

Xenophon and the muleteer

In the spring or summer of 400 B.C., the Ten Thousand Greeks, encamped at Cotyora by the Black Sea, constituted a court, with a jury consisting of the company commanders (*lochagoi*), and resolved that their generals submit to a review of their conduct.¹ Several men accused Xenophon of striking them and charged him with hubris (**Text 1a: X. *Anab.* 5.8.1**).² In Xenophon's ensuing account of his trial, the first prosecutor to speak specifies that Xenophon beat him "where we were dying of cold and there was a huge amount of snow" (i.e., in western Armenia during the previous winter: 4.4-6); Xenophon concedes that "if during such a crisis I was committing hubris, I admit to being more hubristic than donkeys" (5.8.2-3).³ "But tell me," he continues, "the reason that you were struck (*ek tinos eplêgês*). Did I demand something from you and strike you when you refused to give it? Was I demanding something back from you? Was I fighting with you over a boy? Did I get drunk and abusive?" When the prosecutor replies in the negative, Xenophon next seeks to ascertain his role in the army; the answers reveal that the prosecutor had been assigned by his tentmates to drive a mule, "although he was a free man (*eleutheros ôn*)" (5.8.4-5).⁴

The details of the incident now emerge. One day, Xenophon commandeered the prosecutor and his mule to transport a grievously ill soldier. To make room for the man, the prosecutor complains, Xenophon scattered his and his tentmates' baggage; Xenophon responds that he distributed the baggage among others and later returned it. Xenophon sent the prosecutor forward but later found him digging a grave for the man while he was still alive; when the

prosecutor refused to carry the man further, Xenophon struck him (5.8.6-10). The prosecutor retorts that the man subsequently died nonetheless; upon Xenophon's rejoinder, "We are all going to die; should we all be buried alive on that account?," those in attendance "shouted out that he had struck him too few blows," acquitting their general by acclamation (5.8.11). When Xenophon then invites his other prosecutors to stand and explain why they were struck, they remain seated and silent, thus dropping their cases (5.8.12).

Not content with *ad hoc* vindication, Xenophon proceeds to harangue the assembled army in justification of his use of violence against insubordinate soldiers (**Text 1b: X. An. 5.8.13-22**). The core of his argument is found at 5.8.18-19: "My argument," he says, "...is simple. If I punished someone for his own good (*ep' agathôî*), I think I should submit to the same sort of judgment as parents do at the hands of their sons and teachers do at the hands of their students; doctors, too, burn and cut for the good (*ep' agathôî*; *scil.* of their patients). But if you believe that I commit these acts out of hubris (*hybrei*), bear in mind that now I have more confidence, thanks to the gods, than I did then, and I am bolder now than I was then, and I drink more wine, but all the same I don't hit anybody...."⁵ After rounding off his reported speech with a case in point and a recommendation that the army remember his good services, Xenophon concludes the episode by noting that "things turned out well" (5.8.23-26).

At Xenophon's trial, the immediate problem concerned the proper aims and enforcement of military discipline, and the proposed solution advocated the use of violence for the benefit of the individual on the receiving end and the army as a whole. To Xenophon and his fellow Classical Greeks the army *was* the state – not just in the special case of the Ten Thousand,⁶ but in the hundreds of actual Greek *poleis*, where for adult males, the identification of citizen and soldier was essentially complete.⁷ So we should not be surprised if these citizen-soldiers, who

had to obey their generals on campaign but could call them to account upon returning home,⁸ expected that the rights they enjoyed *militiae* would not differ radically from those they enjoyed *domi*.⁹ These rights appear at least sometimes to have included protection against corporal punishment.¹⁰

These factors are specifically, and informatively, at play in Xenophon's trial scene. Nowhere in his defense, and only obliquely after his acquittal,¹¹ does Xenophon assert that his superior rank *per se* grants him special privileges in the use of violence;¹² indeed, he criticizes those soldiers who failed to join him in punishing disorderly conduct (5.8.21).¹³ Rather, the muleteer brings his accusation of hubris, and Xenophon responds, in terms designed to resonate with their audience neither specifically nor predominantly as members of an *ad hoc* military community with special rules, but rather according to common cultural standards. Against the decidedly Panhellenic background of the Ten Thousand,¹⁴ and in light of the Panhellenic readership at which the *Anabasis* is aimed,¹⁵ Xenophon's trial scene is a source of prime importance for the concept of hubris among the Classical Greeks. In what follows, I argue that Xenophon's *ep' agathôî* standard (5.8.18), whereby justified violence, and in particular justified shaming violence, is distinguished from hubristic violence on the grounds of perceived benefit to the sufferer and/or to third parties arising from the purpose(s) of the shame provoked, applies across Greek literary genres and cultural practices, and that in this light and others the prevailing Aristotelian definition of hubris requires modification.

The trial of Xenophon in its contemporary legal context: hubris and shame in the Athenian courts (and elsewhere)

Within a few years of Xenophon's trial,¹⁶ an unnamed Athenian hired Isocrates to write his speech for the trial of Lochites by *dikê aikeias* (a private lawsuit for battery).¹⁷ Anticipating a *de minimis* argument, the prosecutor deploys the language of hubris and shame (**Text 2: Isoc. 20.5-6**). Half a century later, in the *Against Meidias* (**Text 3: Dem. 21.72**),¹⁸ Demosthenes uses similar language in citing the case of Euaeon, who killed Boeotus at a dinner party on account of a single blow. In the cases of Lochites and Euaeon, and that of Demosthenes himself, who was famously punched in the face by Meidias during the Greater Dionysia of 349/8,¹⁹ physical harm is comparatively minor not only in the absolute sense but specifically in relation to the mental attitude of the perpetrator and/or the corresponding mental harm (shame, indignity, dishonor) suffered by the victim, which aggravate the assault so as to constitute hubris. This observation holds even when physical harm is severe, as we see in Demosthenes 54, *Against Conon* (**Text 4: Dem. 54.7-12**). Prosecuting Conon for *aikeia*, Ariston describes in detail the beating that forms the *casus litis*; and yet the gravamen of his accusation of hubris lies in Conon's rooster dance, which caused no physical harm, but manifests *par excellence* Conon's state of mind.²⁰

The same considerations, albeit with different conclusions, lie behind the case of Xenophon and the muleteer and the other cases mentioned in Xenophon's post-acquittal speech. Striking alone does not constitute hubris: Xenophon never disputes hitting the muleteer and volunteers instances of his hitting other soldiers. Presumably he did not inflict severe injury either upon the muleteer, whom he was trying to compel to carry a wounded comrade,²¹ or when he acted to save men from imminent death. Moreover, he had the justification that temporary minor physical harm to an individual outweighed severe and permanent harm to that individual, and potentially equally severe and permanent harm to the army as a whole.²²

Xenophon's case coincides with those of Lochites, Euaeon, Demosthenes, and Ariston in the emphasis on the intent of the actor and the mental effects on the sufferer.²³ In the mouth of the muleteer, *eleutheros ôn* (*An.* 5.8.5) is a pointed comment. Driving a mule²⁴ was characteristically slave labor. Already inconvenienced (if not necessarily shamed) by this assignment, the muleteer was intercepted by Xenophon and ordered to unload his cargo²⁵ and replace it with a man on the verge of death who certainly did not belong to his tent and probably did not belong to his unit.²⁶ Finally, having been divested of his and his tentmates' property and sent forward with no secure knowledge that it would be returned,²⁷ the muleteer found himself on the receiving end of Xenophon's fists, submitting to a punishment that, regardless of his own conduct, was for an adult Greek male assuredly more the mark of slave status²⁸ than mule-driving, and thus, in the full sense of the word, humiliating.²⁹

Both in his defense against the muleteer and thereafter, Xenophon focuses on issues of justification, desert, and benefit. Even before he recognizes the muleteer, Xenophon assumes that he hit him, and proceeds immediately to address circumstance and motive. His first question (*An.* 5.8.2: what was the location of the alleged offense?) goes to broad circumstance, and his reply to the muleteer's answer posits that hubris committed in such a dire situation would be particularly grave ("more hubristic than donkeys," 5.8.3). His next question (5.8.4) goes to specific circumstance and motive, opening with a blunt demand for the precipitating event (*ek tinos eplêgês*).³⁰ He justifies his order to the muleteer both by his conduct after the fact³¹ and on grounds of duress.³² Striking the muleteer receives the fullest justification, as it occurred in response to the attempted live burial of a comrade; and Xenophon's rhetorical question, "We are all going to die; should we all be buried alive on that account?" (5.8.11), casts his punishment of the muleteer as a defense of all against an almost hyperbolically repugnant act. The *ep' agathôî*

standard, implied for third parties here, is openly posited, and extended to include the actual sufferers of violence, in Xenophon's ensuing speech. The general, he argues, stands in relation to (in)subordinate soldiers as parents do to sons, teachers do to students, and doctors do to patients; and the hubristic infliction of physical harm is defined both negatively (in opposition to the same conduct performed *ep' agathôî*) and positively (by association with (over)boldness and intoxication) by the state of mind of the actor and the effects, intended and/or actual, on the sufferer (and others) (5.8.18-19).

The appearance of hubris as an offense at law among the Panhellenic Ten Thousand indicates that a critical mass of Greek *poleis* either recognized hubris as a term of law or could do so without difficulty. The same conclusion is suggested by Hippodamus of Miletus' proposed division of all laws and the corresponding lawsuits into the categories of hubris, damage, and homicide (**Text 5: Arist. Pol. 1267b37-39**), and by Aristotle's efforts at defining hubris, especially in the *Rhetoric*³³ but also in the *Nicomachean Ethics* (**Text 10**). In fact, though, apart from Athens (and the Ten Thousand), we have quite meager evidence for laws or lawsuits concerning hubris among the Classical Greeks.³⁴ In Athens, the law on hubris survives (**Text 6: Dem. 21.47**), but evidence for its application is thin and controversial. On the most cautious reading of the sources we find only two unmistakable *graphai hybreôs*.³⁵ (1) Is. 8.41 (**Text 7: Is. 8.41**):³⁶ in order to prevent the husband of one of his half-sisters from pursuing a claim to her father's estate, Diocles of Phlya "walled him up in his house and by a plot *êtimôse* him." A *graphê hybreôs* has been initiated against Diocles but has not yet come to trial; that it eventually did is shown by the survival of fragments of another speech by Isaeus, *Against Diocles for Hubris*.³⁷ (2) Dem. 45.3-5 (**Text 8: Dem. 45.3-5**): upon returning to Athens from his trierarchy in 368/7,³⁸ Apollodorus filed (but later dropped) a *graphê hybreôs* against the freedman (now

metic) Phormion for marrying Apollodorus' mother Archippe; the grounds for the lawsuit were the impropriety of the marriage and/or Phormion's seduction of Archippe during her previous marriage to Pasion.³⁹

To these cases we may add several possible instances of the *graphê hybreôs*. (3) Lys. fr. 279 Carey (*Against Teisis*) (**Text 9: Lys. fr. 279 Carey**): Teisis invited Archippus into his house, then tied him to a column, whipped him, and confined him; the next day Teisis had his slaves repeat the tying and whipping, and Archippus was only released thanks to the arrival and intercession of friends of Teisis. The resulting lawsuit was either a *graphê hybreôs* or a *dikê aikeias*.⁴⁰ (4) Aeschin. 1.58-64 (**Text 9, note**): Hegesander, Timarchus, and others broke into the house of the public slave⁴¹ Pittalacus, destroyed property, killed his birds, then tied him to a column and whipped him. The following day, Pittalacus, "taking their hubris hard, filed a lawsuit (*dikên*) against each of them [i.e., Hegesander and Timarchus]" (§62),⁴² but the disputants subsequently referred the matter to private arbitration. (5) Din. 1.23 (**Text 9, note**): Athenian courts executed Menon for confining a citizen boy in his mill, Themistius "because he committed hubris against the female cithara-player from Rhodes at the Eleusinia," and Euthymachus "because he put the girl from Olynthus in a brothel"; one or more of these cases may have been *graphai hybreôs*.⁴³

Finally, we have litigants' assertions about acts for which a *graphê hybreôs* would lie. Both the speaker of Isocrates 20 and Ariston, prosecuting *dikai aikeias*,⁴⁴ assert that their defendants have committed the more serious offense of hubris, in order to prove *aikeia a fortiori*.⁴⁵ Demosthenes asserts that Meidias' conduct meets the standard for both *aikeia* and hubris,⁴⁶ but since it occurred during the Greater Dionysia⁴⁷ he opted to proceed by *probolê*.⁴⁸ If the actions brought against Teisis and initiated against Hegesander and Timarchus were not

graphai hybreôs, we find a similar strategy at work in the speech against Teisis and in Aeschines' description of the Pittalacus affair. Binding and beating recur at [Demosthenes] 53.16 (**Text 9, note**): Nicostratus and Arethusius attempt to entrap Apollodorus by sending a citizen boy to pluck his roses "so that if I caught him and bound or beat him in the belief that he was a slave, they could bring a *graphê hybreôs* against me."

Other passages assert the applicability of the *graphê hybreôs* to acts with a sexual element, whether patent or latent. In Hypereides 1, Lycophron, on trial for seduction, criticizes the prosecution's choice of *eisangelia* (impeachment) rather than "*graphai* before the *thesmothetai* provided by the laws"; in all probability the reference is to the *graphê hybreôs* as well as the *graphê moicheias* (for seduction).⁴⁹ A similar objection occurs in Demosthenes 37: at trials over contested mining rights, Pantaenetus convicted Euergus, and now accuses the speaker Nicobulus, on charges including "going to his house in the country and intruding upon his *epiklêroi* and his mother"; Nicobulus maintains that Pantaenetus should have filed an *eisangelia* (*kakôseôs epiklêrou*, for maltreatment of an *epiklêros*)⁵⁰ with the archon, and observes that in one section of his charge document (*enklêma*) Pantaenetus "charges me with many terrible things at the same time: *aikeia*, hubris, acts of violence (*biaiôn*), and offenses against *epiklêroi*," all subject to separate lawsuits.⁵¹ Aeschines 1.15 specifically contends that hiring a boy prostitute constitutes grounds for a *graphê hybreôs*.

The Aristotelian definition of hubris and its problems

These potential *graphai hybreôs* amply demonstrate the procedural flexibility of Athenian law whereby a wrongful act might entitle the would-be prosecutor to choose from among multiple legal actions.⁵² This flexibility, along with the absence (at least at Athens) of a

substantive legal definition of hubris, will have played a considerable role in motivating Aristotle to essay his own definition of hubris.⁵³ Various⁵⁴ formulations of this definition are found in the *Rhetoric* and *Nicomachean Ethics* (**Text 10a-e: Arist. *Rhet.* 1373b38-1374a15; *Rhet.* 1378b14-30; *Rhet.* 1384a15-18; *Rhet.* 1402a1-3; *EN* 1149b20-1150a1**).

Aristotle is especially concerned with distinguishing hubris from other forms of physical assault, above all *aikēia*.⁵⁵ Owing to its clear correspondence with the descriptions of hubristic assaults in the Attic orators, the essence of Aristotle's distinction⁵⁶ – that hubris consists literally of adding insult to injury, requiring the intentional infliction of shame upon its victim (which brings pleasure to the perpetrator)⁵⁷ – has long been recognized as correct by the majority of commentators, at least with regard to acts justiciable under the Athenian *graphē hybreōs*.⁵⁸ Allowing for variation in mental states and capacities, it encompasses not only other forms of hubris committed by humans (and gods and bodies of water), who typically⁵⁹ are motivated by the pleasure of their own perceived self-aggrandizement and/or⁶⁰ the humiliation of their victims, but also acts of hubris committed by animals and plants.⁶¹

Yet upon close inspection, Aristotle's definition founders upon specifics as to both the perpetrator's state of mind and the shame suffered by the victim. With regard to the perpetrator, Aristotle insists that hubris may not be retaliatory, may not be committed in anger, and may not involve any benefit other than that comprised in the act itself.⁶² These assertions are proven false by the overwhelming evidence of other sources. Xenophon stood accused of hubris for an act that he obviously committed in anger, and he was acquitted not because he was angry but because he was justified.⁶³ Moreover, the presence of anger (among other emotions) can be assumed not only in Xenophon's other confessed uses of corporal punishment (*An.* 5.8.13-16) but also in the hypothetical cases he mentions at the beginning of his trial (*An.* 5.8.4). Retaliatory

hubris is evident in the accusations against Conon, Meidias, and Teisis, whose prosecutors all represent the instant offense as the culmination of an escalating quarrel;⁶⁴ in the hypothetical case in [Demosthenes] 53; and in the River Gyndes' drowning of Cyrus the Great's horse (**Text 11: Hdt. 1.189**). Additional examples, from a variety of genres, include Xerxes' punishment of the Hellespont by whipping, verbal abuse, shackling, and (perhaps) branding, done in retaliation for the destruction of his first bridges (**Text 12: Hdt. 7.34-35**);⁶⁵ Ajax's hubris (in the form of binding, torturing, and killing, followed by mockery) against cattle, sheep, and dogs, which he mistakes for Odysseus, Agamemnon, Menelaus, and other commanders of the Greeks,⁶⁶ and Menelaus' resulting prohibition of his burial;⁶⁷ Dionysus' revenge upon Pentheus for imprisoning him, which the god himself describes as hubris;⁶⁸ and Prometheus' response to his punishment.⁶⁹ In most (and arguably all) of these cases, it is abundantly clear that the actors are not just retaliating but doing so in anger (**Text 12, notes**).⁷⁰

But arguably the most blatant contradiction of Aristotle's exclusion of anger, retaliation, and ulterior benefit to the perpetrator lies in the example he himself cites immediately following *Rhet.* 1378b14-30 (**Text 10b**) (**Text 13: Arist. *Rhet.* 1378b30-35**). Aristotle presumably chose the seizure of Briseis because it was the best-known instance of hubris⁷¹ in Greek literature, and on the surface the incident complies with Aristotle's definition: it is an act of violence⁷² intended for, and successful at, the shaming of Achilles. On matters of detail, however, *Iliad* 1 controverts Aristotle. Agamemnon, already roused to anger by Calchas' insistence that he return Chryseis,⁷³ will not have had his mood improved by Achilles' calling him shameless, greedy, and dog-eyed.⁷⁴ Agamemnon explicitly justifies his act as one of retaliation: "just as Phoebus Apollo takes Chryseis from me...I shall carry off fair-cheeked Briseis, your prize, going myself to your hut."⁷⁵ The benefits Agamemnon expects are not limited to putting Achilles in his place⁷⁶ but

include as well immediate⁷⁷ material compensation for the surrender of Chryseis⁷⁸ and the object lesson that the humiliation of Achilles will provide to the other Greeks: in Agamemnon's words, "[so that] another man too may shrink from speaking as my equal and vying with me to my face" (*Il.* 1.186-87)⁷⁹ (**Text 13, notes**). Agamemnon's smug reaffirmation of his superiority is but one example demonstrating the error of Aristotle's refusal (at least in this instance)⁸⁰ to acknowledge that the perpetrator of hubris can (and frequently does) simultaneously feel anger at another and pleasure with himself.⁸¹

Hubris, shame, and the ep' agathôî standard: acts, perpetrators, victims, and third parties

As the case of Agamemnon and Achilles illustrates, in defining hubris we must attend not only to the state of mind of the perpetrator and the effects upon the victim, but also, and equally, to the effects upon third parties,⁸² whose reactions and judgments⁸³ are more informative than (but in many cases cannot be completely divorced from) the interested assertions of alleged perpetrators and victims. Greek literature and cultural practice abound with instances of violence involving a manifest intent to shame; in determining whether such acts constituted hubris, people made at least a tacit, and sometimes an explicit, distinction not only generally, as to whether the act was merited, but specifically, as to the purposes, extent, and effects of the shame provoked. Shame varies not only in degree (minimal and/or fleeting to devastating and/or permanent impact upon the sufferer) but in type (where the scale ranges from almost absolutely⁸⁴ beneficial to absolutely harmful). Moreover, shame operates both (during and) after the fact, as a reaction felt by the sufferer (and those associated with him),⁸⁵ and (during and) before the fact, as a prospect that compels or deters conduct.⁸⁶ In brief, the greater the impact upon the sufferer as against his

deserts (the latter including the extent to which the actor was specifically entitled to act), and the less constructive the shame for the sufferer and for third parties, the more hubristic the act.

At one end of the spectrum lie acts that any reasonable person would characterize as extreme hubris. By definition, no human being is entitled to lash, vilify, and shackle the Hellespont; the shame inflicted is entirely destructive both for the victim and for third parties, insofar as the lesson they take is that treating a divine body of water in such a manner is permissible.⁸⁷ The same combination of binding, whipping, and (presumed, if not attested) verbal abuse in the cases of Teisis, Pittalacus, and Ajax indicates that (at least in Athens) this constituted a paradigmatic form of hubris also when inflicted upon a human victim.⁸⁸ That the severity of the physical punishment and of the shame induced decisively outweighs any justification is borne out by the reactions not only of neutral third parties, in the Teisis and Pittalacus cases,⁸⁹ but even, in the Teisis case, of third parties friendly to the perpetrator.⁹⁰

At the opposite end of the spectrum lie acts which, though violent and committed with a manifest intent that includes asserting the actor's dominance and shaming the sufferer, carry an inherent strong presumption against hubris. Xenophon's cavalier comparison of his own use of violence with those of parents and teachers is telling.⁹¹ Athenians were prohibited by law from beating their parents⁹² but were expected to beat their sons.⁹³ Teachers regularly beat their students.⁹⁴ The licit and pervasive use of corrective shaming violence also characterized Greek athletics. Athletes who committed fouls, such as false starts in races,⁹⁵ punching a fallen opponent or clinching in boxing, and biting or gouging⁹⁶ in the pancration, were flogged on the spot by supervising officials.⁹⁷ In all these cases, the act is presumed to occur in retaliation for wrongdoing, the actor has standing *ex officio* for his conduct, and the shame provoked, while in the short term destructive to the sufferer, is presumed to be constructive in the longer term for the

sufferer, and immediately and indefinitely for third parties, as deterring similar (and, by extension, other) bad acts. The standard is not only objective (is the punisher entitled to act; does the punishment fit the offense?) but subjective (what are the motives and intentions of the punisher and the expected consequences of the punishment?). So too, Xenophon argues (however tendentiously), for the general. The determining factor lies in the intent of the actor and the expected consequences for the sufferer and for third parties. Striking a person for his own good (in the extreme case, in order to save his life) and that of others (punishing violations of military discipline deters not just the offenders but their comrades from acts that endanger all) is explicitly contrasted with striking a person out of hubris.

A definition of hubris that combines the Aristotelian and Xenophontic models, retaining Aristotle's elements of self-aggrandizement and shame but eliminating his rejection of anger, retaliation, and ulterior benefit to the perpetrator, and applying the Xenophontic test of benefit to the sufferer and others, makes sense not only of those cases in which the standing of the actor and/or the sufferer raise a clear prejudice either for or against hubris, but also of those cases in which such prejudice is complicated, contested, or absent. Some Athenians might have thought that Demosthenes could use a good punch in the face, but Meidias chose the worst possible time to deliver it: insofar as Demosthenes represented his tribe, the sovereign *dêmos*, and the god,⁹⁸ Meidias' insult increases in severity, is diverted onto entities that are never legitimate targets, and loses any claim to justification on the grounds of benefit, resulting instead in positive and unqualified harm for all third parties concerned. In Demosthenes 54, Ariston is aware that his jurors may conclude that he deserved a beating if they believe any or all of the arguments anticipated from the defense; namely, that the fight was a typical instance of wealthy young men scuffling over *hetairai* and as such does not merit the attention of the law; that it involved only

Ariston and Conon's son Ctesias, and was initiated by Ariston, thereby entitling Ctesias to defend himself; and that Ariston is exaggerating the extent of his injuries.⁹⁹ But as Ariston relates the event, the fight was three against one, the hubris started when he was already decloaked and prone in the mud, and it culminated after the beating was over, when Conon did his rooster dance.¹⁰⁰ The prime indicator of Conon's hubris thus occurs at the moment of greatest humiliation for Ariston, least practical purpose for his attackers, whose victim is already down and motionless, and least constructive effect upon anyone else. Confinement and (additional) physical violence inflicted by one Athenian upon another (or even upon a slave, unless done by or with the consent of his owner) was, as we have seen,¹⁰¹ so far beyond the pale of licit behavior that it constituted a stereotypical form of hubris.

The moichos and the radish: topographies of hubris and shame

There was, however, one notorious exception. Among the remedies available to an Athenian who caught a seducer (*moichos*) in the act with his wife, mother, sister, daughter, or concubine was to inflict punishment on his own authority, either killing the *moichos* or detaining him for ransom and/or physical abuse.¹⁰² According to his own narrative in Lysias 1,¹⁰³ Euphiletus caught Eratosthenes in bed with his wife, knocked him down, tied his hands behind his back, and asked why Eratosthenes was committing hubris against his house; Eratosthenes confessed and begged Euphiletus to exact ransom, but Euphiletus refused and killed him. In the famous case narrated in Apollodorus' *Against Neaera*, Stephanus entrapped Epaenetus of Andros into committing (apparent) *moicheia* with Neaera's daughter Phano, apprehended Epaenetus in the act, and, asserting his right as Phano's (alleged) father, confined Epaenetus until he agreed to pay 30 minae and posted two sureties.¹⁰⁴

A captor who elected not to kill a *moichos* may have been permitted by law “to do with him whatever he wishes,” perhaps with the proviso that he not use a dagger.¹⁰⁵ He was entitled by custom to inflict extraordinary punishments including the forcible insertion of a large radish into the *moichos*’ anus and the tearing out of his genital and/or buttock hair with the aid of heated ash.¹⁰⁶ These punishments, and possibly others like them,¹⁰⁷ were not only painful but manifestly humiliating and talionic: for his violative act of seducing a woman the *moichos* was himself violated as a woman.¹⁰⁸ The female party to *moicheia*, if subsequently caught wearing jewelry or attending public religious rites, was subject by law to “whatever she suffers, except death,” at the hands of anyone who caught her.¹⁰⁹ Violent and/or shaming punishments for both *moichoi* and their paramours were not restricted to Athens, as we see in the Great Code of Gortyn (**Text 14: IC IV 72 col. 2 vv. 20-36**) and in various parts of the Greek world where the *moichos*, the female party, or both might be publicly paraded on a donkey.¹¹⁰

At Athens, the non-lethal self-help punishments for *moichoi* were sufficiently unique and characteristic that the speaker of Isaeus 8 could state without elaboration (**Text 15: Is. 8.44**)¹¹¹ that Diocles “was caught as a *moichos* and suffered what befits people who engage in such practices”;¹¹² the sequel, “but even so [he] has not desisted from the practice,” shows that punishment was meant both to shame and to deter. Somewhat more explicitly, Xenophon’s Socrates (**Text 16: X. Mem. 2.1.5**) summarizes the risks incurred by the *moichos* who enters his paramour’s quarters as “suffering what the law commands, being ambushed, and being caught and subjected to hubris (*lêphthenta **hybristhênai***),”¹¹³ which is both harmful and shameful (*kakôn te kai aischrôn*). The rightful punishment of the female party is likewise described as hubris in the *Against Neaera* (**Text 17: [Dem.] 59.86**). While it might be objected that Xenophon’s Socrates passes no overt judgment on the punishment he describes, and thus

hybristhênai might be – as it almost always is – a term of condemnation, this cannot be true of Apollodorus in the *Against Neaera*: since the law is *ex hypothesi* just and right, here we have an unequivocal instance of hubris that is not only retaliatory but morally positive.¹¹⁴

But what if the detained man was innocent? Remedies for this eventuality were available both at Gortyn¹¹⁵ and at Athens, for which we return to the case of Epaenetus of Andros. Upon his release, Epaenetus filed a *graphê adikôs heirchthênai hôs moichon* (“for wrongfully having been detained as a *moichos*”). The law governing this procedure permitted the detainee (or, presumably, any adult male citizen)¹¹⁶ to prosecute his captor. If the prosecution prevailed, the detainee was released from liability¹¹⁷ and his sureties were released from their obligation. “However,” Apollodorus informs us (**Text 18: [Dem.] 59.66**), “if [the detainee] is found to be a *moichos*, the law commands that his sureties hand him over to his captor, and that there in the court, without using a dagger, the captor do with him whatever he wishes.”

In the event, Epaenetus’ case never went to trial. He admitted having sex with Phano but maintained that Stephanus lacked the standing to detain him, since he was not Phano’s father, and proffered a law forbidding the seizure of a man as a *moichos* in the company of a known prostitute.¹¹⁸ Arbitration resulted in a settlement whereby Epaenetus dropped his lawsuit, his sureties were released from their obligation, and Epaenetus contributed 1000 drachmas to Phano’s dowry.¹¹⁹ As this is the only known instance of the *graphê adikôs heirchthênai hôs moichon*, and it did not go to trial, we must resort to conjecture as to the specific results of a trial by this procedure. The victorious captor-turned-defendant could treat the *moichos* any way he wished, without using a dagger: in all probability this meant that he could enact – or reenact – the non-lethal punishments he was entitled to use inside his house, including binding, beating, and radishing.¹²⁰ Thereby he might inflict otherwise private humiliating violence on the public

stage, with the witnessing crowd performing a function at once exacerbating (owing to the number of witnesses)¹²¹ and moderating (by ensuring that punishment did not exceed licit bounds).¹²²

The vindicated detainee, however, received (by Apollodorus' account) only release from his debt to (and, if it had continued up to trial, detention by) his captor. There must also have been punitive measures available against the wrongful detainer, or else there will have been no legal deterrent to his behavior: any Athenian with a wife, mother, sister, daughter, or concubine could detain any man he wished in hopes of successful extortion, and if he lost an ensuing *graphê*, he would face only embarrassment and ill repute. Douglas MacDowell (1978: 126) hypothesized that “the penalty for wrongful confinement was presumably assessed by the jury [*scil.* in the *graphê adikôs heirchthênai hôs moichon*] in each case”; but as Apollodorus mentions nothing of the sort, it is more probable that a new action had to be brought. Owing to the presumption that the detainee, while under confinement, had suffered treatment so heinous that it might merit the name of hubris even had he deserved it, the natural choice of action – provided that the detainee was willing further to publicize (and thereby aggravate) his shame¹²³ – will have been the *graphê hybreôs*.¹²⁴

¹ X. *An.* 5.7.34-5.8.1.

² The trial of Xenophon receives brief attention (pp. 125-26) in Fisher 1992, the most complete and valuable modern study of hubris. For other discussions see Lendle 1995: 355-59; Couvenhes 2005: 452-53; Lee 2007: 101-3; Flower 2012: 146-47.

³ On the hubris of donkeys (to which anyone with sufficient experience riding one can attest), cf. Ar. *Vesp.* 1304-10; Pi. *P.* 10.33-36; Hdt. 4.129 (for varying interpretations of the term here see MacDowell 1976: 15; Fisher 1992: 120).

⁴ The present optatives (*hopliteuoi*, *peltazoi*) in Xenophon's indirect questions may represent imperfect indicatives in the original direct questions (*hōpliteues? epeltazes?*; so taken by Rehdantz and Carnuth 1905 *ad loc.*), referring to the status of the muleteer at the time of the event in question, which would not necessarily be permanent. Greek, however, usually avoids confusion by retaining original imperfect indicatives in indirect discourse (Smyth 1956: §2623b); probably, therefore, Xenophon's original direct questions were present indicatives (*hopliteuis? peltazeis?*), referring to a more or less permanent status, and the muleteer's negative answers indicate that he was an archer (e.g., 1.2.9; 3.4.17), javelineer (if these existed separately from the (javelin-wielding) peltasts: they appear to be identical at 4.3.27-28 but are distinguished (with reference to the Athenian democrats at Munychia) at *HG* 2.4.12), or slinger (a unit of some 200 Rhodian slingers is constituted – along with some 50 cavalry, from whom we can confidently exclude the muleteer – at 3.3.16-20). Complicating the issue, though, is Xenophon's occasional use

of the term “peltasts” to refer to all non-hoplite troops (e.g., 1.2.9 *ad fin.*, whereas earlier in the same section Thracian peltasts and Cretan archers are enumerated separately).

⁵ [Ad 5.8.21:] The army had earlier (3.2.31-33) unanimously approved a motion, proposed by Xenophon, that any disobedient soldier was to be punished by any witnessing soldier in concert with the commanding officer.

⁶ Especially after reaching the relative safety of the Black Sea, the Ten Thousand operated as a mobile virtual *polis*, with an assembly of the army as a whole competent to decide both internal and external policy, and the court of law instituted at Cotyora. See especially Dillery 1995: 59-98 (including, in particular, the meetings and powers of the assembly of soldiers, and the functions of the generals as chief executive magistrates and of the officer corps as a probouleutic council: pp. 78-79 *et alibi*); also, e.g., Hornblower 2004 (with comparison to other Greek armies from the *Iliad* to Alexander the Great and beyond); Perlman 1976-77: 278; Rehdantz 1888: 7 (on the terminology of assemblies and lawcourts employed in the *Anabasis*); *contra* Lee 2007: 9-11. Had the army accepted Xenophon’s proposal to found a city on the Black Sea (5.6.15-34), it would have become a *polis* in fact.

⁷ Adult males were liable to military service until the age of 60. See, e.g., Hanson 2009: 30-31, 89, 92. This is not to discount the military obligations of non-citizen residents of the *polis* (such as the metics at Athens or the *perioikoi* and helots at Sparta), the increasing importance of mercenaries in Greek warfare in the fourth century, or the fact that some citizens were excused from military service for reasons such as physical disability (e.g., Lys. 24; Plut. *Solon* 31.3-4).

⁸ If not earlier. At Athens, in addition to failing to win reelection, a general might be prosecuted for various forms of misconduct at his end-of-term *euthynai* (e.g., Dem. 4.47; [Arist.] *Ath. Pol.* 59.1-2) or at any time by *eisangelia* (“impeachment”: e.g., Hyp. 4.1-2, 7-8; on the frequency of *eisangeliai* against Athenian generals see Hansen 1975; Hansen 1991: 212-18). At Sparta, the ephors could fine, depose, imprison, or remand for capital trial a serving general (X. *Lac.* 8.4); Clearchus, one of the original generals of the Ten Thousand, in his previous life as a Spartan general had violated an order of recall issued by the ephors and consequently had been tried and sentenced to death *in absentia* (so X. *An.* 2.6.2-4; D. S. 14.12.2-7 gives a much more detailed and lurid account of Clearchus’ misbehavior). The trial of a Spartan general took place before the *gerousia* of the two kings and 28 elders; when the defendant general was himself a king, his colleague remained on the jury, to which the five ephors were added (as perhaps in other cases): X. *Lac.* 10.2; Arist. *Pol.* 1270b28-29, 35-41; 1294b18-34; Plut. *Lyc.* 26.1-2; Paus. 3.5.2; de Ste Croix 1972: 131-38; MacDowell 1986: 123-50. On the trial of Leotychidas II see below, n. 000. Returning Argive armies held trials for misconduct on campaign just outside, and before entering, the city walls of Argos (Thuc. 5.60.6; I see no warrant for the skepticism of Gomme, Andrewes, and Dover 1945-81: 4.86). Pritchett 1974: 4-33 includes a catalogue of 70 trials of Greek (predominantly, but not exclusively, Athenian and Spartan) generals from the seventh century to 338.

⁹ The major (apparent) exception, the obligation to obey the orders of superior officers, differed only in specifics, not in kind, from the obligation to obey magistrates at home. Ordinary Spartiates, whether at home or abroad, stood in the same relation to the ephors as their commanders did (X. *Lac.* 8.4; above, n. 000); the ephors heard *ta peri tôn symbolaiôn dikaia* (“lawsuits concerning contracts,” or perhaps “private lawsuits” generally: MacDowell 1986: 130-31) every day, even in the army on campaign (Plut. *Mor.* 221a-b = *Apophth. Lac.*, Eurycratidas).

¹⁰ In the fourth century, Athenian generals could confine, discharge, or fine men for insubordination ([Arist.] *Ath. Pol.* 61.2), but evidently could not beat them, as instances in which we would expect corporal punishment if it were allowed (e.g., Lys. 3.45; Dem. 54.3-5) appear to confirm the argument *e silentio*. In general, short of the death penalty for major offenses, explicit references to military corporal punishment, actual or threatened (see Pritchett 1974: 232-45; Couvenhes 2005), tend to involve Spartan officers’ punishing non-Spartan subordinates, with drastically negative results. Plut. *Arist.* 23 (Byzantium, 478/7): Pausanias’ corporal punishment of allied troops helps to motivate the defection of the Ionians to Athens. Thuc. 8.84 (Miletus, 411/10): Astyochochus’ merely raising his staff to threaten the Thurian commander Dorieus, who is supporting his sailors’ demands for back pay, causes the sailors to attempt to stone him. X. *HG* 6.2.18-19 (Corcyra, 373/2): Mnasippus strikes one mercenary *lochagos* with his staff and another with the butt-spike of his spear for observing that withholding pay does not make for obedient troops; “as a result,” Xenophon concludes, “they all marched out in poor spirits and hating him, which is least advantageous for battle” (!). Protections against military corporal punishment corresponded to domestic prohibitions against physical assault, as at Athens under the laws governing the *dikê aikeias* (for battery) and the *graphê hybreôs* (for hubris): see below, pp. 000-000. Antiphon 4 δ 7, plausibly *a priori*, posits as universal principle sanctions against the wrongful initiator of violence (and, more problematically, impunity of response thereto).

¹¹ As in his opening admission (5.8.13), which assumes the right and responsibility to enforce discipline, and later (5.8.18) by comparison to parents and teachers.

¹² Xenophon's personal opinion may well have differed. Hornblower 2004: 255 is doubtless correct to suggest that Xenophon's use of corporal punishment during the campaign of the Ten Thousand was intentional Laconizing (cf. n. 000); his immediate (partial) role model was Clearchus, who "was always harsh and rough, with the result that his soldiers were disposed toward him as students are toward their teacher" (!) (2.6.12; cf. 1.5.11-17; 2.3.11; 2.6.9-10).

¹³ Insofar as the Ten Thousand were unaccustomed to commanders' striking troops, they will naturally have hesitated to do so themselves, specific empowerment (above, n. 000) notwithstanding.

¹⁴ Over half of the Ten Thousand were Arcadians and Achaeans, with the rest including men from Argos, Sparta, Elis, Sicyon, Megara, Athens, Boeotia, Locris, Aetolia, Acarnania, Ambracia, Dolopia, Thessaly, Olynthus, Amphipolis, Dardanus, Chios, Samos, Miletus, Rhodes, Crete, Syracuse, and Thurii. Lee 2007: 9, 60-66.

¹⁵ Regardless of whether we accept that one of Xenophon's goals in writing the *Anabasis* was to promote Panhellenic action against Persia (e.g., Dillery 1995: 59-63; Cawkwell 2004: 59-67), it cannot be disputed that the work envisaged, and won, a broad Greek readership (note, e.g., Arr. *An.* 1.12.3; 2.7.8-9).

¹⁶ Lochites was a minor during the reign of the Thirty (Isoc. 20.11), so the *terminus ante quem non* for his trial is 403/2; since he is still young (§21) and the oligarchy is treated as a recent event, most modern commentators place the trial *ca.* 400 (Spatharas 2009: 60-62; Mirhady in Mirhady and Too 2000: 123; Blass 1887-98: 2.217 with n. 4; Mathieu and Brémond 1928: 37).

¹⁷ Despite the prevalence of the language of hubris in the speech, the first sentence ("That Lochites beat [*etypte*] me, beginning a fight without justification [*archôn cheirôn adikôn*], all those who were present have testified to you," §1), which employs the formula for *aikeia* (below, p. 000), and in particular the prospect of damages payable to the prosecutor (§§16-19; cf. [Dem.] 47.64), identify the lawsuit as a *dikê aikeias* rather than a *graphê hybreôs* (below, p. 000), in which any fine assessed was paid to the state (Dem. 21.45).

¹⁸ Written in 347/6 for the trial of Meidias, who had punched Demosthenes in the face at the Greater Dionysia of 349/8.

¹⁹ Less than a week after being punched by Meidias, Demosthenes had recovered sufficiently to secure *in propria persona* a preliminary condemnation (*katacheirotomia*) of Meidias by the Athenian Assembly. A special session of the Assembly convened in the Theater of Dionysus the day after the Pandia (i.e., ?17 Elaphebolion) was the mandatory venue for the initiation of the procedure known as *probolê* for offenses concerning the Greater Dionysia (10-15 Elaphebolion) (with the possible exception of cases in which a fine – presumably of 500 dr. or less: [Dem.] 47.43 – had been imposed by the Council of 500 and immediately paid: Dem. 21.8 with MacDowell 1990: 227-29). The Assembly's *katacheirotomia* was only formally punitive; if Demosthenes wished to pursue actual sanctions, he had to bring the *probolê* to trial before a regular jury-court (*dikastêrion*). Dem. 21 is ostensibly the speech that Demosthenes delivered at Meidias' jury-trial two years later (§13); debate over whether the speech (or something approximating it) was actually delivered in court revolves around the interpretation of Aeschin. 3.52 (Demosthenes "sold for 30 minae the hubris committed against him and the *katacheirotomia* that the Assembly rendered against Meidias in the Theater of Dionysus"), which might mean that Demosthenes took a bribe from Meidias to drop his lawsuit (Plut. *Dem.* 12.3-6; [Plut.] *Mor. (Vit. X Oratt.)* 844d; *Suda* s.v. *Dêmosthenês*) or that he prosecuted Meidias and secured a conviction but proposed a penalty of (only) 30 mn. (as opposed to death or confiscation of all Meidias' property: Dem. 21.152) (MacDowell 1990: 23-28; Harris 2008: 84-86). On the language of hubris in Dem. 21 see Rowe 1993.

²⁰ On the foregoing cases, and on the Athenian *graphê hybreôs* (below, pp. 000-000), see Fisher 1976: 180-81; Fisher 1990; Fisher 1992: 36-85; MacDowell 1976; MacDowell 1978: 129-32, 194-97, 256-57; MacDowell 1990, esp. 18-23, 263-69; Cohen 1991: 176-80; Cohen 1995: 87-162; Cohen 2005: 215-22; Lipsius 1905-15: 420-35; Ruschenbusch 1965; Gagarin 1979; Murray 1990; Todd 1993: 268-71; van Wees 2011; Riess 2012: 57-82, 87-94, 96-99, 104-10, and esp. 115-31.

²¹ And note the acclamation verdict that Xenophon should have hit him more: *An.* 5.8.11.

²² "If we all [broke ranks in pursuit of plunder], we would all be dead," *An.* 5.8.13; cf. 5.8.16: stragglers on the march hinder movement of the entire force under enemy pressure.

²³ While we are at Xenophon's mercy for our knowledge of his trial, and so the explicit language of shaming is predictably absent (as such an admission, however qualified, would be against Xenophon's interests), the centrality of mental factors remains evident.

²⁴ Though an unquestionably vital function under the circumstances, as observed by Lee 2007: 101-3, who also notes that the assignment to drive the mule was given by the man's tentmates, not by a superior officer.

²⁵ His description of Xenophon's "throwing about" (*dierrhipsas*, 5.8.6) their baggage connotes a high-handed and disrespectful attitude.

²⁶ As indicated by the wounded man's proper forward position in the order of march, the muleteer's ensuing callous behavior, and Xenophon's silence on a matter that would be sure to prejudice his audience in his favor.

²⁷ Cf. nn. **000 ad fin.**, **000** on wrongful appropriation as hubris; the eventual return notwithstanding, assurances may or may not have been given, and if given, may have been reasonably disbelieved due to the situation of enemy pursuit.

²⁸ Couvenhes 2005: 452.

²⁹ Dem. 22.54-55: the most significant difference between free men and slaves is that the latter are liable to corporal punishment while the former are not; Androtion has committed hubris against both citizens and metics by "inflict[ing] his punishments upon their bodies, as though they were slaves (*eis ta sômata hôsper andrapodois*)."²⁹ Cf. Dem. 21.180: during a procession, Ctesicles horsewhipped an enemy and "was deemed to strike out of hubris rather than intoxication [which, together with the procession,] he seized upon as the pretext for committing the offense of treating free men as slaves (*hôs doulois chrômenos tois eleutherois*)."²⁹ Note the contrast between the assumptions in these passages and the terms of the Athenian hubris law (below, p. **000**), which protected slaves and free people alike. On the (theoretical) inviolability of the citizen's body see Fisher 1992: 59; Hunter 1994: 154-84; Allen 2000: 213-24; Riess 2012: 87-88.

³⁰ He then proceeds to list some typical situations of potential hubristic assault: refused demand for or recovery of property, erotic rivalry, and drunken violence. Withholding property is frequently described as hubris in Attic oratory: see n. **000 ad fin.** Erotic rivalry: in addition to the Pittalacus case (below, p. **000**); the assault on Pittalacus took place after Timarchus transferred his affections from Pittalacus to Hegesander: Aeschin. 1.55-58), note, e.g., Lys. 3.5-7; Dem. 54.13-14 (below, p. **000** with n. **000**). Drunkenness, depending on the needs of the speaker, might be held either to exacerbate or to mitigate a violent act, and accordingly to support (e.g., Dem. 54.3, 7-8) or rebut (e.g., by implication at Dem. 21.180: above, n. **000**) an allegation of hubris: see Riess 2012: 67-69.

³¹ He returned the mule's original cargo whole and undamaged, 5.8.7.

³² With the enemy in pursuit, the wounded man would surely die if left behind: 5.8.8.

³³ Insofar as its target readership was not only Panhellenic but specifically concerned with winning lawsuits.

³⁴ Hdt. 6.85 (Sparta, ca. 490): in response to a complaint by Aeginetan ambassadors, the Spartans convene a court, which finds that the Aeginetans have been treated with extreme hubris by Leotyichidas II (*dikastêrion synagagontes egnôsan perihybristhai Aiginêtas hypo Leutyichideô*) and sentences him to extradition to Aegina in return for Aeginetan hostages being detained at Athens (see Fisher 2000: 105-6). *IG XII 2.646, a 23-25* = Stauber 1996: no. 36 (Nasos, fourth century): Agesistratus is convicted of hubris and fined 25 gold staters. Cf. *PHalensis 1 (Dikaiomata: Bechtel et al. 1913) col. IX, lines 210-13* (mid-third century hubris law of Egyptian Alexandria), with Fisher 1992: 83-85; Hirata 2008.

³⁵ Despite the latitude of the law's opening condition, and although Athenian litigants accuse their opponents of hubris as a matter of course. The opening condition neither defines hubris nor restricts its scope to hubris, encompassing as well "anything *paranomon*." The law does restrict the cases it governs to those in which both the perpetrator and the victim are human beings (MacDowell 1976: 24; 1978: 130; Gagarin 1979: 230; cf. below, pp. **000, 000, 000** with nn. **000, 000, 000**). Moreover, cases in which the victim was an orphan, *epiklêros*, or widow who remained in her deceased husband's household claiming to be pregnant were subject to separate remedies ([Dem.] 43.75; cf. Dem. 37.33, 45-46: below, p. **000**).

³⁶ ?383-363: Wyse 1904: 588; Wevers 1969: 21.

³⁷ Is. fr. VIII Baiter-Sauppe. Against the traditional interpretation of *êtimôse* – that by imprisoning his brother-in-law Diocles (somehow) procured his legal *atimia* (disfranchisement) (Wyse 1904: 621; Roussel 1922: 156; Forster 1927: 316; Michailidis-Nouaros 1939: 300-1; Fisher 1990: 125; 1992: 40-41; Carey 1995: 410 n. 12) – Avramović 2010 argues that the verb refers simply to shaming, with the victim becoming an object of general mockery. (Depending on the duration of his confinement, he may have been incomed after the manner described in the thirteenth-century Icelandic *Laxdæla saga* 47. Shortly after Christmas 1002, Kjartan Olafsson assembled sixty men and barricaded his cousin and foster-brother Bolli Thorleiksson, Bolli's wife Gudrun Osvifsdottir, *et al.* inside their farmstead for three days, forcing them to excrete inside rather than going to the outhouse, which, the author takes pains to observe, was the custom of the time. The victims "thought it was a much bigger humiliation than if Kjartan had killed one or two of their men" (*þótti þetta miklu meiri svívirðing ok verri, en þótt Kjartan hefði drepit mann eða tvá fyrir þeim*: !); the result was a full-blown feud (*ibid.*), and Kjartan would be killed in ambush a few days after Easter 1003 (*Laxdæla saga* 49 with Magnusson and Pálsson 1969: 21).) Whatever the significance of *êtimôse*, observe that there is no mention of any direct physical injury to the victim, although Harp. s.v. *katôikodomêsen* (= Is. fr. VIII.6 Baiter-Sauppe) glosses the word as "shut [the victim] up in a house/room (*oikêma*) and tried to kill (*apekteinen*, conative) [him]" (by starvation? by hurling down roof tiles? by smoke?). This is certainly an abnormal

case (Avramović 2010: 269-71 compares *inter alia* the barricading of Philocleon at the beginning of Ar. *Vesp.* and the legend of the Athenian who punished his daughter for losing her virginity before marriage by walling her up in an empty house with a horse at Aeschin. 1.182; note, however, that Avramović's interpretation of the passage is incorrect – the purpose of the act was not the preservation of the girl's virginity but the infliction of her death by horse: cf. the more specific variant of the legend at Heraclides Lembus, *Epitome of the Ath. Pol.* 1, and see Fisher 2001: 331-34): what concerned Athenians was the vulnerability of their homes not to barricading but to breaking and entering (commonly by digging through walls, *toichôrychia*, which rendered the actor liable to *apagôgê*, summary arrest: Ar. *Plut.* 565; X. *Mem.* 1.2.62; [Dem.] 35.47; [Arist.] *Ath. Pol.* 52.1; Diocles' victim evidently escaped by the reverse method, tunneling out of his house: Harp. s.v. *ekplitheusas* = Is. fr. VIII.4 Baiter-Sauppe). Apart from the special case of Diocles, actual or hypothetical bad actors in disputes concerning estates are described as committing hubris, or their victims as suffering hubris, at Lys. 32.10; Is. 2.15, 33; 3.46, 48; 4.11; 5.24; 6.48; 8.1, 45; Dem. 27.65, 68.

³⁸ Sandys and Paley 1910: 62; Trevett 1992: 10, 33.

³⁹ Apollodorus suggests (§84) that his younger brother Pasicles is Phormion's son, and Pasicles was born eight years before Pasion died. This case too is to some degree abnormal, as Apollodorus essentially confesses by way of explaining that he initiated a *graphê hybreôs* because private lawsuits (*dikai idiai*: see n. 000) were suspended owing to the war (with Thebes: Sandys and Paley 1910: 62-63). (Since Apollodorus alleges that Phormion withheld the estate left to him by Pasion (§3) and that the will of Pasion adduced by Phormion – which marries Archippe to Phormion – is a forgery (§§6, 28ff.), private lawsuits by which he might have proceeded include a *diadikasia* (for adjudication of the estate) and a *dikê blabês* (for damage; i.e., wrongfully inflicted financial loss.) However, both improper marriage and seduction are elsewhere described as hubris. At [Dem.] 59.72 the term hubris (albeit with no hint of a *graphê hybreôs*) is applied to Stephanus' and Neaera's falsely representing Phano as a citizen in marrying her to Theogenes. (A complicating factor in Apollodorus' case will have been the evident hypocrisy of his objecting to the remarriage of Archippe – whose first husband Pasion was a naturalized former slave – to another former slave.) Seduction (*moicheia*) could be prosecuted by a *graphê hybreôs* (Hyp. 1.12: below, p. 000); for seduction as hubris cf. Lys. 1.2-4: Eratosthenes commits “what all men consider the most terrible kind of hubris” by entering Euphiletus' house and sleeping with his wife. Other sexual offenses described as hubris include rape (seen as a particular vice of tyrants: e.g., Ar. *Pol.* 1314b23-25 with Hdt. 3.80; Fisher 1976: 183; for rape as justiciable under the *graphê hybreôs* see Harris 1990: 373; 2004: 63-66; Cohen 1991: 178; Fisher 1992: 13; Carey 1995: 410) and the prostitution of citizen males (as involving hubris by the pimp, by the client, and against and/or by the prostitute: see Aeschin. 1 with Cohen 1991: 175-80; Fisher 1992: 109-10; 2001; 2005; in Aeschines' estimation (e.g., §15, 87), all parties are at least aware of the shame inflicted on the prostitute, even if they do not specifically intend it). Fisher 1992: 42 notes the “highly unusual circumstances” of Apollodorus' *graphê hybreôs* but correctly warns against the assumption that the action was “patently absurd.”

⁴⁰ D. H. *Dem.* 11 introduces the fragment as *diêgêsîn tina...hybristikên*, “a narrative dealing with hubris.” The speaker who delivers the *Against Teisis* is not the victim Archippus and refers to the lawsuit with the word *dikê* (*Teisis ho pheugôn tèn dikên*, §1). Neither of these facts is dispositive as to the legal action. The speaker might be appearing as a *synêgoros* (supporting speaker, advocate) for Archippus in a *dikê aikeias* (which Archippus would have had to prosecute *in propria persona*) or might be either a *synêgoros* or (less probably) the prosecutor of record in a *graphê hybreôs* (in which case *dikên* at §1 is used in the general sense of (any) “lawsuit” rather than in specific reference to the type of private lawsuit called *dikê*). On general vs. specific *dikê* see Phillips 2007: 95-96; on the identification of the lawsuit against Teisis see Blass 1887-98: 1.623; Gernet and Bizos 1989: 2.241; Todd 2000: 347.

⁴¹ Perhaps by this point a freed metic: Fisher 2001: 190-91.

⁴² By the letter of the hubris law, the non-citizen Pittalacus could not bring a *graphê hybreôs* in his own name; accordingly, Fisher 2001: 199-200 tentatively identifies the action as a *dikê aikeias* but also raises the possibility of a *dikê blabês* (for damage to property: cf. n. 000 above) or a *dikê biaïôn* (for “acts of violence”: cf. Lys. 23.12; Lys. fr. 31, 299-302 Carey; Dem. 21.44-45; Harp. s.v. *biaïôn*). Note, though, that if Pittalacus was a slave, he had no more legal right to bring a *dikê* than a *graphê*. Here too, in fact, *dikên* might be used generally (cf. n. 000): given the Athenians' lack of legal professionalism and their tendency to interpret and enforce laws inconsistently and casuistically (note the influence of equity at, e.g., Isoc. 7.33; Arist. *EN* 1137a31-b38, especially 1137b11-13; see generally Meyer-Laurin 1965, and Lanni 2006: 115-48 on the phenomenon of “legal insecurity”), we cannot eliminate the possibility that Pittalacus convinced the *thesmothetai* to admit a *graphê hybreôs*.

⁴³ In Themistius' case the action may rather have been *probolê* for “wrongdoing concerning the festival” (*adikein peri tèn heortên*): for *probolê* arising from the Eleusinia (as arising from the Dionysia in the case of Meidias: above, p. 000) see Dem. 21.175 with MacDowell 1990 *ad loc.* Worthington 1992: 169 and Harris 2008: 79-81 incorrectly

conflate *probolê* with the *graphê hybreôs*; for the distinction between the procedures see Dem. 21.25-26 with MacDowell 1990: 16-17, 246-48. (For other possible cases see Fisher 1990: 125-26, 133 with n. 29.)

⁴⁴ Defined as *archein cheirôn adikôn*, literally “beginning unjust hands”; i.e., starting a fight without justification. Dem. 23.50 quotes from a law the condition “if a person strikes (*typtêi*) another, *archôn cheirôn adikôn*”; that his source is the law governing *aikeia* (of which the quoted words presumably comprise the opening condition) is indicated by the fact that the speaker of [Dem.] 47 twice defines *aikeia* as *archein cheirôn adikôn* (§§40, 47; cf. §§7, 8, 15, 35, 39; Isoc. 20.1 (above, n. 000)). The phrase is at least as old as the legislation of Draco (*IG I³* 104.33-35).

⁴⁵ See especially Dem. 54.1, 8-9; Isoc. 20.1-6.

⁴⁶ E.g., Dem. 21.25, 28, 31-35.

⁴⁷ And thus Meidias committed hubris not just against Demosthenes but against the city and Dionysus.

⁴⁸ For “wrongdoing concerning the festival” (e.g., §1).

⁴⁹ Hyp. 1.12. Phillips 2006: 383-84.

⁵⁰ [Arist.] *Ath. Pol.* 56.6-7; [Dem.] 43.75.

⁵¹ Dem. 37.33, 45-46.

⁵² Osborne 1985, esp. 50-51; Gagarin 1979: 232-34; Carey 2004; Riess 2008: 58-61. See also, e.g., Dem. 22.25-27 on various remedies for theft and for impiety.

⁵³ Aristotle intended his definition to obtain not just in Athens, nor as a legal definition alone, but among the Greeks generally and in all contexts. Fisher 1976: 179-80; 1992: 9ff.; *contra* MacDowell 1976: 27-28; Cairns 1996: 6 n. 32.

⁵⁴ But mutually consistent.

⁵⁵ As we see in his borrowing of the phrase that defined *aikeia* in Athenian law, *archein cheirôn adikôn* (above, p. 000), at *Rhet.* 1402a1-3 (cf. *pataxai proteron*, *Rhet.* 1374a3).

⁵⁶ Whether as against *aikeia* or otherwise: note especially the phrase “doing and saying things,” *Rhet.* 1378b23-24.

⁵⁷ This is reflected in the concise definitions in [Pl.] *Def.* 415e12 (“hubris is an injustice (*adikia*) leading to dishonor (*atimia*)); Phot. *Lexicon* s.v. *hybris* = *Suda* s.v. *hybris* (“Hubris: battery (*aikia*) accompanied by humiliation (*propêlakismou*) and spite (*epêreias*); battery is blows (*plêgai*) alone”).

⁵⁸ E.g., Cope and Sandys 1877: 1.239-40, 2.17; Lipsius 1905-15: 424-26; Harrison 1968-71: 1.172 (“the necessary ingredient for *hybris* of intention to insult”); MacDowell 1976: 27; 1978: 129-32; Fisher 1990; Murray 1990; Cohen 1991: 178; 1995, esp. 143-62; 2005: 216; Todd 1993: 107, 270-71 (without explicitly citing Aristotle); Harris 2004: 63-65; Spataras 2009: 31-38. Saunders 1991: 268-71 recognizes the Aristotelian definition but insists (unconvincingly) that the *graphê hybreôs* “applied to assaults on *weaker people*” (emphasis in the original). Dissenters include Gernet 1917: 183-97, esp. 195-96 (*graphê hybreôs* aimed at acts perpetrated against the community as a whole, and particularly against its religious principles); Ruschenbusch 1965 (*graphê hybreôs* as a catch-all procedure intended for the redress of all wrongs against the person); Gagarin 1979 (the *graphê hybreôs* “could apply to any attack against a person” but was intended for use in the case of severe, unprovoked physical assaults).

⁵⁹ But not always: note the qualifying *hoion*, “for example,” at *Rhet.* 1374a14.

⁶⁰ Note the disjunctive *ê*, *ibid.*

⁶¹ See especially Fisher 1992; MacDowell (1976, esp. 28; cf. 1990: 18-23, 262-68) concurs, at least as to cases involving human victims. Emphasis may be laid on the state of mind either of the victim (as by Fisher) or of the perpetrator (as by MacDowell, who defines hubris as “having energy or power and misusing it self-indulgently” (1976: 22) and contends that hubris does not always have a victim (1976: 23), so *a fortiori* the perpetrator need not intend to shame). My own position is that hubris does always have a victim, either expressed or implied (cf. Fisher 1992: 148), and whether intended by the perpetrator or not (cf. Cairns 1996: 10, “hubris may be a subjective attitude or disposition which can be construed as an implicit affront”; I would lay more stress than Cairns does on the requirement that hubris must involve an act in word, deed, or both). At Ant. 3 β 3, even though both prosecution and defense stipulate that the young man who threw the javelin intended no physical harm to the boy who was accidentally struck and killed, the speaker feels the need to absolve the thrower of hubris (i.e., in this instance, negligence (as Fisher 1976: 187), or at most recklessness; MacDowell’s (1976: 18) “larking about” is closer than Gagarin’s (1997: 149) “‘arrogance’ [which] would indicate an intentional killing”) and *akolasia* (cf. Arist. *EN* 1149b31-34); the grounds for rejecting these attributes are that the thrower was practicing the javelin properly. As to animals (in addition to the proverbially hubristic donkeys at X. *An.* 5.8.3: above, p. 000) and bodies of water (which, if not gods in their own right, enjoy special divine protection: n. 000 below), note Hdt. 1.189: one of the sacred white horses of Cyrus the Great acts with hubris in attempting to swim across the Gyndes River, and the river responds with hubris by drowning the horse (for various theories on why the horse is guilty of hubris see Cairns 1996: 17 n. 69). Although the horse presumably did not intend to insult the Gyndes, its behavior was negligent

(there is at least an implied reasonable-horse standard in the fact that no other horse charged into the river), and the umbrage taken by the river is shown in Herodotus' expression of, and Cyrus' fury at, its agency (the river "snatched [the horse] up, pulled it under, and carried it off. Cyrus was greatly angry at the river for this act of hubris..."). Hubristic plants (Arist. *GA* 725b34-726a3; Theophr. *HP* 2.7.6) literally aggrandize themselves without regard for the needs of their owners (Michelini 1978, esp. 38-39).

⁶² *Rhet.* 1378b14-30, *EN* 1149b20-1150a1; for the exclusion of anger cf. *Rhet.* 1380a35-36, 1385b29-31.

⁶³ In fact, the reaction of the crowd at the trial, *X. An.* 5.8.12, suggests that he was not angry enough.

⁶⁴ *Dem.* 54.3-6; *Dem.* 21.78-101; *Lys. fr.* 279.1-3. See Cohen 1995: 87-142; Phillips 2008: 18-19, 21-22; MacDowell 1990: 2, 294-99.

⁶⁵ Although no hubris-word appears in the passage, there is no question that we are meant to see Xerxes' acts as constituting hubris of a particularly spectacular and revolting kind (e.g., Fisher 1992: 377-78): Artabanus' warning against hubris (*Hdt.* 7.16α) foreshadows Xerxes' behavior, and Herodotus both in his own words (7.35) and in those of Themistocles (8.109) applies to the punishment of the Hellespont the term *atasthalos* (reckless, wicked, outrageous), which is closely associated with hubris (e.g., 3.80; *Hom. Od.* 3.207, 17.588, 20.170; on the connection between *atasthalia* and hubris see Fisher 1992, esp. 155-56, 166-78 [Homer]; 377-81 [Herodotus]; on Xerxes' acts cf. Cairns 1996: 14-15, 18; Fisher 1979: 37-38, 42-43). The insulting speech recited by the men doing the whipping may acknowledge the divinity of the Hellespont ("It is right that no man sacrifices to you, since you are a muddy, salty river"; contrast the sacrifices to the Strymon, 7.113), as may Xerxes' casting of offerings into the Hellespont upon the successful completion of his second bridging attempt, if done in repentance for his earlier actions (7.54). Aeschylus (*Pers.* 745-50) has the ghost of Darius specify that the Hellespont belongs to Poseidon; as Alexander the Great crossed the Hellespont, he sacrificed to Poseidon and the Nereids and poured a libation into the water (*Arr. An.* 1.11.6). Cf. Stafford 2005: 198-202 on Persian hubris as displayed in the campaign of 490 that terminated at Marathon.

⁶⁶ *S. Aj.* 296-304, 1060-61, esp. v. 304 with Blundell 1989: 70; Fisher 1992: 313; cf. vv. 51-111, 233-44.

⁶⁷ *S. Aj.* 1091-92. Cairns (1996: 11-13), noting the "process of retaliatory hubris," correctly observes (*contra* Fisher 1992: 316, 318-29) that the ascription of hubris to Menelaus need not be limited to this specific act, but there are no good grounds for his doubting whether "the primary reference of [vv. 1091-92] is to non-burial": to Menelaus' prohibition, which includes the description of Ajax as "a blazing *hybristês*" (v. 1088), the Coryphaeus responds, "Menelaus, do not lay a foundation of wise maxims and then yourself become a *hybristês en thanousin*." *En thanousin* is often translated "on the dead" (Jebb 1907: 165; Fisher 1992: 316; Cairns 1996: 12), but the preposition signifies not just "on" but also "in respect of, in the case of" (LSJ⁹ s.v. *en* I.7): Menelaus' act would constitute hubris not only against Ajax but also against universal Greek burial custom and the gods who serve as its guardians and guarantors (cf. *Lys.* 2.7-8; *S. Ant.*, in which Creon's edict is clearly an act of hubris although nowhere labeled as such: Fisher 1992: 311). On hubris in the *Ajax* see also Bacelar 2006.

⁶⁸ *E. Ba.* 616-37, esp. *kathybris' auton*, 616.

⁶⁹ *A. Pr.* 970: "So must one commit hubris against those who commit hubris." Despite the apparent lacuna of at least one line immediately preceding (Griffith 1983: 258), Prometheus' statement, unless purely gnomic (cf. *A. Ag.* 763-66: "old hubris is wont to beget young hubris among evil men sooner or later"; Gorgias, *Epitaphius* fr. 6 D-K: the dead were "*hybristai* to the *hybristai*"), must refer to his responding in kind to the hubris perpetrated against him not only by Hermes but also, since Hermes has just identified himself as Zeus' agent (v. 969), by Zeus for ordaining (and Zeus' subordinates, at least the enthusiastic Cratus (and Bia?), if not the reluctant Hephaestus, for executing?) his chaining, which Zeus will eventually exacerbate by sending an eagle to devour his liver every other day (vv. 1020-25; *Cic. Tusc.* 2.23-25 = *A. fr.* 193 Nauck) (cf. Fisher 1992: 248-50). See also *PHerc* 1017 with Karamanolis 2005.

⁷⁰ Note *Dem.* 21.41: even as Demosthenes contends that Meidias' premeditated hubris excludes a mitigating defense of anger, he acknowledges – against his own immediate interests – that hubris and anger can coincide: "acts that a person is suddenly carried away to commit before thinking, even those done hubristically (*hybristikôs*), may be said to have been done in anger (*di' orgên*)."

⁷¹ Explicitly condemned as such by Achilles, seconded by Athena: *Il.* 1.203, 214; cf. 9.368. On this episode see Cantarella 1983; Fisher 1992: 151-54; Scheid 2005: 403-6; Cairns 2011. For wrongful appropriation (violent or otherwise) as hubris (Fisher 1976: 184; MacDowell 1976: 19), cf. *Hom. Il.* 13.620-39 (the Trojans' hubris includes their abduction of Helen and theft of property from Menelaus in defiance of Zeus Xeinius); *Od.* 1.224-29 (Athena calls the suitors *hybrizontes* for feasting on Odysseus' food in his palace: see Fisher 1976: 186-87; *contra* MacDowell 1976: 16); and n. 000; p. 000 with n. 000; n. 000 *ad fin.*

⁷² Explicitly described as such by Homer in his own words (1.428-30: Thetis “left Achilles there, angered in his heart about the...woman whom they had wrested away (*apêurôn*) by force (*biêi*) against his will (*aekontos*)), and understood as such by Agamemnon, Achilles, and other characters: Agamemnon, before the fact, in his threats of force (note, e.g., 1.137-39: “if the Achaeans do not give [me appropriate compensation], I shall myself come and take (*helômai*) your prize or Ajax’s, or take and carry off (*axô helôn*) Odysseus”); 1.323-25, to Talthylus and Eurybates (even after Achilles has promised not to resist, 1.298-99): “Take by the hand and carry off (*cheiros halont’ agemen*) fair-cheeked Briseis; and if he does not give her, I will take (*helômai*) her myself, coming with more men”); and Achilles and others, after the fact and despite Achilles’ failure to offer forcible resistance (1.356 (above), *helôn...apouras* (Achilles), repeated by Thetis at 1.507 and by Thersites (!) at 2.240; cf. 9.106-11 (Nestor; answered by Agamemnon, esp. 9.131-32, and relayed by Odysseus, 9.273-74); 16.56-59 (Achilles)).

⁷³ “Then rose up...Agamemnon, vexed; his heart, black all about, was greatly filled with fury, and his eyes were like blazing fire,” 1.101-4.

⁷⁴ 1.149, 159.

⁷⁵ 1.182-185.

⁷⁶ And thereby diminishing Achilles’ *timê*: “...so that you may know well how much greater I am than you,” 1.185-86; Achilles’ complaints in the lines quoted by Aristotle show that the loss of *timê* is absolute as well as relative.

⁷⁷ Rather than delayed and uncertain, as proposed by Achilles: 1.127-29.

⁷⁸ And the attendant loss of *timê*. 1.118-20, 133-39.

⁷⁹ “...and [so that] another man too may shrink from speaking as my equal and vying with me to my face,” 1.186-87. Not stated here, but assumed – as we see in Agamemnon’s oath of denial, proffered at *Il.* 9.132-34, 274-76; 19.175-77, and finally sworn at 19.258-65: the repetition itself, including in particular the phrase “as is *themis* for men and women” (present with minor variations in the first three instances) testifies to the strength of the assumption) – is the additional benefit of Briseis’ sexual services. Other cases in which an act of hubris clearly involves expected and/or actual ulterior benefit include not only the broadly similar intended object lessons regarding resistance to authority inherent in the punishment of Prometheus and the proposed denial of burial to Ajax but also, e.g., Diocles’ confinement of his brother-in-law, done to deter an inheritance claim (above, p. 000).

⁸⁰ Cf. *EN* 1104b14-15: “every experience and every act is attended by pleasure and pain” (*panti de pathei kai pasêi praxei hepetai hêdonê kai lypê*); *EN* 1113b21-25, 1180a5-12 (*kolasis* and *timôria* may coincide); *Rhet.* 1378a30-b10: anger (*orgê*) is the desire for vengeance (*timôria*): it occurs with pain (*lypê*), but all anger is attended by the pleasure (*hêdonê*) that results from the hope of achieving vengeance. On the problems with Aristotle’s theory of emotions, see Cairns 1993: 393-431; Leighton 1996; Cooper 1996; Frede 1996; Striker 1996; Fortenbaugh 2002, esp. 97-126; Dow 2011.

⁸¹ The combination is patent in Menelaus’ speech at *S. Aj.* 1052-90; note especially 1087-88: “before, [Ajax] was a blazing *hybristês*; but now it is my turn to think big (*meg’...phronô*)”; whether we are here meant to equate *mega phronein* with hubris (so, persuasively, Cairns 1996: 11-13; *contra* Fisher 1992: 315-16) has no bearing on the fact that Menelaus is clearly pleased with himself. In addition to the combination of anger and self-satisfaction evinced by or unproblematically ascribed to other persons acting in (assumed, if not actual) authority (such as Zeus and Xerxes; Xenophon may well have been pleased with himself when he struck the muleteer and other shirkers, but naturally does not tell us so), consider, e.g., the case of Conon, who obviously enjoyed himself, as well as humiliating Ariston, by performing the rooster dance that, according to Ariston, provided the clearest sign of his hubris (above, p. 000). Fisher (1992: 17-18, 58) notes some of the Aristotelian inconsistencies but does not fully pursue them.

⁸² Fisher 1990: 131; Rowe 1993: 400; Cohen 1995: 159 (“Hubris...required...the demonstration of intentionally insulting or degrading conduct *which fell within the categories acknowledged as such by the community*” [emphasis added]).

⁸³ Presumed, and especially, where attested, actual.

⁸⁴ But not absolutely, since all shame involves harm to the victim.

⁸⁵ Such as his family, friends, and fellow citizens.

⁸⁶ Cairns 1993, esp. 13, 414-15; Dover 1994: 226-42.

⁸⁷ Cf. *Hdt.* 6.127.3: Pheidon of Argos, in Herodotus’ estimation, “committed the greatest act of hubris of all the Greeks by expelling the Elean officials and presiding over the Olympic competition himself”: apart from the disgruntled Eleans, Pheidon offended (without doing any bodily harm to) no less a personage than Zeus, king of the gods, guardian of justice, and honorand of the festival. Fisher 1992: 143.

⁸⁸ Xerxes’ explicit (and unmerited) assertion that he is the master (*despotês*, *Hdt.* 7.35) of the Hellespont is clearly implied in these cases (Fisher 1992: 39 n. 18, 52). Cf. Dover’s (1994: 54; cf. 147) summary (and at best only partial,

as is commonly recognized: e.g., MacDowell 1976: 23-24; Fisher 1992: 48 n. 41) definition of hubris as “behaviour in which a citizen treats a fellow-citizen as if he were dealing with a slave or a foreigner” (cf. n. 000 above). A person might be entitled to inflict such treatment on his own slave by way of punishment or in order to produce evidence: Athenian law ordained that the testimony of slaves could be produced at trial only if it had been obtained under torture with the consent of the litigants (e.g., Dem. 37.39-44); for private evidentiary torture at the discretion of the owner see Ant. 1.20 (simultaneously evidentiary and punitive); [Dem.] 48.16-18. This right might extend to some degree as to the slave of another ([Dem.] 53.16 (above, p. 000): the presumption is that if the boy caught plucking Apollodorus’ roses were a slave, Apollodorus could bind and beat him), but the Athenian hubris law’s explicit protection of slaves (above, p. 000) establishes, and the Pittalacus case illustrates in practice, that the right does not extend absolutely to all citizens as to all slaves. For the torture of a confined person as hubris cf. X. An. 2.6.29; 3.1.13, 29.

⁸⁹ Lys. fr. 279.6: after Archippus’ release, he was conveyed on a litter to the Deigma, where “onlookers not only were angry at the perpetrators but even denounced the city for not publicly and immediately punishing [them]”; Aeschin. 1.60-61: the morning after the assault upon him, Pittalacus “went unclothed into the agora and sat down at the altar of the Mother of the Gods; when a crowd came running up, as is wont to happen, Hegesander and Timarchus, afraid that their disgusting behavior would be announced to the entire city,” enlisted the help of friends and together convinced Pittalacus to get up and leave the agora.

⁹⁰ Lys. fr. 279.5-6: Teisis, after both rounds of whipping and with Archippus still tied to the column, summons Antimachus and falsely informs him that Archippus had broken into his house drunk and verbally abused him, Antimachus, and their wives; Antimachus summons witnesses and asks Teisis how he got in; when Teisis replies that he was invited, Antimachus and his witnesses urge the immediate untying of Archippus, “considering what had happened to be terrible,” and deliver Archippus to his brothers.

⁹¹ X. An. 5.8.18, above, p. 000; cf. his description of Clearchus, especially An. 2.6.12, above, n. 000.

⁹² An Athenian child who beat his parent was liable to an *eisangelia kakôseôs goneôn* (e.g., [Arist.] Ath. Pol. 56.6; Lys. 13.91), in which the penalty was disfranchisement (*atimia*: e.g., Andoc. 1.74; Aeschin. 1.28-32; [Arist.] Ath. Pol. 55.3); falsely accusing a person of beating his parent was grounds for a *dikê kakêgorias* (Lys. 10.8).

⁹³ E.g., Ar. Nub. 1410-34; cf. Vesp. 1297-98; Arist. EN 1149b8-13.

⁹⁴ Note the proverbial *ho mê dareis anthrôpos ou paideuetai*, Men. Mon. 422; cf., e.g., Ar. Nub. 492-97. Note also the use of whipping as the standard punishment, designed to inflict and inculcate shame (X. Lac. 2.1-11), in the simultaneously pedagogical and military Spartan *agôgê*, of which Xenophon clearly approved, even if he did not (as implied at D. L. 2.54) send both of his sons through it.

⁹⁵ Hdt. 8.59.

⁹⁶ The only two prohibited moves: Philostr. Im. 2.6; cf. Ar. Av. 442-43, Pax 898-99.

⁹⁷ Poliakoff 1987: 27-28, 54, 80; Crowther and Frass 1998 (including comparison with pedagogical and military flogging); Miller 2004, esp. figs. 90, 98, 102, 152; Potter 2011: 60-61. Cf. the (extraordinary) case of Lichas of Sparta at the Olympiad of 420 (Thuc. 5.50; X. HG 3.2.21; Paus. 6.2.2). A late sixth-century law of the Olympic games (SEG 48.541; on Olympic laws cf. Paus. 6.24.3) prescribes the penalty of flogging, except on the head, for a wrestler who breaks an opponent’s finger. X. Lac. 8.4 (above, n. 000) compares the Spartan ephors’ powers of summary punishment to those of tyrants and athletic officials.

⁹⁸ See especially Dem. 21.18, 32-35, 61, 126-27.

⁹⁹ Dem. 54.13-14, 31. That Conon will portray Ariston and his brothers as “violent drunks (*paroinous*) and *hybristai*” (§14; cf. X. An. 5.8.4, p. 000 above) surely indicates that he will identify Ariston as the aggressor in the fight (the caution evinced by Carey and Reid 1985: 70, 87 is unwarranted; since *aikēia* was by definition *archein cheirôn adikôn* (above, p. 000), any *aikēia* defendant capable of doing so will have argued that it was not he but his prosecutor who *êrxē*).

¹⁰⁰ Dem. 54.8-9. Cf. Harris 2004: 65: “When Ariston tries to prove that he suffered *hybris* at the hands of Conon, he lays stress on his opponent’s behavior after striking him.”

¹⁰¹ Citizen perpetrator and victim: Teisis and Archippus (p. 000); Apollodorus and a citizen boy (hypothetical, p. 000); by analogy (i.e., with a functional equivalence of status between perpetrator and victim), Ajax and the animals he mistakes for Odysseus *et al.* (p. 000). Cf. the cases in which post-confinement violence is not specified (but may have been known or presumed): Diocles and his brother-in-law (p. 000); Menon and a citizen boy (p. 000). A *fortiori*, with human perpetrator and divine victim: Xerxes and the Hellespont (p. 000). Citizen perpetrators and slave victim: Timarchus *et al.* and Pittalacus (p. 000).

¹⁰² Athenian law offered up to seven potential remedies: (1) *graphê hybreôs* (above, p. 000); (2) *graphê moicheias* (Hyp. 1.12; [Dem.] 59.87; [Arist.] Ath. Pol. 59.3-4); (3) *apagôgê* (summary arrest whereby the accused was haled

before the Eleven, executed if he confessed, and brought to trial before a *dikastêrion* if he maintained his innocence: Aeschin. 1.90-91; [Arist.] *Ath. Pol.* 52.1); (4) *eisangelia* (impeachment: Hyp. 1 with Lyc. fr. X-XI Conomis); (5) killing the *moichos* on the spot (Dem. 23.53; Plut. *Solon* 23.1; cf. Lys. 1 (see below and n. 000)); or detaining the *moichos* (6) for ransom and/or (7) for physical abuse. Kapparis 1995; 1996; 1999: 302-7; Schmitz 1997; Cohen 1991: 98-132; Cantarella 2005; Phillips 2006: 381-85.

¹⁰³ §§24-29.

¹⁰⁴ [Dem.] 59.64-65; Apollodorus maintains that Stephanus had used the same scheme before with his alleged wife Neaera as the bait: §41.

¹⁰⁵ Lys. 1.49: the laws “command that if a person catches a *moichos*, he may do with him whatever he wishes (*ean tis moichon labêi, ho ti an oun boulêtai chrêsthai*.” Kapparis 1995: 114-16 (cf. Carey 1995: 413) takes this to be the paraphrase of a law on *moicheia* (cf. the similar legal provision for the female party to *moicheia* who violates her ban on wearing jewelry or attending public religious rites: see below), and tentatively imports from the law governing the *graphê adikôs heirchthênai hês moichon* (see below) the proviso “without a dagger” (*aneu encheiridiou*); but it is equally possible that Euphiletus is referring to the law of Draco that permitted the killing of a *moichos* caught in the act (Dem. 23.53: n. 000), which he cites at §30, and perhaps also to a law on *apagôgê* cited at §28 (on the disputed identification of this law see Cohen 1991: 120-22; Schmitz 1997: 56-69; Todd 2007: 124-25).

¹⁰⁶ Ar. Nu. 1083-84 with schol. ad 1083; Pl. 168 with schol.; Th. 536-38; Suda s.v. *ô Lakiadai* (a deme famous for its radishes); Kapparis 1996; 1999: 302-3; Schmitz 1997: 91-107. Owing to the licit status of such practices, we may safely assume *a fortiori* that the captor was allowed to beat the *moichos* (cf. Kapparis 1996: 66; Forsdyke 2008: 24).

¹⁰⁷ According to the *Suda* (n. 000 above), in the absence of radishes, Athenians used axe-handles. Whether a scorpion-fish (*skorprios*) could substitute for the radish (as may be indicated by Pl. Com. fr. 189.22 Kassel-Austin (= Ath. 5d); cf. Catull. 15.17-19; Juv. 10.317) is debated (*pro*, e.g., Schmitz 1997: 100; *contra*, Kapparis 1996: 67-70). Ar. Ach. 849: Cratinus “always has his hair cut *moichos*-style, with a single blade [i.e., with a razor (schol. vet. ad loc.) rather than with scissors]” (*aei kekarmenos moichon miai machairai*). This may mean (1) that Cratinus’ head resembles the depilated nether regions of a *moichos*; (2) that *moichoi* could have their scalps as well as their genitals and/or buttocks depilated by their captors; or (3) that (voluntarily) wearing one’s hair as Cratinus does (presumably very short) was characteristic of *moichoi* (in which case *moichos* would be a derogatory name for the hairstyle, as schol. Triclin. ad loc.; we might compare the modern American slang “wife-beater” for a white sleeveless undershirt). See Sommerstein 1992: 199; Schmitz 1997: 93-101.

¹⁰⁸ By penetration and/or by depilation, which was characteristic of women and especially of *hetairai*: Kapparis 1995: 112; 1996: 74-76; 1999: 303; Schmitz 1997: 95-99; Forsdyke 2008: 19-20.

¹⁰⁹ [Dem.] 59.86-87; Aeschin. 1.183, which gives as examples of punishment tearing the woman’s clothes, stripping her of her jewelry, and hitting her; adds the proviso that the woman may not be maimed; and highlights the shaming function of the punishment (“dishonoring (*atimôn*) [her] and making her life not worth living”). On the interpretation of these sources see, e.g., Schmitz 1997: 89-91; Kapparis 1999: 354-60; Fisher 2001: 334-38.

¹¹⁰ A punishment talionic in its symbolism. Cf. X. An. 5.8.3, p. 000, with *moicheia* as hubris: p. 000; n. 000. Plut. *Mor.* 291f (*Quaest. Graec.* 2) (Aeolian Cyme); Nicolaus of Damascus, *FGrHist* 90 F 103(l) (Pisidia); Schmitt-Pantel 1981. On the foregoing, and for other punishments outside Athens, see Cole 1984: 108-11; Kapparis 1996: 74; Schmitz 1997: 107-15; Forsdyke 2008: 3-4, 12-16.

¹¹¹ A supporting deposition, which does not survive, was read out at the close of the oration, §46.

¹¹² Carey 1992: 108-9; Kapparis 1996: 66-67; Schmitz 1997: 102.

¹¹³ Cf. *Suda* s.v. *ô Lakiadai* (above, nn. 000, 000): the Athenians used radishes in committing hubris (*enhybrizontes*) against captured *moichoi*. The proverbial status of the utterance “*ô Lakiadai*” (whence its inclusion in the *Suda*) seems itself to argue for the canonical status of the radish in this context (Schmitz 1997: 100).

¹¹⁴ Cf. Fisher 1976: 184; 1992: 96; *contra* MacDowell 1976: 21. “*Hybristai* to the *hybristai*” (above, n. 000), of the honored dead in a funeral oration (Gorgianic though it is), is intended as praise. If the connotations of hubris were universally and absolutely negative, Xenophon would not include *Hybris* in his list of recommended names for hunting dogs (*Cyn.* 7.5, discussed by Rawlings 2011).

¹¹⁵ IC IV 72 col. 2 vv. 36-45: if the detainee maintains that he has been taken by treachery, his captor and a variable number of others must swear an oath to the contrary.

¹¹⁶ The procedure was a *graphê*, and in cases where sureties did not immediately volunteer, initiating legal action might at least temporarily (see below) convince the captor to spare the radish.

¹¹⁷ And, if necessary, from detention.

¹¹⁸ Alleging that Stephanus’ house was a brothel. Cf. Lys. 10.18-19; Plut. *Sol.* 23.1.

¹¹⁹ [Dem.] 59.67-71.

¹²⁰ The prohibition of an edged weapon is presumably meant to prevent guaranteed bloodshed (as opposed to the incidental bloodshed caused by a blunt instrument) and the attendant ritual pollution of the court. For various interpretations see Harris 1990: 374; Cohen 1991: 115-18; Kapparis 1995: 114-15; 1996; 1999: 302, 309; Schmitz 1997: 76; Allen 2000: 214; Forsdyke 2008: 18-19.

¹²¹ Cf., e.g., Meidias' assault on Demosthenes in the Theater of Dionysus, Agamemnon's humiliation of Achilles before the whole Achaean host, and the punishment of athletes at public games.

¹²² As potentially in the case of Xenophon and the muleteer (and others), but not in those of Archippus (until his rescue by Teisis' friends) and Pittalacus. Fisher 1992: 49; Carey 1995: 414; Forsdyke 2008: 16-18; Riess 2012: 51-65.

¹²³ However unmerited.

¹²⁴ Carey 1992: 119 (comparing the *graphê hybreôs* against Diocles); Kapparis 1999: 309: alternatives include a *dikê aikeias* (plausible) or a *dikê heirg mou* ("for detention," from MacDowell 1978: 126, but poorly attested).