

ATHENIAN *ATIMIA* AND LEGISLATION AGAINST TYRANNY AND SUBVERSION

1

Following the idea first expressed by Heinrich Swoboda, there is a general perception that the meaning of ἄτιμία in Athens eventually evolved from the original ‘outlawry’, when an ἄτιμος was liable to being deprived of his property and slain with impunity if he returned to the land from which he had been banished, into a certain limitation on civic status, which has often been rendered as a ‘disfranchisement’.¹ Specific outcomes of this later form of ἄτιμία varied depending on the dating and circumstances of individual cases, thereby giving rise to theories of a so-called full – or ‘total’ – and partial ἄτιμία.² Still, whether it was viewed as ‘full’ or ‘partial’, this ἄτιμία did not inflict the death penalty. The precise dating of the transformation of ἄτιμία has also been debated,

¹ H. Swoboda, ‘Arthmios von Zeleia’, *Archaeologisch-epigraphische Mittheilungen* 16 (1983): 49–68, further elaborated in his *Beiträge zur griechischen Rechtsgeschichte* (Weimar, 1905), 1–42. See also e.g. M. Ostwald, ‘The Athenian legislation against tyranny and subversion’, *TAPhA* 86 (1955), 106–7, 114; M.H. Hansen, *Apagoge, Endeixis, and Ephegesis against Kakourgoi, Atimoi, and Pheugontes* (Odense, 1976), 75–90; P.J. Rhodes, *A Commentary on the Aristotelian Athenaiôn Politeia* (Oxford and New York, 1981), 158, 221–2; B. Manville, *The Origins of Citizenship in Ancient Athens* (Princeton, 1990), 147; S. Humphreys, ‘A historical approach to Drakon’s law on homicide’, in *Symposion 1990* (1991), 33–5; V.J. Hunter, *Policing Athens: Social Control in the Attic Lawsuits, 420–320 B.C.* (Princeton, 1994), 63; id., ‘Status distinctions in Athenian law’, in V.J. Hunter and J.C. Edmondson (edd.), *Law and Social Status in Classical Athens* (Oxford and New York, 2000), 18; C. Patterson, ‘Athenian Citizenship Law’, in M. Gagarin and D. Cohen (edd.), *The Cambridge Companion to Ancient Greek Law* (Cambridge and New York, 2005), 274; P. Liddel, *Civic Obligation and Individual Liberty in Ancient Athens* (Oxford and New York, 2007), 186–7. Cf. E.M. Carawan, ‘Tyranny and outlawry: Athenian *politeia* 16.10’, in R.M. Rosen and J. Farrell (edd.), *Nomodeiktēs: Greek Studies in Honor of M. Ostwald* (Ann Arbor, 1993), 311; A. Lanni, *Law and Justice in the Courts of Classical Athens* (Cambridge and New York, 2006), 40; D. Kamen, *Status in Classical Athens* (Princeton and Oxford, 2013), 71. For the history of this idea (and further bibliography), see B. Manville, ‘Solon’s law of *stasis* and *atimia* in archaic Athens’, *TAPhA* 110 (1980), 213 with n. 1 and P.E. Van ‘t Wout, ‘Neglected evidence for the nature of *atimia*: Agora P 17615 and DTA 107’, *ZPE* 176 (2011), 126 with notes. Against this idea: W. Schmitz, *Nachbarschaft und Dorfgemeinschaft im archaischen und klassischen Griechenland* (Berlin, 2004), 405 n. 11, who, however, did not elaborate any further.

² See J.H. Lipsius, *Das Attische Recht und Rechtsverfahren*, vol. 2.1 (Leipzig, 1908), 396; U. E. Paoli, *Studi di diritto Attico* (Florence, 1930), 307; A.R.W. Harrison, *The Law of Athens*, 2 vols. (Oxford, 1968–71), 2.169; R. Sealey, ‘How citizenship and the city began at Athens’, *AJAH* 8 (1983), 106–10; E. Poddighe, ‘Ateniesi infami (*atimoi*) ed ex Ateniesi senza i requisiti (*apepsephismenoi*)’, in *Annali della Facoltà di Lettere e Filosofia dell’Università di Cagliari* 61 (2006), 9–12; P.J. Rhodes, ‘*Atimia*’, in *OCD*⁴, 199; Kamen (n. 1), 71. The first: see e.g. M.H. Hansen, *The Sovereignty of the People’s Court in Athens in the Fourth Century B.C. and the Public Action against Unconstitutional Proposals* (Odense, 1974), 63 and Hansen (n. 1), 61–6; O. de Bruyn, *La compétence de l’Aréopage en matière de procès publics: des origines de la Polis athénienne à la conquête romaine de la Grèce (vers 700–146 avant J.-C.)* (Stuttgart, 1995), 25 n. 42; G. Thür, ‘*Atimia*’, in *Der Neue Pauly*, vol. 2 (1997), 215; M. Youni, ‘The different categories of unpunished killing and the term ἄτιμος in ancient Greek law’, in *Symposion 1997* (2001), 126. The second: Paoli (above), 325–7 (the loss of the rights of *arkhein*, *dikazein*, *ekklesiazein*), 327–8 (no loss of legal rights);

with opinions ranging from pre-Solonian times (L'Homme-Wéry) to the late sixth (Swoboda, Hansen, Manville) or the late fifth century (Scafuro). While the exact dating is unknown, this transformation was definitely over in the fifth century, when inscriptions and literary texts mentioned punishment by ἄτιμία alongside the death penalty and the confiscation of property.³ Thus, according to Raphael Sealey, ἄτιμία evolved 'from a more severe to a milder sense', and Alick R.W. Harrison pointed to the evidence that, by the fourth century, any willing Athenian could seize an ἄτιμος who happened to be in Athenian territory and surrender him to the θεσμοθέται, instead of killing him.⁴

Later studies have developed the theory put forward by Swoboda in more than one way. In a major departure from Swoboda's vision of ἄτιμία as a punishment 'with impunity' and 'without a compensatory fine', Mogens H. Hansen held ἄτιμία as 'a penalty implying a loss of honour in addition to the loss of rights', and Alberto Maffi distinguished between what might be called legal and moral perceptions of ἄτιμία, with reference to the Homeric poems, which described the societal use of this practice as bringing dishonour.⁵ Subsequent publications have accepted this dual approach with various degrees of modification: Elisabetta Poddighe saw ἄτιμία as defining one's moral and legal conditions, and, more recently, Evelyn van 't Wout similarly questioned whether ἄτιμία was a legal concept from its starting point. Instead, she proposed to 'distinguish between a legally defined technical usage of the term ἄτιμία and its cognates on the one hand ("disfranchisement"), and a non-technical usage ("dishonour") on the other'.⁶ Others, too, have interpreted the original meaning of ἄτιμία as 'public infamy' (Humphreys) or 'dishonor' (Youni), and suggested that ἄτιμία gradually transformed into the 'deprivation of specific civic rights' (Humphreys) or the 'loss of all privileges composing citizenship' (Youni), thus developing into a legal concept. This approach has also been pursued by Manville, who linked the evolution of ἄτιμία with the growth of Athenian citizenship. He proposed that 'over time ἄτιμία became not a different and milder penalty, but one more sharply defined'. In his opinion, the perception of ἄτιμία evolved together with the 'redefinition of civic membership', so that ἄτιμία 'was now largely irrelevant to a man with little or no rights in the city'.⁷

Harrison (above), 2.169 n. 3; A.C. Scafuro, 'Atimia', in R. S. Bagnall (ed.), *The Encyclopedia of Ancient History*, vol. 1 (Malden, MA, 2012), 923.

³ L.-M. L'Homme-Wéry, 'Le rôle de la loi dans la pensée politique de Solon', in P. Sineux (ed.), *Le législateur et la loi dans l'Antiquité: hommage à F. Ruzé* (Caen, 2005), 182; Swoboda (n. 1), 60; Hansen (n. 1), 75–8; Manville (n. 1 [1980]), 220; Scafuro (n. 2), 923. Cf. e.g. *IG* 1³ 40.73–4 (446–445 B.C.); [Xen.] *Ath. Pol.* 1.4; Lys. 31.29 and n. 13 below.

⁴ Sealey (n. 2), 99–100; id., *The Justice of the Greeks* (Ann Arbor, 1994), 13; Harrison (n. 2), 2.169–70.

⁵ Hansen (n. 1), 60–1; A. Maffi, 'Ἀτιμάζειν ε φεύγειν nei poemi omerici', in *Symposion* 1979 (1983), 251–60.

⁶ E. Poddighe, 'L'ἄτιμία nel διάγραμμα di Cirene: la definizione della cittadinanza tra morale e diritto alla fine del IV secolo A.C.', *Aevum* 75 (2001), 38; P.E. van 't Wout, 'From oath-swearing to entrenchment clause: the introduction of *atimia*-terminology in legal inscriptions', in A.P.M.H. Lardinois and J. Blok (edd.), *Sacred words: orality, literacy, and religion* (Leiden and Boston, 2011), 144–5. Cf. a similar view in Kamen (n. 1), 78: 'The very word *atimos*, meaning both "deprived of civic offices" (*a + timai*) and "deprived of honor" (*a + time*), encapsulates both the degraded political status and the degraded social status of such individuals', who, thus, approached these two meanings of the word ἄτιμος not in their development but synchronously.

⁷ Swoboda (n. 1), 64–5; Humphreys (n. 1), 33–5; Youni (n. 2), 124–6. See Humphreys (n. 1), 34 ('in origin these were informal sanctions, imposed by public opinion', 'but those in power in early Greek cities appropriated the sanction and began to proclaim men *atimos* by decree', so that this evolution 'contributed to the development of the concept of citizenship') and 35 (on connecting the change in the meaning of ἄτιμος with the development of citizenship); Youni (n. 2), 125 ('as late

Regardless of whether they have accepted Swoboda's idea or modified it in some way, modern studies still have not solved two major problems concerning the nature of ἄτιμία. The first is that the understanding of ἄτιμία as a penalty that inflicted death with impunity survived in later times.⁸ One such example is provided in Herodotus' story about Lycides, an Athenian councillor who was immediately stoned to death once he proposed accepting the Persian offer delivered by Mardonius in 479.⁹ Archeptolemus and Antiphon were condemned to capital punishment, confiscation of all property, demolition of their houses, deprivation of the right of burial in Attica, and ἄτιμία extended to descendants for their participation in the oligarchy of 411.¹⁰ Although cases of bribery by Athenian officials and ambassadors were typically punished by fines in the classical period, if they could be presented as a high treason, they called for punishment by death. Thus Aristophanes was summarily executed and his property confiscated after he had been accused of high treason in connection with his embassy to Euagoras in 390. When Lycurgus, Dinarchus, Lysias and Demosthenes urged the Athenian assembly to inflict the death penalty on their political enemies, whom they accused as traitors and thus decried as liable to the punishment of ἄτιμία (see Section 2 below), this was not mere rhetoric. In what looks like a similar case, having been condemned for high treason, Phocion preferred to go in exile, only to be returned to Athens by force and put to death.¹¹ Elsewhere, the Greeks of that time also seem to have understood ἄτιμία as the status that left its holder unprotected from being murdered with impunity.¹²

The other problem is that foreigners, too, could be declared ἄτιμοι. Demosthenes' third speech against Philip mentioned an Athenian decree condemning a certain Arthmius of Zelea, who brought Persian gold to the Peloponnesus, probably in the

as Aeschylus our texts never use the word *atimos* as a legal term', 'it is only in classical times and mainly in the orators that *atimia* is used in a solid legal sense') and 126 (contrasting this later understanding with the 'original meaning of the word'). Manville (n. 1 [1980]), 216–17 and 220, respectively; for a similar connection between ἄτιμία and the development of Athenian citizenship, see also O. Murray, 'The Solonian law of *hubris*', in P. Cartledge, P. Millett and S.C. Todd (edd.), *Nomos: Essays in Athenian Law, Politics, and Society* (Cambridge and New York, 1990), 140. For limiting the punishment by ἄτιμία to only citizens, see also e.g. M. Debrunner Hall, in L. Foxhall and A.D.E. Lewis (edd.), *Greek Law in its Political Setting* (Oxford and New York, 1996), 80; É. Karabélias, *Études d'histoire juridique et sociale de la Grèce ancienne: recueil d'études* (Athens, 2005), 236, 279–80.

⁸ E.g. Harrison (n. 2), 2.169–71; Rhodes (n. 1), 158 and (n. 2), 199; Carawan (n. 1), 311–12.

⁹ The three main surviving accounts about this story (Hdt. 9.4–5, Lycurg. 1.122 and Dem. 18.204) vary on details and disagree on the name (Demosthenes referred to him as Cyrsilus, while Lycurgus gave no name at all), but agree on the plot. For further evidence and discussions, see A.W. Verrall, 'The death of Cyrsilus, alias Lycides: a problem in authorities', *CR* 23 (1909), 38–40; C. Habicht, 'Falsche Urkunden zur Geschichte Athens im Zeitalter der Perserkriege', *Hermes* 89 (1961), 18–19, 24; V.J. Rosivach, 'Execution by stoning in Attica', *ClAnt* 6 (1987), 237–41.

¹⁰ [Plut.] *X orat.* 1 (Antiphon), 834ab. This traditional explanation has been questioned by M.J. Edwards, 'Antiphon the revolutionary', in D.L. Cairns and R.A. Knox (edd.), *Law, Rhetoric, and Comedy in Classical Athens: Essays in Honour of D. M. MacDowell* (Swansea, 2004), 82–3, speaking only of Antiphon and arguing solely on the basis that some other members of the Four Hundred, such as Theramenes and Andron, were not subjected to this punishment.

¹¹ Aristophanes: Lys. 19.7–8; cf. Harp. 10.15. See also e.g. Lycurg. 1.141; Din. 1.60, 2.4, 3.5; Lys. 27.7–8; Dem. 19.275–7. Fines as punishments for such crimes: e.g. [Dem.] 57.70, suggesting that this was a typical, if not a standard, penalty. Cf. Din. 1.60 and 3.5 (either death or a fine ten times as great as the original bribe), and Andoc. 1.74 on bribe-takers as ἄτιμοι. Plut. *Phoc.* 33.2–34.3.

¹² E.g. *IG* 5.2 357 = *StV* 3.567 = G. Thür and H. Taeuber, *Prozessrechtliche Inschriften der Griechischen Poleis: Arkadien [IPArK]* (Vienna, 1994), no. 17.113: the one who steals or robs from the house is to be put to death as an ἄτιμος; [ἀ]ποθανέτω ἄτιμος (c. 303–300 B.C.).

470s, as ‘an outlaw and enemy of the Athenian people and its allies, himself and his family’ (ἄτιμος καὶ πολέμιος τοῦ δήμου τοῦ Ἀθηναίων καὶ τῶν συμμάχων αὐτὸς καὶ γένος, 9.42). Demosthenes confirmed that this perception of ἄτιμία was not the same as that of the ἄτιμία of his own time (τοῦτο δ’ ἐστὶν οὐχ ἦν οὐτώσῃ τις ἄν φήσειεν ἄτιμίαν, 9.44), since the decree allowed anybody to kill Arthmius, and members of his family, without being prosecuted for murder, if Arthmius ever stepped on Attic soil: ‘anyone who has killed them shall be free from pollution’.¹³ Christian Habicht rejected the historicity of Arthmius’ ἄτιμία because the earliest documented use of the word πολέμιος in the sense of a ‘(public) enemy’ is thought to have been the so-called decree of Demophantus (410), which is referred to in the speech of Andocides *On the Mysteries* (1.95–97) from 399 (see below), and because the earliest evidence for the story of Arthmius, and of Lycides, belongs to the second half of the 300s.¹⁴ However, if, as we have seen above, the meaning of ἄτιμία had changed by or in the fifth century, Demosthenes and his contemporaries reinforced its original significance by speaking of the ἄτιμος as a public enemy.¹⁵ The anachronistic use of new terminology in later texts does not, by itself, invalidate the historicity of earlier events described in these texts.¹⁶ We also need to distinguish carefully between the event and its later interpretation. Even if decrees about the ἄτιμία of Lycides and of Arthmius were inventions that reflected a practice not established until later (see below),¹⁷ this alone neither can nor does overturn the historical actuality of those events.

Recent studies have acknowledged the ἄτιμία of Arthmius, even though he was not an Athenian citizen. Manville spoke of the ἄτιμία of Arthmius as ‘one exception’. Scafuro, who believed that ‘in the later fifth century, ἄτιμία meant the abrogation of all or some of the rights attached to citizenship’, thus also effectively denying the application of ἄτιμία to foreigners, still also accepted the historical authenticity of the ἄτιμία of Arthmius.¹⁸ Such references provide no rationale for this alleged exception, and

¹³ Dem. 9.42–5, with M. Cary, ‘Arthmius of Zeleia’, *CQ* 29 (1935): 177–80. See esp. Manville (n. 1 [1980]), 215–16 n. 11: ‘whatever the fate of Arthmius of Zeleia, it is clear that Demosthenes expected his audience in the fourth century to know a distinction between killing without blood guilt and loss of Athenian rights’, with a collection of evidence from the fifth and fourth centuries where ἄτιμία is contrasted with or cited in addition to penalties of death and loss of property. Here and below, English translations come, with occasional modification, from the *Oratory of Classical Greece* and the Loeb Classical Library, unless noted.

¹⁴ Habicht (n. 9), 18–19, 24, 27. Habicht’s view has been rejected by R. Meiggs, *The Athenian Empire* (Oxford, 1972), 508–12 and Manville (n. 1 [1980]), 220–1 (see also n. 18 below).

¹⁵ The reference to Arthmius as ἄτιμος καὶ πολέμιος (Dem. 9.42–5) has been interpreted as reflecting that ἄτιμία had already lost its original meaning of ‘outlawry’: e.g. Swoboda (n. 1), 58; Hansen (n. 1), 75–6.

¹⁶ Thus, when the speaker in *Against Neaira* quoted the original decree about the Athenian grant to the Plataeans, after their city was finally taken by the Spartans in 427, he used the ethnic (‘let the Plataeans be Athenians’), whereas when he provided his own description of those events, he applied the word πολιτεία and its cognates, which emerged only later: [Dem.] 59.104–6. Likewise, Dem. 23.205 talked about Cimon’s punishment for subverting the ‘ancestral constitution’ (τὴν πατρῖον μετεκίνησε πολιτείαν), with L. Piccirilli, *Themistocle, Aristide, Cimone, Tucidide di Melesia fra politica e propaganda* (Genoa, 1987), 139–40, although this concept became a part of the Athenian political vocabulary only in the late fifth century: see e.g. A. Fuks, *The Ancestral Constitution: Four Studies in Athenian Party Politics at the End of the Fifth Century B.C.* (London, 1953), 103, 107.

¹⁷ So e.g. Habicht (n. 9), 22 (about the decree concerning Lycides as Lyncurgus’ own invention [‘a product of his own time’] on the basis of information provided by Herodotus, followed by Rosivach [n. 9], 237–9) and 27 (about the decree concerning Arthmius of Zeleia) (see n. 14 above).

¹⁸ Manville (n. 1 [1980]), 220 (after the late sixth century ‘*atimia* was not invoked against foreigners and metics’), 221 (‘after Arthmius *atimia* was reserved for Athenians’); Scafuro (n. 2), 923.

ignore both inscriptional and literary evidence about ἀτιμία still being imposed on other non-Athenians in the fifth and fourth centuries.¹⁹ Neither Swoboda's theory nor its subsequent modifications have succeeded in explaining the evidence for the survival of ἀτιμία as a penalty that inflicted death with impunity or for the use of ἀτιμία as a punishment for non-citizens, although these aspects of ἀτιμία offer an important insight into its nature and development. By reconsidering relevant evidence, the present article attempts to explain why ἀτιμία continued to be used in such diverse ways in classical Athens.

2

The survival into later times of ἀτιμία as a penalty that inflicted death with impunity has allowed some to propose that the difference between 'archaic' and 'classical' ἀτιμία was 'not as radical as often assumed'.²⁰ Thus, Hansen believed that 'atimoi in the fourth century were *de facto* legally unprotected', and that some ἄτιμοι considered or chose exile over the risk of remaining in Attica. Manville likewise thought that 'through history *atimos* remained outside the law', even if his life and security were not immediately threatened, and Carawan held the same opinion.²¹ Rhodes took the approach that 'when the offence is treason and revolution, and the penalty includes death, confiscation of property, and extension to the whole family, the stronger sense of the word [*atimia*] is surely likely'. This view, which has also been shared by others,²² implies that the gravity of the offence made the difference, and that the nature and development of ἀτιμία can, thus, best be seen with reference to Athenian regulations against tyranny and subversion. When arranged in chronological order, evidence for such regulations looks like this:

- (i) Athenian 'laws against tyrants' (οἱ περὶ τῶν τυράννων νόμοι) attributed to Solon, which Aristotle mentioned in the context of his overview of Peisistratus' regime:

These are the ordinances and ancestral principles (θέσμια πάτρια) of the Athenians: if any persons rise in insurrection in order to govern tyrannically, or if any person assists in establishing the tyranny, he himself and his γένοϛ shall be ἄτιμοι (ἄτιμον εἶναι αὐτὸν καὶ γένοϛ) ...;²³

- (ii) a restored Athenian decree, dated to 470–460, which seemingly suggested the punishment by death for anyone who attempted to establish a tyranny in Erythrae, and his progeny: [κ](αὶ) [οἱ] παῖδες (ἡ)οι ἐχς ἐ(κ)εῖν(ου);²⁴

¹⁹ *JG* 1³ 21.27 (Miletus, 450–449 B.C.) and 40.33–4 (Chalcis, 446–445 B.C.). Taurosthenes: Din. 1.44. Euthykrates: the *Suda*, Π 2539.

²⁰ Hansen (n. 1), 118; see also pp. 61–6, 75–80.

²¹ *Ibid.* 58, see also 118; Manville (n. 1 [1980]), 221; cf. p. 215: 'Though slaying and confiscation perhaps lurked as a possibility for all *atimoi*, such ultimate punishment was not normally suffered'; Carawan (n. 1), 315–16.

²² P.J. Rhodes, 'Bastards as Athenian citizens', *CQ* 28 (1978), 90; cf. R. Parker, *Miasma: Pollution and Purification in early Greek Religion* (Oxford, 1983), 204 ('It is in connection with subversive offences that the inherited punishment is specifically attested') and S. Forsdyke, *Exile, Ostracism, and Democracy: The Politics of Expulsion in Ancient Greece* (Princeton and Oxford, 2005), 10 ('Ατιμία in the stronger sense "outlawry" continued to exist as a penalty for certain serious crimes such as establishing a tyranny or overthrowing the democracy').

²³ Arist. *Ath. Pol.* 16.10. This attribution: e.g. A. Martina, *Solone: testimonianze sulla vita e l'opera* (Rome, 1968), 208; E. Ruschenbusch, *Solonos Nomoi: Die Fragmente des Solonischen Gesetzeswerkes mit einer Text- und Überlieferungsgeschichte* (Wiesbaden, 1983), 81.

²⁴ *JG* 1² 10.32–4: ἐὰν δ(έ) τις ἀ(λ)ῶ[ι προδιδ]οὺς ... τοῖς τυράννοις τῆμ (πόλι)[ν] (τῆν)

- (iii) the law against the suppression of the democracy and the above-mentioned so-called decree of Demophantus (410), known from the speech by Andocides *On the mysteries* (1.95), dated to 399, in which the speaker makes the following statement: ‘... what does the law (νόμος) say, the one inscribed on the stone in front of the Council-house? “Anyone who holds office in the city when the democracy has been subverted (τῆς δημοκρατίας καταλυθείσης) may be killed with impunity, and the killer shall be free from guilt and shall possess the dead man’s property”. So, isn’t it the case, Epichares, that anyone who kills you now will have untainted hands, according to Solon’s law (κατὰ γε τὸν Σόλωνος νόμον)? The speaker then asked the clerk to read the text of the law (νόμον), which appears to have included the decree (τοῦ ψηφίσματος), framed by Demophantus and his colleagues in the following fashion (1.96–8):

If anyone subverts the democracy at Athens or holds any office when the democracy has been subverted, he shall be regarded as an enemy of the Athenians (πολέμιος ἔστω Ἀθηναίων) and may be killed with impunity, and his property shall be confiscated and a tenth part of it devoted to the Goddess; and he who kills or helps to plan the killing of anyone who does that shall be pure and free from guilt. All Athenians shall swear over unblemished victims by tribes and by demes to kill anyone who does that ... and they shall pray that he who keeps his oath may have many blessings, but that he who breaks it may suffer destruction, both himself and his family (ἐξὼλη αὐτὸν εἶναι καὶ γένος);²⁵

- (iv) and the Athenian law (νόμος) against tyranny republished in 337–336, with the stipulation that

if anyone rise up against the Demos for tyranny or join in establishing the tyranny or overthrow the Demos of the Athenians or the democracy in Athens, whoever kills him who does any of these things shall be blameless. It shall not be permitted for anyone of the Councillors of the Council from the Areopagos – if the Demos or the democracy in Athens has been overthrown – to go up into the Areopagos or sit in the Council or deliberate about anything. If anyone – the Demos or the democracy in Athens overthrown – of the Councillors of the Areopagos goes up into the Areopagos or sits in the Council or deliberates about anything, both he and his progeny shall be ἄτιμοι (ἄτιμος ἔστω καὶ αὐτὸς καὶ γένος τὸ ἐξ ἐκείνου) and his substance shall be confiscated and a tenth given to the Goddess.²⁶

Some of these texts refer to ἄτιμία as a punishment extended to the entire family, while others speak of the penalty by death, without mentioning ἄτιμία. Thus, the Athenian θέσμις against tyrants (= [i] above) did not make clear if the punishment of the entire family by ἄτιμία meant banishment or a death penalty, whereas the restored Athenian decree, dated to 470–460 (= [ii] above), inflicted a death penalty on anyone who

Ἐρυθραίων, καὶ [αὐτ]ὸς [νηπο]ί(νε)ῖ τεθνάτω [κ](αί) [οἱ] παῖδες(ς) ἡοὶ ἐχς ἐ(κ)εῖν(ου). However, David Lewis (*IG* 1³ 14) preferred neither to accept this restoration nor to offer his own; cf. *IG* 1³ 46.27 (see n. 59 below).

²⁵ The authenticity of the text as presented in the speech of Andocides has been recently rejected (M. Canevaro and E.M. Harris, in *CQ* 62 [2012], 119–25) and defended: A.H. Sommerstein, in A.H. Sommerstein and A.J. Bayliss (edd.), *Oath and State in Ancient Greece* (Berlin and Boston, 2013), 74–5 with n. 54. On the basis of their analysis of its terminological content, Canevaro and Harris ([above], 125) concluded that the text adduced as the decree of Demophantus in Andoc. 1.96–8 was probably passed in 400–399. It can be suggested that, like on several other occasions, which will be mentioned below, we see a later modification of earlier regulations.

²⁶ *SEG* 12.87 = B.D. Meritt, ‘Greek inscriptions’, *Hesperia* 21 (1952), 355–6, no. 5 = *IG* 2³ 320.7–21 (trans. Meritt, slightly modified), with J.M. Rainer, ‘Über die Atimie in den griechischen Inschriften’, *ZPE* 64 (1986), 168–9, no. 5 and R.W. Wallace, *The Areopagos Council to 307 B.C.* (Baltimore, 1989), 179–84.

attempted to establish tyranny, evidently without making any reference to ἄτιμία. The law quoted by Andocides threatened anyone who occupied a public office after the overthrow of democracy with death, whereas the decree of Demophantus established the same penalty also for those who helped to overthrow democracy, and extended that penalty to the posterity of such people (= [iii] above). Neither document used the word ἄτιμία, at least judging by what we read in the text. The Athenian law against tyranny from 337–336 (= [iv] above) similarly punished anyone who helped to overthrow democracy by death with impunity, while imposing ἄτιμία on the entire family of the people who occupied official positions or participated in public life after the overthrow of democracy. However, just as in the case of the Athenian θέσιμα against tyrants (= [i] above), the actual meaning of that ἄτιμία remains unclear.

Was ἄτιμία juxtaposed with punishment by death, or was it merely implied in such cases? Were these discrepancies or omissions? Did this situation have anything to do with the fact that some such regulations took the form of laws, while others were issued as decrees? This body of evidence has been considered together in a very indiscriminate fashion, by using the generalizing concept of ‘legislation’. Thus, a major debate on dating Athens’ legislation against tyranny and subversion has ascribed its authorship either to the θεσμοθέται in the period before Draco (Gagarin) or to Draco (Ostwald, Gallia) or to Solon (Meritt).²⁷ However, the former opinion cannot be verified with certainty, because Gagarin’s reference to the θέσιμα πάτρια in Arist. *Ath. Pol.* 16.10 (= [i] above) as being decisions of pre-Draconian court cases has been disputed; even Gagarin himself has acknowledged this opinion as a speculation.²⁸ It is safe to say, in general terms, that the earliest Athenian regulations against tyranny and subversion predated Solon’s reforms, because we know that Solon’s amnesty law pardoned all ἄτιμοι, except those punished for murder, slaughter and tyranny:

As many of the ἄτιμοι as were made such before the archonship of Solon, shall be restored to their status (ἐπιτίμιος εἶναι), except such as were condemned by the Areopagos, or by the ἐφέται, or in the Prytaneum by the kings, on charges of murder or homicide, or of seeking to establish a tyranny, and were in exile when this law (θεσμός) was published.²⁹

Solon’s amnesty law provides no precise indication about the authorship and dating of the Athenian legislation against tyranny and subversion. Martin Ostwald has attempted to ascribe this legislation to Draco on the basis of the evidence from Arist. *Ath. Pol.*

²⁷ M. Gagarin, ‘The Thesmothetai and the earliest Athenian tyranny law’, *TAPhA* 111 (1981), 72 (the legislation against tyranny and subversion was established even ‘before Draco by the Thesmothetai and ... Solon later incorporated it as part of his revised tyranny law’). Ostwald (n. 1), 103, 108; A.B. Gallia, ‘The republication of Draco’s law on homicide’, *CQ* 54 (2004), 458–9; cf. F. Bourriot, *Recherches sur la nature du genos* (Paris, 1976), 310–1, who dated its origins to as early as at least the Cylonian conspiracy. Meritt (n. 26), 358 n. 36. Cf. Forsdyke (n. 22), 179 n. 160 (on the law in Arist. *Ath. Pol.* 16.10 as ‘dating back at least to the time of Solon’).

²⁸ He later assumed a much more cautious stance, though without abandoning this theory: M. Gagarin, *Early Greek Law* (Berkeley and Los Angeles, 1986), 56 (an ‘admittedly speculative reconstruction’); M. Gagarin, *Writing Greek Law* (Cambridge and New York, 2008), 115–16 (‘all this is speculation’).

²⁹ Plut. *Sol.* 19.3, with Ostwald (n. 1), 105; Gallia (n. 27), 458–9. For the historical validity of this law, see e.g. M. Gagarin, *Drakon and Early Athenian Homicide Law* (New Haven, 1981), 129–30; R. Sealey, *The Athenian Republic: Democracy or the Rule of Law?* (University Park, PA, 1987), 114; Wallace (n. 26), 7; K.-W. Welwei, *Athen: Vom neolithischen Siedlungsplatz zur archaischen Grosspolis* (Darmstadt, 1992), 137; de Bruyn (n. 2), 24–5; K. Bringmann, in E. Ruschenbusch, *Solon: Das Gesetzeswerk-Fragmente. Übersetzung und Kommentar*, ed. K. Bringmann (Stuttgart, 2010), 136–7.

16.10 (= [i] above, i.e. the same evidence Gagarin wanted to use in support of a pre-Draconian dating) and the decree of Demophantus (= [iii] above).³⁰ However, neither of these texts offers firm grounds for dating the origins of the regulations they contain: the former text has been defined by Rhodes very broadly as a ‘reaffirmation of an ancient law’, while a recent study has interpreted the regulation mentioned in the decree of Demophantus together with Solon’s law on *stasis* as ‘a fourth-century reformulation of Solonian ideas in the form of a law’.³¹

Still trying to ascribe the Athenian legislation against tyranny and subversion to Draco, Ostwald made an attempt to present that legislation as a part of Draco’s homicide law, since, as is generally agreed, only that law was retained by Solon.³² Hence, according to Ostwald, Solon took over legislation against tyranny and subversion as a part of Draco’s homicide law.³³ Michael Gagarin’s response was that if legislation against tyranny and subversion made up a part of Draco’s homicide law, Solon would have preserved it unaltered; otherwise, it would have been effaced.³⁴ However, here too any definitive conclusion is made impossible by the state of our evidence: we know neither if Draco’s legislation was limited to homicide or if only that part of his laws was retained by Solon,³⁵ nor if Solon borrowed earlier laws against tyranny and subversion. Some evidence, in fact, supports the view that Draco’s homicide law did not include legislation against tyranny and subversion: the punishment of Archeptolemus and Antiphon, and the issuing of the decree of Demophantus happened without any reference to Draco’s law on homicide,³⁶ and, once the latter law was republished – more or less verbatim, as has been claimed³⁷ – in 409–408, it contained no reference to

³⁰ Arist. *Ath. Pol.* 16.10: Ostwald (n. 1), 106 (‘an early law which, in its original form, may go back to pre-Solonian times’), 107 (with reference to Swoboda’s theory of ἀρχαία), 108–9 (on philological and procedural grounds). The decree of Demophantus: Ostwald (n. 1), 103–14 (tracing its content to Draco’s legislation).

³¹ Rhodes (n. 1), 221; P.E. Van ‘t Wout, ‘Solon’s law on *stasis*: promoting active neutrality’, *CQ* 60 (2010), 300.

³² E.g. Carawan (n. 1), 307 and Gallia (n. 27), 459.

³³ Ostwald (n. 1), 107; Carawan (n. 1), 307–8; Youni (n. 2), 130; Gallia (n. 27), 459.

³⁴ Gagarin (n. 27), 73 and (n. 29), 21 n. 31.

³⁵ *IG* 1³ 104 (409–408 B.C.); Dem. 23.51; Arist. *Ath. Pol.* 7.1 (on Draco’s homicide law as only a surviving part of his overall legislation), and further evidence: e.g. Ael. *VH* 8.10; Plut. *Sol.* 17.1 with general overviews by G. Busolt, *Griechische Staatskunde*, vol. 2 (Munich, 1926³), 807 n. 1; J. Miller, ‘Drakon (8)’, in *RE* 10 (1905): 1649–58; R.S. Stroud, *Drakon’s Law on Homicide* (Berkeley and Los Angeles, 1968), 54–6, 61–4; Harrison (n. 2), 2.37–8; Gagarin (n. 29), 21–9; Rhodes (n. 1), 109–12; S.C. Humphreys, ‘The evolution of legal process in ancient Attica’, in E. Gabba (ed.), *Tria corda: Scritti in onore di A. Momigliano* (Como, 1983), 233, 236 n. 13; R. Develin, in *Athenaem* 62 (1984), 300; R.W. Wallace, ‘The date of Solon’s reforms’, *AJAH* 8 (1988): 81–95; J.P. Sickinger, *Public Records and Archives in Classical Athens* (Chapel Hill and London, 1999), 15, 24; Humphreys (n. 1), 18; K.-J. Hölkesskamp, ‘Drakon’, in *Der Neue Pauly* 3 (1997), 810–1; Gallia (n. 27), 452; I. Tsigarida, *Solon – Begründer der Demokratie? Eine Untersuchung der sogenannten Mischverfassung Solons von Athen und deren ‘demokratischer’ Bestandteile* (Berlin and New York, 2006), 24 n. 8, with a brief summary of both views in D.M. MacDowell, ‘Draco’, in *OCD*⁴, 477. Cf. R. Westbrook, ‘Drakon’s homicide law’, in *Symposion* 2007 (2008), 11–15, arguing that Draco’s legislation was of a comprehensive nature, but that the ἀναρχαίεῖς extracted all relevant rules on homicide and excluded any connected rules on other subjects. However, this task of the ἀναρχαίεῖς does not follow from the text of *IG* 1³ 104.

³⁶ It is hard to follow Gallia (n. 27), 459–60 when he says that the republication of Draco’s homicide law was intended to provide a ‘legal jurisdiction for what the assassins of Phrynichus had done and what Demophantus’ decree enjoined future generations to do as well’. Cf. J.L. Shear, *Polis and Revolution: Responding to Oligarchy in Classical Athens* (Cambridge and New York, 2011), 71 on the issuing of the decree of Demophantus and the republication of laws as the Athenians’ response to oligarchs.

³⁷ E.g. Stroud (n. 35), 51, 60–4; Gagarin (n. 29), 21; Sickinger (n. 35), 18–19; R. Koerner,

tyranny, although, it must be admitted, the surviving text of this inscription is only a fragmented part of the original.

A compromise suggestion by Edwin M. Carawan that ‘if indeed the original tyranny law was part of the [Draco’s] homicide code, there is every reason to suppose that it too would have been retained unaltered, though superseded by later amendments’ has not solved the problem of dating Athenian legislation against tyranny and subversion. But the idea that this legislation evolved over time looks attractive, because the same can be said about other Athenian laws. Thus, Solon’s own laws are thought to have been transformed and adjusted over the course of Athenian history, allowing us to see only what Scafuro has defined as an ‘authentic Solonian kernel’.³⁸

A closer look at Athenian regulations against tyranny and subversion reveals that they formed two distinct groups. The first group was comprised of specific decisions on individual events and personalities, as, for example, the decree on the death of Lycides (and members of his family); the verdict concerning Arthmius of Zelea from the 470s (?); the restored Athenian decree dated to 470–460 (= [ii] above); the decree punishing those Athenians who withdrew to safety in Decelea in 413, when Athens was being besieged by the Spartans; the decree punishing Archeptolemus and Antiphon for treason (411); the so-called decree of Demophantus (= [iii] above); the decree honouring Thrasybulus and his accomplices for the murder of Phrynichus, whom the Athenians decreed to have been a traitor; the decisions from the fourth century on Taurosthenes of Chalcis, Euthycrates of Olynthus and Phocion, who was condemned for his alleged high treason by a show of hands, according to a special *ψήφισμα* adopted by the people; and the summarily execution of the people who fled Attica after Philip’s victory at Chaeronea, according to the decree adopted by the Athenians.³⁹ If some decrees relevant to earlier episodes, like those of Lycides and Arthmius, were indeed later inventions (as has been asserted by Habicht and those who follow him), this only confirms that the practice of issuing ad hoc decrees in such cases was typical of the classical period.⁴⁰

The second group embraced general regulations in the form of laws that became modified over the course of time. Thus, the regulation quoted as the Athenian law against tyranny and subversion by Arist. *Ath. Pol.* 16.10 (= [i] above) has been attributed

Inscriptifliche Gesetzestexte der frühen griechischen Polis: Aus dem Nachlass von R. Koerner, ed. K. Hallöf (Cologne, 1993), 30 n. 4 and 38 (with n. 45).

³⁸ Carawan (n. 1), 309. A.C. Scafuro, ‘Identifying Solonian laws’, in J.H. Blok and A.P.M.H. Lardinois (edd.), *Solon of Athens: New Historical and Philological Approaches* (Leiden and Boston, 2006), 175, 190–5, followed by J.H. Blok, ‘Solon’s funerary laws: questions of authenticity and fiction’, *ibid.*, 210–13 and P.J. Rhodes, ‘The reforms and laws of Solon: an optimistic view’, *ibid.*, 257.

³⁹ Lycides and his family: Lycurg. 1.122 (*ψήφισμοι*); Arthmius: Dem. 9.41 (*γρόμμιατο*); Decelea: Lycurg. 1.120 (*ψήφισμοι*); [Plut.] *X orat.* 1 (Antiphon), 834a (*δόγμα*); the decree of Demophantus: Andoc. 1.95–97 (*ψήφισμοι*); Thrasybulus: *IG* 1³ 102 (410–409 B.C.) and Lycurg. 1.112–114 (*ψήφισμοι*); Taurosthenes: Din. 1.44 (*νόμοι*); Euthycrates: the *Suda*, Π 2539 (*ψήφισμοι*); Phocion: Plut. *Phoc.* 33.4, 34.5; Chaeronea: Lycurg. 1.52–53 (*ψήφισμοι*).

⁴⁰ See M.H. Hansen, in *GRBS* 19 (1978): 315–30 and 20 (1979): 27–53, repr. in M.H. Hansen, *The Athenian Ecclesia*, vol. 1 (Copenhagen, 1983), 161–76 and 179–206, respectively, and P.J. Rhodes, in *JHS* 111 (1991), 97 n. 45; J.P. Sickinger, ‘Literacy, orality, and legislative procedure in classical Athens’, in I. Worthington and J.M. Foley (edd.), *Epea and Grammata: Oral and Written Communication in Ancient Greece* (Leiden and Boston, 2002), 148 (for the fifth and fourth centuries); cf. a distinction between *ψηφίσματα* as passed by the popular assembly and laws as passed by the *νομοθέται*, see Hansen, in *GRBS* 19 (1978), 315–30 = Hansen, *The Athenian Ecclesia* (Copenhagen, 1983), 161–76, who dated its origin to the turn of the fourth century.

to pre-Draconian θεσμοθέται by Gagarin, and to Draco by Ostwald. While the exact dating of this regulation is unknown, it certainly antedated Solon's legislation, even though it has been acknowledged as a part of Solon's laws by Martina and Ruschenbusch. Likewise, the law quoted in the decree of Demophantus (see [iii] above) could not be the law authored by Solon for several reasons: it used the later expression 'public enemy' (πολέμιος); this decree required all Athenians to take a special oath (which would have been unnecessary if a separate law to that effect existed) by tribes and by demes; and the demes only became political entities after Cleisthenes' reform. Also, although the decree of Demophantus appealed to the authority of Solon's law against tyranny, this decree evidently quoted from the law protecting democracy.⁴¹ The same is true for the law republished in 337–336, which juxtaposed establishing the tyranny to the overthrow of democracy (see [iv] above).⁴² The Athenians, thus, tailored earlier laws against tyranny and subversion to new political realities, regardless of whether the old law became reinterpreted over time or whether a new (or modified) law was retrospectively ascribed to a revered lawgiver,⁴³ just as Solon's laws were retrospectively interpreted as having established democracy.⁴⁴

Curiously, the emphasis on protecting democracy was almost totally lacking in specific decrees against tyranny and subversion. We see it only in the decree of Demophantus, and it is likely that the decree against Taurosthenes also focussed on accusing him of being an enemy to Athenian democracy, since Dinarchus (1.44) ridiculed the democratic stance taken by Demosthenes, who proposed to give πολιτεία to Taurosthenes. However, except in these two cases, no immediate connection can be traced between Athenian laws against tyranny and subversion and specific decrees that were adopted for particular events. The earliest known such decrees belong to the early fifth century and, therefore, they offer no help for establishing when the Athenian legislation against tyranny and subversion emerged. A much-disputed reference to θέσμια πάτρια in Arist. *Ath. Pol.* 16.10 (= [i] above), and the information about Solon's amnesty law from Plutarch – whose reliability as a source for this law is doubted⁴⁵ – have been the only available evidence for dating the origins of that legislation to pre-Solonian times.

⁴¹ See e.g. J.L. Shear, 'The oath of Demophantos and the politics of Athenian identity', in A.H. Sommerstein and J. Fletcher (edd.), *Horkos: The Oath in Greek Society* (Bristol, 2007), 150–1.

⁴² E.g. D.M. MacDowell, *Athenian Homicide Law in the Age of the Orators* (Manchester, 1963), 79: 'From its wording it is clear that this law is based on the two earlier ones' and Sickinger (n. 40), 156: 'The anti-tyranny law of 337/6 includes no reference to earlier legislation, but its text is clearly modeled on older laws regarding tyranny and subversion of the democracy.'

⁴³ For the practice of retrospectively naming additional and modified laws after the original lawgiver, see e.g. K. Clinton, 'The nature of the late fifth-century revision of the Athenian law code', in *Studies in Attic epigraphy, history, and topography presented to E. Vanderpool. Hesperia*, suppl. 19 (Princeton, 1982), 30; Sealey (n. 29), 116; T.J. Figueira, *Excursions in Epichoric History* (Lanham, 1993), 237–8; R. Thomas, 'Writing, law, and written law', in M. Gagarin and D. Cohen (edd.), *The Cambridge Companion to Ancient Greek Law* (Cambridge and New York, 2005), 41; Chr. Flament, 'Que nous reste-t-il de Solon? Essai de déconstruction de l'image du père de la πατρίος πολιτεία', *Les Études Classiques* 75 (2007), 301.

⁴⁴ E.g. Isoc. 7.16 and 15.231–2; Dem. 22.31 and Schol. Dem. 22.30 (Dilts); Plut. *Sol.* 18.2; Diog. Laert. 1.66–7.

⁴⁵ Plut. *Sol.* 19.3 (see n. 29 above). See Flament (n. 43), 293–300.

A further piece of evidence, however, which has so far been neglected, similarly testifies to the pre-Solonian origins of the Athenian legislation against tyranny and subversion, and also adds meaningfully to our knowledge about ἀτιμία. This evidence concerns the nature of ἀτιμία as a penalty that extended to the entire family. Death with impunity awaited not only the ἄτιμος himself but also other members of his family in the case of high treason.⁴⁶ Once Lycides was killed, according to Herodotus (9.5), upon learning what had happened and ‘on their own motion’, Athenian women went to the house of Lycides, and stoned his wife and his children (τὰ τέκνα) to death. Habicht not only decried the murder of the wife and children of Lycides, which has traditionally been presented as a display of unexpected cruelty,⁴⁷ but even interpreted Lycides’ own death as a ‘breach of law’.⁴⁸ According to Habicht, the ‘illegality’ of this act required the adoption (or inventing the adoption) of a special decree to justify what had happened.⁴⁹ However, even if decrees on the ἀτιμία of Lycides and Arthmius were later inventions, the murder of Lycides’ family members reflected the nature of ἀτιμία as a penalty that was extended to the entire family. The situation was the same in the case of the punishment of Archeptolemus and Antiphon and their families, and the provision for the punishment of Arthmius and his family members.⁵⁰ Athenian laws against tyranny and subversion revealed a similar attitude when they penalized the entire family by ἀτιμία (see [i] and [iv] above). Likewise, according to Idomeneus, the Athenians punished Themistocles’ ‘betrayal of Greece’ by having him and his family (αὐτοῦ καὶ γένους) exiled in perpetuity, and Isocrates reflected the same idea in the mid fourth century, when he observed that the entire γένος of former tyrants had been blotted out of the sight of men.⁵¹ Other such examples include Polybius’ reference to the treachery of the Arcadian king Aristocrates, which was punished by putting him and his whole family (αὐτὸν ... καὶ τὸ γένος αὐτοῦ πᾶν) to death after the Second Messenian War; an Attic provision against the establishment of tyranny in Erythrae, which stipulated against tyrants and their ‘children’: [κ](αὶ) [οἱ] παῖδες(ς) ἢ οἱ ἐχς ἐ(κ)εῖν(ου); a decree from Miletus, which exiled the tyrants and their descendants (καὶ αὐτὸς [κα]ῖ ἐκγόνος), and promised to reward their killers (evidently in the case such people dared to return); and the threat of death to the breaker of the oath and his progeny (καὶ αὐτὸν καὶ γόνον) in an inscription from Cyrene.⁵²

⁴⁶ This point has only been noted in brief: e.g. Hansen (n. 1), 71–2. For the meaning of γένος in the phrase αὐτὸς καὶ γένος in such cases, see Bourriot (n. 27), 315–23, who suggested that γένος essentially meant a household, οἰκία, in the classical period. He inferred, however, that the circle of the people who had to suffer the same punishment could have originally included a much wider group of relatives: pp. 316–17 with n. 185.

⁴⁷ E.g. Verrall (n. 9), 36 with n. 1; Rosivach (n. 9), 237 (‘mob violence’); A. Kuhrt, *The Persian Empire: A Corpus of Sources from the Achaemenid Period*, vol. 1 (Milton Park and New York, 2007), 278 n. 4; D. Hamel, *Reading Herodotus* (Baltimore, 2012), 271–2 (‘mob mentality’).

⁴⁸ Habicht (n. 9), 31 (‘Rechtsbruch’); cf. 22 (on the murder of Lycides as ‘lynching’); cf. e.g. Verrall (n. 9), 36 (‘a mere act of popular vengeance and without formal justification’).

⁴⁹ Habicht (n. 9), 31 (‘es zugleich beispielhaft und gesetzlos war ... man die betreffenden Gewaltakte durch förmliche Beschlüsse sanktionierte, von denen zur Zeit der Ereignisse nicht die Rede gewesen war’), followed by Rosivach (n. 9), 237–8.

⁵⁰ Archeptolemus and Antiphon: [Plut.] *X orat.* 1 (Antiphon), 834ab (see n. 10 above); Arthmius: Dem. 9.42–5 (see n. 13 above) and Plut. *Them.* 6.2 (τοῦτον εἰς τοὺς ἀτίμους καὶ παῖδας αὐτοῦ καὶ γένους ἐνέγραψαν).

⁵¹ *FGrHist* 338 (Idomeneus), F 1. Isoc. 5.108, 8.113.

⁵² Polyb. 4.33.6. *IG* 1² 10.32–4 (see n. 24 above) and *Syll.*³ 58 = *ML* 43.3 (c. 470–440 B.C.), with

The character of ἀτιμία as a punishment of the entire family survived even when ἀτιμία was understood in a narrow legal sense, as a loss of civic rights, and served as a penalty for crimes other than a high treason.⁵³ In this sense, the difference between ‘archaic’ and ‘classical’ ἀτιμία was indeed ‘not as radical as often assumed’. The relevant evidence includes the words of Andocides that before the battle of Aegospotami the Athenian ἄτιμοι were comprised of thieves and bribe-takers, who were ἄτιμοι ‘together with their posterity’ (τούτους ἔδει καὶ αὐτοὺς καὶ τοὺς ἐκ τούτων ἀτιμούς εἶναι, 1.74), as well as the following excerpt from [Dem.] 43.58:

Those who fail to pay rent for the precincts of the Goddess and other gods and eponymous heroes shall be ἄτιμοι, themselves and their kinsmen and heirs (ἀτιμούς εἶναι καὶ αὐτοὺς καὶ γένος καὶ κληρονόμους τοὺς τούτων), until they pay up.

Another speech from the Demosthenic corpus mentions the same law and refers to a grandson of an ἄτιμος, who inherited ἀτιμία in the third generation ([Dem.] 58.14, 16). In Demosthenes’ oration against Androtion, the speaker reminds the defendant that the law made him an heir to the ἀτιμία of his father, so that if his father was still an ἄτιμος, the defendant, too, had no right to move proposals in the assembly and initiate prosecutions. We see a reference to the ἀτιμία being inherited in another speech. Other texts likewise provide evidence for ἀτιμία as a punishment that was extended to the rest of the family.⁵⁴ The nature of ἀτιμία as a collective penalty is also revealed in Lysias’ oration for Polystratus, which pointed to the impending misery of the entire family once the father lost his πολιτεία as a result of a διασηφισμός, and in Antiphon’s speech on the murder of Herodes, which included the following words aimed at the prosecutor:

You ought to have sworn the greatest and strongest oath, calling down destruction on yourself, your kinsmen and your household (ἐξώλειαν σαυτῷ καὶ γένει καὶ οἰκίᾳ τῇ σῇ ἐπαρώμενον) and swearing to confine your case to this murder alone.⁵⁵

The speeches of Andocides, Demosthenes, Lysias and Antiphon show that the nature of ἀτιμία as a punishment of the entire family survived in the classical period. They complement inscriptional evidence in challenging the idea that ἀτιμία completely transformed into a personal punishment late in the fifth century.⁵⁶

Youni (n. 2), 122–3, who put such cases together as evidence for the ‘legislation of outlawry’. *SEG* 9.3 = *ML* 5 = C. Dobias-Lalou, ‘*SEG* IX, 3: un document composite ou incassable’, *Verbum* 17 (1994), 246, lines 46–9 (370–360 B.C.).

⁵³ Cf. Parker (n. 22), 204: ‘it is clear that the children’s loss of rights is a continuation in mitigated form of the earlier practice ... by which they shared their father’s *atimia* in the sense of outlawry and were liable to be killed with him if caught’.

⁵⁴ Dem. 22.34 (κληρονόμον γὰρ σε καθίστησαν ὁ νόμος τῆς ἀτιμίας τῆς τοῦ πατρὸς) and 24.201, respectively. See also e.g. [Dem.] 59.6 and Lys. 20, 21.25. This evidence contradicts the view on ἄτιμος καὶ αὐτὸς καὶ γένος advanced by Carawan (n. 1), 316–9, who rejected its traditional interpretation as ‘hereditary outlawry’ and held it as ‘without legal recourse either in his own right or in respect of his *genos*’. What was meant was certainly a change in the status of both the person who was responsible for ἀτιμία, and his γένος.

⁵⁵ Lys. 20.34–5; see also Lys. 21.25; Antiph. 5.11.

⁵⁶ This idea: G. Glotz, *La solidarité de la famille dans le droit criminel en Grèce* (Paris, 1904), 505, who dated this change to the archonship of Euclides (403–402), i.e. in connection with the fall of the Thirty. The view presented by Glotz has been challenged on the basis of inscriptional evidence by Rainer (n. 26), 172.

The nature of ἀτιμία as a collective penalty is confirmed by the practice of extending curses to other members of the family. By threatening his adversary with a curse of the extinction of his entire family and household, the speaker in the excerpt quoted above from Antiphon's speech on the murder of Herodes reflected a situation when an accusation of a murder was brought against a specific individual 'by name' – as opposed to making a general accusation against unspecified 'perpetrators and murderers' – which made up a part of Draco's legislation.⁵⁷ The practice of cursing both the person responsible for destroying, abolishing or modifying legal ordinances and his entire family survived in later documents. Thus, a 'law' quoted by Demosthenes made ἀτιμοὶ both the one who broke the ordinance and his children (ἀτιμον εἶναι καὶ παῖδας). Similar provisions have been documented in other places in Greece.⁵⁸ The parallelism between the situation in Athens and other Greek cities is reinforced by a comparison of the Athenian decree about the establishment of a κληρουχία in Brea (Thrace) – which threatened anyone who challenged it, and his children, with ἀτιμία ([ἀτιμον] ἔναι αὐτὸν καὶ παῖδας τὸς ἐχθρ[ο]ς [ἐκένο]) and the confiscation of property – with a law on establishing a new colony from Locris, which punished anyone who challenged its provisions by making him and his entire family (καὶ γενεὰ ἅματα πάντα) accused for all time, as well as having his property confiscated and his house demolished.⁵⁹

A similar situation reveals itself in legal and diplomatic documents from the ancient Near East: curses and divine punishments awaited not only the persons who abolished or modified an existing regulation but also their entire families. In the former case, the Laws of Hammurabi concluded by cursing 'him, his descendants, his land, his warriors, his people, his nation with a foul curse!'⁶⁰ Similar clauses were typical of treaty oaths, as, for example, in the treaty between the Hittite king Mursili II and Duppi-Tessub of Amurru (c. 1315 B.C.), and between Niqmepa of Alalakh and Ir-IM, king of Tunip (from about the same time).⁶¹ Other treaties reveal the innermost meaning of such

⁵⁷ Antiph. 5.11 (see n. 55 above). Cf. the advice of the ἐξηγηταὶ in [Dem.] 47.70–1: if someone takes an oath and accuses someone else by name as a murderer and then the accusation goes wrong, he and his entire household (οἰκία) will be accused, with references to a situation in which the name of the killer was unknown; see Arist. *Ath. Pol.* 57.4 and Dem. 23.76.

⁵⁸ Dem. 23.62, with Ruschenbusch (n. 23), F 22 and Bringmann (n. 29), 52, who ascribed this law to Solon; for its authenticity, see M. Canevaro, *The Documents in the Attic Orators: Laws and Decrees in the Public Speeches of the Demosthenic Corpus* (Oxford and New York, 2013), 71–3. See Rainer (n. 26), 167, no. 4: the honorific decree for Thersippus from Nasos (*IG* 12.2 645 = *OGI* 4 = *SEG* 27.4.102–4: late fourth cent. B.C.) and 169, no. 6: the anti-tyranny law from Ilium (*OGI* 218 = *Ilium* 25: early third cent. B.C.), and also *SEG* 31.985.A.8–10, B.10–12, C.3–4 (Teos, 480–450 B.C.) with texts of public imprecations from Teos in I. Arnaoutoglou (ed. and trans.), *Ancient Greek Laws: A Sourcebook* (London and New York, 1998), 84–6 (with further references and bibliography), and *IG* 12.9 191.29–33: the initiator of the annulment of a contract will suffer the punishment of ἀτιμία and the confiscation of property, himself and his γένος (Eretria, late fourth cent. B.C.).

⁵⁹ *IG* 1³ 46 (= Rainer [n. 26], 167, no. 3).²⁷ (c. 445 B.C.) and *IG* 9.1².3 609 = *ML* 13.9–14 (525–500 B.C.?, with a detailed discussion). See C. Vatin, 'Le bronze Pappadakis, étude d'une loi coloniale', *BCH* 87 (1963), 13–14 (with several parallels from other places in Greece); S. Link, 'Das Siedlungsgesetz aus Westlokris', *ZPE* 87 (1991), 65–77 (a general context for similar practices at that time); and, in general, M.L. Zunino, 'Decidera in guerra – pensare alla pace', *ZPE* 161 (2007), 157–69.

⁶⁰ J.B. Pritchard (ed.), *Ancient Near Eastern Texts Relating to the Old Testament*, trans. T.J. Meek (Princeton, 1969³), 180.

⁶¹ Pritchard (n. 60), 205: 'may these gods of the oath destroy Duppi-Tessub together with his person, his wife, his son, his grandson, his house, his land and together with everything that he owns' (trans. A. Goetze) and 532: 'whoever transgresses these agreements, Adad, [...] and Shamash etc. [will make disappear] his name and (his) descendants from the lands', etc. (trans. E. Reiner), respectively. See M. West, 'Ancestral curses', in J. Griffin (ed.), *Sophocles Revisited: Essays presented to Sir*

references, as does the Succession Treaty of Esarhaddon (early seventh century B.C.), which includes curses against the breakers of oaths and their ‘seed’.⁶² In fact, this is the word used in the translation of the above-quoted segment of the Laws of Hammurabi as well.⁶³ While it is not possible to trace the roots of the corresponding Greek practice directly to the ancient Near East, the meaning of *καὶ γένος* (αὐτοῦ) in curses and punishments from classical Greece evidently was the same: both the perpetrator and his ‘seed’ were to be exterminated. Thus, the murderers of the Cylonian conspirators were cursed together with their entire *γένος*.⁶⁴

Even more important, however, is that *ἄτιμία* not only retained its character as a collective penalty but also extended to family members regardless of their legal status. The legal status of the children of Athenian *ἄτιμοι* was noted only very rarely, as, for example, in the decree on Archeptolemus and Antiphon, which extended *ἄτιμία* to their ‘illegitimate and legitimate’ descendants (*καὶ νόθους καὶ γνησίους*, [Plut.] *X orat.*, 834b), and in the Athenian law stating that those who did not pay the rents due for the lands of the goddess or of the gods and the eponymous heroes would be *ἄτιμοι* – themselves and their *γένος* and their heirs (*ἄτιμους εἶναι καὶ αὐτοὺς καὶ γένος καὶ κληρονόμους τοὺς τούτων*, [Dem.] 43.58) – until they shall make payment. The crucial evidence is that punishment by *ἄτιμία* made no distinction between legitimate and illegitimate children, even when this distinction was formally acknowledged. To judge by its extension to children regardless of their legal status, the origins of *ἄτιμία* predated Solon’s legislation. It was Solon who organized the order of inheritance by kinsmen on the basis of legitimacy and thus established a distinction between legitimate children and bastards,⁶⁵ as quoted in the following ancient texts:

Legitimate children (*εἶναι παῖδας γνησίους*) are born from a woman whom a father or brother or grandfather has pledged in marriage;

If a father or brother born of the same father or grandfather on the father’s side betroth any woman on just terms, her children are legitimate (*ἐκ ταύτης εἶναι παῖδας γνησίους*);

Whomever a man lawfully gives in betrothal, children born of her are legitimate (*οὔτοι γνήσιοι εἰσ[τν]*).⁶⁶

H. Lloyd-Jones (Oxford and New York, 1999), 35: ‘such provisions are typical of Near Eastern treaty oaths ... the extension of the curses to cover the oath-taker’s descendants is matched in the Greek oath *κατ’ ἐξώλειαν*’.

⁶² S. Parpola and K. Watanabe (edd.), *Neo-Assyrian Treaties and Loyalty Oaths* (Helsinki, 1988), 41 (§ 26: ‘If anyone makes rebellion or insurrection against Esarhaddon ... destroy his name and his seed from the land’) and 50 (§ 57: ‘May all the gods mentioned by name hold us, our seed and our seed’s seed accountable’).

⁶³ G.R. Driver and J.C. Miles (edd., with trans. and comm.), *The Babylonian Laws*, vol. 2 (Oxford, 1955), 107 (‘curse that [man], his seed, his land’, etc.) and 304 (with commentary and parallel references).

⁶⁴ Thuc. 1.126.11 (*καὶ τὸ γένος τὸ ἅπ’ ἐκείνων*).

⁶⁵ See e.g. Glotz (n. 56), 341 (with n. 1); Harrison (n. 2), 1.5; D. Ogden, *Greek Bastardy in the Classical and Hellenistic Periods* (Oxford and New York, 1997), 37; C.B. Patterson, *The Family in Greek History* (Cambridge, MA and London, 1998), 109 (‘a traditional, perhaps Solonian, law that defined legitimate children’); S. Lape, ‘Solon and the institution of the “democratic” family form’, *CJ* 98 (2002/3), 124 (on ‘Solon’s transformation of bastardy and legitimacy into formal legal statuses’), and commentaries by Bringmann (n. 29), 88–94. This is not the place to raise and examine the very complicated problem of the authenticity of laws that were ascribed to Solon by later generations. For a positive view, see e.g. Manville (n. 1 [1990]), 124 n. 1; Rhodes (n. 38), 256.

⁶⁶ [Dem.] 44.49, 46.18 (= Martina [n. 23], F 440 = Ruschenbusch [n. 23], F 48b), and Hyp. 5.16 (Jensen), respectively. The attribution of this law to Solon: e.g. Harrison (n. 2), 1.5; J. Modrzejewski,

Hence, Heracles, who was Zeus's illegitimate child, found himself in a comic situation in Aristophanes' play *The Birds* (414 B.C.), which rendered Solon's law (τὸν Σόλωνος νόμον) in the following fashion:

A bastard (νόθος) is to have no right of inheritance, if there be legitimate children (παίδων ὄντων γνησίων). And if there be no legitimate children (ἐὰν δὲ παῖδες μὴ ὄσι γνηστοί), the goods are to pass to the next of kin (τοῖς ἐγγυτάτω γένους).⁶⁷

The prose citation suggests that Aristophanes quoted the original text of the law, whereas its alleged inconsistency is explained by the play's comic nature.⁶⁸ Contrary to Heracles' hopes, the phrase 'and if there be no legitimate children' (one expects a meaningful pause after this sentence) reflected not that bastards could inherit but that the property then passed to the nearest legitimate kin.

CONCLUSION

The ways in which ἀτιμία was used in classical times cannot be explained by either its transformation into a milder form of punishment or a transition from a moral concept into a legal one. They were, rather, an outcome of fitting an old broadly social concept within a later developed narrow legal framework, while the original collective extra-legal nature of ἀτιμία survived into the classical period, making it possible to apply ἀτιμία regardless of individual legal and political status. For this reason, ἀτιμία was extended to family members, including illegitimate children, and to non-citizens, cutting across legal and political divisions instituted in Athens in connection with Solon's reforms early in the sixth century.⁶⁹

The survival of the original extra-legal nature of ἀτιμία explains many (at the first glance, surprising) aspects of its use by the Athenians during the classical period. The cases of Lycides and Arthmius did not constitute breaches of law and, therefore, the use of ἀτιμία did not necessitate the invention of special decrees to justify alleged illegalities. Even if the decrees we see in the sources about Lycides and Arthmius were later inventions, they reflected the practice of ad hoc decrees. Likewise, the expression ἄτιμος καὶ πολέμιος offers no valid basis to conclude that,

'La structure juridique du mariage grec', in *Symposion 1979* (1981), 49–53 (repr. in J. Modrzejewski, *Statut personnel et liens de famille dans les droits de l'Antiquité* [Aldershot and Brookfield, 1993], V); Ogden (n. 65), 37. See also Dem. 20.102–3; [Dem.] 46.14; cf. similar language in [Dem.] 48.56 and Arist. *Ath. Pol.* 35.2.

⁶⁷ Ar. *Av.* 1660–6 (= Martina [n. 23], F 426 = Ruschenbusch [n. 23], F 50a) with Busolt (n. 35), 834 (and n. 3 with other sources and bibliography).

⁶⁸ Ogden (n. 65), 35–6; id., 'Bastardy and fatherlessness in ancient Greece', in S.R. Hübner and D. M. Ratzan (edd.), *Growing Up Fatherless in Antiquity* (Cambridge and New York, 2009), 108; cf. E.M. Carawan, 'Pericles the Younger and the citizenship law', *CJ* 103 (2008), 397.

⁶⁹ For Solon as the one who laid down the foundation of Athenian citizenship: e.g. Manville (n. 1 [1990]), 69, 154–6 and 185–6; P.B. Manville and J. Ober, *A Company of Citizens* (Boston, 2003), 20, 80; Manville (n. 1 [1980]), 217; F.J. Frost, 'The Athenian military before Cleisthenes', *Historia* 33 (1984), 283 and 'Aspects', 50; Patterson (n. 1), 270, 273; J. Ober, 'The Athenian revolution of 508/7 B.C.E.', in C. Dougherty and L. Kurke (edd.), *Cultural Poetics in Archaic Greece* (Cambridge and New York, 1993), 218; Tsigarida (n. 35), 66; C. Farrar, 'Power to the people', in K.A. Raaflaub, J. Ober and R.W. Wallace (edd.), *Origins of Democracy in Ancient Greece* (Berkeley and Los Angeles, 2007), 186–7; C.B. Patterson, 'Citizenship and gender in the ancient world: the experience of Athens and Rome', in S. Benhabib and J. Resnik (edd.), *Migrations and Mobilities: Citizenship, Borders, and Gender* (New York, 2009), 53.

since punishment by death concerned πολέμιος, then ‘*atimos* in origin must mean “without honor”, both because this expression was late and because it was being used in a legal setting.⁷⁰ Since the original meaning of ἄτιμία was never fully reduced to a legal or a political concept, references to the γνήσιοι and the νόθοι being equally punished by ἄτιμία offer no justification for speaking about the ‘citizenship of bastards’ in ancient Athens.⁷¹ And the same can be said about the ‘ἄτιμία of non-citizens’. Such evidence reflects that ἄτιμία emerged before legitimacy and citizenship were established in Athens as a result of Solon’s reforms, which then pushed the Athenians to approach ἄτιμία in narrow legal terms.⁷²

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⁷⁰ Humphreys (n. 1), 33. The emergence of this concept likely resulted from the association of earlier punishment for supporters of tyranny as ἄτιμοι with the punishment of enemies of democracy as ‘public enemies’.

⁷¹ The ἄτιμία of bastards has been one of the three arguments used in support of this theory: see e.g. D.M. MacDowell, ‘Bastards as Athenian citizens’, *CQ* 26 (1976), 89 (‘this clearly implies that illegitimate descendants of Athenians normally have citizenship’, with reference to the ἄτιμία of Archeptolemus and Antiphon, and their illegitimate and legitimate descendants); C.B. Patterson, ‘Those Athenian bastards’, *CLAnt* 9 (1990), 46 (about ‘the logical impossibility of making *atimos* someone who was not a citizen’). Cf. Manville (n. 1 [1980]), 221 (see n. 18 above), who appeared to share this view.

⁷² A similar conclusion has been reached by Wout (n. 1), 127, 133–4, who spoke about the ‘continuity between legal and non-legal uses of the word *atimia* and its cognates’ (p. 127). This conclusion, however, requires adjustments in the sense that the legal and extra-legal forms of ἄτιμία could co-exist during the classical period, and that even the narrow legal perception of ἄτιμία could take more than one form.