

Immigration and Citizenship Procedures in Athenian Law

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In Greek mythology Athens is often represented as the place where exiles from all parts of the world find refuge. Orestes, Oedipus, the children of Heracles, and even the barbarian Medea seek safe haven in the city of Athena¹. These myths, as developed in the drama of the classical period, reflect 5th century attitudes and an Athenocentric point of view. However, what is important is that this point of view is expressly presented as open and welcoming. These foreign refugees are not turned away at the border of Attica, but allowed in and integrated into the history of the land, even if their hands are soiled with the blood of kin or grave sins conceivable only in myth. Athenian propaganda in the 5th century boasts about this openness of the city to strangers: τὴν τε γὰρ πόλιν κοινὴν παρέχομεν, καὶ οὐκ ἔστιν ὅτε ξηνηλασίαις ἀπείργομέν τινα ἢ μαθήματος ἢ θεάματος, ὃ μὴ κρυφθὲν ἂν τις τῶν πολεμίων ἰδὼν ὠφελῆθει, πιστεύοντες οὐ ταῖς παρασκευαῖς τὸ πλεον καὶ ἀπάταις ἢ τῷ ἀφ' ἡμῶν αὐτῶν εἰς τὰ ἔργα εὐψύχῳ². In this passage from the famous *Funeral Oration* Pericles contrasts the open-borders policy of his city with that of Sparta, which practiced ξηνηλασία, an exclusive immigration policy similar to that of some modern states, allowing in visitors only for a short period of

¹ See also P.VIDAL-NAQUET, *The place and status of foreigners in Athenian tragedy* in C.Pelling (ed.) *Greek tragedy and the historian* : Oxford 1997, 109-119, V.CITTI, *The ideology of metics in Attic tragedy* in Y.Tory- D.Masaoki (ed.) *Forms of Control and Subordination in Antiquity*, Leiden 1988, 456-64

² Th.2,39.

time and granting residency only in exceptional circumstances³. The speaker reflects the typical Greek perception of ξενηλασία as an inhumane practice (πᾶνθρώπων) that does not befit enlightened states⁴. Athens, by contrast is represented as an open city, not afraid of the influence of immigrant populations upon her values and way of life, and not secretive or paranoid about the enemy, simply because she has enough trust in her own soul (εὐψύχῳ).

In reality, foreign populations lived in Attica since early times. Some among them were of aristocratic stock brought to Attica as brides to members of prominent Athenian families, like Agariste, the daughter of Kleisthenes of Sikyon, who married Megakles of the Alkmaionidai, or Hegesipyle, a Thracian princess, who married Miltiades⁵. This came to an end in 451 with a law introduced by Pericles, which essentially discouraged mixed marriages by establishing that a child could be an Athenian citizen only if both of his/her parents were of citizen stock⁶. The reasons and precise historical circumstances behind the Periclean citizenship law have been the subject of a long debate in recent years⁷. It appears that at the height of the Athenian Empire the citizens of the leading city did not want to share widely the privilege of being Athenian. These restrictions on citizenship should probably be viewed as an inverse reflection of the pride which the citizens of the imperial capital felt for their city, and not as an attempt to stem immigration into Attica, restrict the numbers of

³ Cf. X. *Lac.* 14,4: τούτου ἔνεκα ξενηλασίας γιγνομένης καὶ ἀποδημεῖν οὐκ ἔξόν, ὅπως μὴ ῥαδιοιουργίας οἱ πολῖται ἀπὸ τῶν ξένων ἐμπίμπλαιντο.

⁴ See for example, Hecat. *FGrH* 264 F 6; Pl. *Lg.* 950b; Ar. *Av* 1011-13.

⁵ Hdt. 6, 39 and 126; Plu. *Cim.* 4, A.R.W.HARRISON, *The Law of Athens*, vol. 1, Oxford 1968, p. 24-5; W.R.CONNOR, *The Problem of Civic Identity* in A.Boegehold – A.Scafuro (ed.) *Athenian Identity and Civic Ideology*, Baltimore - London 1994, 34-44.

⁶ Arist. *Ath.* 26,4, *Pol.* 1275 b 31, 1278 a 34, Plu. *Per.* 37, P.J.RHODES, *A Commentary on the Aristotelian Athenaion Politeia*, Oxford 1981, 331-5, C.PATTERSON, *Pericles' Citizenship Law of 451-50 BC*. Salem N.H. 1981; K.R.WALTERS, *Perikles' Citizenship Law*. *CA* 2 (1983) 314-36.

⁷ See also: K.A.RAAFLAUB, *The Discovery of Freedom in Ancient Greece*, Chicago 2004, 15-6, 217; I.MORRIS, *The Strong Principle of Equality and the archaic origins of Greek Democracy* in J.Ober – C.Hedrick (ed.) *Demokratia: A Conversation on Democracies, Ancient and Modern*, Princeton 1996, 19-48; J.OBER, *Mass and Elite in Democratic Athens: Rhetoric, Ideology, and the Power of the People*. Princeton 1989, 81, al.

non-citizens, or curb their activities. Immigrants continued to arrive in Attica, and many of them opened businesses and prospered in the land of opportunity that was Periclean Athens. Kephalos of Syracuse, the father of Lysias, was one of those who built a fortune and were accepted into the upper strata of Athenian society, and ironically, for much of his illustrious political career Pericles himself cohabited with Aspasia, a learned Milesian woman. Moreover, Athens in the second half of the 5th century was the center to which intellectuals, such as Anaximenes, Herodotos, Gorgias, Protagoras and many others converged from every corner of the Greek world thus giving a tremendous boost to the cultural life of the city.

The law of Pericles stood for a number of years but was ignored during the difficult times of the Peloponnesian war, and was reinstated in 403 with the decrees of Aristophon and Nikomenes⁸. Still, immigrant populations continued to flourish in 4th century Athens. Intelligent slaves who could hardly speak Greek when they were brought into Attica might end up with full Athenian citizenship, like Pasion and Phormion⁹, while alien courtesans, like Sinope from the Black Sea, could become fabulously wealthy¹⁰. The claim which Thucydides puts in the mouth of Pericles in the *Funeral Oration*, that Athens was a city open to outsiders, was not empty propaganda, but a fact that played a major part in the economic and cultural development of the city.

This same statement, however, reveals another side to the relations between the host city and its immigrant communities, an acute awareness of the differences between Athenians and outsiders, 'us' and 'them', which often was emphasized by differences in dialect, accent, and sometimes racial features, dress, and customs¹¹. This concept of

⁸ Caryst. *FGrH* 358 f 11, Eumel. *FGrH* 77 f 2, D. OGDEN, *Greek Bastardy in the Classical and Hellenistic Periods*, Oxford 1996, pp. 77-9.

⁹ D.36, 45 and 46.

¹⁰ Amphis *PCG* fr. 22,12.

¹¹ 'Otherness', especially in relation to Greeks and non-Greeks, has been widely discussed in recent years, and it is outside my purposes to explore this complex and important cultural concept in this study. The interested reader could consult some of the following studies: Maria Michela SASSI: *The Science of Man in Ancient Greece* [Trsl.], Chicago 2001; T. HARRISON [ed.], *Greeks and Barbarians*, New York 2002; H.H. BACON, *Barbarians in Greek Tragedy*, New Haven 1961; C. BRIZHE, *La langue de l'étranger non-Grec chez Aristophane*, in R. Louis (ed.),

the 'otherness' of the immigrant populations was probably two-sided. We hear that even the Plataians, who were *en masse* naturalized as Athenian citizens after 427, gathered on the first day of each month at a place called 'Fresh Cheese', obviously in an attempt to avoid complete assimilation and preserve their identity in their new homeland¹². Equally, from an Athenian point of view, an outsider might be welcome, and in exceptional circumstances might even be given Athenian citizenship, but he would always be different and his citizenship could be revoked at any time through a *graphe paranomon* against the original decree that bestowed this award upon him.¹³ Inevitably, laws were created to safeguard the dividing lines between citizens and aliens, especially after the influx of immigrants during the prosperous years of the Athenian empire. These laws were never intended to keep people out of Attica; they were only meant to ensure that foreigners would not attempt to intrude into the Athenian citizen body. In this respect they are similar to modern immigration laws, which treat as a criminal offence any attempt to bypass normal immigration or naturalization procedures and misrepresent one's immigration status.

It is a curious contradiction in terms to find that the Greek word *xenia* used to indicate friendship and hospitality (ξενία καὶ φιλία¹⁴), a venerable and ancient institution consecrated by the gods themselves,¹⁵ was also employed by Athenian law for violations of the citizenship and immigration laws of the city. Undoubtedly this paradoxical usage arises from the intriguing ambiguity of the word ξένος meaning 'friend' but also 'stranger or alien'. The ideology behind

L'étranger dans le monde Grec, Nancy 1988, 113-38, W.BURKERT *et al.* (ed.), *Hérodote et les peuples non-grecs* = Fondation Hardt, *Entretiens* 35, Geneva 1990, Claude CALAME, *Facing otherness. The tragic mask in ancient Greece*, HR 24 (1986) 125-142, Vivienne J. GRAY, *Herodotus and the rhetoric of otherness*, *AJPh* 116 (1995) 185-211; F.HARTOG, *The Mirror of Herodotus: The Representation of the Other in the Writing of History*. Berkeley 1988; E.HALL, *Inventing the Barbarian: Greek Self-Definition through Tragedy*; Oxford 1989; B.COHEN (ed.), *Not the Classical Ideal: Athens and the Construction of the Other in Greek Art*. Leiden 2000; al.

¹² Lys. 23,6-7, K.KAPPARIS, *The Athenian decree for the naturalisation of the Plataians*, *GRBS* 36 (1995) 359-378.

¹³ D.59.88ff, K.Apollodoros KAPPARIS, *Against Neaira*, Berlin 1999, 360ff., Osborne, M.J. *Naturalization in Athens* Brussels 1981-3 (Vol. I-IV).

¹⁴ Plu. *Mar.* 43,9, *Ages.* 23,6.

¹⁵ See e.g. E. *Hec.* 794, *Isoc.* 11,43, X. *Ages.* 8,3

Greek attitudes to outsiders has been discussed by previous studies, most notably by D. Whitehead, P. Gauthier, U. Kahrstead, E. Cohen, A. Dihle, C. Mossé and others, and it would be outside the purposes of this study to explore it at length¹⁶. However, the legal aspects of the core procedures against aliens for immigration offences have only received circumstantial treatment in the margin of discussions on the conditions, status and economic significance of alien populations. Modern scholars still confuse the main charge directed against aliens for trying to masquerade as citizens, the *graphe xenias*, with more specific legal provisions introduced much later in order to curb back-door invasions into the citizen body by means of pretended marriage to a citizen¹⁷, and no one seems to have anything conclusive to say about the *γραφή ἀπροστασίου*, a procedure apparently intended to keep an eye on resident aliens. Moreover, some interesting aspects of Athenian immigration law, such as the very unusual possibility to reopen a case through a series of legal procedures after the jury had reached a verdict, have again only marginally being discussed. My intention in this article is not to deal comprehensively with all provisions of Athenian law regarding non-citizens, but rather to focus on the legal procedures intended to address status disputes and transgressions of the obligations of the free immigrant populations of Attica. Thus, here I will discuss procedures which applied only to true or alleged aliens living in Attica, such as the *γραφή ξενίας*, *γραφή δωροξενίας*, *διαπήφισις*, *γραφή ἀπροστασίου*, and also the role of some

¹⁶ M. CLERC, *Les métèques athéniens* (1893); P. GAUTHIER, *Symbola. Les étrangers dans les cités grecques*, 1972; U. KAHRSTEAD *Staatsgebiet und Staatsangehörige in Athen*, 1934; D. WHITEHEAD *The Ideology of the Athenian Metic*, Cambridge 1977; E. COHEN, *The Athenian Nation*, Princeton 2000, 49-78; J. PECIRKA *A note on Aristotle's conception of citizenship and the role of foreigners in fourth century Athens*, *Eirene* 6 (1967) 23-26; M. J. OSBORNE, *Citizens, friends and foreigners in Athens*; *AH* 20 (1990) 35-42; C. MOSSÉ, *Métèques et étrangers à Athènes aux IV-III siècles avant notre ère*, *Symposion* 1971 (1975) 205-213; H. JOLY *Études platoniciennes: la question des étrangers*, Paris 1992; A. DIHLE, *Die Griechen und die Fremden*, Munich 1994; IDEM. *Die Wahrnehmung des Fremden im Alten Griechenland*, Göttingen 2003; M. ADAM *Metöken als Wohltäter Athens*, Munich 2003; G. NÉMETH, *Metics in Athens* *AAntHung* 2001 41 (3-4) 331-348; C. HEDRICK, *The Zero Degree of Society: Aristotle and the Athenian Citizen* in P. Euben, J. Wallach, and J. Ober (ed.), *Athenian Political Thought and the Reconstruction of American Democracy*. Ithaca and London 1994, 289-318; Geoffrey W. BAKEWELL, *Metokia in the Supplices of Aeschylus*, *ClAnt* 1997 16 (2) 209-228 al.

¹⁷ e.g. I. WORTHINGTON, *Review of Debra Hamel, Trying Neaira*. *BMCR* 2003.07.42.

judicial processes which applied to any person in relation to their immigration or citizen status, such as the διαμαρτυρία, παραγραφή and the δίκη ψευδομαρτυρίου.

1. Γραφή Ξενίας and Related Procedures

The *graphe xenias*, is the only procedure against aliens who masqueraded as citizens attested in 5th century authors, and understandably it must have been the first of its kind to be introduced, as it was the most basic law, the one intended to make sure that aliens who disguised themselves as Athenian citizens could be prosecuted and punished. It is first mentioned in the *Wasps* of Aristophanes, where it is implied that largesses and distributions in the years of the Peloponnesian war sparked a number of xenia prosecutions intended to limit the number of citizens, that is, of persons eligible to receive state benefits¹⁸. In the dramatic plot Philocleon barely escapes conviction, even though he is undoubtedly an Athenian citizen. The reason for his prosecution is economic, and the entire case has nothing to do with his actual citizen status. So, already in the first reference to a *graphe xenias* in the surviving Greek literature the process is misused and an accusation of xenia is in fact only the excuse for settling scores that have nothing to do with one's true status. Of course Aristophanes is joking at this point, however, the joke may appeal to a shared belief among the audience that the procedure was open to abuse. According to the scholiast of the *Acharnians*, Aristophanes himself faced an obviously unsuccessful prosecution for *xenia* by Kleon, who tried to intimidate him for the liberties the comic poet took with his jokes on stage¹⁹. It is not possible to tell for sure whether Aristophanes was indeed prosecuted, or not. The scholiast could simply be mistaken, but there is no compelling argument against his testimony. The fact that Aristophanes beyond reasonable doubt was an Athenian, should not be taken as evidence that he was immune from such prosecution, because there are several attested cases of Athenian citizens, including some prominent politicians, who were accused of xenia by opponents attempting to intimidate them. The insults directed at the parents of Aeschines by Demosthenes, blatantly accusing them of being low-class foreigners, because no Athenian would be willing to do the un-

¹⁸ Ar. V. 718.

¹⁹ Sch. Ach. 378.

dignified jobs that they were doing, are familiar to most classical scholars²⁰. Timotheos, the son of Konon, threatened to prosecute the undoubtedly Athenian general Iphicrates for xenia²¹. The irony is that Timotheos himself was only half Athenian. His mother was from Thrace and he was only a citizen because he was born before 403, when the decrees of Aristophon and Nikomenes brought back to force the Periclean citizenship law²². Another Athenian, Aristophanes of Cholleidai, who was also an offspring of a mixed marriage at the time when the Periclean law had fallen in disuse, and evidently registered with the deme of Cholleidai as a citizen, was threatened with xenia by the Thirty, and shortly afterwards put to death without trial because he had refused to collaborate with the regime²³. In the above mentioned cases threats were made, but actual prosecutions did not follow. Isaios, however, mentions the case of an Athenian who was prosecuted for xenia by one of his phrateres and escaped conviction by the narrowest of margins, only four votes²⁴.

Several Attic speeches delivered in trials for xenia are known to us through the testimony of later grammarians and lexicographers. Two of these are ascribed to Lysias, one against Kalliphanes (with some doubt over the authorship), and one against Pythios and Androtion²⁵. The speech *Against Demeas* attributed (with some doubt) to Hypereides was delivered in a xenia trial²⁶, but his speech *Against Aristagora*, which sometimes grammarians confuse with a xenia case, was delivered for a γραφή ἀπροστασίου (see below). The speech of Deinarchos against the politician Pytheas, mentioned by several grammarians and lexicographers, was unsuccessful²⁷. The third letter of Demosthenes attests that Pytheas narrowly escaped conviction, and lived on to become quite wealthy through bribery, enough to be able to keep two courtesans, and finally died of consumption (φθόνη)²⁸.

²⁰ D.18,130.

²¹ D.49,66.

²² Athen. 38,577, W.ERDMANN, *Die Ehe im alten Griechenland*, Munich 1934, p.171.

²³ Lys. 13,58.

²⁴ Is. 3,37.

²⁵ Harp. s.v. *xenias*, Apostolius *Paroemiogr.* 3,78,5.

²⁶ Harp. s.v. κυρία ἐκκλησία, s.v. Χαλκεία, Phanod. fr. 22, Hdn.Gr. 861 Lentz,

²⁷ Din. fr. 5 Conomis, Harp. s.v. Ἀρχιδάμειος πόλεμος, s.v. δωροδοκία, D.H. *Din* 10, St. Byz. 42, 5 Meineke.

²⁸ D. *Ep.*3,29

Modern scholars also keep confusing the case of Apollodoros against Neaira (D.59) with a *graphe xenias*. However, the law on the basis of which this case came to court is quoted by Apollodoros in section 16 of the speech, and this clearly is not the law on *graphe xenias*. I have argued elsewhere that this law and the one quoted in section 52 of the same speech are extracts from legislation introduced in the 380's in order to curb immigration violations by means of pretence of marriage to a citizen²⁹. Whether one agrees on the precise date or not, there is universal agreement that this is a 4th century law. However, the testimony of Aristophanes mentioned above makes clear that the *graphe xenias* was already in existence in the 5th century. So, we are obviously dealing with different laws introduced many years apart for different purposes. The phrase *καθάπερ τῆς ξενίας* (*as in cases of a prosecution for xenia*) in the legal document of section 52 provides further support for the argument that this extract is not part of the law on the *graphe xenias*, but a new law which follows similar procedures regarding the submission of this type of *graphe* to the Thesmothetai. Moreover, what is interesting is that all three major legal scholars of the twentieth century, Lipsius, Harrison and MacDowell, never confuse these procedures. Lipsius treats them together with the other procedures submitted to the Thesmothetai, which includes xenia, but does not confuse them. Harrison and MacDowell would not even bundle the case against Neaira together with cases of xenia, but treat it as part of the legislation on marriage³⁰. Evidently, the case for treating the prosecution of Neaira as a *graphe xenias* is not a valid interpretation of the sources, but rather the product of carelessness in a number of modern studies.

According to the Aristotelian *Athenaion Politeia*, a prosecution for xenia began with a *graphe* brought to the Thesmothetai, and this information is repeated by the lexicographers³¹. However, some later sources attest that the magistrates responsible for processing cases of

²⁹ KAPPARIS, *Neaira*, 198-206.

³⁰ J.H.LIPSIUS *Das attische Recht und Rechtsverfahren*, Leipzig 1905-15, pp. 414-20, HARRISON, *Law*, vol. 1, pp. 24-29, D.M.MACDOWELL, *The Law in Classical Athens*, London 1978, p. 87.

³¹ Arist. *Ath. Pol.* 59,3, Lex.Rhet.Cant. p. 674,7, Harp. s.v. *παράστασις*, Phot. *Lex.* γ 206 and s.v. *ἡγεμονία δικαστηρίου*.

xenia were the ναυτοδίκαι³². This has led Lipsius to assume that the *nautodikai* were the appropriate magistrates in the 5th century, but xenia cases were transferred to the Thesmothetai at some point before the 340's, when the speech against Neaira was delivered³³. This view was cautiously criticized by D.M. MacDowell, according to whom 'the interpretation of the evidence is disputed, and it is not clear how this activity fitted in with the *nautodikai*'s other functions³⁴. Both objections are valid, and it would be tempting to dismiss the evidence of the lexicographers about the *nautodikai* as mistaken, when compared with the hard evidence of two sources from the classical period (*Ath.Pol.* 59,3 and D.59,52), one of which is a probably authentic quotation of a legal document from the early 4th century. However, there are two important details which may suggest otherwise. First, Photios refers both to a *dike xenias* submitted to the *nautodikai* (β 108), and to a *graphe xenias* submitted to the Thesmothetai (γ 206 et al.). Was he confused or did he have something else in mind? Second and most important, in all instances where xenia is mentioned as a procedure that belonged to the *nautodikai*, it is either mentioned as a δίκη (or δίκαι) ξενίας, or simply by the genitive ξενίας. No source is actually suggesting that the *nautodikai* ever accepted a *graphe xenias*. This is consonant with what we know about the functions of the *nautodikai*, who at least in the 5th and for a part of the 4th century accepted private lawsuits for commercial disputes (δίκαι ἐμπορικαί) and never any type of public lawsuit (*graphe*). That a case of xenia ought to be a public lawsuit is a matter of common sense. There would be no advantage for the state to place in the hands of private citizens lawsuits against alleged aliens. This was an offence that affected the entire community and like every other procedure for related offences (ἀπροστασίου, δωροξενίας, pretended marriage to a citizen etc.) it probably was a *graphe*, that is, a procedure which any citizen could initiate. So, why do all these sources speak about a *dike xenias*? I think the answer lies in the blurring of the lines between foreigner, metic and merchant in 5th century Athens, which is discussed at some length by D. Whitehead³⁵.

³² Pol. 8,126, Hsch. s.v. ναυτοδίκαι, Phot. Lex. β 108 and s.v. ναυτοδίκαι.

³³ D.59,52; Lipsius *Recht*, 86-7 and 416-7.

³⁴ MACDOWELL *Law*, 230 and n. 511 for the older bibliography on the matter.

³⁵ D. WHITEHEAD, *The Ideology of the Athenian Metic*, passim.

The lexicographers by *dike xenias* could be referring not to prosecutions of foreigners for assuming the status of an Athenian citizen, but, albeit somewhat inaccurately, to commercial disputes between Athenians and foreigners, some of which certainly would come under the authority of the *nautodikai* in the 5th century.

A reference by Dionysius Halicarnasseus to a speech of Deinarchos delivered for an *εἰσαγγελία ξενίας* against a certain Agasikles is most likely another instance of loose phraseology, where the word *xenias* is used to indicate a legal dispute between an Athenian and a foreigner over some other issue but not over the alien's immigration status³⁶. From a linguistic point of view, it would be odd to couple in this manner two separate legal avenues. *εἰσαγγελία* is a separate procedure in its own right and does not need further qualification with a genitive (*xenias*) technically indicating another legal procedure attached to it. In all other instances where Dionysios is referring to an *eisangelia* among the speeches of Deinarchos, there is no qualifying genitive following³⁷. Moreover, what we know about *eisangelia* would make it an unsuitable avenue for *xenia* prosecutions. Both *graphe* and *eisangelia* were public procedures, however, while in the first case the state wanted to discourage frivolous prosecutions by imposing 1000 drachmas fine upon the prosecutor who lost with less than 1/5 of the votes, in an *eisangelia* the state was prepared to forego this safeguard and allow a risk-free prosecution regardless of the result, because the aim was to encourage citizens to bring such cases to court. It is easy to see why the state would want citizens to report abuse of orphans and heiresses by allowing *eisangelia* for such offences, but it would make absolutely no sense for the city to want to encourage frivolous prosecutions of people for *xenia* by removing the element of risk and responsibility for the prosecutor. As mentioned above, accusations of *xenia* were thrown even at people whose citizen status was not really in dispute. If anything, the state had good reasons to expect a responsible attitude from prosecutors in *xenia* cases. For these reasons the most likely explanation of this reference is that probably there was no such procedure as an *eisangelia xenias*, and that Dionysios is not

³⁶ D.H. *Din.* 10

³⁷ See e.g. D.H. *Din.* 10: *εἰσαγγελία κατὰ Πιστίου: ... Κατὰ Καλλιθέου εἰσαγγελία.*

using the word *xenia* here in a technical sense to refer to immigration offences.

There is no extant speech in the corpus of the Attic Orators delivered for a *graphe xenias*. However, we can reconstruct the general character of the proceedings and arguments through related procedures for which we have extant speeches. In particular, the speech 'Against Neaira', and the two *diapsephisis* speeches 'For Euphiletos' (Isai. 12) and 'To Euboulides' (D.57) discussed in greater detail below, can provide some insights on how the prosecution and the defense could be built when someone's citizen status was in dispute before a court. Neaira's prosecution is an overkill on behalf of Apollodoros, the actual prosecutor³⁸. Apollodoros devotes a great part of his narrative in proving rather conclusively that Neaira was an alien courtesan, a former slave only much later manumitted from her lovers and masters. However, this was not the accusation against her and the defense agreed that Neaira was an alien. The critical part of the prosecution, that Neaira had acted as the lawful wife of an Athenian citizen even though she was an alien, remains unsubstantiated down to the end of the speech. The case of Apollodoros is legally and factually feeble and basically based on nothing more than rumor and innuendo, and the orator knows that. His only chance of success in this case lies in the hope of raising enough prejudice and hostility against Neaira, so that the members of the jury will vote with their gut feelings rather than their minds. The proof which Apollodoros provides that Neaira was an alien consists of witnesses regarding her early career as a glamorous Corinthian courtesan, a witness to the act of her manumission, evidence from Aetes, the Polemarch of the year 371/0, that sureties were presented before him on behalf of Neaira when her status as a freedwoman was disputed, and testimonies from the private arbitrators who finally resolved the issue and determined that Neaira was a free person (but not a citizen). This is pretty conclusive evidence regarding the non-citizen status of Neaira, but it

³⁸ In reality Theomnestos, the brother and son in law of Apollodoros, was the actual prosecutor, while Apollodoros acted as his advocate (*synegoros*). Apollodoros prepared the case, wrote the speech and carried the burden of the proceedings. See KAPPARIS, *Neaira* 195-7. On *synegoria* see Lene RUBINSTEIN, *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens (Historia Einzelschriften 147)*. Stuttgart 2000

does not prove what Apollodoros needs to prove, namely that in reality she had acted as the wife of an Athenian citizen. Section 118 of the speech allows us a brief insight into the possible arguments of the defense, and there we read that they were going to argue that Neaira indeed was an alien, but she had never acted as the wife of an Athenian citizen. She only shared her life with her partner Stephanos as his concubine. That was not illegal; many Athenian citizens chose to share their lives with alien life-long lovers. In order to substantiate his claim that they had acted as a married couple Apollodoros says that Stephanos and Neaira had children and these children were behaving as Athenian citizens. The three boys were introduced to the phratry and the deme, while the daughter Phano had been given in marriage twice to Athenian men, and as the wife of the archon basileus (*basilinna*) she had served as priestess for the festival of the Anthesteria. This would be conclusive proof of citizen behavior, and if indeed these children had been the offspring of Stephanos and the alien Neaira, these two would have violated the spirit of the law quoted in the speech (16), which forbade aliens to marry citizens and essentially penalized pretence of marriage in order to secure the benefits of Athenian citizens for their offspring. Stephanos, however, we are told (section 118), was going to argue that the children were his from a former Athenian wife and not from Neaira. The ageing courtesan had been the step-mother of these children, not their biological mother, and no illegal acts had been committed. The problem of Apollodoros is that he presents no evidence for this central part of his case; he just tells the court a story, his version of events, and simply bets on the prejudices of the jury against sly aliens and especially alien courtesans, and this is why he goes to great lengths to provide this otherwise superfluous information.

Battling against this kind of prejudice is of critical importance to Euxitheos, the defendant in the speech *To Euboulides*, and this is why he opens the speech with a plea for sympathy towards people who had been unjustly robbed off their rights and privileges as Athenian citizens through unsubstantiated accusations, although, he says, the jurors would be right to feel angry with aliens who had tried to steal these privileges. Euxitheos knows that once a citizen came under suspicion for being an alien in disguise it would be an uphill task to dispel the doubts of a skeptical jury, especially since a number of aliens might

have intruded into the citizen registers at that time, and the demes were trying to flush them out through the *diaphsephiseis* (see below). Some remarks relating to his prosecutor allow us to understand the basics of the case against him. Euboulides, a local politician, at some point had a disagreement with Euxitheos, another local figure. We are not given the background of the conflict in detail, but it seems to have been a clash of ego and a battle for leadership in the politics of the deme of Halimous. This clash led Euxitheos to testify against Euboulides in a trial for impiety that the latter had initiated against a woman, whom Euxitheos respectfully identifies only by the name of her brother Lakedaimonios. Euboulides lost with less than a fifth of the votes and had to pay a fine of one thousand drachmas. It seems that he considered Euxitheos responsible for this debacle, and waited for his chance for revenge. This opportunity came during the *diapsephisis* of the deme. Each citizen had to be scrutinized whether he was truly of citizen stock, and the deme took a vote on each one of its members. Euboulides was the leader of the deme at the time, and stalled the processes all day. By the time the turn of Euxitheos came, it was already getting dark and many demesmen had left to go home. However, the supporters of Euboulides stayed put. A stunned and surprised Euxitheos was totally unprepared for the charges of *xenia* and begged for a recess until the morning to allow him to prepare. He was given no chance to defend himself, but in the darkness a vote was taken, and the supporters of Euboulides won through electoral fraud and the fact that more than half the demesmen had already gone home.

Euboulides stood up and accused Euxitheos of being an alien on the grounds that his father had a foreign accent and his mother had been working in jobs that free women would definitely consider to be beneath them. He concentrated the attack on the mother of Euxitheos, because it was easier to cast doubt upon the citizenship of a woman, since no formal register of female citizens was kept, and said that she had even served as a wet nurse to Kleinias, something which citizen women would not normally do. Euxitheos counters the arguments effectively. First he presents an endless string of relatives, all Athenian citizens verifying the citizen status of both his father and mother. He presents the genealogy of his father and then witnesses confirming it. He then goes through the service record of his father to the state.

The speaker argues that since for each one of the offices Thoukritos, the father of Euxitheos, held he had to undergo a scrutiny (*dokimasia*) before entry to office, and his citizen status had never been questioned, obviously he was recognized by everyone as a citizen. Euxitheos tries to counter the charge that his father had a foreign accent by saying that during the Peloponnesian war he had been captured and spent many years in captivity, away from Athens. When he returned he was welcomed by his family and got his share of the family property. Thus, Euxitheos says, his wider family acknowledged Thoukritos as one of them, and they were willing to hand over to him his rightful entitlement. Would an Athenian family share their property with an alien? When it comes to his mother's status, Euxitheos again presents witnesses from her natal family attesting her Athenian status. He counters the charge that she had been doing jobs suitable for freedwomen by saying that his parents were very poor, and that, although they were not proud of it, still they had to do any job they could find. He also presents Kleinias as a witness saying that his family was well aware of the citizen status of the mother of Euxitheos when she was working as a wet nurse for them. Finally Euxitheos mentions the places where his family graves are located and also the offices which he had occupied in the state, including that of demarch. In all that time himself, and his father before him, had passed successive scrutinies as citizens and magistrates of the state, and no one ever had questioned their status. Euxitheos has built a convincing case and it is difficult to see how he could have faked so many witnesses and such formal proof.

Similar arguments are procured in defense of the citizen status of a man called Euphiletos, who is defended by his older half brother after being excluded from the deme for being an alien (Isai. 12). The precise circumstances are not certain, as we only have a lengthy quotation by Dionysius Halicarnasseus, which is a *synegoria* by the brother of Euphiletos, while the main narrative is missing³⁹. Dionysios states that this case was brought to court through an *epheisis* after a *diapsephisis* in the deme (as in the case of Euxitheos above). The precise legal background as well as many of the details to which the speaker hints have been a matter of speculation among the commentators of Isaios, however, neither Wyse nor Schoemann seem to produce a

³⁹ D.H. *Isai.* 14-17.

satisfactory explanation of the details of the case⁴⁰. The main problem seems to be that this trial was the final act in a long standing quarrel between the deme, or at least some of its members, and the family of Euphiletos, but, as this extensive fragment is only the argument of the synegoros, we are not provided with sufficient data for a confident reconstruction of the previous rounds of litigation. Sections 2-3 allow us some insight into the main argument of the prosecution. Seemingly they claimed that Euphiletos had been adopted into the Athenian family of Hegisippos as an infant, and was not the natural son of Hegisippos and his second wife, as the defense maintained. This allegation would be very difficult to prove for a number of reasons. First, Athenian Law did not allow adoptions of non-citizens into citizen families, and for that reason the adoption of an alien infant was done surreptitiously, without any witnesses or documents. The family had to present the infant to the world as their own natural child, and thus it was extremely difficult for any outsider to prove anything, especially if more than twenty years had gone by and people in the community had accepted this child as a member of that family. The second reason has to do with the circumstances under which Athenian families adopted. The need of an heir, or heiress, who would continue the family line, inherit the property, look after his/her adopted parents in their old age, and take care of the appropriate religious rites after their death was a compelling reason for which childless Athenian families often adopted. Families with children did not need to do that and in fact the law did not allow Athenian men with legitimate sons to adopt, as adopted children would slice away the inheritance of legitimate children⁴¹. This is one of the arguments of the brother of Euphiletos, when he tries to counter the allegation of adoption at infancy made by the opposing litigants. He says that his father Hegisippos had no need to adopt one more son, since he already had a legitimate son and two legitimate daughters from his first marriage. Then the brother of Euphiletos further strengthens this point by arguing that he would have no other reason to defend the legitimacy, and therefore citizenship, of his

⁴⁰ W.WYSE *The Speeches of Isaeus*, Cambridge 1904, 714-23; G.F.SCHOEMANN *Isaei Orationes XI cum aliquot deperditarum fragmentis* Greifswald 1831, com. ad loc.

⁴¹ On the laws and practicalities of adoption in classical Athens see MACDOWELL, *Law* 99-108, and the monograph of L.RUBINSTEIN *Adoption in IV Century Athens*, Copenhagen 1993.

half brother, only to end up with his inheritance halved if he won, except the fact that Euphiletos truly was his half brother. This is a compelling argument because, indeed, the elder brother of Euphiletos stood to gain financially if Euphiletos were convicted as illegitimate and an alien, as he would be left sole heir to their father, and if we can judge from the fact that the family could afford to hire Isaios, this probably was an affluent household. The same argument was put forward by Euxitheos in the case mentioned above⁴², and probably one of the reasons for which the half-brother of Euphiletos feels compelled to appear as his *synegoros* is precisely because these financial considerations might weigh heavily upon the minds of the jury. The speaker here says that he feels compelled to defend his half brother because he can remember his birth, when himself was thirteen years old (12,10).

In addition to his own testimony the speaker presents substantial evidence in defense of the legitimacy and citizenship of Euphiletos from very close relatives. Their father Hegisippos was still alive and obviously gave evidence, and so did Demaratos, the brother of the first wife of Hegisippos, who, as the speaker reminds us, would have no reason to lie in court in order to defend the son of the second wife. The husbands of the two half-sisters of Euphiletos also give evidence in his favor, although, we are told, they would not have been allowed by their wives to defend the son of their step-mother, if this man was not their half-brother. The potential testimony of the mother of Euphiletos, herself, who offered to give evidence under oath before the arbitrators in a previous lawsuit over the same matter is more intriguing, because the procedure evokes some interesting parallels to cases of disputed status, and has puzzled Wyse and Schoemann⁴³. The latter in fact has procured an unlikely theory that although arbitration was not normally used in *epheisis* procedures, since they were public lawsuits, exceptionally in 346/5, because of the volume of *epheiseis* that followed the *diapsiphiseis* of Demophilos public arbitrators were drafted to help with the huge volume of work at the hands of the Thesmothetai. This suggestion is not supported by any evidence, and it is nothing more than wild guessing. As I will argue, the arbitration is not related to the *epheisis* procedure but to the previous trial which Euphiletos initiated against the deme, and in fact, far from being excep-

⁴² D.57,25

⁴³ See the discussion in WYSE, *Isaeus*, 721-2

tional to this case, the use of arbitration in order to resolve disputes over one's legitimacy and citizen status, was rather routine and is mentioned several times in the sources. Apollodoros mentions in the speech against Neaira the case of Phrastor, first husband of Phano, the alleged daughter of Neaira and Stephanos⁴⁴. When Phrastor tried to introduce his son from Phano to his *genos* of Brytidai, the child was rejected. Apollodoros claims that this happened on account of doubts over the citizen status of his mother. Phrastor took the matter seriously as this could have affected his child's future claims to citizenship and inheritance, and sued the *genos*. The case, which Apollodoros names a *δίκη ὅτι οὐκ ἐνέγραφον αὐτοῦ υἱόν*, came before a public arbitrator, who probably found for Phrastor, and the *genos* was compelled to register the boy. In this case the arbitrator had to weigh on the one side the explicit assertion of the father and probably other relatives that the boy was properly born in lawful wedlock between two Athenian citizens against vague rumors and innuendo on Phano's parentage on the other side, and naturally found for the family and ordered the *genos* to register the boy. The Brytidai abided by the decision of the arbitrator. This instance clearly suggests that the word of the father and the wider family was taken quite seriously in such cases, and further support for this is provided by a passage of Andocides, where Callias first publicly refuses to accept the boy presented to him as his son by the family of his former mistress, an Athenian woman named Chrysilla, but then, when he simply changes his mind, he enrolls the boy with the prestigious *genos* of the Kyrekes, of which Callias was a member, without contest⁴⁵.

Another case of public arbitration deciding legitimacy and citizen status is entangled with the long standing quarrel between Boiotos and Pamphilos, the sons of Mantias from Plangon, and Mantitheos, the son from his second wife. Mantias was refusing to acknowledge the sons from his first wife, because, Mantitheos claims, he was not convinced that they were his (Demosthenes 40 and 41). When he was sued by Boiotos, the elder of the boys, who was claiming that he was unlawfully deprived of citizenship because of his father's reluctance to acknowledge him and his brother, Mantias tried to find a solution by which the boys could be enrolled as citizens, and still he would not

⁴⁴ D.59,55-61 and KAPPARIS, *Neaira* 277-292

⁴⁵ Andoc. 1,126-7

have anything to do with them. He offered his former wife a challenge to confirm or deny under oath that the children were his before the arbitrator, and, as was the practice with such challenges, he promised to acknowledge the children if she confirmed that they were his⁴⁶. In the meantime, according to Mantitheos, Mantias paid Plangon the very substantial sum of 30 minae to decline the oath. This per se would not have deprived the children of citizenship, but would have effectively absolved Mantias from all responsibility for them. Then the children could be adopted by the brothers of Plangon, who were from a respectable but impoverished family, remain citizens in the houses of their adopters, and all legal ties between them and the second family of Mantias would be permanently severed. The plan sounded like a reasonable compromise for everyone, but the practical details of it were ambiguous and risky, mostly because this procedure would leave the boys in a vulnerable position for future prosecutions of *xenia* by their enemies, and perhaps on account of this Plangon reserved one final surprise for her ex-husband. In the formal setting of the Delphinion, before the arbitrator and many witnesses she took the challenge and confirmed on oath that the children were the sons of Mantias. Her former husband was publicly embarrassed and felt that he had to fulfill his promise: he acknowledged the boys as his sons and enrolled them in his phratry. By the time this speech was delivered the sons of Plangon were undoubtedly considered to be Athenian citizens registered with the deme, and heirs to the considerable fortune of Mantias along with his younger son from his second wife.

The narrative of Mantitheos is biased and many of the details do not add up. However, the bare fact that a citizenship dispute could be decided through arbitration is certainly correct, and this is further

⁴⁶ Regarding challenges of various kinds and their function in Athenian law see V.HUNTER *Policing Athens: Social Control in Attic Lawsuits*, Princeton 1994, 70-93; D.C.MIRHADY *The Oath Challenge in Athens*, CQ 41 (1991) 78-83; ID. *Torture and Rhetoric in Athens*, JHS 116 (1996) 119-31; ID., *The Athenian Rationale for Torture*, in J.C.Edmondson and Virginia J.Hunter (ed.) *Law and social status in classical Athens*, Oxford 2000, 53-74; G.THÜR, *Oaths and Dispute Settlement in Ancient Greek Law*, in L.Foxhall and A.D.E.LEWIS (ed.) *Greek Law in its Political Setting* Oxford 1996, 57-72; ID., *Beweisführung vor den Schwurgerichtshöfen Athens. Die Proklesis zur Basanos* Wien 1977; M.GAGARIN, *Oaths and Oath-Challenges in Greek Law*, *Symposion 1995. Akten der Gesellschaft für griechische und hellenistische Rechtsgeschichte*, vol. 11, Cologne 1997, 125-34.

corroborated by the narrative of Apollodoros regarding the dispute between Phrynion and Stephanos over the status of Neaira⁴⁷. The quarrel really was over Neaira's affections, but her former lover Phrynion was trying to reestablish his control over her by claiming that she was his slave, and the question on the status of Neaira became the subject of litigation. Eventually both parties were persuaded to submit to private arbitration, which determined that Neaira was a free person, and then the arbitrators, in order to end the fighting over her, tried to strike a far-fetched compromise by stipulating that the two men, her former lover and her current lover Stephanos, ought to share her. Their decision although awkward in many ways was legally valid, settled the status of Neaira, and successfully ended the feud.

The case of Euphiletos clearly went to arbitration at some point but not in relation to the *diapsephisis* trial. The *ephephesis* after the *diapsephisis* was an appeal procedure in itself (this is the exact meaning of the word ἔφεσις), and thus not subject to arbitration, but a public procedure submitted to the Thesmothetai, who forwarded it directly to the *dikasterion*. The fact that Euxitheos does not mention any arbitration in the speech 'Against Euboulides' supports this understanding of the *ephephesis* procedure. The brother of Euphiletos explicitly refers to a previous trial initiated by Euphiletos against the demarch and the deme over the same issue, namely his citizenship (11: ἐπειδὴ ἔλαχεν Εὐφίλητος τὴν δίκην τὴν προτέραν τῷ κοινῷ τῶν δημοτῶν καὶ τῷ τότε δημαρχοῦντι, ὃς νῦν τετελεύτηκε). The exact procedures and events surrounding that previous litigation are not clear, but we are told that Euphiletos sued the deme because, although he had first been accepted and inscribed on the register, his name was later expunged. That earlier case went to public arbitration and the case dragged on for two years. This was unusual as each arbitrator, appointed only for one year, had to finish all cases entrusted to him before his departure from office. Schoemann and Wyse discuss the matter in some detail⁴⁸. The theory of Schoemann that the arbitrator was re-appointed is almost certainly incorrect, since the first arbitrator had to undergo his *euthyna* at the end of his year and all his dealings in office had to be

⁴⁷ D.59,38-40 and KAPPARIS, *Neaira* 248-51

⁴⁸ See WYSE, *Isaeus* 716-7, and 721-2.

concluded before that⁴⁹. Although the theory of Wyse about an ἀντίληξις is not supported by the text of Isaios, he may be pointing in the right direction when he observes that the demarch, against whom Euphiletos had brought the *dike* was dead by the time of this trial, and the *synegoros* in this trial considers this information important enough to mention it. If the demarch died when the case was with the first arbitrator, then this could result in delays and complications in the proceedings that made it necessary to pass the case to another arbitrator. The precise legal platform by which this extended period of arbitration became possible is a matter of speculation, and it could simply be the case that both Euphiletos and the deme were compelled by circumstances to suspend proceedings for a while after the death of the demarch and renew the litigation in the coming year. Finally, the deme lost, because those who had opposed the membership of Euphiletos were unable to present any solid proof, despite the fact that the case went on for two years. As a result they had to accept Euphiletos for the time being, but later, when a *diapsiphesis* of all members was carried out under the decree of Demophilos, those who had opposed his membership in the first place seized the opportunity to re-open the case and remove Euphiletos from the register. This time Euphiletos was facing a much greater danger if the litigation did not go his way, because if one appealed to the courts and lost under the *diapsephesis* procedure he would be sold as a slave⁵⁰. However, the family, perhaps with good reason, is confident that this case is going to go their way too, like the previous lawsuit, and this is why they take the risk of an appeal to the court (*epheisis*). This is a united family putting together a compelling case and Dionysios Halicarnasseus praises the skill of Isaios in the concentrated presentation of the evidence. One must agree with Dionysios that the *synegoria* of the brother of Euphiletos is a barrage of solid proof and a masterpiece of Attic Oratory, which

⁴⁹ The theory of Schoemann, corroborated by B. HUBERT (*De arbitris Atticis et privatis et publicis*, Leipzig 1885, 46), is based upon the fact that Isaios uses the singular δύο ἔτη τοῦ διαιτητοῦ τὴν δίκαιαν ἔχοντος (10). However, a few lines above he uses the plural ἐπὶ τὸν διαιτητήν, and for that reason I would agree with Wyse that no particular significance is to be attached to the use of the singular here. Isaios meant to say that the case was with an arbitrator for two years, but not necessarily with the same one.

⁵⁰ Lib. *Hyp.* 57,1

would leave even the most skeptic reader with little room for doubt that Euphiletos was properly born and an Athenian citizen.

The three procedures described above were different legal avenues regarding the same matter. The central issue in all three was the clarification of someone's citizen status, however, they differ mainly in relation to the manner of initiation of legal proceedings, the purpose of these proceedings, and the outcome. A *dike* could be initiated by the person who had been denied admission, or one of his close relatives, against individual members of the citizen body which had rejected him, such as the deme, or one of the older religious associations like the phratry or the genos. Most likely in such cases the *dike* was brought not against all members of that body, but only against the primary instigators of the rejection. Through this lawsuit, the rejected candidate was hoping to compel them to back down and allow his registration. This would explain why only 6 members of the genos of the Brytidai are mentioned in the legal document which Apollodoros presents to the court with regard to the dispute of Phrastor with his genos⁵¹. Phrastor possibly sued only those 6 men who had objected the registration of his son, and not the entire genos. This suggestion would also explain why the role of the demarch was so pivotal in the first *dike* of Euphiletos against his demesmen. If Euphiletos had brought the *dike* not against the whole deme but only against the demarch, whose objections had swayed a number of demesmen to vote against Euphiletos, then the latter's death would render the current proceedings void, as the next demarch could not pick up from where the deceased demarch had left it, because the lawsuit was personal and not against the deme as a unit; thus a new platform had to be found in the coming year. This understanding of the *dike* proceedings would also explain why this legal avenue was voluntary and probably did not carry the severe penalties that an *epheisis* to the *dikasterion* carried for rejected deme candidates. This *dike* was perceived to be a private dispute among the members of a certain body, and the law was simply trying to assist them towards reaching agreement and resolving their dispute through public or private arbitration. However, when the case escalated to an *epheisis*, then the matter became public and an item of concern to the penal system of the city, with severe consequences for the rejected candidate. No one was compelled to proceed

⁵¹ See D.59,61 and KAPPARIS, *Neaira* 291-2.

with a *dike*, and should the rejected candidate choose to abide by the decision of the deme, phratry or genos, he could continue living in Attica as a free person, but not as a citizen⁵². If the rejection was from one of the older religious bodies, namely the phratry or the genos, the family of that child might still ignore the decision of that body, since membership in them was not obligatory for citizenship, and still try to have him enrolled with the deme when he reached adulthood. However, in this case the previous rejection had the potential to prejudice his chances of acceptance, and this is why we see people like Phrastor taking their quarrel with some members of the genos to court right away, in an attempt to clarify the situation now in order to avoid serious problems in future when it mattered most, namely during the registration with the deme. In all known cases this type of procedure ended with a settlement at the first round, through public or private arbitration, and in all of them the rejected candidate won.

By contrast, a *graphe xenias* or a *diapsephisis* was compulsory litigation into which an adult was drawn by one of his enemies or the deme. In the case of a *graphe xenias* one had no option but to fight the case in court and risk enslavement and loss of all his property. In a *diapsephisis* one did not need to run the ultimate risk in court; he could simply accept the decision of the deme and live as a non-citizen, albeit with some serious disadvantages. If he chose to do this, all his real estate would revert to his closest lateral male relative (but not his descendants who would also be disqualified from citizenship), as aliens did not normally have the right to own real estate in Attica, but he might be able to keep his liquid assets, if his family did not try to reclaim from him everything he owned on the grounds that these were assets of the oikos of which he was no longer a member. If, on the other hand, he chose to fight his case in court and lost, the penalty was enslavement and confiscation of his property.

The *diapsephisis* was a rare procedure, carried out irregularly, when the members of the deme had good reason to believe that persons not entitled to citizenship had been improperly entered into the registers, or simply the registers were lost or destroyed and had to be

⁵² Cf. Lib. Hyp. 57, 1: καὶ τοὺς μὲν ἀποψηφισθέντας καὶ ἐμμεΐναντας τῇ ψήφῳ τῶν δημοτῶν ἐξαληλίφθαι καὶ εἶναι μετοίκους.

rebuilt⁵³. However, in 346 a systematic attempt to purge the registers of all demes throughout Attica was carried out, initiated by the decree of Demophilos⁵⁴. In this instance individual demes had no option but to put each one of their members to the vote, and one can imagine how great the potential for abuse was in this procedure. Local politics, personal animosities, or simply unpopularity could generate unjust attempts to exclude people from the deme. Unlike a *graphe xenias*, which carried considerable risk for the prosecutor, in a *diapsephisis* there was no element of personal responsibility and deme members could act on impulse and exclude other members who did not deserve to be excluded, or simply turn this process into an opportunity to settle old scores. If we believe Euxitheos, the charge that he was a foreigner, illegally registered with the deme of Halimous and exercising the rights of an Athenian citizen, was brought by his opponent Euboulides as a result of the latter's desire for revenge on account of previous altercations in court and in the politics of the deme between the two men. Euxitheos provides an interesting statistic from a previous *diapsiphesis*, which had taken place a few years before the general diaspheseis of 346, when the father of Euboulides, who was the demarch of Halimous at that time, claimed to have lost the register. He states that out of 10 rejected citizens 9 were re-instated by the court⁵⁵. If a similar measure of inappropriate rejections were to be applied to the *diapsipheseis* which came as a result of the decree of Demophilos, we can imagine that many people were rejected for reasons other than their citizen status, and also that these rejections sparked a wave of appeals to the courts for re-instatement⁵⁶. The case against Euboulides certainly belongs to that wave of appeals. The case in defense of the citizenship of Euphiletos probably belongs to that

⁵³ D.57,26. However, later on (section 60) Euxitheos alleges that Antiphilos, the father of Euboulides, who was the demarch at the time when the registry was supposedly lost, had been bribed to 'lose' it, so that there would be a *diapsiphesis*. In this light the loss of the registry by Antiphilos is presented as a deliberate political move by some members of the deme, intended as an attack against certain demesmen, who were initially disqualified but then almost all readmitted after the court found in their favor.

⁵⁴ Aesch. 1,77, and Schol. ad loc., Harp. s.v., MACDOWELL, *Law* 70, WYSE, *Isaeus* 713-7.

⁵⁵ D.57,60.

⁵⁶ Cf. D.57,2.

wave too, if we accept that an ageing Isaios was still active as a speech-writer in 346/5, although near the end of his brilliant career.

We don't know for sure what circumstances caused the *diapsiphiseis* of Demophilos and led to this ill-thought procedure in 346, but we may be able to make an educated guess if we consider that the first time when a seriously restrictive immigration law was introduced, namely the Periclean citizenship law of 451, Athens was at the height of her powers and the citizens of the imperial capital did not wish to share their privileges with the many foreigners who had been converging into it. Could this be another incident motivated by similar factors? The historical reality of the situation is that by 346 Sparta had faded away, Thebes and Corinth were a shadow of their former selves, and Athens could proclaim herself to be the economic and cultural center of the Greek world⁵⁷. A recent study describes the economic recovery of mid-fourth century Athens as follows: '*Eubulus' keen interest in finances had dramatic results. Under his stewardship, Athenian revenues rose from 130 talents to 400, enabling Athens to construct new triremes and improve the docks and fortifications. Work at the neglected silver mines at Laurium was renewed and new inducements lured additional metics to Attica*⁵⁸.' The citizens of Athens, in reality, considered the warnings of Demosthenes about the danger from the North to be mere scaremongering, and overlooked his passionate speeches, behaving with an air of superiority and a confidence that might not befit the times, but was well grounded in the prosperity and increased strength of the city in the past fifteen years. The decree of Demophilos came into force in the same year as the peace of Philocrates, at a time when Athens still believed that Philip was not a mortal threat, and felt secure in her renewed leadership of the Greek world. The modern historian might see a parallel situation with that feeling of superiority that fostered the Periclean citizenship

⁵⁷ See for example the proud statement of Isocrates in the *Panegyricus* (11,42): ἐμπόριον γὰρ ἐν μέσῳ τῆς Ἑλλάδος τὸν Πειραιᾶ κατεσκευάσατο, τοσαύτην ἔχονθ' ὑπερβολὴν ὥσθ' ἅ παρὰ τῶν ἄλλων ἐν παρ' ἐκάστων χαλεπὸν ἐστὶν λαβεῖν, ταῦθ' ἅπαντα παρ' αὐτῆς ῥάδιον εἶναι πορίσασθαι.

⁵⁸ S.B.POMEROY, S.M.BURSTEIN, W.DONLAN, J.TOLBERT ROBERTS, *Ancient Greece: A Political, Social, and Cultural History*, New York-Oxford 1999, 383. See also J.R.ELLIS, *Philip II and Macedonian Imperialism*, Princeton 1976; R.SEALEY, *Demosthenes and His Time: A Study in Defeat*. Oxford 1993; Worthington, I. (ed.) *Demosthenes: Statesman and Orator*, London and New York 2000, al.

law, and explain the decree of Demophilos as a demonstration of the pride that the Athenians felt in themselves in 346, and their desire to safeguard their privileged position by strengthening the barriers between themselves and the 'others', the multitude of aliens that was surrounding them in their own city and in their area of influence around the Aegean coastline.

2. *Appeals after Conviction for XENIA*

The above-mentioned legal procedures undoubtedly reflect the firm desire of the Athenian state to prevent aliens slipping through the net by pretending to be Athenian citizens. However, in a state which mistrusted written documents and acted on the assumption that records can be easily falsified no one was safe. People whose families had been enrolled in the records of the demes for generations, like Euxitheos and Euphiletos, could be accused of not being really Athenian by one of their enemies, and risk losing their precious citizenship rights. But, no Athenian would have wanted to live with that kind of insecurity pending over his head, and this is why it is not surprising to see that citizenship and immigration were unusual, compared with most other legal processes, in that they involved extensive safeguards after the trial, intended to ensure that any such procedure was correctly brought to court, that the evidence presented was accurate, and that, in the end, if someone had secured a conviction by lying and deceiving a jury, that conviction could be overturned with an appeal and a new trial. In this respect, citizenship and immigration lawsuits depart from the usually simpler Athenian model of direct prosecution and final verdict without the right to further appeal, and resemble modern legal systems with all their complications, long-winded twists and safeguards.

The law allowed a convicted alien to reopen the case, but only under a specific set of circumstances. Now he would need to prove not only that he was not an alien, but also that one or more witnesses had lied in the first trial. The process involved the prosecution of the witness for false testimony (*ψευδομαρτυρίου*). If the convicted alien won this trial, then the verdict of the *xenia* trial was overturned, and he was allowed to rejoin the citizen body. If he lost, then the verdict of the *xenia* trial stood, he was sold as a slave, and his estate was confiscated and handed over to the *πωληταί* to be auctioned. Because there was a distinct possibility that the convicted man might try to

escape from Attica before the trial for false testimony could come to court, the law stipulated that persons convicted of *xenia* would need to remain in prison (δεσμοτήριον) until the second trial came to court and the case came to a close, one way or another⁵⁹.

Trials before Athenian juries were generally final, however, according to Photios (α 1455), three types of lawsuits were ἀνάδικοι, which means that their result could be challenged and overturned through a δίκη ψευδομαρτυρίων afterwards. Those procedures were *xenia* cases, trials for false testimony (ψευδομαρτυρίων), and inheritance disputes (κλήρων). Photius explicitly states that even these lawsuits were not always ἀνάδικοι, but only when more than half of the witnesses were convicted afterwards for false testimony. This last piece of information is unreliable because it is probably derived from a passage of Plato, which did not refer to contemporary Athenian practice⁶⁰. It would be a reasonable assumption that if one witness was convicted for false testimony this would have been sufficient to overturn the initial verdict, and, indeed, the passage of Demosthenes mentioned above (n. 56), does not imply multiple trials for false testimony after *xenia* cases. However, there is no good reason to dispute the first leg of the passage of Photios, stating that only these three lawsuits were ἀνάδικοι. We can understand why inheritance disputes and cases of false testimony could come before a court more than once: the factual circumstances in the former case could be in a state of flux as the line of eligible heirs constantly changed with births, deaths, adoptions and eligibility lawsuits, while cases against witnesses depended on the testimony of other witnesses, which in turn could be challenged and this would give good grounds to have the initial verdict overturned. But it is not as clear why cases of *xenia* were ἀνάδικοι, even though we have the authoritative corroboration from the speech *Against Aristocrates* that they were. We should probably attribute this peculiarity to the insecurity of every Athenian that one day some enemy of his could accuse him of *xenia*, and win with false witnesses and deception. Every Athenian would

⁵⁹ D.24,131: οὐδὲ γὰρ οἱ τῆς ξενίας ἀλισκόμενοι ἀγανακτοῦσιν ἐν τῷ οἰκήματι τούτῳ/ (sc. τῷ δεσμοτηρίῳ) ὄντες, ἕως ἂν τῶν ψευδομαρτυρίων ἀγωνίσωνται, ἀλλὰ μένουσιν.

⁶⁰ Pl. Lg. 937 d: ἐὰν τῶν τοιούτων ὑπὲρ ἡμῶν μαρτυριῶν καταδικασθῶσιν τινες, τὴν κατὰ ταύτας ἀλοῦσαν δίκην ἀνάδικον γίγνεσθαι, ἀμφισβήτησιν δ' εἶναι καὶ διαδικασίαν εἴτε κατὰ ταῦτα εἴτε μὴ ἡ δίκη ἐκρίθη.

want to have as an insurance policy the knowledge that he could challenge this deception, and safeguard the most fundamental of all his rights through further litigation.

In a balancing act, the Athenian state itself reserved the right to reopen a case of *xenia* if there was suspicion that the defendant had been unfairly acquitted. Hyperides quotes the law as following: τὸς ἀποφυγόντας ξενίας εἴρηκεν ἐξεῖναι τῷ βουλομένῳ πάλιν γράψασθαι, ἐὰν μὴ δοκῶσι δικάϊως τὸ πρῶτον ἀποπεφυγέναι. Aristotle clarifies the precise circumstances under which a retrial was permissible: εἰσὶ δὲ καὶ γραφαὶ πρὸς αὐτοὺς (sc. τοὺς θεσμοθέτας) ὧν παράστασις τίθεται, ξενίας καὶ δωροξενίας ἂν τις δῶρα δούς ἀποφύγη τὴν ξενίαν⁶¹. The discussion of δωροξενία in later lexicographers is based upon these two passages, while there is no evidence of an actual case of δωροξενία ever being brought to court. The name of the procedure and this evidence from the *Athenian Constitution*, make clear that a *xenia* case could only be re-opened under the *doroxenia* law in very specific circumstances, namely when there was reason to believe that bribery of the jury had distorted the verdict of the initial trial. Thus, in a *doroxenia* case the prosecutor would have a twofold task ahead of him, first to prove that the defendant was an alien posing as an Athenian citizen, and second to prove that he had escaped conviction the first time because he managed to bribe some members of the jury. So, even if the prosecutor succeeded in demonstrating that the defendant was an alien, he would still have considerable difficulty with the second task. It would be hard to prove bribery considering the complex system of jury selection and the rigorous safeguards in place. Moreover, it would be quite a delicate process to accuse of bribery the jurors from the previous trial in front of their peers, and we know from the extant law court speeches that such accusations against jurors were not thrown in routinely. Litigants do not hesitate to say that juries were deceived by lies, but specific accusations of dishonest conduct against jurors are virtually unheard of, and any prosecutor who would be bold enough to accuse members of the Athenian judicial system of corruption could risk the wrath of the present jury, a bad loss and a fine of 1000 drachmas, if he had failed to carry at least a fifth of the votes. In short, the prosecutor risked a lot and would need to present overwhelming and undeniable evidence in

⁶¹ Hyp. Fr. 20 Jensen, Arist. *Ath. Pol.* 59,3.

support of his claims. Even then, his opponent could shower the current jury with endless blandishments for their fairness, and state how trustworthy the decisions of Athenian juries were, and thus gain a very considerable advantage as far as the εὔνοια of these judges was concerned, before even attempting to address the issue of *xenia*. Under these circumstances it is not surprising that we find no evidence of a *doro xenia* case ever being introduced to court. However, even the theoretical possibility of re-opening the case is highly unusual and essentially contravenes the fundamental premise of Attic law that one cannot be tried twice for the same offence⁶². Considering that there were no circumstances peculiar to a *xenia* case that would facilitate the bribery of a jury and thus require specific measures to address it, we can only interpret this legal provision as a balancing act to the right of individual citizens to continue litigation in case of *xenia* even after the verdict of the *dikasterion*.

3. παραγραφή and διαμαρτυρία in Citizen Status Disputes

If a man involved in any kind of legal proceedings claimed to be Athenian but had *de facto* been treated as a non-citizen during the judicial processes (for example, his opponent had submitted a lawsuit to the polemarch, the magistrate in charge of lawsuits involving aliens in Attica, instead of the responsible magistrate for Athenian citizens), he could challenge the assumption that he was a foreigner before the actual lawsuit in which he was involved was allowed to come to trial. In the 4th century one could challenge his opponent's assumption on his citizen status either through a διαμαρτυρία or through a παραγραφή. In a *diamartyria*, the litigant needed to produce a witness formally asserting his citizen status, and this would put the current proceedings on hold. Normally this witness needed to be an Athenian citizen, however an exception was made in a γραφή ἀπροστασίου (see the discussion below), where the law allowed any adult free male (ὁ βουλόμενος) to serve as a witness in a διαμαρτυρία⁶³. If the opposing litigant failed to prosecute that witness for false testimony (δίκη ψευδομαρτυρίου) within a certain time frame, then apparently the assertion of the witness stood and this would bring these proceedings

⁶² AnD.4,9: τῶν νόμων ἀπαγορευόντων δις περὶ τῶν αὐτῶν πρὸς τὸν αὐτὸν μὴ ἐξεῖναι δικάζεσθαι, Isoc. 2,42, Isae.6,52, Aeneas Tact. *Polioretica*, 7,4

⁶³ Hyp. Fr. 16 Jensen, Din. Fr. 55 Conomis, Harp. s.v.

to a close⁶⁴. However, if the opposing litigant persisted and won a lawsuit for false testimony against the witness, then the proceedings of the initial lawsuit would continue; if he lost then obviously he could not continue. However, a determined litigant could always find another formula, albeit one which recognized his opponent's true citizen status.

The second procedure, the *paragraphe*, was generally used when some kind of irregularity was involved in the initiation of a lawsuit. In a sense the *paragraphe* is similar in spirit and intent to the *graphe paranomon*, but while the latter was intended to address procedural irregularities after a decree had passed and the debate on it was over, the former was intended to prevent procedurally incorrect cases from reaching the courts. If a man was sued, he could challenge the procedure by arguing that a legal reason prevented this lawsuit from coming to trial. Then a *paragraphe* trial would come first, and either led to the termination of proceedings which were deemed to be irregular, or cleared the ground for the initial lawsuit to continue as planned. The alleged procedural irregularity could be of any kind, and certainly submission of a case to the wrong magistrate qualified as a situation where a *paragraphe* was applicable. If someone had submitted a lawsuit to the polemarch on the assumption that his opponent was an alien, but the opponent claimed to be Athenian, then he could stop the proceedings with a *paragraphe*, arguing that the polemarch was the wrong magistrate. The *paragraphe* would have to be tried before the other lawsuit could proceed, and if the defendant won, the prosecutor could either submit the case to the magistrate responsible for such lawsuits against Athenian citizens, thus accepting that his opponent was Athenian, or drop the case altogether.

The use of both procedures, the *diamartyria* and the *paragraphe*, with regard to citizenship and immigration disputes is well attested in the sources, but when a litigant should use the one or the other is less clear-cut. MacDowell, on the basis of two important studies, one by L. Gernet on *diamartyria* and one by H.J. Wolff on *paragraphe*⁶⁵, has

⁶⁴ Cf. Lys. 23,14: ἐπισκηψόμενος δὲ τῷ μάρτυρι οὐκ ἐπεξήλθεν, ἀλλ' εἶασε καταδικάσασθαι αὐτοῦ τὸν Ἀριστόδικον. ἐπεὶ δὲ ὑπερήμερος ἐγένετο, ἐξέτεισε τὴν δίκην.

⁶⁵ MACDOWELL, *Law*, 212-219; L.GERNET, *Droit et Société dans la Grèce ancienne*, Paris 1955, 83-102; H.J.WOLFF, *Die attische Paragraphe: Ein Beitrag zum Problem der Auflockerung archaischer Prozessformen*, Weimar 1966, passim.

argued for a chronological distinction. The *diamartyria*, by the fact that it is based on the formal assertion of one witness, must be a very old procedure, one that predates the bureaucratic and adversarial legal system of the classical period, while the *paragraphe* was introduced in 400, to bolster the reconciliation agreement of 303⁶⁶, if we believe the assertion of the speaker in the speech of Isocrates *Against Kallimachos* that this was the first ever *paragraphe* case⁶⁷. The new procedure was supplementary to the *diamartyria*, and applied to cases where the latter would not have been suitable, but seemingly was not intended to replace it, because the *diamartyria* is still used extensively, side by side with the *paragraphe*, in the 4th century. On the other hand, Harpocration makes a different distinction⁶⁸. He states that a *diamartyria* could be initiated either by the prosecutor or the defendant, while a *paragraphe* could be initiated only by the defendant. Both explanations are correct: there is a chronological difference in the introduction of these procedures and there are some procedural differences, like the one mentioned by Harpocration. There was also a clear difference when the dispute between the two litigants was financial, because the loser of a *paragraphe* needed to pay a penalty equal to the one sixth of the amount in dispute, while a *diamartyria* remained risk-free⁶⁹. The *paragraphe* involved a financial risk obviously in order to discourage its frivolous use,

⁶⁶ See A.WOLPERT, *Remembering Defeat: Civil War and Civic Memory*. Baltimore and London 2002; J.-H.KUHN, *Die Amnestie von 403 v. Chr. im Reflex der 18. Isokrates-Rede*, WS 80: 31-73, al.

⁶⁷ Isoc. 18,2-3 (ed. G. Norlin): Now after your return to the city from Piraeus, you saw that some of the citizens were bent upon bringing malicious prosecutions and were attempting to violate the Amnesty; so, wishing to restrain these persons and to show to all others that you had not made these agreements under compulsion, but because you thought them of advantage to the city, you enacted a law, on the motion of Archinus, to the effect that, if any person should commence a lawsuit in violation of the oaths, the defendant should have the power to enter a plea of exception (*paragraphe*), the magistrates should first submit this question to the tribunal, and that the defendant who had entered the plea should speak first; and further, that the loser should pay a penalty of one-sixth of the sum at stake. The purpose of the penalty was this, that persons who had the effrontery to rake up old grudges should not only be convicted of perjury but also, not awaiting the vengeance of the gods, should suffer immediate punishment.

⁶⁸ s.v. διαμαρτυρίαν

⁶⁹ See also MACDOWELL, *Law*, 215.

especially in trivial money quarrels. The most likely reason why the *diamartyria* remained risk-free is probably historical: the *diamartyria* was introduced at a time when Athenian laws did not have risk elements intended to make lawsuits more responsible embedded in them, while by the time the *paragraphe* was introduced such safeguards were rather routine. The *paragraphe* quickly established itself as a more formal kind of litigation, although the *diamartyria* remained in use as a more readily available process, often intended to function as an intimidation tactic, rather than a deliberate step to further litigation.

These differences notwithstanding, still it is not always easy to see why a defendant would choose the one procedure over the other when it came to citizenship or immigration status disputes, and in fact we know of one man who resorted to both, when twice in the space of a few years, he faced prosecutions to the polemarch, under the assumption that he was an alien, and in the first instance he chose a *diamartyria* while in the second case he chose a *paragraphe* in order to deal essentially with the same legal issue. The speech of Lysias *Against Pancleon* provides important information regarding the use of both procedures in cases of citizenship disputes. Pancleon was prosecuted first by a man called Aristodikos, who submitted the lawsuit to the polemarch on the assumption that Pancleon was an alien. We are not told what exactly was the reason for the dispute, but considering that Pancleon was a poor fuller who did not even own a shop but was working for someone else, one could extrapolate that it was some kind of petty dispute, which the orator does not even consider worthy to mention by name. Pancleon challenged the legality of these proceedings claiming that he was Plataian, and as such an Athenian citizen, in accordance with the decree of Hippocrates (427 BC), which had conferred full Athenian citizenship upon all Plataians⁷⁰. Aristodikos in turn presented a witness who stated formally that he was not a Plataian, and that, consequently, the case correctly had been submitted to the polemarch. Pancleon's next step ought to have been the prosecution of that witness for false testimony (*δίκη ψευδομαρτυρίων*), but Pancleon did not take that step. The orator allows us to understand that he did not do it because the

⁷⁰ See D.59,104-106 and K.KAPPARIS *The Athenian decree for the naturalisation of the Plataians*, *GRBS* 36 (1995) 359-378

testimony of the witness, that he was not a Plataian, was obviously true. However, we should not uncritically accept this. Pancleon may have failed to prosecute that witness for a variety of reasons. For example, he might not want to turn some petty litigation into a much larger and very public question about his citizenship before the courts, since, in order to prove the witness wrong, he would have to go to great lengths, like Euphiletos and Euxitheos do in the above mentioned cases, and present very substantial evidence that he was a Plataian. And one can understand why anyone would be reluctant to do this: once doubt was expressed over someone's proper birth and citizenship it stuck like mud and only further doubt should be expected to come. So, it may well have been a strategic decision by Pancleon to push this litigation out of the way, as quickly as possible, even if it was based on the assumption that he was not Athenian, and thus introduced to court by the polemarch, rather than protract it and turn it into a big issue about his citizenship. Whatever the case, he ultimately lost the *diamartyria* because he took no action against the witness within a certain time frame (we are not told how long). The wording of the orator is rather ambiguous at this point, and the word *καταδικάσασθαι* may or may not apply to the final outcome of the main litigation. It certainly applies explicitly to the outcome of the *diamartyria*, but only by implication to the final outcome of the trial that should have ensued after the success of Aristodikos in asserting the legality of his case. However, the omission of an explicit reference to the final outcome of the main trial is rather important, and may be deliberate. Maybe the orator was reluctant to tell the jury that Aristodikos, although he won the *diamartyria* by default, lost the litigation against Pancleon in the end, or simply dropped it.

Pancleon needed to learn two lessons from all this: First, that one either had to follow through with a *diamartyria*, and proceed with a *dike pseudomartyrion*, or he automatically handed over the first round to his opponent. Second, if he ever thought that it might be a better strategy to forfeit the *diamartyria*, in order to avoid further trouble and concentrate on the main litigation, even with the wrong magistrate, he was soon to realize that this was a big mistake because it exposed him to further questions regarding his citizen status, and other adversaries in future were going to treat him as a non-citizen. When later on someone else prosecuted him for something (probably

another petty dispute, because the prosecutor, who is the speaker in Lys. 23, does not bother to mention even in passing what exactly his quarrel with Panoleon was), he took the case to the polemarch again on the assumption that Panoleon was an alien, like Aristodikos had done. But this time Panoleon had learned his lesson and did not try to challenge the legality of the case with a *diamartyria*. Instead he used a newly established procedure, the *paragraphe* (which he calls *antigraphé*, probably because, as MacDowell suggests, this was a new procedure and the terminology was not yet fixed in the Attic forensic vocabulary⁷¹). The speech of Lysias *Against Panoleon* was composed for the *paragraphe* trial and quickly turns into an argument against Panoleon's claim to Athenian citizenship. Only this time the strength of the argument is not even comparable to the forceful defense of the citizenship of Euxitheos by Demosthenes, the masterful defense of Euphiletos by Isaios, or the shrewd and captivating prosecution of Neaira by Apollodoros. And since the author of this speech did not lack in skill, the modern reader is compelled to conclude that Lysias had a very weak, almost indefensible, case in his hands and tried to make the best out of it with a lucid, but, all the same, vague and largely unsubstantiated argument. The speaker presents two types of evidence in order to support his argument that Panoleon was an alien who pretended to be a Plataian, and that in fact he might even be a slave. First he summons some members of the deme of Dekeleia and some Plataians who testify that they did not know Panoleon, although they ought to because they were members of those citizen groups to which Panoleon should be known, since he claimed to belong to them. But of course this is not real proof of anything, because not all members of a large deme like Dekeleia could have known each other personally, and not all Plataians could have known every single descendant of a Plataian in Attica, especially the younger men, who were born in Attica after 427, and might not maintain strong ties with

⁷¹ Pollux (8,57-8) believes that *παράγραφη* and *ἀντιγραφή* are two distinct, although similar, procedures, and this view has found some following in modern scholarship. He thinks that *paragraphe* was the appropriate procedure when a litigant claimed that the procedure for the introduction of a case to court was incorrect, and *antigraphé* the procedure by which a defendant turned prosecutor. Clearly there is no basis for such distinction, because, indeed, in a *paragraphe* procedure the tables were turned in the manner described here; Pollux is confused by the loose terminology in the speech *Against Panoleon*.

their city of origin and the monthly gatherings of its members. All Pancleon needed to do was to present some Dekeleians and some Plataians who actually knew him, and he would have disproved effectively this part of his opponent's argument. The second form of evidence is the testimony of a few people present at a street episode, where some man called Euthidikos claimed that Pancleon was his slave, while an unnamed woman turned up insisting that he was her slave. Obviously neither of the two had any lawful claim on Pancleon, because neither tried to enforce ownership rights upon him through the proper legal avenues. All they did was scream at Pancleon and each other in the middle of the street, and eventually gave up. This ridiculous street brawl is worthless when it comes to its persuasiveness as evidence in a law-court. If anything, it supports the citizenship of Pancleon, because what Athenian would give up on a strong, young skilled slave just because some strange woman started screaming at him that he was hers? The most plausible reason why Euthidikos did not proceed to hale Pancleon into slavery was because he feared the severe consequences of ἀνδραποδισμός, namely the unlawful enslavement an Athenian citizen.

A cluster of *paragraphe* speeches has survived in the Demosthenic Corpus grouped together (speeches 32-38), while both procedures, the *diamartyria* and the *paragraphe*, were extensively used in the 4th century in relation to property and commercial disputes, the study of which would be outside the purposes of this project. Of the two, the *diamartyria* seems to be much more extensively used in relation to citizenship disputes, probably because it was procedurally simpler (at least if the opponent was intimidated and decided not to contest it) and risk free, while the *paragraphe* inevitably involved a proper trial in court before the main trial and was risky for the unsuccessful litigant who had to pay a fine (ἐπωβελία). Several passages of Isaios (3,3 ff., 6,12. 52), the speech of Demosthenes *Against Leochares* (D.44), and two speeches of Deinarchos surviving only in fragments (*Against Hedyle* [fr. 55 Conomis] and *On the Estate of Euippos* [fr. 62 Conomis]) provide additional evidence for the use of *diamartyria* in property and inheritance disputes, where someone's claim was questioned on the grounds that he or she was not an Athenian citizen

born in lawful wedlock⁷². That person's citizen status became the central point of the dispute, basically because in all these cases the litigant whose status came under scrutiny invariably had a better claim, and only if he or she could be eliminated as illegitimately born (*nothos*) or of alien status others could lay claims. For example, Phile, the natural daughter of Pyrrhus in *Isaios 3*, had an inherently stronger claim than the relatives of her adopted brother Endios to her father's estate, and the only way for the other relatives to inherit would have been her elimination from the succession line on the grounds that her mother had been a courtesan (and thus not really the lawful Athenian wife of Pyrrhos). Despite the masterful speech of *Isaios*, the attempt of the lateral relatives to exclude Phile from her father's inheritance appears to be legally weak. However, what is intriguing in this case is the pursuit of the inheritance by people who were not blood relations of Pyrrhos against his natural daughter, and the means by which it was orchestrated. The *diamartyria* in this case was used to cast doubt upon Phile's legitimacy and maybe citizen status, not because her pursuers were righteously seeking the implementation of the city's citizenship laws, but simply because they were after her inheritance.⁷³ Nevertheless, in cases such as this the arguments before the court resemble those delivered in the case against *Pancleon*, or the cases of

⁷² The issue whether legitimacy and citizenship were connected is a difficult one, and the subject of a prolonged and inconclusive debate in international scholarship, which is outside my scope at this point. See: D.M.MACDOWELL, *CQ* 26 (1976) 88-91, S.HUMPHREYS *JHS* 94 (1974) 88-95, M.H.HANSEN *Demography and Democracy: The Number of Athenian Citizens in the Fourth Century B.C.*, Haring 1986, 73-6, P.J.RHODES *CQ* 28 (1978) 89-92 and *AP* 496-7, C.PATTERSON *CIAnt* 9 (1990) 40-73, R. Just *Women* 55-60.

⁷³ The speaker in *Isae. 3*, 45-51 also claims that Phile could not have been legitimate because her adopted brother Endios gave her an average dowry (30 minae), and not the high dowry that a rich heiress like her should expect (cf. *Men. Dysc.* 729-39). However, this is an inconclusive argument. Xenokles, the husband of Phile could have agreed to an average dowry for a number of reasons: Maybe he only wanted the woman and did not care about the money, or maybe he did have ulterior motives, after all, thinking that if they had any children, they would ultimately inherit the entire estate of their maternal grandfather after the death of Endios. Whatever his motives, once the adopted brother and the husband agreed, and Phile was given to Xenokles in lawful marriage with a respectable dowry in the presence of witnesses, neither the state nor any other party had any reason to question this contract, and obviously no one ever did until the speaker brought it up during this trial.

xenia mentioned above and very much evolve around someone's claim to full Athenian citizenship.

4. γραφή ἀπροστασίου

Among legal processes dealing with the alien populations of Attica the γραφή ἀπροστασίου resembles most the procedures of modern states against aliens who failed to observe immigration regulations in the host country. In this respect we can broadly understand its purpose and function, however, in some important aspects it remains elusive. There are two passing references to the *graphe aprostasiou* from the classical period, one in the Pseudo-Demosthenic speech *Against Lakritos* (D.35,48), and one in the Aristotelian *Athenian Constitution* (58,3). Both state only that it fell under the responsibility of the polemarch (like all other procedures pertinent to the alien populations of Attica). There is also a reference to two speeches of Hypereides *Against Aristagora*, delivered in an actual *aprostasiou* trial⁷⁴. The numerous lemmata of the lexicographers are probably derived either from Aristotle or Hypereides, and most of them provide one single piece of information, that a *graphe aprostasiou* could be brought against an alien who failed to have a prostates⁷⁵. Pollux (3,56), Photius (a 2640), and Suda (α 3546 and α 3703) extend the field to include failure to pay the metic's tax (μετοίκιον) as grounds for an *aprostasiou* prosecution. However, most intriguing is the brief entry in the *Lexica Segueriana* (α 132,23), which says that someone was liable to *graphe aprostasiou* if he had failed to pay the metoikion and illegally presented himself as a citizen (ἀστὸς εἶναι φάσκη, παρεγγεγραμμένος εἰς τὴν πολιτείαν). Of course, as mentioned above, a *graphe xenias* would be the appropriate procedure against someone

⁷⁴ Hyp. fr. 13-26 Jensen. The lexicographers several times refer to the 'second speech against Aristagora' (κατὰ Ἀρισταγόρας β'), so we must assume that two speeches of Hypereides *Against Aristagora* were in circulation, both from the same trial. The case was public and thus only one long speech was allowed for the prosecutor and one for the defendant, but that could be split into two smaller speeches one of which would be delivered by a *synegoros* as in the case of Neaira and probably the two speeches *Against Aristogeiton*. Alternatively Aristagora was convicted and the second speech was about her sentencing in the model vividly presented in Plato's *Apology* for the trial of Socrates. Since we do not have the speeches we cannot tell.

⁷⁵ Harp. s.v.: εἶδος δίκης κατὰ τῶν προστάτην μὴ νεμόντων μετοίκων, Hsch. α 6853, π 3893. 3896, Photius a 2640 al.

who had inappropriately enrolled himself as a citizen, however, this citation is not far off the mark when it interprets the intention of this law as one meant to enforce the divide between citizens and alien residents, and penalize any alien who transgressed this boundary by failing to register and pay the special tax that all alien residents in Athens were compelled to pay.

The references in Demosthenes and Aristotle add nothing that we could not have extrapolated ourselves from our understanding of Athenian legal procedure. Moreover, the Aristotelian passage is loosely phrased, when it refers to an *aprostasiou* case as a *dike*. Here the word δίκη means 'lawsuit' (cf. the discussion on δίκη ξενίας above), and is not used in a technical sense to indicate a private lawsuit. The same kind of loose phraseology is used in the citation of the *Lexica Segueriana*, where ἀπροστασίον is referred to as a δίκη but in the same breath it is stated that anyone could prosecute (ὁ βουλόμενος δίκην εισάγει πρὸς αὐτόν, ἥτις λέγεται ἀπροστασίον). An *aprostasiou* case was undoubtedly a *graphe*, as most of the sources suggest, because it would be in the best interests of the state to have offenders prosecuted by anyone who noticed and cared to do so. The information of the lexicographers that a metic could be prosecuted with a *graphe apostasiou* if he had failed to enlist a *prostates* could easily be an invention of the lexicographers on the basis of the etymology of the word ἀπροστασίον, and one would almost wish that this was the case, because the precise role of the *prostates* is one of the thorniest issues in the study of the Athenian metic. A prolonged debate on the 'mysterious functions of the *prostates*'⁷⁶ - to use the words of one of the foremost specialists in the field - has not yielded conclusive results, mainly due to the lack of sufficient evidence. Essentially we don't have a single scrap of evidence where a *prostates* is doing something on behalf of his protégé, while we have numerous references to metics and foreigners directly accessing the Athenian legal system⁷⁷. If anything, the available evidence suggests that the role of the *prostates* was rather a meaningless formality in the reality of the classical period, and this raises the question why, if this role was mostly figurative, it was so important for every metic to have a *prostates* or face a prosecution with dire consequences. The answer to

⁷⁶ D. WHITEHEAD in *Metic*, 96.

⁷⁷ See the informative account of D. WHITEHEAD, *Metic* 89-92.

this question probably lies not in what the prostates did but what he represented. First and foremost, having a prostates amounted to implicit acknowledgement on behalf of the metic of his non-citizen status. Then, as it is often the case with sponsors of immigrants in modern countries, the host state wanted to have a person who served as a link between itself and the immigrant. Thus, the prostates functioned as a symbol of clarity regarding the metic's status and an iconic link between Athens and the resident alien.

The issue of the *metoikion* and how it affects our understanding of the *graphe aprostasiou* is also complex, mainly because scholarly opinion is divided between those who believe that it was a symbolic tax, and those who perceive it as an issue of greater substance. We know that the *metoikion* was a fixed poll-tax of 1 drachma per month for a man, and half a drachma for an independent woman, plus a small administrative fee of three obols per annum payable to the secretary who processed the payment⁷⁸. This would be roughly equal to a day's wages for an unskilled worker, or, to draw a modern analogy, \$ 50 per month for someone who earns \$ 1000⁷⁹. That kind of money is not negligible for someone with a low income. It is another bill for the worker, and, considering that the number of metics in Attica was substantial, the annual income of the state from this tax was not negligible either. Xenophon considers the presence of metics in Attica to be good for the economy, because they pay their way, and contribute to the public treasury instead of draining it with benefit claims, like citizens do⁸⁰. D. Whitehead has calculated that c. 20 talents p.a. were collected through the *metoikion*, which would create enough of a motive for the state to enforce rigorously the collection of this tax⁸¹. So, was it all about money? In order to answer this question we may resort to another modern analogy: in our times payment of an insurance premium amounts to at least implicit recognition of a contract between the insured and the company who accepted this premium, while failure to pay the premium cancels an existing policy.

⁷⁸ Pol. 3,55: μέτοικος ὁ τὸ μετοίκιον συντελών· τοῦτο δὴ ἦν ἰβ' τῷ δημοσίῳ δραχμαὶ καὶ τῷ γραμματεῖ τριώβολον

⁷⁹ Assuming a 5 day week, someone who earns \$50 per day, would earn \$250 per week, and approximately \$ 1000 per month.

⁸⁰ X. *Vect.*: πολλὰ ὠφελοῦντες τὰς πόλεις οὐ λαμβάνουσι μισθόν, ἀλλὰ μετοίκιον προσφέρουσιν.

⁸¹ WHITEHEAD, *Metic* 75-78.

Once the premium is paid, the insurance company that might want to evade payment of a claim cannot maintain that it had no knowledge of a contract, even if the insured individual, for some reason, is unable to produce the original document. In a situation such as this, the financial dimension is central to the whole relationship between insurer and insured, however, it is not limited to the exchange of money. It acquires a wider legal significance as verification of an existing agreement, and can be produced as evidence in case of a dispute that a contract has been drawn between insurer and insured. In a similar manner the payment of the *metoikion*, was not only a financial transaction, but also a confirmation of the status of the metic. By paying the *metoikion* the alien accepted his status as such, and if any situation arose where the status of this person came under scrutiny, the payment of the *metoikion* could serve as formal proof of the metic status of this individual. As an example, let us revisit briefly the dispute over the status of Pancleon: a couple of people were claiming that he was their slave, and others were claiming that he was an alien, while himself was claiming to be a Plataian, and therefore an Athenian citizen. If one of these parties were able to go to the public records and produce proof that Pancleon had paid the *metoikion*, this would instantly have resolved the matter. It would have confirmed that Pancleon was a free person, a metic, but not Athenian. However, no one was able to produce such a record because Pancleon had not paid the *metoikion*, either legally because he was truly an Athenian citizen, or illegally because he claimed to be one. Euxitheos, in fact, uses this as an argument in defense of his citizenship, when he asks his opponent to produce proof that he, or one of his relatives, had ever paid *metoikion*⁸². Of course the argument is not a very strong one, because if Euxitheos had intended to deceive the state and present himself as a citizen, he would not have paid the alien tax in the first place. However, it is a valid argument, because once someone paid the *metoikion* in future neither himself nor his descendants could stop paying, unless they were granted ἰσοτέλεια or citizenship through a decree of the Assembly. If they stopped paying, their action could be interpreted as a clear intent to deceive the state and present themselves as citizens. Thus, the payment of the *metoikion* not only provided the state with a handsome income every year, but also

⁸² D.57,55: εἴτ' ἐγὼ ξένος; ποῦ μετοίκιον καταθείς... ἢ τίς τῶν ἐμῶν πόποτε;

provided the resident aliens of Attica with clear and active proof of their status, and the state with a mechanism of keeping tracks on the aliens living within its borders.

Both the *prostates* and the *metoikion* served a wider purpose: they represented implicit recognition of a contract between the alien and the Athenian state. By taking a *prostates*, registering and paying the *metoikion*, the alien declared his wish to become a resident in Attica, formally accepted his status as a metic, and consented to all the obligations that came with this status. On the other hand, the Athenian state by enrolling the alien and receiving the *metoikion* demonstrated its acceptance of that person and his family, if he had one, as residents in Attica, and undertook to confer upon them the rights and protection afforded to free people by Athenian law. Now, if the alien failed to comply with those basic requirements, he exposed himself to a *γραφὴ ἀπροστασίου*, with the severe consequences of enslavement and confiscation of his property if convicted. Considering that the punitive process was not automatic but dependent upon the wish of someone to prosecute the elusive alien at considerable risk to himself (since this was a *graphe* and failure to carry 1/5 of the jury could result in a huge fine), it is not inconceivable that some aliens lived in Athens for a long time without registering and some even remained undetected and pretended to be citizens. However, since, by comparison to the risk of being prosecuted by an enemy at any time with severe consequences, what the law required was rather minimal, most aliens probably complied. The fact that we only have evidence of one case of *aprostasiou* ever coming to court, and this brought against a woman (who would probably have found it easier to elude the processes of the law, since women were not included in the lists of the demes or any other formal register), probably means that the Athenian state was successful in keeping order with the numerous immigrants to whom it offered a home in the classical period. This was achieved through a combination of minimal requirements and severe deterrents for non-compliance. The *graphe aprostasiou* functioned as an effective deterrent, and its impending threat compelled the metics of Attica to formally register and keep up with their obligations towards the host city, if they wished to continue to benefit from the opportunities and relative safety that it offered without fear of prosecution

Conclusions

A prosecution for *xenia* would be a stressful and troublesome affair not only for the accused but also for his entire family, as they were directly affected by the outcome of this lawsuit. In the event of conviction, if the man had sons, they would be disqualified from citizenship themselves, while his daughters would no longer be eligible for marriage to Athenian citizens (D.59,52). If he had brothers or sisters, their status could also be questioned and potentially come under attack. After the 380's, the convicted man's wife would be obliged to divorce him under the law quoted in the speech *Against Neaira* (D.59,16), which forbade Athenians to live in lawful marriage with aliens, while himself and his property would be sold. And while a supportive wider family might buy him back and give him his freedom, his whole life would be shattered to such an extent that rebuilding would be very difficult. The modern interpreter of Athenian law can diagnose in such perils a determined desire on behalf of the Athenian state to keep the citizen stock clear from unauthorized intrusions. It is not always easy for us to understand this deeply embedded obsession of the Athenian state with legitimacy of birth and citizen descent, not least because in some ways it appears to be contradictory. On the one hand, Athenians were not even allowed to marry non-Athenians for a large part of the classical period, but on the other hand many citizens lived with aliens in committed relationships and had children from foreign women, with Pericles, ironically the instigator of the first seriously restrictive citizenship law in Athenian history, being one of them. Moreover, xenophobia or racism in the modern sense do not appear to be significant factors in the equation, and while Athens is an open place which allows large immigrant populations from every corner of the earth within its borders, still the divide between '*us and them*' is evident and rigorously enforced. Then, we cannot fail to notice how Athenian naturalization procedures were abused within the spirit of political expediency in the 4th century, with rich or powerful aliens, like Dionysios I or Kotys, being given Athenian citizenship even though they did not live in Attica, nor intended to do so, while, as M.J. Osborne has observed (see n. 12), the numerous resident aliens of Attica could not hope to obtain citizenship unless, like Pasion or Phormion, were essentially in the position to buy their way into it. These contradictions merit further study in their own right, but

whatever the reasons behind them, the underlying philosophy of Athenian citizenship and immigration laws is clear: Athens intended to enforce simultaneously an open immigration policy, but an exclusive citizenship policy, and rigorously guard the dividing line. An open immigration policy was viewed as good for the economy, the arts and the cultural life of the city, so long as Athens profited from the additional taxes and skills of the imported populations. An exclusive citizenship policy, at the same time, is also represented in the sources as economically sound, because the state did not need to support the resident alien populations with benefits and largesses. But, of course, it goes beyond bare economics: one can say without much hesitation that this exclusive citizenship policy is a clear reflection of Athenian pride, if we interpret it as a self-conscious recognition by the citizens of Athens of their prominent position in the Greek world, or Athenian chauvinism, if we interpret it as a demonstration of that spirit of superiority which caused so much resentment among the allies of the city in the years of the Athenian empire. This underlying philosophy of an open immigration policy and simultaneously an exclusive citizenship policy is behind every single law ever introduced in classical Athens in order to deal with these issues. The *graphe xenias* and the *graphe apostasiou* were never intended to police the borders of Attica, but only to guard the divide between citizens and non-citizens. The laws related to marriage between citizens and non-citizens were not intended to stop Athenians from creating families with non-Athenians, but to draw a clear line between Athenian and non-Athenian families. Additional procedures, such as the *diamartyria* and the *paragraphe*, intended to safeguard the correct judicial processes in cases of citizenship or immigration disputes, were, again, designed to clarify the citizen status of persons involved in legal proceedings before any other legal process could unravel. These laws, exactly by demonstrating openness towards aliens on the one hand, and a firm determination to exclude outsiders from citizenship on the other, in reality elevated Athenian citizenship into a precious commodity, a gift which, if one did not possess by birth, could only obtain by two successive ballots of the Assembly with great trouble and expense (D.59,13: μετὰ πολλῶν ἀναλωμάτων καὶ πραγματείας). And precisely this is what made those who had it by

birth to be very proud of it, and sometimes feel superior towards those who did not have it.

The fact that, although there had been prosecutions, the sources do not actually mention a single person who was definitely convicted for *xenia* or *aprostasion* can only mean two things: first, that these procedures were primarily designed to serve as deterrents and safeguards, and second, that as such they probably were very effective. It is my contention that the success of the Athenian system in tackling citizenship and immigration violations rests precisely upon this rather contradictory nature of its core philosophy. This twofold approach of 'carrot' in order to attract skilled labor to enhance the creativity and productivity of the Athenian economy, and 'stick' in order to keep Athenian citizenship the exclusive privilege of those born into it or those who earned it, was conducive for creating a vibrant city inhabited by many different peoples and groups, and yet allowing each group to maintain its character in this diversity. Illegal immigrants jump over the border when walls are built to keep them out. However, if there were no walls, and they could freely move in, settle, exercise a trade and enjoy all the advantages of living in a flourishing city contributing to its economy and benefiting themselves from that, then the restrictions from full citizenship and voting rights probably would seem less important in their daily lives. The immigrant populations of Attica accepted their inferior position compared with Athenian citizens, because that 'inferior position' was only burdened with comparatively minimal additional obligations, while at the same time offered opportunities which they might not have in their native lands. The only matter upon which the Athenian state insisted was not to try to enter the citizen body from the back door, and this requirement would not seem unreasonable to the many aliens who made a good living in Attica.