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Absentee Athenians: Lysias Against Philon and Lycurgus Against Leocrates

By David Whitehead, Belfast

Abstract: This study compares and contrasts two speeches from the surviving corpus of classical Athenian forensic oratory, Lysias 31 *Against Philon* and Lycurgus (1) *Against Leocrates*. In both cases the man in the dock is an Athenian citizen who has chosen to live abroad at a critical time for his city. Both orators accordingly depict the defendant as a coward and a traitor – but Lysias’ strategies, in the shorter and more understated speech of the two, were apparently the more successful in harnessing the emotions of the jury and determining the outcome.

In 331 BC¹ the leading Athenian statesman of the age, Lycurgus son of Lyco-phron, decided to prosecute a certain Leocrates, a fellow-citizen who in his eyes was a traitor. Leocrates’ putative offence had been committed during the post-Chaeronea crisis of autumn 338, when all patriotic Athenians should have been rallying to the community’s defence against an anticipated attack from the victorious Macedonians under Philip II. Leocrates, instead, had left town, living first (and briefly) on the island of Rhodes and later in Megara, Athens’ western neighbour. To Lycurgus this was indeed nothing short of treason, *prodosia*, and it prompted him to initiate against Leocrates (upon the latter’s eventual, ill-judged return to Athens) the procedure appropriate to traitors: impeachment (*eisangelia*), a charge made first in the political arena – Council or, as in this instance, Assembly – before being heard in full before a jury-court.²

An assessment of the rhetorical and forensic strategies employed by Lycurgus in the *Against Leocrates*, the only complete speech of his to have survived, prompts the question of why his efforts to see Leocrates convicted ended as they did. Speaking the following year, Aeschines (3.252) alludes to a case which, it is routinely recognised, cannot but be this one: ‘another’³ private citizen, who sailed away to Rhodes, was impeached only the other day, because he

* I thank Lene Rubinstein for her wise and learned advice on an early draft of this study, some of which has prompted notes 5, 7 and 46 below.

1 All three-figure dates hereinafter are BC.

2 The case is no.121 in Hansen (1975). Hansen proffers the orthodox date for the trial, 330; I agree with Harris (in Worthington (2001) 159 n. 1) that 331 is the date calculable from § 45 (seven years since the events) and § 58 (L. abroad for six full years); perhaps, though, not Harris’s ‘early’ 331, given that Aeschines 3. 252, delivered in 330, says that Leocrates’ trial took place *πρόην ποτέ* (‘the day before yesterday’). See further on this passage below.

3 i.e. other than the one mentioned in the preceding sentence (an individual who, also in the post-Chaeronea emergency, had been sentenced to death by the Areopagus for attempting to sail away to Samos); cf. generally Lyc. *Leoc.* 52.

showed fear and cowardice, and the votes cast for him were equal; if a single vote had been changed, he would have been cast outside the borders' (ἕτερος δ' ἐκπλεύσας ιδιώτης εἰς Ῥόδον, ὅτι τὸν φόβον ἀνάνδρως ἤνεγκε, πρῶην ποτὲ εἰσηγγέλθῃ, καὶ ἴσαι αἱ ψῆφοι αὐτῷ ἐγένοντο· εἰ δὲ μία ψῆφος μετέπεσεν, ὑπερώριστ' ἄν). Though it is in Aeschines' interests in this passage to stress how close Leocrates had come to being convicted, the simple truth is that, by parity of votes, he was acquitted.⁴ Lycurgus had failed. Why?

A comprehensive answer to this question is out of reach, and it would be idle to pretend otherwise;⁵ nevertheless, short of that, I want to explore here some elements in it. My angle of approach stems from the fact that Lycurgus had at his disposal a speech delivered three-quarters of a century earlier, in a broadly similar instance of unpatriotic desertion: Lysias 31, *Against Philon*, referring to events of 404/3 from a vantage-point some years later.⁶ Leocrates, as we have seen, was acquitted, albeit by the narrowest possible margin (or indeed by no margin at all, but a facet of procedure). Philon of Acharnai, for his part, is not actually standing trial, in a court of law; rather, he is undergoing the preliminary scrutiny (*dokimasia*) to determine his fitness to serve on the Council of 500, a current member of which is the "prosecuting" speaker here. But with that understood, it is reasonable to believe that Lysias' client probably succeeded in proving his case.⁷ In any event

- 4 For the rule that parity of votes favoured the defendant see ?Aristot. *Ath. Pol.* 69.1: ὁποτέρῳ δ' ἂν πλείους γένωνται, οὗτος νικᾷ· ἂν δὲ ἴσαι, ὁ φ[εύ]γων. In this era of juries numbering 101 (and no option to abstain) no tie should theoretically have arisen, but evidently it had in this instance. The orthodox explanation is to assume that one or more jurors had had been unable to cast a vote because of illness or the like: Hansen (1991) 202 with n.259; Rhodes (1993) 733–734. Taking a different and novel tack, Sullivan (2002) argues that Aeschines' words refer to a second vote, after Leocrates had been convicted, to determine his punishment; but this is convincingly rebutted by Bianchi (2002).
- 5 Not least because it is impossible to assess the *effectiveness of the defence speech(es)*, a consideration for which, in general terms, [Plut.] *Vit. X Or.* 840D–E sounds a salutary warning: '(Aeschines) read to the Rhodians, as a display, his speech against Demosthenes, and when they were all amazed that after delivering that speech he was defeated, he said "You would not have been amazed, Rhodians, if you had heard Demosthenes' reply to it" (ἀνέγνω τε τοῖς Ῥοδίοις τὸν κατὰ Κτησιφώντος λόγον ἐπιδεικνύμενος· θαυμαζόντων δὲ πάντων εἰ ταῦτ' εἰπὼν ἡττήθη, "οὐκ ἄν," ἔφη, "ἐθαυμάζετε, Ῥόδιοι, εἰ πρὸς ταῦτα Δημοσθένους λέγοντος ἠκούσατε").
- 6 Its date, subsequent to the restoration of democracy in 403/2, cannot be established with precision, but the proffering of elderly witnesses in §§ 18–19 appears to indicate a lapse of time no longer than the first half of the 390s; cf. Carey (1989) 179.
- 7 I suggest this on a purely mathematical basis: according to [Plut.] *Vit. X Or.* 836A, Lysias is said to have lost with only two of 233 speeches authentically attributed to him (φέρονται δ' αὐτοῦ λόγοι τετρακόσιοι εἰκοσιπέντε· τούτων γνησίους φασὶν οἱ περὶ Διονύσιον καὶ Καικίλιον εἶναι διακοσίους τριάκοντα καὶ τρεῖς, ἐν οἷς δις μόνον ἡττῆσθαι λέγεται). Lene Rubinstein has put it to me that these claims should be viewed with extreme caution. I concede the point as regards the overall number – disputed, as we see here (and elsewhere) – of genuine speeches, but I place more faith in the subsidiary assertion about their high success-rate, quantified rather than merely proffered as a loose generalisation (e.g. 'L. always won', or even 'L. nearly always won'). Nevertheless one does wonder how late writers came by information of this kind; and even if it is accepted that Lys.31 was a successful speech, there is again (cf. n.5 above) a larger context: prob-

it will be profitable to compare and contrast the handling of such a charge by Lysias and Lycurgus and to establish, if one can, whether Lycurgus might have been better-advised to follow his exemplar more closely.

(i) *Proof that Leoc. draws on Phil.*⁸

I have said that Lycurgus had *Phil.* ‘at his disposal’ when devising *Leoc.*, but (as commentators and others have noted) it is safe to go further than that and state unequivocally that *Phil.* was a speech which Lycurgus knew and used. There are two pairs of key passages which demonstrate this:

Phil. 9: ‘...he migrated across the border, and in Oropus he paid a metic-tax and lived under a *prostatês*, preferring to be a metic amongst them than to be a citizen with us’ (εἰς τὴν ὑπερορίαν ἐξώκησε, καὶ ἐν Ὠρωπῷ μετοίκιον κατατιθεὶς ἐπὶ προστάτου ὥκει, βουλευθεὶς παρ’ ἐκείνοις μετοικεῖν μᾶλλον ἢ μεθ’ ἡμῶν πολίτης εἶναι). *Phil.* 14: ‘... he lived in Oropus under a *prostatês* ...’ (ὥκει ... ἐν Ὠρωπῷ ἐπὶ προστάτου).

Leoc. 21: ‘...he lived in Megara for more than five years, having a Megarian *prostatês*, unashamed at (*sc.* living on) the borders of Attica but being a metic in the territory of neighbours of the fatherland which had nurtured him’ (ὥκει ἐν Μεγάροις πλείω ἢ πέντε ἔτη προστάτην ἔχων Μεγαρέα, οὐδὲ τὰ ὄρια τῆς χώρας αἰσχυνόμενος, ἀλλ’ ἐν γειτόνων τῆς ἐκθρεψάσης αὐτὸν πατρίδος μετοικῶν). *Leoc.* 145: ‘... having lived in Megara under a *prostatês* for more than five or six years ...’ (οἰκήσας ἐν Μεγάροις ἐπὶ προστάτου πλείω πέντ’ ἢ ἕξ ἔτη).

Here then are two renegade Athenian citizens whose craven decision in the past to live as metics in nearby communities, Oropos⁹ and Megara,¹⁰ has been brought back to haunt them. It is supposed to disgust and alienate their fellow-

ably more “prosecution” speeches (see § 4), and certainly one or more “defence” ones. However, to argue either that Lysias’ client won or that Lysias’ speech for him was the sole reason he did so is not crucial for my purpose here, which is simply to explore some aspects of two speeches which do survive.

8 I use this self-explanatory shorthand for the two speeches from now on.

9 On the unstable history of Oropos, continually snatched back and forth between Athens and Thebes, see the (incomplete) summary in Hornblower (1991) 279. It fell into Theban hands in 402 (Diod.Sic. 14.17.1–3), i.e. after the time of Philon’s residence there. Thuc. 8.60.1 appears to describe something similar in 411, which would therefore require a period of Athenian control to be postulated between these two dates, either before or after Philon’s stay. (Oropos cannot have been Athenian *during* his stay, since an Athenian citizen would not have been classified as a metic there.) But preferable, to my mind, is the view of Honigmann (1939) 1173: that between 411 and 402 Oropos was not ‘under Theban control’ (so Carey (1989) 189) but, at least nominally, independent.

10 Oddly, Lycurgus momentarily forgets this when he asserts (in § 133) that Leocrates is so detestable a figure that no polis allowed him residence as a metic. (Leocrates’ stay in Rhodes, by contrast, was presumably too short to trigger whatever mechanisms would have classified him as a *metoikos* there; cf. generally Whitehead (1984) 54–56. It is interesting, nevertheless, that the thumbnail characterisation of Leocrates in Aeschines 3.252 is the man ‘who sailed away to Rhodes’, not the man who lived for years in Megara.)

citizens who are now sitting in judgement on them. But *Leoc.*'s echoing of *Phil.* goes beyond that. The phrase ἐπὶ προστάτου οἰκεῖν (underlined above), which Lysias uses twice and Lycurgus once, is described by Carey as 'unusual'.¹¹ In truth it is unique, for an act (and resultant condition) which is elsewhere, without exception, described as προστάτην ἐπιγράφειν or ἔχειν or νέμειν. Lysias – a metic himself, of course – coined the seemingly more emotive phrase ἐπὶ προστάτου οἰκεῖν,¹² and Lycurgus adopted it.

In the light of this, other echoes between *Phil.* and *Leoc.* can only be called secondary, especially when they can also be paralleled elsewhere, but they do at any rate serve to corroborate the link still further.¹³

Phil. 2 and *Leoc.* 5–6: the speaker insists that he is not motivated by personal animosity (*idia echthra*).

Phil. 8 and *Leoc.* 16: the narrative begins with an apology for the fact that the speaker is obliged (ἀναγκάζομαι) to recall painful events.

Phil. 14 and *Leoc.* 43: the absenteeism of both Philon and Leocrates at a time of crisis is conveyed by the idiom of their failure to 'take up arms' (τίθεσθαι τὰ ὄπλα).

Phil. 26 and *Leoc.* 59: the accused has betrayed not merely some military adjunct of Athens (Philon 'fort or ship or army', Leocrates 'dockyards or gates or camps') but 'the whole polis' (ὅλην τὴν πόλιν).

Phil. 27–28 and *Leoc.* 9: there is no specific law covering such a crime because no lawgiver could have anticipated it.

Phil. 31 and *Leoc.* 143: the accused has betrayed the ancestral gods. (For the all-pervading role of religion in *Leoc.* see further below, section v.)

(ii) *Phil.*: basic strategy

Formally speaking the purpose of any *dokimasia* – of a prospective city councillor in this instance (see generally ?Aristot. *Ath. Pol.* 45.3) – was to check the candidate's eligibility for office, 'but in practice the officials might find themselves under pressure more generally to justify their career and demonstrate that they were satisfactory citizens';¹⁴ and never more so than with reference to their record under the regime of the Thirty and the ensuing civil war. Thus Lysias, on behalf of his client, must depict in Philon a citizen so *unsatisfactory* that he must be deemed unsuitable to be a councillor (ἀνεπιτήδειον ... βουλεύειν, § 2).

11 Carey (1989) 183.

12 For ἐπὶ with the genitive implying pathetic reliance upon someone compare e.g. Creon on Oedipus (and Antigone) in Sophocles, *OC* 746.

13 I have drawn most of them from Carey (1989) 183, supplemented by his commentary. Some are also noted by Petrie (1922), Usher (1999), Harris in Worthington (2001), or combinations thereof.

14 Rhodes (1993) 542, with 472 for the following point about 404–403 (made also by Hansen (1991) 219).

Comparing the portrayal of Philon here with that of Simon in Lysias 3, Carey reasonably contends that Philon is not characterised with any particular vividness, but he concedes nevertheless that the various strands of the man's behaviour are shown to be consistent with each other.¹⁵ While the narrative section of the speech features first and most prominently Philon's selfish refusal to do his duty by his *stasis*-torn city (§§ 8–16), alleged failings in two other areas are also illustrated: (a) §§ 17–19 claim that he used Oropos as a base for intimidating and robbing the elderly inhabitants of rural north Attica, while (b) §§ 20–23 sharpen the theme of exploitation of the weak by depicting him as a man not even trusted by his own mother, when it came to setting up the financial arrangements for her burial. Concerning *a*, what Philon is alleged to have engaged in is, in effect, behaviour more to be expected from enemy troops (such as the Peloponnesian ones who had operated from Dekeleia between 413 and 404) than from a citizen of Athens.¹⁶ And as to *b*, a presentation of Philon as a son failing his mother is highly relevant in a *dokimasia*, concerned as it was with, amongst other things, the solemn and legal duties of children towards their parents.¹⁷

All in all, then, the *bouleutai* need only compare themselves, as individuals who had successfully negotiated a *dokimasia*, with Philon to recognise that his conduct does not meet the standards that a democracy requires (§ 34).

(iii) *Leoc.: basic strategy*

'The law concerning *eisangelia* provided that the procedure could be used to prosecute serious crimes against the community, including conspiracy to overthrow the democracy and treason endangering the city's defenses. Lycurgus charges that Leocrates' departure from Athens amounted to treason (*prodosia*), but it is clear from his arguments that he was attempting to stretch the meaning of "treason" to cover an action the Athenians did not normally associate with the term.'¹⁸

15 Carey (1989) 183; and cf. already Blass (1887) 483.

16 On the effects of Dekeleia the *locus classicus* is Thuc. 7.27–28. Here in *Phil.* the impression of Philon as a paramilitary commander is conveyed by the phrase 'setting out from Oropos, sometimes alone, sometimes in command of others' (ὁρμώμενος ... ἐξ Ὀρωποῦ, τοτὲ μὲν αὐτὸς μόνος, τοτὲ δ' ἑτέροις ἡγούμενος) in § 17. For ὁρμᾶν ἐκ as hostile excursion (of troops *vel sim.*) from their base cf. e.g. Thuc. 1.64.2, 1.104.1, 2.69.1, 3.31.1, 3.85.2, 4.1.2.

17 In ?Aristot. *Ath. Pol.* 55.3 the question about parents is put to prospective archons, but it was probably asked of other would-be office-holders too (cf. Hansen (1991) 219, citing Dein. 2.17). Although rejection (*apodokimasia*) following an unsatisfactory answer to this and/or any of the other questions seems to have had no automatic consequences beyond the bar to office itself, a candidate who had failed to show the required solicitude towards his father or mother might expect to face a *graphê* (or *eisangelia*) for *kakôsis goneôn*, with automatic *atimia* following conviction (Harrison (1968) 77–8).

18 Harris in Worthington (2001) 159–160. On the *eisangelia* law see Hyperides, *For Euxenippos* 7–8, with Whitehead (2000) 186–189.

By (almost) the close of the speech Leocrates can be rhetorically declared guilty of a whole roll-call of serious crimes: treason, subversion of democracy, impiety, maltreatment of parents, military desertion and dereliction (§ 147); but *prodosia* is indeed the charge that must “stick” if the case is to be won. Thus, where *Phil.* had used the *prodosia* theme quite sparingly, and brought it to the fore only in the closing stage of the speech (§§ 10, 13, 26–32) *Leoc.* introduces it in § 1 and rarely departs from it between then and the closing appeal to the jurors as they prepare to cast their votes (§§ 149–150, quoted in section v below).

(iv) *Phil.: tactics*

As procedure dictated, the speaker in *Phil.* is a member of the Council currently in office addressing an audience of his fellow-councillors, and that fact is central to the tactics (and tone) adopted. In a lawsuit proper it is of course commonplace to see litigants stressing their fellowship with the general run of jurors, against an opponent portrayed as a very different sort of person: clever, rich, malicious, unpatriotic, or whatever. Here, though, a smaller and more exclusive “club” is meeting: those who could still recall, from twelve months ago, their own bouleutic *dokimasia* and who had been functioning since then as the 500 of their year.

The speaker makes no attempt to suggest to his fellow-councillors that he is someone whom they know personally, from any impact he has been making on their deliberations during the year. On the contrary: having made the point (noted in section iii above) that this objection to Philon’s suitability for office is not the result of personal enmity, § 2 goes immediately on to the self-deprecating disavowal of being a good or experienced speaker; ‘nor was I prompted by ability or practice in speaking amongst you’ (οὐδὲ τῷ δύνασθαι καὶ εἰωθέναι λέγειν ἐν ὑμῖν ἐπαρθεῖς). Such claims were eventually to become courtroom clichés, at any rate in speeches delivered in private actions, but in the early fourth century they perhaps still retained some freshness, and in any event – the point is worth reiterating – they are being made here to a body of men which, unlike an average jury, was in a position to know for certain whether or not they were true. Presumably, then, they were. Admittedly, as Carey notes, a councillor ‘cannot claim complete inexperience of speaking, but he can give a pleasing impression of modesty by showing lack of confidence in his eloquence’.¹⁹ In other words the self-deprecation (underlined in § 3: εἴ τι ἐγὼ ἐλλείπομι τῷ λόγῳ τῆς κατηγορίας – ‘if I myself should fall short at all in my statement of the accusation’) need not be absolute; it can be relative, especially when it is backed up by the flattering implication that fellow-councillors with superior presentational skills will join in the process that the present speech has started. ‘I call upon those of you who are more able in speaking than I to expose his offences more fully, and to draw on material I myself might leave out for accusing Philon,

19 Carey (1989) 185.

in your turn, concerning matters known to you' (§ 4: ἀξιῶ δὲ καὶ ὑμῶν οἵτινες δυνατώτεροι ἐμοῦ εἰσι λέγειν, ἀποφῆναι μείζω ὄντα αὐτοῦ τὰ ἀμαρτήματα, καὶ ἐξ ὧν ἂν ἐγὼ ὑπολίπω, πάλιν αὐτοὺς περὶ ὧν ἴσασι κατηγορῆσαι Φίλωνος). The psychology of this is adroit: if even the speaker can see what is unacceptable about Philon, his more accomplished colleagues should display their accomplishment by strengthening the case.

The speaker's *persona*, then, is clear from the outset (and maintained consistently thereafter). He is an honest, average Athenian citizen who has been taking his year on the Council with the utmost seriousness and, as part of doing so, feels honour-bound to protest that Philon is unworthy to be one of his successors.

His conception of civic responsibility is proffered in the section (§§ 5–7) which immediately precedes the narrative. In the terminology employed by ancient rhetoricians this is the *prothesis/propositio* section, and – here, as often elsewhere – it is the conceptual core of the speech:

'Myself, I say that the right to serve on the Council (and deliberate) about us belongs only to individuals who, beyond being citizens, are desirous of it. For to them it makes great differences whether this city does well or unsuitably, because they consider themselves obliged to bear their share of the terrible things, just as they share in the good things too. (6) But those who, though citizens by birth, adopt the view that any country in which they have what they need is their fatherland: these are clearly men who would even abandon the common good of the city to pursue their own private gain, because of the fact that what they consider their fatherland is not their city but their property. (7) I, therefore, will expose this Philon here as someone who set a higher importance on his personal safety than on the the common danger of the city, and who considered it preferable to live his life danger-free rather than to save the city by sharing danger with the other citizens' (Ἐγὼ γὰρ οὐκ ἄλλους τινὰς φημι δίκαιον εἶναι βουλεύειν περὶ ἡμῶν, ἢ τοὺς πρὸς τῷ εἶναι πολίτας καὶ ἐπιθυμοῦντας τούτου. τούτοις μὲν γὰρ μεγάλα τὰ διαφέροντά ἐστιν εὖ τε πράττειν τὴν πόλιν τήνδε καὶ ἀνεπιτηδείως διὰ τὸ ἀναγκαῖον σφίσιν αὐτοῖς ἡγεῖσθαι εἶναι μετέχειν τὸ μέρος τῶν δεινῶν, ὥσπερ καὶ τῶν ἀγαθῶν μετέχουσι· [6] ὅσοι δὲ φύσει μὲν πολῖταί εἰσι, γνώμη δὲ χρῶνται ὡς πᾶσα γῆ πατρίς αὐτοῖς ἐστιν ἐν ἣ ἂν τὰ ἐπιτήδεια ἔχωσιν, οὗτοι δηλοῖ εἰσιν ὅτι καὶ παρέντες τὸ τῆς πόλεως κοινὸν ἀγαθὸν ἐπὶ τὸ ἑαυτῶν ἴδιον κέρδος ἔλθοιεν διὰ τὸ μὴ τὴν πόλιν ἀλλὰ τὴν οὐσίαν πατρίδα ἑαυτοῖς ἡγεῖσθαι. [7] ἐγὼ τοίνυν ἀποφανῶ Φίλωνα τουτονὶ περὶ πλείονος ποιησάμενον τὴν ἰδίαν ἀσφάλειαν ἢ τὸν κοινὸν τῆς πόλεως κίνδυνον, καὶ ἡγησάμενον κρεῖττον εἶναι αὐτὸν ἀκινδύνως τὸν βίον διάγειν ἢ τὴν πόλιν σῶζειν ὁμοίως τοῖς ἄλλοις πολίταις κινδυνεύοντα).

In other circumstances a desire (*epithymia*) for Athenian citizenship would probably be predicated of someone who wants it but does not yet have it; but here, as we see, the notion is that of an active rather than merely passive citizen. Philon, it will be argued, fails such a test: the cowardly selfishness attributed to him in § 7 turns out, once the principal section of the narrative (§§ 8–16) has begun, to mean his refusal to play any part in the events of 404/3. And not once but repeatedly. This is important, because pointing out that Philon spurned not one but several, successive opportunities to do his civic duty will at the same time serve to enlist as his critics those of the listening councillors who had not been active in the restoration of democracy from the very outset. What is more, §§ 13–14 extends the support-group still further by claiming that Philon's passivity and absenteeism is an affront to *both* sides in the civil war of 403, democrats and "moderates" alike. (Only if oligarchs ever win control of Athens again, § 14 darkly insinuates, will Philon suitably fill a bouleutic seat.)

By these means, virtually all the men who will determine the outcome of Philon's *dokimasia* are given an opportunity to dissociate themselves from him (and associate themselves instead with the speaker – who implies, without ever expressly stating, that his own actions and whereabouts at the time would incur no such reproach). They may, and probably do, have different opinions on the best sort of constitution for Athens, but what they all share is loyalty to Athens itself. Though an Athenian by birth (φύσει), like them, Philon has chosen (γνώμη)²⁰ to behave in a way which spurns that birthright. All right-thinking Athenians, Lysias and his client assume (and hope), will recoil from the notion that 'any country in which they have what they need is their fatherland' (πᾶσα γῆ πατρίς αὐτοῖς ἐστὶν ἐν ᾗ ἂν τὰ ἐπιτήδεια ἔχωσιν). The proper sentiment, rather, is the one voiced by Andocides in his own defence: 'a life abroad where I had every good thing but was deprived of my fatherland is something I would not accept' (Andoc. 1.5: ἄλλοθί τε γὰρ ὦν πάντα τὰ ἀγαθὰ ἔχειν στερόμενος τῆς πατρίδος οὐκ ἂν δεξαίμην). As Carey rightly warns, πᾶσα γῆ πατρίς would become a familiar and largely uncontroversial idea in late hellenistic and Roman times, once the nature and privileges of polis citizenship had become more diffuse, but in the late fifth and early fourth centuries its power to provoke and subvert needs to be recognised.²¹ Something of this comes through in Aristophanes, *Plutus* 1151, where Hermes, in response to Carion's shocked realisation that he has no qualms about deserting the gods and moving to Athens, cheerfully declares that 'every man's fatherland is where he would do well' (πατρίς γὰρ ἐστὶ πᾶσ' ἵν' ἂν πράττῃ τις εὖ). This may be a quotation from tragedy, either in these very words or as a close paraphrase of others: see *tragica adespota* fr.318 ('to the man doing well, every land is his fatherland', τῷ γὰρ καλῶς πράσσοντι πᾶσα γῆ πατρίς); and compare Euripides fr. 777 ('since

20 This contrast occurs in § 6, but see below on the second γνώμη (in § 11).

21 Carey (1989) 186–187. For later statements of it see e.g. Cic. *Tusc.* 5.108: patria est, ubicunque est bene.

everywhere the country which feeds one is one's fatherland', ὡς πανταχοῦ γε πατρίς ἢ βόσκειν γῆ) and fr. 1047.2 ('to a noble man every country is his fatherland', ἅπαντα δὲ χθὼν ἀνδρὶ γενναίῳ πατρίς). In these three tragic instances, preserved out of context, it is obviously impossible to know who is speaking and what impact their sentiments are supposed to have, but the destabilising frisson detectable in *Plutus* 1151 (staged a decade after *Phil.* was written and delivered) may well reflect a debate over just this issue which had been passing back and forth between the dramatic stage and the political and forensic arenas of Athenian life. Lysias' speaker is confident that Philon and others like him – § 6 is couched in impersonal, disdainful plurals – will be judged by the councillors as men who scarcely deserve citizenship at all, let alone a place amongst the 500. For an Athenian, above all, there could be only one *patris*.

This *prothesis*, then, puts the listeners in exactly the right frame of mind for what is to come: narrative (§§ 8–23),²² “proof” section (§§ 24–33), and brief epilogue (§ 34). Only a few points need further comment:

§ 11 repeats the expression γνώμη – literally, ‘by intent’ – of § 6 (quoted above) and so underlines the picture of Philon as someone who makes a deliberate choice to adopt the wrong attitude or course of action. Furthermore, just as § 6 encompasses Philon in a generalisation introduced by ὅσοι, so §§ 10–11 contrast in generic terms (ὅσοι μὲν, ὅσοι δέ) those Athenians in 403 who were obliged to keep their distance from the action because of some unavoidable private calamity with those who simply chose to stand aloof and who therefore, by the universal ethical standards applicable to human behaviour (ἔθος δίκαιον πᾶσιν ἀνθρώποις), deserve no indulgence.

§§ 17–19 (previewed in section iii above) aim to show that Philon's time in Oropos did not merely, negatively, deprive the community of his services but allowed him actively to pursue private profit at the expense of vulnerable fellow-citizens. (ὅπως τι κερδανεῖ in § 17 and μικρὰ κερδαίνειν in § 18 pick up § 6's ἴδιον κέρδος, quoted earlier.) The pathos evoked here then continues in §§ 20–23, when Philon's mother – by now conveniently deceased – is brought into the picture; at the same time, the importance of care for one's parents in *dokimasia* questioning imbues facts which may not actually be very damaging in this instance with the emotiveness of the topic in general.²³

§§ 9 and 14 (see section ii above) have heaped contempt upon Philon for enduring life as a metic in Oropos, and obviously the force of the point is that, as an Athenian citizen, better was expected of him. § 29 presents another and more explicit form of this metic topos *a fortiori*:²⁴ ‘who would not have good reason to rebuke you if, after honouring the metics in a manner worthy of the city, for exceeding their duty in helping the demos, you did not punish this man, for

22 So in formal terms; but Carey (1989) 182–183, 187 and *passim* is right to point out that a good deal of argument and interpretation is included.

23 ?Aristot. *Ath. Pol.* 55.3, Dein. 2.17, etc.; Carey (1989) 194.

24 For this term see Whitehead (1977) 46, 55, 59.

violating his duty in betraying the city ...?' (τίς δ' οὐκ ἂν εἰκότως ἐπιτιμήσειεν ὑμῖν, εἰ τοὺς μετοίκους μὲν, ὅτι οὐ κατὰ τὸ προσήκον ἑαυτοῖς ἐβοήθησαν τῷ δήμῳ, ἐτιμήσατε ἀξίως τῆς πόλεως, τοῦτον δέ, ὅτι παρὰ τὸ προσήκον ἑαυτῷ προὔδωκε τὴν πόλιν, μὴ κολάσετε ...). The *metoikoi* in question here are of course the members of Athens' own immigrant community; they included the writer of this speech, Lysias himself, who had used a similar but more transitory argument when speaking in his own right as the prosecutor of his brother's murderer;²⁵ nevertheless, since the argument works perfectly well in the mouth of a citizen there is no basis for supposing that either the present speaker or his audience would have had a problem with it.

§ 31 contains the speech's solitary appeal to religion: 'what kind of oaths do you think this man would respect, he who by his actions betrayed the ancestral gods?' (ποιῶν ἂν ὑμῖν δοκεῖ οὗτος ὅρκων φροντίσαι, ὃς ἔργῳ τοὺς πατέρας θεοὺς προὔδωκεν;). And even here the topic arises almost incidentally, in support of the insinuation that Philon's adherence to the bouleutic oath could not be relied on.²⁶ (Contrast Lycurgus, for whom the gods are paramount throughout: see the next section.)

The brief and understated epilogue (§ 34) begins conventionally enough, with the speech's second use of the cliché of abundance/*praeteritio* (leaving much, allegedly, unsaid; already in § 20 on Philon's shortcomings in the eyes of his mother); it ends with a reiteration of the basic assertion that Philon's behaviour is undemocratic; but in between it reverts to what has been the tactical and psychological strength of *Phil.* ever since § 4 (see the start of this section). In other circumstances, Athenian *jurors* were well used to hearing that they were faced with the task of deciding what was best for the city and/or most in accord with the requirements of justice. Sometimes they were even flattered by an expression of confidence, analogous to the one here (πιστεύω ὑμᾶς ... αὐτοὺς τὰ συμφέροντα τῇ πόλει γνῶσεσθαι), that they would succeed in doing so.²⁷ Here, though, the *amour propre* of the adjudicating body is crucial to everything. 'To assess those who are worthy to serve on the Council you need employ no other evidence than yourselves, what behaviour towards the city on your own part enabled you to come through the scrutiny' (οὐ γὰρ ἄλλοις τίσιν ὑμᾶς δεῖ περὶ τῶν ἀξίων ὄντων βουλευεῖν τεκμηρίοις χρῆσθαι ἢ ὑμῖν αὐτοῖς, ὅποιοί τινες ὄντες αὐτοὶ περὶ τὴν πόλιν ἐδοκιμάσθητε). Even if the listening councillors did not believe every single charge and allegation that had been brought against Philon, they will have heard enough to be keen to distance themselves from him, sustaining thereby the self-image that Lysias had so simply but effectively created.

25 Lys. 12.27: the Thirty would not have tested Eratosthenes' loyalty by having him arrest a mere metic (οὐ γὰρ δήπου ἐν τοῖς μετοίκους πίστιν παρ' αὐτοῦ ἐλάμβανον).

26 But note again (cf. above, at n.17) the role and relevance of religion in a *dokimasia* procedure, with its question about the maintenance of family tombs and cult (?Aristot. *Ath. Pol.* 55.3).

27 See e.g. Lys. 9.21, πιστεύω δὲ τῇ ὑμετέρῃ γνώμῃ.

(v) *Leoc.: tactics*

§§ 1–2: ‘Justice, Athenians, and piety will mark the beginning of this prosecution of the defendant Leocrates brought both on your behalf and on behalf of the gods. For I pray to Athena and the other gods and the heroes whose statues stand throughout the city and the countryside: if I have done justly to impeach Leocrates and am accusing a man who betrayed their temples and shrines and precincts as well as the honours and the sacrifices handed down in the laws by your ancestors, (2) make me this day a worthy prosecutor of Leocrates’ crimes, for the good of both the people and the city, and make you – deliberating as on behalf of fathers and children and wives and fatherland and holy things, and having at the mercy of your vote the betrayer of them all – implacable judges, both now and in the future, of those who break the laws in such a way and on such a scale; but if the man I am bringing to this trial neither betrayed the fatherland nor forsook the city and its holy things, may he be saved from danger both by the gods and by you the jurors’ (Δικαίαν, ὧν Ἀθηναῖοι, καὶ εὐσεβῇ καὶ ὑπὲρ ὑμῶν καὶ ὑπὲρ τῶν θεῶν τὴν ἀρχὴν τῆς κατηγορίας Λεωκράτους τοῦ κρινομένου ποιήσομαι. εὐχομαι γὰρ τῇ Ἀθηνᾷ καὶ τοῖς ἄλλοις θεοῖς καὶ τοῖς ἥρωσι τοῖς κατὰ τὴν πόλιν καὶ τὴν χώραν ἰδρυμένοις, εἰ μὲν εἰσήγγελκα Λεωκράτη δικαίως καὶ κρίνω τὸν προδόντ’ αὐτῶν καὶ τοὺς νεῶς καὶ τὰ ἔδη καὶ τὰ τεμένη καὶ τὰς ἐν τοῖς νόμοις τιμὰς καὶ θυσίας τὰς ὑπὸ τῶν ὑμετέρων προγόνων παραδεδομένας, [2] ἐμὲ μὲν ἄξιον ἐν τῇ τήμερον ἡμέρᾳ τῶν Λεωκράτους ἀδικημάτων κατήγορον ποιῆσαι, ὃ καὶ τῷ δήμῳ καὶ τῇ πόλει συμφέρει, ὑμᾶς δ’ ὥς ὑπὲρ πατέρων καὶ παίδων καὶ γυναικῶν καὶ πατρίδος καὶ ἱερῶν βουλευομένους, καὶ ἔχοντας ὑπὸ τῇ ψήφῳ τὸν προδότην ἀπάντων τούτων, ἀπαραιτήτους δικαστὰς καὶ νῦν καὶ εἰς τὸ λοιπὸν χρόνον γενέσθαι τοῖς τὰ τοιαῦτα καὶ τηλικαῦτα παρανομοῦσιν· εἰ δὲ μήτε τὸν προδόντα τὴν πατρίδα μήτε τὸν ἐγκαταλιπόντα τὴν πόλιν καὶ τὰ ἱερὰ εἰς τουτονὶ τὸν ἀγῶνα καθίστημι, σωθῆναι αὐτὸν ἐκ τοῦ κινδύνου καὶ ὑπὸ τῶν θεῶν καὶ ὑφ’ ὑμῶν τῶν δικαστῶν).

§§ 149–150: ‘So for myself, in aiding the fatherland and the holy things and the laws I have conducted the trial rightly and justly, neither slandering this man’s private life nor making any accusation irrelevant to the matter in hand; and as for you, everyone must now realise that a vote to acquit Leocrates is a vote condemning the fatherland to death and slavery, and that ‘with twin urns in place’,²⁸ the one treason’s, the other salvation’s, you must cast your votes in the one case for the destruction of the fatherland

28 As Boegehold (1985) pointed out, this phrase appears to be part of a iambic trimeter and thus quoted from somewhere, perhaps (he suggested) Euripides’ lost *Palamedes*. Lysurgus therefore seems to have aimed for poetic/tragedic effect at the expense of procedural reality – which by his time centred on a single urn for two types of ballot. See Harrison (1971) 165 n.2; Harris in Worthington (2001) 202 n.99.

and in the other for security and prosperity in the city. If you free Leocrates, you will be voting to betray the city and the holy things and the fleet; if you kill him, you will be encouraging the protection and preservation of the city and its revenues and its prosperity. So imagine, Athenians, that the countryside and the trees are supplicating you, that the city's harbours and dockyards and walls are begging you, and that the temples and the holy things are pleading with you to help them: make an example of Leocrates, bearing in mind the charges that have been brought, and (showing) that neither pity nor tears weigh more heavily with you than keeping the laws and the people safe' ('Εγὼ μὲν οὖν καὶ τῇ πατρίδι βοηθῶν καὶ τοῖς ἱεροῖς καὶ τοῖς νόμοις ἀποδέδωκα τὸν ἀγῶνα ὀρθῶς καὶ δικαίως, οὔτε τὸν ἄλλον τούτου βίον διαβαλὼν οὔτ' ἔξω τοῦ πράγματος οὐδὲν κατηγορήσας· ὑμῶν δ' ἕκαστον χρὴ νομίζειν τὸν Λεωκράτους ἀποψηφιζόμενον θάνατον τῆς πατρίδος καὶ ἀνδραποδισμόν καταψηφίζεσθαι, καὶ δυοῖν καδίσκοιν κειμένους τὸν μὲν προδοσίας, τὸν δὲ σωτηρίας εἶναι, καὶ τὰς ψήφους φέρεσθαι τὰς μὲν ὑπὲρ ἀναστάσεως τῆς πατρίδος, τὰς δ' ὑπὲρ ἀσφαλείας καὶ τῆς ἐν τῇ πόλει εὐδαιμονίας. [150] ἐὰν μὲν Λεωκράτην ἀπολύσητε, προδιδόναι τὴν πόλιν καὶ καὶ ἱερὰ καὶ τὰς ναῦς ψηφιῖσθε· ἐὰν δὲ τοῦτον ἀποκτείνητε, διαφυλάττειν καὶ σῶζειν τὴν πατρίδα καὶ τὰς προσόδους καὶ τὴν εὐδαιμονίαν παρακελεύσεσθε. νομιζόντες οὖν, ὧς Ἀθηναῖοι, ἱκετεύειν ὑμῶν τὴν χώραν καὶ τὰ δένδρα, δεῖσθαι τοὺς λιμένας <καὶ> τὰ νεώρια καὶ τὰ τεῖχη τῆς πόλεως, ἀξιοῦν δὲ καὶ τοὺς νεῶς καὶ τὰ ἱερὰ βοηθεῖν αὐτοῖς, παρὰδειγμα ποιήσατε Λεωκράτη, ἀναμνησθέντες τῶν κατηγορουμένων, ὅτι οὐ πλέον ἰσχύει παρ' ὑμῖν ἔλεος οὐδὲ δάκρυα τῆς ὑπὲρ τῶν νόμων καὶ τοῦ δήμου σωτηρίας).

Though 146 chapters intervene between this opening and close, not a great deal of either *Leoc.*'s content or its tone would actually be missed if, like the rest of Lycurgus' speeches, only such quotations as these had been preserved.

For Lycurgus the battle of Chaeronea and its aftermath had been the ultimate testing-ground of the calibre of all patriotic Athenians, and this prosecution of Leocrates appears to be the third in a series of impeachments, brought by him, which it generated. The first two, which came to court not long after the battle itself, had been successful: against the *stratêgos* Lysicles, for his leading part in the military defeat itself,²⁹ and against the Areopagite Autolycus.³⁰ The latter case is cited in *Leoc.* itself, at § 53 (though without mention of Lycurgus' own involvement), and unsurprisingly so, as it appeared to furnish such a good precedent, *a fortiori*, for a conviction of Leocrates: 'you condemned Autolycus and punished him, because although he himself remained to face the dangers, he incurred a charge of removing his sons and his wife to a place of

29 Hansen (1975) no.112 (which may either, as he points out, be an *eisangelia* or an *euthyna*); the principal source is Diod.Dic. 16.88–12, with a quoted fragment.

30 Hansen (1975) no.113.

safety. If you punished him who incurred a charge of removing to a place of safety people who were of no military use, what is the appropriate fate for an individual who, though a man, did not repay his fatherland for nurturing him?'. Autolycus' mistake, evidently, had been to infringe post-Chaeronea emergency measures – mentioned first in § 16 and again, more vaguely, in §§ 53–54 – which had aimed to prevent emigration of just this kind. So if Leocrates had infringed them too, why is this not stated plainly? The answer, obvious to modern commentators and readers (though not to the writer(s) of the ancient summary of the speech), must be that he had *not* infringed them. Rather, it must be presumed, he had absconded before they were passed. And if that is so, any mystery vanishes from the fact that in the speech as a whole Lycurgus spends far less time even insinuating that Leocrates has contravened any specific law or decree – a point conceded, effectively, in §§ 7–10 – than he does in stating and reiterating the general motif of treason/betrayal (see already section iii) and everything that went with it.

And what principally went with it, as we see, was religion. The speech opens with the adjectives Δικαίαν ... καὶ εὐσεβῆ, 'just ... and pious' (preceding the noun to which they refer, ἀρχήν); and given that any speaker could lay claim to justice in his presentation and in the judicial outcome he desired, the second is the more striking of the two. It leads immediately on to the prayer to Athens' gods and heroes. No surviving speech before this one had opened with such a prayer, and – in what survives – only once was such an opening to be essayed again. Where Demosthenes in the *de corona* offers up his prayer (Demosth. 18.1) and then rapidly moves on to other things, however, *Leoc.* 1–2 has sounded a note of piety which never dies away:

§ 5: it is monstrous to allow L. to enter the Agora and share in the *hiera*;

§ 8: L. abandoned the graves of his ancestors;

§ 15: what distinguishes the Athenians from others is piety towards the gods and reverence towards ancestors;

§ 17: during L.'s departure from Athens he looks back at the Acropolis and the shrines of Zeus Soter and Athena Soteira, whose protection he will now call on;

§§ 25–26: when L. settled in Megara he also removed to there his family's ancestral images, so stripping Athens of divine support (again § 38, § 56);

§ 27: L. has no regard for the *hiera* (again § 35);

§ 44–45: in the emergency 'the land was giving up its trees, the dead their gravestones and the temples their arms', but L. did not even help collect the bodies or prepare the funerals – instead, years later, he passed their tombs without shame (again § 59);

§ 65: the traditional punishment for temple robbery (*hierosylia*, again § 90), however minor, is death;

§§ 76–78: L.'s behaviour breaks the ephebic oath which he must have sworn; it also (§§ 79–82) undermines the cohesive role of other oaths, such as the one taken before the battle of Plataea;

§ 85: the Athenians of 431 did not abandon the land and its *hiera* as L. has;

§ 88: Codrus and the early kings, so unlike L. in their love of country, received godlike honours;

§§ 91–93: it is surely some god that has brought L. back to Athens to face punishment, just as happened with Callistratus;

§§ 94–100: the gods oversee everything, especially care of parents, the dead, and themselves; illustration of this in stories of the Sicilian ‘Place of the Pious’ and of Eumolpus and the Delphic Oracle (the latter glossed with a lengthy quotation from Euripides);

§ 105: the Athenian Tyrtaeus was accepted in Sparta on divine advice;

§§ 113–114: earlier traitors, Phrynichus et al., were not allowed burial in Attica (cf. §§ 128–129: the case of Pausanias in Sparta also shows that traitors forfeit divine protection);

§ 127: the jurors must follow precedent, which embodies pledges from their ancestors to the gods;

§§ 136–137: L.’s abandonment of his own father’s statue, dedicated in the temple of Zeus Soter;

§§ 142–144: L. has scandalously returned to claim access to the very manifestations of Athenian religion that his departure sullied and betrayed;

§§ 146–148: ‘the people’s decree ... concerning piety’ (?) is read out, and the jurors owe it to the gods as well as themselves to apply it in L.’s case – or else incur divine vengeance (see further below);

(§§ 149–150: quoted above).

I began this section with a quotation of §§ 149–150 as well as §§ 1–2 because there is no simpler way to show that religion (together with its ancient analogue patriotism)³¹ frames as well as permeates the whole speech. Yet in a sense it is the final clause of § 148,³² immediately before the epilogue, which exposes Lycurgus’ approach most nakedly. Here is § 148 as a whole:

‘Who then will vote to acquit this man, and show sympathy for the crimes he has chosen to commit? And who is so senseless as, by saving this man, to entrust his own safety to those who want to be deserters; by pitying this man, to choose to die himself unpitied at the hands of the enemy; and by showing favour to the betrayer of his fatherland, to become subject to vengeance from the gods?’ (ἔπειτα τούτου τίς ἀποψηφιῖται, καὶ συγγνώμην ἔξει τῶν κατὰ προαίρεσιν ἀδικημάτων; καὶ τίς οὕτως ἐστὶν ἀνόητος, ὥστε τοῦτον σφάζων τὴν ἑαυτοῦ σωτηρίαν προέσθαι τοῖς ἐγκαταλιπεῖν βουλομένοις, καὶ τοῦτον ἐλεήσας αὐτὸς ἀνηλέητος ὑπὸ τῶν πολεμίων ἀπολέσθαι προαιρήσεται, καὶ τῷ προδότῃ τῆς πατρίδος χάριν θέμενος ὑπεύθυνος εἶναι τῇ παρὰ τῶν θεῶν τιμωρίᾳ;).

31 On the unparalleled frequency of the word *patris* in this speech see Allen (2000) 6 with n.2.

32 It is inadvertently (or so I assume) omitted in the most recent translation, that of Harris in Worthington (2001) 202.

This is the second time in the speech that Lycurgus has used the term ὑπεύθυνος, but while the jurors may scarcely have registered the first one (in § 129: the Spartans made survival after war ‘subject to risk and attendant shame’, ὑπεύθυνον ... κινδύνῳ μετ’ αἰσχύνῃς), what they are told here in § 148 is so striking that it must have made them gasp. *If they vote to acquit Leocrates the gods will punish them.* Such a threat, as effectively it is, might have sounded foolish in the mouth of some prosecutors, but not this one: a man from venerable aristocratic and priestly stock, who had made religion a speciality of both his policy and his public speaking.³³ Invoking divine (as well as human) τιμωρία was nothing novel in itself. In Antiphon’s Third Tetralogy the victims of murder leave it behind them, to play its part in bringing the perpetrators to justice (Antiph. 4.1.3). In Lysias 12.96 the detested Thirty are said to have believed their own rule strong enough to withstand it. And in Isocrates 18.3 violations of the 403 oaths of amnesty, it is assumed, will activate it in the long run (over and above the more immediate consequence, civil prosecution). The jurors who will decide the fate of Leocrates have of course sworn an oath too (§§ 79, 128), and the alarming implication here – picked up, and sharpened, from § 15 (allowing him to escape (sc.) dikastic *timôria* will be a neglect of *eusebeia* towards the gods) – is that if they vote in his ‘favour’ they will be breaking it.

These closing moments of *Leoc.* thus create a gulf between speaker and audience which nothing earlier in the speech has quite paved the way for. After all, Lycurgus has begun it by saying that his prosecution has been ‘brought both on your behalf and on behalf of the gods’ (§ 1, quoted earlier), and ὑπὲρ ὑμῶν must be given its weight as well as ὑπὲρ τῶν θεῶν. Neither here nor elsewhere can he wisely claim to be championing Athens on some abstract level set above the Athenian demos itself, which for present purposes the jury represents. Rather, when (in § 3) he seeks to forestall the standard criticism levelled at anyone initiating a prosecution *pro bono publico* (that such a man is not φιλόπολις but φιλοπράγμων – not a patriot but a busybody), and does this by crushing the criticism from a lofty and didactic height, the target of his displeasure is not the otherwise ubiquitous second person plural, you the jurors = citizens, but a third-person entity which, if they care to, they can join him in despising: οἱ πολλοί. Yet this distinction passes quickly, and is never repeated. Instead, in the extended lecture on patriotism which the prosecution of the wretched Leocrates becomes, only two types of Athenian are differentiated. There are (a) traitors like the defendant, and there are (b) others. Category-*a* citizens, naturally, are referred to throughout in the third person. For category *b*, which subsumes the jurors, some mix of third-person, second-person and first-person plurals could have been expected, with the first-person mode creating and underlining a bond between speaker and his audience. The vast majority of surviving speeches do this, *Phil.* amongst them. In *Leoc.*, however, the ‘we’ standpoint is

33 See generally Parker (1996) 242–255, including 251–253 on *Leoc.*

used very sparingly indeed. Where it does occur it sometimes means ‘we (sc. habitual) prosecutors’, not ‘we Athenians in general’,³⁴ which makes the Athenian (or all-embracingly human) ‘we’ even more conspicuous by its infrequency.³⁵

Lycurgus’ approach is to compartmentalise. He, the *dikaïos politês* of § 6, has his role, the jurors theirs (§ 146). He has done his civic and religious duty by bringing Leocrates to court. They must do theirs by convicting him – or else they too, having paid no more heed to the dictates of *eusebeia* than Leocrates has, will deserve the gods’ punishment (and grammatical demotion) just as he does.

(vi) *The light and the heavy*

Phil. and *Leoc.* each address a similar phenomenon: what I have called absentee Athenians. Furthermore, the Council in the earlier instance and a court in the later one must be persuaded that absenteeism goes beyond the negative point of what these individuals should have done but did not (and where they should have been but were not). By failing, in 403 and 338 respectively, to emulate their public-spirited fellow-citizens at a time of crisis, they had forfeited the right, once normality had been restored, to behave like other Athenians: accepting public office in the case of Philon; avoiding trial and conviction as a criminal in that of Leocrates.

Given that there was much more at stake for Leocrates than for Philon, the burden of proof rested more heavily on *Leoc.* than on *Phil.*, and that in itself may have some bearing on the fact that *Leoc.* failed in its aim where, probably, *Phil.* had succeeded.³⁶ But what else can legitimately be inferred from these (as I shall continue to assume here) differing outcomes?

Why *Phil.* “works” so well should have emerged from sections ii and (especially) iv, above, and need not be repeated here. Nothing is overdone or overblown, either to modern taste or (more important) to ancient. (For this distinction see further below.) Instead the speech gently manoeuvres the listening councillors into a position where, in effect, they owe it to themselves to reject Philon as one of their successors.

Could the same effect have been produced, *mutatis mutandis*, on the jurors in a case against Leocrates? In principle there is no reason why not; no reason why Leocrates should not have been successfully depicted as someone who no

34 For this see §§ 20 (κλητεύσομεν αὐτούς) and 30 (ὥσπερ ἡμεῖς – anyway perhaps no more than a pluralisation of ἐγώ).

35 Absolute precision is beyond reach, given the common phenomenon of manuscript confusion between the pronouns ἡμεῖς (etc.) and ὑμεῖς (etc.). Nevertheless, in terms of Conomis’ Teubner text see merely: § 61, ἡμῶν ... ἡ πόλις; § 67, ἡμέτερον εὐτύχημα (that there are not many like Leocrates); § 83, οἱ πρόγονοι ἡμῶν; § 84, τὴν πόλιν ἡμῶν and ἡμῶν τοὺς προγόνους; § 85, οἱ πρόγονοι ἡμῶν (twice); § 94, εἰλήφαμεν and πεπόνθαμεν in a generalisation about people and their parents; § 105, the Spartans took Tyrtaeus παρ’ ἡμῶν.

36 See introductory section above.

longer deserved to be their fellow-citizen. What would have been needed was a prosecutor who represented himself as the most ordinary and self-effacing of Athenians, here stung into unwonted action, by the sheer outrage of Leocrates' behaviour, to bring him to judgement before wise and experienced dikasts, in whom he wants to stimulate similar feelings. But instead, the case was initiated by one of the least 'ordinary' figures of his generation. Lycurgus can and does express the outrage, repeatedly and at length. What he cannot, on this showing, do is genuinely enlist the emotions of his listeners. (Not enough of them, at any rate, to secure a conviction.) He tells them what they should be feeling, rather than harnessing the feelings they are likely to be experiencing already. In modern eyes at least, his approach is too much that of the lofty harangue, the stuffy (and monotonous) moral lecture, the sermon.³⁷

Modern eyes, though, are not the best through which to assess a speech like *Leoc.* Ancient criticism employs different standards, and from an ancient perspective such a term as 'solemn' (σεμνός) is not the automatically adverse value-judgement it can be nowadays. In Lycurgus' case it is a description applied to him by one of the more approachable of the ancient pundits, Dionysius of Halicarnassus:³⁸ ὁ δὲ Λυκούργειός ἐστι διαπαντός αὐξητικός καὶ διηρημένος καὶ σεμνός, καὶ ὅλως κατηγορικός, καὶ φιλαλήθης καὶ παρρησιαστικός· οὐ μὴν ἄστεϊος οὐδὲ ἡδύς, ἀλλ' ἀναγκαῖος. τούτου χρὴ ζηλοῦν μάλιστα τὰς δεινώσεις; 'the Lycurgan (*sc.* type of speech) is throughout amplificatory and elevated and solemn, and altogether accusatory, and truth-loving and outspoken; not witty or charming, but forceful. Particularly to be emulated are his exaggerations/indignations'. Some of these terms map on to modern (less style-based) criteria better than others, but any present-day reader of *Leoc.* will grasp 'amplificatory' (αὐξητικός) and notice the role played by 'exaggeration(s)/indignation(s)' (δεινώσεις).

The amplification (*auxêsis*), indeed, is partly self-evident from the speech's sheer length – between five and six times longer than *Phil.* Even allowing for ancient attention-spans, honed by rhapsodes and long days in the theatre, Lycurgus may have forfeited the sympathies of a proportion of the jurors by simply speaking, in their view, for too long. By his day there were formulaic phrases for soothing juries (and other kinds of audience) whose patience was being tried or was about to be tried. Lycurgus uses them on a few occasions (§§ 16, 52, 128), but with no great impression of sincerity. Like a lecturer (or preacher) with a

37 For recent comments to this effect see Harris in Worthington (2001) 158: 'Lycurgus' oratory possesses a certain solemn dignity, but as an artist he does not rank with Demosthenes and Lysias. At its best, his style conveys deep sincerity and a strong religious conviction; at his worst, Lycurgus is repetitive and bombastic'.

38 In *de veterum censura* (a.k.a. περὶ μμήσεως) fr.31.5.3 Usener-Radermacher. (Harris in Worthington (2001) 158 wrongly attributes this passage to *Letter to Ammaeus* 1.2, where Lycurgus is merely mentioned in passing.)

captive audience, he will speak as long as he wants to and his audience can like it or lump it.

The concept of *auxêsis*, however, involved more than mere length, which could be achieved by verbosity and/or repetition; the argument was supposed to be deepened as well as elongated. If not limited by the waterclock in the extent to which he could do so, any speaker (or speech-writer) who did take the risk of speaking at length needed, for success, to maintain his hearers' interest and sympathies in ways such as the ones Dionysius mentions – and where Lycurgus is concerned, discounts. There is no wit or charm in *Leoc.*; what there is, in abundance, is *deinôsis*, that oratorical mode which (as my inelegant translation attempts to convey) combined an exaggeration of something with an expression of indignation about it; 'the power to bring out the enormity of a wrong'.³⁹ *Phil.* too had employed *deinôsis*, in its very opening sentence ('I supposed, council, that Philon would not have reached such heights of audacity as to want to come before you to be scrutinised'),⁴⁰ but the touch is light and is not repeated. In *Leoc.* it is heavy and insistent.

Dionysius' characterisation is of course not restricted to *Leoc.*; it stems from a reading of Lycurgus' output as a whole; and very probably *auxêsis* and *deinôsis* had served him well in other circumstances. For example, his impeachment of General Lysicles (mentioned above) had included this fine specimen of it: 'you were serving as general, Lysicles, and a thousand citizens have died, two thousand have become prisoners-of-war, a trophy has been erected over the city's defeat, and the whole of Greece is in slavery: after all these things have happened under your command and generalship, you dare to live and to see the light of the sun and to thrust your way into the Agora,⁴¹ now you are a monument of shame and disgrace to the fatherland' (Diod.Sic. 16.88.2: 'Ἐστρατήγεις, ὦ Λύσικλες, καὶ χιλίων μὲν πολιτῶν τετελευτηκότων, δισχιλίων δ' αἰχμαλώτων γεγονότων, τροπαίου δὲ κατὰ τῆς πόλεως ἑστηκότος, τῆς δ' Ἑλλάδος ἀπάσης δουλευούσης, καὶ τούτων ἀπάντων γεγενημένων σοῦ ἡγουμένου καὶ στρατηγοῦντος τολμᾶς ζῆν καὶ τὸ τοῦ ἡλίου φῶς ὄρᾶν καὶ εἰς τὴν ἀγορὰν ἐμβάλλειν, ὑπόμνημα γεγονῶς αἰσχύνης καὶ ὀνειδούς τῇ πατρίδι). Lysicles had been convicted. So too had Autolycus the Areopagite – not vulnerable to the charge of having led citizen troops to ignominious defeat but apparently denounced nevertheless, by *deinôsis*, for a callous and unpatriotic disregard of his native city. One of the two verbatim quotations from Lycurgus' speech against him is the prefatory phrase (addressed to the jurors) 'although many great trials have come before you, you have never come to pass judgement on one so important' (πολλῶν καὶ μεγάλων ἀγώνων εἰσεληλυθότων οὐδέποτε περὶ τηλικούτου δικάσοντες ἦκατε); the other is the quintessentially deinotic assertion that Autolycus, besides doing something unspecified, 'also gave up Attica

39 The phrase is that of Petrie (1922) xl, who may himself be quoting it from elsewhere.

40 Noted by Usher (1999) 77.

41 This phrase recurs in *Leoc.* 5; cf. also Aeschin. 1.164, Demosth. 24.103.

to sheep-pasturage' (ἀλλὰ καὶ μηλόβοτον τὴν Ἀττικὴν ἀνῆκε).⁴² By the time that the impeachment of Leocrates came to court, this kind of nightmare scenario for the aftermath of the Macedonian victory at Chaeronea⁴³ had been falsified by events and might therefore have been thought rhetorically unrecyclable. Lycurgus, undeterred, recycled it (by placing it in the past, at the moment of Leocrates' decision).⁴⁴ When the votes were cast, half of the jurors concurred with him that the defendant merited condemnation and conviction,⁴⁵ but since an equal number demurred, he was acquitted.

Why so many of his fellow-citizens disagreed on this issue with one of the most prominent and respected Athenians of his day is a question without a single or simple answer. Perhaps Leocrates spoke well and convincingly in his own defence (and was supported by some of Lycurgus' political rivals and/or enemies). Even if he did not, genuine indignation about his behaviour seven years earlier may have been hard to generate in sufficient quantity and concentration to secure a verdict against him.⁴⁶ All we really have to go on is Lycurgus' speech for the prosecution. It can be argued to have weaknesses – propensities to fail in its object, so to speak – other than the ones I have been exploring

42 These are, respectively, frs.III.1 and III.2 Conomis. In the source of III.2, Suda s.v. μηλόβοτος χώρα (μ 931 Adler), the Lycurgan speech from which it comes is transmitted as κατ' Αὐτοκλέους, otherwise unattested. A mistaken repetition from μ 928, Ὑπερίδης ἐν τῷ κατ' Αὐτοκλέους, may be assumed. But what has κατ' Αὐτοκλέους displaced in μ 931? As far as I am aware, nobody has proposed κατὰ Λεωκράτους, presumably because ἀλλὰ καὶ ὁ μηλόβοτον τὴν Ἀττικὴν ἀνῆκε ... καταψηφισάμενος in § 145 there (quoted in full in n. 44 below) is reckoned insufficiently close to the Suda's ἀλλὰ καὶ μηλόβοτον τὴν Ἀττικὴν ἀνῆκε. (The gap would indeed be larger still without Baiter's supplement ἀνῆκε, but this has been universally adopted on the basis of compelling parallels for the idiom μηλόβοτον ἀνιέναι: besides Suda μ 931 itself see e.g. Isoc. 14.31 (next note); Diod.Sic. 1.36.6; Joseph. AJ 5.110; Plut. Per. 16.7, Lys. 15.3; Diog.Laert. 6.87; Philostr. VA 5.27.) I confess to a residual suspicion that the Suda's unknown source may actually be proffering an approximation of *Leoc.* 145 itself; but if that is wrong, κατ' Αὐτοκλέους (first in F. Osann's 1821 edition) is probably a better emendation than κατὰ Λυσικλέους (first in G. Pinzger's 1824 edition).

43 For its use in an earlier context see Isoc. 14.31, on what the Thebans wished to be the fate of Athens in 404 (cf. Plut. Lys. 15.3 and Diod.Sic. 15.63.1, the latter wrongly attributing this to the Spartans rather than (some of) their allies).

44 § 145: ὁ μηλόβοτον τὴν Ἀττικὴν ἀνῆκε φανερόν τῇ ψήφῳ καταψηφισάμενος, οὗτος ἐν ταύτῃ τῇ χώρᾳ σύνοικος ὑμῶν γεγένηται.

45 This fact is deemed more significant than its obverse – which I have preferred to stress here – by Allen (2000) 29 and *passim*, whose analysis explores Lycurgus' strategy of sublimating his own person(ality) into an expression of the hurt done by Leocrates to his *polis* and *patris*. I have found more enlightenment in the discussion of *Leoc.* by Harris (2000) 67–75; though like Allen he lays emphasis on a different aspect of the speech (its weak position in law) than the one I have been exploring here, like me he operates from the premise that Lycurgus could and should have done better.

46 That the sheer lapse of time is a relevant consideration may be suggested not only by *Leoc.* itself but also by two other unsuccessful prosecution speeches which invite comparison with it for length, for ponderousness, and for posteriority to the events with which they were primarily concerned: Demosthenes 19 and Aischines 3.

here: most notably, a shortage of witnesses to corroborate some of its key points and allegations (beyond those presented in §§ 20–24, some of whom are testifying to acts which were not in themselves criminal offences), together with a very bold extension of the application of the *nomos eisangeltikos*. But as regards an overall tone of voice I do contend that a significant shortcoming, and one which closer attention to its Lysianic model could have remedied, is the chilly psychological distance between speaker and audience.

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