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Introduction: the trial of Socrates and historical studies

In 400/399 BCE (in the early spring of 399), an Athenian citizen aged seventy was arraigned for impiety (ἄσεβεια). The name of the defendant was Socrates, one of the most influential of all the Western intellectuals, though most of his contemporaries seemed to dismiss him as one of the sophists, and even as a notorious one, as in the portrait of the "Socrates" in Aristophanes' *Clouds*². According to Xenophon, the prosecution made the accusations that he did not recognise (οὐ νομίζουσι) the gods which the city did, introduced other novel divinities (δαίμόνια), and further, he corrupted the young (X. *Ap.*10; *Mem.* 1.1.1; Pl. *Ap.* 24b; *Euthyph.* 2b. See also the wording quoted by D.L. 2.40, from Favorinus). Surrounded by 501 citizens who served as dikasts, the elderly defendant made a speech for the defence on the platform but the case went against him. Although he was convicted by the rather narrow margin of 30, Socrates' second speech, offering an alternative to the penalty proposed by the accusers which might have been offensive for the jurors, brought him the penalty of death³. After a month in prison, having refused to escape, the philosopher was executed with a cup of poison

¹ This article is a modified version of a paper for a meeting at the University of Tokyo on 18 Oct. 2002. A preliminary version, entitled "Anytus prosecuted Socrates after the Civil War" (in Japanese) was published in *How to do researches on ancient Greece and Rome*, ed. by Itsumi, K., Tokyo, 2003. I am very grateful to Professor P.J. Rhodes and Dr. H. Bowden for discussing various aspects of this paper with me and to Professor M. Trapp for his suggestions on some points.

Abbreviations of periodicals and works of reference are those commended in the *American Journal of Archaeology (AJA)* 95 (1991), 1-16. For ancient authors the abbreviations in Liddel, Scott and Jones, *A Greek English Lexicon*, Oxford, 1940 has been followed.

[Abbreviations]

Andokides: Macdowell, D.M., *Andokides on Mysteries*, Oxford, 1962.

AO: Develin, R., *Athenian Officials 648-321 B.C.*, Cambridge, 1989.

APF: Davies, J.K., *Athenian Propertied Families: 600-300 B.C.*, Oxford, 1971.

CAAP: Rhodes, P.J., *A Commentary on the Aristotelian Athenaiion Politeia*, Oxford, 1981.

Companion: Ahbel-Rappe, S. and Kamtekar, R., (eds.) *A Companion to Socrates*, Oxford, 2006.

Kosmos: Cartledge, P., Millett, P. and von Reden, S., (eds.) *Kosmos: Essays in Order, Conflict and Community in Classical Athens*, Cambridge, 1998.

LGPN: Osborne, M.J. and Byrne, S.G., (eds.) *A Lexicon of Greek Personal Names*, vol.II, Oxford, 1994.

PA: Kirchner, J., *Prosopographia Attica*, Berlin, 1901-1903.

² On the impact of the portrait of "Socrates" in Aristophanes' *Cloud*, e.g. Parker, R., *Athenian Religion: A History*. Oxford, 1996, Ch.10. Wallace, R. W., "Private Lives and Public Enemies: Freedom of Thought in Classical Athens," in Boegehold, A. and Scafuro A., (eds.) *Athenian Identity and Civic Ideology*, Baltimore, 1994, 127-155, argues that the trial of Socrates was not a symbolic event of 'religious crisis' but just one of the ordinary trials against those who harmed the city.

³ Diogenes Laertius, who presumably misunderstood Plato's account, tells of the margin of 281 for the first votes, which is approximately the number of votes to acquit Socrates in Plato's *Apology* (1.5.41-42). Some details in Diogenes' account and those in Plato's contradict each other.

made from hemlock, as Plato described in the closing part of *Phaedo*⁴.

Among the many modern scholars that this trial has attracted, some have tried to investigate the trial of Socrates from a political point of view, focusing, first of all, on a part of the prosecution, 'corrupting the young', and secondly, on Anytus, one of the plaintiffs. The general accusation of 'corrupting the young' is often taken separately, at least to some extent, from the other points of the prosecution as a political, rather than religious charge against the defendant, who had taught those who had harmed the Athenian democracy, especially Critias and Alcibiades. The official charge of 'impiety' is sometimes thought to have been used as a pretext in order to avoid transgressing the Amnesty by prosecuting Socrates for political matters⁵. In fact, when the trial of Socrates was held just after the civil war, bitter memories of Alcibiades and especially Critias, the leader of the oligarchic regime of the Thirty, must have been shared by the Athenian citizens, as suggested by Aeschines, an orator of the fourth century BCE, who said to the jurors half a century after Socrates was executed, "You [i.e. the jurors = the Athenian people] put the sophist Socrates to death because he was shown to have educated Critias⁶". If the first two chapters of *Memorabilia* are, in a sense, responding to something similar to, or reflective of, the actual speech(es) for the prosecution, Xenophon also suggests that the two associates of Socrates had some importance in his prosecution and condemnation⁷. Even if Xenophon's work is responding not to the actual speeches for prosecution at all but to an independent work written by Polycrates at least six years after the trial, as has been generally accepted⁸, it seems difficult to assume that the notorious friends of the philosopher had left no impression on the jurors in 399 BCE. Many of the jurors were familiar with conversations between Socrates and others in public, in the gymnasia, the colonnades, and especially the Agora, where information was circulated consciously and unconsciously. This is where the citizens heard news and rumours⁹.

Beside the notorious ('corrupted') younger associates of the philosopher, there is another important character, at least for those scholars who have investigated the political motivation underlying the prosecution and condemnation of Socrates: Anytus of the deme Euonymon. Though the official charge

⁴ Though Gill, Ch., "The Death of Socrates," *CQ* 23 (1973), 25-28, argues that Plato deliberately gives in *Phaedo* a distorted picture of the death of Socrates for his philosophic purpose, Bloch, E., "Hemlock Poisoning and the Death of Socrates," in Brickhouse, Th.C. and Smith, N.D., (eds.), *The Trial and Execution of Socrates*, Oxford/N.Y., 2002, 255-278, argues that the description of Socrates' symptoms is medically accurate, followed by Nails, D., "The Trial and Death of Socrates," in *Companion*, 5-20, esp.16-17.

⁵ E.g. Stone, I.F., *The Trial of Socrates*, Boston, 1988; Todd, S.C., *The Shape of Athenian Law*, Oxford, 1993, 309 with n.23.

⁶ 1.173.

⁷ 1.2.12.

⁸ Traditional consensus for Polycrates as the supposed opponent of Xenophon and later authors: Chroust, A.H., "Xenophon and Polycrates," *ClMed* 16 (1955), 1-77; id., *Socrates, Man and Myth*, London, 1957, 69-100; Brickhouse, Th.C. and Smith, N.D., *Socrates on Trial*, Oxford, 1989, 71-87; Recent challenge: Hansen, M.H., *The Trial of Sokrates from the Athenian Point of View*, Copenhagen, 1995, 4-15; Livingstone, N., *A Commentary on Isocrates' Busiris*, Leiden, 2001, 32-38.

⁹ Lewis, S., *News and Society in the Greek Polis*, London, 1996; id., "Barbers' shops and perfume shops: 'symposia without wine'," in Powell, A., (ed.), *Greek World*, London/N.Y., 1995, 432-441.

was brought by Meletus of the deme Pittus, an obscure Athenian citizen¹⁰, Anytus, an associate accuser along with Lycon, another obscure Athenian¹¹, would have been a key figure in this litigation, especially because he was one of the most influential politicians of this period¹². It is difficult to detect him as the mastermind behind the prosecution¹³, but it is highly plausible that his presence was quite important for the jurors and the contemporary citizens. The description in Plato's seventh letter, in which it is 'some of those in power (δυναστεύοντες τινες)' who summoned Socrates to the law court, suggests that this political leader exercised his influence on the jurors (325a-c). Xenophon's obsessively bitter descriptions of Anytus might also suggest the politician's relative importance for the trial (*Ap.* 29-31).

An antagonistic exchange between Socrates and Anytus described in Plato's *Meno* (90b-95a), where the politician in the end gets furious at the philosopher's questions, and maybe an anecdote about them in Xenophon's *Apology* (29-31), have been tempting for those who have been keen to see behind the scenes a private enmity which caused Anytus to make use of the legal institution against Socrates¹⁴. Plato's portrait of their relationship, however, is not necessarily historical and it would be safer to avoid directly connecting the historical Anytus and 'Anytus' in *Meno*, let alone claiming the historical reality of the conversation between the philosopher and the politician. It is true that Anytus may have had some kind of private animosity toward Socrates, which may be also inferred from Plato's *Apology* (23e-24a), especially in classical Athens, where a prosecution with some sort of personal enmity was far from

¹⁰ Meletus might be identified as a namesake who brought a charge of impiety against Andocides in the same year as Socrates' trial, Mazon, P., "Mélétos, accusateur de Socrate," *REA* 44 (1942), 177-190; Dover, K.J., *Lysias and the Courpus Lysiacum*, Berkeley and L.A., 1968, 78-80; Blumenthal, H., "Meletus the Accuser of Andocides and Meletus the Accuser of Socrates: One Man or Two," *Philologus* 117 (1973), 169-178. The fact that one Meletus joined with Anytus in the prosecution of Socrates and another Meletus was opposed to the same politician in Andocides' trial does not necessarily remove the possibility of identification of the two, but the fact that the name was rather common around 400 prevents certain identification of the accuser of Socrates (See *Andokides*, 208-210; *APF*, 382; Stokes, M.C., *Plato: Apology*, Warminster, 1997, 13-14).

¹¹ On Lycon, see Hansen, M.H., *op.cit.* (n.8), 33-34; *PA* 9271; *LGPN* s.v. Λύκων Thorikos (19).

¹² Lincoln, B., "Socrates' Prosecutors, Philosophy's Rivals, and the Politics of Discursive Forms", *Arethusa* 26.3 (1993), 233-246, argues that the prosecutors were representatives of traditional intellectual authorities, poets, politicians and rhetoricians, which were rivals of Plato's *philosophia*.

¹³ Socrates in Plato's *Apology* referring to his prosecutors as "Anytus and those with him" (τοὺς ἀμφὶ Ἄνυτον) (*Pl. Ap.* 18b, cf. 29c, 30b, 31a), might suggest that the politician was the leader among them. Cf. D.L. 2.38; Burnet, J., *Plato's Euthyphro, Apology of Socrates, and Crito*, Oxford, 1924, 101. Some scholars, however, take Meletus as the principal agent (Hackforth, R., *The Composition of Plato's Apology*, Cambridge, 1933, 78; Reeve, C.D.C., *Socrates in the Apology: An Essay on Plato's Apology of Socrates*, Indianapolis, 1989, 98). I do not discuss the main prosecutor of the three, since the presence of the leading politician is more important for our discussion.

¹⁴ Strauss, B., *Athens after the Peloponnesian War: Class, Faction and Policy 403-386BC*, London/Sydney, 1986, 94; Scholz, P., "Der Prozeß gegen Sokrates: Ein Sündelfall der athenischen Demokratie?" in Burckhardt, L. und Ungern-Sternberg, J. (Hrsg.) *Große Prozesse im antiken Athen*, München, 2000, 163; Brickhouse, Th. C. and Smith, N.D., *Socrates on Trial*, Oxford, 1989, 24, thinks that the dialogue between them could have been 'the final straw' but admits that 'this is mere guess work.'

uncommon¹⁵. But here I have no intention of speculating further about Anytus' private hostility towards Socrates.

Rather more attention has been paid to the political aspect of Anytus, as a leader of democracy, who led the exiled democrats against the Thirty oligarchs and became one of the most influential politicians in Athens under the restored democracy. The participation of the leading democrat in the prosecution of the teacher of the leading oligarch just after the democratic constitution had been restored at the end of the dreadful oligarchic regime of the Thirty, might appear to support a political interpretation of the trial: that the democrats, obsessed with the ghost of oligarchs or would-be oligarchs, brought a suit against the philosopher who had taught politically subversive, i.e. oligarchic, ideas to the notorious politicians¹⁶. Vlastos argues, "Socrates was perceived as a political subversive and this was a weighty reason for his prosecution and condemnation, though by no means the only reason¹⁷." Strauss simply summarizes that one of Anytus' motives other than private hostility was "to attack a symbol of the threat to democracy." Stone strongly claims that Socrates was a real menace to the democracy and prosecuted by politically motivated citizens under the pretext of religion¹⁸. Although he does not deny the importance of the religious aspect of the trial, Hansen claims that Anytus did in fact accuse Socrates of having criticized 'the democratic institutions'¹⁹.

While there have been arguments against this interpretation²⁰, it would be pointless to argue that a political leader could have brought a suit without any political intentions against a famous and influential figure who had had connections with the notorious politicians, in spite of the strong possibility that the trial would attract the attention of quite a few citizens. It seems, on the other hand, less convincing to put too much stress independently on the accusation of 'corrupting the youth' and dismiss the other religious elements as just an excuse, as scholars do when they explain the meaning of Anytus' prosecution. While Socrates in Plato's *Apology* indeed examines each of the elements of the official charge one by one, Meletus seems to have written in the official charge that Socrates corrupts the youth "by teaching them not to recognise the gods the state does but rather other new deities (Pl. *Ap.* 26b)", which suggests that the prosecutors intended to treat all the elements as the inseparable parts consisting of the one charge, 'impiety'. As a leading politician, Anytus could have hardly chosen the official charge of 'impiety' itself and its elements as a whole without any political judgment reflecting the contemporary political situation. With what political intention then did he take part in the prosecution of Socrates for impiety? The

¹⁵ Rhodes, P.J., "Enmity in Fourth-Century Athens," in *Kosmos*, 144-161; Todd, S., "The Rhetoric of Enmity in the Attic Orators," in *Kosmos*, 162-169; Mitchell, L.G. and Rhodes, P.J., "Friends and Enemies in Athenian Politics," *G&R* 43.1 (1996), 11-30. Nevertheless, the Athenian law courts were not supposed to encourage feuding there or escalate litigants' private enmity. On that point, see Rhodes, P.J. "Keeping to the Point", in Harris, E.M. and Rubinstein, L., (eds.) *The Law and the Courts in Ancient Greece*, London, 2004, 137-158; Harris, E., "Feuding or the Rule of Law?: the Nature of Litigation in Classical Athens. an Essay in Legal Sociology," in Wallace, R.W. and Gagarin, M., (eds.) *Symposion 2001*, Wien, 2005, 125-141; Christ, M., "Response to Edward M. Harris," in Wallace, R.W. and Gagarin, M., *op.cit.*, 143-146.

¹⁶ Vlastos, G., "The historical Socrates and Athenian Democracy," *Political Theory* 11(1983), 495-516; Nakamura, J., "A political aspect of Socrates Trial: a motive of Anytus, a prosecutor," *Seiyo-shi-gaku* 12 n.s. (1983), 33-52 (in Japanese).

¹⁷ Vlastos, *op.cit.* (n.16), 495ff.

¹⁸ Stone, *op.cit.*(n.5).

¹⁹ Hansen, *op.cit.*(n.8).

²⁰ Brickhouse, Th. C. and Smith, N.D., *Socrates on Trial*, Oxford, 1989.

purpose of this paper is, firstly, to investigate the political position of Anytus, and secondly, to propose another 'political' interpretation of the trial of Socrates for impiety with reference to Anytus' political stance and the historical context of Athens after the civil war²¹.

1: Anytus the politician²²

Before attempting an analysis of Anytus' political stance in the period of the trial of Socrates, it would be helpful to survey his career as a whole. At the time when Athens had been consolidating its position as the leader of the Delian league, Anytus was born to Anthemion of the deme Euonymon; it is possible that he was originally a tanner and heaped up so much wealth as to rise from the lower to the cavalry class, though this cannot be established with any certainty (Pl. *Men.* 90a; *Ap.* 18a; X. *Ap.* 29, 30; [Arist.] *Ath. Pol.* 7.4)²³. The son of Anthemion may have been one of 500 councillors in 413/2 (*Ar. Th.* 809), just after the catastrophic defeat of the Sicilian expedition and just before the brief subversion of the democracy in 411²⁴. If it is true, this experience at an early stage in his public career would have been significant for his later political life, but nothing illuminates his political leanings at this time.

In 409/8, just four years after his presumed first councillorship, he was already one of the leading figures in Athens and elected as a general with thirty ships for relief of a pro-Athenian garrison at Pylos, besieged by the Lacedaemonians. Although his failure to fulfill this duty caused his impeachment for treachery at home, he was acquitted and seems to have remained politically active as before (D.S. 13.64.6; [Arist.] *Ath. Pol.* 27.5).

The Aristotelian *Athenion Politeia* written in the late fourth century, counts Anytus with Theramenes as one of the politicians who believed in the '*patrios politeia*' or the ancestral constitution as the best, when Athens entered into negotiations with Sparta for a treaty of peace in 404/3, which generated a dispute over the constitution of Athens itself (34.3). This passage, dividing the politicians into three categories, 'oligarchs', 'democrats', and the champions of the '*patrios politeia*', suggests that Anytus was politically moderate. This political analysis is, however, notoriously problematic and far from reliable. First of all, the term '*patrios politeia*' was ambiguous and had broad appeal, as scholars have pointed out, and could be used by politicians whose political leanings were vastly different²⁵. Secondly, no other sources

²¹ I will not argue here why more than half of the jurors voted against Socrates. On the dikasts' mentality, see Todd, S., *The Shape of Athenian Law*, Oxford, 1993, 308; Sakurai, M., *Neighbours of Socrates*, Tokyo, 1997, 235-241 (in Japanese).

²² On Anytus' life, see *PA* 1324; *APF*, 40-41; *LGPN* s.v. Ἄνυτος Euonymon(4); cf. Aly, W., "Anytos, der Ankläger des Sokrates," *Neue Jahrbücher für klassische Altertum* 31 (1913), 169-175.

²³ Raubitschek, A.E., *Dedications from the Athenian Akropolis: a catalogue of the inscriptions of the sixth and fifth centuries B. C.*, Cambridge, Mass., 1949, 206, conjectures that Anytus' father may have been identical with the namesake *thete* who became a *hippeis* ([Arist.] *Ath. Pol.* 7.4; Pl. *Meno*, 90a; Pollux 8.131), which is, according to Davies, 'attractive' but 'cannot be called certain' (*APF* 40-41).

²⁴ *APF*, 41 tentatively accepted Anytus' councillorship in 413/2.

²⁵ Ostwald, M., *From Popular Sovereignty to the Sovereignty of Law*, Berkeley/L.A./London, 1986, 337-411; Wallace, R.W., *The Areopagos Council, to 307 BC*, Baltimore/London, 1989, 131-144, 174-95; Yunis, H., "Thrasymachus B1, Discord, not Diplomacy," *CPh* 92 (1997), 62-63; cf. Fuks, A., *The Ancestral Constitution*, Westport, 1971; Ruschenbusch, E., "PATRIOS POLITEIA, Theseus, Drakon, Solon und Kleisthenes in Publizistik und Geschichtsschreibung des 5. und 4. Jahrhunderts v. Chr." *Historia* 8 (1958), 398-424; Finley, M.I., "The Ancestral Constitution," in id., *The Use and Abuse of History*, New York, 1971, 34-59; Mossé, C., "Le theme de la patrios politeia dans la pensée grecque du IVe siècle," *Eirene* 16 (1978), 81-89.

strongly support the political collaboration between Theramenes and the others mentioned in *Ath. Pol.* 34.3. The author may simply forge the linkage in order to minimize the responsibility of Theramenes for the oligarchy²⁶. It is true that Xenophon may imply a closeness of political principle between Anytus and Theramenes, by making Theramenes name Anytus and Thrasybulus in *Hellenica* as the competing leaders whom the Thirty should not have banished when he disputed with Critias (*HG* 2.3.42). But the speech does not clarify their political theories and may just imply Theramenes' (seemingly unscrupulous) pragmatic means to stabilize the regime of the Thirty²⁷. It would be better, therefore, not to use these passages as evidence for Anytus' political theory over constitutions in 404/3.

Under the oligarchic regime of the Thirty, probably shortly before the execution of Theramenes²⁸, Anytus left Athens along with Thrasybulus of the deme Steiria and Alcibiades (one of Socrates' associates), and his property was possibly confiscated at this time (X. *HG* 2.3.42; Isoc. 18.23). Soon afterwards as a general with Thrasybulus he led the democrats centred on Phyle, and reestablished the democratic constitution of Athens (X. *HG* 2.3.42-44; Lys. 13.78; Isoc. 18.23).

Under the restored democracy, Anytus must have played a leading role in affairs of state and came to be regarded as one of the most influential politicians along with Thrasybulus (Isoc. 18.23). He may have been elected as a general just after the reestablishment of democracy, but the source is too vague to determine the year or even the status of the general (Pl. *Men.* 90b)²⁹.

In 400/399, he appeared in law courts at least twice, once as a supporter of Andocides, who was accused of impiety, and once as one of the accusers against Socrates (And. 1.150).

In 397/6, when a trireme under Demaenetus sailed from Piraeus without the consent of the assembly and left Athens in confusion, Anytus together with Thrasybulus was a prominent leader among those who were opposed to the idea that Athens should get involved in another war against Sparta at that time (*Hell. Oxy.* 1.3). At least by this time he seems to have maintained a great influence over the Athenians. He persuaded 'the majority of the democratic people (οἱ πολλοὶ καὶ δημοτικοί)', who had previously supported anti-Spartan activities, not to provoke Sparta. Thus, his central role in Athenian politics by the early 390's is surely attested by the contemporary sources.

But the passage in *Hellenica Oxyrhynchia* does not clarify Anytus' stance toward the constitution or internal politics. The author describes the internal political situation concerning the Demaenetus affair as follows: Before the Assembly finally resolved not to act against the Spartans, the majority of populace had engaged in many anti Spartan activities under the encouragement of Epicrates, Cephalus and others. However, the well-born and cultivated were indignant at Demaenetus' military action, which could have caused a new war against Sparta. When the people were persuaded by the group including Aesimos, another democratic leader from Phyle³⁰, Thrasybulus, and Anytus, those who were moderate and wealthy

²⁶ Cf. *CAAP*, 422, 430

²⁷ On Theramenes' character, see Buck, R.J., "The Character of Thramenes," *AHB* 9.1 (1995), 14-24; Ehrhardt, Ch., "Lysias on Theramenes," *AHB* 9.2 (1995), 125-126.

²⁸ The chronology of the reign of the Thirty is a question in controversy. See Krentz, P., *The Thirty at Athens*, N.Y., 1982, 132f.; id., *Xenophon: Hellenika II. 3.11-IV. 2.8*, Warminster, 1995, 10f.; *CAAP*, 416-420, 422, 450.

²⁹ *AO*, 225.

³⁰ Aesimos also led the democrats in 403 against the Thirty, though he might have had a different opinion from Anytus over how to deal with Agoratus, which plausibly caused no serious quarrel between them (Lys. 13.80-82).

were satisfied with the existing situation (*Hell. Oxy.* 1.3). The historian's social division of the Athenians may appear to suggest that Anytus was a political leader not of the majority of the democratic people but of the moderate and wealthy or the well born and cultivated. Such an interpretation, however, is not necessary because it was a diplomatic issue, not a constitutional matter, that the Athenian citizens and their leaders were arguing over³¹. Anytus and his followers may have been cautious, realizing the internal and external situation in which the Athenians found themselves at that time. Therefore it is difficult to establish Anytus as a 'moderate' politician from *Hell. Oxy.* 1.3 as well as from *Ath. Pol.* 34.3³².

While Anytus was clearly one of the most influential politicians in the post civil war period, it is not easy to clarify his political leanings from the sources, as we have seen. His later life is more obscure, though there are some unfavourable, probably unreliable, stories told by later authors. It is possible, but not certain, that the Anytus who was *sitophylax* (corn-warden) in Piraeus in 388/7 (*Lys.* 22.8) was our Anytus or his son³³. The credibility of the later stories that allege a second exile for Anytus because of his prosecution of Socrates (*D.L.* 2.43; *Them. Or.* 20.239c) has been suspected by some scholars³⁴.

2: Observance of the Amnesty, as a political agenda

As we have seen, Anytus was among the leading politicians even before the end of the Peloponnesian war and much more prominent after the civil war. His political behaviour must have attracted the attention of his fellow citizens and influenced on their behaviour. Even if they did not have any detailed knowledge about his political theory and his policies, the Athenians must have shared a certain image of this leading statesman, and he himself could hardly have despised his own public image. What image, then, did they have of him, when Socrates was prosecuted under the restored democracy?

One of the most important aspects of his public image must have been the observance of the reconciliation agreement after the civil war. This is attested by an oration of Isocrates, in which, accusing Callimachus of a breach of the agreement immediately after the civil war, the orator explained the illegitimacy of his actions to the jury as follows:

Indeed, it has not escaped him that although Thrasybulus and Anytus, the most powerful men in the city, have lost a great deal of money and know who listed their property, nevertheless they do not dare to bring suit against them or recall past wrong. Even though in other matters they can more easily get their way than others can, concerning matters covered by the treaty, at any rate, they consider themselves equal to others. (*Isoc.* 18.23; trans. R. Mirhady³⁵)

³¹ On the social classes and their political stances described in *Hellenica Oxyrhynchia* 1.3, see Strauss, *op.cit.* (n.14), 90-94, though it seems unnecessary to assume static political factions as Strauss depicts.

³² Pace Gavrilov, A.K., "Anytos-EMBAΔΑΣ und der Prozess des Sokrates," *MH* 53 (1996), 100-105, who discusses that Anytus' appellation "EMBAΔΑΣ" by Theopompus shows the politician's democratic conservatism.

³³ *APF* 41

³⁴ *Andokides*, 166; Platis, E.N., *Οἱ κατήγοροι τοῦ Σοκράτη*, Athens, 1980 (non vidi); Vlastos, G., review of Platis (1980), *AJP* 104 (1983), 201-206; *AO*, 441; Stone, *op.cit.* (n.5).

³⁵ Mirhady, D. and Too, Y.L., (eds.) *Isocrates I*, Austin, Texas, 2000, 102-103.

Here, the orator names Anytus and Thrasybulus as the icons or the best examples of those who have accepted the treaty of reconciliation even to their own disadvantage. This passage suggests Anytus' and Thrasybulus' strict observance of the treaty and clarifies that most of the Athenians at that time believed in their adherence to the agreement, otherwise it would be difficult for the orator to cite their names as examples for the citizens to follow³⁶. It is also plausible that such public belief about Anytus' attitude or possibly his real policy towards the Amnesty may have urged Andocides, when he was accused in 400/399 concerning his behaviour before the civil war, to ask for Anytus' support, since the Amnesty (and legal revision of 405-3 BCE) made the defendant immune from the prosecution. After making excuses for his conduct in the scandals in 415 BCE, the orator himself explains that the legal revision and the Amnesty made him immune from prosecution for the offence committed before the civil war (1.71-91). Near the end of the speech, he also reminds the jurors in rather vague terms of the importance of their generosity in not taking revenge (140). Whether or not his argument based on the Amnesty was weak in a strict legal sense³⁷, it is important here that the defendant made use of the reconciliation in order to claim his innocence, hoping to persuade the jurors, and that the support of Anytus, an icon of the Amnesty, would have been undoubtedly helpful.

How important then was this policy for the Athenians and Anytus? Is it plausible that he would have thought light of it and brought a suit against someone who had apparent relations with the oligarchy even with a pretext to disguise matters?

Investigation of the historical context would be helpful to fathom the significance of this treaty both for Anytus and for the fellow Athenians in this period. After the drubbing of the naval battle at Aegospotami in 405 BCE and the Spartan tactical blockade including cutting off the Athenian corn supply, there was no option for Athens but to initiate peace negotiations with Sparta in 404 BCE. Soon after the peace was signed, under Spartan pressure, the democracy was overthrown and the oligarchic regime of the Thirty was established. Next year, the Athenian democratic exiles successfully delivered a crushing defeat against the junta, restored democracy at home, and entered into the reconciliation agreement with those who had supported the oligarchic government. The Aristotelian *Athenaion Politeia* reported the main terms of the agreement as follows (39.1-6): 1) the settlement in Eleusis by the former supporters of the oligarchy, which most of the terms elaborately listed in *Ath.Pol.* concern; 2) the general amnesty between the democrats and the ex-oligarchs for their past behaviour, except the Thirty and some officials; 3) the payment of the money borrowed by the Thirty and the democratic exiles for the civil war; 4) the return both of the landed property and of the unsold movable property confiscated under

³⁶ While the corpus of Isocrates is thought to have been intended for educated readers, it does not mean that this 'forensic' speech was composed without any intention of persuading the Athenian citizens. On the relationship between the written culture and the spoken world in the Isocratean corpus, see Too, Y.L., *The Rhetoric of Identity in Socrates: Text, Power, Pedagogy*, Cambridge, 1995.

³⁷ Lys. 6.37-40 interprets that the Amnesty only covers offences by members of one group (i.e. either ex-oligarchs or democrats) against those of the other group (cf. Lys. 13.88-89; 26.12-20), but [Arist.] *Ath.Pol.* 39.5 does not show such a restriction. On the Athenian attitude toward the amnesty, see below n. 39. *Andokides*, 200-203 concludes that Andocides' legal position was weak, though his arguments based on the reconciliation treaty and the revised laws do not seem groundless, if the decree of Isotimides had not incorporated in the revised code of laws. Not only the Amnesty but the revision of laws seem to have been important political agenda for Anytus (see below). The latter point may have also urged Andocides to ask support from the politician.

the Thirty. As Wolpert persuasively shows, those terms clearly suggest that the agreement was meant to be the outline for the establishment and coexistence of two separate communities, the one for the democrats and the other for the ex-oligarchs. The fact that both the parties didn't seem to use words like law (*νομος*) or decree (*ψηφισμα*), but 'treaty' (*συνθηκαι*) suggests that they had no intention, or at least no clear intention, of re-establishing Athens as one unified community.

Nevertheless, Athens changed its course towards the unification of the two parties and restoration of one single community. Archinus, one of the democrats from Phyle (D. 24.135; Aeschin. 3.187, 195) and the leading politician of this period (Aeschin. 3.195; [Arist.] *Ath. Pol.* 40.1-2; cf. Plut. *Mor.* 835f, 836a), cut short the deadline for registering for residency in Eleusis, probably with the intention of strengthening the restored democracy, which had already lost a number of citizens and was about to lose even more by separating from Eleusis. As a result of this measure many of the ex-oligarchs remained in Athens. Following this, Archinus clearly demonstrated his policy of unification between the democrats and the ex-oligarchs by strictly punishing those who violated the amnesty as a warning to others ([Arist.] *Ath. Pol.* 40.1-2). While this episode and the legislation of *paragraphe* clearly attests that Archinus was committed to political and social unification of the city, Anytus' commitment to the treaty of reconciliation and to the Archinus' political action remains vague. But Isocrates' description cited above strongly suggested that Anytus (and Thrasybulus) must have at least supported observance of the amnesty. According to most of the fourth century authors, the Athenians seemed generally to abide by the amnesty, to resolve their conflicts peacefully and not to dwell on their past animosity (e.g. Isoc. 18.31-32; [Arist.] *Ath. Pol.* 40.3). In fact, those who remained in the city during the civil war shared the same legal status after the reconciliation as those who were democratic exiles. There are some ex-oligarchs who became officials including a general after the civil war (Lys. 16.8).

It seems difficult to say, nevertheless, that the citizens of this period took it for granted that the conflict between those in the city and those from Piraeus would have immediately disappeared with the treaty of reconciliation, as Callimachus' trial (Isoc. 18) and Archinus' stern measure suggests. The forensic orations of the post civil war period still clearly show that, even after the democratic leader took action against a breach of the treaty, the obstinate feuds enabled the litigants to make allegations about their opponent's oligarchic past in the law court in order to persuade the citizens. Orations for prosecutions against Agoratus (Lys. 13), Andocides (Lys. 6) and Nicomachus (Lys. 30) contain clear references to these defendants' behaviour before and during the civil war in order to inflame the jurors. The public scrutiny (*δοκιμασια*) of officials was in some cases the stage where some candidates were accused in public of supporting the oligarchic regime (e.g. Lys. 16, 25, 26)³⁸.

It is true that, as far as I know, there seemed no clear attempt to nullify the Amnesty: defendants regularly rely on the Amnesty, and prosecutors often allege that their opponents should be excluded from the treaty (therefore they do not challenge the legitimacy of the Amnesty)³⁹. But trial speeches in this

³⁸ Erastosthenes, one of the Thirty, was also accused on account of his past behaviour (Lys. 12), but the amnesty was not applied to him.

³⁹ In the trial of Agoratus, the speech for defence seems to be based on the treaty of reconciliation and the prosecutor claims the accused should be excluded from it (Lys. 13.88-90). Many forensic orations of this period contain similar oratorical strategies (e.g. Lys. 25.28-35; 26.16; And. 1.90-91, 103-105; Isoc. 18.19-35). In order to persuade the jurors and win the cases, the accusers could not nullify or neglect the amnesty and the defendants could appeal to it. These examples show that, even if it does not mean the automatic end of the bitter civil strife, the treaty seemed to work very well in Athenian society.

period at least show that past enmity continued despite of the treaty of reconciliation. Wolpert, having analyzed the trials after the civil war, says, “laws, rules, and procedures were clearly not enough to prevent further factionalism and even a new round of civil war⁴⁰.”

In my opinion, it seems less plausible that, in such a still rather unsettled situation, a political leader, presumably one of the strong supporters of the Amnesty, would have put on his political agenda the prosecution of a famous figure as the teacher of the leader of the Thirty or as the symbol of the oligarchy, despite the fact that the trial must have attracted people’s attention and would possibly have influenced his fellow citizens’ behaviour. While he could mention in some way what Socrates did before the civil war, as other litigants of this period did, deliberate denunciation of Socrates’ anti-democratic teaching before 404 would have been somewhat out of line with his policy. Moreover, if he had intended to attack him as ‘the symbol of oligarchy’ but concealed his ‘real political’ intention, his prosecution would have had no political impact on his fellow citizens. If Anytus, as a leading politician, participated in this notable litigation with any political intention other than attacking the oligarchs, what did he intend or at least appear to intend to do with this public action? In order to answer the question, it would be helpful to examine the political situation after the civil war once again.

3: Way back into Tradition

First of all, the Athenians after the civil war seemed to have perceived the period of the Thirty as an extreme deviation from their rather static situation, as Wolpert convincingly shows.⁴¹ The post-war authors place a special emphasis on the Thirty’s abnormality and otherness from the citizens and depict them as those who could not control their avarice and left almost no avarice undone.

Lysias’ portraits of the Thirty are the most vivid: the tyrants are so greedy that they devoured the properties of their fellow citizens and the metics, endangering their lives (e.g. 12.6-19). They were so shameless that they unjustly put many to death, and deprived them of burial (e.g. 12.21, 96). Emphasizing the otherness of the Thirty in this way in the public sphere might encourage the citizens to feel the abnormality of the period under the Thirty and of the civil war.

Other sources also attest that the Athenians officially considered the civil war as abnormal. By the decree of Theozotides (*Hesp.* 40 (1971), no.7), the Athenian system of public care for war orphans, which had theoretically applied only to the sons whose fathers were killed in a war against foreign countries, now applied exceptionally to the orphans whose fathers had a violent death (ἀπέθανον βιάϊω θανάτῳ) fighting for democracy in the civil war. A few years later, in the funeral oration for the fallen of the Corinthian war, the democrats fighting the civil war in 403 are celebrated along with mythical heroes who are described as fighting against the barbarians of ancient times (Lys. 2.61-65). Inventing and sharing such democratic ideology as shown in the funeral oration, Athenians would have felt the abnormality of the civil war period.

From such an abnormal situation, the Athenians officially recognised that they had not newly established a brand new constitution, but restored their original democracy. First, the continuity of the legal system with a short intermission caused by the civil war, in other words, the restoration of the legal

⁴⁰ Wolpert, A., *Remembering Defeat: Civil War and Civic Memory in Ancient Athens*, Baltimore/London, 2002, 71.

⁴¹ Wolpert, *op.cit.* to which I owe the idea of the citizen’s consciousness of the past after the civil war.

tradition was intentionally emphasized. With Diocles' decree, the Athenians confirmed the legitimacy of judicial judgments under democracy before the civil war (D. 24.56-57), which would mean the continuity of the legal system between the pre- and post-civil-war periods. The revision of the laws, started since the restoration of the democracy in 410 and resumed after the civil war until 400/399, was also recognised as having brought to Athens a reversion to normal conditions, or even to the more traditional conditions of the Solonian and Draconian era, as shown by the original phrasing of Teisamenus' decree in 403 and Andocides' paraphrase in 400/399 (And. 1.80-83)⁴². It is true that, in the early fourth century, the Athenians not only paid attention to legal continuity but also innovated in some aspects of the legal system, e.g. the new distinction between law (νόμος) and decree (ψήφισμα), which had not been differentiated in the fifth century, and the legislation committee (νομοθέται), as scholars have clearly shown⁴³. Contemporaries, however, did not seem to recognise these changes as innovation. The above-mentioned examples suggest that the Athenians would have recognised their post war legal system as restored in accordance with traditional values rather than as newly created. It is true that no leading politicians are recorded as having played a major role in promoting the legal 'restoration' after the civil war, nor is there any explicit clue to understanding Anytus' attitude towards constitutional or legal matters. It is plausible, however, that the leading politicians including Anytus would have promoted or at least supported it. It is hard to assume that they would have by no means exercised their influence over the national program, which was to be the legal basis of the restored democracy.

The leaders of the restored democracy possibly paid attention to a political debate concerning the '*patrios politeia*' or the ancestral constitution in the late fifth century, promoting or supporting the law revision project based on the laws of Solon and Draco⁴⁴. As argued before, the '*patrios politeia*' was so ambiguous that it should not be assumed that there was rigid creed or an explicit understanding of the ancestral constitution as a moderate one between democracy and oligarchy. Nevertheless, it is important to note that the '*patrios politeia*' was a hot issue of that period which politicians could not ignore. It seems impossible to maintain that Teisamenus' choice of the Solonian and Draconian laws as the model of the revised laws had nothing to do with the debate over the ancestral laws, nor that the leaders of the restored democracy were exceptionally heedless of the matter.

Although the leaders did not share the same opinion on every matter, as shown by Archinus' impeachment against Thrasybulus, at least there is no source suggesting that they vastly differ from each other on the legal or constitutional issues. Although Buck believes that Thrasybulus was in favour of reviving the 'radical democracy' and Archinus was moderate, mainly on the basis of the litigation between them over extending citizenship to metics and foreigners who had supported the overthrow of

⁴² On the revision of the law code, see Rhodes, P.J., "The Athenian Code of Laws, 410-399 BC," *JHS* 111 (1991), 87-100; Volonaki, E., "The Re-publication of the Athenian Laws in the Last Decade of the Fifth Century B.C.," *Dike* 4 (2001), 137-167.

⁴³ Hansen, M.H., "Nomos and Psephisma in Fourth-Century Athens," *GRBS* 19 (1978), 315-330; Wolpert, *op.cit.* (n.40), 41-42; Rhodes, P.J., "Judicial Procedures in Fourth-Century Athens: Improvement or Simply Change," in Eder, W., (Hg.) *Die athenische Demokratie im 4. Jahrhundert v. Chr.: Vollendung oder Verfall einer Verfassungsform?*, Stuttgart, 1995, 303-320; Thür, G., "Die athenischen Geschworenengerichte - eine Sackgasse?" in Eder, W., *op.cit.*, 321-331.

⁴⁴ see above n.25.

the Thirty ([Arist.] *Ath. Pol.* 40.2; Plut. *Mor.* 853F-836A)¹⁵, Thrasybulus' enfranchisement of non-citizens seems a pragmatic measure to strengthen the Athenian national power by increasing the number of population and inflaming patriotism, rather than a measure to make Athens more democratic¹⁶. Nor does the political debate in 397/6 mentioned in *Hell. Oxy.* 1.3 attest different opinions among the leaders about legal or constitutional matters. The episode shows the citizens' concern about military and/or diplomatic affairs, not about legal matters¹⁷.

Moreover, it may not be completely impossible that there is a kernel of truth in the passage in *Athenaion Politeia* 34.3, in which Anytus is counted among the politicians who promote the '*patrios politeia*' in 404. As mentioned above, his political leanings of that year could not be safely deduced from that passage, let alone his link with Theramenes. Nevertheless, if the author and his source(s) had not made a random choice, naming Anytus among the politicians believing in the '*patrios politeia*' as the best constitution in 404, it may be possible that in some period of his career he showed some sort of attitude toward legal matters that would have enabled the writer(s) to insert his name among the champions of the 'ancestral constitution'.

Although we have only circumstantial evidence, it seems plausible that Anytus and his fellow leaders supported the revised law code based on ancestral laws.

4: Religion matters

Besides legal 'restoration', reversion to tradition in religious life was also one of the strong concerns of the Athenians after the civil war. The revision of the laws again sheds light on this aspect: the laws collected according to the laws of Solon and Draco during the first part of the program carried out from 411 to 404 must have contained laws concerning religious affairs. Besides, the revision of the official sacrificial calendar, carried out as a part of the law revision project after the civil war up to 400/399, was supposed to be done in accordance with Solonian laws and ancestral laws (*Lys.* 30.4, 29). Though no sources clearly mention the main backers of this project¹⁸, the most likely candidates would be the leading politicians, including Anytus, judging from their strong influence on Athenian politics before and especially after the civil war, as we have seen. While those who were involved with traditional religion,

¹⁵ Buck, R.J., *Thrasybulus and the Athenian Democracy: The Life of an Athenian Statesman*, Stuttgart, 1998, esp. 82-87.

¹⁶ As in the case of Pericles' citizenship law of 451/0, which was reenacted and strengthened after the Peloponnesian war, the Athenians were not generally in favour of granting citizenship to large bodies of non-Athenians. Cf. Osborne, M., *Naturalization in Athens*, vol. III-IV, Brussel, 1983, 145, 181-183; Manville, Ph.B., *The Origins of Citizenship in Ancient Athens*, Princeton, 1990, esp. 4, n. 3, 215-216, n.7.

¹⁷ Besides, they might have been politically closer before the debate in 397/6, as Strauss, *op.cit.* 103, argues.

¹⁸ Nicomachus, the anagraphus, was supported by some politicians at his trial in 399 (*Lys.* 30.31). Based on this passage, Connor, W.R., "The Other 399: Religion and the Trial of Socrates," in Flower, M. and Toher, M., (eds.) *Georgica: Greek Studies in Honour of George Cawkwell*, London, 1991, 53, assumes that the politicians currently in power including Anytus supported the revision of the laws and the sacrificial calendar, which seems likely, although the supporters of the defendants were not necessarily Anytus and his fellow politicians, since the prosecutor(s) could also use a similar rhetorical strategy and ask support from those politicians. But it is clear that the law revision project was such a big political concern of this period that the politicians took part in the debate. Anytus and his fellow leaders were likely to support the laws in accordance with 'the laws of Solon and Draco', whether on the defendant's side or on the prosecutor's side.

e.g. descendants of the traditional families, might have played important roles⁴⁹, the leading politicians would have at least supported this important national project.

Though one might be tempted to think that 'the ancestral laws' means not a religious but a political inclination and that Athenian politicians would have been inattentive to religious matters, it is important to avoid applying to the ancient world the modern idea of division between politics and religion. The political importance of religion is understandable not only from the national project of the revision of ritual calendar but also debate in the Council over religious matters (e.g. Lys. 6.33; And. 1.111-116). After the restoration of the democratic government, Andocides, now back home, is thought to have attended Council meetings and taken part in debates on sacrifices, processions, prayers and oracles (Lys. 6.33). This episode attests that religious matters were dealt with as a part of political issues in Athens. But this phenomenon is by no means a unique feature of the post war period. Not only Athens but also Greek poleis generally provided religion with its fundamental framework and it was always a part of Greek public life⁵⁰.

A debate in the Council over Andocides suggests a political dimension of religious matters in this period (And. 1.111-116). In the Council just after the Eleusinian Mysteries, Callias made an accusation against Andocides of violation of the 'ancestral laws' by placing a suppliant branch at the Eleusinion, and claimed that the laws ordered the death penalty for the offender according to his father's interpretation. Against the claim, Cephalus, one of the leading politicians at that time (A. *Eccl.* 248ff.; Din. 1.76) and a supporting speaker of Andocides with Anytus (And. 1.150), denied the translation and objected that a sinner placing a suppliant branch there should be fined 1,000 drachmai according to the law written on the stone. The leading politician clearly claimed the validity of the laws written in accordance with the laws of Solon and Draco through the law revision project (And. 1.83-85) concerning religious issues as well as non-religious matters⁵¹. This episode suggests that some leading politicians paid heed to a religious aspect of the 'patrios nomos'.

Connor claims that the Athenian law court dealt with many religious cases in the post civil war period⁵². In fact, in 400/399, the same year as Socrates' impiety trial, Andocides was prosecuted of impiety (And. 1), and Nicomachus, an ἀναγραφεύς of the law (including the ritual calendar) revision project was prosecuted concerning the public program (Lys. 30)⁵³. A few years later, the Areopagus dealt with a case concerning a sacred olive tree (Lys. 7).

Although it is impossible to gauge how much higher the number of the religious trials was in the years immediately after the civil war compared with the other years, it is remarkable that many prosecutors of the cases filed in the post civil war period concerning famous citizens (Andocides, Socrates) or a well

⁴⁹ Andocides, who performed a number of religious functions and advised on religious matters in the Council after 403, might have been a Keryx. On this point, see Furley, W.D., *Andokides and the Hermes: A Study of Crisis in Fifth-century Athenian Religion (BICS Suppl. 65)*, London, 1996, 49-52.

⁵⁰ On Polis religion, see Sourvinou-Inwood, Ch., "What is Polis Religion?" in Murry, O. and Price, S., (eds.,) *The Greek City from Homer to Alexander*, Oxford, 1990, 295-322; ead., "Further Aspects of Polis Religion," *AnnArcStorAnt* 10 (1988), 259-274.

⁵¹ Cf. Ostwald, *op.cit.* (n.25), 161-165; Thomas, R., *Oral Tradition and Written Record in Classical Athens*, Cambridge, 1989, 68.

⁵² Connor, *op.cit.* 49-56, points out that a large number of religious suits were brought in 399 and that the mood in Athens of that year "may have colored reactions to Socrates".

⁵³ The dramatic date of Euthphro's prosecution of his father is also 399.

known public project (as Nicomachus' case), focused on religious matters. Besides, the fact that leading politicians joined in those religious trials suggests the political importance of religious matters in this period: Anytus accused Socrates. Andocides was supported by Anytus and Cephalus, and attacked by Agyrrios. Some politicians supported Nicomachus (Lys. 30.31). While the Athenian law courts would have paid attention to fair application of the laws, at least to some extent, they also provided agonistic stages where the litigants tried hard to persuade the jurors with their orations in order to win their cases, rather than just a judicial places which pass a rational judgment on the basis of objective testimony⁵⁴. Given such a situation, the accusers must have chosen among many other matters the issues in the courts with which they would have been most at an advantage over the defendants, in other words, the issues which would enable the prosecutors to persuade the citizens most effectively at the time of the trials. It is highly plausible that religion was one of the most important concerns of the Athenians after the civil war. The Athenians, who heard continuous discussions on religion in public spheres, were undoubtedly becoming more sensitive to religious affairs.

In those religious trials at the beginning of the fourth century, the jurors frequently heard the accusation of infringement of traditional norms and assertions of the importance of conformity to traditional religious rituals.

[18] And yet, gentlemen of the jury, in matters of religious observance we need not learn from Nikomachus, but should look instead to those who have gone before us. Our ancestors, who celebrated their sacrifices from the κῦρβεις [i.e. list of Solonian and Draconian laws]⁵⁵, handed down to us the greatest and most blessed city in Greece, so it is fitting for us to perform the same sacrifices as they did, if for no other reason than the good fortune that has resulted from these rites. [19] How then can anybody display a greater sense of religious propriety than mine? I am claiming that our sacrifices should be, first, in the manner of our ancestors; secondly, in the best interests of the city; and thirdly, the ones that the democracy has decreed and that we are capable of funding from our revenues. You, on the other hand, Nicomachus, are doing the reverse of this. By publishing more than those that were commanded, you have caused our income to be spent on these, rendering it inadequate to pay for the traditional sacrifices. (Lys. 30.18-19: Trans. S.C. Todd, *Lysias*, Austin, 2000)

One of the prosecutors of Nicomachus lays emphasis on the contrast between the public ritual calendar revised by the defendant and traditional sacrifices in accordance with the ancestral laws. They could make the most of the economic crisis of this period and the cost of the sacrifices estimated by the prosecutor as more than the polis could afford. While he actually refers to a problem concerning public revenue, the prosecutor lays much emphasis on the religious aspect, demanding that sacrifices should be performed

⁵⁴ Here I do not mean to describe Classical Athens itself as an agonistic society but to point out an aspect of the Athenian judicial system.

⁵⁵ On *Kyrbeis*, see [Arist.] *Ath. Pol.* 7.1; *CAAP*, 131-134.

according to the ancestral rules, which suggests that the Athenians were strongly concerned with traditional religion in this period.

One of the Andocides' accusers also directed the jurors' attention to the ancestral laws.

You need now to make a decision about Andocides. You know well, men of Athens, that you cannot retain both Andocides and your ancestral laws (ἅμα τοῖς τε νόμοις τοῖς πατρίοις καὶ Ἀνδοκίδῃ χρῆσθαι). One of two things must happen: either you must wipe out the laws or you must get rid of him. (Lys. 6.8)⁵⁶.

The speaker claims that the defendant should not be acquitted, because his participation in public affairs should be seen as incompatible with the citizens' obedience to the ancestral laws. Thus, the rhetoric of the ancestral laws was used in the law court dealing with religious matters in order to persuade the Athenian citizens.

At the *dokimasia* of Philon, presumably around 398 BCE⁵⁷, the ancestral laws were again used to accuse the candidate. The speaker of Lysias 31 argues that Philon should not be chosen as a councillor because he had betrayed the ancestral gods with his act and would not regard any oaths (31). These passages used to persuade citizens in the public sphere suggest that Athenian citizens of the post civil war period had a heightened consciousness of traditional religious practice.

These phenomena drawn from contemporary sources do not suggest that the Athenians controlled religious activities on the basis of some sort of rigid creeds of 'ancestral religion'. It would be plausible to suppose that some citizens had different ideas from others, rather than that the Athenians of this period shared a consensus about ancestral religion. It is important, however, that the rhetoric of the ancestral laws or religion, even if its definition was vague, must have had great powers of persuasion for the Athenians, who would have been sensitive to religious affairs at that time, as already argued.

5: Conclusion

It was in an atmosphere such as the one described above that Socrates kept making conversation with people, especially young Athenians, after the restoration of democracy. The dialogues would have contained something incompatible with the general idea of the traditional religious belief in Athens. Although it is hard to assume that most of his fellow citizens precisely understood his religious views, Socrates' belief in his 'divine voice' (δαίμονιον) must have been taken as important evidence of his teaching about 'new deity' (cf. Pl. *Apol.* 31d1-2; *Eu.* 3b5-9; X. *Mem.* 1.1.2-4; *Apol.* 12-4)⁵⁸. And, as the image of Socrates in Aristophanes' *Cloud* and Meletus' 'misunderstanding' (Pl. *Ap.* 26d-e) suggest, the

⁵⁶ While some scholars argue that Lysias 6 is a political pamphlet or a model for rhetorical exercise in later period, "more recent consensus is," according to Todd, "that this may well be a genuine speech (Todd, S.C., *Lysias*, Austin, 2000, 63)."

⁵⁷ Blass, F., *Die attische Beredsamkeit*, vol.I (2 ed.), Leipzig, 1887, 481; Carey, C., *Lysias: Selected Speeches*, Cambridge, 1989, 179.

⁵⁸ McPherran, M.L., *The Religion of Socrates*, Pennsylvania, 1996, esp.131-139.

philosopher was thought to be teaching similar ideas to those of Anaxagoras and his followers, some of whom had been accused of impiety already during the Peloponnesian war probably on the grounds that their teaching posed a threat to traditional religion⁵⁹.

Furthermore, even though he had no intention of 'corrupting the young', conversations with Socrates may have resulted in urging the young Athenians to think that some traditional authority did not deserve their respect, as Xenophon, the earnest defender of Socrates, admits (*Mem.* 1.2.53-5). This does not necessarily mean that the Athenians feared that the young followers of Socrates might discard their democratic constitution and build a new oligarchic regime. But there was 'evidence' at least for some citizens to prove that his education might cause religious moral hazards among the youth: Critias, Alcibiades and others. Xenophon sees impiety in Critias' merciless order of violent removal of Theramenes from the altar in the Bouleuterion (*HG* 2.3.52-53). Critias' activity as the leader of the Thirty Oligarchs could also be depicted as impious as Lysias describes activities of Eratosthenes, one of the Thirty (12.96, 99). Alcibiades was accused of conducting a parody of the Eleusinian Mysteries, and was condemned to death *in absentia* (Thuc. 6.27-9; And. 1.13,16). Whether or not the historical prosecutors mentioned those names in the court, the jurors could easily associate them with Socrates' conversation with the youth after the civil war, especially because the Athenians saw the philosopher surrounded by the younger citizens in Agora. If Anytus or the other accusers mentioned their names, they would have offered the names as proof of Socrates' present 'impious' teaching, not of his oligarchic instruction to the notorious politicians before the civil war.

As we have seen, Anytus was not only a champion of the ancestral laws but can also be assumed to have been one of the supporters of traditional religion. Whatever motivations he concealed when he participated in the prosecution of Socrates, he, as a political leader, must have needed legitimacy for doing so, especially as he was prosecuting an eminent figure. Considering the stress his policy laid both on the amnesty and on ancestral laws including religious ones, and considering the public atmosphere concerning traditional religion in the post civil war period, it would be more plausible to suppose that Anytus took part in the accusation of Socrates as a champion of traditional law/religion, than that he did so as a democrat obsessed with the idea of revenge on and eradication of the oligarchs. It is true that the trial, prosecution, condemnation and death penalty of Socrates must have had different meanings for different individual Athenians and even one and the same person could have interpreted them in several ways. But considering Anytus' political stance and the political situation in which the Athenians found themselves, Socrates' trial, or at least Anytus' participation in the prosecution, may not have been that the democrats were trying to shake themselves free from the oligarchic shadow looming over their heads but rather a step towards 're-building' Athenian society after the civil war.

⁵⁹ Socrates' own religious belief has been long debated. On the religion of Socrates and its (potential) threat to traditional religion, see McPherran, *op.cit.* (n.58). Janko, R., "Socrates the Freethinker," in *Companion*, 48-62, comparing what is called 'Derveni papyrus', found in 1962, with other texts, argues that Socrates' faith was similar to the beliefs of Anaxagoras and his followers, and that contemporary Athenians recognised their quasi-scientific attitude towards traditional religion as threatening to the religious establishment.