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UNCONVICTED  
OR POTENTIAL «ÁTIMOΙ»  
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<sup>1</sup>. 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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<sup>1</sup> 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.

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 Androtion for the same offense (22.21-32). Among other points, Timarchos's and Androtion'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 Androtion and Timarchos had done for years)<sup>2</sup>, Paoli followed by Harrison claimed that such persons were in fact classified as *átimoi*<sup>3</sup>. Paoli called them «incensurati», «unconvicted *átimoi*», 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 *átimoi*)», 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 *Agorá*, something normally forbidden to *átimoi*). 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-

<sup>2</sup> See, e.g., Aesch. 1.80.

<sup>3</sup> U.E. Paoli, *Studi di diritto attico*, Firenze 1930, esp. pp. 328-334; A.R.W. Harrison, *The Law of Athens*, I, Oxford 1969, pp. 171-172. Further citations in this paragraph are D.M. MacDowell, *Andokides On the Mysteries*, Oxford 1962, p. 138, cf. *The Law in Classical Athens*, Ithaca (New York) 1978, p. 126, lines 2-6 (with no evidence cited); S.C. Todd, *The Shape of Athenian Law*, Oxford 1993, p. 107 n. 5, p. 116 n. 5; M.H. Hansen, «*Apagoge*», «*Endeixis*» and «*Ephegesis*» against «*Kakourgoi*», «*Atimoi*» and «*Pheugontes*», Odense 1976, pp. 55-98 *passim* (including a superb assembly of the ancient evidence).

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*, *pseudomartyrión*, *pseudokletéias* or *argías*<sup>4</sup>. *Atimía* was imposed on those who were debtors to the public treasury, although some sources ([Dem.] 58.45; Arist. *Ath. Pol.* 63.3) including the texts of laws (Dem. 24.45-46; cf. Andok. 1.77-78) list these offenders as a separate category from *hoi átimoí*, 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<sup>5</sup>. According to Aristotle (*Pol.* 1281a.28-32), exclusion from the right to hold magistracies was also a form of *atimía*, since (he says) the *archáí* are *timáí*<sup>6</sup>. Paoli (pp. 326-327) goes so far as to

<sup>4</sup> 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.

<sup>5</sup> See Hansen, «*Apagoge*», «*Endeixis*» and «*Epbegesis*» against «*Kakourgoí*», «*Atimoí*» 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.

<sup>6</sup> According to Demosthenes, «if a man says anything contrary to the laws, if he is convicted, *tó trítion méros etimósthai tou 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<sup>7</sup>. 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»<sup>8</sup>. Hence, according to this statement, transgressors in this group were both automatically and *de jure* *átimoi*. 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-

<sup>7</sup> The *locus classicus* is [Dem.] 25.85-91. See esp. Hansen, «*Apagoge*», «*Endeixis*» and «*Ephēgesis*» against «*Kakourgoi*», «*Atimoi*» and «*Pheugontes*» cit., p. 59 n. 22 and V. Gabrielsen, *Financing the Athenian Fleet. Public Taxation and Social Relations*, Baltimore 1994, pp. 157-169.

<sup>8</sup> 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 *atimía*<sup>9</sup>. 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 *paranómon*<sup>10</sup>. According to Dem. 57.8, Euboulides 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 *atimía* – 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 *atimía*. Although *átimoi* 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 *átimos* 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 *átimoi* 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)<sup>11</sup>. 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 *politía* 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,

<sup>9</sup> The single attested exception is for the crime of *lipotaxión* (Dem. 21.103), and this particular offender does seem to have abided by the terms of partial *atimía* (21.139).

<sup>10</sup> D.M. MacDowell, *Demosthenes against Meidias*, Oxford 1990, pp. 327-328; Hansen, «*Apagoge*», «*Endeixis*» and «*Ephēgesis*» against «*Kakourgoi*», «*Atimoi*» and «*Pheugontes*» cit., p. 64; Harris, «*Classical Philology*» 87 (1992), p. 80 regards these as suspect stories from the mouths of enemies.

<sup>11</sup> MacDowell, *Demosthenes against Meidias* cit., p. 319.

slip in and out, as invisible as the dead?» (*Republ.* 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, *atimía* 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 prohibition 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 archons, nor to discharge the office of priest, nor to act as advocate [*sýndikos*] 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 Timarchos had not been convicted of prostitution, we must suppose that this law was directed to unconvicted prostitutes: i.e., no male prostitute can serve as archon, etc. (and see *Aesch.* 1.160). Hence, as quoted, this law also involves a lacuna. It does not say what happens 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. 61-63). 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 prostitution.) 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 *epítimoi* (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 various 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, enjoining 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 *átimos*, 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 *átimos*». 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 (*toús binouménous*), by erasing Grypos from the rolls (*tón 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» (*hína mé rhétores génointo*) (trs. Sommerstein)<sup>12</sup>. This passage is based on the stock comic charge against Athenian politicians that they were or had

<sup>12</sup> 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 *exaléipein*, «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 *átimoi* 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 *kínaidos*» [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»<sup>13</sup>. 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

<sup>13</sup> 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).

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<sup>14</sup>. In fact, three of the offenses punishable by *atimía* 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» *atimía* 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 *atimía* 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

<sup>14</sup> 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 *átimos*, 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<sup>15</sup> 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 *Agorá*, he shall be imprisoned, and if someone condemned for *astratéia* and acts in some way like the *epítimoi*, he is to be imprisoned». If authentic, the law subsequently quoted in Dem. 24.105 specifies that the punish-

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<sup>15</sup> 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 *átimoi* 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 *átimoi* – 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 *átimoi* (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 Timarchos should not have spoken in the Assembly, something he says was not hard to do. Hence it seems that not even Aeschines regarded Timarchos as *átimos*, 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

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<sup>16</sup>. 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 *atimía*, 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 *hetáiresis*, or parent-beaters for *kákosis 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

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<sup>16</sup> See (preliminarily) R.W. Wallace, *On not legislating sexual conduct in classical Athens*, in G. Thür - J. Vélissaropoulos-Karakostas (hrsg.), *Symposion 1995*, Köln-Wien 1997, pp. 151-152.

automatically lead to a *dokimasía rhetóron* 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<sup>17</sup>.

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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<sup>17</sup> See R.W. Wallace, *The Athenian laws against slander*, in G. Thür (hrsg.), *Symposium 1993*, Köln-Wien 1994, pp. 109-124.

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 potential *átimos* could persist in the fourth century also illustrates the anti-evolutionary aspects of Athenian law, and its embedding in a wider social framework.