

SOLON'S LAW OF STASIS AND *ATIMIA* IN ARCHAIC ATHENS*

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At the end of the last century Swoboda gave new subtlety to the concept of *atimia*. The German scholar distinguished an archaic from a classical form of the legal penalty, and the main elements of his interpretation still underlie modern assumptions.¹ Thus it has become orthodoxy that the *atimos* of archaic Athens was in some sense an “outlaw” (liable to slaying and plunder of property with impunity); by contrast, *atimia* in the fifth and fourth centuries was milder, a loss of certain civic privileges (participation in courts, assembly, magistracies, etc.).² However, recent reexaminations of the evidence have challenged the opposition between archaic and classical *atimia*; M. H. Hansen’s new and thorough study led him to the conclusion that “the difference . . . is not as radical as often assumed.”³ But this

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¹ H. Swoboda, “Arthemios von Zeleia,” *Archaeologische-epigrafische Mittheilungen* 16 (1893) 46–98; the position received fuller treatment in his *Beiträge zur griechischen Rechtsgeschichte* (Weimar 1905) 1–42. Most of the evidence was first collected by P. Usteri, *Ächtung und Verbannung im griechischen Recht* (Berlin 1903) 49–68. Other important studies include U. Kahrstedt, *Staatsgebiet und Staatsangehörige in Athen* (Stuttgart 1934) 106–21; U. Paoli, *Studi di diritto attico* (Florence 1930) 304–39; E. Ruschenbusch, *Untersuchungen zur Geschichte des athenischen Strafrechts* (Köln 1968); A. R. W. Harrison, *The Law of Athens. Procedure* (Oxford 1971) 169–76.

² For the current influence of Swoboda see, for example, A. W. Gomme, “Atimia,” *OCD*² 143; D. M. MacDowell, *The Law of Classical Athens* (Ithaca 1978) 73–74.

³ Harrison, following Paoli (above, note 1), argued that a form of outlawry persisted side by side with mild *atimia*, but his overly precise categories are open to question. Hansen refuted the existence of *atimia proscrittiva* (“serious *atimia*”), but persuasively demonstrated the survival of archaic aspects of the penalty through the classical period. See in general his *Apagoge, Endeixis, and Ephegesis against Kakourgoi, Atimoi, and*

observation offers its own set of problems. Was there in fact any difference between *atimia* of, say, the sixth and fourth centuries? If so, how can such differences be explained?

Answers to these questions require a new perspective. Rather than searching for two distinct phases of *atimia*, we should instead consider its evolution. Over time the concept became more sharply defined and closely followed the gradual sophistication of another legal concept—citizenship. It can be argued that in the archaic age Solon's reforms marked an important step in the evolution of both citizenship and *atimia*; his law on stasis (Arist. *Ath. Pol.* 8.5; Plut. *Sol.* 20, etc.) demonstrates a new consciousness of public status that would further develop through later Athenian history.

Few scholars doubt Swoboda's interpretation of archaic *atimia*. Though the evidence and details are at times controversial, Hansen has now confirmed that at least until the age of Solon *atimoi* were essentially outlaws. By Draco's laws murderers sentenced to *atimia* were liable to slaying with impunity; other ancient statutes sentenced both offenders and their property to *atimia*, which in context must mean their liability to assault and plunder without legal bar.⁴ But Hansen has now also shown that during the classical age the *atimos* was in many ways still legally vulnerable.⁵ In the *Gorgias* (486b–c; 508c–d) Plato suggests that even in his day *atimoi* could be abused with impunity, stripped of their property, sent into exile, or even killed.⁶ Further, though classical sources attest to statutes protecting the rights of such defenceless individuals as heiresses and orphans, no evidence survives for any law guaranteeing any right of the *atimos*.⁷ Hansen also notes that in the fifth and fourth centuries some

Pheugontes (Odense 1976) 55–90, esp. 81, note 45; 118 (hereafter cited as “Hansen”). Though I have sought to modify some of Hansen's conclusions, no one should question the important advance this monograph represents.

⁴ Hansen 75–82. Solon's law of amnesty (Plut. *Sol.* 19) suggests murderers were *atimoi*. Since Solon took over without change Draco's laws of homicide (*Ath. Pol.* 7.1; Plut. *Sol.* 17) and those laws allowed killing with impunity murderers in Attic territory (Dem. 23.28), it follows that such *atimoi* were in fact liable to slaying.

For property and persons both declared *atimos* in archaic times see Dem. 23.62 (cf. 51) and Hansen's analysis (77–78). I am less persuaded by his argument about *atimia* in Dem. 21.113. The law cannot be dated and the text (as he admits) may be defective.

⁵ For evidence and arguments see Hansen 55–61.

⁶ See also Dem. 21.87 where the *atimos* cannot bring suit against Meidias and “even fears to walk the same street with him;” cf. 21.92: ἀτιμία καὶ νόμων καὶ δικῶν καὶ πάντων στέρησις.

⁷ Dem. 38.7; 43.75. For other examples and discussion of the legal rights of orphans and heiresses (*epikleroi*) see A. R. W. Harrison, *The Law of Athens. Family and Property* (Oxford 1968) 38, 44–45, 138–42.

atimoi considered or chose exile over the risk of remaining in Attica.⁸ Finally, it is clear that the *atimos* who stayed in Attica was deprived of many privileges in addition to those reserved for Athenian citizens: the right to visit the Agora, enter sanctuaries, and give evidence in court.⁹

Nonetheless, Hansen insisted that classical *atimoi* were not outlaws. By the end of his investigation he was forced to a logical contradiction and concluded that “*atimoi* in the fourth century were *de facto* legally unprotected.” Elsewhere he struggled to maintain the distinction between archaic and classical *atimia* that he had masterfully undermined:

But there remains a clear difference: whereas in classical times it was possible with impunity to assault an *atimos*, in the archaic period it must have been almost a civil duty; and moreover in the case of homicide the family of an *atimos* could in the classical period bring a *dike phonou* against the perpetrator, whereas an *atimos* in the archaic period could be killed summarily by anyone.¹⁰

Unfortunately, no examples can be found of any *dike phonou* on behalf of a slain *atimos* and Hansen's argument is only *a priori*. Further, it is hardly satisfying to distinguish archaic and classical *atimia* by a difference in spirit or civil duty.

It is clear, however, that during the classical period *atimia* could result in less than total outlawry. Though slaying and confiscation perhaps lurked as a possibility for all *atimoi*, such ultimate punishment was not normally suffered. This seems to follow from several cases of the fifth and fourth centuries where *atimia* is contrasted with or cited in addition to penalties of death and loss of property.¹¹ But if

⁸ Lysias 6.26; (?) 20.35; Isoc. 16.47; Plut. *Mor.* 840c–d; Dem. *ep.* 2.24. Some *atimoi*, however, were apparently able to ignore their penalty and behave as *epitimoi* (Hansen 59 for examples). The risk was not insignificant. The state debtor Pyrrhus was executed for trying to earn three obols as a juror (Dem. 21.182).

⁹ For the evidence and arguments, Hansen 61–63. For discussion of the (controversial) place of foreigners and metics in Athenian law see P. Gauthier, *Symbola* (Nancy 1972) 136–56; D. Whitehead, *The Ideology of the Athenian Metic* (Cambridge 1977) 69–97.

¹⁰ Hansen 58, 75. He also proposes that certain rights of the *atimos* may have been protected without the means to institute proceedings. Discrepancy between substantive and procedural law is not unattested, but there are no known examples for cases of *atimia*.

¹¹ Whatever the fate of Arthmius of Zeleia (below, note 28), it is clear that Demos-

atimia did not preclude, yet in practice did not entail, these consequences, how can we explain its application in classical times?

We might better understand *atimia* by asking what particular disabilities actually resulted from the penalty. From the evidence of orators and inscriptions, Hansen was able to enumerate specific privileges lost by the *atimos* in the classical period. Under total *atimia* the Athenian was deprived of the right to move decrees, participate in the assembly, serve as a juror, bring public or private suit, give evidence in court, hold a magistracy, enter sanctuaries or the Agora.¹² Moreover, Andocides records that at the end of the fifth century there were various types (*tropoi*) of *atimia* and even forms of partial *atimia* whereby specific privileges were lost while others were not. In the speech *On the Mysteries* (73–76) the orator tells us that state debtors suffered an *atimia* that included the possible loss of property; other offenders maintained property but were *atimoi* with respect to their person. Further, soldiers who lived in Athens under the Council of 400 were deprived of only the right to speak in the assembly or become members of the *boulê*. Still other offenders lost the privilege of lodging a *graphê*, or *endeixis*, or sailing to the Hellespont, or crossing to Ionia, or entering the Agora.¹³

All evidence attests to specific privileges lost by *atimia* in the classical period. It is only logical that such privileges could not be lost before they had been guaranteed by law. The codification of fixed rights and prerogatives was a necessary prelude to the classical application of *atimia*. This codification, a gradual process, marks the evolution of citizenship at Athens.¹⁴ Thus, we might say that over

thenes expected his audience in the fourth century to know a distinction between killing without blood guilt and loss of Athenian rights (Dem. 9.44). See also Dem. 20.156; 59.52 (confiscation of property in addition to *atimia*); Isoc. 16.47 (*atimia* contrasted with exile); Dem. 21.182; 24.92 (*atimia* contrasted with death); *IG* 22 43.51–61 (*atimia* as a preliminary penalty until the offender is put on trial). See Hansen 55–98 for further examples.

We must remember, however, that apparent distinctions between death or confiscation and *atimia* may not be strictly accurate. Athenian law often seems redundant to modern readers, as for example the ancient measure entitling the Areopagus to judge cases of homicide, wounding, arson, and “killing by poison” (Dem. 23.22). In the same way sentences of *atimia* and, say, exile may have overlapped.

¹² For evidence and discussion, Hansen 61–66.

¹³ Certain details of this famous passage are controversial, and some parts of the text have been challenged; but the main outline and themes are generally accepted. See D. M. MacDowell (ed.), *Andokides. On the Mysteries* (Oxford 1962) 106–13; Hansen 82–90 (with references to earlier literature).

¹⁴ However, as stated above (text and note 9), some rights lost by *atimia* included privileges beyond those guaranteed to citizens, i.e., lesser rights held by metics and

time *atimia* became not a different and milder penalty, but one more sharply defined. As new dimensions were added to the public status of the individual, so new dimensions were incorporated into the punishment which denied that public status. *Atimia* evolved as the antonym of *epitimia*.

Citizenship was not a static institution, but took form as law itself developed and gave shape to the legal identity of the Athenian. An early and crucial stage in the process was the reform of Solon. We might say Solon first created a legal citizenship; by partitioning the Attic population among quantitative *telê*, he established more precise boundaries of status and guaranteed privileges for each group.¹⁵ Even the lowest *telos*, men below two hundred medimnoi, would be allowed to participate in assembly and court.¹⁶ Not until these prerogatives were established can one imagine losing them to be a punishment. Accordingly, we might expect that as early as Solon's revolution threatened denial of the rights became a legal deterrent. In its historical context the Solonic law on stasis bears witness to this.

The law on stasis, preserved by Aristotle and later sources, records that in times of civil strife any man who failed to take up arms or

foreigners were also denied. By the fourth century both *xenoi* and *metoikoi* had some legal status in the *polis*, and we might say that their privileges became codified in contrast, but at the same time along with the codification of rights of citizens. That the *atimos* was deprived of even the rights of foreigners helps explain the link between archaic outlawry and later *atimia*. The penalty is best understood in relation to evolution of public statuses whether metic, foreigner, or citizen. Though I have concentrated on the latter, the former two are obvious complements in the social and legal structure.

Finally, it must be admitted that certain (lost) privileges cited by Andocides were perhaps special cases or only indirectly implied the normal rights of citizenship in the classical period (e.g., sailing to the Hellespont).

¹⁵ Aristotle (*Ath. Pol.* 7.3) says that *thêtes*, *zeugitai*, *hippeis*, and *pentakosiomedimnoi* existed before Solon. Though some historians doubt (all or part of) this statement, few hesitate about the new legal importance of the orders under Solon. For representative discussion see G. Busolt and H. Swoboda, *Griechische Staatskunde* (Munich 1926) 2.821; C. Hignett, *A History of the Athenian Constitution* (Oxford 1952) 100; L. H. Jeffery, *Archaic Greece* (London 1976) 92–96. For interpretation of the quantitative measures (much debated) see K. Grimes, "On Solon's Property Classes," *CR* 46 (1932) 2–4; A. French, *The Growth of the Athenian Economy* (London 1962) 17–22.

¹⁶ Full details of Solon's constitution can hardly be treated here. I take *Ath. Pol.* 7.3 and Plut. *Sol.* 18 to mean that all dwellers of Attica were ensured the right to attend, speak, and vote in the assembly; *Ath. Pol.* 9.1 and Plut. *Sol.* 18 to mean that the assembly sat as a court of appeal after some preliminary judgment of magistrates. For recent additions to the century-old arguments see Ruschenbusch (above, note 1) 30–82; W. G. Forrest, *The Emergence of Greek Democracy* (London 1966) 160–74; Jeffery (above, note 15) 92–94; MacDowell (above, note 2) 29–32.

side with a faction would be “*atimos*... and have no share in the city” (καὶ τῆς πόλεως μὴ μετέχειν: *Ath. Pol.* 8.5)¹⁷ The measure has been rejected by scholars on several grounds: it seems inconsonant with Solon’s views of peaceful moderation; was not mentioned by Lysias who once treated a similar theme (31.27); sounds bizarre and is *a priori* improbable.¹⁸

But though some ancient authors were puzzled by the terms of the law, none doubted its authenticity. Nor is the silence of Lysias decisive; his ignorance (real or feigned) would hardly be the first such case among classical orators.¹⁹ As for Solon’s ideas about civil strife, no fragment of his poetry necessarily contradicts the existence of such a law. Recently Victor Bers made the attractive case that the law was authentic and was designed to press shy supporters of Solon into active service; the reformer needed deeds not words from backers of his program. Reticence or apathy would be punished—such is implied by Solon’s poem of the *dêmosion kakon* (emerging from *stasis emphylos*) which sought out a man in his innermost chamber (fr. 4.19, 26–29 West).²⁰

Thus interpreted, the law of stasis fits the historical setting. With new public rights came new public obligations. Those who failed to support the revolution would lose their share in it and consequently, for the first time, *atimia* entailed loss of a share in the *polis*.²¹ The

¹⁷ For complete list of sources see E. Ruschenbusch, *Solonos Nomoi* (Wiesbaden 1966) F 38 a–g. Ruschenbusch himself argues that the law deals not with civil strife but rather with certain military offences.

¹⁸ For representative examples of skepticism: A. Masaracchia, *Solone* (Florence 1958) 173–74; Hignett (above, note 15) 26–27.

¹⁹ See J. A. Goldstein, “Solon’s Law for an Activist Citizenry,” *Historia* 21 (1972) 538–42; (more persuasively) V. Bers, “Solon’s Law Forbidding Neutrality and Lysias 31,” *Historia* 24 (1975) 493–98, cf. R. Develin, “Solon’s Law on Stasis,” *Historia* 26 (1977) 507–08.

²⁰ Bers (above, note 19) 494–98. Certain objections (not conclusive) were raised by K. von Fritz, “Nochmals das solonische Gesetz gegen Neutralität im Bürgerzwist,” *Historia* 26 (1977) 245–47.

²¹ Swoboda, *Beiträge* (above, note 1) 5 ff., made the law on stasis the turning point between archaic and classical *atimia*, but stumbled in his attempt to prove a decisive shift in legal terminology. Ruschenbusch (above, note 1) 22–23 saw the contribution of the law to the concept of *atimia*, but based his conclusions on a somewhat forced interpretation of its terms. See Hansen 79–80.

Hansen himself admitted the “civic” interpretation of the law, but rejected the measure as a forgery (75, note 6, 78–79). His objection that *atimia* in the law on stasis cannot be reconciled with its archaic sense in the law of amnesty (above, note 4) is not valid. The amnesty did not include murderers and certain other offenders described as

atimos was now a different kind of outlaw: one with no claim to the citizenship which implied rights in the assembly and protection of suit and appeal.²² Solon changed the meaning of *atimia* by changing the state and citizenship which gave definition to its opposite, *epitimia*.

The close link between the evolution of citizenship and *atimia* is demonstrated by later practice. After the overthrow of the Peisistratids, Athenians showed concern for redefining membership in the state. The tyrants had given some sort of legal status in the state to men "of impure descent;" after the withdrawal of Hippias the population was subjected to a *diapsephismos* (*Ath. Pol.* 13.5).²³ Cleisthenes soon instituted a new system of organization which allowed uniform registration of Athenians, in demes, regardless of their membership in phratries.²⁴ Once again we see sharper boundaries drawn around the citizen, a predictable context for more precisely defined *atimia*. Andocides tells us that shortly after 510 B.C. Athenians condemned certain enemies to death, others to exile, whereas others μένειν ἐν τῇ πόλει ἐάσαντες ἡτίμωσαν (1.106).²⁵ Here *atimia* is a punishment for those allowed to live, and live in Attica. Luckier than men slaughtered or banished, these *atimoi* were doubtless

atimoi; however, we need not assume that a newer definition of the penalty devised for cases of stasis was extended retroactively to criminals sentenced before Solon.

²² That Solon gave new definition to *atimia* gains some support from a few other laws assigned to him. Aeschines (1.28 ff.) claims that failure to support parents, avoidance of military service, debauchery, prostitution, squandering of patrimony, etc. were punished by the law-giver by prohibition from speaking in the assembly.

²³ There is no need to doubt the historicity of the *diapsephismos*: Hignett (above, note 15) 132–33; it can plausibly be assigned to the years 510/509: M. Ostwald, *Nomos and the Beginnings of Athenian Democracy* (Oxford 1969) 141. Whatever the details, the effect of the scrutiny was denial of privileges of some men (including immigrants and freed slaves?) who had come to share in public life under the tyrants.

Aristotle assigns to the time of Peisistratus a law against tyranny which threatened offenders with *atimia* (*Ath. Pol.* 16.10); notable is his assertion that such laws were "mild" (*praoi*). It is tempting to see here a new stage in the concept of *atimia* (as did Swoboda and others). But the meaning of the penalty cannot be known from the text of the law itself; Aristotle's judgment might be only a guess. Moreover, the law probably belongs to the Draconian age: M. Ostwald, "Athenian Legislation against Tyranny and Subversion," *TAPA* 86 (1955) 103–107.

²⁴ Cleisthenes' reforms can only be summarized here; it is my belief that by 510 many dwellers of Attica did not belong to (or had drifted away from) phratries. Thus Cleisthenes' reorganization was as much an attempt to incorporate diverse elements in society as to change the basis of local memberships. See my forthcoming study *The Evolution of Athenian Citizenship: Individual and Society in the Archaic Age*.

²⁵ In this passage Andocides is clearly talking about the period after the final defeat of the Peisistratids, though he mistakes their overthrow with the battle of Pallene. For an explanation of the error see MacDowell (above, note 13) 212–13.

denied specific privileges that the demos would soon realize as its own. A distinction between *atimia* and executions bespeaks contemporary awareness of public rights. Such awareness accords well with a period marked by redefinition of civic membership.

Finally, it causes no surprise that later in the classical period *atimia* was not invoked against foreigners and metics.²⁶ There is, however, one exception.²⁷ During perhaps the 470s the proxenos Arthmios of Zeleia betrayed Athens by taking Persian gold to the Peloponnese.²⁸ Whatever Arthmios' motives, Demosthenes and other sources record that he was charged with *atimia*. Demosthenes insists that by this punishment any Athenian might kill the proxenos (or his family) and be free from blood guilt (Dem. 9.41–45) Ruschenbusch used this evidence to argue that the case of Arthmios represented a *terminus post quem* for a change in the meaning of *atimia*.²⁹ But if, as we have argued, there was no change but only evolution the fate of Arthmios is readily explained.

If, following the development of citizenship, *atimia* had come to mean the loss of certain civic rights and privileges, it was now largely irrelevant to a man with little or no rights in the city. As Demosthenes himself asks, "What did it matter to a native of Zeleia if he was denied the privileges common to Athenians?" (Dem. 9. 44).³⁰ But we must remember that, despite innovations of Solon and Cleisthenes, Athenians in the early fifth century still sometimes followed older customs, customs held over from an age when

²⁶ Hansen 55 who also hinted at some connection between citizenship and the penalty.

²⁷ I follow Hansen's doubts (55, note 8) about another possible exception cited by the *Suda* (s.v. "Demades").

²⁸ For sources, recent bibliography, and discussion of the controversy surrounding Arthmios see M. Walbank, *Athenian Proxeny of the Fifth Century B.C.* (Toronto and Sarasota 1978) 67–75.

The date of Arthmios' trial is much debated, though the *terminus post quem* is probably after the formation of the Delian League. See Walbank 72; for other possible dates between 493 and 450 see M. Cary, "Arthmios of Zeleia," *CQ* 29 (1935) 177–80; R. J. Lenardon, "The Archonship of Themistokles," *Historia* 5 (1956) 410–11; A. W. Gomme, *A Historical Commentary on Thucydides* (Oxford 1945) 1.327, note 1; R. Meiggs, *The Athenian Empire* (Oxford 1972) 508–12.

²⁹ Ruschenbusch (above, note 1) 21, note 54

³⁰ τί γὰρ τῷ Ζελεΐτῃ, τῶν Ἀθηναίων κοινῶν εἰ μὴ μεθέξειν ἔμελλεν; It is possible, however, that Arthmios' position as a proxenos gave him some legal status in Athens and *atimia* was a cancellation of that status. But I know no other cases of such punishment of proxenoi, and the interpretation would demand that we charge Demosthenes with serious misunderstanding of the facts.

citizenship was only vaguely shaped and *atimia* took little notice of distinctions of status not yet formed. Legal differences between native and stranger had not always existed. Tradition was often inexact, but law only slowly and only imperfectly replaced it.³¹ In the same way Athenians of the early fifth century continued to use their fathers' names even after Cleisthenes established the more democratic nomenclature.³² Ties of kinship were not easily ended by political geography; Athenians were known no less for their allegiance to the old than for their love of the new.

Over the course of the fifth century citizenship continued to evolve and with it evolved the denial of public status, *atimia*. After Arthmius *atimia* was reserved for Athenians. By the time of Andocides it allowed a detailed and elaborate hierarchy of punishments. Eventually new penalties for foreigner and metic were devised; the innocent "outsider" as much as the proud "insider" became a legal identity in the city of Athens.³³ Through history the *atimos* remained outside the law; we need only realize that after Solon law was very different.

³¹ Compare, for example, the change in meaning of the word *nomos* during the sixth century: Ostwald (above, note 23) 1–61.

³² E. Vanderpool, *Ostracism at Athens* (Cincinnati 1970) 6–8

³³ Thus *metoikoi* and *xenoi*—unlike *atimoi*—were guaranteed certain privileges by law: see above, notes 9, 14.