



From Murder to Geography:

A Forensic Paradigm of Testimony in Antiphon and
Herodotus

by,

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I, Jurgen Ronald Gatt, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated.

Abstract

One 'principle' of Greek epistemology asserts the superiority of *personal* experience over hearsay. This principle is attested as far back as Homer and right through the revolution of the Sophistic age. It is also attested, if not unproblematically, in the forensic requirement of witnesses to be eyewitness and not to rely on hearsay themselves. And yet, the very prominence of witnesses in forensic proceedings, and in Antiphon's speeches, betrays the existence of another, contrary, attitude to testimony. Under certain conditions, it seems, the words of witnesses may be used to help settle important questions of fact. This very assumption is intrinsic to Aristotle's definition of a forensic witness. The following thesis attempts to reconstruct this positivistic epistemology of testimony from the court speeches of Antiphon. I argue, in sum, that Antiphon uses, and presents, the testimony of witnesses as a heuristic and a demonstrative device. In both cases, this use is underpinned by the oft-defended credibility of the witnesses, in turn defined in terms of two 'criteria', knowledge and truthfulness. In other words, the testimony of a witness demonstrates some fact, and makes it known to others, only if the witness is knowledgeable of the fact of which he testifies and is subjected to some test for truthfulness. Following this, I apply this model of credibility to Herodotus' 'meta-historie' of ἀκοή to show that this model may be profitably used to analyse a number of episodes in the text. I argue that the geographical descriptions of the Nile and of Scythia presupposes an analogous 'epistemology' of testimony and, indeed, put it to good use. We find, then, that the definition of credibility in terms of the witnesses' knowledge serves to make sense of the basic Herodotean distinction between the inhabited world and the deserts which lie beyond.

Impact Statement

Over the previous three decades, there has been a remarkable proliferation of scholarship dealing with the epistemology of testimony. Various epistemologists have now examined testimony as an inference based on other, more basic, forms of knowledge, as an automatic, albeit rational, cognitive activity akin to memory and, more recently, in terms of ‘social epistemology’. Concurrently, and in a disparate field, there has been a general, though by no means universal, tendency to regard formal testimony in Athenian courts as a ‘socio-political’ act dissociated with concerns of credibility and truth. Similarly, a ‘performative’ reading of Herodotus’ engagement with his sources has increasingly downplayed its evidentiary and epistemological roles in his *ιστορίη*. The following thesis is attempt to draw these seemingly diverging trends together, and to reconstruct a non-sceptical epistemology of hearsay which can underpin both the rhetorical function of Antiphon’s witnesses and the performative dimension of Herodotean meta-historie. In both cases, then, I subject a text which is *not* primarily concerned about epistemology – a so-called ‘non-philosophical’ text – to a rigorous analysis for the epistemological assumptions inherent in Antiphon’s ‘use’ of witnesses and Herodotus’ meta-*historie*. In so doing, I hope to daw attention to some of the inherent epistemological problems relating to testimony, as understood by these authors, but also to sketch a cogent, and reasonably well-developed, epistemology of testimony which is no small component of the rhetorical, argumentative, and philosophical revolution of the late 5th century. The following analysis, then, as yet a ‘local hypothesis’ about two contemporary authors, may be generalized and confronted with other texts. These works include the display pieces of Gorgias and, in particular, Palamedes’ defence speech; Lysias 1, 3 *et al.*; the Hippocratic treatise *On the Art*, referred to below, and the many messenger-scenes of Sophocles’ *Women of Trachis*, among others.

To Clio.

Έδιζησάμην έμεωυτόν

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Socrates: How would you block a suit when facing an enemy about to clinch his case, *if* you had no witnesses?

Strepsiades: Why, that's the easiest thing of all!

Socrates: Tell me then.

Strepsiades: Of course! Well, if the case before my own were still pending, then I, before even being summoned to court, would run away and hang myself.¹

Ar. *Nub.* 776ff.

¹ All translations are my own.

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Chapter One.

Introduction

Speak to me now, Muses, who hold Olympian homes, for you are goddesses, and you are and are present and are knowing of all things them (ἔστε πάρεστέ τε ἴστέ τε πάντα), while we rely on the mere rumours which we hear (κλέος οἶον ἀκούομεν), and know nothing (οὐδέ τι ἴδμεν).

Hom. *Il.* 2.484ff.

These lines, the infamous Muse-invocation¹ which introduces the *Catalogue of Ships*, stands as the beginning of all Greek thought about the limitations of ‘rumour’² to produce knowledge.³ Though few would credit Homer with a fully-fledged epistemological position,⁴ it is clear that the opposition drawn here, between the Muse’s sight, implied by her presence,⁵ and the poet’s hearing, is a fundamental distinction which is echoed in many Greek authors of very diverse castes.⁶ It is the relative position of κλέος or, to adopt the more prosaic term, of ἀκοή, to its senior partner, ὄψις, which is the main subject of the following dissertation.

As early as Homer, then, we find that these two epistemic resources, sight and hearsay, are carefully distinguished from one another and arranged hierarchically. The Muse’s (omni)-*presence* – which is a necessary condition even for more mundane witnesses –

¹ The literature relevant to this invocation is vast. On the issues of knowledge see esp. Minton, 1960; Murray, 1981; MacLeod, 1983; Finkelberg, 1990; Ford, 1992.

² On the meaning of κλέος in Homer, see Olsen, 1995.

³ The ‘locus classicus’ in Barnes, 1979, p. 108; Leshner, 2008, p. 459.

⁴ See esp. Leshner, 1981, p. 2ff.; Hussey, 1991, p. 11; Zellner, 1994, p. 309. Barnes, on the other hand, credits Homer with a ‘Lockean scepticism’ which characterizes much of Greek ‘folk epistemology’ (Barnes, 1979, 108).

⁵ The Muse’s sight is underlined by the verb, πάρεστέ, one which can be used, in a participial form, to refer to eyewitnesses (e.g. Antiph. 6.46; cf. Antiph. 6.24, πολλοὶ μάρτυρες παρήσαν).

⁶ E.g. Arist. *Metaph.* 1.980a; Soph. *OT* 704.

grants the goddess knowledge of all things, while 'rumour' yields no knowledge at all. Indeed, some have suspected that the disdain for κλέος which Homer shows here can, in fact, be generalized to something akin to an epistemological principle. Snell¹ and von Fritz,² then, drawing partly on etymology and partly from semantic analysis of the poems themselves, argued that for Homer, knowledge means only one thing, vision. The Muse knows all because she sees all, while man, his eyesight limited by his corporeality and his temporality,³ can only rely on 'hearing'. Yet, as Hussey notes,⁴ the scepticism found in this Muse-invocation must be qualified significantly. The knowledge which the poet attributes to the Muse but not to man is historical knowledge of the deep past and, further, is limited to the identity of the commanders who went to Troy. It concerns, therefore, not only knowledge of past events, but knowledge of an enormous number of names. Moreover, numerous episodes can be found which clearly contradict this general hypothesis. Homeric characters know all sorts of things and, more significantly, can acquire knowledge by means of hearsay.⁵ Hussey proposes, instead, that Homer's scepticism in this passage concerns *that* knowledge for which the poet must rely only on the Muse and which he cannot verify himself.⁶ Quite apart from the inherent implausibility of such verificationism in Homer,⁷ such a reading would seem to miss the central point of the Muse-invocation, namely that it 'works'.⁸ Zellner has also questioned, in a more radical way, any epistemic reading of this Muse-invocation.⁹ These verses, in his opinion, are far better read in light not of an epistemic prejudice, but of a religious one. Just as the gods are stronger and finer than us, so they also know more. And yet, it is surely significant that this traditional piety sought to express itself in a palpably epistemic idiom. The very choice of 'knowledge' as an axis of comparison emphasizes the importance of this descriptor. In other words, it is significant that the gods *know* more than we do. And,

¹ Snell, 1953, p. 136ff.

² von Fritz, 1943, p. 88ff.

³ Lesher, 2009a, p. 19.

⁴ Hussey, 1991, p. 14.

⁵ Lesher, 2009b, p. 460ff.

⁶ Hussey, 1991, p. 15.

⁷ Zellner, 1994, p.311.

⁸ Lesher, 2009a, p. 21ff.

⁹ Zellner, 1994, esp. p. 312ff.

more importantly, Homer emphasizes not merely that the Muse knows more, but also that she knows in a qualitatively different way, by means of ὄψις. And, returning to the same point, it is clear that the divine way of knowing is infinitely better than the human way. Indeed, while the Muse's vision sweeps over all the captains in an instantaneous present tense, as indeed over the rank and file whom Homer cannot even begin to mention, the poet would need an eternity to name them all.¹

Homer, then, appears to embrace a somewhat tragic view,² which holds that men know less than gods and, more importantly, that the human way of knowing the distant past, κλέος, is qualitatively different from and inferior to that of the gods. The crucial point of Homer's 'epistemology', however, is that this distance can be overcome, at least partially and temporarily, by the direct intervention of the Muse. It is only to be expected that with the disappearance of the Muse from prose,³ Homer's tragic vision would harden into a more absolute form of scepticism:

And even if something is known (γνωστά), how can one, Gorgias says, reveal (δηλώσειεν) it to another? How can someone who sees something say this very thing in speech? And how can this become clear (δῆλον) to someone who is only listening, and not seeing? Just as sight cannot know (γιγνώσκει) sound, in just this way hearing cannot hear colour, only sound. Nor does the man who speaks utter colours, or objects.

[Arist.], *DMXG*, 980a19ff.⁴

¹ On this issue see Snell, 1956, p. 137.

² Not unrelated to Leshner's 'poetic pessimism' (Leshner, 1999, p. 225ff.).

³ See Goldhill, 2002, p. 11ff.; Marincola, 1997, p. 3ff.

⁴ The text of the anonymous doxographer may be closer to Gorgias' original text than that of Sextus, particularly in the third section of Gorgias' argument (cf. Mourelatos, 1987, p. 136; Gaines, 1997, p. 2f.).

This sceptical conclusion comes at the end of a long and infamous tripartite argument which purports to establish that ‘nothing exists’,¹ that ‘even if something exists, then it cannot be known (ἄγνωστον)’ by way of the senses,² and, finally, that ‘even if it is known (γνωστόν), then it cannot be demonstrated (δηλώτον)’ to another person.³ Gorgias’ *On Not Being*, therefore, advances a general programme of scepticism which attacks both perceptual knowledge and knowledge which results by means of hearing speech.⁴ And yet, by separating the possibility of autoptic knowledge, granted *ex hypothesi* at the beginning of the third argument, and that of testimonial knowledge which is completely rejected, Gorgias emphasizes that the possibility of the latter is even more remote. Even if, *per impossibile*, a man were to have direct access to a ‘thing’ by means of his eyesight, even then, he shall fail to make it clear to anyone else through speaking. This thesis must, of course, be placed in context of Gorgias’s views of the power of λόγος, eulogized in his *Helen*.⁵ Nonetheless, it is clear that whatever power λόγος might hold, it is not a power which dwells in the light of knowledge.⁶

A tragical-sceptical tradition, one which was also to elevate the distance between λόγος and ἔργον into a polar opposition,⁷ can be traced from Homer’s hexameters through to Gorgias’ paradoxical prose. The following thesis, however, does not treat of this sceptical tradition. What I will attempt to prove, rather, is that there existed, alongside this negative view, often within the same text,⁸ a relatively well-developed positivistic epistemology of ἀκοή, one which assumes that speech can, under certain defined circumstances, confer knowledge upon the listener. A survey of the entirety of Greek literature would, even if

¹ The argument seems to parody Zeno’s arguments and attempts to refute Parmenides’ conclusions (Gagarin, 1997, p. 39). The interpretation of this section oscillates between four possibilities carefully delineated by Schiappa (Schiappa, 1997, p. 23).

² Kerferd, 1955, p. 5.

³ The meaning of the verb is well rendered by Untersteiner’s ‘*darne diretta contezza*’ (Untersteiner, 1954, p. 71)

⁴ See Wardy, 1998, p. 18; Guthrie, 1971, p. 198; Kerferd, 1981, p. 80f.; Gaines, 1997, p. 4.

⁵ Segal, 1967; Kennedy, 1963, p. 61ff.; Guthrie, 1971, p. 50f.; Verdenius, 1981, 117ff.; de Romilly, 1994, p. 65ff.

⁶ See e.g. Untersteiner, 1954, p. 104; Verdenius, 1981. Cf. Valiavicharska, 2006.

⁷ See esp. Parry, 1981, p. 15ff.

⁸ As I argue below, Antiphon could deploy arguments which depended on a positivistic epistemology of testimony and, at the same time, maintain the rigid opposition between λόγος and ἔργον (Antiph. 5.5; 6.47. See Gagarin, 1997, p. 178f.; Goebel, 1983, p. 25).

confined to Gorgias' contemporaries, far exceed the bounds of many books. For this reason, I have focused, in the first place, on Antiphon's forensic rhetoric. Several reasons may be adduced for this choice. At the most practical level, the various ἄτεχνοι πίστεις attract Antiphon's attention considerably and, accordingly, we find several τόποι dealing with the subject of witnessing. In short, we find a substantial metadiscourse on the subject of witnessing, framed around the rules of admissibility, which was meant to commend itself to a panel of impartial jurors. More fundamentally, the ἄτεχνοι πίστεις and, in particular, witnesses, seem to have been important elements of forensic speeches. Their very frequency and their continued use in forensic oratory suggests as much.¹ It stands to reason, then, that the first place to look for a positive valuation of testimony is, in fact, the works of the earliest extant logographer. There is yet another, somewhat more speculative, reason for this choice. Audi, in his work on the epistemology of testimony, suggests that the predominant discourse of testimony in Western philosophy has been, for a long time, profoundly tied to the standards of the formal testimony of the law-courts.² He argues, for example, that testimony has been regarded as an inference – the so-called reductivist theory of testimony – largely because this is how it is treated in court, as a piece of evidence that can be undermined by argument. This suggestion would, moreover, apply all the more readily to a fifth-century democracy in which any citizen may be summoned to sit on the juror's bench. Indeed, as I argue briefly in Chapter Eight, there is cogent evidence in favour of this hypothesis.

The first half of this thesis, then, is dedicated to the reconstruction of a rational 'model' of testimony, which underpins Antiphon's presentation, discussion, and evaluation of witnesses, whether free men on oath or tortured slaves. First, however, in Chapter Two, I respond to two key challenges which threaten this investigation from the very start. The first is posed by the 'socio-political' theory of forensic testimony which argues that the value of an Athenian witness was not tied to any notions of his credibility or, indeed, to

¹ Todd, 1990, p. 39. See also Solmsen, 1930 (discussed below).

² Audi, 2002, p. 132.

any notion of evidence. This theory, if correct, would seriously undermine any attempt to elicit, from any court speech, any coherent 'rational' system of presenting and discussing testimony. Moreover it would eschew any possibility of tracing a 'forensic paradigm of testimony' in any other work of prose not intimately tied to the socio-political world of the Athenian courts. The second challenge, that of opportunism, is similarly devastating. A strong version of this position would hold that Antiphon, a man infamous for his avarice,¹ and his litigants, with obvious material interests in the outcome of their own case, were not guided by any coherent model for testimony, but only by the needs of the case. Much of the rest of the discussion is relevant to these two important challenges and furnishes, I hope, the strongest counter-argument to both objections. We find, in the speeches of Antiphon, sufficient evidence for a coherent, rational, and persuasive system for discussing the testimony of witnesses in terms of their truth, their credibility, and their truthfulness. In Chapter Two, however, I restrict the counter-argument to more general terms, marking out an *a priori* defensible 'middle position' on both counts. In Chapter Three, I turn to a close analysis of Antiphon's three court-speeches with the aim of identifying the key roles which testimony plays therein. I argue that the testimony of free-witnesses and slaves is characterized as having two distinct, though not incompatible, functions. First, the testimony of witnesses can be straightforwardly demonstrative and evidentiary. Witnesses, then, can be called to verify or falsify an assertion made by the litigant and, indeed, establish definitively some matter of fact. In Antiph. 6, for example, witnesses are called to falsify the sworn oath of the prosecution and to establish that the defendant is not guilty. In Antiph. 5, on the other hand, Euxitheus attempts to undermine his opponent's demonstrative claims, quite explicitly, by attacking its evidentiary basis and, therefore, his witnesses. In Antiph. 1, on the other hand, a speech in which no witnesses are called, the young litigant characterizes the would-be extracted confession of a tortured slave as a heuristic device which could, much like personal ὄψις, grant a litigant 'knowledge' of the truth of his accusation.

¹ Plato Com. frg. 103K. See Edwards, 2000; Cartledge, 1992.

The three chapters which follow on from this are an attempt to explain these two 'functions' in light of what Antiphon tells us about testimony. In Chapter Four, I define the two most important characteristics of a credible witness, namely his knowledge and his truthfulness. I argue that Antiphon consistently attributes to favourable witnesses some form of knowledge, often autoptic, of the fact to which they testify. Conversely, the credibility of a witness may be undermined by attacking the witness's *lack* of the relevant knowledge, as the mock-defendant does in the *First Tetralogy*. Antiphon also suggest a second criterion for credibility, truthfulness, one which is subject to more extensive discussion. We find that Antiphon characterizes the testimony of free witnesses and slaves as credible only in so far as some test has been applied to ensure, indeed to *necessitate*, the truthfulness of the deposition. It is only once these two conditions are satisfied that the demonstrative and heuristic functions of testimony can begin in earnest. More generally, we note that all testimony can, by an application of these two criteria, be divided into two general types, the first credible, admissible and conducive to knowledge, the other not. The function of the wily orator, then, is to explain, by resorting to the rational criteria of credibility, why the jurors classify favourable witnesses one way, and unfavourable witnesses in the other. And, indeed, we find that Antiphon's ingeniousness serves such a purpose admirably.

This distinction between two types of testimony also underlies a more fundamental principle, namely that testimony is not of a uniform type. Some testimony is credible, some not. Every individual piece of testimony, indeed every λόγος, demands a judgment from the juror as to which type of testimony it is. Anaximenes too urged litigants to call attention to this very fact.¹ Antiphon, I will argue, goes one better. Not only does he assume that the credibility of witnesses must be established and proceeds, unfailingly, to do so, he also supplies, defends, and indeed *prescribes* the criteria by which such a judgment is to be made. This is the main argument of Chapter Five. Here, I suggest a way in which the epistemic model of testimony was used, most masterfully by the

¹ [Arist.], *Rh. Al.* 1431b41ff.

Chorus-producer, to establish not only the credibility, but the very pertinence of the testimonial evidence at hand. Antiphon argues, in short, not only that his client's witnesses can be believed, but that they must be believed. In Chapter Six, on the other hand, I suggest a way in which this model of credibility of testimony, which emphasizes its great *heuristic* value, was used by the litigant in Antiph. 1 to prosecute his step-mother for murder. More generally, I suggest a way in which the notion of credibility could be widened to include the litigants' own assertions and, therefore, be enlisted by Antiphon to defend or attack the *credibility* of a litigant's speech *tout-court*.

Following this analysis, I turn to Herodotus in order to show that the forensic 'paradigm' of witnessing can also be profitably used to analyse some key episodes of his *ἱστορίη*. Aside from his contemporaneity to Antiphon, the choice of this author can be defended by reference to the centrality of Herodotus' engagement with *ἀκοή* in his text.¹ What I will attempt to prove in the second part of the thesis, then, is that an epistemology of testimony, comparable to that of Antiphon, is an important underpinning of Herodotus' engagement with his sources. I do not argue, of course, that the forensic 'paradigm' provides some 'key' to understanding Herodotean *ἱστορίη* generally. Rather, I argue that certain episodes of Herodotus' *ἱστορίη* suggest that he was, at least at times, operating within the bounds observed by Antiphon² and, secondly, that this 'epistemology of testimony' is, in these episodes, an important element in the construction of Herodotus' own authority. First, however, in Chapter Nine, I argue that an epistemic reading of 'source citations' or, more precisely, of Herodotus' 'meta-historie' of *ἀκοή* is, like the epistemic reading of forensic witnesses, a defensible one. I argue, in other words, that Herodotus describes a process of interaction with his sources which can be reasonably called 'testimony' and which could be cited as 'evidence' in favour of a hypothesis or, alternatively, as the source of one's knowledge. These are, broadly, the same functions observed in Antiphon's forensic speeches. And as in Antiphon's case, this 'epistemic

¹ Marincola, 1987, p. 128; Fowler, 1996, p. 77; Luraghi, 2001, p. 141f.; etc.

² On the possible direction of 'influence', see Chapter Eight.

reading' of Herodotus' 'meta-historie' need not overlook its obvious rhetorical function. Here too, I argue, Antiphon provides a 'model'. In much the same way as Antiphon's speeches constitute the credibility and pertinence of the witnesses he summons, Herodotus too does not merely invoke his sources, but discusses their credibility and outlines their pertinence. In Chapter Ten, I move onto an examination of those episodes which provide the strongest evidence for this position, namely the long descriptions of the sources of the Nile and of Scythia. Here the vast canvas of geography provides Herodotus with the opportunity of distinguishing between those lands known by ὄψεις, those known by ἀκοή, and those lands which are not known at all. In this scheme and, in particular, in the separation of the known world and of the unknown world beyond, we find an emphatic distinction between lands known by, and through, credible sources and lands which are unknown because no credible sources exist. Interestingly, Antiphon draws an exactly parallel distinction between witnessed murders which can be solved and known, and unwitnessed murders which cannot. This remarkable overlap, made more remarkable by the great disparity of the subject matters concerned – from murder to geography – is, along with the other, more general, overlaps described, an important piece of evidence for the existence of this positivistic epistemology of testimony across the nascent 'genres' of late fifth-century prose.¹ By turning to Herodotus, I hope not merely to vindicate the existence of the paradigm described, but also to generalize upon it. These overlaps need not, and do not, of course, imply that Antiphon's and Herodotus' engagement with ἀκοή is somehow 'identical'. Indeed, while Antiphon consistently characterizes his own speech and his own witnesses as credible and, therefore, divides all credibility and knowledge along party lines – in accordance with his case's needs – Herodotus seems to be far more willing to face up to the limitations of his own sources and of his own credibility. And though Herodotus' self-circumscribed limitations are entirely consistent with the principles described above, this difference is an important one. In Chapter Eleven, I analyse the ways in which this basic difference is expressed in

¹ The analysis concentrates on Antiphon's court speeches, partly because of issues of dating (see Sealey, 1984; Carawan, 1993).

the settlement of forensic-type ἀντίλογοι. Here, I argue that while Antiphon's litigants universally propose to their jurors that the fundamental issue on trial has been decidedly resolved in their favour, Herodotus appears to embrace a far more sceptical position about his ability to resolve ἀντίλογοι at all. Indeed, even when an ἀντίλογος is successfully collapsed – as in the case of Arion or in that of Dodona – nonetheless Herodotean doubt prevails. And yet, I argue, even this basic difference can be related – albeit somewhat more speculatively – to the underlying model being proposed.

Chapter Two.

Testimony in Forensic Oratory

In the rhetorical handbooks of the 4th century, a fundamental distinction is drawn between two kinds of πίστεις.¹ The first class,² which Aristotle calls ἔντεχνοι, are speech devices crafted by the orator and aimed at producing belief in the audience.³ Aristotle famously divides this class into three: λόγος, ἦθος and πάθος.⁴ The orator, then, might turn his τέχνη to manipulate the emotions of the listener, characterize the speakers, or deploy rational argument and craft a narrative in an attempt to persuade his audience. The second class of πίστεις, with which we are more concerned, are those ‘ready-made’⁵ evidentiary materials which avail themselves to the orator and which he may also use to provoke belief, usually in a forensic setting.⁶ As well as giving different names to this type of πίστις, Aristotle and Anaximenes give different classifications, with the former citing νομοί, or laws, as the first ‘artless πίστις’ and the latter citing ‘the opinion of the speaker’ as the first ‘supplementary’ one.⁷ The other three types,⁸ mentioned by both writers in the same order,⁹ are testimony of free witnesses or μαρτυρία,¹⁰ extracted statements of slaves or βόσανοι, and oaths. Various similarities, logical as well as formal, unite these

¹ The word πίστις is polysemous (see Grimaldi, 1957, p. 188ff.; Wikramanayake, 1961, p. 193ff.; Grimaldi, 1980, p. 19f.; McAdon, 2004). The rest of the discussion treats μαρτυρία and βόσανοι as ‘evidentiary materials’ the ‘persuasiveness’ of which is determined by the rhetorical and argumentative use to which the testimony is put by the orators (Cf. esp. Gagarin, 1990a, p. 29ff.; Due, 1980, p. 70.).

² There is some debate over the correspondence of the two classification systems. Most scholars agree that it is ‘essentially the same’ (Goebel, 1983, p. 7. Cf. Kennedy, 1963, p. 88; Mirhady, 1991, p. 5ff.; Carey, 1994a, p. 95) while a minority argue that it is not (e.g. Kraus, 2011, p. 265ff.). Whatever the exact relation of the two treatises, the logical distinction between intrinsic and extrinsic πίστεις is not one merely historical interest, but ‘real and inescapable’ (Carey, 1994a, p. 95).

³ Kraus, 2011, 266.

⁴ Arist. Rh. 1356a3.

⁵ On exactly how ‘ready-made’ such πίστεις were see Carey, 1994a.

⁶ Arist. Rh. 1.15.1; Arist. [Rh. Al.] 6, 1428a 6f.

⁷ See Mirhady, 1991, p. 9ff.

⁸ Aristotle also mentions ‘contracts’, which he may have added to the traditional list (Mirhady, 1991, p. 8).

⁹ Mirhady, 1991, p. 5.

¹⁰ There is considerable debate over whether Greek courts made use of accidental witnesses (see Headlam, 1892-3, p. 51ff.; Willets, 1967, p. 33; Gagarin, 1984). The use of both accidental (the two witnesses for the prosecution in Antiph. 5.31ff.) and formal witnesses (the relatives summoned to oversee the reconciliations of the feuding parties in Antiph. 6.39) is clear in Antiphon’s speeches.

three πίστεις to one another. Most generally, witnessing, confessions and oaths are all *assertions* made by the litigants or by competent third-parties and which were deemed to have probative value. Accordingly, in his definitions of these πίστεις, Anaximenes makes explicit reference to their essentially *verbal* nature.¹ Thus, both μαρτυρία and βάσανοι are instances of ὁμολογεῖν which, according to Anaximenes, only differ in the conditions under which such an ‘agreement’ or ‘confession’ is obtained.² On the other hand, evidentiary oaths and βάσανοι are linked to one another by the πρόκλησις procedure, a formal mechanism which restricted the admissibility of these πίστεις to cases in which a challenge is made by one side and accepted by the other. These three ἄτεχνοι πίστεις also appear to have been especially prominent in early forensic procedures.³ Indeed, βάσανοι and oaths exercise Antiphon’s litigants considerably, whilst Aristotle and Anaximenes, writing around 70 years later,⁴ regard both πίστεις with considerable reserve.⁵ And yet, these differences in emphasis and tone notwithstanding, these two rhetorical treatises, particularly the less innovative work of Anaximenes,⁶ propose an analytical framework for bolstering and undermining testimony which is also articulated, albeit less abstractly, in the court-speeches of Antiphon.⁷

A discussion of these later theoretical works, to which one must turn to find a fully articulated theory of proof, is an ideal starting point for any discussion about an ‘epistemology’ of testimony in forensic oratory. Two challenges, however, appear to threaten the viability of this enterprise from the start. An ‘epistemic’ reading of witness depositions must argue, against a growing consensus, that these statements did, in fact, play a genuine evidentiary role in Athenian courts, and that truth and truthfulness were the yardstick against which they were assessed. Secondly, we must also show that the

¹ ὁμολογήη of witnesses and tortures at Arist. [Rh. Al.] 1431b20 and 1432a13 respectively; φάσις of oaths Arist. [Rh. Al.] 1432a34.

² Witnesses are ‘willing’ (Arist. [Rh. Al.] 1431b20), tortured slaves ‘unwilling’ (Arist. [Rh. Al.] 1432a13).

³ Carey, 1994a, p. 96.

⁴ For a recent discussion on the (relative) dating of the two works see Chiron, 2011, p. 240ff.

⁵ Mirhady, 1991, p. 7

⁶ Mirhady, 1991, p. 13; Kraus, 2011, p. 265

⁷ Cf. Goebel, 1983, p. 7ff.

orator's need to write winning speeches under any circumstances, and Anaximenes' obvious interest in proposing a winning strategy at whatever cost, does not preclude us from finding a genuine epistemology of testimony in these works. It is to these problems that we turn to first.

2.1: *The role(s) of testimony in Athenian Courtrooms*

At the end of the fifth-century,¹ the deposition of testimony by a witness in an Athenian court was a relatively ceremonial affair. After summoning the witness, usually with a formulaic phrase, the litigant fell silent and the water-clock, which timed the litigants' speeches, was stopped. The witness, who was present in court, would then be identified by name, and he – for a 'he' it invariably was – would swear to know a fact relevant to the case, one which the litigant would have asserted himself,² presumably with considerably more force. If more witnesses were summoned at some other point, as was usually the case, the entire process would be repeated, and the litigant's speech was interrupted once again. Despite the risks to the coherence of their speech,³ this lengthy procedure was an important part of litigation. Indeed, the limitations of forensic science and the relative unimportance of documentary evidence⁴ ensured that witnesses were fundamental to arguing one's case.⁵ They provided litigants with a legal mechanism to dwell upon, flesh out, emphasize, and corroborate⁶ key points in their narrative. As such, they feature prominently in the extant speeches of Athenian trials, being cited, on average, six times for every hundred sections of text.⁷ Conversely, cases completely

¹ Early in the 4th century, this procedure was changed very markedly by the introduction of written depositions. In these later cases, the court clerk would read these written depositions and the witness simply confirmed it (see Harrison, 1971, p. 143f.).

² Bonner, 1905, 54.

³ Thür, 2005, p. 246.

⁴ See Antiph. 1.30.

⁵ Scafuro, 1994, p. 157. Cf. Kennedy, 1963, p. 89. Carawan also argues that they are technically necessary (Carawan, 1998, p. 186).

⁶ Bonner, 1905, p. 87; Carey, 1994a, p. 95.

⁷ Todd, 1990, p. 39.

lacking in testimonial support seem to have been relatively rare in the oratorical period.¹ Though the importance of testimony in forensic cases is beyond doubt,² the exact nature of its role in litigation has become a matter of intense debate. A long-established view, most conspicuous in Bonner's work written a century ago,³ conceives the testimony of witnesses as a form of evidence used to establish questions of fact. Under this traditional model, depositions of witnesses were only deemed to be of evidentiary value if, as in 'modern courts', they were found to be impartial, truthful and, indeed, true. Since the 1980s, this view has been extensively and forcefully criticised.⁴ Various scholars have proposed an alternative 'socio-political' model for understanding the role of testimony in Athenian courts. This theory, expressed in its strongest terms,⁵ suggests that the 'weight' of a witness' support is independent of the factual content of the testimony and even of its truthfulness. Contrary to the way testimony operates in 'modern courts', the ancient Athenian witness was intrinsically partisan⁶ and may even have been *expected* to lie for the litigants he favoured.⁷ Witnesses, then, had no overriding commitment to truth, only to their allies, and were entrenched in the incessant political manoeuvrings of a deeply agonistic society. In this context, witnesses were primarily instruments of social capital, to be called upon to express their support for one side of a quarrel.⁸ Moreover, the strength of this 'support' did not depend on the 'credibility' of the witness's testimony, but on his identity, his personal influence and his relationship to the disputing litigants.⁹ Witnessing is to be conceived as 'a ritualized socio-political act of support'¹⁰ which proved nothing material to the case, but simply allowed a litigant to present himself as

¹ Todd, 1990, p. 39; Thür, 2005, p. 147.

² Some scholars have, indeed, questioned the value of the short statements of witnesses which were liable to being attacked and explicitly contradicted by one's opponents and their witnesses. (e.g. Leisi, 1907; Thür, 2005, p. 163. Cf. Cohen, 1995, p. 112). As already noted, the prominence of these arguments is itself strong proof that the deposition of witnesses was central to arguing one's case. The main thesis presented below, however, stands or falls irrespective of the 'importance' of witnesses.

³ Bonner, 1905.

⁴ Primarily in Humphreys, 1985; Todd, 1990; and Cohen, 1995.

⁵ Most notably in Cohen, 1995.

⁶ Martin, 2008, p. 56.

⁷ Cohen, 1995, p. 105.

⁸ Cohen, 1995, p. 111.

⁹ Humphreys, 1985, p. 325ff.; Todd, 1990, p. 30f.

¹⁰ Todd, 1990, p. 27.

part of a supportive network of social alliances in the local community.¹ In such a system, the extent of this familial, social, and political network served as a surrogate for the justice of the litigant's claim which rested, fundamentally, on the evaluation of the case within the community.² In short, witnesses only nominally testified to facts and, in effect, all witnesses were character witnesses.³

Though this sweeping hypothesis may appear counter-intuitive at first glance, several of the formal characteristics of testimony make its 'truth-presenting' and broadly 'evidentiary' function doubtful. Most generally, the exclusion of women from testifying in court⁴ and the legal distinction between free and slave witnesses⁵ significantly limited the court's capacity to discover the facts of several cases. Worse still, these criteria strongly suggest that social, not epistemological, issues were at the heart of the Athenian definition of a μαρτύς.⁶ Even when it came to free male witnesses, the litigant had little legal power to summon them to court and admit to anything.⁷ Consequently, most witnesses had to be drawn from the ranks of people most closely allied to the litigant and who could reasonably be relied upon to show up on the day of the trial.⁸ These were, in the main, the litigant's friends and family who would be most inclined to lie for him. And, even if 'impartial witnesses' were initially available – an improbable eventuality in a small society – their testimony had to be secured in advance and, therefore, solicited. Indeed, any legal confrontation immediately 'polarized' the available testimony, aligning the statements of all possible witnesses to the interests, legal as well as political, of the two litigants.⁹ And, even if some impartial witnesses did somehow make it to court, then he may even have been more liable, because of his impartiality, to accusations of bribery

¹ Humphreys, 1985, p. 316. Todd adopts a more nuanced position (see Todd, 1990, p. 27).

² A strong reading of the theory must also assume that these 'allies' were fundamentally unconcerned with the possibility of their friend being a murderer, a thief, a sycophant, or a perjurer and, moreover, of openly declaring their alliance for such a person.

³ Martin, 2008, p. 57.

⁴ Todd, 1990, p. 24.

⁵ Soubie, 1973, p. 226.

⁶ Todd, 1990, p. 25f.

⁷ Thür, 2005, p. 160.

⁸ Humphreys, 1985, p. 325ff.

⁹ Thür, 2005, p. 166.

than witnesses with an obvious interest in the outcome of the case.¹ As to the testimony itself, some have pointed out that litigants often called upon witnesses to confirm irrelevant or agreed-upon facts,² or summon several witnesses to confirm the same points.³ Such techniques of litigation are hard to explain if we assume that witnesses were called upon *only* to confirm contentious issues relevant to the case. They are, on the other hand, a straightforward way of presenting the litigant in a favourable light, as a citizen who was well-supported by the community. Even more problematically, the power of the litigant over the content of a witness's testimony was very significant. Not only could they draft the 'testimony' with their witnesses, the ἐξωμοσία, which appears to have given the witness some modest control over what he swore to know, may have been just another device in the litigant's rhetorical arsenal.⁴ Litigants, then, had a virtual monopoly over these depositions, especially after the introduction of written testimony in the 4th century. They could craft testimony in their own favour, asking relatives and friends to confirm that some fact was 'true', and exploit the wording of the deposition to embarrass reluctant witnesses into supporting them.⁵ Nor could these witnesses be cross-examined, nor, indeed, does any litigant lament the loss of this possible route of inquiry.⁶ Even those features which *prima facie* support the traditional theory have been re-interpreted in line of this alternative, socio-political model. Thus, Cohen has argued that the laws concerning the inadmissibility of mere hearsay evidence conforms not to the well-established prejudice against ἀκοή, but to an ideology of supportive risk-sharing which bound allies together.⁷ Even the action against 'false testimony' is, in Cohen's opinion, no guarantee of the importance of truthful testimony, but simply a political move necessitated by the 'logic' of enmity.⁸ One may be inclined to conclude, then, that even

¹ Humphreys, 1985, p. 333.

² Thür, 2005, p. 166. Yet, the testimony of irrelevant facts may be related to different notions of relevance. On this point see Carey, 1996, p. 34.

³ Humphreys, 1985, p. 324.

⁴ Carey, 1994a, p. 101; Martin, 2008, p. 64ff.

⁵ Carey, 1994a, p. 99ff.

⁶ Humphreys, 1985, p. 316; Thür, 2005, p. 163. This was formally true after the introduction of written depositions early in the 4th century, though cross-examination of testimony prior to this procedural change also seems to have been limited (cf. Andoc. 1.14; Aristoph. *Wasps*, 163-6).

⁷ Todd, 1990, p. 28.

⁸ Cohen, 1995, p. 91.

though testimony was regularly presented as the truthful assertions of knowledgeable witnesses, these witnesses were summoned only to 'vouch for' the litigant irrespective of the truth of their own, or anyone else's, claims. And, which is the crucial point, we must also assume, if the theory is to be meaningful at all, that none of the jurors were taken in by this rhetoric of truthfulness. The court's decisions were not based on the facts of the crime,¹ often far beyond the power of the meagre instruments of proof to establish.² Nor was 'truth' a primary concern for the juror.³ The rhetoric of truth, pervasive in Antiphon, was all pretence and known to be pretence. The role of the juror was simply to oversee this game of political chess and to vote in the interests of the community, and in conformity to the prevalent opinion about the litigants.

This impressive critique has surely highlighted some of the key limitations of the traditional 'evidentiary model' of testimony and uncovered an important function of witnessing in Athenian courts. In short, we must conclude that no purely 'evidentiary-epistemological' reading can account for all the peculiarities of the Athenian institution of forensic testimony. Nonetheless, extreme versions of the hypothesis seem implausible, not least because they presuppose an unlikely degree of artifice surrounding the use of testimony in a forensic setting. We observe, then, that several of the key features of the legal apparatus of testimony presuppose that the witness should *know* what he swears to know. The most significant of these are the formulaic expressions which introduced a witness' testimony and which made explicit reference to his *knowledge* of some fact or to his *presence* at the scene of the crime.⁴ Conversely, the formula which introduced the witnesses' ἐξωμοσία excused the would-be witness in view of his *ignorance* of, or his *absence* from, the relevant incident.⁵ Furthermore, as the analysis of Antiphon's speeches will show, litigants often presented their witnesses in terms of their knowledge

¹ Humphreys also notes that the litigants' investigation of the facts is rarely emphasized in the presentation of cases (Humphreys, 1985, p. 316).

² Cohen, 1995, p. 109.

³ Thür, 2005, p. 146.

⁴ Carey, 1994b, p. 184; Thür, 2005, p. 153.

⁵ See Carey, 1995, p. 116.

of the case and repeatedly emphasize, and explicitly defend, their truthfulness. Conversely, they also routinely attacked their opponent's witnesses for contrary reasons. Moreover, we observe that the examination of different 'types' of witnesses coming from different social castes – the examination of slaves and free men – are strictly parallel to one another.¹ Thus, though a prejudice in favour of free citizens over slave-witnesses may have been operative,² in line with the 'socio-political' model proposed, there is a clear and concerted effort to examine both types of witnesses in the same way, in terms of their knowledge of the facts and the truthfulness of their assertions.³ This emphasis on knowledge and truthfulness, pervading the formal presentation and oratorical representation of testimony, is clearly better explained by the assumption that they were regarded as important elements in witness depositions. Various other observations also support this hypothesis. Thus, litigants never present their witnesses as the support of an important ally⁴ and there is usually little emphasis placed on the identity of the witness,⁵ his social status or his relation to the litigant. Conversely, as Anaximenes informs us, witnesses were subject to be criticized for a close association with the litigant.⁶ A general consensus, then, seems to have existed to the effect that a witness's interests should be, at least, 'distinct from those of the litigants'.⁷ Carey has also persuasively shown that the formal characteristics surrounding testimony – such as the *ἐξωμοσία*⁸ – acted as a control against grosser deviations from the truth.⁹ And, *pace* Cohen, the existence of the action against *false* testimony is surely more simply and better explained by the natural assumption that testimony was, in general, expected *not* to be false, and that violations of this norm led to censure and, ultimately, to a loss of

¹ See p. 102f.

² See Thür, 1977, p. 211ff.; Mirhady, 1996, p. 130.

³ See esp. Chapter Four.

⁴ Carey, 1994b, p. 184.

⁵ Mirhady, 2002, p. 262; Carey, 1994b, p. 183.

⁶ [Arist.], *Rh. Al.* 1431b35-38. Cf. Dem. 45.64; Dem. 47.11. This criticism, however, had little place in family disputes (e.g. over inheritance). See e.g. Todd, 1990, p. 32.

⁷ Mirhady, 2002, p. 269.

⁸ The *ἐξωμοσία*, which allowed the witness a limited choice between two non-equivalent alternatives – 'I do not know' or 'I was not present' – may have been more nuanced than a simple negation (Carey, 1995; Thür, 2005).

⁹ Carey, 1994, p. 98.

citizen rights.

These observations all suggest that the errors of Bonner's 'traditional model' are, in the main, ones of overemphasis and that the newer hypothesis has, in true Anaximanderian fashion, strayed too far in the opposite direction. Indeed, a more modest and inclusive version of Bonner's thesis, one which does not smooth over the 'strangeness' of witnessing in Athenian courts, may be articulated.¹ Such a thesis would accept that knowledge, truthfulness, reliability, credibility, even impartiality, had a central role to play in the complex, and perhaps somewhat self-contradictory, notions about testimony prevalent in Athenian trials. Simply put, such a thesis proposes, firstly, that a witness's knowledge and his truthfulness are the key components which guaranteed the credibility of testimony and, moreover, that credibility was the primary criterion for evaluating testimony. These propositions can be shown to underpin most, if not all, references to testimony in Antiphon's court speeches. Such a position need not imply, however, that the Athenian court held the same norms² which are operative in an ideal, perhaps idealized, modern court, nor that similar notions of evidence were in play. A weaker thesis is sufficient, namely that the orator assumed that the credibility of a witness – a notion which he himself explicates in the course of the speech – was an important element of persuasion and, therefore, could be exploited as such. More generally, the revised evidentiary 'model' need not assert that testimony played no 'socio-political' role, or that truth was the only axis of a juror's judgement. Indeed, the evidence compels us to conclude that summoning witnesses to an ancient court – as, indeed, to modern ones – was richly and diversely imbued with epistemic as well as socio-political overtones. This revised 'mixed' model also gains in plausibility if we assume that the two overlapping ways of assessing testimony need not be equally important in every type of case. Thus, it is reasonable to suspect that the social model of testimony was more prominent in trials involving family disputes. Indeed, in such cases, an assessment of the family's

¹ Cf. Todd, 1990; Mirhady, 2002.

² See esp. Thür, 2005.

'consensus' appears to be an eminently reasonable way of solving the case.¹ Conversely, Antiphon's speeches may be describing, even recommending, a way of evaluating testimony in trials in which, as his litigants repeatedly tell us,² it was crucial for the jurors to discover who the murderer really is, and who he is not.

2.2: Opportunism and testimony in 4th Century Rhetoric

A survey of the evidence, then, supports the view that testimony played some evidentiary role in Athenian courtrooms and, further, that it was assessed, at least in part, in a straightforwardly rational way. Nonetheless, any attempt to reconstruct a system of thought from the use of testimony in Antiphon's speeches, or from later rhetorical handbooks, comes up against one glaring objection: the litigants and their well-paid speech-writer had only one overarching interest, winning. They were, as a result, profoundly uninterested in adhering to any abstract model of thought about testimony, much less of 'Truth'. In other words, the litigant's use of and references to witnesses were not philosophically consistent or ideologically motivated, merely opportunistic.³ This opportunism is, perhaps, best exemplified in Anaximenes' treatment of the supplementary πίστεις.⁴ Here, the author suggests means of augmenting the forcefulness of testimony if it is favourable to the prospective litigant, and other ones to weaken it if it is not.⁵ The contrariness of the advice betrays a cynical indifference to the truth of the witnesses' claims and, perhaps, a hostility to a general 'theory' of testimony. Much of the discussion to follow is relevant to this crucial objection. In short, I argue that though we should assume that a good deal of distortion is involved in the use of

¹ Indeed, such cases seem to be the cases which rely most extensively on 'testimonial evidence' (Todd, 1990, p. 39).

² E.g. Antiph. 2.1.3.

³ Carey and Reid, 1985, p. 147; Caizzi, 1969, p. 197

⁴ Braet, 1996, p. 350f. On the opportunistic and 'immoral' character of this work see Cope, 1867, p. 480ff.; Chiron, 1998, p. 214ff.; Calboli Montefusco, 2007, p. 105.

⁵ The same is true of Aristotle's *Rhetoric*. See Grimaldi, 1980, p. 320.

witnesses – and, indeed, it is virtually beyond doubt in his two longest speeches¹ – Antiphon’s use of and discussion about witnesses can be explained by a rational, and somewhat legalistic, model of credibility. This rational model, however, does not rule out opportunism, so much as become the idiom through which such opportunism is expressed. The orator could exploit this rational model to defend witnesses favourable to his client as credible, and attack unfavourable witnesses as know-nothings and liars. This is none other than the grand strategy Anaximenes proposes. Indeed, the frankly opportunistic fourth-century discussions of μαρτυρία also belie a consistent model of testimony, similarly centred on notions of knowledge, credibility, and truthfulness, and one which may be profitably compared to the model which emerges from Antiphon’s speeches. They provide, therefore, an *a fortiori* argument for the compatibility of a consistent, rational model and bold-faced pragmatism.

For reasons of space, I will concentrate on the section dealing with ‘witnessing’, the longest and most well-developed treatment of a supplementary πίστις in Anaximenes, and the one most relevant to the discussion. As with his treatment of the other supplementary πίστεις, Anaximenes starts² with a definition; ‘witnessing is the agreement of a willing and knowledgeable person’.³ This definition is almost replicated in the section dealing with the βάσανος, which the author defines as ‘the agreement of an *unwilling* and knowledgeable person’. Witnessing and βάσανοι, then, are two members of a common type,⁴ which we can designate ‘testimony’, differentiated from one another by the conditions under which such testimony is obtained. One condition, however, was thought to be common. The witness must be a *knowledgeable* one, συνειδώς, a condition which features prominently in Antiphon’s speeches.⁵ Indeed, Antiphon is not averse to using this same verb to indicate a witness’s knowledge.⁶

¹ See Chapter Three.

² For a discussion about the structure see Mirhady, 1991, p. 12f.

³ [Arist.], *Rh. Al.* 1431b20.

⁴ The parallels uniting these two πίστεις, which Antiphon also consistently assesses in analogous ways, is another important point of continuity between the two authors.

⁵ See Chapter Four.

⁶ See p. 98f.

Μαρτυρία, Anaximenes continues, can be internally distinguished into credible or incredible, just as the witness himself can be persuasive or not.¹ The best-case scenario, one which needs no supporting arguments from the litigant, is the credible testimony of a persuasive witness. All other testimony must be supplemented or, conversely, can be attacked by a variety of arguments, which Anaximenes goes on to discuss. The first series are aimed at enhancing the credibility of the witness by showing that it is not in the witness's interest to lie. One such argument, the form of which irresistibly suggests a sophistic ἀπαγωγή,² seeks to establish the credibility of his witness by way of denying that he has of the typical motives for testifying falsely. Anaximenes, then, suggests that a would-be litigant argue in favour of a favourable witness's honesty by showing that the witness is not motivated by greed, enmity, or friendship. He also suggests defending a witness's truthfulness by expounding the risks involved in perjury and minimise its rewards.³ In both cases, Anaximenes proposes that the litigant argue for the truthfulness of his witnesses by showing that the litigant's interests fall on the side of honesty and not of dishonesty. This is, as we shall see, an argument Antiphon also deploys.⁴ Conversely, Anaximenes also proposes that a witness can be attacked on these very grounds. Thus, if one can argue for a witness's honesty by showing that he has no motives for lying, neither favour nor revenge nor gain, one can also attribute one or more of these motives to show that he is dishonest.⁵ Thus, these two 'contrary' arguments are not contrary at all, but underpinned by the same assumptions and, indeed, are implied by one another. Each argument must assume that the value of testimony depends on its credibility which, in turn, depends on its truthfulness, a property which is often defended or attacked in accordance to the needs of the case. In spite of the vagaries of the argument, the essential focus – *truthfulness* – remains the same. Indeed, Anaximenes argues, albeit somewhat implausibly, that the existence of an indictment for false testimony 'proves'

¹ [Arist.], *Rh. Al.* 1431b21ff.

² A form of argument prominent in the mock-forensic works of Antiphon (e.g. 2.1.4ff.) and Gorgias (*Pal.* 5ff.).

³ [Arist.], *Rh. Al.* 1431b27ff.

⁴ See Chapter Four.

⁵ [Arist.], *Rh. Al.* 1431b32ff.

that such judgments about the credibility and truthfulness of witnesses *must* be made.¹ Once again, this shall turn out to be one of the guiding principle of Antiphon's use of testimony. Finally, Anaximenes also mentions the possibility of attacking testimony by an examination of its 'probability', a suggestion entirely at home in Antiphon's speeches.²

If we turn to Aristotle's uncustomary³ discussion about testimony,⁴ we also find suggestive overlaps with Antiphon's speeches which, moreover, hint at the same basic rational model for assessing witnesses. Nonetheless, much of the philosopher's discussion on the topic focuses on fine distinctions between types of witnesses, distinctions which Antiphon does not draw. In a lengthy and unparalleled introduction, Aristotle divides all witnesses into three types: old witnesses, new witnesses who do not share in the litigant's risk, and new witnesses who do. The former two types of witnesses, mostly poets and wise men,⁵ can be called upon to ascertain the quality of an action. On the other hand, the last type of witness – discussed in overtly forensic terms⁶ – can only be called upon to settle a question of fact. These witnesses, in other words, offer the court *material* evidence. The Chorus-producer in Antiph. 6 and the mock-defendant of the *First Tetralogy* would surely agree. Moreover, Aristotle explains that it is their 'proximity' to the events⁷ in question which precludes these men from being credible witnesses about an action's *quality*. The fact that these witnesses are not strangers, but intimately involved in the events in question, renders their account less credible. A calculation of the witness's interest, then, is also operative, though hardly prominent, in Aristotle's discussion. More suggestively, Aristotle defines the last type of witness in terms of their 'risk', a measure which Antiphon also uses to examine the credibility of witnesses. Antiphon too specifies that *free* witnesses incur an element of risk, a risk

¹ [Arist.], *Rh. Al.* 1431b41ff.

² Antiph. 6.30, 41.

³ See Mirhady, 1991, p. 12.

⁴ Ar. *Rhet.* 1.15.13ff.

⁵ Aristotle also adopts a broader meaning for the term 'witness' and applying the term to oracles and proverbs.

⁶ καὶ οἱ μετέχοντες τοῦ κινδύνου, ἂν δόξωσι ψεύδεσθαι, Ar. *Rhet.* 1.15.16.

⁷ Cope, 1877, p. 213.

which is central in the assessment of its truthfulness.¹ Finally, Aristotle also draws a distinction between two general types of witnesses: material witnesses, which are preferable, and character witnesses, called on to prove 'one's respectability or the worthlessness of [one's] opponent'.² Though no such precise distinctions are to be found, or expected, in Antiphon's court-speeches, we may note that material and character *evidence* are clearly distinguished, once, in the *First Tetralogy*.³

The main point remains, however, that the 4th century rhetorical handbooks suggest that there existed, behind the τόποι and the contrary arguments of attack and defence, a coherent system of thinking about testimony. And indeed, there are no *a priori* reasons why this framework should be incompatible with the pragmatic needs of the orator. The rhetorician's 'contrary' τόποι are clearly underpinned by a series of assumptions, ones which would have suggested themselves to the jurors, and which, therefore, could be exploited by an ingenious litigant. And, less cynically, if we assume that the jurors held a 'folk epistemology' of testimony, one inherited partly from tradition,⁴ partly from epic,⁵ partly from the theatre,⁶ then the orator would be well-advised not to disregard it when defending his litigant or his witnesses.⁷ To cite one example, if *hearsay* knowledge was generally thought to be inferior to *autoptic* knowledge – as Homer suggests it is – a rhetorician would be well advised to defend the autoptic nature of a witness's knowledge. Whether some particular witnesses really did have the autoptic knowledge which the orator claimed is debatable and, in some cases, doubtful. The important point, however, is that Antiphon chooses to attribute one kind of knowledge to the witness and not another and, moreover, that he defends him and his credibility on these grounds. There is little in the *pragmatic* interpretation of testimony which is *a priori* incompatible with the

¹ See p. 107.

² *Ar. Rhet.* 1.15.18.

³ *Antiph.* 2.3.8.

⁴ Evidenced by the gnomic sayings found in Herodotus and Heraclitus. See (e.g. *Hdt.* 1.8. See p. 173).

⁵ See p. 13f.

⁶ Nenci, 1955, p. 26ff.

⁷ See esp. Zinsmaier, 2015, p. 203ff. Zinsmaier, however, looks at torture of slaves in Roman law.

epistemic reading defended below.¹ What the pragmatic reality prompts us to do, then, is not to reject a broadly 'epistemological' reading of testimony, so much as oblige us to understand it in its rhetorical context.

¹ Cf. Braet, 1996, p. 348ff. esp. 355f.; Grimaldi, 1980, p. 317f.

Chapter Three.

Witnesses and Witnessing in Antiphon's Court Speeches

The reclassification of an 'epistemic reading' of testimony in terms of its rhetorical function has an important methodological consequence: any analysis of this epistemology must start with an examination of the *use* of testimony as a persuasive device. The conciseness of the 4th century discussions on testimony, the fragmentary nature of the evidence pertaining to matters of procedural law, as well as the contentiousness of some key issues,¹ preclude the possibility of reconstructing, from this evidence alone, a coherent picture of the way testimony operated in the courts. In the following chapters, then, I turn to Antiphon and attempt to define the role that testimony plays in the three court speeches preserved in his corpus. And yet, as soon as we turn to Antiphon's speeches, another preliminary methodological problem quickly becomes apparent; the very words of the witnesses are lost. Immediately, then, the subject matter seems to vanish off into τὸ ἀφανές. As already mentioned, however, Athenian witnesses were usually called upon to confirm parts of the narrative which the litigant has already laid out in full. Consequently, the general shape of the testimony, albeit not the specifics, can usually be surmised. More importantly, however, Antiphon's litigants often lavish great attention, if not on the contents of the testimony itself, then on the consequences, logical or otherwise, of the testimony of summoned witnesses. Indeed, τόπιοι dealing with the ἄτεχνοι πίστεις – and, in particular, with witnesses – are one of the most distinctive characteristics of Antiphon's rhetoric.² Litigants routinely expand on the topic of testimony in a number of significant ways. They pause to discuss witnessing in general terms, reflecting on the mechanics of truth-telling in forensic testimony and on its role in litigation. They also refer to the imagined testimony of hypothetical 'witnesses' or to the

¹ The most important issue being the question of the 'automatic' operation of the βάσανος. See p. 145.

² Due, 1980, p. 73ff. For an excellent theoretical discussion regarding τόπιοι in Antiphon, see Zinsmaier, 1998, p. 389.

informal ‘testimony’ of other third-parties, real or imagined.¹ These litigants are not, of course, engaging in any disinterested epistemological speculation in front of their jurors. Nonetheless, these self-interested passages afford the reader a glimpse into late fifth-century discourses about testimony which were meant to commend themselves to a panel of impartial jurors. These passages, then, and the arguments in which they are used, will form the basis of this investigation.

First, however, we must turn to a more general treatment of the *πίστεις* in Antiphon generally and, more especially, of their use in each speech.

3.1: Evidence and Proof in the Court Speeches of Antiphon

‘As for Antiphon of Rhamnus, I do not know whether to call him a good or a bad man.’

Philostr. VS. 1.15

This is how Philostratus, writing almost six centuries after the execution of Antiphon, begins his biography of the ‘sophist’. He cites the power of his thought and his speech as among the sophist’s more laudable qualities, and, not unreasonably, his leading role in the oligarchical coup of 411 B.C.E. as among his least laudable ones.² A similar uncertainty hangs, and all the more thickly, over much of Antiphon’s corpus. Of the works that are generally attributed to him, debate has long raged about the authenticity of most of them. As unique as Antiphon is to us – the first *logographer*, an Athenian sophist, a

¹ Once again caution must be exercised. One cannot assume, a priori, that the ‘testimony’ referred to in these passages operates in the same way as the formal testimony of summoned witnesses. Indeed, these informants are hardly ever called witnesses but ‘informants’. On this distinction, see esp. Edwards, 1985, p. 93.

² Philostr. VS. 1.15.

prefiguring of Critias, and of Socrates – his name was a regrettably common one. Three Antiphons – a playwright, a ‘sophist’ and rival of Socrates, and a logographer and oligarch – find themselves, more or less, distinguished by the ancients.¹ Whether our Antiphon, whose speeches find themselves preserved in two fifteenth-century manuscripts, refers to only the last, or whether the last two Antiphons were really one man, is a matter of intense debate. The two contrary positions have long existed and, of late, Pendrick has defended the separationist thesis² and Gagarin the unitarian one.³ And, as regards the speeches themselves, a further distinction must be drawn between those speeches for use in court, which are unanimously attributed to one logographer, and the *Tetralogies*, the authorship of which is contested.⁴ The following discussion, which concentrates primarily on the court-speeches universally ascribed to Antiphon, side-steps such issues of authenticity.⁵

If, then, we turn to Antiphon’s *court* speeches, and to the use of the ἄτεχνοι πίστεις therein, we do not move far before we come face to face with Friedrich Solmsen. In 1931, Solmsen proposed a suggestively simple thesis. Drawing analogies from early Germanic law,⁶ he proposed that early Greek law had once operated ‘irrationally’.⁷ In such a system, the ἄτεχνοι πίστεις – the only means of proof available – operated automatically. Antiphon’s rhetoric, Solmsen argued, lies one move away from the ‘irrational’ model of ἄτεχνοι πίστεις and toward the fully rational, and fully *technical*, rhetoric of the 4th century. The cause for this shift was, primarily, the εἰκός argument.⁸ This versatile mode of argumentation was then sweeping through the streets of Athens, blowing away the once tyrannical monopoly of the formal means of proof. The hold of the ἄτεχνοι πίστεις,

¹ On this issue see Gagarin, 1990b; Pendrick, 2002, p. 1ff. with previous scholarship.

² Pendrick, 2002, esp. p. 19ff.

³ Gagarin, 2002, p. 38ff. Cf. Decleva Caizzi, 1969, p. 71ff.; Avery, 1983; Edwards, 1998.

⁴ E.g. by Sealey, 1984 and Carawan, 1993.

⁵ I will, however, refer to the *Tetralogies* to supplement the argument provided. The similarity of the two sets of works (see Goebel, 1983, p. 23) is, of course, not an argument in favour of Antiphon’s authorship.

⁶ Solmsen, 1931, p. 6f. See the criticism in Gagarin, 1990a, p. 26ff. and Due, 1980, p. 13f.

⁷ Solmsen, 1931, p. 6ff.

⁸ The literature on this form of argument is immense. For a recent survey with abundant bibliographical references see Kraus, 2007 and Hoffman, 2006.

however, left an indelible mark in the structure of Antiphon's speeches. Solmsen argued, against Schwartz,¹ that Antiphon's speeches *lacked* a formal dispositional scheme. Instead, the ἄτεχνοι πίστεις, acted as the gravitational centres of Antiphon's speeches,² distorting the logic around them and splitting would-be coherent arguments into two or fusing would-be separate arguments into one.³ It is this third component of Solmsen's argument – the main substance of his thesis – which has attracted the most rigorous and specific criticism.⁴ What is more relevant to the discussion at hand, however, is the model for the ἄτεχνοι πίστεις which Solmsen proposes, one based on 'the general use of automatic 'irrational' procedures for settling legal disputes'.⁵ In such a system, these πίστεις had a discrete and predetermined evidentiary 'value', one which allowed them to operate irrationally and, at a fundamental level, independently of any argumentation.

This model of the irrational operation of πίστεις can be traced back to a rigid, indeed absolute, distinction drawn between Aristotle's ἄτεχνοι and ἔντεχνοι πίστεις.⁶ Solmsen himself, of course, noted the complex interplay of εἰκός and testimony in Antiphon's speeches,⁷ but his model nonetheless proposes a strained relationship between the two.⁸ To give one revealing example, discussed further below, Solmsen's views on the irrationality of the *oath* and the βάσανος force him to split up a perfectly coherent argument found in Antiph. 1 simply because it draws upon *two* 'irrational' πίστεις.⁹ The strongest criticism of Solmsen's model, and the one most relevant to the discussion below, however, is directed at his central assumption of 'irrationality'. What we consistently do *not* find in Antiphon's speeches are ἄτεχνοι πίστεις being dropped, like leaden weights, into the middle of a speech. We find, rather, in line with the suggestions

¹ Schwartz, 1892, p. 9ff.

² Solmsen, 1931, esp. p. 19ff.

³ See below.

⁴ See especially Goebel, 1983, p. 202ff.; Due, 1980, p. 24f. *et passim*.

⁵ Gagarin, 1990a, p. 29.

⁶ Gagarin, 1990a, p. 31f.; Due, 1980, p. 70f.

⁷ E.g. Solmsen, 1931, p. 17 and p. 37f.

⁸ Solmsen, 1931, p. 17ff.; Kennedy, 1963, p. 131.

⁹ In short, according to Solmsen (1931, p. 21ff.), the 'oath' argument at Antiph. 1.6ff. 'proves' that the oath is literally false, while the βάσανος argument at Antiph. 1.10ff. 'proves' the complicity of his brothers. As Due and Goebel have argued (Due, 1980, p. 25; Goebel, 1983), and as I argue below, the two arguments are fundamentally related by the βάσανος.

of Anaximenes and Aristotle, that the deployment of testimony is always accompanied by rational argumentation and, crucially, that the value of ἄτεχνοι πίστεις – their credibility, their usefulness, indeed even their relevance to the case – is largely determined by these very arguments.¹ The ἄτεχνοι πίστεις, then, were not so much ‘proofs’, as Solmsen thought, but ‘evidentiary materials’ which *must* be incorporated into arguments.² Due³ and Gagarin,⁴ then, have proposed that there existed no logical distinction between the two types of πίστεις. Indeed, Due argues that in Antiph. 6, where the testimony of the witnesses is largely *irrelevant* to the charge, this must be true as a matter of logic. Since the witnesses do not answer a fair reading of the charge, their testimony can, at best, only furnish a piece of ‘circumstantial evidence’ which must be supported by argument.⁵ Yet, Due neglects the fact – which she had brilliantly outlined⁶ – that Antiphon goes out of his way to minimize this supposed ‘irrelevance’. The testimony of his legion of witnesses is presented and defended as *the* legitimate way of establishing his innocence.⁷ It seems, then, that though the two elements of proof are closer than Solmsen proposes, it was, at least at times, in the litigant’s interest to distinguish categorically between testimony and other, more circumspect, methods of proof and to insist on the superiority of the former. Indeed, as Gagarin notes, the author of the *First Tetralogy* elevates this polar opposition into a structural principle.⁸

It seems best, then, to agree with Goebel,⁹ and concede that Antiphon recognized two broad types of πίστεις, λόγοι and witnesses, which together formed an integrated system of proof.¹⁰ Antiphon generally uses witnesses in order to corroborate parts of the narrative and, in so doing, to lay down the facts. And indeed, the testimony of witnesses, especially that of slaves, is often characterized as a means of examining the facts

¹ See esp. Due, 1980, p. 70f.; Gagarin, 1990a, p. 29ff.

² Grimaldi, 1980, p. 20.

³ Due, 1980, p. 70.

⁴ Gagarin, 1990a, p. 25f. A different position is taken in Gagarin, 2002.

⁵ Due, 1980, p. 70.

⁶ Due, 1980, esp. p. 59f.

⁷ See p. 123ff.

⁸ See p. 129ff..

⁹ Goebel, 1983, p. 25f.

¹⁰ Goebel, 1983, p. 22.

themselves, and a way in which litigants and jurors may come to *know* these facts.¹ Λόγοι, on the other hand, are the litigant's explanations of the events in question, explanations which must conform to the circumstantial evidence at hand, to the testimony of witnesses, and to εἰκός. Goebel also suggests that this distinction between these elements of proof prefigures the later distinction between the ἄτεχνοι and the ἔντεχνοι πίστεις.² And yet, to return to the same point, this conceptual distinction need not imply that the two types of πίστεις are, somehow, incommensurable. Indeed, testimony is routinely opened up to devastating attacks by arguments depending on εἰκός³ and, conversely, εἰκός is often at the root of a litigant's 'demonstrations'.⁴ What we must conclude, then, is that the distinction between these two πίστεις and the relationship between them is drawn, at least in part, internally to the speech itself and in terms of the case on trial.⁵ It is this overarching view of testimony, as a piece of 'evidentiary material' the value of which must be established internally to the speech *via* rational argumentation, which guides the analysis of the individual speeches below.

A brief word must also be said, at the start, about Carawan's ingenious attempt to rescue Solmsen's model from some of the criticism outlined above, a reading which adopts a middle position between Solmsen on the one hand, and Due, Gagarin, and Goebel on the other. Carawan, discarding the evolutionary ideas of Solmsen, proposes that the original thesis works well for Antiph. 1 and 6 – the δίκαι φόνου– but less well for Antiph. 5 which, he argues, presupposes a different, evidentiary, model of testimony.⁶ The central difference between these two types of trial is the presence and the severity of the litigants' oaths, the διωμοσίαι.⁷ In Carawan's view, the presence of the oath changes the fundamental question which the court addresses. What is *really* at stake in an Athenian δίκη φόνου, then, is not some factual matter which must be demonstrated, but the relative

¹ See Chapter Six.

² Goebel, 1983, p. 26.

³ See below.

⁴ E.g. Antiph. 6.33ff.

⁵ See esp. Chapter 5.3.

⁶ Carawan, 1998, esp. p. 270ff.

⁷ Carawan, 1998, p. 315ff.

conviction with which the two litigants have spoken their oaths, a conviction which must be proven by appeal to the traditional means of proofs. Moreover, Carawan proposes the juror's decision in δίκαι φόνου is strictly confined to a 'comparison of oaths' – a strategy openly suggested by the Chorus-producer of Antiph. 6 – and, therefore, to a comparison of two different assertions 'guaranteed' by witnesses.¹ In Antiph. 5, on the other hand, litigants are forced, by the absence of the oath, to argue in another way, one more compatible with the preceding analysis, and with a demonstrative function of witness depositions.² Though Carawan's model may be criticized as overly reductive,³ the following reading, particularly in the discussion of Antiph. 1, adopts his key insight, namely that the judgment of jurors is sometimes confined to the realm of λόγος and, in particular, to the relative 'preferability' of two sets of contrary assertions.⁴ This appears to be a corollary of the basic 'triangular' logic by which the Athenian court-system operated,⁵ one which gave rise, quite naturally, to the litigant's interest in suggesting a way in which his own speech, and his own witnesses, are to be preferred over those of his opponent's and *his* witnesses. This need not mean, however, that the Athenian courts were unconcerned with issues of fact. As Carey points out, the 'facts' are an emphatic touchstone of litigation in forensic cases.⁶ Rather, what the analysis will suggest is that the juror's decision about the relative preferability or, to give its proper term, the relative *credibility* of the litigant's speeches, was one way, perhaps the only available way, of accessing the facts of the case. This is, at least, what Antiphon's litigants tell their jurors. And this is, at heart, an epistemological position.

¹ Carawan, 1998, p. 271 *et passim*. See further below.

² Carawan, 1998, p. 316ff. See further below.

³ See below.

⁴ '[The jurists] are called upon to validate the claim of one party over the other' (Carawan, 1998, p. 237).

⁵ Carey, 2004, p. 1.

⁶ Carey, 2004, p. 3.

3.2: Testimony in Antiphon's Court-Speeches

In the following analysis, I delineate the predominant rhetorical functions of testimony in Antiphon's court speeches. As already discussed, I identify two predominant uses. The first, explicit in Antiph. 6 and Antiph. 5, is a demonstrative or straightforwardly evidentiary use. Here, witnesses are used in order to settle some matter of fact which is relevant to the determination of the defendant's guilt or innocence. Conversely, a witness may be attacked in order to undermine a demonstration. The second use, found in its most complete form in Antiph. 1, conceives testimony as a *heuristic* device, a method by which litigants can come to know the truth of their own assertions and, therefore, secure the truth of their own oaths and, as I argue, their own credibility.¹

For the sake of clarity, I will discuss each speech separately.

a. Antiph. 1: Against the Step-Mother for Poisoning

Antiph. 1 is the shortest² court-speech found in Antiphon's corpus and the only prosecution speech of the three. It was likely composed in the 410s³ for delivery at the court on the Areopagus.⁴ The prosecutor, an illegitimate son⁵ of the victim, indicted the victim's ex-wife, represented in court by the prosecution's half-brother, on a charge of murder. The prefatory hypothesis asserts that the prosecutor accused her of poisoning, φαρμακεία, though the actual charge seems to have been one of 'planning a wilful

¹ The two uses are not entirely distinct in Antiphon. Thus, demonstration by means of witnesses also leads to knowledge (see Chapter Six) and is, therefore, also 'heuristic' in the sense used above. On the logical differences between these two functions, as related to Herodotus, see Chapter Nine.

² The preserved speech can be read in around fifteen minutes (cf. Freeman, 1952, p. 85).

³ Dover, 1950, p. 44. Cf. Edwards, 2000, p. 236.

⁴ Gagarin, 1997, p. 104. Due, following MacDowell, believes that the speech was delivered at the Palladium (Due, 1980, p. 16; MacDowell, 1963, p. 58ff. Cf. Arist., *Ath. Pol.* 57.3). Gagarin has since shown that these cases treated of 'planning an unintentional murder' which was distinguished from cases such as this (Gagarin, 1990a, p. 92; cf. Carawan, 1998, p. 219.). However, cf. Plastow, 2016.

⁵ Goebel, 1983, p.40; Due, 1980, p.16.

homicide'.¹ The alleged plot involved a patsy, a concubine of the victim's friend,² who was tricked into administering a 'love potion' to the two men while they were in the Piraeus. Her lover, Philoneus, died immediately, being given a larger dose of the concoction. The prosecution's father died some three weeks later. On his death-bed, the victim summoned his son, our litigant, to accuse his ex-wife and to extract a promise of vengeance from him. Indeed, the entire case for the prosecution is presented as a belated act of this righteous vengeance, one directly dependent on the dead man's final revelation.³ At some point, presumably during the three-week period before the victim's death, the concubine was tortured and executed for her involvement in the death of Philoneus.⁴ Before the trial, the prosecutor, perhaps acting on information given by his father, challenged the defence to interrogate his slaves and establish that this was not the woman's only attempted poisoning. Unsurprisingly, the defendant refused. On the day of the trial, the two litigants swore solemn oaths. The woman's son, the defendant, swore that he 'knew well'⁵ that his mother did not intentionally murder his father. Our prosecutor, armed with a vindictive rumour from his dying father and the defence's refusal to extract testimony from his slaves, swore to the opposite.

After taking this solemn oath, the prosecutor would have recited, presumably almost verbatim,⁶ the speech preserved as Antiph. 1. This speech starts with a typical proem, bemoaning the speaker's youth and his inexperience in court.⁷ The main body of the speech which follows can be divided into four sections of roughly equal length, namely the 'preliminary argument' (Antiph. 1.5-13), the 'narrative' (Antiph. 14-20), the 'epilogue'

¹ Due, 1980, p. 16; cf. Gagarin, 1997, p. 104.

² The *παλλακίη* may have been a free-woman (Lipsius, 1915, p.895 n.122; Bushala, 1969, p.66ff.), but Philoneus' power over her suggests that she was a slave (Carey, 1988, p.241f.).

³ Due, 1980, p.16; Goebel, 1983, p.203.

⁴ There is some debate whether this torture was simply an execution or an interrogation followed by an execution (cf. Thür, 1977, p. 21 n. 42; Hunter, 1992, p. 283). The litigant emphasizes the *execution* of the slave. It seems implausible, however, that no information was extracted in the process (cf. Antiph. 6.31). Some, however, have suggested that that the litigant's narrative depends on this extracted information (Wohl, 2010a, p. 92; cf. Wilamowitz, 1887). Antiphon's silence on the issue, however, does seem to make this far less likely (Carawan, 1998, p. 211).

⁵ The prosecution's insistence on this phrase suggests that it formed part of the defence's *διωμοσία* (Gagarin, 1997, p. 109).

⁶ Due, 1980, p. 74.

⁷ Antiph. 1.1.

(Antiph. 1.21-27) and the 'second epilogue' (Antiph. 28-31).¹ The narrative is clearly demarcated from the adjacent sections by references to the judges² and contains an 'imaginative reconstruction' of the events recounted above. It is generally regarded as the best part of the speech.³ Following the narrative is a long *petitio principii*,⁴ which simply assumes the woman's guilt and concentrates on the relative justice of the litigants' claims and on some of the broader moral issues raised in the proem. The first and last sections, on which the rest of the discussion will concentrate, are the argumentative parts of the speech and contain the litigant's 'evidence', such as it is. The step-son's first, and most prominent, piece of 'evidence' is the βάσανος or, to be more exact, his brother's rejection of the βάσανος he had proposed before the trial:

For it was I who wanted to examine these men's slaves with the βάσανος, slaves who knew (συνήδει) that this woman, their mother, had even before plotted to poison our father, but my father caught her red-handed, and she even confessed, though she said that she gave him the poison not to kill him but as a love potion.

Antiph. 1.9

The prosecution's only piece of 'evidence', then, is an account of what the slaves *would* have said, *had* they been tortured. And, moreover, the testimony does not even treat of

¹ Cf. Gagarin, 1997, p. 104ff., Goebel, 1983, p. 200ff.

² πειράσομαι ὑμῖν διηγήσασθαι (Antiph. 1.13); σκέψασθε (Antiph. 1.21).

³ The narrative is praised for its vividness (Due, 1980, p. 20), the use of tragic language and motifs (Gernet, 1923, p. 42; Wohl, 2010b, p. 45; Edwards, 2017) and its 'argumentative' function (esp. Due, 1980, p. 21f.; Gagarin, 2003, p. 205f.). See esp. Edwards, 2004.

⁴ Goebel, 1983, p. 41.

the crime itself.¹ Of course, as Due has pointed out,² the litigant is slow to admit this fact and has exploited the illusion that his evidence was actually pertinent to the prosecution throughout the first argument. Indeed, postponing crucial facts unfavourable to his client is one of Antiphon's favourite rhetorical tricks, one which reaches its apogee in Antiph. 5.³ Nonetheless, the 'evidence' offered by the litigant is deeply problematic. Indeed, Antiphon has also embarrassingly put his finger on the case's fatally weak point, the issue of the woman's intention.⁴ Surely, his opponent might have countered that the woman could not have *intentionally* caused her husband's murder if she had not known the potion was poisonous. Under this traditional reading, then, the βάσανος is at the root of a hopelessly ineffective argument for premeditated homicide. This reading of the speech, which regards the woman's *intentions* as its chief *demonstrandum*, appears to be supported by a short description of a case found in the Aristotelian *Magna Moralia*,⁵ one in which a woman was acquitted from a charge of poisoning for just this failure to demonstrate malicious intent.⁶ As Gagarin has pointed out, however, the question of the woman's intent is hardly the focus of the argumentative sections of the speech.⁷ He proposes, rather, that the relevance of the previous attempts was not to prove the *intent* to poison, but to show that this latest episode conforms to a dangerous and pre-established pattern of φαρμακεία. Gagarin, in other words, re-interprets the βάσανος more favourably, as evidence of the woman's *agency*. The prosecution's case, then, does not so much suggest the actions of a malevolent 'poisoner', but of a Deianeira, driven to bold, catastrophic, acts by the extreme situation in which she finds herself.⁸ Arguing that these suggestions would have been sufficient to persuade jurors well-

¹ Carey, 2004, p. 5.

² Due, 1980, p. 18.

³ See below.

⁴ Cf. Goebel, 1983, p. 41.

⁵ Arist., [*Mag. Mor.*], 118b28-39.

⁶ Gernet, 1923, p. 35f; followed by MacDowell, 1963; Due, 1980; Goebel, 1989; Wohl, 2010a/b; and others. Carawan gives a similar interpretation, though focuses on the establishment of *prior knowledge* to which the prosecutor can swear with more conviction (Carawan, 1998, p. 238).

⁷ Gagarin, 1997, p. 104; 2002, p. 149.

⁸ Gagarin, 2002, p. 105. Wohl argues that Antiphon's use of tragedy and his sympathetic portrayal of the concubine risks introducing the ambiguity of tragic discourse and an implicit reference to Sophocles' *Trachiniae* and involuntary homicide (Wohl, 2010b, esp. p. 56ff.).

trained in chauvinistic suspicions to condemn her, Gagarin suggests that the woman's *intention* was entirely irrelevant to the case.¹ Yet, this seems to push the case rather too far. The reference to Clytemnestra in the step-son's narrative surely implies malicious intent, as does the helpless ignorance of the concubine. Moreover, the prosecution himself lays out the *demonstrandum* of his speech in terms of the woman's intention.²

Carawan has also attempted to rehabilitate Antiphon's βάσανος argument, albeit in an entirely different way. Arguing that the facts of the case were agreed upon by both parties – a suggestion which would explain the complete lack of witnesses³ – he argues that the βάσανος related primarily to the woman's state of mind and, in particular, her knowledge of the drug's baneful effects.⁴ The reference to the previous attempts, then, seeks to prove that even if she had once believed it to be a love potion, she was now certain it was a lethal poison.⁵ Carawan's reading, then, also helps explain the otherwise awkward 'slip-up' in the argument quoted above. Another explanation, however, is possible and, indeed, more economical: the contents of the would-be deposition, though introduced and emphasized by the litigant in Antiph. 1.9, are largely *irrelevant* to the argument which follows.⁶ This surely would explain not only the 'slip-up' – it does not damage, in any way, the ensuing argument – but also the palpable emphasis of Antiphon's argument which is evidently not on the contents of the βάσανος but on its supposed 'effects'. To be sure, the step-son makes the most of this 'missing' evidence – introducing issues which are surely relevant to the criminals' intent and *modus operandi*⁷ – and, indeed, defends the slaves' credibility in ways discussed below, but when he returns to the subject of the βάσανος, the subject of its 'contents' are never picked up again. What Antiphon does pick up on, rather, is an entirely different matter, namely the defendant's *ignorance* of his

¹ Gagarin, 2002, p. 151f.

² ἐπιδείξω ἐξ ἐπιβουλήs καὶ προβουλήs τὴν τούτων μητέρα φονέα οὔσαν τοῦ ἡμετέρου πατρός (Antiph. 1.3).

³ Carawan, 1998, p. 221; cf. Goebel, 1983, p. 209.

⁴ Carawan, 1998, p. 234f.; 2000, 211ff.

⁵ Carawan, 1998, p. 234f.

⁶ This is in stark contrast to the mode of argumentation in Antiph. 6.

⁷ I owe this observation to my examiners.

mother's innocence. And, indeed, the litigant would have been well advised not to dwell on the *contents* of the slave's testimony. There was no βάσανος to begin with! Indeed, the prosecution's insistence on the βάσανος conjures up, not so much a picture of the contents of the testimony, but the unassailable fact that no βάσανος had ever taken place. Indeed, as I shall argue below, this very fact constitutes one of Antiphon's chief weapons of attack.

To see how this paradoxical argument conferred any advantage over the defendant, it is necessary to look beyond this short report of the βάσανος to the two arguments which surround it. For reasons of clarity, it is best to treat these two arguments in turn even though I will suggest, with Due and Goebel, that they are in reality one argument.¹ And, since 'both' arguments have elicited very different readings, it is best to quote them at length. The so-called first argument, then, runs as follows:

I am at a loss (θαυμάζω) to understand what γνώμη led my brother to take a stand against me... And how can he say this,² that he knows well (εὔ οἶδεν) that his mother did not murder our father? He showed no interest in those methods which permit him to know clearly (σαφῶς εἰδέναι), the βάσανος. He preferred instead not to learn (πυθέσθαι). But it was incumbent on him to use the methods I suggested and, thereby, to examine the truth of the matter (ὅπως τὸ πραχθὲν ἦ ἀληθῶς ἐπεξελεθῆναι). For if the slaves did not agree (ὁμολογούντων) with me, he would have defended his mother with sure knowledge (εὔ εἰδῶς) and he would have pressed down upon me with great force. His mother would be absolved! How, then, having refused to furnish definitive

¹ Due, 1980, p. 18; Goebel, 1983, p. 208.

² For textual difficulties see Gagarin, 1997, p. 109f.

proof (ἔλεγχον) of what had happened, how is it that he can he claim to know those very things he refused to learn (πυθέσθαι)? How likely is it, gentlemen, that he knows that very truth he failed to grasp? How, then, shall he defend himself against me? For he knew well (εὔ ᾔδει) that the examination of the slaves would lead to disaster and, so, ensured that they are not examined (μὴ βασανισθῆναι) for this would lead to the truth (τὰ γινόμενα) to be buried (ἀφανισθῆναι). But how, I ask you, how can he swear truthfully that he knows well (εὔ εἰδέναι) that very thing he did not want to learn (σαφῶς πυθέσθαι) by the just βάσανος I was imploring him to use?

Antiph. 1.6ff.

According to Solmsen this argument centres on one ἄτεχνος πίστις above all, the litigant's διωμοσία.¹ Setting aside his proposals regarding the structure of the speech,² Solmsen observes that the main thrust of the argument is an attack on the literal truth of his brother's oath. He also suggests that this basic argument has, because of the gravitational power of the oath-motif, attracted to itself rogue elements which *really* belong to the second argument, one related to the βάσανος, and one with a different conclusion. As we already noted, then, Solmsen assumes that the βάσανος and the *oath* *must* be separated from one another, presumably *because* they operated irrationally and, therefore, independently from one another. As I argue below, this assumption does not obtain. As to the supposed prominence of the oath, Goebel has pointed out that any explicit reference to it comes rather late in the argument and proposes,³ with Due,⁴ that

¹ Solmsen, 1931, p. 21ff. esp. p. 24.

² We may note, however, that the position of the argument, as Goebel observes, fits exactly with the dispositional scheme first proposed by Schwartz (1892, p. 9f.). See Goebel, 1983, p. 204ff.

³ Goebel, 1983, p. 204.

⁴ Due, 1980, p. 25f.

the focus on the oath was merely traditional and of no real argumentative importance. The main function of the oath, a 'mere' *trope* according to Due, is to set up an antithesis between a dutiful and pious son who respects his oaths, and his impious, perjurious brother.¹ We may note, however, that the supposed scarcity of *explicit* reference to the oath is undercut if we grant, as seems very likely, that the repeated reference to 'εὖ οἶδε' are direct quotations from it.² The oath, then, is referred to multiple times in this argument and, indeed, in the rest of the speech. It seem reasonable to conclude, then, that the issue of the oath – the solemn δῶμοσία which preceded litigation in murder cases – was one of the touchstones of Antiphon's litigation here. We must also note, however, that the interest in the litigant's *knowledge* goes well beyond the strict interest of the εἰδέναι he swore to. The wealth of epistemically loaded terms – σαφῶς, ἔλεγχον, πυθέσθαι – is a clear sign of this basic fact. Moreover, and this is the key point, the prosecution also proposes a potential source of his brother's hypothetical knowledge, the βάσανος which his opponent has ignored. Indeed, this is the crucial assumption of the prosecution's argument: it is by means of the βάσανος that the litigants *ought* to have come to know the truth of the matter. How is it, the defendant pointedly asks, that my brother can *swear* to know that my mother is innocent when he did not bother to find out? Indeed, how can even *know* that his mother is innocent when he neglected the βάσανος? The reference to the slaves' testimony, then, is not simply a rogue element belonging to a separate argument, as Solmsen suspects, but the bedrock on which the argument is laid. Furthermore, the attack on the oath – my brother has sworn falsely that he knows – though undoubtedly prominent in Antiph. 1, is here subordinated to a more productive charge, namely 'my brother does not know what he is talking about'. In refusing to engage in the βάσανος, the litigant's brother has confirmed not only that his oath is false, but also his own ignorance. This is the most emphatic conclusion of the 'first argument'. Antiphon, however, continues:

¹ Due, 1980, p. 26.

² Gagarin, 1997, p. 109f.

This very examination is a just proof (τεκμήριον) that I was attending to my father's murder in a just and correct manner. For if they resorted to silence or refused to agree (λέγοιεν μὴ ὁμολογούμενα) the βάσανος would have necessitated (ἀναγκάζοι) them to agree upon the true facts... And I am confident (εὖ οἶδά) that if my opponents came to me as soon as my accusation of murder was proclaimed wanting to furnish me with the slaves and I refused, they would be treating this as the greatest proof that they are not guilty of murder. But it was I, and I alone, who wanted to examine these slaves, and bid them to examine them in front of men. It is only right (εἰκὸς) that their refusal is taken as evidence (τεκμήρια) of their guilt.

Antiph. 1.10f.

This 'second' argument is followed by a repetitious and seemingly superfluous doublet, examined further in Chapter Six, and one which has sparked much discussion. As Due observes, however, repetitiveness is a characteristic feature of Antiphon's writing style¹ and, further, may well have structural,² perhaps even argumentative,³ functions in the section. As to the argument just quoted, we may note, once again, that the litigant focuses on the great power of the βάσανος to necessitate truthful testimony and, thereby, to render the facts known. Solmsen too noted the emphasis laid on the βάσανος and proposed that this ἄτεχνος πίστις acted as another, separate, barycentre of Antiphon's

¹ Due, 1980, p. 73.

² Goebel, 1983, p. 206.

³ Due, 1980, p. 18f.; Goebel, 1983, p. 29.

argument,¹ one which he described as a ‘hypothetical role-reversal’.² This implausible argument – which Solmsen also regards as the litigant’s strongest point³ – runs as follows: since the defendant’s actions *suggest* that he is hiding something relevant to the case, then he must be hiding his mother’s guilt.⁴ As I will argue shortly, it is unclear whether this charge of complicity should be taken too seriously. More importantly, however, we note that the segregationist logic which Solmsen expects from Antiphon is not inevitable. Indeed, Due has described the ‘second argument’ as a logical *auxesis* of the first.⁵ In the ‘first argument’, then, the litigant purports to conclude that his brother cannot know that his mother is innocent, while in the ‘second argument’ he concludes that they in fact know her to be guilty. The βάσανος, as Due proposes, is the connecting thread uniting this single logical argument.⁶ Like Due, Goebel has suggested a similar interpretation of the argument as a single ἔντεχνος πίστις, one which is designed to prove his brother’s complicity.⁷ Once again, however, we note that if Antiphon’s main point is this rather questionable result, complicity, then it is an emphasis that Antiphon only makes here. Indeed, in the final argument, examined below, Antiphon regards the possibility of his brother’s complicity as laughable.⁸

Carawan, on the other hand, argues that the βάσανος functions primarily as a guarantee of the litigant’s conviction in the truth of his oath and, therefore, that his brother’s reluctance to examine his slave undermines his ‘conviction’.⁹ One must wonder, however, why it is that the litigant never spells this out in so many words. What we do find, rather, is an obsessive concentration on the *knowledge* of his litigant-brother, a knowledge which *should* have been acquired through the βάσανος and which he, quite ‘inexplicably’, even wondrously, swore to possess in his διωμοσία. Indeed, even the

¹ Solmsen, 1931, p. 24.

² Solmsen, 1931, p. 10.

³ Solmsen, 1931, p. 24.

⁴ The argument moves from not knowing (x) to knowing (not-x) and is, of course, invalid. Antiphon’s complex argumentation is, perhaps, an attempt at concealing this weakness.

⁵ Due, 1980, p. 18.

⁶ Due, 1980, p. 17ff.

⁷ Goebel, 1983, p. 208.

⁸ Antiph. 1.28.

⁹ Carawan, 1998, esp. p. 237ff.

second argument can be comfortably accommodated into this strategy. Rather than being the crux of Antiphon's strategy, this argument is a vitriolic *auxesis* on the litigant's general attack on the defendant's knowledge-claims. In short, the claim that the defendant knows well his mother's guilt proves, *a fortiori*, that he does not know of her innocence. The argument also introduces the possibility – one exploited to greater effect in Antiphon's other two speeches – that the defendant is not only epistemically ill-equipped to speak knowingly, but is also lying for self-interested motives.¹ The two arguments, then, can in fact be united into one long ἔντεχνος argument, as Goebel proposes, though one which attempts to prove, most emphatically, his brother's *ignorance*.

The central assumption of this argument, as we have noted, is that βάσανος can function as a legitimate source of knowledge. It is only because the βάσανος is a way of examining the truth of the matter, τὸ πραχθὲν ἢ ἀληθῶς ἐπεξελεθεῖν,² a way of obtaining clear knowledge, σαφῶς εἰδέναι,³ certain knowledge, εὖ εἰδέναι,⁴ and learning, πυθέσθαι,⁵ that any neglect of this βάσανος necessarily leads to gross epistemic failure. The mechanism by which the βάσανος was thought to guarantee this is discussed in the next chapter. If we grant for the time being, however, that the βάσανος is characterized as a *heuristic* device, we may ask the next relevant question: what is the proposition that the βάσανος would have made 'known'. Once again, Antiphon spells this out for us: the βάσανος would have established his step-mother's guilt. This is, of course, not true. The βάσανος did not relate to the incident in any unambiguous way. Yet, as already noted, Antiphon delays the necessary information which would let the jurors know this fact. Moreover, Antiphon also 'distracts' from the issue by focusing, rather than on the contents of the βάσανος, on its *consequences* and, in particular, on the epistemic consequences of his brother's neglect. Antiphon's overall strategy with respect to the

¹ See p. 150ff.

² Antiph. 1.6.

³ Antiph. *Ibid.*

⁴ Antiph. 1.8

⁵ Antiph. *Ibid.*

βάσανος, then, treads a very fine line. By introducing the would-be contents of the βάσανος and defending the credibility of the slaves and the rationality and justice of the procedure, he takes the opportunity of presenting the accused in the most unfavourable light, whether as a malicious plotter or a dangerous potion-handler, and points to the availability of hard ‘evidence’ which his brother had ignored. Simultaneously, he emphasizes that that the βάσανος has not actually taken place and describes, in minute detail, the disastrous epistemic and moral consequences of this deficiency for his brother.

The strategy described has, of course, one glaring problem. The same basic proposition, namely ‘the litigant has no idea what he is talking about’, could very well be said of the prosecutor himself. Though the responsibility of his *ignorance* might lie with his brother – as he is keen to point out – the very fact that the βάσανος, hailed as the securest method of investigation, was *not* performed is bound to raise this awkward question for *both litigants*. As Wilamowitz observed long ago,¹ however, Antiphon turns to address this question in the last section of the speech:

I am amazed (θαυμάζω) that my brother would dare to swear that he knows well his mother is innocent. How could he know well (εὖ εἰδείη) that which he didn’t himself see? For, I suppose, murder plots do not have witnesses (μαρτύρων) and murderers make sure that their plans are hidden and that no man alive knows of them (ἀνθρώπων μηδένα εἰδέναι). And indeed, those plotted against also do not know, *before* they are in the midst of evil and recognize (γινώσκωσι) their impending doom. And then, if at all possible, while they are breathing their last, they summon their friends and relatives to make them witnesses (μαρτύρονται),

¹ Wilamowitz, 1887, p. 209; Goebel, 1983, p. 213.

tell them who their murderer is, and charge them with vengeance. And indeed, this is just what my father charged me with, though I was still a boy, while he was gripped with his final illness. But if they cannot, they write these things down, and make their slaves witnesses (μάρτυρας) and reveal to them (δηλοῦσιν) who their murderer is. But my father had me, young though I was, and he revealed (ἐδήλωσε) these things to me, and not to his slaves, and laid down these charges on me.

Antiph. 1.28ff.

Goebel and Due have rightly characterized this passage as the climax of the speech and emphasized the πάθος which it is meant convey.¹ Schwartz also proposed that the brevity of the epilogue is meant to emphasize this 'grave and religious argument'.² Commentators are often far less impressed, however, with the content of the argument itself.³ The primary problem with this passage revolves around its seeming incompatibility to the previous statements. Thus, while the litigant proposed that witnesses did exist for previous murder attempts and were potentially available to the court, he now argues that the truth can only be known by the murderer. Wilamowitz, accordingly, proposed this incompatibility to explain the awkward separation of this argumentative section from the first.⁴ Yet, once again, other reasons have been suggested for the position of the final argument.⁵ Furthermore, both Carawan and Goebel suggest that there is no fundamental incompatibility between the two arguments,⁶ as I too hope to demonstrate.

¹ Goebel, 1983, p. 212; Due, 1980, 24f.

² Schwartz, 1892, p. 11.

³ Due (1980, p. 24), however, points out that the passage does explain the lack of witnesses.

⁴ Wilamowitz, 1887, p. 209.

⁵ E.g. emphasis (Due, 1980, p. 25; conventional structure (Goebel, 1983, p. 214).

⁶ Goebel, 1983, p. 213; Carawan, 1998, p. 238.

As Solmsen notes,¹ the oath is, once again, a prominent feature of this argument. Apart from the verb δίομνυμαι, references to it are stark and unmistakable and include, once again, the direct quotation, εὐ εἰδέναι. The return to this topic is heralded by the introductory and intensive θαυμάζω which is closely parallel to Antiph. 1.5.² Testimony, explicit in the litigant's references to the βάσανος, is another uniting thread. We note, then, that two explicit references to formal witnesses occur in the final part of the speech, where μαρτύρες refers to relatives and friends summoned by the victim to hear his dying declaration. The implication of this is clear. The litigant, the only *actual* witness to his father's dying words, characterizes himself as a first-hand μαρτύς of his father's death and, more importantly, of his father's accusation. It is this fact which explains how he *knows* his accusation to be true. The father's death-bed testimony, like the βάσανος, is not merely a 'piece of evidence' introduced by the litigant to support his claims. Rather, it allows the litigant to explain how he knows that his accusation is true.³ Accordingly, the litigant is emphatic that these dying men *demonstrate*, δηλοῦσιν, the identity of the guilty-party to these witnesses, just as his father had demonstrated, ἐδήλωσε, his step-mother's guilt to him. His reference to μαρτύρες, of course, also draws attention to the embarrassing absence of witnesses who can vouch for his account of the father's accusation.⁴ It is likely, given the importance of this piece of indirect testimony, that the litigant could find none. He does, however, attempt to augment the force of the argument by describing, in some detail, the knowledge state of the primary witness, the victim, on whose assertions he must depend. On closer inspection, of course, this γινώσκειν turns out to be *irrelevant* to the question under discussion. His father simply realized that he is about to die. Yet, by generalizing about the 'common situation' in which the murdered

¹ Solmsen, 1931, p. 22ff.

² Pace Due, 1980, p. 23.

³ Several commentators have argued that the litigant is *not* justified in his claims of epistemic superiority and, further, that he is guilty of a 'fallacy' in distinguishing himself and his opponent in epistemic terms (e.g. Goebel, 1983, p. 214). By modern epistemic standards, this is undeniable. Yet, this is not the only example of a victim who, at the point of death, 'magically' comes to know who is responsible for the crime (Cf. Hdt. 1.8ff.). The same point is made by Wilamowitz, 1887, p. 208.

⁴ As Due pointed out, the section also helps explain the lack of accidental witnesses (Due, 1980, p. 24).

man is sure of the identity of the killer, he implies that his father also knew who had killed him. And, to bolster this specious argument further, the prosecution also favourably compares such testimony to the use of 'documentary evidence' and explains that his father's testimony is just one instance of a recognizable 'convention' of death-bed declarations.¹ In other words, the testimony, indirect though it surely is,² conforms to the normal behaviour of dying men. It is, in a word, εἰκός. This, then, is the means by which our litigant presents himself as a *knowing* litigant.

A few lines earlier, the litigant had also referred to another group of hypothetical witnesses, summoned to observe the hatching of a murder-plot. In this case, the hypothetical μαρτύς is his half-brother, the defendant. Yet, in contrast to the 'convention' whereby victims summon their relatives to their death-scene, no murderer can be expected to do anything comparable. By the rules of εἰκός, murderers do not want to be discovered. The existence of such witnesses, the prosecution points out, is incredible.³ The brother, in other words, could not have witnessed the relevant events. As already observed, this is, strictly speaking, contrary to the 'conclusion' of the so-called 'second argument'. And yet, we note that the general thrust of the argument is, at heart, complementary. Thus, having denied that the litigant had any βάσαυος-based knowledge of his mother's innocence, he now moves on to deny the possibility of his own personal knowledge. Indeed, the pair of arguments form an *apagoge* of considerable power: how can he *know* that his mother is innocent if he *cannot* have personal knowledge or knowledge based on the βάσαυος? The defendant cannot have knowledge of his mother's innocence, we are led to infer, *which corresponds to* the prosecution's own knowledge of her guilt.⁴ If, then, the jurors are to compare the epistemic grounds of the two litigants, they will see that their respective claims 'to know well' what they claim to

¹ Carawan (1998, p. 239ff.) proposes a more speculative alternative.

² One notes, however, that death-bed declarations were one of the only admissible pieces of *hearsay* evidence (MacDowell, 1979, p. 243)..

³ Interestingly, the argument relies on a failure of the litigant to distinguish between formal and accidental witnesses. Thus, the litigant argues that since murderers do not summon witnesses, there can be no accidental witnesses either.

⁴ Antiph. 1.28ff.

know are very different. One is based on a plausible 'convention' and his dying father's 'knowledge', the other flies in the face of εικόζ.

All three arguments, then, converge on the litigants' oaths or, more precisely, on the epistemic grounds upon which this knowledge-claim is sworn. This argumentative 'strategy' may be divided into two complementary halves. The first deprives his opponent of any access, whether by personal ὄψις or by extracted testimony, to the 'knowledge' which he claimed to have in his διωμοσία. The second half suggests a way in which he himself could have possessed the knowledge which he has denied of his opponent. In both cases, then, 'testimony', whether understood to mean the father's declaration or the slave's extracted testimony, are *heuristic devices* which can be used to secure the litigant's *knowledge* and, therefore, the truth of his knowledge-claims. This reading, which appears to hang the entirety of the case on the literal truth of the διωμοσία, may appear to support Solmsen's thesis about the dominance of ἄτεχνοι πίστεις in early rhetoric. Yet, important differences separate the two readings. Thus, I have argued that the ἄτεχνοι πίστεις are not automatically decisive and unilateral pieces of evidence, but used as the basis of argumentation about the respective knowledge-claims of the litigants. Secondly, Solmsen conceives the *oath* and the βάσανος as fundamentally separate forms of argument. This has been shown not to be true. The βάσανος is one way in which a litigant can secure the knowledge he has sworn to in his διωμοσία. Carawan too has focused on the importance of the oath and has argued, partly on the basis of Antiph. 6, that the βάσανος must be subordinated to the primary axis of judicial decision-making, the comparison of the oaths.¹ The βάσανος, he argues, functions as a test of one's conviction. Indeed, the self-effacing terms with which the βάσανος was proposed seems to support this thesis. The βάσανος, however, also serves a more straightforward function. It is a potential epistemic resource at the litigant's disposal, one that must be used to explain the origin of his knowledge and, secondly, guarantee the literal truth of one's oath. Antiphon's focus on the oath, then, is hardly 'irrational'. Indeed,

¹ Carawan, 1998, 237ff.

the contrariness of oaths, each a sworn knowledge-claim, automatically invites a comparison as to the epistemic resources which could justify such a strong claim. An attack on the defendant's *ability* to know, then, appears to be a perfectly legitimate form of argument attacking the oath-cum-knowledge-claim. Once the importance of the speaker's *knowledge* in the assessment of credibility has been established, however, it will become apparent that Antiphon's argument is not simply a charge of perjury. It is, rather, a challenge to the credibility of the defendant's case *tout court*.

b. Antiph. 6: On the Chorus-producer

Antiph. 6 is a defence speech securely dated to the year 419/8 B.C.E.¹ The defendant, a wealthy and prominent citizen and a suspected political ally of Antiphon,² was accused of homicide by a certain Philocrates. The case involved the prosecutor's brother, the boy Diodotus. While under the defendant's tutelage – he was a *χορηγός* for that year's Thargelia – the victim was fatally poisoned by a medicinal potion given to him, presumably by a member of the defendant's 'staff'. The boy appears to have died soon after drinking the potion.³ The defendant, who was busy elsewhere at the time, seems to have been unaware of these goings-on. Yet, in the immediate aftermath of the death, the boy's relatives publicly indicted the defendant and the case eventually made it to the Palladion⁴ under the law forbidding the *βούλευσις* of 'unwilful homicide'.⁵ The charge of 'planning' an involuntary criminal act sounds somewhat strange and was, perhaps,

¹ Dover, 1950, p. 44; Meritt, 1928, p. 120f.

² Cf. Erbse, 1963, p. 17.

³ The boy died in the house of *χορηγός* and, therefore, fairly rapidly. The temporal sequence of the events strongly suggests that the potion was the cause of death. In fact, the defendant never disputes this fact. The 'potion' may have contained a phytotoxin or a mycotoxin, which would usually induce obvious symptoms of poisoning, or the boy was fatally allergic to one of the potion's components.

⁴ Gagarin, 1997, p. 221.

⁵ For a full account of the events leading up to the prosecution see Freeman, 1954, p. 86ff. The author, however, dates the speech to 412 B.C.E. and ties the speech to an implausible reconstruction of the convoluted political machinations of 411 B.C.E.

unusual at the time.¹ In a modern court, the case appears to hinge on two legal principles, namely those of 'negligent homicide' and 'vicarious liability'.² The prosecution may have alleged that the defendant, though not present at the boy's death, is nonetheless responsible because his provisions for the boy's safety were inadequate. The defendant appears to address this possible charge by a detailed description of the provisions in place at the time of the boy's death and by assuring his jurors that these provisions had proved adequate before.³ The prosecution may also have argued that the defendant is to be held accountable for the actions of his 'subordinates' and, therefore, to be ultimately responsible for Diodotus' death. Once again, the defence speech appears to argue against this charge, albeit only in passing.⁴

The main body of the defence speech may be divided into two principal parts.⁵ The first⁶ is a reply to the charge itself. The aim of this section is to 'explain to the judges all that had happened'.⁷ In truth, however, the defendant falls short of his intended goal. Indeed, virtually nothing is said of the death of Diodotus or of the events leading up to it.⁸ Instead, two 'narrative sections'⁹ deal with the prelude and the immediate aftermath of the death. The defendant's narrative is supported, at key points, by appeal to testimony. Thus, at Antiph. 6.16, the defendant refers to accidental witnesses who confirm the most important point made in the narrative, namely his absence from the scene. The defendant also appeals to 'the knowledge of those present in court' for his account of the detailed arrangements of the chorus and the prosecution's actions after the death.¹⁰ Each narrative contains much implicit argumentative material¹¹ and, moreover, leads

¹ Gagarin (1997, p. 224) proposes that the archon's initial refusal to initiate judicial proceedings was due to the unorthodox nature of the charge. The defendant, however, appeals to a different rationale (Antiph. 6.38).

² On these principles, and especially on 'planning by negligent omission', see Heitch, 1980, 14f.

³ Carawan, 1998, p. 265.

⁴ Antiph. 6.15.

⁵ At Antiph. 6.8 and 6.33, the defendant appears to acknowledge this division.

⁶ Antiph. 6.11-31

⁷ Antiph. 6.8.

⁸ Schwartz, 1892, p. 10.

⁹ Antiph. 6.11-14, 20-24

¹⁰ Antiph. 6.41.

¹¹ E.g. Due, 1980, p. 56.

directly to two explicit arguments of great importance. The first is an enthymeme,¹ based on premises which have been confirmed by witnesses, which concludes that the defendant is innocent under the law invoked by his opponents. The second argument from the βάσανος, is an attack on his opponent's γνώμη for prosecution and contains another instance of the 'hypothetical role-reversal' described by Solmsen.

Almost every component of this central section has invited extensive criticism. Under the traditional interpretation, inaugurated by Schwartz² and Wilamowitz,³ the speech is a 'masterwork of subterfuge',⁴ one which distorts the charge and evades the central issues of the case. The defendant's restricted narrative of the events is one element of this strategy.⁵ In effect, the defendant refuses to narrate the facts because the facts are unfavourable to himself or to one of his close associates. The enthymeme which follows on from the narrative has attracted even more attention. Here, the defendant 'demonstrates' his innocence of βούλευσις by establishing, by means of testimony, that he did not 'give him the drug, compel or order him to drink it'. In logical terms, the argument is based on an ἀπαγωγή, one which reduces the prosecution's charge to a purportedly exhaustive disjunction of possible ways in which he could have 'planned' the boy's death. The litigant then proceeds to discount each possibility by appealing to witnesses who confirm that the defendant did not act in the relevant ways. As part of an implicit *a fortiori* argument, the defendant also demonstrates, again by appealing to testimony, that he was not even *present* at the scene of the death. Most commentators are harshly critical of this ingenious argument. It is often suggested that the defendant has misrepresented the spirit, if not the actual words,⁶ of the prosecution's charge. And, indeed, the very structure of the accusation – ideally suited for attack by Antiphon's

¹ Erbse, 1963, p. 26.

² Schwartz, 1892, p. 9ff.

³ Wilamowitz, 1900, 403-4.

⁴ Carawan, 1998, p. 253.

⁵ See esp. Erbse, 1963, p. 25. Due proposes a plausible alternative. The defendant does not dwell on the events to impress upon the judges the fact that he knew nothing of them (Due, 1980, p. 56).

⁶ Maschke (1926, p. 92ff.) argues that the disjunctive phrase is the defendant's tendentious interpretation of the defendant's charge. In this, he is followed by Heitsch (1980, p. 31f.) and Gagarin (1997, p. 233).

favourite argument, the ἀπαγωγή – does suggest an Antiphontean source for the ‘triple disjunction’, as does the distinct similarity of the argument to one which Euxitheus deploys in the prologue of his defence speech:

And that I am not a *malefactor* and not liable to prosecution for *malefaction*, they themselves are witnesses. For the law pertains to theft and mugging. But they have demonstrated (ἀπέδειξαν) neither of me.

Antiph. 5.9

Though the purpose of the argument is somewhat different – Euxitheus wishes to prove that the choice of the procedure is inappropriate – the form of the argument is essentially the same. The overarching charge of ‘malefaction’, which his opponents had brought against him, is broken down into a disjunction of possibilities and each possibility falsified. If, then, as the similarity of these arguments suggests, the ‘triple disjunction’ was Antiphon’s creation, the *enthymeme* counters a charge the prosecution never explicitly made. It seems implausible, however, that Antiphon would have strayed too far from the *substance* of the charge, if only because an obvious mischaracterisation could be easily detected, particularly in light of his emphasis on the prosecution’s *assertions*.¹ Antiphon’s strategy, then, may have simply involved manipulating the opponent’s charge to produce a more easily assailable, but still recognizable, version of it. And indeed, the argument from Antiph. 5, quoted above, reassures us that this is probably the case. Here the litigant is explicitly concerned with the scope of the law of malefaction and, in particular, whether malefaction included *murder* as well as thieving and mugging as his

¹ E.g. αἰτιῶνται... φασιν... φασιν... φασιν... Antiph. 6.17.

opponent had argued. Both litigants, then, appear to be preoccupied with defining the scope of the relevant accusation. Similarly, then, the Chorus-producer presents, in accordance to the needs of his case, as narrow a definition of βούλευσις as possible, and moves on to disprove each possible act of βούλευσις by referring to the testimony of his own witnesses. The problem, then, lies with the fact that Antiphon has purposefully re-interpreted βούλευσις in terms which were too narrow, too literal and which purposefully omits the most pertinent meaning of βούλευσις, that of negligent homicide. As a result, the *enthymeme* is specious and sophistic.¹ One possible motive for adopting this strategy is the ease with which the defendant could find witnesses to confirm that he did not behave in the ways he has defined as βούλευσις. Indeed, the power and pertinence of this testimony is one of the leitmotifs of the speech, and understandably so. And yet, under the traditional interpretation, the testimony of the summoned witnesses is irrelevant² to the issue because the prosecution's case does not depend on the established facts, but on an interpretation of these facts. Even the defendant's clinching argument – I was absent at the time of the death – is *irrelevant* for the purposes of determining his guilt. Indeed, the prosecution may have argued that his very absence from the scene – which the prosecution appears to have openly acknowledged – *proves* that he was negligent and, therefore, responsible.

The apogee of this strategy of obfuscation is the defendant's alleged manipulation of the prosecution's charge. According to Heitsch, the participle βουλεύσας in the prosecutor's charge was used absolutely. The charge, then, is one of 'involuntary homicide *by means of planning*'.³ The defence, however, turned this syntax on its head and made 'involuntary homicide' an internal accusative of βουλεύσας. The charge now reads '*planning an involuntary homicide*', a construction which sounds, and was intended to sound, paradoxical.⁴ Heitsch's view, and the traditional interpretation more generally, must

¹ Due, 1980, p. 57; Erbse, 1963, p. 26.

² Schwartz, 1892, p. 10; Due, 1980, p. 57; Gagarin, 2002, p. 141.

³ Heitsch, 1980, p. 31f.

⁴ *contra* Carawan, 1998, p. 256ff.

assume that the charge of ‘planning an involuntary homicide’ was a relatively recent development in late-fifth-century juristic thought.¹ The Chorus-producer, then, mischaracterizes the charge as the new-fangled concept, ‘planning an involuntary homicide’, and proceeds to argue that no such thing exists. The sophist’s strategy, then, is to engage in sophisticated ‘philosophy of action’ and, simultaneously, to insist repeatedly that the case should be treated as any case of βούλευσις which turned on a question of *fact*. Such an argument sounds implausibly convoluted. Carawan has recently given a more charitable interpretation of the defendant’s speech.² First, he notes, against Heitsch, that the defendant never questions the general principle behind ‘planning an involuntary homicide’,³ but only its application to his specific circumstances.⁴ The defendant’s case, then, depends on a ‘definition’ of the proper remit of this law. Second, Carawan argues that Antiphon relies on different legal principles, ones more congenial to fifth-century notions of agency and guilt, to prove that the law does not apply to his client’s case.⁵ The crux of Carawan’s re-interpretation, however, relies on an entire shift of focus toward the traditional forms of proof and, especially, to the litigants’ δῶμοσία.⁶ Drawing on Solmsen’s analysis – which, predictably, attempts to separate the arguments of speech in accordance to the influence of two different ἄτεχνοι πίστεις⁷ – Carawan argues that the central question of the trial, being a *dike phonou*, is the litigants’ relative confidence in the truth of their oaths.⁸ In such a trial, Carawan proposes, this conviction must be established by appeal to the formal methods of proof and, in Antiph. 6, by appeal to witnesses. The defendant’s case, then, consists of an attack on

¹ Carawan, 1998, p. 256.

² Carawan (1998, p. p. 253) also suspects distortion on the part of the litigant.

³ Carawan, 1998, p. 261.

⁴ Carawan, 1998, p. 253f., 260ff.

⁵ For Carawan, the defendant’s main strategy relies in denying ‘any role in the causal sequence’ (Carawan, 1998, p. 262), rather than defend himself against the charge of βούλησις by negligence’ (Carawan, 1998, p. 265). Carawan also proposes that the defendant relied on two different legal principles, those of ‘fair choice’ and ‘last clear chance’ to argue that his behaviour during the time of the boy’s death was beyond reproach (cf. Carawan, 1998, p. 265ff).

⁶ ‘[The defendant] approaches the trial as a decision for the judges to make between the claims that he has sworn and those of the plaintiffs.’ (Carawan, 1998, p. 271).

⁷ Solmsen, 1931, p. 24ff.

⁸ Carawan, 1998, p. 270ff.

the prosecution's *neglect* of testimony¹ which should have been the basis for the resolution of the case, namely, to prove that he was convinced that the Chorus-producer was guilty.² Their neglect of the βᾶσνος, then, betrays a lack of confidence in their oath and, consequently, the unrighteousness of their prosecution. Conversely, the defendant's willingness to appeal to the testimony of witnesses proves the reverse. Carawan's reading, then, also allows us to relate *all* the arguments found in Antiph. 6 to one overarching issue,³ the relative conviction the litigants demonstrated in their oaths. Gagarin points out,⁴ however, much as Due⁵ and Goebel⁶ did in arguing against Solmsen, that the attention lavished on oaths is only one focus of the speech, and not a particularly prominent one. Nonetheless, Carawan's reading has one great advantage: it more readily explains the defendant's focus on the power of testimony than does a deceptive strategy designed to obscure the nature of the case.

The second part of the speech (Antiph. 6.7-10 and 33-50), has also been implicated in Antiphon's sophistry. This section, however, does not deal with the facts of the case at all. Rather, in what precedes and follows from the central parts of the speech,⁷ the defendant engages in an extended attack on the opponent's γνώμη for prosecuting him. Once again, the defendant openly declares his purpose in speaking, namely to 'embarrass his accusers' by showing that their charge amounts to nothing else but slander and deceit.⁸ This is declared purpose of the third and final argument, one which is preceded by another extensive account of the defendant's actions leading up to the trial. The dramatic climax of these events – their public reconciliation with the defendant – is confirmed by appeal to formal witnesses who, however, do not appear to have been summoned to court.⁹ From this description of the prosecution's actions, one emphasizing

¹ Antiph. 6.27f.

² Carawan, 1998, p. 261.

³ See e.g. Carawan, 1998, p. 261.

⁴ Gagarin, 2002, p.142 n. 24.

⁵ Due, 1980, p. 61.

⁶ Goebel, 1983, p. 224.

⁷ See Goebel, 1983, p. 200ff. and 224f.

⁸ Antiph. 6.33.

⁹ Cf. Gagarin, 1997, p. 241.

certain irregularities which sit uncomfortably with a genuine belief of the defendant's guilt, our litigant 'proves', by εἰκόσ, that even the prosecution 'could not persuade themselves' that the defendant was guilty. The Chorus-producer, then, attempts to demonstrate, by an examination of his opponent's actions, that the prosecution knows his own sworn claims to be false. Just like their unwillingness to examine witnesses, then, the prosecution's other actions before the trial prove that he believed the defendant to be innocent. The defence treats this 'fact' as powerfully demonstrative, asserting that his opponents have become 'witnesses' for his side.¹ Finally, our litigant also proposes to show that the prosecution's reason for indictment is not a genuine belief in the truth of their δῖωμοσῖα,² but a bribe of thirty minas promised by the Chorus-producer's political enemies, a claim which is supported by no evidence, as commentators point out.³ Most commentators have also remarked on the relative length of the two sections, particularly in context of the law forbidding litigants from speaking '*outside the matter*' in murder trials. Just as the defendant's reticence in the first part was considered a sign of an 'evasive strategy', so is his prolixity in the second. Antiphon, aware of the weaknesses inherent in the case, sought to distort the issue and confuse the jurors with personal attacks on the prosecution.⁴

The structural 'problems' of the speech have also attracted considerable attention. As with his reading of Antiph. 1, Solmsen argues that the second part of the speech – which deals with actions in the same temporal sequence as the first – has become separated from its logical partner.⁵ Noting the disjointed report of the prosecution's actions after the boy's death, Solmsen proposes that a potentially coherent narrative had been torn apart to support two separate arguments.⁶ The reason for this separation is, again, the alleged magnetic power of ἄτεχνοι πίστεις around which the two arguments are built, testimony

¹ Antiph. 6.47.

² Antiph. 6.49.

³ E.g. Gagarin, 1997, p. 246; Goebel, 1983, p. 39.

⁴ E.g. Due, 1980, p. 64.

⁵ Solmsen, 1931, p. 24ff.

⁶ See Carawan, 1998, p. 280f.

and the oath.¹ Due has, however, suggested an alternative explanation for the separation of the two major parts of the speech, one with considerable textual support,² namely that the second part is separated from the first because it deals with issues ‘*outside the matter*’.³ It should be noted, however, that in arguing that the second ‘part’ of the speech is an *ad hominem* attack irrelevant to the case, Due must agree with Solmsen’s more basic thesis, namely that the arguments are fundamentally unrelated to one another. A more unitary reading, however, is also possible.⁴ After attacking the truth of the prosecution’s accusation by confronting a distorted, though superficially plausible version of the accusation with the statements of witnesses, the defendant turns to attack his opponent’s γνώμη for prosecution. This argument, concentrating on the prosecution’s rejection of the βάσανος, concludes, in the manner of Antiph. 1, that even the litigant does not believe his own accusation. Though the latter conclusion is manifestly stronger, the two arguments are related to one another by way of a rhetorico-logical *auxesis*. In the first argument, then, the Chorus-producer shows that his opponent’s accusation is false and, in the second, that they themselves cannot bring themselves to believe it.

As in Antiph. 1, then, all the major arguments converge on certain *assertions* made by the opponent. The defendant’s attack on his opponent’s claims, however, is broader than that in Antiph. 1 and has a different focus. To re-iterate, in Antiphon’s first speech, the prosecutor characterizes the δῶμοσία as a knowledge-claim and compares the grounds on which these oaths are sworn. The upshot of this strategy is a ‘proof’ that his own δῶμοσία, and indeed his entire case, are more credible than those of his opponent. The Chorus-producer, on the other hand, does not concentrate on the grounds on which the prosecution can claim to ‘know well’ the defendant’s guilt, but on the truth of the ‘facts’ they claim to know. This attack is constituted, chiefly, by the enthymeme. Here, the defendant *apagogically* reduces the accusation into an exhaustive disjunction of

¹ Solmsen, 1931, p. 24ff.

² Implied by the apology at Antiph. 6.33.

³ Due, 1980, p. 62.

⁴ E.g. Goebel, 1983, p. 222f.

possibilities and proceeds to *demonstrate* that each disjunct is factually false. Whatever the exact origin of this ‘triple disjunction’, it is testimony which plays a central role in *demonstrating* its falsity. Conversely, testimony also plays a role in the *demonstration* of the truth of his own claims, namely that he was not there. The testimony of witnesses, then, is *not* primarily conceived as a *heuristic device*, but has a demonstrative or evidentiary role. In the words of Antiphon, the testimony of witnesses confirms and refutes λόγοι¹ and, therefore, lays down some matters of fact.² Carawan’s reading, for all its merits, neglects this key component of the Chorus-producer’s defence speech. By focusing exclusively on its role as a *guarantee* of the litigants’ oaths, he downplays the importance of Antiphon’s main argument and mischaracterizes its fundamental purpose. The litigant insists that the case should be resolved by witnesses not merely because he relies on them to prove his own confidence in the oath, as Carawan argues,³ but because the witnesses can *demonstrate* the relevant facts which exonerate him. As Carawan observes, however, the defendant does insist that the testimony affords the jurors the means of resolution *because* they can now compare the contradictory oaths of the litigants. The issue, however, does not seem to be related, in any obvious sense, to the litigant’s ‘conviction’. Nor, indeed, is the role of the witnesses to be defined in relation to the oath, as Carawan proposes. The picture which emerges is, rather, the reverse. Thus, it is the availability of testimony which allows Antiphon to present the *truth* of the oath as the fundamental issue on trial. Furthermore, there is nothing in the ‘oath-comparing’ function of testimony which is incompatible with the ‘demonstrative’ role of testimony for which I have argued. Rather, ‘demonstration’ introduces another axis of comparison: the *facts themselves*. It is in answering such questions of fact, the defendant insists, that the demonstrative testimony of witnesses is decisive.

In the rest of the litigant’s attack on the prosecution’s λόγοι, the ‘facts’ of the case recede further into the background. Rather, it is the actions of the prosecutor – his refusal to

¹ Antiph. 6.28.

² Antiph. 6.29.

³ Carawan, 1998, p. 254.

appeal to witnesses – which becomes the focus of the argument. The prosecution's refusal to use testimony, the Chorus-producer argues, implies that he did not want to discover the truth and, hence, that they 'knew well' that the truth was unfavourable to their case. As in Antiph. 1, then, the willingness of the litigants to appeal to the available testimony is a measure of the litigant's good-faith. This attack resumes in the second part of the speech, where the defendant's actions, and especially their public reconciliation with the defendant, also suggest that he did not believe the defendant to be guilty. What, then, a juror may ask, motivated the lying prosecution's accusation if not a genuine belief in the Chorus-producer's guilt? In the final part of the speech, the defendant also suggests an answer to this question; money. Once again, however, the primary objective of the argument is to prove that the prosecution's accusation is false¹ and that he knows it to be false.² This, the defendant insists, should be the basis for his acquittal.

c. Antiph. 5: On the Murder of Herodes

Antiph. 5 is the longest, and possibly the latest,³ of the court-speeches in Antiphon's corpus. As in Antiph. 6, the details of the case remain obscure, and highly contentious, largely due to the brevity and partiality of the litigant's narrative. A tentative summary of the events in question, however, can be given.⁴ Sometime before the trial, Euxitheus,⁵ the defendant, and Herodes,⁶ the victim, found one another aboard a ship leaving Mytilene and heading toward Thrace. Euxitheus insists that they both had valid and independent reasons for being there.⁷ Shortly after setting out, perhaps on the very first

¹ Antiph. 6.41.

² Antiph. 6.47.

³ Dover, 1950, p. 48ff.; Schindel, 1979, p. 206ff. *Contra* Edwards, 2000, p. 236.

⁴ For more detail, cf. Gagarin, 1989a, p. 31ff.

⁵ The defendant is named by Sopater in *Rhetores Graeci* 4.316.

⁶ Probably a cleruch (Edwards, 1985, p. 80; Lattimore, 1987, p. 502).

⁷ Antiph. 5.20ff.

night of the journey,¹ a storm forced the ship to lay anchor close to Methymna. The passengers were then transhipped onto another boat closer to shore. Here, the passengers started drinking. On that fateful night and under mysterious circumstances, Herodes disappeared and was never found again. When morning came, and his absence was noted, a fruitless two-day search was initiated. Euxitheus, who also took part in this search, implies that a messenger was dispatched,² on his own initiative, to Mytilene to inform Herodes' relatives of his disappearance. With the return of good weather, the defendant continued his voyage and the second ship, on which the two men had been drinking, sailed to Mytilene and was searched by Herodes' relatives. On board they found traces of blood, though these turned out to be that of an animal, and two men,³ whom they interrogated. The first, described as a free man, said nothing to incriminate the defendant, while the second, a slave, was examined a few days later and seems to have admitted to assisting Euxitheus with murdering Herodes. He later recanted but was executed by the prosecution, despite opposition from the defendant's relatives. On board, they also claimed to have found an incriminating letter addressed to an Athenian man, Lycinus, which implied that Herodes was the victim of a murder-plot. On these grounds, the prosecution summoned Euxitheus to Athens to face trial.⁴ Upon his return, he was arrested, thrown into prison and later tried under the law concerning *κακοῦργοι*, a law typically reserved for the trial of thieves and muggers.⁵

Euxitheus was clearly in a difficult position. Not only was he facing a suspicious Athenian jury, he had been arrested for a number of days before the trial. Worse still, the prosecution was clearly armed with what seemed to be definitive proof, a slave's extracted testimony. And although, as the defendant justifiably complains, the slave had

¹ The distance between the two ports is less than 60 km.

² Edwards, 1985, p. 84.

³ Lattimore, 1987, p. 503. Cf. Gagarin, 1989a, p. 60 n. 7.

⁴ Some have suggested that the original charges were different (e.g. Cataldi Palau, 1977, p. 208; Schindel, 1979, 25ff; Heitsch, 1984, 44ff.). The main issue on trial, however, is clearly homicide (see Edwards, 1985, p. 28f. and Gagarin, 1989a, p. 19ff.).

⁵ On this procedure see Hansen, 1976, p. 36ff.; Gagarin, 1989a, p. 17ff.; Volonaki, 2000, esp. 153ff.

been rendered unavailable to the court, it is more than likely that the extracted testimony had been adequately secured by formal witnesses summoned to oversee the torture. Not only is this inherently plausible, it is indicated by Euxitheus' speech, which starts with a generalized attack on all unsworn testimony and with an explanation for his own 'lack' of witnesses.¹ On the basis of this testimony, the prosecutors claimed that Euxitheus had left the boat with Herodes, killed him on the beach with a rock, moved the body onto a boat, and disposed of it into the sea. In this, they claimed, the defendant was aided by the slave, whom they had executed. As Euxitheus informs us,² the prosecution also spoke at some length about Herodes' missing body, perhaps arguing that his disappearance makes premeditated murder more likely, or arguing, on the grounds that burial was not possible, that the murderer must have been a truly wicked man. Their second piece of evidence, the note to Lycinus, appears to have furnished them with a motive;³ Euxitheus had murdered Herodes because he was instructed to do so by Lycinus, an enemy of the victim. A significant part of the prosecution's speech appears to have been dedicated to attacking Euxitheus' father for his alleged involvement in the Mytilenean revolt, perhaps using this allegation to paint a picture of an anti-Athenian conspiracy.⁴ Such an argument, the defendant justifiably complains, would have been illegal in a traditional δίκη φόνου. Herodes' relatives, who seem to have anticipated criticism about the *legality* of the indictment, also seem to have justified the use of the procedure. Euxitheus suggests that they defended both the arrest, claiming the defendant would have simply left Athens if he weren't arrested, and the prosecution under the law against malefactors, saying that murder was also a great 'malefaction'.⁵

Against this seemingly iron-clad case, the defendant mounts a long and complex response. The speech starts with a characteristic prologue full of τόποι.⁶ As in the other

¹ Antiph. 5.13, 15.

² Antiph. 5.64

³ Cf. Due, 1980, p. 45.

⁴ Gagarin, 1989a, p. 87. On this component of the speech see further Vollmer, 1958, p. 119ff. and Edwards, 1985, p. 112ff.

⁵ Antiph. 5.10.

⁶ Due, 1980, p. 29.

two speeches, this is followed by a preliminary argument which precedes the narrative.¹ The focus of this section is, in this case, a procedural question. The litigant attacks his opponents for prosecuting him in an entirely improper fashion, given the nature of his charge. The exact nature of the indictment, and the legitimacy of Euxitheus' complaints, have been the focus of intense controversy and are beyond the scope of this summary. We may note in passing, however, with Gagarin,² that Antiphon can cite no law to cite as a πίστις for his argument, but rests his criticism on moralistic and religious grounds. And, furthermore, we may note that the argument's main thrust is that the prosecution has chosen this uncustomary procedure because he knew that Euxitheus would have been proven innocent by the more rigorous, and more conventional process.³ It seems best, then, to read this procedural argument, with Edwards and Goebel, as a variation on the attack on the prosecution's γνώμη.⁴ This preliminary argument is followed by a sparse narrative of the events in question, one corroborated by witnesses at various points. The identity of these witnesses and the exact content of their testimony – though Euxitheus does give some indication as to these contents⁵ – cannot be determined with any conviction.⁶ As Goebel has rightly pointed out,⁷ however, Antiphon does seem to draw explicit attention to the *results* of their testimony. Conveniently forgetting his own criticism of unsworn witnesses, he describes the corroborated narrative as 'the facts' and distinguishes them from the 'probabilities' which can be inferred from them. In truth, the distinction between narrative and argument is not a sharp one.⁸ Indeed, as in Antiph. 1, the facts are delivered in a slow and deliberate way, in accordance with the needs of the argument.⁹ The result of this technique is a confusing picture,¹⁰ a result which was, presumably, a calculated one. Indeed, O'Connell has recently elucidated the way in

¹ Antiph. 5.8ff.

² Gagarin, 2002, p. 158.

³ Cf. Due, 1980, p. 31.

⁴ Goebel, 1983, p. 230; Edwards, 1985, p. 72. Cf. Volonaki, 2000, p. 154.

⁵ See below.

⁶ Gagarin, 1989a, esp. p. 64f.

⁷ Goebel, 1983, p. 24.

⁸ Vollmer, 1958, p. 14ff.; Goebel, 1983, p. 227; Gagarin, 1989a, p. 48f.

⁹ See Due, 1980, esp. p. 39.

¹⁰ Gagarin, 2002, p. 115.

which Antiphon makes brilliant use of the rhetoric of invisibility to suggest that much of the defendant's case is unknown and, indeed, unknowable.¹

As already mentioned, the narrative is followed by a long and complex argumentative section which is aimed, primarily, at undermining the prosecution's two key pieces of evidence. Many, including Solmsen himself,² have drawn attention to the frequent use of *eikós* argumentation. Nonetheless, Solmsen also detected, in the length and the structure of the arguments to follow – one directed against the witness, the other against the letter – the same old tyrannical preoccupation with the 'irrational' means of proof.³ As Due and Goebel point out, however, the length of these sections is at least equally well explained by the circumstances of the case.⁴ In short, Euxitheus had no choice but to dedicate the greater part of his *lóγος* to undermining his opponent's evidence because these were their strongest points. Indeed, Due suggests, the especially lengthy treatment of the witness reflects the assumed preferability of oral evidence over written,⁵ a point also made in Antiph. 1.⁶ Yet Euxitheus also had a more positive route he could follow. He reveals, rather awkwardly, that he had an alibi who could demonstrate that he never left the boat at all. This revelation, however, does not seem to inform his defence in the slightest. Indeed, even the exculpatory testimony of the free man who was also tortured by his opponents – who had cleared him of all charges – seems to get insufficient attention. Rather, this favourable testimony is used as a lever to pry open and undermine the slave's damning testimony and, in particular, to suggest that the evidence was fabricated.⁷ The letter to Lycinus is attacked on similar grounds,⁸ a parallelism which suggests that testimony was primarily conceived, at least by Euxitheus, as a piece of *evidence* to be undermined. The main section of the speech contains one more

¹ O'Connell, 2016, esp. p. 53.

² Solmsen, 1931, p. 48ff. Cf. Gagarin, 1990a, p. 31f.; Carawan, 1998, p. 315ff.

³ Solmsen, 1931, p. 26ff. Cf. Carawan, 1998, p. 318f.

⁴ Due, 1980, p. 43; Goebel, 1983, p. 228. Cf. Scheidweiler, 1966, p. 333.

⁵ Due, 1980, p. 43.

⁶ Antiph. 1.29f.

⁷ Due, 1980, p. 38f.; Edwards, 1985, p. 84.

⁸ See Edwards, 1985, p. 102ff.

argument, an ἀπαγωγή which seeks to prove that he had no motive for killing his victim.¹ In the following section of the speech, three more arguments follow. The first is a subtle argument on the role of conjecture in defence speeches,² discussed further in Chapter Five. The second is a direct attack on the ‘slander’ levelled against his father.³ Finally, Euxitheus produces the infamous argument from divine signs or, more exactly, from the absence of divine signs of guilt.⁴ The speech ends with a long epilogue, one used to stir some of the doubts about the procedure roused in the first part of the speech and which stresses, much as the prologue had done, Euxitheus’ readiness to be tried.

A discussion of all the arguments of this speech, and of the various questions of procedural law which it raises – of particular note are the implied possibility that the slave could have appeared in court as a witness⁵ and, secondly, how the litigant can torture a ‘free man’ without any complaint from Euxitheus⁶ – would take us too far afield. What the rest of the discussion will concentrate on, instead, is the long central argument of the speech, the comparison of the two witnesses interrogated by the prosecution, and on the use, or rather Antiphon’s apparent ‘misuse’, of the alibi. Turning first to the former question, we note that much of the detail about these two witnesses, their identity, and the contents of their testimony, remains hopelessly obscure. The obscurity is particularly remarkable when we consider that one of these witnesses actually exculpated Euxitheus. We may tentatively conclude, from this silence, that it was not in Euxitheus’ interests to dwell on the identity of these men and on his exact relationship with them. In Antiph. 5.29, then, we are told that the witness returned to Mytilene on the covered ship, while Euxitheus continued on his way to Thrace. This has made many suspect he was a crew-member on the covered ship on which Herodes had disappeared.⁷ A little later, however, Euxitheus insists that the man had been ‘sailing on the same boat and was his

¹ Antiph. 5.57ff.

² Antiph. 5.64ff.

³ Antiph. 5.74ff.

⁴ Antiph. 5.82f.

⁵ Antiph. 5.36, 48. See Edwards, 1985, 1985, p. 90f. with previous scholarship.

⁶ See Bushala, 1968, p. 68; Thür, 1977, p. 20ff.; Carey, 1988, p. 234f.; Gagarin, 1989a, p. 58f.

⁷ E.g. Lattimore, 1987, p. 503f. with previous scholarship.

constant companion'.¹ This seems to suggest, on the other hand, that he was Euxitheus's associate, presumably a dependent of his.² Of course, Antiphon is clearly not averse to mischaracterizing the qualities of a witness to suit his argumentative purposes, and Maidment has suggested that this is just one such case.³ Euxitheus, then, may have *misidentified* the free-man as a companion of his, instead of a lowly ship-mate, to make his testimony more credible. This would, presumably, have been a risky strategy,⁴ not only because the prosecution may have already specified the identity of the witnesses in greater detail, but also because we may suppose that they did their utmost to denigrate this man's credibility. The slave's identity also presents us with similarly insoluble difficulties. Firstly, it is plausible to suppose that the slave and Euxitheus were intimates. Why else would the prosecution allege that the slave was an accomplice?⁵ Euxitheus is, once again, silent on the issue. Indeed, he would have been well advised *not* to dwell on any previous association he had with this man. One objection to this proposal, however, must be raised: the slave would never have been sold to the prosecution and, if he was, Euxitheus would surely have turned this fact into an *εἰκός* argument in favour of his good faith.⁶ Some have tentatively suggested, then, that the slave was also a crew-member of the covered ship.⁷ It does seem strange, however, that the man would have so easily come into Euxitheus' confidence and that the prosecution singled him out as a potential witness.⁸ We must conclude, then, in both cases, that though an inattentive juror would have presumably passed over the confusing and irreconcilable details, beneath the surface, doubt prevails. And though Antiphon may have admirably 'sophistic' reasons for not dwelling on the identity of the men, the crucial point is that the lack of identification seems not to affect Antiphon's argument in the slightest. It relies, rather, on the *impersonal* characteristics of their testimony, not on any *personal* ones. And, further,

¹ Antiph. 5.42. On textual difficulties see Edwards, 1985, p. 89; Gagarin, 1997, p. 197.

² E.g. Gagarin, 1989a, p. 60; Edwards, 1985, p. 89.

³ Maidment, 1941, p. 181.

⁴ Edwards, 1985, p. 89.

⁵ Edwards, 1985, p. 89.

⁶ Gagarin, 1989a, p. 17f.

⁷ Lattimore, 1987, p. 503f.

⁸ Gagarin speculates that Euxitheus' meeting with the slave may have not been accidental (Gagarin, 1989a, p. 62 n. 14).

when it comes to these impersonal characteristics, the litigant has plenty to say.¹

More problems, however, abound. In particular, the two reports of the slave's testimony that we are given contradict one another.² Thus, in Antiph. 5.39, the litigant suggests that the slave had only confessed to helping the defendant move the body, arguing that no one would be insane enough to summon help *after* the risk had been undertaken, an argument which, as Edwards points out, is based on well-established τόποι.³ Later, however, Euxitheus contradicts himself and agrees that the slave had confessed to assisting in the murder, a 'confession' which he uses to undermine the prosecution's other piece of evidence, the letter.⁴ Carawan also suggests that a procedural issue is at the root of Antiphon's distortion. The orator, then, alleges that the slave only confessed to assisting him to make his execution even more problematic.⁵ Moreover, as Gagarin notes, the lesser admission is also more in line with εἰκός since the slave is more likely to confess to the slighter charge.⁶ As to the exact nature of the distortion, Edwards has proposed that the contradiction may be based on an ingenious re-interpretation of the record of the βάσανος,⁷ a suggestion that would fit in well with Carey's more general views about similar linguistic manipulation of the wording of the so-called 'artless' πίστεις.⁸ Whatever the origin and nature of the manipulation, however, the central point is clear: Antiphon is re-interpreting the content of the ἄτεχνος πίστις to suit his *argumentative* purposes.⁹

More impressive is Antiphon's attack on the evidence for the prosecution supplied by the slave's testimony. As already mentioned, the speech starts with a general argument which weakens the reliability of all witnesses summoned to testify in the present case.

¹ See esp. Due, 1980, p. 38f. who focuses, correctly, on their 'respective credibility'.

² See Edwards, 1985, p. 103f. and Gagarin, 1989a, p. 63ff. with previous scholarship.

³ Edwards, 1985, p. 97. Cf. Due, 1980, p. 38.

⁴ Antiph. 5.54.

⁵ Carawan, 1998, p. 345.

⁶ Gagarin, 1989a, p. 70.

⁷ Edwards, 1985, p. 103f.

⁸ Carey, 1994.

⁹ Due, 1980, p. 39ff.

The defendant argues that the choice of procedure, which has ‘no oath’, has destroyed the credibility of witnesses. The same is true of the defendant’s witnesses, of course, though his willingness to be tried under normal homicide procedure, emphasized at either end of his speech, constitutes an εἰκόζ argument in his favour.¹ The attack on the slave’s reported testimony resumes with increased vehemence in Antiph. 5.30. Much of the argumentation which we encounter in this section is familiar from elsewhere in Antiphon’s corpus. As in the other two speeches, then, we find a hypothetical role-reversal, though it is adapted to the situation – the slave was missing not because he was secreted away but because he was killed by the prosecution.² We also find a chronological argument,³ familiar from Antiph. 6.⁴ Euxitheus argues, then, that the delay in examining the slave undermines his credibility. The prosecution, of course, as Erbse and Gagarin have pointed out,⁵ may well have alternative explanation for the delay and, indeed, produced it in court. But where one argument fails to convince, another is summoned to take its place.⁶ Indeed, Antiphon has two further arguments, one levelled against the nature of the examination itself⁷ and another at the slave’s inconsistency.⁸ The main focus of the first argument is the one-sided nature of the prosecution’s examination. Since the defendant was not there to supervise the proceedings, he argues, the prosecution may have promised the slave his freedom in exchange for ‘favourable’ testimony. Moreover, even in the absence of these imagined, though plausible, positive inducements, the urgency to end the torture guaranteed that the slave would say anything to please his torturer. To prove this, Antiphon traces the history of the slave’s self-contradictory testimony, from denial before torture, to accusation during torture, back to denial once the torture stopped. The exact correlation of accusation and torture

¹ Antiph. 5.15

² Antiph. 5.47f.

³ Due, 1980, p. 38; Edwards, 1985, p. 88.

⁴ Antiph. 6.23.

⁵ Erbse, 1977, 211f.; Gagarin, 1989a, p. 71f.

⁶ As Due (1980, p. 39) and Edwards (1985, p. 101 *et passim*) point out, much of the power of Antiphon’s rhetoric comes from circling around the same points.

⁷ Antiph. 5.31f., 50, etc.

⁸ Antiph. 5.36f., etc.

suggests, perhaps sophistically,¹ a direct causal connection, one which the litigant explicitly endorses. Even in the absence of conspiracy, then, the one-sided interrogation enabled a 'collusion of intent' which a two-sided βάσανος would have prevented. Most commentators have underestimated the cogency of this argument.² Thus, Erbse correctly points out that Antiphon is not high-minded about torture and, in fact, often praises the probative power of the βάσανος, but incorrectly concludes that Antiphon's criticism of the slave's testimony must be vacuous.³ This critique, however, neglects the crucial fact that Euxitheus never claims that the slave's testimony is invalid simply *because* it was obtained by torture. The argument, rather, is meant, like the chronological argument, to suggest that the examination was not conducted properly and that, therefore, collusion is a possibility. Euxitheus, then, does not and need not conclude that the testimony is *false* because it *must* have been solicited by the defence, only that the slave's testimony is not *credible* because there was nothing to stop the 'testimony' from being fabricated.⁴ And, to do so, Antiphon impugns the nature of the litigant's examination by comparing it to the truth-conducive conditions of the two-sided βάσανοι Antiphon praises elsewhere.⁵ The inconsistency of the slave's testimony also generates a series of potential objections which the defendant exploits to good effect. If two versions of the slave's testimony are available, which version, Antiphon asks, should the court believe, the exculpatory or the accusatory one? The very question constitutes an objection since, as the litigant asserts, consistent witnesses are more credible than inconsistent ones.⁶ If, the defendant continues, the two versions were equally credible, he should be acquitted since an equal number of jurors voting for and against a motion is sufficient to secure acquittal. Moreover, the defendant continues, the two λόγοι are not

¹ For e.g. Edwards, 1985, p. 97.

² E.g. Gagarin (1997, p. 31) who regards the argument as speculative and disingenuous, though admits that it has a rhetorical effectiveness.

³ Erbse, 1977, p. 211ff.

⁴ '...Euxitheos' purpose is not so much to persuade the jurors of its truth as to plant a seed of doubt' (Gagarin, 1989a, p. 72).

⁵ A similar point is made by Gagarin (1996, p. 1f.) who draws a distinction between judicial torture, which was usually unilateral, and evidentiary torture, which was necessarily bilateral. See also Thür (1977, p. 43ff.) on the difference between one-sided and two-sided torture.

⁶ Antiph. 5.50.

equally credible. To prove this, the defendant once again turns to the slave's motivations and, therefore, to εἰκόσ. Unsurprisingly, the application of this criterion leads the defendant to conclude that the witness's exculpatory remarks are more credible than his accusations since they are not motivated by an unchecked need to stop the torture, but on a genuine will-to-truth. As a final coup-de-grace, the litigant attacks the very 'plausibility' of any witness being present. He argues, then, that if he were truly guilty, he would have any witness 'disappear'.¹ This εἰκόσ argument allows him to conclude that any 'testimony' which inculpates him must have been fabricated. In short, Euxitheus treats the testimony of the slave as a piece of evidence which, as Anaximenes suggested, could be undermined by attacking the qualities of the witness and of the testimony itself.

This vigorous attack on the slave's credibility is, as already noted, united to a pointed comparison between the slave who accused the defendant and the free man who exculpated him.² All the vices which are true of the first witness are turned into virtues for the second. The exculpatory witness was examined immediately, was well placed to know all Euxitheus' movements and most importantly, he never contradicted himself.³ Moreover, despite facing the same inducements to accuse the defendant, he stuck to the truth despite his best interests. Where the one is self-interested, inconsistent and untruthful, the other is truthful, consistent, and selfless. In short, the one is credible, the other not. We have, moreover, already noted Antiphon's use of comparison in arguments attacking the credibility of the witness. Thus, his examination is compared to the two-sided βάσανος, while his inconsistent statements are compared to one another. The same broadly comparative scheme is also used in the *First Tetralogy*, where the defendant's witnesses – numerous, knowledgeable and testable – are contrasted to the prosecution's solitary and unexamined slave witness.⁴ The credibility of one witness,

¹ Antiph. 5.52.

² See esp. Due, 1980, p. 38ff.

³ Antiph. 5.42.

⁴ See p. 138.

then, seems to come, quite regularly, at the expense of another's. Indeed, as I argue below, comparison is one of the central characteristics of Antiphon's discussion of credibility. The use of the free man's testimony to undermine that of the slave, then, appears to conform to a larger pattern of argumentation, one which leaves its traces in the very language Antiphon uses to refer to 'credibility'.

Such attacks on the slave's credibility present a number of argumentative opportunities for Antiphon to exploit. As in Antiph. 1, then, the defendant could have argued that the prosecution's ability to swear that they 'know well' the defendant's guilt has been fatally compromised because he has no credible source of knowledge. Euxitheus may argue that his opponents have taken from him the opportunity of discovering the truth of the matter. As already mentioned, O'Connell has followed a similar path of inquiry though one focused, not so much on the lack of witnesses – an argument which Euxitheus could not have made – but on the absence of key pieces of evidence and, especially, the victim's body.¹ The litigant suggests, similarly to Antiph. 1, that the truth of the crime is only known by the murderer and is, as a result, is unavailable to the court. We must note, however, that the attack on his litigant's own knowledge is not as emphatic, or as explicit, as it is in Antiph. 1. Carawan, moreover, has suggested a reason why this should be so.² Unlike Antiph. 1, then, the slave's testimony could not be used as a guarantee for the oath – the knowledge-claim – simply because no oath was taken. This change, Carawan argues, has turned the ἄτεχνοι πίστεις, especially testimony, into pieces of 'circumstantial evidence' which must be used to answer a question of fact. As in a 'modern' murder mystery, the fundamental issue on trial in Antiph. 5 is a question of fact – what happened? – while traditional murder trials directly addressed only questions relating to 'psychology' – what are the litigants convinced happened? Carawan, more contentiously, also proposes that the fact on which the entire trial hinges turns out, strictly speaking, *not* to relate to the murder itself – though this is clearly the dominant focus of

¹ O'Connell, 2016, esp. p. 52f.

² Carawan, 1998, esp. p. 316ff.

the speech – but the legality of his arrest. The missing prosecution speech, Carawan argues,¹ must have also used testimony as circumstantial evidence for Euxitheus' arrest or, in anachronistic terms, to prove 'probable cause'. The defence, in retaliation, attempts to prove that his opponents had no such 'probable cause' and that his arrest was, therefore, illegal. This seems to be inordinately reductive. It seems more plausible, rather, that the 'procedural' issue was just another rhetorical weapon to be wielded in a murder trial, in which the main issue relates to the defendant's guilt or innocence. Furthermore, Carawan neglects the fact that such a strategy may itself be a polemical one, designed to undermine the credibility of the opponent's witness by effacing the distinction between *bona fide* demonstrative proof and merely circumstantial evidence. Euxitheus, then, may treat testimony as circumstantial because it is in his interests to do so. Furthermore, a simpler and more economical solution for the 'missing' argument is at hand: the absence of the oath removed much of its rhetorical power. The litigant's strategy, then, is more plausibly understood as a broader attack on the evidence in favour of the opponent's λόγοι, rather than a rather obsessive insistence on the legality of his own arrest. Nonetheless, Carawan is certainly correct about the underlying point, namely that testimony is being used as an *evidentiary* and *demonstrative* tool. The defendant, then, faced with a litigant armed with testimonial evidence of his guilt, attempts to disengage the prosecution's λόγος from its supporting evidence by undermining its credibility. This evidentiary function is underlined by the similarity of the objections levelled against the prosecution's other main piece of evidence, the letter to Lycinus.² Once again, then, the defendant seeks to prove that the letter has been fabricated by the prosecution. To do this, he argues that putting pen to paper, like summoning the slave to help him move the body, entailed an unnecessary risk for a murderer to take. Since the behaviour contravenes the guiding εἰκόσ principle for murderers, minimising risk, any narrative which entails the letter's existence must be rejected as not εἰκόσ and, consequently, not credible. As with his critique of the slave's

¹ Carawan, 1998, p. 345ff.

² Pace Due, 1980, p. 43f.

testimony, Euxitheus also notes another delay in the 'discovery' of the letter and suggests that this delay also introduces the possibility of fabrication. His most powerful argument, however, is an attack on the coherence of the letter and the witness's testimony. Since the letter contradicts the prosecution's *report* of the slave's testimony,¹ Euxitheus argues that the same series of questions which hang over the slave's self-contradictory assertions hang over the entirety of the prosecution's case. Which *evidence* are we to believe, Antiphon insists,² the letter or the slave's assertions? The very question, once again, attempts to expose a fatal flaw in the prosecution's case. It is also, we note, the same sort of question which hangs over the slave's testimony. Euxitheus' strategy, we may conclude, against Carawan, is exactly parallel to that of the enthymeme found in Antiph. 6. The Chorus-producer, armed with favourable testimonial evidence, *demonstrates* that the prosecution's accusation is false because it does not agree with the testimony of his witnesses and, to secure this demonstration, defends the credibility of his witnesses. Euxitheus, conversely, facing a litigant who is himself armed with strong testimonial evidence confirming his accusation, argues that his opponent's speech is not genuinely demonstrative since the testimonial evidence on which it relies is vacuous. The two speeches, therefore, presuppose the same basic function of testimony, *demonstration*.

No account of the use of testimony in Antiph. 5 would be complete without a review of the alibi, the most important component of the litigant's 'positive demonstration' or, rather, what one would expect to be the most important component. In truth, Euxitheus makes exceptionally poor use of the witness who could, allegedly, confirm that he had no opportunity for murdering Herodes. This ineptitude is all the more striking if one considers the great sophistication with which Antiphon used the available testimony in Antiph. 6. Indeed, Antiphon's poor handling of the alibi is especially troubling for the above reading since this inability to make effective use of demonstrative testimonial

¹ On this point, see Edwards, 1985, p. 103f. and Gagarin, 1989a, p. 80 n. 3.

² Antiph. 5.55.

evidence sits uncomfortably with the complex and multiple attacks on his opponent's own demonstration. And, indeed, various commentators have sought to explain this remarkable deficiency.¹ One possible explanation is that the formal characteristics of the free man's testimony detracted significantly from its evidentiary weight. Thus, Thür plausibly suggests that the lack of emphasis on this alibi is entirely in keeping with the inadmissibility of hearsay evidence.² Indeed, the free-man's testimony, also unsworn, reported, and tested by a one-sided βάσανος, falls prey to some of the defendant's attacks on the slave's testimony. Other, less formal deficiencies have been suspected. Schindel proposes that an Athenian jury is unlikely to have accepted the word of two foreigners over that of an Athenian,³ while Heitsch,⁴ noting that an alibi was used similarly in the *First Tetralogy*, suggests that the lack of focus on the alibi is typical and reflects the lack of a theory of proof operative in the Athenian courts. Yet, the absence of formal theory of proof does not preclude Euxitheus, or Antiphon, from realizing that an alibi is a strong piece of evidence to be used with care.⁵ Antiph. 6 is ample proof of this. Moreover, the 'bizarre' use of the alibi in the *First Tetralogy*, to which Heitsch points as an illustration of Antiphon's inability to use alibis effectively, is more plausibly interpreted as a way of underlining the power, not the deficiency, of ἄτεχνοι πίστεις.⁶ Carawan, on the other hand, defends Euxitheus by arguing that the alibi's testimony was largely irrelevant to the main issue on trial, the legality of the arrest.⁷ Yet, this suggestion does little to explain why Euxitheus makes so little use of a witness who could confirm his whereabouts at the time of Herodes' death in a speech which is manifestly and directly addressing the charge of murder. Confronted by this basic fact, it is hard to resist Gagarin's impression that the lack of focus on the alibi reflects its inherent weakness, one underlined by the

¹ Besides the ones mentioned below, see Gernet, 1923, p. 115 n. 1; Edwards, 1985, p. 83f.

² Thür, 1977, p. 50. In effect, then, Euxitheus promised witnesses which he did not have. See Schindel, 1979, p. 37ff. and Edwards, 1985, p. 84.

³ Schindel, 1979, p. 39.

⁴ Heitsch, 1984, p. 69f.

⁵ Carawan, 1998, p. 328.

⁶ Caizzi, 1969, p. 207; Gagarin, 1997, p. 142.

⁷ Moreover, he continues, the testimony is irrelevant if the prosecution's case attempted to prove βούλησις (Carawan, 1998, p. 329).

consensio which follows on from his reported testimony.¹ The defendant, then, unable to prove his innocence by means of this weak alibi, resorts to attacking the prosecution's claims because that is all he can do. One notes, however, that this 'sophistic' strategy of misdirection would have fared far better had the defendant not claimed, at the very start of the speech, that this is what he is about to do.² Another reason for Euxitheus' lack of emphasis on the alibi is at hand: witnesses, particularly solitary witnesses, were liable to being attacked viciously in court.³ It is not entirely surprising, then, that attacks on the credibility of one's opponents, attacks which could not have been answered in a subsequent speech, should take precedence over an alibi, especially if the alibi wasn't watertight.

3.3: Conclusion: The Role(s) of Testimony in Antiphon's Court Speeches

In the above analysis, I have argued that Antiphon uses the testimony of witnesses in two different, though complementary ways. Both 'roles' can be traced in all three speeches, though in each case Antiphon focuses on one in preference to the other. These differences need not reflect any fundamental break in Antiphon's thinking about testimony. Rather, they are differences of *emphasis* in accords with the needs of the case. In Antiph. 1, testimony is primarily conceived as a *heuristic* tool, one which the litigants must use to gain knowledge of the events in question and upon which they must rely in swearing the oath. And, moreover, the testimony of 'witnesses' – extended to include the father's dying declaration – is the resource one must point to when *defending* one's oath. In Antiph. 5 and 6, on the other hand, testimony is conceived primarily as a straightforwardly evidentiary tool, one which may be used to *demonstrate* the truth or falsity of some *fact* and, therefore, of the litigants' assertions. In Antiph. 6, then, the

¹ Gagarin, 1989a, p. 105f.

² Antiph. 6.3, 7, 85.

³ As the defence speeches of the *First Tetralogy* demonstrate. The propensity of witnesses to be attacked is also evident in And. 1.7, Lys. 12.87, Dem. 34.19 etc.

defendant summons witnesses whose testimony materially contradicts his opponent's assertions, while corroborating and confirming his own. Conversely, Euxitheus attempts to undermine his opponent's demonstration by attacking the credibility of the testimonial evidence on which it relies. The two speeches, then, represent two sides of the same rhetorical coin. Moreover, the similarity of the arguments of these two speeches has one more important consequence. The absence of the oath in Antiph. 5 could not persuade the orator to adopt a different argumentative procedure, but to stick to those same arguments which attacked his opponent's λόγοι, whether sworn or unsworn. The focus on oath in Antiph. 1 and 6, then, does not produce the radical argumentative change which Carawan proposed. And, moreover, Antiphon's attraction to the oath is, contrary to what Solmsen proposes, entirely *rational*. The oath, being a strong assertion of the justice and truth of one's claims, represents the most vulnerable point of the litigant's case, in strictly *logical terms*. Indeed, any such strong assertions of knowledge begs a fundamental question: *how* is it that the litigant knows what he *swears* to know? This is the line of argumentation pursued in Antiph. 1.

Chapter Four.

An Epistemology of Witnessing in Antiphon's Court Speeches

The heuristic and demonstrative functions of testimony, identified above, are both underpinned by the belief that testimony or, to be more exact, that *some* testimony can yield knowledge and, secondly, that it can verify or falsify assertions made by the litigants. They are, in other words, underpinned by a cogent and positivistic epistemology of testimony centred on the key notion of 'credibility'. In the following chapter, I break up this central concept into two separate pre-conditions and examine the way in which this preoccupation influences Antiphon's use of witnesses. I attempt to show that litigants routinely insist that their own witnesses are credible because they *know*, directly and personally, the facts to which they testify. They fulfil, in other words, the basic condition asserted by the definition of witnesses and βάρσται prescribed by Anaximenes. Secondly, Antiphon also insists that his witnesses have been adequately tested for their truthfulness, in large part, by an assessment of the possible self-interest which may have directed the witness's testimony. Once again, then, there is clear accord with the advice found in Anaximenes.

4.1: 'Credibility' in Antiphon's Speeches

Athenian trials were structured around the inherent contradictoriness of forensic discourse.¹ Two conflicting oaths were followed by one or two pairs of opposed speeches arguing for contrary conclusions, each, for the most part, relying on contradictory evidence or of evidence interpreted in contradictory ways. Furthermore, the judgement about the 'preferability' of one set of speeches over another constituted the hard currency of justice in an Athenian court, as the litigants themselves were wont to reflect.² It is only

¹ The forensic logic is well described as 'triangular' by Carey (2004, p. 1).

² Antiph. 6.18. See Zinsmaier, 1998, p. 400.

to be expected, then, that orators should seek to capitalize on this arrangement and to insist that their speeches, and their witnesses, are 'preferable' to because more credible than those of their opponents. And, indeed, one of the most striking characteristics of the language of credibility is the frequency of comparison. Thus, comparative and superlative forms of πιστός account for a large proportion of the term's occurrence,¹ while the negative ἄπιστος can also be found abutting parallel references to credibility.² Such use of comparison has already been noted above and, indeed, is the most characteristic feature of Antiphon's longest argument dealing with testimony. We may conclude, then, that credibility was a quality which was possessed in degrees. Secondly, we observe that the term πιστός is usually used to refer to the statements of witnesses and the witnesses themselves.³ On two occasions, however, the comparative of πιστός is also used to qualify the speech of the litigants. In the *Second Tetralogy*, then, the mock-prosecutor asserts that his opponent's argument – blaming the victim – is even less credible than the manifestly ludicrous accusation of accidental premeditated murder.⁴ The Chorus-producer makes a similar point in Antiph. 6.29, arguing that it is only a failure to provide witnesses that could have made his defence less credible than the prosecution's speech. And, indeed, the Chorus-producer suggests a reason why this is the case: the proofs concerning justice are clearest and most convincing, πιστότατοι, when there is a superabundance of *credible* witnesses as, 'incidentally', there is in his own case.⁵ If the witnesses provided are judged more credible than his opponent's λόγοι, he argues, what else must he do to make truth persuasive and untruth unpersuasive, τάληθῆ πιστὰ ἢ τὰ μὴ ἀληθῆ ἄπιστα ποιεῖν,⁶ but to present these witnesses? Once more, then, we find that credibility is the central quality against which any speech, even that of a litigant, must be measured. Moreover, we find that the litigant insists that the jurors are

¹ Of the 12 instances of the term, 7 occur in the comparative or superlative form (Antiph. 2.4.7; 3.3.4, 5; 5.50, 81; 6.25, 29) and 5 in the normal adjectival or adverbial form (2.3.7; 2.4.7; 5.3, and twice in 6.29).

² E.g. 6.29.

³ In Antiph. 2.3.7, 5.50, 6.29 and twice in 2.4.7. In Antiph. 6.29, the emphatic connection between witnesses and credibility is spelled out in great detail.

⁴ Antiph. 3.3.5.

⁵ Antiph. 6.30f.

⁶ Antiph. 6.29.

to *compare* the credibility of one λόγος with that of another. And, to reiterate, this comparative approach to the speech-acts of litigants appears to be eminently reasonable in light of the highly agonistic stance of forensic rhetoric.

Whatever the 'reason' for this strategy, it extends well beyond the simple comparison of favourable and unfavourable witnesses to one another. Even in Antiph. 5, the comparison of the free witness and the slave, already noted, is only one element of the broad use of comparison. Euxitheus also compares the witnesses' contradictory statements to one another – explicitly asking 'which is more credible?'¹ – and his opponent's interrogation to a standard of credibility, the two-sided βάσανος.² Indeed, the logic of comparison is even prominent when there is only one witness. Thus, the mock-defendant of the *First Tetralogy* attempts to undermine the credibility of his opponent's solitary witness by comparing his testimony with that of a *hypothetical* free-witness.³ It has, not implausibly, been suggested that Antiphon is simply trading on mere sophistry, implying that he had a witness when he had none.⁴ Regardless of how effective such simple-minded tactics would have been, such interpretations risk obscuring a key fact of Antiphon's references to credibility. It is entirely *expected* for the credulity of witnesses to be assessed in relative, comparative, terms. The best way to undermine testimony, it seems, is to compare it to better, more credible, testimony, even if this testimony does not exist. And, further, though the mock-prosecutor may be trading on a well-established prejudice against the trustworthiness of slaves,⁵ he is also suggesting that the available testimony be compared to an *ideal* of credibility and be found wanting. Similarly, when contradictory testimony is available, as it is in Antiph. 5, one can undermine unfavourable testimony by comparing it, pejoratively, with the more favourable one:

¹ Antiph. 5.51f.

² εἰ μὲν γὰρ ἐγὼ ἐκέλευον αὐτὸν στρεβλοῦν... νῦν δὲ αὐτοὶ ἦσαν καὶ βασανισταὶ... (Antiph. 5.32).

³ Antiph. 2.4.7.

⁴ Gagarin, 1997, p. 142.

⁵ Caizzi, 1969, 177.

Which witness, then, is it more reasonable to believe? (ποτέρω οὖν εἰκόσ ἐστι πιστεῦσαι) the witness who was consistent to the end or the witness who contradicted himself? Even in the absence of torture, consistent witnesses are more credible (πιστότεροι) than those who contradict themselves.

Antiph. 5.50

Here, the litigant seems to address the jurors directly, explicitly proposing that they ought to compare the utterances of the witnesses to one another in order to determine which to believe and, therefore, which speech is more credible in a strictly literal sense. The quality which attends credibility, in this case, is *consistency*, an emphasis which is rare in Antiphon's corpus and, presumably, provoked by the circumstances of the case. Nonetheless, an admirably general and rational formulation is given for the suggested preference, 'consistent witnesses are more credible than inconsistent ones'. The upshot of the argument is also typical: the comparison of the available testimony to one another, and to an ideal of credibility, should lead the jurors to believe, πιστεῦσαι, the witnesses which are favourable to his case. Party bias is, of course, afoot. Nonetheless, this party bias is not above using rational argument and articulating cogent general principles to achieve its ends. Surely, it is correct to prefer *consistent* witnesses over inconsistent ones and, therefore, to defend one's witnesses on this principle. And, more generally, we find that it is an argument, largely implicit but eminently plausible, which attributes to the favourable witness his key property, credibility.¹

This brief overview of the language of credibility allows us to suggest some important preliminary findings. Firstly, and most importantly, credibility appears to be a central

¹ An argument, therefore, strictly analogous to those suggested by Anaximenes and Aristotle. See Chapter Two.

quality against which witnesses and their λόγοι are judged in an Athenian court of law. This is the most natural interpretation of the prominence of the language of credibility and, indeed, of most of the arguments examined below. It is also consistent with Anaximenes' treatment of witnesses. Secondly, defending or undermining a witness's *credibility* often involves the use of *comparison* even when there is, strictly speaking, nothing to compare it to. Thirdly, the credibility of witnesses must be established, at least partly, by means of rational argument. In Antiph. 5, then, Euxitheus *argues* that the favourable witness is more credible than the less favourable witness *because* he is consistent. Finally, though it is primarily witnesses who are assessed for their credibility, the *credibility* of the litigant's speech was also of potential rhetorical and argumentative significance.¹

4.2: Knowledge and Truthfulness: The Conditions for Credible Testimony

a. Sight, Guilt and Suffering: The 'Knowledge Precondition' of Credible Testimony

As the analysis of Antiphon's speeches amply shows, knowledge was considered to be the fundamental touchstone of any witness. Litigants repeatedly refer to their witnesses as 'those in the know'² and the word μάρτυς may itself refer to a person possessing relevant knowledge of the case.³ The centrality of knowledge is also clear in the formal apparatus which surrounded testimony and, further, in the fourth-century rhetorical handbooks. Thus, knowledge is one of the components of Anaximenes' definition of μαρτυρία and βάσανοι and a witness's deposition was introduced by a solemn declaration of knowledge, while the ἐξωμοσία excused the witness from taking this oath in view of his ignorance or his absence. The importance of a witness's knowledge is also, and especially, underlined by the litigants' habitual practice of *explaining* how their

¹ This idea is explored in Chapter Six.

² The συνειδότες in Antiph. 6.22, 55.

³ E.g. ἔπειτα τὰ πραχθέντα φανερώς ἅπαντα πραχθῆναι καὶ ἐναντίον μαρτύρων πολλῶν, Antiph. 6.19

witnesses know what they swear to know.¹ As is often the way, the best illustration of this practice is found in a case in which the litigant is justifiably anxious to show that the testimony he is presenting is credible. In the *First Tetralogy*, then, the mock-prosecutor has only one piece of ‘hard’ evidence: the *reported* testimony of a slave who died shortly after the victim.² So flimsy is this evidence that litigant first indulges his jurors with a lengthy tour into εἰκός arguments, one which occupies much of the speech,³ introducing the testimony immediately before his epilogue and with a lengthy apology.⁴ Indeed, we may suspect that Antiphon has purposefully chosen for the prosecution the weakest testimony possible, that of an untested slave who died with the victim.⁵ And yet, despite, or perhaps *because*, of this weakness, the litigant lavishes on his mock-jurors a description of the details under which the testimony was obtained, one which focuses explicitly on the witness’s epistemic credentials:

Had there been many witnesses *present* (παρεγένοντο), I would have summoned many witnesses. But there was only one man *present* (παραγενομένου), the attendant, and those who have heard him speak shall testify, for the man was still breathing when he was rescued. And when we questioned him, he said that he only recognized (γνώναι) one of his assailants, the defendant.

Antiph. 2.1.9

¹ The only exception to this rule is the potential slave-witnesses in Antiph. 1 whose knowledge, as discussed above, did *not* relate to the crime itself.

² Antiph. 2.1.9.

³ Antiph. 2.1.4 - 8.

⁴ Gagarin, 2002, p. 113.

⁵ Carawan, 1998, p. 246. As Gagarin points out, this choice also allows Antiphon to develop various εἰκός arguments (Gagarin, 1997, p. 142). Gagarin gives a different answer in his later work (2002, 115ff.) to which I return below.

In spite of the terseness of this statement, Antiphon manages to highlight several key points. Firstly, the presence of the slave at the scene of the crime is emphasized. This participle, one repeatedly used to qualify witnesses in Antiphon's speeches,¹ indicates to the jurors that the witness's statements are based on a *direct* and *autoptic* access to the events in question. By using this verb, Antiphon also alludes to the technical necessity of the witness's *presence* at the scene of the crime, one underlined by the oaths sworn by free witnesses. This 'presence', however, is not the slave's only epistemic act. Thus, the litigant also emphasizes that the slave had *recognized*, γνῶναι, the perpetrator. This two-step process – passive presence and active recognition – is the dual foundation of the slave's testimony. The detailed biography of the slave, then, stresses the *autoptic* nature of the testimony. An analogous, though less elaborate, defence of witnesses' epistemic credentials can also be found in Antiphon's other speeches. Thus, the witnesses summoned by the Chorus-producer are described as 'those present'² and, as I argue below, their presence explicitly defended in terms of the nature of the crime, unintentional homicide. The basis of Euxitheus' alibi, though hardly crucial to the speech, is also specified in similar terms: the man 'was present' with the defendant at the time of Herodes' disappearance.³ The litigants' insistence on these points, then, suggests a cogent 'epistemic' principle: credible testimony must be based on a secure source of knowledge. In accordance to long-established prejudice,⁴ *autopsy* is assumed to fulfil this criterion admirably. Thus, Antiphon variously characterizes *autoptic* knowledge as accurate,⁵ clear,⁶ competent,⁷ correct,⁸ and complete.⁹ These remarkable properties allow *autopsy* to engender a privileged epistemic access to the facts themselves. More importantly for the court, the statements confirmed by autoptic

¹ E.g. Antiph. 5.23.

² Antiph. 1.28; 6.23.

³ Antiph. 5.42.

⁴ See p. 176f.

⁵ Antiph.6.14: ἀκριβῶς.

⁶ Antiph.2.4.4: σαφῶς.

⁷ Antiph.1.28: εὖ.

⁸ Antiph.2.2.8: ὀρθῶς.

⁹ Antiph.6.22: τὰ γενόμενα πάντα.

witnesses may also be described as ‘evident’.¹ Indeed, the statements of autoptic witnesses can be introduced as premises, written in a confident indicative mood, in a deductive argument proving the defendant’s innocence.² It is entirely reasonable, therefore, for a litigant to lavish great attention on the epistemic credentials of his witnesses – and especially on their *autoptic* credentials – and, moreover, to suggest this very ‘epistemic’ principle, namely that their *autopsy* should be thought of as the first sign of the credibility of their speech.

The legitimacy of autoptic knowledge, however, is not always beyond reproach. Confronted by the testimonial evidence presented above, the mock-defendant of the *First Tetralogy* argues that the probable psychological state of the slave – mortal fear – has undermined the supposed infallibility of his ‘recognition’:

And how is it right to trust (πιστεῦεσθαί) the testimony of the slave? Driven out of his wits by mortal terror, it is unlikely that he recognized (γῶναι) his murderers. What is likely, however, is that he was persuaded (ἀναγιγνωσκόμενον) by his masters to nod [to their accusations].

Antiph. 2.2.7

Antiphon’s mock-defendant, then, attempts to counter the defence of the slave’s testimony by undermining, among other things, the epistemic foundation of the slave’s testimony. Summoning *eikós* to his aid, the litigant elaborates on the witness’s last frantic moments. We can imagine the poor man, gasping, surrounded by the prosecutor and his

¹ Antiph. 5.23: φανερός.

² One line of the three-fold argument reads καὶ εἰ τὸν δόντα τὸ φάρμακόν φασιν αἴτιον εἶναι, ἐγὼ οὐκ αἴτιος; οὐ γὰρ ἔδωκα, Antiph. 6.17.

relatives, being pressed to blame the defendant and meekly nodding his ‘assent’ as he died. This, the defendant insists is the likely ‘epistemic’ foundation of his testimony, collusion, ἀναγιγνώσκειν, and not recognition, γιγνώσκειν. The pointed similarity of these two verbs, epistemically miles apart from one another, lends a touch of rhetorical genius to Antiphon’s argument. Here, then, the mock-defendant suggests an alternative scenario to the one presented by his opponent, one which replaces the supposed epistemic credentials of the witness with the illegitimate ἀναγιγνώσκειν. And, in a further twist of the rhetorical knife, the mock-defendant implies that the slave made no *assertion* at all, but merely nodded to his masters. And as to the supposed *autoptic* knowledge of the murder, Antiphon presents a devastating critique. Capitalizing on the distinction between passive presence and active recognition introduced in the first speech, he suggests that mere presence is not enough and that the *required* epistemic act, *recognition*, never took place. The slave’s mortal terror would have stricken him senseless, ἐκπεπληγμένον, and incapable of such acts as γνῶναι. The testimony, then, is not as epistemically well-founded as his mock-opponents have suggested and, therefore, assailable on this point. In sum, then, the mock-defendant attempts to undermine the credibility of the slave’s testimony by applying stricter criteria for the basis of testimony and arguing that these stricter criteria have not been met. The minutiae of the argument notwithstanding, the criticism of the slave’s credibility reinforces the main point: credible testimony should be grounded in *competent* knowledge. And, further, the arguments suggest, above all, that the credibility of the witness, and therefore his value, was determined by *argument* and could be undermined by *argument*.

Though *autopsy* is presented as the foundation for the testimony of most witnesses called upon in Antiphon’s speeches,¹ two other forms of knowledge – especially relevant to forensic discourse – are also to be noted. These are, in order of frequency of references to them, the ‘guilty knowledge’ of the criminal and his accomplices, and the

¹ This is the probable basis for the testimony of (a) the slaves who are proposed for examination in Antiph. 1 (b) the slave in Antiph. 2.1 (b) the proposed alibi in Antiph. 2.4 (d) the various witnesses in Antiph. 5 (e) the various witnesses in Antiph. 6.

'sufferer's knowledge' of the aggrieved party. The first of these is generally designated by the verb συνειδέναι. This verb is the subject of extensive study which, however, often does not extend to the forensic texts.¹ The observations made about this term, however, are in keeping with Antiphon's use of the term. As in other texts of the late fifth-century – primarily drama – the term is used to designate a sort of 'guilty knowledge' a criminal shares with himself and with his accomplices.² What is more, this form of knowledge was assumed to be infallible.³ It is understandable, then, that Antiphon should seek to capitalize on these assumptions as the basis for defending the testimony of favourable witnesses. And indeed, references to confessions by suspected accomplices do occur, albeit obliquely, in Antiphon's speeches.⁴ For the clearest reference to testimony based on such suneidetic knowledge, though by way of negation, we must turn to Euxitheus' criticism of his opponent's primary witness, the executed slave:

They even allege that the man confessed under torture that he helped me kill (συναποκτεῖναι) him. I maintain that he did not say this, but only that he had led the man out of the boat and when the man was dead, helped me pick him up (συναελών) onto the boat and then threw him into the sea.

Antiph. 5.39

Twice,⁵ when referring to this witness, an alleged accomplice of Euxitheus, Antiphon describes him as συνειδώς. And, further, in the passage quoted above, the litigant, once

¹ E.g. Pierce, 1955; Sorabji, 2014.

² See Pierce, 1955, p. 18ff. Sorabji, p. 11f.

³ Sorabji argues that the fallibility of the συνειδώς was an innovation of St. Paul (Sorabji, 2014, p. 11).

⁴ E.g. νῦν δὲ συλληφθεὶς αὐτὸς ὕστερον κατεῖπεν αὐτοῦ, Antiph. 5.69.

⁵ Antiph. 5.52, 53.

again, alludes to *suneidetic* knowledge. The key verbs of his imagined testimony – συναποκτεῖναι and συνανελών, verbs designating those actions which constituted his role as an accomplice – share the same prefix as συνειδώς. Once more, then, Euxitheus admits that the opponent's key witness is armed with *suneidetic* knowledge. This concession is, of course, part of an attack attempting to undermine just this epistemic basis. As in the *First Tetralogy*, then, the litigant attempts to undermine the credulity of the witness by calling his knowledge into doubt. Indeed, Antiphon essentially reduplicates the argument discussed above, suggesting that collusion was the more probably eventuality and, then, moves on to cast doubts on how εἰκόσ the very existence of such testimony is in the first place. How likely is it, the litigant asks, that he went through the business of murder alone, only to summon a witness to help me move the body? The slave, the defendant concludes, was no accomplice and, therefore, could not have been genuinely συνειδώς. He is, in other words, not a witness at all.

Diametrically opposed to the perpetrator's 'guilty knowledge' is the tragic ignorance of their victims. This ignorance persists, usually, to the point of death when the criminal's plans are finally 'revealed' to his victim. This tragic flash of insight, usually the victim's final cognitive act, is most vividly captured in the prosecutor's report of his father's dying testimony in Antiphon's first speech. Though the following passage does not treat of a witness deposition, but of a litigant's case, the discussion revolves, again, around the same principle:

The victim, however, knows nothing until he is already in midst of the evils plotted against him and finally recognizes (γιννώσκωσι) his imminent destruction. And if they are able to and if time permits, they summon their friends and relatives and make them witnesses (καλοῦσι καὶ μαρτύρονται), revealing to them their murderer (λέγουσιν αὐτοῖς ὑφ' ὧν ἀπόλλυνται) and charging

them with taking vengeance on him.

Antiph. 1.29

The dying man, then, thinking nothing of safety, has only one thing in mind; vengeance, a prominent pretext for litigation in the trial. With his last breath, the victim summons his son and turns him into a 'witness' for the ensuing trial. The prosecutor cautiously side-steps the issue of how his father, who suddenly *recognizes*, γιγνώσκειν, the mortal danger he is in, is also able to know the identity of murderer.¹ Nonetheless, this death-bed declaration is marked out as the source of the litigant's 'testimony' and one of the epistemic pillars upon which he has based his case. The prosecution, then, traces his own knowledge – implicit in his references to 'witnesses' – all the way to his father's final cognitive act, which he describes in detail. One may suppose that such a reading imports rather Aeschylean ideas² about 'learning through suffering' into an Antiphontean speech. We may note, however, that this criticism is mitigated by the fact that Antiph. 1 is infused with tragic elements and, further, by reference to Clytemnestra.³ The key point remains, however, that even in this case, credible speech – in this occasion that speech which made the prosecutor a 'witness' – is traced back, if perhaps somewhat sophisticatedly, to the primary victim's knowledge and, therefore, to 'secure' epistemic foundations.

One epistemic resource is conspicuously absent from the list of possible foundations of credible testimony, testimony itself. In every case, then, the litigants lay stress on the fact that the testimony of their own witnesses, whether slave or free, is founded on a direct access to the facts, either by direct involvement in the events or by *autopsy*. It cannot be placed on yet more λόγος. In other words, a valid testimonial chain must be composed of just one link, that between the primary witness and his audience. Accordingly, the

¹ If the stepmother's previous attempt is genuine, however, the litigant's father surely might have 'inferred' the identity of his killer.

² E.g. Aesch. *Ag.* 174ff.

³ See esp. Wohl, 2010a, p. 50.

litigant in Antiph. 5 takes great exception to being forced to defend his father since he is compelled to argue not from direct acquaintance of the relevant incidents, but from hearsay.¹ Such arguments, the litigant insists, have no place in serious litigation. Even when hearsay must, of necessity, be a component of testimony great emphasis is placed on the dependence of the *reported* testimony on the original testimonial act of the primary witness. The mock-prosecution in the *First Tetralogy*, for example, emphasizes that the witnesses he had summoned were present at the interrogation of the *autoptic* slave and, indeed, took part in the interrogation.² Similarly, in Antiph. 1, the prosecution traces his own knowledge to his father's death-bed declaration and describes the exact circumstances in which he himself had become a witness of his father's last moments.³ This epistemically-minded prejudice against ἀκοή, of course, also appears to be institutionalized in the formal restriction of hearsay evidence in Athenian courts. This convergence need not mean that Athenian law enshrined some ancient epistemic principle. Another, more plausible, interpretation is at hand. It is far more likely that Antiphon is using the legal distinction between admissible and inadmissible witnesses as a means by which he could defend his own witnesses as credible, and those of his opponents as unbelievable and inadmissible to boot. This is just what he does, and all the more conspicuously, with the second pre-requisite of credibility, truthfulness.

b. Honesty, Self-Interest and Torture: The Elenchus Precondition of Credible Testimony

An epistemically competent witness, however, does not ensure, in some automatic way, that the testimony is true, since incompetence is not the only enemy of truth, so is deceit. Indeed, the possibility of deceit, openly acknowledged by Antiphon,⁴ and implicit in the provisions taken against testifying falsely,⁵ renders any such state of privileged

¹ Antiph. 5.74f.

² οἱ τούτου ἤκουον μαρτυρήσουσιν... ἀνακρινόμενος ὑφ' ἡμῶν... Antiph. 2.1.9.

³ Antiph. 1.29f.

⁴ καταπεύσασθαι ἔξεστι τῷ βουλομένῳ, Antiph. 6.19.

⁵ Antiph. 6.18.

epistemological access *insufficient* for credible testimony. It was necessary, therefore, for a litigant to prove that his witnesses did not merely know the facts, but that were also inclined, or better still, *forced* to report them truthfully.¹ And, conversely, the testimony of unfavourable witnesses could be attacked on the suspicion that the witnesses were lying and, worse still, actively conspiring with the litigant's opponents.² Truthfulness, then, or more exactly, the application of an 'adequate' test for truthfulness, was the second necessary criterion for credible testimony. Once again, we must note that such arguments are entirely in keeping with the advice given in the fourth-century rhetorical handbooks. Thus, Anaximenes also suggests that the issue of collusion, whether incited by friendship or relation or interest, should be raised to undermine the credibility of unfavourable witnesses.³ Indeed, the fundamental criterion which Anaximenes uses to assess a witness's truthfulness, self-interest,⁴ also features prominently in Antiphon's references to testing of a witness's truthfulness.

Unlike the knowledge-criterion, which applied indiscriminately to slaves and free witnesses – Anaximenes also defines both by the same term, *συνειδέναι* – the type of test for truthfulness to which the witness was subjected depended on his legal status:

You yourselves know, gentleman, that compulsions (*ἀνάγκαι*) are strongest and most steadfast in the affairs of men, and the proofs (*ἔλεγχοι*) about matters of justice are clearest and most persuasive when there are many knowing witnesses (*οἱ συνειδότες*), some free and others slaves, and when it is possible to compel (*ἀναγκάζειν*) free man by oaths and assurances (*πιστεῖς*), which free men regard as matters of prime importance,

¹ Antiph. 1.10f.

² Antiph. 5.31f.

³ [Arist.] *Rh. Al.* 1431b24.

⁴ [Arist.] *Rh. Al.* 1431b27.

and when it is possible slaves are compelled (ἀναγκάζονται) by different compulsions (ἀνάγκαις), under which they would speak even at the expense of their lives, to report the truth, for the immanent compulsion (ἀνάγκη) is more forceful than a future one.

Antiph. 6.25

The dominant theme of this passage is necessity, ἀνάγκη, referred to five times in the space of a hundred words. The principal meaning of this word is ‘compulsion’ or ‘instrument of necessity’ which is applied to a witness and which compels him to speak the truth.¹ In the case of slaves, the Chorus-producer euphemistically refers to the practice of extracting truthful testimony by means of torture. It is, therefore, the necessity imposed by the torture which ensures truthful deposition. On the other hand, free men had a different form of compulsion: oaths and assurances. This difference, however, should not belie the fact that both ‘instruments of compulsion’ are applied for the same purpose, to ‘ensure’ that the deposition is defended as *truthful* because the witness *cannot* lie. And, moreover, the emphasis on such conditions is immediately understandable. Through the application of these compulsions, the litigant can assure his jurors that his witness ‘must be’ speaking truthfully. If, moreover, the witnesses are also *knowledgeable* of the facts, this compulsion also enables the litigant to present their assertions as necessarily truthful assertions of *knowledge* and, therefore, as factually *true*. The importance of applying these ‘tests’ can also be proved negatively. In Antiph. 5, then, Euxitheus opens his defence speech by claiming that the absence of the oath has destroyed the *credibility* of witnesses:

¹ Cf. Antiph. 5.41. The link between necessity and truth is also noted by Edwards (1985, p. 97).

Moreover, you ought to have sworn a mighty and binding oath, against your person, your house, your family, that you would accuse me of this murder, that I committed it [and nothing else] ... These requirements you have evaded. You have invented laws for yourself and accuse me unsworn. Unsworn too are the witnesses who testify against me, though they ought to have sworn the same oath you should have sworn, and not utter a word against me before laying their hands on the sacrifice. But now, you urge the judges to believe your unsworn witnesses, sitting as they do on a murder trial, witnesses you yourself have made unbelievable (ἀπίστους) by evading the required laws.

Antiph. 5.11f.

The lack of the oath, then, which in Antiph. 6 is described as a guarantee for the witness's truthfulness,¹ has made the witnesses incredible, ἀπίστους. The way in which oaths guarantee the credibility of the witnesses is not stated explicitly. The passage quoted above, however, suggests an entirely rationalistic attitude – somewhat jarring when placed side-by-side to Antiphon's talk of μίσημα² – on the part of the orator. Free men are not forced to respect oaths by a mysterious divine compulsion, nor by the threat of divine punishment, but simply because they hold oath-keeping to be of great importance.³ In this, Antiphon is again consonant with the fourth-century rhetorical handbooks.⁴ Thus, Anaximenes suggests defending *evidentiary* oaths on the grounds that men obey them because they *fear* punishment from the gods and *shame* from their

¹ Antiph. 6.25.

² On pollution in Antiphon see Declava Caizzi, 1986, p. 25ff.; Parker, 1983, p. 104ff.; Carawan, 1998, 192ff.; Gagarin, 2002, p.102ff.; Wohl, 2010a, p. 41ff.

³ ἅ τοις ἐλευθέροις μέγιστα καὶ περὶ πλείστου ἐστίν, Antiph. 6.25.

⁴ Though these works discuss evidentiary oaths, and not the δῖωμοσία. On litigants oaths, see Gagarin, 2007.

peers.¹ Once again, then, the effectiveness of oaths is described in strictly psychological terms. The witnesses are, in other words, motivated to speak the truth by self-interest. This rationalism is also evident in other, similar, passages:

Many of the men, present here, know all these facts perfectly well and with the oath still ringing in their ears, they have attended to my defence. And it is in my interest (βουλοίμην) that they should think me true to my oath and speaking truthfully when I request that you acquit me.

Antiph. 6.12

Once again, the reason for keeping true to one's δῶμοσῖα is not some supernatural power, but the desire to appear truthful to those who can verify the facts from memory. The reader might object that the 'psychology' of oath-keeping, appears to underline the 'social', not the epistemological consequences, of perjury. It is abundantly clear, however, that Antiphon does not regard oath-keeping to be matter of keeping up appearances with one's neighbours. 'The men present', to whom Antiphon refers in this last passage, are the very jurors to whom the litigant's truthfulness is of obvious interest. Indeed, *shame* is only the potential consequences of perjury, one which 'prevents' lying and which, therefore, can be exploited as a means of defending the witness's truthfulness and credibility. This appears to be the primary rhetorical function of these tests, namely to defend their truthfulness in terms of necessity. There is, nonetheless, an obvious line of counter-argument to such claims. Free witnesses were under no literal obligation to testify truthfully or, indeed, to testify at all. Indeed, in admitting that the

¹ [Arist.] *Rh. Al.* 1431b30ff.

litigant has *chosen* to keep to his oath, the defendant undermines the very ‘necessity’ which he uses to prop up the infallibility of his oath-test. No oath, however severe, can *compel* a litigant or a witness to keep to it, especially considering the rationalistic attitude to oath-keeping implicit in the speeches.¹ Indeed, as Plato later complains,² the structure of trials ensures that half the oaths are perjured from the start. Any talk of oaths *necessitating* truth-telling was obvious hyperbole and, therefore, easily attacked as such.³ A more plausible defence of a free witness’s truthfulness, then, had to be proposed:

And how is that we must regard the testimony of the slave more credible than that of free men? Free men would lose their rights and their property if they appear to be testifying falsehoods. But he had no test (ἔλεγχον) nor any interrogation (βάσανον). What punishment would he have (if he testified falsely)? What test (ἔλεγχος)? He has testified with no risk (ἀκινδύνως). No wonder he was persuaded by the masters, enemies of mine, to slander me! I would suffer a great impiety if I were condemned by testimony which is not credible!

Antiph. 2.4.7

This is the second rebuttal of the slave’s testimony in the *First Tetralogy*, quoted above. Besides attacking the likelihood of reliable ὄψις, then, the litigant deploys a more intricate and more interesting argument attacking the slave’s *truthfulness*. The argument is,

¹ One may object that the latter passage refers to the litigant’s διωμοσία. Yet, Antiphon draws clear parallels between the oaths of witnesses and litigants (e.g. Antiph. 6.12).

² Plat., *Laws*, 948df.

³ The definitive counter-argument is given in Arist. Rh.1.15.26.

predictably, based on the comparison between free and untortured slave witnesses on the grounds the relative risks each sort of witness assumes in testifying. The testimony of free witnesses, the mock-defendant argues, inherently contains an element of risk because perjury is severely punished if it is detected. The threat of losing one's citizen rights and having one's property confiscated, *disinclines* free witnesses from testifying falsely. Slaves, on the other hand, run no such risks, *unless* they are subjected to some other test. This basic difference, the litigant continues, means that a slave could lie with impunity, while a free witness cannot. The litigant, thereby, concludes that accepting the slave's unexamined testimony is a crime against reason, since it leads to the absurd conclusion that the testimony of a slave is inherently more credible than that of a free man since it is accepted 'untested'.¹ This subtle *comparative* argument, then, is a not just a piece of misdirection, but a cogent attack on the credibility of the untested testimony of his opponent's slaves. Though few would now agree that torture – or, indeed, oaths – are of themselves a reliable guarantee of truthfulness, the requirement for some test for or calculation of the witness's truthfulness is an entirely rational suggestion.

In the case of slaves, this rationale of inherent self-interest was believed not to hold.² Since slaves could testify without risk of prosecution, their depositions were inherently 'risk-free' and, therefore, not subject to the same intrinsic 'test' of self-interest. And yet, as the mock-defendant of the *First Tetralogy* makes plain, 'testing' a slave's testimony is a necessary precondition for credibility:

The slave who accused me has been proved unreliable
(ἄπιστος), because it is untested (ἔλεγχος οὐκ ἔστι).

¹ ἔλεγχος οὐκ ἔστι, Antiph. 2.4.12.

² A possible exception was the slave in Antiph. 5.41 who conveniently, when facing death, was moved to telling the truth.

In the absence of an intrinsic means of ‘testing’ the truth of a witness’s testimony, an external means of coercion had to be found to ensure the truthfulness of the deposition of slaves’ testimony, and, therefore, its *credibility*. This extrinsic test was none other than the βάσανος, a legal instrument which could be used, at least in theory, to extract testimony from slaves under torture. The reader might object that the βάσανος was a legal fiction¹ and, therefore, could hardly function as a test for anything. Nonetheless, the impracticality, if not the uselessness, of the βάσανος procedure clearly did not prevent it from being the gold-standard of credibility in Athenian rhetoric.² Indeed, it seems to have positively promoted it. Antiphon, then, gleefully uses the paradigm of the two-sided βάσανος as a cudgel to use against his enemies’ witnesses. In this way, he attacks the testimony of any witnesses by comparing it to the lofty standards imposed by the all-mighty βάσανος. And, indeed, the effectiveness of the βάσανος at securing the truth could not be expressed more emphatically:

I wanted to examine the slaves by the βάσανος. I even proposed to write down my questions to the woman and let them be the examiners with me present (ἐμοῦ παρόντος) to ensure that they were not give forced answers (ἀναγκαζόμενοι) to my questions. Yes. It was enough for me to use written questions... And if the slaves were reluctant to confess or contradicted one another (εἰ δὲ ἄπαρνοι γίγνοιτο ἢ λέγοιεν μὴ ὁμολογούμενα), the βάσανος would compel them (ἀναγκάζοι) to speak the truth. For the βάσανος makes (ποιήσῃ) those who prepared lies to speak

¹ Gagarin, 1997, p. 22.

² E.g. Lys. 7.31; Dem. 30.35. On the topical praise lavished on this method see Headlam, 1893, p. 1.

the truth.

Antiph. 1.10f.

Once again, then, the rhetoric of ‘necessity’ is a prominent feature in the discussion. Indeed, the association of ‘necessity’ and the βάσανος was a widespread and enduring one, appearing even in Aristotle’s cursory treatment of the πίστις. Here too, then, ‘terrible necessity’ is considered to be the foundation of the notorious credibility of the βάσανος.¹ According to the step-son, then, the slave, who could otherwise perjure himself with impunity because he can testify ‘risk-free’, can be *made* to speak truthfully by the application of the βάσανος. The simple economics of torture, in which pain and the threat of pain are exchanged for truth, ensure the slave’s truth-telling. As in this case of oaths, however, this simplistic rhetoric of ‘necessity’ is supplemented by an examination of the slave’s *interests*. In general then, the need for the βάσανος is explained in terms of slave’s positive inclination to lie on his master’s behalf in the interests of self-preservation.² The slave’s interests to lie for his master, then, must be overcome by a stronger compulsion, physical pain. Indeed, the compulsion is so strong that the βάσανος ensures truth-telling even if the penalty for this is death, because the ‘present compulsion’ overwhelms any thought of future suffering.³ The *need* to stop the torture as quickly as possible, as Anaximenes reassures us, *incentivises* truth-telling.⁴ This deeper analysis of the psychological effects of torture, however, exposes an obvious weakness of the βάσανος as a test for truthfulness: the ‘terrible need’ to stop torture does not *necessitate* truth-telling at all. Rather, the tortured witness finds himself ready to admit

¹ Arist. Rh.1.15.26

² At other times other sort of ‘loyalty’ to one’s master appears to be operative. Thus, the slave witness in the *First Tetralogy*, who could not be threatened in the same way, was suspected of ‘agreeing’ to slander an enemy of the litigant in his dying moments (Antiph. 2.2.7). The point is, then, that litigants could attack the testimony of a slave on the grounds of some vague loyalty which was rendered more precise by the litigant in accordance with the needs of the argument.

³ Antiph. 6.25.

⁴ Arist. [Rh. Al.] 1432a17.

anything to make his torture stop as quickly as possible. Aristotle makes this very objection in his discussion on the βάσανος:

Those subject to compulsion are compelled (ἀναγκαζόμενοι) to speak falsity no less than truth. Some endure to the end without saying the truth, while others lie to make the compulsion stop quicker.

Arist. *Rhet.* 1.15.26

The 'terrible necessity' which 'ensures' truth-telling, then, turns out to be ambivalent to truth. The βάσανος can no more guarantee truthfulness than it can deceit. Any talk of the βάσανος causing the witness to speak truthfully is, consequently, an easily refutable exaggeration. Though this argument does not occur in any explicit form, the step-son seems to propose a way out of this conundrum. In his estimation, the truth-distorting potential of the βάσανος can be eliminated if it is conducted *properly*.¹ Thus, if the litigant were not present to supervise, his *opponents* would 'compel' the slave to lie on their behalf. His mere presence, however, would have ensured that his opponent has no opportunity to do this and, therefore, that the truth-preserving necessity of the βάσανος operate untrammelled. The same argument is made more explicitly in Antiph. 5 where, as already mentioned, the one-sided nature of slave's interrogation underpins Euxitheus' main objection to his opponent's slave:

Now consider the type of βάσανος it was. The slave was, perhaps, promised his freedom and, further, the power of

¹ Antiph. 1.10.

stopping the torture was entirely in my opponent's hands. Perhaps, then, he was persuaded by both considerations to lie about it, hoping to gain his freedom and wanting to stop the torture as quickly as possible. I need not remind you, I think, that when it comes to the βάσanos, the greatest power lies in the torturer to whom the tortured would say anything he wanted them to say. It is in him that all their hope lies, especially when the one being accused is not present. For if I had been present, I would have ordered him to be racked for not telling the truth. This fact alone would have stopped him from slandering me. In truth, however, the examination was conducted by those seeking their own best-interests.

Antiph. 5.31f.

This topical argument has been discussed at some length in the previous chapter. Now, however, the underlying assumptions can be appreciated fully. The litigant, once again, proposes that his presence at the examination would have guaranteed the truthfulness of the slave as much as his absence guaranteed his duplicity. There is nothing to guarantee, therefore, that the witness was not 'convinced' to lie against him. There has been in other words, no adequate test for his truthfulness. And, further, the litigant argues more positively against this possibility by examining minutely the natural history of the examination – from denial before torture, to admission under torture, back to denial once the torture stopped – to suggest that the admission was *caused* by the βάσanos or, rather, by the victim's self-interest in making the βάσanos stop. The testimony, then, is not only untested, but there is also further 'reasonable suspicion' about the truthfulness of the extracted confession. We may suppose, of course, that the prosecution had its own justification for *not* testing the slave. Indeed, the defendant in the *First Tetralogy*

protests when confronted with a similar argument, arguing that such cases need no βάσιμος because of the nature of the case. Nonetheless, the disagreement, once again, underlines an important general principle: credible testimony must be checked for truthfulness in an appropriate way.

4.3: Conclusion: The credibility of admissible testimony and the admissibility of credible testimony

Two rational principles, then, can be shown to underpin virtually all references to testimony in Antiphon's court speeches. The litigants consistently defend their witnesses by referring to their epistemic foundations and to a 'test' by which their truthfulness is guaranteed. Conversely, Antiphon's litigants repeatedly attempt to undermine unfavourable witnesses by attacking them on one, or both, of these grounds. These two criteria of credibility, then, provided litigants a framework for attacking hostile witnesses, and for defending favourable ones. Other particulars may be attacked, such as a witness's consistency and their number,¹ but attacks on the witness's knowledge and the nature of the test remain the dominant forms of criticism. This remarkable consistency allows us to frame an implicit general principle: the witness's competent and first-hand knowledge and an 'adequate' test for the witness's truthfulness were 'necessary' preconditions for credible testimony.² It is, perhaps, noteworthy that a similar model of testimony – a broadly reductionist one – has long been defended by various celebrated epistemologists and, most recently, by Elizabeth Fricker.³ Moreover, the two conditions which Antiphon proposes for credibility are eminently comparable to the 'V-conditions' that she proposes.⁴ I am not, of course, suggesting that Antiphon was

¹ ἐναντίον μαρτύρων πολλῶν, καὶ ἀνδρῶν καὶ παιδῶν, καὶ ἐλευθέρων καὶ δούλων, Antiph. 6.19.

² This is, in essence, a reductionist model of testimony (see Coady, 1994).

³ Other reductionists include John Locke (*Essay*, IV.xv. Cf. Shiebner, 2009, esp. p. 16), David Hume (*Essay*, X. Cf. Coady, 1973, 1994; Faulkner (1998); Welbourne (2002); Gelfert (2010)), and Bertrand Russell (1948, p. 163). This model has recently come under heavy criticism (see Coady, 1994; Audi, 1997, 2002).

⁴ Fricker, 2002, 398ff.

in possession of any a fully-fledged epistemology or, indeed, that the speeches are an expression of one. Rather, the close overlap between these solutions may stem from the recognition of a fundamental problem, the old Homeric distinction between κλέος and *bona fide* knowledge, and, further, from the attempt to find some measure by which to bridge these two spheres. And, what is perhaps more pertinent to the discussion, the feature most characteristic of Antiphon's epistemology can also be described in terms of this model: the forcefulness with which the second condition is presumed to act. Thus, litigants repeatedly argue that the correct application of an appropriate *elenchus* necessitates or, in anachronistic terms, is a sufficient condition for truthfulness. This rhetoric was also supplemented by appeals to the witnesses' *self-interest*, though necessity appears to be the order of the day, particularly when the βάσανος was discussed. And, indeed, this 'necessity' is eminently convenient to litigants: the truth seems to emerge naturally through the application of this mechanical process. Another striking characteristic of Antiphon's epistemology, alluded to above, is the similarity of these two preconditions to the procedural laws which surrounded testimony in Athenian courts. Antiphon, then, need not have argued that ἀκοή is not a credible foundation for testimony because the distinction between admissible *autoptic* evidence and inadmissible hearsay evidence was already enshrined in law. Similarly, the distinction between the 'tests' applied to the two kinds of witnesses also appears to be 'presupposed' by the conditions for admissibility of a slave's testimony. These suggestive overlaps need not imply that Antiphon's 'epistemology' of testimony was somehow inherent in the legal code.¹ It is more plausible to assume, rather, that Antiphon engages purposefully with the procedural laws surrounding formal testimony as a rhetorical stance, a way of defending his own witnesses and of attacking those of his opponents in an especially formidable way. His litigants, then, repeatedly argue that a 'fair' reading of the formal criteria of admissibility guarantees the *credibility* of their

¹ Of course, the criteria of admissibility and credibility do not overlap completely. Thus, the Chorus-producer sensibly proposes that testimony is more credible if numerous witnesses are available (see above), though there exist no formal rules which prevented a solitary witness from testifying in court.

own witnesses and undermines the credibility, indeed the very admissibility, of their opponent's witnesses. The litigant could also show, in this way, that his mode of analysing the criteria of a witness's credibility is in line with the 'intention' of the law and of the law-giver. Besides being a common trope in Greek rhetoric,¹ Anaximenes also suggests such an argument in his discussion on the prosecution of false witnesses. As already noted, he suggests that the existence of the suit for false testimony implies that the jurors *must* examine the credibility of witnesses.² Though Antiphon does not use this exact argument, much of his rhetoric implies a similar use of procedural laws, as a starting point for an argument relating to the credibility of witnesses. And, indeed, it is an eminently reasonable tactic to employ. Apart from allowing the litigant to defend his own witnesses in terms of the law, any criticism made of the credibility of the witnesses of one's opponent is, simultaneously, directed against the very admissibility of this evidence.

We turn, finally, to the most important corollary of the model discussed above, one which truly encapsulates a fully-fledged, albeit implicit, epistemology of testimony. The model allows us to infer that credible testimony was regarded as a valid source of knowledge. That this is so is simply a matter of logic. If a credible witness has access to a primary source of knowledge and if the *elenchus* necessitates truthfulness, then it follows that the testimony is not only truthful, but true. More importantly, however, we find that this corollary is emphatically corroborated in Antiphon's speeches. Indeed, the βάσανος is frankly and repeatedly described as a means of 'examining the truth' and, even more dramatically, the *heuristic* function of the βάσανος is compared to that of personal eyesight. Credible testimony – or personal knowledge of facts uttered truthfully – is an entirely legitimate epistemic source, while all testimony which falls outside these norms of credibility is *not* conducive to knowledge or demonstration. The formulation of two necessary pre-conditions for credibility, thus, necessarily divides all testimony into two

¹ On legalism in the rhetoric of murder trials see Laanni, 2006, esp. p. 87ff. Cf. Carawan, 1998, p. 282.

² See p. 31.

basic kinds. This radical division, inbuilt into the system itself, goes some way to justifying Anaximenes' advice – namely that testimony necessitates judgement – and, further, Antiphon's emphasis on the credibility of favourable witnesses. It is only once the credibility of such witnesses is established that Antiphon puts the testimony to work.

Chapter Five.

Testimony and Demonstration in Antiphon's Rhetoric

In the next two chapters, I relate the two functions of testimony identified in Chapter Three to the model of credible testimony discussed above. I first turn to the most characteristic function of testimony, *demonstrating* facts relevant to the case. To reiterate, I have argued that the Chorus-producer calls upon witnesses to *show* that 'he did not order or force [Diodotus] to drink the drug, nor give it to him' and, consequently, that he is innocent of the charges levelled against him. Witnesses, whom the litigant explicitly defends as credible, are called upon to demonstrate that the prosecution's sworn allegations were factually untrue. In Euxitheus' defence speech, on the other hand, the defendant is faced with an opponent in possession of strong testimonial evidence of his guilt and, presumably, of a strong demonstrative claim. In response, the defendant attempts to undermine his opponent's case by attacking the credibility of the testimonial evidence on which his case relies. Both arguments, then, are underpinned by a common assumption, namely that credible testimony and demonstration are interdependent. In the first part of this chapter, I turn to Antiphon's language and use of demonstration to show that this is the case. I argue, in short, that demonstration, like testimony, depends on the speaker's knowledge and his truthfulness. The 'logic' of demonstration, in other words, is entirely consistent with the epistemological model of testimony outlined above. In the second part of the chapter, I briefly re-examine the Chorus-producer's enthymeme in terms of this demonstrative logic to show that it is entirely consistent – and, indeed, dependent on – the epistemology of testimony described. Antiphon's speeches, however, do not simply illustrate testimony being used demonstratively. They also, and more importantly, explicitly justify and defend this demonstrative function. In Antiph. 6, the Chorus-producer does not merely argue for the credibility of his witnesses, but also for the *pertinence* of the resultant demonstration. This explicit defence of his argumentative strategy suggests that the 'demonstrative

function' of witnesses was, like their credibility, not granted *a priori* or automatic, but a potential point of contention which must be established by the litigants in the course of their speech. At the end of this chapter, I turn briefly to the *First Tetralogy* to support this thesis.

5.1: 'Demonstration' in Antiphon

Antiphon's litigants make prominent use of a rhetoric of demonstration. Indeed, the five commonest verbs referring to 'demonstration' occur, on average, once in every five sections of text.¹ This intense meta-discourse, by which a litigant comments on his own or his opponent's λόγος, also falls into easily recognizable patterns. Thus, these verbs tend to cluster² around one another and to occur in the latter sections of Antiphon's speeches.³ Two broad forms are prevalent: prospective claims,⁴ in which the litigant promises to demonstrate some fact later in his speech, and retrospective uses,⁵ in which he claims to have demonstrated some fact already. The various terms also have a consistent meaning: 'demonstration' generally refers to the process of establishing the truth or falsity of some proposition, generally an assertion made by a litigant. Thus, in the *First Tetralogy*, the mock-prosecution summarizes his first speech by saying 'I have demonstrated, ἀπεδείξαμεν, that the defendant has killed the victim',⁶ while the Chorus-producer asks, 'how else am I going to demonstrate, ἀποδείξαντα, that I am not guilty?'.⁷ In both cases, the litigant claims to have *shown* that the main assertion made by the prosecutor – his accusation – has been proved true or, in the case of Antiph. 6, false.

¹ Namely ἀποδεικνύναι, ἐπιδεικνύναι, δηλών, ἀποφαίνειν and διδάσκειν. The verbs are commonest in Antiph. 2.4, 3.4, 4.2, and Antiph. 6, being used about once for every 2.5 sections three sections. The verb is less common in prosecution speeches, occurring about once for every 9 sections.

² E.g. Antiph. 2.4.10 (n=3); 5.64-66. (n=4); 6.27-29. (n=7).

³ E.g. Antiph. 5.81

⁴ E.g. Antiph. 5.64, 66 etc.

⁵ E.g. Antiph. 32, 43, etc.

⁶ Antiph. 2.3.1.

⁷ Antiph. 6.32.

The rhetorical usefulness of such claims is, therefore, immediately apparent. Through them, litigants purport to have established definitively the truth and justice of their case and, conversely, the falsity and injustice of that of their opponents. The multiple demonstrative claims made toward the end of Antiphon's speeches, then, indicated to the jurors that the speech is drawing to an end and, further, that it has been successful. The rhetorical effect of these claims would be magnified manifold if, as Antiphon's litigants often imply, there existed an 'expectation' for a speech to be demonstrative:

It is unjust for the prosecution to secure conviction if he has not clearly demonstrated (σαφῶς διδάξαντα) that he has been unjustly treated. Moreover, it is a sin for the defendant to be sentenced, if the accusations have not been proven clearly (φανερῶς ἐλεγχθέντα).

Antiph. 4.4.9

Here, the mock-defendant of the *Third Tetralogy* plainly asserts that a prosecutor ought to secure conviction *only if* he can clearly and conclusively show, or *demonstrate*, that the defendant is *really* guilty of the crime. Conviction, then, should only follow if guilt is made manifest and, therefore, clearly *known*. Consequently, the demonstrative claims of prosecutors, as much as their knowledge-claims, were an obvious focus of attack for defendants who, predictably enough, insisted that the principle be applied as rigorously as possible. This is the main mode of defence in Antiph. 5. Euxitheus, then, undermines the demonstrative claims of his prosecutor by attacking the witnesses, and their evidence generally, on the grounds of their credibility and consistency.¹ And yet, no defendant was

¹ See above.

bold enough to assert that the need to demonstrate was unique to their opponents. Thus, Euxitheus openly acknowledges that his acquittal must depend on his own demonstration of innocence:

Do not let my acquittal depend on plausible conjectures (εὔ
εικάζω). Let it suffice that I demonstrate (ἀποδείξαι) my
innocence. And my innocence depends not on discovering
(ἐξεύρω) in what way Herodes died or disappeared, but in having
no reason for killing him.

Antiph. 5.66

This crucial passage comes towards the end of the argumentative section of the speech and follows the defendant's 'demonstration' of his lack of a motive, an argument which is entirely dependent on εἰκός. I postpone discussion about the contrast drawn in this passage between εικάζειν and demonstration since much of the argument of the *First Tetralogy*, examined below, is pertinent to this contrast. For now, one may simply note that, like testimony,¹ demonstration is explicitly contrasted to εικάζειν.² Euxitheus's reluctance to dwell on any 'likely' scenario comes as a surprise, when one considers the mock-defendant's case in the *First Tetralogy*.³ Yet, Edwards⁴ is surely right in saying that any alternative scenario would have jarred considerably with the largely negative tone of Euxitheus's argument. Due interprets the litigant's silence similarly,⁵ drawing attention to the continuity of this strategy with the rest of the speech and, indeed, the litigant's own

¹ E.g. 2.4.10. See below.

² The contrast, one may note, is somewhat marred by the fact that an εἰκός argument provides the grounds for demonstration.

³ On this issue see Gagarin, 1989a, p. 100ff., with previous scholarship.

⁴ Edwards, 1985, p. 108. Edwards also notes its topical character (Edwards, *ibid*).

⁵ Due, 1980, p. 46f.

narrative. We may cautiously conclude, then, that the defendant's reluctance to dwell on alternatives is conditioned by the same 'rhetoric of invisibility' identified by O'Connell¹ and, more generally, is fundamentally similar to the Chorus-producer's reluctance to paint a detailed narrative of events.² In other words, the litigant sought to create a pervasive sense of mystery and ἀπορία – focusing on the disappearance of the victim's body – which would have been undermined by any discussion of possible, alternative scenarios of Herodes' disappearance. Indeed, the murder itself is consistently presented as an event impervious to knowledge and about which it is futile even to speculate. And, finally, the litigant goes to great lengths to describe and to *defend* his chosen argumentative strategy:

I have demonstrated (ἀποδέδεικται), to the best of my ability, that both Lycinus and I are innocent of the charges. Yet the accusers have maintained (χρῶνται λόγῳ), again and again, that the man has disappeared. And perhaps you would like to hear an explanation of this fact. Yet, if I must speculate (εἰκάζειν) about this, then you should speculate too – for you are as guilty of the crime as I am. If, however, a true account of the facts (τοῖς ἀληθέσι τῶν εἰργασμένων) is needed, let the prosecution ask the murderer, for he is best placed to know it. My best (μακρότατον) answer to the question is this: I did not do it. To the guilty party, however, demonstration (ἀπόδειξις) comes easily or, failing that, plausible conjecture (μὴ ἀποδείξαντι εὖ εἰκάσαι), for they no sooner commit the crime than invent plausible excuses (πρόφασιν) for it. To the man who is innocent, however, it is hard to conjecture about things unknown (περὶ τῶν ἀφανῶν εἰκάζειν).

¹ O'Connell, 2016.

² Due, 1980, p. 224.

Indeed, I think that if I asked each of you about something you happen not to know, you would reply only that you did not know (οὐκ οἶδεν). And if I pressed you to say more, I think you would find yourself in a quandary. Do not, then, impose on me this same quandary. Do not let my acquittal depend on plausible conjectures.

Antiph. 5.54ff.

The main distinction of the passage quoted above is that between the demonstrative power of an innocent man, who knows nothing of the crime, and that of the murderer. The guilty man, whose knowledge is implicit in his guilt, is able to *demonstrate* all the facts in as far as he knows all the details. He knows when the murder took place because he was there, doing the killing, and he knows where Herodes body lies because he buried it himself. He has, in the terms of the last chapter, *suneidetic knowledge* of the crime and fulfils one of the criteria of credibility. He does not, however, fulfil the other, that of truthfulness, and for predictable reasons: the criminal does not *want* to be caught. His self-interest, then, ensures his deceit. Indeed, plausible but misleading ‘conjecture’, εικάζειν, is as much a characteristic of the guilty man as his power to demonstrate his own guilt. We observe then, that in this case, the two preconditions for demonstration, knowledge and truthfulness, are analogous to the ones used to evaluate the credibility of testimony. The same is true in the case of the defendant’s own speech. Innocent men, Euxitheus argues, know nothing of the crime. Consequently, the most they can do, μακρότατον, is demonstrate what they know, namely their own innocence. If pressed harder, beyond the limits of this knowledge, all he can do is resort to speculation, explicitly distinguished from ‘demonstration’. His acquittal, then, should not depend on such ‘plausible conjecture’, a characteristic he would share with the murderer. The jurors, then, are only to look to the defendant’s ability to *demonstrate* that which he *knows* to be

true, namely that he did not commit the crime, that he had no intention of ever committing it and, indeed, that he knows nothing of it. This demonstration alone, the defendant continues, ought to guarantee his acquittal.

The importance of demonstration, however, goes even further:

I think, gentlemen, that given my account and my demonstrations (ἀποδεδειγμένων), it is just for you to acquit me and, further, that you *know* (ἐπίστασθαι) that I had nothing to do with the crime. But to confirm you in that knowledge (ἵνα δ' ἔτι καὶ ἄμεινον μάθητε) I will go further and demonstrate to you (ἀποδείξω) that they are the most reckless perjurers and the unholyest of all men...

Antiph. 6.33

Demonstration, then, also provides a means by which the jurors can come to *know*, ἐπίστασθαι, and to learn, μάθητε, the most salient facts of the case. It is a knowledge-bound process, being *based* on knowledge of the speaker and *conferring* knowledge to its audience, a 'didactic role' which explains the use of the verb διδάσκειν as a near-synonym of ἀποδεικνύειν.¹ Through demonstration, litigants purport to provide the jurors with the surest basis to answer the fundamental questions on which the case turns: *knowledge* of the basic facts. In the *Third Tetralogy*, for example, the mock-prosecution claims that he has demonstrated 'clearly' all the relevant facts of the case,² while in Antiph. 5, on the other hand, Euxitheus claims to have demonstrated that his opponents *clearly* have designs on his life:

¹ E.g. Antiph. 5.8, 14, 46 etc.

² Antiph. 4.3.7.

It is far more just for you to be convicted of murder by my relatives for killing me than it is for me to be convicted by you and yours. For I have demonstrated (ἀποδείκνυμι) that you manifestly have designs on my life (φανερὰν τὴν πρόνοιαν εἰς ἐμὲ), but you seek to convict me on the grounds of an obscure account (ἐν ἀφανεῖ λόγῳ).

Antiph. 5.59

Demonstration, then, may refer to the process of making something manifest, φανεράν, and known. And, once again, demonstration is contrasted to another type of account, the prosecution's, which is described pejoratively as ἀφανής. While demonstration is both based on and confers knowledge, its negative image, ἀφανής λόγος, is not based on, not does it lead to, knowledge.

To summarise, then, demonstration in Antiphon's speeches is consistently held to be of fundamental importance in litigation. Litigants are consistent in their insistence that prosecutors must demonstrate that the accused is guilty and, therefore, that his own assertions, particularly his sworn accusation, are *true*. A legitimate defence, on the other hand, depends on demonstrating that the opposite is the case. Demonstration is also consistently described as a knowledge-bound process, founded on the knowledge of the speaker and leading to the audience's knowledge. In other words, it is a testimonial process. Indeed, the third argument of Gorgias' *On Not Being* also makes this plain.¹ Similarly, in Antiph. 1, the step-son describes the process by which his father made him a 'witness' – and hence knowledgeable – as a demonstration, δηλοῦν.² More generally,

¹ See p. 15f.

² Antiph. 1.30.

however, the two conditions for credible testimony, knowledge and truthfulness, are also prominent in Antiphon's discussion of demonstration. Moreover, the distinction between demonstration and its opposite, ἀφανής λόγος, is exactly parallel to the distinction between credible and incredible testimony. This close affinity, we may surmise, is not incidental. Rather, it is related, fundamentally, to the demonstrative role of credible testimony,¹ which I examine below.

5.2: The Demonstrative Value of Witnesses: the enthymeme of Antiph. 6

The clearest illustration of testimony being used as an *instrument* of demonstration is the enthymeme of Antiph. 6, already discussed above. To reiterate, I have suggested that this argument can be broken down into two inter-dependent steps. In the first part, the defendant asserts that his opponents have accused him 'of ordering or forcing the drug to be given to [Diodotus], or of giving it to him'. In the second, the litigant purports to demonstrate that the individual components of this triple disjunction are false by confronting the accusation with the testimony of autoptic witnesses. In the following section, I re-examine this argument in light of the observations made above and, further, I attempt to define, in a more precise way, the exact role of the 'epistemology of testimony' in Antiphon's rhetoric. The relevant section is quoted in full:

First of all, I will demonstrate to you (ἀποδείξω ὑμῖν) that I did not order, nor compel the boy to drink the potion, nor did I give it to him, nor was I even present when he drank it.

[WITNESSES]

¹ The possible grounds for demonstration found in Antiphon's speeches are myriad and include the use of both ἔντεχνοι (Antiph. 6.59) and ἄτεχνοι (Antiph. 4.2.3) πίστεις. See Goebel, 1983, p.21f.

You have now heard the witnesses' testimony (μεμαρτύρηται) about the very facts (περὶ τοῦ πράγματος) which I promised you. It is now incumbent on you to examine (σκοπεῖν), from this testimony, who of us is speaking more truly (ἀληθέστερα) and who of us is more respectful of the oath. For he swore that I killed Diodotus by planning, while I swore that I did not, not by my hand and not by any plan of mine. They have accused me on the principle that he who ordered or compelled the boy to drink the potion or who gave it to him is guilty of murder by law. But I will demonstrate (ἀποφανῶ), from this very principle, that I am not guilty, for I gave no orders, I did not compel him, nor did I give him the drug. Nay, I will go even further. I was not even present at the time! And if they allege that he who gave the order is guilty, then I am not guilty because I gave no orders. If they say that he who compelled the act is guilty, then I am not guilty, for I did not compel him. And if he who gave the potion is guilty, then I am not guilty, for I gave him no potions.

Antiph. 6.15ff.

It is clear, firstly, that the effects of the witnesses' deposition and of the argument as a whole are laid out in explicitly demonstrative terms. In short, the litigant argues that his own witnesses have allowed him to demonstrate the essential facts of the case. Indeed, they can also demonstrate that he was not there at all and, therefore, that he couldn't be responsible. It is, presumably, the force of this demonstration which allows the litigant to repeat these facts as simple negative statements in a confident indicative case. And, further, we may conclude, that it is also for the sake of this demonstration that the

Chorus-producer lavishes great attention on the *credibility* of his witnesses:

And If there were no witnesses at all, and I provided some, or if I were not producing the real witnesses who were present there but some other men, then it would be reasonable to take their *words* as more credible (πιστότεροι) than my witnesses. But they themselves admit (ὁμολογοῦσι) that witnesses were present, and I am presenting those men who were present, and both I myself and all the witnesses have, from the very first day, been *saying* (λέγοντες) what we have been saying. What else, gentlemen, must I do to disprove their lies and confirm you in the truth?

Antiph. 6.29f.

We learn, then, that his witnesses were *present*, the free men took oaths, the slaves were proffered to his opponent to examine in whichever way he saw fit and, we now learn, the witnesses were consistent from the start. They are, in other words, the paragon of consistent, knowledgeable and well-tested witnesses and, hence, of credibility. The close attention on the witnesses' knowledge can now be better explained. Since demonstration is a knowledge-bound process, it is imperative for the witnesses to *know* the relevant facts. Similarly, it is important for their truthfulness to be established, since, as Euxitheus has assured us, demonstration is fundamentally opposed to falsity. It is the same conditions which guarantee that the witnesses are credible which allow their testimony to demonstrate the facts of the case. And, further, it is on the basis of these established *facts* that the Chorus-producer invites his jurors to examine, σκοπεῖν, the litigants' assertions and, in particular, their accusation. It is with good reason, then, that Antiphon spells out how the credibility of these witnesses is guaranteed. It is only

because they are *credible* that they can be called upon to establish that the defendant did *not* do, and *could* not do, the actions which the prosecution allege. And, having *demonstrated* that each component of the triple-disjunction is false, the litigant moves on to demonstrate that he is innocent of the charge of βούλευσις. This is the most pertinent *proposed* result of the jurors' σκοπεῖν. This is also the most problematic step of the argument. Indeed, as Due notes,¹ the testimony of the witnesses is irrelevant to a fair reading of the prosecution's presumed charge. The testimony, in other words, can only amount to 'circumstantial evidence', not demonstrative proof. If we turn to the speech, however, the Chorus-producer is predictably emphatic that the testimony furnishes the jurors with *demonstrations*, not mere presumptions, of innocence. And, moreover, this is not simply asserted, it is explicitly argued for:

Whenever murder is committed in secret and with prior design, there are not witnesses. It is necessary, then, to judge on the basis of the *words* of the two litigants and to examine the words in their minutiae and, ultimately, to vote on conjecture and not on a secure knowledge of the facts. But in the present instance, the prosecution themselves admit (ὁμολογοῦσι) that the boy's death was not the result of premeditation or design and, therefore, that the deeds were all done manifestly (φανερῶς) and in front of many witnesses, free men and slaves. Any crime committed in these circumstances would be patently manifest (φανερῶτατος). Any, further, if anyone accused an innocent person, he would be instantly refuted.

Antiph. 6.18

¹ Due, 1980, p. 70.

This ingenious argument revolves around an important distinction, one which resurfaces elsewhere,¹ between an *observed* and an *unobservable* murder. Premeditated murder, Antiphon argues, being carefully planned, is generally committed in the dark and away from the prying eyes of witnesses. This absence irrevocably alters the nature of the case. Intentional murder, then, is inherently ἀφανής since there are no witnesses. The litigants' arguments, consequently, *would* have to be confined to the realm of the unknown and, in the terms of Antiph. 5, to mere conjecture, εικάζειν. In other words, no demonstration can take place when nothing is known. The case facing the jury, however, is *not* of this sort. The presumed murder, if it had occurred in the way the prosecution alleged, was, by their own admission, *not* premeditated. Consequently, Antiphon argues, witnesses are to be expected. In charging the accused with unpremeditated murder, then, the litigants find themselves 'agreeing' with the defendant that pertinent witnesses must have existed. And, indeed, the Chorus-producer insists, witnesses do exist, a veritable legion of them, all ready to take the stand on his account. It is by means of this argument that the Chorus-producer justifies the use of his demonstrative enthymeme, arguing that the testimony is not merely credible, but also their pertinent to the resolution of the case. Finally, we may note that this argument, fallacious though it is, can also be explained in terms of the epistemic model defined above. Antiphon first draws up the likely limits of the personal ὄψις of witnesses around premeditated murder. Since knowledge, particularly *autopsy* is a necessary condition for credible testimony, this boundary also marks the limits of credibility and of demonstration. Second, he argues that the case under discussion, by his opponent's admission, does not fall outside this limit. Antiphon can now 'conclude' that the testimony of his witnesses is not only credible, but pertinent to the resolution of the case. What else, the defendant insists, can he do but provide these witnesses and defend their credibility? What else can the 'poor man' do to prove that he is innocent? This seems to be the Chorus-producer's main argumentative strategy.

¹ See below.

I have argued, then, that the main rhetorical strategy of the first half of Antiph. 6 consists in presenting witnesses, defending their credibility and their pertinence, and ‘demonstrating’ that the prosecutor’s accusation, and his oath, are *literally* false. Moreover, we have seen both the credibility and the pertinence of the witnesses are not granted automatically, but are the subject of explicit, albeit highly dubious, argumentation. The Chorus-producer does not merely cite the testimony at hand as an automatic proof, as Solmsen proposes. Rather, their function and the conditions of their success is the subject of explicit argumentation in the speech itself. It is for this reason, then, that Antiphon expounds on his witnesses credibility and, more radically, ‘defends’ the legitimacy of the demonstrations which result from them. And, which is the key point, I have argued that this strategy is consistent with, even directed by, the positivistic assumptions defined above. The ‘epistemology of testimony’ of Antiphon, then, is not a latent structure to be excavated. It has a distinct and important *active* rhetorical function. It furnishes the means of defending the credibility of witnesses and the pertinence of the litigant’s testimonial demonstrations.¹ In other words, the ‘epistemology of testimony’ is a necessary complement to the view that testimony is not, as Solmsen supposed, a proof, but an ‘evidentiary material’ whose qualities must be, in part, determined by argument. In the next section, I turn, briefly, to the *First Tetralogy* to support this thesis.

5.3: The Limits of Demonstration: Antiphon’s First Tetralogy

The *First Tetralogy* is a hypothetical who-done-it in which the mock-defendant stands accused of wilfully murdering a rival of his. The main issue of the trial – the subject of much of the argumentation of the four speeches – concerns a matter of fact:² the litigants can’t agree on the identity of the murderer. And, in consequence, much of the content of

¹ Conversely, it provides the frame work for such demonstrative claims to be attacked, as they are in Antiph. 5.

² On Antiphontean ‘*stasis-theory*’ and the *Tetralogies* see Russell, 1983, p. 17; Gagarin, 2002, p. 106; Carawan, 1993, p. 236ff.

the speeches addresses this basic question. In an effort to prove that the defendant is the murderer – a *demonstrandum* which Carawan believes sets this speech at odds with Antiph. 1 and 6, but not Antiph. 5¹ – the mock–prosecutor produces two types of πίστεις. The first is a piece of direct evidence, the reported testimony of the slave who died shortly after the victim and who was involved in the same incident.² A modest, but significant, part of the four speeches relates to the credibility of this witness which, as I argued above,³ is assessed in the terms of epistemic model of testimony. The mock-prosecution also produces, and in far greater abundance, another form of πίστις, rational argument.⁴ The mock-prosecutor argues, for example, that the victim could *not* have been killed by a mugger because his possessions were *not* taken.⁵ More positively, the prosecution also argues that the mock-defendant is the killer because he has a clear motive.⁶ So plentiful are these arguments, and so prominent is the mock-defendant’s response, that the *First Tetralogy* is typically read as a showcase of εἰκός argumentation.⁷ Indeed, we find in the *Tetralogies* experimental arguments, such as the reverse εἰκός-argument, which do not seem to have been used in court.⁸ What is more pertinent to our discussion, however, is the fact that the relation between these two types of πίστεις is also, as Gagarin notes, the subject of an insistent ‘metadiscourse’.⁹ On this point, then, Goebel¹⁰ and Gagarin¹¹ agree that the author of the *First Tetralogy* draws a firm distinction between εἰκός argumentation and demonstrative testimonial evidence, one which is parallel to the distinction between the artful and artless πίστεις.¹² And yet, as Gagarin

¹ Carawan, 1993, p. 243ff.

² Antiph. 2.1.9.

³ See p. 94f.

⁴ On the relation of εἰκός and such evidence see Goebel, 1983, p. 18ff.

⁵ Antiph. 2.1.4.

⁶ Antiph. 2.1.5f.

⁷ E.g. Gagarin, 2002, p.112, 115.

⁸ Gagarin, 1994, p. 52. On general differences between the *Tetralogies* and the court-speeches see Gagarin, 2002, p. 104f.

⁹ Gagarin, 2002, p.118. Indeed, Gagarin proposes this is one of the ‘purposes’ of the work (Gagarin, 1994, p. 53).

¹⁰ Goebel, however, proposes that the various elements of proof form an ‘interrelated whole’ (Goebel, 1983, p.22).

¹¹ Gagarin, 2002, p.116.

¹² Gagarin, 2002, p. 116, n. 34.

himself notes,¹ and as Wohl has shown in greater detail,² there is also, and running parallel to this distinction, a persistent, and seemingly purposeful, conflation of the two. And, more problematically for the model described above, we find a parallel conflation of testimonial evidence based on testimony and of εἰκός arguments dependent on circumstantial evidence. What I attempt to show below, then, is that the litigants' 'conflation' can be understood as a coherent argumentative strategy which is consistent with the model being defended. We find, in short, that the legitimacy of εἰκός and demonstrative proof was, like the function and the success of testimony, not set in stone but established by the litigant in accordance with the needs of his case. The mock-litigants, then, do not merely draw this important distinction, but, like the Chorus-producer, also attempt to justify their own argumentative choices in terms of it. We find, in other words, in the prosecution's and the defendant's cases, two parallel strategies of addressing the same set of questions, namely *how* one ought to go about settling the case. And, once again, such a defence is best understood in terms of an ideology of demonstration by means of credible witnesses.

As for the prosecution's strategy, the essential point is made in the very prologue of the *First Speech*:

Those crimes committed by the criminal on the street (ὑπὸ τῶν ἐπιτυχόντων) are not difficult to expose (ἐλέγχεσθαι). But criminals sufficiently prepared by nature and experience (οἱ ἱκανῶς μὲν πεφυκότες, ἔμπειροι δὲ τῶν πραγμάτων ὄντες), and settled in that point of life most amenable to reason, are difficult to discern (γνωσθῆναι) and expose (δειχθῆναι)... Knowing these things, then, it is necessary for you to trust (πιστεύειν) any

¹ Gagarin, 2002, p. 116f.

² Wohl, 2010a, esp. p. 138f.

indication you receive from εικός....

Antiph. 2.1.1

In the very beginning of his speech, then, the mock-prosecution makes prominent use of the τόπος of the 'undiscoverable' murder, noted elsewhere. We may note, however, Antiphon adapts the topical distinction in accordance with the needs of the case. The boundary between the solvable and the unsolvable murder is drawn not by the murderer's intention to remain undetected, as it is in Antiph. 6,¹ but with his 'capacity' to do so. In short, the novice-criminal's deficiencies ensure that his identity can be *known* securely, γνωσθῆναι and demonstrated, δειχθῆναι. Such cases, therefore, are easy to detect, to prove and to convict: ἐλέγχειν, namely by resorting to testimonial demonstrations. On the other hand, the identity of the 'master criminal', well versed in his bloody art, cannot be the subject of knowledge or demonstration because he is not witnessed:

And when they say that the murders are those who *actually* (ὄντως) committed the crime and not those who are likely (εϊκότως) to have done so, he is right, though only if the identity of the murderers is manifest (φανερὸν). If the identity of the murderers is unclear and undemonstrated (μὴ δεδηλωμένων), then it is he, and he alone, who is proved (ἐλεγχόμενος) guilty by εικός. For such crimes are not committed in front of summoned witnesses, but in the dark.

Antiph. 2.3.8

¹ Carawan, 1993, p. 246f. See below.

Even in his second speech, then, the mock-prosecutor returns to the epistemic distinction between the two basic types of murder and, especially, the two different types of murder *trials*. Furthermore, he now explicitly distinguishes the demonstrative and conjectural cases in terms of the availability of witnesses. The simple-minded criminal, caring nothing for keeping his crime undetected, makes his identity manifest *to witnesses*. And, since witnesses are a source of demonstration, the identity of this simpleton is also demonstrable to the court. And, further, since demonstration yields knowledge, the identity of the murder is known even to the jurors. On the other hand, a master criminal would have ensured that no witnesses would have existed and, moreover, this absence has calculated and epistemically devastating consequences. Without witnesses, the murder's identity is indemonstrable and unknowable. Moreover, this distinction has an important argumentative corollary, which the mock-prosecutor is at pains to point out. Since the identity of the murderer in his case cannot be demonstrated by means of witnesses, an alternative mode of argument, must be employed to deal with ἀφανής murder, one which he all too happily supplies in great abundance. By drawing this distinction between the φανερός and the ἀφανής cases, then, the mock-defendant simultaneously 'excuses' his inability to summon witnesses and justifies his use of εἰκός argumentation. He embarks, in Wohl's words, on a 'theoretical justification of (his) methods'.¹ This is the same purpose the distinction serves in Antiph. 6.²

To reiterate, then, the litigant attempts to justify his main argumentative strategy by suggesting that he has no choice but to rely on εἰκός. Since witnesses are not forthcoming, the jurors, faced by the necessity of avenging the victim and purifying the city, must trust, πιστεύειν, in εἰκός because these are the only means of demonstration,

¹ Wohl, 2010a, p. 134. Cf. Gagarin, 2002, p. 113.

² Pace Carawan, 1993, p. 246f. Carawan argues that the 'unavailability' of witnesses (on this issue see Carawan, 1998, p. 246) has fundamentally changed the question the cases seek to answer. Since the litigant, lacking witnesses, cannot swear to know the truth of the oaths, he must resort to treating testimony as an evidentiary tool. As I argued above, Carawan's exclusive concentration on the oath in Antiph. 6 has led him to mischaracterize and undervalue the function of the enthymeme. Furthermore, as to the purported differences in the function of this distinction, we must note that the two arguments, however different their conclusions may be, have a more basic similarity, namely that of justifying whichever technique the litigant must use.

δηλοῦν, available to the litigant.¹ The prosecution's use of these suggestive verbs, ones closely associated with testimonial evidence,² points to a second component of the prosecution's rhetorical strategy. Though the prosecution acknowledges that a distinction between εἰκός and testimonial demonstration is real and important,³ he simultaneously attempts to approximate the two forms of argumentation to one another, at least in their effects. We note, then, that the jurors are urged to trust, πιστεύειν, the probabilities as they would otherwise trust witnesses, and these same probabilities demonstrate, δηλοῦν, his opponents' guilt as witnesses otherwise would. The rapprochement between εἰκός and testimony becomes even more explicit as the prosecution's case unfolds. Thus, immediately after he excludes, by εἰκός, every other *possibility* but premeditated murder, the mock-prosecutor asserts that the very circumstances of the death *inform*, μηνύειν, against the *murderer*.⁴ The use of this verb, the literal sense of which relates to the activity of an informant, points to the same testimonial metaphor which seeks to legitimize the εἰκός 'demonstration'. The *circumstances* of the death itself, through the application of εἰκός and circumstantial evidence, have become a surrogate 'witness' against the defendant. Later in his second speech, the prosecution also juxtaposes εἰκός and testimony as parallel instruments of proof.⁵ The prosecution's overall strategy, therefore, treads a very fine line. By insisting that voluntary murder is unlikely to be observed by witnesses, the prosecutor frees himself from the burden of substantiating his forensic hypothesis with testimonial proof. And, simultaneously, by blurring the distinction between εἰκός and testimony in such cases, he attributes the demonstrative power which more properly belongs to latter to the former. And yet, the careful distinction between the φανερόν and ἀφανές has, by the end of the second speech, all but gone up in smoke.⁶ Justifying his use of εἰκός on the

¹ Antiph. 2.1.2. The tone adopted, however, is cautious.

² See p. 89ff.

³ Antiph.2.3.8

⁴ Antiph.2.1.5.

⁵ Antiph. 2.3.9.

⁶ The prosecutor is saved from outright contradiction by insisting that knowledge of an ἀφανές crime is difficult, not impossible.

grounds that knowledge is impossible, he argues that εἰκός has yielded 'clear knowledge' of the identity of the murderer. This is, as the defendant is keen to point out, one step too far. Indeed, the elision of εἰκός into demonstration is, according to the mock-defendant, one of the fundamental problems of the mock-prosecutor's case, one which he exploits to devastating effect:

They say that I am a master criminal and that it is the hardest thing on earth to convict me, and yet they say that I am also an idiot whose guilt is manifest (φανερὸν) in the very act I performed.

Antiph. 2.2.3

The prosecution cannot have his cake and eat it. He cannot justify his εἰκός arguments on the grounds that the case is not solvable, and then proceed to solve the case by means of εἰκός. The prosecution, then, must either produce witnesses to demonstrate his opponent's guilt or admit that his accusation is merely an εἰκός one. The two forms of argument *must* remain distinct from one another:

Pretending to prove (ἐλέγχειν) my guilt from probabilities, they allege (φασί) that I am the *actual* (ὄντως) murderer, not the *probable* (εἰκότως) one.

Antiph. 2.4.10

The mock-defendant goes to great lengths to re-establish the *logical* separation between

factual demonstrations of guilt based on witnesses and circumstantial evidence based on εἰκός.¹ Εἰκός arguments, he proposes, can only lead to εἰκός conclusions, not factual ones. They do not, in other words, lead to genuine demonstration, ἐλέγχειν, as credible testimony does. The contrast between εἰκός and demonstration, which the prosecutor has conjured only to try to erase, re-asserts itself with full force. Categorically divorced from the facts and from knowledge, εἰκός proves insufficient for the purposes of prosecution since, as the defendant points out, the prosecutor must prove that the defendant is the *real*, not merely the εἰκός killer. They can only, in other words, produce an account, one which is not, and cannot, be based in knowledge:

They pretend to be prosecutors and avengers of the dead man,
doing their very utmost to defend the truth of any suspicion and
because they cannot discover (τὴν ἀπορίαν) who the murderer is,
they say that it is me.

Antiph. 2.4.2

The epistemological basis of demonstration and εἰκός are, therefore, diametrically opposed to one another. It is knowledge which allows the criminal to demonstrate the facts and, ultimately, the defendant's guilt. Εἰκός, on the other hand, depends on the litigant's *ignorance* and, more generally, on the crime's unknowability. It is this type of argument, the mock-defendant concludes, that forms the *illegitimate* basis of his opponent's case. Indeed, he continues, the failure of the prosecution's demonstration has also led to even more absurd consequences. Chief among them is the strange reversal of roles which has been forced upon the defendant. All he should be doing, he

¹ Antiph. 2.4.10.

argues, is rebut the slave's testimony which, at least, is potentially demonstrative.¹ He has been forced, however, by the litigant's refusal to demonstrate his guilt, to attempt to identify the murderer himself² and, therefore, to argue like a prosecutor.³ More paradoxically still, the confusion of εἰκός and testimony leads, not to the strengthening of the former, but the hollowing out of the latter:

And if one considers that εἰκός have the force of fact in my accusation (τὰ εἰκότα ἀληθέσιν ἴσα ἡγεῖται καταμαρτυρησαί μου), then let the him reckon with the 'fact' that it is more likely that I, with an eye on the safety of my plot, would have taken precaution not even to be present at the scene of the crime than for this man to correctly identify me (ὀρθῶς γνῶναι) when he was being butchered.

Antiph.2.2.8

If likelihood and fact were equivalent, Antiphon argues, then the prosecutor's testimonial evidence can be overturned by contrary εἰκός arguments. Testimony would also lead to an endless cycle of argument and counter-argument which can be traced across the speeches that make up the *First Tetralogy*. Wohl also comments on this passage, arguing that this is yet another instance in which the litigants conflate the two distinct πίστεις to his own advantage.⁴ What one must note, however, is that this conflation explicitly depends on an assumption – a counter-factual conditional – which the litigant is keen to point out is *not* his own. It is *his opponent's* confusion of εἰκός and

¹ Antiph. 2.4.3.

² Antiph. 2.2.2.

³ Antiph. 2.4.3.

⁴ Wohl, 2010a, p. 138.

demonstration has made nonsense of the distinction between real evidence and mere conjecture and made nonsense of the only piece of direct evidence he has provided. The mock-defendant's strategy, then, turns out to be a virtual mirror-image of the mock-prosecutor's. Acknowledging the distinction between εἰκός and demonstration, introduced by his opponent, he argues that the only evidence which counted, which could establish the litigant's *demonstrandum* – namely that he is *really* the murderer – was the *factual* evidence of the witness. Answering *mere* suspicions, he says, is not his function though, of course, he responds to them at length and, indeed, furnishes alternative possible scenarios of his own.¹ Nonetheless, a primary component of his strategy is to insist that demonstrative proof, such as a credible witness, and merely εἰκός accusations are to be distinguished from one another. The apogee of this strategy comes at the end of his second speech:

They allege (φασί) that my absence from the scene of the prime is more unbelievable (ἀπιστότερον) than my presence there. But I will show you, in fact and not by mere conjecture (οὐκ ἐκ τῶν εἰκότων ἀλλ' ἔργῳ δηλώσω), that I was not present. For however many slaves I have, men and women, I give them all to you to examine. And if they say that I was not in the house that night asleep, or indeed if I even left the house at all, I will confess that I murdered him. For the fateful night can be identified: for the man dies during the Diipoleia.

Antiph. 2.4.8

¹ Antiph. 2.2.5f.

The mock-defendant, after attacking the legitimacy of the prosecution's εἰκός accusations, produces his trump card: a credible alibi. All the vices which characterize his slave witness – his insecure epistemic basis and the absence of a test – have been turned into virtues. Indeed, a seemingly endless supply of *autoptic* witnesses can be produced for the mock-defendant to examine to his heart's content. The introduction of the witness at the end of his second speech, though undoubtedly bizarre,¹ may have been a necessary device for allowing the εἰκός-arguments to be developed at any length.² We may also suspect, however, that this bizarre position underlines a fundamental point about the difference of testimony and εἰκός. As Gagarin notes, the position of the alibi emphasizes that it cannot, even technically, be answered.³ With the introduction of the witnesses, we have finally come to an ἔργον, one which sweeps away the multitude of εἰκός arguments which preceded it.

The starkly different strategies adopted by the two-mock litigants and, indeed, the back-and-forth of these arguments strongly suggests, once again, that the demonstrative power of testimony over εἰκός was not a *given* but, like the credibility and pertinence of witnesses, must be defined by the litigant in the course of his speech. We may be tempted, with Gagarin, to look at the conclusion of the *Tetralogy* – where the distinction between demonstration and εἰκός is reasserted in its starkest terms – as being somehow definitive and unassailable. And yet, even here, the finality of this categorical distinction is not entirely beyond doubt. Thus, as Gagarin himself notes,⁴ the testimony is not as definitive as the mock-defendant would like us to believe. It does not answer, for one, the possibility that he hired an assassin – a possibility the defendant himself has brought up.⁵ Moreover, the argument is a πρόκλησις which, by definition, demands a response from the other side, one which the audience is left to imagine. Indeed, the position of this

¹ Thür, 1977, p. 99ff. Carey also notes that challenges were less formal at the end of the fifth-century (Carey, 1994a, p.97).

² Gagarin, 1997, p. 142.

³ Gagarin, 1994, p.53ff; 2002, p.118.

⁴ Gagarin, 2002, p. 117.

⁵ Antiph. 2.2.8.

supposedly definitive distinction does not so much emphasize that argument is unanswerable in some fundamental way, only that it is so by a sheer technicality. The bizarre dislocation of the demonstrative argument emphasizes this very fact. What is more important for the argument at hand, however, is that both mock-litigants attempt to justify their own argumentative procedure in terms of this basic distinction. The prosecutor, on the one hand, argues that the unavailability of credible witnesses means that the case cannot be demonstrated and, therefore, that the jurors must 'trust' the εἰκόσ arguments he has supplied. The defendant, on the other hand, insists that witnesses are the only way to demonstrate the identity of the murderer and, further, goes on to summon such credible witnesses. The central point remains that, in spite of the contrariness of the argumentation, the discussion remains bound to a few, cogent, epistemic principles concerning what makes speech credible and, hence, demonstrative.

5.4: Conclusion

To summarize, I have argued that there exists in Antiphon's speeches, a consistent and close association of testimony and demonstration. Not only does Antiphon's characterization of demonstration, as a knowledge-bound process opposed to deliberate falsehood, bear close resemblance to testimony, witnesses are also routinely presented as instruments of demonstration. Witness depositions, however, are by no means automatically demonstrative. Rather, such demonstrations depended, in the first place, on a defence of the witnesses' credibility and, most notably in the case of Antiph. 6, a defence of their pertinence. And, once again, the epistemic assumptions discussed above provide the starting point for these arguments. Thus, the Chorus-producer argues that the conditions of the 'crime' ensure that knowledgeable, and hence credible, witnesses are available. The case, in other words, can be definitively resolved by appeal to witnesses. The mock-prosecutor of the *First Tetralogy*, on the other hand, though drawing the same distinction between the observed and the unobserved murder,

attempts to justify his use of εἰκός arguments on the grounds that no knowledgeable witnesses can exist. Once again, the limits of credibility are used to justify an argumentative procedure. The same distinction, then, could be used to defend a multiplicity of different, indeed contradictory, strategies. The crucial point remains, however, that the distinction – one which separates that which is witnessed and subject to demonstration and that which is unwitnessed, ἀφανές, and subject only to conjecture – is drawn on the same lines and, further, that it plays an important rhetorical function. The criteria for credibility, therefore, are not simply conditions which must be fulfilled in order for the demonstrative function of witnesses to proceed unimpeded. These very criteria are invoked in defending this demonstrative function itself.

Chapter Six.

Discovery, Credibility and Litigation in Antiphon's Court Speeches

In this chapter, I turn to the second main argumentative function of testimony identified above, which I have termed heuristic. To reiterate, I have argued that the references to testimony in Antiph. 1 are best understood *not* as evidentiary or demonstrative in any regular sense. We find, then, that though the prosecutor presents and capitalizes on the contents of the slaves' confession, the evidentiary value of this 'report' was, necessarily, problematic. Perhaps as a consequence of this, the litigant's argumentation focuses on the way in which the testimony *could* have solved the case and, most especially, on the defendant's unwillingness to allow it to do so. He concludes, in sum, that his opponent's refusal examine the slaves, as well as the impossibility of his having direct knowledge of the plan's being hatched, means that he is not able to *know* what he claims to know. Conversely, the prosecutor points to his own father's 'deposition' as a point of contrast, to emphasize that he does, at least, have an εἰκός source of knowledge. The former claims, of course, challenge directly his opponent's oath, as Solmsen and Carawan propose,¹ just as the reference to his father's own death-bed declaration is a defence of his own sworn knowledge-claims. It is also clear, however, that the litigant's interest in his brother's *knowledge* is not limited to attacking the literal truth of his brother's oath nor, indeed, the confidence with which he swore it. It is here, I argue, in the face of such an emphatic concern for his brother's knowledge, that the epistemological model of testimony can offer another *locus* for the prosecutor's attack: the very *credibility* of the litigant's speech. Conversely, his appeal to his own father's death-bed declaration is a defence of his own credibility as a knowledgeable speaker. They are, in other words, appeals to the speakers' ἦθος.² Antiphon's use of this πίστις, however, appears to have very little in common with the 'dramatic ἦθος³ which we find in the works of Lysias.

¹ See Chapter Three.

² On ἦθος generally see Kennedy, 1963, 135ff.; Russell, 1984, p. 87ff.; Carey, 2003, p. 34ff. For a similar argument see Gorgias' *Palamedes* (esp. sections 3 and 22 – 24).

³ Usher, 1985, p. 221f.; Carey, 2004, p. 40; Edwards, 2004, p. 59.

Rather, it appears to be based, rather stiffly, on an explicit rapprochement between the depositions of witnesses and the assertions of litigants and, therefore, a consequent widening of the notion of credibility to include the latter sort of speech.¹ For this reason, I attempt to strengthen this 'extension' by looking at the *second precondition* of credibility, truthfulness, and by examining the ways in which Antiphon sought to use it to undermine the speeches of litigants as he undermined the credibility of their witnesses. These extensions, if accepted, would allow us to glimpse the makings of a more general 'epistemological position' which is not strictly bound to the formal rules of *deposition* of witnesses.

6.1: Knowledge: the first precondition of credible litigation

At first glance, the step-son's case in Antiph. 1 appears to be pathetically weak. At one point, the litigant even suggests that his narrative, on which most of his case seems to be pinned, is nothing else but an imaginative reconstruction of events the prosecutor *thought* occurred.² So feeble is the case, that some have suggested that the prosecution would have been content with losing, an eventuality which would, after all, entail sufficiently rich rewards since it may have forced the defendant to concede that the step-mother was *unintentionally* responsible.³ Whether this is true or not – one must wonder, however, whether engaging Antiphon would have really been necessary for *losing* a case – it is undeniable that the litigant really was in a difficult situation. He was dealing with a 'cold case' about which only a few jurors, if any, would have had the barest recollection. Worse still, two key witnesses, the concubine and Philoneus himself, were long dead and the victim's ex-slaves, who surely *could* have known something about the death, were secreted away by the defendant. All the 'evidence' he claims to have was a dying

¹ See esp. Due, 1980, p. 17f.

² Antiph. 1.16.

³ Carawan, 1998, p. 226ff. This concession would then be the basis for the two parties to come to terms *after* the step-mother is acquitted.

man's assurance that he had once caught his wife trying to 'poison' him. The vagueness of the details may, of course, have given Antiphon freer rein to invent the details of the case and craft a narrative fit for purpose. And, indeed, the narrative in Antiph. 1 is far richer than any other of Antiphon's narratives. The absence of any formal witnesses whatsoever, however, must have been a truly crippling deficiency. And yet, perplexingly, Antiphon chose not to follow the strategy of the mock-prosecutor in the *First Tetralogy*.¹ We find, then, no examination of the murderer's or her conspirator's motives, perhaps because this was the weakest point of his accusation. Nor does the prosecutor reject any other possible scenario which could have resulted in the man's death. Antiphon chose, instead, a more daring approach. Acknowledging that he lacked witnesses, the prosecutor attacks his opponent on these same grounds, arguing that the defendant *cannot* know that his mother is innocent because he had not agreed to examine the slaves.

A central part of this strategy consists, as already noted, in arguing that the *βάσανος* is really a source of knowledge for the litigant and, accordingly, the prosecutor extols its power at great length in the various *τόποι* which occupy most of his argument. The *βάσανος*, he tells us, allows for a truthful examination of the matter, τὸ πραχθὲν ἢ ἀληθῶς ἐπεξελεῖν.² And, furthermore, it does so because it *necessitates* truth-telling of knowledgeable witnesses and, therefore, in accordance with the model described at length above. On account of its power, the litigant also tells us, the *βάσανος* would have enabled the prosecution to *demonstrate*, ἀναφαίνειν,³ his mother's innocence and to provide definitive proof of what happened, ἔλεγχον ποιήσασθαι τῶν πεπραγμένων.⁴ In other words, the extracted testimony of the slaves would have furnished his opponent with the possibility of deploying a demonstration dependent on witnesses and of allowing the jurors to come to *know* and *examine the facts* themselves. These deployed *τόποι*, of

¹ Though, of course, he could have done so in a second speech.

² Antiph. 1.7.

³ Antiph. 1.13.

⁴ Antiph. 1.7.

course, help Antiphon evade, or at least postpone, some of the most pertinent questions about these witnesses, namely exactly what it is that these slaves knew.¹ Yet, they also do a good deal more. It was only by focusing on the great virtues of the method he had proposed that the litigant can emphasize the gravity of his opponent's neglect. Indeed, the argument of *ignorance*, to which the litigant returns again and again, must assume that the βάσανος is a powerful truth-finding device which the litigant did not use. It is, of course, entirely to the advantage of the litigant to emphasize all this. We arrive, once again, at the charge of opportunism. And yet, these very assumptions, and the emphatic way in which they are presented, suggests that they commended themselves to Antiphon as persuasive and, therefore, as generally 'accepted', though perhaps in a less hyperbolic form. More importantly, however, and less speculatively, the 'truth-telling' power of the βάσανος is not simply assumed, but defended on rational grounds and, therefore, in terms of its ability to ensure truthfulness. It is these general maxims and argumentative schemes which constitute, in large part, the imaginary value of the *missing* βάσανος. We find, once again, the same epistemological principles being actively employed as a tool of persuasion, namely to characterize the βάσανος as a powerful truth-finding device.

The most striking of such evaluations comes in the *repeated* doublet following the 'second argument':²

Had they been willing to accept my challenge (εἰς βάσανον), and I refused, then this would be evidence in favour of them. Let the very same thing, then, be evidence for *me* if it was I who wanted to pin down the truth (ἔλεγχον λαβεῖν τοῦ πράγματος), but they were unwilling to give it to me. Strange! It seems rather strange

¹ Due, 1980, p. 18.

² See p. 54.

for them to ask you not to find them guilty, when they did not deem it proper to become their own arbiters and give their slaves up to be examined.

Antiph. 1.12

The comparison of a litigant wielding the βάσανος to a juror is a striking one. Mirhady points to a similar passage in Antiph. 5¹ as evidence for Headlam's old thesis, which postulated that the βάσανος was automatically definitive and provided the litigants a way of resolving the case without recourse to the courts.² Such a hypothesis is, for obvious reasons, at odds with the interpretation offered here. Automatic operation of βάσανοι is hardly fit subject matter for epistemological speculation, particularly when divorced from the possibility of argumentation. And yet, the arguments raised against Solmsen's less general thesis can, once again, be used here. Most importantly, there is a clear and consistent tendency on the part of the orators, and the 4th century rhetorical handbooks, to treat the ἄτεχνοι πίστεις as points of discussion, 'evidentiary materials' to be used in the litigant's court-speeches.³ Antiph. 1 is a perfect example of this tendency. Thus, much of the force of the argument comes from the *terms* the prosecution proposes for the βάσανος, which he describes in considerable detail. He would merely supervise, waiting patiently as the defendant tortured his own slaves, and thus giving his opponent a decisive advantage in the process.⁴ These clearly self-effacing terms can only make sense if we assume that the πρόκλησις was offered with the intention of its refusal being used in subsequent litigation. More generally, the entirety of the litigant's first argument depends, logically, on the refused πρόκλησις and the missing βάσανος as its starting point. The comparison of the βάσανος to the jurors, then, is not to be understood literally,

¹ Antiph. 5.47.

² Mirhady, 1996, p. 127. See Headlam, 1893, p. 1ff.; Thompson, 1894, 136f.; Bonner, 1905, p. 60; MacDowell, 1978, p. 245.

³ See esp. Gagarin, 1990a, 1994; Thür, 1977, 1996.

⁴ Antiph. 1.10.

but as part of the positive valuation of the βάσανος, Indeed, Antiphon clarifies this metaphor in the very next section of the text:

It is patently clear, then, that they refused to learn (πιυθέσθαι) the clear truth of what had happened (τῶν πραχθέντων τὴν σαφήνειαν) for they knew that the evil deed would be revealed (ἀναφανησόμενον) to lie on their doorstep. They wanted, therefore, to keep everything hushed up (σιωπώμενον) and unexamined (ἀβασάνιστον). But I am confident, gentlemen that you shall not do this but make everything clear (σαφέξ).

Antiph. 1.13

The juror's verdict, then, 'clarifies' the issue and, in the fawning opinion of the litigant, is veridical *just like the* βάσανος. Just as the βάσανος *would* have permitted the litigant, and the jury, to learn the clear truth of the matter, so must the jurors make everything clear *in place of the* missing βάσανος. This intention, however, is emphatically not shared by the defendant. Instead of examining the 'clarity' of the issue, the defence has hushed up, σιωπώμενον, and ensured that the case itself is left unexamined, ἀβασάνιστον. The slaves were neither questioned, nor allowed to speak! He has wilfully and maliciously attempted to render the murderer *unknown*:

For he knew well (εὖ ᾔδει) that there was no safety in the βάσανος. Indeed, he reasoned that his salvation lay in *not* examining the slaves (ἐν δὲ τῷ μὴ βασανισθῆναι ἠγεῖτο τὴν σωτηρίαν εἶναι). In this way, he would make the facts (τὰ

γενόμενα) unknown (ἀφανισθῆναι)...

Antiph. 1.8

The defendant's campaign of obfuscation, then, was meant to render demonstration of guilt by means of the βάσανος impossible. His aims, in other words, are at odds with that of the court. Indeed, their purposes most neatly align with that of the perpetrator. As to the prosecutor himself, nothing could be further from the 'truth':

In the first place, I wanted to examine their slaves, the one who knew (συνήδει) that the same woman, even before, had plotted my father's death with poisons, and that my father had caught her red-handed, and that she also confessed, though she also said that she had given the potion as a love potion, not a poison.... And the very fact [that I proposed the βάσανος] is a just indication (τεκμήριον) that I was investigating the death of my father correctly and justly. For if they did not confess, or if they lied, the βάσανος would have forced (ἀναγκάζοι) them to admit the actual events. For the torture will make (ποιήσει) those who are prepared to lie to admit the truth.

Antiph. 1.9f.

In contrast to the defendant, then, the step-son wanted to secure the truth of the matter. And, to do this, he looked to the βάσανος as a *heuristic* tool. It is, then, little wonder that the *heuristic* function of the βάσανος is defined and defended most explicitly here and, most importantly for our purposes, in terms of the epistemic model defined above. The

witnesses, then, are knowledgeable, *συνήδεσαν*.¹ More importantly, the *βάσανος* *necessitates* truth-telling and engineering it, *ποιεῖν*. In other words, the prosecutor ‘explains’ the truth-finding function of the *βάσανος* in terms of the witnesses’ knowledge and their guaranteed truthfulness and, therefore, in line with the model described above. And, furthermore, it is only because the *βάσανος* is characterized, and defended, as a truth-finding device, that its neglect can be shown to have compromised the litigant’s position so thoroughly. In it is virtue of these positivistic assumptions, then, that the brother’s self-inflicted ignorance becomes the prosecution’s most emphatic rallying cry. As I argued above, the litigant returns to the subject of his brother’s ignorance in his closing argument. Here, however, the *heuristic* device which is denied of the litigant is not testimony, but *ὄψις* itself:

I myself am amazed at the audacious thinking of my brother, swearing on behalf on this mother that he knows that she didn’t do these things (*εὔ εἰδέναι μὴ πεπιοηκυῖαν ταῦτα*). For how could someone possibly know things which he didn’t witness himself (*πῶς γὰρ ἄν τις εὔ εἰδείη οἷς μὴ παρεγένετο αὐτός*)? For I suppose, those who plot the death of their neighbours do not plot and make preparations in front of witnesses (*μαρτύρων γ’ ἐναντίον*), but as clandestinely as they can manage and with the intention that no man knows (*ὡς ἀνθρώπων μηδένα εἰδέναι*).

Antiph. 1.28

The argument, once again, turns to the topic of the undiscoverable crime and the guilty

¹ Cf. [Arist.] *Rh. Al.* 1431b20.

party's reluctance to make the truth known. This time, however, the defendant son finds himself a victim of the murderer's scheming and is definitively excluded from the ring of complicity. His mother has ensured that *no one* would know. The upshot of this argument is to prove that just like his neglect of the βάσανος, the impossibility of his personal ὄψις has ensured his ignorance. The conclusion is, emphatically, the same: his sworn knowledge claims are shown to make no sense. This parallelism of ὄψις and testimony as two alternative modes of coming to know – a parallelism also observed in the geographical sections of Herodotus – is another stark demonstration of the positive truth-finding power of βάσανος. The former would, like the latter, have granted the litigant *knowledge* of the facts, εὔ εἰδέναι.

To summarize, I have argued that one of the main argumentative strategy of Antiph. 1 is a long, and epistemically minded, contrast between the litigants. In a two-step arguments which binds the speech together at either end, the defendant is deprived of the two primary epistemic resources which could have enabled him to know that his mother is innocent, the extracted testimony of the slaves and the personal knowledge of a witness.¹ The prosecution, deprived of the βάσανος by his half-brother, and for suspect reasons, is at least granted one path of conviction and knowledge: his father's death-bed declaration. And, as I have argued, the heuristic function of the βάσανος is explained in terms of the epistemic model described above. Moreover, both the focus on *knowledge* of a speaker – in this case the litigants – as well as the comparative mode of judgement implied, strongly suggest a possible *locus* of judgement, the *credibility* of the litigants themselves.² Carawan too, in line with Solmsen's emphasis on the power of the *oath*, suggests that a comparison of two such utterances – the litigants' διωμοσία – was the central issue of the trial.³ And, to be sure, it would take a rhetor of extremely poor imagination *not* to take advantage of the religious mores which surrounded an accusation of perjury. Indeed, this focus is especially emphatic in the latter quotation. Nonetheless,

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³ See Chapter Three.

a number of features – such as the expansive emphasis on knowledge, the detailed characterisation of the βάσανος as a heuristic device, and the mere wealth of epistemic terms – suggests a broader charge, one not focused exclusively on the oath. Such an argument, then, would run as follows. ‘Since the defendant has deprived himself of the means of *knowing* the facts, his defence is not credible in so far as he *cannot* know. My own speech, on the other hand, can be traced back to the testimony of the primary witness, the victim. My speech, therefore, is more credible.’ Such a comparison would move beyond the examination of the oaths themselves, or of the confidence with which they are sworn, and onto the epistemic grounds on which the litigant’s case is based. It would involve, then, an extension of the first precondition of credibility from the witness to the litigant’s utterances. Thus, just as the litigant may attack his opponent’s witness on the grounds that he did not know, so can brother attack brother on the grounds that he did not know and could not know.

There is, however, one glaring objection to this argument. The word πιστός does not occur, nor does the verb πιστεύειν. There is, in other words, hardly any emphasis on the ‘credibility’ of the litigants, however much it may have resembled the credibility of witnesses. This objection can be mitigated somewhat by the striking description of litigants as witnesses in the final argument:

For could someone know well that one has not seen. I don’t suppose murderous conspirators plan their murders in front of witnesses... And if they cannot do these things, they write the accusation down and they call their domestic to bear witness, and reveal to them by whom they were murdered. My father too revealed to me such things, though I was still a boy...

Antiph. 1.28ff.

In this argument, then, both litigants are explicitly identified as witnesses or would-be witnesses and, once again, intricately compared to one another. The comparison of these ‘witnesses’, then, made on extremely suggestive grounds – namely, their *knowledge* – irresistibly suggests considerations of credibility, the chief axis of comparison among witnesses. Other axes may, of course, be present. The oath, the litigant’s apparent conviction in his oath, the good faith shown by the litigants, the audaciousness of their actions, even their respective definitions of piety, are all grist to Antiphon’s omnivorous rhetorical mill. Indeed, the very close inter-relatedness of these concepts and of Antiphon’s arguments seems to eschew the possibility of identifying *only* one target for this short speech. What the reading above suggests, however, is that the *credibility* of the litigant’s speeches, assessed in ways similar to the credibility of witnesses, is another prominent axis of Antiphon’s argumentation.

6.2: Slander and Sycophancy: the second precondition for credible litigation

The overlap proposed, between the assessments of the credibility of testimony and that of litigation, gains further in cogency when we turn to examine the second precondition for the credibility of testimony, *truthfulness*. These attacks, which can be classified under the broader charge of slander, were a staple in Greek court and, of themselves, bring to the fore such issues as that of relevance.¹ A full examination of this problem, therefore, would take us too far afield. What the following brief analysis will examine, rather, is how such arguments, as found in Antiphon’s court-speeches, accords with the analysis of credibility presented above. And, on this count, we can immediately see that accusations of a litigant’s ‘deliberate falsity’ are *a priori* compatible since they attack the second precondition for credibility, his truthfulness. We may also note, as a preliminary point, that Carey’s observation that διαβολή is ‘what the opponents do’ accords with the general

¹ See Cohen, 1995, p. 87ff.; Rhodes, 2004, 137ff.; Carey, 2004, p. 3ff.; Lanni, 2006, p. 41ff.

tenor of the argument so far.¹ Just as it is only my opponent's witnesses who can be shown to lie by an application of these rules, so it is that the same rules can be used to show that it is my opponent who is slanderously accusing me. More generally, then, slander was, like credibility, a category which must be constructed internally to the speech itself.

Turning to the arguments themselves, we note that they are found most explicitly in speeches spoken in defence. The argument, however, is not entirely missing in Antiph. 1. Here, the prosecutor also accuses his opponent of lying and, therefore, of knowing that his mother is guilty. To prove this, the step-son examines the 'risks' entailed by the βάσωνος and, from this, attempts to elucidate the litigant's real self-interests in litigation. As already mentioned, the prosecutor describes the self-effacing terms of the βάσωνος he himself had proposed. His willingness to submit to such a risky procedure, he informs us, is a sign that 'he was pursuing the investigation justly and correctly'.² On the other hand, the defendant stood to gain a decisive argumentative advantage by examining the slaves. Had he *truly* believed his mother to be innocent, the prosecution implies, he would have leapt at the opportunity of obtaining definitive proof of these beliefs. The defendant, however, disdained to accept his opponent's challenge. From these actions, the step-son proposes that his opponent knew it was not in his self-interests to examine the slaves and, for predictable reasons, the βάσωνος would have condemned his mother. The oath lies perjured, then, and his credibility is destroyed, not merely by simple omission and ignorance, but also by wilful commission and deceit. As I argued in Chapter Three, it is unclear whether this argument was made with any serious conviction. The charge of conspiracy – though of conspiracy *before* the crime – is ridiculed in his epilogue. I have argued, instead, that it is an *a fortiori* argument in favour of his ignorance of his mother's innocence. Nonetheless, it may also have served to undermine the truthfulness of the defendant. Indeed, virtually the same argument is made by Euxitheus

¹ Carey, 2004, p. 6.

² Antiph. 1.10.

in Antiph. 5:

Let no one obscure this fact from you: it was they who killed the informant and endeavoured by every effort to prevent him from coming here and prevent me from seizing the man and examining (βασανίσαι) him myself. And this even though it was in their favour to do so (καίτοι πρὸς τούτων ἦν τοῦτο).

Antiph. 5.46f.

This argument is another hypothetical role-reversal in which the litigant appeals to a 'logic of fairness'¹ to augment the force of a τεκμήριον, namely the defendant's refusal to examine the witnesses. And, moreover, we find that the opponent's neglect of the ideal court procedure – namely the two-sided βάσανος – is now explicitly explained in terms of their self-interest. Euxitheus caps off the argument by suggesting that his opponent's murder of their own slave was also illegal and, indeed, roughly equivalent to their charges against him. Such an argument, whatever its legal merits,² hardly seems convincing as a proof of *innocence*. In a more modest form, however, conceived as an attack on the truthfulness of his opponents, the argument fares much better. As in Antiph. 1, then, Euxitheus asks his jurors to consider *why* his opponents would have disposed of the very witness on which they relied. Why, if they truly trusted their witness, and believed him to be truthful and knowledgeable, would they have sacrificed this decisive advantage? The answer to this question is unsurprising: keeping the witness alive was not *really* to their advantage. They were convinced, rather, that their witness, had he been able to testify properly, by means of the two-sided βάσανος, would have actually falsified their claims,

¹ See esp. Thür, 2005, 146f.

² See Edwards, 1985, p. 99f. and Gagarin, 1989a, p. 74 with previous scholarship.

and done so definitively. Euxitheus's main point, then, is that his opponent's implacable will to leave everything ἀφανές, undermines his credibility as a litigant:

In all other cases, it is the one being informed against you seizes informants and make them disappear. In this case, however, it is the very persons who arrested the slave and discover the truth who have made him disappear. Had I myself made the man disappear, had I refused to surrender him or in some other way escape the proof (ἔλεγχον), they would have used this as a very strong suspicious of my guilt. It would have furnished them with strong evidence against me. As it is, it is they who are escaping these methods, even with my own friends protesting. This, then, must also be evidence against them, evidence that the charge they are bringing is a false one (οὐκ ἀληθῆ τὴν αἰτίαν)

Antiph. 5.38

As in Antiph. 1, then, Antiphon makes use of the litigant's *behaviour* to suggest that his charge is a false one and, therefore, that his accusation is a lie. And, once again, the defendant's truthfulness is assessed, quite explicitly, by calculating the risks and benefits involved in taking the relevant action. Since his opponent had everything to gain from the βάσανος, *if his accusation were truthful*, his unwillingness to have the slave examined properly, contrary not only to his professed self-interest but also to convention, is suggestive of deceit. His accusation is, in a word, incredible. The fundamental point remains, however, that in this speech, just as in Antiph. 1, the *actions* of one's opponents, particularly their *legal* acts, are examined in light of their presumed self-interest. This is precisely how the credibility of witnesses was calculated.

Finally, if we turn to the second half of Antiph. 6, we find this argument in its fullest and most explicit form.¹ As already discussed, the second half of Antiph. 6 is almost entirely occupied by a long argument which is 'irrelevant' to the main charge. As the defendant tells us himself, this part of the speech intends to prove that his accusers are the 'most reckless perjurers' on earth.² He intends to prove, in other words, his opponent's duplicity. And, as in the other two speeches, it is an examination of their actions,³ and of the interests these actions betray, which is the basis of this argument. Accordingly, much of the speech is taken up by a lengthy, play-by-play, review of all the defendant's 'tell-tale' actions after Diodotus' death which constitute an indication, τεκμήριον, that they are not speaking the truth.⁴ The apogee of this argument follows on from the litigant's dramatic description of the reconciliation of the two litigants:

Why, then, did they keep my company and speak to me? They did so because they did not think that I was a murderer (οὐκ ἀξιοῦντες φονέα εἶναι). This is the reason for them not filing the charge too. They just did not consider (οὐχ ἠγοούμενοι) me the boy's killer, or guilty of the death, or involved in any way. Where could you find men with fewer scruples and greater perjurers than these men? They are trying to persuade (πείσαι) you of something which they cannot bring themselves to believe. They urge you to condemn a man whom they, in fact (ἔργῳ), believe to be innocent.

Antiph. 6.46f.

¹ See Goebel, 1983, esp. p. 38ff.

² Antiph. 6.32.

³ Antiph. 6.41

⁴ Antiph. *Ibid.*

The reconciliation between the two men, the defendant argues, can only mean that he did not believe him to be the murderer. The prosecutor could not, in Antiphon's apt phrase, persuade himself that the Chorus-producer was responsible. It is for this reason, then, that the two parties had reconciled. He would have never knowingly shaken the hand of his relative's murderer nor, indeed, someone he had truly suspected. Their reconciliation and, indeed, their subsequent association, acquit the defendant because such behaviour undermines the truthfulness and, hence, the credibility of their assertions. It is for this reason, as arbitrators and falsifiers of their own statements and vindicators of their opponent's claims, that the Chorus-producer claims to have turned them into witnesses for his side:

For in refusing to obtain proof (ἐλέγχεσθαι) for their accusation, though I was willing, they have acquitted me. They have become witnesses against themselves and against the justice and truth of their charge. And if, in addition to my own witnesses, I add the testimony of my opponents, what else do I need to do to demonstrate my innocence of the charge?

Antiph. 6.32

Once again, then, our litigant argues that the *prosecution's* neglect of the βάσανος proves that he did not believe his own accusation. His actions are simply incompatible with his declared self-interests and his professed suspicions. And, once again, the litigant is directly compared to, indeed identified with, a witness. And, indeed, the examination of the litigant's self-interests is strictly parallel to the examination of a witness' truthfulness.¹ And, as a final twist of the rhetorical knife, Antiphon also explains their

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litigation in terms of their *real* motivation, money:

And if I said nothing else, established (ἀπέφηνα) nothing, produced no witness, but demonstrated (ἀπέδειξα) to you this one thing, namely that when these men were pain to attack me, they accused me and issued proclamations against me, and when there was no one to hire them, they associated and conversed with me, then you would have heard enough to acquit me and to consider these men the worst perjurers of all. What accusation would they hesitate to bring? Which could they hesitate to deceive? What oaths would they dare not violate?

Antiph. 6.48

Thus, the prosecution in Antiph. 6 argues that the accusation was aimed not at avenging the dead boy, as a legitimate prosecutor would, but at hindering the Chorus-producer's legal battles. The real motivation for their accusation, then, is not knowledge of his guilt or even suspicion of guilt, but sheer greed.¹ Just like the slave who accused Euxitheus after being promised freedom, the litigants have sold out the truth and accused the Chorus-producer only because it was in their own selfish self-interests to do so. Once more, by examining the speaker's self-interest as revealed by his actions, the assertions of one's opponents are 'proved' to be deliberate falsehoods. This charge, once again, amounts to an attack on the very credibility of their entire case. Once again, then, we get the glimpse of the makings of a more general epistemology of testimony.

¹ Cf. Gorg. *Pal.* 3.

6.3: Conclusion

The main aim of this chapter was to flesh out the *heuristic* function of testimony in terms of the epistemic model presented in Chapter Four. I have argued, therefore, that testimony – or, rather, the βάσανος – is described as a heuristic device which allows the litigants to ‘examine the truth of the matter’ and, therefore, to come to know well the facts of the case. As such, then, the testimony of witnesses can be presented, as in the second half of Antiph. 1, as the grounds for litigation, while the absence of any such epistemic backing may be a target of attack. This attack, moreover, is exactly parallel to the attack on the credibility of witnesses, to which the litigants in Antiph. 1 are explicitly compared. In other words, then, the litigants may point to their own access to credible witnesses as the foundation of their knowledge and, therefore, as the source of their credibility or, more precisely, as the basis on which to comparing the credibility of both litigants. I have also argued that Antiphon’s accusations of διαβολή can be subsumed under this expanded model of credibility, not merely because it is logically compatible, but also because the examination of the truthfulness, both of litigants and of witnesses, proceed along similar lines and in terms of the ‘speaker’s’ self-interest.

Chapter Seven.

The Anatomy of Testimony in Antiphon's Speeches

We can now summarize the discussion so far and lay down the general shape of the epistemology of testimony as it is found in Antiphon's speeches. The basic proposition of this model is the assumption that any speech-act has an indeterminate relationship to the truth. As the Chorus-producer puts it, it is possible to level every kind of accusation using speech alone.¹ As a consequence of this basic problem, all speech, whether the deposition of witnesses, the assertions of slaves, or those of sworn litigants, requires an assessment as to its credibility. In line with Anaximenes' suggestions, Antiphon gives two major criteria by which the credibility of a given assertion may be determined: the speaker's access to a *primary* epistemic source and, secondly, an application of a test for the speaker's truthfulness. Litigants, then, lavish great attention on the way in which their witnesses, and they themselves, *know* the facts they swore to know, and how their opponents, and their witnesses, did not, and could not, know them. Similarly litigants defend their own, and their witnesses' truthfulness, and accuse the other side of deliberate obfuscation and straightforward fabrication. If these two basic conditions were met – other conditions too were, on occasion, included – the assertions were not only truthful, but true. Consequently, credible testimony is considered a *bona fide* epistemic source and comparable, indeed explicitly compared to ὄψις. The upshot of such arguments is to claim that the facts – represented by the assertions of the knowledgeable and truthful speaker – are, conveniently, on the side of the litigant. This coherent and rational model for credible testimony profoundly influences the way that Antiphon discusses testimony. Antiphon's 'epistemology' is, however, no rigid affair. Indeed, as the analysis above proves, Antiphon's use of testimony is flexible enough to tolerate contrary conclusions according to the needs of the case. Nonetheless, the contrary arguments, like those found in Anaximenes' discussion, are best understood in terms of

¹ Antiph. 6.18.

a shared, assumed, logical structure. Thus, though litigants may choose to apply looser or stricter criteria for the conditions of the 'knowledge' and on the 'test' on which credible testimony must depend, as the needs of their cases demanded, litigants universally assume that credible testimony must meet both conditions. In other words, though Antiphon's litigants might disagree as to the legitimacy of some particular witness in accordance to the needs of their cases, they universally espouse a *non-sceptical* and *positivistic* epistemology of testimony which is pinned onto a rational notion of credibility. This model is most dramatically vindicated by the complex arguments about the boundary line which divides two types of murder cases in terms of the *availability* of credible witnesses, a distinction drawn in order to defend the argumentative choices of the litigants, whatever these happen to be. The Chorus-producer, arguing that both litigants agree that pertinent witnesses existed, suggests that the case should be resolved in accordance with the demonstrated facts of the case because this is the ideal mode of resolution in cases of witnessed, because accidental, homicide. This is also what the mock-defendant of the *First Tetralogy* claims in the surprise move at the end of his second speech. His antagonist, on the other hand, argues that the lack of witnesses in cases such as his obliges the jurors to decide the case by means of εἰκός, the very means he is using to argue his case. Once again, we find that the argument is remarkably flexible in practice, despite the clear, and rational, epistemological principles on which it is based.

Such a model – one which emphasizes the centrality of truthfulness, knowledge and credibility in Antiphon's rhetoric – goes a long way to defend an epistemic reading of forensic testimony. And, further, I have argued that this reading is entirely consistent with Antiphon's rhetorical aims if we assume that his assumptions sounded plausible to his jurors.¹ What the analysis has shown, however, is not so much allusion to some shared but unspoken principle, so much as frequent and emphatic discussion of what it is that

¹ To what extent these positivistic assumptions were shared by the litigant's jurors and the Athenian 'common man' is a question that is not addressed directly here.

makes certain witnesses credible and what it is which does not. In other words, a dense meta-discourse about the presented evidence and about ways of 'correctly' interpreting this evidence finds a prominent place in Antiphon's speeches. And, which is the crucial point, the epistemological position delineated is essential for this function. Indeed, it appears to be one of Antiphon's primary rhetorical weapons. In Antiph. 1, for example, we find that the *heuristic* role of testimony is argued for and defended at length by the prosecutor. Indeed, the testimony itself seems to disappear behind the discussion of general rules. This is, of course, what Antiphon intends to do. The τόποι, however, also have a more straightforward function. Antiphon is not merely *describing* how the litigants are to examine the witness – and, more importantly, the litigant's speech acts – he is *prescribing* one such method. A more radical answer to the 'opportunism' critique may be proposed. Antiphon does not merely manage to have a rational model of testimony despite his opportunism, he positively exploits this rational model to serve his opportunistic ends. He articulates, and defends to the teeth, a way in which the jurors are to interpret this evidentiary material at hand and, finally, to 'educate' them as to its true purpose and meaning.

Finally, what is perhaps most significant about Antiphon's epistemology – in spite of its legalistic tone – is its ability to be generalized. Indeed, the emphasis on the importance on knowledge, truthfulness, and self-interest, can be easily be applied to the rational analysis of other types of discourse. Indeed, in the previous chapter, I have argued that the criterion of credibility may have been applied to the litigant's speeches by Antiphon himself. The scope of this model, however, extends even further, beyond the threshold of the Areopagus. To illustrate this, I turn to an analysis of Herodotus' meta-*historie* of ἀκοή.

Chapter Eight.

Antiphon, the Sophists and the World of Herodotus

It is not impossible for Herodotus and Antiphon to have met. Antiphon was an infamous sophist¹ who was clearly not averse to forming alliances with illustrious and wealthy foreigners.² And as to Herodotus, who seems to have been well-connected with the Athenian political establishment,³ it is hard to conceive of any person – at least any man belonging to the upper echelons of Greek society – with whom he would *not* have spoken, indeed spoken at length. Moreover, Antiphon's native deme, Rhamnus, overlooked the plain of Marathon, a place Herodotus must have visited, presumably several times. If we permit this unlikely meeting to unfold a little, we might well wonder whether these two prose-writers would have discussed the topic of the day, λόγος,⁴ a subject which seems to spring out of the very nature of their self-invented 'professions'. Indeed, the main contention of the following chapters can be stated in terms of this imaginary meeting. Had these two men met, and had they come to speak to one another about λόγος, and about the possibility of knowledge relying upon it, they would have found much common ground.

Before discussing these specific overlaps, however, it might well do to dwell upon generalities and to defend the possibility that Antiphon and Herodotus shared any 'philosophical' ideas at all. Indeed, there exists a long established tendency to treat Herodotus as an archaizing thinker.⁵ Like Homer,⁶ then, Herodotus was interested in κλέος, and like Hecataeus⁷ and the Presocratic 'philosophers'⁸ he practised an intensely

¹ For an account of Antiphon's life see Edwards, 2000; Gagarin, 2002, p. 38ff, Pendrick, 2002, p. 1ff..

² The litigant of Antiph. 5, for example.

³ On Herodotus and the Alcmaeonids see Moles, 2002, p. 40ff.

⁴ See Guthrie, 1971, 204ff; Kerferd, 1981, p. 68ff; de Romilly, 1992, p. 57ff.

⁵ Thomas, 2000, p. 5f. with previous bibliography.

⁶ See, among others, Fornara, 1983, p. 31f. *et passim*; Woodman, 1988, 26ff.; Moles, 1993; Hartog, 2000; Boedeker, 2000; 2001; 2002; Marincola, 2006, p. 14ff.; 2007; 2018.

⁷ See esp. Jacoby, 1913, esp. col. 21-27.

⁸ See Myres, 1953; Immerwahr, 1966; Lloyd, 1975; Gould, 1989; Darbo-Peschanski, 2013.

polemical 'ἱστορίη'.¹ In recent decades, however, there has been a willingness to place Herodotus where he chronologically belongs, and, more specifically, in the context of the medical and rhetorico-argumentative advances made in the late fifth-century.² Indeed, so numerous are the intersections between Herodotus, the Hippocratic doctors, and the Sophists, that any short discussion, such as this, can treat them only schematically. The first, and most obvious, area of overlap comes in the form of Herodotus' reference to doctors and the frequent discussion of the different medical practices of other nations. One need only mention the Egyptian ophthalmologists³ and the decisive role of the Crotonian doctor, Democedes, in the main narrative of the Persian War.⁴ On this point, however, we must note that no Sophist appears in the *Histories*. This absence – more notable in the context of the many wise-men who appear – is more than made up by the clear influence exerted on Herodotus by the rhetorical practices connected with the sophists.⁵ Even in the very first sentence, the word ἀπόδειξις connects Herodotus to the world of the Sophists, as indeed to that of the itinerant doctors who lectured, as well as practised, in the πολεῖς of the late fifth-century.⁶ More generally, the influence of rhetoric can be seen in the various speeches found in the *Histories*.⁷ Edwards notes that Herodotus preserves a trace of an early dispositional scheme in a speech attributed to a barbarian grandee.⁸ We also find an antilogical debate on sophistic political philosophy at Hdt. 3.80,⁹ as well as a display piece in Herodotus' praise of Athens.¹⁰ Thirdly, Herodotus and the other itinerant thinkers also shared some fundamental interests and concerns. Indeed, Herodotus shares with the sophists their most paradigmatic preoccupations, language¹¹ and νομοί.¹² With the Hippocratic doctors, on the other

¹ Cf. Thomas, 2000, p. 161ff.

² See esp. Lateiner, 1986; Fowler, 1996; Thomas, 2000; 2006.

³ Hdt. 2.84.

⁴ Hdt. 3.129ff.

⁵ For a recent and systematic treatment see Provencal, 2015, p. 36ff.

⁶ Thomas, 2000, p. 221ff.

⁷ See Carey, 2017, p. 66.

⁸ Edwards, 2000, 239 n. 9.

⁹ Raauflaub, 2002, p. 162 with previous scholarship.

¹⁰ Carey, 2017, p. 64.

¹¹ Provencal, 2015, p. 39ff.

¹² Provencal, 2015, p. 48ff.; Thomas, 2000, p. 102ff.

hand, Herodotus partakes of, indeed positively contributes to, the discussion of the medical theory of the day, climactic determinism.¹ These late fifth-century thinkers, in other words, shared a number of grand theories and specific problems, and were motivated to ask similar questions. Even more generally, Herodotus shares a number of the intellectual attitudes with the doctors and the sophists. Chief among them is Herodotus' empiricism, the discussion of which I postpone to next chapter. Herodotus also shares in their penchant for polemic,² their rationalism,³ their agnosticism,⁴ and their humanism.⁵ Most important of all, at least for our purposes, Herodotus, the doctors and the sophists, all describe in minute detail the chains of reasoning, and of observation, which led them to their respective conclusions.⁶

If, then, Herodotus' *Histories* speak the same 'intellectual κοινή'⁷ of the Sophists and the Hippocratic doctors, where does this leave the forensic oratory of Antiphon? An overview of the history of forensic rhetoric would take us, for the purposes at hand, too far afield and too deep into disputed territory.⁸ One feels obliged to mention, however, as a mere constellation of suggestive facts, that the dissemination of Antiphon's *Speeches* and of Herodotus' *Histories* in Athens⁹ and may well have occurred within the span of a decade. Moreover, the very distribution of written speeches, which Antiphon pioneered in the 410s, whether for political or financial reasons,¹⁰ as well as the dissemination of model forensic speeches such as Gorgias' *Helen*,¹¹ show that there was a ready audience for such works. If we narrow the discussion to the most pertinent quarter, however, to the nature and use of *evidence* suggested by these various works, we find that forensic rhetoric is at the very heart of the discussion. As already noted by Gagarin and Wohl, a

¹ Thomas, 2000, p. 65f. *et passim*.

² Marincola, 1997, p. 218ff; Carey, 2017, p. 64.

³ Provençal, 2015, p. 42.

⁴ Provençal, 2015, p. 44. Also see Burkert, 1985, p. 313; Harrison, 2002.

⁵ Provençal, 2015, p. 42.

⁶ Thomas, 2000, p. 169f. *et passim*.

⁷ Thomas, 2000, p. 174.

⁸ For a recent review see Schiappa, 2017 with previous bibliography.

⁹ As evidenced by Aristophanes' *Acharnians* dated to 425 B.C.E. On the 'publication' of Herodotus' *Histories* see Jacoby, 1913, col. 233; Sansone, 1985; Fornara, 1971, p. 25ff.

¹⁰ See Edwards, 2000, p. 239.

¹¹ Cole, 1991, p. 104ff.

meta-discussion on the nature of evidence was an important component of the *First Tetralogy* and, more broadly, I have argued that Antiphon deployment on testimonial evidence is done in a self-conscious, indeed self-reflective, way. In other words, we find that the nature of evidence was a central concern in forensic rhetoric. Moreover, there is a good deal of evidence to show that this discussion was an important part of an even wider concern on the nature of evidence more generally. Thus, we find that the most frequent terms for ‘evidence’ are abducted, wholesale, from the world of the law-courts.¹ And even more remarkably, we find that even the Hippocratic doctors of the late-fifth-century² discussed ‘evidence’ in explicitly forensic terms:

[The τέχνη] forces (βιάζεται) this congenital phlegm to be discharged, by means of the acidity of the foods and drinks [given], by which means it is possible to conjecture (τεκμαρεῖται), from that which is seen, about things which could not have been seen without this device (περὶ ἐκείνων ὧν αὐτῇ ἐν ἀμηχάνῳ τὸ ὀφθῆναι ἦν). It also forces breath, by means of uphill jogs, to accuse (κατηγορεῖν) that [disease].... Since things which come out of the body, each leaving in its own distinct way, are [symptoms] which convey information (ἐξαγγέλλοντα), each [symptom] about its own [disease] (ἕτερα μὲν οὖν πρὸς ἑτέρων καὶ ἄλλα δι’ ἄλλων ἐστὶ τὰ τε διιόντα τὰ τ’ ἐξαγγέλλοντα), it should not be marvelled at that there are lengthy proofs (πίστιας χρονιωτέρας) for a short therapy. It is as if there are foreign interpreters speaking to the therapeutic mind (σύνεσιν).

Hippoc. *Art* 12

¹ See esp. Lloyd, 1966, p. 425ff. For Herodotus’ language of proof see Thomas, 2000, p. 190ff.

² On the dating of this work see Jouanna, 2001, p. 377f.

The doctor's art, then, extracts from the patient's diseased body, by a series of 'necessities',¹ an accusation in the shape of a symptom. Much like a slave being subjected to a βάσανος, the diseased patient is 'tortured' until he produces a symptom which 'accuses' the cause.² Indeed, the ideology of the βάσανος as the supreme form of evidence in the law-courts would have made such comparisons all the more poignant. More interestingly, we note that the evidentiary process is discussed in clearly *linguistic* terms and, therefore, in a testimonial metaphor. The symptom, then, communicates to the doctor in a foreign tongue and, therefore, must be translated into meaningful information by the doctor's 'intelligence'. The reader will object, perhaps, that the text treats only of a metaphor, a turn of phrase which collapses on close examination. Yet, for a starker and far more concrete reference to the 'testimony' most pertinent to the medical τέχνη, the reporting of a symptom by the patient to the doctor, we only have to turn to the previous paragraph:

When it is not possible for the [doctor] to see the illness with his own eyes, nor learn from it by hearsay (ἀκοῇ πυθέσθαι), then it must be turned over to reasoning (λογισμῶ). Verily, even the patients, ill with an invisible disease, report their symptoms to the doctors, they are reporting their own *opinions*, and not their *knowledge*... Thus, when it is not possible to hear the clear truth (ἀναμάρτητον σαφήνειαν ἀκούσαι) from the patient's reports, it is necessary to provide some other visible [indication] for the doctor.

Hippoc. Art 11

¹ von Staden, 2007, p. 37.

² Lloyd (1966, p. 428f.) on the strength of such passages, has attributed to the influence of forensic rhetoric the essential development of this key concept of evidence, an extracted proof of an underlying cause.

The forensic terms, indeed the references to *testimony*, cannot be clearer or more emphatic. More importantly, however, we find much which agrees with Antiphon's discussions about witnesses. We find, then, the explicit concern for the limitations of vision, as in Antiphon, and the same subordination of 'reasoning' to more concrete empirical evidence. Above all, we find a clear distinction between a report which is based on knowledge, indeed visual knowledge – the patient, it seems, does not know because the disease is invisible *even to him* – and a report which is based on mere 'opinion'. The distinction is entirely apiece with Antiphon's distinction of the knowledgeable witness and the witness which knows nothing. All this, of course, further strengthens the primary hypothesis of Chapter Two, namely that testimony was understood to be a matter of *evidence*. Indeed, it is for this very reason that the references to the βάσανος and to witnesses can be used in such occasions as these. More importantly, however, the prominence of forensic rhetoric in discussions of evidence also strengthens the possibility that Herodotus' conception of testimonial evidence was, at least in part, moulded by this 'forensic paradigm'.¹ Indeed, the paragraph quoted above could have come straight out of Herodotus' text. We find, then, a careful and hierarchical distinction between ὄψις, ἀκοή and γνώμη, as we famously find in Herodotus.² We also find a process roughly equivalent to 'source criticism' which finds a luxuriant home in Herodotus.³ And, finally, we also find evidence of a positivistic epistemology of testimony which, as I have argued and continue to argue below, is based on the distinction between knowledgeable and credible testimony and the reverse.

If we postpone such matters of ἱστορίη to the next chapter, however, we may observe that there exist several other features which show that Herodotus was deeply engaged with the forensic thought of his day. The notion of cause, then, inseparably bound to Herodotus' ἱστορίη and which looks back to Homer, also looks 'forward' to the determination of guilt in the law-courts.⁴ More specific overlaps can also be found. Thus,

¹ Lloyd, 1966, p. 429.

² Hdt. 2.99. See below.

³ See esp. Fowler, 1996.

⁴ See esp. Frede, 1987, p. 135; Vegetti, 1999, p. 247f.; Fowler, 2006, p. 32.

as Raauflaub observes, Herodotus also engages, as Antiphon did, with a case of involuntary murder.¹ In Chapter 11, I also argue that one of the archetypal images of the barbarian King is, in fact, that of a judge who must mediate between competing claims. Periander, then, presides over a case of attempted murder, and Proteus over a case of kidnap. Furthermore, Herodotus' language of evidence is, like that of the Hippocratic doctors, also bound to the language of the law-courts. Thus, the Oracle of Ammon bears witness (μαρτυρεί) to Herodotus' opinion about the definition of Egypt,² and the shells on the mountains are indications (τεκμήρια) of its origin.³ Much like Antiphon, Herodotus is especially fond of εικός arguments and, further, justifies the use of such arguments in much the same way: by invoking the lack of empirical evidence.⁴ Thomas has also marked the great density of demonstrative terms in Herodotus' text, terms which are especially common in Antiphon.⁵ More generally, the intense 'meta-historie'⁶ which is found in Herodotus' text is not only similar to the texts of the Hippocratic doctors, but also to that of Antiphon, as Plant observes.⁷ Indeed, I will argue that Antiphon's τόποι and Herodotus' 'meta-historie' in the geographical passages have the same function, to configure and prescribe a notion of a credible source.

I hope to have shown, then, that Herodotus and Antiphon shared sufficient intellectual ground to warrant investigating the possibility of a 'forensic paradigm' of witnessing in Herodotus.⁸ The method which most naturally suggests itself, then, is scouring Herodotus' text in an effort to prove that the knowledge of witnesses, indeed their *autoptic* knowledge, and their self-interest, are overriding concerns when considering the credibility of his sources. And, indeed, pertinent passages immediately suggest themselves. Thus, the Egyptian story of Amasis's mummy is rejected by Herodotus on

¹ Raauflaub, 2002, p. 160.

² Hdt. 2.18.

³ Hdt. 2.5ff.

⁴ Corcella, 1984, p. 57f.

⁵ Thomas, 2000, p. 227.

⁶ Luraghi, 2006.

⁷ Plant, 1999, p. 63.

⁸ I do not argue that forensic oratory *influenced* Herodotus' ιστορίη or, indeed, that Herodotus *influenced* forensic oratory. It is, in the manner of Thomas (2000), Lateiner (1986), and others, better to speak of 'confluence'.

the grounds that it is manifestly 'self-interested'.¹ On the other hand, again from his Egyptian λόγος, Herodotus tells us that he confronted a series of historical claims with those of the Memphite priesthood, on account of their being 'supremely well-versed in tales'.² Useful though such a study would be, I have chosen *not* to adopt this method in the analysis below, and this for two main reasons. First, the key concepts of a witness's 'self-interest' and his 'knowledge', though clearly alive in Herodotus – and indeed, already the subject of scholarly attention³ – must be understood in radically different ways once these qualifiers are applied to 'group sources' and not individual witnesses. An oral tradition, shaped by myriad socio-political and historical forces, can hardly be 'knowledgeable' and 'truthful' in the same way that the report of an accidental witness of a murder can. At best, then, this method would ascribe to Herodotus, a rather loose analogy of local tradition and 'witnesses'. More importantly, I have assumed, though not in any dogmatic way, that Herodotean ἱστορίη is largely an *ad-hoc* affair. Though this proposition cannot be proven – it relies, ultimately, on an inference from 'silence' – few would contend with the fact that an almost equal number of passages can be summoned where Herodotus appears to disregard these 'rules'. Herodotus feels at perfect liberty, then, to disregard the opinion of the most well-informed sources when he deems it appropriate.⁴ Likewise, he never for a moment seems to suspect the account of the 'False Smerdis' for what it is, namely an egregious piece of Darian propaganda.⁵ In place of this method, then, I have attempted to investigate in what way the model of credibility described *functions* in certain, carefully chosen, sections of Herodotus' text. Such a method also has the distinct advantage of putting at the very forefront the rhetorical function of such an epistemology. In Chapter 10, then, I examine two parallel sections of descriptive geography which are, first of all, extremely rich in 'meta-historie' and, secondly, in which Herodotus must confront the 'logical' limits of credible testimony. I

¹ Hdt. 3.16.

² Hdt. 2.3. On λογίοι see Evans, 1980; 1991; Nagy, 1989; Luraghi, 2009.

³ See esp. Woodman, 1988.

⁴ E.g. Hdt. 1.172.

⁵ On this issue see Corcella, 2007, esp. p. 391f.

argue, then, that we find in Herodotus' description of the world an exact logical correlate to Antiphon's distinction between the observed and unobserved murders. The distinction of the visible and the invisible has, of course, been tackled by Lateiner and Thomas and I do not seek to object to their sound analysis.¹ Herodotus does, indeed, like Antiphon and the Hippocratic doctors, reserve εἰκόζ to deal with the invisible. And, further, like the Hippocratic doctors, he consistently infers and analogizes from the visible to the invisible. What the analysis below will focus on, rather, are the very terms on which this distinction between the knowable and the unknowable is drawn and its relation to the limits of credibility testimony. In Chapter 11, on the other hand, I examine two particular *quasi*-forensic antilogies and delineate one of the major differences in the authority of Herodotus and Antiphon, one which, I argue, can be traced back to a difference in their respective 'epistemologies'.

¹ Lateiner, 1986, esp. p. 4f.; Thomas, 2000, p. 200ff.

Chapter Nine.

The Problem(s) of Λόγος in Herodotus' Histories

In the following chapter, I define more precisely the two extreme limits of Herodotus' multifarious engagement with ἀκοή. The first limit, the one more commonly encountered in Herodotus' text, is scepticism in the face of a λόγος. Herodotus, then, often characterizes λόγος as an inherently problematic source of knowledge and, crucially, one which is qualitatively inferior to ὄψις. This very message appears to be embedded in an infamous methodological 'parable' which opens Herodotus' text.¹ Candaules, the soon-to-be-deposed king of Lydia, is infatuated with his wife's beauty and compels the soon-to-be King Gyges to observe his naked wife first-hand. The reason he gives is a gnomic utterance,² one also preserved in the fragments of Heraclitus, namely that 'the eyes are more credible (witnesses) than the ears.'³ Gyges must see the queen in order to *know* that she is exceptionally beautiful. His ears, his ἀκοή, can only lead so far down the route of persuasion and belief. And, in line with this prejudice, Herodotus goes to great lengths to distinguish his own belief, more so his own knowledge, from the accounts of the people he claims to have met. And yet, in spite of this well-established prejudice, Herodotus, time and again, resorts to his ears in the investigation of historical, geographical and ethnographical matters. Indeed, he even claims, on occasion, to have achieved knowledge through ἀκοή and goes so far as to approximate the results of ἀκοή to those of ὄψις, as Antiphon does. Clearly, the very existence of any form of λόγος-dependent knowledge, and any such program of rapprochement, sits uncomfortably with Herodotus' insistence on the weakness, both relative and absolute, of λόγος. How, then, does Herodotus reconcile these two contrary positions? In the last section of this chapter, and in the chapters to follow, I suggest that Herodotus adopts a 'forensic' solution to this

¹ Hdt. 1.8ff.

² On Herodotean 'wisdom expressions' see Lang, 1984, p. 58ff.; Gould, 1989, p. 63ff.; Shapiro, 2000, p. 95ff.

³ Heraclit. DK22 B55.

problem. This solution, to reiterate, rests on the insight that these two attitudes to λόγος do *not* constitute a contradiction because λόγος is not of a uniform kind. Put simply, some λόγοι lead to knowledge and some λόγοι do not. Secondly, Herodotus also assumes that there exist, at least in some cases, broadly reliable ways in which to differentiate λόγοι into the reliable and the unreliable sort. Under certain conditions, then, credible λόγοι, which constitute a valid epistemic source, can be distinguished from incredible λόγοι which must be discarded as false or unverifiable. Thirdly, I argue that the criteria which Herodotus uses to distinguish between credible and incredible λόγοι also bear, at least in the episodes analysed below, great resemblance to those criteria encountered in Antiphon's speeches. To begin with, Herodotus' assessment of a λόγος' credibility is based, as it is in the courts, on impersonal criteria. The relevance, and the importance, of this principle for Herodotus – who claims to have travelled over most of the then-known world – is immediately apparent. Such an 'epistemology' would afford Herodotus a method of defending and attacking the credibility of λόγοι independently of his own, or any audience member's, personal acquaintance with the original speaker. This very fact may go some way to explain the form of Herodotus' source-citations which, as is well known, only rarely refer to real flesh-and-blood individuals.¹ Finally, I argue that even the specific criteria for establishing and defending credibility found in Antiphon's speeches – particularly that of epistemic privilege – can be profitably compared to those which Herodotus uses to establish and defend the credibility of his sources.

As in the case of Antiphon, however, the applicability of this model of testimony to Herodotus depends, at the barest minimum, on the assumption that the latter did regard ἀκοή to be an epistemic resource and an evidentiary tool. We must, then, as in the case of the formal testimony of witnesses, first defend an *epistemic* reading of Herodotean engagement with λόγοι.²

¹ See especially Gould, 1989, p. 20ff.; Luraghi, 2001, p. 141; Hornblower, 2002, p. 374.

² One may note, as a preliminary methodological point, that such a defence is considerably more difficult. We are, at the very least, limited by the lack of anything like a programmatic methodology (Hornblower, 2002, p. 375), the experimental nature of the text (Lateiner, 1989, p. 13ff.), the fluidity of the genre of ἱστορίη (Boedeker, 2000, p. 99)

9.1: Herodotean Source-Citations: between *ιστορίη* and *ἀπόδειξις*

As I have argued in the previous chapter, and as Thomas, Raaflaub, Schepens and others have amply demonstrated, Herodotus can be comfortably accommodated within the intellectual world of the late fifth-century. Indeed, much of Herodotus' methodology compares favourably to that found described in the Hippocratic corpus.¹ To cite the most egregious example of this confluence, Herodotus suggests that an ox be opened up to prove that Scythian grass produces most bile,² a suggestion which cannot but have met with approval from the author of *'On the Sacred Disease'* who makes very similar 'suggestions' to his audience.³ More generally, however, Herodotus and this Hippocratic author are, at least in principle, opposed to the dogmatic rationalizing which had characterized Ionian science of the previous generations.⁴ For the author of *'On Ancient Medicine'*, the main target was Empedocles and his propensity for using unsubstantiated 'hypotheses' with no empirical basis.⁵ For Herodotus, one prominent target, though by no means the only one, was the rationalizing mythology of which Hecataeus was fond.⁶ In preference to this arbitrary theorizing, Herodotus and the doctors favoured, in the words of Heraclitus, 'those things of which there is seeing and hearing and learning'.⁷ Like the doctors, then, Herodotus was an empiricist,⁸ even a naïve empiricist.⁹ Conversely, Herodotus often disdains from commenting on the truth or falsity of some particular account if it transcends the limits of his own empirical knowledge.¹⁰ Thus, Herodotus notoriously disdains from refuting the μῦθος¹¹ that the Nile inundates because it reaches a divine, world-straddling, Ocean of which he has no knowledge.¹² This very

¹ Lateiner, 1986, p. 3.

² Hdt. 4.58.

³ Hippoc. *Morb. Sacr.* 14.

⁴ Corcella, 1984, p. 55; Lateiner, 1986, p. 1; Thomas, 2000, p. 165; Romm, 2013, p. 34.

⁵ See Lloyd, 1963; Schiefsky, 2005, p. 55ff.

⁶ Fowler, 1996, p. 71f.; Goldhill, 2002, p. 14f.; Thomas, 2018, p. 266.

⁷ Heraclit. B55.

⁸ See esp. Lateiner, 1986, p. 1, 3, *et passim*.

⁹ Marincola, 1997, p. 66.

¹⁰ Corcella, 1984, p. 55 with previous literature.

¹¹ See Murray, 2001a, p. 24f.

¹² See Chapter Ten.

subject, namely the location of the Nile's sources, also proves that Herodotus himself,¹ like the Hippocratic authors,² falls prey to the sort of theorizing which he attacks.³ It is in discussing the location of the Nile's sources, then, that Herodotus famously departs from his aversion to symmetry which he scoffs at in Hdt. 4.36. What is of crucial importance, however, is that Herodotus narrowly restricts the domain of such theorizing to that part of the word *no one* has seen.⁴

Within the domain of the senses and, therefore, within the domain of ὄψις and ἀκοή, the former reigns supreme.⁵ This epistemic bias in favour of ὄψις, implicit in the Homeric invocation of the Muses and, indeed, in the exclusion of hearsay evidence from the court, is the most important defining characteristic of Herodotean ἱστορίη and of Ionian ἱστορίη generally.⁶ It is not incidental, then, that Herodotus himself explicitly marks this distinction rather emphatically in Hdt. 2.29 and Hdt. 2.99. And as for a methodological application of this epistemic position, one need look no further than Herodotus' own passion for a Hecataean θεωρίη based on travel.⁷ The veracity of Herodotus' astonishing autoptic claims, has, of course, long been questioned, as have the reports Herodotus gives of his own travels. More than a century ago, Sayce had argued that Herodotus' travels to Egypt were invented and that he had, quite unscrupulously, plundered Hecataeus's account in an attempt, indeed a successful one, to commit his predecessor's work to the dust.⁸ Sourdille, on the other hand, argued that Herodotus' travelogue is genuine and speculated that Herodotus must have stayed in Egypt and saw the Nile inundate, which is, *a priori*, an eminent possibility.⁹ Fehling and Armayor have more recently redoubled efforts to cast doubt on the truth of Herodotus' autoptic claims,¹⁰ and West has subjected

¹ Lateiner, 1986, p. 17.

² Who have no problem describing unobserved spaces internal to the body (e.g. Hippoc. *Morb. Sacr.* 6).

³ For this general tendency in fifth-century 'science' see Lloyd, 1979, 15ff.

⁴ Corcella, 1984, p. 58.

⁵ Luraghi, 2006, p. 77.

⁶ E.g. Nenci, 1955, p. 22; Schepens, 1980, p. 58ff.

⁷ Corcella, 1984, 55ff.

⁸ Sayce, 1883, p. xxvf.

⁹ Sourdille, 1910.

¹⁰ Armayor, 1978a; 1978b; 1980; Fehling, 1989, esp. p. 128f.

Herodotus' use of epigraphical inscriptions to severe and penetrating criticism.¹ Though the historicity of these claims is not unimportant – if perhaps undemonstrable – an epistemic reading of these *autoptic* claims does not need to take a position on this matter. What is more significant for such an analysis is to answer the question of *why* Herodotus chooses to support his statements with reference to ὄψις.² And, indeed, one way of answering questions as to *why* Herodotus does what he does is to start by examining *where* Herodotus does it and in what context.³ And, with regard to the rhetoric of ὄψις, it is quickly apparent that it is also *not* evenly distributed in Herodotus' work. It is, by far, densest and most prominent in Herodotus' discourse on Egypt, where it forms part of the general intensification of Herodotean 'meta-historie'.⁴ And, moreover, the concentration of ὄψις in this book may be partly explained by the density and prominence of θώματα, θώματα which, as Nenci pointed out long ago,⁵ had a fruitful and long association with emphatic declarations of *one's own* ὄψις. More generally, however, the epistemological presupposition defined above – the supreme power of ὄψις – furnishes us with a perfect explanation of such appeals. By appealing to ὄψις and travel, Herodotus can claim authority by tracing his own statements back to their epistemic roots, his own eyesight, the supreme epistemic resource. Herodotus adopts, in other words, the persona of an 'immediate observer',⁶ one which Marincola has traced back to a Homeric paradigm, Odysseus.⁷ Whatever the precise origins of this *persona* – and, indeed, appeals to ὄψις appear to be a universal, and an entirely expected, feature of travelogues⁸ – the authority of the 'immediate observer' relies on an underlying epistemic principle, one which Herodotus vindicates, if not unproblematically, in his 'parable' of Candaules. And though, as Dewald observes, the introduction of *opseis* may serve to complicate the issue or to debunk a theory and leave nothing in its place,⁹ it can also operate as a straightforward

¹ West, 1985, esp. p. 304.

² Luraghi makes an analogous point (2001, p. 141).

³ Marincola, 1987, p. 122.

⁴ Marincola, 1987, p. 123ff. See also Luraghi, 2001, p. 251ff.

⁵ Nenci, 1955, p. 17. See also Dewald, 1987, p. 158; Thomas, 2000, p. 135ff.

⁶ Dewald, 1987, p. 155ff.

⁷ Marincola, 2007.

⁸ See Hartog, 1988, p. 283.

⁹ Dewald, 1987, p. 158.

way of assuring his audience that he can be trusted on some specific point. The geographical excursuses, examined below, are a perfect illustration of this practice. And though, as Dewald also points out, autobiographical references to ὄψις are relatively rare in Herodotus,¹ they form an integral part of the narrator's rhetoric in these passages and are a principal way of asserting his authority therein.²

In the case of ὄψις, then, there appears to be a perfect synthesis of epistemology and rhetoric. The rhetorical effect of ὄψις-statements depends on a well-established and widely held epistemic-methodological principle, indeed *the* foundational principle of Ionian ἱστορίη. When we come to ἀκοή, however, and to source-citations, the situation is far murkier. Indeed, it is even questionable whether source-citations can really be called appeals to *hearsay* evidence in any meaningful way. Moreover, the suspicion that there is more or, rather, substantially less to the tales that Herodotus has 'heard' is almost as old as Herodotus himself. Indeed, he himself appears to be rather sensitive to such criticism in places.³ Similarly, Thucydides' scornful remarks in his archaeology, about the use of 'chance witnesses' in a logography written for the purposes of its 'entertainment value',⁴ may well have been a critique of his predecessor who had once, allegedly,⁵ moved him to tears.⁶ More recently, at the end of the nineteenth-century, several challenges were laid at Herodotus' feet. Diels proposed that source-citations were *not* the product of Herodotus' oral communication, but rather a sign of cross-referencing Hecataeus.⁷ Worse still, Panofsky, a proto-Fehling, indicted Herodotus with the old Ciceronian accusation of mendacity⁸ with all the erudition of a nineteenth-century German philologist.⁹ And writing some decades later, Aly, though largely unconcerned with the methodological issues of ἱστορίη, detected, in the λόγοι of Herodotus, not so

¹ Dewald, 1987, p. 155.

² See Chapter Ten.

³ The *locus classicus* is Hdt. 3.80.

⁴ Thuc. 1.22.

⁵ Marcellin. *Life of Thucydides* 54.

⁶ Hornblower, 1994, p. 152ff.; 2002, p. 375 with previous scholarship.

⁷ Diels, 1887, p. 411ff. Similarly Panofsky, 1885, p. 1ff.; Immerwahr, 1966, p. 6 etc.

⁸ Cic. *Leg.* 1.5. See also Plut. *De Her. mal.* 40. On Herodotus' reputation in antiquity see Momigliano, 1958; Evans, 1968.

⁹ Panofsky, 1885, esp. 26ff. Referred to at length by Fehling (1989, p. 1ff.).

much the carefully preserved accounts of barbarian sources, but trope and Greek fable.¹ These accusations were, at least temporarily, quelled by the great figure of Herodotean studies, Felix Jacoby. In his ground-breaking article on Herodotus which marks the high point of *Quellenforschung*,² Jacoby painted a seductive picture of Herodotus the diligent and honest historian who had travelled the Mediterranean documenting his geographical observations, with the realization of a broader 'historical' project slowly dawning on him, and speaking to authoritative locals in an attempt to pin down this newly conceived *historical* account. The various source citations, though they needed not be literally true, were at least true metonymously.³ Whenever Herodotus quoted a source, even if he had obtained the information from another author, it was ultimately to the locals, and to the local oral traditions to which Herodotus ultimately referred. His sources citations were, above all, evidence of an honest attempt to pin down the facts⁴ by examining the λόγοι of the local authorities,⁵ the λόγοι to which Herodotus (very occasionally) refers. Moreover, Herodotus himself had conceived of the project in his περίπλους and, perhaps above all, when he confronted the deep antiquity of Egypt.⁶ This picture of Herodotus dominated Herodotean studies for much of the twentieth century. Thus, von Fritz,⁷ Legrand,⁸ and Ste. Croix,⁹ even Lateiner,¹⁰ though interested in different questions and writing over a span of seventy years, present a coherent picture of Herodotus, one which we can comfortably place in the world of fifth-century itinerant philosopher-scientists and, indeed, in the world of modern historians and anthropologists. And, furthermore, much of what Herodotus says about his own method is immediately compatible with this reading. Indeed, his distinction between ἀκοή and ὄψις and his frequent references to

¹ Aly, 1921. See Luraghi, 2013, p. 90ff.; Murray, 2001a, p. 18ff.

² Jacoby, 1913, col. 392ff.

³ Luraghi, 2001, p. 158. On the problems of reading these 'source citations' literally see esp. Luraghi, 2006, p. 82f.

⁴ Jacoby, 1913, p. 401.

⁵ See also Jacoby, 1912, p. 2676; 1949, 215f.

⁶ See Vannicelli, 2001, p. 212f. with previous scholarship.

⁷ von Fritz, 1937, p. 316ff.

⁸ Legrand, 1932, p. 59f.

⁹ Ste. Croix, 1977, p. 130, 135f.

¹⁰ Lateiner, 1989, esp. p. 22f., 77, *et passim*.

his θεωρίη referred to above are important examples of this.

This model, however, has recently come under some devastating criticism on a number of fronts. One line of criticism is that of Detlev Fehling. Fehling, in a long and ingenious examination of Herodotus' text, attempts to prove that all the source citations, indeed all references to monuments and artefacts were, in fact, fabrications.¹ The various 'sources', in other words, were invented by Herodotus who, Fehling proposes, never pretended to be writing history, only historical fiction.² To prove this sweeping thesis, Fehling relies on one argument above all: the source-citations are far too good to be true. To be more exact, Fehling proves that virtually all source-citations found in Herodotus adhere, literally to a fault, to a few artificial rules, indeed to just two principal ones. Firstly, Fehling shows that all sources in Herodotus are 'appropriate'.³ In other words, the sources find themselves implicated – usually in a geographical or dramatic sense – in the account itself. This, of course, is an eminently plausible principle for a rational ιστορίη. Yet Fehling counters that Herodotus takes this principle to rather implausible extremes. To cite one prominent example, the Egyptian priests know exactly, ἀτρεκέως, what happened to Menelaus in Egypt but know nothing of what happened after he left its littoral.⁴ Secondly, all accounts introduced by a citation carefully preserve the bias of their respective sources.⁵ The Phoenicians of the prologue, then, balk at the idea of Io's abduction by their compatriots and propose that she had gone aboard of her own accord.⁶ In the case of both principles, Fehling shows that the number of instances can be multiplied almost indefinitely. Besides these two principal rules, Fehling also remarks on other peculiar oddities, such as the perfect dove-tailing which, he rightly insists, reeks of manipulation by some guiding intelligence. This rather extreme hypothesis has, of course, provoked much indignation and criticism. Some have attempted to rescue Herodotus even in the

¹ Fehling, 1989, esp. p. 152ff.

² Fehling, 1989, p. 154ff.

³ Fehling, 1989, p. 88ff.

⁴ Hdt. 2.112ff. See Fehling, 1989, p. 59ff.

⁵ Fehling, 1989, p. 106ff.

⁶ Hdt. 1.5. See Fehling, 1989, p. 54.

most extreme cases, where *inventio* is virtually beyond doubt,¹ while others have remarked on the narrow positivistic meaning of 'truth' in Fehling.² Shrimpton has also subjected Fehling's hypothesis to some telling statistical tests.³ Among other things, Shrimpton notes that most of Herodotus' named sources are Greeks and *not* foreign, a result in keeping with his good faith.⁴ The clinching counter-argument, however, is given by Fowler.⁵ If Fehling is correct, his position comes at the cost of turning Herodotus into an alien, completely incomprehensible to us and, more importantly, unaccountable in terms of his contemporaries. Why, Fowler insists, would Herodotus bother? How would his audience realise what he was doing? And how, crucially, can we relate Herodotus' text to the rest of Ionian *ιστορίη* if not as some elaborate parody and private joke? And yet, as Fowler and Luraghi note,⁶ it is vital to distinguish between Fehling's observations – which are unassailable – and his conclusions – which insist on turning Herodotus into an unaccountable phenomenon. Indeed, as Luraghi has eloquently argued, Fehling's principles are far better explained by a theory which does not assume that the common denominator, Herodotus, is an irredeemable liar.⁷

An important elaboration of Jacoby's model – and another potential source of criticism – has followed on from Vansina's anthropological work on other traditions of oral literature.⁸ Evans, to cite a prominent proponent of this reading, argues that Herodotus is to be seen as an heir of the masters of oral literature, indeed an heir in two interrelated ways. Herodotus is, firstly, an heir to their 'time-honoured research methodology',⁹ namely memorizing tales which belong to oral tradition, and, second, he is an heir to their performance and performative norms. Like the *λόγιοι*, Herodotus primary task is to recount authoritative tales which belong to entire communities and, on rare occasions,

¹ The various attempts to defend the historicity of Hdt. 3.80 are discussed by Asheri, 2007, p. 472. Also see, especially, Pritchett, 1993.

² See Luraghi, 2001, p. 140 with previous scholarship.

³ Shrimpton, 1997, p. 231ff., esp. 245f.

⁴ Shrimpton, 1997, p. 244.

⁵ Fowler, 1996, p. 81.

⁶ Fowler, 1996, p. 82; Luraghi, 2001, p. 139f.

⁷ Luraghi, 2001, p. 144.

⁸ Vansina, 1973. See Evans, 1991, p. 113ff.; Murray, 2001a, p. 19ff.

⁹ Evans, 1991, p. 99.

to families.¹ Evans also proposes, however, that Herodotus is no mere λόγιος. Indeed, Herodotus chooses to start his *apodexis* with just such an emphatic rejection of the tales of the λόγοι, in favour of a more sharply demarcated notion of historical knowledge.² This rejection, Evans proposes, was influenced by developments in pre-Socratic thought, namely the scepticism of Xenophanes and the rationalizing of Hecataeus.³ Herodotus, equally an heir to this critical tradition, thus, presents himself as a surveyor of the λόγοι, 'a master of human knowledge based on verifiable tradition'.⁴ Evans' dual model, then, is thus broadly compatible with the model proposed by Jacoby, who had also concluded that Herodotus' λόγοι stem from tradition.⁵ Evans also further proposes that these oral traditions were, in fact, embodied in semi-professional memorialists whom Herodotus could have met.⁶ Whatever the historicity of Greek or Ionian memorialists,⁷ the 'oral tradition' thesis also has remarkable explanatory power. It explains, firstly, the general form of Herodotus' source citations.⁸ It is now entirely reasonable for Herodotus to attribute to the 'Spartans' a story which represents an oral tradition which existed among the Spartan λόγοι. The thesis also partially explains Aly's observations. The motifs which he detected in Herodotus' λόγοι may derive, ultimately, from the sources themselves, and thus not directly from Herodotus.⁹ Indeed the thesis can also help answer some of Fehling's challenges. Harriet Flower, for example, has demonstrated, by a comparative study of the most celebrated passages in Herodotus, Gyges's coup d'état, that Herodotus' source-citations, in fact, refer to *real* oral traditions attested elsewhere.¹⁰ Finally, and most crucially, the indebtedness of Herodotus to the λόγοι also sheds some light on Herodotus' infamous commitment to 'say what is spoken' whatever the account's

¹ Evans, 1991, p. 104, 106. Also see Nagy, 1987, p. 178f.

² Evans, 1991, esp. p. 106.

³ Evans, 1991, p. 95, 99, 104f.

⁴ Evans, 1991, p. 106.

⁵ Jacoby, 1913, col. 408f. *et passim*.

⁶ Evans, 1991, p. 120ff. Also see Nagy, 1987, p. 179f.

⁷ See Murray, 2001a, p. 26; Luraghi, 2009.

⁸ Evans, 1980, p. 10.

⁹ Murray, 2001a, p. 40; Griffiths, 2006, p. 137.

¹⁰ Flower, 2013, esp. p. 151f.

credibility.¹ This was, after all, what the λόγοι were up to.

And yet, Evan's position, in positing two parallel tracks of the Herodotean project, suffers an unenviable strain, all the more because, as Murray and Shrimpton have pointed out,² the central concern of oral tradition is radically different from that of critical ιστορίη. Indeed, Shrimpton argues that their concerns are incompatible since factual truth of the tradition is of far less importance to the oral traditionalist than the accuracy of its transmission. It is this demand for accuracy, Shrimpton argues, which is the fundamental drive behind Herodotean ιστορίη, one which rooted in an archaic notion of 'truth' conceived as ἀπρεκής account, an unfaltering, unwavering λόγος.³ It is this commitment not only to memorialist practices, but to a more archaic concept of 'truth',⁴ that is exemplified in Herodotus' explicit programme of repeating the stories he was told as they are told. Moreover, it is by means of his privileged access to these oral tradition, the common possession of a public 'knowledge', that an ancient historian secures his own authority.⁵ This commitment, Shrimpton argues, is ultimately incompatible with Jacoby's positivistic historian who belongs to a fully literate world of which Herodotus was not part.⁶ And though Shrimpton notes that Herodotus preferentially ascribes stories he endorses to larger groups of informants – and even draws up an intriguing parallel to Andocides⁷ – he argues that the trend is an indication that Herodotus was interested not in truth, but only in authoritative traditions. Shrimpton does not consider the possibility that marking a λόγος as one believed by a majority is underpinned by some rational, epistemological principle. Indeed, his reference to an orator, indeed to orator of rather questionable integrity, is designed to reinforce this point. Herodotus' sources, then, are not really 'cited' by Herodotus in the process of arguing for a thesis, merely nodded to reverentially and, indeed, from a carefully maintained distance.⁸ Nonetheless,

¹ Evans, 1991, p. 101; Murray, 2001b, p. 301

² Murray, 2001b, p. 316; Shrimpton, 1997, p. 97.

³ Shrimpton, 1997, p. 100.

⁴ On 'truth' in Herodotus see Moles, 1993, p. 91 *et passim*; Marincola, 2006, p. 20ff.

⁵ Shrimpton, 1997, p. 172.

⁶ Shrimpton, 1997, p. 88f.

⁷ Shrimpton, 1997, p. 106.

⁸ Shrimpton, 1997, p. 112.

Shrimpton's central point is a cogent one. One must indeed wonder how oral traditions – shaped not by cognitive but by political and social forces¹ – can really be comparable to a piece of testimony to be evaluated rationally. Must not these fundamental differences imply different evaluative criteria?

Any yet, the difference in the methods of analysing a man's statement and a people's tradition runs the risk of being overstated, especially if one introduces the very notion of 'public' or 'local' knowledge as Shrimpton and Luraghi do.² Indeed, the close proximity of the methods of assessment appears to be implied in the form that Herodotus' source citations take. Thus, though the oral tradition theory certainly explains why Herodotus attributes statements to a *group* of people, it hardly explains why Herodotus emphasizes that it is *statement* that he is attributing to them. Or, taking on Erbse's important point on the meaning of λέγειν,³ it is surely significant that all Herodotus' source citations take the form of some *proposition*, some narrative of an event or an account of some phenomenon, more often than not some seemingly trivial point, but in every case some λόγος that someone appears to have said or believed. Does not this form of source citations – *propositions believed by groups of men* – suggest one key Herodotean insight, namely that any tradition, be it that of the Spartans or that found in epic, must be examined in the manner of any λόγος?

The point remains, however, that whatever form the source-citations might take, one is surely hard pressed to defend the literal truth of *every* one of Herodotus' remarks about the 'accounts' he heard. The *locus classicus* – to which every sceptic points and which every staunch defendant must explain – is Herodotus' account of the discussion of the Persian grandees.⁴ Here, Herodotus puts in the mouth of three Persian aristocrats, dead almost a hundred years, cutting-edge sophistic political philosophy which Herodotus – and, which perhaps is the crucial point, Herodotus' audience – would have heard

¹ This may explain the tendency for references to specific events to disappear and to be replaced by generic 'topoi'. See Griffiths, 2006, p. 137.

² Shrimpton, 1997, p. 112ff.; Luraghi, 2001, p. 147; 2006, p. 83ff.

³ Erbse, 1992. Also see Luraghi, 2001, p. 147.

⁴ Hdt. 3.80.

themselves in the streets of Athens.¹ And, what is worse, Herodotus is curiously emphatic in defending the historical veracity of his account of this debate. Though some have defended, beyond the point of likelihood, the possibility of some version of this debate happening, most have opted to interpret Herodotus' strong assertion in different terms, namely as a rhetorical device.² Though Herodotus is insisting that the Persian debate happened, what he is *really* doing is drawing the reader's attention to the speeches and underlining their thematic importance. Indeed, the profusion of direct speech in neat sophistic antilogy may be another one of Herodotus' nudges,³ another clue that he is, in fact, protesting far too much.

What is more, this appealing explanation of one of the most problematic passages of the *Histories* can be radically generalized and this 'generalization' presents, today, the strongest opposition to Jacoby's positivistic Herodotus. Indeed, this rhetorically minded mode of reading Herodotean source citations – which can be broadly called 'performative' – has become the predominant mode of analysis of all Herodotean source citations. It is this drive to come to terms with the rhetoric of Herodotean 'source citations' that has led to the penetrating studies of Herodotus' 'voice print',⁴ his 'monitorial code'⁵, and his 'meta-historie'.⁶ And, indeed, Herodotus' ἱστορίη appears to invite such a reading because of its very incorporation into his ἀπόδειξις. Thus, much of Herodotus' engagement with ἀκοή is also 'auto-biographical' and naturally prompts the 'construction' of a narrative *persona* within the text, one parallel to the 'immediate observer' noted above. And yet, while rhetorical appeals to ὄψις fall back on a well-defined epistemic principle – ὄψις trumps ἀκοή – an appeal to ἀκοή appears to have no such epistemic backbone. In other words, though Herodotus may seem to use references to ὄψις and γνῶμη in the way of a Hippocratic physician, his appeals to his 'sources' λόγοι are *not* to be read as references to ἀκοή at all. And indeed, Dewald's objections to a generalized

¹ Raaflaub, 2002, p. 161; Provencal, 2015, p. 69f.

² E.g. Lateiner, 1989, p. 167.

³ On direct speech being a distancing device see Lateiner, 1989, p. 20f.; Griffiths, 2006, p. 135.

⁴ Fowler, 1996, p. 76f.

⁵ Marincola, 1987, p. 121.

⁶ Luraghi, 2006, p. 77.

epistemic reading of Herodotus' source citations are penetrating. Thus, she points out that the distinction between Herodotus' own knowledge and the λόγοι he records are extremely rare, indeed perhaps even exceptional to the proem.¹ Moreover, when Herodotus explicitly intervenes as a critic, his intervention is usually confined to some small matter of local significance.² And even in those cases where Herodotus deigns to comment on his sources, he rarely explains how he arrived at this judgement or why it is warranted.³ Dewald also points out that the traditional model cannot sufficiently explain one of Herodotus' most common practices; his insistence on giving alternative versions and refusing to decide between them.⁴ She proposes, accordingly, that we read Herodotus' source citations not as appeals to ἀκοή as evidence, but as rhetorical devices meant to emphasize his very separation from the λόγοι.⁵ And, further, she proposes that we should read the dense 'meta-historie' about his sources and his λόγοι not as the intervention of critic commenting on the qualities of his sources – and, therefore, not literally – but as markers of his own laborious wrangling with λόγοι as he tried to pin them down.⁶ The dominant image Dewald proposes, then, is not of a historian citing his sources, but that of 'a harassed editor of an unruly text'.⁷ Thus, as his appeals to *autopsy* are meant to emphasize his own intervention as observer and traveller, his references to 'ἀκοή' are meant to signal to us the enormous effort of producing his own λόγος but, crucially, not the source of his λόγος. This image, of course, begs a fundamental question, namely why the editor should have ever wrestled with any λόγος to begin with. And, indeed, Dewald is sensitive to the criticism, proposing that Herodotus is interested in λόγοι *qua* λόγοι, as cultural products with an inherent value, and not as an account which could be true or false.⁸ A different answer to the same question is given by Luraghi who, however, is driven to ask it for similar reasons.⁹ Luraghi notes, with Dewald, that

¹ Dewald, 1987, p. 160.

² Dewald, *ibid.* Also see Lateiner, 2001, p. 143.

³ Dewald, 1987, p. 160f.

⁴ Dewald, 1987, p. 162f.

⁵ Dewald, 1987, p. 163.

⁶ Dewald, 1987, p. 153.

⁷ Dewald, 1987, p. 166.

⁸ Dewald, 1987, p. 165.

⁹ Luraghi, 2001, esp. p. 143.

Herodotus only rarely introduces an appeal to ἀκοή to 'lend credibility to the narrative' and, on those rare occasions that he deigns to prop up a judgement with an *argument*, he even picks arguments from analogy over hearsay.¹ As Luraghi notes, this leaves open the question of why Herodotus should bother to include reference to λόγοι at all. His answer, in one respect, is the same one Shrimpton suggested: the source citations are an appeal to the authority of the communities' knowledge,² albeit one tempered by the rules of a new genre.³ Luraghi, however, also advances a far more compelling explanation. Noting the intensely geographical nature of Herodotus' sources⁴ – as Fehling had done⁵ – Luraghi argues that Herodotus' source citations primarily refer to just this epichoric dimension. The mass of source-citations, then, are tantamount to a description, albeit a metaphorical one,⁶ of the 'social surface' of the λόγοι he has received.⁷ The source-citations, in other words, are not strictly speaking references to hearsay evidence. Luraghi is driven to this conclusion by one thing above all: the source citations make absolutely no reference to the process of collecting and sifting *stories* which the rest of his 'meta-historie' describes.⁸

Luraghi's position is perhaps the most complete version of this line of the performative reading, one which is committed *not* to reading Herodotean source-citations in terms of hearsay evidence and which, nonetheless, provides a plausible explanation for their inclusion, indeed for their prominence. It is for this reason, then, that the difficulties faced by Luraghi's thesis are important. Firstly, though Luraghi's position undeniably saves Herodotus from Fehling, it does so at the immense cost of eroding the fundamental distinction between descriptions of Herodotus' intellectual activity and descriptions of the world. If source citations are, at heart, *descriptions* of the human 'world', then it becomes considerably and unusually problematic to distinguish, on anything but arbitrary grounds,

¹ Luraghi, 2001, p. 142.

² Luraghi, 2006, p. 85.

³ Luraghi, 2006, esp. p. 87.

⁴ Luraghi, 2001, p. 144; 2006, p. 83ff.

⁵ Fehling, 1989, p. 12, 88ff.

⁶ Luraghi, 2001, p. 150.

⁷ Luraghi, 2001, p. 148, 151f.

⁸ Luraghi, 2013, esp. p. 110f.

any real differences between Herodotus' source-citations and, for instance, his accounts of the various religious beliefs of the peoples he has met. More importantly, however, as Luraghi himself acknowledges,¹ it is difficult to disentangle the performative component of the source-citations from a cognitive attitude with regards to ἀκοή.² Luraghi admits, therefore, that the mass of source-citations, if they *must* refer to an *external* tradition, would be inherently distancing.³ Nonetheless, Luraghi's thesis elucidates an important *geographical* dimension of Herodotean source-citations and, further, has also drawn an important distinction between source-citations and Herodotus' wider 'meta-historie' of ἀκοή which is, more properly, the subject of the following analysis. More generally, the performative reading has emphasized a fundamental dimension of Herodotus' 'meta-historie', namely its rhetorical function. Indeed, it is possible to restate the guiding assumption of the following analysis in light of this performative reading. I argue, then, that the articulation of a *positivistic* epistemology of λόγος – which it is my object to delineate – serves an important performative function in Herodotus' self-presentation.

And, indeed, various performative readings of Herodotus have, from the beginning, attempted to incorporate an 'epistemology of ἀκοή' into the interpretation of Herodotean source-citations and, more broadly, in his 'meta-historie' relating to ἀκοή. And, moreover, a variety of fluid epistemic Herodotean positions preponderate, varying from the epistemic nihilism of a Gorgias to a more positivistic position more compatible with that of Antiphon. The former position is already implicit in Fehling.⁴ After having 'proven' that all Herodotus' sources are fabricated, Fehling is, obviously, also left with the question of why Herodotus cites sources at all. He proposes that Herodotus attached source citations to distance himself from the λόγοι, namely those very accounts which he had himself invented or plundered from Hecataeus. Shrimpton correctly points out that this general tendency to distance himself speaks, rather, of Herodotus' good faith than free

¹ See esp. Luraghi, 2001, p. 145f.

² See Chapter Ten.

³ Luraghi, 2001, p. 143 n. 17.

⁴ Fehling, 1989, esp. p. 96ff.

invention.¹ Nonetheless, Shrimpton's broad statistical approach also leads him to agree with Fehling on the basic function of source-citations. And indeed, the phenomenon of distancing, and the role of source-citations in this practice, are well-known.² What Shrimpton proposes, however, is a rather more general position of 'distancing', one which appears to cover almost all instances of source-citations.³ Such a thesis cannot but suggest some general underlying principle about testimony. And indeed, we need look no further for the *locus* of this prejudice than the well-established prejudice 'ὄψις trumps ἀκοή'. In citing ἀκοή, then, one also tacitly admits that one cannot cite ὄψις and, therefore, that one's assertions are questionable. Lateiner is similarly impressed by the overall negative picture of picture of Herodotus the limited sceptic and justifiably draws attention to the many distancing devices that Herodotus uses and on his insistence on defining the boundaries of his own knowledge, both geographical and temporal.⁴ The scepticism which Lateiner proposes is more circumscribed than that of Shrimpton and, as already mentioned, his analysis of Herodotus' more positive forays into ἱστορίη comes rather close to that of Jacoby. Nonetheless, he proposes that the dominant epistemic theme which we find in Herodotus is one of epistemic resignation. In place of Homer's strident omniscience, we find that Herodotus' voice is one full of scepticism and doubt.⁵ The clearest sign of this resignation is the Herodotean practice of including alternative versions, often without comment. In these cases, Lateiner proposes, Herodotus surrenders completely and turns his *data* over to his audience and the authority of another, external authority, the *audience*.⁶ Darbo-Peschanski also argues for a similar position, defining ἱστορίη as a 'judged judgement' and, therefore, the object of two distinct, indeed divergent, *authorities*: that of Herodotus' own ἱστορίη and the audience, whom Darbo-Peschanski proposes is the ultimate authority.⁷ Once again, then, in

¹ Shrimpton, 1997, p. 246.

² See below.

³ Shrimpton, 1997, p. 245f.

⁴ Lateiner, 2001, 148; 2006, p. 83. See also Hornblower, 2002, p. 379f.

⁵ Lateiner, 1989, p. 26.

⁶ Lateiner, 1989, p. 31f.

⁷ Darbo-Peschanski, 2013, p. 78f., 283ff.

emphasizing on the authority of the audience, one which must supervene on that of Herodotus, cannot help but strike the melancholy chord of scepticism.

A more positivistic reading of Herodotus' attitude to λόγοι, however, is also possible. Marincola, for example, noting that source-citations are fundamentally related to intensely polemical passages, suggests that they were used as a means of bolstering his argument.¹ This is, of course, just what we would expect if source citations were a form of 'evidence'. Herodotus, then, can cite a source, much as a litigant can summon a witness, to corroborate some point – however insignificant – in his narrative.² This evidentiary reading, however, need not neglect the important 'rhetorical' role of his engagement with ἀκοή. Goldhill has drawn attention to the role of such ἀκοή statements in the construction of the persona of the ἵστωρ, an intellectual master who evaluates evidence and who presents an account in accordance to this evidence.³ The crucial point to note, however, is that the evidentiary status of testimony is fundamental to this function. In other words, it is because source-citations are presented as epistemic and evidentiary tools that they can play a role in the construction of the *persona* of a critical ἵστωρ. Fowler has also persuasively shown that Herodotus' 'voice-print' is tied to his discovery and, more importantly, his explicit engagement with the 'problem of the sources'.⁴ Similarly, Cartledge and Greenwood have argued that the shifting authority of Herodotus' ἱστορίη depends on his expressed relationship to his sources and, further, that this relationship may well be an epistemically fruitful one.⁵ The following reading of the geographical descriptions of Scythia and the Nile are entirely compatible with this epistemic-rhetorical model. I argue, then, in opposition to the sceptical model of Shrimpton and Luraghi, that testimony is positively evaluated in these passages and, in view of this positive evaluation, forms an integral part of the basis of Herodotus' authority. And, further, just as references to ὄψις depend on an epistemic principle – ὄψις trumps

¹ Marincola, 1987, p. 128. Also see Thomas, 2018, p. 265f.

² Fowler, 2006, p. 32.

³ Goldhill, 2002, p. 15.

⁴ Fowler, 1996, p. 79f.

⁵ Cartledge and Greenwood, 2002, p. 255, 259, *et passim*.

ἄκοή – so do appeals to ἄκοή depend on an epistemological position, one which I argue is comparable to that of Antiphon. References to ἄκοή, then, are analogous to those of ὄψις. Indeed, as I argue below, Herodotus, like Antiphon, approximates the two epistemic resources to one another. Schepens, who proposes an underlying positivistic principle,¹ has also drawn attention to this close interaction of these two epistemic resources.² Yet, he adopts a narrow definition of ἱστορίη, contrasting it with ἄκοή, and approximating it to vision in virtue of its also being ‘*personal* research’.³ As I argue below, this distinction between ἱστορίη and ἄκοή is not the distinction which Herodotus emphasizes, at least in the passages examined. His ἱστορίη, rather, stretches beyond the world of knowledgeable sources and up to the end of the world, albeit sometimes carried on by surrogate ἱστορεῖς. The main difference he seems to emphasize, rather, is that between the epistemic consequences of hearsay based on knowledgeable and credible ‘witnesses’ on the one hand, and the opposite on the other. This is, fundamentally, the same distinction Antiphon makes.

9.2: The Twin Horns of ἄκοή

In the following section, I argue that Herodotus routinely allows for two opposite reactions to hearing a λόγος: scepticism and, conversely, the acceptance of a λόγος as a legitimate epistemic source and an evidentiary tool. At first sight, this ambivalence to λόγοι appears to be somewhat contrary to the situation we find in Antiphon’s speeches. Indeed, no one would have imagined summoning a witness in order to distance himself from the assertions made. And yet, this ambivalence is also inherent in Antiphon’s own dealing with λόγος. Indeed, it is fundamental to it. What Antiphon’s litigants repeatedly do is to characterize their own λόγοι and the λόγοι of their own witnesses as credible, a form of speech which must be distinguished from incredible λόγοι which ‘happen’ to belong

¹ Schepens, 1980, esp. p. 70.

² Schepens, 1980, p. 65 *et passim*.

³ Schepens, 2007, p. 44.

entirely to their opponents. Litigants, then, consistently attempt to legitimize their own λόγοι and those of their witnesses as being of the 'right sort' and compare them to their opponent's witnesses who are of the 'wrong sort' and, which is the crucial point, propose rational criteria by which this can be shown. Herodotus too allows for both parallel reactions to λόγοι and, which is one crucial difference, accommodates both sorts of 'witness depositions' into his own λόγος.¹

a. The First Horn: 'I do not know, but it is said'

It is now a truism to say that Herodotus carefully sought to preserve his own authority at the expense of λόγοι internal to his *Histories*. Indeed, as already mentioned, Fehling and Shrimpton have suggested that this dictum should be extended to the whole range of source-citations as a general rule. Herodotus' three hundred or so references to his sources would, in this case, constitute a blanket insurance policy, cumulative in its effect, one which allows Herodotus to relate any odd fable he cares to while passing off as a serious, discerning, ἴστωρ.² This 'distancing' effect is to be contrasted, primarily, to rhetorical appeals to ὄψις which furnish statements, especially fantastical statements, with the opposite quality: the veneer of authority and truth. In marked contrast to source-citations, then, Herodotean claims to have seen something are emphatically positive 'operators of belief',³ a πίστις designed to overawe and convince his audience. And, moreover, this rhetorical function neatly falls back on a solid epistemological basis, the 'constant epistemological assumption'⁴ of Ionian thought, namely that ὄψις is the supreme form of knowledge available to man. Quite beyond matters of etymology,⁵ the pre-eminence of ὄψις is vindicated by a large variety of texts.⁶ Herodotus too, in the infamous Gyges' parable, appears to endorse this position, no less than at the very start

¹ On the differences between Herodotus' and Antiphon's handling of λόγοι see Chapter 11.

² See esp. Shrimpton, 1997, 230f.

³ Hartog, 1988, p. 264.

⁴ See Marincola, 1997, p. 66.

⁵ Chantraine, 1968-74, 3:779 s.v. οἶδα. See Thomas, 2000, p. 164; Schepens, 2007, p. 41.

⁶ See p. 13f.

of his text.¹ Moreover, as the Gyges episode also indicates, indeed explicitly states in gnomic fashion, the pride of place for ὄψις comes at the explicit expense of ἀκοή.² ὄψις, in other words, *trumps* ἀκοή. This is the immediate and emphatic consequence of the primacy of ὄψις. And, moreover, this epistemological principle appears to explain, simply and cogently, the alleged distancing effect of source-citations. If claims to have ‘heard something’ are also, as Hartog notes,³ an implicit declaration of having *not* seen something, then such statements are indeed inherently distancing. They are, in fact, not references to ἀκοή so much as declarations of ignorance or, at best, imperfect knowledge which can, at least theoretically, be improved. The rhetorical distance which separates ὄψις and ἀκοή statements, then, corresponds exactly with this epistemic distance. Moreover, there is good evidence – primarily in the fragmentary work *On Not Being* – that this epistemological position was expressly articulated in Herodotus’ day. And, to be sure, if we turn to Herodotus, we quickly find the influence of this sceptical position. Indeed, it appears to be implicit in the very way Herodotus explicitly refers to vision and hearsay.

Starting with the term ὄψις,⁴ we note that much like the word ‘vision’, it may be used in one of two ways. Used in the commoner ‘objective’ sense, ὄψις refers to an object seen, usually dreams which have been sent⁵ by or solicited⁶ from a god. Used subjectively, generally in the prepositional phrase ἐς ὄψιν which follow on a verb of motion, the term denotes, most explicitly, someone’s presence. In most cases, however, the reference to ‘eyesight’ lies in the background. Thus, the rhetorical effectiveness of the expression ἐς ὄψιν in Hdt. 3.11, in which Herodotus describes children entering the ὄψις of their father to be immediately butchered, relies on the image of a father *seeing* his children die. Furthermore, the same principle – though curiously inverted – can be found in Antiphon,

¹ On the different ‘epistemologies’ of the two figures see esp. Benardete, 1969, p. 11f.; Hartog, 1988, p. 269.

² Nenci, 1955, p. 21.

³ Hartog, 1988, p. 270.

⁴ See esp. Hartog, 1988, p. 168f.

⁵ E.g. Hdt. 3.65.

⁶ E.g. Hdt. 4.172.

who refers to autoptic witnesses as ‘those present’.¹ Presence, then, implies sight and sight presence, an equivalence which stresses the most important characteristic of ὄψις, its directness. Nonetheless, an examination of these instances quickly reveals that entering a man’s ὄψις is not simply a matter of seeing or, indeed, being literally present. It is, rather, an inherently political act. Thus, it is invariably a man of inferior status who is said to enter his superior’s ὄψις. In the very first occurrence of the expression, then, a child ‘enters the presence of his father’ for the first time and is acknowledged by him.² More commonly, it is a dependent or a subject who enters into the presence of kings and tyrants. In these cases, entering within someone’s field of ὄψις appears to imply a power-relation between the ‘object seen’ and the ‘seer’. The political significance of entering into another’s ὄψις may also be glimpsed from the story of the first Median King who, in an effort to consolidate power, sought to sequester himself away from the subjects’ *sight*.³ When the same term is applied to Herodotus, however, we note that the references to eyesight and, therefore, to the supreme epistemic source, are far less oblique. Indeed, Herodotus’ references to his own ὄψις invariably indicate – whether truly or falsely – the author’s visual apprehension.⁴ This is, of course, not the only way in which Herodotus indicates that he has seen something.⁵ Nonetheless, we may note forceful and explicit references to ὄψις occur in prominent places and, in particular, in geographical excursuses.⁶ In Hdt. 2.29, for example, Herodotus assures his audience that he had seen the Nile up to Elephantine, while Herodotus’ long and intricate thesis on the wondrous nature of Egypt – the ‘gift of the Nile’ – finds many references to visible ‘indications’ laid out, like signposts, on a hypothetical trail into the Egyptian hinterland.⁷ The supreme importance of ὄψις is, perhaps paradoxically, especially evident in those cases in which Herodotus discusses those things which he has *not* seen.⁸ At Hdt. 2.146,

¹ E.g. τῶν δὲ μαρτύρων ἀκηκόατε, οἱ παρήσαν παροινούντι αὐτῷ. Antiph. 4.1.7.

² Hdt. 3.11.

³ Hdt. 1.99.

⁴ E.g. Hdt. 2.99.

⁵ See Schepens, 1980, p. 46ff.

⁶ Schepens, 1980, p. 56ff.; Marincola, 1987, p. 125f.; Luraghi, 2001, p. 144.

⁷ Hdt. 2.5ff.

⁸ Marincola, 1987, p. 126.

for example, Herodotus explicitly tells us that he did not see the island of Chemmis moving, a wonder to be sure, and, more importantly, a claim that Hecataeus seems *not* to believe. As Marincola has argued, this negative declaration, and others like it, are an essential component of Herodotus' polemical arsenal.¹ More generally, however, and particularly in the geographical excursuses, statements which delimit ὄψις serves to mark the limits of Herodotus' authority as a visual source. They also, significantly, mark the beginning of his dependence on *the* other resource, ἀκοή. Thus, to return to the example given, immediately after Herodotus assures us that he has seen the Nile up to Elephantine, he goes on to add that he only knows the rest, ἐπὶ μακρότατον, by means of ἀκοή. In other words, the emphasis on the value of ὄψις as a secure epistemic resource occurs, as Shrimpton's model predicts, in the context of an explicit contrast to another, inferior, more circuitous means of apprehension, *mere* hearsay. Moreover, the audience is surely invited to divide the text, as Herodotus divides the earth, into those parts which are to be believed implicitly and which they can trace to Herodotus' ὄψις, and those parts which are to be disbelieved regarded with suspicion. And, indeed, if we turn to examine the few instances of the word ἀκοή in Herodotus, we find that this impression of scepticism is further vindicated. Thus, in four of the six times 'ἀκοή' is used, ἀκοή is explicitly and pejoratively contrasted to ὄψις.² To be sure, Herodotus also exploits this same polar opposition between ὄψις and ἀκοή in less explicit ways. Thus, in Hdt. 1.92, Herodotus asserts that Croesus's offerings at Brachidae are equal to those he made to Delphi 'as far as [he] can learn'. This passing remark is implicitly contrasted with the prolonged description of the Delphic gifts which irresistibly suggests Herodotean ὄψις.³ Once again, the audience is invited to think that one claim is more credible than the other.

Nowhere is the polar opposition between ὄψις and ἀκοή clearer and more emphatic than

¹ Marincola, *ibid.*

² Hdt. 2.29, 148; 4.16 (*bis*).

³ Hdt. 1.50f.

in the methodological excursus which separates the Egyptian λόγος into two halves:

Up to this point, I have spoken from my own ὄψις, my own γνώμη and my own ἱστορίη. From now on, however, I will speak from Egyptian accounts as I have myself heard them, adding something of my own ὄψις.

Hdt. 2.99

The prominence of this text in the discussions of Herodotean method is indicative of the importance of these mere thirty-five words. Schepens, in his examination of Herodotean ὄψις, proposes that in this text Herodotus distinguishes between two fundamentally different types of ἱστορίη, each treating of distinct 'objects', the one geographical, the other historical.¹ Moreover, this epistemic difference translates into two different models for the relation between ὄψις and ἀκοή. In ethnographical and geographical excursuses, which treat of the eminently and perennially visible, ὄψις naturally yields to the ἴστωρ direct access to the object of study.² Because of this basic fact, Schepens argues, Herodotus proceeds by using his ὄψις and his γνώμη to form a hypothesis and then by confronting this hypothesis with the ἀκοή of the locals.³ Thus, before Herodotus moves to attack the various Ionian hypotheses of the Nile's inundation, he asks the Egyptians, without much luck, what their belief on the matter was.⁴ Conversely, in the domain of 'history' which is necessarily dependent on reports of what was once visible but is no longer so, the relationship between ὄψις and the object is inverted.⁵ Herodotus must begin with ἀκοή and proceed to confront, where he can, these accounts with his own

¹ Schepens, 1980, esp. p. 54f.

² Schepens, 1980, p. 58ff.

³ Schepens, 1980, p. 62ff.

⁴ Hdt. 2.19.

⁵ Schepens, 1980, p. 70 *et passim*.

ὄψις of monuments, bones and other such things. A more unitarian approach is, of course, possible.¹ Luce, for example, proposes that Hdt. 2.99 points not to some analytical distinction in Herodotus' subject matter, but to the relatively more mundane business of the availability of ὄψις and ἀκοή.² What is crucial for the discussion at hand, however, is the more fundamental fact, namely that Herodotus carefully and programmatically differentiates his own epistemic resources and arranges them in a hierarchical order, starting with ὄψις, moving on to γνώμη, and ending with ἀκοή.³ And, indeed, Herodotus appears to signal his disdain for ἀκοή in a veritable panoply of ways, some subtle, others less so.⁴ The best-known example of the former sort are the oblique infinitives, discussed in exquisite detail by Cooper.⁵ Fowler has also shown that single words, such as the enclitic ποῦ, may be used to indicate Herodotus' scepticism.⁶ The various source citations which Herodotus uses also have a varied distancing effect. The passive verb λέγεται, for example, indicates nothing about, 'when, how, by whom, or for whom' the account was produced and, consequently, invite greater scepticism.⁷ Other expressions such as 'as far as I have been able to learn (by hearsay)'⁸ can also hardly fill the audience with great confidence. Furthermore, it is not only the form of the source-citation which may indicate distance, its position may also do so. Herodotus, then, may place a strategic 'they say' at the climax of a story to imply that it is just that, a good story.⁹ Herodotus' sceptical attitude to λόγοι, however, may have affected his text in even more fundamental ways. Shrimpton, among others, has noted that source-citations decrease substantially in the latter parts of the book and, therefore, when Herodotus is reporting events which are better known.¹⁰ Moreover, many have detected a sceptical

¹ See, among others, Immerwahr, 1966, p. 315; Gould, 1989, p. 10.

² Luce, 1997, p. 16. Also see Thomas, 2000, p. 164f.

³ Luraghi, 2001, p. 142.

⁴ See Dewald, 1987, p. 160ff.; Waterfield, 2009, p. 488ff.

⁵ Cooper, 1974.

⁶ Fowler, 1996, p. 70.

⁷ Lateiner, 1989, p. 22; Fowler, 1996, p. 78; Waterfield, 2009, p. 489

⁸ E.g. Hdt. 1.171.

⁹ E.g. 4.55.3. On the distancing effect of this verb see Waterfield, 2009, p. 490.

¹⁰ Shrimpton, 1997, p. 238ff. One may point out, however, that these events were not seen and, therefore, ultimately also rely on 'hearsay'. Moreover, these events were also better known by his audience. Herodotus' omission of source-citations in these latter works does not, in any way,

attitude behind Herodotus' programmatic declaration that his policy is to repeat λόγοι without believing them and, especially, in the inclusion of alternative, competing, versions without declaring as to which one is to be preferred.¹ We may plausibly be to suspect, then, that Shrimpton's reading of Herodotus as a sceptic about λόγος is correct.

b. The Second Horn: 'I know because I have heard'

It is clear, then, that Herodotus was deeply conscious of the weakness of λόγος, particularly in the face of the overwhelming certainty which accompanied ὄψις. Moreover, he appears to have exploited this weakness for his own rhetorical ends. Thus, Herodotus could allow himself the luxury of recounting a fabulous tale, while guarding himself with a 'credibility shield', namely a 'source-citation'. The audience, motivated by the same prejudice against ἀκοή would, naturally, pick up on this cue and respond appropriately. So ingrained is this epistemic prejudice, that this very position, an inherently sceptical one, also appears to be implicit in the language Herodotus uses to refer to his eyes and ears. Shrimpton's thesis, then, both intrinsically plausible and supported by a broad statistical analysis of Herodotus' text, appears to be incontestable. And, indeed, Shrimpton's findings are not, *a priori*, incompatible with the epistemic reading being defended. Any thesis which posits that λόγος is a problematic source of knowledge is not disproven by episodes in which λόγος causes problems. It is disproven if λόγος *only* causes problems and, therefore, if Shrimpton's thesis is ascribed universally to all of Herodotus' source citations.

We may note, as a start, that such a hypothesis risks turning Herodotus into a sceptic of the Gorgianic sort. Such a radical scepticism about λόγος, however, appears to sit uncomfortably alongside several *key* characteristics of Herodotus' text. Crucially, an

disprove the thesis that source-citations are forms of *evidence* cited in *favour* of a hypothesis, since it is entirely expected for the author to dispense with citing evidence when relating relatively well-known states of affairs.

¹ E.g. Hdt. 2.123.

author who characterizes his inquiry as ἱστορίη, who tells us hundreds of times that he has spoken to epichoric sources,¹ and who emphasizes that he has sought such testimony in order to learn better,² hardly sounds like a radical sceptic. And, to turn to more concrete evidence, a universal application of Shrimpton's thesis would be very hard pressed to explain several important passages found in Herodotus, namely the very excurses that I examine in the following chapter. These geographical descriptions suggest, rather than blanket scepticism, a deep concern with the limitations of ἀκοή and his own ἱστορίη but, nonetheless, a willingness to grant to ἀκοή a positive and important epistemic function. They suggest, in sum, that Herodotus, though aware that ὄψις does, in fact, trump ἀκοή – no one could deny this basic rule and pass off as engaged in serious ἱστορίη – also carves out a legitimate domain for ἀκοή in which it can operate successfully as a source of knowledge.

For the most succinct indication of this positivistic position, one need look no further than the expression οἶδα ἀκούσας, which translates to 'I know because I have heard'. Admittedly, the expression is rare in Herodotus, occurring only three times in the first four books.³ Yet, in each case, the expression is a strong assurance of Herodotus' knowledge and a clear assertion that this knowledge is dependent on access to the relevant sources. Other uncommon expressions such as εἰδέναι λόγῳ⁴ and ὡς ἐγὼ πυνθανόμενος εὐρίσκω⁵ also suggest that Herodotus has come to know something by means of ἀκοή. An examination of these instances, therefore, appears to be the natural place to start the investigation. Prior to this, however, a somewhat abstract distinction between two types of 'λόγος-dependent knowledge' must be made, a distinction which Herodotus seems to acknowledge. Learning a λόγος obviously leads to a knowledge *of* the λόγος in question. In other words, one learns the contents of an account by listening to it. Thus, Herodotus credits Homer with having learnt of the alternative account of the Trojan war, τὸν λόγον

¹ See Shrimpton, 1997, p. 237.

² Hdt. 2.3.

³ Hdt. 1.20, 2.52, 3.117.

⁴ Hdt. 2.150.

⁵ Hdt. 1.105, 2.50.

τοῦτον πυθέσθαι, and of demonstrating that he knows this account in his poetry, τοῦτον ἐπίσταιτο τὸν λόγον.¹ The chiasmic repetition of verb and object emphasizes that learning, πυθέσθαι, has led to knowledge, ἐπιστάσθαι. Similarly, in Hdt. 1.95, Herodotus credits himself with knowledge of three alternative and unreliable versions of the story of Cyrus's upbringing, ones he explicitly distinguishes from 'the true account'.² It is clear, then, that Herodotus can have knowledge of mutually contradictory accounts told by partial and unreliable sources. Indeed, he can also have knowledge of accounts he believes to be false. Someone's knowledge of a λόγος, then, implies nothing about the reliability of the source or the truth of the account. This will turn out to be a crucial difference between the two types of λόγος-dependent knowledge found in Herodotus' works. The second type of λόγος-dependent knowledge, which can be designated 'knowledge *by* λόγος', is a far more problematic proposition.³ In these cases, the object of the knowledge is not the λόγος itself, but the external reality, the ἔργον, to which the λόγος refers. The basic tenet of any positivistic epistemology of testimony, then, can now be stated in terms of this distinction: Herodotus is positivistic if he believes that 'knowledge by λόγος' is also possible.

With this basic distinction in mind, we turn to the texts. For ease of exposition, it is best to treat the various verbs of knowing and learning separately. Starting with εἰδέναι, we may note that the two expressions οἶδα ἀκούσας and εἰδέναι λόγῳ are virtually synonymous. They indicate that Herodotus had gained knowledge of a historical *fact* by listening to his sources.⁴ In Hdt. 1.20, then, Herodotus claims to 'know by hearing' that Alyattes consulted the Delphic oracle because of a protracted illness. Similarly, Herodotus asserts that he 'knows by λόγος' that the Assyrians have disposed of dug-up

¹ Hdt. 2.116.

² λέγειν τὸν ἕντα λόγον, Hdt. 1.95

³ The second type of knowledge (knowledge *of*) presupposes and implies the first type, though the reverse is not true.

⁴ Hdt. 1.20: Alyattes became ill after accidentally setting fire to a temple; Hdt. 2.52: the Pelasgians did not name their gods; Hdt. 3.117: Darius acquired much money for opening his damns; Hdt. 2.150, in Ninus men disposed of dug earth in the river.

earth by throwing it in a river.¹ It is unclear why, or even if, Herodotus has taken his sources at their word. When a source of one of these λόγοι is identified, it falls in line with Fehling's rules. Thus, the *Delphic* sources claim that Alyattes had consulted the *Delphic* oracle.² Likewise, Herodotus declares that he has achieved knowledge on matters of religious history by hearing the inhabitants of Dodona, a major and ancient religious site.³ The validity of Fehling's observation, however, ought not to obscure one basic fact: Herodotus' practice is entirely rational and, indeed, expected. Indeed, this is just what made Fehling suspect Herodotus' mendacity. Moreover, this concern about the basic competence of a source is not dissimilar in its effect to the repeated declarations, by Antiphon's litigants, that his witnesses *know* what they are talking about. Beyond this basic competence of sources, one may also note that the claims of the Delphians seem to be backed up by another source, the Milesians, who were also involved with Alyattes at the time. One may assume, perhaps, that Herodotus approved of his unnamed sources for similar reasons. The text itself, however, suggests nothing of the sort. Indeed, these instances are hardly an invitation to speculate about the qualities of Herodotus' sources which are, even in these cases, usually undisclosed. Rather, these expressions are strong assertions of the authority of someone who knows and who is sharing his knowledge and, secondly, an indication of the epistemic source of this authority, λόγος and, hence, 'testimony'. Above all, then, they are an incontrovertible admission that knowledge *by* λόγος is achievable and, in fact, achieved.

A series of objections, however, must be raised at this point. Firstly, this reading imposes a heavy strain on a mere expression, οἶδα ἀκούσας, and a rare one at that. Even if it is granted that this is not a mere turn of phrase, the epistemological weight of the expression may be considerably less than 'I know because I have heard'. Indeed, Herodotus does occasionally use εἰδέναι in a non-veridical sense.⁴ This is precisely the

¹ Hdt. 2.150.

² Hdt. 1.20. On Delphic sources see Murray, 2001a, p. 31f.

³ Hdt. 2.52.

⁴ Hdt. 2.43.

position Fehling takes with regard to arguably the most important instance of οἶδα in the *Histories*, that found immediately after the proem.¹ There is nothing to suggest, then, that any such instance of οἶδα ἀκούσας is a strong assertion of knowledge. In line with Fehling's reading, we may even suspect that the particle ἀκούσας has a concessive ring to it, considerably loosening the epistemic strength of the verb οἶδα. It seems, then, that there are plausible grounds for translating the expression as 'I know though (only) by hearing' or even 'I believe, though only because I have heard it said'. 'Οἶδα ἀκούσας', then, may come rather close to other expressions which Herodotus uses to refer to his 'learning' from a source, expressions such as ὡς ἐγὼ πυνθάνομαι, which appears to qualify an assertion, quite straightforwardly, with the suggestion that it only represents the tentative results of Herodotus' investigation.² And yet, an examination of the various expressions which Herodotus uses to refer to his own belief and knowledge clearly shows that these expressions are markedly different. To cite one important difference, an examination of the verbs of knowledge in Herodotus loosens the analogy between οἶδα ἀκούσας and ὡς ἐγὼ πυνθάνομαι considerably. On a merely formal level, clear differences in Herodotus' use of the two verbs emerge. Thus, 39 of the 87 instances of εἰδέναι in the first four books of Herodotus are ascribed to himself.³ These account for just over 44% of the instances of the verb. This proportion falls to 18% for πυνθάνεσθαι, which is preferentially ascribed to characters in, and not to the author of, the text.⁴ This preferential ascription of 'knowledge' to himself is a clear indication of the asymmetry between the two terms. Moreover, πυνθάνεσθαι, unlike verbs of knowledge, is only rarely used to characterize Herodotus' sources.⁵ Even more dramatically, when εἰδέναι is used of characters, negations and assertions are found in almost equal numbers.⁶ On the other hand, the verb πυνθάνεσθαι is never negated. The reason for these trends is

¹ Fehling, 1989, p. 58f. For extremely persuasive criticism see Fowler, 1996, p. 83f.

² E.g. Hdt. 1.22, 92; 2.8; 4.95.

³ E.g. Hdt. 1.5, 14, 23, 94, 142, 178, 193.

⁴ Hdt. 1.22, 92, 105, 170, 196, 214; 2.8, 18, 19, 29, 44, 50, 75, 148; 3.12; 4.24, 95.

⁵ Hdt. 2.54 (*bis*).

⁶ Positive: Hdt. 1.20, 45; 2.43, 51; 3.146; 4.76, 115. Negative: Hdt. 1.78, 86; 2.2, 134; 3.76; 4.25, 42, 81.

clear. While εἰδέναι refers to a cognitive feat which may, or may not be, successfully accomplished, πυνθάνεσθαι need not imply that any conclusive verdict on the issue being investigated is reached. Indeed, the activity entailed by πυνθάνεσθαι does not even mean that a method for answering the question has been found.¹ Thus, when Herodotus ascribes πυνθάνεσθαι to himself in the geographical passages, he usually adds a qualifier to indicate the success of his 'learning'. None of this is true of εἰδέναι. These differences, then, clearly show that the expressions οἶδα ἀκούσας and ὡς ἐγὼ πυνθάνομαι are not comparable in meaning or effect. We may surmise, then, from this example, that not all Herodotean 'meta-historie' referring to Herodotus' ἀκοή are equivalent. Moreover, these differences in the meaning of expressions which Herodotus uses to refer to his own reaction to λόγοι is just what we should expect from an author whose engagement with λόγος was not monolithic, but complex, even ambivalent at times. The various forms of source-citations, then, as Hartog has proposed, are multivalent and belie a complex relationship to λόγος.² Moreover, the positive epistemic role of testimony indicated such expressions as οἶδα ἀκούσας is also clearly spelled out in other passages of the *Histories*. One such series, all autobiographical in tone, explicitly associates Herodotus' desire for knowledge with the interrogation of his sources. Thus, in Hdt. 2.19, wanting to know, βουλόμενος εἰδέναι, about the nature of the Nile and the winds in Egypt, he interrogates, ἰστόρεον, the locals. Even more emphatically, in Hdt. 2.44, when Herodotus wants to know 'something clear' about the antiquity of Heracles, he travels to Tyre to interrogate the clergy there. In each case, then, the desire to *know* spurs Herodotus' ἱστορίη which involves, at least in part, the interrogation of the relevant sources. And, more importantly, other, even starker, expressions of the positive epistemic role of testimony can also be found in Herodotus' geographical excursions, examined in the following chapter.

Moving on to the expression ὡς ἐγὼ πυνθανόμενος εὕρισκω, used twice in the first four

¹ Hdt. 2.2.

² Hartog, 1988, p. 269ff.

books, we find another strong assertion of the positive results of testimony. In both cases, things start predictably enough. In a short digression on Aphrodite's worship,¹ Herodotus claims to have 'discovered by inquiry' that the temple of Aphrodite in Syria is the most ancient of all temples dedicated to the goddess. Yet, the ground he gives for this assertion is not a source-citation to that effect. Rather, Herodotus cites sources in Cyprus and Cythera who admit that their own temple was dependent on the older Syrian temple. The assertion that the temple in Syria is the *most* ancient of *all*, then, cannot depend on this testimony alone. The superlative form of the assertion is a clear indication of this. Instead of merely learning what his sources know, then, Herodotus uses the available testimony to arrive at a conclusion of his own making and, indeed, in arguing for this conclusion. Indeed, this is the rhetorical value of the intensive ὡς ἐγὼ εὐρίσκω, 'as I have discovered for myself'.² A similar claim may be found in Hdt. 1.214, where, in contrast to the terseness of ὡς ἐγὼ πυνθανόμενος εὐρίσκω, Herodotus lavishes us with a longer description of his reasoning:

This fight I judge (κρίνω) to be the fiercest one fought among non-Greeks, and indeed I learn (πυνθάνομαι) that it is so, for it is said (λέγεται) that first the armies stood apart and fired arrows at one another, then, when their missiles were spent, fell upon one another with spears and swords. They stood fighting for a long time and neither side wished to flee. Finally, the Massagetæ prevailed and much of the Persian army was destroyed on the spot and even Cyrus fell... Many stories are told (πολλῶν λόγων λεγομένων) about the way in which Cyrus ended his life. This, however, is the most credible one that was told to me. (ὅδε μοι ὁ

¹ Hdt. 1.105.

² E.g. Hdt. 2.50, where Herodotus asserts to have 'discovered by inquiry' that nearly all the names of all the gods came to Greece from abroad.

Once again, Herodotus is arguing for a historical hypothesis he believes to be true, namely that ‘the relevant battle was the fiercest ever fought among barbarians.’ The three verbs κρίνω, πυνθάνομαι and λέγεται point to three separate cognitive acts which are involved in his arriving to this conclusion. Λέγεται, as already noted, is a common Herodotean source-citation usually marked for its ‘distancing’ effect, though is here attached to an episode in which Herodotus claims knowledge. Regardless of its precise effect in the passage above, the impersonal verb points to one of Herodotus’ ubiquitous activities, speaking to his sources. On the other hand, the separation of κρίνω and πυνθάνομαι finds fewer exact parallels. The closest parallels are those rare occasions in which Herodotus emphasizes that he has believed something long before he has heard some corroborating piece of ἀκοή. Herodotus, for example, boldly declares that he had thought of his own definition of Egypt before it was ever confirmed by Ammon’s oracle.¹ The separation of the verbs in the above text has the same effect. It declares the independence of Herodotus’ judgement – described in rather forensic terms – from the testimony of his sources. The details of how Herodotus came to judge this battle to be the fiercest are irrecoverable and, for our purposes, unimportant. Yet, as usual, Herodotus leaves a clear indication of where his ‘learning’ came from: the very testimony of the nameless sources already mentioned. It is only in this context, as testimonial evidence for a Herodotean hypothesis, that the short description can be fully understood. Thus, every detail given emphasizes the ferocity of the battle: both armies spent all their missiles before, were engaged in melee for a long time, most of the Persian army is destroyed, one of the monarchs involved was slain on the battlefield. This was indeed a fierce battle. We find in this passage, then, a rather precise analogue of the method

¹ Hdt. 2.18

Schepens detected in the geographical passages of Hdt. 2.¹ A *historical* Herodotean hypothesis is confronted with the λόγοι of the locals and confirmed by it. We also note, however, an additional element, namely Herodotus' fiercely asserted independence, also noted by Schepens.² Though Herodotus' conclusion depends on the testimony of the nameless sources and, moreover, is presented as dependent upon it, it is simultaneously presented as an *autonomous* judgement of Herodotus, κρίνω. This judgement, moreover, culminates in Herodotus' self-proclaimed knowledge of *facts*. This is just what the phrase πυνθάνομαι οὕτω τοῦτο γένόμενον asserts. Indeed, the results of Herodotus' discovery – the battle was the fiercest battle between barbarians – replicates the superlative form of several explicit assertions of Herodotus' knowledge and is directly comparable to Herodotus' discovery that the temple in Syria is the oldest in the world, an assertion which also depends on *autopsy*. Once again, then, Herodotus claims to have achieved knowledge which is simultaneously dependent on testimony and which also outstrips the accounts of his sources in its generality.³ A second distinction, then, must be made between two kinds of knowledge *by* λόγος. The first, best represented by the expressions οἶδα ἀκούσας and εἰδέναι λόγῳ, is 'testimonial knowledge' in the strict sense. In these cases, Herodotus succeeds in coming to know what his sources know and no more. Herodotus, then, has come to know that the Pelasgians used no names for their gods because the inhabitants of Dodona say that it was so. Testimony is, in other words, a *heuristic* device to which one may point in justifying one's assertion of knowledge. In the last two instances examined, on the other hand, testimony is best characterized as a form of 'evidence' to be used in support of a Herodotean hypothesis, usually one more general in scope than the source's own words. Knowledge is, as in Antiphon, the emphatic result of this demonstrative process. In this way, Herodotus can declare that he has come to know, on the basis of testimonial evidence of the Egyptians

¹ Schepens, 1980, esp. p. 62ff.

² Schepens, 1975; 2007.

³ Thus, while his sources remain fundamentally parochial and tied to local events, Herodotus claims to have surveyed the whole total of barbarian history and concluded that no other battle was as fierce as this.

and the inhabitants of Dodona, that most of the god's names came to Greece from abroad.¹

To summarize, then, I have argued that Herodotus, despite his commitment to the superiority of ὄψις to ἀκοή, allows for the three types of λόγος-dependent knowledge. The first, and most basic type, can be termed knowledge *of* λόγος. In such cases, the listener merely knows the contents of an account. Such knowledge, however, is of little use if ἱστορίη is to rise above the level of mere λόγος. This transition, from knowledge of λόγοι and knowledge of *fact*, one which Gorgias denies can occur,² is accomplished by the second and third kinds of λόγος-dependent knowledge, collectively termed 'knowledge *by* λόγος'. Herodotus, then, may use ἀκοή as evidence in favour of a hypothesis which is thereby confirmed as true. In these cases, he often marks a process of discovery with an intensive first-person verb, with marks his overstepping the limited vision of his sources. Herodotus may also rely on ἀκοή to come to know what his sources tell him and no more and, therefore, use ἀκοή as an epistemic resource. These two uses of testimony may, very broadly, be mapped onto the 'evidentiary' and the 'heuristic' uses found in Antiphon's rhetoric.

9.3: The Middle Course: toward a positivistic epistemology of testimony

In this chapter, I have tried to show that Herodotus embraces two seemingly contrary positions with regards to λόγοι. On the one hand, Herodotus clearly conceives of ὄψις to be a superior form of knowledge than ἀκοή. In this, Herodotus espouses a traditional Greek prejudice which appears to have motivated, and informed, much of his ἱστορίη. He also admits of instances in which access to ἀκοή, even the ἀκοή of supposedly informed sources, leads nowhere. On the other hand, Herodotus can also declare himself to have come to know some fact, and indeed to have confirmed the truth of a

¹ Hdt. 2.50

² See Introduction.

general hypothesis, on the basis of ἀκοή. These are, we note, the same functions which Antiphon attributes to the testimony of his witnesses. We also observe, that Herodotus' multivalent reaction to λόγος is exactly what the forensic model of testimony – which must allow for credible *and* incredible λόγοι – would predict. And yet, the reader will justifiably complain, Herodotus ambivalence to λόγος hardly proves a general theory of 'testimony', merely his inconsistency. In order to show that a coherent and rational system is at the heart of this ambivalence, it is necessary to look for passages in which Herodotus' contrary reactions to the λόγοι are structurally related to one another. This is the role of the next Chapter.

Chapter Ten.

Hearsay and the Structure of the World

Both the proposition that references to λόγοι contain an ‘irreducible epistemic element’ and the centrality of ‘credibility’ in Herodotus’ assessment of these λόγοι gain in plausibility when we turn to the geographical excursuses contained in the *Histories*. In these passages, we find that Herodotus describes geographical spaces in terms of a logico-geographical structure which he defines, primarily, in terms of the availability of epistemic resources. In short, Herodotus describes a world divided into three concentric, non-overlapping sections, each of which is characterized by the presence – and absence – of the two primary epistemic resources available to him.¹ The first zone, the innermost circle, consists of those lands through which Herodotus has travelled, and for which he can personally vouch. In his vivid description of these spaces, ἀκοή gives way to ὄψις and takes an epistemic backseat. It still has, however, one important methodological function, namely *directing* ὄψις. The second zone is, in turn, characterized by Herodotus’ testimonial knowledge of places and peoples, a γινώσκειν which is based on a process he describes as ἀκοῆ ἱστορεῖν, λόγοισι πυθέσθαι and ἀκοῆ ἐξικέσθαι. These admissions, then, are tantamount to the bold assertions of ἀκοή-dependent knowledge examined above. Indeed, they provide far stronger evidence for a positivistic epistemology since they allow us to integrate these assertions into a larger logico-geographical structure, one which is pinned down by two boundaries which separate these zones from one another.² The first of these boundaries, drawn by the extent of Herodotus’ travels, separates ὄψις and ἀκοῆ ἱστορεῖν and is, therefore, a corollary of the programmatic separation of these two resources in Hdt. 2.99. The second boundary, on the other hand, represents the absolute limit of Herodotus’ geographical knowledge and is, as a consequence, demarcated more rigorously. Hemmed in by mountain ranges, vast

¹ Though concerned with fundamentally different questions, this structure is implicit in the work of Romm, Purves, Edelmann, Fehling; and Schepens. See below for further details.

² On the importance of boundaries in Greek geographical thought see Lateiner, 1989, p. Bichler, 2015, p. 3f.

blistering deserts and arctic snowscapes, the extent of human knowledge is limited by the lands unfit for *all* human habitation and by obstacles limiting *all* travel. It is limited, above all else, by the availability of sources who are themselves knowledgeable, who can speak clearly about these lands and, moreover, who can honestly claim to know. It is limited, in other words, by the availability of credible testimony. And yet, Herodotus continues, the deserts beyond the οἰκουμένη provide no absolute barrier to λόγος. As Herodotus informs us, tales of monstrous humans and bizarre creatures populate these ἀφανές places. Poets too insist on ‘discovering’ vast rivers at the deserted ends of the world, and even logographers like Hecataeus have called upon the mysterious globe-straddling ‘Ocean’ to explain visible phenomena. In contrast, Herodotus describes the lands in the third zone, the ἔρημοι, almost entirely in apophatic terms. They stretch out, like Anaximander’s ἄπειρον, undefined in extent and in character. And, moreover, just as the first boundary separates ὄψις from ἀκοή, so too does the second boundary separate credible λόγοι from another, inferior, type of λόγος which Herodotus recounts – what storyteller would not – and routinely dismisses as unbelievable. And it is here, in his very attempt to define these epistemic boundaries which constitute this structure, that references to ἀκοή are found in their greatest density. And, moreover, it is here that Herodotus grapples most explicitly with the nature of the testimonial evidence and with the limits of his testimonial knowledge. This strong correlation – indeed this inseparability – of Herodotus’ logico-geographical structure and his engagement with ἀκοή is strong evidence that these references must be understood, at least in these sections, as related to Herodotus’ epistemic resources. Indeed, it is this ‘irreducible epistemic element’ of these references which allows him to refer to his ἀκοή, as he refers to ὄψις, in his description of the world.

In what follows, I delineate this logico-geographical structure and examine the role of Herodotean ‘meta-historie’ in its construction. To avoid needless repetition, I will refer to those passages in which this structure is fullest and most conspicuous, namely in

Herodotus' description of Scythia and the Nile.¹ In so doing, I delineate, in greater detail, a positivistic epistemology of testimony compatible, to a large extent, with Antiphon's model discussed above and, further, analyse the way in which this epistemological position lends itself to the construction of Herodotus' authority.

10.1: Introduction: Herodotus' Geographical Excursuses

The scholarship on Herodotean geography is as massive as it is multi-faceted and multi-directional. A prominent vector of scholarship, one with a venerable pedigree, attempts to reconstruct the extent and character of Herodotus' geographical knowledge, and to confront this 'mental map' with reality. In the 19th century, then, Rennell² and Wheeler³ – to mention just two scholars writing in English – published detailed studies of the state of Herodotus' 'geography'. A high point of this line of research was Myers' 1896 paper in which he attempted to show that Herodotus had at his disposal two maps, one Greek and the other Persian, which he used to imagine, and to describe, the inhabited world. More importantly, Myers also strove to analyse the principles which underpinned this knowledge, focusing on one of the most notable characteristics of Herodotean geography, namely its appeal to symmetry.⁴ It was this impulse to look at the underlying conceptual infrastructure, clear as day in Myers' paper, which heralded the remarkable expansion of this field of research. It is this same impulse which motivates the analysis below. Nonetheless, the attempt to reconstruct Herodotus' world map, if now usually understood to be only a figurative one, deservedly remains an important component of scholarship. Bichler, in two recent studies,⁵ has described one such 'mental map', a

¹ The reader may object that the remarkable similarity of these two passages – represented in tabular form below – should be read in terms of the well-recognized and more all-encompassing symmetry found in Herodotus' discourses on Egypt and Scythia (see below). Even if this is granted, however, the parallelism does nothing to invalidate the findings.

² Rennell, 1800.

³ Wheeler, 1854.

⁴ Myres, 1895, p. 608f. For more recent treatment see esp. Hartog, 1988, p. 14ff.; Romm, 1989, p. 104ff.; Gould, 1989, p. 90; Thomas, 2000, p. 75ff. and Vasunia, 2001, p. 92ff.

⁵ Bichler, 2015; 2018.

Hellenocentric world centred on the Aegean¹ with fixed waterways arranged horizontally – from Gibraltar to the Phasis and beyond – and vertically – from the Nile, through the Halys, and to the Danube. Bakker has also used automated statistical methods to document in precise detail not only the occurrence of ‘geographical concepts’, but also the various associations which link them together. The studies have, to mention just two important results, amply corroborated the link between Herodotus’ accounts of Scythia and Egypt,² and that between the Nile and the Danube.³ The lion’s share of recent scholarship on Herodotean geography, however, falls in line with Myer’s impulse and concentrates not so much on the intricate details of Herodotus’ descriptions, but on the general concepts and motifs which underpin it.

Various scholars, then, have sought to clarify the relationship of Herodotus’ geographical ‘concepts’ to the wider intellectual world of Hellas. And, as befits as Protean a text as that of Herodotus, various associations can be traced and multiplied. Romm, then, has highlighted the importance of mythological background in Herodotus’ descriptions of ‘ends-of-the-earth’, regions which fall outside the normal range of his empirical *ιστορίη*.⁴ In the climactic extremes which characterize these places, Herodotus’ sober account of the lands closer to Greece gives way to tales of fox-sized ants and gold-guarding griffins and, in a word, to the fantastical world of folktale and myth.⁵ Moreover, Zali has also demonstrated the importance of mythology, often rationalized by Herodotus, in the description of parts of the world well within the *οικουμένη*.⁶ Poets too, and mystics, were also important sources of geographical information and, indeed, form an essential backdrop to Herodotus’ geographical *ιστορίη*.⁷ Thus, with reference to the two descriptions examined below, poetry and myth cast a prominent shadow over both. In

¹ Bichler, 2015, p. 3ff.; 2018, p. 141 with previous scholarship. For Herodotus’ maritime perspective also see Gottesman, 2016.

² Barker et al., 2013, p. 9. On this parallelism see Benardete, 1969, p. 99ff.; Redfield, 1985, p. 106ff.; Romm, 1998, p. 91f.; Thomas, 2000, p. 56; Corcella, 2007, p. 548.

³ Barker et al., 2013, p. 9.

⁴ Romm, 1982, p. 50ff.; 1989, p. 99ff.

⁵ E.g. Hdt. 3.102ff.

⁶ Zali, 2018, p. 129ff. Also see Rood, 2012, p. 125f.

⁷ On the relevance of Homer on Herodotus’ ‘geography’ see Karttunen, 2002, p. 473; Purves, 2010, p. 120ff.; Rood, 2015, p. 117; Zali, 2018, p. 137.

the South, then, Heracles, who figures prominently in Herodotus' account of Egypt,¹ was supposed to have accessed Ocean *through* these lands on his way to the Garden of the Hesperides, presumably by means of an Ocean-reaching-Nile. This world-straddling Ocean, on which Heracles sailed to the ends of the earth, is also a prominent component of this archaic model of the cosmos.² This watery deity delimited dry land of the Earth, just as sacred boundaries delimited the dominion of the poleis, and the Herms stood over the boundaries of farms.³ Indeed, Ocean bears an authoritative, and unforgettable, Homeric stamp. Two references to Ocean, then, form a neat ring-structure around Homer's ekphrastic account of the world, just as Ocean himself formed a ring-structure around the οἰκουμένη.⁴ This intricate technique of 'analogy', of mapping one's description of the world onto the world itself, is, like the catalogue⁵ and the ekphrasis,⁶ another of Herodotus' borrowings from the form of epic, as I argue below. In the North, Aristeas, a shaman who cheated death twice,⁷ had given shape to the lands beyond Scythia in his hexameter poem, one which seems to have influenced the likes of Aeschylus and one which was purportedly based on an almost Herodotean ἱστορίη.⁸

It is clear, then, that a profound engagement with the rich poetic background is an intrinsic part of Herodotean geography. It is equally clear, however, that it is equally indebted to the Ionian ἱστορίη of previous generations and, in particular, to Hecataeus.⁹ Indeed, Herodotus' quarrels with this 'Ionian' logographer, often veiled, in accordance with standard Greek historiographical practice,¹⁰ appears to be one of the dominant themes of, perhaps even the chief motivation for, many of Herodotus' most important

¹ Hdt. 4.43ff.

² Romm, 1992, p. 24f.; Cole, 2010, 198f.

³ See esp. Romm, 1992, p. 22f.; Cole, 2010, p. 200; Bichler, 2015, p. 3f.

⁴ Hom. Il. 18.489, 607f.

⁵ E.g. Hdt. 4.168ff. On catalogues see Romm, 1992, p. 30; Cole, 2010, p. 201f.; Purves, 2010, p. 155; Bichler, 2015, p. 19f.; 2018, p. 147ff. with previous scholarship.

⁶ Purves, 2010, p. 135ff.

⁷ On Aristeas see Bowra, 1956; Bolton, 1962; Huxley, 1986; Ivantchik, 1993. See esp. West, 2002, p. 445; 2003, p. 43ff.; 2007, p. 43ff.

⁸ See below.

⁹ See esp. Thomas, 2000, p. 76f. Fowler, 2006, p. 33f.; Rood, 2012, p. 127f. with previous scholarship.

¹⁰ Marincola, 1997, p. 225f.

geographical discussions.¹ Herodotus' supposed condemnation of Aristagoras's map, presumably an analogue to Hecataeus's, is one of these celebrated confrontations.² More generally, however, several of the key controversies of fifth-century Ionian geographical science – the Tanais-Phasis controversy, the definition of the true extent of Egypt and of Scythia, and the division of the world into continents – see the two Ionians on opposite sides of the argument.³ Egypt, and its wondrous river, are perhaps the most intense focus of this polemic. Hecataeus too, then, perhaps on the basis of a rationalized account of Heracles's eleventh labour, had theorized a Nile which reached to Ocean, a hypothesis which Herodotus treats with palpable scorn.⁴ The Nile, however, also stands as a potent symbol of Herodotus' deep indebtedness to his predecessor. The definition of Egypt as 'the gift of the Nile' – and, presumably, the remarkable hypothesis to which this expression refers – appear to have been lifted from Hecataeus's text.⁵ And, even on a merely formal level, indeed in the very description of the first part of the Nile, much of Herodotus' language emulates Hecataeus's annalistic style.⁶ More generally, however, Herodotus also tends to describe lands starting from the coast and moving inland and, therefore, in the style of a *περίπλους*.⁷ The importance of Hecataeus, however, should not obscure the intersection of Herodotus' interests and discussion with other, more contemporary, itinerant thinkers. Indeed, Herodotus' geographical and ethnographical discussions provide some of the best evidence for Thomas and Lateiner's arguments. To cite the most significant and pertinent overlap, Thomas suggests that the very choice of Scythia and Egypt, to whom Herodotus dedicates his longest and most intricate 'digressions', may have been motivated by the Hippocratic 'paradigm'.⁸

¹ See Pearson, 1939, p. 88ff.; Schepens, 1980, p. 84ff.; 2007, p. 46; Marincola, 1987, p. 128; West, 1991; 2002, p. 445; Romm, 1998, p. 89ff., among others.

² See Rood, 2006, p. 294ff.; Pelling, 2007, p. 195ff.; Branscome, 2010; Rood, 2012, p. 131ff.; Purves, 2010, p. 132ff. with previous scholarship. On Herodotus' style in this passage see esp. Rood, 2012, p. 128f.

³ See esp. Romm, 2010, p. 215ff.; Bichler, 2015, p. 4f.; Gottesman, 2016, p. 89.

⁴ Hdt. 2.21, 23. See below.

⁵ See esp. Jacoby, 1913, p. 396. For a recent treatment see Dillery, 2018, p. 20ff.

⁶ Rood, 2006, p. 295; 2012, p. 127f.

⁷ Bichler, 2015, p. 8f. with previous scholarship.

⁸ Thomas, 2000, p. 44f.

With the Hippocratic medicine and, in particular, with the theory of climatic determinism of *Airs, Waters, Places*,¹ we come to another prominent subject of scholarly discussion, namely that relation between geography and the declared purpose of the *Histories*. On this issue, there is unanimous agreement about at least one thesis: Persian expansionism provides at least the pretext for Herodotus' geographical passages.² Just as Sesostris placed his stelae through the world as markers of the courage of the conquered peoples,³ then, Herodotus' own ἔργον 'remembers' the various people who succumbed willingly to Persian expansionism, and those who bravely resisted. Accordingly, Egypt and Scythia, the two latest countries to suffer the fate visited upon the Greeks, receive the most expansive treatments introduced with reference to Persian designs for conquest.⁴ Geography, however, is also the typical object of a monarch's attention and, therefore, an opportunity for Herodotus to outdo the monarch *qua* 'geographer'.⁵ To mention just one example, Darius's encounter with the Black Sea induces Herodotus to claim, falsely, that he has crossed it and measured it.⁶ Moreover, an intimate relationship between *some* geographical excursuses and the expression of monarchical power is all but certain. The lengthy ethnographical catalogues of Xerxes's troops and Darius's taxed satrapies impress upon the audience the monarch's power over lands and peoples.⁷ A variety of other, more far-ranging theses have also been proposed. Drawing on contemporary scientific manuals referred to above, then, Lateiner and Thomas argue that Herodotus' frequent geographical and ethnographical excursuses are to be understood in terms of a backdrop of climatic determinism and, therefore, of *explanation*.⁸ Though Herodotus was no strict climatic determinist,⁹ Herodotus' ethnographical 'digressions' must be read against the Hippocratic 'theory'

¹ Thomas, 2000, p. 53f. See also Redfield, 1985, p. 109; Hartog, 1988, p. 14ff.

² A 'pretext' in Rood, 2006, p. 293; the 'context' in West, 2002, p. 438; and a 'suitable opportunity' in Bichler, 2015, p. 9. Also see Schepens, 1980, p. 56.

³ Hdt. 2.102ff

⁴ See Gould, 1989, p. 86ff; Munson, 2001, 131f.; West, 2002, p. 439; Rood, 2015, p. 126.

⁵ See Christ, 1994; Demont, 2009.

⁶ Hdt. 4.85f. See Rood, 2015, p. 132.

⁷ Hdt. 3.89ff.

⁸ Lateiner, 1989, p. 146, 155f.; Thomas, 2000, p. 64ff. Cf. Hartog, 1988, 36ff.; Erbse, 1992, p. 160ff.

⁹ Lateiner, 1989, p. 16; Thomas, 2000, esp. p. 68 and 96f.; Zali, 2018, p. 128.

explaining 'barbaric deficiencies'.¹ For Harrison, on the other hand, the geographical and ethnographical digressions are *rhetorical* means of enhancing his main thesis, an account of Persian imperialism.² More generally, the conflict of West and East, introduced by a prologue rife with geographical concerns,³ also has a clear, indeed an emphatic, geographical focus. Accordingly, the geographical separation of the two continents is a central theme of Herodotus' account of Oriental monarchy, *hubristic expansionism*. The account of the war, then, is an account of a monarch's geographical overreaching, and of the preordained cosmic backlash for transgressing the natural boundary which separates the two continents.⁴ Though Thomas has rightly questioned the applicability of this 'archaic' model to the itinerant Herodotus, especially considering his scepticism about the existence of natural inter-continental boundaries,⁵ the ill-effects of crossing over important waterways, such as the Araxes,⁶ and of creating artificial ones,⁷ are unambiguous enough.

Climate and space, then, are inherently political and in many, intersecting ways. And, conversely, politics or, more exactly, imperialism, appears to be inherently *spatial*. Though somewhat paradoxical when put in such a formulation, a number of qualifiers make this proposition far more reasonable. Firstly, we have already seen that ὄψις, the primary instrument of Herodotean geographical ἰστορίη, is also inherently political. For a King to see someone is an expression of his power over him, or it. It is eminently reasonable, then, for a King to want to see as much space as he could, much as the hubristic Nasamones did.⁸ As we shall see, it is a hubris in which Herodotus does not partake. Secondly, Greek geography is not interested, primarily, in the world as a natural

¹ Esp. Hippoc. Aer. 16.

² Harrison, 2007.

³ See Rood, 2010; Vasunia, 2012.

⁴ See Immerwahr, 1956, esp. p. 263; Boedeker, 1988, p. 42f.; Romm, 1998, p. 80ff. among others. For a qualified version see Thomas, 2000, p. 100; Bichler, 2015, p. 19f.; 2018, p. 142. An alternative, albeit similarly spatial, 'maritime mediation model' is given by Gottesman (2016, p. 96ff.).

⁵ Thomas, 2000, esp. p. 98.

⁶ Hdt. 1.205f.

⁷ Hdt. 1.174. See Rood, 2012, p. 139.

⁸ See below.

object, but in the world as an inhabited space, an οἰκουμένη.¹ Herodotus' attention to rivers, then, depends on the fact that rivers are *boundaries* which separate peoples from one another.² Greek geographical space, then, is lived space and, therefore, a space which is, by definition, subject to politics and conquest. Moreover, as Dilke and Bichler have shown,³ there is a clear connection between cartography – and the cartographic mode of conceiving space – and imperial powers of the Near East. And, what is more, it is from these empires that cartography came to Miletus via Anaximander.⁴ Herodotus's own 'cartographic' description of space is, therefore, inherently 'monarchical' and inherently 'Other'.⁵ Purves also conceives cartography to be part of the legacy of these monarchies and, indeed, argues that the adoption of this foreign cartographical conception of space is an important component of the fifth-century Greek Enlightenment.⁶ In his view, however, Herodotus takes up a rather archaic position in this matter, namely that of an Odyssean traveller and, therefore, a counter-cartographical one.⁷ And, indeed, Herodotus does appear to condemn maps, for their vagueness, for their deceitfulness, and, most emphatically of all, for their arbitrariness.⁸ It may seem plausible to suggest then, in line with Janni,⁹ that Herodotus took a stance against this imperialistic cartographic conception of space, in favour of an autochthonous *hodology* of the περίπλοιοι. Both these hypotheses, however, which seek to ascribe cartographical or hodological conceptions of space to Herodotus, presuppose a rather absolute division between these two modes. If we turn to Herodotus, however, we find that the evidence for this central assumption is missing.¹⁰ In his description of Scythia, for example, Herodotus' discourse constructs a mental map by arranging a series of parallel

¹ Herodotus had an 'anthropological conception' of space. See Rood, 2006, esp. p. 301f.; Cole, 2010, p. 207.

² Cole, 2010, p. 207.

³ Dilke, 1985, p. 11; Bichler, 2015, p. 19.

⁴ On the other hand, Leveque and Vidal-Naquet (1996, p. 81) have drawn attention to indigenous 'cartographical' developments.

⁵ E.g. Vasunia, 2002. See below.

⁶ Purves, 2010, p. 97f. *et passim*.

⁷ Purves, 2010, esp. p. 110f., 129ff.

⁸ Hdt. 4.36. See Romm, 1989 esp. p. 109ff. with previous scholarship.

⁹ Janni, 1984, p. 119f.

¹⁰ See esp. 'piecemeal descriptions' in Rood, 2012, p. 134; 2015, p. 105;

hodological routes into a 'grid'.¹ Maps and roads, it seems, entailed one another in Herodotus' mind. Moreover, the adoption of a cartographic or hodological perspective in Herodotus' descriptions can be more plausibly explained in terms of rhetorical 'choice'. Herodotean 'cartography' depends on what Vasunia aptly calls a 'rhetoric of mapping',² one which Herodotus adopts in view of the circumstances of his λόγος. In his analysis of the Egyptian λόγος, Vasunia argues that Herodotus' cartographic vision should be understood as a rhetorical choice, one related to the portraying the absolute power of an Oriental Monarch in inherently geometrical and cartographical terms.³ We might note – albeit this is no critique of Vasunia's theory about *Egyptian* space – that the relation of absolute power and space is by no means limited to a 'cartographic' vision of space. Clytemnestra's beacon-speech,⁴ which tracks the *journey* of the light-messenger, is clear evidence of this. The important point, however, is that Herodotus' cartographical descriptions may be explained in terms of a rhetorical choice. As I attempt to show below, the same is true of the hodological perspective Herodotus adopts in the description of the Nile. Finally, and most importantly, even if we grant that there exists some fundamental difference between these two perspectives which forced itself upon Herodotus' mind, any such difference must, at least in the descriptions examined below, fall back on a more fundamental similarity, namely the logico-epistemic structure discussed below.

The issue of monarch leads us also to the complex intersection of ethnicity and the Other proposed by Hartog and Hall.⁵ In his examination of Herodotus' Scythian account, Hartog attempted to reconfigure Herodotus' geographical descriptions of Scythia in terms of his over-arching concern of 'inventing' the Scythian 'Other', one which must reflect, by way of inversion, the Hellene.⁶ Hartog points to the Herodotus' ubiquitous use of a rhetoric of

¹ See below.

² Vasunia, 2001, p. 76f.

³ Vasunia, 2001, p. 77f., 103ff.

⁴ Aesch. Ag. 281ff.

⁵ Hartog, 1988. Hall, 1989, esp. p. 57; Cartledge, 1993, p. 51ff. Cf. Pelling, 1997.

⁶ A 'rule of intelligibility' (Hartog, 1988, p. 29).

alterity in his description of Scythia's most distinctive 'geographical' feature, its cold.¹ The Scythians, then, make mud not by mixing water to earth, as Greeks do, but by burning it.² And indeed, as to the subject at hand – *space* – a Hellenic perspective is also evident in the various analogies of 'barbarian' and Greek places that Herodotus draws.³ More generally, however, Hartog suggests that Herodotus' description of Scythian *space* deals, primarily, with the problem of conceiving a nomadic power.⁴ It is, in other words, a *conceptualized or imagined space*. Following on from Hartog, Vasunia has subjected the geographical descriptions of Egypt to a profound, and minute, examination. In it, he proposes that Herodotus' geographical picture of Egypt is dominated, above all else, by the picture of the Monarch, perhaps the chief trait of the barbarian 'Other'.⁵ It is this image, Vasunia argues, which is the primary driving force for Herodotus' remarkable obsession with quantifying, measuring and calculating distances.⁶ Though Vasunia does acknowledge the debt Herodotus owes to Ionian ἱστορίη, he argues that it should be placed in the 'background'.⁷ In the foreground, Herodotus maps Egyptian space as measured, carved up, subject to the intrusion of the overreaching tyrant, and implicitly contrasted to the civic space of the Athenian *polis*.⁸ One should note, however, that some of the features which Vasunia ascribes to the Egyptian Other are also prominent, indeed more so, in the geographical showpiece which is most emphatically attached to Herodotus, his description of the Royal Road from Sardis to Susa.⁹ In attempting to outdo the Milesian *tyrant*, then, Herodotus lavishes great attention on the precise lengths of various roads and even corrects the tyrant's reckoning of the length of the voyage. More importantly, however, as Christ and Demont have shown, Herodotus does not force us to choose between the ἵστωρ and the King.¹⁰ In contrasting his own, more limited,

¹ Hartog, 1988, p. 15f., 28f., *et passim*.

² Hdt. 4.28.

³ E.g. Hdt. 1.98.5 See Hartog, 1988, p. 22; Vasunia, 2001, p. 101; Rood, 2012, p. 130.

⁴ Hartog, 1988, p. 34ff.

⁵ Vasunia, 2001, p. 77.

⁶ Vasunia, 2001, p. 87.

⁷ Vasunia, 2001, p. 88.

⁸ Vasunia, 2001, p. 103ff.

⁹ Hdt. 5.52ff. See Bichler, 2015, p. 12.

¹⁰ Christ, 1994; Demont, 2009,

understanding of space with that of the over-reaching King's, Herodotus configures, above all else, what *space* means for the ἴστωρ. And, as it turns out, what *space* means to Herodotus, as indeed it did to the King, is inseparably bound to his own *experience* of it.

On this point, I have already had opportunity to draw attention to Herodotus' empiricism,¹ discussed at length by Lateiner and Thomas. As an 'empiricist', then, Herodotus appears extremely well versed in the geographical discoveries of the day.² He mentions, for example, the circumnavigation of Africa and expedition stories generally³ and, unlike Hecataeus, Herodotus knows that the Caspian is not an open sea.⁴ More generally, Herodotus, like the Hippocratic doctors, purposefully expands the scope of his ὄψις and dwells at length on that which is visible.⁵ Thus, in the core of his descriptions, the narrator's gaze is a 'panoptic' one,⁶ not dissimilar to the Muse's, and follows close behind on the Herodotus' description. In discussing these spaces, Herodotus also invokes a rhetoric of personal travel and ὄψις.⁷ Conversely, he avoids speculating concerning that which is ἀφανές and, in his rejection of Ocean, seems to invoke a principle of falsifiability.⁸ More generally, Herodotus is concerned, especially when dealing with geographical accounts, with defining the extent of his empirical knowledge.⁹ As a consequence of this, and as already discussed, Herodotus carefully distinguishes between his own epistemic resources and arranges them hierarchically. Indeed, as I shall argue below, the opposition of ὄψις and ἀκοή is structurally integral to these descriptions. As Romm observed, then, Herodotus' account moves centrifugally from

¹ On the empirical bent of Herodotus' geography see, among others, How and Wells, 1912, p. 434ff.; van Paassen, 1957, p. 141f. *et passim*; Romm, 1989, p. 98f.; Gould, 1989, p. 87f.f. Lateiner, 1989; Thomas, 2000, esp. p. 162 with previous literature.

² E.g. 'Herodotus... stands out for the sheer variety and spatial range of the material that he gathered and organised' (Rood, 2015, p. 120).

³ Bichler, 2011, p. 316ff.; 2018, p. 142ff.

⁴ Cole, 2010, p. 205.

⁵ Lateiner, 1986, p. 10; Romm, 1992, p. 36.

⁶ Purves, 2010, p. 123; Vasunia, 2001, p. 101.

⁷ Cole, 2010, p. 204; Purves, 2010, p. 121ff.

⁸ See esp. Fowler, 1996, p. 79.

⁹ Lateiner, 1989, p. 61f.

ὄψις to ἀκοή.¹ Two scholars above all, Schepens and Purves, have elevated this primacy of ὄψις to its most emphatic expression. Purves, then, suggests that the *hodological* narrative – which makes explicit reference to the moving eye of the traveller-narrator – provides a model for Herodotus' own λόγος.² If Purves is correct, then, Herodotus' own λόγος, closely mapped onto the travelling eye, itself becomes a vindication of the strident dominance of ὄψις.³ Schepens, on the other hand, proposed a model of Herodotean geographical inquiry centred on the primary importance of vision. Crucially, however, Schepens assimilates ὄψις and ἱστορίη, and proposes that Herodotus' concern with *vision* embraces not merely the references to his own ὄψις, but also his explicit concern with the *autoptic* nature of these sources.⁴ Schepens, of course, acknowledges that Herodotus prefers his own *personal* vision to an *indirect* one,⁵ yet ἱστορίη – which involves active interrogation of autoptic sources – is characterized as a *direct* intervention by the ἴστωρ and, moreover, a 'method' inalienably connected to ὄψις.⁶ These two recourses, Schepens concludes, must be together distinguished from Herodotus' own γνώμη, and from the passive resource, ἀκοή, which embraces all sort of sources Herodotus *cannot* interrogate.⁷ Much of the discussion below agrees with Schepens' analysis of Herodotus' ἱστορίη. There are, however, two key differences. Firstly, in these geographical passages, the relationship between ὄψις and ἱστορίη is more ambivalent than Schepens suggests and certainly more complex.⁸ We find, then, distinctions between ὄψις and ἱστορίη which are even more emphatic than the celebrated Hdt. 2.99 and, simultaneously, an attempt to approximate the two epistemic resources in their effects. The distinction, in other words, is drawn on *methodological* grounds, but not *epistemic* ones. ὄψις and ἱστορίη, though methodologically disparate, together constitute the *known* world. Secondly, though the distinction between ἱστορίη and ἀκοή drawn by

¹ Romm, 1989, p. 99. Also see Edelman, 1970, p. 79ff.

² Purves, 2010, p. 121f.

³ Purves, 2010, esp. p. 123 with previous scholarship.

⁴ Schepens, 1980, p. 54f., 62f., *et passim*; 2007, p. 40f.

⁵ Schepens, 1980, p. 60; 2007, p. 43.

⁶ Schepens, 1980, esp. p. 63.

⁷ Schepens, 2007, p. 44f. with previous scholarship.

⁸ See esp. Romm, 1989, p. 99 n. 9.

Schepens is lucid, it is not a distinction which Herodotus appears to draw. We find, rather, that the ἱστορῶν distinguishes between *credible* sources which speak knowledgeably and *incredible* sources which do not. Moreover, it is clear that these sources are subject to the same *methodological* practices. Indeed, Herodotus engages most polemically and most directly with the accounts of people he could not have interrogated, namely Hecataeus. Herodotus, in other words, does not draw a methodological difference between ἱστορίη and ἀκοή, but an epistemic one. Nonetheless, Schepens' model correctly emphasizes the important differences between what Romm calls the outer zones which are unknowable and often approached with a lens of myth, and the inner zones, the legitimate subject of Herodotus' empirical knowledge.¹ Furthermore, Schepens also rightly emphasizes the overwhelming importance of ὄψις, both that of the author's and that of his sources.

Herodotus' empiricism is, of course, counterpoised by his γνώμη. And, indeed, their intersection seems to be particularly close at times. At a methodological level, then, Herodotus, like the Hippocratic doctors, falls prey to the same propensity of wild *a priori* assumptions and even wilder speculations that he viciously attacks.² Even more fundamentally, however, Herodotus' own observations are, of course, refracted through a Greek conceptual lens.³ The peoples of Scythia, to mention one pertinent example, are placed according to an abstract schema with fixed arrangements of proximal agriculturalist and more distant pastoralist peoples.⁴ More generally, Said and Rosellini have also proposed a tripartite map, though one fixed on the ethnographical distribution of people.⁵ As to the more active and more explicit exercises of Herodotean γνώμη, we may distinguish, for ease of exposition, between negative uses and more positive, or *heuristic*, uses. As to the former, we note that Herodotus uses εἰκόσ to test various

¹ Romm, 1992, p. 38. Also see Romm, 1989, p. 99f.; Bichler, 2015, esp. p. 14.

² See Lloyd, 1966, p. 341ff.; Lateiner, 1986, p. 17; Romm, 1989, p. 98; Schepens, 1980, p. 62

³ See esp. the 'intellectual attitudes' described by Lloyd (1975, p. 141ff.); the 'Greek categories' by Hartog (1988, p. 10) and the 'conceptual filters' by Fowler (1996, p. 82). Also see Raaflaub, 2002, p. 155f.

⁴ Shaw, 1983. Also see Romm, 1992, p. 35ff.; Cole, 2010, p. 209. Rood (2015, p. 115ff.) discusses this 'schematic' arrangement with reference to Herodotus' conflation of space and time.

⁵ Said and Rosellini, 1978. Cf. Karttunen, 2002, p. 460.

fantastical tales.¹ The existence of the Arimaspians, then, and of the Scythian feathers, is rejected or reinterpreted on the basis of εἰκός.² Similarly, Anaxagoras's theory of the Nile's inundation is rejected because it relies on implausible premises.³ As to the latter, Herodotus appeals to *a priori* assumptions – primarily symmetry and polarity⁴ – to 'discover' some fact about the world, most famously, the supposed location of the sources of the Nile.⁵ We must note, however, that this use of *a priori* is not, strictly speaking, incompatible with Herodotus' empiricism. We find that he sharply distinguishes his own empirical ἱστορίη and the exercise of his γνώμη, as Schepens points out,⁶ and generally clearly restricts the use of the latter to those *places* which lie beyond the range of ὄψις and ἀκοή and, therefore, of his empirical ἱστορίη.⁷ And even in these places, Herodotus' concern for sensory knowledge is evidence. Thus, he is sure to infer, in line with Greek scientific practice, from that which is observed to the unobserved.⁸

In the following section, I will focus primarily not on ὄψις or γνώμη, the use of which in geography is better appreciated, but on Herodotus' 'meta-historie' of ἀκοή. As I hope to show, this focus is entirely justified. Not only are these sections among the most richly supplied by Herodotus' explicit descriptions of his own activities and his sources, his 'meta-historie' of ἀκοή also plays a crucial structural role, one analogous to Ocean in the Homeric description of Achilles' shield. In this analysis, I hope to show that Herodotus carves out a region of space, which is described as knowable and known, within which Herodotean ἀκοή is a legitimate epistemic source and defended as such.

¹ Cole, 2010, p. 211.

² Hdt. 3.116. See Romm, 1989, p. 102.

³ Hdt. 2.24. See Gould, 1989, p. 88.

⁴ 'The principal *method*' in ethnography (Lateiner, 1989, p. 147).

⁵ Hdt. 2.34. See Rood, 2006, p. 302. For this form of inquiry, classed as second best, see Romm, 1989, p. 100f.

⁶ See esp. Schepens, 1980, p. 54f.

⁷ See Schepens, 1980, p. 62f.; Lateiner, 1986, p. 17; Romm, 1989, p. 99ff. among others.

⁸ Or, as Herodotus puts it, τοῖσι ἐμφανέσι τὰ μὴ γινωσκόμενα τεκμαιρόμενος (Hdt. 2.33). See Lateiner, 1986, p. 5; Schepens, 1980, p. 59.

10.2: *The Nile and the North: the world according to Herodotus*

a. *From Coast to Wizard: The Unknown Sources of the Nile*

As is well known, Herodotus' second book is by far the richest in appeals to ὄψις, in the consideration of the quality of the sources and, in a word, in 'meta-historie' generally.¹ It is not incidental, then, that Herodotus' account of Egypt should be particularly rich in discussions of space. Indeed, the second book of the *Histories* encapsulates within it all the various 'levels of space' identified by Rood, spaces which range from the cosmic to the local.² Egypt, then, is the land of ἔργα, man-made marvels, which are the only consistent exception to Herodotus' general neglect of local space.³ Indeed, we find here an intricate description of the greatest marvel of them all, the Labyrinth, an account which is absolutely dominated by Herodotus' conception of space.⁴ At the opposite end of the spectrum, Egypt is the focus of one the only Herodotean general attempts to conceive of 'cosmic space', namely of the Earth pinned onto a North-South symmetry between the Ukraine, and its people, and Egypt, and its people.⁵ The apogee of Herodotus' engagement with the physical geography of Egypt concentrates especially on two highly polemical issues, namely the definition and extent of Egypt,⁶ and the nature and source of the Nile.⁷ These questions, each tackled by some of the most remarkable intellectual figures of Ionian ἱστορίη,⁸ are closely related to one another and, indeed, to the rest of Herodotus' discussion of Egypt. To take up just one of the many connecting threads, the integrity of Egypt is, according to Herodotus, not threatened by the Nile's course through the middle of the country – which, according to some Ionians, would carve up Egypt into

¹ See esp. Marincola, 1987, p. 127f.; Luraghi, 2001, p. 151f.

² Rood, 2012, p. 122ff.

³ Rood, 2006, p. 296; 2012, p. 123f.

⁴ See below.

⁵ See below.

⁶ Hdt. 2.15ff.

⁷ Hdt. 2.5ff.

⁸ The first thirty chapters of the first books attack Thales (Hdt. 2.20), Hecataeus (Hdt. 2.21, 23) and Anaximander (Hdt. 2.22). See Thomas, 2000, p. 135f.; Graham, 2003, p. 304ff.

a non-entity – but is entirely dependent on it.¹ Indeed, as the oracle of Ammon had stated, in complete and independent agreement with Herodotus, all the land below Elephantine which is watered by the Nile is to be defined as Egypt, just as all the people who drink of these waters are Egyptian.² It is not incidental, then, that the topsy-turvy nature of the Nile’s inundation – another prominent subject of Ionian investigation – should be a metonym, perhaps even a physical determinant, of the topsy-turvy ‘nature’ of the Egyptians.³ This same city of Elephantine also features prominently in another major object of Herodotus’ ἱστορίη about the Nile, namely his search for the location of its sources. On this subject, Herodotus had already, in refuting rival Ionian theories of the Nile’s inundation, rejected one possible hypothesis, namely that the Nile reaches back to the mythical world-river, Ocean.⁴ In a justly famous, but sadly unique passage, Herodotus disdains even from rejecting the ‘theory’ because it has no ἔλεγχος. Commentators have glossed this remarkable phrase as a reference to ‘disproof’ and attribute to Herodotus something akin to a principle of falsifiability.⁵ Graham, therefore, suggests that Herodotus refuses to comment about Ocean because it goes beyond the ‘empirical evidence’.⁶ Romm has also interpreted this important passage – which he rightly considers to be typical of Herodotus’ engagement with Archaic geography⁷ – in a similar way, as do Gould,⁸ Thomas⁹ and Bichler.¹⁰ Kurtrutten and Lateiner, on the other hand, focus on the ‘mythical’ qualities of Ocean, and its poetic origin, which also appear to have met with Herodotus scorn.¹¹ Yet, what Herodotus himself emphasizes, in a tantalizingly forensic register, is his own lack of *knowledge* of any such body of water. Indeed, he suggests that the theory of Ocean has no *elenchus* because he does not *know* of it: οὐ γὰρ τινὰ ἔγωγε οἶδα ποταμὸν Ὀκεανὸν ἐόντα. And yet, a sceptical

¹ Hdt. 2.17f.

² Hdt. 2.18.

³ Hdt. 2.35. See e.g. Lloyd, 2007, p. 433f.

⁴ See below.

⁵ Fowler, 1996, p. 79.

⁶ Graham, 2003, p. 295, 303.

⁷ Romm, 1989, p. 100; 2006=1992, p. 35.

⁸ Gould, 1989, p. 94.

⁹ Thomas, 2006, p. 62. Also see Cole, 2010, p. 205.

¹⁰ Bichler, 2018, p. 140.

¹¹ Kartrutten, 2002, p. 457. Cf. Boedeker, 2002, p. 109; Zali, 2018, p. 128.

audience-member might ask himself, what does Herodotus' knowledge have to do with *proof* or *disproof*? Has Herodotus been led by some Muse to a Homeric vantage point and become the arbiter of all that exists? Or, conversely, has he fallen into the empiricist's trap, namely of believing only his *own* senses? I return to some of these questions at the end of this analysis. What is of immediately of note, however, is that the most prominent theme of Herodotus' discussion of the Nile's sources is not knowledge, but *ignorance*. Indeed, Herodotus returns to the subject of ignorance in the very introduction of his own account of the Nile's sources:

Of the sources of the Nile, no Egyptian, no Libyan, no Greek with whom I have exchanged words (ἀπικομένων ἐς λόγους), promised me that he had knowledge (ὑπέσχετο εἰδέναι).

Hdt. 2.28

This introductory sentence makes Herodotus' fundamental point abundantly clear: his own λόγος on the Nile's sources will track the available geographical *knowledge* about the Nile, knowledge which is, we learn immediately, extremely limited in scope. The audience must not expect, then, any tale about an unknown Ocean, as they may have expected on the example of less scrupulous logographers. Indeed, they must not expect a definitive answer at all. Unless, of course, Herodotus goes on, the audience is willing to give credence to the lonely dissenting voice of the temple-scribe in Saïs. This man,¹ surely one of the most colourful sources of the *Histories*, boldly declared his ἀτρεκής knowledge to Herodotus and proceeded to describe the Nile bubbling up, like some enormous creek, from a bottomless spring in the neighbourhood of Elephantine. As

¹ On this source see Lloyd, 1975, p. 90f.; 1976, p. 111.

commentators have pointed out, this account may have traced back to traditional Egyptian lore.¹ If we take Herodotus at this word, however, and examine the nature of his response to this account, a direct rival of his own more sceptical exposition, we note that it is firm and frank. As to the scribe's so-called ἀπρεκής knowledge, Herodotus suspects a joke.² And as to the supposed bottomlessness of this spring, 'confirmed' by one of Psammetichus's infamous 'experiments', Herodotus comments explicitly: the fact that a long rope does not reach the bottom of a spring does not mean that it is unfathomable.³ The rest of the scribe's 'theory' – which must stipulate that the Nile flows in two contrary directions away from Elephantine – is quietly rejected by the rest of Herodotus' account. And then, after summarily dismissing this false start, Herodotus returns to the subject of ignorance:

And I could learn nothing whatsoever from anyone else (ἄλλου δὲ οὐδενὸς οὐδὲν ἐδυνάμην πυθέσθαι). And yet, my own furthest researches furnished me with this learning (ἀλλὰ τοσόνδε μὲν ἄλλο ἐπὶ μακρότατον ἐπυθόμην), going as far as Elephantine to see for myself (αὐτόπτης ἐλθών) and, beyond that, relying on the interrogation of sources (ἀκοῆ ἤδη ἱστορέων).

Hdt. 2.28

It is clear that the two negative declarations quoted above, which together form a ring around the scribe's account, are closely associated to one another.⁴ Herodotus' inability to learn from anyone the location of the Nile's sources, then, is tantamount to, and

¹ E.g. Wainwright, 1953, p. 104ff.

² Hdt. 2.28.

³ Hdt. *Ibid.*

⁴ On such 'frames' see Immerwahr, 1966, p. 55ff.

presumably dependent on, his inability to discover any Egyptian, any Libyan, or any Greek person who 'strongly declared their own knowledge' on the issue. Further, we may surmise from Herodotus' engagement with the temple scribe's account that such 'strong declarations of knowledge' are comparable to the scribe's φάμενος εἰδέναι ἀτρεκέως – a declaration of accurate knowledge – which Herodotus, in the case of the scribe, considers unfounded. None of the witnesses, then, say that they know, and the only source who did say he knew didn't *really* know. One may object that the emphasis on the sources' own assessment of their own knowledge are somewhat strained, and downright unlikely. We may note, however, that these statements have direct analogues in the courts. A legitimate source, like a legitimate witness in a murder trial, must not only know, he must also be prepared to declare that he knows. More importantly, these negative declarations are, once again, closely associated with Herodotus' own declaration that he himself does not know. We are entitled to conclude, then, that Herodotus' preface amounts to an admission that he has been unable to learn, and hence does not know and cannot say, the location of the Nile's πηγαί *because* he has been unable to find any legitimate 'witnesses' who did know and who did say that they knew.

These negative conclusions, however, are not nearly the end of the story. Undeterred by the impossibility of learning the location of the Nile's sources and the unavailability of these sources, Herodotus boldly declares that he has engaged in learning of the furthest type, ἐπὶ μακρότατον ἐπιθύμην. As this formulaic phrase makes plain, Herodotus' project, and his discussion, must be understood in terms of their deeply *geographical* nature. That a discussion about the Nile's sources is 'geographical' might come as no surprise. What is more surprising, however, and more significant, is the intrinsically spatial nature of the epistemic resources Herodotus discusses. Thus, we learn that the city of Elephantine does not merely divide the Egyptian and Libyan portions of the Nile, it also neatly separates two of Herodotus' intellectual activities, αὐτόπτης ἐλθῶν and ἀκοῇ ἱστορέων. These two epistemic resources characterize and occupy, quite literally,

separate geographical spaces. The qualitative distinction between ὄψις and ἀκοή, discussed at some length above, finds itself inscribed into the ground. Herodotus has seen – at least that is what Herodotus alleges – the river’s course up to the city of Elephantine but no more. His journey ended there. His personal knowledge – emphasized by αὐτόπτης – characterizes these lands. Beyond Elephantine, however, Herodotus’ ‘furthest learning’ must rely only on ἀκοή and, therefore, on the reports of others. A radical *methodological* break must occur, then, as the account passes beyond Elephantine which marks, as it were, a logico-spatial boundary. The dual epistemic and geographical nature of this boundary and, more generally, the easy association of knowledge and space is, perhaps, also unsurprising. Space and knowledge had long been welded together by the archetypical method of Ionian ἱστορίη: travel.¹ Nonetheless, the logical-cum-spatial nature of this boundary – and the use of ‘meta-historie’ to define it – is a fundamental component of Herodotus’ geographical discussions. It marks the fundamental separation of two principal *heuristic* methods, ὄψις and ἀκοή.

Elephantine, then, marks the limits of Herodotus’ *autoptic* knowledge because it marks the end of his travels. The reader might ask ‘why Elephantine?’ and any number of speculative reasons may be suggested. For one, this city was located at the first cataract of the Nile and was, therefore, a physical barrier to Herodotus’ progress. For another, Elephantine marks the southernmost boundary of Egypt according to the oracle of Ammon, and, as Vasunia might note, the southernmost boundary of the Pharaoh’s dominion. Elephantine also marks the purported site of the bottomless spring mentioned by the temple-scribe. Whether Herodotus actually sought out the city to test these accounts is unclear. His silence on the issue, however, implies that he didn’t. The crucial point, however, is that Herodotus repeatedly demonstrates, elsewhere in the *Histories*, a willingness to travel and see things he has only heard about. In Hdt. 3.12, for example, Herodotus travels to the site of Pelusium in order to see for himself the bones of the

¹ See esp. Purves, 2010, p. 121ff.; Rood, 2012, p. 125.

fallen Persians and Egyptians and of which he had heard from the locals.¹ The same is apparently true for the mass grave of the winged serpents further inland.² Whether these reports are genuine or not – and the latter surely seems implausible³ – it is clear that Herodotus assumes that the geographical location of this boundary between ὄψις and ἀκοή is, at times, negotiable and directed by the interests of his ἱστορίη. ἀκοή, in other words, even within the innermost zone of observed lands, plays an important *heuristic* role, namely that of motivating Herodotean ὄψις and travel. In Hdt. 3.12, then, ἀκοή is presented as the stimulus to ὄψις which, at once, overcomes the limitations of ἀκοή and supersedes it in importance. Moreover, this explicit willingness to travel and see for himself, characteristic also of the various ἵστωρ-kings which Herodotus discusses, is one of the most significant ‘rhetorical’ strategies which Herodotus adopts, one firmly rooted in the Ionian ideology of travel.⁴

At other times, Herodotus finds cultural and religious norms barring the way to his ὄψις. The clearest example of such a boundary, one carefully respected by the ἵστωρ, comes in Herodotus’ description of the sacred ‘geography’ of the Labyrinth near Lake Moeris. Of the upper levels, Herodotus reassures us, he can speak as an eyewitness. He had seen, and proceeds to describe, the many chambers, the corridors, entrances and monumental sculpture of these halls. Of the lower levels, however, restricted by the religious sensibilities of the temple’s caretakers, he can only repeat what he has been told by these men:

Now we have ourselves seen (αὐτοί τε ὠρῶμεν) and have gone through (διεξιόντες) these chambers and we are describing things we have seen ourselves (θεησάμενοι λέγομεν). Of the lower

¹ Fehling, 1989, p. 28ff. Cf. Pritchett, 1993, p. 29ff.

² Hdt. 2.75.

³ Fehling, 1989, 223. Cf. Pritchett, 1993, p. 136ff.

⁴ See Thomas, 2006, p. 61.

chambers, however, we have learnt through words (λόγοισι ἐπυνθανόμεθα), for the Egyptian caretakers did not want to show (δεικνύναι) them to us, saying that there lie the graves of the Kings who built the Labyrinth and those of the sacred crocodiles. Thus, of these lower chambers, we say only what we have garnered through ἀκοή (ἀκοῆ παραλαβόντες λέγομεν), though we have seen for ourselves that upper parts amount to the greatest of human works (τὰ δὲ ἄνω μέζονα ἀνθρωπηίων ἔργων αὐτοὶ ὠρῶμεν.)

Hdt. 2.148

Though the passage does not treat explicitly of geography, it is clear that Herodotus takes the same autobiographical tone and uses similar terminology including verbs of ‘travelling’. Purves, who detects the same reference to the moving eye of the narrator, considers this description as the archetypical case of Herodotean, ὄψις-invoking description.¹ Vasunia agrees, though for entirely different reasons. The Labyrinth, Vasunia argues, is *geometrically* – and hence cartographically – divided into twelve by its autocratic builders and – we might add – into two symmetric halves by the priestly caretakers. This *geometric* description – dependent on the Monarch’s obsession with division and reflected in the ‘absolute power’ of the narrator’s eye in the King’s dominion – also represents the archetypical case of Egyptian space.² The key property of space that Herodotus’ expresses, however, one also found in the description of the Nile, and of Scythia, is intrinsically tied neither to roads nor to maps, but to Herodotus’ senses. We observe, then, the same logico-spatial distinction between those spaces he has seen and those spaces he has only heard about. And, rather pleasingly, we find that those

¹ Purves, 2010, p. 146f.

² Vasunia, 2001, p. 81.

parts that he has not seen are *under the ground*, the typical province of the ἀφανές.¹ The rhetorical effect of this distinction is also clear and emphatic. Indeed, it falls entirely in line with Shrimpton's distancing *hypothesis*. In differentiating those parts he has seen from those he hasn't, then, Herodotus is marking those parts of his accounts which ought to be believed implicitly and those which must be considered more circumspectly. He is, in other words, marking limits to his own authority, one which coincides perfectly with the limits of *his own* ὄψις. Conversely, the references to ἀκοή come in the train of a loss of ὄψις and, therefore, of another emphatic ἐξωμοσία. 'I did not see the lower chambers'. And, perhaps, we are to understand by this, 'I do not *know* the lower chambers'. Indeed, as if to confirm us in our suspicion, virtually all Herodotus has to say about the underground chambers is that he has *heard* of them. This reticence is yet another admission that the information based on the author's ὄψις is more secure than that based on hearsay, indeed, even the hearsay of eyewitnesses which are interrogated by Herodotus.

One should note, however, that even here the contrast between ἀκοή and ὄψις is fraught with greater complexity than this simple polar opposition might suggest. We may observe, then, that though ὄψις surely yields more exact knowledge, ἀκοή is by no means epistemically neutral. Herodotus, thus, has learnt, ἐπυνθανόμεθα, on account of the priest's λόγοι. It is ἀκοή alone which furnishes any indication of the historical significance of the building and, indeed, of the resting place of the builder-Kings. Moreover, the epistemically weaker ἀκοή can penetrate, however tentatively, places ὄψις is, quite literally, not permitted to go. This fact, as Herodotus himself declares, informs the *modus operandi* of his geographical ἱστορίη. Herodotus' ἐπὶ μακρότατον investigation of the Nile, as his investigation of the Labyrinth, involves λόγοισι ἐπυνθανόμεθα because the scope of *personal* ὄψις is always narrower than that of ἀκοή. The diligent investigator, then, is not only motivated by the cardinal rule of ἱστορίη. He must recognize, simultaneously, that not all potentially visible objects can be observed or, indeed,

¹ E.g. Ar. Nub. 128.

discussed, a lesson also embedded in Gyges' mini-tragedy. The epistemic *necessity* of ἀκοή in answering some questions, then, goes some way to undermining the uncomplicated hierarchical arrangement of ὄψις and ἀκοή. One may note, further, that the symmetrical division of the building into two equal halves also suggests that Herodotus' description of the upper levels somehow relates to those parts of the building Herodotus has *not* seen. More explicitly, Herodotean *autopsy* of the upper chambers convinces him – as the resulting description is meant to convince us – that the works of men are like nothing when compared to this building, an impression which is only strengthened by rumours of yet more chambers underground. ὄψις, though bearing the brunt of the epistemic work, collaborates with ἀκοή to overawe Herodotus' audience. Herodotus' primary epistemic resources, then, though neatly divided into non-overlapping zones by the ground itself, interact with one another in important ways. Nonetheless, the interaction must itself fall back on a hierarchical and, in this case, quite rigid distinction between eyesight and hearsay.

Returning to Herodotus' geography, we note that the description of the first part of the Nile – the part which corresponds to the Labyrinth's Upper Chambers – is found apart from Herodotus' investigation of its 'subterranean' sources:

For the Nile, starting from the First Cataract, flows through Egypt toward the Sea, dividing it into two. Now up to the town of Cercasorus, it flows in one channel, but beyond this city, it splits up into three. The first flows due East and it is called the Pelusiac branch, another flows due West and is called the Canobic branch while the third continues straight, along the Nile's channel and coming from above into the sharp end of the Delta, it divides the Delta into two as it flows toward the Sea. This is the largest and most famous part of the river, namely the Sebennytic branch.

There are, however, a further two branches...

Hdt. 2.17

The short passage is typical of a Herodotean geographical description: orderly, repetitive, even formulaic, and concerned with divisions, lengths, directions and names.¹ As already mentioned, Vasunia has drawn attention to the panoptic character of Herodotus' description of Egyptian space and, has convincingly argued for the centrality of the Nile within this space.² And, indeed, many of the observations that Vasunia makes about its geometrical character and its obsession with counting and measuring, are clearly true also of this description. The narrator's eye, then, glides over the Nile's surface effortlessly, moving from West and East, surveying, and counting, the many mouths of the Nile as it gushes forth into the Sea. Vasunia, of course, acknowledges Herodotus' debt to the cartographical vision of his predecessors but urges us to see Herodotus' geographical structure in terms of one theme above all: the *geometrical* dominance of the Monarch.³ And, in support of this thesis, one may note that Herodotus' description does radically change into a more limited and hodological narrative as one moves beyond Elephantine, the southernmost city dominated by the Pharaoh. And yet, as Christ and Demont have shown,⁴ Herodotus does not force us to choose between the image of the Monarch and that of the ἵστωρ. Indeed, Vasunia's reading of Egyptian space, and its panoptic character, is only reinforced by Christ's observations about the importance of ὄψις to the ἵστωρ-King.⁵ It should not surprise us, then, to find monarchs routinely associated with geography, one of the predominant focus of Herodotean ἱστορίη. And, indeed, we find one such monarch closely associated with the sources of the Nile, in many ways the ideal object of Herodotean ἱστορίη. This King is Psammetichus, the great

¹ See Rood, 2012, p. 127f.

² Vasunia, 2001, p. 101.

³ See above.

⁴ See Christ, 1994, p. 168; Demont, 2009, p. 184f.

⁵ Christ, 1994, p. 170 *et passim*.

experimenter who inaugurates the *Egyptian λόγος*.¹ We meet this Pharaoh performing another ‘experiment’ at the purported sources of the Nile.² The key point remains, however, that even if we assume that the geometricization of space is a product of an ideology of monarchy, as is the desire to experiment and see as much of the river as possible, this only encourages us to examine Herodotus’ geographical ἱστορίη all the more seriously.

And, seen in this light, the most remarkable thing about the panoptic description of Egypt quoted above, surrounded as it is by no less than ten first-person verbs relating to Herodotus’ activities as a ἴστωρ, is the complete lack of any reference to the source of Herodotus’ knowledge. We may surmise from the vividness of the description that Herodotus’ knowledge was, at least partly, *autoptic* in nature. Yet, there is little indication of this prior to Hdt. 2.28, when it is re-introduced in the context of Herodotus’ search for the Nile’s sources. In line with Marincola’s thesis,³ one may suggest that the physical geography of the Nile’s course below Elephantine was not a polemical subject and, therefore, the description ‘called’ for no ‘meta-historie’. Indeed, it is only the controversial consequences of this description that find themselves supported by such interventions.⁴ Whatever the exact cause of Herodotus’ silence, however, it is suddenly broken by the ‘preface’ quoted above, at the very boundary which ‘separates’ the two ‘parts’ of the river and, therefore, at the introduction of ἀκοή:

And, beyond [Elephantine], I rely on the interrogation of sources (ἀκοῆ ἱστορέων). From the city of Elephantine, the land inclines for the man travelling upstream (ἄνω ἰόντι). Indeed, it is necessary to tie the boat at either end and move upstream with

¹ Hdt. 2.2. On this experiment see Salmon, 1956; Lloyd, 1976, p. 5; Sulek, 1989; Vannicelli, 1997; Gera, 2000; 2003.

² Hdt. 2.28.

³ Marincola, 1987, p. 128.

⁴ E.g. Hdt. 2.16.

the help of oxen and if the rope breaks, the craft will be swept away by the strong currents... And crossing this plain in forty days, you will sail on a different boat for twelve days and then you will arrive to a large city named Meroe. This city is said (λέγεται) to be the capital of the Ethiopians... And sailing away from this city for the same amount of time it took you to get there from Elephantine, you will come to the land of the Deserters...

Hdt. 2.31

Besides the introductory and generalizing reference to Herodotus' ἀκοῆ ἱστορέων, we also find the first source-citation of the description, the 'distancing' and impersonal λέγεται. It seems reasonable to assume, then, that the source-citations contained within a ring construction referring to Herodotus' active engagement with ἀκοή are fundamentally related to this process.¹ Herodotus also places careful emphasis on the various peoples living in these places – the Ethiopians and Deserters – who could, at least in principle, function as sources for Herodotus' account. The density of these references to testimony in Herodotus' description of this second, more distant part of the Nile, stands in pointed contrast to the emphatic silence of the previous passage. This marked difference appears to support Shrimpton's thesis about the distancing character of source-citations. Thus, it is only when the course of the Nile is less securely known that Herodotus introduces a source citation to indicate just this, namely that he is unsure whether to believe his 'own' account. This 'distancing' reading neatly dovetails with the emphatic distinction between ὄψις and ἀκοή already noted. In marking those parts of the Nile which are based on mere ἀκοή and, further, in drawing attention to this testimonial basis by referring to its sources, Herodotus may have intended to attach a 'warning label'

¹ Pace Luraghi (2013, p. 110f.).

on this description of the Nile beyond Elephantine and to disassociate himself from it.

And yet, as in the case of the Labyrinth, and all the more emphatically, this simple polar opposition cannot account for the entirety of the account. Thus, the rest of the passage does not seem to serve this ‘distancing’ function in any obvious way. We observe, then, that as well as the change in the density of ‘meta-historie’, there is a corresponding change in the intensity with which Herodotus describes the voyage itself. There is, in other words, a heightening of a decidedly *hodological* rhetoric which must, as Purves observes, speak in terms of a moving eye.¹ Thus, while Herodotus describes a broad panorama of the Nile flowing toward the sea in several adjacent channels, Herodotus’ account of the Nile after Elephantine moves up-river, along a hypothetical journey of exploration. Nor are these ‘impersonal’ datives distancing devices, as Rood and Vasunia suggest,² caused by the mere loss of ὄψις. Thus, we note that this new *hodological* dimension of Herodotus’ description of the lands *beyond* Elephantine is not new at all.³ Herodotus had already referred, as early as Hdt. 2.5, to a hypothetical *explorer* moving inland, conducting experiments in his way and *observing*. And, more subtly but no less persuasively, in his discussion on the φύσις of Egypt, Herodotus places his observable τεκμήρια in a linear geographical distribution, moving from the silt-clogged effluent off the shores of Egypt to the fossils in the mountains and the salt-encrusted pyramids further inland.⁴ The minute description of this hypothetical explorer moving up the upper reaches of the Nile, then, must be understood within this larger *hodological* context. Together, these brief allusions form a continuous journey inland and give Herodotus’ *apodexis* the forward-moving momentum of an explorer’s journey, one which must be understood in the context of Ionian θεωρίη. This *hodological* rhetoric reaches its highest pitch deep in the lands known only by ἀκοή, beyond the lands of the Ethiopians, where the reader himself is invited into the text and along this hypothetical voyage of

¹ Purves, 2010, p. 121, 126 *et passim*. Also see Vasunia, 2001, p. 100f.

² Rood, 2012, p. 127; Vasunia, 2001, p. 101.

³ One can find these ‘distancing’ datives at Hdt. 2.8f.

⁴ Hdt. 2.12.

exploration. None of these features sits well with a ‘distancing’ reading of the passage generally and of ἀκοῆ ἱστορέων in particular. Rather, the vividness of this description and the perspective which Herodotus adopts invite the reader to think of travel and, therefore, of ὄψις. Neither is Herodotus’ next bold assertion of ‘meta-historie’ distancing in any obvious way:

Thus, as far as a journey of four months beyond its course in Egypt, the Nile is known (γινώσκειται). For the months which a man must travel from Elephantine to the land of the Deserters, if added to one another, are found to be as many. And the river flows from the West. Beyond this, however, no one has anything clear (σαφέως) to say for the land is deserted because of the heat.

Hdt. 2.31

The Nile’s course from Elephantine up to the Deserters, can be described in a single word: γινώσκειται. The Nile is *known* up to this point. This bold declaration of knowledge, made even bolder by the emphatic negative which follows, can hardly be called a ‘distancing device’. On the contrary, this verb – found elsewhere in Herodotus’ geographical excursuses – suggests that the course of the Nile which Herodotus has only heard about is known quite as securely as that part of the Nile which Herodotus has seen first-hand. As Schepens suggests, then, ὄψις and ἱστορίη are bound up together. The overlap, however, is not primarily methodological, as he suggests.¹ We have already noted, then, the emphatic separation of ὄψις and ἱστορίη marked both in the descriptions

¹ See above.

of the Nile and the Labyrinth. And, furthermore, the repeated references to a testimonial process, references which become even more emphatic in the account on Scythia.¹ Their 'relatedness', rather, comes from the more basic fact that they both range over a world which is γινώσκεται, known. They are bound, therefore, by *knowledge*. The lands surveyed by these two recourses form, in other words, a single *epistemic* entity, the known world. And, moreover, as soon as we move beyond the scope of this γινώσκεται we find, for the third time, another declaration of the failure to find suitable sources, ones who could speak σαφέως about the lands beyond the Deserters. A second ring-structure, composed of another pair of declarations of ignorance, forms around Herodotus' own account of the river's course beyond Elephantine, just as it had formed around the scribe's account. Once again, then, this structure allows us to relate Herodotus' description of this part of the Nile to the broader mental map. We note that Herodotus' failure to find sources who 'could declare their knowledge' is also tantamount to his inability to find sources who could speak σαφέως. Four months upriver from Elephantine, then, in those lands investigated by ἀκοῆ ἱστορέων, another boundary looms, one marked by the verb γινώσκεται. Like the first boundary, this dividing line is at once logical and geographical, though it is drawn more rigidly on both counts. In geographical terms, the boundary is drawn not by the extent of anyone's travels, but by a vast 'desert' which removes the very possibility of habitation.² It is, in other words, it is an absolute barrier to ὄψις formed by *physis* herself. Beyond this boundary, and beyond the land of the 'the Deserters', who had travelled as far as possible from their accultured masters, the Nile passes through lands which are barren, inhospitable and, as a result, completely unknown. In logical terms, the division is similarly absolute. It demarcates those lands which are known, γινώσκεται, and which are spoken about clearly, σαφέως, from those lands which are completely unknown and about which Herodotus could find no one willing to speak knowledgeably. We have come, then, to the boundary which separate

¹ See below.

² On the physical characteristics of the deserts and its boundaries see Karttunen, 2002, esp. p. 465 with previous scholarship.

Romm's inner and outer zones.¹ We have finally reached the point of complete epistemic oblivion Herodotus warned us about in the beginning. Even the audience's hypothetical journey up-stream must come to an abrupt end. And yet, Herodotus tells us matter-of-factly, the Nile continues to flow Westward, oblivious to the human ignorance which now accompanies it. And if this bold declaration of tragic ignorance were not forceful enough, Herodotus further emphasizes the epistemically devastating consequences of this brute fact by describing the course of the Nile's European twin, the Danube:

For the Ister, starting from the lands of the Celts and the city of Pyrene, flows East dividing Europe into two. These Celts live beyond the Pillars of Heracles and are neighbours of the Cynesii, the last peoples living to the West of Europe. The Ister, having crossed all of Europe, flows into the River at the Euxine Pontus, inhabited by Milesian colonists. The Ister, then, travels through inhabited land as is known from many peoples (πρὸς πολλῶν γινώσκειται). About the sources of the Nile, however, no one has anything to say, for the land through which it flows is deserted and uninhabited. Regarding its course, then, I have said everything which I could learn through furthest inquiry (ἐπ' ὅσον μακρότατον ἱστορεῦντα ἦν ἐξικέσθαι).

Hdt. 2.33

As with the description of the Nile's course, Herodotus' account of the Danube focuses on the local inhabitants of the lands through which it passes. The Ister, we learn, starts

¹ See above.

in the lands of the Celts, divides Europe into two as the Nile divides Libya, and flows into the sea in the lands of Milesian colonists. The Danube is, therefore, entirely contained within the οἰκουμένη which is, Herodotus is at pains to point out, bounded further West by the 'last peoples', the Cynessi. The entire course of the Danube, then, is contained within the ring structure that the Nile transgresses. As a result, the Danube, in its entirety, is known, γινώσκειται and, moreover, characterized by the availability of sources who know it, who can claim to know it, and who speak about it clearly. All this, of course, stands in pointed contrast to the Nile's course which crosses beyond the οἰκουμένη and into the ἔρημοι where its *unknown* πηγαί lie. This boundary separating the οἰκουμένη and the deserts – demarcated by the Deserters in the South as by the Cynessi in the West – corresponds exactly to the scope of γινώσκειται and, therefore, to the second logico-geographical boundary identified. The sources of the Nile, then, are unknown because the Nile flows beyond the οἰκουμένη and, therefore, beyond the scope of γινώσκειται. Herodotus' emphatic and repeated declarations of ignorance, therefore, do not amount to an admission of the failure of ἀκοή in some absolute sense. The discussion which follows affords us a more precise solution. Herodotus' inability to account for the sources of the Nile ultimately depends on the scope of the οἰκουμένη and, therefore, on the scope of γινώσκειται. And, more importantly for us, this failure of knowledge is consistently traced back to the *lack* of a certain type of source, one who knows, who claims to know, and who can speak clearly. We may definitively conclude, then, that there is no contradiction between the oft-repeated refrains οὐδὲν ἐδυνάμην πυθέσθαι and Herodotus' assurance that he has ἐπὶ μακρότατον ἐπυθόμην. They treat of geographically distinct *spaces*.

And yet, one important question remains very much to be answered: γινώσκειται *by whom*? Is Herodotus referring to his own source-begotten, ἱστορίη-dependent knowledge of the Nile's course beyond Elephantine? Is Herodotus, in other words, vindicating the possibility of ἀκοῆ ἱστορέων yielding *knowledge* when it meets with knowledgeable sources who can speak clearly and who can declare his knowledge? Or can the passive

γινώσκειται, surely more reminiscent of the source-citation λέγεται, somehow remain 'distant' from Herodotus? The latter seems to be a corollary of Luraghi's ingenious account of Herodotean *source-citations*. As already noted, Luraghi, faced by Fehling's devastating critique of the *historicity* of Herodotus' accounts of his own sources, attempts to save his credibility by unhinging Herodotus' 'source-citations' from any references to his dealings with ἀκοή and ascribing to them a descriptive function. Whenever Herodotus tells us that 'the Spartans say', he is not *really* speaking about a testimonial source on which he has relied. Nor is he recording the evidence which he has gathered for an account he is advancing. Rather, he is simply informing his audience that 'there is a such-and-such local tradition in Sparta'. He is, in effect, mapping out the local knowledge of the peoples he meets, just as he records their religious beliefs. 'Source-citations', then, are not an indication of Herodotus' epistemic resources, but, rather, ethno-geographical *descriptions* of the human world. It is clear from the outset, then, that parts of Luraghi's reading – particularly his sensitivity to the *geographical* nature of Herodotus' 'meta-historie' – are consistent with the interpretation being defended here. Indeed, his thesis also presents us with an elegant explanation for the verb γινώσκειται, as indeed, for the coincidence of the known world and the inhabited world. The verb is, effectively, another 'source-citation', one which indicates that knowledge of the Nile exists out there in the world, among the very peoples mentioned in the description. The epistemic structure being described, then, is comprised of a first zone known *optically* by Herodotus, a second zone 'known' by epichoric sources – but *not*, presumably, by Herodotus who merely reports the traditions and dissociates himself from them – and the last zone which is known by no one.

As already noted, however, one consequence of such an interpretation is a deepening of the divide between ὄψις and ἀκοή. Luraghi must, in other words, emphasize the importance of that boundary which separates ὄψις and ἀκοή, as must Shrimpton. In other words, the distancing interpretation of source-citations must assume that the first boundary is not merely 'methodological', but more absolute. The first refers to Herodotus'

autoptic knowledge and evidence, appearing in the guise of a travelling eye, and in the second, Herodotus stands back, on the walls of Elephantine, looking out onto a vast expanse human tradition rooted in place and stretching up to the deserts. And yet, when we turn to Herodotus, it is not the first boundary, that separating his ὄψις and ἀκοή, which is marked absolutely, but the second. It is, in other words, that boundary which separates those lands which can be spoken of clearly and those lands which cannot which marks the division between the known and the unknown world. Surely, this exact correspondence, carefully marked out by Herodotus, is not coincidental. More concretely, perhaps, we note that Herodotus goes to great lengths to approximate the two zones which Luraghi and Shrimpton would have us break apart. Thus, Herodotus describes the ἀκοή-dependent portions of the Nile in terms which strongly suggest travel and ὄψις and integrates αὐτόπτης ἐλθῶν and ἀκοῆ ἱστορέων into a single overall activity, ἐπὶ μακρότατον πυθέσθαι. Herodotus' description of the Nile's course, then, though placing each on either side of a logico-geographical boundary, can refer to αὐτόπτης ἐλθῶν and ἀκοῆ ἱστορέων as co-ordinate *methods* with a single aim: tracing the knowledge of the Nile's course as far as it is possible to go. This close alignment of ὄψις and ἀκοή, even more emphatic in Herodotus' account of Scythia, is immediately problematic for Shrimpton's thesis. Indeed, the fundamental continuity of Herodotus' ἐπὶ μακρότατον πυθέσθαι is strong evidence that hearsay is, like ὄψις, an epistemic source which can be adduced, at least in some circumstances, to support one's claims.¹ And, indeed, this should not surprise us. Surely, the characterization of a region of space as 'known' is not merely a description of a local people's beliefs, it is also a *commendation* of these beliefs. It is impossible, therefore, on purely conceptual grounds, to disentangle Herodotus' admission that the locals *know* something and his support for the account which depends on this *knowledge*. And, turning to the text, we note that that Herodotus was, from the very beginning, deeply concerned with the epistemic competence of his sources, just as Antiphon is concerned with the competence of his witnesses. Thus, even

¹ See Chapter Nine.

if we assume – as seems correct – that γινώσκεται refers *primarily* to the local knowledge of the ‘sources’, we must also note that Herodotus’ marking of the patterns of local *knowledge* must be incorporated into a more fundamental intellectual activity: assessing the epistemic credentials of the sources of an account, a process integral to ἀκοῆ ἱστορέων. In sum, then, Herodotus’ assertion that the lands before the Deserters are known is not merely an assertion about the Deserter’s knowledge about the Nile, it is – at a very basic level – as assessment of their competence as sources. The same is true, and all the more clearly, for Herodotus’ judgement that his sources could not clearly account for the lands beyond Meroe.

Summarizing the discussion so far, I have argued that Herodotus divides the world into three geographical zones, each characterized, primarily, with reference to Herodotus’ epistemic resources. Herodotus has travelled through the first zone, from the Nile from the Sea up to Elephantine, and knows this part of the river by means of autopsy. Accordingly, he presents himself as an *autoptic* narrator. In the second zone, from Elephantine to Meroe, the Nile is known by sources who can speak clearly and knowledgeably and who can declare their knowledge. Herodotus investigates these lands by ἀκοῆ ἱστορέων and, indeed, the conclusion that these lands are *known* is an integral part of this investigation. Herodotus goes to great lengths, however, to approximate this investigation with the previous one and, therefore, appears to vindicate the *heuristic* function of testimony. In other words, Herodotus has learnt what his sources know and, further, points to them as the font of his own knowledge. Beyond Meroe, however, Herodotus could not find any competent sources. He could not find, therefore, sources who could speak clearly, who were knowledgeable and who could truthfully declare their own knowledge. There are, to adopt the language of the courts, no credible witnesses of these lands. And yet, Herodotus assures us, though there are no competent witnesses for the lands beyond Meroe, witnesses did exist:

Though I did hear this from certain men of Cyrene, who had gone to the oracle in Ammon and spoken the Etearchus, the King of the Ammonians, and they somehow starting speaking about the Nile, saying that no one knows where its sources Nile (ὥς οὐδεις αὐτοῦ οἶδε τὰς πηγάς). And at that, Etearchus told them that he was once visited by certain Nasomians... who, when asked for any news about the Libyan desert (εἴ τι ἔχουσι πλέον λέγειν περὶ τῶν ἐρήμων) said that he was told this: that certain arrogant (ὕβριστάς) youths of local potentates... chose by lot five among them for the purpose of seeing (ὄψομένους) the Libyan deserts and to see whether they observe anything beyond the edges of what had been seen (εἴ τι πλέον ἴδοιεν τῶν τὰ μακρότατα ἰδομένων)...

Hdt. 2.32

Several characteristics of this remarkable passage call out for comment. As commentators have observed, Herodotus is engaged in carefully tracing his sources from the most immediate, the Cyrenians, to the thrice-removed primary source of the account, the Nasamonians. Each step is, once again, artificially coloured by the preoccupations of Herodotus' ἱστορίη. The Cyrenians too, then, complain that there is no one who knows the location of the sources of the Nile, as Herodotus has done, while Etearchus, like a good ἴστωρ-King, had plied the Nasamonians for more information about the deserts. He has, in other words, engaged in enviably Herodotean ἀκοῆ ἱστορέων. These minute touches, implausible though they might be, emphasize an important point. Herodotus' ἀκοῆ ἱστορέων has not come to an end with the second boundary. We note, then, there is little to separate, except in their results, Herodotus' dismissal of the temple-scribe's pretence of knowledge and Herodotus', or indeed

Etearchus's, activities here. Both are an attempt to discover if an account available to Herodotus is 'epistemically competent' and in what way. In the case of the scribe, Herodotus judgement is firm: he was no competent source of knowledge. In this case, Herodotus' judgment is more complex. Herodotus is careful to trace the series of intermediate sources to the epistemic bedrock of the account, the Nasamonian youths' ὄψις. Indeed, the youths turn out to be ἱστορεῖς in their own right, motivated by a Herodotean desire to expand their own autoptic knowledge and engage, therefore, in respectable Ionian ἱστορίη. Unlike Herodotus, however, the barbarian youths are also desirous to see more than anyone had ever seen and to transgress, hubristically, the boundary line had hitherto separated the seen from the unseen world. They have, as it were, broken into the lower chambers of the Labyrinth. Despite this gross departure from normal Herodotean practice, it is clear that the underlying motivation – the expansion of ὄψις – can easily be incorporated into Herodotean ἱστορίη. The many accounts of exploration narratives in the *Histories* make this plain.¹ Even here, then, Herodotus explicitly assesses the result of the Nasamonians' exploration of the desert:

And crossing through the sandy desert for many days, they saw some sort of trees growing in a plain... and while they were cutting fruit, they were approached by men of shorter stature than normal, who took them and carried them away. The Nasamonians knew neither of these men nor could they decipher their language. They led them through a great marsh and crossing this they came to a city of men who were of normal stature and black skin. And beside this river there was a great river which flowed Westward and, in its waters, crocodiles were visible (φαίνεσθαι). I have said enough of the account (λόγος) of

¹ See Karttunen, 2002, p. 465f.; Bichler, 2018, p. 6f.

the Ammonian Etearchus, except to note that he said that the Nasamonians returned – that is what the Cyrenians said – and that the men to who they came were all wizards.

Hdt. 2.32

Once again, then, the continuity with the previous description is clear from Herodotus' concerns with describing the details of the voyage – he even pauses to inform us of their resupplying – and their ὄψις. Herodotus, then, is sure to make a reference to the Nasamonian youth's ὄψις of the key detail: the crocodiles in the River. There are, of course, novel features which are generally found in similar account of remote places.¹ Chief among these are the references to the fantastical, namely the nation of the pygmies and the city of wizards. And yet, even in these accounts Herodotus' interests may be directed by his search for the epistemic roots of the Nasamonian account. Thus, though the failure of communication emphasizes the 'exoticness' of these distant places, it also points to the failure of *comprehension* and, therefore, of ἀκοή, one which often troubles the exploration of distant places.² Herodotus' attention to tracing the roots of the account is also, and more plainly, manifest in the 'appendix' which Herodotus attaches to the account: the Nasamonian youths returned to tell their story and, therefore, to start off the testimonial chain to begin with. Herodotus, then, makes sure to point out that his account goes back to some fundamental, albeit distant, act of *autopsy*. Shrimpton would, no doubt, point out that the source-citation is invoked just at the time when Herodotus makes his most preposterous claim at the end of his account. And indeed, there is good reason to suspect that Herodotus was sceptical about this account. Thus, Herodotus emphasizes that the identity of this river was reckoned, συνεβάλλετο, not determined definitively. And, besides the references to wizards – which surely would have raised a

¹ See Romm, 1982; 1989; 1992.

² See below.

rationalist's eyebrow – Herodotus recounts the whole story in a relentless *oratio obliqua* and, even more damningly, includes various oblique infinitives.¹ Herodotus, then, has come finally to cast suspicion on the products of ἀκοή. This scepticism, however, which Shrimpton argues is universal, can be fitted into a larger 'epistemology' of testimony, one which admits the possibility of learning by means of ἀκοή ἱστορέων when confined to its proper space, the οἰκουμένη inhabited by knowledgeable sources. It is only when Herodotus' ἱστορίη crosses beyond the scope of γινώσκειται, and the lands for competent sources, that we finally come to that emphatic moment of knowledge-failure and source-failure which are so inextricably bound to one another. And, accordingly, it is here where Herodotus marks most emphatically his scepticism of the accounts he has received.

We may now take stock of the tripartite structure within which Herodotus places his account of the Nile. I have argued, then, that this structure is based on two boundaries, at once logical and geographical. The first boundary marks, primarily, a methodological transition in the process of ἐπὶ μακρότατον πυθέσθαι. The city of Elephantine, where Herodotus' own travels purportedly ended, separates his ὄψις and his ἀκοή ἱστορέων. Beyond this boundary, however, the *known* world stretched out to the ends of the οἰκουμένη. The first boundary, however rigidly it separates ὄψις and ἀκοή, does not distinguish between a legitimate and an illegitimate epistemic source, merely two sources with different geographical domains and which result in geographical knowledge. Part of the world, in other words, is known by ὄψις, and another ἀκοή. Contrary to what Shrimpton's model leads us to believe, then, there is no absolute incommensurability of ὄψις and ἀκοή since they both can be proffered as the justification of a claim. References to ἀκοή, then, as well as the assurances that Herodotus has interrogated sources and examined their credibility – and, therefore, engaged in ἀκοή ἱστορέων – are, like references to ὄψις, persuasive devices. And, further, much like the litigants of Antiphon, the narrator-investigator acknowledges – in a rhetorically pregnant way – the inherent limitations of his ἱστορίη. Thus, at the lands of the last peoples,

¹ See Cooper, 1974, p. 40.

another boundary, marked by the deserts and caused by the heat, separates the known world, the οἰκουμένη, from the outer zones which are unknown. This is the same distinction, found in Antiphon, drawn between observed and unobserved murders. Like Antiphon, then, Herodotus draws a boundary of *knowability* around the *limits* of all possible ὄψις and, therefore, around the possibility of credible witnesses existing. Just as the first boundary delimits Herodotus' access to ὄψις-dependent knowledge, then, so too does the second boundary demarcate the absolute limit of an important type of knowledge, λόγος-dependent knowledge. And, just as in Antiphon, the limits of this knowledge are defined, above all, in terms to the qualities of sources. We find, then, that Herodotus comments on his sources' knowledge, the 'clarity' of their account, and the willingness to declare their knowledge. And yet, as the account of the Nasamonians proves, the second boundary does not mark the limit of available λόγοι. Beyond these lands, a second type of ἀκοή is available, one which does not depend on sources who can speak σαφειώς and who can truthfully declare their ἀτρεκής knowledge. And, more importantly, we find that ἀκοή ἱστορέων continues unimpeded beyond this boundary. Indeed, it is intensified. Even if Herodotus' cannot personally interrogate the Nasamonians himself, we find other ἱστορες willing to pick up the slack. Herodotus' ἱστορίη moves, through these intermediaries – which Herodotus' tracks meticulously – right up to the traveller's most distant, μακρότατον, act of ὄψις. And yet, although λόγοι about these lands reach the ends of the earth, Herodotus' ἀτρεκής knowledge emphatically does not. Indeed, Herodotus routinely regards these λόγοι sceptically. Of course, several other reasons can be adduced to explain this scepticism. For one, Herodotus emphasizes the extra-ordinary length of the testimonial chain and the indirectness of the account by the use of oblique infinitives, a quality which, one cannot help but notice, is sufficient to render testimony inadmissible into an Athenian homicide court. The crucial point, however, remains that Herodotus' scepticism is consistent with the logico-geographical map outlines above. Herodotus, like Antiphon, distinguishes between two different sorts of ἀκοή which fall on either side of the boundary, one which is grounded in knowledge and which yields knowledge, and that which is not and does

not. The second boundary, then, does not separate two different methods, but two different outcomes, a difference which can be traced back the different qualities of the sources investigated by same method which stretches, unchanged, to the ends of the earth, ἐπὶ μακρότατον.

And, at length, we can finally return to the furthest reaches of the archaic world, Ocean:

The next opinion is less grounded in knowledge (ἀνεπισημονεστέρη) than the one already mentioned, though it is more wondrous to relate. It says that the river inundates because Ocean contrives it to be so, the Ocean which flows around the world. But he who speaks about Ocean, and who carries the *mythos* into the unknown (ἐξ ἀφανέος), has no evidence (ἔλεγχον) for I know of no river Ocean (οὐ γὰρ τινὰ ἔγωγε οἶδα ποταμὸν Ὠκεανὸν ἔόντα). Indeed, it was Homer or one of the older poets who, it seems to be, invented the name and inserted it into his poetry.

Hdt. 2.21, 23

It is through the lens of this geographical structure, finally, that this crucial passage can be understood.¹ It is now clear, then, that the Ocean at the ends of the earth is beyond the competence of anyone to know about since it lies beyond the second logico-epistemic boundary. Any λόγος which speaks of it, then, leaves, by definition, the *known* world far behind it. It is, therefore, ἀνεπισημονεστέρη, a λόγος completely bereft of all

¹ We note, however, that this explanation is consistent with that of Fowler, Schepens, Graham, and Romm.

epistemic credentials. The man who speaks of Ocean, then, drags his own λόγος beyond the οἰκουμένη and, therefore, beyond the realm of σαφής and ἀτρεκής speech, and into the ἀφανής deserts. It transports itself, in other words, beyond the realm of knowledge and, indeed, of demonstration:

They say, with mere speech (λόγω), that the Ocean circles the entire globe starting from where the sun rises, but they cannot demonstrate his in fact (ἔργω δὲ οὐκ ἀποδεικνῦσι).

Hdt. 4.8

And, to prove this, Herodotus points to his own lack of knowledge. We can now finally unpack this emphatic declaration of ignorance. Since Herodotus' ἱστορίη has ensured that his own learning has been extended, by means of ἀκοή, as far as human knowledge of the Nile can go, his admission of ignorance of Ocean, otherwise a bizarre way of questioning the existence of anything, becomes highly polemical. Herodotus' ἱστορίη, in tracing the available *knowledgeable* sources to the ends of the οἰκουμένη, has surveyed and has come to encompass all of human knowledge about the Nile. His ἐξωμοσία, then, comes to be tantamount to an assertion of the very *knowability* of the Ocean, as Graham and Romm also point out.¹ It is also true, as Schepens points out, that Ocean is ἀφανής because it transcends *all ὄψις*.² The crucial point, however, is that this 'communitarian' ὄψις must reach Herodotus through a distinctly *oral* process, ἀκοῆ ἱστορέων, one which is rooted to an examination of the credibility of the λόγοι one has heard and, primarily, an examination of their epistemic credentials. It relies, in other words, on the assumption that ἀκοῆ ἱστορέων, like the neglected βάσανος in Antiph. 1, can yield *bona fide* knowledge *when certain conditions of credibility are satisfied*. It is this basic qualification

¹ Graham, 2003, p. 295; Romm, 1989, p. 100.

² Schepens, 1980, p. 63.

that explains Herodotus' interest in the knowledge of his sources. It is because, all testimony, all ἀκοῇ ἱστορέων, *necessitates* – as Anaximenes suggests – a judgement about its credibility. It is, ultimately, this *judgment* which confines the theory of Ocean to the trash-heap. Herodotus, having surveyed all human ὄψις as far as it is possible to go, can simply dismiss it because he does not *know* of it, either by means of his own ὄψις or by the *reported* ὄψις of his credible sources whom he has met. And yet, as was clear from the start, Herodotus' authority must, of necessity, be radically different from that of a poet. Indeed, Herodotus appears to indicate just this very fact in the very structure of his account. Like Homer's references to Ocean, then, Herodotus' ἐξωμοσῖαι bind, quite literally, Herodotus' account of the world in a ring-structure. And, further, like Homer's references to Ocean, they mark out the absolute limits of the world. The divine artificer's vision allows him to fix the limits of his 'map' around Ocean and Homer, the servant of the Muse, also shares in this knowledge and, like Hephaestus, pins his *ekphrasis* of the world to the mythical Ocean. Herodotus, on the other hand, must settle for a far more human limits, a vast sea of universal ignorance marked by the impenetrable deserts. I know of no Ocean indeed.

b. From Coast to Griffin: the ethno-geography of Scythia

Scythia was, even to a Greek writing a full two centuries after Herodotus, forbiddingly remote. Inaccessible to Greek ships perhaps as late as the 7th century, and after that only with immense difficulty and risk,¹ the grasslands of the Ukraine long remained a dark and mysterious place. And for this reason, the milk-drinking, horse-taming nomads of the Eurasian steppe had long exercised the poetic imagination of the Greeks. These peoples, then, find their way even into Homeric poetry² and into the pseudo-Hesiodic

¹ West, 2007, p. 81.

² Hom. Il. 13.5f. See Rolle, 1989, p. 13; West, 1999, p. 76; 2003, p. 154. Cf. Gardiner-Garden, 1986, p. 19.

Catalogue of Women.¹ Moreover, the southern-eastern shores of the Black Sea were considered, even by Herodotus, to be the home of the Amazons, the inveterate enemy of Greekness, and, even further east, lay Colchis, the land of the fabled witch-queen, Medea.² And as the Black Sea opened up its Hellespont to the Greeks of Miletus, the cradle of the Greek Enlightenment, the Scythians exerted their far-reaching influence onto new brands of thinkers and sages. Aristeeas, perhaps writing as early as the 7th century,³ claimed to have visited lands even more remote than those of the Scythians and to have engaged, at the ends of the world, in an almost Herodotean interrogation of the Issedones. Scythia also features, around twenty times, in the scanty fragments of Hecataeus's *Periplus*,⁴ while a far ampler account of these lands survives in the form of a medical treatise, *Airs, Waters, Places*.⁵ Against this rich and diverse background, Herodotus produced, perhaps for the first time,⁶ a systematic attempt to describe the Scythians and to understand their place in the story of Persian expansionism. And, as with his account of Egypt, Herodotus' description of Scythian geography is an integral part of this account. When we turn to Herodotus' geographical descriptions of Scythia, however, we discover a confusing, indeed a contradictory, picture.⁷ Perhaps the clearest sign of Herodotus' difficulty is its very brokenness. Herodotus, thus, attempts to describe the lands of Scythia in three different sections of markedly different character and which can hardly be reconciled to one another, or to any map.⁸ So incongruous are Herodotus' accounts that one recent paper even suggests that Hdt. 4.81ff., a long catalogue of Scythian rivers, be marked as spurious.⁹ More often, the incongruity is thought to arise from Herodotus himself, who was struggling with a large and inchoate mass of data

¹ Hes. F150, 151. See West, 1985, p. 131, 157.

² See esp. West, 2003.

³ Herodotus dates the poet to c. 675 B.C.E. (Hdt. 4.15). On Aristeeas' date see Bolton, 1962, p. 179 *et passim*; Huxley, 1986, p. 155; Corcella, 2007, p. 592.

⁴ See Gardiner-Garden, 1986, p.27f.; Corcella, 2007, p. 553ff. with previous literature.

⁵ See Thomas, 2000, p. 42ff. with previous literature.

⁶ Hartog, 1988, esp. 13f. Similar sentiments are expressed by West (1999, p. 79) when speaking on the much-maligned use of Greek medical theory to explain the making of *koumiss* (Hdt. 4.2).

⁷ West, 2002, p. 441.

⁸ Wheeler, 1854, p. 138; Minns, 1913, p. 26; West, 2002, p. 441. On Herodotus' sources see Rolle, 1989, p. 13; Thordarson, 1997, p. 93; West, 2002, p. 446.

⁹ Bravo, 2000, esp. p. 85ff.

extracted unsystematically and over many years.¹ Of these three sections, most commentators, particularly those writing a century ago, focus on the short passage in Hdt. 4.99f., which they regarded as the most ‘scientific’ and, consequently, the most important.² Here, Herodotus describes the ‘true Scythia’ – the land inhabited by the true Scythians – as a geometrical shape, a tetragon. This description, however, is problematic on a number of counts. Besides its unrealistic schematism³ and geometricization – which Herodotus elsewhere finds laughable – the description fails to mention any river, surely the most important and most impressive feature of Scythian geography. It is, presumably, this gross neglect which prompts Herodotus to write of the movements of Darius’s army as an unimpeded march ‘across a chessboard’.⁴ Indeed, we may also note that this description of Scythia comes at a critical moment in the narrative: Darius had just crossed the Ister into Scythia. The close connection of this description and Darius is also marked by a comparison between Scythia to Attica, the second land Darius fails to conquer, drawn on the rather paltry grounds that both countries are bounded by Sea on two sides. We may, then, cautiously attribute Herodotus’ description of Scythia in Hdt. 4.99 to a ‘rhetoric of mapping’, one which Vasunia detected in Herodotus’ account of the Nile. Herodotus, in other words, accommodates his description not only to the contemporary trends toward precise measurement,⁵ but also to Darius’s imperious mentality. To the Great King, Scythia was a chessboard indeed! And, what is more, no sooner does Herodotus define the extent of ‘true Scythia’ into which Darius has crossed, than he suggests that this picture is problematic and limited. Thus, immediately after the definition of Scythia, Herodotus recounts that the Scythian King met with a host of different peoples living in the more recondite areas beyond this ‘map’ and formed with them a common resistance. The grid which Herodotus laid out to define Darius’s expansionist ambition, then, is immediately revealed to be dangerously incomplete and

¹ Bichler, 2018, p. 148.

² E.g. Wheeler, 1852, p. 140ff. See esp. the critical comments by Minns (1913, p. 27) on this tendency.

³ E.g. West, 2002, p. 441; Bichler, 2018, p. 148.

⁴ Minns, 1912, p. 27.

⁵ See Rood, 2012, p. 131.

its sides prohibitively porous, even arbitrary.¹

With the mention of distant peoples, we come to the first, longest, and most intricate description of Scythia, and the subject of this analysis. And though, as I go on to discuss, profound similarities unite this description to that of the Nile – another stark illustration of the symmetry of Scythia and Egypt – we must first register some major differences. Herodotus' account of the Nile's sources races upstream, along a hypothetical voyage toward the object of the *ἱστορίη*. Accordingly, Herodotus adopts a straightforwardly hodological conception of space. Herodotus' discussion of Scythia could not be more different. Rivers, rather than forming the basis of continuity and unity, separate one part of Scythia from the other, much as Egyptian canals carved up Egypt. And, rather than one continuous motion inland, Herodotus' account moves via a series of stops and starts, tracing different 'roads' moving inland, through increasingly barbarous territory, toward the unknown heartlands of North-eastern Europe. These various roads cut across Scythia like the lines on a page, each road neatly arranged side by side on a 'latitude' formed by the North coast of the Pontus. The perspective of this description, then, is less straightforwardly hodological. Indeed, the series of roads, each arranged to the other in sequential space, must invite a more 'cartographic' conception of Scythia as a vast grid.² Moreover, the adoption of either perspective is explicable in terms of a rhetorical choice on the part of Herodotus. Thus, the hodological perspective of Herodotus' description of the Nile forms part of a larger propulsive force which moves Herodotus' *ἱστορίη* further into Egypt, one which irresistibly suggests Herodotean travel and *ὄψις*. The adoption of the cartographic perspective in the Scythian *λόγος* – no doubt also influenced by the nature of the land – may also have been influenced by the nature of Darius's aborted campaign. Indeed, a simple hodological narrative of the Egyptian sort would have jarred considerably with Darius's fruitless chase across a vast open space. There are no straight roads in Scythia, but a bewildering multiplicity of roads, all leading nowhere.

¹ For a similarly 'immensurable' Scythia see Purves, 2006.

² See Rood, 2012, p. 134.

Moreover, any differences between Herodotus' concepts of Egyptian and Scythian place must fall back on the essential continuity – more easily observed in tabular form¹ – of the logico-geographical structure in both descriptions. We find, then, that the core of the account, one explicitly dependent on ἀκοή, is also ringed by two assertions of ignorance and preceded by another 'false start', itself ringed by similar declarations. This central account leads, once again, to a description of the last *known* peoples separated from the ἔρημοι by a physical boundary which also marks the furthest limits of ὄψις. Even the 'mismatches' toward the end of the Scythian account can be plausibly explained in terms of this structure. Thus, while Herodotus had access to only one account of the lands beyond the Libyan deserts, he now has the reports of two different groups of 'last peoples'; the Issedones and the Bald-Men. In all other respects, the structure of the two accounts lines perfectly. One significant detail, however, has changed. Herodotus does not claim to have 'reached' or seen any of these lands himself, at least not in this critical passage. Whether Herodotus actually went to the Euxine at all has been one of the chief scholarly debates pertaining to his account of these remote lands. Predictably, Fehling and Armayor, argue that Herodotus falsely claims to have gone to the Euxine.² Others have defended Herodotus' credibility, even dating this visit as prior to his before visiting Delphi, while still others, most recently Stephanie West,³ argue that Herodotus never explicitly claims to have visited Scythia or seen any of it. We may note, on this point, that Herodotus' failure to mention his own ὄψις in this description of Scythian geography, especially when contrasted with his insistence on it in the Egyptian λόγος, seems to support West's thesis. As in the former cases, I offer no solutions to this historical question.

If we turn, instead, to the 'meta-historie' found in Herodotus' description of Scythia, we find a preface which is both predictable and illuminating:

¹ See below.

² Armayor, 1978b, p. 61f.; Fehling, 1989, p. 129, 223, 240ff.

³ West, 2002, p. 442f.

And of the land about which I have started speaking, no one has any definite knowledge (οὐδεὶς οἶδε ἀτρεκέως) of what lies above it since I could learn nothing from one who claimed to have autoptic knowledge (οὐδενὸς γὰρ δὴ αὐτόπτεω εἶδέναι φαμένου δύναμαι πυθέσθαι). Not even Aristeas, whom I have just mentioned, claimed to have reached the lands beyond the Issedones in his poems but based his account of these lands on hearsay (ἀλλὰ τὰ κατύπερθε ἔλεγε ἀκοῆ), claiming that the Issedones were his sources. But I will repeat all that I could ascertain by report of the furthest lands (ἀλλ' ὅσον μὲν ἡμεῖς ἀτρεκέως ἐπὶ μακρότατον οἴοι τε ἐγενόμεθα ἀκοῆ ἐξικέσθαι).

Hdt. 4.16

The parallels with the corresponding section in his account of the Nile are numerous. Once again, then, we are given the vehicle by which the account is to 'move' ἐπὶ μακρότατον, namely a testimonial process Herodotus calls ἀκοῆ ἐξικέσθαι,¹ a process analogous, both structurally and semantically, to ἀκοῆ ἱστορέων. Moreover, once again, Herodotus introduces his account of Scythian ethno-geography by declaring that his own knowledge is limited in scope and by assuring us that he will track the reports of Scythia as far, ἐπὶ μακρότατον, as he could reach. And, once again, this failure is pinned down to the complete lack of trustworthy sources who know ἀτρεκέως the lands of which they speak. We may also note, therefore, that Herodotus' assessment of the epistemic credentials of his sources also continues unabated. Indeed, it is refined. Herodotus specifies that he will assess the *autoptic* credentials of his sources. Indeed, this is just

¹ This verb of motion, ἐξικέσθαι, irresistibly recalls the *hodological* rhetoric used in the parallel description of the Nile. On the predominance of hodology see West, 2008, p. 83.

the way in which Herodotus assesses the account of his first and only named source, the hexameter poem of Aristeas. Herodotus is sure to point out, then, that Aristeas himself acknowledged his own *lack* of ὄψις of the lands beyond the Issedones. Like the Saite priest, then, Aristeas proves to be no source of ἀτρική knowledge when assessed by the rigours of Herodotean ἱστορίη, if for different reasons. Indeed, just as in his account of the Nile, Herodotus claims that there is no one who has any ἀτρική knowledge of these lands *because* no one has ever seen them. They lie, like voluntary murder and the sources of the Nile, beyond the absolute limits of ὄψις. And yet, after this peremptory dismissal of all possible sources, Herodotus assures his audience that he will diligently repeat to them all that he has learnt ἀτρικέως by means of ἀκοή. The tension which informs the preface in Hdt. 2.28, then, is repeated here, and more emphatically. How can Herodotus render an account of his ἀτρική learning if there exist no one who knows these lands ἀτρικέως? Herodotus' answer is the same: he cannot. Indeed, no one can. His ἀτρική learning, rather, must be confined within its proper remits, the world which has been *observed* by men and *known* ἀτρικέως *by them*. And, indeed, these are the very parts of Scythia he describes in the core of the discussion and which are also delimited by the repeated references to the unknown ἔρημοι at their limits.¹

The repetition of the important qualifier ἀτρικέως, however, does more than simply delimit Herodotus' ἀκοή ἐξικέσθαι to its 'proper remit', namely to the range of people who also know ἀτρικέως. It is also an emphatic commendation of its results. Herodotus, then, moves seamlessly from confessing his inability to find anyone who has any ἀτρική *autoptic* knowledge of the uninhabited North to claiming to have learnt ἀτρικέως, by means of hearsay, about those lands which are on the hither side of these unknown deserts. This same program of *rapprochement* is also evident in the companion 'epilogue':

¹ E.g. Νευρῶν δὲ τὸ πρὸς βορέην ἄνεμον ἔρημον ἀνθρώπων, ὅσον ἡμεῖς ἴδμεν. Hdt. 4.17. See Purves, 2010, p. 130.

And so, the lands up to these Bald men and the people who live before them are all abundantly evident (περιφανείη), for some of the Scythians go to them from whom it is not difficult to learn (τῶν οὐ χαλεπὸν ἐστὶ πυθέσθαι), and also from Greeks from the trading-port in the Borysthenes and other ports of the Black Sea. These Scythians go to them and conduct their business with seven interpreters who speak seven languages.

Hdt. 4.24

Once again, Herodotus is specifying what can only be described as a testimonial process of inquiry, τῶν πυθέσθαι. And, more importantly, the results of this verbal inquiry cannot be stated more emphatically: those lands Herodotus has heard about are περιφανείη. This term, unique in Herodotus and rare in classical literature generally, serves the same function as γινώσκειται and, accordingly, need not be discussed at length. What is particularly noteworthy about the term, however, is its strong association with *autoptic* knowledge. Besides being implicit in the root φαν-, the uses of this term in pre-Herodotean literature – where it is also used to designate geographical features – refer to apprehension by means of eyesight. Thus, in the *Homeric Hymn to Aphrodite*, Anchises, infatuated by Aphrodite, promises to build an altar on a prominent look-out point, ἐν σκοπιῇ, περιφαινομένῳ ἐνὶ χώρῳ.¹ Similarly, in the *Iliad*, one of Ajax's victims falls like an ash tree atop a mountain visible from all round and from afar, ὄρεος κορυφῇ ἕκαθεν περιφαινομένοιο.² And, turning to literature more contemporary to Herodotus, we find that though the object described as 'prominent' has changed – from geography to medicine – the same association with vision is maintained. Thus, in the Hippocratic *On*

¹ *Hom. Hymn Ven.* 100.

² *Hom. Il.* 13.179.

Ulcers, the author suggests that a physician never cut into a collection of veins on the leg which is either visible, ἢ περιφανῆς, or beneath the flesh, ἢ κατὰ τῆς σαρκὸς.¹ Similarly, in Sophocles' *Ajax*, Athena promises to *show* Odysseus his ex-comrade's 'disease' so that he can see it and report it to his comrades: δείξω δὲ καὶ σοὶ τήνδε περιφανῆ νόσον, ὡς πᾶσιν Ἀργείοισιν εἰσιδὼν θροῆς.² Herodotus' use of this term departs only marginally from its use in archaic poetry. Like Homer, and the author of the Hymn, Herodotus attaches the term to a geographical entity, but enlarges the scope of the term considerably. It is not merely a mountain which is 'prominent', visible, but an entire country! As in his account of the Nile, then, and even more explicitly, Herodotus draws upon language of *autopsy* to characterize the object of his own ἀτρεκέως ἀκοῆ ἐξικέσθαι and his πυθέσθαι. This approximation of the results of such πυθέσθαι to ὄψις underscores Herodotus' belief that testimonial knowledge, the basis of his account, is possible when ἀκοῆ ἐξικέσθαι is confined to proper scope: the known, observed, world. And, indeed, within these limits the results of Herodotus' ἀκοῆ ἐξικέσθαι is indistinguishable from ὄψις in at least one way, as a source of ἀτρεκέως learning and knowledge. Once again, then, we must note a strong analogy with Antiphon's rhetoric. As in the law courts, the witness's immediate access to ὄψις is the fundamental criterion by which the 'admissibility' of a witness is assessed, and their credibility defended. The insistence on *autoptic* sources serves not only to eliminate the reports on one's rivals, but also to legitimize the account of one's own sources and, by extension, one's own account.

This result, once again, appears to vindicate Schepens's close approximation of *autoptic* knowledge to his ἱστορίη. We may note, however, that Herodotus is emphatic about two things. Firstly, he is clear about the *testimonial* nature of the exchange. Romm, then, correctly points out the importance of mutual comprehension along the *testimonial* chain.³ As in the case of the Nile – where ὄψις and ἀκοῆ are distinguished even more

¹ Hippoc. *Ulc.* 25

² Soph. *Aj.* 66.

³ Esp. Hdt. 4.24. See Romm, 2013, p. 37f,

rigorously – this is best regarded as a *methodological* distinction. Secondly, Herodotus is emphatic about the need to distinguish between two different types of λόγοι and on the different results incumbent on each. Thus, as Herodotus has emphasized from the very start, it is not every source which can yield ἀπρεκέως learning. And, as if to confirm his concern with the quality of the sources, Herodotus appears to stipulate, in more precise detail, what it is about his testimonial sources that makes him confident of their credibility. They are, Herodotus now reassures us explicitly, genuinely *autoptic*: the Scythians have gone to these people many times and have commercial relations with them. And indeed, Herodotus' account of Scythia does appear to follow a trade-route toward the mountains.¹ Furthermore, unlike the Nasamonian youths, equipped with provisions but little else, these merchants are not troubled by the indecipherability of the languages they met at the ends of the world. A prodigious number of interpreters followed in their train. Unlike the Nasamonian adventurers, these merchants could speak to the locals. Credible testimony, it seems, must not only be founded on an autoptic act, but the results of this autopsy must be communicated smoothly down through the intermediate sources, these 'merchants-travellers'. Finally, it is not only the Scythians who can speak knowledgeably about the Bald-Men; Greek merchants do so too. Besides ensuring a multiplicity of sources – and thus corroboration – the addition of the Greeks also completes the smooth process of translation which began with the Bald-Men's account and ends in Herodotus'. The original ὄψις of the far-off places has moved smoothly down-river, to Olbia, then to Herodotus, and finally, to his audience. These, then, are the central demands which Herodotus defends of his legitimate sources. And, conversely, it is the failure of these 'processes' which defines those lands about which Herodotus could not learn ἀπρεκέως:

[The country] up to these men is known (γινώσκειται) but no one

¹ E.g. Philips, 1955, p. 76.

can speak with exact knowledge (οὐδεις ἀτρεκέως οἶδε φράσαι)
about the lands beyond the Bald Men. For there are lofty mounts
which no one has ever crossed (ὑπερβαίνει).

Hdt. 4.25

Once again, the boundary separating the known and the unknown world is spelt out in terms of the failure of *knowledgeable* speech, ἀτρεκέως οἶδε φράσαι. Moreover, this failure of testimony is traced back to an epistemic deficiency of the possible sources. No one can render a credible account of these lands because, Herodotus tells us again, no one has seen them. And, just as in Herodotus' account to a Nile, Herodotus specifies what it is that restricts ὄψις: a range of impassable mountains. We have come, finally, to another absolute boundary grounded in φύσις, in the face of which all ὄψις must come to a stop. Herodotus' ἀτρεκέως ἀκοῆ ἐξικέσθαι too, then, must grind to a complete halt in the shadows of these impenetrable mountains.¹ Knowledge-failure is, once again, tied to a failure of credible ἀκοή which is, in turn, traced to a failure of *all* ὄψις. Conversely, the lands immediately before this boundary are known, characterised by the availability of autoptic witnesses who can clearly to one another and to Herodotus. The lands about which Herodotus has been able to learn ἀτρεκέως, then, are just those lands which are known and which were, in Herodotus' account of the Nile, contained by the οἰκουμένη, observed and discussed by *autoptic* witnesses. And, to reiterate, the unobservable lands which lie beyond the 'last men' are just those lands about which no source can speak with ἀτρεκής knowledge and those lands which are inaccessible to Herodotus' ἀτρεκέως ἀκοῆ ἐξικέσθαι. And, just as in the account of the Nile, this perfect alignment of the source's knowledge and Herodotus' learning is not incidental. Indeed, it is based on the fundamental dynamic of Herodotus' ἱστορίη, which itself sits on a positivistic 'epistemology of testimony' which assumes that knowledge can be successfully passed

¹ Karttunen, 2002, p. 465.

from the primary source to Herodotus when certain conditions for credibility are fulfilled.

We find in Herodotus' description of Scythia the same overall structure, the same attention to the same attention to the epistemic credentials of one's sources, and a similar, albeit more emphatic, approximation of the results of ἀκοή to those of ὄψις. We find, then, all the principles on which the epistemic structure of the Nile was constructed and divided. And, further, as in his account of the Nile, we find that the complete failure of ὄψις and knowledge does not dissuade these 'last peoples'¹ – as indeed it had not dissuaded Aristeeas – from *talking* about these unseen places:

But these Bald Men say – though the story is incredible to me – that goat-footed men and, going further up from there (ὑπερβάντι), are men who sleep half the year. All this I take to be foolish in principle (τοῦτο δὲ οὐκ ἐνδέχομαι τὴν ἀρχήν).

Hdt. 4.25

Unconfined by the physical limitations which constrain *all human movement*, the hypothetical, but impossible, explorer – this impossibility is underscored by the repetition of ὑπερβαίνειν which the mountains had just explicitly prohibited – feasts his eyes of equally unlikely beings. And while Herodotus is somewhat coy about his scepticism of the Nasamonian travelogue – perhaps because it could be traced to a distant act of ὄψις – he is now extremely frank. Herodotus finds himself incapable of accepting, from the ground up, τὴν ἀρχήν, the account which he calls incredible, ἀπιστός. It is unclear exactly why Herodotus is quite so categorical in his rejection, though the fantastical component

¹ The propensity for these last peoples to act as sources for their neighbours is pointed out by Fehling (1989, p. 95) as the only consistent exception to his foundational rule of source-citation.

of the account would surely have not inspired him with great confidence. What is clear, however, is that Herodotus' rejection is, once again, entirely compatible with the epistemological structure defined above, one which specifies that no ἀτρεκέϊς sources of these lands could exist. Just as in his account of the Nile, then, the boundary separating the known from the unknown parts of the world – the second logico-epistemological boundary – separates two types of λόγοι which Herodotus must distinguish from one another. On the hither side of this boundary, the available accounts are credible in so far as they are based on *autopsy* and, at least in his account of the Nile, accompanied by the source's assurances of knowledge. ἀκοή of this sort, Herodotus reassures us, can lead to ἀτρεκής learning and forms the epistemic backbone of his ἀτρεκέως ἀκοή ἐξικέσθαι. Of the lands beyond this boundary, however, no autoptic source can be found and, consequently, doubt and ignorance must prevail. And indeed, once again, it is just these accounts which transgress this geographical boundary which meet with Herodotus' frank scepticism and scorn.

The same distinction between the presence and absence of *bona fide* sources also underpins Herodotus' discussion of the second 'last peoples', the Issedones:

It is definite (γινώσκεται ἀτρεκέως), however, that the land to the East of the Bald Men is inhabited by the Issedones, though the lands to the North of the Bald Men and the Issedones are not known (οὐ γινώσκεται), unless perchance by the reports of the latter (εἰ μὴ ὅσα αὐτῶν τούτων λεγόντων). And the Issedones are said (λέγονται) to have these customs... And they are said (λέγονται) to be just, and women and men live with equal power. These men, then, are known to exist (γινώσκονται). And beyond these lands the Issedones relate (Ἴσσηδόνες εἰσὶ οἱ λέγοντες) are one-eyed men and gold-guarding griffins. And the Scythians too

repeat this story (παραλαβόντες λέγουσι). And some of us [Greeks] too get this tradition (νενομίκαμεν) from the Scythians and we call these men Arimaspians in the Scythian fashion.

Hdt. 4.25ff.

In this more elaborate description of the boundaries of knowledge, the separation of the known and the unknown world appears to be less categorical. Thus, in line with Shrimpton's observations, Herodotus' account of these distant lands at the very edge of the known world is marked by two source-citations. Moreover, it is hard to resist the impression that the passive verb, λέγονται, used to introduce more detailed information about these peoples, has a marked distancing effect, particularly since it is juxtaposed to γινώσκονται. And yet, these 'distancing' source-citations¹ are also juxtaposed to other types of reports, one which treats of the fantastical gold-guarding griffins and cyclopes. Worse still, the virtues which characterized the sources of the *observed* lands are suddenly turned into vices. Thus, though the chain of 'last people', Scythians, and Greeks also holds true of reports about the Bald-Men, there are no assurances of the adequacies of the Scythians as intermediate sources. Gone too are the assurances of multiple sources – the Scythians and the Greeks – and replaced by a complete dependence on one source, the Issedones, which Herodotus marks with a sceptical conditional clause. So too are the prodigious interpreters entirely gone, and to replace them, the slavish and wholesale adoption of Scythian names into Greek.² As in his account of the Nile's sources, then, and even more starkly, two types of λόγοι fall on either side of the boundary formed by the mountains and the lands of the Issedones. Indeed, this boundary is constituted, chiefly, by the discussion of just these two different

¹ We must note, however, that Herodotus insists that the Issedones are *known* to live in this area (Hdt. 4.25, 27).

² The participle παραλαβόντες recalls Herodotus' account of underground chambers of the Labyrinth, where it is also used to signify his utter dependence on hearsay (see above).

types of accounts. The first are reports about the 'last peoples' who, however sceptically Herodotus may have regarded the information about their customs, at least are *known* to inhabit lands far to the North of Scythia. The second are fantastical tales which can have no basis in ὄψις, tales which Herodotus explicitly and emphatically rejects. The source-citations which Shrimpton plausibly interprets as 'distancing', then, have another, quite contrary, function: distinguishing the world which is known, γινώσκειται, at least in some faint degree, from the world which is completely and unassailably beyond anyone's knowledge.

With the condemnation of the Issedones as *bona fide* sources for the lands to their North, we come full circle to the figure of Aristeas. As one of his chief rivals, Aristeas's *Arimaspea*, which contained a description of the North well beyond Herodotus' self-imposed epistemic boundaries, posed a fundamental problem to Herodotus: why should anyone accept Herodotus' limited results in the face of Aristeas's more extended account? In response to this challenge, Herodotus attempts to undermine the poet's authority making him play by his own rules and, therefore, by imposing the rigorous demands of his own geographical ἱστορίη. Firstly, as already noted, Herodotus addresses the question of Aristeas' *personal* autopsy. Thus, in Hdt. 4.16, the general statement about the total lack of autoptic witnesses for the lands beyond the Issedones is followed by the pointed and emphatic statement that Aristeas too lacked *autopsy*. Indeed, Herodotus continues, Aristeas himself acknowledges that he is dependent on hearsay from the Issedones for his information. This statement may be more polemical than is first apparent. According to a late source, Maximus of Tyre,¹ Aristeas had claimed to have seen the lands beyond the Issedones in a spiritual journey. In emphasizing his dependence on testimony, then, Herodotus may be rejecting, point blankly and by referring to the poet's own words, any such claims of *autopsy*. What Aristeas has left, then, are his 'sources', the Issedones, whom Herodotus has just debunked. With this, the elegant ἀπαγωγή is complete. Aristeas's account, like the defendant's speech in

¹ Aristeas fr. 20 Bolton. See esp. Philips, 1955, p. 162; West, 2004, p. 57f.

Antiph. 1, is deprived of autopsy and credible ἀκοή. Thus, it can be safely confined to the realm of Ocean and to a realm which exists outside the certainty granted by the Herodotean project. Aristeas's account too, Herodotus would surely agree, lacks an ἔλεγχος. Herodotus, it seems, knows of no Arimaspians either.

10.3: Conclusion

To summarize, I have argued that Herodotus' account of geographical space is based on a fundamental methodological distinction between ὄψις and ἀκοή. This distinction finds itself inscribed into geographical space in the descriptions of the Labyrinth and the Nile. In other words, ὄψις and ἀκοή have, quite literally, different areas of functions. Moreover, this distinction cannot but be understood, especially in Herodotus' account of the Labyrinth, as a hierarchical one. Herodotus, then, distinguishes those parts of his account which rely on *autopsy* – and for which, therefore, he speaks as an eyewitness – and those parts for which he must rely on testimony. And yet, as already discussed, this hierarchical distinction does not imply that the two resources are completely incommensurable. Indeed, Herodotus goes to great lengths to place ἀκοή on the level of ὄψις in at least one way: in the acquiring of geographical knowledge which is ἀτρεκής. Interestingly, this program of rapprochement has a direct analogue in Antiph. 1. Here too, then, are personal ὄψις and the extracted testimony of a slave described as parallel heuristic devices (un)available to the litigant. Herodotus, then, like Antiphon, allows for a positivistic epistemology of testimony. And, as in the case of Antiphon, this position relies on one further distinction. Like Antiphon, then, the ἴστωρ distinguishes between two sorts of λόγοι, one which is credible and a *bone fide* source of geographical knowledge, and another which is neither. While Antiphon artificially divides credible and incredible λόγοι along party lines, Herodotus, perhaps with equal artifice, divides credible and incredible λόγοι around a fixed geographical axis, the lands of the 'last peoples'. The λόγοι told about these most distant are almost universally rejected, though energetically pursued

to the end of the trail. The central point, however, is that Herodotus, like Antiphon, makes this distinction by account of certain *impersonal* qualities possessed by the sources. In Antiphon, as we saw, these are unimpeachable knowledge, particularly *autoptic* knowledge, and a test for truthfulness. In Herodotus, we find different qualities emphasized. Nonetheless, certain important overlaps can be discerned. Herodotus' sources are also, like forensic witnesses in murder trials, given to asserting, even promising, that they have knowledge of the relevant matters. More importantly, Herodotus also emphasizes the importance of accurate and, above all, autoptic knowledge in a legitimate source. The affinity of the two systems is most dramatically shown by a corollary of this basic assumption. Both Antiphon and Herodotus, then, draw the limits of credible testimony at that point where autoptic knowledge becomes impossible. In Antiphon, this limit is drawn around an unsolvable murder committed by a master criminal and witnessed by no-one. In Herodotus, this limit is drawn by the deserts in which no-one can live and though which no one has travelled. Furthermore, as I argued above, both Herodotus and Antiphon dwell on this fundamental limit of ὄψις – be they εἰκός or absolute limits – and use this limit to their own rhetorical advantage. Herodotus, then, divides that part of the world which can yield knowledge to him, from that part of the world beyond human knowledge. He defines, in other words, the legitimate sphere of his own ἱστορίη. Antiphon, on the other hand, uses the distinction between witnessed and unwitnessed crime more straightforwardly, to justify his own argumentative technique. The crucial point remains, however, that in both cases the distinction is underpinned by one, cogent principle, namely that *credible* testimony is a *bona fide* source of knowledge.

Table One

S	Category	Hdt. 2.28-36	Hdt. 4.16-36
1a	Negative Source Citation	τῶν ἔμοι ἀπικομένων ἐς λόγους <u>οὐδεὶς ὑπέσχετο</u> <u>εἰδέναι</u> (Hdt. 2.28.1)	<u>οὐδεὶς οἶδε ἀτρεκέως</u> ὃ τι τὸ κατύπερθε ἐστί (Hdt. 4.16.1)
2	The False Start	εἰ μὴ ἐν Αἰγύπτῳ ἐν Σαί πόλι ὁ γραμματιστῆς... οὗτος δ' ἔμοιγε παίζειν ἐδόκεε φάμενος εἰδέναι ἀτρεκέως: φάμενος <u>εἰδέναι ἀτρεκέως</u> . ἔλεγε δὲ ᾧδε... (Hdt. 2.28.1)	οὐδὲ Ἄριστῆς... προσωτέρω Ἴσσηδόνων ἐν αὐτοῖσι τοῖσι ἔπεσι ποιέων ἔφησε ἀπικέσθαι, ἀλλὰ τὰ κατύπερθε ἔλεγε ἀκοῆ, φασ' Ἴσσηδόνας εἶναι... λέγοντας (Hdt. 4.16.1)
1b	Negative Source Citation	ἄλλου δὲ οὐδενὸς οὐδὲν ἐδυνάμην πυθέσθαι (Hdt. 2.29.1)	
3	Methodological Statement	ἀλλὰ <u>τοσόνδε μὲν ἄλλο ἐπὶ</u> <u>μακρότατον ἐπυθόμην</u> , μέχρι μὲν Ἐλεφαντίνης... αὐτόπτης ἐλθῶν... ἀπὸ τούτου <u>ἀκοῆ</u> ἤδη ιστορέων. (Hdt. 2.29.1)	ἀλλ' ὅσον μὲν ἡμεῖς ἀτρεκέως <u>ἐπὶ μακρότατον οἶοι</u> τε ἐγενόμεθα <u>ἀκοῆ</u> ἐξικέσθαι, πᾶν εἰρήσεται. (Hdt. 4.16.2)
4	Geographical Description	Description of Geography from Elephantine to the Deserters (one source citation) (Hdt. 2.29)	Description of Scythia from the port of Borysthenites to the Bald Men, (no explicit source citation) (Hdt. 4.16-22)

5	The (first) Edge of the Known World.	The Deserters, one source citation (Hdt. 2.30-1)	The Bald Men, one source citation (Hdt. 4.23)
6	Declaration of Knowledge	<u>μέχρι μὲν νυν...</u> γινώσκεται ὁ Νεῖλος (Hdt. 2.31)	<u>μέχρι μὲν</u> νυν τῶν φαλακρῶν τούτων πολλή <u>περιφανείη</u> τῆς χώρας ἐστὶ... (one source citation)... <u>μέχρι μὲν δὴ</u> τούτων <u>γινώσκεται</u> (Hdt. 4.24f.)
1c	Negative Source Citation	τὸ δὲ ἀπὸ τοῦδε <u>οὐδεὶς ἔχει σαφέως φράσαι</u> (Hdt. 4.31)	τὸ δὲ τῶν... κατύπερθε <u>οὐδεὶς ἀτρεκέως οἶδε φράσαι</u> (Hdt. 4.25)
7	The Physical Boundary	ἔρημος <u>γὰρ</u> ἐστὶ ἡ χώρα αὕτη ὑπὸ καύματος. (Hdt. 2.31)	ὄρεα <u>γὰρ</u> ὑψηλὰ ἀποτάμνει ἄβατα καὶ οὐδεὶς σφεα ὑπερβαίνει (Hdt. 4.25)
8	Further Testimony	The reported testimony of the Nasamonians – The Libyan Nile (Hdt. 2.32-34)	The rejected testimony of the Bald Men – the Mountain Folk (Hdt. 4.25)
9	Declaration of Knowledge		ἀλλὰ τὸ μὲν πρὸς ἡῶ τῶν φαλακρῶν <u>γινώσκεται</u> <u>ἀτρεκέως</u> ὑπὸ Ἰσσηδόνων οἰκεόμενον (Hdt. 4.25)

1d	Negative Source Citation		τὸ μέντοι κατύπερθε πρὸς βορέην ἄνεμον <u>οὐ γινώσκεται</u> οὔτε τῶν φαλακρῶν οὔτε τῶν Ἴσσηδόνων (Hdt. 4.25)
11	The (second) Edge of the Known World		The Issedones, two source citations (Hdt. 4.26)
12	Declaration of Knowledge		<u>γινώσκονται</u> μὲν δὴ καὶ οὗτοι (Hdt. 4.27)
13	Further Testimony		The rejected testimony of the Issedones – Griffins and Arimaspians (Hdt. 4.27)
14	Conclusion	Νείλου μὲν νυν πέρι τοσαῦτα εἰρήσθω (Hdt. 2.35)	ταῦτα μὲν νυν τὰ λέγεται μακρότατα εἴρηται. (Hdt. 4.31)

Chapter Eleven.

Testing (some) ἀντίλογοι in Herodotean ἱστορίη

In the previous chapter, I have tried to show that there exist broad and remarkable continuities between Herodotus' and Antiphon's epistemology of testimony. In the main, both authors assume that the λόγοι of others, whether those of witnesses or of the epichoric sources, could, under certain conditions, yield knowledge. Furthermore, both authors incorporate this broad epistemological principle into constructing an ἦθος of authority. In Antiph. 1, then, the litigant pins down his knowledge to the assertions of his father, while the Chorus-producer points to his witnesses, defended as credible and pertinent, to demonstrate that he is innocent. Similarly, in the geographical excursuses, Herodotus establishes the credibility of his witnesses on which his *knowledge* is, partly, laid. The conditions for 'testimonial knowledge' which Herodotus specifies are, admittedly, different. The practitioner of ἱστορίη, then, who purportedly travelled through the lands of barbarians, reasonably proposes that ease of communication is a desirable condition for the production of such knowledge. Antiphon, on the other hand, naturally concentrates on the litigants' sycophancy and the witnesses' potential mendacity. Both authors, however, stipulate one central conditions in common: the testimonial source must himself have direct knowledge of the affairs in question. Even here, however, we must register an important difference. Herodotus, not bound by the formal rules of admissibility, feels free to extend his inquiry to the further reaches of the earth and, therefore, into λόγοι not pinned down by knowledge. Indeed, he is justifiably proud of having done so. Nonetheless, Herodotus' commitment to the aforementioned principles usually leads him to consider these λόγοι sceptically. In Antiphon, on the other hand, credibility is always exhaustively split along party lines and, indeed, used as a primary axis of comparison. In other words, then, while Antiphon uses the limit of knowledge primarily as a rhetorical weapon for offence and defence, Herodotus takes the decisive step of considering, explicitly and programmatically, the limits of *his own* knowledge, of *his own* credibility, and of *his own* witnesses. Moreover, these important divergencies

point to substantial differences in the self-imagined *roles* of the two different authors.¹ Thus, Antiphon's 'weaponized' form of credibility is clearly related to the dialectical necessities of a court-case, while Herodotus' inclusion of rejected alternative versions and, especially, his self-reflective use of the notion of credibility point to a substantial shift in the way in which λόγοι were handled.²

Nowhere, perhaps, is this shift of emphasis more dramatic than in Herodotus' dealings with ἀντίλογοι, to which we turn in this chapter. Here, I argue that while Antiphon imposes strict conditions under which the λόγος of a litigant is definitively and necessarily verified at the expense of that of his opponents, Herodotus almost never does. Indeed, even seemingly definitive 'solutions' to ἀντίλογοι – such as those examined below – are regarded by him with frank scepticism. Herodotus, then, often draws attention to the limits of his own judgement and leaves questions unanswered in a way that a litigant defending himself in trial would be ill-advised to emulate.³ Secondly, I argue that while Antiphon's litigants attempt to minimize their own intervention, even implying that the truth is declared by the facts themselves, Herodotus inserts himself into the middle of these ἀντίλογοι and, indeed, binds any judgement, however limited and insecure, to his own ἱστορίη. In the conclusion of this chapter, I propose, albeit rather speculatively, that these two essential features are tied to one another and, further, are explicable in terms of the epistemic model delineated above.

11.1: Judgement and Herodotean ἱστορίη

It comes as no surprise that the jurors themselves are frequent subjects of discussion in Antiphon's speeches. Aside from the traditional introductory *captatio* in which the judges

¹ I owe this crucial point to my examiners.

² See esp. Fowler, 1996.

³ Yet, at Antiph. 3.2, the *mock*-litigant admits that both sides must argue in their own favour and interpret the facts in ways conducive to these partial arguments.

are directly addressed,¹ and the usual flattery peppering the speeches at either end,² Antiphon's litigants often suggest broad strategies to their jurors on the ideal means of judging the case.³ The mock-prosecutor in the *First Tetralogy*, suggests that the jurors should *trust* circumstantial evidence because *miasma* is an existential threat to them and to the community at large.⁴ In the court-speeches too, litigants may counsel caution of the jurors, as Euxitheus does at the end of the speech,⁵ or firm conviction, as in the Chorus-producer's defence speech.⁶ Indeed, I have argued that Antiphon's use of testimony is not radically different from this type of argument. Litigants, then, propose to their jurors in what way, and to what extent, their own witnesses are more credible than their opponents and how their testimony is pertinent to the resolution of the case. It also comes as no surprise, further, that in none of the speeches does the litigant permit himself to doubt the veracity or the credibility of his own speech, or that of his witnesses. The 'credible' witnesses, then, invariably permit the jurors to decide definitively as to which *account* to believe and, indeed, demonstrate its veracity. Even in the absence of such 'demonstrative proof', as in Antiph. 1, the litigants present an unbroken chain of knowledge, coming straight from the victim, passing seamlessly through the step-son, himself now a 'witness', and to the judges. And though the mock-defendant of the *Second Tetralogy* could afford himself the luxury of suggesting that his λόγος must inevitably represent a biased interpretation,⁷ no sane litigant would have done so. Litigants are, invariably, strident about the fact that the jurors' judgement, if only it accords to their own suggestion, would reach down and grasp the facts themselves. And, furthermore, the epistemology of testimony is one reason for these shrill declarations of knowledge. Testimony, in other words, provides, almost invariably, the jurors the ideal means of resolving the ἀντίλογοι around which the trial revolves.

¹ On Antiphon's proems see Edwards, 1985, p. 68; Due, 1980, p. 72ff.

² E.g. Antiph.5.8 (as an apology for the legalistic argument to follow) and Antiph. 5.96.

³ In the *Tetralogies*, the doctrine of pollution is pressed hard into the service of such arguments.

⁴ E.g. Antiph. 2.1.2; 2.3.11.

⁵ Esp. Antiph. 5.90.

⁶ Esp. Antiph. 6.33.

⁷ Antiph. 2.4.1. Cf. Gagarin, 1997, p. 159.

If we turn to compare this state of affairs to Herodotus' own dealings with the various ἀντίλογοι which fill his text, the term 'shrill declarations of knowledge' seems entirely out of place. Indeed, the propensity of Herodotus to give alternative versions of an account *without* deciding between them is one of the strongest pieces of evidence for Herodotus' scepticism.¹ And though Herodotus often attempts to make an informed judgment,² his very inclusion of alternative versions, is surely problematic for a simple positivistic attitude to λόγος.³ Before embarking on a brief overview of such 'judgements', however, and on the *locus* of authority these judgements imply, we must observe that we have already seen Herodotus has already engaged in 'judging' λόγοι, indeed in 'judging' λόγοι in the manner of a juror.⁴ Herodotus, then, would surely have found much to commend in Anaximenes's suggestion that the credibility of a forensic witnesses *demand*s a judgement. Concerns with credibility are, of course, also alive in adjudications of ἀντίλογοι as, indeed, they are in the law-courts. Nonetheless, the nature of the judgement is different. Indeed, Herodotus appears to take a decidedly more sceptical tone with reference to them, a scepticism which is all the more noteworthy when we acknowledge the forensic backdrop of these *antilogical* episodes. The principal point, however, is that Herodotus' ἱστορίη, even if it is understood narrowly in terms of judgement, accommodates different types of judgements which must be distinguished from one another. And, secondly, even when we concentrate on the judgement which most properly belongs to jurors, namely in the settlement of ἀντίλογοι, we observe that there is wide divergence between Herodotus and the forensic rhetoric of Antiphon.

With this point in mind, we note, with Lateiner,⁵ that Herodotus' work involves different types of judgements and, further, that these different types of judgement involve a different *locus* of authority. Herodotus' most basic judgement, one which is often

¹ Indeed, Herodotus often does not indicate a preference even when he is the author of one of the alternatives (cf. Darbo-Peschanski, 2013, p. 82)

² Groten, 1963, p. 87; Gould, 1989, p. 37; Lateiner, 1989, p. 11; Connor, 1993, p. 10. On the various types of conflicting accounts see esp. Lateiner, 1989, p. 78; Darbo-Peschanski, 2013, p. 79ff.

³ See esp. Darbo-Peschanski, 1987, p. 116 *et passim*.

⁴ See Connor, 1993, p. 9.

⁵ Lateiner, 1989, p. 59f.

completely hidden from view, is the *selection* of a λόγος for inclusion into the *Histories*.¹ This judgement relies entirely on the authority of Herodotus which, however, is generally implicit. When Herodotus discusses his choice,² he generally does so in an effort to 'back-track' his authority to a source or, occasionally, to abandon it entirely into their own hands. Of the former type, then, is the decision to relate only one account of Cyrus's birth because he aims to be guided by truthful sources.³ The ἱστορίη, involving the rejection of the omitted versions, belongs entirely to Herodotus, but the authority of the story is placed, ultimately, into the hands of the nameless sources. Of the latter type are Herodotus' generalizing declarations that he will 'say what it is said'⁴ where Herodotus seems to despair of making an judgement at all. Thomas has recently argued against the 'generalizing' character of one of these 'methodological asides', closely linking it to Herodotus' unwillingness to adjudicate *blame* on the specific and highly inflammatory charge of Argive medism.⁵ Moreover, as Chapter 10 shows, Herodotus' judgement about the value of the λόγοι he encounters is an important principle with an emphatic rhetorical role. Another prominent type of Herodotean judgement, however, encapsulates the triangular logic of the law-courts, namely his dealings with the ἀντίλογοι already mentioned. Indeed, some have detected in the figure of the juror – as one who evaluates evidence but, most particularly, one who solves such disputes and adjudicates blame – a powerful metaphor for explaining the essence of Herodotean ἱστορίη.⁶ Indeed, quite besides matters of possible etymology,⁷ it is clear that judging between competing claims is a recurrent task Herodotus sets himself.⁸ Furthermore, the comparison with a juror – who need not justify his judgement – may explain why Herodotus, frustratingly, does not explain why he endorses one account over the other. Nonetheless, we might observe,

¹ Lateiner, 1989, p. 59; Darbo-Peschanski, 2013, p. 86f.

² See Lateiner, 1989, p. 61ff.

³ Hdt. 1.95.

⁴ Hdt. 2.123.

⁵ Thomas, 2000, p. 188, 213f. Also see Lateiner, 1989, p. 83.

⁶ Connor, 1993, esp. p. 9, 13.

⁷ Floyd, 1990.

⁸ E.g. Hdt. 2.2. For a full list see Lateiner, 1989.

with Dewald,¹ and indeed Connor,² that Herodotus' rhetoric of the critic is only partly a rhetoric of control and, with Darbo-Peschanski,³ that Herodotus' insistence on reporting λόγοι, particularly ἀντίλογοι, lends a remarkable polyphony to his text. The very inclusion of the rejected versions of stories, his reluctance to justify his choices and, most especially, his inclusion of ἀντίλογοι without marking his preference, are significant markers of Herodotus' conception of historiography. Indeed, the numerous ἀντίλογοι, some eliciting extreme caution, others abandoned as impossible to resolve, even suggest a plausible general principle, namely that it is sometimes impossible to *judge* between two contrary λόγοι, a proposition entirely fitting to the age of Protagoras.⁴ Darbo-Peschanski generalizes this position even more radically – though, of course, not on the evidence of ἀντίλογοι alone – arguing that Herodotus' ἱστορίη is, as a whole, a 'judgement', made by the ἴστωρ and reliant on *doxa*, which must be submitted to a second judgement, the readers'.⁵

A full examination of this complex problem is not attempted below. Instead, I focus on two episodes in which a practitioner of Herodotean ἱστορίη – Periander in one, Herodotus himself in the other – appears to resolve an ἀντίλογος and where, in spite of this evident 'success', scepticism appears to prevail. In so doing, I hope to show one major difference between Antiphon's and Herodotus' ἦθος of authority and its relevance, and possible connection, to their respective roles as 'handlers' of testimony.

11.2 Trial and (Ir)resolution at Corinth and Dodona

a. Test and Trial in Periander's Court

¹ Dewald, 1987, p. 160ff.

² Connor, 1993, p. 10f. Darbo-Peschanski, 1987, p. 164ff.

³ Darbo-Peschanski, 1987, p. 116.

⁴ Though, we must note, this principle hardly applies to the law-courts.

⁵ Darbo-Peschanski, 2013, p. 78, 84ff. One may note, that Antiphon's speeches are also submitted to a second judgement, that of the jurors. Indeed, an examination of how both authors handle this extraneous judgment highlights, in an especially stark way, the contrast between the two authors (see below).

The Corinthians say (λέγουσι), and the Lesbians agree (ὁμολογέουσι) with them, that the greatest marvel (θῶμα μέγιστον) to occur in Periander's lifetime was the rescue of Arion of Methymna on the back of a dolphin, off the coast of Taenarus. This man, Arion, was the best lyre-player of the day and, to my knowledge, was the first man to compose dithyrambs, and to name them. He also taught in Corinth. They say (λέγουσι) that Arion, who had spent most of his time at Periander's court, conceived of a desire to sail to Italy and Sicily, and then, having earned a great amount of money there, he wished to return back to Corinth. Setting off from Tarentum, he hired out a crew of Corinthians since these were the men he trusted most. But when they were in open sea, these men plotted to throw him overboard and steal his treasure. Discovering this, he begged for his life, offering them the money in exchange for safe passage. Unpersuaded, they ordered him to do himself in and be buried on earth or jump into the sea at once. Arion, pressed by these difficulties, asked them for one last favour, to allow him to stand on the deck in all his finery and sing. After that, he promised, he would do himself in. The crew, pleased at the thought of hearing the best singer alive, agreed and moved back to the middle of the ship. Arion, in the meantime, putting on all his finery and taking out his lyre, stood on the deck and sung a strained hymn (νόμον τὸν ὄρθιον) to Apollo and, as soon as he finished, jumped into the sea with all his finery. The sailors then sailed toward Corinth. They say (λέγουσι), however, that a dolphin rescued Arion and carried him to Taenarus. Landing there, he made his way to

Corinth in all his finery, and when he arrived gave a detailed account of all that had happened (ἀπηγγέσθαι πᾶν τὸ γεγονός). Periander, distrustful (ὑπὸ ἀπιστίας), arrested Arion, allowing him to go nowhere, and awaited the sailors. As soon as they arrived, he summoned and questioned them (ἱστορέεσθαι) about news of Arion. When the sailors said that he was safe and sound in Italy and that they had left him doing well in Tarentum, Arion revealed himself (ἐπιφανῆναι) to them, garbed in the same way as when he had jumped. The sailors were startled and, having been disproven (ἐλεγχομένουσ), could no longer deny what had happened. This, then, is what the Corinthians and the Lesbians say, and indeed there is a bronze memorial to Arion in Taenarus, not a large one, of a man riding a dolphin.

Hdt. 1.23f.

This account of Arion's miraculous escape on the back of a dolphin is one of the most infamous passages in Herodotus. In it, Herodotus interrupts his account of the succession of Lydian monarchs, which he had introduced at the end of his proem, to paint a little vignette of two remarkable Greek figures, the poet Arion and the tyrant Periander. Herodotus' interest in Periander is, of course, attested elsewhere in the *Histories*.¹ In Hdt. 3.50ff., then, we are reintroduced to the tyrant engaged in further investigations involving questioning, ἱστορέων, this time of his own sons.² Periander is also another one of the Greek sages – along with Bias, Pittacus and Solon – whom Herodotus introduces in the first part of his first book,³ presumably in another bid to

¹ For Periander as the central figure of the episode see Myers, 1953, p. 83.

² See Gray, 2001, p. 18f.

³ Hdt. 2.27, 29. Also see Hdt. 1.59 (Chilon) and Hdt. 1.74 (Thales).

secure his own innovative brand of authority.¹ The inclusion of the poet Arion,² whom Fehling justifiably compares to Aristeas,³ is also easily accounted for by Herodotus' interest in poets and poetic knowledge. One also ought to remark that what is known of Arion is largely confined to this passage.⁴ For this reason, perhaps, Sayce's, How and Wells', and Legrand's commentaries largely concern themselves with the poet and with Herodotus' confused report of his accomplishments.⁵ Asheri's more recent commentary, on the other hand, focuses on the most exceptional feature of this passage: its very inclusion in the Lydian λόγος.⁶ Together with the description of Lake Moeris, included for no other reason than geographical proximity to the previous subject of discussion,⁷ the story about Arion's rescue is *the* archetypal Herodotean digression. Accordingly, Munson treats this episode as the limit case of the 'celebratory' and 'non-explanatory' episodes in the *Histories*, though she argues that such distinctions are alien to Herodotus' text.⁸ Whatever the explanatory function the episode may have, Munson's first point is easily understood. The episode not only breaks the narrative sequence of the Lydian λόγος, it also, simultaneously, jumps across the Mediterranean in a series of successive leaps, first to Corinth then to Italy then back to Corinth.⁹ The 'digressiveness' of Hdt. 1.23-4 has also given rise, naturally, to much speculation as to *why* Herodotus includes the digression in the first place. How and Wells, for example, suggest that Herodotus was attracted to the story for religious purposes,¹⁰ Asheri that the digression was included because it illustrated the 'mutability of fortune',¹¹ while Benardete draws a

¹ Asheri, 2007, p. 90.

² For Arion as the central figure of the episode see Munson, 1986, p.96; Flory, 1978, p.412.

³ Fehling, 1989, p. 21ff.

⁴ Aelian records a '*hymn*' which he attributes to Arion (Page, 1962, p.506f.), though spuriously (Bowra, 1963, p.124f., with previous scholarship).

⁵ Sayce, 1883, p. 14f.; How and Wells, 1912, p.; Legrand, 1932, p. 43f.

⁶ Asheri, 2007, p. 91. This fact, of course, does not go unnoticed in previous scholarship (see Legrand, 1932, p.43). See also Gray, 2001, p. 11 n. 2.

⁷ Hdt. 2.149f.

⁸ Munson, 1986, p.94.

⁹ In spite of this rupture, some have suggested subtle ways in which this digression may have been intricately bound to the surrounding context (Cobet, 1971, p. 146ff.; Gray, 2001, p.16ff.) and, indeed, into the work as a whole (Munson, 1986, p.98ff.; Erbse, 1992, p. 156). It is hard, however, to resist Asheri's impression that the ordinary reader would have failed to see some of the subtler threads of thought detected by scholars (Asheri, 2007, p. 91).

¹⁰ How and Wells, 1912,

¹¹ Asheri, 2007, p. 91.

broad but suggestive analogy between Arion's singing and Herodotus' text.¹ Questions of motivation apart,² it is clear that Herodotus' interest in 'intellectual issues' – most notably the corroboration of his sources and the material proof tagged on at the end – is one of the most prominent themes of the passage above. Indeed, to use Hooker's cogent classification,³ the subject matter of this episode can be divided into the religious, Arion's prayer and his miraculous rescue, the moral, the focus on balance and poetic justice,⁴ and the intellectual. This latter category must, of course, be sufficiently broadened to include things beyond Herodotus' explicit 'meta-historie'. In the same paper, Hooker suggests that the digression – which moves in space but *not* in time – serves to introduce the audience to the method of comparative chronology into the *Histories*.⁵ Demont, on other hand, focuses on Periander's ἱστορίη, another prominent member of this category.⁶ And though Herodotus includes a number of other notable tropes,⁷ wealthy men,⁸ magnificent tyrants,⁹ first discoverers,¹⁰ brave gestures,¹¹ last-minute rescues and the like,¹² it is these intellectual – and indeed broadly epistemic – issues that the following discussion pursues.

Starting with Herodotus' own 'meta-historie', we may note that the source references, once again, neatly arrange the text into a structure.¹³ Thus, the source citation referring to the two sources forms a ring around the digression. Two more 'internal' source citations, both simple λέγουσι, with no explicit subjects, can be found in between. The first marks the end of Herodotus' general account of Arion and of the musical

¹ Benardete, 1969, p. 15f.

² There is no reason why Herodotus should be motivated by any one reason (Hooker, 1989, p.141).

³ Implied in Hooker, 1989, p. 142.

⁴ See esp. Erbse, 1992, p. 156.

⁵ Hooker, 1989, p. 144.

⁶ For 'intellectual dimension' as reason for inclusion see Demont, 2009, p. 196.

⁷ Bowra (1963, p. 131f.) and Asheri (2007, p. 91) have also drawn attention to mythic parallels found in Greece.

⁸ Asheri, 2007, p. 92.

⁹ Wood, 1972, p. 23f.

¹⁰ Asheri, 2007, p. 91.

¹¹ Flory, 1978, p.411ff.

¹² Wood, 1972, p.23ff.

¹³ For alternative structures see Hooker, 1989, p.141 (narrative scenes); Erbse, 1992, p.154; Gray, 2001, p.14 (crises).

accomplishments Herodotus 'knows' to be true. The first λέγουσι, then, introduces the account in a relentless *oratio obliqua* and, therefore, separates the domain of λόγος from that of *knowledge* which precedes it. It is, in other words, a distancing device. This distancing effect is even starker when we turn to the second λέγουσι, found roughly in the middle and tagged, tellingly, to the miraculous climax of the story: Arion's rescue by the dolphin. This internal source citation, we note, also has structural function; it divides the account into two 'panels', the first dealing with Arion's return-journey 'home', the second with Periander's ιστορίη. The two panels, then, are arranged around this central hinge-joint, the θαῦμα which motivated the entire λόγος. And, looking to the sentence itself, we note that we can assign the first half of the sentence, the 'μέν clause', which says, 'and they (the sailors) sailed off to Corinth', to the first 'panel' as its conclusion. Arion has jumped into the sea and the sailors, presumably shrugging their shoulders, sailed off. The second half of the sentence, the 'δέ clause', treats of the miracle itself. Indeed, it is the only direct reference to it. The whole affair of the miracle, purportedly the reason of Herodotus' digression and placed prominently in the middle of the ring structure in between the two 'panels', is put aside with a few words. And, further, it is clear *why* Herodotus would want to distance himself from the story, the very 'wondrousness' which drove him to relate it in the first place.¹ The distancing effect of the central λέγουσι, then, is all the more poignant. Indeed, so stark is the distancing effect of these source-citations that it is hard to resist the impression that Herodotus disbelieved the story, in spite of his 'evidence' to the contrary.² As to *what* Herodotus tells us of this evidence, none of the details excite much surprise. Indeed, many of the most notable features can be broadly generalized. The account, then, is introduced with a reference to the wondrous nature of the event in question.³ This may serve to explain, then, the addition of an *autoptic* proof in a 'tag' attached to the ring-structure noted. Further, the

¹ Gray, 2001, p.14.

² E.g. Fehling, 1989, p. 24; Gray, 2001, p. 19; Erbse, 1992, p. 150. However, Gould (1989, p. 30) believes that the corroboration of the sources convinced the sceptical Herodotus (cf. Fowler, 1996, p. 82), while Lateiner (1989, p. 199) blames the statuette mentioned at the end.

³ Munson, 1986, p.100.

source citations themselves are also perfectly explained by Fehling's rules for Herodotean source citation.¹ Thus, the two sources are those people who are most intimately involved with the events in question, namely the Lesbians and the Corinthians.² These sources also 'dove-tail' beautifully and, therefore, corroborate one another. Indeed, Herodotus is keen to emphasize this point with a forensic sounding verb ὁμολογέουσι. Gould also refers to this episode as an archetype of 'corroboration' and suggests, against Fehling, that it is a sign of Herodotus' good faith.³ Indeed, Herodotus' good faith seems guaranteed by the monument which he adduces as 'material evidence'⁴ for the story, a monument which, as Fehling begrudgingly acknowledges,⁵ is also attested elsewhere.

More remarkable is the 'embedded ἱστορίη'⁶ described in the second panel of the story. The parallels between Periander and Herodotus' own methods are well known and need not be discussed at length.⁷ One need only point out that we find, in this passage, the first use of the verb ἱστορεῖν, after Herodotus' programmatic proem.⁸ Moreover, we note that Periander's sources – a Lesbian and Corinthians – are exactly parallel to Herodotus' sources. More generally, Gray has lucidly spelled out the role of 'wonder', Periander's preference for eyewitnesses, and, most especially, the importance of the methodical doubt in his ἱστορίη,⁹ and cogently traced back these preoccupations back to Herodotus' own ἱστορίη. She concludes, then, in line with Christ's and Demont's more general findings, that 'Periander's inquiry mirrors Herodotus' own'.¹⁰ Also characteristic of these ἱστορ-king's – and Herodotus too, of course – is explicit care with vaguely 'methodological' matters, preoccupations well-attested in the law courts. Herodotus,

¹ Fehling, 1989, p.21ff. How and Wells also suggest that the inclusion of Corinth, Lesbos and Tarentum is motivated by the prominence of the image of the dolphin (How and Wells, 1912, *ad. loc.*).

² As noted by Legrand (1946, p. 43).

³ Gould, 1989, p. 29.

⁴ Gould, 1989, p. 29; Gray, 2001, p. 12.

⁵ Fehling, 1989, p. 23.

⁶ Christ, 1994.

⁷ See esp. Gray, 2001, p. 15f. with previous bibliography.

⁸ Hdt. 1.1. See Christ, 1994, p. 168; Demont, 2009, p. 184.

⁹ Gray, 2001, p. 15. Also see the general comments of Asheri (2007, p. 23).

¹⁰ Gray, 2001, p.15ff. On Greek tyrants see Christ, 1994, p. 168 n. 4.

thus, emphasizes that Periander summoned the sailors to his court ‘as soon as they landed’. Antiphon’s litigants too, both the Chorus-producer and Euxitheus, emphasize the importance of *immediate* examination of witnesses and presumed guilty parties.¹ More importantly, Periander is also heavily involved in the management, indeed the manipulation, of his ‘sources’ of information. Arion is arrested and hidden from the sailors as they are baited to condemn themselves out of their own mouth. On this point, we may note that Periander’s conduct, namely the experiment, appears to distance the tyrant from Herodotus. Indeed, the tyrant’s ‘theatrical’ use of his sources² seems more typical of the ‘coercive’ ἴστωρ-kings Christ describes and which he argues, extremely plausibly, is a characteristic Herodotus does *not* attribute to himself.³ Moreover, these features can also be seen in similar episodes involving other Monarch-judges, most notably Astyages and Proteus.⁴

Indeed, the effects of Periander’s careful handling of witnesses can best be shown by contrasting this account to Astyages’ questioning of Harpagus about the boy Cyrus’s fate.⁵ Astyages, the last king of Media, having dreamt, in typical regal fashion, that his grandson – the future Great King – would overthrow him, had ordered Harpagus, some years before, to dispose of the boy as soon as he was born. Harpagus, unable to obey his king, passed on the task to a slave of his, a cowherd. This servant, whose wife had just aborted in the third trimester, also balked at the task and, on the counsel of his wife, raised the boy as his own, in lieu of his dead son. Some years later, the boy Cyrus was predictably summoned to Astyages’ palace. The king, believing his grandson to be long dead and buried, was dumbstruck (ἐκπλαγεῖς) by the kingly demeanour of the boy and his appearance, much as the sailors were dumbstruck (ἐκπλαγέντας) at the sight of Arion.⁶ Realizing he had been duped, Astyages ensured that the cowherd was alone –

¹ ὡς δὲ ἄρα παρῆναι, Hdt.1.23.7, ‘as soon as he arrived.’ An emphasis on the importance of an *immediate* examination of testimonial evidence is also found in Antiphon (Antiph. 5.30).

² Legrand, 1946, p. 44.

³ Christ, 1994, p. 184ff. with previous literature.

⁴ See below.

⁵ Hdt.1.108ff. See Gray, 2002, p. 307.

⁶ ἐκπλαγεῖς, Hdt.1.116.2. Cf. ἐκπλαγέντας Hdt.1.23.7, describing the sailor’s reaction on seeing Arion

Herodotus is emphatic about this fact – and asked him where he had gotten the child and who had given it to him. When this did not work, Astyages resorted to methods not entirely different from those of an Athenian Court, namely threatening the slave with a βάσανος, a threat which successfully *necessitated* (ἐς τὰς ἀνάγκας) a *truthful* confession (τὸν ἐόντα λόγον). The King, realizing what had transpired, summoned Harpagus to question him.¹ Unlike Periander, however, Astyages, in spite of his previous methodological scrupulousness, summoned the presumed guilty party *without* concealing the cowherd. It is this crucial detail which explains what happened next.² On seeing the cowherd (ὡς εἶδε τὸν βουκόλον ἔνδον ἐόντα), Harpagus immediately is resolved to tell the truth (οὐ τρέπεται ἐπὶ ψευδέα ὁδόν),³ ensuring that his account is not refuted (ἵνα μὴ ἐλεγχόμενος).⁴ The situation in Media, then, is the exact reverse of the situation in Corinth. Astyages, realizing what had transpired by examining the cowherd with a βάσανος summoned Harpagus to test him in his accuser's presence. Periander, perplexed by doubt at hearing a fantastic tale, tests the sailors in their accuser's absence. The sailors, subjected to ἱστορίη but oblivious to Arion's presence, unlike Harpagus, turned onto ἐπὶ ψευδέα ὁδόν and, as a result, were refuted, ἐλεγχόμενος. Periander's brilliance as a 'judge', Herodotus implies, is his having taken care of just this eventuality. Furthermore, we note, that all the tests discussed, like the *elenchus*, are specifically aimed at uncovering duplicitous 'testimony'.

The obvious similarity of the two episodes prompts one to suggest the existence of a stereotyped pattern, indeed of several overlying stereotyped patterns.⁵ Demont, then, has described Periander's experiment as a type, a 'trap interview' method, which he succinctly describes as a method of 'cross-checking the answers to the questions one

¹ Harpagus, however, also believed the boy to be dead. The king-investigator, unlike Periander, already knows the truth about the boy when interrogating Harpagus. These dissimilarities may explain why the handling of the second witness diverges at this point.

² One notable absence, however, is the boy Cyrus who is led 'off-stage' earlier on in the narrative (Hdt. 1.116.3).

³ Hdt. 1.117.2.

⁴ Hdt. 1.117.2.

⁵ Gray, 2002, p. 307.

asks and presenting irrefutable external testimonies'.¹ It is this 'trap interview' which allows Periander to settle his original disbelief definitively. In this, Periander's experiment comes close to Antiphon's notion of test, though, as I argue below, several important differences also obtain. Along with Demont's 'trap interview', one may also note the existence of another archetypal Herodotean ἵστωρ—autocrats which can be placed alongside the ones Christ describes,² namely that of the 'royal arbitrator', a figure with a reputable Homeric stamp.³ A further example can be found in Proteus,⁴ who again must adjudicate between two contrary accounts of *abduction*, that of Helen, and effectively decides between them. Gagarin too, in his discussion of early Greek trials, points to yet another figure in Herodotus' first book, Deioces,⁵ who had seized royal power because of his ability to settle disputes justly.⁶ And, quite beyond this 'Homeric' archetype, various features particular to these passages also evoke forensic notions. Most dramatically, Astyages threatens the cowherd with a straightforward βᾶσanos and, furthermore, its effects are described in ways remarkably consistent with those of Antiphon. Furthermore, in Periander's passage we also note that the 'litigants' appearances in court – Arion's accusation; the Corinthian's denial; Arion's appearance; the Corinthian's confession – is a reasonable way of describing the sequence of speeches in an Athenian trial. Somewhat less speculatively, perhaps, Periander's 'trap' interview' seems to be just a particularly stage-managed instance of Anaximander's more general advice about 'stealing testimony'.⁷ In both cases, then, someone is tricked into admitting some damning detail out of turn. Gray too draws attention to the important 'legal' dimension of Periander's ἱστορίη, and indeed the appeal to the Homeric ἵστωρ, but argues that Herodotus prefers to focus on 'intellectual' matters instead.⁸ Yet, as Antiphon once again

¹ Demont, 2009, p. 190ff.

² Such as the 'curious King' Christ, 1994, p. 168ff.

³ E.g. Hom. Il. 18.497ff. See Bonner and Smith, 1930, p. 31ff.; Wolff, 1946, p. 34ff.; MacDowell, 1978, p. 18ff.; Gagarin, 1989b, p. 26ff. with previous bibliography.

⁴ Gray, 2002, p. 307.

⁵ Hdt. 1.96ff. Gagarin, 1989b, p. 21f.

⁶ Though Gagarin (1989b, p. 21f.) does not mention the other examples of ἵστωρ-kings and tyrants, these episode appear to support his thesis.

⁷ κλέπτειν τὴν μαρτυρίαν, Arist. [*Rh. Al.*] 1432a4-5

⁸ Gray, 2001, esp. p. 15.

assures us, and as Darbo-Peschanski notes,¹ there is no necessary hard and fast distinction between the two domains. Indeed, a sensitivity to the forensic dimension of Periander's 'intellectual' pursuits allows us to highlight some important features of Periander's embedded ἱστορίη.

We note, then, that the object of Periander's investigation undergoes an important change in the process of his ἱστορίη. As Gray has also observed,² Periander is first confronted by Arion's miraculous tale, the 'wonder' that Herodotus introduces at the beginning of the digression. His immediate reaction to this λόγος is doubt. Herodotus too is confronted by the same θαῦμα and, indeed, displays a similar caution. In the process of investigating the truth of this claim, however, Periander's situation changes considerably. Once he has interrogated the sailors and engaged, quite literally, in ἱστορίη, the tyrant finds himself confronted by another divergent account of Arion's recent past. In other words, Periander is confronted – as is Herodotus and, indeed, Herodotus' audience – by two alternative versions between which he must choose. Once again, obvious analogues with Herodotean ἱστορίη abound. This situation, moreover, is also an exact replica of the situation faced by an Athenian juror. Not only are Arion's and the Corinthians' accounts also the paired ἀντίλογοι in a case of 'attempted homicide', Periander must also adjudicate guilt. In other words, the need to discriminate between true and false λόγοι, and between a just and unjust claim, must be brought to bear on a pair of contrary λόγοι. And though the intricate experiment obviated the need for a trial, it is only in terms of these contradictory λόγοι, anticipated by the wily Periander, that the tyrant's experiment makes sense. The tyrant's success as an ἵστωρ, then, *primarily* involves manipulating the circumstances in such a way as to enable such a definitive choice to be made. In other words, he expected the sailors to lie – this, in fact, is *why* the trial functions as a test for Arion's *truthfulness* – and ensures that they are refuted out of their own mouth.

¹ Darbo-Peschanski, 2013, p. 78ff.

² Gray, 2001, p. 21.

Periander's experiment also brings us, therefore, to the issue of testing λόγοι. This issue is clearest in the context of the less interesting, but intrinsically more plausible, λόγος of the Corinthian sailors. Not only is their λόγος refuted, ἐλεγχομένους, by Periander's experiment, his management of the available witnesses is expressly designed to produce just such result. It is, after all, Arion's choreographed appearance which definitively refutes, ἐπιφανῆναί, the sailors' account.¹ As soon as Arion appeared to them 'as he was when he jumped' the sailors are confronted with the same θαῦμα – Arion has survived without a scratch – and they are stunned as a result. Cornered, the sailors 'can no longer deny', οὐκ ἔχειν ἔτι ἀρνέεσθαι, what happened.² They must, in other words, confess their own guilt. Moreover, the result of and the motivation for the test have clear and unmistakable forensic parallels. We have, then, in Arion's presence, a physicalized manifestation of this test, an ἔργον which functions as standard by which to measure the sailor's λόγος. Indeed, so complete is Herodotus' account of the test for the sailor's lying tale, that we seem to forget that the λόγος Periander, and Herodotus, are primarily interested in is not the sailors' tale, but Arion's. The question, then, is 'how does this test figure into Periander's investigation of his wondrous account?' Gray has, once again, pre-empted one possible answer to this question: Herodotus shows a marked tendency to assume that falsifying one detail of a story vindicates the alternative.³ The testing for one λόγος, then, acts as a reverse test for the other. Though Herodotus is surely not innocent of such logical errors, there seems to be no clear evidence that Herodotus succumbs to this habit here. An examination of the other episodes allows for another answer. We note, then, that virtually all the episodes described involve just this *confrontation* of λόγοι to one another. In Proteus's court, then, Paris's lying account is refuted by that of his servants, while in Alyattes's court, Harpagus chooses not to lie because he fears being refuted by his dependant, who had already spoken. It comes as no surprise, then, that Periander's reacts to hearing Arion's λόγος by summoning the

¹ Furthermore, the sailors also suddenly find themselves confronted with the very θαῦμα which Arion has related to Periander and, indeed, are disturbed by it.

² Hdt. 1.23.7, 'they could no longer deny (the truth).' On this '*elenchus*' see Gray, 2001, p. 25.

³ Gray, *ibid.*

sailors to the ‘trial’ and engaging in ἱστορίη by cross-examining them, in the manner of other ἴστωρ-kings. And, indeed, the cross-examination seems to serve one purpose above all, to *test* Arion’s tall tale which the tyrant had doubted. In the case of Paris, this test – confrontation with the contrary tale – leads to the refutation of the suspect λόγος. In the case of Astyages, the test leads to a confession *because* of the fear of being contradicted. In Periander’s experiment, on the other hand, the sailors’ lies are refuted by Arion’s *presence* and they confess. The crucial point, however, is that in all cases the ἴστωρ-Kings shows themselves sensitive to the need of testing λόγοι and, moreover, do so by bringing the issue to ‘trial’ and by engaging in ἱστορίη.

Beyond these general points of points of continuity, however, we must also acknowledge various differences. Firstly, the ‘test’ which Periander applies to the λόγοι is essentially an *ad hoc* one, guided not by formal rules of admissibility, but by personal whim and, indeed, arbitrary violence. The tyrant summarily arrests Arion, the presumed victim, and stage-manages the entire criminal trial,¹ ensuring that the criminal is refuted out of his own mouth. Antiphon’s litigants, on the other hand, go to great lengths to ensure that their actions adhere, and condemn their opponents of not adhering, to the *traditional* standards of ‘the most just βάσσις’.² Secondly, though one may detect the concern for the *truthfulness* of the sailors’ account in the conduct of Periander’s ‘experiment’, it seems to have little in common with the *necessary* and mechanical operation of the Antiphontean βάσσις. Thirdly, and perhaps consequently, we must also note a profound *silence* about the veracity of Arion’s narrative, particularly given Periander’s judicial role and the success of his ‘experiment’. This silence is more emphatic when we consider that the difficulty of estimating trustworthiness is a theme in the account and, all the more, when we consider the lofty silence of Herodotus and the distance he puts between himself and the account. Seemingly not content with his source’s corroboration and the material proof at his disposal, Herodotus disdains even from mentioning the

¹ Alternatively, Arion collaborates with the tyrant.

² Antiph. 1.8.

θαῦμα in more than a few words. One wonders whether Periander, in a similar situation, also resolved to retain his Kingly doubt. The same, of course, cannot be said of Antiphon's litigants. Here, the presentation of any evidence, defended to the hilt as credible and pertinent, is followed quickly by strong demonstrative claims. The litigants also suggest to the jurors that the justice and truth of their own claims is easily discerned, namely by the evidence and arguments they have presented. In making both claims, Antiphon endorses, and presents, a conveniently positivistic epistemology of testimony based on the conventional, legalistic, and, above all, deterministic ways in which the testimony of witnesses operates. Indeed, the litigant himself appears to disappear behind the application of these time-tested methods. In Herodotus, on the other hand, it is doubt which moves the process to trial, one which the confrontation of λόγοι does not seem to allay completely. And, moreover, it is doubt which impels Herodotus to his ingenious experimentation. And, above all, it is doubt which impels him to insert himself in the midst of the ἀντίλογος and its difficult resolution and, further, to remain there throughout.

b. Manufacturing corroboration at Dodona

Located in the far North of the Hellenic world and generally sought for resolution of domestic affairs,¹ the oracle of Dodona hardly features in other accounts of Greek religion. Herodotus' lengthy discussion does find, however, one illustrious literary precedent in Homer, whose account he appears to correct.² Apart from this inconsequential polemical point, Herodotus' interest in the oracle seems to be related primarily to the great similarity of Egyptian divination and the oracular practices at Dodona.³ In characteristic fashion, he explains this overlap in terms of cultural influence and, as Lloyd observes, in a candidly *post hoc ergo propter hoc* fashion.⁴ Greek divination, being more recent, must have originated from the similar and more ancient

¹ Stoneman, 2011, p. 61.

² Herodotus emphasizes that the diviners are women, *not* men (cf. *II*. 16.235).

³ Hdt. 2.57.3

⁴ See Lloyd, 1975, p. 147ff.

Egyptian practices. Herodotus' account of Dodona, then, is related to the larger discussion on comparative religion found in the Egyptian λόγος. The supposedly 'Greek' practice of divination is just another instance of the general historical trend for religious practices to migrate across the Mediterranean Sea from Egypt into Greece. Besides the 'similarity' of the practices which suggested to Herodotus a common source, and which, like Arion's statue, constituted a material proof for Herodotus' hypothesis,¹ the evidence for Herodotus' account of Dodona's foundation was entirely testimonial in nature. Unlike the Corinthian and the Lesbian sources for Arion's account,² however, the sources available to Herodotus are separated not only by water. Herodotus' sources, like Arion and the sailors, blatantly contradict one another.

The first member of this contradictory pair is the Egyptian priests' account:

And as regards the oracles in Greece and Libya, the Egyptians have the following account (λόγον λέγουσι). The priests of Theban Zeus said (ἔφασαν) that two priestesses were abducted from Thebes by the Phoenicians, and that they learnt (πυθέσθαι) that one of them was sold in Libya, the other in Hellas, and that these women were the first founders of oracular practices in these countries. And when I asked how they said this with such perfect knowledge (εἰρομένου δέ μευ ὀκόθεν οὔτω ἀτρεκέως ἐπιστάμενοι λέγουσι), they said (ἔφασαν) that their people had conducted a great search (ζήτησιν μεγάλην) for these women and could not find (ἀνευρεῖν) them, but they later learnt (πυθέσθαι) the story they told me. This, then, is what I heard (ἤκουον) from the priests in Thebes.

Hdt. 2.54f.

¹ Fehling, 1989, p. 70.

² Groten (1963, p. 79) regards this episode, in view of the way these contradictory sources are handled, as an 'ideal example' of Herodotus' method of inquiry.

Herodotus' numerous source-citations – all marked in a historic case which, as Marincola points out,¹ stresses the historicity of the exchange – reassures us that Herodotus is reporting what the Egyptian priests had told him. The Egyptians, then, allege, that two women were abducted and transplanted into Greece and Libya. Interestingly, the priests do not mention Dodona, but this surely is to be inferred. Indeed, Herodotus' realization that the Egyptian story concerning these women referred to the foundation of Dodona seems to be the substance of his discovery. As yet, however, no emphatic claims of the sort are made. Rather, Herodotus emphasizes that the account was the product of the Egyptians' own brand of ἱστορίη. Accordingly, the substance of the account may be divided into two main sentences, each one introduced by the verb ἔφασαν.² The first describes the basic state of affairs: the priestesses were abducted from Egypt. This, in turn, is followed by an account of the priests' own learning, their πυθέσθαι, found in a dependent, or oblique, infinitive clause. And, further, it is here that the priests make their most relevant claim, in that very part of the account from which Herodotus seems most concerned to distance himself. And, moreover, the reason for this distancing, though implicit, is sufficiently clear. As Fehling notes, Herodotus expresses scepticism when the account moves beyond the shores of Egypt and, therefore, from the 'appropriate' sphere of their so-called account.³ Herodotus' scepticism, in other words, starts the moment the Egyptians transgress their own local knowledge. The second sentence mirrors this basic structure. Thus, the priests say that *their own people* conducted a great but unsuccessful 'search' and that they later learnt, πυθέσθαι, what had happened to the women. Once again, the sequence of dependent clauses marks out Herodotus' increasing caution. The two parallel statements dependent ἔφασαν, are separated by a prominent genitive absolute which refers to Herodotus' own intervention. The priests account of their own investigations, which comprises the second 'panel' of the account, was prompted by

¹ Marincola, 1987, p. 122.

² This is similar to the structure observed in Arion's λόγος.

³ Fehling, 1989, p. 70.

Herodotus' searching question, εἰρομένου δέ μευ. The priests must not only account for the fate of the women, but, as before, must also account for their own ἀτρεκής knowledge of it. It is this question which leads the priests to expand their initial πυθέσθαι. In other words, the priests must account for every scrap of information which transgresses the Egyptian seaboard. As in the geographical excursuses, then, sources must not only assert what they know, but explain why they are so sure. And, further, in giving this account, the priests, like the Nasamones and Etearchus, adhere to admirably Herodotean principles. Aside from the priests' express concern with the limitations of their own knowledge, they too appear quite as keen as Herodotus to distinguish between direct and indirect sources of knowledge and, indeed, to conceive of their knowledge as somehow bound to a geographical place. Thus, they explicitly differentiate between searching and finding, ἀνευρεῖν, from inquiry, πυθέσθαι. They have learnt, πυθέσθαι, and know, ἐπιστάμενοι, not by means of ὄψις but by means of learning, πυθέσθαι. Fehling has, not unreasonably, complained that the priests' answer is hardly very informative.¹ This, however, may be the point of the whole exchange. The Theban clergy, like Aristeas and like the Saite-tribe, indeed like Etearchus, turn out to have no ἀτρεκής knowledge about what took place in the distant lands. They must depend, ultimately, on an indirect source of information. Their account, then, trails off into an insecure, and repetitious, πυθέσθαι. Herodotus' sources are invited to give an account of the epistemic underpinnings of their own account and do so with mixed results. Herodotus attempts to draw limits to his sources' credibility and, in characteristic manner, dissociates himself from their rather more questionable 'findings'. Equally, however, Herodotus emphasizes his own role, indeed his centrality, literal and figurative, in this assessment. It is, indeed, this intervention as an ἵστωρ which allows him to distance himself from the λόγος and do so for clear reasons. Like Periander therefore, Herodotus first reaction to the Egyptian account is doubt. And, much like Periander, Herodotus is soon confronted by an alternative account of 'the guilty party':

¹ Fehling, 1989, p. 69 with previous scholarship.

The prophetesses of Dodona, however, say (φασί) this. Two black doves flew from Thebes, in Egypt, one of which went to Libya and one came to them and having perched on the oak he said to them, in human speech, that they must build an oracle there, dedicated to Zeus. The locals realized that the message was divine and, accordingly, built the oracle. They also say (λέγουσι) that the dove that went to Libya also ordered the Libyans to do the same for Ammon, who is their Zeus. The priestesses of Dodona, Promeneia, the oldest, Timarete, and Nicandra, the youngest, gave this account (ἔλεγον). And the other inhabitants of Dodona agreed (συνωμολόγηον)

Hdt. 2.55

Placed side by side with the Egyptian – and also in a parallel ring structure framed by two source-citations – the Greek account is remarkably different. Indeed, it offers a literal negation of the previous account. Not only was there no abduction, there were no women at all! Moreover, the account, steeped in the religious imagination of its sources, hardly inspires great confidence. To be sure, the Egyptian account of women abducted by piratical Phoenicians is not entirely free from legend.¹ Nonetheless, it is free of the manifestly marvellous elements found in the Greek version. More remarkable is the absence of any epistemic verbs or any account of the source's knowledge, whether solicited or proffered. Indeed, Herodotus gives only one clue as to his concern for the priestesses' epistemic credentials, a distancing source-citation, internal to the account, positioned at that very point when their local knowledge is surpassed. More conspicuous is the appendix which Herodotus gives, also in the manner of Hdt. 1.23f., which treats of

¹ Hdt. 1.1.2

the corroboration of the other locals who agree with the *named*, indeed carefully identified, sources.¹ Fehling has also drawn attention to the corroboration of other locals, suggesting that Herodotus resorted to this desperate measure because ‘there was no other place involved other than Dodona’.² Quite apart from the fact that a fiction-writer may have freely invented a Libyan source without so much as blinking, one cannot help but detect a little overzealousness in the verb συνωμολόγεον, unique in Herodotus’ massive text. Could we not, following Luraghi’s footsteps, detect a reference to the social surface of the belief, namely the fervency with which the belief is held in Dodona? Moreover, the corroboration of these locals does not seem to have impressed Herodotus much. He soon will flatly deny that anything resembling the literal truth of the Greek could ever have happened.

What, then, one may ask, is the point of this alternative version? The question becomes more urgent if we follow Gould’s plausible suggestion that Herodotus actually *sought out* this account,³ as he is occasionally wont to do.⁴ Like Periander, we find that Herodotus responds to doubt by resolving on ‘testing’ the account with an alternative version. And, indeed, whether or not Herodotus actively searched for this second version, the fact remains that the text itself enacts this confrontation. And, like Periander, this ‘test’ must be understood as an attempt to resolve this divergence:

Yet I hold this opinion about these matters (ἐγὼ δ’ ἔχω περὶ αὐτῶν γνώμην τήνδε). If the Phoenicians truly led the holy women away and gave one of them to Libya and the other to Greece, it seems to me (δοκέει ἐμοί) that this woman was sold in Thesprotia, a city of what is now Greece, formerly Pelasgia, and then, serving as a slave there, she established a temple of

¹ On these names sources see Gould, 1989, p. 20ff. As with the case of the Saite scribe, however, what is most remarkable is that this identification has absolutely no bearing on Herodotus’ inquiry (Hornblower, 2002, p. 274). Also see Luraghi, 2001, p. 159 n. 35.

² Fehling, 1989, p. 69.

³ Gould, 1989, p. 21; Waters, 1985, p. 25.

⁴ E.g. Hdt. 2.3. On such ‘cross-checking’ see Schepens, 2007, p. 45 with previous bibliography.

Zeus under an oak-tree growing there. For it is reasonable that she, having served in the temple of Zeus in Thebes, would remember it in the land to which she would have come. And from here, she thought divination and learnt the Greek tongue. Then, she said that her sister was sold in Libya by the same Phoenicians which had sold her. And it seems to me (μοι δοκέουσι) that these women were called 'doves' by the people of Dodona because they were barbarians and seemed to speak like birds. And they say that with time the doves spoke in human speech, meaning that the women's speech became intelligible to them. But while she spoke in a foreign tongue, it seemed to them that she spoke after the manner of a bird. For in what way can a dove truly speak in human tongue? And when they say that the dove was black, they are indicating that the woman was Egyptian (μέλαιναν δὲ λέγοντες εἶναι τὴν πελειάδα σημαίνουσι ὅτι Αἴγυπτιή ἡ γυνὴ ἦν).

Hdt. 2.56

The introductory declaration, ἔχω γνώμην τήνδε, the reference to εἰκός, and the repeated use of δοκέειν, may suggest that Herodotus has reached an impasse and has now given himself up entirely to his γνώμη, much as he had done at the boundary which separates the οἰκουμένη and into the ἔρημοι. Lloyd, however, has rightly alerted us to the ambiguity of these general terms and, more importantly, to the interconnectedness of Herodotus' mental operations.¹ It is clear, then, that the operation of Herodotus' γνώμη is here inseparably bound to the conflicting λόγοι which preceded. Indeed, the rest of Herodotus' ἱστορίη is an attempt to resolve this contradiction and to 'reconstruct' a coherent account of what actually happened.² Unsurprisingly, this reconstruction³ leans heavily on the less

¹ Lloyd, 1988, p. 24.

² Pearson, 1941, p. 351; Lloyd, 2007, p. 276.

³ Herodotus' reconstruction is aided by two important intellectual tools of the late fifth-century:

fantastical¹ Egyptian account. The talking birds are expunged from the narrative by appeal to *a priori* principles and replaced by the abducted women. Even so, additional elements are quietly introduced into the narrative. Thus, an important detail from the Greek version: the oracle was set up under an oak tree.² The name of the Pelasgian city where the Egyptian slave was sold is also given, Thesprotia, presumably on the grounds that the oracle was important to the Thesprotians.³ More importantly, however, the confrontation of the two seemingly contradictory accounts also allows Herodotus to rationalize the more implausible elements of the Greek version. Thus, he conjectures that the women are called ‘doves’ because of the barbarous language of the abducted Egyptian woman, and that her learning Greek is suggested by the ‘dove’ speaking in a human voice. Even the bird’s implausibly black feathers are accounted for; the ‘dove’ was Egyptian and, therefore, dark-skinned.⁴ Herodotus’ reconstruction, therefore, does not merely reject the impossible elements of the Greek account, it *corrects* them in light of the more plausible Egyptian account. Appeal to *a priori* assumptions – the ‘possible’ – allows Herodotus to reject certain elements of the Greek account, but it is the confrontation of the two accounts which allows Herodotus to see the account for what it is, a garbled version of the same story. Moreover, this confrontation also helps Herodotus explain one crucial detail of the Greek account, namely how they know of the Libyan ‘bird’. The priestess, Herodotus concludes, in accordance with εἰκόζ, must have told them. Herodotus’ proven concern for the epistemic credentials of his sources proves to us that this comment is *not* an incidental one. It allows Herodotus to conclude that the Greeks, though horribly confused, have a plausible link to a source of knowledge, the Egyptian woman mentioned in the Greek account. What Herodotus’ ἱστορίη impels him

appeals to τὸ εἰκόζ and τὸ ἀδύνατον (Lloyd, 1976, p. 252). In short, Herodotus argues that the Egyptian account conforms with εἰκόζ and is therefore plausible, while specific details of the Greek account are rejected by an appeal to τὸ ἀδύνατον.

¹ Herodotus generally suppresses or explicitly rejects stories which are overtly fantastical (Lateiner, 1989, p. 79).

² This detail may have been included because of the continued prominence of oak trees in the local cult (Fehling, 1989, p. 68). Thus, though carefully evaluated testimony is fundamental to Herodotean reconstruction, the historian does help himself to other sorts of evidence.

³ Lloyd, 2007, p. 276

⁴ Hdt. 2.57, ‘when they say that it was a black dove, they actually mean that the woman was Egyptian.’

to judge, then, is that the two accounts, rather than being opposites, are inexorably intertwined.

The confrontation of the two accounts, then, does not lead, as it did in Periander's court, to the refutation of one account in favour of the other. It leads, rather, to the *rehabilitation* of one account in light of the other, albeit at the expense of its literal truth. The Greek story, Herodotus concludes, operates on two different levels, that of mythical λέγειν and disguised, but entirely rational, σημαίνειν.¹ And, crucially, Herodotus concludes that it is only the superficial λέγειν which contradicts the more authoritative Egyptian version of the foundation of Dodona. Indeed, when it is stripped of its mythical elements, the Greek σημαίνειν corroborates the Egyptian account in every detail. The final product of Herodotus' γνώμη, then, is a common rationalized account of Dodona's foundations dependent on the testimony of two independent sources which corroborate one another, albeit unknowingly. As in Periander's trial, the confrontation of two contradictory λόγοι allows for the contradiction to be resolved. The means by which this is achieved, however, is not summary arrest. Unlike the ἴστωρ Kings and tyrants, it is always Herodotus who moves to his sources. Rather, what Herodotus' test relies on, at least in this instance, is his ability to penetrate beneath the superficial meaning of an oracular account and see its deeper significance. In Greek, it is his σύνεσις. A careful ἴστωρ must, just as Periander had done, *manufacture* corroboration when this is possible. And, though he must not resort to the tyrannical methods of a Periander and an Astyages, he must resort to *ad hoc*, indeed 'experimental', methods to resolve *some* ἀντίλογοι. Moreover, as with Periander, Herodotus must insert himself in the middle of the λόγοι and mediate between them. As in the former case, it is only his own ἱστορίη which provides the context for the λόγοι to be tested.

Many of the observations made of Arion's episode are also true here. The ἴστωρ, this

¹ Most often, the verb 'indicating', σημαίνειν, seems to be roughly synonymous to 'speaking' or 'declaring', λέγειν. Accordingly, messengers are regularly portrayed engaging in straightforward recounting what happened, or σημαίνειν τὸ γεγενημένον. Occasionally, however, a tension develops between λέγειν and σημαίνειν, one exploited to good effect by Heraclitus (Heraclit. DK22 B93).

time Herodotus himself, solves an ἀντίλογος by confronting two λόγοι to one another and by inserting himself in the middle of this mediation. Once again, it is the activity of the ἴστωρ, his ability to look beyond the superficial λέγειν, which *constitutes* the test. It is in light of Herodotus' 'success' at resolving the ἀντίλογος, and of his own emphatic intervention in the resolution, that we must register the sceptical tone with which Herodotus' 'solution' is presented.¹ Indeed, Herodotus is now emphatic that this reconstruction only represents his opinion, not his unimpeachable knowledge. As in the geographical excurses, then, the criteria of credibility are reflected back onto Herodotus' own λόγος and, once again, with mixed results. Not only does he point, repeatedly, to his own δοκέειν, he also preserves the original 'testimony' of the sources. In this, one cannot help but be moved by the observations of Dewald, Lateiner and, in particular, of Darbo-Peschanski. Herodotus 'the critic' *here* seems to content himself, primarily, with describing the difficulty with which he has established his unsure discovery. Moreover, this surrender must, as Lateiner and Darbo-Peschanski argue, shift the 'judicial authority' to a second authority which is external to the text, namely the reader. Indeed, the importance of this second authority is implied also by Herodotus' emphatic references to his dubious epistemic credentials. We are presented, in other words, with a likely story which *depends* on the truth of the Egyptian account the epistemic credentials of which are also laid bare by Herodotus. This is, emphatically, *not* what litigants do. As I argued above, Antiphon does not merely point out that his witnesses are unimpeachably credible, but also that they furnish the jurors with the ideal means of proof. Even in the absence of witnesses, as in Antiph. 1, the litigant defends his argumentative method as the *ideal* one, given the situation. Herodotus is entirely silent on this regard. The second authority, indeed the final authority, is confronted not so much with Herodotus' emphatic certainty, but his cautious scepticism in the face of λόγοι.

Several reasons can, of course, be adduced for Herodotus' scepticism. The legendary elements of the accounts, the antiquity of the events in question, the superficial

¹ See esp. Lloyd, 1976, p. 252.

contradictoriness of the accounts, and the prominence of Herodotean γνώμη are all valid explanations. Since Herodotus does not specify what it is that impels his doubt, we are left only with our own γνώμη. One may be tempted, in this way, to suggest another, speculative but complementary reason for his scepticism, namely the nature of the 'test'. As I have argued above, the most characteristic feature of Antiphon's epistemology is the strength of the second condition and, in other words, the *necessity* with which the test, and in particular the βάσανος, is presumed to act. In Herodotus, no such necessity obtains. Instead of the conventional and mechanistic necessity of the Antiphontean elenchus, we find ingenious and novel tests which, wondrous though they are, do not verify or necessitate. They merely allay doubt. Above all, in place of the mechanical elenchus we find is the ἴστωρ himself. Thus, where the former stresses the mechanical operation of witnesses, Herodotus records the strenuous activities of his ἱστορίη. Where one stresses certainty, the other declares doubt and opinion. And, most importantly, where the one stresses the necessary operations of the elenchus, the other stresses the daring autonomy of his own judgement. It is here, rather paradoxically, in the resolution of forensic-type ἀντίλογος, that Herodotus departs most completely from the model offered by Antiphon's litigants. While Antiphon's litigants all too happily prescribe 'definitive' resolutions for their forensic ἀντίλογος, Herodotus preserves the ἀντίλογος whole and to leave it unresolved for his audience to contemplate. This shift, moreover, is parallel to the one already noted, a move from the consideration of credibility as a tool of offence and defence, to a self-reflexive and frank consideration of the limits of one's own credibility.

11.3: Conclusion

In this chapter, I have argued that in spite of his bold assertions of λόγος-dependent knowledge examined in the previous chapters, Herodotus appears to embrace a decidedly more ambivalent attitude to his own judgements concerning λόγοι. Some ἀντίλογοι, for example, may prove particularly problematic to resolve authoritatively and

definitively. And further, even when Herodotus appears to accomplish his aims, resolving an ἀντίλογος in the manner of a Periander, nonetheless he expresses frank reserve about his results. This caution is not, of course, incompatible with the position defended in the previous Chapter, or with Antiphon's epistemological position more generally. Indeed, in declaring his own epistemic credentials so forthrightly, Herodotus emulates the practice of his most reliable sources and forensic witnesses. Nonetheless, and especially in light of the forensic character of such judgements, we must note a remarkable difference from the expressed authority of Antiphon's litigants. These men, in submitting their own cases for judgment, invariably argue that their own argumentative strategy furnishes the ideal means of deciding the case. And, moreover, in all the court-speeches examined, the examination of testimony, whether that of witnesses or their own, is a central component of this argument. Herodotus, on the other hand, draws explicit attention to the limits of his own judgement even when this judgment appears to have accomplished its task. In so doing, he draws limits to the authority of his own judgment and, therefore, the credibility of his account. In this, Antiphon and Herodotus must part ways.

Chapter Twelve.

Conclusion: The Forensic Paradigm of Testimony in Antiphon and Herodotus

We can now summarize the results of the analysis above. The main thesis of this thesis, delineated in the Introduction, is that there existed, in the prose works of the late fifth-century, a relatively well-developed and positivistic epistemology of testimony. Indeed, I have argued that this epistemology sits at the foundation of two characteristic functions which are attributed to forensic witnesses and, further, is implicit in the Herodotean 'meta-historie' of ἀκοή. The first, logically prior, function of testimony is that of a heuristic principle and, therefore, a source of knowledge. In other words, the litigant, or Herodotus himself, may justify his knowledge of a *fact* by appealing to testimony. One stark illustration of this basic positivistic assumption is the rapprochement of ἀκοή to vision, the supreme epistemic resource, one found both in the geographical excursuses of Herodotus and in the argumentative strategy of Antiph. 1. More generally, various litigants draw a distinction between crimes which can be known because they are seen *by witnesses*, and crimes which are unwitnessed and, therefore, completely unknowable. Similarly, the heuristic power of testimony sits at the heart of Herodotus' distinction between the known world – known not merely by, but from, the local peoples and travellers – and the unknown world which admits no witnesses, and no knowledge, at all. Secondly, testimony may be used demonstratively and, therefore, as evidence in favour of a 'hypothesis'. This appears to be one of the most characteristic functions of testimony in the law-courts. In Antiph. 6, then, the Chorus-producer purports to *demonstrate* that he is innocent by appeal to witnesses, while Euxitheus attempts to undermine his opponent's demonstrative claims by attacking his witnesses and, indeed, his evidence generally. Herodotus too can rarely invoke the testimony of a source as the evidentiary basis for a claim. Thus, Herodotus asserts that the battle between Cyrus and the Messagetæ was the fiercest of all battles because of a report he purports to have heard. Similarly, the Nasamonian report of crocodiles deep in the south-east of Africa evidences – though it barely 'demonstrates' – that the Nile flows to the East in the vast unknowns

of the continent.

I have also argued that these two functions presuppose a number of simple, cogent epistemological assumptions about the nature of testimony. Firstly, both Antiphon and Herodotus assume that λόγοι are epistemically diverse. Some λόγοι, credible λόγοι, then, are *bone fide* heuristic and demonstrative, while other λόγοι are not. The basic proposition of a positivistic epistemology of testimony, then, can be put in terms of this distinction. A positivist must assume that there exist broadly reliable ways by which to differentiate these two kinds of λόγοι and, therefore, to separate credible from incredible speech. It is in this basic assumption that Antiphon and Herodotus are positivists. Moreover – and the reconstruction of this epistemology depends on this further premise – both Antiphon and Herodotus propose *rational* criteria by which this discrimination can be made. And, once again, remarkable overlaps obtain between the two authors. Most generally, then, the credibility of a witness or a source do not depend on his or her personal characteristics. Indeed, Herodotus and Antiphon hardly specify these characteristics at all. Rather, the assessment considers impersonal, even general, criteria for credibility. In Antiphon, these criteria are modelled on the formal rules of admissibility. Credible witnesses must have first-hand knowledge of the facts and, further, be tested adequately for their truthfulness. In Herodotus, on the other hand, credible sources must know, declare their knowledge forcefully, and, further, must be able to communicate intelligibly to him and one another. Other criteria may be invoked by either author, but the primary knowledge of the witness, often autoptic in nature, and his truthfulness, remain at the heart of discussions about credibility.

In sum, I have argued that Antiphon and Herodotus share a comparable understanding of credibility and of the functions of *credible* testimony, outlined above. The two authors, however, also share yet one more important feature. In both cases, the epistemology of testimony described above is not a latent structure to be excavated, but has an active, and important, rhetorical function. Similarly, this epistemology of testimony is not merely *implicit*, but finds itself at the centre of an intense discussion in both authors. At the most

basic level, both Antiphon and Herodotus explicate their defence of and their attack on testimony along these lines. The witnesses at the end of the *First Tetralogy*, then, is presented as furnishing demonstrative proof *because* they know and can be tested for honesty. Antiphon, in other words, constitutes the category of credibility, along the lines presented above, and 'shows' that favourable witnesses are credible and admissible, while unfavourable witnesses not. And, time and again, Antiphon resorts, explicitly, to positivistic premises to argue his point and to derive his conclusions. Similarly, Herodotus may accept an account as a legitimate source of knowledge or evidence, or dismiss it as illegitimate, on comparable grounds. It is, indeed, this distinction, discussed in explicit terms in the geographical excurses, between the credibility of autoptic reports and of reports which cannot be traced back to autopsy which lies at the foundation of Herodotus's account of these distant lands. Antiphon's topical arguments and Herodotus' 'meta-historie', then, serve fundamentally similar purposes, namely of configuring the way in which the witnesses and sources are to be assessed by the audience by defining the 'legitimate' conclusions which can be drawn from them. In Antiphon's corpus, this is most clearly illustrated in Antiph. 6. Here, the litigant defends not merely the credibility, but also the pertinence of his witnesses to the jurors' judgement. The jurors, the defendant argued, have been handed the case on a silver platter. Similarly, Herodotus, in distinguishing the known world and the unknown deserts, confirms the authority of his ἱστορίη over the 'known world', an authority grounded on his judgement about, and his defence of, the credibility of his sources.

Yet, in spite of these broad and important overlaps, important differences separate Antiphon's and Herodotus' use of this important πίστις. Antiphon, presumably driven by the immediate concerns and the zero-sum nature of forensic litigation, takes up a rather absolute position. He defends his litigant, whether on 'heuristic' or 'demonstrative' grounds, to the hilt and yields no quarter to his adversaries. The litigant, and his witnesses, is invested with all relevant knowledge and all possible credibility, while his opponents and witnesses are invariably condemned as liars, perjurers, sycophants, and

cheats. The mechanistic operation of the βάσανος, which *ensures* truthfulness and credibility, was particularly convenient for this mode of examination. The testimony of one's own witnesses, knowledgeable and 'appropriately' tested, can be defended as necessarily, even logically, true. The testimony of his opponents, on the other hand, when compared to this unattainable standard, falls to pieces. Herodotus, on the other hand, is more keenly aware of limits of his own credibility and of his ἱστορίη. Indeed, it is this awareness which sets him apart from other would-be investigators such as the Saite priest, or Aristeeas, or indeed the archaic geographers who spoke of Ocean. In no less polemical a way, Herodotus configures the limits of credibility to favour his own, more limited, account. It is undeniable, however, that the authority conferred by the testimony of his sources is not as unwavering as is the confidence of the Chorus-producer in his witnesses. One place where this is especially clear is in the resolution of forensic-type ἀντίλογοι. We find, then, that Antiphon's litigants invariably urge the jurors, whether by their purported demonstrations, by comparing the oaths or by some other stratagem, to regard the essential question on trial as eminently soluble and, indeed, solved, if only the jurors were to follow the 'advice' given. Herodotus, on the other hand, more readily gave himself over to doubt and caution in the face of such judgements. Even when seemingly conclusive result are obtained, Herodotean agnosticism prevails. And, as if to mark this agnosticism, Herodotus preserves the dilemmas for his readers to contemplate. It is little wonder that Antiphon chose not to follow Herodotus down this treacherous path.

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