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*ATHENIAN IMPIETY TRIALS: A REAPPRAISAL* \*

*Abstract*

This paper aims to critically analyse the testimonies concerning Athenian impiety trials of the classical period. First, it reaffirms the arguments that some of them must have been an invention of Hellenistic and later authors. Second, it presents a likely political background behind the historical cases. Third, it discusses a number of legal issues, along with new arguments concerning the procedures employed. Finally, it examines some less well-known material from the fourth century BCE. Overall, it seeks to provide a possibly coherent and comprehensive framework of Athenian impiety trials based on their shared characteristics.

L'articolo intende condurre un'analisi critica delle testimonianze riguardanti i processi per empietà nell'Atene del periodo classico. Prima di tutto riafferma che alcuni di essi devono essere considerati invenzioni di autori ellenistici o anche più tardi. In secondo luogo mira a ricostruire il probabile retroscena politico dei casi che si possono considerare storicamente dati. In terzo luogo approfondisce un certo numero di problemi giuridici, presentando in particolare nuovi argomenti relativi alle procedure impiegate. Infine vengono esaminate alcune fonti meno note risalenti al IV sec. a.C. In generale si sforza di ricostruire un quadro il più possibile coerente ed esaustivo dei processi per empietà ateniesi, mettendone in luce le caratteristiche comuni.

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Some excuse might be necessary for attempting to deal again with Athenian impiety trials. It remains striking that although scholars have long been interested in this subject<sup>1</sup>, there has been no comprehensive study on it since Derenne (1930), who chose to focus on the ‘trials of philosophers’ and the reaction to ‘impious doctrines’. Derenne, along with numerous later studies<sup>2</sup>, does not seem to critically evaluate the surviving sources or later authors’ suspicious ‘knowledge’ of classical Athens. Most works which, to various degrees, adopt a more critical approach have in turn focused either on selected trials or issues, or were composed as broader and thought-provoking but limited studies<sup>3</sup>.

The most influential work to date on the historicity of these trials has been done by Dover (1988c [1976]) and Wallace (1994, 1996a) who—having dealt with eight selected cases—argued that numerous late testimonies should probably be considered false based on their incongruities and prejudices of their authors. Similar problems have been touched upon by the studies of Lefkowitz (1981, rev. 2012; 1987) and Stone (1988). In respect to legal questions, Lipsius (1905-15) and MacDowell (1978) have proved to be particularly helpful for general issues (although accepting the sources as authentic as a rule), with numerous studies adding more detail on the specifics, while Cohen (1989, 1991: 203-17) and Parker (2005) have focused on the legal definition of impiety. Bauman (1990), Smarczyk (1990), O’Sullivan (1997), and Rubel (2000) have all presented insightful analyses of the political significance of various notorious trials. However indebted this study remains to all previous scholarship, it attempts to venture into more detailed and more comprehensive questions about all Athenian impiety trials known to us today (with a good part of it placed in the footnotes due to compositional challenges). It provides a commentary to individual cases, yet hopes to grasp a broader picture based on their shared characteristics.

In order to present such a detailed reading of the issues which emerge from studying Athenian impiety trials, this paper attempts to focus on several themes. First, it examines the historicity of the alleged trials for impiety in fifth- and fourth-century Athens, highlighting the anecdotal nature of the vast majority of the surviving testimonies and the reasons for their appearance in the later sources. It thus seeks to understand the modes in which ἀσέβεια is spoken of in the classical period, as opposed to later eras. Second, it aims to reveal the political aspects and motives which—I argue—lay behind the great majority of the cases discussed. Third, it proposes an updated reading of the legal

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1. See bibliography listed in Winiarczyk 1994.

2. See Baslez 2007 for one of recent examples.

3. Among them, various contributions of merit referred to later in this paper. I believe that brief studies by Marasco (1976) and Longo (2011), meant as general treatment of this matter, are far from providing more insight into the subject, however useful in attempts to summarise it.

issues connected with trials for impiety, looking for what distinguishes this kind of accusation from other offences in Athenian law and what it has with them in common, including the question of the legal measures employed in the extant cases. In order to shed more light on ancient testimonies, the structure of this study aims to present all important sources and discuss problems which they pose respectively.

How was the lack of reverence a crime?

As we are to ask questions about the trials for ἀσέβεια ('impiety'), it would be useful to learn what ἀσέβεια meant to the Greeks. Unfortunately, we lack a precise definition of the term, all the more its possible legal scope (see further below). Quite likely it was assumed that every citizen would understand what counted as ἀσέβεια, or rather that he should decide on it on the basis of every single case. On the other hand, we could wonder whether the law on impiety—had it been preserved—would have told us much about its meaning. A common opposition was made between ἀσέβεια and εὐσέβεια, a broad term which comprised showing reverence in accordance with tradition towards the gods, one's parents, the dead, or even the fatherland<sup>4</sup>, although we should be safe in assuming that the legal scope of the term in the cases of a formal charge was narrower<sup>5</sup>. There also existed another term, ὀσιότης, to denote proper religious conduct<sup>6</sup>. At some point, ἀσέβεια (impiety) began to signify something different from ἄθεότης (atheism), although the distinction was not yet clear in classical Greece<sup>7</sup>.

4. See [Arist.] *Vir.* 1251a30-33 (ἀσέβεια μὲν ἢ περὶ θεοῦς πλημμέλεια καὶ περὶ δαίμονας ἢ καὶ περὶ τοὺς κατοικομένους, καὶ περὶ γονεῖς καὶ περὶ πατρίδα); Thgn. 1179-80; Antiph. *Tetr.* Γ. α.2; Lys. 30.17-21; Xen. *Mem.* 1.1.16, 1.1.20 (Θαυμάζω οὖν ὅπως ποτὲ ἐπέισθησαν Ἀθηναῖοι Σωκράτην περὶ θεοῦς μὴ σωφρονεῖν, τὸν ἀσεβῆς μὲν οὐδὲν ποτε περὶ τοῦ θεοῦ οὐτ' εἰπόντα οὔτε πράξαντα, τοιαῦτα δὲ καὶ λέγοντα καὶ πράττοντα περὶ θεῶν οἷά τις ἂν καὶ λέγων καὶ πράττων εἴη τε καὶ νομίζοιτο εὐσεβέστατος); Xen. *Cyn.* 13.16-17; Pl. *Symp.* 188c (ἀσέβεια φιλεῖ γίγνεσθαι [...] καὶ περὶ γονέας καὶ ζῶντας καὶ τετελευτηκότας καὶ περὶ θεοῦς), *Euthphr.* 5c, 12e, *Crat.* 394e, *Resp.* X, 615c, *Leg.* IV, 716d-718a, X, 907d-e; Lycurg. *Leocr.* 93-94, 129 (περὶ τοὺς θεοῦς ἀσεβοῦσι), *passim*; IG II<sup>2</sup> 204.51-54 (= RO 58.51-54); Polyb. 36.9.15 (ἀσέβημα μὲν γὰρ εἶναι τὸ περὶ τοὺς θεοῦς καὶ τοὺς γονεῖς καὶ τοὺς τεθνεῶτας ἀμαρτάνειν); as one can note, the gods were often emphasised as the non-obvious object of ἀσεβεῖν. Protecting family tombs and shrines was portrayed as a pivotal aspect of citizenship and duties that came with it, see e.g. Aeschin. 2.23, Lycurg. *Leocr.* 25, 38, 76, 150 *et al.*; cf. Mikalson 1983: 91-105. On εὐσέβεια, see in particular Pl. *Euthphr.* *passim*, Xen. *Mem.* 4.6.2ff.

5. See Cohen 1989, 1991a: 203-17; cf. Parker 2005a.

6. See Dover 1974: 250-54 on the scope of both; cf. Bruit Zaidman 2001: 157-61.

7. Apart from a single testimony (Pl. *Ap.* 26c), in the classical period the meaning of both terms seems to have been comparable; in the extant literature the epithet ἄθεος most often has the meaning of 'god-forsaken', 'god-less' (in the sense of 'deprived of god'), or simply 'impious', see Bacchyl. *Epin.* 11.109, Pind. *Pyth.* 4.162, Aesch. *Pers.* 808, *Eum.* 151, 541, *Soph. El.* 124, 1181, *OT* 254, 661, 1360, *Trach.* 1036, Eur. *Hcll.* 107, *Or.* 925; cf. Pl. *Leg.* X, 908-10. Later, they became clearly distinguished (just as to-

We find words from the ἄσεβ- stem already in the fragments of Hipponax' poetry (fr. 85.4 West = 87.4 Degani) and in the *Theognidea* (1179-80), yet within the surviving sources they appear regularly only since the fifth century<sup>8</sup>. In a purely linguistic sense, there existed different objects of εὔσεβ- and ἄσεβ-, not necessarily the gods or their affairs, but rather everything that deserved to be paid respect<sup>9</sup>.

In the texts of the classical period the noun ἀσέβεια and verb ἀσεβεῖν usually signify the lack of reverence towards and profanation of the 'sacred matters'<sup>10</sup> (sacred places; monuments of the gods; religious festivals, functions, or rituals, etc.). The charge of impiety would thus simply be a charge of neglect of the sacred, including the violation of laws perceived as 'natural' and the breaking of an oath<sup>11</sup>. It could also refer to an improper ritual conduct, such as making sacrifices on the wrong day or in an untraditional manner, or the lack of acceptance of the cult officially recognised by the polis. It appears that religious duties of the citizen boiled down to the maintenance of cult objects, participation in religious activities (festivals, rites), duties of those in priestly service, and avoidance of anything that might be considered impious<sup>12</sup>. Impiety was sometimes juxtaposed with violation of the law, or simply 'lawlessness' (ἀνομία or παρανομία)<sup>13</sup>, so that the two concepts could both complement each other and relate to different levels of the order which was not to be transgressed. Nonetheless, the later distinction between the 'sacred' and the 'profane' was yet far from clear<sup>14</sup>. According to traditional beliefs, religious pollution (μίασμα) of one individual put the blame both on the family of the transgressor and on all citizens. Thus the wellbeing and survival of the entire community could depend on godly manners of its single member and the way such a grave issue was dealt with. It is, however, far from obvious whether this concept functioned as anything more than a rhetorical scarecrow in the classical period<sup>15</sup>.

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day, worshipping the gods in an inappropriate manner is commonly regarded as distinct from not acknowledging their existence), see Rubel 2000: 82-90; cf. Winiarczyk 1990, 1992b; Parker 2013a; LSJ, s.v. ἄθεος; see also n. 13 below.

8. All dates in this paper will be BCE, unless stated otherwise.

9. Cf. Foerster 1971 [1966].

10. Cf. LSJ, s.v. ἀσέβεια, ἀσεβέω; Burkert 2011: 408-11. See e.g. *Soph. Ant.* 920-28.

11. Cf. Dover 1974: 246-50.

12. Cf. Liddel 2007: 300.

13. See Isocr. 11.42, *Lys. fr.* 195-96 Carey; cf. *Xen. Mem.* 1.2.2; *Eur. Ba.* 263, 387, 476, 502, 997, 1015 et al.; *Polyb.* 18.54.10. Similarly, for the connection of ἄθεος and ἄδικος or ἄνομος, see for example their conventional use in Euripides: *Andr.* 491, *HF* 433, *Hel.* 1148, *Ba.* 995, 1015; cf. *Ar. Thesm.* 670-71, *Pl. Gorg.* 481a5, 523b2. See also Furley 1996: 109-16 on the use of the term ἀλιτήριος in religious context.

14. See Rudhardt 1958: 7, 21-22 et al., Connor 1988, Samons 2000: 325-29, Hansen 2006: 118-21, Mikalson 1983.

15. See e.g. Gagarin 1997: 218, opp. Garland 1996: 96-97.

### How to punish the impious

Athenian legal documents provide no precise basis for the charge of impiety, a fact which has been variously ascribed both to the nature of Greek law in general<sup>16</sup> and the peculiarity of this kind of accusation. Presumably, the prosecutors had a wide range of possible procedures to choose from, just as in the cases for the attempted overthrow of democracy (κατάλυσις τοῦ δήμου), for which the punishment was death. In fact, both charges were merged in the trials for the mutilation of the Hermae and the profanation of the Mysteries of 415, so that the courts would gain additional powers to prosecute (And. 1.36, Thuc. 6.27-28, 53; cf. Lys. 13.20). Bauman (1990: 64-65) compares it to the *crimen maiestatis* accusation in the Roman Empire and stresses that it was the only possible way to interrogate (through torture, βάσανος) dozens of slaves who were brought to courts as witnesses without the approval of their masters and without further ‘formalities’<sup>17</sup>.

What can be inferred from the sources concerning the legal procedure appropriate for prosecuting ἀσέβεια leaves us with much uncertainty. In respect to the fifth century, the only indubitable legal remarks on this matter are those connected with the 415 affairs. The εἰσαγγελία (‘impeachment’) procedure was most likely applied in this case (see below), which normally required a preliminary hearing in the Assembly and/or in the Council (Hansen 1975: 21-28, 77-82). Nevertheless, it should be safe to assume that the regular forensic procedure in prosecuting ἀσέβεια would be the γραφή (‘public indictment’ or a written plaint in it)<sup>18</sup>, a procedure employed ordinarily in ‘public’ cases, which could be initiated by anyone, not only a party of the dispute. The γραφαὶ had to be brought before a body of δικάσταί (‘jurors’ or ‘judges’, also ‘dicasts’) in a δικαστήριον (‘popular court’) by the relevant magistrate, and settled by

16. In earlier studies, the procedural aspects of Athenian legal regulations and forensic practice were rather overemphasised. In contrast, recent scholarship tends to stress the balance between the procedural (adjective) and substantive (material) aspects of the Athenian legal system, along with litigants’ awareness of its ‘open texture’ (or ‘procedural flexibility’), that is the need to interpret each time the general terms in which the laws were phrased (Harris 1994: 138-40, 2000, 2004, 2009/10; cf. Rubinstein 2000: 221-24, Carey 2004a). One should also note that due to the lack of the institution of public prosecutor, it was the plaintiff who each time had to decide whether he dared to risk the penalty of partial disfranchisement and a substantial fine for frivolous prosecution (cf. Harris 1999). In conjunction with the accountability of the magistrates and severe penalties for abuse of office, we should be safe in assuming that few accusations would actually be turned down in the preliminary stages of legal proceedings, before turning the written plaint to an actual court (cf. e.g. Harris 2000, 2013b).

17. See And. 1.22, 64, 43, Isocr. 16.6-7; cf. Smarczyk 1990: 270, n. 324; cf. Carey 2004a: 128. Among the accused was Andocides (see [Lys.] 6.22-23, And. 1.32-46), acquitted for the information provided, only to be tried for impiety again some years later (see below).

18. Cf. Lipsius 1905-1915: 358-68, MacDowell 1978: 199. See also remarks on the fourth-century γραφαὶ ἀσεβείας in part II below. See Harris (2013b) on the plaint.

the majority of votes<sup>19</sup>. Nonetheless, we first encounter γραφαί in impiety trials only in the fourth century, beginning with that of Socrates in 399 (we learn from Plato that the entire procedure took up to one day<sup>20</sup>). Probably less frequently impiety cases were brought before the more elite Areopagus Council, consisting of the ex-archons, who were invested with the power to watch over certain religious offences, at least in the late fourth century<sup>21</sup>. Before the late fourth century, however, the only reliable evidence for this is a trial concerning the sacred olive trees (see below), which *could* but did not *have to* be an impiety case.

We can assume that the legal reforms after the restoration of democracy in 403 influenced the measures for bringing impiety trials, although there is no certainty as to the extent and rapidity of these changes. In *Against Androtion* (22.27) from the mid-350s, Demosthenes mentions various forensic procedures possible in prosecuting ἀσέβεια. He ascribes these regulations to Solon, following a common Greek, and especially Athenian, ‘fashion’<sup>22</sup>, and enumerates (1) the ἀπαγωγή<sup>23</sup>, (2) the γραφή, (3) the possibility to turn to the Eumolpi-

19. Citizens-dicasts who volunteered and were drawn by lot for the day had to be at least 30 years of age (normally 500 of them in each session in public trials, as in the case of Socrates); since 403 and throughout the fourth century the mechanism of drawing jurors by lot developed further, cf. Boegehold 1991, 1995. The body of 6,000 dicasts in classical Athens might be a scholarly invention, see Surikov 2009. Todd (1990) has argued that the *dikasteria* consisted mainly of Athenian citizens-farmers of various income but the common values addressed in court ‘were a matter of consensus rather than of division’. Harris (2013a) emphasises that the dicasts were obliged to follow the ‘rule of fairness’ (ἐπιείκεια) in their judgments. On the problem of rendering δικασταί into a modern equivalent (such as ‘jurors’ or ‘judges’), see e.g. Todd 1993: 82-83, Harris 1994: 136, Carey 2012: 5-9, and a brief overview of this discussion in Kremmydas 2012: 176-77.

20. See Pl. *Ap.* 37a; cf. MacDowell 2000.

21. See Lys. 7; [Arist.] *Ath. Pol.* 60.2; [Dem.] 59.78-83; *IG II<sup>2</sup>* 204.16-19 (= RO 58.16-19); cf. Wallace 1989: 94-97, 106-12, de Bruyn 1995: 113-16, 126-42; the Areopagus’ supervision over religious and moral matters was either invented or significantly broadened in the late fourth century, see e.g. Din. 1.3-5, 62, 82-83; Lycurg. *Leocr.* 52; Dem. 18.133-34; Aeschin. 1.81-83; cf. Dem. 23.65-70; cf. Wallace 1989; Sullivan 2003; for restrictions on public morals in general proposed by Lycurgus in the late fourth century, see Wallace (1989: 195-98; 2005: 371) and Liddel 2007: 146-48, see also de Bruyn 1995: 117-46, 166-72 on ἀπόφασις.

22. Cf. e.g. Harrison 1955, MacDowell 1975, Clinton 1982.

23. Basically a ‘citizen arrest’, after catching the perpetrator (usually of a theft) *in flagrante delicto*, and a preliminary questioning before the Eleven, a board of magistrates watching over the prison; depending on his confession, the case could go to court or not. Demosthenes probably had in mind the procedure employed in the cases for temple robbery or theft of other sacred objects (cf. Hansen 1976: 41-43). In practice, the procedure was widely used and abused, just as various others (see e.g. Lys. 13). On the procedure in general see Harris 2006a: 373-90, Hansen 1976, Harrison 1971: 221-29, and Lipsius 1905-1915: 319-31.

dae<sup>24</sup> through a δίκη<sup>25</sup>, and (4) initiating the case before the archon basileus. Their use, besides the well-known (2), is scantily attested in the extant sources but by no means implausible in impiety cases. Nevertheless, the list was brought up by the orator as an argument for the special use of the procedure in his case against Androton, which might indicate some more exotic applications of legal measures (Carey 2004a: 129).

The last (4) possibility mentioned by Demosthenes reads φράζειν πρὸς τὸν βασιλέα in most manuscripts, which in the modern editions is generally accepted as φαίνειν πρὸς τὸν βασιλέα. This is Weil's emendation based on the scholiast's remarks to this passage<sup>26</sup>. Φάσις ('showing') was a multi-faced procedure, which would normally involve some kind of denunciation, a feature not exclusive to this particular procedure<sup>27</sup>. We cannot be sure how it would be applied in impiety cases, although there exists a parallel in fourth-century regulations of the Eleusinian Mysteries<sup>28</sup>. The emendation remains nonetheless arbitrary, and, with some help from other sources, one can see how the original reading could be retained. There is at least one similar example of φράζειν before a magistrate in literary sources. In Plato's *Laws* (XII, 955a) we read about the proper conduct in athletic, musical, or other contests, where in the case of illegal competition one shall report (φραζέτω) his issue to the relevant magistrates, being the patrons of the games (τοῖς ἀθλοθέταις)<sup>29</sup>. Similarly, the so-called Epistatai Decree on the treasury of the Two Goddesses at Eleusis (*IG* I<sup>3</sup> 32.14-17) instructs its overseers (ἐπιστάται, assumed from ἐπισ[τε]ναι in l. 11)—if any debt owed to the Goddesses is discovered—to approach the Council, give information (φρά[ζ]εν), and exact payment (ἀ[ν]απρά[τ]τεν)<sup>30</sup>. In impiety cases someone would, respectively, inform the basileus about the violation

24. The priestly family in charge of the Eleusinian Mysteries (see below, with n. 129).

25. The term is mentioned among other procedures which are named explicitly, and thus needs to signify a specific procedure, rather than a 'trial' in general sense (cf. n. 134 and 153 below).

26. Schol. 84 Dilts: ἵνα ὁ βασιλεὺς τὴν φάσιν λαβὼν (φάσις δὲ κατηγορίας ὄνομα) τοῖς θεσμοθέταις φανεράν καταστήσῃ καὶ παρὰ τῶν θεσμοθετῶν γνωρισθῇ τοῖς δικάζουσι τὰ ἐγκλήματα. ὁ δὲ βασιλεὺς εἰς καὶ αὐτὸς ἄρχων κατ' ἐνιαυτὸν τῶν ἐννέα καλουμένων, ὃς καὶ αὐτὸς ἐπιμελεῖται τῶν ἱερῶν.

27. See MacDowell 1991, Wallace 2003.

28. See *Hesperia* 49 (1980): 263, vv. 28-29, cf. MacDowell 1991: 197-98, Wallace 2003: 175-76. On the scantily attested procedure of φάσις in general, see MacDowell 1991 (with Hansen's reply) and Wallace 2003; cf. [Dem.] 58.8.

29. εἰάν δὲ ἀνταγωνιστὴν γυμναστικῆς ἢ μουσικῆς ἢ τινος ἀγῶνος ἐτέρου διακωλύῃ τις βία μὴ παραγίγνεσθαι, φραζέτω μὲν ὁ ἐθέλων τοῖς ἀθλοθέταις, οἱ δ' εἰς τὸν ἀγῶνα ἐλεύθερον ἀφιέντων τὸν ἐθέλοντα ἀγωνίζεσθαι [...].

30. See Cavanaugh 1996: 1-17 on the *epistatai*, and pp. 19-27 on the dating of the decree (early 440s vs 432); cf. pp. 119-216 on *IG* I<sup>3</sup> 386-387 (a record of activities of the *epistatai* in 408/7); cf. Rosivach 1997.

relevant to his responsibilities first, and the latter would then take the case further without involving the informer. In fact, in the trials of the mutilators and profaners of 415 many denunciations (μηνύσεις) came from citizens, metics, and slaves who did not need to take part in the rest of the prosecution themselves. The way that the scholiast speaks of φάσις as the basileus' action to the thesmothetae points to what could either be the entire procedure (which would mean he had φαίνειν in his MS) or just one after receiving the initial report. Thus Weil's emendation remains a possibility, but we can tentatively accept φράζειν even if φάσις was to follow; both remain only an assumption, unless further evidence is found.

Besides the γραφή, we know of no actual trials involving the other three procedures in impiety cases. It seems striking that the Eumolpidae would possess any additional legal powers in Athens. What we learn from other sources, is that they dealt with the ritual calendar, took part in processions, and had the right to pass their interpretation of the sacred matters involving the Mysteries, without the power to penalise<sup>31</sup>. Furthermore, Pseudo-Lysias (6.11-12) describes a prosecution of Archippus as a 'δίκη ἀσεβείας before the archon basileus' (discussed further). Moreover, we know that Andocides himself was accused of impiety by ἔνδειξις (see below). The author of the pseudo-Aristotelian *Athenaion Politeia* (57.2) remarks also on the possibility of turning to the archon basileus with an accusation of impiety in the cases involving the Mysteries (see pp. 45-46 below). Hyperides (*Eux.* 6), in turn, speaks of a γραφή before the archon basileus as another possibility in impiety cases.

Based on the surviving sources, it can be inferred that, besides the charges of violating the protection of the sacred olive trees, the trials for impiety were subject to a separate vote on the penalty<sup>32</sup> (ἄγων τιμητός). The choices available to the accusers in public procedures would normally involve capital punishment, exile, fines, confiscation of property, and disfranchisement. In the historical cases for impiety the most common type of punishment is death, attested several times (Dem. 24.7 speaks of death and loss of property as an expected outcome); apparently, there were also more lenient penalties involved, while some defendants were acquitted (see below). As noted by MacDowell (1963: 115), the practice of allowing the convict to go into exile before the dicasts agreed on his guilt was not a humane way of dealing with him, but could be (1) an expedient assumption that it would be too difficult to prosecute someone beyond the boundaries of the state,

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31. Cf. MacDowell 1978: 193, Clinton 1974: 89-93, Garland 1984: 115-16; but the case from Dem. 47.68-70 seems particularly intriguing in this context. The institution of the *exegetai* itself could have been, however, a post-403 invention, see Clinton 1974: 90-93, Gagné 2009: 225 with notes. See part II below, with n. 129 for a more detailed discussion of their (assumed) powers and responsibilities in the case of impiety trials.

32. Cf. Harrison 1971: 80-82; Todd 1993: 133-35.

or (2) an attempt to avoid pollution. The idea of prison as a punishment was strange to Greek thought and to the Athenian penal system.

We also know of penalties imposed for the profanation of the Mysteries or the Dionysia. We are given a handful of examples of prosecution by the procedure of *προβολή* in Dem. 21.175-82, including a recent trial of a certain Evandrus of Thespieae and a case of the imposition of the death penalty for 'treating free men like slaves' by publicly hitting a citizen during the festival by another Athenian citizen, one Ctesicles. Anyone—not just the victim—could initiate the *προβολή*<sup>33</sup>. The magistrates<sup>34</sup> were then supposed to add it to the list of issues to be discussed during the meetings of the Council and the Assembly to follow. The details of these proceedings are quite unclear; we cannot be sure whether *προβολή* was only the preliminary vote in the Assembly, which did not have to result in a trial (Harris 1992, 2008: 79-80, 2013c: 211-16), or the name for the entire procedure (MacDowell 1990: 13-17). The case against Meidias was also initiated by the *προβολή*, although Demosthenes argues that—had he wished so—he could have brought a prosecution for *ἀσέβεια*<sup>35</sup> (which shows that the *προβολή* was considered a procedure distinct from the prosecution for impiety in court; cf. MacDowell 1978: 196).

One can assume that much was open to the interpretation of the moment (Wallace 1996b), as in many cases covered by the Athenian legal system. There is no evidence for a specific law which would forbid introducing new gods to Athens, but—as Parker<sup>36</sup> rightly observes—introducing wrong gods at the wrong moment could lead to a trial for impiety; therefore, the most sensible thing to do was to worship the gods in accordance to the custom and law. On the other hand, already in the fifth century we see many instances of introducing 'new gods' (also those described as 'foreign' by scholars) to Athens, while none of their being expelled<sup>37</sup>, as was often the case in Rome. The reasons for 'importing' foreign deities, however, were more often political or economic rather than religious (Simms 1985).

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33. The name of the procedure is sometimes translated as 'denunciation' (but as such it should not be confused with another procedure often bearing that name, *μήνυσις*, for which see MacDowell 1978: 181-83).

34. Only the *proedroi*, if we discount the law in Dem. 21.8 speaking of the *prytaneis* as inauthentic; see Harris 2013c: 211-16.

35. Dem. 21.51, 55, 130.

36. Parker 2005a: 65-68; cf. Parker 2002. The success of these proposals probably depended vastly on the support given to them (or the opposition to them) before the *demos* in the Assembly (and earlier before the Council) by both the inhabitants of Athens in general and the priests specifically, cf. Garland 1992: 19-20.

37. Versnel 1990: 102-23, 128; Parker 1996: 152-98 (who argues that introducing new gods in place of the old ones is a regular trait of a polytheistic religion); Parker 2001: 61.

There existed many private associations in Athens, and most of them were able to exist and meet regularly without any major hindrance. But whenever they were considered a social threat, their leaders could fairly easily fall prey to the accusation of impiety or magic, just as it seems to have happened with some fourth-century trials (see part II below). If this was the case, it is rather surprising to hear so little about such attempts, especially when we consider Athenian ‘litigiousness’<sup>38</sup> and the number of other known trials, particularly the instances of capital punishment passed within the *εἰσαγγελία* procedure in the cases for treason or unlawful conduct in office. There are a few dozen examples of the latter known from the classical period, with probably hundreds unknown (Hansen 1975: 11 *et al.*; see below on Hansen’s catalogue).

Various links could be drawn between democracy and polis in general on the one hand and the nature of polytheism and religious tolerance on the other, but very often they seem far from straightforward<sup>39</sup>. Contrary to what one might expect, it was the Assembly which had the supreme power over many religious practices, including communal consulting of the oracles and supervising the shrines and temples<sup>40</sup>. Introducing a new god would require a group willing to do so, and we know of various private associations that existed and operated in Athens without any major constraint. Although since the late fifth century the elitist political clubs called *ἐταυρεία* were commonly taken for the birthplace of anti-democratic political thought and even oligarchic coups d’état (sometimes deservedly; see e.g. Lys. 12.43), they appear to have been very common. Sometimes they were even juxtaposed with *συνωμοσίαι* (conspiracies) and *στάσεις* (‘seditions’, but also groups aiming for them)<sup>41</sup>. Among them there emerged numerous cult associations<sup>42</sup>. Their members offered sac-

38. So keenly derided by Aristophanes, i.a. in the *Clouds*, *Wasps*, and *Birds*; cf. Christ 1998.

39. See discussion on the problems concerning such an approach in Schmitt Pantel 2010, Jameson 1998, Sourvinou-Inwood 2000a [1990], 2000b [1988], Versnel 1995, Parker 2005b, Boedeker 2007: 57–59, and Osborne 2013: 285–92. Many cults existed before democracy, some new ones emerged over time on both polis- and deme-level along with increased participation. Part of the democratic political practice influenced the cult, but a good deal of ritual practice and many religious beliefs remained unaffected by it, especially still in the fifth century.

40. Cf. e.g. Parker 1996: 61–62.

41. See Thuc. 6.60 (Thucydides’ first remark on the *συνωμοσίαι* appears in his description of the Hermocopidae affair, cf. Stone 1988: 141–44); cf. Isocr. 16.6. For more on the types of associations, see e.g. Arist. *EN* VIII 1160a8–30, *EE* VII 1241b24–29, *Is.* 2.14; see also discussion below. On dangers seen in various types of associations and on linking them to foreign cults later in antiquity, see Cass. Dio 52.36.2; cf. Versnel 1990: 130–31.

42. Cf. Jones 1999: 13, 30, 216–20, 249–67 *et al.*; Calhoun 1913 (overemphasising the role of the associations in Athenian politics, see the summary in Rubinstein 2000: 20, with n. 14); see e.g. *IG* II<sup>2</sup> 1252; Parker (1996: 128–42) gives a long list of various local and private cult associations in Athens, cf. Mikalson 1983: 83–90.

rifices to a variety of deities in public and in private. This included the widespread ὀργεῶνες and now scarcely known θιάσοι (Arnaoutoglou 2003: 31-67). There was no law aimed specifically against them, but various constraints existed and could influence the life of associations. For example, metics—normally not allowed to own land in Athens—wishing to build a temple would each time have to ask the *demoi* at the Assembly for their consent to granting them this privilege (ἐγκτησις).

The first in the extant sources to speak of the law on associations in Athens is the Roman jurist Gaius (2nd cent. CE) cited in *The Digest* (47.22.4) from the 6th century CE. The ‘Solonian’ law cited in this collection was said to have recognised inner arrangements of the associations as valid provided that they remained consistent with common Athenian laws<sup>43</sup> (δημόσια γράμματα). Arnaoutoglou (1998, 2003: 49-57) has argued—based on the wording of this law—that it should be dated at Hadrian’s rather than Solonian times, while Ismard (2010: 44-57; cf. Jones 1999: 311-20) that it may have partly preserved the language of the archaic period. We know of no other law that would prohibit or limit the existence of associations in democratic Athens (Ismard 2010: 146-62, cf. 2007), if we disregard the late fourth-century laws meant to protect democracy against any attempts to overthrow it (Hyp. Eux. 8, SEG xii 87). If there existed certain limitations, they were shaped by social rather than legal context<sup>44</sup>.

A particularly interesting example of the acceptance of even extreme forms of associations is provided by a fragment of a scantily preserved speech by Lysias cited by Athenaeus (XII, 551d-552b = fr. 195 Carey)<sup>45</sup>. It speaks of the members of a certain Athenian cult group calling themselves Κακοδαίμονισταί (which can be understood as either ‘The Unfortunate’ or ‘The Worshipers of the Evil Spirit’, in contrast to the ‘Good Genius’, to whom banqueters would drink toasts, cf. Ar. *Vesp.* 525). Lysias then explains that they have chosen this, apparently shocking (Jones 1999: 225), name to mock the gods and Athenian morals. The orator then relates how the members of the club did their best to feast during the days which were recognised as inauspicious (ἡμέραι ἀποφράδες). Perhaps it was a part of a sympotic ritual of pledge-making (πίστις), meant to bind all members of a club or conspiracy together in a shared transgression<sup>46</sup>. Lysias further notes that the gods did not remain irresponsive and most of the fellows died young.

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Some deities enjoyed private cult separate from the official one, cf. Simms 1985. For local cult associations, see Sourvinou-Inwood 2000b [1988]: 42-45.

43. Cf. Jones 1999: 33-45, 311-20; Arnaoutoglou 1998: 37.

44. Cf. Ismard 2010 146-62 (cf. Ismard 2007), Arnaoutoglou 1998: 76, *passim*; Parker 2011: 57-61.

45. See translation and introduction in Todd 2000a: 356-59.

46. For this kind of bond in political associations, see e.g. Thuc. 3.82.6, 8.73.3, cf. MacDowell 1962: 192, Gomme 1956: 377, Murray 1990.

What is striking in this story (however anecdotal) is that, despite Lysias' and perhaps other Athenians' knowledge of the existence of such a club, there is no remark of any human, as opposed to divine punishment being applied, even though one of these men, Cinesias, is called 'the most impious of all'. This is of course only if we are inclined to believe at least part of this account to be true, rather than treat it as an element of oratorical slander (*διαβολή*), for the fragment comes from a defence speech written by Lysias for a certain Phantias accused by Cinesias of introducing an illegal decree. That such dining and drinking groups of young males of aristocratic background and inclinations were more common in Athens, however, is shown by Demosthenes' *Against Conon* (54.39; cf. §34; cf. Furley 1996: 90-91). The orator speaks of a group of men named Triballoi, meeting regularly under an oath to gather offerings meant for Hecate and dine on them themselves. He mentions that one of them, named Bacchius, was sentenced to death (for reason unknown to us). It remains debatable whether Triballos from Aristophanes' *Birds* has anything to do with it (Katz 1976: 357-59). The name points to a Thracian tribe, which suggests that the club might be connected—at least by Demosthenes' audience—to some rites perceived as 'foreign', which could prove enough of an excuse for a rhetorical attack in court. It is, nevertheless, worth noticing that all forms of punishment for impiety in Athenian popular religion applied only to worldly existence and did not extend to the afterlife (Mikalson 1983: 104).

The modes of executing the death penalty in Athens are not well attested, but since the late fifth century would probably involve drinking poisonous hemlock as an expensive citizen privilege, with the less fortunate doomed to be bound to plank to die out of thirst and exhaustion (*ἀποτυμπανίζειν*, used especially in the case of traitors, murderers, and thieves), some of them—including temple robbers and traitors—having been refused proper burial in Attic soil<sup>47</sup>. More seldom, s/he could be thrown into the pit with sharp rocks (*βάραθρον*, apparently employed in the case of crimes against the *demos*, perhaps mainly for the disposal of the bodies). We cannot be sure which of the above would be used in the case of individuals condemned for impiety (Socrates apart), but by no means can we rule out the use of any of these methods (cf. Dem. 24.7 on an unpleasant death as a result of *γραφή ἀσεβείας*).

### I. The Fifth Century to 399 BCE

In the sources from various periods of antiquity we can trace numerous remarks on several trials for *ἀσέβεια* which reportedly took place in fifth-century Athens. Despite several notorious trials well at-

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47. See Thuc. 1.138, Xen. *Hell.* 1.7.22; cf. Lycurg. *Leocr.* 89, 113, [Plut.] *X or.* 834b; cf. Allen 2000: 200-2, 216-23, 232-37, Tetlow 2005: 93, M.D. Hall 1996: 82-83, Todd 2000b, MacDowell 1963: 111-13; on hemlock, see n. 161 below; on stoning, see n. 55 below.

tested in the contemporary sources, these remarks can often be dated many centuries later than the events which they describe, sometimes even as late as the biographical writings of Diogenes Laertius (ca. 3rd cent. CE) or Plutarch (1st/2nd cent. CE). Within the following list of the alleged or actual trials for impiety, I will—whenever possible—try to present the cases in a chronological order.

The earliest cases: the Alcmaeonidae, Aeschylus, and an unknown Megarian

In classical and later sources<sup>48</sup>, there exist scattered remarks about the condemnation of the aristocratic family of *Alcmaeonidae* for not respecting the sanctity of the suppliants, traditionally guarded by Greek religious customs. Megacles, shortly after Cylon's attempted coup (usually dated 632), killed the to-be tyrant and his supporters after they took refuge at a shrine. The Alcmaeonidae were then reportedly brought to trial by a certain Myron of Phlya, as a result of which those still alive were banished from Athens, while the bodies of the dead were dug out of the ground and left outside of the borders of Attica, either not long after the coup or a century later, after the reiteration of the curse in 508/7 (Thuc. 1.126.12; cf. Rhodes 1981: 80). There can be no certainty as to the actual charge, while impiety is nowhere spoken of directly, but we do hear of the accusation of and curse for 'religious guilt'<sup>49</sup>. The surviving evidence may not be enough to count it as the first impiety trial in Athens, but it certainly falls close.

The first alleged impiety trial from the classical period might thus rather be that of *Aeschylus* the tragedian (ca. 525 – 456), who was said by some late sources to have been accused of revealing the secrets concerning the Mysteries in several of his plays<sup>50</sup> and to have tried justifying it in his own defence by saying that as a non-initiate he had not been aware of their secrets. In a single-sentence reference to Aeschylus, Aristotle simply states (Arist. *EN* III 1, 1111a8-10 = T 93a Radt), while speaking of an excuse for one's ignorance: 'But someone could be ignorant of what he is doing – for example, people declare that they had a slip of the tongue while speaking; or that they did not know that what they said was forbidden, as Aeschylus said about the Mysteries [ἢ οὐκ εἰδέναι ὅτι ἀπόρρητα ἦν, ὥσπερ Αἰσχύλος τὰ μυστικά]' (trans. R.C. Barlett & S.D. Collins).

48. Thuc. 1.126, Hdt. 5.71, [Arist.] *Ath. Pol.* 1, Plut. *Sol.* 12, and the scholia to Aristophanes (*Eq.* 445); cf. Rhodes 1981: 79-83.

49. Thuc. 1.126.11: ἐναγεῖς καὶ ἀλιτήριοι τῆς θεοῦ (cf. Hdt. 5.71, Plut. *Sol.* 12.2, Σ *Ar. Eq.* 445); ἄγος: *Ath. Pol.* 1, Plut. *Sol.* 12.1, Σ *Ar. Eq.* 445. Cf. de Bruyn 1995: 74-76. On the refusal of burial in Attica, see n. 47 above.

50. See also Librán Moreno 2004 for a detailed analysis of the testimonies concerning this incident.

According to the account of late anonymous commentaries on Aristotle's *Nicomachean Ethics*<sup>51</sup>, Heraclides Ponticus (4th cent.) already remarked on the trial of Aeschylus in Book I of his commentary on Homer. Aeschylus was said to have been tried by the Areopagus<sup>52</sup> and acquitted because of his own and his brother's Cynegirus' merits in the Battle of Marathon<sup>53</sup>. Then, several centuries later, Clement of Alexandria (2nd/3rd cent. CE) made a similar brief remark in his *Stromata* (2.14 = T 93d Radt). Also in reference to making an excuse for one's ignorance, he mentioned Aeschylus, who had to face trial before the Areopagus Council<sup>54</sup>. He was being prosecuted for revealing the secrets of the Mysteries before the *skene* and later acquitted, for he convinced the jurors he had not been initiated into the Mysteries.

Among all these remarks only Aelian (ca. 175 – ca. 235 CE) in his *Various History* (5.19 = T 94 Radt) speaks of ἀσέβεια with reference to Aeschylus, yet along with some quite incredible circumstances. He describes how the Athenians were about to stone the tragedian, when his younger brother, Ameinias, exposed a stump of his arm to show that he had lost it fighting with some exceptional bravery in the Battle of Salamis, which led to Aeschylus' acquittal. Even though the variation on the theme of courageous soldiers remains within the expected limits (Heraclides speaks of a different battle and gives another name of the brother), one needs to be very suspicious of the possibility of stoning in fifth-century Athens under these conditions, which had to be Aelian's authorial invention. As far as we can tell, stoning (καταλεύειν) was not practised in fifth-century Athens – we know of only two cases from the entire classical period of a public stoning conducted by the Athenians, both in extreme condi-

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51. T 93b Radt *ap.* Anon. in Arist. *EN* III 2 p. 145 Heylbut, CAG 20.145.23 (= Heraclid. Pont. fr. 170 Wehrli = fr. 97 Schütrumpf) and T 93c Radt *ap.* Aspas. in Arist. *I.c.* Heylbut, CAG 19.1.64.29.

52. After which he might have been tried by a *dikasterion*, but ὑπαχθῆναι εἰς δικαστήριον may actually mean 'be brought to justice', without pointing to the type of the court, cf. de Bruyn 1995: 76-78, LSJ s.v. ὑπάγω.

53. Here, Cynegirus is said to have lost his arm in battle. Herodotus (6.114) mentions losing the arm in battle as the reason of death of a certain Cynegirus, son of Euphorion, whose son, according to other sources, was also Aeschylus; cf. Aesch. T 16-48 Radt. The former was keenly panegyrised as Marathonomachos throughout antiquity. Polemon of Laodicea (2nd cent. CE), a member of the Second Sophistic, dedicated two orations to him. He is known from various artistic representations, and he could have even been one of the few chief Marathonomachoi on the wooden painting in the Stoa Poikile from the fifth century, described in later sources (Polański 2002: 153-54, 157-59).

54. Even if we were to take this account in deadly earnest, it should be worth noting that it would probably not be the Areopagus Council but a *dikasterion* that would deal with such affairs (sometimes, perhaps, consisting only of the citizens initiated into the Mysteries, just as in the case of the trials of 415, cf. And. 1.31).

tions of war<sup>55</sup>. It cannot be ruled out that there was a trial against Aeschylus, of unknown procedure and substance, yet the accounts covering it are particularly disputable and include some clearly fictitious elements. Most likely the whole story grew out of one remark by either Aristotle or Heraclides (known for his talent for writing down miscellaneous fabricated plots, both on legendary and historical figures<sup>56</sup>), the meaning of which we cannot be sure to comprehend. Moreover, the appearance of the Areopagus Council in later sources suspiciously points to a late fourth-century rather than an early fifth-century parallel, and indicates a probable inspiration for the emergence of such accounts.

There is one more early suspect to consider, mentioned in the last words of *Against Andocides* by Pseudo-Lysias (6.54). The speaker claims that his grandfather Diocles, a son of a hierophant Zacorus (a telling name) advised the Athenians to conduct a fair trial of a certain Megarian who had acted impiously and whom the Athenians were about to kill without trial (ἄκριτον). We learn nothing more about this case, but the remark itself constitutes an important example of an attempt to follow proper legal conduct, even in the face of violations especially detestable to the Athenians and in spite of a generally hostile attitude towards the accused. Even so, it is worth noting that this episode is being recalled by the speaker with an agenda. He attempts to encourage the conviction of Andocides for impiety by saying that the dicasts should take their time and reconsider charges issued against him to become certain of his guilt. One could speculate on the connection of this episode to Athenian conflict with Megara preceding the outbreak of the Peloponnesian War described by Thucydides (1.139), when the Athenians accused the Megarians of (impiously) cultivating the sacred land<sup>57</sup> at the border of the two poleis. However, there are two more issues to be considered here. First, the authorship and the date of composition of [Lys.] 6 are unknown, which makes solving chronological issues problematic if not impossible, and second, we cannot be sure if the case—if there was any—reached the stage of a proper trial. This should be enough to exclude it from the list of the historical trials but it remains an interesting possibility.

55. The case of Lycides in 479 (see Hdt. 9.5), whose name according to Demosthenes (18.204) was Cyrsilus, and one of Alcibiades, a cousin of the famous Alcibiades, in 409 (Rosivach 1987; cf. Allen 2000: 142-45). There are, of course, other known cases of stoning outside of Athens, predominantly during the war campaigns or political struggles, described e.g. in Hdt. 5.38 (the Mitylenians stoning Coes) and 9.120 (the Elaeusians hanging Artayctes and stoning his son); cf. Hdt. 1.167. See n. 47 above on modes of executing the death sentence in Athens.

56. Cf. Lefkowitz 1981: 172-73; see e.g. Heraclid. fr. 43 Schütrumpf *ap.* Athen. XII, 533c on Pericles and fr. 98 Schütrumpf *ap.* D.L. 2.43-44 on Homer, Euripides, and others.

57. See *IG II<sup>2</sup>* 204 = RO 58 (dated 352/1) which speaks of forbidding any kind of impious behaviour towards the sacred land (ἱερὰ ὀργὰς); see also Gomme 1945: 447-50 for the roots and details of the conflict. For more on the sacred land in Greek *poleis*, see Rousset 2013.

## The 'circle of Pericles' and the 'decree of Diopieithes' (430s)

A more absorbing case and one very popular in the Roman era is the tradition concerning the trial of *Anaxagoras of Clazomenae* (ca. 500 – ca. 428?<sup>58</sup>). Although not an Athenian citizen, he became one of the leading advisers of Pericles<sup>59</sup>. He taught that Helios and Selene were not of divine nature, the former being just an extremely heated metal, the latter an inhabited world (Pl. *Ap.* 26d, D.L. 2.8, 12, Orig. *Cels.* 5.11). He questioned popular religious beliefs, including those concerning thunderbolts thrown down by Zeus, and for all this he was said to have been accused of impiety based on the decree of a certain Diopieithes<sup>60</sup> proposed specifically against the philosopher.

The first to mention the trial of Anaxagoras in the extant sources, after the much disputed remark in Plato's *Apology* (see further), was Diodorus Siculus<sup>61</sup> (1st cent.) in his description of the years antedating the Peloponnesian War. The author notes that Pericles' enemies, among other actions, 'falsely accused the sophist (*sic!* cf. *Lib. Decl.* 1.153-54) Anaxagoras, the teacher of Pericles, of impiety towards the gods' as part of the attack against friends of Pericles<sup>62</sup>. In the same chapter of his *Library*, he describes the accusation of sacrilege (ἱεροσυλία) against Pheidias, issued by political opponents of Pericles, which they said Pericles himself had certainly known about. The historiographer speaks of (1) Pheidias' assistants acting as suppliants to reveal the sacrilege committed by the sculptor and Pericles, (2) the meeting of the Assembly to discuss the information given by them, (3) some further

58. According to most scholars (based on the citation from Apollodorus in D.L. 2.7). For a short summary of various proposed dates, see Cleve 1973: 1-3; cf. Derenne 1930: 30-38 on some proposed dates of the alleged trial; see e.g. Mansfeld 1979, 1980 for the date of 438/7. More often than not, the dating of Anaxagoras' life rests on the presumption that he was tried in Athens.

59. T 15 D-K *ap.* Pl. *Phaedr.* 270a, Isocr. 15.235, Plut. *Per.* 4; cf. Dem. 61.45.

60. Probably not to be confused with Diopieithes the χρησμολόγος, i.e. the interpreter of the written oracles (cf. Flower 2008: 124-25, 63, *passim*), mentioned by Xen. *Hell.* 3.3.3, see Sommerstein 1981: 202, Dunbar 1995: 550. Various seers certainly had much to say in the case of cultic regulations, as we learn also from non-literary sources, see *IG I<sup>2</sup> 76* (= *IG I<sup>3</sup> 78* = ML 73 = Fornara 140), *IG II<sup>2</sup> 47* (= *IG I<sup>3</sup> 123* = ML 92 = Fornara 165), cf. Osborne 2009: 124.

61. Allegedly following Ephorus (*FGrHist*70 F 196 *ap.* Diod. 12.41.1), while in reality probably some unpreserved anti-Periclean source, cf. Oldfather 1946: 450, n. 2 (or perhaps Ephorus' account based on such sources?).

62. Diod. 12.39.2: διόπερ ἐκκλησίας συνελθοῦσης περὶ τούτων, οἱ μὲν ἐχθροὶ τοῦ Περικλέους ἐπεισαν τὸν δῆμον συλλαβεῖν τὸν Φειδίαν, καὶ αὐτοῦ τοῦ Περικλέους κατηγοροῦν ἱεροσυλίαν. πρὸς δὲ τούτοις Ἀναξαγόραν τὸν σοφιστὴν, διδάσκαλον ὄντα Περικλέους, ὡς ἀσεβοῦντα εἰς τοὺς θεοὺς ἐσυκοφάντων· συνέπλεκον δ' ἐν ταῖς κατηγορίαις καὶ διαβολαῖς τὸν Περικλέα, διὰ τὸν φθόνον σπεύδοντες διαβαλεῖν τὴν τάνδρὸς ὑπεροχὴν τε καὶ δόξαν. See Raaflaub 2000 for a more detailed study of the issues connected to the trials in the 'circle of Pericles', not only those for impiety; cf. Stadter 1989: 284-305 (the author presents some useful references to various sources and studies, but does not always analyse them critically).

(prosecutorial?) action by Pericles' enemies, leading to (4) the arrest of Pheidias, (5) the trial of Pericles, and (6) the accusation of 'impiety towards the gods' against Anaxagoras. All of this is very unclear, as far as legal procedure is concerned. Diodorus sums up this brief description of the proceedings by a surprising statement that Pericles triggered the outbreak of the Peloponnesian War to divert attention away from the accusations aimed at him (12.39.3, 12.40.5; cf. Plut. *Per.* 32, where he also sends Anaxagoras away from the city). This remark is then 'supported' by the fragments of comedies taken out of context (12.40.6): Aristophanes' *Peace* (603-6, 609-11) of 421 and *The Acharnians* (530-31) of 425, along with one fragment of an unpreserved comedy *Demes* by Eupolis (fr. 102 PCG), where someone says that 'Persuasion rested on his lips', connected by Diodorus and later authors to the disposition of Pericles (see PCG ad loc.). Both places in Aristophanes' comedies in fact speak vaguely of some private reasons for Pericles' passing of the Megarian Decree. It is justifiable to suspect that the tale about these events was partly based on another trial of Pericles, that of 430/29, well-documented in the sources of the classical period. It was brought for embezzlement of public funds (κλοπή), and most likely produced by the political climate prevalent in Athens in the first years of the war<sup>63</sup>.

It remains no secret that Hellenistic and later biographers drew from comedy as a historical source eagerly and in quite an unrestrained manner. In the passage from *Peace* which Diodorus cites in support of his narrative, there is in fact a mention of some unfortunate event relating to Pheidias (v. 605), but the context does not provide for any certain conclusions regarding its nature or historicity. According to Plutarch (*Per.* 31.4), Pheidias was charged with sculpting the effigies among the mythological figures on the shield of Athena that confusingly resembled Pericles and himself. We cannot be sure what Aristophanes' joke really concerned, yet it had to be comprehensible for the audience of 421, and thus refer to quite a well-known event, even if its relation to the war was a new idea of the comic poet, leaving both Trygaeus and the chorus in the play wondering (Pelling 2000: 152). It seems that at some point all the remarks found in earlier sources (including comedy) about Diopertes, Pheidias, Pericles, and Anaxagoras were merged to find its way to Diodorus' account of the causes of the Peloponnesian War. The notes on their piety and impiety were easily brought together to support a coherent scheme of events.

We see no mention of the accusation of Pheidias in Plato who refers to him several times in his dialogues. According to other sources, Pheidias was said to have spent his last years in Elis. Pausanias (2nd cent. CE) informs us that the artist worked there on his statue of Zeus

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63. See Thuc. 2.59, 2.65.3, Pl. *Gorg.* 515e-516a, Dem 26.6; cf. Plut. *Per.* 16.3; cf. Raaflaub 2000: 98-100. Modern scholars who accept the historicity of the trial of Pheidias for embezzlement usually date it either 438/7 or 433/2 (Prandi 1977, Ameling 1986).

(5.11.3), and his descendants were said to have lived in Elis (5.14.5). Davison (1953: 43) asserts that there is no proof for Pheidias' stay in Athens after 438/7. These two traditions were apparently mixed up in the scholia to the *Peace* (*FGrHist* 328 F 121 *ap. Σ RV Ar. Pax* 605)<sup>64</sup>. Both scholiasts rely on the Attidographer Philochorus (3rd cent.), who—they claim—maintained that Pheidias fled Athens and came to Elis after the trial for theft. While one of them tells us Philochorus spoke of stealing ivory from the statue of Athena, the other believes he mentioned gold (as do most of the testimonies), which raises doubts about what sources were actually available to our commentators<sup>65</sup>. Nonetheless, this is one of the less significant differences between the extant accounts, for Pheidias is known to have used the technique of chryselephantine, which connected both elements. Furthermore, both state that he was said to have made a statue of Zeus in Elis and then to have been killed by the Eleans. For decades the attempts to establish the 'true biography' of Pheidias have been meeting the same problems, resulting from the existence of different variants of the story about his fate in antiquity and impossibility of solving the puzzle definitively<sup>66</sup>.

In the *Life of Pericles* (32), Plutarch makes a remark on the charge of ἄσέβεια against *Aspasia*, Pericles' 'concubine' (named so only by the later tradition, see Wallace 1996c). According to the biographer, the charge was brought by Hermippus the comic writer claiming that Aspasia was helping free women to rendez-vous with Pericles. The latter was also said to have guaranteed his concubine's acquittal by shedding a flood of tears over her fate before the jurors (Plutarch makes this Aeschines' of Sphettus story), and, feeling concerned about Anaxagoras in turn, to have sent him out of the city and cause the outbreak of the war to cover the bad climate surrounding him. A weeping Pericles in fact seems an easily adaptable motif for a play. Anecdotes about Aspasia's conduct could be also easily drawn out of anti-Periclean polemics found in Plato and elsewhere (Gomme 1945: 65-70, Raaflaub 2000: 107). Furthermore, both Aspasia and Pericles were under constant fire from comic writers<sup>67</sup>, while Hermippus, from what we can tell based on the extant fragments, was especially keen on taking a jibe at Pericles and his alleged debauchery (fr. 47 PCG). Seen in this context, it does not appear we should treat Athenaeus' (2nd/3rd cent. CE) remark (XIII, 589e) on the trials against Aspasia and Pericles any more seriously: 'And Antisthenes, the pupil of Socrates, tells us that Pericles, being in love with Aspasia, used to kiss her [ἄσπάζεσθαι, a pun] twice every

64. Cf. *FGrHist* comment. ad loc. (pp. 484-96); it seems Philochorus had no doubts concerning Pheidias' embezzlement, if the 'citation' in the scholia is to be trusted (see the section 'Quellenforschung' below).

65. Cf. Podlecki 1998: 104, Bauman 1990: 40. It is worth noting that tragic mistakes also took place in Athens in connection to similar accusations, see Antiph. 5.69-70.

66. Cf. Gomme 1956: 186-87.

67. Cf. Schwarze 1971: 110-13, *passim*, Henry 1995: 19-28, Vickers 1997.

day, once when he entered her house, and once when he left it. And when she was impeached for impiety [φευγούσης ... γραφὴν ἀσεβείας], he himself spoke in her behalf, and shed more tears for her sake than he did when his own property and his own life were imperilled' (trans. C.D. Yonge, notes JF).

In the same passage of his *Life of Pericles*, the biographer states that Diopieithes, a seer mentioned numerous times in comedy, brought in a decree (ψήφισμα), soon accepted by the people, which prescribed prosecuting by εἰσαγγελία all those who did not recognise the gods and taught about the celestial phenomena (τὰ μετάρσια)<sup>68</sup>. This was meant to cast suspicion on Pericles through his relations with Anaxagoras. Similarly, in the *Life of Nicias* (23; cf. *De superst.* 169f) the author tells us that Anaxagoras, accused of propagating his views, was barely saved from confinement by Pericles; he gets compared to Protagoras, who 'had to go into exile', and Socrates, sentenced to death 'for philosophy'.

Diodorus—whether following Ephorus or not—most likely transferred the stage humour of the comic writer Hermippus to an imaginary lawsuit and cause of war<sup>69</sup>. Then it could be adopted by posterior sources, among the surviving ones for instance Flavius Josephus (*Ap.* 2.265 = T 19 D-K) or Plutarch, perhaps through an intermediary. Stone (1988: 240) has further noted that Diodorus might have used 'the same lost comedy by Hermippus that Plutarch seems to have echoed'; nevertheless, there is no mention of Anaxagoras in the extant fragments of Old Comedy, including the ones cited by Diodorus<sup>70</sup>. It is also the only source speaking of the story about a series of attacks against Pericles, rather than its being an isolated case (Bollansée 1999b: 473). Apart from that, the first reference to the trial of Anaxagoras is both late and uncertain, and furthermore linked to a historical commentary of dubious value.

Plutarch was apparently eager to accept this biographical tradition with sensational storyline based on anecdotes and remarks found in

68. Plut. *Per.* 32.1: καὶ ψήφισμα Διοπείθης ἔγραψεν εἰσαγγέλλεσθαι τοὺς τὰ θεῖα μὴ νομίζοντας ἢ λόγους περὶ τῶν μεταρσίων διδάσκοντας, ἀπεριεδόμενος εἰς Περικλέα δι' Ἀναξαγόρου τὴν ὑπόνοιαν.

69. Cf. Dover 1988c: 138, Pelling 2000: 128; see also next section below.

70. Cf. Dover 1988c: 139. Other references in *The Life of Pericles* also point to the use of unreliable sources. In 6.2, Anaxagoras acts as a quasi-seer in support of Pericles and against Lampon the seer, cutting the ram's head in two and giving a natural explanation (as befits a philosopher who used to praise the Mind), while in 16.7 we see him on the deathbed giving a witty, allegorical anecdote, so common in the biographical tradition. In fact, one surviving fragment of unknown genre and torn out of context mentions a certain Anaxagoras without telling us much about him, see Ar. fr. 676b Kock = Alex. Aetol. fr. 7 Pow. (= fr. 7 Magnelli). Comedies mocking philosophers' impiety started to appear only in the 420s, if the dating of Cratinus' *Panoptai* to shortly before the first staging of Aristophanes' *Clouds* in 423 is correct (see Bremmer 2007: 14; cf. Banfi 1999: 29-30); see also Furley 1996: 131-45 on the comic remarks about the Mysteries after 415.

comedy<sup>71</sup>. The key argument here, however, seems to be chronology. Out of tens of known or alleged cases of the employment of the *εἰσαγγελία* procedure in the fifth and fourth centuries, only five cases were dated by Hansen to the times preceding the Peloponnesian War, all of them aimed at a single citizen, not a group, and concerning the accusation of treason<sup>72</sup>; and even those five trials were listed as *εἰσαγγελίαι* by Hansen based on tentative assumptions, not having been described as such by the sources and sometimes having even been called otherwise. Moreover, it would be an isolated example from classical Athens of the comic poet repeating his insults from the stage in court.

Diogenes Laertius (ca. 3rd cent. CE) presents us with four different versions of the narrative (2.12-14) about the incidents involving Anaxagoras, without even trying to decide which could be more plausible than the other. According to Sotion's (3rd-2nd cent.) account, Anaxagoras was accused of impiety by Cleon, and defended by Pericles. He was then sentenced to exile and a penalty of five talents. According to Satyrus, (3rd cent.) he was accused of impiety and 'Medism' by Thucydides<sup>73</sup> (the politician, son of Melesias, not the historian, son of Olorus), and then sentenced to death *absente reo* (F 16 Schorn). According to the Hellenistic biographer (not the comic writer) Hermippus of Smyrna<sup>74</sup> (3rd-2nd cent.), Anaxagoras was already in jail when Pericles convinced the people in the Assembly to acquit the philosopher, but the former then committed suicide, for he could not bear the insult. Last but not least, Hieronymus of Rhodes (3rd cent.) believed that the philosopher, weakened by disease, was acquitted out of pity. After listing all these variants, Diogenes Laertius simply states that Anaxagoras spent his last days in Lampsacus(!) where he died.

The reference to the accusations by Thucydides or Cleon looks suspicious, at least for chronological reasons, not to mention the impos-

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71. Hermippus and other comic poets are the usual suspects, see e.g. Gomme 1945: 449, Lefkowitz 1987: 157, Podlecki 1998: 116-17, and Raaflaub 2000: 101-7. See also Wallace 1994: 131-32 (along with the bibliography cited in n. 16), who mentions a fourth-century Socratic philosopher Aeschines of Sphettus, the author of a dialogue entitled *Aspasia* (SSR VI A 59-72) cited by Plutarch, as a probable source of the story, apparently continuing the tradition of philosophical invective and making some references to comedies; cf. Dover 1988c: 140.

72. Cf. Hansen 1975: 69-120 (see pp. 69-71 for those first alleged instances; Hansen's list includes 130 examples of the—attested or presupposed—use of the procedure of *εἰσαγγελία* before the Assembly, with just about a dozen introduced only before the Council; see below on the cases of 415).

73. For controversies on Thucydides, son of Melesias, anti-Periclean opposition in Athens, and Plutarch's account of these 'events', see Andrewes 1978 and Raaflaub 2000: 98-100; cf. Ferrarese 1975.

74. *FGrHist* IV A 3, 1026 T 6b = F 65. Hermippus was known for his passion for sensational stories (which is a common trait of Hellenistic biographical writings in general) and placing the trials for impiety and other thrilling events in pseudo-historical, fictitious setting, cf. Bollansée 1999a: 118ff., 182-84.

sibility of simultaneously condemning anyone to death on the one hand and a fine and exile on the other, which leaves little doubt that these traditions had to be mutually exclusive (Davison 1953: 41). Stone (1988: 241) notes that three out of four authors cited were Alexandrians of the third century, while out of all of them Satyrus, the author of the imaginative *Life of Euripides*, is particularly known for using both comedy and tragedy as historical sources (Lefkowitz 2012: 87) – though the same could be said for Hermippus.

It has also been noted that Plato puts in the mouths of the characters of his dialogues various opinions concerning the philosophy of Anaxagoras, for example when speaking of the trial of Socrates which would form a perfect opportunity for the comparison of both cases<sup>75</sup>. Nevertheless, he does not make any mention of it, just like Cicero, a contemporary of Diodorus, who frequently recalls Anaxagoras, yet without any references to his trial or any other trouble resulting from his spreading of the controversial opinions. Both authors refer to him as the teacher of Pericles, but surprisingly forget to mention any exciting accounts of the affairs from that period concerning the famous general.

Moreover, Plutarch (*Nic.* 23 = T 18 D-K) states that Anaxagoras' beliefs on the 'phases of the Moon' were secret and known only to few. This is particularly worth confronting with a testimony by Plato, borne about the time of Anaxagoras' presumed death in 428, who lets his Socrates say in the *Apology* that anyone who wishes to do so can relatively cheaply buy Anaxagoras' teachings (not necessarily his writings<sup>76</sup>) in the market<sup>77</sup> (*Ap.* 26d-e). Socrates scolds Meletus while saying this, as the latter mistakes the well-known opinions of Anaxagoras with those propagated by Socrates. And although all of this is happening during the trial of the latter and the defendant himself speaks of the writings by Anaxagoras and his beliefs about the gods, neither he nor anyone else says a word about the alleged prosecution.

Some scholars indeed took this passage to be an argument for the existence of such a trial<sup>78</sup>, for Socrates comments on Meletus' charge of not recognising Helios<sup>79</sup> and Selene as gods by responding

75. See e.g. Stone 1988: 241-43, Dover 1988c: 146-47, Raaflaub 2000: 107.

76. See de Strycker & Slings 1994: 308.

77. See Miller & Platter 2010: 75 for possible interpretations of the word ὀρχήστρα in this passage.

78. See discussion in Wallace 1994: 150, n. 49.

79. Montuori (1988: 167-75) believes that it could not form a real charge against Anaxagoras, for Helios and Selene did not enjoy a significant role in fifth-century Athenian cult, and even had they enjoyed one, no one would have expected a metic to be involved in it. These arguments have to be rejected, as it appears it would suffice for Helios and Selene to be deemed divinities to require everyone staying in Athens, a citizen or not, to pay respect towards them; see Pl. *Symp.* 220d, *Leg.* X, 887e, XI, 931a, Hes. *Op.* 339; cf. Parker 2013b.

to him: ‘Do you think you are accusing Anaxagoras? [Ἀναξαγόρου οἶει κατηγορεῖν;]’. Such an argument seems neither particularly convincing nor justified, although the remark on the unrestrained circulation of his teachings does not unequivocally refute it, for there is no evidence for the destruction of someone’s writings in classical Greece. It could be treated as an argument for his being prosecuted and then released, but nothing supports this view, while some actually argued that Plato’s remark could have been the beginning of a later tale about the trial<sup>80</sup>. The term κατηγορεῖν does not have to bear technical meaning. However the argument based on the lack of similar remarks in the contemporary accounts is troublesome due to the fact that beside the works of Plato and Xenophon we barely hear of the trial of Socrates in the extant fourth-century material<sup>81</sup>, the suspicious incongruities between the surviving sources all attest to the fabrication of this case later in antiquity.

The existence of the decree of Diopieithes itself, to which our only source is Plutarch (*Per.* 32), seems unlikely, all the more if we take into account the silence of the authors referring to Anaxagoras and his opinions who had plenty of excuses to tell such a story. We find only three other mentions of Diopieithes as a seer in Aristophanic comedy and just several more in the fragments of lost comedies by other authors (all up to the year 414), where he is described as ‘mad’<sup>82</sup>. Plutarch’s plot is set within a larger narrative of scandals concerning the ‘circle of Pericles’, including charges against Aspasia. Similar accusations against Aspasia and Pericles were often brought forward

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80. See e.g. Gershenson & Greenberg 1962: 348: ‘Socrates’ question was read as an allusion to a historical event, rather than as an outraged protest at the absurdity of accusing *him* of corrupting the youth through doctrines everyone knew to be *Anaxagoras’* and not his. Of course there would have been no point in Socrates referring to Anaxagoras’ *books* if Anaxagoras had in fact been tried earlier for hiding the doctrines at issue’; cf. Wallace 1994: 136-37.

81. There are only two other remarks preserved from the fourth-century sources, both in forensic oratory, one of them passed on by the indirect tradition (Aeschin. 1.173 and Hyp. fr. 55 Jensen), followed by countless later writings; cf. Lenfant 2002: 138. It is worth adding that we also know of Socratic ‘Defences’ written by several fourth-century authors, of which some fragments have survived, among them that of Lysias (Lys fr. 271-76 Carey, clearly epideictic, *pace* Cic. *De or.* 1.231), Theodectes (Arist. *Rh.* II 23, 1399a7-10), and Demetrius of Phalerum (fr. 91-98 Wehrli = fr. 102-9 SOD), with apparently more remaining unmentioned by name (Xen. *Ap.* 1); Polycrates, in turn, wrote an epideictic *Prosecution of Socrates* (Isocr. 11.4), to which Lysias’ defence speech was a response according to the scholiasts (fr. 272a-273 Carey). Aristotle (*Poet.* 1447b1-3, *Rh.* III 16, 1417a19-21) speaks of the entire ‘genre’ of what he called ‘the Socratic dialogues’ (or ‘speeches’, cf. Isocr. 11.4-6), cf. Ford 2009, 2010, Waterfield 2013: 11-13 (with a list of ancient authors involved in such activities).

82. *Ar. Eq.* 1085 and *Vesp.* 380 with schol., *Av.* 988; Ameipsias fr. 10 PCG, Philetairus fr. 9 PCG, Phrynichus *Kronos* fr. 9 PCG, and Teleclides *Amphiktyones* fr. 7 PCG (perhaps also Eupolis fr. 264 PCG, see Sommerstein 1987: 263); cf. *IG I<sup>2</sup>* 57 = *IG I<sup>3</sup>* 61 = ML 65 = Fornara 128 (a decree on the status of Methone proposed ca. 430 by a certain D[iopieithes], if the emendation is correct); cf. Rubel 2000: 109-19.

by comic writers whose ideas Plutarch eagerly incorporated into his biographies (see also pp. 63–66 below on Phryne). The first to explicitly speak of false accusations of Pericles and his circle by comic poets was, to our surprise, Plutarch himself (*Per.* 13.9–10). As Dover (1988b) acutely notes, it is very difficult to explain to someone who has never experienced it what *παρρησία*, democratic frank speech, actually means – hence the later authors’ lack of understanding for the reality of Athenian democracy.

The historicity of the decree of Diopieithes has to be rejected on several grounds. In addition to the convincing arguments noticed by earlier scholarship emphasising all the comic aspects of Plutarch’s sensational story, it is legal chronology that should be emphasised as the main argument for disproving its authenticity. On the other hand, the frequently mentioned linguistic argument does not seem conclusive, for it is perfectly convenient for the later authors to paraphrase the source and restate the original content in new, contemporary wording (for example, using the newly-coined adjective *μετάρσιος* in place of classical Attic *μετέωρος*). Of course, one may assume that Plutarch cited here word-by-word a decree clumsily forged by an earlier author, the authority of whom he believed. Yet when connected with the rest of the evidence, the linguistic arguments provide a final point in support of the view that the decree was a later forgery. The trial of Anaxagoras itself seems unlikely but cannot be deemed unhistorical with all certainty. The one against Aspasia has all the traits of a story based on comic invective, while the case against Pheidias—if any—apparently did not include a charge of impiety.

#### Quellenforschung: ancient biographers

Ancient scholars found many ways to invent circumstances that would show the character of the portrayed person based on a widely understood ‘likelihood’<sup>83</sup>. They used their sources freely, often paraphrasing them under the guise of citations, more often than not making use of the recent popular excerpts instead of reading original authors (cf. Plin. *Epist.* 3.5.10, about Pliny the Elder: *liber legebatur, adnotabat excerpebatque. Nihil enim legit, quod non excerperet*). These extracts were regularly written down without proper context, merged one with another by mere resemblance of source or subject; quite often, the original meaning was long lost or misunderstood<sup>84</sup>. They very rarely used line numbering; not infrequently they omitted a title and book number of the quoted work altogether (Jacob 2000). This had to lead to much confusion when the source was excerpted, rewritten, retold, or simply recalled several times, which was the case with much of the material used by Plutarch, Diogenes Laertius, or Athenaeus.

83. See Hägg 2012: 67–98; cf. Bing 1993 for Hellenistic and later attempts to ‘dramatise’ biographies.

84. Cf. Mejer 1978: 7–29; Fairweather 1974; Bollansée 1999b: 384, with n. 17 (an example of Athenaeus).

Lefkowitz (1981: 110-11; 2012: 93-95, 104-12), having analysed the Hellenistic ‘lives of the poets’ in detail, has tentatively suggested that Athenian impiety trials, and particularly the trial of Aspasia and the decree of Diopieithes, are a product of imagination of later biographers who—for various reasons—made efforts to prove that the trial of Socrates was not the first ‘ideological’ trial in Athens. Earlier prosecution of ‘free thinkers’ could then form a precedent for sentencing Socrates, which would prove useful for the narrative introducing his example as a general trait of Athenian democracy. Many ‘biographical’ tales were invented by Hellenistic and later biographers simply on the basis of the content of the works left by the authors whose life at that point remained otherwise unknown. While doing so, they often widely cited all available sources, including comic and oratorical invective, without applying any critical method, and apparently following the principle ‘se non è vero, è ben trovato’. A single remark suitable for sensational plot was enough to become grist for the gossip’s mill. For example, Demosthenes teased Aeschines in the speech *On the Crown* by saying that Aeschines’ father had been formerly a slave named Tromes, while his mother a prostitute called Empousa (a telling name), which was then without a second thought repeated by Aeschines’ biographers as historical facts (Cooper 1995: 304).

A few curious examples of this approach have been listed by Dover (1988c: 138-42). A scholiast commenting on Aristophanes’ *Frogs* ( $\Sigma$  Ar. *Ran.* 405) on the basis of a fragment from a comedy by Strattis (fr. 16 PCG), where a dithyrambic poet Cinesias (cf. Maas 1921) is derided as the chorus-slayer ( $\chi\omicron\rho\omicron\kappa\tau\acute{o}\nu\omicron\varsigma$ ), draws a conclusion that the *choregia* were abolished on the initiative of Cinesias in the beginning of the fourth century. Satyrus, in turn, in his *Life of Euripides* (F 6 Schorn fr. 39 col. X) treats the plot of Aristophanes’ *Thesmophoriazousae*, in which the Athenian women conspire together against Euripides, as a description of a historical event<sup>85</sup>. Similarly, if we were to believe Plutarch’s account (*Per.* 35) concerning Pericles’ attempt to overcome his great superstitious fear of the solar eclipse during the arrangements for the naval expedition against Epidaurus at the beginning of the Peloponnesian War, we would have to discredit Thucydides’ version of the story (2.56), according to which the expedition took place in the summer of 430, for the nearest solar eclipse (mentioned in Thuc. 2.28) was in August of 431<sup>86</sup>.

The question of intermediaries should be added to this, for Diogenes Laertius had not always read the authors whom he ‘cited’, primarily using quotations in other works, which blurs the question of his ‘immediate sources’<sup>87</sup>. Plutarch, another widely cited historian from the

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85. See also Lefkowitz 1987: 152 and Wallace 1994: 131 (with the bibliography cited by the author in n. 17).

86. Cf. Munro 1919.

87. Goulet 1997: 151-56; Bollansée 2001a: 64-72; Mejer 1978; Gigante 1986; Moraux 1986: 252-53.

Roman era, in his selection of sources willingly made references to the testimonies of other historians, but in his, often anecdotal, narrative he frequently followed comic writers, especially when describing sensational events concerning ancient celebrities. Plutarch's 'unrestrained' use of various sources in his *Lives* included merging different accounts that appeared similar, chronological shifts, inventing the supporting details, and other similar techniques<sup>88</sup>.

It is commonly recognised that biography bears strong connection not only to historiography but also epideictic oratory, following its patterns of praise and blame (Burrige 1997, Hägg 2012). This is true even more for antiquity. Plutarch, as many of his fellow writers, did not attempt to conceal the moralising purpose of his biographies, by means of which he wished to reveal the 'virtue and wickedness' of their characters, ready to sketch timeless moral exempla (παραδείγματα), which should be enough of a warning to his reader<sup>89</sup>. Furthermore, he openly believed the aristocratic government to be the best and—like many of his contemporaries—worshipped Plato while despising the Athenian democrats, which had to significantly influence his view of classical Athens. Plutarch evidently did not understand the nature of democratic government and disliked the *demos*<sup>90</sup>, taking it alternatively for a tyrant or a shapeless mass which can be easily manipulated. We know he also tried to add some spice to his plots (occasionally with a certain naivety), following the general tendency of Hellenistic and later biographical writings, which resulted in his vivid but historically ambiguous 'Lives'.

Historical accuracy in the descriptions of classical Athens was, to put it mildly, also not the forte of Diodorus, the author of our first testimony to the trials in the 'circle of Pericles'<sup>91</sup>. Although traditionally perceived simply as a compiler, he was a writer conscious of his goals as a historian (Chamoux 1993: XVIII-XLII). He, too, regarded historiography clearly as a moralistic and epideictic genre, with its most notable individuals set as examples for the future; he thus generally favoured outstanding individuals and portrayed them as by nature opposed to the 'crowd' (ὄχλος)<sup>92</sup>. Diodorus saw in Athens the fate of countless empires – gradual decline of moral principles and tyrannical aspirations rising

88. Pelling 1979, 1980, 1990; but see Pelling 1992 for a more approving tone; cf. Gomme 1945: 58-59.

89. His moralising aim is clearly stated in introductions to the *Lives* of Aemilius Paulus and... Pericles, see Plut. *Aem.* 1.1-3, *Per.* 1.3-4, 2.1-3; cf. Hägg 2012: 272-77, Gomme 1945: 54-57.

90. This trait can be noticed in almost all of his descriptions of the Athenian *demos*, see e.g. Plut. *Thes.* 25, *Cam.* 36, *Tim.* 37, *Mar.* 28 (cf. Russell 1966).

91. On Diodorus' use of sources, see e.g. Drews 1962, Palm 1955: 15-63, Sacks 1994, 1990: 77, *passim*.

92. Cf. Wirth 1993: 26-32; on Diodorus' moral assumptions ('history as a moral force'), see Sacks 1990: 81-82, 93-108, 215, 229 *et al.*

along with military growth. Sketching a similar scenario for Athens was not particularly challenging. Remarks found in his Hellenistic sources based on anti-Periclean rhetoric were enough to form Book XII of the *Library*, with its eagerness to describe all the events that would support the Thucydidean view of the war as the ‘severest of Athenian defeats’. As the next section will discuss, such political assumptions could prove useful in sketching the life and death of famous individuals living in the classical period and their relation to the contemporary people.

#### Protagoras and ancient book-burning

Protagoras of Abdera (ca. 490 – ca. 421?) was reportedly charged with impiety and either killed or exiled from Athens, while his books were burnt by the Athenians. This famous sophist was the author of the treatise *On the Gods*, illustrating the principles of his agnosticism (Cic. *N.D.* 1.63, Sext. *Emp. Math.* 9.56; F 4 D-K *ap.* D.L. 9.51). All available sources on his trial are both from a later period and mostly dubious as well. The earliest of them was written four centuries after the events it describes. In his dialogue *De Natura Deorum* (1.63), Cicero juxtaposes Protagoras with Diagoras ‘called the Atheist’ and with the famous Greek atheist Theodorus of Cyrene (see pp. 75–76 below). He claims that Protagoras, sentenced by the Athenians, was exiled out of Attic soil (*urbe atque agro*) and his writings were publicly burnt during the meeting of the Assembly (*in contione*). A century later, Flavius Josephus (*Ap.* 2.265 = T 19 D-K) wrote that the Athenians—by a small majority of votes—condemned Anaxagoras to death for his views on the Sun and set a money prize for either seizing or killing Diagoras of Melos (see pp. 46–51 below). The author further explains that Protagoras escaped the city just in time, coming within a hair’s breadth of losing his life after the Athenians agreed to kill him for his writings about the gods which they found incongruous with their own beliefs.

In his *Life of Nicias* (23.4), Plutarch also mentions Protagoras and his flight from Athens, comparing his case with those of Anaxagoras and Socrates. In the treatise *Against the Mathematicians* (i.e. ‘scholars’ in general), Sextus Empiricus (ca. 160 – ca. 210 CE) says that Protagoras was condemned to death by the Athenians, and died in a shipwreck when trying to escape (9.56 = T 12 D-K; cf. Philochorus *FGrHist* 328 F 217 *ap.* D.L. 9.55), referring to a fate commonly ascribed to the impious throughout antiquity (Nestle 1948: 584). He adds that Timon of Phlius (3rd cent.) refers this episode in Book II of his satirical *Silloi* (fr. 5 Diels = fr. 5 Di Marco), where he claims that the Athenians were to burn Protagoras’ books because of what he had written about the gods. Even if we turn a blind eye to the frequently raised objections to Sextus’ careless habits concerning citations from earlier philosophers, we should note that Timon was another author known for his passion for and attention given to scandalous stories of the past<sup>93</sup>. Finally, Diogenes

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93. He wrote i.a. that Plato had committed plagiarism by adopting in his *Ti-maeus* the matter from a Pythagorean treatise (fr. 54 Diels = fr. 54 Di Marco *ap.*

Laertius asserts (9.52 = T 1 D-K) that because of (the introduction to) Protagoras' treatise 'the Athenians expelled him; and they burnt his works in the market-place, after sending round a herald to collect them from all who had copies in their possession' (trans. R.D. Hicks). The Suda (Π.2958, s.v. Πρωταγόρας) repeats some of these remarks. In none of the aforementioned sources is there any direct remark on *a) se/beia*, which does not enter the picture until the Christian authors<sup>94</sup>. Laertius further describes the circumstances of this event by stating (9.54 = Arist. fr. 67 Rose<sup>3</sup> = fr. 867 Gigon):

The first of his books he read in public was that *On the Gods*, the introduction to which we quoted above; he read it at Athens in Euripides' house, or, as some say, in Megaclides'; others again make the place the Lyceum and the reader his disciple Archagoras, Theodotus's son, who gave him the benefit of his voice. His accuser was Pythodorus, son of Polyzelus, one of the four hundred; Aristotle, however, says it was Euathlus. (trans. R.D. Hicks)

Euathlus does in fact seem to be a frequent prosecutor in various trials of that period<sup>95</sup>. We cannot be sure, however, what trial Aristotle, if cited correctly by Diogenes, had in mind; mentioning a different name for the prosecutor arouses suspicion. Diogenes Laertius (9.56; cf. Gell. 5.10.3) makes Protagoras and Euathlus heroes of another quarrel, this time over a due payment, perhaps confused in the biographer's account (Lenfant 2002: 148-49).

What is particularly striking and what raises many concerns—as convincingly discussed by Wallace (1996a)—is the tradition referring to book-burning in classical Greece, which can be dated at the Roman era (and perhaps just then fabricated). One should not forget that religion in Rome was supervised by state officials, unlike in the Greek poleis where the status of priests was much more complex (they did not constitute any coherent 'social group', though individual priests had some political functions in Greek poleis, see Sourvinou-Inwood 2000b [1988]). This disparity had to influence a different understanding of any conception of a 'doctrine' in the Greek and Roman world. If we are to trust Livy (39.16.8), writing two centuries after the notorious *senatus consultum de Bacchanalibus* of 186, we have to assume that before 186 the Senate frequently ordered the officials to gather all available copies of prophetic writings (*vaticini libri*) and burn them. If this is so, Dover (1988c: 157-58) was incorrect in stating that the tradi-

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Gell. 3.17.4), cf. Wallace 1994: 149, n. 33; on Timon's *Silloi* and its reception, see also Clayman 2009: 75-173.

94. E.g. Min. Fel. Oct. 8.3, Lact. *De Ira* 9.1-2, Eus. *Praep. Ev.* 14.19.10.

95. See Ar. *Ach.* 710, *Vesp.* 592; cf. Cratin. fr. 82 PCG *ap. Σ Ar. Vesp.* 592 b (ca. 430 BCE); Ar. fr. 424 PCG (423 BCE?), Pl. *Comic.* fr. 109 PCG; cf. Davison 1953: 35, Olson 2002: 255; perhaps the remarks about both found in comedy made a link between Euathlus and Protagoras possible, see e.g. Eupol. fr. 157 & 158 PCG.

tion of book-burning did not begin until the death of Cicero. However, it should be noted that this inglorious practice gained in popularity during the Augustan era and then during the Empire, when it was employed not solely for the purpose of religious censorship but also in political struggles<sup>96</sup>. Additionally, Roman historiographers<sup>97</sup> make a mention of the events of 181, when the buried chest with the writings which belonged to the king Numa Pompilius was allegedly found, part of which was said to be written in Greek and deal with Pythagorean philosophy. The Senate commanded the praetor to burn them; and although the books were quite obviously a forgery, the act of burning matters as a turning point. After beginning its new life over a century later during the early Principate and continuing throughout the entire duration of the Empire, *damnatio memoriae* became a solution eagerly employed against defiant or inconvenient individuals in an attempt to confirm the imperial authority (Polański 2007).

As proof that the Greeks of that period were familiar with this practice, Dover (1988c: 143) brings up a passage by Aristoxenus (acme 335) cited by Diogenes Laertius (9.40) which says: 'Aristoxenus in his Historical Notes affirms that Plato wished to burn all the writings of Democritus that he could collect, but that Amyclas and Clinias the Pythagoreans prevented him, saying that there was no advantage in doing so, for already the books were widely circulated' (trans. R.D. Hicks). Even if we were to believe that this anecdotal tale were true, it seems that there is a great difference between one such idea being only spoken of (especially when coming from Plato) and the 'state' practice of book-burning.

It is also important to remember that, even during the Republic, Roman political thought and political practice were rather remote from their Greek counterparts; in particular, there was no Roman equivalent to the Athenian ideal of *παρρησία*. Roman politicians, on the other hand, widely assumed that only those in power could speak openly, since the debates were held in the Senate, not the Assembly. Had the burning of Protagoras' books happened in Athens as an infamous exception, it should have drawn considerable attention from contemporary Athenians. We may thus assume that the latter would have left some trace of such an episode in their writings, especially in the case of a distinguished figure, to whom Plato devoted one of his dialogues. Stone (1988: 232; cf. Wallace 1996a: 237-38) summarises it briefly: 'The frequent expulsion of philosophers and other Greek teachers from Rome is well attested, and it was natural for writers of that time to assume that the Athenians were equally suspicious and intolerant. That also suited their contempt for democracy'. All in all, we know of very few individual refugees of the period of the Peloponnesian War<sup>98</sup>.

96. Cf. Forbes 1936: 119, 122-23; cf. Sarefield 2004; Speyer 1981.

97. See Varro *ap.* Aug. *C.D.* 7.34, Liv. 40.29, Val. Max. 1.1.12, Plin. *N.H.* 13.84-87; cf. Plut. *Numa* 22; Lact. *Inst. Div.* 1.22.5-8; Anon. *De Viris Illust.* 3.3; cf. Forbes 1936: 118; Speyer 1981: 52-53.

98. See Panagopoulos 1979.

In Plato's *Protagoras*, the old sophist speaks of himself by admitting that he has never met any trouble because of his being a sophist (317b-c = T 5 D-K):

[...] So I have gone quite the opposite way from these others, and I admit that I am a sophist and that I educate people; I think that an admission of that kind is a better precaution than a denial. And I've taken other precautions as well, so that, touch wood, I've never come to any harm through admitting to being a sophist. And yet I've been practising the craft for many years (and indeed I'm a good age now, I'm old enough to be the father of any of you). (trans. C.C.W. Taylor)

Furthermore, in *Meno* (91d-e = T 8 D-K) Socrates replies to Anytus who claims that one should refrain from mixing with the sophists to avoid corruption:

[...] I know of one man, Protagoras, who earned more money from this branch of wisdom than not just Pheidias (the creator of such conspicuously beautiful works of art), but ten other sculptors too. What you're saying is extraordinary. If people who mend old shoes and repair clothes tried to conceal the fact that they were returning those items in a worse condition than they received them, they wouldn't last thirty days before being found out; if they behaved like that, they'd soon starve to death. And yet you're saying that Protagoras took in the whole of Greece: he was corrupting those who associate with him and sending them back home in a worse condition than when he took them on, and no one noticed for ... well, it must have been more than forty years, because I think he was getting on for 70 when he died, and so he'd been engaged in his profession for forty years. And you're saying that Protagoras took everyone in for that long – right up to the present day, in fact, because his good reputation has not yet been dented. Actually, it's not just Protagoras, because there are a great many others too, some born earlier than him and some still alive today. (trans. R. Waterfield)

Most likely, Plutarch and Diogenes Laertius drew from the same tradition, being the aforementioned Hellenistic biographical literature, always in search of thrilling motifs and spicy plots. I will come back to this proclivity in reference to the trial of Phryne (see pp. 63-66 below). To sum up, it should be concluded that the trial of Protagoras, and particularly the tradition concerning the exile and public book-burning, seems highly doubtful when viewed through the prism of Plato's dialogues, while all the testimonies which mention it are late, mostly anecdotal, and mutually exclusive<sup>99</sup>.

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99. I do not believe that Pl. *Tht.* 171d and a fragment from Eupolis' *Flatterers* cited by Athenaeus (see Wallace 1994: 134) add anything valuable to the discussion about an actual trial.

## Mysteries and superstitions: the Hermae and beyond (415-399)

Unlike the trials of debatable historicity discussed up to this point, the events of 415 concerning the trials of the Hermocopidae and the profaners of the Mysteries are well attested in the contemporary sources<sup>100</sup>, although themselves not without an agenda<sup>101</sup>. The atmosphere of a witch-hunt, false accusations, and encouraging the delation is known to Thucydides' readers<sup>102</sup> (see Thuc. 6.27.2 for a proclamation inviting denunciation of *any* act of impiety). It can be partly justified by the fear of the secret *ἐταιρεῖαι* (Thuc. 6.60, Isocr. 16.6; McGlew 1999), which were about to leave such a heavy mark on Athenian memory during both coups d'état, in 411 and 404. The scale of events concerning the mutilation of the Hermae went clearly beyond the actions of a single *ἐταιρεία* (Pelling 2000: 43). Because of the information given as a result of the Hermocopidae proceedings, Alcibiades himself was charged with profaning the Eleusinian Mysteries by a sacrilegious private performance of their secret rites, most likely meant as a parody<sup>103</sup>.

Much has been said on the political aspects of these events, quite likely an intrigue instigated by political enemies of Alcibiades, in the shadow of attempts to deter the Sicilian expedition<sup>104</sup>. Thucydides explains that the mutilation of the statues of Hermes posed a bad omen for the recently planned military mission (6.27.3) (the presence of a 'godless' individual on the ship was perceived as a threat to the entire crew, while Hermes was considered a god of travel)<sup>105</sup>, although it was

100. See Thuc. 6.27, 53, 60, Xen. *Hell.* 1.4.14-23 (both authors, writing about the profanation of the Mysteries by Alcibiades, use the verb ἄσεβέω; cf. And. 1, Dem. 21.146-47); cf. Hansen 1975: 77-82, MacDowell 1962.

101. See MacDowell 1962: 181 and Pelling 2000: 26-37 on some of Andocides' hidden agenda, and Pelling 2000: 18-25 and Hornblower 2009 on Thucydides'.

102. It is worth noting, however, that the enquiries were led by the ζητηταί, appointed for this purpose by the Council, a fact not stressed by Thucydides, see And. 1.14, 36, 40, 65, cf. n. 101 above.

103. See the overview in Smarczyk 1990: 270, n. 324. Murray (1990: 155-56) notes that the sources speak only of the performance, not of parodying the rites, but Wallace (1992: 328 n. 2) defends the comic aspect based on some contemporary parallels (to which a later one about Ninus could be added, see Σ Dem. 19.281, 495b: ἐξ ἀρχῆς γέλωτα εἶναι καὶ ὕβριν κατὰ τῶν ὄντως μυστηρίων [ὄτι] τὰ τελούμενα ταῦτα <νομίζοντες> τὴν ἰέρειαν ἀπέκτειναν). In fact, MacDowell (1962: 211) believed that among the denounced there were probably three comic playwrights, a detail which would point to mockery rather than simple 'performance'; cf. Bremmer 1995: 77. For more on the gravity of this kind of offence in classical Athens, see Gagné 2009.

104. See e.g. MacDowell 1962: 190-94, *passim*, Gomme et al. 1970: 276-90, Osborne 1985; Furley 1996; Rubel 2000: 197-204. For an overview of the scholarship on these affairs, see Hornblower 2008: 367-72. The mutilation happened some two months after the Assembly meeting which agreed for the Sicilian expedition, see MacDowell 1962: 186-89.

105. Cf. Powell 1979; Gomme et al. 1970: 284; Furley 1996: 93-101. The monuments should perhaps be seen as the god's property and a confirmation of the

not the first time such an impious act had happened (6.28). Andocides (1.67) tells the dicasts in his trial that the mutilation was the result of a ‘pledge’ (πίστις) between the transgressors, a ritual oath conceived as a mutual warranty<sup>106</sup>.

The charges in both cases were initiated by citizens, Pythonicus and Diocleides, presumably by the *εἰσαγγελία*<sup>107</sup> initiated before the Council<sup>108</sup> (at least in the Hermae case), and subsequently taken to popular courts<sup>109</sup> (which would normally imply *γραφαί*). All of this was based on a series of denunciations (*μηνύσεις*)<sup>110</sup> which came from citizens, metics, and slaves<sup>111</sup>. We cannot be sure of the role of the Assembly in all of this. Pythonicus gave some information on the Mysteries before the Assembly (And. 1.11-14), and Andocides addressed the dicasts in 399 by saying ‘the speeches were told before you’ (1.37), but it might be wrong to read it as anything else than the rhetorical ‘as you all know’ *topos*<sup>112</sup>. Diocleides was later separately tried and sentenced to death for misinformation in court, probably by a *γραφή* (And. 1.65-66). The accusation of impiety was intertwined here with the charge *passee-partout* of attempting to subvert the democracy (*κατάλυσις τοῦ δήμου*), while the two cases were linked by the prosecutors<sup>113</sup>. As a

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link between him and the Athenians, rather than as his effigy, cf. Osborne 1985, Graf 2000: 122-23. For some examples of Athenian ‘superstitions’ (*δεισιδαιμονία*), see e.g. Theophr. *Char.* 16; cf. Meijer 1981: 259-61.

106. Cf. MacDowell 1962: 192, Leão 2004: 214-215; Murray 1990; Furley 1996: 93-101; see also remarks on the *Κακοδαιμονισταί* above, cf. Thuc. 3.82.6, 8.73.3, And. 1.41.

107. See And. 1. 37, 43 (*εἰσαγγέλλειν ἐν τῷ δήμῳ περὶ Ἀλκιβιάδου* in 1.14 is apparently meant in a non-technical sense: ‘informed at the Assembly about Alcibiades’ (not *κατὰ* A.), and thus 1.27 probably refers to this as well; it is possible that in other places we should also read the term in its general meaning of *μηνύειν*, cf. LSJ s.v. *εἰσαγγέλλω*; cf. MacDowell 1962: 73, 81, 88, Rhodes 1979: 110); see also Plut. *Alc.* 19.1-3, 22.2-4 (the authenticity of the *ἔγκλημα* cited only by Plutarch, which is incongruent with other sources, is at least debatable, see Harris (2013b): 148, n. 21); cf. Hansen 1975: 11, 52, 77-82.

108. That is if we discount Pythonicus’ denunciation before the Assembly, see n. 107 above. See And. 1.37, Isocr. 16.6-7; cf. And. 1.15, 65.

109. And. 1.17; cf. 1.28 (trial as an expected outcome implied) and Thuc. 6.60.4: *κρίσεις ποιήσαντες*. This would be the typical course of events within *εἰσαγγελία*, cf. Hansen 1975: 51.

110. See almost fifty occurrences of *μηνυ-* throughout the entire And. 1 and eleven in Thuc. 6.27-29, 53, 60-61. One of the ‘informers’ was Andocides himself (Thuc. 6.60.2, And. 1).

111. See Thuc. 6.27-28, 60; And. 1.11-17, 34-35.

112. On the *topos*, see Arist *Rh.* 1408a34-36; on the argument about the use of *ὅμεῖς* in And. 1, cf. Rhodes 1979: 109 (n. 56), 111, Pelling 2000: 30. Based on Hansen’s model, one would have to assume that in this type of *εἰσαγγελία* the Assembly would at some point become involved, cf. Rhodes 1979: 110-11.

113. Cf. And. 1.36, Thuc. 6.27-28, 53, 60-61, Isocr. 16.6-7 (Thucydides speaks of *ἀσέβημα* and *ἀσεβοῦντες* in both the case of the Mysteries and the Hermae,

result, 22 individuals were sentenced to death and confiscation of property for both crimes, some of whom fled Athens<sup>114</sup>; the sentences were then inscribed and publicly displayed on stelae<sup>115</sup>. Similarly, Alcibiades and ‘his companions’ were sentenced to death *in absentia*, because—technically speaking—they ‘failed to appear’ in court (Thuc. 6.61.7: ἐρήμη δίκη)<sup>116</sup>.

One of the principal defendants—and, soon, chief denunciators—in these trials was *Andocides* the orator who had to go into exile after giving evidence during his arrest in return for immunity (ἄδεια) in the on-going trials<sup>117</sup>. Other informers pivotal to the case of the Hermae were Andromachus and Teucrus who gained enormous prizes for testifying (And. 1.28, 40; there was also a price put on the heads of fugitives, see Thuc. 6.60.4; cf. Eur. *El.* 32-33). Andocides’ part in the mutilation of the Hermae and profanation of the Mysteries has been much debated<sup>118</sup>, but it does not constitute a matter of great importance for the present study. Some fifteen years later, he tried to trivialise his part in these scandals in the defence speech given in a new trial brought against him, again for impiety (And. 1.32-56)<sup>119</sup>.

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but there is no *explicit* statement in the sources that the charges in courts were brought for ἀσέβεια; it seems, however, that we have no reason to suspect that Andocides was barred by the Isotimides’ decree to enter the temples in Athens for any other reason than having been found guilty of impiety in 415, since he himself tries to disprove the charge of impiety in reference to the past events, cf. And. 1.10, 29, 58, 71, 132 *et al.* & [Lys.] 6); cf. Lys. 13.20; there is, of course, a certain rhetorical and legal manipulation involved in it, cf. Lycurg, *Leocr.* 147, *passim*. See also Furley 1996: 41-48 on the links made between two cases by the Athenians; see Dem. 25.29 on other cases which could be deemed an attempt to subvert the democracy in Athens.

114. Hansen 1975: 77-82, Gomme *et al.* 1970: 276-80.

115. See the list of sources in Fornara 1983: 170; cf. Pritchett 1953, Lewis 1966, Furley 1996: 45-48.

116. See also And. 1.16, Isocr. 16.7; cf. Hornblower 2008: 457, MacDowell 1990: 300.

117. See Thuc. 6.27.2, 60.3 (and so did others: And. 1.11-22). In [Lys.] 6.22-23 there is a mention of an entire year of detention, but an arrest this long does seem improbable in this case, cf. Todd 2007: 456-57.

118. See e.g. MacDowell 1962: 167-76, Marr 1971, Edwards 1995: 17-26.

119. Not long after the prosecutions of 415, Isotimides proposed a decree, passed soon after, perhaps aimed specifically against Andocides. The new law said that whoever had admitted himself guilty of impiety could not enter the ‘holy places’ (neither the temples of Attica nor the Athenian agora; And. 1.71, 132), which forced Andocides to leave Athens at that time. After years of exile and temporary returns, he chose to settle back in Athens, hoping to be covered by the Amnesty, only to be accused of impiety again and go through a proper trial.

The trial for ἀσέβεια against Andocides in 399 or 400<sup>120</sup> involved the procedure of ἐνδειξις, which could be employed when someone benefited from the rights which s/he should not enjoy, in this case the ability to enter the agora and the sanctuaries<sup>121</sup>. Andocides was charged with impiety not only for illegally entering the temples, which was prohibited to him earlier by the Isotimides' decree, but also for presumably leaving the branch on the altar of the two goddesses in the Eleusinion<sup>122</sup> (And. 1.113), for which the punishment was death (1.115). Due to the religious nature of the trial it was introduced by the archon basileus ([Lys.] 6.11), and the dicasts unusually consisted only of the citizens who had been initiated into the Mysteries (And. 1.11, 29), which emphasised the religious character of the prosecution<sup>123</sup>. Anytus and Meletus, the soon-to-be prosecutors of Socrates, were on the opposite sides in this trial, Anytus being a witness for the defence (earlier allegedly involved in the murder of Leon of Salamis, see And. 1.94), Meletus<sup>124</sup> a supporting prosecutor (And. 1.71)<sup>125</sup>. Andocides exculpated himself in the trial and was acquitted<sup>126</sup>.

The pseudo-Lysianic speech *Against Andocides* ([Lys.] 6) contains a zealous religious argumentation, most likely either from 399 or the late fourth century<sup>127</sup>. What is rather striking in these circumstances

120. See [Lys.] 6.11-12; see the discussion on the date in MacDowell 1962: 204-5.

121. See And. 1.10, 29, 111 (cf. 76); cf. [Lys.] 6.11-12, 24 (the speaker in [Lys.] 6.11 mentions δίκη, though the remark proves to be problematic, cf. n. 134 and 153 and the discussion below); [Plut.] *X or.* 835a, Harp. s.v. ζητητής; cf. Hansen 1976 on the procedure. The prosecutor Cephisius argued that Andocides did not have the citizen (and thus religious) rights in Athens because of the decree of Isotimides from 415, which Cephisius believed was still valid in spite of the Amnesty of 403/2. A similar attitude towards the Amnesty can be found for example in Lys. 12 and 13. Andocides, on the contrary, argued in his defence that this law was not valid anymore, and that it had not applied to him even before (see And. 1.71-72, *passim*), not necessarily in agreement with the logical interpretation of the law, cf. MacDowell 1962: 200-3.

122. The adverb δίς in [Lys.] 6.30 is variously understood either as two charges in the present trial (see e.g. MacDowell 1962: 62, Todd 2007: 460-61) or two lawsuits by ἐνδειξις (see e.g. Hansen 1976: 11, 24, 128).

123. Cf. Martin 2009: 138ff.; see also Scafuro 2010; cf. Gagné 2009 on the offences against the Mysteries.

124. MacDowell (1962: 208-10) argues that Meletus from the first trial should not be identified with the one from the other; Dover (1968a: 78-80), however, opts for identifying the two, cf. Nails 2002: 199-202.

125. Cf. Rubinstein 2000: 106, 235.

126. He had to go into exile about a decade later for an entirely different reason, namely a disagreement with the Athenians regarding the conditions of the peace treaty proposed by the Athenian embassy (which he was a part of) to Sparta.

127. We cannot be certain that this speech is not a later rhetorical exercise, apparently by someone acquainted with Athenian legal system. Todd (2007: 403-11) believes it was a speech by a supporting prosecutor in the trial of Andocides

is that one of the individuals involved in the prosecution was Callias of the Kerykes, a wealthy patron of the sophists, better known as a host in Plato's *Protagoras* and Xenophon's *Symposium*, apparently tangled in a private dispute with Andocides<sup>128</sup>. The accusation of impiety is frequently repeated by the author, who also mentions the possibility of following in impiety trials some kind of 'unwritten laws' subject to the interpretation of the Eumolpidae (6.10). This remark, however, raises many doubts<sup>129</sup>. Curiously enough, Andocides himself employed religious argumentation in his speech, for instance when claiming that the gods had saved him during his voyages (1.114, 137-39), most likely as a reply to similar arguments by his prosecutors ([Lys.] 6.19), but

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(possibly Meletus), to which And. 1 was a reply, but does not discuss other possibilities in detail. For the discussion of religious terminology in [Lys.] 6, especially the accusation of being ἀλιτήριος, see Furley 1996: 109-16.

128. Cf. Clinton 1974: 49-50, Gagné 2009: 230.

129. The classical sources give us little reason to suspect that the Eumolpidae had any legal capacity apart from the customary right to give their interpretation of the rules concerning the Eleusinian Mysteries, which is attested in several sources, see *IG I<sup>2</sup> 76* (= *IG I<sup>3</sup> 78* = *ML 73* = *Fornara 140*) in a case of ἀπαρχή (see n. 146 below on the dating), see also *IG II<sup>2</sup> 3490*, cf. Parker (1996: 295-96, 2004: 64-65), Hitch 2011: 136, MacDowell 1978: 193, Garland 1996; cf. Pl. *Euthphr.* 4a-e, Is. 8.39, *IG II<sup>2</sup> 1177*, *Dem.* 22.27; cf. Clinton 1974: 13-18, 49, 90. It is, nevertheless, interesting to note—however little historical value it might have—that the scholiast commenting on *Dem.* 22.27 (schol. 83 Dilts) believed that they often heard cases for impiety (ἱερὸν δὲ γένος οἱ Εὐμόλπιδαί, ἱερᾶται δὲ Ἐλευσίνοι, καὶ ἐπὶ τούτου πολλάκις ἐδικάζοντο ἀσεβείας οἱ βουλόμενοι). See also *And.* 1.115-16 for the interpretation by the Kerykes (cf. *IG I<sup>2</sup> 6* = *IG I<sup>3</sup> 6* = *Meritt 1945: 61-81* = *Fornara 75*; cf. *Meritt 1946: 249-53*). On the other hand, see *Dem.* 47.68-70 for the possible relations between the legal space and exegesis. The citizens selected for this purpose could also watch the order of the Mysteries as the ἱεροποιοὶ τῶν σεμνῶν θεῶν (see *Dem.* 21.115, *Din. fr.* VIII, 2 *Conomis*). The *exegetai* themselves could have been a post-403 invention, see Clinton 1974: 90-93, Gagné 2009: 225 with notes. Both the Eumolpidae and the Kerykes were themselves subject to examination (*Aeschin.* 3.18). Perhaps we should read the legal term ἄγραφος as opposed to ἀναγράφειν, that is 'not written down for public display' rather than generally 'unwritten', cf. MacDowell 1962: 202 (who unnecessarily focuses on 'stone'); it could have also been connected to the revision of laws and the decree of Teisamenus of 403 (see *And.* 1.83-84, but see also Canevaro & Harris 2012 on the problem of its authenticity), cf. Ostwald 1973: 89-92. More generally understood 'laws of nature' were seen, at least according to Aristotle, as distinct from unwritten laws of each polis, cf. Harris (2006a: 54, 2013a: 32). We can thus understand the remark about the ἄγραφος νόμος in [Lys.] 6 as a more general point of reference, that is following what is just (δίκαιον) in respect to the gods on the one hand and avoiding what is not on the other, having taken into consideration the written laws of the polis, cf. Ostwald 1973; see *Xen. Mem.* 4.4.19-21 on piety and the unwritten laws, Pl. *Leg.* VII, 793a-d, *Dem.* 18.275; cf. Carey (1994: 185, 1996: 34-35), who argues that there were social sanctions rather than legal penalties involved for breaching the ἄγραφοὶ νόμοι in Athens. For the argumentation in *And.* 1 and [Lys.] 6 as a possible reflection of the *physis-nomos* debate, see Gagné 2009: 226 with n. 85. See also *IG II<sup>2</sup> 1231* for an example of the extension of the *genos* of Eumolpidae to an 'outsider', cf. Mikalson 1983: 85.

perhaps only in the edited version of the speech put in circulation<sup>130</sup>; or when he argued that a lie in regard to the Mysteries on the side of his prosecutors was impious, since they falsely stated that the defendant had profaned the Mysteries (1.30).

It seems even more curious that it was also Andocides who prosecuted a certain Archippus for ἀσεβεία soon after the trial of the Hermocopidae and before his own, stating that Archippus ‘acted impiously against his own ancestral Herm’ ([Lys.] 6.11)<sup>131</sup>. The case was reportedly not brought to court after Andocides agreed to drop charges<sup>132</sup> (which would happen before the ἀνάκρισις), but Archippus did not recognise his guilt when offering it ([Lys.] 6.12). The Pseudo-Lysianic author of *Against Andocides* calls this trial ‘δίκη ἀσεβείας before the archon basileus’ ([Lys.] 6.11), that is a private suit. According to Harris (2006a: 417), this trial had to be a γραφή, for it involved the basileus (traditionally responsible for the public religious regulations)<sup>133</sup>, and that δίκη should be read here as a general term with a meaning close to a ‘trial’<sup>134</sup>. There are problems with both stands.

On the one hand, δίκη had to concern a private dispute, that is one which would normally not involve the community as a whole. This is difficult to understand in the case of impiety, although if we think of

130. Cf. Dover 1968a: 169; on the protection or wrath of the gods during sea travels, cf. Antiph. 5.82, Eur. *El.* 1352-55, Xen. *Cyr.* 8.1.25; see also n. 105 above.

131. Out of this remark we neither learn whether it was Andocides’ or Archippus’ Herm, nor why it was ‘ancestral’ (φάσκων τὸν Ἀρχιππον ἀσεβεῖν περὶ τὸν Ἑρμῆν τὸν αὐτοῦ πατρῶον), but the first possibility seems more justifiable; see Furley 1996: 64-65 and Todd 2007: 449-50 on some further questions regarding this passage. In the context of the speech, the use of the epithet πατρῶος appears as an additional emphasis put on the importance of this particular Herm, cf. Mikalson 1983: 96. See also And. 1.61-62 for Andocides’ explanation why it was the only Herm not mutilated along with all the others.

132. Provided that we believe the account by the author of [Lys.] 6, who stated that it was done in return for a compensation, which might be biased, just as the insults found in Aeschin. 3.52 about Demosthenes’ settlement of the dispute with Meidias and other similar instances of slander typical to Athenian forensic oratory. Wallace (2006) argues that in public suits such a compensation would be subject (only) to a fine. Assuming that the prosecution of Archippus was a public suit (which we cannot be sure of), this would make this statement—slanderous or not—a denunciation of opponent’s past illegal activity (cf. Lanni 2009). Harris (2006b; cf. 1999) opposes this view, emphasising the penalty of fine and partial ἀτιμία for the offence of ‘not following through’ with a public case.

133. Cf. Todd 2007: 448-49; cf. [Arist.] *Ath. Pol.* 57.2, Hyp. *Eux.* 6, Dem. 35.48, Σ Pl. *Euthphr.* 2a.

134. In the classical sources it is possible to meet both δίκη in a general sense of a ‘trial’, ‘prosecution’ (see e.g. Isocr. 18.12, Ar. *Nu.* 758, 770, Thuc. 6.61.7.6), and γραφή in a general sense of a ‘written accusation’ (see e.g. Antiph. 1.2), cf. Hansen 1980: 90. Perhaps also Plutarch writing of the alleged trial against Aspasia (*Per.* 32.1: δίκην ἔφευγεν ἀσεβείας ‘was charged with impiety’) simply had just a ‘trial’, not any specific procedure in mind (regardless of the actual historicity of these events).

it simply as the ‘lack of reverence’ towards a god manifested mainly by the damage done to private (though sacred) property which did not involve anyone else, it is certainly conceivable. It could form an offence similar to δίκη βλάβης, especially considering that the Hermae did enjoy an ambiguous status in Athens, being somewhere on the verge of the public and private<sup>135</sup>. Yet it is no less strange to our understanding of Athenian culture. It might be also worth noting that we learn from other sources that the basileus dealt with δίκαι in homicide cases<sup>136</sup>, and the scholion to Pl. *Euthphr.* 2a reads ‘δίκαι πρὸς αὐτὸν ἐλαγχάνοντο ἀσεβείας’, either in the technical or general meaning of δίκη (which, however, looks like a curious rewording of the *Ath. Pol.* Passage cited below). On the other hand, the remark in [Lys.] 6 reads ‘δίκην ... ἔλαχεν’ (‘brought a suit’) which in legal context always presupposes δίκη *sensu stricto*<sup>137</sup>. And although [Arist.] *Ath. Pol.* 57.2, speaking of the basileus, reads ‘γραφαὶ δὲ λαγχάνονται πρὸς αὐτὸν ἀσεβείας’, we find no parallel in the extant oratorical corpus, which in turn shows a few dozen examples of λαγχάνειν δίκην. We are also given a late fourth-century example of an impiety case before basileus in Hyperides’ *Against Diondas* from the 330s (brought by Diondas against Lycurgus), but the procedure is not specified by the orator (144v, 19–20)<sup>138</sup>. Without further evidence, we are left in ignorance, as it needs to be concluded that both δίκη and γραφή remain a possibility in this case – that is if we believe it to be historical, as there is still no certainty among the scholars about the dating of the pseudo-Lysianic *Against Andocides*.

#### The atheistic poet: Diagoras of Melos (415?)

Another case which was notorious in antiquity is that of Diagoras of Melos, who was said to have profaned the Eleusinian Mysteries and revealed its secrets, most probably just after the trials for their profanation by Alcibiades and his companions. After the Melian fled Athens, the Athenians were said to have set a reward for either killing or seizing Diagoras. There is no mention in the extant sources, however, of his being ever killed or seized.

As far as we can tell, Diagoras was, unlike Protagoras or Anaxagoras, a poet, not a philosopher (T 8 Winiarczyk ap. Σ *Ar. Ran.* 320, cf. MSS of *Ran.* 320). Some remnants of his poetry, for which he was called ‘the atheist’, appear in later tradition, but they do not look any more strik-

135. See n. 105 above; cf. Carey 2004a: 127.

136. See Antiph. 6.41–42, Pl. *Euthphr.* 2a; cf. Gagarin 2000.

137. Cf. Rubinstein 2000: 206, n. 36, Carey 2004a: 127, Todd 2007: 448–49. Probably because of the practice of drawing lots to set the order of private lawsuits for the day, cf. LSJ, s.v. λαγχάνω, I.3: λαγχάνειν δίκην *obtain leave to bring a suit (esp. a private suit)*.

138. Λυκοῦρ(γον) δὲ οὐ μόνον παρανόμων ἐδίωξεν, ἀλλὰ καὶ ἀσεβείας πρὸς τὸν βασιλέα. For the text of *Against Diondas*, see Carey et al. 2008, Horváth 2010.

ing than the remarks we find in Aeschylus or Euripides on the ‘god’ being an abstract ‘mind’ of the universe (see F 1-2 Win.). Nonetheless, there existed certain atheistic works ascribed to him in the centuries following his death, *Ἀποπυργίζοντες Λόγοι* and *Φρύγιοι Λόγοι*, the latter most likely being a Hellenistic treatise (Jacoby 1959: 24-31). The sources which discuss his beliefs also appear only in the later biographical and doxographical tradition<sup>139</sup>.

Our first source to mention Diagoras in a political context is Aristophanes<sup>140</sup>. He does not tell us much, but in the *Clouds* he ridicules Socrates as the ‘Melian’ (830: *Σωκράτης ὁ Μήλιος*), referring to his ‘godless’ beliefs, when Strepsiades explains that there is no Zeus but only *Dinos*, the Vortex. We cannot be certain of the date of this testimony. Since the first staged production of the *Clouds* in 423 at the Great Dionysia was not well received, Aristophanes decided to rewrite his play. The final editing probably took place in the years 419-17, yet there can be no certainty if the revised version was ever staged in Athens<sup>141</sup>. In the scholia to this passage, Diagoras is juxtaposed with Socrates and described as a *θεομάχος*, ‘fighting against the god’ (*Σ Ar. Nu. 830*).

A somewhat more peculiar piece of information comes from the *Birds*<sup>142</sup> (1072-75), Aristophanes’ play staged in 414, and one full of allusions to the Sicilian expedition and its generals<sup>143</sup>. The chorus of birds trying to settle a new city turns to the audience with something that resembles a parody of an Assembly resolution: ‘Listen to the City’s notice, specially proclaimed to-day [Τῆδε μέντοι θῆμέρα μάλιστ’ ἐπαναγορεύεται]: ‘Sirs, Diagoras the Melian whosoever of you slay, shall receive, reward, one talent; and another we’ll bestow if you slay some ancient tyrant, dead and buried long ago’ (trans. B.B. Rogers). It does sound like an imitation of an actual resolution, which could have formed the basis for sending a ‘warrant’ after Diagoras. It also looks like a repetitive proclamation (*ἐπαναγορεύεται*, although it would be hazardous to base chronological assumptions solely on the comic wording, since we lack evidence other than a non-obvious reading of *μάλιστα*) placing such a proclamation outside of the Dionysia, e.g. in the Assembly.

139. See Jacoby’s and Winiarczyk’s works cited here for a detailed register and discussion of the sources.

140. A certain Diagoras ‘the Quibbler’ was mentioned ca. 430 by Hermippus (fr. 43 PCG), yet we cannot be sure of his identity.

141. See Dover 1968b: lxxx-xcviii, Henderson 1993, Storey 1993 (Kopff 1990 argues for the latter part of the 410s).

142. I am suspicious of other possible references to Diagoras in the *Birds* mentioned by Romer 1994. However, he also mentions a more probable reference to Diagoras’ flight to Pellene in *Av.* 1421 attested by the quotation from Melanthius in the scholia to *Av.* 1073, already noticed by earlier scholarship, see e.g. Woodbury 1965: 191, n. 37, Katz 1976: 371-72.

143. Cf. Katz 1976, Furley 1996: 136-40.

We find a similarly sounding ‘decree’ concerning Diagoras in the old scholia to this passage (Σ Ar. Av. 1073; cf. Σ Ar. Ran. 320). The scholiasts claim that Diagoras, after the fall of Melos, came to Athens and profaned the Mysteries by revealing its secrets to the uninitiated, turning many of them away from the proper initiation. They then tell us that the Athenians ‘made a proclamation against him’ (ἐκήρυξαν κατ’ αὐτοῦ) and wrote a sentence on a bronze stele, which, according to the scholiast, was the Attidographer Melanthius’ account from his work *On the Mysteries* (FGrHist 326 F 3). Craterus (FGrHist 342 F 16), referred to next by the scholiast, mentions a reward of one talent for killing Diagoras and two for bringing him back alive. They explain that the reason for condemning Diagoras was his impiety (τὸ ἄσεβές), resulting from his spreading the secrets of the Mysteries, and thus belittling their importance and discouraging those willing to be initiated from doing so. The scholia then go back to Melanthius and the stele, and repeat in a slightly different wording the reward for either killing or seizing the Melian, while adding that it all happened at the time of the capture of Melos (which ended in a massacre, Thuc. 5.116). Apparently, we are dealing with some scattered data, repeated and rephrased by our sources one by another and merged by the editors of the scholia<sup>144</sup>, with little hope of finding the Ur-exemplar.

Perhaps some additional tension in Diagoras’ case came in fact both from the recent affairs of 415 and his being a Melian in Athens after the Melian massacre of 416/5 (during the archonship of Arimnestus). Another factor which might have played a role in the cases concerning the Mysteries around that time was the apparent attempt to promote the latter as a Panhellenic cult and to enforce Athens’ interests through ‘religious politics’. The First-Fruits Decree (IG I<sup>3</sup> 78 = ML 73 = Fornara 140; cf. Isocr. 4.31) ordered not only the Athenian demes but also the allies of Athens to hand over their first crops to the sanctuary at Eleusis<sup>145</sup>. Either not much later or sometime earlier<sup>146</sup>, the Athenians established by the so-called Epistatai Decree (IG I<sup>3</sup> 32) the board of overseers of the treasury at Eleusis, elected by and accountable to the Athenian *demos*. Perhaps some of the parodying of the Mysteries performed ca. 415 was a reaction to this aggressive religious propaganda, just like a determined response to the profanation was an outcome of the cult’s new role<sup>147</sup>.

The old scholia to *The Frogs* (Σ Ar. Ran. 320) call Diagoras an ‘atheistic poet’ (μελῶν ποιητῆς ἄθεος) who ‘introduced new gods, just like

144. Cf. Dickey 2007: 29–31 on the editors of the scholia to Aristophanes.

145. See a detailed discussion of the decree and its political significance in Smarczyk 1990: 167–298, cf. Furley 1996: 36–38 for a brief summary.

146. See n. 30 above on the dating of the Epistatai Decree. See Cavanaugh 1996: 73–95 for the new dating of the Aparchai Decree (ca. 435), cf. pp. 29–72 on the dates proposed by earlier scholarship; cf. Smarczyk 1990: 224–52 for the early 417 as another likely date; cf. Rosivach 1997.

147. Cf. Smarczyk 1990: 253–98, Bremmer 1995: 77; cf. Gagné 2009.

Socrates'. There survives yet another early account. Pseudo-Lysias in the speech *Against Andocides* concerning the aforementioned trial of Andocides of the year 399 or 400 attacks the accused by saying that he behaved even worse than Diagoras ([Lys.] 6.17). The orator emphasises that while the latter acted impiously in his words against the sacred rituals and festivals foreign to him, the former committed the same not only by deed but also against religion of his native polis. Just after this comparison, the author speaks of the reward of one talent for either seizing or killing the fugitive. Similarly, Diodorus narrating the events of Athenian history of 415 mentions Diagoras called 'the Atheist' (13.6.7), who, accused of impiety, fled Attica in fear of the Athenian *demos*, which resulted in the Athenians' setting a prize of one talent for killing him. We find similar accounts in numerous later sources. Moreover, we know of a prize of 10,000 drachmae (roughly 1,7 talents, an equivalent of the pay for several decades of work of a qualified worker) for information given in the ongoing trials of 415, with an additional one set for the killing of the condemned refugees (see above). The disagreement on the rewards between these accounts and the Attidographers 'cited' by the scholia who supposedly had seen the inscriptions directly on the stelae remains surprising<sup>148</sup>.

In connection with the passage from Aristophanes' *Birds* and the remark from the speech *Against Andocides*, the proclamation against Diagoras seems plausible, although in this case alike we are left with no comprehensive data, especially on the exact wording of the sentence, which later authors could have deduced solely from the passages of Pseudo-Lysias and Aristophanes. Ostwald (1986: 276) lays stress on the fact that in the surviving sources there is no mention of any kind of trial in an actual court (if there was one that had happened before, it would have to be carried out *absente reo*), but only of the proclamation of the Assembly constantly referred to by the verb κηρύττειν. Athenian orators did not necessarily refer to historical exempla very accurately, while the date of the composition of [Lys.] 6 remains unknown, yet it should be safer to assume that the reward of one talent for either killing or capturing Diagoras is more likely on the basis of a more recent account ([Lys.] 6.18).

If the surviving early testimonies can be trusted, the 'warrant' was sent after Diagoras for some kind of offence against the Mysteries ([Lys.] 6.17), not for his writings, as suggested by later sources. Yet nothing is known of Diagoras' beliefs, which is surprising in the presence of the surviving remarks on the 'religious' beliefs of Protagoras, Prodicus, Critias, or Democritus. We cannot be certain if the genuine writings by Diagoras ever existed or, if so, whether they were known during his lifetime<sup>149</sup>.

148. Cf. Davies 1996: 34-35.

149. Both atheistic works were probably attributed to him in the following centuries. A similar work, *Phrygios Logos*, had been earlier ascribed to Democritus. These were perhaps some of numerous Hellenistic orientalising treatises concerned with religious and philosophical issues, deemed impious and thus attributed to an impious

Following the account of Diodorus and the remarks by the Arab philosopher Al-Mubaššir writing in the 11th century CE, it is possible to date the decree concerning Diagoras at the archonship of Charias (415/4), perhaps the year 415<sup>150</sup>, just after the mutilation of the Hermae in the summer<sup>151</sup>. What we can assume is that the proclamation against Diagoras—if there was one—would have to precede the *Birds*, staged in 414.

Our earliest source, Aristophanes, certainly does speak of some proclamation of the Assembly against Diagoras, and mentions, just as the author of [Lys.] 6, the reward of one talent. Neither they nor any later testimony indicates anything close to a court trial. We do not have many parallels for this. Perhaps Diagoras was tried and sentenced *in absentia*, just like Alcibiades about that time (cf. Thuc. 6.61.7: ἐρήμη δίκη). We hear of similar proclamations in the fifth century which made it legal to kill an outlaw without entailing the pollution for homicide, as in the case of Arthmius of Zeleia against whom the proclamation was inscribed on a bronze pillar<sup>152</sup>. If Melanthius and Craterus were cited correctly, it would be a convincing argument for the historicity of the proclamation; yet we cannot trust the scholia on this, for the document cited differs from the remarks found in [Lys.] 6 (and Diodorus, who—just like Aristophanes—mentions only one talent for killing the Atheist). Even if we do accept the historicity of some proclamation, as seems sensible, based on the passages from the *Birds* and *Against Andocides*, supported by later remarks, it is still striking and worth having in mind for the

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poet (cf. Jacoby 1959: 28-29; Woodbury 1965: 201-2; Winiarczyk 1980: 58-65; more recently, Janko 2001 argued on purely speculative grounds for Diagoras' authorship of an Orphic poem preserved in the Derveni Papyrus). As argued by scholars, the *Apopyrgizontes Logoi* could have been, in turn, a fifth- or fourth-century treatise, as only then the metaphorical sense of the noun πύργος and the verb πύργόειν has been noted (see e.g. Jacoby 1959: 29-31, Woodbury 1965: 205; cf. Nestle 1948: 584, n. 52).

150. Cf. Winiarczyk (1979: 195ff; 1980); Jacoby 1959: 15, 18-23 (further dating attempts by Jacoby were based on several faulty assumptions discussed numerous times since); according to Jacoby (1959: 18), the main source of the date for the decree was the *Chronicle* by Apollodorus of Athens (2nd cent.). Al-Mubaššir erroneously attributes many events to the life of Diagoras, for instance when he claims that the poet—having fled Athens—was supposed to have lived for another 54 years, a number which he had to take—among many improbabilities and general ignorance of chronology—from Porphyry of Tyre (3rd/4th cent. CE), who had had some unknown Hellenistic source as his basis (cf. e.g. Woodbury 1965: 188-90). 54 years is exactly the period from 468/7 to 415/4, and both dates surprisingly reappear in various ancient testimonies on Diagoras' life. The ancient biographers placed his acme along with that of Bacchylides in 482/1 or 468/7 (e.g. Jerome, following Eusebius), while often mistaking it with his year of birth – the fate of many ancient figures. Perhaps the date itself was accepted rather figuratively based on the date of death of Simonides, typically given as 468/7 (see discussion in Woodbury 1965: 188-89, 192 and Winiarczyk 1979: 212-13).

151. Cf. Smarczyk 1990: 278-87 (esp. 282) *et al.*; opp. Sommerstein 1987: 271-72 and Henderson 1993: 596-98.

152. See Dem. 9.41-46, 19.271-72; Aes. 3.258 -259, Din. 2.24-25; cf. Worthington 1992: 309-10.

sake of other cases how easily the information allegedly coming from the stelae directly through the account of the Attidographers could be transformed and incongruent with earlier references. Moreover, given that—again—there is no certainty as to the authorship and date of composition of [Lys.] 6, one cannot be too pleased with the fact that the only classical reference to the proclamation remains a comedy by Aristophanes, based on which much could be added later.

Another cup of hemlock? Euripides, Prodicus, and Diogenes of Apollonia

Even more objections could—and have—been raised concerning the alleged trial of Euripides. According to Satyrus' *Life of Euripides* (T 99 Kannicht = F 6 Schorn *ap.* P. Oxy. 9.1176 fr. 39 col. X), the tragedian was accused of ἀσέβεια by Cleon (the biographer calls the trial δίκη ἀσεβείας<sup>153</sup>). Lefkowitz (1981, 2012; cf. Dover 1988c: 148-51) has argued, however, that ancient authors of the *Lives* of the poets knew about them little more than what they were able to read out of their plays, which means they had to follow their wide imagination for most of the time to accomplish their task<sup>154</sup>. Everything indicates that the legend about Euripides' prosecution was a popular one in antiquity, appearing on a 3rd-century CE list of rhetorical exercises that reads: 'Euripides, after portraying Heracles mad in a play staged at the Dionysia, is being prosecuted for impiety' (T 100 Kannicht *ap.* P. Oxy. 2400). The image of 'impious Euripides' was probably invented based on philosophical—and often surprising—views about the gods that many of his characters express (including Hecuba, Heracles, and Bellerophon). Aristophanes was one of the first to turn it against the poet on literary grounds. The tragedian was then commonly juxtaposed throughout antiquity with both Socrates and Anaxagoras (Lefkowitz 1987: 154-55).

Perhaps Aristotle, too, added to it by stating in his *Rhetoric* (III 15.8, 1416a28-35) that the line from Euripides' *Hippolytus* (612) that reads 'my tongue swore but not my mind' was used against the poet in the trial of ἀντίδοσις in which Hygiaenon called him impious (ἀσεβής). According to Aristotle, 'Euripides replied that Hygiaenon himself did wrong by transferring the judgments of the Festival of Dionysus to the law courts; for there he had given an account of these words, or would again if Hygiaenon wished to accuse him there' (trans. H.C. Lawson-Tancred). Yet the procedure of ἀντίδοσις concerned the exchange of

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153. It seems that especially in this particular testimony δίκη did not have a technical meaning, but could denote a 'trial' in general sense (see discussion above with n. 134, cf. Poll. 8.41: ἐκαλοῦντο γὰρ αἱ γραφαὶ καὶ δίκαι, οὐ μέντοι καὶ αἱ δίκαι γραφαί; cf. Harris 2006a: 417, n. 36).

154. Doubts could also be raised in reference to Cleon's prosecution of Aristophanes for an 'offence' (ἄδικία mentioned by the scholia to Aristophanes (Σ Ar. Ach. 378), although the comic poet does in fact speak in his plays of some kind of dispute with Cleon and an argument before the Council (Ar. Ach. 377-82, 502-6, 628-33); cf. Wallace 2005.

property, meaning that such an accusation would have to be uttered solely as a rhetorical argument (in this case, slanderous), rather than as a formal charge (Dover 1998c: 144). We cannot even be sure if the speech has ever been performed in court, or if, from the very beginning, it was just a rhetorical exercise containing this anecdotal reply. Nothing suggests that the poet might have been sentenced. Even the *Life of Euripides* by Satyrus, always looking for an excuse to give the sensational version of the story, does not say a word about this. All the more, there is a fair reason to believe that the trial itself was a later invention, just like countless tales on the poets' need of taking flight from Athens told by Hellenistic biographers as a way of explaining—with no factual basis—the journeys and visits at royal courts of foreign monarchs.

A tradition concerning Prodicus' being sentenced to death by hemlock for corrupting the youth is attested only in the Suda (II 2365, s.v. Πρόδικος = T 1 D-K) and the scholia to Plato's *Republic* (X, 600c), and seems utterly incredible (Dover 1988c: 147-48, Wallace 1994: 130-31). Apparently, it was a repetition of both the charges and the sentence from Socrates' case, which was quite commonly linked throughout antiquity with the life and death of other prominent figures, especially philosophers.

It seems relevant to note that Demetrius of Phalerum (ca. 350 – ca. 280) in his *Apology of Socrates*, written after his expulsion from Athens, when complaining about the ill-treatment of Peripatetic philosophers (a school of which he was also a member), has reportedly said<sup>155</sup> that Diogenes of Apollonia, an Ionian philosopher (5th cent.), 'came close to the danger [of the trial or execution]'<sup>156</sup> in Athens. Nonetheless, there is no explicit mention of impiety here, only the context of Demetrius' *Apology* points to the likely connection with the persecution of philosophers and the trial of Socrates, which was the reason for the emergence of a good part of similar remarks.

#### Philosophy on trial? The case of Socrates (399)

Any study of impiety in ancient Greece has to at least touch upon its most famous trial, the prosecution of Socrates, well attested in the contemporary sources, even if tinged with a martyred praise of the master by his pupils. It came to have an enormous impact on the imagination of later authors writing about classical Athens. The surviving sources are in agreement that the procedure employed was the *γραφή*,

155. Demetrius *FGrHist* 228 fr. 42 (= fr. 91 Wehrli = fr. 107 SOD = Diog. Apoll. T 1 D-K *ap. D.L.* 9.57).

156. It reads τοῦτον φησὶν ὁ Φαληρεὺς Δημήτριος ἐν τῇ Σωκράτους ἀπολογία διὰ μέγαν φθόνον μικροῦ κινδυνεῦσαι Ἀθήνησιν. The use of the pronoun τοῦτον would normally indicate in this context in Diogenes Laertius the person to whom the entire section is dedicated (Mejer 1978: 24), but one could also read it as the last person mentioned, which would point to Anaxagoras, not Diogenes.

while most of them mention Meletus as the prosecutor<sup>157</sup>. The charge was one of corrupting the youth and impiety, or specifically – of introducing new gods in place of those recognised by the city<sup>158</sup>. Both Plato and the scholia state the procedure and the charge explicitly as ἀσεβείας γραφή<sup>159</sup>. We learn from the *Apology* that Socrates first had to go through a preliminary examination before the archon basileus (19b, 24b: ἀνωμοσίαν ‘affidavit’), and then that the trial was held before the dicasts in a *dikasterion*, a slight majority of whom found Socrates guilty<sup>160</sup>; after a quite immodest second speech by the defendant, this time the prevalent majority sentenced him to the ‘civic’ death by hemlock<sup>161</sup>. One could speculate on whether the prosecutors really wished to seek the death penalty, or if they were perhaps thinking, just as Socrates’ friends, about the defendant’s exile as an obvious outcome. However, they did propose capital punishment in court (Pl. *Ap.* 36b), while Plato’s Socrates in his defence speech suggested the honorary meals in the Prytaneum, which in fact would be regarded as a reward (36d–37a; within the ἀγῶν τιμητός). As the alternatives commonly proposed in such situations, he mentioned imprisonment, fine (resulting in the imprisonment until paid), and exile, which would apparently be likely to please the jurors (37b–c; see the section on punishment above).

Socrates himself, as portrayed in Plato’s *Apology*, constantly speaks with irony and ridicules his accusers by saying that they—Anytus, Me-

157. See e.g. Pl. *Ap.* 19b, 26b, 26e, 27a, 27e, 28a, 31d, *Euthphr.* 2a–c, *Tht.* 210d; Xen. *Mem.* 1 (*passim*); see also D.L. 2.40, according to whom Favorinus (1st/2nd cent. CE) had seen the sentence deposited in the archives of the Athenian Metroon (fr. 34 Bar. = 51 Mensch. = 41 Am.), but it does not openly speak of ἀσέβεια, only of breaching the law (ἀδικεῖ). According to Mejer (1978: 30–32), Diogenes had direct access to Favorinus’ work, although it never became his main source.

158. See Xen. *Mem.* 1.1.1; Pl. *Ap.* 24b, *Euthphr.* 3b, 5c *et al.* (see below). See Versnel 1990: 125–27 on the meaning of ἕτερα δὲ καινὰ δαιμόνια from the wording of accusation.

159. Pl. *Euthphr.* 5c (ἀσεβείας ἐγράψατο), Σ Pl. *Ap.* 18b; there is also a remark on the charges of ἀσέβεια by Meletus i.a. in Plato’s *Apology* (35d), see also n. 157 above.

160. The often-quoted numbers of ‘280 vs 220’ rest upon Plato’s remark on the difference of 30 votes (*Ap.* 36a–b) and the assumption that in a γραφή 500 dicasts would be typically involved. The figure of 501 given by Laertius is probably a later author’s confusion caused by the ‘uneven’ dicast added later in the fourth century; cf. Boegehold 1995: 34, Todd 1993: 83, n. 10; Rhodes 1981: 729. See n. 19 above on Athenian ‘dicasts’.

161. Citizens were usually killed by this means after the court sentence, cf. Tetlow 2005: 93; cf. the discussion in Todd 2000b. Plato speaks only of the ‘poison’ (φάρμακον), while later sources supplement this by saying that it was hemlock (κόνειον); Enid Bloch (2002) in her brilliant paper presents a detailed analysis of the effects of consumption of poison hemlock (as opposed to other types of hemlock) based on modern and contemporary medical studies, and comes to the conclusion that Plato’s description is authentic and accurate, contrary to earlier sceptical opinions of the scholars. On the forms of capital punishment in classical Athens, see n. 47 above.

letus, and Lycon—simply felt offended for trifling reasons (*Ap.* 23e-24c); he restates the charges known from other testimonies, only with the addition of those by Anytus, relating to the principle of ‘making the weaker argument appear the stronger’, attributed to Protagoras<sup>162</sup>. When defending his master in the *Memorabilia*, Xenophon argues that Socrates had revered the gods, for he offered sacrifices to them at home and at the public altars. It seems, though, that this was not the gravest or primary charge against the philosopher.

As has been frequently noted<sup>163</sup>, the trial was held in very particular political circumstances, just after the oligarchic upheaval and deadly regime of the Thirty, followed by the law-revision of 403/2 during the archonship of Euclides and the Amnesty proposed by the Patrocleides’ decree. The latter was meant to include all cases of previous wrongdoings, whether the original wording excluded certain groups or not<sup>164</sup>. At that expense and in fear of social discord (στάσις), the Athenians tried to introduce peace in their state under the restored democracy, and they pronounced the death penalty for those who would attempt prosecuting anyone for the past misdeeds (*And.* 1.79). It seems, on the other hand, that Socrates’ accusers did not have to breach the Amnesty (eagerly supported by Anytus; see *Isocr.* 18.23, *Lys.* 13.78-82, both written ca. 399), for the philosopher could have been prosecuted for the beliefs voiced in public between the years 403 and 399. It remained no secret that he spoke publicly to all who wished to listen (without requesting any fee, as opposed to the sophists), and his name in Athens was practically synonymous with an eccentric intellectual, at least since the staging of the first *Clouds* by Aristophanes in 423<sup>165</sup>. In spite of the efforts by Socrates’ pupils writing their ‘Apologies’ (originally ‘defence speeches’), his religious views had to seem rather distant from those traditionally held by the Athenians, and actually could have formed the basis for the charge of impiety, especially in the political circumstances which encouraged it. One should note that Socrates in Plato’s *Apology* does not refute the argument of not believing in the polis gods by saying that he acknowledges them. Instead, he goes on to state that his δαίμονες are gods as well, and constantly refers to ὁ θεός, which can be understood either as ‘god’ or ‘the god’ (Burnyeat 1997).

The fact that he remained in the city during the coup of 404, when numerous pro-democratic citizens had to flee Athens to save their lives

162. See e.g. *Pl. Ap.* 18b, 19b, 23d-24c, *Euthphr.* 3b; cf. *Ar. Nu* 112ff.

163. Cf. i.a. Derenne 1930: 111-21, Vlastos 1983, Stone 1988, Wallace 1994, Hansen 1995, Parker 1996: 199-217, Scholz 2000, lately also some summaries of studies in this subject: Ober 2011, Nails 2006; cf. Waterfield 2009.

164. See *And.* 1.77-79, 88 (along with Canevaro & Harris 2012 on issues of authenticity of the documents preserved in *And.* 1), *Xen. Hell.* 2.4.43, [*Arist.*] *Ath. Pol.* 39.6. For doubts concerning *Ath. Pol.*’s account and the scope of the Amnesty and law-revision, see Carawan 2004, 2013; cf. Rhodes 1981: 469; see also essays in Sordi 1997.

165. See Santoro 2013 on the links between the *Clouds* and Plato’s *Apology*.

while hundreds of others were killed by the Thirty<sup>166</sup>, did not testify in his favour. After the restoration of democracy such a conduct was frequently used against Athenian citizens in court speeches as a synonym for the support given to the oligarchs (however, due to the Amnesty, not as a formal charge; cf. *Lys.* 18.19, 25.1-2, 26.16). Socrates was a friend to many pro-oligarchic citizens and outsiders. In Plato's dialogues he often represents their worldview, for example when claiming that the 'experts', rather than the ignorant 'mob', should make decisions in the political matters as bestowed with exceptional divine 'virtue' (see e.g. *Gorg.* 458e-61a, *Men.* 99e-100b, *Prot.* 319b-e; cf. *Xen. Mem.* 1.2.9).

Socrates' disciples took part in both successful oligarchic coups – in 411 and 404; in the latter the exceptionally cruel Critias<sup>167</sup> was the leader of the 'radical wing' and the apparatus of repression of the Thirty. It all had an impact on the events taking place just a few years later, in 399. The philosopher was also a teacher and a friend of the notorious Alcibiades, commonly linked to the affairs concerning the profanation of the Mysteries in 415 (see above), an extended stay in enemy Sparta, and, finally, the oligarchic coup of 411. In fact, he was taken for a political teacher in antiquity, in spite of Plato's reservations (Waterfield 2013: 16-18). Half a century after the condemnation of Socrates, Aeschines the orator put it bluntly in the speech *Against Timarchus* (1.173): 'So then, men of Athens, you put Socrates the sophist to death, because it was found that he had taught Critias, one of the Thirty who overthrew the democracy' (trans. C. Carey). Earlier, it was Socrates' disciple, Xenophon, who spoke of Critias and Alcibiades as 'two former pupils of Socrates'<sup>168</sup>. Furthermore, five of the Athenians accused in the trials of 415 had connections to the philosopher (Ostwald 1986: 537-50). All of this was a theme underlying the entire accusation and one very cautiously referred to in Plato's *Apology* (Wallace 2013).

Socrates' own attitude during the reign of the Thirty was probably not helpful either. When they asked him and several other citizens to catch and bring to certain death Leon of Salamis, Socrates refused, but then simply went home doing nothing, while four other confidants of the Thirty sailed off to Salamis (*Pl. Ap.* 32b). Nowhere do we hear of his rationale for not even trying to save the oligarchs' enemy<sup>169</sup>. After the execution of Leon without a trial (*And.* 1.94; cf. *Lys.* 13.44, *Xen. Hell.* 2.3.39), Socrates remained in the city, when other moderate oligarchs, such as Theramenes, could not anymore believe in the justice of the

166. See *Xen. Hell.* 2.4.21 *et al.*, *Isocr.* 7.67, 20.11, *Aeschin.* 3.235, [*Arist.*] *Ath. Pol.* 35.4; cf. Krentz 1982.

167. The death of himself and his supporters led to the fall of the Thirty (*Xen. Hell.* 2.4.19-23). Among Socrates' friends there were some other public figures ill perceived by most of the Athenians (see the list in Hansen 1995: 28; cf. Krentz 1982: 45-56; cf. *Pl. Ep.* 7, 324c-d).

168. *Xen. Mem.* 1.2.12ff., 39; cf. *Isocr.* 11.5, *Pl. Prot.* 336d; *Aristid.* 83.14-23.

169. Cf. Wallace 2013: 109.

Thirty. Roberts (1994: 73) has observed that it is at least puzzling that the deadly usurpers chose to turn with it to Socrates, though—having refused them—he met no repercussions, but was later condemned by the more approving of various opinions democratic state. Yet we could imagine the climate of proscription lists (along with the list of the supporters and future citizens) and constant checks on one's loyalty coming out of the fact of being among the few 'old friends' trusted by the Thirty. Even if we were to treat Roberts's argument cautiously, it is easy to notice how these things could have been envisaged in 399 by the Athenians whose families suffered so badly as a result of these very events only several years earlier<sup>170</sup>.

Among Socrates' prosecutors one can observe a wide outline of the Athenian 'middle class', with no representatives of the aristocracy. The latter were, on the other hand, prevalent in the circle of Socrates. As Stone (1988: 152-53) notes, Socrates speaking in Plato's *Apology* in his own defence, when mentioning his friends, was able to mark only one—Chaerephon—who had not been an enemy of democracy, yet he was not there to testify being already dead<sup>171</sup>. He was a rare exception not only in the *Apology* but also in other writings by Plato and Xenophon<sup>172</sup>. One should remember that it was quite common for the Greeks to hold the teacher responsible for his pupil's deeds<sup>173</sup>. Plato's Socrates expressed his anti-democratic reasoning already in the early dialogues<sup>174</sup>, commonly referred to—even if somewhat naively—as 'closer to the historical Socrates' (see below). Apart from the aforementioned trial of Andocides (of 400 or 399), the year 399 saw another remarkable prosecution – that of Nicomachus (Lys. 30). He was accused of unlawful alterations during the revision and rewriting of Athenian laws, including those concerning the calendar of festivals and sacrifices. This trial alike was held in the shadow of favouring the oligarchs and under a threat of the death penalty<sup>175</sup>.

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170. The murdering of ca. 1500 citizens by the Thirty soon became a commonplace in oratory (cf. Wolpert 2002; see Wallace 2011: 91, n. 11 on the number variously attested by the sources).

171. During the reign of the Thirty he had to go into exile and fought under Thrasybulus for the democrats. Cf. Pl. *Ap.* 20e-21a.

172. In several dialogues by Plato there is a mention of other 'pro-democratic' friends, including Cephalus with sons – Polemarchus and Lysias the orator (on the one hand, Socrates could prefer not to mention their example because of the severe fate their family had met under the Thirty and their metic status, while on the other they would fit perfectly to the argumentation of the defence as the 'champions of democracy' nearly rewarded with Athenian citizenship for their service).

173. See Aeschin. 1.173, Xen. *Mem.* 1.2.9; see also Ar. *Nu.* 1447-53, 1465ff., Pl. *Gorg.* 518e-520b; cf. Pl. *Gorg.* 514a-515d, Xen. *Mem.* 1.2.12ff., *Cyn.* 13.1-8, Isocr. 13, *passim*; but compare also Pl. *Gorg.* 456d-461a.

174. See the collection of such arguments in the dialogues and the arguments concerning Socrates' political views in Brickhouse & Smith 1994: 155-89. See also Wallace 2011.

175. Robertson 1990: 71-75, Rhodes 1991, Todd 1996, and Carawan 2010.

As seen in this particular context, it is easier to understand the spirit and reasons which led to the condemnation of the philosopher. It may be worth noting that Socrates until his late years could openly express his beliefs and try to convince his fellow citizens, while Plato, not long after the death of his master, could found the Academy and teach there unrestrained in a radically anti-democratic spirit for subsequent decades<sup>176</sup>. Nevertheless, according to Hyperides (fr. 55 Jensen) Socrates was condemned for what he used to teach (ἐπὶ λόγοις), not for what he had done (a common antithesis in classical Greek, especially in the rhetorical texts, cf. [Lys.] 6.17). It is likely that what tipped the scale in this case was the general animosity towards philosophers, which usually did not result in such extreme measures but which can be already traced in Aristophanes' *Clouds*. It was a widely held conviction that philosophers were keen on challenging the respected popular axioms, including the beliefs about the gods, trying to search for the principles of the world and human nature. The remarks by orators-politicians, Aeschines and Hyperides, made before the Athenian *demos* seem to indicate that the sentence did not enjoy good press in the later public memory, unless we assume that both authors were somehow biased<sup>177</sup>.

A separate problem is the value of Plato's *Apology* as a source. It is certainly not an accurate record of a historical trial and should be treated as literary fiction just as any other work on Socrates or any other Platonic dialogue for that matter. The sensible question to ask is not 'did Plato recount faithfully all that happened' but 'how far did his artistic construct reach'. It is clear that the dialogue was written to show how the 'bad *demos*' punished the 'good philosopher', which does not distinguish it in spirit from other Platonic dialogues. This problem, long discussed in the scholarship<sup>178</sup>, will probably remain unsolved unless some new sources are found.

#### The fifth century BCE: a summary

What I have aimed to show in the analysis of extant sources so far is that the very existence of the alleged impiety trials before that of Socrates is at least questionable, while others pose many puzzles. As argued up to this point, only the prosecutions connected to the events of 415, that is both the cases of the mutilators and profaners in 415 and the trial of Andocides not long before that of Socrates, all attested in the

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176. Cf. Finley 1996: 134; nonetheless, one should bear in mind Diogenes Laertius' mention (3.6), however suspicious, of Plato's and other Socratics' 'refuge' from Athens after Socrates' death (see D.L. 3.6, cf. de Strycker & Slings 1994: 208-9).

177. For example, Allen (2010: 89-107), based primarily on some formal similarities and late biographical tradition, argues that Aeschines, Hyperides, and Lycurgus were influenced by Plato, perhaps even being his students.

178. On the so-called 'historical Socrates' or 'Socratic question' and *Apology*, see Guthrie 1971 [1969]: 323-78, Patzer 1987 (a collection of essays), Montouri 1988, de Strycker & Slings 1994: 5-8, Burnyeat 1997, Döring 2010: 141-59, Patzer 2012: 118-25, Ralkowski 2013, and Waterfield 2013 (pp. 11-13 on Plato's *Apology*).

classical sources, can undoubtedly be deemed historical. The ‘warrant’ sent after Diagoras of Melos is probable, however does not prove the trial but only some provisional measures taken against him, while the charges against Archippus issued by Andocides according to Pseudo-Lysias—if factual at all and whether taken to a magistrate or not—did not result in a proper court case; finally, the prosecution of a certain Megarian mentioned by the same author was reportedly only proposed by one Diocles, with unknown result. Only in the cases of the trials of 415 and Socrates’ own do we possess any certain knowledge of the death sentences being carried out. The significance given to the prosecution of Socrates by the apologetic writings of his disciples and adopted quite commonly in cultural history had to influence the later image of fifth-century Athens. This tendency represents the primary reason why, already in antiquity, it became extremely difficult to distinguish between the actual charges from before 399 and legends inspired by Socrates’ figure. Perhaps the most problematic in this respect are the trials against Anaxagoras and the ‘circle of Pericles’. In the surviving sources several legal procedures employed in impiety trials up to 399 can be singled out: *εἰσαγγελία* based on *μηνύσεις*, further taken to the popular courts, probably in the form of *γραφαί* (trials of 415, not without doubts), *γραφή* (Socrates in 399), *δίκη* or *γραφή* before the archon basileus (Archippus ca. 415), and *ἔνδειξις* (Andocides in 400 or 399). The decree of Diopieithes cannot be deemed historical based on several grounds discussed above.

The common distinction made between the ‘religious’ trials (for the profanation of the cult) and those for ‘beliefs’ or ‘worldview’ (also referred to as ‘the freedom of the intellectual’) seems mostly unnecessary from the contemporary point of view, not least because of the political dimension prevalent in all the cases described and most of the ones to follow. Athenians would contrast punishing someone ‘for deeds’ (*ἔργον*) and ‘for words’ (*λόγος*), but were not always certain of the dividing line<sup>179</sup>. It should not be left unnoticed that in the extant sources there is no sight of a citizen or inhabitant of Athens prosecuted for the refusal to participate in the so-called ‘polis religion’<sup>180</sup>. It is also clear that one needs to be especially wary of all post-classical sources which mention such trials, particularly when faced with a fruitful tradition of alternative versions of many of such stories. Even the charges against Socrates did not result immediately from his teachings, although the latter could have prepared the grounds. He was rather put on trial because of the role played by his friends and pupils in the oligarchic coup of 404 after Athens’ defeat in the Peloponnesian War, the events firmly intertwined with his teachings in the eyes of the Athenians. All previous trials for impiety well attested in the sources are based on the profanation of either the Mysteries or the sacred laws, and are typically set in a very particular political context of anxiety or direct threat to the community due to upheaval or war. Garland (1996: 95) has even suggested that the Athenian *demos* of the classical period did not bother about the matters

179. Cf. Aeschin. 1.173 and Hyp. fr. 55 Jensen; [Lys.] 6.17.

180. See also Price 1999: 108–25 on the ‘elective cults’.

of impiety at times other than during severe political crises<sup>181</sup>. On the other hand, the cases dealt with in a particularly severe manner where the ones concerning the Mysteries at the time of Athens' attempts to promote the latter as a Panhellenic cult.

The testimonies from Late Antiquity concerning the trials more often than not reveal their authors' incomprehension of the political and social reality of classical Athens. The way the classical authors speak of impious behaviour and trials for ἀσεβεία does not seem to indicate the need to conceal things out of fear of transgressing a taboo (ἀπόρητα), even if the events themselves were not always eagerly recalled. We thus have to conclude that the abundance of such information in later writings in connection with the lack of similar remarks in the works of prolific classical authors should be deemed highly suspicious. We can, of course, assume that such events were not the main interest of a certain author or genre (and so of the audience), yet in comparison with a vast number of more or less evident examples of comic invective repeated by Hellenistic and later biographers it all appears as a subsidiary concern. However limited any ability of finding historical truth may seem in the case of Athenian impiety trials (which is not an exception in ancient history), the possibility of recognising deliberate or unintentional distortions can constitute a partial compensation.

Impiety trials seem to have been fabricated for a variety of reasons. First, the biographers' perceived audience was a large one, similar to that of the modern-day tabloids. This called for an additional emphasis on the sensational stories and punchlines. The less could be found in the sources, the more had to be assumed based on the remarks taken out of their proper context, sometimes misunderstood, at another time deliberately reworded. Not uncommonly, the events created on the basis of likelihood were based on certain political assumptions and at the same time were meant to prove them, especially in regard to the characteristics of the *demos* and democracy. We should also not forget that many authors, either as Aristophanes in the *Clouds* or as Lucian in his *Dialogues*, would take pleasure in playing with the popular motifs at the verge of the *bios* and *doxa* of earlier thinkers, which could be in turn easily misread by the subsequent generations of readers. As observed by Wallace (1994: 149, n. 39), the frequent mention of philosophers' flight from Athens in the surviving sources alongside the tradition of their trials may be, at least in some cases, the effect of a mistaken reading of the verb φεύγειν by later biographers<sup>182</sup>, used in classical Greek both in the meaning of 'to flee, take flight' (or even 'to go into exile') and 'to be accused, prosecuted at law'<sup>183</sup>. Sometimes it remains unclear which of those meanings the author had in mind.

181. Cf. Evans 2010: 202 *et al.*

182. This can create a major hindrance for our attempts to interpret some of the Greek texts, see e.g. Plut. *Nic.* 23; cf. Lenfant 2002: 137.

183. Cf. LSJ, s.v. φεύγω, IV.2.

Quite likely, there were more impiety trials forming a part of a personal vendetta<sup>184</sup> and more charges of the profanation of the cult than what we get to know from the surviving testimonies, as suggested by some mid-fourth century sources which I will analyse in part II before giving a summary covering all extant source-material concerning Athenian impiety trials of the classical period.

## II. The Fourth Century after 399 BCE

An attempt to present the subsequent fourth-century trials in a chronological order is particularly troublesome due to the lack of the relevant information in the surviving sources. We can assume, without much certainty, that the changes in Athenian legislation after the restoration of democracy in 403 had to influence the laws concerning the impiety trials in a number of ways (see pp. 16-19 above on the procedures attested for the fourth century). What we learn from the extant sources forms, in fact, a patchy mosaic. Nonetheless, as will soon become clear, a significant amount of the late-fourth century events was centred around the tensions in Athenian politics concerning Macedonia and domestic politics referring to it.

### The sacred olives and the Thirty (390s)

In the speech *On the Olive Stump by Lysias* (Lys. 7) from the mid-390s we find an unnamed Athenian citizen defending himself before the Areopagus Council. The charge was one of illegally removing the σηκός of a sacred olive tree<sup>185</sup> (the stump or just the fence around it) in 397/6, while the trial itself was probably held a year or two later (Carey 1989: 114). There is no mention of ἀσέβεια in this speech, but concealing the exact wording of the plaint in a defence speech is nothing peculiar, and it is clear that cutting out the σηκός of the sacred olive tree was regarded as a serious religious offence in Ath-

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184. On private enmity as motivation in Athenian litigation with an overview of recent scholarship on the subject, see Kucharski 2012.

185. For the Areopagus' legislation concerning the sacred olives in general, see Wallace 1989: 109-11 and de Bruyn 1995: 113-16. Some of the olive trees in Attica were dedicated to Athena and formed a vital part of local myths and history, cf. Burkert 2011: 219, Foxhall 2007: 117-21 (with some exact accounts showing there had to be tens of thousands of old sacred olive trees in Attica); cf. Pind. *Ol.* 3.13, Hdt. 8.55, 5.82, Soph. *OC* 694-706. Perhaps the beginning of this rule, as well as its later alleviation after changing the estimation system, was linked to the practice of giving the sacred oil as a prize at the Panathenaea since the sixth century (Parker 1996: 64). From Lys. 7.25 we learn that there were monthly and yearly inspections of the condition of the μορία. An account of Herodotus (5.82) suggests that even regular olive trees in Attica (ἐλάαι) could be surrounded with religious reverence. See also remarks on the sacred land (ἱερὰ ὀργάς) between Athens and Megara in part I above, with n. 57. See Carey 1989: 114-15, 119-20 and Todd 2007: 485-87 for the discussion of the 'sacred' olives and the term σηκός.

ens. Earlier, the punishment for such an act could have even been death, while at the time of the trial ‘only’ exile and confiscation of property<sup>186</sup>. From the Demosthenic *Against Macartatus* (43.71) written about 360 we learn that the uprooting of an olive tree (referred to by a general term *ἐλάα*, perhaps indicating a regular ‘olive tree’, as opposed to the sacred one, *μορία* was an offence tried by the archons which carried a heavy fine (in this case perhaps for economic rather than religious reasons). Even if we put this speech aside, the tendency of alleviating the laws concerning the sacred trees over time is quite clear.

In Lys. 7, the political dimension of religious accusations can be also distinguished. We are told that the defendant stayed in Athens during the reign of the Thirty (Lys. 7.9, 27), which was often portrayed pejoratively after the restoration of democracy<sup>187</sup>. We also learn that he was a wealthy man, probably not threatened with disfranchisement by the property qualification under the oligarchic regime (Lys. 7.24, 31-32). The procedure employed was most likely the *γραφή*<sup>188</sup>. We cannot be sure of the outcome of the trial, even if the survival of the speech could sometimes indicate that logographer’s client won the case<sup>189</sup>.

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186. Cf. [Arist]. *Ath. Pol.* 60.2, Lys. 7.3, 32; cf. Xen. *Hell.* 1.7.20-22; Thuc. 3.70.3-4. According to Pseudo-Aristotle, the means of collecting the olive oil, too, changed over time.

187. In this case, it could suggest both a buyout of the property liable to confiscation for next to nothing and being in the ‘circle of trust’ of the Thirty. See Carey 1989: 133 (cf. Xen. *Hell.* 2.4.1), Todd 2007: 479-81, 488. See also notes on the trial of Socrates above.

188. Cf. Todd 2007: 513, who summarises the long-running discussion on *ἀπεγράφην* in Lys. 7.2 (if it was to mean the procedure of *ἀπογραφή*, we would see a very unusual example of its use before the Areopagus; it is thus now widely accepted that *ἀπογράφομαι* here is synonymous to *γράφομαι* and could refer to any kind of *γραφή*; cf. Carey 1989: 119).

189. The question of whether the client could put the speech in circulation seems to be a problematic one. On the one hand, arguably the client did not always want to stress having someone else write the speech for him, while on the other, we could expect he would keep his copy of the winning speech (the losing one would have a far smaller chance of being preserved), and perhaps put in circulation the re-edited version of the words which saved him and for which he had to pay a substantial amount; cf. MacDowell 2004: 16. Yet in some cases, we can assume that the logographer himself would be likely to put an edited version of his speech in circulation, perhaps more often so with the winning speeches, but sometimes also those which did not win the case or did not get to court, yet were interesting to the readers and potential clients for other reasons, e.g. stylistic or political, cf. Dover 1968a: 170-72, Worthington 1993; see also MacDowell 2009: 7-9. Furthermore, the argumentation of the prosecution, to which Lys. 7 was supposed to be a response, could have proved insufficient, if there was in fact no witness to the alleged offence, as suggested by the defence; cf. Carey 1989: 118.

Temple robbery versus impiety (377 – ca. 332/1)

In epigraphic sources we find some scattered remarks on the legal actions dated 377-73, when several<sup>190</sup> *Delians* were charged with ἄσεβεια for driving Athenian representatives of the Amphictyony off the temple and beating them<sup>191</sup>. In the trial, probably carried out in accordance with the Athenian laws<sup>192</sup>, they were sentenced to exile and high fines (from 1,000 to 10,000 drachmae). There have also survived remarks about two trials for ‘sacrilege’ or ‘temple-robbery’ (ἱεροσυλία) of that period. One Athenian inscription<sup>193</sup> informs us of a certain citizen named Theosebes (‘God-fearing’) who, having found no aid in his pious name, was sentenced for ἱεροσυλία<sup>194</sup> *absente reo*, since he had fled Attica already before the trial (the inscription speaks of putting his house on sale during the archonship of Polyzelus in 367/6). Fragmentarily preserved Lys. 5 is also a defence speech, written for delivery by an Athenian citizen on behalf of a metic accused of ἱεροσυλία by his own slaves. There is little to learn there about this case, just as we cannot be sure if ἱεροσυλία was treated as ἄσεβεια in legal terms and whether it could be tried as such, considering the lack of a clear distinction between the two in other poleis<sup>195</sup>. Nonetheless, the surviving evidence indicates that both offences were treated separately in Athenian law, trials for ἱεροσυλία involving the property regarded as sacred. There is also an extant remark about the proposal by Aristogeiton from ca. 332/1 to sentence to death without trial Hierocles, a son of the priestess of Artemis Brauronia, for an alleged theft of sacred vestments which he was carrying (which, he said, had been ordered by his mother); in response, his father prosecuted Aristogeiton for an illegal proposal (γραφὴ παρανόμων), for which the latter was eventually fined a substantial amount of five talents<sup>196</sup>.

190. Eight names had been listed under the relevant section of the inscription, but one of them was later erased.

191. *IG II<sup>2</sup> 1635.134-40* (= RO 28 B(a).24-30); cf. Aeschin. 3.106ff., 126-29 *et al.*

192. Cf. MacDowell 1978: 197; at that point, the Athenians had already regained control over the sanctuary at Delos; also, note that the inscription was preserved in Athens, probably in the sanctuary of Apollo Pythios (see RO *ad loc.*).

193. *SEG xii 100* (see Crosby 1941, v. 13ff.).

194. Dem. 19.293 speaks of γραφή for a three-day delay in payment to the temple treasury; cf. Antiph. 2.1.6.

195. Cf. Cohen 1983: 95ff., 111-14.

196. See Din. 2.12, cf. hypoth. § 24 by Libanius = Dem. 25 *hypoth.* §§ 1-2, where we find a mention of the accusation of ἱεροσυλία and a procedure of ἀπαγωγή; cf. Todd 1993: 307, n. 19. A full list of the sources is given in Hansen 1974: 37 (no. 29) and Hansen 1976: 139-40 (cat. 30). See n. 226 below on the amounts of fines in Athens.

## World's oldest transgression: the case of Phryne (ca. 350-335?)

As far as delving into the sidetracks of the extant testimonies is concerned, the most interesting fourth-century impiety trial seems to be one of the hetaera Phryne (ca. 350 – 335?<sup>197</sup>). Late sources give a variety of reasons for which Phryne was said to have been accused of impiety by Euthias and defended by the famous orator Hyperides (ca. 390 – 322). In the later tradition, there also survived several brief fragments of the unpreserved defence speech reportedly entitled *In defence of Phryne*, Ὑπὲρ Φρύνης (fr. 171-80 Jensen, *ibid.* Kenyon). The rather uninformative fragments aside, one of the first surviving testimonies concerning Phryne's trial comes from a comedy *The Woman from Ephesus* by Poseidippus of Cassandreia (3rd cent.), as cited by Athenaeus (XIII, 591e-f = fr. 13 PCG), describing a scene quite difficult to imagine in an Athenian courtroom: 'Before our time, Phryne was far and away the best-known | courtesan there was; because even if you're | younger than that, you've heard about her trial. | Even though they thought she did terrible damage to people's lives, | she captured the court when she was tried on a capital charge; | and by taking the jurors' hands, one by one, | she saved her life—although just barely—with her tears' (trans. D. Olson). Athenaeus (XIII, 590d-591f) provides a popular version of the story, when speaking of Hyperides' erotic life:

Now Phryne was a native of Thespieae; and being prosecuted by Euthias on a capital charge, she was acquitted: on which account Euthias was so indignant that he never instituted any prosecution afterwards, as Hermippus tells us [*FGrHist IV A 3, 1026 F 46a*]. But Hypereides [*fr. 178 Jensen*], when pleading Phryne's cause, as he did not succeed at all, but it was plain that the judges were about to condemn her, brought her forth into the middle of the court, and, tearing open her tunic and displaying her naked bosom, employed all the end of his speech, with the highest oratorical art, to excite the pity of her judges by the sight of her beauty, and inspired the judges with a superstitious fear, so that they were so moved by pity as not to be able to stand the idea of condemning to death "a prophetess and priestess of Aphrodite." And when she was acquitted, a decree was drawn up in the following form: "That hereafter no orator should endeavour to excite pity on behalf of any one, and that no man or woman, when impeached, shall have his or her case decided on while present."<sup>198</sup> [...] (trans. C.D. Yonge).

197. Cooper 1995: 306, n. 10, following Raubitschek, suggests the date between ca. 350 and 340, but later he speculates on the date rather not long after the battle of Chaeronea of 338 (2001: 147-48). All chronological assumptions in this case remain highly speculative. For the question of identity of Phryne, see Raubitschek 1941 (trial: pp. 903-7). See Cooper 1995 for a detailed analysis of various traditions concerning Phryne's trial.

198. ἦν δ' ἡ Φρύνη ἐκ Θεσπιῶν. κρινομένη δὲ ὑπὸ Εὐθίου τὴν ἐπὶ θανάτῳ ἀπέφυγεν· διόπερ ὀργισθεὶς ὁ Εὐθίας οὐκ ἔτι εἶπεν ἄλλην δίκην, ὡς φησὶν Ἑρμιππος. ὁ δὲ Ὑπερείδης συναγορεύων τῇ Φρύνῃ, ὡς οὐδὲν ἦνυε λέγων ἐπίδοξοί τε ἦσαν οἱ

The decree cited (another curious ψήφισμα) is, quite obviously, a forgery. The narrative makes one recall Plutarch's tale on the tears shed by Pericles in front of the jurors during the trial of Aspasia (see p. 28 above). There is no mention here, though, of the basis for such an accusation, just as there is none in Pseudo-Plutarch's note in *The Lives of the Ten Orators* (849e) stating briefly that the hetaera Phryne was tried for impiety (ἄσεβειν). According to him, Hyperides was supposed to begin his speech by saying that he is defending Phryne due to their close relationship. He then notes that the jurors, on seeing her breasts revealed by the orator, acquitted her for her beauty. The reference to the priestess of Aphrodite might concern Phryne's posing as Praxiteles' model for the statue of the goddess (Athen. XII, 591a), yet we cannot be sure if it was not the courtesan's namesake. In fact, we may be dealing with a 'conglomerate' in most if not all of our sources<sup>199</sup>.

Both Athenaeus and Pseudo-Plutarch, commenting on this story in their works full of scandals, catchy concepts, and gossip, admit that they have repeated the plot from the *Life of Hyperides* (of ca. 200) by Hermippus of Smyrna, who had, in turn, adopted it himself from Idomeneus of Lampsacus (active ca. 300). Those two fragmentarily preserved Hellenistic biographers spoke of it in the context of Hyperides' love affairs that Pseudo-Plutarch and Athenaeus paraphrase in a similar fashion<sup>200</sup>. Both also speak of numerous hetaerae which the orator was said to be acquainted with. Bollansée (1999b: 388; cf. 385) believes that the dramatic description of Phryne's trial and its finale could have been an authorial invention of Hermippus—known for his fondness for putting sensational plots into the narrative<sup>201</sup>—after he had made a collage of various sources.

Idomeneus treated his sources rather lightly, attributing intemperate sexual taste not only to Hyperides but also Demosthenes (fr. 12). To support this statement, Idomeneus described Demosthenes' excesses (*FGrHist* 338 F 12 *ap.* Athen. XIII, 592-93), including his gouging out his lover's, Nicodemus, eyes in a drunken quarrel; apparently, the biographer took at face value slanderous accusations issued by

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δικαστὰι καταψηφιούμενοι, παραγαγὼν αὐτὴν εἰς τοῦφανῆς καὶ περιρήξας τοὺς χιτωνίσκους γυμνά τε τὰ στέρνα ποιήσας τοὺς ἐπιλογικοὺς οἴκτους ἐκ τῆς ὄψεως αὐτῆς ἐπερρητόρευσεν δεισιδαιμονήσαι τε ἐποίησεν τοὺς δικαστὰς τὴν ὑποφῆτιν καὶ ζάκορον Ἀφροδίτης ἐλέω χαρισαμένους μὴ ἀποκτεῖναι. καὶ ἀφεθείσης ἐγράφη μετὰ ταῦτα ψήφισμα, μηδένα οἰκτίζεσθαι τῶν λεγόντων ὑπὲρ τινος μηδὲ βλεπόμενον τὸν κατηγορούμενον ἢ τὴν κατηγορουμένην κρίνεσθαι.

199. Cf. Cooper 1995: 317, n. 39.

200. Cf. Cooper 1995: 305, n. 7.

201. For Hermippus' search of sensational events and circumstances of death and his tendency to add fictitious details, see Bollansée 1999a: 118ff., 182-84, cf. Mejer 1978: 32 (see also various quotations from Hermippus in Diogenes Laertius who eagerly used excerpts from Hermippus' works).

Aeschines and chose to draw on it<sup>202</sup>. It seems that remarks of similar value were incorporated into the tale of Phryne's trial as a duel between two lovers, Hyperides and Euthias. Most likely, this aspect of the story was a later invention based on the famous court case (cf. Alciphr. 4.3, 4.4). Pseudo-Longinus (34.3) and Quintilian (*Inst.* 10.5.2) mention Hyperides' much respected oration in defence of Phryne in their treatises. Cooper (1995: 311) tentatively suggests that the mockery of Euthias might have also been a part of Hyperides' speech, in which the orator would have stated that Euthias has dragged his former mistress to court for abandoning him, having failed to pay for her services. Surviving fragments of Hyperides' defence speech in fact seem to show some usual traits of the orator's style, including sophisticated argumentation and irony (Bartolini 1977: 118).

In fact, the speech was so popular, it can be assumed it was stored in the Library of Alexandria, where Hermippus, an assiduous pupil of Callimachus, could access it and use it for inventing his melodramatic punchline (Bollansée 1999a: 385-88). It was also translated into Latin and appeared in rhetorical exercises, presenting even more opportunities for later additions. The author of the anonymous treatise on rhetoric cites a fragment of the alleged speech by Euthias, the authorship of which was a matter of dispute already in antiquity (*Rhet. Gr.* I, p. 455 Spengel *ap.* Anon. Segu. Τέχνη ῥητορικὴ 215). There appears the charge of ἀσέβεια for introducing new gods, revelry in Lyceum, and leading some, perhaps orgiastic, religious parades (θίασος), consisting of both men and women. Later sources supplement this by saying Phryne tried to introduce the god Isodaites to Athens<sup>203</sup>.

The disrobing episode resembles a tragic scene, especially one involving suppliants or captive women. There is a woman being dragged in her shredded vestment, there is her pleading for mercy similar to a lament for the fate of the characters in a tragic *komos*<sup>204</sup>. Several anonymous treatises on rhetoric speak of such a lament and 'tearing the robes'<sup>205</sup> during Phryne's trial, which biographers could have understood as the orator's stripping off of Phryne's clothes. Hellenistic biographers could have thus, when writing about Phryne, drawn just as easily from tragedy as from comedy. Hermippus might have included some additional details concerning Euthias and Phryne, for instance by saying that Euthias has never appeared in

202. See Aeschin. 1.171-72, 2.148, 166, Din. 1.30, 47, Dem. 21.103-4; see the reconstruction of these events in MacDowell 1990: 328-30; cf. Cooper 1995: 305.

203. Hsch. s.v. Ἴσοδαίτης; Harp. s.v. Ἴσοδαίτης [= fr. 177 Jensen; cf. fr. 174-76] (according to Harpocration, mainly women of ill repute). See also O'Connell (2013) for an interesting yet highly speculative argument that Poll. 8.123-24 speaking of the Mysteries is a part of Hyperides' *Defence of Phryne*.

204. Cf. Cooper 1995: 312 (cf. Arist. *Poet.* 1452b12, *Soph. Ant.* 891-928, 937-43); Eur. *Andr.* 628, Ar. *Lys.* 628; cf. E. Hall 1995: 43.

205. In several passages, we read the verb περιρρήγνυμι (i.a. fr. 7.335, 4.414 Walz), cf. Cooper 1995: 313-14.

court again<sup>206</sup>. At any rate, the apparent lack of a disrobing scene in Poseidippus' play raises numerous doubts about the subsequent variants of the story.

Although the speech in Phryne's defence could have been composed as an exercise, it certainly remains a possibility that the trial actually did take place. It might have included a charge of impiety, although we cannot be certain of it, just as we can be sure neither of the procedure nor the motive, and we can only speculate on the date. What brings attention, though, is the figure of Hyperides' political enemy, Euthias, acting as a prosecutor. Although the sources are not explicit on this, one can clearly see how the accusation of Phryne could have been a private attack on Hyperides conducted through public (legal and rhetorical) measures. This was apparently enough for the famous orator to become involved in his lover's defence in person and make the entire case political *sensu stricto*.

In the 19th century CE, Jean-Léon Gérôme portrayed Phryne being tried before the Areopagus on his famous painting, often recalled in modern accounts of these events. Yet extant sources do not make a mention of Phryne's being tried before the Council of Areopagus, but speak only of the dicasts. Thus, there is no reason to suspect that the trial was held anywhere else than in a regular popular court, *dikasterion*; on the other hand, we cannot rule out the possibility of its falling into the (new) capacities of the Areopagus Council (see n. 21 & 222). Some very insubstantial fragments of the oration so famous in antiquity have survived to this day. Since they show some usual traits of the orator's style, and the authors of the theoretical treatises on rhetoric did not express any doubts concerning its authenticity, Hyperides' authorship remains at least possible. Meanwhile, the curious circumstances of the trial should be regarded as a purely anecdotal later invention.

#### New rites and love potions: Archias, Ninos, and Theoris

Based on both classical and later sources, we learn of the existence of several fourth-century trials relating to religious rituals and cult. One such instance was a trial of a priest named Archias, mentioned by the prosecutor in Apollodorus' speech *Against Neaira* ([Dem.] 59.116-17) of the late 340s. The speaker reminds the Athenians that they have sentenced in court the hierophant Archias of the Eumolpidae accused of impiety (ἄσεβειν). He claims that various charges were brought against him, mainly those of offering sacrifices not in accordance with tradition. His example is being recalled as a rhetorical argument, for the prosecutor argues that, since the Athenians punished the respected priest of a noble family for minor offences (of which he disapproves), they should punish Neaira and her daughter

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206. Probably because no other speech by Euthias was listed in Callimachus' *Pinakes*, cf. Cooper 1995: 317, n. 18.

for similar wrongdoings, being impiety<sup>207</sup>. Athenaeus, while mainly associating Archias with his fondness for courtesans (XII, 592c)—one of them also recalled in *Against Neaira*,—cites the passage from Apollodorus' speech referring to him (XII, 594a-b). As Parker (2004: 60) observes, Archias' punishment could not be severe, since it is not even mentioned in the accusing speech, where such an argument would fit perfectly. Possibly Plutarch mixed two characters in his anecdotal narrative on two Archiases, one being a hierophant who was supposed to warn the Theban oligarchs of the coup prepared by Pelopidas in 379, the other a philo-Laconian Theban oligarch himself (*Pel.* 10.7; *De gen.* 596e)<sup>208</sup>. If we were to believe the biographer's account, it should be assumed that the trial was not merely of cultic but also of a political character, just like all the others analysed so far, a motive perhaps withheld by the orator<sup>209</sup>.

A certain *Ninos* was said to have been condemned to death for performing initiations into the cult of new gods, leading the θίασοι<sup>210</sup> and producing potions, clearly 'magic' ones. There is a brief mention of it in two speeches *Against Boeotus*, both preserved under the name of Demosthenes (39.1-2, 40.9), perhaps from around the middle of the fourth century. In both speeches, using similar wording, the accuser speaks of Meneclēs—portrayed as a sycophant—who was said to have 'convicted Ninos', without giving the reason for bringing charges against her or any further explanations (which could mean that the case was well known to the audience). Furthermore, in his *On the Dishonest Embassy* (19.281), Demosthenes formulates a slanderous accusation against Aeschines by saying that his mother, Glaucothea, was a

207. Neaira was tried by γραφή ξενίας, a procedure employed when one's civic status was at stake due to the suspicion of its usurpation; the charge said that the alleged alien Neaira had lived in Athens with an Athenian citizen appearing as his lawful wife. What seems interesting here, is linking the law regulating morals (perhaps in connection with the 'ethos of citizenship' and its high legal status) with religion and offending the gods, mostly in the context of Neaira's daughter who had done the honours of religious service as the archon's wife, which according to the prosecutors she had no right to do as a non-citizen (cf. Is. 6.47, Dem. 43.51). Nevertheless, one should note that Neaira was not prosecuted for impiety, which appears in the speech merely as a rhetorical argument or an 'informal' charge (cf. [Dem.] 59.74-77 on the basileus; see also the remarks below on the invective connected with impiety in the forensic speeches).

208. See Georgiadou 1997: 89, 117 on different names attested by the sources; cf. Parker 1996: 202, n. 12, Clinton 1974: 16-17.

209. Cf. Kapparis 1999: 411.

210. I.e. a 'cult association' (cf. Is. 9.30) or, here, rather a quasi-bacchic revelry (cf. Dem. 18.260, 19.199-200), cf. Jones 1999: 13, n. 52 *et al.*; on Athenian θίασοι and θιασώται (members of θίασος), see Arnautoglou 2003: 31-67, cf. Lambert 1999. Perhaps we should, first of all, look for the distrust of the θίασοι in social prejudice, for they, since their beginnings in Athens, consisted mainly of the poor (those not taking part in any *ἐταιρεία*), while by the mid-fourth century often of the non-Athenians as well; not infrequently, they were also connected with the cult of the gods 'imported' to Athens (regarded as alien, non-Greek), cf. Leiwo 1997.

leader of the θίασοι – the activity which had earlier led to other priestesses' (ιέρεια) death. The scholia to this passage claim this priestess was Ninon, accused by Meneclēs for casting love charms (φίλτρα) on young boys (495a), and that she was condemned to death for deriding and performing the Mysteries (495b). We hear of the same Meneclēs again from Dionysius of Halicarnassus (*Din.* 11), who mentions a speech *Against Meneclēs* (or. 33 Conomis) of ca. 351-49 wrongfully attributed in antiquity to Dinarchus. Dionysius claims that the prosecutor in the public case (ἀπαγωγή) for which the speech was written was the son of Ninon, convicted because of Meneclēs.

We know that the use of such potions could have had lethal outcome, as attested by cases for poisoning tried by Areopagus (Antiph. 1, [Arist.] *Mag. Mor.* I 16.2, 1188b29-38). The charge against Glaucos thea repeated by later sources does not, however, look like anything more than rhetorical slander (διαβολή), typical of Athenian oratory, and as such should not be given too much credit<sup>211</sup>. Flavius Josephus (1st century CE) also recalled the example of a priestess reportedly sentenced to death in democratic Athens for performing initiations into the Mysteries of foreign gods (*Ap.* 2.267; ἄν of the MS is emended by some editors to Νίνων). Perhaps in this case as well much was added into the content of the accusation several centuries after the trial, which itself seems to be genuine. There can be no certainty whether the remarks about a priestess point to Ninon, but we can at least conclude that a 'priestess' was at that time tried in Athens for what we would call 'witchcraft'. The later remarks in the scholia and Flavius Josephus about initiating into the Mysteries might indicate the confusion with other cases. While it cannot be certain based on the aforementioned sources whether the charge here was ἀσέβεια, the religious character of the trial and the accusations all attest to it.

An otherwise unknown Theoris was also accused of producing magic potions (φάρμακα). In the first speech *Against Aristogeiton* preserved under the name of Demosthenes<sup>212</sup>, the accuser recalls quite a mysterious trial (25.77-80). He claims that the brother of the defendant has acquired potions from the 'hideous Theoris the Lemnian, a witch that you have killed with all her family' (25.79). The lexicographer Harpocration (2nd cent. CE) under the entry Θεωρίς cites Philochorus (*FGrHist* 328 F 60), an Attidographer of the 3rd century, while merely stating that she was a 'seer' (μάντις) sentenced to death for ἀσέβεια<sup>213</sup>. In his *Life of Demosthenes* (14.6), Plutarch gives an alternative version

211. See e.g. Dem. 18.259-64, 19.249; cf. Trampedach 2001: 138-39.

212. The oration was considered inauthentic by Dionysius of Halicarnassus (*Dem.* 57), but MacDowell (2009: 298-313) has recently defended its authenticity. Collins (2011) suggests that it could be dated at the 338-324 frame, so the trial itself would have to be of an earlier date.

213. Philochorus, later killed for his anti-Macedonian activity, was said to have been of a priestly family and a seer himself, which might explain his interest in the case of Theoris; see the Suda, s.v. Φιλόχορος.

of the story embellished with some additional detail (perhaps just a later addition), claiming that (1) Demosthenes himself was an accuser of a ‘priestess’<sup>214</sup> Theoris, and that (2) he charged her with numerous offences (first of all, for teaching slaves how to deceive their masters), which led to her being sentenced to death.

What is even more curious is that since ca. 390 the Athenian cleruchs at Lemnos enjoyed the legal status of Athenian citizens<sup>215</sup>. We cannot be sure whether Theoris came from the original population or an Athenian family (*LGN* lists seven entries under Θεωρίς, six of which come from classical Greece; it is quite striking that our ‘Lemnian’ is listed aside four examples from Attica and just one from Sicyon mentioned only by Hesychius and the *Suda*). In the latter case, the remark about killing the whole family, vague in itself, looks even more suspicious. We would have to assume the direct responsibility of an Athenian citizen acting as her *kyrios*, for which we find no attestation from the classical period in capital cases. It is not less surprising that the names of both Theoris and Ninos appear in the court speeches without any mention of their *kyrioi*, who would normally have to represent a citizen woman in court<sup>216</sup>, as though the orators either believed the accused women were of disreputable, non-citizen descent (*hetaerae*?), or tried to portray them as such (Trampedach 2001: 146-47). It makes one wonder if we should take the orator’s remarks at their literal value. Pseudo-Demosthenes’ epithet ‘the Lemnian’ could be also read as a metaphor referring to the mythical status of ‘the Lemnian women’ (Harpocration and Plutarch do not mention the *etnikon* at all), but there is not much to support this reading. It thus seems impossible to say anything certain on the actual status of Theoris and the probability of this case.

Apparently, there was no law which would prohibit introducing new gods to Athens (as suggested by later sources<sup>217</sup>), but—as Parker notes (see above)—trying to introduce them at the wrong moment could have proved rather hazardous. As noted earlier, it was certainly safer to honour the gods in agreement with tradition and the existing laws, and introduce new gods with approval of the Assembly and oracles<sup>218</sup>. In his treatise *On The Sacred Disease* (1.60-79), Hippocrates objects to

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214. A *ιέρεια*, as opposed to *μάντις*, would have to be a priestess of a specific cult in Athens. It is likely that Plutarch confused the cases of Theoris and Ninos, cf. Collins 2011: 491; see also Eidinow 2010 (focusing on social envy in the trials for magic directed at women transgressing normative boundaries).

215. See Trampedach 2001: 146, with further references in n. 40.

216. Cf. Gagarin 1998.

217. See Joseph. *Ap.* 2.267; Serv. *Verg. Aen.* 8.187. Some decree on piety (τὸ ψήφισμα τοῦ δήμου ... περὶ εὐσεβείας), though not copied with the text of the speech, was cited by Lycurgus (*Leocr.* 146) in the late fourth century, but we are in the dark about its content.

218. Parker 2005a: 65-68, 214-15; cf. Wallace 1996b, Arnaoutoglou 2003: 94.

taking epilepsy for a heaven-sent disease and explains why dealing with magic could have been considered impious (he uses such terms as *δυσσέβεια*, *δυσσεβέειν*, *ἀσεβές*, and *ἀνόσιον*). It seems that such individuals claimed that they could cure the ‘sacred disease’ solely by the use of their own magic skills. According to the author, this is equal to stating that the gods do not exist or that those involved in magic are mightier and do not have to fear them, since they claim they are able even to control the Sun, the Moon, and the atmospheric phenomena<sup>219</sup>.

#### Politics after Chaeronea: philosophers and rhetores (ca. 323)

In some classical and, mainly, later sources (such as Plutarch, Athenaeus, and Diogenes Laertius), one can encounter several alleged trials with religious background brought against pro-Macedonian philosophers and politicians, and one against the philosopher Theodorus of Cyrene<sup>220</sup>. In these half-legendary cases from the late fourth century, one can easily distinguish some recognisable figures of Athenian history standing before the Areopagus Council, in the times of endangered Athenian independence and different political circumstances than in the previously discussed events. After the death of Alexander and the Lamian war, Athens was under two pro-Macedonian regimes with only a short and violent democratic interlude of 318-17 (Plut. *Phoc.* 34-37, Nep. *Phoc.* 4.1). It is difficult to ascertain the veracity of the accounts concerning the trials happening at this period, as most of it—again—is to be found only in later sources; however, as the numerous contemporary remarks suggest<sup>221</sup>, we can certainly trace a shift in the Areopagus’ powers in the second half of the fourth century. The majority of these trials can be dated either just before or not long after the death of Alexander in June 323, when Athenians were already subject to the Macedonian rule. Nonetheless, they preserved much of their political structure from the times of independence, along with a handful of publicly active anti-Macedonian politicians-orators. At least some of the trials had to be genuine, though it seems impossible to assess how many were based on or resulted in a formal charge of impiety. It was a period of grave political conflict between the advocates of the pro-Macedonian option in foreign politics and elitist constitutional changes on the one hand, and those of anti-Macedonian and pro-democratic followers on the other (a distinction not always so straightforward). It is this tension that comes to the surface in most of the cases listed below.

219. Cf. Dickie 2007.

220. In particular, see O’Sullivan 1997, 2009: 149ff.

221. Nevertheless, at least some of the Areopagus’ capacities concerning prosecuting religious offences had to be earlier than this. For the late fourth-century regulations, see Din. 1.3-5, 9, 62, 82-83, Lycurg. *Leocr.* 52, Dem. 18.133-34, Aeschin. 1.81-83; cf. Dem. 23.65-70, [Dem.] 59.78-83; cf. *JG II*<sup>2</sup> 204.16-19 (= RO 58.16-19); the need for conservative regulations linked to the Areopagus’ powers were already proposed by Isocrates in the 350s in his *Areopagiticus* (Isocr. 7); cf. Hansen 1991: 294-95, Wallace 1989: 106-19, 174-89, 195-98 *et al.*, de Bruyn 1995: 113-16, 126-42, Wallace 2000, Sullivan 2003, Carawan 1985.

Demades the orator (ca. 380 – 318) was said to have been accused and sentenced to a fine for attempting to introduce Alexander as the Thirteenth God<sup>222</sup> in autumn 324, not long before the ruler's death<sup>223</sup> (the same allegation was reportedly put forward against Theophrastus). Demosthenes apparently backed the resolution out of political pragmatism (Din. 1.94, Hyp. Dem. 31)<sup>224</sup>. Aelian (ca. 175 – ca. 235 CE) notes in his *Various History* (5.12) that Demades was sentenced to a fine of one hundred talents for ἀσέβεια. The circumstances would probably imply the use of the γραφή παρανόμων, so the trial did not have to be a γραφή ἀσεβείας. Earlier, also Diodorus (18.18.2)—quite likely following Hieronymus of Cardia (Chamoux 1993: XXII-XXVI)—made a mention of Demades' being convicted three times for unconstitutional proposals and deemed ἄτιμος (deprived of civic rights, which he later regained). Plutarch (*Phoc.* 26.2), in a similar context, recalls seven sentences, while the Suda (s.v. Δημάδης) two. Athenaeus (VI, 251b) gives the amount of ten talents rather than one hundred, but neither needs to be more plausible than the other<sup>225</sup>. At any rate, the trial itself—clearly a political one—apparently did take place, while the charge of impiety seems at least probable. Nevertheless, according to the extant sources, in most cases concerning the proposal to treat Alexander with divine honours as the Thirteenth God,

222. As a major addition to the Twelve Olympian Gods commonly recognised by the Athenians, cf. Atkinson 1973: 313, n. 14. For more on this proposal and reactions to it, see discussion in Atkinson 1973 (yet not always convincing; cf. Badian 1981: 54) and Brun 2000: 97-107; see also e.g. Lucian. *Dial. mort.* 13.2.10-12.

223. See Din. 1.94, 101; cf. Ael. *Var. Hist.* 2.19, Plut. *Mor.* 219d; cf. Atkinson 1973, Badian 1981, O'Sullivan 1997.

224. Badian (1981: 54) and Gunderson (1981: 189) find irony in this statement, but the irony does not disprove the fact that Demosthenes could have proposed expedient measures, while putting the ideology aside (τὰ ἐν οὐρανῷ, in his own words; cf. Dem. 5.25). Curiously enough, soon he simply cherished the reputation solely for defending the traditional canon of the gods, see Polyb. 12.12b.3 citing Timaeus the historian (ca. 345 – ca. 250).

225. Cf. e.g. Hansen 1974: 41. By that time, Athenians were already familiar with proposals of fines as large as 100 talents, see Hansen 1974: 34, 1975: 101 (Timotheus in 356/5 was sentenced to such an amount instead of the death penalty proposed by the accusers for treason and bribery, after he had refused to act in the naval battle of Embata because of heavy sea, see Din. 1.14-17, 3.17, Isoc. 15.129: Τιμόθεον δὲ τοσοῦτοις ἐζημίωσε χρήμασιν ὅσοις οὐδένα πώποτε τῶν προγεγενημένων, Diod. 16.21.4; another such fine—if not a rhetorical exaggeration—was proposed by Lycurgus, perhaps in 348, within a γραφή παρανόμων against Philocrates, sentenced several years later for treason, who tried to introduce a decree allowing Philip of Macedon to send a herald and envoys to Athens to negotiate a peace treaty, but the prosecutor did not even gain a fifth part of the votes, see Aeschin. 2.13-15, 20, 109, 3.62, Din. 1.28). Fines of 10-15 talents were not uncommon in fourth-century trials, including γραφαὶ παρανόμων (Dem. 21.182, 58.1, 31-32, 43, 70; [Dem.] 50.6; Aes. 2.99; cf. Hansen 1974: 34-35). Nevertheless, one should note that Athenaeus does not necessarily cite a source known to him directly, as indicated by the references to Demochares that usually follow passages taken from Carystius (XI, 508e, XIII, 610e), who could have been the main source of quotations from Demochares' speeches, cf. O'Sullivan 1997: 141.

prosecutorial means other than impiety trials were used against the proposers of such innovations<sup>226</sup>. Pseudo-Plutarch (*X or.* 843d), in turn, recalls the example of Lycurgus prosecuting Demades, apparently in a series of indictments (see below), brought by the orator sometime before his death in 323, but there is not much we can discern based on this single remark.

The prosecution of Aristotle allegedly occurred just several months after the trial of Demades. The pro-Macedonian inclinations of the philosopher were not forgotten after the death of Alexander. According to later authors, Aristotle was accused of a series of impious acts, including the composition of a 'paean' (a song supposed to be dedicated only to a god, even if poets in the fourth century started to diverge from this rule<sup>227</sup>) and an inscription in Delphi for Hermias, a ruler of Atarneus and Assos and a former disciple of Academia killed two decades(!) earlier, who had kept Aristotle as a guest before Plato's death. The prosecutors claimed that the philosopher performed his 'paean' daily during meals. Athenaeus (XV, 696a-b) and Diogenes Laertius (5.5-9) give a more or less similar account of this story (fr. 645, 674-75 Rose<sup>3</sup> = T 1 Gigon), speaking of the *γραφὴ ἀσεβείας* brought by Demophilus and backed by Eurymedon the hierophant. Diogenes refers to the tradition of the inscription in Delphi based on the Favorinus' *Various History* (fr. 68 Bar. = 36 Mensch. = 73 Am.)<sup>228</sup>.

Having heard the charges, Aristotle was said to have gone into exile to the Euboean Chalcis only to die there not long after. The charge is difficult to understand based on the wording of the 'paean', which is cited by a symposiast in Athenaeus' *Deipnosophistae* and referred to as a 'skolion'. Aelian, in turn, does not give a rationale for the trial, but claims that Aristotle fled Athens in fear of a trial (*Var. Hist.* 3.36; cf. Orig. *Cels.* 1.65.380). He then provides an anecdotal account of these events, in which Aristotle replies to someone asking for the reason of his flight: 'because I do not want the Athenians to wrong philosophy twice', in reference to the prosecution of Socrates (as Aelian himself explains). It seems that a general animosity towards anti-democratic philosophers can be distinguished in the second half of the fourth century. According to various late testimonies<sup>229</sup>, it even led to a decree by a certain Sophocles (soon to be deemed illegal and abolished), introducing the requirement for the philosophical schools to obtain an approval of the Assembly and the Council before being allowed to operate, which in practice

226. See n. 224 above, cf. Bauman 1990: 129-30 (cf. pp. 166-70 for possible later accusations and similar proposals concerning Demetrius Poliorcetes); cf. Mari 2003: 84, with n. 8.

227. Cf. Ford 2011: 58-59 *et al.* (see also the 'paean' itself and the discussion on the context of its creation, p. 1-26, *passim*).

228. Later authors probably used Hermippus as their main source. For a detailed discussion and a collection of testimonia, see Düring 1957: 272-83 and Bolansée (1999b: 311-17; 2001b: 69-83).

229. D.L. 5.38, Poll. 9.42; cf. Athen. XIII, 610e; cf. O'Sullivan 2002.

outlawed them under the threat of death<sup>230</sup>. The case of Aristotle is very unclear. The trial for impiety against him seems probable, although it is suspicious that we do not hear about its outcome, perhaps because he escaped in time, as suggested by Laertius (the case could have been dropped if the prosecutor was happy with the philosopher's exile).

There also survived certain late and rather anecdotal testimonies referring to the trial of Theophrastus (ca. 371 – ca. 287). Diogenes Laertius (5.37) summarises it briefly: 'so highly was he valued at Athens that, when Agnonides ventured to prosecute him for impiety, the prosecutor himself narrowly escaped punishment' (T 1.14-15 Fortenbaugh et al.; trans. R.D. Hicks). We hear, perhaps, some echoes of the tradition concerning the trial of Theophrastus and charges concerning the worship of the Twelve Gods in Aelian's account (*Var. Hist.* 8.12 = T 32A Fortenbaugh et al.). He relates Demochares' supposed reply to the philosopher defending himself before the Areopagus: 'the jurors were Athenians, not the Twelve Gods'<sup>231</sup>. The prosecution of Theophrastus for impiety could indeed arouse anger of the Athenians, since he was known for his treatise *On Piety* (Περὶ εὐσεβείας), fragmentarily preserved in extensive quotations by Porphyry of Tyre (3rd/4th cent. CE)<sup>232</sup>. He wrote about the religious and ethical dimension of offering sacrifices to the gods, and reprimanded Queen Olympias for the extravagance in this domain. By doing so, he implicitly linked impiety with practices of monarchs and deflected away from himself the charge of favouring Macedon, so popular among the fourth-century philosophers, including his master Aristotle (Mari 2003: 86). He was also known in the later tradition for defending democracy in his hometown Eresus<sup>233</sup>. The circumstances mentioned by the sources seem anecdotal, but the presence of Hagnonides indicates that it could have been one in the series of prosecutions by the anti-Macedonian rhetors targeting their political enemies. The most likely period for this would be the tense atmosphere of the democratic interlude of 318-17 when Hagnonides could still be alive and prosecute political opponents, probably having survived the regime set by Antipater but not that of Demetrius (Plut. *Phoc.* 29-38, *IG II<sup>2</sup>* 448).

One should note the similarity of the trials of Demades and Aristotle, and perhaps one of Theophrastus, as clearly being targeted at the pro-Macedonian circle<sup>234</sup>. It is generally assumed (not without doubts) that the prosecutors in the trial of Theophrastus were some well-known anti-Macedonian politicians and orators. For instance, the presence of

230. See Haake 2007: 16-43.

231. It might have been a fragment of Demochares' speech, cf. O'Sullivan 1997: 138-39; see also Bauman 1990: 123-25 on Theophrastus' trial.

232. Theophr. *De piet.* (T 584 A Fortenbaugh et al. = fr. 13 Pötscher) *ap.* Porph. *De abst.* 2.26.1. For details, see Meijer 1981: 250-9.

233. Plut. *Moralia* 1097b, 1126f; cf. Bayliss 2011: 100.

234. Cf. O'Sullivan 1997: 136, 145, 147, 152; Bauman 1990: 119-26.

Hagnonides (T 1.14-15 Fortenbaugh et al. *ap.* D.L. 5.37) and, perhaps, Demochares the orator (Ael. *Var. Hist.* 8.12; cf. 5.12) could constitute an attempt to weaken the standing of Demetrius of Phalerum and his political supporters. Plutarch (*Phoc.* 38) notes that the prosecutors of Phocion, who was sentenced to death for treason, were Hagnonides, Epicurus, and Demophilus. Hagnonides was also said to have been the accuser of Demetrius (in a trial for the attempt to subvert the democracy, *κατάλυσις τοῦ δήμου* of 318<sup>235</sup>), while Demophilus – one of Aristotle (fr. 645, 675 Rose<sup>3</sup> = T 1 Gigon *ap.* Athen. XV, 696a-b, D.L. 5.5). The presence of both in our sources suggests the time frame falling outside the power game between the followers and opponents of Phocion (O’Sullivan 1997: 145).

Demetrius of Phalerum (ca. 350 – 283), a pupil of both Aristotle and Theophrastus, also faced various political charges and had to flee Athens soon after the overthrow of Phocion’s regime<sup>236</sup> (ca. 318). As an envoy, he agreed to the proscription lists of Antipater, allowing his own brother’s, Himeraeus, death<sup>237</sup>. As seen in this context, an account by Carystius of Pergamum (2nd cent.), quoted by Athenaeus (XII, 542e = T 43A SOD = 9, 34, 35 Wehrli), seems quite improbable. He stated that Demetrius had been accused of offering sacrifices to a ‘phantom’ (*τὰ ἐπιφάνεια*) of his brother. The rest of the surviving sources do not mention this charge, which appears as purely anecdotal, and even as such it bears no explicit mention of impiety.

Another tale which strikes the reader as mainly anecdotal is one of the philosopher Stilpo of Megara (ca. 360 – ca. 280), preserved in Diogenes Laertius’ account (2.116 = fr. 183 Döring = SSR II O 12). The biographer claims that Stilpo, a philosopher of the Megarian school, said of the statue of Athena by Pheidias that she was not a god, since Athena came from Zeus, while the statue from the sculptor. Explaining himself before the Areopagus after his bold statement, he was supposed to claim that he had told the truth, since Athena was not a god but a goddess, to which Theodorus was said to have replied by asking if Stilpo had ever raised her vestments to be so certain. As a result, Stilpo reportedly fled Athens by the order of the Areopagus. The entire account seems a fib, though the times of Demetrius’ reign in Athens were perhaps not the most friendly to those wishing to propagate

235. Demetrius T 15A-B SOD = 10-11 Wehrli *ap.* Plut. *Phoc.* 34.4-5, *Nep. Phoc.* 3.1-2; cf. Diod. 18.65.6, 18.66.5; cf. O’Sullivan 1997: 140 with n. 25.

236. In 317 he returned as an ‘overseer’ or ‘governor’ (*ἐπιμελητής*) of Athens appointed by Cassandrus, and ruled a moderately oligarchic regime for another decade (T 16A-B SOD = 12-13 Wehrli; cf. T 23A-E SOD = 18-19 Wehrli), only to be expelled in 307 by his namesake, Demetrius I Poliorcetes (T 26-31 SOD = 47-51, 56 Wehrli). Along with him fled a group of philosophers supporting his rule, including Theophrastus. See also Haake 2007: 60-82.

237. Numerous sources speak of this, see O’Sullivan 1997: 139-40 (nn. 19 & 20); cf. Banfi 2010: 12-14, 151-52.

views inconsistent with the morality of the day<sup>238</sup>. It seems to have helped in the fabrication of this story that in the ancient biographical tradition Stilpo was regarded as a highly controversial figure due to his religious views (see fr. 159-60 Döring = SSR II O 20-21 *ap. Plut. De prof. virt.* 12.83c, Athen. X, 422d).

#### The Atheist: Theodorus of Cyrene (309-5?)

A case separate from other late fourth-century trials and one widely referred to in antiquity is that of a philosopher of the Cyrenaic school, Theodorus of Cyrene called 'the Atheist'<sup>239</sup> (borne ca. 340), the namesake of a fifth-century mathematician also from Cyrene. Philo of Alexandria (ca. 20 BCE – ca. 50 CE) recalls his example (*Quod omnis probus liber sit* 127-30 = T 5 Winiarczyk), saying that the philosopher, having fled Athens and stayed shortly in Alexandria, appeared at the Thracian court of Lysimachus. The author makes someone from the court refer to the reason for Theodorus' banishment, by saying it all happened after the Athenians sentenced him for atheism and corrupting the youth (ἀθεότητι καὶ διαφθορᾷ τῶν νέων), which naturally brings the charges against Socrates to mind. As previously described, all cases of 'impious' characters could be and were linked remarkably easily throughout antiquity.

Plutarch in his work *On Exile* (16, 606b = T 7 Win.) speaks of the unjustly sentenced, the exiles who were deprived of their παρρησία, and in this context also makes a mention of Theodorus and Lysimachus. Diogenes Laertius (2.101 = T 3 Win.), in turn, tells a variant of the story embellished with additional detail. He relates an anecdotal exchange of opinions based on dialectical wit, quite similar to that involving Stilpo. According to him, Theodorus was said to have told Euryclides the hierophant that the priest himself was guilty of profanation of the Mysteries since he explained them to the uninitiated (in the process of initiation). The biographer first states that Demetrius of Phalerum saved the glib thinker from condemnation by the Areopagus (T 48 SOD = 43 Wehrli). He then admits that there is a variant of this story told by Amphicrates of Athens (1st cent.) in his *On Illustrious Men*. The author claimed that the Athenians had sentenced Theodorus to death and that he had accepted the sentence by drinking hemlock. This is another obvious reproduction of the trial of Socrates, and an improbable one, too, for we hear from various sources of Theodorus' later adventures<sup>240</sup>. Immediately after this account, Diogenes Laertius (2.102 = T 6 Win.) presents another anecdotal tale, in which Lysimachus calls the philosopher 'Theodorus who has been

238. Cf. e.g. Wallace 1996b: 371-72.

239. An extensive collection of testimonies on the life, trial, and beliefs of Theodorus has been collected by Winiarczyk in his critical edition (1981b; suppl. 1989) and his paper on ancient atheists (1984, suppl. 1992a; cf. 1981a).

240. Cf. Winiarczyk 1981a: 68-69.

exiled from Athens'<sup>241</sup> (it is likely that he actually had to leave his home city of Cyrene sometime earlier, see Winiarczyk 1981a: 66 and Philo's passage mentioned above).

Earlier, the biographer reports radical views of Theodorus, who not only was said to have doubted, just like Protagoras, the very validity of judgments about the gods (T 26A Win. *ap.* D.L. 2.97), but also to have propagated quite an extraordinary belief, especially for the fourth century. He was said to have claimed that a wise man should not risk his life for his country to help the fools for whom all moral principles had been created, while nothing is wrong *per se* (T 21-23 Win. *ap.* D.L. 2.98-99). Diogenes Laertius attributes to him the opinion that the entire world is the sage's homeland, which quite suspiciously resembles a similar view cited in the fifth century CE by Stobaeus as coming from Democritus (D-K B 247 *ap.* *Ecl.* 3.40.7), and perhaps attributed to Theodorus by mistake (or the other way around, although it seems less likely). Athenaeus, in turn, when writing of philosophy and rhetoric, recalls that Theodorus was condemned to death just like Socrates, i.e. 'for words' (XIII, 611a = T 3C Win.).

It remains possible that some accusations against Theodorus were historical, yet—again—all extant sources come from late antiquity and are mostly anecdotal. If true, there could have been an underlying political agenda behind the accusation, considering the involvement of Demetrius of Phalerum in the alleged proceedings<sup>242</sup>. It can be inferred from them that the prosecution should not be placed among the trials of the anti-democratic politicians in 318, at least if we accept Demetrius' intervention, which does not seem improbable<sup>243</sup>. There can be no certainty whether any charges were brought against the philosopher, if Demertius was indeed able to save him from the trial before it even occurred. The existence of such a tradition is also attested by Pseudo-Hesychius of Miletus (*Vir.* p. 29, 7- Flach = T 3B Win.). We could venture a tentative dating of these events around 309-5 based on the context in which Eusebius of Caesarea relates them in the fragments of his *Chronicle* translated into Latin by Jerome (p. 127.1 Helm = T 1A Win.; cf. T 1C). Various manuscripts<sup>244</sup> mention the fourth year of the 117th Olympiad (309/8) or the 118th Olympiad (308-5). At any rate, it seems possible that Theodorus left Athens in fear of some charges, possibly of impiety. Based on the remaining sources, it can be assumed that since then he lived for many years in Cyrene, where he died sometime in the first half of the 3rd century<sup>245</sup>. It is, however, not enough to assume that he was brought to trial.

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241. Various anecdotal tales of his meeting with Lysimachus appeared also in other sources (see n. 240 above).

242. Cf. O'Sullivan 1997: 145-46.

243. Cf. O'Sullivan 1997: 144; Bauman 1990: 126.

244. See Winiarczyk 1981a: 69, with n. 22; cf. O'Sullivan 1997: 144.

245. Cf. Winiarczyk 1981a: 70-71.

## Trials forgotten and unknown

In the fourth-century sources we can also encounter some less well-known trials for ἀσεβεία. In Demosthenes' *Against Androtion* from ca. 355, an accusation against a member of the Council by the γραφή παρανόμων, the speaker mentions (22.2) that Androtion tried to aim at his political enemy Diodorus (primarily by stating that he killed his own father), and thus he accused the latter's uncle by the γραφή ἀσεβείας. He did not obtain even a fifth part of the votes, and the accused was acquitted, which is emphasised by Demosthenes, for the penalty for this in a γραφή would be a one-thousand drachmae fine and partial ἀτιμία ('disfranchisement'; cf. Harris 1999), which could in turn be used against citizens' lawfulness. Soon, both Androtion's enemies appeared again in court as prosecutors, this time accusing Timocrates by the γραφή παρανόμων. Here Diodorus makes another mention of the prosecution by Androtion; this time, however, he states that the charges of impiety were aimed directly at him (not his uncle) for his alleged murder of his father. Again, he mentions the fact that Androtion did not obtain a fifth part of the votes, and that he was fined with a penalty of one thousand drachmae for it (Dem. 24.7). It remains possible that the entire story was fabricated to depict Androtion as a sycophant<sup>246</sup>. Diodorus accused Androtion of the same offences, claiming that he was 'guilty of temple robbery, impiety, theft, and all the worst delinquencies'<sup>247</sup>, and maintained that each of these charges should result in capital punishment (Dem. 22.69).

In another Demosthenic speech (perhaps of 345), we hear that Eubulides, opposed by a certain Euxitheus removed from the citizen-list, did not obtain a fifth part of the votes in his accusation by the γραφή ἀσεβείας against Lacedaemonius' sister (Dem. 57.8). Both cases are briefly mentioned only as an argument highlighting the bias of the other party (according to Euxitheus, Eubulides aimed to retaliate in the present trial for the testimony given by the former in his defence of the accused woman). In numerous Athenian orations one party calls the other impious (ἀσεβής), though it rarely forms the basis for a legal charge and should be understood simply as a hyperbole within the rhetorical argumentation. It seems this was the case here, although backed by legal argumentation, since Eubulides later appeared as one of the prosecutors in Euxitheus' case in Dem. 57, the very speech in which this case gets mentioned<sup>248</sup>.

246. Harris (1999: 129, 2006a: 410) notes that it is surprising that the accuser mentions the one-thousand drachmae penalty, but makes no mention of the ἀτιμία which would typically follow, but elsewhere—when defending a different point—he takes the opposite stand, arguing that in Dem. 58.6 the speaker does not mention ἀτιμία, 'but he may be selective in his summary of the law and merely leave out the penalty' (Harris 2006b: 68; cf. Wallace 2006: 60). See also n. 132 above.

247. Similarly, in the aforementioned trial of Neaira the prosecutor described with some rhetorical exaggeration actions of the accused as 'impiety' ([Dem.] 59.73-77, 116-17), see n. 207 above; see also Lys. 30.17-21, 21.20.

248. Cf. Harris 1999: 128.

The charge of ἀσέβημα appears also in the fragment of the unreserved speech by Lycurgus against Menesaechmus, his political opponent, found on a papyrus roll (fr. 14.1 Conomis *ap.* P. Berol. 11748; cf. fr. 14.2-11). The main offence mentioned by the fragments of the speech seems to be an improper mode of offering sacrifices, apparently when Menesaechmus was sent to Delos as an ‘religious envoy’ (θεωρός; cf. Harris 2001: 216). There can be no certainty as to the nature of the formal charge and whether it was an ἀσέβεια trial or not. It was probably one of the numerous εἰσαγγελίαι brought by Lycurgus in the 330s-320s. As we learn from Pseudo-Plutarch (*X or.* 843d = T 14.1 Conomis), the defendant lost the case, but the later activity of the convict in Athenian politics indicates that the penalty was not severe (Harris 2001: 216). In the same passage, the biographer recalls Autolycus the Areopagite, Lysicles the general, Demades the orator (son of Demeas), and ‘numerous others’, all of whom he prosecuted (γραφάμενος) in a series of religious trials (εἶπε ... περὶ ἱερῶν πολλάκις). Apparently, the term γραψάμενος in this account should not be read as a technical term indicating the procedure of γραφή but rather a general one referring to a ‘written accusation’ (see nn. 134 and 153 above).

All cases mentioned in this section reflect publicly displayed animosities between actors on Athenian political scene. On the one hand, based on such evidence, it can be assumed that there were many more similar charges, not mentioned anywhere in the surviving sources and probably impossible to uncover in future (cf. [Lys.] 6.12). On the other hand, there can be no certainty as to how many of these rhetorical accusations had their basis in reality and were enough to carry on with a legal case. In the surviving speeches, one party frequently accuses the other of various wrongdoings, including impiety. The adjective ἀσεβής (‘impious’) and the noun ἀσέβημα (‘impious act’) often appear in this context, yet it does not form the basis for a legal charge. Rather, they present common rhetorical invective meant to stir outrage and emphasise the gravity of the crime<sup>249</sup>. Lycurgus’ forensic oration *Against Leocrates* provides an interesting example, in which we can distinguish not only a close relationship between the accusations of impiety, an attempt to subvert the democracy, and treason (147; cf. 8, 97, 66-67 *et al.*) but also a skilful manipulation of the dicasts’ decision by trying to convince them that those who vote ‘impiously’ in the present case will be punished by

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249. Cf. King 1955, Carey 2004b; it can prove problematic to tell, at times, whether any such formal charges appeared in a given case, see e.g. Lys. 30.17. Martin (2009: 7-8, 29, 83-84, 209-10, 245-47 *et al.*) believes that Demosthenes tried to avoid bringing charges of impiety and using in his speeches religious argumentation which could lead to a formal charge. It seems, though, that in the speeches by both Demosthenes and Aeschines (see e.g. Aeschin. 3.106ff.), one can find plenty of religious calumnies that would not justify calling any of them more lenient than other speakers of the day. For instance, the entire oration *Against Meidias* (Dem. 21) forms an extensive manipulation of religious argumentation, cf. MacDowell 1990: 17-18, Cohen 1991b, Wilson 1991.

the wrath of the gods, just like the perjurers and their families<sup>250</sup>. The speech opens with a statement that the prosecutor has brought the case to court ‘on your [scil. dicasts’ – JF] behalf and for the sake of the gods’ (καὶ ὑπὲρ ὑμῶν καὶ ὑπὲρ τῶν θεῶν; trans. Harris). It is perhaps not without irony that Lycurgus—an ardent prosecutor in numerous religious trials and a guardian of Athenian morals—was himself accused of impiety by his political enemy Diondas, as we learn from a fragment of Hyperides’ speech *Against Diondas* delivered in 334 (144v, 19–20; see n. 138 above).

In the epigraphic material we can count over 200 occurrences of words from the ἀσεβ– stem (mainly in the inscriptions from Asia Minor)<sup>251</sup>. Just five are from classical Attica; they deal with potential pious or impious acts in sacred places or within the Mysteries<sup>252</sup>. Even so, one inscription from Ephesus dated at the late fourth century seems to form an interesting parallel (*I Eph 2* = *SEG xxvii 733*). According to the sentence or legal complaint<sup>253</sup> comprised in it, over forty men from Sardis (listed by their Hellenised names) were to be condemned to death for impiety (ἡσέβησαγ) towards the sacred objects and for a violent act (ὑβρι[σαν]), perhaps an assault, against the envoys (θεωροί) sent with an offering to the Temple of Artemis in Ephesus. The charges were brought by legal representatives of the temple (οἱ προήγοροι ὑπὲρ τῆς θεοῦ).

As Momigliano (1973) notes, there are no testimonies indicating the persecution of philosophers in Athens after the fourth century. All extant accounts concerning other places are limited to nebulous remarks regarding the philosopher Hegesias in Alexandria, the expulsion of one or a group of philosophers from Thrace under Lysimachus’ reign, and of the banishment of philosophers from Syria (perhaps under the rule of Antiochus VI Dionysus) and Messenia. The motives behind these actions remain unknown. We hear quite a curious ex-

250. See e.g. Lycurg. *Leocr.* 79ff., 146, 94; cf. [Lys.] 6.53, [Dem.] 59.126, Dem. 19.239; cf. Harris 2001: 201, n. 98. See Rubinstein 2004 on ‘stirring up dicastic anger’ in public cases.

251. See PHI s.v.; cf. Rudhardt 1960: 94–96, Delli Pizzi 2011.

252. These are: *IG I<sup>3</sup> 422*, *IG I<sup>3</sup> 426*, *IG I<sup>3</sup> 427*, *IG II<sup>2</sup> 204*, and *IG II<sup>2</sup> 1635*. See n. 57 above on *IG II<sup>2</sup> 204* on the sacred land and n. 191 above on the trial for ἀσέβεια from *IG II<sup>2</sup> 1635*. In most cases and in most *poleis*, fines would typically follow, see Naiden 2008. Some inscriptions relating to (im)proper conduct in sacred places did not speak of impiety directly, see e.g. *IG II<sup>2</sup> 1362*.

253. The first part, before the long list of names, reads (ll. 1–11): οἱ προήγοροι ὑπὲρ τῆς θεοῦ κατε[δι]κάσαντο θάνατογ κατὰ τὴμ προγρ[α]φῆν τῆς δίκης ταύτην “ὅτι θεωρῶν ἀποσταλέντων ὑπὸ τῆς πόλεως ἐπ[ι] χιτῶνας τῆι Ἀρτέμιδι κατὰ τὸν ν[ό]μον τὸμ πάτριον, καὶ τῶν ιερῶν κα[ι] τῶν θεωρῶν παραγενομένων εἰς Σ[άρ]δεις καὶ τὸ ἱερὸν τῆς Ἀρτέμιδος τὸ ἰδρυμένον ὑπὸ Ἐφεσίων τὰ τε ἰ[ε]ρά] ἡσέβησαγ καὶ τοὺς θεωροὺς ὑβρι[σαν] τίμημα τῆς δίκης θάνατος.” P. Charneux (*BCH* 115, 1991: 298, n. 6; cf. *SEG* xli 290) believes it to be a legal complaint rather than a decree because of the use of ὅτι in l. 3.

planation only in the case of Hegesias of Cyrene, a philosopher who was said by late doxographers to have taught on the impossibility of reaching lasting happiness, while claiming that life should not constitute any worth to the sage (SSR IV F 1 *ap.* D.L. 2.94). This was also the supposed reason why he was sometimes called *πεισιθάνατος*, ‘inciting to die’ (SSR IV F 2 *ap.* Epiph. *Adv. haeres.* 3.2.9 [3.507.18]). According to an ancient anecdote, Ptolemy I Soter forbade him to teach in public, for his lectures led the auditors to commit suicide (SSR IV F 3, 5 *ap.* Cic. *Tusc.* 1.34.83, Val. Max. 8.9 ext. 3).

### Conclusion

I have argued in this paper, first, that most of the testimonies (including laws) found in the late sources regarding Athenian impiety trials need to be treated with a fair amount of suspicion. They include a set of shared features, which point to the patterns of writing about classical Athens appealing to the contemporary readers and authors, rather than some inherent common characteristics of the former. They focus on atheism as an abstract concept, instead of the ‘lack of respect’ (*ἄ-σεβεια*) towards the gods and their property emphasised by the classical sources. Second, a vast majority, if not all of the known Athenian trials for impiety can be deemed political<sup>254</sup>, or politically motivated in several ways. They were not only a display of the struggles for power by individuals (within attempts to harm political opponents and promote oneself in public), but often also involved the political community in general, preparing the basis for *public* accusations in court. This is equally true for the philosophers, politicians, and priests of which we get to learn from the extant impiety cases. Thus the use of religion in those trials appears as a purely instrumental measure, serving various forms of political agenda, even if feeding on existing superstition and fear. At the same time, the primacy of the community over the individual in the public sphere was applied just as everywhere else in Athenian political practice, based on what we can speculate from the surviving remarks.

The trials for impiety shared the characteristics of Athenian legal system, including its ‘open texture’ and Athenians’ willingness to take this feature into account (see n. 16 above). The Athenian dicasts and citizens each time had to interpret the general term, apply it to particular situations, and act accordingly, which some litigants found useful

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254. Bauman’s (1990: 1-11) definition seems too narrow even in the narrower sense of the ‘political’ – he notes that ‘political trials’ in the fifth century involved mostly individuals of high importance to the state, while in the fourth century mainly magistrates and public speakers, *rhetores* (cf. Hansen 1983 for general remarks on Athenian ‘politicians’), while the substance of the trial was based on criminal charges and offences against the state, which was normally meant to lead to the expulsion of the accused (by the means of an adjudicated exile or, apparently, a common flight on one’s own after hearing the death sentence).

to exploit, both in substance and procedure. This was of particular gravity in such a delicate matter as ἀσέβεια, where defendants risked not only their civic rights and property but also their life. We can rather be surprised that in so many testing moments for the community, religious trials constituted a marginal problem, especially when juxtaposed with commonly imposed death sentences on generals and magistrates<sup>255</sup>, and the overall Athenian passion for litigation, so eagerly mocked by Aristophanes. Apparently, the prosecution of the impious was not the regular mode of displaying piety in Athens. This is not to say impiety was no serious matter. As demonstrated by the cases of the repeated curse against the Alcmaeonidae and the trials of 415, the community could be very determinate to punish the impious and generously reward those willing to help in achieving that. As we learn from the historical examples, however, the rule of not sentencing anyone without trial (μηδένα ἄκριτον ἀποκτείνειν) was apparently preserved at all times<sup>256</sup>, along with proper forensic procedures instead of lynch law, even in the face of general unrest.

As discussed earlier, the decree of Diopreithes, often considered the earliest Athenian legal measure against impiety, has to be deemed a forgery on several grounds (including legal chronology), while the legal proceedings in the 415 trials are far from obvious (see n. 107ff. above). Additionally, a new way of reporting an impious act to the magistrate (φράζειν) emerges from an unbiased reading of the MSS to Dem. 22.27. Several procedures are attested up to 399, namely what was quite likely an εἰσαγγελία resulting in the γραφαί in popular courts (the cases of 415), γραφή (Socrates in 399), δίκη or γραφή before the archon basileus (Archippus ca. 415), and ἔνδειξις (Andocides in 400 or 399). Apparently, some of the trials could be based on the information given on the side of the main prosecution (μηνύσεις). No other procedure than γραφή (Lacedaemonius' sister, Aristotle) and an unknown procedure before the basileus (Lycurgus in the late fourth century; perhaps a γραφή) is historically attested in the impiety trials after 399. Yet we do learn from one remark by Demosthenes about the possibility of initiating impiety cases by the procedures of arrest (ἀπαγωγή, presumably in the cases of thieves caught red-handed with sacred property), the act of reporting to the archon basileus (φράζειν) with φάσις to follow (see discussion above), and δίκη before the Eumolpidae, perhaps only in the case of the regulations of the Mysteries<sup>257</sup>. Based on the extant evidence, it should be assumed that the γραφή would be the most common procedure employed in impiety cases, unsurprisingly being also the most popular public procedure in Athens for a variety of offences. There is a trace of at least two individuals, Ninus and Theoris, sentenced and put to death

255. Cf. Hansen 1975; see also section 2 above.

256. See [Lys.] 6.54; cf. Din. 2 & Dem. 25 *hypoth.* §§ 1-2; Dem. 25.87. See And. 1.94 and notes on the trial of Socrates above on the case of Leon of Salamis during the reign of the Thirty.

257. Perhaps—if at all—only after the emergence of the institution of the *exegetai*, see n. 31 & 129 above.

in Athens after Socrates, either one of them (Theoris) or both charged with impiety, and of 22 men condemned after the affairs of 415, with only some sentences carried out. All other extant remarks indicate more lenient forms of punishment (presumably Archias; of uncertain charge: Demades and Menesaechmus). Quite likely there was also an Assembly proclamation which instructed to kill Diagoras. Supposedly, some of the accused fled Athens before their case appeared in court, particularly if they were non-Athenians and did not risk losing citizenship and property in Athens.

About a dozen cases for impiety survives from the entire classical period (if we count those against the mutilators and profaners of 415 as two, regardless of the number of the accused). The only cases before the trial of Socrates which can be undoubtedly deemed historical are the trials of 415 and the prosecution of Andocides in 400/399 directly linked to them. Later, we learn about more trials for impiety which appear as historical, perhaps partly due to the fact that many more sources from the fourth century survive, including most of the forensic orations. In the fourth century Phryne was probably tried for impiety by Euthias (ca. 350?), Archias was brought to court for ritual misconduct, while Theoris was sentenced to death for producing magic potions (both in the mid-fourth century?). Lacedaemonius' sister (before 345) and Lycurgus (330s) were tried and acquitted. Another two late fourth-century cases seem at least probable: that of Aristotle (ca. 323, escaped before the trial?) and Theophrastus (ca. 318-17, probably tried and acquitted). Out of all the historical cases only that of Theoris does not show any clear political background, but is also in every respect extremely vague and found only in some very brief remarks. Curiously enough, out of these few well-attested and probable trials one was backed by a hierophant (Eurymedon, directly or indirectly prosecuting Aristotle), another by a priest of the Kerykes (Callias, acting as a supporting speaker against Andocides); we hear of yet another priest possibly having a dispute with Theodorus (Euryclides), while at least once charges were brought *against* a hierophant (Archias). Probably not too much should be made out of this, but it is interesting to note that the priests may have been somehow involved in the 'religious politics', just as we know the Athenian polis was involved in it in regard to the Eleusinian Mysteries at the time of the Peloponnesian War. In fact, all historical cases before that of Socrates involve the Mysteries in one way or another, while later at least two seem to bear some connection to them (Archias, Theodorus).

A number of other trials are quite certain but of unknown substance. This includes the case of the Alcmaeonidae sentenced to exile (late 7th cent.), the *σηκός* case before the Areopagus from Lys. 7 of unknown result (mid-390s, perhaps a *γραφή*), Ninus sentenced to death for producing magic potions (ca. 350), Demades fined with an enormous amount (ca. 323), and Menesaechmus most likely punished with some minor penalty (330s-320s). These might have been but need not have been trials for *ἀσέβεια*. Other accusations of impiety did not have to result in a trial. These are the events concerning an unnamed Megarian citizen (ca. 432?), possibly Diagoras (415?), Theodorus (309-5?), and a series of trials with religious background brought by Lycurgus against Autolycus

the Areopagite, Lysicles the general, Demades the orator, and numerous others sometime in the 330s-20s. Possible forgeries, literary inventions, or misunderstandings include the alleged fifth-century cases of Aeschylus, Anaxagoras, Protagoras, Euripides, Prodicus, and Diogenes of Apollonia, and fourth-century cases of Demetrius of Phalerum, Stilpo of Megara, and possibly Diodorus from Dem. 22 and 24. We also learn of several attested cases for *ἱεροσυλία* in Athens (Theosebes ca. 367/6, one metic from Lys. 5, Hierocles ca. 332/1) and a few impiety accusations (maybe also trials) outside of Athens (several Delians in 376/5, possibly tried in Athens, and forty men from Sardis either condemned to death or just prosecuted in the late fourth century).

Analysing the surviving trials for impiety through the lens of Athenian freedom of speech is very tempting but at times proves problematic, for, first, most of them did not concern ‘speech’ as much as ‘action’, and second, the Athenian democratic *παρρησία* rested upon the ideal of giving frank advice to one’s fellow citizens, rather than saying what one *really* thinks about Demeter. Nonetheless, it is not without significance that we do get to see a variety of beliefs about the gods and their nature in various genres of literature of the fifth and fourth centuries, along with the intellectual climate and legal sphere that made it possible<sup>258</sup>. Socrates and Euripides were merely mocked at publicly on the stage for their ‘own’ beliefs about the gods, and we know of no Athenian citizen who would meet charges only because of his refusal to participate in cult practices. The foreigners, in turn, did not enjoy any real protection in Athenian law, yet the extant impiety cases do not reveal any severer treatment of them than of the citizens. There was no systematic religious repression in Athens. Rather, the historical record cites a handful of individual trials for impiety out of nearly two centuries of Athenian democracy, more often than not placed in a very particular political context. Those individual trials or sometimes groups of trials reflect important turning points in the life of the community, more often than not being linked to various periods of instability, crisis, anxiety, sometimes even coups d’état, war, and, last but not least, either a threat of falling under foreign domination or frustration at the defeat. They constituted one but not the only measure employed in such circumstances, as shown for example by the dramatic trial of Phocion<sup>259</sup>.

Athens was not the only polis to make use of the impiety accusations in struggles for power, as we learn from Thucydides’ remark about the role which such charges played during the *stasis* on Korkyra in 427 (3.70.3-6). In connection with the aforementioned epigraphic material and the obvious prevalence of Athenian sources, we have to discard Momigliano’s (1973: 566) sentiment that impiety trials were a uniquely Athenian way of dealing with politics<sup>260</sup>. Unfortunately, very little could

258. Cf. Wallace 1994, 1996b.

259. See Bayliss 2011: 148; cf. also Bauman 1990: 129-30.

260. A similar—even if not entirely comprehensible today—connection be-

be said about the non-Athenian trials for ἀσέβεια, besides their apparent existence. There is also no way for us to uncover all complexities surrounding the issues here described, not to mention all the trials unnoticed by the surviving sources, the existence of which we can only surmise, applying the very method used by the ancient authors striving in their insatiable curiosity to supplement the missing pages of history.

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tween religion and politics can be noted, for example, in the case of the so-called Sacred Wars, especially in the Third Sacred War (356-346) between the members of the Delphic Amphictyonic League; see Buckler 1989, Londey 2010. See also Hyp. fr. 70 Jensen (Δηλιακός).

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