearing my paper delivered orally in Oxford in May 1982, told me that she had independently reached a view similar to mine; see now *CR* N.S. 33 (1983), 11.
- 37 E.g. Pind. *Ol.* 2.7 ὀρθόπολιν, ‘keeping the city upright’; *Pyth.* 8.2 μεγαίστοπολι, ‘making cities great’; *Pyth.* 8.22 δικαιοπόλις, ‘having a just city’; Soph. *OT* 510 ἀδύπολις, ‘pleasing to the city’; *Ant.* 370 ὑψίπολις, ‘having a high city’; *Ant.* 733 ὁμόπολις, ‘belonging to the same city’. In some of these instances the interpretation can be disputed, but it is certain that they cannot all be made to fit a single pattern. Therefore dogmatic statements such as ‘Dicaeopolis must be the “Just City”’ (de Ste. Croix, *op. cit.*, p. 365) are unjustified.



# Aristophanes and Kallistratos

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The purpose of this article is to explain what I believe to have been the nature of the relationship between Aristophanes and the producer of his earliest plays, Kallistratos. My view was indicated in my edition of *Wasps* (pp. 124, 263–4) without full explanation. It is much the same as the view taken by Rennie in his edition of *Akharnians* (pp. 11–21), but I think that it can be given more cogent support than Rennie gave it. Recently the whole matter has been discussed afresh by G. Mastromarco (*Quaderni di Storia* 10 (1979), 153–96) and S. Halliwell (*CQ* n.s. 30 (1980), 33–45).<sup>1</sup> This has enabled me to make my article briefer; I need not repeat the full bibliographical references to other views which Mastromarco and Halliwell have given, and I can, for the most part, confine my comments to the points on which I disagree with them.<sup>2</sup>

Everyone accepts the statements of the Hellenistic scholars that the earliest plays of Aristophanes (*Banqueters*, *Babylonians*, *Akharnians*) were produced διὰ Καλλιστράτου. Consideration of what this meant may begin from his own justification of the arrangement, given in the *parabasis* of *Knights*.

Ἄ δὲ θαυμάζειν ὑμῶν φησιν πολλοὺς αὐτῷ προσιόντας  
καὶ βασανίζειν πῶς οὐχὶ πάλαι χορὸν αἰτοίη καθ' ἑαυτόν,  
ἡμᾶς ὑμῖν ἐκέλευε φράσαι περὶ τούτου. Φησὶ γὰρ ἀνὴρ  
οὐχ ὑπ' ἀνοίας τοῦτο πεπονθὼς διατρίβειν, ἀλλὰ νομίζων  
κωμωδοδιδασκαλίαν εἶναι χαλεπώτατον ἔργον ἀπάντων . . .  
Ταῦτ' ὀρρωδῶν διέτριβεν αἰεὶ, καὶ πρὸς τούτοισιν ἔφασκεν  
ἐρέτην χρῆναι πρῶτα γενέσθαι πρὶν πηδαλίοις ἐπιχειρεῖν,  
κατ' ἐντεῦθεν πρωρατεῦσαι καὶ τοὺς ἀνέμους διαθρῆσαι,  
κατὰ κυβερναῖν αὐτὸν ἑαυτῷ.

(*Knights* 512–16, 541–4)

*Knights* was the first play for which Aristophanes ‘asked for a chorus on his own’ (513), and lines 515–16 show that this new departure was not a mere formality.<sup>3</sup> When a play was produced ‘through Kallistratos’, the function of

Kallistratos was not just to give his name to a production for which all or most of the work was in practice done by Aristophanes; it was to do ‘the most difficult task of all’ (516). The nautical metaphor (541–4), with its progression from oarsman to prow-officer to helmsman, indicates that Aristophanes did not take over this task all at once, but by stages. But what were the stages? This is one of the main points of controversy. For Mastromarco and Halliwell, there were three stages:

- 1 In the years before 427, Aristophanes contributed comic material to plays by other authors.
- 2 In the years 427–5, Aristophanes wrote whole plays but still did not undertake their production.
- 3 In 424 for the first time he both wrote and produced a play (*Knights*) himself.

In my view (which, on this point, is the view which most scholars have held, and is fairly regarded by Halliwell as orthodox) there is no evidence that Aristophanes ever contributed comic material to plays by other authors, and only two stages of development are clearly distinguished: the years 427–5, when Aristophanes did not produce his own plays, and the year 424, when he did. But Halliwell (pp. 41–2) rightly warns us not to assume that, when Aristophanes did not himself ask for a chorus, that meant that he took no part at all in the preparations for the performance; and I can use this point of Halliwell’s to defend my own interpretation of *Knights* 541–4. The nautical metaphor means, I think, that Aristophanes, as he gained experience, gradually took a larger share in producing successive plays. For his first play, perhaps, Kallistratos did virtually all the work of producing it, while Aristophanes watched the rehearsals and learned from them; for his second and third plays he may have done rather more of the producing, though still under Kallistratos’ guidance.

So the *parabasis* of *Knights* presents no difficulty for the orthodox view. But the passage which Mastromarco and Halliwell use as the main support for their view is the *parabasis* of *Wasps*.

μέμψασθαι γὰρ τοῖσι θεαταῖς ὁ ποιητὴς νῦν ἐπιθυμεῖ.  
 ἀδικεῖσθαι γὰρ φησιν πρότερος πόλλ’ αὐτοῦς εὔπεποικῶς·  
 τὰ μὲν οὐ φανερῶς ἀλλ’ ἐπικουρῶν κρύβδην ἑτέροισι ποιηταῖς,  
 μιμησάμενος τὴν Εὐρυκλέους μαντεῖαν καὶ διάνοιαν,  
 εἰς ἀλλοτρίας γαστέρας ἐνδὺς κωμωδικὰ πολλὰ χέασθαι,  
 μετὰ τοῦτο δὲ καὶ φανερῶς ἤδη κινδυνεύων καθ’ ἑαυτόν,  
 οὐκ ἀλλοτρίων ἀλλ’ οἰκείων μουσῶν στόμαθ’ ἠνιοχήσας.

(*Wasps* 1016–22)

This passage distinguishes two stages of Aristophanes’ career, a ‘secret’ period and an ‘open’ period. In my view, these are the same two periods as those distinguished in the *parabasis* of *Knights*: the ‘secret’ period is the years 427–5,

and the ‘open’ period begins with *Knights* in 424. But Mastromarco and Halliwell regard the ‘secret’ period as being the years before 427, while the ‘open’ period covers all the years from 427 onwards, when Aristophanes was writing complete plays, whether those plays were produced by himself or not. In their view *Wasps* 1018–20 is evidence that, before he started writing complete plays, Aristophanes contributed comic material to plays by other authors.

The series of objections which Halliwell (pp. 37–9) brings against my interpretation of this passage is substantial. I shall now try to answer them, but I concede at once that my answers are not entirely conclusive.

1. I take ἐτέροισι ποιηταῖς (*Wasps* 1018) to refer to producers of Aristophanes’ plays before *Knights*. But *Banqueters*, *Babylonians*, and *Akharnians* were all produced by the same man, Kallistratos: how then is the plural to be explained? To this question I listed three possible answers in the note *ad loc.* in my edition, and Halliwell’s statement (p. 37) MacDowell finds it difficult to endorse any of them’ is not correct: the one which I think may (not must) be correct is Russo’s solution, that Aristophanes may have had a play produced by Philonides or someone else at the Lenaia of 426. Halliwell himself lends support to this solution by arguing that Aristophanes did indeed have a play produced at the Lenaia of 426 (pp. 44–5), and Mastromarco too believes that (p. 154).
2. Why was Aristophanes’ authorship of the plays of 427–5 secret? I do not think that *Wasps* 1018–20 need mean that he was deliberately secretive (if it did mean that, Halliwell would need to explain why Aristophanes wished his contributions to other at his time. I assume that he was not well known in 427–5, and the general public had no interest in him. I shall return later to this point, which is one of the main conclusions of this article.
3. Why does Aristophanes regard himself in the early period as a mere assistant (ἐπικουρῶν)? This point goes with the previous one, and I shall return to it too; I take ἐπικουρῶν as evidence that the author of those plays was subordinate to the producer.
4. Halliwell’s next objection (iii. on p. 38) is not clear to me. He suggests that in my view Aristophanes in *Wasps* 1018–20 is ‘disowning responsibility for at least one first prize’. On the contrary, I think that Aristophanes is claiming to have contributed to Kallistratos’ success.
5. On *Wasps* 1029 I am content to accept Wilamowitz’s view, which Halliwell reports.
6. Halliwell (v. on pp. 38–9) considers that the *parabasis* of *Clouds* shows that the identity of Aristophanes as author of *Banqueters* ‘was known to at least part of the audience at the time of the first performance of the play, or not long after’.

ἐξ ὅτου γὰρ ἐνθάδ’ ὑπ’ ἀνδρῶν, οὓς ἡδὺν καὶ λέγειν,  
ὁ σῶφρων τε χῶ καταπύγων ἄριστ’ ἠκουσάτην,

κάγώ, παρθένος γὰρ ἔτ' ἦν κούκ ἐξῆν πώ μοι τεκεῖν,  
 ἐξέθηκα, παῖς δ' ἑτέρα τις λαβοῦσ' ἀνείλετο,  
 ὑμεῖς δ' ἐξεθρέψατε γενναίως κάπαιδεύσατε

(*Clouds* 528–32)

The exact interpretation of this passage is difficult, but I believe (as Halliwell does) that the ἄνδρες in line 528 are some specific individuals, not the audience in general, nor even the σοφοί members of the audience in general. The passage distinguishes three successive stages of the production of *Banqueters*: the third of these is the favourable reception of the play by the audience when it was performed (532); before that comes the occasion when Kallistratos agreed to produce it (530–1); the favourable comments by the undefined ἄνδρες are something even earlier. I conclude that the ἄνδρες were two or three people who read the script and encouraged Aristophanes to try to get it performed. (This interpretation means taking ἐνθάδ' as 'in Athens' rather than 'in the theatre'.) If that is right, lines 528–9 are not evidence that Aristophanes was known to the audience in general at that time.

7. We do not know of any plays written by Kallistratos: could he then be called a ποιητής (*Wasps* 1018)? The lack of evidence is, of course, not conclusive proof that he did not write any; but the more important point to make in answer to this question is that, in my view, he is in fact called a ποιητής in another passage, *Akharnians* 633–58. I discuss this passage below.

Thus I think that it is possible to defend my interpretation of *Wasps* 1018–20 against Halliwell's objections, even though some of those objections are not entirely without force. I come now to the reasons why I consider that this interpretation should still be accepted, despite the objections, and the alternative interpretation by Mastromarco and Halliwell should be rejected.

The first reason is the correspondence between the ship metaphor of *Knights* 541–4 and the chariot metaphor of *Wasps* 1022. For metaphorical purposes, holding the tiller of a ship and holding the reins of a chariot are identical activities. The man who does either of these things is the man who controls the vehicle. In the *Knights* passage it is clear that the occasion when Aristophanes took the helm of his ship was the production of *Knights*; before that he had been in a subordinate position, like an oarsman or prow-officer. Therefore in the *Wasps* passage the occasion when he took the reins of his chariot must have been the production of *Knights*; before that he was an assistant (*Wasps* 1018 ἐπικουρῶν).<sup>4</sup> The view of Mastromarco and Halliwell involves the inconsistency of saying that for the production of *Banqueters*, *Babylonians*, and *Akharnians* Aristophanes was in charge (according to *Wasps*) and not in charge (according to *Knights*).

The second reason emerges from consideration of the *parabasis* of *Akharnians*.

Ἐξ οὗ γε χοροῖσιν ἐφέστηκεν τρυγικοῖς ὁ διδάσκαλος ἡμῶν,  
 οὐπω παρέβη πρὸς τὸ θέατρον λέξων ὡς δεξιός ἐστιν·

διαβαλλόμενος δ' ὑπὸ τῶν ἐχθρῶν ἐν Ἀθηναίοις ταχυβούλοις,  
 ὡς κωμῶδεϊ τὴν πόλιν ἡμῶν καὶ τὸν δῆμον καθυβρίζει,  
 ἀποκρίνασθαι δεῖται νυνὶ πρὸς Ἀθηναίους μεταβούλους.  
 Φησὶν δ' εἶναι πολλῶν ἀγαθῶν αἴτιος ὑμῖν ὁ ποιητής.

(*Akharnians* 628–33)

The first line of this passage makes clear that the man in question is in charge of the chorus, and has had charge of several comic choruses before; and he is called both ὁ διδάσκαλος (628) and ὁ ποιητής (633). Since Aristophanes was not in charge of any chorus before *Knights* (*Knights* 512–16, 541–4: ἐφέστηκεν cannot refer to the same activity as προρατεῦσαι), it follows logically that the man described in the parabasis of *Akharnians* is not Aristophanes but Kallistratos.<sup>5</sup> Arid from this it follows (as Rennie maintained, following Briel)<sup>6</sup> that it was Kallistratos who was given credit in this play for the good advice given to the Athenians in *Babylonians* (633–45), that it was Kallistratos who had some connection with Aigina (652–5), and probably also that it was Kallistratos who was attacked by Kleon in the previous year (377–82).<sup>7</sup> Thus Kallistratos was the man whom the audience regarded as the ποιητής of both *Babylonians* and *Akharnians*, and that shows that the plays of the years 427–5 belong to the secret' period when Aristophanes was in a subordinate position (*Wasps* 1018–20) and not, as Mastromarco and Halliwell would have it, to the 'open' period.

But the problem is: if (as we all believe) Aristophanes wrote the script of *Akharnians*, how could Kallistratos be called the ποιητής of this play, and likewise of *Banqueters* and *Babylonians*? Two alternative solutions must be considered.

(1) Perhaps Kallistratos and Aristophanes agreed to pretend that Kallistratos had written the script although he in fact had not. In other words, Aristophanes was a ghost writer; Kallistratos wished to have the credit for the play, and he either paid Aristophanes for the script or did him some other kind of favour in return for it. This solution, as far as I can see, does not conflict with any of the evidence; it certainly fits *Wasps* 1018–20 well. Nevertheless I find it unattractive. I prefer alternative (2). Perhaps we are wrong to restrict the word ποιητής to the meaning 'script-writer'. We should remember that it means 'maker'. A comedy consisted of words, music, dancing, costume, and clowning; and, before Aristophanes came along, it is by no means clear that the words were considered the most important of these ingredients. Earlier comedies probably consisted largely of the cavorting of a comically dressed chorus alternating with actors' slapstick. The ποιητής or 'maker' of a comedy was a man who devised all these things, not the words alone. But a problem of nomenclature arose when Kallistratos and Aristophanes shared the tasks (since, for all we know, such sharing was unprecedented): was the writer of the words or the deviser of the action now to be called the maker of the comedy? The latter may, at first, have seemed more appropriate, especially if Kallistratos was the senior man, the one who was in charge; only gradually, as comedy became more literary, would it become established custom to restrict the term ποιητής to the author of the script.<sup>8</sup>

The following account of Aristophanes' early career is to some extent speculative, but I believe it fits such evidence as we have. When quite a young man, with no experience of the theatre except as a member of the audience, he set about writing a play; the outcome was the script of *Banqueters*. He showed it to two or three intelligent older men of his acquaintance (the ἄνδρες of *Clouds* 528), and they were very favourably impressed by it: here was a comedy which rose above the usual farcical level to include coherent characterization and a moral theme. They wanted to encourage the young man; but how could they help him to get his play performed? He was without experience (παρθένος in *Clouds* 530) of organizing performances, and the arkhon might be reluctant to award a chorus to a young man for a play so different from the kind of comedy which was then customary. The solution which they found was to get Kallistratos to take it on (ἀνείλετο in *Clouds* 531). Kallistratos was no doubt a man of considerable experience in the theatre, either as an actor or as an author and producer, or perhaps in both capacities. He was well able to get a chorus from the arkhon and to put on a performance using Aristophanes' script. The young Aristophanes naturally attended all the rehearsals and, when the arrangement was repeated in the next two years for *Babylonians* and *Akharnians* (and probably also, with a different producer, for a play at the Lenaia of 426), he may have given a considerable amount of help; but Kallistratos remained in charge. It was Kallistratos' show. It was he who was announced as the ποιητής and received the prize. The general public neither knew nor cared about Aristophanes – not because his contribution was kept secret deliberately, but simply because it was treated as a matter of minor importance and was not publicly announced. No one, except his friends, was interested in Kallistratos' young assistant.

But this state of affairs could not last. By the time of *Akharnians* it must have become clear that the play's success was due more to the script than to other aspects of the production. A new kind of comedy had come into existence, more articulate and literary than any that had existed before. Probably copies of the script were made for reading after the performance was over, on which the name of the author of the script would naturally appear. At any rate word somehow got around that these brilliant plays were scripted not by Kallistratos himself but by a young man named Aristophanes.<sup>9</sup> A number of people (πολλούς in *Knights* 512) encouraged Aristophanes to undertake a production on his own, not merely assisting Kallistratos; and when he did so, in 424, he was able to assume, in the *parabasis* of *Knights*, that the audience knew that he had written the scripts for several previous plays.

In later years he sometimes collaborated again with Kallistratos or Philonides over other plays, including *Birds*, *Lysistrata*, and *Frogs*.<sup>10</sup> His example was followed by Eupolis in 420 (Athenaios 216d), and later by other writers. On those occasions, when the authors were already well-known dramatists, there is no need to suppose that the audience was unaware of the collaboration. The man who applied for a chorus (Kallistratos or whoever it was) was probably still formally regarded as the ποιητής, at least for a while; there appears to be no fifth-century

text in which that word is used of the writer of a comic script who was not also the producer. But eventually, at any rate in the fourth century, when the music and clowning had dwindled and the words were the dominating element in a comedy, it became customary to call the writer rather than the producer (when they were different men) the ποιητής of a comedy; and the compilers of the didascalic inscriptions in the third century considered it more appropriate to put down Aristophanes than Kallistratos as the victorious poet of *Babylonians*.<sup>11</sup>

## Notes

- 1 Mastromarco kindly sent me a copy of his article; and I had the privilege of seeing Halliwell's before publication, because I was the referee mentioned in his n. 30.
- 2 The first version of this article was written in 1964, and I am grateful to Professor H. D. Westlake for reading and commenting on it at that time. I was dissatisfied with that version and put it aside *nonum in annum*. The second version was given as a discussion paper at the Triennial meeting of Greek and Roman Societies in Cambridge on 4 August 1978. The article has been entirely rewritten for the present third version.
- 3 I agree with Mastromarco and Halliwell that Aristophanes was not prevented from producing earlier plays by a law prescribing a minimum age.
- 4 οὐκ ἄλλοτριῶν in *Wasps* 1022 is a negative phrase inserted to emphasize οἰκείων. It is not permissible to extract from it a positive statement that Aristophanes did, at an earlier date, control other men's muses; such a statement would, in fact, be incompatible with ἐπικουρῶν.
- 5 I cannot see any validity in Halliwell's claim (p. 36) that the fact that Aristophanes is called διδάσκαλος or κωμωδοδιδάσκαλος in *Knights* and *Peace*, for both of which he was the producer, supports an assumption that he could be called διδάσκαλος in *Akharnians*, for which he was not the producer.
- 6 See pp. 18–21 of Rennie's edition of *Akharnians* (1909); cf. Dover, *Aristophanic Comedy* (1972), p. 14 n. 5.
- 7 The dispute between Kleon and Kallistratos arising from *Babylonians* was distinct from the dispute between Kleon and Aristophanes arising from *Knights*; see the note on lines 1284–91 in my edition of *Wasps* (where, however, the phrase Kleon's prosecution of Ar.' needs amendment). Halliwell (p. 35 n. 11) rejects my interpretation of *Wasps* 1284–91, but I think that he is wrong. For it is not true that the aorist ἐξηπάτησεν cannot refer to something which has been done within this play; cf. *Wasps* 1451 for another aorist referring to a change of attitude which has occurred within the play. Nor do I accept that εἶτα νῦν may (like νῦν δέ in the sense 'but as it is') be a-temporal. The phrase is not unique, as Halliwell alleges; there is a striking instance in Dem. 18. 243, ἐμβρόντητε, εἶτα νῦν λέγεις, which is emphatically temporal.
- 8 In the modern cinema a man who 'makes' a film does not always, or even usually, write the script. Hitchcock's films, are films directed by Hitchcock, not written by him.
- 9 Halliwell (p. 37) not unnaturally wants to know how this fact became common knowledge. I do not know the exact answer, but I find no difficulty in believing that, in a city the size of ancient Athens, information would circulate quite quickly if people once began to take an interest in it.
- 10 But not *Wasps*; I prefer the view that *Wasps* was produced by Aristophanes himself, not by Philonides. See p. 124 of my edition, to which I should add the point that Philonides produced *Proagon* and therefore can hardly have produced *Wasps* too, since it is not credible that the same man would be awarded two choruses at the same festival.
- 11 *IG* ii<sup>2</sup> 2325 col. ii. See Gould and Lewis's second edition of Pickard-Cambridge, *The Dramatic Festivals of Athens* (1968). On p. 112 they give the text of the inscription, where Ἀρι[στοφάνης] is restored as the comic victor at the Dionysia of 426. On p. 86

they say 'It still, of course, remains possible that the official record of the archon may have entered the name of the producer. . . ; and in that case the compilers of the records for our inscriptions, at a later date, may have corrected the archon's entries by substituting the names of the actual poets; but there is no evidence that it was so.' My submission is that the circumstances of production, as recounted by Aristophanes himself, do supply evidence to support that possibility. Cf. Dover's edition of *Clouds* (1968), p. xvii n. 2.



## Aristophanes, *Lysistrata* 277–80

(Originally published in *CQ* 30 [1980] 294–5)

ᾤχετο θᾶπλα παραδοὺς ἐμοί,  
σ μικρὸν ἔχων πάνυ τριβώνιον,  
πεινῶν ῥυπῶν, ἀπαράτιλτος,  
ἐξ ἐτῶν ἄλουτος.

When Kleomenes seized the Athenian Akropolis (in 508/7 BC), he was forced to surrender and leave Attika. Why was he wearing a very short cloak? Wilamowitz (in his note ad loc.) thought it was because he had to give up part of his clothing when he surrendered. But in fact Spartans always wore scanty clothing; being unwashed for six years cannot have been a condition of surrender after a siege lasting only two days (Hdt. 5.72.2); and clearly the whole of 278–80 is not an account of the conditions of surrender, but an expression of the Athenians' amusement or disgust at the normal appearance of Spartans.

The Athenian view of the normal appearance and life-style of Spartans is given also in *Birds* 1282, ἐκόμων, ἐπείνων, ἐρρύπων, ἐσωκράτων; long hair, scanty food, dirtiness, scanty clothing. All the same features are mentioned in *Lys.* 277–80, which actually uses two of the same verbs: besides the reference to the short cloak we have πεινῶν (the reading of Γ, not to be removed in favour of Ρ's πινῶν) referring to the meagre diet, ῥυπῶν and ἐξ ἐτῶν ἄλουτος to the dirtiness.

The remaining feature of Spartans mentioned in *Birds* 1282, long hair, appears to be represented in *Lys.* 279 by ἀπαράτιλτος. But that presents a problem. The Spartans let the hair on their heads grow long. The alternative would have been to cut it or shave their heads; but ἀπαράτιλτος does not mean 'unshorn' or 'unshaven', but 'unplucked'. The verb παρατίλλειν normally refers to plucking out pubic hair, which women did to beautify themselves (*Lys.* 89, 151, *Frogs* 516). A seducer might have his pubic hair pulled out as a punishment (*Wealth* 168), and a man passing time idly is said to pull out his hairs (*Acharnians* 31). But normal Athenian men were just as much 'unplucked' as Spartan men. An Athenian would not think it odd or remarkable that Kleomenes was ἀπαράτιλτος, and indeed, unless his cloak was quite exceptionally short, would not be able to see whether he was

ἀπαράτιλος or not. There is no evidence that this word can be used to refer to having long hair on the head, for which the word is κομῶν or κομήτης, as *Birds* 1282 indicates.

Emendation of line 279 has been suggested before, on metrical grounds. The latest discussion is by Jeffrey Henderson in *CQ* N.S. 29 (1979), 53–5. He rightly says ‘The metre is essentially iambic dimeter’, but nevertheless defends ἀπαράτιλος as a trochaic *metron*. Now, it is true that a lyric passage may contain both iambic and trochaic metra, but when that happens there is usually a considerable number of each, and in comedy they are usually separated from each other fairly clearly. ‘The ins and outs of iambic and trochaic metre rarely give rise to any ambiguity in comedy’ (A. M. Dale, *The Lyric Metres of Greek Drama*<sup>2</sup>, p. 93). *Frogs* 209 ff., to which Henderson refers, is not an adequate parallel for the phenomenon of a single trochaic *metron* on its own. Although we cannot say that such a thing is impossible, it is strange enough to arouse suspicion.

Thus ἀπαράτιλος is suspect both for metre and for sense. The emendation which I propose in order to meet both objections is κομήτης. The parallel of *Birds* 1282 shows that this is right in sense. In metre, it makes an iambic di-meter catalectic, which is suitable; it does not create a problem of responsion, since in line 264 of the strophe μογλοῖς δὲ καὶ κλήθροισιν (for R’s μογλοῖσιν . . .), making an iambic dimeter, was proposed by Brunck and is accepted in the Oxford and Budé texts. I assume that ἀπαράτιλος is a gloss which has ousted κομήτης from the text. But why should anyone have thought of glossing κομήτης by ἀπαράτιλος? The answer, I think, is in line 827. There the gloss κομήτης ἀπαράτιλος would be in place, and some scholiast has misguidedly transferred the equation to 279, where it does not belong.

# The *Frogs*' chorus

(Originally published in *CR* 22 [1972] 3–5)

The *Frogs*' chorus is the best known passage in Aristophanes, and to the many previous discussions three more have recently been added by Garry Wills in *Hermes*, *xcvii* (1969), 306–17, Jean Defradas in *R.E.A.* *lxxi* (1969) 23–37, and Nancy Demand in *C.P.* *lxv* (1970), 83–7. Wills's article is especially helpful in clarifying the main problems and in showing the inadequacy of previous interpretations, even though his own interpretation may not command general agreement. My purpose here is not to go over all the ground again, but only to point out one or two considerations which recent writers have overlooked.

## 1 The visibility of the Frogs

A scholiast on line 209 says that the Frogs are not visible, but the chorus merely sings 'from inside':

ταῦτα καλεῖται παραχορηγήματα, ἐπειδὴ οὐχ ὁρῶνται ἐν τῷ θεάτρῳ οἱ βάρταχοι, οὐδὲ ὁ χορὸς, ἀλλ' ἔσωθεν μιμοῦνται τοὺς βατράχους. ὁ δὲ ἀληθῶς χορὸς ἐκ τῶν εὐσεβῶν νεκρῶν συνέστηκεν.

This scholion is undatable; it may be Hellenistic, or it may be later. There is no ground for supposing that the scholiast ever saw the play performed or had any record of the staging of the original performance. The basis of his view appears to be simply an assumption that there cannot be two visible choruses in one play: since 'the real chorus' consists of εὐσεβεῖς νεκροί, the Frogs cannot be a 'real chorus'. This is not to be regarded as 'evidence' but as a conjecture, deserving as much, or as little, consideration as conjectures by later scholars. And, considered as a conjecture, it is not very compelling: we have one other possible, though disputed, example of an Old Comedy in which the chorus changes its character in the course of the play and is visible in both characters (*Lysistrata*), but we have no other example in Old Comedy of an invisible chorus.

Some modern scholars (e.g. Wills, *op. cit.*, p. 307 n. 2) have tried to bolster the scholiast's view by adducing practical objections to making the Frogs visible. But I confess I cannot see any practical difficulty. It is not true that too little time is available for a change of costume. Over fifty lines of text separate the exit of the Frogs (268) from the appearance of the initiates (323); and, if all that each member of the chorus needs to do is to take off a frog-mask and put on a long cloak covering the rest of his frog-costume, he should have plenty of time.

In fact the decisive practical consideration tells the other way. This is one which all recent writers on *Frogs* have ignored and which it is the main purpose of this note to point out: audibility. The words of the Frogs' song, on any interpretation, are pointed and amusing, and are clearly meant to be heard. They are not just banalities or 'la-la-la', like some songs in modern operas in which it does not much matter whether the audience hears the words or not (in contrast to *Clouds* 275–90 and 298–313, which perhaps do fall into that category). In the best of conditions it is not easy to make words sung by a chorus of twenty-four singers distinctly audible to an audience of people who have never heard them before. If the singers were behind a wall, in an open-air theatre with no ceiling to direct the sound towards the audience, it would be quite hopeless; the audience would hear the tune, but no more.

I conclude that in the original performance the Frogs must have appeared in sight of the audience – as perhaps considerations of dramatic effectiveness should have made us realize in any case.

## 2 The basis of the competition

Wills, in the article already mentioned, has performed an important service by bringing into focus the question 'What is the basis of the competition between Dionysus and the Frogs?' and by showing the weaknesses of attempts to answer it by reference to volume, rhythm, or violence. Instead he suggests that Dionysus and the Frogs are competing in 'beauty' of utterance: Dionysus wins by uttering more 'beautiful' sounds than the Frogs, by their own 'upgurglingbubbly' standards, because his πορδαί outdo their croaks.

This explanation is ingenious and amusing, and may possibly be right; but I do not feel that Wills has quite proved his case. The scene contains no clear reference to πορδαί after 238. The utterance which clinches Dionysus' victory is βρεκεκέξ κοάξ κοάξ in 267. Wills thinks, apparently, that this is a πορδή, imitated by the flautist offstage. But, on the face of it, βρεκεκέξ κοάξ κοάξ is part of the words which Dionysus articulates orally. Would a stage direction to the flautist look like this? And if the flautist makes a noise off-stage (or, for that matter, if Dionysus speaks or sings orally), how is the audience supposed to know that that is a πορδή issuing from Dionysus' πρωκτός?

So the question 'What is the basis of the competition?' still seems to be open. I am not confident that I know the answer to it, but it may be worth while to point out that, as the competition draws near its climax (from 258 onwards), what Dionysus and the Frogs boast about is not any of the four features which Wills

discusses (volume, rhythm, violence, 'beauty'), but a fifth, which Wills does not discuss: persistence. The Frogs declare that they will shout (i.e. croak) all day (258–60 κεκραζόμεθα δι' ἡμέρας). Dionysus retorts that they will never defeat him, because he will shout all day, if necessary, until he defeats them (264–6 κεκράξομαι γὰρ κἄν με δῆ δι' ἡμέρας, ἕως ἂν ὑμῶν ἐπικρατήσω τὸ κοᾶξ). The implication is that whoever goes on shouting longer will be the winner. We ought at least to consider the possibility that the competition has, after all, nothing more to it than this: to see who is the first to get tired of shouting βρεκεκέξ κοᾶξ κοᾶξ.

In the event, the Frogs give up remarkably soon: at 267 Dionysus shouts βρεκεκέξ κοᾶξ κοᾶξ and they make no attempt to reply. He claims to have stopped their croaking (268); this may mean no more than that he has induced them to stop by convincing them that they have no hope of outlasting him. Of course it is unrealistic that they should give up so quickly; but if the scene went on longer the audience might get bored with it, and Aristophanes regularly attaches more importance to keeping the audience entertained than to strict realism or logic.

I doubt whether we shall ever understand the Frogs' chorus completely. So much of its effectiveness must have depended on music and activity of which we have no record. If we had such evidence, it might reveal to us that the basis of the competition was musical (cf. Defradas's article), or that it was 'beauty' (as Wills suggests), or something else again. In the absence of such evidence, however, we ought to hesitate to make additions to what the competitors actually say they are going to do – which is merely to go on shouting all day, until they win.

# Clowning in Aristophanes

(Originally published in *PCA* 65 [1968] 30–31)

When Aristophanes composed a play, his aim was not to create a work of literature for readers but to produce a performance for the entertainment of spectators. Some of his most important comic and dramatic effects were visual, not verbal; and we cannot expect to achieve a full appreciation of his work unless we try, despite the difficulties, to understand the performers' actions as well as their words.

In a scene like *Wasps*, 136–210, where Philocleon keeps trying to get out of his house and Bdelycleon keeps pushing him back inside, the dramatic point is made more effectively and forcibly by comic activity than by speech. Some of the activity in that scene might be called 'jack-in-the-box clowning'. Other types of clowning can be distinguished and classified: simple hitting, as when Aeacus beats Dionysus and Xanthias in the *Frogs*, or when Peisthetaerus chases intruders out of Cloud-cuckooland in the *Birds*; custard-pie clowning, as when the old women in *Lysistrata* throw water over the old men and leave them dripping and shivering; a man in a precarious or uncomfortable situation, such as Trygaeus mounted on a flying beetle in the *Peace*; actions inconsistent with appearance, as when Dionysus is dressed like Heracles but behaves like a coward; and so on.

What makes such activities funny to an audience? For different types of clowning different explanations may be suggested. In some cases one might say that the spectator feels relief and satisfaction at seeing an action done on stage which he would like to do himself but is prevented or inhibited from doing in real life; this is a theory of 'comic catharsis'. In other cases the spectator feels complacent that he himself is not in the awkward or unpleasant situation of the character on stage. There is probably no one psychological explanation which covers every type of clowning; but the whole subject deserves much more study than it has yet received.

## Aristophanes, *Peace* 16–18

(Originally published in *CR* 15 [1965] 17)

Οι. α'           καὶ τριῖβ' <ἔθ'> ἐτέρας.  
Οι. β'           μὰ τὸν Ἀπόλλω γὼ μὲν οὐ  
                  οὐ γὰρ ἔθ' οἷός τ' εἶμ' ὑπερέχειν τῆς ἀντλίας.  
Οι. α'           αὐτὴν ἄρ' οἴσω συλλαβῶν τὴν ἀντλίαν.

The Second Slave has been making dung-cakes and the First Slave has been feeding them to the beetle, until in line 16 the Second Slave refuses to continue.

Some editors accept 17–18 as they stand, but others have wished to emend. The latest editor, Platnauer, obelizes τὴν ἀντλίαν in 18, and casts doubt on 17 too. His objections are that ὑπερέχειν does not mean 'endure'; that ἀντλία generally means 'the hold of a ship where the bilge water was', not the bilge itself; and that ἀντλίας . . . ἀντλίαν is suspicious.

I agree that ὑπερέχειν does not mean 'endure'. Used intransitively it means 'be over'. I agree also that ἀντλία does not mean bilge water. It means a container of ἄντλος. When ἄντλος is the bilge water in a ship, naturally ἀντλία is the hold or bottom of the ship. But in our passage there is no ship, and the dirty water in question is the sewage from which the Second Slave is extracting dung for the beetle's meal. Thus ἀντλία will naturally mean the container of the sewage, just as ἄντλος, if it were used in these lines, would be the sewage itself.

The container is portable (as 18 shows) and so must be a kind of bucket or tub. And this is just what is stated by the scholiast in manuscript R, who in his note on 18 offers the synonyms ἀγγεῖον and σκάφη. To fish out pieces of dung the Second Slave must stand, lean, or stoop over it. Though his feet are on the ground, his head is over the tub. This is sufficient to justify the use of ὑπερέχειν, which is applied elsewhere to a person whose head, though not the rest of him, is above something (e.g. Thucydides iii. 23. 5). Van Daele's translation in the Budé edition, 'avoir le nez sur cette sentine', is nearly right, though it perhaps goes too far in limiting the application of ὑπερέχειν it is easy for a man to identify himself with his head, but less easy for him to identify himself with his nose.

‘No,’ says the Second Slave, ‘I can’t stand over this dung-tub any longer.’ ‘All right,’ replies his colleague, ‘if you won’t give me any more single dung-cakes, I’ll take the *tub*’; and he does so, conveniently clearing the stage of a property which otherwise would soon be in the way. The noun ἀντλίαν is needed in 18 because of the contrast (marked also by αὐτήν) between the dung-cakes, which he expected to take but now will not, and the tub which he is going to take instead. No emendation is required.



# Aristophanes, *Frogs* 1407–67

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## I

AESCHYLUS has just defeated Euripides in the verse-weighting round of their contest. In 1407–10 he issues a final challenge, that with two lines he could outweigh Euripides' whole household. But as it stands the challenge is incomplete; to finish it we need something like 'and my poetry would easily appear the heavier'. Perhaps Aeschylus is interrupted by the next speaker – or, it has been suggested, by a thunderclap heralding the arrival of Pluto.

But when a speaker in Aristophanes is interrupted the words of the interruption normally have some bearing on the speech interrupted. The interrupter may be asking an eager question about the remark he interrupts (e.g. *Frogs* 7, 130), or commenting on it (e.g. *Frogs* 159, 554), or providing it with a different ending from that which the first speaker intended (e.g. *Frogs* 239, 1208). Indeed a speech which neither is complete in itself nor leads on to the next speech or event is dramatically weak and shows bad workmanship on the part of the dramatist. That it is bad workmanship does not of course prove that Aristophanes never wrote such a speech; but it is not what we should expect of him.

Now, when Aeschylus' speech breaks off in 1410, what follows it? Dionysus' remark ἄνδρες φίλοι . . . This remark, though it might be said to be a comment on the whole contest of lines 907–1410, has no particular bearing on Aeschylus' remark in 1407–10; it is not a comment on it, a question about it, or a suggested ending to it. Still less would a clap of thunder fulfil any of these functions. So either the interruption of Aeschylus' speech is a dramatic fault, or there is no interruption – that is, a line from the end of the speech has been lost.

When does Pluto appear? It is now generally agreed that he speaks 1414. Since 1414 is an answer to 1411–13, he must be present by 1411. There is no indication in the text that he appears before 1410. It has been suggested that he appears at 830; but if there is no indication in the text that he appears before 1410, it is most unlikely that he does so, for three reasons.

- (a) It would be most unnatural for the arrival of a god, the ruler of the world in which the action of the play is taking place, to pass unnoticed and ignored by the other characters.
- (b) If Aristophanes allowed a character to be present for nearly 600 lines before speaking, he would be committing the very fault for which Aeschylus is criticized in 911–20, and committing it to a far greater extent than Aeschylus himself (as far as we know) was ever guilty of doing.
- (c) When a fresh character appears in Aristophanes, his arrival is normally announced in one or other of these ways: he immediately speaks himself; or he is addressed by name (e.g. *Frogs* 832); or, if his name is unknown to the other characters, he is addressed as *σὺ* or *οὗτος* (e.g. *Birds* 1199); or he is referred to (usually as *οὗτος* or *οὐτοσί*) by one of the other speakers (e.g. *Clouds* 8, *Peace* 1043, *Thesm.* 96). (This rule of course does not apply to silent characters, nor to very unimportant characters who have only two or three lines to say altogether, e.g. the servants in *Clouds* 56, *Wasps* 248.) So Pluto does not appear before 1410; and the facts mentioned in (c) show that Dionysus' speech in 1411–13 is not a sufficient announcement of his arrival. Therefore at least one line announcing Pluto's arrival must have dropped out before 1411. It might be a line spoken by Pluto himself; but I think the arrival of so important a personage is more likely to have been hailed by a line from another speaker, employing the word *οὗτος* or *οὐτοσί* and saying something like 'Here comes Pluto!' This line will have been spoken either by the chorus-leader or, possibly, by Dionysus.

In 1411 Dionysus refuses to judge between the contending poets. This refusal to judge suggests that he has just been asked to make the judgement. 1411 is not an answer to Aeschylus' challenge in 1407–10, still less to a line heralding the arrival of Pluto. It is an answer to some such remark as 'Now you must make your decision'. This would be a natural remark for Pluto to make; it is the kind of remark which he does in fact make in 1467. So there are three separate reasons for thinking that there is a gap in the text between 1410 and 1411: Aeschylus ought to complete his speech, someone ought to announce the arrival of Pluto, and someone, probably Pluto, ought to make a remark to which 1411 is the answer. Taken together I think that these reasons amount to proof.

I believe therefore that at this point we have lost several lines of the text – probably three, with a meaning something like this:

*Ae.* . . . and I'll easily outweigh him, household and all!

*Ch.* Stop the quarrel! Here is King Pluto.

*Pl.* Have you decided the contest, Dionysus?

## II

In 1411–16 the verb *κρίνω* occurs three times, not always in the same sense. In 1411 it means 'judge', and its object is both the contestants. In 1416 it means 'judge

the better' or 'select', and its object is only one of the contestants. Which meaning does it have in 1415? If τὸν ἕτερον is its object, it must mean 'judge the better' as in 1416. But is τὸν ἕτερον the object of κρίνω or of λαβών? In other words, at what point in the line does Pluto begin to speak? Of the best manuscripts, RU give no indication of a change of speaker at all, while VAM give τὸν ἕτερον to Pluto. Enger was the first to give τὸν ἕτερον to Dionysus, and he has been followed by many editors. (Stanford, for example, follows Enger without even remarking that his reading is not that of the manuscripts.)

Dionysus and Pluto are bargaining. (We must remember that Pluto is generally a hard-hearted god, who can only with difficulty be persuaded to allow a dead man to return to life.) Dionysus wants Pluto to allow him to take a poet back to the world of the living. Pluto wants Dionysus to settle the dispute between Aeschylus and Euripides. (It is true that in 811 it was the two poets themselves, not Pluto, who asked Dionysus to be the judge. But Pluto too wants him to make the decision; he asks him to make it certainly in 1467, and perhaps also, if my conjecture is correct, in the line that has fallen out before 1411.) Dionysus says (1411): 'I won't judge between them.' Pluto replies (1414): 'In that case (ἄρα implies 'If you do as you say', as in 252) you won't achieve what you came for' (i.e. I shall not let you take a poet away with you). Dionysus says (1415): 'And if I do judge between them?' Pluto replies (1415): 'You will take one of them away with you.' Pluto faces Dionysus with an ultimatum and a dilemma: if he makes no judgement he may not take away a poet, but if he makes a judgement he may take one. For this concession Dionysus thanks Pluto with the word εὐδαιμονοίης (of which 'God bless you' is, in the circumstances, a rather Irish translation).

This makes it clear that ἐὰν δὲ κρίνω in 1415 presents the alternative precisely opposite to αὐτοὺς οὐ κρίνω in 1411. Therefore κρίνω has the same sense ('judge', not 'judge the better') in both these lines; therefore a plural object must be understood with it in 1415; therefore τὸν ἕτερον is the object not of κρίνω but of λαβών. Similarly 1414 presents the opposite alternative to Pluto's statement in 1415–16; and, since 1415–16 is a statement, it is likely that 1414 is also a statement, and not a question (as Stanford, for example, makes it).

### III

In 1435–6 Dionysus asks the two poets for their opinions about how the city can be saved. In 1437–41 Euripides gives a ridiculous answer to this question. In 1442–50 he gives another answer which, though it begins in the style of a Euripidean oxymoron, contains advice probably intended by Aristophanes to be taken seriously. In 1451–3 Dionysus makes a comment and asks a question, to which Euripides replies; of these three lines 1452–3 certainly, and perhaps 1451 also, refer not to 1442–50 but to the ridiculous suggestion in 1437–41.

Editors have treated this passage in three different ways. Some (e.g. V. Coulon in the Budé edition, and R. E. Wycherley in *C.R.* lix [1945], 34–38) have accepted the text as the manuscripts give it. Some (following Aristarchus) have cut out

1437–41 and 1452–3. Some (e.g. H. Dorrie) have kept all the lines but rearranged them. I believe that Dorrie's rearrangement of the lines is the right one; and since he has already made a detailed review of the problem and defence of his view in *Hermes* lxxxiv (1956), 296–319, I need give no more than a summary of my reasons for agreeing with it.

We are not justified in cutting out 1437–41 and 1452–3; they were in the text in the time of Aristarchus, their style and humour are quite in Aristophanes' manner, and faulty syntax in 1438, though it may justify emendation of that line, does not justify excision of the whole of the passage in which the line occurs. Yet we cannot accept the lines in the order in which they appear in the manuscripts; for 1442 hardly makes sense when it comes directly after 1437–41, and 1452–3 comment on, and so should follow, 1437–41, not 1442–50. Where would 1442 naturally come? Clearly after 1462. Euripides expresses his willingness to advise when Aeschylus refuses to do so; θέλω φράζειν 1442) is a retort to οὐ βούλομαι (1461). 1442–50 should therefore follow 1462. Should 1451 go with them? Probably not; Palamedes is a model of ingenuity, and so the exclamation ὦ Παλάμηδες appropriately follows the description of aerial missiles in 1437–41 rather than the political advice of 1442–50.

So far I have followed Dorrie's treatment of the passage 1433–66, but some further problems remain in it.

#### IV

What is the syntax of 1437–8? If the two lines are intended both to be parts of the same clause, then they are ungrammatical, for τις cannot be the subject of αἴρῳεν. Yet if they are not both parts of the same clause, what are they? Is it possible that 1437 begins a conditional sentence, which is broken off before even the *protasis* (let alone the *apodosis*) is complete, and 1438 is a wish? This perhaps does not positively break the rules of grammar, but it is certainly a clumsy and incoherent way of speaking. Of course it is not impossible that the speech of a character in a comedy should be ungrammatical or incoherent if the character is a bad speaker or is surprised or nervous. But Euripides is an exceptionally fluent and self-possessed character. An ungrammatical or incoherent speech is therefore utterly inappropriate, and I think that 1437–8 should be emended.

The problem is that the nominative τις is not the subject of any finite verb. I do not see how it can be cut out or altered to another case (to make it genitive absolute, for example, is metrically impossible); therefore it must be provided with a verb. Either πτερώσας or αἴρῳεν must be converted into a 3rd singular optative (for I do not see where else an optative for τις could be inserted). We might write πτερώσαι; in this case we should have also to write either καἴρῳεν (ending 1438 with a dash) or αἴρῳεν ἄν (ending 1438 with a full stop). But in Attic the normal 3rd singular aorist optative of πτερώω would be not πτερώσαι but πτερώσειε (though in *Wasps* 726 we do find δικάσαις for δικάσειας). Or we might write αἴρῳι or ἄρειεν; in this case αἴρῳι must be wrong. If we write αἴρῳα ('on the breeze' or 'by means of a breeze') instead of αἴρῳι, we are hardly making any change at all

(for Aristophanes will have written both these words alike as ΑΥΡΑΙ). αἴροι αὔρα will not scan, but ἄρειεν αὔρα will, and so is perhaps the most likely of the alternatives.

I therefore tentatively suggest that Aristophanes wrote ἄρειεν αὔρα in 1438. Its corruption probably began with the conversion of αὔρα into αὔραι. This seemed to demand a plural verb, and the occurrence of ναυμαχοῖεν and ραίνοιεν at the beginnings of 1440 and 1441 helped to persuade somebody to change ἄρειεν into αἴροιεν instead of merely into ἄρειαν.

## V

What is the purpose of μέν in 1442? It may mean ‘but’, if (*pace* Denniston) adversative μέν is a possible usage in Attic. (Professor Dover has drawn my attention to *Clouds* 654, where μέν does seem to mean ‘but’.) If it does not mean ‘but’, it implies a δέ-clause (‘whereas Aeschylus refuses to speak, because he doesn’t know what to say’) which is so obvious that it is omitted.

## VI

Dörrie believes that the advice given in 1443–4 and 1446–50 should be spoken by Aeschylus. He thinks that Aristophanes means the advice to be taken seriously (for its tenor is very similar to, for example, that of the ‘coinage’ passage of the Parabasis (718–37), which is no doubt meant seriously), and that such advice is out of place in the mouth of Euripides. Accordingly he re-allocates a number of the speeches in this passage.

This seems to me impossible. 1443–4 and 1446 ff. must be spoken by Euripides, for these reasons:

- (a) ἄπιστα πίσθ’ and πίστ’ ἄπιστα are a parody of a well-known trick of Euripides’ style. The trick consists of putting together two adjectives, or an adjective and a noun, which are the same except that one has and the other lacks the privative prefix ἀ-. The result is an oxymoron or a paradox. Examples are: γάμον ἄγαμον (*Hel.* 690), πόρον ἄπορον (*I.T.* 897), φίλα τὰ πρότερ’ ἄφιλα (*Tro.* 287). This kind of verbal trick is not at all in the manner of Aeschylus. (It is true that in 1465 Aeschylus is made to utter a remark of the same kind; but that merely makes it all the more probable that 1443–4 belongs to Euripides. To give Euripides and Aeschylus one Euripidean paradox each is perhaps permissible; to give two to Aeschylus and none to Euripides – except in a scene like 1261–364 where each deliberately and openly parodies the other throughout – would be very strange.)
- (b) It is not true that Aeschylus’ remarks are all sensible and Euripides’ all foolish. If they were, Dionysus would not find it as difficult as he does to make up his mind which is the better, and the audience would be able to foresee the result of the contest long before it is announced. Aristophanes intends the contest to be a close one. If, in reply to Dionysus’ final test-question,

Aeschylus were to give the serious advice contained in 1446–8 as well as that in 1463–5 while Euripides contributed nothing but the facetious fantasy of an aerial vinegar-raid, the result would be a foregone conclusion.

- (c) It is important to observe how carefully Aristophanes balances against each other the tests which the rival poets undergo and the speeches which they make. They first appear at 830. In the scene 830–74 each of them speaks 13 lines. In 885–94 each utters a prayer of 2 or 3 lines. Euripides attacks Aeschylus in a scene totalling 66 long iambic lines (905–70) and 21 short ones (971–91); Aeschylus attacks Euripides in a scene totalling 73 long anapaestic lines (1004–76) and 21 short ones (1077–98). Aeschylus' prologues are criticized in a passage of 58 lines (1119–76), Euripides' in one of 74 lines (1177–250). Lines in the lyric parodies of 1261–364 are hard to count, but of the four songs Aeschylus and Euripides sing two each. In the verse-weighing scene (1378–410) the verses are weighed line for line. In answering Dionysus' question about Alcibiades Euripides gives three lines of advice (1427–9), Aeschylus either three or two (1431–2). In short, throughout the contest the speeches of the contestants are approximately (though not exactly) equal.

So in the passage 1437–65 we should expect to find that the two poets give answers of approximately the same length to the question asked by Dionysus in 1435–6. If, while placing 1442–50 after 1462, we allow the speakers to keep the lines given them by the manuscripts, that is what we have. In 1437–41 Euripides offers four lines of frivolous and ridiculous advice; in 1454–62 Aeschylus in three lines and three incomplete lines refuses to offer any advice at all. So far, tit-for-tat. Then in 1442–50 and 1463–6 each in turn gives a serious piece of advice.

That Euripides should utter the advice contained in 1443–4 and 1446ff. is therefore essential in order to preserve the balance of the scene. It may perhaps cause slight surprise that this piece of advice is somewhat longer than that given by Aeschylus. Even if we exclude from the reckoning 1443–4 on the ground that it is merely a prelude inserted to raise a laugh and restated more clearly in 1446–8, yet still Euripides seems to have five lines (1446–50) while Aeschylus has only three (1463–5). Perhaps this difference is too small to matter. But there is another possible explanation, which will appear shortly.

## VII

Dorrie believes that there is a lacuna of two lines between 1450 and 1463. We should certainly expect Dionysus to make a comment after the suggestion contained in 1446–50, as he does in, for example, 1430 and 1466. In the manuscript order of the lines 1451 appears as his comment on 1446–50, but, as I have already explained, I think that 1451 should follow not 1446–50 but 1437–41. However, it is not necessary to suppose that his comment on 1446–8 is lost; it is probably 1449–50. 1449–50 do little but repeat what has already been said in 1446–8 – except that they make a logical mistake. 1446–8 merely assert that if the Athenians changed their policy they would be successful. 1449–50 assert that, since

their present policy is unsuccessful, the opposite policy could not help being successful, which is a *non sequitur*. This is just the kind of foolish comment which Dionysus might make on a serious suggestion. (In 1466 he again makes a foolish comment on a serious suggestion.) If we accept that 1449–50 are spoken by Dionysus, we may notice that now Euripides in 1446–8 gives three lines of serious advice, just as Aeschylus in 1463–5 gives three lines of serious advice, and that Dionysus then makes a comment containing *ye* (which may be roughly translated ‘Yes’) near the beginning, just as his comments in 1430, 1451, and 1466 have *ye* near the beginning.

But this does not affect the fact that Aeschylus’ speech in 1463–5 needs something to introduce it. We need here a line from Dionysus with roughly the same sense as *σὺ δὲ τίνα γνώμην ἔχεις*; in 1430 or *τί δαὶ σὺ; τί λέγεις*; in 1454, calling on Aeschylus to take his turn in offering a suggestion. It may even be that we have lost more than one line here. When Aeschylus last spoke (in 1461) he refused to give political advice. Now (in 1463) he is willing to give some, probably because he realizes that otherwise Euripides will have gained an advantage in the contest from his sensible suggestion in 1446–8. But it is possible that he still needs more persuasion than an abrupt *τί δαὶ σὺ; τί λέγεις*; Perhaps we have lost as much as two or three lines of dialogue between Aeschylus and Dionysus.

1435–66 now make a well-balanced scene. Dionysus asks his question. Euripides gives four lines of ridiculous advice; Aeschylus in three lines and three incomplete lines refuses to give any advice. Euripides then offers to make a suggestion; after two short preliminary remarks (1442 and 1443–4) he gives three lines of serious advice, which are followed by a foolish comment from Dionysus. Aeschylus then probably makes one or more preliminary remarks (which we have lost), and gives three lines of serious advice, which are followed by a foolish comment from Dionysus.

## VIII

We can now consider together the gap in the text at 1410–11 and the one at 1450–63. How are these gaps likely to have occurred? It is of course possible that a sleepy copyist anxious to finish his task simply left out a line or two from time to time without realizing that he did so. But another possibility is that near the end of an early copy of the play the ends (or beginnings) of successive leaves (or one leaf with lines written on both sides) became worn or torn, so that the last (or first) few lines on each of them were lost. If this is what happened, to find two lacunae in the same scene is less, not more, surprising than it would be to find only one; and in this sense the two may be said to support each other. It also becomes likely that the two lacunae are of about the same length, so that, if there are three lines missing after 1410, there may well be three lines missing after 1450 also. However, this would mean that each page contained 55 lines, which may seem an improbably large number. This suggestion of how the missing lines were lost can be called no more than a guess.

**IX**

I now give the text which I suggest may be the correct one. To save space I have omitted lines 1417–34, on which I have made no comments.

ΑΙ. καὶ μηκέτ' ἔμοιγε κατ' ἔπος, ἀλλ' εἰς τὸν σταθμὸν αὐτός, τὰ παιδιά χῆ γυνή, Κηφισοφῶν, ἐμβὰς καθήσθω, ξυλλαβῶν τὰ βιβλία·	1410
ἐγὼ δὲ δὴ ἔπη τῶν ἐμῶν ἐρῶ μόνον < . . . . . ΧΟ. . . . . ΠΛ. . . . . >	
ΔΙ. ἄνδρες φίλοι, κἀγὼ μὲν αὐτοὺς οὐ κρίνω. οὐ γὰρ δι' ἔχθρας οὐδετέρῳ γενήσομαι· τὸν μὲν γὰρ ἠγοῦμαι σοφόν, τῷ δ' ἥδομαι. ΠΛ. οὐδὲν ἄρα πράξεις ὧνπερ ἤλθες οὔνεκα. ΔΙ. ἐὰν δὲ κρίνω;	
ΠΛ. τὸν ἕτερον λαβῶν ἄπει ὀπότερον ἂν κρίνης, ἴν' ἔλθης μὴ μάτην. ΔΙ. εὐδαιμονοίης.	1415
. . . . .	
ΔΙ. ἀλλ' ἔτι μίαν γνώμην ἐκάτερος εἶπατον περὶ τῆς πόλεως ἦντιν' ἔχετον σωτηρίαν. ΕΥ. εἴ τις πτερώσας Κλεόκριτον Κινησία, ἄροιεν αὔρα πελαγίαν ὑπὲρ πλάκα – ΔΙ. γέλοιον ἂν φαίνοιτο. Νοῦν δ' ἔχει τίνα;	1435
ΕΥ. εἰ ναυμαχοῖεν, κᾶτ' ἔχοντες ὀξίδας ράινοιεν εἰς τὰ βλέφαρα τῶν ἐναντίων.	1440 1441
ΔΙ. εὔ γ', ὦ Παλάμηδες, ὦ σοφωτάτη φύσις. ταυτὶ πότερ' αὐτὸς ἠῦρες ἢ Κηφισοφῶν; ΕΥ. ἐγὼ μόνος· τὰς δ' ὀξίδας Κηφισοφῶν. ΔΙ. τί δαὶ σύ; τί λέγεις;	1451
ΑΙ. τὴν πόλιν νῦν μοι φράσον πρῶτον τίσι χρῆται· πότερα τοῖς χρηστοῖς; ΔΙ. πόθεν;	1455
μισεῖ κάκιστα. ΑΙ. τοῖς πονηροῖς δ' ἥδεται; ΔΙ. οὐ δῆτ' ἐκείνη γ', ἀλλὰ χρῆται πρὸς βίαν. ΑΙ. πῶς οὖν τις ἂν σώσειε τοιαύτην πόλιν, ἢ μήτε χλαῖνα μήτε σισύρα ζυμφέρει;	
ΔΙ. εὗρισκε νῆ Δί', εἶπερ ἀναδύσει πάλιν.	1460
ΑΙ. ἐκεῖ φράσαιμ' ἄν, ἐνθαδὶ δ' οὐ βούλομαι. ΔΙ. μὴ δῆτα σύ γ', ἀλλ' ἐνθένδ' ἀνίει τάγαθά.	1462
ΕΥ. ἐγὼ μὲν οἶδα καὶ θέλω φράζειν. ΔΙ. Λέγε.	1442



ΕΥ. ὅταν τὰ νῦν ἄπιστα πίσθ' ἠγώμεθα,  
τὰ δ' ὄντα πίστ' ἄπιστα –

ΔΙ. πῶς; οὐ μανθάνω.

ἀμαθέστερόν πως εἶπε καὶ σαφέστερον.

1445

ΕΥ. εἰ τῶν πολιτῶν οἷσι νῦν πιστεύομεν,  
τούτοις ἀπιστήσαιμεν, οἷς δ' οὐ χρώμεθα,  
τούτοισι χρησαίμεσθα, σωθείημεν ἄν;

ΔΙ. εἰ νῦν γε δυστυχοῦμεν ἐν τούτοισι, πῶς  
τάναντί' <ἄν> πράττοντες οὐ σωζοίμεθ' ἄν;

1450

< . . . . .  
. . . . .  
. . . . . >

ΑΙ. τὴν γῆν ὅταν νομίσωσι τὴν τῶν πολεμίων  
εἶναι σφετέραν, τὴν δὲ σφετέραν τῶν πολεμίων,  
πόρον δὲ τὰς ναῦς, ἀπορίαν δὲ τὸν πόρον.

1463

1465

ΔΙ. εὖ, πλήν γ' ὁ δικαστὴς αὐτὰ καταπίνει μόνος.

ΠΛ. κρίνοις ἄν.

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# Aristophanes and Athenian law

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Comedy and law: in modern times these may seem to be two very different subjects, having little connection with each other. But in Classical Athens the connection was closer, and that is why it makes sense to study the two subjects together. The main reason for the connection was that many Athenians, perhaps a majority of the male citizens, participated in both of them. On the one hand, the festivals of the Dionysia and the Lenaia were occasions when a large proportion of the citizen population met together, and the performances of comedies were not only watched by thousands of spectators, but were also performed by quite a large number. At each of those festivals there were normally five comedies, each with a chorus of twenty-four members and probably four actors, all probably amateurs in the fifth century; that makes a hundred and forty men performing in comedies at each of those festivals. If comedies were performed also in local theatres in Peiraieus and elsewhere, that will make still more citizens who had actually performed in comedies, besides the much larger number who had watched them. The lawcourts, on the other hand, were notoriously prominent in Athenian life; there is, for instance, the joke in Aristophanes' *Clouds* 207–8, when Strepsiades sees a map for the first time but does not believe that it shows Athens because he cannot see any lawcourts in session on it. We are told that six thousand citizens served as *dikastai* in the courts every year; others were picked by lot to preside over trials as archons or other officials; and of course some were involved in trials as prosecutors or defendants or witnesses, or just attended the trials as spectators. We should therefore assume that a great many of the citizens of Athens regarded both comedy and law as parts of their life, and either consciously or subconsciously they allowed each of those activities sometimes to influence the other.

This mutual influence might take various forms. It is possible that legal proceedings had an influence on the general structure of Old Comedy: the

adversarial format of Athenian trials, with a speech for the prosecution followed by a speech for the defence, may have encouraged the development of the *agón* structure familiar in early comedy. But here I shall concentrate rather on passages in which Aristophanes refers explicitly to law and legal proceedings, and I shall suggest that these can provide information for us, in both directions: that is, knowledge of Athenian law can help us to understand individual lines of Aristophanes, and study of Aristophanes can give us information about points of Athenian law.<sup>1</sup>

The first of those two possibilities is obvious: when Aristophanes mentions a feature of legal proceedings, perhaps to make a joke about it, clearly we shall not see the point of the reference or the joke unless we understand what the legal feature is. At the same time, such references sometimes tell us things we do not otherwise know about the law. In general our knowledge of Athenian law comes mainly from the lawcourt speeches of the fourth century, with only a few from the late fifth century, and for this purpose it is useful that most of the plays of Aristophanes are earlier in date than most of the speeches. Thus on some points of law Aristophanes provides our earliest evidence, or perhaps our only evidence for a legal provision of the fifth century which was altered in the fourth. At least, Aristophanes provides such evidence if you think we can believe him. Some people dismiss the evidence of comedy as being unreliable fiction. I take the opposite view. I think that Aristophanes' references to legal procedures can generally be taken as accurate, for the very reason that ordinary Athenians did devote so much time to their courts. The audience for any of Aristophanes' plays must have included many citizens who had experience of the courts and would have been scornful, rather than amused, if the legal references in the plays had been wrong.

The play with the most legal references is of course *Wasps*, but since I have written a great deal about that play before, I am going to take examples here from a different play, *Clouds*. This is a play with many problems; in particular, there is the difficulty of knowing which parts of the text belong to the original play performed in 423 and which were altered or added when Aristophanes set about revising it a few years later. However, I shall not discuss that problem here, because it does not affect the legal significance of my examples.

1. In *Clouds* the old man Strepsiades has got into debt and is desperately worried that he will not be able to satisfy his creditors. The reason for his indebtedness is the extravagance of his aristocratic wife and his son Pheidippides, and in particular his son's indulgence in horses and chariot-racing. At the beginning of the play Strepsiades mentions two debts in particular: he owes twelve *mnai* to Pasiás, which he borrowed in order to pay for a horse (21–3), and 3 *mnai* to Amynias to pay for a chariot board and wheels (30–1). Later in the play two of Strepsiades' creditors appear, demanding their money. In some of the manuscripts they are called Pasiás and Amynias, but recent editors have denied that they should be identified with the two creditors named earlier. I think there is really no strong reason why they should not be regarded as Pasiás and Amynias, but it hardly affects the interpretation of the scene whether they are so identified or not. They are not

professional moneylenders. The first makes clear that his loan was a friendly one; he belongs to the same deme as Strepsiades (1219), and would have been embarrassed to refuse Strepsiades' request (1215–16). The second is a man who is groaning and wailing because he has been injured by falling off his chariot; perhaps we are to assume that he is one of Pheidippides' chariot-driving friends and now wants to get his money back in order to pay for medical treatment. He says to Strepsiades, 'Tell your son to pay me the money which he received' (1267–8); and when Strepsiades asks, 'What money is that?', he replies, 'The money which he borrowed' (1270). A few lines later he says, with the emphatic pronoun σὺ, 'You will be summoned by me if you don't pay the money' (1277–8).

This raises the question: who is actually in debt, Strepsiades or Pheidippides? In lines 1268 and 1270 Pheidippides borrowed the money; yet in 1277 Strepsiades is going to be prosecuted for it. Nowhere in the play is there any suggestion that Pheidippides might be prosecuted for debt. Apparently, whichever of them physically received money from a lender and paid it out to a seller, it is the father who is legally responsible for the transactions; and that must mean that Pheidippides is still a minor, below the age of eighteen, so that his father is his *kyrios*. Probably we should imagine him as being sixteen or seventeen. At some points in the play he is called *meirakion* (990, 1000, 1071); that word does not have a precise definition, but it usually means a teenager. Dover, in the introduction to his edition,<sup>2</sup> maintains that Pheidippides is over eighteen, but the only reason he gives is that he speaks 'as if already a member of the cavalry'. What he actually says, as the reason for his refusal to become a student in the Thinkery, is 'I wouldn't dare to see the horsemen with my colour scraped away' (119–20). That hardly seems conclusive, because 'the horsemen' here will be the other youths who drive chariots, for whom there was no minimum age; there is no reference here to service in the army. So we may accept that Pheidippides is still a minor, and that is why Strepsiades has legal responsibility for the debts he has run up.

I may mention in passing two other passages which might be thought to refer to Pheidippides' legal responsibility, though I think they do not. When Strepsiades says to him, 'You can be sure that all these debts will turn upon your head' (39–40), he could possibly mean 'One day you will inherit these debts, if I die without having paid them.' That is the interpretation adopted by both Dover and Sommerstein.<sup>3</sup> However, in general imprecations misfortunes are often invoked on someone's head (e.g. *Acharnians* 833, *Peace* 1063, *Wealth* 526), and the verb *τρέπομαι* is often used in this connection (e.g. *Acharnians* 833, 1019, *Clouds* 1263, *Lysistrata* 915). So I think the remark is probably just a vague threat, 'You'll suffer for these debts!', 'I'll get my own back on you!', and has no legal significance. Later in the play, when Pheidippides thinks his father is going mad, he soliloquizes, 'Should I take him to court and get him convicted of insanity?' (845). We know from other sources that if a man was mentally incapable of looking after his property, he could be formally prosecuted for insanity (*παράνοια*), and if the jury decided against him his property would be taken over and administered by his nearest relatives.<sup>4</sup> When Pheidippides considers taking this action, he uses a first-person singular verb (*ἔλω*), and if that is interpreted strictly it might mean that he

himself would be the prosecutor, and thus that he is over eighteen, since a minor could not prosecute in person. However, a relative could present a prosecution on behalf of a minor, and I think we can, if we wish, imagine Pheidippides going to his uncle Megakles, already mentioned earlier in the play (124), and getting him to present his prosecution. So my view is that we can still regard Pheidippides as being under eighteen.

2. We can now move on to the time when Strepsiades is required to repay the money. At the beginning of the play he is worried because ‘the moon is going through her twenties; interest is coming on’ (16–18). Later he is counting up the days to the end of the month. You will remember that in Athens the last ten days of the month are counted downwards: δεκάτη φθίνοντος, ἐνάτη φθίνοντος, and so on. So Strepsiades’ reckoning goes like this:

The fifth, the fourth, the third, and after that  
The second; and then next – of all the days  
The one I fear and dread and loathe the most –  
The next one after that is Old and New. (1131–4)

Old and New (ἔνη τε καὶ νέα) was the traditional name of the last day of the month, apparently because that day was transitional between the old moon and the new. In due course Pheidippides, after his lessons in rhetoric, produces the sophistic argument that a summons for the Old and New cannot be valid, because one day cannot be both old and new. But here I am not concerned with astronomy but with the legal calendar. What exactly is Strepsiades afraid will happen on the Old and New? Obviously it is a day when he will be expected to pay some money, but does that mean that he has to pay all his debts at the end of the month, or only that he has to pay the interest on them? At some points in the play he refers only to interest (e.g. 18), at others there is a demand for the entire sum borrowed (e.g. 1224). But the most revealing passage is the conversation with the Second Creditor (the one sometimes called Amyntias), who first demands return of the entire sum borrowed (1267–70), but then says (in a line which is slightly corrupt, but the main point is clear), ‘If you don’t have the money, pay at least the interest’ (1285–6). This implies that either is possible: at the end of a month a debtor might repay the whole of a loan or might pay only the interest on it. I note also a line earlier in the play where Strepsiades says money is lent by the month (κατὰ μήνα, 756).

I conclude that the custom in Athens was to lend money for one month at a time. At the end of one month the lender could demand the return of the entire sum lent, together with one month’s interest; but if the borrower was unable or unwilling to repay the capital sum, the lender might agree to continue the loan for a further month, and in that case the borrower would just pay the month’s interest. But if he could not pay even the interest, the lender might agree that the interest should be added to the capital, increasing the amount of the loan. This is what we call compound interest, compounded at the end of each month. And this is what Strepsiades is referring to when at one point he cries out, ‘O weep, you money-

lenders! Yourself, your capital sums, and interest on interest!’ (τόκοι τόκων, 1156). So also is the Second Creditor when he says, ‘Month by month and day by day the money’s always getting more and more, as time flows onwards’ (1287–9).

3. If the lender was unwilling to extend the loan or to wait for his interest beyond the end of the month, and yet the borrower failed to pay up, the lender might decide to prosecute. This meant that first of all he must issue a summons and pay a fee called *prytaneia*. In Athens a summons was issued by the prosecutor himself, not by a court official, and it was oral, not written: the prosecutor had to go to his opponent and tell him to appear on a specified day at the office of the appropriate magistrate or official. The issuing of a summons had to be witnessed; the summons-witness (*kleter*) would then be able, if required, to testify that the summons had been duly delivered, so that the defendant would not be able to absent himself and afterwards claim that he had never been summoned. In the fourth century there is evidence that two summons-witnesses were required,<sup>5</sup> but in *Clouds* the First Creditor clearly has only one summons-witness (1218), and so do the two prosecutors in *Wasps* (1408, 1416). We may infer that at this period the number of witnesses required for a summons was one, not two. That is a point of legal procedure known only from Aristophanes.

However, there is another point about summons procedure which I think it is not safe to infer, and that is the amount of notice required. How long before the date of appearance before the magistrate did the summons have to be issued? At line 1131, as we have seen, Strepsiades is counting down from the fifth day before the end of the month, and at line 1221 he receives a summons. From this it has been deduced that ‘The summons had to be made at least four days before the day on which the appearance before the magistrate was required’.<sup>6</sup> But we cannot be sure that the First Creditor is issuing his summons on the last possible day; nor, in Aristophanes, can we necessarily assume that no days have elapsed between line 1131 and line 1221. So this rule that four days’ notice was required, though it may have existed, is not certain.

4. The First Creditor summons Strepsiades for the Old and New (1222), and it is clear throughout that the last day of the month is the one on which Strepsiades fears that legal action will be taken. We may infer from this that prosecutions for debt were monthly cases, *dikai emmenoi*. Monthly cases were ones for which applications to prosecute were accepted on a particular day every month.<sup>7</sup> Various types of case which fell into this category are listed in Arist. *Ath. Pol.* 52, and some are known from other fourth-century sources. By Aristotle’s time they included prosecutions for battery, claims to slaves and draught animals, claims to a dowry, and so on, and one of the cases listed is ‘if anyone obtains a loan at a drachma and defaults’ (κάν τις ἐπὶ δραχμῇ δανεισάμενος ἀποστερῆ, *Ath. Pol.* 52.2). It seems not to have been noted before that this is the particular type of action to which Strepsiades is liable, and *Clouds* is the earliest evidence of it. We can assume that the loans which Strepsiades had obtained were all loans ‘at a drachma’ (ἐπὶ

δραχμῆ), since that was the most usual rate of interest. It means one drachma per mna per month, so that on the loan of twelve *mnai* made to Strepsiades by Pasiás, for example, the interest would be twelve drachmas a month. If Pasiás wanted to recover his money at the end of the month and suspected that Strepsiades would not pay it, he could issue a summons to him to appear before the magistrate on the last day of the month; and that in fact is what is done by the First Creditor, whether or not we identify him as Pasiás. Of course, if Strepsiades then unexpectedly handed over the money, the legal proceedings would go no further; but otherwise the prosecution would proceed. All this is consistent with such other evidence as we have about monthly cases.

5. At no point in the play does Strepsiades or anyone else say which particular magistrate is the one to whom his creditors would apply. I think that it would have been one of the deme-judges (*dikastai kata dêmous*). Deme-judges were originally appointed by the tyrant Peisistratos in the sixth century, and then after a lapse they began to be appointed afresh in 453/2.<sup>8</sup> At that period there were thirty of them, perhaps one for each *trittys* or group of demes, and they held trials in their own districts for minor cases. Whether they still held trials in rural areas at the time of the Peloponnesian War and the Spartan invasions of Attika is not known. Possibly at the time of *Clouds* they held their sittings within the town of Athens. But anyway we can assume that Strepsiades' creditors would take their accusations to the judge for Strepsiades' deme. We are told that his deme was the small rural deme of Kikynna (134). The deme-judge would have had authority to decide summarily claims up to a certain figure; if a claim exceeded that figure he would have made arrangements for a trial by jury.

6. When the Old and New day arrived, and the creditor and the debtor presented themselves before the magistrate, the creditor would present his charge to the magistrate. That point is not mentioned explicitly in *Clouds*, but there is a passage in the play which shows that at this stage the charge would be written down. It is part of the scene in which Socrates is setting Strepsiades conundrums to solve.

SOCRATES: Suppose a prosecution for five talents

Against you: how would you dispose of it?

STREPSIADES: How? How? I don't know. I must find a way.

SOCRATES: Don't keep your thought wrapped close around yourself,

But give your mind free rein into the air,

Like a cockchafer, tethered by the foot.

STREPSIADES: I've found a way of disposing of the case!

A brilliant one, you must agree.

SOCRATES: What is it?

STREPSIADES: Have you ever seen that stone drug-sellers have

The beautiful transparent one, I mean,

With which they kindle fire?

SOCRATES: Do you mean glass?

STREPSIADES: That's it! Now, how would it do if I got that,  
 And when the clerk was writing down the case  
 I stood like this, some way towards the sun,  
 And melted the record of my case right out? (758–72)

The point of ‘melted the record out’ (τὰ γράμματα ἐκτίξαμι, 772) must be that the magistrate’s clerk (ὁ γραμματεὺς) writes the details of the case on a waxed tablet, and the rays of the sun when concentrated on it melt the wax. At this period, it would seem, the prosecutor does not hand in a written charge; he just makes his accusation orally and it is the clerk who writes it down. That is a procedural detail which is not known from elsewhere.

7. On the same day the creditor or prosecutor would pay the fee called *prytaneia*: Strepsiades says in lines 1136 and 1180 that the prosecutors will pay the *prytaneia* on the Old and New day. It is stated by Harrison that the defendant also had to pay the *prytaneia*,<sup>9</sup> but that is based solely on a statement in Pollux 8.38. There seems to be no other evidence on this point, but if the defendant as well as the prosecutor had to pay this fee, it seems to me surprising that Strepsiades laments that his creditors are going to pay the fee and never mentions that he himself will have to pay it too. I am therefore tempted to use this argument from silence to suggest that Pollux is mistaken and *prytaneia* were really paid only by prosecutors, not by defendants. We know from other sources that *prytaneia* were not payable in all cases, and the fourth-century speeches provide some examples of cases in which they were or were not payable, but none of those examples happens to be a claim for debt, so that it is only from *Clouds* that we know that *prytaneia* were payable in this kind of case.

8. Another disaster which Strepsiades fears is that some of the creditors may seize some of his goods or property as a substitute for the money he owes them. This is the act denoted by the Greek verb ἐνεχυράζω, which may be translated ‘distrain’. This verb is used twice in *Clouds*. In line 241 it is passive: ‘I’m robbed and raided, and I’m having my goods distrained upon.’ That is too vague to be much use for understanding the legal procedure.<sup>10</sup> The other instance of ἐνεχυράζω is a little clearer: in lines 34–5 Strepsiades says, ‘I’ve lost some lawsuits, and other men say they will distrain for interest.’ The reference to ‘other men’ (ἄλλοι) seems to mean that the creditors who are threatening to distrain upon Strepsiades’ goods are distinct from those who have already prosecuted him.

At this point there is some disagreement among the commentators. The disagreement is on the question whether Strepsiades, at the time when he borrowed the money, specified some items of his property which the lenders might take possession of if he failed to pay the interest or repay the loan. From fourth-century evidence it is clear that a loan could be arranged either with a security of this sort or without it.<sup>11</sup> If the borrower had agreed to it at the time of receiving the loan, and then had defaulted, the lender could simply take possession of the specified item; but if this had not been agreed when the loan was made, the lender would



first have to prosecute the defaulting debtor, and would not be able to seize any of his goods until the court authorized him to do so. Which of these situations does Aristophanes mean us to imagine in Strepsiades' case? Sommerstein in his note on 34–5 cautiously leaves both possibilities open: 'either these creditors have lent Strepsiades money on condition that they are entitled to distrain on his property if interest is not paid, or they are threatening legal proceedings with distraint to follow'.<sup>12</sup> Millett takes the view that Strepsiades cannot have given any security to his creditors, because he is so hopelessly burdened with debts that he has no property;<sup>13</sup> but that interpretation seems hardly consistent with line 241, where he says that his property actually is being seized. The opposite view is taken by Dover in his note on line 34, where he says that Strepsiades 'is referring now to creditors who lent him money on condition that they could take securities'.<sup>14</sup> I think that the wording of lines 34–5 supports Dover's view: 'I've lost some law-suits, and *other men* say they will distrain for interest' implies that the second group of creditors will seize goods without needing to prosecute. If so, that means that for some of his loans Strepsiades agreed to the seizure of items of his property if he defaulted on payment, though for others he did not.

9. One other line of *Clouds* may refer to distraint, but its point is not very clear. This is line 37. Strepsiades cannot sleep, and when his son asks him, 'Why do you grumble and twist around all night?', he replies, 'I'm bitten by a demarch in the bedding!' The joke, of course, is that the word δῆμαρχος is unexpectedly substituted for a bedbug; but why is a demarch relevant to Strepsiades' situation? At first sight one might wonder whether the demarch was the magistrate in charge of the case, and that view might be supported by a fragment of Demetrios of Phaleron which says, 'Solon and his party also established demarchs in great haste, so that officials, deme by deme, might give and obtain justice from one another.'<sup>15</sup> But several details of this quotation are puzzling, and there are surely some mistakes in it. In particular, demes did not yet exist as administrative units in the time of Solon, and there is no other evidence that demarchs held trials at any period. They must be distinguished from the deme-judges. In the fifth century there were only thirty deme-judges altogether, but every deme had a demarch, making well over a hundred of them. The demarch was the chairman at meetings of the deme, he had charge of the list of members, and he had various other financial and administrative functions,<sup>16</sup> but there is no other evidence that he held trials. There is, however, some evidence that he was involved in distraint on property. A fragment of Aristophanes' lost play Σκηνάς καταλαμβάνουσαι, *Women Encamping*, says simply that 'the demarchs distrained' (fr. 500), and in a passage of the Demosthenic speech *Against Euboulides* the speaker, named Euxitheos, recounts that as demarch he got into a dispute with some men when he was exacting some payments from them.<sup>17</sup> It is clear enough that, if money was owed to a deme, the demarch would have the duty of collecting it, with distraint upon property if necessary.

Should we then conclude that, when Strepsiades feels threatened by the demarch, that means that he owes money to his deme?<sup>18</sup> That is certainly a

possible interpretation of line 37. Yet nothing else in the play suggests that he owes money to the deme; elsewhere his debts are all to private individuals. It therefore seems better to conclude that, when a creditor needed to distrain upon a debtor's property to recover what was owed to him, he might be accompanied by the demarch. It is well known that it was considered wrong for a man to enter another man's house uninvited, especially if there were women in it; but the presence of the demarch would show that the act had legal authority. This would apply both to a case in which the debtor had been convicted in court and also to a case in which the debtor had specified a security which the creditor was entitled to seize without resort to the court (and not to the latter case only, as Dover assumes in his note on line 37),<sup>19</sup> In fact this explanation was already seen long ago by a scholiast on line 37, who says, 'The demarch had to bring those distraining into the houses.' This may be just a conjecture by the scholiast,<sup>20</sup> but it may still be correct. Anyway, whatever the precise interpretation should be, we do seem to have here another point of legal procedure for which Aristophanes provides the only evidence, even though it leaves the details uncertain.

Much of this paper has been about points of detail which may seem to be of minor importance individually, but collectively they show two things. First, Aristophanes is ready to use points of law or legal procedure as a basis for jokes, and that means that he assumes that his audience is familiar with them. The Athenians were litigious people, and could be expected to know about the *prytaneia* or the *demarch*'s functions without needing to have them explained.<sup>21</sup> The second conclusion is complementary to the first: since the spectators were knowledgeable about the law, Aristophanes had to get his facts right, and that means that his comments about the law, though of course they are very incomplete, can, as far as they go, be used by us as historical evidence to supplement the information that we have from other sources.

## Notes

- 1 Aristophanes' references to law are discussed by Carey 2000. He argues that they reflect public anxiety about the legal system. There is also a shorter comment in Todd 1993, 148–50.
- 2 Dover 1968, xxvii.
- 3 Dover 1968, 98, Sommerstein 1982, 161.
- 4 Xen. *Mem.* 1.2.49, Aeschines 3.251, *Ath. Pol.* 56.6; cf. Harrison 1968–71, i.80–1.
- 5 Demosthenes 40.28, 53.14.
- 6 Harrison 1968–71, ii.87.
- 7 Cohen 1973, 23–59, MacDowell 1978, 231–3.
- 8 Arist. *Ath. Pol.* 26.3.
- 9 Harrison 1968–71, ii.92–3.
- 10 Harris 2002, 423 2006, 260, has suggested that ἄγομαι in line 241 is a reference to debt-bondage, but, as Dover 1968, 129, shows, ἄγομαι, φέρομαι is a rhetorical expression for 'I am being harassed'. I do not find any clear reference to debt-bondage in this play.
- 11 For example, Demosthenes 49.2.
- 12 Sommerstein 1982, 160.
- 13 Millett 1991, 184.

- 14 Dover 1968, 97.
- 15 *FGrH* 228 F 31.
- 16 For details see Whitehead 1986, 121–39.
- 17 Demosthenes 57.63.
- 18 This possibility is entertained by Millett 1991, 276–7 n. 48.
- 19 Dover 1968, 98.
- 20 Whitehead 1986, 126 n. 29, calls this ‘the excellent scholion’, but it should be noted that it seems not to have good authority. It is included in Diibner’s edition of the scholia, but Dflbner does not identify the manuscript in which it is found. It is excluded from Holwerda’s edition of the *scholia vetera*, Koster’s edition of the *scholia recentiora*, and Holwerda’s edition of the commentary of Tzetzes.
- 21 On ordinary Athenians’ knowledge of the laws cf. Harris 1994, 135–6.

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## **Part 2**

# **Law, institutions and oratory**



# The Athenian penalty of *epobelia*

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The penalty imposed in public cases in Athens on a prosecutor who failed to win his case, obtaining fewer than one-fifth of the jury's votes, has been thoroughly discussed in recent years by two of our colleagues, Edward Harris and Robert Wallace.<sup>1</sup> But there has been little recent discussion of a penalty imposed on a failed prosecutor in private cases, *epobelia*. One aspect of *epobelia*, the date of its introduction, has been considered by David Whitehead,<sup>2</sup> but I have found no detailed treatment of the whole topic since the one in the second volume of Harrison's *The Law of Athens*.<sup>3</sup> This was the volume left incomplete when Harrison died in 1969. When it was published, the references in the footnotes were mostly supplied by myself, but the text remained as Harrison left it. His account of this topic has never seemed to me very satisfactory, and so in this paper I am trying to improve on it.

*Epobelia* means a payment of one obol per drachma, in other words one-sixth of a sum of money. It is obvious, therefore, that there can be *epobelia* only when a sum of money is under consideration. Thus in a case in which the matter in dispute or the penalty demanded was not monetary, for example the death penalty, there could not be *epobelia*, because one could not pay one-sixth of that penalty. *Epobelia* would seem most appropriate when the prosecutor was claiming a sum of money from the defendant: if the prosecution failed, he would have to pay the defendant one-sixth of the amount he had demanded, as compensation for the trouble he had caused him.

The earliest instance known is one mentioned in Isokrates' speech *Against Kallimakhos*. The date of this case is probably 401/0.<sup>4</sup>

Isok. 18.11–12. λαγχάνει μοι δίκην μυρίων δραχμῶν. προβαλλομένου δ' ἐμοῦ μάρτυρα ὡς οὐκ εἰσαγωγίμος ἦν ἡ δίκη διαίτης γεγενημένης, ἐκείνω μὲν οὐκ ἐπεξῆλθεν, εἰδὼς ὅτι, εἰ μὴ μεταλάβοι τὸ πέμπτον μέρος τῶν ψήφων, τὴν ἐπωβελίαν ὀφλήσει, πείσας δὲ τὴν ἀρχὴν πάλιν τὴν αὐτὴν δίκην ἐγράψατο,

ὡς ἐν τοῖς πρυτανείοις μόνον κινδυνεύσων. “He initiated against me a case for 10,000 drachmas. When I brought forward a witness to testify that the case was not admissible because an arbitration had taken place, he did not proceed against the witness, because he knew that, if he did not obtain one-fifth of the votes, he would incur the *epobelia*. After persuading the magistrate, he prosecuted the same case again, intending to risk only the *prytaneia*.”

This is an example of the old procedure of *diamartyria*. The speaker tried to bar Kallimakhos’ prosecution by bringing forward a witness to testify that it was not admissible because the dispute had already been settled by arbitration. Kallimakhos could have countered this by prosecuting the witness in a case for false witness (*dike pseudomartyrion*); but if he had done that and had obtained fewer than one-fifth of the jury’s votes, he would have had to pay the *epobelia*, one-sixth of 10,000 drachmas, amounting to 1,666 drachmas 4 obols. So instead he let that case lapse, and brought a new prosecution for 10,000 drachmas (probably in the following year), in which he would risk only the *prytaneia*, the court fee of 30 drachmas.<sup>5</sup> From this we see that *epobelia* was payable in a case of false witness, when a litigant was claiming a sum of money from a witness as compensation for loss of a case, but not when he was simply prosecuting an opponent to claim a sum of money.

The next instance arises from the case in which Kallimakhos is prosecuting the speaker to claim 10,000 drachmas for the second time. This is the case for which the extant speech *Against Kallimakhos* is written. Again the speaker wishes to block the prosecution, but this time he is using a different method. He begins his speech by explaining to the jury that this is the very first trial under a new procedure called *paragraphe*, recently established by a law proposed by Arkhinos in support of the oaths which were sworn by the Athenians to defend the reconciliation in the year 403.

Isok. 18.2–3. εἰπόντος Ἀρχίνου νόμον ἔθεσθε, ἂν τις δικάζεται παρὰ τοὺς ὄρκους, ἐξεῖναι τῷ φεύγοντι παραγράψασθαι, τοὺς δ’ ἄρχοντας περὶ τούτου πρῶτον εἰσάγειν, λέγειν δὲ πρότερον τὸν παραγραψάμενον, ὁπότερος δ’ ἂν ἡττηθῆ, τὴν ἐπωβελίαν ὀφείλειν, ἵν’ οἱ τολμῶντες μνησικακεῖν . . . παραχρῆμα ζημοῖντο. On the proposal of Arkhinos you made a law that, if anyone brings a case contrary to the oaths, the defendant is to be permitted to bring a *paragraphe*, and the magistrates are to bring this into court first, and the man bringing the *paragraphe* is to speak first, and whoever loses is to owe the *epobelia*, so that those who dare to recall the troubles . . . are to be punished immediately.”

As a method of barring a prosecution that was in some way illegal, the new procedure of *paragraphe* effectively replaced the old procedure of *diarnartyria*,<sup>6</sup> but the penalty of *epobelia* was applicable in the new procedure too. The speaker says “whoever loses is to owe the *epobelia*”; so in this new procedure the penalty was to be paid not only by a prosecutor who failed to win his case but also by a



losing defendant. Nothing is said here about one-fifth of the votes; the speaker seems to imply that *epobelia* had to be paid by the losing litigant in every *paragraphe* trial.

The speech *Against Kallimakhos* tells us nothing about the earlier history of *epobelia*, but it has been suggested that its origin can be deduced from a scholium on Aiskhines.

Schol. to Ais. 1.163 (329b Dilts). ἐπωβελία οὖν τὸ ἕκτον μέρος τοῦ τιμήματος, ὃ προσώφειλεν ὁ ἀλούς. ἐνομοθέτησε δὲ τοῦτο ὁ Ἀρχῖνος ἐγγράψας τῷ νόμῳ τὰ μὲν πρυτανεῖα εἶναι τοῖς δικασταῖς παρὰ τοῦ ἀλόντος, ὃ ἐστὶν ἐπιδέκατον τοῦ τιμήματος, τὴν δὲ ἐπωβελίαν τῷ δημοσίῳ παρὰ τοῦ μὴ ἐλόντος. “*Epobelia* was one-sixth of the assessment, which the convicted man owed in addition. This legislation was due to Arkhinos, who wrote it in the law that the *prytaneia*, which is one-tenth of the assessment, goes to the jurors from the convicted man, and the *epobelia* goes to the public treasury from the man who has failed to convict.”

This scholium clearly contains some mistakes or confusions. The writer first says that *epobelia* was paid by ὁ ἀλούς, the convicted defendant, but at the end he says it was paid by τοῦ μὴ ἐλόντος, the failed prosecutor; perhaps he means that it was paid by whichever litigant lost the case, but if so he has hardly made that clear. He says that *prytaneia* were one-tenth of the assessment, but that is wrong; the speech *Against Kallimakhos* shows that the *prytaneia* were only 30 drachmas for a case concerning 10,000 drachmas.<sup>7</sup> So I would not place much trust in the other information given by this scholium. However, Whitehead has suggested that the reference to Arkhinos means that Arkhinos proposed the law which first introduced *epobelia*; since, as we have seen, *epobelia* existed before the institution of the procedure of *paragraphe*, that would mean that Arkhinos proposed two laws, one introducing *epobelia* and another, perhaps in the next year, introducing *paragraphe*.<sup>8</sup> This suggestion cannot be proved wrong, but I think that it is really too much to build on an unreliable scholium. It seems to me likely that Arkhinos’ law about *paragraphe* included a provision that *epobelia* should be payable under that procedure, and that the scholiast may simply be referring to that when he says that Arkhinos “wrote it in the law”. So I prefer to say that we do not know when, before 401, *epobelia* was first introduced.

We can now pass on to the next reference to *epobelia*. This occurs in Demosthenes’ first speech *Against Aphobos*, of which the date is 364/3. Aphobos was one of the three guardians of the young Demosthenes, and when Demosthenes came of age they failed to hand over to him the money which he believed was due. He therefore prosecuted them, claiming 10 talents from each. This is not a *paragraphe* case; it is simply a claim for money.

Dem. 27.67. ἂν γὰρ ἀποφύγη μ’ οὗτος, ὃ μὴ γένοιτο, τὴν ἐπωβελίαν ὀφλήσω μνᾶς ἑκατόν. καὶ τούτῳ μὲν, ἐὰν καταψηφίσῃσθε, τιμητόν, κοῦκ ἐκ τῶν ἑαυτοῦ χρημάτων, ἀλλ’ ἐκ τῶν ἐμῶν ποιήσεται τὴν ἕκτεισιν· ἐμοὶ δ’ ἀτίμητον

τοῦτ' ἔστιν, ὥστ' οὐ μόνον ἔσομαι τῶν πατρόων ἀπεστερημένος, ἀλλὰ καὶ πρὸς ἡτιμωμένους, ἂν μὴ νῦν ἡμᾶς ὑμεῖς ἐλέησητε. “If Aphobos gets off – as I hope he won't – I shall have to pay *epobelia* of 100 minas. If you convict him, his penalty is to be assessed, and he'll make the payment not from his own money but from mine; but that penalty for me is a fixed one, so that I shall not only lose my patrimony but be disfranchised as well, if you don't take pity on me today.”

Demosthenes means that, if he loses the case, he will be required to pay Aphobos 100 minas because that is one-sixth of the 10 talents which he is claiming; but actually, if he fails to recover the 10 talents, he will be left with very little money and so will not be able to pay the 100 minas, and he will consequently suffer *atimia*, disfranchisement. This is an interesting point, overlooked by Harrison.<sup>9</sup> Elsewhere we hear of *atimia* imposed for failure to pay money owed to the state treasury. But *epobelia* was not paid to the state treasury but to the successful opponent. That is clear in the Aphobos case from a passage in Demosthenes' second speech.

Dem. 28.18. ποῖ δ' ἂν τραποίμεθα, εἴ τι ἄλλο ψηφίσαισθ' ὑμεῖς περὶ αὐτῶν; εἰς τὰ ὑποκείμενα τοῖς δανείσασιν; ἀλλὰ τῶν ὑποθεμένων ἐστίν. ἀλλ' εἰς τὰ περιόντ' αὐτῶν; ἀλλὰ τούτου γίγνεται, τὴν ἐπωβελίαν ἐὰν ὄφλωμεν. “Where can I turn, if you vote for any other verdict [than conviction] on them? To the property given as security to my creditors? But that belongs to those creditors. To what is left over? But that goes to this man [Aphobos], if I incur the *epobelia*.”

So we must accept that failure to pay *epobelia* to an opponent, like failure to pay a debt owed to the state treasury, led to *atimia*. The other point to notice in these texts is that there is no mention of failure to obtain one-fifth of the votes. Demosthenes implies that he will incur *epobelia* if he loses the case, by however narrow a margin.

These passages show that *epobelia* was payable in a case in which an orphan, on coming of age, claimed his inheritance from a guardian. Should we say that that is evidence for inheritance cases only, or may we conjecture that *epobelia* had now become payable in all claims for money? Harrison takes the former view, and tries to compile a list (a rather short list): he says “The fine is vouched for in the following suits . . .”<sup>10</sup> It seems to me unlikely that orphans were one of only a few types of prosecutor made subject to this penalty, and more likely that it was now extended to all financial claims; but the question cannot be answered with certainty.

The next instance of *epobelia* is in the speech *Against Euergos and Mnesiboulos*, dated around 354. The speaker, who had been appointed to be a trierarch, had a protracted dispute with Theophemos about some naval gear which Theophemos was due to hand over, and at one point, when the trierarch tried to seize some property from Theophemos' house as security, a fight broke out between them. Afterwards each accused the other of starting the fight, and each

brought against the other a prosecution for battery (*dike aikeias*). The case in which Theophemos prosecuted the trierarch came to trial first, and Theophemos won it, so that the trierarch had to pay him compensation or damages.

Dem. 47.64. ἐκτίνοντος δέ μου τῷ Θεοφήμῳ, ᾧ ὠφλήκειν τὴν δίκην, ἐπειδὴ ἐξέτινον πολλῶν παρόντων μαρτύρων χιλίας μὲν καὶ ἑκατὸν δραχμᾶς <τὴν καταδίκην, ὀγδοήκοντα δὲ καὶ ἑκατὸν δραχμᾶς> καὶ τρεῖς καὶ δύο ὀβολῶ τὴν ἐπωβελίαν, τριάκοντα δὲ τὰ πρυτανεῖα (τῶν γὰρ ἄλλων οὐδὲν αὐτῷ ἐπιτιμίων ὄφλον), λαβὼν τοίνυν παρ' ἐμοῦ ἐπὶ τῇ τραπέζῃ χιλίας τριακοσίας δέκα τρεῖς δύο ὀβολῶ τὸ σύμπαν κεφάλαιον. “When I was paying Theophemos, to whom I had lost the case, as I was paying, in the presence of numerous witnesses, 1,100 drachmas <as damages, and 183 drachmas> 2 obols as the *epobelia*, and 30 as the *prytaneia* – for I incurred no other assessed payment to him – so after getting from me at the bank a total of 1,313 drachma 2 obols . . .”

The words in angled brackets were supplied by Boeckh, and it seems that they must be correct, to make the arithmetic fit; a scribe must have omitted them by jumping from one instance of δραχμᾶς to the next. So here we have a case in which the convicted defendant had to pay *epobelia* to the successful prosecutor. This case was not a claim for money owed; it was a prosecution for battery, and the *epobelia* was calculated as one-sixth of the sum awarded as damages. Presumably this sum was the penalty which had been proposed by the prosecutor.

In the first speech *Against Stephanos* we find Apollodoros referring to an earlier case in which he prosecuted Phormion, and Phormion barred the prosecution by bringing a *paragraphe*.

Dem. 45.6. προλαβὼν δέ μου ὥστε πρότερος λέγειν διὰ τὸ παραγραφὴν εἶναι καὶ μὴ εὐθυδικία εἰσιέναι, καὶ ταῦτ' ἀναγνοὺς καὶ τᾶλλ' ὡς αὐτῷ συμφέρειν ἤγεῖτο ψευδάμενος, οὕτω διέθηκε τοὺς δικαστάς, ὥστε φωνὴν μὴδ' ἠντινοῦν ἐθέλειν ἀκούειν ἡμῶν· προσοφλῶν δὲ τὴν ἐπωβελίαν καὶ οὐδὲ λόγου τυχεῖν ἀξιωθείς, ἀλλ' ὑβρισθεὶς ὡς οὐκ οἶδ' εἴ τις πώποτ' ἄλλος ἀνθρώπων, ἀπήειν βαρέως, ᾧ ἄνδρες Ἀθηναῖοι, καὶ χαλεπῶς φέρων. “He was able to speak before me, because it was a *paragraphe* and he was not facing a straight trial, and by reading these [testimonies], and by the other lies which he considered were to his advantage, he so influenced the jurors that they refused to listen to a single word of ours. So I incurred the *epobelia* and wasn't even given a hearing. I don't know if any other person has ever been so insulted, men of Athens, and I went away indignant and upset.”

That confirms that *epobelia* was paid by the loser in a *paragraphe* trial, and does not add anything more to the passages which we have already looked at.

Two further instances of *epobelia* in the fourth-century orations are both in mercantile cases. The mercantile laws establishing a special procedure for trials involving merchants importing and exporting goods to and from Athens were

passed soon after 355, and the speech *Against Lakritos* is probably to be dated around 351. Androkles had lent 3,000 drachmas to a merchant named Artemon, who had since died, and so Androkles was claiming repayment from Artemon's brother Lakritos by the mercantile procedure, but Lakritos tried to bar the prosecution by a *paragraphe*.

Dem. 35.46. ἀλλὰ τί κελεύεις, ὦ Λάκριτε; μὴ ἰκανὸν εἶναι ἡμᾶς ἀποστερεῖσθαι ἃ ἐδανείσαμεν χρήματα ὑμῖν, ἀλλὰ καὶ εἰς τὸ δεσμωτήριον παραδοθῆναι ὑφ' ὑμῶν προσοφλόντας τὰ ἐπιτίμια, ἐὰν μὴ ἐκτίνωμεν. "What is it you're demanding, Lakritos? That it should not be sufficient to deprive us of the money we lent you, but that we should also be thrown into prison by you if we fail to pay the penalty which we incur in addition?"

Here τὰ ἐπιτίμια must refer to *epobelia*, and so once again we see that the loser in a *paragraphe* trial was liable to that penalty. But the new feature here is the reference to imprisonment if the *epobelia* is not paid. We find this again in the speech *Against Dionysodoros*. This is not a *paragraphe* case, but simply a claim for money owed. The speaker and his partner are claiming repayment of a loan of 3,000 drachmas. Instead of paying up, Dionysodoros is resisting the claim in court.

Dem. 56.4. ἀλλὰ δεύτερον ἔτος τουτὶ καρπούμενος τὰ ἡμέτερα, καὶ ἔχων τὸ τε δάνειον καὶ τὴν ἐργασίαν καὶ τὴν ναῦν τὴν ὑποκειμένην ἡμῖν, οὐδὲν ἤττον εἰσελήλυθεν πρὸς ὑμᾶς, δῆλον ὡς ζημιώσων ἡμᾶς τῇ ἐπωβελίᾳ καὶ καταθιτόμενος εἰς τὸ οἶκημα πρὸς τῷ ἀποστερεῖν τὰ χρήματα. "For more than a year he has had the use of our money, and while retaining the loan and the proceeds and the ship given to us as security, he has nevertheless come into your court, evidently intending to punish us by the *epobelia* and imprison us besides depriving us of the money."

If the prosecutors lose the case, they will not only be required to pay *epobelia* but will also be liable to imprisonment. This was a feature of the mercantile laws: we know from the speech *Against Apatourios* (Dem. 33.1) that anyone condemned to make a payment in a mercantile case was imprisoned until he paid it. Otherwise it would have been too easy for a merchant, especially if he was not an Athenian, to sail off from Athens without paying.

That completes the catalogue of actual cases known to us in which *epobelia* was payable, but a couple of other texts should be briefly mentioned. First, a passage in which Aiskhines imagines that a man has hired a male prostitute and made a written agreement with him, but then prosecutes him for failing to do what had been agreed.

Ais. 1.163. Ἐπειτα οὐ καταλευσθήσεται ὁ μισθούμενος τὸν Ἀθηναῖον παρὰ τοὺς νόμους, καὶ προσοφλὼν ἄπεισιν ἐκ τοῦ δικαστηρίου οὐ τὴν ἐπωβελίαν μόνον, ἀλλὰ καὶ ἄλλην ὕβριν; "Then won't the man be stoned for hiring an Athenian illegally, and leave the court after incurring not just the *epobelia* but also a charge of outrageous insolence?"

In this imaginary case the prosecutor is claiming either a refund of the fee he has paid to the prostitute, or perhaps compensation for failure to carry out the agreement. He is claiming a sum of money, and will pay *epobelia* if he loses the case.

The other passage is an entry in the lexicon of Polydeukes (Pollux) for the procedure of *phasis*.

Pol. 8.47–8. φάσις . . . καὶ τὸ μὲν τιμηθὲν ἐγίνετο τῶν ἀδικουμένων, εἰ καὶ ἄλλος ὑπὲρ αὐτῶν φήνειεν· ὁ δὲ μὴ μεταλαβὼν τὸ πέμπτον μέρος τῶν ψήφων τὴν ἐπωβελίαν προσωφλίσκανεν. ἦν δὲ ἕκτον τοῦ τιμήματος. “*Phasis* . . . And the assessed amount went to those who suffered wrong, even if someone else brought the *phasis* on their behalf. The litigant who did not obtain one-fifth of the votes incurred *epobelia* in addition. It was a sixth of the assessment.”

If that statement is true, it is the only evidence for payment of *epobelia* in a public case. But I think there must be some confusion. *Phasis* was a prosecution on behalf of the state, not of individuals who suffered wrong; and if the prosecution was successful, half of the assessed penalty went to the prosecutor and half to the state. So I believe Polydeukes has confused *phasis* with a private prosecution, and I do not accept this evidence that *epobelia* was payable in *phasis*.<sup>11</sup>

I will now give a summary of the stages by which the use of *epobelia* may have developed. But I stress that not all these stages are firmly attested by the surviving evidence; the discovery of further evidence might easily change the picture.

- 1 Before 401 *epobelia* was payable by the prosecutor in a case for false witness (*dike pseudomartyrion*) if he failed to obtain one-fifth of the jury’s votes. We do not know whether it was payable in any other cases at this time.
- 2 A law proposed by Arkhinos, probably in 401/0, made *epobelia* payable by either litigant losing in a *paragraphe* trial, by however small a margin.
- 3 At some time between 400 and 364 a law was passed making *epobelia* payable by the unsuccessful litigant, whether prosecutor or defendant, in any private case. Until he paid, he was subject to *atimia*.
- 4 Soon after 355 the mercantile laws authorized imprisonment of the unsuccessful litigant in a mercantile case until he paid the *epobelia*.

Finally there are two questions to which I can only guess the answers, because I have found no relevant evidence.

- (a) Many private cases were referred to a public arbitrator (*diaitetes*), and if both litigants accepted the arbitrator’s verdict, the case never went to a trial by jury. Did *epobelia* have to be paid by the litigant whom the arbitrator decided against? My guess is that it did not, especially since the arbitrator’s decision could be a compromise with no outright winner or loser. One purpose of the institution of *epobelia* must have been to deter litigants from putting the state to the trouble and expense of providing a trial by jury. If they accepted

the arbitrator's verdict and thus made a jury trial unnecessary, it was reasonable to let them off the *epobelia*.

- (b) How was the *epobelia* calculated in a case in which the proposed penalty was not a payment of money? Possibly the answer is that in private cases, unlike public ones, it was virtually unknown for the penalty to be anything other than a payment of money or surrender of some property which could be valued, so that the question never arose.

## Notes

- 1 E.M. Harris, *Dike* 2 (1999) 123–42, reprinted with afterthoughts in his *Democracy and the Rule of Law in Classical Athens* (Cambridge, 2006) 405–22; R.W. Wallace, *Symposion 2003* (2006) 57–66, with a response by Harris on pp. 67–72.
- 2 D. Whitehead, *Mus. Helv.* 59 (2002) 86–9.
- 3 A.R.W. Harrison, *The Law of Athens* 2 (Oxford, 1971) 183–5. There is a summary of the subject in C. Carey and R.A. Reid, *Demosthenes: Selected Private Speeches* (Cambridge, 1985) 208–9. For earlier discussion see J.H. Lipsius, *Das attische Recht and Rechtsverfahren* (Leipzig, 1905–15) 937–9.
- 4 I have argued in favour of this date in *RIDA* 18 (1971) 267–73. Whitehead, *Mus. Helv.* 59 (2002) 71–84 argues for 403/2. The exact date is not important for my present purpose.
- 5 The figure of 30 drachmas is given in Isok. 18.3.
- 6 An exception is a *diadikasia* with several claimants for an inheritance, for which *diamartyria* continued to be used.
- 7 Isok. 18.3; cf. Dem. 47.64.
- 8 Whitehead, *Mus. Helv.* 59 (2002) 86–9.
- 9 See, however, M.H. Hansen, *Atimistrafen i Athen i Klassisk tid* (Odense, 1973) 120.
- 10 Harrison, *The Law of Athens* 2.183.
- 11 It is likewise rejected by Lipsius, *Das attische Recht* 937 n. 26, and Harrison, *The Law of Athens* 2.184

# Hereditary *sitesis* in fourth-century Athens

(Originally published in *ZPE* 162 [2007] 111–3)

The Prytaneion decree, dated in the 430s BC (*IG* I<sup>3</sup> 131), lists the categories of men entitled to σίτησις, regular meals in the Prytaneion (to be distinguished from δεῖπνον, dinner on one particular day). They include the current holders of certain offices, but among them are descendants of the tyrannicides Harmodios and Aristogeiton, the one nearest relative of each. No other holders of this privilege on a hereditary basis are included in that inscription; perhaps no others existed at that time. There is no other epigraphical evidence for hereditary holders before the late fourth century. The subject has been considered most recently by M. J. Osborne<sup>1</sup> and A. S. Henry.<sup>2</sup> Osborne finds literary evidence for four awards of σίτησις made in the period between the 430s and the 320s: Kleon (*Aristophanes Horsemen* 709, etc.), Iphikrates (*Dem.* 23.130), Diphilos (*Dein.* 1.43), and Demades (*Dein.* 1.101). In none of those cases does the evidence state that the privilege was to be inherited by descendants, though it may have been so.

However, there is one certain case of hereditary σίτησις in this period. This case is too easily dismissed by Osborne in a footnote: ‘The case of Charidemos, son of Ischomachos (*Dem.* 58.30 f.), is quite obscure, perhaps deliberately obscured; but *sitesis* was not granted’.<sup>3</sup> Others too have found this case obscure. J. K. Davies, who provides the fullest discussion of it so far but without mentioning σίτησις, calls it an ‘involved and obscure affair’.<sup>4</sup> But I believe that it is possible to dispel some of the obscurity.

The case occurs in the speech *Against Theokrines*, which is oration 58 in the Demosthenic corpus but is generally agreed not to have been written by Demosthenes. The date is around 340. The speaker, whose name is said by Libanios in the hypothesis to be Epichares, describes how his father, whose name is not given, was prosecuted by Theokrines in a γραφή παρανόμων.

τοῦ γὰρ πατρὸς κατηγορῶν, ὃ ἄνδρες δικασταί, ὅτε τὴν τῶν παρανόμων αὐτὸν ἐδίωκε γραφήν, ἔλεγεν ὡς ἐπιβεβουλευμένος ὁ παῖς εἶη περὶ οὗ τὸ ψήφισμα γεγραμμένον ἦν, ἐν ᾧ τὴν σίτησιν ἔγραψεν Χαριδήμῳ ὁ πατήρ τῷ Ἴσχομάχου υἱῷ, λέγων ὡς, ἐὰν ἐπανεέλθῃ εἰς τὸν πατρῶον οἶκον ὁ παῖς,

ἀπολωλεκῶς ἔσται τὴν οὐσίαν ἅπασαν ἣν Αἰσχύλος ὁ ποιησάμενος αὐτὸν  
 υἷον ἔδωκεν αὐτῷ, ψευδόμενος· οὐδενὶ γὰρ πώποτε, ὃ ἄνδρες δικασταί,  
 τοῦτο τῶν εἰσποιηθέντων συνέβη καὶ τούτων πάντων αἴτιον ἔφη  
 Πολύευκτον γεγενῆσθαι τὸν ἔχοντα τὴν μητέρα τοῦ παιδός, βουλόμενον  
 ἔχειν αὐτὸν τὴν τοῦ παιδός οὐσίαν. ὀργισθέντων δὲ τῶν δικαστῶν ἐπὶ τοῖς  
 λεγομένοις, καὶ νομισάντων αὐτὸ μὲν τὸ ψήφισμα καὶ τὴν δωρεὰν κατὰ  
 τοὺς νόμους εἶναι, τῷ δὲ ὄντι τὸν παῖδα μέλλειν ἀποστερεῖσθαι τῶν  
 χρημάτων, τῷ μὲν πατρὶ δέκα ταλάντων ἐτίμησαν ὡς μετὰ Πολυεύκτου  
 ταῦτα πράττοντι, τούτῳ δ' ἐπίστευσαν ὡς δὴ βοηθήσαντι τῷ παιδί.

'In accusing my father, men of the jury, when he brought the γραφή  
 παρανόμων against him, he said that there was a plot against the boy who  
 was the subject of the ψήφισμα, in which my father proposed σίτησις for  
 Charidemos the son of Ischomachos. He said that, if the boy returned to his  
 father's οἶκος, he would have lost all the property which Aischylos, who had  
 adopted him as a son, had given him. That was a lie, for this never happened,  
 men of the jury, to any of those adopted. And he asserted that Polyeuktos, the  
 husband of the boy's mother, was responsible for all this, because he wanted  
 to hold the boy's property himself. The jurors became angry at what was said,  
 and thought that, while the actual decree and grant were in accordance with  
 law, the boy was really going to be deprived of his money. They imposed a  
 fine of 10 talents on my father, on the ground that he was collaborating with  
 Polyeuktos, and they trusted Theokrines, believing that he had come to the  
 support of the boy.'

[Demosthenes] 58.30–1

The following inferences from the text provide a basis for reconstructing the  
 course of events.

- 1 Charidemos, being still a boy, cannot himself have performed some great  
 public service to earn σίτησις. The argument must have been that he should  
 inherit σίτησις from Ischomachos. Either Ischomachos or (more probably) an  
 earlier ancestor must have received the award of hereditary σίτησις.
- 2 It is not credible that Ischomachos would have allowed his only son to leave  
 his οἶκος by adoption into another family. He must have had another son whom  
 he intended to be his own heir. We can safely assume that Ischomachos had  
 two sons and Aischylos of Athmonon<sup>5</sup> had none. They therefore arranged for  
 one of Ischomachos' sons (probably the younger son) to be adopted by  
 Aischylos, so that each of the boys would inherit one property and neither  
 οἶκος would become extinguished.
- 3 The reason, or at least the pretext, for proposing Charidemos' return to his  
 natural father's οἶκος must have been that the other son had now died, leaving  
 no heir to Ischomachos.
- 4 Since it could be plausibly alleged that the return of Charidemos to his father's  
 οἶκος would bring his property under the control of Polyeuktos, it is clear that



Polyeuktos had some legal standing in relation to Ischomachos' property. Besides marrying the widow, he must have controlled that property as guardian of Ischomachos' other son. (We may compare the case of Demosthenes himself in Dem. 27.4–5: when Demosthenes' father realized that he was likely soon to die, he gave instructions that Aphobos was to marry his widow and be a guardian of his son.)

- 5 Normally an adoption, or a revocation of an adoption, was arranged by the families concerned with appropriate registration in the phratry and the deme but without reference to any other public authority. The reason why a formal ψήφισμα was required in this case must be that it involved σίτησις, which was an award by the state.
- 6 Epichares asserts that Charidemos, on returning to the οἶκος of his natural father, would not have forfeited the property of his adoptive father. At first sight this assertion appears to be simply false: all the jurors would have known that a boy could not be legally the son of two fathers simultaneously. To have any hope of convincing them, Epichares' father must have said, rather, that a boy transferred from one οἶκος to another was not required to give up the property of the οἶκος which he left, if he had a right to inherit it in some other way. If that is correct, we can infer that Aischylos, besides being Charidemos' adopted father, also had a natural relationship to him; he may, for example, have been the brother of Charidemos' mother.

So I reconstruct the course of events as follows. Ischomachos, who held the privilege of hereditary σίτησις, had two sons. Aischylos, who had some family connection with Ischomachos (perhaps his brother-in-law), had no sons, and so adopted Ischomachos' son Charidemos. Ischomachos made a will (oral or written) appointing Polyeuktos to be the guardian of his remaining son and the husband of his widow, taking care of his property until that son should come of age. Ischomachos then died, and these instructions were carried out. Aischylos also died, leaving Charidemos, still a minor, in possession of his property and presumably with a guardian (whose identity we do not know). But then the son remaining in Ischomachos' οἶκος died. It was therefore suggested that Charidemos should return to Ischomachos' οἶκος and inherit Ischomachos' property, under the guardianship of Polyeuktos; Epichares' father, who was a friend of Polyeuktos, proposed a ψήφισμα to allow Charidemos also to inherit the privilege of σίτησις. He argued that Charidemos could still be allowed to keep Aischylos' property too, as being Aischylos' nearest relative. But Theokrines prosecuted Epichares' father by γραφή παρανόμων; he probably invoked the law that an adopted son could not return to his natural father's οἶκος unless he left a legitimate son of his own in his adoptive father's οἶκος.<sup>6</sup> He won the case, because the jury thought the proposal was just a device to enable Polyeuktos to get control of the property left by Aischylos. Thus the decree was annulled and Charidemos did not receive the privilege of σίτησις; whether it was simply extinguished or passed to a cousin or other descendant of the original beneficiary, we do not know. Epichares' father

incurred a very large fine of 10 talents; and that led to Epichares' prosecution of Theokrines, which need not be considered here.

I would claim that this sequence of events is probable, rather than sure. But even if it turns out to be incorrect in some details, it is at any rate certain that Ischomachos provides an example of hereditary *σῆτισις* in the fourth century.

## Notes

- 1 Michael J. Osborne, 'Entertainment in the Prytaneion at Athens', *ZPE* 41 (1981) 153–70.
- 2 Alan S. Henry, *Honours and Privileges in Athenian Decrees* (Hildesheim 1983) 275–8.
- 3 Osborne, loc. cit. 159 n. 18.
- 4 J. K. Davies, *Athenian Propertied Families* (Oxford 1971) 66–7 (no. 436).
- 5 For Aischylos' deme see *IG II<sup>2</sup>* 417.25, as read (as line 26) by S. D. Lambert, *ZPE* 135 (2001) 54–7.
- 6 *Isaios* 6.44, *Dem.* 44.64; cf. Lene Rubinstein, *Adoption in IV. Century Athens* (Copenhagen 1993) 57–61.

# Mining cases in Athenian law

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The silver mines in the Laureion district of south-east Attika formed an important part of the Athenian economy, but the surviving evidence about them is not easy to interpret. Modern study began with Boeckh and, after other nineteenth-century contributions, reached its apogee in Ardaillon's book, published in 1897.<sup>1</sup> The most significant contribution of the twentieth century was the mining leases inscribed on stone by the officials called *poletai*, the sellers of state property; these were published by Crosby<sup>2</sup> and discussed at length by Hopper.<sup>3</sup> The inscriptions have thrown much light on the system used for leasing the mines, but not much on the relevant legal proceedings. The best account of Athenian mining law and legal procedure is still Ardaillon's,<sup>4</sup> but since a century has passed since its appearance, I think it is time to present some of his points afresh and add a few others of my own.

The literary evidence for legal proceedings, including references in the later lexica, is probably all related to the second half of the fourth century BC, and the inscriptions of the leases all date from the period between 367 and 300. Consequently my comments about the legal proceedings all refer to that period; we cannot say how far the same procedures were used in earlier times.

Before coming to the legal actions I must first explain briefly the principles of tenure of the mines. This used to be a very controversial subject, but since Crosby's publication of the inscriptions and Hopper's discussion of them it seems to be generally agreed that the mines were all regarded as belonging to the state, which let them on lease to the individuals operating them.<sup>5</sup> This was true even when the surface of the ground above a mine was the private property of an individual citizen. A few bits of evidence have in the past been thought to show that privately owned mines also existed, the most significant being a passage of Hypereides which tells us that a jury decided that a certain mine was ἴδιον.<sup>6</sup> But it is now generally agreed that this expression can mean simply that Epikrates was

the lessee of the mine, not that he owned it outright, and there is no clear evidence that any mines were owned outright by private individuals.<sup>7</sup> Distinct from a mine (μέταλλον) was a workshop (ἐργαστήριον), which was a building or area on the surface for processing ore obtained from a mine.<sup>8</sup> A workshop was owned by an individual, not by the state.

If we accept that all mines belonged to the state, it naturally follows that anyone who opened up a new mine, even if it was under land belonging to himself, was required to report it to the authorities and pay the appropriate rent for it. It is also likely that sometimes a man who dug a shaft and found a vein of silver under his own land, or perhaps in a rough area not farmed by anyone, might avoid reporting it, so as to be able to keep the silver without paying the rent. This explains one kind of legal action mentioned by Hypereides and the lexica.

Hyp. *Eux.* 34: Τείσιδος . . . ὑπισχνουμένου τὴν Φιλίππου καὶ Ναυσικλέους ἀπογράψειν, καὶ λέγοντος ὡς ἐξ ἀναπογράφων μετάλλων πεπλουτήκασι,

*“When Teisis promised to list the (sc. property) of Philippos and Nausikles, and said that they had got rich from unregistered mines . . .”*

*Names of Cases* (Δικῶν ὀνόματα, Bekker *Anecdota Graeca* 1) 184.27–8: ἀγράφου μετάλλου διὰ τῶν λάθρα ἐργαζομένων ἀργύριον εἰσήγοντο οἱ συγγιγνώσκοντες

*“For an unregistered mine, those who shared knowledge of it were brought in (sc. to court) by those working silver secretly.”*

Phot. *Lex. a* 255: Ἀγράφου μετάλλου δίκη· οἱ τὰ ἀργύρεια μέταλλα ἐργαζόμενοι, ὅπου βούλοιντο καινοῦ ἔργου ἄρξασθαι, φανερόν ἐποιοῦντο τοῖς ἐπ’ ἐκείνοις τεταγμένοις ὑπὸ τοῦ δήμου καὶ ἀπεγράφοντο τοῦ τελεῖν ἔνεκα τῷ δήμῳ εἰκοστὴν τετάρτην τοῦ καινοῦ μετάλλου. εἴ τις οὖν ἐδόκει λάθρα ἐργάζεσθαι μέταλλον, τὸν <μὴ> ἀπογραψάμενον ἐξῆν τῷ βουλομένῳ γράφεσθαι καὶ ἐλέγχειν

*“Case of an unregistered mine: men working the silver mines, wherever they wanted to open up new work, declared it to those appointed for that purpose by the people, and registered it for payment to the people of a twenty-fourth of the new mine. If anyone was found to be working a mine secretly, anyone who wished was allowed to prosecute him who had not registered it, and to prove him guilty.”*

The entry in the *Souda* lexicon α 345 is identical.

In all these passages it is clear that it was an offence to operate a mine which had not been registered with the proper authorities, presumably the *poletai*. Hypereides uses the adjective ἀναπόγραφος, the lexicographers ἄγραφος, but there is no need to imagine a distinction of meaning between those two words: they are just

synonyms meaning “unregistered.” But we should distinguish ἀπογράφω from ἀπογράφομαι: the middle voice is regularly used in the inscriptions for registering a mine for one’s own use, but the active voice denotes a method of public prosecution. Prosecution by *apographe* (listing) involved submitting a list of property which the prosecutor asserted should be forfeited to the state.<sup>9</sup> If it is correct that this procedure was used to prosecute for an unregistered mine, presumably the prosecutor would list items of the defendant’s property or money equal in value to the amount of silver which he was alleged to have obtained from the mine illegally. In the particular case mentioned by Hypereides, Teisis, alleging that unregistered mines were the sole source of the wealth of Philippos and Nausikles, may have threatened to list the whole of their property. However, Photios does not call prosecution for this offence *apographe*, but uses the simple verb γράφεσθαι, implying that the method of prosecution was an ordinary *graphe*. The rest of the passage from Photios casts no light on this discrepancy. His reference to “a twenty-fourth” is not to be taken as meaning the penalty on conviction for this offence, but a tax which the defendant had avoided paying; the figure, though, is not mentioned elsewhere and may be an error.<sup>10</sup>

As for the *Names of Cases* entry, it does not name the prosecution procedure at all, but seems to be saying that other persons who knew about an unregistered mine (neighbouring farmers, for example) could be brought into the case. How that would happen is obscure. More useful, perhaps, are some passages in the Demosthenic speech *Against Phainippos*. This speech belongs to a case of *antidosis*, but the speaker, whose name is not known, mentions several times an earlier case which he lost.

Dem. 42.3: τὸ τελευταῖον νυνὶ με δεῖ τῇ πόλει τρία τάλαντα καταθεῖναι, τάλαντον κατὰ τὴν μερίδα. Μετέσχον γάρ, ὡς μή ποτ’ ὄφελον, κάγω τοῦ δημευθέντος μετάλλου.

“Now finally I have to pay the city 3 talents, a talent for each part; for I too had a share in the confiscated mine – I wish I hadn’t!”

Dem. 42.20: πόλλ’ ἐκ τῶν ἔργων τῶν ἀργυρείων ἐγώ, Φαίνιππε, πρότερον αὐτὸς τῷ ἑμαυτοῦ σώματι πονῶν καὶ ἐργαζόμενος συνελεξάμην· ὁμολογῶ. νυνὶ δὲ πλὴν ὀλίγων ἅπαντ’ ἀπολώλεκα.

“I previously amassed a substantial amount from the production of silver, Phainippos, by my own physical labour and work; I admit it. But now I have lost it all, except for a little.”

Dem. 42.32: καὶ γὰρ εἰ οἰκέτης ὑμῶν, μὴ πολίτης ἦν, ὀρῶντες ἂν μου τὴν φιλεργίαν καὶ τὴν εἰς ὑμᾶς εὖνοιαν, ἀνεπαύσατ’ ἂν με τῶν ἀναλωμάτων καὶ ἐπὶ τὸν δραπετεύοντα τῶν ἄλλων ἤλθετε. τὸν αὐτὸν τρόπον καὶ νῦν, ἐπειδὴν ἀποτείσω τὰ τρία τάλανθ’ ἃ ὄφλον . . .

“For if I had been your servant, not a citizen, on seeing my industriousness and goodwill towards you, you would have relieved me of expenditure and

turned to someone else who shirked it. In the same way, as it is, after I pay the 3 talents which I was condemned to pay, . . .”

The speaker has been ordered to perform an expensive liturgy, but he claims that he now has little money and Phainippos, who is richer, ought to perform it in his place. He is therefore proceeding against Phainippos by *antidosis*, challenging him either to perform the liturgy or to exchange properties with him. The sentences which I have quoted explain why he has become poor. The reason is that he was condemned to pay a heavy fine in a previous case concerning a silver mine. He says that he worked hard at the mine, but now it has been confiscated and he has been condemned to pay 3 talents to the state. But several things remain obscure.<sup>11</sup> He does not explain why the mine was confiscated or why he had to pay a fine. He says that he shared the mine, and the words “3 talents, a talent for each part” imply that he had two partners; but in that case why did he have to pay all three shares of the fine? Clearly he is assuming that the jurors listening to his speech already have some knowledge of the affair concerning the mine; for he speaks of “*the* confiscated mine” as if it were one of which the jurors were already aware, and he says “I *too* had a share” implying that the jurors are already aware of the other partners. Perhaps the affair of the mine was one of general notoriety in Athens; perhaps Phainippos had been talking about it in public. I find it intriguing that in 42.32 the speaker imagines himself as a servant of the Athenians, and I wonder whether he was indeed a servant in some sense. One possibility is that the other two partners were prominent men who employed the speaker as manager of the mine, and when they were found guilty on a charge related to the mine they fled from Athens leaving the manager to pay the whole penalty. Then, when Phainippos declares that the manager has got rich on the proceeds from the mine, he retorts that he was not merely an employee of the two partners, as might have been assumed, but was actually a third partner himself, and as the only partner now left in Athens he has been landed with the whole of the fine.

That is just a speculative explanation of the wording of 42.3, and may be wrong. But here I am concerned rather with the legal case against the partners: why was the mine confiscated and a large fine imposed in addition? We cannot say for certain, but the best suggestion is Hopper’s,<sup>12</sup> that the mine had not been officially registered; so a prosecution for an unregistered mine was brought by some citizen (Phainippos?) against the men operating it, and when found guilty they had not only to hand the mine over but also to pay a large sum, which may have been the estimated value of the silver which they had already extracted from it. This seems to me the best way of explaining the double character of the penalty: confiscation of the mine and a heavy fine in addition. But if it is right, we should notice that the legal procedure does not look like *apographe*. The speaker talks of a fine of a specified amount which he will have to pay; he does not say that some of his property is being forfeited. That seems to imply that the procedure is *graphe*. So perhaps both procedures, *graphe* and *apographe*, were available for prosecution for an unregistered mine, and we can accept the apparent reference to *graphe* in Photios as well as the reference to *apographe* in Hypereides.

We may next look at the sentences which follow almost immediately in the speech *Against Euxenippos*.

Hyp. *Eux.* 35–6: φήναντος γὰρ Λυσάνδρου τὸ Ἐπικράτους μέταλλον τοῦ Παλληνέως <ὡς> ἐντὸς τῶν μέτρων τετμημένον, ὃ ἠργάζετο μὲν ἤδη τρία ἔτη, μετεῖχον δ' αὐτοῦ οἱ πλουσιώτατοι σχεδὸν τι τῶν ἐν τῇ πόλει, ὃ δὲ Λύσανδρος ὑπισχνεῖτο τριακόσια τάλαντα εἰσπράξειν τῇ πόλει· (τοσαῦτα γὰρ εἰληφέναι αὐτοὺς ἐκ τοῦ μετάλλου)· ἀλλ' ὅμως οἱ δικασταὶ . . . ἔγνωσαν ἴδιον εἶναι τὸ μέταλλον.

“When Lysandros revealed that the mine of Epikrates of Pallene had been cut inside the limits – a mine which he had already been working for three years, and pretty well the richest men in the city were partners in it – and Lysandros promised to exact 300 talents for the city (for that was the amount he said they had obtained from the mine), still the jurors . . . decided that the mine was his own.”

In this case, by contrast with the previous one, the legal procedure is clear, and it is the definition of the offence which is obscure. The procedure is clear from the first word, φήναντος, which I have translated “revealed.” This refers to the procedure of *phasis*, which I have discussed previously.<sup>13</sup>

In that paper I distinguished three types of *phasis*, and in a more recent paper Wallace has argued that its range was wider still.<sup>14</sup> However, the case of Lysandros and Epikrates clearly belongs to the best known type, in which the prosecutor initiated the action by pointing out some object or property with which an offence had been committed. In this case the property which Lysandros pointed out was a silver mine. Hypereides does not tell us to which magistrates he pointed it out, but we can guess that it was the *poletai*, because they were the officials in charge of leasing mines. But two problems in this passage remain unsolved.

First, there is the definition of the offence. The text says that the mine had been cut ἐντὸς τῶν μέτρων, literally “inside the measures.” Although the word μέτρον has a variety of applications, I think we can safely assume that the “measures” of a mine are the definition or limits within which digging should take place. But surely it would be an offence to cut a mine outside, not inside the limits. Many suggestions have been made to explain the phrase, but they are almost entirely unconvincing. The simplest is Cobet’s: he proposed to alter the text by changing ἐντός to ἐκτός “outside.” That gives perfect sense, but the objection to it is that virtually the same phrase, τῶν μέτρων ἐκτός, is used in a sentence of Demosthenes’ speech *Against Pantainetos* (37.36, quoted below) referring to what must be the same offence, although *phasis* is not mentioned there. It is difficult to believe that exactly the same scribal error occurred in both places. But if we keep ἐντός, how can that be interpreted to mean cutting a mine beyond the proper limits? Hopper at first suggested that cutting a mine “inside the boundaries” means cutting through them.<sup>15</sup> Later he suggested that it means either cutting down supporting pillars or exceeding some regulation distance between them.<sup>16</sup> It seems to me that, if ἐντός

is correct, the reference can only be to cutting within the limits of a neighbouring mine.<sup>17</sup> But the sense required is given so exactly by ἐκτός that I would not rule out Cobet's emendation of the text, even though it does mean postulating a coincidence of errors.

The other problem concerns the penalty. In *phasis* the normal penalty on conviction was that the object or property concerned in the offence was confiscated and sold, and the proceeds were divided equally between the successful prosecutor and the public treasury. But clearly the present case was a little different. A mine belonged to the state anyway. Probably Epikrates, if he had lost the case, would have forfeited his lease, but the prospective penalty mentioned by Hypereides is a payment to the state of 300 talents, the total amount which Epikrates and his partners were alleged to have obtained from the mine. The best way to explain this is to assume that, when *phasis* concerned a mine, the property at which it was directed was not the mine itself but the silver extracted from it. This (or its value in money) is what was confiscated to the state, and – though Hypereides does not mention it half of it (in this case that would have been 150 talents) was then handed over to the prosecutor.

The measures or limits (μέτρα) of a mine must have been a distance measured horizontally underground from the vertical shaft or other starting-point of the mine. Miners digging a tunnel horizontally, if they went beyond the limits, would not necessarily meet the tunnel of the neighbouring mine (and indeed would gain little by entering a tunnel from which the ore had already been extracted), but would probably be trying to dig down to a lower level not already exploited. I believe therefore that we have further references in the lexica to *phasis* for cutting beyond the limits.

*Lex. Cant.* 25.15–17:<sup>18</sup> Καικίλιος δὲ φάσιν φησὶν εἶναι ἦν κατὰ τῶν τὰ δημόσια μέταλλα ὑπορυπτόντων ἀποφέρουσι καὶ καθόλου κατὰ τῶν τὰ κοινὰ κλεπτόντων.

“Kaikilios says it is *phasis* which they bring against those digging under public mines, and in general against those stealing public property.”

*Lex. Rhet.* (Bekker *Anecdota Graeca* 1) 315.16–18: φάσις. μήνυσις πρὸς τοὺς ἄρχοντας κατὰ τῶν ὑπορυπτόντων τὸ μέταλλον, ἢ κατὰ τῶν ἀδικούντων χωρίον ἢ οἰκίαν ἢ τι τῶν δημοσίων.

“*Phasis*: denunciation to the magistrates against those digging under a mine, or against those committing offences against land or a building or any public property.”

The entry in the *Souda* lexicon at the end of φ 125 is similar.

Kaikilios was a rhetorician of the first century BC who wrote important studies of the Attic orators and is likely to have got his information directly from them. Although only one of these lexical entries mentions him by name, both are



probably derived from him and through him from some Athenian speech now lost. It appears that in that speech *phasis* was mentioned as the procedure used for an offence called *μέταλλον ὑπορύττειν*. The verb *ὑπορύττω* means “dig under” or “undermine,” and the offence of digging under a mine must be that of digging into the area belonging to a neighbouring mine.<sup>19</sup> I suggest that this is simply a different form of words having the same meaning as *ἐντὸς* (or *ἐκτὸς*) *τῶν μέτρων τέμνειν* and confirms that *phasis* was the procedure used for prosecution for that offence.

Another public offence concerning the mines is mentioned in the section on Lykourgos in the *Lives of the Ten Orators* attributed to Plutarch.

[Plu.] *Ethika* 843d–e: ἔκρινε δὲ καὶ Δίφιλον, ἐκ τῶν ἀργυρείων μετάλλων τοὺς μεσοκρινεῖς, οἱ ἐβάσταζον τὰ ὑπερκείμενα βάρη, ὑφελόντα καὶ ἐξ αὐτῶν πεπλουτηκότα παρὰ τοὺς νόμους· καὶ θανάτου ὄντος ἐπιτιμίου ἀλῶναι ἐποίησε, καὶ πενήκοντα δραχμὰς ἐκ τῆς οὐσίας αὐτοῦ ἐκάστῳ τῶν πολιτῶν διένειμε, τῶν πάντων συναχθέντων ταλάντων ἑκατὸν ἐξήκοντα· ἢ, ὡς τινες, μνᾶν.

“(Lykourgos) also put Diphilos on trial because he had removed from the silver mines the pillars which supported the weight above, and had enriched himself from them illegally. The penalty was death; he got him convicted, and distributed 50 drachmas from his property to each of the citizens, the total amount being 160 talents – or, according to some people, a mna.”<sup>20</sup>

The *μεσοκρινεῖς* were pillars of the original rock, perhaps containing ore, which had been left in place to support the roof.<sup>21</sup> Removal of those supports would increase the risk of a collapse of the roof and endanger the lives of those who worked in the mine. Consequently it was regarded as a very serious offence. The word *ἐπιτίμιον* usually means a penalty fixed by law,<sup>22</sup> rather than one assessed by a jury, and so the present passage probably means that there was a law prescribing death, with confiscation of property, as the penalty for removing the pillars from a mine. The text does not say what procedure was used to prosecute for this offence, but it must surely have been a public case of some sort, probably *graphe*.

That completes our information about public prosecutions concerning the mines, but there were also private prosecutions, for Arist. *Ath. Pol.* 59.5 includes *μεταλλικὰς* in a list of private cases taken into court by the *thesmothetai*. For details we rely entirely on the speech *Against Pantainetos* (Dem. 37). This is a speech written by Demosthenes for delivery by a man named Nikoboulos in a *paragraphe* trial, probably in 346 BC. Pantainetos was the lessee of a mine and had a workshop (*ἐργαστήριον*) near the mine with thirty slaves for processing the ore. He did not own the workshop and workmen outright; Nikoboulos and his friend Euergos were the owners (or part-owners), and Pantainetos held the workshop and workmen by lease or “sale with right of redemption” – the terminology and details of the arrangement are difficult and need not be discussed here.<sup>23</sup> Pantainetos failed to pay the rent or interest, and so Euergos, in Nikoboulos’ absence abroad, repossessed

the workshop and workmen; but Pantainetos then prosecuted Euergos for this and some related incidents, and won the case. He also prosecuted Nikoboulos, after his return to Athens, on the same charge. This was a prosecution for damage (βλάβη, in the sense of causing him financial loss). Much of the charge is quoted in the surviving speech. The following were apparently the principal accusations.

- 1 Nikoboulos ordered his slave Antigenes to seize the money which was to have been taken to the state treasury to pay the rent for Pantainetos' mine, thus causing Pantainetos to incur an additional payment as a debtor to the treasury.
- 2 Nikoboulos sent Antigenes to repossess the workshop and workmen.
- 3 Nikoboulos told the workmen to stop working for Pantainetos.
- 4 Nikoboulos took over the ore in the workshop and kept the silver extracted from it.
- 5 Nikoboulos sold the workshop and workmen to other purchasers, in contravention of the agreement giving Pantainetos the right to buy it.
- 6 There were other accusations involving "assault and insolence and offences of violence and against heiresses" (37.33), but details of these are not given.

Nikoboulos then resorted to the *paragraphe* procedure to try to prevent Pantainetos' prosecution from coming to trial, and the surviving text is his speech arguing that it is illegal. His main argument is that Pantainetos had previously given him release from all charges, but here we are concerned with his secondary argument, which is that some of Pantainetos' accusations are ones which should have been taken to different magistrates, not to the *thesmothetai* who were the magistrates responsible for mining cases. He calls for the mining law (τὸν μεταλλικὸν νόμον) to be read out. The text of the law is not preserved, but after it is read he makes these comments.

Dem. 37.35–6: Οὗτος σαφῶς ὁ νόμος διείρηκεν ὧν εἶναι δίκας προσήκει μεταλλικάς. οὐκοῦν ὁ μὲν νόμος, ἐάν τις ἐξίλλη τινὰ τῆς ἐργασίας, ὑπόδικον ποιεῖ· ἐγὼ δ' οὐχ ὅπως αὐτὸς ἐξίλλω, ἀλλ' ὧν τοῦτον ἄλλος ἀπεστέρει, τούτων ἐγκρατῆ κατέστησα καὶ παρέδωκα, καὶ πρατῆρ τούτου δεηθέντος ἐγενόμην. ναί, φησίν· ἀλλὰ κἄν ἄλλο τι ἀδικῆ τις περὶ τὰ μέταλλα, καὶ τούτων εἰσὶν δίκαι. ὀρθῶς γ', ὦ Πανταίνετε· ἀλλὰ ταῦτα τί ἐστίν; ἂν τύφη<sup>24</sup> τις, ἂν ὅπλ' ἐπιφέρῃ, ἂν ἐπικατατέμνη τῶν μέτρων ἐντός. ταῦτ' ἐστὶν τᾶλλα, ὧν οὐδὲν δήπου πέπρακται πρὸς ὑμᾶς ἐμοί, πλὴν εἰ τοὺς κοιμιζομένους ἃ προεῖντό σοι, μεθ' ὅπλων ἤκειν νομίζεις. εἰ δὲ ταῦθ' ἤγει, πρὸς ἅπαντας τοὺς προεῖμένους τὰ ἑαυτῶν εἰσὶ σοι δίκαι μεταλλικά. ἀλλ' οὐ δίκαιον.

"This law clearly defines the proper subjects for mining cases. The law, then, makes liable to prosecution anyone who excludes anyone from his workings; but I, so far from excluding him myself, have given him control of what someone else was keeping from him, and handed it over to him, and acted as vendor at his request. 'Yes,' he says, 'but prosecutions can be brought also for other offences concerning the mines.' Quite right, Pantainetos, but what

are they? Causing smoke; attacking with weapons; cutting a mine inside the limits. Those are the other offences, and surely I haven't committed any of them against you – unless you consider that creditors recovering their money from you are armed attackers! If you think that, you can bring mining cases against all men who lend you their money. But that's not right.”

Elsewhere in the speech he remarks that these are monthly cases (δίκαι ἔμμηνοι, Dem. 37.2), which Edward Cohen some years ago showed to be cases for which prosecutions were accepted every month.<sup>25</sup> We may therefore say that on a certain day every month the *thesmothetai*<sup>26</sup> received applications to prosecute for the offences of excluding a lessee from the mine he had leased, for raising smoke or attacking someone with weapons in a mine, or for cutting a mine inside the limits. The last offence in this list gives us another instance (in fact the only other instance) of the expression “inside the limits,” which I have already discussed in connection with Hyp. *Eux.* 35.

But that raises a question about the procedure. The case of Pantainetos in Dem. 37 is a private *dike*; Arist. *Ath. Pol.* 59.5 includes mining cases in a list of private *dikai* assigned to the *thesmothetai*; two lost λόγοι μεταλλικοί attributed to Deinarkhos are listed by Dionysios as speeches for private cases;<sup>27</sup> and one might assume that the offences listed in Dem. 37.35–6 as being included in the mining last were all subjects of private *dikai*. Yet in Hyp. *Eux.* 35 it is clearly stated that the procedure used by Lysandros to denounce Epikrates' mine as cut inside the limits was *phasis*, a type of public prosecution; the public nature of that case is confirmed by the statement that the penalty on conviction was to be payment of a large sum to the state. There are two possible explanations. One is that the procedure for prosecuting for cutting inside the limits was always *phasis*, and that the same law about mining provided for that type of public prosecution as well as for private prosecutions for other mining offences. The other is that the offence of cutting inside the limits appeared in two different laws providing for different methods of prosecution, so that either a public case of *phasis* or a private *dike* could be raised. Since we know that there were other offences which could be the subject of either a public or a private case,<sup>28</sup> I am inclined to think this latter explanation preferable. If it is right, a private *dike* for cutting inside the limits could be brought only by the lessee of a neighbouring mine of which the boundaries had been invaded, and he, if successful, would receive financial compensation. A public *phasis* for this offence could be brought by anybody (ὁ βουλόμενος), and any penalty paid would be shared between the state and the prosecutor; this would be the only procedure available if the mining rights to the neighbouring ground had not been leased.

We cannot be sure that Nikoboulos' list of offences included in the mining law is complete; there may have been other offences connected with mining which he does not mention. But he is surely correct in saying that some of the things of which Pantainetos accused him were not mining offences. Among the accusations as I have numbered them, no. 1 was about theft of money, no. 5 was about a breach of contract involving sale with right of redemption, and no. 6 included offences

against heiresses; none of those can have been matters for the mining law. As Nikoboulos himself points out (Dem. 37.33), prosecutions for some of these offences needed to be taken to different magistrates, not to the thesmothetai. But what evidently happened is that Pantainetos wanted to make several accusations against Nikoboulos, and because some of those accusations concerned a mine he took the whole list to the thesmothetai on the day for acceptance of monthly cases about mines. Nikoboulos by his *paragraphe* objected that it was illegal to bring a hybrid prosecution in that way. Whether the jury agreed with him, we do not know.

I conclude by listing the legal procedures for which we have evidence in mining cases.

- 1 For operating an unregistered mine, either *graphe* or *apographe*.
- 2 For removing a mine's supporting pillars, some kind of public case, probably *graphe*.
- 3 For cutting a mine inside the limits (whatever that means), either *phasis* or a private *dike*.
- 4 For excluding a lessee from his mine, or for raising a smoke or attacking with weapons in a mine, a private *dike*.

## Notes

- 1 Edouard Ardaillon, *Les Mines du Laurion dans l'antiquité* (Paris, 1897).
- 2 Margaret Crosby, "The Leases of the Laureion Mines," *Hesperia* 19 (1950) 189–312, and "More Fragments of Mining Leases from the Athenian Agora," *Hesperia* 26 (1957) 1–23. The texts have been republished with minor revisions by Merle K. Langdon, "Poletai Records," *The Athenian Agora* 19 (1991) 53–143.
- 3 R.J. Hopper, "The Attic Silver Mines in the Fourth Century BC," *BSA* 48 (1953) 200–54, and "The Laurion Mines: A Reconsideration," *BSA* 63 (1968) 293–326. On the social and economic significance of the mines see also Robin Osborne, *Demos: The Discovery of Classical Attika* (Cambridge, 1985) 111–26.
- 4 Ardaillon, *Les Mines* 200–9.
- 5 For discussion of the prices see Hopper, *BSA* 48 (1953) 224–39; K.M.W. Shipton, "The Prices of the Athenian Silver Mines," *ZPE* 120 (1998) 57–63.
- 6 Hyp. Eux. 36 ἐγνώσαν ἴδιον εἶναι τὸ μέταλλον, regarded as proof of private ownership by J.H. Lipsius, *Das attische Recht and Rechtsverfahren* (Leipzig, 1905–15) 311 note 8.
- 7 For discussion of the prices see Hopper, *BSA* 48 (1953) 224–39; K.M.W. Shipton, "The Prices of the Athenian Silver Mines," *ZPE* 120 (1998) 57–63.
- 8 On the nature of an ἐργαστήριον for a silver mine see Crosby, *Hesperia* 19 (1950) 19–45.
- 9 On *apographe* generally see A.R.W. Harrison, *The Law of Athens* 2 (Oxford, 1971) 211–17, but he does not consider its application to cases of unregistered mines.
- 10 Cf. Crosby, *Hesperia* 19 (1950) 203 note 44.
- 11 Cf. Ardaillon, *Les Mines* 186–7.
- 12 Hopper, *BSA* 48 (1953) 225.
- 13 Douglas M. MacDowell, "The Athenian Procedure of Phasis," *Symposion 1990* (1991) 187–98, with a response by M.H. Hansen on pages 199–201.
- 14 Robert W. Wallace, "Phainin in Athenian Laws and Legal Procedures," *Symposion 1999* (2003) 167–81, including a brief discussion of mining cases on pages 173–4.

- 15 Hopper, *BSA* 48 (1953) 220–1.
- 16 Hopper, *BSA* 63 (1968) 306.
- 17 For this and other views, see David Whitehead, *Hypereides: The Forensic Speeches* (Oxford, 2000) 248–9.
- 18 *Lexicon Rhetoricum Cantabrigiense*, ed. E.O. Houtsma, reprinted in *Lexica Graeca Minora*, ed. K. Latte and H. Erbse (Hildesheim, 1965) p. 85.
- 19 Hopper, *BSA* 48 (1953) 222, takes ὑπορύπτειν τὸ μέταλλον to be synonymous with τοὺς μεσοκρινεῖς ὑφελεῖν, but that is a less obvious interpretation of “dig under.”
- 20 A total of 160 talents would provide 50 drachmas (half a *mina*) each for 19,200 citizens, or a *mina* for 9600. The number of citizens at this time is not known, but the latter figure is certainly too low.
- 21 Pollux 3.87. Hopper, *BSA* 48 (1953) 222–3, rejects this definition on grounds which seem inadequate.
- 22 E.g. Ant. 4.1.4, Lyk. *Leo.* 4, Dem. 18.14.
- 23 See Edward M. Harris, “When is a Sale not a Sale? The Riddle of Athenian Terminology for Real Security Revisited,” *CQ* 38 (1988) 351–81.
- 24 On the alternative reading ὑφάψη, see Ardaillon, *Les Mines* 203 note 2.
- 25 Edward E. Cohen, *Ancient Athenian Maritime Courts* (Princeton, 1973) 23–59.
- 26 The *hypothesis* to Dem. 37 mentions τῷ μεταλλικῷ δικαστηρίῳ but this may be a misapprehension by Libanios. It is unlikely that the *thesmothetai* had a special building for mining cases.
- 27 Dion. Hal. *Deinarkhos* 12 (p. 319.2 Radermacher) and 13 (p. 320.20 Radermacher). Details of the former case are not given; in the latter the speaker complained of being turned out of his mine by the lessee of neighbouring mines.
- 28 The best known example is theft; cf. Dem. 22.26–7.

# The Athenian procedure of *dokimasia* of orators

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There were several Athenian procedures which went by the name *dokimasia*, which is sometimes translated ‘vetting’. Most of them were procedures for checking that a man had the required qualifications for some position which he was about to hold. Either he was about to become an adult Athenian citizen, or he was about to become a member of the Boule, or he had been appointed to hold some office, for instance as an *arkhon*. Before he actually entered upon the privileges and duties of this position he was required to appear either before the Boule or before a jury in a court, or in some cases both. He had to answer some routine questions about his birth and status; he might also have to make a speech in his own defence if anyone made an accusation against him; and then the Boule or the jury voted to accept or to reject him, so that the proceedings were similar to a trial. If they voted in his favour, he could then enter upon the status of citizen, or *arkhon*, or whatever it was.<sup>1</sup>

The procedure called *δοκιμασία ῥητόρων*, ‘vetting of orators’, worked rather differently. Any adult male Athenian citizen, unless disfranchised, could attend a meeting of the *Ekklesia* and make a speech, responding to the herald’s call ‘Who wishes to speak?’ Anyone who spoke in the *Ekklesia* could be called a *ῥήτωρ*, and that term is not restricted to those who spoke frequently.<sup>2</sup> Provided that he had been accepted as a citizen at his *dokimasia* when he reached the age of eighteen, he did not normally have to undergo any further vetting before making a speech. But whenever he came forward to speak, even if he had already spoken many times before, it was possible for another citizen to challenge him by asserting that he was in some way disqualified to be a speaker; and then he had to undergo a *dokimasia* before he could speak again.

The only surviving text which gives much information about it is Aiskhines’ speech *Against Timarkhos*. He quotes some sentences from the relevant statute. The date of this law is not known: Aiskhines says it was made ‘long ago’ (*πάλαι*,

Ais. 1.33), which perhaps means only that he does not remember when it was; and he refers to its author simply as ‘the legislator’, which does not necessarily mean Solon even though he mentioned Solon only a few lines before.<sup>3</sup>

The legislator stated explicitly who should make public speeches and who must not speak in the assembly. He does not bar from the platform anyone whose ancestors have not held office as generals, nor indeed anyone who practises some trade to support those whom he needs to maintain. On the contrary, he particularly welcomes them; that’s why he repeatedly asks ‘Who wishes to speak?’

Who did he think must not speak? Men who have lived a disgraceful life; those are the ones he forbids to make public speeches. Where does he show that? ‘Dokimasia of orators,’ he says. ‘If anyone speaks in the assembly who strikes his father or mother, or does not maintain them, or does not provide housing for them,’ he forbids that man to speak. That’s certainly good, I say. Why? Because a man who behaves badly towards those whom he ought to honour as highly as the gods, what treatment, he says, will that man give to non-relatives, and to the city as a whole? Whom did he next forbid to speak? ‘Or’ he says ‘who has not served on all the military expeditions prescribed for him, or has thrown away his shield.’ Quite right, isn’t it? You, man: if you don’t take up arms on the city’s behalf, or because of cowardice are unable to defend it, don’t presume to advise it either. Whom does he address third? ‘Or who has been a prostitute or a catamite.’ He thought that a man who has sold his own body for violation<sup>4</sup> would be ready to sell the city’s interests too. Whom does he address fourth? ‘Or’ he says ‘who has consumed his ancestral property, or any that he inherits.’ He thought that any man who had managed his private estate badly would treat the city’s property in a similar way.

(Aiskhines 1.27–30)

So Aiskhines tells us that there was one statute, headed *δοκιμασία ῥητόρων*, which listed certain types of activity regarded as disqualifying a citizen from speaking in the Ekklesia. The words quoted from the law include *ἐν τῷ δήμῳ*, ‘in the assembly’; this law was not concerned with speakers in lawcourts. The four categories of activity which disqualified were: maltreatment of one’s parents; failure to perform military service satisfactorily; prostitution; and squandering one’s ancestral property. A man who was guilty of any of those four kinds of behavior was regarded as an unsuitable person to advise the other citizens on matters of public policy. I suppose that these activities were considered to be signs that a man had weak judgement or a poor moral character, so that any advice which he gave to his fellow-citizens was likely to be unreliable or immoral.

Aiskhines speaks as if he were giving a complete list. We cannot be certain that he has not omitted one or two other types of behaviour which were included in the law, but there is no positive evidence that it included others. Lipsius suggests one other, on the basis of a sentence of Deinarkhos.<sup>5</sup> Deinarkhos says (1.71) that the laws prescribe to the orator and to the general that he should ‘produce

children in accordance with the laws and possess land within boundaries' (which presumably means within the frontiers of Attika); and Lipsius infers that a citizen making a speech in the Ekklesia would be subject to *dokimasia* if he did not possess a landholding in Attika and live in lawful wedlock. But even Lipsius seems uncomfortable with Deinarkhos' words, for he has departed from them. Lipsius writes of lawful wedlock ('in gesetzlicher Ehe'), but Deinarkhos actually writes of producing children (παιδοποιεῖσθαι), and it is not easy to believe that men who had no children were banned from addressing the Ekklesia; Andokides, for example, addressed the Ekklesia in his speech *On his Return*, although he was still childless at the time of his speech *On the Mysteries* a few years later (And. 1.148). I am therefore inclined to agree with those scholars who regard this statement of Deinarkhos about orators as untrue, or at least misleading in some way;<sup>6</sup> and I think it unlikely that possession of land and legitimate children was mentioned in the law about *dokimasia* of orators.

After listing the types of misconduct which disqualified a citizen from speaking in the Ekklesia, the law quoted by Aiskhines goes on, as Athenian laws usually do, to specify the procedure to be used for accusing offenders.

He says 'Let any Athenian who wishes, of those permitted, announce a *dokimasia*', and he then bids you decide the matter in the court. It is in accordance with that law that I have now come before you.

(Aiskhines 1.32)

The accuser must be an Athenian 'of those permitted'; that means that he must be an Athenian citizen not barred by *atimia* from prosecuting. That is a common requirement for public prosecutions by *graphe*, but in this instance the procedure is not *graphe*; the law says not γραφέσθω, but ἐπαγγειλάτω.<sup>7</sup> That verb is normally used of announcing or giving notice of something that will be done in the future. Evidently what is meant is that, if a man who has maltreated his parents or committed any of the kinds of misconduct listed in the law starts making a speech in the Ekklesia, any other citizen at the meeting can jump up and say that he intends to proceed against the offender by *dokimasia*. Whereas for other offences the accuser goes to the arkhon or other official to initiate his prosecution after the offence has been committed, for this offence the accuser is to give notice at the time of the offence that he intends to prosecute afterwards. The purpose of this provision must have been to stop the offending speaker from making his speech, and thus to preclude his presumably bad advice from being given to the citizens in the Ekklesia. The offending speaker must have had to break off his speech as soon as this notice of a *dokimasia* was given, and must have been forbidden to address the Ekklesia again, either at the same or at any subsequent meeting, until the trial of the *dokimasia* was held. But some means must have been found of preventing indiscriminate use of this device; otherwise every politician might have cut short all his rivals' speeches by threatening a *dokimasia* without good reason. Probably the accuser had to swear an oath that he would proceed with the *dokimasia*,<sup>8</sup> and was liable to the usual penalty for a prosecutor in a public



case who did not go ahead with it or who failed to obtain one-fifth of the jury's votes.<sup>9</sup>

Aiskhines says explicitly that this is the procedure by which he accuses Timarkhos in the extant speech (1.32), which belongs to the year 346/5;<sup>10</sup> and he gives a description of the meeting of the Ekklesia at which he announced his intention to prosecute (1.81–85). It appears that Timarkhos had previously made some proposal about some houses located on the Pnyx hill, and it had been referred to the Areopagos. The details of his proposal are not known. Carey has suggested that it was a proposal to clear the area around the Pnyx, and that it was referred to the Areopagos because some of the buildings in the area were shrines.<sup>11</sup> But that does not affect my present subject. At the meeting of the Ekklesia with which I am concerned the Areopagos' report on the proposal was presented by one of the members of the Areopagos, a dignified gentleman named Autolykos; and Aiskhines describes at some length how the Athenians laughed because they took Autolykos' innocent mentions of Timarkhos' knowledge of the Pnyx area to be unintentional references to his debauched activities in a district with a bad reputation. Aiskhines omits to say at what point in the debate Timarkhos himself attempted to speak. Perhaps the likeliest guess is that at the end of Autolykos' speech Timarkhos stood up to reply to it, and it was then that Aiskhines objected and announced his intention of accusing him at a *dokimasia* of being unfit to be an orator. The laughter which greeted Autolykos' speech would have encouraged Aiskhines to believe that he had a good chance of winning such a case against Timarkhos. In fact he did win it, and the *atimia* or disfranchisement which Timarkhos suffered as the penalty was the reason why Timarkhos was afterwards unable to accuse Aiskhines at his *euthynai* in the case of the False Embassy.

Aiskhines in the same speech also mentions other laws about orators in the Ekklesia, but those should be regarded as separate. There were laws about orderly conduct (εὐκοσμία), which Aiskhines calls on the clerk of the court to read out to the jury; the transmitted document, which may or may not be genuine, mentions such offences as interrupting, using bad language, and manhandling the chairman, and specifies payment of a fine as the penalty (Ais. 1.34–35). There was also a new law giving the members of one tribe (φυλή) responsibility for maintaining order at each meeting of the Ekklesia. Aiskhines says that this law was introduced as a result of Timarkhos' misbehaviour at a recent meeting, when he threw off his cloak while speaking and appeared undressed, like a pancratiast (Ais. 1.26); however, Timarkhos and others initiated proceedings against the law as being 'unsuitable' (μὴ ἐπιτήδειον εἶναι), so that it was suspended, and it was not yet in force at the time of his trial (Ais. 1.34). But anyway those laws about conduct at meetings were quite distinct from the law about *dokimasia* of orators. The *dokimasia* of orators was concerned not with their conduct at meetings, but with their past life.

Apart from Aiskhines' prosecution of Timarkhos, no other instance of the *dokimasia* procedure is quite clear, but it has been reasonably suggested that another case is alluded to at the beginning of the speech of Lysias *Against Theomnestos*. The speaker says that Lysitheos asserted that Theomnestos made a

public speech when he was not permitted to do so, having thrown away his arms (Lys. 10.1). According to the received text, Lysitheos εἰσήγγελλε, but Gernet and Bizos in their edition propose the emendation ἐπήγγελλε, making this an example of ἐπαγγελία in the sense of giving notice of *dokimasia*. The conjecture is rightly rejected by Hillgruber on grammatical grounds;<sup>12</sup> but I agree with Hillgruber and others that εἰσήγγελλε here is not a technical term referring to the procedure of *eisangelia* but is just a general word for ‘reported’, and that we do have here a case of *dokimasia* of an orator. We hear of one other potential case: Aristophon threatened to make an ἐπαγγελία δοκιμασίας against Hegesandros, but it appears that the threat was not carried out (Ais. 1.64).

The next step in the procedure was for the accuser to put his accusation in writing. Aiskhines, for example, wrote that Timarkhos was making a public speech although he had been a prostitute and had consumed his ancestral property (Ais. 1.154). He must then have delivered the written accusation to the appropriate official or magistrate; no text tells us who that was, but scholars have guessed that it was the *thesmothetai*, who were the officials in charge of other kinds of *dokimasia*.<sup>13</sup> The case then went to a jury for trial; the procedure at the trial was presumably the same as for any other public case. Aiskhines says that the law ordered the jury to decide the case. That the accused man had attempted to speak in the Ekklesia was of course already known; what the jury had to decide was whether he had maltreated his parents, or had been a prostitute, or whatever the accusation was. There may have been some cases in which the accused man had already in a previous trial been found guilty of that offence, and then the decision in the *dokimasia* should have been straightforward. But I presume that in most cases of *dokimasia* the jury had to consider from scratch whether he had maltreated his parents, or whatever. Certainly when Aiskhines accused Timarkhos by *dokimasia* there was no previous court verdict that Timarkhos was a prostitute (for, if there had been, Aiskhines would have mentioned it in his speech).

If the jury did decide that the accused man was guilty, what followed? Did that verdict simply confirm that he was not permitted to speak in the Ekklesia? In the case of Timarkhos it is known that on being convicted he suffered *atimia* (Dem. 19.257, 19.284). Furthermore, one passage of Aiskhines’ speech prosecuting him refers to what one of his defenders is likely to say, and makes clear that both sides were expecting that *atimia* would be the penalty on conviction (Ais. 1.134); so it is reasonable to infer that *atimia* was specified in the law about *dokimasia rhetoron* and it was not left to the jury to assess the penalty.

Disqualification from speaking in the Ekklesia by itself would constitute partial *atimia* (And. 1.75), and it has been suggested that the consequence of a defeat in the *dokimasia* of orators was not really a conviction and penalty at all, but simply a confirmation that the accused man was subject to the restrictions prescribed by law. Thus Todd says, ‘The grounds of his defeat would necessarily be that he was already *atimos*, and the defeat would actualize this already existing status’.<sup>14</sup> Carey agrees, saying, ‘The penalty is merely the confirmation of the formal restrictions automatically attaching (in most cases) to the activities it addresses’.<sup>15</sup> But the penalty imposed on Timarkhos was not just confirmation that he must not

speak in the Ekklesia. Aiskhines insists on the importance of imposing a punishment (κολάζητε, Ais. 1.177), and Demosthenes laments that Aiskhines wanted the jury to show no pity for Timarkhos' mother, who was an elderly lady, nor for his children (Dem. 19.283). It is unlikely that the old lady would have been much inconvenienced if her son had simply stopped making speeches, and we should therefore take it that the penalty prescribed in the law about *dokimasia rhetoron* was not just loss of the right to speak in the Ekklesia, but total *atimia*. That was not just a confirmation of the offender's existing status.

We have here an example of a distinction which Wallace has discussed in a recent article.<sup>16</sup> He points out that certain unconvicted offenders 'were subject to many or all of the restrictions associated with *atimia*. If they violated these restrictions and were prosecuted for it, the sentence was official, formal *atimia*.' Wallace calls men subject to such restrictions 'unconvicted or potential *atimoi*'; previously Hansen had used the expression 'automatic *atimia*'.<sup>17</sup> It is difficult to think of a better label, though those ones are not ideal. In the case of the men subject to *dokimasia rhetoron* I should rather say that someone who had done any of the things listed in the law (striking his parents, wasting his inherited property, and so on), and thus was disqualified from speaking in the Ekklesia, was actually – not potentially – under partial *atimia*, but this partial *atimia* had not been formally confirmed by a court. Such a man was therefore in a different position from one on whom *atimia* had been imposed by a court. If a man on whom *atimia* had been imposed by a court attempted to speak in the Ekklesia, he could be prosecuted, probably by *endeixis* or *apagoge*, and at the trial it would be necessary only to prove that a previous court had indeed imposed *atimia*. But if a speaker in the Ekklesia had not previously been sentenced by a court but was suspected of being disqualified from speaking (because he had struck his parents or whatever), what was required then was an examination of his life in order to discover whether he was indeed an unfit person to address the people of Athens. Such an examination was a *dokimasia*.

Most of the offences concerned were mentioned also in other laws besides the law about *dokimasia rhetoron*, and we can compare the penalty of *atimia* which seems to have been prescribed by this law with the penalties prescribed by other laws.

First, maltreatment of parents. A man who struck his parents or who failed to provide them with food and housing in their old age could be prosecuted by anyone who wished; such a prosecution is sometimes called *graphe*, but more correctly *eisangelia*, because the prosecutor was not subject to any penalty if he lost the case.<sup>18</sup> There are two pieces of evidence for the penalty for maltreatment of parents. A law about imprisonment, quoted in Demosthenes' speech *Against Timokrates*, mentions the arrest of anyone who, after being convicted of maltreatment of his parents, went into a place where he ought not to go (Dem. 24.105); that implies that the penalty was *atimia*, either total or partial. But a passage of Lysias' speech *Against Agoratos* implies that the law specified death for a man who struck his father (Lys. 13.91). So probably death was the penalty for striking a parent, and *atimia* for other kinds of maltreatment of parents.

Second, a man who failed to perform military service, or who deserted and ran away, ‘throwing away his shield’, could be prosecuted by *graphe*, and the penalty was *atimia*.<sup>19</sup>

Third, prostitution. I have recently discussed Athenian laws about homosexuality in another paper,<sup>20</sup> and so I shall not go fully into them here. The essential point is that being a prostitute or a catamite in itself was not an offence, but such a man was liable to prosecution if he went to certain places or engaged in certain activities: if, being a prostitute, he spoke in the Ekklesia or the Boule or a lawcourt, or held any public office, or entered public temples or the Agora, then he could be prosecuted by *graphe*.<sup>21</sup> This means that the partial *atimia* from which a prostitute suffered without having been convicted was quite extensive; it makes a contrast with the partial *atimia* of an unconvicted man who had maltreated his parents or who had failed to perform military service, for in their cases it seems that the only activity forbidden was speaking in the Ekklesia. The prostitute’s penalty on conviction in the *graphe* is not stated explicitly in any surviving text, but Aiskhines speaks of ‘the greatest penalties’ (τὰ μέγιστα ἐπιτίμια, Ais. 1.20), which appears to mean death, perhaps combined with confiscation of property.

Fourth, squandering one’s ancestral property. This is an obscure subject. It seems to have been thought right that, if a man inherited land from his ancestors, he should pass it on in due course to his heirs and not dispose of it in any other way; but there is no clear evidence that a law on this subject existed.<sup>22</sup> If there was a law about the offence of squandering ancestral property, we do not know what it said or what penalty it prescribed. But I find it surprising, if there was such a law, that it is never mentioned in the numerous speeches that we have about inheritance cases, and I think it more likely that there was no such law.

It seems, then, that the penalty of *atimia* prescribed in the law about *dokimasia rhetoron* was more severe than those prescribed in other laws in the case of some offences, and less severe in the case of other offences, while for others it was just the same. If a speaker in the Ekklesia had failed to perform his military service, or had maltreated his parents (short of striking them), it made no difference to the penalty whether you proceeded against him by *dokimasia* or by *graphe*, since the penalty would be *atimia* either way. If he had struck his parents or had been a prostitute, you might be able to get him put to death if you proceeded by *graphe* or *eisangelia*, instead of merely making him *atimos* by using *dokimasia*. If, on the other hand, he had squandered his ancestral property, it may be that using *dokimasia* when he spoke in the Ekklesia was the only way in which you could get him punished at all.

When we look at the situation in that way, the laws seem very inconsistent. That is a good reason for thinking that the Athenians did not look at it in that way. I suspect that, when they made the law about *dokimasia rhetoron*, they were not thinking about its consistency with other laws. They were simply thinking that men who conducted their personal affairs badly, in certain ways, were not fit to tell the Athenians how to conduct their public affairs. ‘It did not seem to the legislator,’ says Aiskhines, ‘to be possible for the same man to be personally bad

and publicly good, and the legislator thought that an orator should not come on to the platform having previously taken trouble over his speech but not his life' (Ais. 1.30). Orators do not always analyse the motives of legislators correctly, but in this instance perhaps Aiskhines has done so.

## Notes

- 1 For discussion of *dokimasia* generally see J. H. Lipsius *Das attische Recht und Rechtsverfahren* (Leipzig 1905–15) 269–85, A. R. W. Harrison *The Law of Athens* (Oxford 1968–71) 2.200–7, D. M. MacDowell *The Law in Classical Athens* (London and Ithaca NY 1978) 69, 167–69, S. C. Todd *The Shape of Athenian Law* (Oxford 1993) 285–89.
- 2 On the definition of ῥήτωρ see M. H. Hansen in *Greek, Roman and Byzantine Studies* 24 (1983) 33–55, reprinted with addenda in his *The Athenian Ecclesia II* (Copenhagen 1989) 1–24.
- 3 A sceptical view of this law is taken by Robin Lane Fox in *Ritual, Finance, Politics* (ed. R. Osborne and S. Hornblower, Oxford 1994) 149–51, but I cannot see any grounds for his suggestion that it was 'all but obsolete until Aeschines revived it'. Many good comments on its details are made by Nick Fisher *Aeschines: Against Timarchos* (Oxford 2001) 157–63.
- 4 Fisher *Aeschines: Against Timarchos* 160 translates ἐφ' ὕβρει as 'in *hybris*', and takes this as an example of 'dishonour or outrage being self-inflicted'. But surely ἐπί here means rather 'with a view to', 'for the purpose of' violation which the purchaser inflicts. Cf. Thuc. 1.38.2 ἐπὶ τῷ ὑπὸ τούτων ὑβρίζεσθαι.
- 5 Lipsius *Das attische Recht* 280.
- 6 Harrison *The Law of Athens* 1.19 n.1, 2.205 n.4, Josiah Ober *Mass and Elite in Democratic Athens* (Princeton 1989) 119, Ian Worthington *A Historical Commentary on Dinarchus* (Ann Arbor 1992) 235, Fisher *Aeschines: Against Timarchos* 159.
- 7 Ais. 1.32; cf. 1.2, 1.81. However, the distinction is not always clearly maintained, for in the speech *Against Androtion* we find ἐπαγγέλειν (Dem. 22.23) and ἐπαγγελία (Dem. 22.29) used with reference to the γραφή ἐταιρήσεως. Cf. MacDowell in *Revue Internationale des Droits de l'Antiquité* 42 (2000) 26.
- 8 This is suggested by Lipsius *Das attische Recht* 281.
- 9 On this penalty in public cases generally see Edward M. Harris 'The penalty for frivolous prosecutions in Athenian law', *Dike* 2 (1999) 123–42.
- 10 The date of Aiskhines' prosecution of Timarkhos is discussed by E. M. Harris *Hermes* 113 (1985) 376–80, H. Wankel *Hermes* 116 (1988) 383–86, E. M. Harris *Aeschines and Athenian Politics* (New York 1995) 102 with 202 n. 52, Fisher *Aeschines: Against Timarchos* 6–8, and briefly in my edition of Demosthenes *On the False Embassy* (Oxford 2000) 21 n. 59. But I was wrong to say in that book (20) that Aiskhines took as the basis of his prosecution a speech which Timarkhos had made some months previously; it must have been a speech which Timarkhos attempted to make at the same meeting at which Aiskhines announced his intention to prosecute.
- 11 C. Carey *Aeschines* (Austin 2000) 52 n. 88.
- 12 Michael Hillgruber *Die zehnte Rede des Lysias* (Berlin 1988) 31. Because ἐπαγγέλλω refers to announcements or instructions about the future, the conjecture ἐπήγγελλε would produce the sense 'Lysitheos ordered Theomnestos to make a speech' (cf. Thuc. 6.56.1).
- 13 Lipsius *Das attische Recht* 281, Harrison *The Law of Athens* 2.205 n.2.
- 14 Todd *The Shape of Athenian Law* 116 n.15.
- 15 Carey *Aeschines* 20.

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- 16 R. W. Wallace 'Unconvicted or potential "átimoi" in ancient Athens', *Dike* 1 (1998) 63–78.
- 17 M. H. Hansen *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes* (Odense 1976) 66. Cf. also U. E. Paoli *Studi di diritto attico* (Florence 1930) 330, Harrison *The Law of Athens* 2.171–72.
- 18 Isai. 8.32, Dem. 24.107, Arist. *AP* 56.6, Harp. e 7 (under εισαγγελία).
- 19 And. 1.74, Ais. 3.175–6, Dem. 15.32, 21.103, 59.27.
- 20 D. M. MacDowell 'Athenian laws about homosexuality', *Revue Internationale des Droits de l'Antiquité* 42 (2000) 13–27.
- 21 And. 1.100, Ais. 1.19–20, 1.164, Dem. 22.73, 24.126, 24.181.
- 22 Cf. Harrison *The Law of Athens* 1.233.

# Epikerdes of Kyrene and the Athenian privilege of *ateleia*

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The literal meaning of ἀτέλεια is ‘non-payment’ or ‘exemption from payment’, and sometimes it refers to payments of an entirely unofficial kind. For example, in the speech *Against Neaira* it is alleged that Stephanos wanted to have a beautiful hetaira ἐξ ἀτελείας, which just means ‘without paying for her’;<sup>1</sup> and Demosthenes senior, the orator’s father, is said to have had an annual income of 30 *mnai* ἀτελεῖς from a cutlery workshop and 12 *mnai* ἀτελεῖς from workmen making beds, which is simply what we should call a net income, an income out of which nothing has to be paid.<sup>2</sup> But more often the word is used to refer to exemption from official payments of some kind, and sometimes it refers to exemption from performing public duties, whether or not those duties would involve expenditure of money. We can make a list of various official payments and duties from which men were sometimes given *ateleia* in Athens in the late fifth and fourth centuries BC.

1. Most often the word is used in connection with liturgies. Thus a man who performed a liturgy had *ateleia* from other liturgies in the same year and from all liturgies in the following year.<sup>3</sup> A liturgy normally involved performance of certain activities, such as commanding a ship or organizing a chorus, as well as expenditure of money. Consequently orphans and heiresses, even if left with large estates, had *ateleia* from liturgies because they would not have been able to perform the activities; so also did cleruchs resident overseas.<sup>4</sup>
2. A man might have *ateleia* from military service for a period, for example because he had been appointed to collect a tax, or because he was a member of a chorus for a forthcoming festival such as the Dionysia.<sup>5</sup>
3. A citizen in his sixtieth year, at the end of his liability to military service, was required to serve as a public arbitrator, but was given *ateleia* from that duty if he held another office in that year or was away from Athens.<sup>6</sup>
4. There was some kind of *ateleia* in the silver mines. If a man appointed to a liturgy used the procedure of *antidosis* to challenge another to perform the liturgy in his place or else exchange property with him, claiming that the other man’s property was greater than his own, it might be necessary to make an

inventory and valuation of the property of both men. For this purpose, property in the silver mines was ἀτελής.<sup>7</sup> Presumably that would include the lease of a mine and also any workshop or other building associated with it. I take it that what is meant is that this property was omitted from the inventory and valuation, so that, if an exchange did take place, it would not have to be handed over.

5. A metic could be given *ateleia* from the metics' tax. In this connection we more often meet the words ἰσοτέλεια and ἰσοτελής, meaning 'paying equally with citizens', but of course that means the same thing in practice: a metic who does not pay the metics' tax pays only the same taxes as a citizen.

But although ἰσοτελής is the commoner term in this connection, there are a few inscriptions in which the words ἀτέλειαν τοῦ μετοικίου are restored with more or less probability.<sup>8</sup>

All those kinds of *ateleia* are fairly clearly defined. But there are other texts in which *ateleia* is mentioned without specification of any particular tax or duty. There is one passage of *Ath. Pol.* which says simply that ephebes (young citizens between the ages of eighteen and twenty) are ἀτελεῖς πάντων, 'exempt from everything', and one inscription in which ἀτέλειαν [πά]ντων is probably correctly restored.<sup>9</sup> But there are also some inscribed honorific decrees in which *ateleia* is conferred without πάντων or any qualification at all.<sup>10</sup> There are also references to unqualified *ateleia* in Demosthenes' speech *Against Leptines* (Oration 20).

The date of that speech is 355/4. It appears that for some years previously there had been difficulty in getting enough men to perform liturgies, and this was thought to be because so many men had been given the privilege of *ateleia*. So a man named Leptines had proposed a law abolishing *ateleia*. His law was attacked by the procedure called γραφή νόμον μὴ ἐπιτήδειον θεῖναι, 'prosecution for making an unsuitable law'. This prosecution was initiated by a man named Bathippos; but he died within the year, and so it was initiated afresh in the next year by Bathippos' son Apsephion, who was supported by Demosthenes and by another man named Phormion. We have only Demosthenes' supporting speech, but it is a quite substantial text and seems to include all the significant arguments against Leptines' law.

The speech does not contain a complete text of the law being attacked, but it does contain several quotations from it, and it is clear that the wording of the main part was as follows.

Λεπτίνης εἶπεν. ὅπως ἂν οἱ πλουσιώτατοι λειτουργῶσιν, μηδένα μήτε τῶν πολιτῶν μήτε τῶν ἰσοτελῶν μήτε τῶν ξένων εἶναι ἀτελεῖ πλὴν τῶν ἀφ' Ἀρμοδίου καὶ Ἀριστογείτονος, μηδὲ τὸ λοιπὸν ἐξεῖναι δοῦναι.

Leptines proposed: in order that the richest men may perform liturgies, no one, either of the citizens or of the equal-payment men or of the aliens, is to be exempt, except the descendants of Harmodios and Aristogeiton; and it is not to be permitted to grant it in future.<sup>11</sup>



Undoubtedly what Leptines intended was that no one should have *ateleia* from liturgies, and he probably thought that his introductory ὅπως clause, including the verb λειτουργῶσιν, would show that he intended ἀτελῆ to mean ‘exempt from liturgies’. But Demosthenes points out that the text fails to make that clear, because it does not say explicitly from what no exemption is to be given.<sup>12</sup> Leptines evidently maintained that over the years *ateleia* had been awarded to some individuals who did not really deserve it, and that was why there was now a shortage of men to perform liturgies. Demosthenes retorts that the recipients of that privilege include some distinguished men, who do not deserve the insult of having it taken away from them. His examples include some famous citizens, notably the generals Konon and Khabrias. They also include some foreigners who had been awarded this privilege because of their good services to Athens.

Now, in the cases of Athenian citizens and metics resident in Athens we can assume that unqualified *ateleia* included all the exemptions which I have already mentioned (nos. 1–5 above), so that they would not be required to perform liturgies, military service, and so on – though they could still volunteer for those duties if they wished. But foreigners, not resident in Athens, were anyway not liable for Athenian liturgies or military service or arbitration duties or metics’ tax; so what use was *ateleia* to them?

Was it just an honour, having no practical significance? That might be a plausible explanation for one of Demosthenes’ examples, Leukon, the ruler of Bosphoros on the north side of the Black Sea. Leukon’s principal service to Athens was that he allowed grain to be exported from Bosphoros to Athens without payment of export duties, and Demosthenes does actually use the word *ateleia* in referring to this concession in Bosphoros.<sup>13</sup> Leukon was unlikely ever to travel to Athens to make use of Athenian *ateleia*, but if the word could be used by Demosthenes to refer to exemption from export or import duties in Bosphoros, it probably was used to refer to a similar exemption in Athens. I suggest that unqualified *ateleia* did include exemption from Athenian import and export duties, and that this was what made it a practical advantage for foreigners, especially for foreign merchants trading into and out of Peiraieus.

After Leukon, Demosthenes’ next example is a man named Epikerdes of Kyrene.

Οὐ τοίνυν, ὧ ἄνδρες Ἀθηναῖοι, μὴ Λεύκων ἀδικηθῆ ἄλλοι μόνον δεῖ σκοπεῖν, ὧ φιλοτιμίας ἔνεχ’ ἢ περὶ τῆς δωρεῖαᾶς σπουδῆ γένοιτ’ ἄν, οὐ χρείας, ἀλλὰ καὶ εἴ τις ἄλλος εὖ μὲν ἐποίησεν ὑμᾶς εὖ πράττων, εἰς δέον δὲ νῦν γέγον’ αὐτῷ τὸ λαβεῖν παρ’ ὑμῶν τὴν ἀτέλειαν. τίς οὖν οὗτός ἐστιν; Ἐπικέρδης ὁ Κυρηναῖος, ὅς, εἴπερ τις ἄλλος τῶν εἰληφότων, δικαίως ἠξιώθη ταύτης τῆς τιμῆς, οὐ τῷ μεγάλ’ ἢ θαυμάσι’ ἠλίκα δοῦναι, ἀλλὰ τῷ παρὰ τοιοῦτον καιρὸν ἐν ᾧ καὶ τῶν εὖ πεπονθότων ἔργον ἦν εὐρεῖν ἐθέλοντά τινα ὧν εὐεργέτητο μεμνησθαι. οὗτος γὰρ ἀνὴρ, ὡς τὸ ψήφισμα τοῦτο δηλοῖ τὸ τότε αὐτῷ γραφέν, τοῖς ἀλοῦσι τότε ἐν Σικελίᾳ τῶν πολιτῶν, ἐν τοιαύτῃ συμφορᾷ καθεστηκόσιν, ἔδωκε μῆς ἑκατὸν καὶ τοῦ μὴ τῷ λιμῷ πάντα αὐτοὺς ἀποθανεῖν αἰτιώτατος ἐγένετο.

καὶ μετὰ ταῦτα, δοθείσης ἀτελείας αὐτῷ διὰ ταῦτα παρ' ὑμῶν, ὁρῶν ἐν τῷ πολέμῳ [πρὸ τῶν τριάκοντα μικρὸν] σπανίζοντα τὸν δῆμον χρημάτων, τάλαντον ἔδωκεν αὐτὸς ἐπαγγειλάμενος. σκέψασθε δὴ πρὸς Διὸς καὶ θεῶν, ἄνδρες Ἀθηναῖοι, πῶς ἂν ἄνθρωπος μᾶλλον φανερὸς γένοιτ' εὖνους ὢν ὑμῖν, ἢ πῶς ἦττον ἄξιός ἀδικηθῆναι, ἢ πρῶτον μὲν εἰ παρῶν τῷ τῆς πόλεως ἀτυχίματι μᾶλλον ἔλοιτο τοὺς ἀτυχοῦντας καὶ τὴν παρὰ τούτων χάριν, ἣτις ποτ' ἔμελλεν ἔσεσθαι, ἢ τοὺς ἐν ἐκείνῳ τῷ χρόνῳ κεκρατηκότας καὶ παρ' οἷς ἦν, δεύτερον δέ, ἑτέραν χρεῖαν ἰδῶν, εἰ φαίνοιτο διδοὺς καὶ μὴ πῶς ἰδίᾳ τὰ ὄντα σώσει προνοούμενος, ἀλλ' ὅπως τῶν ὑμετέρων μηδὲν ἐνδεῶς ἕξει τὸ καθ' αὐτόν. τοῦτον μέντοι τὸν τῷ μὲν ἔργῳ παρὰ τοὺς μεγίστους καιροὺς οὕτως κοινὰ τὰ ὄντα τῷ δήμῳ κεκτημένον, τῷ δὲ ῥήματι καὶ τῇ τιμῇ τὴν ἀτέλειαν ἔχοντα, οὐχὶ τὴν ἀτέλειαν ἀφαιρήσεσθε (οὐδὲ γὰρ οὔση χρώμενος φαίνεται), ἀλλὰ τὸ πιστεύειν ὑμῖν, οὗ τί γένοιτ' ἂν αἴσχιον; τὸ τοίνυν ψήφισμ' ὑμῖν αὐτ' ἀναγνώσεται τὸ τότε ψηφισθὲν τῷ ἀνδρί.

You must not, men of Athens, consider only whether Leukon may be treated unjustly; his concern about the privilege would be for honour, not for need. You must also consider whether someone else, after doing you service in the time of his prosperity, now requires to get the exemption from you. Who is that? Epikerdes of Kyrene, who was awarded this honour as deservedly as any of the recipients, not because his donations were large or extraordinary, but because they were made at a time when, even among your beneficiaries, it was hard to find anyone willing to remember the benefits he had received. This man, as this decree proposed for him at that time shows, gave 100 mnai to the citizens captured in Sicily at that time, when they were in such a disastrous situation, and it was mainly due to him that they did not all die of starvation. Later, after he had been given exemption by you for that action, seeing that in the war, shortly before the Thirty, the people needed money, he gave a talent on his own initiative . . . This man, who in those most serious times acted practically to share his possessions with the people, but holds exemption merely as a verbal honour, will not be deprived by you of the exemption (for he clearly does not use it even when he has it) but of his trust in you – and what could be more disgraceful than that? Now the clerk will read you the actual decree which was voted for the man at that time.

(Demosthenes 20.41–4)

The lines which I have omitted in that passage do not give any more specific information; they just contain more comments on Epikerdes' generosity. The sums of money which he gave, totalling 2 talents 40 *mnai*, are indeed remarkably large for one individual donor in the late fifth century, and, as Demosthenes emphasizes, it is even more remarkable that a man who was not an Athenian himself was prepared to support the Athenians in that way at the very times when they were so plainly the losing side, in 412 after the Sicilian expedition and in 405 just before the installation of the Thirty.

Epikerdes is not known to us from any other literary text, but we do have fragments of an inscribed decree which must be the very one which Demosthenes calls on the clerk to read out to the court.<sup>14</sup> Two fragments were found in the nineteenth century; at that time they were assigned to the fourth century BC on the basis of the letter forms, and were published as *IG* 2<sup>2</sup> 174. In 1969 a third fragment was found in the Agora excavations, and all the fragments were then edited by Meritt.<sup>15</sup> This newest fragment contains the arkhon's name, Alexias, enabling the decree to be dated 405/4. Subsequently it was reedited by Lewis as *IG* 1<sup>3</sup> 125. I reproduce Lewis's text.

Ε π ι κ έ ρ [ δ η ς Κ υ ρ η ν α ι ο ς ]  
 ε υ ε ρ [ γ έ τ η ς ]·  
 [ἔδο]ξεν τῆι [βολῆι καὶ τῶι δήμωι· .....]  
 [...ἰς ἐπ]ρυτ[άνευε, ....9..... ἐγρ]αμ[μ]-  
 5 [άτευε, ....9..... ἐπεστάτ]ε, Ἀλεξίας  
 [ἦρχε, .....10..... εἶπε· ἐπ]αινέσαι Ἐπ-  
 [ικέρδει τῶι Κυρηναί]φι ὡς ὄντι ἀνδρ-  
 [ι ἀγαθῶι καὶ ..4.. αἰτ]ίωι γεγενημέν-  
 [ωι .....15.....]ας τὸς ἐξ Σικελ-  
 10 [ίας .....13.....]ν τῶι πολέμωι· αὐ-  
 [τὸς γὰρ μνᾶς ἑκατὸν] ἔθειλοντῆς ἐς σω-  
 [τηρίαν .....10.....]ωσιν Ἀθηναῖοι  
 [...6... ἀτελείας δε]δομένης ὑπὸ τοῦ δ-  
 [ήμο .....10..... τάλ]αντον ἀργυρίο α-  
 15 [........15.....] εὖ πεποίηκεν Ἀθη-  
 [ναίων τὸν δῆμον κα]ὶ ἄ νῦν ἐπαγγελιά-  
 [μενος ποιεῖ, στεφ]ανῶσαι τε αὐτ[ὸ]ν [..]  
 [........15.....]εκα[.]ε[.....9.....]  
 [...7...]αν [........20.....]  
 20 [.] τῆς ἐς Ἀθη[ναίος .512.5]  
 [· κα]ὶ εἶναι καὶ [αὐτῶι τυχεῖν ἄλλων ἀγ]-  
 [αθ]ῶν Ἀθήνησιν κ[αθάπερ ἂν αἰτῆται Ἀ]-  
 θηναίος, ἀνειπεῖν [δὲ καὶ τὸν κήρυκα π]-  
 [ρ]οσκηρύξαντα ἐ[ν τῶι ἀγῶνι τῶι αὐτί]-  
 25 κα μάλα ἐν ἄστει [ὅτι πρότερον Ἐπικέ]-  
 ρδης ὁ Κυρηναῖο[ς μνᾶς ἑκατὸν ἐσήνε]-  
 γκεν Ἀθηναίο[ις ἐς σωτηρίαν ἀνθ' ὧν κ]-  
 αὐτὸν ἐστε[φάνωσαν ἀνδραγαθίας]  
 [ἔ]νεκα καὶ εὐν[οίας τῆς ἐς Ἀθηναίος· τ]-  
 30 [ὸ] δὲ ψήφισμα τ[ὸδε ἀναγράψαι τὸν γρα]-  
 [μ]ματέα τῆς βολ[ῆς ἐμ πόλει ἐν στήλῃι]  
 [λι]θίνῃι ν Ἄρχε[.... εἶπε· τὰ μὲν ἄλλα]  
 [καθάπερ τῆ]ι βο[λῆ]ι ----- ]  
 -----

From the square brackets you can see that much is missing. Restorations are based partly on other honorific decrees and partly on the text of Demosthenes. The name of Epikerdes is preserved partly in line 1 and partly in line 26, so that it is certain that he is the subject of the decree. In line 9 there is a reference to the men from Sicily. The sum of 100 *mnai* is not preserved, but is restored from Demosthenes in lines 11 and 26; but the amount of the second donation, one talent of silver, is clear enough in line 14. As far as the honours are concerned, the word ἀτέλεια is not preserved on the stone, but is acceptably restored in line 13 with a perfect participle δεδομένης, indicating that this exemption has already been given before the date of the decree.

Neither Demosthenes nor the preserved parts of the inscription make clear the exact purpose of the two donations. Meritt took the purpose of the first donation, in 412, to be ransom, to buy the Athenian prisoners from the Syracusans and enable them to return to Athens. He based this view on the words ἐς σωτηρίαν which can partly be read in lines 11 and 12 of the inscription. This interpretation has been rejected by Pritchett,<sup>16</sup> who believes that the money was used to buy food for the prisoners. In fact the phrase ἐς σωτηρίαν in itself is ambiguous: it means saving the men from death, but that might have been done either by feeding them or by ransoming them. Pritchett also points to the word πάντας in Demosthenes, and says that the prisoners could not all have been ransomed with 100 *mnai*. That is certainly true; although sums paid for ransom in classical Greece varied considerably, the amount required seems never to have been less than one *mna* for each man, so that 100 *mnai* would have been enough for only a hundred men at the most, and probably fewer. Thucydides in fact remarks (7.87.6) that only a few of the Athenians ever returned home from Sicily. If we are really determined to do our best to save the ransom interpretation, we might take Demosthenes' πάντας closely with μή, meaning not that the men all avoided death, but merely that not all of them died. However, since Demosthenes does explicitly mention starvation (τῷ λιμῷ) it seems easier to follow Pritchett and conclude that what Epikerdes did in 412 was to provide food. It is possible that that is also what he did on the second occasion, in 405, when Pritchett suggests that he provided grain for Athens. But Demosthenes says only that at that time the people were short of money (χρημάτων); so Epikerdes' second donation may have been used for any kind of public expenditure.

The main item which does appear in the decree but is not mentioned by Demosthenes is a crown, or rather two crowns. In line 17 we have an infinitive, στεφανῶσαι: so the decree is giving an order to crown Epikerdes in 405/4. (Meritt restores θαλλῶ in line 18, making it an olive crown, but Henry<sup>17</sup> has argued that a gold crown is more likely.) But in line 28 there is an aorist indicative, showing that the Athenians had already crowned Epikerdes on a previous occasion, presumably when he gave money for the prisoners in Sicily in 412. Lines 23–4 evidently say that the herald is now to announce at the forthcoming Dionysia in town that Epikerdes was previously awarded a crown for his earlier donation. The chronological sequence of awards, then, is this: in 412 Epikerdes donated 100 *mnai* and was given a crown and *ateleia*; in 405 he donated a talent and was given a

second crown. That is Meritt's reconstruction, accepted by Lewis, and I think it is correct so far. It implies that the Athenians exhibited somewhat less gratitude on the second occasion, when they awarded only a crown, than on the first, when they awarded a crown and *ateleia* as well.

Then at the end of the preserved part of the inscription someone whose name began Ἀρχε- proposed a rider. It must have been passed, because it was inscribed on the stone, but we have none of its text. What can he have wanted to add to the decree? I shall leave that question aside for the moment, and go back to the text of Demosthenes, which raises a further problem.

In the lines of Demosthenes which I have already quoted one has the impression of an inconsistency. At the beginning Epikerdes is brought in as an example of a man who 'after doing you service in the time of his prosperity, now requires to get the exemption from you'. But some lines later Demosthenes remarks that for Epikerdes *ateleia* is simply a verbal honour; 'he clearly does not use it even when he has it'. It appears inconsistent to say that Epikerdes requires the exemption but does not use it. Possibly one might get over this inconsistency by interpreting 'he does not use it' as not excluding the proposition 'he will soon begin using it'. But we need also to take into account a sentence later again, where Demosthenes has been re-emphasizing the value of Epikerdes' services to Athens and then asks rhetorically:

εἴτ' οὐκ αἰσχυνόμεθ', ὧ ἄνδρες Ἀθηναῖοι, τοὺς τοῦ τοιούτου παῖδας εἰ μηδεμίαν ποιησάμενοι τούτων μηδενὸς μνείαν ἀφηρημένοι φανούμεθα τὴν δωρεῖάν;

Are we not ashamed, men of Athens, if we shall be seen to have no memory of any of these actions, and to have taken the gift away from the sons of such a man?

(Demosthenes 20.46)

This makes clear that it is Epikerdes' sons, not Epikerdes himself, who now want to make practical use of the exemption from Athenian taxes. The dates make this understandable. The date of the speech *Against Leptines* is 355/4. Fifty-seven years have passed since Epikerdes made his donation for the prisoners in Sicily in 412. We do not know how old he was in 412, but he must at any rate have been adult then, so that fifty-seven years later he was certainly an old man. Presumably he lived in retirement at Kyrene and never made use of his exemption from Athenian taxes. But his sons may have been merchants, perhaps exporters of grain from north Africa to Athens, for whom the exemption would be useful.

That may explain why Epikerdes required *ateleia* although he never used it: he required it for his sons, although he never used it himself. But if that explanation is right, it leads to a further complication. It means that the *ateleia* given to Epikerdes was hereditary. Was that normal? Some Athenian privileges were of course hereditary. The most obvious example is citizenship: if Athenian citizenship was given to a metic or a foreigner, his sons and later descendants automatically

became citizens too. For *ateleia*, there certainly were some other instances of inheritance besides that of Epikerdes. The descendants of the tyrannicides, Harmodios and Aristogeiton, seem to have had this among other privileges.<sup>18</sup> No doubt they are an exceptional case, but another instance closer to the time of Epikerdes is mentioned later in this same speech *Against Leptines*; this is ‘the son of Khabrias, deprived [by the law of Leptines] of the *ateleia* which his father deservedly received from you and left to him’.<sup>19</sup>

But does that mean that *ateleia*, like citizenship, was a status automatically inherited? One piece of evidence suggests to me that it was not. This is an inscription of the early fourth century honouring Philytos. It grants *enktesis* and *ateleia* to him and his descendants, αὐτῷ καὶ τοῖς ἐκγόνοις.<sup>20</sup> The fact that the descendants are mentioned explicitly seems to imply that it was at least possible for such an award not to be hereditary, and that the descendants would not have received the *ateleia* if they had not been mentioned. So, in the case of Epikerdes, if his sons did inherit his *ateleia*, we should expect to find that stated in the inscription about him. Yet the words αὐτῷ καὶ τοῖς ἐκγόνοις do not appear in the preserved parts of the inscription, and there does not seem to be any place in the partly preserved lines where they can be conveniently restored.

The speculation which I should like to offer is that this was the subject of the lost rider to the decree about Epikerdes. I can point to one other instance of descendants being added in a later amendment to an Athenian decree, though it is not an award of *ateleia*. It is the famous Peace of Philokrates, by which the Athenians made an alliance with Philip of Macedon in 346; later in that year they passed a further decree extending the alliance to Philip’s descendants, καὶ τοῖς ἐκγόνοις.<sup>21</sup> So, in the case of Epikerdes, the chronological sequence which I am suggesting is this. In 412 Epikerdes donated 100 *mnai* and was given a crown and *ateleia*. In 405 he donated a talent and was given a second crown; but then the man whose name began with Ἀρχε- pointed out that that seemed rather mean and, to top up the reward, he proposed that the *ateleia* already given to Epikerdes should be extended to his descendants; and this was accepted. Epikerdes himself made no practical use of the *ateleia*, but by the time half a century had passed his sons were taking advantage of it. So in 355 Demosthenes could point out that the loss of it would be a practical disadvantage, as well as being insulting to the now aged Epikerdes.

## Notes

- 1 Dem. 59.39.
- 2 Dem. 27.9, 28.12.
- 3 Dem. 20.8, 21.155, 50.9, *Ath. Pol.* 56.3. It appears from Isai. 7.38 that at an earlier period a two-year interval between liturgies, or perhaps only between trierarchies, could be claimed.
- 4 Lys. 32.24, Dem. 14.16. For a different view of the reason for this exemption see V. Gabrielsen, *Financing the Athenian Fleet* (Baltimore, 1994) 87–90.
- 5 Dem. 21.15, 39.16, 59.27.
- 6 *Ath. Pol.* 53.5. Rhodes in his commentary on that passage rightly raises questions about the definition of absence from Athens, but that does not affect my present subject.

- 7 Dem. 42.18.
- 8 Alan S. Henry, *Honours and Privileges in Athenian Decrees* (Hildesheim, 1983) 244–5. In Dem. 23.211 there is a reference to ἀτέλεια τοῦ μετοικίου in Aigina.
- 9 *Ath. Pol.* 42.5, *IG 2<sup>2</sup>* 286.5.
- 10 Henry, *Honours and Privileges in Athenian Decrees* 241–3.
- 11 This text is pieced together from sections 2, 29, 127, and 160 of the speech.
- 12 Dem. 20.29.
- 13 Dem. 20.31, cf. 34.36.
- 14 The first sentence of Dem. 20.45 implies that more than one decree was read out. Probably there was a decree of 412, now lost, as well as the partly preserved one.
- 15 B. D. Meritt, Ransom of the Athenians by Epikerdes, *Hesperia* 39 (1970) 111–14.
- 16 W. K. Pritchett, *The Greek State at War, Part V* (Berkeley, 1991) 272–3.
- 17 Henry, *Honours and Privileges in Athenian Decrees* 30–1.
- 18 Isai. 5.47, Dem. 20.18.
- 19 Dem. 20.75.
- 20 *IG 2<sup>2</sup>* 53.2–3.
- 21 Dem. 6.31, 19.48.

# Athenian laws about homosexuality

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Until the 1970s homosexuality in ancient Greece (as everywhere else) was a subject often passed over in silence. It was opened up by Sir Kenneth Dover's pioneering work *Greek Homosexuality* and since then has been discussed a good deal, but mainly from a sociological or anthropological point of view. Not much has been said about the relevant Athenian laws.<sup>1</sup> Although Dover's book has a section headed "The law",<sup>2</sup> and David Cohen has published a chapter entitled "Law, social control, and homosexuality in classical Athens",<sup>3</sup> neither of them distinguishes clearly the various statutes and procedures; in particular, failure to differentiate between *graphe* and *dokimasia* has led to some misunderstanding. In the present article my purpose is only to set out the legal provisions, not to engage in sociology or psychology. All discussion of this subject must be based primarily on the text of Aiskhines' oration *Against Timarkhos*, written and delivered in 346/5 BC.<sup>4</sup> Timarkhos and others had employed the procedure of *euthyna* to accuse Aiskhines of misconduct in the office of ambassador, and Aiskhines was trying to pre-empt that prosecution by accusing Timarkhos by the procedure of *dokimasia* for the offence of speaking in the Ekklesia although he had in the past been a catamite. I use this somewhat old-fashioned English word "catamite" for translating *ἐταιρῶν*, in order to keep "prostitute" for *πορνεύομαι*. Both those Greek verbs are used of male persons who accept the passive role in sexual intercourse with another male in return for money or other recompense, and the distinction between them is not always sharp, but in general a prostitute is one who constantly sells his body to different men, whereas a catamite has a more long-term relationship with one partner.<sup>5</sup> Aiskhines asserts that Timarkhos, a man now aged forty-five or more,<sup>6</sup> had been a catamite in his youth; and to support his case that Timarkhos had transgressed the law he gives what appears to be a fairly comprehensive account of the laws on the subject.<sup>7</sup>

It is clear that the Athenians generally regarded a homosexual relationship not as a partnership between equals, but as a relationship between an older, active partner, called "lover" (*ἐραστής*), and a younger, passive partner, called "loved"



(ἐρώμενος). Typically it would be a relationship between an adult man and a boy or youth, though relationships between an older and a younger adult (such as Pausanias and Agathon in Plato's *Symposium*) or between a youth and a boy are not excluded. This inequality in a relationship is clearly presupposed in the legislation, and Aiskhines in his account distinguishes laws concerning boys, laws concerning youths, and laws concerning adults; however, since each relationship involves two persons, these categories cannot be entirely separated. I follow Aiskhines' order of exposition, adding different headings, supplementary information from other sources, and comments on each law.

### **A. Laws concerning the supervision of boys**

1. A law stated at what time a free boy should go to school, with how many boys he should go, and at what time he should leave. Teachers were not to open their schools, nor trainers (παιδοτρίβαι) their gymnasiums (παλαίστραι), before sunrise, and must close them before sunset. (Ais. 1.9–10).

Aiskhines says that the legislator was suspicious of darkness and lonely places. He means that a boy going to or from school in the dark would be more vulnerable to assault or rape. The purpose of the provision about the number of boys is not explained by Aiskhines. Perhaps it was to ensure that the boys were not too numerous to be properly supervised.<sup>8</sup>

2. A law stated who should be the young men (νεανίσκοι) who attended, and of what ages they should be, and what control (ἀρχή) of them there should be. It also gave orders about the supervision of the boys' escorts (παιδαγωγοί), and about Mouseia in schools and Hermaia in gymnasiums. (Ais. 1.10)

This law is about persons who assisted or observed the instruction or supervision of boys in schools and gymnasiums. The escorts (παιδαγωγοί) would normally be slaves belonging to the boys' fathers, who brought the boys in the morning and took them home again in the afternoon, and who consequently might be hanging around the school or gymnasium for much of the day. The functions of the young men (νεανίσκοι) are not explained. This is not just another word for the boys; a νεανίσκος is older than a παῖς, but younger than a νεανίας. They may have been senior pupils, but I suggest that they were assistants of the teacher or trainer, who helped to keep the boys in order and performed other subsidiary tasks; Aiskhines himself was in this category when he mixed the ink and cleaned the benches in his father's school (Dem. 18.258). Presumably the law placed some limits on the numbers and ages of such assistants.

The most mysterious part of this law is the reference to Mouseia and Hermaia. The meaning of words of this form can be either local (shrines of the Muses or of Hermes) or temporal (festivals of the Muses or of Hermes). Here I think the temporal sense more probable: on certain occasions the boys may have given recitations of poetry or athletic displays which their fathers and other men might come to watch, in much the same way as modern schools have their speech days and sports days. Plato's *Lysis* is set on an occasion when "as they are holding

Hermaia, the youths and the boys are mixed together” (206d). Presumably the law ordered some arrangements which would prevent men visiting the school or gymnasium from having too close contact with the boys on such occasions.

3. Finally under this heading, a law regulated the assembling (συμφοίτησις) of boys and of cyclic choruses. The only specific thing which Aiskhines tells us about this law is that the chorus-producer (χορηγός) had to be over forty years of age. (Ais. 1.10–11) Evidently this law applied primarily to the dithyrambic choruses of boys at such festivals as the Dionysia and the Thargelia, but “assembling” would also cover any other occasions when boys attended together in a group. A man over forty was regarded as less subject to homoerotic impulses, and the requirement that a chorus-producer for boys must be over forty is mentioned also in Arist. *AP* 56.3.<sup>9</sup>

Aiskhines presents all these laws (A1–3) together as if they formed a single statute. If so, we may assign it to either the very end of the fifth century BC or the first half of the fourth; for a client of Lysias was able to be a chorus-producer in (probably) 403 at the age of about 25 (Lys. 21.4),<sup>10</sup> whereas Apollodoros, born in 393, did not perform this liturgy until 352/1.<sup>11</sup>

Neither Aiskhines nor any other text mentions what prosecution procedure was used for offences against these laws. But it must surely have been *graphe*, a normal public prosecution which could be initiated by anyone who wished, rather than a private *dike* brought by the father or guardian of a boy alleged to be the victim of the offence; for these offences are mostly ones which would not necessarily have an individual victim. Nor does Aiskhines say what the penalties were; perhaps they were not specified by the laws, but were left to be fixed by the juries in individual cases.

## **B. Laws concerning the sexual exploitation of boys**

1. If a father or brother or uncle or guardian, in short anyone in charge of him, hired out a boy as a catamite, a prosecution by *graphe* could be brought, not against the boy, but against both the man who hired him out and the man who hired him. The penalty was the same for both. Aiskhines does not say what the penalty was, but at any rate it was not death, because he adds that the boy, when he grew up, was released from the normal obligation of a son to provide food and housing for his father in old age if his father had hired him out as a catamite. Yet he was not released from the obligation to provide burial and the customary rites for his father when he died. (Ais. 1.13)

Aiskhines comments on the fairness of this law: because the father had deprived the son of his freedom of speech (παρρησία: this refers to D1 below), it was fair that the father should lose the benefit of having produced a son, but not that the law and religion should be deprived of their due honour.

2. The law about procurement (προαγωγή) prescribed death as the penalty for anyone procuring a free boy. The procedure for prosecution was *graphe*. (Ais. 1.14, 1.184)

Aiskhines makes clear that this was a separate law from B1, and it seems hardly consistent with it. If a man accepted money for providing a boy as a catamite, why should he be punished less severely if he was the boy's own father or guardian than if he was a non-relative? Perhaps a procurer (προαγωγός) was assumed to be a man who made a regular business of sexual exploitation, whereas a poor father who prostituted his own son might have the laudable motive of trying to support his own family, including the son. But that distinction would often have been difficult to draw in practice, since such a father could still have been called a procurer; and the truth may be rather that in this matter, as in many others, the Athenians simply made two overlapping laws at different times without noticing the discrepancy.

### C. Laws penalizing the lover (ἐραστής)

1. A law forbade a slave to love or follow (μήτ' ἐρᾶν μήτ' ἐπακολουθεῖν) a free boy. The penalty was fifty strokes with "the public lash". (Ais. 1.139)

This provision was apparently part of a statute which also contained other laws about the conduct of slaves. We have little information about Athenian laws penalizing slaves, and some aspects of their application are obscure; in particular, was there a trial, and if so was it the slave or the slave's owner who was the defendant? It is also obscure how "following" was defined; was it similar to the modern offence of "stalking"? However, the most significant thing about this law about slaves, as Aiskhines is probably right to argue, is that it assumes that there is nothing wrong about a free man loving and following a boy. Indeed Aiskhines argues, and must have expected the Athenian jury to accept, that a lover has a beneficial effect on a boy's behaviour. No doubt a slave lover would not be expected to be beneficial, but a free lover was not penalized by the law as long as the boy accepted his love voluntarily.

2. If a free boy or man was raped by force, the victim (or the boy's father or guardian on his behalf) could bring against the offender a private case for violence (δίκη βλάβης). This is not mentioned by Aiskhines, but it is clear from a passage of Lysias (1.32), which specifies the penalty as "double the damage" (διπλὴν τὴν βλάβην). The phrase is obscure, but it seems most likely to mean that the jury decided the amount of compensation to be paid to the victim, and the offender then had to pay not only that but also the same amount again as a fine to the state. An alternative interpretation is that the compensation payable for rape of a free person was twice as much as for rape of a slave.<sup>12</sup>

3. The law of *hybris*<sup>13</sup> specified *graphe* as the prosecution procedure to be used against anyone who treated with *hybris* any boy or man or woman, free or slave. The penalty was not fixed by law, but had to be decided by the jury in each case. (Ais. 1.15, Dem. 21.47)

*Hybris* was not defined precisely. It was up to each prosecutor to convince the jurors that the conduct of which he complained amounted to *hybris*. But the full range of the concept need not be discussed here;<sup>14</sup> it is clear enough that sexual intercourse imposed upon an unwilling partner would be regarded as *hybris*.

Thus, if a boy or youth had been raped, there would be a choice of prosecution procedures, and the choice might be influenced by various considerations. Prosecution for *hybris* might lead to a very severe punishment for the offender, but because it would be a *graphe* the penalty would be paid to the community; on the other hand, a private prosecution for violence, if successful, could lead only to a payment of money, but would be financially profitable for the victim.

#### **D. Laws penalizing the loved (ἐρώμενος)**

1. Aiskhines provides a verbatim quotation of the law about *graphe* for being a catamite, interspersed with his own comments, which are marked off by brackets in my translation.<sup>15</sup> The subject of “he says” is the legislator. “If any Athenian (he says) is a catamite (ἐταιρήση), let him not be allowed to become one of the nine arkhons (because, I suppose, that office involves wearing a crown), nor to hold a priesthood (because even his body is not pure), nor to be a syndikos for the public;<sup>16</sup> and let him never hold any public office (he says), neither at home nor abroad, neither by lot nor by vote; and let him not be a herald or an ambassador (nor put on trial those who were ambassadors, nor bring malicious prosecutions for payment<sup>17</sup>); and let him never deliver an opinion either in the Boule or in the assembly (even if he is a very clever speaker). If anyone transgresses these rules, he<sup>18</sup> has established *graphai* for being a catamite and has imposed the severest penalties.” (Ais. 1.19–20)

From Demosthenes (22.21) we learn that the *thesmothetai* were the magistrates who took charge of trials for this offence. He attributes this law to Solon (22.30), but no reliance can be placed on that for dating it; orators tend to attribute to Solon all long-established laws.

This law penalized the passive partner in a homosexual relationship, but it is important to notice that its application was limited in certain respects.

(a) The law applied only to those who accepted pay or recompense for homosexual activity, not to those who engaged in it for love. That this is the meaning of the verb ἐταιρῶ is clear from the fact that Aiskhines himself, in accusing Timarkhos, clearly regards payment as one of the facts which he has to prove. Note for example 1.51: “He who does this with one man, and engages in the activity for pay, seems to me to be liable to this very charge.” But once he had been a catamite, in this sense, the law applied to him for the rest of his life; a boy who had been a catamite was still subject to this law after he had grown up, if we may believe Aiskhines’ comment on the father who prostituted his son when a boy and so deprived him of his freedom to speak, sc. as an adult in the Ekklesia (Ais. 1.14; cf. B1 above).

(b) The law applied only to Athenian citizens. Metic or slave catamites were not liable to penalties.

(c) Even an Athenian citizen was not liable to prosecution or punishment for merely being a catamite, but only if, being a catamite, he transgressed certain restrictions on his activities. Although he had not been accused or convicted, he

was regarded as having disqualified himself from certain things by his way of life. He had made himself *atimos*. Thus a γραφή ἑταιρήσεως was not exactly a prosecution for being a catamite; it was a prosecution for taking a public office, or for speaking in the Ekklesia, or whatever, despite being a catamite. But the prosecutor would be expected to prove that the defendant was (or had been) a catamite, besides proving that he had transgressed the restrictions of *atimia*.

As is well known (and is fully explained by Andokides 1.73–6) *atimia*, which may be roughly translated as “loss of rights” or “disfranchisement”, could be either total or partial.<sup>19</sup> A man subject to partial *atimia* was forbidden only to do certain things, “according to specifications” (κατὰ προστάξεις, And. 1.75). The text of Aiskhines strongly implies that this was the situation of the unconvicted catamite. It is clear that he is quoting the wording of the law, and the law did not simply say ἄτιμος ἔστω (like the laws quoted in Dem. 20.156, 21.113, 23.62), but specified individually the things that the catamite was forbidden to do. But has he given the list complete? The following are activities which were forbidden to the man who suffered total *atimia* but are not included in the list given in Ais. 1.19–20 of activities forbidden to the catamite.

- (i) Attending and voting at meetings of the Ekklesia (without speaking).
- (ii) Being a member of a jury.<sup>20</sup>
- (iii) Speaking in a court on behalf of himself or a friend, either in prosecution or in defence or as a witness. However, Andokides in his oration *On the Mysteries* complains that one of his accusers, Epikhares, is a catamite and “according to your laws he is not allowed even to speak in defence of himself” (And. 1.100). Whether or not Epikhares was really a catamite, this can be taken as proof that a catamite, like other *atimoi*, was not allowed to speak in a court.<sup>21</sup>
- (iv) Entering public temples and the Agora. However, later in the same speech Aiskhines imagines the Athenians saying indignantly to Timarkhos, “Are you pushing into the Agora?” (Ais. 1.164); and Diodoros, when alleging that Androtion is a prostitute, asserts that he is not allowed to enter the Agora (Dem. 24.126) or the temples (Dem. 22.73, repeated in 24.181). These passages can be taken as proof that a catamite, like other *atimoi*, was excluded from temples and the Agora.<sup>22</sup>

So Aiskhines’ quotation from the law about activities forbidden to the catamite is incomplete; he has omitted (iii) and (iv) above. It is possible that he has omitted other items too. But it remains true that the listing of individual prohibitions in the law makes it likely that the catamite was not subject to total *atimia*, and that there were at least one or two activities which were permitted to the catamite though not to the totally *atimos* man. My guess is that these included attendance at meetings of the Ekklesia, and that there was no objection if a catamite came to a meeting, listened to the speeches, and joined in the voting by show of hands, provided that he did not attempt to make a speech himself. This guess is not supported by any

explicit evidence, but I suggest that it receives implicit support from two passages which specify freedom of speech (παρρησία) as the thing which a prostitute lost (Dem. 45.79, Ais. 1.14), and also from the law to be considered next, which distinguishes speakers from other citizens at the Ekklesia.

2. Aiskhines quotes also the law about the procedure called δοκιμασία ῥητόρων, “vetting of orators”, which was the procedure that Aiskhines himself used against Timarkhos. If any man spoke in the Ekklesia after he had struck his father or mother or failed to provide them with food or housing (in their old age, presumably), or after he had failed to perform his military service in the due manner or had thrown away his shield (to run away), or after being a prostitute or a catamite, or after consuming his ancestral or inherited property, then any Athenian who wished could give notice (ἐπαγγελάτω) of a *dokimasia*, and “you” (sc. a jury) must decide about the matter in a law-court. (Ais. 1.28–32)

Aiskhines does not quote the part of the law prescribing the penalty, but it is clear from other passages (Ais. 1.134, Dem. 19.257, 19.284) that the penalty imposed in the case of Timarkhos was *atimia*. It was not just a confirmation of the partial *atimia* consisting of disqualification from speaking in the Ekklesia, for Demosthenes (19.283–4) regards it as a very serious penalty affecting Timarkhos’ whole family. Probably total *atimia* was the penalty prescribed by law in all cases of conviction in *dokimasia* of orators.

I intend to discuss this procedure of *dokimasia* in a separate paper. Here I am concerned only with the provision about prostitutes and catamites. The offence which it specifies, speaking in the Ekklesia after being a catamite, is exactly the same as one of the offences specified in D1, but the procedure is different. With D1, the accuser submitted his charge in writing to the *thesmothetai* after the meeting of the Ekklesia was over. With D2, the accuser gave notice at the meeting itself; I take this to mean that he could jump up and interrupt the speaker, thus preventing him from delivering the rest of his speech. There may also have been a difference in the penalty. With D1, Aiskhines says that the legislator imposed the severest penalties (τὰ μέγιστα ἐπιτίμια, Ais. 1.20), which means death, perhaps combined with confiscation of property. With D2, the penalty was the less heavy though still serious one of *atimia*.

Why did the Athenians establish these alternative procedures for the same offence? It was in fact not unusual for two, or even more than two, procedures to be available for one offence,<sup>23</sup> but why it was so for a catamite speaking in the Ekklesia we can only guess. The law about δοκιμασία ῥητόρων may have been added to the legal code, without much attention to inconsistency with laws already existing, at a time when there was particular concern about speeches being made by politicians who were morally unfit to give the Athenians advice and it was considered important to have a means of stopping such speeches at the beginning.

Prosecution of a catamite is mentioned also in Demosthenes’ oration *Against Androtion*, where at first sight one may be uncertain whether D1 or D2 is meant. Androtion had proposed a decree to honour the Boule, and Euktemon was

prosecuting him by a *graphe* for making a proposal which was illegal (γραφὴ παρανόμων). The surviving speech was written by Demosthenes for delivery by Euktemon's supporter Diodoros. Euktemon and Diodoros had alleged that Androtion had been a catamite, and that consequently, quite apart from the fact that the content of his decree was illegal, he was anyway disqualified from proposing any decree in the Ekklesia. Androtion in retort mentioned "the law of ἐταίρησις and said that, if they believed that latter allegation to be true, they ought to have made their accusation to the *thesmothetai* and have gone to court in a case in which they would have risked a fine of 1000 drachmas (if they failed to obtain one-fifth of the jury's votes), and not have introduced the allegation into a different case before a different jury (Dem. 22.21–3). All this appears clearly to be a reference to the possibility of γραφὴ ἐταιρήσεως, our D1, until we are given pause by the appearance of the words ἐπαγγέλλειν (22.23) and ἐπαγγελία (22.29), which seems to be the vocabulary of D2. But it cannot be D2. Androtion, according to Diodoros, did not say that Euktemon and Diodoros might have made an objection in the Ekklesia when Androtion stood up to propose his decree, but that they might make an accusation to the *thesmothetai* at any time. (In 22.29 the present tense in πρὸς τοὺς θεσμοθέτας ἔσθ' ἡμῖν ἐπαγγελία means that the possibility is still open.) So D1 must be meant, and we have to accept that Demosthenes here uses the words ἐπαγγέλλειν and ἐπαγγελία, instead of γράφεσθαι and γραφή, only by a rather loose analogy with the *dokimasia* procedure.<sup>24</sup>

Finally we may notice two other passages of Aiskhines' oration *Against Timarkhos*, in which he remarks that according to the laws read out earlier "anyone who hires an Athenian for this activity, or who hires himself out, is liable to the greatest and to equal penalties" (Ais. 1.72), and refers to "death prescribed by the law as the penalty for both, as in this case – for anyone who hires an Athenian for *hybris*, and also for any Athenian who voluntarily hires himself out for bodily disgrace" (Ais. 1.87). These sweeping statements are misleading summaries of the laws which he has quoted.<sup>25</sup> Really the partners in homosexual prostitution were liable to the death penalty only in certain cases. The passive partner, who hired himself out, could be condemned to death only if he attempted to exercise certain civic rights (D1). For the active partner, who hired an Athenian, death was not specifically prescribed in any law, but it could be the penalty chosen by the jury if he was prosecuted and convicted for *hybris* (C3). Whether any Athenian ever was condemned to death for homosexual conduct, we are not told. But it seems likely that Aiskhines, when prosecuting Timarkhos, would have drawn the attention of the jury to precedents for severity, if he had known of them; since he does not mention any, I should conjecture that execution for this offence seldom or never occurred.

## Notes

- 1 A short account had earlier been given by J. H. LIPSIUS, *Das attische Recht und Rechtsverfahren*, Leipzig, 1905–15, pp. 435–7.
- 2 K. J. DOVER, *Greek Homosexuality*, London, 1978, pp. 19–39.

- 3 David COHEN, *Law, Sexuality, and Society*, Cambridge, 1991, pp. 171–202. There is also an incomplete survey of the topic by Eva CANTARELLA, *Bisexuality in the Ancient World*, English trans. by Cormac O CUILLEANÁIN, New Haven and London, 1992, pp. 17–53.
- 4 For fuller accounts of the circumstances of this oration, see Edward M. HARRIS, *Aeschines and Athenian Politics*, New York and Oxford, 1995, pp. 101–6, C. CAREY, *Aeschines*, Austin, 2000, pp. 18–20, D. M. MACDOWELL, *Demosthenes: On the False Embassy*, Oxford, 2000, pp. 20–1.
- 5 On this vocabulary see DOVER, *Greek Homosexuality*, pp. 20–2. There was in fact a tax on prostitutes (πορνικὸν τέλος, Ais. 1.119), but it is not known how liability to it was defined.
- 6 Timarkhos had been in the Boule in 361/0 (Ais. 1.109), and members of the Boule had to be at least thirty years old.
- 7 At several points Aiskhines calls for the texts of laws to be read out to the jury, and the surviving manuscripts provide what purport to be those laws. It is now generally agreed that in this oration (whatever may be the case in other orations) these documents are not genuine, but have been composed and inserted by someone in a later age. At many points they do not match what Aiskhines himself tells us about the laws concerned, and at some points they contain anachronisms (e.g. the reference in Ais. 1.12 to γυμνασιάρχαι, as distinct from γυμνασιάρχης). In one case, the law about *hybris*, the document in Ais. 1.16 is shown to be false by the survival of a more authentic text of the law elsewhere; cf. D. M. MACDOWELL, *Demosthenes: Against Meidias*, Oxford, 1990, pp. 263–4. So I make no use of these spurious documents for reconstructing the laws.
- 8 This is suggested by CAREY, *Aeschines*, p. 26, n.10.
- 9 On this rule, cf. Peter WILSON, *The Athenian Institution of the Khoregia*, Cambridge, 2000, pp. 55–7.
- 10 On this date, see S. C. TODD, *Lysias*, Austin, 2000, p. 231, n.10.
- 11 Cf. D. M. LEWIS, *Annual of the British School at Athens* 50 (1955), p. 24.
- 12 Cf. C. CAREY, *Lysias: Selected Speeches*, Cambridge, 1989, p. 79.
- 13 On the text and date of this law, see MACDOWELL, *Demosthenes: Against Meidias*, pp. 263–8.
- 14 The meaning of *hybris* is discussed at length by N. R. E. FISHER, *Hybris*, Warminster, 1992. See also Douglas L. CAIRNS, *Journal of Hellenic Studies* 116 (1996), pp. 1–32.
- 15 DOVER, *Greek Homosexuality*, pp. 24–5 discusses in detail which words are the orator’s comments.
- 16 Officials called *syndikoi* were appointed from time to time to represent the state in various legal proceedings; cf. A.R.W. HARRISON, *The Law of Athens* 2, Oxford, 1971, pp. 34–5. The expression τὸ δημόσιον often means the public treasury, but since not all *syndikoi* were concerned with financial matters it probably has here the wider sense of “the public” or “the state” (as in Ais. 3.58).
- 17 This comment by Aiskhines is his way of describing what Timarkhos has been doing recently.
- 18 Sc. the legislator.
- 19 On this subject, see especially M. H. HANSEN, *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes*, Odense University Classical Studies 8 (1976), pp. 61–6.
- 20 Membership of a jury should probably not be regarded as an office (ἄρχή), despite Ar. *Wasps* 587; cf. the note ad loc. in my edition of *Wasps*, Oxford, 1971.
- 21 This is not refuted by the fact that Timarkhos spoke in his own defence when prosecuted by Aiskhines. Timarkhos denied being a catamite, and that was exactly what Aiskhines had to prove.
- 22 It has been thought that exclusion from the Agora meant that *atimoi* were banned from even being present (not merely from speaking) in a court. Cf. HANSEN, *Apagoge*,



*Endeixis and Ephegesis*, p. 62: “As the courts were situated in the market place, the prohibition from entering the *Agora* automatically implied exclusion from being a juror, a prosecutor and a witness.” But that is not correct. At least until the middle of the fourth century the courts were not all situated in the *Agora*, for the *Odeion* and the *Stoa Poikile* were still used as courts at that time (Dem. 59.52, *IG 2<sup>2</sup>* 1641.28–30, 1670.35). Probably none of the courts were regarded as technically part of the *Agora*. At the trial of *Meidias* an *atimos* man named *Straton* was permitted to appear in the court without speaking (Dem. 21.95; cf. the note ad loc. in my edition of *Against Meidias*).

23 The classic example is theft; see Dem. 22.26–7.

24 This is the view of LIPSIUS, *Das attische Recht*, p. 279 n.43 and A. R. W. HARRISON, *The Law of Athens 2*, Oxford, 1971, p. 205 n.2.

25 DOVER, *Greek Homosexuality*, p. 28, criticizes Ais. 1.72, but goes rather too far in calling it “double falsehood”.

# The length of trials for public offences in Athens

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“A public prosecution took a whole day,” So writes Mogens Hansen in his excellent description of Athenian democracy (Hansen [1991] 187). Although the statement might possibly be found ambiguous, it is clear from his next few sentences that he means that the whole trial for a public offence (not the prosecution alone) took all day, and that it was completed within the one day (not merely that it filled at least a whole day). His view, then, is the orthodox one, held by almost everyone who has written on the topic in modern times. There is, however, one exception, not mentioned by Hansen: Ian Worthington has argued that some trials lasted for more than one day (Worthington [1989] 204–207; [1992] 284–285). The purpose of this article is to explain why I still agree with Hansen and the orthodox view.

Worthington’s arguments are not to be lightly dismissed, but deserve detailed consideration. They are of two kinds. On the one hand, he maintains that specific passages of Greek texts which seem to refer to completion of trials for public offences in one day do not prove that this was true of all such trials; on the other hand, that the existence of some very long speeches and the use of several prosecutors in some cases would have made it impracticable to complete every trial within one day. I take each of these arguments in turn, starting with the specific passages, and I begin with the *Athenaion Politeia*, which I quote from Chambers’ Teubner edition:

*Ath. Pol.* 67.1: ταῦτα δὲ ποιήσα[ντες εἰ]σκαλοῦσι τοὺς ἀγῶνας, ὅταν μὲν τὰ ἴδια [δι]κάζωσι τοὺς ἰδίους, τῷ ἀριθμῷ δ’ . . . [ὅταν] δὲ τὰ δημόσια, τοὺς δημοσί[ο]υς, καὶ ἓν[α μόνον ἐ]κδικάζ[ο]υσι.

(“When they have done this, they call in the trials: when they judge private matters, private trials, four in number, . . . : when public matters, public trials, and they judge one only.”)

This passage is the one which comes nearest to saying that every trial for a public offence was completed in one day. It does come very near indeed, for ἐκδικάζουσι should have the sense “judge completely”. Worthington in effect concedes that it means completion in one day, but he suggests that it “need not be read as a hard and fast rule”. It does seem to me that the author of *Ath.Pol.* is stating it as a rule, but *Ath.Pol.* is not a fully comprehensive work, and one cannot maintain that this statement by itself proves that there were no exceptions.

*Ath.Pol.* goes on to use the expression διαμεμετρημένη ημέρα, and this is found also in some passages in the orators. (It appears also in Pollux 4.166 and in the lexica of Harpokration, Hesychios, Photios, and the Suda, but these all draw their information from *Ath.Pol.* and the orators, and are not worth quoting here.)

*Ath.Pol.* 67.3: [ὅταν δὲ] ἤ[ι] πρὸς] διαμεμετρη[μένην τὴν ἡμέρα]ν ἢ [δίκη, τότ]ε δὲ οὐκ ἐπιλαμβ[άνει τὸν ἀλίσκον, ἀλλὰ δίδοτα]ι τὸ [ἴσο]ν ὕδωρ τῷ τε κα[τηγοροῦντι καὶ τῷ ἀπο]λογ[ουμ]ένῳ,

(“When the day of the trial is a measured-out one, then he does not stop the tube, but equal water is given to the prosecutor and to the defendant.”)

Dem. 19.120: ἀγῶνας καινοὺς ὥσπερ δράματα, καὶ τούτους ἀμαρτύρους, πρὸς διαμεμετρημένην τὴν ἡμέραν αἰρεῖς διώκων.

(“You prosecute and win new trials like plays, without witnesses too, with the day measured-out.”)

Dem. 53.17: εἰσελθὼν εἰς τὸ δικαστήριον πρὸς ἡμέραν διαμεμετρημένην, καὶ ἐξελέγξας αὐτὸν τὰ ψευδῆ κεκλητευκότα καὶ τὰ ἄλλα ὅσα εἴρηκα ἠδικηκότα, εἴλον.

(“I went to court, with a measured-out day; I proved him guilty of false testimony to a summons and of the other offences I have mentioned, and won the case.”)

Aeschin. 2.126: πρὸς ἔνδεκα γὰρ ἀμφορέας ἐν διαμεμετρημένη τῇ ἡμέρᾳ κρίνομαι.

(“The time allowed for my trial is eleven amphoras in the day, which is a measured-out one.”)

Previously I have taken διαμεμετρημένη to mean “measured through”, “measured from beginning to end”, indicating that the whole day was used (e.g. MacDowell [1978] 249). I now think it more likely that it means “measured out in parts”, “distributed”, the point being that equal shares of the day were allocated to the prosecutor, to the defendant, and to the speeches on the penalty (which I believe to have been half as long as the principal speeches: MacDowell [1985] 525–526). But that hardly affects the present argument. The details of the distribution were doubtless made clear in *Ath. Pol.* 67.4–5, but that part of the text

is badly damaged. Possible restorations are admirably discussed by Rhodes (1981) 723–728 and it is not necessary to go into the details here. It is enough here to note that restorations have to start from the briefer account of the distribution in another passage of Aischines.

Aeschin. 3.197: εἰς τρία μέρη διαιρεῖται ἡ ἡμέρα, ὅταν εἰσὶν γραφὴ παρανόμων εἰς τὸ δικαστήριον. Ἐγχεῖται γὰρ τὸ μὲν πρῶτον ὕδωρ τῷ κατηγορῶ καὶ τοῖς νόμοις καὶ τῇ δημοκρατία, τὸ δὲ δεύτερον ὕδωρ τῷ τὴν γραφὴν φεύγοντι καὶ τοῖς εἰς αὐτὸ τὸ πρᾶγμα λέγουσιν· ἐπειδὴν δὲ τῇ πρώτῃ ψήφῳ μὴ λυθῆι τὸ παράνομον, ἤδη τὸ τρίτον ὕδωρ ἐγχεῖται τῇ τιμῆσει καὶ τῷ μεγέθει τῆς ὀργῆς τῆς ὑμετέρας.

(“The day is divided into three parts, when a *graphe paranomon* comes into court. The first lot of water is poured in for the prosecutor, the laws, and democracy: the second for the defendant in the *graphe* and those speaking on the actual case; and when the question of illegality is decided by the first vote, the third lot of water is poured in for the assessment of the penalty and the extent of your anger.”)

I leave aside one or two oddities in the details of Aischines’ account (for example, did the prosecutor not also speak on the actual case?); the point which is relevant here is that he is clearly describing divisions of a single day, not of time extending over more than one day. Yes, but this sentence refers only to cases of *graphe paranomon*, as Worthington correctly observes. “Perhaps only *γραφαὶ παρανόμων* were settled in one day and other procedures (such as the *ἀπόφασις* against Demosthenes in 323) were tried over a longer duration” (Worthington [1989] 205). In reply to that, I would point out that all the passages using the expression *διαμεμετρημένη ἡμέρα* use it in the singular; none of them mentions “measured-out days” in the plural. And at least two of them refer to other kinds of public case: Aeschin. 2.126 belongs to a case of *euthyna* for misconduct on an embassy, while Dem. 53.17 refers to *graphe pseudokleteias*.

One other passage telling against Worthington’s view is very fairly cited by himself (Worthington [1992] 285).

Pl. *Ap.* 37A: εἰ ἦν ὑμῖν νόμος, ὡσπερ καὶ ἄλλοις ἀνθρώποις, περὶ θανάτου μὴ μίαν ἡμέραν μόνον κρίνειν ἀλλὰ πολλάς . . .

(“If you had a law, as other people have, to try capital cases not over only one day but over many, . . .”.)

This passage clearly means that in Athens cases resulting in the death penalty are decided in one day. It does not explicitly say that this is true of all such cases without exception, but the contrast with “other people” probably implies that there are no exceptions in Athens. At the very least the restriction to one day must apply to *graphe asebeias*, which is the kind of case with which the *Apology* is concerned.

Worthington is right to say that not one of these texts states explicitly that the trial of every public case, without exception, had to be completed in one day. But one or two of them come close to implying that, and they certainly show that the one-day limit applied to several kinds of public case (not only *graphe paranomon*), including some so serious that they could lead to the death penalty. None of them hints at any exceptions. So it is not surprising that most of us have concluded from them that the one-day limit did apply to all public cases.

I now turn to Worthington's two positive reasons for taking the opposite view. The one which he seems to regard as the weightier is that in some trials there were several prosecutors. In particular, there were ten prosecutors for the trial of Demosthenes in 323: Stratokles spoke first, followed by the speaker of Deinarchos' extant speech *Against Demosthenes*, with Hypereides, whose speech *Against Demosthenes* survives in fragments, somewhere later in the order (cf. Worthington [1992] 52–53). Worthington thinks it improbable that all ten could have spoken within one third of the time allowed for the trial, if the trial had to be completed in one day. Now, we do not know quite how much time that would have been. Rhodes (1981) 726–727 gives reasons for thinking that the total amount of time allowed for speeches may have been 6 hours 36 minutes, so that one third would work out at 2 hours 12 minutes; Hansen (1991) 187 suggests that the prosecution would have had about 3 hours. But whatever the exact length of time was, I do not see any difficulty in accommodating ten prosecutors. It is not to be supposed that all ten made long speeches. Even if plenty of time had been available, they would not all have had different things to say, and the jury would have become bored and hostile. An effective short speech, making only one or two points, can be delivered in five minutes. We could imagine, for example, three speakers taking half an hour each, with the other seven each speaking for only five minutes or less.

But the extant speech of Deinarchos *Against Demosthenes* could not have been delivered in half an hour. This brings us to Worthington's other argument. The speech has 114 sections according to its modern numbering. Some other surviving speeches are even longer. Demosthenes' orations *On the Crown* and *On the False Embassy* each have over 300 sections. We do not know how quickly Demosthenes spoke, but I agree with Worthington that no one could deliver the whole of these texts, as we now have them, in two or three hours in a manner which would make them clear to a large audience.

But we have to consider how these texts originated. They are not transcripts of tape-recordings of what was said in court, nor did an Athenian speaker read out his speech in court verbatim from his written original. For each of the texts we have to ask: is this a copy of the draft which the author wrote before the trial, or was it written down (or revised) after the trial was over?

In some cases it is more or less clear that what we have is the draft written in advance for a speech to be delivered either by the writer himself or by another man. The writer would plan the speech and write out what might be said the speaker (whether it was the same man or someone else) would try to learn it by heart and then deliver in court as much as he could remember. He might remember much less than the whole of it. He might find that he had written more than he had time

to deliver, so that some of it would have to be omitted. An experienced speaker, such as Demosthenes, might change his plan and extemporize passages while he was actually speaking, according to the reception which he seemed to be getting from his audience. (For more detailed consideration of one instance see MacDowell [1990] 23–28).

In other cases it is clear that what we have was written after the trial was over, even though it may incorporate passages written in advance. For example, Aischines at the beginning of his defence speech *On the False Embassy*, in the text we have, refers to what Demosthenes said in his prosecution speech about Aischines' maltreatment of an Olynthian lady, and expresses his pleasure that the jury "threw out" Demosthenes – that is, shouted him down (Aeschin. 2.4). Those words may have been spoken extempore at the trial, but only afterwards can they have been written down. In fact it may have been a quite common practice to write out an improved and polished version of a speech for circulation after it was delivered, either to disseminate political or other views or to enhance the author's oratorical reputation. The written version of Demosthenes' oration *On the Crown*, for instance, is a justification of his whole political career, and may well be much longer and more elaborate than what he said in court when defending Ktesiphon.

I conclude that the written texts which survive, though containing much material which probably was spoken in court, are precarious evidence that it actually was all spoken, and cannot be relied on as proof of the length of court speeches. On the other hand, the evidence of passages indicating that trials for public offences were each completed in one day, even if not absolutely conclusive, is much stronger. So, unless some evidence to the contrary is discovered in future, we should continue to believe what Mogens Hansen has told us about the matter.

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# Foreign birth and Athenian citizenship in Aristophanes

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I should like to offer some comments on some passages in Aristophanes in which it is stated or implied that a man who is or claims to be a citizen of Athens is actually of foreign origin. There are several such passages, though they are not as numerous as is sometimes assumed. Some modern scholars seem to think that an imputation of foreign origin was a routine kind of abuse which was directed at all politicians indiscriminately, but that is not so. To take just one counter-example: if there is any politician who is subjected to abuse in Aristophanes, it is Kleon, but Kleon is never said to be of foreign birth; in *Knights* he is given the servile name Paphlagon because the play is an allegory in which all politicians are slaves of Demos, but there is no suggestion that he was really Paphlagonian. In fact, in the eleven surviving plays of Aristophanes the number of individual public figures in Athens to whom foreign origin is imputed is probably no more than eight (though one or two instances are ambivalent). So it is appropriate to wonder, in each case, why this particular person has been selected for comment on his origins. When, for example, Aristophanes calls Spintharos a Phrygian (*Birds* 762), that may be untrue, and it may be a joke, but there must have been some fact about Spintharos which made him vulnerable to that joke when, say, Kleonymos was not. My aim is to identify the facts which give rise to the jokes. But, I may as well say at once, I shall not be very successful. Among the cases which I shall discuss there is not a single one in which I can say for sure what was the fact that prompted the joke. The most I shall manage to do is to suggest that certain possibilities are more probable than others.

But before I turn to the individual cases I had better say something about the legal relationship between foreign birth and Athenian citizenship in Aristophanes' time. Was it, in fact, possible to be an Athenian citizen with foreign birth or ancestry? This requires reference to Perikles' law about citizenship, and unfortunately some aspects of it are very controversial. Here it would take too long to go fully into the controversies about the law, but I ought to indicate briefly which facts are agreed and which are disputed.

The rule in some Greek cities was that a free man had the same status as his father: if his father was a citizen, he was a citizen, and if not, not. Thus it was quite possible for a citizen to have a foreign mother. But in Athens this was changed by the law proposed by Perikles in 451/0 BC, which laid down that a man was not a citizen unless both parents were Athenian. In 403/2 this requirement was enacted again, with the proviso that it was not to be enforced against persons born before that year; that presumably means that it had fallen into disuse at some time before 403/2 and was renewed at the time of the restoration of democracy.<sup>1</sup>

In the normal way you could be an Athenian citizen only by birth; there was no procedure for applying for naturalization. However, naturalization did take place in certain cases mentioned by Aristophanes. Athenian citizenship was given to the Plataians who settled in Athens after the fall of Plataia in 427; and I think that in 406 it was given to men who volunteered for service in the Athenian navy at the battle of Arginousai, although that has recently been questioned<sup>2</sup>. There were also some individual foreigners who were given citizenship in return for outstanding services to Athens or for diplomatic reasons; in the fifth century there were probably very few of those, but one who is mentioned by Aristophanes is the Thracian prince who longs to eat sausages at the *Apatouria* (*Akharnians* 145–6).

What I have said so far would be agreed by almost everyone, I think. Now I come to points which are doubtful or disputed. First, at what dates did Perikles' law begin and cease to be effective? When the requirement to have two Athenian parents was renewed in 403/2, we are told explicitly that it did not apply to those who were born before that year (D. 57.30, schol. Aiskhines 1.39); thus a boy born in 404 to an Athenian father and a foreign mother could be enrolled in a deme as a citizen on reaching the age of eighteen in 386. Was there a similar proviso when the requirement was originally laid down by Perikles' law in 451/0, so that a boy born with a foreign mother in any year down to 451 could be enrolled in a deme on reaching the age of eighteen in any year down to 433? I should guess that it was so, so that a boy who was of citizen status at birth was not deprived of it by a law passed subsequently. But there is no evidence, and it is possible to take the alternative view that demes were required to apply the new law to all their enrolments after 451, thus excluding any boy born to a foreign mother after 469<sup>3</sup>.

Another problem about the law of Perikles is whether it forbade or invalidated marriage between an Athenian and a foreigner. Was the son of an Athenian man and a foreign woman simply an alien, or was he also illegitimate? There is no evidence about this for the time of Perikles, and some scholars hold that Perikles said nothing about marriage explicitly, but merely made marriage to a foreign woman unattractive by excluding the offspring of such marriages from citizenship<sup>4</sup>. However, we know that in the fourth century it was a punishable offence for an Athenian man to purport to marry a foreign woman, and the more usual view is that the ban on such marriages was part of Perikles' law.

A third point in dispute is whether an Athenian citizen had to be a member of a phratry. The more widely held view, with which I agree, is that in archaic Athens every citizen belonged to a phratry, but after Kleisthenes at the end of the sixth century made membership of a deme, rather than membership of a phratry, the



criterion for citizenship, there were some citizens who did not belong to phratries. Admittedly it is true that, when a distinguished individual foreigner was given Athenian citizenship, he was generally permitted to choose not only which deme but also which phratry he wished to join. But such men were merely a few exceptions essentially a phratry was a kinship group (unlike a deme, which originated as a grouping by place of residence), and it seems improbable that, for example, the Plataians who settled in Athens in 427 or the slaves who fought at Arginousai in 406 all became members of Athenian phratries<sup>5</sup>. But on this point too there is no explicit evidence, and some scholars do hold that a man could not be enrolled in a deme as a citizen unless he had first been enrolled in a phratry<sup>6</sup>.

Related to that is a fourth point in dispute, whether the parents of an Athenian citizen had to be married. Was legitimate birth a prerequisite for citizenship, or could bastards be citizens, provided that they had Athenian fathers and (after 451/0) mothers? There is no doubt that legitimacy was required for inheriting property, and also for membership of a phratry; thus those who believe that only members of phratries could be citizens believe also that bastards could not be citizens. But if we accept that Kleisthenes in 507/6, in changing the definition of citizenship from phratry-membership to deme-membership, let into the citizen body some men who were not entitled to belong to phratries, there seems to be no evidence that bastards were excluded. Some years ago I published some reasons for thinking that illegitimacy was not in itself a bar to citizenship<sup>7</sup>. My arguments have been criticized<sup>8</sup>, and I accept that they are not conclusive, but they still seem to me to be strong enough to tilt the balance of probability in favour of that view. The question remains open.

After that preliminary sketch of the historical facts and problems I turn to Aristophanes, and first to Euathlos in the parabasis of *Akharnians*.

What can justify a stooping old man like Thoukydides  
Being slaughtered, all entangled with this Skythian wilderness,  
This son of Kephisodemos, the loquacious advocate?  
I took pity when I saw it, and I wiped away a tear  
When a Bowman threw an old man into such perplexity.  
Never, by Demeter, when he was the real Thoukydides  
Would he have put up with even Artakhaies's<sup>9</sup> attacks;  
He'd have wrestled well enough to throw down ten Euathletes first;  
He'd have shouted loud enough to bawl three thousand archers out;  
And he'd have outshot the fellow's father's relatives as well.

(*Akharnians* 703–12)

The reference is to the trial of Thoukydides son of Melesias, at which the poor old man was so overwhelmed that he could not utter a word in his own defence. In line 705 the manuscripts give Κηφισοδήμῳ, but since the prosecutor appears from line 710 to have been Euathlos, I follow Coulon and Sommerstein in adopting Hamaker's emendation Κηφισοδήμου, making Euathlos the son of Kephisodemos. Besides prosecuting Thoukydides, Euathlos is said to have prosecuted Protagoras

(Arist. fr. 67), and he also made speeches in the Ekklesia (*Wasps* 592). So he was an Athenian citizen. Yet here he is called a ‘Skythian wilderness’ and an archer, and a scholiast here quotes a fragment of Aristophanes’ Ὀλκάδεις (fr. 424 K-A) in which also he was called an archer. Since the Skythians were famous for their archery, calling a man a Skythian and an archer is really saying only one thing, not two. But why was it said of Euathlos?

The scholiast says that he ‘would be’ (εἴη ἄν) of low birth, but the optative verb shows that this is just a conjecture based on our passage without other evidence. The modern commentators tend to follow suit, most recently Sommerstein (note on 707): ‘the Scythian archers with whom Athenians would be most familiar were their own slave-policemen, so there is a hint that Euathlus’ origin was not only barbarian but servile’. But I find this supposed innuendo difficult to define or to locate in the text. Are we to suppose that Aristophanes is hinting that Euathlos’ mother had an affair with a policeman? No doubt Aristophanes does sometimes say that sort of thing. But it is not what he is saying in this passage, if we accept (as Sommerstein does) that in line 705 he introduces Euathlos by calling him from the start the son of Kephisodemos. Or is it Kephisodemos’ mother, Euathlos’ grandmother, who is supposed to have had an affair with a policeman? No, because Kephisodemos must have been born before Athens had any Skythian policemen. The date when the Athenians acquired the Skythian policemen is not known exactly, but it was certainly after the Persian Wars and probably after the Thirty Years Peace in 446/5<sup>10</sup>; Kephisodemos, as the father of a man active in public affairs in the early 420s, must have been born earlier than that.

Nevertheless, in line 712 the Skythians are called relatives of Euathlos’ father – that is, of Kephisodemos; and that should mean that it was one of the parents of Kephisodemos who was a Skythian. Kephisodemos was presumably born in the early years of the fifth century, and certainly long before Perikles’ law about citizenship. At that time there was no legal objection to a marriage between an Athenian man and a Skythian woman. Just as Miltiades married a Thracian (Hdt. 6.39.2), it is possible that the father of Kephisodemos married a Skythian. (There must have been many contacts between Greeks and Skythians of which we know nothing. Herodotos refers (4.105.2) to Greeks who resided in Skythian territory, and they must certainly have met Skythian women). Of course we cannot really know who Euathlos’ ancestors were. But my conclusion about him is that there is no ground for thinking that he either was or even was alleged to be descended from a Skythian slave-policeman in Athens. It is more likely that he had some Skythian ancestry which was quite legal, even if pure-bred Athenians did look down on it, and there is nothing to suggest that his right to Athenian citizenship was suspect.

My next example is very different. This is Exekestides, who is mentioned three times in *Birds*. In line 11, when Peisetairos and Euelpides are lost, one of them remarks ‘Not even Exekestides could find the way from here’ to Athens; that implies that Exekestides has previously been very clever at getting into Athens from a remote place. In 764–5 he is a slave and a Karian who lacks ancestors and

φράτερες. In 1527 he is a barbarian. I take these passages to mean that Exekestides claimed to be an Athenian, but some people said he was a Karian slave; line 11, implying that he is very good at getting into Athens, may mean that he had in fact succeeded in getting himself accepted officially as an Athenian citizen.

What, then, was the point in dispute? The clue here is the reference to ancestors and φράτερες in 765, and the best case to compare with this one is that of Boiotos in Demosthenes 39. What was disputed about Boiotos was his paternity. His mother was an Athenian woman, who had been married to Mantias, but Mantias denied that Boiotos was his son. After some argument, he agreed to accept the young man as his son if the mother swore an oath that he was so; she did swear it; and so Boiotos was enrolled both in Mantias' phratry and in his deme (D. 39.1–5). This does not mean that citizenship necessarily involved membership of a phratry (which, as I have said, is disputed); it was just that both consequences followed from the same fact, that Mantias was Boiotos' father. The dispute about Exekestides was probably similar. His mother, I suggest, was an Athenian woman, but when he was born her husband declared that the baby was not his son, but the son of a Karian slave (presumably a slave in their own household). There must then have been a divorce<sup>11</sup>, and the boy will have been brought up by his mother and regarded as having the same slave status as his alleged father; but when he grew up he tried, in some ingenious way, to obtain recognition that he was really the son of his mother's husband. This recognition of his paternity would have given him at a single stroke ancestors, membership of a phratry, and Athenian citizenship; and that explains why all those things are mentioned or implied in *Birds* 11 and 765.

Next, Akestor, who was nicknamed Sakas. In *Birds* 31–2 Peisetairos and Euelpides have the opposite disease to Sakas, 'for he, not being an Athenian, is forcing his way in'. The Sakai were an Asiatic people<sup>12</sup> and the scholiasts (on *Birds* 31 and *Wasps* 1221) tell us that the man was called Sakas because he was a foreigner, but his real name was Akestor and he was a tragic poet. They quote other comic fragments in which he is called a Mysian (Theopompos 61 K-A, Metagenes 14 K-A). In *Wasps* 1221, when Philokleon is receiving instruction in the proper way to behave at a symposium, the imaginary guests reclining around the room include 'a foreigner besides at your head, the Son of Akestor' – if I am right in my edition to give Ἀκέστορος a rough breathing. Sommerstein in his edition gives it a smooth breathing, with the sense 'at Akestor's head', but I think that that, though possible, is less likely to be right, because it seems odd to locate a guest as being at Akestor's head when Akestor has not previously been mentioned, and also because there is not much point here in mentioning a foreigner (ξένος τις) without making him a specific person. There is one other important piece of evidence about Akestor: Metagenes 14 K-A seems to say (though the text is corrupt) 'Who is a citizen except Sakas the Mysian and the bastard son of Kallias?' That fragment comes from the play Φιλοθύτης, of which the date is not known, but it is generally thought to be later than *Birds*.

Perhaps Akestor was trying to get himself accepted as an Athenian citizen in 414, since in *Birds* 32 he 'is forcing his way in' in the present tense, and had

succeeded by the time of Φιλοθύτης, when he is now a citizen. In *Wasps* 1221, eight years earlier than *Birds*, though already well known in Athens, he is a foreigner, and there is no suggestion that any claim to Athenian citizenship is yet being made. Furthermore, if I am right in finding a mention of Akestor's son, already adult, in *Wasps* 1221, Akestor himself will have been fifty or sixty years old by the time of *Birds*. Even if *Wasps* 1221 does not refer to Akestor's son but to Akestor himself, he must at the time of *Birds* have been at least thirty.

This case, then, is not like the case of the young Exekestides. Akestor was an older man, who had probably lived in Athens as a metic for many years. Surely it was too late now to open up a question about his paternity. A different explanation is more likely. It was in the later years of the Peloponnesian War that Perikles' law about citizenship ceased to be enforced; that was why it was re-enacted in 403/2. I suggest the possibility that Akestor was known and acknowledged to be the son of an Athenian man and a Mysian woman. He therefore could not be a citizen under Perikles' law; but towards the end of the Peloponnesian War, when the Athenians began to allow the enrolment in demes of some young men with foreign mothers, Akestor claimed that on that basis he too should be a citizen, and was eventually admitted. That suggestion is an even longer shot than the others which I am making in this paper<sup>13</sup>; but I think it does have the merit of explaining the difference between *Wasps* 1221, where he is simply an alien, *Birds* 32 eight years later, where he is trying to push his way into Athens, and *Metagenes* 14, where he is a citizen.

My other examples are taken from *Frogs*, of the year 405.

Then shall we all together  
 Make fun of Arkhedemos,  
 Who when aged seven didn't grow his *phrateres*?  
 But now he's demagoguing  
 Among the upper corpses  
 And he's the prizewinner in villainy up there.

(*Frogs* 416–21)

Again a reference to the phratry, but this time with a pun. The scholiast tells us that φραστῆρες is the name for the permanent teeth which children grow around the age of seven. So that is the reason for mentioning the specific age of seven in line 418. It does not mean that registration in a phratry normally took place at the age of seven. Babies entitled to enter a phratry were normally introduced into it on the first convenient occasion after birth; that is why it was odd that Arkhedemos had still not been introduced into his phratry when he was older. I take it that *vuvî dé* makes a contrast with the aorist in the previous line and implies that he does have *phrateres* now, and the commentators who say that he was never enrolled in a phratry (van Leeuwen, Radermacher, Stanford) are not correct. He is also a citizen now; for he is a demagogue, and he would not have been able to make speeches in the Ekklesia if he were not a citizen. I see no reason to doubt that Arkhedemos was for some reason introduced into his phratry at a later age than was usual;

if that were not true, there would not be much point in the joke. There is also one other passage suggesting foreign ancestry: in Eupolis' Βάπται some character asked about Arkhedemos 'Is he a local, or from a foreign land?' (fr. 80 K-A), and the date of that play is generally thought to be about ten years earlier than *Frogs*. I infer that when Arkhedemos was a boy he was alleged to be of foreign or partly foreign parentage, but eventually he managed to get himself enrolled both in a phratry and in a deme. This is not a case like Akestor, in which enrolment became possible because Perikles' law was ceasing to be enforced; for Perikles' law was about enrolment in demes, not in phratries, and its relaxation would not have made enrolment in a phratry any easier than before. More likely Arkhedemos had the same problem as Exekestides: his paternity was disputed, but once it was acknowledged that his mother's husband was his father, that gave him both phratry-membership and citizenship.

Now Theramenes, one of the best known politicians of the late fifth century, who was notorious for changing his political allegiance, like an Athenian Vicar of Bray.

Theramenes? A clever man, of universal talent.  
If he encounters trouble, and is standing close beside it,  
He falls outside the trouble, not a Khian but a Keian.

(*Frogs* 968–70)

As the commentators explain, the joke alludes to a game of knuckle-bones (ἀστράγαλοι), which were thrown in a manner similar to modern dice; the worst possible throw was for some unknown reason called Χῖος and the best possible Κῶος, after the islands Khios and Kos. Theramenes always manages to fall in the luckiest way, but at the end of the sentence Aristophanes substitutes Κεῖος for Κῶος as a comic surprise, because Theramenes was associated with the island of Keos. But what was his connection with Keos? Plutarch says (*Nikias* 2.1) that he was abused for low birth as a foreigner from Keos, but that may well be nothing but Plutarch's attempt to interpret *Frogs* 970. No other text calls Theramenes a Keian except the scholia on *Frogs* 541 and 970. The scholiasts may also, like Plutarch, have been making guesses on the basis of *Frogs* 970, but they did at least know that Theramenes was the son of a distinguished Athenian father, Hagnon, who was a general in the days of Perikles. To reconcile the statement that Theramenes was a Keian with the fact that his father was an Athenian general, they offer the unconvincing suggestion that he was adopted by Hagnon, and they attribute it to another comedy, Eupolis' Πόλεις (schol. *Frogs* 970). We have no other evidence to show what was said about Theramenes in Eupolis' play, but it may be relevant that we are told in two other places that he studied as a pupil of the sophist Prodikos (Ath. 220b, schol. Ar. *Clouds* 361). Prodikos came from Keos, and indeed was perhaps the most famous person ever to have originated from that island. If we remember that followers of the philosopher Parmenides of Elea were called Eleatics, we may conjecture that followers of Prodikos were called Keians, or at any rate that Theramenes could be called a Keian by Eupolis and Aristophanes as

a joke because he spent time with Prodikos<sup>14</sup>. A person who was educated at (say) Harrow or Oxford may be called a Harrovian or an Oxonian without any implication that he was born in either of those places; and if something like that is the point of *Frogs* 970, we do not have here an allegation that Theramenes was of foreign birth.

My last example is:

Kleophon, on whose  
Bilingual lips a Thracian swallow Utters a terrible roar.

(*Frogs* 679–81)

The scholiast tells us that Kleophon was satirized as the son of a Thracian woman, and that Platon in his comedy entitled *Kleophon* (which was performed at the same festival as *Frogs*) brought the mother on stage speaking barbarously. But in the last two lines of *Frogs* we read:

Let Kleophon fight, and  
Anyone else of those who wants, in the fields of their fathers.

(*Frogs* 1532–3)

Does that final phrase mean that Kleophon's father is supposed to have come from Thrace or some other foreign country? I think it is unlikely that both Kleophon's parents were alleged to be foreign; and since the scholiast evidently saw a text of Platon's play in which the mother was presented as Thracian, I prefer to take πατρίοις in *Frogs* 1533 with the vaguer meaning 'ancestral', referring to Kleophon's forefathers on his mother's side. I accept what is now the usual view, based on the evidence of *ostraka*, that Kleophon's father was Kleippides, who was an Athenian general in 428; and if that is right, all we want to know is why his mother was said to be Thracian. But here we run up against a difficulty: we have no evidence to show whether he was born before or after Perikles' law of 451/0. If he was born before that date, then it is possible that he was quite openly admitted to have a Thracian mother and yet was lawfully an Athenian citizen because his father was Athenian. But if he was born after that date, he could not have been a citizen unless he had an Athenian mother. In that case the allegation that he had a Thracian mother was probably false; for Kleophon's political opponents would certainly have taken steps to get him convicted for wrongful usurpation of citizen-rights if they had been able to convince a jury that it was true. Here I confess ἀπορία: I can only say that I do not know what fact made it appropriate to say in a comedy that Kleophon had a Thracian mother.

In the examples which I have been considering, the alleged foreign ancestry is not merely non-Athenian; it is non-Greek. The only apparent exception is Theramenes, who is called a Keian; but I have argued that this is probably not a comment on his birth but a comment on his education. In the case of Arkhedemos, we are not told what his parentage was alleged to have been. My other four

examples are all associated with non-Greek peoples: Euathlos with Skythia, Exekestides with Karia, Akestor with Mysia, and Kleophon with Thrace. This seems to be the general pattern of such jokes. They are not directed against men whose ancestry was Greek. There certainly were some Athenians with Greek but non-Athenian ancestors; for instance, the distinguished Alkmeonid family descended from a famous marriage between Megakles and Agariste, daughter of Kleisthenes of Sikyon. Yet it was, apparently, not funny if a man's ancestors were Sikyonian, or Corinthian, or Thessalian. It was only funny if they were barbarian. Evidently this was because barbarians were regarded as inferior to Greeks, lacking in intelligence or courage or both. The contemptuous attitude of the Greeks to barbarians has been much discussed, and it is clear that it grew up in the fifth century, after the victories of the Greeks over barbarians in the Persian Wars. It culminated in the fourth century in the view, expressed most clearly by Aristotle (*Politics* 1252b 7–9, 1255a 28–32), that barbarians are slaves by nature. It was the rise of this attitude that made it seem funny in the time of Aristophanes to say that a man's ancestors were Skythian or Thracian. Such a comment would probably not have been found amusing a century earlier.

As I said at the outset, I have only been putting forward possibilities and probabilities, not certainties; in none of these cases can one particular explanation be clearly proved to be correct. My main conclusion is a general one, that jokes about foreign ancestry need not all have the same basis. To say that a man had barbarian ancestors was a good topic for raising a laugh against someone, but a laugh would result only if there was something about the man which made imputation of foreign ancestry appropriate, and it is these particular facts which are likely to have differed in different cases. We should not assume as a matter of course that, whenever an Athenian is called a foreigner in a comedy, that is an allegation that he is the son of a slave, and that the allegation is false. In some cases the imputation of foreign ancestry may have been perfectly true, without involving anything illegal.

## Notes

- 1 This presumption still seems to me sound, though it is not accepted by Walters 1983:324–7.
- 2 Worthington 1989.
- 3 Humphreys 1974:92.
- 4 Patterson 1981:95, Sealey 1990: 16–19.
- 5 Phratries are not mentioned in the preserved text of the decree about the Plataians (D. 59.104). Cf. M.J. Osborne 1983: 37 n.78.
- 6 Prandi 1982:14–19, Hansen 1986b: 73–4.
- 7 MacDowell 1976; so also Walters 1983: 317–20.
- 8 Rhodes 1978, Hansen 1986b: 73–6.
- 9 For this reading cf. Borthwick 1970.
- 10 And. 3.5 dates the acquisition after the Thirty Years Peace, though some modern scholars have suggested that it could have been as early as the 470s. Cf. Albin 1964:601, Hall 1989a:44.
- 11 A wife who committed adultery had to be divorced (D. 59.87).
- 12 Strabon 11.18.2 says that the Sakai lived east of the Caspian Sea, schol. *Birds* 31 that they were Thracians. On a geographical question Strabon's evidence is preferable.

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- 13 It leaves one question unanswered: if Akestor was fifty or more in 414 (as I think likely), why was he not enrolled as a citizen at the age of eighteen, having been born before 451/0? Possibly at that time his father treated him as a slave because he was the son of a slave woman.
- 14 J.K. Davies 1971:228.



# The Athenian procedure of *phasis*

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The Athenian legal action which is known by the noun φάσις and by the verb φαίνεῖν is not the subject of any of the surviving forensic orations, though a few of them make passing references to cases of this type. Otherwise we have only a small number of references to it in inscriptions and in Aristophanes, together with short articles in Harpokration and other lexicons. Most of the scanty evidence is assembled by Lipsius,<sup>1</sup> whose account is largely followed by Harrison;<sup>2</sup> but they are not very successful in defining the distinguishing characteristics of the action. Lipsius (310) considers that the feature distinguishing it from other public actions is that half of the payment made by a convicted defendant (the fine, or the value of confiscated property) was handed over to the prosecutor. But, since there were also other actions in which a proportion of the payment made by the convicted defendant went to the prosecutor, notably *apographe* (Dem. 53.2) and *graphe* for a purported marriage between an Athenian and an alien (Dem. 59.16, 59.52), that seems by itself an inadequate reason for the existence of *phasis* as a separate action. Harrison (2.218) is even more unhelpful; he says that *phasis* may be described as “the denunciation of someone as having broken a law.” That description would fit most other legal actions, both public and private, equally well, and so is really no use at all. A better attempt to characterize *phasis* is made by Ruschenbusch.<sup>3</sup> He sees it as essentially the showing to a magistrate of the *corpus delicti*. I believe that this is correct; but Ruschenbusch does not discuss all the evidence, and some difficulties need further consideration.

Most of the Athenian public actions were named from the means by which the action was initiated: *apagoge* began with the arrest of the accused person, *graphe* began with a written statement, and so on. Thus we should expect the name *phasis* to indicate the means by which this action began. The word means “showing,” “bringing to light,” “revealing.” But of course most kinds of prosecution involve showing that the defendant has done something wrong, and indeed there was another Athenian action which was named by another word meaning “showing”:

*endeixis*. In what way was *phasis* a different sort of showing? To answer this question Ruschenbusch rightly draws attention to two passages of Aristophanes' *Akharnians* in which we see the procedure actually being used. When a Megarian offers some piglets (actually his daughters in disguise) for sale in Dikaiopolis' market, a sycophant challenges him and says:

Τὰ χοιρίδια τοίνυν ἐγὼ φαίνω ταδὶ  
πολέμια καὶ σέ.

Then I shall reveal these piglets as belonging to the enemy,  
and you also.

(Aristophanes, *Akharnians* 819–20)

In a later scene a Theban brings a variety of goods for sale, and another sycophant challenges him and says:

Ἐγὼ τοίνυν ὀδὶ  
φαίνω πολέμια ταῦτα . . .  
{NI.} Καὶ σέ γε φανῶ πρὸς τοῖσδε.

Then I, here present,  
reveal these goods as belonging to the enemy. . .  
And I shall reveal you in addition.

(Aristophanes, *Akharnians* 911–14)

The offence here is importing goods from an enemy state, which evidently was forbidden in wartime. Since the passages are from a comedy, we cannot assume that they necessarily follow the legal procedure of real life in every detail; Aristophanes, in order to avoid boring his audience, may have omitted some formalities which in real life would have been necessary. But the main point must be true to life, since otherwise the joke would be ineffective; and so we can safely infer that in real life a *phasis* was initiated by the prosecutor saying φαίνω or φανῶ and pointing to the goods as well as to the defendant. He reveals now to the bystanders (φαίνω) and will reveal to a magistrate or official (φανῶ) the goods which ought not to be there. Although the offender is also an object of the verb (σέ in both passages), the point which is rightly made by Ruschenbusch is that the goods are mentioned first.

In wartime it is even more important to stop exports to the enemy than imports from the enemy, but Harrison (2.219) is unwise to use these passages of Aristophanes to support his statement that *phasis* was used for “breaches of import and export regulations.” In fact there is another passage of Aristophanes which contains an accusation of exporting goods to the enemy but does not mention *phasis*.

Τουτονὶ τὸν ἄνδρ' ἐγὼ ἠδεικνυμι, καὶ φήμ' ἐξάγειν  
ταῖσι Πελοποννησίων τριήρεσι ζωμεύματα

I point out this man, and I say that he has been exporting  
soup to the Peloponnesian navy.

(Aristophanes, *Knights* 278–9)

That is a joke, but there is a similar real instance, also of the period of the Peloponnesian War, when Peisandros accused Andokides.

ἄνδρες βουλευταί, ἐγὼ τὸν ἄνδρα τοῦτον ἐνδεικνύω ὑμῖν σῖτόν τε εἰς τοὺς  
πολεμίους εἰσαγαγόντα καὶ κωπέας.

Members of the Boule, I point out this man to you as having imported grain  
and oars to the enemy.

(Andokides 2.14)

The accusation against Andokides differs from the comic accusation in one respect: the grain and oars, unlike the soup, came not from Athens but from elsewhere. But the essential point of both offences is the same, that goods were delivered to the enemy; and in both passages the procedure used is not *phasis* but *endeixis*. The reason is easy to see. You can show people goods which have been imported. You cannot show them goods which have been exported, since the goods are no longer there; you can only point out the person who exported them. We see here an important distinction between φαίνω and ἐνδείκνυμι. φαίνω is used for pointing out objects, goods or property, ἐνδείκνυμι for pointing out persons. In later texts we shall find that this distinction is not always observed, but probably this was originally the basic difference between *phasis* and *endeixis*. In *phasis* the denouncer points out some goods, which ought not to be there; so the goods are confiscated and shared out between the denouncer and the state. In *endeixis* there are no goods to be seen; the denouncer merely points out the offender, and the penalty has to take a different form.

The procedure of *phasis* was also used, in peace as well as in war, for smuggled goods, which had been imported without payment of customs duty. In an earlier scene of *Akharnians*, when Dikaiopolis makes his great speech arguing that there is no justification for the war,<sup>4</sup> he refers to sycophants who went around denouncing Megarian goods, which were forthwith confiscated and sold.

ἀλλ' ἀνδράρια μοχθηρά, παρακεκομμένα,  
ἄτιμα καὶ παράσημα καὶ παράξένα,  
ἐσυκοφάντει· «Μεγαρέων τὰ χλανίσκια.»  
Κεῖ που σίκυον ἴδοιεν ἢ λαγώδιον  
ἢ χοιρίδιον ἢ σκόροδον ἢ χόνδρους ἄλας,  
ταῦτ' ἦν Μεγαρικὰ κάπέπρατ' αὐθημερόν

But some villainous fellows, mis-struck coins, disfranchised  
and mis-minted and mis-foreign, were sycophants – “Those  
shawls are from Megara!”; and wherever they saw a cucumber

or a hare or a piglet or garlic or some lumps of salt, those were “Megarian” and were sold that day.

(Aristophanes, *Akharnians* 517–22)

This is a description of what happened before the war began, and before Perikles introduced his famous decree about Megara; the Megarians at that time were not formally enemies, and the pretext for denouncing their goods can only have been failure to pay customs duty. (Since the Megarians had a land frontier with Attika, it was probably easier for them to evade the collectors of customs duty than it was for other people who imported goods to Athens by sea through Peiraieus.) In these lines the verb φαίνω is not used, and the verb ἐσυκοφάντει does not by itself prove that the legal procedure was *phasis*; but that procedure is mentioned later in the speech when Dikaiopolis imagines the reverse situation.

Φέρ', εἰ Λακεδαιμονίων τις ἐκπλεύσας σκάφει  
ἀπέδοτο φήνας κυνίδιον Σεριφίων,  
καθῆσθ' ἂν ἐν δόμοισιν;

Now, suppose a Spartan, “after a voyage in his bark,”<sup>5</sup> had revealed and sold a puppy from Seriphos: would you have sat quiet at home?

(Aristophanes, *Akharnians* 541–3)

This passage is intended as a mirror-image of the previous one, meaning “What would have happened if the roles of the Athenians and the Spartans had been exchanged?”; so the use of φήνας here shows that *phasis* was the procedure meant in lines 517–22, and that it was used for the pre-war confiscation of Megarian goods for non-payment of customs duty when they were imported into Attika.<sup>6</sup>

One other passage of Aristophanes is relevant, in a scene of *Knights* in which Paphlagon and the sausage-seller are threatening each other. One of Paphlagon’s threats is:

Καὶ φανῶ σε<sup>7</sup> τοῖς πρυτάνεσιν  
ἀδεκατεύτους τῶν θεῶν ἱε-  
ρὰς ἔχοντα κοιλίας.

And I shall reveal you to the prytaneis as having sacred tripe belonging to the gods on which no tithe has been paid.

(Aristophanes, *Knights* 300–2)

This is another comic instance of *phasis* for goods on which a payment ought to have been made. The nature of the payment is not very clear. Lipsius (313) takes it as customs duty, Sommerstein (in his commentary on *Knights*) as a tithe due for war booty; but I think that ἱεράς (which qualifies the meat, not merely the tithe) shows that the reference is to meat from a sacrifice. It is known that

payments were made to a sacred treasury for the hides from sacrificed animals;<sup>8</sup> probably the joke here is that a similar payment should be made for the tripe. But anyway the offence is very similar to a failure to pay customs duty. The object of the verb is σε . . . ἔχοντα κοιλίας. Paphlagon points both to the offender and to the offending goods which he visibly has. The denunciation is made to the *prytaneis*. Since the *prytaneis* are not themselves magistrates, the meaning must be that the case is to be considered by the Boule, over which they preside.

Now, turning away from these comic imaginary cases, I take the two earliest real cases of *phasis* that are known, both from Isokrates. In the speech *Against Kallimakhos* we have a vivid description of an incident which occurred in 403, during the regime of the Ten. The speaker relates how Patrokles met Kallimakhos in the street. Kallimakhos was carrying some money which Patrokles said had been left behind by a man of the democratic party, now occupying Peiraius, and was therefore the property of the state. An argument developed and a crowd gathered.

καὶ κατὰ τύχην Ῥίνων εἷς τῶν δέκα γενόμενος προσῆλθεν. Εὐθύς οὖν πρὸς αὐτὸν τὴν φάσιν τῶν χρημάτων ὁ Πατροκλῆς ἐποιεῖτο· ὁ δ' ὡς τοὺς συνάρχοντας ἦγεν ἀμφοτέρους. Ἐκεῖνοι δ' εἰς τὴν βουλὴν περὶ αὐτῶν ἀπέδοσαν· κρίσεως δὲ γενομένης ἔδοξε τὰ χρήματα δημόσι' εἶναι.

And by chance Rhinon, who had become one of the Ten, arrived. So immediately Patrokles made the *phasis* of the money to him, and Rhinon took both men to his colleagues. They referred their case to the Boule; and when a trial was held, the verdict was that the money belonged to the state.

(Isokrates 18.6)

This is not very different from the instances in *Akharnians* of *phasis* of goods imported from an enemy; the democratic party, from whom the money came, was the enemy of the regime in Athens at this time. Again we see that the *phasis* was directed not just at the offender but at the object of the offence (τὴν φάσιν τῶν χρημάτων); and again, as in *Knights* 300–2, the case was referred to the Boule. However, since an oligarchic regime was in power, the proceedings may have been abnormal, and we should be cautious about using this passage as evidence of the correct legal procedure.

In the *Trapezitikos* we read of another case which occurred in the 390s. The speaker is a man from Bosporos, the kingdom north of the Black Sea, who has been doing business in Athens.

ὀλκάδα γὰρ, ἐφ' ἧ πολλὰ χρήματ' ἦν ἐγὼ δεδωκώς, ἔφηνέ τις ὡς οὔσαν ἀνδρὸς Δηλίου. ἀμφισβητοῦντος δ' ἐμοῦ καὶ καθέλκειν ἀξιοῦντος οὕτω τὴν βουλὴν διέθεσαν οἱ βουλόμενοι συκοφαντεῖν ὥστε <τὸ μὲν πρῶτον> παρὰ μικρὸν ἦλθον ἄκριτος ἀποθανεῖν, τελευτῶντες δ' ἐπέισθησαν ἐγγυητὰς παρ' ἐμοῦ δέξασθαι.

A merchant-ship, on which I had lent a large sum of money, was revealed by someone as belonging to a Delian man. When I protested and demanded that

the ship should put to sea, the men who wanted to be sycophants put the Boule into such a state of mind that at first I was nearly put to death without trial, but in the end they were persuaded to accept sureties from me.

(Isokrates 17.42)

Once again an object, not merely an offending person, was pointed out, but this time the object was not the goods transported but the ship itself. The accusation was that the ship belonged to the enemy, because at this period (the 390s) Delos was under Spartan control. Again the Boule was involved, but the description of the legal proceedings is not very clear. The speaker of the speech we have was not the person accused by *phasis* and was not on trial (ἄκριτος). Perhaps he was a speaker in support of the ship's owner or captain who was on trial; or perhaps he made his intervention at an ordinary meeting of the Boule, claiming that he was raising a matter which urgently required action. This passage by itself does not prove that all *phasis* cases were tried by the Boule. Nevertheless it must be significant that, in the period down to the 390s, the Boule and the *prytaneis* are the only officials mentioned in connection with *phasis* explicitly (Ar. *Knights* 300–2, And. 2.14, Isok. 17.42, 18.6), and it seems to be a possibility that they handled many or all *phasis* cases at this time.

But if so, that state of affairs did not continue, because later in the fourth century we find *phasis* cases going to a variety of different magistrates. I take next a number of fourth-century inscriptions which mention *phasis*,<sup>9</sup> and first the law of 375/4 about silver coinage. When there are disputes about the genuineness of silver coins offered in payment for goods in the market, the public tester (δοκιμαστής) is to test them; and if anyone does not accept coins approved by the tester, everything that he offers for sale on that day is to be confiscated.<sup>10</sup>

φαίνειν δὲ τὰ μὲν ἐν [τ]ῷ σί[τ]ωι πρὸς] τὸς σιτοφύλακας, τὰ δὲ ἐν τῇ ἀγορᾷ κ[α]ὶ [ἐν τῷ πᾶλ]λωι ἄσται πρὸς τοὺς τῷ δήμῳ συλλογέ[ας], τὰ [δὲ ἐν τῷ] ἐμπορίῳ καὶ τῷ Πει[ρ]αιεῖ πρὸς τοὺς ἐπιμελητ[ὰς] τοῦ ἐμπορίου πλὴν τὰ ἐν τῷ σίτῳ, τὰ δὲ [ἐν τῷ σί]τῳ πρὸς τοὺς σιτοφύλακας. τῶν δὲ φανθέ[ντων, ὀπό]σα μὲν ἂν ἦι ἐντὸς δέκα δραχμῶν, κύριοι ὄ[ντων οἱ ἄ]ρχοντες διαγιγνώσκειν, τὰ δὲ ὑπὲρ [δ]έ[κ]α [δραχμᾶς], ἐσαγόντων ἐς τὸ δικαστήριον. οἱ δὲ θε[σμ]οθ[έ]ται π[α]ρεχόντων αὐτοῖς ἐπικληρόντες δικαστήριον ὄ[τα]μ παραγγέλλωσιν ἢ εἰθυνέσθω[ν.] δραχ[μαῖς. τῷ] δὲ φήναντι μετέστω τὸ ἥμισυ, ἐ[ὰ]ν ἔλη

Let denunciations for offences in the grain-market be laid [before] the Sitophylakes, for those in the agora and in [the rest] of the city before the *Syllogeis tou démou*; those [in the] market and in Peiraieus before the [Epimeletai] of the market, except for offences in the grain-market; offences [in the] grain-market are to be laid before the Sitophylakes. For [all those] denunciations which are up to ten drachmai the magistrates [are to be] competent to give a verdict; for those over ten [drachmai] let them bring them into the law court and let the Thesmothetai assist them by allotting a court whenever they request

one or let them be subject to a fine of [7] drachmai. Let [the one who] makes the denunciation receive a share of one-half, if he wins a conviction.

(*Hesperia* 43 [1974] p.158, lines 18–29)

Here we see that the goods which the offender is offering for sale, and which are subject to confiscation, are to be pointed out, not to the *prytaneis*, but to the officials in charge of the particular market in which the offence is committed. This is obviously more practical, since those officials are likely to be close at hand when the offence is committed, whereas the *prytaneis* may not be. However, the involvement of the various market officials in *phasis* proceedings is not necessarily an innovation in this law; what is, presumably, new in this law is that it now becomes an offence to reject silver coins approved by the public tester. It has been decided to make this offence subject to the same procedure of *phasis* as has long been used for the offence of offering smuggled or contraband goods for sale. The law therefore states what that procedure is, but it may well be that the whole of that statement simply gives the legal procedure already existing for *phasis* for other offences in the market, and that the transfer of this function from the *prytaneis* and the Boule to the market officials had taken place some years earlier.

The law specifies that half of the confiscated goods is to be given to the accuser if he wins the case in court. That is certainly not an innovation in 375/4, for it is mentioned in another inscription which is of earlier date, though not strictly an Athenian law. It is the famous charter of the second Athenian league of the year 377. Among other clauses, it lays down that no Athenian may possess any house or land in the territories of the allies; if any Athenian does acquire any, anyone of the allies who wishes may reveal it (φῆναι) to the *synedroi* of the allies; the *synedroi* are to sell the house or land and give half the proceeds to the man who revealed it (τῷ φήναντι), while the other half is to belong to the allies.<sup>11</sup>

From a few years later there is another well known inscription awarding to Athens a monopoly of ruddle exported from the island of Keos. The inscription records decrees passed by the separate cities in Keos, and from the surviving fragments we can see that both the decree of Koresos and the decree of Ioulis mentioned the possibility of *phasis* or *endeixis* for the offence of exporting ruddle elsewhere than to Athens, with half of the proceeds going to the prosecutor.<sup>12</sup> Although we cannot assume that the law of either Koresos or Ioulis was identical with Athenian law, these particular decrees were certainly passed under Athenian influence and actually authorize appeals to Athens from verdicts given in Keos; so they probably reflect Athenian practice. Later again is a fragment of an Athenian law recently discussed by Hansen; the subject of the law is obscure, but one sentence clearly says that half of what is revealed (τῶν φανθέντων) is to belong to the revealer (τοῦ φήναντος).<sup>13</sup> So it is clear enough that a common feature of *phasis* was an equal division of the goods confiscated, or of the proceeds when they were sold, between the prosecutor and the public treasury, at least in the fourth century; in the fifth century it is not explicitly attested, but since the Aristophanic evidence shows that *phasis* was already attractive to sycophants, it is likely that

the allocation of half the proceeds to the successful prosecutor was a feature of *phasis* then too.

But this raises a further question: can we then argue in the opposite direction, and say that any case in which the successful prosecutor got half the proceeds must have been a case of *phasis*? This question confronts us when we look at the law about olive trees quoted in the oration *Against Makartatos*.

Ἐάν τις ἐλάαν Ἀθήνησιν ἐξορύττη, ἐὰν μὴ εἰς ἱερὸν Ἀθηναίων δημόσιον ἢ δημοτικόν, ἢ ἑαυτῷ χρῆσθαι μέχρι δυοῖν ἐλάαιν τοῦ ἐνιαυτοῦ ἐκάστου, ἢ ἐπὶ ἀποθανόντα δέη χρήσασθαι, ὀφείλειν ἑκατὸν δραχμᾶς τῷ δημοσίῳ τῆς ἐλάας ἐκάστης, τὸ δὲ ἐπιδέκατον τούτου τῆς θεοῦ εἶναι. ὀφειλέτω δὲ καὶ τῷ ιδιώτῃ τῷ ἐπεξιόντι ἑκατὸν δραχμᾶς καθ' ἐκάστην ἐλάαν. τὰς δὲ δίκας εἶναι περὶ τούτων πρὸς τοὺς ἄρχοντας, ὧν ἕκαστοι δικασταί εἰσι. πρυτανεῖα δὲ τιθέτω ὁ διώκων τοῦ αὐτοῦ μέρους.

If anyone digs up an olive tree at Athens, unless it is for a sacred purpose of the Athenian people or of a deme, or not more than two trees a year for his own use, or for the requirements of a funeral, he is to pay to the public treasury 100 dr. for each tree, and one-tenth of this payment is to belong to the goddess. Let him also pay 100 dr. per tree to the individual who proceeded against him. The cases concerning these are to go to the magistrates according to their competence. Let the prosecutor deposit *prytaneia* for his share.

(Law quoted in Demosthenes 43.71)

The law does not mention *phasis*; but because it specifies equal payments to the public treasury and to the prosecutor (100 dr. for each olive tree destroyed) most people, including Lipsius (313) and Harrison (2.218–19), conclude that the procedure here is *phasis*, and go on to draw general conclusions about *phasis* from this law – notably, that the deposit of money called *prytaneia* had to be paid by the prosecutor in all *phasis* cases (Lipsius 315, Harrison 2.220), for which there is no evidence except this law. But nothing in the text says that *phasis* is to be used, and the prosecutor is called τῷ ἐπεξιόντι and ὁ διώκων, not ὁ φαίνων. I do not believe that this law is about *phasis*, and no conclusion about *phasis* should be drawn from it.

Other evidence from the fourth century indicates a widening of the range of offences for which the *phasis* procedure could be used. It continued to be used for trading cases. Theokrines delivered to the supervisors of the market (ἐπιμεληταὶ τοῦ ἐμπορίου) a *phasis* against Mikon's ship for not sailing to the right place;<sup>14</sup> that probably means that he used it to transport grain to some place other than Athens, which is known to have been an offence for an Athenian in the fourth century.<sup>15</sup> A law quoted in the oration *Against Lakritos* authorizes *phasis* for the offence of lending money for a ship which is not going to transport grain to Athens.<sup>16</sup> The inscribed naval records mention twice a trireme which was subjected to *phasis* by Aristonikos, we are not told why; a trireme was not a merchant-ship, but perhaps Aristonikos alleged that this trireme had in fact been used for illegal



trade of some sort.<sup>17</sup> We also hear of a case in which a silver mine was subjected to *phasis*, because its lessee, Epikrates, was alleged to have extended it beyond the limits permitted by his lease.<sup>18</sup> All these uses of *phasis* were probably authorized by new laws in the fourth century; they are more or less natural extensions of the use of *phasis* for illegal trading in the fifth century.

A more difficult extension is the one which we find in the oration *Against Nausimakhos and Xenopeithes*.

Οὐκ ἐμίσθωσαν ἡμῶν τὸν οἶκον, ἴσως ἐροῦσιν. οὐ γὰρ ἐβούλεθ' ὁ θεῖος ὑμῶν  
Ξενοπείθης, ἀλλὰ φήναντος Νικίδου τοὺς δικαστὰς ἔπεισεν εἶσαι αὐτὸν  
διοικεῖν.

They did not lease our estate, perhaps it will be said. No, because your uncle Xenopeithes did not wish it, but, when Nikides revealed it, persuaded the jurors to let him manage it himself.

(Demosthenes 38.23)

The reference is to an estate left to orphans. An estate belonging to an orphan could be managed by the guardian or guardians, or it could be leased until the orphan came of age, the payments made for the lease being used or kept for the orphan's benefit.<sup>19</sup> In the present case, the estate belonged to two young boys named Nausimakhos and Xenopeithes. Nikides (whoever he was) said that it ought to be leased until they came of age; but when the case came before a jury, the uncle of the two boys, also named Xenopeithes, who was evidently one of the guardians, successfully argued that he could manage it and no lease was necessary. The procedure used by Nikides to make his accusation was *phasis* (φήναντος). It is easy to see why a public action, open to any volunteer prosecutor (ὁ βουλόμενος), was needed to protect the interests of orphans against their own guardians, since the orphans were too young to take legal action for themselves. But other kinds of wrong against orphans were subject to *eisangelia*:<sup>20</sup> why was *phasis* used instead for the particular offence of failing to lease an orphan's estate? I cannot give a satisfactory answer to this question. It is not enough to say that an estate was an object which could be pointed out to the magistrate: it was not an object which could be confiscated and sold for the benefit of the state and the prosecutor, which would have been grossly unjust to the innocent orphan, and it was therefore not comparable to the objects concerned in the other cases of *phasis* which we have considered. It is tempting to suppose that there is an error in the text, that φήναντος should be emended to φήσαντος, and thus that the case was not *phasis* at all. Yet Harpokration, in his article on *phasis*, refers to a lost speech of Πρὸς τὴν φάσιν τοῦ ὀρφανικοῦ οἴκου. So we must accept that the reading φήναντος is correct, and that *phasis* of an orphan's estate was possible. We should recall that there were distinct types of *eisangelia* (for maltreatment of an orphan or heiress; for treason and other serious offences; for misconduct by an arbitrator), and accept that there were likewise distinct types of *phasis*. The procedure and penalty for *phasis* of an orphan's estate may have been quite different from those for *phasis*

of contraband goods or a ship or a silver mine. There may indeed have been no penalty at all for this kind of *phasis*: Wolff suggests that the jury merely decided whether the estate was to be managed by the guardian or to be leased<sup>21</sup> and no evidence refutes that view, though Dem. 38.23 (describing a case which the prosecutor lost, not won) is insufficient to prove it.

The last type of *phasis*, even more difficult to explain, was for impiety. A well known passage of the oration *Against Androtion*, listing different kinds of prosecution, says that for ἀσέβεια one of the possibilities is φαίνειν πρὸς τὸν βασιλέα.<sup>22</sup> Nothing more was known about *phasis* for impiety until in 1980 an inscribed law of the mid fourth century about the Eleusinian Mysteries was published by Clinton.<sup>23</sup> The text is fragmentary and not all of Clinton's restorations are certain, but one clause of the law seems to authorize prosecution by *phasis* for the offence of usurping the right of the Eumolpidae and the Kerykes to conduct initiations,

ἐὰν δέ τις μῆ[ι E]ὐμολ[πιδῶν ἢ Κηρύκων οὐκ ὄν ε]ιδῶς, ἢ ἐὰν προσάγη  
τις μῆσόμε[νον . . . τοῖν] Θεοῖν, φαίεν δὲ τὸμ βολόμεγο[ν Ἀθηναίων, καὶ  
ὁ βασι]λεὺς εἰσαγέτω εἰς τὴν Ἠλιαίαν

If anyone initiates in the knowledge that he does not belong to the Eumolpidae or the Kerykes, or if anyone brings someone to be initiated [ – to the Two Goddesses, and any Athenian who wishes is to reveal it, and let the *basileus* introduce it into the Eliaia.

(*Hesperia* 49 [1980] p. 263, lines 27–9)

This bears no resemblance to the other kinds of *phasis* which we have been considering. Here there is no object or property which is pointed out to the magistrate, and no division of proceeds between the prosecutor and the state. The presiding magistrate is the *basileus*, who is not mentioned in connection with *phasis* for any other offence. We must conclude that this is another quite distinct type of *phasis*. What other impious acts it could be used for, besides wrongful initiation in the Mysteries, we do not know.

I now summarize my conclusions. I believe that, just as there were three distinct types of *eisangelia*, there were also three distinct types of *phasis*, having nothing in common except that they were all public actions, open to anyone who wished to prosecute (ὁ βουλόμενος).

1. An action initiated by pointing out some object or property with which an offence had been committed – perhaps originally contraband goods in the market, but subsequent laws widened the scope to include ships used for illegal trading, goods for which the seller refused to accept approved silver coins, mines dug beyond the permitted limits, and so on. In the fifth century the object was pointed out to the *prytaneis*, who referred the case to the Boule; but in the fourth century this responsibility was transferred to other appropriate officials, such as the supervisors of the market in which the goods-were found, who were competent to decide minor cases themselves but referred more

- serious ones to an ordinary jury court. If the trial resulted in conviction, the object or property concerned was confiscated and sold; the proceeds were divided equally between the successful prosecutor and the public treasury.
2. An action initiated by pointing out to the *arkhon* that an orphan's estate had not been leased. At the trial the jury decided whether the estate should be leased or not. Nothing else is known about this type.
  3. For impiety, initiated by a charge to the *basileus*. Apart from usurping the right of the Eumolpidae and the Kerykes to introduce a person to the Mysteries, it is not known what other acts of impiety were subject to this legal action, nor how the procedure differed from *graphe* or *endeixis* for impiety, nor what penalty might be imposed.<sup>24</sup>

## Notes

- 1 J. H. Lipsius, *Das attische Recht and Rechtsverfahren* (Leipzig 1905–15) 309–16.
- 2 A. R. W. Harrison, *The Law of Athens*, vol. 2 (Oxford 1971) 218–21; see also vol. 1 (1968) 115–17. Brief accounts of *phasis*, adding nothing substantial, are given by U. E. Paoli, *Studi di diritto attico* (Florence 1930) 239; E. Berneker, *RE* 19.2 (1938) 1896–8; R. J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle*, vol. 2 (Chicago 1938) 41; L. Gernet, *Démosthène: Plaidoyers civils*, vol. 4 (Paris 1960) 37; A. Biscardi, *Diritto greco antico* (Milan 1982) 260.
- 3 E. Ruschenbusch, *Untersuchungen zur Geschichte des athenischen Strafrechts* (Cologne 1968) 70–3.
- 4 For discussion of this speech as a whole, see D. M. MacDowell, *G&R* 30 (1983) 148–55.
- 5 This phrase, like some others in the speech, is probably a quotation from Euripides' *Telephos*. As A. H. Sommerstein says in the note on this line in his edition of *Akharnians*, “in its new context it means nothing at all: Spartans could not have confiscated smuggled goods (cf. 517–22) except on their own soil.”
- 6 Lines 541–3 imagine (fantastically) the Spartans following Athenian procedure. They are not evidence for the existence of a procedure called *phasis* in Sparta.
- 7 The manuscripts' reading  $\sigma\epsilon\ \phi\alpha\nu\tilde{\omega}$  does not fit the metre. Alternative emendations are  $\sigma\epsilon\ \phi\alpha\acute{\iota}\nu\omega$  (Bentley) and  $\phi\alpha\nu\tilde{\omega}\ \sigma\epsilon$  (Porson). Since the *prytaneis* are not present on stage, the future tense is preferable.
- 8 *IG* II<sup>2</sup> 1496.68–151, Harp. s.v.  $\delta\epsilon\rho\mu\alpha\tau\acute{\iota}\kappa\acute{\omicron}\nu$ .
- 9 I omit here one inscription of the fifth century, *IG* I<sup>3</sup> 46.5–7 (Meiggs and Lewis 49.1–3), and one of the early fourth century, *IG* II<sup>2</sup> 30a 6, which mention  $\phi\alpha\acute{\iota}\nu\epsilon\upsilon\upsilon$  but are too fragmentary to add to our understanding of the procedure. In *IG* I<sup>3</sup> 4B.24 the verb seems not to refer to prosecution.
- 10 The inscription is published and discussed by R. S. Stroud in *Hesperia* 43 (1974) 157–88. The text and translation which I give here are Stroud's. For a recent discussion of the inscription, with full bibliography, see G. Stumpf, *Jahrbuch für Numismatik and Geldgeschichte* 36 (1986) 23–40.
- 11 *IG* II<sup>2</sup> 43 (Tod 123) 35–46.
- 12 *IG* II<sup>2</sup> 1128 (Tod 162) 18–21, 28–9, 37. I conjecture that *phasis* was used if the ruddle was still present and visible so that it could be confiscated, *endeixis* if it had already gone.
- 13 *IG* II<sup>2</sup> 412, 7–8; cf. M. H. Hansen *Cl. et Med.* 33 (1981–2) 119–23.
- 14 Dem. 58.5–13, especially 12:  $\pi\lambda\epsilon\acute{\upsilon}\sigma\alpha\nu\tau\alpha\ \alpha\upsilon\tau\acute{\omicron}\nu\ \delta\iota\kappa\alpha\acute{\iota}\omega\varsigma\ \omicron\tilde{\iota}\ \pi\rho\omicron\sigma\tilde{\eta}\kappa\epsilon\nu$ . This case is the only one in which the *phasis* is known to have been delivered to the magistrates in writing. I conjecture that in the fifth century the denunciation may always have been oral.

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- 15 Dem. 34.37, 35.50: Lyk. *Leo*. 27.
- 16 Dem. 35.51.
- 17 *IG II<sup>2</sup>* 1631.169, 1632.189–90.
- 18 Hyp. *Eux.* 35. For the sense of ἐντὸς τῶν μέτρων see R. I. Hopper, *BSA* 48 (1953) 220–1. I presume (though there is no evidence on the point) that, if the lessee lost the case, the lease was taken away from him and resold, with half of the proceeds of the resale going to the prosecutor in the *phasis*. Harpocration, s.v. φάσις, could be referring to this kind of case when he says that *phasis* is used against a man who holds some public property without having bought it
- 19 On the procedure for leasing an orphan's estate see Harrison 1.105–7, 293–6. I have speculated about the wording of the law in *Symposion 1985* (1989) 257–62.
- 20 Isaios 11.6, 11.15, Harp. s.v. εἰσαγγελία.
- 21 H. J. Wolff in *Festschrift Hans Lewald* (Basel 1953) 207.
- 22 Dem. 22.27. The word φαίνειν is an emendation by Weil, but a scholium on this passage (84 Dilts), referring to φάσις, shows that the scholiast had φαίνειν in his copy of the text.
- 23 K. Clinton, *Hesperia* 49 (1980) 258–88. On this inscription see also G. Stumpf, *Tyche* 3 (1988) 223–28.
- 24 I acknowledge here with thanks the contribution made by the British Academy to the cost of my travel to the conference at Asilomar.

# The *oikos* in Athenian law

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## Definition

If you look up οἶκος in Liddell and Scott, you find the instances classified in three main divisions:<sup>1</sup> first those meaning a house, or sometimes other kinds of building; secondly ‘one’s household goods, substance’, for which I shall generally say ‘property’, though Liddell and Scott do not actually use that word; and thirdly ‘family’.<sup>2</sup> This threefold distinction is sound, and I shall adhere to it here. Admittedly one sometimes finds an instance where it is not easy to decide which sense the word has. Two of the senses, occasionally even all three, may overlap. But in the great majority of instances it is clear which sense is meant.

The sense of ‘house’, which may be the original one, is very familiar to us from Homer and other poetry, including tragedy, but it becomes less common in the fifth and fourth centuries. There is the man in Antiphon’s *First Tetralogy* who was asleep ἐν οἴκῳ which certainly means ‘in my house’ (Ant. 2d.8). But generally in Attic prose the word in this sense is restricted to a few standard phrases like κατ’ οἶκον and the locative form οἴκοι meaning ‘at home’. I shall not discuss here *oikos* in the sense ‘house’. The other two senses are both quite common in Attic. I will give an example of each. Lysias, recounting the wealth of various rich men, remarks that the *oikos* of Nikias was worth not less than 100 talents, and most of that was indoors (Lys. 19.47); there it is perfectly clear that the whole of Nikias’ property is meant, not just his house. On the other hand, when Themistokles wrote his famous letter to Artaxerxes and said ‘I have done more harm to your *oikos* than any other Greek, at the time when I resisted your father’s invasion’ (Thuc. 1.137.4), he means the family of Xerxes and Artaxerxes, not their house or property.<sup>3</sup>

Besides the three senses of *oikos* we should also consider the meaning of *oikia*. At the beginning of Xenophon’s *Oikonomikos*, Sokrates is trying to define the topic of his conversation with Kritoboulos.

Xen. *Oik.* 1.5. Οἶκος δὲ δὴ τί δοκεῖ ἡμῖν εἶναι; ἄρα ὅπερ οἰκία, ἢ καὶ ὅσα τις ἔξω τῆς οἰκίας κέκτηται, πάντα τοῦ οἴκου ταῦτά ἐστιν; Ἐμοὶ γοῦν, ἔφη ὁ Κριτόβουλος, δοκεῖ, καὶ εἰ μὴδ' ἐν τῇ αὐτῇ πόλει εἴη τῶ κεκτημένῳ, πάντα τοῦ οἴκου εἶναι ὅσα τις κέκτηται.

What do we think an *oikos* is? Is it the same thing as an *oikia*? Or are the things which a person owns outside the *oikia* also all part of the *oikos*? 'In my opinion' said Kritoboulos, 'even if they are not even in the same city as the owner, all the things that a person owns are part of the *oikos*.'

That appears to give a clear distinction: *oikos* means 'property' and *oikia* means 'house'. It is certainly true that in Attic writers of the fifth and fourth centuries a house is much more often called *oikia* than *oikos*. Yet it is also possible for *oikia* to mean 'property' or 'family'. Consider the case of Euktemon, who had the misfortune to fall in love at an advanced age.

Isai. 6.18. ἐπὶ γήρῳ δὲ αὐτῷ συμφορὰ ἐγένετο οὐ μικρά, ἢ ἐκείνου πᾶσαν τὴν οἰκίαν ἐλυμήνατο καὶ χρήματα πολλὰ διώλεσε.

But in old age a great calamity befell him, which ruined the man's whole *oikia* and wasted a large amount of money.

This does not mean that the femme fatale damaged the building; it means that Euktemon spent money on her. So there *oikia* means the whole of a man's property. Then consider this passage recounting the marriage of a rich man of Siphnos named Thrasyllus.

Isok. 19.7. καταπλεύσας δ' εἰς Σίφνον ἔγημεν ἀδελφὴν τοῦ πατρὸς τοῦμοῦ, πλούτῳ μὲν αὐτὸς πρῶτος ὢν τῶν πολιτῶν, γένει δὲ καὶ τοῖς ἄλλοις ἀξιώμασιν εἰδὼς τὴν ἡμετέραν οἰκίαν προέχουσαν.

He sailed back to Siphnos and married my father's sister; he himself was foremost of the citizens in wealth, and he knew that our *oikia* was outstanding in birth and other distinctions.

This is the marriage of a *nouveau riche* into the aristocracy, and the *oikia* is the aristocratic family itself, not its house or its property; it is evident that property was just what the bride's family was short of. So we see that even in lawcourt speeches by Attic writers *oikia* does not invariably mean 'house'; sometimes it means 'family', and sometimes it means 'property'. In Aristotle's *Politics* the distinction between *oikia* and *oikos* breaks down altogether, and he uses both words indiscriminately in his account of the nuclear family (Arist. *Pol.* 1252b9–16). But in this paper I am not concerned with Aristotle but with Athenian law. In legal contexts it is more usual for *oikia* to mean 'house' and for *oikos* to mean either 'property' or 'family', and so I shall observe that distinction.

## Property

When *oikos* means ‘property’, it means the sum total of goods belonging to an individual man, including land, buildings, crops, animals, slaves, furniture, clothes, money, credits owed to him by debtors, and anything else. Legal disputes about an *oikos* are disputes about the ownership of this totality, not about some particular item. A question about the ownership of a man’s entire property normally arises only at his death, when it must inevitably pass to someone else. In such a context there is no significant difference between the words *oikos* and *kleros*, meaning ‘estate’, and we sometimes find the two words used interchangeably (e.g. Isai. 5.14). When a man dies, his *oikos*, in this sense, passes to his heir and becomes part of the heir’s *oikos*. A man who already has some property and then inherits someone else’s is not said to have two *oikoi*; rather, his *oikos* has become larger.

It has sometimes been thought that an *oikos* belonged not to one man but to a family. But, at least in classical Athens, that is not correct. The error arises from confusion of two senses of the word. *Oikos* may itself mean ‘family’, but when it means ‘property’ it refers to the property owned by one individual. The only cases which may be regarded as exceptions to that rule are those in which property seems to be owned by two brothers, and even then we must be careful to distinguish adult brothers from those who are still minors. In the speech *Against Leokhares* we read of two adult brothers named Meidylides and Arkhiades.

Dem. 44.10. δὲ ὁ Ἀρχιάδης οὐκ ἔφη προαιρεῖσθαι γαμεῖν, ἀλλὰ καὶ τὴν οὐσίαν ἀνέμητον διὰ ταῦτα συγχωρήσας εἶναι ᾧκει καθ’ αὐτὸν ἐν τῇ Σαλαμῖνι,

Arkhiades said that he did not choose to marry. For this reason he even agreed that the property should be undivided, and lived on his own in Salamis.

The point here is that Arkhiades would have no children. Only Meidylides would have children to inherit in the next generation the property (probably a farm) which the father of the two brothers left, and Arkhiades considered it more practical to leave that property undivided meanwhile instead of splitting it up. But the word used for the undivided property is οὐσία. That does not mean that the two brothers had a joint *oikos*. Each had his own *oikos*; that is shown, not so much by the verb ᾧκει (which may mean merely that Arkhiades lived in a separate house), but by a reference later in the speech to the *oikos* of Arkhiades, in a context in which it clearly means ‘property’, not ‘house’ or ‘family’ (Dem. 44.27).

So there seems to be no known instance of an *oikos* held jointly by two adult brothers, but there are instances of an *oikos* held jointly by minors. When a father died leaving more than one son, equal division of his *oikos* between them was the rule. But, if the sons were still minors, the division could be postponed until they came of age. Thus it is possible to speak of two or more orphaned children as being the owners of one *oikos* (Isai. 2.9, 11.45), and those are perhaps the only circumstances in which an *oikos*, in the sense of property, can be said to belong to more than one person.

In this connection we sometimes hear of a leasing arrangement (μίσθωσις οἴκου). Orphans (I use this word in the sense of the Greek ὀρφανός, meaning a minor whose father, but not necessarily mother, had died) had guardians. The guardian (or guardians) had the responsibility of looking after the *oikos* of the ward (or wards). This meant putting it to use: land had to be cultivated, money had to be invested or lent on interest, and so on. The income from these activities was available to pay for the ward's maintenance, and any surplus income had to be handed over to the ward with the whole estate when he came of age. This could give rise to disputes about the amount of the income, as in the well-known case of Demosthenes and his guardian Aphobos. To preclude such disputes it was possible to arrange for the *oikos* to be leased. The lease for the years until the ward came of age was put up for auction and sold to the highest bidder. There could then be no dispute about the amount of the income of the orphan's *oikos*, since it was the amount which the lessee had agreed to pay.

It is not necessary here to go into details of the leasing procedure.<sup>4</sup> What is of concern here is the nature of the *oikos* which was leased. Was it the whole of the orphan's property, or only part of it? In the few cases for which details are given in the surviving speeches, the property under consideration seems not to be land or buildings, but money or other movable property (ἀφανῆς οὐσία); and this led to the suggestion by Paoli that only movable property of an orphan was leased, not real estate.<sup>5</sup> The suggestion can be countered by saying that it may be just an accident that we do not know of a case in which real estate was leased, or more plausibly by saying that real estate was more easily defined and controlled and so was less likely to be involved in the kinds of dispute for which the surviving speeches were written. Finley affirmed strongly that what was leased was always the estate as a whole;<sup>6</sup> but Wolff supported Paoli's suggestion by pointing to a passage which refers to the leasing of only part of the property.<sup>7</sup> As far as I know, no one has answered Wolff's argument, and I should like to take this opportunity of doing so.

This takes us back again to the family of old Euktemon in the sixth speech of Isaios. By his first wife (or, as the speaker of the extant speech maintains, his only wife) he had three sons and two daughters. The three sons all died before him without issue, but the two daughters were married and had children. The property which had belonged to the three sons reverted to Euktemon while he lived,<sup>8</sup> and on his death would pass to the children of his daughters. However, an attempt was made to prevent that course of events by bringing forward two boys who were allegedly younger sons of Euktemon. Whether Euktemon had actually married their mother was later disputed, and if they were illegitimate they were not entitled to automatic inheritance of his property; but two men acting on their behalf (Androkles and Antidoros) tried to contrive that they would inherit all the same, by using the legal device of posthumous adoption. The plan was that the two boys would be registered as the adopted sons of two of the deceased sons of Euktemon (Philoktemon and Ergamenes); this would enable them to inherit all Euktemon's property when he died, because as sons of Euktemon's sons they would take precedence over the children of Euktemon's daughters.



Isal. 6.35–6. Ὀρῶντες γὰρ τὸν Εὐκτῆμονα κομιδῆ ἀπειρηκότα ὑπὸ γήρωσ καὶ οὐδ' <ἐκ> τῆς κλίνης ἀνίστασθαι δυνάμενον, ἐσκόπουν ὅπως καὶ τελευτήσαντος ἐκείνου δι' αὐτῶν ἔσοιτο ἡ οὐσία. Καὶ τί ποιούσιν; Ἀπογράφουσι τὸ παῖδε τούτῳ πρὸς τὸν ἄρχοντα ὡς εἰσποιήτω τοῖς τοῦ Εὐκτῆμονος ὑέσι τοῖς τετελευτηκόσιν, ἐπιγράψαντες σφᾶς αὐτοὺς ἐπιτρόπους, καὶ μισθοῦν ἐκέλευον τὸν ἄρχοντα τοὺς οἴκους ὡς ὀρφανῶν ὄντων, ὅπως ἐπὶ τοῖς τούτων ὀνόμασι τὰ μὲν μισθωθεῖη τῆς οὐσίας, τὰ δὲ ἀποτιμήματα κατασταθεῖη καὶ ὅροι τεθεῖεν ζῶντος ἔτι τοῦ Εὐκτῆμονος, μισθωταὶ δὲ αὐτοὶ γενόμενοι τὰς προσόδους λαμβάνοιεν.

Seeing that Euktemon was very weak from old age and not even able to get up from his bed, they considered how his property could still be kept in their hands after his death. And what did they do? They registered these two boys before the arkhon as adopted sons to the deceased sons of Euktemon, putting themselves down as guardians; and they told the arkhon to put up the *oikoi* for lease, on the ground that the boys were orphans. Their purpose was that, in the names of these boys, part of the property might be leased and part of it established as securities [or the securities established] and marker-stones put in position while Euktemon was still alive, and that they themselves should become the lessees and get the income.

Wolff takes the words τὰ μὲν . . . τὰ δὲ . . . to mean that part of the property was to be leased and another part of it (the real property) was to be provided as ἀποτιμήματα. The implication is that the part of the orphan's property which was to be provided as ἀποτιμήματα was not to be leased, and μίσθωσις οἴκου therefore did not mean lease of the whole property. It seems to follow (though Wolff does not say this explicitly) that *oikos* does not mean the whole of a person's property, but only part of it. There does not seem to be any evidence which contradicts Wolff's view explicitly. Yet it has two strange features which make it difficult to accept. The first is the use of the term ἀποτίμημα. This is a very complex subject, to which I can make only brief reference here. The word means literally 'valuation', and it is normally taken as referring to a piece of property which was offered as security for a loan or lease or other item (most often a dowry) which would, or might, have to be repaid at a later date; this property was valued to check that it was at least equal in value to the item for which it was to serve as security, and if it consisted of land (as it usually did) ὅροι or markers were placed on it to show that it was serving this purpose and could not be disposed of otherwise.<sup>9</sup> Wolff's view, however, requires us to suppose that, when part of an orphan's property was leased, it was not some item of the lessee's property but the rest of the orphan's own property which was called ἀποτιμήματα and had ὅροι affixed to it. But that would not have been a security, and it is not clear what purpose the valuation and the ὅροι would have served.<sup>10</sup> The second difficulty about Wolff's view is the use of the term *oikos*. I have already said that *oikos* commonly means a man's property, not just his house, but Wolff's view that μίσθωσις οἴκου meant lease of movable property seems to mean that the *oikos* actually

excluded houses. It is hard to believe that an orphan's house was not even a part of his *oikos*.

It is therefore worth-while to consider whether a different interpretation of Isai. 6.36 is possible, to avoid these strange consequences. I wish to suggest different interpretations both of τὰ μὲν . . . τὰ δὲ . . . In the case of τὰ δὲ . . ., I do not think it is essential to take this as a pronoun, understanding τῆς οὐσίας, in the sense, 'and the other part of the property'. Another possibility is to take it as the article with ἀποτιμήματα: 'so that part of the property might be leased and the securities [sc. for that part] might be established and markers might be placed while Euktemon was still alive'. If we take it this way, the whole of this clause refers to the leasing of property and there is no mention in these words of the part of the property which was not to be leased. This δέ is a simple connective, not responding to μὲν, and although τὰ μὲν . . . leads one to expect τὰ δὲ τῆς οὐσίας later, the sentence pursues a different path and in the end Isaios never supplies a responding δέ. Nevertheless τὰ μὲν . . . τῆς οὐσίας certainly does mean 'part of the property'. What part?

I suggest that the explanation is that part of the property had belonged to the sons of Euktemon and part had always belonged to Euktemon himself.<sup>11</sup> At the time of the incident described in Isai. 6.36 Euktemon's sons had died without issue, and their property had passed into the hands of Euktemon. In practical terms this meant that Androkles and Antidoros controlled it, because Euktemon was aged and bedridden.<sup>12</sup> Their aim was to continue controlling, after Euktemon's death, all the property which had belonged to either Euktemon or his sons.<sup>13</sup> But the device of registering the two boys as posthumously adopted sons of the sons of Euktemon, while Euktemon was still alive, would only affect property which had belonged to the sons of Euktemon. Property which had belonged to Euktemon himself all along could not be legally claimed by anyone else until after his death.<sup>14</sup> The meaning is, therefore, that Androkles and Antidoros intended that part of the property (namely, all that part which had belonged to the sons of Euktemon) should be legally transferred to the two boys now, and should be leased as property of orphans. If that were accepted by the arkhon and his court, the rest of the property (namely, the part that had always belonged to Euktemon himself) would be transferred without question to the two boys on Euktemon's death; and Androkles and Antidoros would then control it all.

I conclude that τὰ μὲν . . . τῆς οὐσίας may mean all the property which was declared to belong to the two boys at that time. If so, the passage does not adequately support the view that the leasing of an *oikos* might be the leasing of only part of an orphan's property; and it is not necessary to abandon the view that the term *oikos*, when referring to a man's property, always means the whole of it.

## Family

I turn now to *oikos* in the sense of 'family', referring to persons rather than property. How was it defined? By what criterion was it decided whether a person was a member of a particular *oikos*? If we judged by the word itself, we might suppose

that an *oikos* consisted of all the people living in a particular house. That is indeed what Aristotle seems to mean when he discusses an *oikos* or an *oikia*. He defines an *oikos* as a ‘natural association for everyday purposes’ (*Pol.* 1252b12–14), and he regards it as including not only a husband, wife, and children but also slaves (*Pol.* 1 253b4–7). But it is not normal Attic usage to regard slaves as members of the *oikos* in this sense. Normally the term *oikos*, when it refers to persons, refers to the line of descent from father to son through successive generations, as in this account of the ancestry of Makartatos.

Dem. 43.48. . . . Μακάρτατος, τίνος ὦν πατρός; Θεοπόμπου . . . ὁ δὲ Θεόπομπος τίνος ἦν πατρός; Χαριδήμου. ὁ δὲ Χαρίδημος τίνος; Στρατίου. ὁ δὲ Στρατίος τίνος; Βουσέλου. οὐτοσί, ὧ ἄνδρες δικασταί, ἐστὶν ὁ Στρατίου οἶκος, ἐνὸς τῶν Βουσέλου υἱέων, καὶ ἔκγονοι οὗτοί εἰσιν Στρατίου, οὓς ὑμεῖς ἀκηκόατε·

Makartatos. Who was his father? Theopompos . . . Who was Theopompos’ father? Kharidemos. Who was Kharidemos’ father? Stratios. Who was Stratios’ father? Bouselos. That, men of the jury, is the *oikos* of Stratios, one of the sons of Bouselos; and those men, whose names I have given you, are descendants of Stratios.

Here the *oikos* seems to be defined as the descendants through the male line. In many extant speeches there are expressions of concern that an *oikos* may be ‘deserted’ or ‘left empty’ (ἐξερημωθῆναι), which means that a man has died without leaving a son or grandson to succeed him.<sup>15</sup> The reason for this concern was at least partly religious, as two passages of Isaios show.

Isae. 2.10. Μετὰ δὲ ταῦτα χρόνου διαγενομένου ἐσκόπει ὁ Μενεκλῆς ὅπως μὴ ἔσοιτο ἄπαις, ἀλλ’ ἔσοιτο αὐτῷ ὅστις ζῶντά τε γηροτροφῆσοι καὶ τελευτήσαντα θάψοι αὐτὸν καὶ εἰς τὸν ἔπειτα χρόνον τὰ νομιζόμενα αὐτῷ ποιήσοι.

After this, when time had passed, Menekles began to consider how he might avoid being childless, and might have someone who during his lifetime would support him in his old age, and after his death would bury him and do what was customary for him in the future.

Isai. 7.30. Πάντες γὰρ οἱ τελευτήσειν μέλλοντες πρόνοιαν ποιῶνται σφῶν αὐτῶν, ὅπως μὴ ἐξερημώσουσι τοὺς σφετέρους αὐτῶν οἶκους, ἀλλ’ ἔσται τις [καὶ] ὁ ἐναγιῶν καὶ πάντα τὰ νομιζόμενα αὐτοῖς ποιήσων· δι’ ὃ κὰν ἄπαιδες τελευτήσωσιν, ἀλλ’ οὖν ποιησάμενοι καταλείπουσι.

All who are approaching death take thought for themselves, to make sure that they do not leave their *oikoi* empty and that there will be someone to perform sacrifices and all the customary rituals for them. For that reason, even if they die childless, they at any rate adopt sons and leave them behind.

These passages do not mean that there was concern that a house should not be left unoccupied; we are told explicitly that Menekles did not have a house (Isai. 2.27). Rather, the concern is for the continuation of the family. A man who had no legitimate son of his own could achieve this aim by adopting one, or this could be arranged for him by his relatives after his death. An adopted son was legally transferred to the *oikos* of his adopter and ceased to be a member of his original *oikos*; but he could return to his original *oikos* later, if he so wished, provided that he left a son of his own in the *oikos* of his adopter to ensure its continuation. I quote two passages to illustrate these rules.<sup>16</sup>

Isai. 9.2. Εἰσποίητος δ' ἦν ὁ πατήρ ὁ Κλέωνος εἰς ἄλλον οἶκον καὶ οὔτοι ἔτι εἰσὶν ἐν ἐκείνῳ τῷ οἴκῳ, ὥστε γένει μὲν διὰ τὸν νόμον οὐδὲν προσήκουσιν Ἀστυφίλῳ.

Kleon's father was adopted into another *oikos*, and they are still in that *oikos*, so that legally they have no family relationship to Astyphilos.

Dem. 44.21. ὁ γὰρ Λεωκράτης ὁ εἰσποιητὸς γενόμενος τῷ Ἀρχιάδῃ, ἐγκαταλιπὼν τουτονὶ Λεώστρατον ἐν τῷ οἴκῳ υἱὸν γνήσιον, ἐπανῆλθεν αὐτὸς εἰς τοὺς Ἐλευσινίους, ὅθεν ἦν τὸ ἐξ ἀρχῆς.

Leokrates, who had been made the adoptive son of Arkhiades, left in the *oikos* this man Leostratos, who was a legitimate son, and himself returned to the Eleusinioi, from whom he originally came.

That was the situation of the *oikos* which was in danger of dying out because there was no son. The converse situation was that of the *oikos* in which there was more than one son. Here the locus classicus is the account of the family of Bouselos. Bouselos had five sons; each received a fair share of their father's property, and they all married and had children.

Dem. 43.19. καὶ ἐγένοντο πέντε οἴκοι ἐκ τοῦ Βουσέλου οἴκου ἐνὸς ὄντος, καὶ χωρὶς ἕκαστος ᾧκει τὸν ἑαυτοῦ ἔχων.

And out of the one *oikos* of Bouselos five *oikoi* came into being, and each man lived separately with his own *oikos*.

At what point in time was the one *oikos* transmuted into five? The sentence just quoted might be taken to mean that it was when each son began to live in a separate house. But I do not think it necessarily means that; it could mean merely that they began living in separate houses some time after the five *oikoi* came into existence. The possibilities remain open that the time when the five *oikoi* were created was when Bouselos died, or when the property was shared out, or when each son came of age. It is also not clear whether one of the five (perhaps that of the eldest son) was regarded as the *oikos* of Bouselos continuing into the next generation while the other four were new *oikoi*. These questions are of legal importance if, but only if, membership of a particular *oikos* had some legal significance.

## Rights and duties of relatives

What legal significance, then, did membership of an *oikos* have? What rights or duties arose from belonging to the same *oikos* as another person? Three legal topics need to be considered here: political rights, death, and inheritance.<sup>17</sup> It will be convenient to consider these in reverse order, so as to take first the topic about which we have most information.

The Athenian law of inheritance is quite well known, because it is the subject of a fairly large number of extant speeches, especially those of Isaios, and I need not go into much detail here.<sup>18</sup> When a man died, his property normally passed to his children or grandchildren, or to an adopted son. If none of these existed, the nearest relatives could claim. The circle of relatives entitled to claim was known as the ἀγχιστεία. The law defining this group and the order of precedence within it is quoted in Dem. 43.51. Some words are lost from the text there, but it is fairly clear that the order of precedence was: brother (or half-brother by the same father), and his descendants; sister (or half-sister by the same father), and her descendants; other relatives on the father's side as far as children of cousins' (μέχρι ἀνεψιῶν παῖδες); half-brother (by the same mother), and his descendants; half-sister (by the same mother), and her descendants; other relatives on the mother's side 'as far as children of cousins'. All this is well known, but what is worth noticing on the present occasion is that this law nowhere uses the term *oikos*. It does use the term ἀγχιστεία, but that denotes a much wider group. The ἀγχιστεία included such relatives as uncles and cousins, who were not members of the *oikos*. Admittedly the order of precedence is constructed in such a way that relatives who were members of the same *oikos* as the deceased would almost always be preferred to relatives who were not. A few exceptions are conceivable: for example, the deceased's daughter's son, who would be in a different *oikos*, would take precedence over the deceased's unmarried sister, who would be in the same *oikos*. Such cases were probably rare; but even if they were very rare indeed, the fact remains that the text of the law of inheritance does not seem to attach any significance to crossing the boundary of the *oikos*.

Yet very great significance is attached to that in the speech in which the law is quoted (Dem. 43). This is the speech *Against Makartatos*, one of the two surviving speeches in the notoriously long dispute about the estate of Hagnias.<sup>19</sup> Sositheos is speaking on behalf of his wife and their young son Euboulides. They had used the device of posthumous adoption to register the boy as the adopted son of his wife's deceased father, also named Euboulides; and they claimed that the boy should inherit the estate of Hagnias, on the ground that he now belonged to the same *oikos* as Hagnias whereas the rival claimant, Makartatos, did not. I have already quoted his account of the ancestry of Makartatos, tracing the *oikos* of Stratios up through the generations from son to father (Dem. 43.48). But now look at his account of the *oikos* of Hagnias.

Dem. 43.49–50. . . . Εὐβουλίδης. τίνος ὦν πατρός; Εὐβουλίδου τοῦ Ἄγνιου ἀνεψιοῦ. . . . ὁ Εὐβουλίδης δὲ τίνος ἦν πατρός; Φιλάγρου τοῦ ἀνεψιοῦ τοῦ

Ἀγνίου. μητρὸς δὲ τίνος; Φυλομάχης τῆς τηθίδος τῆς Ἀγνίου. ὁ δ' Ἀγνίας τίνος ἦν υἱός; Πολέμωνος. ὁ δὲ Πολέμων τίνος; Ἀγνίου. ὁ δ' Ἀγνίας τίνος; Βουσέλου. οὐτοσί ἕτερος οἶκός ἐστιν ὁ Ἀγνίου, ἐνὸς τῶν Βουσέλου υἱῶν

Euboulides. Who was his father? Euboulides the cousin of Hagnias . . . Who was Euboulides' father? Philagros. Who was his mother? Phylomakhe the aunt of Hagnias. Who was the father of Hagnias? Polemon. Who was the father of Polemon? Hagnias. Who was the father of Hagnias? Bouselos. That is a second *oikos*, the *oikos* of Hagnias, one of the sons of Bouselos.

Even if this catalogue is recited at high speed, it is hardly possible to overlook the fact that the line of descent is traced through a woman, Phylomakhe, who was merely an aunt of the Hagnias whose estate was being claimed. The argument used here is unparalleled. Other evidence (e.g. Isai. 3.8) indicates that when a woman was married she was transferred from the *oikos* of her father to the *oikos* of her husband. Thus Phylomakhe and her descendants must surely have belonged to the *oikos* of her husband, Philagros.<sup>20</sup> There is no other evidence that it was considered acceptable to trace an *oikos* through a female line, and thus the argument used by Sositheos is probably wrong. He was desperately trying to find some way of maintaining that the young Euboulides was more closely related to Hagnias than Makartatos was, and he thought that a claim to membership of the same *oikos* would be effective with the jury. Presumably he did have some hope that the jury would believe it. This suggests that, though the normal rule was to trace an *oikos* through the male line, there was no law actually requiring it to be defined in that way.

So the conclusion which I draw from the evidence about inheritance is that membership of an ἀγχιστεία was legally significant, but membership of an *oikos* was not significant legally, but only rhetorically, and consequently there was no need for a legal definition of an *oikos*. I can now deal rather more quickly with laws concerning death, which seem to point to the same conclusion. Two laws are relevant, both quoted by Sositheos in the speech *Against Makartatos*. One is the well-known law about homicide, attributed to Drakon and also partly preserved in an inscription, which specifies the relatives who are to be involved in prosecuting or in pardoning a killer. The other is a law about funerals, permitting only certain categories of women to attend.

*IG* i<sup>3</sup> 104.13–16, 20–23 (cf. Dem. 43.57). [αἰδέσασθαι δ' ἑὰμ μὲν πατέρ]ρ ἔῃ ἔ ἀδελφὸ[ς] ἔ ἡυῆς, ἡάπαντ[α]ς, ἔ τὸν κο[λύοντα κρατῆν· ἑὰν δὲ μὲ] ἡοῦτοι ὄσι, μέχρ' ἀνεφ[σι]ότετος καὶ [ἀνεφσιῶ, ἑὰν ἡάπαντες αἰδέσ]ασθαι ἑθέλοσι, τὸν κο[λύοντα [κ]ρα[τῆν· . . . προειπῆν δ]ὲ τοῖ κτέγαν[τι ἐν ἄ]γορ[αῖ μέχρ' ἀνεφσιότετος καὶ ἀνεφσιῶ· συνδιόκ]εν δὲ [κ]ἀνεφσ[ιὸς καὶ ἀνεφσιῶν παῖδας καὶ γαμβρὸς καὶ πενθερὸς καὶ φρ[ά]τ[ο]<ρ>[ας

Pardon is to be granted, if there is a father or brother or sons, by all, or whoever opposes is to prevail; and if these do not exist, by relatives as far as cousinhood and cousin, if they are all willing to grant pardon, or whoever opposes is to

prevail . . . Proclamation is to be made to the killer in the Agora by relatives as far as cousinhood and cousin; the prosecution is to be shared by cousins, sons of cousins, sons-in-law, fathers-in-law, and members of the phratry.

Law quoted in Dem. 43.62. γυναῖκα δὲ μὴ ἐξεῖναι εἰσιέναι εἰς τὰ τοῦ ἀποθανόντος μηδ' ἀκολουθεῖν ἀποθανόντι, ὅταν εἰς τὰ σήματα ἄγῃται, ἐντὸς ἐξήκοντ' ἐτῶν γεγονυῖαν, πλὴν ὅσαι ἐντὸς ἀνεψιαδῶν εἰσι· μηδ' εἰς τὰ τοῦ ἀποθανόντος εἰσιέναι, ἐπειδὴν ἐξενεχθῆ ὁ νέκυς, γυναῖκα μηδεμίαν πλὴν ὅσαι ἐντὸς ἀνεψιαδῶν εἰσίν.

It is not to be lawful for a woman to enter the house of the deceased, or to follow a deceased when he is taken to the cemetery, if she is under sixty years of age, except those women who are within the degree of cousins' children; nor for any woman to enter the house of the deceased after the corpse is carried out, except those women who are within the degree of cousins' children.

There has been a good deal of modern discussion about the exact interpretation of μέχρι ἀνεπιότητος καὶ ἀνεπιῶ in the homicide law. Does it mean the same as ἐντὸς ἀνεψιαδῶν in the funeral law and μέχρι ἀνεπιῶν παίδων in the inheritance law? I am inclined to think that it probably does, and that all three phrases are intended to define the same degree of relationship, the ἀγχιστεία, 'as far as children of cousins'; but it has recently been argued that the relatives defined in the homicide law are a smaller circle (as far as first cousins once removed) than the ἀγχιστεία (as far as second cousins),<sup>21</sup> and the definition remains uncertain. What is certain, however, is that all these phrases refer to a larger circle than the *oikos*. They all include at least first cousins, who would not be members of the same *oikos*. Even when the homicide law defines a smaller group of relatives who have a prior right to grant pardon to a killer, it specifies 'father or brother or sons'. That is still not a definition of the *oikos*. A deceased man's father or sons would probably belong to the same *oikos* as himself, but his brother, if adult, would probably not (cf. Dem. 43.19, already quoted). The very fact that the brother is sandwiched between the father and the sons in this list confirms that the author of the law (Drakon, if it was he) was not thinking about membership of the *oikos* when he drafted it.

Is there then no Athenian legal text which mentions the *oikos* in the sense of 'family'? Sositheos, in the speech *Against Makartatos*, has obviously made an exhaustive search for such texts, and he has found only one.

Law quoted in Dem. 43.75. Ὁ ἄρχων ἐπιμελείσθω τῶν ὀρφανῶν καὶ τῶν ἐπικλήρων καὶ τῶν οἴκων τῶν ἐξερημουμένων καὶ τῶν γυναικῶν, ὅσαι μένουσιν ἐν τοῖς οἴκοις τῶν ἀνδρῶν τῶν τεθνηκότων φάσκουσαι κρεῖν.

The arkhon is to care for orphans, *epikleroi*, *oikoi* which are left empty, and those women who remain in the *oikoi* of their husbands who have died, saying that they are pregnant.

Here the word *oikos* occurs twice in one sentence, and the participle ἐξερημουμένων naturally reminds us of the passages in the orators where the same verb is used to express concern about a man's *oikos* dying out because he leaves no son. We may therefore be tempted to think that here we do have a clear instance of *oikos* as a legal term for 'family', and that it must have had a precise legal definition, because, if it had not been clear who counted as a member of the *oikos*, it would not have been clear when the arkhon was required to act. But here some caution is needed. The law is undated, and it is possible, or even probable, that it is one of the early laws defining the functions of the arkhon, to be attributed perhaps to Solon; we must therefore not take for granted that its use of terminology is the same as that of the orators.<sup>22</sup> When Isaios says that an *oikos* is 'left empty', he means that a family has no male member left alive. But this law cannot mean that the arkhon is to care for non-existent sons. Does it mean, by the τῶν οἴκων τῶν ἐξερημουμένων, that the arkhon is to care for females left with no father or husband? No, because unmarried daughters have already been covered by the previous words τῶν ὀρφανῶν καὶ ἐπικλήρων, and if the phrase referred to the widows of deceased men there would be no point in adding τῶν γυναικῶν ὅσαι . . . as a further category. Thus there seem to be no persons to whom τῶν οἴκων refers. I believe therefore that τῶν οἴκων in this law does not mean 'families'; it means 'properties' left with no man in control. Or possibly it may even have the more primitive sense of 'houses' left with no male inhabitant; certainly the sense of 'houses' seems quite appropriate for the reference to pregnant wives who remain ἐν τοῖς οἴκοις. Thus this text provides no adequate evidence that *oikos* is a legal term for 'family'.

One other legal function of the *oikos* has been postulated by some modern writers, who make it a fundamental part of the political constitution. This view also was held by Wolff: 'the πόλις was an aggregation of οἴκοι'.<sup>23</sup> He seems to have meant that the citizens of Athens were the heads of all the families. Each family would send, as it were, one representative to meetings of the Ekklesia: the heir replaced his predecessor in representing the "house" within the political organization'.<sup>24</sup> But there is virtually no evidence to support this view, and a great deal of evidence against it. It is simply not true that a son did not succeed to political rights until his father was dead or incapacitated. Every young man entitled to citizenship was enrolled as a citizen at the age of eighteen, and this meant that his name was entered on the ληξιαρχικὸν γραμματεῖον, the lists of those who could enter the lottery for offices (e.g. Lykourg. Leokr. 76). There are known instances of men who held office while their fathers were still alive and active (e.g. Dem. 21.178). The only passage I have found which might be taken as meaning that a political function belonged to an *oikos* rather than to an individual is one which mentions an οἶκον τριηραρχοῦντα (Isai. 7.32, cf. 42). But since this comes immediately after a reference to χρήματα, it should not be taken as meaning a family which provided a trierarch, but property large enough for the owner to serve as a trierarch. There is, then, no evidence that the *oikos* as a family unit had any political function.



## Conclusion

So my conclusion is that in the texts of Athenian laws *oikos* means ‘property’ or ‘house’. These were the older senses of the word. Probably *oikos* did not begin to be used to refer to persons before the fifth century. (Liddell and Scott give no instances of this sense earlier than Herodotos and the letter attributed to Themistokles in Thuc. 1.137.4.) Athenian laws about family matters were mostly formulated in an earlier period, perhaps by Drakon and Solon. Those laws were certainly concerned with relationships between members of a family, as the laws about inheritance and homicide show, but there is no evidence that a family unit called *oikos* played any part in them. By the late fifth and fourth centuries, when the extant forensic speeches were composed, the word *oikos* had acquired the sense of ‘family’, and so the orators used it in that sense in the course of their arguments. But it had no legal definition or significance in that sense; and the attempt made by Sositheos, in the speech *Against Makartatos*, to maintain that this concept is fundamental to the Athenian law of inheritance, is tendentious and unconvincing. Athenian law did not recognise rights of families, but rights of individual persons.

## Notes

- 1 I discussed the *oikos* briefly in *The Law in Classical Athens* (London, 1978), pp. 84–6. I now consider that discussion unsatisfactory, because I failed there to distinguish the different senses of the word. On the concept in general see W. K. Lacey, *The Family in Classical Greece* (London, 1968); E. Karabelias, ‘Le contenu de l’*oikos* en droit grec ancien’, in *Μνήμη Γεωργίου Α. Πετροπούλου* (ed. P. D. Dimakis, Athens, 1984), i. 441–54.
- 2 I leave aside here a fourth division, which is given only in the supplement to *LSJ* (1968) and seems to occur in no surviving Attic text except *IG ii*<sup>2</sup> 1237: there the *oikos* of the Dekeleians is either the whole or some part of a phratry.
- 3 I do not know whether Thucydides here gives us a literal translation from the Persian, or merely the substance of the letter in his own words. But in either case it is clear that he expects his Athenian readers at the end of the fifth century to understand *oikos* as meaning persons, not property.
- 4 See A. R. W. Harrison, *The Law of Athens* i (Oxford, 1968), pp. 105–7, 293 6. U. E. Paoli, *Studi di diritto attico* (Firenze, 1930), pp. 166–9.
- 5 U. E. Paoli, *Studi di diritto attico*. (Firenze, 1930), pp. 166–9.
- 6 M. I. Finley, *Studies in Land and Credit in Ancient Athens* (New Brunswick, NJ, 1951), pp. 40–1.
- 7 H. J. Wolff in *Festschrift Hans Lewald* (Basel, 1953), p. 205 n. 23, and in *Festschrift für Ernst Rabel ii* (Tübingen, 1954), pp. 301–3, 320–2.
- 8 It is a disputed question whether, if a man died leaving no children and his father was still alive, his father was his heir. Dem. 44.33 implies that he was. See Harrison, *The Law of Athens* i. 138–41 for the evidence and references to other discussions; Harrison himself evidently could not make up his mind, and his presentation is not self-consistent. But the problem hardly affects the present discussion, since, even if the view be taken that Euktemon was not the legal heir of his sons, it is clear that their property was in his hands and had not yet been claimed by any other relative at the time when the two boys were put forward for posthumous adoption.
- 9 On ὄροι and ἀποτιμήματα in general see J. V. A. Fine, *Horoi* (*Hesperia* suppl. 9, 1951); Finley, *Studies in Land and Credit in Ancient Athens*; Harrison, *The Law of Athens* i. 253–304. Cf. Harrison, *The Law of Athens* i. 295 n. 1.

- 10 Cf. Harrison, *The Law of Athens* i. 295 n. 1.
- 11 W. Wyse, *The Speeches of Isaeus* (Cambridge, 1904), p. 484 asserts that Euktemon's son Philoktemon possessed no separate estate of his own. It is certainly possible that Euktemon and Philoktemon lived together and controlled their property jointly; but in principle each of them must have been the owner of substantial property, since both performed liturgies (Isai. 6.38). We are not told how Philoktemon acquired his wealth; it may have been by trade, manufacturing, or other activities.
- 12 Isai. 6.35 καὶ τελευτήσαντος ἐκείνου implies that Androkles and Antidoros already controlled the property before Euktemon's death. The reason why they were able to do so is probably that they were friends of the woman with whom Euktemon was living.
- 13 Cf. Isai. 6.37 εἰ δ' ἔλαθεν, ἀπολώλει ἂν ἅπανα ἡ οὐσία.
- 14 Wolff, in *Festschrift für E. Rabel*, ii. 302, writes as if the boys were put forward as κληρονόμοι of Euktemon while Euktemon was alive. But the speaker does not allege that Androkles and Antidoros pretended that Euktemon was dead.
- 15 Cf. D. Asheri, 'L'οἶκος ἔρημος nel diritto successorio attico', *Archivio Giuridico* 28 (1960), 7–24.
- 16 For a more detailed account of the law of adoption see Harrison, *The Law of Athens* i. 82–96.
- 17 It no longer seems necessary to discuss Paoli's strange theory that the *oikos* had a law of its own, separate from the law of Athens. It is rightly rejected by H. J. Wolff, *Tijdschrift voor Rechtsgeschiedenis* 20 (1952), 6–7 n. 19, and by E. Karabelias in *Μνήμη Γ. Α. Πετροπούλου* i. 451–2.
- 18 For more details of inheritance law see Harrison, *The Law of Athens* i. 122–62; MacDowell, *The Law in Classical Athens*, pp. 92–108.
- 19 For a commentary on these speeches see W. E. Thompson, *De Hagniae Hereditate* (*Mnemosyne* suppl. 44, 1976). A summary of the whole dispute is given by MacDowell, *The Law in Classical Athens*, pp. 103–8.
- 20 Philagros too, as it happened, was descended from Bouselos, but through a different son of Bouselos (Dem. 43.24), and we have already seen that each of the sons of Bouselos established a separate *oikos* (Dem. 43.19).
- 21 S. Bianchetti, *SIFC* 54 (1982), 129–65.
- 22 P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1981), pp. 633–4, implies that this function of the arkhon existed 'in archaic Athens', and points out differences between the terminology of the law and normal fourth-century terminology.
- 23 H. J. Wolff. *Traditio* 2 (1944), 93.
- 24 *Ibid.* 50.

# The authenticity of Demosthenes 29 (Against Aphobos III) as a source of information about Athenian law

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Three speeches against Aphobos are included in the corpus attributed to Demosthenes. In the first two, entitled *Κατὰ Ἀφοβου* (nos. 27 and 28), Demosthenes, who has recently come of age, prosecutes Aphobos, one of his guardians during his minority, for misappropriating much of the property left by his father, the elder Demosthenes, and failing to hand over to him the amount which was due. No one, I believe, has ever doubted that those two speeches are genuine works by Demosthenes. We cannot know whether he delivered the speeches in court in exactly the form in which we now have them; and the beginning of the second speech, in particular, appears to have been written down after the trial, not before it. But there is no difficulty in accepting that it was Demosthenes who wrote them, and that they are authentic evidence for the law of his time.

It is a different matter with the third speech, entitled *πρὸς Ἄφοβου* (no. 29). Here we read that Aphobos, having lost the first case and been condemned to pay 10 talents to Demosthenes, is accusing a man named Phanos, who gave evidence for Demosthenes in the first trial, in a prosecution for false witness (*δίκη ψευδομαρτυρίων*). The text which we have is a speech for the defence, delivered by Demosthenes in support of Phanos. If it is genuine, it is an important source of information about the law on false witness and on other subjects which are mentioned in it incidentally. But is it genuine?

No other ancient author mentions this speech or the trial of Phanos, until we find references to it in the lexicons of Harpokration (s. v. *ἐπαϊρόμενος*), Polydeukes (6. 124, 10. 16), Photios (s. v. *λάκκος*), and the Souda (U 541). But the period of silence is not significant; there are many authentic texts which happen not to be mentioned by other classical or Hellenistic writers. The lexicographers who do mention it display no doubt that Demosthenes is the author, and the first person ever to question the authorship seems to have been Westermann in 1834. He declared that the speech could not have been written by Demosthenes because of various mistakes and faults, both in the content and in the style<sup>1</sup>; and this view was supported

by a number of scholars in the nineteenth century, including Schaefer<sup>2</sup>, Schaffner<sup>3</sup>, and Buermann<sup>4</sup>, though it was opposed by others, including Dareste<sup>5</sup> and Blass<sup>6</sup>. The controversy was admirably summarized by Calhoun in 1934. He showed that many of the objections which had been made to the speech were either invalid or inconclusive, and concluded that it was an authentic work of Demosthenes<sup>7</sup>. Since then most people have accepted the speech as authentic, including Wolff<sup>8</sup>, Harrison<sup>9</sup>, and Becker<sup>10</sup>; and there is an interesting analysis of the case on this basis by Thür<sup>11</sup>, followed more briefly by Behrend<sup>12</sup>. The opposite view has been expressed most strongly by Finley, who says, 'it must be completely rejected as a rhetorical exercise of late though uncertain date, and hence of no value as a source of information about fourth-century Athenian institutions'<sup>13</sup>. A more cautious position is adopted by Jackson and Rowe, who say 'real difficulties remain'<sup>14</sup>. In this paper I shall try to remove two of the remaining difficulties.

I confess that I approach the problem with some prejudice in favour of authenticity. The speech does not take the form which I should expect a rhetorical exercise to take. It is not neatly composed in the divisions favoured by the rhetoricians: δῆγγησις, πίστετε, and so on. The facts stated in it are not merely facts drawn from the other speeches; nor, on the other hand, do they make a self-contained story, such as a rhetorician might have amused himself by inventing. On the contrary, the author omits explanation of various matters which he assumes his audience already knows, and the most obvious reason for that is that the audience expected was the Athenian jury in 363 BC, who would have already heard the earlier speeches in the trial. So I think it is reasonable to proceed by assuming that the work is genuine unless we find some clear reason for believing it to be spurious. It is no use demanding absolute logical proof. In default of contemporary external evidence, no work of literature can be absolutely proved to be genuine (because it is always conceivable that a forger may be as clever as the author whom he sets out to imitate, and so may succeed in making his work indistinguishable from a genuine one); but we should accept the work as genuine if we find that no objection to it is really cogent.

I shall not spend time discussing whether the style and other literary qualities of the speech are worthy of Demosthenes. There is nothing in the vocabulary and syntax which could not have been written in the fourth century BC, and one gets nowhere by pointing to particular phrases which are not up to the highest standards of Demosthenes's mature style. The speech, if genuine, was written when he was still very young (about twenty), and we do not know whether he had even completed it. It is possible that, as Burke has suggested, the trial of Phanos was not held in the end and the speech was never delivered<sup>15</sup>; or that the delivery was partly extemporized and the text was never polished for publication, so that what we have is only a rough draft. This would not affect its authenticity as a work of Demosthenes.

I shall therefore concentrate on the two objections concerning fact and law which have been found most difficult since the time when Calhoun wrote. First, the legal position of Demosthenes, the uncle of Demosthenes: was he one of Demosthenes's guardians or not? In the first two speeches against Aphobos we

are told that the elder Demosthenes appointed three men to be the guardians of his children and their property: his two nephews Aphobos and Demophon, and a friend named Therippides (27. 4, etc.). Yet in the third speech Demon is called Aphobos's fellow-guardian (συνεπίτροπος, 29. 56). Scholars have pounced on this as an inconsistency, showing that the third speech was written by someone who believed that there were four guardians, not three; Demosthenes could not have made that mistake, and therefore, the argument goes, the third speech is not by Demosthenes<sup>16</sup>.

But that is a misinterpretation. If we look at the last sentence of the speech, we find a reference to the verdict in the previous trial:

οἱ δικασταὶ . . . ἤϊρον τὸ σύμπαν πλέον ἢ τριάκοντα τάλαντ' αὐτοῦς ἀποστεροῦντας· διὸ τούτῳ τῶν δέκα ταλάντων ἐτίμησαν. 'The jurors found them guilty of misappropriating more than 30 talents altogether; therefore they fixed the sum payable by this man (Aphobos) at 10 talents.'

(Dem. 29. 60)

The word διὸ shows that the figure of 10 talents follows naturally from the figure of 30; it was to be expected that Aphobos would pay one third of the amount due. Thus the writer of this speech (whether he was Demosthenes or not) knew perfectly well that there were only three guardians, and when he calls Demon συνεπίτροπος he cannot mean that Demon had equal responsibility with Aphobos, Demophon, and Therippides. This point is made by several scholars<sup>17</sup>, but they have found it difficult to say exactly what συνεπίτροπος does mean. Becker, I think, makes too little of this difficulty; he suggests that ἐπίτροπος here is used not in the sense of 'guardian' but in the general sense of 'manager', having no legal significance<sup>18</sup>. It is of course true that ἐπίτροπος sometimes means 'manager', but it is difficult to take it that way in this context; here Demon is called συνεπίτροπος with Aphobos, and Aphobos was undoubtedly ἐπίτροπος in the legal sense of 'guardian'. All the other instances of συνεπίτροπος in these speeches refer to Demophon and Therippides, who had legal responsibility as guardians<sup>19</sup>. So I think that, when Demon is called συνεπίτροπος, that must mean that he shared the guardians' legal responsibility in some way. But how can that be true?

Blass tried to solve this problem by pointing out that Demon was the father of one of the other guardians, Demophon; he argued that the father and son, Demon and Demophon, would not have owned separate property, and that Demosthenes must have directed his prosecution against their property as a unit, not against their two persons<sup>20</sup>. This cannot be precisely correct in law, because a prosecution must be directed against a person, not against property. Nevertheless it must be near the truth. We must bear in mind that Demophon was probably young. The elder Demosthenes chose Demophon to be the husband of his daughter, but at the time of his death his daughter was a little girl of five (Dem. 27. 4). The marriage was not expected to take place for ten years (Dem. 29. 43). It was evidently assumed that Demophon would not want to marry anyone else before those ten years had

passed. I suggest that at the beginning of the period of guardianship Demophon was not yet adult. He was old enough to take an active part in what was going on (e. g. Dem. 28. 14), possibly fifteen or sixteen years of age; but for the first year or two his father was legally responsible for him. When Demosthenes came of age and prosecuted Demophon for misappropriating money which had accrued during the ten years' guardianship, Demophon would have been legally answerable for the conduct of business during the first year or two, and could properly be called *συνεπίτροπος* with Aphobos during that period<sup>21</sup>. If my conjecture is right (and it is no more than a conjecture), we have here an interesting instance of a young man appointed as a guardian before he himself had come of age, because he was due to come of age before the guardianship ended and to marry one of the wards. I do not know of any other Athenian instance of a guardian below the age of eighteen, but one can see why it would have seemed a reasonable appointment to make in this case.

I now turn to the most serious difficulty, the one raised by Finley<sup>22</sup>. Finley has attacked a sentence mentioning the failure of Aphobos to arrange for the estate of Demosthenes to be leased during his minority:

τὸν οἶκον οὐκ ἐμίσθωσεν τῶν νόμων κελευόντων καὶ τοῦ πατρὸς ἐν τῇ διαθήκῃ γράψαντος. 'He did not lease the estate, although the laws order that and my father wrote it in his will.'

(Dem. 29. 29)

The reference here is to the possibility of leasing an orphan's estate. Instead of managing it themselves and handing over their profits to the orphan when he came of age, guardians could arrange for it to be leased; then the lessee managed the property, and the income from it was simply the amount which the lessee paid each year. As Finley says, 'the law was permissive, not mandatory'. A passage of Lysias (32. 23) says that lease of an orphan's estate was possible (*ἐξῆν*), not that it was compulsory; and several cases are known in which such estates were not leased but were managed by the guardians themselves (e. g. Isaios 7. 6, 8. 42). How then can Demosthenes say *τῶν νόμων κελευόντων* 'the laws order it'? Finley declares 'this is an error Demosthenes himself could not have made', and he draws the conclusion that 'the third oration against Aphobos is a school exercise or practice speech'. Let us look a little further at what is said in all the three speeches about the possibility of leasing the estate. In the first speech Demosthenes asserts that his father's will, now lost, contained instructions that this should be done:

ἐν γὰρ ἐκείναις (sc. ταῖς διαθήκαις) ἐγγέγραπτο . . . τὸν οἶκον ὅπως μισθώσουσι. 'In the will it was written that they should lease the estate,'

(Dem. 27.40)

A little later he points out that this would have enabled Aphobos to avoid prosecution, and he requests that the relevant laws be read out:

τούτω γὰρ ἐξῆν μηδὲν ἔχειν τούτων τῶν πραγμάτων, μισθώσαντι τὸν οἶκον κατὰ τουτουσὶ τοὺς νόμους, λαβὲ τοὺς νόμους καὶ ἀνάγνωθι. ΝΟΜΟΙ. Κατὰ τούτους τοὺς νόμους Ἀντιδώρω μὲν ἐκ τριῶν ταλάντων καὶ τρισχιλίων ἐν ἑξ ἔτεσιν ἑξ τάλαντα καὶ πλεόν ἐκ τοῦ μισθωθῆναι παρεδόθη. . . . εἰ μὲν γὰρ φησι βέλτιον εἶναι μὴ μισθωθῆναι τὸν οἶκον, δειξάτω μὴ διπλάσια μηδὲ τριπλάσιά μοι γεγενημένα, ἀλλ' αὐτὰ τὰ ἀρχαῖ' ἐμοὶ πάντ' ἀποδεδομένα. 'It was possible for him not to have any of this trouble, if he had leased the estate in accordance with these laws. Take the laws and read them. (*The laws are read.*) In accordance with these laws Antidoros, from an estate of three and a half talents, in six years received six talents or more as a result of leasing. . . . If he asserts that it was better for the estate not to be leased, let him prove not that I have obtained double or treble, but that even the original amount has all been handed over to me.'

(Dem. 27. 58–59)

In the second speech Demosthenes says that his dying father gave oral instructions as well as written ones:

ἐπισκῆπτων μισθῶσαί τε τὸν οἶκον καὶ συνδιασῶσαί μοι τὴν οὐσίαν. 'Instructing them to lease the estate and to combine in preserving the property for me.'

(Dem. 28. 15)

And in the third speech, besides the sentence attacked by Finley, there are two further references to the matter, one of which refers to the will and the other to the laws:

τοῦ γὰρ πατρός . . . τὰ καταλειφθέντα παντ' ἐν τῇ διαθήκῃ γράψαντος καὶ τὸν οἶκον ὅπως μισθώσουσιν. 'Although my father wrote in his will all the property which was left and that they should lease the estate.'

(Dem. 29. 42)

The laws mentioned in 29. 29 and 29. 57 are evidently the laws which are read out in 27. 58. Although the plural νόμοι is used in all three passages, that may mean just a single enactment with several clauses. From the other evidence it is clear that the law did not include a clause making lease of an orphan's estate compulsory; so far we can agree with Finley. But it appears that the author of the third speech did not think otherwise. He twice emphasizes that the elder Demosthenes gave instructions in his will that the estate should be leased (29. 29 and 29. 42); what point would there have been in that, if leasing had been compulsory anyway?

Harrison has tried to solve this problem by integrating the two points<sup>23</sup>. He suggests that in 29. 29 'καί has here the sense of *id est*; the law so ordered because the father had given these instructions'. If that is correct, the second phrase is a condition of the first, and the law said something like 'The estate is to be leased

if the deceased man gave orders that it should be leased'. The suggestion is ingenious, but it is not satisfactory. I reject it, partly because of doubt whether *καί* can mean *id est* (the figure of hendiadys is less common in Greek than in Latin), but mainly because nowhere in the first two speeches does Demosthenes say that Aphobos has broken the law by not leasing the estate. If it had really been a legal requirement in this instance that the estate be leased, surely Demosthenes would have been only too keen to bring that to the jury's attention at 27. 58–9. Becker has argued that a guardian was not legally obliged to lease an estate even when instructed to do so by the will of the ward's father, and I think that is correct<sup>24</sup>.

Thus Finley's objection has not been refuted. The passage in Dem. 29. 29 says τῶν νόμων κελεύόντων, but in fact the laws did not require the estate to be leased. How can that have been written by Demosthenes? I believe that its accuracy can be defended in a different way<sup>25</sup>. We need to give closer attention to the use of the verb *κελεύειν* in connection with laws. First, there are some instances in which *κελεύειν* is virtually a synonym of *ἔάν*: a law is said to *κελεύειν* something if it merely permits it.

Κωμωδεῖν δ' αὖ καὶ κακῶς λέγειν τὸν μὲν δῆμον οὐκ ἔδωσιν, ἵνα μὴ αὐτοὶ ἀκούωσι κακῶς, ἰδίᾳ δὲ κελεύουσιν, εἴ τις τινα βούλεται. 'The Athenians do not allow one to satirize and abuse the people, so as not to be abused themselves, but they provide<sup>26</sup> for anyone who wishes to satirize anyone individually.'

([Xen.] Ath. Pol. 2. 18)

τῶν νόμων . . . οἱ κελεύουσι μὲν, ἔάν τις μοιχὸν λάβῃ, ὅ τι ἂν οὖν βούληται χρῆσθαι. 'The laws . . ., which provide for anyone who catches an adulterer to subject him to whatever treatment he wishes.'

(Lysias 1. 49)

οἱ γὰρ νόμοι κελεύουσιν τὸν βουλόμενον ἀμφισβητεῖν. 'The laws provide for anyone who wishes to make a claim (for an inheritance).'

(Dem. 48. 10)

In those passages the use of *βούλεσθαι* shows that *κελεύειν* does not necessarily mean that the law compels someone to do something. It may, however, specify conditions for permitting it.

καὶ μοι τὸν νόμον αὐτὸν ἀνάγνωθι, ὃς κελεύει τὰ ἑαυτοῦ ἐξεῖναι διαθέσθαι ὅπως ἂν ἐθέλῃ, ἐὰν μὴ παῖδες ἄρρενες ᾖσι γνήσιοι. 'Read me the law which provides for freedom to bequeath one's property however one wishes, if there are no legitimate male children.'

(Isaios 2. 13)

. . . γυναῖκα δὲ μὴ ἐξεῖναι εἰσιέναι εἰς τὰ τοῦ ἀποθανόντος μηδ' ἀκολουθεῖν ἀποθανόντι, ὅταν εἰς τὰ σήματα ἄγῃται, ἐντὸς ἐξήκοντ' ἐτῶν γεγонуῖαν, πλὴν



ἔσαι ἐντὸς ἀνεψιαδῶν εἰσι· . . . ταύτας κελεύει τὰς προσηκούσας καὶ παρεῖναι τῇ προθέσει τοῦ τετελευτηκότος καὶ ἐπὶ τὸ μνήμα ἀκολουθεῖν ‘A woman is not to be allowed to enter the property of the deceased or follow the deceased when he is taken to the cemetery, under sixty years of age, except those within the relationship of cousins’ children. (The orator comments:) . . . The law provides for these women, the relatives, both to attend the laying-out of the dead man and to follow him to the tomb.’

(Dem. 43. 62–4).

In that passage, where we actually possess the text of the law as well as the orator’s comment, we can see clearly that the orator uses *κελεύειν* in connection with the women who are relatives, where the law itself uses *μὴ ἐξεῖναι* of the women who are not relatives. No woman was compelled by law to attend a funeral; *κελεύει* means that it was acceptable for them to do so, in the cases specified.

Commoner still are the passages in which *κελεύειν* means that the law ordains a particular formal or legal procedure for doing something<sup>27</sup>:

εἰ μὲν κατ’ ἀγχιστεῖαν τῶν Ἀγνίου μετεῖναι φησι τῷ παιδί, τοῦ ἡμικληρίου λαχέτω πρὸς τὸν ἄρχοντα, κὰν ὑμεῖς ψηφίσησθε, λαβέτω· ταῦτα γὰρ οἱ νόμοι κελεύουσιν. ‘If he says that part of the property of Hagnias belongs to the child by kinship, let him bring a claim for half the estate before the archon, and if you vote in favour, let him take it; that is what the laws provide.’

(Isaios 11. 33)

ὁ παλαιός, ὃν οὗτος παρέβη, νόμος οὕτω κελεύει νομοθετεῖν. ‘The old law, which this man infringed, provides the following procedure for legislating.’

(Dem. 20. 89)

οἱ μὲν νόμοι τῶν Ἀθήνησι συμβολαίων κελεύουσι τὰς δίκας εἶναι πρὸς τοὺς θεσμοθέτας. ‘The laws provide that actions for contracts at Athens be brought before the thesmothetai.’

(Dem. 34. 45).

τὸν νόμον ὃς κελεύει, ἐάν τις ἀδίκως εἴρξη ὡς μοιχόν, γράψασθαι πρὸς τοὺς θεσμοθέτας. ‘The law which provides that, if anyone wrongfully imprisons a man as an adulterer, he is to prosecute by γραφή before the thesmothetai.’

(Dem. 59. 66)

No one is compelled to claim an estate, or to propose a new law, or to prosecute for breach of contract or for wrongful imprisonment; these passages only mean that if you do claim an estate, or propose a law, or prosecute for those offences, you must use the procedure specified by the law.

I suggest that this is how we should interpret Dem. 29. 29. It does not mean that guardians were compelled by law to lease an estate; it means that the law permitted them to do so, and specified the procedure which they must follow if

they decided to do so. What that procedure was, in outline, we learn from Isaios 6. 36–7: the lease had to be arranged by the arkhon in a lawcourt, where the jury decided whether it should be granted. There is also some evidence that anyone who wished, not merely the guardian, could use the procedure of Ocrig to raise the question whether an estate should be leased<sup>28</sup>. Another clue to the content of the law may lie in the fact that Demosthenes in 27. 59 raises the question whether it was better (βέλτιον) for the estate to be leased. Combining this with the evidence about φάσις and the arkhon, I suggest *exempli gratia* that the law may have said something like: ἐὰν δὲ δόξη βέλτιον εἶναι μισθωθῆναι τὸν οἶκον, φαινέτω πρὸς τὸν ἄρχοντα ὁ βουλόμενος Ἀθηναίων οἷς ἔξεστιν, ὁ δὲ ἄρχων μισθούτω ἐν δικαστηρίῳ . . . That would be quite sufficient to justify the use of the phrase τῶν νόμων κελευόντων, permitting the leasing of an orphan's estate and specifying the procedure which must be followed if it were to be leased; and at the same time it would explain why Demosthenes in 27. 59 envisages that Aphobos may defend himself by maintaining that it was better that the estate should not be leased.

I conclude that Finley is wrong to reject the authenticity of the third speech against Aphobos on this ground. It is reasonable to accept it as a genuine speech of Demosthenes and as an authentic source of information about Athenian law.

## Notes

- 1 A. Westermann, *Quaestionum Demosthenicarum particula tertia* (Leipzig 1834) 5–18, reprinted in Dindorf's edition of Demosthenes, vol. 7 (Oxford 1849) 1045–53.
- 2 A. Schaefer, *Demosthenes und seine Zeit*, vol. 3. 2 (Leipzig 1858; reprinted as vol. 4, Hildesheim 1967) 82–9.
- 3 S. Schaffner, *De tertia adversus Aphobum oratione vulgo Demosthenis nomini addicta* (Leipzig 1876).
- 4 H. Buermann, 'Die Unechtheit der dritten angeblich demosthenischen Rede wider Aphobos', *Jahrb. Cl. Ph.* 115 (1877) 585–612.
- 5 R. Dareste, *Les plaidoyers civils de Démosthène*, vol. 1 (Paris 1875) 44–5, 66–9.
- 6 F. Blass, *Die attische Beredsamkeit*, vol. 3. 1 (third edition, Leipzig 1893) 232–8.
- 7 G. M. Calhoun, 'A problem of authenticity (Demosthenes 29)', *TAPA* 65 (1934) 80–102.
- 8 H. J. Wolff, *Festschrift Hans Lewald* (Basel 1953) 206, note 29.
- 9 A. R. W. Harrison, *The Law of Athens*, vol. 1 (Oxford 1968) 105–6, note 5.
- 10 Becker, *ZSSR* 85 (1968) 41–2, note 59.
- 11 G. Thür, 'Der Streit über den Status des Werkstättenleiters Milyas (Dem. or. 29)', *RIDA* (3e. ser.) 19 (1972) 151–77, reprinted in *Demosthenes (Wege der Forschung)*, 1987) 403–30.
- 12 D. Behrend, *Symposion 1971* (1975) 146.
- 13 M. I. Finley, *Studies in Land and Credit in Ancient Athens* (New Brunswick, New Jersey, 1951) 39–40, with note 10 on pages 234–5.
- 14 D. F. Jackson and G. O. Rowe, *Lustrum* 14 (1969) 49–50.
- 15 E. M. Burke, 'A further argument on the authenticity of Demosthenes 29', *CJ* 70 (1974) 53–6.
- 16 Most recently Finley (see note 13) and Jackson and Rowe (see note 14).
- 17 Buermann (see note 4) 596, Blass (see note 6) 233–4, Calhoun (see note 7) 88–90.
- 18 See note 10.
- 19 Dem. 27. 14, 16, 49, 51, 52, 57; 28. 4, 16; 29. 3, 33, 49, 59.

- 20 Blass (see note 6) 233: ‘die Entschädigungsklage gegen das einheitliche *Vermögen* von Vater und Sohn, nicht gegen die verschiedenen Personen beider sich richtete’.
- 21 No doubt Demosthenes prosecuted Demophon and Demon together in a single action; the proceedings against Demon (Dem. 29. 20) were probably not a separate case from those against Demophon (Dem. 27. 12).
- 22 See note 13.
- 23 See note 9.
- 24 D. Becker (see note 10) 58–64.
- 25 What follows is similar to the interpretation assumed by Wolff (see note 8) and Becker (see note 10) but neither of them investigates the evidence about the meaning of *κελεύειν*.
- 26 It is difficult to translate *κελεύειν* in these passages. Neither ‘permit’ nor ‘provide’ is really satisfactory, but in the discussion of this paper at Schloss Ringberg it was suggested that German ‘vorsehen’ or French ‘prevoir’ would be closer to the correct sense.
- 27 For further instances see Dem. 33. 1, 58. 51–2, Hyp. *Eux.* 29.
- 28 Dem. 38. 23, Harp. s.v. *φάσις*.

# Athenian laws about choruses

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## 1. Recruitment and exclusion of *khoregoi*

In the late fifth and fourth centuries BC there were three annual festivals in Athens at which major choral competitions were held. The most important was the Dionysia, held in the month Elaphebolion (approximately March), at which there were four contests: dithyrambic choruses of boys, dithyrambic choruses of men, comedies, and tragedies. At the Lenaia, held in Gamelion (approximately January), there were contests of tragedies and comedies. At the Thargelia, held in Thargelion (approximately May), there were contests for dithyrambic choruses of men and boys. (There were also some choruses at the Panathenaia, and there were local festivals with choral performances in Peiraieus, Eleusis, and elsewhere. But little is known about these, and they will not be considered in this paper, which is restricted to the Dionysia, the Lenaia, and the Thargelia.)

The first formal steps to arrange these contests were taken in the previous summer, when a *khoregos* was appointed for each of the required number of choruses. This procedure, as far as the Dionysia and the Thargelia are concerned, is outlined in the *Athenaion Politeia* attributed to Aristotle, in an account of the actions taken by the *arkhon* upon entering office at midsummer.

ἔπειτα χορηγούς τραγωδοῖς καθίστησι τρεῖς, ἐξ ἀπάντων Ἀθηναίων τοὺς πλουσιωτάτους· πρότερον δὲ καὶ κωμωδοῖς καθίστη πέντε, νῦν δὲ τοὺς αἰ φυλαὶ φέρουσιν. ἔπειτα παραλαβὼν τοὺς χορηγούς, τοὺς ἐνηνεγμένους ὑπὸ τῶν φυλῶν εἰς Διονύσια ἀνδράσιν καὶ παισὶν καὶ κωμωδοῖς, καὶ εἰς Θαργήλια ἀνδράσιν καὶ παισὶν (εἰσὶ δ' οἱ μὲν εἰς Διονύσια κατὰ φυλάς, εἰς Θαργήλια <δὲ> δυεῖν φυλαῖν εἷς· παρέχει δ' ἐν μ[έρ]ει ἑκατέρω τῶν φυλῶν), τοῦτοις τὰς ἀντιδόσεις ποιεῖ καὶ τὰς σκήψεις εἰσ[άγει] . . . “Then he appoints as *khoregoi* for tragedians three men, the richest, selected from all Athenians; formerly he used also to appoint five for comedians, but now the *phylai*

nominate for these. Then he receives the *khoregoi* nominated by the *phylai* for men and boys and comedians at the Dionysia, and for men and boys at the Thargelia (those for the Dionysia are by *phylai*; for the Thargelia, one for two *phylai*, provided by each of the two *phylai* in turn); and for these he holds the *antidoseis* and brings the *skepseis* to trial . . .”

(AP 56.3)

In the following chapter there is a brief mention of the Lenaia.

ἔπειτα Διονυσίων τῶν ἐπὶ Ληναίῳ· . . . τὸν δὲ ἀγῶνα διατίθησιν ὁ βασιλεύς.  
“Then the Dionysia at the Lenaion: . . . and the contest is arranged by the *basileus*.”

(AP 57.1)

No further information is given in *AP* about the choral contest at the Lenaia, but it is safe to assume that the *basileus* made arrangements for that festival in the same manner as the *arkhon* did for the Dionysia and the Thargelia. There is evidence elsewhere (*IG* ii<sup>2</sup> 2319) that at the Lenaia only two poets competed with tragedies, whereas the number of comedies was the same as at the Dionysia. Other evidence about the numbers need not be given in detail here;<sup>1</sup> we may state that *khoregoi* were appointed as follows:

#### Dionysia

Tragedies: the *arkhon* nominated three *khoregoi*.

Comedies: formerly the *arkhon* nominated five *khoregoi*; by Aristotle’s time five *phylai* each nominated one *khoregos*.<sup>2</sup>

Men: the ten *phylai* each nominated one *khoregos*.

Boys: the ten *phylai* each nominated one *khoregos*.

#### Lenaia

Tragedies: the *basileus* nominated two *khoregoi*.

Comedies: formerly the *basileus* nominated five *khoregoi*; by Aristotle’s time five *phylai* (presumably the five not nominating for comedies for the Dionysia) each nominated one *khoregos*.

#### Thargelia

Men: five *phylai* each nominated one *khoregos*.

Boys: five *phylai* (presumably the five not nominating for men’s choruses at this festival) each nominated one *khoregos*.

These figures must have been laid down in a law or laws, among the laws specifying the duties of the *arkhon* and the *basileus*.<sup>3</sup> Those laws must also have laid down criteria by which the *khoregoi* were to be selected. A *khoregos* was

expected to be a rich man, because one of his duties was to pay the expenses of his chorus. But the arkhon or the *phyle* could not simply pick the richest men in Athens without taking anything else into consideration. *Khoregia* was a liturgy, and was subject to the same rules of exemption as other festival liturgies: no one could be required to perform the same liturgy more than once (though *khoregia* for a different festival, or for a different type of chorus at the same festival, would not count as the same liturgy), and no one could be required to perform two liturgies in the same year or in consecutive years. Anyone who was nominated as a *khoregos* and claimed exemption on these grounds, or because he alleged that someone else was richer than himself and therefore ought to be nominated in his place, could employ the legal procedures of *skepsis* (excuse) and *antidosis* (exchange); those procedures were complex, and will not be considered in the present paper.<sup>4</sup> But, besides the general rules about exemption from liturgies, there were also two special rules about *khoregoi* for certain choruses. One was a rule applying only to the choruses of boys: a *khoregos* for a boys' chorus had to be over forty years old (*AP* 56.3, Aiskhines 1.11). The motive for this rule was evidently a fear that a younger man might take sexual advantage of the boys entrusted to his charge. (This rule was not introduced before the end of the fifth century; cf. Lysias 21.1–4.)<sup>5</sup> The other rule is mentioned only in a scholium on Aristophanes, but there seems to be no reason to reject it.

οὐκ ἐξῆν δὲ ξένον χορεύειν ἐν τῷ ἀστικῷ χορῷ. . . ἐν δὲ τῷ Ληναίῳ ἐξῆν. ἐπεὶ καὶ μέτοικοι ἐχορήγουν. “It was not permitted that an alien perform in the city chorus . . . ; but in the Lenaion it was permitted; for <there> metics were also *khoregoi*.”

(Schol. on Ar. *Wealth* 953)

I take this to mean that for the Dionysia both the choristers and the *khoregoi* had to be Athenian citizens, but for the Lenaia aliens were also eligible. (Those aliens would normally be metics, because aliens who were not metics would not be in Athens long enough to prepare and rehearse for a choral performance.) The scholiast does not mention the Thargelia, and was probably thinking only of comedies and tragedies; but surely at the Thargelia, where the choruses represented *phylai*, the choristers and *khoregoi* had to be members of those *phylai*, so that aliens were not eligible. The only text which might be taken as evidence against this view is Lysias 12.20, where we read that Lysias and his brother Polemarkhos, who were metics, performed all the *khoregiai*: *πάσας τὰς χορηγίας χορηγήσαντες*. But that cannot mean that they performed all the *khoregiai* in existence; it just means that they performed all to which they were nominated, and we can assume that they were only nominated for the Lenaia (and perhaps for local festivals in Peiraieus). So we may accept the rule that only citizens could be *khoregoi* for the Dionysia and the Thargelia.

How were these rules enforced? If a man nominated as a *khoregos* wished to be exempted from the duty, he might claim (if the nomination was for a boys' chorus) that he was under forty, or (if the nomination was for the Dionysia) that

he was not a citizen but a metic; that would be a matter of making his excuse (*skepsis*) to the arkhon or *basileus*, in just the same way as any other claim for exemption from a liturgy. However, these two rules are ones which might need to be enforced in the opposite sense. A man who was under forty, or who was a metic, might want to become a *khoregos*, either because of the prestige it would bring him or for other reasons. How was he stopped? There is no evidence at all for answering this question; but the laws making these rules must undoubtedly have specified a legal procedure for use when they were infringed. I should suppose that anyone who wished could prosecute by *graphe* a man who was acting as a *khoregos* when not entitled to do so.

At any rate it does not seem that there was any *dokimasia* of *khoregoi* before they entered upon their duties. That seems fairly clear, not just because there is no mention of such a *dokimasia* in the *Athenaion Politeia* or any other text, but also because it would hardly fit in with Demosthenes's account of his own appointment as a *khoregos* for a men's chorus at the Dionysia in the year 349/8. Demosthenes relates in his speech *Against Meidias* (21.13) that, at the meeting of the Ekklesia at which the law required the arkhon to allot the pipers (αὐληταί) to the choruses, no *khoregos* had been appointed for his *phyle* (Pandionis). "Words and abuse" arose: the arkhon blamed the officers of the *phyle*, and the officers of the *phyle* blamed the arkhon. To settle the dispute, Demosthenes volunteered to be the *khoregos*, and he thereupon received by lottery the first choice of piper. That account leaves no interval for *dokimasia*, and implies that the appointment as *khoregos* was valid immediately. I conclude that any objections that a man was disqualified from being a *khoregos* had to be made in some other way, probably by *graphe*.

## 2. Recruitment of choristers

Next I turn to the selection of the chorus itself. The best evidence about this is in Antiphon's speech *On the Chorister*, where the speaker is a man who was *khoregos* for the boys' chorus of two *phylai* (Erekhtheis and Kekropis) at the Thargelia.

ἔπειτα τὸν χορὸν συνέλεξα ὡς ἐδυνάμην ἄριστα, οὔτε ζημιώσας οὐδένα οὔτε ἐνέχυρα βία φέρων οὔτ' ἀπεχθανόμενος οὐδενί, ἀλλ' ὥσπερ ἂν ἥδιστα καὶ ἐπιτηδειότατα ἀμφοτέροις ἐγίγνετο, ἐγὼ μὲν ἐκέλευον καὶ ἠτούμην, οἱ δ' ἐκόντες καὶ βουλόμενοι ἔπεμπον. "Then I collected the chorus as well as I could, not imposing a penalty on anyone, nor levying distraint by force, nor quarrelling with anyone, but in the pleasantest and most convenient way for both sides I gave my orders and requests <to the fathers> and they willingly and voluntarily sent <their sons >"

(Ant. 6.11)

This clearly implies that the *khoregos* was legally entitled to compel fathers to send their sons to be members of the chorus. Compulsion is also mentioned more vaguely in a passage of Xenophon, who remarks that it is the function of *khoregoi*

to assemble choruses, and to bring compulsion to bear (ἀνάγκην προστιθέναι) on those who do anything inadequately (Xen. *Hieron* 9.4). I conclude that there was a law saying that anyone requested by a *khoregos* to perform in a chorus must do so, unless he had a good reason for refusing. If a man refused to perform, or (for a boys' chorus) if a father refused to send his son to perform, the *khoregos* was entitled to impose penalties.

What penalties? The words in Antiphon are οὔτε ζημιώσας οὐδένα οὔτε ἐνέχυρα βία φέρων. The word ζημιώσας means imposing a financial penalty: the *khoregos* could demand a sum of money, which would help him to pay the cost of the chorus. The amount must have been stated in the law; it may well have been different for different kinds of chorus (for example, more for a men's chorus than for a boys' chorus). The words ἐνέχυρα βία φέρων mean levying distraint, and are best taken as an alternative to the fine: if a man refused to perform in a chorus (or refused to send his son for a boys' chorus), and refused to pay a fine for not doing so, then the *khoregos* was entitled to seize some item of his property, of a value equal to the fine. We may compare the right possessed by a trierarch to levy distraint on a predecessor who did not hand over the equipment of a trireme (Dem. 47.37). A *khoregos* and a trierarch, though they were not magistrates (ἄρχοντες), were both performing liturgies on behalf of the state, and in that capacity were given these limited powers of punishment, as if they were minor magistrates. This is a sign of the importance which the Athenians attached to their choruses, as to their triremes.

Once the chorus had been recruited, rehearsals went on regularly until the time of the festival, and in this connection we know of another law: a law giving choristers exemption from military service. It would obviously have lowered the standard of the performance if individual choristers had been suddenly sent away from Athens on a military or naval campaign, so that they were absent from the rehearsals or from the festival itself. The existence of the law may be inferred from two passages of Demosthenes. One is the account of his own *khoregia* in 349/8: just after the passage from the speech *Against Meidias* already mentioned, he goes on to describe a number of ways in which Meidias tried to obstruct or interfere with his chorus, and among these τοὺς χορευτάς ἐναντιούμενος ἡμῖν ἀφεθῆναι τῆς στρατείας ἠνώχλησεν, "he gave annoyance by opposition to the release of our choristers from military service" (Dem. 21.15). This clearly implies that the choristers (or the *khoregos* on their behalf) applied to the military officers of their *phyle* (*strategoi*, taxiarchs, and hipparchs) to be omitted from any call-up list which might be issued before the festival. What form Meidias's opposition took is not clear. Possibly there was a formal procedure, by which the military officers published a list of men who had applied for exemption and other citizens could object to the inclusion of particular names in it. Alternatively Meidias may just have had private conversations with the military officers, in which he tried to persuade them to refuse exemption to some of Demosthenes's best singers.

There is a further reference to this law in the first speech *Against Boiotos* (Dem. 39). In this same year, 349/8, Boiotos was a member of another chorus at the Dionysia, and consequently did not serve in the campaign in Euboia which led



to the battle of Tamynai. The speaker of the surviving speech is his half-brother Mantitheos, who complains that Boiotos, instead of calling himself Boiotos, calls himself Mantitheos, which leads to confusion between the two of them.

φέρε, εἰ δὲ δίκην ἀστρατείας φεύγοι, χορεύοι δ' ὅταν στρατεύεσθαι δέη; καὶ γὰρ νῦν, ὅτ' εἰς Ταμύνας παρήλθον οἱ ἄλλοι, ἐνθάδε τοὺς Χοᾶς ἄγων ἀπελείφθη καὶ τοῖς Διονυσίοις καταμείνας ἐχώρευεν, ὡς ἅπαντες ἐωρᾶθ' οἱ ἐπιδημοῦντες. ἀπελθόντων δ' ἐξ Εὐβοίας τῶν στρατιωτῶν λιποταξίου προσεκλήθη, καὶ γὰρ ταξιαρχῶν τῆς φυλῆς ἠναγκαζόμενην κατὰ τὸν νόμον τοῦ ἐμαυτοῦ πατρόθεν δέχεσθαι τὴν λῆξιν “What if he were prosecuted for absence from military service, and were in a chorus when service was required? For in fact recently, when everyone else went over to Tamynai, he was left behind here celebrating the Khoes, and he stayed and performed in a chorus at the Dionysia, as all of you who were in Athens saw. When the troops returned from Euboeia, he was summoned for desertion, and I as taxiarch of the phyle was compelled to receive the charge against my own name and patronymic.”

(Dem. 39.16–17)

On this occasion, it appears, Boiotos had failed to apply in advance for exemption to cover the period of the Dionysia. He had been given exemption in order to perform some function (not a choral performance) at the Khoes in the previous month (Anthesterion), and then was recruited late into a chorus for the Dionysia, perhaps to replace a chorister who fell ill. By that time the military officers were already abroad on the campaign in Euboeia; so Boiotos could not apply to them to have his period of exemption extended, but just assumed that they would not object if he stayed in Athens for one more month to take part in the Dionysia. (He was probably a good singer, who was often given exemption for choral performances; cf. Dem. 39.23.) But it turned out that he was prosecuted for desertion, because he had not obtained exemption in the proper legal manner. He must have been acquitted, however; for the penalty for desertion was disfranchisement (ἀτιμία), but we know that Boiotos continued to exercise the rights of a citizen later (Dem. 40).

### 3. Exclusion of choristers

There was also a law or laws which forbade certain persons to take part in choral performances: disfranchised citizens (ἄτιμοι) and aliens (ξένοι). It is possible that the law about disfranchised citizens did not refer to choruses specifically. One aspect of disfranchisement was exclusion from all sacred precincts, including the theatre of Dionysos; obviously a man who could not enter a sacred precinct could not sing and dance in it, and so it may have been found unnecessary to have a law stating that. But it is worth while to look at the two examples which Demosthenes gives us in a later passage of the speech *Against Meidias* (Dem. 21.58–60).

The first is a man named Sannion, who was an experienced trainer of tragic choruses. He was convicted of failure to perform military service, and so was disfranchised. But some time later a *khoregos* named Theozotides hired him to train a tragic chorus.

τὸ μὲν οὖν πρῶτον ἠγανάκτουν οἱ ἀντιχορηγοὶ καὶ κωλύσειν ἔφασαν, ὡς δ' ἐπληρώθη τὸ θέατρον καὶ τὸν ὄχλον συνειλεγμένον εἶδον ἐπὶ τὸν ἀγῶνα, ὤκνησαν, εἶασαν, οὐδεὶς ἤψατο. “At first the rival khoregoi were indignant and said they would stop him. But when the theatre was full and they saw the crowd gathered for the contest, they shrank from it, they allowed him to go on, no one laid a finger on him.”

(Dem. 21.59)

This passage shows that the trainer of a tragic chorus did not merely conduct the rehearsals beforehand, but took part in the actual performance at the festival; for it was when the theatre was already full that the rival *khoregoi* decided to let Sannion go on. So he must have been a member of the chorus himself, probably the coryphaeus; and, as far as the law is concerned, we need not suppose that there was any distinction between the trainer and the other choristers. The rival *khoregoi* could legally have prevented a disfranchised man from performing, if they had decided to do so; and that would have involved touching him (οὐδεὶς ἤψατο). Let us compare that with the second instance. A man named Aristeides, who was the leading chorister of his *phyle*, had “suffered a similar misfortune”; that must mean that he also had been disfranchised, probably for the same offence of failure to do military service. Yet no rival *khoregos* stopped him performing.

“No one ever . . . ventured to remove him or stop him. Because this had to be done by taking hold of him oneself manually, and it was not possible to summon him to appear before the arkhon, as one would if one wished to remove an alien, everyone shrank from being seen perpetrating this outrage.”

(Dem. 21.60)

That makes it absolutely clear that the correct legal procedure for use against a disfranchised man who attempted to perform in a chorus was *apagoge*: the accuser himself arrested him. That procedure must be used (δεῖν); mere denunciation to a magistrate (*endeixis*) was not available as an alternative. This is consistent with the law quoted in Dem. 24.105, which mentions the use of *apagoge* against men who have been convicted of failure to do military service, or certain other offences, and then go to places where they ought not to go; such men had to be imprisoned by the Eleven until trial. *Endeixis* was the procedure used against some disfranchised men who failed to observe the restrictions of their disfranchisement, but evidently not against the particular category of disfranchised men with which we are at present concerned.<sup>6</sup>

Now for the other kind of person disqualified from being a chorister. The scholiast on Ar. *Wealth* 953 (already quoted) tells us that an alien could not be a

chorister at the Dionysia, and I have argued that an alien could not be a chorister at the Thargelia either. For the Dionysia, this is confirmed by Dem. 21.60 (already quoted), which tells us that the procedure for removal of an alien from a chorus involved a summons to appear before the *arkhon*. The verb ἐξάγειν was probably used in the law, for it appears also in a vaguer reference in Andokides 4.20: κελεύοντος δὲ τοῦ νόμου τῶν χορευτῶν ἐξάγειν ὃν ἂν τις βούληται ξένον ἀγωνιζόμενον “the law gives orders to remove from the choristers anyone one wishes who is an alien competing”. But the reference to a summons to appear before the *arkhon* is not very easy to reconcile with some other remarks which Demosthenes makes about the procedure a few lines earlier.

βουλόμενοι μηδέν' ἀγωνίζεσθαι ξένον οὐκ ἐδώκαθ' ἀπλῶς τῶν χορηγῶν οὐδενὶ προσκαλέσαντι τοὺς χορευτὰς σκοπεῖν, ἀλλ' ἐὰν μὲν καλέσῃ, πενήκοντα δραχμάς, ἐὰν δὲ καθέζεσθαι κελεύσῃ, χιλιάς ἀποτίνειν ἐτάξατε. . . . εἶτα τὸν μὲν χορευτὴν οὐδ' ὁ προσκαλέσας κατὰ τὸν νόμον ἀζήμιος ἔσται. “Although wishing no alien to compete, you did not allow any of the *khoregoi* simply to accost the choristers and make an investigation; but you laid down that, if he accosts one, he is to pay 50 drachmas, and if he orders him to be seated, 1000 drachmas. . . . So, in the case of the chorister, not even the man who accosts him legally will get off without payment.”

(Dem. 21.56–7)

It appears that the Athenians in this law were trying to combine two considerations which were liable to conflict. On the one hand, they wanted the Dionysia to be a truly Athenian occasion; and so they wanted to ensure that no *khoregos* was allowed to bring in an alien to improve the performance of his chorus, and that any alien who had got into a chorus was removed from it before the performance began. On the other hand, there was a risk that a rival *khoregos* might exploit the procedure to expel a good singer who was really a genuine Athenian, so as to give his own chorus a better chance of winning. So one clause of the law laid down a procedure for removing a chorister suspected of being an alien; and another clause of the law (or a separate law passed subsequently) laid down penalties to discourage people from using that procedure, a payment of 50 drachmas for accosting a chorister and 1,000 drachmas for ordering him to sit down and take no part in the performance.

A difficulty is to distinguish the active προσκαλέσαι (Dem. 21.56–7) from the middle προσκαλέσασθαι (Dem. 21.60). The middle is normal for a legal summons, and its meaning is clear: the accuser told a person to attend at the magistrate's office on a certain day on which the magistrate received charges and made arrangements for trials. But the *arkhon* surely did not receive charges and arrange trials on the days of the Dionysia; legal business was not done on festival days, and the *arkhon* would be busy with the festival arrangements. So προσκαλέσασθαι πρὸς τὸν ἄρχοντα (Dem. 21.60) means that the accuser told the chorister to attend at the *arkhon*'s office on a certain later date; but ἐξαγαγεῖν shows that, if such a summons was made, the accused chorister had to leave the chorus forthwith.

The summons had the effect of an injunction not to perform, taking immediate effect, although the trial for the offence would not take place until later.

The active προσκαλέσαι is not used elsewhere for a legal summons, and in Dem. 21.56 it is associated with another active verb, σκοπεῖν. These verbs evidently refer to activities carried out by the accuser himself, not by the arkhon.<sup>7</sup> So the procedure appears to have been as follows. Anyone<sup>8</sup> who saw in the *orkhēstra*, or preparing to enter it, a chorister whom he suspected of being an alien, could accost him (προσκαλέσαι) and ask him questions (σκοπεῖν) such as “Who is your father, and which is your deme?” If he thought the answers unsatisfactory, he could then summon the chorister to appear before the arkhon on the appropriate day (προσκαλέσασθαι πρὸς τὸν ἄρχοντα) and remove him from the chorus (ἐξαγαγεῖν), telling him to sit in the audience (καθίζεσθαι).

The financial deterrents mentioned in Dem. 21.56 fit this interpretation: removing a chorister stopped him performing at all, and 1,000 drachmas was payable for this serious interference; merely questioning him did not stop him performing, but still it incurred a small penalty of 50 drachmas because it might unsettle him and so affect his performance to some extent. From the legal point of view, these payments are an interesting instance of an accuser’s being required to pay money in advance of any trial. They are comparable in some respects to the fee or deposit (πρυτανεῖα or παράστασις or παρακαταβολή) payable in some other kinds of case. If the case went to trial and the prosecutor won, he would recover from the defendant the payment which he had made. The defendant would not be the chorister himself, but the *khoregos* who included an alien in his chorus. That is supported by a passage of Plutarch.

νόμου γὰρ ὄντος Ἀθήνησι τότε μὴ χορεύειν ξένον ἢ χιλίας ἀποτείνειν τὸν χορηγόν “There being a law in Athens at that time that no alien was to be a chorister, or the *khoregos* was to pay 1000 drachmas.”

(Plu. *Phokion* 30.6)

Plutarch proceeds to relate an anecdote to illustrate the ostentatiousness of Demades: Demades recruited choristers who were all aliens, and brought the cash along to the theatre, 1,000 drachmas for each of his hundred choristers. I do not believe the details of this anecdote. Could one *khoregos* present two choruses of fifty at the same festival? And even if he offered to pay, would the aliens have been allowed to perform? But the statement about the law is acceptable: the convicted *khoregos* would have to pay 1,000 drachmas to the prosecutor, who would thus not be left out of pocket, while the state would retain the 1,000 drachmas paid by the prosecutor in advance. If the accuser did not proceed with a prosecution, or if he lost the case, he would not recover the payment which he had made; this would always be so if he only paid 50 drachmas for questioning a chorister and did not remove him from the chorus.

The chorister who was found to be an alien was not punished at all, as far as our evidence goes, unless his removal from the chorus was regarded as a punishment in itself. He was treated much less severely than a chorister found to

be a disfranchised citizen, who was subject to arrest and imprisonment. The reason for this legal discrimination is, of course, that a disfranchised citizen was a man who had already been condemned in court for another offence, and was now defying the penalty imposed by law. Naturally the law took a serious view of such defiance. But, as the examples of Sannion and Aristeides show, public opinion could be more lenient.

## Notes

- 1 For detailed discussion see A. W. Pickard-Cambridge *The Dramatic Festivals of Athens* (revised by J. Gould and D. M. Lewis, 1968) 40–2, 75–7, and J. K. Davies in *JHS* 87 (1967) 33–40.
- 2 It has been widely held that the number of comedies, both at the Dionysia and at the Lenaia, was reduced to three for a period during the Peloponnesian War. The only evidence for this reduction is that the *hypotheseis* to several of Aristophanes's plays list only three competitors; this evidence is not conclusive, since it is possible that the *hypotheseis* list prizewinners only. On the other hand, Platon's Παβδοῦχοι is said to have come fourth at the Dionysia, and that must have been at a date within the period of the Peloponnesian War, since it was the first play which Platon produced for himself (*P. Oxy.* 2737 fr. I col. II 10ff.); and W. Luppe has argued cogently that the number remained at five throughout the period. See his article in *Philologus* 116 (1972) 53–75, and G. Mastromarco in *Belfagor* 30 (1975) 469–73.
- 3 The arrangement of laws according to the magistrates responsible for administering them is indicated by Dem. 24.20; cf. MacDowell in *JHS* 95 (1975) 66–7, P. J. Rhodes *A Commentary on the Aristotelian Athenaion Politeia* (1981) 33–4.
- 4 For discussion of *skepsis* and *antidosis* see W. A. Goligher in *Hermathena* 14 (1907) 481–515, Lipsius *Das attische Recht* 588–99, Harrison *The Law of Athens* 2.232–8, MacDowell *The Law in Classical Athens* 161–4.
- 5 See D. M. Lewis in *BSA* 50 (1955) 24.
- 6 It remains uncertain where exactly the line was drawn between those liable to *endeixis* and those liable to *apagoge*. On that problem see M. H. Hansen *Apagoge, Endeixis and Ephegesis* (1976) 94–6; but he does not discuss the instances in Dem 21.58–60.
- 7 See Lipsius *Das Attische Recht* 804 note 1.
- 8 Dem. 21.56 mentions only accusation by a rival *khoregos*. But it is unlikely that the law forbade action by anyone else who thought he had detected an alien chorister. We should assume that ὁ βουλόμενος could accuse, and that if a prosecution followed it was a *graphe*, not a private *dike*.

# The law of Periandros about symmories

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The speech *Against Euergos and Mnesiboulos* describes a dispute over some naval gear.<sup>1</sup> The dispute occurred early in the year 357/6 BC (ἐπ’ Ἀγαθοκλέους ἄρχοντος, Dem. 47.44), when the speaker was a trierarch and supervisor of his symmory (τριηραρχῶν καὶ ἐπιμελητῆς ὄν τῆς συμμορίας, Dem. 47.22), and he refers to the law of Periandros, by which the symmories were organized’ (ὁ νόμος ὁ τοῦ Περιάνδρου . . . καθ’ ὃν αἱ συμμορίαὶ συνετάχθησαν, Dem. 47.21). There is no other specific reference to the law of Periandros. If 357/6 was the first year of its operation, it was probably passed in 358/7, but that is not known for certain. The identity of the man is likewise uncertain, though it has plausibly been suggested that he was Periandros son of Polyaratos (Dem. 40.6–7) and that he was the Periandros who proposed an alliance between Athens and Arkadia in 362/1 (*IG* ii<sup>2</sup> 112 = Tod 144).<sup>2</sup> However, his identity is of no importance for the present article. Here I am concerned only to try to reconstruct what the law said about the symmories.<sup>3</sup> Despite a great deal of modern discussion this question has still not been satisfactorily solved.

The word συμμορία means ‘group’ or ‘division’ and does not necessarily have a technical or legal sense.<sup>4</sup> But most of the Attic instances do have the special sense of a group of persons formed for the purpose of making payments of a compulsory tax or levy: either the property tax called εἰσφορά, which was imposed at irregular intervals, or payments towards the maintenance of ships in the Athenian navy, which were required every year. A fragment of Philokhoros says that Athenians were divided κατὰ συμμορίας for the first time in 378/7,<sup>5</sup> and it is generally agreed that this means that symmories were first formed in 378 for the payment of *eisphora*.<sup>6</sup> For the navy, however, there is no trace of symmories before the 350s, and everyone agrees that it was the law of Periandros which introduced the use of symmories for maintaining ships, which had previously been the sole responsibility of one trierarch or (more usually in the fourth century) a pair of syntrierarchs for each ship.

The main point of controversy is whether, from 357 onwards, the same symmories were used both for *eisphora* and for the navy, or there were two

different systems of symmories for the two purposes. The view that *eisphora* symmories and naval symmories were distinct seems to have been put forward first almost two centuries ago by F. A. Wolf, and was adopted by Bockh in his great studies of the Athenian navy and public finance.<sup>7</sup> It has been followed by most scholars since then, including (to name only some of the more recent) de Ste Croix, Jones, Thomsen, Jordan, and Wankel.<sup>8</sup> The other view, that *eisphora* symmories and naval symmories were identical, is held by Jacoby and Mossé,<sup>9</sup> and is maintained with characteristic vigour by Ruschenbusch.<sup>10</sup> Recently Rhodes has published a reply to Ruschenbusch and Mosse, upholding the more usual view.<sup>11</sup> In what follows I shall refer mainly to Ruschenbusch and Rhodes, as being the latest and best exponents of the two views, without attempting to trace the history of particular arguments through earlier scholars' work.

One of Ruschenbusch's strongest arguments, to which I think Rhodes gives too little weight, is an argument from silence: although there is a fair number of references to symmories in the orators and other texts of the fourth century, not one of them says that different symmories were used for *eisphora* and for the navy, or takes any trouble to specify which kind of symmory is meant in a particular passage. They just say 'a symmory' or 'the symmories' and assume that no closer definition is needed. Rhodes counters this argument by saying that it is normally clear from the context whether *eisphora* or the trierarchy is under consideration. That is certainly true in many instances, but not in all. Rhodes allows that there are three exceptions. One of these, I agree, is irrelevant: Aiskhines 1.159 merely uses *συμμορία* as a word for 'group' and is not referring to either *eisphora* or naval symmories (not even metaphorically, I think). The other two are more significant. Demosthenes in 14.16–18 talks about the 1200' and symmories for several sentences before mentioning triremes; it is not likely that he would have left his listeners in the dark so long before making clear which system of symmories he was talking about, if there were in fact two systems. But Rhodes could (though he actually does not) retort that, in his view,<sup>12</sup> the expression 'the 1200' can refer only to the trierarchy, not to those liable to pay *eisphora*, and so makes clear at the start that the passage is about the navy. The difficulty of the other passage, Dem. 18.103, is much more serious. There Demosthenes has made quite clear that he is talking about the navy, and then suddenly mentions τοὺς ἡγεμόνας τῶν συμμοριῶν, who according to Rhodes are the leaders of the *eisphora* symmories, not of the naval symmories. How did Demosthenes expect his listeners to know that?<sup>13</sup>

There are besides two other passages of Demosthenes which fail to make clear any distinction between *eisphora* symmories and naval symmories. One of these is mentioned by Rhodes, who says in his note 30 'I agree with L. Gernet (Budé ed.) that the symmories of Dem. 39 (Boe. Nom.) 8 are trierarchic symmories; but they have normally been taken to be *eisphora*-symmories'. But the very fact that there is a divergence of opinions indicates that the passage is another in which the context does not make clear which kind of symmory is meant.<sup>14</sup> And then there is 21.157, in which Demosthenes, cataloguing his own services to Athens, says 'I was leader of a symmory for ten years'. This comes only a few lines after

comments on the inadequate contributions made by Meidias to the trierarchy (21.155), and any juror knowing that there were two kinds of symmory would surely have taken it as a reference to a naval rather than an *eisphora* symmory. But in fact the symmory of which Demosthenes was leader for ten years was a symmory for payment of *eisphora*, as we know from the speeches *Against Aphobos* (27.7–9, 28.4).

So the failure of the orators to draw the distinction between *eisphora* symmories and naval symmories cannot be satisfactorily explained by saying that the meaning is always clear from the context; it is more easily explained by saying that the distinction did not exist. Round one goes to Ruschenbusch. But an argument from silence is not a knock-out, and Rhodes goes on to score some useful points. He is right to complain that Ruschenbusch does not do justice to some of the texts. Dem. 47.21, quoted in my first paragraph, says that the symmories were organized by the law of Periandros. According to Rhodes that means that new symmories were created to provide trierarchs, but if we accept the view of Ruschenbusch (who does not actually mention the passage at all) it has to mean merely that a new function was given to symmories which already existed. I do not think that συνετάχθησαν must mean a totally new creation of symmories out of nothing, but I do think it must at least mean some action which did not leave the formation of the symmories unaltered.<sup>15</sup> Another text to which Rhodes rightly draws attention is a passage of the speech *Against Leptines*.

οὐκοῦν οἱ μὲν ἐλάττω κεκτημένοι τοῦ τριηραρχίας ἄξι' ἔχειν ἐν ταῖς εἰσφοραῖς συντελοῦσιν εἰς τὸν πόλεμον, οἱ δ' ἐφικνούμενοι τοῦ τριηραρχεῖν εἰς ἀμφοτέρ' ὑμῖν ὑπάρξουσι χρήσιμοι, καὶ τριηραρχεῖν καὶ εἰσφέρειν.

So those who have too little property to justify a trierarchy will make contributions to the war in payments of *eisphora*, while those who attain the level for service as trierarchs will be of use to you in both ways, trierarchy and *eisphora*.

(Dem. 20.28)

If the same symmories were used both for trierarchy and for *eisphora*, that would imply that the same men performed both services; yet here we find Demosthenes saying that some men who were not rich enough to be trierarchs nevertheless paid *eisphora*. Ruschenbusch does perceive that the passage creates a difficulty for his view, but the solution which he offers is unsatisfactory. He postulates that for the trierarchy there was a fixed property qualification, which he reckons to have been about 4 talents;<sup>16</sup> those members of a symmory who possessed less were exempt from the trierarchy but still had to pay *eisphora*. In support he adduces a passage of the speech *On the Symmories*. Here, speaking in the year 354, Demosthenes proposes changes in the system, and in so doing reveals to us some features of the system as it had been since the law of Periandros was passed. This text will need to be mentioned several times and may as well be fully quoted at once.



τοὺς διακοσίους καὶ χιλίους ἀναπληρῶσαί φημι χρῆναι καὶ ποιῆσαι δισχιλίους, ὀκτακοσίους αὐτοῖς προσνείμαντας· ἐὰν γὰρ τοῦτ' ἀποδείξητε τὸ πλῆθος, ἡγοῦμαι, τῶν ἐπικλήρων καὶ τῶν ὀρφανῶν καὶ τῶν κληρουχικῶν καὶ τῶν κοινωνικῶν καὶ εἴ τις ἀδύνατος ἀφαιρεθέντων, ἔσεσθαι χίλια καὶ διακόσια ταῦθ' ὑμῖν σώματα. ἐκ τοίνυν τούτων οἶμαι δεῖν ποιῆσαι συμμορίας εἴκοσιν, ὥσπερ νῦν εἰσιν, ἐξήκοντα σώματ' ἔχουσαν ἐκάστην. τούτων δὲ τῶν συμμοριῶν ἐκάστην διελεῖν κελεύω πέντε μέρη κατὰ δώδεκ' ἄνδρας, ἀνταναπληροῦντας πρὸς τὸν εὐπορώτατον ἀεὶ τοὺς ἀπορωτάτους.

I say that you must enlarge the 1200 and make 2000, by adding 800 to them; if you designate that number, I believe that, when heiresses, orphans, property of cleruchs and corporations, and any disabled men have been deducted, that will give you 1200 persons. Out of these I think you should form 20 symmories, as there are at present, each containing 60 persons. Each of these symmories you are to divide into 5 parts of 12 men, matching the richest with the poorest in every case.

(Dem. 14.16–17)

From this passage it is clear that in 354 the 20 naval symmories did not consist entirely of active men. They included ἐπικλήροι (women or girls left with no father or brother, with whom an estate remained until a male heir came of age), ὀρφανοί (boys under eighteen whose fathers had died), κληρουχικά (estates belonging to cleruchs, who lived overseas), and κοινωνικά (estates belonging to corporations, such as demes and phratries). They also included εἴ τις ἀδύνατος, and this is the phrase which Ruschenbusch adduces to support his hypothesis that some members of symmories were exempt from service as trierarchs because they were not rich enough. But I agree with Rhodes that this is not the meaning of εἴ τις ἀδύνατος. Although the word ἀδύνατος can refer to lack of financial means when the context or additional words make that clear,<sup>17</sup> its normal unqualified use refers to physical disability,<sup>18</sup> and that must be its sense here. The fault which Demosthenes finds in the present system is that many of the members of symmories are not available to the Athenians as σώματα: they are not men able to go on active service in person as trierarchs. So this passage does not explain why Demosthenes in 20.28 makes property the basis of a distinction between those liable to serve as trierarchs and those liable only to pay *eisphora*.

Before suggesting a different answer to that problem, it is necessary to consider the evidence for the total number of those subject to these liabilities. The figure of 1200 is given in three passages of extant speeches.<sup>19</sup> One is Dem. 14.16, just quoted, where 1200 is the total membership of the naval symmories. Here are the other two.

διακοσίους καὶ χιλίους πεποιήκατε συντελεῖς ὑμεῖς, παρ' ὧν εἰσπραττόμενοι τάλαντον ταλάντου μισθοῦσι τὰς τριηραρχίας οὗτοι, . . . , ὥστ' αὐτῶν ἐνίοις τῇ ἀληθείᾳ τὸ μηδὲν ἀναλῶσαι καὶ δοκεῖν λελητουργηκέναι καὶ τῶν ἄλλων λητουργιῶν ἀτελεῖς γεγενῆσθαι περίεστιν.

You have made 1200 contributors, from whom they (sc. rich men like Meidias) exact a talent and then let contracts for the trierarchies at a talent . . . , so that some of them in fact end up spending nothing, and are considered to have performed a liturgy, and so obtain exemption from the other liturgies. (Dem. 21.155)

εἰς δὲ τοὺς διακοσίους καὶ χιλίους τοὺς εἰσφέροντας καὶ λειτουργοῦντας οὐ μόνον αὐτὸν παρέχεις, ἀλλὰ καὶ τὸν υἱὸν, καὶ τρεῖς μὲν ἤδη τετρηραρχήκατε, τὰς δ' ἄλλας λειτουργίας πολυτελέστερον λελειουργήκατε καὶ κάλλιον ὢν οἱ νόμοι προστάττουσιν.

You allow not only yourself but your son too to be included in the 1200 who pay *eisphora* and perform liturgies; and the two of you have performed three trierarchies, and have performed the other liturgies with greater expense and generosity than the laws require.

(Isok. 15.145)

At first sight we appear to have a conflict in the evidence. Two texts say that the number of contributors to the cost of trierarchies was 1200 (Dem. 14.16, 21.155); one text says that the number of payers of *eisphora* was 1200 (Isok. 15.145); and one text says that there were more payers of *eisphora* than trierarchs (Dem. 20.28). How is the conflict to be resolved?

The solution offered by Rhodes is to reject the most obvious interpretation of Isok. 15.145 and to suppose that the number of payers of *eisphora* was larger than 1200: 'there may be a class of not quite so rich Athenians who pay *eisphora* but do not perform liturgies'. But this is not satisfactory. To interpret the words of Isokrates as meaning 'the 1200 who both pay *eisphora* and perform liturgies', in contrast with other men who pay *eisphora* but do not perform liturgies, is to put more weight on a simple καί than it will bear. The words τοὺς εἰσφέροντας immediately follow the figure 1200 and must be associated with it; if εἰσφέροντας and λειτουργοῦντας do not refer to exactly the same persons, 1200 should be regarded as the number of the former rather than the latter.

A better solution is to distinguish between those who perform liturgies and those who merely contribute to the cost of them. Several of the texts clearly imply a distinction between the trierarchs and the contributors. The main point which Demosthenes makes in 14.16 is precisely that the list of 1200 includes some (heiresses, orphans, and so on) who do not serve as trierarchs. In that passage the 1200 are not called trierarchs. (Contrast 14.20, in which Demosthenes does use the term τριήραρχοι of the 1200 active men who would be obliged to serve under his new proposal; but this part of his proposal was not carried out.) Likewise in 21.155 the 1200 are called contributors (συντελεῖς), not trierarchs; the trierarchs are the rich men like Meidias, who collect money from the contributors and then either command the ships at sea or employ deputies to do so.<sup>20</sup> In 47.21–4 the speaker says that he was a trierarch and supervisor of his symmory, implying that the members of the symmory were not all trierarchs. Note especially 47.24, where

he calls as witnesses 'the members of the symmory, of which I was supervisor and a trierarch'; the words καὶ τριήραρχος would be completely superfluous if all the members of the symmory were trierarchs.

Some other texts are less clear about this distinction, but none is incompatible with it. A fragment of Hypereides speaks of the richest men 'being trierarchs with 5 or 6 others'.<sup>21</sup> I take this to mean not that the 5 or 6 contributors were trierarchs, but that one trierarch might receive financial contributions from 5 or 6 contributors. The reference in Dem. 18.104 to performing liturgies in groups of 16 can be similarly interpreted as meaning that the man performing the liturgy received contributions from 15 contributors. These two passages will need further discussion later in this article, when the numbers of contributors in the groups are considered; in both passages emendation of the figures has been proposed. But here it should be noted that Demosthenes goes on to say that the rich men no longer called themselves trierarchs but contributors (οὐδὲ γὰρ τριηράρχους ἔτ' ὀνόμαζον ἑαυτοῦς ἀλλὰ συντελεῖς, 18.104). This, I admit, is the most difficult passage for my view that trierarchs are to be distinguished from contributors, since it seems to say that the two words are synonyms. However, it does not quite say that; Demosthenes means that disuse of the term τριήραρχος was unofficial and incorrect. All the 1200 were contributors, and the richest of the active men among them were officially designated to be trierarchs. The reason why they (perhaps really only a few of them), though entitled to call themselves trierarchs, merely called themselves contributors will have been that, instead of going on active service themselves, they just leased out the trierarchies, adding nothing but money of their own (sometimes not even that, if Dem. 21.155 is to be believed) to the money which they collected from the other contributors.

A further argument in favour of the view that trierarchs are to be distinguished from contributors may be drawn from the law about exemption from liturgies. It was the law that no one could be required to perform two liturgies in the same year or consecutive years.<sup>22</sup> Thus the richest men, who were trierarchs, were always exempt from festival liturgies.<sup>23</sup> Demosthenes complains in 21.155 (quoted above) that some rich men like Meidias contrive to discharge their obligations at no cost to themselves by collecting from contributors the whole sum of money needed and then, on the ground of being trierarchs, obtain exemption from other liturgies. But if everyone on the list of 1200 counted as a trierarch, this argument would have had little or no point; the fact that Meidias was one of the 1200 would then have given him permanent exemption from other liturgies anyway.<sup>24</sup> We may safely conclude that the 1200 contributors did not, as such, have exemption from other liturgies, whereas trierarchs did. The two categories were therefore not identical.

Ruschenbusch too considers that the men who served as trierarchs were less numerous than the 1200 payers of *eisphora*. But my view of this point differs from his in two respects. First, I believe that all the 1200 were obliged to pay contributions to naval maintenance as well as *eisphora*.<sup>25</sup> Secondly, I do not accept that the trierarchs were distinguished from the rest by any fixed property qualifications, such as a minimum of 4 talents, nor that there was a fixed number,

such as 300, of men liable to the trierarchy and other liturgies. Not only would 300 not have been enough to perform all the liturgies, at least in some years, while still allowing the statutory interval of one year between liturgies (there were about 100 festival liturgies every year,<sup>26</sup> and surely more than 50 trierarchies in some years); but we have also to bear in mind the *antidosis* procedure, which shows that appointment as a trierarch was essentially competitive. A man designated by the *strategoï* to be a trierarch could avoid serving only by pointing out a man richer than himself who had not been so designated (and was not exempt); otherwise he had to serve, even if his property was less than 4 talents. But if he was able to point out a richer man, he could avoid service even if he possessed more than 4 talents. In principle no man was exempt from the trierarchy (except the nine *arkhons*),<sup>27</sup> however poor he might be; it was only in practice that men possessing less than about 3 or 4 talents were never appointed, because someone richer was always available.<sup>28</sup> And in practice the number of men who, from time to time, found themselves landed with trierarchies was always considerably smaller than the 1200 who were required to pay *eisphora* and to contribute to naval costs. This is the point which emerges from Dem. 20.28. The contrast there is between the 1200 who pay *eisphora* and the smaller number who serve as trierarchs. Demosthenes does not mention explicitly in that passage that those who pay *eisphora* also pay contributions to naval costs; perhaps he is using the verb εἰσφέρειν loosely to cover both kinds of payment, or perhaps he just considers that it adds nothing to his argument to mention the naval contributions. Isokrates, on the other hand, is not concerned in 15.145 to bring out the point that some of the 1200 do not perform trierarchies, since he himself has in fact performed some; he just says ‘the 1200 who pay *eisphora* and perform liturgies’, and since festival liturgies were performed by men not quite rich enough to be trierarchs (Dem. 20.19), it is probably true that most of the 1200 performed liturgies of one sort or the other.

I conclude that, from 357 onwards, the 1200 were those who were liable both for *eisphora* and for payment of naval costs. Appointment to a trierarchy was a separate matter; but since the *strategoï* always designated as trierarchs the richest men available, in practice trierarchs were always men who were also on the list of 1200. One purpose, probably the main purpose, of the law of Periandros was to enable a trierarch to collect contributions from others to the cost of maintaining his ship, instead of having to bear the whole cost himself. But it was still appropriate for the *strategoï* to select the richest men to be trierarchs, because, even if a trierarch recovered most of the maintenance cost from the contributors, he would still need either to give up other work while commanding his ship at sea or to pay someone else to do that on his behalf. (When Demosthenes says in 21.155 that men like Meidias collect from the contributors enough money to pay for that as well, he is clearly describing not the normal procedure but an abuse of it.)

If the same 1200 were the payers of *eisphora* and the contributors to naval costs, that strengthens considerably the case for believing that they were organized in the same symmories for both purposes, not in two different systems. But before deciding that that was so, we have also to consider the evidence about the number

and size of the symmories. Demosthenes says in 14.17 (already quoted) that there are 20 symmories, each having 60 members. He goes on to propose a change, by which, after a revision of the list to produce 1200 active men, excluding heiresses, orphans, and so on, each symmory would be divided into 5 sections of 12 men each. He later refers to the 20 symmories as ‘the large symmories’ (14.21); that probably means that he thinks of the proposed 100 sections as ‘the small symmories’ even though that expression does not appear in the text. We can therefore say that his proposal is to create 100 symmories of 12 men each; but there is no explicit evidence that this proposal was carried out. There are two other pieces of evidence: a fragment of Kleidemos says that there are 100 symmories ‘now’ (νῦν, but it is not known exactly when in the fourth century Kleidemos wrote),<sup>29</sup> and a fragment of Hypereides says that there are 15 men in each symmory.<sup>30</sup>

Those who believe that *eisphora* symmories and naval symmories were separate can deal with this evidence quite easily by distributing it between the two: since 20 is the number of naval symmories, 100 must be the number of *eisphora* symmories; and since 60 is the number of men in a naval symmory, 15 must be the number of men in an *eisphora* symmory. For the latter point there is also an alternative explanation, adopted by Rhodes: Hypereides refers to the period after 340, when, by a reform proposed by Demosthenes, the number of men liable for naval contributions was reduced to 300,<sup>31</sup> and the figure of 15 men in each symmory shows that the number of naval symmories continued to be 20.

If, on the other hand, we accept that after 357 *eisphora* symmories and naval symmories were identical, fitting in the various figures is a little more difficult. It is clear from Dem. 14.17 that the number of symmories between 357 and 354 was 20; is Kleidemos’ figure of 100 the number which existed before 357 or after 354? Ruschenbusch chooses the latter alternative, supposing that the change proposed by Demosthenes in 14.17 must have been carried out in this respect (even if other parts of his proposal were not accepted). I believe that this is correct.

Admittedly one part of the evidence which Ruschenbusch adduces is of doubtful strength. The inscribed naval records of the period sometimes mention a symmory, for example Χαίρεστράτο Κηφισίω, the symmory of Khairestratos of Kephisia (*IG ii<sup>2</sup> 1618.99*). *IG ii<sup>2</sup> 1615 + 1617 + 1618 + 1619* are fragments of a single inscription<sup>32</sup> which appears to have named more than 20 symmories (though no more than 20 different names are legible now in the text as printed in *IG ii<sup>2</sup>*), presumably all existing in the same year. Rhodes objects that the date of this inscription is thought to be very close to 357/6,<sup>33</sup> when all agree that the number of naval symmories was only 20, and suggests instead that in a few lists ‘symmory’ was used of the group (of whatever size) of men responsible for one ship. That suggestion is not very attractive: the official naval records are precisely the place where a vague use of the word would least be expected, whereas a suggestion that the usage in the orators is inexact might be more plausible. However, as Rhodes says, full discussion of these inscriptions must await Laing’s promised republication of them.

Meanwhile the better evidence in favour of Ruschenbusch’s view is Dem. 18.103, which mentions ‘the leaders, seconds, and thirds of the symmories’ as the

men on whom the burden of naval contributions was expected to fall as a result of Demosthenes' reform in 340. As I have already said, the context of this passage implies that the symmories meant are those used for naval contributions; Demosthenes' reform reduced the total membership of the symmories to 300; so 'the leaders, seconds, and thirds' must be the three leading men in each of 100 symmories. If we postulate that the number of symmories, after being raised to 100 in 354, was reduced to 20 again in 340 (when the total number of members of symmories was reduced), we can still retain Rhodes's explanation of the statement of Hypereides that there were 15 men in each symmory, as referring to the period after 340. This explanation is indeed the one adopted by Harpokration (s.v. *συμμορία*), who presumably had the whole of the speech of Hypereides before him and was thus in a better position to date it than we are.<sup>34</sup>

The alternative hypothesis, that 100 was the number of symmories before 357, is less cogent. Yet we must not forget Dem. 47.21 (quoted in my first paragraph): in 357 'the symmories were organized'. That probably does mean that either the number of symmories or their size or both were changed in 357. But we cannot say what the arrangement was before that date; there is no strong reason to say that there were 100 symmories then. It would be helpful and interesting if we knew what reasons the Athenians had for preferring 20 large symmories to 100 small ones, or the reverse; but about this we can only make guesses. I suppose that one advantage of having smaller symmories was that the members of each symmory would soon get to know one another and would be able more easily to satisfy themselves that each was paying his proper share of the sums required. On the other hand, larger symmories would facilitate the distribution of the burden among the symmories: for example, if the number of ships which needed to be put in commission in a particular year was 120, it would be easy to share them out equally among 20 symmories, but not so easy among 100.

There is a little evidence about the distribution of the burden as it affected individual members of symmories. It is clear that the members did not each pay the same amount: a rich man had to pay more than a less rich colleague. For *eisphora* that is clear from the speeches *Against Aphobos*, in which Demosthenes asserts that during his minority his guardians let him in for heavy payments of *eisphora* by allowing the valuation of his property to be set at a high figure (27.7–9, 28.4).<sup>35</sup> For naval contributions Demosthenes, when proposing the formation of 100 small symmories, adds the words 'matching the richest with the poorest in every case' (14.17, quoted above); he adds no explanation or comment on this point, evidently because it was already familiar and accepted in the existing symmories. The purpose of combining rich and less rich men within each symmory is, of course, that each symmory can then be required to pay the same total amount, while within the symmory a rich man will pay more than a poorer man.

Suppose that in a particular year, during the period when there were 100 symmories with 12 members each, 200 ships were needed. (This would be an exceptionally high number.) Each symmory must pay for two ships. This might have been arranged by collecting the money from all 12 members and giving half the total sum to each of the two trierarchs. But that seems not to have been done

in fact. Instead it was customary to allocate each member to one particular ship; thus 4 or 5 men (including the richest in the symmory) might pay for one ship, while 8 or 7 paid for the other. The existence of such groups, varying in size, is attested by another passage of Hypereides, which mentions groups of 6 and 7 (σὺν πέντε καὶ ἕξι).<sup>36</sup> But what are we to make of Dem. 18.104, which says that men sometimes contributed *συνεκαίδεκα*, ‘in groups of 16’? Some have thought this impossible. Emendation to *σὺν ἕξι καὶ δέκα* was suggested by Christ and is accepted by Ruschenbusch.<sup>37</sup> That would mean ‘in groups of 7 and 11’. 11 is perhaps the hardest size of group to imagine within a symmory of 12, and I do not think the change is essential. Demosthenes is obviously not giving a normal figure but the most extreme instance he *can* remember, and we must bear in mind that the number of ships needing to be put in commission varied from year to year. There may have been a year when only 75 ships were needed, so that each ship was paid for by the whole of one symmory and one third of another.<sup>38</sup>

Such details within each symmory may have been arranged by the supervisor of the symmory (*ἐπιμελητὴς τῆς συμμορίας*), who was presumably elected by the members.<sup>39</sup> Little is known about the functions of the supervisor, but the one specific reference to the law of Periandros does say that it laid down a requirement ‘to take over those owing the gear’ (Dem. 47.21). The phrase is obscure, but evidently the speaker, who was both a trierarch and the supervisor of a symmory, considered that he was acting in accordance with this provision when he attempted to claim some naval gear from two men who had been *syntrierarchs* in a previous year (Dem. 47.22). This provision of the law must have been concerned with the procedure for passing on ships’ gear from one year’s trierarchs to their successors. Most probably, as a part of the transfer of naval responsibilities to the symmories, it gave to the supervisors of the symmories the task of seeing that the trierarchs received the gear that was due to them.

The leader (*ἡγεμῶν*) must be distinguished from the supervisor. Demosthenes was leader of a symmory while still a child (Dem. 28.4); this shows that the position did not involve administrative functions. The leader was simply the richest member of the symmory,<sup>40</sup> who therefore paid the highest amount. The *δεύτερος* and the *τρίτος* were doubtless the next richest. These ‘seconds and thirds’ are mentioned specifically in only one surviving text, the passage already mentioned (Dem. 18.103) which shows that the leaders, seconds, and thirds of the 100 symmories were identical with the 300 men to whom Demosthenes in 340 gave the whole of the liability for naval contributions. That is agreed even by Rhodes (who believes that the 100 symmories were used for *eisphora* only). We need, then, to consider how other references to ‘the 300’ (*οἱ τριακόσιοι*) fit in with the information about symmories.

References to the 300 are found over a period of about forty years, from the 360s to the 320s. The latest is in the speech *Against Phainippos*, where *οἱ τριακόσιοι* are equated with *οἱ προεισφέροντες* (Dem. 42.25). *Proeisphora* was a device to save the state trouble in collecting *eisphora*: rich men advanced the entire sum due to the state, and subsequently collected it from the individuals who were liable to pay it. The earliest reference to the 300 is in the speech *On the estate of*

*Philoktemon*, in which we read of some men making payments of *eisphora* ἐν τοῖς τριακοσίοις (Isaios 6.60).

This must refer to a special category within the class of payers of *eisphora*; so it is usually and rightly believed that the 300 were identical with the payers of *proeisphora* throughout this period. That means that we can use references to οἱ προεισφέροντες as evidence for the 300.

The date when they were first appointed is not known. The date of Isaios 6.60 is 364 or 363,<sup>41</sup> but it implies that the 300 have existed for some years before. But *proeisphora* did not begin as early as the formation of the first symmories in 378; for Androtion later undertook the collection of arrears of *eisphora* due from 378 onwards (Dem. 22.44), which would have been unnecessary if the amounts due at that time had been paid by προεισφέροντες.<sup>42</sup>

The first evidence for the manner of their appointment is in the speech *Against Polykles*. The speaker, Apollodoros, describes an emergency in the year 362/1: the Athenians voted that there should be a collection of *eisphora* and that the members of the Boule, on behalf of the members of the demes, should nominate those who were to pay *proeisphora*; Apollodoros himself was nominated in three different demes (Dem. 50.8). From this we see that, although the institution of *proeisphora* was already familiar, no standing list of οἱ προεισφέροντες existed at this date, but they had to be appointed afresh each time there was to be a collection of *eisphora*. Normally they were nominated by demes; on this occasion, as an exceptional arrangement to speed up the procedure in an emergency (since nomination by demes would require the convening of a meeting of the members of each deme),<sup>43</sup> they were nominated by the members of the Boule (each of whom was, of course, a representative of a deme). The fact that Apollodoros was nominated in three demes shows that each deme was free to nominate anyone it wished, not necessarily one of its own members. Nor did the nominee have to belong to a particular symmory; symmories are not mentioned in this passage at all. A point which is mentioned, on the other hand, is that *proeisphora* was a liturgy, so that a man who was a trierarch in a particular year could not be required to pay *proeisphora* in the same year or the next; Apollodoros boasts of not having claimed this exemption (Dem. 50.9).<sup>44</sup>

All this is a quite different method of appointment from the one implied by Dem. 18.103, where the 300 are the three richest members of each of the 100 symmories. It appears that at some time – most probably at the time when the 100 symmories were instituted in 354, or soon afterwards – the cumbrous system of appointing the 300 payers of *proeisphora* through the demes was abandoned, and instead the three richest members of every symmory composed the 300. This provided a more or less permanent list of 300 rich people, to whom Demosthenes in 340 was able to transfer the whole liability for payment of naval contributions, in addition to *proeisphora*. After that they were no longer three members of each symmory; they were just a list of 300 rich people. Thus the membership of the list could be changed by the procedure of *antidosis*: a person could get off the list by pointing out any other person in Athens who was richer than himself, and that was what the opponent of Phainippos tried to do.



I conclude by summarizing what I take to have been the sequence of developments.

- (1) In 378 symmories were formed for the first time for payment of *eisphora*. The number and size of the symmories at this time is not known.
- (2) In the late 370s it became regular, when *eisphora* was to be levied, to appoint 300 men to pay *proeisphora*. They were nominated by demes, not by symmories.
- (3) In 357, or shortly before, the symmories were reorganized by the law of Periandros. Now there were 20 symmories, each having 60 members; and they were used for payment of naval contributions as well as *eisphora*. Trierarchs, however, continued to be appointed as before.
- (4) In 354 the number of symmories was changed to 100, each having 12 members. At the same time, or soon afterwards, the 300 payers of *proeisphora* ceased to be nominated by demes each time they were required, and instead were made up from the three richest members of every symmory.
- (5) In 340, by the law of Demosthenes, the whole of the liability for payment of naval contributions was transferred to the 300, who continued also to pay *proeisphora*. They were now organized in 20 symmories, each having 15 members. Whether symmories continued to be used for payment of *eisphora* after this date is not known.<sup>45</sup>

## Notes

- 1 Dem. 47. I refer without square brackets to speeches in the Demosthenic corpus: this does not imply any judgement whether a particular speech was composed by Demosthenes himself.
- 2 Cf. J. K. Davies, *Athenian Propertied Families* (1971), 464.
- 3 G. L. Cawkwell, *CQ* 34 (1984), 342–3, considers the question whether the law of Periandros dealt with other matters besides the symmories. But there is no evidence that it did; there is no particular reason why changes in the practice of providing crews and gear for ships at public expense (mentioned in Dem. 21.155) should have formed part of this law.
- 4 There are non-technical instances in Xen. *Hell.* 1.7.30, Aiskhines 1.159.
- 5 *F. Gr. Hist.* 328 F41.
- 6 An exception is R. Thomsen, *Eisphora* (1964) chapter 7. He attributes symmories to the time of Themistokles (p. 144), but this suggestion is not compatible with the statement of Philokhoros; cf. J. J. Keaney, *Historia* 17 (1968), 508–9.
- 7 F. A. Wolf, *Demosthenis Oratio adversus Leptinem* (1789), pp. civ–cviii; A. Böckh, *Die Staatshaushaltung der Athener* (1817), ii.61–2, *Urkunden über das Seewesen des Attischen Staates* (1840), 178.
- 8 G. E. M. de Ste Croix, *Class. et Med.* 14 (1953), 45; A. H. M. Jones, *Athenian Democracy* (1964), 28; R. Thomsen, *Eisphora* (1964), 88–9; B. Jordan, *The Athenian Navy in the Classical Period* (1975), 74; H. Wankel, *Demosthenes: Rede für Ktesiphon über den Kranz* (1976), 563–4. A fuller list of scholars holding this view is given by Ruschenbusch (see note 10 below).
- 9 F. Jacoby, *F. Gr. Hist.* IIIb Supp. (1954), i.58; C. Mossé, ‘Les symmories athéniennes’ (delivered orally in 1976; published in *Points de vue sur la fiscalité antique*, ed. H. van Effenterre, Publ. de la Sorbonne ‘Etudes’ 14 [1979], pp. 31–42).

- 10 E. Ruschenbusch, 'Die athenischen Symmorien des 4. Jh. v.Chr.', *ZPE* 31 (1978), 275–84. I refer to this article simply as 'Ruschenbusch'.
- 11 P. J. Rhodes, 'Problems in Athenian *eisphora* and liturgies', *Amer. Journ. Anc. Hist.* 7 (1982, published in 1985), 1–19, especially 5–11. I refer to this article simply as 'Rhodes'.
- 12 My view of the 1200 is different, however, as will be seen presently.
- 13 Professor Rhodes, on reading a draft of this article, has suggested to me that only the *eisphora* symmories had leaders, so that the word ἡγεμόνας in Dem. 18.103 (and likewise ἡγεμών in Dem. 21.157) precludes ambiguity. But, since ἡγεμών was simply the term for the richest member of a symmory (see below, note 40), it seems to me improbable that it was never used in naval contexts.
- 14 The confusion is indeed greater than Rhodes suggests; for Gernet's note on the passage simply says 'Sur les symmories trierarchiques, cf. C. Aph. I, 7 sq.' (L. Gernet, *Demosthenes. Plaidoyers civils* ii (1957), 249), but the Aphobos passage is actually about *eisphora*. We have to conclude that Gernet was (unusually for him) muddled on this point. But Professor Rhodes has told me that his reason for believing that Dem. 39.8 refers to a naval symmory is that in the context there are mentions of liturgies, the generals, and appointment as a trierarch.
- 15 In its ordinary military usage συντάττειν does not mean to create new soldiers but to rearrange soldiers in a suitable formation.
- 16 Ruschenbusch in a later article, 'Ein Beitrag zur Leiturgie and zur Eisphora', *ZPE* 59 (1985), 237–40, suggests that the precise figure was 4 talents 1000 drachmas.
- 17 E.g. Thuc. 7.28.4 ἀδύνατοι ἐγένοντο τοῖς σώμασι.
- 18 Lys. 24, Aiskhines 1.103–4, and Arist. *Ath. Pol.* 49.4 show that οἱ ἀδύνατοι was the standard term for those Athenians who were registered as disabled.
- 19 It occurs also in two fragments where the context is insufficient to make the interpretation clear, Isaios fr. 74 Sauppe = 18 Thalheim = 21 Forster and Philokhoros *F. Gr. Hist.* 328 F45.
- 20 The etymology of the word τριήραρχος shows that it refers primarily to a man who commands a ship. But the word was also used of a man who employed a deputy to do that; thus Demosthenes says ἐτρηράρχου of the occasion immediately after he came of age (21.154), when he employed a deputy and did not go to sea himself (21.80).
- 21 Hyp. fr. 160 Sauppe = 134 Kenyon, Jensen = 43.1 Burtt.
- 22 Dem. 20.8, 50.9, Arist. *Ath. Pol.* 56.3. At an earlier period it seems to have been the law that a two-year interval between liturgies could be claimed (Isaios 7.38).
- 23 οἱ μὲν τοίνυν πλουσιώτατοι τριηραρχοῦντες ἀεὶ τῶν χορηγιῶν ἀτελεῖς ὑπάρχουσιν, Dem. 20.19. I take this to mean that each of these men was a trierarch every second year.
- 24 The occasion when Meidias was compelled by *antidosis* to accept appointment as a *khoregos* (Dem. 21.156) is not relevant here, because it probably occurred before the passing of the law of Periandros and before Meidias first served as a trierarch.
- 25 Ruschenbusch is not very clear on this point in his 1978 article, but he is more explicit in a later article, 'Die trierarchischen Syntelien and das Vermögen der Synteliemitglieder', *ZPE* 59 (1985), 240–9. He considers that trierarchies (and all other liturgies) were performed by only 300 men, but contributions to naval maintenance were paid by all 1200 *eisphora*-payers except heiresses, orphans and so on. I reject this because the number of naval contributors is said (most clearly in Dem. 21.155) to have been 1200. If heiresses and orphans could pay *eisphora*, they were capable of paying naval contributions too.
- 26 Cf. J. K. Davies, *JHS* 87 (1967), 33–40.
- 27 Dem. 20.27–8.
- 28 Cf. J. K. Davies, *Athenian Propertied Families* (1971), pp. xx – xxiv.
- 29 *F. Gr. Hist.* 323 F8.
- 30 Hyp. fr. 186 Sauppe = 159 Kenyon, Jensen = 25 Burtt.

- 31 This figure comes from Aiskhines 3.222, Deinarkhos 1.42, Hyp. fr. 160 Sauppe = 134 Kenyon, Jensen = 43.1 Burtt.
- 32 Cf. D. R. Laing, *Hesperia* 37 (1968), 245 n. 4.
- 33 Rhodes 9, referring to Laing, op. cit. 254 n. 22.
- 34 Harpokration does not say whether these 15-man symmories were used for *eisphora* as well as for naval contributions. There is in fact no evidence at all for the use of symmories for the collection of *eisphora* after 340.
- 35 Harpokration s.v. διάγραμμα finds further evidence of this in two speeches of Hypereides not now extant.
- 36 Hyp. fr. 160 Sauppe = 134 Kenyon, Jensen = 43.1 Burtt. Bekker emended the text to σύμπευτε καὶ σύνεξ, ‘in groups of 5 and 6’.
- 37 W. Christ, *Philologus* 45 (1886), 383–4; Ruschenbusch 280 n. 18 (on page 281).
- 38 In practice there may have been further complexities, about which we have no evidence. Did a trierarch have to be a member of the symmory which paid money for the maintenance of his ship? Probably not, for in a particular year a particular symmory might find that its richest members were all ineligible, because they either had served as trierarchs the previous year or were heiresses, orphans, etc. So sometimes a symmory may have paid for the maintenance of a ship whose trierarch was a member of a different symmory. We do not know how such arrangements were made.
- 39 Harpokration s.v. διάγραμμα, giving Hypereides as his authority, mentions an official called διαγραφεύς, ‘appointed in the symmories to decide how much each man ought to contribute’; and Polydeukes 3.53, also referring to Hypereides, mentions officials called συμμοριάρχαι. Rhodes 18 n. 49 attributes both of these to *eisphora-symmories*. It is possible that they are no more than different names for the ἐπιμελητής. Another possibility, suggested to me by Dr R. A. Knox, is that there was a change of names at some time when the symmory system was changed; the evidence of Hypereides was probably later than 340.
- 40 Harpokration s.v. ἡγεμῶν συμμορίας, again referring to Hypereides.
- 41 The date is calculated from Isaios 6.14.
- 42 For a more detailed discussion of the institution of *proeisphora* see R. Thomsen, *Eisphora* (1964), 206–26. He dates it about 373/2. The date of 378 is maintained by J. K. Davies, *Wealth and the Power of Wealth in Classical Athens* (1981), 18–19, but without any new evidence.
- 43 The need for speed is enough to explain the exceptional arrangement. It is unnecessary to postulate an additional motive, such as a wish ‘to produce a more accurate register of property-owners’ (Rhodes 14).
- 44 The assumption that such exemption did not apply to *proeisphora* at this time (Rhodes 19 n. 68) implies that Apollodoros was lying. No doubt he was capable of lying, but there is no special reason to believe that he lied on this point. Exemption may have ceased to apply to *proeisphora* at the time when the standing list of 300 was established, in 354 or soon afterwards.
- 45 I am grateful to Professor Rhodes for reading a draft of this article and commenting on it. I also received some helpful suggestions from Dr R. A. Knox.

# The length of the speeches on the assessment of the penalty in Athenian courts

(Originally published in *CQ* 35 [1985] 525–6)

The time-limits imposed by the κλεψύδρα on speakers in Athenian trials have been much discussed, but a valuable distillation of the ancient evidence and modern interpretations of it has recently been made by P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (1981), pp. 719–28. He prudently states his own conclusions in a cautious manner, but I find them convincing. One *khous* of water took 3 minutes to run out; this is indicated by the length of time taken by the κλεψύδρα found in the Agora (first published by S. Young, *Hesp.* 8 [1939], 274–84), which holds 2 *khoes* and takes 6 minutes, and it is also consistent with the evidence of Aiskhines about the διαμεμετρημένη ἡμέρα. In a ‘measured-through day’, used only for public cases, the total amount of time allowed for the speeches in a trial was 11 *amphoreis* (Ais. 2.126), equivalent to 132 *khoes*, taking 396 minutes; one third of this time was allocated to the prosecution, one third to the defence, and one third to the speeches on the assessment of the penalty (Ais. 3.197). Time taken for other proceedings, including the allocation of jurors to courts, voting, and payment of jurors at the end of the day (this last is not mentioned by Rhodes, but it was surely completed well before dusk, because the jurors had time to go shopping afterwards; cf. Ar. *Wasps* 303–11, 788–9), was additional. For private cases, figures are given by *AP* 67.2: if the sum at issue was more than 5,000 drachmas, the prosecutor and defendant each had 10 *khoes* for the first speech and 3 *khoes* for the second speech; if between 5000 and 1000 drachmas (2000 according to Hommel’s restoration; cf. Rhodes, p. 721), 7 *khoes* and 2 *khoes*; if less than 1000 (or 2000) drachmas, 5 *khoes* and 2 *khoes*; in a *diadikasia* in which there were no second speeches, each claimant had 6 *khoes* for his one speech.

One further figure is given in *AP*, and this is the point at which I think it is possible to add to what Rhodes has said. In almost the last sentence of the text we read: ἡ δὲ τήμησις ἐστὶν πρὸς ἡμίχουν ὕδατος ἑκατέρω. ‘The assessment is made to half a *khous* of water for each party’ (*AP* 69.2). This means that, when the verdict had been given for the prosecutor in a type of case for which no penalty was fixed by law, the prosecutor had 1½ minutes in which to make his proposal for a penalty

or damages and give the reasons for it, and the defendant had 1 1/2 minutes in which to propose an alternative, with his arguments or pleas for mercy. Is this credible?

It plainly conflicts with the evidence of Aiskhines that in a public case a total of 44 *khoes* was available for the assessment of the penalty. The explanation usually given (cf. Rhodes, p. 734) is that *AP* 69.2 must refer to private cases only. But no one seems to have noticed that this explanation is precluded by a passage about the behaviour of Onetor at the trial of Aphobos.

ἀλλὰ καὶ κατεγνωσμένης ἤδη τῆς δίκης, ἀναβάς ἐπὶ τὸ δικαστήριον ἐδεῖθ' ἰκετεύων ὑπὲρ αὐτοῦ καὶ ἀντιβολῶν καὶ δάκρυσι κλάων ταλάντου τιμῆσαι, καὶ τούτου αὐτὸς ἐγίγνετ' ἐγγυητής.

But even after the case had already been decided against the defendant, he (Onetor) went up in front of the court and begged it on his (Aphobos') behalf, supplicating and entreating and weeping tears, to assess the damages at a talent, and offered to stand surety for this amount himself.

(Dem. 30.32)

This was a private case, the famous prosecution brought by Demosthenes on coming of age against his guardian Aphobos for failure to hand over the property left by his father (the case for which the extant speeches Dem. 27 and 28 were composed). The jury gave a verdict for Demosthenes; after that (κατεγνωσμένης ἤδη τῆς δίκης) followed the assessment of the amount which Aphobos should pay. Demosthenes claimed 10 talents. The alternative proposed by Aphobos was one talent. Aphobos himself must have spoken, even if only briefly, to make his proposal; but the passage just quoted shows that his brother-in-law Onetor spoke too, and at some length, with entreaties and an offer to stand surety. These two speeches cannot both have been made in a total of 12 minutes. In fact there must have been many cases in which the assessment required speeches of some length. Even if the prosecutor included details of his claim in his speech in the main part of the trial (as is done in Dem. 27) and so had little more to say in his speech on the assessment, the defendant, who had previously been maintaining that he should pay nothing at all and had failed to convince the jury of that, would often need to develop a new line of argument to persuade the jury that he should pay less than the prosecutor claimed.

I conclude that ἡμίχου in *AP* 69.2 is wrong. We should not seek to save it by saying that a *khous* of water must, after all, have lasted much longer than 3 minutes; the combination of Ais. 2.126 with the κλεψύδρα found in the Agora provides good evidence that the figure of 3 minutes is at least approximately correct. We could postulate that the time-limit was changed in the middle of the fourth century, between the trial of Aphobos and the composition of *AP*; but that hypothesis is not very attractive, since there is no obvious reason why the allowance of time should have been drastically reduced at that date. Instead it is more likely that there is corruption in the text of *AP*.

The emendation which I should like to suggest for consideration is ἥμισυ τοῦ ὕδατος, meaning that in all cases the time allowed for the speeches on the

assessment was half the time allowed for the speeches in the main trial. Thus in the case of Aphobos, in which the sum at issue was more than 5,000 drachmas, the defendant's time for speaking on the assessment would have been half of 13 *khoes*, working out at nearly 20 minutes, enough time for Aphobos to put forward his proposal of one talent and for Onetor to shed his tears too. A particular advantage of this emendation is that it gives exactly the same proportion of time to assessment in private cases as in public cases, and relieves us of the need to ask why there is no separate mention of public cases in *AP* 69.2.

# Athenian laws about bribery

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δωροφοροῦσιν  
ὔρχας, οἶνον, δάπιδας, τυρόν, μέλι, σήσαμα, προσκεφάλαια,  
φιάλας, χλανίδας, στεφάνους, ὄρμους, ἐκπώματα, πλουθυγείαν.

“As bribes they bring jars of fish, wine, rugs, cheese, honey, sesame, cushions, goblets, cloaks, crowns, necklaces, cups – wealth and health!”

(*Aristophanes Wasps* 675–7)

There are many references to bribery in Athenian public life in the fifth and fourth centuries BC. When Aristophanes suggests that politicians receive a constant stream of valuable gifts, no doubt he is exaggerating for comic effect, but his satire would not have been found amusing or effective by his audience if there had not been at least a grain of truth behind it. The surviving oratory of this period also contains many allegations of bribery. It is therefore not surprising that some attempts were made to check corruption by legislation and prosecution. There were several laws on the subject, and previous studies have not distinguished them with sufficient precision.<sup>1</sup>

## 1. Bribery of magistrates and politicians

We may take first the law about magistrates found guilty at their *euthyna*, recorded in the account of the Athenian constitution attributed to Aristotle. The author (whom I call *AP*) records that ten λογισταί (auditors) are appointed by lot each year, with ten συνήγοροι (advocates); they investigate the magistrates' accounts, and then bring the cases to a court. He goes on:

κἂν μὲν τινα κλέπτοντ' ἐξελέγξωσι, κλοπὴν οἱ δικασταὶ καταγιγνώσκουσι, καὶ τὸ γνωσθὲν ἀποτίνεται δεκαπλοῦν. ἐὰν δὲ τινα δῶρα λαβόντα ἐπιδείξωσιν καὶ καταγῶσιν οἱ δικασταί, δῶρων τιμῶσιν, ἀποτίνεται δὲ καὶ τοῦτο δεκαπλοῦν. ἂν δ' ἀδικεῖν καταγῶσιν, ἀδικίου τιμῶσιν, ἀποτίνεται δὲ τοῦθ'

ἀπλοῦν, ἐὰν πρὸ τῆς θ' πρυτανείας ἐκτείση τις, εἰ δὲ μή, διπλοῦται. τὸ <δὲ> δεκαπλοῦν οὐ διπλοῦται. "And if they prove a man guilty of stealing, the jurors give a verdict of theft against him, and the amount on which they decide is paid tenfold; if they show that a man has taken gifts and the jurors give a verdict against him, they assess him for gifts, and that too is paid tenfold; if they give a verdict that he is a wrongdoer, they assess him for wrongdoing, and that is paid as a simple amount if one pays up before the ninth prytany, but otherwise it is doubled. The tenfold payment is not doubled."

(*AP* 54.2)

All these details must come from a law about the procedure of *euthyna*. In the financial part of the procedure, any of three offences may be alleged: κλοπή or δῶρα or ἀδίκιον. Κλοπή means that the magistrate has taken for himself some money or property belonging to the state. Ἀδίκιον, to judge from the penalty, is a less serious offence; probably it means causing loss of public money by culpable neglect or inadvertence, as opposed to deliberate deception. Here I am concerned only with δῶρα, about which *AP*'s information is perfectly clear, as far as it goes: if a magistrate is accused of accepting gifts and the jury finds him guilty, he must pay a fine of ten times the value of the gifts. The word τιμῶσιν shows that it is an ἀγὼν τιμητός: that means that, after a verdict of guilty, the prosecutor and the defendant each give an estimate of the value of the gifts accepted, and the jury votes again to decide between the estimates. *AP* does not say what happens to the condemned man if he fails to pay the tenfold fine, but we may take for granted that such a man was subject to the same penalties as other debtors to the state: anyone who failed to pay money owed to the state, after the date when it was due, was disfranchised (ἄτιμος) until he paid up; and anyone who wished could propose, by the procedure of *apographe*, confiscation of his property to defray the fine.<sup>2</sup>

An early instance of a fine imposed at a *euthyna* for accepting bribes is the case of Kallias around 449 BC (if we may believe the testimony of Demosthenes more than a century later).

Καλλίαν τὸν Ἱππονίκου ταύτην τὴν ὑπὸ πάντων θρυλουμένην εἰρήνην πρεσβεύσαντα, . . ., ὅτι δῶρα λαβεῖν ἔδοξε πρεσβεύσας, μικροῦ μὲν ἀπέκτειναν, ἐν δὲ ταῖς εὐθύναις πενήτηκοντ' ἐπράξαντο τάλαντα. "When Kallias son of Hipponikos negotiated the famous peace which everyone talks about . . ., because it was considered that he accepted gifts on the embassy, they nearly put him to death, and at his *euthyna* they fined him fifty talents."

(Demosthenes 19.273)

It is possible that the gifts were valued at five talents, so that the amount of the fine was ten times their value. That is uncertain, but at any rate there must have been in the fifth century a law about *euthyna* trials for accepting gifts, and it was probably not very different from the one recounted by *AP*.



Kallias' narrow escape from the death penalty did not occur at his *euthyna* but on some earlier occasion (if we observe Demosthenes's placing of μέν and δέ). Perhaps someone denounced him to the Ekklesia for treason, and he was tried by the procedure of *eisangelia* and acquitted; if so, this case is not evidence that the death penalty was imposed for accepting gifts. However, there is other evidence that it could be. Deinarkhos says so in his speech against Demosthenes.

οἱ νόμοι περὶ μὲν τῶν ἄλλων ἀδικημάτων τῶν εἰς ἀργυρίου λόγον ἀνηκόντων διπλῆν τὴν βλάβην ὀφείλιν κελεύουσι, περὶ δὲ τῶν δωροδοκούντων δύο μόνον τιμήματα πεποιήκασι, ἢ θάνατον, ἵνα ταύτης τυχὼν τῆς ζημίας ὁ λαβὼν παράδειγμα γένηται τοῖς ἄλλοις, ἢ δεκαπλοῦν τοῦ ἐξ ἀρχῆς λήμματος τὸ τίμημα τῶν δώρων, ἵνα μὴ λυσιτελήσῃ τοῖς τοῦτο τολμῶσι ποιεῖν.  
 “Concerning the other offences which fall under financial accounting, the laws require the payment of the deficit to be double; but concerning men who accept gifts they have set only two assessments – either death, so that meeting with this penalty the man who has taken gifts may be a warning to everyone else, or the assessment is to be ten times the original gain from the gifts, so that those who dare to commit this offence may not profit by it.”

(Deinarkhos 1.60)

The words τὸν εἰς ἀργυρίου λόγον ἀνηκόντων show that Deinarkhos is referring to the financial part of the *euthyna*, which was conducted by λογισταί and was called λόγος.<sup>3</sup> But there may be some carelessness in the passage. The first part of it seems to refer to what *AP* calls ἀδίκιον, but if so Deinarkhos, in saying that the fine was double, has failed to make clear that it was not doubled unless it remained unpaid in the ninth prytany; and he has forgotten about κλοπή altogether. On those matters we ought to prefer the evidence of *AP*. But his statement that there were alternative penalties for accepting gifts, either death or a tenfold fine, is the main point of the sentence and cannot be dismissed as an oversight. Furthermore it may be corroborated by a fragmentary passage of the speech of Hypereides against Demosthenes.

οἱ δὲ νόμοι τῶν μὲν ἀδικου[σιν ἀπλᾶ], τοῖς δὲ δω[ροδοκοῦσιν] δεκαπλᾶ [τὰ ὀφλῆματα προστάτ[τουσιν] ἀποδιδόγει, καὶ θάνατον] τὸ τίμη[μα τιμῆ]σαι ἔστιν ἐκ [τῶν νόμων] τούτοις [μόνοι]ς “The laws instruct those guilty of wrongdoing to pay the sums for which they are condemned as simple amounts, but those guilty of accepting gifts to pay tenfold; and it is possible according to the laws to assess the penalty as death for the latter only.”

(Hypereides *Against Demosthenes* col. 24)

The restorations given here are those of Blass, which are accepted in the editions of Kenyon (Oxford) and Colin (Budé). If they are right – and they seem to me to be more plausible than any alternative – the passage confirms that the penalty for

accepting gifts could be either a tenfold fine or death. But most of the word θάνατον is conjectural.<sup>4</sup>

The picture is complicated by another passage of Deinarkhos, from his speech *Against Aristogeiton*.

οἱ πρῶτοι νομοθέται περὶ τῶν ἐν τῷ δήμῳ λεγόντων τοῖς προγόνοις ἡμῶν ἐνομοθέτησαν . . . ἐν τοῖς νόμοις δῶρων γραφὰς ποιήσαντες, καὶ κατὰ μόνου τούτου τῶν ἀδικημάτων δεκαπλασίαν ἐπιθέντες τοῦ τιμήματος τὴν ἔκτεισιν, ἡγούμενοι τὸν τιμὴν λαμβάνοντα τῶν ἐν τῷ δήμῳ ῥηθήσεσθαι μελλόντων λόγων, τοῦτον οὐχ ὑπὲρ τῶν τοῦ δήμου βελτίστων ἀλλ' ὑπὲρ τῶν τοῖς δοῦσι συμφερόντων δημηγορεῖν. “The earliest legislators legislated for our ancestors about those making speeches to the people . . . In the laws they created *graphai* for gifts, and for this offence alone they made the payment of the assessment tenfold, considering that a man who accepts a price for speeches which are going to be made to the people does not speak for what is best for the people but for what is advantageous to the givers.”

(Deinarkhos 2.16–17)

Again the tenfold fine for accepting gifts (and again the carelessness of forgetting that that penalty was imposed for κλοπή too), but this time it is clear that the reference is not to the *euthyna* of magistrates. What Deinarkhos is telling us is that anyone who makes a speech in the Ekklesia, after accepting a gift, may be prosecuted by *graphs* and fined ten times the value of the gift. Speakers in the Ekklesia were not necessarily magistrates; so this provision cannot have been part of the law about the *euthyna* procedure, but must have been the subject of a different law. And yet the two must be very closely connected. Not only is there a general similarity between 2.17, which is about δῶρων γραφαί, and 1.60, which is about ἀργυρίου λόγος, but in 2.17 the reference to “this offence alone” seems to imply that Deinarkhos regards the acceptance of gifts by magistrates and by speakers in the Ekklesia as one offence, not two. A possible explanation may be that the laws themselves assimilated these offences; for example, the law about speakers in the Ekklesia may have said something like “If anyone accepts a gift and then makes a speech to the people, he is to be subject to the same penalties as a magistrate who accepts a gift”. If so, the death penalty would have been available as an alternative for these offenders too, though no text actually mentions death in connection with this law.

Another way of prosecuting an orator for accepting bribes was by *eisangelia*. Hypereides quotes in the speech for Euxenippos several clauses of the law on this subject.

ἐάν τις τὸν δῆμον τὸν Ἀθηναίων καταλύη ἢ συνίη ποι ἐπὶ καταλύσει τοῦ δήμου ἢ ἐταιρικὸν συναγάγη, ἢ ἐάν τις πόλιν τινὰ προδῶι ἢ ναῦς ἢ πεζὴν ἢ ναυτικὴν στρατιάν, ἢ ῥήτωρ ὦν μὴ λέγηι τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων χρήματα λαμβάνων καὶ δωρεὰς παρὰ τῶν τάναντία πραπτόντων τῷ δήμῳ

. . . “If anyone subverts the Athenian people or attends a meeting anywhere or forms a group for subversion of the people, or if anyone betrays any city or ships or military or naval force, or, being an orator, says what is not the best for the Athenian people, receiving money and gifts from the people’s opponents . . .”

(Law quoted by Hypereides *For Euxenippos* 7–8, 29)

*Eisangelia* has been much discussed in recent years, and shall not investigate it here.<sup>5</sup> For the present purpose it is enough to note that this is a procedure distinct from the prosecution of orators by *graphe* for bribery. The intention of those who drafted the law about *eisangelia* was probably that this procedure should be used only for serious cases of treason. The wording does not preclude its use as an alternative to *graphe* for cases of no special importance, but in practice the Bode and Ekklesia might refuse to accept accusations by *eisangelia* which did not have considerable political significance. Yet another procedure was a trial resulting from a report (ἀπόφασις) by the Areopagos. In the second half of the fourth century the Areopagos sometimes investigated an alleged offence, either on its own initiative or when requested by the Ekklesia to do so. It made a report to the Ekklesia, and the Ekklesia then decided whether a trial was required. If so, the Ekklesia passed a decree about the details of the trial, including the charge to be made and the penalty to be imposed if the accused was found guilty. This procedure was used in one notorious case of bribery, the Harpalos affair, in which Demosthenes was convicted and fined fifty talents. But this trial and penalty rested on a special decree of the Ekklesia, of on any general legislation about bribery.

Thus we have evidence of four procedures which could be used in the fourth century against magistrates and politicians accused of accepting bribes two regular ones (*euthyna* for Magistrates, *graphe* for speakers in the Ekklesia) and two others which were available for specially serious cases (*eisangelia* and *apophasis*).

## 2. Bribery in the courts

Next I turn to the bribery of juries, for which there is a special verb, συνδεκάζειν or simply δεκάζειν. The precise meaning of this word has not been adequately explained hitherto. Some information is given in a fragment of Eratosthenes *On Old Comedy*, commenting on Lykos the wolf-hero.<sup>6</sup>

Λύκος ἐστὶν ἥρως πρὸς τοῖς ἐν Ἀθήναις δικαστηρίοις, τοῦ θηρίου μορφήν ἔχων, πρὸς ὃν οἱ δωροδοκοῦντες κατὰ ἑῶν γινόμενοι ἀνεστρέφοντο, ὅθεν εἴρηται Λύκου δεκάς. “Lykos is a hero near the lawcourts in Athens, having the form of the animal, to whom the men accepting gifts used to resort in tens. Hence comes the phrase ‘decad of Lykos’.”

(Eratosthenes, quoted by Harpokration s.v. δεκάζων)

This comment is quoted and expanded by later lexicographers, but they add nothing substantial. It is clear that jurors who were being bribed assembled in groups of ten. But why ten? Because, I suggest, that was the number of jury panels at the time when the practice originated. It is known that in the fifth century, at least as late as 422, each juror was allotted to one court for the whole year.<sup>7</sup> Since each litigant knew in which magistrate's court his case would be tried, it would be fairly easy for him to identify beforehand the jurors who would try it and offer them bribes. By the early fourth century the system was changed, and each juror was allotted at the beginning of the year not to a court but to a letter of the alphabet. The number of letters used was probably ten, from alpha to kappa, as is known to have been the arrangement later (*AP* 63.4). On every day on which trials were to be held, lots were drawn to assign each panel of jurors (those registered under one particular letter) to a court.<sup>8</sup> That would not give a litigant time, before the trial began, to bribe the particular jurors allotted to his case; but to bribe in advance all 6,000 jurors who might possibly be allotted to it would be wasteful and, for most litigants, prohibitively expensive. Hence the device of *συνδεκάζειν*. My hypothesis is that the litigant wishing to bribe jurors organized them (or they organized themselves) in groups of ten, one juror from each of the ten panels; thus in each group (each *Λύκου δεκάς*, as Eratosthenes calls it) it was known that there was one man who would be on the litigant's jury, though no one yet knew which man it was. Suppose the litigant was willing to give one drachma to each juror who voted for him: he would give the drachma in advance to the leader of each group, and after the trial the leader would hand it over to the juror who in the event was on the relevant jury and cast his vote in favour of the litigant who had paid for it.

My hypothesis lacks direct evidence, but it does, I believe, make sense of the word *συνδεκάζειν* or *δεκάζειν* and the grouping of jurors in tens. *AP* tells us that the practice was first devised by Autos in or about 409.

ἤρξατο δὲ μετὰ ταῦτα καὶ τὸ δεκάζειν, πρώτου καταδείξαντος Ἄνυτου μετὰ τὴν ἐν Πύλῳ στρατηγίαν. κρινόμενος γὰρ ὑπὸ τινῶν διὰ τὸ ἀποβαλεῖν Πύλον, δεκάσας τὸ δικαστήριον ἀπέφυγεν. "Alter this, tenning also began. The first to show the way was Anytos, after his generalship at Pylos. When put on trial by some men for losing Pylos, he tenned the court and was acquitted."

(*AP* 27.5)

Other evidence does not tell us when the system of ten panels of jurors, assigned to courts each day by lot, was introduced, except that it was between 422 and approximately 393 (the dates of *Wasps* and *Ekklesiaz\_usai*); but if my hypothesis is correct, *AP* 27.5 indicates that it was before 409. By the middle of the fourth century the system of allotment of jurors to courts was changed again; jurors ceased to be assigned to ten panels at the beginning of the year, and so there was no longer any special reason to group them in tens for bribery. Yet the word (*συν*)*δεκάζειν* continued to be used. I suppose that by then it had become the

conventional term for bribery of jurors by airy method, and the original sense of grouping in tens was ignored. After Anytos's success in 409, one would expect that a law against (συν)δεκάζειν would have been made immediately; and in fact the text of a law which may well belong to that date is preserved in the second speech *Against Stephanos*.

Ἐάν τις συνιστῆται, ἢ συνδεκάζῃ τὴν ἡλιαίαν ἢ τῶν δικαστηρίων τι τῶν Ἀθήνησιν ἢ τὴν βουλὴν ἐπὶ δωροδοκία χρήματα διδοῦς ἢ δεχόμενος, ἢ ἑταιρείαν συνιστῆ ἐπὶ καταλύσει τοῦ δήμου, ἢ συνήγορος ὢν λαμβάνῃ χρήματα ἐπὶ ταῖς δίκαις ταῖς ἰδίαις ἢ δημοσίαις, τούτων εἶναι τὰς γραφὰς πρὸς τοὺς θεσμοθέτας. “If anyone becomes a member of a group or tens the Eliaia or any of the courts at Athens or the Boule for bribery, offering or accepting money,<sup>9</sup> or forms a conspiracy for subversion of the democracy, or, being an advocate, accepts money for private or public cases, there are to be prosecutions of these men by *graphe* before the thesmothetai.”

(Law quoted by Demosthenes 46.26)

This text is not without difficulty. The most serious concerns the clause ἢ ἑταιρείαν συνιστῆ ἐπὶ καταλύσει τοῦ δήμου. Revolutionary conspiracy is out of place in the middle of a list of offences related to lawcourts. Gernet simply deletes the words as an interpolation, and that may well be the right solution.<sup>10</sup> In any case that clause does not concern bribery, and so I shall not discuss it here. Next it should be mentioned that συνδεκάζῃ is a conjectural emendation of συνδικάζῃ. But the emendation, made long ago by H. Wolf and universally accepted, can be regarded as certain in view of the references to bribery later in the sentence. A further problem is why the Boule is added to the list of courts. Certainly the Boule did hold trials in some cases. But it comes in awkwardly after Ἀθήνησιν (as if it were not just as much at Athens as the courts), and it is not a suitable object for συνδεκάζῃ (if I am right in attributing this law to a date when that verb had its strict sense of grouping in tens). Possibly ἢ τὴν βουλὴν has been inserted into the sentence ineptly – not by an editor of a later date, but as an amendment to the law, proposed by someone who considered that the Boule should be included because it held trials, and accepted by the Athenians when they passed the law. Yet another word which gives us pause is συνήγορος. Athens had several kinds of συνήγοροι.<sup>11</sup> Are we to think here of men officially appointed to present a case in court on behalf of the state, or of a defendant's relatives or friends whom he invited to speak in his support? Both, I believe: nothing in the text of the law restricts its application to one particular type of συνήγορος, and the reference to private and public cases encourages us to think that both private and public συνήγοροι are here being forbidden to receive money. If that is right, the official pay of one drachma a day which a συνήγορος at a *euthyna* formerly received must have ceased by this time.<sup>12</sup>

So despite the difficulties this text may be accepted as a genuine law, perhaps passed in 409, forbidding the formation of groups for bribery in the courts and Boule, and at the same time forbidding payment of συνήγοροι for speaking in court.

The law applies equally to those who accept bribes and those who offer them. Two passages in the orators refer to death as the penalty for these offences.

θανάτου τῆς ζημίας ἐπικειμένης ἦν τις ἀλῶ δεκάζων, τοὺς τοῦτο φανερώτατα ποιοῦντας στρατηγούς χειροτονοῦμεν, καὶ τὸν πλείστους διαφθεῖραι τῶν πολιτῶν δυνηθέντα, τοῦτον ἐπὶ τὰ μέγιστα τῶν πραγμάτων καθίσταμεν  
 “Although the penalty fixed for anyone convicted of *tenning* is death, we elect those who do it most obviously to be generals! And the man who has been able to corrupt the largest number of citizens, we put in charge of the most important of our affairs!”

(Isokrates 8.50)

Ἡτίασατό τινας εἶναι οἱ ἄρα ἐνεχείρουν συνδεκάζειν τὴν ἐκκλησίαν καὶ τᾶλλα δικαστήρια, ὥσπερ καὶ νυνὶ Νικόστρατος· καὶ περὶ τούτων κρίσεις αἱ μὲν ἐγένοντο πάλαι, αἱ δὲ νῦν ἐνεστᾶσιν ἔτι. Φέρε δὴ πρὸς τοῦ Διὸς καὶ θεῶν, εἰ ἐπὶ τὴν αὐτὴν ἐτράποντο ἀπολογίαν ἦνπερ Τίμαρχος νυνὶ καὶ οἱ συναγορεύοντες αὐτῷ, καὶ ἠξίουσαν διαρρήδην τινὰ μαρτυρεῖν περὶ τῆς αἰτίας ἢ τοὺς δικαστὰς μὴ πιστεύειν, πᾶσα δὴπου ἀνάγκη ἦν ἐκ τοῦ λόγου τούτου μαρτυρεῖν τὸν μὲν, ὡς ἐδέκαζε, τὸν δέ, ὡς ἐδεκάζετο, προκειμένης ἐκατέρῳ ζημίας ἐκ τοῦ νόμου θανάτου, “He {Demophilos} made accusations that there were some men who attempted to ten the Ekklesia and the courts besides, in the same way as Nikostratos now; some of the trials for these were held long ago, others are still pending. Well, I ask you, suppose they had resorted to the same defence as Timarkhos and his supporters are using now, and had demanded that someone should give explicit testimony about the charge, or else the jurors should not believe it: it would have been essential, wouldn’t it, according to that argument, for one man to testify that he tenned and another that he was tenned, although the penalty fixed for either by the law is death!”

(Aiskhines 1.86–7)

Both these passages say that death was the fixed penalty for (συν)δεκάζειν, not merely an alternative to a fine or other penalty. The latter passage shows that it was imposed for accepting bribes as well as offering them. The only problem in this passage concerns the reference to the Ekklesia. Does it mean that there was a law specifically forbidding bribery of citizens attending the Ekklesia? That offence is not covered by the law in Demosthenes 46.26. There is no other evidence for such a law. Probably it did not exist; Demophilos may have alleged in speeches that bribery occurred in the Ekklesia, while actually prosecuting only for bribery in the courts.

There is evidence of one other law relating specifically to bribery of juries. *AP* 59.3, in a list of *graphai* which came before the *thesmothetai*, includes δωροξενίας, ἄν τις δῶρα δοὺς ἀποφύγη τὴν ξενίαν. This appears to mean that special provision was made for prosecuting by *graphe* a man who had been prosecuted for acting as an Athenian citizen although he was not; and had procured his acquittal on that

charge by bribing the jury. It is not explained why it was considered necessary for such a case to be distinguished from other bribery of juries.

### 3. Atimia as a penalty for bribery

So far we have fairly clear pictures of two fields of bribery and the penalties imposed for them: magistrates and speakers in the Ekklesia who accepted gifts were punished by a fine of ten times the value of the gifts, with the death penalty as an alternative; and death was the fixed penalty for offering or accepting bribes in the courts. But the clarity of the pictures has been maintained only by side-stepping certain evidence of a different penalty for bribery: *atimia*, which in the fourth century at least may be translated “loss of rights” or “disfranchisement”. Aiskhines refers to it in the speech against Ktesiphon, attacking the crowning of Demosthenes.

καὶ τὸ πάντων ἀτοπώτατον, ἐν τοῖς αὐτοῖς δικαστηρίοις τοὺς μὲν τὰς τῶν δώρων γραφὰς ἀλισκομένους ἀτιμοῦτε, ὃν δ’ αὐτοὶ μισθοῦ πολιτευόμενον σὺνιστε, στεφανώσετε; “Strangest of all, in the very same courts you disfranchise the men convicted in prosecutions by *graphe* for gifts, and yet, when you yourselves are aware that a politician is acting for pay, are you going to crown him?”

(Aiskhines 3.232)

That does not make clear what kind of bribery incurred *atimia*. For further details we have to turn to a difficult and disputed passage of the speech of Andokides on the Mysteries, in which he gives a list of different kinds of men who were disfranchised.

Οἱ δὲ ἄτιμοι τίνες ἦσαν, καὶ τίνα τρόπον ἕκαστοι; ἐγὼ ὑμᾶς διδάξω. Οἱ μὲν ἀργύριον ὀφείλοντες τῷ δημοσίῳ, ὅποσοι εὐθύνας ὄφλον ἄρξαντες ἀρχάς, ἢ ἐξούλας ἢ γραφὰς ἢ ἐπιβολὰς ὄφλον, ἢ ὠνάς πριάμενοι ἐκ τοῦ δημοσίου μὴ κατέβαλον τὰ χρήματα, ἢ ἐγγύας ἠγγυήσαντο πρὸς τὸ δημόσιον· τούτοις ἢ μὲν ἔκτεισις ἦν ἐπὶ τῆς ἐνάτης πρυτανείας, εἰ δὲ μή, διπλάσιον ὀφείλουν καὶ τὰ κτήματα αὐτῶν πεπραῖσθαι. Εἷς μὲν τρόπος οὗτος ἀτιμίας ἦν, ἕτερος δὲ ὢν τὰ μὲν σώματα ἄτιμα ἦν, τὴν δ’ οὐσίαν εἶχον καὶ ἐκέκτηντο· οὗτοι δ’ αὖ ἦσαν ὅποσοι κλοπῆς ἢ δώρων ὄφλοιεν· τούτους ἔδει καὶ αὐτοὺς καὶ τοὺς ἐκ τούτων ἀτίμους εἶναι· καὶ ὅποσοι λίποιεν τὴν τάξιν ἢ ἀστρατείας ἢ δειλίας ἢ ἀναυμαχίου ὄφλοιεν ἢ τὴν ἀσπίδα ἀποβάλοιεν, ἢ τρις ψευδομαρτυρίων ἢ τρις ψευδοκλητείας ὄφλοιεν, ἢ τοὺς γονέας κακῶς ποιοῖεν· οὗτοι πάντες ἄτιμοι ἦσαν τὰ σώματα, τὰ δὲ χρήματα εἶχον. “Who were the disfranchised, and in what manner was each category disfranchised? I will explain to you. Some were men owing money to the state treasury, those who had been condemned at *euthyna* after holding magistracies, or who had been condemned in ejection cases or in *graphai* or to pay fines, or who had bought tax-collecting rights from the state treasury and not paid up the money, or who

had given securities to the state treasury (for these, payment was due in the ninth prytany, otherwise they had to owe double and their property had to be sold). That was one manner of disfranchisement. A second was of those men whose persons were disfranchised, but they kept possession of their property. They were any who were condemned for theft or gifts (these incurred disfranchisement of their offspring as well as themselves), and any who deserted their posts or were condemned for failure to serve on a campaign or for cowardice or for failure to serve in a naval battle or threw away their shields, or were condemned three times for false witness or three times for falsely testifying to a summons, or maltreated their parents; all these were disfranchised in their persons, but they kept their money.”

(Andokides 1.73–4)

Andokides says that those condemned for gifts incurred disfranchisement of their offspring as well as themselves, but the exact significance of this has been disputed, and cannot be decided without consideration of the whole context. The combination κλοπῆς ἢ δώρων indicates that in this clause Andokides is referring, primarily at least, to magistrates condemned at their *euthyna*. Yet an earlier clause, at the beginning of the list, covers ὅποσοι εὐθύνας ὄφλον ἄρξαντες ἀρχάς: why the duplication? It seems that we must not interpret the earlier clause as covering every magistrate condemned at his *euthyna*, but only those condemned to pay fine for an offence other than theft or gifts – in other words, for ἀδίκιον, or for a non-financial offence. Likewise the clause about γραφαί does not refer to every person condemned in a *graphe*, but only those condemned to pay a fine; for the whole of this sentence is concerned only with men who owe money to the state treasury. At the end of this sentence the parenthesis τούτοις ἢ μὲν ἔκτισις . . . πεπραῖσθαι states provisions which applied to all the categories of state debtors mentioned before it. Any sum of money owed to the state, for any of the reasons listed, had to be paid by the ninth prytany (of the year following the year in which the debt was incurred); if it was not paid then, the amount payable was doubled, and the debtor’s property (that is, enough of it to pay off the doubled debt) could be confiscated and sold. As long as the man remained in debt, he was disfranchised; but (Andokides undoubtedly means, though he does not say it explicitly) when the debt was paid the disfranchisement ended, because the Man was then no longer ὀφείλων τῷ δημοσίῳ.

But how is the clause about κλοπή and δῶρα related to that account of debtors to the state? It is right for those offences to be distinguished from the ones listed in the earlier sentence in one respect at least; the fine imposed for κλοπή or δῶρα, unlike the others, was a tenfold fine from the start and was not doubled if it remained unpaid by the ninth prytany (*AP* 54.2, discussed above). But those condemned to pay the tenfold fine for these offences were debtors to the state, just as much as those condemned to pay fines for other offences. That is why Paoli suggests that the clause about κλοπή and δῶρα has been misplaced in the text and really belongs at the end of the sentence about state debtors.<sup>13</sup> Adopting his suggestion we may reconstruct the text thus:



. . . πεπραῖσθαι). ὅποσοι δ' αὖ κλοπῆς ἢ δώρων ὄφλοιεν, τούτους ἔδει καὶ αὐτούς καὶ τοὺς ἐκ τούτων ἀτίμους εἶναι. εἷς μὲν τρόπος οὗτος ἀτιμίας ἦν. ἕτερος δὲ ὧν τὰ μὲν σώματα ἄτιμα ἦν, τὴν δ' οὐσίαν εἶχον καὶ ἐκέκτηντο. οὗτοι ἦσαν ὅποσοι λίποιεν τὴν τάξιν . . .<sup>14</sup>

Hansen has objected to this rearrangement of the text<sup>15</sup>. He maintains that the list of those whose persons were disfranchised but who kept their property (ὅποσοι λίποιεν τὴν τάξιν . . . τοὺς γονέας κακῶς ποιεῖεν) in any case includes some men who were fined, namely those condemned for false witness or for falsely testifying to a summons, and that there is therefore no reason why it should not include those condemned for κλοπή or δῶρα too. But this argument is hardly correct. Andokides here refers not to everyone convicted of false witness or falsely testifying to a summons, but to the penalty of disfranchisement which was imposed only on men convicted of either of those offences for the third time. It is not known whether, for the third offence, any other penalty was imposed in addition to disfranchisement. For a first or second offence of falsely testifying to a summons there was no fixed penalty; the penalty was for the jury to assess, and was not necessarily a fine.<sup>16</sup> For false witness, in the time of Demosthenes the procedure was not *graphe*, but a private case, so that no fine to the state was payable;<sup>17</sup> in the time of Andokides a *graphe* may have been possible,<sup>18</sup> but if so it is not known what the penalty was. In short, some at least of those condemned τρις ψευδομαρτυριῶν ἢ τρις ψευδοκλητείας were probably not debtors to the state treasury, whereas those condemned κλοπῆς ἢ δώρων always did have to pay money to the state (unless they were put to death). They ought therefore to be in the list of ὀφείλοντες τῷ δημοσίῳ. Furthermore, if other men who were condemned to pay a fine and failed to pay it by the ninth prytany (including magistrates condemned at their *euthyna* for ἀδίκιον) had their property confiscated to defray the fine, it is not credible that the same sanction was not imposed on those who failed to pay the tenfold fine imposed for κλοπή or δῶρα. They ought therefore to be excluded from the list of those who τὴν οὐσίαν εἶχον καὶ ἐκέκτηντο. So Paoli's transposition should be accepted.

But that leaves a further problem. Does the clause τούτους ἔδει καὶ αὐτούς καὶ τοὺς ἐκ τούτων ἀτίμους εἶναι apply, as Paoli says, to the whole list of debtors to the state? If so, it refers to disfranchisement which ended as soon as the debt was paid, thus was in principle temporary, though it could continue indefinitely if the debt remained unpaid (for example, if a man's property, when confiscated, was not sufficient to pay it); to that case τοὺς ἐκ τούτων means that, when the original debtor died, his heirs inherited his debt and became disfranchised. Or does the clause mean that the debtors concerned, and their descendants, became and remained disfranchised permanently, even though the debt was paid? Since that is known not to have been the rule for other state debtors, on this interpretation the clause must refer only to those condemned for κλοπή or δῶρα, and is evidence that magistrates condemned for bribery suffered disfranchisement in addition to, not instead of, a tenfold fine. This latter interpretation is supported by the text of a law quoted by Demosthenes in his speech *Against Meidias*.

Ἐάν τις Ἀθηναίων λαμβάνη παρά τινος, ἢ αὐτὸς διδῶ ἑτέρῳ, ἢ διαφθείρη τινὰς ἐπαγγελόμενος, ἐπὶ βλάβῃ τοῦ δήμου ἢ ἰδίᾳ τινὸς τῶν πολιτῶν, τρόπῳ ἢ μηχανῇ ἢ τινιούν, ἄτιμος ἔστω καὶ παῖδες καὶ τὰ ἐκείνου. “If any Athenian accepts from anyone, or himself gives to another, or corrupts any persons by promises, to the detriment of the people or of any of the citizens individually, by any manner or means whatever, let him and his children and his property be atimos.”

(Law quoted by Demosthenes 21.113)

This clearly covers magistrates condemned at their *euthyna* for accepting gifts, and it imposes compulsory and permanent disfranchisement on them and their children. It does not permit the *atimia* to be avoided or ended by payment of a fine; so this is not merely the temporary disfranchisement which every debtor to the state must suffer until his debt is paid. But this law goes beyond magistrates undergoing *euthyna*. It is a much more general law than any of the others so far considered; it applies to any Athenian who either offers or accepts any gift to either public or private detriment. Any Athenian who was guilty under any of the other laws about bribery would be covered by this one too, and so must have automatically incurred hereditary disfranchisement in addition to any penalty (a tenfold fine or death) imposed under another law.<sup>19</sup>

The concluding words of this law have been found difficult to interpret. In the fourth century, in legal contexts, ἄτιμος means “disfranchised” and is applicable to persons, not to property. What then is the sense of καὶ τὰ ἐκείνου? Can it mean “let his property be confiscated”? I do not think it can. The regular wording for that is τὰ χρήματα (or ἡ οὐσία) δημόσια ἔστω,<sup>20</sup> and I know no evidence that ἄτιμος can mean “confiscated”: But the words make sense if ἄτιμος is given its earlier meaning of “outlawed”:<sup>21</sup> the offender, his children, and his property are to be deprived of legal protection, so that there is no legal redress if his property is stolen or damaged. In fact there is another surviving text, quoted by Demosthenes 23.62, which contains almost the same words, ἄτιμον εἶναι καὶ παῖδας [ἀτίμους] καὶ τὰ κακείνου.<sup>22</sup> That quotation is part of one of the oldest Athenian laws, the homicide law attributed to Drakon. It provides reassurance that the words καὶ τὰ ἐκείνου in the law about bribery are genuine; they should not be deleted or emended,<sup>23</sup> but accepted as evidence that the law is an early one.

Two other features of the text support (though they would not by themselves prove) the hypothesis that the law is archaic: the extreme generality, not to say vagueness, of the definition the offence; and the absence of any specification of a method of prosecution, which would logically come between the offence and the penalty.<sup>24</sup> These features suggest a time when the legal system was simpler, and left more to the discretion of arkhons, than in the fourth century.

I conclude that this is the oldest of the Athenian laws about bribery, made perhaps in the sixth century, when ἄτιμος meant “outlawed”. It was a law imposing a severe penalty for all bribery. In the course of the fifth century ἄτιμος, in this law as in others, came to be interpreted as merely “disfranchised”, that the words καὶ τὰ ἐκείνου were no longer significant, and the penalty was less severe than it

had been when the law was made.<sup>25</sup> Consequently further laws were made from time to time to impose more severe penalties on what were considered the worst kinds of bribery. Those more severe penalties were additional to the penalty of hereditary disfranchisement, which remained statutory for all bribery which was detrimental to the people or individual citizens of Athens.<sup>26</sup>

#### 4. Conclusion

I have argued for the following chronological sequence:

- (a) At an early date, perhaps in the sixth century, a general law was made, forbidding bribes to be offered or accepted to the detriment of the Athenian people or any individual citizen. The penalty was *atimia*, meaning outlawry, for the offender and his family and property.
- (b) In the fifth century *atimia* came to be interpreted as meaning merely disfranchisement. Consequently a need was felt for laws imposing further penalties for the worst kinds of bribery.
- (c) By the middle of the fifth century a law was made about the *euthyna* of magistrates, including punishment of Magistrates who accepted bribes. Either at that time or later, the penalty was fixed at either a fine of ten times the value of the bribes or death.
- (d) Another law, of unknown date, authorized prosecution by *graphe* of men who spoke in the Ekklesia after accepting bribes. They were subject to the same penalty of 'a fine of ten times the value of the bribes (and perhaps the alternative of death).
- (e) In or soon after 409, a law was made prohibiting bribery jurors in groups of ten. The word (συν)δεκάζειν, used in that law, came to be interpreted as referring to bribery of jurors by any method. The text preserved in Demosthenes 46.26 is either the law made at that time or a subsequent revision; it prohibits both offering and accepting bribes, and it covers juries, the Boule, and συνήγοροι, in private and public cases. Prosecution was by *graphe* and the penalty was death.
- (f) There was a separate law about bribery to secure acquittal on a charge of simulation of citizenship (ξενία). Prosecution was by *graphe* before the *thesmothetai*, but we have no further information about it.
- (g) In the fourth century bribery could be the subject of a prosecution by *eisangelia* or by apophasis from the Areopagos.
- (h) Throughout this period the law mentioned in (a) and (b) remained in force, so that any Athenian condemned under any of the other laws for bribery suffered hereditary disfranchisement in addition.

And did all this legislation have the desired effect of extinguishing bribery in Athens? No, to judge from the frequent allegations of bribery in surviving speeches of the fourth century. Indeed Isokrates in his *Panathenaic* speech declares that bribery of magistrates is more prevalent now than it was in the fifth century.

ἔδει γὰρ τοὺς ἄρχειν αἰρεθέντας τῶν τε κτημάτων τῶν ἰδίων ἀμελεῖν καὶ τῶν λημμάτων τῶν εἰθισμένων δίδοσθαι ταῖς ἀρχαῖς ἀπέχεσθαι μηδὲν ἧττον ἢ τῶν ἱερῶν, – ἃ τίς ἂν ἐν τοῖς νῦν καθεστῶσιν ὑπομείνειεν; “Men selected for magistracies used to have to neglect their personal property, and keep their hands off the gains customarily offered to magistrates, as if they were sacrosanct. What magistrate appointed nowadays would put up with that?”  
(Isokrates 12.145)

Isokrates may be exaggerating. But it is probable that minor peculation was rife, and those who offered or accepted small bribes were too numerous to be detected and prosecuted. Besides, the penalties prescribed by some of the laws about bribery were so severe that juries may have been reluctant to convict in cases which did not seem bad enough to justify such penalties. Severe penalties may not be very effective if most of the offenders evade them, and an efficient system of enforcement was what the Athenians lacked.

## Notes

- 1 I include myself in this stricture: my remarks on the subject in Andokides: *On the Mysteries* (Oxford 1962) 110 and *The Law in Classical Athens* (London 1978) 170–3 are inadequate, and are superseded by the present article. Among older discussions, the best is that of L.H. LIPSIUS, *Das attische Recht and Rechtsverfahren* (Leipzig 1905–15) 401–4.
- 2 For this procedure see A.R.W. HARRISON, *The Law of Athens* 2 (Oxford 1971) 211–17.
- 3 Thus HARRISON, *The Law of Athens* 2, 209 n. 3 (on p. 210) is wrong in saying “The evidence from the orators which suggests that the penalty for embezzlement or bribery might be death is drawn from cases which might have been either ordinary γραφαί or εισαγγελίαι.”
- 4 A different restoration, with no reference to death, is proposed by O. J. SCHRÖDER in *Hermes* 57 (1922) 463–4.
- 5 (5) See especially M.H. Hansen, *Eisangelia* (Odense 1975), P.J. Rhodes in *JHS* 99 (1979) 103–14, HANSEN in *JHS* 100 (1980) 80–95.
- 6 How was Lykos relevant to Eratosthenes’s account of Old Comedy? Perhaps this fragment was originally a note on Aristophanes *Wasps* 389, explaining why Philokleon addresses Lykos as γείτων.
- 7 Aristophanes *Wasps* 242–4, 303–5, 1107–9; cf. HARRISON, *The Law of Athens* 2, 239–40.
- 8 Aristophanes *Ekkl.* 681–8, *Wealth* 277, 1166–7; cf. MACDOWELL, *The Law in Classical Athens* 36–8.
- 9 χρήματα usually means money, but it would also cover gifts of other kinds.
- 10 L. GERNET, *Démosthène: Plaidoyers civils* 2 (Paris 1957) 185.
- 11 See the note on line 482 in my edition of Aristophanes *Wasps* (Oxford 1971),
- 12 Aristophanes *Wasps* 691. On the cessation of pay for officials after the year 411, see M.H. HANSEN in *Symb. Osl.* 54 (1979) 5–22.
- 13 U.E. Paoli, *Studi di diritto attico* (Firenze 1930) 304–7.
- 14 In my edition of the speech (Oxford 1962) I adopted different punctuation: πεπραῖσθαι), ὅποσοι δ’ αὖ κλοπῆς ἢ δώρων ὄφλοιεν (τούτους . . . εἶναι). I now think it preferable to place a full stop after πεπραῖσθαι and make ὅποσοι δ’ αὖ κλοπῆς ἢ δώρων ὄφλοιεν subordinate to τούτους ἔδει . . . , thus detaching the clause about hereditary disfran-

chisement from the other categories of state debtors. (This point is discussed below). Those who believe (with PAOLI) that the clause about hereditary disfranchisement applies to the whole list of state debtors must retain the other punctuation.

- 15 M.H. HANSEN, *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes* (Odense 1976) 86–9.
- 16 Demosthenes 53.18.
- 17 HANSEN, *Apagoge* 86 goes wrong when he says “In this case the fine went to the plaintiff, but this is of no importance in the present connection”. On the contrary it is the decisive point, if one is trying to decide whether such an offender was ὀφείλων τῷ δημοσίῳ.
- 18 Cf. And. 1.7, Lys. 19.4, with MAC DOWELL, *The Law in Classical Athens* 244.
- 19 The text as we have it says nothing about offenders who are not Athenian, for example a metic who bribes an arkhon. Possibly they were covered by another law, or by another clause of this law, which Demosthenes does not quote because it is irrelevant to his case.
- 20 Demosthenes 20.156, 59.52, Xenophon *Hell.* 1.7.22, *F. Gr. Hist.* 342 F17, and the decree quoted in Plutarch *Ethika* 834a.
- 21 For the distinction between the earlier and later senses of ἄτιμος, see HANSEN, *Apagoge* 75–82, MACDOWELL, *The Law in Classical Athens* 73–5. The date when the change occurred cannot be determined exactly, but it was probably near the middle of the fifth century.
- 22 Editors generally delete ἀτίμους. The deletion affects only the elegance of the wording, not the sense.
- 23 Emendation to παῖδες οἱ ἐξ ἐκείνου is proposed by HANSEN, *Apagoge* 88–9.
- 24 Contrast the law quoted by Demosthenes 46.26, which contains the words τούτων εἶναι τὰς γραφὰς πρὸς τοὺς θεσμοθέτας, and probably had another sentence after that about the penalty.
- 25 Cfr *AP* 16.10, where *atimia* is the penalty prescribed in an old law for attempting to set up a tyranny, and the author comments, from a fourth-century viewpoint, that the law is lenient. P.J. RHODES maintains (*CQ* 28 (1978) 89–90, and in his note on *AP* 16.10) that ἄτιμος continued to be interpreted as “outlawed” in some laws at a period when it already meant “disfranchised” in others, but I do not believe that even the Athenians could have lived with such ambivalence of terminology in their laws.
- 26 Consequently I interpret the statement of Deinarkhos 1,60 that only (μόνον) two penalties are available, death or a tenfold fine, as meaning merely that a smaller fine, such as Demosthenes proposed for himself at this trial, was not an acceptable alternative; not as a denial that either of these penalties would automatically be accompanied by hereditary disfranchisement.

# Love versus the law

## An essay on Menander's *Aspis*

(Originally published in *G & R* 29 [1982] 42–52)

I fell in love, not of my own free will,  
With your own sister, 'O dearest of mankind!' I did  
No hasty, wrong, unworthy act,  
But asked the uncle whom you left her to,  
And my own mother who has brought her up,  
To give her to me lawfully as wife.  
I thought I was a lucky man in life;  
But just when I was sure that I had reached  
My very goal, I cannot even see her  
In future! The law gives someone else control  
Of her, and judges my claim worthless now.

(*Aspis* 288–98)

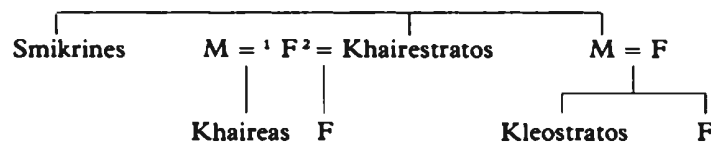
Thus Khaireas, on being deprived of the girl he loves by a legal obstacle. Menander is renowned as an author, perhaps even the inventor, of romantic comedy; and love triumphing over obstacles is a common feature of his plays. Usually the obstacle is a personal one, such as a father who refuses to permit a marriage (as in *Dyskolos*), and in *Aspis* too the difficulties are made by an unpleasant old man, Smikrines. But he has the law on his side, as Khaireas says. This speech, and the play as a whole, presents a sharper conflict between love and the law than we find elsewhere, and I believe that Menander's purpose here is a more serious one than has generally been realized.

My intention in this article is to examine the story of *Aspis* in relation to Athenian family law, and to consider what reaction Menander expected of his audience. The play gives us some excellent evidence about the rules governing family relationships, and, quite apart from its dramatic quality, is an important document for the study of Athenian society. The legal questions arising from it have been discussed in a good article by E. Karabelias;<sup>1</sup> but since his article appeared in a French journal of legal history, which classical scholars seldom read, I think it advisable to repeat some of his points here besides contributing others of my own.<sup>2</sup>

*Aspis* tells us about Kleostratos and his two uncles. Kleostratos is the young man whom the other characters at the beginning of the play believe to have been killed in a battle in Lykia; his faithful slave, Daos, brings home his young master's shield (from which the play takes its name) together with a quantity of money, slaves, and other booty captured on the campaign, and tells the sad story to the elder uncle, Smikrines. But the sombre tone of the opening scene is soon dispelled by the goddess Chance. In her speech (97–148, which is the prologue postponed, as in some other plays, till after the first scene) she tells the audience that Kleostratos has not really been killed at all but will turn up alive later, and she also gives information about the family.

Smikrines and Khairestratos are the brothers of Kleostratos's father. Kleostratos's father is evidently dead, and we are never told what his name was. Smikrines is older than Khairestratos, but we are not told whether Kleostratos's father was the eldest or the middle or the youngest brother. I place him on the right-hand side of the genealogy as if he were the youngest, but that is arbitrary.

Khairestratos has a wife and one daughter.<sup>3</sup> Khaireas is his stepson, the son of his wife by her previous husband. We are not told why she has been married twice. Divorce was quite easy in Athens; any husband could send his wife back to her family, provided that he paid back the dowry as well. However, in this instance we should assume that the previous husband of Khairestratos's wife had not divorced her, but had simply died. The reason for thinking that is that Khaireas has been brought up in Khairestratos's household (263), whereas it would have been his own father's responsibility to bring him up if his father had still been living. A modern divorce court often awards custody of children to the mother, but the *kyrios* of an Athenian child was always his father if the father was alive. We can imagine, if we wish, that the father of Khaireas assigned his wife and son to Khairestratos on his deathbed, just as the father of Demosthenes assigned his wife and son to Aphobos (Dem. 27.4–5).



The other member of the family is the sister of Kleostratos, and one of the interesting things about this family is what happened to her when Kleostratos went away to the war. He left her to his uncle Khairestratos (127, 292), who not only brought her up in his house, but took steps some time later to give her in marriage to Khaireas (130–7). What right had he to do that? In Athens the only person who could give a woman in marriage was her *kyrios*, the man in charge of her, who was responsible for providing her home and upkeep and whom in return she had to obey. Until she was married her father was her *kyrios*; or, if he had died, his heir. Kleostratos therefore was *kyrios* of his sister, and he was the man who had authority to make a betrothal (*engye*) for her. *Aspis* 127–37 shows that a man who expected to be away for a long period could transfer this power to someone else,

making him the *kyrios* of the woman temporarily.<sup>4</sup> That was not clearly known before the rediscovery of this play.<sup>5</sup>

Neither Smikrines nor Khairestratos has a son to be his heir, but both make reference to the plans which they had for disposal of their property on death. This matter, the inheritance of the property of a man who dies leaving no son, is the subject of a law which has been preserved for us in the text of the speech *Against Makartatos*.

Whoever dies without making a will, his property, together with his daughters if he leaves any, is to be taken over by the following persons: brothers by the same father, if there are any; and if there are legitimate sons of brothers, they are to get their father's share; and if there are no brothers or brothers' sons,  
...

(Law quoted in Dem. 43.51)

This law gives rules for *epidikasia*, adjudgement of an estate to heirs. Any claimant (except a son or grandson of the deceased) had to apply to the arkhon, who made a formal award of the inheritance (*epidikasia*) or in disputed cases referred it to a jury for a decision (*diadikasia*). But the arkhon and jury were not free to decide as they liked; they had to keep to the rules.<sup>6</sup> Unless there was doubt about a person's relationship or legitimacy or about the validity of a will (questions which do not arise in *Aspis*), *epidikasia* was normally just a formality. In *Aspis* there is hardly any allusion to the formal legal proceedings, which do not affect the story. What is of interest is the rules specifying which claims are valid.

Take Smikrines's property first. He is unmarried and has no children, but he has had two brothers, Khairestratos, who is still alive, and Kleostratos's father, who is dead. According to law, therefore, if Smikrines dies, his property should be shared equally by Khairestratos and Kleostratos, as the son of the other brother. But that is not what Smikrines says. When grieving, or perhaps shedding crocodile's tears, for the supposed death of Kleostratos, he says:

I do wish he were still alive! He was  
The man to manage this and, when I die,  
To take control of all my property.  
According to the laws.

(*Aspis* 168–71)

Why 'all'? According to the law just quoted, Kleostratos should have inherited only half of Smikrines's property. Karabelias has drawn attention to this problem, and the solution which he suggests is simply that Smikrines is not telling the truth: Kleostratos would not have been the heir to all Smikrines's property, but Smikrines wants to create the impression that he would have been, because that will encourage people to think that, in the situation as it actually is believed to be, with Kleostratos dead and Smikrines still alive, Smikrines should take over all Kleostratos's property.<sup>7</sup> That is an ingenious explanation of the difficult word 'all'. But I am



not convinced that it is right. I concede that Smikrines is the sort of character who might well tell a lie, and that Menander might well make him tell a lie, so as to show what a bad character he is. But that point would be lost if the audience did not realize that the remark was in fact a lie, and the passage contains no indication, such as a comment by Daos, to alert the audience to the possibility that Smikrines is lying.

I therefore prefer a different explanation. A man who had no son could adopt one, either during his lifetime or by leaving a will to take effect on his death. (It was not possible to make someone your heir without making him your son.) In the surviving forensic speeches, especially those of Isaïos, we read of a number of men who did this, and indeed it may have been the normal practice in the fourth century for a man without sons. So I take Smikrines's reference to 'the laws' (in 168–71) to mean the laws about adoption and wills. In effect he is saying (though perhaps insincerely) 'I intended to adopt Kleostratos as my son and heir'.

Now take Khairestratos. His circumstances differ from Smikrines's because, though he has no son, he does have a daughter, who may eventually produce a grandson for him. This grandson would be his heir; but if Khairestratos should die before a grandson is born or while the grandson is still a child, the boy's father, the husband of Khairestratos's daughter, will have charge of the property until the grandson comes of age in his eighteenth year. That was the rule; but how can it be reconciled with what Khairestratos says to Khaireas?<sup>8</sup>

I always used to think  
That you would take this girl, and he himself  
My daughter, and that I would leave you both  
To take control of all my property.

(*Aspis* 278–81)

The plan was that Khaireas would marry Kleostratos's sister, and Kleostratos would marry Khairestratos's daughter. But that should mean that Kleostratos would take control of Khairestratos's property, not 'you' in the plural; what right would Khaireas have to it? The solution must be, in this case also, adoption: Khairestratos means that he intended to adopt his stepson Khaireas to be his own son. But this leads to a complex situation. Whose is the right to inherit if a man at death leaves an adopted son and also a daughter of his own? The accepted view hitherto has been: 'If there were daughters but no sons [a man] could adopt a son on condition that he married [him] to one of the daughters.'<sup>9</sup> That would mean that, if Khairestratos adopted Khaireas, Khaireas would have to marry Khairestratos's daughter. But that would be impossible: she was Khaireas's half-sister, by the same mother; marriage with her would have been incestuous and illegal. Could a man with a daughter never adopt his own stepson, then? Yes, he could; the accepted view is wrong, and an exception was allowed to the rule that an adopted son must marry the daughter (if there was one) of his adoptive father. The instance which shows this most clearly is in Menander's *Dyskolos*. There Knemon has no son, but he has a daughter, and he also has a stepson, Gorgias, the son of his wife by

a previous husband. Thus his family is exactly parallel to Khairestratos's. When he has just been rescued from the well and thinks that he will quite probably die, he says to Gorgias:

Whether I  
 Die at once – I think I shall, too; I'm in quite a poorly state -  
 Or survive, I now adopt you as my son. Regard as yours  
 All that I possess at present. I transfer<sup>10</sup> this girl to you;  
 You procure a husband for her. Even in the best of health  
 By myself I'll never find one; nobody will ever seem  
 Satisfactory to me. But let me live the way I like;  
 Do the rest yourself, take over. Thank the gods, you've got some sense.  
 You're a suitable protector of your sister. Give her half  
 Of my property as dowry, measuring it equally;  
 Take the other half, and with it keep me and your mother too.

(Dyskolos 729–39)

With these words Knemon adopts Gorgias as his son. But Gorgias is not to marry Knemon's daughter; he cannot do so, because she is his half-sister. Instead he is to find her a husband, and give half of Knemon's property with her as dowry, while taking over the other half himself. I suspect that this half-and-half arrangement was required by law when a man having no son adopted his stepson but also had a daughter of his own. Evidently this was Khairestratos's plan too: Khaireas, as his adopted son, would take over half his property, while Kleostratos, as the husband of his daughter, would take charge of the other half and pass it on eventually to Khairestratos's grandson.<sup>11</sup>

So much for the circumstances and plans of the family in the lifetime of Kleostratos. I pass now to the situation when Kleostratos is believed to have been killed. His death leaves his sister in the position of *epikleros*, because there is no surviving male descendant of her father (141). The peculiar situation of an Athenian 'heiress' is well known and may be summarized briefly. She did not herself become the owner of the property, in the sense of being able to dispose of it as she wished; it just remained with her, waiting to be inherited by her eventual son. Her deceased father's nearest male relative could claim her as his wife, and so could get control and use of the property until a son came of age, which would be a period of at least eighteen years. (No matter if he was already married; he could divorce his present wife to marry the *epikleros*.) If the nearest relative did not want to claim the *epikleros* in marriage, then the next nearest could do so. But the hand of the *epikleros* and the control of the property went together; it was not possible to obtain either without the other.

Kleostratos had little property when he went away to the campaign (131–2), not even enough to provide an adequate dowry for his sister (8–9). But in the course of the fighting he acquired a quantity of booty, which Daos has brought home: 600 gold coins, silver cups weighing about 40 mnai, a quantity of cloaks, and a

crowd of slaves (34–7, 82–9, 138–41), amounting in all to a value of 4 talents (351). All this booty is paraded across the stage in the opening scene before the eyes of the avaricious old man, Smikrines, who at once becomes keen to claim the girl in marriage, so as to get his hands on it. The audience's attention is drawn to this prospect as soon as Daos calls Smikrines *kleronome* (85), a word which should not be translated 'heir' but rather 'estate holder',<sup>12</sup> since he will not formally be the owner of the property but will merely have control of it. Smikrines's claim takes priority over any claim by his brother Khairestratos. Here we find the solution of a problem which remained unsolved before the rediscovery of *Aspis*. It was known that the nearest male relative of the deceased man had first claim to an *epikleros* if he wished to claim her, but it was not known who had first claim if there were several relatives equally near, if the deceased man left several brothers, or several uncles, or several first cousins. The suggestion that in such a case the eldest had priority was no more than a guess, since there was no evidence. Now *Aspis* provides evidence showing that the guess was right. Smikrines is stated to have the prior claim to the *epikleros* because he is older than Khairestratos (142–3, 255).<sup>13</sup> The discovery is interesting, because Athenian law did not otherwise recognize a right of primogeniture; brothers inherited equal shares of their father's property, and there was no advantage in being the eldest. But an *epikleros* had to be an exception, because she was not divisible, and we note that in this case the Athenians did accept age (rather than other methods of discrimination, such as drawing lots) as the ground of preference. Nevertheless, the primary consideration was proximity of relationship, and age was used only as a tie-breaker.<sup>14</sup>

When Smikrines proposes to claim Kleostratos's sister in marriage, Khairestratos tries to persuade him not to do so but to let Khaireas to marry her. Knowing that his brother's desire is really for the property, not for the girl, he offers to let him keep the property, if he will let the girl go (260–9). Smikrines scornfully rejects this suggestion. He knows that, if Khaireas marries the girl and they have a son, the son will have the legal right to the property, regardless of any promises given by Khairestratos or anyone else (269–73). This exemplifies the rule that property passing with an *epikleros* did not belong to her, and could not legally be disposed of by her or her husband, but belonged to her eventual son. It also enables us to solve another long-standing legal puzzle.<sup>15</sup> Is the woman in such a case, when first her father and then her brother has died, leaving no male descendants, to be regarded as the *epikleros* of her father's estate or of her brother's? Some scholars have thought the former, believing that only a daughter became an *epikleros* whereas a sister inherited in her own right. But *Aspis* 269–73 indicates that the other view is correct. The booty which Kleostratos captured in the war is undoubtedly his property, and cannot be regarded as part of his father's estate, since his father died before it was acquired. Yet it is this booty which, as Smikrines knows, can be claimed in due course by the son of Kleostratos's sister. She and Khairestratos (who is her present *kyrios*) would be willing to give it to Smikrines in exchange for her being allowed to have Khaireas as her husband (264–7); but, as Smikrines points out, they have no power to do so. This shows

that she does not own it herself; it merely rests with her temporarily until she has a son to inherit it. Thus we have here, for the first time, a clear instance of a woman who is the *epikleros* of her brother's estate.<sup>16</sup>

Now we come to the plot devised by Daos to get Smikrines to give the girl up. It is pretended that Khairestratos has died. Since he has a daughter and no sons (for his projected adoption of Khaireas has not yet been carried out), that makes his daughter an *epikleros* too. Smikrines is, in this case also, the nearest male relative, and he will undoubtedly choose the girl with the larger estate.

*Daos:* Your daughter then becomes an *epikleros*,  
Just like the girl now to be claimed at law.  
You possess sixty talents, I should think;  
The other girl has four. The old miser has  
The same relationship to both.

*Khairestratos:* I see now!

*Daos:* If you're not made of rock! He'll give the one  
Gladly, before three thousand witnesses,  
To the first man who asks, and take the other.

(*Aspis* 348–55)

The plan is based on the assumption that Smikrines can, if he wishes, give Kleostratos's sister in marriage to Khaireas (or to anyone else he chooses). How can he do so? If he forgoes his own right to marry her, can she not be claimed by the next nearest male relative, presumably a cousin of Smikrines and Khairestratos? For an answer to this problem we must turn to the law concerning the position of an *epikleros* who belonged to the *thetikon telos*, the lowest income-class. This law is referred to by Isaios (1.39) and fully quoted in the speech *Against Makartatos*.

As for all *epikleroi* of the *thetikon telos*, if the nearest relative does not wish to have her, let him give her away; a *pentakosiomedimnos* is to give with her (as dowry) 500 drachmas, a *hippeus* 300, and a *zeugites* 150, in addition to her own property.

(Law quoted in Dem. 43.54)

This is a law designed to protect a poor *epikleros*, whom no one wanted to claim, and who might otherwise be left unmarried and unprotected; the nearest relative, if he does not wish to marry her himself, must find her a husband and provide a dowry out of his own pocket. Membership of the classes depended on income, not on capital. Kleostratos's booty is a capital gain, but the income-producing property which he has left is very small (131–2). So naturally his sister is an *epikleros* of the lowest class. Therefore Smikrines, if he does not wish to marry her himself, is not merely able but actually required by law to give her away to another husband. He will also have to give a dowry for her, 500 drachmas if he is himself of the highest class; but he will regard that outlay as trivial, if it leaves him free to claim Khairestratos's daughter and 60 talents.

Daos's plan is that, as soon as possible after Khairestratos's supposed death, Khaireas will ask Smikrines to give him Kleostratos's sister in marriage. Smikrines is expected to agree to that immediately, and also to take the normal legal steps to claim Khairestratos's daughter as his own wife. Once Kleostratos's sister is safely married to Khaireas, Khairestratos will emerge from his hiding-place; he will then be able to reassert his authority as *kyrios* of his own daughter, and refuse to give her in marriage to Smikrines. Even if Smikrines has gone ahead so fast that he has already married her, Khairestratos can still reclaim her; a father had the right to take his daughter away from her husband, effecting a divorce, at least if she had not yet had a child.<sup>17</sup> But will not Smikrines then retaliate by reverting to his original plan, taking Kleostratos's sister away from Khaireas and marrying her himself? Here is another point at which *Aspis* gives us new information about Athenian law. A basic assumption of Daos's plan is that, once the girl is married to Khaireas, Smikrines will not be able to reclaim her when he discovers that he has been tricked. We may draw the conclusion that, unlike a father, a relative who gave away in marriage an *epikleros* of the lowest income-class did not have the legal right to take her back again.

Most of the later part of the play is lost, but the ending is easily guessed. Kleostratos turns up alive and well; we have some fragments of the scene in which he arrives (491 ff.). He gives his sister to Khaireas, Khairestratos gives his daughter to Kleostratos, and a double wedding is arranged (521). Perhaps the cook and the waiter, dismissed when the earlier wedding was called off (216–49) are now summoned back to prepare for the new festivities; and Smikrines, who has in the end gained nothing at all, is probably mocked in some way, like Knemon at the end of *Dyskolos*.

The plot of *Aspis* is very neatly constructed, in a manner characteristic of Menander. It tells a story of contemporary life, consisting of incidents which really could have occurred in Athens at the end of the fourth century. The particular incident which sets the train of events in motion, the wrong identification of a body after a battle, though doubtless unusual, was certainly not impossible. This is Mr Puff's kind of drama: 'A play is not to show occurrences that happen every day, but things just so strange, that though they never *did*, they *might* happen.'<sup>18</sup> It is, in its way, instructive to the spectators. It broadens their experience by showing them events which might happen to themselves one day.

But it also is Miss Prism's kind of story: 'The good ended happily, and the bad unhappily. That is what Fiction means.'<sup>19</sup> Menander is not a neutral writer. He wishes his audience to regard some characters and some actions as good, and others as bad, and he so contrives his plot that the good ones succeed in the end. In particular, Smikrines is presented as being wholly bad, the worst character in all Menander's extant plays. Just in case anyone in the audience is uncertain how to judge him, Menander provides an assessment with the goddess's authority: 'in wickedness, he's beaten all mankind' (116–17). But what does he do in the play to deserve this sweeping condemnation? He simply attempts to exercise his legal rights. His attempt to claim Kleostratos's sister as his wife, on the assumption that Kleostratos is dead, is in perfect accord with the rules of Athenian law.

The implication, that it is wrong to act in accordance with the law, is astonishing. Perhaps we should be less astonished if we found it in Aristophanes. The mischievous heroes of Old Comedy do sometimes try to evade the law; the aim of Strepsiades in *Clouds*, for instance, is to avoid paying his debts. But in the douce families of New Comedy we expect to find ourselves siding with law-abiding characters. And what Smikrines does is to try to uphold the law about *epikleroi*. This law was not a recent and controversial innovation. It was a custom of immemorial origin, and its purpose was the preservation of families and their property. But it took no account of love.

Menander has set up a confrontation between this law and love. He has drawn his characters in such a way as to make the audience side with love and against the law, and he makes love victorious in the end. He wants the audience to regard the law as stupid and wrong; love is a better reason for making a marriage. This view was new, as far as we can tell; there is no evidence that the law about *epikleroi* had been publicly criticized before. Surely one of Menander's purposes in writing this play was to make the Athenians consider seriously whether the law ought to be changed. Perhaps he was more of a social and moral revolutionary than has hitherto been realized.

## Notes

- 1 E. Karabelias, 'Une nouvelle source pour l'étude du droit attique: le Bouclier de Menandre', *Revue Historique de Droit Français et Etranger* 48 (1970), 357–89. There is also an article by J. E. Karnezis, 'Misrepresentation of Attic law in Menander's *Aspis*', *Platon* 29 (1977), 152–5, but his approach seems to me wrong: when we find in Menander a legal feature not mentioned elsewhere, we should use that as new evidence, not pillory it as an error or distortion by Menander. The present article shows how I believe everything in *Aspis* can be interpreted in accordance with Athenian law.
- 2 Some of these points were presented at the Glasgow-Edinburgh seminar on ancient drama in March 1977, and briefly in my book *The Law in Classical Athens* (London, 1978), pp. 97–8. The translations here are my own, but to anyone wishing to read the play in English I commend W. G. Arnott's version in the Loeb series (Cambridge, Mass. and London, 1979).
- 3 Khairestratos had his daughter by his present wife, not by a previous wife, for it seems that she is a half-sister of Khaireas, as argued later in this article; cf. note 11.
- 4 Cf. Karabelias, 366–8. But it remains obscure how this is to be reconciled with the text of the law about ἐγγύη, which is preserved in Dem. 46.18. Possibly it is covered by the last clause of the law: ὅτι ἂν ἐπιτρέψῃ, τοῦτον κύριον εἶναι. However, that clause appears to be subject to the condition ἐὰν μηδεὶς ἧ τούτων, so that it refers only to a woman who has no father or brother (by the same father) or paternal grandfather alive. So it seems more likely that temporary transfer of the power of a κύριος was authorized by another law which has not been preserved.
- 5 There is a less clear instance in Plaut. *Trin.* 1156. Charmides has been away on a journey to Asia, and during his absence his son Lesbonicus has betrothed his sister, Charmides's daughter, to Lysiteles. This may well have been taken over without alteration by Plautus from the Athenian play on which *Trinummus* is based (Philemon's *Thesaurus*).
- 6 Philokleon's boast that he ignores the rules (*Wasps* 583–6) is Aristophanes's joke, perhaps based on some recent notorious misjudgement, but not on normal practice.
- 7 Karabelias, 369–70; cf. Gomme and Sandbach, *Menander, a commentary* (Oxford, 1973), pp. 76–7.

- 8 The lines are defective in the manuscript, but the general sense is certain. I have translated the supplements adopted by Arnott in the Loeb edition.
- 9 A. R. W. Harrison, *The Law of Athens* i. (Oxford, 1968), 85.
- 10 The word *παρεγγυῶ* is worth noting. It may well be the formal term used by the *kyrios* of a woman to transfer her to another *kyrios*, other than a husband (just as *ἐγγυῶ* is used to transfer her to a husband); we may imagine Kleostratos using it when he entrusted his sister to Khairestratos. Cf. U. E. Paoli, *Altri studi di diritto greco e romano* (Milan, 1976), p. 568.
- 11 This appears to be the only possible explanation of the plural *ὑμᾶς* in line 281. It is the reason for believing that Khairestratos's daughter and Khaireas had the same mother; otherwise Khaireas, as Khairestratos' adopted son, would have had to marry his daughter.
- 12 *κληρονόμος* is derived from *νέμω*, which means 'occupy' or 'manage' rather than 'own'.
- 13 Arnott's translation, generally very accurate, seems to be incorrect in 142–3. *τῷ χρόνῳ προῦχων* means not 'despite his age' but 'being ahead (of his brother) in age'.
- 14 It is not correct to say that the law gave the option of claiming an *epikleros* 'to her male relatives in order of their seniority' (Arnott's note on line 187). An older second cousin would not have priority over a younger first cousin, for example.
- 15 Karabelias, 372–5, discusses the puzzle, but overlooks the usefulness of lines 269–73 for solving it.
- 16 An alternative hypothesis might run as follows. Kleostratos's sister does own the property herself, but the law forbids a woman to dispose of property worth more than one *medimnos* of barley (Isaios 10.10); so, when she dies, her son will claim that she cannot have given it away and that he now inherits it. I reject this hypothesis, because Smikrines in lines 269–73 is clearly not looking ahead to the time of the woman's death (which would probably be long after his own), but envisages that a claim may be made by (or on behalf of) the son at any time after his birth.
- 17 Dem. 41.4, Men. *Epitreponres* 657–8, Didot Papyrus 1 (*Menander*, ed. Sandbach, pp. 328–30); cf. Paoli, op. cit., pp. 385–91.
- 18 Sheridan, *The Critic*, act 2 scene 1.
- 19 Wilde, *The Importance of Being Earnest*, act 2.

# *Hybris* in Athens<sup>1</sup>

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## 1. Introduction

In the speech *Against Konon* the speaker, a young man named Ariston, complains that one evening when he and a friend were walking in the Agora they were victims of what would now be called ‘a mugging’. They were set upon by Konon and some other men, who pulled Ariston’s cloak off him, tripped him up, threw him into the mud, and jumped on him. While he was lying on the ground, they said a lot of things which Ariston does not like to repeat in front of a jury of respectable men; ‘but’ he goes on ‘the thing which shows Konon’s *hybris*, and indicates that he was the ringleader, I will tell you: he crowed in imitation of cocks that have won fights, and the others suggested he should beat his sides with his elbows like wings’ (Dem. 54. 8–9). So Ariston has taken steps to prosecute Konon. But his prosecution is not for *hybris*, although *hybris* was an offence in Athenian law, but for assault (*aikēia*).

One may well ask two questions. Why was crowing like a cock a clearer sign of *hybris* than pulling off a man’s cloak, tripping him up, throwing him into the mud, and jumping on him? And why, if Konon was guilty of *hybris*, was it preferable to prosecute him for *aikēia*? Or, to put the two questions in more general terms, what did Athenians in the classical period mean by *hybris*, and what provision did they make in their legal system to deal with this offence when it occurred? These are the two questions which I shall try to answer.

It is perhaps surprising that the first of these questions, ‘What did the Athenians mean by *hybris*?’, still needs answering. *Hybris* is one of the most familiar Greek words, often used in English in untranslated form by people who have never learned Greek at all. If you ask for a translation of it, English equivalents commonly offered are ‘pride’ and ‘arrogance’. But ‘pride’ is not in fact what the Greeks meant by the word; that is just a misunderstanding of it which has grown up in the nineteenth and twentieth centuries, as Professor Richmond Lattimore pointed out some years ago.<sup>2</sup> Lattimore’s is the best modern account of *hybris* known to me, but all he claims to do is ‘to digress briefly’ on it. I hope that someone will in due course



publish a detailed study of the evidence. Meanwhile I offer here a general survey of the Greeks' use of the word *hybris* and the related words *hybrizein*, *hybrisma*, and *hybristes*. My main concern is with the Athenians of the fifth and fourth centuries, but I shall not ignore non-Athenian writers likely to have been familiar in classical Athens, especially Homer and Herodotos.

## 2. Causes and manifestations of *hybris*

The first point to notice, in view of the fact that Konon showed his *hybris* by crowing like a cock, is that *hybris* is not confined to human beings. When the great king Kyros of Persia was marching against Babylon and reached the river Gyndes, which needed to be crossed by boat, one of his sacred white horses from *hybris* stepped into the river and tried to walk across it; the river swept it away (Hdt. 1. 189.1). But when years later king Dareios attacked the Skythians, it was not the horses which showed *hybris* but the donkeys: donkeys were previously unknown in Skythia, and the donkeys accompanying the Persian army, *hybrizontes*, threw into confusion the Skythian horses, which had never heard the voice of a donkey before (Hdt. 4. 129.2). The reference to voice shows that the donkeys were braying. Very likely Kyros' horse was likewise neighing when it tried to ford the river Gyndes. But the *hybris* of a horse or donkey is not just noise. Kyros knew, if we may believe Xenophon, that horses which are *hybristes*, if gelded, cease to bite and to *hybrizein* (Xen. *Kyr.* 7. 5.62). In Euripides angry bulls show *hybris*, and so in Pindar do the snakes attacking the infant Herakles.<sup>3</sup> *Hybris* in an animal is an aggressive spirit as well as the noise that goes with it. Horses, donkeys, bulls, snakes, and cocks are kinds of animal which have it; we never hear of *hybris* in, say, a sheep or a mouse. And before leaving the animals it is worth mentioning Ar. *Wasps* 1303–10, where old Philokleon, invited to a party, got drunk and was far the *hybristotatos* of the people there: he pranced about and chortled 'like a donkey feasted on barley-grains'; he knocked his slave about, and one of the other guests said, 'Old man, you're like . . . a donkey that's run off to a bran-heap'. The simile suggests that the well-fed donkey is a standard example of *hybris*.

When we turn to human beings, we find that *hybris* is specially associated with youthfulness. Plato in his *Laws* goes so far as to say that the child is the *hybristotaton* of animals, but the more usual view is that it is in the teenager or the young man that *hybris* is most often found. *Hybris* blooms in the young, says Sophokles; Xenophon says that Lykourgos the Spartan lawgiver knew that it was in teenagers that *hybris* was most prevalent; and Ktesippos, the lad from Paiania in Plato's *Euthydemos*, had a fine nature except that he was *hybristes* because of being young.<sup>4</sup> But *hybris* can exist in old men too; youth or age is not part of the definition of *hybris*; and it is more important to consider next, what kinds of thing does a man who shows *hybris* actually do?

One thing he is liable to do is to eat and drink too much. One of the very earliest instances of *hybris* in Greek literature is in *Odyssey* 1. 227. The suitors of Penelope come into the house and servants place food and drink before them, and then the minstrel Phemios plays the lyre and sings; and Athena, disguised as Mentos, looks

at them and asks Telemakhos ‘What feast is this? They seem to be feasting *hybrizontes*.’ Unless you prefer to think that listening to music is *hybris*, it seems that the suitors’ *hybris* here consists of eating and drinking in an excessive or disorderly manner; at this point in the story there is nothing else which the newly arrived Mentos has yet seen them doing. In later authors there are several passages in which *hybris* is associated with getting drunk.<sup>5</sup> One group of personages to whom the term *hybristes* is several times applied is the Centaurs, and this no doubt is because they notoriously became drunk and disorderly when invited to a wedding by the Lapiths.<sup>6</sup> Perhaps also because they were half horses; I have already mentioned the connection of *hybris* with horses and donkeys, and I may now add that Plato in *Phaidon* 81 e suggests that after death ‘men who have engaged in bouts of gluttony and *hybris* and drinking and have not avoided them are likely to assume the form of donkeys and animals of that sort’. This passage indicates that *hybris* is associated with excessive eating and drinking as well as with donkeys.

*Hybris* in fact is connected with *koros*, ‘fullness’ or ‘satiety’. In some of the well-known passages of poetry in which *hybris* and *koros* are mentioned together the words may be in some way metaphorical, but I see no reason to doubt that when the connection was first made the word *koros* referred literally to eating and drinking. But the exact relationship is obscure. Does excessive eating and drinking produce *hybris*, or is it *hybris* which makes a man indulge in food and drink? ‘*Koros* begets *hybris*’ say Solon and Theognis; but in Pindar we read of ‘*Hybris*, mother of *koros*’, and in an oracle of Bakis quoted by Herodotos ‘*Koros* son of *hybris*’.<sup>7</sup> The poets appear to be in disagreement about the pedigree. But I do not think there is any real contradiction here. What we have is a vicious circle: when a man eats and drinks too much, like a donkey, he becomes *hybristes*, and when he is *hybristes* he indulges in more eating and drinking.

Now, you cannot eat and drink too much unless you have plenty of food and drink available; and many Greeks had not. For a poor man, it was as much as he could do to get enough to eat, and the possibility of his eating excessively seldom arose. So it is not surprising that we find *hybris* associated with wealth and riches, with having not just plenty of food but plenty of everything. Parallel to Solon’s observation that *koros* begets *hybris*, we find in Euripides the remark ‘Wealth begets *hybris*’. A speaker in Xenophon remarks that it is harder to find a man behaving well in good fortune than in bad; for the former often implants *hybris* in people, the latter always implants *sophrosyne*. And there are many other passages in which *hybris* is connected with material prosperity.<sup>8</sup>

Another form of activity in which *hybris* may show itself is sexual. In Herodotos the story is told that in prehistoric times the Pelasgians from *hybris* violated the daughters of the Athenians when they went to fetch water from the Enneakrounos spring. *Hybristes* can mean ‘lecher’: Kritias remarked that Arkhilokhos revealed in his poems that he himself was lustful and *hybristes*. In Aristophanes’ *Thesmophoriazousai*, when the old man has said rather explicitly what he would like to do to the effeminate Agathon, the retort is ‘You must have been *hybristes* when you were young’; and in Plato’s *Phaidros*, where we read the allegory in which

the soul is represented by a charioteer with two horses, the bad horse, which represents lust and becomes excited at the sight of the loved one, is called *hybristes*. In Euripides the verb *hybrizein* is used to refer to the adultery of Aigisthos, to Hippolytos' attempt (as Theseus believes) to make love to Phaidra, and to Theoklymenos' proposal to marry Helen.<sup>9</sup> Among the surviving plays of Aiskhylos, the one in which the word *hybris* occurs most often is *Suppliants*. Modern scholars writing on Aiskhylos usually look at *hybris* from the religious angle, but this does not give a properly comprehensive view, and I should like at this point to stress a different aspect. In the seven surviving plays of Aiskhylos there are twenty instances of the word *hybris* and its derivatives.<sup>10</sup> Ten of these are in *Suppliants*, which thus has as many as all the other six plays added together. All these ten refer to the sons of Aigyptos, and the theme of the play is the desire of the sons of Aigyptos to marry the daughters of Danaos, by force if necessary. No less than five (that is, half) of the instances occur in conjunction with a word meaning 'male' or 'men'.<sup>11</sup> In view of the passages from other authors which I have just mentioned, it seems clear that *hybris* in *Suppliants* refers primarily to excessive male desire for women. Thus the commonest meaning of *hybris* in Aiskhylos is 'lust'.

Other kinds of indulgence in pleasure are also sometimes regarded as features of *hybris*. I have already mentioned Penelope's suitors in the *Odyssey*, who first show their *hybris* when eating and drinking. In 4. 625–7 we meet them again: 'in front of the house of Odysseus they were enjoying themselves throwing discuses and javelins on a levelled ground, as before, having *hybris*.' If it comes as a surprise that throwing a discus or a javelin may be an act of *hybris*, confirmation may be found in a very different source, the second of the Tetralogies attributed to Antiphon. This Tetralogy is the one about the boy who ran across the gymnasium and was accidentally hit by a javelin and killed: was the boy who threw the javelin guilty of homicide or not? His father, defending him against the accusation, takes pains to say explicitly that the lad did not throw the javelin in *hybris* but as part of his class javelin-practice (Ant. 3 b 3). *Hybris* here means 'larking about', as opposed to doing something seriously; expending surplus energy in a useless manner. That is what the suitors did when they threw discuses and javelins in front of the house of Odysseus. Some young men have a great deal of surplus energy. Hdt. 2. 32.3 tells us of the sons of the chieftains of the north African people named Nasamones, 'who when they grew up devised other excessive activities and also picked five of themselves by lot to explore the African desert, to see if they could see more than those who had explored furthest before'. Herodotos goes on to describe how they crossed the desert and discovered the Pygmies. The word which he uses to describe these young men is *hybristes*. Their adventurous spirit led them to undertake exploits of no practical usefulness. *Hybris* is the spirit which makes men climb Mount Everest because it is there.

Another activity characteristic of *hybris* is fighting and doing physical harm to people. In Iliad 13. 633 Menelaos calls the Trojans *hybristai* because they are gluttons for fighting; and in later authors, when the verb *hybrizein* is used transitively, it more often refers to hitting, wounding, or killing than to anything

else. In Euripides, when the Cyclops uses it, what has happened to him is that Odysseus has put his eye out; and the same verb is used of Lykos' attempt to kill the wife and children of Herakles. In Aristophanes, Philokleon and Peisthetairos are accused of *hybris* when they hit people, and in the law-court speeches of the fourth century *hybris* often means hitting someone; for example, when Meidias punched Demosthenes on the head, Demosthenes called that *hybris*. In Herodotos, the act of *hybris* committed by Intaphrenes was to cut off the ears and noses of two servants who refused to admit him to the presence of the king.<sup>12</sup> But the passage which contains more instances of *hybris* and its derivatives than any other in Herodotos is the debate in 3. 80–2, where the three Persian leaders discuss what is the best form of constitution. The first two speakers are anxious to escape from the *hybris* of a tyrant, because they have seen what the *hybris* of Kambyses was like. The activities of Kambyses, described by Herodotos earlier in the book, are too numerous to list here; they included marrying two of his own sisters and other eccentricities; but above all he constantly put people to death without trial and with the most trivial excuses, and that is probably what Herodotos has primarily in mind when he writes of the *hybris* of Kambyses. Another passage where killing is called *hybris* is Soph. *Tr.* 888. The Nurse rushes out of the house and says that Deianeira has killed herself with a sword, and the chorus ask 'Did you see this *hybris*?' Deianeira commits *hybris* by killing herself, an act of violence which her friends wish she had not committed. This passage is generally ignored by those who write about *hybris* in tragedy; but it has considerable negative importance, because it shows that the definition of *hybris* is not to be narrowly drawn. If committing suicide in sorrow, shame, and despair can be called *hybris*, that shows that *hybris* does not necessarily involve pride or arrogance, or setting oneself above the gods, or a desire to disgrace another person.

*Hybris* may also show itself in an act of taking from someone else a thing which belongs to him, or preventing him from receiving what should be his. This may be simple plunder, as when the Skythians rode round Asia seizing 'from *hybris* and contempt' whatever each of the peoples possessed (Hdt. 1. 106.1). But more often it means depriving someone of a prize or privilege which he has earned. The classic example of this is the first instance of *hybris* in Greek literature, at the beginning of the *Iliad*, where Agamemnon deprives Achilles of Briseis, the girl whom Achilles believes he deserves for his prowess in war; Achilles and Athena both call this action *hybris*. Very similar are two cases in Sophokles: Agamemnon, Menelaos, and Odysseus withhold the armour of the dead Achilles from his son Neoptolemos, who believes it to be his due; and Menelaos commits *hybris* against the dead Aias by refusing him burial, an honour which every good man's corpse deserves. In Thucydides' account of Harmodios and Aristogeiton, Harmodios is said to have been treated with *hybris* by Hipparkhos; what happened was that Harmodios' sister was first invited to be the basket-bearer in a festival and was then refused this privilege.<sup>13</sup> In these examples *hybris* consists not, or not primarily, of depriving a person of some piece of property. It is a matter of depriving him of the honour which is due to him.

The kind of honour which is due to a king or other ruler is obedience, and that is why Kreon regards Antigone as guilty of *hybris* when she disobeys his order to leave Polyneikes unburied (Soph. *Ant.* 309, 480). Above all, obedience is what is required by the gods. The notion of committing *hybris* against the gods by disobeying them does not, I think, occur in the *Iliad* or *Odyssey*,<sup>14</sup> but in the Homeric Hymn to Apollo we hear of a city of men who are *hybristai* and do not heed Zeus; and in tragedy there are several well-known instances, the clearest ones being in Euripides. In *Hippolytos* the Nurse tells Phaidra that it is *hybris* to wish to be stronger than the gods. In *Suppliants* the *hybris* of Kapaneus consisted of swearing that he would sack Thebes whether the god wished it or not. In *Bakkhai* Pentheus is said to commit *hybris* when he gives orders for Dionysos to be arrested, and Agaue and Kadmos commit it merely by not believing Dionysos to be a god. In Aiskhylos the verb *hybrizein* is used in connection with Prometheus' act of giving the gods' privileges to mortals; and in *Persians*, when the ghost of Dareios uses the word *hybris* to refer to the actions of Xerxes and his army, the kind of offence which he mentions specifically is the destruction of the shrines and images of gods.<sup>15</sup> Two particularly famous choral passages may refer to offences against the gods, one in *Agamemnon* which says that old *hybris* begets new *hybris*, and one in *Oedipus Tyrannos* which says either that *hybris* begets a tyrant or that a tyrant begets *hybris*, whichever reading you prefer.<sup>16</sup> But I shall not discuss those two passages here; they are so vague, and their interpretation is so uncertain, that they are virtually useless for my present purpose, which is to define the meaning of the word *hybris*. In any case it is clear enough without them that the word is quite often used in tragedy to refer to disobedience and disrespect towards the gods and their commands. Outside tragedy this sense of *hybris* is rare; but there is a clear instance in Ar. *Clouds* 1506, where Strepsiades accuses Sokrates and his students of committing *hybris* against the gods by denying their existence.

A further category of *hybris* is that in which the offence consists purely of words or noise. Pindar calls *hybris* 'bold-speaking' and 'noisy';<sup>17</sup> and *hybris* and *hybrizein* are often used of a person who taunts another, laughs at him, makes a joke about him, or is simply rude. This, as perhaps one might expect, is the commonest sense of *hybris* in Aristophanes, an author of whom rude jokes are characteristic. Thus in *Akharnians* 478–9, when Dikaiopolis asks Euripides to get him some vegetables from his mother, Euripides calls that *hybris*: it was a rude joke to suggest that Euripides' mother was a greengrocer. And in *Wealth* 1043–4, when the Young Man says to the Old Woman 'I say, you have gone grey quickly!', she calls that *hybris*. Likewise, when the Athenians were making no progress with their attack on Syracuse, some Syracusan cavalymen rode up to the Athenian troops and called out to them asking whether they had come to settle permanently in Sicily; again a sarcastic joke, and the verb which Thucydides uses of the Syracusans is *ephybrizein* (Th. 6. 63.3). And in Plato's *Symposium* Sokrates is several times called a *hybristes* on the ground that he makes sarcastic or ironic jokes about people. Thus Sokrates says that Agathon's wisdom must be extraordinary, because he has just scored such a brilliant success in the theatre before an audience of thirty thousand people, to which Agathon's reply is 'You're a *hybristes*', meaning

‘You’re mocking me’ (175 e). *Hybris* often appears in close conjunction with laughter, and it often has a sense not just of mocking but of triumphing and crowing over someone else’s misfortunes. This is the commonest kind of *hybris* in Sophokles, especially in *Aias*. (*Aias*, by the way, is of all Greek plays the one in which the word *hybris* and its derivatives occur most often.) For example, when *Aias* is dead, Odysseus’ reaction is presumed to consist of *hybris* and laughter.<sup>18</sup>

### 3. A definition of *hybris*

It would of course be possible to quote many more instances of *hybris*, including some of which the interpretation is doubtful and the exact sense of the word obscure. But the ones already mentioned are probably enough to give a fair idea of the range of the word. They indicate that *hybris* has several characteristic causes and several characteristic results. The characteristic causes are youthfulness, having plenty to eat and drink, and wealth. The characteristic results are further eating and drinking, sexual activity, larking about, hitting and killing, taking other people’s property and privileges, jeering at people, and disobeying authority both human and divine. The causes are ones which produce energy or make a person, as we say, ‘full of himself’, and inclined to indulge his own desires and wishes without respecting the wishes, rights, and commands of other people. The results are actions which are, at the best, useless, and in most cases definitely wrong. *Hybris* is therefore having energy or power and misusing it self-indulgently. English expressions which might be used to translate the word, in some contexts at least, are ‘animal spirits’, ‘exuberance’, ‘ebullience’, ‘bounciness’, ‘bumptiousness’, ‘egotism’; but *hybris* is a harsher, more pejorative word than any of these.

This rough definition, ‘having energy or power and misusing it self-indulgently’, may be made more precise by some further observations. First, *hybris* is always bad. It is an evaluative word, not an objective one. No Greek ever speaks of *hybris* as right or justified, and we may infer that it does not make sense to do so. If you believe an action is justified, you do not call it *hybris*.

Secondly, *hybris* is always voluntary. No Greek ever speaks of a person being compelled to commit an act of *hybris*, and we may infer that it would be self-contradictory to say that.<sup>19</sup> *Hybris* means doing what one feels like doing, free from constraint, whether by other people or by oneself. The word most often used as an opposite to *hybris* is *sophrosyne*, which is self-restraint, keeping one’s desires under rational control.

Thirdly, although *hybris* has the characteristic causes already listed – youthfulness, having plenty to eat and drink, and wealth – we do sometimes find the word applied to an action which is not in fact caused by any of those. For example, Deianeira’s suicide, which the chorus call *hybris* (Soph. *Tr.* 888), obviously has none of those causes. But it is a headstrong outburst; killing oneself with a sword requires considerable force, and what the chorus mean is that Deianeira has of her own free will used her strength in an irrational and deplorable manner, not taking account of other people’s wishes. So this instance does fit reasonably well under my definition of *hybris* as ‘having energy or power and

misusing it self-indulgently'. Youth, eating, drinking, and wealth, though they commonly lead to *hybris*, are not essential for it, and should not be included in a definition of the word.

My fourth general observation is that *hybris* is not, as a rule, a religious matter. It is true that there are some passages, including some which I have already mentioned, in which a person is said to show *hybris* towards a god, and a few passages, mostly in tragedy, in which the gods punish *hybris*, but these passages are only a tiny proportion of the instances of the word in Greek literature, and not a large proportion even of the instances in tragedy. As I have already said, numerically the most frequent sense of *hybris* in Aiskhylos is 'lust', in Sophokles 'jeering' or crowing over an enemy. I stress this point because it is the subject of a common misapprehension, especially among undergraduates, who try to generalize about the Greeks and their beliefs from knowledge of a rather limited range of texts. Undergraduates commonly read *Agamemnon* and *Oedipus Tyrannos*; and lecturers on those two plays quite naturally and properly devote time to those two vague and obscure choral odes about *hybris* and the gods; and so the student supposes that from these two passages he has learned that the Greeks believed that the gods punished *hybris*, and does not realize how untypical these two passages are. In fact there are only two ways in which *hybris* may be the concern of the gods. One is that if a man treats a god with *hybris*, that of course is a religious offence, and the god is likely to react. The other is that if one holds a religious belief, such as Aiskhylos perhaps held, that all wrongdoing is punished by the gods, then it follows that the gods punish *hybris* along with all other wrongdoing, because *hybris* is wrong. But that does not mean that the word itself is a religious one. One may see this by comparing a word for some other kind of wrongdoing, say theft. If a man in myth steals something from a god, or in real life steals a sacred object from a temple, it may be expected that the god will punish him; and if one believes that the gods punish all wrongdoing, then one will believe that all thieves are punished by the gods. But that does not mean that 'theft' is a religious word or that it is generally regarded as a religious offence. So it is with *hybris*: there is nothing to show that the Athenians generally thought that *hybris* had any more to do with the gods than any other kind of misconduct.

My fifth observation is that *hybris* often involves a victim, and is more serious when it does so. There is not always a victim: when the young men in Herodotos went off to explore the African desert, they presumably did no harm to anybody; nor did the suitors when they wasted their time throwing discuses and javelins in front of the house of Odysseus. But if a man uses his surplus energy in jeering or hitting or raping or killing, that does affect other people, and it is not surprising that these manifestations of *hybris* generally attract stronger criticism than those in which no victim is involved. They are actions which infringe the rights of someone else, treating him as inferior to oneself, as if he were one's slave. There are several passages of Euripides in which we find *hybris* and treating another person as one's slave mentioned in the same breath. When Admetos suggests that old Pheres might die in his place, Pheres retorts 'Whom do you think you're insulting? A Lydian or Phrygian whom you've bought with silver? . . . You *hybrizeis* too

much.’ Lykos is accused of *hybris* when he has told the chorus ‘Remember that you are slaves of my tyranny’. Hecuba says to Helen ‘In Alexander’s house you behaved with *hybris* and wanted to be grovelled to by barbarians’; that is, she wanted to have people behaving as her slaves.<sup>20</sup> In Ar. *Frogs* 21, Dionysos exclaims that it is ‘*hybris* and luxury’ that he himself is walking while his slave is riding on a donkey. The normal thing would be for the master to ride and the slave to walk behind, but in this case the slave’s self-indulgent behaviour has put Dionysos himself in the position of a slave. It is an extension of this kind of *hybris* to a national level when one city gives orders to another city. Opponents of the Athenian Empire alleged that the Athenians treated their allies like slaves, and we find Spartan speakers in Thucydides boasting that, when they have power over other cities, they do not commit *hybris*; this implies ‘We don’t treat other cities as our slaves, as the Athenians do’.<sup>21</sup>

This is the aspect of *hybris* which has recently been drawn to our attention by Professor Dover in his *Greek Popular Morality*. He does not offer a full discussion of *hybris*, but he does make several references to it; and the definition which he gives is ‘behaviour in which a citizen treats a fellow-citizen as if he were dealing with a slave or a foreigner’.<sup>22</sup> This definition certainly has some attractions. It avoids the error of assuming that *hybris* has any necessary connection with gods or religion; and it suits the passages just quoted, in which *hybris* is linked with treating someone as a slave. Yet, if intended as a comprehensive definition, it seems too limited. It would be more accurate to say that treatment of a free person as a slave is one common manifestation of *hybris*, but other manifestations are also possible. Some instances of it do not involve a victim at all; even those which do involve a victim do not necessarily mean treating him as a slave. Still less as a foreigner; the Greek word for a foreigner is *xenos*, and, unless he is an enemy, the proper treatment of him is *xenia*, which means ‘hospitality’, something very different from *hybris*. Besides, the Athenian law explicitly forbids anyone to treat a slave with *hybris*; it cannot have been illegal to treat a slave as a slave, and so treatment of a person as a slave cannot be the definition of *hybris*. But this law needs more detailed consideration.

#### 4. The law about *hybris*

We have the text of the Athenian law about *hybris* – unlike many other Athenian laws which we have to reconstruct from odd references in the orators.<sup>23</sup> It says: ‘If anyone *hybrizei* against anyone, either child or woman or man, free or slave, or does anything illegal against any of these, let anyone who wishes, of those Athenians who are entitled, prosecute him before the *thesmothetai* . . .’ and so on; the rest of the law lays down the usual rules for prosecution by the procedure known as *graphe*.

The law makes no attempt whatever to define *hybrizein*. It takes for granted that everyone knows what the word means, and that it is unambiguous. It is not introducing a new technical term. I stress this point because some modern writers have assumed that *hybris* in the law and in forensic speeches means something



quite different from *hybris* in tragedy, but that is a great mistake. Not only is there no evidence that *hybris* in law and *hybris* in literature are two different concepts, but there is no intrinsic likelihood of such a division, and to expect one shows a serious misunderstanding of the character of Athenian law. Athenian law was not drafted by professional lawyers using terminology which only they understood; it was made by the citizens of Athens in their own language for their own use, and an Athenian finding the verb *hybrizein* in a law would take it to mean just what it normally meant in ordinary speech.

But the law does not refer to all *hybris*, but only to the act of *hybrizein* against any child or woman or man. It is limited to behaviour involving a victim. That is not surprising, but perfectly sensible. If a man is full of energy and wastes it on some useless activity, that may be deplorable, but as long as he does no harm to anyone else there is no need for the law to take cognizance of it. Another limitation is that the expression 'child or woman or man' does not cover a god; a person accused of acting with *hybris* against a god, for example by disobeying the god's command or denying his existence, cannot be prosecuted under this law. But if the act of *hybris* is directed against another human being, there is no further limitation of the kind of behaviour that can be brought under the law. This law allows a man to prosecute another for hitting, killing, rape, disobeying authority, jeering at someone, depriving him of a privilege, or indeed any kind of misbehaviour whatever towards another person, if he thinks that he can convince a jury that the act was an act of *hybris*.

In practice, when we hear of legal proceedings in connection with *hybris*, the behaviour in question is usually hitting. Demosthenes' speech *Against Meidias*, in which the law is quoted, is about the occasion when Meidias punched Demosthenes on the head. In *Against Konon* Ariston complains that Konon beat him up and threw him into the mud. In Aristophanes' *Wasps* Philokleon is threatened with prosecution for *hybris* when he has got drunk and gone through the streets hitting people, and likewise in *Birds* the inspector who summons Peisthetairos for *hybris* is being beaten by him.<sup>24</sup> But prosecutions for *hybris* were not confined to cases of battery. The passage in which Aiskhines refers to the law (1. 15–17) is concerned not with hitting but with sexual violation. Plato in *Laws* 884–5 takes *hybris* to include damaging or stealing public or sacred property, and also mentions the possibility of *hybris* against the political rights of individual citizens; and it seems unlikely that Plato would regard these offences as kinds of *hybris* in his law if it were unknown for them to be subjects of prosecution for *hybris* in Athens.

But this brings us to the most puzzling feature of the Athenians' way of dealing with *hybris*. Most of these kinds of offence were also covered by other laws, specifying other procedures for prosecution. Hitting someone was *aikeia* and a person who committed that offence could have a case of assault (*dike aikeias*) brought against him; in fact when Konon threw Ariston into the mud, although Ariston claimed that he could have prosecuted him for *hybris*, what he actually did was to bring a *dike aikeias* against him instead. Killing, rape, adultery, and verbal slander also had their own procedures.<sup>25</sup> So what was the point of having

yet another law specifying another procedure for all these offences under the vague name of *hybris*?

Actually the law uses not only that vague term *hybrizein*, without offering any definition of it, but also another expression which is even vaguer. 'If anyone *hybrizei* against anyone,' it says, 'either child or woman or man, free or slave, or does anything illegal against any of these . . .' The adjective is *paranomon*. We have already seen that *hybris* covers a multitude of sins; *paranomon*, if taken literally, would appear to cover any sin whatsoever. If the *hybris* law prescribes a procedure for dealing with every illegal act, why did the Athenians have any other legal procedures for anything?

Clearly the makers of this law cannot have intended their words to be taken in this vague way. They cannot have meant their law to forbid simply what was forbidden in other laws, because that would be pointless. So we must not take *paranomon* here to mean 'forbidden by written law'. Instead we must remember that *nomos* can also mean an unwritten rule or custom or convention. The purpose of our law is to forbid *hybris* or 'any improper behaviour'. That is still a very vague phrase, but at least it does not just duplicate the rest of the legal code, because it means, or at least includes, wrongful behaviour against another person not specifically forbidden in other written laws. Whether a particular act does amount to improper behaviour is left to the court to decide.

Now, in the fourth century, the period to which most of our evidence about Athenian law belongs, the word *nomos* in legal contexts had come to mean exclusively written law; for at the end of the fifth century a law had been made forbidding the enforcement of laws not officially inscribed.<sup>26</sup> At an earlier period it had been different. Perikles is said (Lys. 6.10) to have told the Athenians that they ought to enforce unwritten *nomoi* as well as written ones; and if we go back to the sixth century we find (as Professor Martin Ostwald has shown us in his book *Nomos and the Beginnings of the Athenian Democracy*) that at that period a written law was not generally called *nomos* at all, but *thesmos*. Now, if I am right in suggesting that the makers of the law about *hybris* did not intend the word *paranomon* to mean 'contrary to written law' and did not expect readers of their law to interpret it that way, the probability is that they belonged to a time when *nomos* did not usually mean 'written law'. My suggestion, then, is that the law about *hybris* is most probably a sixth-century law which still remained unaltered in the time of Demosthenes.

This does conflict with the belief of the last scholar to discuss in print the law about *hybris*, Dr. E. Ruschenbusch, that the law is a comparatively late one, made in the age of Perikles.<sup>27</sup> But his arguments seem insufficient. One of them is that the *hybris* law does not specify a fixed penalty, but says that if the accused is found guilty the court is to assess what penalty he deserves to suffer or pay – the usual phrase in laws in which the assessment of penalties is left to the jury. Ruschenbusch believes that the system of assessment of a penalty for each individual case was too difficult to have been operated in early times, and that in Solon's time all laws must have specified a fixed penalty for each offence. But this is unconvincing. The practice of assessing penalties for cases individually must in fact be older than

the system of having penalties fixed by law, because the king or the *arkhon* or somebody must have assessed penalties before any written laws existed. And even when there were written laws, it was always the rule in Athens that in matters about which there was no law a jury was required to give a verdict in accordance with the justest view, and in such cases it must always have been necessary to assess penalties individually. So the mention of assessment in the *hybris* law does not preclude an early date for that law.

Ruschenbusch's view is that the *hybris* law was made in the time of Perikles and was intended to supersede and replace the earlier laws about assault and other offences of personal violence. For example, Solon had made a law that anyone who raped a free woman should pay 100 drachmas. By the fifth century inflation had made this figure seem small; so, Ruschenbusch argues, someone proposed that all such laws should be swept away and replaced by a single law against *hybris*, leaving it to the jury to fix the appropriate penalty in each case. In his view *hybris* is simply a collective term for all offences against the person.

My objections to that view are three. First, the word *paranomon* in the law appears not to refer to written law and for that reason is more likely to belong to the sixth century than to the fifth. Secondly, we know that separate laws about assault, rape, and so on, continued to exist in the fourth century; the *graphe hybreos* did not supersede the *dike aikeias* and other procedures. Ruschenbusch tries to explain this by saying that, although the new law about *hybris* was intended to supersede the other laws, the Athenians did not in fact rescind or delete the other laws, but kept them in force, amending the financial penalties where necessary to keep pace with inflation. But it is a rather desperate expedient to try to save the hypothesis by saying that the Athenians must have intended to do something which we know that in fact they did not do.

Besides – and this is my other objection to Ruschenbusch, and the one which is the main point of this article – *hybris* does not mean the same thing as *aikeia* and the other words for hitting, rape, and so on. It means possessing a certain attitude of mind, self-indulgent egotism. An act is not an act of *hybris* unless it results from the appropriate attitude of mind. And this was understood by Aristotle, who in his *Rhetoric* makes the first attempt to give an analytical definition of *hybris*, for the benefit of composers of law-court speeches. He says (1378b 23–9):

*Hybris* is doing and saying things at which the victim incurs dishonour, not in order to get for oneself anything which one did not get before, but so as to have pleasure . . . It is a cause of pleasure to the *hybrizontes* that they think that by doing harm they themselves are more superior. That is why the young and the rich are *hybristai*: they think they are superior when *hybrizontes*.

And in another passage (1374a13–15): 'If one hits, one does not in all cases commit *hybris*, but only if it is for a purpose, such as dishonouring the man or enjoying oneself.'

Aristotle's account of *hybris* is not without difficulties. Some phrases are hard to interpret, and at one point there is serious doubt about the reading. He is writing

for composers of forensic speeches, and is therefore interested only in those manifestations of *hybris* which are forbidden by law, namely those which involve a human victim. But within that category his definition fits reasonably well the use of the word as we have seen it in earlier authors, a self-indulgent egotism giving one's own desires priority over the wishes or rights of other people. At any rate, it is quite clear that Aristotle believes that *hybris* in law is not, as Ruschenbusch supposes, a comprehensive term covering all offences against the person. An act of assault which is *hybris* is distinguished from an act of assault which is not *hybris* by the motive and state of mind of the offender.

In a law-court it is difficult to establish a state of mind. It may be fairly easy to prove that someone hit you, but much harder to prove that what made him hit you was self-indulgent egotism and not some other motive or accident. Demosthenes points out how one may feel sure that *hybris* was the motive and yet be unable to explain it. He says (21. 72): 'There are many things which the hitter might do, some of which the victim might not even be able to report to someone else, in his stance, his look, his voice, . . .' A man's look or voice may be hard to describe; and so one would think that Ariston, in the passage mentioned at the beginning of this article, was lucky to have such clear evidence of Konon's *hybris*. Konon and his friends pulled Ariston's cloak off him, tripped him up, threw him into the mud, and jumped on him; 'but' says Ariston 'the thing which shows Konon's *hybris* . . . I will tell you: he crowed in imitation of cocks that have won fights, and the others suggested he should beat his sides with his elbows like wings'. To show that Konon committed not just assault but *hybris*, Ariston had to show what was Konon's motive and state of mind at the time. And since it is characteristic of *hybris* to feel pleased with yourself and to crow over other people, there could hardly be any sound revealing *hybris* more clearly than the one which Ariston describes Konon as uttering.

But, if the case was as clear a case of *hybris* as it was possible to have, why was it that Ariston, acting, he says, on the advice of his family and friends, decided not to prosecute Konon for *hybris* but only for the lesser offence of *aikēia*? We cannot rule out the possibility that Ariston was just lying and Konon never really crowed like a cock, at all, but otherwise there are two explanations which seem probable. One is that, even though Konon did in fact crow like a cock, Ariston had no way of proving that to a jury; it was easy to prove that he received blows, because many people saw him in his injured state, but crowing would leave no mark and there may have been no witness willing to testify to it. The other possible explanation is that Ariston may have wanted damages. If he won a case of assault, Konon would be required to pay him some money in compensation. But a case of *hybris* was not a private dike but a *graphe*: this meant that the offence was regarded as being an offence against the whole community, any citizen could prosecute, and if the accused man was found guilty he paid a penalty to the state. No doubt it was in the interest of Athens as a whole that *hybris* should be checked. But the effect of this procedure would be that Ariston would not receive any compensation personally.

So those may well be the two reasons why Ariston did not prosecute Konon for *hybris*: it was difficult to prove *hybris*, and if he did prove it he would not benefit personally. But if those two considerations applied in Ariston's case, they must have applied also in most other possible cases of *hybris*. And the fact of the matter is that we hardly ever hear of anyone actually being prosecuted for *hybris* in Athens. Of all the surviving Athenian law-court speeches, not one is composed for a *graphe hybreos*. The speech of Isokrates *Against Lokhites* is, like the speech *Against Konon*, one in which the speaker alleges that his opponent is guilty of *hybris*, but the case he has actually brought is a *dike aikeias*. Demosthenes in his speech *Against Meidias* says that Meidias committed *hybris* when he punched Demosthenes in the theatre, but formally the charge is not one of *hybris*; it is a charge brought by the special legal procedure called *probole* for interfering with the due performance of a festival. Likewise a case mentioned by Deinarkhos 1. 23, in which a man was condemned to death for committing *hybris* against a girl at a religious festival, may perhaps have been a *probole* case in which the formal charge was one of interference with the festival. Three other cases are mentioned in Demosthenic speeches (21. 36–9; 45. 4) in which prosecution for *hybris* was initiated or threatened, but none which was actually brought to trial. And there is a case mentioned in Isaios 8.41, which had not yet come to trial when Isaios referred to it. I do not know of any quite certain case in which a person was formally found guilty of *hybris* in an Athenian law-court. It seems likely that the distinguishing features of *hybris* were so ill defined and intangible that prosecutors and juries found it hard to pin down. They preferred to use other more clearly defined charges.

## 5. Conclusions

Much of the evidence about *hybris* in Athens is difficult to interpret, and further study might well modify our conclusions. But at present I would suggest that the following propositions are tenable.

- (a) *Hybris* has various causes and various manifestations, but fundamentally it is having energy or power and misusing it self-indulgently.
- (b) It is the same thing in literature and in law, except that the law is not interested in an act of *hybris* unless another human being is the victim of it.
- (c) The law about *hybris* was made probably in the sixth century, and was not intended to duplicate or supersede the laws about assault and other offences.
- (d) But in practice prosecutions under this law, though often talked of, were seldom brought.

## Notes

- 1 This article is a modified version of a lecture given to the Society for the Promotion of Hellenic Studies in London on 20 March 1975.
- 2 *Story Patterns in Greek Tragedy* (London 1964), 22–8; cf. Brian Vickers, *Towards Greek Tragedy* (London 1973), 29–32.

- 3 Eur. *Ba.* 743, Pin. *Nem.* 1. 50. Other references to *hybris* in animals: Arkhilokhos (West, *IEG*) 177, Pin. *Pyth.* 10.36.
- 4 Pl. *Laws* 808 d, Soph. fr. 786 (Pearson), Xen. *Lak. Pol.* 3. 2, Pl. *Euthd.* 273 a; cf. Eur. *Supp.* 232–5, Pl. *Ap.* 26 e, Dem. 21. 18. But Ant. 4 d 2 denies that *hybris* is confined to the young.
- 5 Anakreon (Page, *PMG*) 356(a), Xenophanes 1. 17, Ant. 4 a 6–7, d 6; cf. Th. 8. 45. 2, Ar. *Ekk.* 664, Pl. *Phdr.* 238 a – b.
- 6 Theognis 541–2, Soph. *Tr.* 1096, Eur. *Her.* 181.
- 7 Solon (West, *IEG*) 6, Theognis 153, Pin. *Ol.* 13. 10, Hdt. 8. 77.
- 8 Eur. fr. 438, Xen. *Kyr.* 8. 4. 14; cf. Theognis 751, Soph. *O.T.* 873–4, Eur. *Supp.* 464, 741–3, fr. 437, Ar. *Wasps* 1309, *Wealth* 564, *Th.* 3. 45. 4, Dem. 21. 98. See also K. J. Dover, *Greek Popular Morality* (Oxford 1974), 110–11.
- 9 Hdt. 6. 137. 3, Arkhilokhos (West, *IEG*) 295 (f), Ar. *Thesm.* 63, Pl. *Phdr.* 254 c–e, Eur. *El.* 947, *Hipp.* 1073, *Hel.* 785.
- 10 Not counting *Prom.* 970, obelized in Page’s text.
- 11 Aiskh. *Supp.* 29–30 ἀρσενοπληθῆ δ’ ἐσμὸν ὕβριστὴν Αἰγυπτιογενῆ, 81, 104, 426 ὕβριν ἀνέρων, 487 ὕβριν . . . ἄρσενος στόλου, 528 ἀνδρῶν ὕβριν, 817–18 ὕβρει . . . ἀρσενογενεῖ, 845, 880, 881.
- 12 Eur. *Cyc.* 665, *Her.* 313, 741, Ar. *Wasps* 1418, *Birds* 1046, Dem. 21, Hdt. 3. 118.
- 13 Hom. *Il.* 1. 203, 214, Soph. *Phil.* 342, 397, 1364, *Ai.* 1092, 1151, Th. 6. 57. 3.
- 14 Hom. *Od.* 17. 487 may refer to *hybris* taking the form of disobedience to the gods, but it is too vague for the point to be clear.
- 15 Hymn to Apollo 278–9, Eur. *Hipp.* 474–5, *Supp.* 495–9, *Ba.* 375, 516, 555, 1297, 1347, Aiskh. *Prom.* 82, *Per.* 807–22.
- 16 Aiskh. *Ag.* 763–6, Soph. *O.T.* 873. Alternative readings in the latter passage are discussed by R. P. Winnington-Ingram, *JHS* 91 (1971), 124–7.
- 17 Pin. *Ol.* 13. 10 θρασύμυθον, *Isth.* 4. 8 κελαδενᾶς.
- 18 Soph. *Ai.* 955–7 ἐφύβριζει πολύτλας ἀνὴρ, γελᾷ δέ . . . : cf. 367 οἴμοι γέλωτος, οἶον ὕβρισθη ἄρα.
- 19 Aiskh. *Ag.* 218, ἀνάγκας ἔδου λέπαδνον, is not relevant here, because the word *hybris* is not used in that passage.
- 20 Eur. *Alk.* 675–9, *Her.* 261 (cf. 251), *Tro.* 1020–1.
- 21 Th. 1. 84. 2; 4. 18. 2. The oligarchic government of the Thirty is said by a democratic speaker to have treated the citizens of Athens with *hybris* (Isok. 20. 4, 10).
- 22 Op. cit. 54, 147.
- 23 We are actually offered two texts, one in Dem. 21. 47 and one in Aiskhines 1. 16. But the document preserved in the Aiskhines speech is a forgery; all the references to the *hybris* law which occur in the words both of Demosthenes and of Aiskhines clearly fit the document which we find in the Demosthenes speech, not the one which we find in the Aiskhines speech, and it is generally accepted that the document in Dem. 21. 47 is the genuine Athenian law about *hybris*.
- 24 Ar. *Wasps* 1418, *Birds* 1046; cf. *Ekk.* 663–4, Dem. 21. 36.
- 25 Δίκη φόνου, δίκη βιαιῶν, γραφή μοιχείας, δίκη κακηγορίας.
- 26 And. 1. 85. In the fourth century, when *paranomōn* generally meant ‘contrary to written law’, this phrase in the *hybris* law had probably become a dead letter.
- 27 *ZSSR* 82 (1965), 302–9.

# Bastards as Athenian citizens

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Marriage is a subject of perennial interest, and we should like to be able to assess the exact degree of importance which the Greeks attached to this institution. One of the chief questions is how the formality of marriage, or the lack of it, affected the children of a union; above all, was illegitimate birth a bar to citizenship even in democratic Athens? Unfortunately there is still no general agreement about the answer to this question.

The problem does not involve Perikles' law on citizenship. That law excluded from citizenship persons whose mothers were not of Athenian-citizen status, and forbade marriage between an Athenian and an alien. But there is no evidence that it made any change concerning children whose parents were both Athenian. The question which I wish to consider here is simply: did bastardy (i.e. the fact that his parents were not formally married to each other) exclude from citizenship a person whose parents were both of Athenian citizen status?

The best recent discussion is that of A.R.W. Harrison, *The Law of Athens* i (1968), 63–5. He gives references to earlier discussions, and convincingly demolishes a number of arguments which had been used to support the view that bastards could not be citizens in Athens. This view rested partly on confusion between the right to belong to a deme, the right to belong to a phratry, and the right to inherit property. Everyone agrees that, at least if legitimate children existed, illegitimate children were excluded from inheritance of their father's property (*Ar. Birds* 1649–68, *Dem.* 43. 51). Everyone agrees that an illegitimate son was excluded from his father's phratry or *genos* (*Ar. Birds* 1668–70, *Dem.* 57. 54, 59. 60). But it does not necessarily follow from this that an illegitimate son was excluded from his father's deme, and it was enrolment in the deme which constituted admission to the rights of an Athenian citizen. When a speaker (notably the speaker of *Dem.* 57, *Against Euboulides*), claiming the right to be enrolled in a deme, adduces as evidence the fact that he was enrolled in a phratry, that does not show that admission to a deme required all the same birth qualifications as admission to a phratry, but only that the birth qualifications required for admission to a deme (Athenian parentage on both sides) were among those required for

admission to a phratry, so that previous admission to a phratry was good evidence that one possessed the qualifications required for admission to a deme.

Nevertheless two other writers have lately maintained the view that bastards were excluded from citizenship; but they have failed to answer satisfactorily Harrison's objections to it. The first, W.K. Lacey, can hardly be blamed for this, since his book *The Family in Classical Greece* (1968) had gone to press before Harrison's was published; but his note on the problem (282, n. 15) is vitiated by failure to distinguish deme-membership from phratry-membership and inheritance of property. He does produce one new argument, but it is not valid. The argument is based on Ar. *Wasps* 718, a line which contains a comic complaint that Athenians claiming a dole of grain were subjected to prosecution for evict. Lacey suggests that this line refers to the chorus of the play, that the chorus undoubtedly had Athenian parents, and that the ground of prosecution must therefore have been that their parents were not married; but he has failed to realize that the point of the line is to complain that prosecutions were brought unreasonably against men who in fact were genuine Athenians. (Cf. the note on line 718 in my edition of Ar. *Wasps*.)

More recently Mrs. S.C. Humphreys has adverted to the problem in her article 'The Nothoi of Kynosarges' (*JHS* 94, 1974, 88–95). Her suggestion that the enrolment of bastards at the gymnasium of Kynosarges had religious rather than political significance is interesting and acceptable. But it does not follow from this that bastards had no political rights. In fact she makes no attempt to consider or answer Harrison's arguments. She simply states (p. 89) that bastards were not admitted to demes, giving no evidence for this statement but the reference Dem. 57. 53. I find this mystifying. Dem. 57. 53 contains no reference to demes. It does refer to inheritance of property, and I can only suppose that Mrs. Humphreys, like others before her, has confused admission to a deme with the right to inherit. Her sweeping generalization 'Marriage, legitimacy and citizenship were tied together in the law of Athens' is valueless without supporting evidence.

So the negative part of Harrison's case stands unrefuted. But his positive reasons for believing that bastards were admitted to citizenship are less satisfactory, since his 'two very strong arguments' (p. 65) are both logical rather than factual. If bastards were excluded from citizenship, why, he asks, did Perikles' law on citizenship take the form it did, and what was the object of Solon's law excluding bastards from inheritance? These rhetorical questions have some force, but they do not amount to proof. We know virtually nothing about the political circumstances and motives which gave rise either to Perikles' law or to Solon's, and we cannot be sure that the motives were logical. It would therefore be much more satisfactory if we could bring forward not just presumptions that logically the Athenians must have admitted bastards to citizenship, but also evidence that they actually did. I suggest that the following three pieces of evidence are relevant.

- (a) Arist. *Ath. Pol.* 42. 1, giving a definition of citizenship in a systematic account of the Athenian constitution, says: μετέχουσιν μὲν τῆς πολιτείας οἱ ἐξ ἀμφοτέρων γεγονότες ἀστῶν, ἐγγράφονται δ' εἰς τοὺς δημότας ὀκτωκαίδεκα



ἔτη γεγονότες. Birth from two citizen parents, and registration in the deme at the age of eighteen; that is all. There is no mention of the parents' marriage, and in a formal definition the silence must be significant. Its significance is not affected by the ensuing account of the procedure of registration, in the course of which we are told that the members of a deme consider whether a candidate for enrolment γέγονε κατὰ τοὺς νόμους. The phrase κατὰ τοὺς νόμους must not be mistranslated 'legitimately'. (The Greek for 'legitimate' is γνήσιος.) κατὰ τοὺς νόμους means 'according to the law'; what the law was on the birth of citizens has been stated in the earlier sentence.

- (b) The formal condemnation of Arkheptolemos and Antiphon for their part in the oligarchy of 411 BC is quoted in [Plu.] *Ethika* 834 ab. One of its stipulations is: ἄτιμον εἶναι Ἀρχεπτόλεμον καὶ Ἀντιφῶντα καὶ γένος τὸ ἐκ τούτων, καὶ νόθους καὶ γνησίους. Their descendants are to be disfranchised, both bastard and legitimate. This clearly implies that illegitimate descendants of Athenians normally have citizenship.
- (c) In Isaios 3. 45 the speaker, claiming that Pyrrhos' daughter is illegitimate and therefore not entitled to inherit Pyrrhos' estate, says to her uncle Nikodemos, who claims that she is legitimate:

ἐπειδὴ δὲ τῷ Ξενοκλεῖ ἠγγύα ὁ Ἐνδιος τὴν ἀδελφιδῆν σου, ἐπέτρεψας,  
ὃ Νικόδημε, τὴν ἐκ τῆς ἐγγυητῆς τῷ Πύρρῳ γεγεννημένην ὡς ἐξ ἐταίρας  
ἐκείνῳ οὖσαν ἐγγυᾶσθαι;

When Endios was giving your niece in marriage to Xenokles, did you, Nikodemos, allow the daughter of Pyrrhos by his wedded wife to be given away in marriage as a daughter he had had by a mistress?

If the woman had been legitimate, she would have been ἐπίκληρος, and the nearest male relative would have been entitled to claim her in marriage, and the estate with her. On the assumption that she was illegitimate, the relatives could claim the estate without her and it did not matter to them who married her; and so she was given in marriage to a citizen who was not a relative, Xenokles. Whether the speaker is telling the truth about her legitimacy is questionable; but there can be no question that he expects the jury to believe him, and thus that the kind of act which he mentions was possible in Athens. So the passage shows that it was possible for a bastard daughter to be given in marriage to an Athenian citizen. But in the fourth century marriage or cohabitation of a citizen and a non-citizen as husband and wife was forbidden (Dem. 59. 16 and 52). I conclude that a bastard was not necessarily a non-citizen.

### **Appendix: bastards in Aristotle's *Politics***

Aristotle in *Politics* 1278<sup>a</sup>26–34 and 1319<sup>b</sup>8–10 acknowledges that in some democracies bastards are citizens and in others not, but he does not say whether they were so in Athens. These passages therefore do not help to solve the particular problem which I have been considering; but, since the first of them has been found

hard to interpret, it may be worth while to say here what I think it does mean. The text is:

ἐν πολλαῖς δὲ

πολιτείαις προσεφέλκει τινὰς καὶ τῶν ξένων ὁ νόμος· ὁ γὰρ  
 ἐκ πολιτίδος ἐν τισὶ δημοκρατίαις πολίτης ἐστίν, τὸν αὐτὸν  
 δὲ τρόπον ἔχει καὶ τὰ περὶ τοὺς νόθους παρὰ πολλοῖς. οὐ  
 μὴν ἀλλ' ἐπεὶ δι' ἔνδειαν τῶν γνησίων πολιτῶν ποιοῦνται 1278a.30:  
 πολίτας τοὺς τοιούτους (διὰ γὰρ ὀλιγανθρωπίαν οὕτω χρῶνται  
 τοῖς νόμοις), εὐποροῦντες δὴ ὄχλου κατὰ μικρὸν παραιροῦν-  
 ται τοὺς ἐκ δούλου πρῶτον ἢ δούλης, εἶτα τοὺς ἀπὸ γυναικῶν,  
 τέλος δὲ μόνον τοὺς ἐξ ἀμφοῖν ἀστῶν πολίτας ποιοῦσιν.

I translate as follows, adding in angled brackets phrases of my own to clarify what I take to be Aristotle's meaning.

In many constitutions the law adds <to the list of citizens> some of the <persons who in other constitutions are> aliens: (a) the son of a citizen woman <and a non-citizen man> is a citizen in some democracies; (b) the arrangements concerning bastards are similar <i.e. bastards are citizens> in many places. Nevertheless, since a shortage of legitimate citizens is the reason why they make such people citizens (underpopulation is the reason why they modify their laws in this way), when they do have plenty of people they gradually make exclusions: first <they exclude> the sons of a slave man <and a citizen woman> or of a slave woman <and a citizen man>; secondly <they exclude> those <whose citizen descent is only> on the female side <i.e. the sons of citizen women and non-citizen men>; finally they <exclude even the sons of citizen men and non-citizen women and thus> make only the sons of two citizen parents citizens.

Aristotle here mentions two possible criteria for excluding a man from citizenship: (a) one of his parents was not a citizen, (b) his parents were not married to each other. An individual constitution may employ either criterion (a) or criterion (b) or both or neither. At line 30 he still has (b) in mind (τῶν γνησίων πολιτῶν) means 'citizens whose parents were married to each other', or perhaps 'citizens whose parents were both citizens and were married to each other'; cf. 1319<sup>b9</sup>, where τοὺς γνησίους seems to be treated as the antonym of the whole phrase τοὺς νόθους καὶ ἐξ ὀποτεροῦν πολίτου). But by line 32 he has forgotten about (b), and his account of the successive stages of restriction of citizenship refers only to the use of varieties of criterion (a).

# Law-making at Athens in the fourth century BC

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It is now twenty years since A. R. W. Harrison remarked in this Journal ‘For students of Athenian private and public law it is a painful, but undeniable fact that there is still grave uncertainty as to the precise methods by which statutes, one of the most important sources of law, were made at the most formative period of the history of the system from the middle of the fifth century BC onwards.’<sup>1</sup> His own article is entitled ‘Law-making at Athens at the end of the fifth century BC’ and is concerned primarily with establishing that an important change was made in or soon after the year 403/2. That was the date at which a new procedure for making laws (*nomoi*) was introduced, which Harrison calls ‘the fourth-century procedure of *nomothesia*’, involving officials called νομοθέται. Before then there was no procedural difference between making a *nomos* and making a *psephisma*. References to *nomothetai* in texts before 403 are irrelevant.<sup>2</sup> In 403 the decree of Teisamenos laid down a procedure for review and amendment of laws, involving two distinct bodies of *nomothetai*,<sup>3</sup> but that was a procedure for one particular occasion. The regular procedure was instituted shortly afterwards, and was to some extent modelled on the procedure of the Teisamenos decree.

These conclusions about the end of the fifth century are now generally accepted. But it remains a fact, no less painful than in 1955, that there is uncertainty about the methods by which *nomoi* were made and amended in the subsequent period, from the beginning of the fourth century to the time of Demosthenes and Aiskhines: what exactly was ‘the fourth-century procedure of *nomothesia*’? Two recent books have included some brief but helpful comments on it, and a third includes a more general survey of it,<sup>4</sup> but no one has attempted to explain it in detail since Harrison wrote his article. In the present article I attempt to continue from the point where he left off.

I am here concerned only with the making of laws (*nomoi*), not with the making of decrees (*psephismata*). Apart from a few references to *nomothetai* in inscriptions, the evidence consists of a number of passages in Demosthenes and Aiskhines, including the first three of the legal documents preserved in the text of Demosthenes’s speech *Against Timokrates*.<sup>5</sup> The documents in that speech are now

generally accepted as genuine, and I so accept them here. The correct approach to such texts is never to reject them out of hand, but to try to explain them. Only if they cannot be reconciled with other evidence should they be dismissed as forgeries; and in fact the Timokrates documents fit into our picture of *nomothesia* satisfactorily. Nevertheless, the picture is in my view more complex than has generally been assumed. It is not the case that our texts all refer to one and the same procedure which we may call ‘the fourth-century procedure of *nomothesia*’. They reveal several distinct procedures which were used for different purposes or at different periods, and previous discussions of the subject have gone astray when they have tried to force all the evidence into one account of a single law-making procedure in use throughout the century.

My discussion is therefore based on the texts themselves rather than on other scholars’ interpretations, to which I refer only occasionally. For readers wishing to investigate other views, I list in a footnote some of the most important works (to which I refer later by author’s name without title).<sup>6</sup>

### Epigraphical evidence

The fourth-century inscriptions mentioning *nomothetai* and their proceedings are of two kinds only.

A1. There are four instances of the formula δεδόχθαι τοῖς νομοθέταις introducing a law: *IG* ii<sup>2</sup> 140.7–8 and 244.6, *SEG* xii 87.6–7 and xviii 13.7. In a fifth case, *IG* ii<sup>2</sup> 333.13, though the part of the inscription where δεδόχθαι τοῖς νομοθέταις may have stood is not preserved, part of the prescript of the law is restored as νομο[θετῶν ἔδρα].

Does this mean that the *nomothetai*’s decision about a law was final, or was it subject to ratification by the ekklesia? In the analogous case of decrees, a decision by the boule subsequently ratified by the ekklesia (a probouleumatic decree) is regularly inscribed with the formula ἔδοξεν τῆι βουλῆι καὶ τῶι δήμῳ, or with a probouleumatic formula indicating that the boule’s resolution is to be submitted to the δῆμος, or with both; the formula ἔδοξεν τῆι βουλῆι or δεδόχθαι τῆι βουλῆι with no reference to the δῆμος is used only for decrees of the boule not ratified by the ekklesia.<sup>7</sup> It is reasonable to infer that the same is true of the formula δεδόχθαι τοῖς νομοθέταις, and that a law made by *nomothetai* was not subsequently ratified by the ekklesia.

Each of these five laws is dated within the period 353–334. The time of year varies: *IG* ii<sup>2</sup> 333.13 has the date Skirophorion 6; *SEG* xii 87 belongs to the ninth prytany; in *IG* ii<sup>2</sup> 140 the prytany must be either the fifth or the seventh or the tenth. This evidence shows that sessions of *nomothetai* were not confined to any one time of year. A2. There are three decrees in which the ekklesia gives orders for a proposal for additional legislation to be put before *nomothetai*: *IG* ii<sup>2</sup> 222.41–6, 330.18–23, vii 4254. 39–40.

In one of these texts the officials who are to put the proposal to the *nomothetai* are denoted a few lines later by the words οἱ[ πρ]όεδροι καὶ[ ὁ ἐπιστά]της τῶν

νομοθετῶν (*IG* ii<sup>2</sup> 222.49–50), from which it seems right to infer that the *nomothetai* were presided over by their own *proedroi* and *epistates*, not by the *proedroi* and *epistates* of the *boule* and *ekklesia*.<sup>8</sup>

The last of the three, *IG* vii 4254.39–40 (dated to the third prytany of 329/8), uses the expression ἐν τοῖς πρώτοις νομοθέταις, ‘at the next *nomothetai*’. These words indicate that a minor addition to a law does not justify convening *nomothetai* specially to consider it; it can wait until the next occasion when there is a meeting of *nomothetai* anyway. This means that *nomothetai* meet reasonably often, but it does not necessarily mean that their dates of meeting are fixed and the same every year.

## B. The old legislation law (Demosthenes 20.89–99)

In the speech *Against Leptines* in 355/4 Demosthenes refers to an old (παλαιός) law, which he attributes to Solon, laying down a procedure for νομοθετεῖν. He calls for the law to be read out, but its text is not preserved and we can only partially reconstruct it from his comments. In 93–4, immediately after the reading of the law, he draws attention to three features of it which he regards as particularly significant.

B1. The decision about a new law is made at a session of ‘you who have taken the oath’: παρ’ ὑμῖν, ἐν τοῖς ὁμωμοκόσιν, παρ’ οἷσπερ καὶ τᾶλλα κυροῦται.

Demosthenes is addressing a jury; the oath meant is the one taken at the beginning of each year by all those on the list of jurors for the year. Just before, in 92, Demosthenes refers to οἱ πρότερον νομοθέται, the *nomothetai* under the old law. We can put the two phrases together and say that under the Old Legislation Law the *nomothetai* are jurors. The use of κυροῦται indicates that in their capacity of *nomothetai*, as in their capacity of jurors in trials, their decision is final and is not subject to appeal or confirmation.

B2. The procedure involves repealing any existing law which is contrary to a new one being made (λύοντα τοὺς ἐναντίους).

This feature is also mentioned a little earlier, in 89: γράφεσθαι μὲν, ἂν τίς τινα τῶν ὑπαρχόντων νόμων μὴ καλῶς ἔχειν ἠγῆται, παρεισφέρειν δ’ αὐτὸν ἄλλον, ὃν ἂν τιθῆ λύων ἐκεῖνον: anyone who thinks an existing law unsatisfactory is to γράφεσθαι and introduce another to replace it. But what is meant by γράφεσθαι (and by γραψάμενος in a similar context in 96)? It has sometimes been taken to mean that the proposer of a new law has to prosecute the existing law, the one which his proposal is to replace, by the process of γραφή.<sup>9</sup> Two facts can be adduced in support of that interpretation. One is that in another law (D3 below) the *ekklesia* appoints men to speak in defence of laws whose repeal is proposed. The second is that a γραφή νόμον μὴ ἐπιτήδειον θεῖναι, when the time-limit of one year for prosecuting the proposer of a new law had expired, could still be used for attacking the law itself; and in fact this is just what Demosthenes does in his speech *Against Leptines*.<sup>10</sup> These facts show that one cannot rule out as absurd the notion that a law might be prosecuted by γραφή. Nevertheless I do not think

that the use of the word γράφεσθαι in Dem. 20.89 and 96 need mean that the formal procedure for proposing the repeal of a law was identical with the procedure for prosecution of a man for an offence. The verb in the middle voice can be used of getting an item put down on the written agenda for a meeting (cf. Dem. 24.48 πρόσοδον γράψασθαι πρὸς τὴν βουλήν, ‘to get his admission to a hearing before the boule put on its agenda’). So νόμον γράφεσθαι may mean no more than getting a law put down for formal consideration of its repeal, and the verb cannot be relied on to give us any further information about the procedure by which repeal was carried out.

B3. The proposer has to exhibit his proposal in advance in front of the statues of the eponymous heroes of the tribes, and also to give a copy to the secretary to read out at meetings of the ekklesia: καὶ πρὸ τούτων γ’ ἐπέταξεν ἐκθεῖναι πρόσθε τῶν ἐπωνύμων καὶ τῷ γραμματεῖ παραδοῦναι, τοῦτον δ’ ἐν ταῖς ἐκκλησίαις ἀναγιγνώσκειν, ἵν’ ἕκαστος ὑμῶν ἀκούσας πολλάκις (Dem. 20.94).

It is interesting that the proposal has to be read out at more than one meeting of the ekklesia. The correctness of the reading ἐκκλησίαις is confirmed by πολλάκις. The law must surely have specified a particular number of meetings, and Dobree’s suggestion that ταῖς should be emended to τρισὶν may well be right.

B4. A little later in the speech (99) Demosthenes refers again to ‘the old law’ and says that, according to the procedure which it prescribes, the vote against an existing law (such as the law of Leptines in the present case) makes valid the new law proposed as a substitute for it: τῇ ὑμετέρα ψήφῳ τοῦ τούτου <= Λεπτίνου> νόμου λυθέντος τὸν παρεισενεχθέντα κύριον εἶναι σαφῶς ὁ παλαιὸς κελεύει νόμος. This means that, when the proposal comes before the *nomothetai*, they do not vote twice (first for or against the existing law, secondly for or against the new proposal) but only once, choosing between the existing law and the proposed substitute.

The next words of Demosthenes are puzzling: . . . ὁ παλαιὸς κελεύει νόμος, καθ’ ὃν οἱ θεσμοθέται τοῦτον ὑμῖν παρέγραψαν. The *thesmothetai* are the officials presiding over the trial of the γραφή νόμον μὴ ἐπιτήδειον θεῖναι, for which the speech *Against Leptines* is composed, and I suspect that Demosthenes is trying to make his hearers think that the Old Legislation Law applied to such γραφαί when in fact it did not. He himself shows little confidence in his own argument at this point (. . . ἐάσω ἵνα μὴ περὶ τούτου τις ἀντιλέγη μοι). So I prefer not to infer anything from these words about the Old Legislation Law.

Even though we cannot reconstruct the Old Legislation Law completely, a fairly clear outline emerges of the procedure which it laid down. Anyone wishing to propose a new law has to submit his proposal in writing; he must also propose the repeal of any existing law with which his new one conflicts. He must exhibit his proposal in public, and it is also read out at meetings of the ekklesia. Finally a decision about it is taken at a meeting of *nomothetai*; the *nomothetai* are men from the list of jurors for the current year. During what period was the Old Legislation Law in force? Demosthenes attributes it to Solon; in a fourth-century speech that is most likely to mean that it was among the laws inscribed on stone

at the Stoa Basileios at the end of the fifth century. Accepting Harrison's view that a regular procedure involving *nomothetai* was first introduced in or very soon after 403/2, I think that the Old Legislation Law is the law by which that innovation was made. By the date of *Against Leptines* (355/4) it had been obsolete for a considerable time, for Demosthenes does not himself remember the occasion when a change was made (91 ὡς ἐγὼ πυνθάνομαι). I should suppose that it was annulled before 370.

### C. The New Legislation Law (Demosthenes 20.91)

What then replaced the Old Legislation Law? Demosthenes tendentiously describes the change as follows: ἐπειδὴ δὲ τῶν πολιτευομένων τινὲς δυνηθέντες, ὡς ἐγὼ πυνθάνομαι, κατεσκεύασαν αὐτοῖς ἐξεῖναι νομοθετεῖν, ὅταν τις βούληται καὶ ὄν ἂν τύχη τρόπον, τοσοῦτοι μὲν οἱ ἐναντίοι σφίσιν αὐτοῖς εἰσὶ νόμοι, ὥστε χειροτονεῖθ' ὑμεῖς τοὺς διαλέξοντας τοὺς ἐναντίους ἐπὶ πάμπολυν ἤδη χρόνον, καὶ τὸ πρᾶγμ' οὐδὲν μᾶλλον δύναται πέρασ ἔχειν. Certain powerful politicians procured for themselves permission to legislate at any time anyone wished, and in any way; as a result, so many contradictory laws have been made that the Athenians have now for a long time been appointing men to sort out the contradictions, an interminable task.

When due allowance is made for exaggeration, it still seems to me that the following inferences are reasonably secure.

C1. When the Old Legislation Law was repealed, it was replaced by a new law about law-making.

C2. Under the New Legislation Law there are still *nomothetai* (for otherwise Demosthenes would not use the expression οἱ πρότερον νομοθέται in 92 for the *nomothetai* under the Old Legislation Law, but merely οἱ νομοθέται). But, since Demosthenes makes a point of remarking that under the Old Legislation Law the *nomothetai* were jurors (B1), we may infer that under the New Legislation Law they no longer have to be jurors.

C3. Under the New Legislation Law the procedure for making new laws is simpler (though there must of course be some procedural requirements: ὄν ἂν τύχη τρόπον cannot be taken literally). In particular, it involves fewer checks on whether a proposed new law conflicts with an existing one. This presumably means that two features of the Old Legislation Law to which Demosthenes draws special-attention no longer exist in the New Legislation Law: the specific requirement to repeal an old law which is contrary to a new one being made (B2), and the requirement to exhibit the proposal in public and have it read out at meetings of the *ekklesia* (B3).

C4. There is also a relaxation of previous requirements about the times at which new laws may be made. Although Demosthenes's words ὅταν τις βούληται could be an exaggeration, probably it is now permitted to make new laws at any time of year. From the implied contrast it appears that the Old Legislation Law imposed some limitations on the times when new laws could be made.

C5. Starting at some date later than the institution of the New Legislation Law, but several years before 355/4, the ekklesia has been electing commissioners to inspect the existing laws for contradictions.

One can see from this that the Athenians had difficulty in finding an acceptable compromise between facility and control of legislation. At the end of the fifth century strict controls were imposed (the Old Legislation Law); some years later the controls were found irksome and they were largely relaxed (the New Legislation Law); some years later again, the lack of control was found to have given rise to inconsistencies and steps had to be taken to remove them (C5).

#### **D. The Review Law (Demosthenes 24.20–3)**

The first of the documents inserted in *Against Timokrates*, a speech composed probably in 354/3,<sup>11</sup> is entitled ἐπιχειροτονία νόμων and lays down a procedure for review of the laws.<sup>12</sup> The document contains a considerable number of clauses and Demosthenes therefore calls it νόμοι, in the plural, though in English it is more convenient to call it ‘a law’. The clauses do not give the stages of procedure in strict chronological order; they are rearranged in chronological order in the following list.

D1. When the ekklesia meets on the eleventh day of the first prytany, the first business, after the opening prayer, is to be voting on the laws (ἐπιχειροτονίαν ποιεῖν τῶν νόμων). It has generally been assumed from this that it was the rule for the ekklesia to hold its first meeting of the year on the eleventh day of the first prytany. That seems likely enough, though I do not know of any other clear evidence for it.<sup>13</sup>

D2. The questions are put in the following order:

- (a) Are the νόμοι βουλευτικοί satisfactory, or not?
- (b) Are the νόμοι κοινοί satisfactory, or not?
- (c) Are the laws for the nine arkhons satisfactory, or not?
- (d) Are the laws of the other officials satisfactory, or not?

Since there is no evidence or probability that any laws were immune from this annual review, the four groups listed must be exhaustive; every law falls into one or other of them. The reason for dividing the laws into four groups is just convenience. To vote on each law individually every year would take up too much of the ekklesia’s time; to vote simply on the one question ‘Are the laws satisfactory?’ would be too sweeping; taking them in four gulps is a compromise. The four groups no doubt correspond to the order in which the official texts of the laws are arranged (as inscribed on stone at the Stoa Basileios, or as written on papyrus in the state archives in the Metroon, or both), and the arrangement is according to the officials responsible for seeing that the various laws are obeyed.<sup>14</sup> The code of laws is the magistrates’ rule-book. Thus group (c) includes all laws about offences for which any of the nine arkhons is responsible for holding trials,



as well as laws about their other duties. Likewise group (d) includes, for example, laws about desertion from military service, because the *strategoí* hold trials for that offence. Group (b) includes laws common to all ἀρχαί: an example would be the law ἀγράφω δὲ νόμω τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περὶ ἑνός (And. 1.85). Group (a) includes the matters for which the *prytaneis* (and in the fourth century the *proedroi*) are responsible, the proceedings in the boule and ekklesia; the Review Law itself is an example. Perhaps laws about the Areopagos are also in group (a); more likely they are in group (c) because the *basileus* presides over it.

D3. If the ekklesia votes that all four groups of laws are satisfactory, that is the end of the matter. But if it votes that any of the four groups is not satisfactory, it elects five men to speak in defence of those laws: αἰρεῖσθαι δὲ καὶ τοὺς συναπολογησομένους τὸν δῆμον τοῖς νόμοις, οἳ ἂν ἐν τοῖς νομοθέταις λύωνται, πέντε ἄνδρας ἐξ Ἀθηναίων ἀπάντων, τῇ ἑνδεκάτῃ τοῦ Ἑκατομβαιῶνος μηνός. This is the last sentence of our document, strangely separated from the rest of the provisions about procedure at the meeting on the eleventh day of the first prytany. But the date at the end shows that it does refer to the same meeting; at this period the arkhon-year and the boule-year coincided, so that the eleventh day of the first prytany was always the eleventh of Hekatombaion. The reason why the sentence is at the end of the document could be that it is a later addition.<sup>15</sup>

Demosthenes refers to these five advocates a little later as τοὺς συνηγόρους, οὓς χειροτονεῖτε (Dem. 24.36), which shows that they are elected by show of hands.<sup>16</sup>

D4. Any Athenian who wishes to propose a new law has to write it on a whitened board and exhibit it in front of the statues of the eponymous heroes of the ten tribes every day until the day on which the ekklesia meets: πρὸ δὲ τῆς ἐκκλησίας ὁ βουλόμενος Ἀθηναίων ἐκτιθέτω πρόσθεν τῶν ἐπωνύμων γράφας τοὺς νόμους οὓς ἂν τιθῆ, ὅπως ἂν πρὸς τὸ πλῆθος τῶν ἐκτεθέντων νόμων ψηφίσηται ὁ δῆμος περὶ τοῦ χρόνου τοῖς νομοθέταις. ὁ δὲ τιθεὶς τὸν καινὸν νόμον ἀναγράφας εἰς λεύκωμα ἐκτιθέτω πρόσθεν τῶν ἐπωνύμων ὁσημέραι, ἕως ἂν <ή> ἐκκλησία γένηται. The meeting of the ekklesia mentioned here is not the one on the eleventh day of the first prytany, but the later one (D5) with which the immediately preceding sentences of the document are concerned.

This provision seems carelessly drafted. The second sentence to some extent repeats the content of the first, but with some apparently pointless variations of wording, e.g. from the plural τοὺς νόμους to the singular τὸν κοινὸν νόμον. And the proposer of a new law is told to exhibit it every day until the ekklesia meets, but he is not told how soon the exhibition must begin. It looks to me possible that the second sentence is a late addition to the law, made after some occasion when the proposer of a new law, after putting it in front of the ἐπώνυμοι, took it away again before everyone had had time to see it; thus the significant words in this sentence are the last ones (ὁσημέραι, ἕως . . .).

D5. The matter then comes up for consideration again at the last of the three meetings of the ekklesia (τὴν τελευταίαν τῶν τριῶν ἐκκλησιῶν), and severe penalties are prescribed for the *prytaneis* and the *proedroi* if they fail to bring it

forward. The first business of the meeting, after the opening religious ceremony, is consideration of the arrangements for the session of the *nomothetai*, and of where their pay is to come from (περὶ τῶν νομοθετῶν, καθ' ὅ τι καθεδοῦνται, καὶ περὶ τοῦ ἀργυρίου, ὁπόθεν τοῖς νομοθέταις ἔσται). The *nomothetai* are to be some of the current year's jurors (ἐκ τῶν ὁμωμοκότων τὸν ἡλιαστικὸν ὄρκον).

'The last of the three' perhaps means the third meeting after the one mentioned earlier.<sup>17</sup> More difficult to understand are the details about the *nomothetai*. The *nomothetai* are to be jurors (as in BI), but it is remarkable that the text does not say how many *nomothetai* there are to be, nor how they are to be selected from the complete list of jurors for the year. Presumably it is taken for granted that the method of selection will be the same as is used for selecting a jury for a trial, namely lot. But the number of *nomothetai* required can hardly be taken for granted. (Juries were not all the same size.) Either a number has been lost from our text (before or after εἶναι: cf. Dem. 24.27), or else the number is one of the matters which the *ekklesia* has to decide under the vague heading καθ' ὅτι καθεδοῦνται. Possibly it has to decide also the date and place at which the *nomothetai* are to meet, and a sentence later in the law indicates that it sets a time-limit for them to complete their task (ὅπως ἂν πρὸς τὸ πλῆθος τῶν ἐκτεθέντων νόμων ψηφίσηται ὁ δῆμος περὶ τοῦ χρόνου τοῖς νομοθέταις). The vagueness about these matters makes it all the more remarkable that the *ekklesia*'s responsibility for decision about the source of money for paying them is mentioned so specifically. One might have expected them to receive the normal jurors' pay, from its normal source, without the need to make any ad hoc arrangement. Why this is not so can only be conjectured. One possible conjecture, I suggest, is that this procedure was introduced at a date when it could not be taken for granted that enough money was in fact available for normal jurors' pay; the years 403 – I seem to have been such a period, when the hearing of private cases had to be suspended for a time.<sup>18</sup>

It is also noticeable that the document says nothing about what the *nomothetai* are to do when they meet, or about the validity of any decisions which they reach about the proposed legal changes. It is essentially a law about procedure in the *ekklesia*; for the activities of the *nomothetai* one is expected to look elsewhere.

What relationship does this Review Law bear to the Old Legislation Law and the New Legislation Law? Several parts of it are the same as provisions of the Old Legislation Law which were not included in the New Legislation Law: the requirement that the *nomothetai* should be jurors (B 1); the requirement to exhibit a proposed new law in front of the ἐπώνυμοι (B3); the stipulation of a particular time of year at which the procedure is to be followed (cf. C4). But that does not mean that the Review Law is the Old Legislation Law. The two cannot be identical, for two reasons. First, the Old Legislation Law was annulled by about 370, whereas the Review Law was still in force in 354/3. Secondly, they have different functions: the Old Legislation Law is essentially a law about making new laws, even though this does sometimes involve repealing an old one; the Review Law is essentially a law about reviewing existing laws, even though this sometimes leads to making a new one.

I suggest that the Old Legislation Law and the Review Law are contemporary and complementary.<sup>19</sup> After the review and inscription of laws ordered by the decree of Teisamenos in 403/2, the Athenians set up a regular procedure for scrutinising proposals for new laws (the Old Legislation Law) and for scrutinising the existing laws to see if they required amendments (the Review Law). Some details of the procedure were the same in both laws. Some, particularly those about the functioning of the *nomothetai*, were probably stated fully in the Old Legislation Law (which would naturally be the first of the two) and so could be taken for granted without repetition in the Review Law. At some date before 370, to make the introduction of new laws easier, the Old Legislation Law was repealed and replaced by the New Legislation Law; but the Review Law remained, probably not for any reason of deliberate policy but merely because no one took the trouble to propose any amendment or replacement. This meant that legal changes proposed under the Review Law were henceforth subject to a more complex procedure and stricter scrutiny than other proposed new laws.

This was a somewhat anomalous state of affairs; and anomalies give opportunities to a clever speech-writer like Demosthenes. After presenting the Review Law to the jury, Demosthenes next confronts them with the decree proposed by Epikrates, arranging for the session of *nomothetai* at which Timokrates put forward the new law which Demosthenes is attacking in this speech. The decree of Epikrates (Dem. 24.27) has a prescript dating it to the eleventh day of the first prytany, and it orders the *prytaneis* to convene *nomothetai* tomorrow (the twelfth) to make arrangements needed for the Panathenaia: the *nomothetai* are to be 1001 of the jurors for the year, plus the 500 members of the boule.

Now, to judge from the evidence we have, this decree is in complete conformity with the requirements of the New Legislation Law now in force. The New Legislation Law no longer requires proposals for new laws to be made at any particular time of year (C4); it does not require a period of time to be allowed for a proposal to be exhibited in public before the *nomothetai* meet to consider it (C3); and it does not require the *nomothetai* all to be jurors (C2). But (or, rather, so) Demosthenes never, in this speech, mentions the New Legislation Law. Instead he has the Review Law read out at length, and points out that the decree of Epikrates does not conform to that, especially in the matter of timing. The procedural requirements of the Review Law are more stringent than those of the New Legislation Law (not for any good logical reason, but for the historical reason that it was made at an earlier period, when stricter control was favoured, and has not been modified since), and it is true that Epikrates's decree does not come up to them; but why should it? It is not concerned with amendments to the existing laws, arising out of the annual review, but with a proposal for a new law about arrangements for the Panathenaia.

Admittedly, when the *nomothetai* met on the twelfth, the proposed new law which Timokrates actually put forward was not about the Panathenaia at all but about a quite different matter, which Demosthenes may be justified in claiming should not have been introduced at that meeting.<sup>20</sup> But that was not a fault in the decree of Epikrates. It is only by the subterfuge of substituting the Review Law

for the New Legislation Law that Demosthenes can point to illegalities in that decree. The subterfuge may have taken in some Athenian jurors; it has certainly taken in some modern scholars.

### **E. The Repeal Law (Demosthenes 24.33)**

The third document in the speech *Against Timokrates* is a law about the procedure for repealing an existing law.

E1. It is not permitted to repeal any of the existing laws except at a meeting of *nomothetai* (ἐν νομοθέταις). Then any Athenian who wishes is permitted to do so, if he puts forward another law to replace the one he wishes to repeal.

It is interesting that the law insists that any repealed law must be replaced by a new one. It is not envisaged that it might ever be desirable that a matter regulated by law in the past might be left unregulated in the future. But this does not mean that the converse is true, that a new law may not be made unless it replaces an old one on the same subject.<sup>21</sup> The reason why the making of a new law which does not replace an old one is not mentioned here is simply that that is not what the Repeal Law is about; that is the concern of the Old and New Legislation Laws.

E2. The *proedroi* hold voting (διαχειροτονίαν) about the laws in the following order:

- (a) Does the existing law seem suitable for the Athenian people, or not?
- (b) Does the proposed new law seem suitable for the Athenian people, or not?

The word διαχειροτονίαν means, I think, that the *nomothetai* vote by show of hands like the *ekklesia*, not by ψῆφοι like a jury, and serves to warn us not to regard a board of *nomothetai* as a jury, as some scholars have done. For, although the verb ψηφίζεσθαι is often used of voting which is not carried out by ψῆφοι, I know of no instance of χειροτονεῖν used of voting not carried out by χεῖρες: this verb and its derivatives are not applied to the proceedings of juries.

As for the order of voting, we may assume that if the majority of the *nomothetai* vote in favour of the existing law under question (a), question (b) is not put at all. If the vote goes against the existing law under (a), then under (b) surely alternative proposals and amendments can be discussed and voted on in turn, until one of them receives the *nomothetai*'s approval; otherwise a negative vote to both (a) and (b) would leave the Athenians with no law at all on the matter concerned.

E3. Whichever proposal the *nomothetai* vote for is to be valid law: ὁπότερον δ' ἂν χειροτονήσωσιν οἱ νομοθέται, τοῦτον κύριον εἶναι.

The meaning of this sentence is clear: the *nomothetai*'s decision is final, and is not referred to the *ekklesia* for confirmation or rejection. This accords with the epigraphic evidence of the time of Demosthenes (A1). The Athenian people have delegated to the *nomothetai* their right of decision about the repeal and replacement of laws.<sup>22</sup>

E4. The remaining sentences of the Repeal Law say that a new law must not be contrary to an existing law; anyone who repeals a law and replaces it by a law which is contrary to an existing law or is 'not suitable for the Athenian people' is liable to prosecution by a γραφή νόμον μὴ ἐπιτήδειον θεῖναι. I need not discuss that procedure here.<sup>23</sup>

As a whole the Repeal Law is a clear document, parallel to the Old and New Legislation Laws in the sense that they deal with making new laws, the Repeal Law with annulling existing laws. The only problem is its date: is it contemporary with the Old Legislation Law or with the New? Its voting procedure (E2) differs from that of the Old Legislation Law (B4). And the Repeal Law does not specify that the *nomothetai* must be jurors, nor that the repeal procedure is to be carried out at any particular time of year, nor that time must be allowed for public exhibition of proposals. These omissions distinguish it from the Old Legislation Law and from the Review Law, and make it more like the New Legislation Law. So I should conjecture that the Repeal Law was made at the same date as the New Legislation Law. There is no way of telling whether there had previously been an Old Repeal Law, which was annulled at that date, or whether there was previously no procedure for repeal except such as was specified in the Old Legislation Law and the Review Law.

## F. The Inspection Law (Aiskhines 3.38–9)

In 330, more than twenty years after *Against Timokrates*, we find Aiskhines in his speech *Against Ktesiphon* saying that there cannot be two valid but inconsistent laws in existence about the proclamation of crowns, because a procedure exists for eliminating such inconsistencies. He calls for the law about this procedure to be read out; the document itself is not preserved, but his summary mentions the following steps.

F1. Each year the *thesmothetai* are required to carry out a correction of the laws at a meeting of the *ekklesia* (διορθοῦν ἐν τῷ δήμῳ τοὺς νόμους).

Presumably the law specifies a time of year at which this has to be done, but Aiskhines does not say when it is.

F2. First the *thesmothetai* have to examine the inscribed laws to see whether any are inconsistent, invalid, or redundant: ἀκριβῶς ἐξετάσαντας καὶ σκεψαμένους εἴ τις ἀναγράφεται νόμος ἐναντίος ἑτέρῳ νόμῳ, ἢ ἄκυρος ἐν τοῖς κύριοις, ἢ εἴ που εἰσὶ νόμοι πλείους ἑνὸς ἀναγεγραμμένοι περὶ ἐκάστης πράξεως. If they find any such, they have to write them out and exhibit them in front of the statues of the eponymous heroes of the ten tribes.

F3. τοὺς δὲ πρυτάνεις ποιεῖν ἐκκλησίαν ἀπιγράψαντας νομοθέτας. It is not quite obvious how we should interpret these rather vague words of Aiskhines (or of the law, if he is quoting it verbatim). But the last two words should mean that the *thesmothetai* put *nomothetai* in writing on to (ἐπί-) some document, and the document meant must surely be the *ekklesia*'s agenda. I take the emphasis of the sentence to be on these two words rather than the infinitive, since convening the *ekklesia* is a regular duty of the *prytaneis* which does not need to be specially

ordered by the Inspection Law. So I should translate ‘The prytaneis are to put “*nomothetai*” on the agenda when they convene a meeting of the *ekklesia*’.

F4. There is to be a vote of the *ekklesia* to decide the question, and they are to abolish some laws and retain others, to ensure that there is one and only one law on each subject: τὸν δ’ ἐπιστάτην τῶν προέδρων διαχειροτονίαν διδόναι τῷ δήμῳ, καὶ τοὺς μὲν ἀναιρεῖν τῶν νόμων, τοὺς δὲ καταλείπειν, ὅπως ἂν εἷς ἢ νόμος καὶ μὴ πλείους ἐκάστης πράξεως.

Aiskhines’s loose wording leaves two obscurities: what question is the *ekklesia* to decide, and who is to abolish some laws and retain others? If these two clauses are taken together, they could mean that the *ekklesia* is to decide which laws to abolish and which to retain. But the objection to that interpretation is that it leaves no task for *nomothetai*. So I think that διαχειροτονίαν must refer back to νομοθέτας, the item on the agenda mentioned in the previous clause: the *ekklesia* is to decide whether to appoint *nomothetai* or not. This decision will depend on whether the discrepancies in the laws to which the *thesmothetai* have drawn attention are considered by the *ekklesia* to be serious or not. Then the accusative to be understood as the subject of ἀναιρεῖν and καταλείπειν is not τὸν δῆμον but τοὺς νομοθέτας.

As a whole, then, the Inspection Law lays down a procedure, not for making new laws, but for detecting and eliminating faults in the existing laws: the *thesmothetai* inspect the laws for faults, the *ekklesia* decides whether the faults uncovered are serious enough to justify consideration by *nomothetai*, and *nomothetai* decide which of the faulty provisions should be annulled. The Inspection Law is not the same as the Review Law. One difference is that the Review Law does not give to the *thesmothetai* the duty of inspecting the laws. Another difference is that the Review Law is concerned with making new laws to replace existing laws which are unsatisfactory or inadequate, but Aiskhines is talking about a procedure which seems to be for the purpose of deletion only. Even though Aiskhines might misinterpret a law to suit his case, and his case here requires a law about the elimination of contradictions in the laws, still his threefold classification of faults (F2) does look as if it were based on a corresponding classification in the law to which he is referring; but no such classification appears in our text of the Review Law. It is more to the point to compare the Inspection Law with the arrangement to elect commissioners to inspect the laws for contradictions arising after the institution of the New Legislation Law (C5). This arrangement does appear to have exactly the same purpose as the Inspection Law. Yet it is not the same arrangement, since those commissioners are elected by voting in the *ekklesia* (χειροτονεῖθ’ ὑμεῖς in Dem. 20.91), whereas the *thesmothetai* are appointed by lot. Nor can it be argued that Aiskhines has made a mistake in mentioning the *thesmothetai* in this connection; Theophrastos in Book iii of his *Laws* also attributed to the *thesmothetai* the annual correction of the laws (Harp. θεσμοθέται).

The best explanation seems to be that the Inspection Law described by Aiskhines succeeded and replaced the earlier arrangement (C5). At first the Athenians thought that a special commission elected on one or two occasions would be

sufficient to eliminate discrepancies in the laws, but when they found that the task was interminable (τὸ πρᾶγμ' οὐδὲν μᾶλλον δύναται πέρας ἔχειν, as Dem. 20.92 says) they substituted a permanent annual inspection by the *thesmothetai*. The change must have been made after 355/4 (the date of *Against Leptines*), but not long after; for when Aiskhines is speaking in 330 the origin of the Inspection Law is no longer remembered, and he can attribute it vaguely to 'the law-maker who founded the democracy' (τῷ νομοθέτῃ τῷ τὴν δημοκρατίαν καταστήσαντι).

## G. Other literary evidence

G1. The law of Timokrates quoted in Dem. 24.63 gives us another instance of the phrase δεδόχθαι τοῖς νομοθέταις, as in the inscriptions (A1).

G2. In another passage of *Against Leptines* Demosthenes refers to the possibility of making a new law when *nomothetai* are next appointed: ὅταν πρῶτον γένωνται νομοθέται (Dem. 20.137). This is much the same as ἐν τοῖς πρῶτοις νομοθέταις in an inscription already mentioned (A2); it indicates that a meeting of *nomothetai* is not necessarily convened specially for each proposed legal change.

G3. In his *Third Olynthiac* in 349 Demosthenes introduces his suggestion that the theoric funds should be diverted to military purposes in well-known words: νομοθέτας καθίσατε. ἐν δὲ τούτοις τοῖς νομοθέταις μὴ θῆσθε νόμον μηδένα (εἰσὶ γὰρ ὑμῖν ἱκανοί), ἀλλὰ τοὺς εἰς τὸ παρὸν βλάπτοντας ὑμᾶς λύσατε (Dem. 3.10). This confirms that it is possible to propose to the ekklesia that a meeting of *nomothetai* should be convened, either to make a new law or to repeal an old one, at any time (cf. C4); the abrupt imperative 'Convene *nomothetai*!' would not be appropriate if there were fixed times of year at which *nomothetai* regularly met. The absence of the article with νομοθέτας should also be noted: not 'Convene the *nomothetai*', but 'Convene some *nomothetai*'. (It is the same in the decree of Epikrates in Dem. 24.27: καθίσαι νομοθέτας.) This implies that for a fresh occasion fresh *nomothetai* are appointed; it is not the case that in each year there is only one board of *nomothetai* serving for the whole year.

G4. 'Our politicians make laws nearly every month' (Dem. 24.142) is no doubt a rhetorical exaggeration, but it would not be effective rhetoric if it were not legally possible to make laws in every month of the year. This too accords with the other evidence about the New Legislation Law (C4).

G5. A final passage, which I mention only to dismiss it, is the definition of *nomothetai* given in Polydeukes viii 101: νομοθέται δ' ἦσαν χίλιοι, οἷς ἐξῆν λῦσαι νόμον παλαιόν, ἀλλ' οὐ θεῖναι νέον. τοὺς γὰρ νέους ἐδοκίμαζεν ἡ βουλὴ καὶ ὁ δῆμος καὶ τὰ δικαστήρια. The other evidence (A1, B1, E3) makes it unlikely that new laws passed by *nomothetai* had then to be ratified by other bodies; and the fact that the decree of Epikrates specifies that the number of *nomothetai* on that occasion is to be that of the jurors plus the 500 members of the boule makes it unlikely that the number of *nomothetai* was permanently fixed at 1000. So I think that Polydeukes has confused his information in some way, or has wrongly tried to generalize from a single instance.

**Conclusion: the appointment and proceedings of *nomothetai***

The sequence for which I have been arguing is this:

- (a) In 403/2 the decree of Teisamenos ordered a review of the laws, with amendment and reinscription where necessary, to produce what was intended to be the permanent legal code henceforth.
- (b) When that was completed, in 403/2 or soon after, the Old Legislation Law set up a regular procedure for careful sifting of any new laws proposed, and the Review Law provided for annual consideration whether the existing laws were adequate. Under both these laws the final decision was taken by *nomothetai*, who were some of the year's jurors.
- (c) Some years later (not later than about 370) the procedure of the Old Legislation Law came to be considered irksome, making the proposal of new laws too difficult. So it was replaced by the New Legislation Law, which specified a simpler procedure for making new laws. Perhaps at the same time, the Repeal Law specified a similar procedure for annulling existing laws. Final decisions were still taken by *nomothetai*, but it was no longer a rule that they must be jurors.
- (d) The simplification of the procedure and the reduction of checks on proposed laws led to the passing of some new laws which contradicted or overlapped with old ones. To remedy this, the Athenians at first (several years before 355/4) elected commissioners on a temporary basis to sort out the discrepancies, and later (after 355/4, but not long after) passed the Inspection Law making it a duty of the *thesmothetai* each year to inspect the laws for inconsistencies and other faults, which the *ekklesia* would, if it thought them serious, refer to *nomothetai*.

If this sequence, or something like it, is accepted, it becomes clear that it is unsatisfactory to speak of 'the fourth-century procedure of *nomothesia*'. Different laws specified different procedures for different purposes at different periods. But perhaps the one which is of interest to most readers is the procedure for making new laws in the time of Demosthenes. This was the subject of what I have called the New Legislation Law; and a serious mistake, as I see it, made by a number of scholars, has been the assumption that information about this procedure is to be found in the text of the Review Law. From this it has been supposed that all new legislation was dealt with by one board of *nomothetai* who must be jurors, appointed in the first prytany for the whole year. But in fact, if my interpretation of the evidence is correct, under the New Legislation Law the *ekklesia* could appoint a board of *nomothetai* whenever it liked, deciding at the time how many there were to be and whether they were to be jurors or other persons; the decree of Epikrates is an example.

How did *nomothetai* proceed when they met? There is some evidence in the Repeal Law and in the inscriptions belonging to the time of the New Legislation Law. There a meeting of *nomothetai* is conducted by their *proedroi* and *epistates*



(A2, E2). We can take for granted that the citizen proposing to make a new law or repeal an old one speaks in favour of his proposal, and that anyone opposed to it can speak against it. Then the *nomothetai* vote by show of hands (E2, E3), and their decision is final (A1, E3). But there may have been a different procedure earlier in the century. Under the Review Law five men are appointed by the *ekklesia* to speak in defence of laws whose repeal is proposed (D3). This provision is absent from the Repeal Law. Thus it seems possible that under the earlier laws (the Old Legislation Law and the Review Law) the procedure at meetings of *nomothetai* had refinements which were omitted from the later laws. This would be in accord with our general impression that after the turmoil of 403 the Athenians at first wanted to make it difficult for themselves to introduce changes in the laws, but later found that the restrictions and complexities were excessive. Law-making must not be too easy, but it must not be too difficult either.

Postscript. An instance of ἔδοξε τοῖς νομοθέταις has now come to light, introducing a law on silver coinage (published by R. S. Stroud in *Hesperia* xliii [1974] 157–88). Its date is 375/4, which makes it earlier than the instances of δεδόχθαι τοῖς νομοθέταις (A1); but it has the same meaning, and it does not affect my argument and conclusion.

## Notes

- 1 *JHS* lxxv (1955) 26.
- 2 Th. viii 97.2 refers to an occasion when the democratic constitution was not in force. In *IG* i<sup>2</sup> 63 (Meiggs and Lewis no. 69) line 16 the restoration is dubious.
- 3 And. 1.83–4; for a view of this decree cf. MacDowell, *Andokides: On the Mysteries* (1962) 194–9.
- 4 F. Quass, *Nomos and Psephisma* (1971) 68–72; P. J. Rhodes, *The Athenian Boule* (1972) 50–2; R. A. de Laix, *Probouleusis at Athens* (1973) 52–68.
- 5 For the sake of brevity I assume here that Demosthenes is the author of *Against Timokrates*. How much of the composition was actually due to Demosthenes and how much to Diodoros is a question which does not affect the problems discussed in this article.
- 6 R. Schöll, ‘Über attische Gesetzgebung’ (*Sitzungsberichte der Akademie der Wissenschaften zu München* [1886] 83–139); H. Francotte, *Mélanges de droit public grec* (1910) 5–7; U. Kahrstedt, ‘Untersuchungen zu athenischen Behörden, II: Die Nomotheten and die Legislative in Athen’ (*Klio* xxxi [1938] 1–32); K. M. T. Atkinson, ‘Athenian legislative procedure and revision of laws’ (*Bulletin of the John Rylands Library* xxiii [1939] 107–50); F. Wotke *Νομοθέται* (Pauly-Wissowa, *Real-Encyclopädie Supp.* vii [1940] 578–81). Quass, Rhodes, and de Laix are listed in n. 4 above.
- 7 Rhodes, *The Athenian Boule* Tables C and G.
- 8 So Rhodes 28. The opposite view is taken by Kahrstedt 3 n.2 and Atkinson 125 n.2.
- 9 This is an important, but in my view mistaken part of Mrs Atkinson’s reconstruction of the system; cf. pp. 115–19 of her article, and Gomme’s criticism of it in *CR* liv (1940) 38.
- 10 Dem. 20.144. The period of one year is given only in the second hypothesis to the speech, §3.
- 11 The date 353/2 is given by Dion. Hal. *Amm.* 1.4, and this is regarded as acceptable by R. Sealey (*REG* lxxviii [1955] I to), but D. M. Lewis gives reasons for preferring 354/3 (*BSA* xlix [1954] 32).

- 12 Schöll 84 compares the ἐπιχειροτονία of magistrates at the κυρία ἐκκλησία of each prytany (Dem. 58.27, Arist. *Ath. Pol.* 43.4, 61.2).
- 13 Schöll 85 refers to a dissertation of 1880 by A. Reusch entitled *De diebus contionum ordinarum apud Athenienses*, which I have not seen.
- 14 This is in the reinscription carried out in the years 410–403. It is not evidence for the arrangement of the laws before that; so I need not discuss here how Solon arranged his laws.
- 15 Schöll 108 prefers to delete τῆ ἑνδεκατῆ τοῦ ἑκατομβαιῶνος μηνός from the text; then the election of the five advocates takes place at the later meeting. That seems a more sensible procedure, and it may be right; but, if so, it is not clear how the five spurious words got into the text at this point.
- 16 Schöll 109, Wotke 579, and others take the σύνδικοι in Dem. 20.146 to be an instance of this type of συνήγοροι, but Atkinson 110 n.2 rightly rejects this view. Those σύνδικοι are taking part in a γραφή νόμον μὴ ἐπιτήδειον θεῖναι, tried by a jury, not in proceedings before *nomothetai* following ἐπιχειροτονία νόμων.
- 17 Kahrstedt 1, Atkinson t to, and de Laix 60 take it as the third meeting of the year, and thus the second (or the third counting inclusively) after the one mentioned earlier.
- 18 Lys. 17.3, Isok. 21.7; cf. MacDowell in *Revue Internationale des Droits de l'Antiquité* xviii (1971) 267.
- 19 If this dating of the Review Law in 403/2 or very soon after is correct, it has a bearing on the date of the institution of the proedroi of the boule and ekklesia, who are mentioned in it. Other evidence fails to reveal at what date between 403/2 and 378/7 they were instituted; cf. Lewis in *BSA* xlix (1954) 31–4 and Rhodes 26, including n. 10.
- 20 The twelfth was the day of a religious festival, the Kronia (Dem. 24.26). Demosthenes says there was a law forbidding secular business on that day: νόμου κεμμένου μητ' ἰδία μήτε κοινῇ μηδὲν ἀλλήλους ἀδικεῖν ἐν τούτῳ τῷ χρόνῳ, μηδὲ χρηματίζειν ὅ τι ἂν μὴ περὶ τῆς ἑορτῆς ᾗ (Dem. 24.29). If this is true (Demosthenes does not ask for the law to be read out to support his statement), Timokrates's proposal should not have been permitted on the day of the festival. Probably a proposal about the Panathenaia, such as Epikrates's decree envisaged, would have been permissible, because it concerned another religious occasion. However, if τῆς ἑορτῆς is an exact quotation from the law and is interpreted strictly, it may mean that only business concerning the Kronia is permitted. In that case Epikrates's decree does infringe this law. But that does not affect the point which I make in my text above, that the decree does not infringe the New Legislation Law and does not need to conform to the Review Law.
- 21 Quass 70 n.i to rightly rejects the views of Schöll and Francotte.
- 22 Mrs Atkinson's attempt to deny this is rightly rejected by Harrison in *JHS* lxxv (1955) 35 and by Rhodes 52.
- 23 The best discussion now of γραφή νόμον μὴ ἐπιτήδειον θεῖναι is that of H. J. Wolff, "Normenkontrolle" and Gesetzesbegriff in der attischen Demokratie (*Sitzungsberichte der Heidelberger Akad., Phil.-hist. Klasse*, 1970/2) 28–44.

# The chronology of Athenian speeches and legal innovations in 401–398 BC

(Originally published in *RIDA* 18 [1971] 267–73)

It is well established that occasionally the Athenians found it necessary to suspend for a period the holding of trials for private cases, either because of civil disturbance or because of shortage of money to pay jurors.<sup>1</sup> One such period resulted from the revolution and civil war in 404/3 BC. It is mentioned in Isokrates 21.7 (ἀκαταστάτως ἐχόντων τῶν ἐν τῇ πόλει καὶ δικῶν οὐκ οὐσῶν), and its length is clearly defined in Lysias 17.3. The speaker in this passage explains how his father was prevented from prosecuting Erasistratos for recovery of a debt before the year 401/0:

ἐν μὲν οὖν τῷ πολέμῳ, διότι οὐκ ἦσαν δίκαι, οὐ δυνατοὶ ἦμεν παρ' αὐτῶν ἀ ὄφειλον πράξασθαι· ἐπειδὴ δὲ εἰρήνη ἐγένετο, ὅτε περ πρῶτον αἱ ἀστικάι δίκαι ἐδικάζοντο, λαχὼν ὁ πατήρ παντὸς τοῦ συμβολαίου Ἐρασιστράτῳ, ὅσπερ μόνος τῶν ἀδελφῶν ἐπεδήμει, κατεδικάσατο ἐπὶ Ξεναινέτου ἄρχοντος.

The case was brought as soon as (ὅτε περ πρῶτον) trials were resumed. So the passage clearly implies that after the war no trials of private cases were held until the year of Xenainetos (401/0). The consequences of this for the dating of other speeches, trials, and legal innovations around this time have not, as far as I know, been previously noticed.

Take first the speech *Against Kallimakhos* (Isokrates 18). It has been assigned to 402 or the early part of 401,<sup>2</sup> but this date cannot stand. The speaker was accused by Kallimakhos of depriving him in 403 of a sum of money. Kallimakhos brought two separate prosecutions. The first is shown by the speaker's wording to have been a private case for recovery of the money (Isokrates 18.11: λαγχάνει μοι δίκην μυρίων δραχμῶν); therefore (as we now see from Lysias 17.3) it cannot have been brought earlier than 401/0. This first prosecution was dropped, after the speaker blocked it by *diamartyria*; but subsequently Kallimakhos brought a fresh prosecution on the same charge (Isokrates 18.12: πείσας δὲ τὴν ἀρχὴν πάλιν τὴν αὐτὴν δίκην ἐγράψατο). This second prosecution is the one which the speaker attempted to block by *paragraphe*, for which the surviving speech was composed.

If the first prosecution was in 401/0, the second appears not to have been in the same year, for the following reasons:

- (a) The speech contains (especially in sections 45–6) praise of the internal peace and happiness of Athens. This would not have been particularly appropriate in 401/0, for that was the year of the final battle against the oligarchs at Eleusis (Xenophon *Hellenika* 2.4.43, Aristotle *Ath. Pol.* 40.4).<sup>3</sup>
- (b) How was it possible for Kallimakhos to bring a second prosecution exactly the same as the first, instead of proceeding with the one already started? πείσας τὴν ἀρχήν, says his opponent (Isokrates 18.12), trying to make the action sound improper; but the point is not developed, as it would have been if there had really been anything illegal about it. Only one explanation seems at all plausible: that a new year had begun. Athenian arkhons and other officials changed at the end of each year; but (usually, at least) a legal case was conducted from beginning to end by the same official, and was not passed on from one official to his successor.<sup>4</sup> If a year ended while Kallimakhos was still wondering what to do about the *diamartyria* which was interposed in his original prosecution, that explains why, when he did proceed, he started afresh from the beginning.<sup>5</sup>

So the date of *Against Kallimakhos* appears not to be earlier than 400/399. Now, this case was the very first in which the new *paragraphe* procedure was used, a procedure introduced on the proposal of Arkhinos for stopping prosecutions which contravened the amnesty of 403 (Isokrates 18.1–3).<sup>6</sup> When Kallimakhos prosecuted the first time, his opponent had retaliated not by *paragraphe* but by the older device of *diamartyria*. Why the change of tactics? Surely because at the time of the first prosecution the new procedure was not yet available; if it had been available, Kallimakhos's opponent would have used it.<sup>7</sup> The earliest date, then, for Arkhinos's law instituting *paragraphe* is some time well on in 401/0, later than Kallimakhos's first prosecution; thus 400 rather than 401.

Another speech may now be considered, *Against Pankleon* (Lysias 23). This is another speech for a *paragraphe* trial; for it is now generally agreed that the term ἀντιγραφὴ in this speech (Lysias 23.18; cf. 5 ἀντεγράψατο) does not refer to a different procedure.<sup>8</sup> If *Against Kallimakhos*, the earliest *paragraphe* speech, is not earlier than 400/399, it follows that *Against Pankleon*, is not earlier than 400/399 either. But this in turn has significance for the date of the institution of public arbitration.

The current view is that public arbitration was instituted between 403 and 400, and that *Against Pankleon* was composed before, not after, this innovation was made.<sup>9</sup> The speech is about Pankleon's status: is he a citizen,<sup>10</sup> of the deme Dekeleia, or only a metic? On the answer to this question depends the choice of procedure for prosecuting him for the offence which he is alleged to have committed: if he is a citizen, the prosecution must be made to the judges for his phyle; if he is a metic, to the *polemarkhos*. When the speaker attempted to make a prosecution to the *phyle*-judges, there is no suggestion that he had to travel to

Dekeleia to do it (Lysias 23.2); so we may accept that these phyle-judges are members of the Forty, not the thirty travelling deme-judges who existed before them (Aristotle Ath. Pol. 53.1).<sup>11</sup> Yet, though the Forty already exist, the public arbitrators (so closely associated with the Forty in later times) do not; for, if Pankleon is a metic, his case will be tried in the *polemarkhos*'s own court (Lysias 23.3), not passed on by the *polemarkhos* for arbitration (according to the system described in Aristotle Ath. Pol. 58.2).<sup>12</sup> So *Against Pankleon* belongs to the very short period in between the institution of the Forty and the institution of the public arbitrators.<sup>13</sup> Public arbitrators, like other officials, held office for one year, and the system will have begun to operate at the beginning of a new year. So, if my argument is accepted that *Against Pankleon* is not earlier than 400/399, the earliest year in which the public arbitrators can have held office is 399/8.

The other speech to be considered is *Against Diogeiton* (Lysias 32). This is a speech for a guardianship case (δίκη ἐπιτροπῆς) brought by a son of Diodotos against his guardian Diogeiton. Diodotos died at Ephesos while serving as a hoplite under the command of Thrasyllus (Lysias 32.7). The campaign of Thrasyllus at Ephesos was in the summer of 409 (Xenophon *Hellenika* 1.2.6–13).<sup>14</sup> The news of Diodotos's death will have taken time to reach Athens, and when it arrived Diogeiton at first kept it from Diodotos's wife (Diogeiton's daughter) and children, and only after a time (χρόνῳ) revealed it (Lysias 32.7–8); presumably this means that it was not until some time in the winter of 409/8 that the due religious ceremonies (τὰ νομιζόμενα) were performed. After that the family continued living together in Peiraieus for one year (Lysias 32.8); that is, until the winter of 408/7. Then the children were sent to Athens, and in the eighth year after that the elder son came of age (Lysias 32.9). His *dokimasia* therefore seems to have taken place in 400.<sup>15</sup> This fits the statements that Diogeiton had paid out money for the children's support for eight years (Lysias 32.20 and 29): the speaker would wish to make the period sound as short as possible, and so he would probably reckon from the date when Diodotos's death was formally marked (τὰ νομιζόμενα) in the winter of 409/8, and would say 'eight years' as long as a ninth year was not completed. After the young man came of age in 400, the discussions in the family (Lysias 32.9–18) may have taken some time. Thus, by the time the young man and his brother-in-law (the speaker of the surviving speech) decided to take legal action, it may possibly have been too late to proceed in the year 400/399, so that the legal proceedings may not have begun until 399/8. But it is not credible that they waited any later than that; the speaker claims to have been reluctant to allow legal action to be taken (Lysias 32.1), and surely would have claimed credit if he and his brother-in-law had refrained from it for any long period.<sup>16</sup> So 399/8 seems the latest date which it is reasonable to attach to the speech.<sup>17</sup>

Now, one of Diogeiton's actions early in the legal proceedings was μὴ οὔσας διώκειν (Lysias 32.2). It has long been recognized that this phrase is a reference to public arbitration<sup>18</sup>; τὴν μὴ οὔσαν ἀντέλαχεν is to apply for the setting aside of a public arbitrator's decision given in the absence of one of the parties, and the expression is not found in any other connection. I have already argued that the first year in which the system of public arbitration was in operation was not earlier than

399/8, and that the speech *Against Diogeiton* was not later than 399/8; so, when we find a reference in this speech to the system of public arbitration, the year of both is fixed exactly. And this in turn fixes the other dates back along the chronological line which I have been following. Each of the other speeches and events which I have discussed must belong to the year which I have called the earliest possible year for it, since to date them later means dating *Against Diogeiton* later than 399/8, which is unacceptable.

I conclude that the following chronological scheme is certain or highly probable:

- 401/0:            Resumption of trials of private cases  
                      Prosecution of Erasistratos (Lysias 17.3).  
                      First prosecution by Kallimakhos (Isokrates 18.11).  
                      Arkhinos's law instituting *paragraphe* (Isokrates 18.1–3).
- 400/399:        *Against Kallimakhos* (Isokrates 18), the first *paragraphe* trial.  
                      *Against Pankleon* (Lysias 23).  
                      Law instituting public arbitrators (Lysias fr. 16 Thalheim).
- 399/8 399/8:    The first public arbitrators in office. *Against Diogeiton* (Lysias 32).

## Notes

- 1 A good fourth-century example is Demosthenes 45.4, where it is made clear that the suspension did not apply to γραφαί.
- 2 For example, by R.C. JEBB, *The Attic Orators* ii 234; L. VAN HOOK, *Isocrates* (Loeb) iii 253; G. MATHIEU, *Isocrate: Discours* (Budé) 1 16. But F. BLASS, *Die attische Beredsamkeit* ii (2nd edition, 1892) 214 puts it as late as 399.
- 3 This point is made by G. MATHIEU, *hoc. cit.*
- 4 Antiphon 6.42 gives a good example of an official's refusal to do this.
- 5 The explanation of Kallimakhos's action which is offered by his opponent (Isokrates 18.12), that he hoped to avoid liability to *epobelia* (the payment of one-sixth of the sum at issue, to which he would become liable if he opposed the *diamartyria* by bringing a δίκη ψευδομαρτυριῶν against his opponent's witness and failed to get one-fifth of the jury's votes), is quite unconvincing. Obviously his opponent, who had blocked the first prosecution by *diamartyria*, would attempt to block the second prosecution too either by *diamartyria* or by *paragraphe*, so that Kallimakhos would still face the possibility of *epobelia* anyway. (Isokrates 18.3 shows that *epobelia* was the penalty for the loser of a *paragraphe* trial.)
- 6 The view of G. I. CALHOUN (*Classical Philology* xiii [1918] 170), that τῶαύτην here implies that another type of *paragraphe* existed before, is rightly rejected by L. GERNET, *Droit et société dans la Grèce ancienne* (1955) 84 n. 6 and H.J. Wolff, *Die attische Paragraphe* (1966) 88 n. 3.
- 7 WOLFF, *Die attische Paragraphe* 124.
- 8 GERNET, *Lysias: Discours* (Budé) ii 95; WOLFF, *Die attische Paragraphe* 112.
- 9 GERNET, *Droit et société* 103–7.
- 10 To be precise, a Plataian; Plataians were registered as Athenian citizens between 427 (or earlier; cf. A.W. Gomme, *Commentary on Thucydides* ii 340) and 382.
- 11 Here I dissent from GERNET, *Droit et société* 107 n. 2. But it does not significantly affect the rest of my argument if Garnet's view is preferred on this point.
- 12 GERNET, *Droit et société* 106–7.

- 13 R.J. BONNER and G. SMITH, *The Administration of Justice from Homer to Aristotle*, i (1930) 353 point out that there was such an interval.
- 14 Some have wished to date it in 410, but 409 is the date now generally accepted; cf. A. ANDREWES in *Journal of Hellenic Studies* lxxiii (1953) 2.
- 15 It is probable that the *dokimasia* of young citizens, when they were registered in their demes, took place in the summer, at the beginning of the new year; cf. R. SEALEY in *Classical Review* vii (1957) 195.
- 16 GERNET, *Lysias: Discours* ii (Budé. 2nd edition, 1955) 303 (addendum to p. 187) suggests that it was legally forbidden to bring the *δίκη ἐπιτροπῆς* until two years after the ward came of age. The chief evidence for this rule is Aristotle *Ath. Pol.* 42.5. But I do not think that it applies to the Diogeiton case. Aristotle says that the reason for forbidding *ἔφηβοι* to engage in legal activity was to prevent them from using this as an excuse for absence from their military service; but the military service of *ἔφηβοι* is not likely to have been organized in the same way as early as 400. Besides, Aristotle says that cases *περὶ κλήρου* were excepted from the rule, and a *δίκη ἐπιτροπῆς* may have been regarded as coming under this heading. The rule that a *δίκη ἐπιτροπῆς* had to be brought within five years (Demosthenes 38.17) shows that the Athenians thought delay undesirable for this type of case.
- 17 In fact no one except GERNET (see previous note) has even put it as late as 389/8; it has generally been attributed to 401 or 400.
- 18 BONNER and SMITH, *The Administration of Justice* i 348; GERNET, *Droit et société* 104.

# Unintentional homicide in the *Hippolytos*

(Originally published in *RhM* 111 [1968] 156–58)

At the end of the *Hippolytos* Artemis excuses Theseus for causing Hippolytos's death:

ἄκων γὰρ ὤλεσάς νιν, ἀνθρώποισι δε  
θεῶν διδόντων εἰκὸς ἐξαμαρτάνειν.

(E. *Hipp.* 1433–4)

It may seem surprising to hear that Theseus killed Hippolytos unintentionally; was it not for precisely that purpose that he invoked Poseidon? But, explains W. S. Barrett in his admirable edition of the play (page 413), ἄκων means only “more or less ‘innocently’”, “that he killed him without meaning to do wrong”. Furthermore Barrett suggests that “it is likely enough” that the Athenian legal term φόνοσ ἀκούσιοσ included “the inevitably rare category of deliberate homicide committed in the mistaken belief that it was justifiable, and that Eur.’s use of ἄκων here is legally correct”.

I have already written about φόνοσ ἀκούσιοσ (*Athenian Homicide Law* 58–60; this appeared too late for Barrett to have seen it before completing his book), but I did not discuss this passage, and Barrett’s note has prompted me to further consideration.

Athenian law laid down that certain kinds of killing were lawful (killing in self-defence, killing a man caught stealing at night, and so on; I have made a list in *Athenian Homicide Law* 73–81). But there is no evidence, as far as I know (and Barrett does not quote any), for any specific legal provision about a killer who believed that his act was lawful when actually it was not, except in a single type of case: when a man killed a fellow-citizen in war, mistaking him for an enemy. Such a killer went unpunished. But that does not mean that he was declared to have committed unintentional homicide; the word used in the law was not ἀκούσιοσ or ἄκων but ἀγνοήσασ (Dem. 23. 53, Arist. *Ath. Pol.* 57. 3). So this evidence has no relevance to Artemis’s words to Theseus.

The usual application of the legal expression φόνοσ ἀκούσιοσ was quite different: a person was guilty of unintentional homicide if he committed an act



which was not intended to result in someone's death, but did. For instance, there was the woman who gave a man a drink which she thought was a love-potion, but it killed him (Arist. *Ethika Megala* 1188b 29–3 8). This plainly does not apply to Theseus's case; when he invoked Poseidon, he certainly intended Hippolytos's death.

But there is some evidence that another type of homicide could be called unintentional: homicide which one was compelled by someone else to commit. First there is a sentence of Lysias's speech *Against Agoratos* (to which Barrett refers). Agoratos is alleged to have caused the death of Dionysodoros and others by denouncing them to the Thirty. How will he defend himself? ἴσως φήσει ἄκων τοσαῦτα κακὰ ἐργάσασθαι (Lys. 13. 52). I suppose this could mean that Agoratos might claim that when he denounced the men he did not intend their execution but some different result; that would make his act φόνος ἀκούσιος in the usual sense. But it is much more likely to mean that he might claim that he was compelled to make the denunciations.

Secondly there is a piece of facetious dialogue surviving from a lost play of Aristophanes, referring to the court at the Palladion (which tried persons accused of unintentional homicide):

“ἄκων κτενῶ σε, τέκνον” ὁ δ’ ὑπεκρίντο,  
 “ἐπι Παλλαδίῳ τάρ, ὦ πάτερ, δώσεις δίκην”.

(Ar. fr. 585)

Although it is hard to interpret the lines without their context, it is not likely that the old man means “I shall (voluntarily) commit an act which will result in your death, but I shall not intend to kill you”; to make such a prediction about his own act would be nearly (if not quite) self-contradictory. It is much more likely that he means simply “I shall be compelled to kill you” or “I shan't be able to help killing you”.

These two passages are rather slight evidence for Athenian law. The Lysias sentence only suggests a line of defence which Agoratos might possibly use, and which the speaker claims would not be an adequate defence if he did use it. And the Aristophanes passage is only a joke. Still, taken together, I think they do make it likely that a person accused of intentional homicide in Athens might claim that the homicide was unintentional by saying that he was compelled by someone else to act as he did.

Can ἄκων mean “under compulsion” in E. *Hipp.* 1433? Clearly it can. Euripides makes it quite plain that Theseus is an instrument of Aphrodite. Aphrodite states her plan in the prologue, and part of it is νεανίαν κτενεῖ πατήρ (43–44). And at the end of the play Artemis excuses him not only by saying that he acted ἄκων, but with the phrase θεῶν διδόντων (1434); a god ordained his action. The idea that a person is blameless if he acts under compulsion from a god also appears elsewhere in Euripides. In the *Troades* Helen excuses herself by blaming Aphrodite: τὴν θεὸν κόλαζε . . . : συγγνώμη δ’ ἐμοί (E. *Tro.* 948–50; cf. A. W. H. Adkins *Merit and Responsibility* 124.-5). The excuse which Hekabe rejects as

untrue in the case of Helen (*Tro.* 983–90) is the one which Artemis allows in the case of Theseus.

It therefore seems to me that in *Hipp.* 1433 there is no need to give ἄκων the rather weak and uncommon sense “without meaning to do wrong”. I prefer the translation “under compulsion”. This is a more usual sense of ἄκων it suits Euripides’s thought and the context of the play; and it is also in harmony with the evidence for the definition of unintentional homicide in Athenian law.

**Part 3**

*Varia philologica et  
historica*



# Demosthenes 21. 126

(Originally published in *ZPE* 99 [1993] 10)

S.A. Stephens has published in *ZPE* 77, 1989, 271–2 a papyrus fragment (P. Dubl. C3 = Pack<sup>2</sup> 2621) written in a style attributable to the first half of the first century AD, containing most of section 126 of Demosthenes' *Against Meidias*. Unfortunately this appeared after my edition of the speech (Oxford 1990) had gone to press, and I was unable to take account of it there.

She observes that the text “shows one minor variant from the major mss.”, namely οὐτω̄σαι (meaning οὐτω̄σαι) instead of οὐτω̄σ. However, she fails to observe two other minor variants which appear in her transcript.

One concerns a point of orthography: the papyrus gives ληι[ where the medieval manuscripts have, as usual, λειτουργίαν. There is no real objection to λειτ- in the fourth century BC; cf. N. Lewis GRBS 3, 1960, 180–1 and L. Threatte *The Grammar of Greek Inscriptions* 1.371. But the papyrus might be thought to give a little support to those editors who emend λειτ- to ληιτ- here and elsewhere in Demosthenes.

The other is more significant: the papyrus, according to Stephens' transcript, gives ἐπεβούλευεν where the medieval manuscripts have ἐπεβούλευσεν. Since the present participle ἐπιβουλεύόμενος is used earlier in the section, and Demosthenes is claiming that Meidias' campaign of harassment against him extended over a long period, the imperfect aspect may be appropriate here. However, the immediately preceding verb appears to be aorist (ὑβρίσεν or ὑβρίσε in the medieval manuscripts, not legible in the papyrus), and it is more probable that he used the same aspect for both verbs.

Thus both variants deserve attention, but on balance I should be inclined to leave the text of Demosthenes as it stands in my edition.

# Nikostratos

(Originally published in *CQ* 59 [1965] 41–51)

## A. The problem

Nikostratos son of Dieitrephes is stated by Thucydides to have been a general in a number of years during the first half of the Peloponnesian War, ranging from 427 (Th. 3. 75) to his death in 418 (Th. 5. 74. 3). Nikostratos, a Skambonides by deme, is mentioned in Aristophanes as a member of the audience at the performance of the *Wasps* in 422 (Ar. *Wasps* 81).

The suggestion has long since been made that these two Nikostratoi were the same man. Beloch, however, sternly rejected it ('*eine ganz unbegründete Vermuthung*'),<sup>1</sup> and his scepticism was followed by others.<sup>2</sup> But subsequently the identification was revived by Wade-Gery.<sup>3</sup> Wade-Gery is somewhat cavalier on this point. 'Beloch's objections to this identification are not important', he writes. Equally unimportant, I would retort, are Wade-Gery's arguments in favour of it; he simply gives a reference to Ar. *Wasps* 81 '*cum scholiis*' (but I have found nothing in the scholia relevant to this question), and then remarks that Nikostratos was a general in years when Alkibiades was not. Such a remark can hardly be called conclusive proof; yet since it was written no one seems seriously to have questioned the identification. Sealey and Mattingly accept it without argument, just giving references to Wade-Gery's article,<sup>4</sup> and go on to use it as evidence for further arguments and reconstructions. Gomme as usual is more cautious: 'He [i.e. the son of Dieitrephes] may be the Nikostratos of *Vesp.* 81–84.'<sup>5</sup> Lewis is cautious too: 'There is nothing against it.'<sup>6</sup> But the truth of the matter seems to be that no one has made a full investigation of the evidence to ascertain whether the identification is probable, possible, or impossible.

In this article I attempt to make such an investigation. The question is worth investigating, because the answer might have both historical and literary significance. For if it could be shown that Nikostratos son of Dieitrephes was a Skambonides, that would be a useful piece of evidence for reconstructing the lists of generals for the various years in which he held the office. And if it could be shown that the Nikostratos of the *Wasps* was a general, that might illuminate the satirical significance of the part of the play in which his name occurs.

## II. The evidence of the tribes

The most obvious approach to the problem is by way of tribes. The deme Skambonidai belonged to the tribe Leontis (IV), and if it could be shown that the son of Dieitrephes belonged to this tribe, most scholars (I imagine) would be prepared to accept without more ado his identification with Nikostratos the Skambonides. And among the boards of generals to which he belonged, there is one for which there is quite a lot of evidence about tribal affiliations. It is the board for 424/3. But it presents some unusual problems of its own.

The number of men who held office as generals in 424/3 is exceptionally large:

- (a) Nikostratos, Nikias, and Autokles were generals at the time when the one year's truce was made in the spring of 423 (Th. 4. 119. 2).
- (b) Demosthenes and Hippokrates were in command of the attack on Boiotia in the autumn of 424, in the course of which Hippokrates was killed at Delion (Th. 4. 76–77, 89–100).<sup>7</sup> Later Demosthenes commanded an attack on Sikyon (Th. 4. 101. 3–4).
- (c) Eukles and Thucydides were generals in Thrace in the winter of 424/3 (Th. 4. 104. 4).
- (d) Demodokos, Aristeides, and Lamakhos were generals in command of the tribute-collecting ships in the summer of 424 (Th. 4. 75). Thucydides does not make it quite clear whether their activities belong to the official year 425/4 or to 424/3. Aristeides certainly had this job as general in 425/4 (Th. 4. 50. 1), and the other two may have. Nevertheless it seems certain that all three were elected or re-elected for 424/3: not only does Thucydides mention them immediately before his account of the plan for the invasion of Boiotia, which certainly belongs to the autumn ; but their activities (unspecified action in the Hellespont, the recapture of Antandros from the Mytilenaians, and an excursion to Herakleotis on the Black Sea) must have occupied a considerable amount of time, and even if begun in the first half of the summer will hardly have been completed, or have been expected to be completed, before mid-summer.
- (e) Pythodoros, Sophokles, and Eurymedon were generals in Sicily in the summer of 424. During the summer they returned to Athens, but their return was unexpected and they were punished for it (Th. 4. 65. 3). This plainly implies that they had been re-elected as generals for 424/3.<sup>8</sup>
- (f) Kleon is said by Aristophanes' chorus of *Clouds* to have been elected general despite their own warnings against it and the eclipses of the moon (9 October 425) and sun (21 March 424) (Ar. *Clouds* 581–7). This must mean that he was elected in the spring of 424 as a general for 424/3. It cannot mean only that he was sent to take command at Pylos in 425,<sup>9</sup> since both eclipses occurred after the Pylos affair and so could not be regarded as warnings about it.

Fourteen generals appear too many for a board of ten. But fortunately the quart can be fitted into the pint pot quite easily, since several of these generals are known

to have been removed from office by death or dismissal before the end of the year, and so may have been succeeded by others at by-elections:<sup>10</sup>

- (a) Pythodoros, Sophokles, and Eurymedon were all exiled or fined when they got back to Athens from Sicily (Th. 4. 65. 3), and must have been dismissed from the generalship at the same time, before the end of the summer of 424.
- (b) Hippokrates was killed at the battle of Delion in the autumn of 424 (Th. 4. 101. 2).<sup>11</sup>
- (c) Thucydides was exiled after the loss of Amphipolis in the winter of 424/3 (Th. 5. 26. 5). Eukles may well have been deprived of office then too, though there is no positive evidence about him.

On the other hand, several of the generals are not known to have been in office at the beginning of the year 424/3, and so may have succeeded others at by-elections :

- (a) Thucydides and Eukles are not mentioned as generals until after the beginning of the winter of 424/3 (Th. 4. 104. 4).
- (b) Nikostratos, Nikias, and Autokles are not mentioned as generals in 424/3 until after the beginning of the summer of 423 (Th. 4. 119. 2).

Since the number of generals who died or were dismissed before the end of the year is five or six (excluding or including Eukles), and the total number of names known for the year is only fourteen, it follows that either there were one or two other generals whose names are unknown, or one or two of the vacancies created by death or dismissal were left unfilled. In what follows I use the symbols Q and R for the one or two jokers in the pack: each of these symbols represents either a general whose name is unknown or a vacancy left unfilled. Provisionally I reconstruct the elections in the following way:

- (a) Generals elected to take office at the beginning of 424/3 were Aristeides, Demodokos, Demosthenes, Eurymedon, Hippokrates, Kleon, Lamakhos, Pythodoros, and Sophokles. To these nine one other must be added.<sup>12</sup> Nikias is perhaps the most likely, but on the evidence which I have so far presented Autokles, Eukles, Nikostratos, Thucydides, and Q (a man of unknown name) are all possible alternatives.
- (b) Eurymedon, Pythodoros, and Sophokles were dismissed in the summer of 424 after their arrival from Sicily. Three other generals were elected in their places. Again the list of alternatives is Autokles, Eukles, Nikias, Nikostratos, Thucydides, Q and R, but with the proviso that Eukles and Thucydides must have been elected now at the latest, since both were in command in Thrace in the winter.
- (c) In the course of the winter Hippokrates was killed and Thucydides was dismissed, and perhaps Eukles was dismissed too. Their successors were three<sup>13</sup> out of the list Autokles, Nikias, Nikostratos, Q, and R – whichever



three had not already been elected earlier in the year. (If Eukles was not dismissed, only two new generals were elected in the winter, and R must be removed from the scheme altogether.)

- (d) Thus at the end of the year the ten generals were Aristeides, Autokles, Demodokos, Demosthenes, Eukles or R, Kleon, Lamakhos, Nikias, Nikostratos, and Q.

An attempt may now be made to assign these generals to their tribes. In doing so I make (to begin with) one assumption: that when a general died or was dismissed, the successor chosen at a by-election had to belong to the same tribe as the man he replaced. This assumption has often been made<sup>14</sup> and never (as far as I know) questioned, and it is a fair one; it would be very odd if the Athenians insisted on tribal representation on the board of generals at the beginning of each year but abandoned it at other times of year.

The tribal affinities of most of the generals of 424/3 may be worked out by the following steps :<sup>15</sup>

- (a) Kleon was of the deme Kydathenaion, and so belonged to III.  
 (b) Eurymedon was of the deme Myrrhinous (I.G. i<sup>2</sup>. 324. 38, where Wade-Gery's restoration [Εὐρυμέδοντι Μυρρ]ινοσίοι is generally accepted),<sup>16</sup> and so also belonged to III.

If Kleon and Eurymedon belonged to the same tribe and were generals simultaneously, that means that one of them was elected not as a representative of his own tribe but ἐξ ἀπάντων. Obviously this will have been Kleon rather than Eurymedon. (When Aristophanes wrote *Clouds* 581–7 he may well have been thinking of the fact that the Athenians gave Kleon this special honour in 424, doubtless because of his success at Pylos in 425.) It also means that none of the other generals of this year was elected ἐξ ἀπάντων,<sup>17</sup> but that each of them must belong to a different tribe from all the others (not counting Kleon) who held office at the same time as himself. But of course a general elected at a by-election may well belong to the same tribe as one who had been removed from office earlier.

- (c) Demosthenes was of Aphidna (I.G. i<sup>2</sup>. 324. 18) and so of IX. He was a general for the whole year; therefore no other general this year was of IX.  
 (d) Demodokos was of Anagyrous (Pl. *Theages* 127 e), and so of I. So no one else who was a general at the same time was of I.  
 (e) Lamakhos was of Oe, and so of VI. So no one else who was a general at the same time was of VI.  
 (f) Nikias was a Kydantides, and so of II. If he was a general for the whole year, no other general this year belonged to II. But it is possible that he gained office at a by-election, and thus that one of the generals who disappeared early in the year also belonged to II.

- (g) Hippokrates was of Kholargos (I.G. i<sup>2</sup>. 324. 3), and so of V. So no other general this year was of V unless one of those elected at a by-election in the winter.
- (h) Thucydides was of Halimous (Markellinos, *Life of Th.* 55), and so of IV. So no other general holding office simultaneously with him was of IV.
- (i) Autokles was of Anaphlystos (I.G. i<sup>2</sup>. 302. 17), and so of X. So no other general in office at the end of this year was of X.
- (j) The demes of Pythodoros and Sophokles are unknown. But from what I have already said it appears that, since they were in office at the beginning of 424/3, neither of them belonged to I, III, V, VI, or IX. More can be deduced from the fact that these two were generals also in 426/5 (Th. 3. I I 5. 5). For in that year it is probable that Hipponikos and Aristoteles, both of X, were generals, one of them being elected ἐξ ἀπάντων.<sup>18</sup> If that is right, it means that Pythodoros and Sophokles did not belong to X, nor to any other tribe known to have been represented by another general in 426/5. Nicias of II was a general in 426/5 (Th. 3. 91.), and so was Lakhes (Th. 3. 103. 3) who was of Aixone (Ar. *Wasps* 895, Pl. *Lakhes* 197 c) and so of VII.<sup>19</sup> Therefore Pythodoros and Sophokles belonged to IV and VIII.<sup>20</sup>
- (k) Aristeides is so far unassigned to a tribe. On the assumption that he held office throughout the year, he must have belonged to VII, since that is the only tribe not known to have been represented by another general at some time during the year. But this raises a fresh question. When two generals came from the same tribe because one was elected ἐξ ἀπάντων, (as in this year Kleon and Eurymedon from III), one tribe was left without a representative on the board of generals; and if a dead or dismissed general could be succeeded only by another member of the same tribe (as I have so far been assuming), the tribe unrepresented at the beginning of the year must have remained unrepresented throughout the year; but the only tribe which can have remained unrepresented throughout 424/3 is VII, since all the other tribes are known (from the evidence I have already given) to have had a representative at some time or other during the year. Thus one or other of the following alternatives seems inescapable:
- (i) When a general died or was dismissed, the rule may have been not that his successor must belong to the same tribe, but only that his successor must not belong to the same tribe as a surviving general (not counting the one elected ἐξ ἀπάντων). If this is right, the unrepresented tribe may have varied in the course of the year. There is then no objection to the conclusion that Aristeides was the representative of VII throughout the year.
- (ii) If on the other hand VII was unrepresented throughout the year, Aristeides cannot have held office throughout the year. He must have died or been dismissed (he is in fact never heard of again after the summer of 424), and have been succeeded by another man of the same tribe. If this is right, he must have belonged to II (and have been succeeded by Nicias) or X (and have been succeeded by Autokles).<sup>21</sup>

- (iii) If one is prepared to accept both alternatives, that the unrepresented tribe varied in the course of the year and that Aristeides died or was dismissed during the year, then one must admit the possibility that some other general represented VII, either throughout the year (if Aristeides belonged to II or X) or succeeding Aristeides (if he belonged to VII).<sup>22</sup>

If one is prepared to contemplate the possibility that Aristeides died during 424/3, logic compels one to contemplate also the equal possibility that Demodokos died during 424/3; this would leave open the possibility that one of the generals appointed at a by-election belonged to I. If Aristeides or Demodokos (or both) died during the year, this name (or these two names) must be removed from my list of generals who were in office at the end of the year, and one man of unknown name (or two) or one unfilled vacancy (or two) must be substituted.

- (l) About Eukles there is no further evidence. Six alternative tribes are possible for him. He may have belonged to I, if Demodokos died and Eukles succeeded him. He may have belonged to II, being succeeded by Nikias. He may have belonged to III, succeeding Eurymedon. He may have belonged to VII, if solution (iii) of the problem of Aristeides is right. He may have belonged to VIII, succeeding Pythodoros or Sophokles.<sup>23</sup> Or he may have belonged to X, being succeeded by Autokles.
- (m) At last I come to Nikostratos. From the evidence which I have presented it is clear that Nikostratos did not belong to II or VI or IX or X. There is also some evidence that he did not belong to III. It has been suggested<sup>24</sup> that the anecdote in Plu. *Nikias* 15. 2 about the generalship of Nikias and Sophokles (the poet, to be distinguished from the Sophokles who was a general in 424) refers to 423/2. Sophokles the poet belonged to II (Androtion, F. Gr. Hist. 324. F 38), and so did Nikias. So one of them (clearly Nikias) was elected ἐξ ἁπάντων; so other generals in 423/2 all belonged to different tribes; and Eurymedon of III was a general in 423/2 (according to Wade-Gery's restoration in I.G. i<sup>2</sup>. 324. 38); therefore Nikostratos, who was also a general in 423/2 (Th. 4. 129. 2, 133. 4), was not of III.<sup>25</sup>

But there still remain five possible tribes for Nikostratos. He may have belonged to I, if Demodokos died and Nikostratos succeeded him. He may have belonged to IV, succeeding Thucydides. He may have belonged to V, succeeding Hippokrates. He may have belonged to VII, if solution (iii) of the problem of Aristeides is right. Or he may have belonged to VIII, succeeding Pythodoros or Sophokles.

So, to judge from the evidence of tribal affiliations, the identification of Nikostratos son of Dieitrephes with Nikostratos the Skambonides, which means assigning him to IV, is possible, but it is only one of a number of possibilities. If Nikostratos had been a rare name, it might still be reasonable to make the identification without more ado. But in fact it was a very common name, and it

was used in several different tribes. Nikostratos son of Theozotides, who was present at the trial of Sokrates (Pl. *Ap.* 33 e), was quite probably of the deme Kikynna,<sup>26</sup> and so of V; was Nikostratos son of Dieitrephes his grandfather? Nikostratos son of Nikostratos, who died at some time towards the middle of the fourth century, was a Keiriades by deme (I.G. ii<sup>2</sup>. 1688. 45, 6310), and so of VIII; was Nikostratos son of Dieitrephes his father or grandfather? Nikostratos ‘the handsome’, of unknown tribe, supported the Thirty and was killed in 403 (X. *Hel.* 2. 4. 6); was he Nikostratos the Skambonides? Any of these three identifications would preclude the identification of Nikostratos the Skambonides with the son of Dieitrephes.

### III. The evidence of the *Wasps*

The investigation of tribes being inconclusive, is there any other consideration which might help to solve the problem? I think there is: a consideration of the manner of performance of the passage of the *Wasps* in which the name of Nikostratos the Skambonides appears.

The two slaves Xanthias and Sosias are on the scene. Xanthias is addressing the audience and explaining the dramatic situation to them. He and Sosias have orders to keep a close guard on their master’s father, who is suffering from a strange disease, and he challenges the audience to guess what the disease is.

{Ξα} . . .	
νόσον γὰρ ὁ πατήρ ἀλλόκοτον αὐτοῦ νοσεῖ,	71
ἦν οὐδ’ ἂν εἷς γνοίη ποτ’ οὐδὲ ζυμβάλαι,	
εἰ μὴ πύθοιθ’ ἡμῶν· ἐπεὶ τοπάζετε.	
{Σω.} Ἀμυνίας μὲν ὁ Προνάπους φήσ’ οὐτοσί	
εἶναι φιλόκυβον αὐτόν.	
{Ξα.} ἄλλ’ οὐδὲν λέγει,	75
μὰ Δί’, ἄλλ’ ἀφ’ αὐτοῦ τὴν νόσον τεκμαίρεται.	
{Σω.} . . . . .	
{Ξα.} οὐκ, ἀλλὰ φιλο μὲν ἐστὶν ἀρχὴ τοῦ κακοῦ.	
{Σω.} ὁδὶ δέ φησι Σωσίας πρὸς Δερκύλον	
εἶναι φιλοπότην αὐτόν.	
{Ξα.} οὐδαμῶς γ’, ἐπεὶ	
αὕτη γε χρηστῶν ἐστὶν ἀνδρῶν ἢ νόσος.	80
{Σω.} Νικόστρατος δ’ αὖ φησιν ὁ Σκαμβωνίδης	
εἶναι φιλοθύτην αὐτόν ἢ φιλόξενον.	
{Ξα.} μὰ τὸν κύν’, ὦ Νικόστρατ’, οὐ φιλόξενος,	
ἐπεὶ καταπύγων ἐστὶν ὁ γε Φιλόξενος.	
ἄλλως φλυαρεῖτ’· οὐ γὰρ ἐξευρήσετε.	85

These lines present some textual problems. The most important is the question: which words are spoken by Xanthias and which by Sosias? The manuscripts mark some changes of speaker, but not all in the same places. To give the whole passage

to Xanthias has been thought preferable by several commentators, beginning with the scholiast in manuscript R, who writes: τινὲς ἀμοιβαῖα. χαριέστερον δὲ λέγεσθαι αὐτὰ συνεχῶς πρὸς ἑνός. This comment shows that both views were already current in the scholiast's time. I think that my distribution of the lines between the two slaves is more likely, for these reasons:<sup>27</sup>

- (a) In early manuscripts changes of speaker were probably marked only by a dash, not by the speaker's name. Therefore, though our extant manuscripts may mark changes in the right places, the names they insert in the margin have no authority. And even a dash is easily lost or misplaced in the tradition, so that the absence of a dash at a particular point in extant manuscripts is, in itself, poor evidence that no change of speaker occurs there. To identify the speaker of a particular line, we must consider not the evidence of the manuscripts but dramatic suitability.<sup>28</sup>
- (b) If the whole of 54–135 were spoken by Xanthias, his speech would be of unparalleled length. Nowhere else in Aristophanes does a single character speak continuously for more than 61 lines (*Akh.* 496–556). Intervention by Sosias adds variety to a passage which might otherwise become monotonous.
- (c) Xanthias is the man who gives information about the disease, who knows all the answers in the quiz (cf. lines 54 and 87). The lines in which various suggestions are rejected should therefore be allocated to him.
- (d) These answers to the various suggestions (especially those beginning with οὐκ or οὐδαμῶς) are more naturally spoken by a different person from the reports of the suggestions themselves. If Xanthias were obviously in a position to hear what the members of the audience were saying, it might seem laboured for him to repeat all the suggestions; but if only Sosias can hear them, it is quite natural for him to repeat them to Xanthias.

Two other textual problems may be mentioned briefly. First, οὐκ in 77 must be the beginning of an answer, and so one or more lines containing a fresh suggestion must have been lost between 76 and 77.<sup>29</sup> (If οὐκ merely reinforced οὐδὲν λέγει in 75, rejecting εἶναι φιλόκυβον αὐτόν, it would be quite pointlessly repetitive.) Secondly, in 78 it is rather strange that Aristophanes chooses to mention a spectator of the same name, Sosias, as the character who speaks the line. It is true that the audience will not have noticed anything odd, since they do not yet know (until line 136) that the character's name is Sosias. But another possibility is that Σωσίας has wrongly got into the text from the margin; if so, there is no way of telling what name it has displaced.

Now, how was the scene performed? I suggest that only one method of performance is at all probable. Xanthias remains in a central position at some distance from the audience (on the raised stage, if there is one); Sosias walks around the edge of the *orkhestra* pretending to hear suggestions made by spectators sitting in the front two or three rows. In 78 ὀδί will mean 'here, close to me'. It would be absurd for Sosias to pretend to hear a remark made by someone sitting far back in the auditorium when the remark is inaudible to the rest of the audience.

The scene makes sense only if Amynias, Sosias (or whatever name should be substituted in 78), Derkylos, and Nikostratos the Skambonides are assumed to be sitting at the front, so that Sosias can pretend to be able to hear what they say although the rest of the audience cannot.<sup>30</sup>

But, as is well known, front seats at the theatre were reserved for holders of certain offices and other privileged persons,<sup>31</sup> such as the priests of Dionysos and holders of certain other religious offices, the arkhons, great public benefactors, foreign ambassadors – and generals.<sup>32</sup> I suggest that Amynias, Sosias, Derkylos, and Nikostratos the Skambonides must all have held offices or privileges of some kind entitling them to front seats at the performance of the *Wasps*. Aristophanes and the actor who played the slave Sosias will have known beforehand where these persons would be sitting, and it is no doubt for this reason that Aristophanes chose to mention these four in preference to other persons who might have been satirized as gamblers, drinkers, and so on. How could the actor have rehearsed his performance if he had not known in what parts of the theatre these four would be sitting? How could Aristophanes have written line 78 if he had not known that seats next to each other were reserved for Sosias (or whatever his name was) and Derkylos γ<sup>33</sup>

Furthermore there is some evidence that Amynias was a general at this time. Amynias, who was pretentious (Kratinos 212 Kock = 213 Edmonds, Ar. *Wasps* 1267),<sup>34</sup> who after having wealthy friends had become poor (*Wasps* 1267–74, cf. 74–76), and who was so effeminate that he could be spoken of in the feminine gender (*Clouds* 690–2), went on an embassy to Pharsalos in Thessaly (*Wasps* 1271–4, cf. Eupolis 209) and was alleged to have collaborated with Brasidas (*Wasps* 466–77). The embassy to Pharsalos and the alleged collaboration with Brasidas presumably belong to the same time, shortly before the *Wasps* was performed at the Lenaia of 422; Brasidas was in northern Greece throughout 423. Fragment 71 of Hermippos runs thus:

ὕστερον δ' αὐτὸν στρατηγὸν οὖς ἀνείλωτημένην  
καὶ κασαλβάζουσαν εἶδον καὶ σεσαλωκισμένην.

The lines refer to a general who is a swaggerer (σεσαλακωνισμένην), who used to be more respectable than he is now (ὕστερον δ' . . .), who is a slave to the Spartans (εἰλωτισμένην), and who is so effeminate that he is spoken of in the feminine gender. It has long since been suggested by Kaibel<sup>35</sup> that this fragment refers to Amynias, belongs to the same period as the *Wasps*, and shows that he was a general in 423/2.

Kaibel's arguments are not by themselves quite conclusive.<sup>36</sup> But it seems to me that we now have a situation resembling the proverbial sticks which could be broken individually but were unbreakable in a bundle. The three propositions are:

- (a) Amynias, Sosias, Derkylos, and Nikostratos the Skambonides all held offices at the time of the Lenaia in 422. (This appears from the consideration of the manner of performance of *Wasps* 71–85.)

- (b) Amynias may have been a general in 423/2 (Hermippos 71).
- (c) Nikostratos son of Dietrephes, who was a general in 423/2 (Th. 4.129. 2, 133. 4), may have been the same person as Nikostratos the Skambonides. (This appears from the consideration of the tribal affinities of other generals of the period.)

The three propositions fit neatly together and support one another. I suggest that, unless some contradictory evidence is discovered, it is reasonable to proceed on the assumption that they are all true: that in *Wasps* 71–85 Amynias and Nikostratos are generals,<sup>37</sup> and that the Thucydidean general Nikostratos son of Dietrephes was a Skambonides by deme. If so, reconstructors of the boards of generals in this period may confidently use as evidence the attribution of Nikostratos son of Dietrephes to tribe IV; and readers of the *Wasps* may interpret lines 71–85 as a satirical attack not just on a few ordinary citizens but on some leading officials of the time.<sup>38</sup>

## Notes

- 1 K. J. Beloch, *Die Attische Politik seit Perikles*, p. 324.
- 2 e.g. A. B. West in *A.J.P.* xlv (1924), 158–60.
- 3 H. T. Wade-Gery in *C.Q.* xxiv (1930) 34.
- 4 Raphael Sealey in *Proceedings of the African Classical Associations* i (1958), 74; H. B. Mattingly in *Historia* xii (1963), 264.
- 5 A. W. Gomme, *Commentary on Thucydides*, ii. 363.
- 6 D. M. Lewis in *J.H.S.* lxxxii (1961), 119.
- 7 In the speech *Against Alkibiades* it is stated that Hipponikos died while a general at Delion ([And.] 4. 13). This is probably a mistake, arising from confusion between Hipponikos and Hippokrates, but it cannot be definitely disproved; see A. R. Burn in *C.Q.* N.S. iv (1954), 139. Therefore in my main argument I assume that Hipponikos was not a general in 424/3, but I add an occasional footnote to point out what difference it makes if he was.
- 8 Cf. Gomme, *Comm. on Th.* iii. 526. As he says, ‘the three stand and fall together’; in Th. 4. 65. 3 the words ἐξὸν αὐτοῖς . . . ἀποχωρήσειαν apply to them all, and prove that none of the three was expected to leave Sicily in the summer of 424. This refutes the suggestion of Sealey *P.A.C.A.* i. 84) that only Pythodoros and Sophokles were re-elected for 424/3 and Eurymedon was not.
- 9 This odd suggestion is made by Gomme, *Comm. on Th.* iii. 506.
- 10 Sealey (*P.A.C.A.* i. 83) rejects altogether the idea that by-elections were held, on the ground that ‘no regular practice of holding bye-elections to replace fallen or disgraced strategoi is attested in Athens’. Instead he suggests (attributing the suggestion to Wade-Gery; though actually Wade-Gery, in *C.Q.* xxiv. 38, n. 3, regarded this as the less probable alternative) that Thucydides was not a general of the normal kind in 424/3 but held a special command analogous to Kleon’s special command at Pylos in 425. The objections to this view are overwhelming:
  - (a) Thucydides calls himself and Eukles στρατηγοὶ τῶν ἐπὶ Θράκης (4. 104. 4) without giving any hint that the one had a different status from the other. But when Kleon’s special command at Pylos is described (4. 28–29), Thucydides never calls him στρατηγός.

- (b) If there were fourteen generals in 424/3 but no by-elections, that would mean four special commands in one year. But no 'regular practice' of this sort is 'attested in Athens' either.
- (c) When generals were killed or dismissed in the course of their year of office, what would one expect but by-elections? In wartime it is unwise to do without generals. It might be reasonable to allow one or two vacancies in a board of ten to remain unfilled, but what if the number of vacancies was larger? It is not true to say that the death or dismissal of a general was a rare event, so that no arrangement for appointing *suffecti* was necessary. Athenian politics and warfare being what they were, it was not unusual for a general to be dismissed or killed; and in 424/3 at least four generals were dismissed and one was killed. In 406 nine generals were dismissed; and what happened then? There was a by-election (*X. Hell.* i. 7. I).

11 And Hipponikos, if he was a general this year.

12 If Hipponikos was a general this year, he must be the one.

13 Four, if Hipponikos was also a general and was killed at Delion.

14 It is implicit in the arguments of West (xlv. 151), Wade-Gery (*C.Q.* xxiv. 34, n. 2), and Lewis (*J.H.S.* lxxxii. 121).

15 To save space I henceforth refer to the tribes by numbers only, after giving the names here for reference: I Erekhtheis, II Aigeis, III Pandionis, IV Leontis, V Akamantis, VI Oineis, VII Kekropis, VIII Hippothoontis, IX Aiantis, X Antiokhis.

16 Wade-Gery's arguments for this restoration are given in *C.Q.* xxiv 33–39. Some of his arguments are bad ones: one of them is that all ten generals must belong to different tribes, and another is the very identification of Nikostratos son of Dieitrephes with Nikostratos the Skambonides which I *am* at present questioning. Nevertheless there are enough good arguments to make the restoration convincing: it fits conveniently in the inscription (where the name of a general is required; the suggestion of Lewis, in *J.H.S.* lxxxii. 119, that the name of a Hellenotamias would do instead, is not persuasive; payments elsewhere in this inscription seem to be made to generals, sometimes in conjunction with Hellenotamiai, but not to Hellenotamiai alone), it does not conflict with any known evidence about the tribes of other men who were generals in the same years as Eurymedon, and the only other Eurymedon known in this or the next generation was of Myrrhinous (Diogenes Laertios 3. 42). (The suggestion of Gomme, *Comm.* on *Th.* iii. 628, to the effect that Eurymedon the general may not have been the father but merely a maternal uncle of the known Eurymedon of Myrrhinous, is unconvincing, because Athenians were often named after their fathers but seldom after their maternal uncles.) It will be observed that the arguments for saying that Eurymedon was of Myrrhinous, which I accept are similar to the arguments so far mentioned for saying that Nikostratos son of Dieitrephes was a Skambonides, which I regard as inadequate. The difference in my attitude to the two cases results from one vital difference in the facts: Nikostratos was a common name, but Eurymedon a very rare one.

Earlier Busolt (*Hermes* xxv [1890], 571) argued for the restoration [Εὐρυμέδοντι ηεκ]αλέθ[υ] or [Εὐρυμέδοντι Κεφ]αλέθε[υ] in *I.G.* i<sup>2</sup>. 297. 4, which he thought belonged to the year 427/6. West (*A.J.P.* xlv. 151) accepted it, and proceeded to argue on this basis that Eurymedon was of IV. But meanwhile W. Bannier (*Bed. Phil. Wschr.* xxxv [1915], 1613) had shown that the inscription should be dated to 414/3. Consequently the restoration of Eurymedon's name in the early part of it is no longer appropriate, and West's argument is invalid. Cf. B. D. Meritt, *Athenian Financial Documents*, pp. 88–92, and *S.E.G.* x. 229.

17 It has sometimes been suggested that two generals might be elected ἐξ ἀπάντων in a single year, but on this point I agree with the sceptical view of Hignett (*History of the Athenian Constitution*, pp. 349–51). Sealey (*P.A.C.A.* i. 66) only repeats old arguments with which Hignett has already dealt. See also Lewis in *J.H.S.* lxxxii. 118.

18 See Sealey in *P.A.C.A.* i. 67 and 82, K. J. Dover in *J.H.S.* lxxx. 66, Lewis in *J.H.S.* lxxxii. 119–21.



- 19 Lewis (*J.H.S.* lxxxi. 119–21) suggests that Lakhes was dismissed from the generalship in the middle of 426/5, and that Pythodoros may have replaced him at a by-election and thus have belonged to VII. I find this hypothesis unconvincing, not merely because there is no good evidence that Lakhes was dismissed (Th. 3. 115. 2 says only that Pythodoros took over from him the command of the ships in Sicily), but because it would require an unnatural order of events. If the Athenians suspected Lakhes of misconduct in Sicily, the natural thing to do would not be to set about holding a by-election before recalling him, but to send at once one of the generals already in office. They sent Pythodoros, and when they sent him they already had the intention of sending Sophokles too (Th. 3. 115. 5). I conclude that, even if Lakhes was dismissed, Pythodoros and Sophokles were already in office before his dismissal, and so did not belong to the same tribe.
- 20 This little chain of argument has one weak link. It is possible (even if not very probable) that Hipponikos was a general not in 426/5 but in 427/6 (cf. my *Andokides: On the Mysteries*, p. 10, n. 11, and Mattingly in *Historia* xii. 260–1). If so, we do not know who, if anyone, was elected ἐξ ἀπάντων in 426/5; and that leaves open the possibility that Pythodoros or Sophokles belonged to II or VII or X (but not X if Hipponikos was a general in 424/3; cf. p. 42, n. 1). But since this possibility is a rather slight one, and since anyway it does not affect my eventual conclusion about Nikostratos, I have banished it to footnotes.
- 21 Not X, if its general at the beginning of the year was Hipponikos.
- 22 If Pythodoros or Sophokles belonged to II or X (cf. p. 46, n. 2), so as to leave no general in this year known to have belonged either to VII or to VIII, that would open up further alternative solutions for Aristeides:
- (iv) Aristeides may have belonged to VII, and VIII have remained unrepresented throughout the year.
  - (v) Aristeides may have belonged to VIII, and VII have remained unrepresented throughout the year.
  - (vi) If Aristeides died in the course of the year, he may have belonged to II or IV or X (whichever of these was not represented by Pythodoros and Sophokles), still leaving either VII or VIII unrepresented throughout the year and leaving either VII or VIII represented by another general.
- But these three alternatives are all fairly unlikely, because they depend on the assumption that Hipponikos was not a general in 426/5.
- 23 If solution (iv) or (v) of the problem of Aristeides (in n. i above) is right, Eukles may have succeeded Aristeides in VII or VIII. If solution (vi) is right, he may have represented VII or VIII from the beginning of the year.
- 24 By H. D. Westlake in *Hermes* lxxxiv (1956), 114–15.
- 25 But it should be observed that Westlake (*Hermes* lxxxiv. 115, n. 7) suggested 418/7 as a possible alternative date for the anecdote about Nikias and Sophokles. If this is right, the remaining evidence about 423/2 tells us nothing about Nikostratos' tribe, and the possibility that he belonged to III remains open.
- 26 See J. E. Kirchner in *Hermes* xxxi (1896), 256.
- 27 My distribution of the dialogue is the same as W. J. M. Starkie's, but my reasons differ from his. See p. 405 of his edition of the *Wasps*.
- 28 See J. C. B. Lowe in *Bulletin of the Institute of Classical Studies* ix (1962), 27–42.
- 29 So Meineke, Bergk, and Starkie.
- 30 Similar arguments would still apply if Xanthias, not Sosias, were the slave who pretended to hear the audience's suggestions; it would still be necessary to assume that Amynias and the other three were sitting near the front. Thus, even if my distribution of the dialogue is rejected, the rejection does not invalidate my subsequent conclusion about Nikostratos.

- 31 For a fuller list see A. W. Pickard-Cambridge, *The Dramatic Festivals of Athens*, pp. 275–8.
- 32 Ar. *Knights* 575 implies that generals customarily receive this privilege now, although in earlier generations they did not.
- 33 C. F. Russo, *Aristofane autore di teatro*, p. 195, suggests that Aristophanes may have made a prior arrangement with these members of the audience. But this cannot be right, because the jokes are jokes against them, to which they would not have submitted voluntarily.
- 34 In *Wasps* 1267 he is called ὁ Σέλλου, but this does not mean that Amynias son of Sellos is a different man from Amynias son of Pronapes (*Wasps* 74), since ὁ Σέλλου only means ‘son of boaster’. So Meineke, *Fragmenta Comicoorum Graecorum*, ii. 585, followed by others.
- 35 G. Kaibel in *Hermes* xxx (1895), 441–5.
- 36 The weakest is the one based on *Wasps* 466–77, where eight lines separate Amynias from Brasidas, and it is not obvious that the two are meant to be closely connected.
- 37 It does not necessarily follow that Sosias and Derkylos (*Wasps* 78) were generals in 423/2, since they may have held other offices; but clearly it is possible that they were. It may be just worth pointing out that Νικίας is only three letters different from the suspicious reading Σωσίας, and that Nikias is known to have been a general in 423/2 (Th. 4. 129. 2, 133. 4).
- 38 I am grateful to Professors K. J. Dover and H. D. Westlake for helpful comments on this article.

# An expansion of the Athenian navy

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Andocides iii. 9: ναῦς δὲ πλείους ἢ τετρακοσίας ἐκτησάμεθα.

Aeschines ii. 175: τριήρεις δ' ἐκτησάμεθα πλωίμους καὶ ἐντελεῖς οὐκ ἐλάττους ἢ τριακοσίας.

It is well known that Aeschines ii. 172–6 is a copy, with some omissions and minor variations, of Andocides iii. 3–9, and it may therefore be assumed that the discrepancy between τριακοσίας and τετρακοσίας is due not to a difference of opinion about a historical fact but to textual corruption. These two numerals are often confused in manuscripts; cf. for example Thuc. i. 74. (where the true reading is τετρακοσίας) and Xen. *An.* vii. I. 27 (where the true reading is τριακοσίων). But which of our two texts is the one which ought to be emended?

Almost everyone has referred to emend Andocides. Markland was the first to conjecture τριακοσίας, and this reading has been adopted by almost all subsequent editors (Baier and Sauppe, Blass and Fuhr, Maidment, Albini; the only exception seems to be Dalmeyda, and even he thinks Markland's conjecture worth mentioning in his apparatus criticus). The evidence given for it is Thuc. ii. 13. 8: ἀπέφαινε [sc. Περικλῆς] . . . τριήρεις τὰς πλωίμους τριακοσίας. But the evidence does not justify the conclusion. Thucydides' figure refers to the year 431, but Andocides is speaking of the period after the Peace of Nicias. Further, his use of the aorist ἐκτησάμεθα, 'we acquired', in preference to the pluperfect ἐκεκτήμεθα, 'we possessed', implies (not that the Athenians built 400 or 300 new ships, which would be incredible, but) that at this period the size of the navy was raised to a higher level than before. But the navy had reached a total of 300 triremes long before the Peace of Nicias (Thuc. ii. 13. 8; cf. Xen. *An.* vii. 1. 27, Ar. *Ach.* 545). Therefore he means that it was now raised to 400; and this conclusion is confirmed by [Xen.] *Ath. Pol.* 3. 4: τριήραρχοι καθίστανται τετρακόσιοι ἐκάστου ἐνιαυτοῦ.<sup>1</sup>

So the text of Andocides should stand unemended, and provides the evidence of a contemporary that the Athenian navy was increased to a total of 400 triremes in the period following the Peace of Nicias. Aeschines possibly made a mistake when copying Andocides' figure; more probably his text should be emended to τετρακοσίας.

**Note**

- 1 For the arguments in favour of dating [Xen.] *Ath. Pol.* between 420 and 415, see A.W. Gomme, *More Essays in Greek History and Literature*, pp. 38–69.

# Piso's face

(Originally published in *CR* 14 [1964] 9–10)

Cicero, *In Pisonem* 1: *Iamne vides, belua, iamne sentis quae sit hominum querela frontis tuae? Nemo queritur Syrum nescio quem de grege noviciorum factum esse consulem. Non enim nos color iste servilis, non pilosae genae, non dentes putridi deceperunt: oculi supercilia frons voltus denique totus, qui sermo quidam tacitus mentis est, hic in fraudem homines impulit. . . .*

*Syrum* is generally taken to mean that Piso is of servile origin. Nisbet (on page 58 of his edition) writes: 'Cicero pretends that Piso is simply a Syrian slave . . . . Suggestions of servile origin were common in invective, and seldom serious.' But this interpretation is not without difficulty. The fact that Piso really belonged to an aristocratic Roman family is one that Cicero might choose to ignore; but actually he does not ignore it. Only half a dozen lines later he claims that Piso was elected to magistracies for no other reason than the renown of his ancestors: *obrepisti ad honores errore hominum, commendatione fumosarum imaginum*. And he goes straight on to draw an almost excessively long and repetitious series of contrasts between himself, who was elected because of his merits, and Piso, who was elected because of his noble pedigree.

Only the paternal ancestors of Piso were noble. His mother came from a humbler family: could this be Cicero's pretext for calling Piso a Syrian? No, for the simple reason that he has just been explaining that Piso's mother's family came from Gaul (whether Cisalpine or Transalpine is deliberately made vague). This very topic seems to have occupied a large part of the lost passage at the beginning of the speech (fragments ix – xvi),<sup>1</sup> in which fun is made of Calventius, Piso's maternal grandfather: *Insiber quidam fuit* (fr. ix); *prius enim Gallus, dein Gallica<nus fuit, ad> extremum Placentinus* (fr. xi); *Insiber ille avus* (fr. xv). This is one of Cicero's favourite jibes about Piso, and it recurs several times elsewhere (*Pis.* 53, 62, *Post red. in sen.* 15).

The situation is, then, that just before using the word *Syrum* Cicero says at some length that Piso's maternal ancestors were Gallic, and just after using it he says at some length that his paternal ancestors were noble Romans. In such a context

how can he say, even as a joke, that Piso is by birth a Syrian slave? An accusation which is false may nevertheless be good invective, but an accusation which the speaker himself immediately assumes to be false is pointless and silly. ‘The argument is incoherent’, says Nisbet.

But the difficulty disappears if *Syrum* is not a disparagement of Piso’s origin but a joke about his appearance. Everyone knows Piso is a Roman, but he looks like an oriental.<sup>2</sup> The words *color iste servilis* refer to his dark face,<sup>3</sup> not to his ancestors. Cicero does not say that Piso is really Syrian. The point is made clearer by the rather similar remark in *Post red. in sen.* 14. There Cicero is commenting on Piso’s stupidity, and he says: *Cappadocem modo abreptum de grege venalium dices*. The use of the subjunctive is revealing: ‘You would say he was a Cappadocian’ – if you didn’t know he was really a Roman. So in the *In Pisonem*: ‘No one’s grumbling that a Syrian was elected consul, because we weren’t taken in by your face’ – despite your oriental looks, we knew you were really a Roman. *Syrum . . . factum esse consulem* is *oratio obliqua*; it is not a statement which Cicero makes, but a statement which he says no one makes.

Now the argument no longer seems incoherent. Cicero is drawing a contrast between the physical features of Piso’s face (which he cannot help, and which deceived no one) and the hypocritical expression he wears on it (which is his own fault, and which took everyone in). ‘Now do you see why people grumble about your face? No one’s grumbling that a Syrian was elected consul, because we weren’t taken in by your nigger’s complexion, your hairy cheeks, and your rotten teeth. No: it was your eyes, your eyebrows, your forehead, in fact your whole expression, which is a kind of silent revelation of the mind . . .’<sup>4</sup>

## Notes

- 1 I follow Nisbet’s numbering of the fragments.
- 2 Cf. fr. viii *colore ipso patriam aspernaris*.
- 3 As Nisbet remarks, *servilis* implies ‘swarthy’. Cf. the words a few lines later, *fumosarum imaginum, quarum simile habes nihil praeter colorem*. If the reading *Aethiope* were correct at the beginning of *Post red. in sen.* 54, that would be further evidence that Piso’s face was dark; however, it is more likely that *stipite* is correct there.
- 4 I am grateful to Professor W. S. Watt for reading this note and commenting on it.

# Ἄρετή and generosity

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The normal Greek applications of the term ἄρετή have had a good deal of discussion, but there is one use of the word which seems generally to have been overlooked. In the late fifth and early fourth centuries BC, before the earliest extant writings of Plato, ἄρετή can be ‘generosity’. Yet Liddell-Scott-Jones do not distinguish this sense, and it seems to be completely omitted in the most recent and important discussion of ἄρετή – I mean A. W. H. Adkins’s book *Merit and Responsibility: a study in Greek values* (Oxford, 1960).

In his full and mostly admirable account, Adkins shows that in the period before Plato ἄρετή displayed by a man normally consists of competitive excellences rather than co-operative ones. Most often of all, it implies military prowess, the ability to defeat the enemy and defend oneself and one’s family or city. Secondly, it includes ability to lead one’s family or city to success in peace, ‘to do good to one’s friends and harm to one’s enemies’. Since wealth and aristocratic birth may contribute to these ends, they may be regarded as elements of ἄρετή. But in democratic Athens one could be a useful citizen even without wealth or aristocratic birth, and so from the late fifth century onwards one who serves the city loyally, even though not as a leader, may be said to display ἄρετή. These are the normal and traditional senses of ἄρετή; the statement that the whole of ἄρετή is summed up in δικαιοσύνη (Theognis 147) does not represent ordinary usage, and when a man is called ἄριστος because of his self-control (E. *El.* 380–2) that is only because self-control is useful for the successful administration of households and cities (E. *El.* 386–7).

But now consider this passage of Thucydides. The Athenians have won a battle at Pylos and cut off the Spartan force on Sphakteria. Consequently Spartan envoys have been sent to Athens and are asking the Athenians to make peace.

Th. IV 19, 2–3 νομίζομέν τε τὰς μεγάλας ἔχθρας μάλιστ’ ἂν διαλύεσθαι βεβαίως, οὐκ ἦν ἀνταμυνόμενός τις καὶ ἐπικρατήσας τὰ πλείω τοῦ πολέμου κατ’ ἀνάγκην ὄρκοις ἐγκαταλαμβάνων μὴ ἀπὸ τοῦ ἴσου ξυμβῆ, ἀλλ’ ἦν παρὸν τὸ αὐτὸ δρᾶσαι πρὸς τὸ ἐπιεικὲς καὶ ἄρετῇ αὐτὸν νικήσας παρὰ ἃ προσεδέχετο

μετρίως ξυναλλαγῆ. ὀφείλων γὰρ ἤδη ὁ ἐναντίος μὴ ἀνταμύνεσθαι ὡς βιασθεῖς, ἀλλ' ἀνταποδοῦναι ἀρετὴν, ἐτοιμότερός ἐστιν αἰσχύνῃ ἐμμένειν οἷς ξυνέθετο. 'We believe that serious enmities can best be brought to a lasting settlement, not if one fights back and, after getting the best of the war, forcibly hedges one's opponent in with oaths and makes an agreement on unequal terms, but if, though one has the opportunity to do that, one decently, and surpassing one's opponent in ἀρετή, makes a moderate treaty, contrary to his expectation. For if the debt now owed by the opponent is not to fight back, as having made terms under compulsion, but to repay ἀρετή, a sense of honour makes him readier to stand by his agreement.'

What is the ἀρετή which the victor is to show to his defeated opponent, and which the defeated opponent is to show in return? It is not military prowess; for it is shown after the fighting is finished, and in the second sentence 'to repay' ἀρετή is clearly the opposite of 'to fight back'. Nor is it the achievement of success in peace; the whole point is that each side is to refrain from pressing for its own success at the expense of the other. Nor is it aristocratic condescension to an inferior; for this could not be shown in return by the defeated opponent to the victor. Nor is it even justice; there are no laws or rules that a foreign state defeated in war must be treated mercifully. It is generosity, giving one's opponent more than he could reasonably expect.

At first sight it may appear that this kind of ἀρετή is much the same as that for which Elektra's husband is commended as ἄριστος (*E. El.* 380–2).<sup>1</sup> He has not attempted to consummate his marriage with her; he has shown self-control, and not taken advantage of his situation in the way one would have expected. Similarly in the passage of Thucydides the victor is to show self-control, and not to take advantage of his situation in the way one would expect. But there is an essential difference. The reason why the self-control of Elektra's husband is ἀρετή is that citizens who show self-control are good at administering their cities and households, as Euripides, through the mouth of Orestes, at once goes on to explain (*E. El.* 386–7).<sup>2</sup> Thus ἄριστος in this passage has the traditional implication of 'excellent for ensuring the success of his own household or city'. But in the passage of Thucydides ἀρετή obviously does not consist of competitive excellence, of ability to succeed at someone else's expense. The action implied could hardly be more different from the traditional 'doing good to one's friends and harm to one's enemies'.

There is no other passage in Thucydides where ἀρετή so plainly consists of generosity. There are a few in which it may well include generosity, but in each of them some other quality is more prominent. In II 51, 5 ἀρετή is displayed by those who visit plague-stricken relatives, but here perhaps it is primarily courage (as Gomme says in his note on the passage). In I 37, 5 ἀρετή is, or at least includes, justice; but generosity is more than justice. In I 33, 2 it is said that the Athenians will acquire ἀρετή in the eyes of the world if they make an alliance with Kerkyra, but the context shows that the cause will be not so much generosity as the accession of power.<sup>3</sup> Perhaps in this passage, and certainly in IV 86, 5, there is



some idea of condescension by a superior to an inferior, of the strong helping the weak, which is a traditional feature of ἀρετή. In II 40, 4 and III 56, 7 ἀρετή consists wholly or mainly of military assistance given by ally to ally; helping one's friends is a traditional feature of ἀρετή, but generosity to one's enemies is something quite different.<sup>4</sup>

Writing of the moral problems of the Athenian empire in the fifth century, Adkins remarks: 'We have seen nothing in the ante of the democratic Athenian assembly to suggest that its exercise encouraged co-operation with . . . any other state'.<sup>5</sup> In Th. IV 19, 2–3 the exercise of ἀρετή plainly does encourage co-operation with another state. But, it may be objected, the passage is put into the mouths of Spartans, who have special reasons for wanting the Athenians to act unselfishly; have they perhaps distorted the normal use of ἀρετή? And Thucydides can hardly be regarded as a typical Athenian democrat; has he perhaps given the word a sense which it did not bear in ordinary usage?

To answer this question I take two passages from Andokides's speech *On the Mysteries*. Not a professional orator, not a philosopher, not a sophist, not a poet, with no literary or intellectual axe to grind, Andokides is an obvious starting-point for any enquiry into the verbal usages of the ordinary Athenian at the turn of the fifth and fourth centuries.

In the first passage, he is trying to persuade the jury not to impose penalties for offences committed before the year 403/2 (μὴ μνησικακῆσαι, 'to bear no grudges'). Among the arguments he uses is a historical parallel. At the time of the Persian Wars the Athenians restored exiles and enfranchised the disfranchised, and then, after the war was over, decided 'to bear no grudges' for offences committed before the war. The unity thus achieved, he argues, enabled them to make Athens great.

And. 1 109 Ὑμεῖς οὖν καὶ αὐτοὶ ὕστερον, κακῶν οὐκ ἐλαττόνων ἢ ἐκείνοις γεγενημένων, ἀγαθοὶ ἐξ ἀγαθῶν ὄντες ἀπέδοτε τὴν ὑπάρχουσαν ἀρετὴν· ἠξιώσατε γὰρ τοὺς τε φεύγοντας καταδέξασθαι καὶ τοὺς ἀτίμους ἐπιτίμους ποιῆσαι. Τί οὖν ὑμῖν ὑπόλοιπόν ἐστι τῆς ἐκείνων ἀρετῆς; μὴ μνησικακῆσαι, εἰδότας, ὧ ἄνδρες, ὅτι ἡ πόλις ἐκ πολὺ ἐλάττονος ἀφορμῆς ἐν τῷ ἔμπροσθεν χρόνῳ μεγάλη καὶ εὐδαίμων ἐγένετο· ἃ <καὶ> νῦν αὐτῇ ὑπάρχει, εἰ ἐθέλομεν οἱ πολῖται σωφρονεῖν τε καὶ ὁμονοεῖν ἀλλήλοις. 'Similarly you yourselves later on, in the face of hardship no less than theirs, were as ἀγαθοί as your fathers, and showed the ἀρετή that was in you: you decided to receive the exiles back and to enfranchise the disfranchised. So what do you still have to do to equal their ἀρετή? Bear no grudges, remembering, gentlemen, that in the old days the city, starting from far smaller foundations, became great and prosperous. And she can do the same now, if we the citizens, would only act sensibly and live in unity with one another.'

There are two things to notice about the use of the terms ἀρετή and ἀγαθός in this passage. The first is that it very strongly resembles the use in Th. IV 19, 2–3. The exiles who have been restored, the disfranchised who have been enfranchised,

and the offenders against whom no grudges are to be borne are primarily political offenders. They were opponents of the democracy either in 411 or in 404/3, and are therefore enemies of Athens. So the ἀρετή shown by the democratic government is generosity towards defeated enemies, just like the ἀρετή to be shown by the victor in the passage of Thucydides. Justice may demand that they should be punished; but if the Athenian democracy exhibits aped towards them, they receive more generous treatment than justice entitles them to expect.

But the second thing to notice is that the supporting argument used by Andokides is different from anything in Th. IV 19, 2–3. It is more like the supporting argument used in E. *El.* 386–7. In an earlier generation, says Andokides, the exercise of ἀρετή made Athens great, and now the exercise of ἀρετή will make Athens great again. Generosity is ἀρετή because it is conducive to the success of the city, just as in the passage of Euripides self-control is ἀρετή because it is conducive to the success of the city. In the passage of Thucydides, on the other hand, the only reason given for showing generosity is that it is conducive to the lasting settlement of serious enmities, which is a very different matter from securing the success of one's own city in competition against others.

So this passage of Andokides provides a bridge linking generosity to one of the commoner aspects of ἀρετή, ability to ensure the success of one's city. A rather different bridge is provided by a second passage.

Andokides relates that his uncle Epilykos died leaving behind him no sons, two unmarried daughters, and substantial debts. According to Athenian law, when a man at his death left unmarried daughters, no sons, and no will, both his property and his daughters passed to his nearest male relatives, who were entitled to put in a legal claim for them, and were then required either to marry the daughters themselves or provide them with other husbands and dowries; but it was impossible to claim the property without the daughters or the daughters without the property. On this occasion the nearest male relatives were Andokides and his cousin Leagros, both of them nephews of Epilykos. They were therefore entitled to claim the daughters. But they could not have the daughters without also taking on the debts.

And. I 118–19 Ὅμως δ' ἐγὼ καλέσας Λέαγρον ἐναντίον τῶν φίλων ἔλεγον, ὅτι ταῦτ' εἶη ἀνδρῶν ἀγαθῶν, ἐν τοῖς τοιούτοις δεικνύναι τὰς οἰκειότητα ἀλλήλοις. “Ἡμᾶς γὰρ οὐ δίκαιόν ἐστιν οὔτε χρήματα ἕτερα οὔτ' εὐτυχίαν ἀνδρὸς ἐλέσθαι, ὥστε καταφρονῆσαι τῶν Ἐπιλύκου θυγατέρων. Καὶ γὰρ εἰ ἔζη Ἐπίλυκος ἢ τεθνεὸς πολλὰ κατέλιπε χρήματα, ἠξιούμεν ἂν γένει ὄντες ἐγγυτάτῳ ἔχειν τὰς παῖδας. Τοιγάρτοι ἐκεῖνα μὲν δι' Ἐπίλυκον ἂν ἦν ἢ διὰ τὰ χρήματα· νῦν δὲ διὰ τὴν ἡμετέραν ἀρετὴν τάδε ἔσται. Τῆς μὲν οὖν σὺ ἐπιδικάζου, τῆς δὲ ἐγώ.” “Still, I invited Leagros to meet me in the presence of the members of the family, and said to him that to behave like relatives in such a situation was the thing for ἀγαθοί men to do. “It's not δίκαιον for us to prefer another estate or a successful man, and look down on Epilykos's daughters. After all, if Epilykos were alive, or had left a large amount of money

when he died, we should expect to have the girls, because we're the nearest relatives. So, whereas in that case we should have done so because of Epilykos or because of his money, as things are we'll do it because of our ἀρετή. So you put in a claim for one, and I will for the other.”

I want to draw attention to three features of the use of ἀρετή in this passage.

- (a) This ἀρετή involves generosity. Andokides and Leagros are to suffer financial loss in order to save the two girls from poverty and ignominy. Notice the contrast between ‘because of his money’ and ‘because of our ἀρετή’ contrast shows that the financial loss is an essential feature of this exercise of ἀρετή, not just an incidental one. The girls are not defeated enemies (which means that there is a slight difference between this generosity and the generosity in Th. IV19, 2–3 and And. I 109), but they are in a weak position, and are to receive better treatment than (Andokides implies) they are entitled to demand.
- (b) This ἀρετή involves ‘behaving like relatives’. Protecting the members of his family is a traditional function of an ἀγαθός man. The daughters of Epilykos are members of Epilykos’s household, not as yet of Andokides’s or Leagros’s, and consequently it is not immediately obvious that Andokides and Leagros have a duty to protect them. Nevertheless their relationship is close enough for Andokides to argue that such action is required by ἀρετή in its sense of ‘loyalty to one’s family’.
- (c) This ἀρετή involves submitting to what is τὸ δίκαιον. To identify ἀρετή wholly or partly with submission to justice is (until Plato) rare. In Theognis 147 it is stated that the whole of ἀρετή is summed up in δικαιοσύνη, but this statement does not represent ordinary usage.<sup>6</sup> In the debate about Kerkyra in the first book of Thucydides it is suggested that ἀρετή might be shown by giving and receiving what is just,<sup>7</sup> but it seems possible that this too does not represent ordinary usage but is a novel and provocative suggestion. Euripides makes Amphitryon accuse Zeus of being deficient in ἀρετή because he has failed to protect his own grandchildren, and suggest that he is stupid or not δίκαιος;<sup>8</sup> but the mentions of ἀρετή and of being δίκαιος are five lines apart, and it is doubtful to what extent Euripides really means to identify the two. Thus And. I 118–19 may be the earliest extant passage in which the complete or partial identification of ἀρετή with submission to what is δίκαιον appears established in ordinary usage. This makes it a passage of considerable significance in the history of Greek values.

So the ἀρετή to be shown by Andokides and Leagros towards the daughters of Epilykos combines generosity with loyalty to the family and also with justice. In the earlier passage, And. I 109, ἀρετή combines generosity with ensuring the success of the city. I conclude that at the turn of the fifth and fourth centuries generosity is an element of ἀρετή in ordinary usage, and not merely in a single passage of that eccentric user of words, Thucydides. But it is not an element which

is normally separated from the other elements; it is inextricably intertwined with others in both the passages of Andokides which I have discussed. ἀρετή is a puzzle. Generosity is only one piece, interlocking with other pieces all around it. But it is an essential piece, without which the puzzle cannot be solved.<sup>9</sup>

## Notes

- 1 Cf. Adkins, *op. cit.*, 176–7.
- 2 Cf. Adkins, *op. cit.*, 195.
- 3 ἦν ὑμεῖς ἂν πρὸ πολλῶν χρημάτων καὶ χάριτος ἐτιμήσασθε δύναμιν ὑμῖν προσγενέσθαι, αὕτη πάρεστιν . . . φέρουσα ἐς μὲν τοὺς πολλοὺς ἀρετήν.
- 4 At this point I part company with Edmund Lange, who discusses all the instances of ἀρετή in Thucydides in his article *Die Bedeutung von ἀρετή, bei Thukydides*, in *Jahrbücher für Classische Philologie* 145 (1892), 827–40. For Th. IV 19, 2–3 he offers the translation ‘edelmut’, rightly; but he wrongly classes this passage with others which concern assistance to allies, failing to observe its distinctive features.
- 5 *Op. cit.*, 224.
- 6 Cf. Adkins, *op. cit.*, 78–79.
- 7 Th. I 37, 5 ἐξῆν αὐτοῖς τὴν ἀρετὴν διδοῦσι καὶ δεχομένοις τὰ δίκαια δεικνύναι.
- 8 *E. Herakles* 342–7  

ἀρετῆι σε νικῶ θνητὸς ὢν θεὸν μέγαν· . . .  
 σώϊζειν δὲ τοὺς σοὺς οὐκ ἐπίστασαι φίλους.  
 ἀμαθῆς τις εἶ θεὸς ἢ δίκαιος οὐκ ἔφους.
- 9 I am grateful to Dr. R.S. Bluck for reading this article and commenting on it.

# Gorgias, Alkidamas, and the Cripps and Palatine manuscripts

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## I

Our texts of the two complete extant works of Gorgias (*Helen* and *Palamedes*) and of the two attributed, rightly or wrongly, to Alkidamas (*Odysseus* and *On Sophists*) are derived entirely from two manuscripts. The one generally known as A is the Cripps manuscript (Burney 95), now in the British Museum, which is a principal authority also for Antiphon, Andokides, Isaios, Lykourgos, and Deinarchos; it contains *Helen*, *Palamedes*, and *Odysseus*, but not *On Sophists*. The other, known as X, is the Palatine manuscript (Heidelberg 88), which is the principal manuscript of Lysias; it contains *Helen*, *Odysseus*, and *On Sophists*, but not *Palamedes*. It has long been universally agreed that all other surviving manuscripts (which I refer to as ‘apographa’ or ‘ap.’) containing any of these four works are derived from either A or X, and therefore have no value (except that they occasionally contain intelligent conjectures).

*Helen* and *Odysseus* are the only works common to A and X. Most editors of these two works have tended to prefer A to X, but without giving clear reasons for their preference. On the other hand, O. Immisch, whose edition of *Helen* was published in 1927, gave the prize to X. J. Sykutris, in *Gnomon* iv (1928), 11–18, showed that the basis of Immisch’s view was unsound, but put forward no positive view of his own, leaving his readers to conclude that neither manuscript was superior to the other.

This article has two purposes. First I try to show that in *Helen* and *Odysseus* there is at least one important difference in character between A and X, resulting probably from a difference in the manner in which two copyists approached their task; and I suggest ways in which this conclusion may be relevant to textual studies of the other works contained in these two manuscripts. Secondly I offer comments or suggestions for a number of passages, taken from all four works of Gorgias and Alkidamas, where I believe that the readings adopted in the editions in current use are unsatisfactory.

Quotations from Gorgias are made from Diels – Kranz, *Die Fragmente der Vorsokratiker* (1959), ii. 288–303; quotations from Alkidamas are from F. Blass,

*Antiphontis Orationes* (Teubner, 1881), 183–205. For readings of X I have relied on the apparatus critici of these editions; readings of A I have checked in the manuscript myself. Throughout I refer to the author of *Odysseus* and *On Sophists* as ‘Alkidamas’; it is in fact far from clear whether Alkidamas wrote both or either, but the authorship is not relevant to the problems I discuss here.

## II

It is my belief that the scribe of X was prone to a particular type of carelessness of which the scribe of A was not guilty. (For the sake of brevity, in sections II – IV I attribute this carelessness to ‘the scribe of X’. But it may equally well be due to a predecessor whose mistakes the scribe of X has copied; and I discuss this possibility in section V.) Consider first the following passages.

Gorgias, *Helen* 7: ἄξιός οὖν ὁ μὲν ἐπιχειρήσας βάρβαρος βάρβαρον ἐπιχείρημα καὶ λόγῳ καὶ νόμῳ καὶ ἔργῳ λόγῳ μὲν αἰτίας, νόμῳ δὲ ἀτιμίας, ἔργῳ δὲ ζημίας τυχεῖν·

καὶ νόμῳ καὶ λόγῳ καὶ ἔργῳ, νόμῳ μὲν ἀτιμίας λόγῳ δὲ αἰτίας X

There is no doubt that A’s order is the right one. The first trio of datives is to be taken with ἐπιχειρήσας. (It does not go with βάρβαρον, as has sometimes been thought; if Gorgias had meant this he would have placed it next to βάρβαρον, writing perhaps βάρβαρος ἐπιχειρήσας ἐπιχείρημα βάρβαρον καὶ λόγῳ. . . .) Compare the oath quoted in And. 1. 97: κτενῶ καὶ λόγῳ καὶ ἔργῳ καὶ ψήφῳ. . . . The datives describe means by which a barbaric action may be carried out: ἔργῳ is by performing it oneself; λόγῳ, by instructing someone else to do so; νόμῳ that one may make a law requiring it to be done (compare ψήφῳ in And. 1. 97). But this ‘law’ alternative is inept. Paris did not carry off Helen by making a law; a barbarian monarch might make a law ordaining a barbaric act, but could hardly suffer legal disfranchisement (νόμῳ δὲ ἀτιμίας) as a consequence; a member of a democracy might propose a law ordaining a barbaric act, and afterwards suffer disfranchisement, but a member of a democracy would not himself be a barbarian. So clearly Gorgias has included νόμῳ in the first trio solely because he wants to include it in the second trio; as often, he insists on having a verbal balance, regardless of whether the sense justifies it. But it is incredible that he should place the inept member of the trio at the beginning; he will have chosen for it a less obvious position in the list. His manner is to begin a balanced expression with something that makes sense, and then to complete the balance, if necessary, with something less sensible.

Now, granted that A’s order is right, how does it happen that X’s order is different? It cannot be the result of deliberate conjecture, since there is nothing in A’s order to suggest that conjecture is required. It must be by carelessness; but carelessness of a particular kind. The scribe of X is, I suggest, not one who laboriously copies one word at a time and then looks back to his exemplar to read

the next. No; he reads a whole sentence (or at least a long phrase) at a time, understands it (at least superficially), and then writes it all down; but unfortunately some words have time to change places in his memory between the reading and the writing.

Gorgias, *Helen* 10: αἱ γὰρ ἔνθεοι διὰ λόγων ἐπῳδαὶ ἐπαγωγοὶ ἡδονῆς,  
ἀπαγωγοὶ λύπης γίνονται

ἐπῳδαὶ A : ἡδοναὶ X.

A is clearly right. X's scribe's thoughts are already running on to the next word but one – another indication that he reads whole phrases at once, not single words.

Gorgias, *Helen* 17: πολλοὶ δὲ ματαίοις πόνοις καὶ δειναῖς νόσοις καὶ δυσίατοις  
μανίαις περιέπεσον

ματαίοις νόσοις καὶ δεινοῖς πόνοις X.

Editors have thought that in A δεινοῖς was at first written, and afterwards corrected to δειναῖς. I have looked at this in the manuscript, and I am uncertain whether there is any correction here. But even if there is, it is of no significance, since it is clear from other evidence that the scribe of A made such corrections by checking his copy against his exemplar, not by conjecture. See J. Sykutris in *Philologische Wochenschrift* xlvii (1927), 862 note 3; and compare the 'Note on the Manuscript and Text' in my forthcoming edition of Andokides *On the Mysteries*.

A's order is the right one. It is pointless to mention 'useless diseases' as if some diseases were useful. Again the scribe of X has changed the order of words accidentally (not deliberately; for why should anyone change deliberately the order which appears in A?). He is not an ignoramus, for he has made ματαίοις feminine to agree with ματαίοις, and he has done this from his own knowledge of Greek grammar, not by reference to his exemplar (since if he had referred to his exemplar at this point he would have realized that he was writing the words in the wrong order). The scribe of A, on the other hand, may perhaps be ignorant of Greek grammar, if he at first wrote δεινοῖς νόσοις; but he has the saving grace of being a meticulous checker of his copy against his exemplar.

Alkidamas, *Odysseus* 8: δεῖ δέ με καὶ τὰ λοιπὰ διελθεῖν, ὡς ἔχει, μὴδ' ἀδίκως  
οὕτως ἄνδρα σύμμαχον περὶ θανάτου κρίνειν,

μὴ δ' εἰκῆ οὕτως Bekker: μὴ δ' εἰκὸς οὕτως A: μὴ ἀδίκως X.

Except for a slip over one letter, A has the right reading. The accuser is admitting that so far his accusation (κρίνειν of course means 'accuse' here, not 'judge') is incomplete, and he undertakes to complete it by adding more evidence. It is the manner of the accusation that is in question, not its justice; an accusation may be

just even if no evidence at all is actually presented. The scribe of X has inadvertently substituted for the correct reading a shorter phrase which may at first glance appear to have the same meaning but in fact does not.

Alkidamas, *Odysseus* 10: οὗτός τε ἐκείνοις ἐκείνοί τε τούτῳ πέμποντες  
ἐκείνοι τὲ A: καὶ ἐκείνοι X.

Whichever scribe has made a mistake has done so by remembering the meaning of the whole phrase but not the exact words. τε . . . τε, being less common, is more likely to have been inadvertently altered to τε . . . καὶ than τε . . . καὶ to τε . . . τε. Again carelessness in X and meticulousness in A seem more likely than the converse.

Alkidamas, *Odysseus* 13: γνώσεσθε δὲ προϊόντος τοῦ λόγου, τὰς ἀληθείας ἀκούσαντες τῶν γενομένων.

τὰς ἀληθείας ἀκούσαντες τῶν γενομένων A: ἀκούσαντες μετὰ ἀληθείας τῶν τότε γενομένων X.

Choice between these two readings is difficult, but I suspect that X's is impossible. If τῶν τότε γενομένων is taken with ἀκούσαντες, , the genitive has to mean 'about'. There are instances of this use in Homer, but it seems to be impossible in prose authors without περί. So it becomes necessary, in X's version, to understand τὸν λόγον or μου with ἀκούσαντες, and to take τῶν τότε γενομένων with ἀληθείας: 'the facts of the case'. Compare Antiphon 2d. I: τῇ τε ἀληθείᾳ τῶν ἐξ ἐμοῦ πραχθέντων. The trouble with this is that ἀληθείας then needs the article τῆς. ἀλήθεια means 'truth' in general, and μετὰ ἀληθείας means 'with truth' or 'truthfully'; 'the facts' of one particular case should be ἡ ἀλήθεια (at any rate in prose; there are a few exceptions in verse, e.g. S. *Tr.* 91). A's reading, on the other hand, is unobjectionable. (Adequate parallels for the plural τὰς ἀληθείας may be found in Liddell – Scott – Jones.) And if A's reading is right, it follows that the scribe of X has substituted for the correct words another phrase which superficially seems to give the same meaning, and has also rearranged the order of words.

Alkidamas, *Odysseus* 21: ὥστε καὶ διὰ ταῦτα δικαίως ἂν μοι δοκεῖ θανάτῳ ζημιωθῆναι, εἰ ἄρα γε κολάσασθαι ἄξιόν ἐστι τὸν σοφιστὴν.

εἰ ἄρα γε κολάσασθαι ἄξιόν ἐστι A: ἄξιον γὰρ κολάσαι X.

Both versions give virtually the same meaning. Since neither gives superior sense or is more easily intelligible, neither can be a conjecture deliberately designed to replace the other. One version is a paraphrase originating in the mind of a scribe who tried to memorize the whole sentence at once in order to copy it out more quickly, and failed. The replacement in this way of the more elaborate



phrase by the shorter and simpler is more likely than the reverse process. So again it seems likely that the scribe of X, though knowledgeable enough to be familiar with the idiomatic expression ἄξιον γάρ, has gone astray through careless haste.

In all the passages discussed so far, in which I have argued that A's readings are superior to X's, the differences between the readings concern whole words, not just individual letters, and in each case both readings make sense, at least on a superficial view. I have found no passages in which the differences between readings are of this type and X's reading is clearly superior to A's. Of course there are places where A has mistakes of other kinds while X preserves the true reading; but what I wish to suggest is not that the scribe of A avoids all mistakes, but that he avoids a particular kind of mistake to which the scribe of X is prone. He copies, I suspect, with laborious slowness, reading one or two words at a time and then writing them down before reading the next words, and without much understanding of what he is copying. Consequently, though he sometimes changes individual letters to produce readings which make little sense (e.g. Gorgias, *Helen* 14 ἔτρεψαν for ἔτερψαν, Alkidamas, *Odysseus* 27 ἀνόητα for ἀνόνητα), or makes the kind of mistake which arises from slow writing (e.g. the dittography of αὐτῆς in Alkidamas, *Odysseus* 16; a slow writer is more likely than a fast one to write a word, forget he has written it, and immediately write it again), he does not, as the scribe of X does, rearrange the order of words, or substitute for true readings synonyms and paraphrases which superficially appear correct. The scribe of X writes fast and carelessly, and without afterwards checking what he has written; and these habits give rise not only to rearrangements and paraphrases but also to a much larger number of small omissions than are made in A (e.g. three omissions in the single section Gorgias, *Helen* 15 alone).

### III

Next I give three passages which illustrate in various ways the distinctive features of the two copyists.

Gorgias, *Helen* 6: πέφυκε γὰρ οὐ τὸ κρεῖσσον ὑπὸ τοῦ ἥσσονος κωλύεσθαι, ἀλλὰ τὸ ἥσσον ὑπὸ τοῦ κρεῖσσονος ἄρχεσθαι καὶ ἄγεσθαι, καὶ τὸ μὲν κρεῖσσον ἠγεῖσθαι, τὸ δὲ ἥσσον ἔπεσθαι.

ἥσσον X: ἴσον A. κρεῖσσονος A: κρεῖττονος X. ἥσσον ap.: ἥττον X: ἴσον A.

The scribe of A confuses η and ι, which by his time were pronounced alike; compare And. I. 71, where he or one of his predecessors corrupts Ἴσοτιμίδης οὗ to εἰς ὅτι μὴδ' ἴσου, making utter nonsense. When he reaches ἥσσον he does not remember that four words ago he wrote ἥσσονος, and evidently does not understand the point which Gorgias is trying to make.

The scribe of X knows that -σσ- and -ττ- are equivalent, and does not care which he writes. That -σσ- is correct here is proved by A's ἴσον.

Gorgias, *Helen* 16: αὐτίκα γὰρ ὅταν πολέμια σώματα [καὶ] πολέμιον ἐπὶ πολεμίοις ὀπλίσηι κόσμον χαλκοῦ καὶ σιδήρου

καὶ del. Blass. ὀπλίση X<sup>2</sup>: ὀπλίσει AX<sup>1</sup>: ὀπλισθῆ Blass.

The deletion of καὶ is unnecessary, since the subject of ὀπλίση may be an unexpressed ‘one’, ‘anyone’, as, for example, in *Palamedes* 25: μανία γὰρ ἐστὶν ἔργοις ἐπιχειρεῖν ἀδυνάτοις, ἀσυμφόροις, αἰσχροῖς, ἀφ’ ὧν τοὺς μὲν φίλους βλάπτει, τοὺς δ’ ἐχθροὺς ὠφελήσει, τὸν δὲ αὐτοῦ βίον ἐπονείδιστον καὶ σφαλερὸν καταστήσει. The scribe of X understands that ὅταν demands a subjunctive. Since he at first wrote the same word as we find in A, it is clear that the correction is an intelligent conjecture rather than the result of checking against the archetype, which must have had ὀπλίσει. There is no evidence that X was systematically checked against the archetype.

Gorgias, *Helen* 21: ἀφείλον τῷ λόγῳ δύσκειαν γυναικός, ἐνέμεινα τῷ νόμῳ ὃν ἐθέμην ἐν ἀρχῇ τοῦ λόγου· ἐπειράθην καταλῦσαι μώμου ἀδικίαν καὶ δόξης ἀμαθίαν, ἐβουλήθην γράψαι τὸν λόγον Ἑλένης μὲν ἐγκώμιον, ἐμὸν δὲ παίγνιον.

τῷ νόμῳ ὃν ἐθέμην X: τῷ μώμῳ ὃν ἐν ἐθέμην A.

A is not easy to read here; ὃν is written on an erasure, and other letters look like alterations to what the scribe at first wrote; all of which suggests that his exemplar was not easy to read either. The fact that A’s final version is nonsense proves that the alterations are due not to conjectural emendation but to a desire to reproduce accurately the reading of the exemplar.

In X we find, once again, a reading which superficially seems to make sense. But it is not right. The whole sentence is a claim that Gorgias has achieved what he set out to do. In the opening sections of *Helen* (ἐν ἀρχῇ τοῦ λόγου) we find a statement of the purpose of the work: ἐγὼ δὲ βούλομαι λογισμὸν τινα τῷ λόγῳ δοὺς τὴν μὲν κακῶς ἀκούουσαν παῦσαι τῆς αἰτίας . . . This purpose Gorgias now claims to have fulfilled. But νόμῳ does not mean ‘purpose’, and meanings that it could bear (‘rule’, ‘restriction’, and so on) do not suit the context. Read τῇ γνώμῃ ἣν ἐθέμην: ‘I have been true to the intention which stated’, ‘I have kept to my programme.’ Compare And. 3. 21 τίνα γνώμην ἔθεντο; ‘what did they propose to do?’, and Th. 1. 128. 7 γνώμην ποιῶμαι, ‘I intend to . . .’

#### IV

If my picture of the two scribes is correct, we may conclude that in the following passages, in each of which the readings of A and X differ, the difference concerns whole words, and both readings make sense, A’s version is to be preferred to X’s.

Gorgias, *Helen* 2: Ἑλένην, γυναῖκα περὶ ἧς ὁμόφωνος καὶ ὁμόψυχος γέγονεν ἢ τε τῶν ποιητῶν ἀκουσάντων πίστις

ὁμόψυχος καὶ ὁμόφωνος X.

Gorgias, *Helen* 3: πατρός δὲ τοῦ μὲν γενομένου θεοῦ, λεγομένου δὲ θνητοῦ  
λεγομένου δὲ A : τοῦ δὲ λεγομένου X.

Gorgias, *Helen* 4: ἀλκῆς ιδίας εὐεξίαν.  
ιδίας A: οἰκείας X.

Gorgias, *Helen* 6: Τύχης βουλήμασι καὶ θεῶν βουλεύμασι καὶ Ἀνάγκης  
ψηφίσμασιν ἔπραξεν ἃ ἔπραξεν.

βουλήμασι A: βουλήματι X. βουλεύμασι A: κελεύσματι X. ψηφίσμασιν A:  
ψηφίσματι X.

It is much more likely that X has turned βουλεύμασι into κελεύσματι than that  
A has done the reverse; and if it is granted that βουλεύμασι is right it may then  
be inferred that the plurals βουλήμασι and ψηφίσμασιν should also be read.

Gorgias, *Helen* 13: Gorgias, *Helen* 13: τὰ ἄπιστα καὶ ἄδηλα φαίνεσθαι τοῖς  
τῆς δόξης  
ἄδηλα καὶ ἄπιστα X.

Gorgias, *Helen* 14: πειθοῖ τινι κακῇ τὴν ψυχὴν ἐφαρμάκευσαν καὶ  
ἐξεγοήτευσαν.  
ἐξεφαρμάκευσαν, καὶ ἐξεγοήτευσαν A.

Alkidamas, *Odysseus* 4: ἔστι δὲ τὸ πρᾶγμα, ὡς ἂν εἰδῆτε, προδοσία. ἐφ' ἧ  
δεκαπλάσιαι ζημίαι τῶν ἄλλων εἰσὶν ἐπικείμεναι  
δεκαπλασία τῶν ἄλλων ζημία ἐστὶν ἐπικειμένη X.

Alkidamas, *Odysseus* 4: ἐμοὶ καὶ τούτῳ οὐδεμία πάποτ' ἔχθρα οὐδ' ἔρις  
ἐνεγένετο περὶ οὐδενὸς χρήματος  
ἐνεγένετο A: ἐγένετο X. χρήματος A: πράγματος X.

Alkidamas, *Odysseus* 7: γυναῖκα δίδωσί σοι, καθάπερ ἐπέστειλας.  
καθάπερ A: ὡσπερ X.

Alkidamas, *Odysseus* 8: νῦν δὲ ἐν τῷ θορύβῳ ἔλαθεν αὐτὸ Τεῦκρος  
ἀποτοξεύσας.  
ἀποτοξεύσας A: ἀπολέσας X.

Alkidamas, *Odysseus* 9: οὐδεὶς ἡμῶν εἶδεν ἔχοντα τοῦτον σημεῖον ἐν τῇ  
ἀσπίδι  
ἔχοντα τοῦτον A: τοῦτον ἔχοντα X.

Alkidamas, *Odysseus* 15: ἰδὼν δὲ ὁ Ἡρακλῆς τὴν παῖδα ἐν τῷ νεῷ ὑπὸ μέθης συνεγένετο. ἐπεὶ δὲ κύουσαν αὐτὴν ὁ πατήρ ἤσθετο Ἄλεος, μεταπέμπεται τὸν τούτου πατέρα, πυθόμενος πορθμέα τε εἶναι αὐτὸν καὶ δεινόν.

νεῷ X: ἱερῷ A. ὁ πατήρ ἤσθετο A: ἤσθετο ὁ πατήρ X.  
εἶναι αὐτὸν A: αὐτὸν εἶναι X.

Alkidamas, *Odysseus* 22 : φάσκων τάξεις ἐξηυρηκέναι πολεμικάς.  
τάξεις ἐξευρηκέναι A: ἐξευρηκέναι τάξεις X.

Alkidamas, *Odysseus* 24: καὶ τὰ ἐπὶ τῷ μνήματι αὐτοῦ δηλοῖ ἐπιγράμματα  
καὶ ἐπὶ τῷ μνήματι αὐτοῦ δηλοῖ τὰ ἐπιγράμματα A.

## V

If it is agreed that A and X do exhibit the features to which I have pointed in *Helen* and *Odysseus*, can it be concluded that they are likely to exhibit the same features in the other works which they contain? In other words, are they really features of the copyists of A and X, which these two copyists are likely to have shown in everything they copied; or are they features of two earlier manuscripts of *Helen* and *Odysseus*, of which one was the exemplar of A and the other the exemplar of X, which may be quite distinct from the exemplars from which A derived Antiphon, Andokides, and the rest, and from which X derived Lysias?

In the case of A, the first answer is the right one; the characteristics which I have ascribed to the copyist of A are his characteristics, and not merely characteristics of one of his predecessors. I have argued that A does not, in *Helen* and *Odysseus*, contain transpositions of words within a phrase, or paraphrases giving a meaning similar to the correct text, or conjectures designed to make sense out of nonsense. If it is true that A does not contain these kinds of mistake in *Helen* and *Odysseus*, it follows that the scribe of A (and not merely his predecessors) has avoided these kinds of mistake in *Helen* and *Odysseus*, and so probably avoided them also in all the other texts he copied.

So editors of Antiphon, Andokides, Isaios, and the other authors contained in A can, I think, be confident that the scribe of A has not introduced mistakes of these kinds into their texts. But of course that is no guarantee that mistakes of these kinds have not got into the texts of those authors at earlier stages in their various traditions. I do not claim, for instance, that A's text of Antiphon contains no transpositions of words within a phrase, but only that, if it does contain such transpositions, they are likely to be the fault not of the copyist of A but of one of his predecessors.

With X, the position is rather different. I have argued that X exhibits certain kinds of mistake in *Helen* and *Odysseus*. Whether these mistakes are due to the actual copyist who is responsible for X or to a predecessor, at any rate it seems

likely that they are due to one copyist, and that they originated at a time when these two works were grouped together in a single manuscript.

Now consider the order in which works are arranged in X. (I have compiled this list from pages iii and iv of Hude's Oxford text of Lysias.)

Lysias 1 and 2

Alkidamas, *On Sophists* and *Odysseus*.

Antisthenes, *Aias* and *Odysseus*.

Demades, *Ὑπὲρ τῆς δωδεκαετίας*.

Lysias 3–31. Gorgias, *Helen*.

This is an odd order, since it splits up the works of Lysias. It evidently dates from the time when these works were first collected into a single volume. Considerations of logic or the reader's convenience have not caused the order to be changed at any later stage. I suggest that any predecessor of X which contained both Alkidamas, *Odysseus* and Gorgias, *Helen* is likely also to have contained Antisthenes, Demades, and Lysias 3–31. If this were not the case, and Alkidamas, *Odysseus* and Gorgias, *Helen* appeared together in a predecessor of X which did not contain also Antisthenes, Demades, and Lysias 3–31, we should have to suppose that a scribe copied Alkidamas, *Odysseus* from one manuscript, then turned to another or others for Antisthenes, Demades, and Lysias 3–31, and then went back to the first for Gorgias, *Helen*; but this is not a likely procedure.

A conclusively proved answer to this problem is beyond reach. But I think it is at least a reasonable guess that the kinds of mistake which I have attributed to X in *Helen* and *Odysseus* originated not earlier than the time when these two were grouped in a single manuscript with Antisthenes, Demades, and Lysias 3–31, and that we must therefore expect to find the same kinds of mistake in all these works.

Whether this applies also to Lysias 1 and 2 and Alkidamas, *On Sophists* is doubtful. It is possible, for example, that X is a copy of two exemplars, one containing Lysias 1 and 2 and *On Sophists*, and the other all the other works, and that the kinds of mistake I have pointed out are due to the second of these two exemplars. There are, however, two passages in *On Sophists* which suggest that it too may contain these kinds of mistake.

Alkidamas, *On Sophists* 18: ἐν δὲ τοῖς γραπτοῖς λόγοις καὶ τῶν ὀνομάτων {καὶ τῶν ἐνθυμημάτων} καὶ συλλαβῶν ἀναγκαῖόν ἐστι ποιεῖσθαι τὴν μνήμην καὶ τὴν μάθησιν ἀκριβῆ.

καὶ τῶν ἐνθυμημάτων del. Dobree, ante καὶ τῶν ὀνομάτων transp. Sauppe.

Sauppe's solution may well be the right one.

Alkidamas, *On Sophists* 34: ἔτι δὲ καὶ τὴν γνώμην εὐλυτον καὶ τὴν μνήμην εὐπορον καὶ τὴν λήθην ἀδηλον καθεστάναι βούλεται,

τὴν γνώμην εὐλυτον καὶ τὴν μνήμην εὐπορον Blass: τὴν γνώμην εὐπορον καὶ τὴν μνήμην εὐλυτον X.

The expression εὔπορος ἢ μνήμη appears in 19, and εὐλύτῳ τῇ τῆς ψυχῆς ἀγχινοία in 16. It is therefore quite likely that Blass is right.

## VI

I conclude by adding some comments on a miscellaneous collection of other passages, taken from all four works attributed to Gorgias and Alkidamas.

Gorgias, *Helen* 2: ἐγὼ δὲ βούλομαι λογισμὸν τινα τῷ λόγῳ δοῦς τὴν μὲν κακῶς ἀκούουσιν παῦσαι τῆς αἰτίας, τοὺς δὲ μεμφομένους ψευδομένους ἐπιδείξας καὶ δείξας τάληθές [ἢ] παῦσαι τῆς ἀμαθίας.

ἐπιδείξας καὶ δείξας Blass: ἐπιδείξαι καὶ δεῖξαι AX. ἢ del. Blass: καὶ ap. τε in margine X.

I should prefer to read ψευδομένους ἐπιδείξαι, καὶ δεῖξαί τε τάληθές καὶ παῦσαι τῆς ἀμαθίας. This involves less emendation than Blass's version, and it gives a more balanced (and thus more Gorgianic) sentence. For confusion of ἢ and καί, compare, for example, *And* 1. 78, *Is.* 5. 5, *D.* 3. 27. τε may easily have slipped out by haplography before τάληθές.

Gorgias, *Helen* 3: ὁ μὲν διὰ τὸ εἶναι ἔδοξεν, ὁ δὲ διὰ τὸ φάναι ἠλέγχθη ἠλέγχθη AX: ἐλέχθη ap.

'The one (Zeus) was believed to be (*Helen's* father) because he actually was, the other (Tyndareus) was said to be because he claimed he was.' This must be the sense, a contrast between what people said and what they thought; and so ἐλέχθη must be right. ἠλέγχθη is translated by Diels-Kranz 'die Fama trog', but it cannot mean this. If right, it would have to mean something like 'he was proved not to be because he claimed he was'; but διὰ would then be absurd.

Gorgias, *Helen* 6: εἰ οὖν τῇ Τύχηι καὶ τῷ θεῷ τὴν αἰτίαν ἀναθετέον, [ἢ] τὴν Ἑλένην τῆς δυσκλείας ἀπολυτέον.

ἢ del. Dobree.

Read ἢ. See Denniston, *The Greek Particles*, p. 282, for at the beginning of an apodosis. Similarly in *Ant.* 5. 92 a speaker uses τὸν to introduce the conclusion which he wishes the jury to draw from his argument:

Gorgias *Helen* 11: εἰ μὲν γὰρ πάντες . . . , οὐκ ἂν ὁμοίως ὁμοίος ἦν ὁ λόγος, οἷς τὰ νῦν γε οὔτε . . . εὐπόρως ἔχει.

ἦν A: ὦν X. οἷς Diels: A: ἢ X<sup>1</sup>: ἢ X<sup>2</sup>: ἐπεὶ Sauppe. ὁμοίος ὦν ὁ λόγος ἠπάτα· νῦν δὲ Blass

Blass is very ingenious, but I should prefer to keep as close as possible to A, and read ὁμοιος ἦν ὁ λόγος: ἦ τὰ νῦν γε: ‘. . . would not be as widespread as it is; as things are, it is certainly not easy . . .’. S. *Ant.* 484 similarly begins a sentence ἦ νῦν . . ., with no other connective particle.

Gorgias, *Helen* 16: ἰσχυρὰ γὰρ ἡ συνήθεια τοῦ νόμου διὰ τὸν φόβον ἐξωκίσθη τὸν ἀπὸ τῆς ὄψεως, ἥτις ἐλθοῦσα ἐποίησεν ἀμελῆσαι καὶ τοῦ καλοῦ συνήθεια Diels: ἀλήθεια AX. ἐξωκίσθη Reiske: εἰσωκίσθη AX. ἀμελῆσαι Bekker: ἀσμενίσαι AX.

Read ἡ ἀμέλεια τοῦ νόμου . . . εἰσωκίσθη, which involves less alteration of the manuscripts’ reading. A noun is followed by its related verb in the next clause, as elsewhere in Gorgias, e.g. *Helen* 1: ἐπαίνω . . . μῶμον . . . μέμφεσθαι . . . ἐπαινεῖν. For the metaphorical use of εἰσωκίζω, compare Pl. *Rep.* 424 d: Ἡ γοῦν παρανομία . . . κατὰ σμικρὸν εἰσοικισαμένη ἡρέμα ὑπορρεῖ πρὸς τὰ ἦθη τε καὶ τὰ ἐπιτηδεύματα.

Gorgias, *Helen* 19: ὃς (sc. ὁ ἔρωσ) εἰ μὲν θεὸς <ὦν ἔχει> θεῶν θείαν δύναμιν, πῶς ἂν ὁ ἦσσων εἴη τοῦτον ἀπώσασθαι καὶ ἀμύνασθαι δυνατός; ὦν ἔχει add. Blass. τοῦτον A: τούτων X.

Loss of ὦν ἔχει is not easily explained. I therefore prefer ὃς εἰ μὲν θεός, ἔχων θείαν δύναμιν which involves less alteration; and a second bird falling victim to this stone is θεῶν, which conveys no sense not provided also by θείαν. ἐστί is easily understood, as, for instance, in *Helen* 8: εἰ δὲ λόγος ὁ πείσας . . .

Alternatively, S. Melikoff’s version (an oral suggestion, reported by Diels-Kranz) is not impossible: ὃς εἰ μὲν θεός, θεῶν θείαν δύναμιν πῶς ἂν ὁ ἦσσων εἴη τούτων. . . . But this is open to several small objections: the otiose θεῶν remains; the reference of τούτων (presumably love and *Helen*’s soul) is not obvious; πῶς comes less naturally as fourth than as first word of its clause. For these reasons I slightly prefer my own suggestion.

Gorgias, *Palamedes* 9: πῶς δ’ ἂν <εἷς> ἐκόμισεν; ἢ πολλοί; πολλῶν γὰρ κομιζόντων . . . ἐνὸς δὲ κομίζοντος εἷς add. Keil.

Better both stylistically and palaeographically is: πῶς δ’ ἂν <εἷς> ἐκόμισεν; ἢ πολλοί; πολλῶν γὰρ κομιζόντων . . ., ἐνὸς δὲ κομίζοντος . . .

Gorgias, *Palamedes* ἡ δὲ πρᾶξις πῶς <ἂν> ἐγένετο; ἂν, add. Blass.

ἂν is no more necessary here than with ἐκόμισαν in 10 or ἔπραττον in 11.

Gorgias, *Palamedes* 15: πολλῶν γὰρ δέονται χρημάτων οἱ πολλὰ δαπανῶντες, ἀλλ' οὐχ οἱ κρείττονες τῶν τῆς φύσεως ἡδονῶν, ἀλλ' οἱ δουλεύοντες ταῖς ἡδοναῖς

ἀλλ' οὐχ Blass: οὐχ A.

The apparatus of Diels-Kranz is misleading. No attempt has been made in A to delete the words οὐχ οἱ. There is an erasure between δαπανῶντες and οὐχ. It is not possible to see what was written there before the erasure was made, but the space is of a suitable size to accommodate ἀλλ'.

A's reading is no doubt right. No connective particle is required with mix; compare, for example, 36, Ar. *Frogs* 970. The scribe may have written ἀλλ' here because his eye slipped to ἀλλ' in the following line. But whatever he wrote he erased it, and there is no reason to deny that his motive for making the erasure was that he found, on making a subsequent check, that the word he had written was not in his exemplar.

Gorgias, *Palamedes* 17: πᾶσι γὰρ ὁ γε προδότης πολέμιος, τῷ νόμῳ, τῇ δίκῃ, τοῖς θεοῖς, τῷ πλήθει τῶν ἀνθρώπων· τὸν μὲν γὰρ νόμον παραβαίνει, τὴν δὲ δίκην καταλύει, τὸ δὲ πλήθος διαφθείρει, τὸ δὲ θεῖον ἀτιμάζει. ὧι δὲ τοιοῦτος <ὁ> βίος περὶ κινδύνων τῶν μεγίστων, οὐκ ἔχει ἀσφάλειαν.

μὲν γὰρ Diels : μὲν γε A.      ᾧ δὲ τοιοῦτος <ὁ> βίος Diels: τῷ δὲ τοιοῦτῷ βίῳ A.      οὐκ Diels : οὐδ' A.

γε needs no emendation. See Denniston, *The Greek Particles*, p. 160.

In the second sentence, read: τῷ δὲ τοιοῦτῷ βίῳ περὶ κινδύνων τῶν μεγίστων, οὐδ' ἔχει ἀσφάλειαν, 'The man who acts in this way has a life . . . .' This gives a perfectly satisfactory sense with less alteration of the manuscript reading than Diels inflicts on it. οὐδέ as a connective without a preceding negative is an Ionicism which Gorgias may well have used; compare Denniston, *The Greek Particles*, pp. 190–1, and also Alkidamas, *Odysseus* 8, an instance which Denniston omits.

Gorgias, *Palamedes* 26: βουλοίμην δ' ἂν παρὰ σοῦ πυθέσθαι, πότερον τοὺς σοφοὺς ἀνδρας νομίζεις ἀνοήτους ἢ φρονίμους. εἰ μὲν γὰρ ἀνοήτους, καινὸς ὁ λόγος, ἀλλ' οὐκ ἀληθής

καινὸς Sauppe: κενὸς A.

It is true that the scribe of A does sometimes confuse αι and ε, which were pronounced alike by his time; e.g. And. 2. 25, Is. 5. 31. But that is not a sufficient reason for emending κενός which makes adequate sense. For κενός as the opposite of ἀληθής, compare D. 18. 150: κενῇ προφάσει ταύτη κατεχρῶ καὶ ψευδῇ. For 'eliminative' ἀλλά, see Denniston, *The Greek Particles*, pp. 1–2.



Gorgias, *Palamedes* 35: εἰ μὲν οὐδὲν διὰ τῶν λόγων τὴν ἀλήθειαν τῶν ἔργων καθαρὰν τε γενέσθαι τοῖς ἀκούουσι <καὶ> φανεράν, εὐπορος ἂν εἴη κρίσις ἤδη ἀπὸ τῶν εἰρημένων

τε Diels: γε A. καὶ add Diels.

Emendation is unnecessary, because A's reading makes good sense. καθαρὸς means 'unblemished'. The judges of Palamedes would have an easy task if they were told the whole truth and nothing but the truth. γε both emphasizes and limits: 'the truth of the affair – I mean, the whole truth'. One might expect τὴν γε καθαρὰν, but the article's omission shows that the adjective is 'predicative': 'become clear in an unblemished form'. It means practically the same as πᾶσαν, which likewise would not need to be preceded by the article; compare Th. 6. 87.1: εἰρήκαμεν δ' ὑμῖν πᾶσαν τὴν ἀλήθειαν, 'we have told you the truth in full'. For the use of γε with this kind of adjective, compare X. Sym. 4.54: ὅλας γε καὶ πάσας ταῖς νύκτας.

Diels would make καθαρὰν part of the complement with γενέσθαι. But 'known' or 'obvious' is not a usual meaning of καθαρὸς, and to speak of truth becoming unblemished would be odd.

Gorgias, *Palamedes* 36: καὶ τὴν αἰτίαν φανεράν ἅπασιν ὑμεῖς ἔξετε τῆς ἀδικίας, οὐχ ὁ κατήγορος· ἐν ὑμῖν γὰρ τὸ τέλος ἐνὶ τῆς δίκης.

ἐνὶ Diels: ἔχει A: ἐστὶ Reiske.

ἔχει can perfectly well be kept. 'He relies on you for achieving the fulfilment of his case.' With ἐν, in this sense the present tense may be used for an event which strictly is still in the future; compare Pl. *Prt.* 324 e: ἐν τούτῳ γὰρ αὕτη λύεται ἡ ἀπορία ἣν σὺ ἀπορεῖς, ἢ ἄλλοθι οὐδαμοῦ, 'the difficulty relies on this for its solution'.

Alkidamas, *Odysseus* 11: οὗτος δὲ βέλη ἀνελόμενος πέντε [τοξεύειν], φανερός ἐστιν οὐδὲ ἐν πρὸς ὑμᾶς ἐνηνοχῶς

τοξεύειν del. Sauppe.

Though *de nihilo nihilum* may not always be a reliable principle of textual criticism, still τοξεύειν is more plausibly explained if we assume that Alkidamas wrote either τοξευθέντα or τοξευθείς.

Alkidamas, *Odysseus* 18–19: Ἀλέξανδρος δὲ αὐτοῦ τὴν γυναῖκα ἐξαπατήσας, ἐκ τῶν οἰκῶν λαβὼν ὅσα πλεῖστα ἐδύνατο, ἀποπλέων ᾤχετο . . . ἀφικομένου δὲ αὐτοῦ πάλιν εἰς Ἀσίαν, ἄγοντος τὰ χρήματα καὶ τὴν γυναῖκα, ἔστιν ὅπου ἀντελάβου τινὸς ἢ βοῆ ἑσήμηνας τοῖς περιοίκοις ἢ βοήθειαν συνέλεξας;

καὶ add. Blass.

Blass's note on ἀφικομένου is 'scil. εἰς τὴν Ἑλλάδα (v. §17), quod fort. addendum est'. But there was no reason to raise an alarm when Paris arrived in Greece, but only when he departed with *Helen*. Read ἀποίχομένου δὲ αὐτοῦ πάλιν εἰς Ἀσίαν, ἄγοντος . . . These phrases sum up the account of Paris's departure in the previous sentence. I do not think that the perfect sense of ἀποίχομαι is an obstacle to the conjecture. 'He vanished over the horizon, and you did nothing about it.'

Alkidamas, *On Sophists* τοὺς μὲν γὰρ τὰ χαλεπὰ τῶν ἔργων ἐπιτελοῦντας εἰκός, ὅταν ἐπὶ τὰ ῥάω τὴν γνώμην μεταστήσωσιν, εὐπόρως μεταχειρίσασθαι τὴν τῶν πραγμάτων ἀπεργασίαν· τοῖς δὲ τὰ ῥάδια γεγυμνασμένοις ἀντίτυπος καὶ προσάντης ἢ τῶν χαλεπωτέρων ἐπιμέλεια καθίσταται.

The chiasmic arrangement of the sentence suggests that τὴν τῶν πραγμάτων ἀπεργασίαν is to be contrasted with τὰ χαλεπὰ τῶν ἔργων ἐπιτελοῦντας, and that instead of ἀπεργασίαν ('accomplishment', 'completion') we should perhaps read παρεργασίαν, 'performance of the secondary task' or 'accomplishment of the easy part of the task'. Compare 35, where almost the same comparison of written and impromptu speeches is made again: τοῦ δὲ γράφειν ἐν παιδιᾷ καὶ παρέργως (Benseler: παρέργω X) ἐπιμελόμενος. The form παρεργασία occurs nowhere else, but it is a natural formation; ἐργασία and other compounds (in Attic ἀπ- and ἐπ-; in later authors ἀν-, ἐξ-, ἐπεξ-, κατ-, περι-, προ-, συν-) are common enough. Compare also παρεργάτης λόγων in E. *Supp.* 426.

Alkidamas, *On Sophists* 13: πῶς οὐ χρὴ καὶ τῆς παιδείας ἐκείνην μάλιστα τιμᾶν, ἀφ' ἧς πρὸς τοῦτο τὸ γένος τῶν λόγων εὐπόρως ἔξομεν;

ἀφ' ἧς ἀρ.: ἀφ' οὗ X.

Read ἐκεῖνο . . . ἀφ' οὗ.

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# Theagenes of Peiraieus

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Several passages of Aristophanes mention a personage named Theagenes (or Theogenes; the manuscripts vary; I shall discuss the precise form of his name at the end of this article). We meet him first in *Wasps* 1183, where the action that has brought him to the notice of Aristophanes is his pompous reproof to a dung-collector: ὦ σκαιὲ κάπαίδευτε. In *Peace* 928 he is the first person who comes to mind as a possessor of the quality of ‘swinishness’ (ὕηνία). By 414 BC he has become prominent enough to be mentioned in the *Birds* three times. Line 822 contains a reference to his great wealth – which Euelpides expects to find in Clouduckooland. In the two other passages from this play the exact point of the innuendo is less clear. In 1126–9 a messenger boasts of the width of the new city’s wall; it is so wide that on top of it Proxenides and Theagenes could drive two chariots in opposite directions past each other, drawn by horses as big as the Wooden Horse of Troy. Proxenides was a boaster, productive of hot air (he is here called ὁ Κομπασεύς, ‘Bragger by deme’; compare also *Wasps* 325), and so perhaps the implication is that Theagenes could be expected to have a big chariot because he too talked big. Alternatively we might guess that he was very fat; this view, though it may at first sight seem less likely, receives some support from the scholion on *Peace* 928, which I shall quote presently. In 1295, when men are called after birds, Theagenes gets the name Χηναλώπηξ, for which Liddell-Scott-Jones offer the translation ‘Egyptian goose’. Perhaps he cackled like a goose; or perhaps he was as cunning as a fox (ἀλώπηξ); or possibly he opened his mouth too much (χανεῖν, κεχηνέναι). *Lysistrata* 61–4 is comparatively polite; from it we learn that Theagenes’s wife, and so presumably Theagenes also, lived at Acharnai. The difficult question whether his wife was fond of drink (τάκάτειον ἤρετο) or exceedingly pious (θεοῦκάτειον ἤρετο) has no bearing on the character of Theagenes himself.

There is one other comic passage generally assumed to refer to the same man. It is a fragment of Eupolis *Demes* (produced in 411) found in a Cairo papyrus, and included by Edmonds in his edition of the comic fragments as Eupolis fr. 110 a. The fragment is mutilated and the exact interpretation of the lines not

quite certain; but it seems clear that, as far as Theogenes (as he is here called) is concerned, the chief object of satire in this passage is his gluttony.

The scholia add further information, most of it uncomplimentary.

Σ *Wasps* 1183: ὁ Θεογένης οὗτός ἐστιν ὁ Ἀχαρνεύς, ὃν καὶ ἐπὶ τῷ μεγάλα ἀποπατεῖν κομφοδοῦσιν. δῆλον δὲ ἐν ταῖς Ὠραῖς. (fr. 571).

Σ *Peace* 928: διεβάλλετο γὰρ ὁ Θεογένης εἰς μαλακίαν καὶ ὡς ὑώδης καὶ δύσσομος καὶ πένης. ἦν δὲ ἐκ Πειραιῶς. ἐδόκει δὲ καὶ πένης εἶναι, θρύπτεσθαι δὲ ἐπὶ πλούτῳ. ἦν δὲ τὸ σῶμα παχὺς καὶ χοιρώδης.

Σ *Birds* 822: προεῖρηται ὅτι πένης οὗτος, ἔλεγε δὲ ἑαυτὸν πλούσιον. . . . ἄλλως. Λέγεται ὅτι μεγαλέμπορος τις ἐβούλετο εἶναι, περαΐτης ἀλαζῶν, ψευδόπλουτος. ἐκαλεῖτο δὲ καπνός, ὅτι πολλὰ ὑπισχνούμενος οὐδὲν ἐτέλει. (fr. 122 Kock = 94 Edmonds).

Σ *Birds* 1127: καπνοὶ ἦσαν καὶ κομπασταὶ καὶ μόνον ὑπόσχεσις.

Σ. *Birds* 1295: πανοῦργος ἦν. διὸ ἀλώπηξ. καὶ ὅτι ἀναίσθητος καὶ φθονερός καὶ πονηρός. ὁ δὲ Δίδυμος Θεογένη καὶ Φιλοκλέα φησὶν ὄρνιθώδεις εἶναι.

Σ. *Lys.* 62: ὁ δὲ Θεογένης κομπαστὴς Ἀχαρνεύς.

Some of these statements are no doubt deduced from the extant passages of Aristophanes which I have already discussed, and so have no independent authority. ὑώδης, for example, may well be just a deduction from *Peace* 928, Ἀχαρνεύς from *Lys.* 61–4, and θρύπτεσθαι ἐπὶ πλούτῳ from *Birds* 822. But some of the statements do not appear to be derived from extant plays, and the references to Aristophanes *Seasons* and Eupolis *Demes* make it quite clear that the scholiasts drew also on some good sources of information not now available to us.

There emerges a fairly clear picture of Theogenes's character (or, at any rate, of the caricature of him drawn by comic dramatists). His figure was fat, his appetite large, his personal habits dirty. He lacked sensibility, but not shrewdness. He engaged in business and liked to be thought a tycoon, but in fact his wealth existed only in his own imagination. Above all, he was a talker, but his deeds too often failed to match his words.

But one biographical puzzle remains. *Lys.* 61–4 implies that he lived at Acharnai, and the scholia on that passage and on *Wasps* 1183 state that he was Ἀχαρνεύς. But Σ *Peace* 928 states plainly that he was ἐκ Πειραιῶς, and Σ *Birds* 822 gives him the mysterious title Περαΐτης. Where did Theogenes really come from?

The term Περαΐτης ought to denote a man 'from over the water'. The only other instance of it known to Liddell-Scott-Jones is in Josephus, who uses it to mean 'from across the Jordan'. Hdt. 8. 44. 1, wishing to refer to that part of Boiotia which is opposite Chalkis, calls it τὴν περαΐην τῆς Βοιωτῆς χώρας, but I have found no other instance of the adjective περαῖος or the noun Περαΐα earlier than the third century, and no instance in any period in which either word is used with reference

to Athens or an Athenian. What would ἡ Περαία mean to an Athenian? Salamis? the Peloponnese? one of the Aegean islands? Ionia? Sicily? Franz Dornseiff, in his note *Ein Transjordanier in einer Kornodie des Eupolis?*, in *Hermes* lxxv (1940) 229–31, rightly rejecting the view of C. Jensen that Theagenes came from Transjordan, suggests that he came from Perachora, opposite Corinth. It is true that Xenophon in *Hel.* 4. 5. 1–5 and *Ages.* 2. 18–19, calls Perachora τὸ Πείραιον, and that some manuscripts give the form τὸ Πείραιον. But in both passages Xenophon is writing about Corinth, and about Perachora from the Corinthian point of view. It is unlikely that to an Athenian ‘the place over the water’ would mean Perachora. Nor is there any evidence that the form Περαιῆτης was ever used of an inhabitant of Perachora. Thus it seems practically certain that the scholiast did not get the word Περαιῆτης from a fifth-century Athenian source. Much the likeliest explanation is that it is a corruption of Πειραιεύς or ἐκ Πειραιῶς or something similar, and that we have really only two theories about Theagenes’s place of origin or residence that deserve our attention: that he was Ἀχαρνεύς and that he was ἐκ Πειραιῶς.

The implication of *Lys.* 61–4 that he lived at Acharnai does not justify any out-of-hand rejection of the statement that he was ἐκ Πειραιῶς. This is not the kind of statement which anyone would be likely to invent, and there is no reason to doubt that the scholiast derived it, like most of his other information about Theagenes, from a fifth-century comedy or other good source not now extant. One possibility is that Theagenes had two houses; his contemporary Kallias, son of Hipponikos, possessed a house at Peiraieus (*X. Sym.* 1. 2) in addition to one in Athens (*Σ Frogs* 501). But Kallias was rich, and Theagenes was not. So it is more likely that Theagenes at the time of *Lys.* 61–4 had only the one house, at Acharnai, but he or his family had lived at Peiraieus at an earlier period. In other words, Peiraieus may well have been his deme rather than his place of residence; his deme will have depended on the place where his ancestor in the direct male line resided in 508/7. The appearance of the word Ἀχαρνεύς in the scholia does not prove that his deme was Acharnai, since the statement that he was an Acharnian is probably a deduction from *Lys.* 61–4, and that passage indicates only that he lived at Acharnai, not that it was his deme; nor is there any reason to connect our Theagenes with the Theagenes of Acharnai who is mentioned in a fourth-century inscription (*IG ii<sup>2</sup> 1635.7*: Ἰδιώτης Θεογένος Ἀχαρνεύς, a member of a board of Amphiktyones sent to Delos in 376/5).

Xenophon *Hel.* 2.3.2 lists the members of the Thirty who took office in 404. Twenty-second in the list is one Theogenes (this is the form of the name which most of the manuscripts give). It is hardly to be doubted that Xenophon’s list comes from an official document, and we should expect that such a document would list the men in the order of their tribes. This expectation is confirmed by the few scraps of evidence we possess about the tribes of individual members of the Thirty. Theramenes, ninth in Xenophon’s list, was of the deme Steiria (*Σ Frogs* 541), which belonged to Pandionis (tribe III). Drakontides, twenty-sixth in the list, was of the deme Aphidna (*Ath. Pol.* 34.3), which belonged to Aiantis (tribe IX). Eratosthenes, seventeenth in the list, may well be identical with the Eratosthenes

of Lysias 1 (arguments in favour of this identification are given by J. Kirchner in *RE* vi 358); if so, he was of the deme Oe (Lys. 1.16), which belonged to Oineis (tribe VI). Anaitios, fourteenth in the list, is likely to be identical with the man of that name who was a Hellenotamias in 410/09 (*IG* i<sup>2</sup> 304.20); if so, he was of the deme Sphettos, which belonged to Akamantis (tribe V). This evidence is sufficient to warrant the conclusion that the names in Xenophon's list are arranged in order of tribes, thus:

Polychares	Erechtheis	Sophokles	Oineis
Kritias	Erechtheis	Eratosthenes	Oineis
Melobios	Erechtheis	Charikles	Oineis
Hippolochos	Aigeis	Onomakles	Kekropis
Eukleides	Aigeis	Theognis	Kekropis
Hieron	Aigeis	Aischines	Kekropis
Mnesilochos	Pandionis	Theogenes	Hippothontis
Chremon	Pandionis	Kleomedes	Hippothontis
Theramenes	Pandionis	Erasistratos	Hippothontis
Aresias	Leontis	Pheidon	Aiantis
Diokles	Leontis	Drakontides	Aiantis
Phaidrias	Leontis	Eumathes	Aiantis
Chaireleos	Akamantis	Aristoteles	Antiochis
Anaitios	Akamantis	Hippomachos	Antiochis
Peison	Akamantis	Mnesitheides	Antiochis

This line of argument about the tribes of the Thirty seems to have been first followed by Loeper; J. Kirchner *Prosopographia Attica* no. 6692 (and elsewhere) gives the reference 'Loeper in diariis collegii institutionis publicae Petropolit. 1896, mensis Maius p. 90 sq.'. I have not been able to see this paper, but from Kirchner's references it is clear that Loeper's conclusion was the same as mine.

From this conclusion it follows that the Theogenes who was a member of the Thirty belonged to Hippothontis. Peiraieus was a deme of Hippothontis. Xenophon's Theogenes is likely to have been a person of some prominence, to be chosen as a member of the Thirty. Aristophanes's Theogenes or Theogenes clearly was a well-known man, for Aristophanes to refer to him so often without introduction or explanation. There may well have been a number of Athenians called Theagenes or Theogenes; but it is not so likely that there were many whose deme was Peiraieus or whose tribe was Hippothontis; and it is still less likely that two such men were both prominent personalities. I suggest that the Theogenes of Xenophon and the Theogenes or Theogenes of Aristophanes are identical.

If this is right, he was a man who had been prominent in Athenian life for about twenty years before becoming a member of the Thirty, and there are at least two other references to a Theagenes which may with strong probability be assigned to him. Thucydides 4.27.3 reports the appointment of Kleon and Theagenes to Pylos on a fact-finding commission in 425. From the fact that the two were appointed at the same time it does not follow that Theagenes was a friend or

political ally of Kleon; Thucydides tells us that Kleon was appointed against his own wish, and so perhaps Theagenes was not appointed on Kleon's recommendation. But a man chosen to partner Kleon would need to have some strength of character; it is not likely that the Athenians appointed a nonentity to this post.

In 5.19.2 and in 5.24.1 Thucydides lists the seventeen Athenians who in 421 took the oaths to observe the Peace of Nicias and the alliance with Sparta. These men, chosen to represent Athens on an important occasion, include nearly all of the most prominent politicians and generals of the time, among them Nicias, Laches, Hagnon, Leon, Lamachos, and Demosthenes. A Theagenes is included in the list. This Theagenes too is unlikely to have been a nonentity.

A more doubtful case is that of Xenophon *Hel.* 1.3.13, where a Theagenes is mentioned as one of five Athenian envoys to the King of Persia in 409 or 408. There is nothing to show that any of these men were prominent politicians. The identification of this Theagenes with the politician is no more than a possibility.

The politician Theagenes of Peiraieus, resident at Acharnai, emerges as a figure of some importance. As early as 425 he had talked his way to a position of sufficient prominence to be appointed Kleon's colleague; this implies a date of birth not later than 450, and perhaps considerably earlier. In 421 he was regarded as a leading Athenian of his time. A natural consequence of such prominence was personal jibes from the comedians, and he is mentioned in every extant comedy from *Wasps* in 422 to *Lysistrata* and *Demes* in 411. After 411, except for one very doubtful reference in Xenophon, he disappears from the scene until his appointment as a member of the Thirty. Why this gap? Far the most likely guess is that he was associated with the Four-hundred in 411, and consequently fell from popular favour, and regained influence only when another oligarchic regime was instituted in 404.

How early he began to hold anti-democratic views is a question which must be left unanswered. It is possible that even in 425 it was recognized that his political attitude was different from Kleon's; the simultaneous appointment to Pylos (Th. 4.27.3) of the demagogic Kleon and the oligarchic Theagenes might then be comparable to the appointment of Alkibiades and Nicias to Sicily in 415, each being intended as a counterweight to the other. But the evidence is really too slender to support a reconstruction of Theagenes's political views in the earlier part of his career. A politician might veer from a democratic to an oligarchic policy within a quite short period; Peisandros, for instance, made this change within a period of less than four years (*And.* 1.36). Nor does the charge that Theagenes was a talker and 'only promise' (as *E Birds* 1127 puts it) prove that he was a demagogue or a democrat, for it is little different from the charge made against the oligarch Theramenes: δεῖ δέ, ὃ Θηράμενες, ἄνδρα τὸν ἄξιον ζῆν οὐ προάγειν μὲν δεινὸν εἶναι εἰς πράγματα τοὺς συνόντας, ἂν δέ τι ἀντικόπτη, εὐθὺς μεταβάλλεσθαι, ἀλλ' ὥσπερ ἐν νηὶ διαπονεῖσθαι (*X. Hel.* 2. 3. 31).

Finally, what exactly was his name: Theagenes or Theogenes? Theogenes was a commoner name in Athens, but is also attested by Attic inscriptions (e.g. *IG* ii<sup>2</sup> 1750.11). Metrical considerations are unhelpful. If it were certain that Θεαγένης must be scanned as four syllables, and that the second syllable must be long, we

could condemn this form as unmetrical in Ar. *Peace* 928, *Birds* 1127, 1295, *Lys.* 63, and Eupolis fr. 110a; but in fact neither of these hypotheses is certain. First, θεά is sometimes scanned as one syllable (e.g. E. *Andr.* 978), and consequently Θεαγένης may sometimes have been scanned as three syllables; compare the contraction of Θεο- to Θεου- (e. g. Ar. *Knights* 1103, *Wasps* 1302). Secondly, though θεά has a long α, yet a compound formed from it may have a short α, just as σκιά has a long α and yet σκιάδειον has a short α. So it is impossible to reject this form on metrical grounds, and it is necessary to turn to a less reliable kind of testimony – the evidence of manuscripts.

The readings of the manuscripts in the passages in which our man is mentioned are as follows. (I have not examined the manuscripts myself; my information comes from the Budé texts of Aristophanes and Xenophon, the Oxford text of Thucydides, and the text and photograph of Eupolis fr. 110a given by Edmonds in *Mnemosyne* (series iii) viii (1940) page 2 and plate 1a. ‘All mss.’ means all manuscripts reported in the apparatus critici of these editions.)

	Θεα-	Θεο-
Ar. <i>Wasps</i> 1183	—	All mss.
Ar. <i>Peace</i> 928	All mss.	—
Ar. <i>Birds</i> 822	All mss.	—
Ar. <i>Birds</i> 1127	All mss.	—
Ar. <i>Birds</i> 1295	All mss.	—
Ar. <i>Lys.</i> 63	R, 1 <sup>1</sup> in Souda	E in R
Eupolis fr. 110a	—	Papyrus
Th. 4.27.3	G	Other mss.
Th. 5.19.2	All mss.	—
Th. 5.24.1	All mss.	—
X. <i>Hel.</i> 1.3.13 (identity doubtful)	V	Other mss.
X. <i>Hel.</i> 2.3.2	V	Other mss.

No certain conclusion can be drawn. But on the whole Θεα- has stronger support from the manuscripts than Θεο-. If we consider that names beginning Θεο- are commoner than names beginning Θεα-, and that corruption from Θεα- to Θεο- is therefore more likely than the reverse, it seems clear that Θεα- should be given the benefit of the doubt.



# Aigina and the Delian League

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It is usually taken for granted<sup>1</sup> that throughout the first part of the fifth century BC until her defeat by Athens in or about 457 Aigina was a member of the Peloponnesian League and was consistently hostile to Athens and to the formation and growth of the Confederacy of Delos. I believe that the evidence for this view is weak, and that Aigina was never a member of the Peloponnesian League but probably was a voluntary member of the Delian League from its formation.

About 494 King Kleomenes of Sparta invaded the Argolid and defeated the Argives at Sepeia. For this invasion he used some ships belonging to Aigina, which he had taken by force.<sup>2</sup> This implies that some kind of fight must have taken place recently between Aigina and the Spartans, or their allies. How could the Spartans, who were a land and not a sea power, capture ships from the Aiginetans, who had one of the largest fleets in Greece at that time?<sup>3</sup> Only with the help of an ally whose naval power was stronger than Sparta's. Obviously this ally must have been Corinth. Corinth was always a naval power, and at this period she was hostile to Aigina,<sup>4</sup> and she was undoubtedly a member of the Peloponnesian League. So the forces of the Peloponnesian League fought and defeated Aigina shortly before they defeated Argos in the middle 490s. There were, of course, traditional connexions between Argos and Aigina. Argos had assisted Aigina in a war against Epidauros and Athens long before;<sup>5</sup> while after her defeat at Sepeia Argos demanded a fine of 500 talents from Aigina as an atonement for her treachery,<sup>6</sup> and she could not have made this demand if she had not had, or claimed to have, some kind of alliance with her. It is therefore not surprising that the Peloponnesians should attack both Argos and Aigina at the same period.

During the period 493–488 there was a war between Athens and Aigina.<sup>7</sup> In this war Corinth helped Athens. In the middle of it the Persians attacked Athens, and Sparta, though late, sent help to Athens. Aigina on the other hand Medised (no doubt because her recent defeats had left her temporarily too weak to resist a Persian attack), and the kings of Sparta, at the request of Athens, took hostages from Aigina to ensure her neutrality during the Persian invasion.<sup>8</sup> It is clear, therefore, that during these years Aigina was on bad terms with the Peloponnesian

League as well as with Athens. In 483/2 Themistokles proposed that the Athenian navy should be built up to enable the war against Aigina to be renewed.<sup>9</sup> Two hundred ships were built, but they were not used against Aigina. On the contrary, they fought side by side with Aiginetan ships at Salamis, where the Aiginetan contingent was judged the most courageous of all.<sup>10</sup> And during this campaign Athens had enough confidence in Aigina's loyalty to entrust her with some of her own families.<sup>11</sup> It is clear that in 480 the quarrel between Athens and Aigina had been made up, and Aigina was as zealous as Athens in opposing the Persians. On the other hand the long-standing friendship between Athens and Aigina's traditional enemy, Corinth, was probably beginning to decline. Herodotos' account of the discussions of the Greek leaders before Salamis indicates disagreement between the representatives of Athens and Corinth, and though it may be exaggerated by later hostility between the two cities it must have some foundation in fact.

In 478 came the split between the Peloponnesian League and Athens which resulted in the foundation of the Confederacy of Delos – the split between those who thought that the war against Persia was finished and those who wanted it to continue. Which side did Aigina take? Her earlier alliances tell us nothing. Between 495 and 488 she fought against both Athens and the Peloponnesian League. In 480 and 479 she fought with both against the Persians. I hope to have shown in the preceding paragraphs that before 478 there is no reason to connect Aigina more closely with the Peloponnesian League than with Athens.

What other evidence or arguments are there to show that Aigina sided with Sparta and Corinth from 478 onwards ?

1. The Aiginetans were Dorians. But this proves nothing. The Argives were also Dorians, but they were not noteworthy for friendship with the Peloponnesian League.
2. Aigina is said to appear in the 'Spartan group' on the Serpent Column.<sup>12</sup> But the arrangement of this list of names is really too haphazard for any conclusion to be drawn from it. Those who claim that the list falls into three groups representing the allies of Sparta, Athens, and Corinth, and that Aigina falls in the Spartan group, are forced to admit, for example, that Melos falls in the Athenian group. No one would claim that Melos after 479 was an ally of Athens; this list does not prove, then, that Aigina after 479 was an ally of Sparta.
3. Polyarchos made a special journey from Aigina to Sparta to accuse the Athenians of continuing to rebuild their walls while Themistokles was negotiating at Sparta.<sup>13</sup> But there is no evidence even that Polyarchos was an Aiginetan, let alone an official representative of Aigina.<sup>14</sup>
4. Aigina helped Sparta at the time of the Helots' revolt?<sup>15</sup> But so did Athens.

There is, then, no evidence that Aigina joined Sparta and Corinth in withdrawing from the war in 478. Indeed it would be surprising if she had. The Aiginetans were traders, and so depended for their prosperity on the freedom of the seas from

Persian domination. Whereas Corinth's trade interests lay mainly in the west, where the Persians had not penetrated, Aigina had always looked eastwards?<sup>16</sup> It was in her interest that the naval war against Persia should be continued.

So there is no reason to reject the statement of Diodoros that some years later the Aiginetans broke away from the Athenians, with its clear implication that until then Aigina had been a member of the Delian League. This is his account of the war:

xi 70.1–4 (464/3): ἐπὶ δὲ τούτων ἀποστάντες Θάσιοι ἀπὸ Ἀθηναίων . . . ὁμοίως δὲ καὶ Αἰγινήτας ἀποστάντας Ἀθηναῖοι χειρωσόμενοι τὴν Αἶγινα πολιορκεῖν ἐπεχείρησαν· αὕτη γὰρ ἡ πόλις τοῖς κατὰ θάλατταν ἀγῶσι πολλάκις εὐημεροῦσα φρονήματός τε πλήρης ἦν καὶ χρημάτων καὶ τριήρων εὐπορεῖτο, καὶ τὸ σύνολον ἀλλοτρίως ἀεὶ διέκειτο πρὸς Ἀθηναίους. διόπερ στρατεύσαντες ἐπ' αὐτὴν τὴν χώραν ἐδήλωσαν, καὶ τὴν Αἶγινα πολιορκοῦντες ἔσπευδον ἐλεῖν κατὰ κράτος. καθόλου γὰρ ἐπὶ πολὺ τῇ δυνάμει προκόπτοντες οὐκέτι τοῖς συμμάχοις ὥσπερ πρότερον ἐπιεικῶς ἐχρῶντο, ἀλλὰ βιαίως καὶ ὑπερηφάνως ἤρχον. διόπερ οἱ πολλοὶ τῶν συμμάχων τὴν βαρύτητα φέρειν ἀδυνατοῦντες ἀλλήλοις διελέγοντο περὶ ἀποστάσεως, καὶ τινες τοῦ κοινοῦ συνεδρίου καταφρονήσαντες κατ' ἰδίαν ἐτάττοντο.

xi 78.3–4 τοιούτων δὲ εὐημερημάτων αὐτοῖς γενομένων, τοὺς Αἰγινήτας ὀρῶντες πεφρονηματισμένους μὲν ταῖς προγεγενημέναις πράξεσιν, ἀλλοτρίως δὲ ἔχοντας πρὸς αὐτούς, ἔγνωσαν καταπολεμῆσαι. διὸ καὶ στόλον ἐπ' αὐτούς ἀξιόλογον ἀποστειλάντων τῶν Ἀθηναίων, οἱ τὴν Αἶγινα κατοικοῦντες, μεγάλην ἐμπειρίαν ἔχοντες καὶ δόξαν τῶν κατὰ θάλατταν ἀγώνων, οὐ κατεπλάγησαν τὴν ὑπεροχὴν τῶν Ἀθηναίων, ἔχοντες δὲ τριήρεις ἰκανὰς καὶ προσκατασκευάσαντες ἑτέρας, ἐναυμάχησαν, καὶ λειφθέντες ἀπέβαλον τριήρεις ἑβδομήκοντα· συντριβέντες δὲ τοῖς φρονήμασι διὰ τὸ μέγεθος τῆς συμφορᾶς, ἠναγκάσθησαν εἰς τὴν Ἀθηναίων συντέλειαν καταταχθῆναι. ταῦτα μὲν οὖν Λεωκράτης ὁ στρατηγὸς κατεπράξατο τοῖς Ἀθηναίοις, τοὺς πάντας διαπολεμήσας μῆνας ἑννέα πρὸς τοὺς Αἰγινήτας.

It may be thought that in the first of these two passages the statement that Aigina τὸ σύνολον ἀλλοτρίως ἀεὶ διέκειτο πρὸς Ἀθηναίους contradicts the statement that the war was a revolt from the Delian League just like the revolt of Thasos. If it does, the one which we should reject is the single vague statement about general hostility, not the other more precise part of the account with its deliberate comparison between Thasos, Aigina, and the other allies.

Diodoros' dates may be wrong, yet his facts may be right. He tells us that Aigina revolted from Athens, and the Athenians ravaged the land of Aigina and besieged the city (but apparently did not take it). A little later (how much later we cannot tell, for no doubt Diodoros' dates here as often are unreliable) the Athenians resolved to subdue the Aiginetans completely. They equipped a large expedition, and the Aiginetans were defeated in a sea battle in which they lost seventy ships,

and so were forced to join the Athenians' συντέλεια. A συντέλεια is a group of cities contributing money to a common treasury. This sentence therefore means that the Aiginetans now had to contribute money to the treasury of the League; before now of course they will have contributed ships to the common fleet.

Diodoros therefore describes a revolt by Aigina from the Delian League, suppressed by the Athenians in two stages. How does this compare with the brief account of the same events given by Thucydides ?

i 105.2–4: πολέμου δὲ καταστάντος πρὸς Αἰγινήτας Ἀθηναίοις μετὰ ταῦτα ναυμαχία γίνεται ἐπ' Αἰγίνῃ μεγάλη Ἀθηναίων καὶ Αἰγινήτων, καὶ οἱ ξύμμαχοι ἑκατέρωθεν παρήσαν, καὶ ἐνίκων Ἀθηναῖοι καὶ ναῦς ἑβδομήκοντα λαβόντες αὐτῶν ἐς τὴν γῆν ἀπέβησαν καὶ ἐπολιόρκουν, Λεωκράτους τοῦ Στροίβου στρατηγοῦντος. ἔπειτα Πελοποννήσιοι ἀμύνειν βουλόμενοι Αἰγινήταις ἐς μὲν τὴν Αἰγίναν τριακοσίους ὀπλίτας πρότερον Κορινθίων καὶ Ἐπιδαυρίων ἐπικούρους διεβίβασαν, τὰ δὲ ἄκρα τῆς Γερανεΐας κατέλαβον καὶ ἐς τὴν Μεγαρίδα κατέβησαν Κορίνθιοι μετὰ τῶν ξυμμάχων, . . . οἱ δὲ Ἀθηναῖοι τὸ μὲν πρὸς Αἰγίνῃ στράτευμα οὐκ ἐκίνησαν . . .

i 108.4: ὡμολόγησαν δὲ καὶ οἱ Αἰγινήται μετὰ ταῦτα τοῖς Ἀθηναίοις, τείχη τε περιελόντες καὶ ναῦς παραδόντες φόρον τε ταξάμενοι ἐς τὸν ἔπειτα χρόνον.

Thucydides gives a different order of events; for him the war begins with a sea battle in which the Athenians capture seventy ships, and then follows the siege, which ends in Aigina's capitulation. This certainly seems a more natural sequence, and so is probably the right one. But is there anything in this account to cast suspicion on Diodoros' statement that the war was the result of an attempt by Aigina to break away from the Delian League? It is true that Thucydides does not say that the war started as a revolt. But neither does he say that it did not; and this, after all, is not the only omission in his account of the Pentekontaetia.

Three other features of his account should be noticed:

1. In the sea battle with which the war began both the Athenians and the Aiginetans were supported by their allies. After this battle, the Peloponnesians wished to help the Aiginetans and so sent troops to Aigina and invaded the Megarid. This seems to me to imply that the Peloponnesians did not help Aigina in the sea battle; that is, that the Peloponnesians were not among the allies of Aigina.
2. The decision of the Peloponnesians to help the revolt by invading the Megarid recalls their decision to help the revolt of Thasos a few years earlier by invading Attica.<sup>17</sup> It is the normal Peloponnesian reaction to the revolt of a member of the Delian League.
3. The terms eventually imposed by Athens on Aigina were almost exactly the same as those imposed on Thasos, which are described by Thucydides in very similar phrases:

i 101.3: Θάσιοι δὲ τρίτῳ ἔτει πολιορκούμενοι ὠμολόγησαν Ἀθηναίοις τεῖχος τε καθελόντες καὶ ναῦς παραδόντες, χρήματά τε ὅσα ἔδει ἀποδοῦναι αὐτικά ταξάμενοι καὶ τὸ λοιπὸν φέρειν, τὴν τε ἡπειρον καὶ τὸ μέταλλον ἀφέντες.

In short, Thucydides' account of the war between Athens and Aigina may well be the account of the suppression by Athens of a revolting ally, and I see no good reason to reject the clear implication of Diodoros that Aigina was one of the original members of the Delian League.

## Notes

- 1 E.g. 'Aegina . . . was a leading member of the Peloponnesian League' (E. M. Walker in *CAH* iv 260); '[In 491] Athens was, like Aegina, a member of the Peloponnesian League' (J. B. Bury, *History of Greece* [3rd ed., 1951] 259); 'Aigina . . . no doubt withdrew from naval operations along with the Peloponnesians at the end of 478' (*ATL* iii 197).
- 2 Hdt. vi 92.1.
- 3 In Hdt. vi 89 the Athenians do not have enough ships to fight the Aiginetans until they have borrowed twenty from Corinth, making a total of seventy.
- 4 Hdt. vi 89; cf. Thuc. i 41.2.
- 5 Hdt. v 86.4.
- 6 Hdt. vi 92.2.
- 7 Hdt. vi 87–93. See A. Andrewes, 'Athens and Aegina, 510–480 BC' in *BSA* xxxvii (1936–1937) 1–7, on the dates of the events in this war. His arrangement of them may be correct; but in any case the precise dating of these events does not affect my argument.
- 8 This event is the main piece of evidence adduced by D. M. Leahy in his article 'Aegina and the Peloponnesian League', in *CP* xlix (1954) 232–43, in favour of his view that Aigina joined the Peloponnesian League before 491. He argues that Sparta would have had no legal right to seize the hostages if Aigina had not been a member of the League. But it seems clear to me that the case is one of might, not right. When the Aiginetans found that the hostages were demanded not just by one Spartan king (who might lack the support of the nation as a whole) but by both, they realised that resistance was useless, and decided (Hdt. vi 73.2 ἐδικαίειν need mean no more than this; cf. iv 154.2) to give in. To argue that this proves Sparta and Aigina to be allies seems to me paradoxical. Seizure of hostages is the act of an enemy, not of a friend.
- 9 Hdt. vii 144.1.
- 10 Hdt. viii 122.
- 11 Hdt. viii 4.
- 12 This point is made in *ATL* iii 96.
- 13 Plu. *Them.* 19.2.
- 14 Of course the passive of ἀποστέλλω often means not 'be sent' but merely 'go' or 'set out', so that Plutarch does not say that Polyarchos was sent by the Aiginetans or by anyone.
- 15 Thuc. ii 27.2.
- 16 Aigina had a shrine of her own at Naukratis (Hdt. ii 178.3), and was perhaps the only city in or near mainland Greece to take part in that colony. Even in 480 the ships that Xerxes saw sailing through the Hellespont were on their way to 'Aigina and the Peloponnese' (Hdt. vii 147.2).
- 17 Thuc. i 101.1.

# Leogoras at Ennea Hodoi

(Originally published in *RhM* 102 [1959] 376–8)

The scholiast on Aischines 2. 31 gives a list of Athenian defeats at Ennea Hodoi (later Amphipolis) in Thrace:

Ἐννέα ὁδῶν] ἠτύχησαν Ἀθηναῖοι ἐννάκις περὶ τὰς Ἐννέα καλουμένας ὁδοὺς, . . . τὰ δὲ ἀτυχήματα ἐγένοντο τάδε· τὸ πρῶτον μὲν Λυσιστράτου καὶ Λυκούργου καὶ Κρατίνου στρατευόντων ἐπ' Ἡϊόνα τὴν ἐπὶ Στρυμόνι διεφθάρησαν ὑπὸ Θρακῶν, εἰληφότες Ἡϊόνα, ἐπὶ ἄρχοντος Ἀθήνησι Φαίδωνος· δεύτερον οἱ μετὰ Λεάγρου κληροῦχοι. ἐπὶ Λυσικράτους·

Lysikrates was archon in 453/2. In this mention of Leogoras and Lysikrates it has generally been thought (e. g. by Meritt, Wade-Gery, and McGregor, *The Athenian Tribute Lists* iii: 170) that either the scholiast is confused or his text corrupt, and that the reference is to the defeat of Leagros at Drabeskos (or Daton) in the archonship of Lysitheos (465/4), or possibly of Lysanias (466/5) or Lysistratos (467/6). (This defeat is mentioned by Hdt. 9. 75, Th. 1. 100. 3 and 4. 102. 2, Isok. 8. 86, Diod. 11.70. 5 and 12. 68. 2, and Paus. 1. 29. 4–5.) But A. E. Raubitschek, in *Rheinisches Museum* xcvi (1955) 261 note 8, maintains that the scholiast's statement should be accepted at face-value, and that we should believe that some Athenian klerouchs were defeated at Ennea Hodoi in 453/2, and that their leader was Leogoras, father of Andokides the orator.

I believe that Raubitschek is wrong. But so much else in his paper may win general acceptance that his mistake in this note deserves detailed refutation.

In the first place, there are two reasons why Leogoras, the father of Andokides, cannot be concerned.

1. His age is not known. But he was certainly still alive in 415 (And. On *the Mysteries*), and probably in 410 (if that is the date of Eupolis 44). His father Andokides was a strategos as late as 441/0 (Androtion fr. 38). His son Andokides is usually thought (from And. 2. 7 and [Lys.] 6. 46, disregarding [Plu.] *Life of Andokides* 15) not to have been born until about 440.

So Leogoras can hardly have been born before 480, and is not likely to have been old enough to be the leader of a klerouchy in 453/2.

2. In the scholiast's text, οἱ μετὰ Λεωγόρου κληροῦχοι has no verb. The verb to be understood must be διεφθάρησαν, from the previous part of the sentence. This seems to imply that Leogoras, along with the other klerouchs, was killed. Yet the father of Andokides was still alive years afterwards.

It is of course possible that the father of Andokides was not the only Leogoras alive at that time. The orator's great-grandfather, if not already dead, must have been too old to lead klerouchs in 453/2 (for And. 1. 106 tells us that he fought against the Peisistratids). There is another shadowy figure who might be invoked – the father of the Drakontides whose name Stahl restored in Th. 1. 51. 4; however, Jacoby (*F. Gr. Hist.* commentary on 323 a F 24) has cast doubt on his existence. But it is unnecessary to call on him; there are two more reasons for believing that no klerouchy (or colony; one cannot be sure that the scholiast uses κληροῦχοι precisely) or defeat took place at all at Ennea Hodoi in 453/2.

1. The scholiast is giving a list of all the Athenian defeats at Ennea Hodoi. Yet he does not mention the defeat of Leagros. This defeat was remembered later as one of the greatest disasters in the whole of the fifth century, and 10,000 of the Athenians and their allies were thought to have been killed (Isok. 8. 86). It is incredible that the scholiast (or his authority) should either have been ignorant of it (although not ignorant of the less important expedition from Eion in 476/5, not mentioned by Thucydides) or have thought it too trivial to mention. It is almost as hard to believe (as Raubitschek suggests) that he omitted it on the ground that the battle occurred not at Ennea Hodoi itself but at Drabeskos, a few miles further inland; for it is clear that the defeat at Drabeskos compelled the abandonment of Ennea Hodoi.
2. Thucydides 4.102.2–3 gives a list of attempts to found colonies on the site of Amphipolis: first that of Aristagoras; then, 32 years later, the colonists who were destroyed at Drabeskos; and then, in the 29th year after that, the foundation of Amphipolis by Hagnon. He does not record an attempt in 453/2. His references to the Pentekontaetia are notoriously incomplete; yet in a dated list of this sort it would be strange to omit an Athenian attempt to found a colony while including the attempt of Aristagoras. (The fact that he does omit the expedition from Eion to Ennea Hodoi in 476/5 is irrelevant, since there is no evidence that the purpose of this expedition was to found a colony.)

Each of these objections taken by itself might be not quite conclusive. But together they seem to me overwhelming. The scholiast's statement cannot be correct; Leogoras has been confused with Leagros and Lysikrates with one of the other archons beginning with Lys-. A mistake of this kind could be made only by a person with some knowledge of Athenian history, and so is more likely to

be due to the scholiast himself (or his authority) than to a later copyist. To get two names wrong in one sentence is a mark of gross carelessness, and not everyone will agree with Gomme (*Commentary on Thucydides* i. 391) that this scholiast is 'a good source'.



# Douglas M. MacDowell

## (1931–2010)

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