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## The Rhetoric of an *Antidosis*: [D.] 42 Against *Phaenippus*\*

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### I. *Proeisphora* and *Antidosis*

*Proeisphora* was a fourth century “liturgy” (compulsory public service); three hundred men, alternatively called *οἱ τριακόσιοι* or *οἱ προεισφέροντες*, constituted a select group among citizens liable to war-tax levies (*eisphora*), and they had the obligation to pay the required amount in advance on behalf of their fellow citizens. As was admissible for all liturgies, if a citizen, charged with *proeisphora*, believed that somebody else was richer than himself, he had the right to call upon him (the *terminus technicus* is *προκαλεῖσθαι*) either to exchange properties or to be charged with the liturgy. This procedure was called *antidosis*. It seems that at the initial stage of *antidosis* a meeting for private arrangement between the challenger and the challenged person (henceforth, the challengee) was run; if this proved to be unsuccessful, the procedure was transferred to the judicial field.<sup>1</sup> In that case a special kind of trial, the so-called *diadikasia*, was activated; in this, though the claimant formally initiated the procedure, neither prosecutor nor defendant existed and the jurors had only to decide who was to carry out the liturgy.<sup>2</sup>

For *antidosis* two different assumptions have been argued. The first, which is usually called “traditional view”, is in accordance with the presentation provided by the ancient lexicographers, that, if a man had been challenged by a fellow citizen, but de-

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<sup>1</sup> Cf. [D.] 42.12; Gabrielsen 1987, 12.

<sup>2</sup> On the legal nature of a *diadikasia* concerning properties see Harrison 1968, 237-8; MacDowell 1978, 103, 163; Todd 1993, 119-20, 246-7.

nied to undertake the liturgy, then he was obliged to exchange properties, and so the challenger, being the owner of a larger property, had to take over the service originally assigned to him.<sup>3</sup> Some scholars, however, who favour this view, maintain that this exchange could take place only before the final judgement, which exclusively concerned the assignment of the liturgy.<sup>4</sup>

The supporters of the second view believe that the exchange of properties was too impractical a procedure to be an actual option; they argue that no such transaction is attested in the sources; besides, in almost all passages coming from the surviving forensic speeches, in which *antidosis* is mentioned, the term can be interpreted as “comparison” rather than “exchange.” Therefore, the real object of *antidosis* was not the exchange of properties but the liturgy itself, in the sense that this procedure, being the only one available for the assessment of a citizen’s wealth, should just determine who was the richer, in order to undertake the service.<sup>5</sup>

We should note that some references to *antidosis* procedure seem to confirm the traditional view; a passage in Lysias, in particular, does not leave space for doubt regarding the possibility of such a transaction;<sup>6</sup> the speech *Against Phaenippus*, as will be shown below (IV), also supports this view; one more indication is supplied by a decree of the second half of the fifth century, coming from the deme Ikarion; this decree provides an exchange of properties in a context referring to appointment of *choregoi*.<sup>7</sup> Given, however, that an exchange of properties was a cumbersome and time-consuming procedure, it seems that, at least in the fourth century, this was an option not often followed.<sup>8</sup>

## II. The speech *Against Phaenippus*

The speech *Πρὸς Φαίνιππον περὶ ἀντιδόσεως* (*Against Phaenippus in the matter of an Exchange of Properties*), which is included in the Corpus Demosthenicum (or. 42), has often been read as a source for the Athenian society and economy of the late fourth century. First of all, it has been used for the reconstruction of the different stages of the *antidosis* procedure<sup>9</sup> and for the substantiation of the opinion that the avoidance

<sup>3</sup> Boeckh <sup>2</sup>1851, 1: 749-52; Thalheim 1884, 80-91; Lipsius 1984, 588-99.

<sup>4</sup> Cf. Isoc. 15.5 ... ἐγνωσαν ἐμὴν εἶναι τὴν λητουργίαν. For this opinion see e.g. Thalheim 1884, 80-90; Lipsius 1984, 588-99.

<sup>5</sup> Dittenberger 1872, 1-25; Fraenkel 1883, 442-65; Beauchet 1897, 722-37; Gernet 1957, 71-7. For a review of the older bibliography see Goligher 1907, 514-5. For the recent bibliography see Gabrielsen 1987, 8-9; Christ 1990, 161.

<sup>6</sup> Lys. 4.1: καὶ ὅσα ἐξ ἀγροῦ κατὰ τὴν ἀντίδοσιν ἔλαβε, μὴ ἂν δύνασθαι ἀρνηθῆναι ὡς οὐκ ἀπέδωκε.

<sup>7</sup> IG <sup>1</sup> 254: ἀντίδοσιν δὲ εἶναι τῶν χρ[ημάτων] ἐναντίον τοῦ δημάρχου. See Gabrielsen 1994, 93.

<sup>8</sup> Harrison 1968, 236-8; MacDowell 1978, 162-4. Cf. Gabrielsen 1987, 36, who notes that “the main point at issue [...] was the liturgy rather than the exchange of properties”.

<sup>9</sup> Other important references to *antidosis*: Lys. 3.20; 4.1-3; 24.9; D. 20.40; 21.78-79; 28.17; Isoc. 8.128;

of liturgies was very common among rich Athenian citizens.<sup>10</sup> In addition, this speech has captured the attention of a number of scholars, for another reason: Ph's estate is described as the largest one in Attica, and they have yielded to the temptation to estimate its area.<sup>11</sup> On the contrary, less attention has been paid to the rhetorical qualities of this speech, perhaps because it has almost unanimously been regarded as spurious, mainly on account of peculiarities in argumentation and stylistic idiosyncrasies.<sup>12</sup>

Since, however, a jury did not have at their disposal objective criteria, like official land registries and income tax returns, in order to evaluate properties, rhetoric was a determining factor in charging one of the two litigants with the liturgy. As Gabrielsen says, what is finally very important in *antidosis* procedure is "the subordination of substance to sleight-of-hand employment of argument and rhetoric."<sup>13</sup> Accordingly a systematic approach of the speech as a product of oratory, that is as persuasive speech within the context of *antidosis*, seems worthwhile. This paper both analyzes the rhetorical strategy of the speaker and, adopting the work of an *advocatus diaboli*, looks for possible inconsistencies and suspect points in his speech, in the hope that a more reliable version of the particular case will be revealed.

The speaker, whose name is not mentioned, was included in the select group of the Three Hundred, who were liable to the liturgy of *proeisphora*. But, as he claims, he no longer has the financial ability to remain in this group, because he has both failed in his private business and his involvement in mining operations proved to be disastrous (§3). According to *antidosis* law, he named an allegedly richer fellow citizen, the landowner Phaenippus (henceforth Ph.), as the appropriate person to substitute him in the liturgy. Ph., who had not undertaken any liturgy until then, initially pretended that he accepted the institution of the legal proceedings; he allowed the challenger to inspect his estate, record all the contained material and make certain that the estate was not mortgaged (§§5-6). But later on he proved to be uncooperative and obstructed the procedure in every possible way (§§8-9). Finally, when every attempt at arranging the matter privately failed, the challenger decided to bring the case before the Court (§14). At the last moment Ph. also brought a counter-charge against his challenger, on the grounds that he had not delivered a correct and just inventory of his property (§15). After that, a *diadikasia* was initiated and it was in this judicial stage of the *antidosis* procedure that this speech was delivered. The date of the case should probably be assigned to the late 320s.<sup>14</sup>

15.4-5, 8, 144. The best description of this procedure is that of Gabrielsen (1987), who cites a list including the ancient references and the testimonies of lexicographers and scholiasts (p. 10-1). For a completion of this list cf. Christ 1990, 163.

<sup>10</sup> Christ 1990.

<sup>11</sup> The most interesting study on this subject is that of Ste Croix 1966.

<sup>12</sup> On this issue see below (III).

<sup>13</sup> Gabrielsen 1987, 29; cf. Gabrielsen 1994, 93-4.

<sup>14</sup> So MacDowell 1978, 163; cf. Usher 1999, 268, n. 84.

### III. Rhetorical strategies

#### 1. The self-made mine lessee against the profiteer landowner

From the very beginning the speaker attempts on the one hand to inflate the disadvantages of his involvement in mining operations and on the other to stress his opponent's prosperity. He does not confine himself to presenting the legal aspects of the case and the available witnesses, but resorts to all proper means of persuasion, including arguments *ad hominem*. Accordingly he is at pains to contradistinguish his own zeal with his opponent's selfish behavior: he himself is willing but no longer financially able, whereas Ph. is prosperous enough but reluctant.

In particular he claims that he would be happy if he had the ability to remain in the body of the Three Hundred; but he had suffered a severe financial reverse when he invested a part of his property in mining operations, and as a result he is currently a State debtor.<sup>15</sup> Besides, a man who possesses a farm, “the circuit of which is more than forty stades” (§5), should of course have been included in the liturgical class. Moreover, the speaker has obviously collected every detail concerning not only his opponent's property and financial status, but also his family's prehistory and tradition.<sup>16</sup> He reminds the jury that Ph. has inherited two estates, the first from his natural father Callippus and the second from his adoptive father Philostratus. Ph.'s family has a long tradition in public services and each of his fathers has set up a monument in honor of their choregic victories at Dionysia. This demonstration is approved by the speaker and does not cause his envy (§ 21 οὐ φθονῶ). It has been argued that this passage allows a different interpretation: “despite the cover of these tropes of good service it is surely hoped that envy (φθόνος), the sentiment Alkibiades openly claimed as the response among the citizenry to his *khoregiai*, will be sown among his audience of judges.”<sup>17</sup> But it seems excessive to believe that the speaker mentions this fact in the hope of causing the envy of the audience; it is better to accept that he attempts to contradistinguish the *philotimia* which has been demonstrated by Ph.'s fathers with the individualistic behaviour of their heir, who has discontinued his family tradition and deprived his city –and his fellow-citizens– of liturgies.<sup>18</sup>

<sup>15</sup> Obviously he was the *ἐργώνης* (ὁ ἄρχων ἀνῆς οὐτινοσοῦν, *Etym.magn.* s.v.) who was responsible to the State for the whole team, consisted of three members, himself and two partners; he had to pay three talents, in order to retrieve his rights of exploiting the mine.

<sup>16</sup> On this topic see Hunter 1994, 118.

<sup>17</sup> Wilson 2000, 202.

<sup>18</sup> See Fisher 2003, 200. Wilson (2000, 202) wrongly argues that “no speaker in surviving texts ever points to his *own* choregic monument with an assertion of its proof of virtue: it is always the monuments of ancestors that are at issue”; the anonymous speaker in *Lys.* 21.2 includes in his long list of *choregiae* and expenditures the dedication of a choregic tripod: *ἔτι δ' ἀνδράσι χορηγῶν εἰς Διονύσια ἐπὶ τοῦ αὐτοῦ ἄρχοντος ἐνίκησα, καὶ ἀνήλωσα σὺν τοῦ τρίποδος ἀναθέσει πεντακισχιλίας δραχμάς...*

Another crucial counterpoint characterization is built on §§19-23, a pathetic section which contains a very long *apostrophe* combined with two rhetorical questions (*eperotesis*);<sup>19</sup> When the speaker claims that in the past he had received a good return on his mining operations through his personal work (§20 *αὐτὸς τῷ ἑμαυτοῦ σώματι πονῶν καὶ ἐργαζόμενος*), he actually describes himself, at least at his starting-point, as a *πένης*, a word etymologically connected with *πόνος* (labor): a *πένης* is somebody who earns his living by his personal labor.<sup>2</sup> In the context of an *antidosis*, therefore, it was possible even for a man who belonged to the liturgical class to equate himself with *πένητες*, who were supposed to man the jury; in addition, the landowner Ph., who did not need to personally work, is likely to be considered richer than his challenger. On the other hand, there are strong indications, supported by inscriptions, that during the decade 330-320 at least three food crises hit Greece including, of course, Attica.<sup>21</sup> The description, therefore, of Ph. as a man who profiteers at the expense of his fellow citizens by selling his products at higher prices during a period of shortage (§20) is a very effective means to incense the jury, who supposedly belonged to lower social strata and were prejudiced against rich elite litigants.<sup>22</sup>

This counterpoint characterization may be an indication of a latent tension between landowners and manufacturers, including mine lessees, as concerns their obligations to the State in the Athenian society of late 320s. This antithesis is in accord with the assumption that the landowners possessed countable property (*φανερὰ οὐσία*) which automatically set them amongst would-be liturgists, while the mine tenants had cash (*ἀφανῆς οὐσία*) and thus they might be expected to cope more effectively with a liturgy. When the speaker claims that the mine tenants (*οἱ ἐν τοῖς ἔργοις*) have suffered reverses, while the landowners (*οἱ γεωργοῦντες*) are prospering beyond their due, he exploits this antithesis for his own benefit. Moreover, since the feeding of the slaves involved in mining works mainly depended on corn, an increase in the prices of cereals affected the mining enterprises and thus landowners like Ph., who sold their products at higher prices during a crisis period, were implicitly considered to have some responsibility for the mine lessees' misfortunes.<sup>23</sup>

<sup>19</sup> Cf. Cic., *Her.* 4.24, where it is stressed that *ἐπερώτησις* (*interrogatio*) is a vehicle for keeping the auditors attentive. For the use of *ἀποστροφή* in attacking opponents cf. Quint., *Inst.* 9.2.38: *aversus a iudice sermo, sive adversarios invadimus...*

<sup>20</sup> See P. Chantraine, *Dictionnaire étymologique*, s.v. *πένομαι*, *πένης*: "celui qui vit péniblement de son travail, besogneux". Cf. Ober 1989, 303-4; Spatharas 2006, n. on 20.18. The topos that somebody is self-made is old enough to be found almost one century earlier, in Ant. 2.2.12 (ca 430; see Usher 1999, 355-9).

<sup>21</sup> See Garnsey 1988, 154-62, who cites a list including three food crises during the decade 330-320: 330/20, 328/7, 323/2. [D.] 56.9-10 offers the information that during the crisis of 323/2 the price of grain in Athens was pretty high. See Isager-Hansen 1975, 17.

<sup>22</sup> On this subject cf. Markle 1985, 265-97; Cairns 2003, 235-52; Fisher 2003, 181-215.

<sup>23</sup> For the relation of cultivation to mining activities see Isager-Hansen 1975, 42-9; Hopper 1979, 187.

In conclusion, the speaker attempts on the one hand to direct the envy, which the jury usually feel against rich Athenians, to this individualistic landowner and on the other hand to win them over by stressing his efforts in a field of vital importance for the Athenian, the mines of Laurion. Accordingly Ph. is described as a prosperous landowner, prone to expensive tastes, who neither takes care to invest his profits in business useful to his city nor has any disposition of spending money on liturgies to his city's advantage. On the contrary, the speaker presents himself as a self-made citizen, who does not hesitate even to work hand in hand with the slaves<sup>24</sup> and invests his money in mining operations which are expected to contribute to the improvement of the city's finances.

## 2. Violating law and private agreements. *Apragmon* versus *sykophant*

While the challenger scrupulously followed the definite steps of the *antidosis* procedure, the challengee did not demonstrate the same assiduity in the discharge of his duties (§§5-9). After the submission of Ph.'s name in the General's court, the challenger, accompanied by some friends, proceeded to inspect Ph.'s estate in Cytherus, as he had the right to do. There, in the presence of Ph., he made a note of the stored cereals and certified that there was not any sign of mortgage on the estate. In addition, he invited Ph. to inspect his own property, as a mark of his decision to keep the letter of the *antidosis* law. But Ph. attempted to obstruct the completion of the procedure. The contrast culminates in a section where the formal steps of the procedure followed by the challenger are juxtaposed with the challengee's illegal actions: despite the challenger's instructions and the regulations of the law, Ph. violated seals, removed cereals, exported timber, and, in addition, he even reported a number of debts, which did not exist previously. This juxtaposition is epitomized in the terminative conclusion: "in a word, he does just what he pleases, not what the laws bid him do" (§9).

Moreover, Ph. not only violated the *antidosis* law, but he also proved to be completely untrustworthy, concerning his private arrangements. He requested the challenger to arrange a meeting for settlement and to put off the declaration of the property for only a few days (§11). The challenger accepted the request, but Ph. disappeared and neither met him nor gave him any inventory (§12). The challenger finally delivered his inventory to the Generals, while Ph. gave him a useless piece of paper, in order to be able to argue later that he corresponded to his obligation, but the receiver could not make any use of it (§13).

In a private dispute, a settlement before the hearing of the case was always recommended; it was even more praiseworthy in the initial stage of an *antidosis* procedure, which was considered as a private affair and should be arranged between litigants,

<sup>24</sup> §20; Cf. Lauffer <sup>2</sup>1979, 15: "Bergwerksunternehmer und Bergwerkssklave arbeiten hier gleichsam Hand in Hand."

without the intervention of the State.<sup>25</sup> Consequently it is to the speaker's advantage to persuade the jury that his presence before the Court was due to his opponent's behavior. Accordingly in the context of *antidosis* he applies the well tried rhetoric of the dichotomy *apragmon* – *sykophant* and presents himself as *μέτριος* “moderate” and *ἀπράγμων* “not meddling, who avoids troubles, i.e. litigations”,<sup>26</sup> who was forced to prosecute his opponent, whilst Ph., who violated mutual agreements and through his behavior is responsible for the introduction of the dispute in the Court, is compared with a *sykophant* (§13 *ὑπερβάλλων συκοφαντία*). In this context the word *συκοφαντία* is used *latiore sensu*, since it concerns a private issue, the only common elements with *sykophancy* being the deceitful disposition of Ph. and his reckless resort to Courts. The implicit conclusion, which the jury are expected to arrive at, is that a litigant who violates laws and mutual agreements is likely to be untrustworthy regarding his intention to declare his property and to collaborate on the completion of the procedure.

This section is completed with the commonplace rhetoric of “the law's voice” (§15); the speaker attempts to exaggerate a rather minor issue, the violation of a private arrangement, investing his arguments with the authority of the law. The interdependence of jurors and laws is also stressed in D. 21.224-5, where the appeal of law seems more appropriate, since the subject concerns a major offence, namely Meidias' offensive behavior which is described as *hybris*. Finally, when the challenger speaks of Ph.'s shamelessness (*βδελυρία*), he probably hints at his contempt of the laws because of his wealth.<sup>27</sup>

### 3. The rhetoric of *diabole*: revealing a false Phaenippus

In §§ 24-25 the speaker ascribes to Ph. *philotimia* (“love of honor”), a virtue of aristocratic origin, in orators almost always connected with expenditures on the State;<sup>28</sup> he asserts, however, that the unique field where Ph. has demonstrated this virtue is horse breeding (*ίπποτροφία*).<sup>29</sup> But, when he proceeds to give more details, this char-

<sup>25</sup> Cf. Hunter 1994, 55-62; Christ 1998, 164-6. For the private character of the initial stage of *antidosis* procedure see Gabrielsen 1987, 12-3.

<sup>26</sup> For the combination *μέτριος-ἀπράγμων* cf. D. 54.24. For the old antithesis *ἀπράγμων-συκοφάντης* cf. D. 55.1; 41.1; Ar., *Rax* 190-1: *Τρυγαῖος Ἄθμονεὺς, ἀμπελουργὸς δεξιός, / οὐ συκοφάντης οὐδ' ἐραστής πραγμάτων*; cf. Ar., *V*. 1040. See Christ 1998, 164-6.

<sup>27</sup> For the rhetoric of law see Yunis 2005, 191-208; Kapparis 1999, on [D.] 59.88; for the wealth as a cause for the contempt of laws cf. *Lys.* 24.17; *D.* 21.212; 45.67; *Arist., Rh.* 1372a7-14; Dover 1974, 111; Christ 1998, 76-7.

<sup>28</sup> Cf. *D.* 8.70; 18.257; 28.22; *Lys.* 19.56; 26.3; *Aesch.* 3.19; see Whitehead 1983; Gabrielsen 1994, 248, n. 33.

<sup>29</sup> Ph. maybe used his huge estate as his horses' pasture in the past, like the famous Alcibiades, whose estate from 300 *plethra* must have been used for his horses. Cf. *Isoc.* 16.1 and Burford 1993, 73.



acterization is completely subverted and Ph. seems to contradict his own name: he, a son of a *κάλλιππος* (§21), being himself an *ἵπποτρόφος φαίνιππος*, “lit. a horse breeder who keeps his horses visible”, sold his war horse, in other words put it out of sight, depriving his city and his fellow citizens of his cavalry services, and bought a vehicle, for his comfort! Ph., therefore, is like a tax evader who turns his property from visible (*φανερὰ*) into invisible (*ἀφανής*) by selling it. This attack against his ethos (*ἐπιχείρημα ad hominem*) is carried out by means of *εἰρωνεία*, which consists of calling a person by opposite terms and finds its proper place, according to rhetoricians, in vituperations like the passage at issue.<sup>30</sup>

Ph.’s flamboyant manner, not unlike that of *hippotrophos* Pheidippides’, the comic hero of Aristophanes,<sup>31</sup> is comparable with Meidias’ lavish behavior; he, according to Demosthenes, used to wear luxurious cloaks and ride on a silver mule chair even during the battle.<sup>32</sup> Ph. can also be paralleled with Androtion in D. 22, who *inter alia* was accused of his dissolute life. What is said, therefore, about Androtion, who confused the symbols of honor (crowns) with the symbols of wealth (cups and plates) fits well with Ph.’s behavior, who, at the expense of his fellow-citizens, sold the war horse, the symbol of his honor, and bought a vehicle, the symbol of his self-indulgence: *οὗτος τοίνυν ἀνελῶν τὰ τῆς δόξης κτήματα τὰ τοῦ πλούτου πεποιήται μικρὰ καὶ οὐχ ἡμῶν ἄξια*.<sup>33</sup>

The *hippotrophos* Ph. behaves quite differently from another *hippotrophos*, the famous Alcibiades, who, thanks to his athletic victories in Olympia, won glory for himself and his city.<sup>34</sup> Ph.’s behavior, moreover, seems even more blameworthy in comparison with the presentation of other young elite litigants in forensic speeches. One of them is Mantitheus, who appears in the Corpus Lysiacum (or. 16). This young prospective Councilor in his *dokimasia* claims that, though he was called upon for cavalry service, which was believed to be safer compared to hoplite service, he asked the competent officer of his tribe to erase his name from the list, thinking that it was shameful to fight from an advantageous post when his fellow citizens were going to face greater danger.<sup>35</sup> Both Mantitheus and Ph. dismount from their war horses, but, whilst Mantitheus is presented as a hero, whose option was expected to be appreciated by his fellow citizens, Ph. emerges from his opponent’s description as an anti-hero: his false *philotimia*, instead of being demonstrated in the public field, has been dis-

<sup>30</sup> Cf. Anaximen., *Rh. Al.* 35.19.

<sup>31</sup> *Ar., Nu.* 14-6: *ὁ δὲ κόμην ἔχων/ ἵππάζεται τε καὶ ξυνωρικεύεται/ ὄνειροπολεῖ θ’ ἵππους*. Cf. also D. 18.320, where Demosthenes speaks sarcastically of Aeschines.

<sup>32</sup> D. 21.133: *ἐπ’ ἀστράβης ὀχοῦμενος ἀργυρᾶς*. For this type of *diabole* see Ober 1989, 207-8. For the wealth as a cause of luxury see Dover 1974, 111.

<sup>33</sup> D. 22.75-6.

<sup>34</sup> *Isoc.* 16.33.

<sup>35</sup> *Lys.* 16.13.

played in activities which seem more proper to an effeminate life.<sup>36</sup> However this attack does not indispensably mean that Ph. violated some special law, otherwise the speaker would have stressed it.<sup>37</sup> The best explanation, in my opinion, is that he was exempted from cavalry service in some legitimate way, perhaps by paying some amount.<sup>38</sup> If this suggestion is correct, then Ph.'s behavior is of course blameworthy, since it has been displayed in such an age, but not illegal.

The special procedure of *diadikasia* allows the speaker to adopt the rhetoric both of a plaintiff and a defendant and that is more obvious in the epilogue; in keeping with his bipolar argumentation, he combines an attack on the opponent's character with emotional appeal (§§31-32).<sup>39</sup> Besides recapitulation (§30), which is common in prosecutions and defending speeches, the speaker makes his last attempt to alienate his opponent from the jury, claiming that he has never been of any service to the city, but instead he became rich by selling large quantities of grain and wine three times above its former price. The place of this *diabole* is in accordance with the recommendation found in the best rhetorical treatises that prosecutors should attack their opponent's character in the epilogue, so that the audience may better remember it.<sup>40</sup> Finally the speaker, this time adopting the line of a defendant, completes his speech with a strong entreaty to the jury to acknowledge his industry (§32 *φιλεργία*) and release him; at that point, the jury should implicitly compare this virtue of the speaker with Ph.'s luxury (§24).<sup>41</sup>

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The invention of the material (*εὔρεσις*), is remarkable, but uneven, in the sense that inventive passages, especially those referring to the opponent's ethos (e.g. in §24), co-exist with less satisfactory ones, such as the commonplace rhetoric in §15. The disposition (*τάξις*) is peculiar; the speaker does not keep a chronological order in his account, but he often sets out the facts in reverse order (*hysteron proteron*); e.g. in *prooimion* §§1-2 Ph.'s illegal actions are set in detail, whilst the inspection in his farm, which was preceded, is stated below, in the narrative (§§5-7). Another typical element of the speech is the easy transition from the personal case (§§12, 13) to general comments (§§14, 15), by which the private dispute is presented as a public matter of vital importance. As a result, narration and argumentation are intermixed and some par-

<sup>36</sup> Cf. Arist., *EN* 1150b2-3: *καὶ γὰρ ἡ τρυφή μαλακία τίς ἐστίν*; Lucianus, *Lex.* 2: *μαλακίζομαι ἐπ' ἀστράβης ὀχηθεὶς*; see MacDowell 1990, 351 (on D. 21.133) and Roisman 2005, 91-2.

<sup>37</sup> See Bugh 1988, 70-4.

<sup>38</sup> This suggestion is supported by nearly contemporary texts, such as X., *Eq.Mag.* 9.5: *καὶ παρὰ τῶν σφόδρα ἀπεχομένων μὴ ἰππεύειν, ὅτι καὶ τοῖς καθίστησι τὸ ἰππικὸν ἐθέλουσι τελεῖν ἀργύριον ὡς μὴ ἰππεύειν.*

<sup>39</sup> Cf. Arist., *Rh.* 3.19, 1419b.

<sup>40</sup> Arist., *Rhet.* 1415a29-34: *τῶ δὲ διαβάλλοντι ἐν τῷ ἐπιλόγῳ διαβλητέον, ἵνα μνημονεύσωσι μᾶλλον.*

<sup>41</sup> As Usher (1999, 267) notes, in the epilogue the tone is "unusually pathetic."

ticular aspects are neither thoroughly treated nor sufficiently elaborated.<sup>42</sup> These deficiencies, in combination with considerable divergences from the Demosthenic norm, indicate that the speech is probably spurious.<sup>43</sup>

There are, however, features which indicate a resemblance both to Demosthenes' and Lysias' speeches. In particular, the juxtaposition in §9, constructed in accumulated unconnected antithesis, has a demosthenic flavor;<sup>44</sup> the speech especially has some topics in common with *Against Meidias* (or. 21): the "voice of the law" (§15; cf. D. 21.224-5), the luxurious habits of Ph. which are similar to Meidias (§§24-25; cf. D. 21.133) and the description of Ph.'s false *philotimia* as escape (*δραπετεύειν* §25; cf. D. 21.166).<sup>45</sup> On the other hand, qualities such as counterpoint argumentation, *diabole* and pathos in the epilogue,<sup>46</sup> are traditionally ascribed to Lysias.<sup>47</sup> This is not surprising; since the age of Dionysius it has been remarked that some of Demosthenes' private speeches are quite similar to Lysias' ones.<sup>48</sup>

In conclusion, we would assume that the author of the speech, who could even be the speaker himself, had at his disposal speeches which were put into circulation at his time, and tried –not always successfully– to imitate selectively qualities proper for his objectives. This clumsy imitation is counterbalanced by the remarkable vividness of the speech (cf. especially §§ 20-21, 24-25, 31-32) and does not seem to subvert its persuasive force.

#### IV. The invisible side of the dispute: looking for the truth behind rhetoric

The terminative statement of Ste Croix's excellent article is this: "The speaker may or may not have taken in the dicasts: he has certainly taken in scholars wholesale."<sup>49</sup> We

<sup>42</sup> Cf. Gernet 1957, 76: "argumentation mal construite et peu probante...".

<sup>43</sup> Cf. the *hypothesis* of Libanius: *ὁ μὲν λόγος οὐκ ἀναφέρεται παρά τινων εἰς τὸν Δημοσθένη*. Schaefer (1858, 284) was the first who noted some unusual pompous expressions, like the solemn invocation to Solon (§1) and to gods and demons (§§ 6,22), the uncommon request to the secretary (§19) and the comparison of the speaker with a slave (§32). See also Blass 1979 [²1887], 508-9; Gernet 1957, 71-7.

<sup>44</sup> §8-9: *παρεσημηνάμην τὰ οἰκήματα, τοῦ νόμου μοι δεδωκότος. οὗτος ἀνέωξε. καὶ τὸ μὲν ἀφελεῖν τὸ σημεῖον ὁμολογεῖ, τὸ δ' ἀνοῖξαι τὴν θύραν οὐχ ὁμολογεῖ [...]* ἔπειτ' ἀπέῖπον τὴν ὕλην μὴ ἐξάγειν. ἐξῆγεν οὗτος [...] χρέως οὐδ' ὅτι οὖν ὠφείλετο [...]. *νῦν οὗτος ἀποφαίνει πολλά*. Cf. D. 18.265. See Usher 1999, 267-8.

<sup>45</sup> This contradistinction is also in line with Demosthenes' attack against Meidias: D. 21.166 *καίτοι τὴν τοιαύτην τριηραρχίαν, ὧ πρὸς θεῶν, πότερον τελωνίαν καὶ πεντηκοστήν καὶ λιποτάξιον καὶ στρατείας ἀπόδρασιν καὶ πάντα τὰ τοιαῦθ' ἀρμόττει καλεῖν, ἢ φιλοτιμίαν;*

<sup>46</sup> For the use of *περιδεῖν* in the epilogue (§32) cf. Lys. 3.47; 4.20; 9.22; 18.23; 19.64.

<sup>47</sup> For the Lysian oratory see Usher 1999, 54-118.

<sup>48</sup> D.H., *Dem.* 13.

<sup>49</sup> Ste Croix 1966, 113.

would add that this warning must not be defined on the matter of the estate's area, but should be taken into account in reference to the whole speech. In the case at issue, as in most known forensic disputes, we have only one extant speech that was delivered by the anonymous challenger of this *antidosis* procedure. But, no doubt, Ph. delivered his own speech and, had it survived, we would have a more reliable opinion about this particular dispute. Even so, the speech itself gives us some ideas about Ph.'s possible strategy; for other aspects of the hidden agenda, we must rely on historical evidence and on parallel references from other speeches which share relevant issues.

First of all, the speaker describes Ph.'s estate in a completely extraordinary way, stressing that its circuit was more than forty stades, which, in modern terms, amounts to eight kilometers (§5). This description stimulated many scholars to estimate its area. But the results seem to have been disappointing; even if we accept that this perimeter includes both estates that Ph. had inherited from his fathers (§21), which in that case would be adjacent, the estimations given by most scholars are unbelievable; one of them, taking the speaker's description at face value, believed that this estate would be 390 hectares, namely 4165 *plethra*, this size being ten times above the largest known estate in Attica!<sup>50</sup> Even M. I. Finley's more restrained estimation, which takes into account the possibility of an irregular perimeter, seems exaggerated.<sup>51</sup> The solution of the problem is found by Ste Croix, who argues that this huge perimeter is possible, on condition that we suppose an uneven horizontal contour;<sup>52</sup> this possibility is actually very strong, since Ph.' estate is remote (§5 *έσχατιά*), and encloses a woody region (§7). In that case its area would not exceed 600 *plethra* in extent.<sup>53</sup>

Had the speaker had the intention to give an accurate description of his opponent's estate, he would have given the extent in *plethra*, as was expected in such cases; moreover, he would define it naming the neighboring estates lying north, south, east and west, in the way Athenian *πωληται* used to describe properties.<sup>54</sup> It is, therefore, clear that the supposed extent of Ph.'s estate is more a matter of rhetoric than fact; the speaker exaggerates, in order to create the impression of a huge area. Relevant to this intention is the assertion that he noticed two threshing floors in Ph.'s estate, each of them measuring about one plethron (§6 *μικροῦ πλέθρου ἑκατέρω*). This must have been ex-

<sup>50</sup> Jarde 1925, 48.

<sup>51</sup> "anywhere from 700 and 1000 acres, depending on the contour of the farm" (Finley 1973, 58).

<sup>52</sup> Ste Croix 1966, 111. If the estate was regular in shape (rectangular or circular), then its area might have been much larger (even 3000 to 4000 *plethra*, in Burford's 1993, 69, estimation).

<sup>53</sup> Burford 1993, 112. This suggestion is compatible with what we know about the next two largest estates in Attica: Plat., *Alc. i* 123c (the ancestral estate of Alcibiades, being less than 300 *plethra*) and Lys. 19.29 (the land bought by Aristophanes, more than three hundred *plethra*).

<sup>54</sup> Comparable is the way Plato is supposed to have described his own estate in his will (D.L. 3.41-2). See also Isager-Skydsgaard 1992, 78-9.

aggerated as well, since such sizes are not confirmed by archaeological finds; threshing floors found in south Attica are much smaller, twelve to eighteen meters across.<sup>55</sup> In §6 the speaker maintains that Ph. produces more than 1000 *medimnoi* of corn and 800 *metretai* of wine (§20), but these assertions also seem unsupported, since no testimonies are offered by neighbors or persons involved in relative transactions.<sup>56</sup> Finally, when he refers to cereals produced in Ph.'s estate, he deliberately uses the general term *σίτος*,<sup>57</sup> but when he identifies the product in §20, we realize that it is barley, certainly a product of lower quality, and perhaps more proper to an estate described as *έσχατιά*. We can suppose, therefore, that Ph. would try to question the challenger's assertions concerning the quantity and the supposed sales of products at a higher price and would claim that the allusions to profiteering at the expense of his fellow citizens were unsubstantiated.

Another important factor which should be taken into account in relation to assigning liturgies was the opinion that somebody was able to afford cash for these services; from this point of view mine investors, who after all were protected by special laws, were likely to have at their disposal more cash than landowners. However, a difficult point is the speaker's manoeuvre concerning his mining operations: first he cites the relevant law, which assigned immunity to mining investments:

*άποφανώ τήν ούσίαν τήν έμαντοῦ όρθώς και δικαίως, πλην τών έν τοίς έργοις τοίς άργυρείοις, όσα οί νόμοι άτελή πεποιήκασιν. (§18)*

But he immediately turns in on himself and surrenders his investments in the mining-works to his opponent, on condition that he delivers the farm free from encumbrances and replaces the products he had removed from the buildings (§19). It has been suggested that the law cited was already obsolete, on the grounds that the speaker refers to it without stressing that it was recently set, in order to alleviate the mine workers.<sup>58</sup> But it seems better to view this provision as part of an ensemble of measures which Athenian State had taken in the middle of the fourth century, in order to attract new investors and encourage the exploitation of Laurion. This provi-

<sup>55</sup> See Young 1956, 124, who describes such a threshing floor at Sounion: "a terraced and carefully paved circular platform nearly twenty meters in diameter". Cf. Burford 1993, 117.

<sup>56</sup> See Osborne 1991, 125, who notes that "the speaker certainly exaggerates; and the barley price (18 drachmas) is atypically high as a result of a particularly bad harvest in much of Attica".

<sup>57</sup> *LSJ* s.v. 1 "grain, comprehending both wheat (*πυρός*) and barley (*κριθή*)".

<sup>58</sup> Cf. §31: *ώσπερ και κοινή πάσι βεβοηθήκατε τοίς έν τοίς έργοις έργαζομένοις*. See Boeckh 1828, 489-91, who doubts whether this law was instituted in order to encourage the silver mining, because this would release from liturgies a great number of rich men and would pander some to purchase mines in order to escape inclusion in liturgical lists; accordingly, he argues that the exemption was a result of the legal principle that *είσφοραί* and *λειτουργίαι* were assigned only to property owners, whereas mine investors like Ph. were not owners but lessees of a state property, and in that sense mines were excluded from the property transferred by *antidosis*.

sion is in accordance with the *isoteleia* offered to metics involved in mines, which is described as an effective measure by Xenophon in his *On the Ways and Means* 4.29-31 (ca 355/4 B.C):<sup>59</sup>

παρέχει γοῦν (ἡ πόλις) ἐπὶ ἰσοτελείᾳ καὶ τῶν ξένων τῷ βουλομένῳ ἐργάζεσθαι ἐν τοῖς μετάλλοις.

While noting that in his time the exploitation of mines was a risky business and the persons involved were becoming fewer and poorer, the author adds that operations have been resumed recently, without mentioning such a law; instead, he proposes other ways of meeting the difficulties of mining, e.g. that the State offers each tribe an equal number of slaves. Consequently, we incline to presume *ex silentio* that this law was introduced soon after 355/4 and it was recent enough when this speech was delivered.<sup>60</sup>

The problem, we believe, should be spotted in the vague wording τῶν ἐν τοῖς ἔργοις of the law cited in §18. Some take this expression to mean that this beneficial law includes ἐργαστήρια, “establishments above ground for the elaboration of the ore”, since underground mines “could not be *owned* in any case.”<sup>61</sup> But this is not compatible with a passage in Aeschines, which seems to mean that these workshops were included in an *antidosis*, since it is said that Timarchus’ father, fearing he would be liable to liturgies, sold not only his farms, but also two workshops in mining regions.<sup>62</sup> It is better, therefore, to accept that these ἐργαστήρια, being on the surface of the land, were thought of as private property, and thus they were liable to *antidosis*; if so, the challenger, exploiting the vagueness of the law, presents at this point an obligation as a last generous concession to an avaricious and uncooperative challengee. Ph., on his side, was right to accuse his challenger that he had not included his investments in mining workshops in the inventory.

Since, moreover, the accumulated fortune from mining operations was not liable to the immunity law, as was the current year’s income,<sup>63</sup> but on the contrary increased the opinion that somebody was rich, Ph. would doubt his opponent’s claim that he was no longer financially able; accordingly his argumentation, as his counter-charge indicates (§17), must have mainly relayed on the assumption that a man who had cash at his disposal from mining-works, should not be exempted from the undertaking of the particular liturgy. At that point we could imagine the speaker referring to known

<sup>59</sup> For the date of *On the Ways and Means* see Gauthier 1976, 1-6.

<sup>60</sup> See Hopper 1953, 25, who connects this immunity law with Euboulus’ reformative measures.

<sup>61</sup> Hopper 1979, 227, n. 129. On ἐργαστήρια cf. D. 37,4; Finley 1973, 65-71.

<sup>62</sup> Aeschin. 1,101: Φοβηθεὶς γὰρ τὰς λητουργίας ἀπέδοτο ἃ ἦν αὐτῷ κτήματα ἄνευ τῶν ἀρτίως εἰρημένων, χωρίον Κηφισιάσιν, ἕτερον ἀγρὸν Ἀμφιτροπῆσιν, ἐργαστήρια δύο ἐν τοῖς ἀργυρείοις, ἐν μὲν ἐν Αὐλῶνι, ἕτερον δ’ ἐπὶ Θρασύλλῳ.

<sup>63</sup> See Hopper 1979, 188.

cases of mine lessees, who due to their successful involvement in mining operations benefited the city.<sup>64</sup>

Finally, although the speaker had inherited from his father a small property, he has spent much for the city and has promised to give a list of his services (§§ 21-23). But the promise is not kept. This is really a suspect point;<sup>65</sup> one would expect from him to expose his alleged liturgies, like Demosthenes in 21.154-167, who compares his own services and contributions with Meidias' luxurious habits.

\* \* \*

In conclusion, the rhetoric of the speaker and the suggestive restructure of Ph.'s rhetoric imply that both litigants must have attempted to avoid the liturgy at issue. It is indicative that those who attempt to avoid liturgies are described as *δραπετεύοντες* "run-aways" (§25; cf. §32 *ἐπὶ τὸν δραπετεύοντα τῶν ἄλλων*). As far as I know, these two are the only instances of a metaphorical use of this verb in classical text, in such a context.<sup>66</sup> This vocabulary, especially used for slaves who run away,<sup>67</sup> suggests that some elite citizens of the fourth century –especially would-be liturgists, the speaker himself, no doubt, included– regarded liturgies as an undesirable burden, and paralleled themselves with slaves, who attempt to escape the burden assigned to them by a heartless master, the Athenian State.<sup>68</sup>

It seems, however, that they followed different ways of escaping a liturgy. In particular, the challenger probably attempted in advance to turn his property from visible (*φανερὰ οὐσία*) into invisible (*ἀφανῆς οὐσία*), by investing part of it in mining operations. Purchasing the right to exploit mines could be proved a precarious enterprise, but at the same time offered the purchaser a big advantage: it rendered him subject in the beneficial law which allowed exemption of these investments, in case of an *antidosis*. Ph., from his standpoint, who seems to have been far from an easy opponent, attempted to downgrade retrospectively his property. Since he had no reason to conceal signs of mortgage, if they existed, during the challenger's inspection, at least some of these loans were contracted afterwards, probably in collusion with his lenders. It is astonishing that the loans he contracted amounted to three talents, that is the public

<sup>64</sup> A comparable case is that of Lysitheides of the deme of Kikynna (D. 21.157 with MacDowell), who owned land in mining area; due to this possession he was able to make financial contributions and undertake liturgies; as a result, he was awarded a gold crown (cf. Isoc. 15.94).

<sup>65</sup> Cf. Christ 1990, 167, n. 84.

<sup>66</sup> Cf. also the vocabulary used to describe the liturgy avoidance: *διαδύεσθαι* (§23; Lys. 21.12); *ἐκδεδυκένα* (D. 20.1); *κλέπτειν* (X., *Oec.* 2.5-6; Hyp. fr. 134 Jensen); *φεύγειν* (Lys. 19.58; D. 45.66). See Christ 1990, 158, n. 55.

<sup>67</sup> Cf. Cartledge 1985, 29, who notes that "flight and theft were the two commonest slave 'crimes.'" See Hunter 1994, 230, n. 31.

<sup>68</sup> This is in line with Christ's (1990, *passim*) opinion that most elite citizens were reluctant to undertake liturgies.

debt of his opponent. Obviously he delayed the inventory, in order to plan the contractions of the loans and the consequent mortgaging of his land. Such loans usually were not contracted for some investment; mortgages on big estates found from that period mainly concern loans for current obligations, such as the undertaking of public services.<sup>69</sup> Since Ph. had not undertaken any liturgy in the past, it seems that they were consumption loans; this suggestion is supported by the almost permanent need of the landowners for cash,<sup>70</sup> which in Ph.'s case is manifested by selling his products immediately after the harvest (§6) and by his luxurious habits (§24).

In addition, the speech *Against Phaenippus* has its own contribution to the long debate concerning the procedure *per se*. Regarding the question whether an exchange of properties was a real alternative, we should note that, the entire speech being compatible with this assumption, two passages especially do confirm it. The first is §19: the speaker, while initially citing a law which allowed the exception of investments in mines from the inventory in case of an *antidosis*, suddenly he changes his mind and, showing again his intention to complete the procedure, surrenders to his opponent, among the rest of his property, that in the mining works. The second passage is even more conclusive: in a context of inheritance matter, the speaker claims that he permits his mother to share what he possesses, alike whether he has his own estate or that of Ph.: ...*ἐὼ μετέχειν τὴν ἑαυτοῦ μητέρα, ἅν τε τὴν Φαινίππου ἅν τε τὴν ἑμαυτοῦ ἔχω οὐσίαν* (§27). The citation of §27 and the offer of §19 would make no sense, if an exchange of properties was not a real alternative. Moreover, §19 indicates that the exchange could take place even during the trial.<sup>71</sup>

As happens in most ancient litigations, we do not know the verdict. Davies presumes with reservation that the speaker must have lost his case, on the grounds that no Phaenippus is attested in the documentation of the trierarchical class of the later 320s.<sup>72</sup> But this element, though considerable, does not explain how a very large estate escaped notice and did not render its owner liable to liturgies for such a long period; moreover, this assumption does not shed light on the reason of the publication of a speech which, in all probability, does not come from Demosthenes' hand. We are, however, in a better position when trying to conjecture how an eventual exchange of properties was confronted by the two litigants in the particular case. We will argue that their reactions in view of such an exchange were quite different. In particular, it was the challenger who must have been more prepared to exchange properties. Firstly, his operations seem to have definitely failed, since he was rendered a State debtor; this debt would be transferred to his challengee, if the exchange was transacted; secondly, as his description indicates, he was obviously attracted by the lure of Ph.'s big

<sup>69</sup> See Finley 1973, 27 and *passim*.

<sup>70</sup> On this subject see Osborne 1991, 120.

<sup>71</sup> See Gabrielsen 1987, 36.

<sup>72</sup> Davies 1971, 554.



estate and would be happy if this devolved to him, on condition that the removed products would be replaced and the matters concerning the supposed outstanding debts would be arranged; and, finally, judging from his manoeuvre regarding the work-shops (§19), he would be prepared to surrender his mining operations, to which, after all, he was not emotionally bound. On the other hand, if we take into account that land possession and cultivation continued to be considered as a safer investment than mine operations,<sup>73</sup> as well as Ph.'s delays and obstructions, we can suppose that the young farmer was reluctant to part with his paternal estate and radically change his way of life.<sup>74</sup> Consequently, he deliberately caused the introduction of the dispute in the Court, in the hope that the verdict would be favourable; but even if the verdict was to be against him, he could opt for the lesser evil, that is the undertaking of the *proeisphora*.

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<sup>73</sup> Hopper 1979, 187.

<sup>74</sup> Burford 1993, 97-9 correctly stresses the strong bonds of landowners with their land, where ancestors were often buried (cf. D. 55.13).

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**Η ρητορική μιας *ἀντιδόσεως*: [Δ.] 42  
Πρὸς Φαίνιππον**

ΚΩΣΤΑΣ ΑΠΟΣΤΟΛΑΚΗΣ

*Περίληψη*

Ο [Δ.] 42 είναι η βασική λογοτεχνική πηγή που διαθέτουμε για την αποκαλούμενη *ἀντίδοσιν*, μια διαδικασία που αποτελούσε ασφαλιστική δικλίδα στο πλαίσιο του συστήματος ανάθεσης λειτουργιών στην Αθήνα του 5<sup>ου</sup> και του 4<sup>ου</sup> αι. Ο λόγος συντάχθηκε για τη δικαστική φάση μιας *ἀντιδόσεως*, που δρομολογήθηκε όταν ο ανώνυμος ομιλητής του λόγου μας, στον οποίο είχε ανατεθεί η λειτουργία της *προεισφορᾶς*, υπέδειξε ως καταλληλότερο να αναλάβει τη λειτουργία το νεαρό γαιοκτήμονα Φαίνιππο. Ο [Δ.] 42 έχει χρησιμοποιηθεί επίσης για τη μελέτη πτυχών της οικονομικής και κοινωνικής ιστορίας του όψιμου 4<sup>ου</sup> αι., ενώ δεν έχουν τύχει ανάλογης προσοχής οι ρητορικές ποιότητες του λόγου και η λειτουργία τους εντός του νομικού πλαισίου της *ἀντιδόσεως*. Δεδομένου, ωστόσο, ότι η απόφαση του δικαστηρίου για τον οριστικό ανάδοχο της λειτουργίας καθοριζόταν σε μεγάλο βαθμό από την επιχειρηματολογία που ανέπτυξε κάθε διάδικος, η ρητορική αναδεικνύεται σε κρίσιμη παράμετρο της όλης διαδικασίας. Η παρούσα εργασία, αξιοποιώντας συναφείς αναφορές από τους σωζόμενους δικανικούς λόγους και τα πορίσματα της νεότερης έρευνας αναφορικά με ζητήματα ιδιωτικής και δημόσιας οικονομίας, πολιτικής και ιδεολογίας, επιχειρεί να αναδείξει τη στρατηγική του ομιλητή και, στο μέτρο του δυνατού, να ανασυνθέσει την επιχειρηματολογία της άλλης πλευράς, προκειμένου να φωτιστούν λανθάνουσες πτυχές της συγκεκριμένης υπόθεσης.