

ADELE C. SCAFURO (PROVIDENCE, RI)

## EUMOLPID EXEGESIS IN ANDOCIDES 1 AND LYSIAS 6: RESPONSE TO LAURA PEPE

Laura Pepe's major arguments in 'Athenian "Interpreters" and the Law' appear in its two core sections, the first on Eumolpidai (§3) and the second on non-Eumolpid *exēgētai* (§4). The general argument of the latter, that interpreters were consulted in complicated matters where the law was unclear, is unproblematic; its further argument, that the observance of ritualistic *nomima* allowed a lawsuit to begin properly whereas *nomoi* provided for more detailed aspects of procedure, especially for carrying out the case in court, is innovative and compelling. In the first core section (on the Eumolpidai), Pepe raises interesting questions on the relationship, in practice, between Eumolpid *nomima* and city *nomoi*; here, as in the other section, the argument is well-researched, vigorously argued, and this time articulated with judicious qualifications about the use of what some scholars might consider questionable sources; Pepe, however, has nevertheless chosen to deploy these sources in her major thesis about Eumolpid exegesis.

While I have some smaller questions about her remarks on non-Eumolpid *exēgētai* in the first section,<sup>1</sup> I give attention only to her argument about Eumolpid exegesis and ask, what happens to Pepe's argument if we extirpate the questionable evidence? I pose my remarks, then, as an alternative interpretation. Pepe focuses mostly on the appearance of Eumolpidai in two speeches relevant to the trial of Andocides (400 or 399 BCE): [Lys.] 6 and And. 1;<sup>2</sup> later in her argument (§3), she additionally draws upon evidence from Plutarch and elsewhere for the curses of the Eumolpidai and Kērykeis on Alcibiades and their later revocation as decreed by the city (§3). Here I first give a brief sketch of Pepe's argument and then focus on four literary passages.

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<sup>1</sup> E.g., what, precisely does it mean to say that a *pelatēs* was not a 'full citizen'? Or, can we really be so sure that the *prostatēs*-metic relationship was not a concern in [Dem.] 47? Also, the claim that the interpretations of *exēgētai* 'could be produced in court without giving rise to any controversy' is slightly undercut by the fact that the speeches of opponents are not extant.

<sup>2</sup> Following contemporary commentators, Pepe treats the Lysianic speech as either a pamphlet nearly contemporaneous with the trial against Andocides or as a supporting speech for the prosecution; probably the latter is correct, with the proviso thoughtfully added by Stephen Todd (2007: 407-408, following Blass 1887: 570) that the speech has probably been revised prior to circulation.

Pepe argues, on the basis of a comparison of [Lys.] 6.8-10 with And. 1.115-116, that Andocides looked at the relationship between *hoi gegrammenoi nomoi* and *hoi agraphoi* differently from the speaker of [Lys.] 6; the latter had Eumolpid connections, [Lys.] 6.54) and he cites an alleged statement of Perikles that included the remark that in cases of individuals committing impious acts, one should use both *hoi gegrammenoi nomoi* and *hoi agraphoi*, according to which the Eumolpidai carry out their exegesis—laws which no one has ever had the authority to abolish and to which no one has even dared to object ([Lys.] 6.10). Pepe suggests that the speaker, by embracing Perikles' statement, not only puts unwritten laws on the same level as *polis* law (= written laws), but also equates the unwritten laws alluded to here with Eumolpid laws. The speaker subsequently makes the same assessment, putting city laws and Eumolpid *nomima* on an equal footing, by suggesting that Andocides has been declared *asebēs* both by the laws of the city and by the priests' curses, uttered 'according to ancient and ancestral laws' (κατὰ τὸ νόμιμον τὸ παλαιὸν καὶ ἀρχαῖον, [Lys.] 6.51). Andocides' view, on the other hand (via Kephalos' retort to Kallias), at least in regard to one particular *nomos*, is that 'the strict νόμος πάτριος of the Eumolpids is clearly not in force any more'; it has been 'annulled by a milder law of the city'. Thus, the speaker of [Lys.] 6 sees Eumolpid law on the same level as the written law of the city and Andocides sees the city law as pre-eminent.

Pepe sums up different scholarly receptions of these 'contradictory passages': earlier scholars assumed a conflict between the two systems (between *nomima* and written *nomoi* (see Pepe's nn. 38-39); others assume no conflict: the written laws have won out and any source that says otherwise is unreliable. Pepe tries to maintain a middle position while simultaneously conceding that at this time 'only the laws of the city are applied'. Rather than a split between the two systems, she sees 'a kind of resistance against applying the laws of the city'; moreover, the disparate systems produced confusion when it came to 'proceeding to legal remedies'—and this she thinks is demonstrated by the anecdote rehearsed at the very end of [Lys.] 6, which involves the speaker's grandfather Diokles, as well as by the curses uttered by priests and priestesses against Alcibiades. Thus she concludes that at the end of the fifth century, there were still doubts about who maintained authority in cases of punishing *asebeia* concerning the Mysteries: was it the city, or the Eumolpids with their *nomoi patrioi*? At the end of this section, she offers a brief summary of IE 138; she pays particular attention to the lacunose clause on side A that bid a select number of *exēgētai* from the Eumolpidai to 'interpret' (ἐξηγήσθαι at l. 39); this act of exegesis was probably, she says, 'only meant to be an "explanation of the rules concerning the cult" to Athenians and foreigners who needed it.' Pepe then concludes §3, 'For the first time, the power and exegesis of the Eumolpids were clearly limited and defined, so that they could no longer use the interpretation of their laws to interfere with the judicial activity of the city'.

This is an important conclusion and a provocative highlight of Pepe's argument: the identification of a point at which Eumolpid interference with the city's judicial activity is allegedly suppressed. Before that, we have seen that she maintains there was a kind of resistance by the Eumolpids to the application of written law as opposed to unwritten laws at the end of the fifth century. Is this so? Does the evidence support this picture? — Not exactly.

My reservations are based primarily on a different evaluation of the weight we should accord the speaker of [Lys.] 6. Although the non-Lysian speech may be an authentic one,<sup>3</sup> surely we must be wary of accepting the speaker's views as representing the status quo of the relationship between written and unwritten law (or even between city law and *genē* law) at the end of the fifth century; such statements may instead be rhetorical manipulations that aim to stir up the emotions of the *mystai* who make up his audience (whether in the courtroom or subsequently as readers of a circulating draft). I take up three passages from the speech and then turn to the curses on Alcibiades and their revocation.

(1) [Lys.] 6.8-10. Against Andocides' (dubious) claim that Isotimides' decree is annulled (And. 1.85-89),<sup>4</sup> the deuterologist, as we have just seen, argues: no, as Perikles maintained, in cases of those who have acted impiously, not only are the *gegrammenoi nomoi* to be used, but so too are the *agraphoi*. Contra Pepe, this *is* a rhetorical argument: for there is no legal ground, not even blurred ground, on which this particular argument can be said to rest; indeed, we know of no written laws about impiety from the time of Perikles.<sup>5</sup> The profanation of the Mysteries and mutilation of the Herms in 415 were considered impieties—but they were remedied, amidst great confusion, by *eisangeliai*; the deuterologist reports ([Lys.] 6.11-12) that Andocides summoned Archippos to court for *asebeia* (apparently in 403) but that Archippos bought him off; Socrates' trial took place in 399. This evidence suggests that a law establishing *graphē* procedure for *asebeia* may have been part of the revised lawcode in 403/02; on the other hand, we know of no law establishing the use of *eisangelia* for *asebeia*; the use of the procedure appears to have been *ad hoc*. The speaker's argument is emotional and gets all its punch from ascribing the statement to Perikles—when the historical context is entirely different in 400/399. In this regard, Jacoby's interpretation in his 1949 *Atthis* is palmary—and really quite contemporary, with its articulation of the emotional bias of the speech. Jacoby suggests that the speaker, whom he designates Meletos, had been assigned the role, in the deuterologia, to push back on the legal question 'in favor of

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<sup>3</sup> See n. 2.

<sup>4</sup> See, e.g., Todd 2007: 447.

<sup>5</sup> Ostwald 1986: 530-532 tries desperately to understand this passage by suggesting we need not assume written legislation on impiety was in existence in Perikles' time; the argument is not persuasive. For the trials of Anaxagoras and Aspasia, see Ostwald *ibid.* 192-198, and 528-536.

a general attack on the personality of the accused.<sup>6</sup> Jacoby ends this part of his tirade against the speaker with the statement: ‘It is obvious that Meletos attempts to pull out every emotional stop in [the] court of justice, composed of *mystai*, in order to bring the jurors into a frame of mind in which they shall forget the legal arguments of the defence and condemn the accused in an effervescence of feeling...’<sup>7</sup> Thus Jacoby. So, how are we to weigh the speaker’s arguments? Can we trust this particular contrast of *gegrammenoi nomoi* with *agraphoi* as operable in the year 400? Or is the speaker trying to stir the *mystai* to vote against Andocides in a situation where the battle between *gegrammenoi* and *agraphoi nomoi* is dead or all but dead—except, perhaps, on a highly rhetorical plane?<sup>8</sup> I think the latter.

(2) [*Lys.*] 6.51. For imitating the sacred rites and for mutilating the herms, the deuterologist tells us that ‘it was on this basis that priestesses and priests stood facing the west and cursed, shaking out their purple robes according to ancient and ancestral custom (κατὰ τὸ νόμιμον τὸ παλαιὸν καὶ ἀρχαῖον)’.<sup>9</sup> Pepe uses this as evidence to build the speaker’s depiction of parity between τὸ νόμιμον τὸ παλαιὸν καὶ ἀρχαῖον and the laws of the city. Once again, however, the speaker is manipulative. Ostwald was surely right when he argued that by following the curse with the statement ὠμολόγησε δὲ οὗτος ποιῆσαι (‘he confessed to the deed[s]’), ‘the speaker tries to create the impression that this curse had implicated Andocides.’<sup>10</sup> Ostwald also points out that, unlike the curse mentioned in Plutarch’s *Life of Alcibiades*, ‘[N]o preceding vote is mentioned and the language is manipulated—κατὰ τὸ νόμιμον τὸ παλαιὸν καὶ ἀρχαῖον—to suggest that a curse of this kind was a venerable, traditional procedure.’<sup>11</sup> In the deuterologist’s hands, the curse appears to be the spontaneous reaction of priests and priestesses to Andocides’ conduct that had somehow and somewhere forced a confession from him; the absence of specificity—note that there is no object for the curse—suggests

<sup>6</sup> Jacoby 1949: 245, n. 46 (2); he singles out the Eumolpid’s discussion of Andocides’ impieties in 415; he notes the appearance of the ‘legal monstrosities’ of §8 standing alongside passages about the vengeance of the gods (§§1-3); he notes how pictures of the future broadly describe how Andocides, if acquitted and elected *basileus*, will result in ‘their seeing him performing sacrifices and offering prayers on your behalf according to ancestral custom, sometimes in the Eleusinium here, sometimes in the temple at Eleusis, and overseeing the celebration of the Mysteries’ (§4).

<sup>7</sup> Jacoby 1949: *ibid.*

<sup>8</sup> See Gagné 2009: 226, n. 85.

<sup>9</sup> Trans. Todd 2007: 437.

<sup>10</sup> Ostwald 1986: 168-169 n. 87, with comparison of this passage with Plutarch’s description of the curse against Alcibiades (Plut. *Alc.* 22.5) and its revocation (Plut. *Alc.* 33.2-3).

<sup>11</sup> Ostwald 1986: 169 n. 87. He pointed out (p. 168) that it is not clear whether, in the case of Alcibiades, ‘the curse was voted by the Assembly or by a law court, or . . . whether it was ordered as a political action independently of the trial or whether it was part of the verdict given by the jury. . . . But in any case, we find an organ of the state prescribing a course of action to a religious authority.’

to Ostwald that the speaker ‘is attempting to implicate Andocides by innuendo in the punishment meted out to Alcibiades fifteen years ago. . .’ This is a personal attack that manipulates language into a fiction—no more and no less. This is not a reliable depiction of parity between city law and *genē* law.

(3) [*Lys.*] 6.54. The deuterologist narrates an incident that took place two generations before the current trial of Andocides. A Megarian had committed an act of impiety and some people were urging execution without trial, while Diokles, the speaker’s grandfather and the son of the hierophantēs Zakoros, advised that ‘it was in the interest of mankind’ that the man be put on trial.<sup>12</sup> Pepe follows Ostwald in inferring that Diokles gives his advice to the Council, but then goes a step further (n. 41) when she identifies the anonymous others (those urging execution without trial) as Eumolpids and thus creates a factional split amongst them as the Council debates the procedure and penalty for a person accused of *asebeia*. The first inference may be correct—after all, the speaker reports that his grandfather was giving advice ‘when you were deliberating’ (συνεβούλευσε βουλευομένοις ὑμῖν) and that does suggest an institutional setting;<sup>13</sup> but whether or not the Eumolpids were the ‘others’ who suggested the death penalty remains uncertain. On the other hand, it is entirely plausible that a procedural debate should take place in the Assembly and/or Council. Such debates certainly surrounded the round-up of those accused of *asebeia* for profaning the Mysteries or for mutilating the Herms in 415.<sup>14</sup> Four years later, we may assume debate and uncertainty when Andocides returned to Athens: for he was ‘brought by an *endeixis* followed by an *apagōgē*’ to the Council of the Four Hundred, charged with having provided grain and oars to Athens’ enemies, threatened with instant death by some of the Councillors, and took refuge at the hearth in the bouleutērion (And. 2.13-15); there is no orderly procedure here.<sup>15</sup> We certainly may assume a great deal of debate on procedure (and possibly even regime change) when, after Phrynichos’ murder in 411, his alleged assassins were released and it was decided to put the dead man on trial for

<sup>12</sup> Pepe suggests that the Megarian who committed an act of impiety did so during the celebration of the Mysteries and that different remedies are being bandied about by members of the *boulē*; those are interesting suggestions but have no textual support.

<sup>13</sup> Similarly Ostwald 1986: 169 n. 89. The anecdote is perhaps more interesting if the son of a hierophant advocates the city’s laws whereas unspecified others (who may not be Eumolpids) advocate an unwritten law, or even a lawless impulse. If the ‘debate’ does not take place in the Council, then it may be a ‘street event’, such as a dispute over procedure, as happens in *Lys.* 23.9-12 or even something more casual as in *Hyp. Against Athenogenes* (12) where a crowd suggests arresting Athenogenes as an *andrapodistes*.

<sup>14</sup> *Thuc.* 6.29.3 for Assembly debate concerning Alcibiades. Presumably Speusippos’ decree to bring Andocides’ father Leōgoras and others to trial was accompanied by debate; Leōgoras responded by indicting Speusippos with a *graphe paranomon* (And. 1. 17, 21-22)

<sup>15</sup> Hansen 1976: 125 no. 3.

treason and not his assassins.<sup>16</sup> There was debate again in 409 in the preliminaries to the Assembly enactment, IG I<sup>3</sup> 102, by which Thrasybulos and the assassins of Phrynichos were honored; in Eudikos' rider to that decree, the *boulē* is ordered to deliberate over offence, penalty, and procedure for those who accepted bribes. Debate over procedure and penalty notoriously took place in the case of the Arginousai generals just a few years later (Xen. *H.* 1.7). The maneuverings of the Council in 405/4 to design a trial for Kleophon fit to its specifications cannot have been easily accommodated (Lys. 30.10-11). During the last fifteen years of the fifth century, debates over trial procedure were not at all uncommon; not all of them were trials for impiety; many were trials that scholars put under the umbrella term, *eisangelia*. The trial mentioned by the speaker of [Lys.] 6 at the end of the speech is an early example and should be seen in the broader context both of the unfixedness of trial procedure in the fifth century—and the usual reaction of a crowd in the heat of the moment. There is no need to ascribe the uncertainty over penalty and procedure in this particular case to specifically Eumolpid impulses.

On the other hand, we may well ask: what does the speaker hope to gain, at the very end of his speech, by using this particular anecdote about a debate over procedure that took place perhaps two generations before the trial of Andocides in 400? Would he allow his listeners, at this important point in the speech, to try to recall Eumolpid views regarding an unnamed Megarian some 40 odd years ago? I think not. Rather, he wants to show the *mystai*-judges that he, like them, and like Diokles his grandfather, believes in the rule of law—even when it comes to an unsavory Megarian.<sup>17</sup> This is an entirely rhetorical argument: there is no ongoing opportunity to put Andocides to death without a trial; let them do that with their verdict. Once again, the speaker is working on the emotions of the *mystai*-judges, not on their feelings of resistance to polis law and procedure.

(4) We must also append here Pepe's treatment of the curse on Alcibiades and its revocation. While she readily admits that both curse and revocation were voted by the city (possibly as part of a verdict in the first instance), Pepe sees 'tensions' ('if we trust the available evidence') insofar as the priestess Theano objected to the decree to curse Alcibiades in the first place (Plut. *Alc.* 22.5) and then Theodoros the hierophant refused to revoke his curse in the finale (Plut. *Alc.* 33.3). The

<sup>16</sup> Lyc. 1.112-114.

<sup>17</sup> The 'Megarian' may have been recognizable to his audience—but given the lapse of time, perhaps not. On the other hand, the ethnic may have been used to evoke the Athenian herald Anthemokritos who had allegedly been murdered by Megarians; Plut. *Perikles* 30 reports that Perikles, having publicly charged the Megarians with encroaching on the Sacred Orgas, then proposed that Anthemokritos be sent to the Megarians and Lacedaimonians to denounce the former. Hostility to Megarians was kept alive (see, e.g., Dover 1966: 206-208) in the coming years; while this may not have been the historical Megarian recalled by Diokles (if there were any such), this particular Megarian story (the murder of Anthemokritos and its connection with the Sacred Orgas) may well have been part of the historical baggage of the *mystai*-judges.

authenticity of Plutarch's evidence in the case of Theano is controversial and a verdict of *non liquet* probably must stand;<sup>18</sup> the anecdotal nature of Theodoros' quip is likewise suspicious. But Thucydides' description of Athenian reaction to the possible recall of Alcibiades in 411 is difficult to dismiss; Peisander has arrived in Athens fresh from Alcibiades in Samos, suggesting, inter alia, the recall of Alcibiades and the adoption of a different form of government; then the historian reports: 'But as to the democracy, many others spoke against the scheme, and at the same time the enemies of Alcibiades loudly protested that it would be an outrage if, after defying the laws, he should be restored; the Eumolpidai also and the Kērykeis testified against him on the score of the Mysteries, for whose violation he had been banished, and appealed in the name of the gods against bringing him back.'<sup>19</sup>

What are we to make of the Eumolpidai and Kērykeis voicing their view here? But where exactly is 'here' and what is the 'sequence of events'? Simon Hornblower has put the question bluntly and tendentiously: 'Did they just stand up on the Pnyx (where the Assembly met), or were they placed by some other set of persons in a position where their views would be bound to be called for?'<sup>20</sup> Hornblower argues that the *genē* may have voiced their views first before the Council of Five Hundred (and there will have been a *probouleuma* or a proposal from that body) and then in the Assembly; if so, 'it might mean that one of the organs of state had after all taken the initiative, so that the difference from 415 [when the Council had been active in seeking out the perpetrators of the impieties of 415] is not so great.'<sup>21</sup> If this is correct—and I think it may be—what kind of 'protest' is this? If it took place in the Council, possibly it is a political one, on the side of democracy, and perhaps its last hurrah—for the Council a dozen chapters later (8.66.1) is shown to have lost its autonomy. More likely, it may be that the Council, knowing how the *genē* would respond, is manipulating the two bodies, to

<sup>18</sup> See the judicious note (p. 119 no. 2, n. 119) on Theano (esp. in light of Sourvinou-Inwood's 1988 critique) in Blok and Lambert 2009. My skepticism resides largely in Plutarch's obvious change of source when he announces Theano's opposition with a *φασί*.

<sup>19</sup> Loeb trans., modified. Thuc. 8.53.2: ἀντιλεγόντων δὲ πολλῶν καὶ ἄλλων περὶ τῆς δημοκρατίας καὶ τῶν Ἀλκιβιάδου ἅμα ἐχθρῶν διαβοόντων ὡς δεινὸν εἶη εἰ τοὺς νόμους βιασάμενος κάτεισι, καὶ Εὐμολπιδῶν καὶ Κηρύκων περὶ τῶν μυστικῶν, δι' ἅπερ ἔφυγε, μαρτυρομένων καὶ ἐπιθιαζόντων μὴ κατάγειν. R. Parker (2005: 93) observes: 'This incident is the only collective intervention by a kind of 'religious interest' known to us in Athenian history. All the other most conspicuous examples of priestly influence and commitment that can be cited also relate to members of the great *gene* of Eleusis. . . . The quasi-priests of Eleusis embody the limiting case of priestly authority, the extreme beyond which it never grew. But even at this extreme the members of the two *gene* were speaking in the name not of religion but of the particular gods whose cults they served.'

<sup>20</sup> Hornblower 2008: 913.

<sup>21</sup> Ibid. Hornblower is lambasting Thucydides (once again) for eliding the Council from his narrative.

speak for them in public. If one or the other of these speculative pictures in any way represents the environment in which the Eumolpidae and Kērykeis spoke out in 411 against the recall of Alcibiades—for bringing him back would be tantamount to ending the democracy—then the activity of the genē, while religious in the expression of its view, has nothing to do with resisting the laws of the polis, but possibly everything to do with heeding the behests of Council and Assembly.

Pepe has given us a stimulating discussion of the Eumolpidae and their relationship to the laws and the judicial armature of the polis. While I think she has undervalued the rhetorical strategies of the speaker of [Lys.] 6 and perhaps underplayed the political environment of the last decades of the fifth century, she is certainly correct in identifying the Eumolpidae as an important force in late fifth century Athens. I thank her for this opportunity to provide an alternative picture of the way that force may have been deployed.<sup>22</sup>

Adele\_Scafuro@brown.edu

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<sup>22</sup> More recent scholarship has generally seen an earlier fifth century integration of genē with polis; on the other hand, the target of what may seem emphatically expressed views may not be the polis, but rather one *genos* pushing itself against another—for we must keep in mind that the Eumolpidae and Kērykeis were not the only genē in town who were protecting their traditions, their *patria* and *nomima*. For the expression of this view, see, e.g., Lambert AIO IG I<sup>3</sup> 7, the decree about the *genos* Praxiergidae.