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## RESPONSE TO ATHINA DIMOPOULOU-PILIOUNI “ΑΠΟΞΕΝΟΥΣΘΑΙ: ATIMIA IN ROMAN TIMES?”

1. In tribute to Antonia Tryphaena, who was financing an important dredging and reconstruction program of the city harbours, the *boule* and the *demos* of Cyzicus passed a decree imposing severe penalties on anyone who might put at risk the ambitious naval project of the benefactress. The penalties, recorded in an inscription dating from A.D. 38, embraced any citizen, foreigner or metic, and were enacted in order to avert the danger of speculation that might affect the goods sold in the city market, in a period of unusual affluence of workers, attracted by that huge building program. The decision taken and recorded by the Cyzicenes had a twofold motivation: first, it was a way of expressing their gratitude to Antonia Tryphaena, in a decree written in an elaborate and grandiloquent style; second, it also aimed at the preventive goal of avoiding any difficulty that might compromise the successful completion of the works.

Athina Dimopoulou-Piliouni (henceforth D.-P.) rightly stresses the exceptionality of the measures taken in order to ensure the stability of market prices, a task commended to the ἀγορανόμοι, who could count on the assistance of all other officials (including the στεφανηφόροι), which is a clear sign not only of the big effort necessary to put into practice this market control, but also of the importance attached to its correct execution. D.-P. convincingly adduces several arguments to explain this special commitment, ranging from political and historical reasons to economic pragmatism and even to a moral expression of ‘national’ gratitude. In the past, Cyzicus had supported the Romans against king Mithridates VI of Pontus, who besieged the city in 74 B.C., and in recognition of this act of loyalty the Romans awarded it the status of *civitas libera* along with other benefits. However, during the time of Augustus (in 20 B.C.), Cyzicus lost its free status, and even if it was recovered a few years later (in 15 B.C.), the privileges were lost again under Tiberius (in A.D. 25) and restored a second time by Caligula, perhaps due to the direct influence of Antonia Tryphaena, to whom the emperor was related through a common ancestor (Mark Antony). Thus, the Cyzicenes had strong reasons not only to respect and honour their benefactress, but also to prove beyond any doubt that they were devoted to Rome and to the imperial sovereignty. On the other hand, the reconstruction program was a golden opportunity to put an end to the blockading of the city isthmus and ports, which must have affected severely the prosperity of the markets and of the entire population.

Taken as a whole, these factors help to understand the reason why the *boule* and *demoi* of Cyzicus passed a decree in order to avoid inflationary pressures. The penalties were particularly heavy: transgressors were to receive a damnation by the city (ἐπάρατον εἶναι), a fine (ζημιούσθαι), and, as a corollary to all that, they were threatened with expulsion from the citizen body (ἀποξενούσθαι), in case the wrongdoer was a *polites*. D.-P. sustains that this last term should be translated as ‘to lose the citizen rights’, i.e. in a sense very close to the meaning of ἀτιμία. And even though D.-P. is cautious in her argumentation, I think that this somehow central question of the paper deserves some further analysis before being accepted as certain.

2. *Atimia* is recognizably one of the most difficult topics of Greek law and D.-P. is well aware of that. In legal terms, the concept of *atimia* seems not to have had always the same implications. During the sixth and the first part of the fifth century, *atimia* corresponded probably to a state of outlawry, according to which the *atimos* could suffer mistreatment, lose his properties or even be killed with impunity. The person who suffered such a condemnation would face many worries, because in practical terms this sanction was somehow equivalent to an expulsion from Attica.<sup>1</sup> Perhaps during the second half of the fifth century, *atimia* started to imply a somehow lighter punishment, basically consisting in a loss of civic rights (with different levels of magnitude), i.e. in disfranchisement, applicable only to citizens, because only these had full *epitimia* (complete civic rights).

*Atimia* understood in this more specific sense could be applied permanently or could have only a temporary character, in the case of being motivated for example by a debt to the state, because the effects of *atimia* would be removed as soon as the debt was paid. Full *atimia* would exclude the malefactor from the right of participating in the main areas of public life (e.g. to speak in the assembly or in court, to enter sanctuaries or the Agora).<sup>2</sup> Nevertheless, it seems probable that the *atimos* (depending on the kind of *atimia* a person may have suffered) would keep some rights as citizen, like marrying an Athenian woman, paying taxes and serving in the army; to kill an *atimos* would still be a crime and nothing prevented the family of the deceased of bringing an homicide charge against the killer (MacDowell 1978: 74). But because the person punished with full *atimia* was not allowed to bring charges directly against anyone in order to defend himself and his property, it represented a harsh penalty according to Athenian standards, and even if an *atimos* was not formally condemned to banishment, the decision to go into voluntary exile

<sup>1</sup> It is not improbable that, during this earlier period, this sort of *atimia* could be applied both to citizens and to foreigners. See MacDowell 1978: 73-74.

<sup>2</sup> See the conspectus of sources in Hansen 1976: 61-62. *Atimia* could also be partial and prevent the convicted merely from some specific activities. Usually, *atimia* would fall only upon the wrongdoer, but in some cases it could extend to other members of the *oikos* and even have a hereditary character (as happened with the already mentioned cases involving debts to the state).

could sometimes be preferable to the prospect of remaining in Attica under such severe circumstances.

To conclude: in practical terms, there seems to be a connection between banishment and the heavier forms of *atimia*, but it should also be taken into account that exile was not in itself an immediate legal consequence of a conviction by *atimia*.<sup>3</sup>

3. *Atimia* is a penalty that, in essence, depends strongly on the juridical capacity of a *polites* (Hansen 1976: 74). It is therefore no surprise that, the further we move away from classical times and the less independent the *poleis* are, the less frequent the penalty of *atimia* becomes. There are, nevertheless, a few examples of *atimia* that survive in later inscriptions, and D.-P. quotes very pertinently (pp. 235-237) five instances dating from the middle of the second century B.C. down to the early years of the Empire. It is quite significant that the words *atimos/atimoi* appear in all these examples and that the last occurrence (coming from Thasos and dated from early imperial times) is similar in its wording to other examples of classical times (p. 236: 1.18): καὶ ἄτιμον εἶναι καὶ αὐτὸν κ[αὶ γένος].<sup>4</sup>

By contrast, this is not the case with the decree passed in Cyzicus, where the word ἄτιμία or one of its cognates does not make a single appearance<sup>5</sup>. Admittedly, Cyzicus is not Athens and a decree promulgated in A.D. 38 does not have to mirror the practice of democracy in the age of the orators, but the absence of an expected technical term, and the presence of a different one, suggests that further inquiry is necessary before interpreting ἀποξενοῦσθαι as ἄτιμία and translating the verb as ‘to lose the citizen rights’.

4. On p. 232, D.-P. makes a few remarks that are central to her analysis of the problem under consideration: «Ἀποξενοῦσθαι is an *hapax* in city decrees, and remains without immediate parallel in the juridical meaning of “penalty”. The closest meaning in literary sources is that of being estranged, alienated, driven into exile or to be obliged to live away from home. In the context of the above decree, the term seems close in meaning to ἄτιμία.»

As stated in the first sentence, the term ἀποξενοῦσθαι is an *hapax* in city decrees and the fact that it has no direct parallel in the juridical meaning of ‘penalty’ obviously demands deeper scrutiny of the literary sources, especially if – as D.-P. recognizes – these sources support an interpretation closer to ‘being driven into exile’ or ‘being obliged to live away from home’. I think that it is not enough to assume that in the context of the Cyzicus decree «the term seems close in meaning

<sup>3</sup> It is fair to recognize that D.-P. is aware of that limitation (p. 232) «Hansen, in his treatment of the subject [1976: 55-56], has claimed that ἄτιμία was both more and less than disfranchisement, that it did not deprive the ἄτιμος of his citizenship, nor was he formally exiled.»

<sup>4</sup> See an example from classical Athens in Hansen 1976: 61.

<sup>5</sup> We must of course discard τιμή (lines 20-21) in the sense of ‘price’ of the goods sold in the market.

to ἀτιμία». On p. 232, D.-P. quotes Plato (*Lg.* 855c: ἄτιμον δὲ παντάπασιν μηδένα εἶναι μηδέποτε μηδ' ἐφ' ἐνὶ τῶν ἀμαρτημάτων, μηδ' ὑπερορίαν φυγάδα) in order to support the equivalence of ἀποξενοῦσθαι with *atimia* and with the 'loss of citizenship', but I think that the expression μηδ' ὑπερορίαν φυγάδα rather points precisely in the opposite direction: ἀποξενοῦσθαι is 'to be banished' or 'to be sent into exile', but not necessarily as a consequence of having suffered the penalty of *atimia*.<sup>6</sup>

5. In order to reach a better understanding of ἀποξενοῦσθαι I would like to dedicate some more attention to the literary sources, by discussing a few passages that are not listed in Liddell-Scott, s.v. ἀποξενόω. Although the term is relatively rare, it is beyond the scope of these short comments to discuss all the occurrences of the word and its cognates. Accordingly, I will only evoke here the context in which the term ἀπόξενος is used throughout Aeschylus' *Oresteia* – significantly, once in each of the three plays.

The first occurrence is in the *Agamemnon*, when Cassandra announces that Orestes is going to revenge his father and punish Clytemnestra's crime (*A.* vv. 1279-83): Οὐ μὴν ἄτιμοί γ' ἐκ θεῶν τεθνήξομεν. ἤξει γὰρ ἡμῶν ἄλλος αἶ τιμάορος, ἢ μητροκτόνον φίτυμα, ποινάτωρ πατρός· ἢ φυγάς δ' ἀλήτης τῆσδε γῆς ἀπόξενος ἢ κάτεισιν, ἄτας τάσδε θριγκώσων φίλοις·

It is interesting to note that the notion of *atimia* is somehow implicit in Cassandra's words, not in the sense of disfranchisement but with a generic and wider connotation of a public, social and religious lack of consideration, which demands compensation comparable in magnitude to the humiliation that she has suffered. The avenger will be Orestes, characterized as φυγάς δ' ἀλήτης τῆσδε γῆς ἀπόξενος, i.e. someone who is living an existence of exile and wandering, as a result of (voluntary) desertion from his own land. Apart from that, in this passage it is Cassandra's τιμή (and indirectly that of Agamemnon) that demands reparation and not the one of Orestes, whose absence from Argos constitutes a preventive manoeuvre destined to protect him from political intrigue and to safeguard his own life.

The same word is used again in a context of great dramatic and personal tension, in the final scene of the *Choephoroi*, when Orestes admits having killed Clytemnestra, though alleging that he has done it within the realm of legality: as a direct mandate of Apollo, who is, for his part, an interpreter of Zeus.<sup>7</sup> He feels with growing intensity the menacing presence of the Erinyes and he knows that he has to

<sup>6</sup> The city decrees quoted by D.-P. in notes 79 and 80 simply confirm, as stated at the end of section 2, that there could be a connection between banishment and the heavier forms of *atimia*. Besides that, *atimos*, *pheugein* and *apoxenos* can in fact occur in the same context, as shown by a passage of Aeschylus (*A.* vv. 1279-83), discussed later in section 5.

<sup>7</sup> I discuss in detail the legal implications of homicide in the *Oresteia* in Leão 2010.

flee from Argos (*Ch.* vv. 1042-43): Ἐγὼ δ' ἀλήτης τῆσδε γῆς ἀπόξενος, | ζῶν καὶ τεθνηκῶς τάσδε κληδῶνας λιπῶν.

The inevitability of exile and banishment is expressed in terms that represent almost a perfect replica of the language used by Cassandra to define Orestes' situation, with the single variation that now ἐγὼ significantly substitutes the word φυγάς, used by the prophetess in *Agamemnon* (v. 1282). Although forced by the circumstances, it is Orestes who chooses to go into exile; besides that, his expectation is to free himself of the pollution of homicide and not actually to remain exiled from Argos and from the governing of his palace. Here again the status of ἀπόξενος is not a consequence of a process of *atimia* and the return of the exiled is expected in the near future.

The third passage occurs in the *Eumenides*, after the acquittal of Orestes, at the moment when Athena is making a big effort in order to integrate the Erinyes into the budding order. Winning in court against these divinities of the past was only the first step; it was now necessary to convince them (not by force, but with the help of *Peitho*) to become integrated in the new reality as charitable deities. In Athena's argumentation, the terms under analysis make a final appearance (*Eu.* 881-84): Οὔτοι καμοῦμαί σοι λέγουσα τάγαθά, | ὡς μήποτ' εἴπης πρὸς νεωτέρας ἐμοῦ | θεὸς παλαιὰ καὶ πολισσούχων βροτῶν | ἄτιμος ἔρρειν τοῦδ' ἀπόξενος πέδου.

Athena desires to avoid that an honourable old goddess ends up being driven into a situation that simultaneously combines the sorrows of Cassandra and Orestes: to face a discredit (ἄτιμος) which is somehow unbearable to a mighty θεὸς παλαιά like the Erinyes and to be forced to wonder (ἔρρειν), banished from the soil of Athens (τοῦδ' ἀπόξενος πέδου). Of the three examples taken from the *Oresteia*, this is the one where the clearest link is established between the status of an *atimos* and that of an *apoxenos*. By losing the dispute against Orestes and Apollo, the Erinyes are affected by a kind of degradation of their former status as goddesses, a situation which in a certain way is comparable to the effects of a conviction by *atimia*. Consequently, Athena fears that exile and animosity towards the Athenians might be an inevitable reaction on the part of the Erinyes. But even now, this does not affect the main problem under discussion: *atimos* and *apoxenos* may be found together to underline a situation of statutory vulnerability, but these terms have different motivations and are not equivalent in their legal implications.

To conclude: ἀποξενοῦσθαι is not identical to *atimia* and should not be understood as 'losing civic rights'; on the other hand, the more concrete interpretation of 'being banished' not only is more in accord with the literary sources but also remains preferable even in the context of the Cyzicus decree, as will be argued in the final section.

6. When discussing the similarities between *atimia* and ἀποξενοῦσθαι, D.-P. states (p. 232) that the penalties threatening citizens, metics and foreigners were not automatically applied, but had to be sanctioned by the assembly, acting as a jury court for the hearing of the case. D.-P. rightly suggests that this disposition in the

decree (line 24: ἀναχθέντα εἰς τὸν δῆμον) is «a procedure reminding of the ἀπαγωγή, or the ἐφήγησις of classical Athens (since the arrest is probably made by the ἀγορανόμοι or other city officials)». She does not, however, consider the fact that the person responsible for the infraction is referred to by the expression τὸν δὲ κακουργοῦντα (line 21). If the word κακουργοῦντα is to be interpreted in a technical legal sense, it would also undermine the possibility of equating ἀποξενοῦσθαι and *atimia*, because in the sources the *atimoi* are not described as *kakourgoi*. Although convenient to my analysis of the problem, this argument should not be pushed too far, as the term *kakourgoi* is also often used simply in the general sense of ‘wrongdoer’ (Hansen 1976: 38; Todd 1995: 117).

As a final statement, I would like to argue that the literal interpretation of ἀποξενοῦσθαι as ‘to be banished’ not only suits better the tradition represented in the literary sources, but also works perfectly well in the context of the Cyzicus decree. Intended to be applied to a citizen, this penalty is heavier than the one instituted for a foreigner or a metic, which contemplated only the exclusion from entering the city (lines 24-25: ἐ[ὰν δὲ ξέ]νος ἢ μέτοικος, καὶ τῆς πόλεως εἴργεσθαι). This severity of the law against the *kakourgoi* that were also *politai* is easily understandable if one takes into consideration the deep ‘national’ interest of the polis in supporting the building program financed by Antonia Tryphaena (supra section 1). They should be the first ones to show a genuine commitment and, if they failed to act in the proper way, they should be punished accordingly. On the other hand, in excluding *kakourgoi* that were foreigners and metics from entering the city, the decree would make their living in Cyzicus extremely difficult, because it prevented them from any source of revenue, and so the decision to move to a different polis would become an attractive option. To put it in a different way: the *kakourgoi* were all forced or strongly invited to leave Cyzicus at least until the completion of the building program. And although the decree omits or at least remains ambiguous<sup>8</sup> in what concerns the duration of the interdiction, it is not improbable that the convicted were free to return to Cyzicus after the works were finished.

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<sup>8</sup> Cf. the disposition in line 26: ἄχρι οὗ συντελεσθῆ τὸ ἔργον. See the comments of D.-P. on pp. 234-235.