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LEGAL EXPERTISE AND LEGAL EXPERTS IN ATHENIAN DEMOCRACY

SOMETIME IN THE 340S BC, Theomnestus, an Athenian citizen, brought a charge against a woman named Neaera for living with an Athenian citizen named Stephanus as his legally wedded wife even though she was not a citizen (Dem. 59.14). His motive was partly to take revenge on Stephanus for convicting his brother-in-law Apollodorus for passing an illegal decree around 349 (Dem. 59.1–14). In his speech delivered at the trial of Neaera, Theomnestus explains the background to the case and asks the court to allow Apollodorus to present the case as his *synegoros*, or supporting speaker. He gives two reasons for his choice, but the first is the one that interests us. Theomnestus requests that ‘I therefore ask you, judges, to grant me something that I think it right for a person who is young and inexperienced in public speaking to request, namely, that you allow me to call on Apollodorus to support me at this trial. For he is older than I am and has more experience with the laws. In fact, he has studied them in some detail (*akribos*)’ (Dem. 59.15).

The statement of Theomnestus is confirmed by what we know about the political career of Apollodorus, who was involved in litigation concerning his father’s bank and brought several public cases against prominent Athenians.¹ He was a defendant in a case brought by Calippus about

¹ On the cases brought by Apollodorus, see E. M. HARRIS, *The Rule of Law in Action in*

a deposit left in the bank (Dem. 52), sued the general Timotheus for money owed to the bank (Dem. 49), and charged Phormio with embezzling money from the bank (Dem. 36). When he lost his case against Phormio, he brought a private case for false witness against Stephanus (Dem. 45, 46). He also prosecuted the generals Timomachus, Callippus, Menon, Autocles, and Timotheus (Dem. 36.53) and brought a case against the trierarch Polycles for money owed to him for expenses (Dem. 50). He clearly knew the laws and had much experience in court.²

What is striking in this passage is that Theomnestus views expertise and experience in the law as a positive quality, one that justifies his selection of Apollodorus as his supporting speaker.³ And Theomnestus clearly expects the judges to share his attitude. If the Athenians were suspicious of legal expertise, Theomnestus would certainly have not stressed this point before the judges. Despite this evidence and, as we will soon see, much more evidence in other sources, several scholars have claimed that the Athenians were hostile to legal expertise and were suspicious of those who had detailed knowledge of the laws. In his *Greek Popular Morality* Kenneth Dover claims: 'knowledge of the law could itself be suspect'.⁴ Matthew R. Christ makes a similar claim in his *The Litigious Athenian* and argues that Athenian courts did not pay close attention to the letter of

Democratic Athens, Oxford 2013, pp. 87–93. On the career of Apollodorus, see J. TREVETT, *Apollodorus the Son of Passion*, Oxford 1992.

² M. R. CHRIST, *The Litigious Athenian*, Baltimore 1998, p. 206, thinks that the words of Theomnestus play down the 'considerable legal experience' of Apollodorus: 'First, Theomnestus says only that Apollodorus is more experienced with the laws than he, not that Apollodorus is in an absolute sense knowledgeable concerning them. Second, Theomnestus suggests that Apollodorus' experience is not the result of frequent litigation, but a natural consequence of his greater age'. Neither of these points makes any sense. Theomnestus speaks in comparative terms because he is justifying why Apollodorus and not himself is presenting the case and is comparing their levels of knowledge. Second, there is no reason to think that Theomnestus is not referring to Apollodorus' experience in court when he uses the term 'experienced'. Where else would Apollodorus gain this experience? Reading laws in the library?

³ This is not the place to discuss whether the supporting speaker (*synegoros*) was the ancient equivalent of the modern advocate. On this topic see L. RUBINSTEIN, *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens*, Stuttgart 2000.

⁴ K. J. DOVER, *Greek Popular Morality in the Time of Plato and Aristotle*, Oxford 1974, p. 198.

the law but judged cases according to their vague notions of justice.⁵ In an essay on Lysias' speech *Against Nikomachos*, Steven Todd asserts that the defendant was vulnerable because he was a legal expert and 'Athenians dislike experts'.⁶ For this reason 'the threat that he faced was a serious one. His would have been the fate both of the "expert" in Athenian law, and more specifically of the "expert in Athenian law"'. Todd's views have been endorsed by Michael Gagarin⁷ and by Paulin Ismard in his recent book *La démocratie contre les experts*.⁸ These assumptions have had a major influence on some recent studies of Athenian law, which claim that the Athenian legal system was run by amateurs, that the Athenians did not value consistency in their laws, that Athenian litigation resembled feuding, that Athenians courts did not attempt to determine if a defendant had violated a particular law but made a general evaluation of his character and reputation, and that the Athenians paid little attention to the precise wording of statutes.⁹

First, I will show first that the Athenians had respect for those with legal expertise. I will examine the two institutions whose members had considerable expertise, the Areopagus and the Exegetae, the legal and religious expert Phanodemus, and the men elected as *synegoroi* to defend

⁵ CHRIST, *The Litigious Athenian* (cit. n. 2), pp. 193–224. On this book, see my review in *Classical Review* 50/2 (2000), pp. 499–501.

⁶ S. C. TODD, 'Lysias *Against Nikomachos*: The fate of the expert in Athenian Law', [in:] L. FOXHALL & A. D. E. LEWIS (eds.), *Greek Law in its Political Setting: Justifications, Not Justice*, Oxford 2000, pp. 101–131, at 131.

⁷ M. GAGARIN, *Writing Greek Law*, Cambridge 2008, p. 207.

⁸ P. ISMARD, *La démocratie contre les experts: les esclaves publics en Grèce ancienne*, Paris 2015, pp. 144–147. This book has now been translated into English: P. ISMARD, *Democracy's Slaves: A Political History of Ancient Greece*, Cambridge 2017. For trenchant reviews of the French version, see C. PÉBARTHE in *Revue des études anciennes* 117 (2015), pp. 241–247; D. M. LEWIS in *Classical Review* 66 (2016), pp. 476–478; M. H. HANSEN, 'A note on Paulin Ismard's *Democracy's Slaves*', *Polis* 36 (2019), pp. 337–345.

⁹ For these views, see for instance D. COHEN, *Law, Violence and Community in Classical Athens*, Cambridge 1995; A. LANNI, *Law and Justice in the Courts of Classical Athens*, Cambridge 2006; IDEM, *Law and Order in Ancient Athens*, Cambridge 2016. On the view that Athenian litigation was a form of feuding, see the detailed refutation in HARRIS, *The Rule of Law* (cit. n. 1), pp. 60–98. On the two books of Lanni, see my reviews in *Dike* 12–13 (2009–2010), pp. 323–331, and *Journal of Hellenic Studies* 138 (2018), pp. 270–272.

the law of Leptines in 354/3. The Athenians chose men who had experience in court and in the Assembly and did not select amateurs. Second, accusers in public cases often display detailed knowledge of the community's laws and use this as a way of gaining credibility, and defendants in public cases might also make extensive use of laws and decrees. Third, when litigants criticize their opponents, they never fault them for knowing the laws, but for twisting the laws, for bringing false charges or for being litigious and refusing to settle out of court. Fourth, in Lysias' speech *Against Nicomachus* the defendant Nicomachus is not a legal expert contrary to what Todd claims, and the accuser does not attack him or attempt to arouse suspicions about his conduct because of any special expertise. Instead he charges him with failing to perform his official duties and for overstepping the bounds of his remit.

Before examining attitudes toward legal expertise in particular, however, it is important to keep in mind that there is no reason to think that the Athenians were hostile to experts in general. Perhaps the best evidence for trust in experts is found in Plato's *Protagoras* (319a–c). In the dialogue Socrates reminds the famous sophist that when the Athenians meet in the Assembly and are discussing the construction of a building, they send for the builders, that is, those who have knowledge and training in this skill. When they are discussing the construction of ships, they send for the shipwrights, and so on for other skills. But when someone who the Athenians do not think is a specialist (*demiourgos*) tries to speak on one of these topics, even if he is good-looking, wealthy and well born, they shout him down until he goes away or until the *prytaneis* instruct the archers to remove him. There is evidence to confirm this from inscriptions, which record the Assembly consulting architects on a regular basis (*IG I*³ 32, l. 25; 50, l. 6; 52, l. 9; 64, ll. 12 and 18; 130, l. 10; 132, ll. 4 and 7; *IG II*² 244, l. 6). In *Gorgias* (455b–c), Socrates observes that 'When the city holds a meeting to appoint doctors or shipbuilders or any other set of craftsmen, there is no question then, is there, of the rhetorician giving advice? And clearly this is because in each appointment we have to elect the most skillful person. Again, in a case of building walls or constructing harbours or arsenals, our only advisers are the master-builders; or in consulting on the appointment of generals, or on a manoeuvre against the enemy, or on a military

occupation, it is the general staff who will then advise us, and not the rhetoricians' (tr. W. R. M. Lamb). Because the Athenians were not hostile to expertise in architecture, medicine and warfare, there is no reason to believe that they were hostile to expertise in law.

First topic. The best evidence for attitudes about legal expertise is arguably the respect shown to the Areopagus. The members of the Areopagus were men who had served as archons. Before entering the Areopagus therefore they acquired a full year of experience receiving legal charges from litigants and introducing cases to court. They were a select group and drawn from the top three property classes (Arist. *Ath.* 26.2). Though they were selected by lot, a democratic feature, they had to undergo a double *dokimasia*, or examination of their qualifications, before becoming archons (Dem. 20.90; Arist. *Ath.* 55.2–5).¹⁰ After their year of service as archons, they underwent their *euthynai* or examination of conduct in office (Aeschin. 3.14–31; Arist. *Ath.* 54.2). They then underwent a second *dokimasia* before entering the Areopagus (Xen. *Mem.* 3.5.20). The members of the Areopagus served for life and therefore acquired more expertise than other officials who only served for a year. Because of their expertise, the Areopagus was often consulted by the Assembly. When the politician Aeschines was elected to serve as ambassador to the Amphictyons in a dispute about Delos, the Assembly invited the Areopagus to review the appointment (Dem. 18.139).¹¹ The Areopagus decided to reject Aeschines and replaced him with Hyperides, a decision that the Assembly did not rescind. When Demosthenes and others were accused of accepting bribes from Harpalus, the treasurer of Alexander the Great who absconded with the king's funds, the Assembly instructed the Areopagus to investigate (D. S. 17.108.7–8; Hyp. *Dem.* 2; Din. 1.61). The Areopagus took several months to investigate (Din. 1.45), then delivered a report indicating the names of those who had taken money from Harpalus and the amounts (Hyp. *Dem.* 5–6). These men were then tried and convicted on the basis of

¹⁰ On the *dokimasia*, see C. FEYEL, *Dokimasia: la place et le rôle de l'examen préliminaire dans les institutions des cités grecques*, Nancy 2009.

¹¹ For the date of this decision, see E. M. HARRIS, *Aeschines and Athenian Politics*, Oxford 1995, pp. 169–170.

the Areopagus' report, a good indication of the trust enjoyed by its members. The Areopagus also had the power to investigate the conduct of officials and to impose fines up to a certain amount (Dem. 59.80). They were also entrusted with deciding the most important cases, charges of intentional homicide, for which the penalty was either death or permanent exile with the confiscation of property (Dem. 23.22–24; Arist. *Ath.* 57.3).

Because of their expertise, the members of the Areopagus were the most respected institution in Athenian democracy.¹² According to Diodorus (1.75.3), 'Consequently by appointing the best men from the most famous cities as judges over the entire land the Egyptians did not fall short of their goal. From Heliopolis and Thebes and Memphis they used to choose ten judges from each, and this court was considered to fall in no way below the standard set by the Areopagites in Athens and the Elders among the Spartans'. Xenophon (*Mem.* 3.5.20) recounts a conversation between Socrates and Pericles. Socrates says, 'The Council of the Areopagus is made up of men who have passed their examination of qualifications?'. 'Certainly', Pericles agrees. 'Do you know any people who judge cases or do everything else better or with more attention to the law or more augustly or more justly than they?'. 'I have no criticism to make about them', Pericles replies. Speaking before an Athenian court, Lycurgus (*Leoc.* 12) states: 'You have in front of you the splendid example of the Areopagus. This court is so superior to all other courts that even the men convicted by it agree that its verdicts are just'. At a trial in 346 BC, the politician Aeschines invites the court to: 'Take as an example the Council of the Areopagus, the most scrupulous body in the city. I have seen many people who have spoken very well and presented witnesses being convicted in this council. And I have seen many who have spoken poorly

¹² There is no reason to believe that the Areopagus enjoyed greater powers in the period from 480 to 462 BC, which were taken away by a reform of Ephialtes. The traditions about Ephialtes are all late, contradictory and unreliable: see M. ZACCHARINI, 'The fate of the lawgiver: the invention of the reforms of Ephialtes and the *Patris Politeia*', *Historia* 67/4 (2018), pp. 495–512. The account about the ascendancy of the Areopagus in the Aristotelian *Constitution of the Athenians* 23–26 is contradicted by contemporary sources and is also not reliable: see E. M. HARRIS, 'Aeschylus' *Eumenides*, the role of the Areopagus and political discourse in Attic tragedy', [in:] A. MARKANTONATOS & E. VOLONAKI (eds.), *Poet and Orator: A Symbiotic Relationship in Democratic Athens*, Berlin – Boston 2019, pp. 389–419.

and without witnesses for their case winning a verdict. (...) For this reason this body continues to enjoy a good reputation in our city'. At a trial in 330 BC, Aeschines reminds the judges: 'First, the law provides that the Council of the Areopagus present its accounts to the Accountants and undergo an examination of its conduct, even this solemn court there with power over very important matters is subject to your vote. Will the Council of the Areopagus not receive a crown? No, tradition does not allow it for them. Are they not concerned for their reputation? They certainly are, but they are not content merely with avoiding injustice, but also punish their members if anyone of them does wrong'. This passage is important because it shows that one of the reasons why the Areopagus was trusted was its internal discipline (cf. Din. 1.55–56). Lysias (12.68) recalls how the Areopagus resisted when Theramenes attempted to surrender the city to the Spartans. According to Lysias (26.11–12), Demosthenes (20.157) and Dinarchus (1.6), the Areopagus tries the most important matters.¹³ The legal expertise of the Areopagus made its members the most respected judges in Athens.

Another group that enjoyed prestige because of its legal expertise were the Eumolpidae who served as the *exegetai*.¹⁴ The Eumolpidae were a *genos* whose members inherited their position and held it for life. They were responsible for conducting initiations for the Mysteries (*IG* I³ 6 C, ll. 20–31). They also had the right to explicate traditions about the Eleusinian Mysteries (Andoc. 1.115–116. Cf. *IG* I³ 78, ll. 36–37). Individuals might consult them about points of law and religious practice and use their advice as evidence in court. When a freedwoman who was living with a trierarch who was her former master died as a result mistreatment at the hands of his opponents, Evergus and Theophemus, the trierarch consulted the Exegetae to find out if he should bring an action for homicide against the two men (Dem. 47.68–72). They advised him to purify the house and to make a solemn declaration at her tomb but not to bring an action against

¹³ Pace LANNI, *Law and Justice* (cit. n. 9), pp. 75–113, there is no reason to believe that the Areopagus had a stricter standard of relevance than the regular courts. See my review (cit. n. 9), pp. 327–328.

¹⁴ On the Eumolpidae, see R. PARKER, *Athenian Religion: A History*, Oxford 1996, pp. 293–297.

the men because the freedwoman was neither his relative nor his slave. If he were to bring an action, he would have to declare that he was and this would lead to an accusation for perjury. The trierarch also consulted friends and read the actual statute on the stela. What is interesting is that the trierarch recounts the detailed response of the Exegetae to his question. He obviously thought that the advice of these experts would command the respect of the judges.

Another expert in religious law who was both trusted and praised was Phanodemus, the son of Diyllus, from the deme of Thymaitadae.¹⁵ Phanodemus was born at the latest in 373 BC because he was a member of the Council in 343/2 BC and must have been at least thirty years old in that year. Because he appears to have been a seasoned politician by then, he may have been born around a decade earlier. Phanodemus was the author of an *Atthis*, one of the local histories of Athens, which discussed legends and traditional rituals. Thirty fragments of his work have been preserved and reveal his expertise. In Book 6 of his *Atthis* he records that the Athenians are the only Greeks to sacrifice and pray for children to the Tritopatores when they are about to get married (BNJ 325 F 6 = Harpocration s.v. *tritopatores*). In Book 4 he gives the origin of the obscure shrine of Artemis Colaenis (scholia to Aristophanes *Av.* 373 = BNJ 323 F 3). In Book 9 he discusses the shrine of the Leocoreium, where the daughters of Leus sacrificed themselves for the city (BNJ 325 F 8 = Harpocration s.v. *Leokoreion*) and in Book 5 tells the story of the daughters of Erechtheus, who were called the Hyacinthides because they were sacrificed on a hill called Hyacinthus (Phot. π668 = BNJ 325 F 4). He also describes the origin and nature of the festival of Pitchers (*Choes*) (Ath. 10.49.437C–D = BNJ 325 F 11), the ritual of ‘opening the jars’ (*pithoigia*) (Ath. 11.13.465a = BNJ 325 F 12) and the festival of the Chalceia (Harpocration s.v. *Chalkeia* = BNJ 18). Phanodemus was also interested in legal institutions. In one fragment he says that in ancient times the Areopagites used to summon and punish

¹⁵ On Phanodemus, see P. BRUN, ‘Faire de l’histoire avec des inscriptions: la carrière politique de l’Athénien Phanodemos’, *Ktema* 38 (2013), pp. 205–214; R. THOMAS, *Polis Histories, Collective Memories and the Greek World*, Oxford 2019, pp. 330–340. For a new honorary decree about Phanodemus, see B. N. Μπαρδάνη & A. Π. Ματθαίου, ‘Τιμαὶ Φανοδήμου Διύλλου Θυμμαιτάδου’, *HOPOΣ* 22–25 (2010–2013), pp. 79–84.

spendthrifts and those unable to live from their property (Ath. 4.65.168a = *BNJ* 325 F 10). In another he discusses the foundation of the court at the Palladion for involuntary homicide (*BNJ* 325 F 16). Finally, he recounted events from Athenian history such as the battle of Eurymedon (Plut. *Cim.* 12.6 = *BNJ* 325), the battle of Salamis (Plut. *Them.* 13.1 = *BNJ* 325 F 24) and the death of the general Cimon (Plut. *Cim.* 19.1–2 = *BNJ* 325 F 23). He was clearly very learned.

His expertise was certainly no disadvantage for him in the Council and Assembly. A decree dated to 343/2 records a motion by Deinostratus to praise Phanodemus who had won a prize for offering ‘the best advice and the best service for the Council and the Athenian people without accepting any gifts throughout the year’ (*IG* II³ 306, ll. 4–16 = *IG* II² 223 = *Syll.*³ 227). The Assembly then awarded him a gold crown to be given to him after he rendered his accounts after his term of office.¹⁶ In a decree dated to 332/1 Phanodemus is praised because he has ‘has legislated well and with love of honour about the sanctuary of Amphiaraus, so that both the quadrennial festival may be as fine as possible, and the other sacrifices to the gods in the sanctuary of Amphiaraus, and he has supplied means for these things and for the fitting out of the sanctuary’ (tr. S. D. Lambert; *IG* II³/I 348). The phrase ‘has legislated well’ must mean that he proposed a law about the shrine of Amphiaraus, which was then submitted to the regular procedure of legislation (*nomothesia*) with approval by the Assembly and *nomothetai* (legislators), who are probably to be identified as a special session of the Assembly convened for approving laws.¹⁷ He clearly used his religious and legal expertise to draft a detailed set of regulations for the

¹⁶ For analysis of the inscription see E. M. HARRIS, ‘Applying the law about the award of crowns to magistrates (Aeschin. 3.9–31): Epigraphic evidence for the legal arguments at the trial of Ctesiphon’, *Zeitschrift für Papyrologie und Epigraphik* 202 (2017), pp. 105–117, at 106–108, with the literature cited there.

¹⁷ On the procedure of *nomothesia* M. CANEVARO, ‘*Nomothesia* in classical Athens: What sources should we believe?’, *Classical Quarterly* 63/1 (2013), pp. 1–26, supersedes all previous work. M. H. Hansen, ‘The authenticity of the law about *nomothesia* inserted in Demosthenes *Against Timocrates* 20–23’, *Greek, Roman and Byzantine Studies* 56 (2016), pp. 438–474, has challenged some of Canevaro’s analysis, but his arguments are not convincing. See M. CANEVARO, ‘The authenticity of the document at Dem. 24.20–3, the procedures of *nomothesia* and the so-called ἐπιχειροτονία τῶν νόμων’, *Klio* 100/1 (2018), pp. 70–124.

festival and was rewarded for it. In the same year he proposed a decree to crown Amphiaraus and to announce the award in the Assembly (*IG* II³/I 349 = *IG* VII 4252). In 329/8 BC he was elected by the Assembly to superintend the games and the procession for the festival of Amphiaraus and was praised for his service (*IG* II³ 353 = *IG* VII 4254). The position was clearly an important one because among Phanodemus' colleagues were Lycurgus, the son of Lycophron, and Demades the son of Demeas, two of the leading politicians in Athens at the time (ll. 20–24). Around 330–324 BC he was elected one of the *hieropoioi* to lead the Pythais to Delphi and again had among his colleagues Lycurgus and Demades (*SIG*³ 296). His expertise in law and religion clearly did not count against him.

A passage that scholars do not take into account when discussing legal expertise is found in Demosthenes' speech *Against Leptines* (146–149). When someone brought a public charge against a law on the grounds that it was not *epitedeios*, that is, not suitable for the Athenian legal system, the Assembly elected five *synegoroi* to defend the law.¹⁸ This procedure appears to have rarely used, but that is because there were fewer laws enacted than decrees. In the case Apsephion brought against Leptines' law, Demosthenes (20.146–149) gives the names of four of the men elected: Leodamas of Acharnae, Aristophon of Azenia, Cephisodotus of Kerameis, and Deinias of Erchia. Presumably the fifth was Leptines, the author of the law. Instead of electing men who had no experience in trying cases or in the business of the Assembly, the Athenians chose men known to have been active in the courts.

According to [Plut.] *Mor.* 837d, Leodamas was a student of Isocrates. He served on an embassy to Thebes before 330 (Aeschin. 3.138), possibly the one that preceded the peace with Sparta in 371 (Xen. *Hell.* 6.3.2). Aeschines (1.68–79, 111) says that he was associated with the politicians Timarchus and Hegesander. As Demosthenes (20.146) says, he has brought a charge of proposing an illegal decree against honors for Chabrias (Arist. *Rh.* 1364a).

¹⁸ On the charge against inexpedient laws and the procedure, see M. CANEVARO, *Demostene 'Contro Leptine': Introduzione, traduzione et commento storico*, Berlin – Boston 2016, which refutes in detail M. H. HANSEN, 'Athenian *Nomothesia* in the fourth century B.C. and Demosthenes' Speech *Against Leptines*', *Classica et Mediaevalia* 32 (1979–1980), pp. 87–104.

Aristophon was also active in the Assembly and courts.¹⁹ Aeschines (3.194) says that he was accused of proposing illegal decrees seventy-five times but was acquitted each time, which reveals that he not only had expertise in writing decrees but also in defending them in court against charges that they violated the laws. After the restoration of the democracy in 403/2 he reintroduced Pericles' law on citizenship (Ath. 13.577b–c) and the tax on foreigners working in the *agora* (Dem. 57.32). He also prosecuted several generals and politicians, including the famous generals Timotheus (Isoc. 15.12; Din. 1.14, 3.17) and Iphicrates (Isoc. 15.129). There is evidence for nine decrees enacted by Aristophon.²⁰ Cephisodotus had served as an ambassador to Sparta (Xen. *Hell.* 6.3.2) and was the author of at least one decree (Xen. *Hell.* 7.1.14). He also prosecuted Chares about his conduct during the campaign for Olynthus (Arist. *Rb.* 1411a). Less is known about Deinias, but he may have acted as a supporting speaker in court (Din. fr. 9 [Conomis]). He also performed several liturgies.²¹ Note that at the end of his discussion of these speakers, Demosthenes (20.152) states that they had acted as *synegoroi* many times. These were not amateurs who had no knowledge of law, but men with considerable experience and no doubt expertise. When electing men to defend a law, the Athenians clearly preferred those who knew the laws. Note also that when he criticizes these men, he never does so for their knowledge of the law. What he attacks is their inconsistency.

Second, in public cases, accusers are not afraid to display their detailed knowledge of the law. In *Against Ctesiphon*, Aeschines cites several laws in six places to prove that the defendant has proposed an illegal decree by claiming that Demosthenes deserves a crown for his public service (Aeschin. 3.15, 22, 30, 32, 39, 47). Christ has argued that Aeschines lost his case because of his legal expertise, but this is implausible.²² A careful examination of his legal arguments shows that he interprets two key laws in new and unusual

¹⁹ On his career, see CANEVARO, *Demostene 'Contro Leptine'* (cit. n. 18), pp. 34–35.

²⁰ IG II² 111; IG II² 130; Dem. 50.4–8; IG II² 118; IG II² 121; IG II² 130; Dem. 24.11; Dem. 18.70; Dem. 18.75; IG II² 224.

²¹ See CANEVARO, *Demostene 'Contro Leptine'* (cit. n. 18), p. 36 n. 126.

²² CHRIST, *The Litigious Athenian* (cit. n. 2), pp. 207–208. One might add that in all the court decisions reported by litigants in forensic speeches not one ever states the someone lost a case because he showed too much knowledge of the laws. See E. M. HARRIS,

ways.²³ By contrast, Demosthenes (18.11–25) has no trouble in demonstrating that Ctesiphon had in fact followed the standard way of applying both of the laws on which Aeschines relies and provides many precedents for Ctesiphon's interpretation of these laws. Christ's view is further undermined by the speech *Against Timarchus*, in which Aeschines cites not only the law under which he brought his charges against the defendant, the statute about the *dokimasia* of speakers in the Assembly (28–32), but also many other laws, which support his general case (11 [several laws], 15 [law on *hybris*], 20 [law about prostitution], 34 [law on speaking in Assembly]). This is about the same number of laws cited as in *Against Ctesiphon*. This display of legal knowledge did not hurt Aeschines in this case because we know that Timarchus was in fact convicted (Dem. 19.2, 257, 284–285, 287).

Detailed knowledge of the law was also not a disadvantage for Demosthenes when he spoke in support of Apsephion, who had brought a public charge for enacting an inexpedient law against Leptines. In this speech Demosthenes either quotes or paraphrases sixteen laws.²⁴ It certainly did not hurt his case because the court voted in his favor. In *Against Meidias* Demosthenes cites eleven laws.²⁵ In *Against Aristocrates* he cites nineteen and in *Against Timocrates* seventeen.²⁶ In *Against Neaira* Apollodorus cites sixteen laws.²⁷ In general, accusers in public cases tend to cite laws more frequently than in private cases. The reason for this appears to have been that when bringing a charge in a public case in which the community's

'The Athenian view of an Athenian trial', [in:] C. CAREY, I. GIANNADAKI, & B. GRIFFITH-WILLIAMS (eds.), *The Use and Abuse of Law in the Athenian Courts*, Leiden 2018, pp. 42–74.

²³ On the legal arguments in the speeches, see HARRIS, *The Rule of Law* (cit. n. 1), pp. 225–233, and IDEM, 'Applying the law about the award of crowns' (cit. n. 16).

²⁴ Dem. 20.8, 9, 18 and 27–28, 89 and 93, 94, 96, 100 and 135, 102, 104, 147, 152, 155, 157–158, 159, 167.

²⁵ Dem. 21.9 (law about *proboule*), 10–11 (law about festivals), 43 (two laws), 44 (two laws), 45–46, 48 (law on *hybris*), 56–57 (law about issuing summons to dancers), 93–94 (law about arbitrators), 107, 113 (law about gifts), 175 (law about *probolai*).

²⁶ Dem. 23.24, 31, 33, 37–43, 44–49, 51, 53–61, 62, 67–68, 69 (two laws), 72, 76, 77–78, 80, 82–83, 86, 87, 92; Dem. 24.17–19 and 24–25 (law on legislation), 18, 29, 30, 32–34, 40, 46, 52, 55, 56–57, 59, 64, 65, 83, 113, 114, 212.

²⁷ Dem. 59.4, 17, 26–27 (two laws), 40, 52 (two laws), 66, 67, 75, 85–87, 89–90 (three laws), 92, 113.

interest was at stake, the accuser was expected to show his knowledge of the city's laws as a way of establishing his credentials as civic-minded Athenian who could be trusted to protect the public interest. Yet some defendants also cite many laws. For instance, in *On the Mysteries* Andocides cites or paraphrases eight laws and decrees and in some cases provides detailed paraphrases of their contents (Andoc. 1.74–76, 80 [decree of Patrocleides], 81–82 [decree about the *dokimasia* of the laws], 85–88 [five laws enacted after the restoration of the democracy], decree about killing tyrants [95–96, 99]). His knowledge of the law apparently did not have an adverse effect on the judges who heard the case because he was acquitted.

In fact, litigants might fault an opponent for not knowing the law. In *Against Leptines*, Demosthenes (20.102–103) alleges that the defendant does not know the laws of Solon. ‘This man has not read the laws of Solon or does not understand them. Solon established a law granting the right to give one’s property to whomever one wishes, provided that one has no legitimate children. His aim was not to deprive the closest relative of the right to inherit but to encourage people to compete in doing good for each other by making this benefit available to all. Your proposal is the very opposite, to take away the people’s right to give away its own property to anyone. How is anyone going to say that you have either read or understood the laws of Solon?’ (tr. E. M. Harris).

By contrast, litigants in private cases tend to cite laws far less frequently, but this is because the role of the plaintiff in a private case was in a different position: he was defending his own interests and did not claim to be acting on behalf of the entire community. As a result, it was sufficient for him to cite only the laws directly relevant to his case. But if there were complex legal issues involved in private cases, litigants were not reluctant to reveal their knowledge of several statutes. The best known example is the speech Hyperides wrote for Epicrates to deliver against Athenogenes, in which Epicrates provides detailed analyses of several laws and makes several sophisticated arguments from analogy (Hyp. *Ath.* 13, 14, 15, 16, 17, 22, 29 and 33).²⁸ In the speech *Against Theomnestus* delivered in a private

²⁸ On the legal arguments in this speech, see HARRIS, *The Rule of Law* (cit. n. 1), pp. 198–205.

case for slander, the speaker cites several Archaic laws to show how they often contain words that have fallen out of daily use (Lys. 10.6–14, 16, 17, 18, 19 [two laws]). The number of laws cited by speakers would of course vary depending on the nature of the case, but one cannot assert that there was any general reluctance to reveal one's knowledge of legislation. In fact, Aeschines (1.39) states that when a young man became a citizen, he was expected to know the laws of Athens, which implies that to be ignorant of the community's laws was a failure to perform the duties of citizenship.

Third, when litigants criticize opponents, they do not criticize them for knowing the law or for having a detailed knowledge of the law, but for twisting the law, for deceiving the judges or for being overly litigious. For instance, Demosthenes (18.111) in his defense of Ctesiphon ridicules Aeschines for presenting arguments that confuse the legal issues. He does not dismiss these arguments as technicalities that are not worthy of the court's attention, but presents his own analysis of the relevant laws and their interpretation, which is based on an extensive knowledge of legal precedents.²⁹

In *Against Timarchus*, Aeschines (1.170–176) attacks Demosthenes not for his knowledge of the laws, but for being a sophist, who uses his oratory to distract the judges from the legal issues (τεχνίτου λόγων). In these cases, the speakers object to the misuse of the law and legal procedures, not to any special expertise in the law. What is regarded with suspicion is expertise in rhetoric, not knowledge of the law. When Androcles criticizes his opponent Lacritus in a maritime case, he attacks him for studying with Isocrates, a sophist (Dem. 35.40–41). He finds nothing wrong with Lacritus spending his money on these lessons, but blames him for using the skills he acquired from Isocrates to defraud him of his property. According to Androcles, Lacritus does not rely on the justice of his case but thinks he can use clever arguments to defend wicked schemes and to distract the judges.³⁰

²⁹ For analysis of his arguments, see HARRIS, *The Rule of Law* (cit. n. 1), pp. 225–233, and HARRIS, 'Applying the law about the award of crowns' (cit. n. 16).

³⁰ On the theme of deceiving the judges, see C. KREMMYDAS, 'The discourse of deception and characterization in Attic oratory', *Greek, Roman and Byzantine Studies* 53/1 (2013), pp. 51–89.

Cleon echoes these criticisms when he claims that those who proposed a new debate about the punishment of the Mytilenians thought that they were much more clever than the laws (Thuc. 3.37.4). He contrasts these clever speakers with the average person who does not consider himself superior to the laws. Once more, the contrast is not between those who know the laws and are viewed with suspicion and those who do not know the laws and are considered more trustworthy, but between those who think that they are so intelligent that they can ignore the law and those who are less intelligent but respect the law.

When litigants attack speech-writers (*logographoi*), they criticize them for being clever and dishonest, not for their legal expertise.³¹ In *Against Timarchus*, Aeschines (1.94; cf. 2.180) calls Demosthenes a 'speech-writer' and expects him to make a specious argument picking holes in his charges against the defendant. Elsewhere 'speech-writers' are called dishonest for colluding with the opponents of their clients (Aeschin. 3.173; Dem. 58.19) or compared to sophists (Dem. 19.246, 250). What was distrusted was their reputation for clever and deceitful arguments, not their knowledge of the law.³²

It is true that several speakers try to win favor with the judges by stating that they have never been in court. This is not because they believe that the judges are hostile to legal expertise, but because it was important not to appear litigious. Aeschines (1.1) begins his case against Timarchus by stating: 'Never before have I brought a public charge against any man or given him trouble at his audit; no, in my opinion I have shown restraint in this regard.' But as we have seen above, Aeschines reveals that despite his avoidance of the courts, he is still very knowledgeable about the law. We find similar statements in other authors (Lys. 19.55; Dem. 24.6; Isoc. 15.38; Pl. *Ap.* 17d).³³ A reluctance to go to court is not the same as claiming to be ignorant about the laws.

³¹ On logographers and their profession, see M. LAVENCY, *Aspects de la logographie judiciaire attique*, Leuven 1964.

³² Compare the reputation of Antiphon who wrote speeches for others to deliver in court and was distrusted for his cleverness: Thuc. 8.68.1–2.

³³ For litigants claiming that they attempt to minimize conflict, see CHRIST, *The Litigious Athenian* (cit. n. 2), pp. 160–192.

Fourth, I end with Lysias' speech *Against Nicomachus*, which some scholars believe reflects Athenian hostility toward legal experts. Stephen Todd has argued that the accuser in the speech attempts to exploit this hostility to legal expertise as a way of persuading the court to convict the defendant who had played a role in the revision of Athenian laws at the end of the fifth century.³⁴ Recently Paulin Ismard has used Todd's analysis as a key argument for his thesis that the Athenians were hostile to experts and thought that they represented a threat to democratic equality.³⁵ According to Ismard, the Athenians used public slaves with specialized knowledge whom they could control. In this way, they avoided the tyranny of experts.³⁶

When examining Lysias' speech, one must pay close attention to two issues. First, one needs to understand the duties of the office of *anagrapheus* that Nicomachus held. Second, one needs to understand the charges the accuser makes and study carefully the arguments the accuser uses to prove these charges. A careful analysis of the speech shows that the office of *anagrapheus* did not require any special expertise in the law, but was mainly clerical. Second, the accuser charges that Nicomachus failed to perform his clerical duties and interfered with the revision of the laws. He never attacks him for his legal expertise.

Our knowledge of the revision of the laws comes partly from Andocides' speech *On the Mysteries* and from the account found in Lysias' speech.³⁷ One must be careful when using these sources because several of

³⁴ TODD, 'Lysias *Against Nikomachos*' (cit. n. 6).

³⁵ ISMARD, *La démocratie contre les experts* (cit. n. 8).

³⁶ *Ibidem*, p. 145, believes that 'Nicomachos apparaît à bon droit comme le seul expert que le droit athénien de l'époque classique ait jamais connu'. This ignores the experts in the Areopagus, the Eumolpidae, the legal expertise of leading politicians like Aeschines and Demosthenes and men like Phanodemus. As will become obvious, Nicomachus was not an expert, and nothing in the speech about him indicates that he was. Ismard also accepts uncritically the accuser's slanders that he was a slave. Cf. HANSEN, 'A note on Paulin Ismard's *Democracy's Slaves*' (cit. n. 8), p. 343, for criticism of Ismard's use of the evidence about Nicomachus.

³⁷ For analysis of the procedure of examining (*dokimasia*) the laws, see M. CANEVARO & E. M. HARRIS, 'The documents in Andocides' *On the Mysteries*', *Classical Quarterly* 62 (2012), pp. 98–129, at 110–116; *idem*, 'The authenticity of the documents at Andocides' *On the Mysteries* 77–79 and 83–84', *Dike* 19 (2016), pp. 7–48, at 33–46, with endorsements of

their statements are tendentious. Important details from these sources are however confirmed by the prescript of Draco's law of homicide, which was inscribed on a stela in 410/9 as part of the general process of revision (*IG I³ 104*, ll. 1–8). These details allow us to reconstruct with some certainty the basic features of the revision. Soon after the restoration of the democracy in 403/2, the Assembly met and voted to examine all the laws of Draco and Solon. Those that were approved were to be written up and placed 'in the stoa', which should mean 'in the Royal Stoa'. The examination of the laws was the continuation of a procedure which began in 410/9 and went on until 405/4 when it was interrupted by the regime of the Thirty. The most detailed account of this process is found in Lysias' speech *Against Nicomachus* (30.2–5). The accuser who delivered the speech says that Nicomachus held the office of *anagrapheus* and was ordered to write up the laws of Solon in four months, but he stayed in office for six years (Lys. 30.2). The accuser claims that he took money to add certain laws and delete others. The archons tried to impose a fine on him and bring him to court, but he refused. Before he could be removed from office and forced to submit to examination (*euthynai*), the city met with disaster, an allusion to Athens' defeat by Sparta in 405/4 (Lys. 30.2–3). Despite his failure to pay for his crimes, he was appointed *anagrapheus* again and wrote up laws for another four years although he could have done this in thirty days (Lys. 30.4). He had authority over everything and did not submit to an examination. Unlike other officials who give an account of their office every prytany, he did not do this once during his four years in office (Lys. 30.5).

The charges against Nicomachus are not supported by evidence, and his re-appointment to office after the restoration of the democracy certainly undercuts the allegations made about his conduct during his first term. The title of *anagrapheus* held by Nicomachus is confirmed by the prescript of the republication of Draco's homicide law (*IG I³ 104*, ll. 1–8).

our analysis at p. 10 n. 3. The latter essay refutes in detail M. H. HANSEN, 'Is Teisamenos' decree (Andoc. 1.83–84) a genuine document?', *Greek, Roman and Byzantine Studies* 56 (2016), pp. 34–48. In their new edition of Andocides' speeches (*Antiphontes et Andocides Orationes*, Oxford 2018), M. Dilts and D. J. Murphy reject Hansen's attempt to defend the documents in the speech, endorse our arguments, and place brackets around all the documents we have shown to be forgeries.

The accuser's account is misleading, however, because he gives the impression that Nicomachus acted alone. The decree about Draco's law indicates on the contrary that the task of writing up the laws was given to a board of *anagrapheis*. The accuser also alleges that Nicomachus was able to add and delete laws at will, but the inscription reveals that the *anagrapheis* had the laws inscribed on stelae and placed in front of the stoa only on the orders of the Assembly, which indicates that they approved the text to be inscribed. The accuser also states that Nicomachus served two terms, the first of six years until the defeat of Athens, which should therefore be from 410/9 to 405/4, the second of four years, presumably starting after the restoration of the democracy, from 403/2 to 400/399. His task was the same during this period, namely to write up (*ἀναγράφειν*) the laws. There is no reason to doubt that the procedure during his second term differed from that followed during his first term. What one can therefore conclude is that *anagrapheis* were appointed in 410/9 to find the laws of Draco and Solon and to present them to the Assembly for approval. The *anagrapheis* then wrote up each law that was approved by the Assembly on a stela and placed it in the Royal Stoa.

What the evidence for the revision of the laws shows is that the job of the *anagrapheis* was to find the laws in the offices of the relevant official, to present these laws to the Assembly, and to arrange to have the laws that the Assembly approved inscribed on stelae and placed in the Royal Stoa, which was located at the southern part of the Agora. The main task of the *anagrapheis* was therefore clerical and required no special legal expertise. All they had to know was where to find the laws; they did not have to know what was contained in the laws. The decision about whether to approve the laws, to modify them or to reject them lay in the hands of the Assembly, who would have listened to those who normally spoke there. There is no evidence that the *anagrapheis* played a role in the discussion of the laws in the Assembly though one cannot rule out the possibility that they did. What is important for our analysis of *Against Nicomachus* is that the accuser never charges the defendant with proposing alterations to the laws during the discussion in the Assembly.

There are several charges against Nicomachus, but the main one is that he removed several of the traditional sacrifices and added new ones

(Lys. 30.17–25). From what we know of the duties of the *anagrapheis*, this fell outside of their administrative responsibilities. The decision about what to include and what to exclude lay in the hands of the Assembly, which had the power to approve or not approve the laws, not of the *anagrapheis*. What the accuser charges is that Nicomachus committed impiety by deleting traditional sacrifices, thereby threatening good relations with the gods, and usurped the power of the Assembly. This is why the accuser attempts to link him with the crimes of the Thirty, who overthrew the democracy a few years before (Lys. 30.9–14). The accuser never casts suspicion on his legal expertise.

To sum up. The Athenians believed that their democracy upheld the rule of law (Aeschin. 1.4–5, 3.6; Hyp. *Epit.* 25; Lys. 2.19) and that their laws were just and good.³⁸ As a result, they expected their fellow-citizens to know and respect the laws. There is no reason to believe that the Athenians were suspicious of legal expertise. The Athenians had the greatest respect for the Areopagus, whose members clearly had much legal expertise. The Exegetae and their opinions were also respected as well as the intellectual Phanodemus. When they elected men to defend the law of Leptines, they chose men who had experience in court and clearly knew the laws. When litigants criticize their opponents, they never criticize them for being legal experts, but for twisting the law and distracting the judges from the legal issues. Finally, Nicomachus is not attacked for being a legal expert but for violating the terms of his office and for adding and deleting sacrifices without the authorization of the Assembly. The office of *anagrapheus*, which Nicomachus held, required no expertise and was mainly clerical. In fact, when Aristotle in the *Rhetoric* (1.4.7.1359b–1360a) lists the topics a political leader ought to know, he includes legislation among the compulsory subjects. If the Athenians had been hostile to legal expertise, this would have been very poor advice. On the other hand, the Athenians in particular and the Greeks in general never developed a profession like that of the Roman *iuris consulti*, who advised clients on legal points and later wrote treatises on points of legal interpretation. But just

³⁸ For the Athenian tendency to link the terms ‘justice’ and ‘law’, see HARRIS, *The Rule of Law* (cit. n. 1), pp. 111–114.

because the Athenians did not have such a profession, one should not draw the conclusion that they were hostile to such expertise or incapable of devising sophisticated arguments about the interpretation of statutes. In fact, we find several examples of intelligent legal reasoning in several speeches.³⁹ But the smaller volume of litigation in Classical Athens did not produce a large enough demand to make such an activity into a full-time occupation except for a few speech-writers (*logographoi*), who combined the knowledge of law with skill in rhetoric. As Aristotle advises in the *Rhetoric*, knowledge of Athenian laws always remained an important prerequisite for a political career, but it was just one of the kinds of knowledge a politician needed to acquire.

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³⁹ On the numerous attempts of litigants to exploit the law's open texture, see HARRIS, *The Rule of Law* (cit. n. 1), pp. 175–245.

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documentation. In this sense, sociolinguistics, and especially social semiotics, prove useful when dealing with visual aspects of language in papyri, as they prevent their functions and meanings from being overlooked.

Keywords: notary, social semiotics, digraphia, diglossia, *di emou* signatures

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Keywords: *coloni adscripticii*, *enapographoi georgoi*, Apion estate (Oxyrhynchus), tenancy, viticulture in late-antique Egypt

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Keywords: Ptolemaic papyri, petitions, letters, oil contraband, tax farming, Arsinoite nome, prisoners of war

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Keywords: Monastery of the Metanoia, *anmona civilis*, shipping receipts, Dioscorus archive

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Keywords: expertise, Areopagus, Exegetai, Phanodemus, Apollodorus, son of Pasion, *anagrapheis* (inscribers), Lysias *Against Nicomachus*

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Keywords: Latin papyri, Roman citizens, Egypt, business, trade, land

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Keywords: murder, pre-trial detention, priests, Soknopaiou Nesos

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Keywords: Deir el-Bahari, Amenhotep son of Hapu, Greek inscriptions

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Keywords: Alexandria, Mark Antony, Cleopatra VII, Antyllus, 'Inimitables'

Grzegorz OCHAŁA

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Keywords: medieval Nubia, Qasr Ibrim, Old Nubian documents, onomastics, ghost-names, account, Nubian economy

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Keywords: animal cult, priests, temple personnel, Egyptian temples, Ptolemaic period, Fayum area

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Abstract: The main question that the present paper tries to answer is as follows: since two discordant precepts concerning work were to be found in the New Testament, how did monks behave? One precept treated work as a duty, the other recommended not to care about one's maintenance. The monks followed in their behaviour either the first or the second precept. As a result of disputes that took place in the fourth century the opinion prevailed that work was the better choice. It is important for us to find out when and under what circumstances that choice was done by the majority of the monastic movement in the East. It is also important to see what arguments were used by the monks of Late Antiquity in order to settle the conflict between the two discordant precepts. This conflict worried many and caused a renewal of

a dispute that seemed to have been closed. Two ways of reasoning in favour of monastic work were generally used: monks might and should pray and work at the same time, satisfying both precepts; monks ought to work in order to be able to give alms, and this conferred to work a meaning that went beyond immediate usefulness. Praying and working at the same time was not always feasible in actual practice, but this did not bother authors of ascetic treatises.

Keywords: voluntary poverty, St. Anthony, Pachomius, Horsiese, Basil of Caesarea, Evagrius of Pontus, John Cassian, *melete*, Messalians, ‘wandering and begging’ monks, Rabbula, Syriac monastic rules, almsgiving