

The Athenian Legal System and Its Public Aspects

I. The Culture of Public Display

II. Perpetration of Misdeeds

Open violence:

- Alcibiades drags his wife by her hair across the Agora (Ps.-And. 4.14; Plu. *Alc.* 8.4; indirectly Lys. 14.42; Antiphon fr. 67 [Thalheim – Blass]).
- Alcibiades punches Taureas in the face (Ps.-And. 4.20-21; D. 21.147; Plu. *Alc.* 16.5-8; cf. Th. 6.15-16 [indirectly]).
- Meidias punches Demosthenes in the face (D. 21, mainly 21.74).
- Conon and his sons attack Ariston in the Agora and perform a rooster-dance (D. 54.9).
- Euphiletos kills Eratosthenes in the presence of friends (Lysias 1).
- Thrasyboulos of Kalydon and Apollodoros of Megara kill Phrynichos in the Agora (Th. 8.90-92; Lys. 13.70-76 [unspecific as to time]; Lycurg. 1.112-115. Cf. Lys. 7.4; 20.11-12; 25.9; Plu. *Alc.* 25; HGIÜ I 140). According to Lycurgos, the assassination happened at night, near the well close to the willows. This completely different setting decisively alters the meaning of this coup.).

Hidden violence:

- Teisis has Archippos whipped in his house (Lys. fr. CXXIX 279 [numbered according to Carey 2007]).
- Nicostratos tries to push Apollodoros into a quarry at night (Ps.-D. 53.17-18).
- Antiphon 1: Stepmother kills her husband with “love” potion.
- Antiphon 2.1: A (fictional) murder is committed at night.

III. “Definition” of Violent Acts as (Il)legitimate; “Definition” of Hubris

Demosthenes, *Against Meidias* 72:

οὐ γὰρ ἡ πληγὴ παρέστησε τὴν ὀργήν, ἀλλ’ ἡ ἀτιμία: οὐδὲ τὸ τύπτεσθαι τοῖς ἐλευθέροις ἐστὶ δεινόν, καίπερ ὄν δεινόν, ἀλλὰ τὸ ἐφ’ ὑβρεῖ. πολλὰ γὰρ ἂν ποιήσειεν ὁ τύπτων, ὦ ἄνδρες Ἀθηναῖοι, ὧν ὁ παθὼν ἐνὶ οὐδ’ ἂν ἀπαγγέλαι δύναιθ’ ἐτέρω, τῷ σχήματι, τῷ βλέμματι, τῇ φωνῇ, ὅταν ὡς ὑβρίζων, ὅταν ὡς ἐχθρὸς ὑπάρχων, ὅταν κονδύλοις, ὅταν ἐπὶ κόρρησ. ταῦτα κινεῖ, ταῦτ’ ἐξίστησιν ἀνθρώπους αὐτῶν, ἀήθεις ὄντας τοῦ προπηλακίζεσθαι. οὐδεὶς ἄν, ὦ ἄνδρες Ἀθηναῖοι, ταῦτ’ ἀπαγγέλλων δύναιτο τὸ δεινὸν παραστήσαι τοῖς ἀκούουσιν οὕτως, ὡς ἐπὶ τῆς ἀληθείας καὶ τοῦ πράγματος τῷ πάσχοντι καὶ τοῖς ὁρώσιν ἐναργῆς ἢ ὑβρις φαίνεται (emphasis added).

It was not the blow that aroused his anger, but the humiliation. Being beaten is not what is terrible for free men (although it is terrible), but being beaten with the intent to insult. A man who strikes may do many things, men of Athens, but the victim may not be able to describe to someone else even one of these things: the way he stands, the way he looks, his tone of voice, when he strikes to insult, when he acts like an enemy, when he punches, when he strikes him in the face. When men are not used to being insulted, this is what stirs them up, this is what drives them to distraction. No one, men of Athens, could by reporting these actions convey to his audience the terrible effect of outrage in the exact way that it really and truly appears to the victim and those who witness it. (transl. by E. Harris (ed.), *Demosthenes Speeches 20-22*. Austin, TX 2008).

Demosthenes, *Against Meidias* 195:

σὺ μόνος τῶν ὄντων ἀνθρώπων ἐπὶ μὲν τοῦ βίου τοσαύτης ὑπερηφανίας πλήρης ὢν [πάντων ἀνθρώπων] ἔσει φανερώτατος, ὥστε καὶ πρὸς οὓς μηδὲν ἐστὶ σοι πρᾶγμα, λυπεῖσθαι τὴν σὴν θρασύτητα καὶ φωνὴν καὶ [τὸ] σχῆμα καὶ τοὺς σοὺς ἀκολούθους καὶ πλοῦτον καὶ ὑβριω θεωροῦντας, ἐν δὲ τῷ κρίνεσθαι παραχρημ’ ἐλεηθήσει; (emphasis added).

Will you be the only person in the world who has the greatest reputation for being stuffed with so much arrogance toward everyone that even those who have nothing to do with you get irritated when they see your pushiness, your shouting, the way you strut around with your entourage, your wealth, and your abuse—and then find yourself pitied the minute that you are on trial? (transl. by E. Harris (ed.), *Demosthenes Speeches 20-22*. Austin, TX 2008).

IV. Negotiation and Judgment of Misdeeds in Court

Most courts located in the Agora

Drakon’s and Solon’s *axones* and *kurbeis* on the Acropolis and in the Agora

Recodification of laws (end of 5th century): inscribed on walls of Royal Stoa

Oratory

Public selection process of jurors (*klêrôtêrion*)

Choice of procedure made in public (transmission of symbolic messages possible)

Demosthenes, *Against Conon* 1:

ὑβρισθεῖς, ὦ ἄνδρες δικασταί, καὶ παθὼν ὑπὸ Κόνωνος τουτουὶ τοιαῦτα, ὥστε πολὺν χρόνον πάνυ μήτε τοὺς οἰκείους μήτε τῶν ἰατρῶν μηδένα προσδοκᾶν περιφεύξεσθαι με, ὑγιάνας καὶ σωθεῖς ἀπροσδοκῆτως ἔλαχον αὐτῷ τὴν δίκην τῆς αἰκείας ταυτηνί. πάντων δὲ τῶν φίλων καὶ τῶν οἰκείων, οἷς συνεβουλευόμην, ἔνοχον μὲν φασκόντων αὐτὸν ἐκ τῶν πεπραγμένων εἶναι καὶ τῇ τῶν λωποδυτῶν ἀπαγωγῇ καὶ ταῖς τῆς ὕβρεως γραφαῖς, συμβουλευόντων δέ μοι καὶ παραινούντων μὴ μείζω πράγματ' ἢ δυνήσομαι φέρειν ἐπάγεσθαι, μηδ' ὑπὲρ τὴν ἡλικίαν περὶ ὧν ἐπεπόνθειν ἐγκαλοῦντα φαίνεσθαι, οὕτως ἐποίησα καὶ δι' ἐκείνους ἰδίαν ἔλαχον δίκην, ἥδιστ' ἄν, ὦ ἄνδρες Ἀθηναῖοι, θανάτου κρίνας τουτονί.

I was assaulted, gentlemen of the jury, and at the hands of Conon, the man here, I suffered injuries so severe that for a very long time neither my family nor any of the doctors expected I would survive. But when I unexpectedly recovered and was out of danger, I initiated this private case for battery (*dikê aikeias*) against him. All the friends and relatives whom I asked for advice were saying that for his deeds Conon was liable to summary arrest (*apagôgê*) as a cloak stealer, and to public suits for *hybris* (*graphai hubreôs*). But they advised me and urged me not to involve myself in greater troubles than I could handle; and also, not to be seen to complain more than a young man should about what was done to me. I have acted accordingly and, because of those advisers, have instituted a private case, but I would, with the greatest pleasure, men of Athens, have put him on trial on a capital charge. (transl. by V. Bers (ed.), *Demosthenes Speeches* 50-59. Austin, TX 2003).

Demosthenes, *Against Androtion* 22.26–27:

ἔρρωσαι καὶ σαυτῷ πιστεύεις: ἄπαγε: ἐν χιλίαις δ' ὁ κίνδυνος. ἀσθενέστερος εἶ: τοῖς ἄρχουσιν ἐφηγοῦ: τοῦτο ποιήσουσιν ἐκείνοι. φοβεῖ καὶ τοῦτο: γράφου. καταμέμφει σεαυτὸν καὶ πένης ὧν οὐκ ἂν ἔχοις χιλίας ἐκτεῖσαι: δικάζου κλοπῆς πρὸς διαιτητὴν καὶ οὐ κινδυνεύσεις. Cf. also Isoc. 20.2.

You are strong and confident in your own ability: arrest him and risk a fine of 1,000 drachmas. You are weaker: lead the magistrates to him, and they will do it. You are also afraid of this: bring a public charge. You do not feel confident, and since you are poor, you would not be able to pay the fine of 1,000 drachmas; bring a private action before the arbitrator, and you will run no risk. (transl. by E. Harris (ed.), *Demosthenes Speeches* 20-22. Austin, TX 2008).

- Killing of Nicodemus of Aphidna: two procedures chosen

(D. 21.104-122 and scholia 21.102; 104; 116; 205 and Aeschin. 1.171-172; 2.148; 166 with scholia; Din. 1.30-31; 47; Rhet. Gr. [Walz] VIII 48 [Sopath. Rh.]; Idomeneus *FGrHist* 338 F 12; Arist. *Rhet.* 2.23 [1397 b 7-8]).

- Meidias launches *ephêgêsis* against Aristarchos, the suspected killer; family files *dikê phonou* afterwards

V. Execution of Penalties

Names of state debtors inscribed in stone

Popular justice: public shaming measures (*Schandstrafen*)

Gathering evidence: public torture of slaves (*basanos*)

Public punishments: stoning, throwing from a cliff (*barathron*), bloodless crucifixion (*apotumpanismos*)

Select Bibliography

- Barkan, I. *Capital Punishment in Ancient Athens*. Chicago 1936.
- Bentham, J. *Rationale of Judicial Evidence: Specially Applied to English Practice*. London 1827.
- Bers, V. "Just Rituals. Why the Rigmorole of Fourth-Century Athenian Lawcourts?" in P. Flensted-Jensen – T. Nielsen – L. Rubinstein (ed.), *Polis & Politics. Studies in Ancient Greek History. Presented to Mogens Herman Hansen on his Sixtieth Birthday, August 20, 2000*. Copenhagen 2000, 553–560.
- Boegehold, A. *The Lawcourts at Athens. Sites, Buildings, Equipment, Procedure, and Testimonia*. Princeton 1995.
- Bonanno, M. "All the (Greek) World's a Stage: Notes on (Not Just Dramatic) Greek Staging." in L. Edmunds – R. Wallace (ed.), *Poet, Public, and Performance in Ancient Greece*. Baltimore, MD – London 1997, 112–123.
- Bons, J. "Gorgias the Sophist and Early Rhetoric." in I. Worthington (ed.), *A Companion to Greek Rhetoric*. Malden, MA – Oxford 2010, 37–46.
- Cairns, D. "Hybris, Dishonour, and Thinking Big." *JHS* 116, 1996, 1–32.
- Cantarella, E. "Violence privée et procès." in J.-M. Bertrand (ed.), *La violence dans les mondes grec et romain. Actes du colloque international (Paris, 2–4 mai 2002)*. Paris 2005, 339–347.
- . *I supplizi capitali in Grecia e a Roma*. Milano 1991.
- . "Spunti di riflessione critica su *hybris* e *time* in Omero." in P. Dimakis (ed.), *Symposion 1979. Vorträge zur griechischen und hellenistischen Rechtsgeschichte*. Köln – Wien 1983, 85–96.
- Cartledge, P. "'Deep Plays': Theatre as Process in Greek Civic Life." in P. Easterling (ed.), *The Cambridge Companion to Greek Tragedy*. Cambridge 1997, 3–35.
- Carey, C. *Lysiae Orationes cum Fragmentis*. Oxford 2007.
- . "Offence and Procedure in Athenian Law." in E. Harris – L. Rubinstein (ed.), *The Law and the Courts in Ancient Greece*. London 2004, 111–136.
- Christ, M. *The Litigious Athenian*. Baltimore 1998.
- Cohen, D. "Introduction." in M. Gagarin – D. Cohen (ed.), *The Cambridge Companion to Ancient Greek Law*. Cambridge 2005, 1–26.
- Cooper, C. "Forensic Oratory." in I. Worthington (ed.), *A Companion to Greek Rhetoric*. Malden, MA – Oxford 2010, 203–219.
- Csapo, E. "Deep Ambivalence: Notes on a Greek Cockfight (Part I)." *Phoenix* 47, 1993, 1–28; Part II: 115–124.
- Dickie, M. "Hesychia and Hybris in Pindar." in D. Gerber (ed.), *Greek Poetry and Philosophy: Studies in Honour of L. Woodbury*. Chicago 1984, 83–109.
- Dreyer, B. "Der Tod des Nikodemus von Aphidnai und die Meidias-Rede des Demosthenes." *The Ancient History Bulletin* 14, 2000, 56–63.
- Dülmen, R. van. *Theater des Schreckens. Gerichtspraxis und Strafrituale in der Frühen Neuzeit*. München ²1988 (1985).

- Evjen, H. "Apagoge and Athenian Homicide Procedure." *Revue d'histoire du Droit* 38, 1970, 403–415.
- Fisher, N. "The Perils of Pittalakos: Settings of Cock Fighting and Dicing in Classical Athens." in S. Bell – G. Davies (ed.), *Games and Festivals in Classical Antiquity. Proceedings of the Conference Held in Edinburgh 10–12 July 2000*. Oxford 2004, 65–78.
- . *Hybris. A Study in the Values of Honour and Shame in Ancient Greece*. Warminster 1992.
- Flaig, E. "Gewalt als präsenste und als diskursive Obsession in der griechischen Klassik." in B. Seidensticker – M. Vöhler (ed.), *Gewalt und Ästhetik. Zur Gewalt und ihrer Darstellung in der griechischen Klassik*. Berlin 2006, 29–56.
- Forsdyke, S. "Street Theater and Popular Justice in Ancient Greece. Shaming, Stoning, and Starving Offenders Inside and Outside the Courts." *Past & Present* 201, 2008, 3–50.
- Gagarin, M. "Background and Origins: Oratory and Rhetoric before the Sophists." in I. Worthington (ed.), *A Companion to Greek Rhetoric*. Malden, MA – Oxford 2010, 27–36.
- . *Writing Greek Law*. Cambridge 2008.
- . *Early Greek Law*. Berkeley – Los Angeles – London 1986.
- . "The Athenian Law against Hybris." in G. Bowersock – W. Burkert – M. Putnam (ed.), *Arktouros. Hellenic Studies Presented to Bernard M. W. Knox on the Occasion of His 65th Birthday*. Berlin – New York 1979, 229–236.
- Gentili, B. "Remarks at the American Academy in Rome, February 12, 1994." in L. Edmunds – R. Wallace (ed.), *Poet, Public, and Performance in Ancient Greece*. Baltimore – London 1997, 124–127.
- Gernet, L. *The Anthropology of Ancient Greece*. Tr. J. Hamilton and Blaise Nagy. Baltimore 1981.
- Hall, E. *The Theatrical Cast of Athens. Interactions Between Ancient Greek Drama and Society*. Oxford 2006.
- . "Lawcourt Dramas: The Power of Performance in Greek Forensic Oratory." *Bulletin of the Institute of Classical Studies* 40, 1995, 39–58.
- Hansen, M. *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes: A Study in the Athenian Administration of Justice in the Fourth Century B.C.* Odense 1976.
- Harris, E. "Open Texture in Athenian Law." *Dike* 3, 2000, 27–79.
- Harris, E. – Leão, D. – Rhodes, P. (ed.). *Law and Drama in Ancient Greece*. London 2010.
- Hawke, J. *Writing Authority. Elite Competition and Written Law in Early Greece*. DeKalb, IL 2011.
- Hölkeskamp, K.-J. *Schiedsrichter, Gesetzgeber und Gesetzgebung im archaischen Griechenland*. Stuttgart 1999.
- Hooker, J. "The Original Meaning of Hybris." *Archiv für Begriffsgeschichte* 19, 1975, 125–137.
- Huizinga, J. *Homo Ludens. A Study of the Play-Element in Culture*. Boston ⁴1964 (1955). (*Homo Ludens. Versuch einer Bestimmung des Spielelements der Kultur*. Amsterdam 1939.)
- Humphreys, S. "The Discourse of Law in Archaic and Classical Greece." *Law and History Review* 6.2, 1988, 465–493.
- Johnstone, S. *Disputes and Democracy. The Consequences of Litigation in Ancient Athens*. Austin, TX 1999.
- Kapparis, K. "Humiliating the Adulterer: The Law and the Practice in Classical Athens." *RIDA* 43, 1996, 63–77.
- Knell, H. *Athen im 4. Jh. v. Chr. Eine Stadt verändert ihr Gesicht*. Darmstadt 2000.
- Lanni, A. "Spectator Sport or Serious Politics? *hoi peristekotes* and the Athenian Lawcourts." *JHS* 117, 1997, 183–189.
- Liddel, P. *Civic Obligation and Individual Liberty in Ancient Athens*. Oxford 2007.
- MacDowell, D. *Demosthenes, Against Meidias (Oration 21). Edited with Introduction, Translation, and Commentary*. Oxford 1990.
- . *The Law in Classical Athens*. Ithaca 1978.
- Michelini, A. "Hybris and Plants." *HSCP* 82, 1978, 35–44.
- Ober, J. – Strauss, B. "Drama, Political Rhetoric, and the Discourse of Athenian Democracy." in J. Winkler – F. Zeitlin (ed.), *Nothing to do with Dionysus? Athenian Drama in its Social Context*. Princeton 1990, 237–270.
- Omitowaju, R. *Rape and the Politics of Consent in Classical Athens*. Cambridge 2002.
- Osborne, R. "Law in Action in Classical Athens." *JHS* 105, 1985, 40–58.
- Perotti, P. "La I Orazione di Lisia fu mai pronunciata?" *Sandalion* 12–13, 1989/1990, 43–48.

- Riess, W. *Performing Interpersonal Violence. Court, Curse, and Comedy in Fourth-Century BCE Athens*. Berlin – Boston 2012.
- . “Private Violence and State Control – The Prosecution of Homicide and Its Symbolic Meanings in Fourth-Century BC Athens.” In C. Brélaz – P. Ducrey (ed.), *Sécurité collective et ordre public dans les sociétés anciennes*. Genève 2008, 49-101.
- . “How Tyrants and Dynasts Die: The Semantics of Political Assassination in Fourth-Century Greece.” in G. Urso (ed.), *Terror et Pavor. Violenza, intimidazione, clandestinità nel mondo antico. Atti del convegno internazionale della Fondazione Niccolò Canussio 22-24 settembre 2005*. Milano 2006, 65-88.
- Rosivach, V. “Execution by Stoning in Athens.” *CA* 6, 1987, 232–248.
- Sickinger, J. *Public Records and Archives in Classical Athens*. Chapel Hill – London 1999.
- Slater, W. “The Theatricality of Justice.” *Classical Bulletin* 71, 1995, 143–157.
- Schmitz, W. *Nachbarschaft und Dorfgemeinschaft im archaischen und klassischen Griechenland*. Berlin 2004.
- Stroud, R. *The Axones and Kyrbeis of Drakon and Solon*. Berkeley – Los Angeles – London 1979.
- Thalheim, T. – Thalheim, F. – Blass, T. (ed). *Antiphon: Orationes et fragmenta, post Fridericum Thalheim edidit Theodorus Blass*. Leipzig 1914 (repr. Stuttgart 1982).
- Thompson, H. – Wycherley, R. *The Agora of Athens: the History, Shape and Uses of an Ancient City Center*. Princeton 1972.
- Todd, S. *A Commentary on Lysias, Speeches 1–11*. Oxford 2007.
- . *The Shape of Athenian Law*. Oxford 1993.
- Volonaki, E. “Apagoge in Homicide Cases.” *Dike* 3, 2000, 147–176.
- Walz, C. *Rhetores Graeci*. 10 vols. Stuttgart 1832–1836 (repr. Osnabrück 1968).
- Wilson, P. “Demosthenes 21 (Against Meidias): Democratic Abuse.” *PCPS* 37, 1991/92, 164–195.
- Worthington, I. (ed.). *A Companion to Greek Rhetoric*. Malden, MA – Oxford 2010.
- . “Rhetoric and Politics in Classical Greece: Rise of the *Rhetores*.” in I. Worthington (ed.), *A Companion to Greek Rhetoric*. Malden, MA – Oxford 2010, 255–271.