Robert W. Wallace

UNCONVICTED OR POTENTIAL «ÁTIMOI» IN ANCIENT ATHENS

This essay seeks to illuminate a nexus of problems concerning atimía at Athens during the Classical period. The scholarship in this area has been inconsistent and ambiguous, in part reflecting similar problems with the relevant data. These problems in turn reflect certain characteristics of Athenian law and the interaction of law and society. Although other examples are available, in this paper I shall focus on five types of offenders who from the vantage point of at least one particular law constituted a single category: men who had (or were thought to have had) mistreated their parents, prostituted themselves, squandered their inheritance, not performed all the military service required of them, or thrown away their shields in battle, but who at the same time had not been convicted of these offenses in court.

According to several sources, most notably Aeschines and a law he quotes, men who had committed any of the five offenses listed were prohibited by law from speaking or making proposals in the Assembly. At the opening of the most famous case of this group, Aeschines says that because [Timarchos] had lived shamefully [i.e.,

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1 See above all Aesch. 1.28-32, and also Aesch. 1.3, 14, 19-20, 40, 46, 73, 119, 154, 195, and Dem. 22.29-31 specifically on male prostitution, Aesch. 1.154 on male prostitution and squandering one’s estate, and Lys. 10.1 on throwing away one’s shield.

Dike, 1 (1998), pp. 63-78
as a male prostitute], the laws forbade him to speak before the people, enjoining on him an injunction not difficult, in my opinion, to obey, but rather most easy (1.3). Similar statements are made by Demosthenes when he attacks Androton for the same offense (22.21-32). Among other points, Timarchos’s and Androton’s trials make clear that such restrictions were directed against men who had not previously been convicted of these offenses. What other restrictions, if any, were imposed on offenders of these types? And what punishment was meted out to those who violated these restrictions?

While scholars generally admit that offenders of these five types might sometimes be ignored and left to go about their business (sometimes including speaking and making proposals in the Assembly, as Androton and Timarchos had done for years)\(^2\), Paoli followed by Harrison claimed that such persons were in fact classified as *átimoι*. Paoli called them *incensurati*, *unconvicted átimoι*, as opposed to *pregiudicati*, while Harrison referred to *automatic-atimía* – *atimía* that follows directly on the commission of an offense without the need for a court verdict. MacDowell may have slightly modified this position, suggesting that (at any rate) male prostitutes were *required to avoid exercising the rights of a citizen* (that is, [they were] treated as *átimoι*), and they could be prosecuted if they ignored this requirement. «The penalty was death». (MacDowell does not say whether the restrictions imposed on such persons included for example entering the Agorà, something normally forbidden to *átimoι*). Todd remarks that the procedure known as *dokimasía rhetóron* *implies that atimía* (the loss of citizen rights) was seen as an appropriate penalty for homosexual prostitution but ... only for an active politician rather than for a private citizen. This in turn implies that, provided they stayed out of politics, prostitutes could for exam-

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\(^2\) See, e.g., Aesch. 1.80.

ple enter the Agorá, attend the Assembly and courts, perhaps even serve as dikasts – all of which were normally denied to átimoi. Todd also states that the penalty for an active politician who had been a male prostitute was atimía. Finally Mogens Hansen, in his otherwise systematic, often compelling treatment of atimía, discusses in detail only two examples of automatic atimía (pp. 66-67). First, magistrates who became state debtors but did not resign their office were instantly liable to éndeixis and possibly execution. Second, an Athenian citizen who did not appear when called up for military service was liable to atimía enforced by a graphé astratéias, and it was only if he appeared in public after the conviction in a graphé astratéias that he could be prosecuted by an éndeixis or an apagogé resulting in a penalty fixed by the court. Beyond these two types of offense, on pp. 73-74 Hansen lists (among other items) male prostitution and squandering one’s patrimony as offenses subject either to automatic atimía or atimía by sentence, but he does not specify which of these two punishments applied in these cases, or what offenders of these types were excluded from. He states that if a person did not respect automatic atimía, he could be prosecuted and incur a penalty more severe than the original atimía (p. 66). In his view the abuse of parents (p. 72) and perhaps (p. 72 n. 3) throwing away one’s shield were subject to atimía, perhaps with the implication that these were by sentence only. Finally, directly challenging Andokides’ statement (1.101) to the contrary, Hansen denies that an unconvicted male prostitute was legally not entitled to appear in court.

This brief survey of relevant scholarship indicates the need for clarifying these issues, especially because some of the evidence has been neglected or else requires more detailed discussion. The difficulty will be seen to lie in the confusing and ambiguous nature of this evidence, in part because of discrepancies between the Athenians’ legal principles and their day to day assumptions and practices.

I begin with some general remarks on atimía. In this context timái are various ‘civic or public honors’ (or as we might more blandly call them, ‘capacities’), which ranged from holding magistracies and the protection of law all the way down to crossing into the Agorá. For the Classical period, atimía was to a certain extent a ‘grab-bag’ term denoting the denial of different types of such capacities, extending to what is clearly an older meaning ‘outlawry’ (Hansen, pp. 75-82). In the later fifth and fourth centuries, atimía was
most commonly a judicial sentence imposed on Athenian citizens for neglecting civic duties (Hansen, pp. 72-74), for example by not serving as an arbitrator in one’s sixtieth year or not divorcing an adulterous wife. It was also a penalty which, _de jure_ at least, «automatically» fell on those who had been convicted three times _paranómon, pseudomartyrion, pseudokletéias_ or _argias_. _Atimía_ was imposed on those who were debtors to the public treasury, although some sources ([Dem.] 58.45; Arist. _Ath. Pol._ 63.5) including the texts of laws (Dem. 24.45-46; cf. Andok. 1.77-78) list these offenders as a separate category from _boi átimoi_, possibly because of differences between these two groups. (In particular, public debtors could restore their earlier status by paying their debts, and their property was subject to confiscation [Andok. 1.74]. In addition, [Dem.] 25.85-91 suggests that their offenses might not normally have been judged so culpable, except perhaps for those with unpaid fines). _Atimía_ could also be hereditary.

Finally, permanent but partial _atimía_ could be imposed for certain types of offense. Andokides (1.75-76) expressly attests this phenomenon and lists several types of restrictions, such as not sailing to the Hellespont or Ionia, or not speaking in the Assembly or serving as _bouleutés_. Andokides’ list is neither exhaustive nor meant to be. For example, those who received less than one-fifth of the dikasts’ votes in a court case were subject to partial _atimía_, in that in future they were forbidden to bring public actions. They also had to pay a 1,000 dr. fine. According to Aristotle (_Pol._ 1281a.28-32), exclusion from the right to hold magistracies was also a form of _atimía_, since (he says) the _archáie_ are _timáie_. Paoli (pp. 326-327) goes so far as to

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4 Harrison, _The Law of Athens_, I, cit., pp. 172-176. Hypereides (_4 Phil._ 12) suggests how rare this was, at least in cases of false witness.

5 See Hansen, «Apagoge, _Enodeixis_ and _Ephegesis_ against _Kakourgoi, Atimoi_, and _Pheugontes_» cit., pp. 63-65, and for exceptions see Harrison, _The Law of Athens_, I, cit., pp. 175 n. 4 and MacDowell, _Andokides On the Mysteries_ cit., pp. 65-66 (incl. on Andok. 1.33), and _The Law in Classical Athens_, I, cit., pp. 64-65. E.M. Harris (_Classical Philology_ 87 [1992], pp. 79-80) establishes that the form of this _atimía_ was a prohibition against bringing any public action, not simply the same type of action where the prosecutor had failed to get one-fifth of the votes.

6 According to Demosthenes, «if a man says anything contrary to the laws, if he is convicted, _tó triton méros étimóshai toi sómatos_» (51.12). The nature of this _third part_ remains a mystery.
regard any provision which limited the capacity of a citizen as a form of partial *atimía*, including for example the provision that the physically disabled could not serve as archons (see Lys. 24.13). Of course the Athenians could well have considered as *átimoi* other types of offenders with restricted civic capacities. But it seems unlikely that they would regard the handicapped as *átimoi*, or naturalized citizens who *ipso facto* were not entitled to serve as archons or priests (pace Paoli, citing [Dem.] 59.92 but which does not use the word *átimos*). As Hansen points out (pp. 60-61), *atimía* involved an element of public disgrace. It is not clear that this would have seemed appropriate for those disqualified through no fault of their own.

A number of scholars, among them Paoli (pp. 332-333) and Hansen (pp. 59-60), have argued that *atimía* was sometimes ignored in daily life. In the case of citizens in debt to the *pólis*, this was well recognized. According to [Dem.] 58.48-49 cf. 21, in a case of public debt, Attic law declared that *atimía* was imposed from the day either of a judicial conviction or else «from the day when [an offender] has transgressed the law or the decree» 8. Hence, according to this statement, transgressors in this group were both automatically and *de jure atimoi*. However, in these cases an express pronouncement of *atimía* need not have been made, and many such persons went about their business with no apparent consequences. Two explanations for leniency in this matter are that many such men had fallen into debt through service to the city, and if they were denied the ability to manage their affairs, the Athenians could scarcely hope to recoup the money owed to them.

How far «automatic» and even formal *atimía* could be ignored in other cases is less certain, disregarding for the moment the five types of offenders that are the subject of this essay. Hansen’s fifteen cases in which individuals withdrew public prosecutions with impunity (pp. 59-60 n. 23) are not pertinent, since as I hope to show else-

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8 For discussion, see Harrison, *The Law of Athens*, I, cit., pp. 173-175.
where, such actions were not illegal unless for money, in which case offenders were subject to a fine but not partial atimia. As we have seen, prosecutors who did not get one-fifth the votes were legally forbidden to bring public cases. Demosthenes (24.7, 14) reports that Androtion did not receive one-fifth of the votes in a case of impiety and was fined 1,000 drachmas; and yet Androtion subsequently challenged a decree paranómone. According to Dem. 57.8, Eubouilides also failed to receive one-fifth of the votes in a trial for impiety, and yet he appears as a prosecutor in the case at hand. However, in specifying Androtion’s penalty Demosthenes mentions only a fine, not partial atimia – which he surely would have loved to mention, if it had applied. It is also striking that both of these cases involve the major offense of impiety. It may be that in order to encourage denunciations of impiety, the Athenians specified that in such cases failed prosecutors were subject only to a fine, and not partial atimia. Although atimoi were legally forbidden to speak in court (see, e.g., Lys. 6.24) or to enter the Agorá (where the courts were located), Demosthenes called for the atimos Straton, a victim of Meidias, to stand up in court, “stripped of the capacity to speak or complain”, in order to incite the dikasts’ sympathy (Dem. 21.95). Hansen (p. 62) regards this as evidence that the exclusion of atimoi from the courts was not always enforced. MacDowell queries why the rule of exclusion would be broken but not the rule against speaking, and hence suggests that the courts were not technically part of the Agorá (although [Lys.] 6.24 would argue against this)11. It may also be that exclusionary rules were commonly interpreted to be not so much geographical as participatory (see below). In a more general context, Plato’s Socrates says, “Have you never seen in such a politeía men condemned to death or exile who nonetheless stay on, and go to and fro among the people, and as if no one saw or heeded them, 

9 The single attested exception is for the crime of lipotaxión (Dem. 21.105), and this particular offender does seem to have abided by the terms of partial atimia (21.139).
11 MacDowell, Demosthenes against Meidias cit., p. 319.
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slip in and out, as invisible as the dead?" (Repul. 558a). In the end it
remains unclear how many átimoi in Athens other than state debtors
disregarded the provisions of their reduced civic status. Hansen (pp.
59-60) observes, however, that any such persons lived with a sword
over their heads. Thus the state-debtor Pyrrhos, who out of poverty
served as dikast for the three-obol payment, was condemned and
executed for this offense (Dem. 21.182). In any case, therefore, ati-
mía could involve an ambiguous status.

The following data shed light on the even more complex and
ambiguous status of the five types of offenders that are the focus of
this inquiry.

1) As we have seen (n. 1 above), one law discussed in Aesch.
1.28-32 specified that these five types of offenders could not speak
or make proposals in the Assembly. Dem. 22.29-31 repeats this pro-
hibition specifically in the case of male prostitutes.

2) Some terms of another, partly overlapping law against male
prostitutes are presented in Aesch. 1.19 (the law itself was read out
in 1.21; see also 1.188). "If any Athenian shall have prostituted his
person, he shall not be permitted to become one of the nine ar-
chons, nor to discharge the office of priest, nor to act as advocate
[sýndíkos] for the démos, nor to hold any magistracy whatsoever, at
home or abroad, whether filled by lot or by election; he shall not
take part in debate (gnómen legéto) nor shall he be present at the
public sacrifices; when the citizens are wearing garlands he shall
wear none; and he shall not go inside the stoops (perirrantéria)
delimiting the Agorá [see also Aesch. 1.164]. If any man who has
been convicted of prostitution act contrary to these prohibitions, he
shall be punished by death." Three points may be noted. First, this
text contains an ambiguity in that it begins with a reference to any
Athenian who prostitutes himself, but ends with a reference to those
who had been convicted of prostitution. Is the first reference also to
a man convicted of prostitution, or just to any prostitute? Since Tima-
rchos had not been convicted of prostitution, we must suppose that
this law was directed to unconvicted prostitutes: i.e., no male pro-
stitute can serve as archon, etc. (and see Aesch. 1.160). Hence, as
quoted, this law also involves a lacuna. It does not say what hap-
pens to an unconvicted prostitute who does one of the forbidden
actions, but only that someone already convicted of prostitution who
does one of these things is executed. Second, either implicitly or
explicitly the various restrictions here imposed on Athenians who
prostitute themselves correspond entirely with what is attested as
full *atimía* (see Hansen, pp. 61-65). Hence, according to this law,
male prostitutes were subject to *atimía* without formal sentencing.
(It is so far unclear whether there were such laws about each of the
five offenses I have listed, or only this law regarding male prostitu-
tion.) This conclusion is reinforced by Aeschines’ general claim that
in the lawgiver’s view, male prostitutes can have no share in *tá
koiná*, and should not be *epítimoí* (1.160). Finally, third, this law
does not simply state that a male prostitute is *átimos*: it does not use
that term. Rather, it specifies the applicable restrictions. One reason
for this may have been that the provisions of *atimía* differed in var-
ious types of offense. However, it may also be noted that some other
laws do use only the term *átimos*, without specifying the particular
restrictions implied (e.g., [Dem.] 59.52, Aesch. 3.44).

3) According to Aeschines 1.164, if a male prostitute prosecutes a
client for non-payment in court, “will he not immediately have to
face a loud protest from the dikasts? For who will not say, “And then
do you thrust yourself into the *Agorá*, do you wear a garland, do you
do anything of the things the rest of us do?”” This passage implies
that, in Aeschines’ dramatization at least, male prostitutes were both
*átimoi* and treated as such, at least if they appeared as litigants in
court.

4) In contrast to the legal material in paragraph 2 and Aeschines’
dramatization in 1.164, other points in both Aeschines’ speech
against Timarchos and Demosthenes’ attack on Androtion (22.21-32)
seem to imply that neither Timarchos nor Androtion was *átimos*,
although they are accused of being male prostitutes. In the case of
Timarchos, it is striking that nowhere in his speech does Aeschines
simply say that Timarchos had long since been *átimos*. By contrast,
in 1.134 he states that someone who is clearly judged to be a male
prostitute “you [dikasts] will make *átimos*”. The future tense does not
seem to imply that Timarchos was *átimos* already. We have already
seen that in 1.3 and elsewhere (e.g. 1.154), Aeschines seems to focus
on the restriction imposed on Timarchos not to speak in the Assembly,
rather than other aspects of *atimía*. “Because [Timarchos] had
lived shamefully, the laws forbade him to speak before the people,
ensigning on him an injunction not difficult, in my opinion, to obey,
but rather most easy” (1.3). By contrast, it was presumably very hard
not to enter the Agorá, a restriction normally imposed on full átimoi. When Aeschines recounts all the offices Timarchos had held (106-113), both allotted and elective, he constantly complains that Timarchos had bought these offices or stolen public funds. He nowhere says that Timarchos had no right to occupy them. Hence, Aeschines seems to imply that the status of Timarchos was something less than that of átimo, notwithstanding the law he has read out. Demosthenes' representation of Androtion and Attic law yields a similar conclusion. Demosthenes states expressly that the lawgiver forbade male prostitutes to speak or propose measures, for he saw that the majority of you do not speak although speaking is permitted to you, so that he thought this no great hardship, and he could have laid down many harsher penalties if he wanted to punish this kind of offender (22.30). In this passage Demosthenes also ignores the law which Aeschines quotes, imposing what amounted to atimía on male prostitutes. The key issue for both speakers was active political participation in the Assembly.

5) Both Timarchos and Androtion appeared in court to defend themselves, something forbidden to átimoi.

6) As regards punishment, in 1.134 as we have seen, Aeschines states that someone who is clearly judged to be a male prostitute «you [dikasts] will make átimo». Upon conviction for speaking in the Assembly although he had been a male prostitute, Timarchos was punished with atimía: Dem. 19.284.

7) In Ar. Knights, 876-880, Paphlagon rebukes Demos for accepting shoes from the Sausage-Seller: «isn’t it terrible that a pair of shoes should count for so much, when you don’t recall all I have done for you? I put a stop to the buggereds (toûs binouménous), by erasing Grypos from the rolls (tôn Grypón exaléipsas). The Sausage-Seller replies, «Well, isn’t it dreadful that you should indulge in this arse-snooping (proktoteréin) and “put a stop to the buggereds?” and there’s no room for doubt that you put a stop to them out of jealousy, for fear they should become politicians» (bîna mé rhétores génointo) (trs. Sommerstein). This passage is based on the stock comic charge against Athenian politicians that they were or had

\[12\] I have changed to «buggereds» Sommerstein’s «buggers», which precisely obscures the point, as my next sentence will make clear.
been male prostitutes (Knights, 167, 423-428, Eccles. 112-113; Eupolis 100 Kock; Plato, Com. 186.5 Kock; Plato, Symp. 192a), something that surely influenced Aeschines’ prosecution of Timarchos. Despite the last line, it seems clear (1) that Grypos had already been active politically, (2) that the Sausage-Seller implies that the charge against him and others had been politically motivated, to eliminate them as competition, and (3) that Grypos had been convicted on a charge of male prostitution. Hence, this passage provides a fifth-century parallel to the case of Timarchos. Commentators (Rogers, Budé, Sommerstein) interpret exalēipein, «to erase», which in Athenian contexts often meant from a katálogos (see LSJ s.v.), in this passage to mean «to strike from the citizen rolls». However, there is no evidence that atimoi were formally deprived of their citizenship (and the standard verb for «to deprive of citizenship» is apopsephízesthai: see e.g. Aesch. 1.114). If the sense here is to erase from a katálogos, the only relevant katálogos under the democracy appears to be that of the hoplites. If this is right, then we may add exclusion from the hoplite army to Hansen’s list (pp. 61-62) of the possible consequences of atimía. We may note that Grypos had not been thus «erased» until he had been prosecuted in court by Paphlagon.

8) In Andok. 1.99-101, Andokides claims that one of his accusers, Epichares, a «well worn kínados» [the Loeb does not translate this phrase!] who «prostituted [himself] not to one but welcomed any creature who wished for not much money», dared to bring accusations «although according to your laws it is not possible for him even to defend himself». Andokides here mentions not speaking in the Assembly, but speaking in self defense in court. Hansen (pp. 62-63) protests that Andokides’ «assertion cannot possibly be true», on a priori grounds and because Timarchos later appeared in court although «accused of precisely the same offense as Andokides is alleging against Epichares» 13. However, it can be true both that male prostitutes were excluded from the courts, and that an unconvicted male prostitute (or someone accused of that offense) could go where he would – albeit at the risk of being formally accused of

13 However, Hansen, «Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes» cit., p. 74, lists male prostitution as one of the offenses subject to automatic atimía or atimía by sentence (he does not specify which, p. 73).
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prostitution. Hence, male prostitutes were legally excluded from the courts and other civic capacities, but unconvicted male prostitutes could ignore these restrictions because their status had not been formally determined.

9) In his (partial) list of the various types of átimoi in 1.73-76, Andokides first discusses state debtors and then turns to ‘a second type, in which their persons were átima but they kept and possessed their property. These were whoever was convicted of theft or accepting bribes — it was required that both these and their descendants be átimoi — and whoever deserted on the field of battle or was convicted of evasion of military service or cowardice or withholding a ship from action, or who threw away their shield, or three times were convicted of giving perjured testimony or falsely endorsing a summons, or those who treated their parents badly, all of these were átimoi in their persons, but retained their property’. A curious feature of this paragraph is often obscured by those who claim that the different offenders listed had all been found guilty of the offenses listed. In fact, three of the offenses punishable by átima in this list are not specified to be the result of a legal conviction: desertion on the battlefield, throwing away one’s shield in battle, and mistreating one’s parents. If Andokides is speaking precisely, this passage confirms the existence of ‘automatic’ átima in these cases. This passage may therefore imply that three other of our five categories — those who mistreated their parents, those who deserted in battle and those who threw away their shields in battle — were legally átimoi but retained their property. As in the case of male prostitution, it is unclear to what extent átima was enforced in these cases.

10) According to Diogenes Laert. 1.55, one of Solon’s laws stipulated that ‘if someone does not provide for his parents, he is átimos’. Although it may be dangerous to press this passage, it could imply that someone who mistreats his parents is ipso facto átimos. According to Dem. 24.103 (and see 105), in Solon’s laws ‘if someone is convicted of theft and not punished with death, the court shall award him the further penalty of imprisonment, and if someone convicted of abusing his parents intrudes upon the Agorá, he shall be...’

14 So e.g. MacDowell, Andokides On the Mysteries cit., p. 107. The Loeb also translates, those ‘who were found guilty of maltreating their parents’.
imprisoned. This passage indicates that someone convicted of abusing his parents becomes átímos, i.e. that the judicial punishment for this offense was atimía.

11) It was common in court to accuse one’s opponent of having abused his parents or thrown away his shield in battle. So, for example, Deinarchos (2.8-11) alleges that Aristogeiton allowed his father to lack the bare necessities of life and to die without a proper burial. In Lys. 31.17-23, the speaker says that Philon’s mother was so mistrustful of him that she arranged for a non-relative to attend to her burial. In Lys. 10, the speaker makes merry with insinuations that his opponent had thrown his shield away in battle (e.g., 10.22, 28). Aristophanes frequently ridicules the politician Kleonymos for a similar action (e.g., Wasps, 191, Birds, 290, 1481). As we have seen, the comic poets and others commonly accused politicians of having been male prostitutes. Yet few prosecutions resulted from this banter.

These data reveal a complex relationship between the law and social realities in Classical Athens. Legally, unconvicted male prostitutes and apparently unconvicted offenders of at least three of our four other types 15 were subject to many or all of the restrictions associated with atimía. If they violated these restrictions and were prosecuted for it, the sentence was official, formal atimía. If a person who was expressly condemned to official atimía violated its provisions, in some cases the death penalty could be inflicted, but in other cases other types of penalty applied. As we have seen, a public debtor who held office or a convicted murderer who went where he should not were subject to execution (Dem. 20.156, 23.80). On the other hand, according to Dem. 24.103, in Solon’s laws -if someone is convicted of theft and not punished with death, the court shall award him the further penalty of imprisonment, and if someone convicted of abusing his parents intrudes upon the Agorà, he shall be imprisoned, and if someone condemned for astratéia and acts in some way like the epitímoi, he is to be imprisoned. If authentic, the law subsequently quoted in Dem. 24.105 specifies that the punish-

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15 Of our five types of cases, only for squandering one’s inheritance is there no evidence of any restrictions beyond speaking in the Assembly.
ment for these offenses will be determined by the court, and could be a fine. Hence, someone sentenced to atimía for abusing his parents who violates the terms of formal atimía is imprisoned and (according to 24.105) is subject to further punishment possibly including a fine, at the discretion of the court.

By contrast, in day to day life the actual status of our various types of offenders or suspected offenders was much more ambiguous. None of them had been formally declared átimois by a court, and surely some or even most of those popularly thought to be guilty of such offenses, such as Timarchos or those ridiculed in comedy or the orators, did not consider themselves and were not considered átimois – though, again, some of these men surely knew that swords might be hanging over their heads. As a member of the upper classes, Timarchos’s behavior may have been not widely known among the démos, or else been dismissed as conventional slander or the carryings-on of Athens’ elite. Only when he attracted a political opponent did these issues become public, and he was tried, judged guilty, and formally subjected to the law. An active male prostitute would probably have been much less willing to speak in the Assembly. However, like Timarchos, surely most such persons could have risked attending Assemblies, entering the Agorá, and doing other things legally forbidden to átimois (see Paoli’s perceptive and judicious remarks, pp. 329-333). De facto, at least some of the laws regarding our five types of offenders were commonly not enforced, and not only because the guilt of these offenders had not been proved. Evidence indicates that these laws were not even considered. Thus we have seen, Aeschines nowhere says that Timarchos was átimos, or that on this basis he should not have served as an Athenian official. He does stress that not even Aeschines regarded Timarchos as átímos, despite the law he read out. The same is true of Demosthenes’ representation of Androtion (see 22.30, 33, 34). The applicability of these laws was by no means unconditional, but depended on the status, behavior, circumstances, and number of enemies of the person involved. These factors in part explain the ambiguity of our sources, and the uncertainties of modern scholarship.

These anomalies at the intersection of law and society arose on one level from a legislative oversight. It is easy to understand why
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the Athenians would pass a law stipulating that those who had prostituted themselves, thrown away their shields in battle, or mistreated their parents should not be allowed to address the Assembly or otherwise take part in public life. However, their failure to limit these laws’ applicability to those who had been convicted of these offenses, while altogether understandable, opened up a significant difficulty for people who were merely suspected of them.

An alternative perspective sheds further light on this inconsistent relationship between Athenian law and conduct. The Athenians prided themselves on the freedom of each citizen to live as he liked. Accordingly, despite legal regulations, it was both an Athenian ideology and the common practice that in private life a person might do as he liked, provided that he did not try to play a leading role in government. Vague laws against impiety, for example, were brought to bear only when the community itself had been harmed. Hence, even though Aeschines actually quotes the law stating that male prostitutes were subject to a series of restrictions amounting to *atiemia*, he states that Timarchos was precluded essentially from addressing the Assembly. Demosthenes says the same about Androtion. Other provisions, such as entering the *Agorá*, involved behavior that normally harmed no one. Hence, it is likely that even active male prostitutes could normally violate these regulations with impunity. More remarkably, it was apparently not considered problematic that even active politicians such as Timarchos and Androtion had not previously been prosecuted for *hetairesis*, or parent-beaters for *kakosis gonéon*. This illustrates the Athenians’ typical indifference to the private lives of fellow citizens even including the *politeuómenoi* – or else perhaps the high personal status of Timarchos and Androtion, and their usefulness to the *pólis* despite any doubtful reputation.

Finally, one measure was adopted to lessen the threat of that hanging sword. Lys. 10.2-11 lists three provisions of Athens’ law on slander (there may have been others) making it illegal to accuse people unjustly of murder, mistreating their parents, or throwing away their shield in battle. To be sure, such accusations did not

automatically lead to a *dokimasía rhêtôron* or other prosecution, for as we have seen, they were frequent in political and courtroom battles. However, Athens’ law on slander was enacted to help control such accusations, which were potentially dangerous if allowed to stand unchallenged 17.

What are we to call this type of informal, mostly partial, and in many ways ignored *atimía* to which at least four of our five types of offenders were subject? The concept of *automatic* *atimía* seems in one way appropriate for public debtors, since their offense was established. However, we have seen that in many contexts, the *atimía* of public debtors was disregarded. Questions of whether a man had mistreated his parents, or had been a coward in battle, or had once been a male prostitute, were not necessarily so clearly established. Paoli’s term *incensurati*, *unconvicted* *átimoi*, is partly right, in that such persons had not been convicted; and some such persons, for example active prostitutes, may have lived mostly within the terms of *atimía*. However, other such putative offenders lived normal lives, daring the consequences of any reputation. Timarchos was not, and was not considered, *átimos* before his actual conviction in 345 BC. These persons may be labelled potential *átimoi*. Hence, we may call our categories of offenders unconvicted or potential *átimoi*.

To sum up, while in principle the legal status of people guilty of these several types of offenses was clear, in fact their legal status was indeterminate because they had not been formally judged to be guilty. Their actual status in Athenian society varied, depending on a range of extra-legal factors including the degree of suspicion that attached to them, the number and vigilance of their enemies, their public behavior, and other questions such as their personal status and utility (or danger) to the *pólis*. The penalty for someone convicted of not adhering to this type of *atimía* was not death or a sentence harsher than *atimía*, but official, public recognition of their status as *átimoi*, with the further restrictions and public embarrassments that this recognition imposed. As in the case of this type of *atimía*, the inconsistencies and anomalies of Attic law sometimes vitiate overly rigid attempts at clear categorization. Community sentiment, person-

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al rivalries and politics (among other factors) sometimes played an
equal if not more powerful role than legal rules in determining who
was átimos, how far he was átimos, and at what time. Atimía is often
cited as an example of the evolution of Athenian law, in this case
from scarcely regulated outlawry to the submission to civil process.
That so confusing and ambiguous a status as unconvicted or poten-
tial átimos could persist in the fourth century also illustrates the anti-
evolutionary aspects of Athenian law, and its embedding in a wider
social framework.