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## ***Ephesis* against Eubulides (Dem. 57): Legal Arguments against the Sykophant's Game\***

### *Abstract*

This paper analyses Euxitheus' legal arguments in the trial against Eubulides (Dem. 57) and proposes a new analysis of the *ephesis* procedure. Within this framework it argues that Euxitheus' forensic strategy is not only relevant to the question at issue – to prove his status as a legitimate citizen (*gnesios polites*), as someone born from two citizen parents – but is also characterised by a strict adherence to the laws and procedure involving his case. The relation between rhetoric and law emerging in Euxitheus' speech reveals a rhetorical strategy grounded on legal evidence and documents. This essay will especially focus on two important arguments in the speech, that is, the use of religious arguments and the theme of the plot against Euxitheus, which prove extremely enlightening in showing the how the relevant procedure shaped Euxitheus' arguments. To this aim section II compares Dem. 57 and other probable cases of *ephesis* in order to reassess how the *ephesis* procedure worked when it arose from a *diapsephisis*. Section III shows that the arguments used by Euxitheus are to be considered relevant to winning an *ephesis* case in court. The entire speech is effectively constructed to demonstrate 'what is true' against Eubulides' 'false accusations' and 'defamatory statements' (57.1), that is, to use legal arguments against 'the sykophant's game': to allege everything but prove nothing'.

*Keywords:* Citizenship, Demosthenes, *Diapsephisis*, *Ephesis*, Forensic Rhetoric, Sykophancy

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\* This article is the joint work of two authors who discussed and agreed on the content of each section. However, we should specify that paragraphs I, II, III are by both the authors, while Elisabetta Poddighe has written paragraph III.1 and Laura Loddo paragraph III.2.

## I.

In 346/5 B.C. the Athenian Assembly passed a decree proposed by Demophilus ordering a thorough scrutiny (*diapsephisis*) of the citizen registers of all the demes.<sup>1</sup> Demophilus was a little known Athenian politician who made the fight against corruption one of his focuses.<sup>2</sup> Demophilus' decree ordered what was probably the first extraordinary general scrutiny (*diapsephisis*) of the registers containing the names of all those enrolled in the demes (*lexiarchika grammateia*).<sup>3</sup> His main intention was more to stop the fraudulent registration of foreigners into the civic registers<sup>4</sup> than to attempt to decrease the number of beneficiaries of privileges connected with citizenship.<sup>5</sup> Its purpose was to check and ensure the legality of the entries in the *lexiarchikon grammateion*. Although it is generally assumed that a thorough scrutiny would have been necessary on various occasions as a result of abnormal events, the only one definitely known to have taken place occurred in the year 346/5 BC.<sup>6</sup>

<sup>1</sup> Liddel 2020, D 139. On the citizen registers see now Boffo-Faraguna 2021, 160-63.

<sup>2</sup> Aeschin. 1.86. On Demophilus cf. *PAA* 320855.

<sup>3</sup> While the noun is attested in the literary sources (Aeschin. 1.77; Dem. 57.26), the verb *διαψηφίζω* can be found in some inscriptions with the meaning of voting by ballots: *IG XII*, 4 1 131, l. 17 (honorary decree of Samos for Koan judges, late IV century BC); Meritt, *AJPh* 1935, 377-78, no. 3, ll. 33-35 (citizenship decree for the Sinopean Pyrrhias, ca. 300 BC); *SEG* 53.1297, ll. 27-31 (from the sanctuary of Apollo at Claros, mid III century BC; see Gauthier 2003); *SEG* 53.1299, ll. 11-14 (honorary decree of ancient Kolophon for the Aitolian Kleomenes, ca. 250-200 BC); *IPriene* 116, ll. 20-21 (honorary decree of Kolophon for Prienian judges, late III century BC). It should be stressed that these inscriptions concern cases of naturalization or grants of honours to foreigners.

<sup>4</sup> Fisher 2001, 62; Lape 2010, 203-4. Specific events, such as the return of the clerouchs from Potidea (Hansen 1991, 95 followed by Kasimis 2018, 149 n. 11) or the arrival in Athens of groups of political exiles seeking refuge may have contributed to this climate (Loddo 2020, 223-24).

<sup>5</sup> For an overview of the possible reasons behind the need for such an extraordinary *diapsephisis* see Fantasia-Carusi 2004, 196-206 and Liddel 2020, 510-11.

<sup>6</sup> See Jacoby's commentary on *FGrHist* 324 F 52. We know of three reviews throughout the history of Athens: in 510/9 the first scrutiny, which was called *diapsephismos*, took place following the fall of the tyranny (Arist. *Ath. Pol.* 13.4); in 445/4 an examination was conducted on the occasion of a grain distribution (Plut. *Per.* 37.2; Philoch. *FGrHist/BNJ* 328 F 119 apud *Schol.* in Ar. *Visp.* 718); in 346/5 the so-called *diapsephisis* occurred (see *supra* n. 1). Some scholars have also argued for the inclusion of the other reviews occurring in 424/3 (Nenci 1964 on the basis of Ar. *Visp.* 715-718) and in 403/2 (Dmitriev 2017, 193-200 on the basis of the reaffirmation of Pericles' law after the

The speech Demosthenes wrote for Euxitheus is a consequence of this extraordinary scrutiny.<sup>7</sup> The speaker, an Athenian living in the deme of Halimous, was the defendant in court against the charge that he was not an Athenian citizen, as a result of his fellow-demesmen's rejection of him from the citizens' lists. Euxitheus' case is based on a law that allowed the plaintiff to reject the demesmen's decision and to lodge an *epheſis* against it, asking the judges to reinstate his citizen rights.<sup>8</sup>

First, Euxitheus affirmed that the deme's decision was wrong because he was an Athenian citizen and a real member of the deme of Halimous. To prove it, he reviewed all the irregularities that led to the vote in the deme and attributed the verdict against him to Eubulides' enmity and a conspiracy of his enemies. Second, he brought evidence of his status as a citizen to the attention of the judges: he was the son of two Athenian citizens and in this context brought evidence of the civic status of both his parents. Third, he based his argument on laws relevant to the case and urged the judges to apply them. Fourth, he connected evidence of his and his parents' citizenship to the testimony of his relatives. Fifth, he listed several previous votes of the deme when his and his father's status were subjected to scrutiny and underlined the fact that no doubts had ever been raised about their legitimacy. We do not know the outcome of the case, but at first glance it seems that Euxitheus' case is legally strong since it was built on relevant arguments and legal evidence such as witness statements of his relatives, the legal status of his parents, and procedural irregularities in the deme's scrutiny.

However, scholars have mostly considered Euxitheus' arguments irrelevant to the main point in question. Lanni has claimed that extra-statutory norms influenced Euxitheus' case.<sup>9</sup> Kapparis has argued that the arguments in Dem. 57.63-65 have nothing to do with the *epheſis* on the citizenship of Euxitheus.<sup>10</sup> Moreover, his line of defence has been considered inaccurate and only partially responsive to Eubulides' allegations.<sup>11</sup> Humphreys

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downfall of the Thirty). However, there is no evidence that a scrutiny was conducted every time the citizenship law was amended or reaffirmed. Otherwise, Feyel 2009, 143-48, has convincingly argued against the frequency of such reviews.

<sup>7</sup> On the date of the speech see Bers 2003, 108.

<sup>8</sup> On *epheſis* see *infra* § II.

<sup>9</sup> Lanni 2018, 133.

<sup>10</sup> Kapparis 2019, 52. Cf. Hunter 1994, 107, 112 and 119.

<sup>11</sup> Carey 1994, 105-6. This is possible, but a case can be weak and yet not legally irrelevant.

has pointed out that Euxitheus did not offer any witnesses to testify to his *amphidromia* and *dekate*, which would have proved his birth, or about his admission to the phratry.<sup>12</sup> The great number of witnesses who testified in favour of Euxitheus has been interpreted as implying subornation, in view of the contrast with his inability to get supporters at the time of the vote in the deme.<sup>13</sup> Even some of Euxitheus' statements are questioned: the lack of precision in describing his paternal lineage;<sup>14</sup> the incompatibility between his family's and Euxitheus' social standing;<sup>15</sup> and the very idea of citizenship emerging from Euxitheus' words, which is read as being rhetorically constructed.<sup>16</sup> As a result, some scholars have suggested that Euxitheus was either a wealthy metic, who bought his citizenship, or simply an illegitimate son.<sup>17</sup> What Euxitheus did is to throw sand in the judges' eyes, gathering the available, sometimes irrelevant evidence, in the hope that the large number of witnesses would obscure the weakness of his case.

This article challenges these views and discusses Euxitheus' legal arguments. We will argue that his forensic strategy is not only relevant to the question at issue – to prove his status as a legitimate citizen (*gnesios polites*), as someone born from two citizen parents – but is also characterised by strict adherence to the laws and procedure involving his case (see § II). The relationship between rhetoric and law emerging from *epheis* cases reveals a rhetorical strategy based on an in-depth knowledge of relevant laws and legal procedure. In order to convince the judges, Euxitheus had to address the question and to build his speech according to the law and procedure regulating the case rather than in terms of the plausibility of the topics used. He appeals to norms that Hart calls 'criteria of recognition', i.e. those norms that adjudicators are bound to apply.<sup>18</sup> Within this framework, this essay focuses on two important elements in the speech, the use of religious arguments and a plot against Euxitheus, which prove extremely enlightening in showing the how the relevant procedure shapes Euxitheus' arguments.

<sup>12</sup> Humphreys 1986, 82, followed by Carey 1994, 105 and Scafuro 1994, 168. *Contra* Bers 2002, 234. Carey 1994, 105 has pointed out that this omission is striking, as qualifications for membership could be more stringent than those for mere introduction.

<sup>13</sup> Carey 1994, 105 and 1997, 231.

<sup>14</sup> Bicknell 1976, 114.

<sup>15</sup> Gernet 1960, 12; Ober 1989, 222; Carey 1994, 105 n. 33 and 1997, 231.

<sup>16</sup> Cohen 2003, 90.

<sup>17</sup> Carey 1994, 105-6 n. 38.

<sup>18</sup> A useful discussion of Hart's terminology in MacCormick 2005, 4.

Section II compares Dem. 57 and other probable cases of *epheſis* in order to reassess how the *epheſis* procedure worked when it arose from a *diapſepheſis*. Section III shows that the arguments used by Euxitheus are relevant for winning an *epheſis* case in court.

## II.

In order to assess the standard of relevance of Euxitheus' arguments, we first need to reaffirm the relationship between the extraordinary *diapſepheſis* and the *epheſis eis to dikasterion*. Euxitheus explicitly refers to both procedures in the belief that they are equally relevant to his litigation strategy.<sup>19</sup> This is most understandable when we think that in trials where claims to citizenship were rejected by the deme members, the defendant's speech had to make clear the fact that the demesmen's opinion was not established on solid grounds. Moreover, Euxitheus' point was to demonstrate that his enrolment in the registers of the deme was correct and that he was a genuine citizen.

As far as the *diapſepheſis* is concerned, we have to say that it is no coincidence that some sources consider it a sort of *dokimasia*. As Feyel has convincingly shown, there are several procedural similarities between a *diapſepheſis* and the *dokimasia* of the ephebes, a kind of ordinary, annual *diapſepheſis* for the admission of new deme members.<sup>20</sup> First, the two procedures shared the same aim, that is, to determine whether each candidate possessed the requirements for citizenship. Second, they employed the same criteria to establish this purpose. In both cases the vote was on whether or not each member had been born to two Athenian parents.<sup>21</sup> In particular, the scrutiny was done according to the existing laws, particularly the citizenship law of 403 BC. After the restoration of the democracy, Aristophon of Azenia issued a decree reintroducing the terms of Pericles' law, which had probably fallen into disuse during the last years of the Peloponnesian War.<sup>22</sup> An amendment by Nicomenes prevented the law from being

<sup>19</sup> Διαψηφισις/ἀποψηφισις: §§ 2, 3, 4, 6, 7, 8-14; a previous scrutiny in the deme of Halimous: §§ 26, 58-60; ἔφεσις: 4, 6, 56; possible references to *epheſeis* in a previous scrutiny: §§ 60-61.

<sup>20</sup> Feyel 2009, 143-44.

<sup>21</sup> For the ordinary *diapſepheſis*: Arist. *Ath. Pol.* 42.1; for the extraordinary *diapſepheſis*: Aeschin. 1.77; Lib. *Hyp. Dem.* 57.

<sup>22</sup> There is no certainty that Pericles' law was formally suspended in the last decades

applied retroactively.<sup>23</sup> Those born before 403 were full citizens even if they lacked the requirement of descent from two Athenian parents.<sup>24</sup> Third, the vote in both cases took place in the deme probably because the demesmen had better knowledge of each other's status. Aeschines emphasises that this vote took place with no accusations or testimonies, but only on the basis of what the demesmen knew (*ὅσα τις σαφῶς οἶδεν αὐτός*).<sup>25</sup> This is consistent with Dem. 57, which represents the full account of how the voting was carried out in the deme. It is evident that there was no formal charge against the candidate, but each demesman was only asked whether he was a citizen or not.<sup>26</sup> If the demesmen voted against a given citizen, the rejected citizen (*apopsephismenos*) had two options. He could either abide by (*emmenein*) the deme's assessment and become a metic, or he was entitled to submit an *epheisis* to court (*epheisis eis to dikasterion*). But *epheisis* was not a riskless procedure. If the judges decided against the person submitting the *epheisis*, he was sold into slavery.<sup>27</sup> Both Libanius and Dionysius refer to enslavement as the penalty which the *apopsephismenos* would suffer if he lost the case in court. The speaker in Dem. 57 never mentions enslavement, and his scattered references to the penalty linked to the *epheisis* (§§ 1, 65, 70) are far from being clear. In §§ 65 and 70 he seems to consider exile as the expected sanction, but he fails to specify whether it was a statutory penalty or a voluntary exile due to the loss of citizenship. The plaintiff in Isae. 12 does not address this issue, but in the *argumentum* to the speech confiscation of property is added to enslavement as the main penalty. Gomme considered the accounts of both Libanius and Dionysius to be unreliable since they are based on a poor understanding of *Ath. Pol.* 42.1.<sup>28</sup>

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of the fifth century (cf. the discussion in Poddighe 2014, 319-20) and the decree may simply have introduced, along with the (certainly reiterated) Periclean rule, the (new) rule of not investigating those born before 403 together with new tools to ensure more effective control over the registers. All this within the framework of the new institutional structure defined on the occasion of the amnesty of 403. On the amnesty see Joyce 2015.

<sup>23</sup> *Schol.* in Aeschin. 1.39 = Eumelos *FGrHist/BNJ* 77 F 2.

<sup>24</sup> Dem. 57.30.

<sup>25</sup> Aeschin. 1.78.

<sup>26</sup> The same happened with accusers in the *apopsephiseis* of 18-year-olds. Cf. Rhodes 1981, 501; Harris 2006, 409 n. 19.

<sup>27</sup> Lib. *Hyp.* Dem. 57; Dion Hal. *Hyp.* Isae. 12.

<sup>28</sup> Gomme 1934, 130-39 argued that in Arist. *Ath. Pol.* 42.1 enslavement is the penalty only for individuals of servile status, but see Rhodes *ad loc.* for a more convincing

But what exactly was an *epheſis*? Against previous views that understand the *epheſis* as an appeal, or an appeal by a party, or a compulsory transfer, or an automatic referral of the case to the court, Pelloso has convincingly shown that the *epheſis* was a veto.<sup>29</sup> Its negative character lay essentially in the rejected citizens' declaration not to accept – this is the real meaning of *emmenein* - the decision of the deme. In the case of an extraordinary *diapsephisis*, a rejected citizen used the *epheſis* to deny his consent to a decision of the assembly of the deme. The deme's enactment was subordinated by law to the consent (declaration of *emmenein*) of the rejected citizens (the *apopsephismenoi*). The denial of consent prevented the deme's decision from being legally in force and compelled the deme to bring the case to court. This meant that the deme had to bring an action to the judges, whose judgement was final. The procedure was probably the same as the one attested for an ordinary *diapsephisis* concerning the examination of requests for the admission of eighteen-year-olds to the civic lists. The deme elected five representatives to argue the case in court against the rejected citizen. In court, the litigants' role was reversed if compared to those in an ordinary appeal. The representatives of the deme acted as accusers, although probably one of them spoke as the main accuser, while the rejected one played the role of the defendant.

This same procedure is clearly attested in the speech delivered by Euxitheus. In court, Euxitheus spoke second, in the role of defendant, and Eubulides in the role of *kategoros* spoke first on behalf of his deme (§§ 1, 5). Although Euxitheus' speech is directed against Eubulides, it is plausible that Eubulides was only one of the accusers chosen by the deme to support the accusation in court. It is not so much the internal evidence in the speech that enables us to argue this as the comparison with similar procedural contexts.<sup>30</sup> For example, Aeschines reports that Timarchus first urged the deme

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reconstruction.

<sup>29</sup> This view has already laid out by Paoli 1950 and 1962. See now Pelloso 2016, 2017 and 2020. As Pelloso (2016, 35) has stated: “ἔφεσις is a ‘claim’ submitted by the citizen who has suffered some bodily harm, monetary damages, or personal disadvantages from an ‘authoritative’ order issued by a magistrate. Yet, such a procedural remedy either would bear a resemblance to a private ‘veto’, that formally blocks the issuing of a final ruling, or it would turn out to be the ‘opposition to the enforcement of an authoritative act.’”

<sup>30</sup> Throughout the speech, Euxitheus targets Eubulides as his *kategoros*, since Eubulides is named 15 times. In Dem. 57.4 Euxitheus argues that it is not appropriate for either

of Kydathenaion to exclude a certain Philotadenes saying that he was one of his freedmen (*apeleutheroi*); he then went on to act as an accuser in court in the *ephephesis* arising from the *apopsephesis*, only finally to abandon the trial because he had accepted gifts.<sup>31</sup> It is evident that here Aeschines' criticism of Timarchus concerns the fact that he broke his oath by accepting gifts: knowing that his case was weak, he prosecuted him without evidence that favoured Philotadenes' victory.<sup>32</sup> In any case, *kategoroi* like Eubulides, unlike the prosecutors in ordinary *graphai*,<sup>33</sup> did not face personal risk for their role in the legal procedure since they were acting as representatives of their demes rather than on their own behalf. Euxitheus describes Eubulides as someone who speaks without being accountable (*ἀνυπευθύνῳ γε λέγοντι*, § 5). This label closely parallels the description of the speaker's opponents in Isaeus' fragmentary speech *On behalf of Euphiletus*, which was probably connected to the *diapsephesis* occasioned by Demophilus' decree. Also in this speech, to which we will return shortly, the speaker contrasts the dangerous situation for him and his relatives with that of the accusers, who do not run any risk (§ 8).<sup>34</sup> There is a significant difference here from other public procedures such as *graphai*, *endeixeis* or *ephegesis*, where accusers were subject to penalties for frivolous prosecutions.<sup>35</sup> The burden of this role is indirectly stressed by the honours granted to the *kategoroi* in some inscriptions. A decree from the deme of Epikhephisia dating back to the late fourth-century praises some *demotai* who were appointed as the *kategoroi* against a certain Neocles.<sup>36</sup> It is noteworthy, however, that Aeschines expected the benevolence of the judges in stating that he himself,

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Eubulides or all those who are now bringing accusations in disenfranchisement proceedings (*πᾶσιν δ' ὅσοι νῦν ἐπὶ ταῖς ἀποψηφίσεσιν κατηγοροῦσιν*) to present hearsay evidence in the trial, but the statement seems to have a general meaning.

<sup>31</sup> Aeschin. 1.114-115.

<sup>32</sup> Harris 2006, 411-12.

<sup>33</sup> The main reference is Theophr. Fr. 4 Szegedy-Maszak, who speaks of a fine of 1000 drachmas and the loss of the right to bring a public charge; some other references are found in the orators, on which see Harris 2006, 407-8.

<sup>34</sup> This is evidently the fear of exposing themselves to the risk of a *dike pseudomartyrion*.

<sup>35</sup> See Harris 2006, 409 and n. 20.

<sup>36</sup> *IG II<sup>2</sup>* 1205. For the hypothesis that they acted as *kategoroi* during the ordinary *diapsephesis* see Rhodes 1981, 501, but it cannot be excluded that in court they acted on behalf of the deme for other reasons, cf. Whitehead 1986, 101-2 n. 81. The link between *IG II<sup>2</sup>* 1197, an honorific decree from Aixone (330 BC), and the *diapsephesis*, suggested by Humphreys 2018, 781 n. 31, is even less certain.



acting as *kategoros*, had never deprived anyone of his country at the time when *diapsephiseis* took place.<sup>37</sup> This is not much, because of the absence of risks associated with the role of accuser in the *epheis*, but acting as a *kategoros* might only have raised doubts about sykophantic behaviour. Some evidence (as we will see) corroborates this assumption.

The speech was given in an *epheis* case, and a clear understanding of the procedural design of the *epheis* is central to appreciating the speech's arguments. In Dem. 57.6 the speaker addresses the judges stating that they granted the *epheis* because they know that the decisions of the *demotai* can be influenced by personal grudges and enmities.<sup>38</sup> At first glance his words can be taken as a clue to the fact that the *epheis* was a newly introduced measure, perhaps in connection to Demophilus' decree. This is, indeed, how some scholars have interpreted this passage.<sup>39</sup> Yet there is no evidence to prove that such an important innovation should be attributed to Demophilus' decree and not to a standing law, probably the same one referred to in the account in Arist. *Ath. Pol.* 42.1. Gomme was probably right in saying that the *epheis* was not a recently granted measure and that it continued to work, if not in the same way, for a long time.<sup>40</sup> This is not a rhetorical tool to say that the procedure was old to give it authority, but, as we will see below (§ III.2), we can find a similar reference to the working of *epheis* in § 60.

This is supported not only by Euxitheus' awareness of the risks of a rejection in court (§§ 3, 58), but also by his confidence in a procedure that has the precise aim of helping and rescuing the victim of an injustice (§§ 2-3, 6, 17, 56-57, 66). This is also consistent with what we know of *epheis* in the first half of the fourth century BC. *Epheis* was in force in the Law of the Demotionidai (396/5).<sup>41</sup> Anyone who was rejected in the ordinary *diadikasia* could submit an *epheis* to the Demotionidai, but if the rejection was confirmed, they had to pay one thousand drachmas consecrated to Zeus

<sup>37</sup> Aeschin. 2.182.

<sup>38</sup> See § III.2.

<sup>39</sup> This hypothesis, formulated for the first time by Diller 1932, 201, has been followed by Carey 2005, 24; Pelloso 2016, 40; 2017, 542; 2020, 26.

<sup>40</sup> Gomme 1934, 128-29 n. 13, 140 on Dem. 57.6: '*you judges have always rehabilitated those unjustly excluded*'. But it could also be a *captatio benevolentiae* as a typical *topos* of forensic oratory. This means that the judges never make wrong decisions.

<sup>41</sup> The inscription contains three different decrees, but Hierocles' decree, in which the *epheis* procedure is mentioned, is the oldest one. For the date of Hierocles' decree see Lambert 1993, 292.

Phratrios.<sup>42</sup> Likewise, in the demes of Hagnous,<sup>43</sup> *epheisis* was envisaged in the context of a final account at the end of the demarch's term (*euthynai*). When a commission of ten men chosen among the demesmen voted against a demarch, an *epheisis* was brought before all the demesmen, who could reverse or confirm the previous decision; in case of confirmation, the penalty was a fine, which was increased one and a half times more than the one originally imposed.<sup>44</sup> In view of the Solonian roots of *epheisis* and its functioning at a local level in the early fourth century it is reasonable to assume that it was not an innovation set up by the decree of Demophilus.<sup>45</sup> We agree with Gomme about its possible introduction in 403, when the Athenians reformed their rules about citizenship. It was probably on that occasion that the rules for the ordinary scrutiny for new members and for the extraordinary scrutiny were introduced.<sup>46</sup>

But what was the relation between the veto of (*me emmenein*) the decision of the demesmen and the start of the trial in court? An open issue is whether the legal action, resulting from the *epheisis*, was public or private. Speeches like Dem. 57 are difficult to classify because they contain elements pointing at both public and private actions.<sup>47</sup> If we take the public concern of citizenship into account, we should conclude that the *epheisis* comes to court in the form of a public action. Accordingly, the *epheisis* has been thought to have taken the form of a *graphe xenias*<sup>48</sup>, considering that the lawsuits of individuals rejected in the demes were received and intro-

<sup>42</sup> *IG* II<sup>2</sup> 1237, ll. 29-40. Cf. Lambert 1993, 106-41 for the procedure employed.

<sup>43</sup> The decree was initially attributed to Myrrhinous (Traill 1975, 42; Whitehead 1986, 384-85), but later reassigned to Hagnous (Traill 1986, 132).

<sup>44</sup> *IG* II<sup>2</sup> 1183, ll. 16-24. The inscription dates from 340 BC (Whitehead 1986, 119, 384-85; Scafuro 2004, 100).

<sup>45</sup> Arist. *Ath. Pol.* 9.1; Plut. *Sol.* 18.2. Cf. Paoli 1950; Pelloso 2020, 1-18. *Epheisis* is also attested in the decree for Chalcis (*IG* I<sup>3</sup> 40, ll. 70-77, dating back to 446/5 BC): if the Chalcidians condemned someone to death, exile or *atimia*, an *epheisis* would be submitted to the court of the *thesmothetai*.

<sup>46</sup> Gomme 1934, 129. It is hard to accept Wyse's hypothesis (1904, 715) that *epheisis* was already available in the fifth century at the time of the alleged *diapsephisis* of 445/4, as there is no evidence of *apopsephismenoi* being reintegrated by the *dikasterion*.

<sup>47</sup> Cobetto Ghiggia 2019, 396-97.

<sup>48</sup> For Dem. 57 as a public case see Wyse 1904, 716-17; Bonner 1907, 415-16; Diller 1932, 196-97, 199 and 1935, 308; Hansen 1976, 64 n. 26; Carey 1997, 213 and 2005, 23; Bers 2002, 233; Kapparis 2005, 89; Harris 2013a, 383-84; Phelan 2016, 302-13 (especially p. 313).

duced into court by the *thesmothetai*.<sup>49</sup> What is relevant here is not only the fact that the case was introduced by the *thesmothetai*, but especially that the penalty envisaged was enslavement. However, the reference to the *thesmothetai* is at the very least ambiguous. According to the Aristotelian *Athenaion Politeia*, they dealt with both public and private actions. Moreover, it is not easy to match some features in Dem. 57 with a public action, a fact that has led some scholars to lean towards a private action.<sup>50</sup> In Dem. 57. 21 the speaker asks that the water-clock be stopped, while the herald reads out the witness statement, something that is typical of the private cases. Rubinstein has considered this strong evidence that the case was private; otherwise this would be the only instance in the whole corpus of the orators where a speaker asks for the *klepsydra* to be stopped in a public action.<sup>51</sup> Likewise, the Aristotelian *Athenaion Politeia* states that the water-clock is not stopped in public actions conducted in the measured-out day (*ἡμέρα διαμεμετρημένη*), but that prosecution and defence received the same amount of water.<sup>52</sup> One might add to Rubinstein's remark what Plato says about the criterion of relevance in trials regulated by the water-clock.<sup>53</sup> In these suits the parties involved were not allowed to talk about anything they wanted, but were, on the one hand, limited in presenting their arguments by the water flowing in the *klepsydra* and, on the other, pressed by their opponents to stick to a list of issues outside of which they were not allowed to speak. In both cases two forms of external constraint of the speech are in action.<sup>54</sup> This is consistent with the fact that litigants in private cases swore to speak to the point.<sup>55</sup> So, the fact that Euxitheus emphatically states in his speech that he speaks to the point, unlike his opponent who does not respect this rule, could be taken as an indication that Dem. 57 is a private case.<sup>56</sup> But, as Rhodes and Harris have shown, even litigants in public cases

<sup>49</sup> Arist. *Ath. Pol.* 59.4.

<sup>50</sup> For Dem. 57 as a private case see Rubinstein 2000, 61-62 n. 99; Carawan 2003, 222; MacDowell 2009, 2; Martin 2009, 281 n. 11; Harris 2019, 63.

<sup>51</sup> Rubinstein 2000, 61-62 n. 99.

<sup>52</sup> Arist. *Ath. Pol.* 67.3-5.

<sup>53</sup> Plat. *Thaet.* 172d-e.

<sup>54</sup> Cf. Butti De Lima 1997, 160-61.

<sup>55</sup> Arist. *Ath. Pol.* 67.1. The need for such an oath is explained by Harrison 1971, 163 in the wake of Lipsius 1905-1915 [1984], 918, who considered it as an archaic survival.

<sup>56</sup> Euxitheus states that he speaks *eis to pragma* (Dem. 57. 7, 59-60) or about things that might seem irrelevant but are not (Dem. 57. 63) or he avoids saying something that the judges might consider *exo tou pragmatos* (Dem. 57. 66); on the contrary, his opponent

urge their opponents to stick to the point and so public and private actions were regulated by the same rules of relevance.<sup>57</sup> The large number of witnesses in the speech points to a private case, since in public speeches there is more room for laws and decrees to serve as a means of proof than testimonies.<sup>58</sup> But we have to admit that this strategy can be better explained with the argument that in disputes involving inheritance and contested citizenship producing testimony from several of one's relatives serves to prove that the speaker could rely on the family's support.<sup>59</sup>

More interestingly, Dem. 57 presents some apparent procedural anomalies with respect to the form of public action. First, the speaker claims that Eubulides' allegations are due to personal enmity, in particular to a previous trial for impiety that Eubulides had brought against Lakedaimonios' sister, in which had he acted as a witness for the defence.<sup>60</sup> In that case Eubulides did not gain one-fifth of the votes and, according to penalties for frivolous prosecutions, he suffered a number of limitations: among these, the impossibility of bringing actions of the same kind in the future stands out.<sup>61</sup> How can this limitation be reconciled with his role of accuser in the trial? If we rule out the hypothesis that Euxitheus is lying, a possible explanation is that this rule did not apply to the cases submitted to the court by citizens rejected by the demes.<sup>62</sup> Moreover, individuals acting as *kategoroi* were prosecutors only in name, for they limited themselves to arguing the case in court on behalf of the deme.<sup>63</sup> Second, some scholars have held that if our case were a *graphe*, we would have expected the prosecution to be conducted by a volunteer prosecutor (*ho boulomenos*),<sup>64</sup> but this is not necessarily true because the *syndikoi* that acted as prosecutors in *graphai nomon me epitedeion theinai* were appointed by the Assembly to defend an existing law.<sup>65</sup> Third, unlike *graphai* where the prosecution was left to whoever wished

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slanders him *exo tou pragmatos* (Dem. 57. 33).

<sup>57</sup> Rhodes 2004, 137; Harris 2013a, 114 n. 33 and 2019, 48 n. 25. On the importance of the *enklema* and written documents see Faraguna 2007, 93-101; 2015, 9-12; Harris 2013a, 115-18; 2013b.

<sup>58</sup> Todd 1990, 31-32.

<sup>59</sup> Humphreys 1986; Scafuro 1994. See below III.1.

<sup>60</sup> Dem. 57.8.

<sup>61</sup> Harris 2006, 409 and n. 20.

<sup>62</sup> Harris 2006, 409.

<sup>63</sup> See Harris 2006, 409. Cf. *supra* p. 102.

<sup>64</sup> Gomme 1934, 129; Martin 2009, 281 n. 11.

<sup>65</sup> E.g. Dem 20 and 23.

to take this initiative, in claims to citizenship rejected by the demesmen it was the deme that was in charge of the prosecution.<sup>66</sup> Both the absence of the volunteer prosecutor and the mandatory nature of the accusation can be explained if, in analysing the speech, we overcome the issue of the classification of the case as public or private and turn our attention to what the procedure had to determine, namely whether the defendant was entitled to the privilege of citizenship which he claimed. In this perspective, the form that the *ephesis* took in court may be compared to the *diadikasia*, where the judges had to establish the ownership of a disputed right.<sup>67</sup> As Gomme has already observed,<sup>68</sup> analogies between *ephesis*, *dokimasia* and *diadikasia* explain why Aristotle in his account of the duties of the *thesmothetai* puts these actions together and separates them from both public and private ones.<sup>69</sup> The peculiarity of the *ephesis* is thus better explained in relation to the *graphe xenias*. While the latter had to determine whether the defendant had violated a specific law and fraudulently exercised citizenship rights, in the *ephesis* the judges limited themselves to checking the defendant's identity and to establishing whether he was entitled to the privilege of citizenship on the basis of the conformity of his status with the criteria laid down in the citizenship law.<sup>70</sup>

A last topic worthy of discussion is the alleged procedural disparity between Dem. 57 and Isae. 12. Ancient authors associated the latter speech with the provisions of Demophilus' decree, but Isae. 12 apparently presents a more sophisticated procedure than Dem. 57. The assessment of the procedure ruling the case in Isae. 12 is essential to understanding whether it can be used in reconstituting how the *ephesis* worked. The main problem lies in the mention in Isae. 12 of two different arbitrations preceding the case in court, while in Dem. 57 there is no explicit mention of any arbitration. Scholars have sometimes admitted that arbitration played a role in the *ephesis*, but this is not universally acknowledged. Should we assume that arbitration was an obligatory step in every case of *ephesis* even if not all speeches related to the latter refer to an arbitration judgment? Or rather should we detach the arbitration from the main case? This is a *vexata quaes-*

<sup>66</sup> Paoli 1950; Pelloso 2016, 39; 2017, 539; 2020, 23.

<sup>67</sup> For this definition see Maffi 2002, 111. See also Maffi 2021, 78-79 for the idea that it was the claimants who characterised a *diadikasia* in a public or private sense.

<sup>68</sup> Gomme 1934, 129-30.

<sup>69</sup> Arist. *Ath. Pol.* 59.2-5.

<sup>70</sup> Gomme 1934, 130.

*tio* that scholars have dealt with in divergent ways.<sup>71</sup> More recently Pelloso argues the following version of events.<sup>72</sup> First, Euphiletus was removed from the lists of his deme before 346 BC and in the absence of an *epheisis*, brought a suit for damages (*dike blabes*) against his fellow-demesmen. He won the case, but when the decree of Demophilus was passed, he submitted an *epheisis* against the deme of Erchia and objected to a verdict already in effect. Nevertheless, Euphiletus, although an accuser, played the role of the defendant, as is usually the case in an *epheisis*. While Pelloso is right in separating the arbitration from the main case resulting from the *epheisis*, it is difficult to see how the alleged introduction of the *epheisis* in 346/5 BC could have reopened an already decided case.<sup>73</sup> We should instead believe, according to a more convincing reconstruction, that the background to the case for which arbitration is invoked is the demesmen's refusal to accept the eighteen-year-old Euphiletus on the occasion of his *dokimasia*.<sup>74</sup> From the speaker's words, we can infer that Euphiletus' filiation to Hegesippus was questioned.<sup>75</sup> The account in *Ath. Pol.* 42.1 leads us to argue that a rejected citizen could submit an *epheisis* only if he had been rejected on account of his slave status;<sup>76</sup> instead, when illegitimate birth was the cause of the

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<sup>71</sup> According to a hypothesis by Schoemann, the request to review the registers in 346/5 BC gave rise to so many *epheiseis* that it was necessary to allow a form of collaboration, as much extraordinary as temporary, between public arbitrators and the court, especially in the *anakrisis* (Wyse 1904, 716-17; Bonner 1907, 416; Rhodes 1981, 500; Kierstead 2017, 453 n. 44; *contra* Lipsius 1905-1915 [1984], 629). Some scholars have argued that Euxitheus' silence on the role of arbitrators proves his lack of interest in evoking a previous unfavourable judgement or an ineffective pronouncement on the resolution of the case (Wyse 1904, 716), but this would be inconsistent with Euphiletus' statement that the arbitration ended with a judgment in favour of Euphiletus (Isae. 12.12). Others have inferred from Euxitheus' silence that arbitration was no longer an option available in 346 and that the *epheisis* was a novelty introduced by Demophilus' decree (Diller 1932 and 1935, followed with slight modifications by Carey 2005, 24; Kapparis 2005, 86-95).

<sup>72</sup> Pelloso 2016, 40; 2017, 540-43; 2020, 24-27.

<sup>73</sup> We refer to the principle of the *res iudicata* in Dem. 20.147; 24.54.

<sup>74</sup> See Gomme 1934, 127 n. 10. The same view in Kapparis 2005, 86-95, followed by Phelan 2016, 36, 278-79. Differently, MacDowell 1978, 207 has believed that public arbitration in Isae. 12 was linked to the prosecution of the demesmen for unlawful deletion of one of the fellow-demesmen's names from the register.

<sup>75</sup> Isae. 12.11-12.

<sup>76</sup> The account in the *Ath. Pol.* 42.1 has raised different views. According to Rhodes 1981, 500 the demes, after assessing the legal age, valued both free status and legitimate birth. Otherwise, Gomme 1934, 132 has suggested that the possibility of submitting an

rejection, *ephesis* was not an available option. Evidence from fourth-century arbitrations shows that contested filiation was a matter for public arbitrators;<sup>77</sup> if these disputes were not resolved in the arbitration, they were introduced by the Forty in court through *dikai*. In Euphiletus' case even the reference to the arbitration looks anomalous, but the duration of two years for a single arbitration should be excluded as the arbitrators' appointment was annual; rather, it can be explained by the death of the local demarch and the need for a second arbitration.<sup>78</sup> The arbitrator's verdict was favourable to Euphiletus and the parties accepted it.<sup>79</sup> But the demesmen exploited the general *diapsephisis* to remove Euphiletus from the deme's register, perhaps soon after the first rejection.<sup>80</sup> This is consistent with the speaker's statement that the demesmen acted unfairly in rejecting Euphiletus, who had at first been duly enrolled in the deme.<sup>81</sup> The *ephesis* against the new decision of his rejection by the *demotai* was the occasion for which Isae. 12 was composed; instead, the reference to arbitration represents the factual and legal background of the matter and has no direct connection with the *ephesis*.

If our interpretation is right, there is no reason to distinguish Dem. 57 and Isae. 12 in procedural terms, as both speeches were composed for cases of contested rejection from the list of the demesmen. Since we have two cases dealing with the same subject matter and conducted in a similar way

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*ephesis* was limited to those cases where the candidate was rejected on the basis that he was a slave, who had passed himself off as a citizen. Cf. also Cohen 2000, 61 n. 82; Kierstead 2017, 447.

<sup>77</sup> [Dem.] 59.55-61; And. 1.126-127; the legal case which opposed Mantitheus and Boiotus (Dem. 39 and 40) with Kapparis 2005, 86-89.

<sup>78</sup> Kapparis 2005, 89-90; *contra* Cobetto Ghiggia 2012, 467-68. A possible alternative is that of a motion for a new trial because the judgment was passed by default (*antilexis tes me ouses*, cf. *Lex. Cant.* s.v. ἀντιλαχεῖν καὶ ἀντίληξις). Cf. Lipsius 1905-1915 [1984], 628.

<sup>79</sup> This fact rules out the possibility, already suggested by Lipsius 1905-1915 [1984], 415, that the trial in Isae. 12 results from the demesmen's *ephesis* against the arbitrator's judgment: first, the verdict was accepted by both sides (Isae. 12.12); second, if it were an *ephesis* against the arbitrator's judgment, the demesmen would have submitted the trial in court, but Isae. 12.8 allows us to exclude this.

<sup>80</sup> This assumption is justified by the fact that it is not Euphiletus who speaks in court, but his elder brother - 13 years older than him - and that there is no mention in the speech of Euphiletus' actions and his adult life in the deme.

<sup>81</sup> Isae. 12.12: ἐπεὶ ἔδοξαν αὐτοῖς ἀδικεῖν τοῦτον Ἀθηναῖον ὄντα καὶ κυρίως πρῶτον ἐγγραφέντα ὕστερον ἐξαλείψαντες.

from a procedural point of view, we can use them both to see how speakers who played the role of defendants in an *epheisis* built their argumentative strategy. Both their forensic arguments, as we will see, were grounded in the laws and legal procedure that regulated their case.

### III.

Euxitheus' forensic strategy and the legal basis of his speech are more easily recognised if we discard a recurring prejudice: the idea that the courts decided the case on the basis of how far Euxitheus' speech was compatible with the judges' 'idea' of what a citizen can and must do in the *polis*, as if the judges' personal conceptualization of citizenship guided them in their decision. The fallacious character of this approach, which is dominant in modern studies, is evident from the fact that it leads scholars to opposite results. According to some, the strength of Euxitheus' discourse lies in the emphasis it places on the religious dimension of citizenship, which the judges considered the qualifying condition of an Athenian citizen. This thesis, argued more thoroughly by Blok, maintains that since Euxitheus' speech 'had to be cast in terms in which the *dikastai* would recognise their own conceptions and expectations', the speaker had to stress the religious dimension of citizenship rather than the political one.<sup>82</sup> This interpretative model contrasts with other scholarly views, which claim that Euxitheus' discourse was ineffective because it did not adhere to the political definition of the citizen, who is such insofar as he holds political offices. According to this view, Euxitheus' frequent reference to his religious activities is proof of the ineffectiveness of his legal arguments. Euxitheus' speech gives little space to the political dimension of citizenship because it was poorly represented in his personal experience. Hence the conclusion that Euxitheus' speech was structured for the purpose of giving citizenship a vision only 'rhetorically constructed' but lacking in legally relevant arguments.<sup>83</sup>

We will adopt a different approach. In our perspective the crucial point is exactly what the court had to decide in this particular form of *epheisis*. We know that in the *epheisis* procedure from a scrutiny (*diapsephisis*) the court had to decide whether the rejected candidate was of legitimate Athenian

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<sup>82</sup> Blok 2017, 6.

<sup>83</sup> Cohen 2003, 90. See below III.1.



birth. This requirement had been the legal basis for citizenship in Athens since 451, and this is what the court had to assess, nothing else. An *epheis* procedure from a scrutiny, as rightly pointed out by Gomme, had closer analogies to a *diadikasia* than to any other class of trial.<sup>84</sup> Just as happened in a *diadikasia*, the court assessed the entitlement to a right. In Euxitheus' case, what was being assessed was whether or not Euxitheus had the necessary qualifications, whether he was entitled to the privilege of citizenship or if (as Eubulides argued) he falsely claimed the privilege. In his speech Euxitheus had to keep to the point in a way which corresponded to the issue the court had to decide. We should likewise keep to the point (considering the legal procedure and the issue) when searching for the standard of relevance in Euxitheus' speech. If we adopt this perspective, the legal arguments of Euxitheus' speech appear perfectly coherent. In fact, on the one hand, Euxitheus recalls the numerous occasions on which he has participated in religious activities reserved to citizens, that is, to those whose parents were both Athenians (such activities were forbidden to *nothoi* as well as naturalised citizens), giving details of his (other) public functions only when related to the case. On the other hand, in order to overcome the main obstacle before the judges, namely the sentence of rejection imposed by his fellow-demesmen, Euxitheus introduces the motif of Eubulides' personal resentment and his portrayal of him as a sykophant and a corrupt individual, taking great care to prove that that vote was marred by several and glaring procedural irregularities that were in defiance of Demophilus' decree. His vivid account of a private rivalry that turned into a plot against him constitutes an explanatory context to question the soundness of his rejection.

The legal arguments of Euxitheus' speech are thus essentially two, associated in the *exordium* and then coherently developed in the following parts of the discourse: (1) the participation in the rituals (*ta hiera*) reserved for citizens by descent is a qualifying proof of his status as a citizen; (2) the evidence of Eubulides' conspiracy is proof of the falsity of his allegations and its success in deceiving the demesmen and of his failing to follow the correct legal procedure.

### **III.1.**

The religious argument in Euxitheus' speech is the most relevant to his

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<sup>84</sup> Gomme 1934, 130. Cfr. *supra* pp. 107-108.

proofs of his descent, since birth from Athenian parents was a prerequisite for sharing in the *hiera*. The Athenians used the term *hiera* to define their rites as a whole, the ceremonies, sacrifices, and sacred places in which citizens by birth (*οἱ γένει πολῖται*) took part, and the roles that only Athenians ‘born from two Athenians’ were entitled to perform in the cults, including the right of holding priesthoods.<sup>85</sup> The argument used by Euxitheus to prove his status as a citizen by birth is that during his whole life he has had regular and unlimited access to the *hiera*. Only someone who, like Euxitheus, descended from parents who were both citizens could sacrifice as a citizen on behalf of the city with other citizens (57.47)<sup>86</sup> and access the sanctuaries and ‘other sacred places of the city’ (57.54). Only someone who, like Euxitheus, belonged to a recognised *genos* and was regularly registered as belonging to a *phratry* could be legitimately selected to exercise priesthood (57.46-48). This last role was prohibited not only for foreigners, but also for metics, *nothoi*, and naturalised citizens (the so-called *δημοποίητοι πολῖται* or *πολίται ποιητοῖ*).<sup>87</sup>

Breaking the law of citizenship by claiming a right to which one was not entitled was a very serious crime, and the crucial role assigned to the judge in this context is explicitly cited by Euxitheus: the judges must prevent the intrusion of false citizens into the *hiera*, identifying and punishing those who participate without any right to do so. The judges’ role in the punishment of this crime has already been underlined at the outset of Euxitheus’ oration, in which he affirms that it is necessary for the judges ‘to treat with severity’ those who ‘have secretly and forcibly shared in your sacred rites’ (57.3). This argument is resumed and developed, not by chance, in the section devoted to proofs (*pisteis*). Here Euxitheus maintains that the issue to be settled in trials concerning citizenship is descent from Athenian parents (57.17), an issue to which he himself strictly adheres – almost always, as we shall see – as being directly related to the religious argument. In this

<sup>85</sup> See Blok 2009, 161 ff.; Blok-Lambert 2009.

<sup>86</sup> On the irrelevant role of metics in sacrifices, cf. Whitehead 1977, 86-89; Detienne 1982, 131 ff.; Kamen 2013, 43-61.

<sup>87</sup> [Dem.] 59.104. Blok-Lambert 2009, 100-1, 104; Lambert 2010, 148: ‘*genos* membership and *genos* priesthood were one of the *intima* of citizenship from which foreigners made Athenians by decree were excluded’ and *ibid.* n. 36 ‘while new citizens were usually admitted to phratries and demes they were never admitted to *gene*’. See also Fröhlich 2016, 120. For a comparison with other Greek cities see Garland 1984, 85, and Müller 2014, 552.

same paragraph, Euxitheus invites the judges to restore his status should they deem him a legitimate citizen; otherwise, he invites them to act ‘*in whatever manner seems to you to be pious*’ (πράττειν ὅποιον ἄν τι ὑμῖν εὐσεβὲς εἶναι δοκῆι).

How should we understand Euxitheus’ appeal to the judges to hand down a *eusebes* judgement? Let us begin by stating what Euxitheus’ appeal is not: it is not a generic appeal to the judges ‘to act in keeping with their religious practices’, or ‘flattery’ of the judges ‘by referring to their crucial role as judges in upholding Athenian values’.<sup>88</sup> On the contrary, Euxitheus’ appeal to the judges to give an *eusebes* verdict is particularly weighty in legal terms: his demand is to apply those laws that govern the facts of the case and require the punishment of false citizens. These laws of citizenship are defined by the Athenians as ‘pious laws’.<sup>89</sup> It is not insignificant that the demand is formulated in the same paragraph (§17) in which Euxitheus clearly identifies the terms of the case and implicitly recalls the relevant laws, i.e. the rules on citizenship, that is, the law of Pericles, Nicomenes’ decree and the law of Aristophon.<sup>90</sup> In this sense, it is correct to say that Euxitheus’ appeal is coherent with the judicial oath, precisely on the point where the judges swore to apply the laws.<sup>91</sup>

This appeal should not be understood – as suggested – as a generic reference to the ‘sacred bond’ that derives from the oath.<sup>92</sup> That of Euxitheus, on the other hand, is a timely reminder of the judges’ commitment to act according to regulations on citizenship enshrined in the written laws, hence, if necessary, to punish false citizens, delivering a *eusebes* verdict.<sup>93</sup> In interpreting this passage correctly, it is useful to consider that judges called upon to judge infringements of the citizenship law were bound to keep the city free from the impure by identifying and punishing false citizens who

<sup>88</sup> As stated by Phelan 2016, 134-35.

<sup>89</sup> See Isae. 6.49.

<sup>90</sup> Arist. *Ath. Pol.* 26.4; Plut. *Per.* 37.2-5. Nicomenes’ proposal is reported by Eumelos *FGrHist/BNJ* 77 F 2 (= *schol.* in Aeschin. 1.39). Athenaeus 13.577C mentions the law of Aristophon. *Supra* pp. 99-100 nn. 22-23.

<sup>91</sup> See Carey 1997, 219 ‘*deal with me in any manner you think consistent with your oath*’, and Bers 2002, 112 n. 6 ‘*in accordance with the jurymen’s oath*’.

<sup>92</sup> Phelan 2016, 134.

<sup>93</sup> On the laws of the *polis* as an important part of the relationship between religion and the *polis*, see Harris 2006, 41-80. See also Harris 2015, 29-30 on the relationship between *ta patria* rules and polis regulations.

participated in the sacred rites.

For the Athenians, the fact of false citizens participating in the *hiera* was an act of impiety. Consequently, the punishment of false citizens was automatically viewed as ‘pious’ (*eusebes*) inasmuch as it respected ‘pious’ laws. Comparisons with Isae. 6 and [Dem.] 59 are relevant here. In Isaeus’ speech *On the Estate of Philoctemon*, the speaker stresses that illegitimate children (*nothoi*) are not allowed a share in the *hiera* (6.47, 49) and a little later he calls ‘pious’ the relevant laws.<sup>94</sup> The law excluding the *nothoi* from the *hiera* is evidently the law about Athenian citizenship restored by decree of Nicomenes in 403, paraphrased by the speaker at the point where the law affirms that:

According to the law no male or female illegitimate child has any right, based on kinship, to participate in the cults or property of a family since the archonship of Euclidean.<sup>95</sup> (Loeb’s translation with slight changes)

In the Pseudo-Demosthenic speech *Against Neaera* the vocabulary employed to define the impious nature of the crime of pretending to be a citizen is similar to that used by Euxitheus. Neaera, as a false citizen, is responsible for ‘*such flagrant impiety toward the gods, of such outrage toward the commonwealth, and of such contempt for your laws*’ (59.12). The speaker warns the judges of the risks of leaving unpunished a woman ‘*who treats the city with outrage and the gods with impiety, and who is a citizen neither by birth nor by the gift of the people*’ (59.107). Above all, the speaker reminds the judges of their duty to punish a false citizen, once identified, as impious:

Now that you all know the facts and have got her in your own hands, and have the power to punish her, the sin against the gods becomes your own, if you fail to do so (59.109).

What is univocally affirmed by the speech of Euxitheus and the other orators is that, on the one hand, participation by false citizens in the *hiera* ‘*treats the city with outrage (hybris) and the gods with impiety (asebeia)*’, and on the other, that only the judges’ delivering of an *eusebes* verdict, that

<sup>94</sup> Isae. 6.49: *ταὐτὰ τὰ γράμματα, ὧ ἄνδρες, ὑμεῖς, οὕτω σεμνὰ καὶ εὐσεβῆ ἐνομοθετήσατε*. See Martin 2009, 283.

<sup>95</sup> Isae. 6.47: *ἐκεῖ μὲν γὰρ ἐστὶ νόθῳ μηδὲ νόθῃ <μη> εἶναι ἀγχιστεῖαν μήθ’ ἱερῶν μήθ’ ὀσίων ἀπ’ Εὐκλείδου ἄρχοντος*. See also Dem. 40.3. A different law punished the impiety of those slaves who participated in the *hiera* (Isae. 6.49-51).

is, by applying the laws, will keep the city pure.<sup>96</sup> It is significant that Euxitheus also defines as ‘pious’ the vote given by his demesmen on all occasions in which his status and that of his father had been subject to scrutiny by regular procedures: i.e. when the demarchs had ‘voted piously (*óσίως*) without any conspiracy (57.62). Due to the very consequences that determine the breach of the citizenship laws, demarchs who knowingly admit the impure into the civic community, because they are corrupt, are guilty of impiety since they have not voted piously (*óσίως*).<sup>97</sup>

Likewise, guilty of the same crime are those who, in their exercise of the demarchy, act as sykophants, making malicious accusations of false citizenship. Eubulides is a perfect example of a demarch doubly guilty of impiety: for having introduced the impure into the civic community and then, as a sykophant, for excluding from the civic body a legitimate citizen like Euxitheus. In the former case, as demarch, Eubulides admitted false citizens into the demos of Halimous, registering them on the records in exchange for money (57.60-62), exactly as his father Antiphilus had (who in turn was demarch prior to Eubulides).<sup>98</sup> In the second case, again in his role as demarch, Eubulides exploited the extraordinary scrutiny of the civic lists imposed by the decree of Demophilus as the occasion to avenge himself on Euxitheus who had several times opposed him (57.63-64), as demarch in his turn, particularly with regard to matters pertinent to the sacred (on which, see below).

Accusations of sykophancy relating to a matter as crucial as citizenship regulations are recurrent in the discourse of Euxitheus (57.32, 34, 49, 57) and, more generally, in the *corpus* of Attic orators.<sup>99</sup> This connection permits careful consideration, because it allows a direct relationship to be drawn between the decree of Demophilus and the law on citizenship, the

<sup>96</sup> Pace Eidinow 2015, 72, the association of the concept of *asebeia* ‘with the risk of the violation, and destruction of citizenship—at the judges’ own hands’ is never ‘vague’ in [Dem.] 59. Moreover, and more generally, Attic orators frequently recognise the role of those who, by punishing the guilty, honour the whole city (e.g. Lyc. 1; Dem. 20 and 21, 22, 23). See Bowden 2015 on the connection between *eusebeia* and *philotimia* in honorary decrees as “representing the ideal relationship between the individual and the gods on the one hand, and mortals on the other”. On the association between citizenship and the sacred and the way it was conceptualized in the notion of autochthony, see Barbato 2020; Ferrucci 2021.

<sup>97</sup> On the semantic link between *eusebes* and *hosios*, see Peels 2015.

<sup>98</sup> See below p. 135.

<sup>99</sup> See e.g. Dem. 39 and 40.

relevant law for Euxitheus' case. It cannot be excluded that the 403 re-enactment of the laws of citizenship contemplated the crime of false accusations against legitimate citizens and prescribed the punishment of those who jeopardised citizens' rights, in particular by launching false accusations as to maternal origins.

The sources show that, a few years after Pericles' enactment of 451/0, sykophants are associated with a scrutiny of the citizen-rolls at the time of Psammetichus' gift of grain in 445/4 BCE. At that time, it appears that many citizens of illegal birth (*nothoi*) fraudulently enrolled in demes and phratries 'fell victim to denunciation by sykophants' and were convicted and sold into slavery.<sup>100</sup> The sykophants' role here is apparently that of accusers motivated by the rewards they received for successful prosecutions.<sup>101</sup> But the point that should be emphasised is that, according to Plutarch, it was the maternal foreign origin of many of the defendants that was the matter of the allegations. Plutarch does not speak of foreigners or metics, but only of *nothoi*.<sup>102</sup>

Now, in the same paragraph (57.30) where Euxitheus cites the law on citizenship of 403, he accuses Eubulides of sykophancy for having infringed 'the decree', precisely because he slandered Euxitheus in his mother's case. Eubulides' slander, which concerns doing business in the marketplace, is contrary to the decree. But which decree is meant? It is 'highly plausible' that the decree mentioned at § 30 is the same as at § 7 and § 63, namely that of Demophilus.<sup>103</sup> Evidently, it cannot be affirmed with any certainty that

<sup>100</sup> Plut. *Per.* 37, 3-4; *schol.* in Aristoph. *Vesp.* 718 (Philochorus *FGrHist/BNJ* 328 F 119). See also Valdés Guía 2019-2020, 19-41.

<sup>101</sup> The accusers keep one third of the property expropriated by the state from those convicted of *graphe xenias* (MacDowell 1978, 62-65; Phelan 2016, 177).

<sup>102</sup> See Ebbott 2003, 74: 'In Athens after the Periclean citizenship law of 451/450 BC, the children of 'mixed' parents, that is one Athenian and one non-Athenian, are considered *nothoi*. Although it is generally assumed to be cases of Athenian men producing children with non-Athenian women that this law was intended for'. See also Ferrucci 2017 and 2021.

<sup>103</sup> Phelan 2016, 171, identifies 57.30 as 'the decree' that of Demophilus, without however establishing any connection with the law of citizenship cited in the same paragraph. In line with this interpretation is the translation that considers the accusations of Eubulides on market activities as being against the decree (i.e. "in reproaching us with service in the market" Eubulides has acted contrary to the decree' (see Carey 1997, 222; Bers 2002, 117; Phelan 2016, 74), not the market activities forbidden by decree. On the 'décret qui régleme le marché' Gernet (1960, 23) is surely wrong. This view and interpretation will be dealt with in detail in a forthcoming paper by Elisabetta Poddighe.

the role of sykophants was explicitly contemplated in 403, on the occasion of the re-enactment of the law of Pericles. What is certain however is that any breach of the decree of Demophilus (57.7, 30, 63) – which could not be in contrast with the law of 403 – meant acting as a sykophant against the law on citizenship.<sup>104</sup> In such a context, the accusation made by Euxitheus against Eubulides, of having acted as a sykophant and in an impious manner (i.e. not *hosios*) by voting falsely in the demos ballot (57.62) and launching irrelevant accusations about the status of Euxitheus's mother, is relevant to the legal procedure and the laws on citizenship underpinning Euxitheus' case, since Eubulides acted simultaneously against the decree of Demophilus and against the law of citizenship.

The recognition of the right of access to the *hiera* for members of the citizen group is maintained without hesitation throughout by Euxitheus, who only departs from it after warning the judges that he is going to make a digression from his main theme (see below). The re-evocation of the forms of participation in the *hiera* (or of their safeguarding) is especially accurate when Euxitheus dwells on his candidature for a priesthood (57.46-48), his position as phratriarch (57.23), and his duties as demarch during which he vigorously opposed Eubulides' sacrilegious actions (57.63-65). Even the entire section of proofs (*pisteis*) devoted to his parents' status as citizens (57.18-45) is built on his basic argument that all members of his family have regularly taken part in the rites reserved to citizens by birth according to the laws.

Euxitheus' argument is, in fact, legally based on the citizenship law, which specifically excludes the illegitimate (*nothoi*) from the *hiera*, as shown by the form of the law on its re-enactment in 403.<sup>105</sup> Since his parents' participation in the rites is governed by this law, it is clear that Euxitheus is speaking of the *oikos*, phratry and *genos* of origin in connection with the religious argument in order to prove his parents' legal status as citizens. This point should be noted in any effort to identify the arguments relevant to proceedings concerning legitimate descent. It is clear that, in such a context, participation in the rites is of decisive importance, while the political dimension of citizenship is not (or is less so). Indeed, even naturalised citizens are granted access to political offices, but they are denied the

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<sup>104</sup> See above § I.

<sup>105</sup> Isae. 6.49-50. See above § II.

right to priesthood.<sup>106</sup> Distinguishing between descent status as a principle on which Athenian citizenship is based (on which Euxitheus insists) and the general notion of citizenship (which Euxitheus is not interested in defining) is not only appropriate, but necessary.<sup>107</sup>

Whereas the notion of citizenship may be relevant to a wide range of activities in the political, economic, and cultural sphere,<sup>108</sup> besides that of religion, the motive of descent – which, we repeat, is the key point in the procedure against Euxitheus – must necessarily be affirmed by arguments demonstrating the participation of Euxitheus and his family in the *hiera*. This clear distinction renders it perfectly comprehensible that Euxitheus should choose to depict his status as a legitimate citizen by recalling his and his parents' prerogative of 'participation in the sacred'.<sup>109</sup>

The relevance of the religious argument in proving his parents' status is clear. Thoucritos and Nicarete, Euxitheus's father and mother, have had regular access to the *hiera* and this – more than any other argument – proves their status as legitimate *astoi*<sup>110</sup> (57.18-45). Euxitheus does not, however, restrict himself to affirming tautologically as the principal strand of evidence of his family origins that 'he himself, his parents and other relatives all participated in the group activities typical of Athenian citizens, namely the cults and religious rituals marking Athenian Kinship'.<sup>111</sup>

Euxitheus supports his discourse by providing precise factual references, using a forensic strategy with two main narratives. On the one hand, Euxitheus declares that he is aware of the obligation to introduce and recall proofs concerning his family origins only if relevant to the point (i.e. those directly linked to the legal procedure for ascertaining his Athenian kinship, proved legally by access to the *hiera*).<sup>112</sup> On the other, Euxitheus takes care to remind the judges that, despite his diligence in observing the rule of

<sup>106</sup> Above n. 87.

<sup>107</sup> MacDowell 2009, 289 n. 6 rightly affirms: 'Citizenship conferred as a distinction on an alien is not relevant to the case of Euxitheos'.

<sup>108</sup> See Müller 2014; Duploux 2018; Canevaro 2020.

<sup>109</sup> Martin 2009, 280-83; Frölich 2016, 120; Blok 2017, 7-11.

<sup>110</sup> On Euxitheus' prevailing use of the term *astos*, according to the wording of the law of Pericles (quoted by Arist. *Ath. Pol.* 26.3), rather than *polites*, cf. Blok 2017, 9-11. On the meaning that *astos* assumes in more ancient documentation (prior to the law of Pericles) and the role of residence as an essential feature of early citizenship terminology, see Poddighe 2014, 86, 323-24; Canevaro 2017, 52; Duploux 2018, 32-36.

<sup>111</sup> Thus Blok 2017, 7.

<sup>112</sup> Dem. 57.7, 33, 59, 60.



‘keeping to the point’, in some parts of his speech, he will be forced to recall events that are, or may appear to be, beyond the matter in question (*exo tou pragmatos*) since they are not directly linked to the law on citizenship and to the matter of Athenian kinship.<sup>113</sup> In all such cases, he affirms, the blame falls on Eubulides, or rather on the tenor of the irrelevant accusations made against him by Eubulides concerning his parents’ origin: accusations based on arguments beyond the scope of the legal procedure.

Taking a few examples of this double forensic strategy, we may begin with the second rhetorical device, that of advising the judges of the fact that Euxitheus is forced to reject an accusation even if it is not pertinent to the facts of the case.

The first example is the argument concerning the ‘bizarre’ accent of his father Thoucritos, an argument used by Eubulides and other Halimousian demesmen for the rejection of Euxitheus. It is the accusation that opens the section of proofs concerning Thoucritos (§§ 18-30): “They have maliciously asserted that my father spoke with a foreign accent” (57.18). Now, in this case Euxitheus does not explicitly affirm that the accusation touches on irrelevant aspects, but the cogent reasoning launched by this accusation, duly depicting the many facts that demonstrated Thoucritos’ legitimate origins (i.e. that he shared in the *hiera*, that he frequently passed scrutiny (*dokimasia*) and *diapsephisis* procedures, and that he was selected for offices)<sup>114</sup> reaches, in the final paragraph, precisely this conclusion: that these accusations are not relevant (57.30) and should not even be considered. Euxitheus not only demonstrates the reasons for his father’s accent, in particular recalling the events of the latter’s long exile, because ‘he was taken prisoner by the enemy during the Decelean War and was sold into slavery and taken to Leucas’ (57.18), but is explicit with regard to the fact that the tacit inferences as to the reason for his accent (the presumed foreign origin of Thoucritos’ mother) are not relevant, having no legal value.<sup>115</sup> Indeed, the 403 law on citizenship (cited in the paragraph that concludes the section of *pisteis* on Thoucritos) merely prescribes, as the criterion of access, Athenian origin “on only one side”, and consequently, Euxitheus notes ‘even if

<sup>113</sup> Dem. 57.7, 33, 59, 60, 63, 66.

<sup>114</sup> 57.19-29. It is worth noting that, when Antiphilus, Eubulides’ father, was demarch, the deme register disappeared, and a scrutiny was held in which no one questioned his father’s citizenship (57.26-7).

<sup>115</sup> Indeed, the previous paragraphs conclude with the evidence that Euxitheus would be counted an Athenian on his father’s side.

he was a citizen on only one side, he was entitled to be considered a citizen' (57.30).<sup>116</sup> The point that Euxitheus affirms in this conclusive paragraph is not only 'an implicit reference to an apparently well-known law on legitimacy',<sup>117</sup> but what we find here is a very explicit reference to the relevant law on citizenship which Euxitheus demonstrates that he knows very well.

A second example of the same rhetorical device is found in the evidence relating to his maternal origin. Eubulides had challenged Euxitheus about the craft exercised by his mother. Nicarete actually sold ribbons in the marketplace and had hired herself out as a wet-nurse, both professions that were not considered proper employment for an Athenian woman and therefore a sign that she was not Athenian (57.30). In this case, Euxitheus resorts explicitly to the argument that the accusation is unrelated to the facts of the case, which is focused on Athenian descent and not on Nicarete's social status (57.35). 'What does this have to do with our ancestry?' asks Euxitheus, immediately after defining Eubulides' inferences as the typical conduct of the 'sykophant's game' (57.34).

Further evidence that Euxitheus' speech was based on legal reasoning stemming from the written laws is shown by the series of legal regulations listed, all relevant to the facts of the case, all within a few paragraphs (57.30-32): (1) first, Euxitheus recognises Eubulides' accusations as proofs on breach of the decree of Demophilus, which evidently prohibited recourse to irrelevant facts (the humble profession of a market seller, in this case) to sow doubt on the maternal origin of an Athenian (57.30); (2) second, he cites the laws, relevant and connected, which declare that anyone who reproaches any male or female citizen with doing business in the market shall be liable to the penalties for evil-speaking; (3) Third, he pertinently recalls a law attributed to Solon, and then renewed by Aristophon, according to which only Athenians were allowed to do business in the marketplace (57.31-32).<sup>118</sup> Here too, such regulations safeguard citizens who work and may not be despised for the professions they exercise.

This list including a decree and laws in 30-32 is the exact opposite of a disordered and incoherent 'mass' of miscellaneous decrees and laws that

<sup>116</sup> The proof is that he passed successfully all investigations into his origins and had access to public offices, rapidly recalled only because they do not directly prove his descent.

<sup>117</sup> Blok 2017, 9.

<sup>118</sup> On these two laws: Loddo 2018. See also Cohen 2005, 35, Cecchet 2017, 126-29; Arnaoutoglou 2018, 188.

Euxitheus recalls in a sort of ‘legal accumulation’ with the sole purpose of impressing the judges.<sup>119</sup> Instead, it is a coherent list of legal rules that Euxitheus recalls to prove that Eubulides acted against all of them (the decree and the related laws). And so, in disregard of the values shared by the polis, which, since the time of Solon and his laws (57.32), has safeguarded its citizens against the unjust allegations that humiliated the humblest professions.<sup>120</sup>

Just as indicative of Euxitheus’ abiding by his commitment to deal only with matters relevant to the case are the numerous passages in which he declares his awareness of his duty to introduce and recall proofs and events concerning his family origins only if relevant to the point (those more or less directly connected to the *hiera*-Athenian kinship question).

The category of relevant topics certainly includes testimony concerning his family origins. On his father’s side, the first to bear witness are Thoucritos’ ‘living relatives on both the male and the female side’ who give testimony ‘swearing under oath that my father was an Athenian and a kinsman (*syngenes*) to them’, therefore ‘justly entitled to the right of citizenship’ (57.22-23); then the members of Thoucritos’ phratry, the members of his *genos* and the demesmen to testify that Euxitheus had been elected phratriarch (23); later, other phratry members, demesmen, and members of the *genos* testify to the judges that Thoucritos ‘was selected to offices by lot and, having been approved by scrutiny (*dokimasia*), he held office’ (25), and that he passed *diapsephisis* procedures (26); lastly are indicated the members of the *genos* who share ‘his ancestral tombs’ (28).<sup>121</sup>

In reporting witnesses of his mother’s status Euxitheus follows an order identical to that followed for Thoucritos’s kin: he begins with Nicarete’s natal *oikos* (37-40), then proceeds with her (two) marital *oikoi* (40-43) and, lastly, mentions the *phrateres* and demesmen of his mother’s male kin. The natal *oikos* is represented by Nicarete’s surviving kin, both male and female. Nicarete’s marital *oikoi* are two, since Nicarete was first married to Protomachus (by whom she had a son and a daughter) and later married Thoucritos, Euxitheus’ father. For Nicarete’s first marital *oikos*,

<sup>119</sup> In any case, it would be a legal case, because Euxitheus could have used legal accumulation and built a weak case, but still it would be a case based on the laws and not a case based on rhetoric, social status, and performance.

<sup>120</sup> On this point, see Poddighe’s forthcoming paper.

<sup>121</sup> Scafuro 1994, 156-70. See also Hunter 1994, 112-19; Cohen 2003, 80-90; Rubinstein 2005; Lape 2010, 20 ff.; Faraguna 2014, 178; Kapparis 2019, 222-23.

Euxitheus reports the testimony of the male progeny of Protomachus, Nicarete's former husband; then Eunicos is called, the husband of Nicarete's daughter, and, lastly, Nicarete's son. Last of all, as in the case of Thoucritos, the *phrateres* and demesmen testify that Nicarete's kin are members of the *phratry* and of the *deme*<sup>122</sup>. This section contains the most relevant fact: that Euxitheus' father Thoucritos married his mother regularly and had provided a ceremony (*engyesis*) for the *phrateres*, of which there are several living witnesses, including Nicarete's brother Timocrates and both his uncles (41). Noteworthy is the importance given to the fact that Nicarete was given in matrimony regularly by her brother Timocrates, who was her guardian (*kyrios*) and is called upon to testify. Equally relevant is the statement that her divorce from her first husband was exclusively due to economic reasons: her first husband Protomachos, a poor man, stood to win the inheritance of a rich heiress (*epikleros*) and persuaded Thoucritos to take her.<sup>123</sup> However, the most convincing fact is that two citizens (Protomachos and Thoucritos) married Nicarete, thus proving that she was 'a native and citizen' (43).

The fullness of the testimony on the maternal side (57.36-45) is justified for the reasons already stated: Thoucritos, born prior to 403, had no need to prove his maternal origins, and Euxitheus had to show that his father's marriage to Nicarete had taken place according to law. Although it has been observed that some of the testimony was not relevant to the case – as for example the references to Nicarete's uncles and cousins (57.37-38),<sup>124</sup> in fact when Euxitheus affirms that his maternal uncle Amytheon was killed during the campaign in Sicily (or that his maternal cousin Ctesibios was killed serving under Thrasybulus at Abydos) he evokes facts that are relevant to his attempt to prove his citizenship.<sup>125</sup>

As regards the debated problem of the quality and relevance of testimony attesting the civic origin of Euxitheus' parents, some wider considerations may be appropriate. Witnesses were the primary means of proving civic identity and those called by Euxitheus are qualified for the purpose. Since 'personal knowledge and oral testimonies of relatives, *phrateres* and

<sup>122</sup> Scafuro 1994, 167.

<sup>123</sup> On this point Scafuro 1994, 167.

<sup>124</sup> Lanni 2018, 133 on Euxitheus' listing of ancestors who had died fighting for the city as an example of his adherence to extra-statutory norms to influence the judges.

<sup>125</sup> Harris 2013a, 397.

demesmen are apparently the only method of proving civic identity'<sup>126</sup> Euxitheus states that the judges 'have heard the testimony of all the appropriate people, members of my phratry, members of my deme, and members of my *genos* (57.24). The formal criterion for citizenship was parentage. Doubts raised by scholars concerning the fact that Euxitheos may only have produced as witnesses demesmen who were also kinsmen<sup>127</sup> do not take into account the fact that 'the polis recognised and expected that a *polites* and *politis* would provide just such testimonies as credentials: witnesses to the kin and communal events.<sup>128</sup> Furthermore, in inheritance disputes, the types of events witnessed are the same as in proving civic identity: dependence on witnesses to kin and communal events.<sup>129</sup> The relevance of such testimony cannot be diminished by the observation that Euxitheus' witnesses were unable to bear witness on all sorts of events and every single act performed by Euxitheus between birth and the age of majority.<sup>130</sup>

There are clear analogies in Euxitheus' reporting proofs of his parents' status and his own civic identity. The order followed by Euxitheus in recalling the topical episodes of his parents' lives, acknowledged and described by scholars, proceeds from *oikos* to *genos* to *demos*.<sup>131</sup> The same pattern is adopted when Euxitheus advises the judges that he will also provide 'all the relevant things' to prove that being born of two citizen parents and having inherited their lineage, he is a citizen (57.46). Among the most important things are the witnesses to the fact that he was introduced to the phratry, that he was recorded on the register of demesmen and that having been approved by scrutiny he held offices (57.46). But the most relevant thing for Euxitheus is that he was chosen by the demesmen to draw lots with men of

<sup>126</sup> Faraguna 2014, 178-79.

<sup>127</sup> Osborne 1985 [2010], 148.

<sup>128</sup> Scafuro 1994, 164-65; Faraguna 2014, 178. On the litigant whose main concern was to demonstrate that he had the solid support of a large see also Humphreys 1985, 313 ff. and Rubinstein 2005.

<sup>129</sup> Scafuro 1994, 164-65; Fröhlich 2016, 120. On the role of witnesses to the kin and communal events in inheritance disputes see Isae. 1.29-31; 2.14-16, 19, 36, 44-45; 3.76, 79-80; 6.10-11, 64-65; 8.14, 18-19.

<sup>130</sup> See Phelan 2016, 230 'phratry members who appear in court to attest to his father's membership do not subsequently testify that they bore witness to Euxitheos' presentation at either the *μείον* or the *κουρείον*'. See also Carey 1994, 105 'One might have expected a reference to ceremony at which the newborn infant received a name, which is common in cases where parentage is at issue'.

<sup>131</sup> Scafuro 1994, 166-67.

the best lineage for the priesthood of Heracles. He calls witnesses to that.

Candidature for priesthood is what Euxitheus deals with at greatest length. Wonder is often expressed as to why the priesthood is given more space than, for example, the demarchy. The answer is simple, however: the priest's role is the most relevant with regard to the *hiera*-Athenian descent connection. Indeed, although in the end Euxitheus was not selected, he remarks that if he had been chosen by lot as priest he would have been required to sacrifice on behalf of his demesmen (57.47).<sup>132</sup> Access to the priestly role is *the* argument that proves Euxitheus' descent<sup>133</sup> as testifying to his *eugeneia*.<sup>134</sup> Only 'men of the best lineage' could be candidates for the priesthood of Heracles. The fact that this was a cult of the deme strengthens the argument that Euxitheus' *genos* was well-known to his demesmen, who had accepted him among the candidates. Indeed, it is plausible that the demesmen maintained close control over local cults. The priesthood argument is also doubly useful and advantageous: it could be exploited to demonstrate the bad faith of Eubulides who, on that point, had recognised no anomaly regarding Euxitheus' civic identity. Eubulides did not oppose his candidature, had not been against the possibility of Euxitheus' obtaining such an important role (57.48-49), and this only because the facts determining Eubulides' hostility had not yet occurred.

Euxitheus also brings testimony on other 'relevant things' capable of proving his relations to the *hiera* and consequently to his origins: that he had served as phratriarch (57.23), the chief officer of a phratry, and as demarch (57.63). With regard to the first office, it must be stated that the requisites for exercising it are unclear.<sup>135</sup> The reference to the phratry, however, an essential condition for access to the office of phratriarch, subsequently allows Euxitheus to return to his right, again linked with the religious argument, of access 'to the sacred place of Ancestral Apollo, and to the other sacred places' (57.54). By recalling this series of rights, Euxitheus thus returns, in the same paragraph, to the requirement concerning the limitation of admission to male children born of a woman who had been pledged by *engye* to her husband.

<sup>132</sup> Harris 2013a, 397: 'This is directly relevant to Euxitheus' attempt to prove his citizenship'.

<sup>133</sup> Blok 2017, 10-11.

<sup>134</sup> Blok 2017, 7; Aleshire - Lambert 2011, 554 n. 8.

<sup>135</sup> Phelan 2016, 133-35.

His digression on his demarchy, and its connection to the safeguarding of sacred things, merits some further consideration, given the importance assumed by the rhetorical strategy he uses. This is the only one of his offices he recalls for which Euxitheus utilises the formula advising the judges that the argument may not appear pertinent to the facts of the case (*exo tou pragmatos*). His reason is evident: it has nothing to do with Euxitheus' descent. This aspect is strangely undervalued by those who wonder at the reason behind the rapidity of his reference to his demarchy. To the question 'Why has Euxitheus not mentioned his demarchy before in his speech as evidence for his legitimacy?', scholars have responded variously: does it depend on Euxitheus' unpopularity as demarch due to his strict sense of justice?<sup>136</sup> Or does his rapid recalling of his demarchy show that political functions have no relevance in defining the notion of citizenship?<sup>137</sup> In fact, it is simpler than that: the demarchy has nothing to do with Euxitheus' descent. In this particular case, his warning that speaking of his demarchy will introduce a digression serves precisely not to distract the judges' attention from the digression that immediately follows, or to make them impatient, an impatience that the judges could show against recalling arguments not linked to descent<sup>138</sup>. Euxitheus advises the judges in a similar way prior to beginning his description of the activities of the assembly that excluded him (57.7), a point that is anything but irrelevant, as we shall shortly see, and which Euxitheus judges wholly pertinent to the case.

For Euxitheus, his digression on his demarchy is clearly relevant to the facts of the case. Indeed, it was as demarch that Euxitheus obstructed Eubulides, who thus became seriously hostile to him and hatched his plot. Euxitheus had been a strict demarch and made enemies of Eubulides and other demesmen at the time when 'I quarrelled with many of them when I exacted payments, many for sacred lands and for other things they stole from public property' (57.63). In particular, Eubulides and his accomplices 'committed the sacrilege of stealing the arms' that Euxitheus had dedicated to Athena (57.64). The crime is that of *hierosylia*. The accusation of impi-

<sup>136</sup> Phelan 2016, 246 'he makes the point that he was *dēmarch* and therefore an Athenian citizen, but he refrains from presenting a detailed account because he was so disliked by his fellow demesmen'.

<sup>137</sup> Blok 2017, 11.

<sup>138</sup> See Poddighe 2020, 67-69 on the recognised importance, in theory and practice, of orators' advising the judges prior to every digression, so that they should not lose the thread of the speech.

ety, already brought against Eubulides for acting against the pious laws of citizenship, i.e. against the decree of Demophilus (57.7, 30), is strengthened by recalling this further fault of which he was guilty. Such an accusation is not irrelevant at a trial in which the judges' verdict must be *eusebes*.<sup>139</sup> More generally, recalling such events explains 'why there was a conspiracy against Euxitheus' and the instrumental use that Eubulides made of the subsequent scrutiny to deprive Euxitheus of citizenship.<sup>140</sup>

That Euxitheus preceded his account of the reasons for Eubulides' hostility with his warning to the judges that the subject might appear irrelevant to the facts of the case (even though this was not so) is proof that Euxitheus was carefully keeping to the point and that all his references to the rule of 'keeping to the point' – so numerous and emphatic – are neither superficial nor legally irrelevant<sup>141</sup>, nor, as assumed, later additions to the publication of the discourse.<sup>142</sup>

The context in which Eubulides' hostility matured, only apparently *ex toto pragmatos*, had already been introduced, at the outset of the oration, as a fact relevant to the matter: 'for I take 'keeping to the issue' to mean proving all the wrongs a man has suffered from intrigue in contravention of the decree'. Evidence of this is found in the accurate reconstruction of the matter of the plot hatched by Eubulides and in the irregularity of the assembly's activities that determined his being stuck off the civil lists, for which Eubulides was responsible (57.8 ff).

### III.2.

What is central to Euxitheus' strategy is the use of the conspiracy as a clue for explaining his rejection in the *diapsephisis*. Initially, the defendant takes

<sup>139</sup> See Harris 2013a, 397. *Contra* Lanni 2018, 133-35, and Kapparis 2019, 52, observing that 'Undoubtedly this was intended to have a powerful effect on the jury, even though it has nothing to do with the *epheisis* on the citizenship of Euxitheos'.

<sup>140</sup> Roisman 2006, 88-94; Vlassopoulos 2009, 356; Harris 2013a, 104.

<sup>141</sup> Phelan 2016, 179: 'by using this device, Euxitheos seeks to colour the jury's opinion of Euboulides. Alternatively, if he was not bound by any such irrelevancy rule, Euxitheos' attempts to limit deliberately the scope of the case may have been part of his rhetorical strategy to dismiss Euboulides' remarks about his family as 'beyond the matter at hand'.

<sup>142</sup> Bers 2002, 238 considers 'allusions to speaking to the issue' in Dem. 57 as 'added for publication after the trial' because the judges 'shouted to Euxitheus that he should stick to the point'. Same opinion in Usher 1996, 10-11 n. 15. *Contra*: Carawan 2003, 222 'the text we have is essentially the prepared text, not a revised form', and Carey 2005, 25.



care to ground his defence in the fact that the exclusion he suffered was not due to his failure to meet the citizenship's requirements, but to a plot which the demarch had masterminded with the help of his friends. In § 6 Euxitheus claims that the judges were so aware of the role that feelings such as rivalry, envy, or enmity played in the disputes that they granted a remedy, the *epheasis*, for those who had been harmed. Similarly, the speaker in Isae. 12 argues that Euphiletus' accusers, far from taking any risks with their accusations, were motivated by their personal rivalry (§ 8). It is quite clear that Euxitheus' statement ties in closely with the previous observation that a remedy such as the *epheasis* would not have been granted if the judges had not considered that the demesmen sometimes made unjust judgments. The *epheasis* is thus presented as a saving tool (*καταφυγή*) through which wrong sentences, when influenced by the emotional aspects of the relations between citizens, especially at the local level, could be properly overturned.<sup>143</sup> This statement represents a helpful assumption for a proper understanding of the long excursus that opens the narrative or *diegesis* (§§ 8-16). The theme of the plot has two main cores: first, the evocation of the precedents underlying the enmity between the defendant and Eubulides; second, the description of the deme meeting which ended with his exclusion, with particular emphasis on its procedural irregularities. While the latter is presented as a homogeneous description, the speaker recalls the former at several points in the speech. Among the references to the history of the relationship between the parties involved in the trial is the mention of a public action for impiety (*γραφώμενος άσεβείας*) in which Eubulides acted as accuser against Lakedaimonius' unnamed sister.<sup>144</sup> On that occasion Euxitheus had been a witness for the defence and had thus attracted Eubulides' hostility. In Euxitheus' opinion, Eubulides had harboured this grudge for years, taking advantage of the extraordinary *diapsepshisis* and his role as a member of the Council to orchestrate his revenge.<sup>145</sup> Serving as a councillor, he oversaw the oath and the lists from which the demesmen were called into examination and he was able to manage the meeting as he

<sup>143</sup> The same idea is expressed in § 56 by the verb *καταφεύγω*: *διὰ ταῦτα τοίνυν ἐγὼ πιστεύων ἐμαντῶ κατέφυγον εἰς ὑμᾶς*. Cf. Dem. 40.3.

<sup>144</sup> Dem. 57.8. Gagarin 1998, 40, has observed that women are defendants only in two preserved speeches, although there are other allusions to trials that were not preserved in which the defendant was a woman.

<sup>145</sup> On the fundamental role played by the individuals who presided the meeting in organising the fraud see Bearzot 1999, 294.

saw fit. What Eubulides did was to manage the meeting of the deme in such a way that the vote on Euxitheus took place as late as possible, not by accident, says the speaker, but ‘by plotting against me’ (*ἐπιβουλεύων ἐμοί*).<sup>146</sup> This undermined the fairness of the procedure. Against the usual view of sykophancy as discursively presented as political or personal enmity, the speaker presents the plot especially in terms of infraction of procedures established by law. Consistently, since Euxitheus must frame his accusations in a legal way, Eubulides is presented as a demarch who abused the legal procedure to persecute a citizen.

First, many of the participants, especially the oldest and those living in the countryside, had left by the time of the vote, so that the voters were only thirty demesmen. Did this figure represent a *quorum*? Whitehead has pointed out that ordinary votes in other demes show a similar *quorum* requirement.<sup>147</sup> A comparison with what used to happen in the decision-making process of political assemblies suggests that the use of the casting of ballots (*psephophoria*) could presuppose the existence of a *quorum*.<sup>148</sup> If we assume that it was foreseen also in the *diapsephisis*, we should conclude that Eubulides would have made sure that enough *demotai* remained for the vote to satisfy the *quorum*. In summarising the irregularities of the assembly, the speaker states that the vote had not taken place when all were present (Dem. 57.14). This can hardly be interpreted as a reference to the need for the vote to be valid only if all eligible voters took part in the meeting. It seems preferable to assume that the speaker is complaining that in judging his case there were fewer voters than those who had taken the oath at the beginning of the meeting. The vote was illegal because the procedures were not respected, as the following reference to the larger demes shows (see below pp. 129-130). Furthermore, those involved in these irregularities could

<sup>146</sup> Dem. 57.9. Cf. § 57 when the verb is linked to the action of the sykophants. Cf. also Dem. 40.43.

<sup>147</sup> *IG II<sup>2</sup>* 1183, ll. 21-22: *quorum* of 30 voters, Myrrhinous. In the case of Lower Paiania the *quorum* requirement was not less than one hundred voters, *IG I<sup>3</sup>* 250, ll. 11-14. However, the *quorum* could be modified according to the needs of each deme. Cf. Whitehead 1986, 94-95.

<sup>148</sup> For the working of the decision making in the political assemblies see Canevaro 2018 and Esu 2021. For the functioning of casting of ballots as a system of voting see Hansen 2004, 47-50. For the purpose of the *psephophoria* as a means to stress the unity of the polis and to record the wide agreement behind the decision see Gauthier 2011, 452 and Canevaro 2018, 118-19.

be identified as a group of demesmen, close to Eubulides, who wanted to take revenge on Euxitheus for the way he had behaved towards them when he was a demarch. This is deduced from the reference to the resentment of some fellow-demesmen for collecting rents payments in arrears, especially for the sacred lands; they were probably the same ones who removed from the oath they had to take on the occasion of the *diapsephisis* the clause committing them to vote ‘according to their most just judgement and without favour or malice’ (Dem. 57.63).

Second, taking advantage of his position, Eubulides used slanders to invite the other demesmen to vote against Euxitheus. The rather vivid description of Eubulides’ behaviour is not only a way of denouncing Eubulides’ dominant role in his exclusion, but above all a means of emphasising how Euxitheus was deliberately deprived of the opportunity to present a defence and offer witnesses on his behalf.<sup>149</sup> This is a point worth emphasising. At first glance, Euxitheus’ statement seems to contradict what we know about the way voting in a *diapsephisis* took place. Aeschines argues that in the *ephephisis* trials the accuser often used the argument that the demesmen’s vote of rejection was based on their own knowledge of the facts, because, even if nobody had made a formal accusation or adduced witnesses, everyone knew how things were. He adds that when this argument was used in court everyone immediately expressed their approval (*εὐθὺς θορυβεῖτε ὑμεῖς*) as if to acknowledge that the person on trial was not a citizen.<sup>150</sup> On closer inspection, however, it is likely that Aeschines’ words must be understood as meaning that the exclusions took place without the need for a formal accusation supported by witness testimony, as normally happened in suits for abuse of citizen rights. This does not exclude the possibility that the candidates could say something or present witnesses in their own favour before the individual voting took place. Moreover, Euxitheus also returns to the issue in the final part of the speech, when he refers to the *diapsephisis* in large demes (§ 57). The speaker argues that there the procedure was more correct because no one was deprived of the opportunity to attack and defend themselves; furthermore, if someone asked for a delay, it was granted, something that was aimed to identify the sykophants. Reference to the large demes shows how the procedure should have been carried out.<sup>151</sup>

<sup>149</sup> Dem. 57.13.

<sup>150</sup> Aeschin. 1.77-78.

<sup>151</sup> Thus Phelan 2016, 235.

The concrete comparison with the way the more virtuous, and perhaps more organised, demes had handled voting casts a sinister shadow over the handling of the vote in Halimous.

Euxitheus' argument serves another purpose. One of the main concerns for the judges evaluating the case was the lack of support Euxitheus received from his family members and relatives during the vote. This is not expressly said by Euxitheus, but it can be inferred from the fact that the thirty voters against him were presented as Eubulides' supporters. A rejection could be perceived as evidence of the fact that the defendant had no stable ties within his deme and the presence of his name on the civic rolls was the result of bribery. At the same time the lack of support from the family group during the *diapsephisis* undermined the reliability of the witnesses appearing at the trial. If they had made no effort to protect their kinsman before the demesmen, their presence in court alongside the defendant could only be due to subornation. Thus, speakers in *epheisis* trials tried to counter the accusation that they had bribed the witnesses. The speaker in Isae. 12.4 anticipates the objection that he may have been bribed by saying that after his testimony in favour of Euphiletus he would preclude himself from challenging his status in the future.

Third, the speaker denounced a serious irregularity in the counting of votes. Although there were only thirty people left, there were more than sixty votes. The speaker's point is that Eubulides gave two or three pebbles to each of the voters and that his close friends each voted more than once, taking advantage of the darkness. It is unclear whether fraud of this kind was frequent,<sup>152</sup> but in the case of the *diapsephisis* in Halimous the deception may have been facilitated by the fact that not all were present and there was no mutual control of the citizens.<sup>153</sup>

It is worth noting the use of a specific vocabulary aimed at underlining Eubulides' plot against Euxitheus. First, the thirty voters are said to be instructed on how to act by Eubulides (*οἱ τούτῳ παρασκευασμένοι*, § 10). The

<sup>152</sup> Staveley 1972, 114-15 argued for the frequency of such frauds in *psephophoriai*, excepts for those that occurred in the courts, but evidence is lacking. There are some analogies with the irregularities in the Arginusai trial (see Tuci 2002, 59-65), especially with those that occurred in the first session of the Assembly that had to decide whether to proceed with the *eisangelia* to judge the generals (Xen. *Hell.* 1.7.7). But we have to consider that the Arginusai trial was carried out during an emergency and can constitute an anomaly.

<sup>153</sup> Bearzot 1999, 294.

verb *παρασκευάζω* in the passive voice is often employed by the orators to mean “to be procured, to be suborned”.<sup>154</sup> Later in the speech they are labelled as conspirators (*οἱ συνεστῶτες*, § 13) who were acting in cahoots with Eubulides. This charge recurs frequently in the discourse, often expressed by the verb *συνίστημι*, denoting the union of several persons secretly agreeing to act against another.<sup>155</sup> The speaker in the speech *Against Timocrates* interpreted a clause in the bouleutic oath on the prohibition of imprisoning an Athenian citizen as aiming at preventing councilmen from banding together in order to imprison private citizens who had provided sureties.<sup>156</sup> It is noteworthy that the same rhetorical strategy can be found in the discourse *On behalf of Euphiletus*, where the speaker presents the rejection imposed on Euphiletus as being most unjust since it had been provoked by those who had conspired against him in the deme (*ὑπὸ τῶν ἐν τῷ δήμῳ συστάντων*, § 12). This use is paired with the idea, rendered by the verb *καταστασιάζω*, that different factions with a certain degree of politicization were operating in the deme.<sup>157</sup> While on a normative level it was not allowed, Euxitheus uses this politicization of the legal procedure to show how the laws were not applied in his case. It is the belief, expressed for the first time in the *exordium* (§ 2), that Demophilus’ decree was an opportunity to settle old issues that had never been put to rest. While many were rightly driven out from the demes, others fell victim to their political enemies. Although it is impossible to determine the merits of this claim, we have to admit that it was a helpful way of undermining the credibility of the demesmen’s verdict. If the vote was irregular and the exclusion was the result of retaliation, its outcome must not be considered as reliable.

What is crucial for our discussion is to determine whether this lengthy tirade is relevant to the matter the trial was to ascertain. Added to this is the suspicion that the conspiracy is a purely rhetorical argument, a *topos* commonly employed by speakers to explain the most diverse situations. Reporting alleged abuses by politicians or local officers was extremely common.<sup>158</sup> Scholars have often regarded the peroration in question with suspicion. The

<sup>154</sup> Cf. *LSJ* s.v. *παρασκευάζω* B.I.2. A list of the occurrences of this verb in the forensic speeches is in Phelan 2016, 119.

<sup>155</sup> The verb appears in §§ 13, 16 (two times), 59, 60, 61, 63, cf. Phelan 2016, 123.

<sup>156</sup> Dem. 24.147: *ἵνα μὴ συνιστάμενοι οἱ ῥήτορες οἱ ἐν τῇ βουλῇ δεσμὸν κατὰ τινος τῶν πολιτῶν λέγοιεν*. Cf. Roisman 2006, 86.

<sup>157</sup> The verb can be found in §§ 2, 7, 63.

<sup>158</sup> Roisman 2006, 85.

alleged plot is not corroborated by any witness; the speaker seems to apply it stereotypically to the reading of events, so that any decision unfavourable to him or his family is seen as the result of a conspiracy.<sup>159</sup> Some scholars find it strange that such a controversy over an issue of status could exist in a small deme like Halimous.<sup>160</sup> The point, however, is not so much the truth of the speaker's claims about the conspiracy against him— a question that is destined to remain without a definitive answer - as the legal relevance of this argument to the trial. Relevance is a question that the speaker himself poses before going on to describe the reasons for the enmity with Eubulides and the way in which the deme assembly had been conducted. In fact, the speaker addresses this issue by saying that he believes he is keeping to the point in recounting how the meeting that resulted in his exclusion took place, since it is not speaking out of turn to point out the illegalities and violations of the decree (§ 7). It could be argued that the speaker's zeal in explaining the relevance of the argument to the subject matter on which the judges were to rule betrayed an awareness of using arguments that the audience might consider irrelevant. However, there are many reasons to exclude such lack of relevance. First, it is essential for the speaker to set out the course of the assembly and explain Eubulides' behaviour in the light of his past record with the aim of giving substance to the thesis of the conspiracy he is arguing for. Second, stressing the procedural irregularities in and violations of the spirit of Demophilus' decree could help undermine the reliability of the demesmen's judgement.<sup>161</sup> Finally, the discourse on relevance must be intertwined with that on the function of the excursus. Although the speaker never says it explicitly, his case in court starts at a major disadvantage, that is, the adverse judgement of the demesmen. Since it was commonly accepted that their judgements were based on direct knowledge of the individuals under examination, it was difficult to call into question the validity and correctness of their exclusions.<sup>162</sup> Besides, at the time when the *epheisis* reached the court, the judges could interpret the matter as a last-ditch attempt by a foreign usurper to continue enjoying the rights of

<sup>159</sup> Roisman 2006, 90-91.

<sup>160</sup> Cohen 2003, 84-85. But see *contra* Whitehead 1986, 300.

<sup>161</sup> The same technique is used for example by Demosthenes in the *Against Androtion* (the decree of Androtion is illegal on procedural grounds) and in the *Against Timocrates* (Timocrates' law is unconstitutional because it did not follow the proper law-making procedures among other more complex constitutional issues).

<sup>162</sup> Aeschin. 1.78. Cf. Cohen 2003, 83; Roisman 2006, 89.

real citizens. So, while it was easy to understand why the rejected person submitted an *epheſis*, it was more difficult to explain why the majority of fellow-demesmen had ruled to exclude him if he were indeed a citizen. Providing an answer to this question does not lapse into irrelevance, but constitutes a factual basis, an explanatory context to counter the alleged infallibility of the verdict of the fellow-demesmen.

The concluding part of the argumentative section (§§ 57-65), which focuses on the condition of the deme of Halimous and its widespread corruption, ideally completes the rhetorical strategy we have described. How is this topic articulated? First of all, the speaker makes a general remark on the situation in his deme, pointing out that no other deme has more scandals than Halimous (§ 58). Criticism of the corruption prevailing in the demes was so widespread that it was one of the preferred subjects of comic poets.<sup>163</sup> He then gives substance to his statement by recalling paradoxical cases of siblings with the same father and mother, one excluded, the other confirmed in citizenship, or similar senseless decisions that rejected elderly fathers but recognised their children as citizens (§ 58). These examples challenge the prevailing idea that the outcomes of the *diapsephisis* were the result of a strict control of individual credentials to citizenship, suggesting instead that other logics were at play. In particular, the allusion to the exclusion of elderly people without resources introduces an economic motive for rejections. When little evidence was available because the very content of the records was called into question, an alternative explanation had to be provided to undermine the credibility of the allegations.

The economic motive, which should be read in close connection with that of political enmity and the allegation of *sykophancy* against Eubulides, is part of this strategy aimed at offering another possible scenario behind the exclusions. For what concerns personal enmity, it has been noted that, in spite of the relative frequency with which litigants invoke it as a reason for their involvement in the process, there are many instances in which the parties urge judges not to decide on the basis of the *echthra*.<sup>164</sup> On the one hand, personal enmity, if it is closely related to the issue discussed in court, could be included in the argumentation of private suits when it

<sup>163</sup> Aeschin. 2.177; Lys. f. 254 Carey; Harp. sv. *Ποταμός*; Poll. 3.56. See Whitehead 1986, 291-301 for the topic of corruption in the deme administration.

<sup>164</sup> Dem. 23.97. See Harris 2013a, 68 for several examples of this motif in the speeches.

helped to explain the factual background of the case;<sup>165</sup> on the other hand, there are several instances in the forensic speeches where speakers blame the opponents for bringing a case to court solely on the basis of their enmity,<sup>166</sup> or connect enmity with false charges.<sup>167</sup> Hence, Euxitheus' claim that Eubulides argues the prosecution for personal motives is a useful argument to show that the accusations against him are false.<sup>168</sup> Moreover, private enmities can be intertwined with the suspicion of malicious prosecutions. The speaker in Lysias' speech *On the olive stump* argues that if his opponent had a good case he could have proved that he was acting in the interests of the city rather than appearing to be a sykophant acting on the basis of personal rivalry.<sup>169</sup> Likewise, Euxitheus not only portrays Eubulides repeatedly as a sykophant,<sup>170</sup> by opposing the falsity of the accusatory strategy with his own line of defence, inspired by justice and truth,<sup>171</sup> but he twice links the theme of enmity underlying the conspiracy to the habit of bringing malicious prosecutions.<sup>172</sup> The present situation, in which the demos' anger prevails against those who exercise citizenship fraudulently, Euxitheus argues, constitutes the right timing (*kairos*) for those who are animated by enmity to play the sykophant's game (§ 49).<sup>173</sup> Was this allegation related to an economic motive? While modern scholarship tends to dismiss the equation between sykophancy and corruption and to explain accusations of sykophancy as claims that the prosecutor does not have a good case, Dem. 57 makes this correlation explicit.<sup>174</sup> Moreover, the hybrid nature of the *epheisis* procedure, which keeps elements of both private and public actions

<sup>165</sup> Kurihara 2003, 466-68.

<sup>166</sup> *E.g.* Dem. 18.12, 15; Lys. 9.7 with Harris 2013a, 68-69.

<sup>167</sup> Harris 2013a, 69 and n. 21.

<sup>168</sup> Dem. 57.6, 8, 57.

<sup>169</sup> Lys. 7.20-21.

<sup>170</sup> Dem. 57.5, 8, 32, 34.

<sup>171</sup> For such an opposition see Dem. 57.1, 8, 17, 36. See also the allusions to the laws that Eubulides allegedly transgressed in his accusation speech or by its conduct: he would have violated the rule preventing the introduction of hearsay evidence in court (§ 4), the decree about slandering someone in the Agora and the laws on insulting a male or a female citizen for working in the Agora (§ 30), the law on idleness (§§ 32-33).

<sup>172</sup> Dem. 57.49 and 57.

<sup>173</sup> For the connection between the demos' anger (*orge*) and the right timing in which orchestrate the plot against Euxitheus see Dem. 57.2, 48, 49. For the concept of *kairos* in ancient rhetorical theories see Sipiora 2002 and Kinneavy 2002.

<sup>174</sup> Osborne 1990 [2010], 216.



(see § I), means that it is not only Eubulides' actions that the speaker qualifies as sykophantic, but also Eubulides himself.<sup>175</sup> Thus, it is no coincidence that Euxitheus goes on to explore the issue of purchase of citizenship, citing concrete examples that might have been familiar to his audience.<sup>176</sup> He describes the case of two foreigners, Anaximenes and Nicostratus, who wanted to pass themselves off as citizens. He accuses Eubulides and his circle of having accepted bribes to register the pair as citizens and that then, during the *diapsephisis*, they did not exclude them even though they knew they were foreigners. Such allegations of corruption, which are not supported by either evidence or testimony, could easily be dismissed as slander. However, an offense such as corruption was difficult to prove. It was not simply a question of the ambiguity of the *dorodokia*, an offence that was to some extent tolerated as long as it was not detrimental to the interests of the city,<sup>177</sup> but it was also hard to find witnesses to the tangible act of giving gifts or money or the existence of a corruptive agreement, since both corruptor and corrupted were held responsible for the offence itself. In order to overcome the lack of evidence but still gain the trust of the judges, Euxitheus resorts to the *exomosia*, challenging his accusers to say the opposite (§ 59). Economic reasons may also have been behind the behaviour of Eubulides' father, Antiphilus. During his time as a demarch, he had allegedly set up a money-generating scheme by claiming that the civic register had been lost. As a result, an extraordinary review was carried out, but the demarch conducted it dishonestly in order to exclude certain fellow-demesmen. It is thus suggested that Antiphilus' intention was to extort money from those under review either to prevent them from being excluded or, if they were rejected, to ensure that the prosecution did not come down hard on them in court. The substantial unreliability of the demesmen's judgement on that occasion is demonstrated by the fact that the court restored nine of the ten excluded individuals. What is the aim in referring to an episode from a fairly distant past? Euxitheus is aware that he may give the impression of not sticking to the point, so he introduces the episode by claiming that it is relevant to the subject matter of the dispute. At first sight, it might seem that he is adding a piece in the construction of his opponent's character when

<sup>175</sup> Dem. 57.5, 32, 34. On the prosecutorial identity of the sykophant see Kucharski 2019, 177-79.

<sup>176</sup> Dem. 57.25. Cf. Isae. 12.2.

<sup>177</sup> Taylor 2018, 23.

he presents the love of money and the tendency to corrupt as typical of Eubulides' family, as if they were traits that were passed from father to son. But by referring to a previous scrutiny of his own father's status, to which the oldest of the bystanders are called as witnesses, he demonstrates that his citizenship had never been called into question (§§ 60-61).<sup>178</sup> As proof of this, he adduces an objective fact, the unanimity with which the voting body of the deme expressed itself in favour of his father's citizenship. This is also a way of showing the judges just how many times Eubulides could have acted against Euxitheus and did not, thus confirming by his actions that he believed his opponent to be a citizen. Reference here is to the vote that took place when Euxitheus' name was entered in the register of the deme, a vote in which Eubulides did not raise any objections (§ 61). Thus, what appeared to be a strong argument - rejection in the *diapsephisis* - turns out to be dwarfed by the previous occasions on which the community had positively evaluated Euxitheus and his family's status. As we have seen, at the core of Euxitheus' defence is that the charge against him is false since Eubulides acted out of personal enmity and as a sykophant. Claims that the opponent is a sykophant are not a commonplace here, or a rhetorical trick. On the contrary, Euxitheus brings the legitimacy of the accusation to the centre of his defence by showing that the legislator had foreseen the role that sykophancy played in that legal issue (Dem. 57.30). Euxitheus states that both the law and the decree that regulated the review of the civic registers, as well as the *ephephisis* procedure, aimed to ensure that the review was protected from the action of sykophants. Accordingly, our interpretation has challenged the traditional view that the accusation of sykophancy against Eubulides should be explained as 'character assassination' given the impossibility for Euxitheus to prove his status as a citizen with strong legal arguments, which left only the recourse to construct his citizenship rhetorically.

We have shown that Euxitheus' argumentative strategy was in fact grounded on legal evidence and documents. The citizenship law (57.30), Demophilus' decree of 346 (57.7, 30, 63) and the *ephephisis* procedure (57.17, 33, 57) shared the same purpose: to stop the sykophant's game. Based on

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<sup>178</sup> For previous occasions where Euxitheus' and his father's status were examined without any objection see also Dem. 57.25-27, 54, 62, 67, 69; for the argument that no one before that moment had questioned the citizenship of the speaker and his family see Dem. 57.19, 48-49.

this legal argument, this article has analysed the forensic strategy adopted by Euxitheus to show that he was a legitimate citizen and considered it as perfectly consistent with his aim. The defendant's choice of witnesses, which past scholars have considered weak and tendentious, has been shown to be relevant to prove Euxitheus' and his parents' citizenship. Euxitheus provides witnesses who attest that they have a personal and lasting knowledge of the people involved (Dem. 57.44).

Even the emphasis placed on his religious roles is not proof that Euxitheus did not serve in any political office. This was the result of a legally grounded argument, since the reviews for those who exercised religious functions were in fact particularly accurate. The same standard of relevance characterizes all his rhetorical strategy even when he alleges a plot in order to counter Eubulides' allegations. Against the traditional view of sykophancy as discursively presented as political or personal enmity, the speaker presents the plot especially as an infraction of procedures established by law. Consistently, since Euxitheus must frame the arguments in a legal way Eubulides is presented as an official who abused the legal procedure to harm a citizen.

The entire speech is effectively constructed to demonstrate 'what is true' against Eubulides' 'false accusations' and 'defamatory statements' (57.1), that is using legal arguments against 'the sykophant's game': to allege everything but prove nothing'.

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