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The Future of Classical Oratory

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11 / THE FUTURE OF CLASSICAL ORATORY

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THROUGHOUT MY CAREER IN ACADEMIA I HAVE TAUGHT Roman law, German civil law, and my favorite, ancient Greek law (epigraphy, papyrology, and Athenian court speeches). In keeping with the focus of this volume, my paper explores the practical use of classical oratory in education—in law[1] as well as other disciplines—as a challenge of the twenty-first century. I suggest that classical oratory be taught by practicing it in moot courts modeled on Athenian court speeches and procedures. It is my view that the art of communication and persuasion today encompasses not only speaking and writing, but also visual media (which, although nonverbal, one may compare with *atechnoi pisteis*, or "artless proofs," in the classical sense). In the following paper, I focus on the boundary between lying and manipulating the facts. The method of the ancient Greek *rhētor* ("public speaker") was to "isolate the facts" and combine them into an overall picture that was untrue. I illustrate this using the new Timandrus fragment of Hyperides and Demosthenes's lawsuit against Aphobus. I suggest that for psychological reasons, in Athenian courts the first speaker was in the better position. In conclusion, I argue from practical experience that the "Athenian style" of moot courts is a better way of teaching oratory today than is the imitation of modern trials.

1. INTRODUCTION

Oratory is the art of communication and persuasion, not only by speaking and writing, but also by such visual means as pictures and monuments. Today, in public, business, and private life, we inevitably are confronted with oratory. When one thinks of oratory, one imagines primarily the classical categories of political, court, and commemorative speeches. But only a very few university students will be educated for jobs in politics or law or will have occasion

to compose and deliver formal commemorative speeches. However, the field of social communication and persuasion is much broader than these categories suggest. In practical life everybody has to convince an audience, and to be successful one has to use rational as well as emotional elements. How to combine them in an effective way can be learned by practicing classical oratory. For very good reasons rhetoric was the basis of higher education in antiquity.

For didactic purposes, I would prefer to study Athenian court speeches. In Athenian courts average people spoke to a large audience of average people, and the latter, several hundred lay judges, had to make up their minds—a quick "yes" or "no"—immediately after the parties had spoken. Of course, in modern practice we cannot simply copy Athenian oratory, at least not the arguments *ad personam*. However, from the Athenian court speeches, one can learn all the elements of persuasion. Cicero, the philosophically erudite orator, spoke in person to a more sophisticated upper-class audience. He was confronted with a restricted number of judges, who gave their verdict after hearing several sessions. His speeches are therefore more difficult to explain and to use in teaching oratory. Only very recently have new methods of deconstructing them been found.[2] In my opinion, the ancient rhetorical manuals, the *technai* and *institutiones*, are also of little didactic value today. But the last two points may depend on my personal ignorance; with methods different from mine, dedicated teachers could probably also take advantage of Roman court speeches and general rhetorical theory.

To a significant degree, modern methods of communication and persuasion rely on visual means. Pictures are stronger than words. Does this harm oratory today? Not in my opinion. Instead of deploring our backsliding into speechless barbarism, I would suggest adopting the rhetorical theory and practice of *atechnoi pisteis*. These were prefabricated written documents read aloud to the judges not by the litigants themselves, but by the court secretary. Therefore, they did not belong to the art (*technē*) of rhetorical persuasion; nevertheless, the handbooks taught how to use them in the most effective way. Pictures are nothing other than a means of persuasion outside of oral argumentation. Since antiquity, the task of composing a speech has included the adoption of such means. Indeed, the modern technologies of TV or PowerPoint are meant to persuade (i.e., are used to rhetorical ends). Without going into detail, I only mention two ancient predecessors of these media—coinage and architecture—as studied by Paul Zanker in his *Augustus und die Macht der Bilder*.[3]

One example of modern speechless monumental oratory, nonpolitical at first glance, is the architecture of the Viennese artist Friedensreich Hundertwasser (Friedrich Stowasser), who died in the year 2000. His paintings are perhaps better known, but in his architectural œuvre, Hundertwasser put

FIGURE 11.1. *Hundertwasser House, Vienna 1985: organic "unregulated irregularities."*

FIGURE 11.2. *Hundertwasser garbage incinerator, Vienna 1987: hiding a power plant by "oratory in architecture."*

"diversity before monotony" and replaced a grid system with an organic approach that enabled "unregulated irregularities." He was an enthusiastic forerunner of the environmental movement. From 1983 to 1985, despite fierce criticism, he constructed the "Hundertwasser House," furnished with a total of 250 trees and bushes. Now it is one of Vienna's most visited buildings and has become part of Austria's cultural heritage (fig. 11.1). However, in Vienna there is also another Hundertwasser building. In 1971 a huge garbage incinerator, which also served as a district heating plant, was damaged by fire. After the fire it was difficult to convince the citizens to restore the air-polluting plant in the middle of the city. What were they to do with the structure? The local authority sought help from the famous artist and in 1987 a new work of

art was finally dedicated. The air pollution was the same, but (nearly) everyone praised the new Hundertwasser creation (fig. 11.2). In my opinion this is an extreme example of how rational calculation can trump auspicious emotion. Of course, one cannot find the exact same tricks in classical oratory, but the same psychological effects can be studied there.

2. LIES AND MISREPRESENTATIONS OF FACT IN GREEK ORATORY

My approach to classical Greek oratory has always been juridical. My interests have been twofold: first, what can we learn about Athenian law from forensic speeches; and second, how can we explain the speakers' procedural strategies based on what we know about Athenian law? These two questions are, of course, linked, but only the second is directly concerned with oratory. From this point of view it is not the formal instruments for composing and embellishing a speech that are important, but rather the overall intellectual structure of court speeches. Surprisingly for a modern lawyer, in an Athenian trial we never hear a party discuss legal questions at the high level of classical Roman jurisprudence or Ciceronian complexity. Statutes quoted by Athenian litigants are mostly clear and (though sometimes used in a distorted way) seem to fit the case exactly, at least as presented in the speech. Usually the facts of the case are in dispute. Facts, not law, are the primary topic of Athenian court oratory. Therefore, when analyzing a court speech, a jurist first has to find out which facts were controversial, admittedly by conjecture. A well-known problem is that, in most cases, only the speech of one party is preserved, leaving us with just one side of the story and no way to check its veracity. Some classicists simply trust—or distrust—the *diēgēsis* or narrative part of the speech. In my opinion this is too formalistic, too trusting in the general rules for a court speech shaped by the rhetorical *technai*.

The questions that need to be asked are: Do parties lie in court, and if so, how can we find out what the facts of a case might have been? To answer these questions we have to scrutinize how the logographers ("speechwriters") composed the speeches of their clients in order to convince the court. I will give two examples: first, the new Hyperides fragment against Timandrus, and second, Demosthenes's lawsuit against Aphobus. From these one can see that the borderlines between "lying" and "manipulating" are blurred.

I would like to start with a few words about the method I have applied since I began working on the *proklēsis eis basanon*, the challenge to torture a slave, some forty years ago.[4] My starting point is the observation that the

logographers, in order to support their clients' positions, rarely resorted to simplistic lies; instead, they typically created distortions that the audience was largely unable to unravel. They isolated facts that belonged together and, by using psychological links, combined individual aspects of an issue that were true by themselves but perhaps not in combination. The art of lying—or manipulating—involved attributing typical psychological motives to the opponent; there was a broad range of possibilities, because a person's actual motives always remained in the dark. Thus, out of a set of facts the logographers shaped an overall impression that was false, but met the needs of their clients' cases. In court the litigants used this technique of portrayal to their advantage by informing the audience in a thorough but guided manner.[5] Through careful preparation of their speeches, plaintiffs, on the one hand, were able to keep their opponents from swaying the jurors with new facts; every relevant fact must be mentioned somewhere in the plaintiff's speech, but not necessarily in a coherent order. The defendants, on the other hand, by exciting high emotions tried to highlight different aspects of the case from those their opponents presumably would produce. Because of the Athenian system of litigating by speeches composed in advance, there was no room for direct forensic dispute between the parties. The opportunity of checking each other's positions was given in the pretrial meetings of the *anakrisis* ("preliminary hearing") and the official *diaita* ("arbitration"). Here the litigants had to answer each other's questions[6] and disclose all documentary evidence to be used in court.[7] Given the requirements that Athenian law placed on a particular *dikē* ("private lawsuit"), the true state of the conflict (one party's assertion and the other's counter-assertion) can successfully be reconstructed out of just one oration through a logical synthesis of the details that the speaker disparately reports—a process I have called "Isolierung der Fakten."[8]

My first example, though fragmentarily preserved in the famous Archimedes palimpsest, is Hyperides's speech against Timandrus.[9] A *sunēgoros* ("co-speaker"), whose name is unknown, is speaking for the young plaintiff Academus, who is calling to account his former guardian Timandrus for mismanaging his affairs for thirteen years. The lawsuit was a *dikē epitropēs* ("prosecution for mismanagement of an orphan's estate").[10] In this paper I will concentrate on the facts. The speaker argues that Timandrus had managed his ward's property in an illegal way (lines 10–16): he did not register the guardianship with the archon ("chief magistrate"); he did not have the property leased, which also was to be done by the archon;[11] and he prevented a denunciation (*phasis*) intending to lease the property from being filed with the archon.[12] Worst of all, he dragged one of the four orphans, the younger girl, away from Athens to his home on the island of Lemnos (lines 25–27). Is

it plausible that Timandrus was able to maintain such an illegal position for such a long time? The facts are partly uncontroversial and partly corroborated by witnesses, so they might be recorded correctly. From the comment in lines 3–5: "Yet the laws forbid the guardians to lease the property on their own authority,"[13] I infer that Timandrus will argue in his defense that he himself was lessee of the estate, as was permitted by Athenian law.[14] In this case, at the conclusion of his duty, he was not to be called to account. He only had to pay annual interest to sustain the wards and, at the end of his duty, deliver the capital he had taken over at the beginning of the guardianship.[15] What about the other charges?

The clue to the defendant's argumentation could be the reference to the island of Lemnos. To be appointed as a guardian Timandrus must have been an Athenian citizen; and living in Lemnos he most probably had the status of a cleruch (*klērouchos*, a holder of allotted land in a foreign country who retains his original citizenship). He certainly will argue that he had complied with all of the legal requests mentioned above before the magistrate of the cleruchy in Lemnos. Thus the plaintiff and his witnesses are right that Timandrus did *not* register the guardianship and lease the property *in Athens*. The plaintiff only omitted the essential fact that all this had happened *elsewhere*, that is, on Lemnos. Therefore, the archon in Athens evidently had had no reason to accept any *phasis* based on the claim that something was wrong with the guardianship. And the fact that the girl was brought up in Timandrus's house could have been ordered by her father's will.[16]

Through the common psychological explanation in lines 17 and 59—Timandrus's desire for money—the plaintiff glued together all these facts to make the actions appear illegal. And the whole section between these two lines is about the lonesome girl on the faraway island, making the larger part of the fragment mere rhetoric, intended to demonstrate Timandrus's allegedly avaricious character. It really is a pity that the rest of this speech is lost!

My next example is the young Demosthenes's lawsuit against one of his former guardians, Aphobus, consisting of five orations well preserved since antiquity and subject to scholarly discussion for centuries. First, I concentrate on the dispute about Milyas, the foreman of the knife-workshop.[17] By *proklēsis* ("formal challenge") Aphobus, the defendant, had demanded this man from Demosthenes for *basanos* ("inquiry by torture") to be questioned first about the income of the workshop of thirty minas (27.19–23; 28.12; 29.50), and then about ten talents, the whole amount demanded by Demosthenes (27.50–52, in 29.30 referred to only indirectly). Milyas was requested to confirm or deny that Demosthenes had received all the money. Demosthenes refused the demand to turn Milyas over for torture, holding that the man was no longer a

slave but free. And he produced a witness deposition that Aphobus himself by *homologia* ("agreement") "had acknowledged that Milyas was set free by Demosthenes's father."[18] However, in Athens testamentary manumissions were not valid unless an act of public proclamation occurred,[19] which apparently had not yet happened.

How did Demosthenes handle this delicate situation? By "isolating the facts." In section 9 of his first speech against Aphobus (Dem. 29), he seems to be uncertain about the figure of thirty-two or thirty-three knife-makers—a feigned uncertainty regarding Milyas. Not before section 19 does he identify Milyas as "our freedman," depicting him as manager with full authority. In 22, eventually, without saying a single word about Aphobus's *proklēsis*, Demosthenes most probably produces the witness testimony about Aphobus's *homologia*. Then in section 50 he refers to an "unreliable" *proklēsis*, this time without mentioning the name of Milyas. In this way the plaintiff undermined foreseeable conclusions from the *proklēsis* he had rejected, without saying a single word about the *basanos* that the defendant had demanded. From Demosthenes's first speech, throughout the whole *dikē epitropēs* the judges would have remembered that Milyas was a free man and was not to be subjected to torture.

Another topic of this speech, most promising for scholarship even still in the twenty-first century, is the case of Cleobule, Demosthenes's mother. In the following I can only give a brief outline. On his death bed her husband, Demosthenes's father (also named Demosthenes), gave her in marriage to Aphobus with a dowry of eighty minas and granted Aphobus the house for a residence (27.5). Aphobus took up residence and, allegedly, received the full dowry (27.16) but "refused" to marry Cleobule. In this sense the audience must have understood the words: μὴ γήμαντος δ᾽ αὐτοῦ τὴν μητέρα τὴν ἐμήν ("[if] he did not marry my mother"; 27.17). Since Democharès, the husband of Cleobule's sister, was interfering in the case, we might come to another conclusion. As Douglas MacDowell in his translation correctly notes,[20] Cleobule left her marital home and moved to the house of her sister. Did *she* refuse to marry Aphobus? It seems likely.[21] Anyway, in court Demosthenes concedes that "a little disagreement" had taken place between Aphobus and Cleobule (27.15). Because Democharès, Cleobule's brother-in-law, was not her *kurios* ("woman's guardian")[22] and her son Demosthenes was underage, there was no one to administer her legal interests.[23] Therefore Aphobus, claiming that he had been willing to marry the widow, had good arguments for keeping her dowry, at least until he married another woman, and not providing Cleobule with maintenance (27.15). Did Cleobule incite her son to sue Aphobus first of the three guardians? Most probably she did.[24] Surpris-

ingly, in his *dikē epitropēs* against Aphobus, Demosthenes did not dare praise his mother because "she passed her life in widowhood for her children." He didn't do so until his speech for Phanus in the following *dikē pseudomarturiōn* ("prosecution for false witness"; 29.26), addressing another law court, whose judges were not aware of the speeches in the prior trial. It seems that in his defense against the *dikē epitropēs* Aphobus did not speak very favorably about Cleobule[25]—in vain as it turned out.

In the first speech against Aphobus there is one more instance of "isolating the facts": emotionally the whole speech is concentrated on Cleobule's dowry. Demosthenes began his account of Aphobus's misdeeds with this point (27.13–18), and his last words were spoken about this dowry (27.69). Imploring the judges for pity, Demosthenes complained about another dowry too: if Aphobus should not be condemned in this trial, he, Demosthenes, never would be able to spend the two talents his father had bequeathed as *proix* ("dowry") to his, the younger Demosthenes's, sister (27.65). Eventually the judges must have forgotten that the co-guardian Demophon, who was provided to marry the girl when she came of age,[26] had cashed the sum in advance, as had been mentioned at the beginning of the speech (27.5). Nevertheless, Demophon refused to marry her. Does this item concern Aphobus? If the sister's dowry really was so important, why did Demosthenes not sue Demophon first? However, Demosthenes may have trapped the judges by the fact that *usually* the mother's *proix* passed to her daughter.[27] *Proix* was an ideal emotional topic to frame sober business interests.

The technique of isolating the facts is used primarily by plaintiffs. They have the opportunity to inform the judges first about the relevant facts of the case, and they benefit from this position. From the first plausible information, the listeners receive psychologically "complex associations" tightly interwoven, especially when backed by emotions. Later, when the defendant is speaking, "associative inhibitions" make it difficult for the audience to understand the facts in a coherent order that is different from the one exposed by the plaintiff.[28] Therefore, in Athenian courts the better rhetorical position was the first word.[29] Giving the last word to the defendant was considered a matter of fairness. And as far as possible, defendants used the *paragraphē* (a "special plea" that the lawsuit was not admissible) to speak first and imprint their points of view on the judges. Moreover, Demosthenes (47.39, 45) reports that in two independent cases concerning *aikeia* ("assault") between two persons involved in a scuffle, both opponents struggled to be *first* to address the court—namely, to be the plaintiff, which indeed seems strange to a modern jurist. As a result, one litigant, Theophemus, accepted the burden of proof to show that his opponent had struck the first blow, but because of his preferable rhetorical position of speaking first, he nonetheless won the case.[30]

3. PRACTICUM: ATHENIAN-STYLE MOOT COURT

Jumping now to the twenty-first century one may ask whether it makes sense to teach our students the sophisticated art of lying by manipulating an audience. Admittedly, detecting the technique of "isolating the facts" is a rather extreme method for studying classical oratory,[31] combining philological, historical, sociological, and juristic aspects with mass psychology. Searching for the overall intellectual guidelines of court speeches one cannot benefit much from the ancient *technai* and *institutiones*. Since every actual case preserved in classical court speeches was different, an intensive study of forensic practice is necessary to achieve this goal. A modern lawyer can profit from isolating the facts only in a very restricted way. Today, through cross-examination and forensic dispute law courts are better equipped for finding the truth than the ancient Athenian *dikastēria* ("popular courts") were. In Athens, in an absolutely passive way, the huge panels of lay-judges were completely dependent on the opponents' speeches, performed in continuous blocks, which were only interrupted by reading aloud short documents. Nevertheless, in present-day penal cases every prosecutor or attorney-at-law tries in summation to manipulate the jury by exciting emotions in order to stress or reduce the relevance of facts—just as Demosthenes and Hyperides did.

Today the art of isolating the facts and exciting emotionally "complex associations" survives wherever mass psychology is alive, in the fields of politics and economy. This concerns every citizen. As is generally known, in former generations the most successful active players in politics improved their natural abilities by studying classical oratory, and today business executives are trained in "limbic presentation." But a responsible citizen also needs some knowledge of the tools of oratory and mass psychology in order to penetrate political propaganda and commercial advertising. This ability is a welcome byproduct of rhetorical education.

The main reason for teaching classical oratory is to furnish intellectual and formal guidelines of perfect self-portrayal in public speaking, and in the same way, in writing addresses and in appearing in visual mass media. All of these techniques can be learned by studying and practicing the classical art of persuasion. For several years I performed Athenian moot courts with my students. My idea was to practice oratory throughout all stages from *heuresis* ("discovery" or *inventio*) to *hupokrisis* ("orator's delivery" or *actio / pronuntiatio*). The didactic aim was to perform cases preserved in classical literature according to the pattern of an Athenian trial: adapting the preserved speech and inventing the opposing plea. Thus we strictly observed the following rules: a written *enklēma* (complaint); disclosure of all documents in an *anakrisis*; a strict time limit in speaking controlled by a *klepsudra* ("water

clock"); a prohibition on interrupting the speeches (unless by uproars, *thorubos*, in the audience—the speaker has to learn to cope with these); the use of testimony depositions only as short, untimed written documents read aloud; and secret voting immediately after the speeches.

Preparing such a performance (for example, of Lysias 1) in a seminar took a whole term.[32] The first step was analyzing the court speech by all participants: in term papers, several students reconstructed and discussed the legal, historical, and sociological background of the case, the facts presented by the speaker, his legal arguments, and the possible counter arguments of the opponent. Thereby the students also learned how to penetrate manipulations by isolating the facts. Then the rest of the group separated into the roles of jurisdictional staff (presiding magistrate and court secretary) and the two parties, plaintiff and defendant (with supporters on both sides), and both sides, respectively, drafted the *enklēma* and *antigraphē* ("defendant's plea"). The parties separately sketched the outlines of their arguments, checked the *nomoi* ("laws"), and drafted *marturiai* ("testimony" or *inventio*). Later, after the *anakrisis* (in which the litigants formally questioned each other and disclosed their written documents), the speakers attended to composition and style (*dispositio* and *elocutio*). Finally, they learned their speeches by heart (*memoria*) and, at the end of the term, performed the trial (*pronuntiatio*) before a larger public audience, which played the part of judges by secretly voting. Of course, students performing the role of Lysias's client were better off, but the plaintiff and his *sunēgoroi* also composed ingenious speeches.

To conclude the oral presentation of this paper in Austin, Texas, I relied on an *atechnos pistis*, a movie. It was a cut of some fifteen minutes from a one-hour video of the trial against Socrates that was performed by my students in Graz in 2007.[33]

In conclusion here, I want to stress the differences between performing moot courts in the "classical Athenian" way and those following the shape of a "modern" (Anglo-American) trial, even when featuring cases from Greek or Roman law—and the advantages of the former. In Athens, jurisdiction was a matter of direct democracy, where rhetoric played an essential role. In strictly limited time, addressing personally a mass panel of laymen, who immediately after listening to the speeches voted for guilt or innocence, was a great intellectual and emotional challenge for the litigants. This was the matrix of classical forensic oratory. The presiding magistrate was not allowed to interfere or ask questions. Today the presiding judge governs the trial in a different way; he and professional lawyers on both opponents' sides enter mutual legal disputes and question the parties or cross-examine the witnesses.[34] Therefore, a moot court in the modern style emphasizes elements of dialectic rather than rhetoric;[35] here, students are trained more in special legal knowl-

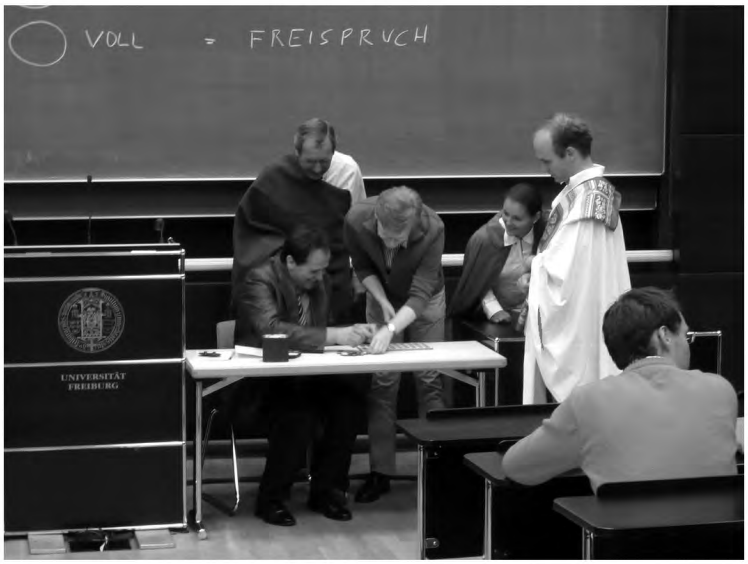

FIGURE 11.3. *Counting the votes in the trial of Socrates, Freiburg, Germany (2007).*

edge rather than in rhetorical argumentation. Moot courts in Athenian style have a more general scope: they do not imply special knowledge of the law but meet the demands of an erudite, responsible citizen of our day. Thus, their place is in legal and classical education as well. Finally, the Athenian style has one more advantage: by interacting with the audience the litigants have to expose the full case—though seen from different sides—to the listeners, who have an active role and will immediately deliver a judgment. In contrast, moot courts shaped in modern style often are conducted like academic examinations: the presiding professional "judges"—teachers or lawyers—do not decide the case, but rather grade and rank the speakers and teams all competing about the same case. The audience, at the beginning scarcely informed, has—sometimes boringly—an absolutely passive role. This satisfies primarily legal but not rhetorical standards of education.

As in ancient Athens, performing "rhetorical" trials requires some technical equipment.[36] A set for fifty judges seems convenient: fifty *pinakia* (small tablets legitimating the judges, at the beginning, by lot, quickly distributed among the audience), one hundred metal *psēphoi* (tokens used to cast votes to be distributed after the speeches, a set of fifty solid and fifty pierced ones—for "guilty" and "innocent," respectively—in two separate boxes), a *klepsudra*, a metal and a wooden urn (in which to drop the *psēphoi*), and an *abax* (a board for counting the votes). My suggestion is to procure equipment that is commercially available. A booklet explaining where to find and how to use the props, and a professionally recorded video to show how such a trial works

would complete the equipment. The availability of such a mock-trial kit could encourage teachers in classics and legal history to perform "Athenian" moot courts with their students. Last but not least, the translations of and introductions to the Athenian court speeches in the Austin *Oratory of Classical Greece* series edited by Michael Gagarin will be of greatest value for this project.

NOTES

1. See my earlier attempts in this direction, Thür 2006, 2007 (not easily available in the libraries of the United States), and 2014.

2. For example, by Steel 2004.

3. Zanker 2003.

4. Thür 1977.

5. Thür 1977: 255–256. Years later I came to a passage in the psychologizing novel *Crime and Punishment* by the great Russian author Fyodor Dostoyevsky: "But why speak against yourself?" . . . "Because only peasants, or the most inexperienced novices deny everything flatly at examinations. If a man is ever so little developed and experienced, he will certainly try to admit all the external facts that can't be avoided, but will seek other explanations of them, will introduce some special, unexpected turn, that will give them other significance and put them in another light . . . ." (Dostoyevsky 1978: 243). Exactly this method, specified here for criminal examination, was used by the litigants before Athenian courts. See also Marcel Proust about the art of lying: "Elle en détachait un petit morceau, sans importance par lui-même, se disant qu'après tout c'était mieux ainsi puisque c'était un détail véritable qui n'offrait pas les mêmes dangers qu'un détail faux. 'Ça du moins, c'est vrai, se disait-elle, c'est toujours autant de gagné, il peut s'informer, il reconnaîtra que c'est vrai, ce n'est toujours pas ça qui me trahira'" (Proust 1919/1946: 85).

6. See Dem. 46.10. An affirmative answer to such a question could not be contested in court (Dem. 42.12); this—and not "to consent to a contract"—was the original sense of *homologein*. See Thür 1977: 154–158.

7. [Arist.] *Ath. Pol.* 53.2–3 mentions only trials preceded by a *diaita*, but this rule applied to trials preceded by both *diaita* and *anakrisis*. See Thür 2008: 64–66.

8. For the term "isolating the facts," see Thür 1977: 256.

9. For the editio princeps of the whole fragment, see Tchernetska et al. 2007. See now Horváth 2014: 184–188 (with German translation by Herwig Maehler); for the palimpsest more generally, see Netz et al. 2011.

10. So Thür 2010: 11, contra Whitehead 2009: 138–140, 146–148, who holds that, after the guardianship was over, the former ward desiring revenge had filed an *eisangelia* either *orphanōn kakōseōs* ("impeachment for the mistreatment of orphans") or *oikou orphanikou kakōseōs* ("impeachment for the mismanagement of an orphan's estate").

11. For these requests see Isae. 6.36.

12. Peter Rhodes kindly wrote me in a letter: "David Whitehead thinks that, when the *phasis* was brought to force Timandrus to have the estate leased, Timandrus prevented it by some improper means; I suspect that as in Dem. 38.23 Timandrus simply won the case when it came to court." Here I partly agree with Whitehead 2009: 139. Winning a *phasis* trial does not fit the list of Timandrus's illegal behavior: he prevented (ekōlusen, l. 17)—though with good reason, I think—the *phasis*, not the *misthōsis* ("leasing").

13. Hyp. Against *Timandrus*, lines 3–5 (Netz et al. vol. 2, Fol. 138R + 135V): αὐτοῖς δὲ τοὺς ἐπιτρόπους ἀπαγορεύουσιν οἱ νόμοι μὴ ἐξεῖναι τὸν οἶκον μισθώσασθαι. For the translation "on their own authority," see Thür 2010: 13–14. Cf. Maehler in Horváth 2014: 167: "Aber dass die Vormünder den Besitz für sich pachten" ("leasing the estate for themselves").

14. Wolff 1953 convincingly demonstrated that the guardian also was allowed to lease his ward's estate.

15. On the basis of Dem. 27.58 I suggest restoring the beginning of the fragment: [ἐξῆν δὲ τοῖς ἐπιτρόποις μισθῶσαι τὸν οἶκον | κατὰ τοὺς νόμους, ὥστε τὸ κεφάλαιον τὸ διαχειρισθὲν] | τοῦ μὲν . . . ("The guardians could have let the property in accordance with the laws, so that the capital managed . . .").

16. I agree with Rubinstein 2009 (and Rhodes, see above n. 000) that the law quoted in line 53 specified only that "wards should be brought up wherever was best for them," and the notion that they should not be separated from one another is not, despite the speaker's insinuation, likely to have been included in the law.

17. For details, see Thür 1972.

18. Text quoted in Dem. 29.31; most probably Demosthenes had produced this witness deposition in 27.22.

19. See the brief remarks in Harrison 1968: 183.

20. MacDowell 2004: 25 n. 24 (commentary on Dem. 27.14), contra Cox 1998: 147.

21. See Foxhall 1996: 146.

22. *Pace* Foxhall 1996: 144 (incorrectly referring to Hunter 1989: 40), and 147, "Democharis was her 'alternative' *kurios*" (beside Aphobus).

23. Hunter 1989: 43–44 correctly remarks that Aphobus was not Cleobule's *kurios* (pace Harrison 1968: 59); she probably also had no *kurios* in her father's family.

24. See also Foxhall 1996: 144, asserting Cleobule was the "real heroine of this social drama."

25. On slandering women, see Foxhall 1996: 141–142.

26. See also Dem. 29.43.

27. For the ideological background, see Thür 1992: 127.

28. Thür 1975: 184–186 with further literature; see also above n. 000. Today in the world of business, the method of "limbic presentation" is based on the classical technique of "complex associations" that combine sober facts with emotions.

29. This might have been important also in the different ways of controlling summary fines. See the paper of Lene Rubinstein in this volume.

30. Thür 1977: 252–254. Theophemus's opponent retorted by filing a *dikē pseudomarturiōn* against two witnesses, Euergus and Mnesibulus; his speech is preserved as Dem. 47.

31. In an admirable way, without using the term "isolation," Steel 2004 deconstructs the "Lampsakos episode" in Cic. *Verr.* 2.1.63–86.

32. In 2005 Adriaan Lanni performed this trial at Harvard and I did the same in Graz, Austria, and Mostar, Bosnia (see the speeches in Thür 2006: 215–232 [in German]). In 2007 I performed the trial of Socrates in Graz and Freiburg, Germany (fig. 11.3). The idea of performing Athenian trials, from Isaeus's speeches, originated with Sima Avramović and his Belgrade students. For his "clinicum," see Avramović 2003.

33. The video was prepared by my colleague, Gernot Kocher, from Graz.

34. For this reason in the "Athenian style" of moot courts I dismiss copious oral depositions of witnesses and cross-examining them. See Thür 2006: 194–195; 2014: 745 (*pace* Avramović 2003). The performances of the Belgrade teams are doubtlessly more colorful.

35. For the difference between the two "counterparts" (*antistrophē*) dialectic and rhetoric, see Arist. *Rh.* 1354a.

36. Fully specified in [Arist.] *Ath. Pol.* 63–69.

REFERENCES

Avramović, Sima. 2003. "Simulation of Athenian Court: A New Teaching Method." *Balkans Law Review* 16: 47–50.

Cox, Cheryl Anne. 1998. *Household Interests: Property, Marriage Strategies, and Family Dynamics in Ancient Athens*. Princeton: Princeton University Press.

Dostoyevsky, Fyodor. 1978. *Crime and Punishment*. Translated by Constance Garnett. New York: Modern Library.

Foxhall, Lin. 1996. "The Law and the Lady: Women and Legal Proceedings in Classical Athens." In *Greek Law in Its Political Setting: Justifications not Justice*, edited by Lin Foxhall and A. D. E. Lewis, 133–152. Oxford: Clarendon Press.

Harrison, A. R. W. 1968. *The Law of Athens*. Vol. 1, *The Family and Property*. Oxford: Clarendon Press.

Horváth, László. 2014. *Der "Neue Hypereides": Textedition, Studien und Erläuterungen*. Berlin: De Gruyter.

Hunter, Virginia J. 1989. "Women's Authority in Classical Athens: The Example of Kleoboule and Her Son." *Échos du monde classique/Classical Views* 33: 39–48.

MacDowell, Douglas M., trans. 2004. *Demosthenes*, Speeches *27–38*. Austin: University of Texas Press.

Netz, Reviel, William Noel, Nigel Wilson, and Natalie Tchernetska. 2011. *The Archimedes Palimpsest*. 2 vols. Cambridge: Cambridge University Press for the Walters Art Museum.

Proust, Marcel. 1919/1946. *À la recherche du temps perdu*. Vol. 2, *Du côté de chez Swann*, Pt.2, *Un amour de Swann*. Paris: Editions Gallimard.

Rubinstein, Lene. 2009. "Legal Argumentation in Hypereides *Against Timandros*." *Bulletin of the Institute of Classical Studies* 52: 149–159.

Steel, Catherine. 2004. "Being Economical with the Truth: What Really Happened at Lampsakos." In *Cicero the Advocate*, edited by Jonathan Powell and Jeremy Paterson, 233–251. Oxford: Oxford University Press.

Tchernetska, Natalie, Eric W. Handley, Colin F. L. Austin, and László Horváth. 2007. "New Readings in the Fragment of Hyperides' *Against Timandros* from the Archimedes Palimpsest." *Zeitschrift für Papyrologie und Epigraphik* 162: 1–4.

Thür, Gerhard. 1972. "Der Streit über den Status des Werkstättenleiters Milyas (Dem. *Or.* 29)." *Revue internationale des droits de l'Antiquité*, ser. 3, 19: 151–177.

———. 1975. "Komplexe Prozeßführung: Dargestellt am Beispiel des Trapezitikos (Isokr. 17)." In *Symposion 1971: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, edited by Hans Julius Wolff, Joseph Mélèze Modrzejewski, and Dieter Nörr, 157–188. Cologne: Böhlau.

———. 1977. *Beweisführung vor den Schwurgerichtshöfen Athens: Die Proklesis zur Basanos*. Vienna: Verlag der Österreichischen Akademie der Wissenschaften.

———. 1992. "Armut: Gedanken zu Ehegüterrecht und Familienvermögen in der griechischen Polis." In *Eherecht und Familiengut in Antike und Mittelalter*, edited by Dieter Simon, 121–132. Munich: R. Oldenbourg.

———. 2006. "Clinicum Antike Rechtsgeschichte. Forensische Rhetorik." In *Imperium und Provinzen (Zentrale und Regionen): Internationales Sommerseminar in Antiker Rechtsgeschichte, Sarajevo, 30 April–04 Mai 2005*, edited by Gerhard Thür and Zdravko Lučić, 191–232. Sarajevo: Pravni fakultet univerziteta u Sarajevu.

———. 2007. "Rhetorik im Rechtsunterricht: Clinicum Antike Rechtsgeschichte." In *Zur Geschichte des Rechts: Festschrift für Gernot Kocher zum 65. Geburtstag*, edited by Helmut Gebhardt and Markus Steppan, 461–472. Graz: Graz Universitätsverlag, Leykam.

———. 2008. "The Principle of Fairness in Athenian Legal Procedure: Thoughts on the '*Echinos*' and '*Enklema*.'" *Dike* 11: 51–73.

———. 2010. "How to Lease an Orphan's Estate in Classical Athens." *Annals of the Faculty of Law in Belgrade / Belgrade Law Review* 58: 7–19.

———. 2014. "Antike Streitfälle im Rechtsunterricht." In Inter cives necnon peregrinos: *Essays in Honour of Boudewijn Sirks*, edited by Jan Hallebeek, Martin Schermaier, Roberto Fiori, Ernest Metzger, and Jean-Pierre Coriat, 741–750. Göttingen: Vandenhoeck and Ruprecht.

———. *Opera Omnia*. ‹http://epub.oeaw.ac.at/gerhard-thuer› will be on open access in 2017.

Whitehead, David. 2009. "Hypereides' *Timandros*: Observations and Suggestions." *Bulletin of the Institute of Classical Studies* 52: 135–148.

Wolff, Hans Julius. 1953. "Verpachtung von Mündelvermögen in Attika." In *Festschrift Hans Lewald*, 201–208. Basel: Helbing and Lichtenhahn.

Zanker, Paul. 2003. *Augustus und die Macht der Bilder*. 4th ed. Munich: C. H. Beck.