

# HYPERIDES AND THE TRIAL OF PHRYNE

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LITTLE HAS BEEN DONE in the way of evaluating the lives of the ancient orators. In the case of the ancient poets scholars like M. Lefkowitz<sup>1</sup> and J. Fairweather<sup>2</sup> have conclusively demonstrated that their lives often contain details simply inferred by biographers from the text of their poetry. Although the line between fact and fiction is not always easily drawn, many of the anecdotes told by biographers about ancient writers seem to have been fabricated from references in their writings.<sup>3</sup> In the lives of the ancient orators, by contrast, the same line of demarcation is far more difficult to draw, since, unlike the writings of poets or philosophers, their speeches were partly biographical and autobiographical through the many references to themselves and their opponents. When this evidence concerned public affairs, it could be combined with other testimony, particularly that of

I would like to thank Phillip Harding and Robert Todd for reading various drafts of this paper and the anonymous referees for their thoughtful criticisms and suggestions. The following works are cited by the author or short title (where specified): K. M. T. Atkinson, "Demosthenes, Alexander, and Asebeia," *Athenaeum* 51 (1973) 310-335. L. Cantarelli, "Osservazioni sul processo di Frine," *RIFC* 13 (1885) 465-482; G. Kowalski, "De Phrynes Pectore Nudato," *Eos* 42 (1947) 50-62; D. M. MacDowell, *The Law in Classical Athens* (Ithaca 1978); M. Montouri, *Socrates: An Approach* (Amsterdam 1988). A. E. Raubitschek, "Phryne," *RE* 20.1 (1941) 893-907; A. Semenov, "Hypereides und Phryne," *Klio* 28 (1935) 271-279. The fragments of Hyperides are taken from C. Jensen's Teubner edition: *Hyperidis Orationes* (Stuttgart 1963); those of Hermippus from F. Wehrli, *Hermippos der Kallimacheer: Die Schule des Aristoteles* Suppl. 1 (Basel and Stuttgart 1974) and those of Idomeneus of Lampsacus from F. Jacoby, *FGrHist* 338 3 B. Any references to the minor biographies of the orators come from A. Westermann, *Biographi Graeci Minores* (Braunschweig 1845, repr. Amsterdam 1964) = *BMG*. Unless otherwise specified, citations of Athenaeus, ps.-Plutarch, Aeschines and Alciphron are all from the Teubner editions: *Athenaei Dipnosophistae* 3, ed. G. Kaibel (Stuttgart 1962), *Plutarchi Moralia* 5.2.1, ed. J. Mau (Leipzig 1971), *Aeschinis Orationes*, ed. F. Blass (Stuttgart 1978), *Alciphronis Rhetoris Epistularum Libri* 4, ed. M. A. Schepens (Stuttgart 1969). Translations are from the Loeb.

<sup>1</sup>M. Lefkowitz, "Fictions in Literary Biography: the New Poem and the Archilochus Legend," *Arethusa* 9 (1976) 181-189; "Poet as Hero: Fifth-Century Autobiography and Subsequent Biographical Fiction," *CQ NS* 28 (1978) 459-469; "The Euripides' Vita," *GRBS* 20 (1979) 187-210; "Autobiographical Fiction in Pindar," *HSCP* 84 (1980) 29-49; *The Lives of the Greek Poets* (London 1981).

<sup>2</sup>J. Fairweather, "Traditional Narrative, Inference and Truth in the Lives of Greek Poets," *Papers of the Liverpool Latin Seminar* 4 (1983) 315-369.

<sup>3</sup>For example see J. Fairweather, "The Death of Heraclitus," *GRBS* 14 (1973) 233-239. For a more general discussion see her article, "Fiction in the Biographies of Ancient Writers," *Ancient Society* 5 (1974) 238-242.

historians. But when it concerned personal matters, biographers usually had to rely on the orators' own words, and these regularly distorted the truth about their opponents, and sometimes about themselves. Thus, for example, several lives of Aeschines repeat Demosthenes' insinuations (*De Cor.* 129) that Aeschines' father was once a slave named Tromes and his mother an hetaira named Empousa.<sup>4</sup> Biographers either failed to recognize, or chose to ignore, Demosthenes' invective. That Aeschines was the son of a slave and a prostitute became part of the biographical fiction of that orator that was only rarely questioned by later biographers. In this particular case the fiction and the source of it, Demosthenes' speech, are easily identified. But there are other examples to be found in the lives of the orators, especially anecdotes, containing much that is of doubtful historicity. One such example is Hyperides' defence of the hetaira Phryne, which emerged as the most celebrated event of his *bios*.

The incident itself is described by Athenaeus (13.590d-e) and more briefly by ps.-Plutarch (*X Orat.* 849d-e). Both versions ultimately derive from the third-century biographer Hermippus (ca 200 B.C.),<sup>5</sup> who adapted the story from Idomeneus of Lampsacus (ca 300 B.C.).<sup>6</sup> In both cases it is reported in the context of a longer discussion of Hyperides' love affairs. Athenaeus' account runs as follows:

Hyperides the orator, after casting away his son Glaucippus from the ancestral home, took up with Myrrhine, the most costly of all prostitutes, and kept her in Athens, while in the Peiraeus he kept Aristagora, and in Eleusis Phila, whom he purchased for a very large sum of money and kept as a freed-woman, as Idomeneus records. In his speech, also, *In Defence of Phryne*, he confesses that he was in love with the woman and had not even then ceased from his passion when he brought the aforesaid Myrrhine into his house.

Now Phryne came from Thespieae. When she was brought to trial by Euthias on a capital charge, she was acquitted. This so enraged Euthias that he never afterwards pleaded another case at law, according to Hermippus. As Hyperides, while defending Phryne, was making no progress in his plea, and it became apparent that the judges meant to condemn her, he caused her to be brought where all could see, and tearing off her undervests he laid bare her bosom and broke into such piteous lamentation in his peroration at the sight of her, that he caused the judges to feel superstitious fear of this handmaid and ministrant of Aphrodite, and indulging their feeling of compassion they refrained from putting her to death. And after she was acquitted a decree was passed that no person

<sup>4</sup>BGM 265.2; 268.1; 270.10. See Fairweather, "Fiction" (above, n. 3) 237. On the unreliability of the orators as sources see P. Harding, "Rhetoric and Politics in Fourth-Century Athens," *Phoenix* 41 (1987) 25-39; E. M. Harris, "Demosthenes' Speech Against Meidias," *HSCP* 92 (1989) 117-136; I. Worthington, "Greek Oratory, Revision of Speeches and the Problem of Historical Reliability," *ClMed* 42 (1991) 55-74.

<sup>5</sup>For Hermippus' dates see Wehrli 7-8.

<sup>6</sup>For Idomeneus' dates see below, n. 31.

speaking in a defendant's behalf should indulge in lamentation, nor should the accused man or woman on trial be bared for all to see.

Now ps.-Plutarch's version:

He was also very prone to sexual indulgence, so that he turned his son out of the house and brought in Myrrhine, the most expensive prostitute, kept Aristagora in Peiraeus, and at his own estate in Eleusis kept the Theban girl Phila, whom he had ransomed for twenty minas. He used to walk in the fish market every day. And, as it is indeed reasonable to suppose, it was because he had been intimate also with Phryne the courtesan that when she was on trial for impiety he became her advocate; for he makes this plain himself at the beginning of his speech. And when she was likely to be found guilty, he led the woman out into the middle of the court and, tearing off her clothes, displayed her breasts. When the judges saw her beauty, she was acquitted.<sup>7</sup>

As we shall see, these stories of the trial have all the hallmarks of being a biographical fiction in which two rival orators fight over a famous hetaira. On the one hand, Euthias is presented by biographers as the scorned and rejected lover, who gets his revenge by prosecuting his former mistress for impiety. On the other hand, Hyperides is presented as the philanderer, who comes to Phryne's rescue by defending her in court. Much of this fiction has, however, simply been inferred from the text of Hyperides' speech *περὶ Φρόνης*.<sup>8</sup> This is also true of the incident that is reported to have happened during the delivery of his peroration: namely, the disrobing of Phryne before the jury. The notoriety of this particular event made the trial so famous that it even emerged as a favourite *topos* in works of rhetoric, although it too was fabricated from precisely the same source, the *περὶ Φρόνης*, like the rest of the account of Hyperides' relationship with Phryne.

Unfortunately, most scholars have accepted the veracity of these accounts, and have concentrated on trying to establish what charges Euthias could have raised against a common prostitute, such as Phryne.<sup>9</sup> Nothing

<sup>7</sup>The correspondence between the passages in ps.-Plutarch and Athenaeus is such that there can be no doubt that the author of ps.-Plutarch has also drawn on Hermippus as his source. Whereas Athenaeus expressly cites the biographer by name, ps.-Plutarch mentions the orator's daily strolls to the fish market, something also mentioned by Hermippus in his life of Hyperides (F 68aII = Ath. 8.342c). What we have here are two different extracts from the same section of Hermippus' biography.

<sup>8</sup>The speech was regarded by some ancient critics as an exceptional piece of oratory, worth emulating and imitating. Quintilian (10.5.3) reports how the great Roman orator Messala Corvinus translated the speech into Latin, without losing the subtlety and delicacy of the Greek. Ps.-Longinus (*De subl.* 34.2–3) calls the *περὶ Φρόνης* a *λογίδιον* that was beyond even the skill of Demosthenes.

<sup>9</sup>See Cantarelli 465–482; Semenov 271–279; Kowalski 50–62; Raubitschek 893–907; P. Foucart, "L'Accusation contre Phryne," *RPhil* 26 (1902) 216–218. Reportedly (ps.-Plut. 849e), the charge was impiety (*ἀσέβεια*), though there were more specific accusa-

has been said of the political implications of the trial,<sup>10</sup> and the explanations

tions. In an anonymous rhetorical work entitled *Τέχνη τοῦ πολιτικοῦ λόγου* (1.390 Spengel) there is preserved a fragment from the end of Euthias' speech, where he summarized the charges against Phryne: revelling shamelessly in the Lyceum, introducing a new divinity, and forming illicit *thiasoi* of men and women. The god whose cult she reportedly introduced was Isodaïtes, a foreign divinity associated with Pluto (Hesychius s.v. *Ἰσοδαΐτης*) or Dionysus (Plutarch *Mor.* 389a). It was a mystery cult into which both men and women were initiated, and according to Harpocration (s.v. *Ἰσοδαΐτης*; F 177 Jensen), particularly women of ill-repute. Cf. FF 174–175 Jensen, Cantarelli 479, and P. Foucart, *Des Associations religieuses chez les Grecs: Thiasés, Éranes, Orgéons* (Paris 1873) 82. Past debate has centered on the question whether Athens had a precise law forbidding the introduction of foreign cults and specifying death as the penalty. Foucart (*Associations* 127–137) is the chief advocate of this view, but his arguments are refuted by Cantarelli. The literary evidence (Josephus *Ap.* 2.37) for the existence of such a law is late and any inscriptional evidence (*IG* II<sup>2</sup> 337) offered by Foucart simply addressed the problem of *ἐγκλησις* and did not concern the introduction of a foreign cult. By contrast, Atkinson (310–335) argues that the laws of Athens recognized and formally maintained the worship of certain ancient gods but denied admittance of any additional ones. She suggests that the law relating to impiety was closely connected with "recognizing the gods which the city recognizes," that is, those gods by which Athenian magistrates, jurors, and private citizens publicly swore. Although Athenaeus (13.590e) mentions that Phryne was up on a capital charge (τὴν ἐπὶ θανάτῳ) the example of Socrates suggests, unless of course the law had changed since 399, that the charge of impiety was an *ὄρων τιμῆτός* in which the penalty was not prescribed by law but was determined by a second vote. See MacDowell 202 and T. C. Brickhouse and N. D. Smith, *Socrates on Trial* (Princeton 1989) 27. The charge of introducing a new divinity had probably become nothing more than the standard accusation raised against anyone on trial for impiety. The three charges against Phryne should be regarded as closely related, in that she was charged with *asebeia* not simply because she propagated a foreign cult but because under the pretext of religion she had engaged in certain illicit and criminal activities. Again the case of Socrates is illuminating. He was accused both of introducing a new divinity and of corrupting the youth (Plato *Ap.* 24b; Xen. *Ap.* 10, *Mem.* 1.1; Diog. Laert. 2.40; Brickhouse and Smith 30–37; Atkinson 318–319). According to the writer of our anonymous rhetorical work, Phryne's illicit activities took place in the Lyceum, one of the gymnasia frequented by Athenian youth, and so it is possible that corruption of the youth, a typical charge directed against philosophers, was another accusation against Phryne. Cf. Cantarelli 467–468 and below, with n. 28, on a possible reference to corrupting the youth in a fragment from the *Ephesia* of the comic poet Posidippus, where he gives his own account of Phryne's trial. On trials for *asebeia* see also K. J. Dover, "The Freedom of the Intellectual in Greek Society," in *The Greeks and Their Legacy* (Oxford 1988) 136–158; M. R. Lefkowitz, "Was Euripides an Atheist?," *SIFC* ns 5 (1987) 149–166.

<sup>10</sup>The fact that the charges against Phryne seem more fabricated than real suggests that the trial was politically motivated. There is evidence of hostility between Hyperides and Euthias. In F 176 Hyperides accuses Euthias of being a sycophant, a charge that the biographical tradition connected with Euthias' alleged hiring of Anaximenes of Lamp-sacus, the fourth-century rhetorician, to write his speech (Hermippus F 67: Harpocration s.v. *Εὐθίας*). It is also known (Ath. 13.591e) that Aristogiton delivered a speech against Phryne. He was a political enemy of Hyperides, for after the battle of Chaeronea (338 B.C.) he charged Hyperides under the *γραφὴ παρανόμων*, for illegally introducing a decree

offered of Hyperides' unorthodox action have been, to say the least, unsatisfactory. Semenov,<sup>11</sup> for example, explains the jurors' reaction by claiming that they imagined that they were actually seeing the embodiment of Aphrodite. He draws a parallel with the famous ruse of Peisistratus (Hdt. 1.60), when he paraded Phye in full armour, as if she were Athena herself. Such a dramatic device as disrobing Phryne was consistent, he argues, with the character of Hyperides, who was depicted in the biographical tradition as someone governed by the passions of the moment, who loved the company of disreputable women and spent considerable money on them. But scholars who argue like Semenov fail to realize that the credibility of stories about Hyperides' love-affairs is even itself open to question.

#### I. HYPERIDES AND PHRYNE

In Athenaeus, and again in ps.-Plutarch, the affair and trial of Phryne are mentioned along with other examples of Hyperides' sexual proclivity. All these stories originated with Idomeneus of Lampsacus, who wrote a polemic on the Athenian demagogues.<sup>12</sup> According to Idomeneus (F 14 = Ath. 13.590c-d), Hyperides had kept Myrrhine, Aristagora, and Phila as his mistresses at various locations throughout Attica, and even went so far as to remove his own son Glaucippus from his ancestral home so as to cohabit with Myrrhine, the most expensive hetaira of the day. The archetype for such behaviour was Pericles himself. He was said to have dismissed his wife from his house to live a life of pleasure with Aspasia, upon whom he squandered the greater part of his wealth.<sup>13</sup> Like his famous predecessor, the orator was also accused of squandering his money on such women. This explains why Idomeneus included such pointed details as that Myrrhine was ἡ πολυτελεστάτη ἑταίρα, or that Phila was purchased with a large sum of money (πολλῶν ὀνησάμενος χρημάτων). Even his conduct at Phryne's trial, as we shall see, recalls the way that Pericles reportedly behaved at the trial of Aspasia (Ath. 13.589e; Plut. *Per.* 32.3). The parallels at once suggest that Hyperides was simply being characterized as sexually unbridled according to the traditional image of the demagogue touted in

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granting citizenship to metics and manumission to slaves (FF 27-39; ps.-Plut. 849a). The trial of Phryne can perhaps be dated around the same period. Raubitschek (904) places the trial sometime between 350 and 340 on the assumption that, if Anaximenes composed Euthias' speech, his appointment to the Macedonian court before Aristotle places the trial shortly after 350.

<sup>11</sup>Semenov 278-279.

<sup>12</sup>*FGrHist* 338 FF 1-15. The title of the work has been restored by Jacoby (F 2) to read Περὶ τῶν Ἀθήνησιν Δημαγωγῶν.

<sup>13</sup>Ath. 12.532f: Idomeneus relied here on the authority of Heraclides Ponticus.

polemics by Idomeneus and others.<sup>14</sup> Indeed, in the parallel passage of ps.-Plutarch (849d), the reports of Hyperides' sexual liaisons that are attributed to Idomeneus by Athenaeus are prefaced by the comment that the orator was πρὸς τὰ ἀφροδίσια καταφερής.

We can understand Idomeneus' method by comparing his treatment of Demosthenes (F 12), whom, like Hyperides, he accused of being ἀκόλαστος περὶ τὰ ἀφροδίσια. His account is again preserved by Athenaeus, who notes that after charging Demosthenes with being sexually unbridled, Idomeneus described how the orator became so enamoured with the young Aristarchus, that he got into a drunken brawl with a Nicodemus whose eyes he gouged out.<sup>15</sup> This anecdote was, however, derived from Aeschines 1.171 (cf. 2.148, 166; Din. 1.30; Dem. 21.104). There it is claimed that Demosthenes, after squandering his own patrimony, scoured the city for a youth whose father was dead and whose mother was administering the estate. He found one in the unsuspecting Aristarchus. According to Aeschines, Demosthenes pretended to be his lover only to get his hands on the money. While under Demosthenes' tutelage, Aristarchus murdered Nicodemus, gouging out his eyes and cutting off his tongue. The affair with Aristarchus, which Aeschines describes simply as mere pretence ('Αρίσταρχος ὁ τοῦ Μόσχου, τούτου προσποιησάμενος ἐραστής εἶναι),<sup>16</sup> Idomeneus has taken to be real; and Nicodemus' murder and the gouging out of his eyes, which was clearly the work of Aristarchus, he has made the result of a lovers' quarrel between Demosthenes and Nicodemus.<sup>17</sup>

<sup>14</sup>Stesimbrotus in his work *On Themistocles, Thucydides and Pericles* noted how Pericles was so prone to sexual excess that he even consorted with his son's wife (*FGrHist* 107 F 10a); Antisthenes, probably in his *Politikos Logos*, which was a scathing attack on all Athenian demagogues (Ath. 12.522d), described Pericles' liaison with Aspasia and his illicit affair with Elpinice which he demanded as the price of Cimon's recall from exile (Ath. 13.589e-f). Theopompus dealt with Cimon's recall (*FGrHist* 115 F 88) and may have included some of the more sordid details already found in Stesimbrotus and Antisthenes. He certainly had characterized other Athenian demagogues along these lines. Callistratus was said to have been πρὸς τὰς ἡδονὰς ἀκρατής (F 97: Ath. 4.166e); Eubulus was an ἄσωτος, who even outdid the extravagance of the Tarentines (F 100: Ath. 4.166d-e).

<sup>15</sup>Ath. 13.592f: ἀκόλαστος δ' ἦν ὁ ῥήτωρ περὶ τὰ ἀφροδίσια, ὥς φησιν Ἰδομενεύς (*FGrHist* 338 F 12). 'Αριστάρχου γοῦν τινος ἐρασθεὶς μειρακίου καὶ δι' αὐτὸν παροινήσας εἰς Νικόδημον ἐξέκοπεν αὐτοῦ τοὺς ὀφθαλμούς. παραδέδοται δὲ καὶ περὶ θῶα καὶ περὶ νέους καὶ περὶ γυναῖκας πολυτελής.

<sup>16</sup>Cf. Aesch. 2.166: οὐκ αἰσχυνθεὶς τὴν φήμην ἦν προσποιήσω, ζηλωτὴς εἶναι τῆς ἡλικίας τοῦ μειρακίου. οὐ γὰρ δὴ τῇ γε ἀληθείᾳ.

<sup>17</sup>The same sort of distortion is apparent in the Cnasion-story, which comes at the end of F 12. Aeschines (2.149) only briefly alludes to it, but Idomeneus has turned the story into a replica of the gossip of Euripides and Cephisophon, whereby Demosthenes becomes the traditional cuckold; see Satyrus βίος Εὐρυπίδου fr. 39 col. 12-13; *BMG* 136.60; scholia ad Aesch. 2.149. At the beginning of F 12 Athenaeus also reports the story that Demosthenes had children by an hetaira. This, we are told, was inferred from the fact

In Idomeneus' account of Phryne's trial it also seems to have been a lovers' quarrel between Euthias and Hyperides that motivated the prosecution. That at least is how it appears in the later biographical tradition. But this fiction, like the affair with Aristarchus, was only loosely based on what was said in an orator's speech. After citing Idomeneus for reports about Myrrhine, Aristagora, and Phila, Athenaeus (13.590d) goes on to describe the affair and trial of Phryne: . . . ὕστερον δὲ καὶ οἰκουρὸν αὐτὴν (Φίλαν) ἐποίησατο, ὡς Ἰδομενεὺς ἱστορεῖ. ἐν δὲ τῷ ὑπὲρ Φρύνης λόγῳ Ὑπερείδης ὁμολογῶν ἔρᾶν τῆς γυναικὸς καὶ οὐδέπω τοῦ ἔρωτος ἀπηλλαγμένος τὴν προειρημένην Μυρρίνην εἰς τὴν οἰκίαν εἰσήγαγεν. He makes clear that the only basis for assuming that an illicit liaison had existed between the orator and the hetaira was the text of the ὑπὲρ Φρύνης. A comparison with the parallel passage in ps.-Plutarch (849e) reveals that the inference was based on what Hyperides had said at the beginning of his speech: ὠμιλῆκώς δὲ καὶ Φρόνη τῇ ἐταίρᾳ ἀσεβεῖν κρινομένη συνεζητάσθη· αὐτὸς γὰρ τοῦτο ἐν ἀρχῇ τοῦ λόγου δηλοῖ.<sup>18</sup> Two fragments are assigned by Jensen to the introduction of the speech. Fragment 171 is of little value, since Pollux, its source, does not specify the speech from which his excerpt comes and, furthermore, the attribution by Jensen to the ὑπὲρ Φρύνης is mere conjecture based on what Athenaeus and ps.-Plutarch tell us.<sup>19</sup> But fragment 172 is more illuminating. The text, taken from Syrianus on Hermogenes (*Ad Herm.* 4.120 Walz), reads as follows: "And again Hyperides in the ὑπὲρ Φρύνης: Although identifying himself and Euthias as both having been intimate with Phryne, he finds some difference to avoid the identification saying: (*And these are Hyperides' actual words.*) 'for it is not the same thing for one to try to save her by every possible means and for the other to destroy her (οὐ γὰρ ὁμοῖόν ἐστι τὸν μὲν ὅπως σωθήσεται ἐκ παντὸς τρόπου ζητεῖν, τὸν δὲ ὅπως ἀπολέσει).'"

that Demosthenes failed during the delivery of his speech at the Harpalus defence (περὶ Χρυσίου) to produce his wife, even though it was customary to do so, when a defendant brought his children forward to arouse the jury's sympathy: αὐτὸς γοῦν ἐν τῷ περὶ Χρυσίου λόγῳ προαγίσχε τὰ τέκνα ἐπὶ τὸ δικαστήριον ὡς δι' ἐκείνων ἔλεον ἔξω χωρὶς τῆς μητρός, καίτοι ἔθος ἔχονταν τῶν κρινομένων τὰς γυναῖκας ἐπάγεσθαι. At some point in the speech Demosthenes had reportedly referred to the pitiful sight of his children, and this became the basis of Idomeneus' insinuation.

<sup>18</sup>This is the reading given by Jensen (xxix-xxx; F 171). The Loeb edition (*Plutarch's Moralia* 10, ed. H. N. Fowler) reads: ὠμληκῶς δέ, ὡς εἰκός, δὴ, καὶ Φρόνη τῇ ἐταίρᾳ ἀσεβεῖν κρινομένη συνεστάθη· αὐτὸς γὰρ τοῦτο ἐν ἀρχῇ τοῦ λόγου δηλοῖ, whereas Mau's edition reads: <καὶ> δὴ καὶ [δίκη] Φρόνη τῇ ἐταίρᾳ ἀσεβεῖν κρινομένη συνεζητάσθη· αὐτὸς γὰρ τοῦτο ἐν ἀρχῇ τοῦ λόγου δηλοῖ. The codices give ὡς εἰκός, δὲ καὶ δίκη which was corrected to ὠμληκῶς δὲ καὶ by Reiske and Bucheler. Given what Athenaeus tells us, the original text of ps.-Plutarch must have contained a reference to Hyperides' intimacy with Phryne and not just the simple assertion that he was a fellow advocate.

<sup>19</sup>F 171: διελέχθη αὐτῇ καὶ διειλεγμένους εἰμὶ (*de concubitu*) ὡς Ὑπερ (Pollux 5.93). Ὑπ. δὲ διειλεγμένος ἐπὶ ἀφροδισίων (Pollux 2.124).

Syrianus' words imply that it was from this statement alone that biographers had inferred that Hyperides had been intimate with Phryne. But it is not entirely certain that Hyperides himself had meant this. The statement is not very explicit and, as we shall see, in its original context was intended only to ridicule Euthias, not to suggest any intimacy with the hetaira on his part. Idomeneus, who appears from the passage in Athenaeus to have been the first to make the inference, had probably misunderstood or misrepresented what Hyperides actually said, as he had in the case of Aeschines' words about Demosthenes' affair with Aristarchus, and had on that basis alleged an affair between Phryne and Hyperides as further evidence of the orator's sexual excesses. But once the suggestion had been made that the two were lovers, it became a permanent fixture of this orator's biographical tradition.

A sample of that tradition is preserved by Alciphron (A.D. 300), the author of fictional letters supposedly written between fourth-century hetairai and their lovers. Here (*Ep.* 4.4 and 5) Euthias is presented as the scorned lover who took Phryne to court to avenge himself on his former mistress, while Hyperides is the new lover who championed her cause. Some of the words attributed to the characters of these letters were actually derived from Hyperides' speech,<sup>20</sup> and from them it is possible to reconstruct the original context of fragment 172, the source of the biographical inference that Hyperides and Phryne were intimate. So, for example, in letter 3, when Bacchis complains to the orator that hetairai like herself will have to give up their profession, since every time they ask for money they are charged with impiety (εἰ γὰρ αἰτοῦσαι παρὰ τῶν ἐραστῶν ἀργύριον οὐ τυγχάνομεν ἢ τοῖς διδοῦσιν [αἱ] τυγχάνουσαι ἀσεβείας κριθησόμεθα, πεπαῦσθαι κρεῖττον ἡμῖν τοῦ βίου τούτου καὶ μηκέτι ἔχειν πράγματα μηδὲ τοῖς ὁμιλοῦσι παρέχειν . . .), her words were almost certainly derived from a similar statement in which Hyperides ridiculed Euthias for the triviality of his charge, ridicule for which he was famous in antiquity (Longinus *De subl.* 32). Similarly in letter 5, Bacchis' caution to Myrrhine not to ask her new found lover Euthias for any money, unless she wanted to be charged with setting fire to the shipyards and subverting the laws (αἰτησὼν τι παρ' αὐτοῦ, καὶ ὧσε σεαυτὴν ἢ τὰ νεώρια ἐμπερηκυῖαν ἢ τοὺς νόμους καταλύουσιν. ἴσθι γοῦν ὅτι παρὰ πάσαις ἡμῖν ταῖς τὴν φιланθρωποτέραν Ἀφροδίτην προτιμῶσαις μεμίσησαι), was again derived from similar words in Hyperides' own speech. In fact, both Jensen and Kenyon (*OCT*) in their editions included them as fragment 179 of the speech.

Now this association of sex and shipyards is provocative. Burning shipyards was, of course, an act of treason for which the proper prosecution

<sup>20</sup>Raubitschek (904) argues from the references to the trial in these letters that the real ground for the charge was the material demand of Phryne on Euthias, which the latter refused and to avenge himself on Phryne brought a charge of impiety against her.



was *eisangelia*.<sup>21</sup> But Hyperides seems to have used the law in more than one context as a rhetorical device, to point out the absurdity of a charge brought against his client. Thus he has Lycophron (2 F 3.28), who was charged with treason for allegedly committing adultery, quote from the law of *eisangelia* to show the illegality of being charged with adultery under the law of treason. It is one thing to seduce a neighbour's wife, quite another to betray the dockyards, burn public buildings, and seize the acropolis. The same pointed ridicule appears at the beginning of *On Behalf of Euxenippus* (3.1–2), where Hyperides asks the jury whether they are not weary of such *eisangeliai*.<sup>22</sup> In earlier times it was men like Timomachus, Leosthenes, Callistratus and others who were impeached, some accused of betraying ships, others of betraying cities. But only extreme acts of injustice then led to the charge of treason, whereas now the practice has reached the absurd, situations in which Diognides and Antidorus are charged with treason for hiring flute-girls at too high a price, or Euxenippus because he had a dream.

Similar ridicule was probably directed against Euthias at the beginning of the speech in defence of Phryne. Here Hyperides surely first insinuated that Euthias was once Phryne's lover, and then probably mocked him for bringing his former mistress to court on a charge of impiety and treason, because she scorned him, when he refused to pay her fee.<sup>23</sup> Treason, by

<sup>21</sup>The connection with subverting the laws clearly suggests the law of treason. The most complete references to the *nomos eisangeltikos* (Hyperides 3.8; Lex. Cant. s.v. *εἰσαγγελία*; Pollux 8.52) refer to subversion of the demos and betrayal of ships, infantry, and naval forces, but not of dockyards. Elsewhere, however, Hyperides (2 F 3) speaks of betraying dockyards (*νεωρίων προδοσία*) and burning public buildings (*ἀρχαίων ἔμπρησμός*). Thus "burning shipyards" could easily be construed as treason under the category either of betraying ships or of burning public buildings. Demosthenes 18.132–133 tells how Antiphon attempted to burn the dockyards for Philip but was caught. He was indicted by the Areopagus under the procedure of *apophasis*, an extension of *eisangelia*. See M. Hansen, *Eisangelia* (Odense 1975) 12–20, 39–40.

<sup>22</sup>Hyperides quotes sections of the law of treason at 3.8, 29, 39. The offences listed include subverting the demos, forming political societies, betraying city, ships, land, or naval forces; and being a rhetor, who accepts bribes to speak contrary to the best interests of the demos.

<sup>23</sup>There is the problem of whether Phryne was charged under a *γραφὴ ἀσεβείας* or *εἰσαγγελία*. The fact that Hyperides seems to quote from the law of treason suggests that Euthias adopted the latter procedure. In the fifth century, at least, it was used in cases of impiety. The procedure against the profaners of the Mysteries in 415 was an *eisangelia* (Andoc. 1.11–12; Plut. *Alcib.* 22.4), which was also the procedure laid out in the decree of Diopieithes on atheism (Plut. *Per.* 32.2). It is thought that this decree introduced the procedure of *eisangelia* into trials of *asebeia*. See Montouri 171, n. 86. The problem is whether, after the introduction of the *nomos eisangeltikos* restricting the offences to those listed by Hyperides (subversion, betrayal, corruption), *asebeia* could still be introduced by the procedure of *eisangelia*. See MacDowell 199. The cases of Euxenippus and Lycophron indicate that the terms of reference in the law were often interpreted so broadly that they could be applied even to the most trivial of offences; cf. P. J. Rhodes, "ΕΙΣΑΓΓΕΛΙΑ in Athens," *JHS* (1979) 103–114, at 107–108; R. J. Bonner and G.

contrast, was reserved for serious charges like setting fire to shipyards or subverting laws. Fragment 172 must therefore be understood in this context: "it is not the same thing to try to save her by every possible means and to destroy her (by every possible means)," in other words by these trumped up charges. The whole thought is a *reductio ad absurdum*, but Idomeneus, later followed by other ancient biographers, misunderstood the original intent of Hyperides' words and saw in fragment 172 a reference to his intimacy with the hetaira. Hyperides' insinuations were taken too literally, and used to create an entire biographical fiction in which Euthias and Hyperides are presented as rival lovers of Phryne.

## II. THE DISROBING

When we turn to descriptions of the trial, we are again faced with the same kind of false inferences. After mentioning the affair with Phryne, Athenaeus proceeds to describe the trial and Hyperides' famous stratagem of disrobing Phryne before the jury during his peroration. Like Hyperides' alleged affair with Phryne, the disrobing scene was based on what Hyperides himself had said. There is no indication that any contemporary account of the trial existed to inform biographers of what happened, and so this could only be inferred from the text of his speech. The disrobing is probably based on a passage found in the peroration, in which the orator described his client being brought before the jurors with her gown torn, striking her breasts in the fashion of a tragic figure led off to her death.<sup>24</sup> The scene would invoke images of a *kommós* of Attic tragedy, in which actor and chorus lament the fate of the victim.<sup>25</sup> Such displays to arouse the pity of the jury were certainly not beyond Hyperides. The author of *On the Sublime* (34.2–3) reports that he could evoke pity and tell a story fluently. At the end of his speech *On Behalf of Euxenippus* (3.41), Hyperides remarks that he has done all he could to help; it now remained for his client to beseech the jurors (δεῖσθαι τῶν δικαστῶν) and to summon his friends and children (τοὺς φίλους παρακαλεῖν καὶ τὰ παῖδιά ἀναβιβάζεσθαι).<sup>26</sup> His defence

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Smith, *The Administration of Justice from Homer to Aristotle* 1 (New York 1968) 296. Like Lycophron's alleged adultery, Phryne's impiety could have been presented by the prosecution as subversion of the *demos*. Hyperides' defence was based on the argument that the charges against Phryne could not be construed as acts of treason. On the problem of whether the procedure of *eisangelia* was open to unusual and serious offences (ἐπὶ τῶν ἀγράφων δημοσίων ἀδικημάτων: Pollux 8.51; κατὰ καινῶν καὶ ἀγράφων ἀδικημάτων Lex. Cant. s.v. εἰσαγγελία) not listed in the law, see Hansen (above, n. 21) 12–20; MacDowell 184–186; Bonner and Smith 294–295, 305–306; Rhodes 107–108. On the use of the γραφή ἀσεβείας as a vehicle for charging those suspected of treason, see Atkinson 325–326.

<sup>24</sup> Kowalski 53.

<sup>25</sup> Aristotle *Poetics* 1452b 12; cf. Soph. *Ant.* 891–928; 937–943.

<sup>26</sup> Socrates' refusal to bring out his wife and children before the jury (Plato *Ap.* 34b7–35b8) is evidence of how common the practice had become in his own day. Socrates uses

of Phryne may have concluded with a similar plea of supplication that included a vivid description of his dejected client, a rhetorical technique known as *ὑποτύπωσις* or *διατύπωσις*, and one recommended by rhetoricians in the peroration to arouse pity.<sup>27</sup>

One late anonymous rhetorical work indeed describes the scene simply as that, a rhetorical device to arouse pity (*ἐπί τινος ἔλεεινοῦ σχήματος*), on a par with introducing women and children into court. Phryne is significantly described only as tearing her dress and striking her naked breast, actions more befitting a tragic victim than a provocative scene of disrobing: *οὐ γὰρ οὕτως ἡμᾶς ἐκπλήττει τὰ λεγόμενα, ὅσον ἐπ' αὐτῶν τῶν σχημάτων φαινόμενα· τὸν γοῦν Ὑπερίδην φασὶν οὕτω τὸν ὑπὲρ Φρόνης νικήσαι λόγον, ὥς γὰρ ἡττάτω, φησὶν, εἰσήγαγε τὴν ἑταίραν ἐπὶ τινος ἔλεεινοῦ σχήματος, παιομένην τὰ στήθη γυμνά, καὶ τὸν χιτῶνα περιρρήξασαν, καὶ οἱ δικασταὶ πρὸς οἶκτον ἰδόντες ἀπεψηφίσαντο* (7.335 Walz). In another anonymous rhetorical work, which seems to have drawn on the same source, we read how Hyperides secured the acquittal of Phryne "by a speech full of pity and the rending of a garment," a comment which again more aptly describes a scene of supplication and mourning than of disrobing: *καὶ τούτου μαρτύριον Ὑπερίδης ἐν τῷ ὑπὲρ Φρόνης τῆς ἑταίρας λόγῳ ἔλεεινολογίας τε πλήθει καὶ τῇ περιρρήξει τῆς ἐσθῆτος διασώσας ἐκ τῆς Εὐθίου κατηγορίας τὴν ἄνθρωπον* (4.414 Walz). But the expression "rending of the garment," which was possibly lifted right from Hyperides' speech, could easily have suggested disrobing to a biographer. In fact some variation of this exact same phrase appears in several accounts of the scene: *περιρρήξας τοὺς χιτωνίσκους γυμνά τε τὰ στέρνα ποιήσας* (Ath. 13.590e); *περιρρήξας τὴν ἐσθῆτα ἐπέδειξε τὰ στέρνα τῆς γυναικός* (ps.-Plut. *X Orat.* 849e); *τὸν χιτωνίσκον περιρρηξαμένη τὰ μαστάρια τοῖς δικασταῖς ἐπέδειξας* (Alciphron 4.4); *καταρρηξαμένη τοὺς χιτωνίσκους καὶ γυμνοῖς στήθεσι προκυλιν-*

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the language of supplication, when describing this type of action: *ἰκέτευσε τοὺς δικαστὰς μετὰ πολλῶν δακρύων παῖδιά τε αὐτοῦ ἀναβιβασάμενος, ἵνα ὅτι μάλιστα ἔλεηθεῖν, καὶ ἄλλους τῶν οἰκείων καὶ φίλων πολλούς . . .* His language comes close to Hyperides' concluding words in the *Euxenippus*. The orators, at least as early as Lysias, regularly concluded their speeches by "supplicating" (*δέομαι, ἀντιβολέω, ἱκετεύω*) the jury (Lys. 4.20, 6.55, 15.23, 18.27, 21.21, 22.21), at times appealing by their children and relatives (4.20, 18.27, 21.24). The whole purpose of the "supplication," which J. Gould, "Hiketeia," *JHS* 93 (1973) 73–103 at 77, defines as figurative as opposed to ritual supplication, was to evoke the pity (*ἔλεος, ἐλεέω*) of the jury, and Hyperides' action at the conclusion of his defence of Phryne can equally be described as supplication, since his whole purpose in parading her, as one would children and family before the jury, was to arouse their sympathy. This must be what the rhetoricians meant when they described his peroration as a *ἔλεεινολογία*. We may rightly suspect that Hyperides invoked the same figurative language of supplication, which we find used by other orators in their concluding appeals. Hyperides' novelty lay in mixing his metaphors, combining the language of supplication, which he used in his appeal, and that of the *kommos*, which he used specifically to describe Phryne's physical appearance.

<sup>27</sup>Quintilian 9.2.40; Longinus *De subl.* 20.1. See Kowalski 53, 58.

δουμένη τῶν δικαστῶν πλεῖον ἴσχυσε διὰ τὸ κάλλος τοὺς δικαστὰς πείσαι τῆς τοῦ συνηγοροῦντος ῥητορείας (Sext. Emp. 2.4). The consistency with which the same words repeat themselves in every description of the disrobing at least suggests a single biographical source, even if they do not go back to Hyperides.

The earliest known description of the trial is found in the *Ephesia* of Poseidippus, whose comic account is preserved in Athenaeus.<sup>28</sup> The comic poet simply describes Phryne clasp ing the hand of each juror and with tears pleading for her life. The scene is one of supplication,<sup>29</sup> with no mention of disrobing, something that if it had actually happened, would have made good comic material. The only conclusion is that the disrobing scene was a subsequent invention, sometime after 290, when Poseidippus was active as a poet.<sup>30</sup> This was just around the time when Idomeneus was writing.<sup>31</sup>

What evidence there is suggests that the story was current by 270 B.C. A disrobing scene is found in one of the mimes of Herodas. He appears to have been a contemporary of Callimachus, which would put the composition of his mimes in the late 270s or early 260s.<sup>32</sup> In Mime 2 a brothel-keeper (πορνοβοσκός) by the name of Battarus gives a speech which parodies the speeches delivered in the Attic courts. The defendant is a ship-owner named Thales who has been charged with battery against Myrtale, one of Battarus' girls. At one point (2.65–78) the πορνοβοσκός produces the girl before the court and bids the jurors look at her torn dress, and the bruises and scars which she has received at the hands of Thales: δεῦρο, Μυρτάλη, καὶ σύ· / δεῖξον σεαυτὴν πᾶσι· μηδέν· αἰσχύνειν· / νόμιζε τούτου[ς] οὕς ὀρῆις δικάζοντας / πατέρας ἀδελφούς ἐμβλέπειν. ὀρῆτ' ἄνδρες, / τὰ τίλματ' αὐτῆς καὶ κάτωθεν κάνωθεν / ὥς λεῖα

<sup>28</sup> Ath. 13.591f (Kock III 39): Φρόνη ποθ' ἡμῶν γέγονεν ἐπιφανεστάτη· πολλὸν τῶν ἑταίρων. καὶ γὰρ εἰ νεωτέρα/ τῶν τότε χρόνων εἰ, τὸν γ' ἀγῶν' ἀκήκοας· / βλάπτειν δοκοῦσα τοὺς βίους† μείζους βλάβας/ τὴν ἡλκίαν εἶλε περὶ τοῦ σώματος· / καὶ τῶν δικαστῶν καθ' ἓνα δεξιουμένη/ μετὰ δακρύων διέσωσε τὴν ψυχὴν μόλις. The text has been restored to read τοὺς νέους for τοὺς βίους in line four of the fragment, and refers to the charge of corrupting the youth. See Semenov 275.

<sup>29</sup> Besides touching the knees or chin, clasp ing the hand of the supplicated was also part of the supplication ritual undertaken by the suppliant. See Gould (above, n. 26) 76.

<sup>30</sup> He won four victories from 289/8 onwards. See A. Körte, "Poseidippos," *RE* 22.1 (1953) 426–428.

<sup>31</sup> Idomeneus' dates are not entirely certain. He lived sometime between 325 and 270; he studied in his youth under Epicurus, when the latter was staying in Lampsacus between 310 and 307/6 (Diog. Laert. 10.15). After a brief career in politics he returned to philosophy and began writing shortly after 300. For his dates see F. Jacoby, "Idomeneus," *RE* 19.1 (1914) 910; A. Angeli, "Per una ricostruzione della biografia di Idomeneo di Lampsaco (P. Herc. 463 col. ix 1672 coll. x 21–xi 13)," *Proceedings of the 16th International Congress of Papyrology* (Chico 1981) 115–123.

<sup>32</sup> See Pliny *Ep.* 4.3.4; I. C. Cunningham, *Herodas Mimiambi* (Oxford 1971) 2–3, 81, 84–85; J. Nairn, *The Mimes of Herodas* (Oxford 1904) xiii–xv.

ταῦτ' ἐτίλλεν ὠναγῆς οὗτος, / ὅτ' εἴλκεν αὐτὴν κάβιάζερ'. It has been thought that this was a travesty of Hyperides' disrobing of Phryne.<sup>33</sup> But the action of Battarus could in fact be a parody of any display on the part of a battered victim, or even a general, who revealed his wounds and scars to invoke the sympathy of the jurors. The humour lies in the fact that what was revealed by Myrtale was something other than scars.<sup>34</sup> Thus the whole point of the disrobing of Phryne may simply be a burlesque of the standard displays by victims and their advocates in court. Even if the scene in Herodas does intentionally parody the trial of Phryne, it need only suggest that the story of her disrobing was current in the Callimachean period, shortly after Idomeneus wrote.

The evidence, then, indicates that the disrobing scene was invented by Idomeneus, perhaps to parody and ridicule the courtroom displays of Athenian demagogues. Given his fondness for attributing sexual excess to these demagogues, such a provocative act as this certainly fits the character that Hyperides had acquired in Idomeneus' work. That the whole scene has been contrived is further suggested from the fact that Hyperides is even made to imitate Pericles' behaviour at the trial of Aspasia. In his polemic Antisthenes had reported that Pericles would "visit" Aspasia twice a day, and that at her trial he broke down weeping as he defended his mistress on a charge of impiety.<sup>35</sup> This is exactly what is said to have happened to Hyperides as he defended his own mistress on a similar charge of impiety. According to Athenaeus (13.590e), after disrobing Phryne, the orator broke

<sup>33</sup>See W. Headlam, *Herodas* (Cambridge 1922) 92; E. L. Hicks, "Emendations of Herodas," *CR* 5 (1891) 350; Nairn (above, n. 32) 15.

<sup>34</sup>Note Cunningham's translation of verses 68–70 (p. 95): "See, gentlemen, her plucked skin, below and above, how smooth this innocent has plucked it," which brings out the obscene humour in Battarus' remarks. Cf. A. E. Housman, "Herodas II 65–71," *CR* 36 (1922) 109–110.

<sup>35</sup>Ath. 13.589e. Plutarch (*Per.* 32.3) tells the very same story on the authority of Aeschines Socraticus, who wrote a dialogue entitled *Aspasia* (Ath. 5.220b). Antisthenes also wrote an *Aspasia* (Diog. Laert. 6.16), but according to Athenaeus (5.220d) in this dialogue Antisthenes slandered the sons of Pericles, Xanthippus and Paralus. But in his political dialogue he attacked all Athenian demagogues. This seems to be the point behind his description of the trial of Aspasia, to malign Pericles, and this dialogue on the demagogues may be an equally appropriate context for such an account of Pericles' behaviour at the trial. Aspasia was charged with *asebeia* by the comic poet Hermippus, who alleged that she had procured free-born women for Pericles (Plut. *Per.* 32.1). For a detailed discussion of the charges against her, see Montouri 201–207. As Montouri notes (202, n. 10), though it was customary to appear in court with weeping and grieving family and friends, it is hard to imagine Pericles himself acting in this way in court. He believes that this idea derived from the imagination of Aeschines and Antisthenes, who freely altered Pericles' speech in defence of Aspasia. Another possible source for the weeping-in-court incident is comedy. See J. Schwarze, *Die Beurteilung des Perikles durch die attische Komödie und ihre historische und historiographische Bedeutung* (Munich 1971, *Zetemata* 52) 110–112.

down and wept at the sight of her: περιρρήξας τοὺς χιτωνίσκους γυμνά τε τὰ στέρνα ποιήσας τοὺς ἐπιλογικούς οἴκτους ἐκ τῆς ὄψεως αὐτῆς ἐπερρητόρευσεν. As evidence of his behaviour, Athenaeus also mentions a decree which supposedly was passed after Phryne's acquittal forbidding any advocate from indulging in lamentation and forbidding the accused to appear before the jury at the time of voting: καὶ ἀφεθείσης ἐγράφη μετὰ ταῦτα ψήφισμα μηδένα οἰκτιρίζεσθαι τῶν λεγόντων ὑπὲρ τινος μηδὲ βλέπόμενον τὸν κατηγορούμενον ἢ τὴν κατηγορουμένην κρίνεσθαι. The decree is tendentious, since Hyperides' conduct, as the example of Pericles shows, is far too characteristic of the demagogues described in polemics.<sup>36</sup> Both in his sexual excesses and now in his courtroom antics Hyperides is made to conform to an archetypal image of the demagogue. What we have is simply a biographical *topos* that has been transferred from one character to another, and, as such, casts further doubt on details of the trial that have been transmitted into the biographical tradition from Idomeneus.

### III. CONCLUSION

As we have seen, then, there is little in the biographical tradition that inspires confidence. Both the alleged affair between Phryne and Hyperides and the disrobing scene were created on the basis of what Idomeneus had falsely inferred from the text of the ὑπὲρ Φρόνης. Clearly his own attitude to Athenian demagogues prejudiced his treatment. But whatever his motives, the fiction that he created certainly excited the popular imagination. Later biographers, like Hermippus, could not ignore it and incorporated Idomeneus' account into their own *bioi* of the orator. It is, in fact, an extract from Hermippus' own biography, and not from Idomeneus' work, that we find preserved in Athenaeus and again in ps.-Plutarch.<sup>37</sup> Hermippus had thus ensured that the story of Phryne's disrobing became part of the popular tradition about the orator, and this is reflected in the fact that the story later emerged as a favourite *topos* in works on rhetoric. Hermippus also added details to Idomeneus' fiction that gave greater life to the char-

<sup>36</sup>Raubitschek (906-907) believes that the decree is authentic and was introduced by Hyperides himself, something which, however, cannot be verified from the text of Athenaeus. He argues that Idomeneus found this document with Hyperides' name attached to it and that its authenticity need not be doubted since Idomeneus could refer to the fact that the orator himself had secured the acquittal of Phryne ἐλεεινολογίας τε πλήθει καὶ τῇ περιρρήξει τῆς ἐσθῆτος. But this type of argument is double-edged, since the contents of the decree may have been suggested by what was said in the speech. Even if such a decree existed, there is no reference to any form of disrobing; the Greek need only suggest that the accused not be seen at the time of voting, so as to influence the jurors' verdict.

<sup>37</sup>It is assumed by Jacoby (*FGrHist* 338 3B 85; "Idomeneus," *RE* 911) that Idomeneus' work was never used directly after Hermippus wrote.

acters Euthias<sup>38</sup> and Phryne. In the case of the latter she was said to have come ἐκ Θεσπιῶν and at her disrobing the jurors grew superstitious at the sight of the "handmaid and ministrant of Aphrodite." This was a link with the tradition which grew up during the period when Hermippus was writing that Phryne had modelled for Apelles' *Anadyomene* and for Praxiteles' Knidian Aphrodite (Ath. 13.591a).<sup>39</sup> The renown of Phryne's beauty, forcefully suggested by this association with Apelles and Praxiteles, formed an integral part of the story, as it came to be told by rhetoricians.<sup>40</sup> In their examples the stratagem is Phryne's own: she disrobes herself and by her beauty persuades the jury, when the orator's words fail. As the context of the passages in Quintilian and Philodemus shows, the persuasive power of Phryne's beauty was a stock argument against defining rhetoric as simply the art of persuasion.<sup>41</sup> They questioned whether rhetoric could be exclusively defined as πειθοῦς δημιουργὸς διὰ λόγων, when so many other things

<sup>38</sup>He noted that Euthias' speech against Phryne was in fact composed by the rhetorician Anaximenes (F 67: Harpocr. s.v. Εὐθίας), a detail which he perhaps derived from the Periegetes Diodorus, who had noted the very same thing (Ath. 13.591e: *FGrHist* 372 F36). According to Athenaeus (13.590e), Hermippus also told how Euthias became so enraged at the acquittal of Phryne that he gave up the practice of law and never pleaded another case: Ἦν δ' ἡ Φρύνη ἐκ Θεσπιῶν. κρινομένη δὲ ὑπὸ Εὐθίου τὴν ἐπὶ θανάτῳ ἀπέφυγεν· διόπερ ὀργισθεὶς ὁ Εὐθίας οὐκ ἔτι εἶπεν ἄλλην δίκην, ὥς φησιν Ἑρμιππος. This little anecdote was probably based on the fact that no other speech was recorded under Euthias' name in the *Pinakes* of Callimachus.

<sup>39</sup>We know from Athenaeus that Apollodorus in his *περὶ ἑταιρῶν* and Herodicus in his *κωμωδομένων* thought that there were actually two Phrynes, and Herodicus noted that the Phryne who was known to the orators as "Sestus," because she sifted and stripped all who came to her, was distinct from the Thespian Phryne (Ath. 13.591d). The Phryne of Hyperides' speech and the Thespian Phryne may have been two different figures who were later combined into a composite figure, renowned for her beauty, a model for great works of art, and also defended by Hyperides. This composite figure is the Phryne described in the Hellenistic treatises *περὶ τῶν Ἀθήνησιν ἑταιρίδων*, written by such distinguished scholars as Aristophanes of Byzantium and Apollodorus of Athens (Ath. 13.567a). These works recorded the sayings and escapades of famous hetairai. The hetairai are characterized as witty, sophisticated, quick in repartee, and associating with philosophers, poets, and politicians. In adapting Idomeneus' account of the trial Hermippus may well have been influenced by some of these contemporary writers on hetairai. In fact, book 13 of Athenaeus, in which the account of the trial occurs, contains several extracts from such works.

<sup>40</sup>Quintilian 2.15.9, Sext. Emp. *Adv. Math.* 2.4 and Philodemus *Rhet.* 1.20.4. Even in ps.-Plutarch (849e), whose account is based on Hermippus, Phryne's acquittal is also attained through her beauty, a detail that probably reflects the hand of Caecilius, who was a rhetorician and a source of ps.-Plutarch: παραγαγὼν εἰς μέσον καὶ περιρρήξας τὴν ἐσθῆτα ἐπέδειξε τὰ στέρνα τῆς γυναίκος, καὶ τῶν δικαστῶν εἰς τὸ κάλλος ἀπιδόντων ἀφείθη.

<sup>41</sup>This argument seems to be answered by Alciphron *Ep.* 4.4, when Bacchis tells Phryne not to believe those who say that Hyperides could not have won the case without her having disrobed (εἰ μὴ τὸν χιτωνίσκον περιρρηξάμενη τὰ μαστάρια τοῖς δικασταῖς ἐπέδειξας). It was his *συνηγορία*, she says, that made the action appropriate (ἐν καρῷ).

could effect persuasion χωρίς λόγον. As Quintilian notes, “Phryne was saved not by the eloquence of Hyperides, admirable as it was, but by the sight of her exquisite body, which she further revealed by drawing aside her tunic” (2.15.9).

In the end the rhetoricians may have got part of the story right. There are things that have more power to persuade than just rhetoric. As the old adage goes, a picture is worth a thousand words; but it all depends on how one makes use of that visual image, and this is where rhetorical skill is crucial. In the words of the hetaira Bacchis to Phryne: “You must not believe people when they say that Hyperides could not have won the day unless you had torn open your robe and showed the jury your breasts. It was his pleading that made the action appropriate and successful” (Alciphron *Ep.* 4.4). If that action really happened and was not the invention of biographers, as we have suggested, in disrobing Phryne, even if only verbally, Hyperides may have discovered something that was more effective and certainly more dramatic than all his best arguments.

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