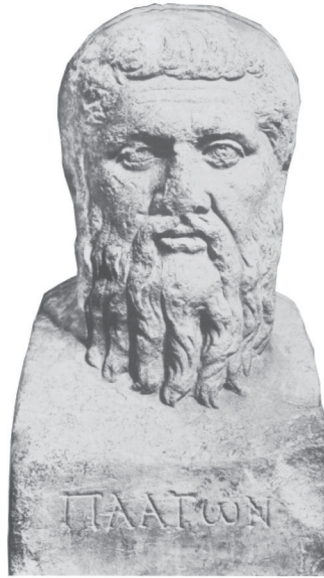


ΠΛΑΤΩΝ

ΠΕΡΙΟΔΙΚΟ ΤΗΣ ΕΤΑΙΡΕΙΑΣ ΕΛΛΗΝΩΝ ΦΙΛΟΛΟΓΩΝ



«Μέτρον τοιούτων λόγων ἀκούειν ὅλος ὁ βίος νοῦν ἔχουσιν»
Πλάτωνος *Πολιτεία* 450b

ΤΟΜΟΣ 60 (2015)

ΚΟΙΝΩΝΙΚΕΣ ΚΑΙ ΠΟΛΙΤΙΣΜΙΚΕΣ ΑΞΙΕΣ
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*Πρακτικά Διεθνoῦς Συνεδρίου πρὸς τιμὴν τῆς Καθηγήτριας
Γεωργίας Ξανθάκη-Καραμάνου
(Καλαμάτα 28 - 31 Μαΐου 2014)*



ΕΚΔΟΣΕΙΣ ΠΑΠΑΖΗΣΗ

ΠΛΑΤΩΝ



ΕΚΔΟΣΕΙΣ ΠΑΠΑΖΗΣΗ ΑΕΒΕ

ΠΛΑΤΩΝ

Περιοδικό της Εταιρείας Ελλήνων Φιλολόγων

ISSN: 1105 - 073X

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Εκδόσεις ΠΑΠΑΖΗΣΗ ΑΕΒΕ
Νικηταρά 2 & Εμμ. Μπενάκη, 106 78 Αθήνα
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Εκτύπωση:

Printfair (digital & offset solutions)
Σόλωνος 119, 106 78 Αθήνα
Τηλ.: 210-33.00.606
site: www.printfair.gr
e-mail: info@printfair.gr

Απαγορεύεται η μερική ή ολική αναδημοσίευση του έργου αυτού, καθώς και η αναπαραγωγή του με οποιοδήποτε μέσο χωρίς σχετική άδεια του Εκδότη

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Ε. ΒΟΛΟΝΑΚΗ - Β. ΚΩΝΣΤΑΝΤΙΝΟΠΟΥΛΟΣ

ΑΘΗΝΑΙ
2016

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ΠΕΡΙΕΧΟΜΕΝΑ

Πρόλογος.....	11
Εὐρυδίκη Ἀντζουλάτου-Ρετσιόλα , Χαιρετισμὸς τῆς Κοσμήτορος τῆς Σχολῆς Ἀνθρωπιστικῶν Ἐπιστημῶν καὶ Πολιτισμικῶν Σπουδῶν τοῦ Πανεπιστημίου Πελοποννήσου	13
Ὁμιλία τῆς Κοσμήτορος Καθηγήτριας κας Εὐρυδίκης Ἀντζουλάτου-Ρετσιόλα	15
Alexios Savvides , Head of the Department of History, Archaeology and Cultural Resources Management, University of the Peloponnese	17
Γεώργιος Ν. Βασιλάρος , Ἡ προσφορὰ τῆς Καθηγήτριας κας Γ. Ξανθάκη-Καραμάνου στὴν Ἐταιρεία Ἑλλήνων Φιλολόγων (Ε.Ε.Φ.).....	19
Ἀνδρέας Γ. Μαρκαντωνᾶτος , Τὸ ἐπιστημονικὸ ἔργο τῆς Καθηγήτριας κας Γ. Ξανθάκη-Καραμάνου.....	25
Ἀριστείδης Ν. Δουλαβέρας , Τὸ διοικητικὸ ἔργο τῆς Καθηγήτριας κας Γ. Ξανθάκη-Καραμάνου	29
Ἐπικὴ καὶ Λυρική Ποίηση	
Φλόρα Π. Μανακίδου , Καλλίμαχος, Ἡσίοδος καὶ ἰαμβικὴ ποίηση (Ἀρχίλοχος, Ἴππῶναξ): «τί χρειάζονται οἱ ποιητὲς σὲ χαλεποὺς καιροὺς»;.....	37
Margarita P. Sotiriou , Animals in the aristocratic ideology of the late 5th century BC. The case of Bacchylides (Ode 5.1-49)...	65

Δραματική ποίηση

Egert Poehlmann , Epicharmus and Aeschylus on stage in Syracuse in the 5th century	81
Andreas Markantonatos , The tragic game of honour and shame: Social opprobrium as character motivation in Euripides’ <i>Alcestis</i>	83
Θεόδωρος Γ. Παππᾶς , ἦθος καὶ ἀξίες τοῦ Ἀριστοφανικοῦ ἥρωα	90
André Hurst , Τί μᾶς διδάσκει ὁ Μένανδρος;	107
Christopher Carey , Legal play in Menander	127
Andreas Fountoulakis , Wealth, poverty and the troubles of life: Social values and plot construction in Menander’s <i>Kitharistes</i>	141
Anastasios D. Nikolopoulos , Erotic <i>sophrosyne</i> in Terence’s adaptations of Menander	169

Ίστορία

Γεώργιος Ν. Βασιλάρος , Τὸ ἀξιακὸ σύστημα τοῦ “οἴκου” στὸν Ξενοφῶντα	181
Christos Kremmydas , <i>Eunoia</i> and Athenian foreign relations in the classical period	200

Φιλοσοφία

Κωνσταντῖνος Γ.-Α. Νιάρχος , Ὁ νοῦς, τὸ νοεῖν, ἡ νόησις, τὸ νοούμενον κατὰ τὸν Ἀριστοτέλη	227
Maria Liatsi , Equity, justice and political power in Aristotle	244
Γεώργιος Χ. Κουμάκης , Μέλημα τοῦ πολιτικοῦ ἢ δίκαιη διακυβέρνηση καὶ ἡ εἰρήνη	255
Μαρία Νούσια-Fantuzzi , Ἡ σημασία τοῦ ἀσήμαντου: Ὁ νέος “πλοῦτος” τῶν Κυνικῶν	270
Anne Sheppard , Drama, dance and divine providence in Plotinus, <i>Ennead</i> 3.2 (47).15-18	287
Evangelos D. Protopapadakis , Some thoughts on active and pas- sive euthanasia under the aspect of utilitarianism	296

Ρητορική

Mike Edwards , Social values in the speeches of Isaios	307
Eleni Volonaki , Social and moral values in homicide cases	316
Athanasios Efstathiou , Wine drinking as a manner of social behaviour in forensic oratory.....	340

Βυζάντιο

Σεβ. Μητροπολίτης Μεσσηνίας κ.κ. Χρυσόστομος , Οί κοινωνικὲς ἀξίες στὰ ὄρια τῆς χριστιανικῆς ἠθικῆς καὶ τῆς ὄντολογίας ...	357
Εὐάγγελος Ἀλεξίου , Ρητορική καὶ φιλοσοφία: Ἡ σατιρική παρώδηση τοῦ Μ. Κωνσταντίνου στὸ <i>Συμπόσιον ἢ Κρόνια</i> τοῦ Ἰουλιανοῦ Παραβάτη	367

Πρόσληψη τῶν ἀξιῶν κατὰ τὴν νεώτερη ἐποχὴ

Ἰωάννα Σπηλιοπούλου , Ὁ κλασικὸς φιλόλογος Εἰρηναῖος Θείρσιος (Freidrich Thiersch) καὶ ἡ ἀρχαιογνωστικὴ ἀξία τοῦ ταξιδιοῦ του στὴν Ἀργολίδα μέσα ἀπὸ τὶς ἀνέκδοτες ἐπιστολὲς πρὸς τὴν γυναίκα του (1831-32)	401
Εὐγενία Κεφαλληναίου , Βυρωνισμὸς καὶ ποιητικοὶ διαγωνισμοὶ τοῦ Πανεπιστημίου Ἀθηνῶν (1851-1877)	437
Μαρία Κουρῆ , Πέρα ἀπὸ τὸν Ἀτλαντικό... Ἀρχαῖα Ἑλληνικὰ Ἰδεώδη στὴν Ἑλληνικὴ Ἀμερικὴ	457

Βιβλιοκρισία

Γ. Μανουσόπουλος, Ι. Γ. Δελλῆς , Ὅψεις προβληματισμοῦ περὶ παιδείας στὸν Νεοελληνικὸ Διαφωτισμὸ, Gutenberg, 2014.....	486
Ἡ ἀρχαία ἐλληνικὴ γραμματεία στὶς ἐκδόσεις Παπαζήση	493
Δραστηριότητες τῆς Ἑταιρείας Ἑλλήνων Φιλολόγων κατὰ τὸ ἔτος 2015	496

Περιοδικὰ μετὰ τῶν ὁποίων ἀνταλλάσσεται ὁ “ΠΛΑΤΩΝ”	500
Ληφθέντα βιβλία	503
Ἐγγραφέντα Νέα Μέλη	506

* Κατὰ τὴν ἔκδοσιν τῶν Πρακτικῶν τοῦ Διεθοῦς Συνεδρίου
διατηρήθηκε τὸ προσωπικὸ ὄψος τῶν συγγραφέων.

ΠΡΟΛΟΓΟΣ

Ὁ παρῶν συλλογικὸς τόμος προέκυψε ἀπὸ τὸ Διεθνὲς Συνέδριον τὸ ὁποῖο διοργανώθηκε πρὸς τιμὴν τῆς Καθηγήτριας Γεωργίας Ξανθάκη-Καραμάνου γιὰ τὴν ἀφυστηρέτησή της ἀπὸ τὸ Τμῆμα Φιλολογίας τοῦ Πανεπιστημίου Πελοποννήσου, μὲ γενικὸ θέμα: «Κοινωνικὲς ἀξίες στὴν Ἑλληνικὴ Γραμματεία ἀπὸ τὴν Ἀρχαϊκὴ ἕως τὴν Βυζαντινὴ Περίοδο», 27-31 Μαΐου 2014, στὴν Καλαμάτα. Στὴν σημαντικὴ αὐτὴ συνεδριακὴ ἐκδήλωση συμμετείχαν ἑγκριτοὶ φιλόλογοι καὶ ἐρευνητὲς ἀπὸ Πανεπιστήμια τῆς Ἑλλάδος καὶ τοῦ ἐξωτερικοῦ.

Κατὰ τὴν διάρκειαν τοῦ ἐνδιαφέροντος καὶ παραγωγικοῦ ἀκαδημαϊκοῦ διαλόγου ποὺ διημείφθη τὶς ἡμέρες τοῦ Συνεδρίου, ὅλες οἱ ἀνακωνώσεις ὠφελήθησαν ἀπὸ τὴν γόνιμην ἀλληλεπίδραση μεταξὺ τῶν εἰδικῶν ὁμιλητῶν στὸ πολυσήμαντο ζήτημα τῶν ἀξιῶν, ἠθικῶν καὶ κοινωνικῶν, ὅπως ἐμφανίζονται στὴν Ἑλληνικὴ Γραμματεία. Ἀκολούθησε ἡ διαδικασία ἀξιολόγησης, ἀναθεώρησης καὶ δημοσίευσης τῶν ὁμιλιῶν, ἡ ὁποία ἐλπίζουμε νὰ συνέβαλε στὴν ἀνάδειξιν τοῦ προσδιορισμοῦ καὶ τῆς ἐξέλιξης τῶν ἀξιῶν σὲ ὅλα τὰ λογοτεχνικὰ εἶδη ἀπὸ τὴν ἀρχαιότητα ἕως τὴν βυζαντινὴν περίοδον καὶ τὴν πρόσληψή τους στὴν νεώτερον ἐποχὴν.

Ἡ ἐπιτυχία τοῦ Συνεδρίου ὀφείλεται στὴν σύναξιν διακεκομμένων μελετητῶν, φίλων τῆς Καθηγήτριας Γεωργίας Ξανθάκη-Καραμάνου, καθὼς καὶ πολλῶν συναδέλφων καὶ μαθητῶν της, προκειμένου νὰ τιμήσουν καὶ νὰ ἀναγνωρίσουν τὴν πολυσχιδὴν προσφορὰ καὶ τὴν σημαντικὴν συμβολὴν της τόσο στὶς κλασσικὲς σπουδὲς διεθνῶς ὅσο καὶ στὸν χῶρον τοῦ Ἑλληνικοῦ Πανεπιστημίου. Ἡ Καθηγήτρια Γεωργία Ξανθάκη-Καραμάνου μᾶς ἔχει ἐμπνεύσει στὴν μελέτην τῆς Κλασσικῆς Φιλολογίας

ἀλλὰ καὶ στὴν ὁμαδικὴ συνεργασία γιὰ τὴν ἀποτελεσματικὴ λειτουργία τοῦ Τμήματος Φιλολογίας τοῦ Πανεπιστημίου Πελοποννήσου, τὸ ὁποῖο καὶ ἴδρυσε ἢ ἴδια μὲ συνεχεῖς καὶ ἐπίπονους ἀγῶνες καὶ προσωπικὸ ἐνθουσιασμό. Ἡ εὐγνωμοσύνη ποὺ τῆς ὀφείλουμε δὲν μπορεῖ νὰ ἐκφρασθῆ ἐπαρκῶς μὲ λέξεις.

Αἰσθανόμαστε ἰδιαίτερη χαρὰ, διότι τὰ Πρακτικὰ τοῦ Διεθοῦς μας Συνεδρίου δημοσιεύονται στὸ ἔγκριτο περιοδικὸ τῆς Ἑταιρείας Ἑλλήνων Φιλολόγων ΠΛΑΤΩΝ. Οἱ εὐχαριστίες ὅλων μας ἀπευθύνονται πρὸς τὶς Ἐκδόσεις «ΠΑΠΑΖΗΣΗ» γιὰ τὴν ἄρτια ἐκδοτικὴ ἐργασία.

Ἀπρίλιος 2016

Ἐλένη Βολονάκη - Βασίλης Κωνσταντινόπουλος

SOCIAL AND MORAL VALUES IN HOMICIDE CASES

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Περίληψη

Ἡ παρούσα μελέτη ἐξετάζει τὴ ρητορικὴ χρῆση καὶ τὴν πειστικὴ ἀξία τῶν κοινωνικῶν καὶ ἠθικῶν ἀξιῶν ποὺ συνδέονταν στενὰ μὲ τὴν ἀνθρωποκτονία, ὅπως ἡ κοσμικὴ καὶ ἱερὴ δικαιοσύνη, τὸ μίαισμα καὶ ἡ ἐκδίκηση, μὲ τὸν τρόπο ποὺ ἐμφανίζονται στὴν ἐπιχειρηματολογία δικανικῶν λόγων οἱ ὁποῖοι ἐκφωνήθηκαν σὲ δίκες ἀνθρωποκτονίας.

Ἡ σχέση ἀνθρωποκτονίας καὶ μιάσματος θὰ πρέπει νὰ ἐξετασθεῖ στὸ πλαίσιο τῆς κοινωνικῆς ζωῆς τῶν Ἀθηναίων. Ἡ ἀντίληψη τοῦ μιάσματος μπορεῖ νὰ ἐνταχθεῖ στὶς ἰδέες ἐκεῖνες ποὺ ἐνισχύουν τὸν κοινωνικὸ ἔλεγχο καὶ συμβάλλουν στὴ διατήρηση τῆς κοινωνικῆς τάξης. Ἐτσι, τὸ μίαισμα ἐθεωρεῖτο ὡς συμπληρωματικὸ μέσο δίωξης τοῦ ἀνδροφόνου, ὡς ἓνα κοινωνικὸ ὑποκατάστατο ἐκδίκησης καὶ ἀπομόνωσης. Ἡ μόλυνση καὶ ἡ κάθαρση ἀπὸ τὸ μίαισμα ἴσως νὰ ἦταν βασικὲς ἀξίες ὅσον ἀφορᾶ τὴ θρησκευτικὴ διάσταση τῆς ἀνθρωποκτονίας ἀλλὰ δὲν ἦταν τόσο σημαντικὲς γιὰ τὸ ἀθηναϊκὸ δίκαιο ἀνθρωποκτονίας, καθὼς τὸ μίαισμα δὲν συναπαγόταν πάντοτε τὴν πράξη τοῦ φόνου. Οἱ ρήτορες χρησιμοποιοῦν τὶς κοινὲς πεποιθήσεις ἢ προσδοκίες τῶν Ἀθηναίων, προκειμένου νὰ πετύχουν τὸν στόχο τους, δηλαδὴ τὴν καταδίκη ἢ ἀθώωση τοῦ κατηγορουμένου.

Οἱ ἠθικὲς καὶ κοινωνικὲς ἀξίες, ὅπως μίασμα καὶ ἐκδίκηση, εἶχαν μεγάλη σημασία γιὰ μία μακρὰ χρονικὴ περίοδο καὶ ἡ ἔμφαση στὰ ρητορικὰ ἐπιχειρήματα διαφοροποιεῖται ἀνάλογα μὲ τὶς πολιτικὲς καὶ κοινωνικὲς ἀλλαγές. Ἐνα χαρακτηριστικὸ ποὺ παραμένει σταθερὸ σὲ ὅλων τῶν εἰδῶν ὑποθέσεις ἀνθρωποκτονίας ἀπὸ τὸν 7ο ἕως τὰ μέσα τοῦ 4ου π.Χ. αἰ. εἶναι οἱ ἀλληλένδετες ἀξίες κοινωνικῆς καὶ θεϊκῆς δικαιοσύνης.

1. Introduction: Homicide and the Family

Death was predominantly a matter of the *oikos* to which the dead person belonged; it concerned primarily the other members of the person's family. There was a special law fixing the matters that followed one's death, such as lamentation, funeral, sacrifice etc., and all these rules ensure that a funeral was a distinctive family event.¹

If someone had been killed either intentionally or accidentally, by another person or by external circumstances, it was the duty of the family to proceed legally to punish the murderer, deterring thus the other people from killing. Two issues relate to homicide: vengeance and purification from the pollution of the blood of the murder. Vengeance was due to the killed person himself, since the only way to be compensated for dying unjustly or before his due time was by punishment of the killer. It was the duty of his relatives to take appropriate action, and it was a shame not to take action.²

Pollution, on the other hand, emerges as a vital component of homicide in the fifth century.³ Purification was required because killing was bringing *miasma* (pollution) upon the whole community. In a religious sense, *miasma* was thought to be a kind of supernatural pollution, which could be spread with the killer's presence in public places and temples as well as with his association with other citizens in public and private life. The Athenians believed, as reflected in Sophokles' *Oidipous Tyrannos*, that a polluted person could be the cause for disaster or disease to the whole

1. Dem. 43.62; cf. MacDowell (1978) 109.

2. Dem. 58.28-9; cf. MacDowell (1963) 8-9.

3. In the *Tetralogies* attributed to Antiphon, in Plato *Leg.*, in tragedies (Aisch. *Oresteia*, Soph. *OT* 97 and 1012, Eur. *Hipp.* 35, 1447-51) and in the mythological cycle of the god Apollo; cf. Arnaoutoglou (1993) 113.

community and therefore it was required that legal action should be taken immediately against anyone believed to be guilty of homicide.⁴

The evidence after the end of the 6th century BC in our testimonies about legal life in Athens shows that pollution may have been an essential feature of the homicide law and the function of the penalty, but its impact went far beyond. On a social level, it functioned in such a way as to control effectively the activities of the offender, in order to encourage a settlement of the dispute, restoring thus the disorder and unity of the society. On a legal level, the consequences from the pollution of homicide were taken as a kind of restrictive measure, if the killer had been arrested, and a substitute for revenge and deterrence, if the killer had escaped.⁵

The religious dimension of homicide sets apart homicide laws and law-courts, and is responsible for several striking peculiarities in Athenian homicide legal procedure. The law prescribing the procedure for cases of homicide was the oldest law still in force in Athens in the fourth century BC (*Ath. Pol.* 7.1); this is considered to be Drakon's homicide law which was not superseded by the laws of Solon. It is conceivable that Drakon's homicide laws were subject to adjustments until the end of the fifth century BC., when they were re-inscribed in the framework of a collective revision of the Athenian laws and part of the re-inscription made in 409/08 BC survives. According to the inscription (*IG* i² 115.20-23), a very wide circle of the victim's relatives had responsibility for initiating the prosecution against the killer, though in practice it may have been the closest adult male relative was acted as prosecutor while the others would have supported him in court.⁶

Homicide was thus a most serious offence with both secular and religious dimensions, and prosecution remained in the family's scope of responsibility toward the law and the whole of the citizen group. The present paper examines the rhetorical use and persuasive value of social and moral values closely related with homicide, such as secular and sacred justice, religion, pollution and revenge, as deployed in the argumentation of forensic speeches presented in homicide trials. There was an evolution

4. MacDowell (1978) 110.

5. Arnaoutoglou (1993) 134-35.

6. 'Relatives as far as children of cousins and cousin are to make a proclamation to the killer in the Agora. The prosecution is to be shared by cousins, children of cousins, sons-in-law, fathers-in-law, and members of the phratry' (*IG* i² 115.20-23).

in the legal homicide procedure from the second half of fifth century until middle fourth century, and it is therefore interesting to explore whether this procedural change framed and affected the effectiveness of arguments based on social values.

2. Law and Procedure

Drakon's homicide law was retained unaltered by Solon, was later complemented with additional decrees most probably, as will be shown later, on procedural matters and was thereafter observed by the Athenians until the end of the fourth century. Classical sources, however, present Drakon's homicide law as the most ancient and stable law for more than two centuries; this is the argument used in court in order to underline that this very fact proves the efficiency of the law.

καὶ τοὺς μὲν νόμους οἱ κείνται περὶ τῶν τοιούτων πάντες ἂν ἐπαινέσειαν κάλλιστα νόμων κείσθαι καὶ ὀσιώτατα. ὑπάρχει μὲν γὰρ αὐτοῖς ἀρχαιοτάτοις εἶναι ἐν τῇ γῆ ταύτῃ, ἔπειτα τοὺς αὐτοὺς αἰεὶ περὶ τῶν αὐτῶν, ὅπερ μέγιστον σημεῖον νόμων καλῶς κειμένων. (Antiphon *On the choreutes* 6.2)

'Everyone would agree in praising the laws governing these matters as the finest and most righteous of laws. They are the oldest established laws in this land and have always remained the same, which is the best sign of well-enacted laws'.⁷

With reference to their laws, the Athenians used to mention Drakon's institutions (*thesmoi*) and Solon's laws (*nomoi*) until the middle fourth century.⁸ The reluctance to change reflects the Greek conservatism in

7. The translation of abstracts from Antiphon's speeches has been taken from Gagarin's *Texas Series of Greek Oratory*, vol. 1, 1998.

8. The same idea that homicide law were distinct from all the other laws due to their divine content, and had thus remained unchanged until the middle fourth century, is also found in the speech composed by Demosthenes in 352, *Against Aristokrates*; the speech was delivered in a *graphe paranomōn* brought by a person called Euthykles against Aristokrates for proposing a decree in favour of Charidemus of Oreus in Euboea. There is a comparable praise of the homicide laws in the extensive section, where Euthykles gives an account of all the institutions available in Athens for homicide cases (Dem.

matters of religion, since homicide was considered to bring pollution to the perpetrator and anyone who came into contact with him or her. On the other hand, the antiquity of the laws explains the fact that homicide, was originally and primarily covered by a private rather than a public action, the so-called *dike phonou*, in which the right of prosecution lays with the victim's family; in any case the concept of a public prosecution (*ho boulomenos*) had not been created until Solon's legislation. *Dike phonou* was heard at special homicide courts, following certain legal restrictions and rules.

The Areiopagos, which in early times was the Old Council of Athens but after 462 its authority was limited, because of Ephialtes' intervention, to intentional homicide, wounding, arson, poisoning and some religious offences, consisted of former magistrates (*archons*), after their year of office had come to an end, and served in the Council for life.⁹ The Areiopagos differed from the popular *heliastic* courts in essential respects: its members were ex-archons and they served for life. The size of the Council of the Areiopagos was probably between 145 and 175 men with an average age between 52 and 57.¹⁰

The Areopagites must have had considerable legal knowledge through their presidency as archons and their judicial experience at the Council; as mature experts on legal matters, they were expected to be less influenced by the art of rhetoric and the manipulation of the law in homicide trials than the judges at *heliastic* courts who were Athenian citizens over 31 years old and had no previous judicial experience. In the middle of the fourth century, the powers of the Areiopagos that had been abstracted by Ephialtes were expanded and thus the Areiopagos gained once again political force. It had thus the reputation of the finest court in Athens, and it was argued to deserve the respect and trust of the Athenians.¹¹

Lykourgos in 330 BC shows an incredible admiration to the Areiopagos (*Against Leokrates* 1.12), calling it as 'κάλλιστον τῶν Ἑλλήνων παράδειγμα τὸ ἐν Ἀρείῳ πάγῳ συνέδριον' ('the Council of the Areiopagos is

23.70-79).

9. For an overall examination of the evidence for the jurisdiction, membership, procedures and the reputation of the Areiopagos, cf. Wallace (1989).

10. For an overview of the issues concerning the composition of the Areiopagos, its size and its expertise, cf. Lanni (2002) 313-14 with n. 12-15.

11. cf. Lys. 3.2, Dem. 23.66.

the best example of the Greeks'). Nevertheless, the Athenians may have had doubts and good reasons to dispute the Areiopagos' abuse of power and therefore Lykourgos asks them later in the same speech not to make noise when he refers to the Council's arbitrary execution of citizens who had allegedly betrayed the city of Athens (*Against Leokrates* 1.52):

ἡ μὲν γὰρ ἐν Ἀρείῳ πάγῳ βουλή (καὶ μηδεὶς μοι θορυβήσῃ; ταύτην γὰρ ὑπολαμβάνω μεγίστην τότε γενέσθαι τῇ πόλει σωτηρίαν) τοὺς φυγόντας τὴν πατρίδα καὶ ἐγκαταλιπόντας τότε τοῖς πολεμίοις λαβοῦσα ἀπέκτεινε.

'The Council of the Areopagus (please do not jeer when I mention its name -in my opinion, the Council was the greatest reason for our survival in that crisis) arrested and put to death men who at that time fled the country and abandoned it to the enemy.'¹²

The other special homicide courts were the Delphinion, Palladion and Phreattion, each consisted most probably of 51 *ephetai*¹³ and the Prytaneion, which consisted of four tribal kings. Homicide courts tried cases in the open air. The Areiopagos and the other homicide courts also had their own special procedures, as the speaker in Antiphon (*On the choreutes* 6.6) alleges:

αὐτῶν δὲ τούτων ἔνεκα οἱ τε νόμοι καὶ αἱ διωμοσίαι¹⁴ καὶ τὰ τόμια καὶ αἱ προρορήσεις, καὶ τὰλλ' ὅσα γίγνεται τῶν δικῶν τοῦ φόνου ἔνεκα, πολὺν διαφέροντά ἐστιν ἢ ἐπὶ τοῖς ἄλλοις, ὅτι καὶ αὐτὰ τὰ πράγματα, περὶ ὧν οἱ κίνδυνοι, περὶ πλείστου ἐστὶν ὀρθῶς γινώσκεσθαι.

'For these reason the laws, oaths, sacrifices, proclamations, and aspects of procedure in homicide cases are very different from other cases,

12. The translation of abstracts from Lykourgos *Against Leokrates* has been taken from Gagarin's *Texas Series of Greek Oratory*, vol. 5, Harris 2001.

13. There has been much debate about the use of the *ephetai*; some scholars argue that by the fourth century the *ephetai* were still members of these courts whereas others argue that Athenian judges were members of the courts by that time; for the divergence in the scholars' views, cf. Lanni (2002) 313 with n. 11.

14. The *diomosia* was a special oath sworn by litigants in a homicide case. Also, witnesses swore in a homicide case their support for the litigant's guilt or innocence.

because it is of the highest importance to determine the facts correctly when so much is at stake.’

This passage and others like it suggest that the rules of this court encourage the Areopagites to base their decisions primarily on the factual and legal issues of the case and minimize some of the characteristics of the popular law-courts that the Athenians found troubling, such as the presentation of irrelevant material. The most striking difference between the Areiopagos and the popular courts is that the Areiopagos had a rule forbidding irrelevant statements (*ἔξω τοῦ πράγματος*). The same rule must have been enforced in all other homicide courts as well; hence, the speaker in Antiphon 6, a case before the court at the Palladion, implies that the rule forbidding irrelevant statements applies to all homicide prosecutions:

ἐν δὲ τούτῳ τῷ ἀγῶνι, φόνου διώκοντες καὶ τοῦ νόμου οὕτως ἔχοντος, εἰς αὐτὸ τὸ πρᾶγμα κατηγορεῖν.

‘on the other hand, in this trial, when they are prosecuting for homicide and the law requires them to stick to the crime itself’. (Antiphon *On the choreutes* 6.9)

None of our sources gives an exhaustive list of items that were considered “legally irrelevant” (*ἔξω τοῦ πράγματος*), but there is adequate evidence¹⁵ making it clear that lists of services and attacks on an opponent’s character were forbidden. The idealization of the Areiopagos and the other homicide courts, and particularly the relevance rule, may reflect Athenian anxieties about the decision making process of the juries in *heliastic* courts. Thus, in 330 Lykourgos in his prosecution against Leokrates, which did not involve a murder case, objects to the manner in which popular courts generally arrive at verdicts, and urges the jurors to be more like the Areopagites:

ποιήσομαι δὲ καὶ τὴν κατηγορίαν δικαίαν, οὔτε ψευδόμενος οὐδέν, οὔτ’ ἔξω τοῦ πράγματος λέγων. οἱ μὲν γὰρ πλείστοι τῶν εἰς ὑμᾶς εἰσιόντων πάντων ἀτοπώτατον ποιοῦσιν: ἢ γὰρ συμβουλεύουσιν

15. Lysias *Against Simon* 3.46, Lycurgos *Against Leokrates* 1.11–13, and Antiphon *On the murder of Herodes* 5.11.

ἐνταῦθα περὶ τῶν κοινῶν πραγμάτων ἢ κατηγοροῦσι καὶ διαβάλλουσι πάντα μᾶλλον ἢ περὶ οὗ μέλλετε τὴν ψῆφον φέρειν. ἔστι δ' οὐδέτερον τούτων χαλεπὸν, ... τούτων δ' αἴτιοι ὑμεῖς ἐστε, ὧ ἄνδρες: τὴν γὰρ ἐξουσίαν ταύτην δεδώκατε τοῖς ἐνθάδ' εἰσιοῦσι, καὶ ταῦτα κάλλιστον ἔχοντες τῶν Ἑλλήνων παράδειγμα τὸ ἐν Ἀρείῳ πάγῳ συνέδριον, ὃ τοσοῦτον διαφέρει τῶν ἄλλων δικαστηρίων ... πρὸς δ' δεῖ καὶ ὑμᾶς ἀποβλέποντας μὴ ἐπιτρέπειν τοῖς ἔξω τοῦ πράγματος λέγουσιν.

'I will make a just accusation, neither lying nor discussing irrelevant matters. You see that most of those who come before you make the oddest speeches, either giving advice here on public matters, or making accusations and slanders about all things except the subject matter of the vote you are about to cast.... And you are the cause of this state of affairs, gentlemen, for you have given this authority to those who come before you here, even though you have in the Areopagus court the most noble example of the Greeks. ... Looking to the Areopagus you should not allow them to speak outside the point'. (Lyk. *Against Leokrates* 1.11-12)

It is to be noted that even though the trial against Leokrates was a political one, where Lykourgos uses every kind of rhetorical means to persuade that the defendant is a traitor of the city and should be convicted to death, the orator does not make any attack on Leokrates' *ethos* nor does he reveal a personal motive in his prosecution but appears as the public prosecutor who defends the city's interests.

Nevertheless, arguments from *ethos* are not unusual in homicide court trials, though not in the same length as to be found in other public trials.¹⁶ In the homicide speech composed by Antiphon in defence of the *choreutes* (6; at the Palladion in 419/8 BC), the defendant makes use of arguments from *ethos*, since he tries to persuade the judges that his opponent is a liar, motivated by financial causes in his prosecution, and intends to deceive the court. The character attack in this case may comply with the argumentation that the defendant has been unjustly prosecuted for homicide as the victim of political rivalry, but it is still irrelevant to the actual charge of killing

16. On the relevance rule and the examination of the sources concerning appeals to this rule, cf. Lanni (2004) 316ff.

the boy, in accordance with the relevance rule. In the prosecution speech *Against the Stepmother* (Antiphon 1; at the Areiopagos or the Palladion / the date is not certain), the prosecutor portrays his stepmother as a ruthless Klytaimnestra, who had been continuously plotting her husband's death; nevertheless the emphasis is placed upon the planning and the plotting of the murder rather than the stepmother's character. The *ethos* argumentation against her aims to prove her guilt and in this sense it is not irrelevant to the homicide charge. One more speech, composed for a homicide court, has been preserved to us and this is Lysias' *On the Murder of Eratosthenes*. This case involves a justifiable homicide according to the Athenian law, the killing of an adulterer (*moichos*) by the wife's husband, after catching him in the act (*ep' autophoroi*) and was tried before the Delphinion. It is striking that this speech was considered already in the Antiquity as a model of Lysias' *ethopoia*, particularly the dramatic characterization of the accused (Dionysius Halikarnassus, *Lysias* 19).

As becomes clear the evidence from speeches delivered in the special homicide courts is not adequate to draw any firm conclusions. It can only be assumed that arguments from *ethos* may have been more extensively used in defence speeches in homicide courts, and if true, such a strategy would be essential to substantiate the prosecutor's motivation. In any case, the relevance rule did not apply in homicide courts, unless it was only the Areiopagos that actually enforced it, but there is not adequate evidence to support this view.

Dike phonou was the traditional homicide procedure which was restricted to the relatives of the victim and the process entailed specific limitations. The prosecution began with a proclamation in the agora by the *basileus* instructing the alleged perpetrator to abstain from a number of religious and social activities, as being unclear (Antiph. *On the choreutes* 6.35-36). It proceeded more slowly than in other cases with three preliminary hearings (*prodikasiai*) in three separate months, whereas the trial itself took place in the fourth month. Therefore, a homicide trial had to initiate before the ninth month of a *basileus*' office, since he had to preside in all hearings and the trial. Oaths were taken by both parties and a compulsory oath from all witnesses was taken to the effect that the accused had or had not committed the crime. The allocation of cases to courts depended on a number of factors; the status of the victim, the nature of the accusation and the nature of the defence.

Apagoge, on the other hand, was a public procedure heard by *heliastic* courts, and involved either the homicide as a *kakourgema* (*apagoge kakourgon*) or the illegal social and religious activities of the suspect perpetrator (*apagoge phonou*).¹⁷ As a public procedure, *apagoge* was available to all Athenian citizens who wished to prosecute a suspect killer and in this sense the specific procedure was established in order that homicides would not easily escape from trial. In practice, however, from the known to us cases of *apagoge* for homicide, prosecutors were relatives of the victims. *Apagoge* initiated with the arrest and imprisonment of the accused and then proceeded with the trial. In *apagoge*, there was no restriction such as time limitation, oath taking, relevance rule, composition of the juries etc. By implication, *apagoge* was a more open procedure in terms of argumentation and the decision making process.

Two *apagoge* cases are known to us for homicide, Antiphon's *On the murder of Herodes*, which was most probably an *apagoge kakourgon* and was tried within the period 420-417 BC¹⁸ and Lysias' *Against Agoratos*, which was most probably an *apagoge phonou* and was tried in 399/98 BC. In the first case, Antiphon's argumentation focuses upon procedural issues, evidence and witnesses and the issue of prosecutor's sycophancy to earn money. In the second case, however, the *ethos* argumentation plays a fundamental role in the substantiation of the prosecutor's case; the defendant needs to have a clear 'oligarchic' ethos in combination with his servile background, his family criminal record, his own deceitful activity toward the city, his scrupulous nature to get benefits on various occasions by changing political sides in his own interest. It may be a Lysianic strategy to persuade through dramatic characterization, as we have already seen in the case of adultery, but as it appears the speech in the *apagoge phonou* against Agoratos is wholly constructed upon the *ethos* argumentation in order to persuade for the homicide charge. This may be taken to show that *apagoge* offered a wide scope of argumentation in court, and as such it would have been preferred to the traditional *dike phonou*. Moreover, the existence of this alternate homicide procedure, as well as the overall infrequency of homicide trials, may have weakened after the end of the

17. For the procedure of the *apagoge*, cf. Hansen (1976). For the use of *apagoge* in homicide cases, and the evolution of the procedure from the mid-fifth century until the mid-fourth century, cf. Volonaki (2000) 147-76.

18. For the case and the date, cf. Gagarin (1997) 173-74.

fifth century, and more specifically after the Amnesty agreement of 403 BC, any inclination to change the traditional homicide procedures.

3. Social Values - Homicide and *Heliastic* courts

Justice in homicide speeches is a collaborative value that is closely associated with legal, religious and moral dimensions concerning the social impact of the homicide upon the city and the Athenian *demos*. A question arises: what was the purpose of condemning a killer? MacDowell (1963: 141-50) discusses three doctrines that may have functioned as motives for the legal prosecution of homicides, 'vengeance', 'cleansing' and 'deterrence'. As an example, he presents the death penalty and explains that when a killer is executed, this means vengeance for the victim, cleansing from the pollution of the killer's presence and deterrence of other prospective killers. The same applies to the penalty of exile. By implication, one might argue that the punishment of a homicide is determined by the three aforementioned doctrines. However, the penalty in homicide was adjusted according to the intention of the killer, and the intention of the killer exclusively involves the idea of deterrence rather than vengeance and pollution.¹⁹ Thus, vengeance and pollution, which were related to the religious conditions of the society in the city and the dead in homicide cases, were neither fundamental to Athenian homicide law nor a function of the penalty.

In cases of justified and lawful killing there was no consequence upon the killer on the part of the law. In certain circumstances if someone killed a traitor, a lover of a female relative, a nocturnal thief, an opponent in an athletic contest, he had committed homicide lawfully and was not punished.²⁰ In those cases the victim did not demand vengeance because he had himself committed a crime.²¹ Moreover, no pollution was involved for the killer did not bring any *miasma* to the city and those who were in

19. MacDowell (1963) 147.

20. Unless he was accused by the dead persons' relatives that he had not committed homicide lawfully as for example in the case of Euphiletos, who had killed his wife's lover after catching him in the act in the presence of witnesses, but was afterwards prosecuted by Eratosthenes' (the dead) relatives that he had killed him after dragging him in the house and from the altar of the house. (Lysias 1).

21. cf. Dem. 23.54.

contact with him, but on the contrary he was *hosios* and pious, as reflected in Andocides (*On the Mysteries* 1.97):

“ὁ δὲ ἀποκτείνας τὸν ταῦτα ποιήσαντα καὶ ὁ συμβουλεύσας ὅσιος ἔστω καὶ εὐαγής. ὁμόσαι δ’ Ἀθηναίους ἅπαντας καθ’ ἱερῶν τελείων, κατὰ φυλὰς καὶ κατὰ δήμους, ἀποκτενεῖν τὸν ταῦτα ποιήσαντα. ὁ δὲ ὄρκος ἔστω ὅδε: “κτενῶ καὶ λόγῳ καὶ ἔργῳ καὶ ψήφῳ καὶ τῇ ἑμαυτοῦ χειρὶ, ἂν δυνατὸς ᾶ, ὃς ἂν καταλύσῃ τὴν δημοκρατίαν τὴν Ἀθήνησι, καὶ ἑάν τις ἄρξῃ τιν’ ἀρχὴν καταλελυμένης τῆς δημοκρατίας τὸ λοιπόν, καὶ ἑάν τις τυραννεῖν ἐπαναστῆ ἢ τὸν τύραννον συγκαταστήσῃ; καὶ ἑάν τις ἄλλος ἀποκτείνῃ, ὅσιον αὐτὸν νομιῶ εἶναι καὶ πρὸς θεῶν καὶ δαίμωνων, ὡς πολέμιον κτείναντα τὸν Ἀθηναίων, καὶ τὰ κτήματα τοῦ ἀποθανόντος πάντα ἀποδόμενος ἀποδώσω τὰ ἡμίσεια τῷ ἀποκτείναντι, καὶ οὐκ ἀποστέρησω οὐδέν.”

*All Athenians shall swear over unblemished sacrifices by tribes and by demes to kill anyone who does that. The oath shall be as follows: ‘I shall kill, by word and deed, by vote and by my own hand, if I can, anyone who subverts the democracy at Athens, and anyone who holds any office after the democracy has been subverted, and anyone who sets himself up to be tyrant or helps to set up the tyrant. If anyone else kills him, I shall consider that man to be pure in the sight of gods and divinities, because he has killed an enemy of the Athenians, and I will sell all the property of the dead men and give half to the killer and not give any back.’*²²

Two points are worth stressing from the above abstract of the law: first, the killer of anyone who acts against the constitution of democracy is considered by law pure in the sight of gods and divinities and, secondly, a lawful killing involves always an enemy of the Athenians. By implication enmity toward the city played a significant role to homicide law, whereas pollution did not necessarily follow each type of a murder; where the law allowed killing, no *miasma* followed the act of killing or the killer himself.

Pollution may have not always been essential to homicide, as can be seen

22. Gagarin & MacDowell (1998) 126-27.

also in circumstances where a killed man before his death had absolved his killer; no prosecution for homicide could follow in such cases (Dem. 37.59). However, there is another passage in Demosthenes' *Against Aristokrates*, where the doctrine of pollution was recognized; Demosthenes says that when an unintentional killer was pardoned and allowed to return from exile, the law ordained 'sacrifice, cleansing and certain other actions' (Dem. 23.72).²³ In this case, the killer had already been prosecuted for unintentional homicide and punished with exile and this might be the reason why cleansing should follow upon his return to Athens, even after getting the pardon from the killed person's relatives. Moreover, it appears that this must have been the only passage where pollution was enforced by law in a specific context.

Antiphon 6, *On the choreutes*, presents a homicide case worth exploring with reference to the matter of pollution. The speaker was an Athenian 'chorus producer' who was assigned the training of a boys' chorus to compete at the Thargelia in 419 BC. The *choregos* was busy (so he says) by bringing an *eisangelia* against public officials, such as Philinos and others, and was therefore absent from his house where the boys stayed, but he assigned the duty of their training to his son-in-law and three other men. During his absence, one boy named Diodotos was given a drug to drink, which caused his death. Two days later, the boy's brother Philokrates charged the *choregos* with 'having killed the boy by planning his death' (Ant. *On the choreutes* 6.16). According to the defendant, this occurred one day before the prescribed trial of *eisangelia* against the public offender he had accused in order that he would not be legible to act as their prosecutor. However, the *Basileus*, the official in charge of homicide cases, refused to accept the suit, since there was not enough time before the end of his office to initiate the three *prodikasiai* and the trial of homicide. Two months later, a new *Basileus* was appointed and Philokrates resubmitted his case to him about six weeks after that. This time the charge was accepted, leading to a trial at the Palladion, the court that heard cases of unintentional homicide or *bouleusis*, for which the penalty was exile.²⁴

It is obvious that the *choregos* was able to proceed with public prosecution against Philinos and others until the following year that the

23. cf. MacDowell (1963) 148ff.

24. For a summary discussion of the case, and the argumentation of the defendant, cf. Gagarin (2011) 28-31.

charge was resubmitted to the new *Basileus* (Ant. *On the choreutes* 6.38); pollution was no obstacle to legal activity and the law did not care if the *choregos* was polluted during the last months of the previous year, immediately after the boy's death, when the charge was initially made.²⁵ Pollution mattered only as a ritual part of the process in a *dike phonou*, in particular it was associated with the exclusion of the suspect killer until he was tried and beyond this time and context, it did not affect the city or the killer himself.

In rhetorical argumentation, however, pollution plays a significant role in the same case and it can be assumed that it was expected to influence the judges' decision; thus, *miasma* was of high importance to the Athenian ideology and social behaviour. The argument for cleansing from the pollution of murder enhances a religious dimension, when the speaker refers to the power of law enforcing revenge even for the death of a slave, for whom there is no-one to avenge his murder, so that the pollution from homicide will remove (Ant. *On the Choreutes* 6.4).

An important part of the defendant's argumentation lies in his effort to prove that his opponents have other political purposes for implicating him with a homicide charge, a rhetorical strategy indicating that in a *dike phonou*, arguments from *ethos* and political *loidoria* were not absent. To that end, the *choregos* appeals to the law of social and religious seclusion for a suspect murderer, after being publicly proclaimed by the *Basileus*, in order to prove that his opponents made use of the law in order that he would not be able to proceed legally against them. On the other hand, he reverses the argument to claim innocence, by saying that his prosecutors used to share with him food and roof, to communicate and treat him as their friend, until they were motivated to prosecute and changed their behaviour. In this context, the non-seclusion becomes an argument of innocence (Antiphon *On the Choreutes* 6.46):

διὰ τί οὖν οὐκ ἀπεγράφοντο; δι' ὅ τι συνῆσαν καὶ διελέγοντο: συνῆσαν τε γάρ μοι οὐκ ἀξιοῦντες φονέα εἶναι, καὶ οὐκ ἀπεγράφοντο τούτου αὐτοῦ ἔνεκα, οὐχ ἠγούμενοί με ἀποκτεῖναι τὸν παῖδα οὐδ' ἔνοχον εἶναι τοῦ φόνου, οὐδὲ προσήκειν μοι τούτου τοῦ πράγματος οὐδέν.

25. cf. MacDowell (1963) 148ff.

‘Then why didn’t they register it? Why were they spending time talking with me? They were spending time with me because they didn’t think I was a murderer, and they did not register the case for the same reason, that they didn’t think that I had killed the boy or was liable for a charge of homicide, or that I had anything to do with the matter.’

The issue of pollution dominates in the prologues and epilogues of Antiphon’s three *Tetralogies*.²⁶ The rhetorical emphasis is placed upon the arguments, first, that a killer is polluted and his pollution also affects the whole city and, secondly, that it is a religious duty that the killer is tried and punished.²⁷ Scholars have seen the prominence of the *miasma* argumentation as excessive and thus reflecting the author’s artificiality; in particular, a review of the scholars’ views maintains that the doctrine of pollution has gone far beyond the level that in practice it created.²⁸ Nevertheless, even though artificiality has obviously gone to an extreme level, Antiphon’s *Tetralogies* as exercises on homicide cases must have elaborated arguments that were expected to have an impact upon Athenian common beliefs and thus influence the judges’ vote in actual cases.

Another aspect of the rhetorical argumentation of pollution concerns the warning of the judges against convicting an innocent man and thereby doubling the stain of murder, which is passed on and vengeance is indefinitely deferred (Ant. 4.10). Furthermore, the judges are asked to face the consequences of an unfair conviction for murder which should befall upon them only (Ant. *On the Choreutes* 6.6):

καὶ οὐκ ἴσον ἐστὶ τὸν τε διώκοντα μὴ ὀρθῶς <αἰτιάσασθαι καὶ ὑμᾶς τοὺς δικαστὰς μὴ ὀρθῶς> γνῶναι. ἢ μὲν γὰρ τοῦτου αἰτίασις οὐκ ἔχει [νῦν] τέλος, ἀλλ’ ἐν ὑμῖν ἐστὶ καὶ τῇ δίκῃ: ὅ τι δ’ ἂν ὑμεῖς μὴ ὀρθῶς γνῶτε, τοῦτο οὐκ ἔστιν ὅποι ἂν ἀνενεγκῶν τις τὴν αἰτίαν ἀπολύσαιτο.

‘If the prosecutor brings an incorrect accusation, this is not the same as you jurors rendering an incorrect verdict. His accusation is not now

26. The Tetralogies are artificial exercises illustrating different types of argument in homicide cases. Each has four speeches, two on each side, as in actual homicide cases, whereas we never have the second speech from actual homicide trials.

27. cf. Gagarin (2011) 17ff.

28. For a discussion of the scholars’ views, cf. Wohl (2010) 123ff.

final, but depends on you and on the trial; but if you give an incorrect verdict in the trial, *there is no way to escape the blame by assigning it elsewhere.*'

In Greek religious thought, as presented in the Introduction (1), murder polluted the killer with a moral stain that persisted until he was convicted and punished. We know that homicide trials were always held in a holy place and in the open air (*Ath. Pol.* 57.4). Would this mean that homicide was regarded as a religious crime? It is a common view that the exclusion of a murderer from the agora and the other public places was motivated from the fear of pollution. According to Demosthenes, however, the purpose of excluding killers from those places is not the protection of the places and other people from pollution but the deterrence of future killers.²⁹ The evidence from the surviving homicide speeches indicates that the exclusion of the killer from public and social life was associated with enmity and vengeance rather than pollution. Antiphon in his defence speech *On the murder of Herodes*, which was delivered about a decade after the Mytilenean revolt in 427 for a case of *apagoge kakourgon*, indicates that the purpose of holding the trial in the open air was that the judges and the prosecutor might not share a roof (*Ant. On the murder of Herodes* 5.11):

ἔπειτα δέ, ὃ πάντας οἶμαι ὑμᾶς ἐπίστασθαι, ἅπαντα τὰ δικαστήρια ἐν ὑπαίθρῳ δικάζει τὰς δίκας τοῦ φόνου, οὐδενὸς ἄλλου ἔνεκα ἢ ἵνα τοῦτο μὲν οἱ δικασταὶ μὴ ἴωσιν εἰς τὸ αὐτὸ τοῖς μὴ καθαροῖς τὰς χεῖρας, τοῦτο δὲ ὁ διώκων τὴν δίκην τοῦ φόνου ἵνα μὴ ὁμωρόφιός γίγνηται τῷ ἀυθέντη;

'Second, as I think you all know, all courts judge homicide cases in the open air, for the simple reason that the jurors won't be together with someone with impure hands and so that the prosecutor of a homicide won't be under the same roof as the killer'.

The pollution is implicitly referred to the role of the judges to convict the killer in order to bring purification, whereas the killer appears an enemy of the prosecutor and as such should not be in contact with him.

29. *Dem.* 20.157-58; cf. MacDowell (1963) 145.

In the same context, in Lysias' speech *Against Agoratos* (13), another case of *apagoge* (*phonou*), the moral dimension of *miasma* as stain is emphatically manipulated in order to present the killer as polluted and thus dangerous personal enemy and an enemy of the city as a whole. Thus, Agoratos is called *miaros* (defiled, Lysias *Against Agoratos* 13.77) and *aliterios* (religious offender, 13.79); he was universally rejected as a murderer at Phyle (13.79)³⁰ and was driven out of the celebratory procession after the return of the democrats and was told 'to go to hell' ('ἐς κόρα-κας', 13.81). The general idea is that Agoratos' mere presence had polluted the Athenian demos (13.64). Wohl (2010: 219) concludes that in this case 'pollution converts a single crime into durable criminality in the form of an indelible stain'. Agoratos has been continuously polluting the Athenians as one of their enemies and the threat of an enemy of the democratic constitution will stop only when convicted and punished.

The argument of not sharing a roof stresses the enmity between the prosecutor and the killer whereas sharing a roof was obviously a symbol of friendship and as such was used to persuade for one's motivation in homicide cases.³¹ Thus, Euxitheos, the Mytilenean prosecuted as *kakourgos* for murdering an Athenian with an *apagoge* attempts to prove his innocence by arguing that he did not bring any misfortune to all those who were travelling with him in the same boat (Ant. *On the murder of Herodes* 5.83):

ἐμοὶ τοίνυν ἐν πᾶσι τούτοις τὰ ἐναντία ἐγένετο. τοῦτο μὲν γὰρ ὅσοις συνέπλευσα, καλλίστοις ἐχρήσαντο πλοῖς: τοῦτο δὲ ὅπου ἱεροῖς παρῆσθην, οὐκ ἔστιν ὅπου οὐχὶ κάλλιστα τὰ ἱερὰ ἐγένετο. ἃ ἐγὼ ἀξιῶ μεγάλα μοι τεκμήρια εἶναι τῆς αἰτίας, ὅτι οὐκ ἀληθῆ μου οὗτοι κατηγοροῦσι.

'With me, however, it's just the opposite in every case. Those I sailed with have enjoyed the finest voyage, and at the sacrificial rites I have

30. For his flight to Phyle, the prosecutor presents him as a polluted murderer, whom no one was contacting but they all wanted to kill him: 'καίτοι πῶς ἂν γένοιτο ἄνθρωπος μιαιώτερος; ... ἀλλ' ἕτερον: οὔτε γὰρ συσσιτήσας τούτῳ οὐδεὶς φανήσεται οὔτε σύσκηνος γενόμενος οὔτε ὁ ταξίαρχος εἰς τὴν φυλὴν κατατάξας, ἀλλ' ὥσπερ ἀλιτηρίῳ οὐδεὶς ἀνθρώπων αὐτῷ διελέγετο' (Lys. *Against Agoratos* 13.77-79).

31. cf. Ant. *On the Choreutes* 6.39-43.

attended, the sacrifice has never been anything but the finest. I think this is important evidence that the prosecution's accusations against me are untrue.'

In *apagoge* cases of homicide, the killer is emphatically treated as an enemy of the city, either implicitly (Ant. *On the murder of Herodes* 5) or explicitly (Lys. *Against Agoratos* 13). Vengeance, thus, appears an imperative necessary action against the city's enemy. Particularly, in the *apagoge phonou* against Agoratos, four years after the Amnesty agreement of 403 BC, the prosecution strategy is constructed upon this doctrine. The prosecutor aims to present Agoratos as an enemy of both the democratic constitution and the whole of the city as well as his own (Lys. *Against Agoratos* 13.3). The collaborative value of justice in its religious dimension is still effective when referring to punishment and revenge.

Vengeance is rhetorically and dramatically emphasized in the *episkepsis* scene. The *episkepsis* occurred in prison, when Agoratos' victim Dionysodoros confessed to his family and even to his supposed unborn boy to avenge his death for which responsible was Agoratos (13. 39-42). Revenge is dictated by the killed person with the instructions given to the whole family before his death and justifies the enmity toward the killer in the eyes of all the Athenian *demos*. The whole prosecution case is based upon character assassination, presenting the defendant as the cause of all misfortunes for the city after the defeat in the Peloponnesian War and the crimes of the Thirty (13.43-48), as a slave from slave origin, his family consisting of offenders who were all *kakourgoi* and condemned to death (13.67-69), as a sycophant convicted with fines in court (13.65), an adulterer (13.66), and finally a traitor of the city who used bribes to get awards for Phrynichos' murder (13.70-76).

It is obvious that the spirit of the Amnesty has been violated in this prosecution, and *apagoge phonou* actually gave the opportunity to all those who could not have taken revenge upon the murder of their relatives, since they could not by the Amnesty law prosecute a homicide unless it had been committed *autocheiriai*, to avenge in this way publicly the murders committed before and during the oligarchy of the Thirty. The appeal for capital punishment obviously shows that this would not be considered as another murder in continuation of the Thirty's crimes. Repetition of a crime is rhetorically associated with forgetting and not remembering;

Lysias employs an effective rhetorical device to persuade the judges to vote against Agoratos by setting a second trial of the dead democrats.³² The only way to avoid repeating the Thirty's crimes and becoming ὁμοψήφιοι with them is to remember (Lys. *Against Agoratos* 13.95):

μηδαμῶς, ὧ ἄνδρες δικασταί, πρὸς θεῶν Ὀλυμπίων, μήτε τέχνη μήτε μηχανῇ μηδεμιᾶ θάνατον ἐκείνων τῶν ἀνδρῶν καταψηφίσθητε, οἷ πολλὰ κάγαθα ὑμᾶς ποιήσαντες διὰ ταῦτα ὑπὸ τῶν τριάκοντα καὶ Ἀγοράτου τουτουὶ ἀπέθανον. ἀναμνησθέντες οὖν ἀπάντων τῶν δεινῶν, καὶ τῶν κοινῶν τῇ πόλει καὶ τῶν ἰδίων, ὅσα ἐκάστω ἐγένετο ἐπειδὴ ἐκείνοι οἱ ἄνδρες ἐτελεύτησαν, τιμωρήσατε τὸν αἴτιον τούτων.

'By the Olympian gods, judges, do not in any way by any means condemn to death these men who died at the hands of Agoratos and the Thirty just because they benefited you. Remembering, then, everything you suffered after these men died, both collectively as a city and individually, punish the man responsible'.

Vengeful memory is passed from father to son and consequently the Amnesty is forgotten. On the contrary, it is necessary to remember in order to bring future civic justice and show piety toward their forefathers.

In Antiphon's *Against the Stepmother* – a prosecution case of intentional homicide or *bouleusis* for intentional homicide –³³ vengeance is a legacy that passes from father to son, whereas the speaker also explains that vengeance can be also transmitted through slaves, who would reveal that information under torture, if the killed persons had no children (Ant. *Against the Stepmother* 1.30).

Justice is associated with the religious and secular legal and moral dimension.³⁴ The observance of the divine traditional laws is a common

32. Wohl (2010) 225-26.

33. There has been a dispute among scholars as to the kind of homicide in the trial against the stepmother, whether she was accused for planning the poisoning (*bouleusis*) or intending to poison and thus kill her husband (intentional homicide); on this matter, MacDowell (1963) 62-69 argues for the *bouleusis* whereas Gagarin (1997) 104-106, (1990) 81-99, (2002) 146-52 regards the case as intentional homicide, and Harris (2006) 398-403 argues for the *bouleusis* as plotting in intentional homicide.

34. Ant. 1.20: ἡ δ' αἰτία τε ἤδη καὶ ἐνθυμηθεῖσα ἔξει, ἐὰν ὑμεῖς τε καὶ οἱ θεοὶ θέλωσιν. 'and the woman who thought up the plan and carried it out, she will have her reward

appeal, in particular in a *dike phonou* (Ant. *Against the Stepmother* 1.3), which is rhetorically associated with the observance of the divine and traditional Drakonian laws.³⁵ Revenge can also give justice as an action from piety (Ant. *Against the Stepmother* 1.4). Punishment is necessary for justice, since it was prescribed with the formal proclamation of the identity of the murderer by the dead just before his death in front of members of his family – the *episkepsis* scene adds dramatic tone and emotional appeal, especially when the condemned to death addresses a young boy (Ant. *Against the Stepmother* 1.29-30).

The appeal to divine justice and piety is again stressed as an essential argument from *pathos* in Antiphon 6, *On the Choreutes* (6.3), when the defendant encourages the judges to vote rightly in homicide trials, on account of the gods, piety and themselves.

4. Conclusion

Homicide law involved the type of crime, the court, the punishment, and the procedure. *Dike phonou* had some procedural restrictions (i.e. oaths, sacrifice, *prodikasiai*, time, prosecutor, role of *Basileus*) and therefore toward the end of the fifth century and until the middle fourth century *apagoge* was instituted as an alternative public procedure which increased the speed and brought efficiency in cases in which the more complicated process was unnecessary. In any case the purpose of law was the condemnation of the killer.

Social and moral values are associated with justice in homicide cases, as reflected in the overall rhetorical argumentation from the surviving speeches. The religious and divine dimension of homicide is a prominent concept used in speeches composed both for a *dike phonou* and an *apagoge*. Justice has to be found in the co-existence of piety and observance of

too, if you and the gods are willing'; Ant. 1.31: ἐν ὑμῖν δ' ἐστὶ σκοπεῖν τὰ λοιπὰ πρὸς ὑμᾶς αὐτοὺς καὶ δικάζειν τὰ δίκαια. οἴμαι δὲ καὶ τοῖς θεοῖς τοῖς κάτω μέλειν οἱ ἡδίκηνται. 'It is up to you by yourselves to consider what remains to be done and decide in accordance with justice. The gods below, I think, are concerned about the victims of crime'.

35. Ant. 1.3: τιμωρῆσαι πρῶτον μὲν τοῖς νόμοις τοῖς ὑμετέροις, οὓς παρὰ τῶν θεῶν καὶ τῶν προγόνων διαδεξάμενοι, 'first avenge the outrage against your laws that heritage from the gods and your forefathers'

religious and divine customs. In this context, pollution dominates the arguments both for defence and prosecution for.³⁶ The relation between homicide and pollution should be viewed in connection with the social life of Athenian citizen; the restrictions pronounced by a *prorrhesis*, limited strictly the range of activities in the everyday political, social and religious life of the city, since the killer could not participate in the community's life, and besides there was always the danger of being killed by the victim's relative. As a result, the killer was condemned to a social seclusion. Thus, the concept of pollution can be classified among those ideas which enhance social control and contribute to the maintenance of the social order.³⁷ Pollution in cases of homicide was regarded as a supplementary means of the pursuit of the killer and as a social substitute for revenge and deterrence.³⁸

Pollution and *miasma* are doctrines that can be rhetorically manipulated to prove either guilt or innocence. As has been shown, the specific moral and social values can be used in reverse according to the purposes of each case. Pollution and cleansing from *miasma* may have been essential to the religious dimension of homicide but were not fundamental to Athenian homicide law since *miasma* did not always follow the act of killing.

Orators manipulate common beliefs or expectations in order to succeed in their purpose, and that is the conviction or the acquittal of the defendant.³⁹ In terms of the procedural context, it has been shown that the relevance

36. An examination of the evidence including all references to pollution indicates that they are concerned either with the procedural rules or occur in myths or literature (tragedies, epic, etc.), but as Arnaoutoglou (1993) 109-35 has argued they are not found in any text of substantive or procedural law on homicide.

37. Scholars have attempted to describe the nature of pollution from homicide but have not offered an explanation of the function of pollution in the context of ancient Athens. Parker (1983) 120 ff. sees pollution as 'a kind of institution, the metaphysical justification of conventional responses to the disruption of normal life through violent death'. In other words, he explains sufficiently the nature of pollution as a social phenomenon but not its function. Thus the question whether pollution implies the imposition of a legal penalty in the depiction of a homicide remains open. Saunders (1991) 65 considered pollution a strong belief internalized by the killer, but he does not either explain the function of pollution in the context of classical Athens.

38. For a discussion how the inconsistencies concerning legal cases of homicide can be easily resolved upon the explanation, cf. Arnaoutoglou (1993) 127-31.

39. The manipulation consists in the way in which both prosecution and defence use the motif of pollution. In the speeches for the prosecution pollution is invoked as a reminder to the jurors of their duty to punish the murderer and thus, keep the city clean of the pollution. On the other hand, in defendant's speeches the spectre of defilement is raised

rule was not always observed in a *dike phonou*, and in the defence case of the *Choreutes* the political *loidoria* and *ethos* argumentation are central to the strategy of the speaker in his attempt to persuade the judges that he has been falsely and unjustly prosecuted for homicide. With the development of the *apagoge* toward the beginning of the fourth century, the argumentation from *ethos* and *pathos* expand and the inclusion of irrelevant issues increases. In particular, in the case against Agoratos, tried in 399 BC, the prosecution is solely based on the character assassination forgetting the Amnesty and encouraging for murder on political motives.

Vengeance in a *dike phonou* is central to the punishment of the murderer and related social beliefs were used as dissuading and deterring factors. Moreover, in such trials revenge is necessary to serve religious and secular purposes. In an *apagoge*, however, revenge is closely associated with personal enmity. Particularly after the Amnesty agreement, the killer appears both a personal enemy and an enemy of the democratic constitution and the city as a whole. Revenge is the only way to attack the enemy, and condemnation to death is required as the relief from the causes of the enemy.

Homicide law was considered to be unchanged for over two centuries (though additions and modifications did occur), a fact that reflects the Athenians' anxiety to punish a murderer and deter future killers. Moral and social values, such as pollution and vengeance, used to matter through this long period of time and the emphasis of the rhetorical argumentation shifts when the political and social context changes. A characteristic that remains the same in homicide cases throughout the centuries involved the interrelated values of secular and divine justice.

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in order to remind the jurors that their task is to find the guilty person and not to condemn innocent people.

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