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OUTLAWRY IN CLASSICAL ATHENS: NOTHING TO DO WITH *ATIMIA*

Abstract: This paper challenges a long-standing prejudice, and argues that the theory of evolution of *atimia* from archaic outlawry to the classical deprivation of citizen rights is not supported by the sources. Rather than being the predecessor of *atimia*, outlawry was an entirely different form of punishment that involved self-help by any citizen and existed throughout the classical and Hellenistic periods alongside *atimia*, which was one of the legal penalties inflicted by the courts.

Keywords: Athenian Law, Proscription, Outlawry, *Atimia*.

The notion of outlawry in ancient Greek law has been connected to the penalty of *atimia* as early as 1893, when Heinrich Swoboda first exposed the famous theory of evolution of the terms ἄτιμος and ἀτιμία. Based on an interpretation of two passages, the decree against Arthmius quoted by Demosthenes (9.42) and the legislation against tyranny mentioned in the *Athenaion Politeia* (16.10), Swoboda argued that the word ἄτιμος originally meant ‘with impunity’, and ἀτιμία was initially equal to outlawry, meaning that the person who was declared an outlaw could be killed by anyone with impunity; later the term *atimia* acquired a milder meaning, and an ἄτιμος was a person deprived of certain rights. Swoboda elaborated further on this theory some years later (1905, 1-42), using a compilation of sources collected by Paul Usteri (1903, 49-68). The concept of the alleged evolution of ἀτιμία was dismissed by Theodor Thalheim (1904) in a review of Usteri’s book. Significantly, Thalheim drew attention to the importance of the terms connected with ἄτιμος in the decree against Arthmius, such as τεθνάτω and πολέμιος, and argued that *atimos* can be related to outlawry only when it is combined with these terms, not by itself. In the same line of argument J.H. Lipsius (1906) also expressed objections against the evolution theory in his review of Swoboda’s book, where he stressed the difference in meaning between ἄτιμος ἕστω on the one hand, and ἄτιμος τεθνάτω/νηποινεὶ τεθνάτω on the other, and argued that in the sources adduced by Swoboda and Usteri ἀτιμία means ‘Rechtlosigkeit’, not ‘Friedlosigkeit’ as the two scholars maintained. Despite sound criticism the theory was adopted in principle by Busolt (1920, 1, 230-233) and Kahrstedt (1922, 121), and since then it was accepted almost unanimously by scholars albeit with different degrees of nuances.

This paper revisits the issue and argues that the theory of evolution of *atimia* is a long-standing prejudice that is not supported by the sources¹. In what follows I argue that rather than being the predecessor of *atimia*, outlawry was an entirely different form of punishment that existed throughout the classical and Hellenistic periods alongside *atimia*. I shall focus on the analysis of outlawry in classical Athens, discussing the extant evidence on cases of proscription and then reviewing the relevant legislation. Finally, by marking out the differences between ἀτιμία and outlawry I hope to show clearly that they were two completely different forms of punishment.

One of the crucial problems faced by advocates of the evolution theory was the difficulty in dating the alleged shift in the meaning of the word *atimia* from ‘without compensation’ or ‘outlawed’ to ‘deprived of citizen rights’. E. Ruschenbusch (1968, 20-23) pointed out that Swoboda’s dating to the period before Solon was in contradiction with his own theory, because the decree against Arthmius on which it was based is dated to the period between 471 and 457²; thus Ruschenbusch proposed c. 460 as a *terminus post quem*. Serious objections to his arguments were expressed by M.H. Hansen (1976, 78-80) who proposed a date c. 510-507. An alternative was offered by U.E. Paoli (1930, 307-316), followed by A.R.W. Harrison (1971, 169-170), who argued that along with normal *atimia*, the ‘older’ form survived down to the classical period; he labelled this form ‘*atimia* proscrittiva’ and considered it to be identical with capital punishment. The idea of the survival of the alleged ‘archaic’ *atimia* was revived recently by S. Dmitriev (2015) who claimed that even in the classical period *atimia* had the characteristics of outlawry.

None of the solutions proposed is without contradictions, therefore the question of dating the shift in the meaning of *atimia* remains disputed. This is of little wonder, since debating over the date of the shift is in fact asking the wrong question. As I have argued elsewhere, a thorough survey of all extant literary and epigraphical sources from archaic and classical Athens containing the term ἀτιμία shows that in *none* of these sources does the term ἀτιμία ever occur in the sense of outlawry³. To summarize my findings, the conclusion is that contrary to the common belief, the word ἀτιμία in the earlier sources has a direct reference to the moral sphere and is strictly associated with the notion of τιμή meaning ‘honor’. In all early sources the word *atimia* appears as an evaluative term that denotes ‘loss of someone’s honor’ or ‘deprivation of the honor which is due to someone’. In sources

¹ This idea was first expressed in Youni 1998; cf. Youni 2001, where outlawry is distinguished from *atimia*, exile, and the death penalty.

² Plut. *Them.* 6 claims that the decree was proposed by Themistocles, but according to Craterus (*FGrHist* 342 F 14) it was proposed by Cimon. In the former case the date would be before 471; in the latter it would be after 457, and may be connected with the mission of Megabazus to Sparta in 455 (Thuc. 1.109).

³ Youni forthcoming.

from the middle of the fifth century on a second meaning of this term appears, when ἄτιμία acquires a technical sense in the legal vocabulary, and denotes the penalty of deprivation of rights, which was inflicted by the court for certain offences connected with citizenship ideology⁴. From that time on, *atimia* occurs in the sources in one of the two following meanings: either as ‘loss of honor’ or as ‘deprivation of rights’⁵.

The same is true of the cognates of *atimia*, the terms ἄτιμος and ἀτιμάζω. In the *Iliad*, the word ἄτιμος and its cognates do not imply death or outlawry but have a moral value. For example, in *Iliad* 1.130 and 1.172 ἄτιμος means ‘dishonored’ and in 1.516 ἀτιμοσύνη is ‘the most dishonored’. The same with the verb ἀτιμάζειν, which in *Iliad* 1.11, 1.94, 1.240, 1.356, and 9.163, means ‘to deprive someone of the honor due to him’⁶. As Alberto Maffi (1983) has demonstrated, the verb ἀτιμάζειν in Homer has no connection to outlawry but expresses the community’s negative judgment about a certain person, amounting to deprivation of honors; Maffi drew a sharp distinction between ἀτιμάζειν and φεύγειν, and convincingly argued that the former means ‘dishonor’ whereas the latter means ‘exile’.

Swoboda’s arguments on the evolution of *atimia* were based substantially on an interpretation of the word *atimos* in the decree against Arthmius as rendered by Demosthenes in his third philippic speech. In order to exhort the Athenians’ sentiments against Philip, and remind them of their forefathers’ spirit Demosthenes reads a decree out from a bronze stele standing on the Acropolis⁷:

⁴ For the connection between *atimia* on the one hand and *timai* and *epitimia* on the other see Youni 1998, 81-88.

⁵ Grouping the ‘meanings’ of *atimia* in two clusters, *atimia* in a non-technical sense (as dishonor, disgrace, contempt, insult, humiliation, indignity) appears in Hom. *Od.* 13.141-142; Tyr. in Lycourg. 1.107; Pindar, *Olymp.* 4.19-21; Aesch. *Eum.* 394-395; Aesch. *Pers.* 847-848; Soph. *El.* 1035-1036; Eur. *Heracl.* 48; Hdt. 3.3.2; 7.11.1; 7.158; 7.231; 9.71; Thuc. 6.89.2; Is. 4.97; 4.179; Is. 6.89; Is. 20.5; Xen. *Hell.* 3.4.9; Xen. *Cyropaed.* 2.2.13; 5.5.26; Xen. *Mem.* 1.2; Xen. *Const. Lac.* 9.6; Pl. *Phaed.* 82c 5-6; Pl. *Rep.* 7.535c; Pl. *Pol.* 310e 9; Pl. *Phileb.* 23a 3; Pl. *Laws* 3.696d 12-e 2; 3.697a 11-b 1; 5.740d 5-8; 5.727d 8-9; 8.831a 1; 11.927e; 11.930e; Dem. 18.205; Dem. 19.32, 19.288; Dem. 21.23, 21.72; Dem. 39.6; Arist. *Nicom. Eth.* 1100a 15-18; 1123b 15-20; 1124a 3-9; 1107b 17-19; 5.1138a 9-14; 5.1302a 33-35; 5.1308a; 5.1315a 17-20; 5.1315a 23-24; Arist. *Rhet.* 1.1365a 5-6; 1.1374a; 2.1378b 6; 2.1384a 13. In a technical sense (penalty of deprivation of some or all rights pertaining to citizenship) *atimia* appears in *IG I³* 40.76; Thuc. 5.34.2; And. 1.74; Lys. 31.29; Xen. *Vect.* 2.2; Is. 16.47; Pl. *Rep.* 6.492d 5-6; Pl. *Pol.* 309a; Pl. *Leg.* 8.847a 6-7; 9.862d; 4.721b 1-4; 10.890c; Isai. 10.17; Dem. 9.44; Dem. 18.166; Dem. 21.92; Dem. 22.34; Dem. 24.201; Dem. 27.68; Dem. 29.16; Dem. 59.1; Arist. *Nic. Eth.* 7.1335b 39 – 1336a 1; 7.1336b; Arist. *Pol.* 5.1302a.

⁶ Cf. Thalheim 1918; Hansen 1976, 76; Maffi 1983.

⁷ Dem. 9.42-44. The decree against Arthmius is generally thought to be genuine. In any case, this question is of little importance for our purpose. What is significant for the perception of proscription is Demosthenes’ explanation.

Τί οὖν λέγει τὰ γράμματα; Ἄρθμιος' φησὶ Πυθώνακτος Ζελεΐτης ἄτιμος καὶ πολέμιος τοῦ δήμου τοῦ Ἀθηναίων καὶ τῶν συμμάχων αὐτὸς καὶ γένος.' Εἶθ' ἡ αἰτία γέγραπται, δι' ἣν ταῦτ' ἐγένετο: ὅτι τὸν χρυσὸν τὸν ἐκ Μήδων εἰς Πελοπόννησον ἤγαγεν.' Ταῦτ' ἐστὶ τὰ γράμματα. Ἐκεῖνοι Ζελεΐτην τινά, Ἄρθμιον, δοῦλον βασιλέως (ἡ γὰρ Ζελεΐα ἐστὶ τῆς Ἀσίας), ὅτι τῷ δεσπότη διακονῶν χρυσίον ἤγαγεν εἰς Πελοπόννησον, οὐκ Ἀθήναζε, ἐχθρὸν αὐτῶν ἀνέγραψαν καὶ τῶν συμμάχων αὐτὸν καὶ γένος, καὶ ἀτίμους. Τοῦτο δ' ἐστὶν οὐχ ἦν οὕτωςί τις ἂν φήσειεν ἀτιμίαν: τί γὰρ τῷ Ζελεΐτῃ, τῶν Ἀθηναίων κοινῶν εἰ μὴ μεθέξειν ἔμελλεν; ἀλλ' ἐν τοῖς φονικοῖς γέγραπται νόμοις, ὑπὲρ ὧν ἂν μὴ διδῶ φόνου δικάσασθαι, [ἀλλ' εὐαγὲς ἦ τὸ ἀποκτείνειαι,] 'καὶ ἄτιμος' φησὶ 'τεθνάτω.' τοῦτο δὲ λέγει, καθαρὸν τὸν τούτων τιν' ἀποκτείναντ' εἶναι.

What does the inscription say? "Arthmius of Zeleia," it says, "son of Pythonax, *atimos* and enemy of the Athenian people and of their allies, himself and his family." Then the reason why this was done is recorded: "because he conveyed the gold of the Medes to the Peloponnese." So runs the inscription. They proscribed as their enemy and the enemy of their allies, and declared him and his family *atimoi*, a man of Zeleia, one Arthmius, a slave of the Great King (for Zeleia is in Asia), because in the service of his master he conveyed gold, not to Athens but to the Peloponnese. This is not what we might call *atimia*; for what mattered it to a native of Zeleia if he was to be debarred from the rights of Athenian citizens? But it is written in the laws of homicide, for cases where prosecution for murder is not allowed; 'and he shall die as *atimos* (*ἄτιμος τεθνάτω*)', says the decree. This simply means that anyone slaying one of these would be free from blood-guilt.

Demosthenes says that in the past the Athenian Assembly had issued a decree which declared Arthmius, an alien Greek from the city of Zeleia in Asia Minor, 'ἄτιμος and enemy of the Athenian people and of their allies', both him and his family because he had conveyed Persian gold to the Peloponnese. Demosthenes' language suggests that for his audience the word ἄτιμος in this context was unfamiliar and very likely to be confused with the penalty of *atimia*. For this reason, he goes on to explain that the decree was not about *atimia*, a penalty which entailed the loss of civic rights and was thus appropriate only to Athenian citizens. By contrast, cases such as this one fell under the provisions of the law on homicide, and more specifically the section on justified murder, where it was stated that the killer was not to be prosecuted. The formula on the decree against Arthmius was 'ἄτιμος τεθνάτω', which means as Demosthenes explains again, that anyone who kills him shall be καθαρός, free of blood-guilt.

Swoboda assumed that since the penalty inflicted on Arthmius was not *atimia*, the word *atimos* in this passage had to have a different meaning. In analogy with the two meanings of its cognate τιμή, he distinguished between two meanings of the word *atimos*, the first coming from τιμή 'honor' and the second coming from τιμή 'price', and assigned the first to classical *atimia* and the second to outlawry.

Despite the fact that the analogy between the connotations of *time* and those of *atimos* cannot be taken for granted, and more significantly, despite the lack of parallel uses, he assumed that the same distinction applied to the term *atimia* and concluded that ‘the earlier form of *atimia*’ was outlawry, whereas ‘normal *atimia*’, denoting deprivation of rights, was a later development of the original severe punishment.

Rather than constructing a theory on a double assumption, his critics suggested that it would be safer to consider the context of the word *atimos* in this passage, and argued that the concept of outlawry is conveyed by the declaration of Arthmius as ‘ἐχθρός’ and ‘πολέμιος’, and in connection with the imperative ‘τεθνάτω’⁸. Indeed, from Demosthenes’ cautious explanations it becomes clear that it was not the adjective ἄτιμος by itself that described the punishment decreed against Arthmius. Without his being declared an enemy of the Athenians and without the addition of the imperative ‘τεθνάτω’ the audience would naturally take ‘ἄτιμος’ to mean ‘deprived of citizen rights’ and connect it with the imperative ‘ἕστω’ to form the standard legal term for the penalty of ἄτιμία (‘ἄτιμος ἕστω’)⁹. Demosthenes explicitly connects the decree of proscription against Arthmius with the laws on justified murder. This was the category of δίκαιος φόνος which was established by Draco, and included specific cases of legally differentiated unpunished killing¹⁰. Anyone who admitted having killed but proved that the killing fell under one of the cases of justified murder was not punished.

One merit of this passage is that it clarifies the distinction between *atimia* and outlawry. In contrast to *atimia*, destined only for citizens, proscription applied against any person, citizen or foreigner. Furthermore, the decree of the Assembly that declared Arthmius and his family outlaws did not involve any trial in court. The decree had a direct and immediate result: if anyone killed Arthmius or a member of his family, that person would not be prosecuted for murder.

The proscription of Arthmius was, as it appears, a favorite *topos* for orators in the fourth century; it is mentioned also by Aeschines and Dinarcus, whereas Demosthenes alludes to it again in *On the False Embassy*. Remarkably, however, the phrase ‘ἄτιμος τεθνάτω’ never appears again in their paraphrases of the decree. In 19.270-271 Demosthenes only says that Arthmius was declared ‘ἐχθρός καὶ πολέμιος τοῦ δήμου τοῦ Ἀθηναίων καὶ τῶν συμμάχων’¹¹. Aeschines maintains that when Arthmius came to Athens as a πρόξενος of the Athenians he barely escaped

⁸ Thalheim 1904; Lipsius 1906; cf. Lipsius 1908, 375 and 930-931. Hansen (1976, 76), although he accepts the evolution theory, asserts that “It is, in fact, the supplementary terms which demonstrate that the penalty referred to is outlawry. Consequently the instances cannot be used to prove that ἄτιμος by itself meant outlawed”.

⁹ Youni 2001; Poddighe 2001 and 2006.

¹⁰ Youni 2001.

¹¹ Dem. 19.270-271.

death and the people proscribed him (ἐξεκήρυξαν) from the Athenian empire¹². Dinarchus states that the Athenians banished Arthmius from the entire land (ἐξήλασαν αὐτὸν ἐξ ἀπάσης τῆς χώρας) and gives his own version of the decree: ‘Ἀρθμιον τὸν Πυθώνακτος Ζελεΐτην πολέμιον εἶναι τοῦ δήμου καὶ τῶν συμμάχων, αὐτὸν καὶ γένος, καὶ φεύγειν Ἀθήνας’¹³. However it may be, if ‘ἄτιμος τεθνάτω’ was indeed the term employed in the decree, this phrase is a hapax among the preserved evidence from Athens. A thorough search of literary and epigraphical sources (in *Perseus* and *Packhum* respectively) gives no other instance of the phrase ‘ἄτιμος τεθνάτω’ in Athenian evidence from all periods¹⁴.

The second passage adduced by Swoboda and his followers to support the concept of evolution of *atimia* was *Athenaion Politeia* 16.10:

Ἦσαν δὲ καὶ τοῖς Ἀθηναίοις οἱ περὶ τῶν τυράννων νόμοι πρῶοι κατ’ ἐκείνους τοὺς καιρούς, οἳ τ’ ἄλλοι καὶ δὴ καὶ ὁ μάλιστα καθήκων πρὸς τὴν τῆς τυραννίδος κατάστασιν. νόμος γὰρ αὐτοῖς ἦν ὅδε. ‘θέσμια τάδε Ἀθηναίων καὶ πάτρια: ἐάν τις τυραννεῖν ἐπανιστῶνται [ἐπὶ τυραννίδι] ἢ συγκαθιστῆ τὴν τυραννίδα, ἄτιμον εἶναι καὶ αὐτὸν καὶ γένος.’

And also the laws of Athens concerning tyrants were mild at those periods, among the rest particularly the one that referred to the establishment of tyranny. For they had the following law: 'These are the ordinances and ancestral principles of Athens: if any persons rise in insurrection in order to govern tyrannically, or if any person assists in establishing the tyranny, he himself and his family shall be disfranchised.' (Trsl. Rackham)

In this much discussed and debated passage [Aristotle] quotes an ancient law which, he says, was in force at the time of Peisistratus¹⁵ and provided that anyone who established a tyranny should be *atimos* himself and his descendants. On the presupposition that in the archaic period a severe punishment had to apply against tyrants, and having concluded from the Arthmius case that ‘*atimos*’ in the archaic

¹² Aes. 3, *Against Ctesiphon* 258.

¹³ Din. 2, *Against Aristogeiton* 24-25.

¹⁴ In the entire corpus of Greek inscriptions at <https://epigraphy.packhum.org> there is only one attestation of the phrase ‘[ἀ]ποθανέτω ἄτιμος’ in an inscription from Arcadia dated 303-300: *IG V 2*, 357 face B ll. 111-114: εἰκ ἐξ οἱ[κ/ίας] κλέπτοι ἢ ἰσφορέοι νύκτωρ,/[ἀ]ποθανέτω ἄτιμος, καὶ εἰκ ἀμ/έρια ἰσφορέοι. It is in fact puzzling that such a deep-rooted prejudice relies on so little evidence.

¹⁵ The date of the law is disputed. Gagarin (1981b, 72-73) proposed a date before Draco (but cf. Gagarin 1986, 56 and Gagarin 2008, 115-116). Many scholars attribute the law to Draco: Ostwald 1955, 106-109; Bourriot 1976, 310-311; Gallia 2004, 458-459. Many others ascribe it to Solon: Meritt 1952, 358; Martina 1968, 208; Rhodes 1981, 200-223; Ruschenbusch 1983, 81; Leão and Rhodes 2015, 57. Entering this discussion is beyond the scope of this paper. It should be noted however that the debate about the dating of the law is largely connected to the meaning given to *atimon einai*; see Carawan 1993.

period equaled to outlawry, Swoboda assumed that ‘*atimon einai*’ in this passage meant outlawry. An obstacle to this assumption was [Aristotle]’s explicit statement that this was a mild penalty, which Swoboda dodged by alleging that [Aristotle] misunderstood the law¹⁶. This assertion is repeated by many scholars¹⁷, but no-one explains why the law would provide for the proscription of the culprit rather than for the death penalty. The simple question is, for what purpose would the law authorize self-help against would-be tyrants when it was simpler and more efficient to normally provide for the death penalty? A decree of outlawry could be issued against a specific culprit who had escaped and therefore general vigilance was needed, but there was no reason to proscribe a person who was present and could be readily arrested, taken to trial, condemned and executed. If the purpose of the law was to kill the would-be tyrant, then a death sentence by the court executed by the *polis* officials was more secure than a declaration of outlawry, whose results were not certain.

Supposing that [Aristotle] was mistaken because disqualification is too mild a penalty to be applied against prospective tyrants in an archaic law is a circular argument. The clause *atimon einai* employed in this passage is the typical phrase for the penalty of deprivation of citizen rights found in all relative sources, and it is never used in connection to proscription. There is no reason to dismiss the testimony of the *Athenaion Politeia* that would-be tyrants were deprived of their rights. After all, for a member of the ruling elite, being disqualified from participating in the city’s government was not a mild punishment at all. Having no access to the administration of the city’s affairs meant being eliminated from the group of his peers and exercising no influence on the mass of the population. It should be taken into consideration that, unlike classical Athens, in the archaic period establishing a tyranny was in fact not an offence against the *demos*, but an offence against fellow aristocrats. Legislation, government, and administration of justice belonged only to a small elite, and the common practice against abuse of power was exile of the opposite fraction, not death¹⁸. As is shown by a Cretan law from the middle of the seventh century¹⁹ (*SEG* 27.620, Dreros), an archon who usurped power in office was ‘to be without rights as long as he lives’²⁰; he was to be *akhrestos*, literally ‘useless’.

Apart from mentions of outlawry as the alleged archaic form of *atimia*, little attention has been paid to its application in Athenian practice. Significant evidence

¹⁶ For the rejection of this interpretation of *Athenaion Politeia* 16.10 see Kaibel 1893, 163-164.

¹⁷ See e.g. Ostwald 1955 107; Hignett 1958, 161; Hansen 1976, 78; Carawan 1993, 306.

¹⁸ Forsdyke 2005.

¹⁹ For the dating of the law see Jeffery 1961, 311; Duhoux 1982, 28-29; Gagarin and Perlman 2016, 200.

²⁰ Trsl. Gagarin and Perlman 2016, 202 and 205; cf. Ehrenberg 1943, 16; Gagarin 2008, 46-48; Youni 2011, 32.

dates to the period of the Peloponnesian war, when decrees of proscription were issued by the Assembly for serious crimes against the polis. On a summer night of 415, a few days before the campaign to Sicily, most of the Herms on the streets of the city were mutilated; a few days later information came about performances of the Eleusinian Mysteries at private houses. The two affairs were immediately considered to be connected and created a great disruption in the city²¹. As Thucydides reports, not only this ‘double affair’ was thought to be ominous for the expedition, but, more importantly, suspicions were raised that these were the workings of a conspiracy whose ultimate purpose was to overthrow the democracy²². The Assembly voted a decree inviting anyone who had information about this double affair to come forward and speak without fear of consequences²³, and large public rewards were offered to anyone who would reveal the names of the perpetrators: ten thousand drachmae to the first person who would come forward, and a thousand drachmae to any consecutive denunciators²⁴.

Numerous denunciations of persons allegedly involved in the two connected affairs were made before the Council and the Assembly by citizens, metics, slaves, by Alcibiades’ wife Agariste, and by anonymous denunciators²⁵. All these resulted in an unprecedented number of trials before the heliastic courts. Dozens of citizens and a number of metics were put to trial²⁶. They were all found guilty and sentenced to death with confiscation of their properties²⁷. Those who were arrested and stood trial were executed, but most of the accused persons fled the polis and were sentenced to death in absentia (And. 1.15, 34-35). Thucydides (6.60.4) reports that after the trials, a decree of proscription was issued by the Assembly against all convicts who had escaped, and a reward was offered to anyone who would kill any of the outlaws: τὸς δὲ κατατιθηθέντας κρίσεις ποιήσαντες τοὺς μὲν ἀπέκτειναν, ὅσοι ξυνελήφθησαν, τῶν δὲ διαφυγόντων θάνατον καταγόντες ἐπανείπον ἀργύριον τῷ ἀποκτείναντι.

On the evidence of new denunciations brought against Alcibiades, whose trial had been postponed by the Assembly until after his return from Sicily, a second *eisangelia* was moved against Alcibiades, with the double charges of profanation of the Mysteries and attempting to overthrow the democracy²⁸. The sacred ship Salaminia was sent to Sicily to fetch him and the others named in the information

²¹ On the two connected cases see the influential study by MacDowell 1962. Also Conomis 1965; Osborne 1985; Murray 1990; Furley 1996; Graf 2000; Todd 2004.

²² Thuc. 6.27.3: καὶ τὸ πρᾶγμα μειζόνως ἐλάμβανον: τοῦ τε γὰρ ἔκπλου οἰωνὸς ἐδόκει εἶναι καὶ ἐπὶ ξυνομοσίᾳ ἅμα νεωτέρων πραγμάτων καὶ δήμου καταλύσεως γεγενῆσθαι.

²³ Thuc. 6.27.2; And. 1.15.

²⁴ Thuc. 6.27.2; And. 1.27-28, 40; Diod. 13.2.3.

²⁵ Thuc. 6.28.1; And. 1.15-17, 19; Isocr. 16.7.

²⁶ Hansen 1975, 58 speaks of forty-eight trials; cf. *ibid.* 75-82.

²⁷ For the persons convicted see Aurenche 1974; Hansen 1975, 75-82; McGlew 1999.

²⁸ Thuc. 6.61.1, 8.65.2; And. 1.27; Isoc. 16.6-7.

given, in order to submit to trial. When Alcibiades escaped to Argos, he was tried *in absentia* (ἐρήμη δίκη); the heliastic court pronounced him guilty and sentenced him to death and confiscation of his property²⁹. The Athenian Assembly passed a decree that declared Alcibiades an outlaw (in the words of Isocrates: ἐλαύνειν αὐτὸν ἐξ ἀπάσης τῆς Ἑλλάδος; πανταχόθεν εἰργόμενος). His name was inscribed on a stele³⁰, and all priests and priestesses were ordered to curse his name³¹.

The decrees of proscription that were issued in 415 against the fugitive convicts in the numerous *eisangelia* trials are parodied by Aristophanes in *Birds*, performed at the Dionysia of the following year. In the words of the Chorus' leader: "I hear it proclaimed: 'A talent for him who shall kill Diagoras of Melos, and a talent for him who kills one of the dead tyrants.' We likewise wish to make our proclamation: 'A talent to him among you who shall kill Philocrates, the Struthian; four talents, if he brings him to us alive'³². The *Birds* is full of allusions to the two connected affairs (e.g. 145-47), and confirms Thucydides' claim that the whole situation was perceived as the sign of a conspiracy to subvert democracy and to establish an oligarchic or even tyrannical regime lead by Alcibiades. Aristophanes' allusion to the sum of one talent decreed as a reward for anyone who would arrest or kill one of the fugitive convicts is confirmed by Lysias. In the speech against Andocides, the prosecutor incites the dicasts to convict Andocides arguing that they should not let go the criminals who are brought before them, while they try to arrest the fugitives, decreeing a reward of one talent to anyone who arrests or kills them³³. It is important to note that in all cases connected with the affairs of the Hermokopids and the Mysteries proscription was employed as a supplement to the normal procedure in court and to the infliction of a legal penalty, because the accused had fled and execution was impossible.

In the turbulent years that followed, Athenian fears of subversion and tyranny turned out to be true in 411/10 with the establishment of the Four Hundred. A few

²⁹ Thuc. 6.61.7; Diod. 13.5.4; Plut. *Alc.* 22.5.

³⁰ Isoc. 16.9: ἀλλ' ἐκεῖνος μὲν τοσαύτην πρόνοιαν ἔσχεν ὑπὲρ τοῦ μηδὲ φεύγων μηδὲν ἐξαμαρτεῖν εἰς τὴν πόλιν, ὅστ' εἰς Ἄργος ἐλθὼν ἡσυχίαν εἶχεν, οἱ δ' εἰς τοσοῦτον ὕβρεως ἤλθον, ὅστ' ἐπεισαν ὑμᾶς ἐλαύνειν αὐτὸν ἐξ ἀπάσης τῆς Ἑλλάδος καὶ σπηλίτην ἀναγράφειν καὶ πρέσβεις πέμποντας ἐξαιτεῖν παρ' Ἀργείων. ἀπορῶν δ' ὅ τι χρῆσαιτο τοῖς παροῦσι κακοῖς καὶ πανταχόθεν εἰργόμενος καὶ σωτηρίας οὐδεμιᾶς ἄλλης αὐτῷ φαινομένης τελευτῶν ἐπὶ Λακεδαιμονίους ἠναγκάσθη καταφυγεῖν. Cf. Diod. 13.69.2.

³¹ Plut. *Alc.* 22.5; Diod. 13.69.2.

³² *Ar. Birds* 1072-78: Τῆδε μέντοι θῆμέρα μάλιστ' ἐπαναγορεύεται,| ἦν ἀποκτείνῃ τις ὑμῶν Διαγόραν τὸν Μήλιον,| λαμβάνειν τάλαντον, ἦν τε τῶν τυράννων τίς τινα| τῶν τεθνηκότων ἀποκτείνῃ, τάλαντον λαμβάνειν. | βουλόμεσθ' οὖν νυν ἀνειπεῖν ταῦτά χημίεις ἐνθάδε. | ἦν ἀποκτείνῃ τις ὑμῶν Φιλοκράτη τὸν Στρούθιον,| λήψεται τάλαντον, ἦν δὲ ζῶντά γ' ἀγάγῃ, τέτταρα.

³³ Lys. 6.18: Καὶ μὴ οὐδς μὲν ἔχετε ἀδικούντας ἀφίετε, τοὺς δὲ φεύγοντας ζητεῖτε συλλαμβάνειν, ἐπικηρύττοντες τάλαντον ἀργυρίου δώσειν τῷ ἀγαγόντι ἢ ἀποκτείναντι. A similar argument is used by Lycurgus 1.115, see note 15.

months after the coup Phrynichus, one of the leading oligarchs, was murdered on his return from an embassy to Sparta, where he had negotiated for an intervention of Spartan troops in Attica³⁴. After the overthrow of the Four Hundred, the Athenians rewarded Thrasybulus of Calydon, the man who had killed Phrynichus, with a golden crown worth a thousand drachmas, a formal announcement of his *euergesia* by the herald at the Dionysia, and the grant of Athenian citizenship³⁵. As Xenophon (*Hieron* 4.5) remarks, in all cities murder is punished and murderers are excluded from the temples, but for tyrants the position is the reverse: instead of avenging them, the cities bestow great honors on those who kill a tyrant, and put up statues of them in the temples. Moreover, the Assembly decided to put on trial the dead Phrynichus with the charge of treason, and decreed that anyone who would plead for the accused would suffer the same penalties as he, if he was found guilty³⁶. Phrynichus was judged guilty, and according to the law of treason his bones were unburied and cast away from Athenian land (Lyc. 1.115). Noticeably, in Phrynichus' case the entire order of events was reversed: there was no decree to declare him an outlaw, since he was killed under the regime of the Four Hundred; his killer was recognized and rewarded by the Assembly *post factum*, and his trial took place after the murder.

The dire events of the last decade of the fifth century led the Athenian Assembly to issue a decree on the proposal of Demophantus which legalized self-help against attempts on democracy³⁷. Demosthenes in the *Against Leptines* alludes to the stele of Demophantus, 'on which it is written and sworn, if anything should happen to a defender of democracy, this person shall be granted the same awards as Harmodius and Aristogeiton'³⁸. Lycurgus in the *Against Leocrates* refers to a stele

³⁴ Thuc. 8.92.2; Lyc. 1.112-113; Lys. 13.71.

³⁵ *IG* I³ 102 ll. 5-21: Ἐρασινίδες εἶπ/[εἰ ἐπαινέσα]ι Θρασύβολου ὃς ὄντα ἄνδρα ἀγαθὸν/[ν περὶ τὸν δέμ]ον τὸν Ἀθηναῖον καὶ πρόθυμον π/[οιῆν ἡ] ὃ τι δύνα[ται ἀγαθόν· καὶ ἀντὶ ὃν εὖ πεπο]/[ίκεν τέν τε πόλιν] καὶ τὸν δέμ[ο]ν τὸν Ἀθηναῖο[ν στεφανό]σα αὐτὸν χρυσοῖ στε[φάνοι, ποιέ]σα/[ι δὲ τὸν στέφανον ἀπὸ χιλίων δρ]αχμῶν· ἡοι [δὲ ἡ]/[ελλενοταμίαι δόντων τὸ ἀργύρι]ον. καὶ [ἀνευ]ῆεν τὸν κέρυκα Διονυσίου ἐν τῷ] ἀγῶνι ἡὸν ἡέν]/[εκα αὐτὸν ἡο δέμος ἐστεφάνο]σε· Διοκλῆς εἶπε/[τὰ μὲν ἄλλα καθάπερ τει βολε]ι· εἶναι δὲ Θρασύ[β]ολον Ἀθηναῖον, καὶ φυλῆς τε κ[αὶ φρατρί]ας ἡὸν ἂν βόλεται γράφασθαι αὐτό]ν· καὶ τὰλλα τὰ ἐ/[φρεφισμένα τοῖ δέμοι κύρια εἶ]ναι Θρασυβόλο/[ι· εἶναι δὲ αὐτῷ εὐρίσκεισθαι π]αρὰ Ἀθηναίων κ/[αὶ ἄλλο ἡὸ τι ἂν δοκεῖ ἀγαθὸν π]ερὶ ἡὸν εὐεργέ/[τεκεν τὸν δέμον τὸν Ἀθηναῖον].

³⁶ Lyc. 1.113-114.

³⁷ According to the common opinion the decree of Demophantus is dated to 410, after the overthrow of the Four Hundred. Recently E.M. Harris has argued that the decree was issued after the overthrow of the Thirty and the restoration of the democracy in 403, following Lycurgus' statement (1.124). See Canevaro and Harris 2012; Harris 2014.

³⁸ Dem. 20.156: καὶ τῆς Δημοφάντου στήλης περὶ ἧς εἶπε Φορμίων, ἐν ἧ γέγραπται καὶ ὁμῶμοται, ἂν τις ἀμύνων τι πάθῃ τῇ δημοκρατία, τὰς αὐτὰς δώσεις δωρεῖας ἄσπερ Ἄρμοδιφ καὶ Ἀριστογείτονι.

‘about traitors and subverters of the demos’, standing in the Council-house³⁹, which he labels as the decree of Demophantus⁴⁰. Lycurgus says that according to the decree, ‘if anyone attempts at tyranny or betrays the city or overthrows the demos, the person who finds and kills him shall be guiltless’⁴¹. He then has the decree read to the judges. That the decree of Demophantus is quoted accurately by Lycurgus in what concerns the offences included in the decree is proven by the fact that the orator is using this decree instead of the law of Eucrates which was issued some eight years before the case against Leocrates. Lycurgus was interested in the clause against traitors and treason, which was included in Demophantus’ decree but not in the law of Eucrates.

In his speech *On the Mysteries* Andocides alludes to ‘a Solonian law inscribed on a stele standing in front of the Council-house’, and quotes the following provision: “if anyone becomes magistrate after the democracy has been overthrown, he shall die without his murder being prosecuted (νηποινεῖ τεθνάναι), and the killer shall be without guilt and shall have the property of the murdered”⁴². Inserted in the speech there is a text purporting to be Demophantus’ decree (And. 1.95-98). Canevaro and Harris (2014) have argued that this is not the authentic text of the decree and argue convincingly that the text is a later forgery based on a patchwork of laws and decrees concerning tyranny and subversion.

The decree of Demophantus provided for the extraordinary and urgent measure of proscription against attempts at tyranny, subversion and treason; anyone who killed such a person, was not to be prosecuted for murder. Furthermore, all Athenians took a solemn oath pledging “to kill by word and by deed and by hand and by vote” anyone who subverted the democracy (Lyc. 1.125). The decree did not establish a new court procedure or a penalty to be inflicted in court; rather, it provided for the immediate killing of the culprit by anyone, Athenian or not, and guaranteed that the killer shall be free of punishment and innocent before human and divine law. If the killer of such a person was prosecuted for murder, he would have to prove that the murder was justified (δίκαιος φόνος) because he had acted in accordance with Demophantus’ decree. An *ad hominem* decree declaring a specific person as an enemy of the Athenians (such as the one published against Arthmius) was not required.

³⁹ Lyc. 1.124: Οὐ μὴν ἀλλ’ ἔτι βούλομαι τῆς στήλης ἀκοῦσαι ὑμᾶς τῆς ἐν τῷ βουλευτηρίῳ περὶ τῶν προδοτῶν καὶ τῶν τὸν δῆμον καταλόντων.

⁴⁰ Lyc. 1.127: Διομωμόκατε δ’ ἐν τῷ ψηφίσματι τῷ Δημοφάντου κτενεῖν τὸν τὴν πατρίδα προδιδόντα καὶ λόγῳ καὶ ἔργῳ καὶ χειρὶ καὶ ψήφῳ.

⁴¹ Lyc. 1.125: Ἐψηφίσαντο γὰρ καὶ ὄμοσαν, ἔάν τις τυραννίδι ἐπιτιθῆται ἢ τὴν πόλιν προδιδῶ ἢ τὸν δῆμον καταλύῃ, τὸν αἰσθανόμενον καθαρὸν εἶναι ἀποκτείναντα, καὶ κρεῖττον ἔδοξεν αὐτοῖς τοὺς τὴν αἰτίαν ἔχοντας τεθνάναι μᾶλλον ἢ πειραθέντας μετὰ ἀληθείας αὐτοὺς δουλεύει.

⁴² And. 1.95: ὃς ἂν ἄρξῃ ἐν τῇ πόλει τῆς δημοκρατίας καταλυθείσης, νηποινεῖ τεθνάναι, καὶ τὸν ἀποκτείναντα ὅσιον εἶναι καὶ τὰ χρήματα ἔχειν τοῦ ἀποθανόντος.

The question however remains, as to which law is quoted by Andocides in *On the Mysteries*. Andocides' trial took place some years after Demophantus' decree was passed, and therefore it cannot have escaped him, but he makes no allusion to Demophantus' decree, and speaks instead of a Solonian law that provided for citizens who became magistrates after the subversion of democracy⁴³. Furthermore, the provision about persons who became magistrates is not included in the passage of Demophantus' decree quoted by Lycurgus, although Lycurgus may not be quoting the full text of the decree. It is likely that Andocides alludes to an older law. The phrase 'νηποιεῖ τεθνάναι' is known to mean unpunished killing since the law of Draco, and the clause about the property of the murdered going to the person who killed him may be earlier than similar clauses providing for confiscation. The attribution of the law to Solon cannot be taken at face value, as orators have the habit of attributing later laws to Solon. If Andocides is quoting the law verbatim, the word 'δημοκρατία' makes it highly unlikely that the law is Solonian. The earliest evidence of the phrase 'κατάλυσις τῆς δημοκρατίας' occurs (restored) in an Athenian decree concerning Colophon dated to 447/6⁴⁴. On grounds of the terminology used, we may assume that either Andocides is not quoting a Solonian law verbatim, or that the law was passed sometime in the 5th century, possibly in connection with Athenian legislation for the allied cities. A parallel may be found in an Athenian decree from the middle of the fifth century (453) that regulates the political settlement for the Ionian city of Erythrae and among others provides for the proscription of anyone who betrays the city to the tyrants (*IG I³ 14*, ll. 32-34).

Three quarters of a century after Demophantus' decree, in late spring of 336, the Athenian legislation against the overthrow of democracy and the establishment of tyranny was reinforced before the Macedonian threat⁴⁵. This time it was a law, not a decree, commissioned by the Assembly and enacted by the board of *nomothetai* on the proposal of Eucrates⁴⁶. The text of the law survives in a well-preserved inscription from the Athenian Agora (*IG II³ 320*, 6-22)⁴⁷:

δεδόχθαι τοῖς νομοθέται-
ς· εἴαν τις ἐπαναστῆι τῶι δήμῳι ἐπὶ τυραννίδι
ἢ τὴν τυραννίδα συνκαταστήσῃ ἢ τὸν δῆμον τ-

⁴³ Andocides also claims that the law cannot be applied on his adversary, because 'τοῖς νόμοις δεῖ χρῆσθαι ἅπ' Εὐκλείδου ἄρχοντος'. This may mean that the law was not included in the revision of the law code, or more likely that it was still valid but could not be applied because of the amnesty.

⁴⁴ *IG I³ 37*, ll. 49-51: καὶ δεμο[κρατίαν οὐ κατάλυσο Κολοφῶνι οὐτ' α]/ἠτὸς ἐγὼ οὐτ' ἄλλοι πείσομαι οὐτ' ἐς ἄλλεν ἀφιστά[μενος πόλιν οἶ]τ' αὐτόθι στασιάζον.

⁴⁵ Meritt 1952; Ostwald 1955, 123-128. Rhodes 1978 suggests, implausibly in my view, that the initiative for passing the law came from anti-Demosthenic circles, as a warning against Demosthenes.

⁴⁶ Rhodes and Osborne 2003, 390-393. Eucrates is unknown apart from an allusion in [Lucian] *Dem. Enc.* 31 along with some anti-Macedonians.

⁴⁷ See Ostwald 1955; Wallace 1989, 175-184.

ὄν Ἀθηναίων ἢ τὴν δημοκρατίαν τὴν Ἀθήνησιν
 10 καταλύσει, ὃς ἂν τὸν τούτων τι ποιήσαντα ἀπο-
 κτείνῃ ὅσιος ἔστω· μὴ ἐξεῖναι δὲ τῶν βουλευ-
 τῶν τῶν τῆς βουλῆς τῆς ἐξ Ἀρείου Πάγου καταλ-
 ελυμένου τοῦ δήμου ἢ τῆς δημοκρατίας τῆς Ἀθ-
 ῆνησιν ἀνιέναι εἰς Ἄρειον Πάγον μηδὲ συνκα-
 15 θίζειν ἐν τῷ συνεδρίῳ μηδὲ βουλευεῖν μη-
 δὲ περὶ ἑνός· ἐὰν δέ τις τοῦ δήμου ἢ τῆς δημοκρ-
 ατίας καταλελυμένων τῶν Ἀθήνησιν ἀνίη τῶ-
 ν βουλευτῶν τῶν ἐξ Ἀρείου Πάγου εἰς Ἄρειον Πι-
 20 ἄγον ἢ συναθίζῃ ἐν τῷ συνεδρίῳ ἢ βουλευή-
 ι περὶ τινος ἄτιμος ἔστω καὶ αὐτὸς καὶ γένος
 τὸ ἐξ ἐκείνου καὶ ἡ οὐσία δημοσία ἔστω αὐτοῦ
 καὶ τῆς θεοῦ τὸ ἐπιδέκατον.

Be it resolved by the *nomothetai*:

If any one rises up against the people for a tyranny or joins in setting up the tyranny or overthrows the people of Athens or the democracy at Athens, whoever kills the man who has done any of these things shall be undefiled.

And it shall not be permitted to any of the councillors of the Council of the Areopagus, if the people or the democracy at Athens is overthrown, to go up to the Areopagus or to sit together in the meeting (synedrion) or to deliberate about anything at all; and if when the people or the democracy at Athens has been overthrown any of the councillors of the Areopagus does go up to the Areopagus or to sit together in the meeting (synedrion) or to deliberate about anything, he shall be without rights (atimos), both himself and his descendants, and his property shall be made public and the tithe given to the Goddess⁴⁸.

The law of Eucrates contains two distinct provisions about political crime and establishes two different sanctions. The first section of the law (ll. 7-11) was directed against any person who revolted against the people to establish a tyranny or joined in setting a tyranny or overthrowing the *demos* of Athens or the Athenian democracy⁴⁹, and provided that whoever killed such a person was not to be punished (ὃς ἂν τὸν τούτων τι ποιήσαντα ἀποκτείνῃ ὅσιος ἔστω). The second section of the law (ll. 11-22) was directed specifically against the members of the Areopagus Council⁵⁰, and set the prohibition for them to go to the Areopagus or to participate in a meeting or to deliberate about any matter at all when the *demos* or the democracy at Athens has been overthrown (καταλελυμένου τοῦ δήμου ἢ τῆς

⁴⁸ Trsl. Rhodes and Osborne 2003, no 79.

⁴⁹ For the inclusion of both *demos* and *demokratia* see Stephanopoulos 1981, 159-160.

⁵⁰ By the middle of the fourth century the powers of the Areopagus were enhanced, especially by the introduction of new judicial responsibilities (Hansen 1975, 56; Rhodes and Osborne 2003, 390-391). Clearly the law of Eucrates suggests that the revival of the Areopagus was seen as undemocratic (Sealey 1958; Wallace 1989, 175-184).

δημοκρατίας τῆς Ἀθήνησιν). The law provides that if a member of the Areopagus breaks this law, he shall be deprived of his rights of citizen both he and his descendants (ἄτιμος ἔστω καὶ αὐτὸς καὶ γένος τὸ ἐξ ἐκείνου), his property shall be confiscated, and one tenth shall be given to the treasure of Athena. The secretary of the Council was instructed to inscribe the law on two stone pillars which were to be placed at the entrance to the Areopagus, and in the Assembly respectively. The Athenian democracy was in fact subverted fifteen years later, after the defeat by the Macedonian army in the Lamian war of 323-322.

In the law of Eurocrates the distinction between ἀτιμία and outlawry is made quite clear. Those who attempt at tyranny, their accessories, and those who subvert the demos or the democracy are outlawed, but the members of the Areopagus who tolerate subversion and cooperate with the subverters are threatened with hereditary loss of their citizen's rights (*atimia*) and confiscation of property⁵¹. What underlies the different penalties is the distinction between subversion and tyranny on the one hand, and tolerating subversion, on the other. The Athenian legislation is quite consistent with this distinction, in that it deprives traitors and prospective tyrants of their life, but deprives lesser offenders against the polis of their citizen's rights.

Thus, in classical Athens proscription and *atimia* were two distinct forms of punishment, aimed at different offences. In what concerns the origins of *atimia*, solid evidence shows that they go back to the archaic period. The final clause of Draco's legislation forbids any alteration of his laws on penalty of *atimia*: "Any magistrate or private citizen who shall cause this law to be altered or changes it shall be without rights, he and his children and his property"⁵². On the other hand, the concept of outlawry originates in the notion of justified or unpunished killing, which was introduced (or more probably legally reasserted) by Draco. The Draconian legislation on homicide in the section about justified killing provided that 'If anyone should kill a person who attacks him first using violence, the killing shall be unpunished' (νηποιεῖ τεθνάναι)⁵³. Both laws are of undisputed authenticity (Canevaro 2013: 71-72) and prove that there was a clear distinction between *atimia* and justified murder both in substance and terminology. For the penalty of deprivation of citizen rights Draco used 'ἄτιμον εἶναι', the stereotype phrase by which *atimia* is denoted in all sources. By contrast, he employed the

⁵¹ Ostwald 1955; Wallace 1989, 175-184; Youni 1998, 118-120. *Contra* Rhodes and Osborne 2003, 392 who believe that in this passage also, as in ll. 10-11, the sanction intended was outlawry but do not explain the different terminology.

⁵² Dem. 23.62: Ὅς ἂν ἄρχων ἢ ιδιώτης αἴτιος ἦι τὸν θεσμὸν συγχρηθῆναι τόνδε, ἢ μεταποιήσῃ αὐτόν, ἄτιμον εἶναι καὶ παῖδας καὶ τὰ ἐκείνου. The same clause was probably repeated by Solon in his legislation. Such clauses are common in Greek legislations of the archaic and classical periods. Cf. *IG IX I* 2 3, 718 ll. 38-41.

⁵³ Dem. 23.60: Νόμος. Καὶ ἐὰν φέροντα ἢ ἄγοντα βία ἀδίκως εὐθὺς ἀμυνόμενος κτείνῃ, νηποιεῖ τεθνάναι. *IG I* 3 104, ll. 37-38: καὶ ἰ ἐὰν φέροντα ἔ ἄγοντα βίαι ἀδίκως εὐθὺς ἀμυνόμενος κτέ[ν]ει, ν[ε]ποιεῖ τεθνάναι].

phrase ‘νηποινεὶ τεθνάναι’ to denote justified killing, which is the core of the notion of outlawry.

Certainly, the content and the scope of archaic *atimia* were not identical to those of classical *atimia*. As I argued above, in the archaic period participation in the city’s magistracies was a privilege restricted to a small elite, whereas in the classical period citizenship meant above all equal rights and full participation in the *archai* for all; especially in the fourth century the notion of citizenship was clearly defined, and the rights and duties comprised in *epitimia* were specifically set⁵⁴. The evolution of citizen rights no doubt affected *atimia* which amounted to the deprivation of such rights. In any case, in the archaic period *atimia* was clearly distinguished from justified murder, and different terminology was employed to define each. We know that justified murder was provided by the Draconian law for a number of cases, but the question is when the notion of justified murder was first employed for serious offences against the polis. The law cited by Anocides seems to be the first instance of such a use.

To conclude, the differences between *atimia* and outlawry are striking:

Firstly, in what concerns terminology, the legal term for *atimia* since Draco’s legislation was ἄτιμος ἔστω. By contrast to *atimia*, which was a legal punishment and therefore denoted by a terminus technicus, outlawry was denoted by a variety of terms, such as νηποινεὶ τεθνάναι (Dem. 23.60), τὸν αἰσθανόμενον καθαρὸν εἶναι ἀποκτείναντα (Lyc. 1.125), τὸν ἀποκτείναντα ὅσιον εἶναι (And 1.95), ὃς ἂν τὸν τούτων τι ποιήσαντα ἀποκτείνῃ ὅσιος ἔστω (law of Eucrates). Other phrases employed by the orators to denote justified murder are ‘φόνου δίκας μὴ εἶναι’ (Dem. 23.51), ‘μὴ φεύγειν κτείναντα’ (Dem. 23.53), or ‘μὴ καταγιγνώσκειν φόνον’ (Lys. 1.30).

Secondly, in what concerns substance, *atimia* entailed the loss of civic rights, and by its own nature it was destined only for citizens. In literary and epigraphical sources it is enumerated as one of the standard penalties of Athenian law, together with the other standard penalties, such as death, exile, and confiscation of property⁵⁵. Ἀτιμία was prescribed by laws and decrees for a number of offences that were associated with the quality of the citizen. On the other hand, proscription was not included in the legal penalties of Athenian law; it was an extraordinary measure to confront emergency situations. It was used exclusively for the most serious crimes against the polis: high treason, tyranny, and subversion. It was not only directed against citizens, but also against any person who was caught in the act of attempting treason, tyranny or subversion.

Thirdly, in what concerns procedure, *atimia* was a regular legal penalty inflicted by the Athenian courts (but it was also possible for someone to become an

⁵⁴ For the evolution of Athenian citizenship see Manville 1990.

⁵⁵ *Ath. Pol.* 67.5: δεσμὸς ἢ θάνατος ἢ φυγὴ ἢ ἀτιμία ἢ δήμεσις χρημάτων; *IG* 13 40, ll. 73-74: πλὴν φυγῆς καὶ θανάτου καὶ ἀτιμίας.

atimos without a court sentence, under specific conditions as provided by laws and decrees, e.g. state debtors). Outlawry was an extraordinary measure that was not inflicted by the courts. It was the authority of the Assembly to issue an *ad hominem* decree of proscription, as in the case of Arthmius; as a consequence, the outlaw was deprived of any legal protection and could be killed by anyone without his death being punished. A decree of outlawry could also be issued after a normal trial had taken place which had resulted in a death sentence in those cases when the convict had escaped, as in the case of Alcibiades and the other persons convicted in the numerous *eisangeliai* of 415. It was possible to add a reward for the person who killed the outlaw, such as the reward of one talent promised for the fugitive convicts of 415. Furthermore, after the end of the fifth century, a person could become an outlaw by force of specific legislation, such as the decree of Demophantus or the law of Eucrates. Outlawry entailed the immediate killing of the offender by any person, not by officials of the polis, therefore it was not identical to the death penalty, which was pronounced by the courts and executed by polis officials.

A final point must be made. The scope of outlawry was to supplement, not to substitute normal procedures in court. In the fifth and throughout the fourth century, the main instrument against treason, tyranny, and subversion was the *nomos eisangelitikos*, modified and reinstated in the new codification⁵⁶. According to the law of *eisangelia*, an indictment before the Assembly or the Council resulted in a trial conducted before the heliastic court or the Assembly⁵⁷. But procedures in court were not sufficient for dealing with flagrant and urgent situations; in such instances, there was no time for a summons and a normal procedure in court; action had to be undertaken immediately, so self-help was authorized by the law in order to deal with a serious crime being committed against the polis. To safeguard democracy, statutes such as Demophantus' decree or Eucrates' law legalized and established self-help against flagrant offenders as a duty of Athenian citizens, as it is a duty of today's citizens, according to many modern constitutions, to defend the constitution and the lawful government. The oath that was added in Demophantus' decree reminded citizens that each and every Athenian was bound to kill any such person 'by hand or by deed'.

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⁵⁶ Hyper. 3.8.

⁵⁷ Hansen 1975.

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