

ATHENIAN LAWS ABOUT HOMOSEXUALITY

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Until the 1970s homosexuality in ancient Greece (as everywhere else) was a subject often passed over in silence. It was opened up by Sir Kenneth Dover's pioneering work *Greek Homosexuality* and since then has been discussed a good deal, but mainly from a sociological or anthropological point of view. Not much has been said about the relevant Athenian laws.¹ Although Dover's book has a section headed "The law",² and David Cohen has published a chapter entitled "Law, social control, and homosexuality in classical Athens",³ neither of them distinguishes clearly the various statutes and procedures; in particular, failure to differentiate between *graphe* and *dokimasia* has led to some misunderstanding. In the present article my purpose is only to set out the legal provisions, not to engage in sociology or psychology.

¹ A short account had earlier been given by J. H. LIPSIUS, *Das attische Recht und Rechtsverfahren*, Leipzig, 1905–15, pp. 435–7.

² K. J. DOVER, *Greek Homosexuality*, London, 1978, pp. 19–39.

³ David COHEN, *Law, Sexuality, and Society*, Cambridge, 1991, pp. 171–202. There is also an incomplete survey of the topic by Eva CANTARELLA, *Bisexuality in the Ancient World*, English trans. by Cormac O CUILLEANÁIN, New Haven and London, 1992, pp. 17–53.

All discussion of this subject must be based primarily on the text of Aiskhines' oration *Against Timarkhos*, written and delivered in 346/5 BC.⁴ Timarkhos and others had employed the procedure of *euthyna* to accuse Aiskhines of misconduct in the office of ambassador, and Aiskhines was trying to pre-empt that prosecution by accusing Timarkhos by the procedure of *dokimasia* for the offence of speaking in the Ekklesia although he had in the past been a catamite. I use this somewhat old-fashioned English word "catamite" for translating „ταίριον“, in order to keep "prostitute" for πορνεύομαι. Both those Greek verbs are used of male persons who accept the passive role in sexual intercourse with another male in return for money or other recompense, and the distinction between them is not always sharp, but in general a prostitute is one who constantly sells his body to different men, whereas a catamite has a more long-term relationship with one partner.⁵ Aiskhines asserts that Timarkhos, a man now aged forty-five or more,⁶ had been a catamite in his youth; and to support his case that Timarkhos had transgressed the law he gives what appears to be a fairly comprehensive account of the laws on the subject.⁷

⁴ For fuller accounts of the circumstances of this oration, see Edward M. HARRIS, *Aeschines and Athenian Politics*, New York and Oxford, 1995, pp. 101–6, C. CAREY, *Aeschines*, Austin, 2000, pp. 18–20, D. M. MACDOWELL, *Demosthenes: On the False Embassy*, Oxford, 2000, pp. 20–1.

⁵ On this vocabulary see DOVER, *Greek Homosexuality*, pp. 20–2. There was in fact a tax on prostitutes (πορνικὸν τέλιον, Ais. 1.119), but it is not known how liability to it was defined.

⁶ Timarkhos had been in the Boule in 361/0 (Ais. 1.109), and members of the Boule had to be at least thirty years old.

⁷ At several points Aiskhines calls for the texts of laws to be read out to the jury, and the surviving manuscripts provide what purport to be those laws. It is now generally agreed that in this oration (whatever may be the case in other orations) these documents are not genuine, but have been composed and inserted by someone in a later age. At many points they do not match what Aiskhines himself tells us about the laws concerned, and at some points they contain anachronisms (e.g. the reference in Ais. 1.12 to γυμνασῶρχαι, as distinct from γυμνασῶρχοι). In one case, the law about *hybris*, the document in Ais. 1.16 is shown to be false by the survival of a more

It is clear that the Athenians generally regarded a homosexual relationship not as a partnership between equals, but as a relationship between an older, active partner, called "lover" (ἄραστῆς), and a younger, passive partner, called "loved" (ἀγαπητός). Typically it would be a relationship between an adult man and a boy or youth, though relationships between an older and a younger adult (such as Pausanias and Agathon in Plato's *Symposium*) or between a youth and a boy are not excluded. This inequality in a relationship is clearly presupposed in the legislation, and Aiskhines in his account distinguishes laws concerning boys, laws concerning youths, and laws concerning adults; however, since each relationship involves two persons, these categories cannot be entirely separated. I follow Aiskhines' order of exposition, adding different headings, supplementary information from other sources, and comments on each law.

A. Laws concerning the supervision of boys

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

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

authentic text of the law elsewhere; cf. D. M. MACDOWELL, *Demosthenes: Against Meidias*, Oxford, 1990, pp. 263–4. So I make no use of these spurious documents for reconstructing the laws.

⁸ This is suggested by CAREY, *Aeschines*, p. 26, n.10.

2. A law stated who should be the young men ($\eta\epsilon\alpha\eta^{\circ}\sigma\kappa\omicron\iota$) who attended, and of what ages they should be, and what control ($\rho\alpha\chi\eta$) of them there should be. It also gave orders about the supervision of the boys' escorts ($\pi\alpha\iota\delta\alpha\gamma\upsilon\gamma\omicron^{\circ}$), and about Mouseia in schools and Hermaia in gymnasiums. (Ais. 1.10)

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

The most mysterious part of this law is the reference to Mouseia and Hermaia. The meaning of words of this form can be either local (shrines of the Muses or of Hermes) or temporal (festivals of the Muses or of Hermes). Here I think the temporal sense more probable: on certain occasions the boys may have given recitations of poetry or athletic displays which their fathers and other men might come to watch, in much the same way as modern schools have their speech days and sports days. Plato's *Lysis* is set on an occasion when "as they are holding Hermaia, the youths and the boys are mixed together" (206d). Presumably the law ordered some arrangements which would prevent men visiting the school or gymnasium from having too close contact with the boys on such occasions.

3. Finally under this heading, a law regulated the assembling ($\sigma\upsilon\mu\phi\omicron^{\circ}\theta\eta\sigma\iota\eta$) of boys and of cyclic choruses. The only specific thing which Aiskhines tells us about this law is that the chorus-producer ($\chi\omicron\rho\eta\gamma\omicron\eta$) had to be over forty years of age. (Ais. 1.10–11)

Evidently this law applied primarily to the dithyrambic choruses of boys at such festivals as the Dionysia and the Thargelia, but "assembling" would also cover any other occasions when boys attended together in a group. A man over forty was regarded as less subject to homoerotic impulses, and the requirement that a chorus-producer for boys must be over forty is mentioned also in Arist. *AP* 56.3.⁹

Aiskhines presents all these laws (A1–3) together as if they formed a single statute. If so, we may assign it to either the very end of the fifth century BC or the first half of the fourth; for a client of Lysias was able to be a chorus-producer in (probably) 403 at the age of about 25 (Lys. 21.4),¹⁰ whereas Apollodoros, born in 393, did not perform this liturgy until 352/1.¹¹

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

B. *Laws concerning the sexual exploitation of boys*

1. If a father or brother or uncle or guardian, in short anyone in charge of him, hired out a boy as a catamite, a prosecution by *graphe* could be brought, not against the boy, but against both the man who hired him out and the man who hired him. The penalty was the same for both. Aiskhines does not say what the penalty was, but at any rate

⁹ On this rule, cf. Peter WILSON, *The Athenian Institution of the Khoregia*, Cambridge, 2000, pp. 55–7.

¹⁰ On this date, see S. C. TODD, *Lysias*, Austin, 2000, p. 231, n.10.

¹¹ Cf. D. M. LEWIS, *Annual of the British School at Athens* 50 (1955), p. 24.

it was not death, because he adds that the boy, when he grew up, was released from the normal obligation of a son to provide food and housing for his father in old age if his father had hired him out as a catamite. Yet he was not released from the obligation to provide burial and the customary rites for his father when he died. (Ais. 1.13)

Aiskhines comments on the fairness of this law: because the father had deprived the son of his freedom of speech ($\rho\alpha\rho\rho\eta\varsigma^{\circ}\alpha$: this refers to D1 below), it was fair that the father should lose the benefit of having produced a son, but not that the law and religion should be deprived of their due honour.

2. The law about procurement ($\rho\rho\omicron\alpha\gamma\upsilon\gamma\epsilon^{\circ}\alpha$) prescribed death as the penalty for anyone procuring a free boy. The procedure for prosecution was *graphe*. (Ais. 1.14, 1.184)

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

C. *Laws penalizing the lover* (ῥαστῆρ)

1. A law forbade a slave to love or follow (ἄρῆσθαι ἢ ἀκολουθεῖν) a free boy. The penalty was fifty strokes with "the public lash". (Ais. 1.139)

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

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

¹² Cf. C. CAREY, *Lysias: Selected Speeches*, Cambridge, 1989, p. 79.

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

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

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

D. *Laws penalizing the loved* (ῥῦμενοῦ)

1. Aiskhines provides a verbatim quotation of the law about *graphe* for being a catamite, interspersed with his own comments, which are marked off by brackets in my translation.¹⁵ The subject of "he says" is the legislator.

¹³ On the text and date of this law, see MACDOWELL, *Demosthenes: Against Meidias*, pp. 263–8.

¹⁴ The meaning of *hybris* is discussed at length by N. R. E. FISHER, *Hybris*, Warminster, 1992. See also Douglas L. CAIRNS, *Journal of Hellenic Studies* 116 (1996), pp. 1–32.

¹⁵ DOVER, *Greek Homosexuality*, pp. 24–5 discusses in detail which words are the orator's comments.

"If any Athenian (he says) is a catamite (, tair , sē), let him not be allowed to become one of the nine arkhons (because, I suppose, that office involves wearing a crown), nor to hold a priesthood (because even his body is not pure), nor to be a syndikos for the public;¹⁶ and let him never hold any public office (he says), neither at home nor abroad, neither by lot nor by vote; and let him not be a herald or an ambassador (nor put on trial those who were ambassadors, nor bring malicious prosecutions for payment¹⁷); and let him never deliver an opinion either in the Boule or in the assembly (even if he is a very clever speaker). If anyone transgresses these rules, he¹⁸ has established *graphai* for being a catamite and has imposed the severest penalties." (Ais. 1.19–20)

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

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

(a) The law applied only to those who accepted pay or recompense for homosexual activity, not to those who engaged in it for love. That this is the meaning of the verb , tair^M is clear from

¹⁶ Officials called syndikoi were appointed from time to time to represent the state in various legal proceedings; cf. A.R.W. HARRISON, *The Law of Athens* 2, Oxford, 1971, pp. 34–5. The expression τὸ δῆμοςιον often means the public treasury, but since not all syndikoi were concerned with financial matters it probably has here the wider sense of "the public" or "the state" (as in Ais. 3.58).

¹⁷ This comment by Aiskhines is his way of describing what Timarkhos has been doing recently.

¹⁸ Sc. the legislator.

the fact that Aiskhines himself, in accusing Timarkhos, clearly regards payment as one of the facts which he has to prove. Note for example 1.51: "He who does this with one man, and engages in the activity for pay, seems to me to be liable to this very charge." But once he had been a catamite, in this sense, the law applied to him for the rest of his life; a boy who had been a catamite was still subject to this law after he had grown up, if we may believe Aiskhines' comment on the father who prostituted his son when a boy and so deprived him of his freedom to speak, sc. as an adult in the Ekklesia (Ais. 1.14; cf. B1 above).

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

(c) Even an Athenian citizen was not liable to prosecution or punishment for merely being a catamite, but only if, being a catamite, he transgressed certain restrictions on his activities. Although he had not been accused or convicted, he was regarded as having disqualified himself from certain things by his way of life. He had made himself *atimos*. Thus a $\gamma\rho\alpha\phi\acute{o}\ \tau\alpha\iota\rho\ \sigma\epsilon\nu\eta$ was not exactly a prosecution for being a catamite; it was a prosecution for taking a public office, or for speaking in the Ekklesia, or whatever, despite being a catamite. But the prosecutor would be expected to prove that the defendant was (or had been) a catamite, besides proving that he had transgressed the restrictions of *atimia*.

As is well known (and is fully explained by Andokides 1.73–6) *atimia*, which may be roughly translated as "loss of rights" or "disfranchisement", could be either total or partial.¹⁹ A man subject to partial *atimia* was forbidden only to do certain things, "according to specifications" ($\kappa\alpha\tau\grave{\alpha}\ \pi\rho\sigma\tau\acute{\alpha}\nu\eta\iota\tau\grave{\alpha}$, And. 1.75). The text of Aiskhines strongly implies that this was the situation of the unconvicted catamite. It is clear that he is quoting the wording of the law, and the law did not simply say " $\tau\iota\mu\omicron\eta$ ' $\sigma\tau\upsilon$ (like the laws quoted

¹⁹ On this subject, see especially M. H. HANSEN, *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes*, Odense University Classical Studies 8 (1976), pp. 61–6.

in Dem. 20.156, 21.113, 23.62), but specified individually the things that the catamite was forbidden to do. But has he given the list complete? The following are activities which were forbidden to the man who suffered total *atimia* but are not included in the list given in Ais. 1.19–20 of activities forbidden to the catamite.

(i) Attending and voting at meetings of the Ekklesia (without speaking).

(ii) Being a member of a jury.²⁰

(iii) Speaking in a court on behalf of himself or a friend, either in prosecution or in defence or as a witness. However, Andokides in his oration *On the Mysteries* complains that one of his accusers, Epikhares, is a catamite and "according to your laws he is not allowed even to speak in defence of himself" (And. 1.100). Whether or not Epikhares was really a catamite, this can be taken as proof that a catamite, like other *atimoi*, was not allowed to speak in a court.²¹

(iv) Entering public temples and the Agora. However, later in the same speech Aiskhines imagines the Athenians saying indignantly to Timarkhos, "Are you pushing into the Agora?" (Ais. 1.164); and Diodoros, when alleging that Androtion is a prostitute, asserts that he is not allowed to enter the Agora (Dem. 24.126) or the temples (Dem. 22.73, repeated in 24.181). These passages can be taken as proof that a catamite, like other *atimoi*, was excluded from temples and the Agora.²²

²⁰ Membership of a jury should probably not be regarded as an office (? ρχ.), despite Ar. *Wasps* 587; cf. the note ad loc. in my edition of *Wasps*, Oxford, 1971.

²¹ This is not refuted by the fact that Timarkhos spoke in his own defence when prosecuted by Aiskhines. Timarkhos denied being a catamite, and that was exactly what Aiskhines had to prove.

²² It has been thought that exclusion from the Agora meant that *atimoi* were banned from even being present (not merely from speaking) in a court. Cf. HANSEN, *Apagoge, Endeixis and Ephegesis*, p. 62: "As the courts were situated in the market place, the prohibition from entering the *Agora* automatically implied exclusion from being a juror, a prosecutor and a witness." But that is not correct. At least until the middle of the fourth century the courts were not all situated in the Agora, for the Odeion and the Stoa Poikile were still used as courts at that time (Dem. 59.52, *IG* 2²

So Aiskhines' quotation from the law about activities forbidden to the catamite is incomplete; he has omitted (iii) and (iv) above. It is possible that he has omitted other items too. But it remains true that the listing of individual prohibitions in the law makes it likely that the catamite was not subject to total *atimia*, and that there were at least one or two activities which were permitted to the catamite though not to the totally *atimos* man. My guess is that these included attendance at meetings of the Ekklesia, and that there was no objection if a catamite came to a meeting, listened to the speeches, and joined in the voting by show of hands, provided that he did not attempt to make a speech himself. This guess is not supported by any explicit evidence, but I suggest that it receives implicit support from two passages which specify freedom of speech (*parrhêsia*) as the thing which a prostitute lost (Dem. 45.79, Ais. 1.14), and also from the law to be considered next, which distinguishes speakers from other citizens at the Ekklesia.

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

1641.28–30, 1670.35). Probably none of the courts were regarded as technically part of the Agora. At the trial of Meidias an *atimos* man named Straton was permitted to appear in the court without speaking (Dem. 21.95; cf. the note ad loc. in my edition of *Against Meidias*).

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

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

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

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

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

Finally we may notice two other passages of Aiskhines' oration *Against Timarkhos*, in which he remarks that according to the laws read out earlier "anyone who hires an Athenian for this activity, or

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

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

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