

THE CIVIC STATUS OF THEODOTOS IN LYSIAS III

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Este artículo retoma la opinión, apuntada en el pasado por varios autores pero actualmente olvidada, de que τοῦτο τὸ ... παιδίον en Lysias 3.33 no se refiere a Teodoto, el joven que motivó el enfrentamiento entre las partes del pleito, sino al esclavo ἀκόλουθος del orador. Las dificultades que suelen señalarse a propósito de la condición cívica de Teodoto se disipan si se adopta esta opinión.

This paper revives the view, advanced in the past by several authorities but currently neglected, that τοῦτο ... τὸ παιδίον in Lysias 3.33 refers, not to Theodotos, the young man over whom the parties to the case had clashed, but to the speaker's slave ἀκόλουθος. The problems usually perceived over the civic status of Theodotos vanish if this view is accepted.

Palabras-clave: Lysias, Teodoto, leyes áticas, tortura, metecos, esclavos.

Keywords: Lysias, Theodotos, Attic law, torture, metics, slaves.

Lysias 3 (*Against Simon*) is the defence of an unnamed speaker charged by Simon with premeditated wounding with intent to kill, four years after the alleged events. The speaker and Simon were then both in love with one Theodotos, who, according to the speaker, was a "Plataian youth" (§5). Simon, so the speaker alleges, attempted to abduct Theodotos and was injured in a general affray. In discussing the controversial question of the civic status (and age) of Theodotos, the most recent commentary on Lysias 3, Carey 1989, focusses (pp. 87, 107) on the initial sentence of §33:

καὶ ἐπεβούλευον μὲν αὐτῷ, οὕτω δὲ ἦλθον ἀπαράσκευος, ὥστε μήτε οἰκέτας μήτε ἄλλον ἄνθρωπον παρακαλέσαι μηδὲνα, εἰ μὴ τοῦτό γε τὸ παιδίον, ὃ ἐπικουρήσαι μὲν μοι οὐκ ἂν ἐδύνατο, μηνῦσαι δὲ ἱκανὸν ἦν βασανιζόμενον, εἴ τι ἐγὼ ἐξημάρτανον;

Carey, who, like the majority of commentators, takes τοῦτο τὸ παιδίον to refer to Theodotos, presents his conclusions with admirable concision:

At the time of the trial he [Theodotos] must have been at least eighteen years of age, and yet the speaker is able to refer to him in §33 as *παιδίον*, ‘little boy’; so he must have been of slight build ... In 427 Plataia in Boiotia, a loyal ally of Athens, was captured by the Spartans and ceased to exist as an independent state. Those Plataians who escaped to Athens could claim Athenian citizenship, subject to individual scrutiny. We can be sure that Theodotos’ father had never received citizenship. In §§21-6 there is talk of a sexual contract between Theodotos and Simon; the existence of the contract is denied, but there is no suggestion that it would be improper or illegal for the boy to make such a contract, although an Athenian citizen who prostituted himself lost his citizen rights. Furthermore, in §33 the possibility of putting Theodotos to the torture is raised; no Athenian citizen could be tortured (Andok. I 43). It is indeed unlikely even that non-citizens were tortured in Athens except where the safety of the state was at risk. There is therefore good reason to accept the majority view that Theodotos was a slave. (p. 87)¹.

However Carey’s conclusion (shared by many of his predecessors) that Theodotos was a slave has met recent resistance. Todd 2000, pp. 42-3 – also taking τοῦτο τὸ παιδίον as Theodotos – regarded Theodotos as a free Plataian who had not received Athenian citizenship², but whose civic status was indeterminate. Todd did not confront the difficulty inherent in the notion of a free alien, as he saw him, being tortured in an Athenian civil case. But this difficulty was met head on by an earlier contributor to this debate, Bushala 1968. Like Todd, Bushala (pp. 64-6) contended that Theodotos was a free alien not a slave, pointing particularly to his freedom of movement and to his ability to enter into a contract for his erotic services. Bushala, who, like the other scholars so far mentioned, believed that τοῦτο ... τὸ παιδίον refers to Theodotos, was intent on supporting another controversial opinion³, namely that the Athenians tortured free aliens to obtain evidence in homicide cases.

¹ Carey 1989 also concluded that, as a slave, Theodotos did not possess the legal capacity to contract out his erotic services (p. 90).

² The obstacle to this view is, of course, the label “Plataian youth” (Πλαταϊκοῦ μαιράκιον, §5). In Lys. XXIII, the speaker, prosecuting one Pagkleon for allegedly having claimed to be a “Plataian” when he was not, expresses doubts about Pagkleon’s adherence to a deme and tribe (§§2-4). This implies that Pagkleon’s claim to be a “Plataian” was a claim to Athenian citizenship in accordance with the grant of 427: cf. Kapparis 1995.

³ Bushala’s verdict was impugned by Thür 1977, pp. 19-22, esp. p. 22 n.43, less perhaps for its own demerits than because of what Bushala wished to base on it. Thür also rejected the alternative view of τὸ παιδίον expounded below. Carey 1989, p. 107 refers to Bushala’s argument that a μαιράκιον could be called a παιδίον, but does not take issue with him on the slavery/freedom question.

In the course of arguing this position he rejected (pp. 66-8) an alternative view of τὸ παιδίον which some earlier commentators had espoused. The alternative view does not help us to decide whether Theodotos had Athenian citizen rights or was a metic⁴, but it eliminates from Lysias 3 any support for the notion that a free individual could have been tortured in connection with the case being tried there (even if a murder had actually taken place); and it also eliminates the supposed evidence for Theodotos' servile condition.

The alternative view is that τοῦτο ... τὸ παιδίον has nothing to do with Theodotos, but refers to the speaker's slave "follower" (ἀκόλουθος). The earliest version of it known to me dates from 1868, when Blass in the first edition of his ground-breaking text-book⁵ commented: «mit τοῦτο τὸ παιδίον 3,33 ist Theodotos gar nicht gemeint». Dobree 1874, p. 194, followed up with a more explicit proposal about «τὸ παιδίον: non esse videtur Theodotus; sed oratoris ἀκόλουθος». Neither scholar advanced arguments. The approach of Emily Grace⁶ (citing Blass and Dobree) was similar. She did add two skeleton arguments: in Lysias 3 Theodotos is called μειράκιον and νεανίσκος, but never παιδίον; and Theodotos did participate in the violent confrontation with Simon's friends, which is inconsistent with the παιδίον's stated inability to help the speaker. But she did not answer the objections of Bushala 1968 – discussed below. Admittedly no incontrovertible proof can be offered for either view: the evidence, including the linguistic evidence (below), is just too evenly weighted. But since a number of legal problems vanish if Theodotos is not τοῦτο ... τὸ παιδίον, and since the case for (and, with the exception of Bushala 1968, the case against) this proposition has to date been made, or recorded, only in footnotes or casual asides⁷, it may be worthwhile to revive and expand upon it in the hope that future commentators on Lysias 3 and on these problems may take more account of it.

⁴ Theodotos' (alleged) self-prostitution is not determinant either: the contract may have been the malicious invention of Simon, it was unprovable anyhow, and Theodotos was seemingly no longer involved in the case (below).

⁵ Blass 1868, p. 594 n.1 = 1887, p. 586 n.3.

⁶ Grace 1973, p. 27 n.13; 1974, p. 42 n.21.

⁷ E.g. Fernández-Galiano 1953, p. 77 identified τὸ παιδίον as a slave, but without arguments or bibliography; Carey 1989, p. 107 noted only that Blass suggested that τὸ παιδίον was "someone else".

In Lysias 3 Theodotos is called *μειράκιον* no less than seventeen times⁸, and *νεανίσκος* three times⁹. The point at issue is whether, in the global context of these twenty references, it is reasonable to understand the speaker's single reference to *τὸ παιδίον* as a reference to the same individual. Bushala cites one or two passages where *παιδίον* is applied to an older child¹⁰, which is unsurprising. But his best argument for taking *τὸ παιδίον* as Theodotos relies on Plato's references to Theaitetos in the dialogue of that name (p. 67). There Theaitetos is called a *μειράκιον* three times, and he is addressed many times by Socrates as a *παῖς*. In addition Protagoras, Socrates' target, is imagined as referring to Theaitetos once as a *παιδίον*. However the references to Theaitetos as a *μειράκιον* are made by three different speakers in the introductory section of the dialogue (142c, Eukleides; 143e: Theodoros; 144c: Socrates) before Theaitetos enters it in person¹¹. The more encouraging and friendly *ὦ παῖ* appears only in Socrates' direct addresses to Theaitetos, which is easy and natural. The use of *παιδίον* to refer to Theaitetos comes later in the dialogue when Protagoras is imagined as making the exaggerated assertion that Socrates has bamboozled the "child" Theaitetos (166a). In contrast Lysias 3 has a single speaker who refers twenty times to Theodotos as *μειράκιον* and *νεανίσκος*, and who is supposed to point out or to mention Theodotos once as "this *παιδίον*". So what happens in Plato's *Theaetetus* is not closely parallel to what happens in Lysias 3.

Carrying his argument forward Bushala rightly claimed that *παιδίον* is used in Lysias 3.33 «in order to emphasize his [the speaker's] point that he could expect little or no help at all from 'the child'» (p. 67). But the question then arises whether such helplessness is sensibly attributable to Theodotos? As Grace noted, Theodotos does put up resistance in the "battle" between the two groups, and so is clearly capable of some exertion. Theodotos resists on his own behalf, not that of the speaker, but he is not a complete weakling. Moreover, if Theodotos was already a "youth" four years earlier when the events under dispute took place, might it not have been ludicrous and therefore counter-productive for the speaker to refer to him as a "boy"

⁸ §§4, 5, 6, 10, 12 (twice), 15, 18, 22, 26, 27, 29, 31, 32, 35, 37 (twice).

⁹ §§10, 17 (twice).

¹⁰ Bushala also notes (p. 67) that «at the time of his death, one of Socrates' *παιδιά* was a *μειράκιον*», citing Plat., *Phaedo* 116b and *Apol.* 34c-d. In such a case *παιδιά* refers to filiation, not age.

¹¹ There are more general references to "lads" at *Theaet.* 146b and 168e.

during the trial? It is, of course, irrelevant that the speaker refers twice to “boy-friend(s)” in general as παιδικά since παιδικά is not synonymous with παιδίον¹². Another question worth asking is whether Theodotos was constantly in the speaker’s company during the events which led to the trial. If he was, then it might appear more likely that he is the παιδίον. But in fact he seems not to have been constantly with the speaker. Lysias 3.12 has the pair leaving Lysimachus’ house together before being attacked and taking flight separately (3.12-13), while 3.17-18 has them reunited, again under attack together. That there was a definite interval in which they were not together is implied by the speaker’s description of himself as “walking alone” (μόνος βαδίζων, §17)¹³.

Next the possible linguistic implications of the phrase τοῦτό ... τὸ παιδίον: no deictic is attached to any of the references to Theodotos as μειράκιον or νεανίσκος, and the speech contains no indication that Theodotos was there in court. If (although this is a moot point: see below) the deictic τοῦτό attached to τὸ παιδίον implies the presence of τὸ παιδίον in court¹⁴, and if τὸ παιδίον is Theodotos, then surely he would have provided testimony, or at least have been offered as a witness, whatever his status. But there is not the slightest hint in Lysias 3 that Theodotos was a witness. On the other hand the identification of τοῦτό ... τὸ παιδίον as the speaker’s “follower” slave generates no such difficulties. He would have been present during the events which led to the trial, and he would also have been present in court. In either context, he would have been so insignificant as to be worth mentioning only in a *reductio ad absurdum* such as the speakers’ reference to τοῦτό ... τὸ παιδίον, since *qua* slave he was a “non-person”. Indeed it would have been his servile status which allowed the speaker to represent himself as “walking alone” (§17) in the mid-part of the conflict, even though his slave-follower would still have been with him. Athenians regularly went about with one or

¹² ἡγούμενος δεινὸν εἶναι, εἰ ἄρα περὶ παιδικῶν ἐφιλονίκησαμεν ἡμεῖς πρὸς ἀλλήλους, τούτου ἕνεκα ἐξελάσαι τινὰς ζητῆσαι ἐκ τῆς πατρίδος. (§ 40) — παιδικῶν X: παιδων tell.; δεινὸν ἂν εἴη, εἰ ὅσοι ἐκ μέθης καὶ φιλονικίας ἢ ἐκ παιδικῶν ἢ ἐκ λοιδορίας ἢ περὶ ἐταίρας μαχόμενοι ἔλκος ἔλαβον κτλ. (§ 43) παιδικῶν X: παιδιῶν C. Although editors sometimes prefer to read παιδων (40) or παιδιῶν (43), the *terminus technicus* for ‘boyfriend’ is παιδικά and παιδικῶν is the reading of the most reliable MS.

¹³ On another implication of this, see below.

¹⁴ Carey 1989, p. 92 believes that the affair continues, and that Theodotos is still in contact with the speaker – but see below.

more “follower” slaves in attendance. It was such a commonplace practice that being accompanied by only one such slave could be taken as a sign of poverty¹⁵, although the speaker in the present case, who was obviously a man of substance¹⁶, is stressing something different, namely his lack of aggressiveness and premeditation. The speaker’s slave ἀκόλουθος was presumably “incapable of assisting” the speaker because he was very young or very slight, something to which the speaker calls attention by pointing at him¹⁷. But a slave ἀκόλουθος would nevertheless have been “able to give evidence under torture” against the speaker because, as a slave, he could only give evidence in this way. Although Bushala, p. 67, makes reasonable general statements about the meanings of παιδίον, he fails to consider the possibility that παιδίον may appear in Lysias 33 in a specialized sense – as used by a master of his own slave (or said by others with privileged access to a slave, such as visitors or guests) – like Latin *puer*¹⁸. In this case the phrase εἰ μὴ τοῦτό γε τὸ παιδίον could arguably mean: “except for *my* slave *here*”.

I add “arguably” because, as noted above, the alternative view of τοῦτό τὸ ... παιδίον as the speaker’s ἀκόλουθος slave is as incapable of incontrovertible proof as is the view that he is Theodotos. This is mainly due to the attested usage of the phrase τοῦτό τὸ παιδίον. First, although common enough, it never elsewhere, as far as I can determine, refers to “my slave”, although there is no linguistic reason why (in the mouth of the slave’s master) it could not do so. Second, and this is where the real ambivalence lies, the phrase can refer either to someone physically present, or to someone not present but the subject of conversation. This can be illustrated rapidly from the only four examples in Longus’ *Daphnis and Chloe*:

θήλυ ἦν τοῦτο τὸ παιδίον, καὶ παρέκειτο καὶ τούτῳ γνωρίσματα· μίτρα διάχρυσος, ὑποδήματα ἐπίχρυσα, περισκελίδες χρυσαῖ. (1.5.3, Chloe is spoken of in a narrative).

¹⁵ E.g. Aristoph. *Eccl.* 593; Plut. *Phoc.* 19.3; Dio Chrys. 40.2; cf. also Carey and Reid (1985) 86-7. At Lys. 32.16 the turning out of orphans without a single ἀκόλουθος is regarded as a disgrace: cf. Carey (1989) 218.

¹⁶ Carey 1989, pp. 86-7.

¹⁷ Slaves could, of course, assist their masters in brawls: when the speaker of Lys. 3 asserts that, had he intended Simon harm, he would have gone accompanied by (slave) retainers (§33), he clearly did not imagine them as simply standing by.

¹⁸ Cf. LSJ s.v. II. Bushala 1967, p. 67 claims that the sense ‘slave’ is «extremely rare». This is not so: the reason why it does not occur in the authors listed by him (p. 67 n.21) is that in those authors no-one refers to his own slave in this everyday fashion.

καὶ χαίρει μόνος ἀνθρώπων ἐν γήρα θεασάμενος *τοῦτο τὸ παιδίον*. (2.5.5, Eros is present and refers to himself(!)).

ᾧμην ἱκανὸν εἶναι τὸ γένος, καὶ γενόμενον ἐπὶ πᾶσι *τοῦτο τὸ παιδίον* ἐξέθηκα, οὐ γνωρίσματα ταῦτα συνεκθείς, ἀλλ' ἐντάφια. (4.24.1, Daphnis is spoken of in a narrative, but is also present).

ἀνεβόησεν ὁ Διονυσοφάνης μείζον τοῦ Μεγακλέους καὶ ἀναπηδήσας εἰσάγει Χλόην πάνυ καλῶς κεκοσμημένην καὶ λέγει· *τοῦτο τὸ παιδίον* ἐξέθηκας· ταύτην σοὶ τὴν παρθένον οἷς προνοίᾳ θεῶν ἀνέθρεψεν, ὥς αἴξ Δάφνιν ἐμοί. (4.36.1, Chloe is present and is referred to).

The choice, then, in Lysias 3.33 lies between taking τοῦτό τὸ παιδίον either of Theodotos, who has just been spoken of (as το μεράκιον) in §32, but is seemingly not in court, or of the speaker's slave attendant, present in court. The first view creates a legal problem, the second does not. Identification of the παιδίον as a slave ἀκόλουθος would offer a further hint about the circumstances of Simon's prosecution. If Theodotos is not in court – as he certainly does not give evidence – he has either left Athens or died, and his relationship with the defendant is over. Might this explain the four year delay between the events and trial? Was Simon waiting for Theodotos, who (whether as a citizen or metic witness) could easily have refuted his charge, to be out of the way before he initiated the case?

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ADDENDVM

In the interval since this paper was submitted for publication there has appeared K. Nikau, «Zur Epiphanie des Eros im Hirtenroman des Longos», *Hermes* 130, 2002, pp. 176-91, with (pp. 190-1) a useful *Anhang*: «παῖς und παιδίον bei Longos».

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