

Athenian Laws about Bribery

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δωροφοροῦσιν

ῥοχας, οἶνον, δάπιδας, τυρόν, μέλι, σήσαμα, προσκεφάλαια,
φιάλας, χλανίδας, στεφάνους, ὄρμους, ἐκπώματα, πλουθυγείαν.

"As bribes they bring jars of fish, wine, rugs, cheese, honey, sesame, cushions, goblets, cloaks, crowns, necklaces, cups — wealth and health!" (Aristophanes *Wasps* 675-7).

There are many references to bribery in Athenian public life in the fifth and fourth centuries B.C. When Aristophanes suggests that politicians receive a constant stream of valuable gifts, no doubt he is exaggerating for comic effect, but his satire would not have been found amusing or effective by his audience if there had not been at least a grain of truth behind it. The surviving oratory of this period also contains many allegations of bribery. It is therefore not surprising that some attempts were made to check corruption by legislation and prosecution. There were several laws on the subject, and previous studies have not distinguished them with sufficient precision (1).

(1) I include myself in this stricture: my remarks on the subject in *Andokides: On the Mysteries* (Oxford 1962) 110 and *The Law in Classical Athens* (London 1978) 170-3 are inadequate, and are superseded by the present article. Among older discussions, the best is that of J.H. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig 1905-15) 401-4.

1. Bribery of magistrates and politicians

We may take first the law about magistrates found guilty at their *euthyna*, recorded in the account of the Athenian constitution attributed to Aristotle. The author (whom I call *AP*) records that ten λογισταί (auditors) are appointed by lot each year, with ten συνήγοροι (advocates); they investigate the magistrates' accounts, and then bring the cases to a court. He goes on:

κἄν μὲν τινα κλέπτοντ' ἐξελέγξωσι, κλοπὴν οἱ δικασταὶ καταγιγνώσκουσι καὶ τὸ γνωσθὲν ἀποτίνεται δεκαπλοῦν· ἔάν δέ τινα δῶρα λαβόντια ἐπιδείξωσιν καὶ καταγνῶσιν οἱ δικασταί, δῶρων τιμῶσιν, ἀποτίνεται δὲ καὶ τοῦτο δεκαπλοῦν· ἂν δ' ἀδικεῖν καταγνῶσιν, ἀδικίου τιμῶσιν, ἀποτίνεται δὲ τοῦθ' ἄπλοῦν ἔάν πρὸ τῆς θ' πρυτανείας ἐκτίεση τις, εἰ δὲ μή, διπλοῦται. τὸ <δὲ> δεκαπλοῦν οὐ διπλοῦται. "And if they prove a man guilty of stealing, the jurors give a verdict of theft against him, and the amount on which they decide is paid tenfold; if they show that a man has taken gifts and the jurors give a verdict against him, they assess him for gifts, and that too is paid tenfold; if they give a verdict that he is a wrongdoer, they assess him for wrongdoing, and that is paid as a simple amount if one pays up before the ninth prytany, but otherwise it is doubled. The tenfold payment is not doubled." (*AP* 54.2).

All these details must come from a law about the procedure of *euthyna*. In the financial part of the procedure, any of three offences may be alleged: κλοπή or δῶρα or ἀδικιον. Κλοπή means that the magistrate has taken for himself some money or property belonging to the state. Ἀδικιον, to judge from the penalty, is a less serious offence; probably it means causing loss of public money by culpable neglect or inadvertence, as opposed to deliberate deception. Here I am concerned only with δῶρα, about which *AP*'s information is perfectly clear, as far as it goes: if a magistrate is accused of accepting gifts and the jury finds him guilty, he must pay a fine of ten times the value of the gifts. The word τιμῶσιν shows that it is an

ἀγῶν τιμητός: that means that, after a verdict of guilty, the prosecutor and the defendant each give an estimate of the value of the gifts accepted, and the jury votes again to decide between the estimates. *AP* does not say what happens to the condemned man if he fails to pay the tenfold fine, but we may take for granted that such a man was subject to the same penalties as other debtors to the state: anyone who failed to pay money owed to the state, after the date when it was due, was disfranchised (ἄτιμος) until he paid up; and anyone who wished could propose, by the procedure of *apographē*, confiscation of his property to defray the fine⁽²⁾.

An early instance of a fine imposed at a *euthyna* for accepting bribes is the case of Kallias around 449 B.C. (if we may believe the testimony of Demosthenes more than a century later).

Καλλίαν τὸν Ἱππονίκου ταύτην τὴν ὑπὸ πάντων θρυλουμένην εἰρήνην πρεσβεύσαντα ..., ὅτι δῶρα λαβεῖν ἔδοξε πρεσβεύσας, μικροῦ μὲν ἀπέτειναν, ἐν δὲ ταῖς εὐθύταις πενήτηκοντ' ἐπράξαντο τάλαντα. "When Kallias son of Hipponikos negotiated the famous peace which everyone talks about ..., because it was considered that he accepted gifts on the embassy, they nearly put him to death, and at his *euthyna* they fined him fifty talents." (Demosthenes 19.273).

It is possible that the gifts were valued at five talents, so that the amount of the fine was ten times their value. That is uncertain, but at any rate there must have been in the fifth century a law about *euthyna* trials for accepting gifts, and it was probably not very different from the one recounted by *AP*.

Kallias's narrow escape from the death penalty did not occur at his *euthyna* but on some earlier occasion (if we observe Demosthenes's placing of μὲν and δέ). Perhaps someone denounced him to the *Ekklesia* for treason, and he was tried by the procedure of *eisangelia* and acquitted; if so, this case

(2) For this procedure see A.R.W. HARRISON, *The Law of Athens* 2 (Oxford 1971) 211-17.

is not evidence that the death penalty was imposed for accepting gifts. However, there is other evidence that it could be. Deinarkhos says so in his speech against Demosthenes.

οἱ νόμοι περὶ μὲν τῶν ἄλλων ἀδικημάτων τῶν εἰς ἀργυρίου λόγον ἀνηκόντων διπλὴν τὴν βλάβην ὀφείλειν κελεύουσι, περὶ δὲ τῶν δωροδοκούντων δύο μόνον τιμήματα πεποιήκασιν, ἢ θάνατον, ἢ αὐτῆς τυχῶν τῆς ζημίας ὁ λαβὼν παραδειγμα γένηται τοῖς ἄλλοις, ἢ δεκαπλοῦν τοῦ ἐξ ἀρχῆς λήμματος τὸ τίμημα τῶν δώρων, ἵνα μὴ λυσιτελήσῃ τοῖς τοῦτο τοιμῶσι ποιεῖν. "Concerning the other offences which fall under financial accounting, the laws require the payment of the deficit to be double; but concerning men who accept gifts they have set only two assessments — either death, so that meeting with this penalty the man who has taken gifts may be a warning to everyone else, or the assessment is to be ten times the original gain from the gifts, so that those who dare to commit this offence may not profit by it." (Deinarkhos 1.60).

The words τῶν εἰς ἀργυρίου λόγον ἀνηκόντων show that Deinarkhos is referring to the financial part of the *euthyna*, which was conducted by λογισταί and was called λόγος⁽³⁾. But there may be some carelessness in the passage. The first part of it seems to refer to what *AP* calls ἄδίκιον, but if so Deinarkhos, in saying that the fine was double, has failed to make clear that it was not doubled unless it remained unpaid in the ninth prytany; and he has forgotten about κλοπή altogether. On those matters we ought to prefer the evidence of *AP*. But his statement that there were alternative penalties for accepting gifts, either death or a tenfold fine, is the main point of the sentence and cannot be dismissed as an oversight. Furthermore it may be corroborated by a fragmentary passage of the speech of Hypereides against Demosthenes.

(3) Thus HARRISON, *The Law of Athens* 2, 209 n. 3 (on p. 210) is wrong in saying "The evidence from the orators which suggests that the penalty for embezzlement or bribery might be death is drawn from cases which might have been either ordinary γραφαί or εισαγγελίαι".

οἱ δὲ νό[μοι τ]οῖς μὲν ἀδικοῦ[σιν ἀπλ]ᾶ, τοῖς δὲ δω[ροδο-
κοῦσι]ν δεκαπλᾶ [τὰ ὀφλ]ήματα προστάτ[τουσιν] ἀποδιδόναι,
[καὶ θάνατο]ν τὸ τίμη[μα τιμῆ]σαι ἔστιν ἐκ [τῶν νόμ]ων
τούτοις [μόνοι]ς. "The laws instruct those guilty of
wrongdoing to pay the sums for which they are condem-
ned as simple amounts, but those guilty of accepting
gifts to pay tenfold; and it is possible according to the
laws to assess the penalty as death for the latter only."
(Hypereides *Against Demosthenes* col. 24).

The restorations given here are those of Blass, which are accepted in the editions of Kenyon (Oxford) and Colin (Budé). If they are right — and they seem to me to be more plausible than any alternative — the passage confirms that the penalty for accepting gifts could be either a tenfold fine or death. But most of the word θάνατον is conjectural (4).

The picture is complicated by another passage of Deinarkhos, from his speech against Aristogeiton.

οἱ πρώτοι νομοθέται περὶ τῶν ἐν τῷ δήμῳ λεγόντων τοῖς προγόνοις ἡμῶν ἐνομοθέτησαν ... ἐν τοῖς νόμοις δώρων γραφὰς ποιήσαντες, καὶ κατὰ μόνου τούτου τῶν ἀδικημάτων δεκαπλασίαν ἐπιθέντες τοῦ τιμήματος τὴν ἔκτεισιν, ἡγούμενοι τὸν τιμὴν λαμβάνοντα τῶν ἐν τῷ δήμῳ ῥηθήσεσθαι μελλόντων λόγων, τοῦτον οὐχ ὑπὲρ τῶν τοῦ δήμου βελτίστων ἀλλ' ὑπὲρ τῶν τοῖς δοῦσι συμφερόντων δημηγορεῖν. "The earliest legislators legislated for our ancestors about those making speeches to the people... In the laws they created *graphai* for gifts, and for this offence alone they made the payment of the assessment tenfold, considering that a man who accepts a price for speeches which are going to be made to the people does not speak for what is best for the people but for what is advantageous to the givers." (Deinarkhos 2.16-17).

Again the tenfold fine for accepting gifts (and again the

(4) A different restoration, with no reference to death, is proposed by O.J. SCHRÖDER in *Hermes* 57 (1922) 463-4.

carelessness of forgetting that that penalty was imposed for κλοπή too), but this time it is clear that the reference is not to the *euthyna* of magistrates. What Deinarkhos is telling us is that anyone who makes a speech in the Ekklesia, after accepting a gift, may be prosecuted by *graphe* and fined ten times the value of the gift. Speakers in the Ekklesia were not necessarily magistrates; so this provision cannot have been part of the law about the *euthyna* procedure, but must have been the subject of a different law. And yet the two must be very closely connected. Not only is there a general similarity between 2.17, which is about δώρων γραφαί, and 1.60, which is about ἀργυρίου λόγος, but in 2.17 the reference to "this offence alone" seems to imply that Deinarkhos regards the acceptance of gifts by magistrates and by speakers in the Ekklesia as one offence, not two. A possible explanation may be that the laws themselves assimilated these offences; for example, the law about speakers in the Ekklesia may have said something like "If anyone accepts a gift and then makes a speech to the people, he is to be subject to the same penalties as a magistrate who accepts a gift". If so, the death penalty would have been available as an alternative for these offenders too, though no text actually mentions death in connection with this law.

Another way of prosecuting an orator for accepting bribes was by *eisangelia*. Hypereides quotes in the speech for Euxenippos several clauses of the law on this subject.

ἐάν τις τὸν δῆμον τὸν Ἀθηναίων καταλύῃ ἢ συνίη ποι ἐπὶ καταλύσει τοῦ δήμου ἢ ἐταιρικὸν συναγάγη, ἢ ἐάν τις πόλιν τινὰ προδῶ ἢ ναῦς ἢ πεζὴν ἢ ναυτικὴν στρατιάν, ἢ ὅπως ὦν μὴ λέγη τὰ ἄριστα τῷ δήμῳ τῷ Ἀθηναίων χρήματα λαμβάνων καὶ δωρεὰς παρὰ τῶν τάναντία πραττόντων τῷ δήμῳ... "If anyone subverts the Athenian people or attends a meeting anywhere or forms a group for subversion of the people, or if anyone betrays any city or ships or military or naval force, or, being an orator, says what is not the best for the Athenian people, receiving money and gifts from the people's opponents ..." (Law quoted by Hypereides *For Euxenippos* 7-8, 29).

Eisangelia has been much discussed in recent years, and I shall not investigate it here⁽⁵⁾. For the present purpose it is enough to note that this is a procedure distinct from the prosecution of orators by *graphe* for bribery. The intention of those who drafted the law about *eisangelia* was probably that this procedure should be used only for serious cases of treason. The wording does not preclude its use as an alternative to *graphe* for cases of no special importance, but in practice the Boule and Ekklesia might refuse to accept accusations by *eisangelia* which did not have considerable political significance.

Yet another procedure was a trial resulting from a report (*ἀπόφασις*) by the Areopagos. In the second half of the fourth century the Areopagos sometimes investigated an alleged offence, either on its own initiative or when requested by the Ekklesia to do so. It made a report to the Ekklesia, and the Ekklesia then decided whether a trial was required. If so, the Ekklesia passed a decree about the details of the trial, including the charge to be made and the penalty to be imposed if the accused was found guilty. This procedure was used in one notorious case of bribery, the Harpalos affair, in which Demosthenes was convicted and fined fifty talents. But this trial and penalty rested on a special decree of the Ekklesia, not on any general legislation about bribery.

Thus we have evidence of four procedures which could be used in the fourth century against magistrates and politicians accused of accepting bribes: two regular ones (*euthymia* for magistrates, *graphe* for speakers in the Ekklesia) and two others which were available for specially serious cases (*eisangelia* and *apophasis*).

2. Bribery in the Courts

Next I turn to the bribery of juries, for which there is a special verb, *συνδεκάζειν* or simply *δεκάζειν*. The precise meaning

(5) See especially M.H. HANSEN, *Eisangelia* (Odense 1975), P.J. RHODES in *JHS* 99 (1979) 103-14, HANSEN in *JHS* 100 (1980) 89-95.

of this word has not been adequately explained hitherto. Some information is given in a fragment of Eratosthenes *On Old Comedy*, commenting on Lykos the wolf-hero (6).

Λύκος ἐστὶν ἥρως πρὸς τοῖς ἐν Ἀθήναις δικαστηρίοις, τοῦ θεοῦ μορφήν ἔχων, πρὸς ὃν οἱ δωροδοκοῦντες κατὰ ἑῷ γιγνόμενοι ἀνεστρέφοντο, ὅθεν εἴρηται Λύκου δεκάς. "Lykos is a hero near the lawcourts in Athens, having the form of the animal, to whom the men accepting gifts used to resort in tens. Hence comes the phrase 'decad of Lykos'." (Eratosthenes, quoted by Harpokration s.v. δεκάζων).

This comment is quoted and expanded by later lexicographers, but they add nothing substantial. It is clear that jurors who were being bribed assembled in groups of ten. But why ten? Because, I suggest, that was the number of jury panels at the time when the practice originated. It is known that in the fifth century, at least as late as 422, each juror was allotted to one court for the whole year (7). Since each litigant knew in which magistrate's court his case would be tried, it would be fairly easy for him to identify beforehand the jurors who would try it and offer them bribes. By the early fourth century the system was changed, and each juror was allotted at the beginning of the year not to a court but to a letter of the alphabet. The number of letters used was probably ten, from *alpha* to *kappa*, as is known to have been the arrangement later (*AP* 63.4). On every day on which trials were to be held, lots were drawn to assign each panel of jurors (those registered under one particular letter) to a court (8). That would not give a litigant time, before the trial began, to bribe the particular jurors allotted to his case; but to bribe in advance all 6000 jurors who might possibly be allotted to it would be wasteful

(6) How was Lykos relevant to Eratosthenes's account of Old Comedy? Perhaps this fragment was originally a note on Aristophanes *Wasps* 389, explaining why Philokleon addresses Lykos as γείτων.

(7) Aristophanes *Wasps* 242-4, 303-5, 1107-9; cfr HARRISON, *The Law of Athens* 2, 239-40.

(8) Aristophanes *Ekkkl.* 681-8, *Wealth* 277, 1166-7; cfr MACDOWELL, *The Law in Classical Athens* 36-8.

and, for most litigants, prohibitively expensive. Hence the device of *συνδεκάζειν*. My hypothesis is that the litigant wishing to bribe jurors organized them (or they organized themselves) in groups of ten, one juror from each of the ten panels; thus in each group (each *Λύκου δεκάς*, as Eratosthenes calls it) it was known that there was one man who would be on the litigant's jury, though no one yet knew which man it was. Suppose the litigant was willing to give one drachma to each juror who voted for him: he would give the drachma in advance to the leader of each group, and after the trial the leader would hand it over to the juror who in the event was on the relevant jury and cast his vote in favour of the litigant who had paid for it.

My hypothesis lacks direct evidence, but it does, I believe, make sense of the word *συνδεκάζειν* or *δεκάζειν* and the grouping of jurors in tens. *AP* tells us that the practice was first devised by Anytos in or about 409.

ἤρξατο δὲ μετὰ ταῦτα καὶ τὸ δεκάζειν, πρώτου καταδείξαντος Ἄνυτου μετὰ τὴν ἐν Πύλῳ στρατηγίαν. κρινόμενος γὰρ ὑπὸ τινων διὰ τὸ ἀποβαλεῖν Πύλον, δεκάσας τὸ δικαστήριον ἀπέφυγεν. "After this, *tenning* also began. The first to show the way was Anytos, after his generalship at Pylos. When put on trial by some men for losing Pylos, he *tenned* the court and was acquitted." (*AP* 27.5).

Other evidence does not tell us when the system of ten panels of jurors, assigned to courts each day by lot, was introduced, except that it was between 422 and approximately 393 (the dates of *Wasps* and *Ekklesiastousai*); but if my hypothesis is correct, *AP* 27.5 indicates that it was before 409. By the middle of the fourth century the system of allotment of jurors to courts was changed again; jurors ceased to be assigned to ten panels at the beginning of the year, and so there was no longer any special reason to group them in tens for bribery. Yet the word (*συν*)*δεκάζειν* continued to be used. I suppose that by then it had become the conventional term for bribery of jurors by any method, and the original sense of grouping in tens was ignored.

After Anytos's success in 409, one would expect that a law against (συν)δεκάζειν would have been made immediately; and in fact the text of a law which may well belong to that date is preserved in the second speech against Stephanos.

ἐάν τις συνιστῆται ἢ συνδεκάζῃ τὴν ἠλιαίαν ἢ τῶν δικαστηρίων τι τῶν Ἀθήνησιν ἢ τὴν βουλὴν ἐπὶ δωροδοκία χρήματα διδοῦς ἢ δεχόμενος, ἢ ἑταιρείαν συνιστῆ ἐπὶ καταλύσει τοῦ δήμου, ἢ συνήγορος ὢν λαμβάνῃ χρήματα ἐπὶ ταῖς δίκαις ταῖς ἰδίαις ἢ δημοσίαις, τούτων εἶναι τὰς γραφὰς πρὸς τοὺς θεσμοθέτας. "If anyone becomes a member of a group or *tens* the Eliaia or any of the courts at Athens or the Boule for bribery, offering or accepting money⁽⁹⁾, or forms a conspiracy for subversion of the democracy, or, being an advocate, accepts money for private or public cases, there are to be prosecutions of these men by *graphe* before the thesmothetai." (Law quoted by Demosthenes 46.26).

This text is not without difficulty. The most serious concerns the clause ἢ ἑταιρείαν συνιστῆ ἐπὶ καταλύσει τοῦ δήμου. Revolutionary conspiracy is out of place in the middle of a list of offences related to lawcourts. Gernet simply deletes the words as an interpolation, and that may well be the right solution⁽¹⁰⁾. In any case that clause does not concern bribery, and so I shall not discuss it here. Next it should be mentioned that συνδεκάζῃ is a conjectural emendation of συνδικάζῃ. But the emendation, made long ago by H. Wolf and universally accepted, can be regarded as certain in view of the references to bribery later in the sentence. A further problem is why the Boule is added to the list of courts. Certainly the Boule did hold trials in some cases. But it comes in awkwardly after Ἀθήνησιν (as if it were not just as much at Athens as the courts), and it is not a suitable object for συνδεκάζῃ (if I am right in attributing this law to a date when that verb had its

(9) χρήματα usually means money, but it would also cover gifts of other kinds.

(10) L. GERNET, *Démotène: Plaidoyers civils* 2 (Paris 1957) 185.

strict sense of grouping in tens). Possibly ἡ τὴν βουλὴν has been inserted into the sentence ineptly — not by an editor of a later date, but as an amendment to the law, proposed by someone who considered that the Boule should be included because it held trials, and accepted by the Athenians when they passed the law. Yet another word which gives us pause is *συνήγορος*. Athens had several kinds of *συνήγοροι* ⁽¹¹⁾. Are we to think here of men officially appointed to present a case in court on behalf of the state, or of a defendant's relatives or friends whom he invited to speak in his support? Both, I believe: nothing in the text of the law restricts its application to one particular type of *συνήγορος*, and the reference to private and public cases encourages us to think that both private and public *συνήγοροι* are here being forbidden to receive money. If that is right, the official pay of one drachma a day which a *συνήγορος* at a *euthyna* formerly received must have ceased by this time ⁽¹²⁾.

So despite the difficulties this text may be accepted as a genuine law, perhaps passed in 409, forbidding the formation of groups for bribery in the courts and Boule, and at the same time forbidding payment of *συνήγοροι* for speaking in court. The law applies equally to those who accept bribes and those who offer them. Two passages in the orators refer to death as the penalty for these offences.

θανάτου τῆς ζημίας ἐπικεμένης ἦν τις ἀλῶ δεκάζων, τοὺς τοῦτο φανερώτατα ποιοῦντας στρατηγούς χειροτονοῦμεν, καὶ τὸν πλείστους διαφθεῖραι τῶν πολιτῶν δυνηθέντα, τοῦτον ἐπὶ τὰ μέγιστα τῶν πραγμάτων καθίσταμεν. "Although the penalty fixed for anyone convicted of *tenning* is death, we elect those who do it most obviously to be generals! And the man who has been able to corrupt the largest number of citizens, we put in charge of the most important of our affairs!" (Isokrates 8.50).

(11) See the note on line 482 in my edition of Aristophanes *Wasps* (Oxford 1971).

(12) Aristophanes *Wasps* 691. On the cessation of pay for officials after the year 411, see M.H. HANSEN in *Symb. Ost.* 54 (1979) 5-22.

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ἤτιάσατό τινας εἶναι οἱ ἄρα ἐνεχείρουν συνδεκάζειν τὴν ἐκκλησίαν καὶ τᾶλλα δικαστήρια, ὡσπερ καὶ νυνὶ Νικόστρατος· καὶ περὶ τούτων κρίσεις αἱ μὲν ἐγένοντο πάλαι, αἱ δὲ νῦν ἐνεστᾶσιν ἔτι. φέρε δὴ πρὸς τοῦ Διὸς καὶ θεῶν, εἰ ἐπὶ τὴν αὐτὴν ἐτράποντο ἀπολογίαν ἦνπερ Τίμαρχος νυνὶ καὶ οἱ συναγορεύοντες αὐτῷ, καὶ ἠξίουσαν διαρρήδην τινὰ μαρτυρεῖν περὶ τῆς αἰτίας ἢ τοὺς δικαστὰς μὴ πιστεύειν, πᾶσα δὴπου ἀνάγκη ἦν ἐκ τοῦ λόγου τούτου μαρτυρεῖν τὸν μὲν, ὡς ἐδέκαζε, τὸν δέ, ὡς ἐδεκάζετο, προκειμένης ἐκατέρω ζημίας ἐκ τοῦ νόμου θανάτου. "He [Demophilos] made accusations that there were some men who attempted to *ten* the Ekklesia and the courts besides, in the same way as Nikostratos now; some of the trials for these were held long ago, others are still pending. Well, I ask you, suppose they had resorted to the same defence as Timarkhos and his supporters are using now, and had demanded that someone should give explicit testimony about the charge, or else the jurors should not believe it: it would have been essential, wouldn't it, according to that argument, for one man to testify that he *tenned* and another that he was *tenned*, although the penalty fixed for either by the law is death!" (Aiskhines 1.86-7).

Both these passages say that death was the fixed penalty for (συν)δεκάζειν, not merely an alternative to a fine or other penalty. The latter passage shows that it was imposed for accepting bribes as well as offering them. The only problem in this passage concerns the reference to the Ekklesia. Does it mean that there was a law specifically forbidding bribery of citizens attending the Ekklesia? That offence is not covered by the law in Demosthenes 46.26. There is no other evidence for such a law. Probably it did not exist; Demophilos may have alleged in speeches that bribery occurred in the Ekklesia, while actually prosecuting only for bribery in the courts.

There is evidence of one other law relating specifically to bribery of juries. *AP* 59.3, in a list of *graphai* which came before the thesmothetai, includes δωροξενίας, ἄν τις δῶρα δοῦς ἀποφύγη τὴν ξενίαν. This appears to mean that special provision

was made for prosecuting by *graphe* a man who had been prosecuted for acting as an Athenian citizen although he was not, and had procured his acquittal on that charge by bribing the jury. It is not explained why it was considered necessary for such a case to be distinguished from other bribery of juries.

3. *Atimia* as a penalty for bribery

So far we have fairly clear pictures of two fields of bribery and the penalties imposed for them: magistrates and speakers in the Ekklesia who accepted gifts were punished by a fine of ten times the value of the gifts, with the death penalty as an alternative; and death was the fixed penalty for offering or accepting bribes in the courts. But the clarity of the pictures has been maintained only by sidestepping certain evidence of a different penalty for bribery: *atimia*, which in the fourth century at least may be translated "loss of rights" or "disfranchisement". Aiskhines refers to it in the speech against Ktesiphon, attacking the crowning of Demosthenes.

καὶ τὸ πάντων ἀτοπώτατον, ἐν τοῖς αὐτοῖς δικαστηρίοις τοὺς μὲν τὰς τῶν δώρων γραφὰς ἀλισκομένους ἀτιμοῦτε, ὃν δ' αὐτοὶ μισθοῦ πολιτευόμενον σύνιστε, στεφανώσετε; "Strangest of all, in the very same courts you disfranchise the men convicted in prosecutions by *graphe* for gifts, and yet, when you yourselves are aware that a politician is acting for pay, are you going to crown him?" (Aiskhines 3.232).

That does not make clear what kind of bribery incurred *atimia*. For further details we have to turn to a difficult and disputed passage of the speech of Andokides on the Mysteries, in which he gives a list of different kinds of men who were disfranchised.

οἱ δὲ ἄτιμοι τίνες ἦσαν καὶ τίνα τρόπον ἕκαστοι; ἐγὼ ὑμᾶς διδάξω. οἱ μὲν ἀργύριον ὀφείλοντες τῷ δημοσίῳ, ὅποσοι εὐθύνας ὄφλον ἄρξαντες ἀρχάς, ἢ ἐξούλας ἢ γραφὰς ἢ ἐπιβολὰς ὄφλον, ἢ ὠνάς περιάμενοι ἐκ τοῦ δημοσίου μὴ κατέβαλον τὰ χρήματα, ἢ ἐγγυὰς ἠγγυήσαντο πρὸς τὸ δημόσιον (τούτοις ἢ

μὲν ἔκτιους ἦν ἐπὶ τῆς ἐνάτης πρυτανείας· εἰ δὲ μή, διπλάσιον ὀφείλειν καὶ τὰ κτήματα αὐτῶν πεπερᾶσθαι). εἷς μὲν τρόπος οὗτος ἀτιμίας ἦν· ἕτερος δὲ ὦν τὰ μὲν σώματα ἀτιμα ἦν, τὴν δ' οὐσίαν εἶχον καὶ ἐκέκτηντο. οὗτοι δ' αὖ ἦσαν ὅποσοι κλοπῆς ἢ δώρων ὄφλοιεν (τούτους ἔδει καὶ αὐτοὺς καὶ τοὺς ἐκ τούτων ἀτίμους εἶναι), καὶ ὅποσοι λίποιεν τὴν τάξιν ἢ ἀστρατείας ἢ δειλίας ἢ ἀναυμαχίου ὄφλοιεν ἢ τὴν ἀσπίδα ἀποβάλοιεν, ἢ τοὺς ψευδομαρτυριῶν ἢ τοὺς ψευδοκλητείας ὄφλοιεν, ἢ τοὺς γονέας κακῶς ποιοῖεν· οὗτοι πάντες ἀτιμοὶ ἦσαν τὰ σώματα, τὰ δὲ χρήματα εἶχον. "Who were the disfranchised, and in what manner was each category disfranchised? I will explain to you. Some were men owing money to the state treasury, those who had been condemned at *euthyna* after holding magistracies, or who had been condemned in ejectment cases or in *graphai* or to pay fines, or who had bought tax-collecting rights from the state treasury and not paid up the money, or who had given securities to the state treasury (for these, payment was due in the ninth prytany; otherwise they had to owe double and their property had to be sold). That was one manner of disfranchisement. A second was of those men whose persons were disfranchised, but they kept possession of their property. They were any who were condemned for theft or gifts (these incurred disfranchisement of their offspring as well as themselves), and any who deserted their posts or were condemned for failure to serve on a campaign or for cowardice or for failure to serve in a naval battle or threw away their shields, or were condemned three times for false witness or three times for falsely testifying to a summons, or maltreated their parents; all these were disfranchised in their persons, but they kept their money." (Andokides 1.73-4).

Andokides says that those condemned for gifts incurred disfranchisement of their offspring as well as themselves; but the exact significance of this has been disputed, and cannot be decided without consideration of the whole context. The combination κλοπῆς ἢ δώρων indicates that in this clause

Andokides is referring, primarily at least, to magistrates condemned at their *euthyna*. Yet an earlier clause, at the beginning of the list, covers ὅποσοι εὐθύνας ὄφλον ἄρξαντες ἀρχάς: why the duplication? It seems that we must not interpret the earlier clause as covering every magistrate condemned at his *euthyna*, but only those condemned to pay a fine for an offence other than theft or gifts — in other words, for ἀδίκιον, or for a non-financial offence. Likewise the clause about γραφαί does not refer to every person condemned in a *graphe*, but only those condemned to pay a fine; for the whole of this sentence is concerned only with men who owe money to the state treasury. At the end of this sentence the parenthesis τούτοις ἢ μὲν ἔκτισις ... πεπεῶσθαι states provisions which applied to all the categories of state debtors mentioned before it. Any sum of money owed to the state, for any of the reasons listed, had to be paid by the ninth prytany (of the year following the year in which the debt was incurred); if it was not paid then, the amount payable was doubled, and the debtor's property (that is, enough of it to pay off the doubled debt) could be confiscated and sold. As long as the man remained in debt, he was disfranchised; but (Andokides undoubtedly means, though he does not say it explicitly) when the debt was paid the disfranchisement ended, because the man was then no longer ὀφείλων τῷ δημοσίῳ.

But how is the clause about κλοπή and δῶρα related to that account of debtors to the state? It is right for those offences to be distinguished from the ones listed in the earlier sentence in one respect at least; the fine imposed for κλοπή or δῶρα, unlike the others, was a tenfold fine from the start and was not doubled if it remained unpaid by the ninth prytany (*AP* 54.2, discussed above). But those condemned to pay the tenfold fine for these offences were debtors to the state, just as much as those condemned to pay fines for other offences. That is why Paoli suggests that the clause about κλοπή and δῶρα has been misplaced in the text and really belongs at the end of the sentence about state debtors⁽¹³⁾. Adopting his suggestion we

(13) U.E. PAOLI, *Studi di diritto attico* (Firenze 1930) 304-7.

may reconstruct the text thus:

... πεπράσθαι). ὀπόσοι δ' αὖ κλοπῆς ἢ δώρων ὄφλοιεν, τούτους ἔδει καὶ αὐτοὺς καὶ τοὺς ἐκ τούτων ἀτίμους εἶναι. εἷς μὲν τρόπος οὗτος ἀτιμίας ἦν· ἕτερος δὲ ὢν τὰ μὲν σώματα ἄτιμα ἦν, τὴν δ' οὐσίαν εἶχον καὶ ἐκέκτηντο. οὗτοι ἦσαν ὀπόσοι λίποιεν τὴν τάξιν ... (14).

Hansen has objected to this rearrangement of the text (15). He maintains that the list of those whose persons were disfranchised but who kept their property (ὀπόσοι λίποιεν τὴν τάξιν ... τοὺς γονέας κακῶς ποιῶεν) in any case includes some men who were fined, namely those condemned for false witness or for falsely testifying to a summons, and that there is therefore no reason why it should not include those condemned for κλοπή or δῶρα too. But this argument is hardly correct. Andokides here refers not to everyone convicted of false witness or falsely testifying to a summons, but to the penalty of disfranchisement which was imposed only on men convicted of either of those offences for the third time. It is not known whether, for the third offence, any other penalty was imposed in addition to disfranchisement. For a first or second offence of falsely testifying to a summons there was no fixed penalty; the penalty was for the jury to assess, and was not necessarily a fine (16). For false witness, in the time of Demosthenes the procedure was not *graphe*, but a private case, so that no fine to the state was payable (17); in the time of Andokides a

(14) In my edition of the speech (Oxford 1962) I adopted different punctuation: ... πεπράσθαι), ὀπόσοι δ' αὖ κλοπῆς ἢ δώρων ὄφλοιεν (τούτους ... εἶναι). I now think it preferable to place a full stop after πεπράσθαι and make ὀπόσοι κλοπῆς ἢ δώρων ὄφλοιεν subordinate to τούτους ἔδει ..., thus detaching the clause about hereditary disfranchisement from the other categories of state debtors. (This point is discussed below). Those who believe (with PAOLI) that the clause about hereditary disfranchisement applies to the whole list of state debtors must retain the other punctuation.

(15) M.H. HANSEN, *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes* (Odense 1976) 86-9.

(16) Demosthenes 53.18.

(17) HANSEN, *Apagoge* 86 goes wrong when he says "In this case the

graphe may have been possible⁽¹⁸⁾, but if so it is not known what the penalty was. In short, some at least of those condemned *τρὶς ψευδομαρτυριῶν ἢ τρὶς ψευδοκλητείας* were probably not debtors to the state treasury, whereas those condemned *κλοπῆς ἢ δώρων* always did have to pay money to the state (unless they were put to death). They ought therefore to be in the list of *ὀφείλοντες τῷ δημοσίῳ*. Furthermore, if other men who were condemned to pay a fine and failed to pay it by the ninth prytany (including magistrates condemned at their *euthyna* for *ἄδικιον*) had their property confiscated to defray the fine, it is not credible that the same sanction was not imposed on those who failed to pay the tenfold fine imposed for *κλοπή* or *δῶρα*. They ought therefore to be excluded from the list of those who *τὴν οὐσίαν εἶχον καὶ ἐκέκτηντο*. So Paoli's transposition should be accepted.

But that leaves a further problem. Does the clause *τούτους ἔδει καὶ αὐτοὺς καὶ τοὺς ἐκ τούτων ἀτίμους εἶναι* apply, as Paoli says, to the whole list of debtors to the state? If so, it refers to disfranchisement which ended as soon as the debt was paid, and thus was in principle temporary, though it could continue indefinitely if the debt remained unpaid (for example, if a man's property, when confiscated, was not sufficient to pay it); in that case *τοὺς ἐκ τούτων* means that, when the original debtor died, his heirs inherited his debt and became disfranchised. Or does the clause mean that the debtors concerned, and their descendants, became and remained disfranchised permanently, even though the debt was paid? Since that is known not to have been the rule for other state debtors, on this interpretation the clause must refer only to those condemned for *κλοπή* or *δῶρα*, and is evidence that magistrates condemned for bribery suffered disfranchisement in addition to, not instead of, a tenfold fine. This latter interpretation is

fine went to the plaintiff, but this is of no importance in the present connection". On the contrary it is the decisive point, if one is trying to decide whether such an offender was *ὀφείλων τῷ δημοσίῳ*.

(18) Cfr. And. 1.7, Lys. 19.4, with MacDowell, *The Law in Classical Athens* 244.

supported by the text of a law quoted by Demosthenes in his speech against Meidias.

ἐάν τις Ἀθηναίων λαμβάνη παρὰ τινος, ἢ αὐτὸς διδῶ ἑτέρῳ, ἢ διαφθείρη τινὰς ἐπαγγελλόμενος, ἐπὶ βλάβῃ τοῦ δήμου ἢ ἰδίᾳ τινὸς τῶν πολιτῶν, τρόπῳ ἢ μηχανῇ ἡτινιοῦν, ἄτιμος ἔστω καὶ παῖδες καὶ τὰ ἐκείνου. "If any Athenian accepts from anyone, or himself gives to another, or corrupts any persons by promises, to the detriment of the people or of any of the citizens individually, by any manner or means whatever, let him and his children and his property be *atimos*." (Law quoted by Demosthenes 21.113).

This clearly covers magistrates condemned at their *euthyna* for accepting gifts, and it imposes compulsory and permanent disfranchisement on them and their children. It does not permit the *atimia* to be avoided or ended by payment of a fine; so this is not merely the temporary disfranchisement which every debtor to the state must suffer until his debt is paid. But this law goes beyond magistrates undergoing *euthyna*. It is a much more general law than any of the others so far considered; it applies to any Athenian who either offers or accepts any gift to either public or private detriment. Any Athenian who was guilty under any of the other laws about bribery would be covered by this one too, and so must have automatically incurred hereditary disfranchisement in addition to any penalty (a tenfold fine or death) imposed under another law⁽¹⁹⁾.

The concluding words of this law have been found difficult to interpret. In the fourth century, in legal contexts, ἄτιμος means "disfranchised" and is applicable to persons, not to property. What then is the sense of καὶ τὰ ἐκείνου? Can it mean "let his property be confiscated"? I do not think it can. The regular wording for that is τὰ χρήματα (or ἡ οὐσία) δημόσια

(19) The text as we have it says nothing about offenders who are not Athenian, for example a metic who bribes an arkhon. Possibly they were covered by another law, or by another clause of this law, which Demosthenes does not quote because it is irrelevant to his case.

ἔστω⁽²⁰⁾, and I know no evidence that ἄτιμος can mean "confiscated". But the words make sense if ἄτιμος is given its earlier meaning of "outlawed"⁽²¹⁾: the offender, his children, and his property are to be deprived of legal protection, so that there is no legal redress if his property is stolen or damaged. In fact there is another surviving text, quoted by Demosthenes 23.62, which contains almost the same words, ἄτιμον εἶναι καὶ παίδας [ἀτίμους] καὶ τὰ ἐκείνου⁽²²⁾. That quotation is part of one of the oldest Athenian laws, the homicide law attributed to Drakon. It provides reassurance that the words καὶ τὰ ἐκείνου in the law about bribery are genuine; they should not be deleted or emended⁽²³⁾, but accepted as evidence that the law is an early one.

Two other features of the text support (though they would not by themselves prove) the hypothesis that the law is archaic: the extreme generality, not to say vagueness, of the definition of the offence; and the absence of any specification of a method of prosecution, which would logically come between the offence and the penalty⁽²⁴⁾. These features suggest a time when the legal system was simpler, and left more to the discretion of arkhons, than in the fourth century.

I conclude that this is the oldest of the Athenian laws about bribery, made perhaps in the sixth century, when ἄτιμος meant "outlawed". It was a law imposing a severe penalty for all bribery. In the course of the fifth century ἄτιμος, in

(20) Demosthenes 20.156, 59.52, Xenophon *Hell.* 1.7.22, *F. Gr. Hist.* 342 F17, and the decree quoted in Plutarch *Ethika* 834a.

(21) For the distinction between the earlier and later senses of ἄτιμος, see HANSEN, *Apagoge* 75-82, MACDOWELL, *The Law in Classical Athens* 73-5. The date when the change occurred cannot be determined exactly, but it was probably near the middle of the fifth century.

(22) Editors generally delete ἀτίμους. The deletion affects only the elegance of the wording, not the sense.

(23) Emendation to παίδες οἱ ἐξ ἐκείνου is proposed by HANSEN, *Apagoge* 88-9.

(24) Contrast the law quoted by Demosthenes 46.26, which contains the words τούτων εἶναι τὰς γραφὰς πρὸς τοὺς θεσμοθέτας, and probably had another sentence after that about the penalty.

this law as in others, came to be interpreted as merely "disfranchised", so that the words καὶ τὰ ἐξείνουν were no longer significant, and the penalty was less severe than it had been when the law was made⁽²⁵⁾. Consequently further laws were made from time to time to impose more severe penalties on what were considered the worst kinds of bribery. Those more severe penalties were additional to the penalty of hereditary disfranchisement, which remained statutory for all bribery which was detrimental to the people or individual citizens of Athens⁽²⁶⁾.

4. Conclusion

I have argued for the following chronological sequence:

(a) At an early date, perhaps in the sixth century, a general law was made, forbidding bribes to be offered or accepted to the detriment of the Athenian people or any individual citizen. The penalty was *atimia*, meaning outlawry, for the offender and his family and property.

(b) In the fifth century *atimia* came to be interpreted as meaning merely disfranchisement. Consequently a need was felt for laws imposing further penalties for the worst kinds of bribery.

(25) Cfr *AP* 16.10, where *atimia* is the penalty prescribed in an old law for attempting to set up a tyranny, and the author comments, from a fourth-century viewpoint, that the law is lenient. P.J. RHODES maintains (*OQ* 28 (1978) 89-90, and in his note on *AP* 16.10) that ἄτιμος continued to be interpreted as "outlawed" in some laws at a period when it already meant "disfranchised" in others, but I do not believe that even the Athenians could have lived with such ambivalence of terminology in their laws.

(26) Consequently I interpret the statement of Deinarkhos 1.60 that only (μόνον) two penalties are available, death or a tenfold fine, as meaning merely that a smaller fine, such as Demosthenes proposed for himself at this trial, was not an acceptable alternative; not as a denial that either of these penalties would automatically be accompanied by hereditary disfranchisement.

(c) By the middle of the fifth century a law was made about the *euthyna* of magistrates, including punishment of magistrates who accepted bribes. Either at that time or later, the penalty was fixed at either a fine of ten times the value of the bribes or death.

(d) Another law, of unknown date, authorized prosecution by *graphe* of men who spoke in the Ekklesia after accepting bribes. They were subject to the same penalty of a fine of ten times the value of the bribes (and perhaps the alternative of death).

(e) In or soon after 409, a law was made prohibiting bribery of jurors in groups of ten. The word (συν)δεκάζειν, used in that law, came to be interpreted as referring to bribery of jurors by any method. The text preserved in Demosthenes 46.26 is either the law made at that time or a subsequent revision; it prohibits both offering and accepting bribes, and it covers juries, the Boule, and συνήγοροι in private and public cases. Prosecution was by *graphe* and the penalty was death.

(f) There was a separate law about bribery to secure acquittal on a charge of simulation of citizenship (ξενία). Prosecution was by *graphe* before the thesmothetai, but we have no further information about it.

(g) In the fourth century bribery could be the subject of a prosecution by *eisangelia* or by *apophasis* from the Areopagos.

(h) Throughout this period the law mentioned in (a) and (b) remained in force, so that any Athenian condemned under any of the other laws for bribery suffered hereditary disfranchisement in addition.

And did all this legislation have the desired effect of extinguishing bribery in Athens? No, to judge from the frequent allegations of bribery in surviving speeches of the fourth century. Indeed Isokrates in his Panathenaic speech declares that bribery of magistrates is more prevalent now than it was in the fifth century.

ἔδει γὰρ τοὺς ἀρχεῖν ἀιρεθέντας τῶν τε κτημάτων τῶν ἰδίων ἀμελεῖν καὶ τῶν λημμάτων τῶν εἰθισμένων δίδοσθαι ταῖς ἀρχαῖς ἀπέχεσθαι μηδὲν ἦττον ἢ τῶν ἱερῶν — ἃ τίς ἂν ἐν τοῖς νῦν καθεστῶσιν ὑπομείνειεν; "Men selected for magistracies used to have to neglect their personal property, and keep their hands off the gains customarily offered to magistrates, as if they were sacrosanct. What magistrate appointed nowadays would put up with that?" (Isokrates 12.145).

Isokrates may be exaggerating. But it is probable that minor speculation was rife, and those who offered or accepted small bribes were too numerous to be detected and prosecuted. Besides, the penalties prescribed by some of the laws about bribery were so severe that juries may have been reluctant to convict in cases which did not seem bad enough to justify such penalties. Severe penalties may not be very effective if most of the offenders evade them, and an efficient system of enforcement was what the Athenians lacked.