

angry on his behalf. What more wretched name could he bear, if after being killed by his enemies, he were to be accused of having been killed by his children?⁵ The memorials of his bravery hang as dedications in your temples—whereas those of the defendants' cowardice are in the temples of your enemies.

[11] He will say that he made this statement out of anger. You are aware, however, gentlemen of the jury, that the lawgiver does not offer any leniency towards anger: he punishes the speaker who does not demonstrate the truth of his statement. Twice already I have been a witness about this, for I was not aware that you punish those who see the act but forgive those who throw away their shields. [12] I am prosecuting now for defamation, but in the same vote I am also defending myself on a charge of murdering my father, and I could not be facing any more serious trial than that—I, who on my own, after I came of age,⁶ brought proceedings against the Thirty before the Areopagus. Please assist him and me.

⁵Lys. 10.28 speaks of his being accused by the children of his enemies, which is rhetorically much more effective.

⁶Lit. "passed my *dokimasia*," as in Lys. 10.31.

12. AGAINST ERATOSTHENES

INTRODUCTION

This is the most famous of Lysias' speeches, not least because it directly concerns Lysias himself, not simply as author but also as speaker. It is an accusation against Eratosthenes, a former member of the Thirty (the oligarchic junta of 404/3), who is charged with the murder of Lysias' own brother Polemarchus.

In 403/2, democracy was restored at Athens, subject to a general amnesty to protect former supporters of the oligarchy. The terms of the amnesty are quoted in *Ath. Pol.* 39.1–6, and include specific provisions excluding the Thirty themselves, together with the holders of certain specified offices under the oligarchy, from the protection of the amnesty until and unless they successfully defended themselves at their accounting (*euthunai*);¹ if however they did this, they would receive the full protection of the amnesty, which prohibited anyone from "remembering wrongs" (or in other words from bringing a prosecution based on events before the restoration of democracy), except in cases where people were accused of killing with their own hands.

The legal context of Lysias 12 is nowhere explicitly stated in the speech, and modern scholars have debated at length whether it was at Eratosthenes' *euthunai* in 403/2, or at a subsequent prosecution for homicide, or indeed whether the speech was actually delivered. It is difficult, however, to see how it can have been at a subsequent

¹Very few of those excluded seem to have taken advantage of this opportunity. Most feared (probably correctly) that any examination would find them guilty.

homicide prosecution. If Eratosthenes had passed his *euthunai* and achieved the protection of the amnesty, he would have been able to protest that he was no longer liable for having brought about Polemarchus' death by arresting him, and Lysias makes no attempt here to argue that such action was somehow tantamount to killing with one's own hands (contrast Lys. 13.85–87).

More difficult is the question of whether the speech was delivered at Eratosthenes' *euthunai* or not delivered at all. This depends on whether Lysias, as a noncitizen, would have been entitled in his own right to bring a charge at such a hearing, and that is a question for which we do not have the evidence to give a direct answer. All we can say is that if Lysias was entitled to prosecute, it is difficult to think of reasons why he would not have done so, and there is nothing about the speech as it stands that would make it inappropriate for delivering at a trial. On the other hand, if Lysias was prevented by his status from appearing in person, he could have circulated this as a pamphlet and as a way of showing what he would have said, all the more so if he felt cheated at not having received the citizenship in return for his support for the democratic counterrevolutionaries in 404/3.²

The formal charge against Eratosthenes is covered in 12.6–36. No evidence is called, and the force of the argument rests on two things. The first of these is the careful construction of a narrative which assumes without stating it that the Thirty were corporately and individually corrupt. The second is the cross-questioning of Eratosthenes himself (12.25), as a result of which Eratosthenes appears³ to be basing his defense on a plea that he was taking orders from superiors, which Lysias ruthlessly criticizes with many of the arguments that were put

²Immediately after the restoration of democracy, Thrasybulus successfully proposed a decree granting citizenship to all those who had joined him (including presumably Lysias), but it was judicially challenged and annulled apparently before taking effect.

³P. A. Krentz, in *Parola del Passato* 39 (1984): 23–32, has argued that this is an illusion created by manipulative questioning, and that Eratosthenes was really claiming to have acted out of fear not of his colleagues among the Thirty but of a counterrevolution among the metics against the Thirty. This, however, as A. H. Sommerstein notes in *Parola del Passato* 39 (1984): 370–372, would imply considerable naiveté on the part of Eratosthenes under questioning.

forward by the prosecutors at the Nuremberg trials. Nearly two-thirds of the speech, however, is devoted to material that is prejudicial rather than formally relevant (12.37–100), including an account of the previous career of Eratosthenes (12.42–52), which broadens into an attack on the rest of the Thirty and their hangers-on (12.53–61). It leads into a specific and extended attack on the controversial figure of Theramenes (12.62–78), the leader of one of the factions among the Thirty, who had been outmaneuvered and executed by his more extreme rival Critias (Xen., *Hellenica* 2.3).⁴

The attack on Theramenes is surprising, and it has often been used by modern scholars seeking to determine the result of the trial. Eratosthenes will presumably have been acquitted, so the argument runs, because he will have had the support of former supporters of Theramenes. But Theramenes does not seem to have been a uniformly popular figure at Athens, and although Lysias' caricature of his career is no doubt unfair, it is at least possible to invert the standard interpretations of its function: Lysias may be using the unpopularity of Theramenes to prejudice the audience against Eratosthenes. We have therefore no evidence for the result of the trial⁵ (if, that is, the speech was actually delivered).

P. A. Krentz, *The Thirty at Athens* (Ithaca, 1982), is a stimulating if at times speculative attempt to see what the Thirty may have been trying to achieve. T. C. Loening, *The Reconciliation Agreement of 403/402 BC in Athens: Its Content and Application* (*Hermes Einzelschrift* 53, Stuttgart, 1987), is a useful account of the amnesty, though his views

⁴Theramenes had been one of the Four Hundred, but he engineered their downfall and his reinstatement as a democratic politician after 410, which gave him a name for always being on the winning side (Aristoph., *Frogs* 967–970). Some accounts written after his death, however, are rabidly positive: *Ath. Pol.* delivers a glowing eulogy and even suppresses his membership of the Thirty, and there exists a fragment known as the Theramenes papyrus (*P.Mich.* 5982, translated by Peseley in *Ancient History Bulletin* 3.2 [1989]: 30–31), which appears to be a conscious rebuttal of the account given in Lys. 12.62–78.

⁵Unless we accept the unlikely hypothesis (discussed in the Introduction to Lys. 1) that the defendant is to be identified with the Eratosthenes who was the victim of the killing which is the subject of that speech. In this case, Lys. 12 would have to be earlier and would have had to result in an acquittal.

on the dating of Lysias 12 have not won widespread acceptance. On the details of the speech, see Usher's commentary in Edwards and Usher 1985.

12. PROSECUTION SPEECH AGAINST ERATOSTHENES,
FORMER MEMBER OF THE THIRTY:
DELIVERED BY LYSIAS HIMSELF

[1] The difficulty I face, gentlemen of the jury, is not how to begin my prosecution but how to draw it to a close. The crimes committed by my opponent are so great and so numerous that even by lying I would not be able to accuse him of things more terrible than what happened, and if I stick to the truth, I cannot tell you everything; inevitably either the prosecutor will give up in exhaustion or his time will run out. [2] My situation seems to be the reverse of what has traditionally happened. Previously those prosecuting had to explain their hatred towards the defendants,¹ but in this case you should ask the defendants about their hatred towards the city, which has prompted them to dare to commit such crimes against it. Not that I cannot give an account of private enmity and suffering, but when there is such an abundance of enmity arising out of public concerns, then everybody should be angry. [3] For myself, gentlemen of the jury, I have never taken part in public affairs, either on my own or on anybody else's account, but because of what has happened, I am now compelled to prosecute this man. As a result, I have frequently become very nervous, lest out of inexperience I should produce a speech that was incompetent and unworthy of my brother and myself. Nevertheless, I shall attempt as best I can to tell you the story from the beginning.

[4] My father Cephalus was invited by Pericles to move to this land, and he lived here for thirty years.² Neither he nor the rest of the

¹Personal enmity was regarded as a good motive for prosecuting, not least because prosecutions were normally brought by private individuals rather than public prosecutors. To prosecute somebody who was not your enemy laid you open to the suspicion of being a sykophant (for which cf. 12.5n).

²This is often assumed to be true, and is used to help date Lysias' family history. There is admittedly no contrary evidence, but we have only Lysias' word for it, and Pericles would have been a good patron to claim.

family was ever involved in any litigation, either as prosecutor or as defendant. We lived our lives under the democracy in such a way as to do no wrong to others and to suffer no harm from others. [5] Later on, however, the Thirty, who were criminals and sykophants,³ established themselves in office, claiming that they needed to cleanse the city of wrongdoers and redirect the remaining citizens towards goodness and justice. But despite this assertion, they did not venture to do anything of the kind. I shall do my best to refresh your memories of this, by speaking first about my own affairs and then about yours. [6] It was at a meeting of the Thirty that Theognis and Peison raised the subject of the metics,⁴ claiming that some were hostile to the new constitution. This would provide an excellent pretext for appearing to punish them while in reality making money, because the city was completely impoverished, and the regime needed cash. [7] They had no difficulty persuading their audience, who thought nothing of taking human life but were very keen to make money. They decided to arrest ten metics, two of them poor, so that they could plead in the case of the others that this had not been done for money but was for the benefit of the constitution—as if they had had valid reasons for any of their other actions! [8] They divided up the houses and set out. They found me entertaining guests at dinner, drove them out, and handed me over to Peison. The others went to the slave workshop (*ergastērion*) and began to draw up a confiscation list (*apographē*) of the slaves. I asked Peison whether he would be willing to take a bribe for rescuing me. He said yes, if it was a big one. [9] I replied that I was prepared to give him a talent of silver, and he agreed to this. I knew he had no respect for gods or for men, but given my situation, I thought it absolutely essential to get a pledge from him. [10] He swore an oath that he would rescue me if he received the talent, and he called down destruction on himself and his children. I then went into my bedroom and opened my treasure chest. Peison noticed this and came in, and seeing its contents, he called two of his attendants and told them to take what was in the chest. [11] He now had not

³A word normally used of malicious prosecutors and sometimes associated with alleged rabble-rousing democratic politicians; to predicate it of the oligarchs of 404/3 is a striking extension of its normal use.

⁴Lysias and his family were metics (noncitizens resident at Athens), some of whom were rich. Theognis and Peison were members of the Thirty.

simply the agreed amount, gentlemen of the jury, but three talents of silver, four hundred Cyzicene staters, one hundred Persian darics, and four silver cups.⁵ So I asked him to give me some traveling money, but he said that I should be glad to save my skin. [12] As we were leaving the house, Peison and I ran into Melobius and Mnesitheides⁶ coming out of the slave workshop. They met us just at the doors of the house and asked where we were going. Peison said to my brother's, to examine the contents of that house as well. They told him to carry on but ordered me to accompany them to Damnippus' house. [13] Peison came near me, and told me to stay quiet and keep my spirits up, because he would join us there. At Damnippus', we found Theognis keeping guard over various others. They handed me over to him and left. It seemed to me that the situation was so dangerous that death was already staring me in the face. [14] So I called Damnippus and said, "You are a close friend of mine, and I am in your house. I have done nothing wrong but am being killed for my wealth. Please help me in my suffering, and use your power to rescue me." He promised to do this, but he felt that it would be best to have a word with Theognis, who he thought would do anything for money. [15] While he was talking to Theognis—as it happened, I was familiar with the house and knew it had two doors⁷—I decided to try and save myself. I reckoned that if I was unnoticed I would be safe, and if I got caught, nothing worse would happen to me if Theognis had yielded to Damnippus' persuasion to accept money, whereas otherwise I would die anyway. [16] With this in mind, I began my escape while the others were engaged in guarding the outer door; the three doors I had to get through all happened to be open. I went to the house of Archeneus

⁵To the modern mind, it is extraordinary how much wealth even a very rich man like Lysias could claim to keep in cash, but we need to remember that although there were banks at Athens (see Lys. Fr. 1 [*Aeschines*], and Isoc. 17), nevertheless these were private institutions whose solvency was not guaranteed.

⁶Melobius and Mnesitheides were members of the Thirty. Damnippus (below) is not attested outside this speech.

⁷Presumably two outer doors leading into the street (otherwise the reference to three doors at 12.16 would be meaningless), whereas Athenian houses would normally have only one.

the shipowner and sent him to the town⁸ to find out about my brother. He came back and told me that Eratosthenes had caught him in the street and dragged him off to prison.⁹ [17] After hearing this, I sailed the following night to Megara. As for Polemarchus, the Thirty sent him their customary instruction to drink hemlock,¹⁰ without telling him why he was to die. He did not even get a hearing and a chance to defend himself. [18] His body was brought back from the prison, but they would not allow us to conduct the funeral from any of our three houses. Instead, we had to hire a shed in which to lay him out. We owned plenty of cloaks, but when we asked, they would not give us a single one for the burial. Instead, one of our friends gave us the cloak for the burial, another the pillow, and others what each one happened to have. [19] The Thirty had seven hundred shields of ours. They had a huge amount of silver and gold, bronze and ornaments, and furniture and women's clothing, more than they had ever hoped to obtain; and also one hundred and twenty slaves, of which they kept the best but handed the remainder over to the Treasury. Such was the level of shamelessness and greed which they reached, and they made the following display of their true character: the moment Melobius first entered the house, he snatched from the ears of Polemarchus' wife the golden earrings she happened to be wearing. [20] We received not the smallest degree of pity from them; instead, because of our money, they behaved towards us just as others would have done if angered by very serious offenses. We did not deserve this sort of treatment at the hands of the city: we had sponsored all our choral performances¹¹ and contributed to many war taxes (*eisphorai*); we had conducted ourselves well and had done everything required of us; we had made no enemies

⁸The *astu*, or in other words the built-up area of Athens itself. Archeneus presumably lived in Piraeus (the port of Athens), and it is possible though not certain that Lysias and Polemarchus lived there also.

⁹The verb implies the procedure of *apagōgē* (summary arrest).

¹⁰Hemlock poisoning was regularly used by the Thirty as a means of execution, though it is not clear how widely it had been used before them.

¹¹The *chorēgia*, or compulsory sponsorship of a choral production at a festival, was a liturgy to which metics were liable (though at only one of the two annual drama festivals, the Lenaea, whereas citizens were liable at the Dionysia as well).

but had ransomed many Athenians from the foe.¹² In these matters, they clearly did not believe that we as metics should behave in the same way that they behaved as citizens. [21] Many citizens they drove into the hands of the enemy; many they killed unjustly and deprived of burial; many of those who possessed full citizen rights they disfranchised; and many men's daughters they prevented from getting married. [22] And now they have reached such a pitch of audacity that they have come into court to defend themselves, and claim they have done nothing wrong and nothing shameful. For my part, I wish they were telling the truth, because I would be far better off in that case. [23] As it is, however, they are not treating me or the city in that way. For as I have already told you, gentlemen of the jury, Eratosthenes killed my brother. He had suffered no injury himself, nor did he see Polemarchus offending against the city. Instead, Eratosthenes himself was serving his own lawless desires.

[24] Gentlemen of the jury, I would like him to come up to the rostrum and answer questions.¹³ My reason is that although I would regard it as impiety even to mention him to a third party if that was going to benefit him, nevertheless, when it will contribute to his downfall, I regard it as a sanctified and holy act even to speak directly to him. So go up and answer whatever questions I put to you.

[25] SPEAKER: Did you summarily arrest Polemarchus or not?

DEFENDANT: I obeyed the orders of those in power, because I was afraid.

SPEAKER: Were you present in the Council-chamber during the discussion about us?

DEFENDANT: I was.

SPEAKER: Did you speak in support of those demanding our execution or against them?

¹²I.e., during the Peloponnesian War.

¹³Litigants at Athens had the right to cross-question each other, and the opponent was apparently obliged to answer. (This was not the case for a witness.) Other examples of interrogation (*erôtēsis*) can be found at Lys. 22.5 (again with the questions and answers reported in the text), and at Lys. 13.30–32 (though in that case the questions and answers are not reported).

DEFENDANT: I spoke against, to try to prevent you being killed.

SPEAKER: Was this in the belief that we were suffering injustice?

DEFENDANT: Yes.

[26] Do you mean to say, you shameless villain, that you spoke against the proposal in an attempt to save our lives but joined in the arrest with the aim of getting us killed? That you spoke against those who wanted to kill us when the majority of your colleagues were in control of our fate, but that when it was in your hands alone to rescue Polemarchus or not, you summarily dragged him off to prison? Do you really deserve to be regarded as an honorable man because (so you say) you spoke against the proposal without achieving anything, but do not deserve to pay the penalty to me and to the jury for having arrested and murdered him? [27] In fact, if he is telling the truth when he says he spoke in opposition, there is no reason to trust his claim that he was acting under orders—because it was hardly in the case of the metics that the Thirty would have tested his loyalty. For who is less likely to have been ordered to arrest us than the man who had spoken in opposition and had thereby made clear his intentions? Who is less likely to have obeyed such an order than the man who spoke against what they wanted done? [28] The rest of the Athenians, it seems to me, could have a plausible excuse for what happened by laying the blame on the Thirty—but if the Thirty lay the blame on themselves, how can you reasonably accept this excuse? [29] If there had been any higher authority in the city who had ordered Eratosthenes to execute men unjustly, then perhaps it would be reasonable for you to pardon him; but where will you get justice, if the Thirty are allowed to plead that they were acting on the orders of the Thirty? [30] What is more, Eratosthenes seized and arrested him not at home but in the street, where he could have left both Polemarchus and the Thirty's instructions unviolated. You are angry against all the Thirty, because they invaded your houses and carried out searches for you or any of your families. [31] But if you must pardon those who killed others to save themselves, then it would be more legitimate to pardon those who conducted house arrests, for it was dangerous for them not to go or to deny it once they had carried out the arrest. Eratosthenes, on the other hand, could have said he did not meet Polemarchus or

that he never saw him: there was no means of verifying this,¹⁴ and so it could not be disproved if his enemies had wanted to. [32] Had you been an honest man, Eratosthenes, you should far sooner have warned those about to die unjustly, rather than arresting those who were to be unjustly executed. As it is, your actions are clearly those of someone who is enjoying what has happened, not trying to remedy it. [33] The jurors should cast their votes on the basis of your actions, not your words,¹⁵ taking the actions—which they know to have been done—as evidence for what was said at the time, since it is impossible to provide witnesses for what was said: not only could we not be present at their debates, but we could not even be present in our own houses. As a result, those who did all the harm to the city can say everything good about themselves. [34] I am not trying to evade this problem. If he wants, I accept his denials. But I do wonder what he would have done if he had spoken in favor of Polemarchus' death, given that he claims to have spoken against it before killing him!

Imagine for a moment that you are the brothers or sons of the defendant. What would you have done? Acquitted him? Gentlemen of the jury, Eratosthenes must demonstrate one of two things: either that he did not arrest him or that he was justified in doing it. But he has himself agreed that he arrested him unjustly, and so he has made your decision easy. [35] Many people have come here, both citizens and foreigners, to find out your attitude towards these men. Before they leave, those onlookers who are your fellow-citizens will discover either that they will be punished for any offenses they may have committed; or else that by achieving what they desire, they will become tyrants over the city, but if they fail, they will still obtain leniency from you. As for the foreigners living here, they will discover whether they are acting justly or unjustly in proclaiming the banishment of the Thirty from their cities. If those who have themselves suffered harm

¹⁴This ignores the probability that Eratosthenes still had with him the attendants mentioned at 12.10, who would have been in a position to denounce him if he had let Polemarchus off.

¹⁵The contrast between *logos* (word) and *ergon* (action) is a commonplace in Greek thought (cf., e.g., 14.34).

get their hands on the offenders but let them go free, then these foreigners will think it a waste of time to look after your interests. [36] Is it not striking that you imposed the death penalty on the generals who won the sea battle,¹⁶ when they claimed that because of the weather they could not rescue the men in the water, since you believed it was essential to exact revenge from them for the bravery of those who had died? The defendants, on the other hand, did their best as private citizens to ensure your defeat in the sea battle, and they admit that once in office, they deliberately executed many of the citizens without trial. Should you not punish them and their descendants with the heaviest penalties available?

[37] My original opinion, gentlemen of the jury, was that the accusations I have made were sufficient. I believe that one should prosecute only to the point where it is clear that the defendant has done things that deserve death, because this is the most extreme penalty we can exact from them. I see no need, therefore, for lengthy prosecution speeches against men like this, who would not be able to pay a sufficient penalty even if they died twice for each of their crimes. [38] Nor can he even do what has become the custom in this city, whereby defendants make no defense against the charges, but sometimes deceive you with irrelevant statements about themselves, showing you that they are fine soldiers, or have captured many enemy ships while serving as trierarchs,¹⁷ or have made hostile cities into friendly ones. [39] You must insist that he show you where they have killed as many of the enemy as they have citizens, or where they have captured as many ships as they have betrayed, or what city they have won over to match their enslavement of yours, [40] or that they have stripped as many shields from the enemy as they stole from you, or that they have captured walls as good as those they tore down in their own fatherland. They have even destroyed the guard posts surrounding Attica—

¹⁶The reference is to the battle of Arginusae in 406, after which six of the generals were executed for failing either to pick up the bodies or perhaps to rescue those clinging on to pieces of wrecked ships (cf. 21.8n).

¹⁷The trierarch was a rich citizen who paid for the upkeep of a warship for a year and was expected to command it.

thereby showing that it was not on the instructions of the Spartans that they stripped Piraeus of its protection, but because they believed that in this way their power would be more secure.¹⁸

[41] I have frequently been amazed at the impudence of those who speak for the defendant, except when I realize that it is natural for those who commit all sorts of offenses to praise others like them. [42] This is not the first occasion on which he has acted against your democracy. At the time of the Four Hundred, he established an oligarchy in his military camp, and he fled from the Hellespont, a trierarch deserting his ship, accompanied by Iatrocles and others whose names I need not mention.¹⁹ After returning here, he acted in opposition to those who supported democracy. I will provide you with witnesses for these claims.

[WITNESSES]

[43] I will pass over his manner of life here in the intervening period, but after the sea battle took place which was a disaster for the city,²⁰ while the democracy was still in existence (this was the point at which they began the civil strife), the so-called companions (*hetairoi*)²¹ appointed five men as "ephors," whose task was to incite the citizens,

¹⁸Precisely what Lysias is getting at here is unclear, though the Thirty are known to have sold the dockyards at Piraeus for scrap, and the Long Walls linking Piraeus to Athens had been pulled down under the terms of surrender at the end of the Peloponnesian War.

¹⁹The first oligarchy, that of the Four Hundred, held power for four months in 411 BC. Iatrocles is not otherwise known.

²⁰A euphemism for the decisive defeat at Aegospotami in 405, which led to the siege of Athens.

²¹The word has aristocratic connotations, and *hetaireiai* were typically oligarchic clubs. The ephors (five in number) were public officials at Sparta, and this passage could suggest that the oligarchs were deliberately modeling themselves on a Spartan pattern (with the Thirty themselves being modeled on the Spartan *gerousia*, which comprised twenty-eight members plus the two kings). There is, however, no other evidence for the existence of ephors at Athens in 404, and this may be simply an attempt by Lysias to imply treasonable pro-Spartan motives and to associate Eratosthenes with the pro-Spartan extremist leader Critias.

to lead the conspirators, and to oppose your democracy. Among these were Eratosthenes and Critias. [44] These men appointed Phylarchs²² in charge of the tribes, and they gave instructions about what Assembly motions were to be voted for and who was to hold office, and they had full power over anything else they might wish to do. As a result, you were the victims of a plot not simply by the enemy but by these men, your fellow-citizens, to prevent you from voting through any good proposal and to ensure that you would suffer serious shortages. [45] They understood clearly that otherwise they could not prevail, but that if things went badly, they could achieve it. They reckoned that because of your desire to escape existing sufferings, you would give no thought to future ones.

[46] As to the claim that he was one of the ephors, I will provide you with witnesses—not his accomplices, because I could not produce them, but those who heard it from Eratosthenes himself. [47] And yet if the accomplices were wise, they would act as witnesses against those men and would harshly punish the teachers of their own crimes; if they were wise, they would not regard as trustworthy the oaths that were designed to harm the citizens,²³ and they would willingly break them for the good of the city. I have finished what I have to say against these men, so kindly call my witnesses. Please go up on the podium.

[WITNESSES]

[48] You have heard the witnesses. In the end, once in office, he did nothing that was good but much that was not. If he had been an honest man, he should in the first place never have held office illegally; secondly, he should have laid information before the Council about

²²The term Phylarch literally means "commander of a tribe (*phulē*)," but a Phylarch normally commanded a tribe's cavalry contingent only, whereas its hoplite contingent was commanded by a Taxiarch (cf. 13.79n). It is not clear why the Phylarchs are mentioned here, though the Thirty do seem to have drawn support from the cavalry (cf. Lys. 16).

²³I.e., the oaths that the oligarchs are assumed to have sworn as conspirators at 12.43.

all the impeachments (*eisangeliai*), showing that they were false: that Batrachus and Aeschylides²⁴ were bringing denunciations that were untrue, but were initiating impeachments that had been concocted by the Thirty and were designed to harm the citizens. [49] What is more, gentlemen of the jury, those who were ill disposed to your democracy lost nothing by remaining silent. Others were saying and doing unsurpassable evils to the city. As for those who claim to be well disposed, how did they fail to demonstrate this at the time, by producing the best advice and deterring those who were in error?

[50] Perhaps he can claim that he was afraid, and to some of you this will seem an adequate defense. But he will need to ensure that he was not seen opposing the Thirty in debate. Otherwise it will be clear that to this extent he was pleased with their activities and that he was powerful enough to oppose them without suffering any harm. He should have devoted this enthusiasm towards your security rather than towards Theramenes,²⁵ who had repeatedly wronged you. [51] This man²⁶ treated the city as his enemy and your enemies as his friends. I shall bring a lot of evidence to prove both these claims, and also that the disagreements between them took place not for your sake but for their own, to decide which of them was going to control affairs and rule the city. [52] If they really had been quarreling on behalf of those who were being wronged, what better occasion was there for a man in office to show his goodwill towards you than when Thrasybulus captured Phyle?²⁷ And yet instead of doing or proclaiming anything to benefit those at Phyle, the defendant marched out with his colleagues to Salamis and Eleusis, dragged off three hundred citizens to prison, and condemned them all to death by a collective vote.²⁸

²⁴For Batrachus as an informer, see Lys. 6.45 with note. Aeschylides is otherwise unknown.

²⁵This paves the way for the attack on Theramenes at 12.62–78, the function of which is discussed in the Introduction.

²⁶Presumably Eratosthenes, but it is not clear whether the disagreements here are general disagreements among the Thirty, or specific but otherwise unattested disagreements between Eratosthenes and Theramenes.

²⁷The capture of Phyle in 403 was the first stage in what became the democratic counterrevolution against the Thirty (cf. 12.53n).

²⁸The massacres at Salamis and Eleusis were two of the Thirty's most notorious actions and are alluded to also at Lys. 13.44. There is a detailed account of the

[53] When we came to Piraeus, and the disturbances took place, and there were discussions about the peace terms, we had many hopes on each of the two sides (as both groups demonstrated) of concluding a settlement with each other.²⁹ Those from Piraeus were victorious and allowed the others to leave. [54] The latter returned to the town (*astu*) and expelled the Thirty (except for Pheidon and Eratosthenes). They elected as officials those who were most hateful to the former Thirty, thinking that it was reasonable for those who hated the Thirty to prefer those at Piraeus. [55] In this group were Pheidon, and Hippocles, and Epichares of the deme Lamptrae, and others who seemed to be particularly hostile to Charicles and Critias and their faction;³⁰ but once they took office, they organized a much more extensive civil war between those in the town and those in Piraeus. [56] In this way they made clear that they were not fighting the civil war on behalf of those in Piraeus or those who had been unjustly slaughtered. Neither the fact of past deaths nor the prospect of future ones concerned them—only how to achieve greater power and more rapid enrichment. [57] Once they had taken office and controlled the city, they made war against both sides: against the Thirty, who had done every kind of evil, and against you, who had suffered it. Yet everybody recognized that if the Thirty had been justly exiled, then your exile was unjust, and if yours was just, then the Thirty's was unjust: it was because they had been held responsible for these deeds, rather than any

Salamis massacre in Xen., *Hellenica* 2.4.8–10, and a briefer mention of both massacres in Diodorus Siculus 13.32.4.

²⁹"We" in this passage denotes the democratic counterrevolutionaries of 403/2 led by Thrasybulus, who had initially occupied Phyle and had then marched to Piraeus. They defeated the Thirty there at a skirmish in Munychia (a hill near Piraeus), in which Critias, the extremist leader of the oligarchs, was killed, and the Thirty were promptly deposed by their supporters and replaced by a board of Ten. Lysias claims that the Ten were elected with the task of making peace (12.58), but it is equally possible that their mandate was to conduct the civil war more efficiently.

³⁰*Hetaireia*: cf. 12.43 and note. Critias (cf. 12.43) and Charicles were, like Eratosthenes and Pheidon, members of the Thirty, but unlike them were among the extremist oligarchs. Of Pheidon's new colleagues, Epichares had served on the Council under the Thirty, but neither he nor Hippocles (otherwise unknown) had been members of the Thirty themselves.

others, that the Thirty had been expelled from the city. [58] So you should be very angry that Pheidon,³¹ who was elected to draw up peace terms and to bring you back from exile, nevertheless joined in Eratosthenes' activities. He shared Eratosthenes' aims, and was prepared to use you to damage those on his own side who were more powerful, but was not willing to restore the city to you, who had been unjustly exiled. Instead, he went to Sparta and tried to persuade them to send troops, slanderously claiming that the city was about to become a Theban possession, and making other assertions that he thought would be most convincing. [59] He failed, either because the sacrificial omens prevented it or because the Spartans themselves were unwilling. But he borrowed one hundred talents to hire mercenaries, and he asked for Lysander³² as governor. Lysander was particularly favorable to the oligarchy and hostile to Athens, and above all he hated those at Piraeus. [60] After hiring all sorts of people to help destroy Athens, they roused the other cities, and finally the Spartans and those of their allies that they could persuade. They were getting ready not to draw up peace terms, but to destroy the city, had it not been for the activities of honest men;³³ and you must make it clear to these men, by punishing their opponents, that you are giving thanks to them also. [61] You yourselves also are aware of this, and I do not know what need there is for me to produce witnesses, but nevertheless I will. I need to pause, and for some of you it will be easier to hear the same story from many speakers.

³¹ Pheidon is the only member of the Ten who is known previously to have been a member of the Thirty, and the only member of the Thirty apart from Eratosthenes himself who is known to have remained in Athens after the regime's collapse (cf. 12.54). It is not clear whether he is being singled out for criticism because he is present or because he is for some unknown reason a particularly unpopular target.

³² The former Spartan admiral, who had defeated the Athenians at Aegospotami in 405 and had established the Thirty. His appointment was a clear signal of Spartan intentions to reimpose oligarchy, but he was superseded in command by King Pausanias, who allowed democracy to be restored subject to the amnesty of 403/2, and whose role is suppressed in the vague reference to "honest men" at 12.60 below.

³³ See previous note.

[WITNESSES]

[62] I would like to tell you something also, as briefly as I can, about Theramenes.³⁴ I want you to listen both for my sake and for the city. Let nobody claim that I am making irrelevant charges against Theramenes, when it is Eratosthenes who is on trial, because I hear that he will defend himself by claiming he was an ally of Theramenes and shared in the same activities. [63] And yet given that he was at Theramenes' side in ensuring that the walls were knocked down, I assume that he would claim he was a political ally of Themistocles in ensuring they were built.³⁵ But I do not think the two things deserve equal consideration: it was against Spartan opposition that Themistocles built the walls, but Theramenes destroyed them by deceiving the citizens. [64] So the reverse of what was expected has befallen the city. It would have been fitting for Theramenes' friends to die with him, unless any of them happened to be acting in opposition to him. As it is, I see defendants referring to him, and his associates trying to grab honor, as if he had been responsible for great benefits rather than great evils. [65] In the first place, he had prime responsibility for the earlier oligarchy, when he persuaded you to vote for the constitution based on the Four Hundred. His father was one of the Probouloi³⁶ and behaved in the same way as Theramenes; he himself was elected general by them, because he seemed particularly well disposed to their regime. [66] As long as he was being honored, he proved to be faithful to them. But when he saw that Peisander and Callaeschrus and others were being placed ahead of him, and the democracy was no longer

³⁴ The diatribe against Theramenes that follows is discussed in the Introduction.

³⁵ The walls of Athens itself had been built by Themistocles in the 470s after the Persian invasion, whereas the Long Walls joining Athens to Piraeus had been pulled down in 404 under the terms of the surrender to Sparta that Theramenes had negotiated. Plutarch (*Lysander* 14) offers a pro-Theramenes response to this charge of undoing the work of Themistocles.

³⁶ A board of public officials created under the democracy in 413 BC, who were subsequently regarded as having paved the way for the oligarchic revolution of the Four Hundred. They were ten in number and included Theramenes' father Hagnon.

willing to obey them, he began to collaborate with Aristocrates, either because he envied them or because he feared you.³⁷ [67] He wanted to appear faithful to your democracy, so he prosecuted Antiphon and Archeptolemus, his closest allies, and had them executed. His wickedness was such that he simultaneously reduced you to slavery to prove his reliability to them, and destroyed his friends to prove the same to you. [68] Although he received honors and was very highly valued, when instructed to save the city he destroyed it all by himself.³⁸ He claimed he had found a magnificent and worthy plan, and promised to make peace without giving up any hostages, destroying the walls, or surrendering the ships, but he refused to explain his plan to anybody, telling you to trust him. [69] The Areopagus Council, men of Athens, was working to achieve your safety. Many people spoke against Theramenes. You yourselves knew that whereas other people keep secrets from the enemy, Theramenes refused to tell a meeting of his own fellow-citizens what he intended to say to the enemy,³⁹ but you still entrusted him with your fatherland, your children, your wives, and yourselves. [70] He accomplished none of the things he had promised, but, convinced that the city should be made small and weak, he persuaded you to do things that no enemy had even contemplated and no citizen had expected. He was not forced to act by the

³⁷ Peisander was one of the extremist leaders among the oligarchy of the Four Hundred in 411 BC (Thuc. 8.68), who fled into exile after the collapse of their regime (his property was then confiscated, and is under discussion in Lys. 7). Antiphon (the first of the Ten Orators) was another of the extremist leaders named by Thucydides, but he remained in Athens with Archeptolemus and was executed under the intermediate regime. Part of his defense speech survives on papyrus (Ant. Fr. 1) and mentions Theramenes by name as one of his accusers. Little is known of Callaeschrus and Aristocrates.

³⁸ During this sentence Lysias moves, without indicating the transition, from Theramenes' role in overthrowing the Four Hundred in 411 to his role in negotiating the surrender of Athens in 404 prior to the establishment of the Thirty. The effect is to accentuate the impression of a man who is constantly changing sides.

³⁹ The Theramenes papyrus (cf. the Introduction at n. 4) attributes to Theramenes' contemporaries a charge that is phrased in almost identical terms to this (*P.Mich.* 5982, lines 5–10), and responds with a long and detailed rebuttal placed in the mouth of Theramenes himself (lines 10–33).

Spartans, but himself gave them instructions that the walls around Piraeus should be destroyed and the constitution repealed. He did this in the full knowledge that if you had not been deprived of all your hopes, you would rapidly have punished him. [71] In the end, gentlemen of the jury, he prevented the Assembly from meeting until the moment which had been agreed by these men, and which he was carefully looking out for. He summoned Lysander's fleet from Samos, and the enemy's camp was in the city. [72] It was then, under these conditions and in the presence of Lysander and Philochares and Miltiades,⁴⁰ that they summoned the Assembly to debate the constitution. Their aim was that no orator would oppose or threaten them, and that you would not choose proposals that were good for the city but would vote for those they had decided on. [73] Theramenes stood up and demanded that you entrust the city to the control of thirty men and adopt the constitution proposed by Dracontides.⁴¹ But even though you had been reduced to such despair, you began to protest that you would not do this. You realized that the Assembly you were holding that day would decide between slavery and freedom. [74] Theramenes responded—I call on you yourselves to be my witnesses of this, gentlemen of the jury—that he was not in the slightest concerned by your outcry, because he knew that many Athenians were trying to achieve a similar solution, and he said that this was what Lysander and the Spartans had decided on. After him, Lysander stood up and stated among other things that he held you guilty of breaking the truce, and that unless you did what Theramenes commanded, it would be a matter not of your constitution but of your lives. [75] Those members of the Assembly who were honest citizens recognized conspiracy and compulsion: some of them remained and stayed silent, while others got up and left, having the consolation at least of knowing that they had not voted for any harm against the city. But a few evil-minded scoundrels voted the proposal through. [76] Instructions were given to vote for ten men identified by Theramenes, ten whom the previ-

⁴⁰ Philochares and Miltiades were Lysander's subordinates in command of the Spartan fleet.

⁴¹ Dracontides of the deme Aphidna, identified in *Ath. Pol.* 34.3 as the proposer of the resolution establishing the Thirty.

ously established "ephors"⁴² should appoint, and ten more from those at the meeting. They were so aware of your weakness and so confident of their own power that they knew in advance what would happen at the Assembly. [77] It is not my version of events that you should trust, but Theramenes': in his defense speech before the Council, he mentioned everything I have said.⁴³ He reproached the exiles, because it was through him that they had returned, when the Spartans had showed no concern for this. He reproached those who had shared in the activity of government,⁴⁴ because he was suffering such a terrible fate even though he had been responsible for everything that had been accomplished in the ways I have described: his actions had provided them with many indications of his loyalty, and he had received oaths from them in return. [78] This man was responsible for evils as great as that, and for other shameful ones, some done long ago and others recent, some great and some small—and yet these men will have the impudence to claim friendship with him, although he died not for your interests but because of his own crimes. It was right that he paid the penalty under an oligarchy, given that he had already betrayed one; it would also have been right under a democracy. Twice he reduced you to slavery, because he despised what was present and longed for what was not. He used beautiful language to make himself a teacher of shameful deeds.

[79] The accusations I have made against Theramenes are sufficient. For you, gentlemen of the jury, the moment is coming when you must have no pardon or pity in your minds but must instead punish Eratosthenes and his fellow officials. You were better than the enemy in war: do not prove weaker than your opponents in voting. [80] Do not let gratitude for the things they promise to do overcome your anger at what they have done. Do not make plans against the Thirty when they are absent, only to acquit them when they are pres-

⁴²For the "ephors," see 12.43 with note.

⁴³We possess a version of Theramenes' defense speech when prosecuted by Critias under the Thirty (Xen., *Hellenica* 2.3.35–49), but it does not support either these or the following allegations.

⁴⁴In other words, the Thirty themselves. Or it could mean "shared in the citizenship," which would imply the Three Thousand who enjoyed full civil rights under the Thirty.

ent. Do not defend yourselves less strongly than does fortune, which has delivered these men into the hands of the city.

[81] This prosecution has been directed against Eratosthenes and his friends, whom he will use to support his defense, and with whose help he acted. However, the contest between him and the city is not on level terms: he was both accuser and judge of those who were condemned, whereas we are now in a situation of accusing and defending. [82] These men executed without trial those who had done nothing wrong, whereas you have decided to judge according to the law those people who destroyed the city—and yet even if you wanted to punish them illegally, you would not be able to impose a punishment to match the crimes they committed against the city. What penalty could they suffer that was worthy of their actions? [83] Would executing them and their children be a suitable penalty for the murders—for our fathers, sons, and brothers whom they executed without trial? Would confiscating their visible property⁴⁵ be a good thing either for the city, from which they stole so much, or for private individuals whose households they destroyed? [84] But since even by doing this you would not be able to exact an adequate punishment, it is surely shameful for you to leave unused any penalty that anybody wishes to impose on them.

A man who comes here now, to speak in his own defense against those who are witnesses of his crimes, when the jurors are none other than those he oppressed, seems to me to show utter impudence: either this is the extent to which he despised you, or that to which he trusted in other people. [85] You must be on guard against both alternatives. Bear in mind that they would not have been able to do what they did without others to assist them. Nor would they have attempted to come here, except in the hope of being rescued by those same people, who have come not to help them, but in the belief that if you acquit those who are responsible for the greatest evils, they themselves will have virtual impunity for what they did and might wish to do in future. [86] It is right to wonder at his supporting speakers. Is it as honorable citizens that they are going to plead for him, displaying their own merits as something more worthy than the defendants'

⁴⁵I.e., land and houses, as opposed to cash.

crimes (because I would be glad if they were as keen on saving the city as the defendants are on destroying it!)? Or will they be clever speakers for his defense, claiming that these men's actions were highly meritorious? And yet none of them has ever tried to deliver a speech that is just or in your interests.

[87] It is also right to look at the witnesses, who by testifying for the defendants accuse themselves. They must think that you are extraordinarily forgetful and stupid, if they believe they can rescue the Thirty without fear under your democracy, when under Eratosthenes and his colleagues it was dangerous even to attend a funeral. [88] And yet if these men are rescued, they would again be able to destroy the city, whereas those they destroyed have ended their lives and are beyond taking vengeance on their enemies. Is it not terrible that the friends of those who were unjustly killed perished with them, whereas many people (or so I suppose) will attend the funerals of those who destroyed the city, given that so many are prepared to help their defense? [89] It would I think be far easier to speak against them on behalf of what you have suffered than to deliver a defense on behalf of what these men have done. And yet they claim that Eratosthenes did the least wrong out of the Thirty, and for this reason, they argue, he should be spared. But do they not realize that he should be executed because he wronged you more than all the other Greeks?⁴⁶ [90] You must show your opinion about these matters. If you vote to convict this man, it will be clear that you are angry at what has occurred. If you vote to acquit, you will be regarded as having the same aims as the defendants, and you will not be able to claim that you acted under orders from the Thirty. [91] At the moment, nobody is forcing you to vote against your conscience, so I would advise you not to condemn yourselves by voting to acquit these men. And do not think that your vote is secret, because you will be making your opinion known to the city.

[92] I want to remind both sides—those from the town (*astu*) and those from Piraeus⁴⁷—of several other things, and then step down, so

⁴⁶ Presumably this should not be taken to include his former colleagues among the Thirty.

⁴⁷ Respectively the former supporters of the Thirty and the democratic counterrevolutionaries.

that when you cast your votes, you will regard as precedents the disasters that you endured because of the defendants. First, then, you who are from the town should realize that the defendants ruled you so badly that you were compelled to fight a war against your brothers, your sons, and your fellow-citizens, in which defeat brought you equality with the victors, whereas had you won, you would have enslaved them. [93] The defendants made their own private households great at the expense of public business, while your fortunes were reduced on account of the civil war. They did not want you to share in their profits but forced you to share their bad reputation. They were so contemptuous that they did not gain your loyalty by sharing their proceeds, but instead they thought you would support them if you shared in their shame. [94] In return for this, be confident now, as far as you can be, and punish them, both on your own behalf and on behalf of those from Piraeus. Realize that you were ruled by the defendants, who were the worst of men; realize too that you now share the government with good men, you are fighting against external enemies, and you are taking counsel for the city; and remember the mercenaries that the defendants established on the Acropolis as guardians of their power and of your slavery.

[95] That is all I say to you, although I could say much more. As for those who are from Piraeus, I want you first to remember your weapons. After fighting many wars on foreign soil, you were deprived of them not by the enemy but by the defendants in time of peace. Next, remember how you were banished from the city that our fathers handed down to us; and when you were in exile, they demanded your extradition from other cities. [96] In return for this, display your anger as you did when you were in exile. Remember also the other evils you suffered at their hands. They executed people after forcibly seizing them, some from the Agora and others from shrines; they dragged others away from children, fathers, and wives, compelling them to be their own killers,⁴⁸ and did not allow them to have the customary funeral rites, in the belief that their own authority was more powerful than the gods' vengeance. [97] Those who escaped death found danger in many places. They wandered to many cities and were banished from all of them. They lacked the necessities of life. Some left their

⁴⁸ By drinking hemlock, as in Polemarchus' case (12.17).

children behind in a hostile fatherland, others in foreign territory, and it was against considerable opposition that you came to Piraeus. The dangers were many and great, but you were honest men. You set the one group free and led the others back to their fatherland. [98] If you had suffered misfortune and had failed to achieve your aims, you yourselves would have fled into exile, fearing that you would suffer the same things as before. Because of these men's behavior, no shrines or altars would have helped you, though these provide sanctuary even for criminals. Your children who were in Athens at the time would have suffered outrageous violence (*hubris*) at the defendants' hands; those who were abroad would have been enslaved for petty debts, without anybody to help them.

[99] But I do not want to talk about what would have happened, and I cannot describe what these men have done. That is a task not for one or two prosecutors, but for many. Nevertheless, there is nothing lacking in my zeal—zeal for the sanctuaries that the defendants either sold or polluted by entering; zeal for the city that they weakened, for the shipyards that they destroyed, and for the dead: you may not have been able to defend them during their lifetime, but you can assist them in death. [100] It is my belief that they can hear us and that they will recognize you as you cast your ballots. In their view, those who vote to acquit the defendants will thereby be passing a death sentence on them, their victims, whereas those who exact justice from the defendants will have avenged them.

Here I shall end my prosecution. You have heard, you have seen, you have suffered, and you have them in your grasp. Give your verdict!

13. AGAINST AGORATUS

INTRODUCTION

This speech is in some ways parallel to Lysias 12, which may explain why they have been placed together in our manuscripts. They are the two longest speeches in the corpus, they both deal with murders committed under the Thirty in 404/3 BC, and they both seek the death penalty. There are, however, significant differences. In the first place, the defendant Agoratus was a man of much lower status than Eratosthenes in Lysias 12. He seems to have been born a slave (a point which is repeatedly emphasized, e.g., at 13.18 and 13.64), but he evidently claimed—and was probably entitled to claim—that he had been granted Athenian citizenship, either because of his part in the assassination of the oligarch Phrynichus in 411 BC (a claim that Lysias unconvincedly seeks to rebut at 13.70–72; cf. 13.70n), or alternatively because he had joined the democratic counterrevolutionaries at Phyle in 404/3 (a claim that Lysias conveniently sidesteps at 13.77–79; cf. 13.77n).

Whereas Eratosthenes had been a member of the Thirty, Agoratus was an alleged informer, whose denunciations had eased their path to power by enabling the arrest and execution of a number of their political opponents in the Spring of 404. His victims (13.13) included Strombichides, who had been general on several previous occasions and was possibly holding that office again at the time of his death, and Dionysodorus, who is otherwise unknown. It is for the killing of Dionysodorus that Agoratus has now been summarily arrested by *apagōgē*,¹ on grounds that are not entirely clear.

¹ Thus M. H. Hansen, *Apagoge, Endeixis and Ephegesis* (Odense, 1976), 130–131, on the basis of the description of the procedure at 13.86. As Hansen rightly

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