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OULAWRY AND *ATIMIA*:
RESPONSE TO MARIA YOUNI

In the last twenty years Maria provided contributions of great importance to the study of *atimia*. And in this *Symposium* there are other scholars who have provided significant contributions to the subject. A thorough discussion of Maria's contribution would require a review of the whole topic. I will therefore treat only the main thesis of her paper: outlawry and *atimia* are two distinct phenomena since the origins. This naturally contrasts with Swoboda's thesis (1905), according to which *atimia* passes from the original meaning of "Friedlosigkeit" to that of "bürgerliche Zurücksetzung". On this point I agree with Maria, but I'm not fully convinced that *atimia* cannot mean outlawry in the archaic and classical sources. To express myself very synthetically: I agree with Maria that the primary meaning of *atimia* is "loss of honor". But in my opinion it is not excluded that the one who loses the honor, that is the social recognition of his rank, risks the extreme consequences for his property and his own life. Especially if the loss of honor is the consequence of an injury to a public interest (as in the case of the father of Antinoos in Hom. Od. XVI, 424-429)

Maria maintains that, since the law of Dracon, outlawry is named by the formula *νηποιεὶ τεθνᾶτο* (justified murder): in the section about justified killing, indeed, the law provided that 'If anyone should kill a person who attacks him first using violence, the killing shall be unpunished' (*νηποιεὶ τεθνᾶναι*) (Dem. 23.60). At same time Dracon's law forbids any alteration of the law on penalty of *atimia* (Dem. 23.62). Maria is aware that "the content and scope of archaic *atimia* was not identical to those of classical *atimia*, especially of the 4th century"; nonetheless she relies on the different terminology employed to define each. But it seems to me that, if we affirm that *atimia* in Dracon's law does not define yet deprivation of civic rights, this statement weakens the argument based on the linguistic distinction between outlawry and *atimia*.¹ Concerning Solon, it would then take us too far to investigate the meaning of *atimos esto* (Plut. *Sol.* 20.1; *AP* 8.5) in the Solon's law against citizens who do not take sides during a civil war. Nevertheless it seems to me interesting to note, beyond any discussion on the authenticity and the scope of

¹ The doubts recently expressed by Harris 2016 about the presence in Dracon's law of justified killing of one who first struck, do not infringe the nature of my remark on the meaning of *atimia* in the law.

the law (see recently Van't Wout 2010), that Cicero, good connoisseur of the Aristotelian work, referring to the law translated *atimos esto* with *capite sanxit* (*Att.* 10.1).

The next step concerns the law that punishes the establishment of tyranny, already in force at the time of Peisistratus. According to *AP* 16.10, the sanction consisted in the *atimia* for the guilty and his descendants, what the author considers a mild penalty. In order to remain coherent with her position, Maria believes that *atimia* should be understood here in the sense of deprivation of political rights (since “being disqualified from participating in the city’s government was not a mild punishment”). In theory it would be possible, but the comparison with the law of Eucrates, and with other laws concerning defense against tyranny, leads us to think that *atimos esto* is equivalent here to *nepoinei tethnato*. I therefore share the opinion of Rhodes 1993, p. 222, according to which there are cases even in the classical age in which *atimos* “without qualification ... does still retain his original sense” (even if I do not agree that this is its “original” sense, because it implies that we have to accept the theory of Swoboda). It is the law of the polis that, for certain offences, gives *atimia* the sense of removal of the right to the protection of personal safety.²

Maria then reinforces her thesis by recalling a series of trials related to the various political crises that occurred in Athens at the end of the fifth century (mutilation of the Herms, parody of Eleusinian Mysteries etc.), in which outlawry appears to be a political measure against those who escape the trial. However, I think that in these cases *atimia* would not have been an alternative, because the outcome of the trial would still have been a death sentence.

Maria finally believes that the distinction is confirmed by the law of Eucrates, where anyone is authorized to kill those who attempt to subvert the democratic constitution, but the members of the Areopagos, which would support the antidemocratic regime, are to be *atimoi*. The translation of *atimos esto* is unanimous: “They shall be deprived of civil rights” (Wallace 1989, p. 179; Schwenk 1985, p. 36); “il sera déchu de ses droits civiques” (De Bruyn 1995, p. 159); “he shall be without rights” (Youni). In the opinion of Maria what underlies the different penalties is the distinction between the most serious crimes against the city on the one hand, and other kinds of offences against the city on the other. But

² According to Rhodes (loc. cit.) also in the case of the conviction of Antiphon and Archeptolemos ([Pl.] *X. Or.* 834 A-B) *atimia* should be understood in the sense of outlawry. Faraguna 2016 p. 82, instead, author of the most recent study on this case, believes that *atimia* should be understood here in the sense of loss of political rights. However, it remains to be understood what sense it can have towards people who have been sentenced to death. So I wonder if, in this case, in addition to the death sentence to be performed by public bodies, the citizens were invited to kill the culprits if they had escaped capture by the authorities: see Vélossaropoulos-Karakostas 1991.

are we sure that this translation is right? The purpose of this measure against the Areopagos is discussed. But if we accept Wallace's explanation ("something which the Areopagos had done...or supported, which (it was feared) might lead to the abolition of democracy": 1989, p. 183), then it is quite surprising that the sanction is not of the same gravity as that for those who intend to overthrow democracy (as it was in the most discussed decree of Demophantos: And. I 96-98)

The doubts about the reliability of the terminology-based distinction criterion increase if we consider epigraphic documentation from other parts of the Greek world. The methodical legitimacy of such a comparison presupposes, unlike what Maria believes, that *atimia* is a phenomenon that presents similar characters throughout the Greek world, at least in the archaic and classical times. If we except the Dreros law on the iteration of the cosmata (where we find the term *achrestos*) (*Nomima* I 81), *atimos* and *atimia* occur in documents coming from areas very far from each other, both geographically and culturally. Let us take, for example, the so called "entrenchment clauses", which protect laws against attempts to modify or repeal them. In the law of the Eastern Lokrians relative to their colony at Naupactos (*Nomima* I 43), those who attempt to render the measure ineffective are declared *atimoi* and their property is confiscated. In the Lygdamis inscription from Halikarnassus (*Nomima* I 19) those who try to abolish the law are to go into perpetual exile and their property will be confiscated and sacred to Apollo. In the Pappadakis Bronze (*Nomima* I 44) and in the *Dirae Teiae* (*Nomima* I 104 + 105) the sanction is formulated as *exole* or *exoleia*: not only men but also gods are invoked to punish the responsible. Now, are we authorized, only on a terminological basis, to say that in the colonial law of Naupactos the *atimia* is to be interpreted as mere loss of civil rights, and does not have the most serious consequences mentioned in the clauses of the other documents?

Let us now consider two inscriptions that provide, in my opinion, an even greater contribution to questioning the thesis sustained by Maria. [ἄτιμος θνασ]κέτο, κτεινέτω δὲ αὐτὸν ὁ θέλων (where *atimos* is unfortunately only restored), can be read in an inscription from Kyme (*Inschriften von Kyme* 11 – III century B.C.). Concerning this inscription Vélissaropoulos-Karakostas 1991, p. 101, writes: "... si ἄτιμος θνασκέτο était conçu comme identique à νηποιεὶ τεθνάναι, les termes κτεινέτω αὐτὸν ὁ θέλων constitueraient une tautologie". In my opinion this objection is not decisive: it can simply be a redundancy that reaffirms and confirms the power to kill which in this particular case is implicit in ἄτιμος θνασκέτο. Moreover, according to l. 113 of the treaty Stymphalos – Demetrias (*IPArk* 17 – end of the IV century B.C.), (and in this case the restoration does not give rise to doubts), in case of theft by night the thief shall die *atimos* ([ἄ]πλοθανέτω ἄτιμος).

My last example will be a very interesting inscription from Dikaia, a colony of Eretria in the Chalkidike (*SEG* 57. 576). The text is dated to the sixties of the IV cent. B.C., and is an amnesty agreement. The two clauses we are interested in are

the following. “If anyone admits a murder case or brings a suit which the assembly voted to exclude, the man who brings the suit should be exiled (*pheugeto*) from the territory of the Dikaiopolitans and his property should be made public, and the one who admits the case should lose his civic rights (*atimos esto*) and his property should be made public and sacred to Apollo” (ll. 32-36).³ The second clause forbids charges against the members of the opposite faction. “If anyone brings a suit or admits a case, the one who brings the suit should lose his civic rights (*atimos esto*) and his property should be made public and the property of the one who admits the case should be made public and sacred to Apollo” (ll. 41-45: transl. Benjamin Gray). There is in this second clause a *variatio* which is not easy to explain, since it seems to involve a violation of the agreement of equal gravity: he who brings the suit is declared *atimos* and is not obliged to *pheugein*, and the magistrate, who admits the suit, suffers only a loss of property. It is possible that this is a mistake of the mason, but it seems to me that one cannot rule out that, in certain contexts, the Greek legal mentality considered *pheugein* and *atimos einai* equivalent.

To conclude, it seems to me that *atimia* is a kind of Proteus, an “omnibus” concept, which is difficult to fit in our categories both legal and sociological, perhaps because it is constantly at the crossroads between legal and social sphere. *Atimia* has therefore a very wide range of meanings, which must be specified in relation to the legal and social context in which the term is used. Precisely for this reason it seems to me that it is not possible to exclude, on the basis of a purely terminological argument, that *atimos* may indicate the deprivation of physical protection by an authoritative measure (law, decree or judgement).⁴

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³ The same sanction is to be found in *Syll.*³ 194 (from Amphipolis)

⁴ Therefore I do not agree with the affirmation of Maria that *atimia*, as “terminus technicus”, “was a regular legal penalty inflicted by the Athenian courts”. I just want to recall that *atimia* could probably not be imposed directly as a penalty fixed by the jurors and not prescribed by law, as Hansen 1976, p. 67, believes. Maria herself recognizes, on the other hand, that “it was also possible for someone to become an *atimos* without a court sentence, under specific conditions as provided by laws and decrees, e.g. state debtors”.

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