Athenian religion had many rules. Its emphasis was more on practice than on conscience. The aim was to do the things which would please the gods, in the hope of getting their help, and to avoid anything which would annoy them and provoke their vengeance. And their likes and dislikes were, apparently, quite complicated. They were formulated in elaborate rules, mainly about sacrifices and other rituals which were to be performed by certain persons in certain ways at certain times; details cannot be given here, but may be found in books on Athenian religion.

These laws were believed to have been made by gods, not by men. Sometimes new ones were obtained from sources thought to be divinely inspired, especially the Delphic oracle. But most sacred laws had no remembered origin and were just ancestral traditions (patria). Many of them were inscribed on stone by the end of the fifth century, but even then others remained unwritten, and comprehensive knowledge of them was possessed only by a few experts, each of whom was supposed to pass on the knowledge to his successor. One might have expected any priest to be regarded as an expert on the cult whose rituals it was his duty to perform, but it is not certain that this was true of all priests and cults. For example, one of the most important Athenian cults was that of the two Eleusinian goddesses, Demeter and Kore, which included the secret ritual of the Mysteries. This cult was controlled by the two aristocratic families named Eumolpidai and Kerykes, who provided the two chief priests of it, the hierophant ('shower of the sacred') and dadoukhos ('torch-bearer') respectively; but it was only the Eumolpidai who gave authoritative statements of sacred law about it, and on one occasion (in 400 or 399) an objection was made when Kallias, who belonged to the Kerykes and was the dadoukhos, tried to usurp this function.  

Probably the Eumolpidai expounded laws only about the Eleusinian cult. But there also existed religious officials called exegetai ('expounders'); perhaps they could expound all sacred laws, or perhaps just those sacred laws which did not concern a particular priest or temple. They are mentioned four times in the literature of the fourth century. The earliest mention is this one in Plato, referring to the year 399 or a little earlier.

'When we were farming in Naxos, he was a labourer on our farm there. He got drunk, lost his temper with one of our slaves, and killed him. So my father bound him hand and foot, threw him into a ditch, and sent a man to Athens to ask the exegetes what should be done.' (Plato Euthyphron 4c)

In all the four passages what happens is that someone asks 'the exegetes' (singular in three of the instances; plural, 'the exegetai', in the other) to state the correct religious procedure in an unusual situation concerning death or purification. On the basis of this evidence we cannot say when exegetai were first appointed, nor how they were appointed, nor how many there were, nor how much of the sacred law they expounded in the fourth century; it is unsafe to use (as J. H. Oliver does in his book on this subject) inscriptions of the Hellenistic Age as evidence for the earlier period.

There is no reason to think that either the Eumolpidai or the exegetai had any powers of enforcement. Although one Demosthenic passage (22. 27) indicates the possibility of requesting the Eumolpidai to judge whether a person had acted impiously, that does not show they could impose a penalty. Where private problems were concerned, the question of enforcement would be unlikely to arise. A man who enquired of the exegetai about the proper ritual to be performed on some occasion by himself in his own household would do so with the intention of following their instructions; or if he neglected them and risked incurring the gods' hostility, that was his own affair. But it was a different matter if an infringement concerned a public ceremony or shrine; for then the gods, if offended, were thought likely to show their hostility to the Athenian people generally, unless the people placated the gods by punishing the offending individual.

For this reason a person could be brought to trial for a religious offence. In such trials the Eumolpidai, exegetai, and other priests had no standing; the trials were conducted by secular magistrates, usually the basileus, with secular juries. (A minor exception is that, if a case concerned the secret rituals of the Mysteries, men who had not been initiated in the Mysteries were excluded from the jury.) The jury
would need to take account of any relevant sacred law, and indeed on some occasion in the middle of the fifth century Perikles told a jury that they should enforce the unwritten laws expounded by the Eumolpidai. After 403/2 the law that no uninscribed law was to be enforced by the courts (see page 47) must have applied to sacred law too, but perhaps by then most sacred law which was likely to concern the courts had in fact been inscribed.

Some offences connected with religion have already been mentioned in previous chapters: homicide, which was thought to give rise to religious pollution (see page 110); destruction of sacred olive-trees (see page 133); theft from a temple (see page 149). In this chapter we are concerned with offences concerning the performance of religious ceremonies and the vaguer offence of impiety.

**FESTIVALS**

Offences in connection with certain festivals were dealt with by the procedure called probole (a word which literally just means ‘putting forward’, sc. to the Ekklesia). At least this was so in the fourth century: our information comes from the speech Against Metidas (Demosthenes 21), composed in 347/6, and at one point Demosthenes remarks that one of the relevant laws did not exist in the time of Alkibiades some seventy years before, but we cannot say what the rules were in the fifth century. Demosthenes mentions several laws and quotes two of them (there is no sufficient reason to reject the genuineness of these texts), from which we see that there were separate laws about different festivals - possibly because different festivals had different rules, but more probably because the scope of the probole procedure was only gradually extended to the various festivals. By 347/6 it was in use for at least the following festivals: the great Dionysia, the Dionysia at Peiraieus, the Lenaia, the Thargelia, and the Eleusinian Mysteries.

The procedure was that anyone wishing to prosecute for an offence in connection with a festival notified the prytaneis (the fifty members of the Boule responsible for arranging meetings of the Boule and the Ekklesia), who had to place it on the agenda for the Boule and the Ekklesia on the day after the festival. (One phrase in the first law quoted by Demosthenes, ‘those which have not been paid’, implies that a prosecution need not be brought to the Ekklesia if it was agreed in the Boule that a small fine was sufficient penalty; but not all scholars agree that the phrase is genuine.) In the Ekklesia the prosecutor and the defendant each made a speech, and the citizens voted for one or the other. But - and this was the peculiarity of the procedure - this vote had no effect, except that it was prejudicial (in the strict sense of that word). If the prosecutor wished to take the matter further, there had still to be a trial with an ordinary jury in the court of the thesmothetai. Neither the prosecutor nor the jury was bound by the result of the voting in the Ekklesia. But no doubt it did in practice carry much weight with the prosecutor, in deciding whether to proceed to a trial, and with the jurors, in reaching their verdict. Presumably the purpose of the hearing in the Ekklesia was, in the absence of any public official to decide whether a prosecution was worth while (like, for example, the procurator-fiscal in Scotland), to enable the citizens generally to express their approval of it.

Any ‘wrong action concerning the festival’ could be the subject of a probole; this expression was not defined in the law, and it was for the Ekklesia and subsequently the jury to decide whether the defendant’s behaviour should be so described. In addition the law stated that at certain festivals no one might seize money or other property from another person, even if it was something (such as an overdue debt) which he was otherwise legally entitled to seize; if he did so, he was subject to probole. Presumably the Athenians had found by experience that creditors would often hope to track down their debtors at a festival which a large part of the population attended, and that their activities, though they formed no part of the festival, were liable to disturb its smooth conduct. (One can imagine the effect of a creditor scanning the rows of the audience in the theatre, spotting his debtor, and challenging him while the performance of a tragedy was going on.)

Demosthenes 21. 175-80 gives several examples of the use of probole. In one case a Karian complained that a Thespian to whom he owed money caught hold of him during the Eleusinian Mysteries. It is interesting that both men involved in this probole were non-Athenians. In another case a man complained that the archon’s paredros (‘assessor’) had manhandled him in the theatre at the Dionysia. In a third case a man named Ktesikles was riding in a procession at a festival and, catching sight of someone he did not like, struck him with his whip. The man brought a probole against him. Ktesikles seems to have defended himself by saying that he was drunk at the time, and perhaps it was regarded as excusable to be drunk at a festival. But the jury decided that he had acted ‘from hybris, not from wine, ... treating free men as slaves’, and he was condemned to death.
But the case which we know most about is that of Demosthenes and Meidias, for which the surviving speech was written. In the spring of 348 Demosthenes was a khoregos for a men's dithyrambic chorus at the Dionysia. Meidias, having a grudge against him, made various attempts to obstruct the chorus's preparation for the contest and prevent its success, and finally on the day of the performance came up to Demosthenes in the theatre and punched him in the face. On the day after the festival Demosthenes proceeded against Meidias by *probolē*. Each spoke in the Ekklesia, and the citizens voted against Meidias. Demosthenes describes, perhaps with some exaggeration, the scene in the Ekklesia when some of Meidias's rich friends tried to persuade Demosthenes not to take the case on to a trial.

"You were all so furious and angry and indignant that, when Neoptolemos and Mnesarkhides and Philippides and one of those very rich men started pleading with me and with you, you shouted out not to let him go; and when Blepaios the banker came up to me, you yelled ‘This is it!’ so loudly, thinking I was going to accept money from him, that in my fright at the noise you were making, and trying to evade his grasp, I let my cloak fall off, and in my short tunic I was nearly nude." (Demosthenes 21. 215-16)

The speech which we have is the one composed by Demosthenes for delivery at the ensuing trial of Meidias. In it he emphasizes tremendously the awfulness of Meidias's crime, declares that it would have been appropriate to condemn Meidias for either *hybris* or impiety (which incidentally shows us that a *probolē* for an offence concerning a festival was legally distinct from a prosecution for impiety or any other offence), and prides himself that no threat or bribe has induced him to give up the prosecution of which the Athenians in the Ekklesia showed such overwhelming approval. The truth was different. The speech, which remains in an unfinished condition, was never delivered. The anticlimax of the affair is revealed to us by Aiskhines.

"What need is there to mention now . . . that business about Meidias, and the punch which [Demosthenes] got in the orchestra when he was a khoregos, and how he sold for thirty mnaï both the assault on himself and the vote which the people gave against Meidias in the precinct of Dionysos?" (Aiskhines 3. 51-2)

IMPIETY

The fact that the people had voted against Meidias in the Ekklesia did not compel Demosthenes to take his prosecution to a trial, and he preferred to accept a substantial bribe and drop the case. The *probolē* procedure appears to be one of those procedures which were designed to make up for a lack of public prosecutors by encouraging individuals to prosecute for offences which concerned the general public; but the case of Meidias shows that it did not always work.

IMPIETY

Whereas the procedure of *probolē* for an offence against religion could be used only in connection with certain festivals, the procedure of *graphe* could be used for any impiety (*asebeia*) on any occasion.

We have brief information about several cases in the fourth century which provide examples of behaviour regarded by juries as impiety. Arkhias, who was the hierophant of the Eleusinian Mysteries, was convicted because on the day of the festival of the Haloa, as a personal favour to a woman he knew, he carried out a sacrifice for her at Eleusis. This was simply an infringement of two rules of sacred law: the sacrifice ought to have been performed by the priestess, not by the hierophant, and sacrifices were not allowed on the day of the Haloa.437 In a case in 376/5 several Delians were convicted of impiety because they chased the Athenian administrators (Amphiktyones) out of the temple of Apollo at Delos and hit them; they were condemned to exile and heavy fines (10,000 drachmas each). Since the Athenians controlled Delos at that time, the case was probably tried in Athens under Athenian law, and it shows that violent conduct in a temple or towards officials performing religious duties could be regarded as impiety.438 In a third case a Lemnian woman named Theoris was condemned to death for impiety because she used magic ("drugs and incantations"); but we cannot tell whether she was convicted because she used magic at all, or only because she used it for some particular impious purpose.439 Also condemned to death was a priestess named Ninos; she too is said to have made potions, but her chief offence seems to have been an attempt to form a new religious sect or a ritual in honour of a new god.440 In another case a man was prosecuted by Androtion for impiety because he had associated (by going into the same house) with his nephew Diodoros, whom Androtion alleged to be a parricide (and therefore polluted: see page 110). The jurors acquitted him, but this was probably because they did not believe that Diodoros was a parri-
cide, and does not make clear whether they thought that association with a killer amounted to impiety.\textsuperscript{441}

Earlier and more notorious than any of these cases were the religious scandals of the year 415. Shortly before the Athenian expeditionary force was due to sail for Sicily, a large number of the images of Hermes which stood in streets and public places in Athens were found to have been mutilated during the night. The perpetrators appear to have been a group of men who wanted to stop the expedition; they evidently had little religious respect themselves for the Hermai, but hoped that the Athenian people generally would be afraid to undertake the expedition if they thought that the god of travellers had been offended. There was little religious respect for the Hermai. but hoped that the Athenian people generally would be afraid to undertake the expedition if they thought that the god of travellers had been offended. There was great public alarm, and while the matter was being investigated another kind of irreligious behaviour came to light: a number of men, including Alkibiades the general, were found to have been amusing themselves and their friends on various occasions by performing parodies of the Eleusinian Mysteries. The offence in this was not just that parodying any religious ceremony implied contempt for it, but that this particular ritual was a secret one and the frivolous performances had given the secrets away to some uninstructed people. Some of the offenders were arrested and executed; others, including Alkibiades, escaped by going into exile. Much of this is described by Andokides in his speech \textit{On the Mysteries}, and the charge brought against Alkibiades is quoted by Plutarch in his \textit{Life of Alkibiades} \textit{22}; from these it is clear that the prosecutions for mutilation of the Hermai and for profanation of the Mysteries were not brought by \textit{graphe} but by \textit{eisangelia} (see page 184). But Andokides, who was implicated but escaped trial by giving evidence against others, later found himself subjected to a decree, proposed by Isotimides, excluding from holy places those who had committed impiety and admitted it; and Andokides himself some years later is said to have initiated a prosecution for impiety against Arkhippos on the ground that he had mutilated one of the Hermai.\textsuperscript{443} This confirms that (as we could confidently have guessed anyway) the mutilation and profanation were both regarded as instances of impiety.

But there are still several problems about the legal definition of impiety and the procedure used for it. First there is the question of intention: was a person guilty of impiety if he accidentally or in ignorance contravened a sacred law, or did the word \textit{asebeia} necessarily imply an attitude of mind which was contemptuous of the gods? In this connection the story that Aiskhylos the tragic dramatist was tried is interesting. He was accused of impiety because he revealed some secrets of the Mysteries in one of his plays, but he was acquitted when he pointed out that he had not been initiated in the Mysteries and therefore did not know that what he had put into his play resembled them.\textsuperscript{443} That suggests that an act was not impious if the doer was unaware that he was breaking any religious rule; but just the opposite is suggested by Andokides's accusers' allegation that he had incurred a penalty by placing a suppliant-branch on the altar of the Eleusinion during the Mysteries, not knowing that there was a law against it.\textsuperscript{444} On this matter Andokides is a more reliable source than the anecdote about Aiskhylos, and it is preferable to accept that in Athenian law an act could be regarded as impious even if the doer did not know that it was so when he committed it.

Then there is a problem about the type of prosecution used for impiety. In the fourth century it was \textit{graphe}, but there is no fifth-century case of impiety in which the procedure is definitely known to have been \textit{graphe}. The procedure used against the profaners of the Mysteries in 415 was \textit{eisangelia},\textsuperscript{445} which was also the procedure specified in the decree of Diopethes about atheism (see page 200). Does that mean that \textit{eisangelia} was the only method of prosecution for impiety at that period, and that the use of \textit{graphe} for this offence was an innovation made not long before 400? No; it is unlikely that until then every minor case of impiety was allowed to take up the time of the Boule and the Ekklesia. It is better to believe that \textit{graphe} was the normal procedure for impiety in the fifth century as in the fourth, but \textit{eisangelia} was also possible for any offence which seemed to be specially serious until the introduction of the law restricting the offences for which this procedure could be used (see pages 184–6).

The final problem concerns the period after 403/2, when the law was made that no uninscribed law was to be enforced (see page 47). It has been suggested that this meant that no one thereafter could be prosecuted for impiety unless he was accused of breaking a law specifying that some particular act or behaviour was required or was forbidden.\textsuperscript{446} But there is no proof that this was so, and it seems unlikely that the Athenians would have considered that an act could not be impious if no law-maker had thought of forbidding it. My guess is that the law about impiety, which is not preserved, was probably similar to the law about \textit{hybris} (quoted on page 129) and said something like 'If anyone commits impiety, let anyone who wishes submit a \textit{graphe} . . . ' without offering any definition of impiety. If the prosecutor could point to a sacred law which had been contravened, that would be good evidence
that impiety had been committed; otherwise it would be for the jury to decide whether what the defendant had done was impiety or not.

**ATHEISM**

Because ordinary Athenians saw religion primarily as a matter of performing the right acts and avoiding wrong acts, it is likely (though evidence is lacking) that in earlier times it was only for irreligious deeds, not words, that prosecutions for impiety were brought. A man who thought and said something unorthodox about the gods may well have been regarded as harmless, provided that his opinion did not lead to unorthodox actions. (In this connection it is interesting that the authors and actors of Old Comedy seem to have been able to say what they liked about the gods without fear of the law, and even to bring them on to the stage as comic characters behaving in stupid or cowardly or other despicable ways. However, the satirical treatment of gods may have been a tradition of comedy at dramatic festivals, and should not be used as evidence that similar mockery of the gods would have been acceptable on other occasions.)

A change occurred in the second half of the fifth century. This is not the place to discuss the 'enlightenment' which reached Athens in the age of Perikles, and on which other books have been written. For the present purpose the essential point is that there was some decline in traditional religious belief, and those who held to the traditional religion began to see atheism as a threat. In the law this development is marked by the decree of Diopeithes. Its exact date is uncertain, but it must be within the 430s. It laid down that those who did not believe in the gods or gave instruction about astronomy should be subject to the charge of eisangelia. The combination of these two offences looks bizarre to modern eyes, but it is clear that the offenders whom Diopeithes had primarily in mind were those like the philosopher-scientist Anaxagoras, who declared that the sun, so far from being a god, was a hot stone. This decree was the first attempt in Athens, as far as we know, to extend the scope of legal action from impious behaviour to atheistic speech and thought.

Anaxagoras is in fact said to have been prosecuted, but the details of his trial are doubtful. According to one account, he was prosecuted by Kleon and defended by Perikles, and was condemned to exile from Athens and a fine of five talents. In another account he was prosecuted by Thucydides (the politician, son of Melesias), fled from Athens to avoid trial, and was condemned to death in his absence; in another he was present when condemned to death, and while he was being held in prison awaiting execution Perikles persuaded the Athenians to let him off. Another philosopher said to have been prosecuted is Protagoras, who wrote a book beginning 'Concerning the gods I am unable to know either that they exist or that they do not exist...'. The Athenians condemned him to exile, and also collected up copies of his book and burned them in the Agora—the earliest recorded instance of official book-burning. Although our evidence does not make the legal procedure clear, and one cannot be quite sure that the trials were held at all, I regard it as probable that both Anaxagoras and Protagoras were prosecuted by eisangelia in accordance with the decree of Diopeithes. Then there was Diagoras of Melos, who is said to have aroused hostility by disparaging talk about the Mysteries in 415/4 (soon after their profanation by Alkibiades and his friends). He fled from Athens, and the Athenians issued a proclamation offering a reward of one talent to anyone who killed him, two talents to anyone who brought him back alive. But there is no evidence that he was ever caught or tried.

The decree of Diopeithes may have lapsed in 403 when the code of laws had been reinscribed (see pages 46–7), and the prosecution of Sokrates in 399 seems to have differed legally from the cases of Anaxagoras and Protagoras. It was not brought by eisangelia but by the ordinary procedure of graphe for impiety. The charge was:

'The following graphe was brought and the oath taken by Meletos son of Miletus of Pithos against Sokrates son of Sophroniskos of Alopeke: Sokrates is guilty of not recognizing the gods whom the state recognizes and introducing other new divinities; he is also guilty of corrupting the young.' (Quoted by Diogenes Laertios 2. 40)

Other books have been written about the trial of Sokrates, and it needs only brief treatment here. After Meletos's speech, supporting speeches for the prosecution were made by the politicians Anytos and Lykon. Sokrates replied in his own words, having rejected a speech written for him by Lysias on the ground that it was 'beautiful' and therefore inappropriate for him. (Plato and Xenophon have each written for us an Apology of Sokrates which purports to be a record of Sokrates's speech. The two are very different from each other, and...
therefore cannot both be accurate reports. Perhaps neither is even intended to be an accurate report; they may rather be idealized versions, giving what Plato and Xenophon thought Sokrates should or might have said.) It is not known whether anyone spoke in support of Sokrates; according to one anecdote the young Plato attempted to speak but was shouted down by the jury. When the vote came, Sokrates was found guilty; there is a discrepancy of testimony about the numbers, but probably either 280 or 281 jurors (out of 500 or 501) voted against him. Then came the assessment of the penalty. The prosecutor proposed death. Sokrates facetiously suggested that he deserved free meals for life in the Prytaneion, like other outstanding benefactors of Athens, but his friends persuaded him to propose a moderate fine; different authorities give different figures. The jury voted for the heavier penalty, and thus he was condemned to death. In the voting on the penalty the number of votes against Sokrates was 80 more than in the voting on the verdict.552

It is not known what evidence and arguments the prosecutors brought forward in their speeches, but from all that we know of Sokrates it seems unlikely that they can have adduced any impious actions committed by him. They must have relied mainly on verbal utterances, on what Sokrates had said to his young followers and to other people. If so, this may have been the first case in which a graphe for impiety was brought for impious thought and speech, rather than impious behaviour. However, there were undoubtedly many Athenians who thought that Sokrates's influence on Alkibiades, Kritias, and others had been indirectly responsible for the political troubles of recent years and especially the oligarchic regime in 404. If in fact the reasons why the prosecutors brought the case, and many of the jurors voted for conviction, were political, that would often be enough.

Arbitration of this sort could be privately arranged; this must have been common in Athens at all periods. One example, fictional but revealing, is one of the best-known scenes in New Comedy. It is the scene in Menander's Arbitration from which the play as a whole takes its name. Daos has found a baby, which he has handed over to Syriskos. Now Syriskos claims that the ornaments found with the baby ought to be handed over too.

Syriskos: You're not doing what's right!
Daos: Mind your own business, you wretch! You've no right to keep what's not yours!
Syriskos: We must get someone to arbitrate about it.
Daos: Certainly; let's get a decision.
Syriskos: Well, who?
Daos: Anyone suits me. But it serves me right; why did I offer you a share?
Syriskos: Will you agree to have that man as judge?
Daos: Just as you like.
Syriskos: Excuse me, sir. Could you spare us a few moments?