A Commentary on Apollodorus' *Against Evergus and Mnesibulus*

A Commentary on Apollodorus' *Against Evergus and Mnesibulus*:

A Case of False Witness

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PREFACE

This book provides readers with a new translation (by Michael Edwards) and a commentary with an Introduction (by Eleni Volonaki) on a legal speech included in the *corpus Demosthenicum* ([Dem.] 47) but written by the so-called eleventh Attic orator, Apollodorus, for an unnamed client. It is the first modern commentary on the speech and contains a full introduction to the legal and historical problems presented by it, with a Greek text and English translation, and a lemmatic rhetorical, legal and historical commentary. The speech is important evidence for the legal and political history of Athens in the mid-fourth century (all dates are BC), concerned with the prosecution by an Athenian citizen of two men, Evergus and Mnesibulus, who had allegedly given false testimony against him at a previous trial in which he was convicted of assault and heavily fined. He and another Athenian named Theophemus were trierarchs, very wealthy citizens who were expected to command and contribute to the upkeep of the navy's warships (triremes). The speaker claimed that Theophemus had failed to hand over equipment to him when it was his turn to perform this public service (liturgy), and the two men had come to blows and prosecuted each other for assault. The outcome of the trial is unknown.

ACKNOWLEDGEMENTS

INTRODUCTION

1. Apollodorus' life

Apollodorus was the elder son of Pasion of Acharnae,[1] a well-known and rich banker in Athens. Pasion was born in 430,[2] not an Athenian citizen but a slave who was later freed and awarded citizenship. At first, he was the slave of two Athenian bankers, Archestratus and Antisthenes. Archestratus is known from the mid-390s,[3] and had acted as guarantor for Pasion (Isoc. 17.43: Πασίων δ᾽ Ἀρχέστρατόν μοι τὸν ἀπὸ τῆς τραπέζης ἑπτὰ ταλάντων ἐγγυητὴν παρέσχεν). Pasion obtained experience and was trusted by his two owners because he was a good and just man (Dem. 36.43: οὐδὲ γὰρ Πασίων ὁ σὸς πατὴρ ἐκτήσαθ᾽ εὑρὼν οὐδὲ τοῦ πατρὸς αὐτῷ παραδόντος, ἀλλὰ παρὰ τοῖς αὑτοῦ κυρίοις Ἀντισθένει καὶ Ἀρχεστράτῳ τραπεζιτεύουσι πεῖραν δοὺς ὅτι *χρηστός* ἐστι καὶ *δίκαιος*, ἐπιστεύθη). Pasion was given his freedom by his two masters (Dem. 36.48) and became the owner of the bank by 394/3.[4] The bank prospered under Pasion's skilful ownership, and consequently he became one of the leading bankers in fourth-century Athens. The evidence from various speeches by Demosthenes suggests that Pasion's clients were very important persons, such as merchants of Peiraeus (Dem. 52.3) and wealthy figures from public life and business, like Timotheus (Dem. 49) and Demosthenes, the orator's father (Dem. 27.11). Pasion must have employed many slaves and experts, such as Cittus (Isoc. 17) and later Phormion (Dem. 45. 30, 73, 81).[5] In return for his numerous donations and services to the city,[6] Pasion was made an Athenian citizen and was enrolled in the deme of

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[1] For a full discussion of the history of the family of Pasion, see Trevett 1992, 1-49.

[2] Davies 1971, 11672 II.

[3] Trevett 1992, 2.

[4] There is no evidence for when Pasion was given his freedom, whether before or after he had become the owner of the bank, and he might have leased the bank and bought it later; cf. Trevett 1992, 18, endnote 3. Further on Pasion with reference to master-slave status relations in fourth-century Athens, see Rihll 2011, 56.

[5] For the organization of Pasion's bank, cf. Trevett 1992, 4-5.

[6] According to Apollodorus (Dem. 45.85), his father had donated to the Athenians 1,000 shields, had also made a voluntary contribution of five triremes equipping them with crew and had served as a trierarch. As Trevett (1992, 6) assumes, Pasion

Acharnae. He married a woman named Archippe, who was probably a metic, and had two children, Apollodorus born in 394 and a much younger one named Pasicles. Pasion died during 370/69 (Dem. 46.13), and in his will he gave his wife Archippe to Phormion with a valuable dowry of two talents, a house worth one talent, 4,000 drachmas, Archippe's servants and jewellery, and all her domestic belongings. Phormion and a man named Nicocles acted as guardians to Pasicles while he was a minor and Pasion's estate remained undivided until Pasicles came of age.

After Pasion had died, Apollodorus moved out of the family house in Peiraeus and went to live in the countryside ([Dem.] 53.4). His neighbour there was a man named Nicostratus with whom he became close friends, but they were later involved in forensic conflicts ([Dem.] 53.4-18). He married the daughter of Deinias, son of Theomnestus of Athmonon (Dem. 36.17, 45.55) and they had two daughters, one of whom we know later married Deinias' son, Theomnestus—the brother-in-law and son-in-law of Apollodorus ([Dem.] 59.2).

Apollodorus, as a rich man, was a member of the liturgical class and undertook trierarchies several times. He first served as a trierarch in 368/7, when he transferred Athenian ambassadors to Sicily who were involved in the negotiations between the Athenians and Dionysius of Syracuse (Dem. 36.4). During his absence on this trierarchy, Phormion married Archippe in accordance with the terms of Pasion's will (Dem. 45.3), but when Apollodorus returned, he came into conflict with Phormion. Their dispute was eventually resolved by his mother Archippe (Dem. 45.3-4). Phormion and Nicocles, as guardians of Pasicles, proceeded with the division of the estate, which was shared between the two brothers except for the bank and the shield-factory, which were leased to Phormion. According to Phormion, Apollodorus had never complained while Archippe was still alive (Dem. 36.14). But, when Pasicles came of age (between 364 and 362), the bank and the shield factory were no longer in the lease of Phormion, and so the two brothers decided to divide these between them, Apollodorus preferring to get the shield factory (Dem. 36.11). It appears, however, that Apollodorus leased the bank to a syndicate of four men, Xenon, Euphraeus, Euphron and Callistratus (Dem. 36.13), and so it can be presumed that it took quite a long time until the agreement came into effect.

In 362 Apollodorus undertook another trierarchy in the north Aegean ([Dem.] 50.4-56), on which he spent a large sum of money on the equipping and manning of his ship ([Dem.] 50.11-13). His mother died a few days after

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must have spent a great deal of money both as a metic and as a citizen to gain the Athenians' favour.

he returned to Athens ([Dem.] 50.60), and subsequently a series of prosecutions against Phormion on matters concerning the estate were brought to court by Apollodorus, as well as against the generals who were involved in his trierarchy between 362 and 360.

In 366/5 Apollodorus served as a syntrierarch on the ship *Phosphorus* (*IG* ii² 3039); and in 349/8 he was a member of the Boule and proposed spending the city's surplus on its military needs and on the Theoric fund ([Dem.] 59.3-10). Apollodorus, however, was prosecuted by Stephanus through a *graphē paranomōn*, was convicted and fined one talent. Because of this prosecution, a dispute commenced between Apollodorus and Stephanus, as is reflected in the speech [Dem.] 59, *Against Neaera*, which was delivered between 343 and 340.

As Trevett points out, Apollodorus must have had a broad education and intellectual background, as can be observed from an examination of his speeches. In particular, he must have had knowledge of rhetorical theory, history, and law. The speech *Against Evergus and Mnesibulus* shows how well informed he was in legal matters, to such an extent that his narratives have a legal framework and are closely associated with crucial legal issues about definitions, prescriptions and explanations, which serve the needs of characterization. Moreover, his style, with his use of direct speech and long narratives, shows that he had acquired a wide knowledge of rhetorical practice. Finally, it has been argued that he employs similar use of legal and historical background to Andocides and Aeschines, but not the same stylistic sophistication.[7]

2. Apollodorus' authorship: his speeches and [Dem.] 47

There is a group of speeches that have been ascribed to the *corpus Demosthenicum* but which present stylistic divergences from the other speeches of Demosthenes to such an extent that they are considered to have been composed by a different author. Kapparis (2014) has pointed out the peculiarity of the *corpus Demosthenicum* in that it incorporates speeches by only two main authors, although it is common to find works by many authors in a corpus. The *corpus Demosthenicum* includes three speeches that are ascribed to known or unknown authors,[8] but the second main author

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[7] For an analysis of Apollodorus' educational background, cf. Trevett 1992, 111-123.

[8] These speeches are: speech 7, *On Halonnesus* which is ascribed to Hegesippus; speech 58, *Against Theocrines* which must have been composed by an unknown orator as an attack on Demosthenes; and speech 17, *On the Treaty with Alexander*

to whom seven speeches from the corpus are ascribed is Apollodorus. Six of these were delivered by Apollodorus at trials that involved him personally. The seventh speech of this group was most probably composed by Apollodorus but was not used for a personal trial and was not delivered by him;[9] this is speech 47, *Against Evergus and Mnesibulus*. Kapparis (2014, 107) gives the following chronological order of the speeches which are attributed to Apollodorus: 52, *Against Callippus* (369/8); 53, *Against Nicostratus* (365); 49, *Against Timotheus* (362);[10] 50, *Against Polycles* (360); 47, *Against Evergus and Mnesibulus* (356); 46, *Against Stephanus II* (348); 59, *Against Neaera* (342).

The current speech [Dem.] 47, *Against Evergus and Mnesibulus*, presents a peculiarity concerning its composition, as has been stated above; it resembles stylistically the other speeches attributed to Apollodorus but it deals with a case that is not connected with any of Apollodorus' own trials. Hence, the questions who wrote and who delivered the speech have preoccupied scholars. Three possible solutions have been offered: (a) Apollodorus could be identified with the speaker (MacDowell 2009, 145-150); (b) Apollodorus was a professional logographer who wrote this speech for a client (Blass 1893, 543; Gernet 1957, 200-201); and (c) Apollodorus was a close friend or a trierarch known to the speaker and offered him valuable advice for composing his prosecution speech (Kapparis 2017, 293 n. 13; Fisher 2009, 189-190). The third option seems the most plausible, as will be shown in Intro. 10, concerning Apollodorus' membership of the symmories and his close association with the speaker as having suffered delays or loss of equipment by other trierarchs (cf. [Dem.] 50). Here, the focus is on the stylistic divergences from Demosthenes observable in the current speech, from which some conclusions about authorship may be drawn.

McCabe (1981, 82-175) used computational and statistical methods to contrast elements of style, such as the use of the pronoun (οὗτος or αὐτός), the frequency of the definite article, the frequency of hiatus, and the observance of Blass's law (Blass 1893, 105-112), according to which Demosthenes avoids using the tribrach (three short syllables in a row). McCabe concludes that [Dem.] 47 digresses from Demosthenes' speeches

which was most probably written by Hypereides, as has been argued by Horváth 2015, 73-80.
[9] From Dem. 36, *For Phormion* (53-54), it can be inferred that were more public and private cases which are mentioned either by Apollodorus himself, or by Demosthenes; see Kapparis 2014, 109 n. 12.
[10] Harris (1988) argues for 368/7, whereas Trevett (1991) argues for 362, following Schaefer (1858, 140-143); see Kapparis 2014, 107 n. 2.

with respect to (a) the content and the ancient tradition, (b) the loose use of hiatus, and (c) the unclear use of Blass's law.

Trevett (1992, 67-72) has followed a similar methodology of using electronic data to compare the Apollodoran speeches with the rest of Demosthenes' speeches, extending the criteria as follows: language and style, sentence length, the occurrence of hiatus, the incidence of the common pronouns *houtos* and *autos*, the frequency of common particles, connectives and prepositions, as well as the frequent use of the definite article with proper names, the rhythm and the general style, and finally the quality of argumentation of a speech. Trevett concludes that the so-called Apollodoran speeches are stylistically distinctive from the rest of the *corpus Demosthenicum* in that they present longer periods and sentences, more frequent use of pronouns, frequent addition of the article with the main nouns, repeated disobedience of the law of Blass, less effort to avoid hiatus, and finally repetition and lack of coherence in the argumentation. Thus, Trevett's results indicate that six of the speeches delivered by Apollodorus were also written by him (speeches 46, 49, 50, 52, 53 and 59), whereas speech 45 was delivered by Apollodorus but seems thoroughly Demosthenic in style, and similarly speech 51 was composed by Demosthenes.

Kapparis (1999, 52-59, 2008, 23-29) has thoroughly examined the style of [Dem.] 59 concerning issues of authorship and the typical components of the Apollodoran speeches. He has distinguished the following elements as typical of [Dem.] 59 and non-typical of the style of Demosthenes' speeches: long narratives, lack of argumentation, unusual structure of the speech, use of proem and epilogue, use of uncommon words and abstract nouns, repetition of the particles τοίνυν, ἐπειδή and ἔτι δέ in successive parts of the speech, frequent use of the pronouns οὗτος and αὐτός, more common use of τολμᾶν than in Demosthenes' speeches, connection of synonyms (the one with a general meaning and the other with a specific meaning) with καί, non-systematic use of the article, a few asyndeta but many polysyndeta, three times fewer rhetorical questions than in Demosthenes' speeches, frequent use of direct speech, extensive use of participles accumulating in endless, non-coherent sentences, many repetitions (sometimes annoying, especially when specific key-words are repeated), parenthetic sentences, stereotypical everyday phrases and linguistic neologisms.

Most of the Apollodoran stylistic elements and divergences examined in the surveys of Trevett and Kapparis are found in [Dem.] 47, which therefore clearly was composed by Apollodorus and not by Demosthenes.[11] Thus, the speech belongs to the group of the Apollodoran speeches, even though

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[11] For a detailed analysis of the style of [Dem.] 47, see Intro. 3.

Apollodorus did not deliver it himself, as he did the rest of them, but he wrote it to be delivered by another trierarch, the unknown speaker. It can be presumed that Apollodorus and the speaker shared an interest in cases of trierarchy and other liturgies for the city as well as the same feelings toward the group of trierarchs who had caused both of them trouble. In this context, it is likely that Apollodorus either wrote the whole speech for his friend to assist him in this prosecution or simply advised and gave him some guidelines. If one considers that the speech itself displays typical stylistic elements that are also found in the other speeches attributed to Apollodorus, the first option seems more plausible.

3. Style

As was shown in the previous section, [Dem.] 47 displays the typical stylistic elements of the Apollodoran speeches, and as such it is clearly attributable to him. A stylistic element that is widely used in the Apollodoran speeches is direct speech, which add vividness in the narrative sections at the most dramatic moments and gives voice to witnesses who are not presented. In [Dem.] 47 the use of direct speech is more extensive than in any other speech of Greek oratory.[12]

Two other stylistic features typical of Apollodorus are observable in his sections of proofs (*pisteis*). These are the repetition of key-words and phrases, and the employment of long periods, including many subordinate clauses and participles, which deliberately creates a confusing result lacking coherence and clarity. Nevertheless, this is also an element of orality and spontaneity, offering the impression of a complicated case of injustice and suffering for the trierarch. Moreover, the speaker uses these sections for emotional appeals to influence the judges' verdict. A parallel proof section to this speech is found in [Dem.] 52.22-31, where Apollodorus summarizes the case against Callippus and asks for a favourable verdict, and this may be taken as a stylistic element in favour of Apollodorus' authorship of the current speech.

Apollodorus' use of detail is cumulative rather than selective in this speech. The speaker uses examples to exemplify the opponents' wrongdoings, and irrelevance and digressive parenthetical explanations are also characteristic of the narrative sections of the speech. Nevertheless, the weakness of these sections lies in the repetition of words and phrases two or three times in consecutive sentences, which may emphasize the speaker's line of argumentation but tends to be tiring and reflects a lack of density and

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[12] For its effect, see Intro. 11.

solidity. For example, there is repetition of nouns and verbal phrases related to *martyria*, *pseudomartyria* and *proklēsis* (§§6-17). An argument that is repeatedly used throughout the narrative of the speech is that Theophemus has deceived the judges (§§1, 3, 8, 9, 10, 15, 17, 18, 39, 46, 48). Also, the speaker repeatedly emphasizes that his actions were forced on him by the decrees and laws of the city, and as a result he was compelled (ἠναγκαζόμην) to go and demand the naval equipment from Theophemus (§§21-25).

There are a few more stylistic characteristics which reflect Apollodorus' style and authorship of the current speech. Firstly, the repetitive use of the common pronouns *houtos* and *autos* (e.g. §§6, 11, 19, 22, 29, 30, 34, 35, 53, 55, 56, 59, 62, 63). [13] Secondly, Apollodorus' liking for comparisons between word and action, rather "old-fashioned" as Trevett (1992, 109) observes, is prominent in this speech (e.g. §§4, 9, 10, 17, 26, 31, 73). Thirdly, there is an accumulation of genitive and accusative absolutes,[14] as for example (a) in §43 where the speaker describes Theophemus' and his friends' request from the Boule not to send the case to the court; (b) in §45 where the speaker refers to Theophemus' counter-challenge and the involvement of *diaitētai* in their cases for *aikeia* against each other; and (c) in §51 where the speaker was allegedly encouraged by Theophemus to postpone his judgment payment. In these instances, one can also notice the piling of clauses one on top of the other. Finally, Apollodorus uses parenthetical sentences with comments that reflect an extreme concern for accuracy, as for example when describing the space where an action took place (§§12, 53, 56), when offering a legal definition of what *aikeia* is (§40), or when commenting on correct social behaviour (§60).

In conclusion, the speech *Against Evergus and Mnesibulus* displays all the stylistic elements included in the speeches composed and delivered by Apollodorus, with the most important ones being the predominance of narrative, which is repetitive and in parts deliberatively confusing, and the highest proportion of direct speech, adding vividness and validity to the scenes depicted in the narrative sections.

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[13] For the results from a test examining the incidence of these pronouns, cf. Trevett 1992, 64-65.

[14] For the use of genitive absolutes in Apollodorus' speeches, cf. Trevett 1992, 106-107.

4. Liturgies in classical Athens

Liturgies were compulsory public services which were delegated to the wealthiest Athenian citizens (also metics in some cases)[15] as an indirect method of taxation. The most prominent liturgies were the *chorēgia*, the funding of the chorus in the production of a dramatic play, the *triērarchia*, the equipment and command of a trireme for the fleet in a war, and the *gymnasiarchia*, the support of an athletic team and the management of the *gymnasium*.[16] The *chorēgia* was one of the most frequent festival liturgies, and was used to support the training and equipment of a dramatic chorus.[17] The *chorēgia* was undertaken by the richest Athenian citizens to support the needs of the city festivals, such as the City Dionysia or Panathenaea, but also the local festivals in the demes of Attica.[18] The appointment of the *chorēgoi* was in the jurisdiction of the epōnymus archōn for the city festivals or the tribes for the local festivals (*Ath.Pol.* 56.3). The trierarchy was a military liturgy and contributed significantly to the superiority of the Athenian navy in the fifth and fourth centuries. As will be shown in the next section (Intro. 5), a trierarch undertook the expenses for the preparation (maintenance and command) of a trireme. In mid-fourth century Athens, in the time of an economic crisis, a group of rich Athenian citizens co-operated for the needs of the Athenian navy (*syntrierarchies*) and undertook the burden of this liturgy, sometimes more than once, in extraordinary circumstances.[19] There were also other minor liturgies, including *estiasis*, the funding of a public dinner for a liturgist's tribe, *architheōria*, leading delegations to the four sacred Panhellenic Games, *arrhēphoria*, the covering of the cost of the four girls (*arrhēphoroi*) who performed religious services for Athena Parthenos (i.e. bringing the *peplos*, offering cakes and dedicating white dresses adorned with gold).[20]

In times of crisis, a tax called the *eisphora* was imposed on wealthy Athenian citizens as well as metics (*IG* ii² 244.20). The *eisphora* was a war tax paid by all rich residents of Athens during the Peloponnesian War, but it was much more frequent in the fourth century due to the financial crisis

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[15] For the metics and their taxation, see Whitehead 1977, 75-77; Hansen 1991, 117-119.
[16] On liturgies, see Davies 1981, 16-37; Veyne 1990, 77-78; Gabrielsen 1994, 177-178; Johnstone 1999, 93-108; Christ 2006, 143; Alwine 2015, 41-45.
[17] The most extensive discussion of the *chorēgia* is Wilson 2000.
[18] Whitehead 1986, 215-219.
[19] For the institution of trierarchy and its evolution, see Gabrielsen 1994.
[20] Cf. Lys. 21.1.

and the reforms of the wealthy class.[21] The payment of the *proeisphora* was another financial duty, which was introduced in the fourth century (between 378/7 and 323/2) and was paid by 300 among the wealthiest citizens; it was another way of collecting the *eisphora* by distributing it to the members of the symmories in order to ensure that the payments would be made.[22] As Christ (2007, 68) concludes, "the reforms of 378/7 were innovative in requiring wealthy citizens to submit τιμήματα listing their assets and in taxing them in proportion to their vetted declarations". The extraordinary institution of the *proeisphora* secured the amount of money that was needed by the city of Athens in advance, as it was paid by the 300 wealthiest citizens who would then recover this amount from the larger group of contributors.

The richest citizens were assigned liturgies by the Athenian *dēmos* but there were certain exemptions: firstly, rich citizens under age could not undertake a liturgy, and secondly a group of adult people, such as disabled men, *klērouchoi* (non-residents of Attica) and the nine archons, were not appointed as liturgists. Normally, no citizen could be required to serve a liturgy more than once in one year, but after 357, as indicated for example in the current speech, a citizen could be appointed as a trierarch twice in the same year.[23] It is possible that the rule of service once in one year applied only to festival liturgies and not for the trierarchy or the *proeisphora*.[24]

Liturgies did not operate only in the city of Athens but in many other city-states of Greece (Ant. 5.77; Isoc. 19.36), and as such an institution they pre-date the constitution of the Athenian democracy ([Dem.] 42.1). Motivation for performing the liturgies included honour (*philotimia*) and prestige in public life (*andragathia*), and therefore liturgies ensured high competition among wealthy Athenians, who wished to gain public reward for their services and benefactions. In addition, they expected gratitude (*charis*) for their liturgies, when they were involved in trials as litigants. Following Davies (1981, 91-97), most scholars tend to adopt this view and contend that wealthy Athenian citizens were motivated to perform liturgies

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[21] For the problems arising in the relation between the *eisphora* and liturgies, see Rhodes 1982; for a detailed discussion on the use of the *eisphora* from the fifth until the end of the fourth century, see Brun 1983, 1-73; for the evolution of the *eisphora* throughout the fifth and the fourth centuries, see Christ 2007. For the *eisphora* in the current speech, see commentary on §54.

[22] Further on the *proeisphora*, see Wallace 1989; Christ 2007, 63-68. The citizen who was appointed to the *proeisphora* and failed to pay was liable to prosecution; cf. Dem. 37.37.

[23] For the change of financial circumstances concerning the trierarchy after 378/7, see commentary on §§21-24.

[24] On the terms of the relevant law, see MacDowell 1978, 161-162.

in order to gain favour from the judges whenever they appeared in court.[25] Undoubtedly, the city depended on the wealthy citizens' financial contribution otherwise it would have been impossible for the public sphere of activities to operate; therefore, it can be presumed that the liturgists expected both honour and gratitude in return for their expenditure.[26] There is evidence from honorific inscriptions for benefactors of the city, indicating that the liturgists were actually rewarded by the city for their services, and this is used rhetorically in forensic trials, as for example in Dem. 18.99, 19.230. Thus, it appears that the liturgists must have been competitive with each other, since there was wide scope for gaining standing, reward and honour from the city.

On the other hand, liturgies constituted a heavy financial burden for the wealthiest class of Athenian citizens, who may have been frustrated at undertaking them as a compulsory duty. It may not have been a coincidence that Athenian law had prescribed the legal procedures of *antidosis*, which allowed a rich citizen to claim that he was unjustly assigned a liturgy,[27] challenging a richer citizen to take up the liturgy or otherwise to exchange properties with him, and *skēpsis*, which enabled a rich citizen to claim that he was exempt from a liturgy.[28] The "traditional view" concerning the *antidosis* procedure is that the appointed liturgist and the richer citizen proposed by the liturgist to undertake the liturgy ought to exchange properties. The alternative view is that this procedure involved a check upon the properties of the wealthy citizens which was decided in court.[29]

Another disputed issue involves the criteria of wealth according to which a citizen was included in the liturgical class, and as a result scholars are divided in their views with reference to the number of liturgists in Athens. Davies (1981, 26-27) argues that a total of 300 rich citizens undertook the costs of both trierarchies and festival liturgies. However,

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[25] For this view, see Ober 1989, 231-233; Millett 1991, 123-126; Christ 2006, 181-183; Engen 2010, 45. Johnstone (1999, 93-108) opines that the ultimate motivation for the performance of liturgies was the establishment of prestige and status gaining honour among the Athenian citizens.

[26] For *philotimia* in connection with competition among the liturgists and public recognition, see Whitehead 1983, 1993.

[27] Generally on *antidosis*, see Harrison 1971, 236-238; MacDowell 1978, 162-164; Todd 1993, 120-121. For the legal procedure of *antidosis* as a means to avoid a liturgy or to encourage a political rivalry, see Christ 1990, 172-193; Stanley 1993; Gabrielsen 1987; for the rhetoric on *antidosis* with reference to [Dem.] 42, see Apostolakis 2006.

[28] On *skēpsis*, see *Ath.Pol.* 56.3, 61.18a with Rhodes 1981, 625, 681; Harrison 1971, 233-236; Todd 1993, 120.

[29] For a review of scholars' views, see Apostolakis 2006, 94.

there were other citizens than the 300 who were also rich enough to be assigned a liturgy. Rhodes (1982) and Gabrielsen (1994, 178-182) dispute Davies' view on the grounds that a larger group of citizens would be required to undertake the liturgies, festival and trierarchies, due to (a) the financial crisis in the city of Athens and particularly the Athenian navy; (b) the exemption from performing a liturgy more than once a year; and (c) the complaints by the small number of rich Athenians who could no longer undertake the financial burden imposed on them. After 378/7 many measures were taken by the city of Athens in order to deal with the naval deficiencies and war needs, and a figure of 1,200 propertied Athenians appeared as being liable to the trierarchy and the *eisphora*. Christ (2006, 155), however, does not give a fixed number of members of the liturgical class and suggests that there must have been an element of variability in the composition of this class. Kremmydas (2012, 18) argues that "the numbers of rich Athenians liable to liturgies and the numbers of liturgists required every year were subject to fluctuation".

On balance, based also on the impression created in the current speech,[30] the financial situation in the mid-fourth century seems to have been problematic, since some trierarchs refused to comply with the Athenian laws and decrees, whereas others were forced to undertake a liturgy twice within a year; hence, the group of liturgists must have been large but not firmly prescribed as to its number. Moreover, the number of the liturgists must have significantly varied throughout the fifth and fourth centuries, since they would not always have been eager to undertake the financial burden, despite the expectations of honour and gratitude from the city of Athens.

5. The trierarchy

The trierarchy most probably originated as a public institution during the Persian Wars, in particular after the major Athenian victory at Salamis, with 200 new triremes, which established Athens as the foremost naval power in Greece. With the creation of the new Athenian navy, the services of the wealthy citizens shifted from an individual basis into a public activity. Thus, the trierarchy was established together with the other liturgies as a public provision by 480.[31] The trierarchic system continued to develop until 415,

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[30] See commentary on [Dem.] 47.21-24; cf. also [Dem.] 50.
[31] For the "trireme question" and its date, see Casson 1971, 77-96; for the state of the navy in the fourth century based on a reading of [Dem.] 50, see Cawkwell 1984, 334-335; for the liturgical census and class, see Davies 1981, 9-37; for the origin of the trierarchy, see Gabrielsen 1994, 19-42; for the performance of a liturgy and the

after which it remained unaltered until 362. The trierarchy was the most important naval public service and involved the command and maintenance of a trireme for one year, even though in the fourth century, due to the number of military expeditions and the financial crisis in the Athenian navy, the limit was not observed and an Athenian citizen could be assigned a trierarchy twice a year (as was the case of the speaker in [Dem.] 47).

A trierarch was not expected to have knowledge of the sea, but his duty involved covering all the expenses that were needed for the preparation and the maintenance of a trireme for war. In the fourth century, however, a group of professional trierarchs became the commanders of the warships.[32] Information about the role of trierarchs and their duties is presented in [Dem.] 50, *Against Polycles*, which concerns the function of the trierarchy as one of the liturgies, the maintenance and costs of a trireme, the manning and operation of the ships, and the ways in which the trierarchs succeeded one another, shared the expenses and the responsibility for the operation of the warships.[33] It appears that the system of supplying taxiarchs from 374 until 360/358 was the syntrierarchy,[34] and as can be inferred from [Dem.] 50, the syntrierarchs were selected by lot by the general.

The ships were allocated at the beginning of each year, and the new trierarchs were appointed to take charge of them. In the fifth century, 400 trierarchs were selected at the start of each year, and given that the Athenian ships numbered 300, there was a margin of 100 taxiarchs, who could claim and be granted exemption from service. In the mid-fourth century, 1,200 trierarchs were selected every year, 800 of whom would claim exemption, and the remaining 400 were distributed in groups of trierarchs. Thus, the trierarchs were selected at the beginning of the year, but they were also appointed *ad hoc*, in cases of emergency or deficiency in their total number.[35]

The institution of the syntrierarchy was established during the last years of the fifth century, enabling two or more trierarchs to cooperate on a single service. During the first half of the fourth century, syntrierarchies were performed by two individuals (Dem. 21.154). After the 350s, syntrierarchs

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representation of public service, see Christ 2006, 199-204; for the mechanism of the liturgical system and the institutional mechanism of the trierarchy, see Kaiser 2007.
[32] Cawkwell 1984, 340.
[33] See particularly [Dem.] 50.39-43; Bers 2003, 19-20. Trierarchs had other duties as well, such as to hear cases of *diadikasiai*, dealing with disputes between taxiarchs for the recovery of the equipment of the ship; see commentary on §26.
[34] Cf. *IG* II² 1609; Gabrielsen 1994, 72.
[35] For the appointment of the trierarchs, see Jordan 1972, 66-67; Gabrielsen 1994, 74-84.

numbered from three up to ten,[36] and they usually shared equally all expenses from the first day they undertook service (Lys. 32.24, 26; [Dem.] 50.30ff.). The difficulty caused by the institution of the syntrierarchy was that not many trierarchs were left available for other services within a year, due to the rule of a two years' break between service. This may have been effective, but it created the requirement for many more citizens to undertake service in a four-year period and a deficiency in the adequate number of men needed.

The financial burden from the costs of the maintenance and recruitment of the triremes, which fell upon the groups of syntrierarchs, was so high that a reform was necessary. Thus, in 358/7 the law of Periander was enacted to prescribe that the group of 1,200 wealthy citizens was to undertake trierarchies, named also *synteleis*, and to organize this group into twenty divisions of sixty members each, the so-called symmories (*Ath.Pol.* 61.1 with Rhodes 1981, 680ff.).[37] Periander's law remained in force until 340, when it was superseded by Demosthenes' law. In 354/3 Demosthenes in his speech 14, *On the symmories*, had proposed to extend the number of the *synteleis*, men liable to the trierarchy, to 2,000 wealthy citizens who would contribute to the service in proportion to their wealth. In 340 he passed a reform which limited the liability for trierarchic service to only 300 citizens, who were expected to contribute in proportion to their wealth (Dem. 18.102-109).[38]

Trierarchic liability was determined in financial terms. The criterion of the taxiarchs' appointment was wealth, possibly in the fifth century the trierarchs belonged to the first two economic classes (*pentakosiomedimnoi* and *hippeis*), whereas in the fourth century they were selected on the basis of their own private wealth.[39] Obviously, the way of evaluating one's wealth had changed from the fifth to the fourth century due to the evolution of the democratic constitution and social structures, but in either case two points should be stressed: first, there was a liturgical class which consisted of the wealthiest Athenian citizens, and second it was not always easy to know the exact amount of wealth each citizen possessed.

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[36] For the inscriptional evidence concerning the numerous individuals involved in a syntrierarchy, see Gabrielsen 1994, 175 n. 4.

[37] For a detailed discussion of the issues concerning Periander's law, see commentary on §21.

[38] Further on the legal reforms to the trierarchy and the number of symmories throughout the fourth century, see Gabrielsen 1994, 173-217.

[39] For the evolution of the board of taxiarchs from the fifth to the fourth century and their selection, see Jordan 1972, 61-78; Gabrielsen 1994, 37-57; particularly on the role of the taxiarchs in the fourth century, see Cawkwell 1984.

A citizen could try to gain exemption from the trierarchy only if he pointed out another citizen richer than him by the *antidosis* procedure, according to which the citizen who was challenged could either agree to undertake the liturgy or refuse and thus proceed with an exchange of properties with the challenger, who consequently discharged the trierarchy. The *antidosis* could be applied to all the liturgies, and with reference to the trierarchy, Gabrielsen (1994, 95) notes: "the *antidosis* can be viewed as a sophisticated mechanism designed by the state in order to exert control over the segment of the citizen body with the economic potential to act as the financial backbone of the navy". By implication, if a rich Athenian citizen attempted to hide his wealth and did not voluntarily belong to the trierarchic class, he might be compelled to undertake a trierarchy if he was challenged through the *antidosis* procedure to a property exchange.

The costs of a trierarchy could vary and be extremely unpredictable, and the trierarchs could be at a high risk of financial damage and loss of property, or even of their own life. The amount that a trierarch had to pay depended on different factors each time, for example the advance payments required by officers and the crew of the trireme he was responsible for, or the length of the expedition involved.[40] The city could provide payment for the crew only for a short period and consequently the excess costs fell upon the trierarchs. Apart from the overall costs of a trierarchy, a trierarch was also liable for damage to or loss of his ship; in the latter case, he could be compelled to pay 5,000 drachmas toward replacement of the ship.[41]

Trierarchic service did not involve only financial costs but also personal ones. Litigation could arise from one's performance of public service and a trierarch faced a greater chance of litigation in the fourth century due to the financial crisis of the Athenian navy, if we consider that after 358/7 a trierarch was required by the city to collect naval equipment from his predecessor, as is indicated in the current speech. There were additional challenges and risks for a trierarch, since he sometimes had to deal with desertion by crews on active duty ([Dem.] 50.11).[42] Moreover, a trierarch would need to stay away from home for long periods of time and he might even lose his life during his service. In the fourth century, because of all

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[40] On the crew involved in a trireme and the relevant costs, see Gabrielsen 1994, 105-125; Christ 2006, 175.

[41] Further on the extra financial burden of a trierarchy, see Gabrielsen 1994, 136-139, 144-145.

[42] Christ 2006, 122-124.

these difficulties and personal risks, many wealthy men hired agents to carry out their trierarchies.[43]

The dangers and risks faced by the trierarchs are reflected in their claims in court aiming at gaining the judges' goodwill towards them, as for example in Lys. 21.11, 24; Isoc. 18.58-62. The fact that the trierarchy was a compulsory public service for the wealthy Athenians forced them to undertake other activities in order to meet the financial needs of their triremes. Thus, they were made to collect the extraordinary *eisphora* tax ([Dem.] 50.9) or to retrieve the naval equipment from ex-trierarchs ([Dem.] 47.19-22), as well as getting involved in private conflict and litigation ([Dem.] 47; Dem. 42).[44]

In sum, the military service of the trierarchy was crucial for the support of Athenian naval power and relied, firstly, on the wealthy citizens' voluntarism and, secondly, on the compulsory duty imposed on them by the city. It was a very costly service requiring money, commanding and maintenance of triremes, allocation of the ships and their crew, repair and reconstruction of damages or losses, and also personal service with all the risks it entailed, even death. In order to meet all the needs deriving from the trierarchy and to deal with the problems connected with the number of the trierarchs and the triremes involved, a series of legal reforms took place from the late fifth until the end of the fourth century to organize the trierarchs into groups of symmories. There were mechanisms for checking up on the trierarchs' conduct, activating legal procedures and enactments to clarify their liabilities and rights in their relationships between themselves and with the city. Nevertheless, the problems were never solved and conflicts could easily arise, entangling the trierarchs in troublesome legal or personal fights. An example of such a conflict is the case of [Dem.] 47, written by Apollodorus for a trierarch who was compelled to act as a debt-collector from his syntrierarchs and to enforce legal enactments introduced by several decrees of the Assembly, as well as the law of Periander in order to recover the naval equipment owed by his predecessor as trierarch, Theophemus. Their conflict involved a series of legal procedures including *diadikasia*, *eisangelia* before the Boule, *dikē aikeias* and *dikē pseudomartyriōn*. It is obvious that the financial burden imposed on trierarchs must have caused them to fight to the death in order to restore their rights and get compensation for their compulsory services. The Athenian laws constituted a necessary tool for enforcing the institution of the syntrierarchy and the rule of the symmories.

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[43] For the alternative of hiring other citizens to undertake a trierarchy, see Christ 2006, 95-102.

[44] For the litigation among trierarchs, see Christ 2006, 188.

6. Witnesses and evidence

Aristotle (*Rhet.* 1.2.2, 1356a) lists five kinds of *pisteis atechnoi*: laws, witnesses, agreements, tortures and oaths, and the list may also include other kinds of evidence of the same sort, as for example challenges (*proklēseis*). Thus, witnesses contributed significantly to the presentation of evidence and the proof of a litigant's case in court.

Only free adult males were allowed to be witnesses.[45] A litigant could not be a witness in his own trial ([Dem.] 46.9) unless it was a case of *diamartyria*, where he was not actually testifying as a witness but he was making a formal deposition on matters of legitimacy in inheritance (Dem. 44.2; Isae. 7.3). Slaves were normally interrogated under torture carried by both litigants after a mutual agreement on the terms, the method and the place of interrogation.[46] Women were forbidden to give testimony in court except in cases of treason, sacrilege, theft of public funds and denunciation (*mēnysis*).[47] Thus, for example, Andocides (1.16) presents Agariste, "the wife of Alcmaeonides, who had also been the wife of Damon", to make a denunciation against those who participated in the profanation of the Mysteries.[48] Women could also submit their knowledge outside of the court through an oath.[49] Foreigners could be witnesses in Athenian courts but presumably under specific terms in accordance with agreements enacted between states.[50]

In the fifth century, witnesses testified orally and might be questioned by the litigant who called them, and it has been suggested that from the early fourth century (around 380) and henceforth witnesses were called to affirm a written deposition that was presented before the court and was read out by the court clerk.[51] If a witness did not wish to attest the truth of the testimony,

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[45] For the depositions of witnesses, the procedural rules and their role in Athenian courts, see Harrison 1971, 133-149; MacDowell 1978, 242-247; Humphreys 1985; Todd 1990, 1993, 96-97; Cohen 1995, 107-112; Rubinstein 2005; Thür 2005; Phillips 2013, 35-39.

[46] On the torture of slaves for evidence, see Thompson and Headlam 1894; Gagarin 1996, 1-18; Mirhady 1996, 2002.

[47] For the exceptions to testifying by women, see Wallace 1992, 333 n. 19.

[48] For a detailed discussion on Agariste's denunciation and the factors that may have urged her to testify, see Wallace 1992, 330-335.

[49] Dem. 29.33 and 55.27: there is an agreement but no oath is taken; Dem. 57.67: the male testifies on behalf of the woman; Isae. 12.5: the woman gives her consent. Further on women as witnesses, see Just 1989, 33-39.

[50] For the legal rights of foreign visitors in Athens, see Allen 2000, 108-109.

[51] On the written and oral form of evidence from the fifth to the fourth century, see Calhoun 1919; generally on the oral tradition and written records in classical Athens,

or if he wished to deny the truth of the testimony which would most probably have been written by the litigant who had called him, he might swear an oath of denial (*exōmosia*, e.g. [Dem] 49.17-20).[52] The oath of denial could also be taken if someone did not have any knowledge about the events of a case or he was not even present at the events mentioned in the testimony. It is plausible, however, as Martin (2008) concludes, that the summoning of the witnesses, including the obstacle of the *exōmosia*, was used as a "rhetorical tool" by a litigant to make him agreeable to the judges. Speakers in court regularly emphasize the necessity to depose or take the oath and, if someone failed to decide on the one option or the other, he was exposed to a penalty of 1,000 drachmas through the procedure of *klēteusis*.[53] It was the duty of the litigant to ensure that the witnesses named by him did actually present themselves at the trial or the arbitration in order to acknowledge their testimony. A *dikē lipomartyriōn* was available against a man who had agreed to testify and had then broken his promise. In sum, we can assume that a litigant could compel witnesses to appear both at the preliminary hearings and in the main trial in court. Although the *exōmosia* was sworn only in preliminary trials, the witnesses who had taken an oath to be exempted from the trial had to go before the court and stand by their oath during the trial. Athenian law had provisions also for those witnesses who were unable to appear at the trial because of illness or absence due to travel, etc. These individuals had to attest the testimony composed by the litigant in the presence of other witnesses in a process called *ekmartyria* ([Dem.] 46.7).[54] Witnesses in homicide cases had to swear an oath to either the guilt or the innocence of the defendant (Ant. 5.12; cf. Ant. 1.8, 28).

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see Thomas 1989; for the role of written documents in Athenian public trials, see Harris 2022.

[52] For the view that the *exōmosia* involved the denial of the content of the testimony, see Thür 2005, 176-178. Another view was introduced by Carey (1995) concerning the *exōmosia*, that witnesses could specify with which part of the testimony they agreed to and which part they denied to be true; for a review of Carey's approach, pointing out that this would be difficult in reality since a witness should either agree with or deny totally the content of the testimony, see Martin 2008, 62-66. For the view that the *exōmosia* was a means to force pressure upon a witness and was rare in private cases but more common in public ones, and that it involved denial of knowledge about the case or testimony rather than rejection of parts or the whole of a testimony, see Rubinstein 2005, 106-109.

[53] For *klēteusis* as a threat and a means of putting pressure on witnesses only in public trials to keep a balance between witnesses and litigants, see Rubinstein 2005, 110-111.

[54] Thür 2005, 161.

Formulaic words[55] were used to introduce the subject of the testimony and the witness accepted responsibility that a statement, which had been carefully prepared in advance, corresponded to the truth. The formulaic verb *eidenai* introduces a subordinate clause which expresses what is to be proven. Other formulaic verbs used for the presentation of witnesses are: *pareinai*, *paragenesthai* and *akouein*. Hearsay evidence, however, was allowed only after one's death (Dem. 46.6-7). The *formulae* used for the introduction of testimony do not change throughout the fifth and fourth centuries, and a witness was not expected to give further information of any kind to the court.

Witnesses did not provide their own evidence but they were expected to tell what they knew about the content of a litigant's testimony. They ran the risk of prosecution by the opposing side; there was a procedure used to check their testimony as to whether it was false or not, the *dikē pseudomartyriōn*, which involved the legitimacy of the content and the presentation of the evidence; the existence of this procedure suggests that witnesses had to follow certain rules in the presentation of testimony at court.

The role of witnesses in the Athenian courts has been widely discussed by scholars of Greek law and oratory, whose perspectives vary according to the way witnesses were considered to contribute to justice. It is generally conceived that witnesses are not the primary source of information for the judges but the litigants who tell the story, frequently calling witnesses to confirm the details. On one view, a witness in an Athenian trial was a supporter of one of the litigants more than a medium for finding the truth and reconstructing justice. Given the risk at which witnesses put themselves on their principals' behalf, it seems that Athenian judges were more interested in who were supporting the rival litigants than the details which they confirmed by their testimony.[56] Humphreys (1985) understood witnesses as supporters and followers of the litigants and grouped these into types of inner and more distant circles. According to this approach, an important function of the witnesses was to give an impression to the judges that the litigant had the personal support of the social groups in which he operated. As Rubinstein (2005, 99ff.) observes, the interpretation of the role of the witness as that of a partisan of the litigant rather than a potential source of information relating to the case itself, is attractive firstly to explain why witnesses offered a mere confirmation of a statement, giving thus weight to their identity more than anything else, and secondly to understand

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[55] Regarding the witness formulas, see Thür 2005, 152-153.
[56] Todd 1993, 97.

the risks associated with the task of testifying in an Athenian court. Todd (1990) suggested that the use of witnesses varied in procedural terms, but he does not explain the procedural variations that show up in our speeches with regard to the litigant's choice of witnesses from the different categories of potential supporters. Rubinstein (2005) examines these variations further as presented in private and public speeches and reaches some interesting conclusions: firstly, the view that most witnesses were personally connected with a litigant can only be likely with regard to private trials; secondly, the opposite applied in public cases, in which it was conceived as a positive advantage if the witnesses were distantly connected or wholly unconnected with the main litigant and their duty was to confirm what they knew rather than to offer him their personal support. Thus, Rubinstein concludes that witnesses were from the litigants' own inner circle in private trials whereas witnesses were personal allies of the litigants in public cases.[57] Mirhady (2002) has offered a different approach from previous recent scholarship and has argued that the primary function of witnesses was to tell the truth and what they knew about the case.

On the whole, the examination of the role of witnesses in its variations with regard to their social and procedural function suggests that the identity of witnesses may be closely connected with the litigant they supported, as his relatives and close friends, or they may be completely unrelated to him, being strangers, passers-by, doctors, etc. In any case, their testimony mattered more than their identity. The choice of witnesses depended on the evidence they were expected to attest and on the type of legal case they were involved in.[58]

The formal challenge (*proklēsis*) played an important role in the Athenian judicial system. There were different kinds of challenge. Firstly, if a party wished to use a private document, such as a contract, will, etc., but did not hold it or did not have a copy of it, he could make a formal application (*proklēsis*) to his opponent or to a third party to produce it and allow him to take a copy (Dem. 49.43). He would then take witnesses with him and would summon his opponent to be present, if the demand had been made to a third party (Dem. 48.48). He might also challenge his opponent to assert immediately the genuineness of the document in question (Dem. 45.8ff.).[59] Another form of challenge noted by Harrison (1971, 236-238) was the *antidosis*, when a man challenged another citizen to discharge a liturgy on the ground that he was financially better able to do so than

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[57] Rubinstein 2005, 103-104.
[58] Rubinstein 2005, 113-114.
[59] Harrison 1971, 135-136; cf. Todd 1993, 97.

himself.[60] Finally, there was the challenge for the torture (*proklēsis eis basanon*) of a slave, since a slave's evidence was valid only if produced under torture with the consent of both parties. The litigant who wished to use evidence from a slave had to issue a challenge (*proklēsis*) to his opponent, either requiring him to hand over one of his slaves for torture or offering one of his own slaves for torture. A litigant could also challenge his opponent to accept the evidence under torture of the slave of a third party, in which case he had to secure the consent of the third party for the torture of his slave. The *proklēsis* must have contained a written document prescribing the questions that were to be asked, the kind of torture that was to be used and the person who was to conduct it. If these terms of the *proklēsis* were broken, then the transgressor could be prosecuted by a legal action, most probably a *dikē blabēs*. As Aristotle (*Rhet.* 1.15, 1355b) recommends, the speaker can have the written text of the challenge read to the jurors and confirmed by the witnesses who had to be present at the time; the 1,000 drachmas fine is exactly the same penalty as a prosecutor had to pay, if he abandoned his case or received less than one-fifth of the votes (Dem. 21.47). Thür (2005) and Rubinstein (2005) suggest that this fine had to be paid only in political trials. All the aforementioned challenges had to be made in the presence of witnesses (Lys. 7.34; Dem. 45.61, 54.28; [Dem.] 59.123).[61]

Basanos was the interrogation of a slave under torture, which was carried out jointly by both parties outside the court, and the evidence produced after the torture of the slave could be presented in court. The fundamental work on *basanos* is Thür 1977.[62] A slave would be surrendered for torture only after a challenge had been made by one of the litigants. But whether or not challenges to torture were ever actually accepted so that the relevant *martyria* would be presented in court has been a subject of debate among scholars. Mirhady (1996) argued, for example, that the rhetorical manipulation of the opponent's rejection of torture does not necessarily mean that *basanos* did not take place outside the court, where an arrangement among litigants may have been reached.

Documents, including the *proklēsis eis basanon*, evidence attested by slaves under torture and the laws, were placed in evidence jars (*echinoi*) after a public arbitration (*Ath.Pol.* 53.2-3). The speeches in the oratorical corpus contain references to the court secretary to read challenges for torture or oaths directly. Aristotle (*Rhet.* 1.15, 1355b) classifies *basanoi* among the

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[60] For the *antidosis*, see Intro. 4 and 5.
[61] See also Harrison 1971, 147-148.
[62] See also Harrison 1971, 147; MacDowell 1978, 245-247; Todd 1993, 96; Gagarin 1996; Mirhady 1996; Thür 2005, 151.