Vindictive Prosecution in Classical Athens: On Some Recent Theories

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> To avoid the fatal charge of *sycophantia*, any one prosecuting a fellow-citizen for some public offence endeavoured to show that he had private and personal grounds of enmity against the accused; and if he succeeded in proving this it was considered the most natural and reasonable thing in the world that he should endeavour to satisfy his hatred by becoming public prosecutor.

THIS QUOTATION from a Victorian, non-specialist treatise[1] eloquently demonstrates that the issue in question is anything but new. Recently however, as sharp-edged discussions on the problem of the 'otherness' of Athenian law and society[2] swept through the world of classical studies, it became one of the major theatres of war in the ongoing debate.[3] Vindictiveness so unabashedly acknowledged by

[1] A. S. Wilkins, *The Light of the World*[2] (London 1870) 31.

[2] S. C. Todd, *The Shape of Athenian Law* (Oxford 1993) 29, "intense otherness" (cf. 64–70); V. Hunter, *Policing Athens* (Princeton 1994) 125–129; P. J. Rhodes, "Personal Enmity and Political Opposition in Athens," *G&R* 43 (1996) 21–30, at 24–25, and "Enmity in Fourth-Century Athens," in P. Cartledge et al. (eds.), *Kosmos. Essays in Order, Conflict and Community in Classical Athens* (Cambridge 1998) 144–161, at 145–146.

[3] Closely related to this problem is the recent debate on the Athenian polis as a 'stateless' community with emphasis on the absence of the state's monopoly on the use of force; cf. Hunter, *Policing Athens* 129–153; M. Berent, "Anthropology and the Classics: War, Violence, and the Stateless *Polis*," *CQ* 50 (2000) 260 ff.; M. H. Hansen, "Was the *Polis* a State or a Stateless Society?" in T. H. Nielsen (ed.), *Even More Studies in the Ancient Greek Polis* (Stuttgart 2002) 17–47, at 32–37; G. Herman, *Morality and Behaviour in Democratic Athens* (Cambridge 2006) 216–257; E. M. Harris, "Who Enforced

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the Athenian prosecutors served for one side as the crowning argument in representing classical Athens as a feuding society, one in which "the homicidal violence of the blood feud appears … to have been displaced into other arenas," most importantly the lawcourts.[4] For the other side it became a serious obstacle and embarrassment to the picture of a community which deliberately purged its punitive system of the spirit of vengeance, and in which the civic code of behavior in general demanded models of conduct radically opposite to those found in honor-based, feuding societies.[5] The present paper cannot hope to provide a full assessment of these two very different and mutually exclusive views. Both, however, are usually considered as extremes,[6] delimiting thus a spectrum within which much room for discussion—perhaps of somewhat less holistic scope—remains open.

Insofar as the area of litigation is concerned, the scholarly consensus was not far removed from what is succinctly stated in the opening quotation.[7] The last decade however, along with

the Law in Classical Athens?" in E. Cantarella (ed.), *Symposion 2005* (Cologne/Vienna 2007) 159–176.

[4] D. Cohen, *Law, Violence, and Community in Classical Athens* (Cambridge 1995) 84, on litigation as feud; cf. more recently F. McHardy, *Revenge in Athenian Culture* (London 2008) 94–99.

[5] Herman, *Morality* 201 (this book contains much of Herman's earlier research on the subject); cf. his critical review of Cohen, *Law, Violence*, in *Gnomon* 70 (1998) 605–615. Further bibliography on this view, n.9 below.

[6] Cf. R. Osborne, *Athens and Athenian Democracy* (Cambridge 2010) 200 ("extreme"); L. Rubinstein, *Litigation and Cooperation. Supporting Speakers in the Courts of Classical Athens* (Stuttgart 2000) 178 ("most radical interpretations": along with Cohen, however, she cites Osborne and Todd). See also Christ's overall sympathetic review of Cohen's *Law, Violence*, in *BMCR* 1996.6.12, and Osborne's review in *CR* 47 (1997) 86–87.

[7] Cf. J. H. Lipsius, *Das Attische Recht und Rechtsverfahren* II (Leipzig 1908) 238; J. O. Lofberg, *Sycophancy in Athens* (Menasha 1917) 21; R. J. Bonner and G. Smith, *The Administration of Justice* II (Chicago 1938) 41–42; K. J. Dover, *Greek Popular Morality* (London 1974) 182 ff.; for more recent assessments see Rhodes, in *Kosmos* 156 and esp. n.44; M. Christ, *The Litigious Athenian* (Baltimore 1998) 155; D. Allen, *The World of Prometheus. The Politics of Punishing in*

some more balanced assessments,[8] has seen a vigorous defense of a radically divergent position according to which motives such as enmity or revenge were generally out of place in the Athenian courts.[9] Understandably, this has been approached with caution and reservations in more recent scholarship.[10] Given their importance to our understanding of the working of the Athenian legal system and civic ideology, however, the issues raised in the present controversy merit detailed scrutiny.

To declare that a personal agenda is unsuitable for court is not, of course, to rule it out altogether. A personal wrong could be the very subject of prosecution, and not just the prosecutor's personal motive. Such a lawsuit was in some cases procedurally

Democratic Athens (Princeton 2000) 151–156; Cohen, *Law, Violence* 72 ff., 86–118.

[8] M. Christ, "A Response to Harris," in M. Gagarin and R. W. Wallace (eds.), *Symposion 2001* (Cologne/Vienna 2005) 143–146, and his earlier *Litigious Athenian* (esp. 154–159); L. Rubinstein, "Differentiated Rhetorical Strategies in the Athenian Courts," and D. Cohen, "Crime, Punishment, and the Rule of Law in Classical Athens," in M. Gagarin and D. Cohen (eds.), *Cambridge Companion to Ancient Greek Law* (Cambridge 2005) 129–145 (esp. 131–132) and 211–235 (these two studies cover more limited ground); D. Phillips, *The Avengers of Blood. Homicide in the Athenian Law and Custom* (Stuttgart 2008) 15–29 (whose scope, however, extends far beyond vindictive prosecution, discussed briefly at 19–20 and 23–24); most recently A. Alwine, *The Rhetoric and Conceptualization of Enmity in Classical Athens* (diss. Univ. of Florida 2010), as well as his forthcoming book on the same subject (I thank Dr. Alwine for granting me permission to refer to the typescripts of both).

[9] A. Kurihara, "Personal Enmity as a Motivation in Forensic Speeches," *CQ* 53 (2003) 463–477; E. M. Harris, "Feuding or the Rule of Law? The Nature of Litigation in Classical Athens," in *Symposion 2001* 125–141, esp. his criticism (133 n.23) of Christ's response in the same volume; Harris, *Democracy and the Rule of Law in Classical Athens* (Cambridge 2006) 405–406 (orig. in *Dike* 2 [1999]), 421–422 ("afterthoughts"). The quotation comes from Herman's *Morality* (200–201), which is also to be counted among these studies (esp. 191–194, 276–277—with some divergent conclusions).

[10] Cf. Phillips, *Avengers* 20 n.14; D. M. MacDowell, *Demosthenes the Orator* (Oxford 2009) 170 n.58; S. C. Todd, *A Commentary on Lysias, Speeches 1–11* (Oxford 2007) 616 (on Lys. 9.10); Alwine, *Rhetoric* 78–79.

limited only to the aggrieved party, while in others it extended to any volunteer who enjoyed the required citizen rights (*ho boulomenos Athēnaiōn hois exestin*) and wished to act as a third-party prosecutor on behalf of the victim. Of such altruistic prosecution, however, we hear next to nothing, and it seems a fair guess that for the most part cases of this kind were also taken to court by the wronged persons themselves.[11]

Lawsuits open to volunteer prosecution are usually—following the ancient practice—described as 'public' (*dikai dēmosiai*), while those available only to the victim or his closest kin, as 'private' (*dikai idiai*). This distinction will be used in the discussion to follow. It should be kept in mind, however, that such phraseology runs the risk of inviting anachronistic presuppositions related to modern categories of civil and criminal law, torts and crimes, etc., which do not always square well with Athenian practice—all the more in that in classical Athens the choice of procedure, public or private, was frequently a matter of considerable flexibility.[12] In any event, as long as it was the aggrieved party who took upon himself the task of prosecuting for the wrongs suffered, such lawsuits were inherently bound up with personal motivation.

There were, however, cases of wrongdoing with no particular individual victim, save the entire community at large. These too were brought to court by volunteers; in fact a majority of known public procedures dealt with wrongs of this kind.[13]

[11] Cf. Christ, *Litigious Athenian* 119–129; cf. Osborne, *Athens* 172 ff., 184–190 (orig. in *JHS* 105 [1985]). Even in cases of *eisangelia* on behalf of orphans, third-party prosecutions are scantily attested: Is. 11; [Dem.] 58.30–34; perhaps also the recently-discovered fragments of Hyperides' *Against Timandros*, cf. D. Whitehead, "Hypereides' *Timandros*: Observations and Suggestions," *BICS* 52 (2009) 138–148 (suggesting, however, that the orphan himself was prosecutor).

[12] The *locus classicus* is Dem. 22.25 ff.; on a more specific level (*dikē aikias* vs. *graphē hybreōs*) this is brought out in Dem. 54.1. The standard work on the subject is Osborne, *Athens* 171–204 (with the recent endnote).

[13] A definite categorization, however, may not always be advisable; a public prosecution for impiety, for example, could be based on a charge of

Since the prosecutor here was not the victim of the offence, his action truly deserved the qualification 'volunteer', and he himself, as it may seem, selflessly undertook the task to act on behalf of the polis. To be sure, some volunteers did also have their own personal accounts to be settled through such public lawsuits, but, as we have been recently advised, "one should not generalize from a few isolated cases."[14]

Norms and numbers

There are in total thirty-one preserved (at least in considerable amount) public prosecution speeches.[15] Of these, five explicitly or implicitly deny any suggestions of personal enmity.[16] This is a considerable figure, which does not necessarily merit the disregard shown it by some historians of Athenian law and society.[17] On the other hand, however, the public

cutting an olive stump (possibly Lys 7; cf. Osborne, *Athens* 196) or of personal assault during a festival (entertained in Dem. 21.51).

[14] Harris, in *Symposion 2001* 129; cf. Kurihara, *CQ* 53 (2003) 463–477; Harris seems to have significantly modified his earlier views, cf. his comments on Aeschin. 1 in his *Aeschines and Athenian Politics* (Oxford 1995) 147.

[15] These are: Lys. 6, 12, 13, 14, 15, 22, 26, 27, 28, 29, 30, 31; Dem. 19, 20, 21, 22, 23, 24, 25, [26], [53], [58], [59]; Aeschin. 1, 3; Lyc. 1; Hyp. 1, 4 (Jensen); Din. 1, 2, 3. Cf. Rubinstein, *Litigation* 179, and in *Cambridge Companion* 133 n.10, who does not, however, take into account two Lysianic *dokimasia* 'prosecutions' (26, 31); though not dealing with a specific wrong and not followed by a penalty on conviction (cf. D. M. MacDowell, *The Law in Classical Athens* [London 1978] 168) this procedure was also open to any enfranchised volunteer (*Ath.Pol.* 55.4 with P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia*[2] [Oxford 1993] 619). The authenticity of Dem. 25 and [26] is a matter of scholarly debate; I follow here the recent assessments of Rubinstein, *Litigation* 30–32, and MacDowell, *Demosthenes* 310–313, who consider both as genuine fourth-century forensic speeches, but deny the Demosthenic authorship of 26.

[16] Lys. 22.1, 31.2; Dem. 19.221, 23.1; Lyc. 1.5–6. It should be noted that Dem. 19.221 (personal enmity) is to some extent contradicted by 19.17 (political enmity; see below); the incompletely preserved Lys. 26 on the other hand denies prosecuting as a favor to a friend (15).

[17] Cf. Allen, *World of Prometheus* 39–40, and "Changing the Authoritative

prosecutions where the speaker explicitly admits his personal, hostile involvement amount to eleven.[18] Even if we take out the three cases related to individual wrongs,[19] this still leaves us with eight acknowledged vindictive prosecution speeches as opposed to five where the litigant chose to present himself as a disinterested agent of the state.

Furthermore, following Allen's analysis, it should be pointed out that among the remaining twenty prosecutions which either deny personal agenda (five), or simply make no explicit mention of it (fifteen),[20] six were delivered by appointed prosecutors,[21] one is, by Athenian standards, an unusual prosecution of a law and not the man behind it (where the adversaries were a board of *elected* advocates with the original proposer among them),[22] yet another was, in the speaker's own

Voice: Lycurgus' *Against Leocrates*," *ClAnt* 19 (2000) 12–13.

[18] Lys. 12, 13, 14.2, 15.12; Dem. 21; 22.1–4; 24.6–8 (the same enmity as in 22); [53].1–19; [58].1–4, 57–70; [59].1–16, 126; Aeschin. 1.1–3. Cf. Rubinstein, *Litigation* 179 and in *Cambridge Companion* 138. Dem. 25.37 mentions previous litigation (seven prosecutions by the defendant), which may imply personal enmity.

[19] Lys. 12, 13; Dem. 21; on the latter's status as a genuine forensic piece in the light of Aeschin. 3.52 cf. Rubinstein, *Litigation* 208–209 (pro) and MacDowell, *Demosthenes* 246 (uncertain).

[20] Explicitly denied: n.16 above; not mentioned *explicitly*: Lys. 6, 26, 27, 28, 29, 30; Dem. 20, 25, [26]; Aeschin. 3; Hyp. 1, 4; Din. 1, 2, 3; on Dem. 25 see n.18 above.

[21] Dem. 25 (25.13), [26] (*endeixis*); Din. 1, 2, 3; Hyp. 1 (*apophasis*). On elected prosecutors and the relevant procedures (the standard one is *apophasis*) cf. Bonner and Smith, *Administration* II 357–362; MacDowell, *Law* 61–62; Rubinstein, *Litigation* 111–122. Being an elected prosecutor does not preclude personal animosity (cf. Dem. 57.8, 63), but it may considerably affect the speaker's rhetorical strategy, at least insofar as the representation of his motives is concerned; cf. Rubinstein, *Litigation* 196. On the *endeixis* of Aristogeiton see M. H. Hansen, *Apagoge, Endeixis and Ephegesis* (Odense 1976) 141–142.

[22] Dem. 20 (*graphē nomon mē epitēdeion theinai*), cf. 20.146; see also MacDowell, *Demosthenes* 157.

words, "forced" upon him by external circumstances,[23] three others, finally, are incompletely preserved, lacking the crucial proem, where the speakers habitually display their reasons for bringing the case.[24] Their reliability in assessing the motivations of volunteer prosecutors is thus limited. This leaves us with only nine public prosecution speeches where personal enmity on the part of the speaker is without any doubt left unmentioned or explicitly denied,[25] against eight where it is paraded.[26] So much for the "few isolated cases."

This discussion of the figures and numeric proportions within the corpus of extant prosecution speeches (whose representative value as a whole is far from obvious) is enough to show that vindictive motivation stands out quite prominently among them, though far from appearing as a standard, let alone a required rhetorical strategy, as one might be led to assume e.g. on the basis of Lysias' programmatic statement on prosecutorial enmity.[27] But still it is a great embarrassment to the opposite view that public litigation in classical Athens remained untainted by the spirit of revenge—the view *apparently* encapsulated in Lycurgus' claims to disinterestedness in his prosecution of Leocrates.[28] Unless, of course, the surviving

[23] Lys. 22.1, "I am forced to prosecute" (ἠνάγκασμαι κατηγορεῖν). On the circumstances see below.

[24] Lys. 6, 26; Hyp. 4. On Lys. 26 see n.16 above. Lys. 27, 28, and 29 are labeled in the MSS. as *epilogoi*, which may either mean 'peroration' or 'supplementary speech' (i.e. *synēgoria*), cf. S. C Todd, *Lysias. Speeches* (Austin 2000) 281, 287. A recent and authoritative discussion of their status is given in Rubinstein, *Litigation* 27–28, 37–38; they too lack a developed proem, though the same may be said of Lys. 15 (not described as an *epilogos*), where enmity is nonetheless manifested in the brief peroration (12).

[25] Unmentioned: Lys. 27, 28, 29, 30; Aeschin. 3; denied: above, n.16.

[26] Lys. 14, 15; Dem. 22, 24, [53], [58], [59]; Aeschin. 1.

[27] Lys. 12.2; on such a reading see Cohen, *Law, Violence* 72 (his view of the topos of enmity, however, is much more nuanced, see n.93 below). Cf. Aeschin. 1.2. See also Allen, *ClAnt* 19 (2000) 15 ("standard ideological constraint requiring speakers to explain their enmity for the defendant").

[28] Lyc. 1.5–6 (cf. Dem. 18.272–273); on such a reading see Kurihara, *CQ*

nine[29] vindictive prosecution speeches are somehow proved to be abnormal, idiosyncratic, and therefore exceptions to the "normative expectation that public suits should not be motivated by private enmity."[30]

Some exceptions

Four among the nine were delivered by supporting speakers (*synēgoroi*), whose "relatively free position as συνήγοροι might have led speakers to expose their private enmity"[31] in a manner allegedly unsuitable for the main prosecutors (*hoi grapsamenoi*). This is a fair argument insofar as it receives one-sided, positive support from the *Rhetoric to Alexander*, where the *synēgoros* is indeed advised to produce his personal agenda—either friendship with the co-speaker or hostility towards the defendant—among the plausible motives for joining in the lawsuit.[32]

There are however three problems with this argument. First, by granting the *synēgoros* the privilege of vindictiveness, we are bound to acknowledge that it was, after all, not completely out of place in the Athenian courts, even if by virtue of his—apparently—peripheral persona we were to take it as a motif of secondary importance or indeed exceptional.

This, in turn, brings us to the second point. Traditionally *synēgoria* was considered a phenomenon relatively infrequent and at best collateral to the mainstream form of one-on-one prosecution. More recently, however, it has been clearly dem-

53 (2003) 468–469; Harris, *Democracy* 405; Herman, *Morality* 276–277. On Lycurgus see below.

[29] To avoid clumsiness, in the following section I will treat [Dem.] 59.1–15 and 59.16–126 as separate speeches, both written by Apollodorus, but the first part delivered by his brother- and son-in-law Theomnestus (as the main prosecutor).

[30] Kurihara, *CQ* 53 (2003) 466; the following section will deal specifically with his assessments.

[31] Kurihara, *CQ* 53 (2003) 470; the speeches in question are: Lys. 14, 15; Dem. 22 and the second part of [Dem.] 59 (16–126).

[32] *Rh.Al.* 1442b13–16 (36.13); cf. the discussion in Rubinstein, *Litigation* 125 ff.

onstrated by Rubinstein that, while far from usual, the practice of joint prosecution (and joint litigation in general) was in fact very common in the Athenian courts, and this especially in high-profile public lawsuits.[33] And supporting speakers not infrequently acted as the de facto main litigants.[34] *Synēgoria* therefore, itself little short of the norm, can hardly provide an explanation for transgressing the "normative expectations."

Third and most important, the *synēgoros*-argument still leaves us with five vindictive speeches delivered by main prosecutors. Their exceptional nature must be proven along different lines. It has been argued therefore that three of the remaining speakers were *idiōtai*, private citizens—as opposed to professional politicians—to whom the "normative expectation on the private/public distinction in legal activities applied less decisively."[35] As it stands, this claim is in need of additional

[33] See her meticulous discussion with numbers in *Litigation* 61–65. For a critical assessment of the traditional one-on-one model of Athenian litigation (including the agonal, prestige-related model proposed in Cohen, *Law, Violence*) see Rubinstein 16–21; an attempt to reconcile it with the institution of *synēgoria* has been made in M. Christ's review of Rubinstein, *BMCR* 2002.04.01.

[34] As did Apollodorus prosecuting Neaera ([Dem.] 59.16–126) or Demosthenes defending Ctesiphon (Dem. 18); see also Rubinstein, *Litigation* 133 ff.

[35] Kurihara, *CQ* 53 (2003) 475; the private citizen (*idiōtēs*)/politician (*rhētōr, politeuomenos, symboulos*) opposition is a relatively late concept which arguably emerged in the public discourse of Athens somewhere in the first half of the fourth century, cf. L. Rubinstein, "The Athenian Political Perception of the *Idiotes*," in *Kosmos* 125–143, at 127, 140–141. According to the letter of law, a *rhētōr* was any person who (voluntarily) addressed the Assembly, the council, the lawgivers (*nomothetai*), or the courts, cf. M. H. Hansen, *Eisangelia. The Sovereignty of the People's Court* (Odense 1975) 12 ff., and *The Athenian Ecclesia II* (Copenhagen 1989) 14 ff. In practice, however, even those who occasionally did take the rostrum were keen on presenting themselves as *idiōtai*, as opposed to the 'regulars' who made it their life; only the latter group therefore are considered politicians *sensu stricto*. It is also worth noting that when the term *idiōtēs* was opposed to the magistrates (who unlike the politicians exercised their political authority *ex officio*) it usually denoted any volunteer speaker of whatever socio-political status; cf. Rubin-

support. Some corroboration of it may be tentatively deduced from Demosthenes' vicarious defense of Ctesiphon (*On the Crown*), where it is stated that a "good and honest citizen" (*kalos kagathos politēs*), later identified as a "politician" (*politeuomenos kai rhētōr*), should not expect a jury convened on public matters to "secure the interests of his enmity (*echthra*) and anger (*orgē*)."[36] A corresponding statement regarding the proper legal conduct of an *idiōtēs* is yet to be found.

How and why is this supposed to save the normative expectation of the private/public distinction? Now, the usual assumption was that public lawsuits in classical Athens were the exclusive domain of those who had the resources to undertake the risks of high-profile litigation as well as the skills and abilities to withstand the "terrors of the courtroom": the political elite.[37] An *idiōtēs* on the other hand, traditionally considered wanting in either or both, would seem a very rare specimen in the field of public lawsuits, indeed an exception. Yet again, however, Rubinstein has demonstrated that this model is far from self-evident. In the first place, the identity of many (public) prosecutors is simply unknown, and the names of many others are recorded only for the one case at hand: this does not prove that they were *idiōtai*, but it certainly does not prove that they were not.[38] Furthermore, the assumed de facto

stein 128 ff.

[36] Dem. 18.272; Christ (*Litigious Athenian* 158) speculates that the topos of the disinterested prosecutor may have been particularly popular among the 'politicians'.

[37] E.g. J. Ober, *Mass and Elite in Democratic Athens* (Princeton 1989) 113–118; Christ, *Litigious Athenian* 32 ff.; Todd, in *Kosmos* 164; Allen, *World of Prometheus* 123 ("Only the strongest citizens would have been wise to undertake a public case"). On the "terrors of the courtroom" see recently V. Bers, *Genos Dikanikon. Amateur and Professional Speech in the Courtrooms of Classical Athens* (Washington 2009) 44–68 (esp. 54–68).

[38] Rubinstein, *Litigation* 190–191. The catalogues in M. H. Hansen, *The Sovereignty of the People's Court* (Odense 1974) 28–43, *Eisangelia* 69–111, *Apagoge* 124–141, and Osborne, *Athens* 196–197, give over 60 unknown *main* prosecutors. Among those recorded only for one lawsuit there are: Lysitheos

exclusion of private persons from public lawsuits on account of their high risks and the terrors of the courtroom is not easily reconciled with the institution of *synēgoria*, joint litigation, which could and probably did pave the way for non-elite citizens to take part in public lawsuits, and even as main litigants (at least formally), when accompanied by wealthy and rhetorically skilled co-prosecutors.[39] In consequence, the participation of a private person in a high-profile public lawsuit does not necessarily render it in any way exceptional, in which case the entire *idiōtēs*-argument may, again, appear limited.

Two other main prosecutors so far seem to have successfully made it through the sieve of the above exceptions: Aeschines and Diodorus.[40] Their cases therefore require yet another explanation. This time the argument would be that their conflict with their legal adversaries was too notorious for them to pretend to be indifferent to personal matters. Now, to argue that public suits should not be motivated by private enmity except when they obviously were, may seem like playful sophistry. All the more since this is in fact far from being the case. For we do

(*PA* 9399; Hansen, *Athenian Ecclesia II* 54; *LGPN* II s.v. 4); Pythangelos (*PA* 12335; *LGPN* s.v. 1); Skaphon (*PA* 12724; *LGPN* s.v. 1; cf. Hansen, *Apagoge* 139–140); Ariston (*PA* 2140; Hansen, *Athenian Ecclesia II* 38); Bathippos (*PA* 2814; Hansen, *Athenian Ecclesia II* 39; *LGPN* s.v. 1); Apsephion (*PA* 2808; Hansen, *Athenian Ecclesia II* 39; *LGPN* s.v. 4); Lycinus (*PA* 9198; Hansen, *Athenian Ecclesia II* 53; *LGPN* s.v. 6); Phanostratus (*PA* 14097; Hansen, *Athenian Ecclesia II* 61; *LGPN* s.v. 7); Kallikrates (Hansen, *Athenian Ecclesia II* 50; *LGPN* s.v. 13); Archestratides (*PA* 2395; Lys. 14.3; 15.12; not listed by Hansen; *LGPN* s.v. 2).

[39] Rubinstein, *Litigation* 91–92, 189–193; cf. Rhodes, in *Kosmos* 145; N. Fisher, "The Bad Boyfriend, the Flatterer and the Sykophant," in I. Sluiter and R. Rosen (eds.), *Kakos. Badness and Anti-Value in Classical Antiquity* (Leiden 2008) 185–231, at 213.

[40] Diodorus' prosecution of Timocrates (Dem. 24) is the first one recorded where he acts as the main prosecutor. It is possible therefore that he was no 'professional' politician; cf. 24.6 which, though an obvious topos, for Kirchner is proof that he was a "homo in re publica parum versatus" (*PA* 3919).

know of public lawsuits initiated out of flagrant and notorious hostility where the litigant nonetheless chose *not* to make an explicit display of it as his motive, as in Aeschines' prosecution of Ctesiphon. We also know of defendants taking the time to *refute* their adversaries' claims to enmity, which, true or not, obviously must not have been notorious enough.[41] And yet, apparently, the prosecutors did choose to make a display of it in order to gain further credibility, for why else would it be contested? Why refute such claims at all, if indeed personal, vindictive motivation on the part of the prosecutor was considered out of place in public lawsuits?

Finally, one other main prosecutor—and quite probably a 'politician' too—seems still happily indifferent to the stipulation that public suits should not be motivated by private enmity: Euctemon, the old foe of Androtion.[42] To be sure, the speech he delivered as the main prosecutor has perished, but from the proem of his *synēgoros* Diodorus we may certainly infer that he too took time to recount his enmity towards the defendant:[43]

> As Euctemon, members of the jury, mistreated by Androtion, thinks it necessary both to assist the polis and to take revenge on behalf of himself (δίκην ὑπὲρ αὐτοῦ λαβεῖν), that I too shall attempt, if only I am capable.

Perhaps again Euctemon's enmity towards Androtion was too notorious to be passed over in silence? Perhaps instead, we should revise the applicability of the normative expectation according to which public suits should not be motivated by

[41] Lys. 24.2; cf. [Dem.] 53.2. On the debated question of the authenticity of Lys. 24 see Todd, *Lysias, Speeches* 253–254 (in favour).

[42] In his catalogue Hansen, *Athenian Ecclesia II* 46, records one proposal delivered by Euctemon, admittedly after the prosecution of Androtion (Dem. 22); on Euctemon's enmity see also MacDowell, *Demosthenes* 170.

[43] Dem. 22.1: ὅπερ Εὐκτήμων, ὦ ἄνδρες δικασταί, παθὼν ὑπὸ Ἀνδροτίωνος κακῶς, ἅμα τῇ τε πόλει βοηθεῖν οἴεται δεῖν καὶ δίκην ὑπὲρ αὐτοῦ λαβεῖν, τοῦτο κἀγὼ πειράσομαι ποιεῖν, ἐὰν ἄρα οἷός τε ὦ. Unless otherwise specified, translations are my own; quotations of Dem. are from the edition of Dilts (OCT).

private enmity. The exceptions, gradually heaped up upon one another, finally leave us with a very narrow space within which the alleged norm would operate: 1) active politicians, 2) main prosecutors, 3) with no history of previous conflict with the defendant.[44] Consideration of the extant public prosecution speeches shows that only a few meet such strict criteria, the majority being delivered by *synēgoroi*, *idiōtai*, old enemies of the defendants, or any combination of these.[45] Survival, to be sure, should not be equated with representative value. As noted above, however, the participation of *synēgoroi* and *idiōtai* in public lawsuits was both frequent and firmly established on the ideological plane. What is thus left as specimens of the 'norm' are three speeches where pre-existing enmity is unambiguously ruled out by the speakers[46] and perhaps five others where their status is unknown.[47]

Political and personal quarrels

What exactly are the vindictive litigants angry about when they explain their motives for taking their enemies to court?

[44] "Courtroom appearances had long-term effects on the politician's career," Ober, *Mass and Elite* 148. On the significance of gossip in the circulation of information about the Athenian elite (and not only) see Ober 148–151; Hunter, *Policing Athens* 96–119.

[45] Prosecution speeches delivered by *synēgoroi* (including elected prosecutors): Lys. 6, 14, 15, 27; Dem. 20, 22, [25], [26], [59].16–126; Hyp. 1, 4; Din. 1, 2, 3; (possibly) delivered by *idiōtai* acting as main prosecutors: Dem. 24, [53], [58], [59].1–15; delivered by prosecutors with a history of enmity with the defendant or his party (acknowledged or not): Lys. 14, 15; Dem. 19, 22, 24, 25, 53, 58, 59, Aeschin. 1, 3.

[46] Lys. 22, Dem. 23, Lyc. 1.

[47] Lys. 26, 28, 29, 30, 31; the Lysianic speeches of course precede the assumed development of the ideological *idiōtēs-rhētor* opposition. The speaker of Lys. 26, though denying a (positive) personal agenda (26.15), may have been actually motivated by "sour grapes" going back to the previous *dokimasia* of his own friend Leodamas (26.13–14; cf. Todd, *Shape* 287 and *Lysias* 273). Lys. 28 and 29 according to some authorities were delivered by *synēgoroi* (or elected prosecutors); Rubinstein (*Litigation* 37–38) considers them uncertain in this respect. The speaker in Lys. 31 explicitly denies enmity.

Apollodorus had previously been prosecuted by Stephanus, Neaera's husband, for proposing an illegal decree (*graphē paranomōn*). So was the father of Epichares, by Theocrines. Both lost their cases. Aeschines was to be prosecuted by Timarchus and Demosthenes at an audit (*euthyna*) on the charge of misconduct on the embassy. Finally there is Diodorus, Euctemon's team-mate, whose uncle was accused by Androtion of impiety (*graphē asebeias*)—yet another public prosecution.[48] As noted by Rubinstein, all these cases, high-profile public lawsuits, are firmly rooted in the political sphere.[49] This observation, however, led her and later Harris to conclude that "very few prosecutions resulted from private enmity,"[50] which may be taken to suggest that in all other instances (as in those above) the enmity was rather political, or, in any case, at least safely removed from the sinister sphere of private vendetta (this point is of particular weight for Harris).

Indeed, litigation in classical Athens may have been considered the "handmaiden of politics."[51] Debates over laws and policy were frequently taken from the Assembly to the courts by means of procedures specifically tailored to this end (*graphē paranomōn*, *graphē nomon mē epitēdeion theinai*, *eisangelia*),[52] and

[48] [Dem.] 59.4–8; 58.1, 30 ff.; Aeschin. 1.2, 168, 174; Dem. 22.2, 24.7. Stephanus had also launched against Apollodorus a *dikē phonou* for the killing of a slave (probably); cf. C. Carey, *Apollodoros Against Neaira* (Warminster 1992) 89; K. A. Kapparis, *Apollodoros Against Neaira* (Berlin 1999) 182–183.

[49] "Only three prosecutors state that their feelings of hostility originate from their dealings with the defendants *outside* the political sphere": *Litigation* 179.

[50] Harris, in *Symposion 2001* 129–130 (quoting Rubinstein); cf. Kurihara, *CQ* 53 (2003) 465 n.8: "Lene Rubinstein briefly remarks that enmities exposed in public suits are mostly political."

[51] Bonner and Smith, *Administration* II 43; cf. Rhodes, *G&R* 43 (1996) 11–30.

[52] Owing to its widest applicability (and also greatest susceptibility to abuse) *eisangelia* was the least specific of these three (Hansen, *Eisangelia* 58–65). Most *graphai paranomōn* had also limited explicit political import, since the indicted decrees were for the most part honorary ones (Hansen, *Sov-*

many other lawsuits (public and private alike) could have been used simply to get rid of a political rival or cripple an opposing faction. Even the strictly political prosecutions, however, usually entailed severe penalties and repercussions for the defendants, such as heavy fines, disenfranchisement, exile, or capital punishment.[53] Small wonder therefore that, as observed by Rhodes, in classical Athens political rivalry usually went hand in hand with personal animosities.[54] It is quite conceivable nowadays that politicians arguing bitterly in the parliament could still be friends on a less formal footing. Though such relationships cannot be entirely ruled out from the world of classical Athens,[55] a case where one politician (as a volunteer prosecutor) quite literally wants the other's head leaves little room for informal neutrality, let alone cordiality. Even if, as it is sometimes asserted, there was no history of previous *personal* conflict between such adversaries, the present lawsuit was bound to generate it.[56]

Now, the public, 'political' prosecution of Diodorus' uncle for impiety (*graphē asebeias*) was based on the charge of associating

ereignty 62–65). See also J. Roisman, *The Rhetoric of Conspiracy in Ancient Athens* (Berkeley 2006) 95.

[53] Strictly speaking the only penalties attested in the known cases of *graphē paranomōn / nomon mē epitēdeion theinai* and *eisangelia* were fines and capital punishment (not attested for the former, but see n.74 below); these two, however, frequently led to either disenfranchisement (failure to discharge the fine, or three convictions in a *graphē paranomōn*) or self-imposed exile (in the face of a possible death sentence). See the catalogues in Hansen, *Sovereignty* (28–43) and *Eisangelia* (66–120; cf. 35), also Todd, *Shape* 305–306.

[54] Rhodes, *G&R* 43 (1996) 21 (with the counter-example of modern politicians).

[55] Were we to believe Aeschines' sentimental assertion (3.194), in the "Good Old Days" (so Rhodes, in *Kosmos* 157–158) even friends were bringing each other to trial for transgressions against the polis; on the other hand Euthyphro's plans to prosecute his father (even before the nature of the case is revealed) are seen as highly idiosyncratic (Pl. *Euthphr.* 4A; I owe this remark to Professor Osborne).

[56] E.g. Dem. 19.221, 23.1; cf. Ar. *Plut.* 910 (see below).

with a polluted parricide—allegedly Diodorus himself. As such, this trial had little room for any overt political content (leaving aside the general and vague proviso that religion was inherently bound up with the public life of the Athenian polis).[57] Whatever hidden political agenda Androtion may have had here, is also left in the dark. What is given prominence, on the other hand, are the very personal, indeed tragic repercussions of this—broadly speaking—political trial:[58]

> Who would have suffered greater misfortunes than I at his hands? What friend or guest-friend would have ever wanted to meet with me; which polis would have ever admitted someone believed to have committed so impious a crime? There is none.

Turning to the prehistories of more overtly political litigation, in search for a foothold for the thesis that very few prosecutions resulted from private enmity, we may start with the case Theomnestus vs. Neaera. The dispute of Apollodorus and Stephanus, as it is represented in the speech, originated in a *graphē paranomōn* launched by the latter. Apollodorus lost the case, though in the sentencing (*timēsis*) the jury did not side with the prosecutor, who had proposed a large fine of fifteen talents. The indicted decree provided for the Assembly to decide whether the surplus of the budget be used for military (*stratiōtika*) or domestic (*theōrika*) purposes, whereas according to the existing law, in times of war it was to be the former by default.[59] But the decree itself was apparently of little importance since its cancellation *per se* would not be "much of a bother"—

[57] See Osborne, *Athens* 189–190, on the political agenda behind some known *graphai asebeias*; cf. however D. Cohen, *Law, Sexuality, and Society. The Enforcement of Morals in Classical Athens* (Cambridge 1991) 215; Todd, *Shape* 308 ff.

[58] τίς ἂν ἀθλιώτερα ἐμοῦ πεπονθὼς ἦν ὑπὸ τούτου; τίς γὰρ ἂν φίλος ἢ ξένος εἰς ταὐτό ποτ' ἐλθεῖν ἠθέλησεν ἐμοί; τίς δ' ἂν εἴασε πόλις που παρ' ἑαυτῇ γενέσθαι τὸν τὸ τοιοῦτο ἀσέβημα δοκοῦντα εἰργάσθαι; οὐκ ἔστιν οὐδὲ μία (Dem. 22.2; cf. 24.7).

[59] [Dem.] 59.3–6; see Hansen, *Sovereignty* 34; Carey, *Apollodoros* 6–7; Kapparis, *Apollodoros* 174–178.

says Theomnestus. The worst was yet to come—if only Stephanus had it his way in the sentencing: disenfranchisement and "ultimate poverty." "What shame and indeed misfortune would not have befallen me?" asks the prosecutor.[60] This, and not the differences between the stratiotic money and the theoric, is given as his motive for prosecution.

The 'political' quarrel between Epichares and Theocrines also had its origins in a *graphē paranomōn* launched by the latter against the former's father. The indicted decree, a motion honoring one Charidemus,[61] was attacked as in fact detrimental to his interests. Theocrines won the day with a double victory: not only did he secure the defendant's conviction, but he also managed to persuade the jury to a heavy fine of ten talents. Unable to discharge it, Epichares' father was registered as a state-debtor and disenfranchised. According to the speaker, the prosecution was, of course, a sham, and Theocrines was ready to drop it for a thousand drachmas, which the defendant was, unfortunately, unable to pay. Yet again, however, in the prologue Epichares chooses to secure the sympathy of the jury not by arguing how wrong—and, perhaps, harmful or at least inexpedient to Charidemus—was the lawsuit cancelling his father's decree, but by pointing to the very personal consequences of this (broadly speaking) political trial: to his father's misfortunes as a result of the disenfranchisement, which was to be inherited by himself.[62]

Now, it may well be that at least some of these legal quarrels did have a political agenda as well.[63] The fact nonetheless remains that what is given emphasis here are only the possible or

[60] [Dem.] 59.6, τὴν ἐσχάτην ἀπορίαν; the decree: 59.11. Theomnestus, of course, would have been affected only indirectly by Apollodorus' (hypothetical) plight.

[61] *PA* 15374 and 15376; *LGPN* II s.v. 23; not to be identified with the beneficiary of Aristocrates' indicted decree (in Dem. 23; *PA* 15380).

[62] Theocrines' case: [Dem.] 58.30–33; misfortunes of the speaker: 58.1.

[63] For the political dimension of the quarrel between Stephanus and Apollodorus see Carey, *Apollodoros* 6 ff.; Kapparis, *Apollodoros* 183–184.

actual repercussions of these (broadly speaking) political trials: personal repercussions. For being publicly labeled a parricide with all its legal, social, and religious implications (as with Diodorus), being disenfranchised (like Epichares' father and, hypothetically, Apollodorus), or simply losing a considerable amount of money (Apollodorus and Euctemon) is no *political* matter, even if the *fons et origo* of the quarrel did fall under such a category. Most revealing here is the quarrel between Aeschines and Timarchus. Hardly any other trial could be more overtly political than the former's (pending) prosecution at his audit on the charge of misconduct on the embassy to Philip. And yet even here the whole case is curtly dismissed with a vague but revealing phrase: "I myself have been *personally* (*idiai*) harassed with sycophantic prosecutions"—by Timarchus. The latter's multiple transgressions against the polis are strictly opposed to this 'private' quarrel, whereas the political issue of the audit itself is given surprisingly little attention.[64]

Priorities and premises

In another recent and highly eulogistic account of Athenian social and legal history, which seeks to prove that motives such as enmity or revenge were generally out of place in a city such as Athens, a somewhat different attempt is made to square with the embarrassing evidence of vindictive prosecutions. The most notorious lawsuit in this respect (along with some other speeches) is explained away as follows:

> The speakers are at pains to point out that they have brought this case only as a last resort … and that any interest in private vengeance that they may feel is secondary to their deep concern for public welfare … By the speech's concluding paragraph the idea of private vengeance has vanished altogether and the dikasts are being told that it is their duty to avenge not Theo-

[64] "Seeing that the polis is harmed … and myself being personally harassed by sycophantic prosecutions" (ὁρῶν δὲ τὴν πόλιν μεγάλα βλαπτομένην … καὶ αὐτὸς ἰδίᾳ συκοφαντούμενος: Aeschin. 1.1); the embassy to Philip and the audit are briefly mentioned at 1.168, 174.

mnestus and Apollodorus, but the gods and themselves.[65]

I have no misgivings about taking justice as the highest-scoring motive in the public discourse of classical Athens—a motive so noble indeed as to be of itself too good to be true. For the only volunteer prosecutor who does indeed live up to this ideal of pure and disinterested litigation is found in Aristophanes. A "patriot" (*philopolis*) "like no other man," "attentive to the matters of state" (*ta tēs poleōs*), tasking himself "to act for its benefit," "to protect its laws," and "not to let wrongdoings go unpunished"—the Sycophant.[66] All this of course may seem no more than a façade, beneath which false accusations and, perhaps, sinister pecuniary motives are lurking. But this is not the point in the *Plutus*. Neither the legal merits of the Sycophant's actions nor even his possible hidden agenda (money) are given any attention. The point is that he is a meddler, someone eager to take people to court over affairs which are none of his business, regardless of the accusations' validity.[67] "How can you be a good citizen, you thug (*ō*

[65] Herman, *Morality* 193, referring to [Dem.] 59. This is not exactly the case: in the concluding paragraph (59.126) we read: ἐγὼ μὲν οὖν, ὦ ἄνδρες δικασταί, καὶ τοῖς θεοῖς, εἰς οὓς οὗτοι ἠσεβήκασιν, καὶ ἐμαυτῷ τιμωρῶν, κατέστησά τε τουτουσὶ εἰς ἀγῶνα. The idea of private revenge is therefore far from vanished altogether; along similar lines Herman reads the proem of Lys. 14.1–2. Cf. Kurihara, *CQ* 53 (2003) 471 (on Dem. 24), "the ongoing hostility is presented as if it were a secondary reason."

[66] Ar. *Plut*. 901–925; cf. [Dem.] 58.63–64. See Bonner and Smith, *Administration* II 44; MacDowell, *Law* 63 ff.; Christ, *Litigious Athenian* 146–147, and "Imagining Bad Citizenship in Classical Athens: Aristophanes' *Ecclesiazusae* 730–876," in *Kakos* 169–183, at 173–174; M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes* (Norman 1999) 195.

[67] The keyword here is πολυπραγμοσύνη (or φιλοπραγμοσύνη) for which (in the context of the courts) see V. Ehrenberg, "Polypragmosyne: A Study in Greek Politics," *JHS* 67 (1947) 54–55, 59; A. W. H. Adkins, "*Polupragmosyne* and 'Minding One's Own Business': A Study in Greek Social and Political Values," *CP* 71 (1976) 308–311, 316 ff. ("to prosecute, not out of enmity … but out of public-spiritedness or a desire for reward, whether the accusation was false or true, was … to 'do many things,'" 318);

toichōryche), if you make enemies (*apechthanei*) in what concerns you naught?"[68] For even the best case, a patent instance of wrongdoing brought to court, could nonetheless appear as sycophantic prosecution. This is most clearly stated in the Lysianic speech *Against the Grain Dealers*:[69]

> Many people, men of the jury, have approached me surprised at the fact that I was prosecuting the grain-dealers before the Council; they said that, even though you are certain that they had committed a crime, you nonetheless consider all those who engage in this case as sycophants.

The speaker, to be sure, explicitly denies any pre-existing enmity. To call his prosecution disinterested, however, would be mistaken. For he too has pressing personal concerns which he seeks to address by bringing in the case at hand. He had previously opposed the Council's motion to execute the grain dealers without trial, which led to suspicions and slanders that he was, in fact, working in concert with them and attempting thus to save them. To prove these allegations false, therefore, he considered himself "forced" (ἠνάγκασμαι κατηγορεῖν αὐτῶν) to move on with the lawsuit.

An examination of other prosecution speeches, where enmity towards the defendant is explicitly denied, reveals that, with one notable exception, the litigants seem curiously reluctant to produce their concern for justice and law as a motive on its own.[70] The speaker prosecuting Philon (during the latter's scru-

L. B Carter, *The Quiet Athenian* (Oxford 1986) 83–87; Osborne, *Athens* 217; Rubinstein, *Litigation* 199 ("litigious hyper-activity").

[68] Ar. *Plut*. 909; though quite specific in the legal sense ('a burglar digging through the wall'), τοιχωρύχος here and elsewhere in Aristophanes is used as a "highly general term of opprobrium": K. J. Dover, *Aristophanes Clouds* (Oxford 1968) 249.

[69] Lys. 22.1: πολλοί μοι προσεληλύθασιν, ὦ ἄνδρες δικασταί, θαυμάζοντες ὅτι ἐγὼ τῶν σιτοπωλῶν ἐν τῇ βουλῇ κατηγόρουν, καὶ λέγοντες ὅτι ὑμεῖς, εἰ ὡς μάλιστα αὐτοὺς ἀδικεῖν ἡγεῖσθε, οὐδὲν ἧττον καὶ τοὺς περὶ τούτων ποιουμένους λόγους συκοφαντεῖν νομίζετε.

[70] On the mistrust of purely public-spirited prosecutions see Hansen,

tiny as a prospective councilor) refers to the bouleutic oath, which he, himself a member of the council, has taken, and which *obliges* him (he is keen to stress) to prevent anyone unfit for this office from undertaking it.[71] In the prosecution of Aristocrates, the speaker, as if recycling the anxieties voiced in the *Plutus*, admits that he is likely to incur the defendant's enmity (*apechtheia*), but argues that the decree is not just contrary to the law, or that Charidemus is unworthy of the honors bestowed thus upon him:[72] according to him, the indicted motion is in the first place inexpedient as it jeopardizes the Athenian presence in the Chersonese.[73] And despite Euthycles' commonplace assertion that he is no politician (*politeuomenos*), he seems to have been actively involved in these particular matters in the past, and working in tandem with Demosthenes, his present logographer. The whole case becomes thus a clear-cut specimen of a truly political debate taken to the courts, where the

Democracy 195; Rubinstein, *Litigation* 197; Allen, *ClAnt* 19 (2000) 16.

[71] Lys. 31.1–2: "Given the extent of his audacity and the fact that I have sworn an oath when I came to the office … putting my confidence in the multitude of his crimes and honoring the oaths which I have sworn." Cf. Christ, *Litigious Athenian* 152. M. Weissenberger, *Die Dokimasiereden des Lysias* (Frankfurt am Main 1987) 157, argues that denying personal involvement was "unbedingt notwendig" in *dokimasia* suits, which however was clearly not the case for the prosecutor of the eponymous disabled man of Lysias' defense speech (Lys. 24.2).

[72] Dem. 23.22–99 and 144–195 respectively; cf. T. L. Papillon, *Rhetorical Studies in the Aristocratea of Demosthenes* (New York 1998) 14–19, who takes them as the judicial and epideictic elements of the speech (I owe this reference to Dr. Alwine).

[73] Dem. 23.1–17 (esp. 8–12), 100–143. These were the chief strands of argument of prosecutions in *graphai paranomōn* (those related to honorary decrees comprising two-thirds of the known cases: Hansen, *Sovereignty* 62 ff.), most succinctly stated in Dem. 23.18; cf. H. Yunis, "Law, Politics, and the *Graphe Paranomon* in Fourth-Century Athens," *GRBS* 28 (1988) 361–382, at 368–373. Of these, however, (in)expediency may well have been the most weighty (Yunis 376 ff.); on the alleged inexpediency of Aristocrates' decree and its historical background see Roisman, *Rhetoric of Conspiracy* 101–102, 165 ff.

issue at stake is not just punishing the wrongdoer, but preventing a course (allegedly) detrimental to Athens' foreign policy.[74] In any case, Euthycles (and Demosthenes) may have had good reasons to believe that they were above suspicion of frivolous meddlesomeness. More personal (though not expressly vindictive) was Demosthenes' prosecution of Aeschines on the charge of misconduct on the embassy to Philip. His concern for justice is indeed given the place of honor there. He does, however, sincerely acknowledge another motive, one slightly more down-to-earth: that he himself, a member of the embassy, was also implicated in its failure and in the adverse political turn which followed it—that, in other words, it may also become his liability, which he therefore seeks to forestall, by prosecuting the true villain.[75] Whatever his real agenda, no-one could possibly suspect that this matter "concerns him naught."

The only speaker who boldly defies the suspicions voiced in Aristophanes' *Plutus* is the austere and upright Lycurgus. Even he acknowledges that his lawsuit may be open to allegations of sycophancy,[76] but this does not hinder him from parading his own disinterestedness and even making an example of it. The manner in which his truly public-spirited concern for justice is voiced may, however, reveal more than our expectations would

[74] Dem. 23.188–189; cf. Papillon, *Rhetorical Studies* 24. Hansen, *Sovereignty* 33, tentatively suggests that the prosecution was to demand the death penalty, but this is far from certain; on Euthycles' possible personal involvement in the case see Rhodes, in *Kosmos* 156; Todd, in *Kosmos* 162 n.3.

[75] Dem. 19.223–224. A moment earlier (221), however, he distances himself from a similar motive imputed to him by his adversaries: "he believes his opponents to be guilty and wants to avoid being dragged down with them" (D. M. MacDowell, *Demosthenes. On the False Embassy* [Oxford 2000] 295; cf. Christ, *Litigious Athenian* 153).

[76] Lyc. 1.31, cf. 1.3. A thorough analysis of Lycurgus' disinterested rhetoric is given by Allen, *ClAnt* 19 (2000) 5–33 (though she may somewhat overstate the case for vindictive prosecution as the normative strategy). Alwine (*Rhetoric* 72, and more extensively in his forthcoming book) points out well that Lycurgus' high profile as a leading politician may to some extent have shielded him from suspicions of sycophantic motivation.

allow:[77]

> For it does not become a just citizen to put on public trials those who have done the polis nothing wrong on account of private enmity (ἰδίας ἔχθρας), but to consider all those who transgress against our country to be his own personal enemies (ἰδίους ἐχθρούς).

It has been observeded that the rhetoric of this professed indifference to personal matters displays notable similarities to the argument that opens the first Lysianic prosecution of Alcibiades the Younger[78]—a prosecution, however, very different in spirit, in which enmity, far from being denied, is explicitly acknowledged, indeed paraded:[79]

> I believe, members of the jury, that you have no need to hear any statement of motive from those who are volunteering to prosecute Alcibiades. From the beginning he proved himself to be a citizen of such sort, that even if one happens not to be personally (ἰδίαι) wronged by him, one should nonetheless consider him a personal enemy (ἐχθρόν) on account of his conduct in other matters.

These similarities extend beyond that which is stated plainly to that which is understood. Lysias' rhetoric makes use of the following enthymeme: 1) you need not hear of the prosecutor's motivation (conclusion); 2) because everyone should be the defendant's enemy (minor premise). The implied major premise, voiced explicitly just a moment later, is: 3) normally the prosecutor should be the defendant's enemy. Compare now the

[77] Lyc. 1.6: πολίτου γάρ ἐστι δικαίου, μὴ διὰ τὰς ἰδίας ἔχθρας εἰς τὰς κοινὰς κρίσεις καθιαστάναι τοὺς τὴν πόλιν μηδὲν ἀδικοῦντας, ἀλλὰ τοὺς εἰς τὴν πατρίδα τι παρανομοῦντας ἰδίους ἐχθροὺς εἶναι νομίζειν.

[78] Allen, *ClAnt* 19 (2000) 14–15; cf. C. Carey, *Lysias. Selected Speeches* (Cambridge 1989) 150.

[79] Lys. 14.1: ἡγοῦμαι μέν, ὦ ἄνδρες δικασταί, οὐδεμίαν ὑμᾶς ποθεῖν ἀκοῦσαι πρόφασιν παρὰ τῶν βουλομένων Ἀλκιβιάδου κατηγορεῖν· τοιοῦτον γὰρ πολίτην ἑαυτὸν ἐξ ἀρχῆς παρέσχεν ὥστε καὶ εἰ μή τις ἰδίᾳ ἀδικούμενος ὑπ᾽ αὐτοῦ τυγχάνει, οὐδὲν ἧττον προσήκει ἐκ τῶν ἄλλων ἐπιτηδευμάτων ἐχθρὸν αὐτὸν ἡγεῖσθαι.

train of thought in Lycurgus' argument: 1) I am not prosecuting out of enmity (conclusion); 2) because everyone should be the defendant's personal enemy (minor premise). The implied major premise remains the same. To be sure, Lycurgus does later explicitly condemn vindictive prosecution in general, but with an important qualification: bringing in *false* charges for the sake of enmity. His professed public-spiritedness therefore rests not on rejecting revenge on principle, but on its rhetorical transposition from the individual prosecutor to the entire community, on whose behalf the former may now act as a disinterested agent.[80]

Patriotic revenge and vindictive sycophancy

For revenge, it has been traditionally argued (as in the opening quotation), effectively dispels suspicions as to the prosecutor's motivation. If he means to harm his enemy, he is no sycophant.[81] "I am not acting as a sycophant, but because I have been wronged (*adikoumenos*) and insulted (*hybrizomenos*), and now I intend to take revenge (*timōreisthai*)," insists bluntly Apollodorus in the very first words of his prosecution of Nicostratus.[82] Now, it has been traditionally understood that the term 'sycophant' denoted a very particular sort of villain, one exploiting the institution of volunteer prosecution for the sake of financial gain, sought either through blackmail, litigation for a fee, or money awarded to successful prosecutors in some particular procedures. Since these could hardly be advanced as respectable motives for prosecution, 'professional' sycophants usually had the appearance of righteous and patriotic busy-

[80] Cf. R. J. Bonner's revealing if inadvertent choice of words: "a new turn to a common sentiment": *Lawyers and Litigants in Ancient Athens* (Chicago 1927) 62.

[81] See n.7 above for an overview of the scholarly consensus on this point.

[82] [Dem.] 53.1; cf. 59.1; Lys. 7.20 (Kurihara's suggestion, *CQ* 53 [2003] 467, that this "cannot be taken as a comment condoning private enmity in so far as it appears alongside 'sycophancy'" is mistaken); Lys. 24.2; Lys. 6.31 is less decisive.

bodies.[83]

The only professional sycophant, however, was probably to be found on the comic stage.[84] For in classical Athens sycophancy was not necessarily a career, but in the first place a term of abuse on which a fuzzily-defined social and rhetorical construct has been erected, that of the perverted Doppelganger of the good citizen-prosecutor. The famous "workshop of sycophants" (*ergastērion sykophantōn*) was not an actual Athenian law office but rather a figure of invective.[85] Money-grubbing may still have been one of the more obvious traits of the 'sycophant',[86] but neither the only one nor even the mandatory

[83] Lofberg, *Sycophancy* 26–59; Bonner and Smith, *Administration* II 44–54, "legitimate financial gain" (41), i.e. rewards for successful prosecution perhaps could sometimes be produced as a good motive; cf. [Dem.] 58.13 and Christ, *Litigious Athenian* 142. Patriotic busybodies: Dem. 58.34 (ταῦτα γὰρ οἱ πάντα πωλοῦντες λέγειν εἰθισμένοι εἰσίν), 63–64; cf. D. Harvey, "The Sycophant and Sycophancy: Vexatious Redefinition?" in P. Cartledge et al. (eds.), *Nomos. Essays in Athenian Law, Politics and Society* (Cambridge 1990) 103–121, at 114; Christ 147; Yunis, *GRBS* 28 (1988) 379–380.

[84] Osborne, *Athens* 216–217; Christ, *Litigious Athenian* 59–67 and in *Kakos* 170–174; Rubinstein, *Litigation* 198 ff.; contra: Harvey, in *Nomos* 114 ff. (but see Christ 67).

[85] Cf. [Dem.] 39.2, 40.9. Actual 'bureau' or 'club': Lofberg, *Sycophancy* 60–68; cf. Bonner and Smith, *Administration* II 54 (cautiously); not real: Osborne, *Athens* 217 n.42.

[86] The traditional triad, prosecuting for a fee, rewards, and blackmail, is given emphasis by Harvey (in *Nomos* 111 ff.), and criticized Osborne (*Athens* 209–213), who points out the weaknesses of the latter two (few procedures offering rewards; few references to sycophantic blackmail). Rubinstein (*Litigation* 201 ff.) points to other possibilities of 'sycophantic' money-making in the context of *synēgoria*: acting as a 'straw' *grapsamenos* and deserting or sabotaging a team-based prosecution for cash—all the while denying the significance of prosecuting for rewards and blackmail. To the latter the recent debate on the criminalization of withdrawing public prosecutions is highly relevant, cf. Harris, *Democracy* 408–418, 421–422; R. Wallace, "Withdrawing Graphai in Ancient Athens – A Case Study in 'Sycophancy' and Legal Idiosyncrasies," in E. Cantarella et al. (eds.), *Symposion 2003* (Cologne/Vienna) 57–66, with Harris's response at 67–72;.

one.[87] Revenge therefore might have seemed incompatible with some features of this Protean monster, but not necessarily with all. And indeed in some rhetorical arguments the 'sycophant' and the vindictive prosecutor appear to be working hand in hand.[88] In others, furthermore, allegations of sycophancy are thrown at the speaker's adversaries indiscriminately alongside suggestions that they are motivated by *enmity*.[89] Even vindictive prosecution therefore—whether or not explicitly acknowledged as such by the prosecutor himself—could be 'sycophantized'.

Such ignoble enmity as it is constructed in the extant speeches—prosecution and defense alike—has its distinctive characteristics. It is coupled with envy and spite, whereas 'good' forensic revenge is fuelled by sincere indignation at one's personal grievances and the defendant's public transgressions.[90] It is incommensurate with the wrongs suffered by the prosecutor, who thus proves to be a pest causing both the defendant and the jury unnecessary trouble on account of his petty over-

[87] A systematic list is given by Harvey (in *Nomos* 112 ff.): false charges, sophistical quibbling, slander, overlitigiousness, and raking up old charges; the first four are given emphasis by Osborne (*Athens* 207–217) at the expense of the pecuniary side of sycophancy.

[88] E.g. Lys. 7.1, 30, 38–39; Andoc. 1.104; Dem. 23.190; Dem. 57.57—probably a private lawsuit (*ephesis*), cf. Rubinstein, *Litigation* 61–62 n.99, and MacDowell, *Demosthenes* 288 n.4; contra Hansen, *Apagoge* 64 n.26 (*graphē xenias*).

[89] E.g. Lys. 19.2, 64 (enemies), 9 (sycophants); 21.17 (both); Dem. 18.123 ff. (enemy), 242, 266 (sycophant); Aeschin. 2.5 (both); cf. Lys. 3.44 (sycophant); 4.13 (enemy), 14 (sycophant)—probably public lawsuits, see D. Phillips, "*Trauma ek pronoias* in Athenian Law," *JHS* 127 (2007) 74–105; Dem. 57.34 (sycophant), 61 (hereditary enemy) 50 (both). Similar conclusions (on the basis of Dem. 57) have been reached by Alwine in his forthcoming book (ch. 3).

[90] Envy and spite: Dem. 18.279, 121, 315; 23.188; Aeschin. 2.22, 139. Cf. D. Cairns, "The Politics of Envy: Envy and Equality in Ancient Greece," in D. Konstan and K. Rutter (eds.), *Envy, Spite, and Jealousy: The Rivalrous Emotions in Ancient Greece* (Edinburgh 2003) 235–252. 'Proper' enmity contrasted with envy: Lys. 24.1 ff.; cf. Cohen, *Law, Violence* 81 ff.

sensitivity (indeed meddlesomeness); a 'proper' vindictive lawsuit, on the other hand, is launched only in the face of truly heinous, hubristic injuries, testimony to which is also the fact that the speaker has endured repeated provocations or that the present court vengeance has been urged upon him by others.[91] It is finally selfish and not infrequently contrary to the interests of the people, whereas respectable enmity always serves the common good.[92] These are of course nothing more than rhetorical phenomena; an actual prosecution launched for the sake of revenge could be constructed either way by either side, depending on their choice of forensic strategy (and of course the factors determining such choice).[93]

An area in which the figures of the sycophant and the (bad) vindictive litigant may have been seen to cooperate most harmoniously was the baseless prosecution—a rhetorical, conceptual area, to be sure. According to Osborne, this in fact was the defining trait of the Athenian sycophant.[94] He who wanted revenge, on the other hand, may well have been above petty money-grubbing,[95] but he was also likely to trump up false accusations in order to make the life of his enemy at least a little harder.[96] If the defense managed to persuade the jury of

[91] Incommensurate: Lys. 9.15; Dem. 18.277; pest: Osborne, *Athens* 217; repeated provocations: [Dem.] 53.14–18; urged by others: [Dem.] 59.12. Cf. Cohen, *Law, Violence* 103–104, and Allen's remarks (*World of Prometheus* 162 ff.) on the sycophant's inappropriate "economy of spending" anger.

[92] Contrary: cf. Dem. 18.277, 23.190; serving the common good: Antiph. 6.9; Aeschin. 1.2; Dem. 22.1, 24.8, [59].12, 126 (a common motif).

[93] Discussed by Rubinstein (in *Cambridge Companion* 129–145) and Christ (*Litigious Athenian* 148–159). Cf. Cohen, *Law, Violence* 85: "Athenian judicial orations … should not be read as repositories of moral verities about enmity, vengeance and the like, but rather as a record of the ongoing discursive construction of those values through the interpretative and manipulative practices of forensic rhetoric" (cf. 105 ff.).

[94] Osborne, *Athens* 216; cf. Harvey, in *Nomos* 112 and n.33.

[95] Cf. Lys. 4.13: "they want no money, but eagerly seek to deprive one of his homeland"—of the speaker's enemies and adversaries.

[96] Unsurprisingly this is the charge leveled at prosecutors whose enmity is

this, the vindictive prosecutor risked not only the case he pled, but may have also faced a heavy fine, partial disenfranchisement[97] and subsequent liability to the procedures against sycophancy.[98]

According to Harris the existence of these punitive measures provides the crowning proof that the Athenian courts "were not designed to be just another arena for citizens to pursue private feuds or to harass their enemies with suits lacking any legal merit."[99] Though the second part of this assertion can hardly be contested, the first seems far less plausible. Indeed when faced with an entire sequence of penalties for frivolous litigation, a would-be vindictive prosecutor might have thought twice before taking his chances with a trumped-up lawsuit. It does not necessarily mean, however, that he would forego the pursuit of his private feud when an opportunity to harass his enemy on a better case presented itself.[100] This in fact the team Diodorus/Euctemon did twice:[101]

produced as a negative: Lys. 7.30, 38; 9.7, 10; 21.17; cf. Lyc. 1.5–6; Dem. 23.190 (both prosecution speeches); Dem. 18.123, 141, 143 (of a protest in the Assembly). An example of such double construction of this topos may have been the case Euctemon vs. Androtion (Dem. 22): the prosecution advances (proper) enmity as a respectable motive, whereas the defense, arguably, attempted to produce it as a negative (22.59).

[97] If the prosecution failed to secure one-fifth of the jury's votes; exempt from this were *eisangeliai* and perhaps *euthynai* and *dokimasiai* (but not *dokimasia rhētorōn*). Somewhere after 333 the fine of 1000 drachmas was introduced for failed or dropped *eisangeliai*; no form of partial *atimia*, however, is mentioned here, cf. Hansen, *Eisangelia* 29 ff.; MacDowell, *Law* 64.

[98] For the association of decisive failure in court and sycophancy see e.g. Dem. 25.83, Hyp. 3.34; cf. Harvey, in *Nomos* 106; Christ, *Litigious Athenian* 64. Numerous procedures were available here (testimony to Osborne's thesis on the flexibility of Athenian law: *Athens* 171–204): *graphē*, *probolē*, *eisangelia* (Isoc. 15.313–314; *Ath.Pol.* 43.5, 59.3), perhaps also *endeixis*, *apagōgē*, and *phasis*.

[99] Harris, *Democracy* 405, cf. 418.

[100] "Fortunate indeed was the man who could catch his enemy in a breach of the law": Bonner, *Lawyers* 62.

[101] Dem. 24.8: ἰδὼν δ' ἠδικηκότα κοινῇ πᾶσαν τὴν πόλιν … ἦλθον ἐπ'

> *Having noticed* (ἰδών) that he [Androtion] has committed a crime against the entire polis at large … I have moved against him with Euctemon, considering it a good opportunity simultaneously to help the polis and to take revenge (τιμωρίαν … λαβεῖν) for what I have suffered.

Others did not even content themselves with simply waiting for their foes' false step. As Epichares sincerely admits, he had done "extensive research" into Theocrines' activities until he "found" a good case to bring him to court—and to get his revenge.[102] All this is of course rhetoric. We do not know if indeed these two cases were as good as the speakers would have us believe. It does, however, show that in the public discourse of classical Athens vindictive and frivolous prosecution were quite distinct phenomena, overlapping only to a certain degree, which, in turn, proves that the penalties against the latter could only to a limited extent appear as set against the former.

Conclusion

We have no reason to believe that classical Athens was a society in which revenge by whatever means was an absolute moral imperative, nor even that, in terms of rhetoric, it was the magic wand dispelling the suspicions and anxieties—conceptualized as 'sycophancy'—surrounding the institution of volunteer prosecution. There is, however, sufficient evidence that properly constructed prosecutorial vindictiveness could be advanced as a respectable motive for undertaking public litigation and this also on behalf of the entire community. Recent attempts to do away with this phenomenon, by playing down its significance or by burying it beneath numerous 'exceptions', fail to persuade.

All this, however, need not be taken as an attempt to ques-

αὐτὸν μετ' Εὐκτήμονος, ἡγούμενος ἁρμόττοντ' εἰληφέναι καιρὸν τοῦ βοηθῆσαί θ' ἅμα τῇ πόλει καὶ τιμωρίαν ὑπὲρ ὧν ἐπεπόνθειν λαβεῖν.

[102] "Extensive research," τὰ πλεῖστα ἐξητακέναι, [Dem.] 58.19 (V. Bers's translation); "we found," ηὑρίσκομεν (58.5)—since he was aided in this and instigated by his father.

tion the validity of the rule of law model altogether. The problem lies in the attempt to map the legal system of classical Athens and its discourses on the notional grid of modern philosophy of law, where indeed revenge and the administration of justice are decidedly at odds with each other. Rule of law excludes revenge—or, if you will, feuding—on principle, and, according to some more traditional, evolutionary models, supersedes it as the society evolves. Faced with such an alternative on the one hand and with the contradictory evidence from the orators on the other, we are indeed bound to choose between the two mutually exclusive models of Athenian litigation: feuding or the rule of law.[103]

This fundamental, stark opposition, however, may have been wholly alien to the public discourse of classical Athens. Indeed in the orators revenge and rule of law are sometimes represented as antagonistic principles—with a positive emphasis on the latter, of course. More frequently, however, a very different picture presents itself, where, far from mutually exclusive, they are in fact seen as synergistic forces in the working of the legal system. Revenge, in other words, may have been sometimes constructed as opposed to law enforcement, but it was not so by definition. This is the very least one might expect of a legal discourse which did not even strictly distinguish revenge from punishment on the notional level.[104] Perhaps in reality these

[103] Harris, in *Symposion 2001* 133–139, disputes the validity of the notion of feud in relation to the Athenian legal system and practice (contra Cohen, *Law, Violence* 87–118). This however unduly plays down the perpetuation of some conflicts and does not take into account the way conflict is constructed and perceived by the orators themselves. Demosthenes, for example, explicitly links his quarrel with Meidias with the troubled history of his litigation against his guardians, in which Medias' brother, Thrasylochos, played a significant role (Dem. 21.77 ff.).

[104] See esp. L. Gernet, *Recherches sur le developpement de la pensée juridique et morale en Grèce ancienne* (Paris 1917) 97–178; cf. Allen, *World of Prometheus* 68–72; S. Saïd, "La tragédie de la vengeance," in R. Verdier et al. (eds.), *La Vengeance. Etudes d'ethnologie, d'histoire et de philosophie* IV (Paris 1981) 47–90; C. Milani, "Il lessico della vendetta e del perdono nel mondo classico," in M.

two principles may have been more frequently at odds with one another. However, Athenian law and its discourses offered ample room for accommodating *both*, which in turn is in itself an illustration of its "intense otherness" when compared with the modern practice and philosophy of law.[105]

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Sordi (ed.), *Amnistia, perdono e vendetta nel mondo antico* (Milan 1997) 3–18.

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