

Athenian Litigation: How Athenian courts provided a venue for Athenian citizens to debate their societal conventions

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In his book, *The Litigious Athenian*, M. R. Christ argues that verdicts which were passed in the Athenian courts demonstrated ‘competing visions of community that the litigants offered’.¹ Thus, the courts became not only a place for ‘the adjudication of individual disputes but also for the articulation and confirmation of collective ideals’.² Christ’s use of the term ‘collective ideal’ can be problematic due to the vagueness of the descriptor, as there is nothing that can enforce an ‘ideal’. The definition of ‘ideal’ is something which is desired – it is not something that is practised. Hence, this essay will add to Christ’s thesis by adding nuance to his argument by redefining ‘collective ideal’ to a societal convention. This will allow a more holistic approach to Athenian litigation to be developed. David Cohen’s book, *Law, Violence and Community in Classical Athens*, sits alongside Christ’s thesis, with Cohen arguing that litigation belongs to wider context of ‘social practices’ and facilitated debate on ‘honour, competition, hierarchy and equality’.³ Thus, the idea developed in this essay stems from previous research on the topic. This essay will explicitly look at the way in which Athenian litigation provided citizens a venue not only to try court cases but also discuss the societal conventions which governed their lives. This essay’s argument will be developed by assessing speeches in relation to three main areas of Athenian society: slaves, citizenship and behaviour. This essay will then show the consistencies between the different speeches in relation to these three

¹ Matthew R. Christ, *The Litigious Athenian* (Baltimore: John Hopkins University Press, 1998), 2–3.

² Matthew R. Christ, *The Litigious Athenian* (Baltimore: John Hopkins University Press, 1998), 2–3.

³ David Cohen, *Law, Violence and Community in Classical Athens* (Cambridge: Cambridge University Press, 1995), 181.

areas, as well as cases where people presented different views and strayed from the norm, and the effect that this had on individuals and their position in society.

Slaves were a crucial part of everyday Athenian society,⁴ and thus attitudes towards slaves and Athenian societal conventions surrounding the role of slaves in law court cases were frequently discussed to confirm the practice of slaves being tortured in court cases to achieve the correct adjudication. This convention is expressed in many of the extant speeches. In Antiphon 6.23, the speaker offers his slaves to the prosecutor and states he may torture them to reveal the truth.⁵ The same sentiment is replicated in Lysias 4.10–11, where the speaker emphasizes a slave-girl should be tortured so that she reveals she belongs to both the speaker and his opponent.⁶ This line of thinking is taken further in Lycurgus, *Against Leocrates*, where he writes it is *'by far the justest and most democratic course...to examine these [slaves] by torture'*.⁷ These speeches all reflect the same sentiment: that it was expected – not just accepted, to torture slaves in the law courts.

Demosthenes 29.39 further consolidates this fact by distinguishing between slaves and freemen, stating that it would have been a 'crime' if a freeman was tortured.⁸ This statement highlights this societal convention amongst the Athenians – illustrating that it was acceptable for slaves to be tortured but taboo for other members of society to receive such treatment, reinforcing the position of slaves in society.

⁴ Gabriel Herman, *Morality and Behaviour in Democratic Athens* (Cambridge: University of Cambridge Press, 2010), 67.

⁵ Ant. 6.23

⁶ Lys. 4.10–11.

⁷ Lyc. *Against Leocrates*, 30.

⁸ Dem. 29.39

This view is further confirmed by the law courts speeches, which illuminate the social pressure seen within Athens to succumb to this view. When people refused to give their slaves up for torture, the speeches show that the Athenian's believed this to be the behaviour of a speaker trying to hide their guilt. This is illustrated in Lycurgus' *Against Leocrates* section 30,⁹ Isaeus 8.14¹⁰ and in Lysias 4.10–11, 17.¹¹ However, these speeches show that some Athenians did struggle to uphold this societal convention. Lysias 4 is the defendant's speech, who is being tried for assaulting a man over the 'love' of a slave girl.¹² The defendant is much more willing to let the slave girl be tortured, despite supposedly loving her, and the speaker seems to demean his opponent for being under her influence and not desiring to torture her.¹³ This is because the speaker implies that the prosecutor has no case against him as the slave-girl will reveal if she were to be tortured.¹⁴ Thus, Lysias 4 highlights that individuals took different stances towards the torture of slaves and that people did contest societal conventions, but they faced the ridicule of others if they did.

There are, however, some more contentious matters regarding the torture of slaves. One such issue is raised in Demosthenes 53.23 where there is a discussion surrounding the appropriateness of certain people to torture slaves.¹⁵ Apollodorus states that, because this case is a public case, the information belongs to Athens and hence it is not right for him to personally torture the slaves and that a 'public official' should instead, undertake this act.¹⁶ This demonstrates that there were cultural and legal norms surrounding this practice reaffirming its position as an established part of

⁹ Lyc. *Against Leocrates*, 30.

¹⁰ Isaeus 8.14.

¹¹ Lys. 4.10–11, 17.

¹² S. C. Todd, introduction to 'Lysias 4. Concerning a Premeditated Wounding: Prosecutor and Client Unknown,' in *Lysias*, trans. S. C. Todd (Austin: University of Texas Press, 2000), 53–54.

¹³ Lys. 4.8, 10–11.

¹⁴ Lys. 4.17.

¹⁵ Dem. 53.23.

¹⁶ Dem. 53.23.

the legal procedure. In addition, Isaeus 8.12 effectively states slaves under torture provide factual evidence as they have an incentive not to lie.¹⁷ Athens' democracy was central to Athenian identity.¹⁸ Therefore, the fact an Athenian speech-writer acknowledges that the citizen body can lie in the courts, effectively undermining the democratic process and the loyalty to state that Athens demanded of its citizens, is rather controversial. However, this idea has been discussed in other cases, including in Demosthenes 29, where it was implied that two citizens falsely testified by claiming a man named Milyas was a citizen, and hence he was not tortured.¹⁹ Milyas then supposedly lied as a witness, losing the prosecutors the previous case.²⁰ Whilst this practice may have been a societal convention, it evidently had flaws and could be manipulated by those within the court system to serve their purposes.

Athenian courts also heard many cases surrounding citizenship issues. Athenian conventions surrounding citizenship, particularly in relation to deme membership, were one of the issues frequently debated, consequently allowing juries the capacity to confirm Athenian citizenship conventions. For male Athenians to prove their citizenship status they had to show they were enrolled in a deme.²¹ This idea is reaffirmed in the speeches, notably Isaeus 12 and Demosthenes 57, which explain the process of deme membership.²² Both speeches feature a case where a deme member(s) has been expelled and is now trying to prove their membership to that deme, and thus obtain citizenship.²³ In Isaeus 12, the man on trial is accused of being a metic who was adopted by an Athenian citizen either because he had no legitimate children, or he was in poverty and adopted

¹⁷ Isaeus 8.12.

¹⁸ Christ, *The Litigious Athenian*, 2-3.

¹⁹ A. T. Murray, introduction to 'Demosthenes, Oration 29. Against Aphobus 3', in *Demosthenes Orations, Volume IV*, trans. A. T. Murray (Cambridge: Harvard University Press, 1936), 80-81.

²⁰ A. T. Murray, introduction to 'Demosthenes, Oration 29.' 80-81.

²¹ Dionysius of Halicarnassus. *Argument*; Isaeus 12.; Dem. 57.

²² Dem. 57.1-10; Isaeus 12.

²³ Dem. 57.1-10.; Isaeus 12.

the rich metic thereby giving him citizenship in return for financial aid.²⁴ This demonstrates that there were exceptions to this collective norm and that Athenian citizenship could be attained through other means. However, the fact that the speaker (the man on trial's brother) dismisses the above ideas as nonsense and that neither option applied to his father,²⁵ reiterates that deme membership was the legitimate way to prove citizenship in Athens and was the convention in society.

The extant speeches also demonstrate that another societal convention which was discussed in the law courts was the Athenian perceptions of themselves alongside their perceptions of metics. Firstly, these speeches show that metics were perceived as lesser people by Athenian citizens. This is seen in Demosthenes 57, where the speaker defends his mother's citizenship despite her being a wet-nurse and selling ribbons in the market, jobs which are implied to be below a citizen.²⁶ He also has to explain why his father has a foreign accent and how he obtained this while being a prisoner of war.²⁷ This speech clearly demonstrates that there was social stratification in Athenian society which was based upon an individual's citizenship status. Speeches such as Lysias 31.9 and Demosthenes 35.1–2 also lead to the conclusion that this stratification often led to discrimination and distrust by Athenian citizens towards metics.²⁸ This separation is further shown in Lysias 23 with the separation between the naturalised Plateans citizens and Athenian citizens²⁹ – even if foreigners were given citizenship under extreme circumstances,³⁰ Athenians were not keen to accept them. The collective distrust of metics is furthered by the surviving fragments of a Hyperides

²⁴ Isaeus 12

²⁵ Isaeus 12.1–2.

²⁶ Dem. 57. 31, 35.

²⁷ Dem. 57.18.

²⁸ Lys. 31.9.; Dem. 35.1–2.

²⁹ Lys. 23.6

³⁰ S. C. Todd, introduction to 'Lysias 23', in *Lysias*, trans. S. C. Todd (Austin: University of Texas Press, 2000), 245.

speech, where he writes that people may retry 'aliens'³¹ if they believed they were wrongly acquitted on charges.³² This fragment clearly reiterates the double standard between Athenian citizens and those of metic status, proving that this stratification was a societal convention. In confirming this, the speeches also provide interesting insights into how Athenians perceived themselves by confirming some of the views expressed in Thucydides. For example, the established belief of Athenian superiority.³³

The law courts also provided a venue for Athenians to discuss the conventions on what would be deemed acceptable behaviour. A series of the speeches focusing, in particular, on the acceptable behaviour of older men, especially when their actions were driven by 'passionate' emotions towards adolescents. Lysias 3 and 4 both feature elderly men undertaking violence, attempting to ward off a competitor's interest in either a slave girl³⁴ or a male adolescent of unknown status.³⁵ The speaker in Lysias 3 states that *'I shall be compelled to speak to you about matters which so embarrassed me that I tolerated mistreatment to avoid having them widely known'*.³⁶ In Lysias 4.9 the same sentiment is echoed with the speaker stating that this type of behaviour is shameful.³⁷ However, the exact matter that they are ashamed about is not made explicit in the speeches. Thus, it is plausible that the shame these men felt could have resulted from a stringently upheld societal convention to the extent that writing it down in a speech would have made them appear dense. However, comparison with other cases provides clues. In Hyperides 3, the speaker (a young man)

³¹ Hyp. Fragment 2.

³² Hyp. Fragment 2.

³³ Thuc. 1.32–36, 37–43 show other Greek states appealing to Athens power, fuelling a belief of superiority: Thuc. 1.75, 1.141–142, 6.6, 6.18 are examples of when Athenian superiority was used, primarily to justify decisions.

³⁴ Lys. 4.

³⁵ Lys. 3.

³⁶ Lys. 3.3.

³⁷ Lys. 4.9.

does not express a sense of humiliation at having accumulated a substantial debt for himself and his friends because his lust for a slave overruled his common sense.³⁸ Nor does the speech provide any indication that this contravened an accepted norm.³⁹ Demosthenes 54 provides further clues as to why the behaviour seen in Lysias 3 and 4 was deemed shameful. Demosthenes 54 presents the idea that it was acceptable for youths to brawl, engage in scuffles and generally misbehave and that this *'is the way of young people'*.⁴⁰ The phrasing of Demosthenes 54.14–16 makes it abundantly clear that it was considered improper for older men to act in such a way.⁴¹ This is most likely why the men in Lysias 3 and 4 were so ashamed by their actions, as they were behaving in a way that contravened their society's conventions regarding the behaviour of older men.

The law courts also played an important role in restricting people's behaviour by judging (through jurors) what Athens collectively viewed as appropriate behaviour, helping to confirm the behavioural conventions of Athenian society. Firstly, many of the speeches highlight that Athenian law helped to restrain behaviour. Firstly, Demosthenes 54.17–19 provides example of how the law regulated certain types of conduct in Athens.⁴² Additionally, Lysurgus, *Against Leocrates*, emphasises that the jurors involved in this case were not merely judges but lawmakers, and the decision they made will affect the outcome of later cases.⁴³ Similar views are expressed in Demosthenes 21.4–7 where the speaker emphasises that the decision, in this case, will set the precedent for cases of this nature, establishing boundaries which will help to prevent crime as people will know the punishment for their actions.⁴⁴ Demosthenes 25.20 provides the best example

³⁸ Hyp. 3.

³⁹ Hyp. 3.

⁴⁰ Dem. 54.14–16.

⁴¹ Dem. 54.14–16.

⁴² Dem. 54.17–19.

⁴³ Lyc. *Against Leocrates*, 9–10.

⁴⁴ Dem. 21.4–7.

of Athenian speech writers acknowledging the laws ability to regulate behaviour. Demosthenes writes that without law *'our life would not differ from that of the beasts of the field'*.⁴⁵ Thus, it is abundantly apparent that Athenians valued the law courts as a place to debate their society's norms surrounding behaviour.

The idea of a society without rules governing behaviour is explored by Thucydides in his passage about the stasis at Corcyra and the civil disturbance Corcyra's Civil War caused.⁴⁶ This scene shows a society where all the norms and ideals expressed in the law court speeches are lost.⁴⁷ Arguably, the Athenian system was designed to prevent this type of anarchy, as every citizen was placed in a position to contribute to democracy.⁴⁸ The Athenian system predisposed the people to fear a lack of control over their collective ideals, partly explaining why Athens despised the Thirty⁴⁹ and Alcibiades,⁵⁰ and why so many speeches were directed against them. The Thirty and Alcibiades posed a threat to Athenian citizens' capacity to run their society and regulate the behaviour of that society. Thus, the speeches aimed at Alcibiades⁵¹ and the Thirty⁵² can be considered a response to their oligarchical actions, proving the previous argument of this essay. Namely, the idea that Athenians valued their ability to debate their society's collective ideals in the courts and feared losing this privilege.

⁴⁵ Dem. 25.20.

⁴⁶ Thuc. 3.70–84.

⁴⁷ Thuc. 3.70–84.

⁴⁸ Anton Powell, *Athens and Sparta Constructing Greek Political and Social History from 478BC* (Oxon: Routledge, 2016), 270, 304–306.

⁴⁹ Lys. 12.; Lys. 7.; Isoc. 20.

⁵⁰ Lys. 14.; Lys. 15.; Isoc. 1.; Andoc. 4.

⁵¹ Lys. 14.; Lys. 15.; Isoc. 1.; Andoc. 4.

⁵² Lys. 12.; Lys. 7.; Isoc. 20.

Thus, this essay has presented evidence that shows Athenian courts provided a venue for Athenian citizens to reconfirm their societal conventions. An understanding that these speeches had relevance beyond simply acting as law court speeches mean they become crucial sources to assess Athenian social history. These speeches are far from a perfect assessment of Athenian culture as they are a manipulation of culture to try and achieve a specific objective in court. However, as this essay has shown, they still provide an invaluable insight into the conventions governing Athenian society and show that these conventions were upheld primarily as a result of the shame a person was made to feel for contradicting a societal convention. Further research could be conducted into this specific area, to further both the work of Christ and Cohen to assess the way in which social conventions were established in the law courts and how the law courts provided an effective public shaming venue for those who broke these conventions. This research would enable the discussion to move beyond the explicit context of law court speeches and to encompass a broader spectrum of Athenian sources, such as plays and historical narratives. This would enable a demonstration to examine how these societal conventions, whilst debated in the law courts, were replicated and governed all aspects of Athenian life.

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