

15 The decline of the oath?

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As we saw in ch. 11, the belief in the binding power of oaths was strong and sustained, and attempts to specify circumstances under which the principle might be waived met with little success. At the same time, it could not be denied that some people did in fact swear assertory oaths which were false, or promissory oaths which they broke; to take only one example, if it were not so, few murder cases would ever have come to the Athenian Council of the Areopagus for trial, since in every such case the prosecutor had to swear – in circumstances of special solemnity – that the defendant had killed, and the defendant that he had not killed (see S&B §5.14). Such breaches of oath would, it was thought, be punished by the gods – but the gods, notoriously, were often slow in punishing offences, and their retribution might be delayed for many generations. So one could never be in a position to infer with confidence that because a swearer had not suffered anything that looked like divine punishment for perjury, therefore his oath had been honest. And on the other hand, if he or his *did* come to some serious harm, this was not necessarily reliable evidence that he *had* been guilty of perjury on any particular occasion, since disasters did not come labelled with explanations of their causes.¹ In any case, even if it was eventually established that an oath had (or had not) been violated, such knowledge would often come too late to be of any use at all, and always too late to give any guidance to judges, treaty partners, etc., as to whether the swearer should be trusted. On top of all this, the ancient and increasingly sophisticated practice of “sidestepping” (see ch. 10), and of careful and precise choice of language in oaths, added further layers of uncertainty, and already in the time of Aeschylus (fr. 394) it could be said that “oaths do not give credibility to men; men give credibility to oaths” – in other words, that a person who could not be trusted when not on oath should not be trusted when he was on oath, either.²

1 Unless the sufferer, or his kin, or another interested party, inquired of a god (normally via an oracle) why the disaster had occurred, and received an informative response.

2 Much the same is said by a character in Alexis’ comedy *Olynthioi*, probably from the third quarter of the fourth century: “a sensible person ought not to trust people’s oaths, but rather always trust the actual facts” (Alexis fr. 165). And in an unknown comedy by Menander’s contemporary Diphilus (fr. 101), a character named two types of person whose oaths were worthless – the courtesan and the politician, both of whom “swear to anything that suits the man they’re talking to” (the nature of New Comedy suggests that he was talking about courtesans and using politicians as a well-known standard to which to compare them, rather than vice versa). Already in the sixth century Theognis (284, 1139) is warning against putting one’s trust in oaths.

We should, of course, remember that this is a line from a drama, and was spoken by a character who may have had an axe to grind. The same applies even more strongly to similar remarks made by speakers in the courts, whose opponents had all sworn oaths to the truthfulness of the case they were arguing, oaths whose reliability the speaker must necessarily attempt to undermine. Nevertheless, it is significant that in lawcourt speeches, little or no weight is normally placed on the mere fact that the speaker has sworn to the truth of his case; rather, he will marshal argument and evidence (including evidence of character) to persuade his judges that it is *his* sworn declaration, rather than his opponent's, that should be believed.

This is already evident in the earliest surviving lawcourt speeches, those of Antiphon, which probably all date from within a few years of 420 BC – even though they were all written for homicide trials and all make use of arguments that would be persuasive only to those of a strongly religious mindset.³ In none of them does the speaker argue, either directly or by implication, that simply because he has sworn to his innocence (if he is the accused) or to his opponent's guilt (if he is the prosecutor) he is entitled to be believed. In two of the three speeches, indeed, the speaker never makes any mention of his own oath. In the third (Ant. 6), the defence speech of a *choregos* charged with causing the death of a boy named Diodotus who had been a member of his chorus, he does (§§14–16); but observe how he does it. He reminds the judges that the listening public “have heard the words of the man who administered the oath” and says that he would like them (the public) “to feel that I was being faithful to that oath, and that in persuading you [the judges] to acquit me I was telling the truth”. That virtually concedes that the mere fact of his taking the oath proves little or nothing. Rather, he points to reasons, entirely independent of the oath, that go to confirm his credibility: the fact that his words are subject to refutation by the prosecution, who have another speech to follow in which they can expose any lies he may have told;⁴ the fact (if it is a fact) that many of those present have “precise knowledge” of the facts of the case; and the fact that he has called witnesses, whose evidence the judges should use to help them decide which side's account of the case is “truer and more oath-respecting”.

And yet, while only one of Antiphon's three clients is made to draw attention to his own oath, all three draw attention to the oaths of their opponents – always, of course, in order to destroy their credibility. In the Herodes case (Ant. 5), the prosecutors had not used the regular homicide procedure but had prosecuted

³ Ant. 1.3, 31; 5.81–4, 93; 6.3–6.

⁴ He does not mention that *he* will then also have a second speech, giving him the last word.

the accused, Euxitheus, by *endeixis*, thus (he complains) evading the specially solemn oaths that were taken in homicide cases both by the parties themselves and by all their witnesses. He asserts, indeed, that the prosecutors and their witnesses are not on oath at all (§12) – which is true of the latter but false of the former – and accuses his accusers of “knowing very well” that if their witnesses *had* had to take the special “homicide” oaths, they would not have been willing to give evidence at all (§15). He does not, of course, mention that he himself, and *his* witnesses, are “unsworn” in exactly the same sense. Later (§§90, 96) he will ask for an acquittal on the ground that it will then still be open to his accusers to launch a normal prosecution for homicide in the course of which they will have to take “the customary oath”. Essentially, he has undermined the prosecutors’ oath that they “know well” that he killed Herodes by pretending it never happened.

In the other two surviving cases (Ant. 1 and 6) the two parties (and their witnesses, if any) did take “the customary oath”; and in each case Antiphon’s client sets out to prove that they have perjured themselves. The accused *choregos* in Antiphon 6, having stated that his accusers have sworn “that I killed Diodotus by planning his death”,⁵ while he himself has sworn “that I did not kill him either by my own hand or by planning”,⁶ then undertakes to prove that the prosecutors are “the most perjured and impious of mankind” (§33) because their conduct for a short time before, and a long time after, they first commenced proceedings clearly indicates that they did not in fact believe him to be guilty of causing the death of their young kinsman (§§34–50); and in the last 150 words of his speech (§§48–51) he refers no less than five times to the oath his opponents have sworn, now proved (he assumes) to have been insincere (see §12.2.3, p. 311).

In Ant. 1, too, the speaker seeks to disparage his opponents’ oath. He is prosecuting his late father’s wife⁷ for allegedly poisoning her husband; she is repre-

5 i.e. by planning the act that caused his death (the administration of a drug, either for medicinal purposes or to enhance his performance, which proved to be poisonous).

6 Though these two sworn statements seem contradictory, they may in fact both be true. The defendant says (§§15, 17) that he was not present when the drug was taken and neither told the boy to take it, nor compelled him to do so, nor gave it to him – but that still leaves plenty of possible scenarios of indirect responsibility (e.g. ordering one of his subordinates to compel the boy to take the drug) which he at no point denies. If one of these scenarios happened to represent the truth, the defendant would doubtless claim that it did not amount to “planning” the boy’s death. Such a claim might or might not seem reasonable to the judges.

7 The case is traditionally called “Against the Stepmother”, but this is inappropriate. Given what we learn about the ages of those concerned, the accused woman must have been married to the deceased at the time of the speaker’s birth; in other words, the speaker is the deceased’s *illegitimate* son, the offspring of what would now (but not then) be thought of as an adulterous liaison.

sented in court by one of her sons (the speaker's half-brothers), and it is he who has taken the "customary oaths". The speaker professes amazement that he can swear he "knows well" that his mother is innocent: "how can one 'know well' the truth of events which one did not oneself witness?" (§28). It is a fair enough point (or it would be, were not the prosecutor himself in exactly the same position – for he must have sworn he "knows well" that the accused is guilty, though all he actually knows is that his father believed her so); but one can certainly understand and sympathize with the half-brothers' position. In all probability they were absolutely convinced that their mother was indeed innocent, even if their certainty was based on nothing more than her word, their long experience of her character, and filial love and loyalty. And unless one of them took the oath in the terms in which it was dictated, they could not defend her, and no one else would be in any better position to do so; she would be convicted by default, and executed. What else could they possibly do? And the phrase "know well" provided enough wiggle-room to satisfy a reasonable conscience; in Greek, as in English, "I know" could mean in effect "I am morally certain".⁸

Both in *Ant.* 1 and in *Ant.* 6, too, the speakers argue that their opponents have no belief in their own case because they have refused to accept a challenge to have slaves examined under torture (1.5–13, 6.21–7); and the prosecutor in *Ant.* 1 explicitly asks how, in view of this, his half-brother can possibly be thought to have taken his oath in good faith (1.8). It seems to have been generally accepted that such interrogation of slaves was a reliable method of establishing the truth (partly perhaps because of its rarity in practice), and Antiphon evidently expected that the judges in these two cases would be readier to believe that his clients' opponents had perjured themselves in a particularly solemn oath than that they had honest grounds for refusing a torture challenge.⁹

So by the late fifth century, an oath on its own was not considered to be of much probative value; it was recognized that some men's oaths might be not just misleading (as had always been realized) but downright false. And as a result, certainly by the middle of the fourth century, it could be respectably argued that if you believed a man to be of bad character, you ought not to give him the opportunity to gain a spurious credibility by offering him the chance to swear that he

⁸ There are ten clear examples in Sophocles alone: *Trach.* 67 (where Hyllus explicitly ascribes his "knowledge" to hearsay), *Aj.* 560, *Ant.* 89, *OT* 1455, *El.* 400, 672, *OC* 656, 662, 666, 1197.

⁹ It is in harmony with this that litigants rarely attempt to justify their rejection of such a challenge; it is apparently considered safer to ignore the matter entirely. On torture-challenges see Thür 1977, 1996b; Gagarin 1996; Mirhady 1996, 2000.

is telling the truth or that he will keep his promise. As someone put it in a play by the comic dramatist Antiphanes (fr. 230):

Anyone who invites a wicked man to take an oath is barmy, because the gods now do the opposite of what they ought to. If anyone swears a false oath in their name, the man who *invited* him to swear gets struck by lightning right away – and rightly so, if you ask me, because he trusted someone.

Since our quotation ends there, we can't be quite sure whether the speaker is a total cynic who thinks no one should ever be trusted, or whether his sentence has been truncated and he was actually blaming the perjurer's dupe for trusting someone *who he should have known didn't deserve to be trusted*, oath or no oath.

We find the same view taken in court, too. One of the best-known instances of an oath-challenge in litigation (see S&B §5.11) is narrated in Demosthenes' two speeches *Against Boeotus* (Dem. 39.2–4, 40.10–11). We do not, for present purposes, need to inquire whether the account of the affair given by the speaker, Mantitheus, is true or not; it is sufficient that he – and his expert adviser, Demosthenes – expected it to be credible. As already mentioned (ch. 9, p. 173, 236), he is suing his half-brother, Boeotus, in an attempt to stop him from using the name Mantitheus. He tells the jury of an earlier case in which his father, Mantias, had been sued by Boeotus, who claimed that Mantias was wrongfully refusing to recognize him as his son. Mantias did not want the case to go to court, and eventually agreed to a deal with Boeotus' mother, Plangon. Mantias would challenge her, before the official arbitrator, to swear that he was the father of her two sons, Boeotus and Pamphilus, with the outcome of Boeotus' lawsuit depending on her response; she would refuse the challenge; Mantias would then pay her thirty minae, and she would arrange for Boeotus and Pamphilus each to be adopted by one of her own two brothers. She swore an oath "which is regarded by all mankind as the greatest and most fearsome" that she would honour this agreement. And then she broke it; when Mantias issued the challenge before the arbitrator, she accepted it and swore that he was indeed the father of the two young men, and he was thus compelled to acknowledge them as his sons.

Now if this story is true, Plangon was a shameless perjurer. But what of Mantias? Mantitheus clearly thinks he should have known better than to make such a deal, even though, according to Mantitheus' account, he was pretty much blackmailed into it;¹⁰ and he speaks (39.25) of Boeotus "having gained a father

¹⁰ He describes Boeotus' associates Mnesicles and Meneclis, who helped him with the lawsuit, as *sykophantai*, and says Mantias did not want to go to court "for fear that someone whom

through his mother's oath and the naivety (*euētheia*) of the man who invited her to take it". It is not a very sharp criticism (one would not expect it to be, given that it is his father whom Mantitheus is criticizing), but the plain implication of it is that a shrewder man¹¹ would have avoided giving Plangon such an opportunity for gainful perjury.¹²

In another passage of Antiphanes (it might even be from the same play, though we have no evidence one way or the other) almost exactly the opposite view is taken – but with an important reservation (fr. 237):¹³

When someone shows contempt for the sworn statement of another, *unless he knows that the person has sworn falsely in the past*, in my opinion he is showing contempt for the gods and violating an oath that he himself has previously taken.

One can without too much difficulty extract from this evidence – and other evidence of the same kind – a coherent position to which most people would have been willing to sign up had it been explicitly put to them. In principle, an oath is entitled to credence: Oedipus ought to believe Creon (Soph. *OT* 647, 652–3, 656–7), Theseus ought to believe Hippolytus (Eur. *Hipp.* 1036–7), particularly since both have expressed their oaths in especially powerful terms (see §5.1, pp. 79). On the other hand, it would clearly be foolish to believe the oath of someone who had a history of committing perjury. The problem lay in the grey area between. What if the swearer was someone who had frequently told lies, but had never been proved to have lied on oath? What if there was evidence, direct or circumstantial, which strongly suggested that he was lying on this occasion? Such evidence

he had aggrieved in some other matter – as can happen when one is in public life – might confront him there" (39.3).

11 Mantitheus is anxious to make it seem that his father was anything but shrewd; in his next sentence, commenting on lawsuits brought by Boeotus against him to secure money allegedly due to him from Mantias' estate, he says to the jury "I think you all know what sort of businessman my father was" ("i.e. a bad one," comment Carey & Reid 1985, 185, "so that the money claimed by Boeotus does not exist").

12 The gain she made by it was to have her sons recognized as Athenian citizens and probably (though Mantitheus obfuscates this) as legitimate and therefore entitled to a share of Mantias' property at his death. It is not clear, even on Mantitheus' version of the facts, how Mantias could have avoided making the deal, if he really was afraid of a trial for political reasons; perhaps he might have phrased the challenge more artfully, e.g. by not specifying what would be the consequence if it was accepted – but an experienced litigant like Menecles would surely have seen through such a ruse.

13 Very similarly, but without the reservation, Amphis fr. 42: "He who does not believe an oath will himself be a ready and clever perjurer."

there is both in the case of Creon and in that of Hippolytus. In Creon's case the evidence is, to any objective observer, weak, and the chorus duly draw attention, not only to Creon's oath of innocence, but to the fact that the case against him is "unclear" (*OT* 656–7) and that he has no past record of disloyalty (652); even so, and even though the chorus swear to their own loyalty in terms as strong as Creon had used (660–2), Oedipus still believes that in letting Creon go free he is running a grave risk himself (669–70). But at least he *does* let Creon go free. In Hippolytus' case the evidence is to all appearance very strong (Phaedra's written accusation, made all the more credible by her suicide); both Hippolytus and the chorus know it to be false, but both are themselves bound by oaths of secrecy. Hippolytus' sworn denial of guilt has to stand alone, and it was not enough for Theseus.¹⁴

From the late fifth century onwards, we begin to find a trickle of statements which suggest that reflection on these problems was in some circles leading to a tendency to argue that since oaths were of little real value as a guarantee of truth-telling or promise-keeping, they should be avoided when not obligatory, and even that many of the obligatory occasions for them should be abolished.

The earliest surviving text in this tradition is a fragment of the *Persica* of Choerilus of Samos, an epic poet of the late fifth century, who said, or more probably made a character say, that "there should be no such thing as an oath, whether just or unjust"; we have no idea of the context. The next, probably in the 370s, comes from Isocrates, who thus advised the Cyprian nobleman Demonicus (*Isoc.* 1.23):

When requested to swear an oath, accept for two reasons only – to clear yourself from a disgraceful accusation, or to save your friends from great dangers. Never swear by any of the gods for the purpose of material gain, not even with sincere intent: if you do, everyone will think you either perjured or greedy.¹⁵

It can be no accident that Isocrates' own texts prove that he himself practised what he here preaches; nowhere in his 125,000-word corpus does he, or any

¹⁴ Theseus had in any case already doomed Hippolytus irrevocably to death, by his curse-prayer to Poseidon (*Hipp.* 887–90), before even giving him a hearing; but he appears to have forgotten about this, and Hippolytus did not know of it in the first place.

¹⁵ To most people (though not, for example, to Quakers) this will seem an unrealistic counsel of perfection, since if Demonicus literally obeyed it, he could never have taken legal proceedings and anyone would have been able to defraud him with impunity. However, it may well be significant that Isocrates himself, in all his long life, was never the prosecutor or plaintiff in any lawsuit ([*Plut.*] *Lives of the Ten Orators* 839c).

of the clients for whom he wrote speeches, or any of the characters he creates, swear, even informally, to any statement or promise at all, except for those oaths which were required by the procedures of the courts in which they are represented as speaking. There is no sign of any such abstinence in the works of the other Attic orators, or during most of the career of Isocrates' great rival in the sphere of advanced education, Plato. The discussion of the ideal state in Plato's *Republic* hardly mentions oaths, and seems to consider them unproblematic. But in his last work, *The Laws*, it is quite otherwise.

It is probably not significant, despite the parallel with Isocrates, that informal oaths are notably rare in the actual conversation between the Spartan Megillus, the Cretan Cleinias, and the Athenian who represents Plato's views (there are only four of them, all in the mouth of Cleinias and all to reinforce responses that give assent to something the Athenian has said), since this is a general feature of Plato's late work.¹⁶ What is significant is a striking bifurcation in the laws regarding oaths in the new Cretan city of Magnesia. The principle behind this is not explained until long after many examples have been given of its application – not until nearly the end of the long work (949a). It is that oaths shall be required in those cases, and only in those cases, “where it is not generally thought that gain can accrue to the perjurer”; where, on the contrary, it is widely believed that “a sworn denial can bring great and manifest gain”, oaths will be positively *forbidden*, even in situations where states have hitherto made them obligatory. The reason given for this is that “it is terrible to think of a city in which ... nearly half the population have committed perjury and are mixing promiscuously with the rest” (948d-e) and thus exposing all alike to divine anger.

There are still a considerable range of situations where Magnesia will require an oath – for judges in the courts (948e), those voting in elections of all kinds (949a, cf. 767c-d) including someone putting forward an alternative candidate against an official nominee (755c-d), judges of musical and athletic competitions (949a), and the *nomophylakes* (guardians of the laws) when they make a declaration that a married couple are persistently refusing to fulfil their procreative duties (784c); we also hear of choruses that will sing to young children in praise of the virtuous life, one of which (of men under thirty) will invoke the god Paeon as a witness to the truth of their words (664c). Oaths are mentioned as being required

¹⁶ In the five other certainly genuine dialogues generally regarded as late – *The Sophist*, *The Statesman*, *Timaeus*, *Critias* and *Philebus* – which together amount to about four-fifths the length of *The Laws*, there are a total of three informal oaths.

of private citizens before entering another person's house to search for stolen goods (954a) and when refusing to testify in court (936e-937a; cf. S&B §5.10)¹⁷.

The areas of community life from which oaths are to be partially or completely banned are the market and the courts. Market traders are forbidden under any circumstances to swear to the genuineness or quality of their goods; if one of them does, anyone¹⁸ who hears him is not only permitted but required, on pain of being designated a "betrayers of the laws", to inflict physical chastisement on the trader (917c). And in court cases, the litigant's oath which was a feature of every Athenian lawsuit is to be abolished, and moreover no citizen¹⁹ may swear an oath during his speech to increase his credibility, as the clients of Demosthenes and others frequently do (948d-949b).

Why is the attractiveness of perjury considered to be so much greater in these cases than in the others mentioned? This question is never answered by Plato, but the answer is not difficult to discern. The market trader and the litigant *invariably have a strong material interest in being believed*. The trader is always anxious to make a sale; the litigant is always anxious to gain, or prevent his opponent from gaining, the property, or whatever it may be, that is in dispute. This *necessary* material bias is not to be found in any of the other cases. Judges and voters, of course, may be bribed, but that isn't a necessary consequence of being a judge or a voter; the same applies to the reluctant witness.²⁰ The man wishing to search a house for stolen goods is required to swear "that he expects to find them"; a person who took that oath falsely, and then searched the house and found nothing, would have gained only the privilege of showing himself up as one who pried into other people's privacy for no good reason, and it would be likewise with the *nomophylakes* if they procured the punishment of a couple who had remained childless through no fault of their own.

17 Another passage (917a) reads *prima facie* as though market traders accused of fraud will be required to swear their innocence before the market magistrates (*agoranomoi*). Taken in context, however, it seems to mean rather that the dishonest trader is *automatically* deemed a perjurer because he has lied to a superior (his customer) in defiance of the "laws and cautions" of the *agoranomoi* (on lying to a superior, see below).

18 If a citizen, and not below the age of thirty.

19 The prohibition is not to apply in cases between foreigner and foreigner (949b-c), because perjured foreigners are deemed unlikely to corrupt the citizen body since they will not normally grow old or raise children in the city.

20 So Morrow 1960, 290: "The judge is *seldom* under the temptation that a litigant is *always* exposed to, the temptation of gain by perjuring himself, or by inducing his witnesses to commit perjury" [italics mine: AHS].

Another striking innovation in *The Laws*, which might well be felt hard to reconcile with the principle just deduced, is that statements made *to one's superior* are considered to be tantamount to sworn statements. The law governing lying and deception begins thus (916e-917b):

Let no one perpetrate, by word or deed, any lie, deception or fraud, calling to witness the race of gods, unless he wishes to be greatly hated by them. Such a person is he who shows complete disregard for the gods by swearing false oaths, and secondly *he who tells falsehoods in front of his superiors*. "Superiors" means the more virtuous in relation to the less virtuous, the older to the younger in general and parents to their offspring in particular, and likewise men to women and children, and rulers to the ruled. It will be proper for everyone to respect all their superiors in every governing relationship and especially in civic magistracies For everyone who commits any fraud in the market place is a liar and deceiver and perjures himself²¹ by calling the gods to witness in the face of the laws and cautions of the market magistrates,²² neither respecting men nor revering gods.

Any false statement, then, made to a magistrate, or to a parent, or to anyone old enough to be one's parent, or by a woman or child to a man, is deemed to be perjury and subject to divine punishment: whenever one is speaking to a superior, one is regarded as speaking before divine witnesses, whether one has explicitly invoked them or not. At first sight there is a major paradox here. Swearing has been banned from the market, and largely from the lawcourts, because in these environments the temptation to swear falsely is so great that if swearing is permitted the city will be full of perjurers. Yet at the same time a vast number of other utterances are declared to have the effect of an oath, and on any realistic assumption about the behaviour of children (or on normal ancient Greek assumptions about the behaviour of women, young men, and "the less virtuous") there will be few Magnesians indeed who will not, under this new definition, have committed "perjury" at some time in their lives. And this is not an inconsistency between two passages in different parts of a long and complex work: the rule that market traders may not use oaths in praise of their goods is enunciated less than seventy

²¹ I take ἐπόμνησιν here as equivalent to ἐπιорκεῖ: otherwise it is tautologous (after τοὺς θεοὺς παρακαλῶν) and anticlimactic (after ψεύδεται καὶ ἀπατᾷ). The use of ἐπόμνημι in this sense could have been based on passages like *Iliad* 10.332 (the only occurrence of this verb in the poem); Hes. *Thg.* 793; and Empedocles fr. 115.4 D-K – in all of which the verb is coupled with ἐπίορκον.

²² These "laws and cautions" are the rules about market conduct referred to in 917d–e, which will be inscribed on a *stele* in the market-place by the *agoranomoi* and *nomophylakes*. The *stele* is apparently deemed to make these officials symbolically present in the market-place, whether they are physically present or not, and false dealing in breach of these rules is thus deemed tantamount to false dealing in the presence of state officials – and therefore to perjury.

words after the end of the passage just quoted (917c). Again, litigants speaking in court are not to be allowed to swear to the truth of what they are saying – and yet, since they are speaking before the presiding magistrate of the court, who counts as their “superior”, *everything* that they say will be deemed to have been spoken on oath! The only way to make sense of this seeming contradiction is to suppose that the new extension of the definition of an oath is of rhetorical rather than religious significance. It is neither intended nor expected that the gods will pursue as a perjurer every child who lies to his father or mother; the object of the law is not to invite them to do so, but rather to impress on the population the importance of respecting parents, elders and public authorities (and on women the importance of respecting men). And after all, the rights of these classes *were* believed to be under divine protection, even if the divine sanctions for their breach were not in general as severe as those for breach of an oath. One might say that for this limited purpose (the culpability of falsehood) those who are deemed superior by reason of virtue, age, gender or civic status are to be treated as if they were gods.

Although, as has been mentioned, speakers in the real Athenian courts at this time (the middle of the fourth century) are at least as willing as ever to swear solemnly, without any necessity, to the truth of the case they are presenting, it was not impossible for them also to take credit for a virtuous *reluctance* to swear and to criticize their opponents, not specifically for swearing *falsely*, but merely for being “unduly” eager to swear and doing so with flamboyant emphasis. There is only one surviving case in which this is done, and it is particularly striking in that the speaker tries to have his cake and eat it: he condemns his opponent’s oath and immediately afterwards takes a very similar one himself. This speaker is Ariston, prosecuting Conon for assault (Dem. 54.38–41), in a passage discussed in S&B (§5.8) where it is argued that the only difference between Ariston’s oath and Conon’s was that Ariston did not swear on the heads of his children (most likely because he *had* no children)²³ and that probably “the main purpose of Ariston’s vehement attack on the propriety of Conon’s intended oath is to distract the jury’s attention from the likely content of that oath, and from points, crucial to Ariston’s own case, to whose truth he is neither swearing himself nor calling any evidence”. Nevertheless it is significant that Ariston, speaking before a jury many of whom must have had long experience of the practice, can condemn it, and can treat it as a mark of virtue to be the sort of man who “would not swear even an honest oath”²⁴ (54.40).

²³ In any case, producing one’s children in court, and swearing oaths on their heads, were perfectly routine ploys (see Carey & Reid 1985, 99–100). On this passage see also §2.4.4 above.

²⁴ We must understand here “without necessity”, since Ariston immediately goes on to ex-

A similar tendency appears a generation or so later, in the *Characters* of Theophrastus. Being “quick to take an oath” is one of the characteristics of the shameless man (6.1, cf. 6.8), along with “dancing the *cordax* while sober” (6.3), failing to feed his mother (6.6), and charging interest at an annual rate of about 9000 per cent (6.9). The busybody (*periergos*) is, among other things, the sort of man who, when about to take an oath (probably in court), says to the public standing round “I’ve sworn many times before” (13.11).²⁵ Oaths of excusal (*exōmosiai*) seem particularly suspect: the shameless man will take one to postpone a court hearing (6.8) and then walk into another court laden with case papers; the arrogant man (*hyperēphanos*) will take one to avoid serving in a post to which he has been elected²⁶ (24.5). These are the only references to oaths in the *Characters*, and they are all negative: Theophrastus clearly agrees with the view of Isocrates, and the professed view of Ariston, that one should swear as little as possible, and that one who swears much probably, a good deal of the time, swears falsely.

But how widely shared was this attitude among ordinary people? We may get a glimpse of the development of colloquial usage in the work of Theophrastus’ contemporary (and, we are told, pupil) Menander. In the 969 lines of his *Dyskolos* we find one formal oath (at 309–13, where Sostratos, unprompted, calls on Pan and the Nymphs to strike him senseless if he has come to the place with any evil intent) and thirty-four informal ones; this ratio of one oath for every 27.7 lines of text is hardly changed from the time of Aristophanes, whose eleven extant plays contain 663 oaths of all kinds (the vast majority informal) in 15,291 lines of text, or one oath for every 23.1 lines. It is clear, too, that on serious occasions oaths can quite properly be volunteered, and both they and their givers are treated with respect. Both Sostratos in *Dyskolos* and, as we have seen (p. 289), Moschion in *Samia* win their brides partly by giving oaths to guarantee their honourable inten-

plain how the virtuous man should swear “if he has to”.

25 Many of the public will have done, too, for example as jurymen; but this man is boasting about the number of oaths he has sworn *as an individual*, not for public service but for private advantage. Theophrastus’ friend Menander (cf. D.L. 5.36) made a different use of the same expression in an unknown comedy, where a man, doubtless her lover, says to the *hetaira* Glykera “Why are you crying? I swear to you, my darling, in the name of Olympian Zeus and Athena, as I’ve sworn many times before ...” (Men. fr. 96). The last clause may be a piece of inadvertent self-debunking, characteristic of comedy: the value of the speaker’s oaths has depreciated with over-use.

26 Probably as an ambassador (cf. Dem. 19.124), since teams of ambassadors often had to be chosen at short notice and nominations made on the spur of the moment; if the election had been to a regular office such as a generalship, our man could merely have avoided putting himself forward as a candidate.

tions: Sostratos by this means wins over the girl's fiercely protective brother who had been convinced he was up to no good. Sostratos' oath, we know, was volunteered; Moschion's, which is only reported, not enacted (it occurred some months before the action of the play begins), may have been volunteered or may have been demanded by Plangon's sceptical mother.²⁷ All this, however, is not really inconsistent with the suspicious attitude evident in Theophrastus. Both Sostratos and Moschion swear because they perceive that their interlocutors have good reason to mistrust them, and they must dispel this mistrust if they are to achieve what their hearts are set on. And neither can be accused of seeking material gain. Both their families are much richer than the families of their prospective brides; moreover, Sostratos has already made it explicit (*Dyskolos* 308) that he expects no dowry, and Moschion is in no position to insist on one anyway.²⁸

It appears, therefore, that by the end of the fourth century there was a fairly widespread view that oaths, at any rate formal oaths, should be taken only when necessary – when they were imposed by authority, or when the circumstances were such that even an honest man would probably be disbelieved if he did not swear. But we should reflect that any serious-minded person would *always* have taken that attitude: it was absurd to call down divine wrath on oneself, even conditionally, for no compelling reason. What is new in the fourth century, then, is not so much the attitude itself as its explicit articulation and, from one or two authors, an attempt to extend it further. Meanwhile, public authorities, including the upstart kingdoms of the Hellenistic world (which badly needed to assure themselves of the loyalty of their heterogeneous subjects and soldiers), went on exacting oaths as they always had done; and ordinary people carried on swearing, informally and on occasion formally, also as they always had done.

²⁷ Plangon was pregnant, having been raped by Moschion; her mother might reasonably have suspected that his promise of marriage was only a ploy to avoid prosecution, particularly since it could not be fulfilled immediately (Plangon's father was abroad on business) and Moschion could at any time make himself scarce (for example by taking service as a mercenary soldier – as he actually pretends to do in the play's fifth act).

²⁸ Nor does either, in the end, *get* a dowry. At Moschion's betrothal ceremony, Plangon's father, Nikeratos, declares her dowry to be "all my property – when I die – which I pray may never happen" (*Samia* 727–8)! Sostratos' new brother-in-law, Gorgias, having been given charge of the property of his stepfather (now adoptive father) Knemon, does offer a dowry of one talent with his sister (*Dyskolos* 844–5) – not a large one, by New Comedy's standards – but Sostratos' father Kallippides refuses it (845–7) even though he has just given Gorgias his own daughter with a dowry three times as large; Sostratos himself presumably approves this, since a short time previously (797–812) he gave his father a lecture on the unimportance of material wealth.