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LAWCOURT DRAMAS: THE POWER OF PERFORMANCE IN GREEK FORENSIC ORATORY *

EDITH HALL

In Aristophanes' *Wasps* the addicted juror Philocleon delivers a pseudo-forensic speech in defence of jury attendance. He lists the types of entertaining performances he can expect to witness in court (562–70):

I can listen to the defendants putting on every manner of voice in order to get acquitted... Some bewail their poverty and greatly exaggerate their plight... Others tell us stories or a funny Aesopic fable; others crack jokes to make me laugh and put me in a good mood. And if these means don't persuade me, they straightaway drag in their little children, girls and boys, by the hand, and they cower together and wail in chorus...

Yet more outlandish forensic presentations than these are subsequently envisaged by Philocleon: recitations from tragedy, *aulos*-recitals, and competitions in rhetorical entreaty by rival suitors for the hand of a rich heiress (579–86).

This is a comic, biased, and exaggerated account of the proceedings in the Athenian *dikastērion*. But Aristophanes' audience would not have found it amusing had it borne no relation to reality. It isolates three kinds of social performance — pathetic lamentation, humorous joke-telling, and verbal contest — which are reminiscent of other kinds of public performance in Athens: tragedy, comedy, and the rhetorical debate (*agōn*) common to both theatrical genres.

In classical Athens an isomorphism characterised dramatic festivals, athletics competitions, meetings of the assembly, and court cases.¹ They had all developed out of the tradition of the aristocratic competition, the *agōn*, but they all involved a small number of elite individuals competing in front of an audience, often a very large audience, of citizens: Demosthenes compares the assessment of an orator's skill with the judgements passed on playwrights, choruses, and athletics (18.318–19). The analogy between athletics and the law is occasionally reflected in the metaphors used by the speech-writers (e.g. wrestling and boxing, Aesch. 3.205–6), but the analogy between drama and litigation is closer. Dramatic contests shared with legal trials not only formal aspects — the performance before an audience, and the judgement by a democratically selected jury — but subject-matter as well. Crime, and the problem of what to do with the criminal, were the topics which had to be addressed by both the dramatist and the writer

*Several people have helped me to improve this paper during its development into a written text from its original oral 'performance' at the University of London Institute of Classical Studies in 1989. I am profoundly grateful to Christopher Carey, Paul Cartledge, James Davidson, Bob Sharples, and Stephen Todd.

¹ See R. Garner, *Law and Society in Classical Athens* (London and Sydney 1987) 3.

of forensic speeches. The main difference is that for the lawcourts two people (usually) wrote the script instead of one.

It is nothing new to discuss the influence of the legal practices of the Athenians on their drama: from some of the earliest extant tragedies there survive examples of set-piece trial scenes. The lost plays of Aeschylus' tetralogic *Danaids* included a trial at Argos; the *Oresteia* concludes with Orestes' acquittal at the court of the Areopagus. Scholars have long recognised the impact on drama made by the development under the democracy of legal language, concepts, and procedure, and by the advent of the teachers of rhetoric.² But the relationship between the dramatic and legal practices of the Athenians was dialectical: the development of drama had an impact on the direction taken by forensic oratory. This paper aims to demonstrate, by stressing the affinities between legal trials and dramatic productions, that the manner in which forensic speeches were *performed* was as important to their success as their intellectual content and literary merit. It assesses the legal speeches as the written records of competitive quasi-dramatic *performances* by individual speakers, before responsive audiences, in a particular social context.

Some ancient theorists were well aware that the spontaneous performance and delivery of all species of oratory played a bigger part in the effectiveness of the persuasion than the contents of the speeches themselves. Much of Gorgias' pupil Alcidas' treatise *On the Sophists*, for example, is devoted to arguing that the ability to extemporise makes for more effective persuasion in *all* social situations, including the *dikastērion*, than the ability to write an elegant oration (9):

For who does not know that to speak on the spot is a necessary thing for those who speak in the public assembly, for those who go to law, and for those who make private transactions? And often unexpectedly opportunities for actions fall in one's way, at which times those who are silent will seem to be contemptible, but we see those who speak being honoured by the others as if having intelligence that is godlike.

That this treatise has been extraordinarily overlooked is indicated by the fact that until very recently the only available English translation was in an obscure location and even obscurer diction.³ This is in turn proof that modern scholarship has failed to take the spontaneous and performative dimensions of classical Greek forensic rhetoric seriously.

This neglect of the importance of performance in the Greek courtroom may partly be Aristotle's responsibility. Ever since he relegated music and spectacle to the last place in his discussion of the constituents of tragedy (*Poet.* 6. 1450b 15–20), critics have underestimated the importance of the performative aspects of ancient drama, and the participatory role of the audience. It is often forgotten, for example, that a *chorēgos* and an actor won prizes in addition to the poet. A similar attitude has applied to forensic

² See A. D. Thomson, *Euripides and the Attic Orators: A Comparison* (London and New York 1898), L. Gernet, *Recherches sur la développement de la pensée juridique et morale en Grèce* (Paris 1917), G. Else, 'ΥΠΟΚΡΙΤΗΣ', *WS* 72 (1959) 75–107, L. Pearson, *Popular Ethics in Ancient Greece* (Stanford 1962) 90–135, J. Duchemin, *L'AGŌN dans la tragédie grecque* (2nd. ed., Paris 1968), K. Eden, 'The Influence of legal procedure on the development of tragic structure', (Diss., Stanford 1980), *Poetic and Legal Fiction in the Aristotelian Tradition* (Princeton 1986), 7–23, V. Bers, 'Tragedy and rhetoric', in I. Worthington (ed.), *Persuasion: Greek Rhetoric in Action* (London and New York 1994) 176–95.

³ LaRue van Hook, 'Alcidas versus Isocrates: the spoken versus the written word' *CW* 12 (1919) 89–94, but see now P. P. Matsen, transl. 'Alcidas, *Concerning those who write written speeches, or Concerning Sophists*', in P. P. Matsen, P. Rollinson and M. Sousa (eds.), *Readings from Classical Rhetoric* (Carbondale and Edwardsville 1990), 38–42.

oratory, partly because Aristotle's *Rhetoric* emphasises performative aspects, 'how to speak' (*hōs dei eipein*), far less than 'what to speak' (*ha dei legein*), i.e. content, arrangement, and style.⁴ Aristotle does not regard delivery as an elevated subject of inquiry; indeed, it is 'vulgar' (*phortikon*). He rather grudgingly concedes, however, that the study of delivery is indispensable, since 'the whole business of rhetoric is concerned with appearances'.⁵ For every ancient legal speech, however extensively it was edited, circulated, and studied subsequently to the trial,⁶ was originally designed to be performed orally. It was judged at the time of delivery not in terms of its 'literary' merit, but in terms of the effectiveness with which the speaker communicated with his audience, in this case consisting of jurors and bystanders (*periestēkotes*). Alcidas compares the relationship between written speeches and the experience of a performed oration to that between lifeless works of visual art and living bodies, while conceding that animate creatures (and therefore performed orations) are less beautiful than their polished 'copies' (*de Soph.* 27–28).

There are problems involved in using the published versions of the speeches. They may differ greatly both from those originally prepared and from those spontaneously delivered, inter-reactively with the audience, on the actual day of the trial.⁷ The speeches must often have been adapted in performance, and probably rewritten before circulation.⁸ Moreover, the editing procedure, in an attempt to give the impression that the litigant had achieved the ideal of speaking 'temperately' (*metriōs*), may often have sought to eliminate from the speeches precisely the more theatrical aspects of forensic verbal display. Aristotle says that poorly connected clauses and the frequent repetition of the same word, while 'rightly disapproved in written discourse' are of course used by rhetors in public debate (*Rhet.* 3.1413b). Yet there is some evidence internal to the speeches which can be used to reconstruct the nature of the actual performances. This evidence has been supplemented by sources such as drama and philosophy from the same historical period as the classical forensic speeches, but the anachronistic reading back of evidence on delivery from later antiquity has been generally avoided. The results have been organised under headings suggested by the metaphorical conceptualisation of the speaker's platform (*bēma*) as a stage (*skēnē*), the court as a theatre, and the whole procedure of the legal trial as a dramatic experience.

The Stage

Drama and trials shared a context: both were enacted in public spaces in the civic heart of Athens; legal speeches, like tragedies and comedies set in the city, refer to important civic and religious sites in the immediate proximity — the prison (Dem. 24.131), or the propylaea (Dem. 24.184). Modern actors stare into the darkness of an auditorium, but ancient actors, like ancient litigants, could see their audience in the daylight.

⁴ 3. 1403b 16; see R. P. Sonkowsky, 'An aspect of delivery in ancient rhetorical theory', *TAPA* 90 (1959) 256–74, at 258–59.

⁵ 3.1404a 1–8, see E. L. Hunt, 'Plato and Aristotle on Rhetoric and Rhetoricians', in R. F. Howes (ed.), *Historical Studies on Rhetoric and Rhetoricians* (Ithaca N.Y. 1961) 19–70, at 64–65.

⁶ Isoc. 4.11, see S. Usher, 'Lysias and his clients', *GRBS* 17 (1976) 31–40, at 37–38.

⁷ See F. Lämmler, *Das attische Prozessverfahren in seiner Wirkung auf die Gerichtsrede* (Paderborn 1938) 17–57; M. Lavency, *Aspects de la logographie judiciaire attique* (Louvain 1964) 183–94, K. J. Dover, *Lysias and the Corpus Lysianicum* (Berkeley and Los Angeles 1968) 168–70, S. Todd, 'The use and abuse of the Attic orators', *G&R* 37 (1990) 159–78.

⁸ See I. Worthington, 'Greek oratory, revision of speeches and the problem of historical reliability', *C&M* 42 (1991) 55–74.

Unfortunately we know little about the appearance of a classical Athenian court; if more evidence were available it might be that the parallels between the physical contexts in which plays and trials were performed would be even clearer. The fourth-century Palladion remains do indicate that railings (*druphaktoi*) were required to keep out the crowd.⁹ Jurors seem to have sat, as they did in the theatre, in rows at varying distances from the rostra; in one Demosthenic oration the speaker says he has decided not to write a family tree on a *pinax* because those sitting at a greater distance would be at a visual disadvantage (Dem. 43.18). The term *proedria* was used to designate sitting on the front bench, exactly as it was in theatre (Epicrates fr. 11 K-A).

Thought was put to the exploitation of the platform(s). If you were secretly in league with your opponent you would sit in silence on your platform while your supposed antagonist but secret colleague delivered his speech from the other one (Dem. 48.31), two litigants colluding in a dramatic illusion. An exciting strategy was to put one's opponent on the platform and attempt to embarrass him by interrogation (Lys. 12.24, see Ar. *Ach.* 687–88). Technically speaking, information elicited from an opponent in court was not even admissible as evidence, since he could not have an action for perjury brought against him.¹⁰ But such interrogations must have influenced juries, because the strategy receives serious attention in ancient handbooks on rhetoric (e.g. *Rhet. ad Alex.* 36.1444b 9–21), importantly implying that spontaneous verbal combat and repartee took precedence over formalities.

By the end of the trial the platform might be crowded. Political allies were often introduced in large numbers to vouch for their performer's good name. It was customary to arrange one's family, especially children, on the platform (see e.g. Dem. 21.99, Aesch. 2.152); although parodied by Aristophanes and condemned by Socrates (*Vesp.* 568–740, *Apol.* 34c), failure to produce family members might cast doubt on the unity of one's household.¹¹ Interestingly it is tragedy which best describes the demeanour suitable for children on the platform. When in Aeschylus' *Suppliants* the Danaids are about to supplicate Pelasgus, their father instructs them to look modest, piteous, and humble, and to speak words to elicit pity, neither harshly nor at length (191–203).

Stagecraft

Much of the pleasure to be gained from spectating, whether in the court or the theatre, is derived from suspense and surprise; a skilled orator might plan a case so as to exploit the 'dramatic' potential of the courtroom. Herodotus relates, for example, that when Miltiades was tried in the assembly in 489 BC he had been wounded (fatally, as it turned out); throughout the trial he lay pathetically silent on a stretcher in full view of the people, like a dying tragic hero on the stage,¹² while his friends spoke on his behalf. The silences of the principal actors were an effective technique in tragic drama.¹³

In Antiphon's speech *On the Choreutes* we hear that Philocrates had gone before a heliastic court which was to hear on the following day a case brought by the chorus-member, and counter-attacked him by charging him with murdering his brother; the

⁹ See Ar. *Vesp.* 386, Paus. 1.28.8, J. Travlos, *Pictorial Dictionary of Ancient Athens* (English translation, London 1971) 412–13.

¹⁰ See R. J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle* (Chicago 1938) vol. 2, 122.

¹¹ Lavency (n.7) 80.

¹² Hdt. 6.136, see R. A. Bauman, *Political Trials in Ancient Greece* (London and New York 1990) 18.

¹³ See O. Taplin, 'Aeschylean silences and silences in Aeschylus', *HSCP* 76 (1972) 57–97.

chorus-member immediately presented himself to the court to defend himself (6.21–22). This whole procedure was presumably spontaneous in so far as the case had not even been registered for trial, and was designed to prejudice the chorus-member's chances in the trial which *had* been arranged.

An even more 'dramatic' scene occurs in Isocrates' report of a previous trial (18.53–54). Callimachus was an enemy of Cratinus. So he and his brother-in-law had hidden a female slave, and prosecuted Cratinus in the court of the Palladion for killing her by crushing her head. Only after they had testified to her death, testimony corroborated on oath by no fewer than fourteen individuals, did Cratinus feel the theatrical moment was right to present her, alive, in court. The fourteen corroborators were presumably bribed: a character in Aristophanes' *Storks* said, 'If you prosecute one lawless (*adikos*) man, then twelve others who serve him for their supper swear against you in court' (*antimarturousi*, fr. 437 K-A).

Athenian drama refers several times to Helen's ruse of saving her life by revealing her breasts to Menelaus (e.g. Eur. *Andr.* 628, Ar. *Lys.* 155). Clearly modelled on this archetype is the story about Phryne, the beautiful Ephesian courtesan accused of impiety, defended by her lover Hyperides, and acquitted. The pseudo-Plutarchean *Lives of the Ten Orators* (849e) and Athenaeus (13.590e) both claim that he revealed her breasts to the jury while weeping piteously himself.¹⁴ A fragment of Posidippus, a third-century comic poet much closer to Hyperides' time, seems to confirm that something memorable went on at Phryne's trial (*Ephesian Woman* fr. 13 K-A), though in his version Phryne herself tearfully supplicated every jury member in turn. Whatever the truth of these pleasurable anecdotes, they do imply that such spectacular tactics were not beyond the imagination of the ancient court-goer.

From sex to violence: Demosthenes can envisage a scene in which he is attacked on the platform by Meidias' friend Blepaeus the banker (21.215–17); Aeschines, histrionic as ever, titillates his audience by unusually offering to let his slaves be tortured in court during his allotted time (although this may have not been a serious possibility): he caps this offer with the invitation to his fellow citizens to rise up and execute him on the spot if the slaves should not corroborate his testimony (2.126).

Even suicide during or immediately after the trial seems to have been within the realms of possibility. In one Demosthenic speech the jurors are begged to acquit the defendant, for the sake of his mother; if they do not, he will kill himself (57.70): conviction in this case would have meant being sold as a slave. Paches, according to Plutarch, did actually stab himself to death in 426 BC when facing the shame of a possible conviction (*Vit. Nic.* 61, *Vit. Arist.* 26.3).

The Audience

An important article by Bers¹⁵ assembles the testimony to the influence that the shouts and other noises made by jurors and bystanders might have on the outcome of a trial. In Plato it is said that these noises, collectively designated as 'din' (*thorubos*, *Legg.* 9.876b 1–6), arise in assemblies, theatres, military encampments and lawcourts (*Resp.* 6.492b 5–c 1). From this it can be inferred that the well-documented noises used by theatrical audiences were also customary in the *dikasteria*. These noises are characterised by the

¹⁴ An egregious example of 'extra-rational proof', cf. G. Kennedy, *The Art of Persuasion in Greece* (Princeton 1963) 253.

¹⁵ V. Bers, 'Dikastic *thorubos*', in P. Cartledge and D. Harvey (eds.), *Crux: Essays in Greek History Presented to G. E. M. de Ste. Croix* (London 1985) 1–15.

ensorious Athenian of Plato's *Laws* as whistling or hissing (*surigx*, see also Dem. 18.265, 21.226), the uncouth shouts of the mob (*amousai boai plēthous*), and handclapping (*krotoi*) to signify approval (*Legg.* 3.700c 1–4). Demosthenes testifies to an abusive sound denoted by the verb *klōzein* (21.226): it is defined in Harpocration as an inarticulate mouth noise used by audiences when they wanted to get an actor thrown off stage (s.v. *klōzete*). Such intimations of disapproval might be supplemented by heel-drumming (Pollux 4.122). Pollux recounts a day when an audience's hissing drove off one comic actor after another (4.68); Plutarch even claims that tragic actors needed the support of a claque in the theatre (*Quomodo adulator* 63a). Such noises are regarded by Plato as having been taken to such extremes that they have established over the poets a 'dictatorship of the spectatorship' (*theatrokratia*, *Legg.* 3.701a 3).

Bers argues that although there was no affirmative entitlement in Athenian law for a juror to shout at a litigant, in practice trials were a highly noisy and participatory business, far more than is indicated by the edited speeches which have survived. Aristotle's *Rhetoric* strangely neglects *thorubos*, although there is a brief account of the demagogue Androcles dealing with it in the assembly (2.1400a 9–14). To manage *thorubos* a speaker needed to be able to think on his feet and adapt his argument around unforeseen developments; this was perceived by Alcidas, the brilliant advocate of the art of extemporisation (*autoschediasmos*).¹⁶

In the dog's trial in *Wasps*, the prosecuting dog is interrupted by the juror Philocleon (912). Noisy juror participation is suggested by references within the speeches. Speakers incite the jurors to interrupt their opponents. Jurors make their wishes known and speakers comply (Dem. 23.18–19). Jurors become angry (Dem. 58.31); they summon individuals to the platform (Hyp. 1.20). A fragment of Aristophanes' *Farmers* says that jurors interrupt deliverers of poor defence speeches with the criticism that they are 'singing' or 'chanting' their speeches (*aidein*, Ar. fr. 101 K-A); comedy attests to the use of murmuring to impede a speaker (*hupokrouein*, Alexis fr. 33 K-A). There were interchanges between speakers and jurors reminiscent of audience participation in a children's pantomime. Is Timarchus a lover or a prostitute, Aeschines asks the jury: his subsequent remarks imply that they chorused 'a prostitute' in response (1.159). Is Aeschines a 'friend' or merely a 'hireling' of Alexander, asks Demosthenes: a 'hireling' they cry in reply (Dem. 18.52). Their unscripted response becomes evidence in itself: 'You hear what they say' (*akoueis ha legousin*), remarks Demosthenes.

Bers also points out that *thorubos* could have been deafening (as it must have been at drama competitions) when multiples of 500 jurors were present (Andoc. 1.17, Lys. 13.35); the shouting of spectators in such cases must also have been difficult to distinguish from the shouting of the jurors themselves. The *Rhetorica ad Alexandrum* differentiates the management of interruptions by jurors from that of the *thorubos* of the mass of the audience (*to plēthos*, 18. 1433a 14–20). A homicide defendant was permitted to withdraw into exile after his first defence speech (Ant. 5.13, Dem. 23.69); his decision must have rested on his assessment of the degree of sympathy he perceived in the jurors, and this he would have had to deduce from their *thorubos* and general demeanour; scowling jurors are mentioned at *Wasps* 623–7. The orchestration of shouting and juror reaction was therefore an essential aspect of rhetorical strategy, and in practice trials were spontaneous affairs in which the opinion of the jury could unpredictably have been swung this way or that depending almost entirely on the atmosphere created in the heat of the moment.

¹⁶ *de Sophistis* 3, 22, see Kennedy (n. 14) 172–3).

The Protagonists

The social group from which the speech-writers and the politically active men who jostled for influence in the assembly and the courts came was the same one, with a high public profile, which produced poets, actors, and dancers. There are frequent mentions of the men in such professions who are friends of litigants or speech-writers, spend time at their houses, drink with them and share their women. Timarchus sold his house to Nausicrates the comic poet, and it was later bought by Cleaenetus the chorus-master (Aesch. 1.98). Satyrus the comic actor was on the notorious embassy to Philip (Aesch. 2.156–57); Lysias the sophist had allegedly been the lover of Metanaera, one of Neaera's colleagues, and in Corinth two of Neaera's supposed clients were the poet Xenocleides and Hipparchus the actor ([Dem.] 59.21,26). The men who battled in the lawcourts, and those who wrote speeches for them, also lived and breathed the theatre: Antiphon is said to have written tragedies himself ([Plut.] *Lives of the Ten Orators* 833c); Isocrates's followers included tragedians such as Aphaeus and Theodectes.¹⁷

The importance of poetry in the training of the ancient rhetor is clear from the quotations appearing in the handbooks, not only for illustrating the importance of quoting poetic maxims, but for illustrating stylistic devices (see e.g. Euripides quoted at *Rhet. ad Alex.* 18.1433b 11–14). Aristotle's *Rhetoric* abounds in illustrations drawn from Homer and the tragic poets, assuming of the apprentice speech-writers who formed its readership a wide and intimate knowledge of poetry.¹⁸ Aristotle approves of the deployment of poetry in the courtroom, and supplies anecdotes concerning poems as a form of proof (*Rhet.* 1.1375b 25–1376a 2); poetry was apparently used by both Socrates and his opponents at the philosopher's trial.¹⁹ Direct quotations from poetry in the extant corpus of speeches²⁰ are therefore surprisingly infrequent.

It is Aeschines, a former tragic actor, whose extant works most frequently include quotations from poetry. He does not hesitate to recite — or make the clerk recite²¹ — long passages of poetry, one quotation from Homer running up to 18 lines (1.149 = *Iliad* 23.77–95). Nothing, however, can outstrip the extravagance of Lycurgus' 55-line performance of Praxitheia's great patriotic speech from Euripides' *Erechtheus* (*In Leocr.* 100). It is likely that Lycurgus used the poets in his other speeches, for Hermogenes says that 'he digresses many times into myths and stories and poems'.²² Jurors enjoyed such poetic recitations. Philocleon says that if the famous tragic actor Oeagrus should ever be defending himself in court, the jurors will not allow him to be acquitted until they have heard him deliver the finest speech from the tragedy *Niobe* (*Vesp.* 579–80): plays with this title are attributed to both Aeschylus and Sophocles.

Aristotle's famous tripartite division of rhetoric defines deliberative rhetoric as looking to the future and urging expedience, epideictic rhetoric as looking to the present and

¹⁷ See Thomson (n.2) 9–10 n. 2.

¹⁸ See H. North, 'The use of poetry in the training of the ancient orator', *Traditio* 8 (1952) 1–33, at 6–8; R. R. Bolgar, 'The training of elites in Greek education', in R. Wilkinson (ed.), *Governing Elites: Studies in Training and Selection* (New York 1969) 23–49, at 37–38.

¹⁹ See Xen. *Mem.* 1.2.56–8, A. P. Dorjahn, 'Poetry in Athenian courts' *CP* 32 (1927) 85–93, at 59.

²⁰ Assembled by S. Perlman, 'Quotation from poetry in Attic orators of the fourth century BC', *AJPh* 85 (1964) 155–72, at 162–165.

²¹ See Dorjahn (n.19) 92.

²² *Peri ideōn* 2.389, see Dorjahn (n.19) 88.

urging honour, but forensic rhetoric as looking to the past and urging justice.²³ This definition supports the connection between tragedy and forensic rhetoric, for tragic drama likewise deals with the past, and its questions are questions of justice. But in practice the distinction between the three kinds of rhetoric is frequently blurred (as the writer of the *Rhetorica ad Alexandrum* observed, 5.1427b 33–4), for the relationship between law and politics was much closer in classical Athens than it is today.

Public performances against rivals, in the setting of the lawcourts, were used by Athenians to regulate conflicts, control social relations;²⁴ and to promote their own and their families' interests;²⁵ the *dikasterion* 'was not only a juridical and theatrical space, but also and essentially a politically defined arena',²⁶ an arena for the constant combative social performances engaged in by prominent men.²⁷ They delivered speeches which not only addressed themselves to the case, but also contained material Aristotle would have categorised as 'sumbouletic' or 'epideictic'. The speaker may deliberate about the best course of action for the city; he will calumniate his opponent while cataloguing his own noble ancestry and civic liturgies — a procedure analogous less to a modern trial than to the televised debates between the candidates for the American presidency before an election.

The candidate who wins the election is usually the one whose appearance has been the most attractive, whose spontaneous verbal performance has been the most impressive, and who has managed to tap into the public's collective consciousness by a judicious blend of laughter, tears, and soupy patriotism. Approximately the same recipe would have been prescribed by a teacher of rhetoric in ancient Athens. A trial was a one-off business; although its outcome was affected by the social status, reputation, previous public performances, and precursory propaganda campaigns of the opponents,²⁸ the spontaneous performances on the actual day were crucial.

For ancient jurors liked to be entertained. One of the reasons Philocleon gives for his love of the lawcourts is the sheer pleasure of the experience (Ar. *Vesp.* 550–51). Legal speeches often express the desirability of brevity (Lys. 23.1), and a fear of wearying or boring the jurors (*enochlein*, Lys. 24.21, *diatribein*, Isae. 7.43). Hyperides was commended for avoiding tedium in his speeches without resorting to exaggeratedly histrionic tactics ([Plut.], *Lives of the Ten Orators* 850a–b); Aeschines says that Leodamas was a more pleasurable speaker (*hēdiōn*) to him than Demosthenes (3.139), although he would say that, wouldn't he?

Delivery (*hupokrisis*)

When asked what were the first, second, and third most important things in oratory Demosthenes is supposed to have said, 'delivery, delivery, delivery' ([Plut.] *Lives of the Ten Orators* 845a). This anecdote, though almost certainly fictional, underlines the

²³ *Rhet.* 1.1357a 36–b 29, see C. S. Baldwin, *Ancient Rhetoric and Poetic* (New York 1924) 14–15.

²⁴ See R. Osborne, 'Law and Action in Classical Athens' *JHS* 105 (1985) 40–58, at 52.

²⁵ Cf. S. Wilcox, 'Isocrates' fellow-rhetoricians', *AJPh* 66 (1945) 171–86, at 175.

²⁶ See P. Cartledge, P. Millett, and S. Todd (eds.), *NOMOS: Essays on Athenian Law, Politics and Society* (Cambridge 1990) 42

²⁷ See S. Wilcox, 'The scope of early rhetorical instruction', *HSCP* 53 (1942) 121–55, at 136; S. Perlman, 'The politicians in the Athenian democracy of the fourth century BC', *Athenaeum* n.s. 41 (1963) 327–55, at 342–43.

²⁸ Cf. A. P. Dorjahn, 'Anticipation of arguments in Athenian courts', *TAPA* 66 (1935) 274–95, at 284–93.

important truth that a well-written speech was not in itself enough to impress a jury. Thrasymachus gave advice on delivery in his treatise on arousing pity (Ar. *Rhet.* 3.1404a): Theophrastus, who regarded it as the ‘most important aspect of persuasion’ (*megiston... pros to peisai tēn hupokrisin*, fr. 712 Fortenbaugh), devoted an entire work to it (Diog. Laert. *Vitae* 5.48). The word of course also denoted the art of the actor, the *hupokritēs*.²⁹ Aristotle recognises a similarity between dramatic and rhetorical delivery (*Rhet.* 3.1403b 24–30), and vocal training by the time of the Hellenistic schools certainly consisted chiefly in the declamation of poetry.³⁰ The anecdote in which Demosthenes is trained by the actor Satyrus in the delivery of speeches by Sophocles and Euripides may, again, not be literally true (Plut. *Vit. Dem.* 7; [Plut.] *Lives of the Ten Orators* 844–45), but it expresses a truth about the way in which ancient speakers learned both delivery and mnemonic techniques; the latter, a speciality of the sophist Hippias (Plato, *Hipp. Min.* 368d), were already well developed by the end of the fifth century BC.³¹

In Aristophanes’ *Knights* the Paphlagonian is pouring contempt on the sausage-seller’s pride in his own forensic oratory. He may win some trifling case against a resident foreigner, but only by refraining from alcohol and staying up at night to repeat the speech over and over again, reciting it to himself in the street, and wearying his friends by rehearsing his performance in front of them (347–49). For although litigants were not *required* to deliver their speeches off by heart,³² which might have been impossible for the inexperienced or incompetent, successful performance at a trial was undoubtedly facilitated by the ability to deliver the speech, like an actor, from memory. Memorisation was regarded as difficult (Alcidamas *de Soph.* 18); anecdotes about ‘drying up’, like Labes, the jaw-locked canine defendant in Aristophanes’ *Wasps* (945), can be used to humiliate an opponent (Aesch. 2.34–35). Yet it was important to give an *impression* of spontaneity; many speeches contain phrases such as ‘really, I can’t contain myself’ (Din. 1.15), or ‘I nearly forgot to mention this’ (Dem. 21.110), the latter in Demosthenes’ *Against Meidias*, which was probably never even delivered.³³

Speech-writers took account even of their clients’ skill in declamation. Hiatus, for example, the use of a word ending with a vowel followed by another word beginning with a vowel, requires a particular physical effort from the speaker, but lends an explosive emphasis to the second word. Demosthenes uses it with dazzling effect at the end of important cola or to punctuate a string of direct questions. When writing for less competent speakers, however, he uses far less hiatus.³⁴ Long sentences were also a challenge, requiring great control of the vocal chords and lungs unless broken down into distinct cola and parentheses; Hermogenes distinguishes between sentences which can be broken down into short cola and the type of period with a single colon (*monokōlos periodos*) which was so arranged that its meaning required a single movement through from beginning to end (*peri Heuresēōs* 4.3). Virtuoso passages, anger, and climaxes attract long *monokola* (Dem. 30.30, 35–36), and are frequently followed by the reading of evidence to allow the speaker a rest. As Demosthenes matured he made much greater demands in the speeches written for his own delivery, but in the first speech against

²⁹ See P. Ghiron-Bistagne, *Recherches sur les acteurs dans la Grèce antique* (Paris 1976) 115–19.

³⁰ Cf. A. Krumbacher, ‘The Voice Training of Orators in Antiquity up to the Time of Quintilian’ (English translation, Diss. Cornell 1924).

³¹ See North (above, n.18) 11 and n. 54; F. Yates, *The Art of Memory* (London 1966) 29; H. Blum, *Die antike Mnemotechnik* (New York 1969 = *Spudasmata* 15) 40–55.

³² See Usher (n.6), 36.

³³ See D. M. MacDowell, ed. *Demosthenes, Against Meidias* (Oxford 1990) 27.

³⁴ See L. Pearson, ‘Hiatus and its purposes in Attic oratory’ *AJPh* 96 (1975) 138–59.

Apobus, written for a self-confessedly inexperienced client (27.2), the sentences are short and the cola natural and manageable.³⁵

Despite Aristotle's assertion that the volume and pitch of the voice needed to be modulated according to the emotional response it was meant to elicit,³⁶ in practice a loud voice always seems to have been an advantage, just as actors were usually praised for the size of their voices, their *megalophōnia*;³⁷ an opponent may be forced to suggest that a loud voice implies a violent and unscrupulous nature, or to deride its sound as 'shrieking' or 'roaring' (*kraugē*, Dem. 40.53, Isae. 6.59, Hyp. 5 col. 12). The elderly politician Thucydides notoriously 'dried up' when required to defend himself in court against the vigorous verbal onslaughts of the much younger Cephisodemus (Ar. *Vesp.* 946–48); the chorus of *Acharnians* remembers sadly that when Thucydides was younger he could easily have 'shouted down with his roaring' three thousand noisy archers (*kateboēse... kekragōs*, 711).

The importance attached to vocal training is best exemplified by the ex-actor Aeschines. He had a beautiful speaking voice, and pointed out to the jury that Demosthenes, in contrast, sounded shrill, unpleasant, and strained (*oxeia kai anosios phōnē*, 2.157, *tonos tēs phōnēs*, 3.21). Demosthenes came up with several lines of counter-attack which reveal the extent to which he was threatened by his opponent's fine delivery. He claims that Aeschines was never a good actor at all, but used to be driven from the stage by theatrical *thorubos* (19.337). He tries to make Aeschines' delivery seem absurd, by characterising it as a loud noise developed in Aeschines' youth when he assisted his mother in initiation rites by adopting the voice of female incantation (*ololuzein*, 18.259). Demosthenes accuses Aeschines of having gone to law simply in order to indulge in 'verbal exhibitionism' and 'speechifying' (*logōn epideixis, phōnaskia*, 18.280). He reminds the jury that Aeschines has not been appointed to deliver a funeral oration, *despite his lovely voice*, because it was thought that such a solemn speech should not be delivered in the feigning, tearful voice of an actor (*mēde tēi phōnēi dakruein hupokrinomenon*, 18.285–87). He constantly uses sarcastic references to Aeschines' vocal gifts (e.g. 19.199).

A passage in Aeschines' *Against Ctesiphon* claims that Demosthenes will soon compare Aeschines with the sirens, whose lovely voices brought men to destruction, because the smooth flow of his words (*eurhoia*) and natural ability have always ruined those who listened to him (3.228). No such brilliant mythical analogy actually appears in Demosthenes' extant speeches; either he edited it out for publication, or omitted it spontaneously after Aeschines anticipated it, or Aeschines invented the whole thing.

There was a prejudice against those who spoke with a barbarian or non-Attic accent (a prejudice apparent sometimes in tragedy: it is feared, for example, by Aeschylus's barbarising Egyptians at *Supplices* 972–74): this is expressed especially in cases where the defendant has been accused of not being a full-blooded Athenian citizen. Eubulides used against Euxitheus the claim that his father had a non-Attic accent; Euxitheus is given a slightly incredible story about his father being sold into slavery and sent abroad, where he started to speak in an alien way (*xenizein*, Dem. 57.18). In Apollodorus' prosecution of Phormio the defendant needed to have an advocate perform the whole defence, because

³⁵ See L. Pearson, 'The virtuoso passages in Demosthenes' speeches', *The Phoenix* 29 (1975) 214–30, at 215–18.

³⁶ *Rhet.* 3.1403b 27–32, see W. W. Fortenbaugh, 'Aristotle's Platonic attitude towards delivery', *Philosophy and Rhetoric* 19 (1986) 242–54.

³⁷ See A. E. Haigh, *The Attic Theatre* (Oxford 1889) 246–47.

he had originally been a slave and had never learned Greek well enough to speak before the Athenians. He is accused of 'solecising' (Dem. 36.1, see 45.30, 81).

A brisk pace seems to have been desirable. In Eupolis' *Demes*, part of the brilliance of Pericles' delivery is attributed to the speed with which he spoke: he is likened to a sprinter who leaves his competitors standing at the starting-line (Eupolis fr. 102 K-A). The physical strain of speaking without amplification must not be underestimated. An opponent is said to have 'over-exerted himself' (*huperdiateinomenon*, Dem. 25.1), and Lysias, in a speech he delivered himself, at one point says that he is going to hand over to his witnesses because he is in need of a rest (12.61).

The exertion was not only verbal. There are disappointingly few references to gesture in the speeches, however, and they are usually derogatory.³⁸ This is because, in excess, gesture was disdained. Theophrastus was said to have 'indulged in' gestures (Athen. *Deipn.* 1.21a-b). It was thought that in the days of Themistocles and Pericles it had been the custom to speak with the arm inside the cloak, whereas in the fourth century everyone's arm protruded (Aesch. 1.25). But removing the cloak and excessive physical movement were certainly disapproved of, if Aeschines' caricature of Timarchus in the assembly is anything to go by: he is said to have cast off his cloak and jumped around half-naked like a gymnast, his body so foul with drunkenness that right-thinking men covered their eyes (Aesch. 1.26).

Demosthenes seems to have used gestures effectively, for Aeschines needed to make fun of them; his opponent, he complains, had 'wheeled round in a circle on the platform' for emphasis (3.167). Demosthenes in turn complains that Aeschines had been mimicking his diction and gestures (*rhēmata kai schēmata mimoumenos*), as if the fate of Hellas rested on a hand movement (18.232).

Characterisation

'It is the demeanour (*tropos*) of the speaker which persuades, not his speech (*logos*)', said a character in Menander's *Hymnis* (fr. 407 Körte). A large part of successful persuasion came down to characterisation. The outcome of a case must often have depended not on discovery of the factual truth or falsity of the two versions of events rendered, but on their competitive plausibility; this in turn was dependant on the credibility of those rendering them. Winning a case required the adoption of a believable character. Every litigant and every corroborative speaker needed to convince the jury that his character (*ēthos*) was authentic. The ancient speech-writer no less than the modern advocate was like a dramatic director who had to inculcate into his troupe of actors the version of events which he wished to present to the public, and train them in their roles.³⁹ The case might be lost if they forgot their 'lines', or failed to persuade the jury of the authenticity of the dramatic characters they had assumed.

The handbooks describe techniques whereby speech-writers could construct for their clients a plausible personality, *ēthos*, through their language: Aristotle states that the

³⁸ The Romans developed the use of gesture into a fine science; on the discussions in Cicero and Quintilian see F. Graf, 'Gestures and conventions: the gestures of Roman actors and orators', in J. Bremmer and H. Roodenburg (eds.), *A Cultural History of Gesture*, (Oxford and Cambridge 1991) 36–58.

³⁹ The Treasury Counsel at the Old Bailey once concluded his opening thus: 'I have set the stage for you, Members of the Jury. The scenery is in place. Let me ring up the curtain and the play begin.' The effect of the theatrical metaphors was demolished by the retort of the Defending Counsel: 'And have your actors learned their lines?' Du Cann, *The Art of the Advocate* (revised ed., Harmondsworth 1980) 78.

character must be credible, inspire confidence in the jury, and be appropriate to the individual's age, gender, and ethnicity (*Rhet.* 1.1356a 1–13, 3.1408a 25–31). This is almost identical to his prescription that tragic characterisation must conform with gender and status in the *Poetics* (1454a 16–25): it would be implausible, for example, for a female to be characterised as courageous or intelligent! The critics regarded Lysias as the supreme exponent of character construction (*ēthopoiia*) in oratory,⁴⁰ and indeed his high-minded Euphiletus, his gallant Mantitheus, and his humorous but humble invalid in 1, 16, and 24 are powerfully individualised through their language and attitudes.

Studies have been made of forensic *ēthopoiia*.⁴¹ But it is important to stress that this paper has nothing to say about the truth or falsity of any of the 'facts' or personalities in the ancient legal speeches. Although a skilled speech-writer like Lysias would presumably develop his characterisation of a particular litigant in a manner designed to emphasise the client's 'real' personality if it were attractive,⁴² this discussion assumes that *all* the figures presented to the Athenian courts were 'fictive' characters invented by the speech-writers. It treats the speeches as one side of a performed dramatic dialogue where the words of another speech-writer for the presentation of the opponent's case are usually lost to us forever.

The Cast (*tou dramatos prosōpa*)

When a poet redesigned a myth for the tragic contests he was at liberty, besides the protagonists, to people his cast very much as he liked. In Euripides' *Orestes*, for example, the poet chose to have a messenger speech delivered not by Helen's nurse or Orestes' tutor but by a flamboyant Phrygian eunuch. Analogously, a speech-writer could, within certain limits defined by the nature of the evidence required to prove his case, choose whom to bring in to participate; part of the fun of being a spectator at a trial must have been waiting to see who was to be introduced into the 'cast'. Demosthenes' speeches demonstrate creative manipulation of 'casts'; he sometimes asks for a particular individual to stand up in court for identification, creating that exciting split-second when everyone looks all round the building to see which one of the audience is implicated in the trial (e.g. 21.95, see also Hyperides fr. 55). Much work remains to be done in this area,⁴³ though the usual function of the 404 witnesses produced in the extant orations was to corroborate what the speaker had said so far.⁴⁴ Space only allows a brief mention of a few of the more 'theatrical' forensic cast members — not all official 'witnesses'.

In his speech against Neaera, Apollodorus turns his venom against her daughter Phano, who had married the *archōn basileus* and undergone the sacred marriage with him at the Anthesteria. Apollodorus has the imagination to bring into the drama the herald who had

⁴⁰ Dio. Hal. *de Lysia* 8–9, see W. Devries, *Ethopoiia: A Rhetorical Study of the Types of Character in the Orations of Lysias* (Baltimore 1892), S. Usher, 'Individual characterisation in Lysias', *Eranos* 63 (1965) 99–119.

⁴¹ See W. Süß, *Ethos: Studien sur älteren griechischen Rhetorik* (Leipzig 1910), W. Sattler, 'Concepts of ethos in ancient rhetoric', *Speech Monographs* 14 (1957) 55–68, M. P. O. Morford, 'Ethopoiia and character-assassination in the *Conon* of Demosthenes', *Mnemosyne* 19 (1966) 241–48, D. A. Russell, 'Ethos in oratory and rhetoric', in C. B. R. Pelling (ed.), *Characterization and Individuality in Greek Literature* (Oxford 1990) 197–212, at 203–212.

⁴² see R. J. Bonner, 'Wit and humour in Athenian courts', *CP* 17 (1922) 97–103, at 101.

⁴³ See S. C. Humphreys, 'Law as discourse', and 'Social relations on stage: witnesses in classical Athens', in S. C. Humphreys (ed.), *The Discourse of Law (= History and Anthropology 1.2)* (London 1985) 241–64; 313–69.

⁴⁴ See S. Todd, 'The purpose of evidence in Athenian courts', in Cartledge, Millett and Todd (n.26) 19–39, at 23.

waited upon Phano when she administered the oath of chastity to the venerable priestesses. The herald and the oath are absolutely irrelevant to the question of Neaera's ethnicity and citizenship. But introducing the herald into the cast, and making him read out an oath which says 'I live a holy life and am pure and unstained by all else that pollutes and by intercourse with men', have the effect of underscoring Neaera's own alleged sexual profligacy, which has occupied so much of the speech ([Dem.] 59.78).

Dinarchus understands the opportunities for evocation of pathos provided by the small child, and when trying to arouse pity for Didymus brings his little child into the court, calling him by the emotive diminutive *paidion* (fr. 21). A speech attributed to Demosthenes bringing an indictment against Aristogeiton catalogues the failings of this notorious orator, who has already spent time in gaol for the debts he had inherited from his father. To crown this exercise in malicious character assassination the speaker claims that while in prison Aristogeiton had bitten off the nose of another inmate during a quarrel, and crowns the allegation by actually producing a Noseless Convict in court (25.61–62).

Slaves could not give evidence in court. But they could be used as mute exhibits, like the silent 'extras' and servile attendants of tragedy. Cratinus produced the very slave woman he was alleged to have killed (Isoc. 18.53–54), and in Demosthenes 37.46 an old slave named Antigenes is exhibited to show that he was physically incapable of committing an assault on Pantaenetus — a 'visual' refutation of the opponent's argument.

The 'Masks'

The proof for which the feeble old Antigenes was produced relied on his appearance alone; one of Aristotle's six elements of tragedy is *opsis*, the visual dimension. The litigant's thespian ability was different from the actor's, for in the absence of a mask of Dionysus he had to use his facial expressions to convey the personality and arouse the emotions (*pathē*) his case required. The eyes were carefully used. A fragment of Theophrastus' *On Delivery* underlines the importance of moving the eyes and altering their expression; a speaker whose gaze remains fixed on a single point is as ineffective as 'an actor with his back turned' (fr. 713 Fortenbaugh). Speeches suggest the importance of eye contact with the jurors: Andocides tells his witnesses to look straight at them (1.18, see also Aesch. 1.121, 63; Dem. 18.283).

Anyone who has been to court understands the power of physical appearance. Treatises from later antiquity stress that the rhetor should cultivate a manly and dignified image.⁴⁵ The classical speeches imply that for men good looks were an asset. Hyperides comments on the poor impression made by excessive thinness (2 fr. 21); Alcibiades stresses that he has won contests in physique (*euandria*, Andoc. 4.42), which seem to have been held at the Panathenaea (Anaxilas fr. 8 K-A). An unattractive appearance may be used as evidence of bad character (Andoc. 1.100), and sometimes a litigant needs to ask the jury to *disregard* someone's good looks, because they mask an evil interior: the accuser of Theomnestus says that the taller and more youthfully handsome his opponents are (*neaniai*), the more the jury should suspect them (Lys. 10.29).

Beauty in women was more easily turned to their disadvantage, for myth had long authorised its equation with destructive power in the stories of Helen and Pandora. Neaera was in court when Apollodorus brought his case against her, for there are deictics

⁴⁵ Cf. M. Gleason, 'The semiotics of gender: physiognomy and self-fashioning in the second century C.E.', in D. M. Halperin, J. J. Winkler and F. I. Zeitlin (eds.), *Before Sexuality: The Construction of Erotic Experience in the Ancient Greek World* (Princeton 1990) 398–415.

throughout referring to her. ‘This woman here’, he says repeatedly, to keep the jurors’ attention fixed on her ([Dem.] 59.44, 50, 64, 115). He also stresses her beauty. Near the end of the speech he asks the jurors to take a good look at her appearance (*opsis*) before passing judgement (115).

The Costumes

Clothing is a vital aspect of visual persuasion. Modern lawyers advise prostitutes to dress up like provincial Sunday-school teachers; vagrants required as witnesses are lent sober suits.⁴⁶ When the baby Hermes makes his defence speech before Zeus in the *Homeric Hymn to Hermes*, he appeals to his visually obvious lack of strength, saying that he was born but yesterday, and ‘bears no resemblance to a cattle-rustler, a strong man’ (377); while he made his speech he kept shooting sidelong glances and deliberately ‘kept his swaddling bands on his arm, and did not cast them away’ (388). Clothing is thus implicitly used as part of Hermes’ argument from probability. Likewise, the actors in the ancient legal dramas had to wear suitable costumes for the role they were assuming. Sober clothing commanded respect: in a speech against Conon the plaintiff Ariston tries to undermine the good impression made by sombre apparel. He says that his opponent is supported by three grey-haired men, whom he points out sitting in court. By day they put on sour looks and pretend to play the Spartan (i.e. the abstemious and moral type),⁴⁷ wearing short Laconian cloaks (cf. Plato Comicus fr. 132 K-A) and single-soled shoes. Yet beneath this deceptive exterior they ‘leave no form of wickedness or indecency untried’ (Dem. 54.34).

Litigants should not look too shabby, unless, like Cephisodotus (Isae. 5.11), or Lysias’ invalid (24), poverty was an essential part of their case. The invalid seems to have made a special sartorial effort, because he carefully mentions that he has to use two sticks and explicitly asks the jury to believe their own eyes rather than the words of his opponent (24.12, 14). But an ostentatiously modish appearance risked arousing the jury’s prejudices. Lysias 16 was written for Mantitheus, a young man of the knight census-class. He asks the jury not to take exception to him because he favours the long hair fashionable among his social peer group. Don’t judge me upon my *opsis*, he asks, but upon my deeds (*erga*, 6.18–19).

Clothing could suggest ways in which to insult an opponent: Demosthenes 19.314 portrays Aeschines striding around the *agora* puffing out his cheeks with his cloak trailing around his ankles. The ethical significance is not clear, although *epipurontes*, ‘trailing one’s robes’, is sometimes a metaphor for slipshod language (e.g. Dem. 20.131). Demosthenes, on the other hand, is alleged by Aeschines to wear such effeminate mantles and soft shirts that if they were handed round the jury, they would be unable to tell whether they were male or female clothing (1.131).

Costuming in cases involving violence might extend to the display of scars. A litigant needed to ensure that scars from alleged acts of violence were conspicuous, at least when he first went to lodge his complaint (Dem. 47.41); it helped to be seen being driven around in a litter as a result of an alleged wound (Lys. 4.9). There are accusations that people actually wounded themselves: Aeschines says that Demosthenes has inflicted a

⁴⁶ Lindi St Claire, a prominent brothel-keeper and campaigner for the decriminalisation of prostitution, went to the High Court on a tax evasion charge in 1987 wearing a suit and pillbox hat. She lost the case. In 1990 she took it to the Court of Appeal, announcing that she would be wearing leather and whips. ‘This time,’ she said, ‘I won’t pretend to be what I’m not’ (*The Independent*, 15th May 1990, p.1).

⁴⁷ See L. B. Carter, *The Quiet Athenian* (Oxford 1986) 72.

thousand gashes on his own head, which is not a head 'but an investment' (3.212). But if a plaintiff's wounds had healed up by the time of the trial (or, indeed, if he had never received any in the first place), medical experts could always be produced in court to testify (Dem. 40.33, 54.12, 36).

Deportment

Gait was construed ethically by the Greeks: Menelaus' delicate gait is remarked upon in Euripides' *Orestes*, where the Spartan has become orientalised and tyrannical;⁴⁸ in Aristotle's *Physiognomics* the gait of a man with a short, quick step is diagnosed as indicating that his was the type of character who starts well but has no staying power (6.813a).⁴⁹ In a lost comedy by Phrynichus the politician Nicias was ridiculed for the timidity of his gait (*hupotageis ebadizon*, fr. 62 K-A). Servility of character was thought to be indicated by 'unco-ordinated' walking (*badizein arrhuthmōs*, Alexis fr. 265 K-A). How a person approached the platform to speak could be crucial in determining the jury's response to his words. 'Leap up' (*anapēdan*) is used derisively (Aesch. 1.71, 3.139), as it was in reference to leaping up in a disorderly manner (*akosmōs*) in the assembly (Ar. *Eccl.* 428–9 and Cratinus fr. 378 K-A). The platform should be approached 'soberly' (*sōphronōs*, Aesch. 3.2). In his speech against Timarchus, Aeschines predicts that a general will appear in support of the defence, and caricatures him proleptically as mounting the rostrum with a self-conscious air and head held high, as if to proclaim that he is a graduate of the wrestling-school and a philosopher (1.132). Particularly intriguing is the ethical significance of Nicoboulos's gait; jurors were asked to suspect him on the ground that he was 'a fast-walking loud-talking cane-carrying' moneylender (*tachēōs badizei, kai mega phthegetai, kai baktrian phorei*, 37.52). The ethical significance of the fast walking may perhaps be illuminated by comparison with the modern Greek *tachypodarakias*, which signifies something like the English 'fancy footworker', a shifty and untrustworthy 'operator'.

The Messenger Speech (Narrative)

Both tragedy and legal speeches examine in a public arena actions which had happened away from the public gaze. Just as the violent actions in tragedy nearly always take place within or away from the household, but the public assessment of them takes place outside the palace or tent, so legal speeches expose to the public the most intimate secrets of family and personal life. The social experience of the collective visualisation of a violent, pathetic, or criminal action is very similar to the shared aesthetic experience of imagining Heracles murdering his children, Deianeira stabbing herself to death, or the struggle between Theseus and the Thebans over the kidnapped daughters of Oedipus.

There are structural affinities between forensic and tragic narratives; forensic narratives tend to involve no more than three figures in the action narrated at any one time, even where the case involves a large 'cast' and complicated 'plot',⁵⁰ and the participants often use sentences of identical length in reported interchange. These features are powerfully reminiscent of the three-actor rule and tragic stichomythia. Often the

⁴⁸ 349–51, see E. Hall, *Inventing the Barbarian: Greek Self-Definition through Tragedy* (Oxford 1989) 81 and 210 n. 33; J. Bremmer, 'Walking, standing, and sitting in ancient Greek culture', in Bremmer and Roodenburg (n.38) 15–35.

⁴⁹ For later Greek ideas about the relationship between gait and qualities of character see the section 'Walk like a man, my son', in Gleason, (n.45) 392–393.

⁵⁰ See e.g. Dem. 32 and 36, with Pearson (n.35) 222 and n.21.

speech-writer elevates the verbal register in order to mark the importance of the section: in tragedy epicisms often appear in the messenger speech.

In narrative the speaker could do things forbidden by the conventions of the court, such as recount speeches by people who could not be witnesses themselves. Using direct speech enabled the litigant temporarily to assume the persona of one of the characters in the forensic drama. He needed to be able to act his own public persona in the process of acting another one. Female utterances are often delivered in direct speech to great effect, though women could not normally be used as witnesses. Men impersonated women from the forensic platform, as they did in the theatre, when it suited them to do so.⁵¹

Perhaps the best example is in the Lysianic *In Diogeton*. The speaker enacts in *oratio recta* the powerful speech of Diodotus's widow on behalf of her family.⁵² If recast in the iambic trimeter it could be imported straight into a suppliant drama: it effectively turns the jury into the recipients of the widow's supplication, even though there are reasons for doubting that she ever did give a speech of this kind.

In Lysias 1 direct speech is used in various interchanges involving Euphiletus and various women — his wife, an old woman, and a servant girl. These incidents build up the complication of the plot, and enhance the plausibility and excitement of his narrative. The alleged adulterer himself is given no direct speech, for Lysias does not want him to have a defined personality; his role is to personify all that threatens decent Athenian patriarchs. The scenes with the women, and the silence of Eratosthenes, both therefore serve to throw the last piece of direct speech into profound and memorable relief. It is in a different, elevated semantic register, and uttered by Euphiletus himself, as he stands over Eratosthenes before he kills him, improbably announcing 'with all the formality of a judge pronouncing sentence',⁵³ 'it is not I who shall kill you, but our city's laws' (26).

The Trial as Tragedy

This paper has examined one of the ancient Athenians' 'metaphorical extensions of drama into the realm of social relations and their performance', an expression borrowed from Herzfeld's description of the engagement of the male villagers of Glendi in Crete in constant competitive social performances:⁵⁴ the affinity between legal and tragic public performances is often reflected explicitly in the metaphors and analogies used by the speech-writers themselves. Meidias' family life, averred Demosthenes, was 'like a tragedy' (21.149); Lycurgus made a client say of someone that 'he will play the tragic roles made for others' (fr. 3); Hyperides' client Lycophron accuses his opponent of 'writing tragic phrases' (1.12). But the analogy with tragedy pervades the speeches in other, more subtle ways.

Jurors liked to be entertained: absorption and comprehension were problematic when issues were complex, the evidence detailed, or the legal terms specialised and technical. Demosthenes complains that jurors may not be intelligent enough to follow a case (23.97), Demades comments on the difficulty of following arguments (1.1), and in a fragment of Aristophanes a young man derides his father for his inadequate grasp of legal terminology (fr. 233 K-A). But in the consciousness of any half-educated Athenian was a mythical code by which he organised his perceptions of the world; the orators introduced

⁵¹ See D. M. Halperin, 'Why is Diotima a woman', in Halperin, Winkler and Zeitlin (n.45) 257–308, at 290.

⁵² 32.15–17, see U. Albini, 'Lysia narratore', *Maia* 5 (1952), 182–90, at 189.

⁵³ Usher (n.40) 105.

⁵⁴ M. Herzfeld, *The Poetics of Manhood: Contest and Identity in a Cretan Mountain Village* (Princeton 1985) 10.

mythical parallels to themselves or their opponents in order to provide a memorable and familiar analogy which would stick in the jurors' minds when detailed evidence might be lost on them.⁵⁵

The exemplum may be derived from Homer: Aeschines claims that his opponents will use the Homeric friendship of Achilles and Patroclus to justify the conduct of Timarchus (1.141). But usually it is tragedy which supplies the mythical archetypes for the actors of the Attic lawcourts. A speech by Hyperides, rhetorically characterising the opponent as insane, uses the analogy of Orestes, one of the most famous tragic madmen (1.7); Demades and Lycurgus both use Erechtheus' daughters, portrayed as sacrificing themselves for Athens in Euripides' *Erechtheus*, as exemplars of patriotism (Dem. 1.37, *In Leocr.* 98–100). Antiphon's speech in which a man prosecutes his stepmother for poisoning his father suggests that she is like the most famous tragic husband-slayer, Clytemnestra (1.17). This sly allusion suggests that the speaker is an Orestes, offering the woman up to the jurors of Athens. They are thus encouraged to respond like Athena in *Eumenides* and vote in his favour. The case, moreover, was probably heard, like that of Aeschylus' Orestes, before the court of Areopagus.

Andocides describes Callias' allegedly colourful private life: he is supposed to have been married to a mother and her daughter simultaneously, and to have fancied the grandmother to boot (1.129). What ought we to call such a man, asks Andocides: Oedipus or Aegisthus? Here the analogies are inaccurate: neither Oedipus nor Aegisthus slept with three generations of related women, although Jocasta was both mother and grandmother to Antigone. The mythical parallels are nevertheless left engraved upon the jury's imagination, implying that Callias has transgressed the most basic socio-sexual tabus.

The Reversal (*Peripeteia*)

Once the speeches had been delivered, the jurors voted immediately: in the Athenian court there was no delay for consultation or meditation before the verdict was delivered.⁵⁶ The drama of each trial was therefore enacted, like a tragedy, without an intermission: in dramatic terms, the *peripeteia* occurred immediately after the debate scene (*agōn*). When the penalty is heavy, litigants often adopt the personae of tragic heroes, stressing the danger in which they find themselves (Dem. 57.1), and their emotions of fear and anger (Demad. 1.5); supporters are asked to speak to save the defendant's life (Aesch. 2.142). Apollodorus says that it brings him pleasure to relate to a sympathetic audience the terrible wrongs he has suffered at the hands of Phormio, in language modelled on the tortured hero's words to the chorus of *Prometheus Bound* (Dem. 45.1, *PV* 637–9).

Trials are sometimes turned into contests between two types of tragic plot. Defendants beg the jury to save them, to turn the trials' drama into an escape plot (Dem. 57.1, Demad. 1.5). Plaintiffs may characterise the jury as avengers,⁵⁷ and try to turn it into a revenge tragedy (Lys. 13.1); the jurors may be called the 'agents of justice' (*dikē*, Dem. 25.11). Like the tragic chorus they are simultaneously observers and participants. As Aeschines puts it, they are the judges of his words, but *he* is the 'spectator' (*theatēs*) of their deeds (i.e. of their verdict, 1.196).

⁵⁵ See Aristot. *Rhet.* 3.1416b 26–9, S. Perlman (n.20) 157.

⁵⁶ See D. M. MacDowell, *The Law in Classical Athens* (London 1978) 251–252.

⁵⁷ See A. Missiou, *The Subversive Oratory of Andokides* (Cambridge 1992) 177–179.

The Trial as Comedy

In the passage of *Wasps* with which this paper began Philocleon cited laughter as one of the pleasures of jury service: some litigants ‘tell us stories or a funny Aesopic fable; others crack jokes to make me laugh and put me in a good mood.’ This paper has largely focused on the similarities between the performances of trials and the performances of tragedy, but it can be concluded, like a day at the City Dionysia, with a glance at the sibling genre of comedy.

There are, unfortunately, few examples of funny stories of the kind Philocleon describes. It may be that this was precisely the kind of material the speech-writer edited out of his speech before it was published.⁵⁸ Yet one Aesopic fable is credited to Demosthenes: the story of the ass’s shadow. This was a proverbial example of a ridiculously petty dispute to take to court (see Ar. fr. 199 K-A): Demosthenes’ approximate contemporary Archippus composed a comedy entitled *The Ass’s Shadow*. The orator is said to have introduced the silly tale precisely in order to retrieve the attentions of a listless and uninterested jury.⁵⁹

The ancient rhetoricians were aware that laughter is a potent rhetorical weapon: wit and humour receive attention in the handbooks.⁶⁰ The aspiring speech-writer was certainly expected to be familiar with comic texts in addition to more serious poetry, for passages from comedy are sometimes used in the handbooks to illustrate rhetorical tactics and stylistic devices (e.g. Anaxandrides fr. 67 K-A, quoted by Aristotle to illustrate wit through metaphor, *Rhet.* 3.1411a 18).

Court-room humour functions by establishing a sense of collective ‘in-group’ consciousness between one of the litigants and the jurors, thus estranging his opponent from the group. In some passages forensic rhetoric shows a much stronger affinity with comedy than tragedy.⁶¹ Comic ridicule and the language of socio-political abuse in the legal texts have many features in common. A commonplace of both genres, for example, is the allegation that a man cannot speak Athenian Greek, which calls his citizen status into question (see above under ‘Delivery’ and e.g. Eupolis fr. 99 K-A, where it is alleged that a demagogue cannot ‘talk Attic’ — *attikizein* — convincingly).

The prominent public figures who were likely to be lampooned in comedy were the same men who litigated against one another; the stereotypes used in the lawcourts must have drawn upon the same aspects of individuals’ public reputations as did their comic characterisations. Socrates is supposed to have claimed that his poor public image was a creation of the comic poets (Plato, *Apol.* 18b-d, 19b-c, 23c-d), probably an allusion to his portrayal in Aristophanes’ *Clouds*.⁶² Philippides, the defendant in Hyperides 2, was also sent up in comedy (Athen. *Deipn.* 6.230c, 238c); the comic poet Timocles wrote a *Neaera* (Athen. *Deipn.* 13.567e); Blepaeus the banker, mentioned in Demosthenes’ *Against Meidias* (21.215–17), was attacked for his wealth in comedy (Alexis fr. 229 K-A). Timarchus, says Aeschines in his speech against him, had recently been lampooned in

⁵⁸ Cf. Bonner (n.42) 103.

⁵⁹ Σ Ar. *Vesp.* 191, see B. B. Rogers (ed.), *The Wasps of Aristophanes* (London 1915) 28–29.

⁶⁰ See e.g. Aristot. *Rhet.* 3.1412a 26–b4, and the distinction Demetrius draws between lofty pleasantries and vulgar buffoonery (*On Style* 3.128, 5.262); M. A. Grant, *The Ancient Rhetorical Theories of the Laughable* (Madison 1924).

⁶¹ See P. Harding, ‘Comedy and rhetoric’, in I. Worthington (ed.), *Persuasion: Greek Rhetoric in Action* (London and New York 1994) 196–221.

⁶² See J. Henderson ‘The *dēmos* and comic competition’, in J. J. Winkler and F. I. Zeitlin (eds.), *Nothing to do with Dionysus? Athenian Drama in its Social Context* (Princeton 1990) 271–313, at 301–5.

comedies at the rural Dionysia (1.157), his forensic portrayal as a failed prostitute may owe much to comic characterisation. But Timarchus allegedly intended to get his own back by the subversively comic ruse of displaying Aeschines's own erotic poems in public (Aesch. 1.135).

Humour is culturally and historically relative, and it is often hard to assess the tone and likely impact of particular passages; there are, however, some obvious bids for laughter. One of Demosthenes' clients, defending himself in a drainage suit, asks, 'What am I to do with the surplus of water on my land... Will the plaintiff insist that I drink it?'⁶³ Lysias fr. 1 hilariously explores the gap between the behaviour which might be expected of a former pupil of Socrates who was much given to discussing virtue, and his 'actual' character as an incurable borrower of money and failed perfumier. Isaeus 4.7 contains an amusing characterisation of the excessive displays of bereavement by litigants in a dispute over a will.

The fragments of Hyperides' speeches in defence of Lycophron, allegedly an *homme du monde*, accused of adultery and ruining women, indicate that this trial was consciously formulated as a genre battle between tragedy and comedy. The opponent is characterised as one who uses *tragic* phrases (*tragōdias grapsai*, 1.12), while Lycurgus uses strategies appropriated from the contrasting dramatic genre. Lycophron would hardly have been likely to assault Charippus' wife at her wedding given the presence of two wrestlers (one of them her brother), 'acknowledged to be the strongest men in Greece' (1.6). And anyway, he says, adultery is not a habit one can begin above the age of fifty (1.15)! Yet in the second oration the speaker tries to undercut the *opponent's* successful use of comedy by labelling it as vulgar (*kordakizōn kai gelōtopoiōn*, 2.7), and claiming that it has debased the solemnity of the proceedings. This sort of complaint is frequent: Demosthenes laments that he has suffered because of the wit of both Aeschines and Philocrates (19.23, 46). Aeschines attacks Timarchus for his use of bawdy insinuation (1.80, 84), though he is himself responsible for scatological colloquialisms at Demosthenes's expense.⁶⁴

Conclusion

Athenian legal speeches reveal affinities with drama in terms of the context in which they were performed, the relationship between speakers and audiences, the enactment of fictive identities even extending to the attention paid to appearance, costume, use of the eyes, gait, and demeanour; and the exploitation of the courtroom, witnesses, and other individuals. But the courts were an arena for competitive social performances. One reason for prosecuting a rival was to provide an opportunity for competing verbally against him in public: successful performance at a trial required identical skills to those required by the dramatic actor — stamina, exciting delivery, vocal virtuosity, memorisation, extemporisation, and the abilities to control the audience, hold its attention, and arouse its emotions.

Other criteria than these must of course have influenced the outcome of a trial: the speech made by the oligarch Antiphon in defence of his life,⁶⁵ though according to Thucydides the best of its kind in living memory (8.68.2), did not secure his acquittal.

⁶³ 55.18, see also 55.4, Lys. 1.36, 7.1, 7.14, 16.5, Bonner (n.42), at 100.

⁶⁴ 2.44, see P. G. Maxwell-Stuart, 'Three words of abusive slang in Aeschines', *AJP* 96 (1975) 7–12.

⁶⁵ The fragments are conveniently published with English translation in K. Maidment, *Minor Attic Orators* (Cambridge, Mass. 1941) vol. 1, 294–98.

The evidence accumulated in this survey, however, indicates that we must approach the forensic texts conceding that we have lost almost all access to one of the most significant dimensions of the ancient trial: its nature as a theatrical and competitive performance. This recent statement by Richard Martin on the importance of the notion of performance to our understanding of epic poetry,⁶⁶ is equally pertinent to Athenian forensic oratory:

‘... timing, gesture, voice inflection, tempo, proximity to the audience, the past relation of a particular performer with his ... audience, the setting ... are factors that determine the meaning of the actual words spoken by a performer as much if not more so than the literal meaning of the words themselves. That is to say that it is the performance, not the text, which counts.’

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⁶⁶ R. P. Martin, *The Language of Heroes: Speech and Performance in the Iliad* (Ithaca and London 1989) 7.