

# Coming to Terms with λιποτάξιον

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IT IS GENERALLY AGREED that the principal offense to which the term *lipotaxion* refers in Athenian law is the unauthorized retreat of a soldier from his position in line.<sup>1</sup> This is the definition to which the verbal components of the word itself point, and it is what we are told of the offense by Lysias in his first speech against the younger Alkibiades (14.5).<sup>2</sup> A number of passages in our sources, however, suggest that offenses other than the desertion of one's *taxis* (in particular, desertion from the army and failure to appear for service) could be prosecuted by *graphe lipotaxiou*. As a result, scholars have been uncertain about the relationship among these offenses. Stephen Todd, for

<sup>1</sup>See for example W. K. Pritchett, *The Greek State at War I* (Berkeley/Los Angeles/London 1974) 233; D. M. MacDowell, *Andocides On the Mysteries* (Oxford 1962) 110–111, *The Law in Classical Athens* (Ithaca 1978) 160, and *Demosthenes Against Meidias* (Oxford 1990: hereafter MACDOWELL) 325; S. C. Todd, *The Shape of Athenian Law* (Oxford 1993) 183. Pritchett includes *rhipsaspia*—the offense of throwing away one's shield—under the rubric of *lipotaxion*, but this is, I think, mistaken (cf. T. Schwertfeger, "Der Schild des Archilochos," *Chiron* 12 [1982] 265 n.41). *Rhipsaspia* seems clearly to have been viewed as a distinct offense (e.g. Andoc. 1.74; Plato, too, clearly distinguishes between *lipotaxion* and *rhipsaspia* in the *Laws*, 942A5–945B2). It was evidently considered particularly odious, so much so that it was a prosecutable offense to say of someone that he had thrown away his shield (Lysias 10 *passim*; MacDowell, *Law* 128–129). As far as I am aware, no ancient source conflates *lipotaxion* and *rhipsaspia*, and I have not discussed that offense in this paper.

<sup>2</sup>Lysias' presentation of Athens' military offenses in this speech is distorted, but as I argue below the information he provides in §5 is reliable. See also *Lex.Seg.* 277.1 λιποταξίου· ὁ λιπὼν τὴν τάξιν.

example, writes in the introduction to his recent translation of Lysias 14 that “it is not wholly clear that *lipotaxion* and *astrateia* were regarded as different offenses....”<sup>3</sup> In this paper I discuss the evidence for *lipotaxion* with a view to defining the semantic range of the term as closely as the ancient testimonia permit. Given the much remarked-upon “open texture” of Athenian law—the Athenians did not attempt to define precisely the actions proscribed in their statutes, which means that a jury panel’s collective understanding of what constituted a particular offense amounted to the “definition” of that offense—we cannot expect to define *lipotaxion* with a precision that would satisfy modern jurists.<sup>4</sup> We can hope, however, to arrive at a more satisfactory understanding of what the popular conception of *lipotaxion* was.

### 1. λιποτάξιον and failure to appear for service

Three passages from the orators—Lys. 14.5–7, Lysurg. 1.147, and Dem. 39.16–17<sup>5</sup>—have suggested to scholars that the term *lipotaxion* could refer to a conscripted soldier’s failure to appear for service, an offense referred to also, in these

<sup>3</sup>Lysias (Austin 2000) 162. He translates *lipotaxion* as “deserting the army” at 14.5 and as “deserting the ranks” at 14.7.

<sup>4</sup>On the open texture of Athenian law see D. Cohen, *Theft in Athenian Law* (Munich 1983) 6–7; Todd (*supra* n.1) 64–67; E. M. Harris, “Law and Oratory,” in I. Worthington, ed., *Persuasion: Greek Rhetoric in Action* (London 1994) 138–140; C. Carey, “Legal Space in Classical Athens,” *GaR* 41 (1994) 178–179, and “The Shape of Athenian Laws,” *CQ* N.S. 48 (1998) 98–99. See also *Ath.Pol.* 9.2.

<sup>5</sup>Carey, “Shape” (*supra* n.4) 144, includes Dem. 21.103 in a short list of passages in which “the action for evasion of service [is] described indifferently as γραφή ἀστρατείας and γραφή λιποταξίου.” Carey is evidently assuming that the indictment referred to there—Euktemon’s aborted *graphe lipotaxiou* against Demosthenes—was brought for the offense of “evasion of service,” that is, for what we would normally call *astrateia*. Little is known of the circumstances which led to Euktemon’s *graphe*, but it is certainly not safe to conclude that Demosthenes’ offense would more reasonably have been called *astrateia*. For further discussion see §2.2 below, especially n.49.

speeches and elsewhere,<sup>6</sup> as *astrateia*.<sup>7</sup> I argue below that much of the evidence for this use of the term *lipotaxion* can be rejected: in two of the three passages the author has deliberately miscast his opponent's offense(s) as *lipotaxion* with a view to exaggerating the defendant's culpability, or portraying his actions as prosecutable by *some* military *graphe* when in fact none was strictly relevant. The third passage, Dem. 39.16–17, cannot be so easily dismissed. But by itself it does not constitute compelling evidence that the term *lipotaxion* was used with any regularity—that is, when its meaning was not being manipulated for rhetorical purposes—to refer to the offense of failing to appear for service. It is, in my view, stretching our evidence to conclude that the terms *lipotaxion* and *astrateia* were used indiscriminately to refer to that offense. Nor can we assume that it was immaterial whether a soldier who had failed to serve when required was prosecuted by a *graphe lipotaxiou* or a *graphe astrateias*.

### 1.1. Lysias 14.5–7

#### a. *Conflicting information about the charge*

Lysias discusses *lipotaxion* at length in his first speech against Alkibiades (14.5–7), the twenty-one or twenty-two-year-old son of the like-named fifth-century *strategos*. Alkibiades was charged by a certain Archestratides (14.3)<sup>8</sup> with having

<sup>6</sup>Dem. 21.58 (with schol.), 39.16–17, 59.27; Lycurg. *Leoc.* 147; Pl. *Leg.* 878c–d, 943a.

<sup>7</sup>For the conclusion that failure to join the army could be called both *astrateia* and *lipotaxion* see H. Frohberger, *Ausgewählte Reden des Lysias II* (Leipzig 1868) 1–2; R. C. Jebb, *The Attic Orators from Antiphon to Isaeus I* (London 1876) 256; T. Thalheim, "Das attische Militärstrafgesetz und Lysias 14,7," *NJbb* 115 (1877) 269; MacDowell, *Andocides* (*supra* n.1) 111; and C. Carey, *Lysias. Selected Speeches* (Cambridge 1989) 143–144. Cf. E. Rosenberg, "Ueber das attische Militärstrafgesetz," *Philologus* 34 (1876) 68.

<sup>8</sup>The two speeches we have from the trial, Lys. 14 and 15, were delivered by *synegoroi* rather than by Archestratides himself. (There has been some question about the relationship of the speeches to one another. K. J. Dover,

evaded service in the Boeotia campaign of 395.<sup>9</sup> He had, according to the prosecution, avoided serving with the hoplites by getting himself enrolled illegally as a *hippeus*.<sup>10</sup> We cannot know for certain whether the action brought against Alkibiades was a *graphe lipotaxiou* or a *graphe astrateias*: the two speeches that survive from the trial have been handed down with different titles, κατὰ Ἀλκιβιάδου λιποταξίου (14) and κατὰ Ἀλκιβιάδου ἀστρατείας (15). This disparity is unsurprising, since the speeches themselves provide conflicting information about the charge under discussion. Alkibiades' offense is referred to as *astrateia* at 15.1 and 7, but the defendant is said to have deserted his *taxis* at 15.11, and as we shall see the internal evidence from the first speech against Alkibiades is confused.

b. *Lysias 14.5–6: abandoning one's taxis distinct from failing to appear in infantry*

At 14.5 the author appears to be quoting verbatim the text of a law governing *lipotaxion* and other military offenses:<sup>11</sup>

Some dare to say that no one is liable to a charge of *lipotaxion* or *deilia* because there has not been any battle, and that the law prescribes, "if someone leaves his position out of cowardice, moving to the rear while the others are fighting, in the case of this man the soldiers serve as jurors." But the law applies not only to these men, but also to all those who do not appear in the infantry.

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*Lysias and the Corpus Lysiicum* [Berkeley/Los Angeles 1968] 166–167, argues that speech 15 is a précis of 14. See Carey [*supra* n.7] 142 n.2, and L. Rubinstein, "Synegoroi in the People's Court in Classical Athens" [diss. Cambridge Univ. 1997] 30, for the view that Lys. 15 is genuine.)

<sup>9</sup>Xen. *Hell.* 3.5.6–25. On the incident see G. R. Bugh, *The Horsemen of Athens* (Princeton 1988: hereafter BUGH) 133–135; and I. G. Spence, *The Cavalry of Classical Greece* (Oxford 1993) 220–221.

<sup>10</sup>During the campaign Alkibiades served as a *hippotoxotes* (Lys. 15.6).

<sup>11</sup>Aeschines presumably is referring to the same law at 3.175, where he mentions a Solonic *nomos* that prescribes the same penalty for τὸν δειλόν, τὸν ἀστράτευτον, and τὸν λελοικότα τὴν τάξιν.

τολμῶσι γὰρ τινες λέγειν ὡς οὐδείς ἔνοχός ἐστι λιποταξίου οὐδὲ δειλίας· μάχην γὰρ οὐδεμίαν γεγονέναι, τὸν δὲ νόμον κελεύειν, εἴαν τις λίπη τὴν τάξιν εἰς τοῦπίσω δειλίας ἕνεκα, μαχομένων τῶν ἄλλων, περὶ τούτου τοὺς στρατιώτας δικάζειν. ὁ δὲ νόμος οὐ περὶ τούτων κελεύει μόνον, ἀλλὰ καὶ ὅποσοι ἂν μὴ παρῶσιν ἐν τῇ πεζῇ στρατιᾷ.

The pertinent law is then read out in court, and Lysias summarizes it in §6: the *nomos*, he writes, concerns “those who retreat to the rear during battle and all those who do not appear in the infantry” (ὅσοι ἂν μάχης οὔσης εἰς τοῦπίσω ἀναχωρήσωσι, καὶ ὅσοι ἂν ἐν τῇ πεζῇ στρατιᾷ μὴ παρῶσι). The implication of 14.5 is that Alkibiades is liable to prosecution under the statute to which Lysias is referring because he did not appear in the infantry. (The question of his guilt is of course complicated by the fact of his having served instead in another branch of the military.) For us, seeking to demarcate the semantic range of the term *lipotaxion*, the important question is: did failure to show up for service in the infantry constitute *lipotaxion*? A careful reading of §§5 and 6 suggests that it did not—the offenses were addressed by the same law but were distinct. But this relatively neat presentation is soon complicated.

c. *Lysias 14.7: inclusion of λιποταξίου in text perhaps correct*

At 14.7 Lysias applies the law he has been discussing in §§5 and 6 to the particular case of the defendant.

I think, gentlemen, that he alone of the citizens is liable to the whole law: he would justly be convicted of *astrateia*, because, though enrolled as a hoplite, he did not go out with you, <of *lipotaxion*, because> he alone <in the> camp did not present himself with the others for formation, and of *deilia*, because he was required to run risks with the infantry but elected to serve as a *hippeus*.

ἡγοῦμαι δ' ὃ ἄνδρες δικασταί, ὅλῳ τῷ νόμῳ μόνον αὐτὸν τῶν πολιτῶν ἔνοχον εἶναι, ἀστρατείας μὲν γὰρ δικαίως ἂν αὐτὸν ἀλῶναι, ὅτι καταλεγείς ὀπλίτης οὐκ ἐξῆλθε μεθ' ὑμῶν,

⟨λιποταξίου δὲ ὅτι ἐν τῷ⟩ στρατοπέδῳ μόνος οὐ παρέσχε μετὰ τῶν ἄλλων ἑαυτὸν τάξαι, δειλίας δέ, ὅτι δεῖν αὐτὸν μετὰ τῶν ὀπλιτῶν κινδυνεύειν ἱπεύειν εἴλετο.

Before discussing the implications of §7 for the term *lipotaxion* it is necessary to consider whether a reference to that offense belongs in the passage at all. Its appearance is not inevitable: the phrase *λιποταξίου δέ, ὅτι ἐν τῷ* appears in one manuscript of Lysias, the fifteenth-century *Laurentianus* (C). It has been regarded by many as an interpolation,<sup>12</sup> but was accepted by Dobree. Nor is a reference to *lipotaxion* necessary: the text could be restored so as not to name the offense while yet making good sense. See, for example, the text of Scheibe: ἀστρατείας μὲν γὰρ δικαίως ἂν αὐτὸν ἀλῶναι, ὅτι καταλεγείς ὀπλίτης οὐκ ἐξῆλθε μεθ' ὑμῶν στρατοπεδευσόμενος οὐδὲ παρέσχε μετὰ τῶν ἄλλων ἑαυτὸν τάξαι, δειλίας δέ.... Certainly the passage would be easier to understand if *lipotaxion* were *not* mentioned in it.

Two considerations suggest, however, that *lipotaxion* may indeed have been named in the passage. (1) At 15.11 Lysias writes: "it has been shown that Alkibiades was enrolled in the hoplites and left his *taxis*" (λιπῶν τὴν τάξιν). The passage suggests that at least one of those who spoke against Alkibiades during the trial, Arcestratides himself or one or another *synegoros*, had explicitly claimed that the defendant was liable to punishment for *lipotaxion*. This in turn makes more likely the possibility that that charge was made at 14.7. (2) Anyone favoring an emendation which does not name *lipotaxion* in §7 would need to explain how Lysias could write in that passage that Alkibiades is liable to ὄλω τῷ νόμῳ. We have already been told quite clearly in §5 that *lipotaxion* is covered by the law under discussion. ὄλω τῷ νόμῳ would seem, therefore, to imply the inclusion here of that term.<sup>13</sup> At the least we may

<sup>12</sup>See for example Rosenberg (*supra* n.7) 67, followed by F. Blass, *Die attische Beredsamkeit* I (Leipzig 1887) 486 n.5.

<sup>13</sup>For a different view see Rosenberg (*supra* n.7) 67.

say that it is necessary for us to consider the implications of the passage as read in C on the chance that Dobree is correct. The discussion which follows, therefore, is predicated on that assumption.

d. *Lysias* 14.7: οὐ παρέσχε μετὰ τῶν ἄλλων ἑαυτὸν τάξαι =  
*failure to appear for service*

In §7 *Lysias* claims that Alkibiades is liable to punishment for *lipotaxion* because he alone in the camp did not present himself for formation. Obviously, this description of *lipotaxion* is not consistent with what *Lysias* tells us of the offense in §5. But before we attempt to reconcile *Lysias*' ostensibly contradictory evidence, we need to determine precisely what action is referred to by οὐ παρέσχε μετὰ τῶν ἄλλων ἑαυτὸν τάξαι, a version of what appears to have been a standard expression.<sup>14</sup> Considering the clause for the moment divorced from the historical circumstances of Alkibiades' trial, I can imagine it referring to one of two possible scenarios: either the soldier who is the subject of the finite verb did not show up for service on a campaign at all, or he did join the army in the first instance, but on some occasion during the campaign failed to present himself for duty.<sup>15</sup> That the expression is preceded at 14.7 by the locative phrase ἐν τῷ στρατοπέδῳ suggests that the second of these scenarios may be meant, since the implication seems to be that the offense was committed after the campaign was underway and not in connection with the call-up of soldiers. But the particular circumstances of Alkibiades' offense make it clear that in his case the second interpretation of the clause is impossible. Alkibiades did not join the infantry at all on the Boeotia campaign. He therefore cannot have offended during the campaign but rather at its outset, by his failure to appear

<sup>14</sup>See *infra* n.16.

<sup>15</sup>Carey (*supra* n.7) 143 and n.12, assumes that the phrase describes the "failure to present oneself for duty while on campaign."

for service. The phrase ἐν τῷ στρατοπέδῳ does not militate against this interpretation, since it can readily be explained by Alkibiades' participation in the campaign—and his appearance in camp—as a cavalryman. Further, versions of the expression οὐ παρέσχε μετὰ τῶν ἄλλων ἑαυτὸν τάξαι appear elsewhere in the orators also with reference to defendants who simply had not served in the military on the occasions under consideration.<sup>16</sup> Indeed, Isocrates writes of his opponent Kallimachos that he had not offered himself to the generals for formation during the Decelean War *for one single day*: οὐδὲ μίαν παρέσχεν αὐτὸν ἡμέραν τάξαι τοῖς στρατηγοῖς (18.47). The accusative μίαν ἡμέραν can only make sense if we understand the clause to refer to Kallimachos' failure to show up for service *at all*.<sup>17</sup> We may conclude, then, that the clause οὐ παρέσχε μετὰ τῶν ἄλλων ἑαυτὸν τάξαι refers to a soldier's failure to appear for service, and that it is, therefore, synonymous with the offense of *astrateia*, as it is defined at 14.7: καταλεγεις ὀπλίτης οὐκ ἐξῆλθε μεθ' ὑμῶν. (Both of these expressions appear also to be synonymous with the description in §5 of the offense with which Alkibiades had evidently been charged: ὅποσοι ἂν μὴ παρῶσιν ἐν τῇ πεζῇ στρατιᾷ.)<sup>18</sup>

#### e. Reconciling the evidence of §§7 and 5

We return now to the principal question with which we are

<sup>16</sup>See Lys. 31.9; Lycurg. 1.43, 44, 57, 77, and 147; Isoc. 18.47–48.

<sup>17</sup>Isocrates further writes (§48) that during the war Kallimachos διετέλεσεν ἀποδιδράσκων καὶ τὴν οὐσίαν ἀποκρυπτόμενος, ἐπειδὴ δ' οἱ τριάκοντα κατέστησαν, τηνικαῦτα κατέπλευσεν εἰς τὴν πόλιν. I do not believe that Isocrates is suggesting here that Kallimachos ever actually deserted the army after starting out on a campaign, as the participle ἀποδιδράσκων might suggest. Rather, I suspect Isocrates uses the verb ἀποδιδράσκω in order to neatly contrast Kallimachos' behavior under the democracy, "running off" (an action characteristic of slaves), with what he did under the Thirty, κατέπλευσεν εἰς τὴν πόλιν.

<sup>18</sup>Frohberger (*supra* n.7) 2 n.8 suggests that this last expression refers specifically to a mustering of soldiers in Athens prior to their marching out, the sort of assembly described at Lys. 16.14.



here concerned: could a *graphe lipotaxiou* be brought for the offense of failing to present oneself for formation, as §7 (read with λιποταξίου δέ, ὅτι ἐν τῷ) implies? As already mentioned, Lysias' discussion of *lipotaxion* in §7 seems to contradict his description of the offense in §5. Since in this earlier passage Lysias appears to be quoting verbatim the relevant portion of the Athenian law on military offenses, we can hardly doubt that the information he provides there is accurate. How, then, do we reconcile the information provided in the two passages? The obvious solution—short of discarding λιποταξίου δέ, ὅτι ἐν τῷ as an interpolation—is to reject the evidence of §7 on the grounds that Lysias has misrepresented there the *graphe lipotaxiou*. In fact, I think that this is the appropriate course, and I will discuss Lysias' misrepresentation of the offense further below, but it is necessary first to consider an alternative solution to the problem posed by Lysias' ostensibly contradictory claims.

f. *Could a graphe lipotaxiou be brought for two distinct offenses?*

One might argue that Lysias' discussion in §5 of the circumstances that could lead to a *graphe lipotaxiou* is incomplete. (In the passage Lysias is, after all, reporting his opponent's objections to his prosecution of Alkibiades; it is not his purpose to present jurors with a full description of the offense of *lipotaxion*.) It is possible, that is, that the *graphe lipotaxiou* did double duty, that in addition to being brought for the offense of leaving one's *taxis*, it could also be brought for the ostensibly distinct offense of failing to present oneself for formation. If so, what Lysias writes in §7 would not be surprising: he would naturally defend his charge of *lipotaxion* with reference to that offense of the two which more accurately described Alkibiades' behavior. First, a preliminary remark about this hypothetical argument. Since the offense of τὸ οὐ παρεσχεῖν μετὰ τῶν ἄλλων ἑαυτὸν τάξαι was, as I have argued (§1.1.d), synonymous with

failing to appear for service on campaign, it might be objected that it could be prosecuted by a *graphe astrateias*, and that there need not be a second *graphe* by which the same offense could be pursued. I am unwilling to appeal to this argument, however, to combat the suggestion that the *graphe lipotaxiou* had a dual function. Athenian law notoriously was characterized by procedural flexibility. Specifically, prosecutors sometimes had a choice of bringing either a *graphe* or a *dike* against their opponents.<sup>19</sup> Here of course the question concerns a choice between two *graphai*, but given the inherent flexibility of Athenian law it would be incautious to assume that such redundancy would not have been tolerated.

g. *Lysias' argument in §5 suggests graphe lipotaxiou could not be brought for τὸ οὐ παρεσχεῖν ἑαυτὸν τάξαι.*

Let us assume for the moment that there were two judicially-sanctioned uses of the term *lipotaxion*: that, for some reason, the failure to appear for service came to be prosecuted by *graphe lipotaxiou*. In that case, how would we expect Lysias to have responded to the objection of his opponents, mentioned in §5, that, "no one is liable to a charge of *lipotaxion* or *deilia* because there has not been any battle," and the law provides for a trial by a jury of *stratiotai* in the event that a soldier leaves his *taxis* during battle? The *obvious* response to this charge, under these conditions, would be to explain that Alkibiades *is* liable to a charge of *lipotaxion* because he did not present himself for formation. (He might have written, for example: ὁ δὲ Ἀλκιβιάδης ἔνοχος ἐστὶ λιποταξίου, ὅτι οὐ παρέσχε μετὰ τῶν ἄλλων ἑαυτὸν τάξαι.) Lysias, of course, does not make this argument. He

<sup>19</sup>On this flexibility see M. H. Hansen, *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes* (Odense 1976) 120; Todd (*supra* n.1) 160–163; Carey, "Shape" (*supra* n.4) 98–99; and especially R. Osborne, "Law in Action in Classical Athens," *JHS* 105 (1985) 40–58. Osborne has been criticized for applying the term "open texture" to procedural flexibility rather than to the verbal formulation of laws, *i.e.*, to the lack of formal definitions of offenses. See Carey, and Harris (*supra* n.4) 150 n.16.

elects instead to counter his opponents by noting that the law which covers *lipotaxion* has to do also with “those who do not appear in the infantry.” But the phrase ὅποσοι ἂν μὴ παρῶσιν ἐν τῇ πεζῇ στρατιᾷ is at best ambiguous, since it can refer to the offense of *astrateia*—which we know from §7 was discussed in the law in question<sup>20</sup>—and it is at the same time synonymous with the offense of not presenting oneself for formation, which Lysias equates with *lipotaxion* in §7. Lysias’ adoption of this argument in response to the objection of his opponents suggests that he was unable to answer them with a straightforward claim about Alkibiades’ liability to a charge of *lipotaxion*. He could not, that is, claim that a *graphe lipotaxiou* could be brought for the failure of a soldier to present himself for formation because, I suggest, that assertion would not have been true, and his misrepresentation of the law, so soon before it was read out to the court, would have been too easily spotted by jurors.

The assumption that Lysias’ equation of *lipotaxion* and the offense of failing to present oneself for formation reflected a judicial reality in Athens leads to the unsatisfying conclusion that our author has eschewed in §5 a decisive argument against his opponents in favor of an ambiguous remark which does not really address their objection. He *may* have, of course: Lysias’ failure to make the more sensible argument does not amount to irrefutable evidence that he *could* not or that, therefore, a *graphe lipotaxiou* could not be brought for the offense with which it is linked in §7. But rejecting Lysias’ equation there of *lipotaxion* and τὸ οὐ παρεσχεῖν μετὰ τῶν ἄλλων ἑαυτὸν τάξαι produces a more credible reading of §§5–7.

#### h. *Rejecting the evidence of §7: deliberate obfuscation in §§5–7*

Lysias’ response to his opponents in §5 becomes more

<sup>20</sup>For Thalheim’s reconstruction of the military law see (*supra* n.7) 271.

intelligible if (1) we reject the model of the *graphe lipotaxiou* considered above and assume that Lysias has misrepresented the *graphe* in §7, and (2) we assume that the charge brought against Alkibiades was in fact *astrateia* rather than *lipotaxion*. In response to the objection that no one can be liable to prosecution for *lipotaxion* because there has not been a battle, Lysias makes the argument we would expect—if admittedly a brief version of it: that the law governing military offenses also refers to the failure of a soldier to appear in the infantry, the offense, it is implied, with which Alkibiades is charged. Lysias could have expanded on the argument and made himself more clear by explaining that the objection of his opponents is irrelevant because Alkibiades is being charged with *astrateia*—a term he does not use in §5—rather than with *lipotaxion*. But his obliquity is, I suggest, part of a calculated effort to obscure the distinction in his account between *lipotaxion* and *astrateia*. Consider the following:

(1) Lysias introduces in §5 the objection of his opponents that “no one is liable to a charge of *lipotaxion*.” If we assume that the *graphe lipotaxiou* could be brought only for the offense of deserting one’s *taxis*, this objection (which may, of course, be wholly fabricated by Lysias/the speaker) is irrelevant to the case. While it could easily be answered with the remark that Alkibiades is not being tried for *lipotaxion*, it would have been easier still to omit any reference to the objection. Its insinuation into the speech, however, serves the purpose of introducing the subject of *lipotaxion* and (the prosecution will have hoped) arousing the suspicion and indignation of the jurors.

(2) The tendentious wording of Lysias’ introduction of the subject is itself noteworthy. “For,” he writes, “some dare (τολμῶσι) to say that no one is liable to a charge of *lipotaxion* or *deilia* because there has not been any battle.” The implication of τολμῶσι is surely that the claim of Lysias’ unnamed opponents is outrageous. The conclusion which suggests itself is that, con-

trary to what these *τινες* have to say, someone *is* in fact liable to a charge of *lipotaxion* or *deilia*, and the reader, or *dikast*, waits for Lysias to say as much. He never does. But his response to his opponents, that the law on military offenses also pertains to those who do not appear for service, is presumably irrefutable. On hearing it the *dikasts* may have been left with the impression that the speaker has somehow proved his case against those objecting to the prosecution and shown that the present trial does indeed concern *lipotaxion* and/or *deilia*.

(3) As already noted, Lysias is less clear than he might be in responding to the objection in §5 of his opponents. He does not name the offense of *astrateia*, referring to it only periphrastically. As a result, the distinction between *lipotaxion* and the offense of non-appearance in the infantry is not demarcated as clearly as it might be.

(4) In §§5 and 6 virtually the same language is used to refer to the offense of failure to appear for service: *ὅποσοι ἂν μὴ παρῶσιν ἐν τῇ πεζῇ στρατιᾷ* (§5); *ὅσοι ἂν ἐν τῇ πεζῇ στρατιᾷ μὴ παρῶσι* (§6). In §7 the same offense is described, accurately enough, in altogether different language, and here for the first time it is called *astrateia*: *ἀστρατείας μὲν γὰρ δικαίως ἂν αὐτὸν ἄλῶναι, ὅτι καταλεγείς ὀπλίτης, οὐκ ἐξῆλθε μεθ' ὑμῶν*. The connection between the references to *astrateia* in §7 and §§5 and 6 is minimized by this lack of verbal similarity. Were it more obvious that the relevant clauses in §§5 and 7 describe the same offense, *astrateia*, the distinction in §5 between those who do not appear in the infantry and *lipotaktai* would be made somewhat clearer.

(5) Lysias has, then, introduced the irrelevant subject of *lipotaxion* and juxtaposed it in §5 with a description of *astrateia* not clearly demarcated as such. In §7 he makes the deceptive claim for which he has been preparing. In enumerating the offenses for which Alkibiades might justly be convicted our

author names *astrateia*, *lipotaxion*, and *deilia*, and in each case he justifies the charge with an explanatory phrase introduced by ὅτι. But Lysias' explanation of the charge of *lipotaxion*—ὅτι ἐν τῷ στρατοπέδῳ μόνος οὐ παρέσχε μετὰ τῶν ἄλλων ἑαυτὸν τάξαι—differs from what he has written of the offense in §§5 and 6, and he is in fact describing (or so I argue in §1.1.d) *astrateia* rather than *lipotaxion*. I have argued (§1.1.g) that Lysias could not claim in §5 that a *graphe lipotaxiou* could be brought for the offense of failing to present oneself for formation. For two reasons his equation of these offenses in §7 is not the potentially self-damaging rhetorical stratagem that the insertion of this claim would have been earlier: (a) Lysias' ὅτι clause is a more subtle reference to the alleged relationship between the offenses than would have been the direct statement I am suggesting he eschewed making in §5; (b) he equates the offenses *after* the clerk has read the law in court, which precludes jurymen from listening for confirmation of Lysias' statement in the law as it is read out. I note, finally, that Lysias' conflation of the two offenses in §7 is cloaked by his use of τάξαι, which suggests a connection between *lipotaxion* and the offense here described although none exists. "Not offering oneself for formation," *i.e.* failure to appear for service, is thereby deftly subsumed in §7 under the heading of *lipotaxion*.

i. Reasoning behind Lysias' manipulation of terminology

I suggest that by these means Lysias sought to conflate *lipotaxion* and *astrateia*. Having done so, he is able to conclude that Alkibiades has committed both offenses.<sup>21</sup> We have already seen that Alkibiades' failure to join the infantry in 395 made him liable to a charge of *astrateia*. Why then should our

<sup>21</sup>In §11 Lysias attempts more directly to equate Alkibiades' offense with *lipotaxion*: "And I am surprised, gentlemen, if someone thinks it appropriate to convict a man of cowardice if at the approach of the enemy he withdraws to the second rank, having been stationed in the first, but to have forgiveness for a man if he appears in the cavalry having been stationed among the hoplites."

speaker take such pains to portray the defendant also as guilty of *lipotaxion*? The charge of *astrateia* could readily be countered with the mitigating consideration that Alkibiades *had* at least served with the cavalry (however base his motivation for switching to that branch of service may have been).<sup>22</sup> Alkibiades' failure to serve in the infantry was perhaps not a sufficiently stark example of the offense to ensure his conviction.<sup>23</sup> Lysias hoped by manipulating terminology, I suggest, to exaggerate Alkibiades' offense and make it appear to fit the definition of at least one of the military crimes he names, when in fact it could not readily be classified under any of the available rubrics.<sup>24</sup> In this context it is noteworthy that Lysias' discussion of *lipotaxion* is preceded in §4 by an apparent invitation to those trying the case to put unorthodox constructions on the laws:

Now, it is reasonable, gentlemen of the jury, that those who are sitting in judgment on these matters for the first time since we made the peace not only be *dikasts* but also *nomothetai*,<sup>25</sup> knowing well that for the rest of time the city will deal with these matters in accordance with your view of them now. And it seems to me that it is the role of a worthwhile citizen and a just *dikast* to treat the laws in a manner that is going to be beneficial for the state in the future.

Lysias thus hints (concedes?) that Alkibiades' offense in fact

<sup>22</sup>Service on horseback was notoriously less difficult than service in the infantry. See Lys. 16.13; Bugh 135; and Spence (*supra* n.9) 219–221.

<sup>23</sup>Bugh (134) makes the point that Alkibiades is unlikely to have been the only man prosecuted for deserting the infantry in favor of the cavalry during the Boeotia campaign. Perhaps Lysias' attempt to portray Alkibiades as guilty of *lipotaxion* and *deilia* in addition to *astrateia* was a response to the failure of recent prosecutions for *astrateia* in which more straightforward arguments had been made.

<sup>24</sup>See Thalheim (*supra* n.7) 270: "dem Alkibiades gegenüber waren die ankläger in einer peinlichen lage, da auf ihn keiner der gesetzesteile passte...." Cf. Blass (*supra* n.12) 486.

<sup>25</sup>Cf. Lycurg. 1.9, translated below in §1.2.

was not covered by any of Athens' standing statutes, as they were conventionally interpreted.<sup>26</sup>

j. *Defining lipotaxion*

In defining *lipotaxion* we can, I think, disregard the evidence of 14.7: the term did not properly refer to a soldier's failure to present himself for formation. But we can trust the definition Lysias provides in §§5 and 6, where he cites, perhaps verbatim, and summarizes the relevant statute. Properly interpreted, the evidence Lysias provides in §§5–7 suggests that the term *lipotaxion* referred to a soldier's unauthorized retreat from his *taxis* during battle, with the proviso that that retreat must have been motivated by cowardice.

k. *Alkibiades prosecuted by graphe astrateias*

I should add here that it is my opinion—and I have already suggested as much above—that Alkibiades was prosecuted on this occasion by a *graphe astrateias* rather than a *graphe lipotaxiou*. Alkibiades' ignominious retreat to the cavalry bears more resemblance to *astrateia* than to *lipotaxion*, a crime of which, without a battle having taken place, he simply cannot have been guilty. It is hard to believe that the prosecutors would bring the less appropriate of these charges against their opponent, only to spend part of their time in court manipulating terminology so as to make the charge they elected to bring appear more like the one they rejected. As was mentioned above, moreover, the trial is clearly marked as a prosecution for *astrateia* at 15.1 and 7.

1.2. Lycurgus 1.147

Lysias' exaggerated claim at 14.7 that Alkibiades was guilty of *astrateia*, *lipotaxion*, and *deilia* resembles a hyperbolic passage in Lycurgus' speech against Leokrates, who was denounced by

<sup>26</sup>On the jurors' power of decision in the case of ambiguity see also *Ath. Pol.* 9.2 with P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford 1993) *ad loc.*



*eisangelia* and tried for treason in 330.<sup>27</sup> Eight years earlier, after the Athenian defeat at Chaeronea, Leokrates had taken fright and deserted Athens.<sup>28</sup> For this offense, our author suggests, Leokrates might be considered liable to all manner of charges, among them *lipotaxion* and *astrateia* (§147).

I think, gentlemen, that you vote today concerning all the greatest and most awful crimes, for all of which one may view Leokrates as liable to penalty: of treason, because he left the city and rendered it subject to the enemy; of destroying the *demos*, because he did not endure danger for the sake of freedom; of impiety, because he was responsible by himself for the ravaging of the sacred precincts and the razing of the temples; of maltreatment of his ancestors, because he erased their memorials and deprived them of their customary rites; and of *lipotaxion* and *astrateia*, because he did not offer his body to the generals for formation (λιποταξίου δὲ καὶ ἀστρατείας οὐ παρασχὼν τὸ σῶμα τάξαι τοῖς στρατηγοῖς).

Earlier in the speech Lycurgus similarly claims that Leokrates has broken the ephobic oath, which enjoins those sworn to it not to abandon the men stationed next to them in battle (§77): οὐδὲ λείψω τὸν παραστάτην ὅπου ἂν στοιχήσω. The oath is read out in court, after which the speaker asks, "How does a man who does not offer himself for formation not desert his line-mate and his *taxis*?" (πῶς δ' οὐ καὶ τὸν παραστάτην καὶ τὴν τάξιν λέλοιπεν ὁ μηδὲ τάξαι τὸ σῶμα παρασχὼν;)

Neither of these passages can be taken as evidence that Leokrates' cowardly abandonment of Athens after Chaeronea in fact constituted either *lipotaxion* or *astrateia*. Indeed, Lycurgus tells us near the beginning of his speech that the law had not yet devised a penalty for Leokrates' offense (§8). Just as Lysias had in his first speech against Alkibiades (14.4), moreover,

<sup>27</sup>M. H. Hansen, *Eisangelia: The Sovereignty of the People's Court in Athens in the Fourth Century BC and the Impeachment of Generals and Politicians* (Odense 1975) cat. no. 121.

<sup>28</sup>Lycurg. 1.147; Aeschin. 3.252.

Lycurgus writes that the jurors must act as *nomothetai*, since Leocrates' desertion of Athens does not fit into any of the available categories of punishable acts (§9):<sup>29</sup>

It has come about, gentlemen, that the punishment for such things has been neglected not on account of the carelessness of the *nomothetai* of the time, but because nothing of the sort had happened in the past or was expected to happen in the future. Therefore, gentlemen, you must by all means be not only judges of the present offense, but also *nomothetai*. For in the case of as many of the offenses as a certain law has defined, it is easy, using this standard, to punish transgressors. But in the case of those the law has not really defined, labeling them with a distinct name, and someone has committed greater offenses than these but nevertheless is liable to all of them, it is necessary that your judgment be left behind as an example to future generations.

Although Leocrates' offense cannot have constituted either *lipotaxion* or *astrateia* as they were usually conceived, I suggest that Leocrates' flight from Athens resembled *astrateia* more closely than it did *lipotaxion*. The latter, as Lys. 14.5 attests, could not be committed unless a man actually showed up for service. Lycurgus might have labeled Leocrates an *astrateutos* and omitted any reference to the less credible charge of *lipotaxion*. But he was attempting in §147, I suggest, albeit less insidiously than Lysias before him, to brand Leocrates' action with the names of as many prosecutable offenses as could be made to sound halfway applicable to his case. Perhaps more to the point, Lycurgus has elected in this speech to structure his presentation of Leocrates' offense around the ephebic oath. He devotes §§76–78 to demonstrating how Leocrates had, in deserting Athens, violated the oath's provisions: he had, for example, disgraced his arms by not using them. Since the

<sup>29</sup>For this reason Leocrates' flight was presumably not technically illegal, though a jury might nonetheless have considered the offense worthy of punishment. In the end, Leocrates was acquitted in a tie vote (Aeschin. 3.252).

ephebic oath enjoined those sworn to it not to leave their *taxeis*, and incidentally did *not* explicitly refer to *astrateia*, it is not surprising that Lycurgus cast Leokrates' offense as *lipotaxion*. Indeed, that he included *astrateia* at all in §147 suggests that he recognized it as the military offense most apropos.

We also cannot conclude from §147 that οὐ παρασχὼν τὸ σῶμα τάξαι τοῖς στρατηγοῖς was an accurate description of the offense of *lipotaxion* as well as of *astrateia*. As Lysias had, Lycurgus is here describing the offense of *astrateia* with an expression which, because it includes the word τάξαι, hints also at the offense of *lipotaxion*. This in turn makes it easier for Lycurgus to refer to Leokrates' metaphorical desertion of his place in line as *lipotaxion*. A corollary of this conclusion is that Lycurgus does not provide evidence here that the terms *lipotaxion* and *astrateia* could be used interchangeably—except by orators seeking to bewilder jurors through their manipulation of words—to refer to the failure of soldiers to present themselves for service.<sup>30</sup>

### 1.3. Demosthenes 39.16–17

In late 348 a certain Mantitheos, son of Mantias, of the deme Thorikos, brought suit against his half-brother, also the son of Mantias. As a child this half-brother had been enrolled in his father's phratry under the name Boiotos. But Mantias died before Boiotos could be enrolled as an adult in their deme. Boiotos accordingly enrolled himself, but—for reasons having to do with the complex history of their family<sup>31</sup>—he did so under the name Mantitheos rather than Boiotos (§§4–5, 21). This resulted in the existence of two men identifiable as Mantitheos, son of Mantias, of the deme Thorikos. The first Mantitheos prosecuted his half-brother with a view to compelling him to resume

<sup>30</sup> As Carey (*supra* n.7: 143 and n.12) appears to conclude.

<sup>31</sup> For a good introduction to the background of the trial, see C. Carey and R. A. Reid, *Demosthenes. Selected Private Speeches* (Cambridge 1985) 160–167.

using the name Boiotos. In §§16–17 Mantitheos describes an irony in which the brothers' use of the same name had resulted:

Who of the many will know which one he is, when there are two Mantitheoses with the same father? Come, what if he should be a defendant in a *dike astrateias* (εἰ δὲ δίκην ἀστρατείας φεύγοι),<sup>32</sup> and he is performing in a chorus when he should be serving in the military? For, even now, when the rest went to Tamynae [in 348], he was left behind here keeping the feast of *Choes*, and he remained for the Dionysia and performed in the chorus, as all who were in the city saw. But when the soldiers returned from Euboea, he was summoned before the magistrate on a charge of *lipotaxion* (λιποταξίου προσεκλήθη), and I, as taxiarch of the tribe, was compelled to receive the complaint against my own name,<sup>33</sup> which appeared with the patronymic.

MacDowell's discussion of the incident<sup>34</sup> bears repeating:

On this occasion, it appears, Boiotos had failed to apply in advance for exemption to cover the period of the Dionysia. He had been given exemption in order to perform some function (not a choral performance) at the Khoes in the previous month (Anthesterion), and then was recruited late into a chorus for the Dionysia, perhaps to replace a chorister who fell ill. By that time the military officers were already abroad on the campaign in Euboea; so Boiotos could not apply to them to have his period of exemption extended, but just assumed that they would not object if he stayed in Athens for one more month to take part in the Dionysia. (He was probably a good singer, who was often given exemption for choral performances; *cf.*

<sup>32</sup> δίκη is here used in the general sense of "suit"; *cf.* Carey and Reid (*supra* n.31) *ad loc.*

<sup>33</sup> This evidently does not mean that the Mantitheos who is speaking was to be the defendant in a *graphe lipotaxiou*—the confusion arising from his sharing a name with his half-brother had not led to that absurd an outcome. Rather, as taxiarch of his tribe he had to receive a complaint against a soldier whose name happened to be his own. It may be that Mantitheos would also have had to preside over the trial, had the complaint led to one. For discussion see A. R. W. Harrison, *The Law of Athens* II (Oxford 1971) 32–33 and n.1; Carey and Reid (*supra* n.31) 180.

<sup>34</sup> "Athenian Laws about Choruses," *Symposion* 1982 (1989) 72.

Dem. 39.23.) But it turned out that he was prosecuted for desertion, because he had not obtained exemption in the proper legal manner. He must have been acquitted, however; for the penalty for desertion was disfranchisement (ἀτιμία), but we know that Boiotos continued to exercise the rights of a citizen later (Dem. 40).

The problem for us is twofold: (1) Mantitheos here describes a single event—a soldier's absence from an expedition because of his participation in a chorus<sup>35</sup>—as grounds for charges of both *astrateia* and *lipotaxion*. (2) Mantitheos claims that the charge which was actually brought against his half-brother was *lipotaxion*, yet Boiotos' offense does not correspond to the definition of *lipotaxion* at Lys. 14.5. Far from deserting his *taxis* during battle, Boiotos had not set foot in the field. He would, we might think, more reasonably have been indicted for *astrateia*.

In our attempt to determine the implications of §§16–17 for our understanding of *lipotaxion*, let us consider the passage first while assuming that a *graphe lipotaxiou* could be brought for the offense of failing to appear for service and that the terms *lipotaxion* and *astrateia* were to that extent interchangeable. How, in that case, do we account for Mantitheos' use of both terms to refer to a single offense? If Mantitheos was free, because of the flexibility in terminology I have proposed, to describe Boiotos' absence from the Euboean campaign as either *lipotaxion* or *astrateia* or both, it is reasonable to believe that when referring to the charge that was actually brought against his half-brother Mantitheos would provide accurate information, there being no incentive for him to lie about the detail. Under this "interchangeable" view, then, we may believe that

<sup>35</sup>It is of course true that in the first instance Mantitheos is referring to a *hypothetical* failure to appear for service. He asks what would happen *if* Boiotos were a defendant in a suit for *astrateia*. But Mantitheos' further description of this hypothetical instance—Boiotos is imagined serving in a chorus when he should be on campaign—makes it clear that the offense here envisioned is identical to the one Boiotos has in fact committed.

Boiotos was summoned before a magistrate on a charge of *lipotaxion* rather than *astrateia*.

This being the case, why should Mantitheos have bothered earlier in the passage to describe as *astrateia* a hypothetical offense identical to the real-life incident he was about to describe and refer to as *lipotaxion*? There are two potential advantages to the prosecution's use of both terms.

(1) In §§13–18 Mantitheos lists and discusses a number of legal difficulties Boiotos could one day become involved in. We are told, for example, that he might be inscribed on the list of state debtors, be a defendant in a *dike exoules*, fail to pay his *eisphora*, or be summoned before a magistrate on a charge of *xenia*. Among these hypothetical run-ins with the law Mantitheos mentions the possibility that Boiotos could be a defendant in a *dike astrateias*. In this case, of course, he has a real-life incident to relate, and as we know he refers next to Boiotos' indictment for *lipotaxion*. By naming the offense of failing to appear for service *astrateia* rather than *lipotaxion* when he is discussing it in the abstract, Mantitheos increases by one the number of offenses which he mentions in these sections. Since an implication of this part of the speech is surely that Boiotos is more likely than the average Athenian to run afoul of the law in the ways described, any increase in the number of ways Boiotos might do so serves to blacken his reputation that much more.

(2) Since Boiotos actually *had* been charged with *lipotaxion* (or so we are currently assuming), the explicit identification of that offense with *astrateia* would serve to remind jurors that he had committed that crime as well. There is, I suppose, some advantage to be gained for the prosecution in attempting by this means to make Boiotos' offense appear worse. The tactic bears some resemblance to what we have said of the strategies adopted in Lys. 14 and Lycurg. 1, where the prosecutors sought to exaggerate the culpability of their opponents by piling on offenses. Here, however, the offense of the defendant that is

being made to appear worse is not the one for which he is being prosecuted, as in the case of both Alkibiades and Leokrates. Rather, Boiotos' indictment for *lipotaxion* is only one of the proofs Mantitheos introduces in his attempt to demonstrate that his half-brother has caused him injury (§13). That Mantitheos can refer to Boiotos' *lipotaxion* makes his case for injury stronger than it would be otherwise. It may be that the implication that Boiotos has also committed *astrateia* makes Mantitheos' case stronger yet. But I do not think that the advantage thereby gained would have been dramatic.

Let us consider the passage a second time while assuming that a *graphe lipotaxiou* could *not* be brought for the offense of failing to appear for service and that the terms *lipotaxion* and *astrateia* were therefore not interchangeable. Under this view Mantitheos cannot be telling the truth when he reports that Boiotos was summoned before the magistrate on a charge of *lipotaxion* rather than *astrateia*. But why should he bother to lie about the charges that were brought against his half-brother? There are two possible advantages for the prosecution to Mantitheos' deception.

(a) The first is identical with (1): by mentioning *lipotaxion* in addition to *astrateia* in §§13–18, Mantitheos increases by one the number of offenses he implies Boiotos is capable of. (b) In addition, it is not impossible that *lipotaxion* was perceived as a more shameful offense than *astrateia*, although both brought the same penalty, *atimia*, upon conviction. Failing to appear for service, after all, can have been the result of the sort of misunderstanding or disagreement about obligations that had rendered Boiotos vulnerable to prosecution after the campaign in Euboea. *Lipotaxion*, on the other hand, was a manifest act of cowardice in defense of which one could offer no exculpatory arguments. Presumably it was worthwhile for a prosecutor in a *graphe astrateias* to attempt to portray his opponent also as a

*lipotaktes*. Mantitheos, of course, had considerably less to gain since, as discussed under (2) above, Boiotos' military offense is only one of a number of proofs the speaker evinces in support of his argument. There is a further consideration which could detract from the potential of Mantitheos' lie to benefit his case, the possibility that that lie would be detected by the jurors. Certainly Demosthenes has not created here a muddle of misinformation as difficult to unravel as Lys. 14.5–7, and for that reason his deception is not so well camouflaged. But Mantitheos introduces his discussion by clearly labeling as *astrateia* the hypothetical instance of Boiotos failing to appear for service because of his performance in a chorus. It was perhaps to be hoped that after this initial, straightforward categorization of that scenario and after they had heard a description of the real-life circumstances of Boiotos' absence from the Euboean campaign, the jurors would not listen over-critically to Mantitheos' claim that Boiotos was summoned in fact on a charge of *lipotaxion* rather than *astrateia*.

The assumption that a *graphe lipotaxiou* could not be brought for the offense of failing to appear for service thus leads to an unsatisfactory explication of the passage as the contrary assumption: the speaker's claim that his half-brother was summoned before the magistrate on a charge of *lipotaxion* can be explained as a deception intended to serve the prosecution's case by blackening the defendant's reputation, but it is unlikely that that deception will have been a very effective strategy, and it was not without risk.

#### 1.4. Summary

Dem. 39.16–17 is, I suggest, the strongest evidence that can be adduced in support of the view that *lipotaxion* and *astrateia* were to some extent interchangeable terms. But the passage is nevertheless not compelling evidence for this view. The assumption that the terms were interchangeable does not produce a



wholly satisfactory explanation—or an explanation manifestly superior to that produced by the contrary view—for Mantitheos' labeling of a single offense as both *lipotaxion* and *astrateia*. Demosthenes' evidence therefore fails to show that the average Athenian understood *lipotaxion* to refer to the offense of failing to appear for service in addition to a soldier's unauthorized retreat from his *taxis*.

## 2. λιποτάξιον and the offense of desertion

References to *lipotaxion* in Plato's *Laws* and in Demosthenes' speech *Against Meidias* might be taken as evidence that the term could be used to refer to desertion from the army (as opposed to desertion only of one's *taxis*). In neither case, however, is this conclusion inevitable.

### 2.1. Magnesian *lipotaxion*

In the hypothetical *polis* for which he is devising a law code Plato writes that soldiers who return home without leave will be liable to prosecution by *graphe lipotaxiou*: ἐὰν δὲ στρατεύσῃται μὲν τις, μὴ ἀπαγαγόντων δὲ τῶν ἀρχόντων οἴκαδε προαπέλθῃ τοῦ χρόνου, λιποταξίου τούτων εἶναι γραφὰς (*Leg.* 943D). He does not specify that a soldier's desertion need have followed his abandonment of his *taxis* during battle, though this possibility is of course not precluded. For Plato, then, the term *lipotaxion* refers to desertion of the army alone or desertion in addition to the abandonment of one's *taxis*. He does not specify a penalty for the offense of abandoning one's *taxis* only.

We need not assume that Plato's definition of *lipotaxion* reflects Athenian judicial practice, since Plato only sometimes models his law code on that of Athens. In his discussion of military offenses itself he certainly diverges from the Athenian model in his prescription of penalties.<sup>36</sup> We are free to imagine,

<sup>36</sup>See T. J. Saunders, *Plato's Penal Code* (Oxford 1991) 324–328.

therefore, that the Magnesian version of *lipotaxion* would differ from its Athenian counterpart in other respects as well. Apart from Dem. 21.164–166, discussed below, I am not aware of any evidence which suggests that the term *lipotaxion* was used in an Athenian legal context to refer to desertion from the army instead of or in addition to deserting one's position during battle. Indeed, I argue below (Appendix 1) that the Athenians called desertion from the army *lipostration*, and they prosecuted it by *graphai lipostrationiou*.<sup>37</sup> I am therefore inclined to reject Plato's use of the term *lipotaxion* as evidence for Athenian usage.

## 2.2. Meidias' alleged triple *lipotaxion*

In the course of his speech against Meidias for wrongdoing related to a festival (21.9 etc.), Demosthenes claims that his opponent<sup>38</sup> had deserted his post on three occasions: τρεῖς αὐτὸς τάξεις λελοιπῶς (21.110). Meidias' several alleged offenses, discussed at length in §§160–166, are all related to his tenure as trierarch and hipparch in 349/8:

(1) Meidias voluntarily undertook a trierarchy<sup>39</sup> in order (so Demosthenes contends) to avoid active service in the cavalry (161–162).

(2) Since it later appeared that he would not in fact be summoned for active service if he remained in Athens, Meidias elected not to

<sup>37</sup>I can well imagine an orator saying of a man who had deserted the army but not left his post during battle that he was guilty of *lipostration* and *lipotaxion* and, for that matter, *astrateia*: as Lys. 14.7 and Lycurg. 1.147 indicate (see above §§1.1–1.2), prosecutors were not loath to denigrate their opponents by piling on offenses. But I suggest that Athenian law recognized *lipostration* and *lipotaxion* as two separate offenses and that these terms referred properly to distinct actions.

<sup>38</sup>Or would-be opponent, since Demosthenes' speech may never have been delivered in court (Aeschin. 3.52). For discussion see MacDowell 23–28, and see 1–13 for an account of the long-standing quarrel between Meidias and Demosthenes that prompted Demosthenes' indictment of his adversary.

<sup>39</sup>For this understanding of Meidias' *epidosis* see V. Gabrielsen, *Financing the Athenian Fleet* (Baltimore and London 1994: hereafter GABRIELSEN) 199–204. MacDowell (334) understands the passage to mean that Meidias donated a trireme. Bugh (161) suggests that Meidias offered to equip a ship.

serve as trierarch in person. He sent off a metic in his stead (163). (3) When the general Phokion summoned cavalry from Athens<sup>40</sup> to serve in Euboea, Meidias, looking to avoid danger, deserted his post in the cavalry and joined the trireme for which he was trierarch (164–166).

While Demosthenes implies that each of these “offenses” constituted *lipotaxion* (110), he is more conservative about making that charge in his subsequent discussion of Meidias’ actions. In §§160–166 only the third offense mentioned—Meidias’ quitting of the cavalry for active service on his ship—is called *lipotaxion*: “this man abandoned his post (λιπὼν τὴν τάξι) and went to the ship” (164); “he abandoned the post assigned him by law (ἐκ τῶν νόμων τάξι λιπὼν), for which he is liable to pay the penalty to the state” (166). Having described this last crime Demosthenes makes a final reference to his opponent’s *lipotaxion*, at the same time suggesting that one or more of Meidias’ offenses constituted desertion (*strateias apodrasin*) as well (166): “Yet, by the gods, is it fitting to call such a trierarchy as this tax-farming (τελωνίαν), a two-per-cent tax (πεντηκοστήν),<sup>41</sup> *lipotaxion*, desertion from the army (στρατείας ἀπόδρασιν),<sup>42</sup> and everything of that sort, or do we call it a public service?”<sup>43</sup>

There are two means by which Demosthenes’ discussion here of *lipotaxion* might suggest that the term could be used to describe the offense of desertion.

(1) Rosenberg (*supra* n.7: 68) has understood Demosthenes’ juxtaposition of *lipotaxion* and *strateias apodrasin* to imply that

<sup>40</sup>The passage has sometimes been understood to mean that the cavalry were summoned from Argoura (see, e.g., J. M. Carter, “Athens, Euboea, and Olynthus,” *Historia* 20 [1971] 426), but see MacDowell 383.

<sup>41</sup>For discussion of the meaning of πεντηκοστήν see Bugh 163; MacDowell 163.

<sup>42</sup>These four terms—organized into the ostensibly unrelated pairs τελωνίαν καὶ πεντηκοστήν and λιποτάξιον καὶ στρατείας ἀπόδρασιν—have in common that each referred to an activity that would result in the absence of the person involved from service in the military.

<sup>43</sup>See MacDowell (378–379) for a discussion of the meaning of φιλοτιμία.

the two terms were synonymous: “[Dem. 21.166] wo wir noch einen mit λιποτάξιον synonymen begriff kennen lernen, nämlich στρατείας ἀπόδρασις....” But I think this conclusion must be wrong. Demosthenes is here concluding his discussion of his opponent’s alleged offenses, in the course of which he has claimed both that Meidias “fled the army” when he undertook a voluntary trierarchy (τὴν στρατείαν φεύγων, 162) and that he abandoned his *taxis* when he left the cavalry to join his ship (164, 166). In Demosthenes’ discussion the phrases τὴν στρατείαν φεύγων and λιπὼν τὴν τάξις clearly refer to two distinct offenses. In §166, I suggest, Demosthenes is simply repeating the charges he has already made in the preceding discussion. Admittedly, the phrase τὴν στρατείαν φεύγων of §162, which seems to describe the offense of *astrateia* rather than of desertion, has been translated in §166 to στρατείας ἀπόδρασις—which, divorced from the historical context Demosthenes has provided, sounds more like desertion from the army. But the identity of τὴν στρατείαν φεύγων and στρατείας ἀπόδρασις is, I think, clear. It follows that *lipotaxion* is *not* synonymous with *strateias apodrasis*.

(2) Meidias’ attempts to avoid active service in the cavalry through his voluntary trierarchy are reminiscent of Alkibiades’ machinations in 395, and like Lysias before him Demosthenes uses the term *lipotaxion* to describe offenses other than a soldier’s desertion of his *taxis* during battle. Meidias’ quitting of the cavalry for active service on his ship—the one offense which Demosthenes labels as *lipotaxion* in §§160–166—would, we might think, more naturally be termed *lipostration*: Meidias *could* be said to have abandoned the cavalry unit with which he was stationed (even if his departure from the *hippeis* was probably legal<sup>44</sup>), but he presumably did not do so during battle. Why,

<sup>44</sup>So Bugh 161, 165; MacDowell 334–335. Gabrielsen 96 (*cf.* 99): “In 348, Meidias undertook a voluntary trierarchy while serving simultaneously as cavalry commander. In spite of Demosthenes’ aspersions (21.163–67), it looks

then, does Demosthenes refer to the offense as *lipotaxion*? Had the *graphe lipotaxiou* in fact come to be the weapon of choice for those prosecuting deserters, such that Demosthenes' terminology is only reflecting a legal reality? Or can Demosthenes' charges of *lipotaxion* be otherwise explained?

The answer, I think, is not far to seek. Demosthenes' (aborted?) prosecution of Meidias for striking him while he was acting as *choregos* at the Dionysia—the offense for which Demosthenes 21 *Against Meidias* was composed—was but one in a series of legal actions in which the animosity between Demosthenes and Meidias had erupted over the years.<sup>45</sup> Among the previous manifestations of their feud was an indictment that one of Meidias' supporters, Euktemon,<sup>46</sup> had brought against Demosthenes, a *graphe lipotaxiou* related, apparently, to his participation in a campaign in Euboea in 349/8.<sup>47</sup> In §103 Demosthenes discusses Meidias' orchestration of this attack:

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as if Meidias commanded his ship in person when not needed in the cavalry and let the Egyptian Pamphilos take charge of it when he had to perform his duties as hipparchos."

<sup>45</sup>On "litigation as feud" see D. Cohen, *Law, Violence, and Community in Classical Athens* (Cambridge 1995) ch. 5, esp. 90–101 on Dem. 21.

<sup>46</sup>According to Aeschines (2.148), Nikodemos of Aphidna brought the *graphe lipotaxiou* against Demosthenes, not Euktemon (*cf. infra* n.48). Aeschines also claims that Demosthenes bribed Nikodemos to drop the prosecution.

<sup>47</sup>Schol. Dem. 21.110; A. Schaefer, *Demosthenes und seine Zeit* II (Leipzig 1856) 96 n.2. At 2.79 Aeschines claims that Demosthenes had all but been branded as an *automolos*. Demosthenes' alleged *lipotaxion* during the campaign in Euboea is not to be confused with a later commission of this offense with which he is charged in our sources. Demosthenes' purported cowardice at the battle of Chaeronea in 338 is alluded to repeatedly by Aeschines (3.148, 151–152, 155, 159, 175–176, 181, 187, 244, 253) and Dinarchus (1.12, 71, 81, and *cf.* 69). Plutarch claims that Demosthenes left his *taxis* and threw away his arms (*Dem.* 20.2). The author of the *Vitae decem oratorum* adds the quaint detail that as Demosthenes was running away a pricker bush caught his cloak, and he turned to face it and said, "Take me alive!" ([Plut.] *X Or.* 845F). Plutarch suggests that Demosthenes may have been charged with the offense (*Dem.* 21.1). If so, it is unlikely that he was convicted, since—as Plutarch also mentions—he was selected to deliver the *epitaphios* over those who fell in the battle. For a recent discussion of the incident see I. Worthington, *A Historical Commentary on Dinarchus* (Ann Arbor 1992) 147–148.

How he prepared a *graphe lipotaxiou* against me (λιποταξίου γραφήν κατεσκεύασεν κατ' ἐμοῦ) and hired the man who brought it, the disgusting and too rash, the filthy Euktemon—I won't mention this. For that sykophant did not bring the case to *anakrisis*, and Meidias hired him for no other reason than so that it might be posted in front of the statues of the Eponymous Heroes and everyone might see: "Euktemon of the deme Lousia has brought a *graphe lipotaxiou* against Demosthenes of Paiania." And it seems to me that he would have been happy to add this, if it was possible, that the *graphe* was brought with Meidias doing the hiring. But I let this pass. For I require no further satisfaction in addition to the *atimia* which he has brought against himself by not pursuing the charge; rather, I have enough.<sup>48</sup>

We do not know much about the circumstances which led to the *graphe lipotaxiou* against Demosthenes. It is likely, given that the charge was dropped, that Demosthenes had not in fact done anything illegal. Would Meidias' associates have failed to follow through with a case they were likely to win? Presumably, the charge was brought simply for the purpose of harassing the would-be defendant, and the original plan was for the prosecutor to misrepresent as *lipotaxion* some defensible act of Demosthenes', either a legitimate absence from service in Euboea or a premature but lawful departure from the army stationed there.<sup>49</sup> Whatever the particulars of the incident,

<sup>48</sup>The incident became uglier yet. Nikodemos of Aphidna, a supporter of Meidias, was murdered, and a certain Aristarchos was charged with the murder. Meidias reportedly attempted to implicate Demosthenes in the murder, both by slandering him in private conversations in the Agora and by offering money to the dead man's relatives to induce them to charge Demosthenes rather than Aristarchos (§§104, 106). In the end, Meidias was unable to connect Demosthenes with the crime (110). On Nikodemos and Demosthenes' alleged involvement in his murder see also: Dem. 21.116–121; Aeschin. 1.172, 2.166; Din. 1.30, 47; Athen. 13.592–593. For discussion see Schaefer (*supra* n.47) 96–99; Worthington (*supra* n.47) 179–180.

<sup>49</sup>On the circumstances of the charge MacDowell (9), writes: "We are not told what grounds were given for this charge; but since we know that Demosthenes was in Athens for the Dionysia of 348, most likely he was accused of leaving the army in Euboea without permission. Of course he could

however, it provides the necessary background for interpreting the charge Demosthenes levels against Meidias in §110: “He brought a *graphe lipotaxiou* against me, having abandoned three *taxeis* himself...!”

That Demosthenes had been vilified by Meidias’ cronies as a *lipotaktes* provides adequate explanation both for his hyperbolic statement in §110 and for his more specific charge of *lipotaxion* in §§164 and 166,<sup>50</sup> where the term is used to describe an incident that would more credibly be labeled *lipostration*. We need not conclude from the speech against Meidias, therefore, either that any of the offenses described in §§160–166 in fact constituted *lipotaxion*, or that the terms *lipotaxion* and *lipostration* could be used interchangeably to refer to the offense of desertion, as §166 might suggest.

### 3. λιποτάξιον in a nautical context

It remains to consider whether the *graphe lipotaxiou* could be used to prosecute nautical offenses. I discuss four offenses to which the term might be thought to refer.

#### 3.1. A trierarch’s departure from his ship before the arrival of his successor

The speaker of Dem. 50, Apollodoros, son of Pasion, served as a trierarch in 361/0 and was to be succeeded in this duty by a certain Polykles. Polykles failed to take over the ship, however, which led to an extension of Apollodoros’ service by some four months (§36). He sued Polykles for the expenses he incurred during this additional period. In §§59–63 of Apol-

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have argued that it was his duty as a chorus-producer to be present at the festival; that would probably have been accepted as a good excuse for leaving the army, and in fact Euktemon in the end did not proceed with the case.” On the exemption of choristers from military service see also MacDowell (*supra* n.34) 70–72.

<sup>50</sup>Cf. a scholiast’s comment on λιπὼν τὴν τάξιν in 164: ταύτην τὴν φιλοτιμίαν εἰς λειποταξίαν κατέστησε, καὶ ὅπερ αὐτὸς ἐνεκαλείτο παρὰ Εὐκτῆμονος, τοῦτο διαβάλλει τὸν Μειδίαν.

lodoros' speech from that trial he discusses the circumstances which made his absence from home during those months particularly grievous—his mother's final illness, his wife's sickness, mounting debts, etc. He concludes this litany in §63:

Although such things had befallen me, I did not consider my private affairs more important than your concerns, but I thought that I should be stronger than my wasting finances and the neglect of things at home and my wife and mother being ill, so no one would accuse me of having abandoned my *taxis* and so my trireme would not be useless to the *polis* (ὥστε μήτε τὴν τάξιν αἰτιᾶσθαι μέ τινα λιπεῖν μήτε τὴν τριήρη τῆ πόλει ἄχρηστον γενέσθαι).

Gabrielsen (80) has suggested from the evidence of Dem. 50 and this passage in particular that if a trierarch left his ship without his successor formally acknowledging that he was assuming his liturgical responsibilities, he could be "charged with desertion and probably ... indicted in a *graphe lipotaxiou*." But I am not convinced that the act Gabrielsen describes is the offense Apollodoros is suggesting could have led to prosecution. In the penultimate section of his speech Apollodoros considers what the response of the Athenians would have been had he abandoned the campaign on which he was engaged before he was relieved of his trierarchy by Polykles (§67):

I would like to find out from you, gentlemen of the jury, what opinion you would have had about me if, when my time had run out and this man did not come to the ship, I did not serve as trierarch beyond my term but sailed off home. Would you not have been angry with me and thought that I was doing wrong (καὶ ἠγείσθε ἂν ἀδικεῖν)? So, if you would have been angry then, because I did not serve beyond my term, how is it not appropriate now that you exact from him my expenses, which I spent on his behalf, this man who did not take over the ship?

The jurors, Apollodoros hypothesizes, would have been angry and would have thought their trierarch *adikos* if he had abandoned the campaign before Polykles succeeded him.



Apollodoros does not say in this passage that he might in addition have been condemned by the Athenians in a court of law, although that claim would, if true, have bolstered the point he is making here. He is suggesting that the negative reaction the jurors would have had to his *adikia* be directed instead against the defendant in the present trial. So much the better for Apollodoros if the jurors' hypothetical reaction could have included condemnation for *lipotaxion*. That he does not mention the possibility of prosecution suggests that the scenario here described—Apollodoros' departure from the fleet before Polykles relieved him—would not have constituted an actionable offense.

### 3.2. A trierarch's withdrawal during battle to a safe position

It remains possible that Apollodoros is alluding in §63 to some other nautical offense that did in fact constitute *lipotaxion*. By analogy with what we know of *lipotaxion* on land, I suggest that this offense was a trierarch's withdrawal during battle from his *taxis* to a relatively safe position. The term *taxis* could refer, after all, to the battle order of ships in a squadron (e.g. Aesch. *Pers.* 380–381, Thuc. 6.34.4). Admittedly, the connection between this offense and the act Apollodoros labels as actionable in §63—his return to Athens after the expiration of his term but before the arrival of Polykles—is not apparent. We have seen, however, that Athens' orators were not loath to identify as *lipotaxion* acts which hardly resemble the description of the offense given at Lys. 14.5. That litigants misrepresented the offense as it suited their needs means that we need only consider whether Apollodoros can have been suggesting that his withdrawal from the fleet with his trireme would have been the equivalent of, or could have been perceived as, the act of a trierarch withdrawing his ship from a dangerous position during battle. If we consider that Lycurgus, for example, felt free to describe as *lipotaxion* Leokrates' flight from Athens before he had even set foot in the field (1.147), it is not difficult to

imagine that Apollodoros is misrepresenting a nautical version of *lipotaxion* in the manner here suggested.

With some hesitation I will suggest something further about the passage. In §60, Apollodoros claims that while he was serving as trierarch his mother often urged him to come home by himself if he was unable to return with the trireme: *πολλάκις δὲ πρότερον μετεπέμπετό με, ἀφικέσθαι δεομένη αὐτόν, εἰ μὴ τῆ τριήρει οἶόν τε εἴη*. An implication of the passage is that there is some important distinction between Apollodoros returning to Athens on his own and his returning with his trireme: the former would have been possible, he suggests, but the latter was for some reason problematic. With this passage in mind let us consider again the result clause of §63: Apollodoros says he remained with the campaign “so no one would accuse me of having abandoned my *taxis* and so my trireme would not be useless to the *polis*.” It is possible that the two scenarios envisioned here correspond to the two modes of return allegedly referred to by Apollodoros’ mother: if, that is, Apollodoros had left for home with his trireme, he would—or so he implies—have been vulnerable to a charge of *lipotaxion*, while if he left his trireme with the rest of the fleet (in its *taxis*, so to speak) but without a commander (and financier), the ship would have been *achrestos*.

An explanation for Apollodoros’ misrepresentation of *lipotaxion* in §63 is provided by his discussion in §67 of the reaction the jurors would have had if he had refused to serve as trierarch beyond his term: he wants to suggest to the jurors that the defendant in the present case should meet with the full force of the anger they would have felt toward him had he been less obliging in his trierarchic service. A reference to the possibility of a *graphe lipotaxiou* bolsters his argument. Of course, as I mentioned above in arguing against Gabrielsen’s interpretation of §63, Apollodoros does not refer in §67 to this potential lawsuit. The omission is readily explained, however, if we assume that

the nautical version of *lipotaxion* alluded to in §63 was a trierarch's withdrawal of his ship during battle. While the act which Apollodoros claims could have led to prosecution is not specified in that passage, the plaintiff spells out in §67 precisely what circumstances he is referring to. After the scenario is described so clearly, the suggestion that the act under discussion is tantamount to nautical *lipotaxion* would have been too easily spotted by the jurors as a misrepresentation of that offense.

It may be suggested, finally, if the above argument for a highly distorted reference to a real charge of nautical *lipotaxion* fails to convince, that Apollodoros' mention of *lipotaxion* in §63 is only a metaphorical usage of the expression (for other metaphorical references to the offense see Dem. 15.33, 18.173, etc.). It is teamed in a bipartite result clause with a reference to Apollodoros' trireme as, potentially but not in fact, *achrestos* to the *polis*. Apollodoros plays off of both expressions in §64, where he describes himself, in contrast both to his hypothetical behavior and to the defendant's actual behavior, as εὔτακτος and χρήσιμος/χρηστός. The desirability of engaging in this particular bit of verbal play may have informed Apollodoros' choice of words in the preceding section.

### 3.3. The leasing of trierarchies

After the Athenian defeat at Peparethos in 361/0 certain trierarchs who had let out their trierarchies<sup>51</sup> rather than serving in person were held responsible for the defeat and prosecuted, evidently by an *eisangelia eis ten boulen* (Dem. 51.8–9).<sup>52</sup> They were charged with having betrayed the fleet and abandoned their posts. We do not know what the final verdict was, but in a preliminary vote before the case was sent to the *dikasteria* for trial the *bouleutai* decided that the defendants were guilty: κατα-

<sup>51</sup>On this practice see Gabrielsen 95–102.

<sup>52</sup>See Hansen (*supra* n.27) cat. no. 142.

χειροτονήσαντες προδεδωκέναι τὰς ναῦς καὶ λελοιπέναι τὴν τάξι<sup>v</sup> (51.8).<sup>53</sup>

Had the trierarchs been prosecuted by *graphe lipotaxiou*, we could assume that the hiring out of trierarchies was thought by a fair number of Athenians to constitute *lipotaxion*: the prosecutor in that case would presumably have at least some expectation of persuading a jury that the defendants were guilty as charged. But after Peparethos the defendants were prosecuted by *eis-angelia*, a type of action that could be brought for any number of offenses, and the trierarchs were accused also of betraying the fleet. It is conceivable that the prosecutor added *lipotaxion* to his enumeration of the defendants' offenses in order to make the accusation against them more weighty. There may well have been no expectation that a jury would believe the defendants guilty of *lipotaxion* in fact. Gabrielsen (99), at any rate, suggests that the hiring out of trierarchies never amounted to a prosecutable offense:

Demosthenes' equation of *misthosis trierarchias* with desertion (i.e., *lipotaxia*, *strateias apodrasis*, 21.164–66) should not be taken *au pied de la lettre*. ... On the whole, the hiring out of trierarchies was not, and to the best of my knowledge never became, a right warranted by law; but neither was it directly discouraged, and the incident just mentioned is best understood as a singular reaction to the defeat at Peparethos rather than as a reflection of the systematic prosecution of "lessor" trierarchs.

Given that *misthosis trierarchias* was evidently widely practiced in the fourth century, it is likely that the reference to *lipotaxion* in the charge against the trierarchs was metaphorical, and that the hiring out of trierarchies did not constitute that offense in the view of most Athenians.

### 3.4. A crewman's failure to take up his shipboard position

One may suggest that the term *lipotaxion* could refer to the

<sup>53</sup>On the incident see Gabrielsen 99.

offense of a crewman—whether an oarsman or an *epibates*—failing to take up his shipboard position before a battle. For this possibility see also my discussions of *liponaution* and *anaumachion* in the APPENDIX below. I know of no evidence which suggests that the temporary absence of crewmen from their ships was in fact a problem for the Athenian navy—save for when an emergency prompted immediate embarkation, and crewmen were too scattered to man their ships at short notice (*cf.* Xen. *Hell.* 2.1.28), but that is a different phenomenon. It may be that despite having the opportunity to absent themselves from their ships (*cf. infra* n.65), sailors tended not to do so. It must also be admitted that while the posited failure of a sailor to take up his shipboard position was analogous to a soldier's *lipotaxion* in some respects, the act would necessarily take place before the sailor's boat became engaged in battle. He would therefore have to abandon his *taxis* at an earlier stage than a soldier, who could withdraw from his own position in the midst of the battle itself. As a consequence, it is less likely that a sailor's absence from his vessel would be occasioned by the same panic that inspired *lipotaxion* on land. For this reason I lean toward labeling the offense here described *anaumachion* rather than *lipotaxion*.

These reservations aside, it remains possible that the term *lipotaxion* can have referred to a sailor's temporary absence from his vessel. And with less hesitancy I would suggest that, if such an offense ever *was* committed by an Athenian sailor, he will have rendered himself vulnerable to a charge of *lipotaxion*, even if that allegation may not have held up in a court of law.

## Conclusion

Athenian males swore as ephebes not to abandon their line-mates,<sup>54</sup> and it is likely that every general who ever harangued them thereafter reminded them that the cohesion of the phalanx depended on their not deserting their *taxeis*. Most Athenian men, I suspect, shared for this reason a very similar impression of precisely what action constituted the offense of *lipotaxion*: a retreat during battle, motivated by fear, from one's *taxis* to a relatively less dangerous position in the field. This, I argue, is the nuclear "definition" of *lipotaxion*, the one action that all Athenians polled in the *agora* on a given afternoon would agree constituted that offense. Reasonable men might differ in their classification of offenses not matching the paradigm exactly. Was a soldier who deserted the army when the enemy were just out of bowshot guilty of *lipotaxion* as well as *lipostration*? A jury panel composed of soldiers who *had* stayed for the battle might well be persuaded that he was. And prosecutors, as we have seen, could attempt to portray as *lipotaxion* all manner of offenses—*astrateia* and desertion, for example—however unlike the paradigmatic *lipotaxion* they might be. Their rhetorical machinations, however, do not imply that these offenses were likewise equated with *lipotaxion* in the collective consciousness of the Athenians.

Whether *graphai lipotaxiou* could be used to prosecute nautical offenses is a matter of guesswork, but I have discussed above without a great deal of conviction two offenses which might have been perceived by the Athenians as *lipotaxion*: a trierarch's withdrawal of his trireme during battle from his assigned position to a relatively safe location, and the failure of a crewman to take up his shipboard position before an engagement.

<sup>54</sup> At least after the introduction of the ephebic oath, on which see Rhodes (*supra* n.26) 494.

## APPENDIX

## 1. λιποστράτιον

The existence of a *graphe lipostratiou* is attested at Pollux 6.151 and 8.40<sup>55</sup> and at schol. Thuc. 6.91.7.<sup>56</sup> The *Suda s.v.* λειποστράτιον defines the offense as refusal to serve in the military,<sup>57</sup> which we may imagine as a reference either to desertion or to a refusal to muster. The former is the more likely referent, since λειποστράτιος in the same entry is defined as a deserter from the army. Hesychius glosses λειποστρατή as λιποταξία, but I am inclined not to trust this identification. At *Leg.* 943D Plato writes that anyone who returns home prematurely from a campaign, without leave, is liable to indictment by *graphe lipotaxiou* (cf. §2.1).<sup>58</sup> This definition of *lipotaxion*, however, is at odds with that which Lysias provides at 14.5 (see §1.1), since Plato refers to the abandonment of the entire *stratos* rather than of one's *taxis* only. In devising the laws for his fictional Magnesia, Plato seems to have subsumed desertion under the rubric of *lipotaxion*, a conflation which may reflect Athenian thinking and judicial practice regarding the two offenses, but need not.<sup>59</sup> Hesychius, I suggest, equated *lipostration* and *lipotaxion* under the influence of Plato's discussion or some similar passage no longer extant.

<sup>55</sup> 6.151, ἐξ ἀδικημάτων ὀνόματα, ἐφ' οἷς εἰσι δίκαι καὶ γραφαί. κλέπτης ... προδότης, ρίψασπις ... αὐτόμολος ... δειλός, ἀστράτευτος, λιποστρατιώτης. 8.40, γραφαί δὲ ... λιποστρατίου, λιποταξίου, ἀστρατείας, λιποναντίου, ἀνανυμαχίου, τοῦ ῥίψαι τὴν ἀσπίδα.

<sup>56</sup> φαρμὲν οὖν ὡς ἦν τις πρόσοδος ἀπὸ τῶν δικαστηρίων, οἷα ἢ ἀπὸ τῶν γραφῶν δωροδοκίας, ὕβρεως, συκοφαντίας, μοιχείας, ψευδογραφίας, παραπροσβείας, λειποστρατίου.

<sup>57</sup> λειποστράτιον· τὸ μὴ ἐθέλειν στρατεύεσθαι, καὶ λειποστράτιος, ὁ τὴν στρατιὰν καταλιμπάνων. So also *Lex.Seg.* 276.33: λιποστρατίου· ὁ λιπὼν τὴν στρατιάν. Cf. schol. Thuc. 1.99.1.

<sup>58</sup> A scholiast on the passage repeats the information provided by Plato: λιποταξίου δίκη ἐστὶ γραφή κατὰ τοῦ στρατευσαμένου μὲν, λιπόντος δὲ τὸ στρατόπεδον καὶ τὴν τάξιν αὐτοῦ. G. Busolt and H. Swoboda, *Griechische Staatskunde* II (Munich 1926) 1127 n.2, write that the offense of desertion "auch unter den Begriff des λιποτάξιου fiel...."

<sup>59</sup> Note, however, that while for Plato *lipotaxion* could refer to *lipostration*, the reverse was not necessarily true. See further §2.1. Given this conflation of *lipotaxion* and *lipostration*, Saunders (*supra* n.36) 324–328, I suggest, is not quite right when he writes that "Plato recognizes the same three offenses as Attic law" (328).

Other references to *lipostration* in the classical period are compatible with one or both of the explanations of the term suggested by the *Suda*.

(1) Herodotus (5.27.2) reports that the man whom the Persians installed as governor of Lemnos accused some of the Lemnians of λιποστρατίης ἐπὶ Σκύθας, evidently while Darius' army was fighting in Scythia. The phrase may mean "desertion [in the campaign] against the Scythians" (with ἐν τῇ στρατείᾳ or the like readily supplied from the context) or "refusal to serve against the Scythians."

(2) At Thuc. 1.99.1 (cf. 6.76.3) *lipostration* is listed as one of the principal reasons for the defection of the allies from Athens during the *pentakontaetia*: αἰτίαι δὲ ἄλλαι τε ἦσαν τῶν ἀποστάσεων καὶ μέγισταί αἱ τῶν φόρων καὶ νεῶν ἔκδειαι καὶ λιποστράτιον εἴ τῳ ἐγένετο. Gomme (*infra* n.65) concludes in his discussion *ad loc.* that *lipostration* implies "'return home in the middle of a campaign'; not on the part of individual men or regiments or crews, but of whole contingents, recalled by their authorities." Dover, on the other hand, suggests that *lipostration* refers to a failure to participate in campaigns rather than defection from an expedition already undertaken.<sup>60</sup> In fact, either explanation of the term fits the passage.

(3) According to a scholiast to Ar. *Eq.* 226, Kleon, having been in some way provoked by the cavalry, accused them of *lipostration*: κατηγορεῖ γὰρ αὐτῶν ὡς λιποστρατούντων.<sup>61</sup> While this passage could refer to either desertion or refusal of service, the former possibility makes more sense: it is difficult to imagine how an Athenian military unit could have refused service *en masse*. (And if one *had*, we would expect to hear about the incident from some other source.)

It is possible, then, that *lipostration* referred in some contexts to refusal of service. I am inclined to believe, however, from the admittedly late evidence of the scholium to Ar. *Eq.* 226, that it did not bear this meaning in the context of Athenian law but referred rather to desertion. The prefix of *lipostration*, moreover, would seem to

<sup>60</sup> Cf. B. D. Meritt, H. T. Wade-Gery, and M. F. McGregor, *The Athenian Tribute Lists III* (Princeton 1950) 246. E. C. Marchant, *Thucydides Book I* (London 1905) *ad loc.*, writes that *lipostration* here refers to the allies' "failure to furnish any ships as distinct from ἔκδειαι, which means that *part* only of the number was supplied."

<sup>61</sup>The charge may have been related to cavalry action in the campaigning season of 427. See Bugh 113. For discussion of the scholium see also C. W. Fornara, "Kleon's Attack Against the Cavalry," *CQ* n.s. 23 (1973) 24; Spence (*supra* n.9) 213–214.



suggest an offense committed after the offender had joined the expedition. *Graphai lipostratiou*, I suggest, were brought only for the offense of desertion, while the failure of soldiers to serve when obliged could be addressed in *graphai astrateias*.

Scholars have been reluctant to follow Pollux in recognizing the existence of a *graphe lipostratiou*. Thalheim (*supra* n.7: 271) is exceptional in including *lipostration* in his reconstruction of the Athenian law governing military offenses. The term is, admittedly, ill-attested, but *liponavigation* is as obscure and is accepted by Carey (*supra* n.7: 143–144), who does not so much as mention *lipostration*. Harrison (*supra* n.33: 32) likewise ignores *lipostration* while listing *aponautou*—the word is not attested in our sources to my knowledge—among other *graphai* for military offenses. My suspicion is that Plato's definition of *lipotaxion* at *Leg.* 943D is responsible for this modern prejudice. Lipsius cites the *Laws* as evidence that *lipostration* was subsumed under *lipotaxion* in Attic usage.<sup>62</sup> Martin, though he does not link his conclusion to Plato, similarly suggests that *lipostration* was a synonym of *lipotaxion* and was not itself found in Athenian law.<sup>63</sup> But the conclusion that there was no *graphe lipostratiou* is not warranted. (1) While Plato based his Magnesian law code on Athenian practice to an extent, he did not do so in every particular. (2) Our other sources for the definition of *lipotaxion* suggest that it did not connote desertion. It is reasonable to assume that the offense of desertion was addressed by Athenian law. If it was not covered by the *graphe lipotaxiou*, why not accept the evidence of Pollux for the existence of a *graphe lipostratiou*?

## 2. λιπονάυτιον

Among the offenses listed by Pollux at 8.40 (*cf.* n.55) is *liponavigation*, which he describes further at 8.42–43:

The man who abandons his ship was tried for *liponavigation*, just as the man who abandons his *taxis* was tried for *lipotaxion*. But the man who was tried for *anaumachion* does not *desert* his ship; rather, he does not fight at sea.

<sup>62</sup>J. H. Lipsius, *Das Attische Recht und Rechtsverfahren* II.1 (Leipzig 1908) 453.

<sup>63</sup>"Liponautiou Graphè, Lipostratiou Graphè, Lipotaxiou Graphè," *Dar. Sag. Dict.* 3.2 (1904) 1264–1265.

καὶ λιπονναυτίου μὲν ἐκρίνετο ὁ τὴν ναῦν ἐκλιπών, ὥσπερ ὁ τὴν τάξιν λιποταξίου, ἀναυμαχίου δὲ ὁ τὴν ναῦν μὲν μὴ λιπών, μὴ μέντοι ναυμαχήσας.

The phrase ὁ τὴν ναῦν ἐκλιπών admits of two interpretations. It can refer either to a sailor's (or other crew member's)<sup>64</sup> outright desertion of his ship or to his failure while on campaign to board before an engagement, resulting in his temporary absence from service.<sup>65</sup> (This is the nautical analogue of a soldier's unauthorized retreat from his position in the front ranks of an infantry force, that is, of *lipotaxion*. On land, a soldier could offend by withdrawing during battle from a position to which he had been posted. For a sailor to likewise abandon his *taxis*, he could not take up his position to begin with.) That Pollux links *liponavigation* with *lipotaxion*<sup>66</sup> may seem to suggest that the term refers to the second of these possibilities. But Pollux appears chiefly concerned with illustrating the similarity in meaning of those terms prefixed by *lipo-* and their dissimilarity with the differently prefixed *anaumachion*. Two considerations suggest, moreover, that *liponavigation* refers rather to desertion of the fleet. (1) At Dem. 50.65, τοὺς λιπόνεως refers to hired sailors who had deserted the speaker's trireme during his tenure as trierarch and who had to be replaced (§§11, 12, 15, 16).<sup>67</sup> Demosthenes is not

<sup>64</sup>Triremes were manned not only by *nautai* (oarsmen), but by *hyperesia* (petty officers), *epibatai* (marines), and archers. See Gabrielsen 106. Presumably, a trierarch also might desert his ship during the period for which he was responsible for its maintenance, but the scenario is inherently a less likely one. (Eratosthenes allegedly did just this in the period when the Four Hundred were coming to power [Lys. 12.42].) Gabrielsen (80) suggests that a trierarch who left his ship before he was relieved by his successor might be indicted by a *graphe lipotaxiou*. I consider this possibility above, §3.1.

<sup>65</sup>It will be remembered that triremes hugged the shore by necessity and that sailors frequently put in to land (see A. W. Gomme, *A Historical Commentary on Thucydides* I [Oxford 1956] 19–20; Gabrielsen 119). This will have provided ample opportunity for *nautai* to absent themselves.

<sup>66</sup>Cf. the scholium to Theoc. *Id.* 13.73, where λιπονναύταν is glossed as καθάπερ λιποτάκτην.

<sup>67</sup>*Suda s.v.* λειπονναῦται preserves an intriguing reference to *liponautai* whose offense was evidently more serious than a failure to take up their positions on a single occasion: ἐδογματοποιήσαντο δὲ τοὺς κατὰ τὴν Ἑλλάδα λειπονναύτας γεγονότας ἀναζητῆσαι καὶ τὰς χεῖρας ἀποκόψαι πάντων. These *liponautai* had abandoned their fleets and scattered. It is not clear, however, to what event this passage refers.

referring to deserters in the context of a legal proceeding brought for that offense, and the hired sailors he mentions may not have been Athenian, but if for a fourth-century dikast τὸς λιπόνεως meant “deserters,”<sup>68</sup> it is reasonable to believe that *liponaution* similarly referred to the outright desertion of a ship by one of its crew rather than to that crewman’s temporary absence from the vessel. (2) There are two other terms which arguably can have been used to refer to sailors who failed to board their vessels, *lipotaxion* and *anau-machion* (see §3.4, and below). *Liponaution*, I suggest, was more accurately the analogue of *lipostration* than of *lipotaxion*.<sup>69</sup>

### 3. ἀναυμαχίον

*Anaumachion* is somewhat better attested than *liponaution*. Andocides (1.74) mentions it alongside *lipotaxion*, *astrateia*, *deilia*, and *rhipsaspia*.<sup>70</sup> The *Suda* (s.v. ἀναυμαχίου) reports, none too helpfully, that it was a punishable offense having something to do with fighting at sea:

Just as there were penalties prescribed by law for not going on an expedition and for leaving one’s *taxis* and for throwing away one’s arms, so also for fighting at sea. This was called the penalty for *anaumachion*,<sup>71</sup> as in Andocides.

ὡς τοῦ μὴ στρατεύεσθαι καὶ τοῦ λείπειν τὴν τάξιν καὶ τοῦ τὰ ὅπλα ἀποβαλεῖν ζημίαι ἦσαν ὀρισμέναι ἐκ τῶν νόμων, οὕτω καὶ τοῦ ναυμαχῆσαι. τοῦτο τὸ ὄφλημα ἀναυμαχίου ἐκαλεῖτο, ὡς Ἀνδοκίδης.

<sup>68</sup>Elsewhere in the speech the deserters are referred to by forms of the participle ἀπολιπών, and their desertion is ἀπόλειψις.

<sup>69</sup>Cf. Lipsius (*supra* n.62) 454: a *graphie liponautiou* might be brought against those who “eigenmächtig sich von der Flotte entfernten....” Thalheim (*supra* n.7: 271) likewise seems to equate *liponaution* with *lipostration* rather than *lipotaxion* (also “λιποναυτίου γραφή und λιποστρατίου γραφή,” *RE* 13 [1926] 722–723). Frohberger (*supra* n.7: 2) and Busolt and Swoboda (*supra* n.58: 1127 n.2) equate *liponaution* with desertion from the army, though they term the latter offense *lipotaxion*. B. Jordan, *The Athenian Navy in the Classical Period* (Berkeley/Los Angeles/London 1975) 119, and Gabrielsen (244 n.23) both regard *liponaution* as desertion.

<sup>70</sup>ὅποσοι λίποιεν τὴν τάξιν ἢ ἀστρατείας ἢ δειλίας ἢ ἀναυμαχίου ὄφλοιεν ἢ τὴν ἀσπίδα ἀποβάλοιεν ... οὗτοι πάντες ἄτιμοι ἦσαν τὰ σώματα, τὰ δὲ χρήματα εἶχον.

<sup>71</sup>The appearance in Andoc 1.74 of the verb ὄφλοιεν may explain the *Suda*’s unnecessarily wordy phrase τὸ ὄφλημα ἀναυμαχίου.

A virtually identical description appears at *Lex.Seg.* 217.21, though here *μη* is inserted between *τοῦ* and *ναυμαχήσαι*, which makes the passage more immediately intelligible. Pollux includes *anaumachion* in his list of *graphai* at 8.40 and explains the term at 8.42–43: ἀναυμαχίου δὲ ὁ τὴν ναῦν μὲν μὴ λιπών, μὴ μέντοι ναυμαχίσας. A *graphe anaumachiou*, then, could be brought against a man who, while not deserting his ship, yet did not fight at sea. It has been suggested that *anaumachion* refers specifically to a trierarch's withholding a ship from action,<sup>72</sup> and this may be right. But Pollux could also be describing the offense, discussed in Appendix 2, of a sailor's failure to take up his shipboard position before an engagement. A small argument in favor of this interpretation is that all of the military offenses mentioned by Pollux at 8.40—assuming that the interpretations argued in this paper are correct—would in that case pertain (in the majority of cases, *cf.* n.64) to the rank and file rather than officers.

MacDowell and others have suggested that *anaumachion* may correspond to *astrateia*, that is, that it may refer to a sailor's failure to report for duty when he was obliged to do so: "It is not clear what name was given to the offense of a man who failed to join the navy when required to do so; since a man who failed to join the army might be accused of either ἀστρατεία or λιποτάξιον..., perhaps failure to join the navy was termed indifferently ἀναυμάχιον or λιπονάτιον."<sup>73</sup> This is possible. As we have seen, there is some reason to believe that *lipostration* could refer to refusal to serve (though, as I argue, not in a judicial context). One may imagine *liponaution*, at least, as bearing a comparable meaning in some contexts. This explanation of *anaumachion*, however, is hardly in accord with the evidence of Pollux 8.42–43 (which suggests that one had to join one's ship in the first place to be in a position to commit *anaumachion*). For an analogue in naval affairs to *astrateia*, moreover, neither *liponaution* nor *anaumachion* seem appropriate in terms of their etymology. Better would be a word such as *anaution* or *anautikon* (neither is attested), indicating absence from the fleet rather than either

<sup>72</sup>MacDowell, *Andocides* (*supra* n.1) 111; LSJ *s.v.* ἀναυμάχιον. See also §3.4. Jordan (*supra* n.69: 119) defines *anaumachion* as "cowardice in battle."

<sup>73</sup>*Andocides* (*supra* n.1) 111–112. I argue against this assumption in §1. Cf. Frohberger (*supra* n.7) 1; E. Caillemer, "anaumachiou graphè," *Dar.Sag. Dict.* 1 (1877) 265; Thalheim, "ἀναυμάχιου γραφή," *RE* 1 (1894) 2075; Busolt/Swoboda (*supra* n.58) 1127 n.2.

absence from a sea battle in particular (*anaumach-*) or desertion (*lipo-*). Alternatively, it is perfectly possible that failure to join the *nautikos stratos*, just as the *pezikos stratos*, was called *astrateia*.<sup>74</sup>

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