BELIEF, FEAR, AND MANIPULATION: 
THE INTERSECTION OF RELIGION AND THE 
ATHENIAN LEGAL SYSTEM IN THE SECOND 
HALF OF THE 5TH CENTURY BCE

by

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THE REQUIREMENTS FOR THE DEGREE OF 
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ABSTRACT

Because the historical record makes reference to a substantial number of prosecutions driven by charges of impiety, including the notorious trial and execution of Socrates, a perception arose that there were continual attacks on freedom of expression in Athens in the half century that bracketed the Peloponnesian War. This was, however, also a time of intellectual, political, and social ferment, when ordinary citizens had reason to fear that traditional beliefs were being eroded and that the *polis* had incurred the displeasure of its gods. In this thesis, I examine how the interplay between this complex mix of factors and the malleable definition of the concept of impiety, as well as its emotive power, all facilitated the use, and abuse, of such accusations. Lessons learned from the study of these ancient events can be applied to the problems that we ourselves face in accepting the sovereignty of the rule of law.

Keywords: Athens; freedom of expression; impiety; law; religion.
ACKNOWLEDGEMENTS

When I first embarked on the studies that have culminated in this thesis, I was far from realizing how much the enterprise would come to resemble the work of Nicomachus who was appointed in 410 BCE to a commission that was to re-inscribe the basic laws of Athens within a period of four months and who eventually finished his task some ten years later. The journey towards the Masters degree was partly shaped by some intriguing detours to explore other aspects of the ancient world and a life changing experience which left me with altered perspectives and priorities. At times there were echoes of Stoppard’s Rosencrantz and Guildenstern are Dead: “What a fine persecution – to be kept intrigued without ever quite being enlightened.” But I hope that I am at last able to say that a measure of enlightenment has taken place; the experience has certainly been more than worthwhile.

There are many individuals who have supported me along the way to whom I owe a debt of gratitude. First and foremost I would like to thank my husband and dearest life’s companion, Martin Zuckermann. His love and unfailing encouragement have kept me going when I questioned why I should continue. Also, I owe loving thanks and an apology to the many members of my family, especially my children and my grandchildren, both near and far away, who have at times put up with less than the attention they deserve as I stole time from them to pursue my academic goals. I am indebted to two dear friends in Montreal, Kim Bartlett and Honora Shaughnessy, whose warm friendship is not diminished by distance and whose encouragement through thick and thin has meant more to me than they will ever realize. I would also like to acknowledge the efforts of three physicians, Drs. Dean Brown, George Chang, and Paul Klimo, exceptional, caring physicians without whose special skills and wonderful sense of humour I might not have lived to tell the tale.

On the academic front, I consider myself fortunate to have studied at Simon Fraser University, an innovative institution of which I am enormously proud, not least for the pipers who lead the convocation processions. I am very grateful to Jonathan Driver, who as Dean of Graduate Studies gave permission for me to undertake this degree as a special arrangements student and who showed himself to be a compassionate and understanding administrator. In this he was assisted by Vivian Blaker, who was always a source of help and friendly concern. Finally, and especially, I owe particular thanks to my senior supervisor, Professor David Mirhady, a scholar and a mensch. He patiently guided me until I found the right track and then gently prodded me along it. By giving me opportunities to hone my skills in a related project on Greek law, he brought me to the point where I finally gained the confidence to realize that writing the thesis was inevitable and achievable. I have benefited greatly from his advice, but any errors and misinterpretations in this thesis are, of course, my own.

“Reasoning is a robust source of hope and confidence in a world darkened by murky deeds. The remedy for bad reasoning is better reasoning.”

Amartya Sen
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INTRODUCTION

After the death of Alexander the Great in 323, Athens gave full vent to its resentment over its subjugation to Macedon and rallied a number of other Hellenic city-states to rebel against their foreign rulers.¹ The philosopher Aristotle, who had been Alexander’s tutor and who was closely associated with the Macedonian court, was – like Socrates three quarters of a century earlier – charged with impiety by the Athenians.² According to long-standing legend, Aristotle famously pronounced that he would “not allow the Athenians to wrong philosophy twice” and fled the city.³ This statement, as well as evidence for a spate of earlier prosecutions on the basis of religious offences, led to a perception in the later ancient world that there were continual attacks on freedom of expression in Athens. Such trials would seem to indicate that there was a disconnect between the attitude expressed by Pericles in his renowned funeral oration to the effect that Athenian citizens enjoyed a great measure of personal freedom in their private relations and the reality of the extent to which this could be exercised when it spilled over into the public arena.⁴

As I set out to write this thesis, possibly influenced by the words of Aristotle and the frequent condemnations in modern times of the trial and

¹ Unless otherwise noted, or as a reference publication date, the dates in the thesis are all BCE.
² This accusation was based on the contention that he had instituted a private cult in honour of Hermias, the uncle of his wife and the tyrant of Assos and Atarneus in Asia Minor, by virtue of his having written, some years earlier, an ode to Hermias that was deemed befitting for a god, but not for a mere king. Diogenes Laertius recounts the story in Life of Aristotle 7 as follows: “Aristotle then having come to Athens, and having presided over his school there for thirteen years, retired secretly to Chalcis, as Eurymedon, the hierophant had impeached him on an indictment for impiety, though Favorinus, in his Universal History, says that his prosecutor was Demophelus, on the ground of having written the hymn to the beforementioned Hermias, and also the following epigram which was engraven on his statue at Delphi:

The tyrant of the Persian archer race,
Broke through the laws of God to slay this man;
Not by the manly spear in open fight,
But by the treachery of a faithless friend.”
⁴ For the funeral oration, see Thucydides 2.37.2-3.
execution of Socrates, I planned to examine the body of actual, and rumoured, charges of *asebeia* (impiety) that were reported in Athens in the second half of the 5th century BCE from the standpoint that they constituted an infringement on freedom of expression which may have had a religious dimension. An analysis of the circumstances and substance of these cases, as well as of others that were lodged during this same time period that involved sacrilegious acts rather than words only, showed that the notion of impiety was, in the judicial context, a poorly defined concept. This indicated that the situation was much more complicated than it appeared on the surface. It was, therefore, necessary to examine the way in which religion and law were inter-connected, as the two operated in tandem in Classical Athens, both as instruments of social control and as the hand-maidens of the political system.

It appears that the indictment of Socrates was the end-product of an era in which an overall heightened awareness of any type of religious offence had precipitated these accusations. This sensitivity may have been brought about by the social, political, and intellectual developments that took place during the period from just before the outbreak of the Peloponnesian War to its immediate aftermath – a time when Athens declined from its zenith as Hellenic hegemon to a nadir as a defeated *polis* much less in control of its destiny.\(^5\) These major changes were interwoven with the undercurrents of an undisguised hostility directed at intellectuals and of an on-going class struggle between the inward-looking ordinary people, the *dēmos*, and the outwardly-connected upper-class who had traditionally controlled the *polis*.\(^6\) Added to these were, of course, traces of the personal rivalries that are a fact of public life and that dominated the political landscape. All of these found an outlet in the legal system, partly because of its structure and partly because of the malleable nature of the Athenian concept of impiety, and were factors in the way in which the indictments played out in court.

\(^{5}\) The word *polis* is vaguely defined and used inexact by authors both ancient and modern to cover a range of inconsistent meanings, e.g. political community, state, urban centre, town, society as a whole, physical territory and its inhabitants, or any combination of these (Cohen, E., pp. ix-x). In this thesis, *polis* when referring to Athens should be taken to mean the city itself together with the territory of Attica as a geopolitical entity.

\(^{6}\) Herman, p. 164.
Consequently, I have come to a better understanding of “the complex mess of human resentment” that swings into action when individuals sit in judgment on each other. Neither religious, nor social, nor political issues operating in isolation were the determining factors in any of these trials, but all could be manipulated to achieve the ends of the persons initiating the prosecutions. Nevertheless, an examination of these cases reveals valuable lessons that can be applied to some of the thorny legal questions with which our own society is currently confronted. In particular, they serve to illuminate both the pitfalls associated with dealing with offences which are culturally mediated and how fear and panic can deform the judicial process.

In order to provide a background for the discussion of the accusations of *asebeia*, I shall first examine the relationship between Classical Athens and its gods, both in general and with particular reference to the observances and cults that underpinned popular religion. This will be augmented by an overview of the concept of impiety as it was portrayed in a variety of literary sources and in the forensic speeches, together with its place in the legal framework as a serious, actionable crime. In the chapters that follow, I will intersperse the historical context and consideration of the influence of the new philosophical ideas disseminated by the pre-Socratics and the sophists, many of whom had come from other *poleis*, with an examination of the trials and their consequences. The objective will be to identify the extent to which the indictments reflected a real or perceived crime versus the degree to which *asebeia* was used as a value word to lend credence to a prosecution which was politically motivated.

In undertaking this study, I am mindful that the dearth of information concerning the formal mechanisms for dealing with instances of impiety in the era immediately preceding the one under consideration deprives us of a useful template for comparison purposes. Furthermore, the evidence which is available for the period from 450 to 399 is viewed through the distorting prism of unrepresentative survival. Apart from a single case, the accusations of impiety which are to be found, in one form or another, in the ancient sources all involve

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7 Parker, 1996, p. 207.
8 Todd, 2005a, p. 105.
prominent individuals who are otherwise known to history. It is entirely possible that there were others involving ordinary citizens of which we know nothing. To steal a phrase from Berthold Brecht, “*doch man sieht nur die im Lichte, die im Dunkeln sieht man nicht.*”

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9 The exception is the defendant in Lysias, *Concerning the Sekōs*. 7.
10 Brecht, *Mack the Knife*: “But you see only those in the light, those in the darkness you don’t see.”
CHAPTER I
GREEK RELIGION, ATHENIAN PERSPECTIVES

Religion in the Greek world was entirely lacking in many of the principal components that are now conventionally associated with a belief system: it was not divinely inspired, had no sacred scriptures or theologically trained clergy, did not demand a profession of faith and, in the Classical period, seemed to be little concerned with doctrine.¹ Despite this absence of a unifying core, it could be thought of as Panhellenic in that beliefs about the origin of the cosmos, the principal gods and their relationship to humans, and the nature of the afterlife formed a part of an overarching national identity.² Ritual procedures and traditions tended to be similar, in part because certain shrines and festivals were open to all Greeks, exerting a pressure in the direction of homogeneity and imitation. That being said, the aspects of religious observance with which this thesis is concerned can best be understood at the level of the polis, particularly in Attica where it constantly intersected with Athenian history.³ Hence, it is not my intention in this initial chapter to try to present what could, at best, be a cursory overview of Greek religion, a vast topic that has been explored in extenso by many eminent scholars. Instead it is my goal to identify and extract those broader concepts which may help to form a framework for the discussion which will follow of the impiety trials in Athens in the period that brackets the Peloponnesian War. Background concerning specific rituals and cultic observances will be incorporated, as appropriate, in the sections to which they pertain.

¹ Burkert, 1992, p. 262; Dillon, J., p. 155; Osiander, p. 772.
² The often multiple and inconsistent myths about the gods were not considered to be divine revelation nor sacrosanct truths. Hesiod’s Theogony, written c. 700, synthesizes many strands of mythology from various areas of the Hellenes into one large-scale narrative on the origin of the cosmos and the nature of the gods; it was considered to be the canonical work in the Classical period. On the afterlife, see discussion in Chapter VI concerning the Eleusinian Mysteries.
³ Parker, 1996, p.3.
Although there were no holy scriptures, orally-based mythology and popular tradition had merged to bequeath a complex assemblage of gods to the Greeks. As Parker so eloquently puts it, Greek polytheism was indescribable because the twelve principal Olympian gods had so many forms, there was a plethora of lesser gods and heroes, and they all combined in a multitude of ways, functioning as a team with the powers of one god overlapping with, but circumscribed by, those of another. After the valiant efforts of the early writers of theogonies to catalogue and classify the Pantheon, the Greeks simply called on the gods and heroes of the particular polis generically for assistance in times of crisis without enumerating exactly who they might be. “Gods overflowed like clothes from an over-filled drawer which no one felt obliged to tidy.”

The image of the gods that emerges from Archaic and Classical Greek literature is filled with contradictions. Their multi-dimensional aspect and their immortality allowed them to function as “bundles of power quite inconceivable in human terms” and as complete masters of the physical world. Nevertheless, they did not have the overarching capacities associated with an aloof, omnipotent god. Their knowledge exceeded that of humans and they were generally able to bring their plans to fulfillment, but they were not omniscient; they could traverse vast distances, but were not omnipresent; they could assume human and animal form and sire a race of glorious heroes with mortals, but the latter were not divine. As represented in Homeric mythology and in art, the gods were, in fact, more human-like than the gods of virtually any other polytheistic system. In their display of physical needs – eating, drinking, satisfying their sexual

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4 Parker, 2005a, pp. 387-388.
5 Parker, 2005a, p. 389.
6 For example, Zeus was the thrower of thunderbolts and sent rain; Hephaistos was the god of fire and volcanoes; Demeter controlled the sprouting and crops and brought the seasons (Homer Hymn to Demeter ll. 332, 492).
7 Burkert, 1985, pp. 182-183. A caveat re omniscience: this limitation may have been with respect to each other, rather than to their knowledge of what was happening in the human sphere.
8 Parker, 2005a, p. 389. Herodotus writes, “As to the origin of each of the gods, or whether they all had always been, and what their appearance was, they [the Greeks] had no notion until, one might say, a few days ago. Hesiod and Homer, in my opinion, lived four hundred years before my time, not more, and it is they whose poetry gave the Greeks the genealogy of the gods, their titles, their several ranks and occupations, and made known their outward resemblance.” (Histories 2.53) Linear B tablets and comparison with near-Eastern societies are evidence that the Greek gods had a long pedigree prior to Hesiod and Homer (Furley, p. 74).
impulses, bleeding – and of a full range of emotions – love, anger, pity, sorrow, laughter, suffering, revenge – they were “human almost to the last detail.” As depicted in the *Theogony* and the *Homeric Hymns*, the gods did not adhere to any particular moral code and relationships between them were often openly agonistic; they engaged in power struggles and sexual rivalry, quarrelled amongst themselves, and inflicted harm on each other. Their preoccupation with protecting their own domain and indifference to right and wrong were reflected in their attitude to toward humankind, described as caring only to a limited extent about how humans behaved, and not at all about what they thought. Furthermore, there was no term conveying the concept of a duty to obey that was associated with the gods and goddesses. The literary image of the gods in such epic tales as *The Iliad* and *The Odyssey* shows them as interfering directly in earthly life, taking sides, manipulating the outcomes of human conflicts, and, as often as not, appearing to toy with lowly mortals. Death was ultimately the line which separated gods and men; no matter how much the gods raged and even suffered, their emotional displays lacked “the true seriousness which comes in mankind from the possibility of destruction.”

With its lack of centralization, Greek religion in practice had no distinct priesthood, a situation that was partially a reflection of the nature of the Hellenic world, one of subsistence farmers. As there were no warrior or priestly classes, these functions were distributed; each man could be called on to fight or to serve in a religious capacity. In Athens, with the exception of a few hereditary positions which were the preserve of aristocratic families like the Eumolpidai and

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10 Burkert, 1985, pp. 248-249; Osiander, p. 774. Demeter thinks that humans are foolish and without the sense to know their destiny ahead of time (*Homeric Hymn to Demeter* ll. 255-256).
11 Osiander, p. 774.
12 Mortals endure the gifts of the gods by necessity, even though they suffer, for indeed the gods are much stronger” (*Homeric Hymn to Demeter* ll. 147-148). Solon describes the divine as entirely mean spirited and troubling the lot of humans, giving them a glimpse of happiness and then plunging them into ruin (Herodotus, *Histories* 1.32.1,9).
13 Burkert, 1985, p. 188.
14 The office of a priest was thought to be one that any man could fill (Isocrates, *To Nicocles* 2.6; Burkert, 1985, p. 189; Osiander, pp. 763-764). In addition to their civic duties, the untrained laymen serving as priests had the task of looking after the cult of a god and maintaining his or her temple. This was immensely significant as it removed speculation about the origins of life from the hands of a priesthood and placed it in those of ordinary citizens. This, and this alone, “was the prerequisite for free thought and for the rise of philosophy and science” (Nilsson, 1969, p. 4).
Kerykes who presided over the Eleusinian Mysteries, priesthoods were not usually full-time occupations and were commonly tenable for only a year.\textsuperscript{15} The men and women who filled the roles had no special qualifications and were selected by birth, election, lot, or even by purchasing the position.\textsuperscript{16} It is interesting to note that women, who were barred from holding political office, held many high religious offices as priestesses, being accorded a status that was not inferior to that of their male counterparts. This has been interpreted as an indication of the limited importance attached to priestly offices by a masculinist society.\textsuperscript{17} As will be seen later, the absence of an authoritative religious hierarchy left a great deal of scope for those who took it upon themselves to exercise oracular functions as interpreters of the divine or to pass judgment on the nature of piety.

The Greeks were, to a large extent, left to themselves to maintain the natural balance in the universe\textsuperscript{18} and to mediate their relationship with an unpredictable pantheon of gods who neither led by example, nor issued a code of behaviour, nor set up a divine court to sit in judgement over them, but who were nonetheless in a position to visit good and ill fortune on mere mortals and expected to be honoured by them.\textsuperscript{19} The actual mechanisms of divine intervention might be unclear and remote,\textsuperscript{20} but the possibility of it nevertheless provoked a persistent preoccupation with winning and maintaining the goodwill of the gods, essential for ensuring the prosperity of the individual and the state.\textsuperscript{21} But because the gods lacked the quality of sanctity, “the fear that they inspired fell short of reverence.”\textsuperscript{22} A god was rarely invoked using the term \textit{despota} (lord), the term of address used by a slave to his master, but this freedom in spiritual matters was

\textsuperscript{15} Those restricted to a particular \textit{genos} came in time to be viewed as a threat to the egalitarian democracy (Parker, 1996, p. 126).
\textsuperscript{16} Aristotle, \textit{The Athenian Constitution} 54.6-7; Muir, p. 193; Osiander, p. 765.
\textsuperscript{17} Cohen, E, p. 47; Osiander, p. 766.
\textsuperscript{18} According to Herodotus, there was a natural balance in the universe mediated by a higher power, but any disruption of this balance, whether voluntary or involuntary, was an offence against the gods and the individual guilty of so doing would not prosper (Pownall, 2004, p. 6).
\textsuperscript{19} Osiander, pp. 762-763.
\textsuperscript{20} It was thought that signs and omens came principally from Zeus, and that he communicated most often through his son Apollo. Hence, the importance of the Delphic cult.
\textsuperscript{21} Mikalson, 1983, p. 53.
\textsuperscript{22} Burkhardt, p. 64.
“bought at the price of security and trust.” Instead of submission, commerce with the gods was through the idiom of gift-giving and reciprocity, a reflection of the do ut des spirit that was prevalent in real life. Religious expression centered on outward observances, which were manifested in a complex matrix of rituals, processions, and sacrifices designed to propitiate the deities and incur their favour.

Consequently, acknowledgement of the divine was omnipresent and integrated into the background consciousness of the population as a whole, permeating the routines of daily life and studding the calendar of each year with religious festivals to an extent which it is difficult for a contemporary person to comprehend. Religion was completely embedded into the social order as just another set of ancestral customs that was taken for granted as a comfortable, familiar facet of the human condition. All the major landmarks of human life – birth, marriage, death – were accompanied by rituals with a religious significance. As a matter of honour, there were sacred obligations toward one’s ancestors (looking after their tombs), toward one’s family (care of elders, which was also a statutory requirement), and toward the gods (through ritual observance); failure to do so was a transgression against the gods. Each head of household took seriously the obligation to maintain private shrines and cults within the oikos, but only those of gods publicly sanctioned by convention were permitted. The same constraints applied to the shrines belonging to phratries, demes, and tribes. Hence, despite Pericles’ assertion that in their ordinary lives

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23 Burkert, 1985, p. 188.
24 Parker, 2005a, p. 390.
25 The catalogue of ritual acts that was necessary to stay on the right side of the gods found in Hesiod’s Works and Days was incredibly intricate and included such things as: prayer to Zeus and Demeter that the corn may produce heavy and full ears before setting hand to plough; libations were poured and incense burned on going to bed and at daybreak; a river was not to be forded without looking towards the water, praying, and washing one’s hands (as the gods were angry with anyone who crossed a stream without washing away evil); food was not to be taken out nor water poured from a vessel that had not been consecrated; libations poured to Zeus must only be poured with washed hands; it was forbidden to urinate toward the sun or along a road, or to uncover one’s private parts by the hearth, or to beget a child after returning from a funeral; nails were not to be cut at a time of a sacrificial meal; a ladle was not to be laid across a bowl from which wine was drawn; a man must not bathe in a bath intended for a woman’s use.
26 Muir, p. 194; Osiander, p. 770; Parker, 2005a, p. 104.
Athenians were free from “the jealous surveillance of their fellow citizens”, there was “no authentically private religious domain in Attica” and even within the sanctity of one’s own walls one could incur the risk of being arraigned for impiety.

Whereas the gods had shown little interest in regulating human behaviour, it was believed that they themselves had ordained the finicky ‘sacred laws’ that regulated the smallest details of all outward manifestations of worship. This made them, in a sense, norms against which an individual’s piety could be measured. In practice, these may have been primarily hortatory and to be viewed as more of a source of guidance concerning best ritual practices, sometimes based on oracular consultation, rather than as actual laws accompanied by enforceable sanctions. Parallel to these were numerous laws that were enacted and administered in the same manner as those governing secular matters and which were ‘sacred’ only in relation to the topics they regulated – for example, sanctuary protection, orderly conduct of festivals, and fees for consulting oracles.

With the development of democracy, the distinction between public and private became even more blurred. The word *demoteles* (paid for by the people) was applied to sacrifices, festivals, sacred precincts, and even gods supported by taxation and was indicative of the control exercised by the *polis* over who had access to sacred places or the right to participate in religious events. The ‘inherited conglomerate’ of rituals became more elaborate and frequent, falling

\[\text{\ref{footnote:1}}\]
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28 Thucydides 2.37.2.
29 Parker, 1996, pp. 6-7.
31 Parker, 2004, pp. 57-60; 2005b, pp. 62-63. The extent to which these could be considered hortatory is subject to debate. They might be subsumed under that unwritten code referred to by Pericles which could not be broken without acknowledged disgrace (Thucydides 2.37.3). Parker (2004, p. 69, n. 30) acknowledges Lene Rubinstein’s argument that in these and similar cases mechanisms for enforcement are not spelled out because it was assumed that everyone would know how to deal with non-compliance. This point is reiterated by Carbon (p. 2), who stresses that “[a]ll laws are to some extent advisory and exegetical, but that does not undermine their authority.”
32 Parker, 1996, pp. 5, 125.
33 A geological comparison coined by the eminent British classicist, Gilbert Murray, to describe religious growth as an agglomeration rather than a substitution. New belief patterns seldom efface completely the old ones, which either live on as elements of the new or else persist side by side. See Dodds, 1951, pp. 179-180.
increasingly under the control of the dēmos or magistrates acting on its behalf.\textsuperscript{34} As Osborne points out, this was part of an effort to combat vigorously “the appearance of any hierarchy within the citizen body by constructing ritual roles which all citizens not only could, but were expected to, slip into.”\textsuperscript{35} By extension, it might be said that it was through the necessary, and generally enjoyable, participation in religious festivals which took place on public holidays, rather than by attending meetings of the Assembly, an activity which was not within the reach of everyone, that citizens were incorporated into the body politic in a more broadly inclusive way.\textsuperscript{36} Furthermore, honouring the gods, whether privately or publicly, was a source of psychological reassurance to the citizenry that, as individuals, they were doing their utmost to ensure the safekeeping of the polis. Religious observance was a far from trivial instrument of social cohesion during an extended period of warfare and upheaval.

On a superficial level, the political life of Athens during this period in history was subservient to expressions of eusebeia (piety) as a civic duty.\textsuperscript{37} The political calendar\textsuperscript{38} and even the timing of trials and executions were shaped by the annual rhythm of festivals.\textsuperscript{39} Meetings of the Assembly, which were preceded by a ceremonial purification and the offering of prayers, had a divided agenda, with hiera (sacred matters) preceding hosia (profane matters).\textsuperscript{40} But in reality, religious authority which had formerly been exercised, above all, by the archons

\textsuperscript{34} Osborne, 1994, p. 6; examples include ceding control of distribution of sacrificial meat to the demarchs and regulation of the format of, and right to participate in, festival processions for the Panathenaia and the Dionysia.

\textsuperscript{35} Osborne, 1994, p. 6, 9.

\textsuperscript{36} In a society with a large proportion of subsistence farmers not everyone had the time to attend the Assembly, or lived within walking distance of it, but religious festivals were public holidays.

\textsuperscript{37} Pace Osborne (1994, p. 2), who deems political life to be secondary to religious activity. To my mind it was subservient on a superficial level only; the relationship more closely resembled symbiosis, as will be argued below.

\textsuperscript{38} Note, however, that the task of revising the sacrificial calendar established by Solon was carried out c. 400 by a politician, Nicomachus, rather than by a religious official; see Lysias, Against Nicomachus 30.

\textsuperscript{39} For example, the Areopagus which dealt with capital cases sat only on the three ‘impure days’ at the end of the month (Parker 2005a, p. 101). Athens was not permitted to be defiled by public executions during the month in which a solemn mission sailed to Delos and back to celebrate the victory of Theseus over the Minotaur and the Cretans (Plato, Phaedo 58b,c).

\textsuperscript{40} Aeschines, Against Timarchus 1.23; Aristotle, The Athenian Constitution 43.6. A suckling pig, the blood of which was used for thorough purification, was sacrificed before every meeting (Nilsson, 1969, p. 15).
had moved seamlessly over to the democratic Council and the Assembly, the only authorities in a position to issue binding and enforceable rules in this domain.\(^1\) The \textit{dēmos} decided which gods were to be worshipped, by which rituals, at what times and places, and at whose expense.\(^2\) One of the nine archons appointed by lot, the \textit{Basileus}, oversaw all religious matters, including the much-revered Eleusinian Mysteries, while ten \textit{hieropoioi} were randomly selected to oversee expiatory sacrifices and another ten to administer the quadrennial festivals.\(^3\)

Another indication of the extent to which religion was centrally embedded in the \textit{polis} was the symbiotic relationship between the political and the sacred as evident in the interplay between priests and \textit{exegetai} (religious expounders) in civic religious expression.\(^4\) The role of the priests was not to give orders to the state but to carry out its wishes, in a sense as its officers, and to report the outcomes of sacrifices to the Assembly.\(^5\) While the priests prayed and performed sacrifices on behalf of the \textit{polis}, acting within the guidelines dictated by the \textit{dēmos}, there are numerous records showing that magistrates such as archons, generals, hipparchs, and taxiarchs also had the authority to offer public orisons and sacrifices. In light of textual evidence, Parker posits that there was a “functional equivalence” between priests and civic magistrates, with neither having a monopoly on modes of communication with the divine. The two groups came at the same task from different angles with the magistrates representing the city before the gods as in any other official undertaking and the priests

\(^1\) Parker, 2006, p. 90. While overall responsibility for the supervision of religious affairs was still vested in the Areopagus, this council was made up of citizens, namely, former archons who were now selected from amongst the people by lot; hence, the process was still an extension of the democracy (Parker, 2005a, p. 91).
\(^2\) Parker, 2005a, pp. 89-90.
\(^3\) Aristotle, \textit{The Athenian Constitution} 54.6, 57.1-4.
\(^4\) As an aside, the term ‘embedded’ has particular resonance because of the parallels with the economic system. According to Moses Finley’s well-known analysis in \textit{The Ancient Economy}, the economy of this time was both ‘primitive’ and ‘embedded’ because it was driven by social and civic ideology rather than by external forces, in this case the rational ones of the market. While his theory has been updated and refined, his basic underlying ideas are still considered valid. For a general discussion, see Bitros and Karayiannis, pp. 206-208. In a similar manner, religion did not exist as an independent sphere, but was subjugated to the traditional social and political needs of the state, with the activities of the seers and oracle-interpreters being analogous to those of the mostly metic entrepreneurs in the realm of commerce. Re \textit{exegetai}, see below.
\(^5\) Parker, 2005a, p. 95. Note, however, that as there is no trace in the sources of repeating sacrifices or cancelling meetings because the omens were poor, the sacrificial outcomes reported to the Assembly seem always to have been positive (Parker, 2005a, pp.100-101).
performing rites on behalf of the city as for any other client. The exegetai were somewhat shadowy figures about whom not much is known. It appears that there were two different types; those appointed by the oracle of Apollo at Delphi and those elected by the Athenian people from one or two noble families with hereditary authority in cultic matters. This board of sacred officials, which may actually have consisted of only two members, seems to have functioned as a convenient in situ resource to be consulted, both by the state and by private individuals, on routine questions about the conduct of official cults and to explain special aspects of ancestral traditions and sacred laws, particularly with regard to purification.

Because there was, even as part of an oral tradition, no original revelation to which the Greeks could turn, they had constantly to seek partial revelations through divination about particular cases. This led to a reliance on oracles and omens, which became one additional area in which religion and public decision-making were intertwined to a remarkable extent. It was commonly believed that the gods knew everything that was or would be and, therefore, all states and all individuals inquired of them by means of divination about what they ought and ought not to do, particularly in regard to religious observances and warfare. The gods responded by way of ordinances and counsels that could be observed directly: interpretation of sacrifices, flights of birds, utterances, dreams, and omens.

Divine signs were interpreted by two different groups of individuals who acted as free agents, operating outside of the control of the civic authorities, even of the dēmos itself, but who nevertheless had great influence in the Assembly. The chresmologoi (oracle-interpreters) collected and expounded on the many

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46 Parker, 2005a, pp. 95-97. In his comprehensive review of officialdom, Aristotle recognizes two types of public sacrifice, those conventionally carried out by priests and those performed by magistrates who derive their prestige from the common hearth (Politics, 6.1322b17-28). See also Antiphon, On the Chorus Boy 6.45, on the offering of prayers and sacrificing by a member of the Council.
48 Parker, 2005a, 105.
50 Flower, p. 59; Parker, 2005a, p. 95.
prophetic works attributed to famous oracles of the past or, on occasion, interpreted the cryptic remarks of figures like the Pythian priestess at Delphi. When the Assembly decided to consult an oracle, the undertaking involved a great deal of formality; because the resulting advice was considered binding, there was an official motion to take the problem to the oracle and to accept the answer. As the outcome of oracular consultation could be uncontrollable and subject to corruption, however, the Assembly regularly protected itself somewhat by phrasing the question in the form of a statement that simply needed to be rubber-stamped.\textsuperscript{51} Even though undertaking a formal consultation with an oracle had the advantage of transferring the decision elsewhere, the pronouncements of the \textit{chresmologoi} were often couched in threatening terms, implying that divinely inflicted punishment could result from failure to follow them, thereby inducing fear and anxiety in the populace.\textsuperscript{52} This combination of factors may have contributed to the Athenians’ becoming less and less reliant on these sources of guidance by the last quarter of the 5\textsuperscript{th} century. The oracle-interpreters were considered less prestigious than the \textit{manteis} (seers), were blamed for some seriously bad advice which had resulted in military failures, and possibly had fallen victims to the transition from an oral to a written culture and the greater focus on democratic decision making.\textsuperscript{53}

The seers, the other independent group who advised on the will of the gods, particularly with respect to military affairs, specialized in the interpretation of physical signs and dream visions and the analysis of the entrails of sacrificial victims. Unlike the priestly functions which could be, and were, carried out by randomly selected individuals, those of the seers required expert skills acquired by experience and study. Often highly charismatic and considered the most authoritative religious experts of their time, the \textit{manteis} generally offered their services for hire as mobile “religious mercenaries.” Those whose prophecies

\begin{footnotesize}
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\item \textsuperscript{51} Parker, 2005a, pp. 90, 106, 109. See Herodotus, \textit{Histories} 7.6, concerning the selective use of oracular passages.
\item \textsuperscript{52} Dover, 1988a, p. 67; Parker, 2005a, p. 115.
\item \textsuperscript{53} Flower, pp. 64–65; Nilsson, 1949, p. 274; Parker, 2005a, p. 115; Price, p. 74. \textit{Chresmologoi} and \textit{manteis} were very influential in the decision to undertake the Sicilian expedition and in its failure; see Chapter VI for further discussion.
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proved to be reliable, became very successful, influential, and rich.54 While it was never stated explicitly, there are minor hints in the texts that “the seer was expected, in some mysterious way, to work success for his client, to obtain somehow – perhaps by virtue of his abilities or special relationship to supernatural beings – favourable omens.”55 Here, too, the possibility of manipulation was always a source of concern.

A dominant theme of religious expression, then, was a constant need to appease, curry favour with, and try to second-guess a plethora of agonistic, anthropomorphic gods. When this was coupled with an extended period of warfare, deprivation, diseases, and their attendant hardships, it became a major contributing factor in the climate of pervasive religious anxiety that manifested itself in Athens in the latter part of the 5th century, mostly through accusations of impiety.

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54 Burkert, 1992, p. 262.
55 Flower, p. 70. The influence of prophets rose at times of uncertainty and crisis; it is no doubt more than a coincidence that the records of prominent divination at Athens concern especially the critical periods of 480, 431/430, 415-413 (Powell, p. 19). It was considered normal for people in a desperate situation to be spiritually sustained by oracles and soothsaying (Thucydides 5.103.2).
CHAPTER II

RELIGIOUS IMAGERY AND THE POPULAR IMAGINATION:
THE ‘SOFT’ CULTURAL POWER OF PIETY AND IMPIETY

Before turning to a consideration of the prominent legal accusations that had a religious basis, some of which were centered on acts rather than beliefs, it is important to look for the influences that might have shaped the understanding in the popular imagination of the twin concepts of eusebeia (piety) and asebeia (impiety), as well as their outward manifestations. Because the legal system lacked a professional component and was wholly dependent on the participation of the average citizen, such influences bear careful scrutiny since they may have had a major impact on how charges were framed and brought to trial. With these in mind, one can then examine the individual cases to try to determine how well the accusations accorded with commonly held notions of piety. In this chapter, I intend to give an overview of the literary sources which were, in some sense, the broader ‘soft’ cultural power that worked in tandem with the usage of these terms in the legal arena. The latter will be discussed in the next chapter.

Greek religious expression involved two diverging, and possibly diametrically opposing, strands of thought about the relationship between man and god, which are both germane to the above concepts. One central theme, inculcated by the many stories concerning Apollo, required that mortals allow the dictates of rituals and cults to suffuse every aspect of their lives. They were to remain humble before the gods and not make a boastful show of their piety; to do

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1 I have omitted any reference to atheism in this chapter, reserving it for discussion in conjunction with the actions against Anaxagoras and Diogoras of Melos. Acts of sacrilege, which generally implies physical desecration, are included under the notion of impiety. It is interesting to note that in compiling a catalogue of acts which were designated as ‘pious’ or ‘impious’, Mikalson (1983, p. 91) found that both types were not always described. Where there was only one description, the negative deed was portrayed more frequently than its positive counterpart; consequently, the non-performance of such a deed would presumably, and by implication, be either ‘pious’ or neutral.
otherwise was an act of *hybris* and courted disaster. The other theme emphasized the kinship between the human and the divine and enjoined men to emulate the gods to the greatest extent possible. Following the successes of the Persian Wars and Athens’ rise to the status of Hellenic hegemon, religion in Athens had become, if not an actual expression of triumphalism, quite openly patriotic and more closely allied with the power and welfare of the state, narrowly restricting the impact of individual worship. The Athenians considered themselves most pious and god-fearing, heaping honours on the gods who had bestowed such blessings on them. The spoils of empire were reflected in the consecration of the entire Acropolis as a sacred precinct, by a program of temple building, and by the celebration of cults with splendid contests and sacrifices. In a way, this could be interpreted as a manifestation of the Athenian emphasis on *aretē* and their aspirations to attain the immortal status of the gods. By the end of the 5th century, however, the political and economic circumstances in the *polis* had changed drastically and the pervasive preoccupation with fostering the goodwill of the gods may well have been founded on apprehension as much as on respect. Adversity could easily have served to reawaken awareness that each and

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2 *Hybris* as used by the ancient Greek writers was a complex term which can in essence be defined along Aristotelian lines as ‘behaviour intended to produce dishonour or shame to others’; when used in a religious context it tended to mean pride or overconfidence that offended the gods (Fisher, p. 178). Note in particular Theopompus’ anecdote, quoted in Porphyry, *De Abstentia* 2.16, to the effect that the gods were more pleased by the humble offerings of a poor man who gave what he could than by ostentatious displays by the wealthy. See also, Isocrates, *Address to the Areopagus* 7.29-30, in which the orator nostalgically lauds the time of Solon and Cleisthenes when *eusebeia* consisted not in extravagant sacrifices and elaborate festivals, but in introducing no rites not approved by custom and in maintaining those handed down by the ancestors. Given the temptation to do more in order to get greater benefits, the balance between expressing piety and holiness by looking after the gods without going overboard was a delicate one in an environment that popularly characterized holiness as “a kind of skill in trading between gods and men” (Plato, *Euthyphro* 12e, 14e).


4 Nilsson, 1969, pp. 66-69. Knox (pp. 269-270) describes the City Dionysia, the yearly religious festival in honour of Dionysus, as an opportunity for Athens to dazzle people from all over the Greek world with its strength. There was a procession of sacrificial bulls, tribute from Delian League members was on display in the theatre, war orphans were blessed and equipped with arms by the state, and proclamations were read out honouring foreigners and citizens who distinguished themselves in the service of the *polis*. Public business was suspended and prisoners were even released from jail for the duration of the festival. Mikalson (1983, pp. 110-111) thinks that Nilsson has overemphasized the extent to which the promotion of a secular public cult for political purposes undermined popular religious belief.

5 *Aretē* was the central Greek value that was intimately bound up with the virtue of living up to one’s full potential or being the best that one could be; it was gender neutral.
every citizen had a responsibility to contribute to the common good by pious
behaviour and this, in turn, would lead to a more intense public scrutiny of what
was perceived as a breach of religious observance. As will be seen later, such a
climate of anxiety also lent itself to exploitation for unscrupulous purposes.

Apart from participation in politics and the exchange of news in the course
of the quotidian life of the Agora, the principal channel of communication in
Athens at this time was public performance, with the drama festivals constituting
the high point of the civic calendar.\textsuperscript{6} By attendance at just the two major festivals,
a citizen would be exposed each year to eighteen new tragedies, as well as to a
number of comedies.\textsuperscript{7} The roots of Greek tragedy were deeply embedded in ritual
celebration and, even in its most sophisticated form, a performance constituted
an act of worship, honouring the god in his own precinct.\textsuperscript{8} Comedy, which had
arrived on the scene much later, could be described as “the licensed clown of the
Athenian democracy”, whose civic and religious duty was to release the audience
from restraints and inhibitions, as did Dionysus with whom it was associated.\textsuperscript{9}

As the stage works were entered in competition, they had to appeal to a
mass audience and were likely to reflect the social and political realities of their
time. This was especially true of comedy, but even tragedy, which dressed its

\textsuperscript{6} The true impact of the festivals as a vehicle of mass communication should be viewed in the
context of the make-up of the population of Attica. Given that it consisted primarily of rural
subsistence farmers, attendance at the Assembly or jury duty was much more accessible to the
urban dwellers, a lamentable state of affairs characterized by Croiset (pp. 4-6) as the “evil” from
which the Athenian democracy suffered the most. But religious festivals drew in everyone and
were among the few occasions when women could join in public activities. Beer (pp. 39-40) states
that a reasonably conservative estimate of the capacity of the theatre of Dionysus is 15,000; in
addition there were about 1,000 performers in the choruses and about 200 players. As the total
citizen population of Athens, Piraeus, and environs has been estimated to have been in the
neighbourhood of 60,000 at the beginning of the Peloponnesian War (Gomme, 1967b, p. 47), a
sizeable proportion of the Athenian population would have been exposed to the influences of the
dramatic works in any given year.

\textsuperscript{7} Arnott, p. 50.

\textsuperscript{8} That tragedy had ‘nothing to do with Dionysus’ was a well-established adage in the ancient
world. Scullion (pp. 33-36) argues that, even though the origin of the saying is unknown, it can be
taken at face value because incomprehensible and idiosyncratic ideas are rarely transformed into
proverbs. He sees the relationship between tragedy and religion as contingent rather than
intrinsic; the tragedies were always performed in conjunction with holy festivals and were thus,
by definition, under the auspices of a god.

\textsuperscript{9} Knox, p. 285. Purifying the theatre by a ritual sacrifice, having the \textit{strategeoi} (generals) pour
libations, and bringing a statue of Dionysus to watch the performances underscored the religious
nature of the festival, much as the civic trappings mentioned above had cemented its ties to the
communal life of Athens (Knox, pp. 269, 270, 285).
lessons in mythological clothing, incorporated allusions that were clearly pointing to contemporary events. The combination of the civic context with the religious aspect had the effect of turning the playwright into a popular expounder of theology, whose function was to deliver good advice to the citizens in a way that would touch their hearts and leave a lasting impression at the end of the play. Here, one needs, first of all to take into account that the genre of a literary work was a crucial determinant of its religious content. Consequently, a study of the tragedies would reveal that they focussed on a sub-set of similar areas of experience and belief, to the exclusion of others. Secondly, one needs to make allowance for the imperatives of striving for a deliberate dramatic impact. On the stage, heroic figures were confronting and complaining about events inflicted on them by the gods; the actions and utterances of ordinary Athenians might have been quite different. Finally, although one should take care in drawing biographical inferences about the character of the authors based on works that are in all senses fictional and mostly inhabit the realm of the extraordinary, it seems likely that their writings were in some way reflective of their personal ideology.

Belief in the established pantheon of gods was the bedrock of Athenian religion and the accepted social norm. From it flowed a multitude of behavioural manifestations of piety, encompassing the traditional religious practices acquired by birth: worshipping the gods of the polis, correct cultic practice in the performance of rituals and sacrifices, acknowledgement of signs and omens, reverence for sacred spaces, respect for the rights of asylum and hospitality, proper burial of the dead and care of tombs of the ancestors, and honouring of oaths. These themes, as well as more nebulous notions of piety as a moral force, recur time and again in the plays with which the average Athenian became

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10 See Parker, 1997, pp. 154-55, for the example of Euripides’ *The Trojan Women* performed in 415. The Trojan survivors stress over and over that they had been betrayed by the gods whose favour they thought they had earned with pious sacrifices. Rose (pp. 186-187) points out that the allusion could quite possibly have been to the Athenians’ exceptionally cruel treatment of the inhabitants of Melos in 415. See also Thucydides 5.84-116.
12 Parker, 1983, pp. 15-16. He cites the example of pollution which figures prominently in the tragedies, is inconspicuous in the poetry of Pindar, and scarcely to be found in Xenophon.
13 Bain, p. 222.
familiar. The histories, which were probably read by only a few, contain valuable empirical information about the ways in which religious practices were carried out. Our main sources of information for the second half of the 5th century are the playwrights Sophocles, Euripides, and Aristophanes and the historians Thucydides and Xenophon, who are discussed briefly below; their contemporary experiences and perspectives are our lenses into the past.

Of the three playwrights, Sophocles can be considered the most conventional and the most successful, both in his role as citizen and as a writer. Although the scanty biographical information concerning the poet is considered unreliable, a few points can be established with some certainty. He was born shortly after the dawn of the 5th century and died just before its end. Anecdotal evidence suggests that he had a pleasant personality and a very sociable nature.\(^{14}\) Sophocles was at least minimally active in civic affairs and must have been sufficiently highly regarded to be elected one of the ten strategoi for the year 441/440.\(^{15}\) As a dramaturge, Sophocles was exceptionally successful from start to finish. It is thought that he composed one hundred twenty-three plays, won the competition for tragedy at least eighteen times, and possibly as often as twenty-four times, and never came in lower than second.\(^{16}\)

Sophocles’ plays, like the world of Thales, are full of gods, so “saturated with the divine”, that a deity or a religious practice is mentioned within the first twenty lines of each of the surviving plays.\(^{17}\) But these gods are “remote, dangerous, and awesome powers, easily offended but not easily appeased once their realm has been violated or their rights infringed.”\(^{18}\) His oeuvre has been characterized as a study in eusebeia, dwelling on the question of how man is to revere the gods, when their ways of maintaining order in the universe and meting

\(^{14}\) Stevens, p. 89.
\(^{15}\) This is the only securely attested indication of Sophocles as homo politicus; Avery demolishes the case for his having served as hellenotamias, treasury magistrate, or proboulos, one of the magistrates given plenipotentiary powers after Athens’ defeat at Syracuse. See also Beer, pp. 20, 67, and Woodbury, 1970, p. 216. Both of these note that the sources indicate that Sophocles was elected stratēgos as a result of the production of Antigone, but as the date of the play is not known, it might also have been in recognition of some other play, or just plain incorrect.
\(^{16}\) Beer, p. 25.
\(^{17}\) Parker, 1999, p. 11.
\(^{18}\) Segal, p. 5.
out justice are “neither predictable nor necessarily wholly intelligible to mortals.” A most explicit expression of the supreme importance of piety is found in Heracles’ admonition at the end of Philoctetes. Even in warfare, men are to be reverent, and show true respect for the things of the gods when they lay waste the land. Zeus holds all else in second place to piety – “for piety does not die along with mortal men; if they live or die, it is not destroyed.” This ethic is paramount in Antigone, which stresses the supremacy of obedience to god’s laws over those of men, to the point of self-sacrifice. Sophocles considered the will of heaven to be a mystery and that the will of the gods was revealed in prophecies, all of which must have made the strict observance of piety more challenging. Even though divination had become highly controversial by this stage of Athenian history, the characters of Sophocles seem favourably disposed to accept its guidance.

Euripides presents a much more complex picture. According to the biographical information, he was born into a well-to-do family, but was an unpopular figure in Athens, disliked, and considered unsociable. Although he was almost as prolific as Sophocles, with more than ninety plays attributed to him, he was less successful as a dramatist, winning only five first prizes in total, one of them posthumously. It is believed that he may have been a pupil of the sophists Prodicus and Anaxagoras, both of whom appear to have faced accusations of impiety, although this may simply be an inference based on the many philosophical references in his plays. Whatever the case may be, most scholars see in his work the influences of the unconventional speculation that was prevalent in the intellectual circles of the time, which led him to question and

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21 Segal, pp. 5, 95.
20 Sophocles, Philoctetes ll. 1440-1444.
21 “Since the gods conceal all things divine, you will never understand them, not though you go searching to the ends of the earth” (Sophocles, fr. 919, Tragicorum Graecorum Fragmenta).
22 Parker, 1999, p. 14; Knox, pp. 277-278. Nilsson (1949, p. 274) thinks Sophocles accepted only the oracle at Delphi as authoritative. Re impact of auspices and augury, see fn. 52 below.
23 For references re biographical information, see Rose, p. 177ff.; Stevens, 87ff.
24 Stevens (p. 88) injects the note of caution that thinkers of that age were by definition considered proud and unsociable.
25 Suda, E3695, Adler; Rose, p. 178, fn. 2. Re Anaxagoras, see Chapter IV.
criticize. Those of his plays which are set in Troy are riddled with images of human suffering brought on by the brutalities of war. By implication, they are critical of the peoples who perpetrate in them, including the Athenians. Hence, in a nation at war, which doubtless counted on having the gods on its side as a military tactic, denouncing the injustices of the war, especially one that was not going well, may have turned the population against him. He left the city abruptly in about 408, very late in life, never to return. The reasons for his departure are unclear; he may have been responding to an irresistible invitation from the ruler of Macedon, who was an admirer or his work, have had political difficulties, or simply have tired of being the butt of the comedians’ barbs.

Like the works of Sophocles, Euripides’ plays are also filled with gods and he makes his audience keenly aware of their interest in human affairs. Only six of his eighteen extant works have no divine characters and, of these six, four incorporate references to, or scenes of, miraculous events that could have been brought about only by a god. Nevertheless, the atmosphere is negative, rather than reverent, as his characters pour out a stream of damning statements about the deities. Among all the poets of his time, he is considered to have been the most sceptical about the nature and even the existence of the gods, giving rise to the idea that he may have been an atheist or, at best, had profound doubts about

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26 See for example, Appleton, p. 91; Arnott, p. 49; Knox, p. 280; Russell, pp. 104-105.
27 Goodman and Holladay, p. 152; Murray, 1913, p. 164.
28 The enduring notion that he felt embittered does not stand up to scrutiny; it is understandable that a generous invitation might tempt an old man to leave a war-torn town (Dover, 1988b, p. 149). According to tradition, the Athenians begged the Macedonians to return Euripides’ bones to the city only a short time after his death, which raises questions about his having been held in low esteem (Stevens, pp. 89, 93). Re comedy, see Aristophanes below.
29 Knox, p. 280; Lefkowitz, p. 70.
30 To give but a few examples: Hecuba ll. 488-491, where Hecuba states that Zeus has won a false reputation for protecting the affairs of men, if there even is a race of gods, while in fact all is due to chance; in Heracles ll. 342, 347, Amphitryon accuses Zeus, great god though he is, of being stupid or unjust right through; in Helen ll. 238, 921-924, the celebrated heroine rails against Aphrodite as treacherous and murderous, a goddess who has in insatiable appetite for mischief and loves to cause bloodshed; in Ion ll. 433-449, the main character berates Apollo for his behaviour, saying that the gods prescribe laws for humans but are themselves lawless. Euripides’ gods are dangerous, incomprehensible, alien beings; living in close association with a deity implies separation from normal political life (Humphreys, p. 60).
conventional religion. Many scholars interpret his plays as an attempt to discredit all received religious views, portraying the gods with a particularly uncompromising vehemence as elemental forces utterly indifferent to human ideals of morality and justice. Others consider them to be a reflection of his “celebrated realism” and dismiss the idea that radical atheism could even have been a serious alternative for anyone of his time. In either case, if there was an undercurrent of popular disapproval of, and resistance to, the message in his plays, its effect may have been to help solidify adherence to the traditional notions of piety, rather than to foster a spirit of critical scepticism.

In contrast to tragedy, which drew on the Homeric myths, comedy had its origin in the rustic and exuberant rural masquerades staged during the festivals of Dionysus. It did not lose its character once it was translated to the official festival stage of Athenian civic drama, continuing its traditions of indecent buffoonery, extravagant satire of current events, and merciless attacks on prominent citizens. The third major playwright, Aristophanes, who is the author of the only extant examples of Old Comedy, was born in the middle of the 5th century and wrote all of his work in the dark shadows cast by the Peloponnesian War. Little is known of his life and outlook, apart from what can be gleaned from his plays, which form the basis for the deduction that Aristophanes must have lived a good portion of his early life in the countryside.

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31 Lefkowitz, p. 71. Grube (p. 39) points out that when striking, quotable lines are taken out of context and disseminated broadly, they can often leave the impression, as in the case of Euripides, that their author has atheistic tendencies.
32 Appleton, pp. 89, 90; Burnett, p. 89; Knox, p. 281. Nilsson (1949, p. 274) quotes his Bellerophon, fr. 292, “if the gods do anything base there are no gods”, to buttress his argument that Euripides undermined the old gods without replacing them with new and better gods.
33 Lefkowitz, pp. 77, 79; Yunis, p. 76. And let us not forget Sophocles’ take on his contemporary, that he portrayed people as they ought to be and Euripides as they are (Aristotle, Poetics 1460b, ll. 33-34). Presumably, Sophocles’ opinion encompassed the religious sentiments they expressed.
34 Croiset, pp. 1-2. Later writers might have derived some of their information from reading the comedies at face value, not bearing in mind that they ridiculed and vilified personages, without regard for the social and political consequences (Dover, 1988b, p. 138). Mansfeld (1980, p. 39) quotes an apparently forgotten paper by Vischer, Über die Benutzung d. Alten Komödie als gesch. Quelle, to the effect that Aristophanes should never be used as if he were a sober historian; evidence derived from his plays should be taken at face value only if it is confirmed by other, independent evidence, or it is the starting point, not the climax, of a joke, or if it is just a piece of innocuous information.
35 Croiset (p. 9) states that the abundance and variety of concise, vivid allusions to rural life in the works of Aristophanes are evidence of his personal knowledge of the agricultural environment.
It is thought that one of the reasons that he so detested the war was that the land campaigns, in particular, had brought about the forcible separation of the rural population from their holdings and the devastation of the farmlands. In Peace, he nostalgically lauds the return to the old way of life as an occasion for rejoicing and the offering of thanks to its eponymous goddess. In view of the nature of comedy and Aristophanes’ own background, it then seems reasonable to expect his plays to project the conservative values of the countryside, which were more intimately connected with old customs and ancient rites of worship than those of the urban setting. Suspicion of, and resistance to, new ideas, especially those which were proposed by men whose notion of labour was not working the soil but ‘philosophizing’, which the average man might consider incomprehensible or ridiculous, were natural reflex reactions under these circumstances.

The comedies of Aristophanes are firmly set in the present, rife with caricatures of public figures and references to current events. Nevertheless, it has been argued that Aristophanes’ plays were devoid of any political content or ideological purpose, that he had no desire to be taken seriously, that his aim was entertainment pure and simple, driven by “a generic imperative to produce laughter at any cost”, and that he strove only to win a prize. Naturally in order to do so, he had to provoke mirth and he availed himself liberally of comedic licence to incorporate parodies of religion and rituals into his plays. But, there is no harsh criticism of the gods and he does not direct his attack at traditional beliefs. Instead he introduces demonstrably silly, new-fangled inventions, such as

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36 Sommerstein, p. 15.
37 Aristophanes, Peace ll. 551-599.
38 Croiset, p. 5.
39 Carey, 1994, p. 76. He thinks it is difficult to accept that poets vying for popular favour would collectively present unpopular views. Konstan (pp. 5-6) opposes this view and cites the proponents; he thinks Aristophanes is engaged with social themes. See also Sommerstein (p. 14) who points out that in the revised version of Clouds Aristophanes included a rebuke to the audience for failing to appreciate the merit that lay in the words of his work, an indication that he wanted to be taken seriously. Pritchard (1998, pp. 40-41), on the other hand, takes issue with the influential theory of de St. Croix, who maintained that Aristophanes was a reactionary who used his plays as a political vehicle to win the audience over to his conservative point of view.
40 Authors of the time often teased or scoffed the gods of their city; the question is whether this reflected dissatisfaction with the ‘inherited conglomerate’ or whether it was merely intellectual exuberance (Furley, p. 71). Todd (1990, pp. 153-154) cautions about the dangers of basing broad conclusions in social history on the unsupported evidence of a comic poet like Aristophanes; comedy relies on exaggeration and fantasy, and its apparent realism can be insidious.
the divinities Chaos, Clouds, and Tongue and the mystery-like initiation rites in *Clouds*.\(^{41}\) His concern with the protection of established religion may have triggered his deep-seated antipathy toward the ideas of Euripides, who looms large in three of his eleven extant comedies and who merits at least a passing reference in all the rest.\(^{42}\) He is directly criticized in *Frogs* as failing in the poet’s duty to conceal the wicked, rather than flaunting immorality openly on the stage. Euripides is reproved for causing a general moral decline not only by the actions of his characters but by his rhetoric and for having a deleterious effect on the young.\(^{43}\) In one play, he has a character complain that the “guy who composes in the tragedy market”, clearly Euripides, has persuaded men that the gods do not exist.\(^{44}\) The writer of comedies was reinforcing the notion that the tragedian and the purveyors of philosophy with whom he consorted were undermining the accepted ideas of the gods, thus playing havoc with the safeguards of domestic and public morality.\(^{45}\) In the years to come, the impressions left by Aristophanes would surface in a legal setting, cited as having indelibly affected popular thinking about impiety, particularly with regard to Socrates.

Whereas the theatre was the vehicle for communication with the masses, the historical writings, which must have been available only to the educated and wealthy elite, were intended as a record for posterity. Thucydides makes this plain at the very beginning of his *magnum opus* on the history of the Peloponnesian War: “I have written my work, not as an essay which is to win the applause of the moment, but as a possession for all time.”\(^{46}\) Xenophon, who copied his template in *Hellenica*, likely had similar thoughts. What is of interest

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\(^{41}\) Aristophanes, *Clouds* ll. 424, 250ff.
\(^{42}\) Murray, 1913, pp. 30-31. He points out (p. 108) that the attacks on Euripides were remarkably lacking in personal spite or denigrations of his character.
\(^{43}\) Aristophanes, *Frogs* ll. 1053-1054, 1078-1082. Dover (1988b, p. 149) thinks it obvious from Old Comedy that Aristophanes was open to blame by conventional people for the sentiments, ideas, and behaviour found in his plays.
\(^{44}\) Aristophanes, *Women at the Themsmophoria* ll. 450-451. The comic playwright thought Euripides full of subtleties and sophistries; he had a dangerous, disturbing effect and played havoc with the accepted ideas of the gods (Wycherley, pp. 105-106).
\(^{45}\) Appleton, p. 90; Croiset, p. 99; Lefkowitz, p. 71; Russell, p. 104; Stevens, p. 93; Wycherley, pp. 98, 106.
\(^{46}\) Thucydides 1.22.4.
at this point is to look briefly at the extent to which their works might shed light on forms of behaviour and specific acts that were judged to be pious and impious.

Of Thucydides almost nothing is known beyond the few autobiographical references that he doles out in his history. He was an Athenian, had survived the plague which broke out in Athens in 430, and owned gold mines in Thrace. Elected to be a stratēgos in 424, he failed, through no fault of his own, to prevent the Spartan capture of Amphipolis, was exiled, and spent the next twenty years away from Athens, returning after the end of the Peloponnesian War.47 In his book, he stresses that he has set out to be an objective reporter, chronicling events without romance or poetic flourishes.48 Regrettably, and inexplicably, the work breaks off abruptly in the middle of the year 411.

It is a broadly held opinion that Thucydides’ one glaring omission is religion: the gods of the time are nowhere to be found.49 Such an assessment may be presenting the religious aspect of the History in a manner that is too one-sided. It may be true in the sense that divinities are not seen to interfere directly in the affairs of men as they are in the earlier accounts of Herodotus, nor does he engage in religious preaching or deploy the gods as invisible policemen.50 Removing them from the role of “historical causation” does not, however, lead inescapably to the conclusion that Thucydides denied their existence or their importance to the people about whom he wrote, nor (pace Hornblower) that he was oblivious to the interaction between religion and politics.51 Concerning divination, which played a prominent part in public decision making,52 the communis opinio is that Thucydides was sceptical of oracles and rejected them as

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47 Thucydides 1.1.1, 2.48.3, 4.104.4, 4.105.1, 4.106.2, 4.108.1, 5.26.5.
48 Thucydides, 1.21-22.
49 Veyne, p. 232. Hornblower (p. 170) refers to “scandalous” religious silences in Thucydides. See Jordan, 1986, p. 119, for a long list of scholarly sources re religion in Thucydides, to whom atheistic or agnostic tendencies are generally attributed. Marinatos (p. 140) places him in the mainstream of 5th century tradition.
50 Lateiner, pp. 97-98.
51 Lateiner, p. 97. See also Jordan, 1986, pp. 120, 121; Hornblower, p. 178.
52 Finley (1983, pp. 93-94) points out that, unlike Rome which had institutionalized augury, Athens did not have official augurs and left divination largely to private ‘soothsayers’ whose authority and predictions could be challenged or ignored. While this may be true, an example such as the one found in Thucydides 2.21.3 shows clearly that the results of oracle consultations, even if unofficial, were the subject of hot debate on street corners and in this sense they certainly shaped public opinion. Hence, they had an effect on the outcome of voting in the Assembly.
a form of superstition, mentioning the supernatural only to report its effects on popular feeling. A more nuanced interpretation might be that he was interested in oracular puzzles and their correct explanation; he reserved his scorn for the interpretations of the notoriously fraudulent “reciters of oracles and soothsayers, and all other omenmongers.” In this he was no different from other intellectuals of his time.

After undertaking a meticulous examination of all the references to religious matters in Thucydides, Jordan concludes that religion was treated in the same way as other topics which help to shape events – economics, finance, military organization, constitutional procedures, and so on. Any judgements Thucydides makes about matters that touch on the gods are couched in terms that would not offend even the most orthodox believer. The sphere of human activity is another matter. While he stops short of explicitly labelling actions as impious, he embeds them in the narrative in such a way as to ensure that the reader is aware of his disapproval of those which transgress conventional morality. Without declaring his own allegiances, Thucydides consistently defers to pious behaviour as a generally beneficial constraint that helped to curb the destructive wartime forces that were tearing his society apart.

The much younger Xenophon was born into a wealthy family around the time of the start of the Peloponnesian War and as a young man was an associate of Socrates. He spent many years fighting as a mercenary, first with the Persian army and later the Spartans. In the course of the latter, he formed a close friendship with the Spartan king, Agesilaus, who rewarded his services with an estate on which he lived as a country squire. He is known to have been exiled from Attica for reasons that are not clear and died at Corinth. In using Xenophon as a source of insight into questions of piety and impiety, one has,

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53 See Marinatos, p. 138, for an extended list of scholarly opinion, with only two dissenting voices; also Lateiner, p. 97; Nilsson, 1969, p. 77.
54 Thucydides 8.1.1.
55 Marinatos, pp. 138-140.
56 Jordan, 1986, p. 147. Osborne (1994, p. 19) conjectures that Thucydides must have taken it for granted that his audience was familiar with the details of religious practice and that, as a consequence, there was no need to spell them out.
57 Pearson, p. 58.
58 See Cawkwell, p. 8ff., for biographical details.
therefore, to balance the extent to which he absorbed Athenian attitudes in his formative years against the influence of the notoriously conservative and reverent Spartans with whom he spent much of his adult life.

According to Diogenes Laertius, Xenophon was pious, fond of sacrificing, and capable at discerning sacred matters, all of which are indicative of adherence to conventional religious traditions.\(^{59}\) In his writings he provides only two direct glimpses into his personal beliefs, one of which pertains to following oracular advice and the other to building a temple on his estate in gratitude for his safe return and making cultic offerings.\(^{60}\) On the other hand, he refers frequently to his public practices. In both the *Hellenica* and the *Anabasis*, Xenophon repeatedly tells of his belief in omens, being in the habit of sacrificing before military undertakings, to determine the likelihood of success or failure of the mission from the entrails of the slaughtered animal.\(^{61}\)

He firmly believed in the omniscience of the gods, that they were not unmindful of those who were impious or of those who committed unholy acts, and that they would exact divine retribution on them.\(^{62}\) His divinities were an abstract divine force that not only reinforced moral conduct at both the individual and the collective levels but also scrutinized the motives which underlie human behaviour.\(^{63}\) Among the acts of impiety mentioned in the *Hellenica* which resulted in the immediate downfall of the offender were: breaking of oaths, not honouring the right of sanctuary, violation of a cult or festival, negligence in religious rites, manipulation of religious ritual, physical damage to temple buildings, and temple robbery.\(^{64}\) These are all issues which surfaced, in one form or another, in the context of the legal system, which was the only available mechanism for curbing religious offences in Athens. Hence, even though there is a modern tendency to dismiss Xenophon for his uncritical belief

\(^{59}\) Diogenes Laertius, *Xenophon* 2.56.
\(^{60}\) Xenophon, *Anabasis* 3.1.4-8, 5.3.7-13.
\(^{61}\) Anderson, p. 34.
\(^{62}\) Xenophon, *Hellenica* 5.4.1; Pownall, 1998, p. 252.
\(^{63}\) Dillery, pp. 188-189; Pownall, 1998, p. 255, fn. 22.
\(^{64}\) Pownall, 1998, p. 256. Note, however, that of the thirty-one cases listed in the appendix to the article (pp. 276, 277), only four relate directly to Athens, which is natural given Xenophon’s absence from Athens. On the other hand, the traditions of religious observance seem to have been fairly consistent throughout the Hellenic world.
in the power of sacrifice and his repetition of empty formalities,\textsuperscript{65} his religious outlook seems to have been virtually identical to what appears from the plays and the forensic speeches to have been the consensus of his contemporaries about what was publicly acceptable.\textsuperscript{66}

\textsuperscript{65} Anderson (p. 35) points out that this may be due to a modern tendency to doubt the sincerity of someone who professes beliefs that differ from our own.

Athenian law and religion worked in tandem as complementary forces to exert social control over the citizenry. Despite the absence of a body of codified laws attributable directly to a divine being, the law still rested on a religious foundation, namely, the widespread acceptance that there was an overarching, permanent framework of unwritten laws that dictated how humans were to behave. These were the timeless ordinances of the gods, so frequently extolled in the tragedies, which could not be over-ruled by any promulgated by mere mortals; true piety rested on following these higher precepts. Nevertheless, there were explicit man-made laws and decrees governing sacred matters within the polis. These were the vehicles for laying charges of impiety, even though the concept itself was ill-defined, and, as discussed previously, its interpretation was very dependent on the filtering effect of the collective consciousness. Seemingly, the term was sufficiently vague to cover a wide range of offences, leaving a great deal of scope for legal manoeuvring. And because impiety was a crime against the state, like treason and embezzlement of public funds, the stakes were very high when charges were laid. The actual laws and their administration, references to piety and impiety in the forensic oratory, and the malleable nature of the legal system form the subject of this chapter.

As described in the Athenian Constitution, the mechanics of how cults, rituals, and priesthhoods were to function was clearly spelled out, but we possess considerably less information about the laws governing the much more intangible sphere of what constituted a religious crime. The principal description of something that comes close to being an ur-law governing civic religion is neither

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1 See Sophocles, *Oedipus Tyrannus* ll. 863-872; *Antigone* ll. 450-459; also Aristotle, *Rhetoric* 1.13.2.
2 Aristotle, *The Athenian Constitution* 54.6-7, 56.4-5, 57.1-2, 58.1.
3 Carey (1996, p. 38) characterizes Athenian law as having a marked tendency “to be procedural, to define means of redress rather than offences.”
firmly based on an Athenian source nor contemporary and is, therefore, not considered totally reliable. This is Porphyry’s quotation of “an eternal sacred law” attributed to Draco, which would date it as being from approximately 621. It enjoins the inhabitants of Attica, in perpetuity, to worship the gods and heroes, publicly in conformity with the laws of the ancestors and privately in accordance with their individual abilities with auspicious words and offerings of first fruits and cakes. In addition, references to decrees are found in the sources. Plutarch writes that Diopeithes, the diviner, introduced a decree, which was passed by the Assembly, to the effect that “those who did not believe in divine things or taught about things in the sky” should be prosecuted. A number of scholars have accepted the decree of Diopeithes as a historical fact, but opinion is much divided and, because it is not corroborated elsewhere, there is a great deal of scepticism about its authenticity. To ignore it outright, however, may be somewhat dismissive. First of all, control over sacred matters was vested in the Assembly and the intent of the decree is consistent with the law attributed to Draco and with the established practice of regulating religion in the polis. For example, Andocides cites another decree, proposed by Isotimides, that excludes those who

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4 Porphyry, *De Abstinentia* 4.22, composed about eight centuries after the time of Draco.
5 Plutarch, *Pericles* 32. Plutarch gives a date of 433. Mansfeld (1980, pp. 38, 40), so Ostwald (p. 525), argues persuasively in favour of an earlier date of 438/437, noting that Plutarch’s *Lives* are notoriously full on compressions and chronological inaccuracies. The date is crucial to an understanding of the first round of accusations of impiety directed at the circle of Pericles. Burkert (1992, p. 264) points out that, as Diopeithes was a diviner, ‘divine things’ were the signs from the gods that should be treated as directives; respect for them was “the very foundation not only of piety, but of religion itself.” Piety in the sense of sacrilege was probably always an offence; what was new was a prohibition on neglect of a cult and anti-religious teaching (Dodds, 1951, p. 189).
6 David Cohen (p. 212) takes issue with MacDowell’s acceptance of the decree and adopts the radical position that in the study of Athenian law evidence from late authors should be ignored unless their own sources withstand critical scrutiny or supporting evidence is available in contemporary Athenian sources. Dover (1988b, p. 147) entertains doubts about what the decree said, what it meant, and the time and circumstances which made it possible. Ostwald (p. 528), whose position is that Greek religion stressed ritual and sacrifice and was indifferent to belief, considers the decree to be believable but thinks that it might have been the earliest attempt to institute a law by which an offender against society, who could not be charged in any other way, could be punished. (He does not mention the law attributed to Draco.) Many other scholars, e.g. Derenne, Dodds, Mansfeld, take it as authentic, and as Bauman (p. 39) says, one may safely align oneself with them. For further discussion of the decree see Chapter IV. According to Ostwald (p. 526), the diviner Lampon proposed an amendment to it in 422 that was aimed at protecting the Pelargikon, the walls surrounding the Acropolis, and preventing the erection of altars on it. An amendment presupposes the existence of the original and lends credence to its authenticity.
had committed impiety and confessed to it from the Agora. Secondly, impiety clearly existed in the statutes as a crime. This is attested in a speech dating to about 400, in which the speaker makes reference to Pericles’ having said that written, as well as unwritten, laws against impiety should be applied. Logic dictates that in the absence of such laws charges could not have been laid.

Thirdly, as will be seen later, theories about natural phenomena were a source of conflict and legal action was taken against those who propounded these views.

There is a paucity of concrete information about the precise legal definition of what constituted impiety but evidence from the forensic literature indicates that there was significant overlap with the ordinary language found in the tragedies. The confusion is compounded because many of the regulations about religious matters were not laws in the true sense. They consisted of recorded conventions, derived from exegetical tradition, and, as they lacked sanctions and procedures for enforcement, were of an advisory nature. Many of the categories cited in court cases are simply the exact opposites of the traditional behavioural manifestations of piety already described in Chapter II above. Broadly speaking, the defined categories were: wrongdoing concerning a festival, theft of sacred money, temple robbery, and offences against sacred olive trees.

As MacDowell points out, the related question of intent was critical. Was an action that contravened a sacred law but that was committed inadvertently still a crime? Here he cites the case of Aeschylus who was said to have been accused of revealing the Eleusinian Mysteries in a play. The playwright countered that as he had not been initiated he could not have known that what he wrote was a breach of the law.

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7 Andocides, *On the Mysteries* 1.71, a speech delivered c. 400. See also Chapter VIII.
8 [Lysias], *Against Andocides* 6.10. MacDowell (1978, p. 199), with Parker (2005b, p. 65), speculates that there was an actual law against impiety and that it was probably similar in form to the one against *hybris*, an equally vague and imperfectly defined concept that was subject to interpretation.
10 These were virtually all to do with proper observance and compliance with ritual.
11 All manner of offences could be incorporated under one or the other of these: improper sacrifices, violation of ritual prohibitions, entering a religious precinct or taking part in religious celebrations when one was debarred from them, lack of respect for sacred property, violation of refuge accorded to a suppliant, and so on. For details and sources, see Cohen, D., pp. 205-206; Mikalson, 1983, p. 92; Parker, 2005b, pp. 63-64.
of the secrets and he was exonerated.\textsuperscript{13} In a reverse case, Andocides was accused of impiety for placing a suppliant’s branch on the altar of the Eleusinion during the Mysteries, even though the prosecutor conceded in his charge that Andocides was ignorant of the law against it.\textsuperscript{14}

Here it is pertinent to raise the question of whether the concept of impiety was concerned primarily with actions or whether it also subsumed expressions of opinion that denied the existence of the gods or showed contempt for them.\textsuperscript{15} Because of the fear of divine retribution against the polis, it is likely that there was a low tolerance for outright expressions of disbelief.\textsuperscript{16} In practice, there was probably no systematic repression, but neither did the freedom of the citizen to make his voice heard amount to a licence for impious talk.\textsuperscript{17} MacDowell posits that in earlier times an individual could voice unorthodox opinions as long as they were harmless and did not incite anyone to commit unorthodox acts, but by the second half of the 5\textsuperscript{th} century there was a decline in traditional religious beliefs and atheism began to be seen as a threat. Certainly the passage of the decree of Diopeithes supports this thesis, as it clearly signalled a hardening of attitudes since it extended the scope of asebeia to include thought crimes and verbal offences.\textsuperscript{18} In a reflection of what may have been the common perception in antiquity, Josephus wrote with reference to events in the late 5\textsuperscript{th} century that the Athenians punished without mercy those who spoke but one word contrary to the laws about the gods.\textsuperscript{19}

\textsuperscript{13} Aristotle, Nicomachean Ethics 1111a18. See also Ostwald, p. 529, for discussion and further sources. As the acquittal is also attributed to the valour shown by Aeschylus and his brother at the Battle of Marathon, the case is not a conclusive illustration of the point MacDowell makes that lack of intent could serve as an acceptable excuse.

\textsuperscript{14} Andocides, On the Mysteries 1.113; for details see Chapter VIII. This aspect of the case seems, however, to have been dropped.

\textsuperscript{15} The dichotomy is expressed in [Lysias], Against Andocides 6.17: “Diagoras committed impiety in word against sacred things and festivals which were alien to him, whereas Andocides committed impiety in deed towards those of his own city.”

\textsuperscript{16} David Cohen (pp. 210©211) argues that as eusebeia encompassed expressions of belief, there is insufficient evidence that its opposite, asebeia, was concerned exclusively with deeds.

\textsuperscript{17} Parker, 2005b, p. 67. For an example see Xenophanes’ assertion, quoted in Aristotle, Rhetoric 2.23.18, that saying that the gods were born was as impious as saying that they die.

\textsuperscript{18} MacDowell, 1978, p. 200. Contra Nilsson (1969, p. 79) who holds that freedom of thought and expression were absolute and that accusations were framed as offences against the practices of a cult rather than the dissemination of false doctrine.

\textsuperscript{19} Flavius Josephus, Against Apion 2.38.
To appreciate the practical effect that the fundamental vagueness of the term *asebeia* had in the legal arena, it is necessary to have a basic understanding of the technical aspects of how the law was applied. In Athens there was no official civic machinery for policing the laws, laying charges, or enforcing judgments other than confiscations and executions. As there was no independent religious agency which handled religious offences, they were dealt with in a manner analogous to profane ones via the regular judicial channels of the *polis*. These depended on a system of ‘free enterprise’ in that wrongdoing could be prosecuted only on the initiative of an individual citizen who brought the case to the attention of the appropriate authority. In a private dispute, the complaint, known as a *dikê*, could be lodged only by the person directly affected, or a close male relative acting on behalf of a female, a minor, or the victim of a homicide. On the other hand, if the matter was one of concern to the entire city, the charge could be laid by anyone at all as a public suit, that is, a *graphê*. Given the belief that the fate of the entire city rested on collective piety, any transgressions in this domain fell automatically into the public sphere.

Public suits could be initiated in two ways. If an individual thought the wrong-doing posed an immediate threat to the safety and well-being of the community, he could report the crime (or even an apprehension that a crime involving subversion of the state or treason might be committed) directly to the Council or to the Assembly by a process known as an *eisangelia*. It is possible that the process was framed in such a way that it could also be invoked for new offences not covered by an existing law, possibly something that was clearly

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20 In this section, I have drawn on MacDowell (1978, pp. 58, 183-184, 197-200). A detailed account of the legal system lies beyond the scope of this thesis and the present sketch is intended only to put in place a context for consideration of the impact that the ‘free enterprise’ approach to law could have on cases involving religious offences.  
22 The *graphê* and the volunteer prosecutor were innovations introduced by Solon sometime around the beginning of the 6th century. See Aristotle, *The Athenian Constitution* 9.1; Plutarch, *Solon* 18. Gagarin (1989, p. 69) posits that Solon may originally have intended the public suit to have somewhat limited use for the protection of those not in a position to seek redress, such as those who were poor or elderly parents who were being mistreated. It seems to have been a profoundly popular reform and was eventually so pervasive in Greek law that over fifty different types of *graphê* have been identified.  
23 This was the procedure prescribed under the decree of Diopeithes (MacDowell, 1978, p. 184; Ostwald, 1986, p. 528ff.)
wrong but not explicitly forbidden because it had not occurred to anyone that such a crime might be perpetrated. The denunciation was then referred either to a regular jury court or to the Assembly as a whole for a trial in which the accuser normally acted as the prosecutor. At some point toward the end of the 5th century restrictions were imposed on the use of *eisangelia* to limit it to cases that posed a grave danger to the *polis*. The other major vehicle for prosecuting impiety in force at the time was the *graphē asebeias*, a specific type of public suit. In accordance with the importance and prestige attached to religious matters, this area of the law fell under the purview of the *Basileus*, who was the solemn, symbolic vestige of the monarchy and who also oversaw cases involving homicide. He arranged for the indictment to be heard by a court composed of a large number of volunteer jurors. As was the case with any public suit, however, the prosecutor in a *graphē asebeias* incurred the personal risk of being fined or losing a deposit if he dropped the case before it went to trial or if the prosecution failed to garner at least one-fifth of the votes. *Eisangelia* was an exception to these provisions in that the prosecutor could withdraw the case or lose it completely without incurring a penalty, presumably because the public interest warranted facilitating such cases. Regardless of the procedure used, the verdict reached was final and the penalty was usually severe. For example, temple robbery, like treason, was subject to the severest penalty that could be inflicted: death, confiscation of property, and denial of the right to be buried on the soil of Attica.

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24 MacDowell (1978, p. 184) cites the mutilation of the Herms, discussed in Chapter VI, as an obvious example of this type of crime. See Andocides, *On the Mysteries* 1.11-17, for a description of how informers went about laying their charges and Plutarch, *Alcibiades* 22, for an example of an indictment. As discussed in Chapter IV below, it also seems to have been used against Anaxagoras, in which case it covered the extension in scope of an already existing offence. Aristotle, *The Athenian Constitution* 57. The *Basileus*, one of the archons chosen by lot, administered most religious matters and was an important participant in civic rituals. His functions were indicative of the roots of this archonship in the real religious, political, and military authority once held by the king (Mikalson, 1983, p. 92; Yunis, p. 24). Homicide trials were closely associated with religious laws because murder was a source of *miasma* (pollution). Note that the trial of Aspasia, see Chapter IV below, is referred to by Plutarch as a *dikē asebeias*, a private suit (*Pericles* 32). Either Plutarch was not aware of the distinction or else that legal option was available. Ostwald (1986, pp. 528-536) argues that impiety was normally treated as an *eisangelia* until the reforms of 403/402 and exclusively as a *graphē* after that point.

25 MacDowell, 1978, pp. 54, 64.

Another indication of the importance attached to offences against the gods is that actions for impiety, as well as temple robbery and harm to sacred olives, could effectively be initiated by a slave acting in the capacity of *menutes* (informer). As he did not normally have the right to do so in secular cases, this was one of the extremely rare instances when a slave could exercise any power over his master. It was also a very risky proposition. If testimony given by a free man contradicted the word of the slave, he would be executed, but if the accused was convicted, the slave was manumitted at the behest of the state.

The profound way in which religion and law were intermingled can also be detected in three other, less tangible phenomena that exerted an influence in the court room. The first of these is the use of oaths, which were a pre-eminent form of law enforcement, as well as an ancillary means of attesting to the truthfulness of one’s case in a dispute. In early societies which lacked a central authority but considered the gods to be immensely powerful, swearing an oath, often accompanied by calling down destruction on oneself and one’s household in the event that it was breached, carried a great deal of weight. The subject of the oath could be a promise not to take a bribe, not to give false testimony, not to perjure oneself, and so on. No one would swear a promissory oath lightly for fear that violating it would invite divine retribution and, because the gods were invoked as guarantors, keeping one’s oath became an extension of the concept of piety. This aspect was exploited to curb corruption and dishonesty in the administration of justice. The 6,000 or so citizens who were eligible to serve as jurors were required to swear an oath, *en masse* rather than individually, at the beginning of each year to the effect that they would judge according to the laws.

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28 For an example of a capital charge for temple robbery, see Lysias, *For Callias* 5. For discussion, see Parker, 2005b, pp. 64-65. Osborne (2000, pp. 81-82) argues that these were the only instances when slave could lodge a complaint, a view not shared by John Dillon (p. 166-167) or Gagarin (2001, pp. 2-3), who also are convinced that slaves could denounce traitors.

29 Dillon, J., p. 166.

30 For a typical example, see Lysias, *Against Diogeiton* 32.13, in which a woman is quoted as saying that she is ready to swear an oath in whatever location is preferred, surrounding herself with her children and swearing destruction on them, but she is neither so wretched nor so greedy for money that she would commit perjury in the name of her children nor unjustly claim her father’s property.

and decrees of Athens, consider only matters relevant to the charge, listen to both sides without favour or enmity, and vote with their most just or fair understanding.\textsuperscript{32} This last point is the subject of scholarly debate, as the phrase ‘in those matters about which there is no existing law’ was sometimes appended as an authentic part of the oath and can be interpreted to subsume the concept that the jurors were free to vote more or less according to their conscience. The opposite view is that it is unlikely that the oath would have been formulated in such a way as to provide for that possibility and think that ‘most just understanding’ applies to an understanding of the facts of the case and their merits.\textsuperscript{33}

The second phenomenon was shaped by the essential nature of the legal system itself. First of all, it was not so much a means of dispensing justice in the formal sense as it was an arena in which completing claims and versions of events were presented for adjudication by a panel of ordinary citizens, unguided by any professional input.\textsuperscript{34} Although there was a set format according to which the proceedings unfolded, there was no presiding judge who could issue an authoritative interpretation of the law, nor was there a body of institutionalized precedent or learned comment to which reference could be made.\textsuperscript{35} In fact the laws quoted in court came from the mouths of the prosecutors and defendants, who were free to quote selectively for partisan purposes.\textsuperscript{36} Each case was decided

\textsuperscript{32} The oath was known as the Heliastic oath; see Christ, 1998, p. 194; Harris, pp. 159-160; MacDowell, 1978, p. 44; Mikalson, 1983, pp. 31-32; Mirhady; Ostwald, p. 159. Mikalson quotes the entire text of a lengthy version of the oath derived from Demosthenes, \textit{Against Timocrates} 24.149-151, which includes many more provisos. MacDowell (1978, p. 44) notes that in the opinion of modern scholars there are a number of misquotations and spurious clauses in the text.

\textsuperscript{33} Mirhady, p. 53. See also Harris for an extended discussion of the oath. In Lysias, \textit{First Speech Against Alcibiades} 14.4, the orator talks about the task of a “just-minded juror” as being to interpret the laws in the way that will benefit the city in the future; but the jurors are still bound to follow the law.

\textsuperscript{34} Carey, 1997, p. 5. See also Cohen, D., p. 209.

\textsuperscript{35} This led to a sort of verbal ‘free for all’ in the courtroom. David Cohen (p. 205) notes that orators used \textit{asebeia} and its cognates loosely as strong synonyms for ‘wrong-doing’, associating it with someone who was violent, dissolute, or larcenous as a general term of reprobation even when no actual religious transgression was involved, thereby constantly reinforcing its strongly negative connotations in the minds of the jurors. See also Yunis, p. 25, and Lysias, \textit{Against Cinesias} fr. 4.1, where the speaker refers to his opponent as the most impious lawbreaker in the land, even though the charge on which he is being tried is a \textit{paranomōn}, introducing an unlawful decree.

\textsuperscript{36} Christ (1998, p. 198) refers to the laws as the “instruments of partisan advocates.” See the case of Andocides in Chapter VIII for an example of suspected selective quotation of laws.
as a stand-alone item by a jury of 500 or more. Secondly, a trial was concluded within the space of a day, without any opportunity for the jurors to debate amongst themselves, consult with each other, or have sober second thoughts away from the theatrics in the court room. They simply listened to the speeches and then voted immediately to convict or to acquit. Thirdly, the juries consisted of a large collection of individuals who were self-selected, in the sense that if a citizen wished to be empanelled on any given day he showed up at the law courts early in the morning in the hope of being chosen. Elaborate provisions for random selection and assignment to cases were in place to insulate the judicial system to the greatest extent possible from the possibility of bribery and collusion. Nevertheless, while the jury panels were probably not made up largely of the crotchety old men mercilessly caricatured by Aristophanes in *Wasps*, it is likely that they were to a disproportionate extent composed of subsistence-level farmers, workers with a moderate income, and seniors. This was a group that, on the whole, could be expected to defend conservative social values, which in turn would have had a major influence on their judgment in cases involving religious offences.

Consequently, there was a certain level of uncertainty that flowed from the lack of precision in the legal system and the way it was administered. This was

37 For a comprehensive overview of how trials were conducted, see Carey, 1997, pp. 1-19. Carey (1997, p. 17) notes that discussion was limited to any exchanges that one could have with one’s nearest neighbours while the trial was underway or when standing in line to vote and the outcome “reflected the sum total of individual decisions rather than a genuinely collective decision.”

38 For sources, details, and discussion, see Bers on the measures to alleviate the anxiety of the Athenians about the workings of the courts and the potential for manipulating decisions.

39 For two extended, thoughtful discussions of jury composition, see Sinclair, pp. 119-135; Todd, 1990. Some of the arguments for their conclusions include the following: tradesmen and shopkeepers would lose money by taking a day off work, whereas farmers had some flexibility in working around their agricultural tasks, particularly at some times of year; the pay for jury duty would attract those of moderate means but was an insufficient monetary incentive to motivate a wealthier individual to serve; many younger men had been killed in the course of the protracted warfare or were absent on active military duty. The tenor of the extant speeches indicates that there was an emphasis on addressing those in the Assembly as taxpayers (indicating greater participation of the rich in that forum) that was notably absent in the court speeches, but neither was there a tendency to infer poverty on the part of the jurors. Todd (1990, p. 167) points out that the self-image of subsistence farmers was that they were farmers, not poor men. Sinclair encapsulates their economic status as that of citizens who were neither well-to-do nor very poor, but either well removed from real poverty or not averse to being regarded by the orator as removed from that status. Christ (1998, p. 199) adds that the average Athenians who dominated the juries were “less than fully literate”, in which case, they were more reliant on the laws as recited to them in the course of the arguments.
partly off-set by the shared cultural norms and values of the Athenians, in particular the rather homogeneous sub-set of male Athenians who tended to sit on the jury panels. But even this considerable stock of common values and beliefs, which promoted *homoionia* (same-mindedness) was insufficient to create true consistency. It must have been difficult to predict the interaction of individual pieces of evidence in a particular case. Although both the prosecutors and the defendants would try to extract those points that might be most compelling, there was no way to foresee how the competing norms would stack up in a given case, or even to determine if there was a hierarchy of norms. The average Athenian could not have confidence that his conduct was in conformance with the law and be certain that it precluded the possibility of litigation. In an area such as *asebeia*, which was rife with legal uncertainty, that very lack of precision allowed the charge to be used very flexibly.

Furthermore, the forensic literature indicates that orators sought to exploit the residual popular fear of lapsing into impiety. Helped by the inherent plasticity of the concept, clever speakers could adroitly slip a counter-narrative into the proceedings, invoking the spectre of the potential for transference of guilt onto the jury. In order to buttress their arguments, they were in the habit of constructing unilateral formulations of the laws in order to remind jurors of all the ills that could befall them individually and the *polis* collectively if they failed in their sworn duty to render their most just opinion. One facet of the dilemma faced by the jurors was summed up neatly in Andocides' mantra that it was “no less impious to convict the innocent of impiety than to fail to punish those guilty of it.” Antiphon put it more threateningly in his warning that convicting an innocent man of murder was “a sin against the gods and the laws.” An incorrect accusation could be undone, but the verdict of the jurors was final, could not be appealed, and was most likely fatal to the wrongly convicted man. Blood guilt and its attendant pollution were thereby piled on top of the already serious

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40 Lanni, pp. 128-135.
41 In [Lysias], *Against Andocides* 6.33, the jury is warned ominously that if they choose to overlook the deeds committed by Andocides they should not expect the gods to forget as well. One suspects that such tactics would have been less successful if aimed at the educated elite.
42 Andocides, *On the Mysteries* 1.32.
transgression of having offended the gods by punishing the wrong person.\textsuperscript{44} The community would suffer because *miasma* caused by the on-going presence of a guilty man who was circulating freely even in its holy precincts would infect the whole city.\textsuperscript{45} Conversely, the jury would purify the city and rid it of pollution by convicting, and presumably executing or exiling, a malefactor.\textsuperscript{46} Neither were jurors to risk overlooking signs from the gods when evidence of them could be adduced by a prosecutor or defendant. Even as omens and portents guided the city in its deliberations both in times of war and of peace, the jurors were told, so should they inform the verdict rendered in a trial.\textsuperscript{47} Another oratorical tactic involved putting none too subtle pressure on the jury to convict by playing on the oft repeated theme that exonerating a lawbreaker sent entirely the wrong message to the citizenry.\textsuperscript{48} In this way, the assertion that failure to exact vengeance for a serious crime and leaving it unpunished was a great sacrilege was a way of co-opting the jurors into having a stake in preserving societal norms by curbing such behaviours and demonstrating their support for justice and religion.\textsuperscript{49} What these sometimes tortured verbal gymnastics illustrate is the extent to which impiety was a highly malleable concept. The jurors had duly sworn to uphold the law, but precisely what that meant was filtered through their acculturation, their status, and the extent to which an orator could persuade them to think about it in an imaginative manner.

Finally, there was the phenomenon of sycophancy, a unique outgrowth of the self-help nature of the legal system, which, as noted above, permitted any interested male citizen to launch a law suit in the public interest for a crime that was deemed to affect the civic body as a whole. Unfortunately, this novel feature turned out to be a rogue element and a perfect example of the law of unintended consequences. Many accusations were not motivated by moral indignation, patriotic sentiments, or even the less noble desire to burnish the reputation of the prosecutor. Instead, the provision was often perverted by unscrupulous

\textsuperscript{44} Antiphon, *Against the Stepmother* 1.5; *First Tetralogy* 2.3.9.
\textsuperscript{45} Antiphon, *First Tetralogy* 2.1.3,10-11.
\textsuperscript{46} [Lysias], *Against Andocides* 6.53.
\textsuperscript{47} Antiphon, *On the Murder of Herodes* 5.81-84.
\textsuperscript{48} See, for example, Lysias, *Against the Retailers of Grain* 22.17.
individuals to exploit the legal system for personal gain— for financial advantage, to settle personal scores, or to neutralize or destroy a political opponent. Some characteristics common to this type of prosecution were that there was a monetary motivation, the charges were trumped up, arguments were based on sophistic quibbling, the attacks were usually abusive, they raked up matters from the past, and/or the prosecutor had a history of laying charges. The term sycophant, or malicious prosecutor, became a true value word, a hostile characterization frequently found in the company of a whole host of other expressions of ill repute. It was clearly such a normal facet of court life that the speaker in one trial blandly defended himself on a charge of homicide by citing as proof of the lack of enmity between himself and the victim the fact that the latter had never so much as lodged a public suit against him. As an indication of the destabilizing effect of sycophancy on the legal system and the difficulty experienced in suppressing it, one can point to the existence of legislation to try to rein it in and several references to ‘malicious prosecution’, hardly a term of respect, in the Athenian Constitution.

A prime example of how a sycophant could adapt a charge of impiety to his own purposes is found in a defence speech composed in about 397 by Lysias, Concerning the Sekōs. The olive tree had an especially emotive status in Athens,

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50 A full discussion of sycophancy lies well beyond the scope of this thesis. Differing points of view, sometimes ideologically tinged, can be found in Burkhardt, p. 80; Christ, 1998, especially pp. 48-71; Harvey; Ober, 1989, pp. 171-174; Osborne, 1990; Ostwald, pp. 81-82, 209-210; Todd, 1993, pp. 92-94, 150-154. Re financial gain: in a successful lawsuit where the penalty was a fine, the prosecutor could pocket a share of it; in other cases, the denunciation had the effect of blackmail by persuading the defendant to pay off the sycophant and drop the case before it went to trial. Harvey (pp. 110-112) cites examples of financial gain as a motivation. Re political advantage: because the penalty was sometimes death, and often exile and/or confiscation of property, a maliciously motivated graphē was an efficient way of getting rid of, or neutralizing, an opponent and ruining his whole family. Todd (2005b, p. 66) holds that public cases tended to involve either personal enmity or political rivalry, or both, and MacDowell (1978, p. 62) points out that the desire to harm one’s enemies was considered perfectly proper in Athens. See also Lysias, For the Soldier 9.20, for the notion that life is organized on the principle of “hurting one’s enemies and helping one’s friends.”
51 Harvey, pp. 112-114.
52 Harvey, p. 107; see pp. 107-109 for a complete catalogue of words and phrases associated with the concept.
53 Lysias, On the Death of Eratosthenes 1.43-44.
54 Aristotle, The Athenian Constitution 35.2-3, 43.5, 59.3; MacDowell, 1978, p. 66; Lysias, Against Agoratus 13.65, attests to a hefty fine of 1,000 drachmas for sycophancy.
55 A sekōs was the stump of a sacred olive tree or the fence marking out the area around it.
derived partially from its association with the patron goddess of the *polis*, Athena. According to mythology, she had successfully staked her claim to this position by planting the first olive tree on the Acropolis, thus rendering it sacred. When the Persians sacked and burned the Acropolis in 480, the tree sprouted again, and shoots taken from it were used to plant its descendents all over Attica. These were all considered *moriai* (sacred) even if planted on private property, and were protected and subject to strict regulation. The original laws dating from the time of Draco dictated that the fruit of the trees belonged to the state, which collected the olives and pressed them to make holy oil for prizes at Panhellenic games. Anyone who cut down a sacred olive, or even uprooted its stump, was liable to be put on trial for his life. By the time of Aristotle, some of these provisions had been amended to the collection of a portion of the oil production on the property rather than the fruit from the actual sacred tree, but the penalties for tampering with a *sekōs* remained severe: exile and confiscation of property. These laws probably had more to do with practicality than any genuinely religious purpose. While olive trees live to a great age, it takes a long time before they become productive; on the other hand, they can regenerate if burnt or cut down. Furthermore, the general deforestation of Greece, which was by this time already well advanced, compounded by the destruction of warfare, had led to a scarcity of timber and increased the worth of any tree.

The defendant in this case was initially accused of having uprooted a living olive tree on property that he had owned for only a few years but, after the charge had been initiated, it was modified to read that it was an olive stump. This inconsistency gave the defendant ample leverage to undermine the prosecution’s

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56 For an account of the myth, see Dillon, J., pp. 162-163.
57 See Sophocles, *Oedipus at Colonus* ll. 695-705, for a tribute to this an “unconquered, self-renewing” plant watched over by Zeus and grey-eyed Athena.
58 Aristotle, *The Athenian Constitution* 60.2-3; Lysias, *Concerning the Sekōs* 7.41.
59 One of the favourite methods of ravaging the countryside was setting fire to crops and woodlands, but it was not easy to destroy olives in that way as they were planted far apart and their thick bark made them fire-resistant (Spence, p. 101).
60 Lysias, *Concerning the Sekōs* 7.6-7; Jordan, 1984, pp. 156-158. Jordan suggests that the reason that Aristotle made provision for a plethora of sacred groves in the countryside in his ideal state was that he realized that “the only hope of staving off complete deforestation of the land lay in the protective power of religion”.
61 Lysias, *Concerning the Sekōs* 7.2.
case, which he proceeded to do, giving a history of the ownership of the property that allowed some scope for the deed to have been carried out before he came into possession of the land. In particular, he also pointed out the improbability of his having been able to carry out such operation in broad daylight undetected by witnesses and noted that the prosecutor had waited a long time to came forward with the indictment.\textsuperscript{62} Hence, it is likely that the denunciation had nothing to do with a sacrilege, and much to do with the considerable wealth of the defendant.\textsuperscript{63} There may also have been a political dimension because the defendant appears to have stayed in Athens during the time when the democracy was overthrown in 404/403. This implies that he may have had oligarchic tendencies, which would continue to place him under a cloud of suspicion almost a decade later.\textsuperscript{64}

What is particularly interesting about this case is that it is the only attested case, whether actual or rumoured, of a prosecution for impiety that is directed at a person who is not an identifiable public figure. It seems to exhibit at least two of the features of a typical sycophantic accusation in that there was an implication that the prosecutor was looking for a settlement and it dredged up a wrong-doing that had supposedly been perpetrated many years before.\textsuperscript{65} Parker thinks that offences against sacred land “offered a particularly valuable handle for political manipulation” as the charges could be structured in such a way as to lead to crippling penalties; thus an accusation based on this type of sacrilege was “an ideal device for the pursuit of personal vendetta or class strife behind a veil of legal process.”\textsuperscript{66}

In sum, then, the interaction between the legal system and religion extended beyond its more obvious and concrete elements and fed on collective anxieties about the relationship between the gods and mortals. Oaths were used in an attempt to encourage honesty and lessen the temptation to act corruptly.

\textsuperscript{62} Lysias, \textit{Concerning the Sekōs} 7.18-19,42.
\textsuperscript{63} Lysias, \textit{Concerning the Sekōs} 7.21,31.
\textsuperscript{64} The implications of remaining in Athens under the oligarchies are discussed further in Chapter VIII.
\textsuperscript{65} Lysias, \textit{Concerning the Sekōs} 7.39,42.
\textsuperscript{66} Parker, 1983, p. 165. See also Dillon, J., p. 163. Burkhardt (p. 73) is more forceful, referring to the “permanent terrorism” that was exercised by the combination of sycophants, orators, and the constant threat of public prosecution, including an ever-present risk of being accused of \textit{asebeia}. 

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The composition of the jury and the conduct of the trials allowed orators to fashion arguments that depended on a flexible interpretation of the concept of impiety. And, finally, the strong emotions that could be stirred up by invoking offences against deities and sacred matters provided some latitude in which an unscrupulous individual could deform justice using the agency of religion to cover a trumped up charge with an air of respectability.
CHAPTER IV
THE NEW PHILOSOPHIES IN COLLISION WITH OLD VALUES

One starting point for delving deeper into the relationship between law and the practice of religion in Athens is the spate of nebulous accusations of religious malfeasance and 
asebeia
reported by Plutarch in his Life of Pericles.

Being the most prominent public figure of his time, Pericles was naturally the object of politically motivated attacks, whether by direct or indirect means. The charges catalogued by Plutarch were, however, not just examples of run-of-the-mill politics; many were also symptomatic of the social disruption that had come about due to the influence of new ways of thinking about religion, man, and the cosmos. These ideas were expounded by the mostly itinerant philosophers and teachers of rhetoric who had burst onto the scene in Athens in about 450 and who were lumped together in the popular imagination as ‘sophists’.¹

The sophists were not only well connected with the intellectual and political elites who were powerfully attracted to them,² but also a visible presence in the community as a whole. Everyone was aware of them to the extent that they were treated as household names – Athenians learned from them, imitated them,

¹ This is a sticky point. Strictly speaking, not all of the individuals who were popularly labelled sophists are now classified by scholars, based on the content of their teachings, as ‘Sophists’ with a capital S. Examples are the transitional figure Anaxagoras, who was a pre-Socratic, and Socrates himself, who vehemently denied being one. Many of them were in some way involved in disseminating their ideas by giving instruction, whether paid or unpaid, but this is not a unifying factor. Critias, who was a politician, is usually counted in their number. The absence of the fine distinctions found in modern publications is clear from the references in Aristophanes, who may even deliberately have muddied the waters, and much later in Aeschines, Against Timarchus 1.173. As far as the dēmos was concerned, however, all the purveyors of the new ways of thinking and religious scepticism were ‘sophists’. Because this thesis is concerned with conceptions of piety and impiety in the popular imagination, I have chosen to adopt the attitude of the Athenians and refer to all of these individuals as ‘sophists’, albeit with a small letter s, as a gesture of deference to current convention and in an attempt to differentiate my usage from the standard one.

² The most prominent patrons were Pericles and Callias, a member of one of the wealthiest noble families in Athens whose mother was at one time married to Pericles and who was reputed to have spent more money on paying sophists for instruction than all the rest of the Athenians put together; see Plato, Apology 20a. His house was the setting for Plato’s famous dialogue, Protagoras, concerning the eponymous sophist.
or wrote, argued, and made jokes about them. Nevertheless, in trying to replace dogma with rational methods of enquiry, the sophists were altogether blind to the value of tradition and the result was that their existence in Athens was dogged with controversy. Furthermore, because of the reprehensible political careers of some of their pupils and the implacably hostile manner with which their ideas were treated by the two most important philosophers who wrote about them, Plato and Aristotle, the word ‘sophist’ has, to this day, remained an expression of odium. In this chapter, I will consider the ideas and activities which caused the purveyors of these novel philosophies to run afoul of popular opinion, thereby finding themselves the objects of legal manoeuvres aimed at securing their silence.

The genesis of the sophistic movement was to be found in the Greek settlements of Ionia, where scientific explanations about physical phenomena, which diverged sharply from those based on myths and religious beliefs, had gained currency in the 6th century. Thinkers such as Anaximander, Anaximenes, Thales, Xenophanes of Colophon, Heraclitus, and Parmenides advanced ideas aimed at dismantling the anthropomorphic pantheon of gods and suggested rational explanations based on observable facts that supplanted notions of divine

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3 de Romilly, p. viii; Humphreys, p. 54; Reinhardt, p. 20. The works of Aristophanes are replete with references to sophistic explanations of natural phenomena that would be intelligible only to an audience that was intimately familiar with them; see, for example, the marvellous parody of this type of discourse in Aristophanes’ Clouds II. 366-381, in which Socrates uses rain and thunderbolts as justification for not believing in Zeus.

4 Dodds, 1973, pp. 93-94.

5 See Dodds, 1973, p. 92; de Romilly, pp. x, xiii, who labels Plato’s testimony a “distorting spotlight.” The term sophistēs was originally free of all derogatory association and applied to any number of men considered wise, including also poets, musicians, seers, and diviners (Kerferd, p. 24). As Grote (Vol. VI, pp. 55-56) points out, however, Plato stole the term out of general circulation and reshaped it unilaterally by connecting it with express discreditable attributes in order to use it to disparage his opponents, the paid teachers. Aristotle echoes this vexatious redefinition in Rhetoric 1.1.4-5, decrying the sophists as ones who have deformed the court system by concentrating on arousing prejudice, compassion, anger, and other emotions that have nothing to do with proof. No doubt the reputation of the sophists was not helped either by Aristophanes’ treatment of them, and there is evidence that their contemporaries did not tolerate them well. Isocrates, in Against the Sophists 13.1 and Antidosis 15.168, speaks of the common prejudice against the sophists and in Antidosis 15.235 refers to the label as being “dishonoured and placed on trial.” Plutarch, in Nicias 23, reports that public opinion was “instinctively hostile” to them.
control of the universe. Because written material was scarce and had limited circulation, discussions of natural philosophy could unfold undisturbed in the political backwaters of Asia Minor and the islands, attracting little attention. This all changed around 450 when men of wisdom started flocking to Athens, whose affluence, military prestige, and status as the cultural capital of the Hellenic world, coupled with a reputation for political liberty, drew them in like a magnet. Once their ideas were transplanted to this fertile environment, it was only a matter of time before the individuals and their philosophies came to be perceived as a threat to established order and came into conflict with conservative values and the socially embedded religion of the polis.

In Athens, the most influential supporter and patron of the philosophers was Pericles, all of whose close friends and associates seem to have been artists and intellectuals. He had been educated in the arts by Damon, a sophist and one of the founders of ancient Greek musical theory, who was also considered his trainer and teacher in politics, and had studied natural philosophy under Zeno the Eleatic. But he was mainly influenced by the philosophy of Anaxagoras of Clazomenae whose theories about meteorological phenomena and of celestial bodies were considered dangerous by adherents of divine traditions about the sun, moon, and stars. Pericles was known to engage in lengthy discussions with Protagoras, the most prominent of the sophists. Unfortunately for him, his well-publicized commitment to natural philosophy was not shared by the proverbial man-in-the-street who was suspicious of the enthusiasms of the educated elite.

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6 Muir, pp. 196-198. Kahn (p. 250) cautions that while the Ionian philosophers dismissed the conception of the gods as super-humans, there is nothing to suggest that they were hostile to the notion of divinity itself. Thales introduced a more encompassing idea of piety in his famous dictum that “all things are full of the gods.”
8 de Romilly, pp. 20-21.
10 Plutarch, Pericles 4-6, 31. Tradition has it that even Aspasia, his long-time companion, was considered to be an intellectual who taught him political oratory (Dover, 1988b, p. 140).
11 Damon was also a friend of Socrates; Isocrates, in Antidosis 235, refers to him as the wisest citizen in Athens in his time.
12 Kagan, McDermott Lecture; Nilsson, 1949, pp. 274-275. Nilsson says this sentiment was given inimitable expression by the über-populist Cleon in his words to the effect that ordinary men are to be emulated as they usually manage public affairs better than their more gifted fellows (Thucydides 3.37.3-5).
The interests of the dēmos lay with the existing forms of state religion which were, by implication, marginalized by the speculations of the philosophers. These sentiments eventually crystallized into the popular opposition that opened the way for charges against individuals who were close to Pericles. Either directly or indirectly these accusations could be linked to an attempt to protect the established religion.

Our understanding of the sophistic movement is hampered by the fact that none of their writings survive, leaving us dependent on fragmentary extracts, shorn of all context and found preserved in the works of later writers. In essence, the philosophers were promoting a secular model, stressing empiricism over received wisdom, the primacy of public life, and the power of logical argument. The latter was the core principle that animated their work: all areas of human life or of the universe as a whole were open for discussion and analysis, with the outcomes of such disputations hinging entirely on the skilful use of words and reasoned arguments. This has led to the perception that the sophists were simply teachers of rhetoric. Had this been the case, they might never have aroused the strong feelings, both for and against their endeavours, which are so widely attested in the sources. Rather, they had far-reaching interests, advancing radical new ideas in the areas of religion, natural phenomena, the tension between physis and nomos, the relative nature of truth, the origin of culture,

13 The possible exception to this is the extensive Hippocratic Corpus. Hippocrates, a man of medicine, was not, strictly speaking, a sophist, but he is often associated with them. His dates point to the likelihood that he was influenced by the Sophistic Enlightenment and he championed scientific analysis and treatment of disease over cures based on magic and religious rituals.
14 As de Romilly (p. 29) and Muir (p. 199) point out, the sophists were primarily teachers; hence their works were intended for only limited circulation and seldom copied, and their lectures were, by their very nature, ephemeral and unrecorded. As the authority and idealism of Plato eventually carried the day and as he was inclined to suppress the teaching of his opponents, it is entirely likely that no one saw much need to preserve the writings of those who were considered unorthodox and objectionable. O'Sullivan (pp. 16-18) has an interesting take on the nature of the fragments. He notes the use of the term 'Thurian seers’ in Aristophanes’ Clouds l. 331ff., in a discussion in which the character of Socrates seems to be pointing out Protagoras and other sophists. From this he posits that the sayings, such as “Man is the measure of all things, of those that are, of those that are not, that they are not”, are not fragments taken out of context, but discrete stand-alone sentences of an oracular nature. According to his theory this is why, when the statement is quoted by Plato in Theaetetus, it is unaccompanied by any of the arguments that Protagoras might have made in its support.
15 Humphreys, p. 55.
laws, and all matters political. From among these topics, one can extract three themes which contributed to creating the atmosphere that distinctly facilitated the use of asebeia as a plausible basis for legal action: the problem of achieving any meaningful knowledge about the gods, the conflict between natural rights and convention, and relativism in values based on a cynical view of morality.

Plutarch describes the public perception of the sophistic attitude to religion as expounded by those whom they styled “natural philosophers and visionaries” as follows: “they belittled the power of the gods by explaining it away as nothing more than the operation of irrational causes and blind forces acting by necessity.” While any cursory attempt to survey the various propositions regarding the gods will, of necessity, come across as simplistic, it is important to have some idea of why these ideas had such an unsettling effect. Whether unconventionally theist, agnostic, or atheist in essence, the new concepts reflected the sophists’ detachment from, and pronounced distaste for, the traditional religion which Athenian society wore like a protective carapace.

A few theories can be singled out as particularly illustrative of the discussions that were taking place in intellectual circles. Anaxagoras, whose arrival in Athens in the middle of the century was “an epoch making event in the history of ideas”, daringly redefined deity in terms of a single divine mind, the Nous, which was responsible for controlling all living things, both great and small. Even though the cosmic Nous appeared to be godlike, said to be “boundless, sovereign, omniscient, all-ruling, the finest and purest of things” it was deliberately not said to be god. Far more disturbing, given that the heavenly bodies were deemed by Plato to have been the first gods of the Greeks, was Anaxagoras’ reduction of the handsome all-seeing sun-god Helios, who traversed the sky in a splendid chariot and who bore witness to men’s most sacred oaths, to

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17 Plato lays out their areas of interest, summing them up with the statement that they did not seem to leave out much (The Sophist 232). For other lists of topics, see de Romilly, pp. 8-9; Kerferd, pp. 2, 35, 39.
18 Plutarch, Nicias 23.
19 Mansfeld, 1979, p. 53; he also quotes Clement of Alexandria as saying that it was Anaxagoras who “transplanted philosophy from Ionia to Athens.”
20 Muir, p. 205.
21 Kahn, p. 253.
an inert mass of molten stone.\textsuperscript{22} The problem lay not in associating the sun and the moon with inert physical objects, but rather with stripping them of their divine functions.\textsuperscript{23} A variation on the theme that the popular gods did not exist was attributed to Prodicus, who posited that religion had its basis in an evolutionary process of deification. Because primitive man quickly realized that he was dependent on the forces of nature, he came to stand in awe of, and eventually to worship as gods, those things on which he depended for survival, such as the sun, rivers, and the bounty of the earth. As civilization developed and benefited from the inventions of gifted individuals, man added these to the pantheon; for example, crops and agriculture came to be represented by Demeter and wine by Dionysus.\textsuperscript{24}

Possibly the most famous statement concerning religion is found at the beginning of \textit{On the Gods}, a lost work by Protagoras, who was considered the first and foremost of the sophists: “Concerning the gods I am unable to discover whether they exist or not, or what they are like in form, for there are many hindrances to knowledge, the obscurity of the subject and the brevity of human life.”\textsuperscript{25} Although this statement could be interpreted as an anodyne acknowledgement of the limits of human knowledge, it was unequivocally agnostic and, hence, scandalous. To call into question knowledge of the existence of the gods was only one step from acceptance of the notion that they might not exist at all and with a single blow to cripple the mythological, moral, and legal foundations of the \textit{polis}. Even more extreme are the blatantly atheist and cynical ideas that are found in the notorious \textit{Sisyphus} fragment, described as one of the intellectual monuments of its time, which casts the gods as the casual by-product of human society.\textsuperscript{26} The author writes of a time when human life was disordered and ruled by force without reward for the virtuous nor punishment for the wicked.\textsuperscript{27} To correct this, men imposed a system of laws which curbed open

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\item \textsuperscript{22} Guthrie, 1969, pp. 231-232; Nilsson, 1949, p. 266; Osiander, p. 768.
\item \textsuperscript{23} Nilsson, 1949, p. 267.
\item \textsuperscript{24} Henrichs, pp. 107ff.; Kahn, p. 261; Lefkowitz, p. 74.
\item \textsuperscript{25} Guthrie, 1969, p. 63; see Guthrie, 1969, p. 234, for the sources for, and text of, the quotation.
\item \textsuperscript{26} Dover, 1988b, p. 150; Henrichs, p. 112.
\item \textsuperscript{27} The authorship of the \textit{Sisyphus} fragment is highly disputed. Attributed in the early sources to Euripides, it was later thought to be the work of Critias, whose notoriety rests on his participation
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violence but did not prevent them from being wicked in private. But “a shrewd and clever-minded man invented for mortals a fear of the gods” by introducing the all-seeing and all-knowing, immortal deities, a sort of celestial secret police, to deter men from committing the vices that were hidden from public view. This cunning invention was then set in the region of thunder, lightning, and meteors, the majestic natural phenomena most feared by men. Along with the debates about the gods came criticism of Homer and the poets, thereby devaluing the works that, as much as anything, served an almost biblical function as sources of wisdom and instruction for the young. Ideas such as these, regardless of the audience at which they were directed, were a bit like a genie let out of a bottle. Once they had been uttered, they were forever in the public realm.

Scepticism about the origin and nature of the gods was not the only source of worry for the Athenian leadership. Emphasis on rational thought and the denigration of the status of the gods also allowed thinkers to question the primacy of the nomoi, that heavy accretion of laws fused with traditions, which represented the collective wisdom of the past and were felt to be authoritative in their own right, but which constrained individual and democratic liberty. Those who moved in intellectual circles and were well travelled had come to realize that nomoi were not absolute but were arbitrary human constructs that varied from state to state, an indication that the gods were the invention of mankind. Physis, on the other hand, was an unconditionally valid, unwritten natural law which championed the rights of the individual against the arbitrary requirements of convention or government. The opposition between convention and nature was given expression in the sophistic argument that the former, nomos, was of human origin, conceived by the weaker and more numerous to restrain the strong. However, according to the laws of nature, physis, it was right for the better to have an advantage over the weaker and the abler over the feeble, a

in the oligarchy of the Thirty in 404/403. It is now again generally linked to Euripides. For discussion re authorship, see de Romilly, pp. 108-109; Kahn, pp. 247, 249; Kerferd, p. 53.

28 Sisyphus fragment, DK 88B.25.
29 Muir, pp. 210-211; Nilsson, 1949, p. 269.
31 Dodds, 1951, p. 182; 1973, p. 98.
principle that applied to animals, men, and states.\textsuperscript{32} On this basis, ethical principles could be pushed to the extreme to allow a tyrant or demagogue to justify his seizure of power.\textsuperscript{33} Unfortunately, in the absence of a sense of duty, this could easily foster an atmosphere of “pure anarchic immoralism” and, without the community as its anchor, allow for the seditious striving to free oneself from obedience to the democratic will of the people.\textsuperscript{34} The logical consequence of this thinking was a weakening of the legal framework, the loss of the unifying power of religious cult, and the displacement of any broader notions of a divinely sanctioned law as the final arbiter of right and wrong.

The dichotomy between nomos and physis was exacerbated by promotion of an anthropocentric world view expressed by Protagoras as “Man is the measure of all things, of things that are that they are, and of things that are not that they are not.”\textsuperscript{35} Its effect was the abolition of all societally superimposed standards, thus leaving the individual free to judge everything according to his own understanding.\textsuperscript{36} Although ambiguous, the dictum, when coupled with the dilution of nomos, shifted authority over what was right or wrong, good or bad, from the religious sphere into the hands of human beings.\textsuperscript{37} His support for relativism, extended to utilitarianism, was furthered by his teaching that a statesman should persuade society to adopt, not the truer notions of right and wrong, but better or more useful ones, the chrēsta (good and beneficial) as

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\item Plato, Gorgias 483b©d. This view is expounded in this Platonic dialogue by Callicles, who is a student of the famous sophist Gorgias. Whether it is a distortion of a sophistic teaching, or one taken to an extreme, is open to question, given Plato’s well-known disdain for the sophists. At the state level, a prime example of physis in action as Machtpolitik was Athens’ unregenerate bullying of the much smaller city of Melos in 416 during the Peloponnesian War. According to the Athenians, men by a necessary law of their nature ruled wherever they could, as did the gods, and the polis, therefore, had no need to fear divine retribution (Thucydides 5.105.2-3). For a comic take on the nomos-physis issue, see Aristophanes’ Clouds ll. 1421-1429, in which Phidippides argues that the law preventing him from beating his father is only a man-made construct that can be changed; after all, roosters and other creatures stand up to their fathers and they are no different from humans, except that they do not pass legislation.
\item Wycherley, p. 105.
\item Dodds, 1951, p. 183; 1973, p. 103ff.
\item Fr. 1, trs. by Guthrie, quoted by Muir, p. 202. It was a statement that was to resurface centuries later more or less as the manifesto of the Renaissance humanists.
\item Nilsson, 1969, p. 73. This was very much at odds with the conservative spirit of common values and precisely the sort of thing that the Helastic Oath was intended to curb.
\item Muir, p. 202. Contra Morrison (p. 1), quoting Neumann, that “no certainty whatever can be reached on the meaning of the dictum”; the terms ‘man’, ‘measure’, and ‘things’ are all ambiguous. Even de Romilly (p. 99) admits that it is difficult to say very much that is definite about this thesis.
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opposed to the *ponera* (evil).\textsuperscript{38} A contemporary sophist, Gorgias, argued that (a) nothing is; (b) even if it is, it cannot be known to human beings; (c) even if it is and can be known, it cannot be indicated and made meaningful to another.\textsuperscript{39} In sum, the scepticism fostered by the new philosophies created an environment in which there was no certainty, everything was in a state of flux, and all notions of morality were open to debate and interpretation – the very ideas which were being given wide dissemination by the sophists.

As stated earlier, the sophists might never have been perceived as a threatening influence, if they had languished in smaller settlements instead of gravitating to the power centre of the Greek world, where they rubbed shoulders with each other and with the intellectual, wealthy elite, and slipped into a niche role as teachers of young men. Not only were their philosophies disturbing and revolutionary, but their status as metics, their professionalization of teaching, and the clientele they attracted, all served as red flags in the popular consciousness.

Some of the undercurrent of unease about the sophists is traceable to the massive upheavals that had affected the population of Athens in this period, which must have stirred up the murky prejudices of xenophobia.\textsuperscript{40} One of the Athenians’ most cherished civic myths was that they were the most ancient of all Greek peoples. They were autochthonous, that is, they had sprung from the soil of Attica and alone amongst all the Greeks, they had never migrated.\textsuperscript{41} Without ever articulating the reasons, the Athenians believed that this conferred on them a superior status, a claim that was especially important in a city that was filled with metics, many of whom were wealthier and more prestigious.\textsuperscript{42} It must, therefore, have rankled to see the sophists, who were virtually all itinerants from other

\textsuperscript{38} Dodds, 1973, p. 96.
\textsuperscript{39} Muir, p. 203, based on Gorgias’ treatise *On that which is not or on Nature*.
\textsuperscript{40} Edward Cohen (pp. 64–67) discusses the demographic fluctuations during this period, citing both massive influxes of outsiders, grants of citizenship related to warfare, and the expulsion of about 5,000 existing *politai* as a consequence of the revision of the citizenship laws in 445/444. Isocrates bemoaned the liberal granting of citizenship to multitudes who had “no claim on the *polis*” (*On the Peace* 8.50).
\textsuperscript{41} Herodotus, *The Histories* 7.161. The concept of autochthony forms the core of Nicole Loraux’s monograph, *Born of the Earth: Myth and Politics in Athens*.
\textsuperscript{42} Rosivach, pp. 297, 303.
Greek poleis, insinuate themselves into the highest circles of social and political power. Furthermore, it would have been easy to raise questions about their role as backroom policy advisers to Pericles and whether Athens was well served by this influence.\textsuperscript{43} Rational explanations of natural phenomena were diluting the role of the diviners and exegetes who advised the Assembly and accompanied the army on campaign to interpret the outcomes of the solemn sacrifices deemed essential for victory.\textsuperscript{44} When these factors were coupled with doctrines that dethroned the traditional religious practices of the polis from their controlling position it is not hard to understand some of the popular ill-will that was directed at the sophists.

Over and above their having the ear of the intelligentsia, the sophists had transformed the role of the teacher and, in the process, found a way to make substantial amounts of money. While their philosophizing had only a narrow appeal, their true claim to fame was as superb teachers of rhetoric, a role in which they seem to have generated an enormously enthusiastic following.\textsuperscript{45} Until their advent on the scene, education was carried out at the elementary level by instructors who occupied an essential, but lowly, place as physical trainers and teachers of music, reading, and writing.\textsuperscript{46} Values and comportment were taught by heredity and example.\textsuperscript{47} With the participatory democracy and the evolution of the law courts, however, this level of education was no longer adequate. Athens was still primarily an oral society, so those who aspired to make their mark in public life or who might have need to defend themselves in court, especially against politically motivated charges, were determined to learn to speak

\textsuperscript{43} Re influence: it seems fairly certain that Protagoras was chosen by Pericles to write the code of laws for the foundation of the new colony at Thurii in 444; see Ehrenberg, pp. 168-169, and Guthrie, 1969, p. 264. Re loyalty: Gorgias, DK82 A1, quoted in Dodds, 1973, p. 100, preached pan-Hellenic unity and lamented the victories won over fellow Greeks.

\textsuperscript{44} See, for example, the story of a ram born with one horn and respective explanations for this as a portent advanced by Lampon, the diviner who was also a highly respected politician, and as an accident of nature by Anaxagoras (Plutarch, Pericles 6). In general, the sophists were openly dismissive of the art of prophecy; Antiphon referred to it as “an intelligent man’s guess” (A9 DK). Divination will be seen later to have played a role in the timing of the Sicilian expedition in 415.

\textsuperscript{45} See Plato’s dialogue Protagoras for a description of the way in which they attracted disciples and admirers.

\textsuperscript{46} Muir (pp.199-200) lists the professions as: paidotribēs, who coached the skills needed for athletic competitions; kitharistēs, who gave instruction in instrumental techniques for the lyre and singing, necessary social skills; grammatistēs, who taught reading and writing.

\textsuperscript{47} de Romilly, p. 4.
effectively. Without this weapon a man was like “an unarmed civilian attacked by armed soldiers.” In recognition of this, training in oratory had been available to a limited extent in the past, but it concentrated on the acquisition of techniques and modes of delivery. The instruction of the sophists was radically different in that it was geared toward rhetoric and also encouraged independence of thought.

Although the sophists delivered on their promise to teach the art of effective speaking, their success came at a price and the result was a generation of upper-class young men “who had learned the art of Odysseus, of speaking winning words without much regard for the truth.” Possibly because their own scepticism had deracinated absolute principles of right and wrong as the foundation on which an argument should be constructed, they did not think it unscrupulous to impart the techniques of winning by any means, as well as the method of arguing with equal conviction both for and against a proposition. According to Gorgias, all who managed to win over others did so by false arguments, based on opinion rather than fact, but herein lay a problem. Because opinion is “slippery and insecure” it resulted in successes that were equally slippery and insecure. Such sophistry is parodied mercilessly in Aristophanes’ Clouds as a means by which the worse arguments could be made the better and the weak ones the stronger, allowing the unjust side of the case to triumph. Adding insult to this injury, the sophists also maintained that aretē, the special Greek concept of excellence and virtue, could be taught. This claim may not have been well received by those who nostalgically looked back to a time of

50 Woodruff, p. xxxiv. When Neoptolemus, son of Achilles, objects to telling untruths and practicing deception, Odysseus, older and jaded by experience, urges him on by saying that “men are mastered by words, not deeds” (Sophocles, Philoctetes ll. 54-99).
51 See Guthrie, 1969, pp. 267-268, for a balanced account of the sophists’ rationale for the legitimacy of taking either side in an argument according to the circumstances. The difficulty arose when the doctrine was applied to values in general and individual morality in particular.
52 Gorgias, Encomium of Helen 8, 11.
53 Aristophanes, Clouds ll. 112-118; see also, Aristotle, Rhetoric 1402a23. Socrates says that he was accused of “making the weaker argument defeat the stronger and teaching others to follow his example” (Plato, Apology 19b, 23d).
54 Dodds, 1951, pp. 183-184.
aristocratic privilege; if aretē could be acquired instead of being passed on from family and birth, then social mobility was sure to follow.55

As their services filled an unmet need, the sophists were able to charge fees, ranging from the modest to the exorbitant, for their instruction.56 But the very fact of their charging at all was a violation of gentlemanly custom; what they were teaching was wisdom and virtue, things that should not be sold for money, only for friendship and gratitude.57 By offering their services for pay, the sophists were, in effect, prostituting themselves, behaving in a slavish manner, and losing the privilege of choosing with whom they would converse.58 Here, again, the sophists were going out on a limb. By teaching rhetoric to all comers, they were setting themselves up to incur scorn, in this case, from those with oligarchic tendencies who already resented the levelling effect of the democracy.59 This same group may also have felt aggrieved that those of the sophists who were metics were in a position to exert influence over the public agenda but were in no way forced to share their wealth, if they had indeed accumulated it, by paying taxes or contributing to public festivals.60

The final point concerning the sophists as teachers is the effect that their activities had on the formerly entrenched patterns of interaction between the older and the younger generations. Athenian laws attributed to Solon explicitly outlined the obligation of adult children to look after their parents, a duty which bordered on the pious. These were taken so seriously that they carried a penalty

55 Kerferd, p. 37. The disdain of the educated elite is reflected in Aristophanes’ treatment of Cleon, often referred to as a demagogue, even though he was elected stratēgos and was a prominent politician. He was ridiculed on the basis that, though wealthy, he was a tanner’s son; Wasp 11. 664–712. Thucydides called him the “most violent man in Athens” (3.36), possibly based on his histrionics in the Assembly.

56 Isocrates claims that “although they say that they do not want money and speak contemptuously of wealth as ‘filthy lucre’, they hold their hands out for trifling gain and promise to make their disciples all but immortal” (Against the Sophists 13.4). See Kerferd, pp. 26–28, for an extensive review of sources concerning the exact size of the fees. He concludes that there is no decisive answer to the question, but points out that some, notably Protagoras and Gorgias, were reputed to have become very wealthy. As we are well aware, perception often taints reputation to the same degree as reality.

57 Xenophon, Memorabilia 1.2.6–8.

58 Xenophon, Memorabilia 1.2.6, 1.5.6, 1.6.5, 13.

59 Plato, Protagoras 319a1–2. Kerferd (p. 26) considers this point to be the source of the hatred and attacks directed at them in the comedies and, eventually, of the prosecutions.

60 Isocrates makes this point although he uses it to demonstrate his ability to understand why Gorgias, who had a great following as a teacher, left such a puny estate (Antidosis 15.155-156).
of atimia (disenfranchisement) and compliance with them formed part of the public scrutiny of citizens to ensure that they were fit to hold public office.\textsuperscript{61} In the intervening century, the family hierarchy had, however, been eroded by the democratic ethos, as fathers and sons could operate in the public arena on a completely equal footing once the latter reached the age of majority at 18.\textsuperscript{62} To this was added the influence of the likes of Antiphon the Sophist, who considered “blind obedience and piety toward parents” irrational and contrary to natural law and taught malleable young men that there was nothing morally wrong with disregarding legal restraints.\textsuperscript{63} The resulting and unprecedented discontinuities introduced by this tabula rasa approach of the sophists in all areas dealt the generational dominance of the elders a mighty blow, bringing conflict and anxiety in its wake.\textsuperscript{64} On the other hand, the high spirited, gilded youth who comprised the bulk of the disciples of the sophists revelled in their sense of liberation from hide-bound traditions, showing shameful disrespect for their elders and openly mocking and parodying religious institutions.\textsuperscript{65}

As described by Protagoras, the aim of his instruction was to make men into good citizens by teaching them to look after their affairs, manage their households, and be capable of participating in civic affairs, both in speech and in action.\textsuperscript{66} This was hardly a sinister agenda. Our perception of the sophists’ role has been coloured by the works of Aristophanes, who consistently mocked them, a sharp contrast to the respect shown by Plato, who never claimed that they themselves were flouting established moral rules.\textsuperscript{67} It is, therefore, reasonable to

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\bibitem{A62} Reinhold, p. 353.
\bibitem{A63} Reinhold, p. 356, with reference to the fragmentary \textit{On Truth}.
\bibitem{A64} Reinhold, p. 353.
\bibitem{A65} Dodds, 1951, pp. 188-189. Socrates attracted a crowd of rich young men who had nothing better to do than follow him around as he humiliated people by cross-examining them; they then emulated his practices themselves; see Plato, \textit{Apology} 23d. Aristophanes makes fun of the breakdown of filial obedience: in \textit{Wasps}, the son forcibly prevents the father from reporting for jury duty; in \textit{Clouds}, the son presents an argument about why it is right for him to beat his father; in \textit{Birds}, the younger generation displays a consistently belligerent attitude. Parodies of religious rituals are discussed in Chapter VI.
\bibitem{A66} Plato, \textit{Protagoras} 319a.
\bibitem{A67} Guthrie, 1969, pp. 265-266, 271. This was all the more notable given Plato’s well-known opposition to the teachings of the sophists as being morally neutral and concerned with means rather than ends. Much as Plato may have wanted to attribute relativistic and immoral doctrines
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pay attention to Grote’s observation that the sophists did not set out to remould Athenian youth, but merely to equip them with the skills they would need to succeed in public life. They adapted their profession to the place and society in which they found themselves.  

Since they were dependent on making a living from teaching, the content of what they taught fell victim to the dictates of the market; the discontented young aristocrats were interested only in learning how to acquire personal power in a democracy.  

As is evident from the examples of Alcibiades and Critias, who were followers of Socrates, the young men who sought out this type of instruction already had their eyes fixed on a political career; the goal was not implanted in them by the sophists. It is entirely possible that, had the full scope of sophistic thinking survived, its proponents would have heralded an epoch of intellectual, social, and political progress, and posterity would have formed a far more positive picture of these proto-humanists. Instead, their movement intersected fatally with the Peloponnesian War, a conflict which was waged with “a conscious satisfaction in brutality” that has seldom been surpassed.  

The consequence, as de Romilly concludes, is that their work has “suffered from a lack of understanding to such a degree that their influence is now sometimes hard to discern.” Nevertheless, in the prevailing conditions in the Athens of the time, the outcome of their activities was perceived as profoundly threatening to the communal fabric of Athens and led, inevitably, to a backlash that was played out in the Assembly and the courts.

to the sophists (Pownall, 2004, p. 14), he never depicted Protagoras with anything less than respect for him as a person (de Romilly, p. 235).

69 Dodds, 1973, p. 103; Grote, Vol. VI, pp. 59-60. Munn (p. 79) attributes the ascendancy of pure rhetorical skill over the pursuit of intellectual aretē to the polarizing pressures of the Peloponnesian War.  
70 Xenophon, Memoirs of Socrates 1.2.12-16. Alcibiades will be discussed in Chapter VI, and Critias in Chapter VIII.  
72 Dodds, 1973, p. 102.  
73 de Romilly, p. 242. In her monograph, de Romilly (pp. 189-212) argues that careful examination of the fragments provide evidence that the sophists were not concerned simply with destructive analysis, but also tried to introduce compensatory positive ideas. As an example, she notes that while Protagoras’ dictum about man being the measure of all things sapped the foundations of truth, he took a corrective measure by replacing the notion of truth with the purely practical idea of utility (p. 189). I consider it to be debatable whether this constitutes a remedy or is merely a substitution.
With the full development of the popular democracy, those two arms of government were entirely in the hands of the *dēmos* and their deliberations were, naturally, sensitive to shifts in public opinion. Leaders emerged who sought to steer the course of their deliberations and the ensuing power struggles among them were no less real for not having official factional labels or for not being clearly demarcated in terms that are visible to posterity. In the second half of the 5th century, political machinations worked in parallel with two strong, and possibly mutually reinforcing, influences – the response to the sophists, both by the population as a whole and by oligarchic special interests, and the tensions generated by the uneasy peace between Athens and Sparta and on-going military skirmishes. Both served to elevate collective suspicion of religious heterodoxy. It is entirely possible that the one without the other would not have been sufficient to trigger the spate of religiously based accusations that were levelled against individuals, who were all in some way regarded as intellectual leaders and who were closely associated with Pericles and his political agenda.74 In what follows, I will try to link the chronology and the cases with what may have been the underlying factors and consider the ways in which the charge of impiety was used.

First, it is useful to review what has been said about the accusations themselves. Over the years, much doubt has been cast on the historicity of these events, partly because the details vary from one account to another, and partly because the references to them are found in comedy, a notoriously distorting medium, or are recorded in sources that were written centuries later, which themselves depended on works that were not strictly contemporary accounts.75 It is probable that many of the anecdotes were originally intended as witticisms or as grist for the partisan mills of political posturing, took on a life of their own, and eventually became entrenched in the literature. Nevertheless, one should bear in mind Dover's *caveat* that “no anecdotal evidence about Pericles and his contemporaries can ever be dismissed out of hand as the invention of a later

74 Other major cases involving aspects of *asebeia*, those of Alcibiades, Andocides, Diagoras, and Socrates will be discussed in subsequent chapters.
75 Sources include Aristophanes, Diodorus Siculus, Diogenes Laertius, and Plutarch.
Though the evidence for the prosecutions is poor, questionable, or was garbled in transmission, the tradition is sufficiently widely preserved to render it highly unlikely that they were all invented *ex nihilo.*

Furthermore, two sources considered impeccable, Aristotle and Plato, both make allusions to the danger inherent in the profession of sophist. Finally, the decree of Diopeithes is indicative of the legal measures put in place to make *asebeia* a punishable offence and to curb the behaviour of an individual who was committing what was regarded as an offence against society as a whole.

In his biography of Pericles, Plutarch presents an inventory of attacks, all either overtly or by extension, grounded in impiety, that seemingly formed part of a coordinated effort to test the public mood and gauge how difficult it would be to topple Pericles from his position of power. These accusations, lodged some seven or eight years before the start of the Peloponnesian War, constitute a good exemplar of the Athenian tendency to use financial pressure, comic ridicule, and trials with drastic consequences as tactics in the political arena. This played on an underlying resentment of successful politicians, who were generally the object of popular envy because of the advantages conferred on them by birth and

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76 Dover, 1988b, p. 141.  
77 Dover (1988b, p. 152) grudgingly acknowledges the authenticity of the prosecutions, apart from those of Diagoras and Socrates, while Frost (p. 69) and Dover (1988b, p. 142) discuss anecdotal origins. The indictments are accepted as historical, despite the lack of crystal clear evidence, by scholars such as Derenne, de Romilly, Dodds, Kerferd, and Ostwald. Dodds (1951, pp. 189-190) feels that this type of prosecution in a time of enlightenment was a source of distress and puzzlement to scholars of the modern era who had an idealized picture of Athens and, hence, they tended to cast doubt on their authenticity or to dismiss them as entirely political in nature.  
78 Aristotle, *Rhetoric* 1397b; Plato, *Protagoras* 316c,d.  
79 Ostwald, p. 528.  
80 Plutarch describes the first of these indictments as a test used by Pericles’ enemies to gauge the mood of the people in a case in which he was implicated (*Pericles* 31-32). In the discussion of these four cases, I rely on the exhaustive analysis of Mansfeld, 1980, which sorts out the chronology in such a way as to show how they were inter-connected. In referring to this lengthy article, I have on occasion not given a specific page reference because the arguments are presented as a coherent whole and encompass the paper in its entirety. See Dover, 1988b, pp. 135-136, for a complete list of all ancient sources for the impiety trials of those connected with Pericles.  
81 Mansfeld (1980, p. 34) posits that Plutarch’s absolute chronology in dating these events to 433 and shortly thereafter is erroneous, but his sequence is coherent; he then presents arguments *in extenso* for the dating of these trials to the period around 438/437. In an early paper, Frost (p. 70) stated that Ephorus’ histories, which were used by Diodorus Siculus, have influenced the dating of the attacks on the circle of Pericles in the lead-up to the Peloponnesian War. He notes that an astute scholiast to Aristophanes’ *Peace* l. 605 was able to date the prosecution of the sculptor Pheidias to the archon year 438/437. Others, such as Bauman and Derenne, favour the 433/432 date.
wealth.\textsuperscript{82} The sequence of events appears to have been as follows: the sculptor Pheidias, a friend of Pericles, was indicted for embezzling precious materials used in the construction of the great statue of Athena Parthenos; a decree was passed requiring Pericles to undergo a scrutiny of the accounts used to finance the statue; Pericles’ consort Aspasia was accused of impiety; the philosopher Anaxagoras, whom Pericles regarded as a mentor, was driven out of town.

After Pericles had achieved the status of near monarch, he launched an ambitious program to erect temples and public edifices that reflected the glory that was Athens. The project was not without its detractors, with Pericles’ rivals constantly denouncing it as a waste of public money, but he managed to deflect the criticism and turn it to his advantage.\textsuperscript{83} He had entrusted the entire works to his friend Pheidias, the sculptor, who was also in charge of creating a massive statue of Athena to be placed in the crowning achievement of the whole enterprise, the Parthenon.\textsuperscript{84} Pheidias’ close friendship with Pericles and the inclusion of likenesses of both himself and Pericles on the shield of the goddess aroused jealousy that could be used to advantage against both men.\textsuperscript{85} Questionable charges that Pheidias was embezzling precious materials, specifically gold and ivory, were laid by one of the workmen, who had turned informer under the protection granted to a suppliant. Because of the ingenious way in which the statue was constructed, it was possible to remove and weigh the gold in order to refute the accusation, but it would have been much more difficult to account for the ivory.\textsuperscript{86} Pheidias seems not to have been indicted on the full extent of the charge, if at all, left Athens, and continued his career at Olympia, outside the jurisdiction of Attica.\textsuperscript{87} Not to be deterred, political rivals led by

\textsuperscript{82} Carey (1994, pp. 73-74) views these mechanisms as ones used by the \textit{dēmos} to exert control over the well-born and the elite. I think that they equally well served the ends of political rivals in their jockeying for position.

\textsuperscript{83} Plutarch, \textit{Pericles} 14.

\textsuperscript{84} Plutarch, \textit{Pericles} 11-13.

\textsuperscript{85} The depictions could have been considered impious and used to fuel charges against the sculptor (MacDowell, 1978, p. 149).

\textsuperscript{86} Plutarch, \textit{Pericles} 31.

\textsuperscript{87} Mansfeld (1980, pp. 45-47) cites Philochorus and Pausanias as convincing evidence of Pheidias’ presence at Olympia; this counters Plutarch’s claim that he died in jail in Athens (\textit{Pericles} 31). See also Frost, p. 72, who also ignores Plutarch’s statement. Mansfeld notes that Pheidias may have been held in protective custody by the Assembly because of the uncertainty over the ivory.
Dracontides demanded that Pericles, in his capacity as the superior of Pheidias, give a special accounting of the public funds used for the statue. From the specifications Dracontides imposed, it is clear that he meant to subject Pericles to a trial with sacred overtones: the jurors were to convene on the Acropolis and use ballots that had been especially sanctified on the official cult altar of Athena. Cast in this way, the charge was tantamount to *hierosylia* (theft of sacred property), a crime that carried the death penalty, and that would almost force the jurors to express their moral outrage by finding Pericles guilty. One of Pericles’ allies, Hagnon, was able to effect an amendment to have the case tried in the ordinary way, before a large jury of 1,500, thus converting it into a more routine scrutiny of the activities of a public official, in which case Pericles was probably running the much lesser risk of being made to pay a fine. The outcome of the trial is unknown; but the fact that up until 430 he was continuously re-elected as general, a position open only to a citizen in good standing, is evidence that he was either acquitted, convicted of a minor offence such as neglect and fined, or made restitution.

At about the same time, charges were laid against Aspasia. She was Milesian by birth and was said to be a brothel-keeper, which was considered anything but reputable or honourable. This may have been type-casting her in an effort to disparage her, however, as she was free-born and appears to have been well educated. Aspasia was, effectively, the common-law wife of Pericles,
with whom she had a son, and in the only extant portrait of her she is depicted modestly as an honourable woman. The famous leader was supposedly attracted to her because of her intelligence and great political acumen, although the only evidence that she influenced his policies is derived from comedy. According to Plutarch, Aspasia was accused of impiety and of procuring free-born Athenian women for Pericles by the comic poet Hermippus, who was his implacable enemy and attacked his policies in his plays. Like many others he was disaffected by the decision to withdraw the population into Athens and to allow the Spartans to ravage the countryside of Attica, a policy that was completely orthogonal to the hoplite infantry mentality that had been successful in the Persian Wars and that was still the underpinning of Athenian military self-identity. Aspasia was a soft target: she must have been sexually desirable, a quality which the Greeks considered to be a disruptive force, she was a metic, and her notoriety was exactly the opposite of the ideal of a decorous woman who was not known outside her own oikos. None of these attributes are likely to have endeared her to the Athenian public, nevertheless, the charge that was brought against Aspasia is not easy to parse. Her impiety may have consisted, because of her involvement in intellectual circles, in discussions on the nature of the divine

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95 Dillon, M., p. 186; see p. 188 for the illustration of the Aspasia portrait on a herm; like any respectable woman, her hair is covered with a scarf, a symbol of propriety. It should be noted that the law, proposed by Pericles himself in 451/450, dictated that a legal marriage could be contracted only between parties who were both Athenian citizens (MacDowell, 1978, p. 87). Pericles could not have married Aspasia, but by living with her as his wife he was acting contrary to the purpose and spirit of the law (Henry, p. 25).

96 Plutarch, Pericles 24. Aspasia’s reputation for having a way with words is attested by Plato (Menexenus 235e-236d), when Socrates, perhaps playfully, claims to have been instructed in the art of oratory by her, and by her appearance as the central figure in dialogues written by two of Socrates’ followers, Anthisthenes and Aischines (Dillon, M., p. 186). Re influence, see Henry, p. 10. In a parody of the outbreak of the Peloponnesian War, Aristophanes links her to the Megarian decree (Acharnians ll. 515-539).

97 Plutarch, Pericles 32, identifies the legal vehicle as a dikē asebeias, a private suit.

98 Plutarch, Pericles 32; Hermippus fr. 47, quoted by Carey, 1994, p. 80. Note that Plutarch discusses the slander and innuendo surrounding Pericles who was rumoured to be a sexual predator (Pericles 13). In the account, Pheidias also had a hand in arranging intrigues between Pericles and free-born women. This lends weight to Mansfeld’s thesis concerning the linkages between these four cases.


100 Independent women, living outside of the confines of an oikos, were considered different and disquieting; because they were seductresses and a destabilizing force (Cantarella, p. 238).

101 Re sexual attraction, Dodds, 1951, p. 185; Carey, 1994, p. 80; re metic status, Dillon, M., p. 189; re notoriety, in the funeral oration Pericles says that the greatest glory would go to the woman “who is least talked about among the men whether for good or for bad” (Thucydides 2.45.2).
or, as she was branded a courtesan and a madam, she may have been judged to have defiled sacred precincts by her presence. At any rate, this prosecution was also to no avail, as Pericles apparently made a personal, tearful appeal to the jurors and secured her acquittal.

If the assumptions about the sequence of events is correct, the decree of Diopeithes was passed by the Assembly at about the same time as the prosecution of Aspasia. It seems likely that sacrilege by way of physical offences against religious practices – for example, failure to execute a ritual properly, violation of the sanctity of sacred precincts, and neglect of omens – had probably always constituted punishable acts. What was striking and new was the extension of the concept to encompass disbelief in, or denial of the existence of, the gods and teaching about celestial phenomena. The latter part was so precisely tailored that it indicates that the decree was clearly aimed at facilitating the prosecution of Anaxagoras, for whom Pericles had an unbounded admiration and whom he thought of as his consigliere. From his association with the philosopher, he had become steeped in higher philosophy and abstract speculation, had learned to think rationally about the effects of natural phenomena, and was even said to have acquired personal attributes such as dignity of spirit, nobility of utterance, composure, serenity, and graceful manner. Pericles did not hesitate to display his adherence to these new ideas, sprinkling his oratory with allusions to natural philosophy and persuading the Assembly by means of rational explanations. On the other hand, Anaxagoras seems to have been resented for keeping to himself, which could easily be interpreted as arrogance and disdain, and had

102 Re intellectual activity, Dillon, M., p. 189; re activities as procuress, Bauman, p. 38. According to Derenne (p. 9) prostitutes were banned from temples; he cites Isaeus On the Estate of Philoctemon 6.47-50, which implies that out of reverence for the goddesses immoral women were excluded from participating in the Thesmophoria. It is not clear that this applies to Aspasia, but seems sufficiently related to have been plausible.
103 Plutarch, Pericles 32. Pericles was not intervening gratuitously; as a woman and a metic Aspasia was doubly prohibited from representing herself in court.
104 Derenne (p. 12) refers to these as “les délits matériels contre le culte.”
105 Derenne, p. 12; Dodds, 1951, p. 189.
106 Plutarch, Pericles 5, 16. Derenne (p. 24) maintains that this was the only raison d’être of the decree. As noted in Chapter III, the procedure envisaged was eisangelia, which framed the offence as constituting an immediate threat to the community as a whole and lent it an air of urgency.
107 Plutarch, Pericles 5-6.
108 Plutarch, Pericles 8, 15.
incurred the enmity of the influential seer Lampon by proffering a reasonable explanation for a malformed ram on the basis of anatomy that ran counter to the diviner’s interpretation of it as a portent.\textsuperscript{109}

Barring the discovery of new materials, the exact nature of the prosecution of Anaxagoras and its outcome will probably never be known with any certainty as the sources do not agree on the details.\textsuperscript{110} The central point is that he was accused of impiety, and possibly of medism,\textsuperscript{111} and from a reference in Plato’s \textit{Apology} it can be inferred that there was a trial.\textsuperscript{112} In one version of the story, he was defended by Pericles, whose plea to the jury swayed them in his favour.\textsuperscript{113} Even though Plutarch says that Pericles smuggled Anaxagoras out of the city because he feared for his safety, it is possible that he was acquitted and that Pericles simply assured his safe passage out of Athens in deference to his advanced age.\textsuperscript{114} He went to Lampsacus and lived there undisturbed, as an honoured citizen, until his death.\textsuperscript{115} Had he been a fugitive from justice, it is likely that he would have been pursued by the Athenians, as the city was an ally by virtue of its membership in the Delian League.\textsuperscript{116}

The implications of these four prosecutions will be left in abeyance for discussion below. Suffice it to say at this point that they seemingly did not succeed in neutralizing or even destroying Pericles’ position of leadership within

\textsuperscript{109} Plutarch, \textit{Pericles} 16. Derenne (p. 16) goes so far as to say that Anaxagoras’ aloofness offended the democratic sensibilities of the Athenians. He also thinks (p. 38) that Euripides alludes to Anaxagoras with the statement that some get “a reputation for indifference to their neighbours from their retiring manner of life” and that “a foreigner must be quite compliant with the city” (\textit{Medea} ll. 214-223). For the story of the ram born with one horn, see Plutarch, \textit{Pericles} 6.

\textsuperscript{110} Dover (1988b, p. 140) catalogues the variations on the theme, adding that not one of the sources was clear on what really happened but that this did not prevent them from writing as if they did.

\textsuperscript{111} Medism, siding with the Persians, was for obvious reasons a crime in many Greek city-states and a serious charge. Given the reputation of the Persians as astronomers, one may ask whether it is possible that Anaxagoras’ discussion of celestial matters was sufficient to taint him by association and generate an accusation of having pro-Persian sympathies.

\textsuperscript{112} At his own trial Socrates asks his accuser, Meletus, if he thinks he is prosecuting Anaxagoras (Plato, \textit{Apology} 26d).

\textsuperscript{113} As in the case of Aspasia, Anaxagoras was a metic and had to be represented in court by an Athenian; so it is probable that Pericles intervened as his sponsor (Derenne, p. 39).

\textsuperscript{114} Plutarch, \textit{Pericles} 32. Josephus (\textit{Against Apion} 2.262) reports that Anaxagoras was acquitted on a capital charge by only a few votes. Re Pericles’ facilitating Anaxagoras’ departure from Athens, see Mansfeld, 1980, p. 81.

\textsuperscript{115} Mansfeld, 1980, pp. 85-86.

\textsuperscript{116} Mansfeld, 1980, p. 81.
the *polis*. But neither did all prosecutions on the ground of impiety of individuals closely associated with him cease when he died in 429.\(^{117}\) Although there is a paucity of information about his case, it seems to be historically accurate that Protagoras, the most famous of the sophists, was prosecuted on the basis of his professed agnosticism about the gods.\(^{118}\) As his assertion had been simply that there could be no absolute certainty about the existence of the gods, he did not appear to be challenging the popular religion. Apart from general paranoia related to any discussion about the gods, then, the motives for the charge are not obvious.\(^{119}\) In 421, the comic poet Eupolis characterized Protagoras as “the sinner concerning celestial phenomena”, which was presumably either a reference to his statements about the gods or a sign that Eupolis was confusing him with Anaxagoras.\(^{120}\) It seems that some sort of trial took place in about 420, but the actual mechanism is not known, and descriptions of the outcome are confused.\(^{121}\) It appears, however, that he was either condemned, expelled, or escaped from Athens, and died shortly thereafter, drowning when shipwrecked on his way to Sicily.\(^{122}\) According to tradition, the Athenians also ordered all his books to be gathered up from their owners and taken to the Agora to be burned. Dover thinks

\(^{117}\) Here I deal only with the case of Protagoras. It should be mentioned that there are references to an additional two against individuals who frequented his intellectual circle, but as Ostwald (p. 533, fn. 26) and others note, the evidence is so tenuous that I have omitted them. There are reports that Prodicus, a sophist, was condemned to death for corrupting the young and drank hemlock. One wonders whether his fate was confused with that of Socrates. Also, Euripides was said to have been prosecuted for *asebeia*, seemingly for having represented the character of Herakles as mad at the Dionysia, but the details are sketchy and his unimpeded career as a playwright tends to cast doubt on the allegation. Note that Bauman (pp. 47©48) thinks that in view of the atheistic character of Euripides’ thinking, a prosecution cannot be ruled out.

\(^{118}\) See Ostwald, p. 532, for sources. Ostwald (p. 533) thinks that the evidence is insufficient to support the conclusion of some that it was an *eisangelia* under the decree of Diopeithes, but that it is too strong to reject altogether the notion that he was tried for impiety.

\(^{119}\) One might be tempted to link them to moves against Alcibiades, a kinsman and former ward of Pericles, who at the time was a major player on the political scene and regarded in certain quarters as a potential successor to Pericles, but this would be purely speculative.

\(^{120}\) Eupolis, *Flatterers* fr.146a,b, quoted in Ostwald, p. 533. If Eupolis was prone to employ the same comedic touches as Aristophanes, he could deliberately have made a reference that was redolent of Anaxagoras, as it seems that ‘teaching things about the sky’ had a particular humorous resonance with the audience.

\(^{121}\) Derenne (p. 54) sums up the situation with an elegant turn of phrase: “à ce sujet, les anciens nous laissent en complet désarroi.” Derenne (p. 54) dates the trial to 416, but the earlier date is more generally accepted (Ostwald, p. 533; Guthrie, 1969, p. 262).

\(^{122}\) Morrison (p. 4) with Kerferd (p. 43) thinks there is no reason to doubt the story of the shipwreck which Diogenes Laertius (D.L. 9.52-55) attributes to Philochorus. Diogenes Laertius poetically remarks that Protagoras escaped Minerva’s might, but not the outspread arms of Pluto.
that this statement is quite plausible. By this time, the idea of invalidating certain
types of written utterances by physical destruction was already an established
administrative practice in Athens.\textsuperscript{123} It was an inglorious end for both the person
and the writings of a man who came to be viewed in the Hellenistic period as the
equal of Plato, Heraclitus, and Thales.\textsuperscript{124}

It is reasonable to conclude that the charges lodged against those
associated with Pericles used the pretext of impiety but were strongly motivated
by personal and political considerations, although the same could be said about
many cases that found their way into the courts of Athens.\textsuperscript{125} The indictments
provide an interesting demonstration of the flexible way in which prosecutions
could be undertaken and illustrate the malleability of the concept of impiety. The
charge against Pheidias was an \textit{eisangelia} brought before the Assembly by a
suppliant and may have been based on the supposed theft of sacred property.\textsuperscript{126}
Pericles was subjected to a special scrutiny of his role as a public official for which
a large jury was empanelled, and it is likely that there was an attempt to
demonstrate misuse of public funds as constituting temple robbery. If Plutarch is
correct, Aspasia faced a \textit{dikē}, or a private suit, in which the accusation was
probably based on the presence in a sacred area of a woman whose sexual
transgressions would pollute the precinct. Finally, the decree of Diopeithes
opened up wide scope for the interpretation of impiety in the arena of the popular
courts, especially as the legal procedure, \textit{eisangelia}, did not impose any penalty
on the person who brought a frivolous suit. In the case of Anaxagoras, impiety
seems to have consisted in the content of his teachings. The term \textit{asebeia} was a
veritable verbal chameleon.

Base political motivation on the part of upper class rivals can be only part
of the explanation.\textsuperscript{127} If the cases were lodged by the enemies of Pericles with the
sole aim of toppling him, the charge of impiety laid against Protagoras so many

\textsuperscript{123} Dover, 1988b, p. 143.
\textsuperscript{124} Kerferd, p. 44, citing archaeological evidence uncovered at Memphis in Egypt in 1950.
\textsuperscript{125} Cohen, D., p. 215; Dodds, 1951, p. 190; Kerferd, p. 21.
\textsuperscript{126} Plutarch, \textit{Pericles} 31. The use of a suppliant to lay the charge could have been quite deliberate
as it reinforced the religious overtones and was a subtle way of applying psychological pressure on
the Assembly in favour of conviction.
\textsuperscript{127} See, for example, Kerferd, p. 21, Nilsson, 1969, p. 79.
years after Pericles’ death makes little sense. Neither can the indictments be attributed exclusively to the machinations of professional seers who saw their livelihood and prestige threatened by the inroads made by novel philosophies.\textsuperscript{128} So we are faced with a complex situation that cuts across class lines and which has sometimes, and somewhat dramatically, been styled a “heresy hunt.”\textsuperscript{129} The accusations may have constituted a backlash but, as Dodds says, “it would be dishonest not to recognize that the new rationalism carried with it real as well as imaginary dangers for the social order.”\textsuperscript{130} Any attempts to dismantle the religious foundation of the polis would exacerbate the public’s fear of losing the favour of the gods that had allowed the city to flourish. The defenders of the old values seized on the vulnerable stereotype of the impious person as the surest means of securing support from the public to safeguard Athens from divine anger and devised the legal means to do so.

\textsuperscript{128} Nilsson (1940, p. 133ff.) posits that this was the principal cause.\textsuperscript{129} The term is used, but not endorsed, by Nilsson (1969, p. 79) and Dodds (1951, p. 189) refers to heresy trials.\textsuperscript{130} Dodds, 1951, p. 191.
CHAPTER V
MIASMA, PLAGUE, AND THE EARLY DAYS OF THE PELOPONNESIAN WAR

Like Caesar several centuries later, it could be said of Pericles that he bestrode the narrow world like a colossus. The lengthy descriptions of him penned by Thucydides and Plutarch are those of a man who so completely dominated his era that he was a monarch in all but name. Yet the two characterizations are markedly different. Plutarch is not hesitant to portray him as a highly manipulative figure who used his advantages as a member of a distinguished family, policies calculated to ingratiate himself with the masses, and ruthless suppression of political rivals to set himself up as the first citizen of the democracy. Once he had gained control, however, he abandoned his nerveless and indulgent style of leadership and adopted the aristocratic, or even regal, manner of a statesman, exercising unbroken authority for a period of 15 years.\(^1\) Thucydides expresses his “emphatic approval of Pericles’ personality and Realpolitik”,\(^2\) attributing his success to his rank, ability, and known integrity. Pericles was not led by the multitude, but was instead their leader, never sought power by improper means, and was never compelled to flatter the people, but could afford to anger them by imposing his will.\(^3\) Here there is not a whiff of the backroom dealings, described by Plutarch, that had resulted in the destruction of the public career of his main rival, Cimon, and in the murder of the latter’s supporters.\(^4\) Nevertheless, in the last two years of his life, Pericles was to experience a series of reversals, both political and personal, as great as those suffered by the tragic heroes found on the Athenian stage.\(^5\) In these, as in the attacks levelled at his associates a few years before, the concept of asebeia was harnessed to marshal public opinion against him.

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1 Plutarch, Pericles 9-16.
2 Chambers, p. 81.
3 Thucydides 2.65.8-9.
4 Plutarch, Pericles 10.
5 Kagan, McDermott Lecture.
Notions of piety and impiety became thoroughly entangled with the two most important events of the time, both closely associated with Pericles. Using his position as leader, he had fervently exhorted the citizens to take up arms against their fellow Greeks and, thereby, committed Attica to the Peloponnesian War. Before the actual fighting began, religious issues were conjured up by both sides of the conflict in order to construct respectable pretexts for resorting to outright warfare. The outbreak of plague which followed shortly thereafter was open to interpretation as a sign of divine disfavour and added to the upheavals and religious uncertainty already wrought by the new philosophies.

There is little question that the Peloponnesian War had a cataclysmic effect on the collective psyche of Athens. Thucydides unequivocally staked out his position that, despite the known tendency of the actors in a struggle to overrate its importance and then, when it is over, to return to their admiration of earlier events, an examination of the facts would show that it was much greater than the wars which had been fought up to that point in history. He loses little time dismissing the legendary Trojan War because it involved only an “inconsiderable” number of participants, given that they were representing the whole force of Hellas, and, even though it lasted for ten years, it was fought only episodically. Furthermore, if the Greeks had thrown more resources at the problem in the first instance, with sufficient manpower and supplies to see the siege strategy through to completion, “the capture of Troy would have cost them less trouble.” In other words, Thucydides belittles the conduct of the Trojan War as incompetent, attributing its renown to the “opinion about it formed under the tuition of the poets.” The conflict with Persia, fought primarily in the first two decades of the 5th century, was a huge joint effort that united the Hellenes under Sparta, but it

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6 It is possible that Pericles tried to stave off the inevitable war for several years by bribing Spartan officials, with whom he had good connections. It was widely rumoured that he had paid off the Spartans so that they withdrew from the countryside of Attica in 446 (Plutarch, Pericles 22). Pericles was attacked more than once for the vast amounts of money that were being disbursed for the building of the Parthenon precinct and he was reluctant to respond to requests for a thorough accounting (Plutarch, Pericles 12, 14, 32). Some of the funds may have been skimmed off for further bribes to Spartan officials to leave Athens in peace.

7 Thucydides 1.21.2.
8 Thucydides 1.10.5.
9 Thucydides 1.11.1-2.
10 Thucydides 1.11.2.
basically consisted of two great land battles and two decisive naval engagements.\textsuperscript{11} The Peloponnesian War, on the other hand, was fought almost continuously for twenty-seven years, embroiling all the Greek states in a conflict, which was, à fond, a species of civil war on a grand scale. According to Gomme, it did more material and moral harm that any other war had done, threatening to destroy Greek civilization altogether, and was, in short, the greatest \textit{kinesis} that had ever been. Because of its long duration, its intensity, and the many victims it created, it “at once became more serious than any particular problem it was called upon to solve.”\textsuperscript{12}

Another notable difference, of immediate relevance to this thesis, is to be found in the putative causes of these three major conflicts. The legendary expedition against Troy was, nominally at any rate, launched to recover stolen property, namely Helen, the wife of the king of Sparta. The much more contemporary Persian War was a straightforward power struggle resulting from the incursions of the Persians, initially under Cyrus the Great in 550, into the Greek sphere of influence in the Mediterranean. In the case of the Peloponnesian War, the causes were mainly geopolitical, based on the increasing irritation of the other Hellenic city-states over the Athenians’ insistence that they enjoyed primacy over them and Athens’ hegemonic demand for tribute.\textsuperscript{13} Nonetheless, in the year leading up to the actual invasion of Attica, both sides attempted to dress up the conflict with a veneer of respectability by advancing unimpeachable religious grounds for going to war. First, the opponents endeavoured to provoke each other by trading demands relating to curses laid upon their cities. The Spartans tried to prove that the Athenians were impious and sent an embassy demanding that they deal with the curse of the goddess by driving out the descendents of those responsible for the murder of a number of suppliants two

\textsuperscript{11} Thucydides 1.23.1. Gomme (1967a, p. 118ff.) supports Thucydides’ analysis, also noting that military encounters before the Persian Wars were small wars, pitting neighbour against neighbour.

\textsuperscript{12} Gomme, 1967a, pp. 120-121.

\textsuperscript{13} Thucydides 1.119-122. At the congress of the confederated allies, the Corinthians applauded Sparta’s vote for war and added that Athens was an enemy that was a match for their whole coalition which they must fight as a unified body; otherwise, Athens would conquer them city by city, with no end other than reducing them to slavery, pure and simple.
centuries before. This was a very thinly veiled attack on Pericles and will be discussed in more detail below. The Athenians countered with orders to Sparta to drive out the curses of Taenarum and of the goddess of the Bronze House, which also involved the violation of sanctuary and expulsion of accursed persons. A second round of demands followed. Sparta ordered Athens to raise the siege of Potidaea, to respect the independence of Aegina, and, above all, to revoke the Megarian decree under which Athens excluded all Megarians from the use of Athenian harbours and of the market at Athens. The edict was contrary to the common rights of all Greeks and in defiance of an earlier treaty.

But the roots of the Megarian decree, aptly described by Aristophanes as “the small spark” that lit a great war, ran much deeper than a mere trade dispute. There was a simmering ill-will toward the people of Megara for their betrayal of Athens in 446 when they returned to the Peloponnesian fold and massacred the Athenian garrison which had been stationed there. Officially, the denunciation of the Megarians centred on their cultivation of the hiera orgas, the sacred field of Eleusis, appropriating for their own profane use the territory consecrated to Demeter and Persephone. Since the exclusion of the Megarians was a form of atimia similar to that which would be imposed on an impious individual, it was, by analogy, an appropriate punishment for a political entity that had desecrated a sanctuary. As a city-state in its own right, Megara was technically an equal. Hence this act could be interpreted as a political expression of hybris, deliberately dishonouring and humiliating the city, and that may explain why it provoked such a strong reaction. Pericles used the Megarian

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14 Thucydides 1.126-127; Pearson, p. 52.
15 Thucydides 1.128-138.
16 Plutarch, Pericles 29; Thucydides 1.67.4, 1.139.1.
17 Aristophanes, Peace l. 609.
18 Megara was an enemy of long standing, against which Athens had exhausted itself in the time of Solon in order to gain possession of the strategic island of Salamis, which is only two kilometres off the coast from Piraeus (Plutarch, Solon 8-10). McDonald (pp. 1-2) cites Aristophanes, Acharnians ll. 515-523, as evidence of “a widespread antagonism” toward the people of Megara. Plutarch, writes that Pericles “seems to have harboured some private grudge” against them (Pericles 30).
19 Plutarch, Pericles 30. As will be discussed later, any impiety associated with the Eleusinian Mysteries provoked a strong reaction from the Athenian public; it was a classic ‘hot-button’ issue.
20 McDonald (p. 5) points out, contra de Ste Croix, that atimia was not reserved solely for crimes involving asebeia, but agrees with him that it was the right choice under the circumstances.
decree to draw a metaphorical line in the sand, saying that refusing to rescind it was not tantamount to going to war over “a trifle” and a “slight cause”; to obey an ultimatum issued by an equal who should instead submit the dispute to arbitration was equivalent to becoming enslaved.\textsuperscript{21} With these words, Pericles persuaded the Athenian Assembly to vote for a war that would ultimately lead to the complete unravelling of their already fraying empire.

Such a decision was hardly novel in a society which by the second half of the 5\textsuperscript{th} century had come to be completely dominated by warfare, an activity that consumed more money than any other public activity and in which Athens was on average engaged for two out of every three years.\textsuperscript{22} Abandoning its former reliance on infantry phalanx battles, Athens used the vast resources derived from the Laurion silver mines and tribute from its allies to build a large fleet of highly manoeuverable triremes, train their crews, and develop a new form of mobile sea warfare in which the standard tactic was retreat, a bold innovation that ran completely counter to the hoplite ethos of standing one’s ground.\textsuperscript{23} The reliance on naval superiority was made possible by the construction of the long walls between Athens and its port at Piraeus, which allowed the residents of Attica to respond to the ravaging of their countryside by simply withdrawing themselves and their moveable goods into the city.\textsuperscript{24}

By the time of the outbreak of the Peloponnesian War, Pericles was at least 60 years old\textsuperscript{25} and he was depending on the offensive power of the navy to carry out seaborne raids that would secure an easy victory over the allied forces.\textsuperscript{26}

\textsuperscript{21} See Thucydides 1.140-144, for Pericles’ speech, with the Megarian decree discussed at 1.140.3-4.
\textsuperscript{22} See Pritchard, 2007, p. 335, for sources. Note also as per Aristotle, \textit{The Athenian Constitution} 43.4, that “the defence of the country” was a compulsory agenda item for discussion at the Principal Assembly held each month. In the summer of 430, Pericles reminded the citizens that the state had “a right” to their services to sustain the glories of its position (Thucydides 2.63.1).
\textsuperscript{23} Pritchard, 2007, pp. 334-335. See Plutarch, \textit{Themistocles} 4 for an account of the origin of the Athenian fleet and 14-15, for a description of the effective tactical use of the smaller, lighter Greek boats. Retreat in hoplite battle as a source of shame was so entrenched in the Athenian ethos that it was actually illegal to refer to someone as a ‘shield-thrower’; for an example, see Lysias, \textit{Against Theomnus} \textit{Speech 1} 10.9.
\textsuperscript{24} Allison, pp. 21-22; Pritchard, 2007, p. 335. The rural residents moved their household goods, furniture, and even the dismantled, valuable woodwork of their houses into the city, while sending their domestic animals to Euboea and other the nearby islands (Thucydides 2.14).
\textsuperscript{25} Chambers, p. 84.
\textsuperscript{26} Spence, p. 92. By a strategy of avoiding a single pitched battle, however, Athens was setting itself up to fight a protracted war of attrition.
whom he dismissed as inexperienced farmers whose meagre finances were no match for the deep pockets of the Athenians.\(^\text{27}\) Furthermore, whereas Athens could quickly make decisions by calling a meeting of the Assembly, their enemy had first to summon their allies from many states for the equivalent of a committee meeting at which the members brought conflicting priorities and unequal resources to the table.\(^\text{28}\) So, as outlined in his speech in support of the war, Pericles was counting on winning by combining a limited offensive strategy with a prudent policy of avoiding a land engagement against a numerically superior foe which could cross over into Attica with impunity, by replacing the loss of agricultural products by imports through the port of Piraeus, and by keeping the population safe within the city walls. This was a strategy that has been criticized by some modern scholars as overly defensive – able to avoid defeat, but incapable of securing a real victory.\(^\text{29}\) Pericles’ plan might have been successful, had it not been for the unforeseen arrival of an enemy of a vastly different sort, namely, recurring outbreaks of plague over a five year period early in the conflict. It is estimated to have killed almost a third of the population\(^\text{30}\) and it threw a pall of religious uncertainty over the polis, undermining the leadership of Pericles.

The majority of the people of Attica were used to their lives as subsistence farmers, scattered throughout its rural areas, and it troubled them deeply to have to abandon their homes and hereditary sacred precincts in order to crowd into a city that was much too small to hold them all, especially as they had just re-established themselves after the upheavals of the Persian Wars.\(^\text{31}\) Only a few had

\(^{27}\) Thucydides 1.141-142.  
\(^{28}\) Thucydides 1.141.6-7.  
\(^{29}\) Spence, p. 92.  
\(^{30}\) At 3.87.3, Thucydides enumerates the death of no less than 4,400 hoplites, 300 cavalrymen, and an indeterminate number of others. Hansen (1988, p. 14) calculates that the plague killed about 15,000 of the 47,000 adult male citizens (using Gomme’s estimate of the total) living in Athens in 431 at the outbreak of the war. It seems reasonable to assume that losses in the population as a whole, including women and children, would have been on a similar scale.  
\(^{31}\) Thucydides 2.16.1-2. Allison (p. 22) notes that the magnitude in terms of sheer numbers and duration of the confinement also made this evacuation into the city different from previous occasions. I think it is reasonable to question to what extent a policy devised by a clearly upper-class urban politician, no matter how pragmatically logical, would have been sensitive to the intense feelings of discontent and sense of dislocation it aroused. The rural dwellers had to
houses in the city or relatives or friends who could lodge them. The others took up residence wherever they could, seeking refuge in huts that were stifling hot in summer, temples and chapels, the towers of the city walls, and even on a plot of land below the Acropolis which had been declared off limits by a curse. These were conditions that were tailor-made for an epidemic of catastrophic proportions, and it was not long in arriving. It first struck in the summer of 430 and returned in successive waves until 426, by which time people had either succumbed to the disease or acquired immunity by having survived it.

Although there have been many attempts at retro-diagnosis, the exact nature of the Athenian plague has eluded identification. Thucydides, a keen observer who had himself been afflicted by the illness, makes clear that this scourge had never before been seen in his part of the world, which would go a long way toward explaining its virulence. Diseases which are seldom fatal in societies that have had a long exposure to them can exhibit very high rates of case mortality when they are first introduced. In addition to the physical toll it took on the people of Athens, as it “devoured the flower of her manhood and their strength”, the plague had a devastating and almost immediate effect on their morale. Despite Pericles’ efforts to shore up the population, whose spirit was

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32 Thucydides 2.17.1-3, 2.52.2.
33 Re immunity; Thucydides 2.51.6. See Mikalson, 1984, for a year by year chronology of the epidemic. He notes (p. 219) that there is some evidence that the plague might not have disrupted Athenian life as completely as depicted by Thucydides, as the state continued to make dedications to the gods after military victories and the major festivals were celebrated in some of the years. Thucydides might have directed the attention of the reader to the very worst outbreaks in order to emphasize the total disorder into which it had thrown Athens. Mikalson stresses, however, that the social upheavals caused by the plague and the way in which it sapped the dynamis of the state, can be understood properly only if the duration of the epidemic is taken into account; see Thucydides 3.87.1-2. Recovery from its ravages took a full decade (Thucydides 6.12.1, 6.26.2).
34 Some of the leading candidates are smallpox, measles, and typhus fever. Page (p. 119) makes the case for measles. MacArthur (p. 174) argues that it must have been typhus fever because if the Athenians had escaped this disease given their crowded and, inevitably, unsanitary conditions, “their experience must be unparalleled in the history of war in Europe.” Holladay and Poole (pp. 283-284, 291-295) having explained that evolution can have a marked effect on infectious diseases, come to the very plausible conclusion that the plague of Athens either became extinct because everyone had died or acquired immunity or else its clinical manifestations are now so changed that its modern descendant no longer matches the description provided by Thucydides.
35 “[A] pestilence of such extent and mortality was nowhere remembered” (Thucydides 2.47.3).
36 Page, p. 113.
37 Plutarch, Pericles 34.
quailing before the unexpected, the Athenians did not cease to grieve over their private losses and were little inclined to follow his admonition “to keep unimpaired the lustre of their name.” What resulted was what we now define as a state of anomie, when unregulated passions and strivings lead to a breakdown of custom and morality and, in the case of Athens, to unprecedented lawlessness. People openly did as they pleased, thinking that they would not live long enough to face the legal consequences. Fortunes changed hands when the rich died and the penniless suddenly inherited great wealth; money was spent recklessly, as it was thought of only as an ephemeral good with which to purchase the pleasures of the moment.

Despairing of seeing an end to this inexplicable and uncontrollable loss of life, men also lost all fear of the gods, judging it to be the same whether they worshipped or not. No doubt their hope of benefiting from divine assistance was further eroded by an ancient oracle that had told the Spartans that if they went to war they would be victorious and that the god himself would be on their side. They came to the realization that supplications in the temples, divinations, and so forth were as futile as the human attempts to stem the disease and people were eventually so overwhelmed by the scope of the disaster that they ceased their prayers. Their reaction was a stark contrast to the idealized response to an epidemic depicted by Sophocles in *Oedipus the King* where the citizens of Thebes sit in attitudes of supplication, with branches and garlands, and incense filling the sky, offering prayers to the gods to release their city from a tide of death brought on by the pestilence. As Mikalson puts it, Athenian society instead sank to a depth of religious despondency, unparalleled in the records of ancient Greek

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38 Thucydides 2.61.3-4.  
39 Nielsen, p. 400. The concept itself comes, in fact, from Thucydides who speaks of Athens as being *anomias* during the time of the plague.  
40 Thucydides 2.53.1-4.  
41 Thucydides 2.53.4. Many would no doubt be reminded of the first book of the *Iliad* in which Apollo had decimated the Greeks because of Agamemnon’s impiety in insulting one of his priests.  
42 Thucydides 2.54.4-5; that the Peloponnesus had been spared any significant outbreaks of plague was not lost on the Athenians either.  
43 Thucydides 2.47.4. Mikalson (1984, p. 220-221) posits that Euripides’ *Hippolytus*, produced in 428 when the plague was still rampant, reflects the despair felt by the Athenians; Artemis and Aphrodite are depicted as remarkably and unusually unresponsive to human miseries and prayers.  
44 See the opening scene of Sophocles’ *Oedipus the King*. Some scholars date this play to 425 BCE after the plague had abated, but there is no reliable evidence about when it was first performed.
civilization, which dislodged the very foundation of the belief system, namely, the desirability of leading a pious life.\textsuperscript{45} Particularly noticeable in Thucydides’ text is the abandonment of any semblance of order with respect to burial practices. Corpses were thrown haphazardly on funeral pyres lit for others, an outrageous breach of established custom, or left piled up in sacred places, an almost unimaginable desecration of a holy space.\textsuperscript{46}

Although they suffered from a collective lapse of faith, the Athenians remembered an oracle, said to have been uttered in the dim and distant past, to the effect that a Dorian war would come and with it pestilence.\textsuperscript{47} Despite Thucydides’ caustic dismissal of the predictive powers of the message,\textsuperscript{48} it tapped directly into the deep-rooted, archaic fear of \textit{miasma} (moral pollution). This was a type of supernatural infection, terrifyingly believed to be ineradicable, contagious, and hereditary, which was caused by any killing and which was liable to spread to an entire community unless it took steps to bring the guilty party to justice and purify the environment.\textsuperscript{49} \textit{Miasma}, as shown in the Oedipus myth, was popularly believed to be responsible for diseases like the plague. It is not possible to know whether the outbreak of disease constituted a nagging reminder of the earlier Spartan demand that the Athenians must drive out the curse of the goddess,\textsuperscript{50} but it is not inconceivable that it was a subsurface factor in the attacks that were launched on Pericles only months after the start of the epidemic or, at

\textsuperscript{45}\textsuperscript{45} Mikalson, 1984, p. 219.
\textsuperscript{46}\textsuperscript{46} Thucydides 2.52.
\textsuperscript{47}\textsuperscript{47} Thucydides 2.54.2.
\textsuperscript{48}\textsuperscript{48} Thucydides 2.54.3. The wording of the oracle was variously remembered as ‘death’ and ‘dearth’, leading Thucydides to comment acerbically that if there had been famine the people would have amended the verse to suit their sufferings.
\textsuperscript{49}\textsuperscript{49} Arnaoutoglou, pp. 110-112; Dodds, 1951, p. 36; Knox, p. 277; MacDowell, 1978, p. 110. The effects on the relationship between the city and its gods of pollution caused by homicide are discussed in the forensic speeches. Some examples are: Antiphon, \textit{Second Tetralogy} 3.3.11-12 – the speaker reminds the jurors that failure to ban those who are responsible for pollution is disrespectful of the gods and will cause them to share in the killer’s pollution; Antiphon, \textit{Third Tetralogy} 4.1.1 – the jurors are told that since the gods made the human race, whoever kills someone unlawfully sins against the gods; Lysias, \textit{Against Agoratus} 13.3 – by exacting vengeance for a murder the city will derive benefits from both gods and men. Furthermore, even judicial murder, that is, imposing capital punishment, was regarded as being so closely associated with pollution that the Aeropagus, which judged cases of intentional homicide, held its sessions only on impure days and all the homicide courts met in the open air so that jurors would not be ‘infected’ by the accused by sharing a roof with him. See Antiphon, \textit{On the Murder of Herodes} 5.11; Aristotle, \textit{The Athenian Constitution} 57.4; Parker 1983, p. 122; 2005a, pp. 101-102.
\textsuperscript{50}\textsuperscript{50} Thucydides 1.126-127.
the very least, may have provided ammunition for his enemies. It had certainly been Sparta’s intention to prejudice the Athenian dēmos against him as the author of their misfortunes. When they issued their demand, the Spartans were dredging up the hereditary aspect of miasma and taking aim at Pericles, who on his mother’s side was related to the Alcmaeonids, an old aristocratic family. The pollution was associated with an attempt in 632 by Cylon to set himself up as tyrant of Athens. After the attempt failed, some of his supporters sought refuge as suppliants at the altar of the Acropolis, but were lured out with the promise of safe passage and then murdered by members of the clan from which Pericles descended. Supplication, which featured prominently in the tragedies, was considered a quasi-legal procedure, but because it was deemed that the suppliant’s safety had divine sanction, killing a suppliant in any way was doubly impious – it incurred blood-guilt and it offended the gods. While the Athenians did not condemn or exile Pericles, which would have removed him as a source of pollution, they did vent their fury on him by stripping him of his position as stratēgos and fining him. He was restored to his position after a short time, but succumbed not long after to the plague, which had already carried off both of his legitimate sons, his sister, and many friends and relatives.

While religious activity in Athens seems to have reached a low ebb during the years of the epidemic, it appeared to enjoy a resurgence shortly afterward. There was an extensive program of building and remodelling sanctuaries that could be viewed as a sign of reaffirmation of, and greater devotion to, the traditional religious cults and deities. Having failed, shortly after the outbreak of the plague, in their attempt to conquer Epidauros, the site of a major sanctuary

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51 Plutarch, Pericles 34; Thucydides 2.59.2.
52 Thucydides 1.127.2.
53 See Thucydides 1.125-126 for an extended narrative of the incident.
54 See, for example, the use of supplication in Euripides’ plays: Helen ll. 63-64, 540-549; Andromache ll. 42-46; Ion ll. 1256, 1259-1260; The Children of Heracles ll. 71, 264.
55 Parker, 1983, p. 146.
56 Plutarch, Pericles 35. Davison (p. 44, fn. 2) suggests that Sophocles’ Oedipus the King might have been a subtle background element in the attack on Pericles. This idea is credible only if the play was performed at a time when this would have been relevant. Consequently, as the best guess seems to be that it was written in Sophocles’ middle period, linking the two is interesting, but highly speculative.
57 Plutarch, Pericles 36-38; Thucydides 2.65.1-6.
58 Mikalson, 1984, pp. 221-223.
of the healing god Asclepius, the Athenians imported his cult at the first opportunity during an interval of peace in 420. Possibly with the memory of the plague fresh in their minds, they transformed him from a minor hero into a major god. He was solemnly inducted into the polis, probably represented by a likeness of his Holy Snake, and lodged in the home of Sophocles until a house could be built for him.59 As Dodds notes acerbically, nothing better illustrates the bifurcation of the mind of the ancient Greeks than the fact that the honour paid to this medical reptile was co-incidental with the publication of the austerely scientific treatises of Hippocrates, who established medicine as a clinical profession.60 So in the same period, after a decade of war, Protagoras was expelled and the pantheon of gods was expanded. Perhaps there is no irony to be found in the timing – it was simply a sign that the ordinary people of Athens, in times of danger, found comfort in the values and practices that had served them in the past. And as we will see next, even when they were surrounded by the brutal realities of war, accusations of impiety had lost none of their ability to stir up anger and irrational behaviour.

59 Mikalson, 1984, p. 220; Dodds, 1951, p. 193. Dodds feels that Sophocles' hospitality and association with the regression into magic helps to shed some light on his literary work.
60 Dodds, 1951, p. 193. To give an example of the sophistication of Hippocrates' studies concerning the nature of disease, he wrote about epilepsy in On the Sacred Disease that it was not of divine origin as was commonly supposed, but was a disease like any other and should be treated as such; men regarded its cause as divine only “from ignorance and wonder.” In so doing, he undermined belief in the power of the gods over men’s lives.
In 415, as the Peloponnesian War was about to flare up once more, Athens was the scene of a set of bizarre and perplexing religious scandals that took place shortly before the departure of the ultimately disastrous Sicilian expedition. These resulted in an outbreak of public hysteria, where fear completely overpowered any hope of rational analysis, leading to wholesale accusations of impiety, flights into exile, and executions, which continued to have legal reverberations a decade and a half later.

A few years earlier, in 422/421, when the forces of the opposing factions were spent and neither had succeeded decisively in achieving their military objectives, their leaders finally faced reality and brokered a treaty, the so-called Peace of Nicias, in which Athens secured decidedly favourable terms. The treaty was, however, difficult to enforce, there were constantly shifting alignments among the other city-states, and by 415 both Athens and Sparta were again nearing a confrontation. Spurred on by a young, ambitious general, Alcibiades, the Assembly was persuaded that Athens should try once more to conquer Sicily, a goal that had repeatedly eluded its grasp but that had tantalized it for decades. In coming to this decision, the Athenians did not take into adequate account Sicily’s size and large population and were unconcerned about the difficulty in

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1 See Thucydides 5.14 for the reasons for seeking a peace treaty. Nicias, one of Athens’ most prominent and, to this point, successful generals, eagerly wanted to release himself and his state from the trials and tribulations of continuing warfare and to leave his name to posterity as a successful statesman (Thucydides 5.16.1).
3 Alcibiades was an Alcmaeonid by birth, raised as the ward of Pericles after his father’s death, and because of his family connections, wealth, and the valour in battle he had demonstrated at an early age, the doors to a public career had all been opened to him, helped by his extraordinary power as an orator (Plutarch, Alcibiades 1, 7, 10). Those who longed for aristocratic leadership saw in Alcibiades an opportunity to rid themselves of the plebeian demagogy exemplified by Cleon (Morrison, p. 15).
4 Pericles had resisted the Athenians’ “extravagant and ill-starred ambition to conquer Sicily” (Plutarch, Pericles 20).
keeping such a distant territory in subjugation.\(^5\) While the annexation of Sicily was not in and of itself a violation of the treaty with Sparta and a *casus belli*, it was likely that it would destabilize the fragile peace and encourage revolt among Athens’ reluctant allies.\(^6\) Alcibiades was, in this instance, championing the populist cause and had the backing of the naval *thetes* (the oarsmen who rowed the triremes) and the soldiery against an older, conservative fellow general, Nicias, who was supported by the propertied class and by the ordinary farmers of Attica who had suffered severely from the ravaging of their land.\(^7\) For the majority of Athenians, who were poor, Sicily represented a new source of income. Although there was a dearth of favourable omens and the priests opposed the venture, Alcibiades orchestrated encouraging prophecies by sending oracles to seek new guidance at the temple of Zeus Ammon in what is now Libya and was able to carry the day.\(^8\) The Assembly voted to mount an extravagantly well-

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\(^5\) Thucydides 6.1.1, 6.1.11; Plutarch, *Alcibiades* 17, *Nicias* 12. On a previous attempt to conquer Sicily, the Athenians had convinced themselves that they could achieve what was possible and impracticable alike, confusing their strength with their hopes (Thucydides 4.65.4). The capture of Sicily was to be only the beginning; it was to serve as a springboard from which to attack Carthage and then enable Greece to have mastery over the whole of the Mediterranean (Plutarch, *Nicias* 12).

\(^6\) Thucydides 6.10.

\(^7\) The relative political alliances are important in the later discussion of possible reasons for public reaction to the sacrileges. For purposes of brevity, I have adopted MacDowell’s notion of using the shorthand terms ‘democrats’ to denote those, usually from the ranks of the common people who tended to be poorer and defended the fully empowered popular assembly, and ‘oligarchs’ to denote the patrician land-owners and the more prosperous classes who favoured a limited democracy. Neither Alcibiades nor Nicias are easy to label, as Alcibiades was from a wealthy upper-class family and was a person of changeable allegiances and Nicias was a wealthy conservative who also had broad support. For details, see MacDowell, 1962, p. 190. In the absence of true political parties with policy platforms, politics seemed to have been very much a question of individual personalities and their following, rather than of conflicting ideologies, with individuals changing allegiances as circumstances demanded (Furley, p. 61, fn. 47). Furthermore, views about the expedition also broke down along generational lines (Thucydides 6.12.2,13.1). At 6.24.3, Thucydides attributes the troops’ enthusiasm for the expedition to its potential as a way to earn a living for a period; the common people were attracted by the prospect of swelling Athens’ coffers with tribute money.

\(^8\) See Plutarch, *Nicias* 13, *Alcibiades* 17–18, for unfavourable omens. Favourable prophecies had been obtained by Alcibiades, who took the unusual step of sending oracles to the shrine of Zeus Ammon in the North African desert; on their return they did not divulge any of the contrary signs for fear of uttering words of ill-omen (Plutarch, *Nicias* 13). It is possible that at the time access to Delphi, the traditional source of advice, may have been difficult or that there was fear of a pro-Spartan pronouncement (Powell, p. 18, fn. 19). Parker (2005a, p. 113, fn. 84) notes that any independent initiative by Alcibiades to seek advice from Ammon would have been without precedent, as oracular consultation was normally the prerogative of the Assembly. Even though Thucydides, at 8.1.1, says that the oracle-mongers had encouraged the people to hope that they would conquer Sicily, Parker (2005a, p. 110) is sceptical about the veracity of the various stories related to divination and the decision to mount the Sicilian expedition. On the other hand, as
equipped campaign, to be led jointly by Nicias, Alcibiades, and a third general, Lamachus, who were granted absolute authority. In addition, the Assembly voted to impose an unprecedented open-ended tax on the wealthy to support all additional expenses associated with the expedition and homeland defence as necessary, a move which aggravated the divisions between the supporters and the opponents of the Sicilian venture.

It is impossible to determine from the sources a precise account of the sacrileges that triggered the sustained public outrage that convulsed Athens in the summer of 415; they remain a historical enigma. Nevertheless, the consequences are well documented and an overview of these is needed before one turns to the religious issues at stake. To spare the reader the tedious task of finding a way out of the maze of conflicting detail, the following presents a bare bones story of what transpired. In early June, about two weeks before the largest and most splendid flotilla that Athens had ever assembled was to sail for Sicily, the Athenians awoke one morning to discover a shocking spate of vandalism. Virtually all of the Herms, small stone pillars with the image of the god Hermes and erect phalluses that stood in front of private homes and temples

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Powell (p. 20) points out, the inadequacy of the secular information about their destination may have led the Athenians to be over-reliant on the utterances of the diviners. The resort to oracles may give a clue that there was an effort to manipulate public opinion, given that, according to Parker (2005a pp. 109-110) no oracular consultation on any military matter was reliably recorded in the interval since the Persian Wars.

9 Thucydides 6.25.2,26; Plutarch Nicias 12, Alcibiades 18.

10 See Munn, pp. 100-101, for discussion and sources.

11 No one knew for certain who did the deeds (Thucydides 6.60.2). Concerning the main accounts, MacDowell (1962, p. 181ff.) comments that Thucydides was in exile at the time and was probably privy only to garbled versions of already confusing happenings. Two forensic speeches, Andocides, On the Mysteries 1, and [Lysias], Against Andocides 6, relate to a later trial of Andocides and refer extensively to the events of 415. As they are rhetorical pieces designed to defend and attack, respectively, it would be unrealistic to expect to find in them the story told in its entirety and completely truthfully. There were enough in the courtroom audience who would remember the events, however, to ensure that much of what they chose to disclose was an accurate, if selective, reflection. (For comparison purposes, see Isocrates, On the Team of Horses 16.4, in which Alcibiades the Younger, in a speech delivered about three years later, points out that the older members of the audience would remember the facts.) Todd (2000, p. 63) notes that [Lysias] “eschews both historical narrative and legal argument” and focuses on religious issues. See also Plutarch, Alcibiades 18-22, Nicias 13.

12 For the narrative, see Thucydides 6.27-31, 6.53, 6.61 and Plutarch, Alcibiades 18-22. I have also followed MacDowell (1962, pp. 3, 181-185) who devised a chronology that deals with the inconsistencies in the sources.

13 It was “by far the most costly and splendid Hellenic force that had ever been sent out by a single city up to that time” (Thucydides 6.31.2).
and served as road markers, had been mutilated.\textsuperscript{14} Such an intentional physical attack on public sacred objects that was not motivated by robbery or plunder was without parallel.\textsuperscript{15} The great majority of the citizens responded with feelings of outrage and fear; the Assembly met repeatedly and voted to post large rewards for information concerning the identity of the miscreants, promising protection to anyone, including metics and slaves, who knew anything about any other acts of impiety to come forward.

The result was an outpouring of accusations that overwhelmed all other business on the public agenda, but served only to deepen the crisis. Metics and slaves made statements about the mutilation of other sacred images in the course of drunken revels and, most damagingly, that Alcibiades and others had staged mock celebrations of the Eleusinian Mysteries in their private houses.\textsuperscript{16} These revelations were seized upon by Alcibiades’ enemies, who magnified the scope and import of the sacrileges until they had convinced the \textit{dēmos} that they amounted to nothing less than a plot to overthrow the democracy.\textsuperscript{17} Sensing the danger, Alcibiades denied any wrongdoing and sought to defend himself before the Assembly, demanding an immediate trial.\textsuperscript{18} His opponents, fearing that he might be judged too leniently because of his central role in an expedition from which the population as a whole, and by extension the sub-set who would act as jurors, hoped to gain great riches, succeeded in having the trial postponed until

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\textsuperscript{14} The exact nature of the damage was not spelled out, being described variously as having “their faces mutilated” and “their extremities disfigured” (Thucydides 6.27.1; Plutarch, \textit{Alcibiades} 18). Most scholars seem to think that the desecration targeted both their faces and their most characteristic features. Discussion of the significance of the Herms follows below.

\textsuperscript{15} Grote, Vol. V, p. 149. John Dillon (pp. 173-174) thinks that those who were behind the mutilation knew exactly what they were doing and wanted to precipitate political upheaval to overthrow the government and set up an oligarchy.

\textsuperscript{16} The significance of the Eleusinian Mysteries will be discussed below.

\textsuperscript{17} Even though Alcibiades was implicated only in the profanation, his enemies, led by Androcles, the dominant radical leader, vocally and persistently linked the two sacrileges as part and parcel of the same plot, hoping in this way to rid themselves of an obstacle to their domination of the political scene (Thucydides 6.28.2, 6.61.1,4). Androcles was Alcibiades’ mortal enemy (Plutarch, \textit{Alcibiades} 19). His enemies thought that maximum effect could be achieved by tying the most sensitive religious issue, violation of the Mysteries, to the most inflammatory popular issue, fear of tyranny (Isocrates, \textit{On the Team of Horses} 16.6).

\textsuperscript{18} The individual who introduced the charges against Alcibiades, who had been the ward of Pericles, was Thessalus, the son of Cimon (Plutarch, \textit{Alcibiades} 19). See Cox, pp. 34-40, for a discussion of the family enmity resulting from the long-standing political rivalry between Pericles and Cimon.
his return. And so, with almost exaggerated pomp and circumstance, the fleet set sail,\textsuperscript{19} despite the well-known Athenian fear of the dangers inherent in embarking on a sea voyage in the same boat as an impious individual who had offended the gods.\textsuperscript{20}

Meanwhile, the public obsession with the two sacrileges continued, suspicion and paranoia grew to a fever pitch, giving rise to conspiracy theories about an oligarchic or tyrannical plot. More denunciations resulted in arrests and imprisonments. The people believed stories that were unsupported by facts or for which there was only the flimsiest of evidence, rounding up anybody who had been named.\textsuperscript{21} When Andocides, one of the suspects in the desecration of the Herms, turned informer to free himself, members of his family, and several others, those who had not already fled were apprehended, tried, and executed.\textsuperscript{22} Despite the pressing needs of the far-off military campaign, fears of a Spartan invasion, and worries about plans to overthrow the democracy in Argos, the general mistrust of Alcibiades, whose name was by then associated with both sacrileges, reached such a fever pitch that the state trireme was dispatched to Sicily to recall him from the joint command to stand trial.\textsuperscript{23} He was, of course, too shrewd to comply with the order and, apprehensive about the prejudices against him, escaped into the Peloponnese. He was sentenced to death and confiscation of property \textit{in absentia} and to having his name cursed publicly by all priests and

\textsuperscript{19} See Thucydides 6.32.1-2 for a remarkably pictorial description of the elaborate send-off.
\textsuperscript{20} Antiphon, \textit{On the Murder of Herodes} 5.82. Centuries later, Horace, who had studied in Athens, wrote that, out of fear of divine retribution which could strike indiscriminately against all those in the same location, he would never share a roof with, or sail in the same boat as, a person who had revealed the Mysteries (\textit{Odes}, 3.2).
\textsuperscript{21} It is worth quoting at length from Thucydides 6.53.2 to sense the abysmal state of affairs: The Athenians “had continued as active as ever in investigating the facts of the Mysteries and of the Hermæ, and, instead of testing the informers, in their suspicious temper welcoming all indifferently, arresting and imprisoning the best citizens upon the evidence of rascals, and preferring to sift the matter to the bottom sooner than to let an accused person of good character pass unquestioned, owing to the rascality of the informer.” As Grote, Vol. V (pp. 152-153, fn. 4) points out “the occurrence of one act of sacrilege turns men’s imagination, belief, and talk to others, real or imaginary.” To demonstrate that this phenomenon is not confined to ancient times, he recounts as a fascinating parallel incident the religious hysteria that erupted in Abbeville, France in 1766 following the vandalizing of a wooden crucifix that stood on the town bridge.
\textsuperscript{22} Andocides’ role in the affairs of the Herms and the Mysteries is complex and will be discussed in Chapter VIII in connection with the charges of impiety eventually levelled against him.
\textsuperscript{23} Thucydides 6.53.1; other soldiers suspected of the sacrileges were also to be brought back. The formal indictment against Alcibiades, however, mentioned only the profanation of the Mysteries (Plutarch, \textit{Alcibiades} 22).
priestesses. According to Andocides, a total of at least 300 individuals were denounced for the mutilation of the Herms, many of whom were put to death or fled into exile.\textsuperscript{24} Inscriptions cataloguing, in minute detail, the sale of personal property belonging to condemned men who were convicted of one or both of these sacrileges were recorded on the Attic Stelai found in the Eleusinion.\textsuperscript{25}

It is entirely possible that if the mutilation of the Herms had never taken place the parodies of the Mysteries would have remained the subject of idle gossip in a narrow circle, instead of serving as the catalyst for a host of accusations and trials.\textsuperscript{26} Furthermore, the rapid fusion of these two distinctly different and disparate acts into one attack on the gods and the degree to which religious and democratic sentiments became interwoven would probably not have come about either without the zealous efforts of Alcibiades’ enemies to exploit the situation.\textsuperscript{27} That they were able to accomplish this with such overwhelming success was due partly to what the deities who had been offended represented for the ordinary Athenian. Before delving into the reasons for the uproar that consumed Athens and its eventual resolution through the legal system, it is, therefore, useful to pause briefly to consider the religious backdrop to the events of 415.

Hermes was an ancient god of the countryside, whose name may have derived from \textit{herma}, the word for a heap of stones or a cairn, the traditional wayside landmarker. While the connection is somewhat tenuous, the distinctive stone pillars known as the Herms may have evolved from these roadside cairns.\textsuperscript{28} Combining the features of a stele with those of a statue, they consisted of a

\textsuperscript{24} Andocides, \textit{On the Mysteries} 1.37,58. No comparable numbers are found anywhere with regard to the profanation of the Mysteries. It has been possible to identify reliably sixty-four historically attested figures among the accused (Ostwald, pp. 537-541). Because Andocides was addressing an audience comprised of many who would have had first-hand knowledge and a very distinct recollection of the era, it is unlikely that he would have diverged too widely from a plausible figure, even for rhetorical effect.

\textsuperscript{25} The range and value of property auctioned off in the course of the next year is staggering; it includes everything from rags used for bandages and a weasel trap to the crop from a fig harvest and a goldsmith slave. For detailed descriptions of the stelai, see Pritchett, 1953, 1956.

\textsuperscript{26} Todd, 1993, p. 314, following Thucydides 6.28.1.

\textsuperscript{27} See fn. 17 above.

\textsuperscript{28} Guthrie, 1950, p. 88. The \textit{Hermaios lophos} was a pile of stones sacred to Hermes. Guthrie (1950, pp. 88-89) makes the connection, while Osborne (1985, p. 48) considers the etymological warrant for the association to be imaginary.
quadrangular body on which was carved the head of the god Hermes and an erect phallus thought to enhance their apotropaic powers and to promote fertility. By the 6th century Herms had become ubiquitous in Attica, having been set up along roads, in the middle of cities, and in every district town, with a view to educating the inhabitants of the countryside by inscribing on them edifying bits of wisdom. Because boundary stones also warded off intruders, the spirit which inhabited them was naturally regarded as a protector of the property and it was in this capacity that Herms were placed outside the private houses of Athens. Even though Hermes was considered crafty and the patron of thieves, he was also the messenger of the gods, a bringer of joy and blessings, the guide of wayfarers, and the psychopompos who led the souls of the dead to the banks of the Styx on their journey to Hades. Because of his endearing qualities as a guide and an averter of evil, he was revered by the ordinary man, who was constantly reminded of his beneficence by the smiling face on the Herms, his ever present companions in the outdoor world; private sacrifices were often left in front of them. On a more abstract level, the Herms were also associated with Athens’ wartime successes. After the capture of Eion in the Persian Wars, Cimon, the successful general, was authorized to erect three Herms in Athens as a commemoration of the victory. The battle was a military watershed and of particular psychological importance, as it was the first occasion on which the Athenians had launched an offensive operation, rather than just acting in self-defence.

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29 Dillon, J., p. 168; Guthrie, 1950, p. 89. Osborne (1985, p. 54) following Jacques Lacan, gives a psychological reading of the phallus as a sign of Hermes’ role as a messenger; the Herm shows what a man will be if he stops at the halfway point in the medium of communication that is reproduction – “a mere pillar, frozen desire without humanity.”

30 Osborne, 1985, pp. 48, 50. According to Plato, the Herms were erected on the initiative of Hipparchus, the son of the tyrant Peisistratus (Hipparchus 228d,e).

31 Guthrie, 1950, p. 90.

32 Homeric Hymn to Hermes ll. 13-15, 572; Hymn to Hermes l. 12. Because Hermes had many avatars – Hermes Agonios in the gymnasium, Hermes Agoraios in the market place, Hermes Epimelios as the carer of the flocks, etc., he would be encountered, regardless of the nature of the expedition (Osborne, 1985, p. 53). Hermes saw the dead through a symbolic no-man’s land to the shores of the infernal waters and then handed them over to Charon who ferried them across; he represented a go-between with the upper world (Sourvinou-Inwood, 1995, p. 306).


34 Plutarch, Cimon 7-8. The Herms were erected in the area known as ‘the stoa of the Herms’, where Herms dedicated by magistrates were already in place (Osborne, 1985, p. 58).
The cult of Demeter, which, like that of Hermes, had agricultural origins, was widely diffused in the historical period, and had most probably been imported to the area that became Attica from Crete. According to the myths, Demeter, the earth goddess, was wronged by Hades, when he abducted her daughter Persephone and carried her away to the underworld. In her anger and grief, Demeter neglected her duties to bring forth crops, leaving the race of men in danger of extinction from famine. When Zeus finally intervened and brokered an arrangement whereby Persephone would be allowed to return to the upper world to be with her for two-thirds of the year, Demeter relented and once more allowed vegetation to flourish. The goddess had already decreed that a temple was to be built in her honour at Eleusis where she had made an appearance and that she herself would teach the ceremonies to be performed to propitiate her. She also stipulated that, out of reverence for the gods, her holy rites, which came to be known as the Eleusinian Mysteries, were not to be transgressed or revealed to anyone who had not been initiated. The oath of secrecy did not preclude knowledge of the preliminary rituals, which were performed publicly and included purification by bathing in the sea, the sacrifice of piglets, fasting, and the joyful procession from Athens to Eleusis. But the mystai (initiates) were forbidden to reveal the details of what transpired at the heart of the ceremony when the sacred objects were displayed by the hierophantēs (the chief priest).

35 Burkert, 1983, p. 255; Parker, 1996, p. 17; Guthrie, 1950, p. 282. In the Homeric Hymn to Demeter l. 123, the goddess refers to herself as having been borne, forcibly, across the sea from Crete by pirates. Sourvinou-Inwood (1995, p. 425), with Parker thinks, contra a number of earlier scholars, that the archaeological evidence has now shown that the cult at the Eleusinian sanctuary did not begin until the later 8th century; the notion of the cult having been continuous at that location from Mycenean times is tenuous at best.

36 Demeter was also known as ‘the Mother’. While her daughter’s formal name was Persephone, in the context of the Mysteries she was almost always referred to as Kore or ‘the Maid’.

37 The story of Demeter, Persephone, and the little town of Eleusis is recounted in the Homeric Hymn to Demeter.

38 Homeric Hymn to Demeter ll. 270-274; note that Persephone was reconciled to her fate by the promise of being honoured with sacrifices, holy rites, and gifts, ll. 368-369. Concerning the ceremonies, Sourvinou-Inwood (2003, p. 28) points out that such divine revelation is extremely rare in Greek religion and she posits that for this reason the associated rituals may have been extremely stable over time; in order not to offend the goddess, changes could take place only within very restricted parameters.

39 Homeric Hymn to Demeter ll. 476-479.

The veil of silence that was imposed on them was respected to such an extent that there is no written record of the revelation based on direct sources and the secrets were even more closely guarded in iconographical sources. The central rites of the Mysteries were first transmitted at a much later date by Christian authors whose testimony was founded on hearsay and who may not have wished to glorify in any way what they regarded as pagan tradition. Nevertheless, based on a careful analysis of these writings, many scholars now believe that the central rite consisted of a ceremony in a darkened room, to invoke a mystical and terrifying atmosphere which played on the senses. Persephone somehow ‘appeared’ from the world of the dead and the hierophantēs then, in solemn silence, exhibited an ear of corn, symbolic of rebirth and the eternity of life. In this way, the annual celebration recalled the dual gifts of Demeter. She had established agriculture on a secure footing, with grain as a reliable source of nourishment, which in turn provided mankind with a more civilized and peaceful life. In conjunction with the yearly cycle of growth, she had introduced the mystery ceremony, a process that was strictly a matter of ritual and involved no profession of belief. Those who were initiated into its rites

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41 See Bianchi, p. 1; Mylonas, p. 229, re iconographical sources. From Homeric times it was the general understanding of the Greeks that grievous offences against the gods would be punished eternally in the afterlife (Guthrie, 1950, p. 121). If one thinks of the gruesome punishments meted out to Prometheus (Hesiod, *Theogony* l. 507ff.; Aeschylus, *Prometheus Bound* l. 1021ff.) and Tantalus (Homer, *Odyssey* 11.582-592; Euripides, *Orestes* ll. 3-10) for revealing the secrets of the gods to humans, the argument for obeying the Eleusinian embargo becomes much more compelling.

42 Guthrie, 1950, p. 289; Nilsson, 1940, p. 43. Burkert (1983, p. 251) thinks, however, that for their polemics to have been effective they must have contained at least a kernel of truth. Mylonas (p. 287) points out that, oddly, none of the Christian Fathers appears to have been initiated at some prior point or to have based his account on what he was told by an initiate who had converted to Christianity; perhaps none had left the cult or else those who did were still sufficiently in awe of the goddesses to obey their oath of silence.

43 The term ‘corn’ is used in most of the translated texts, instead of wheat, but it should be understood in the sense of a cereal crop such as wheat or barley, rather than maize which was introduced into Europe only in the late 15th century.

44 Burkert, 1983, p. 251, 1992, p. 265; Nilsson, 1940, p. 55. Both scholars base their conclusion on the description in Hippolytus’ *Refutation of All Heresies* at 5.8.39, in which the claim is made that there is a basic identity between all mysteries and Gnostic Christianity. Nilsson notes that the elevation of the cereal to a sacred object is congruous with the simple agrarian roots of the Eleusinian cult. Mylonas (pp. 273-276) strongly contests the theory that an ear of cut wheat was the sacred object because wheat was so prominently depicted on buildings and in works of art; he considers the identity of the object to be unknowable.
would be “blessed on earth” and they alone could look forward to a happy afterlife of sunlight and frolic in the otherwise gloomy realm of the shades.45

The Eleusinian Mysteries had originally been the private preserve of the Eumolpids, who had admitted new initiates at the discretion of the head of the family, a genesis which might serve to explain the secretive nature of the cult.46 Over time, the cult became one of the most important and influential in the Hellenic world, possibly because it remained open to any adults who were pure of all pollution and who spoke Greek, whether man, woman, metic, foreigner, or slave.47 It was, however, so thoroughly appropriated by the Athens that it was fully assimilated into the civic administration, falling under the purview of the Basileus, who had ultimate responsibility for the rites in conjunction with a board of four overseers, two of whom were appointed by lot. As a concession to its origins, the other two members of the group were one representative each from the Eumolpids, who acted as the high priests, together with the Kerykes, descendents of Eumolpos’ son Keryx who fulfilled the role of torch-bearer and sacred herald.48 The two families, by virtue of something like apostolic succession, had inalienable rights to officiate at the sacred ceremonies and to

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45 Burkert, 1983, pp. 254-255; *Homeric Hymn to Demeter* ll. 480-482. See also Aristophanes, *Frogs* ll. 448-456, for a description of the fate of the blessed mystic. Guthrie (1950, p. 291) characterizes this vision of the afterlife as resulting from a fusion, under the influence of Athens, between the old idea of immortality derived from the cult of Demeter and Persephone and Homer’s teachings about Elysium. Because Persephone was the goddess who moved annually between the underworld and the world of mortals, it was on her that the initiates depended particularly for the hope of a sweeter afterlife (Parker, 1994, p. 143). The eschatological aspect of the cult appears to have been added early in the 6th century, at a time when the population started to develop an awareness of, and anxiety about, death; this was conducive to the introduction of an eschatology replete with reassurances about a happy afterlife (Sourvinou-Inwood, 2003, p. 28). If one concedes that the emotional behaviour of humans is fairly consistent over the millennia, the attractive power of the gift of a blessed afterlife should not be underestimated. A recent study by Brañas-Garza et al. has shown that the incentive of eternal bliss is far more effective in promoting religious participation than the disincentive of eternal damnation and this may help to explain the pronounced reverence with which the cult was treated.

46 Nilsson, 1940, p. 46. The family descended from Eumolpos, who was initiated into the Mysteries by Demeter and became a priest of the cult; *Homeric Hymn to Demeter* l. 475. As his name means ‘the sweet singer’, it is possible that the priestly function encompassed recitation or singing (Nilsson, 1940, p. 43).

47 Re eligibility, Guthrie, 1950, p. 291; Mylonas, p. 247; Nilsson, 1940, p. 58. Note that in the aftermath of the Persian Wars, Persians were excluded from the rites; Isocrates, *Panegyricus* 4.157. No doubt the prestige of the Mysteries was enhanced by the myth that Heracles and the Dioscuri had been among the very first initiates (Apollodorus 2.5.12; Plutarch, *Theseus*, 33; Xenophon, *Hellenica* 6.3.6).

charge fees for initiating candidates, although the size of the fee was regulated by the city.\textsuperscript{49} Only the \textit{hierophantēs} was ever allowed to display the sacred objects which were locked up the rest of the year in the holy of holies of the sanctuary, and consequently only he could perform a complete initiation ceremony.\textsuperscript{50} Seemingly Pericles had conceded that the Eumolpids alone had the right to expound on the unwritten ancestral sacred laws that pertained to the Eleusinian Mysteries.\textsuperscript{51}

Over and above exercising political control over Eleusis, the Athenians availed themselves of the prestige of the cult to reinforce their claim to superior status among the Hellenes. They redeployed the myth of Demeter’s gift of corn in the service of patriotic ideology to show that they were indeed autochthonous, true children of the Earth, and the center of civilization, who had graciously shared this legacy with the rest of the world.\textsuperscript{52} In turn, this assertion was the basis for the singular decree passed by the Assembly by which all their allies were ‘ordered’ and the rest of the Greek cities ‘invited’ to join Athens in offering to the two goddesses a tithe of first-fruits of the barley and wheat harvest, all in accordance with an earlier oracular response from Delphi. Sacrificial bulls and votive offerings were purchased with the proceeds of the sale of these cereals. In turn, those who complied and did not injure the Athenians, Athens, or the two goddesses would be blessed with abundant harvests.\textsuperscript{53} Whether the decree was

\textsuperscript{49} Mylonas, pp. 234-235, 237; Parker, 1996, pp. 293-294. The total fee for the initiation amounted to about 15 drachmas. See Mylonas, pp. 237-238, for financial details.

\textsuperscript{50} Mylonas, pp. 230, 273.

\textsuperscript{51} [Lysias], \textit{Against Andocides} 6.10.

\textsuperscript{52} Isocrates, \textit{Panegyricus} 28-29; Burkert, 1985, p. 289; Guthrie, 1950; pp. 287, 291; Parker, 1996, p. 138. The idea became so firmly implanted that it was repeated by succeeding generations for many centuries. Cicero wrote that Athens had brought forth nothing better than the Mysteries which had civilized humanity and given it better expectations after death (\textit{On the Laws} 2.36).

\textsuperscript{53} The decree outlines the procedures to be used in minute detail; see Bowden, pp. 125-128, for the text of the decree found at IG \textsuperscript{13} 78. The date of the decree is disputed with most scholars suggesting dates around 420 (Burkert, 1985, p. 67; Dillon, M., p. 145; Nilsson, 1940, p. 56; Parker, 1996, p. 143, fn. 85; Rhodes, p. 94, fn. 2). Bowden (p. 127, fn. 29) cites a date of c. 435, stating that the earlier date is based on Cavanaugh’s arguments in \textit{Eleusis and Athens} concerning the style of the decree, officials named therein, and its being in concert with other Periclean activities of the time. Parker (2005a, p. 330, fn. 15) on reflection, is tending as well to the earlier date. Note also that Lampon, the prominent seer, who proposed an amendment to the decree was already active in Athenian politics from the 440’s onward. It, therefore, seems to me more likely that the decree was an artefact of Athens at the height of its power, rather than that of a \textit{polis} embroiled in a protracted war. Parker (2005a, p. 109) notes that nothing is known concerning what question was
yet another means of subjugating other Greek cities to Athens’ power or whether it was enacted for the greater glory of the cult is arguable, but it was symptomatic of the way in which religious and political issues were entangled in the homage paid to the two goddesses and of the way in which the polis had cemented its control over the Mysteries.

The importance of the Mysteries is attested by the fact that most adult Athenians chose to become initiates and public denigration of them was not taken lightly.54 This is clear from the action, seemingly unrelated to the denunciations of Alcibiades and the others, which was taken at about the same time against Diagoras of Melos, a lyric poet, who was known in Athens from the 420’s onward.55 Unlike the earlier sophists whose tendencies were agnostic, Diagoras acquired a reputation as the most notorious atheist in antiquity, but this characterization is elusive and indefinite, as not a word is known about his beliefs other than that he denied the gods.56 It is possible that his reputation as an atheist rested on the original meaning of the word, i.e. that he was ‘ungodly’ or ‘god-forsaken’, both of which would aptly characterize an offence such as blasphemous ridicule.57 Having started as a writer of conventionally pious verse, he was said to have converted to atheism and then written a book designed to disprove the existence of the gods, although this latter point may be the construct of the later authors who wrote about him.58 It seems, though, that the varied and

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55 The timing of this accusation has been the subject of controversy. Dover (1988b, p. 137) and Derenne (pp. 66-70) argue that Athenian hostility to the Melians based on their resistance to Athenian domination in 416/415 and the attempts to root out impiety in 415, as well as the evidence from the scholiasts to Aristophanes, favour a date of about 415, contra 19th century scholars who proposed a date before the Peloponnesian War. See also Woodbury, 1965, who favours the later date. Diagoras appears as a character in Aristophanes’ Clouds I. 830, which was first produced in 423. Woodbury (1965, p. 186) notes out that the passage is presented in such a way that it makes clear that his opinions at that time were treated as little more than a joke.
56 Nilsson, 1969, p. 81; Dillon, J., p. 157, fn.5. The notoriety of Diagoras was such that in later times he became the very paradigm of an atheist. See Woodbury, 1965, pp. 197-206, for sources and attempts to uncover his views.
58 Derenne, p. 64; Woodbury, 1965, pp. 199-201.
amusing stories about him, some of which may be apocryphal, are actually more suggestive of a thoroughly irreverent spirit who could not resist a clever phrase.\textsuperscript{59}  

At some point, his open repudiation of conventional religious practice exceeded the limits of tolerance and aroused the ire of the public. He apparently not only repeatedly divulged the secrets of the Eleusinian Mysteries, but also maligned them to the extent that he was seen to have discouraged others from becoming initiates.\textsuperscript{60} Diagoras must have sensed the danger because he fled, taking refuge first in Pellene in Achaia, which was allied with Sparta. Such verbal offences on the part of a \textit{xenos}, and a Melian\textsuperscript{61} at that, seem to have enraged the Athenians to the point of passing a decree effectively making him an outlaw, and putting a price on his head: one talent for killing him and two talents for returning him to Athens alive.\textsuperscript{62} The Athenians were so concerned with punishing Diagoras that they even tried, unsuccessfully, to pressure Pellene into extraditing him, possibly in order to question him about the complicity of others.\textsuperscript{63} With the renewal of active warfare, however, Athens was soon faced with much greater issues and Diagoras, already an old man, was left to his natural fate.\textsuperscript{64}  

From the little that is known about him – mostly amusing anecdotes – Diagoras hardly seems to have been an intellectual leader or a philosophical radical. Instead he may have had far more in common with the members of the \textit{hetaireiai}, the informal clubs that were a common feature of upper-class

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\textsuperscript{59} An example of such a story is recounted by Derenne (pp. 64-65). When Diagoras was dining at someone else’s house, his host left the cooking unattended. Impatient for the lentils to boil more quickly, Diagoras seized a wooden statue of Heracles, broke it into pieces, threw it on the fire, and proclaimed the task of bringing the pot to a boil to be the thirteenth labour of the god. I might add that the whole notion of a man cooking for a guest in this era is sufficient to raise questions about the credibility of the story, but perhaps it was meant simply to be an illustration of Diagoras’ reputation for irreverence.  
\textsuperscript{60} Diagoras “told everyone the mysteries, thus making them vulgar and mean, and dissuaded those who wished to be initiated” (Krateros, \textit{FGrHist} 342 F 16). See Burkert, 1983, p. 252; Derenne, pp. 65-66; Dover, 1988b, p. 137; Ostwald, p. 275, for discussion and other sources.  
\textsuperscript{61} Woodbury (1965, p. 183) notes that the recent Athenian reprisals against the independent stance of Melos would have made it impossible for virtually any Melian to be welcomed in Athens and this may have been part of the incentive for bringing a charge. It is also quite possible that Diagoras may not have been in Athens itself but in an allied city.  
\textsuperscript{62} The decree was taken so seriously that it was inscribed on a bronze stele (Woodbury, 1965, p. 179, with sources for the text). [Lysias], \textit{Against Andocides} 6.17, describes Diagoras’ offences as being by word, rather than deed. Aristophanes also refers to the offer of a reward (\textit{Birds} l. 1073).  
\textsuperscript{63} Woodbury, 1965, pp. 181-182.  
\textsuperscript{64} Derenne, p. 66; Woodbury, 1965, p. 178. Tradition has it that he died in Corinth.
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Athenian life in the 5th century. They were a tangible reflection of the fracture lines that separated the citizen body, the educated and enlightened from the uneducated and superstitious, the wealthy urban elite from the rural poor, the conservative traditionalists from the progressives or radicals. Ostensibly the clubs, which met at each other’s houses, provided a setting for drinking and dining and derived their exclusive character largely from the cost of participating in such symposia. Over and above their social function, however, the clubs served to cement bonds of friendship and were a source of mutual support in political and legal matters. Membership was so highly prized that the clubs could exact proof of loyalty even at the expense of one’s obligations to the polis.

A notorious example of such a dining hetaireia was called the Kakodaimonistai (devotees of the evil spirit) which numbered among its members the well-known comic poet Cinesias. Evidently, the raison d’être of this particular club was to allow the members to flout the rules and observances of popular religion by dining together on the forbidden days to exhibit their scorn of superstition and deliberately tempt fate. In their choice of name, the members mocked the gods and the laws of the polis. Although the hetaireiai were by no means all purposefully irreverent, they did attract the young and the wealthy, many of whom rejected the traditional political and social pursuits of their elders, channelling their energies into dissipation and revelry. Often these were the same

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65 Woodbury, 1965, p. 210. There is no evidence that he belonged to a hetaireia, but if he did it would be a plausible reason for his blatant scorn for religious convention to have become an issue in 415.
66 Chroust, p. 281. I think it important to note, though, that these categorizations were not particularly clear-cut and both populists and those with oligarchic tendencies might be found in the same circle. Judging by the cast of characters who patronized them, the clientele that the clubs attracted consisted of individuals who wanted to differentiate themselves from the plêthos.
67 Thucydides 8.54.4; McGlew, p. 5. Alcibiades the Younger refers to his father’s hetaireia as a ‘political club’; Isocrates, On the Team of Horses 16.6.
68 Chroust, p. 282. The bonds in these associations are described as being thicker than blood and often resting upon complicity in a crime (Thucydides 3.82.6). There seems to have been an element of the latter with regard to the mutilation of the Herms (Andocides, On the Mysteries 1.62–63). Profaning the Mysteries, which also involved great personal risk, mimicked the social bonds forged among those who were fellow initiates at Eleusis and probably used the parody to reinforce feelings of loyalty to the club (McGlew, p. 9, fn. 29).
69 Dodds, 1951, p. 188; Pownall, 2004, p. 12; Woodbury, 1965, p. 210. The club is referred to in Lysias, Against Cinesias fr. 4.2. Anti-establishment titles seem to have been common; for example in Demosthenes, Against Konon for Battery 54.14 there is reference to groups of young people calling themselves ‘Ithyphallics’ and ‘Down and outs’.
individuals who were regarded as having been adversely influenced by the antinomian teachings of the sophists. It seems that, at the time, performing parodies of the Eleusinian Mysteries had become something of a favourite after-dinner entertainment, possibly for no reason other than its being illegal and *outré.* Clearly some upper class Athenians were sceptical about religion to the point of losing their fear of retribution, divine or worldly. The cone of silence that was imposed on the rites had created a protective space in which the mystical could flourish, but it had also shielded them from the type of rational criticism that was prevalent among the educated. Profaning the rites may, therefore, have been an expression of the snobbish contempt in which those with sophistic inclinations held the populist beliefs associated with the Mysteries. Some Athenians were prepared to write off the mutilation of the Herms as an act of vandalism on the part of a group of rowdy young men who had drunk too much strong wine, but most thought of it as far more than a prank that had been carried to excess. It was obvious from the extent of the damage, and the concerted effort required to accomplish the deeds in the space of one night, that this was a very carefully planned undertaking. When the evidence was pieced together, it was clear that both sets of sacrilegious acts – one overtly public and the other never intended to be anything but private – could be traced to the privileged confines of the *hetaireiai.*

Members of the social set who moved in the circle of the clubs also operated within the system of ritualized friendship, *xenia,* that was endemic among the elite of the ancient world. The demands of *xenia,* which from their...

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70 Dillon, J., p. 169. The parodies in which Alcibiades was implicated took place at the house of Pulytion (Andocides, *On the Mysteries* 1.12; Isocrates, *On the Team of Horses* 16.6).
71 Humphreys, p. 59.
72 Dillon, J., p. 169, fn. 36.
73 Plutarch, *Alcibiades* 18. Plutarch adds that the initial notion that it was the work of the Corinthians to deter Athens from undertaking the Sicilian expedition and damaging their colony at Syracuse did not have much traction either.
74 Andocides makes it plain that the mutilation of the Herms was planned by a group of drinking companions (*On the Mysteries* 1.61-64). They contravened the social norm expressed by Plato that the most serious of youthful outrages are those directed at objects that are public as well as sacred (*Laws* 10.884).
75 For a full exposition, see Herman, pp. 116-164. *Xenia* was a ritualized aristocratic institution which bound individuals together, often on a hereditary basis, through a system of mutual obligation arising from the high-level services, sometimes of an extraordinary magnitude, which
perspective were highly respectable and had for many years greased the wheels of inter-polis and even international affairs, were often at odds with the demands of civic morality. The services exchanged by xenoi routinely exceeded the purely private and the obligations created therefrom were of such magnitude that the ties which linked the elites across political boundaries interfered with their obligation to those they considered their inferiors within their own communities. Loyalty to the dēmos and the polis came to stand in ideological opposition to the taint of treason associated with the upper-class by virtue of their network of alliances that stretched across the Mediterranean into Asia Minor. The ease with which those accused of the sacrileges were able to disappear into exile, seemingly without undue hardship, is a testament to the powerful connections from which they benefited. Their ability to do so would, similarly, have raised questions about their devotion to the gods honoured by Athens and revered by the large mass of the population that was in all senses firmly bound to the soil of Attica. Both the bonds of xenia and the hetaireiai provided an opening for those who wished to impugn the piety and the patriotism of those who were accused of the sacrileges.

Interestingly, though, there was very little overlap between those denounced for the acts of vandalism and those accused of the parodies, a total of four of the sixty-four named individuals who have been identified. Almost all of those who were incriminated were either from aristocratic families or from the ranks the moderately wealthy; there are no signs that any of them belonged to the lower class. A careful study of the twenty-seven accused persons about whom additional information can be gleaned from a variety of sources indicates that

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they were in a position to provide for each other through wealth and influence. Samples included: kinship-like favours — foster parenting, composing epitaphs; private services — providing shelter and maintenance, safekeeping property, lending expert assistance (physicians, artists), ransoming captives, facilitating contacts for business deals; political activity — acting in a consular capacity for citizens of another polis, ensuring safe passage of an army, provision of troops and ships (Herman, pp. 122, 128-130).

76 Herman, pp. 117-118.
77 Herman, pp. 129-130.
78 Both Alcibiades and Andocides sought help from their xenoi when they left Athens after 415.
79 See Ostwald, pp. 539-540 for the lists of names.
80 Ostwald (p. 541) based on his analysis of the work of Aurenche in Les Groupes d’Alciabade, de Léogoras et de Teucros.
most were under thirty-five years of age, there seems to have been a fair proportion who would have been classified as members of the intelligentsia, and at least a half could be considered likely to harbour oligarchic tendencies.\textsuperscript{81} Given that the supposed culprits belonged to that segment of society of which the \textit{dēmos} was already predisposed to be wary and whose piety was suspect, it is possible to infer that it would have been relatively easy to stir up hostile sentiments against them.

The supra-religious functions of the Herms and the Mysteries as important symbols of Athenian civic identity were deployed for political purposes to transform the transgressions against the gods into a concerted attack on the democracy. As Grote points out, modern people see “little connection between daring acts of impiety and designs against the state” and can hardly fathom why they were associated in the minds of the Athenians. But the ancients would have had as much trouble comprehending the present day disjunction as we do in understanding the extent to which they were intertwined.\textsuperscript{82} Hence, it is important to try to unpack the specific ways in which these incidents undermined the administrative authority of the \textit{polis}, by extension striking a blow against democracy, and were construed as flagrantly offensive religious behaviour.

Because the Herms were a physical presence that marked roads and boundaries and separated the public from the private, their desecration was a visible flaunting of the demarcation of property rights and the authority of the state that had erected them. The explanation of the mutilation as a spur-of-the-moment drunken prank was completely inadequate in view of Andocides’ evidence about how the desecration had been planned by members of his \textit{hetaireia}.\textsuperscript{83} While the plot may have been oligarchic in origin and aimed at obstructing, or even derailing, the Sicilian Expedition, a venture for which Alcibiades had won broad and enthusiastic popular support,\textsuperscript{84} it was a risky strategy, because it unleashed fears in the \textit{dēmos} that their legislative will was

\textsuperscript{81} Ostwald, pp. 541-550.
\textsuperscript{82} Grote, Vol. V, pp. 148-149, fn. 2.
\textsuperscript{83} Andocides recounted this at his own trial some years later; presumably he had told the same story in 415 when he became an informer to secure his freedom (\textit{On the Mysteries} 1.61-63).
\textsuperscript{84} Powell, p. 22.
being thwarted. Unmanning the Herms was a symbolic way to make the Athenians look impotent as they prepared to launch the Sicilian Expedition, even though they, in turn, were collectively offending Hermes, the herald of peace, by preparing for war. Given the dearth of positive omens in evidence at the time when the decision to undertake the offensive was made, the Athenians were particularly dependent on the surveillance and goodwill of Hermes in his capacity as the god of travellers. Despite the public anger and upheaval caused by the mutilations, they did not serve to disrupt the plans for the invasion of Sicily. None would have been more aware of the risks of the long voyage on boats potentially contaminated by the presence of impious miscreants than those who were preparing to cast off and this may have been behind the belated, melancholy realization of the dangers being faced that injected itself into the departure ceremonies. It is possible that the Athenians convinced themselves that their demonstrable zeal in trying to track down and punish the perpetrators would be sufficient to appease the gods or, at least, to postpone divine vengeance against the polis.

The profanations of the Mysteries were of an entirely different character, as they likely had little, if any, political motivation and seem to have been intended for the private amusement of the participants. What they did display, however, was lack of respect for the way in which the cult fell under the civic control of Athens together with an attitude of contempt for the sanctity of the

85 Furthermore, the implication of Eucrates, a brother of Nicias, named by Andocides as one of those responsible for the mutilation, effectively prevented Nicias from using his considerable influence and much respected reputation for piety to try, once again, to dissuade the Athenians from the undertaking (Powell, p. 23). In addition, notices had already been sent out to the allies and it was too late to call off the planned rendezvous at Corcyra (Grote, Vol. V, pp. 150-151).
87 Thucydides 6.31.1.
88 Powell, p. 22.
89 Hamilton thinks it likely that Alcibiades was notorious for activities of this sort and that the profanations had no political motive. Furley (p. 131-133) describes a play by Eupolis, Baptai, that features lewd, effeminate men, dancing in imitation of women, and portrays farcical rites in honour of Kothytto, a favourite deity of the Corinthians; this may have been an effort to satirize Alcibiades for staging mock initiation rites in a private house. What little is known of the play lends credence to Alcibiades’ reputation for impiety, scorn for cult, and transgression of gender roles, drawing unwelcome attention to matters that he would rather have kept private. It is said that Alcibiades retaliated by drowning Eupolis, or having him drowned, while on a military expedition in Sicily.
rites. Only a Eumolpid could act as an officiant; so by donning the robes of the *hierophantēs* and elaborating a re-enactment of the initiation ceremony, Alcibiades was trespassing on the prerogatives of the two hereditary families who had exclusive rights to perform them and appropriating for his own ends the rites that belonged to the public as a whole. Even though these ‘charades’ were staged behind closed doors before individuals who were most probably all initiates, they still constituted an offence because of the absolute taboo on repeating the words and acts of the revelation that lay at the heart of the ceremony outside of the boundaries of the sanctuary. In addition, it is very likely that the performers and attendees at the parodies omitted any of the mandatory forms of purification, thereby further profaning the rites.

The Athenians took exceptional pride in having stewardship on their own territory of the ineffable rites that provided “a unique channel of communication between the human and divine worlds and a secret recipe for the well-being of the soul in the afterlife.” Of all religious transgressions, anything less than respect for the Eleusinian Mysteries was the offence that most infuriated the city. When the mockery inherent in the profanations was combined with rumours that any man might have the audacity to try to overthrow the democracy, public reaction was outrage. But even though anger and alarm centered on plots against the democracy – rather than on the need to punish impious wrongdoers to forestall divine retribution – no one was ever brought to trial on this basis. The prosecutions were exclusively aimed at the religious crimes which disrupted the city’s relationship with its gods. Once again, the legal vehicle of choice was the ever malleable charge of *asebeia*. For pious Athenians,

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90 Aristophanes did include a parody of the Mysteries in *Frogs*, but he confined himself to spoofing those elements of the celebrations which took place in public; he revealed none of those things about which it was forbidden to speak.

91 The charge against Alcibiades gave explicit details of how the rites were profaned; Plutarch, *Alcibiades* 22. See also McGlew, pp. 2, 7.


93 The various forms of purification associated with the Eleusinian rites, including bathing in the sea and washing of hands with lustral water, are discussed in detail by Mylonas (p. 239ff.).

94 Dover, 1988b, p. 137. Despite its humorous context, the song of the chorus in Aristophanes’ *Clouds* l. 299-314, is a heartfelt tribute that conveys the joyful feelings associated with the Mysteries.

religious transgressions would, however, have been a driving force; allowing
perpetrators to remain at liberty in their city meant that public spaces, such as
the Agora and the temples, were being defiled by their presence. The survival and
well-being of the whole city was imperilled by the offences committed against
Demeter, Kore, and Hermes, popular gods on whom the people were particularly
dependent in their everyday affairs and for conveyance to, and ease in, the
underworld after death.

The enormity of the ‘witch hunt’ that was unleashed, the use of eisangelia
to prosecute the accused, and the scale of the reprisals make it clear that the
Athenians were willing to invoke extreme measures to deal with these deeds.
Crimes committed in secret bred fear and worries about the number and power of
the dissidents involved, as well as their motivation. It was not enough to expect
that divine retribution would look after the impious; the stakes were so high that
they had to pay a price to both gods and men. The resulting sense of urgency with
which the investigations were handled and the pressures generated by having so
many individuals to prosecute are evident from the special measures that were
invoked to undertake virtually every aspect of the task. In the first place, a special
commission of investigators, the zētētaí, was set up to gather evidence, a marked
departure from the normal practice that indictments were launched on the
initiative of individual citizens.96 It appears that to expedite matters and avoid
cumbersome delays in uncovering the truth, the Council vastly expanded the
option of using torture to uncover the facts. An existing decree that prohibited the
torture of citizens was repealed with the result that any who were accused could
be put to the wheel97 and special powers were granted to allow slaves to be
tortured, even without their master’s permission, to extract evidence about what

96 Andocides refers to the zētētaí (On the Mysteries 1.14,36); Lysias uses the term in a speech
given shortly after 403 (On a Charge of Accepting Bribes 21.16). Lewis (p. 183) thinks that the
office was a carry-over from 415. McGlew (p. 4) notes the departure from regular procedure.
97 Andocides, On the Mysteries 1.43; Bauman, p. 64; Rhodes, pp. 187-188. As far as I can tell,
there is no reference to any torture actually having been carried out; had a citizen been treated in
this way it would surely have provoked comment in one of the sources. Bauman (p. 95) poses the
interesting question of why no one launched a graphē paranomōn against those who made this
proposal. He goes on to speculate that this legal instrument may not yet have been devised, which
makes no sense given that it was used by Leogoras, Andocides’ father, in connection with the
sacrileges; see fn. 104 below.
had gone on in private houses. In order to preclude any further dissemination of the secrets of the Mysteries, scrupulous care was used to prevent any who were uninitiated from hearing details of the profanations. The presidents of the Assembly cleared the meeting of any who were not mystae before taking the initial evidence from Alcibiades’ slave, the jurors who heard the ensuing cases all had to be initiates, and the courts where the trials took place were roped off. The Athenian officials, poletai, who were responsible for the adjudication and sale of the properties confiscated from those condemned were, apparently for the first time, reliant on denunciations by the demarchs, the local officials who would be expected to have knowledge of who owned what.

The way in which these trials unfolded is also interesting from a purely legal aspect. They were based on impeachment decrees, eisangeliai, rather than on any existing statutes. These procedures were reserved for instigating actions that were treasonous or posed a grave danger to the state, were initiated with either the Council or the Assembly, and then referred to jury-courts for trial. The precise wording of the one against Alcibiades is preserved in Plutarch, and we know from Andocides that a decree was also the mechanism used to prosecute his own father, Leogoras. In the latter case it was unsuccessful, because Leogoras availed himself of a technical defence known as a graphē paranomōn, a device meant to ensure that the existing legal framework was honoured by allowing the defendant could launch a counter-suit against his accuser to the effect that the decree passed against him was illegal. His case was heard by a jury of six thousand, which seems like an extraordinarily large number.

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98 MacDowell (1962, p. 79) infers this from Andocides, On the Mysteries 1.22, which refers to compelling people who refused to allow their slaves to be tortured to do so; no other instance of slave torture absent the owner’s consent is known.
99 Andocides On the Mysteries 1.12; Parker, 2005a, p. 91.
100 Lewis, p. 183, 186; this subsequently became a routine practice.
101 Bauman, p. 65. MacDowell (1978, p. 64) points out that the structure of eisangelia was indicative of the gravity of offences for which it was intended; they were presumably considered so serious that nothing should be allowed to deter the prosecutors from bringing the cases forward.
102 Andocides, On the Mysteries 1.17; Plutarch, Alcibiades 22.
103 MacDowell, 1978, p. 50; Rhodes (p. 62) indicates that the graphē paranomōn may have been instituted by Ephialtes, which would date it sometime before 460.
104 Andocides, On the Mysteries 1.17. The number might, however, refer to the entire group from which the jury was empanelled; this is the first known use of this legal instrument.
In the panic of the moment, then, prosecution of the sacrileges, driven partly by fear and haste, pushed the Athenian legal system into new territory, both procedurally and substantively. Apart from Andocides’ account, which names many of those who were implicated in the two sacrileges, we have no clear information about the exact number of individuals who either fled into exile or were executed, or whether all were tried separately or in groups. \(^{105}\) We can only conclude that the fact that there were so many accusations is a testimony to the potency of founding prosecutions on charges of *asebeia*, as well as to the very real apprehension that it would be difficult to mount a defence and that the courts would not hesitate to impose the death penalty for such crimes. Furthermore, the procedures used to prosecute both sets of sacrileges elevated them to the level of crimes against the state, an indication of a deep-seated distrust of the upper classes and of the fears for the survival of the democracy that had been swirling about since the 420’s. \(^{106}\) Many of those accused were party to the subsequent events of 411 and 404, when oligarchic regimes took power for short periods of time, suggesting that there may have been substantive reasons for the ‘take no prisoners’ type of response incited by the leaders of the *dēmos* against any behaviour that struck at the cohesion of the *polis* or that could be construed as a threat to the will of the majority. These various factors played a role in the subsequent well-documented trials of Andocides and Socrates, which will be discussed later. But first I will turn to the trial of the Arginusae generals in 406, another instance when the spectre of *asebeia* was invoked up to galvanize the Assembly into action.

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\(^{106}\) Ostwald, pp. 219-229, 323, 533-535; he cites the demagogue Cleon’s frequent resort to slandering and attacking opponents of his policy of ‘war to the bitter end’ by accusing them of conspiring to establish a tyranny; a tactic which is reflected in how he is portrayed by Aristophanes in *Knights* and *Wasps*.
CHAPTER VII
PROSECUTIONS IN THE CAULDRON OF WARTIME:
THE TRAGEDY OF ARGUSAE

One of the most puzzling and controversial series of events in the Peloponnesian War relates to the aftermath of the engagement at the Arginusae Islands, considered “the greatest naval battle that had ever taken place of Greeks against Greeks”.¹ It was fought in 406 when the conflict was in its twenty-fourth year, and can be recapped briefly from the accounts of Xenophon and Diodorus Siculus, as follows.² The Spartan navarch, Callicratidas had assembled a fleet, besieged and taken Methymna on the island of Lesbos. This put him in a position to capture the rest of the island, which would have enabled him to move the fleet to the Hellespont, allowing him to cut off the vital Athenian grain supply from the Black Sea. In response, the Athenian commander, Conon, was forced to move his much smaller fleet to the Hekatonnesi Islands near Methymna, but he was attacked and had to flee to Mytilene farther south on Lesbos. There he was blockaded by the Spartans and sent an urgent message to Athens to seek assistance. This spurred the Athenians to an extraordinary effort to build and man, within the space of thirty days over a hundred new ships,³ which were placed under the collective command of eight generals, a somewhat unusual arrangement.⁴ After camping overnight for the evening on the Arginusae Islands, across from Lesbos, the Athenian fleet took up battle formation the following morning. Although the Spartan crews were more skilled than their Athenian

¹ Diodorus Siculus, Library 13.98.5, 13.102.4.
² There are two extensive, but rather divergent, accounts, one by Xenophon, Hellenica 1.6-1.7, and the other by Diodorus Siculus, Library 13.97-102. The initial descriptions of the engagement are similar, and the differences will be discussed below.
³ Lazenby (p. 229) discusses whether it would have been physically possible to accomplish this in such a tight time frame. He posits that Alcibiades may already have started a re-building program before leaving Athens and/or that ship-building might have been out-sourced to Macedonia.
⁴ Only recently, the Athenians had acknowledged the virtue of having one man more or less in charge. See Xenophon, Hellenica 1.4.20, in which he states that Alcibiades had been proclaimed supreme commander with authority over the other generals.
counterparts, the ingenious tactics of the Athenians, and possibly the death of Callicratidas, enabled them to rout the Spartans having lost only twenty-five ships to their one hundred.

Up until this point the two narratives are quite similar, but they give divergent accounts of what happened next. Xenophon states that the Spartans fled and the Athenians returned to Arginusae to hold council. They resolved to send Theramenes and Thrasybulus, who were ship captains, to sail with a large number of vessels to the aid of the disabled vessels and the men on them, while the rest of the fleet would attack the ships that were blockading Mytilene. But none of this came about because of a storm. At this point his narrative breaks off and fast-forwards to the subsequent events in Athens with no explanation. In the account of Diodorus, the Athenians pursued their fleeing enemy for a considerable distance, across a whole area of the sea that was strewn with corpses and ship wreckage, which later washed up on nearby shores. Some of the generals wanted to pick up the bodies, but others said that they should race to Mytilene to lift the siege. In the meantime, a great storm arose and the sailors, exhausted from fierce fighting and facing heavy waves, rebelled at the idea of picking up the dead. As in Xenophon, any thought of continuing to sail was scuppered by the weather, and the ships sought shelter at Arginusae. Once the storm had abated, the Athenians sailed to Mytilene to collect Conon and his ships, set up their base at Samos, and once again set about on the business of laying waste the territory of their enemies.

The Athenians were at first thrilled that a great victory had been won, but the mood soon changed and the consequences, in a number of ways, run parallel to their reactions to the sacrileges of 415. The dēmos became infuriated that the generals had neglected their duty: in “not picking up the ship-wrecked”

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5 Xenophon, *Hellenica* 1.6.31. This was a reversal of fortune; it was the first time that the Spartan forces were assessed as being superior to the Athenian oarsmen who had ruled the sea for decades.

6 See Andrewes, 1974, for a detailed discussion of the two narratives and his rationale for thinking the one by Diodorus to be more logical. With him, I concur that Xenophon’s narrative is oddly disjointed, and preferring it to that of Diodorus seems “a perverse rejection of the intelligible in favour of the confused” (p. 118).

7 Xenophon, *Hellenica* 1.6.33-35.

(Xenophon’s version) or in allowing “the men who had died to maintain their [the Athenians’] supremacy to go unburied” (Diodorus’s version). Theramenes and Thrasybulus who had supposedly been assigned to rescue survivors or collect bodies, depending on the narrative, arrived back in Athens first but were able to defend themselves against the charges. Diodorus hints at a reason when he says that “both were able orators and had many friends.” The populace then turned the entire command over to Conon and ordered the eight generals who had been at Arginusae to return to Athens to stand trial. Two of them, wisely, opted to take flight into exile instead. The others apparently hoped that their track record of service and their connections would stand them in good stead, and that their crews, who were many in number, would corroborate their statements that the actions in dispute had been rendered impossible because of the storm.

What happened next seems to have been a jumble of the conventional public scrutiny to which the conduct of generals was subject with irregular legal procedures. Xenophon, gives a virtually blow-by-blow account, while the one of Diodorus is much briefer; but neither paints a pretty picture. After listening to their version of events and being told about the violence of the storm, the Council decided to imprison the generals and turn them over to the Assembly, probably for an impeachment hearing, which would normally lead to a trial. No actual trial took place. Instead the Assembly was persuaded to vote on a summary verdict, the generals were found guilty en bloc, their property was confiscated, and they were immediately executed, including the general who had been shipwrecked and saved by chance. It would appear that not long afterwards, there was some recognition that this whole affair had gone sadly wrong, although the dēmos did

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9 Xenophon, Hellenica 1.7.4.
11 Diodorus Siculus, Library 13.101.3.
12 They may well have shared the apprehensions of Nicias, that “those who would vote upon their conduct, instead of judging the facts as eyewitnesses like themselves and not from what they might hear from hostile critics, would simply be guided by the calumnies of the first clever speaker” (Thucydides 7.48.3).
13 Five of the six generals had solid political or family connections and a good record of achievement, which they might have thought sufficient to help them to emerge unscathed from a trial (Lang, 1992, pp. 267-268, fn.5). The sixth had himself been shipwrecked in the battle and could expect favourable consideration on that basis.
14 These are dealt with by both Ostwald, pp. 435-444, and Lang, 1992, pp. 267ff.
15 Diodorus Siculus, Library 13.101.1-7; Xenophon, Hellenica 1.7.3-34.
not place the burden of blame on themselves. A probolē, preliminary complaint, for having deceived the state was passed in the Assembly against a number of those who had been instrumental in proposing the paranomoi (irregular procedures) and they were imprisoned to await trial. Regrettably, they escaped and left Athens before this took place.  

Without going into the details, I think it is worth noting that the many troubling legal aspects of this episode raise questions about the extent to which it played out in accordance with the Athenians’ much vaunted respect for the rule of law. Interestingly, the actual charges are not clearly spelled out in the historical record, although the generals seem to have been summoned for a rendering of accounts. By making the central issue the failure to recover the bodies, the prosecution turned the well-entrenched religious obligation to bury the dead honourably into a secular crime. The accused were not allowed to present their case properly, and any who tried to speak in their defence were greeted with an outcry and prevented from speaking; relatives of the dead, whose anger may have been purposely stirred up, appeared in the court dressed in mourning and clamouring for them to be punished. When it grew late in the day, the Assembly decided to postpone the matter to a subsequent meeting, an unusual step as decisions were normally taken on the same day, and to have the Council present a proposal regarding the way in which the trial should be conducted. The proposal from the Council was simply that the Assembly should immediately vote to find the generals guilty or not, with no provision for any presentations by either side. Two attempts to declare the proceedings unconstitutional, which should have suspended them while they were being adjudicated, were not dealt with; arguments that the citizenry should not run the risk of finding itself guilty

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16 Diodorus Siculus, Library 13.103.1-2; Xenophon, Hellenica 1.7.35.
17 Xenophon, Hellenica 1.7.4.
18 Bauman (p. 72) points out that this link had not previously been made.
19 They spoke only briefly because “they were not granted the hearing prescribed by the law” (Xenophon, Hellenica 1.7.5). Ostwald (p. 438) notes, however, that this was understandable as there was no provision for a full-length defence speech at a meeting of the Assembly.
21 Xenophon, Hellenica 1.7.7. In Pseudo-Plato, Axiochos, 368e-369a, it is suggested that the final vote was delayed until the next day when more tractable prytanes were chairing the Assembly.
22 Xenophon, Hellenica 1.7.9-10.
before the gods because it had acted in haste and run roughshod over its own laws fell on deaf ears.\textsuperscript{23} The generals were tried as a group, which was not unprecedented, but which was thought to be a violation of their rights, if not downright illegal.\textsuperscript{24} Having the accused stand trial together, released the prosecutors from the task of demonstrating that each of them was guilty; “proof against one saddled the others with vicarious responsibility.”\textsuperscript{25} There was ample evidence of intimidation of both individual citizens and of the presiding prytanes who, with the exception of Socrates, were frightened into allowing the vote in the Assembly.\textsuperscript{26} A low point was reached when some called out that “it was monstrous if the people were to be prevented from doing whatever they wished”.\textsuperscript{27} The assertion that it was “the right of a sovereign people not to be bound by their own \textit{nomoi}” was symbolic of what many think was wrong with the popular democracy and that stigmatizes it to the present day.\textsuperscript{28}

Antagonism toward commanders who had failed in some aspect of their mission was not unknown in Athens.\textsuperscript{29} Nevertheless, the severity of the outcome, in a society that preferred to impose exile over capital punishment, is an indication that something must have happened in the three months or so that elapsed between the time of the naval battle and the appearance of the generals in Athens to turn the popular mood from one of relieved delight in a military triumph into a desire to spill the blood of those who had defeated the enemy.

Before echoing the outright condemnation of this episode in Athenian history as

\begin{footnotes}
\item[23] Xenophon, \textit{Hellenica} 1.7.12-33.
\item[24] Xenophon, \textit{Hellenica} 1.7.23,34; Plato, \textit{The Apology} 32b. Aristotle expresses tactic disapproval by noting that even those who had not taken part in the battle or lost their own ships were condemned in a single vote because the people were deceived by those who had stirred up their anger (\textit{The Athenian Constitution} 34.1). Munn (p. 186) notes that one verdict for all had also been the procedure in the trial of Antiphon and his associates in 411. MacDowell (1978, pp. 188-189) argues that the case of the Arginusae generals was unusual, but there is no good reason to suppose that there was legal impropriety as the charge was essentially one of treason and it was appropriate for it to be heard by the Assembly. Rhodes (p. 62) suggests that it is perhaps a mistake to look for complete regularity in such exceptional circumstances. I think it ironic that the ancient sources are more prepared to declare the proceedings illegal than contemporary authors, despite the widespread condemnation by posterity of the whole affair.
\item[25] Bauman, p. 74, who adds that “the doctrine of common purpose has a long pedigree.”
\item[26] Xenophon, \textit{Hellenica} 1.7.12-15; Plato, \textit{The Apology} 32b.
\item[27] Xenophon, \textit{Hellenica} 1.7.12.
\item[28] Ostwald, p. 445.
\item[29] See, for example, the case of Thucydides who was exiled for 20 years for his failure to prevent the fall of Amphipolis in 424, even though this was an impossible task (Thucydides 5.26.5).
\end{footnotes}
a particularly nasty example of “mob rule” and “a humiliating political defeat for the principle of popular sovereignty”.30 I would like to delve into what it was about the Arginusae affair that agitated the people to such an extent that they were “beside themselves at that time” and willing to be “provoked unjustly by their political leaders.”31 This topic has been subjected to much scrutiny, partly because it raises so many questions about why the greatest naval victory ever won by Athens was transformed into a tawdry series of events that were more redolent of the recriminations following a defeat and that raised profound concerns over the responsible exercise of sovereign power by the dēmos.

An obvious motive was that the recall and so-called trial was the unfortunate result of political chicanery by opposing factions, especially given the central role played by Theramenes, whose history as a political chameleon with shifting allegiances makes him an easy target for suspicion.32 Whether he was “a turn-coat or a moderate”33 is a subject for debate that is not likely to be reconciled, although it can be said in his defence that he that he lived in a time of “constitutional upheaval”.34 What is clear, however, is that he was closely associated with Alcibiades who was in exile, having recently been deposed as Athens’ supreme commander, and who had been replaced by the generals of Arginusae. That is not an adequate reason to finger him as being hostile to them, given that the political alignments and loyalties of those who were recalled were sufficiently diverse to render any such argument illogical. Since there were associates of both men on the opposing sides, the trial cannot be explained away as “an expression of factional rivalry.”35

30 Lazenby, p 235; Ostwald, p. 434, respectively. Others use much more unflattering terminology such as Németh’s ‘politichen Justizmordes’.
31 Diodorus Siculus, Library 13.102.5.
32 For a discussion of Theramenes in the sources, see Harding as well as Lang, 1990, p. 25. Apart from the defence of Theramenes in The Athenian Constitution, at 28.5 and 34.3, there is only one other passage in any of the accounts of his life that obliquely supports the idea that he was a moderate, rather than a political opportunist. Although Xenophon was generally critical of him, he did cast his death in a favourable light, but not before he recounts the damning words of Critias to the effect that Theramenes had to share the blame “for all the oligarchs killed by the democrats and for all the democrats killed by the oligarchs” (Xenophon, Hellenica 2.3.32).
33 Harding, p. 103.
35 Hunt, p. 371. See also Lang, 1990, for a careful parsing of the allegiances of the six generals who were tried.
Several related ideas, which have a less directly political basis but are still reflective of personal antagonisms, have been put forward to explain the proceedings. Lang attributes the centrality of Theramenes in Assembly proceedings to the possibility that what was taking place was an *eisangelia* and that he may have been the public accuser designated to lead the prosecution. She thinks that there may have been something of a cover-up about what happened in the muddle following the battle and that clear orders may not have been issued. The generals then seized on Theramenes’ role as “a heaven-sent opportunity” to shift the responsibility from themselves by turning the tables and counter-accusing him, together with Thrasybulus, of having failed to carry out the task that was delegated to them.36 This notion is fairly close to that of Andrewes who thinks the generals may have suspected that Theramenes and Thrasybulus, who were the first to arrive back in Athens, were the source of the agitation against them.37 This led to a situation of mutual accusations in which the generals moved from sole reliance on using the weather as an excuse to implicating their subordinates.38 Andrewes sums up the trial as the outcome of “a disastrous misunderstanding between two sets of men, separated by a considerable distance, and on the past record understandably nervous of one another.”39

In a completely different vein, there are also theories that attribute the outcome of the Arginusae affair to financial considerations. There is some evidence that in order to find the significant complement of rowers required to man the triremes,40 the Athenians marshalled slaves in greater numbers than was their usual practice.41 The competition for rowers extended even to slaves, as rival navies were more generous employers, tempting the slaves to take their chances

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36 Lang, 1992, pp. 269-271. Lateiner (p. 103) notes the irony of making political capital from the failure to recover the dead, as corpses “lie beyond politics and are valueless in themselves.”
37 Andrewes, 1974, p. 116. Critias accused Theramenes of having stirred up the people against the generals to save his own skin (Xenophon, *Hellenica* 2.3.32).
40 Lazenby (p. 229) talks of 18,700 out of a total complement of about 22,000 for the fleet (including some supplied by the allies). Hunt (p. 369) and Munn (p. 180) state that roughly 12,000 were needed from Athens.
41 Hunt, pp. 368-369. He notes that many may have come from the mining operations at Laurion, the operation of which seems to have shut down only at this particular time.
on deserting and escape.\textsuperscript{42} Hunt is convinced that, in order to motivate them to remain loyal to Athens, the Athenians took the extraordinary measure of granting freedom and citizenship to the slaves who had been drafted for the expedition to lift the blockade at Mytilene.\textsuperscript{43} He goes on to posit that the rich slave-owning Athenians held the generals responsible, if only indirectly, for the loss of their valuable property and their conversion into free men in an economic climate in which there was little chance of compensation. They vented their fury and resentment, and this was just one more factor which left the Assembly “angry, vindictive, and hasty.”\textsuperscript{44} In this they may have been joined by the newly-enfranchised former slaves who had fought in the battle and may have seen this as a unique opportunity “to exact retribution for the callousness with which aristocratic leaders had so long disposed of humanity by the shipload.”\textsuperscript{45}

Building on an initial accusation of a charge of peculation against one of the six generals, Munn constructs a scenario in which the basis for the condemnation of all was “evidence of possible financial mismanagement.” They, in turn, tried to derail the possible outcome of a hostile audit by levelling a formal charge of murder against Theramenes and Thrasybulus, the chief witnesses against them.\textsuperscript{46} Discussion of fiscal impropriety quickly disappears from the record, which may be due to the evidence’s being too insubstantial or too complicated to make a convincing case.\textsuperscript{47}

Nevertheless, all of these elements no doubt factored into the final outcome. But even if they were collectively greater than the sum of their parts, they do not seem sufficient to warrant the draconian sentences of execution

\textsuperscript{42} The Spartan ambassadors asked the Persian king to contribute one obol a day toward the payment of their sailors, raising it to four obols a day, as the offer of that wage would be sufficient to induce the Athenian crews to desert their ships (Xenophon, \textit{Hellenica} 1.5.4,7).

\textsuperscript{43} Hunt, pp. 359ff. His assertion concerning freedom and citizenship is based primarily on references in Aristophanes’ \textit{Frogs}, which won first prize at the Lenaean festival in the winter following the battle. (If many of the slaves were freed, presumably including the ones from Laurion, this does beg the question of why the mining operations at Laurion were known to have ceased only for that one brief interval. Who manned the mines after Arginusae? Hunt does not address this topic.)

\textsuperscript{44} Hunt, pp. 372-373.

\textsuperscript{45} Munn, p. 185.

\textsuperscript{46} Munn, pp. 183-184.

\textsuperscript{47} Munn, p. 184. What casts doubt on Munn’s speculation is that there is no mention at all of this aspect in the Diodorus Siculus account and that it merits only one sentence in Xenophon’s otherwise exhaustive exposition of the proceedings which runs to several pages.
rather than exile, which was an often-used solution. Thus it seems to me that something more must have been fanning the general atmosphere of popular hysteria, which resembles in quality, if not in particulars, that which ensued after the mutilation of the Herms. This is why I propose that a religious element relating to the sanctity of burial was also a major contributing factor.

In the second half of the 5th century, which was a time of great loss of life due to warfare and plague, the cult of the dead, a time-honoured and integral part of Athenian life, features very prominently in the extant sources. While piety required that the dead be regarded as sacred, the observance of funerary customs and rituals had ramifications that spread far beyond the confines of religion. These rites also served a valuable social purpose by perpetuating traditions across the generations, thus maintaining family bonds, and fostering civic cohesion through solemn public celebrations. In addition, these practices had distinct legal and political implications.

Carrying out the funeral rites and the subsequent care of the graves was a rigorously observed duty that fell on the descendents of the deceased. In the 6th century, Solon, as part of his comprehensive legal reform, had instituted strict curbs on the lavish expenditures and on the excessive and unseemly mourning, particularly on the part of women, that had become a feature of Athenian funerals. These laws had the effect of turning what had, in some cases, become an over-wrought public spectacle into a more discreet and private affair with a limited number of mourners. A death was first marked by sacrifices and a banquet, with the funeral procession taking place on the third day. On that day, as well as the ninth, food was brought to the grave, and the end of the period of mourning was marked on the thirtieth day with another communal feast. General city-wide celebrations were held yearly – *nekysia* (the days of the dead) and *genesia* (the days of the forefathers). These were occasions for cleaning and adorning the tombs, making offerings to the gods, and eating special foods.

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50 Alexiou *et al.*, p. 15. The authors (p. 18) speculate that this may also have been aimed at decanting the outpouring of emotion into organized, communal hero worship with some of the same beliefs and practices associated with the aristocratic clan cults in an active effort to break down the cults.
Libations of barley broth, milk, honey, wine, lustral water, or the blood of sacrificial animals were poured into the earth, establishing contact with the dead and allowing them to hear the prayers of the living.  

Apart from their being strictly regulated, practices associated with the cult of the dead also served legal purposes. A man was expected to be able to affirm the location and existence of his family tombs when he was being examined to determine his fitness to hold public office. Furthermore, having performed funeral rites could be cited as proof of family connection and establish the right of inheritance in court cases. In one dispute, the claimant to an estate maintained that because of his opponent’s failure to perform the customary rites – he “neither took up the body of his adoptive father after he died nor cremated it nor collected the bones but left all this to be done by complete strangers – he was utterly impious in thinking he should inherit the deceased’s money.” In another case, the story is told of two individuals who both showed up at the wake, seeking to take charge of the funeral rites, motivated less by pious zeal than by the desire to stake their claim on the estate.

The importance of proper funerary rites, characterized as an ordinance of the gods, appears time and again as a theme in the literature of the era. Not only was it “a pious thing not to cheat the dead of their due”, as those who are unburied are thought to wander endlessly in death, but it also reflected positively on the one carrying out these duties since “the rites we owe the dead adorn the living.” Euripides puts forward an interesting rationale for the importance attached to burial by saying that men do not possess their bodies as their own, they merely live their lives in them and the earth then takes them back. The dead must be buried to allow each element to return to the place from

\[51\] Burkert, 1985, p. 194. See, for example, Euripides, *Iphigenia among the Taurians* ll. 156-166, and Sophocles, *Antigone* ll. 956-957. For a detailed description of the wake, procession, burial, and offerings, see Alexiou et al, pp. 4-8.
\[52\] Aristotle, *The Athenian Constitution* 55.3.
\[54\] For example in Isaeus, *On the Estate of Ciron* 8.21-27.
\[55\] See, for example, Euripides, *Suppliant Women* l. 18.
\[56\] Euripides, *Helen* l. 1277.
\[57\] Euripides, *Trojan Women* ll. 1084-1085.
\[58\] Euripides, *Suppliant Women* l. 77.
whence it came – the spirit to the upper air, the body to the earth.\footnote{59} Not leaving a body exposed to the forces of nature and likely to be devoured by wild animals, or at the very least casting three handfuls of earth on it, constituted a binding obligation that appears as a driving force in a number of the tragedies of the time.\footnote{60} It is compels Antigone to risk her own life to do so, defying Creon’s order to leave her brother unburied, insisting that she is obeying a higher law, as a man should not override the commands of Zeus. And further, that the god of death, Hades, demands equal funeral rites, regardless of the circumstances that led to the individual’s demise.\footnote{61} This sentiment is forcefully echoed in another play when Odysseus argues with Menelaus to allow Ajax to be buried even though he had treacherously plotted to strike a murderous blow against the whole Greek army.\footnote{62} Another expression of the importance of funeral rites is to be found in the advice given to Andromache. She is warned not to raise the slightest protest against the cruel fate of her son Astyanax, who is to be hurled from the battlements of Troy, as this might anger the Greek army and extinguish any hope she might have of being allowed to give him a proper burial.\footnote{63} I can think of no more heart-rending attestations of the importance that must have been attached by the Athenians, and the entire Greek world, to the performance of this rite.

As already discussed in Chapter V, the Athenians had been so driven to despair during the outbreak of plague in the 420’s that they become utterly careless about adhering to proper burial rites. Because of the huge death toll, the restraints imposed by fear of the gods and the laws of man had disappeared and many behaved shamelessly, disposing of bodies in an utterly careless manner. No one expected to live long enough to be held accountable for his offences and any punishment that might be imposed was irrelevant because, under the prevailing

\footnote{59} Euripides, \textit{Suppliant Women} ll. 531-536. Here Euripides may be showing the influence of the pre-Socratics, specifically of Anaximander. The only remaining fragment of his work (“The things that are perish into the things out of which they come to be, according to necessity for they pay penalty and retribution to each other for their injustice in accordance with the ordering of time.”) is considered a forerunner of ideas about the conservation of matter, dynamic equilibrium, and the first law of thermodynamics.

\footnote{60} Nilsson, 1969, p. 5. Aelian refers to this as a law (\textit{Varia Historia} 5.14).

\footnote{61} Sophocles, \textit{Antigone} ll. 494-501, 570.

\footnote{62} Sophocles, \textit{Ajax} ll. 1062-1063, 1343-1344.

\footnote{63} Euripides, \textit{Trojan Women} ll. 735-739.
circumstances, continuing to live already constituted a far more severe sentence. Nevertheless, if we are to judge by the tone of Thucydides’ writing, failure to follow correct burial practices was a source of disapproval, even during times of extreme hardship.

The importance of recovering the bodies of slain soldiers is stressed both in literature and in the historical record. Euripides’ play, *Suppliant Women*, revolves around the desperate desire of the grieving mothers of the six slain Argive warriors who joined Polynices in attacking Thebes to have the bodies of their sons returned to them. The Thebans, led by Creon, who had forbidden the burial of Polynices, refused to do so, leading the mothers to appeal to Theseus, king of Athens, for help, either by negotiation or by force of arms. Should he take up the cause, Theseus would be discharging his duty to the suppliant women and performing an act of piety toward the gods. Although the dead men were, to a certain extent, the architects of their own misfortune in that they went to war in spite of having been warned not to by divine guidance, Theseus is eventually persuaded that this is not a sufficient reason to deny them their final rites. As in *Antigone*, the fact that the individuals had acted foolishly, or even in defiance of the gods, does not over-ride the need to respect their mortal remains.

Euripides’ play reflects the actual events of the battle of Delium, which was fought a year earlier, in 424, between Athens and Boeotia. In its aftermath, the Athenians were besieged in the garrison at Delium, which encompassed the sanctuary of Apollo and was, therefore, consecrated ground. The Boetians were holding hostage the bodies of the Athenians who had fallen in the battle and refused to allow the Athenians to collect them under a truce, which was “the national custom.” Thucydides poses the question of who are the most impious – those “who wished to barter dead bodies for holy places” or those “who refused to give up holy places to obtain what was theirs by right?” The bodies were

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64 Thucydides 2.52-53. Well over half the references to the plague in Thucydides concern social and religious effects rather than symptoms, treatment, and mortality (Lateiner, p. 97).
eventually restored to the Athenians, but only after they had been defeated and evacuated the area.67

The Euripidean hero, Theseus, casts himself as the champion of the ancient law of the gods (nomos palaios daimonon), since helping the distraught women to carry out their sacred duty to their sons helps to fulfill divine ordinances.68 In his discussion of the play, Conacher proposes that the whole incident should be thought of as “a test-case, almost a symbol, of international law” which features more prominently than the technical religious associations.69 It is true that the demand by Theseus for the return of the bodies is repeatedly presented to the opposing side in terms of compliance with accepted Panhellenic practices,70 which would subsume the entire operation into the realm of intergovernmental relations. This interpretation de-emphasizes the appeals to piety which ultimately convinced Theseus to act and seems to be at odds with what must have been the popular belief that the proper burial of the dead was mandated by the gods, not by man.71

At some point in the 5th century, possibly in emulation of Cimon’s great public relations coup of ‘recovering’ the bones of Theseus, Athens’ mythical founding hero who had died some 400 years previously,72 and bringing them back from Skyros with great pomp and ceremony, it had become the custom to honour those who had fallen in war by staging an elaborate public funeral. 73 The warriors were cremated abroad and their remains returned to Athens and

68 Euripides, Suppliant Women ll. 563.
69 Conacher, pp. 15-16.
71 See Isocrates, Panathenaikos 169; the same story is recounted using the terminology palaion ethos (ancient custom) and patrion nomon (ancestral law), stressing that it is prescribed by divine powers rather than instituted by human nature.
72 Plutarch, Theseus 36.1-2, Cimon 8.5-6; Munn, p. 36. Mikalson (2005, p. 40) appropriately sceptical, posits that these were remains of some warrior or other that could be found in one of the many large, vaulted Bronze Age tombs that were scattered in the Greek countryside. But what mattered was that the Athenians bought the story. Hornblower (p. 175) notes that in the account of the taking of Skyros (1.98.2), Thucydides omits any mention of the recovery of Theseus’ bones.
73 According to Munn (p. 358, n. 61) the practice is dated variously from 479 to 458. This might lead one to observe that Thucydides’ characterization of these funerals, only a few decades later, as being the custom of the Athenian ‘ancestors’ seems to stretch somewhat the concept that they were well established.
stored until the time of the collective service in their honour. Thucydides describes the details of how the bones of the dead were laid out for three days before the ceremony so that they could be honoured with offerings by friends and relatives, then placed in coffins in accordance to the tribe to which they belonged, and eventually entombed with all due solemnity in a public sepulchre in the most beautiful suburb of the city. Following the burial, “a man chosen by the state, of approved wisdom and eminent reputation,” pronounced the eulogy, bringing the proceedings to a close, but the heart of the oration was the glorification of the city that produced them, rather than the individuals who had sacrificed their lives. Through this particular contribution to the cult of the dead, the polis appropriated the war dead and made them its own forever.

As is clear from the foregoing, the central thread connecting the various aspects of Athenian burial practices was the overarching importance of possessing the physical remains in some form or other, for they served as both the focus and the locus of memorial veneration. This, I think, is an important key to gaining further insight into the underlying causes of the hysterical atmosphere that led to the summary execution of the Arginusae generals.

Naval warfare must, by 406, have become a very familiar activity to many of those who attended the Assembly. The range and quantity of nautical imagery in the tragedies and comedies suggests that these figures of speech would have lost their dramatic impact and been pointless if the Athenian public had not had a fairly sophisticated understanding of what it was all about. Triremes ramming each other led to bone-crushing injuries, hence many of those below deck may well have been wounded or killed. In addition, it is likely that many of them were not strong swimmers and after exerting themselves to manoeuvre the ships in an

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74 Munn, p. 36.
75 These took place “whenever the occasion arose”, which implies that these events were not held on a fixed schedule (Thucydides 2.34.7).
76 Allison (p. 15) observes that the rational power of the polis reflected in the nomos of the burial of the war dead and the oration associated with this ritual stands in sharp contrast with the anomia of the chaotic disposal of bodies during the plague described so vividly by Thucydides.
77 Thucydides 2.34.6.
78 Osborne, 1994, p. 3.
79 Thucydides, at 2.34.3, mentions the exceptional case of the war dead whose remains could not be recovered and for whom a symbolic empty bier was provided at the state funeral.
intense battle, or already having suffered injuries, may have been too tired to try
to save themselves and simply have drowned. According to Xenophon, the
generals sailed first to Arginusae to confer and then decided to send a number of
ships back to pick up survivors. As such an operation would only have been truly
effective if mounted immediately, especially with a storm already starting, it
seems logical that whoever was in the water would have had to be rescued right
away. Furthermore, the rebellion of the sailors points to the notion that they were
being asked to risk their own lives for the sake of dead corpses. Except under the
most adverse weather conditions, the sailors would surely have preserved enough
shreds of their own humanity to try to save men who would otherwise drown.
Consequently, it seems more plausible that what was at stake in the immediate
wake of the battle was the recovery of bodies, as per the account of Diodorus
Siculus. Even so, this was no minor issue to a population already emotionally
fragile from a long, and seemingly unending, war and could well have aroused
uncontrollable feelings against those they held accountable.

The timing of the trial might also have exacerbated feelings of loss and
mourning. In the interval between the initial meeting of the Assembly and the
decision to find the generals guilty, Athens celebrated the Apaturia, a solemn
three-day festival which was dedicated to kinship and at which the names of
children born since the previous festival were inscribed by their fathers on the
*phratry* register of legitimate citizens. It takes little imagination to see how this
could have worked as an intense emotional trigger to unleash and nourish a sense
of bereavement and outrage at being unable to find release and bring closure
through the prescribed rituals of burial. There seems to be little reason to doubt
that the crowds in attendance at the Assembly were genuine relatives, rather than
others bribed by Theramenes to masquerade as such in order to prop up the case
against the generals.81

81 See Lang, 1992, pp. 273-274. Grote (quoted by Lang, p. 274, fn. 19) considers the scenario most
improbable seeing as the deceased Athenian citizens would have been well known to their actual
survivors who would immediately have spotted the phonies. Furthermore, they would have had to
shave their heads and thus expose themselves as frauds until it grew in again. One could imagine,
however, that it would not have been difficult to play on the emotions of the relatives in order to
exacerbate their anger and engineer a show of outrage at the Assembly.
At the level of the *polis*, the absence of the bodies of the sailors also had relevance. Their bones had not been gathered to be honoured by the public funeral rituals and, in a sense, this meant that the city had been deprived of something that belonged to it. For many these tragic circumstances must have served as a painful reminder of the disastrous Sicilian expedition, another inglorious occasion when the Athenians had abandoned corpses in the sea. Following the crushing defeat in the naval battle at Syracuse in 413, the Athenians had been so overwhelmed by the misfortunes that had befallen them that they did not even think of asking leave from the Spartans to take up their dead or their wrecks, but thought only of retreating.\(^8^2\) Even more shamefully, those who survived had later left bodies unburied on land and abandoned wounded comrades in an unheroic and humiliating scramble to save their own lives.\(^8^3\)

In the case of the Arginusae generals an immensely complicated set of social factors overlapped and influenced the *plēthos*, whose votes were ultimately responsible for the outcome. But there may be grounds for singling out the strong feelings of piety associated with the recovery of bodies and performance of funeral rites as the catalyst\(^8^4\) that drove their intense reactions and led to the hasty, and most probably unwarranted and illegal, decision to execute six individuals who had been doing their utmost to serve the citizenry under difficult circumstances. The subsequent decision to prosecute those who had brought the proposals against the generals to the Assembly was a tacit admission that the proceedings had been irregular at best and that there had been a miscarriage of justice.\(^8^5\) But the *dēmos* itself, ultimately responsible for the impetuosity of its actions, was not, and would not, be held accountable for them and had instead

\(^{8^2}\) Thucydides 7.72.2.
\(^{8^3}\) Thucydides 7.75.
\(^{8^4}\) It seems that the way the affair unfolded had violated the customary understanding of the overarching fundamental system of laws and the actions of the generals could, therefore, be interpreted by analogy with *hybris* as an abuse of authority, directed at the collective *dēmos*, rather than as a crime against an individual.
\(^{8^5}\) As Carawan (2007, pp. 19, 21, 53) points out though, what had made the proceedings *paranomōn* is not exactly clear as there was no formal prescription for ‘due process’, nor any general statute guaranteeing each citizen the right to trial by a properly constituted jury.
found a few scapegoats and prosecuted them. In the heat of the moment, the people had been cowed into submission by the threat of violence, and had, in a sense, violated their own constitution.
CHAPTER VIII
IN THE WAKE OF THE OLIGARCHIES:
THE TRIALS OF ANDOCIDES AND SOCRATES

The last of the accusations of impiety associated with the second half of the 5th century, those against Andocides and Socrates, were lodged just after it ended in 400/399. In order to gain a better understanding of them, it is helpful to set them in the context of the actions of a number of prominent Athenians and of a series of events that humiliated Athens militarily and, on two occasions, temporarily overthrew the popular democracy. Partly as a consequence of the latter, an amnesty of past misdeeds was declared and a scrutiny of the laws was undertaken. All of these factors played a major role in the timing and the nature of these two important trials.

The story starts with Alcibiades, who was closely associated Socrates, and the consequences of the Sicilian expedition. Because of the religious scandals of 415 and the related accusations and indictments, this military undertaking was deprived of the services of Alcibiades, whose abilities as a commander, strategist, and leader were second to none.¹ Regrettably, his genius as a general was not matched by any binding loyalties, other than to his own survival. While he was able, time after time, to exploit his considerable personal charm and an aristocratic network of xenia connections to seek asylum, he also betrayed virtually anyone who trusted him.² Although he finally returned to Athens in about 407, after having been pardoned some three years earlier, he was soon in exile again and was eventually murdered in Asia Minor, probably on the orders of

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¹ In attestation of this, one has only to read Plutarch’s account in Alcibiades 24-37; one cannot help but be impressed by his skill in reading the enemy, in controlling the troops under his command, and in extricating himself from danger by adroit, and often amoral, political machinations.

² Herman (p. 149) notes that even though armies went to war, xenoi operated behind the scenes in pursuit of their individualistic interests; he thinks it was Alcibiades’ xenos, Endius, who secured his admission to Sparta after he was summoned back from Sicily to stand trial in 415. For the way in which he, without scruples, gave key military advice to Sparta upon fleeing from the Athenians, see Thucydides 6.89–92.
the Spartans, in 405. Nevertheless, over the course of a decade, his successive tergiversations from Athens to Sparta to Persia, and back again, with stints as an independent warlord, left an almost uniformly glorious trail of victories in his wake. The Athenians came to realize, too late, that of all their past errors and follies, their second outburst against Alcibiades had been their greatest mistake; they were infinitely better off when he was fighting on their side. They might also have allowed that had it not been for the simmering tension between the democrats and the oligarchs that magnified incidents that had all the characteristics of irreverent pranks into a major crisis, Alcibiades might never have abandoned the cause of Athens in the first place. As soon as he did, however, his treasonous conduct sealed the fate of the Sicilian expedition, led to disastrous losses of life and materiel for the Athenians, and was the turning point that led eventually to the loss of the Peloponnesian War.

While war was being waged outside the walls of Athens, a political crisis was brewing within. Following the rout of the Athenians in Sicily, the Peloponnesian forces benefited from the unprincipled collaboration of Alcibiades who knew exactly how best to inflict losses on his homeland. By 412 he had helped to put them in a position to secure financial help and an alliance with the Persians which bound them to fight on the side of Sparta against Athens. Spartan successes led to more rounds of fighting, with Athens facing open revolt from a number of its Ionian allies who, aided and abetted by Sparta, saw the weakened condition of Athens as a golden opportunity to regain their independence. That was not to be the end of the trouble, however, as those within the polis who had been looking for a means to rid themselves of the popular democracy also saw this as their chance to undertake a little

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3 It is interesting to note that Critias, of whom more later, was instrumental in the decree recalling Alcibiades in 411 and then seems to have been the one who persuaded the Spartans to have him killed (Plutarch, Alcibiades 33, 38). Double-dealing was clearly not the exclusive province of the brilliant general. See also Plutarch, Alcibiades 39, for two conflicting stories about his demise.
4 Plutarch, Alcibiades 38.
5 After the Sicilian disaster the Athenians were “themselves no longer denying the thoroughly desperate state of their affairs” (Thucydides 8.24.5). The polis was weakened to the point that “after its late misfortunes the city could hardly be justified in voluntarily taking the offensive even with the strongest force, except in a case of absolute necessity” (Thucydides 8.27.3).
6 Thucydides 8.17-18, 8.37.
7 For details of the fighting, see Thucydides 8.19-44.
constitutional reform. Over the objections of the Eumolpids and the Kerykes, Peisander, formerly a populist demagogue, together with Antiphon, Phrynichus, and Theramenes, eventually persuaded the Assembly that they could gain the favour of the King of Persia if they modified their form of government and recalled Alcibiades. By the use of intimidation, selective assassination, and recourse to subterfuge, those who favoured oligarchy had a decree passed in the Assembly that removed the safeguards to the constitution by suspending *graphē paranomōn* and *eisangelia* and making their attempted use a capital offence. Once this was in place, the Four Hundred, as the conspirators came to be known, were able, for all practical purposes, to dismiss the established channels of government and usurp absolute rule for themselves. While there was nominally an Assembly composed of the five thousand men who were most able to serve Athens with their persons and their purse, effectively the hoplite class and above, they were appointed in name only and did not meet.

Part of the reason for the seeming ease with which the oligarchs overthrew the existing form of government can be attributed to the care the conspirators took to overlay their actions with a veneer of legality and to the feeling of helplessness that overcame the populace because they had no way of knowing the size of the conspiracy – Athens was so large that there was a tendency for people to be swept along with events pell-mell as in a flood. More importantly, the composition of the Assembly that acquiesced to this very hostile take-over was abnormal. It was, in several ways, stacked in favour of the wealthy. The meeting was held outside the city walls at the Temple of Poseidon Hippios, a place sacred to the *hippeis* (knights), where the unarmed poor would have been hesitant to

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8 Alcibiades was not actually recalled immediately and arrived back in Athens only later. See Aristotle, *The Athenian Constitution* 32.2, for names the leaders of the oligarchic movement. Peisander had been one of those who most vigorously pressed for prosecuting those who had parodied the Mysteries, proposing a decree to reward informants (Andocides, *On the Mysteries* 1.27). Although Peisander was the more public figure and ostensibly the ring-leader, it was Antiphon who masterminded the necessary legal manoeuvres required to change the constitution (Thucydides 8.68).

9 Most of those who did attend the Assembly were afraid to say a word in opposition, as those who did were “promptly put to death in some convenient fashion” and no attempt was made to find their murderers (Thucydides 8.66.2).

10 The intricate series of steps by which this was accomplished are outlined in Aristotle, *The Athenian Constitution* 29-33 and in Thucydides 8.65-70.

venture. Because the fleet, which was manned largely by *thetes*, the lowest economic class, was away at Samos, ordinary people would have been under-represented. Those who attended were disproportionately the well-off and they were able to vote, with relative impunity, to eliminate pay for public service, which struck a blow at the pocketbook of those who depended on a modest stipend for attending the Assembly and acting as jurors.

The economic interests of the upper-classes lay in finding some way to ease the burden of the protracted war. After the Spartans on the advice of Alcibiades had fortified Decelea, located about twenty kilometres from Athens, they had kept a garrison there to harass the Attic countryside on a year-round basis. This deprived the Athenians of the proper use of their farmland, crops were ruined and domestic animals lost, access to the vital silver mines at Laurion was compromised, and trade routes were closed. Furthermore, in the course of this second phase of the Peloponnesian War, more than 20,000 slaves escaped to Decelea, many of them artisans. In order to reduce the devastating effect that the enemy’s control of its hinterland was having on Athens and to boost morale, the cavalry was called on to ride out daily in an effort to mitigate the impact on the city. Like the hoplites and the rowers, the *hippeis* served the *polis* with their bodies, but in addition shouldered the cost of maintaining horses that were both over-worked and injured by enemy action. In fairness, one should note that those who favoured the oligarchy were also politically motivated. At the hands of the democracy, many of them had suffered *atimia* (loss of civic rights), had their property confiscated, or been subjected to other severe forms of punishment, for not fulfilling their duties properly or not passing scrutiny after a term of office.

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12 Ostwald, pp. 373–374. Furley (p. 91, fn. 62; quoting Robert Neil in *The Knights of Aristophanes*, p. 83) notes that the notoriously oligarchic *hippeis* seem to have resented Athena’s supremacy and had a preference for Poseidon as the champion of the aristocracy.

13 Aristotle, *The Athenian Constitution* 29.5; Thucydides 8.67.3.

14 Thucydides 6.91.6–7, 7.27.

15 Thucydides 7.27.5.

16 Spence (p. 107) maintains that the *hippeis* also were subject to levies for the maintenance and equipment of triremes and the *eisphora* (special tax), *contra* Christ( 2007, p. 54) who states that up until the reforms of 378/377 only the conspicuously wealthy were responsible for these costs.

17 This argument in favour of a balanced view is presented in Lysias, *On Overthrowing the Democracy* 25.11. Consider, for example, the gravely ill Nicias’ decision not to retreat in Sicily because he was more afraid of the Athenian people and the accusations and trials which would
The most powerful citizens, therefore, had many incentives to try to wrest control of the government from the *dēmos* who were not above making capricious decisions and whom they blamed for the exuberant excesses of the Sicilian expedition and the dire straits in which Athens found itself.

Nevertheless, the regime of the Four Hundred was short-lived, lasting for only a few months. The *thetes* who were at Samos, led by Thrasyllus and Thrasybulus, constituted themselves as a sort of *polis* in exile, reaffirmed the democracy, re-elected Alcibiades to the position of general, and put all their affairs in his hands. Although Alcibiades chose not to return with the fleet to Athens and to pursue the war from the shores of Asia Minor, the situation in Athens became increasingly confused. One leading oligarch was assassinated, two others turned on their colleagues, panic and rumours abounded, and the hoplites led a peaceful, but determined, people’s revolt against the Four Hundred. When Athens shortly thereafter lost Euboea, a key ally, a development that was of greater consequence than the Peloponnesian control of the countryside, the two sides quelled their differences in the face of the renewed threat from Sparta. Fortunately bloodshed was averted; the authority of the Four Hundred evaporated and a government, called the hoplite democracy, which had popular support but seems to have been dominated by the Five Thousand, was installed.

Within a few years, however, further disasters struck Athens. Virtually all of its once dominant fleet was destroyed at the battle of Aegospotami in 405, thousands of the Athenians who were taken prisoner were executed, and the besieged city was starved into capitulation by Sparta in March 404. Although the terms of the peace were that the city should be governed under its traditional constitution and the democrats sought to do so, those with oligarchic sentiments

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18 Thucydides 8.81-82.
19 Thucydides 8.92-93.
21 An account of the unravelling of the oligarchy is found interspersed with the war narrative in Thucydides 8.92-98. Ostwald (pp. 395-397) explains that the details of how this intermediate form of government worked are not well known.
22 Xenophon, *Hellenica* 2.1.20-2.23.
had other plans. At the urging of Theramenes, who had been instrumental both in the setting up and the dismantling of the regime of the Four Hundred and had probably arranged for the presence of the Spartan general, Lysander, the Assembly voted six months later to hand over power to a hand-picked group, known as the Thirty, who were to frame the laws for a new constitution. This they failed to do, and instead started to govern as they saw fit. While at first they had the support of the people because they put sycophants and other undesirable elements on trial for their lives, things quickly changed for the worse and a true reign of terror ensued. As soon as they had consolidated their position, with the support of a garrison supplied by Sparta, they callously put to death those who were outstanding for their wealth, birth, or reputation, eliminating those who might oppose them or whose assets they sought to acquire for state use or for themselves and sending many others fleeing into exile to escape a similar fate. A law was passed that allowed the Thirty to draw up a list of Three Thousand citizens who were deemed fit to participate in government and who could not be killed without the vote of the Council, but the fate of all others could be decided unilaterally by the Thirty. Even so, such trials were prejudiced because the members of the Council had to vote in such a way that the Thirty could see whether anyone was in favour of acquittal; only one person ever

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23 Aristotle singles out members of the hetaireia and those who had fled into exile after the overthrow of the Four Hundred as having been particularly eager supporters (The Athenian Constitution 34.3). Ostwald (p. 466) notes that such individuals would have borne deep-seated grudges against the democracy.

24 Aristotle, The Athenian Constitution 34.3; Lysias, Against Erastosthenes 12.70-76; Xenophon, Hellenica 2.3.211. Krentz (p. 50) stresses that the Thirty were elected and did not usurp power, but it is difficult to see how the Assembly could have resisted Spartan pressure, especially the coercion implied by the physical presence of Lysander, who was both brilliant and ruthless.


26 Aristotle, The Athenian Constitution 35.3; Xenophon, Hellenica 2.3.12-13. Giving high priority to the move against the sycophants, whose chief victims were the rich, was somewhat self-serving. Isocrates, who came from a wealthy family which was impoverished by the deeds of the Thirty, had first-hand knowledge of their rapacity (Plutarch, The Lives of the Ten Orators: Isocrates). In a speech delivered in about 404/403, Isocrates said that, at the time, it was more dangerous to be wealthy than to do wrong, for it was the custom of those in control of the city not to punish criminals, but to despoil the rich, regarding the criminals as trustworthy and the well-off as their enemies (Against Euthynus 21.12). The need for money with which to pay the Spartan garrison certainly loomed large in the program of selective annihilation and property confiscation; among those killed were Niceratus, the son of the late, wealthy Nicias, and sixty of the richest metics in Athens (Diodorus Siculus, Library 14.5.5-6).

28 Xenophon, Hellenica 2.3.51. Note, however, that an individual could be stricken from the list on the whim of a member of the Thirty, as was the case with Theramenes.
escaped conviction.\textsuperscript{29} Those excluded were forced out of the city and went either to Piraeus or into the countryside.\textsuperscript{30} It is reported that, within a space of about eight months, the oligarchs had killed at least 1,500 citizens, by conservative estimates about five percent of the population, as well as many metics.\textsuperscript{31} Consequently, most Athenians must have been acutely aware of the losses – having either family members, friends, associates, or neighbours who fell victim.\textsuperscript{32} Of the Thirty, the one who has gone down in history as the most prominent and the most extreme was Critias, who from the time he was a young man was closely associated with Socrates.\textsuperscript{33} He took a completely cavalier attitude toward human life, reportedly cold-bloodedly telling the Council that if more people were being put to death than seemed to be warranted by the situation, that was to be expected during periods of revolution.\textsuperscript{34}

As in 411/410, the leader of the move against the oligarchy was again Thrasybulus, who was in exile. With a party of seventy men, many of them mercenaries, he seized the Attic fortress at Phyle, about sixteen kilometres from the Acropolis, and proceeded to attract followers to the cause, eventually also gaining control of Piraeus, the vital Athenian seaport, where many of those who had been excluded from the register of the Three Thousand had taken up

\textsuperscript{29} Lysias, \textit{Against Agoratus} 13.37-38.
\textsuperscript{30} Krentz (p. 66) considers the exclusion to have been driven by a pragmatic decision based on economic and political necessity. With the loss of the navy at the end of the war, the oligarchs wanted to lessen the power of the \textit{thetes} by removing them from the Assembly and to re-emphasize the role of agriculture by compelling those who were forced out of the urban area to live on farms, either by buying land or becoming hired hands, thus increasing food production.
\textsuperscript{31} Aristotle, \textit{The Athenian Constitution} 35.4; Xenophon, \textit{Hellenica} 2.3.14, 2.4.21. Wolpert (pp. 22, 152, fn. 68) cites total population estimates that range from about 15,000 to 30,000. Lysias, in \textit{Against Erastosthenes} 12.96, makes a point of showing the Thirty as not only murderous, but also impious, in that they forcibly seized victims who had sought sanctuary in shrines and denied them the customary funeral rites. They believed “that their own authority was more powerful than the gods’ vengeance.” The herald of those initiated in the Eleusinian Mysteries says that the Thirty have killed more than all the Peloponnesians did in almost ten years of war (Xenophon, \textit{Hellenica} 2.4.21). But this statement must have been intended for dramatic effect as the herald is trying desperately to prevail on the Athenians to stop fighting against each other, which he called a sin against the fatherland. Among the victims of the Thirty was Theramenes, who had become insufficiently co-operative and was executed, after a farcical hearing, on the orders of Critias (Xenophon, \textit{Hellenica} 2.3.15-56). Although he knew that he could not save himself he took refuge at the altar of Hestia, in that way implicating his murderers in an act of impiety by dragging him forcibly from his place of refuge (Diodorus Siculus, \textit{Library} 14.4.7).
\textsuperscript{32} Wolpert, p. 22.
\textsuperscript{33} Ostwald, pp. 461-463. Critias was also the cousin of Plato, a fact that he glosses over, referring to Critias simply as a ‘connection of mine’ (Plato, \textit{Letters} 7.324d).
\textsuperscript{34} Xenophon, \textit{Hellenica} 2.3.24.
residence.\textsuperscript{35} Benefiting from a certain degree of dissension in the Spartan hierarchy and from the cowardly behaviour of the oligarchs who had fled to the bolt-hole which they had prepared for themselves at Eleusis, Thrasybulus was able to put an end to the “savagery and wickedness” of the Thirty.\textsuperscript{36} What happened next was a concerted effort to put an end to internal strife. Not only was peace concluded with Sparta, but the warring factions – those who had remained in Athens under the Thirty and the democrats who had come back to restore the constitution – were reconciled.\textsuperscript{37} Eleusis was maintained as an autonomous sanctuary for those who had remained in Athens during the oligarchy or had participated therein, but they were banned from re-entering the city.\textsuperscript{38} An amnesty was effected that reflected the collective interest of both sides in laying to rest a sharply partisan conflict that was tearing Athens apart; no one was to be prosecuted on the basis of an act committed prior to the date on which the amnesty was enacted, even if it contravened a law currently in effect.\textsuperscript{39} Oaths were sworn that bound all to live in harmony as fellow-citizens, which implies that it was an absolute curb on pursuing vendettas, whether by legal or by violent

\textsuperscript{35} Diodorus Siculus, \textit{Library} 14.32.4-6. Whether these individuals were in Piraeus voluntarily or under compulsion, they were naturally only too eager to seek a restoration, if not of outright democracy, at least of a government controlled by reasonable individuals.

\textsuperscript{36} For a full account, see Xenophon, \textit{Hellenica} 2.4. The descriptors are from Aristotle, \textit{The Athenian Constitution} 37.2.

\textsuperscript{37} This all happened at the prompting of Pausanias, the king of Sparta (Aristotle, \textit{The Athenian Constitution} 38.4). Ostwald (pp. 497-498) thinks that the order of Aristotle’s terminology of a “peace settlement and reconciliation” should probably be reversed as the internal settlement would have been a precondition for a peace treaty; the Spartans would have required a defined partner with whom to negotiate.

\textsuperscript{38} Aristotle, \textit{The Athenian Constitution} 39.1-4. Trouble with Eleusis broke out in 401, however, and the Athenians, having heard that the exiles were raising an army of mercenaries marched against them and killed their generals; at that point those who remained were finally reconciled with the \textit{polis} (Xenophon, \textit{Hellenica} 2.4.43).

\textsuperscript{39} Joyce, pp. 512, 517. Robb (1993, p. 104, fn. 22) refers to the amnesty as wiping the slate clean, but it seems clear that it fell somewhat short of such sweeping simplicity. Krentz (pp. 107-108) notes that the amnesty is sometimes erroneously referred to as a law or a decree, which it technically was not; it was never passed at an official meeting of the Assembly and near-contemporary writers use the terms \textit{dyaliseis} (reconciliation) and \textit{synthēkai} (terms of agreement). As Joyce points out (p. 514) the oath was not about the rights of those who had been expelled or had fled, but about protecting those who had remained in Athens from the vengeance of the victors. So in a sense, Sparta was using its political muscle to soften the blow for those whom it had been supporting. Any consideration of the precise meaning of the amnesty is made considerably more complex by reference to the decree of Patrocleides in 405, which restored rights to those who had already been penalized with a sentence of \textit{atimia}, but seemingly did not preclude normal actions against crimes that had not been redressed. For discussions focussing on this aspect, see Joyce and Carawan, 2002.
means. The only exceptions were the crimes of the past committed by a total of sixty-one people: the Thirty, the Ten, the Eleven, and the ten governors of Piraeus, and not even those if they submitted to a dokimasia (scrutiny on leaving office) and were found to have conducted themselves properly. Indictments for homicide were permitted only against those who had killed others with their own hands. It seems that, almost without exception, the amnesty was honoured, no doubt because what went before had been so terrible that it had caused men within a short time to look back on the past government as a golden age.

One positive side-effect of the two oligarchies should also be noted, as it was a particularly germane factor in the trial of Andocides. In 411, the Four Hundred were anxious to consolidate their power by returning to an ‘ancestral’, less democratic constitution and in order to facilitate this they passed a decree appointing a group of syngrapheis to draft a new constitution. After their overthrow, it seems that there was uncertainty about the exact nature of the legal landscape. Since the time of Draco in 621/620 and Solon in 594/593, terminology had evolved and the Assembly had passed a multitude of decrees, which had the effect of laws, even though they may have been promulgated in a rather haphazard way. At the time they were scattered all over Athens in a variety forms: inscribed on axones and kyrbeis, engraved on marble and bronze

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40 Xenophon, Hellenica 2.4.43; Joyce, p. 512.
41 Aristotle, The Athenian Constitution 39.5-6. It seems that the Ten refers to the individuals who took over the government of Athens when the Thirty fled to Eleusis; although they had a mandate to end the war, they too set themselves up as tyrants (Diodorus Siculus, Library 14.33.5). The Eleven and the ten in Piraeus were concerned with the more mundane matters of the market and municipal administration, while the Thirty had ruled as tyrants (Plato, Letters 7.324c). Note, however, that after the overthrow of the Four Hundred, the hoplite democracy had relentlessly prosecuted and executed many of the extremist leaders of the oligarchy (Ostwald, p. 401ff.). Without disparaging unduly the reconciliation of 403, it seems to me, therefore, that this aspect of the amnesty of 403 was not nearly as substantially different from what had transpired previously as it has been made out to be, even though Ostwald (p. 497) describes it as “one of the most inspiring episodes of Athenian history, if not even in human history.”
42 Aristotle, The Athenian Constitution 40.2; Plato, Letters 7.324d.
43 Aristotle, The Athenian Constitution 29.2-3; Sickinger, pp. 94-95. The watchword was patrios politeia which could be used to mean anything the speaker wanted it to mean, but which was an attempt to legitimize an undertaking by linking it with a hallowed past. It was used so extensively as a slogan by the two oligarchies that later generations resorted to paraphrases; in the case of the restored democracy, it was patrios nomos (Hansen, 1999, pp. 296-297; Saxonhouse, p. 46).
44 Ostwald, p. 410. See Lysias, Against Theomnesteus 10.16-19, in which the speaker takes great delight in pointing out the confusion that arises from trying to follow the letter of the law.
tablets, and so on.\textsuperscript{45} It is not known what records were kept in the 6\textsuperscript{th} century and up to the time when the office of state secretary was instituted in the middle of the next. That office holder was charged with keeping the official written archives of the Council, but it is likely that they lacked organization and complete accuracy.\textsuperscript{46} This disorganization may have provided the impetus for the restored democracy to appoint a board of anagrapheis (recorders) to undertake a compilation and reinscription of all the laws, with a view to producing a full and reliable collection of texts that would foster legal consistency.\textsuperscript{47} One of those involved, Nicomachus, was subsequently accused of having published some laws and erased others, taking upon himself the role of lawmaker, which indicates that the task was one of synthesis rather than mere passive copying.\textsuperscript{48} Although the work was interrupted in 404/403, the Athenians once again voted to continue the project to make laws publicly accessible, with an even more formal review of, and approval process for, those that were still valid.\textsuperscript{49} It was an over-riding principle that the democracy distinguished itself from a tyranny or an oligarchy by the rule of established laws, rather than the whim of those in power, and that the written laws were the common possession of all the people. Specific procedures were incorporated into the constitution to ensure that the decisions of the Assembly did not contravene existing laws, an effort to preclude any future attempt to use

\textsuperscript{45} Ostwald, p. 410. According to Sickinger (pp. 26-27) it is difficult to determine the exact nature of the axones and the kyrbeis. Seemingly, the laws of Solon were originally inscribed on axones, rectangular wooden boards set on a rotating axle. The kyrbeis were apparently found in more public places and were probably upright stone pillars, with laws, primarily pertaining to religion, inscribed on them. He posits that the Athenians may have reserved publication on stone and bronze for sacred laws.

\textsuperscript{46} Sickinger, pp. 74, 95, 97. In the fifty years between 460 and 410 alone, some 500 individuals had served as state secretaries, which must, inevitably, have added to the confusion.

\textsuperscript{47} Lanni (p. 144) construes the task as more of a review that resulted in an actual legal code, while Robertson (p. 45) dismisses talk of a law code as reflecting the preoccupation of modern scholars and their preference for tidiness and thoroughness; he considers this to have been a largely clerical function.

\textsuperscript{48} Lysias, Against Nicomachus 30.2,4; Robb, 1994, p. 142. Incidentally, Robb notes that Nicomachus was not found guilty and passed his scrutiny when he left office.

\textsuperscript{49} Andocides, On the Mysteries 1.83,84, outlines the decree of Teisamenus which proposed how the work was to be completed and approved. For discussion, on the origin and procedures for the nomothesia (review of proposed laws) and the functions of the board of nomothenai (lawmakers) which are not entirely clear, see Lanni, p. 145; MacDowell, 1962, pp. 195-199; Robertson; Sinclair, pp. 83-84. Sickinger (p. 99) notes that the work on secular laws seems to have been completed in the first phase and that the second phase was devoted largely to the production of a sacrificial calendar.
this body to overthrow itself by a snap vote or at a single meeting stacked with opponents of the democracy.  

With the scrutiny of the law code completed and the normal administrative bodies of the polis restored, trials were once more conducted in accordance with recognized procedures and heard before large panels of jurors. Included amongst them were two, held within months of each other in 400/399, that constitute the final, and essential, components in the consideration of accusations of asebeia undertaken in this thesis. For the convoluted case of Andocides, who was ultimately acquitted, we are fortunate to have both his defence speech and that of one of his accusers, a rarity in the study of Greek law. For the infamous trial of Socrates, who was convicted, we can refer to the extensive reconstructions of his defence written somewhat after the fact by Plato and Xenophon.  

As these cases, particularly the latter, have been examined in minute detail by an army of scholars who have devoted entire lifetimes to this research, it is not possible to try to touch on all aspects of the trials. I will concentrate primarily on the way in which the concept of impiety could be shaped, within the parameters of the legal system, to fit the purposes of the prosecutors and the social factors that might have assisted them in so doing.

Andocides was born c. 440 and was a relatively young man in 415 at the time of the religious scandals. Literary and epigraphical evidence suggest that he, like all the others implicated in these incidents, belonged to the highest property class. Based on statements in his defence speech in 400 and on the public offices that he held which had religious duties, it is likely that he was a

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50 Saxonhouse, p. 46; Sinclair, p. 84.  
51 [Lysias] Against Andocides 6; Andocides On the Mysteries 1; Plato, Euthyphro, Apology, Crito, Phaedo; Xenophon, Socrates’ Defence. Given that the first two works are forensic speeches intended to sway a jury and that those concerning Socrates are written by his devoted disciples, they cannot be considered unbiased. There are many questions about the degree to which these works are both reliable and historically accurate; those of Plato are sometimes characterized as hagiographies.  
52 The autumn of 400 was the likeliest date for the trial of Andocides (MacDowell, 1962, pp. 204-205). Hence, it probably preceded that of Socrates, which is dated to the spring of 399, with his death taking place in April or May (White, p. 171, fn. 31).  
53 The speaker in [Lysias], Against Andocides 6.46 gives his age as about 40 at the time of his trial.  
54 Missiou, p. 23. This is corroborated by Andocides’ ownership of slaves and the ease with which he was able to take up a lucrative career as a shipping magnate (Andocides, On the Mysteries 1.64, On His Return 2.11,20; [Lysias], Against Andocides 6.48; Plutarch, Alcibiades 21).
member of the clan of the Kerykes, who were intimately connected with the Eleusinian Mysteries. If so, any involvement in impious activities could be made to look more meaningful because of assumptions about his family connections. What seem to be more securely attested are Andocides’ political leanings. According to Plutarch, he was generally considered to be an opponent of the democracy and to harbour oligarchic sympathies and had, supposedly, written a political pamphlet to try to stir up the hatred of the few against the people.

His journey to the courtroom in 400 started with the mutilation of the Herms some fifteen years earlier. Because the statue of Hermes standing outside his house was one of the very few in a prominent location that remained undamaged, Andocides naturally fell under suspicion. He was accused, possibly falsely, along with many others, and was imprisoned, as were twelve members of his family, including his father, Leogoras. Andocides was persuaded by a

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55 Re the role of the Kerykes, see Chapter VI. This clan claimed descent from Odysseus, and by extension from Hermes (Plutarch, *Alcibiades* 21). Whether this was even remotely plausible is less relevant in this context than that it may have been the popular perception and would, therefore, influence judgments about Andocides’ role in the mutilation of the Herms.

56 MacDowell (1962, p. 156) discusses the notion, but stops short of concluding that Andocides belonged to this clan. Furley (pp. 50-51) argues the case at length on the basis of Andocides’ statement that he initiated foreigners into the Mysteries (as a member of the Kerykes he would have been privileged to conduct preliminary initiation rites for individuals) and that he had easy access to the Athenian Eleusinion, an area with particularly strict security arrangements. Furley (pp. 58, 113-114) additionally points out that the fact that none of Andocides’ family was found culpable in either of the scandals might also be an indication that they were Kerykes, as does his intimate knowledge of the family affairs of Callias, one of his later accusers and himself a Keryx. See also Andocides, *On the Mysteries* 1.124-131.

57 Plutarch, *Alcibiades* 21, *Themistocles* 32. In the latter, Plutarch refers to the title of the pamphlet as *Address to his Associates*, presumably like-minded members of his hetaireia. A further indication is Andocides’ attempt to return to Athens from his self-imposed exile during the time of the Four Hundred, when no self-respecting supporter of the democracy would have entertained such a move. See also fn. 65 below.


59 Furley (p. 62) quotes Phrynichos fr. 58 to the effect that Diocleides, who denounced Andocides and the others, was perceived as a rogue. Seemingly after the interrogation of slaves had corroborated Andocides’ testimony, Diocleides confessed that the denunciation was an invention and tried to save himself by asking for exoneration in return for naming those who had put him up to it; he named them but was executed anyway (Andocides, *On the Mysteries* 1.64-65). In view of drastic repercussions of making and then recanting such grave accusations, it was not unnatural that Diocleides’ “perjury” was equated with treason and treated as a capital offence (Marr, p. 335, fn. 1).

60 In order to proceed somewhat expeditiously to the impiety trial itself, I intend to outline in what follows only the main points of the intervening events. The many twists and turns of how the accusations unfolded and how Andocides escaped direct punishment are to be found in Plutarch, *Alcibiades* 21; Thucydides 6.27-28, 6.60; Andocides, *On the Mysteries* 1.11-68, *On His Return* 2.7-9; [Lysias], *Against Andocides* 6.14,21-24,51. Todd (2000, pp. 63-64) expresses doubt
fellow prisoner to confess his part in the sacrilege in order to end the turmoil besetting Athens and to save the lives of his innocent relatives, especially that of his father, and did so in return for a grant of adeia (immunity from prosecution). Together with all those not implicated by him, he was then released, but this did not put an end to his troubles. A decree was proposed by Isotimides which excluded all those who had committed acts of impiety from entering the Agora and the sacred places. Its net effect was to subject him to a form of atimia, in essence excluding him from religious and civic life and, even

whether Against Andocides was actually written by Lysias, as it is too clumsy both in style and substance to have been composed by such an eminent logographer. Marr (p. 334, fn. 1) states that the authenticity of the speech which purports to be that of one of the accusers is not wholly beyond dispute; it may have been composed after the fact and circulated as a pamphlet by Andocides’ enemies. There has been extensive debate about the veracity and absolute accuracy of any and all of these accounts, a thorny issue which I intend to avoid, other than to note it. For example, MacDowell (1962) mistrusts the account presented by Thucydides and contends that Andocides was involved in the profanation of the Mysteries rather than the mutilation of the Herms, while Marr (pp. 326, 335) sees no reason to question the historian’s version and adds that Andocides’ story was accepted at the time. Furley (p. 57) comments acerbically that MacDowell maintains that he, separated from events by a chasm of time, is in a better position to evaluate them than Thucydides, who was a contemporary, but merely absent from Athens. One particularly vexed point is the extent to which Andocides, in On the Mysteries, distorts or misquotes laws and the effects of the scrutiny of the laws and the amnesty of 403. See especially Robertson (p. 62) who holds that “[i]t is astonishing that much of Andocides’ blague has been credited by scholars.” While being mindful of the doubts expressed, I will direct my attention to the use of the concept of piety within the legal setting, without attempting to ascertain the truthfulness of the arguments for both sides. For the sake of brevity, I will omit or minimize those issues of this extremely complex case that are tangential to the religious charges, such as the role of slave testimony, extortion attempts, and the question of the length of Andocides’ imprisonment.

61 It was a man called Timaeus who urged Andocides to inform on himself and a few others with a fabricated confession and in this way to rescue himself and many others from the fury of the people (Plutarch, Alcibiades 21). Andocides states that it was his cousin who prevailed upon him to do so to save members of the family, including his father (On the Mysteries 1.48©53). Had he not done so, he would have been indirectly responsible for his father’s death and patricide was, if not actual impiety, a closely allied crime. The wording used by Andocides in On His Return at 2.7-8 seems to indicate, however, that he had fallen into youthful error and was guilty. According to Andocides, the four whom he named, in addition to those who had already been identified by other informers, had all been allowed to return to Athens and had regained their property (On the Mysteries 1.53). Furley (p. 58) thinks that Andocides, who named some of his own slaves, tried to keep the amount of information he was passing on to the acceptable minimum that would satisfy the authorities. The case of Andocides’ father deserves special comment as it appears that he was accused of having been party to both sacrileges. Claiming to have been asleep at the house where the parody of the Mysteries was being enacted, Leogoras successfully lodged a graphē paranomōn against his prosecutor (Andocides, On the Mysteries 1.17©18). The case actually turned not on whether the decree was legal, but on a question of fact (Bauman, p. 95). Hence, the accusation from which Andocides was trying to rescue his father must have been for involvement in the mutilation of the Herms.

62 Andocides, On the Mysteries 1.8; [Lysias], Against Andocides 6.24-25. MacDowell (1962, p. 4) points out that it was obviously aimed at Andocides, as he was possibly the only man in Athens to whom it applied.
more importantly, leaving him without the means to defend his interests in court.  

As living under such restrictions was intolerable, Andocides chose to leave Athens voluntarily, set himself up in business as a shipper, and grew wealthy. Nevertheless, he longed to return to Athens and by generous benefactions tried on two occasions to curry sufficient favour to be pardoned. Neither attempt was successful and he remained in exile until the general amnesty of 403, which he, presumably, thought would afford him a sufficient measure of protection to take his chances as a resident of Athens. After his return to Athens, Andocides resumed a very high-profile public life. He fulfilled, with the support of the individuals who were later to bring him to trial, a number of religious and quasi-religious offices, namely that of gymnasiarchos (the official supervising athletic training and competitions), architheōros (leader of the Athenian delegation at the Isthmian and Olympic games), and treasurer of the sacred finances on the Acropolis. In addition, he attended meetings of the Council and gave advice on sacrifices, prayers, processions, and oracles, a further indication that his slate had been wiped clean. His demonstrated wealth, connections, and willingness to be

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63 The decree stopped just short of nullifying the adeia but would, more or less, have made any form of public life impossible. Furthermore, as the law courts were mostly located in the Agora, he would have been unable either to defend himself or to pursue anyone else in court. Given the nature of the Athenian legal system, he would have become a ‘soft target’ for anyone who wished to use the law for nefarious purposes.

64 Andocides, On the Mysteries 1.144-145, On His Return 2.11.20; [Lysias], Against Andocides 6.19.48.

65 Andocides, On His Return 2.11-15.21; [Lysias], Against Andocides 6.27,29. The first attempt was made in 411 during the time of the Four Hundred. To equip the navy, which was stationed at Samos, Andocides imported grain and bronze and acquired Macedonian timber for oar-spars which he sold at cost. Unfortunately, his arrival in Athens coincided with the democratic revolt of the thetes and the oligarchic leader, Peisander, construing his intended benefaction as a hostile act, or possibly reflecting the odium directed at Andocides by those affected by his having turned ‘state’s witness’ in 415, imprisoned him. He seems to have been released after the fall of the oligarchy and returned to exile. The second attempt took place sometime between 410 and 405, at which time he personally pleaded with the Assembly to reverse the decree of Isotimides. On this occasion he said that he had procured more than fourteen shiploads of grain for Athens, which must have been a valuable gift in a time of war and food shortages. It was, however, of no avail and he was forced to leave Athens again.

66 Todd (2000, p. 62, fn. 2) speculates that the care which Andocides takes to subsume the amnesty into a wider concept of reconciliation in On the Mysteries 1.171-191, is indicative that he was unsure whether it guaranteed him total immunity from prosecution for past events.

67 Andocides, On the Mysteries 1.132.

68 [Lysias], Against Andocides 6.33. The role of adviser would have presupposed a certain level of religious expertise, perhaps another clue that he might have been a Kerykes.
of service to Athens were all cards that Andocides kept in his hand and did not hesitate to play at his trial. Unfortunately, however, once liberated from the inability to litigate, Andocides had become embroiled in a series of lawsuits that, even if they were justified, seem to have been ill-considered given that he could not have been unaware of the contempt with which he was regarded, particularly in the circles of those who were in the habit of pursuing their ends by legal means. A mere ten days after his return, he instituted proceedings for impiety against Archippos for having desecrated his ancestral Herm. Although Archippos defended himself by saying that the statue was safe and intact, he settled the matter by paying off Andocides to drop the suit. He next antagonized a powerful cartel of tax-farmers who were led by Agyrrhius, a democratic politician and eventually one of his accusers. Because Andocides thought they were profiteering unscrupulously, he put together a rival consortium and underbid them, thereby managing to infuriate them, leaving them fearful of exposure, and vowing to put him out of the way, by any means possible. He also became entangled in a legal battle with Callias, the spendthrift heir to one of the greatest fortunes in Athens and a relation by marriage, over the question of who had the right to marry an epikleros (heiress), the daughter of one of Andocides’ maternal uncles.

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69 Andocides, On the Mysteries 1.149.
70 He managed to generate for himself “the enmity equivalent of the Perfect Storm” (Dillon, J., p. 177).
71 [Lysias], Against Andocides 6.11. It is not clear from the text whether this was Andocides’ Herm or the Herm belonging to Archippos, although logically it would be the former. MacDowell (1962, p. 211) finds evidence for identifying the defendant in the case with Archippos, the comic poet who was seemingly involved in the profanation of the Mysteries. He further notes that the lists of those denounced include names borne also by comic dramatists known to have been active in Athens after 402, but not between 415 and 404. It is not difficult to imagine why the high camp aspect of a religious parody would appeal to those who wrote for the stage and were already in the habit of including mock ceremonies in their work.
72 [Lysias], Against Andocides 6.12. Furley (p. 65) suspects that the damage was probably something less than mutilation; perhaps paint was daubed on its prominent appendage. Andocides may have won the case, but showed poor judgement in reviving memories of the happenings of 415 and exposing himself to accusations of sycophancy.
73 Andocides, On the Mysteries 1.133-136; Dillon, J., p. 177.
74 Andocides, On the Mysteries 1.117-122. The Athenian rules concerning the disposition of daughters who, in the absence of legitimate sons, inherited property were rigidly codified and very complex. For a full discussion of the order of precedence in matters of inheritance, see Harrison, Vol. I, pp. 143-149. See Clinton, pp. 49, 50, for a full list of sources re Callias. Callias was active in social circles and had lavished vast amounts of money entertaining sophists; for
Callias had indulged in a series of rather colourful marital escapades and was interested in finding a wife for his son, who may or may not have been illegitimate, or even of living with the heiress himself.\textsuperscript{75} Andocides claims that because he ended up with her, Callias masterminded a lawsuit against him in order to have him executed or driven again into exile.\textsuperscript{76} The latter supposedly bribed Cephisius with a sum of 1,000 drachmas to bring an indictment before the Basileus immediately on the conclusion of the celebration of the Eleusinian Mysteries. He charged that Andocides was guilty of asebeia because he had participated in the rites even though, as an impious person, he was debarred from so doing by the decree of Isotimides.\textsuperscript{77} When he realized that Andocides planned to fight the charge, Callias stepped up his pressure tactics. He announced that a suppliant’s branch was found on the altar of the Eleusinion, which the prosecution then claimed was placed there by Andocides. In his capacity as a member of the Kerykes, who acted as dadouxos (the torchbearer) at these rites, Callias had access to the sacred precincts and would have been in a position to discover this sacrilege.\textsuperscript{78} In addition, he approached three of Andocides’ friends to pass on a message that he would pay compensation to him and have the lawsuit withdrawn if he would give up the heiress.\textsuperscript{79}

Although Cephisius seems to have lodged the official complaint, he can be ruled out as the person delivering the rather inarticulate and unfocussed speech example, Plato’s dialogue Protagoras is set in his house. He was famous for his luxurious lifestyle, which was the source of much comment and parody, and over the course of his life dissipated the family fortune of two hundred talents, eventually reducing it to two.

\textsuperscript{75} Andocides, On the Mysteries 1.117-121,124-127. See Cox, pp. 41-45, for a full exposition on the relationships between Andocides and Callias and the latter’s marital arrangements.

\textsuperscript{76} Andocides, On the Mysteries 1.121.

\textsuperscript{77} Andocides, On the Mysteries 1.2,92-93,110-112. By pursuing this as a public case, which was the appropriate option, the prosecutors were, nevertheless, going out on a bit of a limb, in the sense that if fewer than a fifth of the jury’s votes were cast in favour of conviction, they were liable for a fine of 1,000 drachmas and loss of the right to bring similar cases in future. The legal procedure used against Andocides was an an endeixeis, a denunciation before an official against someone who had exercised rights to which he was not entitled; the penalty was, in some cases, fixed by the jury, varied, and could be a fine (MacDowell, 1978, pp. 64, 75). Andocides takes great liberties in stating that the penalty was total disenfranchisement, which would debar the individual from entering the temples on pain of death (On the Mysteries 1.33). This was embroidery for effect on his part, as Andocides had been asked neither to provide sureties, nor had he been incarcerated while awaiting trial; he could have fled if he had felt unsure of his chances.

\textsuperscript{78} As the officials of the Eleusinian Mysteries held office for life, it is possible that Callias was already the dadouxos in 415 when the parodies were performed (Clinton, p. 49).

\textsuperscript{79} Andocides, On the Mysteries 1.121. Callias was, in effect, trying to buy the woman for himself.
for the prosecution, as he is named in it. Andocides also benefited from a stroke of luck in that the five who were instrumental in bringing him before the courts were hardly in possession of unblemished reputations and were easy to discredit in the eyes of the jury. He had no difficulty in casting aspersions on their motives and besmirching their characters, standard tactics in the Athenian courtroom. In view of his recent encounters, already described, with Agyrrhius and Callias, Andocides could credibly lead the jury to believe that they were acting out of personal spite. While he was at it, he could amplify the baseness of Callias’ attempts to procure the heiress by ventilating the salacious details of his tumultuous love life, which involved, at one time, a ménage à trois with his then wife and her mother. Because Callias acted as dadouxos of the Eleusinian Mysteries, which specifically honoured the close attachments formed between a mother and her daughter, showing him to be, in his own life, a party to the violation of maternal bonds of affection was a direct way to arouse conservative religious sentiments in his audience, who were all initiates. He reminded the jurors that Cephisius, like Agyrrhius, was a powerful tax collector who had absconded with a great deal of money that should have been turned over to the state and then fled into exile, returning only after the Amnesty. His crimes were of such scope that even his fellow prosecutor undercut the case by stating that Cephisius was deserving of prosecution in his own right. This served as a reminder that the public treasury had been defrauded by one of his opponents and was another way to stir up anger against them. Andocides called Epichares ugly and accused him of sycophancy under the democracy, of having served on the Council during the time of the Thirty, and now of prostituting himself to anyone who would pay him. Meletus had been in Athens during the time of the

80 [Lysias], Against Andocides 6.42.
81 Andocides, On the Mysteries 1.124-127.
82 Andocides, On the Mysteries 1.31. As with the hearings concerning the profanation of the Mysteries in 415, this was a precaution to avoid revealing the secrets to those not initiated.
83 Andocides, On the Mysteries 1.92.
84 [Lysias], Against Andocides 6.42.
85 Andocides, On the Mysteries 1.95,99,100. Sycophancy was a true value-word; it denoted an ill-defined concept (like impiety), which was almost always used to denigrate the integrity of one’s opponent and was found in the company of a long catalogue of other words of ill repute including
Thirty and had carried out their orders to convey Leon of Salamis to the Eleven for summary execution. The defence amounted to a *tour de force* of denunciation that portrayed Andocides’ opponents in such a way that they appeared at once morally bankrupt, unethical, impious, and more worthy of condemnation than he was for his part in an event that occurred long ago.

The surviving prosecution speech is presumably one of a possible four and, for that reason, probably presents a less than full picture of their line of attack. One certainty is that the speaker was a member of the Eumolpid clan; he stated that his great-grandfather was a *hierophantēs*, possibly in order to stake a claim to being in a position to speak with authority in religious matters. The speech was an effort to undermine any claims to immunity that Andocides might put forward and introduced unsupported assertions intended to demonstrate the extent of Andocides’ impiety. A substantial proportion of it is devoted to transforming the present charge into a rehash of the actual events of 415, particularly by branding Andocides as complicit in both sacrileges, and claiming that he had confessed accordingly. At one point, the accuser goes so far as to state that he parodied the Mysteries using exactly the same story as that told of Alcibiades, which seems to be either ineptitude, faulty memory, or a deliberate

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86 Andocides, *On the Mysteries* 1.94. The identity of the Meletus of the Andocides trial is particularly intriguing, because an individual of the same name was also an accuser of Socrates, but attempts to shed light on it are speculative at best. MacDowell (1962, p. 208) identifies eight individuals in the sources with that name. Blumenthal (p. 170) states that the notion that some of them may refer to the same person is supported by the relatively infrequent occurrence of the name. Ostwald (p. 543) concludes that the ones denounced for the profanation of the Mysteries and the mutilation of the Herms are probably the same individual. Marr (p. 334, fn.1), with Blumenthal, notes that there is a strong temptation to equate the Meletus who accused Andocides with the one who accused Socrates, although the failure by Socrates to mention Meletus’ part in the arrest of Leon of Salamis argues against it, unless Meletus’ part in the affair is less clear-cut than Andocides would like the jury to believe. On the other hand, the accuser of Socrates is characterized by Plato (*Apology* 26c,d, 27c; *Euthyphro* 2c,d,3a) as a champion of traditional religious ideas, a descriptor which, at least on a superficial level, equally applies to the person making the speech for the prosecution against Andocides. Bauman (pp. 115-116) notes that the Meletus implicated in the sacrileges of 415 would have escaped death only by flight and there would be reason to believe that Meletus or his family would have been on the look-out ever since for an opportunity to take revenge on Andocides for his betrayal of the cause and his comrades.

87 [Lysias], *Against Andocides* 6.54.

88 [Lysias], *Against Andocides* 6.50-52. Furley (p. 105) speculates that his confession to a measure of guilt in the one sacrilege was sufficient for the prosecution to portray him as culpable of both.
attempt to mislead the audience.\textsuperscript{89} The defence speech, by way of contrast, had laid out a narrative of events, documented the relevant laws, and rebutted prosecution arguments. The accusations of the other speakers forced Andocides to talk at length about the sacrileges, but he strongly denied having had any involvement in the profanation of the Mysteries.\textsuperscript{90} As for the mutilation of the Herms, he also recounted the whole story and, although he admitted that he knew about the plan to carry this out, he again stated that he had not actually defaced any of the Herms and was not guilty of any impiety.\textsuperscript{91} In what follows, I will focus first on the legal claims and counterclaims about the actual indictment and then on those that appear to stretch the concept of what constituted \textit{asebeia}.

Since the primary charge against Andocides was that he had violated the terms of the decree of Isotimides, the trial needed to address whether it was still valid in view of the legal and political settlements that had taken place in the interval between 415 and 400.\textsuperscript{92} The prosecution says that Andocides would claim that he was protected by the agreements. \textsuperscript{93} By ‘agreements’ the prosecutors could have meant any or all of the decree of Patrocleides of 405, which had

\textsuperscript{89} [Lysias], \textit{Against Andocides} 6.51. See Plutarch, \textit{Alcibiades} 19, 22 for the original account.
\textsuperscript{90} Andocides, \textit{On the Mysteries} 1.11-29.
\textsuperscript{91} Andocides, \textit{On the Mysteries} 1.34-69. There is extensive discussion of the extent to which this claim is disingenuous. His defence can be characterized as an attempt to minimize the political aspect of the mutilation and present it as a student prank (Dillon, J., p. 173). According to Furley (pp. 52, 59), MacDowell (1962, pp. 173-174), and Marr (pp. 331-332), Andocides was probably guilty in some or all of the following senses: he was a member of the club that planned the vandalism and knew all about it; he had agreed to share in the crime and intended to do so; he absented himself with either a real or a feigned injury, whilst not necessarily distancing himself from the political motives of the group (if he was one of the Kerykes, who claimed descent from Hermes, his status might have caused him to think twice about desecrating a statue of his divine patron); he maintained silence about the affair despite the fact that it was seen as a portent of a much greater plot.
\textsuperscript{92} There is a great deal of modern scholarly disagreement and discussion on this subject, much of it centered on the accuracy of the laws quoted by Andocides and on how he interpreted them in support of his contentions. Perhaps one needs to bear in mind that an orator could not throw caution completely to the winds when citing laws, especially at this very juncture when they had recently been reinscribed and collected, lest someone charge him with \textit{graphē paranomōn}. Edward Cohen (p. xiii) concludes that even though Athenian forensic speeches were rhetorical contrivances that virtually always presented evidence tendentiously, the presuppositions underlying litigants’ claims were generally reliable since the presence of hundreds of jurors acted as a check on the assertions made. The case is examined in great detail in papers by Boegehold, Carawan (2002), and Joyce. In order not to get lost in a thicket of recondite parsings of whether these measures applied to Andocides and seeing as his situation appears to have been unique in more than one way, I will focus on how he presented his defence and tried to sway the jury.
\textsuperscript{93} [Lysias] \textit{Against Andocides} 6.37.
restored civil rights to certain groups of disenfranchised Athenians, the amnesty of 403, and the oath sworn by all citizens not to recall past misdeeds. In addition, Andocides would contend that in order to abide by the oath to forget past misdeeds the jurors would have to vote to acquit him. But the accusers maintain that these oaths applied only to those who had been in Athens and in Piraeus, respectively, during the oligarchy and Andocides was excluded because he had been in Cyprus at the time. Furthermore, the decree of *atimia* against Andocides was unique in the history of Athens and, if the Athenians wanted to uphold their ancestral laws, they would have to get rid of Andocides. Above all, the speaker quotes Pericles’ statement that in matters of impiety, not only the written laws, but also unwritten ones, according to which the Eumolpids had the sole right to expound on sacred laws, should apply.

What Andocides did to counter the prosecution was to launch into a barrage of skilfully worded legal arguments. His first claim is that the decree of Isotimides did not apply to him because he had neither committed impiety nor confessed to having done so. Here, he is being quite economical with the truth because he had come very close to an outright confession some years earlier when he addressed the Assembly to plead with them to annul the decree, but he probably counted on collective amnesia on this point. He adds that the decree had been annulled and later explains that it was no longer valid because the laws passed in connection with the scrutiny and reinscription of the laws stipulated that no decree of the Council or Assembly should prevail over a law and no law applying to an individual could be passed unless it was ratified by at least 6,000 citizens voting by secret ballot. Again it is not patently obvious that these laws

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94 The text of the decree is found in Andocides, *On the Mysteries* 1.77–79. Boegehold (p. 150, fn. 2) thinks that discrepancies between the inserted text of the decree and Andocides' references to it are sufficient to indicate that the version quoted is probably authentic, rather than a synthesis derived by an early editor of the manuscript. For a summary of the amnesties granted by the decree of Patrocleides, see Boegehold, p. 161.
95 [Lysias], *Against Andocides* 6.37. This appears to be an unusual interpretation of the oath.
96 [Lysias], *Against Andocides* 6.8,24–25. Presumably what the speaker meant by upholding the ancestral laws was the ability to ban impious individuals from public and religious places.
97 [Lysias], *Against Andocides* 6.10.
99 Andocides, *On His Return* 2.7–9.
100 Andocides, *On the Mysteries* 1.72,87,89.
applied directly to his situation because, even though they were to be in force from 403 onward, there was also a provision for maintaining all judgments and arbitrations rendered while the city was democratically governed, which it was in 415 when he was partially disenfranchised.\textsuperscript{101} Furthermore, while no one was under any illusion that the decree of Isotimides was not directed specifically at Andocides, it was worded in such a way that it was not, according to the letter of the law, \textit{ad hominem}.\textsuperscript{102} Another legal argument consists of a long exposition of the decree of Patroclides, without ever claiming that it specifically applied to him. Even though he was subject to specific limitations on his rights under an anonymous decree, that of Isotimides, he had not been found guilty in the course of a trial and so his name did not appear on any list. Hence, he was not technically covered by the decree of 405. The same problem about retroactivity would also affect the recently passed law that prohibited the use by officials, on any matter whatsoever, of laws that had not been inscribed.\textsuperscript{103} But by quoting it, Andocides would have been able to deal with the Eumolpids’ claim of being allowed to apply unwritten laws in matters of impiety by none too subtly playing on democratic sentiment that the sovereign power resided with the people.\textsuperscript{104} In his final legal salvo, as predicted by the prosecutor, he appeals to the conscience of his audience, reminding them that they had sworn to be reconciled and not to dredge up the past, so they should not violate their oaths in fact or in spirit.\textsuperscript{105} He reinforces this later by flattery, drawing their attention to the admiration that all of Greece has for the Athenians because they are generous and reasonable men who do not devote themselves to revenge for past deeds, a reputation that they should not cast away by making an ill-considered decision.\textsuperscript{106}

It seems that, at the time, a mood of forgiveness was being fostered in recognition of the need to start over in order to break the cycle of enmity that

\textsuperscript{101} Andocides, \textit{On the Mysteries} 1.87. What emerges in these provisos is a pattern by which the newly restored democracy sought to protect the core body of the laws from arbitrary tampering in the Assembly.

\textsuperscript{102} Robb, 1994, p. 143.

\textsuperscript{103} Andocides, \textit{On the Mysteries} 1.85.

\textsuperscript{104} Aristotle, \textit{The Athenian Constitution} 41.2.

\textsuperscript{105} Andocides, \textit{On the Mysteries} 1.90–91.

\textsuperscript{106} Andocides, \textit{On the Mysteries} 1.140.
infected public life. In a speech delivered at about the same time, it was stated that under the terms of the Amnesty, any who informed on, or denounced, any person or did any similar thing was explicitly exculpated.\textsuperscript{107} No matter that Callias had engineered an indictment based on Andocides’ recent participation in the Eleusinian Mysteries, the court presentation of the prosecutor worked against the charge because it dwelled on the past. Partly as a result of the peculiarities of his situation, Andocides could not fasten on any specific legal provision that would definitively put the decree of Isotimides and, with it, his present dilemma to rest. But he was able to capitalize on the zeitgeist, deploying the language of reconciliation, in tandem with an appeal to the rule of law, to create an atmosphere in which the indictment against him could be made to look intolerant and unreasonable when compared to the crimes committed under the Thirty that had been set aside.\textsuperscript{108} This allowed him to question, legitimately, why the prosecutors had chosen to indict him after he had been living in Athens for three years, performing religious functions, and pursuing the life of an engaged citizen without anyone’s objecting. His accusers were the very ones who had put him forward for liturgical offices and had passively allowed him to appear before the Council to discuss religious matters. They had suddenly started to worry that he was planning to play an active and highly political role in public life.\textsuperscript{109} Having shown his accusers as being themselves in a variety of ways guilty of impiety and corruption, he exposed them as hypocrites, motivated by personal greed, whose raking up of the past had all the hallmarks of sycophancy.\textsuperscript{110}

The subsidiary charge against Andocides was based on the rather obscure provision that he had placed a suppliant’s bough on the altar of the Eleusinion

\textsuperscript{107} Isocrates, \textit{Against Callimachus} 18.20, delivered in 402.
\textsuperscript{108} This has led to scholarly disdain of Andocides as inaccurate, untrustworthy, less than forthright, and using his oratory to obfuscate. See, for example, Seager and Andrewes (1961, p. 2) who says flatly that “Andocides is at all times a bad witness.” I note that distortion of facts was hardly rare in forensic oratory, ancient or modern. As a man on trial for his life, who had failed in the past to obtain forgiveness by outright benefaction, he had little to lose; he could not be in deeper trouble than he already was. He was probably trying to inveigle the audience into believing that he had immunity, but he was fairly cautious about making direct claims to this effect.
\textsuperscript{109} Andocides, \textit{On the Mysteries} 1.135; [Lysias], \textit{Against Andocides} 6.33. The accusers were particularly exercised that he had questioned public officials at their dokimasia and had given advice on religious matters.
\textsuperscript{110} Furley, p. 112. Harvey (p. 114) lists monetary motivation, raking up of the past, and false charges as among the characteristics of sycophancy.
during the celebration of the Mysteries, an act that was forbidden by law.\textsuperscript{111} The exact reasons for this being construed as impious are difficult to understand; it has been conjectured that it amounted to a disruption of the festival itself as it constituted a distraction that might annoy the two goddesses.\textsuperscript{112} Supplication \textit{per se} was a quasi-legal procedure that involved both divine and human law, subject to moral and legal standards, which had to meet several important tests. As far as divine law was concerned, the request had to be made by a person who was \textit{ennomos}, that is, eligible to make it, and it had to be \textit{ennoma}, meaning that it was made at the right time, in the right place, using the right gestures, and it had to be lawful.\textsuperscript{113} By the 5\textsuperscript{th} century, the \textit{polis} had taken over the outward regulation of supplication and a law to this effect was inscribed on a stele found in the Council chamber.\textsuperscript{114} Presumably, the prosecution held that Andocides was still under the restriction imposed on him by Isotimides, and broke the law doubly by approaching a public altar when he was \textit{atimos} and placing a suppliant’s bough on it while the festival was in progress.\textsuperscript{115} According to the traditional laws quoted by Callias at the preliminary hearing, the latter meant that Andocides should be put to death without trial.\textsuperscript{116} This caused Cephalus, one of the other attendees, to intervene, correcting Callias by referring to the stele, saying that the penalty was actually a fine of 1,000 drachmas and adding that Callias had no business interpreting sacred law as he was a member of the Kerykes, not a Eumolpid.\textsuperscript{117} Despite the far-fetched prosecution story that Andocides had placed the branch on the altar because he was in a daze induced by the goddesses in order to have him punished, Callias was unable to bring forward any witnesses to corroborate his story that someone had seen Andocides do the deed and suspicion was cast

\textsuperscript{111} Naiden, 2004, p. 74, 2006, p. 178. He points out that a supplicant’s bough was a symbol which allowed the individual to be seen from a distance and was, presumably, carried for protection.

\textsuperscript{112} Dillon, J., p. 181.

\textsuperscript{113} Naiden, 2004, pp. 72, 74, 80; 2006, pp. 177-178. A \textit{supplicandum} was not permitted to make a request that would grant him something that the laws of the \textit{polis} had denied him; the procedure was not there to overturn decisions made within the framework of the legal system (Naiden, 2004, p. 75).

\textsuperscript{114} Andocides, \textit{On the Mysteries} 1.116.

\textsuperscript{115} An individual who was disenfranchised was forbidden to approach any public altar (Naiden, 2006, p. 178).

\textsuperscript{116} Andocides, \textit{On the Mysteries} 1.115.

\textsuperscript{117} Andocides, \textit{On the Mysteries} 1.115-116. Cephalus later became a prominent democratic politician.
back on him. This probably stopped the subsidiary charge in its tracks but, by recounting it, Andocides was able to burnish his own legal credentials and show that his opponents did not know what they were talking about, had not even bothered to double-check the law before making a serious accusation, and had tried to frame him for good measure.\footnote{118}

In addition to the standard laundry list of warnings to the jurors that failure to punish a criminal would anger the gods, harm the \textit{polis}, and transfer impiety on to themselves, the prosecution produced a series of creative, or even truly novel, ways of interpreting the laws and attesting to the impiety of Andocides, an issue that was actually extraneous to the substance of the case.\footnote{119}

At one point, the prosecutor contends, quite correctly, that someone who had been found guilty of deliberately wounding an individual and been exiled was subject to \textit{endeïxis} (summary arrest) and execution if he dared to return.\footnote{120} By analogy, therefore, wounding the physical statues of the gods, the Herms, should merit an equivalent punishment.\footnote{121} Building on this theme, he goes on to say that it was more unholy for an Athenian to commit a crime in deeds (\textit{ergoi}) against the gods of his city, than for Diagoras, a foreigner, to commit a crime in words (\textit{logoi}) against gods that were not those of his \textit{polis}. Consequently, the citizens should not set free a criminal whom they had in hand, while trying to capture, with an offer of reward, one who had fled.\footnote{122}

In order to prove that Andocides was...
ungodly, the prosecutor introduces a brief narrative of Andocides’ life since his self-imposed exile. He maintains that Andocides did not worship the gods because, on leaving Athens, he had become a ship owner. Being a seafarer was proof of his impiety in that he was flaunting the gods by taking up a dangerous occupation; a ‘polluted’ man should hide in a quiet corner to avoid divine retribution, rather than inviting it by exposing himself to maximum danger from supernatural powers. He then covers up for the fact that Andocides had survived these perils for over a decade by adding that god does not always punish right away; sometimes he just allows men to live with their fears and sufferings, making their existence intolerable.\footnote{[Lysias], Against Andocides 6.19–20,26–32.} Andocides chose to meet this accusation head on by countering that his successful seafaring was indicative of divine favour. If the gods had wanted to, they could have let him drown, thus depriving him of even a proper funeral.\footnote{Andocides, On the Mysteries 1.137-138. As an echo of the Arginusae affair, note the importance of being denied a proper burial if lost at sea.} He injects a twist of irony by demonstrating the absurdity of the claim that the gods had preserved him through years of peril at sea, only to turn him over to a scoundrel like Cephisius for punishment.\footnote{Andocides, On the Mysteries 1.139.} The prosecution claims that the gods hated Andocides and had made him mad, otherwise he would not have been so daft as to volunteer to be imprisoned in 415 if his slave were unable to corroborate his testimony.\footnote{[Lysias], Against Andocides 6.21–23. Andocides probably did this in good faith, not knowing that his slave had meanwhile been killed, by persons unknown.} Possibly because everyone knew that Andocides had betrayed his mates and there were widespread rumours that he had also been responsible for his father’s incarceration, the prosecution stresses this point repeatedly.\footnote{[Lysias], Against Andocides 6.2,19,22–24,43,44.} He was forced to go into a lengthy defence, probably knowing full well that if the jurors were left with the impression that he had informed against his father, it was a transgression that was regarded as next to, if not outright, asebeia.\footnote{Aristotle lists three kinds of unrighteousness: impiety, greed, and outrage; impiety consists of transgression in regard to gods and spirits, or even in regard to the departed and to parents and country (On Virtues and Vices 7.1,2).}
Despite the best efforts of the prosecutor to convince the jury that by punishing and getting rid of Andocides, the jury would purify the city, drive away the scapegoat, and get rid of something accursed, he was acquitted.\textsuperscript{129} Perhaps Andocides’ closing argument, that the sizeable fortune which he had accumulated while pursuing his maritime shipping interests, when combined with his family’s tradition of public service, placed him in a position to be of further use to the city and tipped the verdict in his favour.\textsuperscript{130} He continued his public life in Athens until 392/391 when he was appointed to undertake an embassy to Sparta to negotiate a settlement of the war that had started a few years earlier. After rejection of his report recommending acceptance of the peace terms, he was prosecuted along with his fellow ambassadors, charged with disobeying the instructions of the Assembly, making false reports, and accepting bribes. They all fled to avoid trial and, at this point, Andocides faded from the pages of history.\textsuperscript{131}

Unlike the wealthy Andocides, who was eager for public acceptance, Socrates was, in many ways, a contrarian who seemed to thrive on being at odds with the popularly accepted norms of his city, while still moving in the highest social circles. With his almost infallible instinct for attracting attention, he has been described as “a man who seems to have been designed by some well-intentioned inept deity to become a martyr”, which is to some extent the image of him created by Plato.\textsuperscript{132} Concerns about his role in the \textit{polis} generated by his lifestyle and personality culminated eventually in the charges that were brought against him in 399. The indictment centered on his reputation and influence on youth and on his idiosyncratic approach to religion. The trial of Socrates is an entity unto itself to which a vast \textit{corpus} of literature has been devoted and, therefore, lies well beyond the scope of this thesis. Nevertheless, any consideration of the use of impiety as a legal charge that omits to touch on it would be sadly deficient. What I will do, therefore, is limit my consideration to

\textsuperscript{129} [Lysias], \textit{Against Andocides} 6.53. As they requested the death penalty, one may assume that by ‘getting rid of’ they meant executing, a subject to which the Athenians tended to refer obliquely.

\textsuperscript{130} Andocides, \textit{On the Mysteries} 1.146-149.

\textsuperscript{131} Andocides, \textit{On the Peace} 3; MacDowell, 1962, p. 6.

\textsuperscript{132} Smith, pp. 25-26. Todd (1993, p. 312) refers to this as Plato’s success in depicting him as a martyr to democratic injustice.
summarizing only those aspects of Socrates’ life which may have led to the trial and the way in which asebeia was interpreted in this particular instance.

Socrates was born c. 469/468 and tradition has it that he was from a modest but respectable family; his father was a stone mason and his mother a midwife. On the other hand, his easy association with the aristocratic members of the circle of Pericles and philosophers such as Protagoras suggests that he was not of completely humble origins; similarly, the names of his wife and sons point to a connection to the Alcmeonids. Consequently, Socrates’ economic circumstances and outward appearance of poverty are an on-going source of puzzlement and have been the subject of much discussion. As the head of an oikos and the father of three sons, by two different women, he had financial responsibilities which would not have been lessened by his much vaunted disregard for money. Socrates stressed that he took no fee for teaching, preferring to do so on the basis of friendship, and that his philosophizing had left him in extreme poverty. He thought that by so doing he protected his independence and freed himself from the need to converse with those who were willing to pay for instruction, in contrast to the sophists whom he characterized as ‘self-enslavers’. It is reported that he rejected the offer of Plato’s uncle, Charmides, to buy him several slaves from whose work he might generate an income. The most likely theory is that he had a limited amount of capital that he invested and lived on the accrued interest. An indisputable indicator of his

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33 Diogenes Laertius, Life of Socrates 2.18; Libanius, Apology of Socrates 27; Plato, Thaetetus 147a, Euthyphro 11b-e. Tarrant (pp. 116, 118-119) argues that Plato may have constructed the concept of Socrates as the son of a midwife in order to foster understanding of the historical figure. As for the actual mother, Tarrant adds that she may have acted as a midwife, but he questions whether there was such a thing as a profession of midwifery in Athens at that time.

34 Burnet, p. 12.

35 Diogenes Laertius quotes Aristotle to the effect that Socrates was married to two women; Life of Socrates 26. It appears, based on fragmentary evidence from Aristoxenus, that Socrates, like many Athenian men, was married to Myrto and kept Xanthippe as his concubine (Huffman, pp. 32-34). This sort of arrangement must have been rather common in view of the great loss of life associated with the plague and years of warfare and the consequent need for the population to reproduce itself.

36 Diogenes Laertius, Life of Socrates 27; Plato, Apology 19e, 23c, 31b,c, 33b.

37 Xenophon, Apology 16, Memoirs of Socrates 1.2.6-8.

38 Diogenes Laertius, Life of Socrates 2.31.

39 Diogenes Laertius, Life of Socrates 2.20. Huffman (pp. 14-16, with sources) suggests that charging a modest rate of interest fell within the bounds of what was socially acceptable, whereas
socio-economic level was his having fought as a hoplite in three campaigns, an option not open to those at the lowest end of the income scale. In some ways, Socrates’ penchant for self-reliance was in tune with the Athenian ethos of the subsistence farmer who worked for himself and the disdain shown for banausic occupations, but in terms of how he honoured his obligations to support his household he would not have appeared a model citizen.

Either as a result of Socrates’ voluntary poverty or through personal preference, Socrates presented himself as a particularly ill-groomed figure. He was notorious for walking around unwashed, barefoot, ill-clad, and looking malnourished, all characteristics that made him stand out in a society where every aspect of an individual’s comportment was strictly evaluated and regimented in the expectation that it would be in accordance with his age and status. In Classical Athens physical perfection was highly valued and considered an expression of virtue and noble heritage, but Socrates was strikingly ugly, a misfortune that was deemed to be indicative of a base nature, and was likened to a satyr or Marsyas, not particularly attractive figures.

Socrates was, by his own admission, a most eccentric person who drove men to distraction. He was the quintessential *flâneur* who spent all his time strolling around in public places where he could expect to find the greatest number of people – the Agora, the covered walks, and the gymnasia. Engaging them in conversation, he would cross-examine them until he had trapped them in hopeless contradictions and inconsistencies, exposing them to ridicule and earning for himself the reputation of being a “pestilential busybody.” Although he disingenuously construed his attempt to teach others about wisdom as his mission in life, Socrates was generally despised and ridiculed, on occasion

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140 Plato, *Symposium* 219e-221c.
141 Socrates admits that he has neglected his own affairs and allowed his family to be neglected as well (Plato, *Apology* 31b; Higgins, p. 34).
143 Plato, *Symposium* 215b.
144 Plato, *Theaetetus* 147a.
145 Plato, *Apology* 23a-d.
arousing so much hostility that his victims fell on him and beat him. But it was no innocent pastime, as he was usually surrounded by the *jeunesse dorée* of Athens who had attached themselves to him and found it amusing to hear him questioning the self-important and who adopted him as a role-model. Socrates’ actions were subversive and ran counter to the traditional pattern of authority, whereby the young learned virtue by respectful emulation of their elders.

Not content with publicly humiliating those he encountered, who, given the venues he frequented, were most probably the wealthier merchants and leisured class, Socrates also made derogatory comments about the democracy, thereby antagonizing the ordinary man. He was particularly opposed to the use of sortition, comparing appointing those who were to hold office by lot rather than selecting the men who knew the most about it, to picking athletes for a contest randomly instead of choosing those who were the best, or arbitrarily picking a steersman from among the ship’s crew. This struck at the very heart of what was seen as the safeguard against tyranny and misread the political landscape. The use of the lot was based on the idea that all men were sufficiently expert to fulfill these duties and the system ensured that magistracies could no longer be used as attractive weapons in the struggle for power. It was also rooted in the *polis* religion, as it was the accepted belief that, because of their divine power and foreknowledge, the gods, rather than fallible humans, were in control. His disdain for the democracy comes out in the *Apology* in his statements that it is the many who corrupt, while the individual with special expertise is the source of improvement, and that democracy inevitably leads to illegality and injustice.

From the perspective of the ordinary Athenians, the man who was belittling their cherished democratic processes was one who, unlike many others, has neither

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146 Diogenes Laertius, *Life of Socrates* 2.21; Plato, *Apology* 23e, 30a.
147 Plato, *Apology* 23c, 33c.
148 Parker, 1996, p. 204.
149 Aristotle, *Rhetoric* 1393b. Xenophon, in *Memoirs of Socrates* at 1.2.9, attributes similar sentiments to Socrates, in this case saying that no one would choose a builder, or a flautist, or any other skilled craftsman by lot, even though in these cases the mistakes would be less disastrous than in statescraft.
150 Hansen, 1995, p. 22.
151 McPherran, p. 172.
152 Plato, *Apology* 25b, 31e, 32a; Kraut, p. 15.
chosen to, nor been forced to, leave Athens during the time of either of the oligarchies. Many of those who would ultimately decide this fate might well have been among the *perioikoi* who had recently been excluded from Athens under the Thirty. Whether or not one had stayed in the *polis* had become a touchstone of one’s political sympathies.

In sum, his public persona indicated that unlike Andocides who, at least on a superficial level, was trying to accumulate social capital, Socrates appeared to be doing his best to dissipate any that he might have had and eventually earned himself a charge of impiety, which was laid against him in 399. Why was an old man who had been a fixture in Athens for many years, doing the same things, suddenly dragged into court?\(^{153}\) One possibility is that a comprehensive statute covering *asebeia* had been passed after the acquittal of Andocides had exposed weaknesses in the existing law,\(^{154}\) but there is no obvious answer to the question of the timing. The specifics of the indictment lodged by Meletus accuses Socrates of not recognizing the gods which the state recognizes, of introducing new divinities, and of corrupting the youth. The penalty proposed is death.\(^{155}\) Meletus is characterized in the *Apology* as a poet, and scholarly opinion is divided over whether he was the same Meletus who was involved in the prosecution of Andocides.\(^{156}\) Lycon, who is styled as the representative of the orators and is described by Diogenes Laertius as a demagogue, is otherwise unknown.\(^{157}\) The third prosecutor was Anytus, who was both a prominent democratic politician and the wealthy son of a self-made man who had made a fortune from a tanning factory. He was well versed in legal tactics, having won an acquittal on a charge of *prodosia* (treason) and possibly had more reasons than the others to be angry with Socrates.\(^{158}\) The latter had made derogatory

\(^{153}\) Hansen (1995, p. 11) points out that Socrates was notorious for always saying the same thing, about the same, in the same way; he had not changed his tune.

\(^{154}\) Bauman (pp. 114-115), *contra* Ostwald (p. 536) who dates the *graphē asebeias* to 403/402.

\(^{155}\) Diogenes Laertius, *Life of Socrates* 2.40.

\(^{156}\) Plato, *Apology* 24a. See fn. 86 above.

\(^{157}\) Diogenes Laertius, *Life of Socrates* 2.38; Plato, *Apology* 24a. The characterization points to a populist link going back to Cleon and Androcles (Bauman, p. 111). Derenne (p. 131) describes him more neutrally as a mediocre politician in the same democratic camp as the other two prosecutors.

\(^{158}\) Ostwald (p. 473) calls Anytus non-partisan, but Derenne (pp. 128-130) goes to great lengths to establish his credentials as a true democrat and upholder of the amnesty of 403. There were many
references about his origins and had subjected him to one of his typical humiliating interrogations in front of his son, at the conclusion of which Anytus had told him that he was too apt to speak ill of people and warned him ominously to be careful.\textsuperscript{159} Anytus was clearly the driving force behind the prosecution, but Derenne does not think that he was motivated by personal spite, a theme that Plato would surely not have failed to exploit. He is convinced that Anytus, as a trusted politician, was sincerely concerned with preserving the ancient mores and considered Socrates to be a threat to the political, moral, and religious stability in a time of economic reconstruction.\textsuperscript{160} Socrates was being tried as much for what he represented as for what he had done.

Like Andocides, Socrates had an immediate problem that superseded the direct charges that were laid against him and that led him to conduct his defence on the basis of whether he was socially desirable. As is shown in Plato’s \textit{Apology}, he could no longer ignore the nebulous layers of prejudice that had built up against him over many years; he would have to confront them as if dealing with another set of prosecutors. So at the beginning of the trial, he introduces his own set of charges based on the \textit{diabolē} (slander) in general circulation about him and reflecting the longstanding prejudice against the natural philosophers and sophists. He words it as follows: “There is a clever man called Socrates who has theories about the heavens and has investigated everything below the earth, and can make the weaker argument defeat the stronger.”\textsuperscript{161} This was an acknowledgement of the way he had been satirized by Aristophanes in \textit{Clouds}, first produced in 423. In this work the playwright featured prominently a caricature of Socrates as the prototypical ‘intellectual’. While imbuing him with the peculiar physical features that made him instantly recognizable as the man

\textsuperscript{159} See Plato, \textit{Meno} 89e-95a, for an interchange, possibly exaggerated, between Socrates and Anytus. For incidents related to Socrates’ comments about the source of Anytus’ wealth, see Libanius, \textit{Apology of Socrates} 25-26, and Xenophon, \textit{Apology} 29. When coupled with Socrates’ other comments, they could be construed as further proof of an underlying anti-democratic current in his utterances.

\textsuperscript{160} Derenne, p. 133. When one considers that Anytus appeared as a \textit{synegoros} at the trial of Andocides and masterminded the one against Socrates, one has a sense of his political clout.

\textsuperscript{161} Plato, \textit{Apology} 18c.
who frequented the Agora, he had him utter a mishmash of ideas that lumped together those that were typical of both the natural philosophers and sophists. Seeing as Aristophanes was writing for a mass audience, the distinctions were simply not important.\textsuperscript{162} To make matters worse for Socrates, the playwright had centered the play on the conflict between a father, who is an old-school traditionalist, and his son, whom he had enrolled in ‘The Thinkery’, run by Socrates, so that he might learn effective argumentation to help him escape his creditors.\textsuperscript{163} Instead, the pleasure seeking young man is corrupted by the ideas on offer, throws away the last vestiges of restraint, and rebels against traditional religion and the authority of the elders. In the end, the enraged father sets fire to ‘The Thinkery’ and rails against the intellectuals who teach natural philosophy and outrage the gods of heaven.\textsuperscript{164} While making fun of a sophistic education, Aristophanes was transmitting a message that it would not impart the values that made Athens great; Socrates was one of these new intellectuals, the “prophets of amorality and atheism, lazy, unwholesome, unwashed, ineffective logic-choppers.”\textsuperscript{165}

Aristophanes had included theories and concepts associated with the natural philosophy of Anaxagoras, Protagoras, and Diagoras, who in the intervening years between when the play was first staged and 399 had all been driven out of Athens by accusations of \textit{asebeia}.\textsuperscript{166} Many an Athenian father must have had occasion to rue the lack of respect fostered in the young who were amused by watching Socrates in action. What Aristophanes might have intended as an innocent comic spoof had been overtaken by events, but Socrates’ decision to rehearse what he considered to be malicious slanders against him did little to dispel them. Besides, the portrait of Socrates was not completely unfounded. As

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\item[162] Aristophanes had incorporated traces of the ideas of the three most prominent intellectuals, Anaxagoras, Protagoras, and Diagoras. As far as the \textit{dēmos} was concerned, Socrates promoted ideas that were vaguely attributable to all of them indiscriminately so that he appeared in their eyes as an atheist and a dangerous dialectician (Croiset, p. 98).
\item[163] Not only is ‘The Thinkery’ a parody of the type of instruction given by the sophists, but the initiation ceremony associated with admission to it paints Socrates as dispensing secret, elitist, anti-social instruction (Aristophanes, \textit{Clouds} l. 253ff.; Parker, 1996, p. 205).
\item[164] For a detailed mapping of where the ideas of the philosophers and sophists are found in \textit{Clouds}, see McPherran, pp. 92-93.
\item[165] Muir, p. 213.
\item[166] See Chapters IV and VI.
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McPherran points out, Socrates did ridicule *sunousia*, the traditional mode of education that favoured shaping the young by teaching them to emulate the conventional *nomoi* instead of sending them to experts for training.\(^\text{167}\) With regard to his elenctic cross-examinations concerning morality, Socrates seemed to premise them on the theory that inquiry into the subject would lead to deeper moral knowledge, which would, in turn, lead to right action. Instead, it often led to a refutation of everything his interlocutors thought they knew, humiliation, and anger, and he did indeed sometimes appear to make the ‘weaker argument look the stronger’.\(^\text{168}\) The one aspect of the caricature that seems not to have been based on the philosopher himself was the hybridization of him with Anaxagoras, showing Socrates teaching a completely farcical version of natural science. This subject had become sufficiently common to be influential and it was considered offensive and threatening when it was combined with moral relativity and the sort of antinomianism that infected the pupils of ‘The Thinkery’.\(^\text{169}\) Aristophanes’ play reflects the contemporary fusion of astronomy with disbelief in the gods and a concomitant fear of the ‘atheist’ scientist, who substituted chance and necessity for the gods to explain celestial phenomena and in so doing “deprived Zeus of his thunderbolt.”\(^\text{170}\) Dramatic licence, in this instance, was unfair, as all reliable sources point to Socrates’ having eschewed the investigations of the *physiologoi* in favour of ethical inquiry.\(^\text{171}\)

Socrates’ professed disinterest in natural science did not, however, insulate him completely from the perception that his religious beliefs overlapped with those of the new philosophies. This leads into a consideration of the formal charges that related to his introduction of new gods and lack of belief in the gods of the state. Most of the *physiologoi* could not be thought of as true atheists, but

\(^{167}\) Plato, *Apology* 20a,b, 24c-25d; McPherran, p. 94. It is interesting to note that in both instances Socrates makes the analogy about who should be engaged to educate the young with who should be hired to train animals.

\(^{168}\) McPherran, pp. 94-95, with sources. Socrates always denied being a sophist, linking them with pay for teaching, but in the popular mind the resemblances were more significant than the differences (Kraut, p. 14). His peripatetic style of enlightening the citizens of Athens shared one of the characteristics that was associated with the sophists, namely the close connection between the instructor and the close-knit group of young men who gathered around him (Kerferd, p. 30).

\(^{169}\) Parker, 1996, pp. 212-213.


\(^{171}\) McPherran, p. 96, with sources.
they had moved in the direction of an impersonal divinity who oversaw the workings of the universe which was governed by the rational, necessary laws of nature.\textsuperscript{172} This type of god left no room for the capricious interventions of a pantheon of gods who performed miracles and responded to human sacrifices and prayers. For the natural philosophers there was little hope of advancing understanding of the mechanisms of the cosmos as long as hidden personalities were performing mysterious actions from a great distance. But once religion was stripped of its anthropomorphic qualities, there was no longer any point in attempting to sway the course of events with outward rituals. Given that these traditional activities were the very foundation of Greek \textit{polis} religion and the demonstration of piety, expunging them and believing in ‘a god’ rather than ‘the gods’ was a radical departure from the past. Consequently, groups loosely identified as \textit{sophoi}, \textit{sophistai}, and \textit{philosophoi} were perceived to be promulgating doctrines that in some vague way could be judged to be inimical to the gods of the ancestors and it was consequently not difficult to arouse resentment against them.\textsuperscript{173}

Socrates moved in the same direction, but by a different route. Where the Ionian philosophers had rationalized the gods into a single rational divinity, Socrates was making them moral.\textsuperscript{174} He poured scorn on the tradition of the Olympian pantheon as a kind of quarrelsome \textit{oikos}, made up of deities who were little better than misfits and who were guilty of scandalous behaviour.\textsuperscript{175} He argued that the popular Homeric mythology should no longer be taught to children because the jealous, disputatious gods portrayed therein set a bad example.\textsuperscript{176} In Socrates’ view, the gods are inherently good, their goodness must surpass that of the most virtuous man, and no malice can be attributed to them. They cannot be swayed by the prayers and sacrifices of mere humans, a

\textsuperscript{172} In what follows I have relied on McPherran, pp. 102-104.
\textsuperscript{173} Yunis, p. 59.
\textsuperscript{174} Vlastos, p. 162.
\textsuperscript{175} Cohen, D., p. 214; Osiander, p. 764. Socrates rejects the picture of “the civil war among the gods, and fearful hostility and battles” described by the poets (Plato, \textit{Euthyphro} 6c). Allen (p. 18) notes that the questions Socrates asked would have been embarrassing to Olympian fundamentalists.
\textsuperscript{176} Plato, \textit{Republic} 2.377-3.391; Allen, p. 18.
cornerstone of popular religion.\(^{177}\) Along the same lines, he divorces the concept of true piety from what is pleasing or displeasing to the gods; it consists instead of a transcendent moral excellence, which can only be gained by engaging in a quest for truth.\(^{178}\) For those who had been raised with the traditional beliefs, this “obliterated a whole range of divine activity” by which the gods, careless of the moral havoc they were creating, imposed cruel torments and destroyed the innocent with the guilty.\(^{179}\) By applying his own austere standards to the gods, he was rendering those of the city unrecognizable, a transformation that was tantamount to destroying the old gods and replacing them with new ones.\(^{180}\)

Related to his makeover of the deities was his narrative that the Delphic oracle had proclaimed him to be the wisest of all men, which had been the genesis of Socrates’ mission of street-philosophizing.\(^{181}\) He had been able to guess that it was this wisdom that had led him to the realization that he should refrain from thinking that he knew what he did not know. Based on this premise, he had a unique responsibility to deploy his wisdom in the service of the god by examining others so that they should come to the right beliefs, but he never stated his own.\(^{182}\) This was a line of thinking that was not so far removed from that of the sophists. They devoted themselves more to challenging the traditional customs and ideas than to developing positive doctrines of their own.\(^{183}\) He firmly believed that he had been assigned by the god to Athens and commanded to perform this mission; he would not stop doing so as he owed a greater obedience to god than

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\(^{177}\) Dillon, J., p. 157; Vlastos, p. 163, fn. 29. Euthyphro defines prayer and sacrifice as gratifying to the gods, conduct which was the salvation not only of private households but of public well-being and the cities (Plato, *Euthyphro* 14b). In reply, Socrates denigrates prayers and sacrifices as “skill in trading between gods and men” (Plato, *Euthyphro* 14e).

\(^{178}\) Dillon, J., p. 162. Socrates’ discourse in *Euthyphro* is geared to bringing his interlocutor to adopt this understanding of piety.

\(^{179}\) Vlastos, p. 165.

\(^{180}\) Vlastos, pp. 166, 173.

\(^{181}\) By referring to the oracle at Delphi, Socrates touched on a sensitive nerve; when the Spartans had approached Delphi, Apollo (by way of the oracle) had replied that victory would be theirs if they attacked in force and that he personally would aid them, whether they asked him to do so or not (Thucydides 1.118.3, 1.121.3, 1.123.1, 2.54.4). As a result there was a general perception that some of the Athenians’ tribulations were due to the Delphic Apollo’s assistance of Sparta. Those familiar with the pronouncements of the oracle would also be aware that one could creatively manipulate the outcome of the oracular pronouncement by the way in which the question was posed or in the manner of the consultation (Furley, p. 95).

\(^{182}\) Plato, *Apology* 20e-23c.

\(^{183}\) Gagarin, 2002, p. 32.
to the citizens of Athens. Socrates likened this to his valour in battle in staying at the post to which he had been assigned regardless of the danger that he could be killed.

The centrality of Socrates’ daimonion, or guiding spirit, to the charge of introducing new divinities is shown early on in Plato’s account when Euthyphro reacts to the news that Socrates has been charged with the comment that “you improvise on the subject of the gods, and so he [Meletus] is off to the lawcourts to present you in a bad light, knowing that such things are easily misinterpreted before the general public.” In Athens, the polis jealously guarded its political control over the religious affairs of its citizenry, so an unlicensed god was greeted with suspicion, contempt, and hostility, and there was particular resistance to the novelty of a non-traditional god. There could have been resentment that Socrates’ daimonion put him on special private terms with a deity, a very undemocratic state of affairs. Because he scrupulously avoided giving any information about its identity, it was not difficult to stir up the fear that it might be some ‘uninvited’ deity that could be hostile to the city. It might have been fairly easy for Socrates to convince the jury that he had not established any new cult and that his guiding voice was not substantially different from the transmission of oracles and divinations that were an acceptable part of the religious landscape. But he did not do so and, as a result, the possible extra-legal dimension and his distinct relationship with the daimonion laid him open to the sort of slander and envy that he considered to be the real reasons behind his indictment. It may also have been the cause of his conviction, as he states that the daimonion had forbidden him to make any preparations to defend himself.

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184 Plato, Apology 29d, 30e. Socrates is in some ways following the same line of reasoning as Antigone, in saying that a divine power trumps human laws.
185 Plato, Apology 28e. This alluded to his acknowledged valour in battle (Plato, Symposium 220a–221c).
186 Plato, Euthyphro 3b. See also, Xenophon, Memoirs of Socrates 1.1.2,3. Socrates maintains that the supernatural experience of this spirit, of which he became aware in early childhood, was a sort of voice which dissuaded him from a particular course of action that he was contemplating (Plato, Apology 31d). In Greek religion, a daimonion was traditionally not a god, although a god could act as one, but more of an occult, indefinite, and unknown supernatural power, which could be a benign or a malign force (Burkert, 1985, p. 180; Nilsson, 1969, p. 60).
187 McPherran, p. 135, fn. 156; Parker, 1996, p. 163.
188 McPherran, p. 137.
against these charges, and it complacently accepted the results of his unrehearsed presentation.\textsuperscript{189} His defence consists mainly of denial and of cross-examining Meletus by the same techniques that had so often enraged those subjected to it in the past. Socrates’ unerring instinct for arousing antagonism did not fail him on this occasion.

The third element of the charge is the one of corrupting the young. As already outlined, Socrates appealed to the iconoclastic instincts of the idle youths who trailed around in his wake and delighted in watching his performance.\textsuperscript{190} Socrates maintains repeatedly that he was not in the business of giving instruction and could not be held responsible for whether a citizen turned out badly or well.\textsuperscript{191} The jury, however, would have been unlikely to forget that Alcibiades, a notorious traitor, Charmides, governor of Piraeus under the Thirty, and Critias, the most extreme of the Thirty, now all dead, had been acolytes of Socrates.\textsuperscript{192} While teaching \textit{per se} might be an innocuous occupation, dissemination of ideas that threatened the established order was not and it bordered on treason. Traditionally, values were transmitted from generation to generation by \textit{sunousia}, the close daily association of adolescent men with their more accomplished elders, who were expected to be upstanding role models. It was a feature of all predominantly oral societies, and accounted for their inherently male-dominated nature.\textsuperscript{193} The habits acquired by those who attached themselves to Socrates, as lampooned by Aristophanes in \textit{Clouds}, were anything but respectful. Publicly revealing or uncovering the vulnerabilities of another was to humiliate that person, making him feel weak and defenceless, and causing him to feel shame. It amounted to an act of \textit{hybris}, a crime that was taken very

\textsuperscript{189} Plato, \textit{Apology} 40a-c; Xenophon, \textit{Memoirs of Socrates} 4.8.4ff.; Oldfather, p. 205.

\textsuperscript{190} Robb (1993, p. 87) adds that this was a problem that affected the rich, as the adolescents of the lower classes were put to work on farms or in shops next to their older relatives.

\textsuperscript{191} Plato, \textit{Apology} 33b.

\textsuperscript{192} The popular perception a half century later was that ‘Socrates, the sophist’ was put to death because he had been the teacher of Critias (Aeschines, \textit{Against Timarchus} 1.173). Socrates was not immune, nevertheless, from incurring the enmity of those who had been his pupils. He had a serious falling-out with Critias and the Thirty passed a law forbidding teaching the art of words, a statute aimed at Socrates (Xenophon, \textit{Memoirs of Socrates} 1.2.31). It may have been in an attempt to counter his taint by association that Socrates reminds the jury of his opposition to the collective trial of the Arginusae generals and the order to arrest Leon of Salamis issued by the Thirty (Plato, \textit{Apology} 32a-c).

\textsuperscript{193} Robb, 1993, pp. 82-83.
seriously in the Athenian courts. Consequently, Socrates’ elenctic examination of others and its emulation by the young worked at cross-purposes to the efforts to inculcate them with the virtue of aidōs. This was a very different form of shame, an inhibitor that prevented an individual from saying or doing something that would not be perceived as good. As it was considered the strongest moral force, actions that exposed a man to the contempt or ridicule of their fellows were considered to be unbearable. Thus, it was a fundamental tenet that without respect and reverence for others there could be no aidōs and one who did not learn those lessons should be put to death as a public pest. It formed an important component of the ethos of self-restraint and soundness of mind, which was, ironically, what Socrates purported to practice. The net result was that he was perceived to be destroying the relations between the generations by maliciously fomenting hostility toward, and contempt for, fathers and tradition, and setting himself up in place of sunousia as the ultimate authority. To counter the charge Socrates challenges those who were in the court and who had consorted with him when they were young men to come forward and reveal that they had been corrupted by his influence. In the absence of such testimony he feels that the prosecutor does not have a case. No response is recorded.

As is well known, Socrates was convicted and executed. Socrates explicitly states, in Crito, that the laws are just, and he has been wronged not by them, but by the people who condemned him. The arguments as written up by Plato and Xenophon nowhere challenge the legal aspects of the case; they are directed solely at showing that the prosecutors misrepresented Socrates’ beliefs and character. This supports the conclusion that the issues in the trial centered

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194 It ‘was more needful to quench hybris than to put out a house on fire’ (Herakleitos, fr. 103 (Bywater) = 43 (Diels), quoted in Nilsson, 1969, p. 57).
195 Dodds, 1951, pp. 17-18.
196 Plato, Protagoras 322d.
197 Xenophon, Apology 19, Memoirs of Socrates 1.2.53ff; Reinhold, p. 357.
198 If the penalty of execution is deemed to be harsh, it should be remembered that the prosecutors probably expected Socrates to propose a penalty of exile, which would likely have been accepted. Instead, his defence in the courtroom, in contrast to that of Andocides, showed little respect for the process or the intelligence of the jury and his proposal that his ‘sentence’ should consist of free maintenance by the state was a direct insult (Plato, Apology 37a).
199 Plato, Crito 54c.
200 Cohen, D., p. 214.
on Socrates as a role model, whether by his often stated views about the gods, as an individual privileged by the advice of a personal daimonion, or as an influence on the young. Violations of ritual practice at no point entered into the discussion. Socrates neither neglected his outward observances nor criticized anyone else concerning ritual practices, even though, as already noted, he thought the gods had no need of them. In Athens it was not necessary to have committed an act which was explicitly forbidden in order to be charged under a graphē. This raises the question, once again, of how far the concept of asebeia could be stretched and the degree to which it was conflated with treason, a not illogical fusion in a city with an embedded religion. Socrates seriously undermined the traditional lines of authority between the generations and weakened aidōs, that fabric of respect that held the members of the community together so that they could live in harmony. In the aftermath of all the turmoil and bloodshed associated with the oligarchies, protecting social peace must have been an important consideration. If eusebeia entailed a proper attitude of respect toward the traditional gods and their cults, by a slight extension it also covered sunousia, the established customs of tribe and family that were under the protection of the gods. A flagrant disregard for the traditions of the city, when coupled with a lack of respect for those who made up the body politic and a unilateral declaration of moral superiority, could not be allowed to go unchallenged in a society which had already experienced the poisonous effects of his ethos when those who were affected by it entered the political arena. While the charge of treason seems to have been the preferred legal vehicle for prosecuting someone who was politically active, it was hardly apt in this case. An alternative remedy was an accusation of asebeia, most probably because it was an umbrella concept and it carried the death penalty. Socrates was charged not for his beliefs, but for

201 Kraut, p. 17; Naiden, 2007, p. 136. Xenophon (Memoirs of Socrates 1.1.2) defended Socrates saying that he always followed regulations concerning rituals.
202 Dover, 1988b, p. 147.
203 Robb, 1993, p. 99. Nilsson (1969, p. 8) explains that the gods who protected the clan and the state also protected its members and showed kindness to them. Everyone was responsible for showing them reverence and for fulfilling their demands; an offence against them was avenged not only on the criminal but on his clan and the state. The whole formed a conscious chain of relation to the deities.
204 Bauman, pp. 113-114.
his dissemination of them and the threat this posed to the society that his accusers sought to preserve.

The traumatic events of the second phase of the Peloponnesian War loomed like a dark shadow over the trials of Andocides and Socrates. The vehemence of feeling that had been stirred up by the sacrileges of 415 did not abate easily. The deprivations of wartime may well have scarred the collective psyche of the polis so deeply that it was leery of any actions that might threaten its well-being and endanger the collective piety. The two trials form an interesting study in contrasts. That of Andocides had all the appearances of being politically motivated and intensely personal. He relied heavily on an arsenal of legal arguments, proclaimed his intention to be of benefit to the city, treated the jurors with restrained respect, and was acquitted. The trial of Socrates, on the other hand, had no overt political motivation, but he was a nagging, daily presence and a disruptive influence. As he announced that nothing would deter him from his activities, there was no prospect of his being a public benefactor except in his own mind. Little could be done short of removing him from the scene. He had no substantial legal arguments to counter the charges, relied on assertions that he was being misrepresented, displayed a consistently arrogant attitude, and was convicted. It is difficult to draw conclusions from Athenian trials because there was neither an appeals process nor do we know how and why the juries reached their decisions. It is conceivable that the same trials heard before a different panel of jurors could have yielded the opposite results. On the other hand, the verdicts can also be read as an indication that the citizens had balanced the relative gravity of the accusations carefully. The case against Andocides might have been viewed as a lesser cause for concern because it was based on a single, specific action that transgressed on an old prohibition banning him from entering a sacred area, a restriction which was commonly thought to be have been lifted by the amnesty. The actions of Socrates might have been deemed much more subversive because they were centered on an on-going effort to introduce new beliefs about the gods and to promote a new set of behaviours that threatened to overturn the traditions on which the stability of Athenian society were anchored.
CONCLUSION

The point of departure for this thesis was Classical Athens at the height of its glory as an imperial power in the middle of the 5th century. By the end of the century, the city had suffered simultaneously from the twin traumas of an external war against Sparta and its allies and an internal civil war between the adherents of the popular democracy and those who sought to replace it with oligarchic rule. Triumphalism had been displaced by the necessity to nurture harmony, to reconcile and forget differences, and to preserve the common values that had held Athenian society together in the past. As described in the foregoing chapters, all of these factors were reflected in the interaction between the legal system and the deeply embedded religion of the polis. After summarizing briefly the aspects of both which are germane to the charge of asebeia, I will present some conclusions about what might have precipitated the resulting trials and try to draw some lessons from them that could be applied to our own contemporary society.

Asebeia was, like murder, a public crime that could not be left unpunished because it carried with it the potential of repercussions for the entire community. When it occurred, it constituted a challenge to the Athenians’ vaunted self-image as the most god-fearing and pious of all the Greeks, secure in their relationship with the gods, one that followed the manifestly contractual pattern of do ut des. Heaping honours on the gods of the city by constructing beautiful temples and offering prayers and sacrifices did not guarantee that blessings and favour would be bestowed on Athens, but failure to do so risked exposing the entire community to divine anger and reprisal. Even in the absence of a professed dogma, everyone had a general understanding of the unwritten and timeless ordinances of the gods which governed human behaviour; these were the moral glue that held society to a common standard. Given expression in the laws of Draco, they placed all citizens under obligation to worship in perpetuity the gods and heroes of the polis and master the strict observance of ritual practices, the outward signs of piety. As
the associated festivals were the principal and most enjoyable means of participating in civic life, equally accessible to everyone, religion was a channel for the expression of common values, including the democratic ethos, a source of comfort, and the protective carapace which shielded Athens from its external enemies.

Consequently, religious life was as deeply embedded in the state as political, military, and economic activity and, in view of its importance for the well-being of the community, the polis reserved its right to exercise control over all aspects of cult. Although the nature of the religion was polytheistic, the Olympic pantheon was considered to be complete and, as was known from epic tales such as the *Iliad*, the gods guarded their territory jealously. It was thus entirely logical that the introduction of new deities and rituals was subject to public scrutiny and occurred only with the explicit approval of the state; to do less would have been tantamount to tearing up the civic insurance policy. A display of religious nonconformity on the part of an individual, whether by a breach of ritual, criticism of the deities, or profession of disbelief in them, amounted to an intolerable attack on the institutions of the polis and a dissolution of his allegiance to it.¹ Despite the often-stated and laudable guarantee of *parrhēsia*, which allowed an individual to have his say in public affairs, there was no licence permitting a maverick to express divergent religious opinions with impunity.² A doctrine of rights, with concomitant concepts of religious toleration and freedom of thought, had not yet made its appearance on the world stage; the primacy of the state over the individual was simply a given.³

Written laws covering tangible religious crimes involving ritual malpractice or physical damage of one sort or another against sacred property, as well as extensions of these concepts, were seemingly in place by the middle of the 5th century. References to punishment in the literature indicate that very harsh penalties could be imposed for such acts as temple robbery or offences against the sacred olive trees. These would have formed a sufficient basis for lodging

¹ Garnsey, pp. 2-4; Yunis, p. 27.
² Todd, 1993, pp. 311-312.
³ Wallace, p. 144; Garnsey, p. 6. Even in the trial of Socrates, which to many modern eyes looks like an attack on the right to free speech, there is no plea on his part for liberty of conscience.
about half of the cases of *asebeia* that are known from this time, including the major trials for the mutilation of the Herms, the profanation of the Mysteries, and the failure to recover the bodies at Arginusae.

If the charges laid against Socrates and those reported about other thinkers are any indication, the *polis* at some point must have enacted either a decree or a set of laws that prohibited the much more intangible religious offences that resulted from the public dissemination of statements of disbelief and lack of respect for the gods.\(^4\) Alternately, the part of the “eternal sacred law” attributed to Draco enjoining the inhabitants of Attica to worship the gods with ‘auspicious words’ may have acquired new force in the popular imagination.\(^5\)

Based on the evidence concerning the accusations during this time, I have concluded that they were underpinned, if I may be permitted to invent a concept, by a portmanteau understanding of impiety which had ingeniously been broadened to combine the elements of treason with those of *hybris*, themselves both flexible and ill-defined crimes. Treason could take on many forms but it could be directed only against the state. *Hybris* was an even more slippery notion – every Athenian knew in his own mind what it entailed, but it was difficult to pin down. What was always involved, however, was the intent to shame or humiliate a victim, by either physical or psychological means, and there was a general implication that the perpetrator arrogantly considered himself to be in a position of superiority. When these were joined to *asebeia*, the result was a crime in which the victim was the *polis* because its religious framework and moral structure were seen to be under attack from those whose new ideas were dismissive of the old ones and were deliberately attempting to erode them.

From the point of view of the ability to prosecute someone whose ideas were judged to be undesirable, even if not patently inimical to the welfare of the city, an elastic concept of *asebeia* along these lines was particularly useful in two ways. Penalties for both treason and *hybris* were severe, up to and including death, confiscation of property, and denial of the right to burial on the soil of

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\(^4\) In view of the controversy concerning the historicity of the decree of Diopeithes, I have not identified it uniquely as the legal vehicle. Nevertheless, both it and the amendments associated with it are obvious candidates.

\(^5\) See Chapter III for “the eternal sacred law” as quoted by Porphyry.
Attica. The interpretation of what constituted each of them was, to a large extent, culturally determined and mediated by the ‘most fair judgement’ of the jurors. As religion was the one domain of civic life in which everyone was implicated and of which everyone had experience, using impiety as a touchstone against which to measure the accused’s moral worth was almost certain to arouse anger. Hence, a skilful prosecutor could capitalize on a range of external factors to play on the fears and prejudices of his audience in order to secure a conviction. Contrary to the contemporary view of Athens as a ‘face-to-face’ society, in which citizens had a great deal of familiarity with each other, the physical size of Attica and its large population argue against this conclusion. Lack of first-hand knowledge about the court-room opponents was thus an additional factor that facilitated the use of rhetoric to achieve the desired result.

The eclectic cluster of accusations of impiety which took place in the second half of the 5th century have often been cited as proof of a heresy hunt or of the persecution of intellectuals and even those that were based on the commission of a tangible sacrilege, such as the mutilation of the Herms and the profanation of the Mysteries, were directed at individuals who belonged to the more educated elite. They seem to have arisen primarily in conjunction with a series of events that had a profoundly unsettling effect on the collective psyche. First of all, the arrival of the Ionian philosophers in mid-century, followed shortly after by the sophists, effected a double cleavage in Athenian society. It widened the gap between the upper classes who had both leisure time and an interest in appraising religion from an abstract, intellectual point of view and the ordinary people who depended on its rhythms and reassurance to see them through their daily lives. Apart from their novelty, it was also hard to convey complicated philosophical ideas, originally developed in writing for abstract discussion, in oral form. Detail is lost in translation when such concepts are transmitted through the air to the brains of the audience and, as a consequence, speculation about

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6 Cohen, E., pp. 104-106.
7 This particular terminology appears to have been more common in an earlier time when it may have been seen through the lens of the McCarthy era, although John Dillon (p. 169) used the expression ‘witch-hunt’ as recently as 2004.
8 I think of this as the “Power Point Problem.”
physical phenomena and the nature of the gods generated distrust of intellectuals as a whole. On another plane, relativistic sophistic teachings about morality drove a generational wedge between the young students and their conservative elders who were apprehensive about the dismantling of the traditional hierarchy.\(^9\) Secondly, the population suffered from the significant loss of life caused by the deprivations of a protracted war studded with military set-backs and outbreaks of plague. This led to fear that the city was being punished by the gods and resulted in a devastating loss of morale.\(^10\) When the simmering tensions between those who wanted to overthrow the democracy and its defenders were added to the mix, it is not difficult to imagine why the mood of the populace was volatile and why it was open to suggestions that impiety was an underlying cause.

Had ordinary Athenians, who were appointed by lot to the magistracies that ran the legal system, not thought that defence of their ancestral religion from any form of denigration was a legitimate concern of the courts, it is not likely that these indictments would ever have come to trial.

In and of themselves, however, concern for the public’s welfare and patriotic sentiments were not generally sufficient to trigger a prosecution for outrages against religious sensibilities as these had to be lodged by individuals, not the state. A review of the trials shows that there was almost always a more immediate personal motivation on the part of either the person laying the charge or the one pulling the strings behind the scenes.\(^11\) The prosecutor had to undertake the task on his own initiative, at his own risk, and at his own expense. There is little evidence that anyone was brought to court by another who was acting purely altruistically and solely out of concern for the welfare of the community. So, the conclusion is that the trials operated on two levels. The

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\(^9\) Wallace (p. 143) points out that the philosophical discourse caused problems only when conducted in full public view – Plato’s philosophy was fundamentally undemocratic and probably impious by Athenian religious norms (i.e. the theory of the Forms) but for more than forty years he was undisturbed as he said and wrote what he wanted to enclosed in the Academy outside the walls of Athens.

\(^10\) As an aside, it puzzles me that the societal consequences of the death toll are so little discussed. Many, if not most, of those who perished must have been men in their productive middle years who would normally form a buffer between the reckless young and the conservative older generation and who were a source of economic output and family stability.

\(^11\) Derenne, p. 258.
accusers used *asebeia* to throw a cloak of public spirited piety over litigation that was, in truth, motivated by personal enmity or political rivalries. The goal was to find a way to impose crippling penalties on, or rid the city of, someone whom they deemed undesirable and who could not be indicted for having committed a more well-defined crime.\(^\text{12}\) By tapping into arguments tailored to capitalize on common cultural values, the speakers for the prosecution hoped to appeal to the jurors’ desire to preserve its cherished ancestral traditions, as well as to the noble goal of defending the *polis* from moral decay or divine retribution. For their part, the jurors were only too well aware of the dread and anxiety that was fuelled by the nagging suspicion that Athens had in some way transgressed the deities and that this was the source of its recent misfortunes. By punishing impiety to appease the gods, they could perceive of themselves as taking an active part in trying to alleviate the city’s miseries.

Even though we are removed in time by a chasm of two and a half millennia, I think that there are aspects of the impiety trials of 5th century Athens that can stimulate our thinking concerning contemporary issues. One of these arises from the reactions to the sacrileges of 415 and to the Arginusae affair. They are an illustration of how fear and panic can race through a body politic like a virus, persuading it to disregard concern for due and fair process and debasing the value of thoughtfully enacted legislation. One has only to reflect on the way in which many countries in the Western world, our own included, have passed laws that curtail the rights of the accused or found reasons to excuse ‘robust’ interrogation methods and rendition in the wake of 9/11 and the bombings in London and Madrid. And even though we have judiciaries that have an express mandate to ensure that legislation does not violate the enshrined rights of the citizenry – a modern vestige of the *graphē paranomōn* – we see that time and again governments try by every means possible to appeal against and thwart their judgements, thereby diminishing the authority of the rule of law and denigrating jurisprudence by implying that an unelected judiciary has no business frustrating

\(^{12}\) Todd (1993, p. 154) remarked that “Athenian leaders seem in the sources to devote an extraordinary energy to trying to get each other executed.”
the will of the majority. The echoes of Arginusae that it was “monstrous” for the people to be prevented from doing whatever they wished ring loud and clear.

Another aspect, which relates to the difficulties inherent in pinning down what was meant by asebeia, is particularly instructive. We come up against similar problems when we try to arrive at a judicially secure and sensible way to express what is meant by loaded words such as pornography and hate speech and when considering whether limitations on freedom of speech and other forms of expression are justifiable. No less than the Athenians, we react in accordance with our own culturally mediated biases and are faced with finding the essential and delicate balance between parrhēsia and aidōs. Where should the line be drawn between constraints on civil liberties and respect for those norms that allow our societies to function in harmony?13 In the same vein, legislation such as Bill 101 restricting the use of English in Quebec and recent moves to ban the wearing of the niqab in public in France go right to the heart of the tension between the rights of the individual and those of the collective which come to the fore in the attempts of a community to assert and protect its core identity and values. We do well to bear in mind the words of Antiphon that we should not act in anger and prejudice, “for there could be no worse advisers than these.”14

13 See Saxonhouse, p. 49, re the balance between the two.
14 Antiphon, On the Killing of Herodes 5.72.
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