

**AN HISTORICAL COMMENTARY ON  
LYKOURGOS AGAINST LEOKRATES.**

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**The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.**

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## ABSTRACT

This thesis is an historical commentary on Lykourgos' prosecution speech *Against Leokrates*. The introduction comprises various sections. The first is a brief consideration of the specific historical background to the oration in Athens and the wider Greek world. The second looks at the orator Lykourgos himself, one of the most significant figures of Classical Athenian history who could be described as a fourth-century equivalent of Perikles. Lykourgos was 'Controller of Athenian finances' for more than a decade following the Athenians' defeat by Philip at Khaironeia in 338 B.C. During this period, Lykourgos used his dominant position effectively to rebuild Athens structurally, aesthetically and culturally. He could thus be considered to be of far greater significance than his much better-known contemporary Demosthenes, even if it is accepted that he was a less effective orator. There are, however, reasons to believe that he was in fact not less effective, for the ancient view of Lykourgos as a prosecutor was that his 'pen was dipped in blood'. This has, indeed, proved a puzzle in terms of this one surviving speech, which Lykourgos has unanimously been deemed to have lost. The remainder of the introduction looks in detail at *eisangelia*, the procedure under which Lykourgos prosecuted Leokrates, and the sole reference to the outcome of the case (Aiskhin. 3.252), and re-evaluates this assessment. It concludes that there are juridical and rhetorical reasons to suggest that Aiskhines has been misinterpreted and that Lykourgos in fact won this case, failing by one vote on a second ballot to secure a majority for a punishment of execution. The introduction concludes by re-evaluating the structure of the speech which has been overwhelmingly seen as a mass digression into poetic quotations. It suggests that previous assessments of the speech as a failure have worked against an objective consideration of Lykourgos' tactics, and have therefore masked the structure inherent to the speech as a whole. The commentary itself has an historical, rather than rhetorical or linguistic, focus, and is subdivided into sections which reflect the structure outlined in the introduction.

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## ABBREVIATIONS AND CONVENTIONS

*APF* = Davies, J.K., *Athenian Propertied Families 600–300 B.C.* (Oxford, 1971).

*ATL* = Meritt, B.D., Wade-Gery, H.T. & McGregor, M.F. *The Athenian Tribute Lists*. 4 vols. (vol. i: Cambridge, Mass., vols. 2–4: Princeton, 1939–1953).

*BGM* = Westerman, A., *Biographi Graeci Minores*. (Amsterdam, 1845).

*FGH* = Jacoby, F., *Die Fragmente der Griechischen Historiker*. (Leiden, 1923–1955).

*GHI* = Tod, M., *A Selection of Greek Historical Inscriptions*. 2 vols. i: 2nd edn.; ii. 1st edn. (Oxford, 1946–1948).

*IG* = *Inscriptiones Graecae*. (Berlin, 1873–).

*Lex. Cant.* = Dobree, P.P., *Lexicon Rhetoricum Cantabrigiense*. (Cambridge, 1834).

*LGPN* = Fraser, P.M. & Matthews, E. (eds). *A Lexicon of Greek Personal Names*. 3 vols. in 4. (Oxford, 1987–).

*ML* = Meiggs, R. & Lewis, D.M, (eds)., *A Selection of Greek Historical Inscriptions to the End of the Fifth Century B.C.* Revised edn. (Oxford, 1998).

*PA* = Kirchner, J.E., *Prosopographia Attica*. 2 vols. (Berlin, 1901–1903).

*SEG* = *Supplementum Epigraphicum Graecum*. (1923–).

*SIG* = Dittenberger, W., *Sylloge Inscriptionum Graecorum*. 3rd edn. 4 vols. (Berlin, 1915–1921).

References to *APF*, *FGH*, *GHI*, *IG*, *ML*, *PA*, *SEG*, and *SIG* are to item numbers; all others are to page numbers with # indicating item numbers.

Journals are cited after the style of *L'année Philologique*. Ancient sources are generally cited after the style of Liddell & Scott, though I have tried to avoid Latinization. Thus Isokrates will appear in the references as Isok., rather than Isoc. I have also tried to be consistent throughout the text itself in this respect, but there

are times when this has proved extremely difficult: some words which are very familiar in English simply look wrong when transliterated. I have therefore been unable to bring myself to discard ‘Aegean’ and ‘Corinth’, though Lykourgos and Aiskhines seem more acceptable than Lycurgus and Aeschines. This has led, at times, to an uncomfortable co-existence, but one which has at least minimized the need for wholesale Latinization. In a similar vein with transliterated *upsilon*, *sykophantēs* and *asty* seem right, whereas *toy emporioy* simply looks wrong; I admit defeat in achieving consistency in this respect.

The text used is Conomis 1970. Also useful for comparison have been those of Petrie 1922 and Durrbach 1956.

## PREFACE

Forensic oratory presents some awkward methodological problems. Speeches, originally produced to achieve a legal victory, were delivered in a judicial setting and might then be published, perhaps to advertise the logographer's abilities or as a teaching aid for rhetoricians. The speeches we have inherited, therefore, mainly through Alexandrian copyists who often canonized oratorical models for stylistic and rhetorical purposes, may not be the original versions.<sup>1</sup> MacDowell suggests that it may, in fact, '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'.<sup>2</sup> Dover, too, considers that there is 'a substantial gulf ... between what was uttered and what was put in writing', though he notes that it is obvious that an orator's reputation would not be remotely harmed by 'detection of inaccuracies and distortions in his published speeches': what mattered was the result of the case and this affected his reputation far more than the discovery of a lie or mistake.<sup>3</sup> This would clearly militate against the need for revision, and Todd argues that despite the 'improvements' which have clearly been made to the two matching pairs of Aiskhines 2/Demosthenes 19 and Aiskhines 3/Demosthenes 18, preserved speeches seem to offer little evidence for 'touching up' an initial oration to eliminate error or specious argument.<sup>4</sup>

Despite the fact that, unlike the jurors in their immediate audience, orators were able to read and re-read the speech before publication, they often seem not to remove many examples of suppression, fallacy and illogicality, if not downright lies. Although it is, as Todd notes, probably a subjective judgement in the end as to whether and why a speech has been polished, it must be assumed that not all such imperfections, nor their eradication from the published version, resulted from weak cases, or cases where the extant speech represented a client 'in the wrong'.<sup>5</sup>

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<sup>1</sup> See Gabba, 60ff.; Humphreys 1985c, 316f.; Todd 1990a, 164 ff.; Worthington 1991, *passim*; MacDowell 2000a, 567f.

<sup>2</sup> MacDowell 2000a, 567.

<sup>3</sup> Dover 1968, 169ff. See too Ober 1989a, 49 n. 113.

<sup>4</sup> Todd 1990a, 167.

<sup>5</sup> Todd 1990a, 171f., arguing especially against Isager and Hansen's methodology of assuming that lies or suppression indicate weakness of case, and proceeding to build the

The problems raised by such alterations, together with questions of whether, and why, numbers and dates were changed, and whether ‘private’ and ‘public’ knowledge was adapted, are unyielding, perhaps insoluble, yet further difficulties exist.<sup>6</sup>

One is our frequent inability clearly to determine when the text is making assumptions about our background knowledge, and whether that knowledge would represent genuine facts, or simply something the speaker wishes us to identify with.<sup>7</sup> There is the difficulty, too, of the type of procedure the oration is prepared for. Todd cites Lysias 13 as a prosecution which failed as a result of a weak case supported by fatuous arguments; for Todd, Lysias’ case, and the argument he chooses to support it, is not the main issue and, in any case, the jury was not there inquisitorially, but to decide which thesis they *preferred*.<sup>8</sup> By using an *apagōgē* and risking the penalty for not securing the vote of one-fifth of the jury, Lysias must have felt, Todd suggests, that passions were running so high that he could not lose. If this was the case, then Lysias’ judgement was evidently flawed. Perhaps, however, the use of the procedure itself was a bluff, the jury being supposed to think that Lysias would not risk such a process if he were not in the right, however weak his argument was. If this scenario is correct, then Lysias’ gamble did not pay off. Clearly more than one interpretation is possible of the rationale behind a prosecutor’s choice of procedure and, similarly, behind the construction of his speech.<sup>9</sup>

Problems are also posed by very clear cultural differences in ideas about the nature and function of witnesses and impartiality, and indeed evidence, which included the laws themselves.<sup>10</sup> None the less, Todd argues that further commentaries on extant orations are essential, and suggests that one approach might be to disregard anything an orator says that actively helps his particular

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presumed facts of the case from that assumption. See too Dover 1968, 151ff.; Carey and Reid, 15f.; Worthington 1994c, 115–118.

<sup>6</sup> Todd 1990a, 167.

<sup>7</sup> See Arist. *Rhet.* 1408a25–36; Dover 1968, 148–174; Usher 1976, 36f.; Humphreys 1985c, 318; Ober 1989a, 48 n. 112; Boegehold 2000, 599; Pelling, 37–43.

<sup>8</sup> Todd 1990a, 172f.

<sup>9</sup> See too R. Osborne 1985a, *passim*; Todd 1993, 7–10.

<sup>10</sup> See Harrison 1968–1971, ii, 134f.; Todd 1990b, *passim*; Todd 1993, 58ff.

case, and to accept only incidental remarks made without elaboration.<sup>11</sup> As Harding notes, indeed, there is no trick known to modern politicians that was not known to ancient orators.<sup>12</sup> Yet there is often no way of knowing what is incidental, or where knowledge is being taken for granted, without the background of legal framework and rhetorical devices which commentaries provide.<sup>13</sup> It is hoped that this commentary will provide some such background for Lykourgos *against Leokrates*, and that it will contribute to the generic corpus of commentaries in which, for too long, this sole surviving Lykourgan speech has been largely ignored.

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<sup>11</sup> Todd 1990a, 168, 174.

<sup>12</sup> Harding 1987, *passim*, esp. 38f.

<sup>13</sup> See too Wolff 1975b, *passim*.

## INTRODUCTION

### HISTORICAL AND POLITICAL BACKGROUND

#### *ATHENS*

After Philip of Macedon's victory at Khaironeia in 338 B.C., overall control of Athenian state finances passed to Lykourgos.<sup>14</sup> For the twelve years during which he remained, at least nominally, in control, Athens experienced inordinate prosperity, at least in fourth-century terms, as annual state income increased from 400 to 1200 talents and a series of public expenditure programmes echoed the Periklean glory days of the previous century.<sup>15</sup> It was, perhaps, Athens' relative success which simultaneously facilitated and undermined the spirit of nationalism prevailing in the period after Khaironeia, for although Athens had the leisure and prosperity to consider what action she might take, there was a clear need to reach some sort of pragmatic accommodation with Macedon to maintain that leisure and prosperity, rebellion being practically, as well as financially, inadvisable.<sup>16</sup>

Perhaps the principal pragmatist in this respect was Aiskhines, though he, like Demosthenes, was at pains to play down his part in the negotiations of the Peace of Philokrates.<sup>17</sup> Sealey argues that Aiskhines had little ulterior motive in his

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<sup>14</sup> Both the date and the office itself are disputed, see introduction, 17f., below.

<sup>15</sup> Burke 1985, 251f., 260ff., assesses the most likely state sources of the increased income as the mines and the Peiraieus, since only these 'possessed the necessary potential'. Non-state sources comprised commercial and fiscal incomes from the much expanded metic population and the increased business of the courts and emporia. See too Andreades, 126–189, 268–303.

<sup>16</sup> See Reinmuth 1971a, *passim*; Mitchel 1973, *passim*; Will, 22f., 98ff., argues that the idea that Lykourgos was passionately anti-Macedonian was a fiction, though he perhaps goes too far in seeing Lykourgos as prepared to compromise Athens to quite a large extent. The situation changed in 323 B.C.: Alexander was known to be dead; Athens had had a decade and a half of peace and prosperity and now had a reorganized and apparently effective fighting force; there was a consensus for rebellion which included even the Thessalians and the Aitolian League; and the cream of the Macedonian troops were in Asia. Yet the forces under Antipater still outnumbered those nominally under Athenian control, and the military preparation and prosperity provided during the Lykourgan era could not compensate for the inevitable lack of fighting experience and practice of troops which were no longer battle-hardened. See too Hammond and Walbank, 107–117; Adams, 231f.

<sup>17</sup> Aiskhin. 3.58–68, 148–151.

prosecution of Ktesiphon in 330 B.C. to disclaim his part in the peace.<sup>18</sup> Yet Aiskhines was attempting to display Demosthenes' advice as consistently harmful to Athens as well as hypocritical, and it would be in his interests both to show that Demosthenes was responsible for isolating Athens in negotiations with Macedon, and that Demosthenes had once more turned aside from a chance to fight, the course of action which Aiskhines had originally advocated. Aiskhines therefore implies that he had only grudgingly accepted the Peace of Philokrates in 346 B.C., after repeated attempts to rally a Greek alliance had failed, and when Athens itself needed an individual accommodation with Macedon to protect the grain supply in the face of Macedonian advances in Thrace.

Harris suggests that Aiskhines had bowed to the inevitable and never again tried to revive his earlier policy of allied resistance, pouring cold water on what was effectively Demosthenes' conversion to his ideas.<sup>19</sup> Yet in his speech against Timarchos in 345 B.C., Aiskhines was still defending, if not boasting, of the part he had played in negotiating the Peace.<sup>20</sup> By 343 B.C., however, when the expected fruits of the Peace had failed to materialize, and in view of Hypereides' successful prosecution of Philokrates for treason, Aiskhines shifted his position, needing to defend himself against Demosthenes' charges of treason with regard to the second embassy.<sup>21</sup> Thus he justified his part in negotiating the Peace on the basis of the contemporary contingencies of the situation in Athens, offering little in the way of a defence beyond a different interpretation of the facts and the suggestion that the peace was, at least, better than war.<sup>22</sup>

None of this undermines Harris' argument, however, that Aiskhines was in fact a committed patriot who had, on the one hand, overestimated Philip's interest in Athens and, on the other, underestimated Philip's desire for a balance of power in the Greek states to obviate rebellion against Macedon.<sup>23</sup> Macedonian involvement in the Greek political world had changed all the rules, and there were inevitable

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<sup>18</sup> Sealey 1993, 164.

<sup>19</sup> Harris 1995, 150.

<sup>20</sup> Aiskhin. 1.166–169, 174.

<sup>21</sup> Aiskhin. 2.3–6.

<sup>22</sup> See too Ellis 1994b, 760ff.; Harris 1995, 50–6, 107–123.

<sup>23</sup> Harris 1995, 153f.

disagreements on policies such as whether and how to resist Philip, and how to recover Athenian prosperity.<sup>24</sup> It is, however, perhaps in the area of financial administration that such disagreements in policy can best be perceived, exemplified by a general entrenchment and moderation of the radical democracy, and the new financial offices of the fourth century to which officers were elected, as well as by an increasing specialization of rhetors and *stratēgoi*.<sup>25</sup>

### *SPARTA*

Further afield, in 334 B.C., Alexander disbanded his fleet, apparently planning to undermine the Persian fleet by depriving it of its bases on the Mediterranean coasts. A large Persian fleet was sent to the Aegean, where Dareios III handed over its control to Memnon of Rhodes. The Persian plan seems to have been to secure the major Eastern Greek islands and take the war to Macedon. Memnon was victorious at Khios and besieged Mytilene, dying there of disease, and was succeeded by Pharnabazos, to whom Mytilene yielded.<sup>26</sup> These operations aroused Spartan and Athenian attention and both sent embassies to Dareios.<sup>27</sup> Agis III, King of Sparta since 338 B.C., was himself attempting to hire mercenaries with Persian financial help, but whilst he was conferring with Pharnabazos, news of Issos arrived and Pharnabazos' fleet of allies disintegrated to make peace with Macedon.<sup>28</sup> Agis now had no naval support and needed to delay his challenge to Antipater; taking 8000 mercenaries who had fought for Dareios at Issos, Agis captured cities in Crete to increase his force, which took most of 332 B.C. His gains, however, for Cartledge and Spawforth, were as nothing compared with the disaster of the defection of the Persian fleet, which

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<sup>24</sup> See too Ferguson 1911, 7ff.; Cawkwell 1969, *passim*; Markle 1976, *passim*; Bosworth 1988, 211ff.; Ober 1989a, 333–336; Lane Fox, 143–155.

<sup>25</sup> See too Mitchel 1973, *passim*; J.T. Roberts, 168–82; Hansen 1983b, 39f, 49–55; Hansen 1983c, *passim*; Rhodes 1986, 139–142; Hansen 1991, 270.

<sup>26</sup> Arr. An. 1.18.6–2.1.5; Curt. 3.1.19ff.; D.S. 17.23.1–31.6; Plut. Alex. 17f.; see too Hammond 1986, 601–608; Sealey 1993, 205; Heckel, 193–199.

<sup>27</sup> The Spartan envoy was Euthykles, who bore the same name as a previous envoy to Susa in 337 B.C. Athens' envoy was Iphikrates, son of the famous Iphikrates who had served the Persians in the Egyptian campaign in 373 B.C. The envoys seem to have been carefully selected, and late in 333, after Dareios had been defeated by Alexander at Issos, they were captured by Parmenion at Damascus.

<sup>28</sup> Sealey 1993, 205f.; Heckel, 198, suggests that Pharnabazos had met Agis with the intention of fostering revolt in the Peloponnese.



gave Alexander control of the sea.<sup>29</sup> In spring 331 B.C., Agis put his plan into action, and at the same time, in what might have been a co-ordinated action, Memnon, whom Alexander had left to control Thrace, revolted. Agis' campaign was successful at first, but after Antipater and Memnon reached a compromise whereby Memnon continued to govern in Thrace, Antipater was free to advance to the Peloponnese. Battle was joined at Megalopolis, where Agis was killed and his forces defeated.<sup>30</sup>

Cartledge and Spawforth dismiss claims that Agis' action was a minor skirmish, despite Alexander's cursory dismissal of it as inconsequential. Even allowing that Badian's count of the opposing forces might be optimistic, they grant that it is not seriously amiss. Towards 32,000 men were deployed under Agis, facing 40,000 under Antipater: the largest land battle on Greek soil since Plataia.<sup>31</sup> There was, none the less, no overt Athenian action at this time, though there are indications that Athens considered and rejected becoming involved.<sup>32</sup> According to Deinarkhos, Demosthenes did little or nothing during Agis' uprising; Sealey suggests that he perhaps refused to sanction Athens joining the Spartans because they had opted out of Khaironeia and he wanted to wait and see what effect Dareios had on Alexander. If so, Sealey argues, he made the wrong choice because there was now no opposition left to Macedon: worse than doing nothing, Demosthenes had seen that nothing was done.<sup>33</sup>

Perhaps, though, Athens' inaction was grounded in the proximity of the Macedonian garrison on the Theban Kadmeia, which was nearer to Athens than the equivalent garrison at Corinth was to Sparta.<sup>34</sup> Moreover, there might have

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<sup>29</sup> Cartledge and Spawforth, 21f. Dareios' forces scattered after Issos: Arr. *An.* 2.11.8, 3.2.3–7; Curt. 3.11.1–13.17, 4.1.27–37; D.S. 17.34.7–35.1; Bosworth 1988, 62f.

<sup>30</sup> Sparta perhaps now corralled into the League of Corinth: Sealey 1993, 206; doubted by Cartledge and Spawforth, 24f. Antipater's tactics and manpower: Badian 1994, 268–277.

<sup>31</sup> Cartledge and Spawforth, 22f.; see too Badian 1967, *passim*; Borza, *passim*; Lock, *passim*; Badian 1994, 259–268.

<sup>32</sup> Dem. 17.5–9; Plut. *Mor.* 818E; see too Mitchel 1973, 171f; Will, 71–77.

<sup>33</sup> Sealey 1993, 206f.; see too Mitchel 1973, 171.

<sup>34</sup> Sealey 1993, 207; see too Potter, *passim*, who suggests that Agis was not necessarily seen as a saviour either by Athens, or by other Greek states, but was viewed, perhaps, still as an enemy capable of sinking to any depths to regain Spartan hegemony. Harding 1995,

been little point in any alliance from Sparta's viewpoint, for despite Athens' relative prosperity, most Greek cities not only continued to recognize Messenia, but were also impoverished and debilitated: thus they turned to Persia instead.<sup>35</sup> Recriminations in Athens inevitably followed the Persian defeat at Issos and Agis' failure, and Bosworth suggests that Aiskhines used the occasion to indict Demosthenes' entire political career.<sup>36</sup> It was also at this low point that the city's chief financial officer and self-appointed moral guardian, Lykourgos, prosecuted a certain Leokrates for fleeing from Athens eight years earlier, in the immediate critical aftermath of the defeat at Khaironeia.

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109 argues for a cohesive Athenian policy which saw little point in wasting men or money on the enterprise.

<sup>35</sup> Thus Cartledge and Spawforth, 19f.

<sup>36</sup> Bosworth 1988, 213f.; see too Sealey 1993, 211f.

## LYKOURGOS

The origins of the Eteobutadai are linked with Butes, a mythic Ionian who appears in different places, but always with a connection to Poseidon.<sup>37</sup> The family had lost one member in Kimon's Thracian campaign and one of the grandfathers of the orator Lykourgos, also named Lykourgos, had been executed by the Thirty. This elder Lykourgos was probably a member of the wealthy, ruling elite, and may have been one of the *Hellēnotamiai*, though it is impossible to be sure because the principal source, Plutarch's biography of the orator Lykourgos, is particularly ambiguous in its opening remarks.<sup>38</sup> According to Stratokles' honorary decree of 307 B.C., the elder Lykourgos received public burial in the Kerameikos, together with his father, Lykomedes, great-grandfather of the orator. Nothing is known of the elder Lykourgos' son, Lykophron, father of the orator.<sup>39</sup>

The orator Lykourgos was born in 390 B.C., and was a pupil of both Plato and Isokrates.<sup>40</sup> One branch of his family held the hereditary priesthood of Poseidon Erekhtheus, the other, the priestesshood of Athene Polias.<sup>41</sup> Aleshire argues that since Plutarch reports how one of Lykourgos' sons, Habron, stepped aside for another, Lykophron, to take up the priesthood of Poseidon Erekhtheus, its hereditary nature is called into question; the known holders in Plutarch's genealogy are Habron and Lykophron, and then a late second century B.C. politician connected in some way with Lykourgos' family on the female line: other priests, from the first and second centuries A.D., are completely unconnected with the family. Aleshire concludes, therefore, that the priests were probably elected by lot from the Eteobutadai *genos*, and argues that if Plutarch had not included the genealogy, no-one would ever have suggested that the

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<sup>37</sup> *RE* 3, s.v. Butes (Wernicke); Toepffer, 113–133.

<sup>38</sup> See [Plut.] *Mor.* 841A–B; *PA/APF*, 9249 = 9251 Lykourgos III; *RE* 13, s.v. Lykourgos(14) (Obst); Krentz, 80; see too Toepffer, 122f.; Blass iii<sup>2</sup>, 96; Mitchel 1973, 173ff.; Humphreys 1985a, 199; Parker 1996, 291.

<sup>39</sup> Lykomedes: *PA/APF* 9232 = 9251 Lykomedes. Lykophron: *PA/APF* 9260 = 9251 Lykophron I; *RE* 13, s.v. Lykophron(5) (Obst); Toepffer, 122f. Stratokles' decree: introduction, 17, 20f., below.

<sup>40</sup> *PA/APF*, 9251 Lykourgos IV; *RE* 13, s.v. Lykourgos(10) (Kunst); [Plut.] *Mor.* 841B; Jebb, ii.375ff.; Blass iii<sup>2</sup>, 97.

<sup>41</sup> See too Farnell i, 270ff.; Mitchel 1973, 204ff.; Garland 1984, 83–86, 91–94, 106; Christopoulos, *passim*; Parker 1996, 290–293.

priesthood was hereditary.<sup>42</sup> Kearns, moreover, suggests that sortition might be an expected ‘form of appointment of a gentilian priest hood, although the numbers of those eligible might not be large’.<sup>43</sup> Yet the claim that Habron received his office *λαχῶν ἐκ τοῦ γένους* could mean either that sortition took place within the *genos* or that he succeeded to the priesthood as part of his inheritance. Plutarch says, moreover, that having received the priesthood, Habron stepped aside (*παραχωρήσας*) for his brother and it is difficult to see why this necessarily invalidates the view that the office was hereditary.

A more difficult problem is the chronology of the three sons. Plutarch records that Lykourgos had three sons from his marriage to Kallisto, daughter of Habron of Boutadai.<sup>44</sup> Of the three, Habron and Lykourgos died childless, but Lykophon had a daughter; the male line was, therefore, continued by adoption.<sup>45</sup> Schöll argues that the assumption that Lykophon was the eldest son is based on misunderstandings which arise both from the fact that the eldest son was frequently, but not always, named after the grandfather, and because Lykophon took legal action to enforce the right he claimed as his own to dine publicly in the *Prytaneion*, a right that had been granted in perpetuity, after Lykourgos’ death, to his eldest son.<sup>46</sup> Davies echoes this emphasis on a probable misunderstanding, suggesting that because it was Habron who inherited the priesthood, he is almost certainly the eldest, the error probably arising from editorial confusion over Lykophon’s claim to a right belonging to the eldest son.<sup>47</sup> Moreover, that Lykophon needed to take legal action to enforce a right granted to the eldest son suggests that he did not inherit it: this suggests to Schöll that since Habron and Lykourgos were childless, it was perhaps Lykophon’s status as a father that made him argue that he should be treated as the eldest son.<sup>48</sup>

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<sup>42</sup> Aleshire, 328–331, citing [Plut.] *Mor.* 843F.

<sup>43</sup> Kearns, 210.

<sup>44</sup> [Plut.] *Mor.* 843 A, E.

<sup>45</sup> See too *RE* 13, s.v. Lykourgos(11) (Kahrstedt, 1927); Toepffer, 123f.; Blass iii<sup>2</sup>, 107; Parker 1996, 291ff.

<sup>46</sup> Schöll, *passim*. See too [Plut.] *Mor.* 851F–852A.

<sup>47</sup> See too [Plut.] *Mor.* 843A, C, E.

<sup>48</sup> Schöll, 52ff. The order of Habron, Lykourgos and Lykophon is retained in *RE* 13, s.vv. Lykophon (5), (6), Lykourgos (14) (Obst). The right to dine at public expense in the *Prytaneion* was granted during the archonship of Anaxikrates, therefore in 307/6 B.C., for Lykourgos’ countless services to the state and his personal integrity. Kunst, *RE*

Lykourgos was in control of Athens' finances from the time of Khaironeia until his death, probably in 325/4 B.C., raising the annual state revenue to 1200 talents per annum. Buchanan suggests that Lykourgos' office of *ὁ ἐπὶ τῇ διοικήσει* may have been an extraordinary one, established by decree at a dark point in Athens' history and effectively forming a token of 'coalition government': this could explain, he suggests, Aristotle's silence on the post, for he was consulting *nomoi*, not *psēphismata*.<sup>49</sup> Meritt, however, claims epigraphical evidence for the office, which may name Xenokles as its holder around 340 B.C., and which might cast doubt on claims that the post was specifically created for Lykourgos; the precise date of the inscription is unclear, however, and Rhodes prefers to place it generally in the Lykourgan period: thus Xenokles perhaps held titular office only to enable Lykourgos to continue his administration.<sup>50</sup>

There is also confusion over Lykourgos' length of tenure. Stratokles' decree refers to twelve years' service, an assessment perhaps arising from the internal administration of the *prytany* boards, one of a series of new commissions in the fourth century, which produced official records annually but kept inventories in four year groups, presenting them at the end of a penteteris, probably at the time of the Great Panathenaia, a sequence to which Lykourgos' tenure is naturally linked. He thus could appear to have held the post, himself and through others,

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13, s.v. Lykourgos(10) thus concludes that Lykophron was the youngest son who, after the premature death of the eldest brother, Habron, claimed this right for himself. This raises the question, however, of why the middle son, Lykourgos, did not do so. Humphreys 1985a, 220, considers that the honour, initially awarded mainly to victors in major athletic events and, after the fall of the Peisistratid dynasty, to figures who had performed fundamental patriotic services (e.g. Kleon after Sphakteria in 425 B.C., or Iphikrates after the peace with Sparta of 371 B.C.) seems partly to have been debased after Khaironeia, with awards going to citizens and non-citizens who had acted as intermediaries between Athens and Macedonia. None the less, the posthumous awards to Lykourgos and Demosthenes suggest some degree of continuity in the ideology of such an honour. See too M.J. Osborne 1981b, *passim*; M.J. Osborne 1981c, 172ff.; Rhodes 1984, *passim*.

<sup>49</sup> Buchanan, 77; see too Durrbach 1890, 19–38; Mitchel 1973, 174f.; Andreades, 372–381; Rhodes 1993, 515f.

<sup>50</sup> Meritt 1960, 2ff. #3; Rhodes 1993, 516. See too Markianos, *passim*, who suggests that there may have been no law that prohibited Lykourgos holding office consecutively, but that he was attempting to forestall the proposal of such a prohibition.

every year for twelve years.<sup>51</sup> According to Sealey, however, Stratokles might have exaggerated his claim, for he was not, after all, writing a history, but setting out reasons for honouring Lykourgos; thus, Lykourgos perhaps held office for only one or several individual years of these penteterids and was possibly even in charge of the financial affairs of Athens by means of more than one post, maybe even as *tamias stratiōtikon*, rather than as *ὁ ἐπὶ τῇ διοικήσει*.<sup>52</sup> There is evidence for Demades, too, being involved in financial administration at the same time, which suggests that Lykourgos was not solely responsible for Athenian financial affairs.<sup>53</sup>

It is perhaps unsurprising therefore that the date from which Lykourgos administered Athens finances is disputed. For Sealey, the period immediately after Khaironeia was problematic, thus Lykourgos' tenure cannot pre-date 337/6 B.C.<sup>54</sup> Develin claims 336/5 B.C., whilst for Buchanan, Lykourgos' death in 325/4 B.C., before the Harpalos case, makes it reasonable to assume that he did indeed serve twelve consecutive years in power and that they ran from 337/6 to 326/5 B.C., at which point his arch-enemy Menesaikhmos took overall control.<sup>55</sup> The earliest secure note of the office of *ὁ ἐπὶ τῇ διοικήσει* itself in extant inscriptions is from 307/6 B.C., immediately after the downfall of Demetrios of Phaleron: the holder is Lykourgos' son Habron.<sup>56</sup>

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<sup>51</sup> Develin 1986, 71f.; see too Durrbach 1890, 21–25; Daviero-Rocchi, 38f., 45; Sealey 1993, 209ff.

<sup>52</sup> Sealey, 1993, 210f. Stratokles' decree: introduction 20f., below. See too Durrbach 1890, 26–38; Humphreys 1985a, 199f., who notes that Kallias, Lykourgos' brother-in-law, was treasurer of military funds in 338/7 B.C.

<sup>53</sup> Demades had served as treasurer of the stratiotic fund in 334/3 B.C., and collaborated in Lykourgos' policy of retrenchment, he was also involved in making golden Nikai: there is no reason to believe that others were not generally involved as well. See too Kallet-Marx, 228–232, whose principal focus is the fifth century but who suggests that financial expertise was not widely accessible.

<sup>54</sup> Sealey 1993, 210.

<sup>55</sup> Develin 1989, 363: on 480, he also lists Lykourgos' other appointments as envoy in 343 B.C., financial administrator in 336/5, *hieropoios* in 330, *epimelētēs amphiaraiā* in 329, and *katēgoros* in 325; Buchanan, 76f.; see too Durrbach 1890, 21–25.

<sup>56</sup> *IG* ii<sup>2</sup> 463; see too Kahrstedt 1936, 11ff., 80, 144, 194; Buchanan, 77; Will, 24 with n.156. Davies 1994a, 204f., suggests that although the *tamias stratiōtikon* was a single official, the *ἐπὶ τῇ διοικήσει* were a board of officials. For Rhodes 1993, 516, there might variously be one or a board of officials depending on 'the complexion of the regime'.

Despite these uncertainties, Lykourgos' influence was clearly profound for much of the 330s.<sup>57</sup> The evidence is complex and confusing, not least in the area of iteration of office. If Rhodes is correct, Lykourgos may have been able to be re-elected to his post, certainly only the minor offices tended to be sortitive, and although the nine archons were selected by lot, the process was preceded by the formation of a short list by election or selection.<sup>58</sup> The silence of the sources on this particular point, however, together with their suggestion that others held the position nominally for him, makes it unlikely that he was re-elected. Indeed, although the treasurer of the stratiotic fund and the administrator(s) of the theoric payments may have been re-electable, Lykourgos' post, most likely created by *psēphisma* rather than *nomos*, would not fit comfortably into the general procedures applicable to other financial offices. The office continued, however, and with different incumbents, even though *psēphismata* most often applied to a particular person or time, and it may therefore initially have been an extraordinary post later ratified by *nomos*, in which case re-election may not have been excluded.<sup>59</sup>

Lykourgos was one of the most respected and trusted orators of his time. According to the third letter attributed to Demosthenes, his word alone was perceived as sufficient for the *Ekklēsia* to approve a motion and for the jurors to convict.<sup>60</sup> Plutarch claims that in addition to a stern and humourless nature, Lykourgos wore the same clothes in summer and winter and habitually wore no shoes.<sup>61</sup> The orator's moral character is reflected, for Blass, in his intolerance, which led him to demand the highest penalty whenever he prosecuted. He was,

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<sup>57</sup> See e.g. Perlman 1967, 175f.; Mitchel 1973, 190ff.; Humphreys 1985a, *passim*.

<sup>58</sup> See [Arist.] *Ath.* 3.2–4, 8.1, 22.5, 26.2, 43.1, 55.1, 62.3, with Rhodes 1993.

<sup>59</sup> It is also difficult to assess whether the *Hellēnotamiai* could resubmit for further tenure. After reforms of 411 B.C., the Treasurers of Athene were merged with the Treasurers of the other gods; both they and the *Hellēnotamiai* were then elected from an elected shortlist, the functions of the *Hellēnotamiai* simultaneously incorporating those of the *kōlakretai* ('paying officers of the state treasury': Rhodes 1993, 139). All seem to have followed a tribal cycle of appointment, but this does not necessarily preclude reappointment. See [Arist.] *Ath.* 7.3, 30.2, with Rhodes 1993; Ferguson 1932, 3, 10, 81, 141ff.; W.E. Thompson, *passim*; Rhodes 1972a, 102.; Andreades, 370ff.; Ostwald 1986, 383; Brock 1988, 137f.

<sup>60</sup> See Dem. *Ep.* 3.6; Hyp. 4 (*Eux.*) 12; [Plut.] *Mor.* 841D–F; Blass iii<sup>2</sup>, 103; see too Goldstein, 3f., 31–34, 211–234.

<sup>61</sup> [Plut.] *Mor.* 842C.

Blass suggests, therefore feared, rather than respected.<sup>62</sup> There seems, however, to be a certain amount of caricature in such a picture, with Lykourgos emerging as a cross between Perikles and Sokrates, or for Conomis, between Perikles and Antiphon, whose religious pronouncements Lykourgos seems to echo.<sup>63</sup> de Marcellus, however, considers that the image might be grounded in some degree of reality and that Lykourgos, a student of Plato, might have consciously adopted a Sokratic image.<sup>64</sup> This view perhaps finds some support in Webster's argument that the fourth-century characterization of philosophers as humourless, money-grabbing, eristic, and aloof reflects how Lykourgos would have appeared to ordinary citizens of the time.<sup>65</sup>

Stratokles' honorary decree lists Lykourgos' significant political services, decrees and laws.<sup>66</sup> He had statues of Aiskhylos, Sophokles and Euripides erected, and had an official copy of their works transcribed and kept in the *Metrōon*; these originals were later borrowed by Ptolemy II Philadelphos for the Alexandrian library.<sup>67</sup> He constructed the Panathenaic stadium on the south bank of the Illissos; rebuilt the Lykeian gymnasium to the east of the city under Mt. Lykabettos; refurbished in stone the Theatre of Dionysos on the south slope of the Acropolis, incorporating marble seating and some stage parts, of which some are still visible today. Lykourgos' building programme had similarities to that of Perikles a century earlier, but was less extensive and clearly more intentionally functional; none the less, it also was publicly financed, the entire programme probably costing somewhere between 750 and 1000 talents.<sup>68</sup> A fleet of 400 triremes was equipped; work resumed on the naval arsenal and dockyards; armour

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<sup>62</sup> Blass iii<sup>2</sup>, 104ff.

<sup>63</sup> Conomis 1961, 74. Jebb, ii. 375f., suggests an analogy between Plutarch's claim that Lykourgos' pen was dipped in blood and Demades' view of Drakon, whose laws were "written in blood". Kennedy 1963, 249, calls Lykourgos an Athenian Cato because of his view that all crimes were equal and should receive the same punishment. Fairweather, 237–254, esp. 251, citing [Plut.] *Mor.* 843E, & *BGM* 277.145ff., suggests that Lykourgos was credited with divine ancestry on account of his association with the priesthood of Poseidon, but notes that whilst some biographers set varying accounts side by side, others tried to make syntheses, e.g. [Plut.] *Mor.* 840A ff., in order to fill out their anecdotes.

<sup>64</sup> de Marcellus, 129f.

<sup>65</sup> Webster, 50ff.

<sup>66</sup> Only fragments exist, but it is preserved in [Plut.] *Mor.* 852A–E.

<sup>67</sup> See too Blass iii<sup>2</sup>, 99; Buchanan, 78f.

<sup>68</sup> Burke 1985, 254f.



and a supposed 50,000 items of weaponry on the Acropolis was accumulated, which brought Athens into line with Macedonian developments; the *Ephēbeia* remodelled; the golden *Nikai* which had been melted down for coins at the end of the fifth century were re-established, and ornaments provided for religious processions; dithyrambic and histrionic contests were instituted, and there were also major works undertaken at Eleusis.<sup>69</sup> For Buchanan, this is a kind of fifth-century revival, achievable only by reducing the emphasis on the *theorika*, in a programme of conservatism and belt-tightening which probably led, amongst other things, to the removal of free tickets for theatrical performances.<sup>70</sup>

Tradition has it that Lykourgos' extradition, and that of Demosthenes and others, was demanded by Alexander, but that the demand was refused. Different names are recorded by different sources. Arrian lists nine: Demosthenes, Lykourgos, Hypereides, Polyeuktos, Khares, Kharidemos, Ephialtes, Diotimos and Moirokles.<sup>71</sup> The *Suda* names ten: as Arrian, plus Thrasyboulos, though the date is

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<sup>69</sup> Durrbach 1890, 47–115, Buchanan, 78f., Mitchel 1965, *passim*, Mitchel 1973, 190–214, Will, 77–93, Humphreys 1985a, 201–214, de Marcellus, 137–143, Parker 1996, 242–250, Hurwit, 253–260, and Knell, *passim*, all look at this programme in considerable detail. Will, 93ff., suggests that the reforms did not begin until 336 B.C., when immediate defensive work had been carried out in Athens in the face of the imminently anticipated Macedonian invasion. He also argues, 61f., that Lykourgos' anti-piracy measures, including sending out Diotimos as *stratēgos* to deal with pirates directly, should be seen in the context of an agreement with Alexander that Diotimos' ships should be equipped to the highest standard, reflecting less an ambition to reinstate a thalassocracy than financially astute close negotiations with Macedon involving an attempt to increase metic traffic. See too Berve, i. 239ff.; D.M. Lewis 1959, *passim*; de Marcellus, 24–49, 123–169; Lambert, *passim*, esp. 1–4, 269–291.

<sup>70</sup> Buchanan, 57f., 78–82. The *theoric* fund was probably originally administered by a single elected officer, though there was later a board of officials, perhaps of ten representing the tribes. When Euboulos became Treasurer of the fund in 354 B.C., it was principally used for public festivals, a religious focus which probably lay at the root of Demosthenes' difficulties of transferring surplus funds to the *stratiotic* fund. After Philip had withdrawn from his assault on Byzantium, however, Demosthenes' proposal was approved, and Lykourgos was appointed as commissioner. The *theoric* distributions continued in the Lykourgan period, though they probably decreased in frequency, if not in amount, following Hegemon's legislation of 335 B.C. The fund probably did not survive the Lamian War. See Aiskhin. 3.25; [Arist.] *Ath.* 43.1, with Rhodes 1993; Dem. 1.19f., 3.10f., 33–36, 13. *passim*, 19.291; Plut. *Mor.* 1011B; Cawkwell 1962, *passim*; de Ste Croix 1964, *passim*; Pickard-Cambridge 1968, 270ff.; Rhodes 1972a, 235–240; Hansen 1976b, *passim*; Andreades, 259–263, 372–381; Hammond 1986, 565.

<sup>71</sup> Arr. *An.* 1.10.4.

different here, being 322, rather than 335 B.C.<sup>72</sup> Plutarch gives what he calls the most genuine/approved list he could find, naming eight: Demosthenes, Polyektos, Ephialtes, Lykourgos, Moirokles, Demon, Kallisthenes and Kharidemos; he also says that there was an alternative list of ten.<sup>73</sup> Diodorus, too, says that there were ten, but only names Demosthenes and Lykourgos.<sup>74</sup> Of contemporary sources, only Demosthenes says anything about the matter, namely that he was included in those summoned for extradition, a claim apparently confirmed by Aiskhines.<sup>75</sup> Will is highly sceptical about the whole thing, arguing that Plutarch's list has been prioritized because Schäfer accepts it, and that there are significant reasons to distrust Plutarch, especially since he gives two differing accounts. Probably, Will suggests, Plutarch received the list uncritically and was unable to offer a critique of his sources: in the absence of any transmitted details, later historians then inserted prominent anti-Macedonians into the list.<sup>76</sup>

Whether or not Lykourgos had reason to require shielding from Alexander, his domestic enemies were unable to get at him until after his death. Then, however, his sons were successfully prosecuted by Menesaikhmos, perhaps embittered because of Lykourgos' prosecution of him, possibly for religious offences connected with the cult of Apollo on Delos.<sup>77</sup> Lykourgos' sons were imprisoned, despite a defence by Hypereides, and seem to have been released only after an letter of appeal was sent by an exiled Demosthenes.<sup>78</sup> Pausanias reports that after Lykourgos' death, a bronze statue was erected prominently in the agora near the shrine of the Eponymoi, and that his grave, on the outskirts of the city on the road to the Academy, was near those of Themistokles, Perikles, the tyrannicides and other luminaries.<sup>79</sup>

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<sup>72</sup> Suda, s.v. 'Αντίπατρος.

<sup>73</sup> Plut. *Dem.* 23.3; *Phok.* 17.2.

<sup>74</sup> D.S. 17.15.1.

<sup>75</sup> *Dem.* 18.41, 322; *Aiskhin.* 3.161.

<sup>76</sup> Will, 44 n.303, citing Schäfer, iii. 138f. n.2. See too Blass iii<sup>2</sup>, 101, for whom Alexander's demand was fuelled by Lykourgos' position as treasurer and leader of those who had urged the Thebans to revolt.

<sup>77</sup> See too Conomis 1961, 98ff., 141ff.

<sup>78</sup> Suda, s.v. Λυκούργος, Λυκόφρονος.

<sup>79</sup> Paus. 1.8.3, 1.29.15.

## LEGAL BACKGROUND

Of a maximum of fifteen orations by Lykourgos, only one survives, this prosecution of Leokrates for treason following his flight from Athens at the news of the defeat at Khaironeia. In his speech, Lykourgos maintains that democracy and the prosperity of the *polis* principally depend upon three things: the code of laws; the votes of the *dikasts*; and individuals who are prepared to prosecute despite the view that prosecutors were regarded not as patriots but as busybodies. This is why, he claims, he is prosecuting Leokrates for treason, impelled not by enmity nor litigiousness, but by justice and his view that crimes which affect the public offer public grounds for outrage. The prosecution was an *eisangelia* on the grounds of *prodosia*, a treasonable betrayal of Athens.

Blass claims that Lykourgos, unlike Demosthenes, lacked a sense of committed juridical interest and placed so little value on the letter of the law that he not only left unread the law on which his case against Leokrates was based, but also did not explain it, nor the others which he mentions but does not quote.<sup>80</sup> In the light of recent comparative social-anthropological scholarship on the nature of law and the laws in Athens, however, this now seems rather naïve.<sup>81</sup> Moreover, Lykourgos was no juridical novice, and his other prosecutions were sufficiently successful that it was possible to claim that his pen was dipped in blood, and that no prosecutor was more feared.<sup>82</sup> It is better, perhaps, to see Lykourgos' supposed lack of juridical interest in terms of a different concept of law, of the particularities of the single case which has come down to us, and the circumstances prevailing in Athens at the time of the trial.

Blass' impression is, indeed, part and parcel of the unanimous view that Lykourgos failed to secure a condemnation in this case, whether as a result of his lack of a specific law or his failure to apply a particular law effectively, or because of a poorly-structured speech which tends to waffle and degenerate into an undifferentiated and wholesale reliance on extraneous matter. Every part of this

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<sup>80</sup> Blass iii<sup>2</sup>, 100ff.

<sup>81</sup> See Todd 1993, 18–29; Todd and Millett, *passim*, esp. 11–18; §§5–6, below.

<sup>82</sup> [Plut.] *Mor.* 841E.

view is open to challenge. The actual composition of the speech will be considered later because interpretations of its (lack of) structure are closely bound up with ideas of the result of the case.<sup>83</sup> First, therefore, the outcome needs to be explored, but to establish the legal context within which the verdict should be considered, an investigation into the specific procedural basis of the trial is necessary.

Although Aristotle attributed the institution of *eisangelia* to Solon, its origins defy any firm reconstruction.<sup>84</sup> Much of the problem lies in the nature of the sources, which are overwhelmingly late; Fuks suggests that with nostalgia for an ancestral constitution, reference was increasingly back-dated as greater traditional authority was sought, and Ephialtes, Kleisthenes, and Solon were cited respectively as its creators.<sup>85</sup> Hansen accepts that Solon may have introduced the procedure of *eisangelia* and that cases were conceivably heard originally by the Areopagos, but is inclined to believe that its introduction belongs to Kleisthenes' reforms of 508/7 B.C., and that all cases were, from the outset, heard either by the *Ekklēsia* or the *Dikastēria*.<sup>86</sup>

Although this view involves rejecting Aristotle's report that Themistokles was charged with Medism under the procedure, Hansen argues that the account has been accepted only in desperation, and that this simply goes to show how difficult it is 'to produce any evidence proving that *eisangeliai* before 462 were brought before the Council of the Areopagos'.<sup>87</sup> Rhodes finds the attribution to Solon plausible, however, with the procedure being reformed later by Ephialtes when the right to try *eisangelia* was removed from the Areopagos. He is wary of 'crediting Cleisthenes with an otherwise unattested judicial reform', particularly when Ephialtes' reforms clearly concerned the transfer of powers away from the

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<sup>83</sup> Introduction, 36–39, below.

<sup>84</sup> [Arist.] *Ath.* 8.4, with Rhodes 1993. See too Wilamowitz 1893, ii. 188ff.; Lipsius i. 178f.; Busolt 1920–1926, ii. 847ff.; G. Smith, 63ff.; Bonner and Smith i. 298f.; Hignett, 90; Harrison 1968–1971, ii, 52f.; Hansen 1980a, 90f.; Carawan 1987, *passim*.

<sup>85</sup> Fuks, 8ff., 95f. See too §§4, 80–81, below.

<sup>86</sup> Hansen 1975, 15–19.

<sup>87</sup> Hansen 1975, 19, citing [Arist.] *Ath.* 25.3f.

Areopagos.<sup>88</sup> Moreover, in line with the attribution to Solon, *eisangelia* seems likely to have originally constituted an appeal against a magistrate's decision, forming a precedent, in turn, for the fourth-century process of *apophasis*, in which the Areopagos acted as a commission of enquiry for the *Ekklēsia* and *Dikastēria*.<sup>89</sup>

In the middle of the fourth century, however, procedural reforms removed the right of the *Ekklēsia* itself to hear *eisangeliai*, a change that is probably best explained by a requirement to cut the cost of a full assembly, the required quorum for such cases. The precise date of these reforms is uncertain, but probably belongs in the period from 362/1 B.C., after which no *eisangelia* by the *Ekklēsia* is known, to the mid-350s B.C., when Isokrates called in his *Areopagitikos* for the Council to be restored to its ancient powers.<sup>90</sup> It is around this time, moreover, that a somewhat clearer picture begins to emerge of the exact provisions of the *Nomos Eisangelitikos* which governed the types of cases for which the *eisangelia* process was applicable. There are four principal sources: Pollux, who says that the law covered specific crimes and those for which no law existed;<sup>91</sup> Theophrastos and Kaikilios, who are quoted in the *Lexicon Rhetoricum Cantabrigiense*, where Theophrastos claims that it was used only for specific cases and Kaikilios, that it was for offences governed by no other existing law;<sup>92</sup> and Hypereides, who cites it in his defence speech for Euxenippos for instances of overthrowing or attempting

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<sup>88</sup> Rhodes 1972a, 162, 199–201. See too [Arist.] *Ath.* 8.4, 25.3f., with Rhodes 1993.

<sup>89</sup> *Apophasis* seems to have been fuelled primarily by the need to investigate public officials on corruption charges, though Carawan 1985, 138, suggests that the right to conduct *apophasis* on its own initiative was granted to the Areopagos after Khaironeia not to protect against public officials' corruption, but as an internal mechanism for investigating charges against Areopagites: 'The earliest known *apophasis*, soon after the peace of Philocrates, were directed against [those] held accountable for that ignominious peace, Aeschines and Philoxenus; many of the most notorious cases involving exile or execution came soon after Chaeronea, when the Areopagites were given special authority against treason and conspiracy.' See §§52–54, below.

<sup>90</sup> See Hansen 1975, 51–57; Carawan 1985, 124; Rhodes 1995b, 311–319. *Eisangeliai* to the *Boulē* may have been unaffected by these putative reforms. Hansen 1975, 118ff., lists three known *eisangeliai* to the *Boulē* all of which occurred between 362 and 355 B.C., though they could clearly have pre-dated any reform which transferred all *eisangeliai* to the *Dikastēria*: #142 = Aristophon impeached trierarchs in 361 B.C.; #143 = Pamphilos impeached Timarkhos for embezzlement as a *Bouleutēs* in 361/0 B.C.; #144 = an unknown accuser impeached the trierarch Theophemos in 357/6 B.C.

<sup>91</sup> Pollux 8.51f.

<sup>92</sup> *Lex. Cant.* s.v. *είσαγγελία*; see too Szegedy-Maszk, 19ff.

to overthrow the constitution, betraying the forces, bribery on the part of orators and forming conspiratorial clubs.<sup>93</sup>

Rhodes and Hansen have disagreed fundamentally on these sources. For Hansen, Theophrastos and Hypereides agree that *eisangelia* was related to attempts to overthrow the democracy, treason or corruption. Their view is intrinsically in conflict with that of Kaikilios: it is impossible that both opinions are right.<sup>94</sup> Rhodes, however, argues that Kaikilios conflicts not with Hypereides, but with Theophrastos: since, moreover, Kaikilios' and Theophrastos' views are known only from the lexica, we cannot really be assured that a conflict existed.<sup>95</sup> For Rhodes, we must complement Hypereides with Pollux and the *Lex. Cant.* to obtain a definition, and by adding Demosthenes 49.67, we can append 'deceiving the people with false promises', but even then we cannot be certain that this constitutes the full extent of the law and that further offences were not part of the *Nomos Eisangeltikos*.<sup>96</sup>

For Bonner and Smith, such speculation is largely pointless: the law was clearly intended to ensure that *eisangelia* was used in certain political cases.<sup>97</sup> They argue that the *Nomos Eisangeltikos*, at least in the form known to Hypereides, was probably passed around the time of Antiphon's impeachment as a traitor in 411 B.C., and that further, later provisions provided for heavier penalties.<sup>98</sup> The confusion might, indeed, be mediated by allowing for an accretion of clauses, whereby an original *Nomos Eisangeltikos*, specifically referring to certain cases,

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<sup>93</sup> Hyp. 4 (*Eux*). 8, 29, 39.

<sup>94</sup> Hansen 1975, 12–20.

<sup>95</sup> Rhodes 1979, 107f. See too Hansen 1980a, 89ff.

<sup>96</sup> Rhodes 1979, 107. Hansen 1975, 12ff., also argues for supplementing Hypereides because he omits the clause referring to taking bribes and acting contrary to the *dēmos*' interest, and argues for the addition of Dem. 20.100, 135, for the law forbidding deceiving the people with false promises. See too Hansen 1980a, 91ff.

<sup>97</sup> Bonner and Smith, i. 295–309.

<sup>98</sup> See too Lipsius, i. 192–195, who argued for the middle of the fourth century because heavier penalties were applicable thereafter. There are other possible dates: Ostwald 1955, 115ff., supports 403/2 B.C., as part of Eukleides' reforms; Hansen 1975, 17, argues that since we know from [Arist.] *Ath.* 29.4, that *eisangelia* was abolished by the 400 in 411 B.C., but reintroduced by the 5000, and since the law expressly forbade 'the forming of *hetairika*, precisely the vehicle for the oligarchic propaganda in 411', 411/0 B.C. is the most likely date for any revision; see too Thalheim, 342–352.

was deemed to be insufficiently broad to cover serious cases for which no law existed. Kaikilios is referring, perhaps, to an extension of law intended to remedy this problem, and Hypereides, needing only specific references to bolster his own case, citing old provisions still in force under the revised measures. A refinement of this argument is offered by Hager, for whom *eisangelia* was precisely defined, but was widely used by prosecutors ascribing a crime to one of its specified definitions: Lykourgos, for example, defines Lykophron's adultery as an attempt to overthrow the democracy and Leokrates' flight as treason; the crimes governed by *eisangelia* could thus accommodate any other crime provided that the prosecution referred to some section of the law.<sup>99</sup>

Hansen argues that it would be 'characteristic of Athenian legal procedure that some formalities had to be strictly observed before a case was allowed to be heard', and that both Lykourgos and Hypereides provide 'sufficient proof that neither the Assembly nor the Council was allowed to accept an *eisangelia* if the prosecutor did not refer expressly to one of the three sections of the *Nomos Eisangeltikos*'.<sup>100</sup> Yet the most straightforward reading of the sources suggests that certain offences were strictly defined as being within the jurisdiction of the *eisangelia* procedure but that other crimes, too, which were not covered by existing laws could be so tried. This is also the view taken by Bonner and Smith, who argue that 'there is plenty of evidence that any sudden or serious wrong was normally dealt with by this process', and by Harris, who suggests that 'the statute obviously attempted to cover treasonable acts in general, but did so by listing various kinds of treasonable activities instead of offering a comprehensive type of treason'.<sup>101</sup>

The question seems to boil down to the issue of whether Athenian law was primarily procedural or substantive, an issue which has been subject to a great deal of analysis. For Hansen, 'our sources show that the Athenians took much more interest in procedural law than in substantive law'; thus the laws themselves

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<sup>99</sup> Hager, 78; see too Durrbach 1890, 135ff.; Conomis 1961, 128ff.; Hansen 1975, 19f., 106 #119; Szegedy-Maszak, 21f.

<sup>100</sup> Hansen 1975, 20.

<sup>101</sup> Bonner and Smith, i. 309; Harris 2000, 68.

‘dealt more with procedure and less with the subject matter which brought about the employment of the procedure prescribed’.<sup>102</sup> Todd too argues that the principal concern in Greek law generally was ‘not so much to define ..., but to indicate a form of action which may (not ‘must’) be taken’ against an alleged criminal.<sup>103</sup> Carey sees a hardening of the consensus for a procedurally-based Athenian legal system and argues that the model simply cannot work for the entire system.<sup>104</sup> It is true, as Cohen argues, that ‘on any particular day offenses ... were whatever the mass court of ... untrained lay judges thought they were. Further, since the judges could not even debate the case amongst themselves, what this situation implies is that the common community understanding of ... offenses provided the basis for judgement’.<sup>105</sup> None the less, arguments can be put for a substantive interpretation.<sup>106</sup>

Hansen himself notes that on one occasion the Eleven refused to accept an *apagōgē* until the two words ἐπ’ αὐτοφώρῳ had been included in the indictment: here definition is clearly a matter of fundamental concern.<sup>107</sup> Todd also notes similar nit-picking over allegations of slander: it is difficult to see how the question of whether someone called someone else a ‘murderer’ or merely stated that ‘he had killed his father’ could arise if the system was purely, or even overwhelmingly, procedural.<sup>108</sup> Harris argues, indeed, that there is a clear danger of drawing the wrong conclusions about the procedural basis of Athenian law, for careful attention was clearly paid to substantive issues and questions about the interpretation of law.<sup>109</sup> Rhodes suggests that the clear interest shown by the statutes in offences rather than procedures indicates that the legal system was indeed concerned with substantive as opposed to procedural law, at least in the

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<sup>102</sup> Hansen 1975, 10, 14.

<sup>103</sup> Todd 1993, 66f., 269ff.; see too R. Osborne 1985a, 48–53; Ober 2000, 543ff.

<sup>104</sup> Carey 1998, *passim*.

<sup>105</sup> D. Cohen, 242.

<sup>106</sup> See too §§8, 9, 128–132, below.

<sup>107</sup> Hansen 1975, 20, citing Lys. 13.86. Noted, in his section on procedure, but without any real acknowledgement of the implications for a substantive interpretation, by Todd 1993, 80, 126.

<sup>108</sup> Todd 1993, 258–262, citing Lys. 10.

<sup>109</sup> Harris 2000, *passim*, esp. 78f.



first instance.<sup>110</sup> His view has been challenged by Todd, most notably on the grounds that the offences are listed not to provide a definition, but to show the appropriate procedure for them; this is, however, in a work which claims priority for procedural law while allowing ‘over half of the total book’ to discussion and detail of substantive law.<sup>111</sup>

Notwithstanding the difficulties that exist with the definition or scope of the *Nomos Eisangeltikos*, there are further problems in respect of the procedure required for the introduction of *eisangeliai*. To Hansen’s argument that major public *eisangeliai* were presented first to the *ekklēsia* and only exceptionally to the *Boulē*, Rhodes contends that since a *probouleuma* was necessary before the *ekklēsia* could discuss anything, a *probouleuma* could have offered an open invitation at *kyria ekklēsia* to discuss any proposed *eisangelia*, but did not necessarily do so, allowing *eisangeliai* to be instituted in a variety of ways. Thus, there could be an invitation by *probouleuma* at *kyria ekklēsia*, or a presentation to the *Boulē* at any time. The difference of view seems to come down to a question of imprecision and invariability. Hansen is surely right to consider that in a *polis* which had a procedure for dealing with procedures, *eisangeliai* would be precise and unvaried; Rhodes, however, convincingly argues that different laws, enacted on different occasions, gave the citizens options on how to proceed with such *eisangeliai*, and that therefore different procedures could merge, lead from one into another, or be separate with different penalties in a fluid system.<sup>112</sup> Thus options existed for instituting the procedure, though they required close attention to juridical detail when applied.

An *eisangelia* to the assembly involved bringing the charges before the *ekklēsia* which, upon acceptance of the impeachment, ordered the *Boulē* to draw up a

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<sup>110</sup> Rhodes 1979, 106f.

<sup>111</sup> Todd 1993, 66f, 70.

<sup>112</sup> Hansen 1975, 10; Rhodes 1979, 108–114; cf. Hansen 1975, 21, where he concedes that one offence could be dealt with by several procedures and that one procedure could cover several charges. Rhodes 1995a, 196, suggests that after the reforms of 360 B.C., it is possible that *eisangeliai* could be instigated in the *kyrios* assembly without prior application to the *Boulē*, other *eisangeliai* being instigated in the normal way in any assembly. See too [Arist.] *Ath.* 43.4, 45.2, 53.6, 59.2, with Rhodes 1993; Rhodes 1972a, 162–171; MacDowell 1978, 238; Todd 1993, 114f.

*probouleuma* which was discussed and ratified at the next *ekklēsia*: the case was heard either at the following *ekklēsia* or in a court.<sup>113</sup> In the fifth century and the first half of the fourth at least, penalties did not have to be fixed; the penalty was either proposed in the normal way with the jurors voting twice, as in other *agōnes timētoi*, or a penalty was pre-set and became automatic in the event of a guilty verdict. The position in the second half of the fourth century is not, at first glance, as clear. Lipsius argues that from the middle of the fourth century, *eisangelia* became an *agōn atimētos*, carrying an automatic, and pre-set, death penalty, along with confiscation of property and loss of right to burial in Attika.<sup>114</sup> This putative reform must have post-dated the trial of Timotheos in 356/5 B.C., because the general was fined 100 talents; it might also have post-dated 353/2 when Demosthenes seems to refer to *timēsis* in *eisangelia* as still applicable.<sup>115</sup> Hansen has looked in detail at the twenty-eight cases of *eisangelia* known from the period 353/2 to 322 B.C.: in nine, the result is unknown; four *eisangeliai* were withdrawn prior to the trial; eight resulted in acquittal and one in a guilty verdict, but there is no information on the sentence; and five cases are known to have carried the death penalty. The one remaining case is that of Lykourgos against Menesaikhmos, a case prosecuted before 325 B.C. This prosecution achieved a guilty verdict but could not have resulted in a death sentence, because Menesaikhmos succeeded Lykourgos in the capacity of financial administrator and prosecuted his predecessor's sons, after their father died, for an alleged fiscal deficit. Hansen argues, therefore, that Menesaikhmos must have only been fined and that this one case proves Lipsius wrong; thus *eisangeliai* remained *agōnes timētoi* down to 322 B.C.<sup>116</sup>

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<sup>113</sup> Hansen 1975, 26ff.: [Arist.] *Ath.* 45.2 claims that *eisangeliai* to the *Boulē* were restricted to cases against magistrates, an argument reinforced by *IG* ii/iii<sup>2</sup> 1631, 398–401 which refers to prosecution of harbour officials and the Eleven's secretary. Hansen accepts Aristotle's claim despite quibbles over the vague use of the word magistrate, but suggests that *Lys.* 22 would violate the theory if it could be proven to be an *eisangelia* rather than an *apagōgē*. Hansen argues that the magistrates could also be impeached in the *Boulē* for offences unrelated to their office but which had been committed whilst they were empowered. See too n.90, above.

<sup>114</sup> Lipsius, i. 192ff.; see too Hansen 1975, 33–36.

<sup>115</sup> See Hansen 1975, 34, 101 #101; *Dem.* 24.63f.

<sup>116</sup> Hansen 1975, 34; see too Conomis 1961, 140ff.

Hansen suggests that the alternative penalty procedures from the fifth and early fourth centuries outlined above therefore continued throughout the fourth century.<sup>117</sup> Thus *eisangeliai* could be subject to a penalty, though not automatically the death penalty, pre-set by the *Boulē* or by an *Ekklēsia* decree referring the trial to the *Dikastēria*; there was at least one case in the second half of the fourth century where this procedure was used.<sup>118</sup> The *Ekklēsia* would probably have accepted any recommendation for a penalty which formed part of a *probouleuma* issued by the *Boulē*, whether this was issued in the first instance or when a proposal for *eisangelia* was referred from the *Ekklēsia* to the *Boulē* for drafting. It may, indeed, also have been possible for the *Ekklēsia* to refer a *probouleuma* back to the Council for any recommended penalty to be changed before the case came to trial.<sup>119</sup> Such a penalty clause was optional, however, and, in the fourth century particularly, it is likely that the decision concerning an appropriate penalty was left to the increasingly sovereign authority of the courts by means of the alternative procedure of permitting proposals for a penalty to be suggested directly by prosecution and defence, with a second vote following a guilty verdict as in other *agōnes timētoi*.<sup>120</sup>

When these issues are applied to the outcome of Lykourgos' prosecution of Leokrates, it is possible to reinterpret the sole reference to the result in Aiskhines 3.252. Much has been made of Aiskhines' comment that a difference of one vote

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<sup>117</sup> Hansen 1975, 33, acknowledges that 'the scanty evidence does not allow us to arrive at any decision as to whether these two procedures were regulated by law or whether the Assembly and the Council or perhaps the prosecutors were empowered to choose between them in each particular case'.

<sup>118</sup> Hansen 1975, 35, citing Demosthenes' *eisangelia* against Anaxinos of ca. 340 B.C., where it was the death penalty which happened to be stipulated; see too Aiskhin. 3.223f.; Dem. 18.137.

<sup>119</sup> See too Billheimer, *passim*; Harrison 1968–1971, ii. 57, 82; Rhodes 1972a, 167, 168 with n.4; Brock 1988, 137. The similarity with *probolē* is striking in some regards, notably that there was a preliminary hearing by the *ekklesia* but the actual case, if it was to proceed to prosecution, was tried in the courts. Similarly too, a prosecutor in an *eisangelia* suffered no penalty if he withdrew his prosecution. In an *eisangelia* to the *Boulē* where a guilty verdict was passed, but where the maximum enforceable penalty of 500 dr. was insufficient, the case would be referred to the courts for a penalty vote alone: Harrison 1968–1971, ii. 13f., 59–64; MacDowell 1978 194f.; Todd 1993, 121.

<sup>120</sup> Hansen 1975 33f., notes several fifth-century *eisangeliai* where the penalty was pre-set both by the *Ekklēsia* and the *Boulē*, but in the trial of Kephisodotos in 359 B.C., 'the jurors had to take a second vote ... to fix the sentence'; see too Dem. 23: 167; §2, below.

would have resulted in Leokrates being cast out without burial, or exiled — *ὑπερώριστε*, with scholars unanimously concluding that the vote was tied, and that the defendant was acquitted on the legendary precedent of Athene's acquittal of Orestes, escaping execution by the one casting vote. Hansen argues, indeed, that the remark shows that there was only one vote taken by the jury.<sup>121</sup> This is not necessarily so, however, for a penalty might not have been specified by *probouleuma*, and if it was not, then Aiskhines would by definition be referring to the second vote on whether the death penalty should be applied to a man who had already been found guilty.

Aiskhines had, in fact, every reason only to refer to a second vote, for he was attempting to create the greatest possible distinction between the punishment of the crime committed by Leokrates and the proposed reward for the crimes alleged to have been committed by Demosthenes. He would not, anyway, need to refer to a first vote which had resulted in a guilty verdict since this would have been common, and recent, knowledge because the cases were only separated by a few weeks at most. The whole tenor of what he says and the way in which he refers to Leokrates, indeed, does not indicate that Leokrates was found Not Guilty, even by a single vote. For whilst Aiskhines is minimising the crime Leokrates has committed, a crime judged seriously enough for the *Ekklēsia* to ratify an *eisangelia* eight years after Khaironeia, his rhetoric implies that Leokrates is someone who has been punished for committing an offence which Demosthenes has exceeded by far, and for which it is proposed he should be rewarded.

According to Aiskhines, Demosthenes is a coward and a deserter; great care is taken to set up a vivid comparison between the city's heroes and cowards, a line of attack that makes a mockery of using as an example a man who had been acquitted of cowardice.<sup>122</sup> Moreover, Aiskhines is arguing in the context of the erosion of democracy, with private citizens being held to account for their misdeeds, however trivial, whilst politicians, *rhētors* and the like, do as they please and even seek to be rewarded for things which should carry an automatic

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<sup>121</sup> Hansen 1975, 35.

<sup>122</sup> Aiskhin. 3.153ff.

death penalty.<sup>123</sup> Within the context of this rhetoric, Aiskhines can only mean that Leokrates would have been executed and cast out without burial if Lykourgos' penalty had been accepted but that, in the event, Leokrates was given an alternative punishment, perhaps exile or a large fine as proposed by the defence. Indeed, the other example Aiskhines uses of behaviour which contrasts with Demosthenes' own is a citizen who was simply trying to sail to Samos and was executed by the Areopagos on the same day. It would seem to undermine his argument fundamentally if his other example, Leokrates, had received no punishment whatsoever, and especially if he was actually found Not Guilty.

Yet a hung jury, on either vote, would be remarkable bearing in mind the numbers of jurors involved: from Deinarkhos it is apparent that multiple panels of up to 2,500 jurors could hear *eisangeliai*.<sup>124</sup> There is a precedent, however, for a guilty verdict being followed by an extremely close penalty vote. In Kephisodotos' *eisangelia* of 359 B.C., where Demosthenes spoke as *synēgoros* for the prosecutor Euthykses, a guilty verdict was followed by a penalty vote in which Kephisodotos escaped execution by a mere three votes, being fined five talents instead.<sup>125</sup> Hansen quotes four other examples of *eisangeliai*, moreover, where the accused was fined though the prosecution demanded the death penalty; the first two, Miltiades and Perikles, are from the fifth century, but the latter two, Ergophilos and Timotheos are from 362 and 356/5, tried by the *Ekklēsia* and the *Dikastēria* respectively.<sup>126</sup>

On two occasions, however, Lykourgos himself seems to contradict this interpretation of the outcome of his prosecution. First, he explicitly says that the jurors have a single vote in the case, and secondly, that they should either acquit Leokrates or execute him — apparently a straight choice in a single vote between acquittal or execution.<sup>127</sup> If Lykourgos can be taken at face value, then the penalty

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<sup>123</sup> Aiskhin. 3.248–251; see too Hyp. 5 (*Dem.*). 24–27.

<sup>124</sup> Dein. 1.52; see too Dem. 24.9; Bonner and Smith, i.243ff.; MacDowell 1978, 36–40; Rhodes 1993, 728f.

<sup>125</sup> Aiskhin. 3.51f.; Dem. 23, 167; see too Hansen 1975, 33, 98f. #96.

<sup>126</sup> Hansen 1975, 69 #2, 71 #6, 94 #86, 101 #101.

<sup>127</sup> §§146–148, 149–150.

was pre-set at death, and there was only one vote with no possibility of any alternative proposal from the defence. There are good reasons, however, to suspect that Lykourgos' words are misleading precisely because they appear to fit with the alternative procedural possibility, and that he is, rather, making highly emotive and rhetorically effective points, first that a single vote covers a multiplicity of crimes, all of which Leokrates has committed, and secondly that the defendant must be saved or destroyed in accordance with the two voting urns which represent the destruction of the city or its safety and prosperity. He is seeking to show what one vote can do, and using appropriate and anticipated rhetoric to obtain his desired verdict. His carefully composed and perhaps genuine outrage, his rhetorical skill, and the jurors' expectations, require that he does nothing less.

Kennedy, whilst arguing that Lykourgos' *failed* prosecution of Leokrates was an act of rhetorical irresponsibility and indulgence, and a fine example of unreasonable prosecution built on confidence in rhetorical technique, concludes that Lykourgos actually had a great chance of success. Lykourgos' skill, the emotional atmosphere in Athens at the time of Khaironeia, and in the jury during the trial, all contributed, Kennedy suggests, to the presentation of a case which, if not grounded firmly in law, had a basis in fact, and which should have been a foregone conclusion.<sup>128</sup> Harris, too, sees the *unsuccessful* prosecution as a trial that Lykourgos 'should have won hands down', but which he lost because he failed to persuade the jury to agree with his definition of Leokrates' actions as treason under the terms of the *Nomos Eisangeltikos*.<sup>129</sup> Will, indeed, argues that Lykourgos was motivated by the general apathy of the Athenians in 331/0 B.C. to prosecute a case without any basis in law in an attempt to reintroduce political and patriotic sentiments in the Athenians.<sup>130</sup> Yet Lykourgos seems to have had a case that the jurors would deem to be strong in fact, law and emotion, a case which was reinforced both by Leokrates' apparently open admission that he had left Athens, and by the precedent of Lykourgos' successful conviction of Autolykos for

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<sup>128</sup> Kennedy 1963, 251.

<sup>129</sup> Harris 2000, 74f.

<sup>130</sup> Will, 102.

secreting his family out of Athens at the time of Khaironeia.<sup>131</sup> It seems, moreover, that he could well have been able to rouse emotionally-charged patriotic sentiments by rhetorical technique and the judicious extraction of laws, epigrams and poetry, and win his case. At the very least, the traditional and unanimous understanding of the implications of Aiskhines 3.252 for Lykourgos *against Leokrates* cannot continue to be considered safe.<sup>132</sup>

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<sup>131</sup> §§5–6, 14–15, 16, 17–18, 19, 25, 26–27, 28–30, 52–54.

<sup>132</sup> See too Sullivan 2002, *passim*.

## STRUCTURE OF LYKOURGOS AGAINST LEOKRATES

Analyses of Lykourgos *against Leokrates* have almost universally deemed the speech to be fundamentally unstructured, citing the mass of quotations which Lykourgos uses in the second half of his prosecution as evidence of a mass digression on the orator's part.<sup>133</sup> One of the most recent examples of this approach is that of Usher. Despite crediting Lykourgos with originality of approach, noting that the narrative of §§38–41 owes 'little to previous narratives in its combination of stressed action', Usher concludes that 'the speech seems to be a rich and triumphant marriage of epideictic and forensic rhetoric, combining pathos and vividness in its narratives; but its debt to earlier oratory in both genres is always apparent and it falls short of the best of those models in structural compactness'.<sup>134</sup> This opinion is consistent with the general view that Lykourgos' speech is fundamentally flawed, and that 'grand old patriotic themes and ancient oaths, delivered in a dignified style, continue to serve in place of argument based on evidence'.<sup>135</sup> Thus Lykourgos' failure to conform to traditional structural requirements weakened his speech and his prosecution, and led to an unfavourable outcome of the trial itself.

Another recent example of this trend is Danielle Allen's analysis of Lykourgos *against Leokrates*. She too, although offering an acute reading of the content of the speech, and interpreting Lykourgos' avowed disinterested prosecution as a new style of 'prosecutorial voice', none the less concludes that Lykourgos 'lost the case by one vote, which perhaps reveals both the power of the norm of personal involvement and the degree to which it was possible to change it. Echoes of Lycurgus's speech turn up in two speeches given later that year, suggesting that his new and dramatically public voice did have a noticeable impact on Athenian politics'.<sup>136</sup> At the root, however, of her view that the trial resulted in Leokrates' acquittal, again lies the assumption that the speech is structurally weak, albeit

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<sup>133</sup> See e.g. Jebb, ii. 376f.; Blass iii<sup>2</sup>, 118f.; Kennedy 1963, 251; Parker 1996, 251ff.; Wilson, 313f.

<sup>134</sup> Usher 1999, 326ff.

<sup>135</sup> Usher 1999, 327.

<sup>136</sup> Allen 2000a, 157–160, citing Aiskhin. 3.252f., & Dem. 18.204; see too Allen 2000b, *passim*.



because of what she sees as Lykourgos' problematic self-presentation as disinterested prosecutor, rather than of rhetorical inadequacy.<sup>137</sup> Thus there is again little leeway to perceive a 'prosecutorial' victory. Her perception, therefore, of the similarities in Aiskhines' and Demosthenes' speeches of a few weeks later is based upon her interpretation that it was Lykourgos' 'new and dramatically public voice' which was echoed by the other two cases, whereas if the speech were viewed as a structurally sound and balanced entity, it would be possible to see these resonances as attempts not just to echo Lykourgos' new 'public voice', but his successful prosecution.<sup>138</sup>

The speech can, in fact, be viewed in this way, its structure demonstrated by the striking use of a transitional *μὲν οὖν* to introduce each new section. This occurs in §§7, 23, 36, 55, 110, 124, 141 and 149, the sole exception in §95 being contextually and grammatically valid in its own right. The text thus divides into 9 sections as follows:

- 1: §§1–6 — *prooimion*;
- 2: §§7–15; 16–20; 21–23 — introductory exhortation; narrative; disinterested general evidence;
- 3: §§23–27; 28–35 — specific contractual evidence; argument; challenge to slave torture;
- 4: §§36–45; 46–51; 52–54 — decree and narrative; eulogy to the dead of Khaironeia; juridical precedents;
- 5a: §§55–58; 59–67; 68–74 — defence arguments and their refutation;
- 5b: §§75–78; 79–82; 83–89 — tradition and oaths;
- 5c: §§90–97; 98–101; 102–110 — divine rationale for trial and divine requirement for extreme punishment; poetic authority from tragedy; poetic authority from Homer;
- 6: §§110–116; 117–119; 120–123 — precedents of traitors from history and ancient history, with decrees;

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<sup>137</sup> Allen 2000b, *passim* 10f., 25ff., 29; §§5–6.

<sup>138</sup> This might also help to explain the problems scholars have evidently had in determining whether Aiskhines or Demosthenes would have been more encouraged by

- 7: §§124–132; 133–140 — precedents of traitors against the democracy and aspirants to tyranny; demolition of *synēgoroi*;  
8: §§141–148 — peroration;  
9: §§149–150 — concluding remarks.

Central to the speech is section 5, where the arguments Leokrates is expected to use are presented with their refutations, and the claim of his *synēgoroi*, that Leokrates' flight is comparable to the departure from Athens for Salamis, is dismissed on the grounds that that particular heroic action was an example of shifting the scene of battle rather than of refusing to fight. The Athenians' sea victory at Salamis is complemented here by the Plataian victory as an example of how the defence argument can be rebutted. At the very heart of the speech, Lykourgos places the Plataian and Ephebic oaths, providing a backdrop against which he brings into relief most vividly both his own motivation for initiating the prosecution and the jurors' motivation, according to their own *hēliastic* oath, for a guilty verdict. These arguments are then reinforced by the extra-legal authority provided by the gods, the tragic poets and Homer. The various strands of Leokrates' anticipated defence are, accordingly, comprehensively demolished in this central section.

The second half of Lykourgos' prosecution speech against Leokrates is not a mass digression into a structurally-flawed conglomeration of poetic quotes, oaths, decrees and folktales, but is, rather, carefully constructed and balanced with argumentation and authority from precedent provided in a cohesive form. The traditional reading of Aiskhines 3.252 is at the root of assumptions that Lykourgos lost his case, but the view that the speech is poorly structured is closely bound up with this.<sup>139</sup> It is difficult to identify how great a part this view has played in the construct of Leokrates' acquittal. It is not inconceivable that purists would find it difficult to acknowledge that a speech which appears to fail to conform to traditional rhetorical requirements could have been successful. This would be fuelled by the fact that Lykourgos *against Leokrates* has not received much

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the result of Lykourgos' 'hung jury' in forcing the delayed prosecution of Ktesiphon into court: See Tarn, 445f.; Burke 1977, *passim*; Bauman, 103; Harris 1995, 174.

<sup>139</sup> Introduction, 31–35, above.

detailed attention, despite its extensive and selective citation to back up a variety of arguments. There would therefore be little incentive to look again at Aiskhines 3.252 and to consider different possibilities for its meaning. Conversely, however, with the usual interpretation of that brief passage, there would be little reason to look more closely for a structure to a speech that has always been criticized for poor arrangement. It has been all too easy to blame Lykourgos' legal failure, at least in part, on a poorly-structured oration.

This is not to say that Lykourgos won, if he won, simply because his speech was well structured. Events and attitudes at the time were such that Aiskhines felt confident that he could successfully arraign Demosthenes' entire career.<sup>140</sup> Lykourgos himself had reputation, status and enormous moral authority.<sup>141</sup> There was also the prospect of a hefty fine for the *dēmos*, if the jurors so chose.<sup>142</sup> A well-structured speech would not, however, have done his cause any harm and such a reinterpretation of his arrangement of this oration can be viewed either as providing justification for, or a reinforcement of, a new reading of Aiskhines 3.252, or both.

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<sup>140</sup> Introduction, 10–14, above.

<sup>141</sup> Introduction, 15–22, above.

<sup>142</sup> Leokrates clearly had considerable wealth, and Carey 1994b, 183, goes too far in suggesting that he was a rather shabby character: Schäfer, iii<sup>1</sup>.199ff.; Durrbach 1890, 150; Blass iii<sup>2</sup>, 111; Burke 1977, 330f., 339; Millett 1991, 139; §§23(ii)–24. Bosworth 1988, 207f., suggests that there was a financial motive behind more than one of Lykourgos' prosecutions; certainly, in the case of Diphilos, the *polis* gained 160 talents: [Plut.] *Mor.* 843D. Jurors were thought, at least by elite defendants, to condemn for the financial benefit for the *polis*, which included, of course, their own remuneration: A.H.M. Jones, 58–61; Ober 1989a, 200f.

## COMMENTARY

### HYPOTHESIS

The hypothesis of Lykourgos *against Leokrates* is the only extant scholiastic writing on the speech, though it is impossible to date. The author is similarly unknown, but he clearly assumes that the prosecution was based on the violation of the decree of the *dēmos* which, through its categorization of flight as *prodosia*, effectively prohibited departure from Athens.<sup>143</sup> Since this is not a claim that Lykourgos ever makes, the attention paid to the decree here might suggest a different cultural concept of a law, and thus that the hypothesis was written quite some time later.<sup>144</sup> It would clearly be speculative to attempt to identify a type of author, but the text might have been used as part of a rhetorical educational schema, which might also help to account for the evident academic thought that has gone into identifying a classification for the case.

The hypothesis claims that the case should be classified as one of contradictory definition, *ὄρος ἀντονομάζων*, Leokrates admitting his departure but denying the charge of betrayal. The author allows, however, that there are two other views. First, that since Leokrates admits his departure, the case is one of conjectural intention, *στοχασμὸν ἀπὸ γνώμης*, namely whether Leokrates left for betrayal or trade. Second, that since Leokrates explicitly claims to have left for purposes of trade, the case is one of counterplea, *ἀντίστασιν*. The author's definition of contradictory definition is, in fact, a virtual mirror image of counterplea, for in both views Leokrates admits his departure but denies betrayal. The only difference in the two definitions is the concrete existence in the second of motive, but this is implicit in the hypothesis' original classification. There are no grounds for defining the charge as one of conjectural intention since the arguments on both sides are clear, and differing definitions of laws were often presented in the courts, selectively excerpted and interpreted.<sup>145</sup>

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<sup>143</sup> See §§52–54, below.

<sup>144</sup> See too introduction, 23, above; §§5–6, below.

<sup>145</sup> See too Bonner 1927, 177ff.; Todd 1993, 58, 61f., 65, 90; Carey 1997, 10.

The hypothesis ends by comparing the subject matter to the prosecution of Autolykos, presumably Lykourgos' prosecution of the Areopagite who had removed his wife and children from Athens in the face of the anticipated Macedonian invasion in 338 B.C.<sup>146</sup>

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<sup>146</sup> See too introduction, 34f., above; §§52-54, below.

§§ 1–6.

Lykourgos opens his speech with a prayer to the gods whom Leokrates has wronged, to make him a worthy prosecutor, and to enable the jurors to reach a just verdict on behalf of their ancestors, children, wives, country and temples, all of which Leokrates has betrayed. The *polis*, Lykourgos claims, needs prosecutors as one of the three foundations of democracy, along with the system of laws and trial by jury, both of which are powerless without the willingness of accusers to go to trial. This case has arisen as the result of Leokrates' publicly outrageous behaviour, not Lykourgos' own enmity. Justice must be the jurors' first concern, as it is in Lykourgos' prosecution. The city might not appreciate prosecutors sufficiently, but Lykourgos will run the gauntlet of the anticipated accusations of meddlesomeness because he knows the defendant is liable to all aspects of the *eisangelia*, and because such cases preserve democracy itself and ensure the continued prosperity of the *polis*.

§1. *Δικαίαν*: The speech starts with an emphatic '*Δικαίαν*', generating an immediate image of justice and the laws with which Lykourgos is attempting to identify. Dover notes that *dikaïos* also reflects the concept of paying back that which is due and behaving in a way unlikely to generate enemies: in 'tit for tat' style, *dikaïos* is the conceptualisation of upright behaviour in opposition to the justification of vengeance for wrong-doing.<sup>147</sup> This is also, therefore, the model for the behaviour required of the jury in return for Lykourgos' righteousness and in revenge for Leokrates' wrong-doing. The laws, as well as the *dikē* personified by the prosecutor and intrinsic to his case, convey his own patriotism and conformity to approved social norms, however unusual his disinterested approach to the case is, and they require no less than absolute vengeance for the defendant's

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<sup>147</sup> Dover 1994, 180f., 306f.

unpatriotic crimes which contravene any standard of conventionally acceptable behaviour.<sup>148</sup>

The concept was not unfamiliar in the courts. Demosthenes claimed that the laws' existence was rooted in the need both to prevent actions which are not *dikaïos* and to ensure that punishment made others better, and argued that in the absence of laws, the jury should confer the most *dikaïos* judgement.<sup>149</sup> Lykourgos will argue in a similar vein, though he will offer his own particular interpretation of what would be *dikaïos* on this occasion, and his emphatic opening is therefore especially significant in view of the absence of any specific laws which the defendant will be accused of violating.<sup>150</sup>

ὦ Ἀθηναῖοι: The composition of juries of 'Athenians' has been much debated. Demographically, a significant two-thirds of the adult male citizen population was eligible for *dikastic* service: the majority of jurors would thus necessarily not have been selected from the wealthier sections of society. Jury pay at the rate of two obols a day was introduced in the 450s B.C., a measure ridiculed by the rich for producing a deterioration in the composition of juries, which suggests that from this time jury service was a means of obtaining pocket money for the elderly and poor. It is noteworthy too that elite speakers extend their flattery of jurors in an attempt to assimilate their circumstances to that of their audience.<sup>151</sup> Jury pay was soon raised to 3 obols, probably by Kleon, and was still at that level by the time of

<sup>148</sup> See too Dover 1994, 186; Allen 2000a, 39f., 50f, 157–160 citing only three other cases where claims of disinterested prosecution were made (Hyp.1, Dein. 1, Lys. 22); §§3, 5–6, 11–13, below.

<sup>149</sup> Dem. 25.17, 39.40f.; see too Isok. 19.16, for whom *dikaïos* appears to be an adjunct to the strictly legal; §9, 11–13, below.

<sup>150</sup> See introduction, 23f., above; §§5–6, below.

<sup>151</sup> See [Arist.] *Ath.* 27.4, with Rhodes 1993; Ar. *Vesp. passim*, though despite Philokleon's supposed poverty, Bdelykleon appears comfortably enough off; Dem. 21.182, 211, 24.123f.; Isok. 7.54, 8.129f., 15.152; [Xen.] *Ath.* 1.18. See too Lofberg 1917, 13ff.; Mossé 1962, 312f.; A.H.M. Jones, 36f., 124; Markle 1985, 266f., 281–289; Ober 1989a, 97, 255f., 306ff.; Hansen 1990c, 222f.; Todd 1990c, 158–170; Hansen 1991, 183–186; Sinclair, 127–135; Todd 1993, 88f.; Lanni, 186f.; Pelling, 13ff. Ruschenbusch 1994, 190f., sees attendance fees for both assembly and courts as being as much the result of great depopulation at the end of the fifth century resulting from war and plague as of political developments.

the composition of the *Athēnaiōn Politeia*.<sup>152</sup> Brock suggests that after the juridical hiatus which resulted from the coups at the end of the fifth century, restored jury pay no longer kept pace with inflation and the constitution of the Aristophanic popular courts changed, ‘increasing the representation of the more prosperous’.<sup>153</sup>

The position had clearly altered again by the 360s B.C., when private suits were apparently suspended for some years, and again in 348, when jury pay could not be afforded as a result of the campaign in Euboia, circumstances which suggest that panels of jurors may once more have been composed principally of the old and poor and were accordingly difficult to man without pay.<sup>154</sup> Lykourgos could, in fact, be inferred to distinguish between the wealthy and the jury he is addressing by decrying Leokrates’ *synēgoroi* who, he argues, will claim gratitude for horsebreeding and the performance of liturgies. It must be noted, however, that he appears also to make a distinction between the jury and the elderly, in whose hands Athens’ hopes rested after Khaironeia.<sup>155</sup>

*καὶ εὐσεβῆ καὶ ὑπὲρ ὑμῶν καὶ ὑπὲρ τῶν θεῶν ... τὴν χώραν ἰδρυμένοις*: The gods are enlisted for the prosecution almost immediately, and will later be presented as playing a fundamental part in bringing the defendant to court.<sup>156</sup> They, along with the heroes, as well as the poets and law-makers of the past, allow Lykourgos to set out his stall as pious public defender from the outset: he is, after all, a member of the Eteoboutadai *genos* which held high-profile hereditary priesthods, and the gods and oaths will be foregrounded throughout the speech.<sup>157</sup> He is also, however, clearly intending to make the most of all the reserves of goodwill and respect his civic persona could call upon, for he had himself played no little part in the rejuvenation of Athens’ public space.<sup>158</sup>

<sup>152</sup> [Arist.] *Ath.* 27.3, 62.2, with Rhodes 1993; see too Schol. Ar. *Vesp.* 88, 300; Arist. *Pol.* 1274a8–11; Harrison 1968–1971, ii. 48f.; Hansen 1991, 188f.

<sup>153</sup> Brock 1988, 138; see too Thouk. 8.67.3.

<sup>154</sup> Dem. 39.17, 45.4; see too Hansen 1991, 189. See too Aiskhin. 3.85ff.; MacDowell 1990, 5ff.; Ellis 1994b, 771f.

<sup>155</sup> Elderly: §§36–39, 40–41, 59–64. *Synēgoroi*: 135–137, 138–140, below.

<sup>156</sup> See §§90–92, 93, 94–97, below.

<sup>157</sup> See too Vielberg, *passim*.

<sup>158</sup> See Knell, 93–96, 126–147, 182–195. See too introduction, 20f., above; §§46–51, below.



*εἰ μὲν εἰσήγγελκα ... ὑμετέρων προγόνων παραδεδομένας*: The immediate contrast of Leokrates the impious traitor confirms that the case is an *eisangelia*.<sup>159</sup> The betrayer of gods, temples, statues and sanctuaries has violated everything that Lykourgos is defending. *Timai* and *thusiai* are specifically linked to ancestral Athenians, who will be a major theme of the speech. *τιμὰς καί* is not certain in the text, but Mitchel notes that Lykourgos himself, ‘and his supporters were generous in proposing honours to those whose actions showed them to have been public benefactors’; such honours included ceremonies for the dead with *epitaphioi*, sanctuaries, and special privileges to foreign victims of pro-Macedonianism, to ‘donors of large sums, ... [and] to public officers and priests who had carried out their jobs honestly and well’.<sup>160</sup> The total cost to the state of gold and foliage honorary crowns, inscriptions and bronze statues has been estimated as high, with Wright suggesting an annual sum of perhaps between 10.5 and 15 talents, based on her calculation that over one-fifth of honorific decrees resulted in the bestowal of gold crowns, and that a 1000 dr. crown, which was not uncommon, would have fed fifty people for a year: a bronze statue was calculated in antiquity to be worth 3000 dr.<sup>161</sup>

Leokrates’ own status in these respects is unknown, but can be presumed to offer a poor contrast, at least in the prosecution’s hands. There is no reference to him holding public office, though Lykourgos will make capital out of his membership of a symmory for collection of the two per cent tax.<sup>162</sup> He probably never received a crown, for Lykourgos would probably have used any such award to argue for the defendant’s duplicity; Aiskhines, too, might have mentioned it in his prosecution of Ktesiphon, where he directly contrasts Leokrates’ crime and

<sup>159</sup> See introduction, 23–31, above.

<sup>160</sup> Mitchel 1973, 201f. See too Whitehead 1983, 67, who notes that honorific decrees were primarily proxeny decrees; Gauthier 1985, 103–149, 181–191; de Marcellus, 21ff., who suggests that ephebes were honoured at or after the end of their service by honorific decrees: §§75–76 77–78, below.

<sup>161</sup> Wright. See too Henry, 22–25. Tax exemptions, *ateleia*, added an additional, but difficult to estimate, burden to Athens’ honorific expenditure: Henry, 241–245. Right to dine publicly in the *Prytaneion* in perpetuity: Schöll, *passim*; Henry, 262–278; introduction, 16, above. Humphreys 1985a, 217f., contrasts the public honours inaugurated by Lykourgos with his deprecation of those who desire rewards for actions which have a personal benefit only; see too §§135–137, 138–140, below.

<sup>162</sup> §19, below.

Demosthenes' crown.<sup>163</sup> There is no evidence, either, for Leokrates' performance of a liturgy, nor of any liability to *eisphora*.<sup>164</sup>

Apart from the sacrifices at great public festivals, *thusiai* could be small, family-based sacrifices which were performed at domestic altars. Leokrates, however, stands accused of harming not only the city but also his own ancestors, and in the most impious ways. As Burkert notes, when prospective archons were examined for their eligibility, they were required 'to prove their full citizenship not only by naming their parents and grand-parents but also by stating "where they have their Zeus *Herkeios* and their Apollo *Patroos* and their family graves". These places of cult are not transferable and thus indissolubly bind the man to his *polis*.'<sup>165</sup>

Leokrates will be portrayed as having loosened his own bonds with the city in every respect. Abandoning even his own home, he will be shown to have deserted the graves of his ancestors where sacrifices would have been performed at regular intervals. The third, ninth and thirtieth days after death were marked by rites performed at the graveside, known respectively as τὰ τρίτα, τὰ ἕνατα, and τὰ τριακοστήα, the last alternatively known as τριακάς, or τριακάδες, but there were also annual celebrations which were 'incorporated into the general celebrations with which the city honours its dead every year'.<sup>166</sup>

§2. ἐμὲ μὲν ἄξιον ... καὶ ὑφ' ὑμῶν τῶν δικαστῶν: In a μὲν ... δέ clause, Lykourgos explicitly presents himself as acting on behalf of the *dēmos* and the *polis*, and the jurors as agents of family and country. Ostwald argues that the *dēmos* is, not surprisingly, associated most with the *ekklēsia*: the courts were a smaller representative body, like the *Boulē*, and it is to be expected that *dēmos* would refer

<sup>163</sup> Aiskhin. 3.252f

<sup>164</sup> Leptines was prosecuted for proposing the abolition of the additional honour of exemption from liturgies: Dem. 20, *passim*. See too §§138–140, below.

<sup>165</sup> Burkert, 255f., citing [Arist.] *Ath.* 55.3: q.v. with Rhodes 1993; see too §25, below.

<sup>166</sup> Burkert, 194. *Genesisia*, anniversary rites for the dead: Hdt. 4.26, though Kurtz and Boardman, 147f. note that there were other purported annual celebrations known as *nemesia*, *nekysia*, *epitaphia*, and *eniausia*. *Aponimmata*, libations which perhaps doubled

to the most representative body.<sup>167</sup> Hansen accepts that ‘*dēmos*’ does not apply to the courts as an institution, but denies that the *ekklēsia* is *representative* of the *dēmos*; for him, it *is* the *dēmos*, whereas the *Dikastēria*, being a part of the *dēmos*, cannot be referred to in such terms. He argues that the *Dikastēria* acted on behalf of the *dēmos*, and suggests that it is better to see them as a part of the *dēmos* of which they are intrinsically representative, rather than as *a* substantive representative of it.<sup>168</sup>

For Ober, Hansen contradicts himself by arguing simultaneously that the courts’ powers were not delegated to them, and that the *Dikastēria* represented the *dēmos*, and thus exercised their powers on behalf of the *dēmos*: Hansen counters that the term *dēmos* has multiple meanings and that he sees the *Dikastēria* not as empowered by the assembly, i.e. the *dēmos* as an institution, but by the *dēmos* as the state.<sup>169</sup> This whole argument seems, however, to be grounded more in semantics than in constitutional theory, and, in any case, largely ignores what is perhaps the most important perspective, namely that of the individual citizen, who would probably have seen himself as the *dēmos* incarnate whether as *ekklēsiast* or *dikast*.<sup>170</sup>

For Rhodes, the *Ekklēsia* was the undivided *heliaia*, and therefore sovereign, when it met to exercise its judicial functions and, with regard to the trial of *eisangeliai*, which power the *Ekklēsia* retained almost to the middle of the fourth century, this was almost certainly the case.<sup>171</sup> The whole issue of sovereignty, however, is a thorny one which has been as hotly debated as the issue of the representative nature of the assembly and courts.<sup>172</sup> The principal problem seems to be that the matter is so closely related to the issue of representation, which itself might be little more than a red herring, that there is a real danger of becoming

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as a means of purification for the celebrants: Athen. 9.78. See too Humphreys 1980, 98–101; Garland 1985, 39, 43; Antonaccio, 248f.; Parker 1996, 48f.

<sup>167</sup> Ostwald 1986, 34f. with n.131.

<sup>168</sup> Hansen 1989b, *passim*.

<sup>169</sup> Ober 1989b, *passim*, esp. 330; Hansen 1989b, *passim*. See too Sealey 1982, 302; Maio, *passim*; Montgomery, 18ff.; Brock 1988, 137; Hansen 1989c, *passim*; Ober 1989a, 22f., 95–103, 144ff., 299–304; Hansen 1990c, *passim*; Hunter 1994, 185ff.

<sup>170</sup> See e.g.: Dein 1.105f., 3.1, 15f.; Dem. 21.2, 193f., 214ff., 22.10; Is. 5.38.

<sup>171</sup> Rhodes 1972a, 168f.; see too Hansen 1975, 51f.; introduction, 24f., above.

<sup>172</sup> See esp. Ostwald 1986, *passim*; Sealey 1987, *passim*.

further ensnared in semantic niceties. This is, effectively, Davies' view, according to which 'sovereignty', despite its convenience as a 'shorthand term', is far too anachronistic and legally-loaded a term and one which, moreover, can hardly be technically applicable in the first place.<sup>173</sup> Indeed, if the relationship between the *politeia* and its organs is synecdochial, as Ober argues, then sovereignty intrinsically resides in the *politeia*, whether perceived as the laws themselves, the *dēmos*, the *ekklēsia* or the *Dikastēria* — whether composed of *dikastai* or *nomothetai*.<sup>174</sup> Again, it is the perspective of the individual citizen that is most noticeably lacking. In his role as *dikast*, any juror would feel himself to be both representative of, and *the* representative of, the laws and the people as a whole, by whom he would be held to account, at least informally.<sup>175</sup> This was perhaps particularly so when judging cases like *eisangeliai*, which had formerly been brought before the *Ekklēsia*.

<sup>173</sup> Davies 1994b, *passim*. See too Todd 1993, 299f.

<sup>174</sup> See Ober 1989b, 330f.; Ober 1989a, 299–304. After the revision of the law code at the end of the fifth century, panels of jurors, *nomothetai*, were instituted, marking a new legal distinction between *nomoi* and *psēphismata*. The latter fell within the jurisdiction of the *Ekklēsia*, and were specific and/or temporary measures; the former, that of the *dikastēria*, and were for general measures and of no specific time limit. An annual revision of the laws was carried out by the *thesmothetai*, who brought any contradictory laws before the *nomothetai* so that one in each case could be invalidated. Disputed *psēphismata* passed by the *Ekklēsia*, like *nomoi* passed by the *nomothetai* could be challenged in the courts by means of a *graphē paranomōn*, but *nomoi* could also be disputed by means of a *graphē nomon mē epitēdeion theinai*. Both types of case were tried by the jurors in their capacity as *dikastai*, and it is possible that some of the *nomothetai* who referred a law or decree to the courts would then be involved in the resulting trial. This whole area has an enormous secondary bibliography, see e.g.: Bonner 1933, 1–24; Atkinson, 107–142; Harrison 1955, *passim*; J.W. Jones, 124–128; Ruschenbusch 1957, *passim*; Quass, *passim*, esp. 2ff., 14–44, 55–60, 68–72; Rhodes 1972a, 49–81; de Laix, 52–68; Hansen 1974, 16ff.; MacDowell 1975, *passim*; MacDowell 1976, *passim*; Hansen 1978a, *passim*; Hansen 1978b, *passim*; MacDowell 1978, 41–50, 258f.; Hansen 1979a, *passim*; Hansen 1980b, *passim*; Rhodes 1980b, 305–309; Hansen 1981, *passim*; Clinton, *passim*; Sealey 1982, *passim*; Hansen 1985b, *passim*; Rhodes 1985, *passim*; Ostwald 1986, 511–522; Garner, 136–140; Sealey 1987, 32–45, 134ff.; Hansen 1989b, *passim*; Hansen 1989c, *passim*; Ober 1989a, 95ff.; Ober 1989b, *passim*; Hansen 1990a, *passim*; Hansen 1990c, *passim*; Robertson, *passim*; Hansen 1991, 161–177; Rhodes 1991, *passim*; Sinclair, 83f.; Todd 1993, 18f., 56f., 294f.; D. Cohen, 238–244; Rhodes 1995b, *passim*; Todd 1996, 126–131; Millett 2000, *passim*. See too Aiskhin. 3.38ff.; And. 1.81–89; [Arist.] *Ath.* 29.3f., 35.2, 45.4, 59.2, with Rhodes 1993; Lys. 30.2ff.; §§7, 124–127, below.

<sup>175</sup> See too §§141–145, below.

§3. Ἐβουλόμην δ' ἂν, ὧ ἄνδρες ... τοῖς πολλοῖς ὑπειλήφθαι: Aristotle implies that before Solon's reforms, a law-breaker could only be prosecuted by his victim, or his victim's family. In order to ensure that crimes which affected the public, and perhaps also those where the victim was unable to proceed to court personally, the modified constitution allowed anyone who wished, *ho boulomenos*, to prosecute wrongdoers.<sup>176</sup> MacDowell suggests, however, that since, in practice, it had always been possible for anyone to report a crime's perpetrator to a magistrate, the innovation may in fact have been in the provision of the right to conduct the prosecution personally in court.<sup>177</sup> Rhodes notes that in classical times, at least, *ho boulomenos* was principally restricted to prosecuting *graphai*, with *dikai* being the preserve of the victim personally.<sup>178</sup> A prosecutor was usually the original plaintiff, but an alternative could be appointed by the *Boulē* or *Ekklēsia* if the individual who laid the information was, for example, a woman or a slave, and thus incapable in law of taking action.<sup>179</sup>

ἡν δὲ περίεστηκεν ... συμφερόντως τῇ πόλει: Lykourgos contrasts his own view of prosecutors as philanthropic with what he suggests is the prevailing opinion that they are φιλοπράγμονες.<sup>180</sup> Polypragmatism in its broadest sense was a characteristic that could be attributed to the Athenians generally, but in its narrower sense it was defined in terms of *sykophantia* and contrasted with apragmatism, a quietude which could be the result of lack of leisure, and therefore

<sup>176</sup> [Arist.] *Ath.* 9.1, with Rhodes 1993. See too Plut. *Sol.* 18; Lipsius, ii. 237f. with n.1; Harrison 1968–1971, ii. 76f.; Rubinstein 1998, *passim*, especially 128ff.; §§5–6, below.

<sup>177</sup> MacDowell 1978, 53f.

<sup>178</sup> Rhodes 1993, 160. See too Lipsius, ii. 237–244; Harrison 1968–1971, ii. 76ff.

Rubinstein 2000, 91–111, 148–172, 186–198, suggests that *hoi boulomenoi* could work as a team and gain political advantage from association with elite orators, particularly because they probably would not have shared the risk of being fined for failing to achieve 20% of the jurors' votes, that risk being borne by the initiator of the action *ho grapsamenos*, alone.

<sup>179</sup> MacDowell 1978, 62, 183; MacDowell also notes, 190f., that in *apophasis*, the *Ekklēsia* or *Boulē*, upon receipt of the Areopagos' decision, decreed the details of the prosecution, which included the appointment of prosecutor(s). In these and many other instances there may have been a team of prosecutors, a practice that Rubinstein, 2000, *passim*, especially 24–75, suggests was commonplace. It is, in fact, possible that Lykourgos was not the only speaker in the *eisangelia* of Leokrates: see too §§19, 31–35, 52–54, below.

<sup>180</sup> *Philanthropia* is often associated with pity and compassion, generally for the defendant, but also for the city too: Dem. 21.184f., 25.81; see too Dover 1994, 201ff.

banausic in concept.<sup>181</sup> Clearly there was a need here, too, for the moderation intrinsic to the concept of *sophrosune*, indeed Dover defines the philopragmatic individual as one who is ‘determined to keep the initiative in dominating those whose interests he regards as conflicting with his, ... [who has] recourse to litigation on trivial grounds, ... or presses ruthlessly for satisfaction’.<sup>182</sup>

It is not difficult to see why, as Lykourgos claims, such behaviour aroused public enmity against prosecutors (*ὑπὲρ τῶν κοινῶν ἀπεχθανόμενον*). The litigant who had too great a knowledge of the law was suspect, hence the various apologies for a clear understanding of juridical procedures.<sup>183</sup> This helps further to explain why he meets this matter head on, for not only does he need immediately to dispel suspicions of meddlesomeness, but also to provide a basis for the professedly disinterested, and therefore philanthropic, nature of his prosecution, and to obviate the allegations of *sykophantia* which could still be levelled at him, despite his status and authority.<sup>184</sup>

*τρία γὰρ ἔστι τὰ μέγιστα ... τὴν τῆς πόλεως εὐδαιμονίαν*: The tripartite system of law which Lykourgos describes was also argued by Aiskhines to underpin the democracy, as opposed to the unconstitutional methods employed by tyrants and oligarchs.<sup>185</sup> Lykourgos is continuing to present his case as one which has been generated by the needs of the city and one which is grounded firmly in the laws. This is especially necessary in this introductory section because it creates an impression of legal solidity which may help to distract the jurors’ attention from the lack of any particular law which Leokrates is alleged to have violated.<sup>186</sup>

<sup>181</sup> E.g.: *ἡγεῖσθαι ... ξυμφορὰν τε οὐχ ἦσσαν ἡσυχίαν ἀπράγμονα ἢ ἀσχολίαν ἐπίπονον*: Thouk. 1.70.8f.; see too Ar. *Av.* 39–44; *Pl.* 898–925; Dem. 4.42, 10.70, 36.53, 40.32; Thouk. 6.18.7, 87.3; Ehrenberg 1947, *passim*; Kleve, *passim*; L.B. Carter, *passim*; Sinclair, 209f.; Dover 1994, 188f.; Christ 1998, 118–192.

<sup>182</sup> Dover 1994, 188, citing Dem. 21.137, 39.1; Is. 4.30, and Ar. *Pax.* 191.

<sup>183</sup> E.g.: Dem. 49.5, where bankers can justify themselves by their requirement to keep records; 54.17f., where the speaker claims that he was forced by Konon to discover the law. Practised speaking too was a matter for opprobrium: e.g.: Aiskhin. 1.117, 170; Dem. 22.4, 23.5. See too Ober 1989a, 166–177; Dover 1994, 189f.

<sup>184</sup> See too §§2, 3, above, 5–6, 11–13, 31–35, below.

<sup>185</sup> Aiskhin. 1.4f.

<sup>186</sup> See too introduction, 23f., above; §§1, above, 5–6, 9, 52–54, 120–121, below.

§4. *πρῶτον μὲν ἢ τῶν νόμων τάξις ... παραδιδούσα κρίσις* : Through the course of the sixth and fifth centuries B.C., appeals against magistrates' decisions resulted in the courts becoming responsible for trials in the first instance. MacDowell notes that there is no evidence for when magistrates ceased to give decisions, nor for when democratic juries came into existence, but they were clearly in operation by the middle of the fifth century, when jury pay was introduced.<sup>187</sup> Prior to the revision of the law code at the beginning of the fourth century, a board of six archons, the *thesmothetai*, was responsible for many of the cases which were to be decided by the courts.<sup>188</sup> Their name is problematic, however, for they appear to pre-date Solon, and perhaps even Drakon: it is difficult, therefore, to assess their function at this early stage because they would appear to have existed prior to the institution of the written law code with which they were concerned. By the fourth century, however, the *thesmothetai* were primarily concerned with the administration of the courts, though they retained responsibility in some cases of *endeixis*.<sup>189</sup>

There was a variety of trial procedures under which the jurors exercised their powers, and a number of different courts in which cases could be heard.<sup>190</sup> Cases were divided into public or private trials, *γραφαί* and *δίκαι*, and were subject to fixed or variable penalties, *ἀτίμητοι* and *τιμητοί*.<sup>191</sup> Prosecutors in public prosecutions who failed to achieve twenty per cent of the jurors' votes were fined 1000 dr., and forfeited the right to prosecute in such cases again.<sup>192</sup> Until the late

<sup>187</sup> MacDowell 1978, 33f. Development of legal code: §9, below. Fourth-century revision of law code and jurors as *nomothetai*: n.174, above.

<sup>188</sup> Property matters fell within the jurisdiction of the Eponymous Archon, religious cases and homicide within that of the *Basileus* Archon, and disputes between citizens and non-citizens within that of the Polemarkhos: [Arist.] *Ath.* 55.1–59.7, with Rhodes 1993.

<sup>189</sup> [Arist.] *Ath.* 52.1, 59.1–7, with Rhodes 1993. See too Dem. 24.22; Hansen 1976a, 20; MacDowell 1978, 75; n.174, above.

<sup>190</sup> Procedural versus substantive definition of law: introduction, 27ff., above. Jury voting procedure: §§149–150, below. Variety of courts: §§14–15, below.

<sup>191</sup> [Arist.] *Ath.* 48.4; 53.2; 67.1, 68.1, with Rhodes 1993; Harrison 1968–1971, ii. 74–82; MacDowell 1978, 57–61; R. Osborne 1985a, *passim*; Todd 1993, 99–112.

<sup>192</sup> And. 4.18; Dem. 21.47, 22.21, 23.80, 24.3, 53.1f.; MacDowell 1978, 64, suggests that the 'ban on future prosecutions ... was a kind of partial disenfranchisement' and might account for the references in some of the sources to an additional punishment of *atimia* for such unsuccessful litigants; see too Hansen 1975, 29. See too Harris 1999, *passim*; §§11–13, 40–41, below.

fourth century, no such penalty applied to prosecutors in an *eisangelia*, where public participation was highly desirable and much to be encouraged.<sup>193</sup>

ὁ μὲν γὰρ νόμος πέφυκε ... τοὺς ἀδικοῦντας ἰσχύει: Lykourgos will later contrast the laws with poetic authority: the laws do not teach, he will argue, but, because of their conciseness, merely state that which must be done.<sup>194</sup> Here, however, he states that the laws have developed so as to declare those things which are forbidden. Thus the laws need the assistance of jurors and especially prosecutors: the law is the foundation of society, and of this case, but on its own it is not enough.

The laws themselves were kept in the *Metrōon*, where a citizen could ascertain whether his suspicions were justified and follow the requisite procedure to bring a criminal to justice. Sealey suggests that the decree of Teisamenos in 403/2 B.C., proposing the continuation and completion of the process of revising the law code, legislated for the laws to be inscribed on the walls of the Stoa of the *Basileus*.<sup>195</sup> For Sealey, the prominence given there to sacred law is remarkable, but it is possible that this Stoa was the natural location for the inscription of religious law, whose violation came within the jurisdiction of the archon *Basileus*, and that other laws were inscribed elsewhere. This is the view taken also by Richardson, who argues that fourth-century laws were generally set up in places appropriate to their content: thus coinage decrees were located in the agora and the Peiraieus, and a decree for the repair of walls in the Peiraieus and Mounykhia was established at Mounykhia itself.<sup>196</sup> Bonner, too, suggests that laws which referred to murder were set up on the Areopagos.<sup>197</sup>

It is unclear whether from the outset laws would be inscribed in this way in addition to a copy being kept in the *Metrōon*, or whether the creation of an archive was a later addition to the process. Hansen suggests that the *Metrōon* quickly came to be used for archives preserved on perishable materials because revisions

<sup>193</sup> See §7, below.

<sup>194</sup> §§102–103, below.

<sup>195</sup> Sealey 1987, 35ff.; see too Todd 1993, 57f.

<sup>196</sup> M. B. Richardson, *passim*.

<sup>197</sup> Bonner 1905, 59.



came thick and fast after 410–399 B.C. He argues that laws continued to be inscribed on stone, but were updated in archive form: only in the *Metrōon*, therefore, could a citizen be assured of consulting the appropriate, up-to-date edition of the law he sought to clarify. For Hansen, the *Metrōon* was clearly used as early as the beginning of the fourth century when Diokles' law was ratified, since this explicitly legislates for dates to be added to revisions, a practice not associated with stone versions until the second half of the fourth century: the law code inscribed on stoa walls therefore probably comprised only a part of the complete code and was superseded within a few years by the *Metrōon*.<sup>198</sup>

Having determined his charge, the prosecutor summoned the accused in front of a witness and required him to report to the appropriate magistrate; originally, two witnesses were required, but by 420 B.C. at least, one was sufficient.<sup>199</sup> There were, however, other options open to him. He could initiate an *eisangelia*, without a summons, in the *Boulē* or the *ekklēsia*.<sup>200</sup> He could, alternatively, take more immediate action, since a summons was similarly unnecessary in *apagōgē* or *ephēgēsis*, but the procedures could be instigated on the spot.

*Apagōgē* was summary arrest followed by delivery to the Eleven, who were in charge of the prison, whereas in the case of *ephēgēsis*, the plaintiff led the appropriate magistrate to the lawbreaker and required an arrest to be carried out on his behalf.<sup>201</sup> *Endeixis* could also involve arrest and imprisonment, though it is unclear whether it was a separate procedure whereby a criminal was denounced to a magistrate for later arrest, or part of the process of *apagōgē*: Hansen's analysis of instances of *endeixis* where the arrest was carried out by the prosecutor makes

<sup>198</sup> Hansen 1990b, 71. See too Bonner 1905, 58ff., for whom the *Metrōon* seems to function as a repository for those laws not inscribed elsewhere. See too [Arist.] *Ath.* 7.1, with Rhodes 1993; Isok. 7.41; And. 1.83f.; Atkinson, 145ff.; Clinton, *passim*; Ostwald 1986, 410; Garner, 136–140; Robertson, *passim*; Rhodes 1991, *passim*; Shear, 171–178; §§66–67, 124–127, below.

<sup>199</sup> Ar. *Nu.* 1218; *Vesp.* 1408; Dem. 40.28; 53.14; MacDowell 1978, 238; Sealey 1987, 53ff.; §20, below.

<sup>200</sup> See introduction, 29, above.

<sup>201</sup> [Arist.] *Ath.* 29.4, 52.1, with Rhodes 1993; Bonner 1927, 46; Hansen 1976a, *passim*; MacDowell 1978, 58, 65, 75, 113, 120ff., 148, 238; Sealey 1987, 55f.; Todd 1993, 117; Hunter 1994, 135ff.

the latter seem likelier.<sup>202</sup> In such instances, the prosecutor delivered his charge to the relevant magistrate, which was, in most instances, one of the *thesmothetai*, though the Eleven or the Archon *Basileus* might be appropriate depending on the charge: Andokides, for example, was being prosecuted on religious charges which fell within the jurisdiction of the Archon *Basileus*, so it seems to have been the nature of the charge which was the determining factor in choice of magistrate.<sup>203</sup> The prosecutor then had the option of allowing the law to take its course or of removing the criminal from society pending his trial. MacDowell argues that this was the most significant aspect of the procedure, but notes that there is, unfortunately, no evidence for whether a summons was necessary on occasions when an arrest had been deemed unnecessary.<sup>204</sup> Hansen, though arguing that a summons was in fact necessary in such cases, offers corroboration only from Antiphon, which merely shows that a summons was issued in that particular instance.<sup>205</sup>

§§5-6. ἐγὼ δ' ὦ Ἀθηναῖοι ... τοῖς γεγραμμένοις ἔνοχον ὄντα: Despite the vivid picture Lykourgos will paint of the desperate days in 338 B.C., when Athens was expecting imminent invasion by Macedon in the wake of the battle of Khaironeia, the dangers were less real than perceived.<sup>206</sup> Lykourgos refers to Leokrates' personal betrayal of *πάσαν τὴν ὑμετέραν δύναμιν*, a theme which he will develop with the claim that one individual can be held responsible for the destruction of that which is the concern of all.<sup>207</sup> Throughout the first half of his speech, Lykourgos will also build up a complete picture of the charges to which he alleges Leokrates is liable, referred to here as *ἅπασι δὲ τοῖς γεγραμμένοις ἔνοχον ὄντα*, and

<sup>202</sup> Hansen 1976a, 13-17. See too §§112-115, below.

<sup>203</sup> See And. 1.111; [Arist.] *Ath.* 29.4, 52.1, with Rhodes 1993; Dem. 24.105; Hansen 1976a, 20ff.

<sup>204</sup> MacDowell 1978, 75, 238.

<sup>205</sup> Hansen 1976a, 21f., citing Ant. 5.13; see too Dem. 20.156, 24.22; Harrison 1968-1971, ii. 221.

<sup>206</sup> See §§ 36-39, 40-41, 43-45, 52-54, below; Pickard-Cambridge 1914, 392-400; Mossé 1962, 322ff.; Reinmuth 1971a, *passim*; Frolov, *passim*; Hammond 1986, 570f.; Hammond and Griffith, 604-611, 619-623; Hammond and Walbank, 79.

<sup>207</sup> §§59-64, below.

will start his central section with a definitive statement that this has been demonstrated, and that Leokrates is ἔνοχος ... τοῖς εἰσηγγελλμένοις ἅπασιν.<sup>208</sup>

It is noteworthy that there is no reference here, nor in the speech as a whole, to any particular law or decree which Leokrates has violated. This has led Blass to believe that because Hypereides cites laws in detail, even if it is disputed whether he quotes the *Nomos Eisangeltikos* in full, and because Demosthenes and Aiskhines seem regularly to have spelled out the laws which they alleged had been broken, there was, in fact, no law applicable to this trial.<sup>209</sup> There appear, moreover, to be problems with the two decrees which Lykourgos does mention. The first of these empowered the *stratēgoi* to man the fortifications of the city with Athenians and metics, and in this particular respect, Blass acknowledges the weakness of his general argument that Lykourgos was principally concerned with the spirit, rather than the letter, of the law: Lykourgos does not go into detail, but this, for Blass, had less to do with any lack of feeling for the law than with the problem that, by going into detail, Lykourgos would have to admit that this decree said nothing about punishing any absconders, even if they were due for service.<sup>210</sup>

The second decree was passed immediately after Khaironeia and effectively forbade flight from the city.<sup>211</sup> Yet even assuming that the decree had lapsed during the eight years between the crisis and the prosecution, Lykourgos could have argued that it applied at the time, and perhaps even that it applied retroactively if Leokrates had already left before it was passed by the *ekklēsia*. Certainly, it is not possible to be as dogmatic as Hansen, who argues that Lykourgos' notably brief reference to 'highly relevant precedents is undoubtedly because Leokrates has left Athens immediately after the defeat at Chaeronea, before the passing of the decree referred to in 53'.<sup>212</sup> Yet, such arguments may betray unconscious cultural assumptions about the nature of law itself, for

<sup>208</sup> See §§8, 55–58, below.

<sup>209</sup> Blass iii<sup>2</sup>, 100–113; see too Vielberg, *passim*, for whom Lykourgos tries to hide behind a religious façade in order to disguise this problem.

<sup>210</sup> Blass iii<sup>2</sup>, 112; see too introduction, 23f., above; §16, below.

<sup>211</sup> See too §§52–54, below.

<sup>212</sup> Hansen 1975, 108 #121.

Lykourgos noticeably does not say that they should ignore the fact that it was inapplicable, nor that they should consider it still to be so.

This is telling, and comprehensible only within the context of a different concept of law.<sup>213</sup> In an Athenian court, a law, although capable of close definition, provided a persuasive backdrop to a defendant's actions, rather than a specific legal yardstick against which his behaviour was measured.<sup>214</sup> Thus despite Blass' conclusion that this decree must have been the one on which the case was based, and despite the fact that it categorized flight as *prodosia*, Lykourgos does not, and does not need to, focus on any single decree.<sup>215</sup> Indeed, rather than concentrate on any one particular charge, he defines Leokrates' behaviour as treacherous in general, and therefore intrinsically capable of definition as *prodosia* under the terms of the *Nomos Eisangeltikos*. Any specific legislation that he chooses to cite is offered as additional ammunition to support his general characterization of Leokrates as the sort of person whom the *dēmos* legislated against immediately after Khaironeia. As he did in the prosecution of Lykophron, if not also in that of Autolykos, Lykourgos is attempting to secure a conviction on as broad a front as possible.<sup>216</sup>

ταύτην τὴν εἰσαγγελίαν ἐποιησάμην: It is unknown whether this *eisangelia* was raised in the *Ekklēsia* first, or whether the impeachment was initially proclaimed in the *Boulē*, which then issued a *probouleuma* for the prosecution to be debated in assembly. Hansen argues that Lykourgos' reference to Phyrkinos' accusation that Leokrates had harmed his share of the *pentēkostē* demonstrates that the case was an *eisangelia* to the *Ekklēsia*, though it is not self-evident that Phyrkinos' speech was directly connected with the *eisangelia* itself.<sup>217</sup> If it was, however, he may even have been one of a team of prosecutors.<sup>218</sup>

οὔτε δι' ἔχθραν οὐδεμίαν ... τοῦτον τὸν ἀγῶνα προελόμενος: Since voluntary prosecution was encouraged, particularly in cases which affected communal

<sup>213</sup> See too Todd 1993, 68ff.

<sup>214</sup> See too §20, below.

<sup>215</sup> Blass iii<sup>2</sup>, 112f.; see too Harris 2000, 70f.

<sup>216</sup> See introduction, 23–29, above.

<sup>217</sup> Hansen 1975, 108 #121; see too introduction, 29ff., above; §19, below.

<sup>218</sup> See nn.178, 179, above, 451, below; §§19, 31–35, below.

interests, personal enmity was an acceptable motivation to prosecute for reasons other than those provided by a competitive culture alone. In some respects, indeed, it was desirable, since it provided an added impetus to litigation aimed at assisting and protecting the laws.<sup>219</sup> Private hatred could, moreover, be offered as a motivation for the litigant to avoid the suspicion of meddlesomeness, or even *sykophantia*, which would be even more important in cases where financial incentives existed.<sup>220</sup> None the less, personal grudges were generally given an additional ‘public interest’ factor, not least to undermine a defence based upon the claim that a case would not otherwise have been brought to court since no crime had been committed.<sup>221</sup> Thus although it might be expected that Lykourgos would argue that he was not prosecuting out of sheer joy of litigation, he appears, at first glance, to be undermining his substantial credibility by claiming that he is not prosecuting as a result of personal enmity either.

There is no need, however, to see Lykourgos as hiding behind a mass of oaths and quotations from poetry in order to disappear from his own prosecution and construct a public and disinterested prosecutorial voice.<sup>222</sup> His rhetoric is extremely clever and has a double indemnity, for by disclaiming personal enmity as well as *philonikia*, he can argue that his disinterested prosecution displays overt *philanthropia*, and he is able to place the emphasis upon patriotic and responsibly executed duty. At the same time, by asserting that enmity has rightly been aroused in a public respect, he provides the expected grudge even as he disclaims it, and the jury is given an early signal that only by sharing his publicly grounded enmity can they themselves display equal virtue.<sup>223</sup>

<sup>219</sup> See e.g. Aiskhin. 1.1f; Dem. 21.1f., 22.1f., 24.6–9, 53.1, 58.1f., 58ff., 59.11ff.; Montgomery, 32 with n.6; Sinclair, 72f.; Dover 1994, 182; Rhodes 1998, *passim*; Todd 1998, *passim*; Allen 2000a, 39f., 50.

<sup>220</sup> See Lys. 24.2; §§3, above, 11–13, 31–35, below; see too Cloché 1960, 89f.; Bosworth 1988, 207f.

<sup>221</sup> An explicit claim, for example, in Lys. 24.1f.; implicit in Aiskhin. 2.1–10.

<sup>222</sup> Allen 2000b, *passim*.

<sup>223</sup> Rowe, 139, notes that orators could make use of a rhetorical device, *parrhēsia*, by which they seem prepared to risk the listener’s goodwill through being candid, but actually gain credence by appearing to take a risk. This is akin to the rhetoric Lykourgos is using here. See too Harris 1999, 123f., citing Dem. 18.123, 278, for the argument that jurors should not be asked to support private feuds and grudges.

ἀλλ' αἰσχρὸν εἶναι νομίσας ... τῆς πρὸς αὐτοὺς διαφορᾶς: ἐμβάλλοντα conjures up the vivid image of Leokrates barging into the agora, metaphorically invading communal areas and public sacrifices.<sup>224</sup> The word thus provides not only an effective contradistinction with Lykourgos' own action in prosecuting Leokrates, but also an emotionally-charged impression of Leokrates as, effectively, an *atimos*, and therefore as someone who should have been banned from such a space. Indeed, Lykourgos calls Leokrates' behaviour a disgrace, ὄνειδος, an emotive word applied, for example, to Oidipous' daughters, and evocative of the pollution attached both to that king and to the murderers who were forbidden to enter public or religious areas for the duration of the three preliminary investigations, *prodikasiai*, and who were meanwhile therefore debarred almost entirely from the life of the *polis*.<sup>225</sup> Mere association with such people was evidence of impious behaviour.<sup>226</sup> The conspicuous behaviour Lykourgos attributes to Leokrates was, at the very least, considered vulgar, if not downright offensive: Apollodoros, for example, clearly felt the need to defend his own manner of walking and talking against charges of vulgarity.<sup>227</sup>

<sup>224</sup> See too §§21–23(i), below.

<sup>225</sup> ὄνειδος: S. *OT*. 1494; see too Ar. *Akh.* 855; Aiskhin. 2.164. *Prodikasiai*: §§112–115 with n.848, below. Tainted presence of polluted murderers necessitating trials in the open, and frustrating proper performance of rites and safe transit: Ant. 5.10f., 82; Theophr. *Char.* 25.3–4. See too §§133–134, below.

<sup>226</sup> See Dem. 22.2; §§14–15, 135–137, 138–140, below.

<sup>227</sup> Dem. 45.77. See too Sattler, 59f.; Ober 1989a, 147; Trevett, 153f.

§§7–23(i).

With the first transitional *μὲν οὖν* of eight, Lykourgos exhorts the jurors to treat the crimes which Leokrates is alleged to have committed as a matter for great public concern to each private citizen.<sup>228</sup> The defendant’s crimes are heinous and far-reaching, and the verdict will be a lesson to posterity. This is necessarily so, because the crime and its penalty have not been defined by law: thus the jurors will be both law-makers and educators as they attempt to designate an appropriate penalty for unprecedented and unforeseeable crimes. Lykourgos describes the events leading up to the defendant’s flight, and concludes the section with narrative evidence from disinterested witnesses to the general circumstances surrounding Leokrates’ departure from Athens and arrival at Rhodes.

§7. “*Ἀπαντας μὲν οὖν χρῆ ... βλάπτειν τὴν πόλιν*: In the fifth century, the *graphē paranomōn* was concerned with laws and decrees passed by the *Ekklēsia*; the procedure was suspended in 411 and 404 B.C., and after the restoration of democracy and the revision of the law code, it became concerned only with decrees passed by the *Ekklēsia*.<sup>229</sup> A new procedure, the *graphē nomon mē epitēdeion theinai*, was instituted probably at this time and dealt only with laws proposed to the *nomothetai*. The *graphē paranomōn*, like the *graphē nomon mē epitēdeion theinai*, dealt with the suitability and legality of legislation. Both fell into the category of public cases with a variable penalty, which in the example of Eudemos in 382/1 B.C., was death. There was also a ‘three strikes and you’re out’ rule in respect of the *graphē paranomōn*, for an additional penalty of *atimia* was applied to persistent offenders. A time limit of one year was probably applicable after which the proposer could not be punished, though the proscribed measure

<sup>228</sup> *μὲν οὖν* structure: introduction, 37, above.

<sup>229</sup> Aiskhin. 3.191; Dem. 24.154.

could still be annulled: this was the case, at least, with the *graphē nomon mē epitēdeion theinai*.<sup>230</sup>

ὁ δὲ νῦν ἐνεσθηκῶς ... ἀλλ' ὑπὲρ ὅλης τῆς πατρίδος: Although Lykourgos argues that this *eisangelia* is not concerned with a relatively minor constitutional issue, but with a major issue of long-lasting and widespread significance, Humphreys suggests that he was using a sledge-hammer to crack a nut.<sup>231</sup> Yet Hypereides suggests that by the middle of the fourth century, and probably earlier, *eisangelia* was widely employed for the most trivial offences, and was abused by being applied to almost anyone and for virtually any crime.<sup>232</sup> This criticism accords with the view of the *Nomos Eisangeltikos* being more widely applied in the fourth century than in the fifth, though Hansen sees *eisangeliai* becoming more specific and subject to stricter definitions in the fourth century: Hypereides would thus be quoting these tightened provisions.<sup>233</sup> Yet Hypereides' citation of the restrictions of the *Nomos Eisangeltikos* has to be seen within the context of his explicit complaint that they are violated, and to such an extent, indeed, that Euxenippos had been impeached because he misrepresented his dreams.

Perhaps to obviate such frivolous misuse of the procedure, it seems that there might have been an amendment which allowed for prosecutors to be fined if they received less than twenty per cent of the vote. The timing of such a revision, however, is extremely problematic. Hypereides' defence of Lykophron is dated reasonably securely to 333 B.C., where there is explicitly no concern in respect of such a penalty.<sup>234</sup> Demosthenes, however, implies that by 330, the date of his speech in Ktesiphon's trial, such a measure was in place.<sup>235</sup> Yet Demosthenes is referring to the time of Khaironeia eight years previously, and it is somewhat difficult to credit that he might have believed, or expected the jurors to believe,

<sup>230</sup> [Arist.] *Ath.* 45.4, 59.2, with Rhodes 1993; *Dem.* 24, 138, 51.12; *Hyp.* 2 (*Phil.*) 11f.; *Plut. Phok.* 26; *Lipsius*, ii. 383ff., 396, iii. 852f.; *Harrison* 1968–1971, ii. 172, 176; *Wolff* 1970, *passim*; *Hansen* 1974, 44–48; *Hansen* 1978b, 325–329; *MacDowell* 1978, 50ff.; *Sealey* 1982, 291ff.; *Ostwald* 1986, 125–129, 135f.; *Sealey* 1987, 44, 49f., 54ff., 135; *Ober* 1989a, 95f.; n. 174, above.

<sup>231</sup> *Humphreys* 1985a, 218f.

<sup>232</sup> *Hyp.* 4 (*Eux.*) 1ff.

<sup>233</sup> *Hansen* 1975, 16f.; see too introduction, 25–29, above.

<sup>234</sup> *Hyp.* 1 (*Lyk.*) 8, 12, with *Whitehead* 2000; see too *Hansen* 1975, 106f. #119.

<sup>235</sup> *Dem.* 18.250.



that a measure which had been introduced only within the last three years had, in fact, applied eight years previously.<sup>236</sup> Moreover, in Hypereides' defence of Euxenippos, which Hansen dates to 330 B.C. at the earliest, there is again apparently no concern about such a penalty.<sup>237</sup>

*καὶ κατὰ παντὸς τοῦ αἰῶνος ... ἐπιγιγνομένοις τὴν κρίσιν*: A prosecution argument that the verdict will effectively be a paradigm of correct judgement, on the assumption of course that the defendant is found guilty, is far from uncommon in forensic oratory, though the concept of precedence was, if anything, psychological rather than legal.<sup>238</sup> The emphasis is thus on the effect a verdict will have on society and future juries rather than on that which society or earlier juries have determined previously and which should be binding on the jury. Lykourgos, however, will use both forms of precedence argumentation, and will refer to prior verdicts reached by the Areopagos and earlier panels of jurors, as well as to a decree passed by the *Ekklēsia*.<sup>239</sup>

§8. *οὕτω γὰρ ἐστὶ δεινὸν ... ἔλαττον δὲ τῶν Λεωκράτους ἀδικημάτων καθέστηκε*: It is noteworthy that Lykourgos does not mention the *probouleuma* which would have been prepared by the *Boulē*. If it had contained a specific penalty recommendation, he would be remiss not to mention it here, since it could have been incorporated into his precedence argumentation to offer reinforcement for his view of the severity of the crime, arguing that if a crime was deemed severe enough to warrant an automatic death penalty, it would be criminal to acquit Leokrates on the slightest of doubt.<sup>240</sup> On the contrary, indeed, he explicitly states that no suitable categorization nor punishment has been found for such crimes, which would seem to make his paradigmatic *ho boulomenos*, who benefits the

<sup>236</sup> Dem. 18.248ff. See too Whitehead 2000, 78–82; Rubinstein 2000, 115ff.

<sup>237</sup> Hyp. 4 (*Eux*). *passim*, with Whitehead 2000; see too Bonner and Smith, i.296ff., 305; Hansen 1975, 29ff., 109 #124; MacDowell 1978, 64, 186; Rhodes 1979, 113; §§4, 5–6, above.

<sup>238</sup> See e.g. Aiskhin. 1.192f., 196; Lys. 1.34ff., 14.4. See too Bonner 1927, 181ff.; J.W. Jones, 133ff.; Todd 1993, 58–61.

<sup>239</sup> See too §§10, 52–54, 110(ii)–111, 122, below.

<sup>240</sup> See §9, below.

*polis* through his right to prosecute, *aporos* here, with no mechanism to facilitate a charge.

The impression is thus of a substantive, rather than procedural, basis for Athens' legal system, an impression reinforced by the use of *ᾠρίσθαι*, and of a system which, moreover, might render prosecutors impotent in the absence of a clearly defined law.<sup>241</sup> However, despite this apparent weakness, Lykourgos' own prosecution has evidently not been hindered. Rather, he appears to have constructed a prosecution by redefining the crimes, here enumerated simultaneously for the first time, to comply with the definitions of treason in the *Nomos Eisangeltikos*.<sup>242</sup> He will, however, almost immediately develop, if not contradict, his argument that the crimes committed by Leokrates are so great that previous law-makers were at a loss to set an appropriate categorization or penalty.<sup>243</sup>

Lykourgos makes the first of many calls for the death penalty and urges the jury to additional severity by imposing a punishment worse than death.<sup>244</sup> Jurisdiction for executions was in the hands of the Eleven and was performed immediately after the trial by a professional executioner, except during the annual voyage of the sacred trireme to Delos.<sup>245</sup> Three forms of execution are known: the chasm, or pit; the *tympanon*; and the prescription of hemlock. Execution by the pit seems originally to have involved throwing those who had been condemned to death into the chasm while still alive, and Barkan argues that this was perhaps adopted to obviate the need for executioners actually to shed blood themselves.<sup>246</sup> It seems, however, that at a later date criminals were put to death first by an alternative

<sup>241</sup> See introduction, 27ff., above; §9, below.

<sup>242</sup> See §§5–6, above; introduction, 25f., above.

<sup>243</sup> §9, below.

<sup>244</sup> Other calls: §§26–27, 46–51, 52–54, 66–67, 77–78, 79, 120–121, 123, 133–134, 141–145, below.

<sup>245</sup> MacDowell 1978, 254, argues that although the executioner was known euphemistically as 'the public man', *demios*, this should not necessarily be taken to mean that he was a public slave. Sokrates' execution was delayed pending the return of the sacred trireme: Pl. *Phd.* 58a–c.

<sup>246</sup> Barkan 1936a, 55.

method, with their corpses being thrown into the depths as a debased burial rite.<sup>247</sup> The chasm was known as *barathron* in the fifth century, and as *orygma* in the fourth: the location is unknown, but the change of name may imply a change of location, rather than merely of name, since *orygma*, from *ὀρύσσω*, implies a dug trench or the like: probably in line with this development, the executioner's name was also changed in the fourth century, to *ὁ ἐπὶ τοῦ ὀρύγματος/τῷ ὀρύγματι*.<sup>248</sup>

The tympanon was a board to which murderers, traitors and thieves were fixed with five iron rings around the neck, wrists and ankles; death presumably resulted from exposure, though MacDowell suggests that strangulation by the ring around the neck was possible.<sup>249</sup> The use of hemlock, despite its notoriety as the means of Sokrates' execution, has most recently been seen less as a general means of execution, or as a mechanism for enforced suicide, than a privilege granted to those convicts who had the means to pay for what was, probably, quite an expensive draught.<sup>250</sup> There was, however, a fate worse than death since additional punishments could be inflicted on the corpse: property could be confiscated or demolished; the right to be buried in Attica could be denied; and the executed criminal's descendants could suffer *atimia*.<sup>251</sup>

<sup>247</sup> See too Arist. *Eq.* 1362; *Ra.* 574; *Pl.* 1107ff.; Xen. *Hell.* 1.7.20; Barkan 1936a, 59–62; MacDowell 1978, 254f.; Allen 2000a, 218–224, 324f.

<sup>248</sup> See Dein. 1.62; Hdt. 7.133; §121, below; Barkan 1936a, 56–59. Allen 2000a, 220ff., suggests that the *barathron* was on the border of Attica, whereas the *orygma* bordered the city of Athens itself.

<sup>249</sup> MacDowell 1978, 255; see too Ar. *Thesm.* 930ff.; Arist. *Rhet.* 1385a10–13; Dem. 19.137; Lys. 13.56; Bonner and Smith, ii. 278–287; Barkan 1936a, 65ff.; MacDowell 1963, 111ff.; Allen 2000a, 200f., 213ff.; Todd 2000, *passim*. Crucifixion, at least in the sense of being nailed to something, was also possible, if apparently rare: Dem. 21.105.

<sup>250</sup> See And. 3.10; Lys. 12.17, 18.24f.; Pl. *Phd.* 117a ff.; Xen. *Hell.* 2.3.56; Barkan 1936a, 76ff.; Bonner 1973, *passim*; Gill, *passim*; MacDowell 1978, 255; Allen 2000a, 201, 232–237; Todd 2000, 33, 39f.; Sullivan 2001, *passim*. It is interesting to speculate whether this can be the *common* privilege of an easy exit from life in Dem. 24.7.

<sup>251</sup> See D.S. 13.101.7; Plat. *Grg.* 516d; [Plut.] *Mor.* 833D–834B; Xen. *Hell.* 1.7.22; Hansen 1975, 33ff., 82f. #62, 113ff. #135–7; MacDowell 1978, 255f.; MacDowell 1976f., suggests that whilst Xenophon could be omitting the obvious in not mentioning the death penalty when he describes refusal of burial in Attica, it is possible either that there were separate penalties or that this was a penalty given in isolation, or in expectation of being unable to inflict the death penalty on criminals who escaped, or were expected to escape, into voluntary exile, which is one of the possible meanings of the emended text in Aiskhin. 3.252; Connor 1985, *passim*; see too §§40–41, 112–115, 117–119, below.

§9. *παρεῖσθαι δὲ τὴν ὑπὲρ ... ἐπίδοξον εἶναι γενήσεσθαι*: Despite Lykourgos' previous claim that law-makers had been at a loss about how to deal with the prospect of crimes such as those committed by Leokrates, he now argues that such offences were never anticipated.<sup>252</sup> Neither argument, however, is plausible. Drakon's law code, although instituted within a decade of Kylon's fruitless attempt at tyranny in the late seventh century B.C., seems, as MacDowell argues, to have been a clear response, whether attributable or not to a real or mythical Drakon, to the socio-political machinations which lay behind the abortive coup, despite the lack of evidence to give concrete support to a theory of the impetus behind the legal innovations.<sup>253</sup> All that can now be discerned of Drakon's code are the measures concerned with homicide, the remainder being superseded, though he was also credited with the institution of the *Ephetai*, the fifty-one magistrates who tried cases which fell outside the jurisdiction of the Areopagos and who were, perhaps, therefore a committee of Areopagites.<sup>254</sup>

Solon's legal code of 594/3 B.C., also, can hardly be seen simply as little more than an unsuccessful effort to avert an anticipated tyranny, but seems primarily to have resulted from the social, political and financial disputes and upheavals which followed the Drakontian reforms. It, too, was unable fully to resolve dissatisfaction, and in the years following the reforms a period of literal anarchy ensued culminating in Damasias' attempt to hold onto his archonship, and the establishment of the Peisistratid tyranny.<sup>255</sup> As later laws came to be attributed to him, Solon's reforms came to be considered far more wide-ranging than in fact they were, his legislation being recorded in his own verse and inscribed on

<sup>252</sup> See §8, above.

<sup>253</sup> MacDowell 1978, 41 ff.; see too [Arist.] *Ath. Lost Beginning* (b)–4.5, with Rhodes 1993; Dem. 20.158; 23.51; Plut. *Sol.* 12f., 17; Wilamowitz 1893, i. 49–98; Stroud 1968, *passim*; Gagarin 1981, *passim*. In the immediate aftermath, Kylon's supporters were killed by followers of the Alkmaionid archon, Megakles, whose family was later condemned for sacrilege and its dead exhumed and cast out of Attica: Hdt. 5.70ff.; Thouk. 1.126.

<sup>254</sup> The *Ephetai* tried cases in the courts detailed in Paus. 1.28.8–12, the exception being killings where the murderer was unknown, in which case the trial was held by the *Basileus* Archon in the *Prytaneion*: [Arist.] *Ath.* 57.4, with Rhodes 1993; MacDowell 1963, 53–57; Harrison 1968–1971, ii. 36–43; MacDowell 1978, 27f., 117; Todd 1993, 81f. See too §§4 with n.188, above, 65, below.

<sup>255</sup> [Arist.] *Ath.* 5–15, with Rhodes 1993.

publicly-displayed wooden *axones*.<sup>256</sup> Kleisthenes' democratising measures from 508/7 B.C., too, arose from, and were clearly aimed at obviating *stasis*. Having abolished the old tribes and inaugurated ten new tribes based on the tripartite subdivisions of Attica, *trittyes*, of city, coast and inland, the *Boulē* of 100 *Bouleutai* from four tribes was reformed to comprise 50 from each of the ten tribes. Ephialtes' reforms of the constitution and powers of the Areopagos, probably in 462/1 B.C., resulting from the increasing power of that Council, seem again to be grounded in social unrest, with the transfer of power from the Areopagos to the assembly and law-courts: the ancient Council retained jurisdiction only in cases of intentional homicides and certain sacred crimes.<sup>257</sup>

Although Ephialtes' reforms were among the most radical, the overall pattern is a reactionary one, especially when compared to Lykourgos' attribution to previous law-makers of either *aporia* or inability to imagine crimes of such Leokratean magnitude. The argument is, however, probably disingenuous rather than erroneous. The intention is to pave the way for the flattering argument that the jurors must now be reactionary *nomothetai* themselves, following the precedents set by Drakon, Solon, Kleisthenes and Ephialtes.<sup>258</sup> Thomas views such appeals to ancient law-makers in forensic oratory in a distinctly anti-democratic, if not oligarchic, light: her argument is plausible and, if her model is correct, Lykourgos may be subtly and simultaneously appealing to ancient law-makers and thus to a disregard of the laws, or more precisely the lack of laws, applicable to his case, as well as flattering the jurors by effectively comparing them to the likes of Solon and Kleisthenes and urging them on to extreme severity.<sup>259</sup>

<sup>256</sup> Fuller discussions: Ruschenbusch 1966; Forrest 1966; Hignett; Ehrenberg 1968; Drews; Murray 1993. See too D. Cohen, 241, (with Rhodes' comment, 245) who suggests that 'certain features of Athenian litigation and the administration of justice contradicted, or existed in tension with, democratic principles of the rule of law'.

<sup>257</sup> See [Arist.] *Ath.* 20–22.6; 25.1–2, with Rhodes 1993; Hdt. 5.66ff; G. Smith, *passim*; Hignett, 124–159; Ober 1989a, 68–78; Carawan 1990, *passim*; Hansen 1994, *passim*; Badian 2000, *passim*; Rhodes 2000a, 469.

<sup>258</sup> See §2 with n.174, above.

<sup>259</sup> Thomas 1994, *passim*. She also argues, 121ff., that many of the references to Solon in fourth-century oratory, especially in Aiskhin. 1, can be seen to have an educational thrust, with emphasis on the law-giver's moral outlook and motivation: see too §10, below. Similar strategy of law-makers' *aporia*: Lys. 31.27; see too §65, below.

διὸ καὶ μάλιστ' ... καταλείπεσθαι παράδειγμα τοῖς ἐπιγιγνομένοις: Behind his flattery of the jurors with the magnitude of their power, Lykourgos is conflating their tasks of giving a verdict and determining the penalty. Since the penalty in this case had probably not been defined in the *probouleuma*, Leokrates' punishment would result from the jury's choice between his penalty proposal and that of Lykourgos.<sup>260</sup> Lykourgos at least seems in no doubt as to what his proposal is to be, though litigants presumably did not generally make their final decision in advance, but waited until they knew that there was to be a second vote, and based their suggestion on the margin by which the defendant had been condemned. In theory, penalty suggestions were totally at the discretion of the opposing parties. Sokrates famously claimed that he had intended to propose the public honour of dining in the *Prytaneion* as a punishment but had been persuaded by his friends to suggest a fine instead, and MacDowell notes that although 'no doubt it would have been silly to put that forward as his proposed penalty, ... it would not have been illegal. In practice, however, only certain kinds of penalty were imposed', notably death, exile, *atimia* and fines.<sup>261</sup>

Fines generally were the property of the state, except for half the value of the fine in *phaseis* and three-quarters in an *apographē*, which went to the successful prosecutor.<sup>262</sup> Imprisonment seems not to have been generally used as a punishment, but as an optional means of detention prior to trial, or pending the repayment of fines, for violating *atimia* restrictions, for mercantile offences, or where such precaution was required according to the terms of the judgement; the situation is not clear cut, however, with various arguments from time to time suggesting that imprisonment was recognized as a normal penalty.<sup>263</sup> More

<sup>260</sup> See introduction, 29ff., above; §8, above. Argument for jurors to act as law-makers: Lys. 14.4.

<sup>261</sup> MacDowell 1978, 254; Pl. *Ap.* 36b–37c; D.L. 2.40–42; see too §8, above.

<sup>262</sup> *Phaseis* were akin to *graphai* in that they could be prosecuted by *ho boulomenos*, the principal difference between the cases being the retention of half the imposed fine in *phaseis*. Non-payment of fines resulted in the classification of the defaulter as a state debtor. See [Arist.] *Ath.* 43.4, 52.1, with Rhodes 1993; Dem. 40.22, 53.1f.; Hyp. 4 (*Eux*). 34; Lys. 17.4; Bonner and Smith ii. 41, 50, 71, 271; Harrison 1968–1971, ii. 211–221; MacDowell 1978, 58, 62, 158f., 166, 257; Todd 1993, 118f. See too §§4, 7, above.

<sup>263</sup> See e.g. Harrison 1968–1971, ii. 177, 241–244; Allen 1997, *passim*; Allen 2000a, 226–230. See too And. 4.4; Dem. 21.47, 24.92, 105, 114, 132, 146, 33.1, 35.46f.; Pl. *Ap.* 37b–c; Barkan 1936b, *passim*; Todd 1993, 140; Hunter 1997, 306f.; §§112–115, below.

certainly, enslavement was not an option unless the defendant was an unregistered or tax-evading metic, an alien exercising citizen rights, or living with a citizen as spouse: freed slaves who did not adopt their previous owner as patron could also be reassigned to that owner.<sup>264</sup>

Exactly what Lykourgos means by *μη σφόδρα περιείληφεν ἐνὶ ὀνόματι προσαγορεύσας* is unclear. He specifically said in §8 that law-makers had not legislated in respect of the combination of crimes of abandonment, desertion, flight and betrayal, the grounds on which he is prosecuting, and therefore appears to be alluding to the particular charge of *prodosia* when he claims that Leokrates' crimes are not individually categorized, but are designated as a single offence which itself does not do justice to the magnitude of the offences. It is possible, therefore, that this is a direct reference to the *Nomos Eisangeltikos*, and if this is so, then the law seems clearly to have covered undefined, as well as specific, crimes, a scenario that is plausible for a law which was intended to underpin voluntary prosecution against precisely those crimes which most affected the *polis*.<sup>265</sup>

§10. *εἰ δ' ἴσται ... ποιήσασθαι τοῦ δικαίου*: Apart from this specific reference to the education of the young, Humphreys argues that Lykourgos generally used the assembly and law courts as educational vehicles in his reforms, thus 'Paideia of the young, ... consists of punishment of offenders and rewards to the virtuous. ... He made a point in some cases of personally proposing honours to benefactors of the city in the Assembly, ... and by the use of *eisangelia* in prosecutions he ensured that sanctions against offenders also got publicity in Assembly meetings.'<sup>266</sup> She contrasts this behaviour with the distinction Lykourgos makes between agonistic liturgies which bring glory to the individual, and *epidoseis* which should be singled out for reward since they benefit the whole community.<sup>267</sup> Here, Lykourgos stresses the double thrust of education which

<sup>264</sup> See Dem. 25.57; Lys. 23. *passim*. See too Lipsius, ii. 625; Harrison 1968–1971, i. 26, 165, 181–6, ii. 168f., 186; MacDowell 1978, 70, 78f., 87, 256; Todd 1993, 139, 182, 208; §4, above.

<sup>265</sup> See introduction, 25ff., above; §§1, 5–6, 8, above, 55–58, below.

<sup>266</sup> Humphreys 1985a, 217.

<sup>267</sup> Humphreys 1985a, 216ff.; see too §§135–137, 138–140, below.

might be expected in a highly competitive culture, and reinforces his argument that judgements, honours and punishments set precedents which are too important to be taken lightly.<sup>268</sup>

Since there was no obligation to provide any specific education for children, learning was chosen and privately bought by a child's parents. Opportunities existed for basic training in fundamental aspects of education, from literacy and numeracy to music and gymnastics, or for individual tuition in specific areas: basic literacy was taught by *grammatikoi*, numeracy by *logistikai*, music by *mousikoi*, and gymnastics and athletics by *gymnastikai* and *paidotribeis*. Choices would clearly be based on a variety or combination of factors and considerations, including practical requirements, cost, and status, and the duration of individual children's education thus varied.<sup>269</sup> The sophists too offered an additional education in persuasiveness. Although sometimes much-derided, this training in public speaking, argumentation, and virtue seems to have been subordinate to the principal concerns of the concept of education itself and the ability of *paideia* to produce *aretē* and leadership.<sup>270</sup>

§§11-13. Ποιήσομαι δὲ κἀγὼ ... ἀπολογήσεται κατηγορίαν εὐρεῖν: Although Aristotle claims that opposing litigants swore on oath not to stray from the point at issue, he implies that this oath was taken only in private cases. For Rhodes, however, it is dangerous to construct from silence an argument that the oath was not actually sworn in public cases. There are, he argues, plentiful occurrences in both types of cases of deviation from the point, at least from a modern perspective, which implies that a rule broken in one instance is being broken in the other also.<sup>271</sup> It was, certainly, far from unusual for speakers to insist that they

<sup>268</sup> See too Dover 1994, 229-232, 236f.; Thomas 1994, 119ff.; §§1, 7, above.

<sup>269</sup> See Arist. *Pol.* 1337a33-1338b8; Isok. 15.181f., 295f.; Pl. *Prt.* 318e, 325e-326a; Ober 1989a, 157-165, 182-191; Robb, *passim*.

<sup>270</sup> See Aiskhin. 1.9-12; Ar. *Eq.* 185-93; *Nu. passim*; *Ra.* 718-37; Isok. 7.40-51, 10.1-13, 13. *passim*, esp. 12f., 19f.; Jaeger, i. 283-405, iii. 105-130; Kerferd, 17, 131-138; Ober 1989a, 170-174.

<sup>271</sup> [Arist.] *Ath.* 67.1 with Rhodes 1993; see too Lipsius, iii. 918f.; Hommel, 103f.; Bonner and Smith, ii. 162f.; Harrison 1968-1971, ii. 163.



were maintaining relevance and to allege that their opponents were attempting to mislead the jurors not only by straying from the point, but also by using dishonest arguments, and seemingly related but actually irrelevant details.

There is, however, a significant problem of perspective. Was it, in the view of a fourth-century juror, deviating from the point for a litigant to speak of indirectly related historical events, public scandals or concerns, and to include character analysis and quotations from epic, tragedy and epigraphs? Bers has demonstrated the power of *thorubos* to disrupt proceedings if a speaker aroused a jury's hostility, with misdemeanours ranging from mispronunciation to obvious lies.<sup>272</sup> The lack of such uproar in respect of these sorts of issues suggests, therefore, that from the jurors' perspective, it was considered appropriate and to the point. Bonner has argued, indeed, that it was the prevailing practice to use such tactics, and despite orators' requests for the jurors not to shout or interrupt at points where they clearly anticipate interruptions, there is no real evidence in the speeches for actual interruptions.<sup>273</sup> It is hard to see how there could be such evidence, of course, but speakers were aiming primarily to rouse the jurors' interest and, in this respect, deviation was probably essential. It is also difficult to see how certain common mechanisms of argumentation, like character analysis for arguments from probability, would have been possible without straying from the immediate point at issue.<sup>274</sup>

The rules themselves, moreover, could be interpreted subjectively. The death penalty was the ostensible punishment for citing a non-existent law but, as Thomas notes, litigants effectively did this constantly by appealing to the ancient law-makers and their intentions, as well as to the tragedians in their capacity as moral authorities.<sup>275</sup> Lykourgos is clearly being disingenuous here, fitting into a

<sup>272</sup> Bers 1985, *passim*; see too Lofberg 1917, 12; Ober 1989a, 104, 147; Lanni, 187f.

<sup>273</sup> Bonner 1905, 14–20. D. Cohen, 244, suggests that 'much of the judicial rhetoric which has been too readily dismissed as "irrelevant" or a "perversion of legal process" is really central to the process of judgement as the Athenians conceived it'; see too Ober 1989a, 125; §§52–54, below.

<sup>274</sup> See Arist. *Rhet.* 1376a23–32; Sattler, 57–61; Carey 1994c, 40–43.

<sup>275</sup> Thomas 1994, *passim*; see too Aiskhin. 1.6ff., 141–152; Dem. 26.24; Bonner 1905, 14–20, 39f., 59f.; Bonner 1927, 177ff.; Calhoun 1927, 132; Clinton, 35f.; Garner, 136–140; Johnstone, 25–33; §§90–92, 98–101, below.

pattern easily illustrated by Aiskhines and Demosthenes, who frequently accuse each other of deviation whilst insisting on their own rhetorical propriety, and who allow a great deal of time to answer alleged irrelevancies.<sup>276</sup> Digression was evidently effective and viewed with anything but opprobrium by the jurors for whom it may have provided as welcome an entertainment and distraction as hearing professional speakers or actors recite for their pure entertainment.<sup>277</sup>

ἀλλ' οὐ δίκαιον ὑμᾶς ... δικαίαν ποιεῖσθαι τὴν κρίσιν: Panels of jurors fell largely into one of two camps for rhetorical purposes: they were 'a soft touch', sometimes because of their simplicity and fairness, but more often because they were easily hoodwinked as a result of their indifference and desire for entertainment; or they were fierce and relentless, like a hornet with a vicious sting in its tail. Antiphon, adopting an admonitory tone, argued that jurors had often repented of imposing the death penalty; he had, however, already claimed that he would have had faith in the intrinsic justice and forgiveness of jurors even had they not taken an oath.<sup>278</sup> Such statements were evidently grounded not only in the particular rhetorical requirements of the argument, but also couched in terms that flattered even as they criticized.<sup>279</sup> Speakers could therefore adopt a hectoring persona whilst voicing fears that jurors were easily tricked and misled by sophistic speakers, but it represents, all the same, a delicate balancing act to avoid the appearance of arrogance.<sup>280</sup>

Elite orators thus clearly made efforts to bring themselves down to the level of their audience. They also, none the less, insisted upon a community of interest and took for granted a tacit acknowledgement that the elite had something valuable to contribute to the *polis*.<sup>281</sup> Aiskhines, however, was explicit: it was laughable the way jurors now paid no attention even when the charges were being read out, a complaint reinforced by Demosthenes' claim that juries let defendants off for one

<sup>276</sup> See e.g. Aiskhin. 2.4; Dem. 18.9.

<sup>277</sup> E.g. Ar. *Vesp.* 579–582, 1101–1105.

<sup>278</sup> Ant. 5.8, 91.

<sup>279</sup> Dover 1994, 27, notes this effect in 'the prosecutor trying to induce severity by stern admonition (almost, at times, by taunts) and the defendant trying to induce leniency by persuasion and flattery'.

<sup>280</sup> See too Ober 1989a, 174ff.; Dover 1994, 23ff.; §§135–137, 138–140, below.

<sup>281</sup> See Markle 1985, 282ff.; Ober 1989a, 219–233, 259ff., 304–309; Todd 1990c, 167ff.

or two sophisticated witticisms.<sup>282</sup> This is more akin to the tone in which Lykourgos addresses the jurors: they should mimic the Areopagos which is hard but scrupulously fair. This Council, therefore, which retained respect even during periods of unpopularity, and whose representation thus itself represented a delicate balancing act, could be identified as a model of propriety in the hands of an elite orator.<sup>283</sup> Dover, indeed, notes the similarities between Aristophanic comedy and fourth-century orators: both were ‘upholders of conservative virtues and a scourge of demagogues’.<sup>284</sup> This was a persona which Lykourgos could adopt with ease and, probably, with impunity: as a familiar conservative leader of the *polis* identified with personal and public austerity, his tone also provides a link with the poets whom he will later use in their traditional capacity as guarantors of the public conscience who exhorted, rather than cajoled, citizens to proper public-spirited behaviour.<sup>285</sup>

πρὸς ὃ δεῖ καὶ ὑμᾶς ἀποβλέποντας ... διώκουσιν ἥκιστα συκοφαντεῖν: Whilst jurors, swearing the *heliastic* oath, undertook *διαψηφιοῦμαι περὶ αὐτοῦ οὐ ἂν ἡ δίωξις ἡ, forensic speeches delivered to the Areopagos were required by law to avoid ἔξω τοῦ πράγματος λέγειν*.<sup>286</sup> Lykourgos uses the same terminology to urge the jurors to be exactly like their esteemed counterparts; he might, indeed, have used the combination of hortatory rhetoric and flattering comparison frequently, a technique which perhaps formed a not inconsiderable element of his overall success. Lykourgos claims that his advice is aimed, in part, at reducing the risk of *sykophantia*. He cannot mean to imply that he himself is the sort of prosecutor of whom the jurors should be wary, and he has in any case already insisted on his own disinterested prosecution.<sup>287</sup> He seems, rather, to be characterizing himself almost as the moral conscience of the *dēmos*, a persona that not only puts him above every allegation of *sykophantia*, but also above any hint that his case is not fully worthy both of prosecution, and of a guilty verdict.

<sup>282</sup> Aiskhin. 3.192; Dem.23.206.

<sup>283</sup> See §§52–54, below.

<sup>284</sup> Dover 1994, 26, see too 23–33.

<sup>285</sup> See too Carey 1999, 371, 388–391; introduction, 19f., above.

<sup>286</sup> Dem. 24.151 ; [Arist.] *Ath.* 67.1 with Rhodes 1993.

<sup>287</sup> §§3, 5–6, above.

‘Fig-revealers’ were restricted to prosecuting *graphai*, since *ho boulomenos* could not involve himself in others’ private legal concerns. *Sykophantai* are traditionally viewed as public nuisances who were highly, if not solely, motivated by the financial rewards available to prosecutors in, for example, *phaseis* and *apographai*, as well as by the prospect of monetary gain from blackmail.<sup>288</sup> Thus, although *sykophantia* might be defined in terms of the protection of democracy, underpinned by Solonian law to permit *ho boulomenos* to protect the *polis*, attempts were clearly made to discourage what has been called ‘vexatious litigation’: a penalty of a 1000 dr. fine, together with limitations on future prosecutions, was imposed for failing to secure one-fifth of a jury’s vote.<sup>289</sup> In addition to these indirect mechanisms, there were also various direct means for prosecuting *sykophantai*: *probolē* cases, heard once a year in the assembly, and the *graphē sykophantias* both provided a means of active discouragement to citizen and metic alike.<sup>290</sup>

This traditional view of *sykophantai* has been strongly challenged by Osborne, who argues that *sykophantai* were a vital part of Athenian legal proceedings but not the malicious and financially-motivated caricature understood by the term. He suggests that the word indicates more a nuisance, ‘a pest causing ... the court unnecessary trouble’.<sup>291</sup> Harvey, however, considers that there is ‘much to be said in favour of the traditional view of the *sykophantēs* as one who abused the rights of *ho boulomenos*’.<sup>292</sup> Thus, speakers generally stressed their patriotism and public-spiritedness to defend themselves against charges of *sykophantia*, and fell back on the ‘much more cogent argument’ of personal enmity; Lykourgos, however, eschews such a defence, firmly drawing the fine line between the

<sup>288</sup> See Ar. *Pl.* 898–923; Dem. 39.2, 40.9f., 53.1ff., 57.34, 58.12f.; Lys. 7.20f., 25.3; Isok. 18.9f.; Calhoun 1913, 47f.; Lofberg 1917, 26–48; Bonner 1927, 63ff., 70; J.W. Jones, 123f.; Mossé 1962, 270; Adkins, 309f.; MacDowell 1978, 62–66; Harvey 1985, 78; Ober 1989a, 173f., 255; Sinclair, 73; Todd 1993, 92ff.; Hunter 1994, 125ff.; Christ 1998, 48–71; R. Osborne 2000a, 75–78.

<sup>289</sup> See R. Osborne 1990, *passim*. See too §§3, 4, 7, above, 31–35, 120–121, below.

<sup>290</sup> See [Arist.] *Ath.* 43.5, 59.3 with Rhodes 1993; Isok. 15.313ff.; Lofberg 1917, 19–25, 53, 86–95; Harrison 1968–1971, ii. 61 with n.3, 62; MacDowell 1978, 65; Christ 1992, *passim*; Sinclair, 159.

<sup>291</sup> R. Osborne 1990, 94.

<sup>292</sup> Harvey, 1990, 103, and *passim*.

discouragement of malicious prosecution and invitation of public-spirited actions according to his own, strictly defined terms.<sup>293</sup>

*καὶ ὑμῖν εὐορκοτάτην ... θέσθαι τὴν ψῆφον*: Jurors swore an oath at the start of every year rather than at the outset of an individual case. The actual text of the oath is unknown, but appears to have been at least paraphrased by Demosthenes: the jurors agreed to reach a verdict in accordance with Athenian laws and decrees; to reach a decision that would be considered the most just where a law or decree either did not exist, or was insufficiently exact to correspond with the case at hand; and to enforce rules relating to the restrictions of terms and numbers of posts of public officials.<sup>294</sup> MacDowell suggests that although the text has been considered to contain ‘misquotations and spurious clauses’, it none the less corresponds with what might be expected and presumably contained several, if not many, other clauses which were not germane to the cases of those who quoted it.<sup>295</sup> It is, indeed, unlikely that it could be seriously misrepresented before jurors who would themselves have sworn it. Since once a year was deemed sufficiently often for the oath to be sworn, it may have been extensive and comprehensive, attempting to cover any contingency but also to make allowances for instances where this was inadequate.

Johnstone has considered the *dikastic* oath at some length and concludes that ‘an authoritative text would not guarantee a single valid meaning, if for no other reason than because the oath itself, just like the laws, was subject to debate and interpretation in the courts’.<sup>296</sup> He argues that Harris’ view that the oath required jurors to vote strictly in accordance with the law is too rigid an interpretation, and that litigants who give this impression are, rather, attempting to persuade the jurors to behave in a particular way: thus a litigant uses the oath ‘to claim

<sup>293</sup> Hansen 1991, 194f.; see too Aiskhin. 1.1, 2.145; Lys. 12.2f.; Lofberg 1917, 1–19; R. Osborne 1985a, 44–48; Sinclair, 209; Allen 2000a, 151–167; Allen 2000b, *passim*; §§3, 5–6, above, 43–45, below.

<sup>294</sup> See Dem. 24.149ff.; see too [Arist.] *Ath.* 62.3, with Rhodes 1993; Aiskhin. 3.6; Dem. 20.118, 23.96, 39.40; Bonner and Smith, ii. 152–155; Harrison 1968–1971, ii. 48; MacDowell 1978, 44; Todd 1993, 54f., 58, 59f., 83.

<sup>295</sup> MacDowell 1978, 44.

<sup>296</sup> Johnstone, 35.

authority for his interpretation of the law'.<sup>297</sup> Johnstone's suggestions are plausible, though his claim that 'Lycurgus ... made no reference to the oath at all' is difficult to understand, particularly since Lykourgos' point about the oath could conceivably be taken to reinforce Johnstone's view that the oath was an interpretative rhetorical tool.<sup>298</sup> Here, in any case, it is debatable whether Lykourgos intends anything more than the statement of fact that disallowing digression will help the jurors to pass their judgement more easily in accordance with their oath.

§§14–15. Δεῖ δ' ὧ ἄνδρες μηδὲ ... τοῖς ἐπιδημοῦσιν ἐκεῖ: In his first reference here to Leokrates' voyage to Rhodes, Lykourgos appears to take it for granted that the jurors are well informed about the detail of the charges and, implicitly, the defence of trade which Leokrates will make.<sup>299</sup> The jurors would have had a chance to hear the charges in the preliminary hearing in the *Ekklēsia*, but a greater knowledge, particularly of a likely defence, is likely to have been provided by gossip and pre-trial canvassing. Prior information for litigant and jurors alike could also arise from attempts to settle things informally before trial, or at an *anakrīsis* or in arbitration, or from advisers or logographers consulted in common and bound neither by rules about conflict of interest nor about confidentiality.<sup>300</sup> There were also stock arguments which allowed educated guesses to be made about what was likely to be said. Any or all of these could account for the many instances of 'of course you all know ...' that are found.<sup>301</sup>

Lykourgos will speak later in far more detail about the deeds of ancestral Athenians; for now he is concerned to set the seal on the distinction between them and Leokrates, to stress the likelihood that other Greeks will discuss the result of

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<sup>297</sup> Johnstone, 36 citing Lys. 22.6f.; see too Harris 1994, 136f.

<sup>298</sup> Johnstone, 42.

<sup>299</sup> See too §§17–18, 26–27, 55–58, below.

<sup>300</sup> *Anakrīsis* and arbitration: Harrison 1968–1971, ii. 66ff., 94–105; MacDowell 1978, 207ff., 239–242; Todd 1993, 126–129; see too §§36–39, below.

<sup>301</sup> See too Dorjahn 1935, *passim*; Dover 1968, 167ff.; Humphreys 1985c, 351; Ober 1989a, 148–151; Millett 1998, 211–218.

the case, and the particular importance, therefore, of a guilty verdict to broadcast the opprobrium of the defendant's fellow citizens.<sup>302</sup> Although it was clearly in the interests of orators to magnify as far as possible the impression of Athens at the centre of affairs, it is not difficult to believe that significant cases from Athens were of interest to other Greeks. Athenian influence had declined after the Social War of 357/6–355 B.C., with Philip in control of Amphipolis and Olynthos, and Euboian independence proclaimed; following Khaironeia, moreover, the Second Athenian League was formally disbanded and Athens was corralled into the Corinthian League, despite retaining her navy.<sup>303</sup> None the less, interest about events in Athens and the manner in which she managed her internal affairs was clearly maintained, for any successfully co-ordinated resistance to Macedonian hegemony and intervention would inevitably involve the erstwhile leader of the greater part of the Greek world, as Agis' failure had recently shown.<sup>304</sup>

In practical terms, this interest would not have been difficult to feed. The precise location of the *Dikastēria* has been much disputed but there is little doubt that trials were openly conducted.<sup>305</sup> Some trials seem to have been held in the stoas, and it is possible that several courts occupied a large section of the east side of the Agora, an area subsequently covered by the Stoa of Attalos II of Pergamon; in Aristophanes' *Clouds*, Strepsiades looks at a map of the world and refuses to accept Athens' location because he cannot see the courts, and although the joke centres on the supposed litigiousness of the Athenians, the physical courts themselves may perhaps be inferred to have existed in a variety of locations, including the Odeion and the *Stoa Poikilē*.<sup>306</sup> It is unknown where *eisangeliai* generally and this trial in particular were heard. Multiple panels of jurors would have been allocated to them, and if they were held in a building rather than on the

<sup>302</sup> See too §§46–51, below.

<sup>303</sup> See Reinmuth 1971a, *passim*; Hammond 1986, 515f., 533–570; Bosworth 1988, 187–192; Heskell, 182–186; Schwenk 1997, 25–33; §42, below.

<sup>304</sup> Introduction, 12ff., above.

<sup>305</sup> [Arist.] *Ath.* 63.2–67, with Rhodes 1993; Aiskhin. 3.56, 207; Ant. 6.14; Dein. 1.30, 2.19; Dem. 20.165, 54.41; MacDowell 1978, 248; Lanni, *passim*. See too §§11–13, above.

<sup>306</sup> And. 1.77ff.; Ar. *Nu.* 206ff.; *Vesp.* 120, 389, 1109; Arist. *Pol.* 1300b13–35; Dem. 23.65–79, 59.52; Paus. 1.28.5, 8–12; *IG* ii<sup>2</sup> 1641; *IG* ii<sup>2</sup> 1670; Phot. *Bibl.* 535a22–34; Poll. 8.121–123; Harrison 1968–1971, ii. 36–43, 46f.; MacDowell 1978, 35f., 40, 116ff.;

Pnyx, the Odeion, which is possibly the court known as the *Meizon*, would have been large enough to hold multiple panels of jurors; although the Odeion is the largest attested enclosure in which trials were held, however, there is no firm evidence for any trials being held there except for those introduced by the Eponymous Archon. An alternative location is the building known as the *Mētiokheion* or the Temenos of Metiokhos, but the exact location of this building is still disputed and there are no fourth-century sources which confirm its use either as a popular court or for *eisangeliai*.<sup>307</sup>

οἱ πᾶσαν τὴν οἰκουμένην ... οὗτος διαφύγοι τιμωρίαν: πᾶσαν τὴν οἰκουμένην is ambiguous. It can indicate the entire inhabited world, but can also refer specifically to the Greek world, as opposed to barbarian territories.<sup>308</sup> Lykourgos probably intends the former connotation, for it is rhetorically effective to imply such an extent for the rumour of Athens' degradation for which Leokrates is responsible, and to play to a fond self-image of world-wide renown. Yet the reference to the false reports of Athens' capture which Leokrates allegedly made in Rhodes explicitly connects him with the traders there to whom he spoke, an association that is rather dangerous for Lykourgos, for in the central part of his speech he will fiercely attack the anticipated defence claim that Leokrates' departure was motivated by trade.<sup>309</sup>

In this respect, Lykourgos is trying to have his cake and eat it, for he will argue on the one hand that Leokrates' trading activities provided no service at all for Athens, but were intended merely to line his own pocket, and on the other hand that, in any case, he did not leave Athens for such purposes. This type of all-encompassing defence, however, is understandable where litigants had only one speech in which to cover all aspects of their case, and where any of a number of possible defence arguments had to be anticipated.<sup>310</sup> It is clearly an additional

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Wycherley 1978, 53–60; Sealey 1987, 70ff.; Todd 1993, 81f.; Boegehold 1995, 3–16, 43–50, 91–98, 121–192; Millett 1998, 217f.; Shipley 2000, 87.

<sup>307</sup> See Boegehold 1995, 5f., 11f., 177f.; see too §§98–101, below.

<sup>308</sup> See Arist. *Met.* 362b20–30, where Ethiopia and India are included; Dem. 7.35. Hyp. 4 (*Eux*). 33 probably means 'the whole world'.

<sup>309</sup> See §§17–18, 26–27, 55–58, below.

<sup>310</sup> See too §20, below.



advantage if, in the process, Lykourgos can highlight the contrast between the defendant's behaviour and the patriotic excellence of ancestral Athenians.

Lykourgos' identification of himself with such exemplary models is emphasized by the mirroring of his opening *δικαίαν* and *εὐσεβῆ* with his current analysis of how Athenians differ from all others — *εὐσεβῶς ... ὀσίως ... φιλοτίμως ἔχειν*.<sup>311</sup> Leokrates' abandonment of familial and social obligations thus marks him out as *ἀσεβής*. The phraseology hints at divine, rather than human law, and its use may therefore be significant, for Leokrates' crimes implicitly breach the limits within which mankind can legislate, and require a generalized categorization such as *prodosia*.<sup>312</sup> If Lykourgos intends the jurors to draw this inference, the argument, though subliminal, is similar to that commonly found in murder trials, where the pollution of the 'guilty' individual is envisaged as a potential risk of infection for the jurors.<sup>313</sup> Dover, indeed, suggests that the conjunction of *dikaios* and *hosios* recognizes precisely such a legal distinction and it is *dikaios* which Lykourgos links with *hosios*, *eusebēs* and *philotimia*. The jurors must, clearly, avoid any personal risk of divine retribution and, in the process, will acquire the renown associated with public benefactors and be deemed *philotimoi*.<sup>314</sup>

§16. *Δέομαι δ' ὑμῶν ... μεμνήσθαι περὶ αὐτῶν*: The request that a jury listen to a speech through to the end without interruption or irritation is commonplace and illustrates the tendency of jurors, noted by Bers, to disrupt proceedings with *thorubos*.<sup>315</sup> This rhetorical technique was a necessary element of the orator's arsenal, for certain references might antagonize any audience, not just a jury, and it was important for a speaker, whilst evoking outrage at the events described, simultaneously to convey his concern for his listeners' sensibilities (not least to generate their sympathy for his supposed predicament), and to invoke a communal

<sup>311</sup> See too Dover 1994, 247f., 276; §1, above, 40–41, 43–45, below.

<sup>312</sup> See too introduction, 23–29, above; §§5–6, above, 90–92, 94–97, below.

<sup>313</sup> See e.g. Ant. 1.31, 2.a.3, γ.9ff., 3.γ.11f. See too Parker 1983, 110; §§5–6, above.

<sup>314</sup> Dover 1994, 230f., 250ff. See too Ant. 1.25; Lys. 13.3; Whitehead 1983, 56–66. See too §§1, 3, above, 43–45, 135–137, 138–140, below.

<sup>315</sup> See §§11–13, 14–15; see too Bers 1985, *passim*; Lanni, 187f.

ethos which excluded his particular opponent.<sup>316</sup> There is also, perhaps, an element of caution in respect of mentioning ‘unlucky’ matters, for even if such sentiments were not held by Lykourgos himself, they could have been held, or be thought to be held, by many in the jury; they are, at least, frequently expressed in fifth-century tragedy where speaking of ill-omened events is portrayed as (re)generating the very thing to be avoided.<sup>317</sup>

*Γεγεννημένης γὰρ τῆς ἐν Χαίρωνείᾳ μάχης*: Within a year of the conclusion of the Peace of Philokrates in 346, Demosthenes, with Timarkhos, charged Aiskhines with misconduct during the embassies in which their negotiations had been conducted.<sup>318</sup> The trial eventually took place in 343 B.C., after Aiskhines had successfully prosecuted Timarkhos, and was prosecuted by Demosthenes alone.<sup>319</sup> Aiskhines was acquitted, even though Philokrates had recently been prosecuted by Hypereides and found guilty of treason, fleeing before the death sentence could be carried out.<sup>320</sup>

Demosthenes’ *volte face* was grounded in Philip’s actions, for following the Peace of Philokrates, Philip had seized Thermopylai and forced a Phokian surrender, ending the Third Sacred War in 346 B.C.; subsequently, he laid siege to Byzantium and Perinthos, installed tyrannies in Oreus and Eretria, and captured at Hieron a shipment of grain bound for Athens.<sup>321</sup> The Athenians fought back by forcing Philip to abandon his siege of Byzantium, regaining Euboia, seeking and obtaining Persian support, and forming alliances with, amongst others, erstwhile members of the Second Athenian League; although these alliances included even Thebes, Sparta was uninterested in proposals to unite against Macedon, for

<sup>316</sup> See, e.g. Aiskhin. 3.252; And. 1.9; Lys. 31.8. See too Sattler, 59ff.; Carey 1999, 386ff. Even a tragedian needed to avoid causing undue distress to his audience, as Phrynikhos found on the production of his *Taking of Miletus*: Hdt. 6.21.

<sup>317</sup> See e.g. A. Ag. 1078f., S. El. 1211ff.; E. Hek. 208–214; See too Vernant 1990, 260f.; Carey 1999, 372ff.

<sup>318</sup> See Aiskhin. 2. *passim*; Dem. 19. *passim*; Schäfer, ii.274f., 358–390; Hammond 1986, 551–558; Sealey 1993, 145–159; Harris 1995, 70–77, 89–101.

<sup>319</sup> See Aiskhin. 1, *passim*, with Fisher 2001; Harris 1995, 101–106.

<sup>320</sup> Hyp. 4 (*Eux*). 29; see too Aiskhin. 2.6; Hansen 1975, 102 #109. According to Dein. 1.28, Demosthenes conducted Philokrates’ defence.

<sup>321</sup> Dem. 18.71ff.; D.S.16.74.2–77.2; FGH 328F 162 — Philokhoros; FGH 115F 292 — Theopompos; see too Parke and Wormell, i.216–231; Hammond 1986, 556–564; Harris 1995, 124ff.; Schwenk 1997, 28ff.

Arkhidamos III was involved in mercenary action in Tarentum, dying there, ironically, in 338 B.C.<sup>322</sup>

Confrontation became inevitable when Philip, who controlled the Amphictyonic Council, was invited to settle the Fourth Sacred War, which had arisen after the Athenians had rededicated their victory at Plataia against the Persians and Thebans, an act which naturally offended Thebes to a great extent. Thebes had accordingly persuaded the Amphissians to accuse Athens of sacrilege, because the rededication had been made whilst Delphi was under the control of the Phokians who had outrageously robbed the sanctuary before Philip's settlement of the Third Sacred War.<sup>323</sup>

Aiskhines was present when the Amphissians were due to level their accusation and turned the tables by pre-emptively accusing the Amphissians themselves of sacrilege for misuse of sacred land. The Amphictyonic Council, attempting to rectify this misuse the following day, was assaulted by the Amphissians; it therefore resolved to hold an extraordinary meeting at Thermopylai to determine both a resolution and suitable punishment. Aiskhines' success in deflecting Theban machinations, however, was undermined by Demosthenes, who was convinced that continued enmity between Athens and Thebes was disadvantageous: he ensured that the Athenians were absent from the Council's extraordinary meeting. Thebes was also absent, her anger exacerbated by Thessaly's seizure of Ekhinos, a Theban stronghold around the bay from Thermopylai. In response, the Thessalian garrison was expelled from Nikaia, another stronghold near Thermopylai.<sup>324</sup>

After the Amphictyonic Council had failed to enforce its sanctions against Amphissa, Philip's help was requested. He descended into central Greece and demanded both the surrender of Nikaia, and Thebes' co-operation against Athens:

<sup>322</sup> Dem. 18.73–80; D.S. 16.62.4–63.1; Paus. 3.10.4f.; Plut. *Ag.* 3; *Phok.* 14; Str. 6.3.4; *FGH* 115F 232 — Theopompos; see too Hamilton 1982, 61–83; Hammond 1986, 580; Hammond and Griffith, 586–584; Cartledge and Spawforth, 8–15; Hamilton 1997, 60ff.

<sup>323</sup> D.S. 16.23.1–25.3; Dem. 6.22; 9.26f., 32f.; 19.260, 325ff.; Paus. 10.3.1ff. See too Parke and Wormell, i.233–242; Hammond 1986, 565–567; Munn 1997, 98ff.

<sup>324</sup> See Aiskhin. 3.113–31, 140; Dem. 11.4, 18.143–52; *FGH* 328F 56b — Philokhoros.

he was at the Boiotian border to emphasize his demand before a response could even be given. In alarm, Thebes and Athens united to protect Amphissa, and confronted Philip in a series of inconclusive skirmishes which culminated in Philip's seizure of Amphissa.<sup>325</sup> In 338 B.C., Philip, in formation with his son Alexander and the experienced Parmenion, attacked at Khaironeia, where the allies had retreated and where the plain was narrow and more defensible. Philip's feigned retreat duped the Athenian ranks, under the command of Khares, Lysikles and Stratokles, into an attack that broke the allies' formation; Alexander's cavalry simultaneously fractured the Theban line and routed the allies' right wing. The two-thousand-strong cavalry had been the decisive factor in the battle, and Alexander would not forget the advantage of employing such tactics, for a similar manoeuvre again proved decisive at Issos.<sup>326</sup> Athenian losses at Khaironeia totalled one thousand, with a further two thousand taken hostage; the Thebans suffered too and although exact numbers are unknown, the three-hundred-strong Sacred Band died to a man.<sup>327</sup>

*καὶ συνδραμόντων ἀπάντων ὑμῶν ... καθ' ὅτι ἂν αὐτοῖς δοκῆ:* Following the disaster at Khaironeia, there was great apprehension in Athens that Philip would invade immediately, and emergency decrees were rapidly passed. One such decree defined flight as *prodosia*.<sup>328</sup> Other decrees legislated for trials of public officials on charges of treason: Lysikles himself was successfully impeached by Lykourgos, a case which was probably motivated to mitigate the political failure and to attribute the catastrophe to abject military incompetence, though the prosecution of unsuccessful generals was far from unusual.<sup>329</sup>

<sup>325</sup> See Aiskhin. 3.140–51; Dein. 1.74; Dem. 18.174–188, 211–217; D.S. 16.84.2–85.4; Plut. *Dem.* 18; see too Hammond 1986, 566f.; Hammond and Griffith, 585–595; Munn 1997, 98ff.

<sup>326</sup> See D.S. 16.85.5–86.6; Just. 9.3; Plut. *Alex.* 9.2, 20.4; Hammond 1938, 201–218; Pritchett 1958, 308–311; Hammond and Griffith, 596–603; Hammond 1986, 568ff.

<sup>327</sup> See too Paus. 9.40.5; Plut. *Pel.* 18; Str. 9.2.37. See too Hammond 1986, 569f.; Hammond and Griffith, 598f., 603; Munn 1997, 100; §§46–51, below.

<sup>328</sup> See §§52–54, below.

<sup>329</sup> See too Dem. 4.47; D.S. 16.88; [Plut.] *Mor.* 843D; Durrbach 1890, 147ff.; Conomis 1961, 136ff.; Pritchett 1974–1991, ii. 4–33, esp. 20; Hansen 1975, 58f., 103f. #112; Will, 22f.; Humphreys 1985a, 219; Sinclair, 146–152; §§36–39, 40–41, 52–54, below.

Lykourgos cites three proposals passed in this panic-stricken atmosphere. The first, here, relates to a vote to gather women and children from the countryside inside the walls of the Peiraieus, and to permit the *stratēgoi* to organize Athenians and non-citizen residents for the defences as they thought appropriate. The second, in §§36–39, is a reading of a decree authorising the *Boulē* to go to the Peiraieus fully armed to take any such measures as appropriate, but especially to protect the harbour which, despite Leokrates' assertion to the Rhodians, had not been blockaded.<sup>330</sup> Finally, in §41, he records the approval of the motion to free the slaves, to give citizenship to aliens, and to re-enfranchise *atimoi*.<sup>331</sup> Despite the emphasis in these decrees on the Peiraieus, a land invasion was much more likely, though Macedonian siege machinery had been used to great effect at Amphipolis and it may have been feared that the walls linking the city to the harbour, as well as the newly refurbished Peiraieus ship-sheds and the naval arsenal in Zea, products of Euboulos' financial guardianship from 354 B.C., were at risk.<sup>332</sup> According to Plutarch, these measures were proposed by Hypereides, though it is unclear whether they were passed collectively or as individual items, since the impression is of one decree rather than several.<sup>333</sup>

§§17–18. *Λεωκράτης δὲ τούτων οὐδενὸς ... πρὸς τὴν ναῦν προσέπλευσε*: Lykourgos will shortly describe how the defendant made financial arrangements to dispose of his property and how he sacrificed his share in the *pentēkostē*: Leokrates' wealth is evident from his membership of such a consortium and the sale of his house and slaves: these raised one talent and further sales raised an additional 35 minai.<sup>334</sup> There was also a bronze statue of his father in the temple of Zeus Soter, calculated to be worth around 3000 dr.<sup>335</sup> Presumably, the slaves who helped to load the boat were left to maintain Leokrates' property in Athens under the supervision of his

<sup>330</sup> See §§17–18, below.

<sup>331</sup> §§40–41, below.

<sup>332</sup> See too [Plut.] *Mor.* 851A; Xen. *Por.* 3.13, with Gauthier 1976; Cawkwell 1963, *passim*; Garland 2001, 43ff.; Garland 1994, 682–692.

<sup>333</sup> [Plut.] *Mor.* 848F–849A.

<sup>334</sup> See too Kränzlein, 76–82; introduction, 39, above; §§21–23(i), 55–58, below.

<sup>335</sup> See §1 with n.161, above, 25, below.

brother until the date of their sale. To set the scene, however, Lykourgos paints a graphic picture of the defendant's actual departure.

*δείλην ὀψίαν* indicates late afternoon or early evening: it was thus likely still to be light when Leokrates left for the coast.<sup>336</sup> Eirenis' description as an hetaira may be somewhat pejorative, for Demosthenes distinguishes clearly between a *παλλακὴ*, effectively a common-law wife or concubine, who lacked the legal protection of a formally married citizen woman and whose children could not be admitted to the citizen register, and an *ἑταίρα*, a high-class, often foreign, prostitute.<sup>337</sup> A *παλλακὴ* could, however, formerly have been an *ἑταίρα*: Aspasia lived first with Perikles and then, after his death, with Lysikles, during and after the time when she was an *ἑταίρα*.<sup>338</sup> The terms are perhaps somewhat interchangeable, but Eirenis, who was prepared to abandon Athens with her lover, should probably be seen as Leokrates' common-law wife rather than a prostitute. The reason for her concubinage, if such it was, is unclear: Lykourgos makes no mention of any legal wife of Leokrates, so marriage would have been possible if Eirenis was a citizen; the implication is, therefore, that she was non-Athenian, for marriage between citizens and non-citizens, which was previously discouraged by the politically disadvantageous status of the children of such unions, became subject to stringent discriminatory legislation in the fourth century.<sup>339</sup>

The gate through which the couple gained access to the coast is described by a diminutive noun and is therefore probably not one of the fifteen or more main entrances in the city wall, like the Dipylon and the Sacred Gates.<sup>340</sup> Although

<sup>336</sup> In the southern Mediterranean, darkness descends at around 8 to 9 p.m., far more rapidly than in more northerly countries because the sun sets nearer to the perpendicular: these factors are unaffected by the passage of time. See too W.F. Richardson, 51f.; §§5–6, above.

<sup>337</sup> Dem. 59.122. *Pornai* (perhaps 'hookers') were another category of available women: Dem. 59.114.

<sup>338</sup> Plut. *Per.* 24, 30.4, 32; see too Dem. 59.118; Harrison 1968–1971, i. 13ff.; Davies 1971, 458f.; Pomeroy, 88–92; MacDowell 1978, 89f.

<sup>339</sup> See [Arist.] *Ath.* 26.4, with Rhodes 1993; Harrison 1968–1971, i. 25–29; MacDowell 1978, 87; Pelling, 189–196, 218–245.

<sup>340</sup> City walls and the problems posed by gateways: Wycherley 1978, 7–25; Lawrence 1983, 299–308; Knigge, 10, 36, 39f., 56–73. Specific survey and comprehensive discussion of the Dema wall: Munn 1993, *passim*; general discussion: Camp 2000, *passim*. Thouk. 4.110–112, demonstrates the vulnerability of such gates during Brasidas' capture of Amphipolis.

there was both a Peiraeus Gate and a Gate to the Sea, the latter's presence confirmed by evidence of a road leading to Phaleron, there were also several small gates, or posterns, which were simple slits in the wall closed by doors.<sup>341</sup> Lawrence argues that the siting and spacing of these gates strongly suggests an intended peace-time use, probably servicing bridle paths to and from the country for agricultural traffic.<sup>342</sup> The secretive nature of Leokrates' and Eirenis' departure suggests that they probably used such a gate, though it is puzzling that, despite the panic and exigencies of the situation, steps do not appear to have been taken to set guards or erect barricades.

*καὶ ᾗχετο φεύγων ... ἐκ τῶν κινδύνων ἐπικαλέσεται*: Lykourgos paints an emotive picture of Leokrates looking back at the Acropolis, visible even from the coast, and the temples of Zeus Soter and Athene Soteira in the Peiraeus.<sup>343</sup> There were often such temples in harbours, Soter typically being conceived of as the manifestation of Zeus who cared for sailors: no trace remains of these particular temples, but Strabo reports that the colonnades of the temple of Zeus Soter contained works of art by famous artists.<sup>344</sup> Lykourgos again anticipates Leokrates' defence and, in this instance, the reason for his precise reference to Zeus and Athene as Saviours is clear, for the bronze statue of Leokrates' father was abandoned in the temple of Zeus Soter.<sup>345</sup> It is, therefore, implicitly sacrilegious for Leokrates to call upon him again in these circumstances, and his intention to do so is thus further evidence of his impious nature.<sup>346</sup> The rhetoric is emotive, and the jurors' outrage is evoked with a tricolon which emphasizes the now familiar themes of flight, abandonment and betrayal, and the shamelessness of the defendant who will request pity, and demonstrate fear, despite feeling neither as he himself fled.

<sup>341</sup> Wycherley 1978, 17. See too Lawrence 1979, 246, 335–342; Garland 2001, 166f.

<sup>342</sup> Lawrence 1979, 336f.; see too Stroud 1998, 104ff.

<sup>343</sup> See too Paus. 1.28.2.

<sup>344</sup> Str. 9.1.15; see too [Arist.] *Ath.* 56.5 with Rhodes 1993; Paus. 1.1.3; Farnell, i. 47, 60, 164 n.128a–b; Wycherley 1978, 265; Garland 2001, 137; Parker 1996, 238–241.

Wycherley 1978, 42, also notes that the fifth century stoa just south of the Stoa of the *Basileus* in the Agora was also dedicated to Zeus 'under the title of Soter or Eleutherios, because he had saved the freedom of Athens from the Persian threat'.

<sup>345</sup> See too §§14–15, above, 25, 55–58, 135–137, below.

<sup>346</sup> See §§90–92, 94–97, below.

*καταχθεις δὲ καὶ ἀφικόμενος εἰς Ῥόδον*: Before Rhodes' incorporation into the fifth-century Delian League, the Rhodian *poleis* paid tribute to the Persian kings; in 411 B.C., with Spartan support, the island's oligarchic rulers revolted from Athens. After Alkibiades' campaign against the island in 408 B.C., Ialysos, Kameiros and Lindos united, the *poleis*' synoecism probably intended to obviate further attacks by providing 'strength through sympolity' in the new Rhodian republic, with the new city of Rhodes providing excellent harbours on the northeast tip of the island.<sup>347</sup>

Following a democratic revolution in 395 B.C., and the King's Peace of 386, Rhodian autonomy was guaranteed, and despite the island's enrolment in the second Athenian League, its revolt alongside Cos, Chios and Byzantium in 357 resulted in Athenian recognition in 355 of the four rebel states' independence.<sup>348</sup> Almost immediately, however, Rhodes fell under the control of the Hecatomnid ruler, Mausolus: Berthold suggests that 'given the proximity and growing power, particularly naval, of its Carian neighbor, the revolt from Athens and cooperation with the ambitious dynast had entailed a certain gamble for the island, and now the Rhodian democrats found themselves the losers'.<sup>349</sup> Oligarchic rule followed, and Hecatomnid control over Rhodes survived Mausolus' death in 353/2 B.C., and continued, under Artemisia, his sister/wife and successor, until the invasion of Alexander the Great.<sup>350</sup>

*ὤσπερ τῆ πατρίδι ... σωτηρίαν προσαγορεύσας*: In the Kleisthenic distributions of Attika, ἄστυ represented the city of Athens together with the plain, extending as far as the coast itself, of which most was designated *παραλία*: the third designation was *μεσόγειος*.<sup>351</sup> In general terms, however, Athens was conceptually divided

<sup>347</sup> See A. *Pers.* 889ff.; D.S. 11.3.8, 13.69.5, 75.1; Str. 14.2.10f.; Thouk. 8.44; Meiggs 1972, 55f., 368f.; Berthold 1980, 32–35; Berthold 1984, 19–22; Gabrielson 2000, *passim*.

<sup>348</sup> See Dem. 15. *passim*; D.S. 14.79.4–7, 15.28.2ff., 16.7.3f., 21.1f.; Xen *Hell.* 4.8.20–5.1.36; Berthold 1980, 35–43; Berthold 1984, 23f., 28–31; Hammond 1986, 455, 515; Ruzicka, 115–123.

<sup>349</sup> Berthold 1984, 31f.; see too Berthold 1980, 43f.

<sup>350</sup> See Arist. *Pol.* 1304b 27–31; Dem. 15.11ff., 19, 27; D.S. 16.36.2; Pliny, *HN*, 36.4.30; Berthold 1980, 43–49; Hornblower, 34–137, esp. 123–130; Berthold 1984, 31ff.; Ruzicka, 123–129.

<sup>351</sup> See [Arist.] *Ath.* 21.4, with Rhodes 1993; Whitehead 1986, 25–28; Hansen 1991, 47f.



between the upper city, or *asty*, and the harbour of the Peiraiæus.<sup>352</sup> The two were linked by the long walls which, Garland notes, effectively sealed the city and its main harbour from the rest of Attika; with Macedonian use of siege machinery, however, such fortifications became ‘increasingly obsolete’, though Philip still needed inside help in Byzantium, and in Athens, allegedly relied on Antiphon to set fire to the docks.<sup>353</sup> Osborne envisages an additional conceptual division between the *asty* and ‘an undifferentiated countryside’, which is ‘almost universal in the classical writers’; he argues that such a view indicates ‘prejudices and assumptions ... that the *asty* was perceived to have features, advantages, not shared by ... the countryside’.<sup>354</sup> The opposite, indeed, is also true, with honesty and simplicity capable of portrayal as intrinsic rural characteristics in apposition to urban sophistication.<sup>355</sup>

*οὔτω δὲ σφόδρα ... τὰλλα χρήματα διὰ τούτων*: The wide diffusion and enormous volume of eastern-Mediterranean trade, predominantly with Egypt, was heavily focused on the Rhodian ‘entrepôt’.<sup>356</sup> Naval operations, as well as trade, were controlled by what Gabrielsen has called the ‘Rhodian naval aristocracy’, whose activities included the control of piracy. It was, presumably, the efficient organization of this maritime expertise, together with the use of the fast and manoeuvrable ships, *phylakides*, which patrolled and protected the coastline, that would have permitted the recall to harbour of merchants after Leokrates’ report of Athens’ situation, particularly his false report of the blockade of the Peiraiæus.<sup>357</sup>

The Rhodians’ recall of merchant ships would not only help the native traders of the island, but would also allow the islanders to take advantage of Athenian ones. As Berthold asks, where better to dispose of a cargo if Philip was blockading the Peiraiæus?<sup>358</sup> Indeed, traders might have received a better price in Rhodes than in

<sup>352</sup> See e.g. [Arist.] *Ath.* 50.2, 51.1ff., 61.1, with Rhodes 1993; Arist. *Pol.* 1303b10ff.; Thouk. 1.93.7; Xen. *Hell.* 2.4.10f. The administrative duplication in these sectors was perhaps intended to allow logistical continuity in the event of the destruction or invasion of either. See too Wycherley 1978, 261–265; Whitehead 1986, 394ff.; Roy 1998, *passim*.

<sup>353</sup> Garland 2001, 22–26, 43. See too Dem. 18.132; Dein. 1.63; D.S. 16.77.2.

<sup>354</sup> R. Osborne 1985b, 18f.; see too Sinclair, 107ff.; Hansen 2000b, 202ff.

<sup>355</sup> See too Arist. *Pol.* 1318b9–17; Dover 1994, 112ff.

<sup>356</sup> Gabrielsen 1997, 71ff.; see too Garnsey 1988, 150–164.

<sup>357</sup> Gabrielsen 1997, 108ff.; see too Berthold 1984, 42–49; §16 above.

<sup>358</sup> Berthold 1984, 33.

Athens, particularly in the circumstances as portrayed by Leokrates.<sup>359</sup> In Athens, therefore, this could easily be turned into a cause for complaint, for produce that should have brought an economic and physical benefit had been made advantageous to others, and Lykourgos is clearly aiming to lay such losses at Leokrates' door.

§19. *καὶ ὅτι ταῦτ' ἀληθῆ λέγω ... Λεωκράτης ταῦτ' ἀπήγγελλε*: To reinforce the claims he has made, Lykourgos now moves to narrative evidence from witnesses to the general circumstances surrounding Leokrates' departure from Athens and arrival at Rhodes. Here he simply summarizes the evidence to be presented: the jurors will hear from former neighbours of the defendant; then from the Rhodians themselves; and finally from Phyrkinos. This evidence is not, technically, different in kind from that presented in §23(ii); neither set of evidence is, strictly speaking, documentary or contractual. It is, however, theoretically distinct, for the witnesses in this section are presented as disinterested, if not impartial: they were not involved in any dealings with Leokrates, but were, effectively, simply bystanders at the events Lykourgos has described.<sup>360</sup> None the less, this evidence could be intended to do more than just flesh out and substantiate the narrative of events; it could also be meant to imply the outrage generated even in those who may once have been predisposed towards Leokrates, or whom he had alienated even before his treachery, a motive which could perhaps underpin Lykourgos' claim, in §23(ii), that he would have produced the defendant's brother-in-law had he still been alive.<sup>361</sup>

*μετὰ δὲ ταῦτα τὴν Φυρκίνου ... πεντηκοστὴν, μετέχων αὐτῆς*: Phyrkinos is not mentioned either in *APF* or *PA*, and seems to be unknown but for this reference to his accusation of Leokrates *ἐν τῷ δήμῳ*. Hansen suggests that Phyrkinos 'testified against Leokrates in the Assembly, presumably during the meeting when

<sup>359</sup> See de Ste Croix 1974, 48–52; see too Dem. 56. *passim*; §§26–27, below.

<sup>360</sup> See too §§20, 21–23(i), 23(ii)–24, below.

<sup>361</sup> See too Bonner 1905, 39f.; §20, below.

Lykourgos brought his *eisangelia*'.<sup>362</sup> Yet Lykourgos claims that Phyrkinos accused Leokrates of damaging the *pentēkostē* in which he had a share, an allegation which forms no part of the wide range of charges of the *eisangelia*. The remark is, itself, strange. Lykourgos must be referring to an allegation of harm caused to Leokrates' partners in the consortium, rather than to any disservice Leokrates had done to himself, but the grounds for the accusation are unclear: it would make a little more sense if Phyrkinos was himself an associate member and had been personally harmed. The text, however, is less than secure at this point, and this may be just what Lykourgos means, and perhaps formed the basis of Phyrkinos' evidence itself.

Also unclear is the nature of *κατηγοροῦντα*, and whether Phyrkinos *prosecuted* or *denounced* Leokrates, though *ἐν τῷ δήμῳ* is, perhaps, suggestive of denunciation by means of a *phasis*. A successful *phasis*, indeed, resulted in the prosecutor receiving half the fine imposed on the defendant, and would have given Phyrkinos, had he been one of the group, the chance to recoup any losses he may have incurred.<sup>363</sup> Moreover, the procedure was available for trading offences and is notably attested in one case of the importing of grain to a market other than Athens.<sup>364</sup> This was a crime which Lykourgos chose not to include in his *eisangelia*, but of which he accuses Leokrates; it is, however, impossible to determine whether this formed any part of Phyrkinos' charge.<sup>365</sup> Hansen's suggestion is not impossible, however: Phyrkinos may have been one of the speakers in the assembly reinforcing, with arguments not strictly linked to the charges, the motion passed by Lykourgos as principal denunciator, or a *synēgoros* presenting just one aspect, perhaps the specific aspect of illegal import, of a prosecution team's argument for an *eisangelia* on the grounds of *prodosia*.<sup>366</sup>

<sup>362</sup> Hansen 1975, 108 #121 n.2; see too §§5–6, above, 55–58, below.

<sup>363</sup> Dem. 58.13; Harrison 1968–1971, ii. 218–221; Stroud 1974, 158, lines 28f.; MacDowell 1978, 158f.; R. Osborne 1985a, 47f. Harris 2000, 70, seems to take it for granted that Phyrkinos *had* invested in the contract for collecting the tax.

<sup>364</sup> Dem. 35.50–53; MacDowell 1978, 62.

<sup>365</sup> §§26–27, below.

<sup>366</sup> See too Harrison 1968–1971, ii. 56; Hansen 1975, 31; §§3 with nn.178, 179, above, 31–35 with n.451, below.

The *pentēkostē*, also known as the ‘fiftieth’, or ‘two per-cent tax’ was a tax upon imports and exports which was levied on all incoming and outgoing goods.<sup>367</sup> It was collected by the *pentēkostologoi*, having been leased to the highest bidder by the *πωληταί*, or ‘sellers’, ten officials responsible for the state leasing of contracts for the mines and tax collection.<sup>368</sup> Lessees paid over the contracted amount and retained any surplus; if, however, they failed to keep to the terms of their contract, they were registered as state debtors, and their names and the price they had paid for the lease were recorded on whitewashed tablets which were retained by the *Boulē*. There was clearly a substantial profit to be made, and not only by the lessees: Andokides records how bribes were accepted by lease contractors to keep the bidding low and how they themselves formed co-operatives and took shares in cut-price taxes.<sup>369</sup>

Lessees undertook to make payments either periodically or in a lump sum: some were required to pay once in each *prytany*; some, three times annually; others had to make full payment in the ninth *prytany*. Although attempts have been made to argue that mining leases were to be paid in each *prytany* and that tax contract payments were due as a lump sum in the ninth *prytany*, Rhodes notes that it is not actually possible to assess the determinants in these practices, nor to be precise about when contractual payments for tax leases were actually due.<sup>370</sup>

§20. Πρὸ δὲ τοῦ ἀναβαίνειν ... τῆς δημοκρατίας κλητεύσομεν αὐτούς: Lykourgos argues that his advice to the jurors not to allow witnesses to stray beyond evidentiary boundaries is in the interest of the laws, the jurors themselves, and democracy.<sup>371</sup> These are, of course, the fundamental principles which he stressed

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<sup>367</sup> And. 1.133; Dem. 21.133, 166, 35.29f., 59.27; Harp. & Suda, s.v. *πεντηκοστή*; Pollux 8.132.4ff. From 413 B.C., there was also a 5% tax levied on all goods passing through the emporia of Athenian allies: Thouk 7.28. See too Hasebroek 1933, 161f.; §§36–39, 55–58, below.

<sup>368</sup> [Arist.] *Ath.* 47.2f., with Rhodes 1993.

<sup>369</sup> And. 1.133f.

<sup>370</sup> Rhodes 1993, 555f.; see too And. 1.73f.; Dem. 24.40, 96ff., 59.27; Hopper 1953, 210–216, 224–239; Rhodes 1972a, 149ff.

<sup>371</sup> See too §§11–13, above.

at the outset, and which he argued were worthy of the utmost honour and protection. Witnesses are also, therefore, worthy of the same honour and protection only if they comply with his definition of those principles.

Witnesses were, for Aristotle, one of five *pisteis atekhnoi*, and therefore represented concrete evidence which required no rhetorical expertise, in opposition to *pisteis entekhnoi*, intrinsically skilful types of evidence such as arguments from probability.<sup>372</sup> Other *pisteis atekhnoi* were laws, including decrees; agreements, including contracts but also private documents generally; slave testimony from torture; and oaths. Todd considers that the conceptualisation of laws as a type of evidence rather than the rules by which a case is judged reflects a fundamental difference between ancient and modern evidentiary practice; thus the laws have ‘persuasive not compelling force’ and, as such, this type of evidence was effectively ‘supporting arguments’, rather than proofs *per se*.<sup>373</sup>

Not all witnesses to a case were eligible to give testimony: women, children and slaves were precluded. Women could, however, take an evidentiary oath, which did not actually make them witnesses. MacDowell suggests that this was perhaps because they could not be seen in public, but as Todd notes, the evidentiary oath was a public undertaking.<sup>374</sup> Although children could not be witnesses, they could, as adults, testify to events which occurred in their minority and the reason for excluding them at the time of any such event is unclear.<sup>375</sup>

The production of eligible witnesses was the responsibility of litigants. Although there was no juridical power to locate them, witnesses could, however, be compelled in one of three respects: they must either testify to the accuracy of the

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<sup>372</sup> Arist. *Rhet.* 1375a, 22–25; see too Harrison 1968–1971, ii. 133–154; Mirhady 1991b, 13–16; Carey 1994a, *passim*; Carey 1997, 14–17.

<sup>373</sup> Todd 1990b, 32; see too Soubie 1973, *passim*; Soubie 1974, *passim*; Mirhady 1991b, *passim*; Todd 1993, 58ff.; D. Cohen, *passim*, esp. 245; Davies’ comment; §§5–6, above.

<sup>374</sup> MacDowell 1978, 243; Todd 1990b, 26; see too Mirhady 1996, 125–131; Allen 2000a, 103–107; §§28–30, below.

<sup>375</sup> See Dem. 49.42; see too Leisi, 12; Lipsius, iii. 874, n.32; Harrison 1968–1971, ii. 137; Todd 1990b, 26. Child witnesses possibly in homicide cases: MacDowell 1963, 102–109; MacDowell 1978, 119.

text of their evidence; deny knowledge under an oath of disclaimer, *exōmosia*; or pay a fine of 1000 dr., which seems to be what is meant by *klēteusis*.<sup>376</sup> *Exōmosia* was taken ‘with hands on the sacrifice’, and in the name of Zeus, Apollo and Themis, if Plato is quoting actual practice.<sup>377</sup> Sliced victims were placed on a stone in a process also used in the *dokimasia* of archons and by arbitrators before giving their judgement.<sup>378</sup>

Witnesses also faced a fine, imposed in a *dikē lipomarturiou*, for lack of attendance, though only one case is known and that was unsuccessful, and Todd argues that it could only be used against witnesses who had agreed to come and then failed to turn up.<sup>379</sup> A recalcitrant witness, however, only needed to ‘forget’ what he knew: there was little redress against such amnesia, and Lykourgos clearly feels the need to pre-empt such tactics here.<sup>380</sup>

Todd argues that since witnesses were there essentially to support the litigant for whom they were giving evidence, the practice was a privilege bestowed on the citizen body; as such, it carried the risk of prosecution for false witness in a *dikē pseudomarturiōn*.<sup>381</sup> There is very little evidence for such cases, but it is clear that the procedure was altered at some point for a hearing to be held ahead of the execution which would otherwise have followed the original trial.<sup>382</sup> Todd notes several uses of the association of witnessing with risk, and suggests that it was

<sup>376</sup> See Aiskhin. 1.46f., 67ff.; Dem. 19.176, 59.28; Is. 9.18; Poll. 8.37,55; Leisi, 54ff., 67ff., 114–119; Lipsius, iii. 884f.; Bonner and Smith, ii. 136–139, 163f.; Harrison 1968–1971, ii.139f.; MacDowell 1978, 243f.; Humphreys 1985c, 321 with n.27; Todd 1990b, 23–30; Carey 1995, *passim*; Thür 1995, *passim*; Carey 1999, 372; §§21–23(i), below.

<sup>377</sup> Pl. *Lg.* 936e6–937a1.

<sup>378</sup> Stone found in front of the Stoa of the *Basileus*: [Arist.] *Ath.* 7.1, 55.5, with Rhodes 1993. See too Burkert, 252; §79, below.

<sup>379</sup> Dem. 49.18ff.; see too Bonner and Smith, ii.139–143; Todd 1990b, 25. *Graphē pseudoklēteias* for those falsely appearing as witnesses following summons: [Arist.] *Ath.* 59.3, with Rhodes 1993; And. 1.74; Dem. 53.15; Harp. s.v. *ψευδοκλητείας*; Poll. 8.44; Suda, s.v. *ψευδοκλησία*; Lipsius, ii. 446ff.; Harrison 1968–1971, ii. 85f.

<sup>380</sup> See too §§55–58, below.

<sup>381</sup> Todd 1990b, 27–30. See too Aiskhin. 2.170; [Arist.] *Ath.* 59.6, 68.4, with Rhodes 1993; Lipsius, ii. 771, 778ff., iii. 957; Harrison 1968–1971, ii. 192–197; Carey 1999, 372. *Dikē pseudomarturiōn* for use of inadmissible evidence: Dem. 46.6–10, 57.4f.; MacDowell 1978, 245. *Synēgoroi* not liable, and thus effectively character witnesses: Harrison 1968–1971, ii. 158; §§138–140, below.

<sup>382</sup> Dem. 34.18ff.; possibly Dem.27.51; Lys. 12.87; see too And. 1.7; Ant. 5.69ff.; [Arist.] *Ath.* 68.4, with Rhodes 1993; Dem. 48.45; Lys. 19.4; MacDowell 1978, 244; Todd 1990b, 24.

precisely because women, children and slaves could not be sued that they were not permitted to be witnesses.<sup>383</sup> Osborne argues that women were excluded as witnesses for fundamentally the same reasons as slaves, namely that their inclusion would ‘allow them shares of honour’ with male citizens, but Todd’s perhaps juridically sounder and more pragmatic argument is reinforced by Plato, who suggests that women and slaves should be allowed to be witnesses if they could supply sureties to appear at a subsequent *dikē pseudomarturiōn*.<sup>384</sup> Anyone convicted three times of giving false evidence was automatically disenfranchised, and in what MacDowell considers an interestingly humane measure, anyone who had been convicted twice was therefore made exempt from compulsion to testify.<sup>385</sup>

Prior to ca. 380 B.C., witnesses delivered oral statements in front of the court; reforms from that date required them to swear to the truth of a written deposition which had been prepared previously, either personally or by the litigant himself. Demosthenes indicates that this change was intended to obviate any dispute in the event of a subsequent *dikē pseudomarturiōn*, an argument which Bonner supports, though MacDowell views it as a measure that was probably meant to save court time or make the evidence easier to follow.<sup>386</sup> Clearly, this would have been an advantage, but Demosthenes’, and Bonner’s, arguments are bolstered by another and apparently contemporaneous reform, whereby litigants made their initial formal statements in writing: the two changes, taken together, imply a concern over verifiable and permanent evidence.<sup>387</sup> Although witnesses were not cross-examined on their evidence in any modern sense, they appear not to have been deterred from using their appearance to plead for compassion for the defendant on the basis of their own euergetism or *eugeneia*, a tendency which Lykourgos will deprecate specifically in respect of Leokrates’ *synēgoroi*.<sup>388</sup>

<sup>383</sup> Todd 1990b, 28, citing Ant.3.ḏ.7; Dem. 34.19, 43.30, 45.13; Is.12.4.

<sup>384</sup> R. Osborne 2000a, 79ff.; Pl. *Lg.* 937a5–b3.

<sup>385</sup> MacDowell 1978, 245; citing Ant. 2 ḏ.7; And. 1.74; Hyp. 2 (*Phil.*) 12.

<sup>386</sup> Dem. 45.44f., 46.6; Bonner 1905, 46ff.; MacDowell 1978, 242f. See too Rhodes 1980b, 315; Rhodes 1995b, *passim*.

<sup>387</sup> See too Calhoun 1919, 192, who dates the latter reform to 378/7 B.C.; Garner, 136–140; Todd 1990b, 29 with n.

<sup>388</sup> See too Bonner and Smith, i. 353–362; Carawan 1983, *passim*; Humphreys 1985c, 321f., 335ff.; Rubinstein 1998, 135–139; Rubinstein 2000, 212–231; §§135–137, 138–140, 141–145, below.

λέγε τὰς μαρτυρίας: Documents were read out in court by one person, probably elected for the purpose: this is true, at least, in the case of the *Boulē* and the assembly and Rhodes notes that election makes sense since not everyone would be capable of performing such a function well, or sufficiently well.<sup>389</sup> Little real importance was attached to original documents; Bonner notes, indeed, that it was typical for Athenian courts rather to rely on witnesses; in the case of contracts, both litigants usually retained a copy for their own protection to preclude alterations, but the tendency generally to favour witnesses over documentation was clearly problematic when the witnesses were dead.<sup>390</sup>

Water clocks were stopped when evidence was read in private cases but the citation of testimony in public cases ate into the overall allocation of time in the measured-out day; Rhodes notes that although there are plentiful references to this practice in private suits, ‘there are none in speeches in what are unquestionably public suits’.<sup>391</sup>

Speakers addressed jurors twice in many, if not all, private cases as well as in homicide cases: prosecution and defence thus offered *logoi proteroi* and *hysteroi*.<sup>392</sup> The length of the speeches depended upon the value of the case: in cases involving less than 1000 dr., five and two *khoes* were measured for *logoi proteroi* and *hysteroi* respectively; of between 1000 and 5000 dr., seven and two; and of more than 5000 dr., ten and three.<sup>393</sup> Speakers therefore would have had between fifteen and thirty minutes per *logos proteros* and between six and nine minutes per *logos hysteros*, for it appears from the surviving Agora *klepsydra* that

<sup>389</sup> See [Arist.] *Ath.* 54.5, 67.3 with Rhodes 1993.

<sup>390</sup> Bonner 1905, 39ff., 54ff., 61ff., 64ff.; see too Humphreys 1985c, 323ff.; Garner, 136–140; Thür 1995, 326ff.; §§21–23(i), 23(ii)–24, 36–39, below.

<sup>391</sup> See [Arist.] *Ath.* 67.2f., with Rhodes 1993; Harrison 1968–1971, ii.162; MacDowell 1978, 250.

<sup>392</sup> See e.g. Ant. *Tetralogies*, & 6.14; Dem. 48.51; [Arist.] *Ath.* 67.2, with Rhodes 1993; Lipsius, iii. 910f.; Harrison 1968–1971, ii. 160f.; MacDowell 1978, 249. The situation in *diadikasiai*, private cases of disputed rights or obligations, is unclear. Dem. 43.8 implies two speeches, but [Arist.] *Ath.* 67.2 one only: Rhodes 1993, 721, and MacDowell 1978, 249, see a possible change of rule, though MacDowell also suggests different procedures for different types of claim.

<sup>393</sup> See [Arist.] *Ath.* 67.2, with Rhodes 1993; Harrison 1968–1971, ii. 162; MacDowell 1978, 249; Carey 1997, 13f.



one measure was equivalent to three minutes. As MacDowell notes, however, it is unsafe to assume that every *klepsydra* would necessarily have had identically sized drainage holes, and Rhodes suggests that calculations based on hours of daylight in Poseideion, a winter month, indicate that four minutes per *khous* is possible.<sup>394</sup> This makes a difference in private cases of between only seven and thirteen minutes in total speaking time, though the difference would be more significant in ‘measured out days’.

In public cases, litigants had only one attempt at persuasion. The day, known as *διαμεμετρημένη ημέρα*, was divided into three equal parts. The third section was allocated to the discussion of the penalty if a guilty verdict was secured, though if the case was an *agōn atimētos*, the final third would clearly be superfluous.<sup>395</sup> Rhodes notes a contradiction between the interpretations in Xenophon and Aiskhines of the function of the third part of the measured out day: Xenophon allocates it to the jurors, Aiskhines to the assessment of the penalty.<sup>396</sup> There is not necessarily a conflict here, however, for not only is Xenophon relating an argument for a trial in the assembly, but his subject matter dates to 406 B.C., whereas Aiskhines is detailing practice in the *Dikastēria* of the late fourth century. Xenophon’s description is also of a heated debate about highly irregular procedures, and in any case, might not accurately reflect what was actually said. It is, therefore, far from clear that Xenophon and Aiskhines are discussing the same thing. A change in practice cannot be ruled out, however, though it is difficult to see what changes could have been made that would account for the different descriptions.

There is also uncertainty over the water allocation for each party in these cases. Harrison suggests that Aiskhines shows that eleven *amphoreis*, i.e. 132 *khoes* were allocated to the defence alone.<sup>397</sup> MacDowell, however, following Lipsius, argued that this figure was the allocation for the entire day, with one-third of the

<sup>394</sup> MacDowell 1978, 250; Rhodes 1993, 721, 726.

<sup>395</sup> Aiskhin. 3.197; [Arist.] *Ath.* 67.3, with Rhodes 1993.

<sup>396</sup> Xen. *Hell.* 1.7.23; Aiskhin. 3.197; Rhodes 1993, 722f.; Harp., Phot. *Bibl.* & Suda, s.v. *διαμεμετρημένη ημέρα*; MacDowell 1978, 249; Worthington 1989, *passim*; MacDowell 2000a, *passim*.

<sup>397</sup> Harrison 1968–1971, ii. 162, referring to Aiskhin. 2.126.

amount, i.e. 44 *khoes*, being awarded to the defence, an allocation of between 132 and 176 minutes.<sup>398</sup> He has since modified his argument, and ‘now think[s] it more likely that ... equal shares of the day were allocated to the prosecutor, to the defendant, and to the speeches on the penalty’.<sup>399</sup> The share of eleven *amphoreis* appears, though, to be the natural reading of Aiskhines’ *κρίνομαι* and *πρός* with the accusative, with the defence allocated a share in relation to the eleven *amphoreis* allowed for the whole day’s sitting. Moreover, it is clear that if the equation of *khoes* to time allowed based on the surviving *klepsydra* is remotely accurate, speakers in public cases would have needed at least six and a half hours each for Harrison to be correct. An equation that allows for an allocation of between two to three hours each is far more credible, and would also fit much more neatly with Harrison’s own suggested total day length of nine hours.<sup>400</sup>

The length of penalty speeches poses a similar problem. Harrison interprets Aristotle as indicating that only half a *khous* was allocated, an amount that equates with one-fourteenth of the shortest total speaking time in private cases, namely five plus two *khoes*; this would allow only one and a half to two minutes, depending on a three or four minute allocation for each measure.<sup>401</sup> MacDowell, however, whilst agreeing that Aristotle refers to one-half, argues that the text is severely corrupt at crucial points and that the reference may be to the actual speaking time allocated rather than the water allowance, particularly in view of Aiskhines’ statement that a third of a day was granted for this part of the trial.<sup>402</sup> This is plausible, and might have been the practice in both private and public cases where *timēsis* was required, for Aristotle, having turned his attention to public cases in the middle of 67.3 has not indicated that in 69.2 he has returned to discuss only private cases. Thus, anywhere from roughly ten ( $5 + 2 \text{ } \textit{khoes} \times 3$

<sup>398</sup> MacDowell 1978, 249; see too Lipsius, iii. 915ff.

<sup>399</sup> MacDowell 2000a, 565, replying to Worthington 1989, who suggests that some public prosecutions lasted for more than one day.

<sup>400</sup> Harrison 1968–1971, ii. 162; see too [Arist.] *Ath.* 67.3f., with Rhodes 1993; Hansen 1991, 187f. If four minutes per *khous* is a correct calculation, the time for 132 *khoes* increases to nearly nine hours, which is still within the bounds of possibility, but leaves little room in a nine and a half hour day for distributing jurors, voting procedures etc.

<sup>401</sup> [Arist.] *Ath.* 69.2, with Rhodes 1993; Harrison 1968–1971, ii. 166. Rhodes 1993, 734, suggests that this is, in fact, a reference to the allowance for private cases.

<sup>402</sup> See MacDowell 1985, *passim*. See too MacDowell 1978, 254; MacDowell 2000a, 565; Worthington 1989, *passim*.

minutes ÷ 2) to twenty-six minutes (10 + 3 *khoes* x 4 minutes ÷ 2) may have been allocated to speeches on the penalty in private cases, and in public *agōnes timētoi*, from around one to one and a half hours (44 x 3 or 4 minutes ÷ 2). This does not seem unreasonable in view of the severity of the possible penalties, and it corresponds with Aiskhines' tripartite division of the day; it also accords, moreover, with the time he clearly assumes to exist for prosecutors to wait until their final speech before detailing their demands for penalties and requests for the jurors to be lenient, inappropriate matters with which, he argues, they fill their initial speeches.<sup>403</sup>

§§21–23(i). *Μετὰ ταῦτα τοίνυν ... αὐτὸν πατρίδος μετοικῶν*: Lykourgos resumes his narrative and moves on to set the scene for the further evidence he will now present: the extent to which he paves the way for this evidence, however, suggests that it is, somehow, insufficient in some respects.<sup>404</sup>

Lykourgos' comments here are also indicative of the timing of his prosecution. Leokrates is said to have been away from Athens for over five years; it appears, later, that he was, in fact, away for a total of six years, for five of which he conducted trade from Megara.<sup>405</sup> Presumably, the extra year is accounted for by his stay in Rhodes before his fabrication was discovered, and allows for a time before which Leokrates could not have traded with Kleopatra, though Lykourgos will also claim that the defendant was absent for a total of eight years.<sup>406</sup> His return to Athens, therefore, can tentatively be dated to 332 B.C., and it is clear that Lykourgos did not begin his prosecution before this date, for he explicitly states that he was forced to initiate his *eisangelia* by the sight of Leokrates barging into the agora, and the possibility of his participation in cults and sacrifices, and public

<sup>403</sup> Aiskhin. 3.198; see too Dem. 30.32.

<sup>404</sup> See §§23(ii)–24, below.

<sup>405</sup> See §§55–58, below. Nothing is known of Leokrates' patron in Megara. Apparently, however, the requirement for metics to have a *prostatēs* was not restricted to Athens: see too §§36–39, below.

<sup>406</sup> See §§26–27, 43–45, 141–145, below.

spaces which should be reserved for unpolluted and honourable citizens.<sup>407</sup> Lykourgos probably initiated his *eisangelia*, therefore, sometime in 331, with the case coming to court in 330 B.C.<sup>408</sup>

*καὶ οὕτως αὐτοῦ κατεγνώκει ... καὶ τούτων ἡμῖν τὰς μαρτυρίας:* Amyntas, Antigenes and Timochares cannot be identified in the sources, though Lykourgos' comments at least demonstrate that Leokrates had two sisters.<sup>409</sup> A Lysikles of the deme Leuconoe is, however, mentioned by Hypereides: the reference may allow a tentative identification, for Hypereides' Lysikles also receives documents confirming an agreement relating to a sale, though whether he is doing so as a friend, or a banker, or in another capacity, is unclear.<sup>410</sup>

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<sup>407</sup> §§5–6, above.

<sup>408</sup> There seems little reason to conceive a delayed prosecution, whether in the context of the loss of all hope for Athens or as a vexatious prosecution: Burke 1977, 337f.; Will, 102. There is equally little reason to conceive a prosecution immediately upon Leokrates' return: Hansen 1975, 108 #121.

<sup>409</sup> Amyntas: *PA* 745; *LGPN* ii. 26 #1; Antigenes: *PA* 994; *LGPN* ii. 34 #57. Timochares: *PA* 13832; *LGPN* ii. 433 #1.

<sup>410</sup> *Hyp.* 3 (*Ath.*) 9; see too Millett 1991, 139 n.16; §§21–23(ii), below.

§§23(ii)–35.

The second transitional *μὲν οὖν* moves the speech on to specific evidence from interested parties to the facts that Lykourgos has just presented.<sup>411</sup> The contractual nature of the argument in this section is supplemented by the inclusion of the written challenge to slave torture issued to Leokrates, which was refused. It is, therefore, significant that Lykourgos incorporates into this section argument and detail of alleged crimes for which he has no evidence whatsoever.

§§23(ii)–24. *εἰ μὲν οὖν ζῶν ἐτύγγανεν ... τριάκοντα μινῶν, καὶ τὰς συνθήκας*: Lykourgos first presents evidence for his claim that Leokrates' house and slaves were bought by the husband of his elder sister, Amyntas.<sup>412</sup> It is not possible to recover the nature of this evidence, but it is not unreasonable to surmise that it was a statement by Antigenes, whose function was probably to act as witness to the agreement that Amyntas would pay one talent for his brother-in-law's property.<sup>413</sup>

The second item of evidence concerns the claim that Amyntas paid off Leokrates' debts and loans, paying what was left from one talent to the defendant. Since Amyntas is said to have paid forty minas in honour of debts and loans, it can be inferred that Leokrates actually received twenty minas from Amyntas. The evidence which Lykourgos produces, however, relates specifically to the receipt by Philomelos and Menelaos of forty minas from Amyntas himself. Too little is known about these two individuals for any identification to be made, and it is unclear whether their loans had been made as bankers or in a private capacity; it is also impossible to know whether the actual evidence produced comprises their statements, or documents concerning the transaction.<sup>414</sup> Clearly, however, the

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<sup>411</sup> *μὲν οὖν* structure: introduction, 37, above.

<sup>412</sup> §§21–23(i), above.

<sup>413</sup> See too introduction, 39 n.142, above; §20, above.

<sup>414</sup> Philomelos: *PA/APF* 14671; *LGPN* ii.457 #10; not the same individual mentioned by Isok. 15.93 (*PA/APF* 14670; *LGPN* ii.457 #28). Menelaos: *PA/APF* 9963; *LGPN* ii. 306

extent to which it confirmed the debt as that of Leokrates, whether partly or entirely, is unknown, and perhaps even questionable, for since Amyntas himself was dead, he was unable to contradict the prosecutor's claims.

The third piece of evidence is intended to demonstrate that Amyntas resold the slaves to Timochares of Acharnae, Leokrates' other brother-in-law by marriage to his younger sister. The evidence comprises Timochares' own statement and the agreement, lodged with Lysikles, which detailed the transaction whereby Timochares paid 35 minas to Amyntas, belatedly and with interest.<sup>415</sup> Again, however, the evidence is not necessarily straightforward, for whether it specifically identified the slaves as those who originally belonged to Leokrates can also be questioned; it may have documented no more than a private agreement relating to a transaction between the two brothers-in-law which had nothing whatsoever to do with Leokrates. Its relevance would therefore be extremely suspect, as might the previous item, and it is perhaps this characteristic that induces Lykourgos to pave the way for it so extensively, and to follow it almost immediately with emotive, but notably unsupported, allegations.<sup>416</sup>

§25. Τῶν μὲν μαρτύρων ἀκηκόατε ... τὴν Μεγαρέων πόλιν εἰθισμένοις: Lykourgos here adduces Leokrates' removal of his ancestral images to Megara to his charge of *prodosia*. It is, as Parker notes, a little inconsistent to call this treachery, for it could be taken to indicate a devotion which Lykourgos does well to attempt to negate.<sup>417</sup> None the less, the pity he incites for the defendant's ancestors is

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#6); not the same individual mentioned by Dem. 4.27 (PA 9961). See too Calhoun 1926, 81–131; Hasebroek 1933, 14f., 85f.; Pringsheim, 46f.; Bogaert 1968, 332; Isager and Hansen, 88f., 96f.; Millett 1983, *passim*; Humphreys 1985c, 327ff.; Bogaert 1986, 24–29; E.E. Cohen, 14–18; Todd 1993, 250–257; Shipton, 417–421.

<sup>415</sup> See §§21–23(i), above; see too Pringsheim, 130f., 245f.; Bogaert 1968, 373. Finley 1952, 215 n.60, notes that verbal agreements were common, and that this item of evidence represents one of the few written ones. Millett 1991, 138f., suggests that this 'formality' might reflect 'the remoteness of the connection' between Amyntas and Timokhares, though Amyntas' readiness to accept a deferred payment with interest implies a substantial income-earning potential on his investment. See too Millett 1990, 175–182.

<sup>416</sup> See §§20, 21–23(i), above, 26–27, below.

<sup>417</sup> Parker 1996, 251; see too §§5–6, 8, 17–18, above, 94–97, 135–137, below.

manipulated into disgust by the presentation of their images as exiles, of Leokrates' disregard for their need for a patron in Megara, and by their lack of choice in their removal, a contrast with the defendant which is unmistakable.<sup>418</sup>

Since Leokrates left the bronze statue of his father behind, it is likely that the images which he did remove were portable. Such small anthropomorphic votive figurines could represent both deities and their worshippers, and Burkert suggests that *anathemata* were placed in temple precincts in the same way that large statues were set up by individuals who wanted to give expression to what they considered to have been a special connection with a god.<sup>419</sup> He also notes how 'the pious act of dedication is thereby transformed into an act of public ostentation', with the individual creating his own memorial.<sup>420</sup> The removal of this *mnēma* is, therefore, an affront not only to those ancestors depicted in the votive images, nor just to the gods in whose precincts they were established, but to the *polis* which housed those precincts and which had bestowed fame and honour only to see its gifts summarily rejected.

§§26–27. *καὶ οἱ μὲν πατέρες ... αὐτῇ πόλιν μὴ ἐγκαταλίπωσι*: This passage has been much emended, but the sense is reasonably clear: the city was named in honour of the patron deity Athene so that those who honoured the goddess would equally honour and protect her eponymous city. Welwei suggests that the name, deriving from 'ein vorgriechisches Sprachsubstrat ... , läßt sich aber nicht befriedigend erklären'.<sup>421</sup> Burkert argues that the goddess 'Athena' is 'more properly *Athenaia*, Ionian *Athenaie*, Attic *Athena*, shortened in epic to *Athene*': he notes that 'whether the goddess is named after the city or the city after the goddess is an ancient dispute, though since *-ene* is a typical place-name suffix ... the goddess most probably takes her name from the city'.<sup>422</sup> For Burkert, the unifying factor is 'the force of civilization', and Athene clearly seems to represent an amalgamation

<sup>418</sup> See too Humphreys 1985c, 350; Antonaccio, 263; Millett 1998, 204ff.

<sup>419</sup> Burkert, 92ff.

<sup>420</sup> Burkert, 93.

<sup>421</sup> Welwei 1992, 1 n.1; see too Pötscher, 160–177.

<sup>422</sup> Burkert, 139; see too Nilsson 1949, 26ff.; Nilsson 1950, 490–501.

encapsulating all the desirable elements of Athenian life; perhaps, as Pomeroy suggests, she is ‘the most complex of the goddesses ... [whose] activities are better documented than those of other goddesses since she plays an important role in the works of Homer’.<sup>423</sup>

*Λεωκράτης δ' οὔτε νομίμων ... ἐσιτήγει καὶ ἐκεῖθεν εἰς Κόρινθον*: Kleopatra, daughter of Philip II and Olympias, and sister of Alexander III, was married to Olympias' brother, Alexander of Epeiros. Although Epeiros was a Greek-speaking monarchy like Macedon, it was dependent upon Macedon, for after Neoptolemos, Olympias' father, had died, his brother, Arybbas, had attempted to seize power: only Philip's intercession had established Alexander on the Epeirot throne.<sup>424</sup> Philip himself, however, had every reason to avoid dispute with Epeiros since the territory represented access to the Corinthian gulf and to western Greece, and it is probably in the context of a strategic alliance that he gave his daughter as wife to Alexander in an attempt to pour oil on the waters troubled by his own new marriage to another Kleopatra, variously described as the daughter, niece or ward of the Macedonian general Attalos.<sup>425</sup>

Those waters were indeed severely troubled, for at the celebration of Philip and Kleopatra's wedding in 337/6 B.C., the bride's father had apparently prayed for a legitimate heir. Alexander III, purportedly furious at the slight to his mother's decency, but more obviously concerned at the threat to his own monarchic ambitions, narrowly avoided a lethal quarrel with Philip and removed himself and his mother to Epeiros.<sup>426</sup> The birth of a son to Philip's new wife might in one respect have played into Olympias' hands, in that it provided a justification to Alexander III and Alexander of Epeiros for her machinations. Philip was fatally attacked at the Epeirot Alexander's marriage to Kleopatra at Pella in 336 B.C., purportedly by a certain Pausanias, an obscure figure who seems to have been

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<sup>423</sup> Burkert, 141; Pomeroy, 4.

<sup>424</sup> See Dem. 1.13; Just. 7.6.10ff., 8.6.3ff.; *GHI* ii.173; Hammond 1967a, 554; Hammond 1989, 33; Hammond 1994, 436–443; Davies 2000, 244f. with n.36.

<sup>425</sup> See Busolt 1920–1926, ii. 1470–1477; Berve, i. 3–7; Hammond 1967a, 533f.; Hammond and Griffith, 214f., 677f.; Errington 1990, 35–102.

<sup>426</sup> Athen. 13.5.23–30; Plut. *Alex.* 9.4ff.; Hammond and Griffith, 153, 215, 675–698; Errington 1990, 44f.



wronged by Attalos, and whose grievances had not been redressed by Philip. Whatever the truth of Philip's death, Olympias had obtained the succession for her son and revenge for her own displacement.<sup>427</sup> Alexander of Epeiros himself was murdered by a Lucanian exile in Pandosia in 331 B.C., but Kleopatra acted as regent whilst he was at war in Italy fighting for Tarentum, whose former champion, Arkhidamos, had been killed.<sup>428</sup>

καίτοι, ὡ ἄνδρες ... τοῖς δεινοῖς ὀργιζόμενοι: Notably, Lykourgos does not offer the jurors any evidence of the charge that Leokrates dealt in corn from Megara, even though the transport of grain to places other than Athens was deemed a sufficiently severe offence to be classified as a capital charge. The law expressly stated that any Athenian citizens or metics resident in Athens might not import grain to any market except that of Athens, nor lend to finance the import of grain to any other market; indeed, of that corn imported into the Peiraieus, two-thirds had to be transported into the *asty* itself. Prosecutions for infringement of these laws were brought before the *epimelētai tou emporiou*, the supervisors of the emporion who were also responsible for ensuring the compliance of dealers with the requirement to deliver two-thirds of grain imports into the city.<sup>429</sup>

Aristotle reports that there had once been ten corn guardians, *sitophylakes*, five of whom were based in the Peiraieus and five in the city, but that their numbers had been increased to twenty in the city and fifteen in the harbour. Their responsibilities included ensuring that unground corn was sold fairly, that millers sold the grain in accordance with the price they had paid for the raw ingredients, that the bakers sold their bread in accordance with the price they had, in turn, paid for the wheat, and that their loaves were of the weight prescribed by the *sitophylakes*.<sup>430</sup> These corn laws were clearly strictly observed, and the patent concern with the supply of grain clearly underpinned the discussions of the matter

<sup>427</sup> See too Pomeroy, 122; Ellis 1976, 211–217; Hammond 1989, 34, 61, 139, 175; Hammond and Walbank, 1–12; Carney, 358f.

<sup>428</sup> See Aiskhin. 3.242; Livy 8.24; see too Hammond 1967a, 557f.; Hamilton 1982, *passim*; Talbert, 161; Davies 2000, 257, with 248 (D5).

<sup>429</sup> [Arist.] *Ath.* 51.4, with Rhodes 1993; Dem. 34.37, 35.50f., 56.3, 10; Wilamowitz 1893, i. 219ff., ii. 374ff.; Harrison 1968–1971, ii. 27, 221; MacDowell 1978, 157f.; Salmon, 128ff., 159; Garnsey 1988, 139–142; Stroud 1998, 104ff.

<sup>430</sup> [Arist.] *Ath.* 51.1–3, with Rhodes 1993. See too Harrison 1968–1971, ii. 26.

which were allocated to each *kyrios* assembly.<sup>431</sup> Changes were made in the range of the duties of the *sitophylakes* and the *epimelētai* in the fourth century. A currency law of 375/4 B.C. implies that under contemporary practice, the *sitophylakes* were responsible for both wholesale and retail trade in corn; by Aristotle's time, however, these duties were split between them, the change perhaps occurring during a period of severe shortage and being enacted at the same time as the increase in the *sitophylakes*' numbers and the introduction of the law whereby two-thirds of grain was required to be allocated directly to the *asty*.<sup>432</sup>

Lykourgos' lack of evidence for these charges is suspicious, and may explain what appears to be a rejection of the capital charge of illegal trade: perhaps there was no evidence at all for these activities. It is conceivable, however, that he was attempting to involve Leokrates in a 'Catch-22' trap, whereby the only defence against *prodosia* was to admit to such a charge. Such a manoeuvre could not work in reverse, since a denial of trade would not automatically result in an admission of treason. In any case, through such a manipulation of a likely defence argument, Lykourgos is able to make a pre-emptive strike and claim simultaneously that Leokrates did not leave Athens to trade, that he traded illegally from Megara, and that any defence which rests upon the claim that the initial departure was motivated by trade should be dismissed on the grounds that such conduct was illegal and itself carried an automatic death penalty which should be enforced by the jury for these alternative charges.<sup>433</sup>

§§28–30. *Καὶ ταῦτα δ' ... καὶ μοι λέγε ταύτην*: Lykourgos implies that he has already shown his good character in the prosecution of the case; Leokrates, conversely, is demonstrably and thoroughly to be distrusted, and his witnesses undermined by guilt by association.<sup>434</sup> Notably, Lykourgos has immediately

<sup>431</sup> See [Arist.] *Ath.* 43.4, with Rhodes 1993; Dem. 20.32f., 34.37, 56. *passim*; Lys. 22. *passim*.

<sup>432</sup> See Stroud 1974, *passim*. See too Xen. *Por.* 3.3, with Gauthier 1976.

<sup>433</sup> See too §§55–58, below. Other calls for death penalty: §§8, above, 43–45, 46–51, 52–54, 66–67, 77–78, 79, 120–121, 123, 133–134, 141–145, below.

<sup>434</sup> See too §§20, above, 138–140, below.

drawn attention away from the conjectural nature of the charges of illegal trade in §§26–27, and the fact that he has only his original witnesses to provide a supposed verification of his allegations, and moves on to a typically emotive discussion of his written challenge of the defendant to produce his slaves for torture, *πρόκλησις*. Whether issued in writing, or orally, challenges were made in the presence of witnesses, stating which slaves were to be tortured, what questions would be asked, and how the torture should be applied and by whom: normally the torturer was the *basanistēs*, an appointed official, but one of the litigants themselves might also undertake the procedure.<sup>435</sup>

*Ἄκούετε ὡ ἄνδρες τῆς προκλήσεως ... τοῦ αὐτῶν δεσπότη κατεψεύσαντο*: Dorjahn notes that slave evidence from torture never appears in any suits from extant forensic oratory of fifth- and fourth-century Athens. Conversely, evidence preserved in Valerius Maximus demonstrates that evidence extracted by torture was used in Rome. Dorjahn thus concludes that since this evidence was clearly not trusted, and since Greek courts were no more gullible than Roman ones, and indeed Greek slaves were no more trustworthy than their Roman counterparts, Athenian sources cannot be taken at face value when they attach paramount importance to slave testimony.<sup>436</sup>

Aristotle offers a rhetorical explanation for what Todd calls ‘so much noise and so little action’: torture is one of five *pisteis atekhnoi* which, he argues, *δοκοῦσι τὸ πιστόν, ὅτι ἀνάγκη τις πρόσσεστιν*.<sup>437</sup> For Aristotle, arguments can be generated to demonstrate both that it provides the only true evidence, and that it is of no value whatsoever because slaves would say anything just to please their torturers, or to incriminate their owners for past maltreatment. This was also expressly noted by orators themselves; thus despite frequent complaints about the freedom of speech granted to Athenian slaves, and examples of close relations between masters and servants, it was held to be dangerous to allow them to be in receipt of information

<sup>435</sup> See Ant. 1.10f.; Ar. *Ran.* 615–630; Dem. 37.40ff., 45.61, 54.28, 59.123f.; Isok. 17.15f.; Lys. 7.34ff.; see too Harrison 1968–1971, ii, 147–150; MacDowell 1978, 245ff.

<sup>436</sup> Dorjahn 1952, *passim*, citing Val. Max. *Facta et Dicta Mem.* 8.4.1–3. See too Dem. 30.37; Is. 8.12; Isok. 17.54; Harrison 1968–1971, ii, 147; Soubie 1973, 226–238.

<sup>437</sup> Arist. *Rhet.* 1376b31–1377a7; Todd 1990b, 34. See too §20, above.

which might give them a hold over their masters should they ever be subjected to such close scrutiny.<sup>438</sup>

A challenge, *proklēsis*, thus appears to have been accepted on only two of forty-two known occasions, the remainder meeting a flat rejection: notably, on these two occasions, the challenge was not carried out.<sup>439</sup> Todd argues that torture was, in any case, only carried out on slaves who were guilty parties, and never in cases where they were only witnesses, though MacDowell cites three examples where this is clearly not so.<sup>440</sup> The evidence is none the less minimal, a factor which Headlam interpreted as resulting from the fact that its use obviated a hearing in court.<sup>441</sup> Thompson, however, responded that this explanation did not account for the appearance of arrangements for the production of slave testimony, and most scholars have subsequently rejected Headlam's analysis.<sup>442</sup> Thür has argued convincingly, moreover, that most references in the orators can in any case be taken with a large pinch of salt as rhetorical posturing.<sup>443</sup> Todd agrees: it is not only patently nonsensical to claim that 'witnesses have often been convicted of perjury, but slaves under torture have never been shown to be lying', it is also tautologous, because 'there is no procedural opportunity whereby the statements of slaves could be tested'.<sup>444</sup>

It was the procedure itself, therefore, or more precisely the rhetorical advantage arising from it, that was at the root of the importance attached to issuing a

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<sup>438</sup> Arist. *Rhet.* 1377a3-5; see too Ant. 5.29ff.; Lys 7.34ff.; Lys.7.16, 34f. [Xen.] *Ath.* 1.10; Hunter 1994, 71-89; Allen 2000a, 109ff. Slaves none the less protected from hybristic abuse: Aiskhin. 1.17; Dem. 21.46.

<sup>439</sup> Dem. 37.40-44; Isok. 17.13-17; see too Todd 1990b, 33f.

<sup>440</sup> Todd 1990b, 33f. with n.25; MacDowell 1978, 246, citing And.1.64; Lyk.1.112; POxy, 2686. See too Todd 1990b, 34 n.26, who argues that the cases cited by MacDowell are instances of judicial, rather than evidentiary, torture; §§112-115, below.

<sup>441</sup> Headlam 1893, *passim*.

<sup>442</sup> C.V. Thompson, *passim*; See too Headlam 1894, *passim*; Bonner 1905, 72; Lipsius, iii. 889 n.91; Thür 1977, 205-214, 310; Todd 1990b, 34; Gagarin 1996, 5ff. Johnstone, 74f., and Mirhady 2000, 54, argue for Headlam's view, and Johnstone suggests that the idea that 'acceptance of a dare terminated a legal claim most economically accounts for the complete absence of the evidence from any completed oaths or tortures introduced as the result of a dare'.

<sup>443</sup> Thür 1977, 269ff.; see too Gagarin 1996, *passim*, for whom the references to *basanos* are a legal fiction whereby the evidence of slaves could be introduced into court.

<sup>444</sup> Thür 1977, 310; Todd 1990b, 35; see too Ant.2.δ.7.

challenge which was almost certain to be rejected. It was a loaded weapon for litigants, who could either claim the manifest and admitted guilt of the party refusing to submit his slaves to torture, or the moral and legal high ground of the person issuing the rejected challenge. Conversely, a litigant might offer his slaves for torture only to be rejected by his opponent, which supports the interpretation of the challenge as intentionally refusable: it was precisely because it might result in compelling, irrefutable and unwelcome evidence that it was undesirable to both sides.<sup>445</sup> It is, therefore, not unreasonable to presume that Lykourgos' own, unpreserved, challenge was phrased in such a way.

Johnstone takes issue with Todd's connection of challenge and information, and argues that dares should not be seen as having anything at all to do with providing evidence. For Johnstone, the discrepancy between frequency of dares and insistence on their value, and the lack of evidence that challenges should have yielded has resulted in the paradoxical conclusion that a process for introducing evidence was never, or almost never, used for this purpose at all: he suggests that dares are, rather, a legal fiction intended to impart 'evidentiary authority on a claim'.<sup>446</sup> This does not seem, however, intrinsically to invalidate Todd's argument, for rhetorical advantage could be gained whether the underlying intention of the dare was to provide information or to invest a charge with authority, or indeed both. Todd, indeed, accepts that scholarship has emphasized either the 'dispute resolution' or 'information provision' interpretations, but does not fully agree with Johnstone's exploration of 'the challenge as ritual of authority'.<sup>447</sup> Like Thür, Todd sees the process more as a socio-political one: thus the very possibility of torture emphasized the difference in status between slave and free and performed a powerful social function independent of the ostensible aim.<sup>448</sup> Todd notes, indeed, that the overwhelming implication of the evidence is that there was little, if any, real interest in what the slave actually had to say.

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<sup>445</sup> Thür 1977, 233–61; Todd 1990b, 35f. *Dikē blabēs* perhaps possible against transgressor of broken *proklēsis* agreement: Harrison 1968–1971, ii. 148f.

<sup>446</sup> Johnstone, 86f.

<sup>447</sup> Todd 2001, *passim*.

<sup>448</sup> Todd 1990b, 27ff., 32–36; see too Bonner 1905, 31f., 67ff., 73f.; Leisi, 20–26; Harrison 1968–1971, i.166–177; Soubie 1973, 226; MacDowell 1978, 245ff.; Hunter 1994, 89–94, 133ff., 154–173; Hunter 2000, *passim*.

§§31–35. *χωρίς τοίνυν τούτων ... ὁμολογουμένων ἀδικημάτων ἐξαπατήσαι*: Lykourgos is again at pains to distance himself from possible allegations of *sykophantia*, but is himself guilty of the quibbling which he attributes to *sykophantai*.<sup>449</sup> Despite his claim that he was prepared to risk damaging his case by accepting the testimony of Leokrates' slaves even though they would probably have defended their master, he proceeds to argue that torture results in completely trustworthy testimony which would have proved his charges.

The herald's curse appears to be lost, but Demosthenes refers to its pronouncement at each *Ekklēsia* and *Boulē* meeting; it was probably dictated to the herald who made the official pronouncement: this, at least, was one of Aiskhines' roles as a functionary of the *ekklēsia* and *Boulē*.<sup>450</sup> The curse was parodied in Aristophanes' *Thesmophoriazousai* and may have called upon the Olympian, Pythian, Delian and other gods to curse the individual, and his household, who planned harm to the *dēmos*, was guilty of Medism, or was attempting to establish a tyranny or overthrow the democracy.<sup>451</sup> Lykourgos is setting up a characterization of Leokrates as anti-democrat and would-be tyrant that he will make explicit in the latter part of the speech.<sup>452</sup> For the moment, however, he is concerned to round off his discussion of details specific to the defendant, and to pave the way for a much more generalized, but extremely emotive, treatment of the impact of Leokrates' behaviour.

<sup>449</sup> *Sykophantia*: §§11–13, above. Foreknowledge of defence arguments: §§14–15, above, 55–58, below. 'Everybody knows' topos: §§93, 104–107, below.

<sup>450</sup> Dem. 19.70.

<sup>451</sup> Ar. *Thes.* 331–351. Lykourgos' use of *ἡμεῖς* may be an allusion to other speakers in a team who are engaged to prosecute different aspects of the *eisangelia*: see too §§3 with n.179, 19, above.

<sup>452</sup> See §§124–127, below.

## §§36–54

The third transitional *μὲν οὖν* shifts the focus of the speech from the alleged crime of the defendant, to the circumstances in which it was committed.<sup>453</sup> The new section introduces a decree of the *dēmos*, and a narrative account of the reaction in Athens to the defeat at Khaironeia. A eulogy to those who died in that battle follows, being presented, effectively, as an *epitaphios* in its own right, and as a stark contrast to any description that could be applied to the defendant's behaviour. The section ends with examples of juridical precedents which will be balanced by precedents from history and ancient history in §§110–123.

§§36–39. *Περὶ μὲν οὖν τῆς προκλήσεως ... ἡ πόλις καὶ ἡ χώρα*: The transcript of Hypereides' decree which Lykourgos requests the clerk to read would have been supplied to the court personally, for litigants were themselves responsible for gathering evidence for the trial and for securing whatever copies of laws or decrees they deemed necessary.<sup>454</sup> As MacDowell notes, however, 'we do not hear of any procedure for checking that the text which he brought was accurate'.<sup>455</sup> It is likely, although the evidence is extremely poor, that documents for disputes which did not involve public arbitration could be gathered by the prosecutor up to and including the date of the trial; this would, at least, be in line with the encouragements and lack of discouragements given to prosecutors in such cases.<sup>456</sup>

Members of the *Boulē*, together with the unfit, were granted military exemption, *ἀστρατεία*: so too, however, were lessees of the *pentēkostē*. Leokrates would,

<sup>453</sup> *μὲν οὖν* structure: introduction, 37, above.

<sup>454</sup> See too §20, above. Hypereides' decrees: §§16, above, 40–41, below. *Dēmos*' decree after Khaironeia: §§52–54, below.

<sup>455</sup> MacDowell 1978, 242; see too Harrison 1968–1971, ii. 134f.

<sup>456</sup> Evidence was otherwise sealed into a container at arbitration, and any proofs subsequently produced were inadmissible. See too [Arist.] *Ath.* 53.1–5, with Rhodes 1993; Dem. 39.17, 45.57f.; Bonner 1905, 48ff.; Lipsius, iii. 838; Bonner and Smith, i. 283ff.; Dorjahn 1935, 274ff.; Harrison 1968–1971, ii. 18–21, 64–68, 97f., 101f.; MacDowell 1978, 207–211; Humphreys 1985c, 321; Garner, 136–140; Todd 1993, 129; Rhodes 1995b, 305ff.; Allen 2000a, 42, 317–322; §§2, 3, 20, above, 128–132, below.

therefore, himself have been *astrateutos* at the time of the crisis, for Lykourgos' remarks imply that despite the 'state of emergency' reflected by Hypereides' emergency decree, such dispensations, at least in the case of *Bouleutai*, remained unaffected.<sup>457</sup> Lykourgos' depiction of the armed Councillors going to the Peiraeus despite their own military exemption is, however, rhetorically and emotively pre-emptive: Leokrates would have found it harder to play on his own excused status when the Councillors had surrendered their own, and particularly when the jurors have been reminded that Phyrkinos charged Leokrates with damaging the *pentēkostē* which provided that exemption.

καίτοι κατ' ἐκείνους ... ἔμπροσθεν χρόνοις ἐπιδημηκῶς: Metics were resident aliens who had set up home in Athens, a privilege for which they were liable to the *metoikion*, a tax levied at the rate of 12 dr. per annum.<sup>458</sup> They were required to register with a *prostatēs*, or guarantor, a procedure known as *νέμειν προστάτην*, and failure to do so or to pay the *metoikion* could result in being sold into slavery.<sup>459</sup> Harpokration suggests that metics were legally registered within a short period of time of their arrival, though he does not define the period. MacDowell, however, argues that this is not certain, and that metic status may have been determined by the setting up of a household.<sup>460</sup>

The function of the *prostatēs* is also unclear: he may have been responsible for no more than a character reference at the time of registration, but his sponsorship may have had longer-lasting effects. MacDowell notes that there is no evidence whatsoever for any continuing responsibility, and suggests that the ancient grammarians' arguments for guarantors needing to speak on behalf of their

<sup>457</sup> Dem. 39.16, 59.27; see too MacDowell 1978, 160; §§16, 19, above.

<sup>458</sup> See [Arist.] *Ath.* 58.2, with Rhodes 1993; Dem. 25.57; Harrison 1968–1971, i. 187–199; MacDowell 1978, 76f. See too Clerc, 15–22; Whitehead 1977, 75ff.; Whitehead 1986, 82ff.; Garland 2001, 64f., 109; Roy 1998, 196f. Foreigners who intended to trade in Athens were also subject to the *xenika*: Dem. 57.31–34. Grant of *isoteleia*, liability only to taxes payable by citizens: Dem. 20.29; Harp. s.v. *ἰσοτέλης καὶ ἰσοτέλεια*; Xen. *Hell.* 2.4.25; Harrison 1968–1971, i. 189; MacDowell 1978, 78.

<sup>459</sup> The legal framework for enslavement for having no sponsor was provided by the *γραφὴ ἀπροστασίου*: see Arist. *Pol.* 1275a11–14; Harp. s.v. *ἀπροστασίον, μετοίκιον, προστάτης*; Hesych. s.v. *ἀπροστασίον, μέτοικοι, προστάτου*; Isok. 8.53; Phot. s.v. *μετοίκιον*; Pollux 8.35, 99; Suda, s.v. *μετοίκιον, νέμειν προστάτην, Πωλητής καὶ Πωληταί*; Lipsius, ii. 370 n.5; Harrison 1968–1971, i. 165; MacDowell 1978, 77f.

<sup>460</sup> Harp. s.v. *μετοίκιον*; MacDowell 1978, 77.



charges in any legal proceedings are wrong, the result of mistaken comparisons with the *patronus* in Roman law.<sup>461</sup> Harrison, however, argues that this may have been precisely the case in the fifth century but that the practice could have fallen into disuse in the fourth as metics came to represent themselves in legal proceedings, a change which he attributes to Athens' increasing influence as a commercial centre and a great increase in the number of metics. He notes that Lysias' speech against Eratosthenes was delivered in special circumstances and with the exception of those circumstances, Lysias was required to speak through the mouth of his *prostatēs*.<sup>462</sup> For Whitehead, however, there was no occasion on which a metic had to be represented by in court by a *prostatēs*, though the relationship between the pair was lasting, even permanent.<sup>463</sup>

The question, as Harrison notes, 'must be regarded as still open', though he plausibly argues that since it is 'difficult to envisage circumstances in which a man could have laid himself open to' a *γραφὴ ἀπροστασίου*, in view of the fact that the registration procedure which must have existed could only have been circumvented by the complicity of Athenian officials, the germane offence must have been of wider-ranging consequence.<sup>464</sup> The responsibility of the *prostatēs*, however, may have been no more than a legal liability for any penalty which a metic incurred: sureties, *ἐγγυηταί*, could at least be required by a prosecutor whose case was against a metic.<sup>465</sup> An on-going function, indeed, perhaps arose from fears of metics purporting to be citizens, a crime for which enslavement might again be imposed.<sup>466</sup>

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<sup>461</sup> MacDowell 1978, 78; see too Harrison 1968–1971, i. 190f.

<sup>462</sup> Harrison 1968–1971, i. 191ff.; see too [Arist.] *Ath.* 58.2–3, with Rhodes 1993; Harrison 1968–1971, i. 193–199; MacDowell 1978, 220–234. Metics' access to courts as *synēgoroi*: Rubinstein 2000, 18 with n.10, 47–50.

<sup>463</sup> Whitehead 1977, 90–96, largely accepting the view of P. Gauthier, 'Les xeni dans les textes athéniens de la seconde moitié du V<sup>e</sup> siècle av. J-C', *REG* 84 (1971) 44–79.

<sup>464</sup> Harrison 1968–1971, i. 192f. See too MacDowell 1978, 77f.; Rhodes 1993, 497; Hunter 2000, 15–23; Patterson, *passim*.

<sup>465</sup> See Dem. 24.131f.; Isok. 17.12; MacDowell 1978, 76.

<sup>466</sup> The legal framework was provided by the *γραφὴ ξενίας*: [Arist.] *Ath.* 59.3, with Rhodes 1993; Dem. 40.41f., 49.66, 59.52; Hesykh. s.v. *ξενίας δίκη*; Lys. 13.60; Harrison 1968–1971, ii. 24, 193 n.1; Todd 1993, 139, 174 n.9, 181f.

Lykourgos' remarks imply that metics were believed to feel less passionately about their new home city than its citizens did; this is unsurprising perhaps, not least in view of the restrictions placed upon them with regard to property ownership and marriage.<sup>467</sup> Patterson suggests that the metic's lack of 'connection to the Athenian land or to Athenian household and kinship structures ... jeopardized the exercise of legal privilege and fostered the creation of the topos of the rootless metic whose loyalty and services might be held up to rebuke the wayward citizen, but whose crimes clearly revealed the dangers of the "xenos within"'.<sup>468</sup> They were, none the less, expected to provide at least an outward appearance of devotion, as well as military service, and it is clear from Hypereides' prosecution speech against Athenogenes that the law provided for the summary arrest of a metic who had departed in war-time and returned when the crisis had passed.<sup>469</sup>

It is, however, unclear whether this law, not mentioned in any other source, applied before Khaironeia or whether it was passed in the state of emergency which followed the defeat. It is possible that it pre-dated 338 B.C., since Athenogenes' departure occurred before the battle, though Hypereides delivered the speech between 330 and 324 B.C., and it is possible that Hypereides was misleading the jurors, or assuming that their knowledge had been dimmed by the passage of time. Certainly the atmosphere in which the *dēmos* forbade citizens to depart would provide a context for its institution after the defeat.<sup>470</sup> None the less, this outward appearance of loyalty, Lykourgos implies, was more even than Leokrates, a full citizen, was able to supply. There is, therefore, a rationale for the unsupported claim that Leokrates was turned out by everyone he approached in his self-imposed exile: a citizen who fled the peril faced by his own *polis* would certainly not be expected to face danger for one to which, as a metic, he owed less allegiance.<sup>471</sup>

<sup>467</sup> See Dem. 34.37, 36.6; Xen. *Por.* 2.5f., with Gauthier 1976; Harrison 1968–1971, i. 24ff.; MacDowell 1978, 75f., 87.

<sup>468</sup> Patterson, 94; see too Whitehead 1977, 69f.; Allen 2000a, 107ff.

<sup>469</sup> Hyp. 3 (*Atth.*) 29, 33, with Whitehead 2000. Metics' military service: Thouk. 2.13.7, 2.31.2; Whitehead 1977, 82–86; MacDowell 1978, 77.

<sup>470</sup> See too §§52–54, below.

<sup>471</sup> §§133–134, below.

τίς δ' ἦν οὕτως ἢ μισόδημος ... αὐτὸν ὑπομείναι ἰδεῖν: Cowardice in battle, in the form of *astrateia* or *lipotaxion*, was severely punished: the jury consisted of the deserter's erstwhile comrades who would be more likely to avail themselves of the punishment of *atimia*.<sup>472</sup> Lykourgos' use here of ἄτακτον is clearly intended to bring such offences to mind, for the word was used not only in the sense of disorder in the ranks, but also of not being called up, a connection which implicitly expresses disapproval of civilians who had not volunteered for service. Thus although Leokrates was exempt from military duty, further opprobrium could be generated for his failure to volunteer for service, and the implication of disorderly conduct reinforces Lykourgos' earlier description of Leokrates' behaviour since his return.<sup>473</sup>

ἡνίκα ἢ μὲν ἦτα ... πεντήκοντ' ἔτη γεγονόσι καθειστήκεσαν: Military service was a civic duty imposed upon the top three census groups to the age of 59, with *thētes* serving mainly as oarsmen in the fleet.<sup>474</sup> Although it is unclear how or when a change occurred, the sources indicate that in the fifth century and for the first half of the fourth, military call-up was based principally on rotation of service from the muster roll, but that in the second half of the fourth century, liability to call-up was determined by age groups.<sup>475</sup> It is possible that this change had a detrimental effect on volunteer service and may have been responsible, at least in part, for the increasing need to rely on mercenary service.<sup>476</sup> The 20–29 and 30–39 age groups were the first to serve in any conflict and the burden perhaps fell more heavily on the younger cohorts in part because they were debarred from jury service and magisterial office until the age of 30, even though they were eligible for the *stratēgia*.<sup>477</sup> Garland argues that the term *presbutēs* and its cognates might have been reserved for those in the 50–59 age group, after which they were liable to act

<sup>472</sup> See Aiskhin. 1.29, 3.175f.; And. 1.74; Dem. 15.32, 21.103; Lys.14.5ff.; see too MacDowell 1978, 160; Hamel, *passim*, esp. 376–379.

<sup>473</sup> See §§5–6, above, 43–45, 128–132, below.

<sup>474</sup> See too [Arist.] *Ath.* 27.1, with Rhodes 1993; Arist. *Pol.* 1274a12–15; Thouk. 6.43; [Xen.] *Ath.* 1.2, 2.14; Xen. *Hell.* 1.6.24; Meiggs 1972, 439ff.

<sup>475</sup> See Aiskhin. 2.133, 168; Ar. *Eq.* 1369ff.; [Arist.] *Ath.* 26.1, 53.7, with Rhodes 1993; Dem. 3.4; Xen. *Mem.* 3.4.1. See too Pritchett 1974–1991, ii. 105, 230f.; Andrewes 1981, *passim*; Garland 1990, 200ff.; Sinclair, 55; Rhodes 2000a, 470f.

<sup>476</sup> See e.g. Dem. 1.6, 24, 2.13, 24, 3.34f., 4.19ff., 27, 29, 37, 46, 10.19; Isok. 8.41–48.

<sup>477</sup> See [Arist.] *Ath.* 4.3, 63.3, with Rhodes 1993; Dem. 24.150f.; Xen. *Mem.* 1.2.35. See too Garland 1990, 280ff.

as arbitrators for a year before passing on to the threshold of old age as *gerontes*.<sup>478</sup> This last group to be called up was apparently not in service at Khaironeia, and was perhaps perceived to add little more in battle, in practical terms, than its experience to the physical strength of their younger comrades, though it seems that there was no upper age limit for *stratēgoi*, since Phokion appears to have been elected at the age of eighty.<sup>479</sup> They are, in any case, presented here as a hope of last resort for the city.<sup>480</sup>

§§40–41. ὄραν δ' ἦν ἐπὶ μὲν ... ἀναξίως αὐτῶν καὶ τῆς πόλεως ὀρωμένας: Lykourgos evaluates the spectacle of wives, mothers and sisters cowering in doorways as unworthy of free women. What lies behind this view of their degradation is, however, unclear. Perhaps he considers that the terror which the news of the defeat at Khaironeia engendered was degrading, though his mention of their status may imply that their visibility was considered to have demeaned them. This should not, however, necessarily imply that the ideal of the seclusion of Athenian women equates with misogyny, or with a view of female inferiority, for Garland's argument with respect to the elderly is equally applicable to women: 'what passes for esteem, homage and sympathy ... in one society may be interpreted as neglect, indifference or abuse in another'.<sup>481</sup>

The women's desperation at this time is vividly depicted by Lykourgos: crouched in terror, some asked of husbands, some of fathers, others of brothers. The language is emotive, and somewhat reminiscent of Xenophon's account of how reports of the defeat at Aigospotomoi were received in Athens.<sup>482</sup> There is, too, more than a passing resemblance to the image of Trojan wives and daughters clustering around Hektor at the Skaian gate begging for news of sons, brothers,

<sup>478</sup> Garland 1990, 243; see too §§40–41, below.

<sup>479</sup> Plut. *Phok.* 24.3; see too Thuk. 1.105.4; §§16, above, 46–51, below.

<sup>480</sup> See too §§40–41, below.

<sup>481</sup> Garland 1990, 244. See too Arist. *Pol.* 1300a4–8, 1323a3–6; Dem. 43.62, 47.53–56, 60, 59.110–114, 122; Lys. 1.6–14, 3.6f.; Xen. *Oik.* 7.35f.; Pomeroy, 58ff., 65f., 71–74, 79–84; Gould, *passim*; Walker, 81–84; Nevett, 89–95; Millett 1998, 207–211; §§141–145, below.

<sup>482</sup> Xen. *Hell.* 2.2.3.

friends and husbands.<sup>483</sup> Such an association may be intentional in view of the poetry, epigrams and oaths Lykourgos will produce later.

τῶν δ' ἀνδρῶν τοὺς τοῖς σώμασιν ... διπλᾶ τὰ ἱμάτια ἐμπεπορημένους: The *presbutai*, or those between fifty and fifty-nine, upon whom the the city's hopes rested seem here to be differentiated from the *gerontes* who were exempt from military service, though Lykourgos' use of the comparative *presbuterous* may suggest that it was cognate with *gerontes*.<sup>484</sup> None the less, the elderly are portrayed as pitiful at a time of life when they might expect to receive respect, a point which will be reinforced in §§94–97. This mixture of respect, pity and contempt for the elderly is echoed elsewhere in the ancient sources, where respect for the aged co-exists with a view that they are also to be pitied, viewed with contempt, and equated with women and children because of their inability to fight. Their plight was thus twofold: physical, hence the desirability of a quick and painless death; and economic, hence their supposed dependence on jury pay and the legal requirement for a son to maintain his parents.<sup>485</sup>

πολλῶν δὲ καὶ δεινῶν ... εἶναι καὶ ἐλεύθερος ἐσεμνύετο: Hypereides was unsuccessfully prosecuted by Aristogeiton for the allegedly illegal proposal that the slaves should be released, that citizenship should be granted to metics, and that those deprived of citizenship should have their rights reinstated. Hypereides' response to the charges was that he could not see the law with Macedonian arms staring him in the face and that, in any case, it was not he but the battle of Khaironeia that proposed the decree.<sup>486</sup> He argued that the silver-mine slaves alone would have furnished Athens with at least 150,000 fighting men, though the motivation might have been the escape to Dekeleia of thousands of slaves at the end of the fifth century and the breakdown of cultivation and silver production; a

<sup>483</sup> Hom. *Il.* 6.237–240.

<sup>484</sup> See too §§36–39, above.

<sup>485</sup> See e.g. Ar. *Vesp. passim*; Arist. *Pol.* 1329a14–16, 1329a29–34; *Rhet.* 1389b13–1390a23; Pl. *Rep.* 465a5–465b3, 563a3–563b2; Xen. *Mem.* 3.5.15. See too Garland 1990, 242–287; Dover 1994, 102–106.

<sup>486</sup> Hyp. frg. 27–28; [Plut.] *Mor.* 848F–849A; see too Hansen 1974, 36f. #27; §§7, 16, 36–39, above.

freed slave population might have been considered to be less harmful than an escaped one.<sup>487</sup>

The concern behind Hypereides' proposals is fully demonstrated, however, by the proposal to grant citizenship to aliens and to allow the re-enfranchisement of *atimoi*. Citizenship and its associated rights were jealously guarded and it is clear from Lykourgos' remarks that the Athenian concepts of autochthony and freedom were grounded in the definition of the citizen. As Rosivach notes, 'the legend of autochthony was used as part of democratic ideology, asserting the political equality of all citizens and the superiority of even the humblest citizen to any non-citizen'.<sup>488</sup> MacDowell, indeed, notes that citizenship was only rarely granted and that the proposal attributed to Solon, whereby aliens were granted citizenship if they came to Attica to practise a trade, should refer, instead, to foreigners' rights to become metics rather than citizens.<sup>489</sup>

In the fifth century, however, grants of citizenship were conferred as a means of expressing gratitude, and although Thrasybulos' decree for such a proposal was also prosecuted as an illegal motion by Arkhinos on the grounds that some of the prospective citizens were not free, in other times of crisis, notably at the battle of Arginoussai, even slaves were granted citizenship.<sup>490</sup> In the fourth century, the process was provided with a legal basis: citizenship, with some limitations concerning office holding and priesthoods, could be proposed in the *Ekklēsia* for an alien who had displayed outstanding courage for Athens and, in what looks strikingly like a reversal of the procedure for ostracism, a quorum was required at the following assembly to decide upon the proposal.<sup>491</sup> MacDowell argues that the

<sup>487</sup> Hyp. frg. 29; see too §§120-121, below.

<sup>488</sup> Rosivach 1987a, 305. See too Isok. 4.22-25; Ober 1989a, 97f., 261-270; Loraux 1993, 37-72; Connor 1994, *passim*; Parker 1996, 138-141; §§36-39, above, 46-51, 98-101, below.

<sup>489</sup> MacDowell 1978, 70f., citing Plut. *Sol.* 24.4; see too §§1, 9, above.

<sup>490</sup> See Aiskhin. 3.195; Ar. *Ran.* 33f., 190f., 693f.; [Arist.] *Ath.* 40.2, with Rhodes 1993; Dem. 59.104ff.; Isok. 12.94; Lys. 13.72, 23. *passim*; Thouk. 3.55.3, 3.63.2; *IG* ii<sup>2</sup> 10; ML 94 = *GHI* i.96; see too Harrison 1968-1971, ii. 207; Connor 1994, *passim*, esp. 40f.

<sup>491</sup> See Dem. 59.88-92; *GHI* ii.178 = *IG* ii<sup>2</sup> 237; MacDowell 1978, 72f.

matter never became routine, however, since the wording of *x is to become an Athenian* reflects the honour and ‘real assumption of a new nationality’.<sup>492</sup>

*Atimia* involved the loss of socio-political rights and legal protection and could be imposed on citizen and alien alike. Harrison argues that there were two forms of *atimia*. One equated to outlawry and involved any or all of the following sanctions: confiscation of property; the extension of sanctions to the family of the *atimos*; permanent exile from the state, *ἀειφυγία*; and the eventual imposition of the death penalty. The other form was, effectively, exclusion from citizenship by means of a ban on entering the agora and holy places, on participation in sacred rites, and on addressing the *Ekklēsia* and *Boulē*, effectively the loss of all political rights. These two types, for Harrison, co-existed simultaneously.<sup>493</sup> For MacDowell, however, the second, lesser, type of *atimia* was a development of the former and involved a change in procedure at some time after the middle of the fifth century. Previously, he argues, *atimia* was equivalent to expulsion since the loss of rights of protection made it unsafe to remain in Attica: this remained the case for outlawry, but *atimia* itself came to represent an exclusion from citizen rights and privileges, and might be only partially imposed, being better translated as disenfranchisement.<sup>494</sup>

The sources do not permit a definitive resolution to the uncertainty and, as MacDowell notes, ‘*atimia* remains one of the most difficult topics in the study of Athenian law’.<sup>495</sup> It is, however, clear that *atimoi* were effectively demoted from citizen status: reprieve was possible, occurring for example after the fall of the Thirty, but a *νόμος ἐπ’ ἀνδρί* could only be proposed if an indemnity, *ἄδεια*, was

<sup>492</sup> MacDowell 1978, 73; see too Dem. 57.30ff.; Is. 8.43; Whitehead 1986, 103–109. M.J. Osborne 1981a–1983, provides a comprehensive survey of Athenian decrees conferring citizenship.

<sup>493</sup> Harrison 1968–1971, ii. 169–176. He suggests, 170, that the former type evolved into the imposition of a fine. If sufficiently heavy, of course, such a penalty would necessitate departure from Attica: Dem. 25.92. See too And. 1.33, 73–76; [Arist.] *Ath.* 53.5, 67.5, with Rhodes 1993; Dein. 1.60; Dem. 20.135, 21.32, 43, 87, 95; Hdt. 6.136; Lys. 6.24.

<sup>494</sup> MacDowell 1978, 73ff.; see too [Arist.] *Ath.* 8.5, 22.8, with Rhodes 1993; Hansen 1976a, 54–90; Rhodes 1993, 282f. *Atimia* as evolving out of Solon’s reforms, with loss of specific privileges becoming punishments from the point at which they were guaranteed by law: Manville, *passim*. Partial *atimia* as loss of the right to address *Ekklēsia*, to be a *Bouleutēs*, or to occupy a magistracy: And. 1.75f.; Dem. 51.12; Lys. 26.3.

<sup>495</sup> MacDowell 1978, 75. See too Todd 1993, 142f.

first accorded to the proposer by a quorate assembly.<sup>496</sup> The re-enfranchisement or recall of *atimoi*, therefore, for practical purposes, equated to the granting of citizen rights to aliens. Although Hypereides' proposals seem to have been accepted in the panic-stricken atmosphere, they were not implemented, for it soon became clear that the situation was not as dire as at first imagined. Plutarch suggests, however, that the proposals themselves may have had the effect of Philip permitting the removal of the dead from Khaironeia, overturning his previous refusal to the heralds from Lebedeia.<sup>497</sup>

§42. *τσαύτη δ' ἡ πόλις ἐκέχρητο ... Μακεδόνας ὑπὲρ τῆς ἰδίας κινδυνεύειν*: Lykourgos' portrayal of Athens as former champion of the freedom of the Greek world and ruler of many barbarian lands displays the dual nature of Athenian hegemony in the fifth century.<sup>498</sup> Athens' empire was dismantled after the Peloponnesian War, but the King's Peace of 387 B.C., which concluded the Corinthian War, permitted her retention of Lemnos, Skyros and Imbros despite the principle of autonomy for all Greek *poleis*.<sup>499</sup> A series of alliances up to 382 B.C., purportedly for purely defensive purposes against a Persian threat, and which did not violate the terms of the Peace, bound Khios, Mytilene, Methymna, Rhodes, Euboaia and Byzantium to Athens; these alliances were supplemented by others with victims of Spartan heavy-handedness.<sup>500</sup> Even Thebes joined the new league whose constitution of 377 B.C. is recorded on the 'Aristoteles decree' together with the league's determination that the Greeks must be autonomous and free from Spartan control.<sup>501</sup>

<sup>496</sup> See [Arist.] *Ath.* 34.3, with Rhodes 1993; And. 1.77; Dem. 24.45. Lipsius, iii. 963f.; Harrison 1968–1971, ii. 199; see too §§124–127, below.

<sup>497</sup> [Plut.] *Mor.* 848F–849A; Hammond and Griffith, 604ff.; see too §§16, 36–39, above.

<sup>498</sup> See Plut. *Aris.* 24–25.3; Isok. 4.52, 71f., 80f., 100–109, 12.53f., 56f., 66–73, 97ff., 114–118; Thouk. 1.96–99, 2.13.2f.; see too Busolt 1920–1926, ii. 1337–1360; Bonner 1933, 158–176; Hammond 1967b, *passim*; Meiggs 1972, 42–67, 205–272, 324–339, 459–464, 524–561; Andreades, 306–312; Hammond 1986, 225ff., 254–266, 324–328; Kallet-Marx, *passim*.

<sup>499</sup> Significance of these islands for Athens' corn supply: Stroud 1998, *passim*; see too §§25–27, above.

<sup>500</sup> See D.S. 15.28.1–5; Cargill, 51–96; Hammond 1986, 485f.; Schwenk 1997, 19f.

<sup>501</sup> *IG* ii<sup>2</sup> 43 = *GHI* ii. 123; D.S. 15.29.7–30.2; Busolt 1920–1926, ii. 1360–1389; Andreades, 312ff.; Cargill, 14–47, 115–128. R. Osborne 2000a, 86–90, interprets a



Thebes' victory over Sparta at Leuktra in 371 B.C., provided definitive evidence of the growth of Theban power and in 369 B.C., Athens negotiated another alliance with Sparta.<sup>502</sup> After the battle of Mantinea in 362 B.C. and the onset of the decline of Theban power following the death there of Epaminondas, however, it became apparent that no *polis* was sufficiently powerful to retain hegemony alone.<sup>503</sup> In 357 B.C., revolts in Rhodes, Khios and Kos were supported by Mausolos of Karia.<sup>504</sup> Khares was forced to support the Persian satrap, Artabazus, in his rebellion against Artaxerxes III in order to obtain funds to quell further uprisings among league members: the King's response was to demand that Khares be recalled to Athens and that the rebel *poleis* be granted independence supported by Karian garrisons.<sup>505</sup> This so-called Social War severely undermined Athenian control of her allies, and Philip's annexation of Amphipolis, Potidea, Pydna, Krenides, Methone and, finally, Olynthos, exacerbated Athens' problems. The Peace of Philokrates in 346 B.C., sounded the death knell for a league which had for long been on its knees.<sup>506</sup>

*καὶ τὸν δῆμον ὄν πρότερον ... ἐπικουρίαν αὐτῷ μεταπέμψασθαι*: Lykourgos' portrayal of Athens as champion of Greek freedom plays to a fond self-image which is reinforced by implicit references to the Ionian revolt, and to the helot uprising of 464 B.C.<sup>507</sup> The four places which Lykourgos specifically names, however, had significantly negative associations for Athens.

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provision for slave informing as an indicator of Athenian imperial ambitions. He argues, 88 n.26, that those who deny such ambition (e.g. Harding 1995) suppress the decree (e.g. Harding 1985): see too *IG* ii<sup>2</sup> 1128 = *GHI* ii.162.

<sup>502</sup> D.S. 15.51.1–56.4, 62.3–66.1; see too Stroud 1974, 187, who suggests that 'peace with Sparta in 375 was hastened by Athens' financial distress', witnessed by the 'totally inadequate allocation of only thirteen talents to Timotheus' expedition'; Arist. *Oik.* 2.1350a 25–1350b15; Isok. 15.108f.; Xen. *Hell.* 5.4.63–66, 6.2.1. See too §93, below.

<sup>503</sup> D.S. 15.79.2; Xen. *Hell.* 7.5.25ff. See too Buckler, 220–227; Hammond 1986, 499–516; Roy 1994, *passim*; Munn 1997, 92ff.; Schwenk 1997, 25ff.

<sup>504</sup> See too §§17–18, above.

<sup>505</sup> See too Cargill, 131–188; Hammond 1986, 513–516; Schwenk 1997, 27f.

<sup>506</sup> See too D.S. 16.8.3–7; Hammond 1986, 538–551; Errington 1990, 45–102; Sealey 1993, 108–112, 120–126, 137–157; Harris 1995, 63–77; Schwenk 1997, 28–33.

<sup>507</sup> See Ar. *Lys.* 1137–1144; D.S. 11.64.1–4; Hdt. 5.96–106; Paus. 4.24.5–7; Plut. *Kim.* 16.4–10; Thouk. 1.101–102; See too Meiggs 1972, 88f.; Forrest 1980, 101ff.; Hammond 1986, 204–210, 262; Murray 1993, 258ff.; Welwei 1999, 27–31, 89ff.; §§14–15, above.

It had been a colony of Andros, Akanthos, that in 424/3 B.C. had opened the door for Brasidas' capture of one of Athens' most important settlements, Amphipolis; since Andros had been subjected to a cleruchy from around 450 B.C., Meiggs speculates that 'Andrian ill feeling against Athens had influenced her colonies'.<sup>508</sup> The island had also previously lent support to the Persians, an act of betrayal for which Athens had signally failed to exact revenge.<sup>509</sup> In 356 B.C., moreover, Andros had been a sufficiently direct source of concern for an Athenian garrison to be installed.<sup>510</sup> Keos, too, had negative connotations, for while Timotheos was achieving successes in the eastern Mediterranean in the mid-360s, Thebes launched a naval offensive in the same arena: Keos revolted and in 362 B.C. had to be corralled back into the Second Athenian League.<sup>511</sup>

Troizen and Epidauros had been both comfort and curse to Athens. Troizen, strongly associated with Theseus, was, by the latter half of the fourth century, equally associated with housing some of the refugees from Athens at the time of the battle of Salamis. Despite the significant controversy over the authenticity of the so-called Themistokles decree discovered at Troizen, it is likely that the jurors would have made such an association, whether the decree was genuinely fifth-century legislation or fourth-century propaganda.<sup>512</sup> Athens had, however, been forced to abandon Troizen in humiliating fashion as part of the terms of the Thirty-year peace of 446/5 B.C.<sup>513</sup> Epidauros, home of the sanctuary of Asklepios, had joined with Corinth at the battle of Halieis in 459/8 B.C. against Athens' occupation of Megara, and had assisted the Megarian revolt.<sup>514</sup> The city, allied with Sparta, had also successfully resisted Athenian attempts at capturing her and had maintained a fierce independence during the Peloponnesian War.<sup>515</sup> In 366

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<sup>508</sup> Meiggs 1972, 335; see too Plut. *Per.* 11; Thouk. 4.84–88.

<sup>509</sup> See Hdt. 8.111.

<sup>510</sup> *IG* ii<sup>2</sup> 123 = *GHI* ii.156; Cargill, 155f.; Harding 1985, 91 #69.

<sup>511</sup> Isok. 5.53ff.; *GHI* ii.141; Cargill, 134–140; Harding 1985, 74ff. #55; Hammond 1986, 505f., 513.

<sup>512</sup> See Habicht, *passim*; see too Paus. 1.27.8, 2.1.4; Meiggs 1972, 493f.; Murray 1993, 295–299; Raaflaub, 249ff.; §§72–74, 80–81, below.

<sup>513</sup> See Thouk. 1.115.1; 4.21–22; see too And. 3.3f.

<sup>514</sup> Links between Corinth and Epidauros from at least the early seventh-century marriage of Periandros to Melissa, daughter of Epidaurian tyrant, Prokles: Athen. 13.56.33–36; Hdt. 3.50ff.; Paus. 2.28.4; D.L. 1.94.

<sup>515</sup> Thouk. 1.105.1f., 114, 2.56, 5.77. See too Figueira 1981, 170–192.

B.C., moreover, Epidauros had allied with Boiotia after the announcement of the terms of the Persian-brokered Peace of Pelopidas which were potentially disastrous for Athens.<sup>516</sup>

Athens' humiliation at having to call on such neighbouring foes is magnified by the fact that these *poleis* would not have been considered to be remotely of the same magnitude as Athens in the great days of the empire, as it is by the refusal of one of her own citizens to offer any assistance. In rhetorical terms, therefore, Leokrates' betrayal is all the greater, and the need for the jurors to avenge themselves on this representative and cause of their humiliation is paramount.

§§43-45. ὥστε ὧ ἄνδρες ... τὴν τῆς πόλεως καὶ τοῦ δήμου σωτηρίαν: Dover suggests that patriotism was primarily defined in archaic times as valour in war and wisdom in discussion: a 'twofold commendation' that indicated 'that a man was all that a man should be'.<sup>517</sup> In the classical period, patriotism in its purest sense had democratic connotations, with danger shared equally by all; thus Demosthenes could present Khabrias as *philopolis* because he ran the same risks as the men under his command, a principle which Lykourgos will vividly illustrate by his quotation from Euripides' *Erechtheus*.<sup>518</sup> The concept is akin to *philotimia*, Leokrates' lack of which is repeatedly emphasized by Lykourgos; any desire for good repute, natural in others, is clearly lacking in the defendant, and demonstrably extends to his attitude to his family and to the *polis*.<sup>519</sup>

Lykourgos argued, in §§14-15, that one of the characteristics that distinguished Athenians and set them apart from the rest of mankind was πρὸς τὴν πατρίδα φιλοτίμως ἔχειν and that this was one of the main reasons why Athens remained a

<sup>516</sup> See Plut. *Pel.* 30; Xen. *Hell.* 7.1.33-40; Hammond 1986, 502; §93, below.

<sup>517</sup> Dover 1994, 161.

<sup>518</sup> Dem. 20.82f; see too Aiskhin. 3.169f.; Dein. 1.31; Dem. 24.127; Ober 1989a, 239f., citing Dem. 18.170ff., though the terminology is actually εὐνοὺς τῇ πόλει; Dover 1994, 162; §§14-15, above, 46-51, 98-101, below.

<sup>519</sup> See too §§25, 135-137, below; Aiskhin. 1.129; Dem. 19.223; Connor 1992, 91ff., 102f., 105ff., 119 n.56; Dover 1994, 230-234. Leokrates' alleged desertion: §§5-6, 8, 17-

focus of interest for the outside world and why Leokrates' trial had generated such interest. The jurors are here placed in explicit counterpoint to Leokrates' *prodosia*: only a guilty verdict by patriotic jurors will redress the damage which the notoriety of the defendant's behaviour has engendered; only a guilty verdict will regain the good reputation which innately belongs to the city and its inhabitants, and which should, by right, be actively sought by every *philopolis* individual among them.

The use here of *philopolis* may, however, have further significance, since another *dikaïos* might reasonably have been expected. Thukydides notably attributes to Perikles the claim of being *philopolis* in the context of seeing and explaining what needed to be done for the city, and of being above the influence of money.<sup>520</sup> Lykourgos is therefore perhaps alluding to his own reputation of incorruptibility, extending the flattering allusion to the jurors, and pre-emptively undermining the defendant's *synēgoroi*, who are presumably the subject of the reference to a *ρήτωρ κληθείς*.<sup>521</sup>

*ὄθ' ἢ μὲν χώρα τὰ δένδρα ... παρέσχε τάξαι Λεωκράτης*: In paving the way for the emotive contrast between Leokrates and the 'Khaironeiamakhoi' to come, Lykourgos offers a contrast between the defendant and those who had turned their hands to the defence of the city after the defeat at Khaironeia. Men of every age were involved in this defence, he alleges, a claim which clearly evokes the pitiful elders to whom he referred in §§40–41. Even trees, the dead, and temples are presented as having offered their support and assistance to the city, creating a debt which the jurors will be urged to repay in §§149–150, and a debt which is all the more poignant because these are the very aspects of city life that Leokrates has betrayed.<sup>522</sup>

This was not the first time, however, that the city's walls had been rebuilt in a hurry. After the Persians had sacked Athens, Themistokles urged the rapid

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18, above, 55–58, below; voluntary service and exemption from military duty: §§19, 36–39, above; *eusebeia*: §§14–15, above; summons of witnesses, *klēteusis*: §20, above.

<sup>520</sup> Thouk. 2.60.5.

<sup>521</sup> See §§135–137, 138–140, below.

<sup>522</sup> See §§1, 8, above. See too Dem. 60.5; Lys. 2.70.

reconstruction and extension of the city's walls; the work was carried out so hurriedly that funerary *stēlai* and sculpture were adapted to fit as necessary.<sup>523</sup> This is exactly the picture that Lykourgos himself depicts one and a half centuries later as the Athenians, again in haste and panic, prepared to defend their city from the onslaught imminently anticipated from Macedon.<sup>524</sup>

It is unclear which temples Lykourgos means, though the remark is perhaps little more than an emotive piece of rhetoric. Temples were the original repositories for dedicated spoils of war, though Burkert notes how, 'in the sixth century separate treasure houses, *thesouroi*, began to be set up' for the purpose. Rather than housing an abundance of such booty, however, these treasuries, which Lawrence calls 'satellite temples', probably represent alternative storage for occasions when the temple itself was not in a fit condition to house such votive offerings.<sup>525</sup> These spoils of war were, none the less, clearly held by the god on a conditional basis, to be redeemed and used by their captors in the event of further crisis.

*ὦν εἰκὸς ὑμᾶς ἀναμνησθέντας ... τὴν πατρίδα αὐτῶν προσαγορεύων*: Lykourgos here makes his third call for the imposition of the death penalty.<sup>526</sup> The length of Leokrates' absence is elsewhere categorically stated to be six years, for five of which he traded from Megara, and it is likely that the claim of an eight-year absence is a rhetorical flourish; indeed, since Lykourgos appears not to have proceeded with his prosecution immediately, it is difficult to see how the case could have come to court in 330 B.C., if Leokrates did not return until then.<sup>527</sup> Moreover, although the later reference to an absence of over five or six years possibly betrays an uncertainty over when, exactly, the defendant left and returned to Athens, the claim allows Lykourgos neatly to bridge the narrative gap between events in the immediate aftermath of Khaironeia and the time of the trial, a period of almost exactly eight years.

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<sup>523</sup> Thouk. 1.90.3, 93.1f.

<sup>524</sup> See too §§16, 17–18, 36–39, 40–41, above; Ar. Av. 1110–1180; Wycherley 1978, 10–16, 19f.; Ober 1980, 59f.; Knigge, 30, 35f., 49–55.

<sup>525</sup> Burkert, 94; Lawrence 1983, 113.

<sup>526</sup> Other calls: §§8, 26–27, above, 46–51, 52–54, 66–67, 77–78, 79, 120–121, 123, 133–134, 141–145, below.

<sup>527</sup> See §§21–23(i), above, §§55–58, below.

§§46–51. *Περὶ ὧν ὦ ἄνδρες ... τῆς πόλεως μὴ παραλείπειν*: Despite berating those who strayed from the point in their prosecutions and insisting that he would introduce only relevant matters in his own speech, Lykourgos here has to argue that he is not guilty of the same offence.<sup>528</sup> In this highly emotional passage, he insists that whilst he may appear to be breaking his own rule, his digression in respect of those who died at Khaironeia is not only contextually relevant, but intrinsically so in a trial before the whole *polis* for whose salvation they died. The function of such a digression, however, is clear: the dead of Khaironeia are effectively introduced as witnesses for the prosecution, their death providing an *ἐλεγχον σαφή* of Leokrates' behaviour, as of that of all cowards and traitors. The 'Khaironeiamakhoi' are directly contrasted with Leokrates in precisely the way that the jurors' patriotism was earlier placed in counterpoint to Leokrates' *prodosia*.<sup>529</sup> The jurors, as a result, are placed beyond any possible empathetic identification with the defendant.

Lykourgos has already indicated that the jurors are being watched by the whole world, and has compared them to their ancestors, demanding that they maintain the same standards of excellence for all to see.<sup>530</sup> Here, in language highly reminiscent of *epitaphioi* generally, he argues that the memorial of praise which is the immortal reward for such courage is nowhere more fittingly spoken than in public trials of treachery, which proclaim the fame of Athens and its heroes to the whole world. The 'agathos Khaironeiamakhos' is thus a hero of the stature of past Athenian veterans, and Leokrates' trial is itself an equivalent judicial *agōn*. The *athlōn* which the jurors will win if they condemn the defendant therefore is akin to the fame and the prize of valour gained by the ultimate warrior on the field of battle.<sup>531</sup>

*ἐκεῖνοι γὰρ τοῖς πολεμίοις ... πατρίδος εἶναι τὰς ἐκείνων ψυχάς*: Every aspect of the actions of the 'Khaironeiamakhoi' offers an implicit contrast with Leokrates'

<sup>528</sup> §§11–13, above.

<sup>529</sup> §§43–45, above.

<sup>530</sup> §§14–15, above.

<sup>531</sup> See Thouk. 2.42.2–43; Demandt, 14; Loraux 1986, 209ff.; Parker 1996, 131–137; §§14–15, 16, 43–45, above, 104–107, below.

behaviour. Unlike them, he did not encounter the enemy, nor fight for freedom, but effectively and single-handedly surrendered the *polis* to the enemy.<sup>532</sup> His own courage amounted to placing his trust in the city walls of Rhodes and Megara and, rather than being ashamed to see his country ravaged, was unashamed on his return to pass the graves of those who fell in the battle which he had fled.<sup>533</sup>

Whether or not there is an implicit reference to Thoukydides' claim that the *polis* comprises men, not walls, the tone of this passage is so similar to other funeral orations that it is difficult to escape the conclusion that it reflects a conscious modelling on *epitaphioi* in general.<sup>534</sup> The prosecution thus becomes, itself, a eulogy to the dead.<sup>535</sup> They had shared danger with the best and bravest who, for Lykourgos, clearly did not include Leokrates. He who had not respected the images of his natural parents and ancestors could not respect the *polis* which was his by birth. His behaviour equates not with that expected of a citizen but of a metic who feels a lesser regard for the city in which he lives. It also undermines the *doxa* of his forebears and brings yet further shame on them, treatment which equates with treason in its own right.<sup>536</sup> The defendant's desertion of all which he should have treasured is perhaps explicitly contrasted with the bequest of the reputation of the 'Khaironeiamakhoi' by a play on (ἐγ)καταλείπειν: the city was deserted by Leokrates whereas life itself was abandoned by the heroic dead; the martyrs of Khaironeia bequeathed their glory whilst Leokrates bequeathed only shame.

There are, also, echoes of the Homeric *thanatos kalos* in ἂ γὰρ ἄθλα τοῦ πολέμου τοῖς ἀγαθοῖς ἀνδράσιν ἐστίν, ἐλευθερία καὶ ἀρετή ... . μόνους γὰρ τοὺς ἐν τοῖς πολέμοις καλῶς ἀποθνήσκοντας ... εὐκλεᾶ θάνατον αἰροῦνται.<sup>537</sup> Perikles, too, had reputedly exhorted his audience to ignore the dangers of war, ζηλώσαντες καὶ τὸ εὐδαιμον τὸ

<sup>532</sup> See §16, above, 59–64, below.

<sup>533</sup> See §§141–145, below.

<sup>534</sup> See Thouk. 27.77.7; Dem. 60; Hyp. 6; Lys. 2; Pohlenz, *passim*, esp. 50–53.

<sup>535</sup> See too Loraux 1975, *passim*, esp. 24–31; Loraux 1986, 120f., 132–171.

<sup>536</sup> See Dem. 24.60; Lys. 13.91, 31.20–23. See too §§36–39, above, 98–101, 135–137, below.

<sup>537</sup> See Hom. *Il.* 9.412ff., 12.322–328, 22.71ff., 110, 304f.; see too Vernant 1992, 50–74; §§104–107, below.

ἐλεύθερον, τὸ δ' ἐλεύθερον τὸ εὐψυχον κρίναντες.<sup>538</sup> By relinquishing Athens' freedom and displaying extreme cowardice, Lykourgos implies, Leokrates is now worse than a metic, indeed he is no better than a slave and, unlike the dead who gloriously escaped such disgrace, has returned to claim the inglorious and disgraceful death which is the particular (dis)honour to which he has laid claim.<sup>539</sup>

Athens is also, effectively, reiterated as champion of Greece. The defeat at Khaironeia was the result of misfortune, rather than lack of courage, and led to the whole of Greece falling into servitude. It would, therefore, be unconscionable if the defendant, who personally handed the city over to the enemy, was himself granted freedom by the jury: the people who once voted for the slaves to be freed must not do so again.<sup>540</sup> It is debatable, however, whether any community actually felt itself to have been enslaved by Macedon. Thebes, perhaps, could have claimed such a fate after the Macedonian garrison that had been installed on the Kadmeia was blockaded upon rumours of Alexander's death, and proof that Alexander was still very much alive arrived within a fortnight: the Theban captives were sold into slavery and the city was razed to the ground.<sup>541</sup>

Yet Thebes was the exception that proved the rule, for the Macedonians generally treated their defeated enemies more generously than might have been expected, and recovery in Athens itself, under the measures introduced by Lykourgos, was little short of spectacular.<sup>542</sup> For rhetorical purposes, however, if the jurors can be induced to feel the metaphorical weight of Macedon's yoke, then they will be inclined to punish the defendant more harshly. In this respect, the image of Greek freedom being buried with the bodies of the 'Khaironeiamakhoi' may not be incidental, for Aiskhines' reference to the outcome of the trial shows that Leokrates escaped being cast, unburied, outside the borders of Attica, by a hair's

<sup>538</sup> Thouk. 2.43.4.

<sup>539</sup> See too Ober 1989a, 271f.

<sup>540</sup> See §§16, 36-39, 40-41, 42, above.

<sup>541</sup> Aiskhin. 3.156f.; Arr. *An.* 1.7.1-8.8; Dein. 1.18-21; D.S. 17.8.2-14.4; Just. 11.2.9f.; Plut. *Alex.* 11.3ff; *Dem.* 23.1f.; Heckel, 192f.; Munn 1997, 102ff.

<sup>542</sup> See D.S. 16.89.1-3; Isok. *Ep.* 3; Plb. 9.28.1-4, 18.14.13-15; Mitchel 1973, *passim*; Hammond 1986, 570-576; Sealey 1993, 196-212; Heckel, 189ff.; Munn 1997, 98ff.; Schwenk 1997, 33-37; Shipley 2000, 114f.; see too introduction, 17-21, above.



breadth.<sup>543</sup> Perhaps, therefore, Lykourgos is paving the way here for a demand for just such a penalty worse than death so that Leokrates will properly be equated with the dead whom he, for his part, left unburied after the battle.

*καὶ δι' ἃ οὐκ ἀλόγως ... ταῖς ἐσχάταις τιμωρίαις κολάζειν*: Until the early fourth century when successful generals were so honoured, the tyrannicides were probably the only human figures represented in the Agora.<sup>544</sup> The statues of Harmodios and Aristogeiton seen by Pausanias were replacements by Kritios and Nesiotes, dating to 477/6 B.C., for originals by Antenor, dating to between 510 and 490 B.C., which had been removed by Xerxes in the early fifth century when the Persians invaded Attica.<sup>545</sup> If Pausanias is correct, the originals were returned by Antiokhos, one of Alexander's successors, whereupon both pairs stood together in the Agora.

Again the Athenians are noted as different, now because they alone know how to define and honour *agathoi*, not as athletic champions, but as liberators and avengers: ideal models, therefore, for the jurors themselves to emulate, for the *stephanoi* with which athletes are rewarded are as nothing compared to the *stephanos* symbolized by the souls of the 'Khaironeiamakhoi'.<sup>546</sup> As though his remarks had in themselves proven Leokrates' guilt, Lykourgos now makes his fourth call for the death penalty.<sup>547</sup>

<sup>543</sup> Aiskhin. 3.252; introduction, 31 ff., above.

<sup>544</sup> Konon and Timotheos: Dem.20.69f.; Paus. 1.3.2; Isok. 9.57. Statues of the pair also on the Acropolis: Paus.1.24.3. See too Wycherley 1978, 136; Gauthier 1985, 96f., 102f.; Parker 1996, 239 with n.76.

<sup>545</sup> See Paus.1.8.5: the statues he saw in the Agora of Pindar and a certain Kalades were probably erected much later. See too [Arist.] *Ath* 58.1, with Rhodes 1993; Arr. *An.* 3.16.7f.; Meritt 1936, 355-358 #1; Wycherley 1972, 155-160; Wycherley 1978, 73f.; Gauthier 1985, 92ff.; Taylor, 13-21; Castriota, 201-209, 213ff.; Spivey, 172-177; Hurwit, 138 n.1, 254; Raaflaub, 261-265. Posthumous bronze statue of Lykourgos in the agora: Paus.1.8.3.

<sup>546</sup> See too §§14-15, above; Isok. 4.2.

<sup>547</sup> Other calls: §§8, 25-27, 43-45, above, 52-54, 66-67, 77-78, 79, 120-121, 123, 133-134, 141-145, below.

§§52-54. *Σκέψασθε δ' ὧ ἄνδρες, ὅτι ... πολιτῶν τοιοῦτόν τι παρανομῆσαι*: Lykourgos here turns to three precedents which he argues have to be accepted as judicially binding upon the jurors.<sup>548</sup> First he singles out the Areopagos Council; his request not to be interrupted seems specifically to relate to the Areopagites' judgements and actions after Khaironeia, for he has already mentioned them with no such plea.<sup>549</sup> Although it is not possible to identify the individuals whom the Areopagos executed in 338 B.C., the Council's punishments were, at least in respect of the individual who tried to sail to Samos, evidently carried out with reference neither to the *Ekklēsia* nor to the *Dikastēria*.<sup>550</sup>

This exercise of power was clearly deemed deeply undemocratic and it raises questions concerning the measures which formed the basis of the powers to which the Areopagos apparently considered itself entitled. It seems clear that in the 340s, the *Ekklēsia* passed a decree, proposed by Demosthenes, conferring the powers of *apophasis* on the Areopagos Council. Under the terms of this decree, the Areopagos acted as a commission of enquiry for the *Ekklēsia* and *Dikastēria*, though it was also empowered to act on its own initiative: the two procedures have been labelled respectively *apophasis kata prostaxin* and *apophasis aute proelomenē*.<sup>551</sup> It is generally accepted that the Areopagos was not permitted, in either case, to inflict punishment, but was to compile a report.<sup>552</sup> The commonly accepted reading of Deinarkhos 1.62f., moreover, is that Demosthenes was also responsible for a further decree empowering the Areopagos to enforce the laws and punish lawbreakers.

This is certainly the impression gained at first sight, but the situation which Deinarkhos is describing may not offer as clear an interpretation as has been

<sup>548</sup> See too §§7, 9, 10, above, 110(ii)-111, 122, below.

<sup>549</sup> See §§11-13, above. Powers and perception of the Areopagos: Aiskhin. 1.81-84, 92, 3.20, 252; Dem. 18.134, 23.65-70; Dein. 1.4ff., 9ff., 62f.; Isok. 7. *passim*; Xen. *Mem.* 3.5.20; Wilamowitz 1893, ii. 186-200; G. Smith, 76-79; Bonner and Smith, i. 362-365; Carawan 1985, *passim*; Ostwald 1986, 517ff.; Cawkwell 1988, 10f.; Wallace 1989, 126f., 196f.; Hansen and Pedersen, *passim*; Rhodes 1995b, 311ff.; Millett 2000, 341.

<sup>550</sup> Aiskhin. 3.252.

<sup>551</sup> Carawan 1985, 135.

<sup>552</sup> See Dein. 1.50 with Worthington 1992; see too Carawan 1985, 125-138; Sealey 1987, 56f., 137; Wallace 1989, 113-119; Hansen 1991, 292ff.; de Bruyn, 117-146; Wallace 2000, *passim*; §3 with n.179, above.

supposed, for the examples which he proceeds to give all appear to be cases of *apophasis*.<sup>553</sup> The cases of Antiphon and Kharinos, at least, date to around 343 to 340 B.C., and as Wallace notes, it would have struck the jurors as odd if two cases of *apophasis* from around 340 were joined with two other cases resulting from Demosthenes' 'Areopagos legislation' dating to the time of Khaironeia. Wallace's argument is intended to demonstrate that this 'Areopagos decree' does not date to 338 B.C., but it serves to demonstrate, in addition, that the two cases are probably not connected to any such decree, for in any case, as Wallace himself notes, 'only *apophasis* was directly relevant' to Deinarkhos' argument.<sup>554</sup> Deinarkhos does not, moreover, use a single conjunction in his list of the effects of Demosthenes' legislation until he arrives at his *coup de grâce* — *κατὰ δὲ σπαντοῦ* — to demonstrate why Demosthenes cannot argue that his legislation is now inapplicable to himself.<sup>555</sup>

Demosthenes' second, 'Areopagos', decree has, indeed, been notoriously difficult to date. Prevailing recent opinion places it in the immediate aftermath of Khaironeia, but Wallace has comprehensively demolished this dating, not least by taking account of the outrage expressed by the jurors in this passage of Lykourgos' prosecution: why, Wallace asks, would the *dikasts* be so outraged as much as eight years later by the Areopagos' exercise of powers which had just been expressly granted to it?<sup>556</sup> Wallace therefore places Demosthenes' Areopagos decree 'earlier, under different circumstances, and for different purposes' — it was the result of an unknown but 'sudden crisis' where criminal behaviour was the concern, not treachery, hence the outrage when the powers which the measures bestowed were abused and used to punish purported

<sup>553</sup> See Dein. 1.6, 50, 62f.; see too Carawan 1985, 126, 130; Wallace 1989, 117f.; Hansen 1991, 291f.; Rhodes 1995b, 313 with n.57; Wallace 2000, 584.

<sup>554</sup> Wallace 2000, 584. See too Worthington 1992, 357–362.

<sup>555</sup> Dein. 1.63: *apophasis* terminology is only specifically used in connection with the cases of Antiphon and Kharinos, but although Deinarkhos' use of *τεθνήασι κατὰ τὸ σὸν ψήφισμα* for his first example might imply that he is referring to a particular decree unconnected with *apophasis*, the appearance of *ἐδέθη ... κατὰ τὸ σὸν πρόσταγμα* for the second suggests that he is simply attempting to find a different way of expressing the items of *apophaseis* in his list.

<sup>556</sup> Wallace 2000, 583; see too Mossé 1962, 280ff.; Hansen 1975, 18f.; MacDowell 1978, 191; Hansen 1979a, 38 = Hansen 1983a, 190; Ober 1989a, 101; Wallace 1989, 118; Hansen 1991, 291f.; Sealey 1993, 186f.; Rhodes 1995b, 313.

traitors.<sup>557</sup> This seems illogical, however: the use of measures originally intended to permit the punishment of criminals would hardly occasion outrage when used against traitors in a civic emergency, at whatever date those measures were introduced.

None the less, the Areopagos patently did overstep the mark in a way which led the Athenians to assess its actions as an abuse of power and the explanation has perhaps already been provided by Wallace's earlier suggestion that Demosthenes' *apophasis* legislation and Areopagos decree may be identified as one and the same measure, an explanation which, moreover, benefits from needing neither *an unknown sudden crisis* nor any particular date.<sup>558</sup> First, although Deinarkhos states that the Areopagos was empowered by Demosthenes to punish law-breakers, he is at pains to emphasize the power of the Council and Demosthenes' own part in its empowerment: this is especially so since he is prosecuting Demosthenes in particular, and he may thus be exaggerating the scope of the Areopagos' jurisdiction.<sup>559</sup> Secondly, if an earlier date is posited for the Areopagos decree than around the time of Khaironeia then, as Wallace acknowledges, the decree would have been passed around the time of the *apophasis* measures and the *Ekklēsia* would unaccountably have been responsible for two pieces of legislation for effectively the same purpose at almost the same time; one measure is far more plausible.<sup>560</sup>

Moreover, a requirement for the Areopagos to refer to the courts any *apophaseis* warranting a penalty above a certain amount is strongly implied, if not demonstrated, by its attempt secretly to fine Theogenes, the *Basileus*, for failing to divorce his wife as required by law; the Council's covert action 'at least suggests that the Areopagites were acting in a way that exceeded their legitimate authority

<sup>557</sup> Wallace 2000, 583, 588, 590.

<sup>558</sup> See Wallace 1989, 118f.; see too Millett 2000, 341 with n.7.

<sup>559</sup> Dein. 1.6, 62f., with Worthington 1992; see too de Bruyn, 118 n.33, 119 n.35; Rhodes 1995b, 313; Wallace 2000, 584-589, citing Dem. 18.132ff., and Dein. 1.56f.

<sup>560</sup> Wallace 1989, 118f. Wallace 2000, 587, now concludes, therefore, that the single legislative measure in this respect concerned criminal behaviour, and that there was no 'general, preliminary enabling law or decree' for *apophasis*. Rather, the Areopagos was acting on the basis of its traditional rights when it conducted such investigations and reports, which accounts for its ability to instigate enquiries upon its own initiative. This argument is discussed and disputed in Sullivan 2003, *passim* = Appendix.

when they imposed that fine'.<sup>561</sup> This is, as Wallace notes, consistent with Demosthenes' claim that the Areopagos did not have final authority to punish as it saw fit; the complexities of variously dating the criminal-behaviour legislation, Demosthenes *against Neaira*, and Theogenes' case at least strongly suggest that the *Basileus'* case took place shortly after the Areopagos was so empowered.<sup>562</sup> Wallace's argument is further supported, perhaps, by the procedural parallel of the *Boulē's* power to impose penalties of up to 500 dr. in *eisangeliai* which fell within its jurisdiction, but its requirement to refer to the courts any cases deemed to warrant a heavier penalty.<sup>563</sup>

Thus the troublesome Areopagos decree may be a mirage concealing a process whereby the Areopagos, specifically under the terms of Demosthenes' *apophasis* decree, was permitted to punish law-breakers up to a certain limit, but was required, like the *Boulē*, to refer to the *Ekklēsia* and thence to the courts any criminals deemed to merit a heavier penalty than it was permitted to impose.<sup>564</sup> It was arguably, therefore, the Council's recourse to execution in 338 B.C., a punishment well beyond its jurisdiction to impose, which occasioned such outrage both at the time and even at its mention in 330 at Leokrates' trial.

The Areopagos' abuse of its powers may well have served indirectly to motivate the decree in 338 B.C. which effectively forbade flight by legislating for its categorization as *prodosia*.<sup>565</sup> This decree, although having no apparent effect on the Areopagos' existing powers, seems to have been intended, in the immediate aftermath of *Khaironeia* and, perhaps, of the Council's executions, to bring *hoi pheugontes* within the jurisdiction of the *Dikastēria* and, as a result, to empower the jurors to execute those deemed to be cowards in and after the crisis: to be able

<sup>561</sup> Allen 2000a, 45 citing Dem. 59.80ff.

<sup>562</sup> Wallace 2000, 583, 586.

<sup>563</sup> See [Arist.] *Ath.* 45.2 with Rhodes 1993; Dem. 24.63, 47.43; Harrison 1968–1971, ii. 56; Rhodes 1972a, 156, 164; Hansen 1975, 24; MacDowell 1978, 189f.; Hansen 1980a, 93, 95; Hansen 1991, 222, 258.

<sup>564</sup> This seems to be implied, too, by Dem. 59.80. See too Sullivan 2003, *passim* = Appendix.

<sup>565</sup> Demosthenes was responsible for many more decrees between the mid-340s and 338: Dein. 1.78ff., cites a decree passed after *Khaironeia* which effectively put Demosthenes in control of manpower in the city and appointed him as envoy to Philip; Dem. 18.248 lists what he considers to be his own significant services in this crisis, which include decrees for a range of defensive measures.

to exercise, therefore, powers equal to those which the Areopagos had usurped.<sup>566</sup> This perhaps indicates an immediate fear of an attempt at tyranny either by Philip or, more likely, by certain individuals within the *polis*, notably the Areopagites themselves: the decree was certainly followed by Eukrates' law in 337/6 B.C., itself closely modelled on Demophantos' decree of 410/9 B.C., the difference between the two measures being the express ban in Eukrates' proposals on Areopagites holding office or sitting in Council in the event of the democracy being overthrown.<sup>567</sup> Clearly, however, by incorporating the actions of the Areopagos into this section, Lykourgos is attributing to them the force of law, however unconstitutional they may have been deemed to be.

*ἀλλὰ μὴν Αὐτολύκου ... ὑπὲρ ἡμῶν αὐτῶν κινδυνεύουσας*: The second precedent which is argued to set the seal upon Leokrates' fate is provided by the Areopagite, Autolykos, who was apparently an honourable and highly respected, if somewhat aloof, figure. Aiskhines describes the farcical uproar which occurred during Autolykos' announcement of the Areopagos' disapproval of Timarkhos' proposals for the clearance of the region near the Pnyx for redevelopment: the Areopagite is presented as a pious and worthy figure left completely bewildered by his audience's uncontrollable laughter at his unintended but repeated *double entendres*.<sup>568</sup>

Lykourgos' reference here indicates that his prosecution of Autolykos for treason took place in or soon after 338 B.C.<sup>569</sup> It is noteworthy that the Areopagos did not itself prosecute Autolykos for treason under the terms of Demosthenes' *apophasis aute proelomenē* legislation, nor under any terms of the putative decree by which Demosthenes may have empowered the Council summarily to arrest and punish criminals. Carawan suggests that the procedure under which Autolykos was tried

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<sup>566</sup> See too §§5-6, above; MacDowell 1978, 178f., 185; Wallace 1989, 176-184; Hansen 1991, 291.

<sup>567</sup> Eukrates: *SEG* 12.87 = Harding 1985, 127 #101; Schwenk 1985, 33-41 #6. Demophantos: *And.* 1.96ff. See too Meritt 1952, 355-359 #5; Ostwald 1955, *passim*; Conomis 1958, *passim*; Sealey 1958, 72f.; Raubitschek 1964, *passim*; Mossé 1970, *passim*; Reinmuth 1971a, 47f.; Will, 28ff.; Carawan 1985, 136; Ober 1989a, 101f.; Wallace 1989, 179ff.; de Marcellus, 143ff.; see too §§124-127, below.

<sup>568</sup> Aiskhin. 1.81-84; see too *PA* 2746.

<sup>569</sup> See too §§5-6, above.

was an *apophasis*: Lykourgos could therefore have been appointed as prosecutor. Yet this seems implausible, for as Hansen argues, none of the sources mention the Areopagos in this context, and since they were so prominent in the procedure, it is extremely unlikely that they would be invisible in this instance.<sup>570</sup> Autolykos' case was, therefore, probably an *eisangelia* and, specifically, one heard by the *Dikastēria*. Since the Areopagos is known to have fined and reported Areopagites on more than one occasion, it is possible that public reaction to its spontaneous executions was such that further actions against alleged traitors were impossible. It is also possible that the Council was strictly interpreting the terms of the *dēmos*' decree categorizing flight as *prodosia*, and was unwilling to act against an individual who had not personally fled Athens but who had removed only those unable to contribute to her safety.<sup>571</sup>

Lykourgos' reference to his successful prosecution of Autolykos, together with his insistence upon the Areopagos' legal rectitude, conveniently paves the way for the third precedent of the *dēmos*' decree itself. The jurors were thus perhaps assumed to be prepared to interpret the laws more widely than the Areopagos, something that in his present prosecution Lykourgos would clearly be relying upon. Although Autolykos was evidently convicted, however, it may be unsafe to presume that he was sentenced to death. Lykourgos does not repeat the *ἀπέκτεινε* which he used for those seized by the Areopagos; instead he uses *ἐτιμωρήσασθε*, and repeats the word in suggesting that a greater punishment should be visited upon Leokrates for removing an able-bodied person from the crisis than on Autolykos for secreting away his wife and sons. Moreover, in what is effectively a fifth call for the death penalty, he adds *τῆς ἐσχάτης* to indicate the appropriate *timōria* for Leokrates. Although this might imply that a punishment worse than death is being urged, it is also possible, *pace* Hansen, that Autolykos was heavily fined, rather than executed.<sup>572</sup> This would help to explain why Aiskhines, in focusing on cases where the death penalty was, or was nearly implemented, does

<sup>570</sup> Carawan 1985, 132; Hansen 1975, 40, 104 #113. See too Lyk. frg. 3 (Conomis 1970, 96f.); Cloché 1960, 90; Conomis 1961, 93ff.; Will, 102; Sealey 1987, 56f., 137.

<sup>571</sup> One Areopagite was fined and reported for 'fare-dodging' and another was fined and expelled for trying to sell the Areopagos' portion — presumably of sacrificial meat: both were acquitted by the *dikastēria*. See Dein. 1.56; Wallace 2000, 585.

<sup>572</sup> Hansen 1975, 104 #113; see too [Plut.] *Mor.* 843D.

not mention the fate of Autolykos, a significant individual whose execution would have forcefully supported Aiskhines' argument.<sup>573</sup> It is possible, however, that Lykourgos' present use of this precedent backfired, with the jurors repeating the imposition of a heavy fine on the present defendant, Leokrates.<sup>574</sup>

Hansen claims that Lykourgos' third precedent is a decree empowering the Areopagos to pass sentence on all Athenians who fled the country in the immediate aftermath of Khaironeia. He is, however, conflating Demosthenes' Areopagos legislation which, whether as *apophasis* or criminal-behaviour legislation, seems in any case not to have conferred such powers onto the Council, with the decree of the *dēmos* which defined flight as *prodosia*, and which therefore effectively prohibited flight at that time.<sup>575</sup> Lykourgos' use of this decree as an example of precedent strongly suggests that it did not in fact form the basis of his *eisangelia*, and the combination of the three precedents in this section adds weight to the argument that laws are being presented as a backdrop against which Leokrates' actions can be judged.<sup>576</sup>

Lykourgos brings this section of his speech to a close with a synopsis of his three precedents, and a reiteration of his praise of the Areopagos. An emotive tricolon emphasizes judgement, condemnation and severity — ἃ δὴ κατέγνωσται μὲν ... κατεψήφισται δ' ... ὁμολογεῖται δὲ παρὰ τῷ δήμῳ τῆς μεγίστης ἄξια εἶναι τιμωρίας — and the jurors are presented with the inevitability of the ultimate verdict that they must pass.

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<sup>573</sup> Aiskhin. 3.252.

<sup>574</sup> See introduction, 33, above.

<sup>575</sup> See Hansen 1975, 108 #121 n.8.

<sup>576</sup> See too §§5–6, above.



## §§55–110(i)

The beginning of this central section of the speech is signposted by a further transitional *μὲν οὖν*.<sup>577</sup> The whole is, effectively, divided into three parts: §§55–74 comprise presumed defence arguments, together with their refutation; §§75–89 are an appeal to tradition and oaths; and §§90–110 offer a divine rationale for the trial, with the corollary of the divine requirement for the extreme penalty, an inevitably subjective perspective which needs, and is given, poetic authority from tragedy and Homer. At the heart of the speech, therefore, Lykourgos brings into the sharpest relief his own motivation for initiating the prosecution. In the process, he demolishes the various strands of Leokrates' presumed defence, and demonstrates the inexorability of a guilty verdict.

§§55–58. *Ὡς μὲν οὖν ἔνοχός ἐστι ... ἐπιτρέψειν αὐτῷ νομίζω*: As he moves into the central section of his speech, Lykourgos reiterates that Leokrates is liable in respect of all the charges with which his prosecution has been concerned so far, and he again implies a thorough knowledge of the likely arguments which the defence will use.<sup>578</sup>

All aspects of any possible defence are immediately tackled and seem to be comprehensively demolished. The departure was secretive and unaccompanied by well-wishers, whereas traders were normally waved off by all their friends. The defendant was not accompanied by a *παιδὸς τοῦ διακονοῦντος*, but by an hetaira and her maids. Traders did not need to stay away for five years, nor to remove ancestral images, nor to sell their property in Athens. Leokrates was no trader in any case, but a bronzesmith and, as such, had naturally imported nothing at all to Athens from Megara despite his six-year stay there.<sup>579</sup> There was also that share in the *pentēkostē*, the tax which represented one thing, at least, that he would not

<sup>577</sup> *μὲν οὖν* structure: introduction, 37, above.

<sup>578</sup> See too §§8, 14–15, above, 68–69, below.

<sup>579</sup> Departure: §§5–6, 17–18, above. Length of absence: 21–23(i), 43–45, above. Ancestral images: 25, above. Sale of property: 21–23(i), 23(ii)–24, above. Trade: 26–27, above.

have abandoned.<sup>580</sup> The sarcastic tone of *καταλιπών* in this context, and in that of a call for the jurors, and probably those on the periphery too, to prevent Leokrates from introducing any of these elements into his defence, is a continuation of the heavy irony of *ἡδέως δ' ἂν αὐτοῦ πυθοίμην, τίν' ἐμπορίαν εἰσάγων χρησιμώτερος ἐγένετο ἂν τῇ πόλει τοῦ παρασχεῖν τὸ σῶμα τάξαι τοῖς στρατηγοῖς καὶ τοὺς ἐπιόντας ἀμύνασθαι μεθ' ὑμῶν μαχόμενος*.<sup>581</sup>

Lykourgos argues that Leokrates' likely defence of leaving to trade has been exposed as lies, for a trader would not have given up an essential Athenian base. Thus the defendant has conclusively condemned himself as a traitor, and as such, cannot expect the jurors to reach a different conclusion. This was a typical extrapolation that the jurors might have anticipated, though Lykourgos is perhaps, in the belief that he can demolish the excuse, also trying to force his opponent into arguing that he did, indeed, leave Athens to trade and had certainly not fled in terror, and in particular is not trying to mislead the jurors in this respect.<sup>582</sup> This was, in fact, a general tactic which Hypereides denounced, albeit under particular circumstances which served his argument: accusers refuse to confine themselves to arguments relevant to their case, but offer trumped-up slanders which defendants must either rebut, thus neglecting a proper defence argument, or ignore, thus leaving the jurors with a false impression that the slander is accurate.<sup>583</sup>

It is, however, difficult to see what alternative to trade Leokrates could offer as a defence, and the likeliest reason for Lykourgos' attention to this argument is that it causes him a particular problem if the jurors accept it. It is, therefore, perhaps the trade in corn specifically and the illegality of such trade that is questionable, certainly the evidence in this respect is suspect, at least.<sup>584</sup> It would, therefore, clearly be in the prosecutor's interests to characterize Leokrates as a craftsman rather than a trader, and as someone who fled from the crisis in Athens, carrying out from Megara any trade for which he later became known. Such activities

<sup>580</sup> See too §19, above.

<sup>581</sup> See too §§11-13, above.

<sup>582</sup> Self-condemnation: see e.g. Dein. 3.21; Dem. 19.212. 'Catch-22': §§26-27, above.

<sup>583</sup> Hyp. 1 (*Lyk*). 8ff.; see too Dover 1968, 170.

<sup>584</sup> See §§19, 20, 21-23(i), 23(ii)-24, 26-27, above.

could thus be presented as the result of his inability to return home after his flight, rather than as his usual business. Notably, indeed, no evidence is introduced to support the claim that Leokrates had formerly been a bronzesmith. Lykourgos was clearly also uneasy about the witnesses to Leokrates' departure, who may have been prepared to swear an oath of disclaimer to any such description of flight as Lykourgos offered, or to the categorization of Leokrates as an artisan rather than a trader.<sup>585</sup> Thus the demolition of the defendant's presumed defence strategy was perhaps not as comprehensive as it appears at first sight. None the less, Lykourgos can still hope to fall back on the implicit argument in the alternative that if the jurors believe him, then they must find Leokrates guilty of flight, but that if they believe the defendant, then he is guilty of a charge which itself carries the ultimate penalty.

§§59–64. "Ἦξει δ' ἴσως ἐπ' ἐκεῖνον τὸν λόγον ... ὅταν ἀνάστατοι γένωνται: Lykourgos continues his rebuttal of the anticipated defence case by asserting that a single individual, even one who was not responsible for strategic defences, could still be guilty of *prodosia*. His argument seems to be grounded in treason as a state of mind, a theme which he will shortly develop more fully, with *φερόμενος* here implying a desperate attempt to evade conviction by improper use of inappropriate arguments suggested by the defendant's *synēgoroi*.<sup>586</sup> Lykourgos appears to view such a treacherous state of mind as a moral decay which pollutes everyone with whom it comes into contact, a view which accords with his assessment of the defendant's character throughout the entire speech. Leokrates' total evasion of responsibility, therefore, was capable of subjecting the whole *polis* to complete disestablishment. As Dover notes, 'however clearly it was perceived that an individual's "nature" circumscribes his moral capacity, the community had a right to deal with its members according to the contribution, for good or ill, which their various natures made'.<sup>587</sup>

<sup>585</sup> See §20, above.

<sup>586</sup> See too §§65, 68–69, 135–137, 138–140, below.

<sup>587</sup> Dover 1994, 149. See too §§66–67, below. A contribution to the extent of self-sacrifice was only to be expected of Athenians, according to Thoukydides' Perikles: Thouk. 2.43.1f.

This was true even when external compulsion was acknowledged to be so strong that members of the jury themselves would have been unable to resist, even if driven mad or led astray by divine forces. Lykourgos acknowledges but refutes this possible defence in §§90–92, arguing that an individual remained responsible for any error or wickedness which had resulted in metaphysical punishment. Dover suggests, indeed, that *prodosia* ‘could be applied equally to deliberate betrayal through disloyalty and to failure through inadequate energy and enthusiasm’, and it is the defendant’s deliberate criminality, *προαίρεσιν ἀδικημάτων*, which Lykourgos will stress in §148.<sup>588</sup>

After his claim in §50 that Greece was enslaved after her defeat at Khaironeia, Lykourgos here tacitly acknowledges that this was not so; rather, Athens *would* have been enslaved had others betrayed the city by deserting the posts to which they had been assigned. His rhetoric requires him to ignore Philip’s clear disinclination to attack Athens, for the emphasis is on the extent to which Leokrates’ actions would have caused the desertion, and thus the annihilation of Athens, whereas the habitation of even an enslaved city at least ensures its survival. The theme that inhabitants are the essence of a city rather than, or as well as, buildings and location, is a constant in the ancient sources, where *poleis* are denoted by *hoi Athēnaioi*, *hoi Lakedaimonioi*, *hoi Thēbaioi*, etc.<sup>589</sup> Lykourgos can therefore rely on a common understanding of the nature of a *polis* to reinforce his argument by reducing it to the individual level of personal death which, naturally, Leokrates must himself suffer.

*εἰ γὰρ δεῖ τὴν ἀλήθειαν ... τυχόντων ἀνθρώπων συνοικισθεῖσαν*: Again Lykourgos refers to Athens’ enslavement. Again, however, his emotive imagery glosses over the fact that Athens survived Leokrates’ alleged betrayal, and indeed subsequently prospered. Lykourgos’ problem is exacerbated by his own success as *ὁ ἐπὶ τῇ διοικήσει*: his very presence is a constant reminder of the city’s prosperity after

<sup>588</sup> Dover 1994, 159.

<sup>589</sup> See e.g.: Arist. *Rhet.* 1398b11–20; Hdt. 5.74; Isok. 9.68; Pl. *Lg.* 638b. See too, e.g. Murray 2000, 235f., with associated *Bibliographia Hansenania*.

Khaironeia.<sup>590</sup> The argument, therefore, must focus more on Leokrates' supposed responsibility for facilitating the wholesale annihilation of Athens than on enslavement as such. Thus examples are offered of the differing outcomes of enslavement and desertion: as such, Athens' prosperity is implicitly the result of the patriotism, steadfastness, and courage of Leokrates' fellow-citizens and current judges, rather than of Philip's moderate treatment and beneficence to his defeated foes and of Lykourgos' own financial expertise.

The rhetoric clearly requires that the archaic tyrants and the Thirty are presented as responsible for the enslavement, not the annihilation of Athens.<sup>591</sup> Lykourgos is careful here to attribute the rule of the Thirty to Athens' native oligarchs: apart from allying himself with the ultimate democratic ideology, he will also shortly praise Sparta as a paradigm of virtue and good order in §§105-108 and 128-130, albeit a paradigm which developed out of the teaching of the Athenian Tyrtaios.<sup>592</sup> Thus, Athens' true subjugation began only after the walls were demolished by Lysandros in 404 B.C., and a reign of terror under men such as Kritias, Eratosthenes, and Theramenes commenced. That this regime was typical of those imposed by Lysandros, and that it was supported by a seven-hundred-strong Spartan garrison is conveniently forgotten in the equation of Spartan and Athenian courage and decency and the generation of emotive democratic responses reinforced by reference to Athenian hegemony, with Athens again presented as chosen guardian of freedom and democracy.<sup>593</sup>

Lykourgos offers Troy and Messene as two examples of the consequences of the eradication of cities. Demandt suggests that the Homeric paradigm was the preferred yardstick for consequential relationships between past and present

<sup>590</sup> See introduction, 17-21, above.

<sup>591</sup> Peisistratid tyranny: [Arist.] *Ath.* 14-19, with Rhodes 1993; *Pol.* 1315b29-34; Hdt. 1.59-64, 5.62-65; Andrewes 1956, 100-115; Ober 1989a, 65ff.; Hammond 1986, 163-166, 179-185; Welwei 1992, 223-265; Rhodes 2000b, 120ff. The Thirty: *Lys.* 12. *passim*; *Xen. Hell.* 2.3-2.4; Krentz, *passim*; Hammond 1986, 442-449; Buck, 60-79; Welwei 1999, 247-257; Rhodes 2000b, 134f. Nouhaud, 21f., sees the correlation here between the Peisistratids and the Thirty as 'absurde historiquement', but one which fits a model in which the Peisistratids are 'symboles des malheurs d'Athènes'; see too Perlman 1961, 164ff.; §§80-81, 110(ii)-111, below.

<sup>592</sup> See too §§104-107, below.

<sup>593</sup> Lysander's imposition of oligarchic juntas: *Plut. Lys.* 13; Spartan garrison: *Xen. Hell.* 2.3.13f.; see too §42, above.

events and peoples, for by securing the values of the past and linking them with the present, they can be asserted and transposed onto the present.<sup>594</sup> Notably, the Trojan example is expressed as an historical event, albeit early: there is apparently no question that the Homeric tales represent anything other than fact to the jurors.<sup>595</sup> None the less, Lykourgos' focus is, in a way, ahistorical here, for his arguments are grounded in his refutation of the likely defence case rather than in the precedent of history.<sup>596</sup>

Messene, therefore, can afford to be a muddled example. Lykourgos argues that it was desolate for half a millenium before being re-established, but the city was destroyed in the mid-seventh century B.C., and refounded in 369 B.C. by Epaminondas, a period of only three centuries. Even if Lykourgos is dating Messene's destruction from the First Messenian War in approximately 720 B.C., the period is no more than 350 years.<sup>597</sup> Deinarkhos, however, also used Messene as an example of cities' varying fortunes, which suggests that this was a common trope; his claim that four hundred years elapsed between its fall and re-establishment further implies that the rhetorical requirements of prolonged devastation outweighed those of pure numerical accuracy.<sup>598</sup>

Ἴσως οὖν τῶν συνηγόρων ... ἀποβλέψαντας τὴν ἀλήθειαν εὐρεῖν: Lykourgos again appears to confront a possible defence argument, here presumed to arise from one of the defendant's *synēgoroi*, though his call for the death penalty is probably nothing more than rhetorical posturing. This 'one individual' argument is, indeed, an intrinsic part of the 'non-responsible individual' argument, and probably does not reflect any actual defence plan, though it may represent a genuine supposition that the defendant would feel bound in his own speech to address such points.<sup>599</sup>

<sup>594</sup> Demandt, 14. See too §§102–103, 104–107, 110(ii)–111, below.

<sup>595</sup> See Perlman 1961, 158–162; Markle 1976, 97f.; Veyne, 14f., 20f., 79–93; Parker 1996, 224–227, 252; see too Aiskhin. 2.31; Dem. 23.65f.; Isok. 4. 28–33, 68ff., 6.24, 42; Thouk. 1.73.2; §§83–87, 94–97, below.

<sup>596</sup> See §§55–58, above; see too 110(ii)–111, below.

<sup>597</sup> See Huxley, 26–36, 53–60; Cartledge 1979, 98f., 113–119, 293–299; Forrest 1980, 28–34, 69–77; Nouhaud, 303ff.; Hammond 1986, 105f., 135ff.; Murray 1993, 163ff., 171.

<sup>598</sup> Dein. 1.73; see too §§72–74, below.

<sup>599</sup> Continuation of argument: §§55–58, above. Defence foreknowledge: 14–15, above. *Synēgoroi*: 68–69, 112–115, 135–137, 138–140, below.

Despite his own demands for the imposition of the death penalty, Lykourgos was not alone in his request that the jury should be left to decide the penalty according to its own view of the severity of the crime.<sup>600</sup> Aiskhines, too, argued strongly that ὅστις μὲν οὖν ἐν τῇ τιμῆσει τὴν ψῆφον αἰτεῖ, τὴν ὀργὴν τὴν ὑμετέραν παραιτεῖται· ὅστις δ' ἐν τῷ πρώτῳ λόγῳ τὴν ψῆφον αἰτεῖ, ὄρκον αἰτεῖ, νόμον αἰτεῖ, δημοκρατίαν αἰτεῖ, ὧν οὔτε αἰτῆσαι οὐδὲν ὅσιον οὐδενί, οὔτ' αἰτηθέντα ἑτέρῳ δοῦναι. κελεύσατε οὖν αὐτούς, ἐάσαντας τὴν πρώτην ὑμᾶς ψῆφον κατὰ τοὺς νόμους διενεγκεῖν, ἀπαντᾶν εἰς τὴν τίμησιν.<sup>601</sup> There was clearly a tendency both to use some of the first speech to raise issues which properly belonged to speeches on the penalty, and to deplore this practice in the opposition.

§65. ἐκεῖνοι γὰρ οὐ ... εἶναι τὴν ζημίαν: Despite his references to archaic law-givers, the extremity of the prescribed punishments and the crimes for which they were prescribed suggests that Lykourgos is referring to Drakon in particular.<sup>602</sup> Figueira suggests that Solon's stature as a law-giver made praise of Drakon's severity difficult, and that Lykourgos' reference here is rare; certainly Lykourgos does not name Drakon, but other orators were less coy and it is not easy to detect the tone of disparagement or oligarchic ideology that Figueira notes.<sup>603</sup> Lykourgos identifies three types of crime to illustrate his point: they seem carefully chosen, for under the terms by which Lykourgos defines Leokrates' crimes as *prodosia*, the defendant stood accused of theft, impiety and effective sacrilege and homicide. For the jurors to emulate the ancient law-givers, and perhaps especially Drakon, therefore, only one penalty is available to them — death.

Private theft and public embezzlement were treated respectively by the *dikē* and *graphē klopēs*, and a convicted thief was required to return stolen property, or to compensate for its loss if return was not possible, and to pay his victim double the amount of the stolen object's value as additional compensation, or ten times the amount for embezzlement of public monies; at the jury's discretion, the miscreant

<sup>600</sup> §§8, 26–27, 43–45, 46–51, 52–54, above, 66–67, 77–78, 79, 120–121, 123, 133–134, 141–145, below.

<sup>601</sup> Aiskhin. 3.198.

<sup>602</sup> Gagarin 1981, *passim*.

<sup>603</sup> Figueira 1993, 234f.; see too e.g.: Aiskhin. 1.6f.; Dem. 20.158, 24.211.

and any accomplice(s) could also be placed in the stocks for five days.<sup>604</sup> Theft from a sacred precinct or embezzlement of sacred monies fell within the confines of a *graphē klopēs* and appears to have been viewed as distinct from temple robbery; although the distinction is unclear, temple robbery, *hierosylia*, carried an automatic death sentence with additional penalties of loss of right to burial in Attica and confiscation of property.<sup>605</sup>

Slaves were the property of their masters and, technically, a slave-killer could have been liable to a prosecution under a *dikē blabēs*; Harrison argues, however, that the law went further and that such a killer was required to obtain purification, with a failure to undergo the necessary rituals rendering the killer liable to a *graphē asebeias*.<sup>606</sup> There are, however, two cases which suggest that a *dikē phonou* could be used against slave-killers.<sup>607</sup> Those accused of killing a slave were tried in the Palladion, where cases of unintentional homicides of citizens and intentional murders of metics and *xenoi* could also be heard. Ideas about premeditation were thus perhaps a function of issues of status, and Harrison tentatively suggests that the use of the Palladion could imply lesser penalties for defendants convicted there than for those found guilty of premeditated murders of citizens.<sup>608</sup>

Lykourgos' use of *εἰργον τῶν νομίμων* suggests that he is referring to *atimia*, perhaps for involuntary homicide, rather than the death penalty for the intentional murder of a citizen, though he could be alluding to the possibility of a defendant going into voluntary exile at the end of his first speech.<sup>609</sup> MacDowell suggests that this custom possibly derived from 'the fact that it was not practicable in early

<sup>604</sup> Ant. 2.a.6; [Arist.] *Ath.* 54.2, with Rhodes 1993; Dem. 22.26f., 24.105, 111–115, 127; Bonner and Smith, ii. 109f.; Harrison 1968–1971, i. 206–214, ii. 177; MacDowell 1978, 147ff.; Todd 1993, 283f.; see too §4, above.

<sup>605</sup> See Ant. 5.10; Dem. 19.293; Isok. 20.6; Xen. *Hell.* 1.7.22; *Mem.* 1.2.62; Lipsius, ii. 442f.; Harrison 1968–1971, ii. 82; MacDowell 1978, 149, 176; R. Osborne 1985a, 51f; Todd 1993, 110; §90–92.

<sup>606</sup> Harrison 1968–1971, i. 169. See too Ant. 6.4f.; MacDowell 1963, 20ff., 69, 126f.; Todd 1993, 190.

<sup>607</sup> Dem. 59.9f.; Isok. 18.52ff.; see too Dem. 47.72; Harrison 1968–1971, i. 169.

<sup>608</sup> Harrison 1968–1971, i. 169f., and 171f., 196–199; see too Aiskhin. 2.87, with schol.; Ant. 5.47f.; [Arist.] *Ath.* 57.3, with Rhodes 1993; Dem. 21.43f., 47.70; Isok. 18.52; Pl. *Euthphr.* 3e7–4e8; MacDowell 1978, 80f., 114–117, 120. See too 36–39, above.

<sup>609</sup> See too §§40–41, above.



times to pursue a man beyond the boundaries of the state, perhaps combined with a belief that the state was not polluted by a man who had left it'.<sup>610</sup> Harrison suggests that the practice became equivalent to *timēsis*, whereby the death penalty 'could be converted into banishment for life if the defendant fled the country before the end of the trial'; he accepts, however, that it is impossible to be 'entirely dogmatic on the precise procedure in prosecutions for homicide, nor therefore on the rationale which lay behind it'.<sup>611</sup> Conceivably, therefore, second speeches in homicide cases were for a different purpose than *logoi hysteroi* in other types of prosecution. It would, however, seem even more important in such cases, in view of the severity of the charge and the automatic penalty of death, that the defence and prosecution should be allowed to follow the standard practice and counter or expand upon points and arguments raised in the *logoi proteroi* in the hope of influencing the forthcoming verdict.<sup>612</sup>

§§66–67. οὐ γὰρ πρὸς τὸ ἴδιον ... τὴν σωτηρίαν ἐζήτησεν: It is unlikely that Athenian law expressly took individual circumstances into account at any stage, but litigants frequently used their particular condition, and especially their family, to elicit pity from the jurors who were hearing their case.<sup>613</sup> Dire poverty, however, seems sometimes to have been viewed as sufficiently compelling to account for criminal activity, and offered a possible mitigation of criminal intent, whether of self-prostitution or of receiving bribes as a juror: at the very least, Aiskhines makes use of his own moderate means to excuse a lack of litigiousness which might otherwise be interpreted as laxity or disinterest.<sup>614</sup> Lykourgos is clearly attempting to present Leokrates' crimes and circumstances as obviating any

<sup>610</sup> MacDowell 1978, 119. See too Ant. 2.β.9, 4.δ.1, 5.13; Dem. 23.69; MacDowell 1963, 113ff.; Harrison 1968–1971, ii. 75, 186.

<sup>611</sup> Harrison 1968–1971, i. 198. Harrison 1968–1971, ii. 226, citing Ant. 5.10, notes that there is confusion about the apparent *timēsis* in what is in fact an *apagōgē* and which should therefore have been an *agōn atimētos*. See too [Arist.] *Ath.* 52.1, with Rhodes 1993.

<sup>612</sup> This is the impression given, at least, in the second speeches in Antiphon's *Tetralogies*.

<sup>613</sup> See e.g.: Ant. 3.a.2, γ.3; Ar. *Vesp.* 568–574, 975–978; Athen. 13.63.1–7; Dem. 21.99, 186, 53.29; Hyp. 4 (*Eux*). 41; Pl. *Ap.* 34d5–35a6. See too §§141–145, below.

<sup>614</sup> See Aiskhin. 3.218; see too Aiskhin. 1.74, 88; Dem. 3.34, 21.182, 23.148, 24.123, 29.22; Isok. 17.18; Lys. 7.14, 31.11f.

allowances that could be made; he is perhaps also intending to pre-empt any request that the jury take account of the services of Leokrates' *synēgoroi*.<sup>615</sup>

The ancient law-givers are presented as intending to inhibit activities which posed a clear and present danger to society, and the example is offered of the imaginary erasure of a single law, a crime provided with a hypothetical defence that an individual law was insignificant.<sup>616</sup> The particular argument here has a twin aspect. First, that an individual, whether a single law or a person, does indeed make a difference, a stance which Lykourgos argued forcefully in §§59–64, above. Second, that the sophistic minimization of crimes which would devastate society if extrapolated to its logical conclusion inherently undermines democracy and can thus be categorized as a treasonable offence: consensual stability can only be maintained by all agreeing to abide by those laws which the community itself establishes and ratifies.<sup>617</sup>

Leokrates is thus not only guilty, but as worthy of the ultimate punishment as the imaginary obliterator of the single law: there is every reason, therefore, for Lykourgos to make what is now his sixth call for the death penalty to be imposed on the grounds of setting a precedent for posterity.<sup>618</sup> Since the defendant is mercifully one of only a small group of cowards and, in fact, the only one who sought personal rather than communal safety, Lykourgos argues that Leokrates deserves an even harsher treatment; it is therefore difficult to escape the impression that he is not simply urging the jury to imposing the death penalty, but actively paving the way for a claim for additional penalties.<sup>619</sup>

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<sup>615</sup> See §§135–137, 138–140, below.

<sup>616</sup> Laws in the *Metrōon*: §4, above. Forensic use and abuse of *Metrōon* laws: Aiskhin. 1.119; Lys. 6.8f., 30.1–6. Theory of changeability of laws: Arist. *Pol.* 1269a8–27.

<sup>617</sup> This corresponds with Lykourgos' apparent predisposition to define even adultery as a threat to the democracy: introduction, 27, above; §§5–6, above. It also paves the way for his link between Leokrates' criminality and tyrannical aspirations: §§138–140, below; see too Plato, *Rep.* 571c1–576b9, who saw an intrinsic likeness between a natural criminal and a would-be tyrant.

<sup>618</sup> Precedent: §§7, 52–54, above. Other calls for death penalty: §§8, 26–27, 43–45, 46–51, 52–54, above, 77–78, 79, 120–121, 123, 133–134, 141–145, below.

<sup>619</sup> See too §§8, above, 88–89, 123, below.

§§68–69. 'Αγανακτῶ δὲ μάλιστα ... κίνδυνον καλῶς βουλευσάμενοι: The argument that Leokrates' behaviour could be equated to the Athenians' evacuation of the city during Xerxes' invasion is presented as being suggested by one of Leokrates' *synēgoroi*. This was, perhaps, more an attempt at creating pre-trial influence through gossip than a genuinely intended defence strategy.<sup>620</sup> It would certainly have been a risky ploy, for the argument could have engendered indignation more than resigned agreement: the majority of citizens, and therefore jurors, had after all remained in Athens after Khaironeia, and the decision to evacuate the city during the Persian wars had been a communal one intended to aid the eventual defence of the *polis*.<sup>621</sup>

Nouhaud suggests that this would, however, have been a ridiculous defence; the jury simply would not have swallowed it. He argues that Lykourgos is attributing a ludicrous defence tactic to Leokrates in order to draw out the contrast implicit in the very behaviour which would have made its use as a defence theme impossible.<sup>622</sup> Lykourgos is perhaps being more cynical, however. In §§11–13, he adopted a hectoring tone, criticising the jurors for their leniency towards speakers who strayed from the point. The line between justifiable admonition and outright contempt was, however, a fine one, and here he overtly argues that contempt for the jury is a signal characteristic of the defence. In the context of such emotive arguments, outrage would not only be natural, but easily manipulated and turned against the defence. As such, this is perhaps a conscious attempt at inciting the jurors with entirely specious arguments, and reinvoking the imagery of honour and shame with which his speech is infused. As Ober notes, 'the orator who succeeded in generating in his audience a group-versus-individual state of mind had won the day'.<sup>623</sup>

<sup>620</sup> Foreknowledge of defence arguments: §§14–15, 55–58, 59–64, above.

<sup>621</sup> Salamis: A. *Pers.* 337–471; [Arist.] *Ath.* 23.1, with Rhodes 1993; Hdt. 8.40–97; Plut. *Them.* 10; Hammond 1986, 237–244; Welwei 1999, 57–67; §§70, 72–74, below.

<sup>622</sup> Nouhaud, 159f.

<sup>623</sup> Ober 1989a, 166.

§70. Ἐτεόνικος μὲν γὰρ ὁ Λακεδαιμόνιος ... πλοῦν εἰς Ῥόδον: Lykourgos is mistaken here, for Eteonikos was in fact responsible for blockading Mytilene in 406 B.C., with 50 ships, whilst Kallikratidas, assisted by Theban ships under the control of Thrasondas, attempted to launch a surprise night attack against the Athenian fleet at Arginoussai. A gale slowed the Spartans' progress and Kallikratidas was killed in the ensuing sea battle on the following morning. The Athenians despatched Theramenes and Thrasyboulos, amongst other captains, with 47 ships to rescue the survivors and to retrieve the corpses of the dead, the rest of the fleet sailing to confront Eteonikos. Again a gale intervened and the Athenians attempting to reach Mytilene turned back, allowing Eteonikos to escape.<sup>624</sup> The Athenian generals who failed to ensure the success of the Arginoussai rescue mission were tried collectively and executed.<sup>625</sup> Lykourgos should have named the Spartan general at Salamis as Eurybiades, who was in command of 271 triremes, 147 of which were under Athenian, Plataian and Khalkidian control. Themistokles held Athenian command but was under Eurybiades' nominal authority.<sup>626</sup>

Adeimantos is, however, correctly named. The Corinthian commander wanted to withdraw his ships from Artemisium, but Themistokles prevented his desertion with a bribe of three talents. Themistokles had himself already been bribed by the Euboians, passing on one-sixth of the amount to Eurybiades together with threats that the Athenians would abandon Attica for Siris, an Athenian colony in Italy, if the Spartans withdrew, leaving the Peloponnesians to face the Persians alone at the isthmus.<sup>627</sup> Herodotus reports that Adeimantos fled the battle anyway, but met a mysterious ship whose crew announced victory at Salamis. An incredulous Adeimantos was reassured that the report was true by the offer of hostages, and returned in time to join the victory celebrations. Herodotus notes, however, that this was Athens' version; the Corinthians maintained that they had played a

<sup>624</sup> D.S. 13.76.1–79.7, 97.1–100.6; Xen. *Hell.* 1.6.26–38.

<sup>625</sup> [Arist.] *Ath.* 34.1; D.S. 13.101.1–7; Xen. *Hell.* 1.7.1–34; *Mem.* 1.1.18; Pl. *Ap.* 32a9–b7; *FGH* 328F 142 — Philokhoros; Hammond 1986, 415f.; Buck, 49–60; Welwei 1999, 236–240.

<sup>626</sup> Hdt. 8.1f., 4–15, 42–51.

<sup>627</sup> Hdt. 8.4f., 57–64. See too Plut. *Arist.* 8; *Them.* 11ff.; Frost, 105, suggests that Plutarch incorporated the fears of all the Greeks in the single figure of Eurybiades.

significant and courageous role in the battle, and their version seems to have been generally accepted.<sup>628</sup>

Lykourgos also seems to be wrong in claiming that the Aeginetan fleet wished to desert with Eurybiades and Adeimantos, for Herodotus records that the Aeginetans, especially Polykritos, provided the most distinguished service at Salamis. Indeed, despite their recent war with Athens, the Aeginetans aligned themselves with Themistokles' plans and argued, with the Athenians and Megarians, that battle should be joined at Salamis.<sup>629</sup> Herodotus notes, in fact, that an Aeginetan vessel, trying to help an Athenian trireme under attack from a Samothracian ship, was itself stormed and captured in the process, and the Aeginetans were clearly even able to argue that they had joined battle first.<sup>630</sup>

The confusion of Eteonikos and Eurybiades is perhaps understandable given the similarity of their names and the passage of nearly a century and a half. Perhaps Adeimantos was remembered because his son, Aristeus, was captured in Thrace whilst on an embassy to Persia: being taken to Athens, he was summarily executed.<sup>631</sup> Moreover, whilst the claim that the Aeginetan fleet inclined towards flight is contradicted by the sources, Athens and Aegina were old enemies and, following the defeat of the Persians, had again been at war in 458 B.C., when the Athenians landed on the island and besieged Aegina town. Corinth and Epidaurus tried to help but the Athenians, under Myronides, prevailed. The Spartans, on the point of invading Attica under Nikomedes, engaged Athens at Tanagra and Aegina was spared capitulation.<sup>632</sup> The reference could therefore reflect a tradition of ambivalence, if not hostility, towards Aegina. Figueira argues, indeed, that when Athenians and Aeginetans thought of each other it was in terms, primarily, of past violent encounters.<sup>633</sup> Lykourgos clearly aims to reinforce the claim that

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<sup>628</sup> Hdt. 8.94.

<sup>629</sup> Athens' war with Aegina: Hdt. 7.145.1; Thouk. 1.14.3, 41.2; Hammond 1986, 224, for whom the two powers were still at war; Figueira 1993, 130f., 146; Welwei 1999, 41, 47ff., 54ff.

<sup>630</sup> Hdt. 8.74, 84, 86, 90–93.

<sup>631</sup> Thouk. 1.60.2, 2.67.

<sup>632</sup> Thouk. 1.105.1–108; D.S. 11.70.2f., 78.3f.; ML 36 = *GHI* i.27. See too Figueira 1981, 166–170; Figueira 1991, 104–113; Figueira 1993, 9–33; §§128–132.

<sup>633</sup> Figueira 1993, 35ff., 113–149.

Athens would have been abandoned by all of her allies had they not been forced to remain and fight, a motif which can thus be deflected onto Leokrates.

Lykourgos' errors are, therefore, perhaps part and parcel of a somewhat inaccurate historicity in the orators generally. Indeed, Nouhaud suggests that the sources the orators used are so heavily veiled that we cannot ascertain how they conceived of history, let alone the sincerity with which it was used.<sup>634</sup> Clearly their sincerity is suspect, though accusing them of excessive cynicism is perhaps unkind, for mistakes do not appear generally to have been corrected prior to publication.<sup>635</sup> Various reasons might explain this fact, however, and errors do not necessarily indicate unawareness that a mistake had been made; speeches might have been intended as logographical advertisements or as teaching aids where mistakes provided valuable lessons, both as examples of what orators could get away with and of what should be avoided.

Such errors cannot, in any case, be taken to indicate a general lack of historical knowledge, for the speed of delivery and the generally elite status of orators would probably serve to make their assertions appear sound. Indeed, it may even have been considered that such mistakes were irrelevant, since the point itself was generally clear and relevant.<sup>636</sup> Most importantly, however, Lykourgos is not seeking to make historical points for their own sake; he will do that later: for now, his principal concern is to demolish potential defence arguments and to use events from the past to help him do so.

§71. *ἢ που ταχέως ἂν ἠνέσχετό τις ... μεγάλαις ἂν ζημίαις ἐκόλασαν*: This account of Alexander at Athens does not accord with that of Herodotus, who reports that Alexander I of Macedon, son of Amyntas, acted as Xerxes' envoy under Mardonius' instructions. Alexander was to persuade the Athenians that, despite

<sup>634</sup> Nouhaud, 157, 354f.; see too Pearson 1941, *passim*; Habicht, *passim*; Ober 1989a, 177f., 181; Worthington 1992, 18–24, 37; Worthington 1994c, 113–118; §§110(ii)–111, below.

<sup>635</sup> See too preface, 7f., above; §§71, 122 below.

<sup>636</sup> See §§11–13, above.

their victory at Salamis, they could not hope to withstand Persian land forces. There is, however, no demand for earth and water in Herodotus' account. Rather, Alexander was to offer the Athenians the restoration of their erstwhile territory; the choice of any additional territory they desired; the renovation of temples destroyed by the Persians during their occupation of the city; and the retention of the *polis*' autonomy. The Athenians heard Alexander out but, to Spartan pleas not to capitulate to Persian demands, replied that their dignity required them to fight: the Spartans should have known better than to urge them to do that which was already in their nature.<sup>637</sup>

Athens was, therefore, invaded for the second time in ten months. Again the city was found abandoned. Having discovered that the Athenians had returned to Salamis, Mardonius sent Mourykhides, a Greek from the Hellespont, to the island to urge the Athenians to see sense on the same terms as those outlined by Alexander. Herodotus suggests that Mardonius was hopeful that the Athenians might agree terms now that the whole of Attica was occupied. Mourykhides delivered his message to the *Boulē*, but when the *Bouleutēs* Lykidas suggested agreeing to the Persian terms, his fellow *Bouleutai* and the assembled crowd surrounded him and stoned him to death. Herodotus notes that Mourykhides himself escaped unscathed, but the Athenian women, incited by the news of Lykidas' death, gathered at the Councillor's house and stoned to death his wife and children.<sup>638</sup> Lykourgos is probably conflating Alexander's reception with the fate of Lykidas and his family, though there were clearly conflicting accounts, for Demosthenes names the victim of the stoning as Kyrtilos.<sup>639</sup> That Alexander did not in fact suffer the fate described by Lykourgos is further suggested by his help to the Athenians on the eve of the battle of Plataia. Alexander informed the Athenian commanders that although Mardonius was receiving unfavourable

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<sup>637</sup> Hdt. 7.133, 8.136–144; see too Dem. 6.11; Hammond 1986, 245f.; Hammond 1989, 42–45; Hammond and Griffith, 98f. Earth and water: Kuhrt, *passim*.

<sup>638</sup> Hdt. 9.1–5; see too Plut. *Arist.* 10; §122, below.

<sup>639</sup> Dem. 18.204; see too Rosivach 1987b, 240 n.22, 245, who finds the misnomer inexplicable in view of the rarity of the event and its translation into popular memory on this account; §122, below.

omens from the sacrifices, he had decided to attack at dawn because of his anxiety at having to face possible reinforcements.<sup>640</sup>

There are few references to stoning to death, *kataleuein*, in the classical sources. Perhaps the most celebrated is Cassandra's threnody during Agamemnon's murder: other examples show Dikaiopolis threatened with stoning for treachery by Aristophanes' Akharnians; Demosthenes suggesting that stoning would not be inappropriate for those responsible for the destruction of the Phokians; and some Athenians stoning a band of Corinthians who had wandered onto private land whilst on campaign.<sup>641</sup> Aiskhines claimed that someone who illegally hired an Athenian for immoral purposes should be stoned, and then sentenced to a fine of one obol in the drachma, the *epōbelia*, and convicted of hubris.<sup>642</sup> This suggests that stoning did not always result in death, or at least was not meant to do so. The impression given by the sources, however, is that stoning was a rare and impulsive mass reaction rather than a legal punishment, and an excitable crowd might have found it difficult to stop short of killing its victim.<sup>643</sup> Barkan, following Hirzel, argues that stoning represented a punishment by the community for crimes which affect the community as a whole.<sup>644</sup> It would therefore perhaps not even have been classified as a crime, and it is in any case difficult to see how a mob could be prosecuted on a charge of murder. It might, however, have been seen as justifiable homicide, and Demosthenes could thus claim that no Athenian would associate his hypothetical killers with blood guilt.<sup>645</sup>

<sup>640</sup> Hdt. 9.44f.; Plut. *Arist.* 15; see too §§80–81, 82, below.

<sup>641</sup> See A. *Ag.* 1118 with Fraenkel; Ar. *Akh.* 285–295; Dem. 19.66; Thouk. 1.106; see too Hdt. 5.38, 9.120; Hesych. *καταλεύει*; Phot. s.v. *καταλεύσιμον*; Suda, s.v. *Θεμιστοκλέους παῖδες, καταλεύσιμον, Λευστήρ.*

<sup>642</sup> See Aiskhin. 1.163. *Epōbelia*: Dem. 27.67, 28.18f., 45.6, 47.64, 56.4; Isok. 18.3, 12, 35; Pollux, 8.39; Harp. & Suda, s.v. *Ἐπωβελία*; Harrison 1968–1971, ii, 183ff.; MacDowell 1978, 252f.

<sup>643</sup> Stoning as legal punishment in Macedon: Hammond 1986, 625. See too Rosivach 1987b, *passim*.

<sup>644</sup> Barkan 1936a, 41, 49; Hirzel 1909, 247f.; see too A. *Ag.* 1118, 1616, with Fraenkel; Daube 1939, *passim*.

<sup>645</sup> Dem. 19.66; see too Allen 2000a, 141–146.



§§72–74. *τοιγαροῦν τοιαύταις χρώμενοι ... τὸ κεφάλαιον τῆς νίκης*: The historical inaccuracies of §§70 and 71 above appear initially to be repeated here. Caution is necessary, however, for this is a continuation of the rebuttal of the putative argument that Leokrates' departure equated to Athens' evacuation, and a conclusion to the first part of his central section in which he tackles presumed defence arguments, and refutes them.<sup>646</sup> As such, general historical accuracy is not at issue, though correct treatment of specific details was presumably desirable, and is less sacrificed to rhetorical requirements than subordinate to them.

Thus, Kimon's campaigns in the eastern Aegean, from Eurymedon to Cyprus, actions lasting from 467 B.C. to the so-called Peace of Kallias, usually dated to 449 B.C., are dealt with in just 27 words.<sup>647</sup> The period of Athenian hegemony is likewise generalized at seventy years, and there seems little point, therefore, in attempting to define it too closely: Demosthenes argued for seventy-three years, Isokrates for seventy and sixty-five, and Lysias for seventy.<sup>648</sup> Presumably, Lykourgos is thinking of something like the gap between the founding of the Delian League in 478/7 B.C. to Aigospotamoi in 405 B.C.<sup>649</sup> That he does not claim a perhaps naturally anticipated century-long hegemony might suggest that juror credulity was thought to have its limits.

*οὐ τὸ ἐν Σαλαμῖνι τρόπαιον ... ἔδεισεν οὔτε ἡσχύνθη ὑμᾶς*: Pausanias saw the trophy erected after Salamis.<sup>650</sup> Although it remains unidentified, Lykourgos clearly assumes that the jurors are familiar with it. He seems, also, to assume that the jurors would understand his comment that *ὄρους τοῖς βαρβάροις πῆξαντες τοὺς εἰς τὴν ἐλευθερίαν τῆς Ἑλλάδος, καὶ τούτους κωλύσαντες ὑπερβαίνειν, συνθήκας ἐποιήσαντο*. This seems to be a reference to the notoriously problematic Peace of Kallias, supposedly agreed between Persia and Athens and her allies, though Lykourgos is

<sup>646</sup> See §§59–64, 68–69, 70, above.

<sup>647</sup> Kimon's campaigns: D.S. 11.60.1–62.1; Thouk. 1.100–112; Plut. *Kim.* 12f., 18; Hammond 1986, 259f., 292f., 297f.; Meiggs 1972, 73–87, 92ff., 101–108; Welwei 1999, 83–91. Athens' leagues: §42, above. Peace of Kallias: this section, below.

<sup>648</sup> Dem. 9.23; Isok. 4.106, 12.56; Lys. 2.55.

<sup>649</sup> The original *ἐνενήκοντα* seems more natural than the emended *ἐβδομήκοντα*, and would allow a more credible period of hegemony from Marathon in 490 B.C., though counting to Aigospotamoi in 405 still does not account for ninety years.

<sup>650</sup> Paus. 1.36.1.

not explicit despite apparently detailing some of its articles. Specifically, he mentions two clauses that could be considered to have particular relevance to Leokrates: the Persians should not sail away from their own land — they should not, at least, sail warships beyond Phaselis and Kyanea; and all the Greeks should be autonomous — an ideal overtly threatened by Leokrates' actions, as far as Lykourgos is concerned.

These clauses appear elsewhere. Demosthenes, Diodorus and Isokrates all refer to the limitation on the Persians' freedom to sail.<sup>651</sup> There are some slight variations: Demosthenes locates the boundary beyond which the Persians may not sail at the Khelidonian islands, though the region is clearly the same, and Diodorus repeats the autonomy clause, but presents it as referring only to the Ionian Greeks.<sup>652</sup> From these sources, however, other clauses can be added: the King was not to travel within one day's ride of the coast,<sup>653</sup> his satraps were not to sail further than three days away from Persia, though presumably within the set boundaries,<sup>654</sup> the Persians were not to invade Attica,<sup>655</sup> and the Persian army was not to march beyond the Halys river.<sup>656</sup> There is considerable consistency in such reporting, but all that can be said with reasonable certainty is that fighting appears to have stopped in or around 451 B.C.; that Thoukydides (and indeed all other fifth-century sources with the possible exception of Lysias, if he can be taken to be a fifth-century source), fails to mention any such treaty; and that scholarly debate about the issue has been more vigorous and vehement than about perhaps any other issue in Athenian history.<sup>657</sup>

<sup>651</sup> Dem. 19.273f.; Diod. 12.4.5; Isok. 4.118ff., 7.80, 12.59.

<sup>652</sup> Dem. 19.273f.; Diod. 12.4.5.

<sup>653</sup> Dem. 19.273f.

<sup>654</sup> Diod. 12.4.5.

<sup>655</sup> Diod. 12.4.5.

<sup>656</sup> Isok. 7.80, 12.59.

<sup>657</sup> Primary references to a Peace, to limitations imposed on the King, to non-specific negotiations, or obvious missed opportunities for a reference: Dem. 15.29, 19.273f.; D.S. 12.4.4–6; Hdt. 7.151; Isok. 4.118ff., 7.80, 12.59; Lys. 2.56f.; Paus. 1.8.3; Plut. *Kim.* 13 — based on Krateros, there is notably no reference in *Per.* 12; Thouk. 3.10.4; *FGH* 104F 1(13) — Aristodemos. Secondary treatments: Meiggs 1972, 129–151, 487–495, with an extremely full list of references cited; see too, particularly, Sealey 1954, *passim*; Stockton, *passim*; Sealey 1960, *passim*; Meiggs 1963, 10–19; Meritt and Wade-Gery 1963, 106f.; Eddy, *passim*; Badian 1993, *passim*.

Thoukydides' silence is not conclusive, however, for if he is guilty of suppression in this respect, it would not be the only occasion. He fails, for example, to mention the battle at Oinoe which was even depicted in the *Stoa Poikilē* and seen by Pausanias — perhaps the engagement too clearly demonstrated Athenian aggression.<sup>658</sup> Yet Theopompos too had reservations about the existence of a Peace, though it is far from clear what his argument against it was. All that can reasonably be reconstructed is a report that he claimed that the inscribed letters were Ionic and not Attic.<sup>659</sup> This demonstrates, for Meiggs, that for a forgery, this was a publicly acknowledged one, but Theopompos cannot be taken at face value any more than Thoukydides, for he was not an Athenian, nor an admirer of Athens, and was writing more than a century after the events he was describing. Indeed, the issue of the Ionic letters may be a red herring, for Meiggs lists various alternative explanations: the style was perhaps a conscious gesture to the allies; the inscription might have been damaged, perhaps by the Thirty, and reinscribed in the fourth century; the *stēlē* itself was possibly from the late fifth century when Ionic lettering was more common, and perhaps recorded a renewal of the treaty in 424–423 B.C., incorporating the text of the earlier one.<sup>660</sup> Indeed, as Meiggs notes, 'it is difficult to see why, if there had been no previous agreement, Darius should wish to make a treaty with Athens in the middle of the Peloponnesian War. There is considerably less difficulty if the treaty was a renewal'.<sup>661</sup>

The Peace of Kallias remains a matter of speculation and inference. If there was an official Peace, then it would have been public knowledge, and with the threat officially over, the allies could be expected to revolt from the Athenian Empire. Such revolts did occur, but this itself is not decisive, for if there was no official Peace, then there was no public decision to abandon operations against Persia, and Athens could keep applying pressure to her allies until they did in fact rebel.<sup>662</sup> Without a formal Peace, however, it is more difficult to explain the clear problems Athens had in procuring *phoros* between 449 and 446 B.C. In 449 itself, Andros, which had paid 12 talents in 450, paid only 6; others in that year paid in two

<sup>658</sup> Paus. 1.15.1f.; see too Meiggs 1972, 97, 469–472.

<sup>659</sup> *FGH* 115F 154 — Theopompos = Harp. s.v. Ἀττικαῖς γράμμασιν.

<sup>660</sup> Meiggs 1972, 131, 136ff.; see too And. 3.29; Thouk. 4.50; *IGii*<sup>2</sup>8 = ML 70.

<sup>661</sup> Meiggs 1972, 135.

<sup>662</sup> See too ML 45 = *GHI* i.67; Mattingly, *passim*, esp. 161f.; Meiggs 1972, 134, 152–174.

instalments, others late. In 448, there was no tribute at all, at least there is no evidence for any payments. The list for 447 is the shortest except for that of the first year, and nine states paid late, whilst many paid only part of their tribute. More significantly, perhaps, many states are listed twice for 446, and there were widespread reductions when the terms were renegotiated at the Greater Panathenaia.<sup>663</sup> It is difficult to see why these payments should be at issue in these very years if there was no Peace in 449 B.C.

Clearly, any treaty between Athens and Persia is ignored by the fifth-century sources, and in Plutarch's *Perikles*. The fourth-century sources, particularly Demosthenes, Isokrates and Lykourgos are, too, part and parcel of a clear reinvention of fifth-century history which encompasses both the Themistokles decree and the oath of Plataia.<sup>664</sup> It is impossible to ignore the issue, and equally impossible to reach a definite conclusion. On balance, although the silence of the fifth-century sources together with the nature of the fourth-century sources is deeply worrying, and at least creates a strong impression that there was no official Peace, Meiggs is probably right that 'the reasons for accepting it, though not yet decisive, are stronger'.<sup>665</sup> None the less, whether there was a Peace of Kallias or not, its existence was evidently widely accepted by the second half of the fourth century, and its use before jurors, here by Lykourgos, and particularly by Demosthenes who specifically names it after Kallias, clearly implies that the jurors believed in it, and were expected to do so.

§§75-76. *Καίτοι ὑμεῖς τίνα τρόπον ... ὑπὲρ τῶν θεῶν τιμωρήσασθε*: Lykourgos is now at the heart of his prosecution, an appeal to tradition and oaths.<sup>666</sup> His personal involvement here probably cannot be overstated, though the usual attribution of widespread fourth-century reform of the *ephēbeia* to Lykourgos

<sup>663</sup> See e.g.: *ATL* iii. 30-36, 59f., 281, 298ff.; *ML* 46; *ML* 50 = *GHI* i.38; Meiggs 1972, 153f., 157-174, 242ff., 524-530, 538-561.

<sup>664</sup> See too §§ 77-78, 80-81, 108-110(i), 110(ii)-111, below. Themistokles decree: *ML* 23, with references cited.

<sup>665</sup> Meiggs 1972, 133f.

<sup>666</sup> See introduction, 37f., above. Subordination of historical accuracy to these themes: §§70, 71, above, 110(ii)-111, 122, below. See too 80-81, below.

lacks evidence, and seems to be based mainly on his honorary decree for Epikrates because of his law concerning the institution. Certainly Plutarch, despite describing Lykourgos' reforms at length, does not mention such a reform, and Stratokles' honorary decree is equally silent in this respect.<sup>667</sup> None the less, Epikrates' legislation was passed in the Lykourgan period, and the reform of such an institution corresponds well not only with Lykourgos' own programme of regeneration, but also with the focus on past ideals and the reinvention of Athens' fifth-century history which belong to this period and which was, perhaps, most visible in Lykourgos' reforms.<sup>668</sup> He can certainly rely on the full moral, social and political authority gained through all such services to his city. Indeed, his reference to the *ephēbeia* itself, as an institution, is oblique: the jurors presumably know full well his involvement, or at least interest, in its development. His focus is rather on the oath that the epebes swore, and on the divine opprobrium inevitably generated by its violation.<sup>669</sup> Lykourgos thus locates his entire prosecution in his own outrage and that of the gods, an outrage that the jurors will fail to share at their peril, not least because of the oath that they themselves have sworn.<sup>670</sup>

Lykourgos argues that Leokrates might have avoided taking the epebic oath which, he asserts, was sworn by all citizens who were registered in the *ληξιαρχικὸν γραμματεῖον*. This register was kept at deme level and only those so registered at the age of eighteen counted as citizens.<sup>671</sup> It is difficult to see how one could have avoided swearing the oath if this were really the case, but evasion was clearly considered possible. More important, however, is the characterization, both throughout the speech and specifically here, of Leokrates as the sort of person who would evade such a duty and who would, therefore, indeed flee Athens; such a person could not fail to bring divine displeasure and retribution upon his own

<sup>667</sup> See introduction, 20f., above.

<sup>668</sup> See too §§80–81, below.

<sup>669</sup> §§77–78, below.

<sup>670</sup> See §§11–13, above, 77–78, 79, 90–92, below.

<sup>671</sup> Aiskhin. 1.18, 103; [Arist.] *Ath.* 42.1, with Rhodes 1993; Dem. 57.26, 61; Harp., Hesykh. & Phot. s.v. *Ληξιαρχικὸν γραμματεῖον*; Is. 7.27f.; Harrison 1968–1971, i. 74, ii. 205ff.; MacDowell 1978, 69f.; Whitehead 1986, 97–103; Todd 1993, 180.

head.<sup>672</sup> Lykourgos is clearly trying on this occasion, moreover, to put the defendant in a dilemma: he either swore the oath, in which case he violated his vow, or he failed to swear it, and evaded a duty incumbent upon all pious and patriotic citizens.<sup>673</sup>

Having taken the oath, ephebes served for two years, an apprenticeship in citizenship after which they received full political rights excluding, until age thirty, magisterial office and jury service. Similarly, they were not permitted to conduct prosecutions, except in cases of inheritance, during their service; they were, however, allowed to perform duties associated with hereditary priesthoods.<sup>674</sup> The precise age at which service started is debated: Aristotle's *ὀκτωκαίδεκα ἔτη γεγονότες* has been interpreted both as age eighteen, and the start of the eighteenth year, i.e. age seventeen.<sup>675</sup> In a society where the number six is a fundamental counting block, however, Rhodes' suggestion that registration and ephebic service both commenced after the eighteenth birthday, i.e. in the nineteenth year of the ephebe's life, seems more natural.<sup>676</sup> In their first year, ephebes toured the sanctuaries, undergoing what both Schwenk and de Marcellus have suggested was effectively political and religious indoctrination.<sup>677</sup> After proceeding to the Peiraeus, some were garrisoned at Mounykhia, others at Akte, and all underwent training in hoplite warfare, archery, javelin throwing and catapult firing. The cadets received four obols a day, most or all of which they seem to have handed over for maintenance.<sup>678</sup> At the start of their second year, they assembled at the theatre, displaying the shield and spear which they now received from the city: they then patrolled the borders of Attica, garrisoned in fortresses around the *polis*' boundaries.<sup>679</sup>

<sup>672</sup> See too Arist. *Rhet.* 1376a30–32, 1395b1–1396a3, 1402a18–22, 1402b13–1403a1; §§90–92, 93, 94–97, below.

<sup>673</sup> 'Catch-22' for trade defence: §§26–27, 55–58, above.

<sup>674</sup> [Arist.] *Ath.* 42.5, with Rhodes 1993.

<sup>675</sup> [Arist.] *Ath.* 42.1, with Rhodes 1993; see too Sealey 1957, *passim*; J.M. Carter, *passim*; Golden, *passim*.

<sup>676</sup> Rhodes 1993, 497f. See too Pélékidis, 87–101; de Marcellus, 21ff.; §§36–39, above.

<sup>677</sup> Schwenk 1985, 126; de Marcellus, 155; see too Humphreys 1985a, 206ff.

<sup>678</sup> [Arist.] *Ath.* 42.3, with Rhodes 1993.

<sup>679</sup> See [Arist.] *Ath.* 42.4, with Rhodes 1993; Xen. *Por.* 4.51f., with Gauthier 1976; Pouilloux, 80ff.; Ober 1980, 90f.; de Marcellus, 5–23, 50–84, 123–169. See too McCredie, 88–91; Bosworth 1988, 209f.; Sekunda 1990, 152f.; Hunter 1994, 151ff.

Cadets were supervised by *sōphronistai* who were paid a daily rate of one drachma and who received and administered the ephebes' maintenance monies; three candidates of at least forty years of age were chosen from each tribe by the fathers of the ephebes, the *dēmos* electing one from each group of three. The *dēmos* also elected a single *kosmētēs* who was responsible for the ten *sōphronistai* and the cadets under their care.<sup>680</sup> It is unclear whether these officers served for one year, or for the two years of a complete ephebic cycle, though at the end of their service they were often honoured with honorific decrees.<sup>681</sup> Reinmuth argues that the 'earliest ephebic inscription', which honours the *kosmētēs* Autolykos, demonstrates that the institution of the *ephēbeia* pre-dated Lykourgos' reforms.<sup>682</sup> Mitchel disagrees, stressing that the inscriptional evidence is fragmentary and unsafe: from an epigraphical perspective, 'one would have to imagine a truly anomalous *stēlē* to believe that ... [the] fragments ever belonged together'; for Mitchel, Reinmuth's prosopographical evidence, too, is doubtful, and rather than underscoring an attempt to place the inscription in 361 B.C. in the archonship of Nikophemos, reinforces instead a dating in the mid-330s.<sup>683</sup>

There was certainly a law concerning the *ephēbeia* in some respect which was proposed by Epikrates and passed around 335 B.C., and which received an honorary decree from Lykourgos.<sup>684</sup> The nature of the law, however, and the extent of Lykourgos' involvement in it, is far from clear. Reinmuth argues that any reform could not have concerned the compulsory nature of the *ephēbeia*, since Aristotle clearly indicates that ephebic service became compulsory in the wake of Thrasyboulos' constitution, the eleventh, of 403/2 B.C. Aristotle, however, despite claiming that the constitution of that time continued into his own, does not specifically mention the *ephēbeia*. More convincing is the argument that the Athenians would have been unlikely to pass radical legislation in the immediate aftermath of Khaironeia and the decree against tyranny.<sup>685</sup>

<sup>680</sup> [Arist.] *Ath.* 42.2-3, with Rhodes 1993.

<sup>681</sup> One year: Reinmuth 1971b, 81; Two years: Rhodes 1993, 504. See too Pélékidis, 103-117; de Marcellus, 21ff.

<sup>682</sup> Reinmuth 1971b, 1-4, 123-138; see too Mitchel 1965, 197f.

<sup>683</sup> Mitchel 1975, *passim*, esp.238, 242f.; see too Harding 1985 #108 = *IG* ii<sup>2</sup> 156.

<sup>684</sup> Harp. s.v. 'Ἐπικράτης; Wilamowitz 1893, i. 193f.; Pélékidis, 12ff.; Reinmuth 1971b, 123ff.

<sup>685</sup> Reinmuth 1971b, 126ff., citing [Arist.] *Ath.* 41.2.

Reinmuth therefore concludes that the likeliest reform in the 330s is that of continuous, as opposed to seasonal, service, together with *syssitia* lifestyle and extended pay for the entire period; this transformed the institution from a military to an educational one and incorporates the innovation of the *sōphronistai*, to whom honours are conspicuously lacking before this date.<sup>686</sup>

Such reforms have a Laconizing feel, however, and might be likelier in a post-Leuktra context, when the Spartans were perceived as a reduced threat and imitation was more tolerable. Thus the reforms of around 335 B.C. were perhaps part of an on-going programme of reorganization stretching back into the fifth century. Certainly, one measure, clearly pre-dating Aristotle by some time, made one of the ten *stratēgoi* specifically responsible for the *khōra*; epigraphical evidence seems to locate this reform no later than 352/1 B.C., and Ober connects it with ephebic reforms of 386–351 B.C.<sup>687</sup> There was also a change to the way in which ephebes were listed, their names being inscribed in bronze rather than painted on whitewashed tablets, though this is impossible to date.<sup>688</sup>

None the less, de Marcellus suggests that the word ‘ephebic’ was used before 335 B.C. only in the limited context of citizenship initiation and that ‘ephebe’ was, therefore, a technical term for one becoming a citizen. He sees the creation of the *ephēbeia* as an institution *per se* by Epikrates during Lykourgos’ administration, for which he was honoured by Lykourgos with a bronze statue for his law.<sup>689</sup> Rhodes accepts that ‘it was Epikrates in the 330s who converted the *ἐφηβεία* into a period of full-time national service for all young citizens’, but argues that since the ephebes were supplied with equipment, service was limited to the hoplite class despite the fact that *thētes*, too, were inscribed in the deme register.<sup>690</sup>

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<sup>686</sup> Reinmuth 1971b, 127–135.

<sup>687</sup> [Arist.] *Ath.* 61.1, with Rhodes 1993; *IG* ii<sup>2</sup> 204; *FGH* 328F 155 — Philokhoros; Ober 1980, 89ff. 213f.

<sup>688</sup> [Arist.] *Ath.* 53.4, with Rhodes 1993.

<sup>689</sup> de Marcellus, 43ff., 48f., 136ff., 154f.

<sup>690</sup> Rhodes 1993, 495, 503; see too Ruschenbusch 1979, *passim*; Rhodes 1980a, *passim*.



For Reinmuth, it is asking too much of credulity to believe 'that a program so hostile to Macedonia in its intent could have been taken at this time, and that if it had been launched, it was not forthwith quashed'; he suggests that 'it would be difficult to choose a more unlikely time for the establishment of a new military-educational institution'.<sup>691</sup> Yet the oath taken by the ephebes has a primarily defensive feel, and de Marcellus claims that, in any case, Macedon had other concerns and was not necessarily interested in or worried about Athens in this period: this does not prove that the *ephēbeia* was not reformed after Khaironeia.<sup>692</sup> Yet reform is not the same as creation, and although it is probably unwise to push the institution back too far, something clearly pre-dated the ephebic measures of the 330s.<sup>693</sup> Indeed, Aiskhines insisted that he spent two years at the frontier immediately after registration; he was presumably already middle-aged when he made the claim in 343 B.C., and his service perhaps coincides with reforms in the post-Leuktra period.<sup>694</sup> Moreover, although Demosthenes later alleged that Aiskhines had instead served as clerk and menial of minor officials at this time, and then became a bit-part actor after being sacked, Aiskhines clearly believed that the jurors would at least find his claim plausible.<sup>695</sup>

The origins, institution and reforms of the *ephēbeia* are impossible to reconstruct fully, as is Lykourgos' own part in that process. The institution should be accepted as pre-dating the 335 B.C. reforms, not least because earlier measures are unlikely to be connected merely to a limited context of citizenship initiation. Lykourgos clearly had a powerful effect on the institution, none the less, and something happened in 335 B.C. that was sufficiently significant for Epikrates' legislation to be deemed deserving of particular honour by Lykourgos. It was sufficiently significant, too, for Lykourgos' involvement to be patently obvious to the jurors, and for him to be fully prepared to use it to his own advantage, and to Leokrates' disadvantage.

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<sup>691</sup> Reinmuth 1952, 48f.

<sup>692</sup> de Marcellus, 140f., 161–69. Oath: §§77–78, below.

<sup>693</sup> *Ephēbeia* as ancient: Pélékidis, 71–79; Vidal-Naquet, 151–174, esp. 173f. See too Winkler, *passim*; Parker 1996, 253ff.

<sup>694</sup> Aiskhin. 2.167f.: notably service appears to be envisaged as continuous, which it should not be if such a reform belongs to the 330s.

<sup>695</sup> Dem. 18.261f.

§§77–78. βούλομαι δ' ὑμᾶς ἀκοῦσαι τοῦ ὄρκου ... τοῖς μικροῖς μᾶλλον ὀργιζόμενοι: The reference to ancient laws and traditional views in §§75–76 suggests that the ephebic oath was of some antiquity. This alone seems to negate the possibility that Lykourgos himself instituted the oath which is read to the jurors. Whether the official would have had, or needed, a text is unclear; the transcript presumably derives from a fourth-century inscription from Akharnai, though it is impossible to know when it was added to the text.<sup>696</sup>

The oath, also preserved in Pollux, is as difficult to date as the *ephēbeia* itself.<sup>697</sup> Although a fourth-century date would correspond with the contemporary idealization of the past, Siewert argues that the oath has echoes in fifth-century literature.<sup>698</sup> Indeed, as he notes, the oath not only contains numerous archaic words and concepts, but the phraseology is also ancient; thus an even earlier date cannot be ruled out. There is, however, a clear possibility of intentional archaicism, as de Marcellus warns, and deliberate efforts to incorporate the elements that Siewert discusses cannot be dismissed.<sup>699</sup> The oath was thus perhaps originally a traditional citizenship oath which became formally connected with the *ephēbeia* at some point in the process of reform. Siewert, at least, suggests that loyalty to laws and authority are ‘fundamental for the citizen’s attachment to his *polis*, so one will hardly assume that the content of the oath depends upon the existence of the Athenian institution of cadet-training (*ephēbeia*)’.<sup>700</sup>

The ephebic oath was sworn in the sanctuary of Aglauros on the north side of the Acropolis.<sup>701</sup> There is an extensive list of witnesses to the oath. Naturally named first is Aglauros herself, the daughter of Kekrops who, with her sister Herse, disobeyed the injunction not to look into Athene’s basket: discovering

<sup>696</sup> *GHI* ii.204, 5–20. See too §§80–81, below.

<sup>697</sup> Pollux 8.105f.; Harding 1985, 133ff. #109, also citing C. Stobaeus, *Florilegium*, 43.48.

<sup>698</sup> Siewert 1977, *passim*, citing A. *Pers.* 956–962, S. *Ant.* 663–671, Thouk. 1.144, 2.37; see too Lofberg 1925, 332ff.; Reinmuth 1952, 40ff.; Pélékidis, 113; Garland 1975, 174ff. Fourth-century views of past: §§72–74, above, 80–81, 110(ii)–111, below.

<sup>699</sup> de Marcellus, 123; Siewert 1977, *passim*, esp. 109–111.

<sup>700</sup> Siewert 1977, 102.

<sup>701</sup> Dem. 19.303; E. *Ion*, 492–498.

Erikhthonios inside, the siblings became mad and leapt to their death.<sup>702</sup> Aglauros is followed by Hestia, goddess of the hearth of the *oikos*. Enyo, Enyalios and Ares form a distinct group of deities: Enyalios is attested as a Mycenaean war god whose partner is Enyo; in the *Iliad*, the name becomes an epithet of Ares, and Burkert notes that Ares Enyalios becomes a conflated individual identity who received a cult.<sup>703</sup> These deities seem to represent the defence and preservation of the home, the wider polis, and the religious life of both. Thallo, Auxo, and Hegemone appear conversely to be personifications of the success, prosperity and leadership which the ephebes swore to preserve and try to improve during their service; Herakles is one of the ‘figures who cross the chthonic-Olympian boundary’ and can, in this context, perhaps be seen as the personification of the deification of dead heroes, though Burkert suggests that Herakles is particularly appropriate for ephebes, ‘for there is something forever youthful about the hero who is always wandering, fighting and nowhere at home’.<sup>704</sup>

Lykourgos argued earlier that ancient law-makers intended to preclude serious offences by legislating harshly for minor crimes.<sup>705</sup> Here, with five rhetorical questions, he argues that major offences will be easy to commit if minor crimes alone are punished severely, a claim that sets up his seventh call for the death penalty to be imposed upon the defendant.<sup>706</sup>

§79. *Καὶ μὴν ὧ ἄνδρες ... ἀτυχήμασι περιπίπτει*: At the outset, Lykourgos argued that democracy was upheld by three fundamental safeguards: the organization of the laws, the jury’s vote, and the procedure by which crimes were handed over to the *Dikastēria*.<sup>707</sup> This tripartite arrangement is now adduced to the constitution

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<sup>702</sup> Paus. 1.2.6, 1.18.2. A third sister, Pandrosos, obeyed Athene’s order and survived. Her sanctuary, the Pandrosion, was incorporated into the Western area of the Erekhtheion: Wycherley 1978, 143ff. See too Burkert, 229.

<sup>703</sup> Burkert, 169–171.

<sup>704</sup> Burkert, 208, 211.

<sup>705</sup> See §§9, 65, 66–67, above.

<sup>706</sup> Other calls for death penalty: §§8, 26–27, 43–45, 46–51, 52–54, 66–67, above, 79, 120–121, 123, 133–134, 141–145, below.

<sup>707</sup> §3, above.

itself, whose components are the archon, juror and *idiōtēs* who perform the functions of this division of political responsibility. What binds everything together is the oath, for the gods know perjurers even if humans cannot know when they are being deceived.<sup>708</sup> To avoid divine retribution on themselves or their descendants, therefore, the jurors must act in accordance with their *dikastic* oath, just as Lykourgos has fulfilled his own citizen's oath by bringing his prosecution.<sup>709</sup>

§§80–81. *διόπερ ὦ ἄνδρες ... ἀσεβείας*: The oath of Plataia which is read out presents problems similar to those posed by the Peace of Kallias and the ephebic oath.<sup>710</sup> Siewert suggests that Lykourgos used an original document, a version of the oath being inserted in the speech later.<sup>711</sup> Certainly the clerk's actual words cannot be reconstructed from our text, and it is impossible to know exactly which version of the oath was appended to the text, and when. Even greater difficulties, however, exist with regard to the content and authenticity of the oath, which Theopompos claimed to be nothing but a boastful fraud of the Athenians.<sup>712</sup>

Meiggs defines two traditions for the oath: literary and epigraphical. He argues that the literary tradition derives from Diodorus, probably following Ephorus, whereas the epigraphical evidence is the fourth-century Akharnaian *stēlē* which preserves the ephebic oath.<sup>713</sup> There are several differences between the two traditions. In the epigraphical tradition, the oath is taken by the Athenians, rather than by the allies generally, and although Lykourgos' generalized tithing clause,

<sup>708</sup> Archon's oath: [Arist.] *Ath.* 3.3, 7.1, 55.5, with Rhodes, 1993; §20 with n.378, above. *Dikastic* oath: §§11–13, above. Ephebic/traditional citizen oath: §§77–78, above, 80–81, below.

<sup>709</sup> See too Dover 1994, 248–251; Burkert, 250–254; §§11–13, 14–15, above, 90–92, 93, 94–97, below.

<sup>710</sup> §§72–74, 77–78, above.

<sup>711</sup> Siewert 1972, 9, 107f.

<sup>712</sup> *FGH* 115F 153 — Theopompos. See too Sealey 1960, *passim*; Siewert 1972, 14ff.; §§74–74, 77–78, above, 104–107, below.

<sup>713</sup> Meiggs 1972, 155f., 504–507, citing D.S. 11.29.2, *GHI* ii.204, 23–51. See too Raubitschek 1960, *passim*; §§77–78, above.

not mentioned by Diodorus, does appear, it refers specifically to Thebes.<sup>714</sup> Athens, Sparta and Plataia are explicitly named in the inscription, whereas the literary tradition has a general clause of protection. There is, moreover, no reference in the inscription to the clause, notable in the literary tradition, which forbade the rebuilding of temples and shrines. Meiggs suggests that the differences in the two traditions are understandable, as the *stēlē*, ca. 360 B.C., reflects a time of hostility to Thebes: the temples are not mentioned because they had already been rebuilt; and Medizers were not in fact tithed, though Thebes' enemies fondly envisaged such a fate.<sup>715</sup>

The temple clause of the literary tradition is mirrored by an oath attributed to the Ionians, presumably after the Ionian revolt; according to Isokrates, the Ionians called down curses upon anyone who disturbed or desired to renovate the ruins of their burnt temples.<sup>716</sup> Isokrates notably fails, however, to mention any comparable oath taken by the mainland Greeks, and Meiggs' suggestions that the mainland Greeks copied the Ionians, or that the orator's memory was possibly faulty does not really explain the silence adequately, particularly since the reference to the Ionian oath immediately follows a discussion of the Persian devastation of Hellenic temples: the context seems to demand a reference.<sup>717</sup> Yet Isokrates is at pains to demonstrate the implacable hatred of the Hellenes towards the Persians, and the way in which it differed from that felt towards other enemies; thus he argues that although enmities were generally forgotten when peace had broken out, Persian atrocities were always remembered.<sup>718</sup> He felt, perhaps, that the failure to observe the temple clause undermined his point. For Meiggs, the absence of the clause from the Akharnanian *stēlē* can also be explained, for the inscription was hortatory, and probably edited to suit the circumstances: there was little reason to include a clause that would have reminded the Athenians that they had broken this part of their oath.<sup>719</sup>

<sup>714</sup> Diodorus following Ephoros: Siewert 1972, 107f. Diodorus' source, probably Ephoros, ultimately derived from Herodotus 7.132, who places tithing clause before Thermopylai: Meiggs 1972, 504.

<sup>715</sup> Meiggs 1972, 505, citing Xen. *Hell.* 6.3.20.

<sup>716</sup> Isok. 4.156.

<sup>717</sup> Meiggs 1972, 505; Isok. 4.155.

<sup>718</sup> Isok. 4.157ff.

<sup>719</sup> Meiggs 1972, 505.

Siewert, however, does not accept that the temple clause formed any part of the original oath. He argues that since the temple of Athene in Plataia was clearly rebuilt, and because the majority of Greeks would not have needed such a clause since their temples had not been damaged, it was added later.<sup>720</sup> Siewert also notes several oddities in the wording of the clause and suggests that these, together with Isokrates' silence, point to a conflation with Ephoros.<sup>721</sup> Siewert's view has the clear advantage of not requiring an explanation for the rebuilding programme which followed: if there was no reference to temples in the oath then there is no problem with their reconstruction. For Meiggs, however, 'the positive reasons for accepting the clause are that it explains facts which need explaining and to forge an oath that was deliberately broken presupposes a perversity rare even among forgers'.<sup>722</sup> Yet Meiggs' view of a cessation of building activity followed by a sudden resumption in the early 440s was based upon a survey of evidence which was updated in his supplementary bibliography to incorporate arguments that at least imply a continuity of such activity, and which serve to support Siewert's opinion.<sup>723</sup>

Despite the possible explanations for Isokrates' failure to mention the temple clause, and its omission from the Akharnaian *stēlē*, the silence of both in this respect is worrying. Since, moreover, there appears to have been little or no interruption to Athens' building programme, it is difficult to accept the clause as part of an original oath despite the difficulties that exist in explaining its insertion if it is taken as a later addition. It is, however, just as difficult, if not more so, to assess the authenticity of the oath of Plataia *per se*. Again, the fifth-century sources are silent, and the possible derivation of the literary tradition from Herodotus, suggested by Meiggs, is undermined by Herodotus' attribution of the tithe clause, the only part of the putative oath that he mentions, to the time of Thermopylai rather than Plataia.<sup>724</sup> Herodotus' silence, indeed, is particularly

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<sup>720</sup> Siewert 1972, 102–106.

<sup>721</sup> Siewert 1972, 17–45.

<sup>722</sup> Meiggs 1972, 505.

<sup>723</sup> Meiggs 1972, 504–507, with supplementary bibliography: 596ff., citing Rhys Carpenter, *The Architects of the Parthenon*, London, 1970, and J.S. Boersma, *Athenian Building Policy from 561/0 to 405/4 B.C.*, Groningen, 1970.

<sup>724</sup> See n.714, above.

damning because there is no reason for the oath to be ignored, especially given the context of his explanation for, and the opportunity to moralize about, the absence of Persian corpses in the precinct of Demeter after the battle of Plataia: the goddess refused to admit the Persians because they had burnt her sanctuary at Eleusis.<sup>725</sup> As with the Peace of Kallias, the silence of the fifth-century sources, and the nature of those of the fourth, is deeply worrying.<sup>726</sup> Here, though, there is at least a strong impression that there was no oath until it was 'invented' in the fourth century: on this occasion, Theopompos was perhaps right.

Such an invention, however, requires an explanation, and despite Isokrates' failure to mention an oath of Plataia, his works provide at least a partial answer, for they trace the development of Athenian ideas of Athens' status and place in the fourth-century Greek world. The *Panēgyrikos* of about 380 B.C. reflects a time of Spartan hegemony and increasing Theban power: Athens' decline is explicitly noted, and the Greek world urged to unite under the two former super-powers.<sup>727</sup> More significant, however, is the rosy view of the fifth-century empire, for despite recognizing the criticisms that could be made of Athenian imperialism, Isokrates is 'carried away by his own eloquence [and] ...can even expect his audience to believe that the cleruchies should have been popular'.<sup>728</sup> Isokrates clearly believed his own propaganda, for despite a tirade against the idiocy of the fifth-century democracy in *On the Peace*, ca. 355 B.C., his *Panathēnaikos*, written in very old age probably in the late 340s, revisits the sentiments of the *Panēgyrikos* of nearly 40 years earlier.<sup>729</sup> Yet in the 380s, Athens was founding the second empire on a very different basis, and the fact that the *allies* did not share Athens' fond view of her former hegemony is demonstrated by the conciliatory wording of the so-called Aristoteles decree.<sup>730</sup>

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<sup>725</sup> Hdt. 9.65.

<sup>726</sup> See §§72-74, above.

<sup>727</sup> Isok. 4.16ff., 120. See too D.S. 15.20.1-30.4; Isok. 14.13-28; Plut. *Pel.* 4.4-5.3; Xen. *Hell.* 5.2.1-5.4.66; Hammond 1986, 466-470, 482ff.; Hamilton 1997, 53ff.; Munn 1997, 75-78.

<sup>728</sup> Meiggs 1972, 399, citing Isok. 4.103-106; see too Isok. 4.107-109, 115-119.

<sup>729</sup> Isok. 8.77-89, 12.53-73.

<sup>730</sup> §42, above.

Moreover, although Isokrates had criticized the former empire, his complaint was located far more in the radical nature of the democracy of that time.<sup>731</sup> This theme was expanded in the *Areopagitikos*, probably written, like *On the Peace*, in the mid-350s: a return to what was effectively an oligarchy, with power situated in an elite Council of Areopagites, is proposed as the sole safeguard for future prosperity and the only guarantee against the disaster confronting the city.<sup>732</sup> That such ideas could be voiced might indicate no more, perhaps, than the inherent conservatism of a democracy under pressure. That they could be acted out in reality within a decade or so indicates that they were not merely the flights of fancy of just one politically-embittered rhetorician.<sup>733</sup>

It is significant, however, that in the one discourse where Isokrates could be expected to place a Plataia oath, namely the Plataikos, he fails to do so.<sup>734</sup> Yet in such an environment, the past was clearly open to widespread reinvention, not just reinterpretation; indeed, Athens' claim to hereditary greatness seems to have facilitated the rewriting of more than just the history of the fifth-century empire.<sup>735</sup> The Akharnaian *stēlē* may have been part of just such a process, hence it is specifically the Athenians who are parties to the oath and the Thebans who are to be tithed. The composite nature of the *stēlē*'s version is, indeed, perhaps best demonstrated by this tithing clause, placed by Herodotus at the time of Thermopylai and thus ignored by Diodorus, and presumably by Ephoros too. A broken temple clause would clearly not suit such purposes, even if it really had been an early component of the literary tradition. The Akharnaian *stēlē* is not, however, necessarily a work of wilful misrepresentation even if there appears to be an intentional attempt at creating a veneer of authenticity by inscribing the Plataia oath immediately below the genuine ephebic article; the Athenians were,

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<sup>731</sup> Isok. 8.75f.

<sup>732</sup> Isok. 7. *passim*.

<sup>733</sup> Areopagos legislation: §§52-54, above.

<sup>734</sup> Isok. 14. *passim*. This is especially noticeable in 58ff., where Isokrates puts into the Plataian envoy's mouth explicit references to Plataian memorials to Athenian courage in the Persian wars, and to the honours due to the gods and heroes to whom successful sacrifices were the prelude to a decisive and critical victory for Greek freedom.

<sup>735</sup> See Fuks, 8ff., 95; Perlman 1961, 164ff.; Walters, *passim*; Fisher 1994, 356f., 362ff.; §§83-87, 104-107, 108-110(i), below.



after all, reworking their own history for their own purposes. It seems unlikely, however, that their history comprised any such swearing of such an oath.

§82. *Οὔτω τοίνυν ... πονηρίαν καταλυομένην*: Lykourgos' claim that the Athenians won the greatest renown at Plataia is understandable within its own rhetorical context. Herodotos, though, saw things differently, and thought that the Spartans deserved the most praise.<sup>736</sup> For Plutarch, however, Herodotus' claim that only the Athenian, Spartan and Tegean contingents actually engaged with the enemy is disproved by the casualty figures: the allies lost just 1,360 men, compared to around 250,000 Persians, but these figures clearly exceed the total of the 52 Athenians, 91 Spartans, and 16 Tegeans who fell.<sup>737</sup> Athens and Sparta were therefore only the foremost of those who could claim the greatest contribution to victory, the primary dispute between the two principals settled, according to Plutarch, by Theogeiton of Megara, who advised awarding the prize for valour to a third city. The Corinthian suggestion of Plataia was approved, and Plataia received eighty talents with which the temple of Athene was rebuilt; Athens and Sparta set up their own independent trophies.<sup>738</sup>

§§83–87. *Καίτοι ὦ ἄνδρες μόνοις ... πρωτανείψ αἰδίων σίτησιν ἔδοσαν*: Lykourgos rounds off his appeal to tradition and oaths with the legend of Kodros, King of Athens. The flattering description of Athens and the Athenians allows him not only to present the jurors' verdict as inevitable, but also to pave the way for his argument that there is a divine rationale for the trial, for the story of kingly piety provides a natural link with the impiety of those whom the gods punish, a contrast that will be reiterated when Lykourgos turns to Erekhtheus.<sup>739</sup> As Parker notes,

<sup>736</sup> Hdt. 9.71. Battle of Plataia: D.S.11.29–33; Hdt. 9.24–65; Plut. *Arist.* 11–19; Hammond 1986, 245–250; Murray 1993, 300; Welwei 1999, 67–71. See too §§71, 80–81, above.

<sup>737</sup> Plut. *Arist.* 19.5ff., presumably following Kleidemos who is named as the source for the Athenian dead all being Aiantes; Hdt. 9.70 ; see too Murray 1993, 300, who accepts Herodotus' figures.

<sup>738</sup> Plut. *Arist.* 20.1ff.; see too Paus. 3.14.1, 5.23.1–3, 9.2.4f., 10.13.4; §§80–81, above.

<sup>739</sup> §§90–92, 93, 94–97, 98–101, below.

the examples 'demonstrate the rewards of piety, the wretched fate of the wicked, [and] the supreme value of patriotic self-sacrifice'.<sup>740</sup>

It is clearly impossible to date the events surrounding Kodros' salvation of Athens. The king himself perhaps derives from the eleventh century, yet the involvement of Delphi, and Spartan expansion, imply a date after the eighth or seventh centuries.<sup>741</sup> Interestingly, however, the Delphian Kleomantis has a namesake in fourth-century Phokis where, indeed, the name is previously unrecorded.<sup>742</sup> Parke and Wormell therefore suggest that 'the part played by Cleomantis and his subsequent reward are cleverly invented to make the story [of Kodros] more convincing'.<sup>743</sup> The signal honour of dining in the *Prytaneion* at public expense, awarded to Kleomantis for forewarning Kodros, is clearly wildly anachronistic, but would have made perfect sense to a fourth-century Athenian.<sup>744</sup> The reinvigorated legend was, therefore, probably part and parcel of the fourth-century reconstruction of Athens' past. Parker suggests, indeed, that such 'use of myth as a pattern-book of patriotic conduct was much in fashion at just this period'.<sup>745</sup> Certainly, extant references to Kodros are few, and although the tale of his self-sacrifice was known in the fifth century, at least to Hellanikos, Herodotus mentions the king almost in passing.<sup>746</sup> An increase in Kodros' popularity in the fourth century, however, is implied by his positive treatment in several orators' works, and at least one fourth-century dialogue had the king as its subject; Plato's father, Ariston, also apparently traced his descent from the king.<sup>747</sup>

<sup>740</sup> Parker 1996, 251.

<sup>741</sup> Kodros: [Arist.] *Ath.* 3.3, with Rhodes 1993; Scherling; Hammond 1986, 84. Delphi: Farnell, iv. 179-218; Parke and Wormell, i.5-11, 49-79; Morgan, 106-126, 148-152; Maass, 42f., 126-151; Murray 1993, 243. Spartan expansion: Huxley, 17-25; Cartledge 1979, 102-130; Forrest 1980, 28-39, 69-77; Hammond 1986, 102-106; Murray 1993, 161-173.

<sup>742</sup> *LGPN* iiiia, iiib, s.v. Kleomantis: evidence disputed for a fourth-century Lakedaimonian soothsayer Kleomantis, with understandable arguments for the emendation of Kleomantis to Kleomenes. See too Plut. *Alex.* 50.3.

<sup>743</sup> Parke and Wormell, i. 297.

<sup>744</sup> See Miller, 4-11, 21-24; M.J. Osborne 1981b, 170.

<sup>745</sup> Parker 1996, 251; see too §§80-81 above, 104-107, below.

<sup>746</sup> Schol. Pl. *Smp.* 208d2-31 = FGH 4F 125 — Hellanikos; Hdt. 1.147, 5.65, 5.76, 9.97; see too Harp. s.v. 'Ερυθραῖοι.

<sup>747</sup> Suda, s.v. Εὐγενέστερος Κόδρου, Πανύασις, Πλάτων, Φιλίσκος; Pl. *Smp.* 208d.

§§88–89. *ἄρα γ' ὁμοίως ἐφίλουν ... κάκιστον πάντων ἀνθρώπων*: Lykourgos concludes the heart of his speech by drawing an emotive contrast between the defendant and *οἱ τότε βασιλεύοντες*. The old Kings were like those who fought and fell at Khaironeia, prepared to outwit the enemy and die for the common good. They were, therefore, also analagous to the jurors, a flattering comparison which starkly defines Leokrates' behaviour as alien. Even the non-Athenian Kleomantis had had a greater regard for Athens than Leokrates.<sup>748</sup> Thus the heroes of the past would be outraged if Leokrates was buried alongside them, an argument which conveniently, if hyperbolically, paves the way for Lykourgos' general demands for the defendant to suffer a penalty worse than death.<sup>749</sup>

§§90–92. *Καίτοι γ' ἐπεχείρησεν ... ἀναιδεΐας ἦν ἔχουσιν*: The third and final section of the central part of the speech is devoted to the divine rationale for both the trial and the requirement for extreme punishment. This rationale is reinforced by poetry which not only provides Lykourgos with what, for Aristotle, were among the most authoritative of witnesses, but which is also presented in such a way that it achieves the status of law.<sup>750</sup>

The use of the aorist *ἐπεχείρησεν* implies that there was a particular occasion on which Leokrates asserted that he would not have submitted to trial if he had been guilty as charged. If so, then this probably occurred at the original pronouncement of the *eisangelia* in the *Ekklēsia*, for there is no evidence to show that *anakriseis* were held prior to trial by *eisangelia*.<sup>751</sup> Such a defence was probably far from unusual: Andokides explicitly argued that juries should be convinced of the innocence of those who faced trial of their own free will, and Aiskhines too claimed that since Philokrates was condemned for fleeing his trial he himself should be acquitted for appearing at court to defend the charges brought by Demosthenes.<sup>752</sup> This is clearly a defence to which Lykourgos needs to pay

<sup>748</sup> See too §§46–51, 83–87, above, 98–101, below.

<sup>749</sup> See too Garland 1985, 7f., 88f.

<sup>750</sup> Arist. *Rhet.* 1375b26–35.

<sup>751</sup> MacDowell 1978, 242; see too Harrison 1968–1971, ii. 105.

<sup>752</sup> And. 1.2f.; Aiskhin. 2.6; see too Lys. 6. 19.

attention, and it is, indeed, met head on with the argument that the defendant's mind has been turned by the gods to suffer a trial in which he feels safe but is, in fact, in real danger. The thieves and temple robbers of §65 reappear here, moreover, to emphasize the sort of person the defendant must be to incite such divine retribution.<sup>753</sup>

οὐ γὰρ τοῦτο δεῖ ... ἵν' εἰδῆ μηδὲν ὧν ἀμαρτάνει: Lykourgos emphasizes with a tricolon the fact that Leokrates did not deny leaving the city. Notably he mentions neither the trade which Leokrates allegedly carried out nor its illegality.<sup>754</sup> His principal concern here is Leokrates' presence in court, which is taken to be a conspicuous and ironic example of the gods' revenge, for they have brought the defendant to trial in the very place where his crime was committed.

The author of the iambic passage attributed to τῶν ἀρχαίων τινὲς ποιητῶν is unknown.<sup>755</sup> Notably, it is introduced as τεκμήρια τοῦ πράγματος. The poets and the gods themselves are thus presented as *synēgoroi* for the prosecution.<sup>756</sup> Parker notes that 'the old doctrine of *atē* ... is here given an explicitly moral twist'.<sup>757</sup> Dover, indeed, argues that 'direct manipulation of human thoughts and feelings by gods is taken for granted in Homer, and is openly postulated in fourth-century oratory; it is in fact the principal mechanism by which a god can determine the outcome of a complex event'.<sup>758</sup> Lykourgos is certainly using a concept of great antiquity and general credence, but there is not the lacuna in the transmission of the concept implied by Dover, nor is the particularly moral sense in which it is applied here peculiar to the fourth century, as Parker hints. Indeed, Dodds traces the use and development of *atē* and *daimōn* from Homer to the fourth century, and perceives a light-heartedness and unspecificity in the earliest treatments of *daimones* which has developed even as early as Theognis into something akin to

<sup>753</sup> The sort who would evade swearing the ephobic oath: §§75–76, above.

<sup>754</sup> See too §§26–27, 55–58, above.

<sup>755</sup> *Trag. Adesp.* frg. 296.

<sup>756</sup> See too §§2, 20, above, 98–101, 104–107, 128–132, below.

<sup>757</sup> Parker 1996, 251.

<sup>758</sup> Dover 1994, 136.

the moral treatment discernible in the fifth-century tragedians and the fourth-century orators.<sup>759</sup>

It is not surprising that Lykourgos glosses the poetic *δαίμονες* as *οἱ θεοί*. For Burkert, the two terms are not 'simply interchangeable'; *daimones* are 'the necessary complement to the Homeric view of the gods as individuals with personal characteristics ...[, covering] that embarrassing remainder which eludes characterization and naming'.<sup>760</sup> By the time that Sokrates referred to his own personal *daimōn*, however, there was 'reason enough to fear the *daimon*: ... [it] indicates a deep unease in the face of an uncanny power'.<sup>761</sup>

Lykourgos is, however, perhaps prejudging the jurors' response to these concepts, for Leokrates could presumably claim that until he is actually condemned by the court, it is Lykourgos who is being misled into a hubristic claim of personal knowledge of the gods' intentions in order to suffer his own humiliating defeat.<sup>762</sup> He could argue that the gods brought him to court precisely to display the lack of the cowardice with which he is charged and to humiliate a proud and arrogant prosecutor.

§93. *τίς γὰρ οὐ μέμνηται ... τοῖς κακούργοις φαίνοιτο*: In 367 B.C., four years after Theban supremacy was assured by victory over Sparta at Leuktra, Thebes sent an embassy headed by Pelopidas to Persia. Thebes' requirements were straightforward, and supported by Artaxerxes: Spartan claims to Messenia should be relinquished, and the Athenian fleet must be beached; war would be declared on those who did not agree. To add to Athens' concerns, this so-called Peace of

<sup>759</sup> Dodds, 10-18, 38-41, citing Thgn. 402ff.; A. *Pers.* 354; A. *Ag.* 1486; Eur. *Med.* 122-130; Hdt. 6.135.3; Aiskhin. 3.117, 132; see too Burkert, 179ff.

<sup>760</sup> Burkert, 180.

<sup>761</sup> Burkert, 181. See too Dodds, 41 with n.71.

<sup>762</sup> Andokides 1.113f. makes a similar attempt to turn the tables on his accusers.

Pelopidas required recognition of Amphipolis' independence.<sup>763</sup> Timagoras, the Athenian envoy who agreed the terms, was executed upon his return, and in the following year, Oropos in Boiotia was seized from Athenian control by exiles and delivered into Thebes' hands.<sup>764</sup>

For their part in Athens' failure to secure a Theban withdrawal from Oropos, Kallistratos and Khabrias were charged with treason by Leodamas, but were acquitted.<sup>765</sup> In 362/1 B.C., however, following the battle of Mantinea, Kallistratos was again charged with treason on the grounds of corruptly offering the *dēmos* bad advice. He fled the prospect of another trial, and was found guilty *in absentia*, being executed upon his return in 355 B.C.<sup>766</sup> Lykourgos claims that everyone knows the conveniently appropriate detail for which he is the only extant source, namely that Kallistratos was removed from his place of refuge for execution: not one of the twelve gods was prepared to save the suppliant who had been told by Delphi to expect 'fair' treatment. Kallistratos, like the Spartans who killed Kodros, and like Leokrates himself, was deliberately led to misunderstand his situation in order to bring divine retribution upon his own head.<sup>767</sup> As Sinclair notes, however, Kallistratos probably simply miscalculated the public mood.<sup>768</sup>

§§94-97. 'Ἡγούμεαι δ' ἔγωγε' ... οὐκ εἴασε τυχεῖν: Lykourgos reinforces the points he has been making with an example intended to demonstrate that the greatest piety should be directed towards parents, the dead and the gods themselves.<sup>769</sup> Thus those who commit crimes in these particular respects are precisely those who are most likely to be punished by delusion. Here we see Lykourgos the

<sup>763</sup> Leuktra and aftermath: D.S. 15.51.2-56.4, 62.5-66.1; Paus. 4.26.3-8, 9.13.3-4; Plut. *Pel.* 20-24; *Ages.* 28-32; Xen. *Hell.* 6.4.1-6.5.32. Embassy: D.S. 15.76.3; Plut. *Pel.* 30; Xen. *Hell.* 7.1.33-40; see too Hammond 1986, 491-502; Munn 1997, 81-90; §42, above.

<sup>764</sup> Oropos: Aiskhin. 3.85; Dem. 5.16, 16.11-18, 18.99, 21.64; Isok. 14.20, 37.

Timagoras: Dem. 19.135-142. Oropos restored to Athens by Philip in 338 B.C.: D.S. 18.56.6f.

<sup>765</sup> Arist. *Rhet.* 1364a19-23; Dem. 21.64; D.L. 3.23f.; Plut. *Dem.* 5; *APF* 8157 (Kallistratos), 15086 (Khabrias); Hammond 1986, 502; Sinclair, 157, 163-169.

<sup>766</sup> Hyp. 4 (*Eux.*) 1-2; Hammond 1986, 513, 530.

<sup>767</sup> See §§83-87, 90-92, above; see too §§128-132, below.

<sup>768</sup> Sinclair, 157.

<sup>769</sup> See too §§25, 46-51, 90-92, above.

educator in full flow, and perhaps get a glimpse of the nature of the educational emphasis with which reforms of the *ephebēia* are linked, and with which Lykourgos himself might have been associated.<sup>770</sup> Significantly, too, Lykourgos acknowledges that his example is *μυθωδέστερον*, more myth than reality. He clearly does not view this story in the same light to his other references to the past and he evidently expects the jurors to share his ideas about what, exactly, constitutes history.<sup>771</sup>

The Sicilian story is presumably the same as that related by Pausanias of a family from Katana which escaped an eruption of Etna when the two sons each carried a parent away from the lava. In Pausanias' version, the stream split in half to avoid the entire family, the sons being honoured locally even at the time he heard the tale.<sup>772</sup> Pausanias also does not mention Lykourgos' *τῶν εὐσεβῶν χώρον*: the only other reference to this in the sources relates to the destinations of good souls after their judgement by Minos and Rhadamanthos.<sup>773</sup> The motif of a father's rescue from fire was perhaps familiar to the jurors in association with Aeneas and Ankhises.<sup>774</sup> The Trojan episode, however, would not have provided the imagery of spineless flight that Lykourgos needs, whereas the Sicilian tale offers clear links to the picture he has painted of Athens after Khaironeia; thus Leokrates' flight and abandonment of city, parents and gods, are explicitly equated to those Sicilians who abandoned all in their flight from Etna's eruption.<sup>775</sup>

§§98–101. *Καίτοι σκέψασθε ... γενέσθαι Κηφισοῦ θυγατέρα*: The original form of the Eumolpos legend is impossible to reconstruct and is, as Parker notes, 'largely a matter of curious conjecture'.<sup>776</sup> By the later fourth century, however, Lykourgos could justly claim that the Euripidean version of a Thracian Eumolpos

<sup>770</sup> §§10, 75–76, above, 108–110(i), below.

<sup>771</sup> See §§59–64, 70, above, 108, below.

<sup>772</sup> Paus. 10.28.2.

<sup>773</sup> Stob. 1.49.47, discussing the *Axiokhos* attributed to Plato.

<sup>774</sup> Sophokles dealt, at least partly (frg. 373), with Aeneas helping Ankhises to escape Troy.

<sup>775</sup> §§16, 40–41, 46–51, above.

<sup>776</sup> Parker 1996, 138; see too Parker 1987, 201–204; Christopoulos, 126.

had become traditional.<sup>777</sup> Cropp suggests that the original conflict behind the myth is almost certainly mythical, but that the Athenians would have fought Eumolpus and the Eleusinians for control of the Mysteries.<sup>778</sup> Certainly, the Eumolpid *genos* came to hold the right to charge initiates, and perhaps more prestigiously, to provide the hierophant; it was thus highly respected, though its members were apparently not of the liturgical elite.<sup>779</sup> Lykourgos can claim no small amount of prestige himself, however, and clearly intends here to draw upon the unmistakable connections of the Euripidean quotation to his own *genos*. Indeed, MacKendrick sees the passage in terms of ‘a foundation-charter for the Eteoboutadai ... [which explains] their claim to the priesthood of Athena Polias’.<sup>780</sup>

‘ΡΗΣΙΣ ΕΤΡΠΠΙΔΟΥ ... ὡςπερ Λεωκράτης: Praxithea’s speech from Euripides’ *Erechtheus* has only been preserved by its insertion into Lykourgos’ text; it is the longest quotation in extant oratory.<sup>781</sup> The length of time which Lykourgos is prepared to devote to the passage reflects not only the the popularity of such recitations, but also the connections he is specifically trying to make in the jurors’ minds.<sup>782</sup> Christopoulos has investigated the ‘elements which connect the priestly office of [the cult of Poseidon-Erechtheus] with the lineage of the orator Lycurgus’: the mythological ancestry of the priesthood can be traced to Boutes himself, and it is particularly significant that the ‘role of the priest was to recall the descent of the Athenians and to ensure their genealogical succession’.<sup>783</sup>

It is just such ancestral institutions, *προγόνων παλαιὰ θέσμι*, that the queen promises in line 45 to preserve: they will, in turn, be preserved by Boutes’ own descendant by means of this trial. The quotation itself is thus highly appropriate to both prosecutor and occasion: it is, indeed, appropriate even within its own immediate rhetorical context, for the queen’s speech is a formal rhesis. It is not

<sup>777</sup> See Isok. 4.68f., 12.193.

<sup>778</sup> Collard, Cropp and Lee, 152.

<sup>779</sup> Feaver, 126–132; Ober 1989a, 254; Parker 1996, 293–297.

<sup>780</sup> MacKendrick, 22ff., and 73 n.100; see too introduction, 15f.

<sup>781</sup> See Collard, Cropp and Lee, 148–194 (frg. 360); see too Christopoulos, 126.

<sup>782</sup> See too §§11–13, above.

<sup>783</sup> Christopoulos, 129f.; see too MacKendrick, 73; Humphreys 1985a, 217; Wilson, 313 with n.18.



surprising, therefore, that Cropp finds a ‘clear rhetorical organization’ to the queen’s speech, with a gnomic introduction (lines 1–4), first justification (5–13), second justification (14–49), and conclusion and peroration (50–55).<sup>784</sup>

Although there is no instruction to the clerk, it is unlikely that Lykourgos recited the passage himself, and his choice of words implies that a different voice is going to be heard: ἄξιον δ’ ... καὶ τῶν ἰαμβείων ἀκοῦσαι, ἃ πεποίηκε λέγουσαν τὴν μητέρα τῆς παιδός. ὄψεσθε γὰρ ἐν αὐτοῖς ... . There was no pressure of time as such, because the water clocks were not stopped in measured-out days, and the recitation would not have eaten into any limited allocation of speaking time.<sup>785</sup> None the less, both prosecutor and jurors would doubtless have appreciated the chance of a different voice or an entertaining change from the immediate subject: Dorjahn, indeed, notes that litigants would often have to perform their specialties informally to jurors, though it is unclear whether this was as a bribe or a reward.<sup>786</sup>

Yet the recitation of poetic quotations by litigants surely fulfilled other functions. Perlman has argued that they were used primarily to reinforce a weak case, or one where the law was open to interpretation.<sup>787</sup> This is surely not the whole story, however, for the law was always susceptible to interpretation.<sup>788</sup> The quotations themselves, moreover, focus on patriotic duty to such an extent that it is difficult to see them simply as providing a buttress for any particular case. Indeed, despite the claims and counter-claims made by Aiskhines and Demosthenes over each other’s disingenuity in using poetry in their speeches, their cases are overtly concerned with charges of misleading the people over issues of national or international importance.<sup>789</sup> The use of poetic quotations could thus be seen as a mechanism to heighten the emotional response of the jury with regard to the city *qua* city, to evoke the subordination of individuality to *polis*, and thereby to incite individual jurors to comply with the collective ideology of the litigant.

<sup>784</sup> Collard, Cropp and Lee, 178.

<sup>785</sup> See §20, above.

<sup>786</sup> Dorjahn 1927, *passim*; see too Ar. *Vesp.* 579f.; Hall, *passim*.

<sup>787</sup> Perlman 1964, *passim*, esp. 161–172; see too §§90–92, above, 102–103, 104–107, 108–110(i), 128–132, below.

<sup>788</sup> See too §§5–6, 9, 11–13, above.

<sup>789</sup> See Aiskhin. 1.135–143; Dem. 19.243–251.

Something else must be going on, though, for extant quotations from poetry in forensic oratory appear only in this speech, and in Demosthenes and Aiskhines.<sup>790</sup> What becomes clear upon even a cursory examination of the passages used by these sparring partners is that Demosthenes uses quotations only to undermine Aiskhines' own prior use of them. There are only two exceptions to this, and both can easily be explained within their context. The first is a passage from Sophokles' *Antigone* which Aiskhines had performed on the stage, but had not quoted either in court or, more significantly (and understandably), before Philip; the other is a passage of Solon's elegiacs to demonstrate what the old law-giver *qua* law-giver, not poet, would have made of Aiskhines.<sup>791</sup>

It is therefore possible to attempt an alternative explanation of the function of poetic quotations in the law-court speeches. The quotations have to be relevant to the occasion, hence the agōnistic excerpts from patriotically-charged poetry. This perhaps explains why Euripides is favoured to the virtual exclusion of all others except Homer and, to a lesser degree, Hesiod. For despite Dorjahn's clearly valid suggestion that only well-known lines were acceptable to avoid alienating juries by the appearance of elitism, only Euripides' tragedies provided a sufficient number of appropriately rhetorical passages.<sup>792</sup> It was not just a case of Aiskhylos simply being too elitist, or too difficult: as Heath notes, 'it was open to a tragedian to compose *rhētorikōs* rather than *ēthikōs*. This style was not to everyone's taste, even in the ancient world: Sophocles is quoted as speaking of a style that is *ēthikōtatōn* and *best* ..., [about which] the scholia are unenthusiastic. But it was approved by some: by Euripides, evidently, and increasingly in the fourth century.'<sup>793</sup>

<sup>790</sup> Aiskhin.: 1.128 (Hom. location unknown; E. unknown tragedy), 1.129 (Hes. *Erg.* 240f.), 1.144 (Hom. *Il.* 18.324–329), 1.148 (Hom. *Il.* 18.333–335), 1.149 (Hom. *Il.* 23.77–91), 1.150 (Hom. *Il.* 17.95–99), 1.151 (E. *Stheneboia* – Frg. 671B), 1.152 (E. *Phoinix* – Frg. 809N), 2.144 (Hes. *Erg.* 240f.), 2.158 (Hes. *Erg.* 763f.), 3.135 (Hes. *Erg.* 763f.). Dem.: 18.267 (E. *Hek.* 1; unknown poet), 19.243 (Hes. *Erg.* 240f.), 19.245 (E. *Phoinix* – Frg. 809N), 19.247 (S. *Ant.* 175–190), 19.255 (Solon).

<sup>791</sup> S. *Ant.* 175–190: Dem. 19.247; Solon: Dem. 19.255. See too Ober and Strauss, 250f.

<sup>792</sup> Dorjahn 1927, 90; see too Ober 1989a, 177–181.

<sup>793</sup> Heath 1987, 130; see too Wilson, 314ff.

It was not enough, however, for quotations to be relevant to the occasion, they needed to be relevant to the speaker too. Thus Demosthenes uses quotations only in the context of Aiskhines' recitations and to expose him as someone who is as bad a citizen as he is an actor.<sup>794</sup> The real use of poetry in extant forensic oratory is confined to Aiskhines and Lykourgos, the one an actor and the other the statesman who redeveloped the theatre of Dionysos and canonized the tragedians' works.<sup>795</sup>

Lykourgos earlier argued that laws are simply definitions of what may or may not be done; he will shortly claim that they are too brief to educate. Poetry explains what the law cannot, however, and acts as a supplementary authority equal to the laws Leokrates has violated.<sup>796</sup> Thus it is of little account that human sacrificial victims had no say in their fate, and that the desired success is undermined by the empathetic suicides of the other royal daughters. As Brock notes, although *we* cannot see Lykourgos' use of Praxithea's speech as a simple and uncomplicated expression of patriotism, this is precisely how Lykourgos presents it in the trial and he clearly expects the jurors to see it that way too, for Leokrates is presented as not only less patriotic than a metic, he is unequal even to a woman.<sup>797</sup>

§§102–103. *Βούλομαι δ' ὑμῖν ... ἐς πατρίδα γαίαν*: The usual problems apply to this quotation of *Iliad* 15. 494–499, though it seems to sit quite naturally within the text and the wording implies that it was an intrinsic part of Lykourgos' speech that he himself recited.<sup>798</sup> The transmitted text, moreover, differs from the passage quoted here, and it is unclear how many versions existed in the fourth century, or when (and even if) a standardized, definitive version was canonized. This is an enormous, and enormously contentious, field of study with a vast secondary

<sup>794</sup> An explicit claim in 19.246.

<sup>795</sup> See introduction, 20, above.

<sup>796</sup> §§4, above, 102, below; see too Isok. 2.3; Pl. *Lg.* 722c6–723d4; Dorjahn 1927, 90; Humphreys 1985a, 216ff.

<sup>797</sup> Brock 1998, 237; see too Wilkins, *passim*; §§36–39, above, 108–110(i), 128–132, below.

<sup>798</sup> See §§20, 90–92, above, 104–107, below.

literature.<sup>799</sup> Traditionally, however, the so-called Homeric Recension, and the reorganization of the Panathenaia at which the poetry was recited, is attributed to the Peisistratid tyranny.

Harpokration, citing Hellanikos, Androtion and Istros, claims that the festival was celebrated by Erikhthonios, before which it was known as the Athenaia.<sup>800</sup> Parker argues that although the attribution to Peisistratos is probably an invention, the tyrant was almost certainly responsible for major reforms of the festival in the second quarter of the sixth century, including its transformation into an international celebration.<sup>801</sup> It was his son Hipparkhos, however, who was most associated with the institution of Homeric recitations within the Panathenaia, which was celebrated in the first month of the Athenian calendar, Hekatombaion: in the third year of each Olympiad the festival was especially grand, being known as the Greater Panathenaia, and as the Lesser Panathenaia in the other three years of the quadrennium.<sup>802</sup>

As an international event, the festival was a particularly appropriate vehicle for fifth-century Athenian imperial propaganda, for after the transfer of the League treasury from Delos to Athens in 454 B.C., tribute brought to the city and displayed during the City Dionysia was reassessed at the Greater Panathenaia. A decree passed sometime around 450 B.C., recording the minimum offerings which Erythrai was obliged to supply, provides a preview of how the allies would all come to be required to participate in this show of Athenian greatness: the assessment of 425 B.C. was itself complemented by a decree requiring all cities to bring a cow and a panoply to the festival.<sup>803</sup> In the fourth century, however, imperialism was not only inappropriate, it was anachronistic. The requirement placed upon the Parians in 372 B.C. to bring a cow and panoply to the festival

<sup>799</sup> See e.g. Wace and Stubbings, 215–265; Willcock, 277f.; Kirk, i. 10–16, 38–43, iv. 8–38, vi. 20f.; Parry, 104–140; Taplin 1992, 31–44, 285–293; Nagy, 29–112.

<sup>800</sup> Harp. s.v. Παναθήναια; see too Schol. Pl. *Prm.* 127a.

<sup>801</sup> Parker 1996, 68, 75f., 89–92.

<sup>802</sup> Hipparkhos: [Plat.] *Hipparkh.* 228b4–228c1; see too [Arist.] *Ath.* 18.1, with Rhodes 1993; Panathenaia: [Arist.] *Ath.* 54.7, 60.1, 60.3, 62.2, with Rhodes 1993; Deubner, 22–35; Mikalson, 34, 199; Parke, 33–50; Burkert, 232ff.; Sinclair, 53f.; Nagy, 65–108.

<sup>803</sup> Erythrai: *IG* i<sup>2</sup> 10 = *ML* 40 = *GHI* i. 29. Assessment of 425: *IG* i<sup>2</sup> 63 = *ML* 69 (55–58) = *GHI* i.66. See too *IG* i<sup>2</sup> 45 = *ML* 49 (11–13) = *GHI* i.44; Ar. *Akh.* 505f.; Schol. *Nu.* 386;

looks, Parker suggests, ‘like a first attempt to restore the conditions of the fifth century’: if so, ‘it led to nothing ... and it is not until after the collapse of the Second Confederacy that we again find cities of Asia Minor sending cattle and panoply to the *Panathenaea*’; when they did so, moreover, it was a voluntary decision aimed at expressing ‘solidarity with their “mother-city”’.<sup>804</sup>

Lykourgos’ interpretation of the function of the laws differs from that offered in §4, where he argued that the laws state what is forbidden. Here, he suggests that the laws define what must be done, but cannot provide an underlying reason, an understandable change of emphasis given his present reliance on the authoritative and educational nature of the poetic passages being quoted. This was not a new idea, however, for Plato had distinguished between νόμος and προοίμιον τοῦ νόμου, the latter ‘preamble’ providing a persuasive rationale aimed at making the intended recipient of the law-giver’s bare rules more compliant.<sup>805</sup> Here, however, it is the jurors who are the targets of Lykourgos’ clear statement that the poetry he cites is not only relevant and complementary to the laws, but also that it has equal authority.<sup>806</sup>

§§104–107. Τούτων τῶν ἐπῶν ἀκούοντες ... χεῖλος ὁδοῦσι δακῶν: In what is, effectively, itself a preamble to his discussion of Tyrtaios, Lykourgos presents Athens’ victory at Marathon as a response to just such verses as those which the jurors have heard.<sup>807</sup> Indeed, despite the innate *aretē* of previous generations of Athenians, the effectiveness of this sort of inspiration created a demand for Athenian leadership which Athens was only too happy to supply.

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Meritt and Wade-Gery 1962, 67–71; Meiggs 1972, 240, 290–305; Hammond 1986, 305, 324; Burkert, 257; Parker 1996, 142f., 221f.

<sup>804</sup> Parker 1996, 221; see too *SEG* 31.67; Meritt and Wade-Gery 1962, 70f.; see too §42, above.

<sup>805</sup> Pl. *Lg.* 722e7–723b6.

<sup>806</sup> See too §§4, 90–92, above.

<sup>807</sup> Marathon: Hdt. 6.103–117; Just. 2.9; Pl. *Lg.* 698c3–e5; *Mx.* 240c; Plut. *Arist.* 5; Hammond 1986, 213–217; Murray 1993, 281ff.; Welwei 1999, 31–39. Athenian hegemony: §§42, 70, 72–74, above. Preambles: §§102–103, above.

Carey suggests that praise of Sparta could present difficulties for speakers since it implied a criticism of their own *polis*.<sup>808</sup> Demosthenes, indeed, explicitly criticized those who praised Sparta: such arguments were provocative precisely because equivalent praise of Athens would not be possible in Sparta.<sup>809</sup> Yet Isokrates, although pulling no punches over what he saw as Sparta's faults, could end his *Panathenaikos* of the late 340s with a concession that he might, after all, have been a little harsh; he specifically claims, indeed, that most people would bestow at least moderate praise on Sparta.<sup>810</sup> Lykourgos will, certainly, shortly offer the jurors examples of Spartan courage and will present Sparta as a paradigm of good order, any inherent difficulties being mitigated by his argument for Athens' part in creating the *eunomia* for which Sparta was famous.<sup>811</sup>

Powell calls the assertion that Tyrtaios was, in fact, originally an Athenian, a most striking historical claim.<sup>812</sup> Fisher, indeed, notes the use of the 'everyone knows' topos, and suggests that the story that Tyrtaios was originally Athenian, and a lame teacher at that, has a place within the context of the fourth century, an 'exceptionally fertile period for "the invention of tradition"'.<sup>813</sup> Lykourgos' use of the Spartan example is, for Fisher, legitimized and made palatable by the emphasis on Tyrtaios as an Athenian, as well as by his location of Spartan triumphs safely in the past.<sup>814</sup> Yet if Tyrtaios' Athenian background is part and parcel of the revisionist history of the changed circumstances of the fourth century, then Lykourgos is perhaps not so much consciously using acceptably long-gone Spartan victories as taking advantage of his ability to mention in positive terms a former enemy whose power had clearly waned; this is at least implied by Isokrates' ability to soften his view of the Spartans and to present them as not such bad old chaps, really, in their own way. Lykourgos seems to have little

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<sup>808</sup> Carey 1999, 388.

<sup>809</sup> Dem. 20.105-111f.

<sup>810</sup> Isok. 12. *passim*, esp. 41, 200-261.

<sup>811</sup> See too Isok. 12.153-155; §§108-110(i), 128-132, below.

<sup>812</sup> Powell 1994, 311, citing Pl. *Lg.* 629a.

<sup>813</sup> Fisher 1994, 362ff., 377f. See too Plut. *Mor.* 230D 9-11, attributing to the regent Pausanias the claim that Tyrtaios was made a citizen so that Sparta should not be seen to have a foreign leader; *FGH* 328F 215 — Philokhoros; *Suda*, s.v. *Τυρταίος*; Huxley, 127 n.349; Ober and Strauss, 253. Invention of tradition: §§80-81, above.

<sup>814</sup> Fisher 1994, 377f.

problem, moreover, in advising the jurors to take heed of present Spartan *eunomia* in voting in accordance with their oath.

Whatever Tyrtaios' provenance, his poetry traces Sparta's troubled fight for control of Messenia in the Second Messenian War of the seventh century B.C.<sup>815</sup> The passage recited here is similarly problematic in terms of documentary interpolation and textual variation as the Homeric quotation from the *Iliad*.<sup>816</sup> It has, however, inevitable and clear Homeric echoes which, if the jurors were sensitive to them, would have resonated with that earlier quotation.<sup>817</sup> It is perhaps not overly fanciful to imagine that they would make such an association, and that they would be expected to do so.<sup>818</sup> Thus Tyrtaios, the Athenian, is the equivalent of Homer, and the recitation of his verses has equal authority to those of the bard himself. More importantly, perhaps, the Spartans were inspired to contend with Athens for hegemony as a direct result of Athens' own legacy, and were responsible for providing the impetus to greatness which Leokrates has voluntarily relinquished.

It is impossible to verify the law which Lykourgos cites.<sup>819</sup> It would also have been extremely difficult for the jurors to do so, at least immediately. MacDowell notes that the 'organization of the Spartan army [was largely] ... a matter of military practice rather than law', and seems inclined to accept Lykourgos' assertion.<sup>820</sup> Cartledge, however, is rather less emphatic, claiming simply that 'poems of Tyrtaios were sung by the Spartans on campaign'.<sup>821</sup>

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<sup>815</sup> See §§83–87, above.

<sup>816</sup> §§102–103, above.

<sup>817</sup> See Hom. *Il.* 22.66–76; see too Vernant 1992, 64–68, 88–90. Lysias' *Epitaphios* was perhaps inspired by Tyrtaios: Loraux 1986, 166.

<sup>818</sup> Fisher 1994, 378, suggests that there is perhaps also 'some ideological connection between this praise of Tyrtaios' patriotic verses and of the idealized, Tyrtaios-taught Spartan *agōgē* and the Lycurgan renewal and reform of the *ephēbeia*'; see too §§75–76, above.

<sup>819</sup> See too §§128–132, below.

<sup>820</sup> MacDowell 1986, 69f.

<sup>821</sup> Cartledge 2001, 43. See too *FGH* 328F 216 — Philokhoros; Bowie, *passim*, esp. 224–229.

§§108–110(i). *Καλά γ' ὦ ἄνδρες καὶ χρήσιμα ... πόλει δόξαν κατήσχυεν*: Lykourgos brings his central section to a close here, and it is in this context that his remarks about Marathon and Thermopylai should be seen, for he is less concerned with the history of the events as their relevance to the poetry he has just quoted.<sup>822</sup> Thus the passage has few details, and a somewhat euphemistic feel. Yet the generalities also succeed in presenting Leokrates in specific and stark contrast to normal behaviour and fundamental values: he is unable to recognize or to utilize the basic and intrinsic Athenian qualities of deliberation, morality and courage. The jury, by implication and contrast, are perfectly able to recognize the importance of such values, and the value of poetry in forensic oratory.

Within the immediate context, however, Lykourgos is setting up the recitation of the epigrams composed for the Spartan and Athenian dead of Thermopylai and Marathon. According to Pausanias, Leonidas' body was returned to Sparta by the regent Pausanias forty years after Thermopylai: annual speeches and games were inaugurated in honour of the fallen king, and a stone erected inscribed with the names, of all Spartans who fought in the battle, names which were committed to memory by Herodotus in honour of their heroism.<sup>823</sup> The rest of the Spartan dead were buried on the hill where they had made their last stand, and Herodotus records two epigrams set up at Thermopylai by the Delphic Amphictyons for the dead. The first honoured the entire force that faced the Persians, and the second, which Lykourgos cites, the Spartiates specifically.<sup>824</sup> The heroized *Marathōnomakhai* were also buried where they fell, though Parker argues that this honour, interpreted since Thoukydides as exceptional, was normal at the time.<sup>825</sup> They were, however, publicly honoured in Athens in a painting in the *Stoa Poikilē*

<sup>822</sup> Poetry: §§90–92, 98–101, 102–103, 104–107, above. History: §§ 70, 72–74, 80–81, above, 110(ii)–111, below. Battle of Thermopylai: D.S. 11.4.1–11.6; Hdt. 7.175–225; Isok. 6.99; Paus. 3.4.7f., 10.20.2; Hammond 1986, 228–237; Murray 1993, 293ff.; Welwei 1999, 51–61.

<sup>823</sup> Paus. 3.14.1; Hdt. 7.224.

<sup>824</sup> Hdt. 7.228: a third, set up by the Lacedaimonians, honoured the seer Megistias. See too Bowra, 361f.; Page, 231–234.

<sup>825</sup> Parker 1996, 132–135, citing Thouk. 2.34.1. See too Paus. 1.32.3f.; *SIG* 23b = ML 19 = *GHI* i.14; Raubitschek 1940, *passim*; Jacoby 1944, 47, 56–66; Garland 1985, 89f.; Pritchett 1974–1991, iv. 249ff.



which showed various heroes and aspects of the battle, together with the gods who were reported to have come in person to help their favourites.<sup>826</sup>

Both epigrams recited by Lykourgos were attributed to Simonides of Keos, his Athenian commission seemingly arising from a competition in which Aiskhylos participated.<sup>827</sup> Jacoby has grave doubts about the Marathon epigram, and argues that ‘whether or not it was ever engraved on a stone, and whether or not it is a fifth-century poem (strictly contemporary it is not), it is certainly not an epitaph, and even in Lycurgan times it can hardly have stood on a *stēlē* at the Soros in the Marathonian plain’.<sup>828</sup> The Spartan epigram, however, is of somewhat more secure provenance. It is quoted verbatim by Diodorus, and by Strabo, whose version is slightly different in the first few words, with *ὦ ξέν’ ἀπάγγελιον* instead of *ὦ ξειν’, ἄγγελιον*. Herodotus has another, though again slight, variation, with the infinitive *ἀγγέλλειν*, and *ρήμασι* instead of *νομίμοις*; he also expressly states that the inscribed epitaphs were set up in Thermopylai.<sup>829</sup>

To conclude his central section, Lykourgos shows how the epigrams, the culmination of the poetic examples he has been citing, are as appropriate to the circumstances of their present citation as they were to the heroes for whom they were composed.<sup>830</sup> Their relevance reinforces the direct and striking comparison which Lykourgos now draws between the defendant and all Athenians who in the past produced Athens’ glorious reputation from the earliest times. Leokrates is the worst Athenian ever.<sup>831</sup>

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<sup>826</sup> Paus. 1.15.4.

<sup>827</sup> See too Jacoby 1945, 157–185; Podlecki, 257–262. See too ML 26.

<sup>828</sup> Jacoby 1945, 160, 179–185; see too Bowra, 355ff.; Page, 225–231.

<sup>829</sup> D.S. 11.33.2; Str. 9.4.16; Hdt. 7.228.

<sup>830</sup> See too §§98–101, above.

<sup>831</sup> See too §§36–39, 98–101(i), above, 128–132, below.

## §§110(ii)–123

The speech now moves on, with the fifth *μὲν οὖν*, to a section comprising four juridical precedents whose legal relevance is reinforced by the citation of the decrees directly relating to the cases.<sup>832</sup> Lykourgos' first two examples are from the late- and early-fifth century respectively, a pattern repeated in the second pair. Thus legal incidents from Athens' two major conflicts prior to the threat from Macedon are utilized to demonstrate how, in similar crises, treachery was viewed and how traitors were treated, views and treatments that must apply equally to the present case.

§§110(ii)–111. *εἰάν μὲν οὖν αὐτὸν ἀποκτείνητε ... ἐνόμιζον εἶναι τῆς πόλεως*: The examples of past judgements that occupy the whole of this section are introduced by arguments for their relevance. Thus a condemnation of the defendant will demonstrate that the jurors are indeed the true descendants of the great Athenians of the past. The alternative is unthinkable, for an acquittal would deprive the jurors' ancestors of their reputation and harm their fellow citizens, for crimes of a similar nature would inevitably follow: as such, the jurors will effectively be complicit in Leokrates' crimes. The rhetoric portrays the past and present as inextricably linked, with previous *dikastic* judgements being as binding upon the jury as those of the Areopagos.<sup>833</sup> No prior verdict bound a jury, of course, no matter how exactly the cases matched, but the argument that verdicts, being the view of the *polis*, should be the same when the circumstances being judged were so similar, would be little short of compelling to jurors who had been systematically and emotively equated to the greatest heroes in Hellenic and Athenian history.<sup>834</sup>

There seem, none the less, to be clear divisions in Lykourgos' perception of the events he is discussing, for his examples appear to form a twin pattern of late- and

<sup>832</sup> *μὲν οὖν* structure: introduction, 37, above.

<sup>833</sup> See §§7, 52–54, above.

<sup>834</sup> See §§46–51, 72–74, 88–89.

early-fifth-century incidents. Nouhaud argues for an increased rhetorical distinction between ancient and recent history in the fourth century. He suggests that ancient history, which ended at the start of the Peloponnesian War, was divided into two epochs, according to the image desired: the first, the Persian Wars, had become legendary by the time of the orators, signifying that it was already fixed with basic falsifications; the second, the *Pentēkontaetia*, was idealized by or at the time of Isokrates' *Panēgyrikos*. By the second half of the fourth century, these two epochs had already been rewritten to their fullest extent. Recent history started at the Peloponnesian War, and was still there to be rewritten. It was, therefore, much more susceptible to manipulation.<sup>835</sup>

Lykourgos' precedents in this section seem to comply well with Nouhaud's schema, and are suggestive of a co-ordinated structure within the structure of the speech as a whole.<sup>836</sup> They appear, indeed, to form two specific pairs of examples taken twice and alternately from recent and ancient history, and to be presented in a thematically mirrored image of each other, for whilst the first two respectively concern Phrynikhos, who actively betrayed the city, and Hipparkhos, who deserted by failing to appear at his trial, the presentation is reversed in the second pair, where those who deserted the city for Dekeleia are followed by an individual who actively betrayed the city with words.

It is noteworthy that Lykourgos does not use any fourth-century examples. Presumably he is trying to show consistency of verdicts over time, and to avoid any precedents that could be controversial. The lapse of time might also explain why there is, at times, a significant lack of detail, and perhaps also accounts for what seems to be a somewhat unusual practice of relating a story and then appending the relevant decree, rather than citing the decree and then discussing it in detail.<sup>837</sup> It seems, however, as if Lykourgos feels that the stories themselves are proof, with the decrees being merely supporting documents. Yet it is not what is, or is not, treason that he is trying to demonstrate, nor that Leokrates has done

<sup>835</sup> Nouhaud, 355f. Perlman 1961, 162, sees the Persian Wars as the 'turning point in the history of Greece, the dividing line between the "ancient" and the "modern" periods in Greek history'.

<sup>836</sup> See too Nouhaud, 364f.; introduction, 36-39, above.

<sup>837</sup> E.g. Aiskhin. 1.16ff, 21ff.; And. 1.76-89; Dem. 19.47ff.; Lys. 13.33-38, 59ff.

what is alleged: that is taken for granted. His proofs seem, rather, to be intended to show beyond any doubt what the verdict must be.<sup>838</sup>

It is, none the less, noteworthy that it is in this particular section that Lykourgos' examples are complemented by decrees. This confers a legality and authority that his previous historical references lack, and reinforces the hypothesis that all previous historical references have fulfilled a purpose subordinate to the principal function of the section, whether that function is to refute potential defence arguments, to illustrate tradition and oaths, or to demonstrate the divine rationale for the trial and the extreme punishment the prosecutor is demanding.

§§112-115. Φρυνίχου γὰρ ἀποσφαγέντος ... τῶν τοῦ Φρυνίχου φίλων: Although he is not named in the Aristotelian *Athēnaiōn Politeia*, Phrynikhos was a leading member of the Four Hundred of 411 B.C. Rhodes suggests, however, that the identity of the three principals given in the *Athēnaiōn Politeia*, namely Peisandros, Antiphon and Theramenes, derives from Thukydidēs, who does include Phrynikhos.<sup>839</sup> Despite an allegedly poor background and a reputation for *sykophantia*, Phrynikhos had been elected to the *stratēgia* and commanded the Athenian fleet at Samos.<sup>840</sup> He was murdered upon his return from a failed embassy to negotiate a secret alliance with Sparta, as others set about fortifying Eetioneia.

The motive for his assassination is unknown, though it seems likely that he was killed for political, rather than personal, reasons. The Four Hundred's regime

<sup>838</sup> Perlman 1961, 154, suggests that whilst 'it is the truthful and objective reconstruction of the past which is of paramount importance for Thucydides ... [, who] leaves complete freedom to his readers and relies on their ability to decide when a similar state of affairs has recurred ... [, for the orator] the present is of primary importance; he himself compares the past with the present, and draws his conclusions from the comparison in order to show the listeners the validity of his arguments. ... Thus the historical example becomes a tool of political propaganda and a reflection of the views of the fourth century'.

<sup>839</sup> [Arist.] *Ath.* 32.2, with Rhodes 1993; Thouk. 8.68; see too Arist. *Pol.* 1305b22-27; Lys. 13.73f., 25.9.

<sup>840</sup> Lys. 20.11f.; Thouk. 8.27, 50-54, 90-92; see too *PA* 15011; Hammond 1986, 401f.; Welwei 1999, 218-221.

lasted for only four months in 411 B.C., their grip on power becoming increasingly tenuous as many, both in Athens and in the fleet in Samos, became increasingly dissatisfied with their rule. The promise of funds from Tissaphernes had evaporated. Worse, deep splits appeared within the Four Hundred themselves as some attempted to make alliance, rather than war, with Sparta. Moreover, the fortifications at Eetioneia seem to have been interpreted widely as a means of letting the Spartans in, rather than keeping the Samian democrats out.<sup>841</sup> In such an atmosphere, the position of someone who could be described as 'more enthusiastic than anyone for the oligarchy' would be unenviable.<sup>842</sup>

Lykourgos presents the murder occurring at night in the osier beds near the spring, perhaps one of the fountains in the agora. Thoukydides, however, places the event near the *Bouleuterion* in a crowded agora, presumably therefore in the middle of the day; Lysias, too, though merely saying that Phrynikhos was out walking, and giving neither time nor location, never implies a deserted scene.<sup>843</sup> On the contrary, the killing was witnessed and an outcry ensued, though the culprits escaped in Lysias' version, whereas in Thoukydides' the killer's accomplice was captured. Lykourgos appears to be alone in arguing that both were, eventually at least, caught and imprisoned.

Lysias, denying Agoratos' involvement in the affair, explicitly names Thrasyboulos, an Aetolian of Kalydon, and Apollodoros of Megara, which corresponds with Lykourgos' account. Thoukydides does not name the assailants, but agrees that there were two, one the assassin, who was one of the border patrol, and the other an accomplice who was an Argive, presumably the Megarian Apollodoros who, in Lysias' account, took no part at all in the actual murder.<sup>844</sup> Thoukydides' description implies that he considers Phrynikhos to have been the victim of a 'hit', not an unreasonable view under the prevailing circumstances. By the turn of the century, moreover, there were clearly some, like Agoratos, who, if not exactly queuing up to claim responsibility, were more than prepared to take

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<sup>841</sup> Thouk. 8.70-92.2.

<sup>842</sup> Thouk. 8.68.3.

<sup>843</sup> Thouk. 8.92.2; Lys. 13.71.

<sup>844</sup> Metic military duty: §§36-39, above.

the credit for what could be presented as an overtly democratic political assassination.

The procedure under which the culprit(s) was apprehended may have been an *apagōgē*, the summary arrest of someone caught in the act of committing their crime, and their delivery to the Eleven, though it is far from clear that the law was operating normally in this period.<sup>845</sup> Notably, *apagōgē* could only be used against murderers who were defined as *kakourgoi*. Thus Antiphon writes for Euxitheos, the defendant charged with the murder of Herodes, that whilst he agrees *τό γε ἀποκτείνειν μέγα κακούργημα εἶναι*, the proper procedure would have been a *δίκη φόνου*.<sup>846</sup> None the less, Phrynikhos' oligarchic friends can readily be imagined to have had little problem in categorizing his killer(s) in this way. If the murder occurred in the agora, indeed, there would perhaps have been a more immediate reason for *apagōgē* to be used on this occasion, for Demosthenes records that a killer who was seen there, or in other sacred places, could be summarily arrested.<sup>847</sup> MacDowell conjectures that the procedure was intended to allow for the apprehension of killers who were not immediately prosecuted, 'either because the killing was done in the last three months of the year ... or because the killed man had no relatives or the relatives failed to act'.<sup>848</sup>

*αἰσθόμενος ὁ δῆμος ... ἀνορύξαντες ἐκ τῆς Ἀττικῆς ἐξώρισαν*: It is unclear whom Lykourgos is representing as having been subjected to torture, *basanos*, by the *dēmos*, but he presumably means Apollodoros, perhaps with Thrasyboulos who, in Lykourgos' account, did not avoid capture.<sup>849</sup> For MacDowell there is 'some

<sup>845</sup> See Harrison 1968–1971, ii. 221–229; Hansen 1976a, 104, 107, 125f. #4–5; MacDowell 1978, 120ff., 148, 238; Sealey 1987, 56; Brock 1988, *passim*; Todd 1993, 117f., 275f.; Hunter 1994, 134ff.; Todd 2000, 43ff.

<sup>846</sup> Ant. 5.10, 16, 85.

<sup>847</sup> Dem. 23.80; MacDowell 1963, 130–140; MacDowell 1978, 121f., suggests that this was the basis for Dionysios' arrest of Agoratos for denouncing and causing the death of his brother, Dionysodoros, at the hands of the Thirty: Lys. 13, *passim*.

<sup>848</sup> MacDowell 1978, 121. Homicide proceedings could not be initiated in the final three months of the year because the requirement for three *prodikasiai*, pre-trial enquiries, to be held in separate months, could not be completed within the *Basileus* archon's tenure: Ant. 6.42; see too MacDowell 1963, 34ff.

<sup>849</sup> What is at issue in the case of Phrynikhos' murder seems to be judicial, unilateral torture rather than the privately agreed procedure whereby slaves were examined by mutual consent of the litigating parties: see §§28–30, above.

evidence that free aliens could ... be tortured as witnesses, but it is not clear in what circumstances this was possible', though his view is not shared by either Carey or Hunter.<sup>850</sup> Lysias notes, none the less, that after the investigation was completed, Thrasyboulos was granted Athenian citizenship and Apollodoros was given a piece of land which had been confiscated from Peisandros.<sup>851</sup>

Alongside the rewards for the killers, Phrynikhos was posthumously prosecuted. The decree was proposed by Kritias, presumably the subsequent oligarch and member of the Thirty, though the identification is no more than inferential.<sup>852</sup> Kritias is perhaps not the likeliest candidate for populist prosecutor, though he might have been trying to distance himself from accusations of involvement, if not actual participation, in the Four Hundred.<sup>853</sup> The prosecution was probably an *eisangelia* to the *Ekklēsia*, though it is unclear whether the case was heard by the assembly itself or by the *Dikastēria*. The trial, if it can be so called without a defendant, would have taken place in 411/10 B.C. under the rule of the Five Thousand, before the trial of Antiphon and Arkheptolemos under the same regime, for their sentence was to be inscribed and set up where the bronze *stēlē* bearing the decrees relating to Phrynikhos had already been placed.<sup>854</sup>

*καὶ τοὺς ἀπολογουμένους ... ἀτιμώρητον εἶσατε:* Either in the same or another decree, it was proposed that anyone who defended Phrynikhos should suffer the same punishment; thus their property was to be confiscated, and they were to be refused burial in Attica. Hansen accepts this assertion because some of

<sup>850</sup> MacDowell 1978, 246, citing Lys. 3.33, Ant. 5.49. Mirhady 2000, 64 n.41, suspects that the *free man* in Ant. 5.49 was probably a slave at the time of the torture. Hunter 2000, 17 n.30, argues that Lys. 4.12, 14, is conclusive evidence that metics could not be tortured, but her claim is undermined by the rhetorical requirements of the particular argument, as well as by the lack of evidence for an extension of full metics' rights to freed slaves, despite their 'metic' status. See too Clerc, 104–107; Harrison 1968–1971, ii. 150; Carey 1988, *passim*; Allen 2000a, 215f.

<sup>851</sup> Thrasyboulos' citizenship: Lys. 13.72f.; Apollodoros' gift of land: Lys. 7.4; see too *IG* i<sup>2</sup> 110 = ML 85 = *GHI* i.86.

<sup>852</sup> See *PA/APF* 8792 (Kritias IV); Hansen 1975, 82f. #62; Ostwald 1986, 402ff., 464. It is unclear whether the decree is the same decree that conferred citizenship on Thrasyboulos, though the conferral of such honours was probably passed separately.

<sup>853</sup> See Dem. 58.67; Avery, *passim*; Adeleye, *passim*; Rhodes 1993, 429f.

<sup>854</sup> Hansen 1975, 82f. #62, 113ff. #135–7; [Plut.] *Mor.* 834A 1–B 8; Brock 1988, 136f. See too [Arist.] *Ath.* 29–33, with Rhodes 1993; Thouk. 8.97–98; de Ste Croix 1956, *passim*; Rhodes 1972b, *passim*.

Phrynikhos' heirs might have appeared for the defence, particularly in view of the possibility of property confiscation. He does not, however, accept Lykourgos' identification of Aristarkhos and Alexikles as the two unfortunate supporters who received the same penalty as their friend. He argues that Lykourgos cannot be correct in his identification because Aristarkhos betrayed Oinoe to the Boiotians and was sentenced to death as a result some time before 406 B.C., and notes that Lykourgos is careful to name the pair *after* the decree has been read out.<sup>855</sup>

Hansen's case is not conclusive, however, for although he builds his argument upon the claim that Aristarkhos' execution is a '*quite reliable*' piece of information, that reliability is based upon his own assumption that Lykourgos drew a false conclusion from Aristarkhos' execution, namely that since Aristarkhos was a friend of Phrynikhos, he was executed in that capacity. For Hansen, therefore, Lykourgos knew that Aristarkhos was executed, but got the reason wrong, and that, in fact, '*having betrayed Oinoe to the Boiotians ... Aristarkhos is presumably sentenced to death and executed*' (my italics). This might be methodologically suspect in its own right, but the source Hansen cites to reinforce his argument that Aristarkhos was executed for treachery at Oinoe, rather than for supporting Phrynikhos, is this very passage which he has deemed unreliable, and which expressly claims that Aristarkhos *was* executed for supporting Phrynikhos.<sup>856</sup>

Hansen's conclusion is probably right, unless Aristarkhos was impeached immediately after his treachery at Oinoe but somehow supported Phrynikhos, and was executed for it, before his own *eisangelia* was heard: these were unusual times, and this was, to say the least, an unusual trial without a living defendant.<sup>857</sup>

<sup>855</sup> Hansen 1975, 83 #62 nn.7, 8; see too *PA* 1663 (Aristarkhos), 535 (Alexikles).

<sup>856</sup> Hansen 1975, 83 #62 n.8, #63, also citing Thouk. 8.98 & Xen. *Hell.* 1.7.28, neither of whom give any explicit information about Aristarkhos' end. Hansen supported by Rubinstein 2000, 161 n.103; see too Ostwald 1986, 403f.

<sup>857</sup> Defendants in *eisangeliai* to the *Boulē* would probably be imprisoned pending trial, though *pace* Harrison 1968–1971, ii.56, this seems to have been an option available to the *Boulē*, rather than a legal requirement: Dem. 24.63, 144–148, insists that the measure was not a law, but part of the *bouleutic* oath intended in fact to restrict the *Boulē*'s ability to imprison. Although it seems likely that an option or requirement to imprison an impeached individual would also apply in *eisangeliai* to the *ekklēsia*, there is no evidence that such rights or duties existed. It is perhaps not inconceivable that an individual



In the absence of solid evidence of Aristarkhos' fate, however, it cannot categorically be claimed that Lykourgos is wrong, and he may in any case simply be conjuring up names, familiar enough within the general context, to add detail and credibility to his description.

§116. *καὶ τοσοῦτόν γ' ἔσεσθε ... τοῖς τοιούτοις ἔργοις ἐπολέμου*: Lykourgos ended the previous section with a rhetorical question, and adds two more here to demonstrate why his example must lead to a guilty verdict in the present trial. Aristarkhos and Alexikles were executed merely for supporting a traitor with words: Leokrates has betrayed the city with actions as well as words and, unlike Phrynikhos, is at the jury's mercy in person to receive their punishment.<sup>858</sup> Phrynikhos' posthumous prosecution, however, and the treatment of his supporters, could arouse suspicions that the events were so closely related to the particular circumstances of the late fifth century and the individuals involved in them that the cases were not comparable. Thus the second and fourth examples will be drawn from the early fifth century to demonstrate the consistency over time of verdicts in such cases, with the third being taken again from the late fifth century to show that the Phrynikhos affair was no isolated incident, but a precedent which the jurors cannot justify ignoring.

§§117–119. *Ἰππάρχον γὰρ τὸν Χάρμου ... θανάτῳ τοῦτον ζημιώσαντες*: Hipparkhos was probably the great-grandson of Peisistratos by the marriage of Hippias' daughter to Kharmos.<sup>859</sup> He was ostracized, most likely in 488/7 B.C., the first

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awaiting trial could have offered support to a defendant in another case even if his testimonial might be rather questionable: on this occasion, indeed, the defendant would not have been able to voice his opinion on the value of any of his supporters. See too Lipsius iii. 813f.; Rhodes 1972a, 179 n.3, 180; Rhodes 1979, 107, 112; Hunter 1994, 144; Hunter 1997, 302f.

<sup>858</sup> §§112–115, above.

<sup>859</sup> *PA/APF* 7600 = 11793 ix (Hipparkhos II).

victim of the procedure.<sup>860</sup> Hansen accepts Lykourgos' account of a trial for treason, concluding that Hipparkhos returned to Athens in 481 B.C., on the basis of the amnesty granted to exiles in the face of Xerxes' anticipated invasion;<sup>861</sup> he was thus indicted for treason at some later stage, probably between 480 and 460 B.C., but fled before his trial. For Hansen, therefore, Lykourgos' claim that Hipparkhos *οὐχ ὑπομείναντα τὴν περὶ τῆς προδοσίας ἐν τῷ δήμῳ κρίσιν, ἀλλ' ἔρημον τὸν ἀγῶνα ἔασαντα* strongly suggests that there was a period during which Hipparkhos was back in Athens and in which he was prosecuted for *prodosia*.<sup>862</sup>

*ἐπειδὴ τῆς ἀδικίας οὐκ ἔλαβον ... πρὸς τοὺς προδότας καταλίποιν*: The bronze statue of Hipparkhos which Lykourgos claims was sited on the Acropolis was probably a votive offering. Hurwit notes that the only certain Peisistratid construction on the Acropolis is the Brauronian precinct, for Brauron, on the coast of Attica, was in Peisistratid territory; the sanctuary of Artemis may therefore have been an appropriate setting for Hipparkhos' icon as a votive offering.<sup>863</sup> If the identification of Hipparkhos as eponymous archon in 496/5 B.C. is secure, however, then it was conceivably a public honour, though it is debatable whether such an honour of an individual with such hereditary tyrannical associations would survive a subsequent ostracism.<sup>864</sup>

Hipparkhos' punishment was especially ironic since the *stēlē* is alleged to have been made from the metal of his own statue. The addition of traitors' names to such *stēlai* was probably viewed as an extra punishment, for when Alkibiades was found guilty and sentenced to death by default in 415/4 B.C., the penalty later commuted to exile, his property was also confiscated, his name was inscribed on a

<sup>860</sup> See [Arist.] *Ath.* 22.3f., with Rhodes 1993; Plut. *Nik.* 11.8; Harp. s.v. "Ἱππαρχος. See too Arist. *Pol.* 1284a17-b34; ML 21 = *GHI* i. 15, 45; Raubitschek 1958, 105-109; Dover 1963, *passim*; Keaney and Raubitschek, *passim*; Thomsen 1972, 61-108; Welwei 1999, 42-46.

<sup>861</sup> [Arist.] *Ath.* 22.8. See too Raubitschek 1959, 127.

<sup>862</sup> Hansen 1975, 69f. #3. See too Rhodes 1979, 105; Hansen 1980a, 91; Ostwald 1986, 28-40; Sealey 1987, 69, 85f.; de Bruyn, 53ff.

<sup>863</sup> Hurwit, 117ff.

<sup>864</sup> D.H. 6.1.1; Develin 1989, 54; Rhodes 1993, 272; Welwei 1999, 42.

*stēlē*, and he was publicly cursed.<sup>865</sup> The traitors, beginning with Hipparkhos, whose names are inscribed are joined by *ἀλιτηρίους*, though it is unclear what distinguishes these offenders. The word is not common in the orators and has connotations of both religious and sacrilegious crimes, and divine and fiendish vengeance, as well as of an ability to spread pollution.<sup>866</sup> When Lykourgos instructs the clerk, however, to read out the inscription, now lost, from the base of the *stēlē*, together with the names of those inscribed, he refers only to the names of traitors. The *alitērioi* are therefore probably a generalisation of long-forgotten identities which is meant to evoke the civic and religious nature of the crimes being attributed to Leokrates.

§§120-121. *Λαβὲ δ' αὐτοῖς καὶ τὸ ἕτερον ψήφισμα ... ἐκείνων τῶν ἀνδρῶν*: Syracusan and Corinthian envoys, seeking assistance against the Athenian campaign in Sicily in 415 B.C., found Alkibiades in the Peloponnese; the Athenian *stratēgos* advised Sparta to aid the defence of Syracuse and to occupy Dekeleia, a town in the North of Attica. His advice was followed, and Dekeleia was invaded by Agis and fortified by Sparta in 413 B.C.<sup>867</sup> Funke notes that Alkibiades' advice was astute, for 'es kaum einen besseren Ort in Attika gab': Athens was effectively blockaded, for 'mit der Besetzung und Befestigung dieses Platzes hatten die Lakedaimonier ... mit einem Schlag die Kontrolle über die gesamte nordostattische Grenzregion gewonnen'.<sup>868</sup> Dekeleia became a sanctuary for deserters and escapee slaves, one major effect of which was the devastation of the production of the Laureion silver mines, one of Athens' main sources of revenue, and the city was forced to resort to minting silver-plated copper coins.<sup>869</sup>

<sup>865</sup> Nep. *Alc.* 4.5; Dem. 21.143-146; D.S. 13.69.1f.; Isok. 16.9, 45; Plut. *Alc.* 19.22; Thouk. 6.61.7; Hansen 1975, 76f. #12. Razing of property symbolic of release from effective tyranny: Connor 1985, *passim*. See too Allen 2000a, 201f., 216f.; §8, above.

<sup>866</sup> See e.g. And. 1.51, 131; Ant. 4.a.4; Dein. 1.77; Lys. 6.52f., 13.79; see too Ar. *Eq.* 445; Thouk. 1.126.11; Phot. & Suda, s.v. 'Ἀλιτήριος, 'Ἀλιτήριοι.

<sup>867</sup> D.S. 13.9.2; Thouk. 6.88.7-93.2, 7.18.1-20.1.

<sup>868</sup> Funke, 127.

<sup>869</sup> Ar. *Ra.* 718ff.; Thouk. 7.27.2-28.4; Ferguson 1932, 85-95, 160; see too Hammond 1986, 396, 399f.; Ostwald 1986, 344; Welwei 1999, 212, 214; introduction, 20f., above.

The decree which Lykourgos requests the clerk to read out legislated for the automatic condemnation of those who abandoned Athens for Dekeleia. *Ho boulomenos* was empowered to apprehend any who returned and to hand them over to the *thesmothetai* for delivery τῶ ἐπὶ τοῦ ὀρύγματος; as *kakourgoi*, they would probably have been subject to an *apagōgē*, an inference reinforced by Lykourgos' use of the verb ἀπαγαγεῖν.<sup>870</sup> Lykourgos appears to be the only source for this decree, and its date and proposer are unknown, but the reference to *the pit-man* might imply a date in the fourth century.<sup>871</sup> Possibly, the decree was intended to circumvent the general amnesty proclaimed by the restored democracy in 403 B.C. though later speakers would probably use contemporary terminology to describe something previously known under another name.<sup>872</sup>

Lykourgos is, of course, *ho boulomenos* himself in the present case, which is again a prosecution of a deserter.<sup>873</sup> Thus rhetorical questions illustrate the similarities between his example and the present trial, and he makes his ninth call for the death penalty.<sup>874</sup>

§122. "Ἄξιον τοίνυν ἀκοῦσαι καὶ ... ἀδικούντων τιμωρίας ἐκέκτηντο: Lykourgos' reference here to the execution in Salamis noticeably lacks detail, perhaps because there was no definitive version of the events.<sup>875</sup> It is likely that he means the *Bouleutēs* Lykidas, whose stoning, followed by that of his wife and children, is related by Herodotus: almost certainly Lykourgos does not mean Alexander, whom he has already presented as being *nearly* stoned to death.<sup>876</sup> Notably, αὐτοχειρὶ ἀπέκτεινεν is used rather than κατέλευσεν. The term is not especially

<sup>870</sup> See §§112–115, above.

<sup>871</sup> See §8, above.

<sup>872</sup> See And. 1.90f.; [Arist.] *Ath.* 38.4–41, with Rhodes 1993; Xen. *Hell.* 2.4.43; Cloché 1915, 251–277, 343–351; Hignett, 294; Ostwald 1986, 497–509.

<sup>873</sup> See §3, above.

<sup>874</sup> Other calls: §§8, 26–27, 43–45, 46–51, 52–54, 66–67, 77–78, 79, above, 123, 133–134, 141–145, below.

<sup>875</sup> See §71, above.

<sup>876</sup> Hdt. 9.1–5; Allen 2000a, 142–146; see too §71, above.

common, and where it does not indicate suicide, it seems primarily to refer to murder.<sup>877</sup>

In this respect, the detail, which does not appear in Herodotus, of the *Bouleutai* removing their garlands before committing the act is interesting, for it is perhaps meant to indicate that although the Councillors recognized their act as homicide, they deemed it to be justifiable homicide.<sup>878</sup> It is, however, probably no more than a Lykourgan gloss to assimilate himself with the Councillors, and to remind the jurors, however subliminally, that he too is a public official who has acted in a private, and thoroughly justifiable, capacity to bring about the death of a traitor. Such a gloss might also explain his claim that there was a decree concerning Lykidas, though its relation to the killing is unclear. Herodotus' account and Lykourgos' remarks imply that the Councillors acted impulsively, or at least after only enough forethought to remove their garlands, and as Rosivach notes, 'mobs do not pass *psēphismata* before lynchings'.<sup>879</sup> Any such decree might therefore have been less directly concerned with the victim than with vindicating the action of the *Bouleutai* themselves, and obviating any requirement for them to be purified. If so, its relevance to the present jurors is clear, and they are being presented with one more reason to condemn the defendant. For Rosivach, indeed, the difference between Herodotus' and Lykourgos' accounts suggests that a culturally-repulsive event, fairly accurately recounted by Herodotus, was legitimized, with Lykourgos' version reflecting how it was remembered.<sup>880</sup>

§123. *Τί οὖν ὡ ἄνδρες ... ὑπὲρ τῆς πατρίδος προσήκει ποιεῖν*: Lykourgos rounds off this entire section with a list of rhetorical questions designed to bring together many of the themes he has repeatedly stressed throughout the speech, and to provide a framework for the proofs offered by his historical precedents. Desertion and active treachery are equally heinous crimes, and individuals who damage the

<sup>877</sup> E.g. Ant. 5.47; Dem. 20.158, 21.106; Isok. 4.111, 14.29, 19.19; Pl. *Lg.* 872a1–c6.

<sup>878</sup> See too Hirzel, *passim*, esp. 247f.; Parker 1983, 193ff.; §71, above.

<sup>879</sup> Rosivach 1987b, 237f.

<sup>880</sup> Rosivach 1987b, 238f.

city with actions or words commit equivalent outrages. This is the view of Athenians past and present, and must be the view of the present jury. Thus Lykourgos makes his tenth call for the death penalty, but Leokrates, who is guilty on all these counts, cannot therefore simply be executed, but must suffer extra penalties commensurate with his excessive treachery.<sup>881</sup>

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<sup>881</sup> Other calls: §§8, 26–27, 43–45, 46–51, 52–54, 66–67, 77–78, 79, 120–121, above, 133–134, 141–145, below.

## §§124–140

At first glance, §§124–140 seem to be simply a continuation of the historical precedents of §§110(ii)–123. Certainly, Lykourgos will refer to one example each from the late and early fifth century, in a pattern familiar from the previous section. There is, clearly, a large degree of continuity, but there is also a definite shift of focus which is signalled by a sixth *μὲν οὖν*, and the emphasis switches from traitors against the city to traitors against democracy and to those aiming to establish a tyranny.<sup>882</sup> This paves the way for Lykourgos' concentration in the second half of this section on the defendant's *synēgoroi*, whose undemocratic abuse of their elite status underpins this redefinition of Leokrates' treachery and the indefensibility of his case. Notably, too, the examples are no longer introduced as precedents, but as norms which are, or should be, binding on the jury. Thus Demophantos' decree against tyranny is treated as if its accompanying oath had been sworn by the present jurors, and the Spartan law, introduced by the example of Pausanias who himself demonstrates how Athens' alter-ego deals with aspiring tyrants, is presented as an appropriate and necessary measure to be applied by Athenian jurors. It therefore also provides a direct opportunity to introduce the eleventh call for the death penalty, and indeed a penalty worse than death, in what is Lykourgos' final substantive section before he begins his closing remarks.

§§124–127. *Ἰκανὰ μὲν οὖν καὶ ταῦτα ... καὶ μοι λαβὲ τὸ ψήφισμα*: Demophantos was one of the *anagrapheis tōn nomōn* appointed to revise the law code in accordance with Teisamenos' legislation of 403/2 B.C. The *anagrapheis* were to continue and complete the process started by Nikhomakhos in 410 B.C., collecting and publishing the laws in force, especially the laws of Solon and Drakon.<sup>883</sup> It is unclear whether the original revision was actually complete by

<sup>882</sup> *μὲν οὖν* structure: introduction, 37, above.

<sup>883</sup> And. 1.81–85, with MacDowell 1962; Lys. 30.2, 25; *IG* i<sup>2</sup> 114; *IG* i<sup>3</sup> 104; *IG* i<sup>3</sup> 105; ML 86 = *GHI* i.87; F.D. Smith, 74–78; MacDowell 1978, 46ff.; Clinton, *passim*; Ostwald 1986, 414–420; Sealey 1987, 35–41; Robertson, *passim*; §§2, 4, above.

404 B.C., or if it was interrupted by the regime of the Thirty.<sup>884</sup> Two points are clear, however: that Lykourgos attributes Demophantos' decree against tyranny to the period after the Thirty, and that he is wrong to do so, for the legislation was passed in 410 B.C., before, not after, their rule.<sup>885</sup>

Conomis suggests that this piece of misinformation was far from accidental, for in this way the jury would have the 'benefit of an argument *ex silentio*, namely that it was partly for lack of such a law that the Thirty were able to establish themselves as tyrants'.<sup>886</sup> Lykourgos is probably being even more disingenuous than this, however, for whilst he claims that the decree permitted, indeed encouraged, the killing of someone who was merely thought to be about to overthrow the democracy and establish a tyranny, this clause is absent from the decree cited by Andokides.<sup>887</sup> This implies a deliberate misdirection of the jury on Lykourgos' part, which strongly suggests that he wilfully misdated Demophantos' legislation in order to bolster his own prosecution and his argument that the jurors should be legislators as well as judges.<sup>888</sup> Moreover, the association with aspirants to tyranny serves to justify the argument for Leokrates' condemnation and execution: the jurors' ancestors preferred to punish *imagined* culprits than take the risk of being enslaved, and since Leokrates is the sort of person who would aspire to overthrow the democracy, the jurors themselves must behave in the same way as their forebears.

Ταῦτα ὡ ἄνδρες ἔγραψαν ... ταύτης δὲ μὴ κληρονομεῖν: Lykourgos' phraseology suggests that the wording of Demophantos' legislation was taken from the *stēlē* in the *Bouleuterion* in the agora, rather than from any copy of the *nomoi* preserved in the *Metrōon*.<sup>889</sup> It is, indeed, unclear whether the measure was actually a *nomos*, even though Andokides states unequivocally that it was.<sup>890</sup> In the fifth century,

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<sup>884</sup> Revision complete by 404 B.C.: MacDowell 1978, 47. Interrupted by the Thirty: [Arist.] *Ath.* 35.2, with Rhodes 1993.

<sup>885</sup> And. 1.96f.; see too Ostwald 1955, 111–114; Conomis 1958, 6; see too §§52–54, above.

<sup>886</sup> Conomis 1958, 9f.

<sup>887</sup> And. 1.96ff.

<sup>888</sup> See §9, above.

<sup>889</sup> See too §4, above.

<sup>890</sup> And. 1.95f., 99.



however, the distinction between decrees and laws did not exist as it did in the fourth; for Hansen, 'there is no demonstrable difference between *nomoi* and *psēphismata*' and although the words cannot strictly be seen as synonymous, they have 'roughly the same meaning when referring to enactments of the Athenians'.<sup>891</sup> MacDowell differentiates between the two 'overlapping terms' by suggesting that pieces of legislation which had not been the subject of a vote, the laws of Solon for example, were strictly *nomoi*, whereas the type of law proposed by Demophantos was a *psēphisma*.<sup>892</sup>

Demophantos' measures, however they were defined, do not seem to have survived the process of reform to become one of the inscribed fourth-century *nomoi* despite the fact that they were 'the adopted report of a legislative commissioner'.<sup>893</sup> This is probably because they were based on a pre-existing Solonian law which was itself inscribed in the revised codifications, though whether the decree was simply a reaffirmation of that law or whether it contained any innovations is unclear. Ostwald believes that Demophantos' legislation reaffirmed an existing law which itself incorporated an oath.<sup>894</sup> Rhodes, however, considers that the oath was the only innovation of Demophantos' measures, requiring the Athenians to observe the law that already existed.<sup>895</sup> Yet although Demophantos' decree against tyranny can be imagined to have lapsed in 403/2 B.C., the *stēlē* upon which it had been engraved remained *in situ*: this, at least, is the scenario described by Andokides.

MacDowell, however, does not accept this interpretation. For him, Andokides is 'speaking loosely. He does not mean that the law was completely invalid (for if this had been the case the law would not have remained on a *stēlē* in front of the Council-house), but only that it was not valid in Epikhares' case, because it could not now be enforced against persons who offended against it before the beginning of 403/2'.<sup>896</sup> Such a reading, though, flies in the face of Andokides' explicit

<sup>891</sup> Hansen 1978b, 316; Hansen 1990b, 67; see too §2 with n.174, above.

<sup>892</sup> MacDowell 1978, 45.

<sup>893</sup> Bonner and Smith, ii. 47, 150.

<sup>894</sup> Ostwald 1955, 104-114.

<sup>895</sup> [Arist.] *Ath.* 16.10, with Rhodes 1993.

<sup>896</sup> And. 1.99, with MacDowell 1962; see too MacDowell 1978, 176.

statement that the law was ἄκυρος, and that it was so because τοῖς νόμοις δεῖ χοῆσθαι ἀπ’ Εὐκλείδου ἄρχοντος.<sup>897</sup> Indeed, Ostwald argues that for Demophantos’ law to have survived the legal reforms of 403/2 B.C., it would have been ‘a clear contradiction to the letter and the spirit of the amnesty of that year, if all those who had participated in the tyranny of the Thirty had been declared outlaws on the grounds that they overthrew the democracy. True [they] ... were excluded from the amnesty ...; but ... the adoption of the procedure of εἰσαγγελία for overthrow of the democracy to replace the harsher measures prescribed by Demophantos would ... be consonant with the restraint expressed in the amnesty’.<sup>898</sup>

There are, in any case, other ways to explain the retention of the *stēlē* on which the decree was engraved. The Athenians did not always remove awkward or defunct monuments: Lykourgos has, for example, already mentioned the statue of Hipparkhos, which may have survived the Peisistratid’s ostracism.<sup>899</sup> Moreover, even as early as Andokides’ speech in 399 B.C., the storage of a written law in the *Metrōon* was likely to have been the fundamental mechanism to establish validity and the mere fact that a *stēlē* existed did not, of itself, offer proof of legislative validity.<sup>900</sup> Clearly, too, in the same way that the *stēlē* made from Hipparkhos’ own statue provided a very particular memorandum of his treachery, the very location of the *stēlē* argued for its retention, since it provided a constant and visible reminder of democratic values to any who were currently serving as Councillors. Andokides may well be speaking loosely in calling a *psēphisma* a *nomos*, but not necessarily in any other sense.<sup>901</sup>

Lykourgos, however, is speaking not so much loosely as disingenuously. He has already misdated and misquoted Demophantos’ legislation, but it is in his very choice of Demophantos’ decree in its own right that his disingenuity is most apparent. For he could have cited Eukrates’ anti-tyranny legislation, which had

<sup>897</sup> And. 1.99. Support for MacDowell’s view: Thomas 1994, 120 with n.5; Thomas 1996, 19 with n.18.

<sup>898</sup> Ostwald 1955, 117f.

<sup>899</sup> §§117–119, above.

<sup>900</sup> Hansen 1990b, 71, dates this to ‘undoubtedly as early as c. 400 when Diokles’ law was passed’.

<sup>901</sup> See too Hansen 1978b, 316f.; Hansen 1990b, 66f.

been passed, by *nomothesia*, as recently as 337/6 B.C.<sup>902</sup> The problem, though, was that Eukrates' law seems itself to have been repealed, a lapse which may have been better known, or at least better remembered, than that of Demophantos' decree, and the citation of a law which had become defunct not too long before the trial might not have escaped notice.<sup>903</sup> Moreover, whilst Eukrates' legislation closely paralleled Demophantos' measures, which prohibited the holding of office if the democracy were overthrown, it specifically extended, or clarified, the ban to the Areopagites.<sup>904</sup> Apart from the fact, therefore, that Lykourgos might in any case have tried to avoid citing a law which post-dated Leokrates' alleged crimes, he would clearly try to avoid using as an example legislation directed specifically against the Areopagos, against the very Council which he has previously used as a paradigm of juridical rectitude. Thus, Conomis' interpretation that Lykourgos merely wished to avoid offending the susceptibilities of the Council appears somewhat naïve, though he is right to see a direct connection between Lykourgos' emphasis on oaths and the citation of Demophantos' decree.<sup>905</sup> The legislation which perhaps specifically included this innovation is especially relevant to the inheritable nature of oaths. It is probably also significant that the law quoted by Andokides legislates for a penalty worse than death, something that Lykourgos has called for repeatedly, and which he will again urge upon the jurors at the end of this entire section.

§§128–132. Οὐ μόνον τοίνυν ἡ πόλις ... νομίμων αὐτοὺς ἀποστεροῦντες: It seems odd, initially, that having insisted throughout his speech on Athens' individuality and uniqueness Lykourgos should turn to a Spartan law to demonstrate that Athens

<sup>902</sup> See §§52–54 with n.567, above.

<sup>903</sup> Eukrates' decree perhaps repealed by 330 B.C., with the *Nomos Eisangeltikos* becoming again the proper measure for *eisangeliai*: Ostwald 1955, 120, 127f. Eukrates' decree lapsed in 322 B.C.: Meritt 1952, 359. One of the two *stēlai* inscribed with Eukrates' decree was found in the agora; one *stēlē* was to be erected near the Areopagos Hill, the other in the Pnyx. Raubitschek 1964, 333, suggests that 'die *Stēlē* mit dem Gesetz des Eukrates ist nur ein Abglanz einer viel klareren und bedeutenderen Einrichtung, nämlich des Kultes der Demokratia, wozu ein Standbild, ein Altar und ein Priester gehört'.

<sup>904</sup> *SEG* 12.87, lines 11–26.

<sup>905</sup> Conomis 1958, 11ff.

was not the only city to deal harshly with traitors. Yet, notwithstanding his own clear admiration for the Spartan polity, the concept of Spartan *eunomia* offered a perfect opportunity to show the jury an ideal law: they are to be law-makers, after all.<sup>906</sup> Yet the example of Pausanias also brings to mind Lykourgos' earlier arguments that the gods withhold protection from the impious and lead their minds astray. Kallistratos was removed from the altar of the twelve gods for execution, having been misled by the gods into taking refuge there.<sup>907</sup> Similarly, and more importantly, Leokrates himself has been deluded into standing trial and claiming that his presence is proof of his innocence.<sup>908</sup> Given these twin functions of the reference, therefore, it is perhaps unsurprising that there is another historical error, for although Pausanias is described as King of Sparta, he was in fact regent for Pleistarkhos, whose father, Leonidas, had died defending Thermopylai.<sup>909</sup>

Pausanias was, however, an archetypal aspirant to tyranny, for his behaviour in the wake of the victory at Plataia resulted in his recall to Sparta, and a trial where, despite being acquitted of the majority of charges which included intrigue with Persia, he was replaced by Dorkis. Returning to Byzantium as a private individual, he again acted in a despotic manner and, after an Athenian siege, connived with Persia before being recalled once more by the Ephors. It seems, however, that the ephors were uncertain of the grounds of the allegations against Pausanias, even after receiving from Pausanias' erstwhile *eromenos* apparent confirmation of their suspicions in a letter, purportedly intended for Artabazus. Thoukydides reports that Pausanias' friend was supposed to have delivered the letter but had instead read it himself, fearing, apparently with good reason, that he would become yet one more in a line of messengers who had been sent out and

<sup>906</sup> See §§9, 59–64, 104–107, above. *Eunomia*: Arist. *Pol.* 1306b37–1307a1, 1326a25–27; D.S. 7.12.1; Plut. *Lyk.* 5.1–5.3; [Xen.] *Ath.* 1.8, 29.6. Punitive measures against cowardice attributed to Solon: Aiskhin. 3.175f.; Dem. 24.103.

<sup>907</sup> §93, above.

<sup>908</sup> §§90–92, above.

<sup>909</sup> Hdt. 9.10; see too §§108–110(i), above. Historical function and inaccuracy: §§110(ii)–111, above.

had not returned. Eventually, the ephors are said to have hidden behind a screen to hear Pausanias admit everything to his betrayed friend.<sup>910</sup>

Pausanias took refuge in the so-called Bronze House, where he was walled in and, according to Thoukydides, brought out at death's door, presumably to avoid the pollution attendant on an individual dying in the precinct itself.<sup>911</sup> Diodorus' account, which corresponds with that of Lykourgos, is slightly different, with Pausanias being starved to death inside the temple.<sup>912</sup> The gods, of course, do not take care of the sort of suppliants who use their sanctuary for unjust ends, or without due piety, as the case of Kallistratos had demonstrated.<sup>913</sup>

*μέγιστον δὲ τῶν ἐκεῖ γεγενημένων ... ἐστίας ἀμύνεσθαι τολμήσας*: MacDowell accepts the existence of the law concerning the execution of those who would not risk danger for Sparta, despite conceding that 'no stone inscriptions of laws of the classical period have been found at Sparta'; there is, however, an air of circularity about what is effectively the argument that the law must have existed for Lykourgos to make use of it and that Lykourgos' use is evidence for its existence.<sup>914</sup> Lykourgos has, in any case, been disingenuous before, and it is not at all clear that he is citing a real law here.<sup>915</sup> Indeed, Fisher suspects that Lykourgos might well have made it up; at the very least 'he has certainly made [it] ... seem more general and extensive'.<sup>916</sup> It would, in any case, have been extremely difficult for a juror to determine its authenticity, even if a transcript had existed in Sparta, and impossible for him to have done so on the spot. It is also arguable that any subsequent prosecution for the citation of a non-existent law could have been defended upon the grounds that the relevant law referred only to Athenian legislation.<sup>917</sup>

<sup>910</sup> D.S. 11.44–46, 60; Thouk. 1.94.1–96.1, 128.1–135.2; Plut. *Arist.* 23; *Kim.* 6; Forrest 1980, 99–103; Hammond 1986, 254ff.

<sup>911</sup> Thouk. 1.134. See too Paus. 3.17.2–9; Suda, s.v. *Χαλκίοικος*; Parker 1983, 182ff. The story of Pausanias' escape to the Bronze Temple of Athene and his starvation seems to have had at least the one precedent of Kharilaos of Sparta: Plut. *Lyk.* 5.5.

<sup>912</sup> D.S. 11.45.7.

<sup>913</sup> See §93, above.

<sup>914</sup> MacDowell 1986, 5, 70.

<sup>915</sup> See §§124–127, above.

<sup>916</sup> Fisher 1994, 378.

<sup>917</sup> See too §§11–13, 104–107, above.

The authenticity of this Spartan law seems further undermined by evidence that *atimia*, not death, was the punishment in Sparta for cowardice. Thoukydides reports that the Spartan survivors of the blockade at Sphacteria were disenfranchised, though they were later reinstated; this was, however, perhaps a special measure at a time of oliganthropic crisis.<sup>918</sup> Plutarch, however, also suggests that after Leuktra Agesilaos urged the Spartans not to enforce laws against those who fled, the *tremblers*, and Diodorus explicitly names *atimia* as the punishment which was waived for survivors of the battle at Megalopolis in 331 B.C.<sup>919</sup> MacDowell thus argues for two distinct varieties of cowardice, punished alternately by death and *atimia*, though he also concedes that there might have been no such distinction and that Lykourgos might instead be referring to the right of the King on campaign to execute on the spot anyone caught attempting to desert.<sup>920</sup>

Lykourgos' tactics, at least, are clear. Fear of one's own community should be sufficient to ensure that everyone stands and fights; yet this is precisely what Leokrates failed to do. Thus, despite the fact that most Athenians did remain to face their peril, such a law is essential to constrain those, thankfully few, who are cowards. This is, by now, a familiar argument, as is what is effectively an appeal for substantive and pre-emptive legislation: indeed, by placing Demophantos' decree against tyranny after the Thirty, he can simultaneously imply that it was for lack of such legislation that the Thirty were able to seize power, and can avoid the impression that pre-emptive legislation, at least on that occasion, failed to achieve its aim.<sup>921</sup>

*ἀλλὰ μόνος οὗτος τῶν πάντων ἀνθρώπων ... τοῖς πολεμίοις ἐγκατέλιπε:* All trace of the quotation which Lykourgos attributes to some of the old poets is lost.<sup>922</sup> None the less, Leokrates has become not just the worst Athenian ever, not even simply

<sup>918</sup> Thouk. 5.34.2.

<sup>919</sup> Plut. *Ages.* 30.2–6; D.S. 19.70.5; see too MacDowell 1986, 44ff.

<sup>920</sup> MacDowell 1986, 70, citing Arist. *Pol.* 1285a7–10.

<sup>921</sup> See §§66–67, 124–127, above.

<sup>922</sup> *Trag. Adesp.* 297.

worse than metics, women and slaves, but incapable of actions which are instinctive even to animals.<sup>923</sup>

§§133–134. *τοιγαροῦν οὐδεμία πόλις αὐτὸν ... τὴν πόλιν ἐγκαταλιπὼν κρίνεται*: No evidence is offered for the allegation that Leokrates was not allowed to reside as a metic in any other *polis*, and it is in any case contradicted by the admitted fact that Leokrates spent five years in Megara with his *prostatēs*.<sup>924</sup> The argument is, however, that he who was worse than a metic in his own city could not be acceptable as a metic elsewhere. This is presented as if it proves the claim, and offers an easy contrast with polluted murderers, who would clearly be more welcome, and presumably less polluted, than the defendant.<sup>925</sup> The case of Phrynikhos alone, too, disproves the assertion that other traitors are always punished before their treachery can be carried out.<sup>926</sup> Lykourgos is, however, clearly summing up, albeit in hyperbolic and contradictory style, his examples of would-be tyrants and traitors of democracy for whose treason pre-emptive legislation is needed, and setting the context for his eleventh call for the death penalty, and for his diatribe against the other enemies of Athens, the defendant's *synēgoroi*.<sup>927</sup>

§§135–137. *Θαυμάζω δὲ καὶ ... ἐπιγράψαι πρὸς τὴν εἰσαγγελίαν*: In setting up what will be a systematic attack on the democratic principles of Leokrates' *synēgoroi*, Lykourgos uses the defendant's own father as a contrast, and claims that he would have condemned his son for deserting the bronze statue which he had set up in the

<sup>923</sup> See too §§36–39, 46–51, 98–101, 108–110(i), above.

<sup>924</sup> See too §§21–23(i), 43–45, 55–58, above.

<sup>925</sup> See too §§5–6, above.

<sup>926</sup> §§112–115, above.

<sup>927</sup> Other calls: §§8, 26–27, 43–45, 46–51, 52–54, 66–67, 77–78, 79, 120–121, 123, above, 141–145, below. *Synēgoroi*: 135–137, 138–149, below.

temple of Zeus Soter.<sup>928</sup> The contrast is significant because it might imply that Lykourgos is worried about the credibility of Leokrates' supporters: perhaps he feels that he needs to urge the jurors to bear in mind that whatever the *synēgoroi* might say, Leokrates' own father would have condemned him. There is, too, the repetition of Zeus Soter: does Lykourgos think that the *synēgoroi* are going to pronounce the god as Leokrates' saviour, whom the jurors cannot contradict?

Such suspicions make it impossible to take at face value Lykourgos' claim that he was asked time and again why he failed to include Zeus Soter's name in his indictment. It may indeed be the case that the details of the forthcoming trial had been the subject of much speculation.<sup>929</sup> There are, though, other possibilities. Perhaps some had asked, tongue-in-cheek, why such a pious prosecutor had omitted such a pertinent charge from his comprehensive list of accusations: that could explain the clear edge to the reply that he had not felt the need to add the name of Zeus Protector to his charges of treason. Perhaps, too, Lykourgos is trying to characterize the Athenians *en masse* as so outraged by Leokrates' behaviour that he himself was criticized for missing a golden opportunity to hammer a final nail into Leokrates' coffin: if so, the jurors will take the hint that these are not the fellow citizens they will want to meet after the trial if they fail to deliver the 'right' verdict.

§§138–140. Ἐκπέπληγμαι δὲ μάλιστα ... πατρίδι καὶ τούτοις ἐστὶ συμφέροντα: The emphasis on threats to democracy and aspirants to tyranny with which this entire section of the speech has been primarily concerned is made explicit now. For when Lykourgos introduced the particular topic of the *synēgoroi*, he used θαυμάζω to express what seems to have been his own personal view of those who supported anyone whom he considered to be a traitor.<sup>930</sup> Now he uses ἐκπέπληγμαι, but this

<sup>928</sup> Dover 1994, 243, citing this passage, notes the 'flexibility of religious belief in the service of rhetoric': doubt, or even outright denial, might frequently be expressed that the dead are sentient (e.g. Aiskhin. 1.14, Isok. 19.42), but the opposite was strongly asserted when the need arose (e.g. Is. 9.4, Lys. 12.99f.). See too §§17–18, 25, above.

<sup>929</sup> See §§14–15, 55–58, above.

<sup>930</sup> §§135–137, above.



time in respect of the jurors themselves. What he is dumbstruck about is that they do not realize the explicit threat to the interests of τῶν νόμων καὶ τῆς δημοκρατίας that the *synēgoroi* represent, for such speakers have become skilful to act καθ' ἑμῶν, rather than ὑπὲρ ἑμῶν. There is no real criticism here of the jurors. People such as the *synēgoroi* are clever speakers, skilled at pulling the wool over everyone's eyes, and have accepted bribes specifically so as to mislead the jury. Indeed they needed to be able to do so successfully, for discovery of such a crime could result in their own prosecution.<sup>931</sup> Lykourgos is effectively redefining the support of Leokrates' *synēgoroi* as a threat to democracy akin to corruptly misleading the *dēmos*.<sup>932</sup> In the courts, moreover, such subversives did not even run the risk of a *graphē dōrōn*, as they did in the assembly.<sup>933</sup> *Synēgoroi* were not, indeed, even vulnerable to prosecution for false testimony, for they were exempt from a *dikē pseudomartyrion*.<sup>934</sup>

Rubinstein notes that Lykourgos' use here of the *topos* of the similarities in the treacherous outlook between defendant and *synēgoroi* is consistent with his reference to a previous jury's attitude towards Aristarkhos and Alexikles in §§113–115, above. She argues that Lykourgos is clearly assuming that one of the functions of friends who act as *synēgoroi* is to offer a personal endorsement of their associate. This is itself consistent with the view of *synēgoroi* as either friends, relatives, or *philotimoi*.<sup>935</sup> Whilst relatives can evoke Aristotelian *pathos*,

<sup>931</sup> MacDowell 1978, 251, citing Dem. 46.26; Todd 1993, 94f., citing Dem. 32.31f.

<sup>932</sup> Defined in Hyp. 4 (*Eux.*) 29, as saying what is not in the best interests of the *dēmos* after taking bribes from those acting for opposing interests.

<sup>933</sup> See Harp. s.v. Δώρων γραφή; Lipsius, ii. 401ff.; MacDowell 1978, 180. Perhaps the most (in)famous example of the *graphē dōrōn* is Hypereides' prosecution of Philokrates, who was convicted and sentenced to death *in absentia*: Hyp. 4 (*Eux.*) 29f.; Dem. 19.114–119; Aiskhin. 2.6. On other occasions, however, the sentence was clearly *atimia*: Aiskhin. 3.232. General treatment: Harvey 1985.

<sup>934</sup> Aiskhin. 2.170; Since Phokion appears as both witness and *synēgoros* for Aiskhines, the fourth-century restrictions upon witnesses' verbal testimony could thus be circumvented, and a witness could refrain from contentious statements in his written testimony and wait to assert them aloud, with impunity, as a *synēgoros*. Rubinstein 2000, 72ff., argues that the reform which silenced the witnesses was, in part, perhaps intended to obviate rhetorical advantage: if she is right, then the attempt seems to have failed. She notes, none the less, that exemption from a *dikē pseudomartyrion* is one of the more important differences between *synēgoroi* and witnesses: see too Harrison 1968–1971 ii, 158, more tentatively citing also Is. 12.4; §20, above.

<sup>935</sup> Rubinstein 2000, 151f.; see too Lys. 14.19ff. The typology is subverted in Aiskhin. 1.194 to wasters, superannuated rent-boys, and degenerates.

however, friends are in a more ambivalent position, for they should renounce associates who are discovered to be criminals, rather than emphasize their friendship, and they certainly should not endorse them.<sup>936</sup> Rubinstein notes this moral dilemma and argues that the very risk of guilt by association itself gave credence to friends' appearances in court, which could therefore be taken as a very real conviction that they believed their associate to be innocent: rhetorically there was thus no conflict of interest in reality, since they could have chosen not to appear.<sup>937</sup>

Lykourgos might therefore need to argue that the relationship between Leokrates and his *synēgoroi* is not a genuine relationship between *philoï*, but that the supporters have been bribed to offer their endorsement. Yet the topos of paid *synēgoroi* seems to have been used so infrequently that his attack is better seen as an integral part of his theme that the *synēgoroi* are anti-democratic.<sup>938</sup> The point is, indeed, explicitly made by an assault on their abuse of their elite status, on their request for what Rubinstein calls 'transferable *charis*'.<sup>939</sup> Horse breeders and *chorēgoi* already receive crowns, and need no further benefit from others; to deserve gratitude, Lykourgos argues, they should have been trierarchs or the like, providing something useful rather than ostentatious. Ober notes that 'Lycurgus is deliberately extreme in his rejection of all non-military liturgies. Certainly fourth-century litigants expected *charis* for serving as *chorēgos* and in some cases felt that bringing up their horse raising and athletic victories would gain the jurors' respect'.<sup>940</sup>

The distinction is valid, however, within the terms of Lykourgos' own rhetorical requirements. In 357 B.C., the trierarchy had been modified by a reform of Periandros, with the 1,200 wealthiest liturgists being formed into 20 symmories

<sup>936</sup> See Arist. *Rhet.* 1413b10.

<sup>937</sup> Rubinstein 2000, 152–166.

<sup>938</sup> Two examples: Aiskhin. 3.257; Dem. 21.139; see too Rubinstein 2000, 164, who omits Aiskhines.

<sup>939</sup> Rubinstein 2000, 212–231.

<sup>940</sup> Ober 1989a, 231 n.57. Liturgies: [Arist.] *Ath.* 56.3, 61.1, with Rhodes 1993; *APF*, xvii–xxxi; Thomsen 1964, 24–37, 45–104, 194–257; Davies 1967, *passim*; Pickard-Cambridge 1968, 75–78, 86–93; Jordan, 61–93; Andreades, 322–348; Davies 1984, 92–96; Ober 1989a, 226–233. More generally: Harrison 1968–1971, ii. 232–238; MacDowell 1978, 161–164; Rhodes 1982, *passim*; Sinclair, 61–65.

sharing the heavy expense, and the glory.<sup>941</sup> The defendant and his 'team' are, however, anti-democratic and self-serving war-shirkers who might entertain the jurors but would not, and did not, save them in a crisis. Worse, the very element of elite individuality that marks out horse breeding and the *chorēgia* and that allows them to be linked in this way demonstrates their potential danger to the democracy itself. The conclusion is easy to draw: the *synēgoroi* are to be condemned by their association with the defendant, and Leokrates must be tarred with the same brush as them. He is no longer just a traitor, but an enemy of democracy and law, and a tyrant-in-waiting.

Todd implies that there is little real evidential value in such rhetorical attacks on *synēgoroi*: they are simply 'the regular technique of the conspiracy theorist', included to incite prejudice against prospective speakers, and, 'if no supporters appear, then the hearers' inference will be that the outspoken clarity of the prosecutor's case has frightened them into silence'.<sup>942</sup> Thus abuse proves nothing about whether *synēgoroi* were actually used in any given case. Rubinstein disagrees, claiming that *synēgoroi* were very far from exceptional and that people often knew in advance about opposing litigants' tactics. As a result, she argues, there is 'no compelling reason to follow Todd's pessimistic assessment of the value of rhetorical passages which contain attacks on the opponent's *synēgoroi*'.<sup>943</sup> Certainly we cannot know whether Leokrates' *synēgoroi* really appeared in court, or whether this passage was included in case they did so, perhaps being incorporated later into a published version without ever being delivered in court. It is, however, difficult to imagine that a defendant with friends (or the wealth to bribe acquaintances) of such a stature would have been prepared to stand trial without them, especially against this particular prosecutor.

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<sup>941</sup> Dem. 14.16f., 18.102ff., 21.80, 154f., 47.21f.; Isok. 15.145. A reform by Demosthenes in 340 B.C. reduced the number of those liable from 1200 to 300: Aiskhin. 3.222; [Arist.] *Ath.* 61.1, with Rhodes 1993; Dein. 1.42; Dem. 18.102-109; *APF*, xxix; Ruschenbusch 1978, *passim*.

<sup>942</sup> Todd 1996, 113.

<sup>943</sup> Rubinstein 2000, 65.

§§141–150.

The conclusion, beginning with the penultimate *μὲν οὖν*, is divided into a summary of the arguments and charges (§§141–148), and an emotional appeal (§§149–150), signalled by the final *μὲν οὖν*, for the defendant’s conviction and execution.<sup>944</sup>

§§141–145. Ἐχρήν μὲν οὖν ὧ ἄνδρες ... σύνοικος ὑμῶν γεγένηται: The practice of defendants bringing their families into court to incite pity was widespread.<sup>945</sup> Here, however, it is turned on its head, with the argument that on this occasion it is the jurors’ wives and children who should be in court as a reminder of the larger issues beyond the *dikastērion*. This allows Lykourgos not only to lay the ground for his reiteration of the principal themes of his prosecution, but also to locate the jurors’ wives and families specifically and properly within their homes, providing a counterpoint to the defendant who deserted his own. There is also a strong hint that the jurors will be required to account for their verdict when they return home to these wives and families: this was probably not an unfamiliar tactic and was made explicit at least on one occasion by Demosthenes.<sup>946</sup> There follows a summary of the main points of the speech. Leokrates the fugitive is presented in stark contrast to those who stayed in the city, and to those who faced danger and remained in their posts, fighting to save their country.<sup>947</sup> Brazen and unrepentant, he returns against the backdrop of Athenian cults and sacrifices, the agora, and the laws and constitution, and the dead of Khaironeia themselves.<sup>948</sup>

With heavy sarcasm, Lykourgos raises the rhetorical temperature by posing a typical short series of questions to which he provides his own answers, *hypophora*, to demonstrate that there is no approach open to the defendant that

<sup>944</sup> *μὲν οὖν* structure: introduction, 37, above.

<sup>945</sup> See e.g. Ar. *Vesp.* 568–574, 975–983; Dem. 21.99, 186ff.; Lys. 20.34f.; Pl. *Ap.* 34b6–c5.

<sup>946</sup> Dem. 59.110f.

<sup>947</sup> §§5–6, 16, 17–18, 19, 36–39, 40–41, 43–45, 46–51, above.

<sup>948</sup> §§5–6, 7, 8, 9, 25, 52–54, 59–64, 65, 66–67, 135–137, above.

can secure his acquittal.<sup>949</sup> The generational division of the jury reappears to stress that both older and younger members have no reason whatsoever to pity the defendant.<sup>950</sup> The older jurors' concerns of being cared for in their old age and burial in a free land were surrendered by the defendant as readily as the city itself. The younger jurors would effectively be stabbing in the back their fallen comrades at Khaironeia if they were to acquit the man who betrayed their graves. They would, moreover, be denouncing them as mad for defending their country if Leokrates were to be acquitted as sane for abandoning it. Acquittal would set too dangerous a precedent.<sup>951</sup> The defendant has, in any case, already condemned himself once to banishment by deserting the city and living in Megara with a sponsor for five or six years.<sup>952</sup>

§§146–148. Βούλομαι δ' ἔτι βραχέα ... παρὰ τῶν θεῶν τιμωρία: It is not possible to identify the decree that Lykourgos has read out. He claims that it was passed by the *dēmos*, and that it concerned piety, though he does not name its sponsor. He has not done so consistently with the previous decrees that he introduced, however, naming Hypereides, Kritias, and Demophantos, but referring to decrees of the *dēmos* in other instances.<sup>953</sup> This probably indicates that the proposer of the piety decree was unknown, at least to Lykourgos.<sup>954</sup> One decree against impiety was attributed to Diopeithes; it was passed, according to Plutarch, shortly before the Peloponnesian War, and Ostwald suggests that this was the first time such legislation had existed.<sup>955</sup> Indeed, whatever rules existed in this respect, they were

<sup>949</sup> See too, e.g.: Aiskhin. 3.230f.; And. 1.148f.; Dem. 35 47ff., 36.53f.; Hyp. 2 (*Phil.*) 10; Lys. 10, 22f., 30.26f.

<sup>950</sup> §§36–39, 40–41, above.

<sup>951</sup> §7, above.

<sup>952</sup> §§21–23(i), 33–34, 43–45, 55–58, above. Lykourgos also used *μηλόβοτον* in his prosecution of Autolykos. The word is rare in the orators, appearing once each in Isok. 12.31, Dem. frg. 64, and Aiskhin. *Ep.* 11.13; see too Suda, s.v. *Μηλόβοτος χώρα*.

<sup>953</sup> Hypereides: §§36–39; Kritias: §§112–115; Demophantos: §§124–127; *Dēmos*: §§52–54, 117–119, 120–121, 122, above.

<sup>954</sup> It is unlikely that it formed part of his own package of reforms, for he would surely have said so. There is also no trace in Schwenk's 1985 collection of the dated laws and decrees of 'the Lykourgan era' of anything that could be reconstructed as a Lykourgan decree concerning piety.

<sup>955</sup> Plut. *Per.* 32.1f.; Ostwald 1986, 528–535. See too MacDowell 1978, 200; Parker 1996, 208.

clearly in respect of *impiety*, rather than piety as such.<sup>956</sup> Lykourgos' use of *μηνύω* might therefore be significant, for he is perhaps quoting or paraphrasing part of the decree itself.<sup>957</sup> Thus he has informed against an impious individual, and it is now for the jurors to take vengeance on their own, and the gods', behalf.

In accordance, perhaps, with the terms of the so-called decree of piety, Lykourgos emphasizes that those who fail to punish the guilty inherit the burden of their crimes. There follows an explicit warning that despite the secrecy of the ballot, the gods will see how the jurors vote.<sup>958</sup> He reiterates all the elements of his *eisangelia*: Leokrates is guilty of treason, overthrowing the democracy, impiety, injuring his ancestors, and desertion of his post and failure to serve.<sup>959</sup> These are all encompassed by the one *eisangelia* and the one vote on whether Leokrates is guilty or not.<sup>960</sup> With a final flourish, Lykourgos asks whether anyone could be stupid enough to acquit Leokrates. The rhetoric is vivid and effective: saving the defendant will result in everyone's safety being delivered up to would-be deserters; pitying him is an active choice to be killed pitilessly by enemies; and providing any *charis* to the traitor of his country, and perhaps inferentially his supporters too, will lead to a scrutiny by the gods which can have only one result — condemnation.<sup>961</sup>

<sup>956</sup> See Harrison 1968–1971, ii. 62f.; MacDowell 1978, 197–200; Todd 1993, 106, 307–315.

<sup>957</sup> If so, he does not provide enough detail to allow a reconstruction, nor to search for similar expressions in the other orators. *Mēnysis*: Lipsius, i. 208–211; MacDowell 1978, 181ff., citing especially Lys. 13. See too Lykourgos' use of *μηνύειν* in §4, above.

<sup>958</sup> See too §§90–92, 93, 94–97, above.

<sup>959</sup> Treason: §§5–6, 8, 26–27, 31–35, 36–39, 55–58, 59–64, 112–115, 123, 133–134; overthrowing the democracy: 79, 124–127, 128–132, 133–134; impiety: 8, 25, 31–35, 36–39, 55–58, 59–64, 77–78, 90–92, 94–97; injury of ancestors: 9, 25, 55–58, 94–97, 135–137; *lipotaxia* and *astrateia*: 17–18, 36–39, 43–45, 55–58, 59–64, 128–132.

<sup>960</sup> It is in this context that Lykourgos' reference to a single vote should be taken, rather than as implying an *agōn atimētos*: see introduction, 33f., above; §§149–150, below.

<sup>961</sup> See too §§135–137, 138–140, above.

§§149–150. Ἐγὼ μὲν οὖν καὶ τῇ πατρίδι ... τῶν νόμων καὶ τοῦ δήμου σωτηρίας:  
 With a final μὲν οὖν, Lykourgos begins an emotive appeal intended to keep his prosecution in the forefront of the jurors' minds during the defence speech to come and when they are on the point of giving their verdict. His remarks about the voting itself seem odd, though, for his description of the procedure appears anachronistic. He claims that there are two urns. The first represents treason, and therefore the condemnation of the defendant: as such, it signifies safety and prosperity for Athens. The other represents delivery, and therefore the acquittal of the defendant: this signifies the destruction of Athens. The problem arises because the voting system had changed at some point during the fifth and fourth centuries. In the former system, a single pebble was put in one of two urns, one for a guilty verdict, the other for not guilty; the contents of both urns were counted to determine the verdict. In the latter procedure, there were two urns, one of bronze and another of wood, and two bronze ballots; the ballot for acquittal had a solid axle and the other, for condemnation, was hollow. The ballot representing a juror's chosen verdict was placed in the bronze urn and the other was discarded in the wooden urn. Only the contents of the bronze urn were counted. Jurors were then allocated a token with which to collect payment. It is the former system to which Lykourgos appears to be referring when he emphasizes the votes contained within the two urns.<sup>962</sup>

Worthington has reconsidered the possibility, however, that this apparent inconsistency might easily be explained by interpreting Lykourgos' statement as a rhetorical nicety rather than a procedural problem.<sup>963</sup> Thus Lykourgos is 'asking the jurors not to discard the ballot for condemnation but to make that the one which counted in the present case, and so to deposit it in the "active" urn. In that way, with more condemnation ballots in that urn, Leocrates would be found guilty'. Worthington's argument is extremely persuasive, not least because of the overt and overwhelming rhetorical thrust of this final section. Lykourgos has,

<sup>962</sup> See Ar. *Vesp.* 986–996; [Arist.] *Ath.* 68.2–69.2, with Rhodes 1993; Lipsius, iii. 926f. n.98; Boegehold 1963, *passim*; Harrison 1968–1971, ii. 164ff., esp. 165 n.2; Boegehold 1985, *passim*; Todd 1993, 132f.

<sup>963</sup> Worthington 2001, 303f., citing Lipsius, Boegehold 1985, and Harrison (previous note), and H. Sauppe, *De Atheniensium ratione suffragia in iudiciis ferendi* (Göttingen 1883).

moreover, switched his emphasis from the *καδίσκειν* to the *ψήφους* which they contain: his principal focus changes and is no longer the urns, but the ballots themselves. Lykourgos is therefore setting up a contrast rather than reflecting actual practice. The urns represent the defendant's treason or his salvation. The ballots, conversely, represent the destruction of the city or its safety and prosperity. It is a simple choice: save or destroy.<sup>964</sup>

Lykourgos concludes by conjuring up personifications of the country, trees, harbours, dockyards and walls, temples and sanctuaries. For Usher, this is closely modelled on the closing *prosōpopoiia* of Lysias' prosecution of Eratosthenes.<sup>965</sup> There are similarities, it is true, but Lykourgos is clearly bringing together *topoi* that have been stressed through the speech. He began by offering a justification of his entire prosecution on behalf of the temples, shrines and precincts that Leokrates had betrayed, moving on to the harbours and walls that the defendant had not pitied, the land and the temples which had given up their trees and arms, and the dockyards which had been personally betrayed.<sup>966</sup> There is, too, more than a passing resemblance to the ephebic oath which Lykourgos placed at the heart of his speech.<sup>967</sup> Thus he urges the jurors to remember these personified appeals, to dismiss what is likely to be a pitiful and tearful defence spectacle, and to be necessarily hard-hearted when they vote. The sole reference to the outcome of this case, Aiskhines 3.252, probably refers to a second vote on the penalty, rather than on the verdict itself.<sup>968</sup> If so, Lykourgos' plea seems to have been successful.

<sup>964</sup> This should not be taken to refer to a single vote covering verdict and penalty, but a rhetorical contrast similar to that in §§146–148, above; see too introduction, 33f., above.

<sup>965</sup> Usher 1999, 328, citing Lys. 12.99.

<sup>966</sup> See §§2, 17–18, 36–39, 43–45, 59–64, 141–145, above.

<sup>967</sup> §§77–78, above.

<sup>968</sup> See introduction, 31ff., above; Sullivan 2002, *passim*.



## APPENDIX

### DEMOSTHENES' AREOPAGOS LEGISLATION – YET AGAIN.

In 330 B.C., Lykourgos prosecuted a certain Leokrates for treason. His charges were based partly on Leokrates' flight from Athens in the wake of Athens' defeat at the battle of Khaironeia in 338 B.C. The defendant's behaviour violated a decree passed by the demos at that time which categorized flight as *prodosia*, though the *eisangelia* is defined more generally, and not specifically based on that decree, for the demos' decree is the third of three precedents which Lykourgos uses in §§52–54, and which he argues should be judicially binding upon the jurors. The first precedent singles out the Areopagos Council for the exemplary provisions of its judgement. Its use, however, requires the orator to interpose a request not to be interrupted.

Σκέψασθε δ', ὦ ἄνδρες, ὅτι οὐδ' ἐν ὑμῖν ἐστὶν ἀποψηφίσασθαι Λεωκράτους τουτονί, τὰ δίκαια ποιούσι. τὸ γὰρ ἀδίκημα τοῦτο κεκριμένον ἐστὶ καὶ κατεγνωσμένον. ἢ μὲν γὰρ ἐν Ἀρείῳ πάγῳ βουλή—καὶ μηδεὶς μοι θορυβήσῃ· ταύτην γὰρ ὑπολαμβάνω μεγίστην τότε γενέσθαι τῇ πόλει σωτηρίαν—τοὺς φυγόντας τὴν πατρίδα καὶ ἐγκαταλιπόντας τότε τοῖς πολεμίοις λαβοῦσα ἀπέκτεινε.

Consider, gentlemen, that it is not actually open to you to acquit this Leokrates if you act justly, for his offence has already been judged and condemned. For the Areopagos Council—and you need not shout me down, because I contend that it was the greatest security the city had at that time—arrested and executed those who fled the country and abandoned it to the enemy.

Lykourgos has, none the less, already mentioned the Areopagos with no such plea for forbearance.<sup>1</sup> His request here, therefore, seems specifically to relate to the Areopagos' judgements and actions in the immediate aftermath of Athens' defeat at Khaironeia. It is not possible to identify the individuals whom the Areopagos executed in 338 B.C., but in respect of at least one individual who attempted to flee to Samos, the Council's punishments were evidently carried out with reference neither to the *Ekklēsia* nor to the *Dikastēria*.<sup>2</sup>

This exercise of power was clearly deemed deeply undemocratic and it raises questions concerning the measures which formed the basis of the powers to which the Areopagos apparently considered itself entitled. It seems clear from Deinarkhos 1.50 that at some point in the 350s or early 340s, the *Ekklēsia* passed a decree, proposed by Demosthenes, conferring the powers of *apophasis* on the Areopagos Council.<sup>3</sup> Under the terms of this decree, the Areopagos acted as a commission of enquiry for the *Ekklēsia* and *Dikastēria*, though it was also empowered to act on its own initiative: the two procedures have been respectively labelled as *apophasis kata prostaxin* and *apophasis aute proelomenē*, and it is generally accepted that the Areopagos was not permitted, in either case, to inflict punishment, but was to compile a report.<sup>4</sup>

Deinarkhos is, however, also commonly interpreted as implying in 1.62 that Demosthenes was further responsible for a separate decree empowering the Areopagos to enforce the laws and punish lawbreakers, a measure that we may perhaps call *criminal-behaviour* legislation. This is indeed the impression gained at first sight, but the situation which Deinarkhos is describing may not allow such a straightforward interpretation, not least because the examples which he proceeds to give all appear to be cases of *apophasis*.<sup>5</sup>

This *criminal-behaviour* legislation of Demosthenes has been notoriously difficult to date. Prevailing recent opinion has placed it in the immediate aftermath of Khaironeia, but Wallace has comprehensively demolished this dating, not least by taking account of the outrage expressed by the jurors in the above passage of Lykourgos' prosecution: why, Wallace asks, would the *dikasts* be so outraged even eight years later by the Areopagos' exercise of powers which had only just been expressly granted to it?<sup>6</sup> Wallace therefore places the measure 'earlier, under different circumstances, and for different purposes': it was the result of an unknown but *sudden crisis* where criminal behaviour was the concern, not treachery, hence the outrage when the powers which the measures bestowed were abused and used to punish traitors.<sup>7</sup> This seems illogical, however, for the use of powers originally intended to permit the punishment of criminals would hardly occasion outrage when used against traitors in a civic emergency.

None the less, the Areopagos patently did overstep the mark in a way which led the Athenians to assess its actions as an abuse of power. Wallace had, however, perhaps already resolved the confusion with his earlier suggestion that Demosthenes' *apophasis* legislation and *criminal-behaviour* decree may be identified as one and the same measure, an explanation which benefits from needing neither *an unknown sudden crisis* nor any particular date. It is, therefore, worth briefly revisiting this suggestion and considering the arguments which make it remain highly attractive.<sup>8</sup>

First, although Deinarkhos states that the Areopagos was empowered by Demosthenes to punish lawbreakers, he is at pains to emphasise the power of the Council and Demosthenes' own part in its empowerment: this is especially so since he is prosecuting Demosthenes in particular, and he may thus be exaggerating the scope of the Areopagos' jurisdiction.<sup>9</sup> Secondly, if a date earlier than 338 B.C. is posited for the *criminal-behaviour* legislation then, as Wallace acknowledges, it is datable to about the time of the *apophasis* measures and the *Ekklēsia* was unaccountably responsible for two pieces of legislation for effectively the same purpose and at almost the same time; one measure is far more plausible.<sup>10</sup>

Moreover, a requirement for the Areopagos to refer to the courts any *apophaseis* warranting a penalty above a certain amount is strongly implied, if not demonstrated, by its attempt secretly to fine Theogenes, the *Basileus*, for failing to divorce his wife as required by law; the Council's covert action 'at least suggests that the Areopagites were acting in a way that exceeded their legitimate authority when they imposed that fine'.<sup>11</sup> This is, as Wallace notes, consistent with Demosthenes' claim that the Areopagos did not have final authority to punish as it saw fit; the complexities of variously dating the *criminal-behaviour* legislation, Demosthenes *against Neaira*, and Theogenes case at least strongly suggest that the *Basileus*' case took place shortly after the Areopagos was so empowered.<sup>12</sup> Wallace's argument is further supported, perhaps, by the procedural parallel of the *Boulē*'s power to impose penalties of up to 500 dr. in *eisangeliai* which fell within its jurisdiction, but its requirement to refer to the courts any cases deemed to warrant a heavier penalty.<sup>13</sup>

Wallace now suggests, however, on the basis of the foregoing arguments, that since Demosthenes' *criminal-behaviour* legislation must belong to a period in the 350s or

early 340s, and since this brings it into conflict with the putative dating for the *apophasis* legislation, and since it is also difficult to reconcile ‘the power to punish any Athenian’ to ‘the power to investigate and report’, there was no general *apophasis* legislation at all; he argues that ‘*apophasis* was not instituted by either law or decree’ but that each incident of investigation was separately decreed as deemed appropriate by the demos.<sup>14</sup> He concludes that the Areopagos, in cases of *apophasis*, was acting on the basis of its traditional rights, hence its powers of instigating investigations on its own authority—as it did in the case of Theogenes—and that its executions in 338 B.C. were actions in excess of the powers bestowed by Demosthenes’ specific *criminal-behaviour* legislation.

There is clearly an advantage in denying the existence of one of the two legislative items, but Wallace might have chosen to reject the wrong measure. Thus it is significant that Lykourgos fails to mention any particular decree at the root of the Areopagos’ executions in §52, despite explicitly citing the *dēmos*’ decree in §53 and despite a legal basis, however restricted, to the Councillors’ actions. Indeed, the second precedent he introduces is the case of Autolykos, an Areopagite who had secreted his wife and children out of Attica in the days of crisis in 338 B.C., and whom Lykourgos himself prosecuted, presumably for *prodosia* under the terms of the *Nomos Eisangeltikos*. The Areopagos was perhaps, at least on this occasion, not prepared to prosecute one of its own; perhaps, however, public reaction to its spontaneous executions was such that further actions against alleged traitors were impossible. It is also possible that the Council was strictly interpreting the terms of the demos’ decree categorizing flight as *prodosia*, and was unwilling to act against an individual who had not personally fled Athens.<sup>15</sup> Lykourgos does, indeed, insist upon the Areopagos’ legal rectitude, and his reference to Autolykos conveniently paves the way for the third precedent of the *dēmos*’ decree itself. The jurors were clearly assumed to be prepared to interpret the laws more widely than the Areopagos, something that in his present prosecution Lykourgos is relying upon.

Lykourgos’ precedents are patently more comprehensible if the Areopagos was acting on the basis of specific legislation when it conducted its executions, even if it had exceeded its powers by far. Such an excess was clearly a matter of interpretation, however, for Lykourgos presents the needs of the moment as justification for the

executions, despite recognizing that the jurors and surrounding audience will probably not share this view. This, indeed, probably accounts for his silence over the actual legal measures that were evidently widely interpreted as seriously abused. There is, however, no need for the elaborate scenario Wallace posits of a ‘possibly isolated emergency sometime in the years 346–340, apparently unrelated to the struggle with Macedon, and for which Athens’ cumbersome procedure of *nomothesia* was judged too slow’; there is also no need to imagine such an emergency being concealed by the ‘absence of any record of daily events inside Athens, especially events unrelated to foreign policy’.<sup>16</sup>

The troublesome *criminal-behaviour* decree may instead simply be a mirage concealing a process whereby the Areopagos, specifically under the terms of Demosthenes’ *apophasis* legislation, was permitted to punish lawbreakers to a certain limit, but was required, similarly to the *Boulē*, to compile a report for the *Ekklēsia* about any cases deemed to merit a heavier penalty than it was permitted to impose; the *Ekklēsia* would then refer the case to the courts for due process. It is more plausible to deny the existence of this *criminal-behaviour* decree, lacking as it does both date and context, than the reality of the *apophasis* legislation.<sup>17</sup> Thus the Areopagos’ investigation of Theogenes, conducted under the *apophasis* measures, implies that even shortly after the legislation was passed, the Council felt that the powers it bestowed were too limited.<sup>18</sup> It would therefore have been the Council’s recourse to execution in 338 B.C., a punishment well beyond its jurisdiction, which occasioned such outrage both at the time and even at its mention in 330 B.C. at Leokrates’ trial.

The Areopagos’ abuse of its powers may well have motivated the decree passed by the *dēmos* in 338 B.C. which defined flight as *prodosia*.<sup>19</sup> Hansen has claimed that this decree of the *dēmos* empowered the Areopagos to pass sentence on all Athenians who fled the country in the immediate aftermath of Khaironeia.<sup>20</sup> He is, however, conflating it with Demosthenes’ *apophasis* legislation; the separate nature of the two legislative items being demonstrated not least by Lykourgos’ listing of them as individual precedents for the jury to follow; Demosthenes’ *apophasis* decree did not in any case confer any such powers onto the Council. The *dēmos*’ decree, however, although having no apparent effect on the Areopagos’ existing powers, seems to have

been intended in the immediate aftermath of Khaironeia and perhaps, of the Council's executions, to bring *hoi pheugontes* within the terms of the Nomos Eisangeltikos and, as a result, to facilitate the execution of those deemed to be cowards in and after the crisis: to reappropriate for the *Dikastēria*, therefore, powers equal to those which the Areopagos had just usurped.<sup>21</sup>

The *dēmos*' decree was quickly followed by Eukrates' law in 337/6 B.C., a measure which was itself closely modelled on Demophantos' anti-tyranny decree of 410/9 B.C., with one particular difference: Eukrates' proposals expressly prohibited Areopagites from holding office or sitting in council in the event of the democracy being overthrown.<sup>22</sup> Lykourgos clearly had good reason to request an uninterrupted hearing, and to plead for the jurors to refrain from shouting him down when he referred in positive terms to actions by the Areopagos which abused the powers granted to it by Demosthenes' *apophasis* legislation, and which seem to have resulted in two consecutive pieces of legislation to redress the juridical balance in favour of the *Dikastēria*. Lykourgos' argument that the Areopagos had been the city's greatest security at the time of Khaironeia was patently still contentious, and the passage of eight years seems to have made little difference to the *dēmos*' fury at the way in which the Council had exceeded its authority. Such sustained anger was perhaps also directed at those who had abandoned Athens in 338 B.C., and may have resulted in Lykourgos' success in this prosecution despite his unpopular view of the value of the Areopagos' behaviour.<sup>23</sup>

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**14.02.02**

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<sup>1</sup> Lyk 1.12.

<sup>2</sup> Aiskhin. 3.252.

<sup>3</sup> See too R. W. Wallace, "Investigations and Reports" by the Areopagos Council and Demosthenes' Areopagos Decree' in P. Flensted-Jensen, T. H. Nielsen & L. Rubinstein, *Polis & Politics* (Copenhagen 2000), 586.

<sup>4</sup> Dein. 1.50 with I. Worthington, *A Historical Commentary on Dinarchus* (Michigan, 1992); see too E.M. Carawan, 'Apophasis and Eisangelia: The Role of the Areopagos in Athenian Political Trials', *GRBS* 26 (1985), 115–140; R. Sealey, *The Athenian Republic: Democracy or rule of law?* (Pennsylvania, 1987), 56f., 137; R. W. Wallace, *The Areopagos Council to 307 B.C.* (Baltimore, 1989), 113–119, 126f., 179f., 195ff.; M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes* (London, 1991), 292ff.; P. C. Millett, 'Mogens Hansen and the Labelling of Athenian Democracy' in Flensted-Jensen, Nielsen & L. Rubinstein, 341; Wallace 2000, 581–595.

- <sup>5</sup> See too Dein. 1.6; M. H. Hansen, *Eisangelia* (Odense, 1975), 18; D. M. MacDowell, *The Law in Classical Athens* (Ithaca, 1978), 191; O. de Bruyn, 'La compétence de l'Aréopage en matière de procès publics', *Historia Einzelschriften* 90 (1995), 117ff.; Millett 2000, 339, 341 & n7; Wallace 2000.
- <sup>6</sup> Wallace 2000, 583, 590; see too R. Sealey, 'On Penalizing Areopagites', *AJP* 79 (1958), 74; C. Mossé, *La Fin de la Démocratie Athenienne. Aspects sociaux et politiques du déclin de la cité grecque au IV<sup>e</sup> siècle aJC* (Paris, 1962), 280ff.; J. Ober, *Mass and Elite in Democratic Athens. Rhetoric, Ideology, and the Power of the People* (Princeton, 1989), 101ff.; Wallace 1989, 113–119; Worthington 1992, 357–362; R. Sealey, *Demosthenes and his time: a study in defeat* (Oxford, 1993), 186f.; cf. MacDowell 1978, 191; M.H. Hansen, 'Did the Athenian Ecclesia Legislate After 403/2?', *GRBS* 20 (1979), 38= M. H. Hansen, *The Athenian Ecclesia* (Copenhagen 1983), 190; Carawan 1985, 129f., 135f.; Hansen 1991, 291f.; P. J. Rhodes, 'Judicial Procedures in Fourth-Century Athens: Improvement or Simply Change?' in W. Eder, *Die athenische Demokratie im 4. Jahrhundert v. Chr.* (Stuttgart, 1995), 313; Millett 2000, 338f., 341 with n 7.
- <sup>7</sup> Wallace 2000, 583, 585, 588, 590.
- <sup>8</sup> Wallace 1989, 118f., 179ff.; see too Millett 2000, 359 n7.; cf. Wallace 2000, 584, 587ff.
- <sup>9</sup> Dein. 1.6, 62f., with Worthington 1992; cf. Dem. 59.80. See too Wallace 1989, 118f., 179ff.; Bruyn 1995, 118 n33, 119 n35; Rhodes 1995, 313; Wallace 2000, 584–589, citing Dein. 1.56f., & Dem. 18.132ff.
- <sup>10</sup> Wallace 1989, 118f., 179ff.
- <sup>11</sup> Allen 2000a, 45 citing Dem. 59.80ff.; see too Wallace 2000, 586f.; cf. Hansen 1983, 190, with n. 24.
- <sup>12</sup> Wallace 2000, 583, 586.
- <sup>13</sup> [Arist.] *Ath.* 45.2 with P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1993); Dem. 24.63, 47.32ff., 41ff., 59.80ff.; IG I<sup>3</sup>105.32; P.J. Rhodes, *The Athenian Boule* (Oxford, 1972), 156, 164; Hansen 1975, 22–28; M.H. Hansen, 'Eisangelia at Athens - a reply', *JHS* 100 (1980), 91; Hansen 1991, 222, 258; Wallace 2000, 583, 586.
- <sup>14</sup> Wallace 2000, 587, also citing Dein. 1.4.
- <sup>15</sup> Carawan 1985, 132, suggests that the procedure under which Autolykos was tried was an apophysis: Lykourgos could therefore have been appointed as prosecutor. Yet this is implausible, for as Hansen 1975, 40, 104, argues, none of the sources mention the Areopagos in this context, and since they were so prominent in the procedure, it is extremely unlikely that they would be invisible in this instance.
- <sup>16</sup> Wallace 2000, 588f.
- <sup>17</sup> See n 14, above.
- <sup>18</sup> Wallace 2000, 586; nn 11, 12, above.
- <sup>19</sup> Lyk 1. 53.
- <sup>20</sup> Hansen 1975, 108.
- <sup>21</sup> See too Aiskh. 3.252; Dein. 1.62f.; Poll. 8.52; Carawan 1985, *passim*; Ober 1989, 101f.; Wallace 1989, 115–119, 176–184; Hansen 1991, 291; Rhodes 1995, 314f.; Millett 2000, 341.
- <sup>22</sup> And. 1.96ff.; SEG 12 87; B. D. Meritt, 'Greek Inscriptions', *Hesp.* 21 (1952), 355–359=#5; M. Ostwald, 'The Athenian Legislation against Tyranny and Subversion', *TAPA* 86 (1955); Sealey 1958; A. E. Raubitschek, 'Demokratia', *Acta of the Fourth International Congress for Greek and Latin Epigraphy* (Wien 1964), 332–337; C. Mossé, 'à propos de la loi d'Eucratès sur la tyrannie (337/6 av. J.-C.)', *Eirene* 8 (1970), 71–78; C. J. Schwenk, *Athens in the Age of Alexander: The dated laws and decrees of 'the Lykourgan era' 338–322 B.C.* (Chicago, 1985), 33–41=#6; Wallace 1989, 179ff.; Millett 2000, 338, 341; Wallace 2000, 583.
- <sup>23</sup> See J. Sullivan, "'Second' Thoughts on Aiskhines 3.252', *G&R* 49 (2002), 1–7.

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