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## RECENSIONI

## REVIEWS

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# Xenophon and Lysias on the Arginousai Trial\*

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ABSTRACT: Lysias argues in XII 36 that if the Athenians condemned the Arginousai generals it would be right to condemn the Thirty. This argument implies that the generals were guilty and asserts that there was a strong conviction on the part of the Athenians that they should punish the generals. This is a clever rhetorical argument, which conformed to the Athenian ideology according to which the demos was blameless. However, Lysias avoids mentioning that the Athenians violated their law and tried the generals without a proper trial. This happens because the orator comments on the trial retrospectively. If he had to admit that the procedure was illegal, this would clearly have weakened his case; so he does not make this mistake.

KEYWORDS: Arginousai trial; generals; Lysias; Plato; Xenophon – Lisia; Platone; processo delle Arginuse; Senofonte; strateghi.

One of the goals of Xenophon in his *Hellenica* was to promote his history in such a way as to criticize the excesses and deficiencies of Athenian democracy, creating an alternative version of the past, in opposition particularly to the version of events treated by the orators<sup>1</sup>. He does not seem to have been particularly energetic or intelligent in searching for the truth when the truth was hard to discover, but we have no reason to think that he did not care about the truth, or that he wrote things which he knew were false<sup>2</sup>. On the other hand, the orators referred to past events in order to serve their own rhetorical ends, i.e. to win a case<sup>3</sup>. This means that although pieces of historical information could be accurate, these

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<sup>1</sup> See Pownall 2004, 3-4.

<sup>2</sup> Rhodes 1994, 167.

<sup>3</sup> See the detailed study of Nouhaud 1982.

speeches were tendentious and did not aim at recording the historical reality of the past<sup>4</sup>. Therefore, historians and orators had different aims, limits and audiences<sup>5</sup>.

Such an interesting example of a common reference to a historical event is the trial after Arginousai and its common mention by Xenophon in his *Hellenica* (I 6, 29 - 7, 35) and the orator Lysias in his speech *Against Eratosthenes* (XII 36). It is the purpose of this paper to argue that Lysias refers to the naval battle at Arginousai and the trial after it in such a way as to achieve the conviction of Eratosthenes and does not really reflect what happened in the trial of the generals. This episode offers a very good case study on the use of the past by the oratorical versus the historiographical tradition and shows that the orators do not provide the whole truth.

Some words must be said about Eratosthenes' trial first. The trial took place in 403/2 B.C.<sup>6</sup>, i.e. only a few years after the trial of the Arginousai generals. Lysias prosecuted Eratosthenes at the *euthynai* offered to former members of the Thirty by the amnesty of 403 B.C., bringing as the nominal charge the killing of Polemarchus and demanding the death penalty<sup>7</sup>. However, Lysias lacked direct evidence against Eratosthenes. For this reason, Lysias paid more attention to the crimes committed by the Thirty in general than to those committed by Eratosthenes, as the structure and the content of the speech reveals<sup>8</sup>, and treated them as a homogenous group<sup>9</sup>. On the basis of this tactic, Lysias makes a comparison between the punishment of the generals who led the Athenian fleet at Arginousai and the Thirty. The relevant passage for the present investigation runs as follows:

οὐκ οὖν δεινὸν εἰ τοὺς μὲν στρατηγούς, οἱ ἐνίκων ναυμαχοῦντες, ὅτε διὰ χειμῶνα οὐχ οἰοί τ' ἔφασαν εἶναι τοὺς ἐκ τῆς θαλάττης ἀνελέσθαι, θανάτῳ ἐζημιώσατε, ἡγούμενοι χρῆναι τῇ τῶν τεθνεώτων ἀρετῇ παρ' ἐκείνων δίκην

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<sup>4</sup> Cf. Worthington 1991, 55: «The orators do not record information in the same way and for the same ends as historical authors. Yet often the information supplied by oratory is still used to substantiate an argument without really assessing its validity: *whether a certain narrative suits a particular context of a speech, whether there are serious clashes with our historical authors, whether a particular accusation occurs only in oratory and in no other source. It is indeed likely that most of the historical information given in oratory is embellishment, even invention*» (my emphasis).

<sup>5</sup> Cf. Todd 1990, 159-178, who points out the danger of accepting every piece of information in the orators at face value.

<sup>6</sup> For the date of the speech see Bearzot 1997, 42-44, 47-50, 227.

<sup>7</sup> See Phillips 2008, 154-156.

<sup>8</sup> See Krentz 1984, 24; Lamers - Rademaker 2007, 466; Phillips 2008, 155.

<sup>9</sup> See Chiron 2002, 46-49.

λαβεῖν, τοὺτους δέ, οἱ ἰδιῶται μὲν ὄντες καθ' ὅσον ἐδύναντο ἐποίησαν ἡττηθῆναι ναυμαχοῦντας, ἐπειδὴ δὲ εἰς τὴν ἀρχὴν κατέστησαν, ὁμολογοῦσιν ἐκόντες πολλοὺς τῶν πολιτῶν ἀκρίτους ἀποκτινύναι, οὐκ ἄρα χρὴ αὐτοὺς καὶ τοὺς παῖδας ὑφ' ἑμῶν ταῖς ἐσχάταις ζημίαις κολάζεσθαι;

Wouldn't it be outrageous that you sentenced to death those generals who won the naval battle, although they said that a storm prevented them from rescuing sailors from the sea, since you deemed that you ought to exact justice from them for the bravery of the dead? These men (i.e. the Thirty) by contrast did whatever they could as private citizens to make us lose the naval battle, and when they came to power, as they admit, they intentionally executed many citizens without a trial. And yet should neither they nor their children receive from you the most severe punishment?

Lysias' point is: if generals who had won a great victory were executed for failing to recover shipwrecked sailors, how could an Athenian court acquit Eratosthenes when he worked with the enemy to defeat Athens?

The content of the argument is striking and unusual. We know that an Athenian verdict was determined by a tally of individual judges' votes and never included a statement of their reasoning. Lanni has remarked that in more than half of the speeches which include references to previous decisions, Athenian litigants make no attempt to use the *ratio dicendi* of a past verdict as a guide for the proper interpretation and application of the laws in the current case. Eight passages record the penalties given in previous cases and urge the jury to treat the current defendant in the same spirit of severity. These passages do not shed light on how the jury should interpret the facts or laws involved in the current case, and often involve examples of punishment for crimes completely unrelated to the case at hand. One of the most puzzling exceptions to this rule is Lysias' discussion of the punishment of the Arginousai generals-hardly a sterling exemplum of Athenian justice-used by Lysias to incite the current jury to deliver a guilty verdict. In this passage the speaker is simply providing past examples of severe punishments and encouraging the current jury not to be lenient in the current case. His inflammatory references to previous cases in no way assist the jury in reaching an appropriate verdict in the matter before them<sup>10</sup>.

However, Gish, unlike Lanni, does not see anything illegal in the Arginousai trial. Instead, he claims that Lysias seems to assimilate the treason of the generals of Arginousai to that of the Thirty and that from

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<sup>10</sup> The eight passages are: Lys. XII 36; XXII 16; Dem. XXIV 138; XXXIV 50; Din. I 23; Hyp. 5, col. 27; Aeschin. I 173; III 252. The other exception is Aeschin. I 173, who refers to Socrates' execution on the grounds of his having taught Critias. Lanni 2006b, 121-122.

this statement we gather that there is «no indelible mark of error or injustice on the hands of the *demos*», «no taint of illegality with respect to the trial and execution and no sense of regret». For him Lysias makes a direct and approving reference to the precedent set in the case of the Arginousai generals<sup>11</sup>.

It is the opinion of the present author that Lysias does not endorse the judgment of the *demos* in putting to death the generals of Arginusai. We can assess Lysias' passage by examining its rhetorical treatment of this recent historical event, its ideological dimension and finally its historical reliability.

Let us focus first on Lysias' rhetorical treatment of the case, analyzing what he says word by word. First of all, I may remark that litigants always named a man and then defined him as στρατηγός, obviously because it was not easy for the audience to understand to whom a speaker referred<sup>12</sup>. Nonetheless, here it is noteworthy that Lysias takes it for granted that the jurors knew that he was referring to the generals of Arginousai. Then, he calls them the commanders who were victorious in a sea battle. The only victorious Athenian naval battle at the end of the Peloponnesian War, accomplished by a group of generals, was that at Arginousai<sup>13</sup>. Thus, everyone could identify these commanders with the commanders of Arginousai. This can only mean that their memory was still alive. On the basis of this social knowledge about the Arginousai generals, Lysias emphasizes that the Athenians imposed the death penalty on them (θανάτω ἐζημιώσατε) and claims that the Athenians deemed it necessary (ἡγούμενοι χρῆναι)<sup>14</sup> to take such a decision. It is noteworthy

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<sup>11</sup> Gish 2012, 171.

<sup>12</sup> Thus, Andoc. I 11 says: Ἦν μὲν γὰρ ἐκκλησία τοῖς στρατηγοῖς τοῖς εἰς Σικελίαν, Νικίᾳ καὶ Λαμάχῳ καὶ Ἀλκιβιάδῃ. Isocrates first mentions the names of Agamemnon and Timotheus and then calls them generals (see XII 74, 76 and XV 106 respectively). Aeschin. II 92 does the same with the general Chares. Lys. XIII 78 defines Anytus as general, a fact which allows him to refer to his office later on without naming him again: στρατηγοῦ ἀνδρός. In the same text the speaker claims that Agoratus is responsible for the death of those generals and officers who resisted to the subversion of democracy. The speaker does not mention the name of these generals during his speech, but they are read to the jurors by the secretary (XIII 38-39). The reason why this happens is that they were too many (XIII 62). Note that Aeschin. III 186 transports the jurors to the Stoa Poikile, where the battle of Marathon is depicted, and says: Τίς οὖν ἦν ὁ στρατηγός; οὕτωσί μὲν ἐρωτηθέντες ἅπαντες ἀποκρίναισθε ἂν ὅτι Μιλτιάδης, ἐκεῖ δὲ οὐκ ἐπιγέγραπται. This means that it was the monument that helped the Athenians to identify the general.

<sup>13</sup> Alcibiades was credited with the victories at Abydos (Xen. I 1, 5-7) and Cyzicus (I 1, 16-18) as well as the defeat at Notium (Xen. I 5, 11-14) as his.

<sup>14</sup> For this translation of the verb see *LSJ s.v.* ἡγούμεναι III 4.

that the verb ἡγοῦμαι expresses strong conviction in Greek<sup>15</sup>, while its use with the infinitive χρῆναι is rare in the orators<sup>16</sup>. Moreover, we must take into consideration that the verb ἡγοῦμαι was connected with matters of justice and the laws<sup>17</sup> and the verdict of the jurors<sup>18</sup> and implied their moral obligation to convict someone in order to avoid incurring the social reproach of their fellow citizens<sup>19</sup>. Lysias asserts that there was a strong conviction on the part of the Athenians that they should punish the generals. Then, the orator gives the reason for the punishment of the generals, which was the virtue (ἀρετή) of the dead men. This claim is in accordance with the belief of the Athenians that they should give priority to their oarsmen instead of their generals<sup>20</sup>. Finally, he concludes with the phrase λαμβάνω δίκην in order to intimate that only the death penalty against the Arginousai generals could appease the living for the loss of the dead<sup>21</sup>. Consequently, Lysias gives a legal and moral reasoning to the decision of the Athenians to execute the generals.

It is time to proceed to the ideological side of the orator's argument. In my opinion, Lysias' interpretation of the decision of the Athenians to punish the generals is successful. This happens because it recalls what Ober has called 'the Athenians' democratic knowledge', i.e. the belief in the superior wisdom of decisions made collectively by the citizens and

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<sup>15</sup> See [Lys.] XX 5 with Αποστολάκης 2003, 139.

<sup>16</sup> See Antiph. V 12, where the speaker says to his accuser «you *deem it necessary* (ἡγή χρῆναι) that your illegal conduct should take precedence over the laws themselves» (my emphasis). Moreover, see Isaeus I 51, where the speaker says to the jurors «It would be really extraordinary if you vote that our opponents should have the whole estate when they recognize our right to receive a part of it, and *deem necessary* (ἡγήσεσθε χρῆναι) they should receive more than they considered themselves entitled to, but don't think that we deserve even what our opponents concede to us» (translations by Gagarin 1998 and Edwards 2007 respectively).

<sup>17</sup> See Pl. *Cri.* 51a4, where the Laws supposedly say to Socrates that they decided to execute him, because they believed (ἡγούμενοι) that this was just and 53b7 that the citizens of other cities will have the conviction (ἡγούμενοι) that Socrates is a corrupter of the laws if he escapes from prison. For a close connection of the verb with justice see also Dem. VII 31; [Dem.] LVI 14; Aeschin. III 85.

<sup>18</sup> See Lys. XXII 19; Din. I 41; Dem. *Exord.* 6, 1.

<sup>19</sup> See Din. I 41, who claims that the jurors should feel shame that they must inflict a punishment on Demosthenes only because they make such a strong conviction (ἡγούμενοι) on the basis of the speeches of the plaintiffs.

<sup>20</sup> Andoc. I 142 claims that the Spartans did not want to destroy Athens after the defeat at Aegospotami because of the virtues of those men (τῶν ἀνδρῶν ἀρετάς) who laid the foundations of freedom for the whole of Greece. For further evidence see Kapellos 2018, 404.

<sup>21</sup> Cf. Allen 2000, 69 that the phrase λαμβάνω δίκην highlighted the exchange of justice between the punisher and the punished.

the belief in their innate intellectual superiority<sup>22</sup>. Hansen comments on the power of persuasion in Athenian democracy, saying that the fundamental article of faith was «the demos is always right» and, accordingly, ideally, «the orator should be simply the mouthpiece of unspoken mass will»<sup>23</sup>. Regarding the relationship between the demos and its officials in times of crisis, Elster points out that Athenian politics was result-oriented, that is its people were held accountable for the outcome of their actions regardless of extenuating circumstances<sup>24</sup>. Todd points out that the punishment of the Athenian leaders can be explained by the fact that in Greek political life results mattered more than good intentions. Decisions for punishment should be explained because of the concept of the sovereignty of the demos according to which there was no way for its decisions to be wrong<sup>25</sup>. We must also note that the orator identifies the jurors with the demos, i.e. he follows a strategy common to other orators when it fits their case<sup>26</sup>. Although it was not possible for all the men on this jury to have participated in the Arginousai trial, this rhetorical fiction allowed the Athenians to imagine the rule of the people as transcending time and place, as well as individuals and institutions, and to represent the demos as eternal and unchanging<sup>27</sup>. On the basis of this analysis, we can be quite certain that Lysias tries to strengthen his jury's authority by justifying the punishment of the Arginousai commanders.

Moreover, it is apparent that Lysias' call to the jurors to reproduce the severe punishment of the generals voted in the trial presupposes their guilt and that by the construction of an argument on the basis of analogy he is inciting the current court to find Eratosthenes guilty and to impose a severe penalty<sup>28</sup>. Lysias' speech belongs to those cases where an orator refers to a previous trial where the court had imposed death, and although the claim had nothing to do with the legal issue under discussion, his aim was to overcome the court's natural reluctance to put someone to death<sup>29</sup>. Therefore, Lysias' seemingly direct and approving

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<sup>22</sup> See Ober 1989, 33-38.

<sup>23</sup> Hansen 1990, 350.

<sup>24</sup> See Elster 1999, 264-265.

<sup>25</sup> Todd 1993, 306. For the concept «sovereignty of the demos» which meant all the political decisions of the demos see Ostwald 1987, XIX, 40-42, 47-66, 77-83.

<sup>26</sup> For another case see Blanshard 2004, 37-39.

<sup>27</sup> For this rhetorical device see Wolpert 2003, 537-555.

<sup>28</sup> These remarks belong to Lanni 2006a, 161-162.

<sup>29</sup> See Harris 2007, 368.

reference to the precedent set in the case of the Arginousai generals and his assimilation with the crimes of the Thirty<sup>30</sup> seems justified.

However, Lysias' historical accuracy with regard to the legality of the trial is another issue and the best way to test it is to compare it with Xenophon's *Hellenica*, which offers a detailed account of the events at Arginousai and the different phases of the trial that ensued in Athens<sup>31</sup>. Someone might think that we should not assume too straightforwardly that Xenophon's account is uncontroversially true because he was not a lover of democracy<sup>32</sup>. In addition, Xenophon's determination to present the generals as innocent stands out clearly<sup>33</sup>. Thus, it would suit him to suggest that the democracy not only made the wrong decision but arrived at that decision improperly. On the other hand, we must not forget that Xenophon was a historian who wanted to tell the truth, as I pointed out in the beginning of this paper and as I will argue a little later. Moreover, we must bear in mind that his *Hellenica* does not have a consistently anti-democratic bent and his narrative of the Arginousai trial seems to contain elements of both blame and exoneration of the Athenian democracy<sup>34</sup>. In fact, Xenophon had a fundamental interest in the operation and improvement of Athens, rather than a wholesale rejection of its systems and values. For him the problem was not necessarily democracy, but rather the ability of *to plethos* to govern without the interdependent guidance of truly capable leadership<sup>35</sup>. Thus, although Xenophon's account may be distorted to some extent because of his political views, there is no reason to think that what he says is fundamentally untrue. Therefore, Xenophon's description of the trial can shed light on Lysias' difficulties in describing the trial in a clear way.

There is one more problem to solve in this investigation. Our understanding of the Arginousai trial is hampered because Xenophon's account is in contrast with Diodorus' account, especially in its estimate of Theramenes' role and the behaviour of the demos. However, we should not discard the historicity of Xenophon's account, which is a contemporary source, and we should consider that the image of the «democrat» Theramenes in Diodorus most probably comes from the Ephorian tradi-

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<sup>30</sup> For the brutal violence of the Thirty see Wolpert 2006, 213-223.

<sup>31</sup> For the phases of the trial and a thorough attempt to investigate the illegalities of the trial see Tuci 2002, 51-85.

<sup>32</sup> See more recently Tamiolaki 2013, 31-50 about Xenophon's oligarchic perceptions in Athenian democracy.

<sup>33</sup> Andrewes 1974, 122.

<sup>34</sup> See Kroeker 2011, 220-221.

<sup>35</sup> See Brown Ferrario 2017, 57-83, especially 69-71 for the Arginousai episode.

tion which is not credible<sup>36</sup>. Nevertheless, I will also point out the similarities of the accounts of the two historians<sup>37</sup>. The usefulness of doing that comes from the fact that it is not certain whether Diodorus draws his information from Xenophon or not in those points where they agree. So if Diodorus draws from Ephorus, then Xenophon's account becomes more reliable and thus we can shed more light on the events of the trial<sup>38</sup>. Then I shall demonstrate that Lysias did not accurately remind the jurors of what had really happened in the trial of the generals.

It is time to read Xenophon's account of the battle of Arginousai and the trial after it<sup>39</sup>. The historian reports that the Athenians fought a sea battle and defeated the Lacedaimonians (ἐναυμάχησαν [...] ἐνίκησαν: *Hell.* I 6, 33)<sup>40</sup>. The generals, Pericles, Diomedon, Lysias, Aristocrates, Thrasyllus, Erasinides, Protomachus and Aristogeiton (τοῖς στρατηγοῖς), decided to send forty-seven vessels to the sinking ships under the orders of the trierarchs Thrasybulus and Theramenes in order to collect them but they were prevented by a great storm (χεμῶν: I 6, 35). The commanders informed their fellow citizens, sending a letter to Athens and explaining the facts to them (I 7, 4) without accusing Theramenes and Thrasybulus<sup>41</sup>. When the Athenians learned the news, they deposed the generals in a meeting of the Assembly<sup>42</sup>, most probably because they did not believe that the generals could not save their crews. Six of the generals who fought in the naval battle (τῶν ναυμαχησάντων στρατηγῶν) returned to the city. Two of them, Protomachus and Aristogenes, decided not to follow their colleagues (I 7, 2).

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<sup>36</sup> For previous assessments of the accounts of Xenophon and Diodorus see Andrewes 1974, 112-122; Kagan 1987, 362-375; Krentz 1989, 58-61. For an overall attempt to defend Theramenes and his involvement in the Arginousai trial see Hurni 2010 but see the review of Bearzot 2013a, 137-143, especially 140. For arguments against Diodorus' account see Bearzot 2013b, 95-97. See Bearzot 2012, 293-294, 297-300 for the influence of Ephorian tradition on Diodorus and especially Bearzot 2015 for a detailed assessment of Xenophon's account (see further below).

<sup>37</sup> See Bearzot 2015, 178-179 who has already made such a comparison; but the subject allows further research.

<sup>38</sup> See Bearzot 2011, 17-18.

<sup>39</sup> Bearzot 2013b, 89-91 has offered an important summary of Xenophon's account. My own reading of Xenophon aims at shedding light on some other aspects of his text but I also write having in mind Lysias' speech.

<sup>40</sup> Diod. XIII 102, 4 says that the naval battle at Arginousai was the greatest battle between Greeks.

<sup>41</sup> Diodorus' report that the generals accused Theramenes and that he defended himself does not seem credible, while Lys. XXX 14 indicates, if it does not prove, that Theramenes and his associates attacked the generals. See in detail Bearzot 2015, 179-182.

<sup>42</sup> See Gish 2012, 174, 177.

When the six generals returned home, Archedemus, the current champion of the demos, who was in charge of the two-obol allowance, imposed a fine on Erasinides and accused him in court, claiming that he held money from the Hellespont, which belonged to the demos<sup>43</sup>. Archedemus also accused Erasinides in connection with his generalship. Archedemus was convincing, so the jury decided to imprison Erasinides (I 7, 1-2).

When the commanders returned to Athens, they reported in the Council about the sea battle and the seriousness of the storm (οἱ στρατηγοὶ περὶ τε τῆς ναυμαχίας καὶ τοῦ μεγέθους τοῦ χειμῶνος). Nevertheless, they were not convincing. Timocrates proposed the imprisonment of the generals and the Councillors accepted it. The Council voted that the Assembly should decide whether the generals had committed an offence actionable by *eisangelia* (I 7, 3)<sup>44</sup>.

The second Assembly meeting related to the trial<sup>45</sup> was called to hear denunciations against the generals<sup>46</sup>. Theramenes accused the generals that they did not collect (οὐκ ἀνείλοντο) the shipwrecked men and demanded that they should be subjected to an audit<sup>47</sup>. Theramenes showed the letter which the generals (οἱ στρατηγοὶ) had sent to the Council and the Assembly, accusing nobody else but the storm (τὸν χειμῶνα: I 7, 4). The generals defended their actions briefly but they were not given the time to speak allotted by law<sup>48</sup>. For Xenophon this was illegal<sup>49</sup> and probably he means that the generals were not allowed to speak for the length of time normally allotted to defendants in a public trial, which may have been up to three hours each<sup>50</sup>.

Then, the generals said that they had ordered Theramenes and Thrasylbulus to accomplish the task of collection (τὴν δὲ ἀναίρεσιν: I 7, 5). They argued that if the Athenians were to blame someone regarding the collection of the crews (περὶ τῆς ἀναίρεσεως), they should accuse those who

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<sup>43</sup> For the *diobelia* see the concise comment of Krentz 1989, 160. For Archedemus and the *diobelia* see Blok 2015, 87-102.

<sup>44</sup> See Ostwald 1986, 436-437. Xenophon does not use the word *eisangelia* but trial by the Assembly does suggest this procedure.

<sup>45</sup> See Gish 2012, 178.

<sup>46</sup> For arguments that this meeting was not a trial see Ostwald 1986, 437.

<sup>47</sup> See Ostwald 1986, 438.

<sup>48</sup> Diod. XIII 101, 6 confirms that the Assemblymen did not let the generals speak.

<sup>49</sup> Ostwald 1986, 438 argues that the law stipulated that the generals should not be given the time to defend themselves. However, Harris 2013, 342, n. 120 rightly points out that Ostwald's interpretation of the passage is inconsistent with the tenor of Xenophon's account.

<sup>50</sup> Harris 2013, 242.

received the order. Nevertheless, they pointed out that nobody should take the blame for the loss of men except for the weather which prevented the collection of the crews (τὸ μέγεθος τοῦ χειμῶνος [...] τὴν ἀναίρεσιν: I 7, 6). Many captains and men who served with the commanders at Arginousai confirmed what their superiors said; the Athenians were almost convinced that the generals had been telling the truth. Nevertheless, it was already dark; so the Assemblymen decided that they should adjourn the session for another meeting and resolved that the Council should propose the way in which the commanders were to be judged (I 7, 7). This was a request for guidance concerning the procedure to be used in the generals' case, to which the Council was free to respond by ordering a trial but might equally well order that the *euthyna* take its normal course and that its outcome determine whether judicial action was necessary<sup>51</sup>.

Shortly after the first meeting of the Assembly the Athenians celebrated the festival of Apatouria, where the fathers and the relatives meet together (I 7, 8)<sup>52</sup>. For the generals the timing could not have been worse. The bereaved would gather and family losses in the recent battle would be all too clear<sup>53</sup>. If some of the relatives of the dead participated in the next Assembly meeting, they would be rather hostile to the Arginousai commanders.

Theramenes grasped the opportunity to conspire against the generals. He made a two-fold scheme. First, his men<sup>54</sup> prepared many false mourners to mingle in the Assembly with the real ones. Athens was not a face-to-face society<sup>55</sup>; so it would not be easy for the participants to recognize the real from the fake mourners<sup>56</sup>. This would lead the rest of the Assemblymen to be pressed psychologically by the mourners that the generals should not have left their men to die despite their allegation that the weather was very bad.

Second, Theramenes' men persuaded Callixenus to accuse the generals (Xen. *Hell.* I 7, 8). We must explain why Theramenes needed Callixenus. We have seen that the Council was already hostile to the generals. Nev-

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<sup>51</sup> Ostwald 1986, 439.

<sup>52</sup> For this festival see Krentz 1989, 161.

<sup>53</sup> Tritle 2010, 211.

<sup>54</sup> Note that Diod. XIII 101, 7 also mentions that Theramenes had followers whom he turned against the generals.

<sup>55</sup> For the argument that Athens was not a face-to-face society see Ober 1989, 31-33; Hunter 1994, 97-98.

<sup>56</sup> Therefore, I disagree with Kagan 1987, 369 and Krentz 1989, 162 who believe that the historicity of Theramenes' ploy is wrong. For the historicity of this incident see also Sordi 1992, 12-13 and Bearzot 2015, 182-183.

ertheless, it was not certain for Theramenes that the *bouleutai* would be willing to vote a decree which said that the generals had already defended themselves in the previous session of the Assembly. Obviously, Callixenus was a competent speaker who could convince his colleagues to accept his proposal that no more time should be given to the generals to defend themselves<sup>57</sup>. Indeed, this man convinced the Council, as Euryptolemus explicitly says in his speech (I 7, 26), to vote his *probouleuma*<sup>58</sup> according to which the generals (τῶν στρατηγῶν) had already been given the time to defend themselves in the previous meeting of the Assembly. The Athenians should simply decide about the wrongdoing of the commanders who did not collect those who had been victorious in the sea battle (οἱ στρατηγοὶ [...] οὐκ ἀνελόμενοι τοὺς νικήσαντας ἐν τῇ ναυμαχίᾳ: *Hell.* I 7, 9). This sentence of the decree is noteworthy because it considered the lost crews the victors of the naval battle at Arginousai but not the generals.

In the third meeting of the Assembly<sup>59</sup>, which was a trial session<sup>60</sup>, an anonymous man spoke first and claimed in an emotional way<sup>61</sup> that the drowning men told him to deliver the message that the generals had not picked up the most worthy men who died for their fatherland (οἱ στρατηγοὶ οὐκ ἀνείλοντο τοὺς ἀρίστους ὑπὲρ τῆς πατρίδος γενομένους: I 7, 11). This story was dishonest and aimed at arousing a hostile reaction to the Assemblymen<sup>62</sup>.

Euryptolemus and some others tried to stop Callixenus' decree with a *graphe paranomon* (I 7, 12), because it violated the law that no one should be put to death without a proper trial<sup>63</sup>. Some Athenians praised Euryptolemus' reaction but the majority of the Athenians thought that democracy was threatened<sup>64</sup>. Thus, they turned into a mob<sup>65</sup> and said that they would do whatever they liked, proving in this way their deter-

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<sup>57</sup> Thus, I disagree with Kagan 1987, 370, n. 37 who thinks that Callixenus' proposal is implausible and unnecessary. Note that Diod. XIII 103, 2 also says that Callixenus deceived the Councillors and made a proposal, apparently against the generals.

<sup>58</sup> See Bearzot 2014, 97.

<sup>59</sup> See Gish 2012, 181.

<sup>60</sup> See Bauman 1990, 73.

<sup>61</sup> See Gish 2012, 181.

<sup>62</sup> See Hamel 2015, 82.

<sup>63</sup> Mehl 1982, 32-80 has attempted to prove in detail that the Assembly was not guilty of any procedural flaw. However, Harris 2013, 342 provides evidence which proves the existence of this law. Hamel 2015, 83-84 claims that there was no violation of any law in the trial, but her analysis is weak, because she does not take into account Harris' evidence. Cf. also the review of Foster 2016, 3 for a negative criticism of Hamel on this point.

<sup>64</sup> See Lévy 1990, 149.

<sup>65</sup> See Pownall 2000, 500.

mination to violate the law (I 7, 13). One man called Lyciscus made a speech and said that Euryptolemus and the others should be judged by the same vote as the generals unless they withdrew their call for a trial against Callixenus. The mob shouted again in approval of his proposal. Euryptolemus and those who agreed with him were forced to abandon bringing their legal demands for a trial (I 7, 13).

The *prytaneis*, the officials who presided over Assembly meetings, reacted when they saw that their fellow citizens wanted to violate the law and said that they would not approve the voting of Callixenus' decree. However, all of them stepped back out of fear when they saw the Athenians behaving as a dangerous rabble. Only Socrates was not scared and said that he would not violate the law (I 7, 14-15)<sup>66</sup>. The people did not stop feeling that democracy was in danger. Socrates' refusal was ignored and the process went forward<sup>67</sup>.

However, Socrates' refusal gave Euryptolemus the opportunity to attempt to change the mind of his fellow citizens through a brave speech. This is not actually the speech that Euryptolemus delivered in the Assembly but a version of it that Xenophon created for his audience. On the other hand, the historian was still in Athens when the trial took place<sup>68</sup>, so he could have talked with some of those who participated in the trial<sup>69</sup> if he was not present himself. Thus, it would be useful to take into account Euryptolemus' speech for the assessment of the trial.

Euryptolemus urged the Athenians not to be deceived by anyone but respect the law which gave an equal hearing to the defendants and proposed that they should judge the generals under the decree of Cannonus<sup>70</sup> or the law about traitors in order to act legally (I 7, 19-23)<sup>71</sup>. He warned them that if they judged the generals without a proper trial (ἀκρίτους), this would be equal to fighting along with the Spartans against their own city, while their commanders had already defeated their enemies (νενικηκότας; I 7, 25). He urged them not to be afraid

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<sup>66</sup> Xenophon repeats Socrates' different stance in the Assembly in *Xen. Mem.* I 1, 18; IV 4, 2. Plato confirms in his *Apology* (32a9-c3) that Socrates spoke against the violation of the law in the generals' trial (see further below in this paper). See also [Pl.] *Ax.* 368d6-a2, who praises Socrates for his determination not to violate the law in the Arginousai trial.

<sup>67</sup> Kagan 1987, 371.

<sup>68</sup> See Anderson 1974, 61 about Xenophon's presence in Athens.

<sup>69</sup> Note that Xenophon was competent enough to find out and write down in his account that there were Athenians who wanted to speak against Alcibiades in the Assembly meeting in which he defended himself (I 4, 20).

<sup>70</sup> For the decree of Cannonus see in detail Lavelle 1988, 19-41.

<sup>71</sup> See Allen 2000, 324-325.

but believe in the law (I 7, 26); otherwise they might regret it later (I 7, 27). Euryptolemus claimed that it would be a terrible thing (δενὸν δ' ἂν ποιήσαιτε) if the Athenians had allowed Aristarchus, one of the Four Hundred, who betrayed Oenoe to the Thebans<sup>72</sup>, to have a proper trial, but denied this right to the generals who defeated the Lacedaimonians (τοὺς [...] στρατηγούς [...] νικήσαντας: I 7, 28). Euryptolemus' mention of Aristarchus is serious because it makes an implicit connection between the oligarchs who had subverted the democracy in 411 B.C. and the Arginousai commanders. The oligarchic regime continued to haunt the Athenian democracy, so the Assemblymen must have thought that the generals had evil plans against their city<sup>73</sup>. This explains why they protested earlier that the democracy was under threat.

For this reason Euryptolemus urged the Assemblymen to consider again the facts which supposedly showed the guilt of the generals (τοῖς στρατηγοῖς). He said that when the generals had won the sea battle (τῇ ναυμαχίᾳ), they landed on the shore and decided that one squadron should collect (ἀναρῆσθαι) the shipwrecked while the other would sail against Eteonicus (I 7, 29-30). He asserted that it would be just for the Athenians to ask Theramenes and Thrasybulus, who were responsible for the collection of the crews (τοὺς δὲ πρὸς τὴν ἀναίρεσιν), to explain why they did not do so (οὐκ ἀνείλοντο: I 7, 31). Nevertheless, he pinpointed that the weather (ὁ χειμὼν) had prevented them from doing what the commanders (οἱ στρατηγοί) planned. He also reminded the Assemblymen that even one of the generals was picked up from a shipwreck (ἀναίρεσεως: I 7, 32)<sup>74</sup>. Euryptolemus concluded his speech by saying that it would be more just if the Athenians crowned the victors with wreaths instead of punishing them with death (τοὺς νικῶντας ἢ θανάτῳ ζημιούῃν) as traitors, being convinced by evil men (I 7, 33)<sup>75</sup>.

The verdict of the trial was a difficult matter. The Athenians accepted Euryptolemus' proposal initially, but when one Meneclēs objected, asking for a repetition of the vote<sup>76</sup>, they decided to condemn the generals to death (I 7, 34)<sup>77</sup>. Xenophon leaves no doubt that the demos proved

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<sup>72</sup> Cf. Thuc. VIII 98, 3, who narrates how immediately after the fall of the Four Hundred Aristarchus managed to occupy Oenoe with a company of Scythian bowmen.

<sup>73</sup> See Gish 2012, 163-167, 172.

<sup>74</sup> Diod. XIII 99, 3 names this general, it was Lysias.

<sup>75</sup> Diod. XIII 102, 5 says that the generals were worthy of wreaths.

<sup>76</sup> See Carawan 2007, 20, n. 4; Sommerstein 2013, 50-52.

<sup>77</sup> Diod. XIII 101, 7 confirms Xenophon that the generals were condemned to death. Plut. *Per.* 37, 6 says that Pericles, one of the Arginousai generals, was condemned to death in the Arginousai trial along with his colleagues.

itself fickle<sup>78</sup> because it was still acting in passion and haste. This is also the reason why the death sentence was carried out immediately on the generals.

Nonetheless, Xenophon allows us to realize that one year after the trial the Athenians regretted their decision<sup>79</sup>, evidently because they understood what Xenophon has shown, namely that the generals had not done any injustice to the city<sup>80</sup>. The citizens of Athens were blameless<sup>81</sup>, so they took legal action again and issued a *probole*<sup>82</sup> against Callixenus and four other men who had deceived them regarding the innocence of the generals<sup>83</sup>. These men must have been Archedemus, Timocrates, Lyciscus, and Meneclis, namely the men who had attacked the generals<sup>84</sup>. The Athenians did not issue any legal procedure against Theramenes, but this is not surprising. Theramenes had stopped accusing the Arginousai commanders after his presence in the second meeting of the Assembly, so the Athenians could not hold him responsible for the generals' execution<sup>85</sup>. Later, during a civil strife in which Cleophon was executed in a sham trial<sup>86</sup>, Callixenus and the other four escaped before being brought to court<sup>87</sup>. Had Callixenus faced a trial, he would have been accused of lying about the supposed treason of the generals. Since he escaped no trial was possible.

In the meantime, the Athenians contemplated the Arginousai trial again, since in 405/4 B.C. Aristophanes mentioned in his *Frogs* that the Athenians had second thoughts about the trial and its verdict<sup>88</sup>. A little later the Athenians decided that their previous decision about the Arginousai generals was illegal. Plato testifies to this in his *Apology of Socrates*, saying explicitly that *all* the Athenians decided that their previous deci-

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<sup>78</sup> See Pownall 2000, 500-501.

<sup>79</sup> See Rhodes 1972, 145. Diod. XIII 103, 1 also says that the Athenians regretted their decision.

<sup>80</sup> Diod. XIII 102, 4 explicitly says that the generals did not do any injustice to the city.

<sup>81</sup> See *supra*, pp. 23-25.

<sup>82</sup> For this procedure in the present occasion see Krentz 1989, 169.

<sup>83</sup> Diod. XIII 103, 1-2 does not say anything about the *probole*, but he says twice that the Athenians were deceived. [Arist.] *Ath. Pol.* 34, 1 also says that the demos was deceived. For the meaning of deception see Bearzot 2017a, 271-272.

<sup>84</sup> See Lang 1992, 277.

<sup>85</sup> As Krentz 1995, 131 remarks.

<sup>86</sup> See Krentz 1989, 170.

<sup>87</sup> Diod. XIII 103, 2 focuses only on Callixenus and says that he escaped before facing a trial.

<sup>88</sup> See Allan 2012, 101-114.

sion about the Arginousai generals was illegal (32b2-5)<sup>89</sup>. It is a fact that Plato undertook a literary defence of Socrates in his *Apology* and that he largely took a 'rejectionist' stance to the Athenian democracy<sup>90</sup>. So someone might think that we should not believe Plato but suspect that he and Xenophon exaggerated about the Arginousai trial in order to praise Socrates<sup>91</sup>.

At this point we must assess the historical veracity of Plato's testimony. We cannot be absolutely certain what the historical Socrates said in his own defence, but Plato was present at Socrates' trial (*Apol.* 34a, 38b). This is not something we should dismiss, because Plato was among the bystanders<sup>92</sup> and could hear what Socrates had said. Plato undoubtedly commemorates and defends his master, so the *Apology* is his version of Socrates' speech in self-defence<sup>93</sup>. However, if Plato's *Apology* did not present at least the general substance<sup>94</sup> or the gist<sup>95</sup> of Socrates' speech, this would have provoked a reaction from the associates of Socrates<sup>96</sup>. We must not doubt that the speech is intended to recapture something of the freshness of the trial<sup>97</sup>. Moreover, we must not forget that it was in the year after Plato's *dokimasia* that Socrates attempted to prevent the Assembly from trying and executing the generals of Arginousai<sup>98</sup>. This means that Plato must have heard about the way the commanders had been tried and executed<sup>99</sup>. Moreover, he must have seen the regret of his fellow citizens at the execution of the generals and their wish for *probolai* against Callixenus. Finally, he could have heard or read the decree of the Athenians according to which they decided that the execution of the

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<sup>89</sup> Ὑμεῖς τοὺς δέκα στρατηγούς τοὺς οὐκ ἀνελομένους τοὺς ἐκ τῆς ναυμαχίας ἐβουλεύσασθε ἀθροὺς κρίνειν, παρανόμως, ὡς ἐν τῷ ὑστέρω χρόνῳ πᾶσιν ὑμῖν ἔδοξεν. Plato mentions ten generals, while Xenophon in the *Hellenica* and Diodorus name eight, but this is not a problem for the legality of the trial (see Krentz 1989, 159-160). Moreover, it does not affect my analysis.

<sup>90</sup> See Kroeker 2009, 208-209.

<sup>91</sup> For instance, Mehl 1982, 38 has noted that Plato and Socrates belong to the Socratic circle.

<sup>92</sup> See Lanni 1997, 183-189.

<sup>93</sup> See Wallace 2013, 99-112.

<sup>94</sup> See Allen 1980, 34.

<sup>95</sup> See Waterfield 2013, 12.

<sup>96</sup> As Wilamowitz 1920, 50 has remarked.

<sup>97</sup> Cf. Munn 2000, 293: «to ignore the presence of the historical Socrates is to overlook a vital dimension of the meaning of Plato's writings, however problematic its nature. Plato was the historian of Socrates».

<sup>98</sup> For this biographical information from Plato's life in Athens see Nails 2006, 3.

<sup>99</sup> It is certain that Plato must have had some information about the Arginousai trial, since he left Athens three years after Socrates' execution, as Nails 2006, 5 remarks.

generals was illegal. Thus, when Plato witnessed Socrates talking about the Arginousai trial in court, he was not hearing this information for the first time. Therefore, Plato's information about the trial of the generals and Socrates' role in it cannot be doubted regarding its historicity. This is very important for our evaluation of the aftermath of the Arginousai trial because it means that it became a legally established fact after the official decision of the Athenians, as Plato says. The only reasonable explanation for this reaction of the Athenians must be that they felt remorse.

Finally, one more incident happened that reminded the Athenians of the trial, namely Callixenus' return to the city. The former Councillor who had convinced the *boule* to pass the illegal decree against the generals and had led the Assemblymen to accept his proposal came back to the city after the restoration of democracy with the democrats. However, he was not prosecuted because of the amnesty<sup>100</sup>. Perhaps this made the Athenians hate him and let him die out of starvation (Xen. *Hell.* I 7, 35)<sup>101</sup>. In my opinion, this was the final step of the people to forget that the Arginousai trial had not been legally handled.

Now it is time to relate what we know about the trial with Lysias' speech. Comparing Xenophon's account of the trial with Lysias' passage we can realize that its wording recalls that of the historian. Moreover, it is easy to define the common points about the Arginousai generals in the two authors and between Lysias and Eurypolemus. More specifically we realize that: (1) the commanders were victorious in the sea battle against the generals; (2) they were not able to collect the shipwrecked men because of the bad weather<sup>102</sup>. Concerning Lysias' first argument, i.e. his reference to the victory of the generals, we can explain it by saying this was an undisputed fact for everyone. The second argument seems to acknowledge the generals' argument for not being able to save their men as true. Most probably Lysias justifies the commanders because he knew about the argument of extenuating circumstances, as he shows when he rejects Eratosthenes' claims that he acted under duress<sup>103</sup>.

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<sup>100</sup> See Sinclair 1988, 172.

<sup>101</sup> The lexicon of Suda *s.v.* ἐναύειν says that «Callixenus the Athenian because of his sycophancy suffered the rewards of his shamelessness and impiety in the city, being hated, poor, and excluded, to die of starvation, since they neither shared water with him, nor wished to provide fire, as they share with all those who need and ask for». Bearzot 1999, 56 believes that there is no connection between the lexicon and Xenophon's *Hellenica*. If this is right, we have more evidence that the historian tells the truth about this man.

<sup>102</sup> See Bearzot 1997, 130-131.

<sup>103</sup> See Harris 2013, 288-289.

However, the differences are many. (1) Lysias does not say anything about the critical role of Theramenes in the accusations against the generals during the first meeting of the Assembly, while Xenophon is clear that the trierarch was most aggressive against them and insisted that the generals did not blame anybody else except for the storm (*Hell.* I 7, 4; 31). In the light of Lysias' denunciation of Theramenes' crimes (XII 62-79) as an important part of the case against Eratosthenes, who claimed association with Theramenes' faction, the orator could have said something against Theramenes. On the other hand, Theramenes had acted against the generals only secretly, as I said earlier, so Lysias did not have any proofs against him to attack him for the condemnation of the commanders<sup>104</sup>. (2) Lysias omits to say that the generals spoke only briefly in the second meeting of the Assembly, so they did not defend themselves individually. (3) He does not say anything about the Councillor Callixenus and his illegal decree, which became accepted by the *boule*. (4) He disregards the fact that an anonymous man appeared in the third meeting of the Assembly and claimed that the drowning men demanded the punishment of the generals. (5) He does not say that Eurypotemus and others tried to stop Callixenus' decree in the third Assembly meeting through a *graphe paranomon*, but that most of the Athenians turned into a mob because they felt that the democracy was threatened. (6) He does not say that the Assemblymen violated their law which guaranteed a fair trial to the generals. (7) He does not say that Eurypotemus tried to prevent this illegality by insisting on the need to abide by the law. (8) And he does not allege that the commanders conspired against the Athenians<sup>105</sup> or that the Athenian democracy suffered any wrong from them. This is striking compared to the people's reaction in the trial that the generals had turned against their city.

From this comparison it is logical to conclude that Lysias is very brief regarding the events that took place in the Arginousai trial. How should we explain the different accounts of Xenophon and the orator? We

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<sup>104</sup> My argument replies to the remark of Kagan 1987, 369, Krentz 1989, 162 and Hamel 2015, 79-80 that Lysias does not accuse Theramenes about his guilt in the Arginousai trial. Gottesmann 2014, 134-135 accepts Xenophon's account by saying that (a) he does not *actually* say that Theramenes orchestrated it; instead he holds responsible «the associates of Theramenes» and (b) we should not be surprised if the stunt did not become one of the stock charges against him especially if the Athenians blamed others for misleading them on this occasion. However, this interpretation does not take into account that Theramenes acted in secret. My analysis agrees with that of Piovan 2011, 43-44 and Bearzot, 2013b, 99-100.

<sup>105</sup> Lysias keeps this scenario only for the Thirty (XII 42-45) and Theramenes (XII 62-78); see Roisman 2006, 79-80.

could say that there would be no reason to expect a longer digression on the Arginousai trial during Lysias' prosecution of Eratosthenes, since this was not the main subject, or for a forensic orator to provide the full truth and context regarding any passing historical allusion. Besides, when the orator delivered his speech, few Athenians could remember in detail what had been said in the three meetings of the Assembly about the generals or every detail of the procedures followed. Finally, Eurypotemus' speech would have been forgotten after a while. Only Xenophon's readers and modern readers can find out what took place in the Arginousai trial, so we try to find more in Lysias' text than he had written. These arguments are right only if we forget that the trial was illegally handled and that the Athenians had regretted about the execution of the generals after the trial, as Xenophon and Plato testify. However, as I argued earlier, the opposite is true. The Athenians did change their mind about the supposed anti-democratic action of their commanders.

This means that Lysias' short reference to the Arginousai trial was not coincidental, but it indicates that the orator knew what had taken place in that fatal Assembly meeting. The question how he acquired this knowledge is not difficult to answer. Lysias was a metic, so he could not have participated in the Assembly-trial meeting which condemned the generals to death<sup>106</sup>. Nevertheless, it is most probable that he learned about the trial by speaking with Athenians who had participated in it<sup>107</sup>, as Xenophon could have done<sup>108</sup>, and/or through some public discussion which had taken place regarding the case and its verdict.

Moreover, what Lysias indicates, if he does not prove, is that there must have been a hot debate in Athens about the conviction of the generals at that time, especially because of the defeat at Aegospotami<sup>109</sup>. Three reasons justify such a thought. First, Eurypotemus had connected the Arginousai trial with a possible defeat of the Athenians in the Peloponnesian War. Some Athenians could have remembered Eurypotemus' warning. Second, Callixenus had left Athens when the city had not suffered

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<sup>106</sup> For the non-participation of metics in meetings of the Assembly see e.g. MacDowell 1978, 75-76.

<sup>107</sup> Cf. Harris 2013, 292, who remarks that a speaker does not indicate how he discovered the *ratio dicendi* for the decision, but there is no reason to doubt that he could have spoken with the judges after a trial and discussed why they voted as they did.

<sup>108</sup> See *supra*, p. 30.

<sup>109</sup> For the military engagement between Lysander and the Athenians at Aegospotami see all the testimonies conveniently collected by Rhodes 1981, 426. For the reaction of the Athenians to the defeat see Xen. *Hell.* II 2, 3; 10. Lysias himself refers to the defeat of the Athenians at Aegospotami in XII 43.

any defeat from Sparta yet but he returned after the reconciliation agreement when the humiliating defeat at Aegospotami was a painful memory in Athens<sup>110</sup> and the city was trying to remember and forget the rule of the Thirty<sup>111</sup>. Third, the account of Pseudo-Aristotle's *Atb. Pol.* 34, 1 makes a short bridge between 411/10 and 404/3 B.C., and Arginousai and Aegospotami are two of the items which he mentions. More specifically, he says that when the naval battle of Arginousai took place, the demos convicted the generals who defeated the Lacedaimonians in one vote because it was deceived by those who made it angry. Afterwards the Spartans wanted to make peace with Athens, but Cleophon prevented them from doing so. Because of this decision, (Aristotle) tells us, the Athenians lost the naval battle at Aegospotami. This author does not tell us how he knows what he knows<sup>112</sup>. On the other hand, his information about the end of the Peloponnesian War is not in complete agreement with Xenophon, so his source is different<sup>113</sup>. This means that the connection between the naval battle at Arginousai, the trial of the generals and the defeat at Aegospotami must be sought elsewhere. Rhodes says that «the bare facts in 34, 1-2 will have been common knowledge in the fourth century»<sup>114</sup>. It is certain that *Atb. Pol.* postdates Lysias' speech. On the other hand, if we consider that Lysias and (Aristotle) bridge the aforementioned incidents in such a similar way, this cannot be a coincidence. The Athenians must have discussed the conviction of the Arginousai generals to death and the defeat of their fleet in the Hellespont by Lysander. If these thoughts are not right, it is difficult to explain, for me at least, why Lysias compares the generals of Arginousai with the Thirty in this passage.

Thus, when Lysias claims that there was a strong conviction on the part of the Athenians that they should punish the generals because they were guilty and thus they should appease the living for the loss of the dead, he has in mind the thoughts of the Athenians during the trial, not *after* it.

On the basis of this analysis it is logical to conclude that Lysias' mention of the Arginousai trial was selective. The orator knew that an explicit justification of the punishment of the generals was a risky argument given

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<sup>110</sup> See Lys. XXI 9 with Kapellos 2014, 91-95. For the «rhetoric of the naval battle at Aegospotami» cf.: Kapellos 2009, 260, 263; Kapellos 2012, 99-100; Bearzot 2017b, 41-52.

<sup>111</sup> See Wolpert 2002.

<sup>112</sup> See Rhodes 1981, 25.

<sup>113</sup> For a thorough discussion of (Aristotle)'s passage and a comparison between it and Xenophon and Diodorus see Rhodes 1981, 422-426. For the issue that (Aristotle) did not use Xenophon except for chapter 36 see Rhodes 1981, 20.

<sup>114</sup> Rhodes 1981, 416.

that the Athenians had changed their minds about the generals. So he should not appear as instructing his audience about the recent past<sup>115</sup>. Moreover, Lysias could not admit that the Athenians executed the generals after having taken an illegal decision and then changed their mind about the condemnation of the commanders; otherwise he would weaken his position as a prosecutor and at the same time he would alienate his audience<sup>116</sup>. This becomes most imperative if we consider that Lysias was a metic, that is an isolated and vulnerable figure who did not have the same status as the Athenian citizens in courts<sup>117</sup>. This means that he had to be very careful in his criticism of the Athenian democracy and, in any case, he could not insist on the Arginousai affair any further. On the other hand, Lysias knew that the jurors would hear his speech only once<sup>118</sup>, so a brief reference to the Arginousai trial was enough for him to create a specific impression for the jurors about the need to punish the Thirty.

Now that the Athenians had exculpated the commanders of Arginousai, Lysias seizes the opportunity to make an argument *ex contrariis* between the generals and the Thirty (μέν ... δέ)<sup>119</sup>. Through this antithesis and comparison he creates a setting in which the jurors are to view the Thirty<sup>120</sup>. At the same time the audience is itself implicated in each of the antitheses. If the jurors follow the speaker's thought, they are led to the same legal and moral thoughts he makes for them: the Thirty conspired against the city, even when they were not involved in politics, and when they took over Athens, they executed many citizens without a trial.

The claims against the Thirty deserve analysis. Lysias alleges that the Thirty started their evil plans against their city before the expedition of the Athenian fleet at Aegospotami. At first, they played a very active part in the political life of Athens as speakers in the Assembly and the courts<sup>121</sup>, that is, they were members of political clubs that acted for the military defeat

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<sup>115</sup> For the avoidance of the orators to appear as instructors of their fellow citizens see Pearson 1941, 209-229, especially 213.

<sup>116</sup> See Dover 1974, 5-8; Ober 1989, 43-49 that orators should express values and conceptions that were acceptable by the majority of the people.

<sup>117</sup> See Patterson 2000, 93-112, especially 108-111 for her analysis of Lys. XII.

<sup>118</sup> According to Plut. *Mor.* 504c, a client of Lysias read the speech that the speechwriter wrote for him. The first time he found the speech persuasive but after reading the text again and again he discovered many flaws. Lysias responded that that the jurors would hear the speech only once.

<sup>119</sup> For other examples of this argument in the same speech and other speeches in the corpus Lysiicum see Bateman 1962, 161-171.

<sup>120</sup> For this argument as an argument by comparison see Usher 1985, 242.

<sup>121</sup> For this meaning of the word *idiotes* see Rubinstein 1998, 125-143, especially 126-127, 135.

of Athens in the war<sup>122</sup>. This could mean that they urged the Athenians to vote for the election of Tydaeus, Menander, Cephisodotus, Adeimantus and Philocles who served as generals at Aegospotami (Xen. *Hell.* I 7, 1; II 1, 16) but proved themselves incompetent to defeat Lysander. Some of the Thirty must have taken part in the expedition at Aegospotami, so they weakened the position of the fleet, which lost the naval battle. After the surrender of the city to Lysander they came to power, but instead of ruling lawfully, since they had been appointed for this reason<sup>123</sup>, they admitted that they intentionally executed many Athenians without proper trial (ἄκριτους). It is obvious that this is another scenario of conspiracy regarding the defeat at Aegospotami<sup>124</sup> which is not true<sup>125</sup> but conformed to the social expectations of the Athenians<sup>126</sup>, who had not explained to themselves why they lost the sea battle in the Hellespont<sup>127</sup>. Moreover, although the Thirty intentionally executed many citizens without a legal trial<sup>128</sup>, there is no proof that they explicitly said that they admitted their actions. This is only a conclusion which is borne out of reality itself. It is evident that Lysias tries to distract the jurors' attention from the fact that the Athenians had condemned the generals of Arginousai ἄκριτους (Xen. *Hell.* I 7, 25) before the Thirty followed the same tactic.

Therefore, on the basis of this analysis, I agree with Gish that Lysias is reminding the demos of its vigorous and decisive action on that prior occasion in defence of democracy against the generals. However, this is the surface of the argument, as I have argued. Thus, I cannot agree with Gish that the Athenians still believed that the Arginousai commanders had conspired to overthrow the rule of the demos.

In conclusion, Lysias' speech cannot provide an accurate understanding of the historical persons, places, and events mentioned in it. The

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<sup>122</sup> See Bearzot 1997, 131-132.

<sup>123</sup> See Krentz 1995, 122-124.

<sup>124</sup> See *supra*, n. 110 for «the rhetoric of Aegospotami».

<sup>125</sup> Usher 1985, 242 rightly remarks that the presence of some of the Thirty at Aegospotami could have been a factor but we have no proofs that any of them served in the Hellespont (see Krentz 1982, 51-55 for the prosopography of the Thirty). For what really happened at Aegospotami see Kapellos 2009, 257-259; Kapellos 2013, 97-99; Kapellos 2014, 9-10.

<sup>126</sup> For the issue that the orators had to conform to the values and conceptions of their jurors see Dover 1974, 5-8; Ober 1989, 43-49.

<sup>127</sup> Cf. Lys. XXI 10 (with Kapellos 2014, 100) and *supra*, n. 110 for «the rhetoric of Aegospotami» again.

<sup>128</sup> Cf. Diod. XIV 4, 2-3 who says that the Thirty executed their fellow citizens without a legal trial with Isoc. IV 113; VII 67; XX 11; Lys. XII 82, 83; Dem. XL 46; Aeschin. II 77; III 235, who repeat the same accusation.

orator is concerned with the given example's relevance to his argument rather than with historical accuracy because it is accommodated to the ideals and beliefs of his audience. His purpose is not to defend the Athenian democracy but to offer an accepted explanation about the execution of the Arginousai generals, having in mind the remorse of the Athenians, in order to force the jurors to convict Eratosthenes.

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