

II. Forensic Speeches

Illae omnium doctrinarum
invenitres Athenae,
in quibus summa dicendi vis et inventa
est et perfecta.
(Cicero, *De oratore* 1.13)

Ritual Framing

While Athenian trials were first and foremost legal procedures, they also fulfilled the functions of rituals. Religious rites permeated every aspect of Athenian life, including politics and jurisdiction, but even if we approached the legal sphere solely from a non-religious angle, we could still employ the broad, anthropological definition of ritual, as explicated above, and consider Athenian lawsuits as secular rituals, much as anthropologists regard today's sporting events and rock concerts as rituals. Since the litigants regularly enacted their disputes in front of an audience (judges, bystanders), we can also say that they staged their cases and, in so doing, conveyed symbolic meanings to the onlookers in and through a performative narration that worked very much like a large-scale ritual.¹ The corporeal aspect was of paramount importance and will concern us not only when dealing with the law courts as ritual communities, but also in the ensuing chapters on the magical curses and comedy.² The courtroom ritual

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- 1 The creativity of the ritual transforms the merely empirical coexistence of experiences into narrations. Cf. Davis 1987, 120–121.
 - 2 Turner and Schechner have frequently highlighted the close connections between real-life Social Dramas and stage dramas: Turner 1990, 17; 1989a, 161–195; 1989b, 116; 1979; Schechner 1990, 96–102; 1977, 76–94; 1976, 208. According to Schechner, “ritual dramas” such as courtroom speeches are designed to show a high degree of efficacy, whereas “stage dramas” show a high degree of entertainment. Since Athenian trials were often as entertaining (cf., e.g., Lysias 1 [*On the Death of Eratosthenes*] and 24 [*For the Disabled Man*]) as dramas may have been efficacious at reaching out into the *polis*, we have an additional criterion at hand to draw a parallel between the performance of a court session and a stage drama. Consequently, the analogies between the “ritual drama” of the courtroom and stage drama are significant. There is a reciprocal movement between ritual and theater. The ritual always tends to become theater, and vice

could only work if the actions (*drômena*) of the litigants (gesture and tone) and the words they spoke (*legomena*) were performed in a special context, a ritually marked-off place that all participants acknowledged as being distinct from the occurrences of daily life.

This ritual demarcation is better attested for the meetings of the Assembly of the People than for most courts. Considering some ritual features of the Ekklēsia first will enable us to draw cautious analogies between the Assembly of the People and the *dikastēria*. The Athenians were highly conscious of the political privileges they enjoyed through and in the general Assembly. Any citizen (*ho boulomenos*) could step forward to the *bēma* and speak on any issue of importance, as long as he did so in accordance with certain rules that the Athenians had given themselves in order to ensure the orderly conduct of the meetings. By the fourth century, Athenians differentiated between laws and decrees, but in fact a vote by the Assembly in the form of a decree carried great weight and almost had the power of a law. Given this solemn character of the occasion, every statement publicly uttered in the Assembly was a speech act that all participants in the ritual took seriously by default. Because of the prerogatives Athenian citizens enjoyed in this Assembly, it was closed to foreigners and metics. Latecomers were penalized by having to step over a dyed rope that was stretched around the Pnyx.³ The ritual event started with the drawing of a purifying boundary around the meeting place. The *peristiarch*, a priest who was responsible for the ritual purity of the meeting place, sacrificed young piglets, cut off their testicles, and carried them around the Pnyx.⁴ The periphery of this meeting area was sprinkled with their blood so as to make the confinement of the meeting place visible and cleanse it from all potential pollution, which might otherwise endanger the successful holding of this secular ritual.⁵ Before the actual session began, a herald performed prayers⁶ and cursed everyone intending to de-

versa. In other words, daily life has an impact on cultural performances (e.g., stage dramas). Conversely, the aesthetic performance of a stage drama affects ordinary life. This interdependence certainly applies to Athenian courtroom trials as well as drama.

3 Ar. *Ach.* 22; *Ec.* 378–379. The rope might also have served to gather the citizens together.

4 Moulinier 1952, 99–100.

5 D. 54.39; Aeschin. 1.23. The idea of the Pnyx as a sacred precinct characterized by purity is neatly expressed in Ar. *Ach.* 44. To ensure ritual purity, orators washed their hands in water before they spoke (Ar. *Av.* 463–465).

6 Aeschin. 1.23; Din. 2.14–16.

ceive the Athenian people, including traitors and enemies of the state.⁷ A similar procedure is also attested for meetings of the Boulê.⁸ This means that public meetings took place within a ritual and theatrical framework, like the performance of a stage drama. And indeed, Athenians frequently equated the political with the dramatic stage by using metaphors borrowed from the sphere of theater to characterize behavior in the Ekklēsia.⁹ To the Athenians, all public events were political and thus meaningful social practices. The ritual frame had a profound impact on the performers' behavior and their speeches. The speakers should display temperance in appearance and language. Speaking in too loud a voice and exaggerated gesticulating were frowned upon. Ideally, a speaker would hide one hand in his cloak.¹⁰ This ideal is visualized, for example, in the statue of Sophocles that was erected near the theater of Dionysus during the Lycurgan era.¹¹ The speeches themselves were highly ritualistic in their internal rhetorical structure,¹² a fact that we will investigate further below.

In the context of this book, however, I am less concerned with political speeches held on the occasion of an Assembly meeting than with the staging of forensic speeches, most of which were delivered in the dicastic courts. The buildings of the heliastic courts were firmly integrated into the Agora,¹³ and we can observe how carefully the Agora, as the center of Athens' political, social, and economic life, was delimited by a variety of rituals and other markers. First of all, the Agora seems to have been

7 And. 1.31; D. 19.70–71; 20.107; 23.97; Lycurg. 1.31; Din. 1.47; 2.16. The curse is parodied in Ar. *Th.* 331–371. Cf. on this curse Ziehbarth 1895, 61.

8 D. 23.97 and 19.70–71 both mention the Boulê, D. 23.97 also the courts. Cf. Kagarow 1929, 8.

9 E.g., Aeschin. 2.4. Dem. 5.7 is not a metaphor, but an explicit comparison. On the multiple analogies between theater and the Assembly of the People or the courtrooms, cf. Harris – Leão – Rhodes 2010; Hall 2006, 14, 353–390; 1995; Cohen 2005a, 22; Bers 2000; Lanni 1997; W. Slater 1995, esp. 144–147; Wilson 1991/92; Ober – Strauss 1990, esp. 238, 270; Humphreys 1988, 482.

10 D. 19.251–252 (with an idealizing reference to Solon); D. 22.68 (referring to Androtion's misbehavior in the Ekklēsia); Aeschin. 1.25–26 (referring to Timarchus' misbehavior in the Ekklēsia in contrast to Solon's ideal conduct imbued with self-restraint). In general, speakers were not supposed to burst into uncontrolled laughter (Isoc. 1.15).

11 Knell 2000, 139–145.

12 A good example of the ritual character of rhetoric is Demosthenes' speech against Meidias before a dicastic court. On its structure, cf. MacDowell 1990, 29–30.

13 Thompson – Wycherley 1972, 52.

surrounded by a “system of *horoi*,”¹⁴ boundary stones that visually and physically delineated the confines of the Agora. This was all the more necessary, because murderers and other people who had lost some or all citizens’ rights (*atimoi*) had to keep away from all public places so as not to defile them.¹⁵ This stipulation included the court buildings and demonstrates that the drawing of ritual boundaries was meant to be territorial and physical. We have ample evidence that it was especially in the courts that *atimoi* could not appear.¹⁶

The course of a standard dicastic trial was also highly ritualized. Multiple rites of separation dissociated the lay judges, in respect to time and space, from their daily routines outside court. At the beginning of the year, all Athenian citizens above the age of thirty who were willing to serve as judges took part in a lot procedure, which selected six thousand of them at random. These men swore a solemn oath that transformed them into potential judges.¹⁷ Thus, it was drummed into each layman’s head that, as a heliast, he was about to fulfill a crucial duty in the service

14 Lalonde – Langdon – Walbank 1991, 10; Thompson – Wycherley 1972, 117–119; pls. 4, 64: a, b.

15 D. 23.40–41. Even more explicit is D. 23.80, where he explains the *apagôgê phou* procedure. Athenian law distinguishes total from partial *atimia* (Hansen 1976, 61–66). Connected to these different degrees of *atimia* are serious social consequences, such as shunning persons considered to be *atimoi*. Cf. And. 1.73–79; Aeschin. 1.19–22, 28–30; Lys. 6.24–25; Arist. *Ath.* 57.4; IG I³ 104, lines 26–28 (Draco’s homicide law). On the various aspects of self-incurred and imposed *atimia*, cf. Hansen 1976, 66–67.

16 This is one of the reasons why Aeschines went into voluntary exile after Demosthenes defeated him in court. Having lost the *graphê paranomôn* against Ctesiphon—he had not received one-fifth of the votes—Aeschines suffered partial *atimia*. In his speech against Timarchus and his defense in the embassy case, Aeschines had tried hard to bring Demosthenes into some connection with the brutal murder of Nicodemus of Aphidna (Aeschin. 1.171–172; 2.148, 166 with scholia). A well-grounded suspicion that Demosthenes was a murderer would have been enough to make Demosthenes a partial *atimos* and thus bar him from public business. A similar strategy to knock out a political opponent is attested in Antiphon 6. The *chorêgos*, accused of being responsible for the accidental death of one of his chorus boys, claims that the charge against him is politically motivated. Philocrates, the brother of the dead Diodotus, only filed charges of homicide against him to prevent him from lodging an *eisangelia* against Philocrates’ friends. For this technique of framing for homicide, cf. below 46–48.

17 The oath of the heliasts is partly preserved verbatim: D. 24.149–151. Cf. Mirhady 2007, 49–50, 229 on the historicity of this passage and other sources pertaining to this particular oath.

of democracy. This oath defined and established the assembly of the *dikastai* as a ritual community and a vital organ of the democracy.¹⁸ Every court day began in the early morning with the complicated use of the allotment machine (*klêrôtêrion*), which randomly assigned every pre-selected citizen to a certain law court.¹⁹ The potential judge taking part in this elaborate ritual experienced with his own body how he was being treated as part of a larger whole, a representative sample of the citizen body rendering verdicts on that particular day. He also realized with all his senses that Athenian legal procedures were conducted in such a way as to prevent anyone from meddling with the composition of the law courts through bribery or other illegal means. “Playing” with the lot machine turned the former potential judge into an actual judge for a day. We could also speak of a twofold initiation “rite”²⁰ that a citizen had to undergo to serve as a *dikastês*, one at the beginning of the year, the other immediately before the court session itself.²¹ As with the Pnyx, the court buildings were probably also purified by the *peristiarch*.²² Before the sessions began, fire, myrtle wreaths, and incense were brought in, libations made, and Apollo invoked.²³ Courtroom trials were understood as secular rituals within a sacred sphere. The actual court proceedings were then opened by a sacrifice, the accused taking the sacrificial victim in his hand and swearing that the charge against him was not true. In doing so, he called down destruction upon himself.²⁴

Cases of intentional killings or serious woundings of citizens were not heard before dicastic courts, but before the Areopagos. There, the ritual oath of the *diômosia*, sworn only in trials for homicide (by *dikê phonou*) and wounding, was especially gory and thus charged with a high degree of significance. Standing over the entrails of a ram, a boar, and a bull, the litigants swore a horrible oath of self-execration upon themselves, their children, and their entire household. The prosecutor swore that one of his relatives had been killed, or himself or a relative wounded, by the ac-

18 On the identity-creating function of oaths, cf. Cole 1996.

19 Thür 2000, 42–45. Boegehold 1995, 32–33, 58 dates the introduction of this novel method of assigning *dikastai* to courts to ca. 410 BCE.

20 I use the word “rite” in the meaning of “religious ritual,” thus following the terminology of Ambos – Hotz – Schwedler 2005, 1.

21 Bers 2000, 557 speaks of a “civic ritual.”

22 Moulinier 1952, 101.

23 Ar. V. 859–874.

24 Aeschin. 1.114. On oath curses in courts, cf. Gagarin 2007; Faraone 1999a, 103–111.

cused; the accused swore that he was innocent. This oath ceremony had the purpose of discouraging frivolous charges for homicide and averting guilt from the judges in case they convicted the accused of intentional homicide and meted out capital punishment.²⁵ This practice did not apply to the Delphinion, where cases of lawful killing were heard.²⁶ Ritual sacrifices are attested for the Palladion, where cases of the unintentional killing of citizens and of killing non-citizens (regardless of intent) were tried.²⁷ The witnesses, too, took oaths at all court proceedings.²⁸ During the trial, the *klepsudra* habitually allotted a certain amount of time to each speaker.²⁹ This device helped stage the ritual and convey the impression of fairness to all parties involved. The speeches were interspersed with the readings of documents such as laws and decrees, private documents, statements of witnesses, evidence given by slaves under torture, oaths, and challenges.³⁰ These different genres of evidence helped structure the performance of the speeches and further enhanced the ritual character of the proceedings by drawing a line, time and again, between the daily life of the judges and their elevated, significant activity within this ritual circle. All of the evidence and instruments they saw, heard, and experienced enabled the judges to step out of the routines of their daily lives to fulfill the public duty required of them.³¹

25 I follow Loomis' argumentation (1972, 90), according to which Athenians did not differentiate between premeditated (*ek pronoias*) and intentional (*hekôn* or *hekousios*) manslaughter in the judicial context. Consequently, unpremeditated (*mê ek pronoias*) is equated with unintentional (*akôn*). Therefore, we should translate *mê ek pronoias* as "unintentionally," not as "without premeditation" (Phillips 2007 *passim* contra Wallace 1985, 98–100).

26 Antiphon 6.6, 14, 16; D. 23.67–69; 59.10; Lys. 10.11; Aeschin. 2.87 on the oath that a winner in a homicide trial had to take. Cf. Boegehold 1995, 46–47; MacDowell ²1966, 99–100.

27 Aeschin. 2.87; Ps.-D. 47.70. Our main sources for the different homicide courts are Arist. *Ath.* 57.3–4; D. 23.65–79. Phillips 2008, 59–61 gives an excellent overview of all homicide courts. Cf. also Sealey 1983, who tries to date the introduction of the different courts, and Boegehold 1995, 43–50 on their locations.

28 Carey 1995b.

29 Thür 2000, 46–47.

30 Cf. Harrison 1971, 133–153.

31 In this way, inserted documents are ritual attributes, which are supposed to underscore the rationality of the speech. Cf., e.g., the documents presented by Demosthenes against Meidias (laws, witness statements, oracles): MacDowell 1990, 43–47.

To Huizinga, the courtroom is a *hieros kuklos*, “a sacred spot cut off and hedged in from the ‘ordinary’ world” as a “veritable *temenos*.”³² The sacredness, or rather the solemn character, of the secular courtroom ritual could not be better expressed. If it is true that the Athenian courtroom circumscribed a kind of play-ground where the customary differences of rank were temporarily abolished,³³ we can speak of a liminal sphere with all its constituent parts as described by Turner and many others. And in fact, in the liminality of the Athenian courtroom trial, there was enormous scope for reflection, creativity, and the establishment of a special community spirit (*communitas*) for the judges, which promoted citizen identity through the public performance of the forensic speeches.³⁴ In ascribing certain qualities to opponents, judges, and spectators, the speakers were highly creative. The judges were required either to accept or reject a certain construction of character. By judging the case, the judges rendered a legal and moral verdict, exerted the supreme power of the *dêmos*, and represented it visually. Since the attendants of a law court constituted a public, the judges’ decision was open for all to see and carried political weight. The creative delivery of the speeches and the performative rendering of moral and legal judgment in the lawsuit ritual helped maintain the cosmos of the Athenian democracy,³⁵ for without courts Athenian democracy was inconceivable, and without courts the state would fall prey to tyrants. For fourth-century Athenians, the memory of the Thirty Tyrants remained a haunting specter. We will see to what a great extent the traumatic experience of the Thirty shaped the violence discourse.³⁶ The speeches dealing with violence clearly reflect the preoccupation with this previous rampant violence and civic strife.

In the ritual space of the courtroom, anti-structural elements were designed and put to debate: the social elites who set the tone in daily life “voluntarily” surrendered to the verdict of the masses in front of the people’s court. They humbled themselves and implored the judges, citizens of mostly low origins, to confirm them in their social status or to negotiate it anew. Mainly in the courtroom, otherwise underprivileged Athenians

32 Huizinga ⁴1964, 77.

33 Huizinga ⁴1964, 76–88 regards the staging of a lawsuit as a ritual play.

34 On citizenship as performance, cf. Farenga 2006, 6–7.

35 Cf. Köpping – Rao 2000b, 17–18, 24; J. Assmann 2000, 152–153 and below 146, n. 551.

36 On the difficulties and the politics of forgetting at Athens, cf. Wolpert 2002 *passim*; Flaig 2004a; 2004b; 1999; 1991; Loraux 2002.

held power over social superiors.³⁷ Judges and bystanders³⁸ were influenced and persuaded by arguments and learned a lot about acceptable and unacceptable behavior, which the judges had to “define” through the ritual of rendering the verdict.³⁹ The main protagonists of a lawsuit, prosecutors and accused, both of them acting on private initiative, vied for social prestige in front of an audience. The ritual of the court session turned them into winners and losers. All this was brought about by language and its performative enactment through persons. Persuasion by rhetoric (*peithô*) was regarded by many contemporaries as a magical force,⁴⁰ powerful and yet invisible. The gifted speaker who could enchant his audience with his words was a *magos* who could lead the listeners in any direction he wanted, the supreme goal of the sophists. In the realm of magic, the *goês* who wrote curses for a client was analogous to the logographer in the forensic sphere who wrote speeches for anyone who could pay his services.⁴¹ These analogies can be carried so far that it is hardly surprising that some wealthy Athenian litigants hired talented speechwriters and professional sorcerers side by side to crush their opponents.⁴² This close relationship between forensic speeches and curse tablets⁴³ will occupy us more in the next chapter, but, for our present argument, it is important to note that both forensic speeches and curse tablets amply testify to a world full of *phthonos* and *baskania*, traditionally translated as ‘envy’⁴⁴ and ‘the evil eye.’⁴⁵ It is telling that Athenian society found various ritual forms to express these problematic emotions.

37 In this sense, Philocleon’s addiction to courts in Aristophanes’ *Wasps* can be better understood. Taking an active part in the lawcourt procedures must have led to a tremendous degree of self-esteem among humble Athenians.

38 Cf. Lanni 1997, esp. 189 on the key role that bystanders played during court proceedings.

39 On the informal learning in court, cf. Rubinstein 2005b, 135–136.

40 Johnston 1999a, 118. On the close connection between magic and rhetoric, cf. below 184, n. 100.

41 On the analogies between rhetoric and magic, cf. De Romilly 1975 on the basis of Gorgias’ *Helen*.

42 Faraone 1999a, 116, 118.

43 On this relationship, cf. Bernand 1991, 234.

44 On envy, cf. below 169, n. 19. Envy was seen negatively throughout the fourth century (Walcot 1978, 67–76). Fisher 2003, 211 refines this view and differentiates between malicious *phthonos* and justified envy. The first variant dominated, however.

45 Dionisopoulos-Mass 1976 connects envy and the evil eye in a modern Greek village setting. Walcot 1978, 77–90 is still useful on the evil eye. Cf. below 169, n. 20.

The consequences of this ritual framing of the violence discourse cannot be overestimated. Whether in the Assembly of the People or in court or in the theater, the violence discourse was always enacted on the public stage within a ritually delimited precinct. If it is true that the congregation of the judges was a ritual community that was pre-eminent in constructing Athenian identity, the violence discourse must have played a key role in this dynamic process. This hypothesis will guide us in the ensuing treatment of the subject, establishing the discursive patterns of how Athenians talked about violence and thus constructed a semantic grammar of violence. The large body of orations, in which we can grasp most clearly the Athenian perception of violence and its evaluation by speakers, allows the historian to examine under what circumstances violence was regarded as legitimate or illegitimate. What we have access to in the speeches, however, are only discourses. In what follows I differentiate between discursive rules of interaction and discursive rules of representation. Sometimes the exertion of violence itself unfolded in accordance with the discursive rules of interaction. In these cases, the violence in question was characterized by some ritual traits: it followed certain behavioral patterns, occurred at a certain time and space, within a certain frame of onlookers, and displayed meaning to the audience. In these scenarios, we could say that the rules of violent interaction were ritualistic themselves and provided unwritten guidelines for committing violence.⁴⁶

Rituals circumscribing the actual perpetration of violence fulfill two major purposes: regulating violence and charging it with symbolic meanings that facilitate communication between the conflicting parties and the audience.⁴⁷ That such unwritten rules of interaction exist in every society is made clear by the disastrous consequences that failure to abide by them can entail.⁴⁸ How, then, can we extract rules of violent interaction, if the orators construct and rhetorically represent them in their speeches? We have to acknowledge that interactionist rules and their representation on the discursive level are inextricably intertwined and influence each other. This is a far more complicated problem than the conventional concept of the orators' "rhetorical distortion" of facts. Schechner's braid

46 Bell 1997, 138–169 speaks of ritual-like activities, which correspond to my concept of interactionist rules in the context of violence.

47 Köpping – Rao 2000b, 7–8 speak of rituals as a condensed and sublimated form of social communication. Bauman 1977, 9, 15 emphasizes the importance of the ritual as the communicative frame for the performance. Similar now is Stavriannopoulou 2006, 18.

48 Ambos – Hotz – Schwedler 2005, 4 with examples from the Middle Ages.

model is applicable to this context, too,⁴⁹ and provides a heuristic tool to untangle the two levels, or at least to become more acutely aware of them.

Rules of interaction and representation condition each other. Whatever one did in reality, one would represent in similar terms in court, or at least one would try to make the happenings probable and plausible.⁵⁰ Otherwise, one would not win the favor of the bystanders and the judges. Whatever one saw and learned in court, one would imitate in reality so as to make one's commitment of violence more defensible in the future. The ritualistic representation of violence influenced violence proper by partially ritualizing the actual perpetration of violence. In turn, actual violence often followed certain rules and thus facilitated its ritualistic representation in the courtroom and on the dramatic stage. Given these two distinct layers, we can postulate that rules of violent interaction and of representing violence show symbolic meanings on at least two distinct levels: in daily life, partly because the courtroom speeches endowed actual violent interactions with a certain significance, and in the forensic speeches, partly because daily-life occurrences already had some symbolic meanings and were furthermore semantically charged through the process of turning these occurrences into courtroom narrations.

The following discourse analysis will demonstrate that the speaker represents himself by characterizing his opponent as the complete opposite. The speaker's self-definition and the "otherness" of his rival create multiple dichotomies.⁵¹ Also, the notion of violence was not a stable entity, but depended heavily on the viewpoint of the speaker. What constituted violence lay in the eyes of the beholder, be it the victim of violent aggression, playing mostly the part of the prosecutor, or the perpetrator, starring mostly in the role of the accused. This creation of dichotomies, roles, and masks was an integral part of the courtroom experience and is precisely what brings forensic speeches into close proximity to theatrical performances. The audience, made up mainly of judges and bystanders, had to decide at the moment of performance which "role" was more

49 Cf. above 16, n. 77. In terms similar to Schechner's on the relationship between drama and reality, cf. Hall 2006, 1–15.

50 Cf. Pl. *Phdr.* 272d–e.

51 Cf. as well the constant negotiation between mass and elite in democratic Athens (Ober 1989).

convincing, the prosecutor's or the defendant's;⁵² this must have created an exhilarating experience of *communitas*, full of suspense.

In the eyes of the victim, violence was the breach of rules and the transgression of boundaries by a perpetrator. Spotting the manifold features that made up these boundaries, and thus contributing to the decipherment of the semantics of violence at Athens, are the primary goals of this chapter. As a first step, I focus on what the orators tell us about concrete violent actions, violent behavior that could be observed by a third party. In this way, the first part of the ensuing analysis is oriented toward discursive "facts" as far as they might have been discernible. The close reading of violent conduct in its wildly contradictory character will reveal codes of behavior which I call (ritualistic) rules of violent interaction. Overlaps with (ritualistic) rules of representation will be unavoidable, but will, it is hoped, be kept to a minimum. A second part will then concentrate on the interpretation and evaluation of these violent acts through the orators, that is, on the ritualistic representation of violence.

Constructing Violence: Discursive Rules of Violence I (Interaction)

In this section, only visible breaches, the violation of certain codes or rules of behavior, will be described. Taken all together, these actions constructed the notion of violence in the Athenian imagination. Threshold transgressions removed an action from the culturally constructed norms of proper conduct. The further the derangement from acceptable behavior, the more serious, relevant, and shocking an act was deemed. But even the breaking of rules often followed certain established patterns and was often to be expected by the involved parties. The axis around which the following presentation of all these breaches is structured is the fundamental dividing line between the defendant's and the prosecutor's points of view. The accused claimed the legitimacy of the violence he had used,

52 It must be noted that the strict dichotomy between speaker and opponent that is portrayed in this book is an idealization rather than reality, constructed by the litigants themselves. This binary system is only to be found on the discursive level. In practice, many more people and factions were involved in major lawsuits, as is evident, e.g., from judicial curse tablets, which lump many people together as adversaries. Cf. below 171, n. 29.

if he could not deny it outright or downplay it to a considerable degree. In the eyes of the prosecutor, the violence suffered was illegitimate. The following list of dichotomies will circumscribe the highly flexible line between legitimate and illegitimate violence.

Contexts

Mapping the context in which violence took place is crucial for understanding any act of violence,⁵³ for context frames the violent act and makes it comprehensible to the involved parties and bystanders. In fourth-century Athens, violence could be expected at drinking parties (symposia),⁵⁴ festive processions after public events (*kômoi*), during the training of choruses, in *gymnasia*, at games, and on the occasion of quarrels between neighbors. Violence was also foreseeable in lovers' quarrels,⁵⁵ on the occasion of the seduction of a female relative (*moicheia*),⁵⁶ when people felt offended by insults, in cases of a contested inheritance or unclear boundaries of plots of land,⁵⁷ and when goods were seized, either with or without state authorization.⁵⁸ Brawls could also erupt because of unclear citizenship status.⁵⁹ Lysias and Ps.-Demosthenes were aware of these situational hotbeds of violence and have left us telling

53 On the contexts of violence, cf. Fisher 1998a, 75.

54 Similar outbreaks of violence are frequently attested for medieval *convivia* (Kaiser 2002, 165–180). For violence in the context of Greek symposia, cf. Borg 2006, 224, n. 4 (with older literature).

55 Lys. 3 and 4; Aeschin. 1.135. In D. 54.14 Conon downplays the violence of his sons by claiming that it was not excessive and quite normal in the customary adolescents' competition to win young women as mistresses.

56 E.g., Lys. 1. Todd 2007, 43–60 provides an excellent introduction to Lysias' first speech. To Cohen 1991b, 100–101; 1984 *passim*, *moicheia* is the sexual "violation of the marital bond" only; a broader notion of *moicheia* would render Athens unique among Mediterranean societies. With this view, he is alone as far as I can see. Cf. Herman 2006, 268. Herman 1996, 33–36 argues in favor of abandoning the Mediterranean model altogether, because it is not applicable to ancient Athens. The *communis opinio* is that *moicheia* is illicit, consensual sex. Representative are Schmitz 1997, 124–140; Kapparis 1995, 122; Cantarella 1991b (with older literature). *Moicheia*, therefore, should be translated as 'seduction,' not as 'adultery.'

57 D. 37.33; Is. 8; 9; Hyp. fr. 21 (97–99).

58 Ps.-D. 47.

59 Lys. 23.

lists of the contexts in which people were particularly prone to violence.⁶⁰ Within these social frameworks, rules of violent interaction had developed and people were not surprised about outbreaks of violence. One of the most famous examples of violence outside these contexts is preserved by Demosthenes, and entails the prison neurosis from which Aristogeiton obviously suffered. After being imprisoned for a long time, he picked a fight with another inmate, a man from Tanagra, bit off his nose, and swallowed it. The other inmates were so horrified that they socially shunned him by sharing neither light nor food and drink with him. His extreme violence far beyond acceptable norms had made him an outsider in the eyes of the other prisoners.⁶¹ As we will see, speakers in court normally tried to represent the violence committed by their opponents as being deprived of all sense, or rather tried to charge it with a blatantly negative sense, while trying at the same time to cast their own violence in a positive light, as something tactful and replete with social sense.

First Blow versus Self-Defense

Concerning the origin of a fight, it was of paramount importance to demonstrate that the opponent struck the first blow and was thus the aggressor.⁶² Every speaker would portray his own share in violence as self-defense: the opponent had forced him to strike back.⁶³ At first glance, this statement sounds trivial, but there is more to it. Since in a confused *mêlée*, and especially afterward, it was hardly possible to make out who actually started the fisticuffs, the insistence on the “first-blow” rhetoric

60 Lys. 1.43–45; 3.43; Ps.-D. 47.19.

61 D. 25.60–62. A less serious incident is rendered at Plu. *Alc.* 8.1. Because of a bet with his friends and for the fun of it, Alcibiades hit the famous Hipponicus, the father of Callias. Since there was neither a genuine reason nor a customary context for this outburst of violence, people were outraged. The next day, Alcibiades repented by exposing his bare back to Hipponicus to be scourged. The latter, however, renounced his claim to revenge.

62 Striking the first blow made one liable for different offences: Hes. *Op.* 708 (general moral principle); Lys. 4.11, 15 (*trauma ek pronoias*); D. 23.50 (*aikeia*?); Ps.-D. 47.7–8, 35, 39–40, 47 (*aikeia*); D. 54.33 (*hubris*); Isoc. 20.1 (*aikeia* and *hubris*); Men. *Sam.* 576 (*hubris* indirectly); Arist. *Rh.* 1402a1–2 (*hubris*); IG I³ 104, lines 33–34 (homicide); Antiphon 4.4.2 (homicide); cf. Scheid 2005, 409; MacDowell 1978, 123.

63 E.g., Lys. 3.18.

was mainly of symbolic value.⁶⁴ It distributed guilt and innocence in the interest of the speaker. As in many pre-modern societies, retributive violence was considered socially acceptable at Athens under certain circumstances, a typical feature of a society that lacked a state monopoly on violence to a large degree, and therefore had to rely on a considerable amount of self-help,⁶⁵ including immediate self-defense, which is still permitted in modern law. Even retaliating disproportionately to the violence received was acceptable as long as the violence resorted to remained within certain limits and did not entail the killing of the opponent.⁶⁶

Murder versus Lawful Homicide

Homicide was the ultimate boundary that could not be transgressed except under very special circumstances, such as self-defense. Killing an Athenian citizen was too extreme a reaction to an insult suffered⁶⁷ and

64 Flaig 2006, 38 aptly speaks of the “mythische Qualität des ‘Anfangens.’” This holds especially true for historiography. Cf. Gould 1989, 63–65 on Herodotus’ probing into the causes of the Persian Wars and blaming Croesus for having committed the first injustices (Hdt. 1.5.3).

65 Hunter 1994, 120–153, 188 distinguishes between private initiative and self-help, the latter denoting concrete physical action against a malefactor. At the same time, self-help is a subcategory of self-regulation. This wider term describes the sum of all actions an aggrieved party had to take to compensate for the shortcomings of the state in terms of law enforcement. Schmitz 2004, 423–431 and Fisher 1998a, 88 stress the role of mutual help among neighbors. Phillips 2000, 256: “The law of classical Athens did not seek to eliminate or suppress self-help to any meaningful extent. Rather, given the ... dichotomy of a highly-developed legal system with very limited personnel, the Athenians relied on the initiative of private individuals for the administration of justice at all stages, before (the initiation of the lawsuit), during (the conduct of the prosecution and defense), and after trial (the execution of judgement).”

66 Flaig 2006, 38. This is the problematic point about the speaker’s allegation in Antiphon 4.2.2–3, where he pleads for “a head for an eye” approach. Cf. Dover 1974, 184.

67 A good example is the homicide in D. 21.71–75. In a fit of anger, Euaeon killed Boeotus with his bare hands, because he had insulted his honor during a symposium. This incident is often described as self-defense, but the trial was rather about Euaeon’s exaggerated revenge. Cf. Flaig 2006, 36–38. Flaig’s reasoning supports Gagarin’s view that cases of self-defense were heard before the Areopagos and not the Delphinion, because the question at stake was whether or not the killing had been intentional homicide (Gagarin 1978, 112, 120). It is telling that Euaeon was convicted by a single vote only, which means that many judges

was often regarded as disruptive to the citizen body because of its potential to trigger *stasis*. Exceptions stated in the Athenian homicide statute confirm the rule.⁶⁸ The Draconian law of homicide was geared toward calming down emotions after a homicide had been committed and toward removing the culprit from the community so as to prevent private vengeance. No other offense but homicide drew the line so sharply between permissible and impermissible use of violence. The Solonian regulation concerning an adulteress, for example, makes this abundantly clear. The husband had to divorce her. She was barred from all public places and was not allowed to participate in religious rites and festivals. If she did not respect these rules of social exclusion, anyone could do with her what-

must have found his deadly action legitimate. Therefore, Herman's insistence on the non-retaliatory philosophy of the *dikastai* (2006, e.g., 175) is untenable. Cf. below 59, n. 167 on Demosthenes' uncertainty how the judges would evaluate Meidias' punching him.

- 68 Draco's homicide statute is partly preserved. The epigraphic fragment from 409/8 BCE, a copy of the law issued in 621/20 BCE (IG I³ 104 = IG I² 115 = Syll. I³ 111 = M/L 86 = GHI I 87 = HGIÜ I 145), was republished by Stroud 1968. Gagarin 1981 also gives the text, provides an English translation (xiv–xvi), and a detailed interpretation of the Draconian law. In the epigraphical text, lines 33–36 refer to self-defense, lines 37–38 to lawful homicide. D. 23.60–61 is a verbatim quote from the part on self-defense. D. 24.113 mentions the justified killing of a thief at night, but ascribes this regulation to Solon. Lys. 1.30–33; Aeschin. 1.91; D. 23.53–56; Arist. *Ath.* 57.3; *Ath.* 13.569; and *Plu. Sol.* 23.1 refer to the *moichos* who can be slain in the act without punishment, and may therefore have been part of Draco's homicide statute (Stroud 1968, 81). Plutarch, however, attributes this law to Solon. Paus. 9.36.8 does link a law on *moicheia* to Draco, but not to a homicide law. Lys. 1.49, the allegation that a *moichos* can be treated by the *kurios* in whatever way he wishes, is supposed to bolster Lys. 1.30–33. Cf. Ruiz 1994, 167. Ogden 1997, 27 and Cohen 1991b, 100 think that one can also speak of the law of adultery, seduction, and rape with reference to these passages. D. 23.22 explains the competences of the Areopagos. Ps.-D. 43.57 provides us with the provisions for pardon in cases of unintentional homicide and indicates which relatives of the victim were morally obliged to take action against a murderer; in more detail, Ps.-D. 47.68–73 (down to and including the degree of descent first cousin once removed). Indirectly on Athenian homicide law Pl. *Euthphr.* 3e7–5d6. Schmitz 2001 convincingly argues that Draco only regulated the blood feud and codified this new regulation. Similar are Hölkeskamp 1999, 267–268; Ruschenbusch 1960, 152. Euphiletus, the speaker of Lys. 1, represents his killing as justified homicide, especially at 1.30 and 1.34. On the symbolic side of the *dikê phonou*, cf. Riess 2008.

ever he liked, apart from killing her.⁶⁹ The punishment for her disobedience was not only *talion*; it was almost boundless, unrestricted, absolute. Only her death was excluded as the ultimate boundary that could not be transgressed. Violating this threshold would have caused pollution and could have triggered civil strife.

Killing, except for self-defense and a very few other, qualified reasons, was taboo. This was the ideal. But reality might have been different. In a casual side-note, Lysias talks about the frequency of murders commissioned by enemies for money.⁷⁰ The speaker of Lysias 3, defending himself against Simon, interprets the law in a strange way that leads to the assumption that at least the wounding rate must have been quite high in Athens: 'Clearly our lawgivers also did not think they should prescribe exile from the fatherland for people who happen to crack each other's heads while fighting—or else they would have exiled a considerable number.'⁷¹

In the following paragraphs, I seek to explore the parameters by which homicides were morally assessed and adjudicated in court. Despite the unacceptability of homicide, it was not an objective, factual category of extremely violent misbehavior, understood by everyone alike as a serious crime. On the contrary, the relevance of a homicide hinged upon many factors, including the citizenship status of the victim, his political function, his or her legal and social rank, and sex. The number and kinds of boundaries that a violent action broke determined the societal relevance of the act. At the same time, the violation of these markers created the symbolism that was ascribed to a particular killing. Accordingly, subtle gradations in the assessment of the outrageousness of a homicide resulted. The reactions of the judges on the Areopagos or of legal interpreters (*exêgêtai*),⁷² and thus of the general public, were different on every occasion. We will concentrate first on the murderers *par excellence*, the Thirty Tyrants and to what extent they shaped—unknowingly—the

69 Ps.-D. 59.86–87; Aeschin. 1.183; cf. Arist. *Ath.* 59.3–4 (*graphê moicheias*). Cf. Omitowaju 2002, 113; Ogden 1997, 28–29. On the woman's punishment, cf. Schmitz 1997, 85–90; on the *moichos*' punishment, 91–106.

70 Lys. 1.44.

71 Lys. 3.42: ἀλλὰ δῆλον ὅτι καὶ οἱ τοὺς νόμους ἐνθάδε θέντες, οὐκ εἴ τις μαχεσάμενοι ἔτυχον ἀλλήλων κατὰξαντες τὰς κεφαλὰς, ἐπὶ τούτοις ἡξίωσαν τῆς πατρίδος φυγὴν ποιήσασθαι· ἢ πολλοὺς γ' ἂν ἐξήλασαν. Isoc. 15.252 points in the same direction: many people use the skills they have acquired in the *pankration* against their fellow citizens.

72 Even these interpreters of Athenian religious matters were no legal experts.

notion of homicide during the fourth century. An analysis of a few, well-attested homicide cases will show by example the markers involved (citizenship status, political function, legal and social rank, and sex). Special emphasis will be placed on the killing of relatives, followed by a section on “framing for homicide,” an essential method of character denigration in the forensic speeches, and, finally, attempted homicide.

The tyranny of the Thirty provided the most powerful interpretive framework for judicial murder ever created in Athenian history.⁷³ Allegedly, the tyrants killed 1,500 citizens without proper trial.⁷⁴ They not only eliminated political opponents in 404/03 BCE, but also put to death rich citizens and metics, whose property they seized. Their greed is emphasized unanimously in the ancient sources.⁷⁵ Among the victims was Polemarchus, Lysias’ brother, a fact that prompted Lysias to write his twelfth speech (*Against Eratosthenes*, after 403/2 BCE), one of the most valuable sources for the dictatorship of the Thirty. Lys. 13 (*Against Agoratus*, 399 BCE or later) is also to be seen in this context. This speech tells about court proceedings against Menestratus and Agoratus, informers for the Thirty, who had caused the death of many democrats. Both were prosecuted via the summary procedure of the *apagôgê* and executed. This means that the restored democracy found legal loopholes to circumvent the stringent rules of the amnesty and to take revenge on people who had not killed with their own hands during the tyranny and who only belonged to the entourage of the Thirty.⁷⁶ This procedure is revealing. The horrific regime of the Thirty became the foil against which many acts of violence against citizens, not just homicide, were gauged during the fourth

73 On the Thirty and their politics, cf. Wolpert 2002 (with older literature). Nemeth 2006 and Krentz 1982 provide an excellent overview of the sources on the Thirty Tyrants, most importantly D.S. 14.3–6, 32–33; Arist. *Ath.* 34–40; Lys. 12; 13; X. *HG* 2.3–4; Just. *Epit.* 5.8.11–10.4.

74 Aeschin. 3.235. They did not even provide their victims with reasons why they would be executed. Most heinous of all, they denied them burial (Allen 2000, 237). On all aspects of violence committed by the Thirty, cf. Wolpert 2002, 15–24.

75 Cf. Nemeth 2006, who claims that the Thirty predominantly killed out of greed rather than for ideological or political reasons. Similar is Balot 2001, 219–224. On more tyrannical actions of the Thirty, cf. Jordović 2005, 194–202.

76 Cf. Phillips 2008 on these two speeches and their respective argumentation (153–184 on Lysias 12; 185–235 on Lysias 13); Riess 2008 on the symbolic meaning of the *apagôgê* procedure.

century. The Thirty Tyrants became the very embodiment of violence.⁷⁷ As we will see, many negative interpretations of violence in the fourth century can ultimately be traced back to the traumatic experience of the suspended democracy.

Citizenship status. The oldest homicide case attested in Athenian oratory (dated between 422 and 413 BCE) is that of the Athenian klerouch Herodes, allegedly killed by Euxitheus, a rich Mytilenean citizen.⁷⁸ Both were on a sea trip together from Mytilene to Aenus in Thrace, when a storm forced them to anchor in Methymna on Lesbos. During a night of drinking, Herodes disappeared. His corpse was never found. On the basis of a slave's report, forced by torture, Herodes' relatives indicted Euxitheus for homicide in Athens. The procedure to be expected was the *dikê phonou*, which would have given Euxitheus the possibility of going into exile after delivering his first speech in court. Trusting in his relative security, he went to Athens willing to face trial there. Upon his arrival, he was imprisoned and not even allowed to post sureties to prepare his trial. Since it took place before a dicastic court and not the Areopagos, there is good reason to assume that the *nomos tôn kakourgôn* involving the *apagôgê* procedure was expanded and used in a homicide case for the first time.⁷⁹ If this was the case, Euxitheus' indignation and protest were justified, for the summary procedure of the *apagôgê* posed serious obstacles to his defense, whereas it greatly favored the prosecution.⁸⁰ Considerations on why the extension of the *kakourgos* law came to include homicide reveal some of the prejudices the Athenians had against their foreign allies around 420 BCE. Given the conservatism of Athenian homicide law, the extension of the *apagôgê kakourgôn* procedure was a crucial innovation. Heightened anxieties about Athenians living abroad in times of war may have induced the Athenian *dêmos* to look for possibilities of bringing disobedient or unruly allies to justice at Athens. Summary arrest seemed to be the most convenient means of achieving this goal. If this is correct, a decisive change in Athenian homicide law would have resulted from Athens' growing fear that Athenian citizens "might be murdered as a form of

77 Although Isocrates 20 has nothing to do with tyranny, the prosecutor constructs his opponent as a tyrant, a paradigm that only became viable in this particular way after 404/03.

78 Antiphon 5. For an overview of all homicide cases attested in fourth-century records, cf. Riess 2008, 93–94.

79 Phillips 2008, 122–131. On all the procedural questions in detail, cf. Gagarin 1989.

80 Volonaki 2000, 153, 158–159 (with older literature).

protest vote against Athenian imperialism.”⁸¹ Athens’ aggressive foreign policy would then have had serious repercussions on the administration of justice at home.⁸² It is revealing that a foreigner became the victim of these concerns first.⁸³ In addition to its political relevance, the Herodes case also has social overtones. A rich ally lays hands on a poor and innocent Attic klerouch. The symbolic meaning on the political level, the fact that imperialism has domestic consequences, is cast in the conventional terminology of the social divide between rich and poor.

Political function. The killing of Nicodemus of Aphidna (348 BCE), friend of Eubulus and Meidias, also had strong political implications. He was brutally murdered, with his tongue cut off and his eyes put out.⁸⁴ The killer was not found, but Nicodemus’ relatives suspected Aristarchus, a young friend of Demosthenes. A motive was readily at hand: Nicodemus had slandered Demosthenes and wanted to sue him for desertion, and so it appeared to Nicodemus’ family that Demosthenes might have commissioned this murder. According to the Athenian homicide law, it was the family’s moral duty and prerogative to file charges of homicide on behalf of a killed relative. Instead, Meidias reacted first and brought Aristarchus before the Boulê, probably through *ephêgêsis* followed by *apagôgê kakourgôn*, which was a public suit that anyone who wished (*ho boulomenos*) could bring.⁸⁵ Meidias’ proposal, however, was rejected by the Boulê for reasons unknown to us. Unlike a *dikê phonou*, in which the accused could escape into exile before the end of the trial, the *apagôgê* procedure did not allow for this possibility. The accused was executed immediately after a verdict of guilt. To many councilors, this may have seemed an excessive penalty for someone like Aristarchus, who was only suspected of homicide. This is the only homicide case we know of in which two different procedures were used separately by different prosecutors, a fact that has been neglected in research so far. After the failure of the *apagôgê* procedure, Nicodemus’ relatives filed a conventional *dikê phonou*. Even before the start of the trial, Aristarchus withdrew into exile, which, for his opponents, was a tacit confession of guilt.

81 Todd 1993, 331.

82 Erbse 1977, 224; Evjen 1970, 405, 412.

83 Cf. also the killing of Aesion on Ceos: IG II² 111 = Syll. I³ 173 = GHI II 142 = Rhodes – Osborne 2003, 39 = HGIÜ II 231 = Hansen 1976, 133, no. 16.

84 D. 21.104–122 and scholia 21.102, 104, 116, 205; Aeschin. 1.171–172; 2.148, 166 and scholia; Din. 1.30–31, 47; Rhet. Gr. VIII 48 (Sopat. Rh.); Idomeneus FG RHist 338 F 12.

85 Hansen 1976, 135–136, no. 23.

What does the double prosecution mean? Both parties of prosecutors wanted to see Aristarchus convicted of homicide. Their intentions were different, however. The fact that Meidias tried his luck first with an uncommon *apagôgê* sent a powerful message to the politically well-informed. Although it was the moral obligation of Nicodemus' family to file a *dikê phonou*, Meidias went ahead of them and initiated the unusual *apagôgê* procedure, not only to ensure Aristarchus' death, but also to demonstrate that this was a political murder, with Demosthenes looming in the background and bearing joint responsibility. Through the procedure chosen, Meidias made it clear that this was a political affair with much more at stake than just ordinary homicide. The whole community of Athenian citizens was called upon to stop Demosthenes' machinations. It is not less revealing that the *bouleutai* did not share this view and rejected Meidias' bold proposal.

The murder of Nicodemus was politicized posthumously in order to attack a political opponent. The murder of Phrynichus (411 BCE), one of the leading members of the Four Hundred, was also politicized *post factum*, but with contrary goals in mind. The killers were portrayed as tyrant slayers to protect them from being brought to justice. The metics Thrasybulus from Calydon and Apollodorus from Megara killed Phrynichus in the Agora near the Boulê.⁸⁶ Their motives are unclear and might have been of private nature, like those of Harmodius and Aristogeiton who had killed Hipparchus in 514 BCE. Right after the deed, with the Four Hundred still in power, the assassins absconded. When they disclosed themselves and claimed responsibility for the assassination after the restoration of the democracy, Phrynichus' relatives or friends felt compelled to react and file charges against the murderers. Since Phrynichus had been a staunch oligarch for all his life, the people of Athens, strongly endorsing the restored democracy, now wanted to protect the killers from being prosecuted. So they declared Phrynichus a traitor and portrayed his murderers as tyrannicides. They were not only not punished, but in fact honored for the rest of their lives.⁸⁷ Hence, the prosecutors' plan to bring the killers to justice (410/09 BCE) failed.

86 Th. 8.90–92; Lys. 13.70–72; Lycurg. 1.112–115. Cf. Lys. 7.4; 20.9–11; 25.9. Hansen 1976, 125–126, no. 4–5.

87 IG I² 110 = IG I³ 102 = Syll. I³ 108 = GHI I 86 = M/L 85 = HGIÜ I 140: Thrasybulus was rewarded with a golden crown and citizenship. His fellow conspirators, among them Agoratus, were also honored as *euergetai*. They received lesser rights, most notably the right to own real estate in Attica as non-citizens (*egktêsis*).

Legal and social rank. In all the cases mentioned above the victims were Athenian citizens; the latter two even had political functions. That is why their deaths were taken seriously. Very different were reactions when a non-citizen suffered a violent death. In Plato's fictional dialogue *Euthyphro* or *on Holiness*,⁸⁸ the father of the speaker, Euthyphro from Prospalta, had killed a dependent, a so-called *pelatês*, through negligence.⁸⁹ This man had killed a house-slave and, in retaliation, Euthyphro's father had thrown him into a ditch without providing food or drink. He then sent a messenger to Athens to ask the *exêgêtai* for advice on what to do with the killer. Before the messenger returned, the *pelatês* had died in the ditch from hunger, thirst, and cold. Although Euthyphro, the interlocutor of Socrates in the dialogue, has the law on his side in suing his father for homicide,⁹⁰ Socrates, first of all, is shocked to hear that his friend has filed a *dikê phonou* against his own father. Very clearly, Socrates assumes the attitude of an average Athenian; he seems to be highly concerned about Athenian social etiquette and family ties. It was inappropriate to sue one's own relatives in court,⁹¹ even more so for a son to indict his own father for homicide, let alone in a case where the victim at stake was a slave and a killer himself. Once more, we see that the notion of homicide was not independent of social norms. Values permeating Athenian society also pervaded Athenian law and contributed to determining the choice of legal procedure.⁹² The philosophical dialogue clearly delineates the discrepancy between some principles of Athenian law and social practice.

Sex. To what degree the assessment of homicide as a serious crime was dependent on the viewpoint of the accuser and the judges is also clear from the regulations concerning the honor of women. According to Demosthenes' interpretation of the lawful homicide statute (D. 23.53), every *kurios* under whose protection a woman lived was entitled

88 Although the case is fictional, it must be plausible within the parameters of Athenian law. Otherwise, there would be no effect on the readership (Kidd 1990, 213–214).

89 Pl. *Euthyphr.* 3e–4e.

90 On the legal status of the *pelatês* and the father's liability, cf. Kidd 1990; Panagiotou 1974.

91 Cf. Phillips 2008, 85–88. Cf. also the trial for homicide initiated by a stepson against his own stepmother (Antiphon 1).

92 A prime example is the beginning of Ariston's speech against Conon (D. 54.1) and the aforementioned case of Nicodemus.

to kill even friends if they tried to compromise female honor.⁹³ Although this level of self-help had become problematic by the fourth century, the wide latitude of the *kurios*' prerogatives was still taken for granted after the restoration of democracy in 404/03 BCE. Hyperides, in his defense of Lycophron (Hyp. 1 [Lyc.]), the alleged seducer of a widow betrothed to another man, claims that the bride's brother Dioxippus, an Olympic victor in the *pankration*, and his friend, also a wrestler, would have killed Lycophron on the spot, if he had dared to approach the bride indecently during the wedding procession. This argument may be rhetorically distorted, because Hyperides has to show that his client did not make overtures to the woman at all, but Hyperides conveys the impression that killing under these circumstances would have been justified and even expected. This anecdote also casts some light on Lysias 1, Euphiletus' famous speech in his own defense for having killed Eratosthenes, the seducer of his wife.⁹⁴ His excessively violent reaction to his wife's cheating on him was probably seen as problematic,⁹⁵ but Lysias is able not only to justify Euphiletus' deed by Athenian law, but even to present it as having been necessitated by it. We will have to come back to Euphiletus' excessive act of revenge, but he could still cite three laws in his support, probably the *nomos tôn kakourgôn* (Lys. 1.28),⁹⁶ the lawful homicide statute (Lys. 1.30),⁹⁷ and probably the *dikê biaîôn* (Lys. 1.31).⁹⁸ Although the first two laws may have given Euphiletus the right to kill the seducer whom he caught in the act, this extreme reaction had almost certainly become obsolete by the fourth century.⁹⁹

93 D. 23.56.

94 From a gender perspective, cf. Omitowoju 2002, 72–115.

95 If we follow Roy 1997, 13–15, 18–19 in concluding that adultery must have been fairly frequent in Athens and was often condoned by the parties involved, Euphiletus' extreme measure must have been all the more shocking.

96 The *nomos tôn kakourgôn* is the most controversial of the three laws. Cf. the lists in Arist. *Ath.* 52.1 and Antiphon 5.9. Hansen 1976, 36–48 has the most detailed and sharpest analysis of the *kakourgoi* to date. Todd 2007, *ad* Lys. 1.28 discusses the possibility whether or not this law could also be that on *moicheia*.

97 Cf. above 36, n. 68.

98 On these three laws, cf. Omitowoju 2002, 98–105. Todd 2007, *ad* Lys. 1.31 discusses the possibility of a *dikê blabês*, but also leans toward a *dikê biaîôn*.

99 Carawan 1998, 135, 284, 291 reminds us that the amnesty's stipulation of *mē mnēsikakein*, not to recall past crimes, referred only to the atrocities committed during the civil war, but in reality had a tremendous impact not only on the conditions of justifiable killing, but also on the Athenians' understanding of retrib-

These two instances may suffice as examples of how seriously female chastity was taken. And yet, the ambivalent position of women with regard to the homicide law is obvious. Whereas they were protected by their *kurios* from any outside intrusion, they were almost completely at the latter's mercy. An anecdote encapsulates the general Athenian notion. According to Aeschines, fathers had the full right of disposal over their daughters in the old days. When the Athenian king Hippomenes discovered that his daughter Leimone had lost her virginity before marriage, he sealed her up in a stable and had her killed by a horse.¹⁰⁰ This brutal act of social control was obviously not regarded as punishable homicide, but as a justified paternal reaction to female misconduct. Sources from classical times confirm the impression that women were firmly subject to the powers of their *kurioi*. No one protested when Alcibiades dragged his wife Hipparete by the hair back home from the Agora, where she had filed for divorce from him with the *archôn basileus*.¹⁰¹ Two weeks later, she died under mysterious circumstances.¹⁰² It would have been the responsibility of the woman's relatives to investigate the case, and, if necessary, to bring charges against Alcibiades. Whether it was his high social status that prevented any action against him or the general notion that a wife was at the whim of her husband anyway, we cannot say.

Even more precarious was the status of women when they were slaves, freedwomen, or metics. When an old nurse, a former slave, died from the blows that she had received from Theophemus and Euergus, the prosecutor in Ps.-D. 47 was at a loss as to how to proceed.¹⁰³ On the one hand, the woman had been a member of his household and thus a dependent. Therefore, he felt the responsibility to take legal action to avenge her death. On the other hand, she had been neither his relative nor his slave. Therefore, he did not dare file charges of homicide before the king *archôn*. In his dilemma, he asked the *exêgêtai* for advice. Their answer is one of the most debated passages in all of Athenian legal documents,¹⁰⁴ but we can grasp the essentials. The *exêgêtai* emphasized that he should not bring a *dikê phonou* against the killers. It was enough for him

utive violence in general. Also for this reason, self-help killing had become problematic during the fourth century.

100 Aeschin. 1.182; D.S. 8.22; Heraclid. Lemb. *Epit. Ath. Pol.* 1.

101 Ps.-And. 4.14.

102 Plu. *Alc.* 8.4; indirectly Lys. 14.42; Ps.-And. 4.14; Antiphon fr. 67 (Thalheim – Blass).

103 Ps.-D. 47.58–62, 67.

104 Ps.-D. 47.68–70. Cf. Hansen 1976, 110–111; Grace 1975.

to make a proclamation against the killers in general terms. They advised him further to perform the appropriate rites to cleanse his house from pollution and to 'exact vengeance in some other way.'¹⁰⁵ The *exêgêtai* deliberately chose a vague formulation, which allowed for some kind of self-help within the latitude of Athenian law. We do not know how the prosecutor was supposed to go about this business, but whatever form of redress he would seek, his reaction should remain below the level of a *dikê phonou*, which would make him extremely unpopular, as the *exêgêtai* told him. Very clearly, the death of a former slave woman did not warrant any major ill feelings among Athenian citizens. To put it in other words: the well-known killers of a former slave woman got away scot-free on the advice of the city's interpreters of religious matters. More than any other example, this incident shows again that killings were not always treated in the same way. Beyond the question of procedural variety in how to deal with killings (depending on the likelihood of prosecution and the intent of the killer), the citizenship status and political function of the parties involved, as well as the legal and social rank and sex of the victims, were decisive in order for a killing to qualify as homicide. The judges and the *exêgêtai* interpreted a killing differently according to the circumstances and the outrage they felt.

Killing of relatives. After these remarks on the violent death of women, let us now treat a sort of homicide that was considered especially heinous. Opponents were not the only ones killed; the slaying of relatives is also attested. Because of their mythical dimensions, matricide,¹⁰⁶ parricide,¹⁰⁷ fratricide,¹⁰⁸ and the killing of one's own husband or relative constituted the most horrible subcategories of homicide. It comes as no surprise that a stepmother accused of having poisoned her husband was compared to Clytemnestra by her stepson, the prosecutor.¹⁰⁹ In Isaeus 8, Dioctes is accused of having murdered one of his brothers-in-law. For this reason, Orestes is mentioned twice in the speech to give a mythical flavor to

105 Ps.-D. 47.70: ἄλλη δὲ εἴπη βούλει, τιμωροῦ.

106 Cf. Orestes' trial for matricide in A. *Eu.* 566–777.

107 Diodorus allegedly killed his own father (D. 22.2).

108 Thudippus had killed his own brother Euthycrates. The eyewitnesses did not dare speak about it; since they were not relatives of the victim, they were in no position to file charges and so probably thought that this homicide was none of their business (Is. 9.16–19).

109 Antiphon 1.17.

this reproach.¹¹⁰ In Ps.-Andocides 4.15, the character assassination of Alcibiades is driven to the extreme by insinuating that he was plotting the murder of his brother-in-law Callias.

Framing for homicide. Because homicide was the most extreme crossing of the ultimate threshold and the most blatant form of violence committed by the Thirty Tyrants, framing one's opponent for homicide became one of the most popular means of character assassination in fourth-century forensic oratory.¹¹¹ In Apollodorus' speech against Stephanus and Neaera (Ps.-D. 59),¹¹² Apollodorus relates how his long-time opponent Stephanus had tried to damage his reputation with a fabricated charge of homicide. Stephanus brought a *dikê phonou* against him, because he had allegedly slain a slave or foreign woman from Aphidna with his own hands.¹¹³ The woman was probably dead, but the accusation lacked every basis and was, in fact, false. Although he had no proof whatsoever to substantiate his charge, Stephanus was willing to swear the *di-ômosia*, calling down destruction upon himself and his household. Just in the hope that the reproach would somehow tarnish Apollodorus' reputation in the future, Stephanus risked coming out of this procedure as a perjurer. This is in fact what happened.

Isocrates transmits an even more blatant example of faked homicide.¹¹⁴ In the wake of a quarrel over a plot of land, Callimachus and his brother-in-law accused Cratinus of having killed a slave woman of theirs. Although the woman was alive—she was hidden away during the trial—Callimachus could muster fourteen witnesses on his behalf who backed him up in court by claiming that the woman was in fact dead. This incident tells us a lot about the role witnesses had to fulfill. Similar to the part *sunêgoroi* had to play in court,¹¹⁵ witnesses were—seen from the litigants' partisan point of view—not necessarily supposed to tell

110 Is. 8.3, 44. Diocles of Phlya was nicknamed Orestes, cf. below 276, n. 130. Diocles was a frequent name and is also to be found on curse tablets, cf. below 163, n. 596 and 176, n. 55.

111 On framing for homicide, cf. Roisman 2006, 54–58.

112 On the speech as a whole, cf. Brodersen 2004; Hamel 2003; Kapparis 1999; Carey 1992. On Apollodorus in general, cf. Trevett 1992. Schuller 2008, 57–63 rightly notes that much of what Neaera is accused of might fall under *diabolê*, 'slander.'

113 Ps.-D. 59.9–10.

114 Isoc. 18.52–54.

115 On their role, cf. Rubinstein 2000.

the truth, but to endorse a particular litigant's claims.¹¹⁶ The more support a litigant could garner, the higher was his social prestige, and the more likely was his acquittal. Cratinus waited until Callimachus had sworn the oath of self-execration, went out to the farm, freed the slave woman, and presented her in court. Being a slave and a woman, she was certainly not allowed to speak in front of the judges. And yet, her presence was so powerful that Callimachus did not get one single vote and was thus unmasked as perjurer. Performance won the day.

In an inheritance case, Diocles was framed for having killed his brother-in-law, his sister's husband.¹¹⁷ Although the allegation of kinship murder clearly served the purpose of extreme character denigration—we do not hear anything about reactions on the part of the victim's family—there seems to have been more substance to it than in the cases mentioned above. At least the man was dead. It is interesting to note that Diocles may have employed mediated violence—he may have had the murder committed by a slave whom he smuggled out of the country—and put the blame for the homicide on his own sister, thus framing her with having killed her own husband. The strategy seems to have worked. As far as we know, Diocles got away with his plot; at least, the speaker of Isaeus 8 does not tell us that Diocles was ever indicted for homicide.

In order to harm Diodorus as much as possible, Androtion insinuated that Diodorus had killed his own father. Although parricide was an outrageous crime, Androtion did not file charges himself—as a non-relative he was not entitled to bring a *dikê phonou* outside his own family¹¹⁸—but contented himself with lodging a *graphê asebeias* against Euctemon, the brother of the victim. According to Androtion's interpretation, Euctemon had incurred pollution from associating with Diodorus, his nephew and

116 Todd 1990, 20, 23, 27; Humphreys 1985b, 313, 322–325. Mirhady 2002, 272, however, emphasizes that “systemic expectations” required witnesses to tell the truth. Ancient evidence itself speaks against Mirhady. A fragment of Aristophanes' *Storks* (F 452 [Henderson; K.–A.]) draws a rather negative picture of the role witnesses often played: ἦν γάρ ἐν' ἄνδρ' ἄδικον σὺ διώκης, / ἀντιμαρτυροῦσι / δώδεκα τοῖς ἑτέροις ἐπισίτιοι, ‘if you prosecute one wrongdoer, twelve of his hangers-on, equally bad, will bring a countersuit.’ In his speech against Conon (D. 54.32–34), Ariston emphasizes the contrast between his witnesses and those of Conon. He, Ariston, did not even know his witnesses, but they were still willing to testify to what they saw on his behalf. Different are Conon's witnesses, according to Ariston: they put on Spartan airs of soberness during the day and went wild during the night.

117 Is. 8.41.

118 He still would have been entitled, however, to resort to the *apagôgê* procedure.

alleged parricide.¹¹⁹ We do not know why Androtion chose this indirect form of attack, but to him at least the *graphê asebeias* against the victim's brother, Diodorus' uncle, was the appropriate form of framing Diodorus for parricide.¹²⁰ Androtion failed with his strategy, but we cannot tell to what extent Diodorus' reputation was permanently damaged. A reproach as serious as parricide must have left its traces.

Framing for homicide, however, was not the only way one could denigrate one's opponent with regard to homicide. Falling short of social expectations in this context also entailed ill feelings among the community. Theocrines failed to prosecute Demochares and others, the murderers of his brother, although he was at least morally obliged to do so. Instead, he preferred a private settlement outside of court by accepting blood money, a kind of financial compensation.¹²¹ This was an archaic practice, but obviously frowned upon in fourth-century Athens.¹²² Not even taking judicial "revenge" for one's own brother might have been regarded as scandalous cowardice.¹²³ Otherwise, the speaker could not have used this incident to denigrate Theocrines as thoroughly as he does.

Attempted homicide. Given the highly symbolic relevance of the homicide of an Athenian citizen, it comes as no surprise that attempted homicide weighed heavily in any court proceeding. Apollodorus was attacked late at night near a quarry outside Athens. Nicostratus hit him,

119 D. 22.2.

120 In the long run, the *graphê asebeias* should create a "material and moral vacuum" around the killer (Glötz 1973, 436–437, 442).

121 Ps.-D. 58.28–29. There is debate about whether or not the relatives of a slain victim were obliged to file a *dikê phonou*. Against Gagarin 1979b, 322–323, Panagiotou 1974, 433–434, and MacDowell 1963, 10–11, 94, 133, Grace 1975, 175, Hansen 1981, 30, Hansen 1976, 111, and Tulin 1996, 105–106 have shown that only relatives of killed victims and masters of killed slaves were allowed and even expected to prosecute, but were not obliged to do so. MacDowell 1997 has adopted this opinion in his review of Tulin's book. Sanctions for not taking action were social and religious.

122 Glötz 1973, 439–440.

123 Through the ideology of self-control, masculinity became redefined. Restraining oneself and going to court instead of striking back were now also considered masculine; cf. Fisher 1998a, 81 contra Herman; also Roisman 2005, 177. Trials were emanations of masculinity; concomitantly, going to court was regarded as a kind of vengeance with different means (Fisher 1998a, 92; Cohen 1995, 23, 33, 72, 87; Gehrke 1987, esp. 140, 143). Cf. below 96, n. 327 and 137, n. 526. Bers 2009, esp. 69–76 demonstrates that maintaining one's composure in court, in a situation of stress and anxiety, was beneficial for the speaker. Not being able to keep one's emotions under control was considered unmanly.

grabbed him around the waist, and tried to throw him down into the quarry. The plot was well prepared. Nicostratus and his men must have observed Apollodorus beforehand, because they knew that he was coming up from the Piraeus. The murder should have taken place outside the city and at night so as to avoid witnesses. But Apollodorus was lucky. Upon his shouting, passers-by rushed to his aid and foiled the plot. Several days later, he faced Nicostratus in court on grounds of other charges. Apollodorus told the judges all that had happened. They were so outraged that they demanded Nicostratus' death. In a pose of self-restraint, however, Apollodorus asked the judges during the *timêsis*, the assessment of the penalty, not to execute Nicostratus, but to exact a fine of one talent only.¹²⁴ We do not know exactly what Apollodorus told the judges, but the attempted homicide was certainly a major factor in their willingness to vote for Nicostratus' death.¹²⁵

It is *communis opinio* today that Athenians of the classical period did not go around armed.¹²⁶ But it would be rash to conclude from this fact a high level of peacefulness. Although we do not hear about swords with regard to daily brawls, but only about potsherds (*ostraka*), the latter were obviously effective and also acknowledged as weapons dangerous enough to cause someone's death.¹²⁷ Phillips has shown that intentional wounding (*trauma ek pronoias*) involved the use of weapons and that the infliction of serious wounds was tried as a *graphê* in front of the Areopagos, although it was differentiated from attempted homicide.¹²⁸ Lysias 3 and 4, in which litigants are suing each other for wounding with *ostraka*,¹²⁹ during their ongoing fights about lovers, are probably both *graphai*

124 Ps.-D. 53.17–18.

125 Dillon 2004, 94–100 provides a good overview of the case.

126 Herman 2006, 206–215; 1994. Van Wees 1998 provides detail on the fundamental shift from the proud panoply of weapons as testifiers of manly prowess to the display of “conspicuous consumption and leisure” (369) in the form of, e.g., luxurious clothes and walking sticks. This paradigm shift happened during the archaic period and preceded the emergence of the city-state. Cf. also Gröschel 1989 from a different, rather antiquarian perspective.

127 Phillips 2007, 82–83, 98–99. Cf. the reasoning of the speakers in Lys. 3.28 and 4.6.

128 Phillips 2007 *passim*. On *trauma*, cf. Pl. *Lg.* 874e–879b; Arist. *Rh.* 1374a11–15, 1374a32–b1, 1375a6–7; *EN* 1135b24–27.

129 Todd 2007, 275–286, 347–353 provides excellent introductions to these two speeches.

traumatōs ek pronoias.¹³⁰ In Lysias 3, the accused faces such a *graphê traumatōs ek pronoias* in front of the Areopagos. He accuses the prosecutor, the young and poor Simon, of having resorted to wanton violence and hooliganism, whereas he, the speaker, did not injure anyone, he claims.¹³¹ The strategy of the accused is easily discernible. He claims that the prosecution far exaggerates the level of violence committed in these fisticuffs and passes over his own violence in almost complete silence. Whereas the speaker downplays his own aggressive behavior,¹³² he highlights that of his opponent. This is a standard pattern and can be found time and again in the orators. The prosecutor would always exaggerate the wounds, whereas the accused would play them down. Ariston anticipates the argumentation of Conon and his sons, according to which they did not cause serious wounds to their rivals; their actions were just youthful skirmishes typical of teenage clubs.¹³³ The speaker of Isocrates 20 clearly trumps up the assault made on him by Lochites. He urges the judges to consider whether or not the law was broken rather than to look into how severe the beating was.¹³⁴

It is highly unusual that Euphiletus as a defendant talks about his *sidêrion*,¹³⁵ the dagger he used to kill Eratosthenes. This is the only incidence in the whole extant corpus of Attic oratory where a defendant implicitly talks about the weapon he used, and it can only be explained by the specific intention Euphiletus had in mind, to represent the murder he committed as a formal execution prescribed by Attic laws.

Wounds could be instrumentalized against one's opponent. We do not know if the story is true or to what extent it served the purpose of char-

130 Whether the charge was a *graphê* or a *dikê* has been contested. Whereas Hansen 1983 thinks that both procedures were possible, Phillips 2007, 93–98 makes a strong case for the existence of a *graphê traumatōs ek pronoias* only. Important sources are D. 54.18 and Aeschin. 2.93; 3.51, 212. Most recently, Todd 2007, 284 favors a *dikê traumatōs ek pronoias* for both speeches, without precluding the possibility that a *graphê* as well as a *dikê* was possible in these two cases.

131 Lys. 3.14.

132 Concerning Lys. 3.13 we should wonder why the defendant absconded right after the brawl if nothing serious had happened. Did he run away because he injured someone seriously, just as the prosecutor claims? Normally, defendants would belittle their violence as youthful skirmishes. Cf. also Lys. 4.9, where the defendant claims that his opponent is so insolent as to call a black eye a “wound” and to have himself carried around on a litter to display his terrible condition.

133 D. 54.20. On teenage violence in ancient Athens, cf. Van Looy 1990.

134 Isoc. 20.7

135 Lys. 1.42.

acter denigration, but Aeschines reproached Demosthenes for having inflicted upon himself a serious cut on the head in order to indict for wounding his cousin, Demomeles of Paeania, with a *graphê traumatōs ek pronoias* in front of the Areopagos.¹³⁶

Public versus Hidden Violence

In order for a violent act to be regarded as justified, it had to take place in public.¹³⁷ It was the presence of bystanders and passers-by willing to join the fracas that constituted an audience and thus ensured the “proper” involvement of a violent interaction.¹³⁸ This means that the attendance of a third party not only enabled the litigants to summon witnesses in court later,¹³⁹ but also fulfilled vital functions within the violent action proper. The presence of a certain public often reduced the violence committed by forcing the opponents to restrain themselves and remain within the accepted boundaries of exerting violence.¹⁴⁰ The bystanders also

136 Aeschin. 2.93; 3.51. A similar story is to be found in D. 40.32–33, 57: in the wake of a long-term quarrel between two half-brothers about the question of who would be allowed to carry the name of Mantitheus, Boeotus had the doctor Euthydicus inflict a cut on his head so as to enable him to bring Mantitheus before the Areopagos on charges of attempted homicide.

137 Cf. the telling dialogue between Aegisthus and Orestes (S. *El.* 1491–1495).

138 On the active participation of bystanders and witnesses, cf. Sternberg 2006, 76–103 (p. 77 lists bystander responses in oratory and historiography). Fisher 1998a, 88 with 96, n. 74 lists source passages; cf. Fisher 1998b, 67; Hunter 1994, 138.

139 Isoc. 20.1: Lochites struck the first blow in public. All who were present testified to this fact later in court. The speaker of Ps.-D. 47, an incoming trierarch, seeks to retrieve the naval equipment from his predecessor, Theophemus, who was not willing to hand it over to him. In order to be authorized to exact what was due to him, the speaker obtained a decree and took witnesses with him so as to constitute a public (Ps.-D. 47.34). Obviously, exacting this naval equipment from a trierarch reluctant to do so was a tricky business. The context alone suggested probable verbal abuse, the escalation of the argument, and finally the use of violence.

140 Passers-by save Apollodorus from Nicostratus’ attempted homicide (Ps.-D. 53.17). Although the neighbors would sometimes keep aloof when witnessing violence (cf. Plato’s *Euthyphro* and the homicide of Euthycrates as described in Is. 9.16–19), they intervene in Ps.-D. 47.60–61 and prevent the incoming trierarch’s son from being led away like a slave. Similarly, even grasping a slave boy violently was considered disgraceful and caused many people to congregate (Lys. 3.16). The presence of a public clearly had a corrective function. In Isoc. 18.6 we see that people rushing to the scene could actually prevent the out-

served as the first judges on the scene. Their opinion was key in labeling the violence of one party legitimate.

Performing violence in public also facilitates the communication about it. Many violence mongers, therefore, deliberately sought the public scene to dramatize their actions in a theatrical-like frame and endow them with a certain meaning. They felt they were in the right and wanted to display their good conscience to the public, which was called upon to legitimize that particular act. By going public, the aggressor put up his behavior for scrutiny. And through making violence public, it was democratized. Examples of this performative aspect of violence abound in the Attic orators. In the following survey of violent acts committed in public, I will focus on their symbolic meanings. The order in which the cases are presented is descending, from homicide in the political and private sphere, to violence in choregic competition involving death and blows, and finally to daily-life brawls.

The political assassination of Phrynichus (411 BCE) was carried out in plain view, in the Agora, thus following the unwritten code or semantic rules of tyrannicide. The phenomenological difference between tyrannicide and dynastic murder was constructed along constitutional lines.¹⁴¹ Whereas in the constitutional hoplite *polis*, where the culture of public display held uncontested sway¹⁴² and political murder had to be committed before the eyes of onlookers in order to qualify as a legitimate tyrannicide, dynastic murder mostly took place behind closed doors in tyrannies or monarchies, as in Sicily, Thessaly, and Macedonia. There, the aspect of publicity was of minor importance, since the citizenry was not involved in the moral assessment of the murder the way it was in a constitutional *polis*. As a rule, citizens killed tyrants in public as a civic act on behalf of the city; family members killed monarchs in their bedchambers for dynastic reasons. Both patterns of standardized killings conveyed specific, culturally coded messages. Through the public killing, a victim was con-

break of open violence. Patrocles and Callimachus were in a heated argument that came close to escalating. Among the passers-by who came running up was Rhinon, one of the Ten, who arrested both of them, when Patrocles denounced Callimachus for illegally holding on to state money (*phasis*).

141 Cf. Riess 2006 *passim*.

142 Cf., e.g., Bonanno 1997, 112 ("culture of performance par excellence"); Gentili 1997, 125 ("culture of spectacle"). Cartledge 1997, 6 calls Athens a "performance culture" (with older literature). Even the tension between civic obligations and individual liberty was negotiated and performed in public: Liddel 2007 *passim*.

structed as a tyrant who had overthrown or was about to overthrow the democracy and had thus earned his due punishment. The assassins displayed their personal courage and superior power openly for all to see by killing their victim in public, who was thus represented as defenseless and weak. The two metics who carried out the plot on Phrynichus had an instinctive understanding of the symbolic language of Greek assassinations. They were bold enough to face the “tyrant” in public and strike him down in front of eyewitnesses, whose task was to adjudicate the deed. In hoplite *poleis* the citizenry wanted to be involved in the process of defining the legitimacy of an assassination. Phrynichus died helplessly in front of an audience. The circumspect choreography and careful staging of this assassination resembled an execution or religious sacrifice, making the bloody deed seem necessary to purge the city of tyranny. The dramatic effect of the public killing underscored the success of the city’s saviors. Since the standard pattern of tyrannicide in hoplite *poleis* was fulfilled, the murderers’ self-presentation as tyrant slayers in the tradition of Harmodius and Aristogeiton worked and was publicly recognized. The plot was legitimized *post factum*, the prosecution by Phrynichus’ relatives was thwarted, and the killers honored as tyrannicides.¹⁴³

If a violent act was supposed to make sense by transmitting a message, it had to be public. This even holds true in the private sphere. One of our best sources is Lysias 1, where Euphiletus stands trial for having killed the seducer of his wife, Eratosthenes. When Euphiletus learned about the *moicheia* going on in his house, he created a public by calling upon friends and neighbors to accompany him into his house and catch the adulterer *in flagrante delicto*.¹⁴⁴ Although he had many other options for seeking redress at his disposal,¹⁴⁵ he took a dagger with him, which tes-

143 Cf. above 41, n. 87.

144 Lys. 1.23–24.

145 Ransom money, the painful and humiliating radish-and-ash treatment (*rhaphanidôsis*: Ar. Nu. 1083–84; Lucianus, *Peregr.* 9; X. *Mem.* 2.1.5; cf. Omitowaju 2002, 108; skeptical is Kapparis 1996, 65), *apagôgê* (since Eratosthenes admitted his guilt [Lys. 1.25, 29], the Eleven could have executed him on the spot), *graphê moicheias*, and *graphê hubreôs*. In theory, also an *eisangelia* and a *dikê biaiôn* (in case of rape) could be brought against a *moichos*; cf. Riess 2008, nn. 106–111; Phillips 2006 *passim*; Omitowaju 2002, 68–71, 112; Ogden 1997, 27; Carey 1995a, 410 on the different possibilities of punishing a *moichos*. Let us not forget, however, that executions without trials even in cases of *apagôgê* and *endeixis* had become obsolete by the second half of the fourth century (Carawan 1984, 120–121). Lysias 1 is earlier, of course, but the development away from executions without trials had started as a consequence of the tyranny of the Thirty. This

tifies already to his intention to kill the rival. How could Euphiletus possibly legitimize the most serious transgression that Athenian society knew, the killing of another citizen? It was not enough to cite three laws on his behalf later.¹⁴⁶ The act itself had to appear as being within an acceptable framework. In order to stage this killing as a kind of legitimate execution, prescribed by the laws of Athens, Euphiletus needed accomplices in the act. In pre-modern times, most formal executions were carried out in public. Euphiletus' posse provided the ritual frame which transformed the actual killing into an acceptable act of public vengeance, at least in Euphiletus' and his friends' eyes. We see again that the participants not only fulfilled the function of witnesses later in court, but also had the role of forming an audience that was part of a spectacular ritual. They witnessed the "execution" and by attending the scene and not intervening they validated the killing as such. Beyond these legal considerations, this extreme form of self-help sent an additional message to the bystanders. Euphiletus proved that he was a real man, taking revenge for his wife's and his own compromised honor. Whatever his argumentation in court was, his actual behavior was in line with the old archaic ideology of revenge.¹⁴⁷ Euphiletus flaunted his physical prowess. He bound the *moichos*, spoke briefly to him, and defended his *oikos* by spilling the blood of the victim. This almost religious form of taking revenge worked like a purifying sacrifice. The spilt blood cleansed the house from pollution by washing off the stain of dishonor. Euphiletus did not talk about this underlying message in court. There, he played the modern, rational, and law-abiding citizen by quoting three laws in his support, and could well have been acquitted.¹⁴⁸ The discrepancy between ideology and dis-

means that Euphiletus' self-justice, although theoretically in compliance with the letter of the law, may have been frowned upon. A case of *graphê moicheias* is attested among the fragments of Lysias: *Against Autocrates for Seduction*: Lys. fr. XXVII 58–61 (Carey). Henceforth, I will stick to Carey's numbering of the fragments in his OCT edition of 2007.

146 Probably the *nomos tôn kakourgôn* (Lys. 1.28), the lawful homicide statute (Lys. 1.30), and the *dikê biaion* (Lys. 1.31). Cf. above 36, n. 68 and 43, nn. 96–98.

147 From a ritual perspective, we could say with Kertzer 1988, 68 that, "socially and politically speaking, we are what we do, not what we think."

148 It is an idle question why Euphiletus probably could go home scot-free. To Herman 2006, 175 the civic discourse was what the *dikastai* wanted to hear and they believed in this version. In my opinion, the judges did not convict him because, in the end, they approved of Euphiletus' old-fashioned actions. The judges were not called upon to judge a discourse, but Euphiletus' excessive violence. In the three archaic laws he cites he found sufficient support to justify his deed.

course on the one hand and actual practice on the other could not be more blatant.

Alcibiades' violent behavior toward his wife was also carefully staged and enacted in public. When she filed for divorce with the *archôn basileus* in the Agora, Alcibiades called his friends so as to have an audience and 'carried his wife off from the Agora by force, making clear to everyone his contempt for the Archons, the laws, and the other citizens.'¹⁴⁹ The dramatization of violence again transmitted a symbolic message to the bystanders. Alcibiades did not acknowledge his wife's actions in filing for divorce. Like the archaic father who killed his debauched daughter, Alcibiades displayed that he was fully entitled to wield his boundless power as a *kurios* over his wife, whose subordinate status was thus fully re-established.¹⁵⁰ Alcibiades' insistence on being in charge worked at the expense of the authority of the *archôn basileus*, whose task it was to provide a minimum of protection to Athenian wives. It lies in the logic of the power of performance that no one intervened to stop Alcibiades from committing this unlawful act. The woman died only two weeks later under mysterious circumstances.¹⁵¹

In the realm of choregic competition we see that political commitment and involvement in this high-pitched liturgy were inextricably intertwined. Any activity in this field belonged in the public domain and enticed the participants to resort to harsh measures. Political, social, and economic rivalries between elite members of Athenian society were also expressed through the competition of the choruses.¹⁵²

A rich and politically active Athenian citizen equipped a chorus and had the boys practice in his house. In his absence, one of the boys, Diodotus, was given a potion, drank it, and died in front of all the other trainees. The boy's brother, Philocrates, brought a *dikê phonou* for unintentional homicide or a *dikê phonou* for *bouleusis* (normally 'planning,' 'plotting') of unintentional homicide against the *chorêgos* before the Palladion.¹⁵³

149 Ps.-And. 4.14. Cf. above 44, nn. 101 and 102.

150 Plutarch reports many more instances of Alcibiades' exerting violence against social inferiors. He slaps his teacher, for example, because he does not have the Homeric texts available: Plu. *Alc.* 7.1.

151 Cf. above 44, n. 102. Influential biographies on Alcibiades are De Romilly 1995; Ellis 1989; Hatzfeld 1940. On the literary presentation of Alcibiades in the major sources, cf. Gribble 1999.

152 D. 21.5–6.

153 Antiphon 6.16. On the meaning of *bouleusis* in this specific context (negligent homicide or involuntary manslaughter through failure to do something), cf.

Although all parties agreed that Diodotus' death was accidental, the question remained how liable someone was for actions taken by his subordinates. The accused was especially enraged about the homicide charge, because Philocrates had reconciled with him some time after the deadly accident but now resumed the prosecution of this incident. This re-opening of the case happened for political reasons, according to the speaker, for he was about to bring an *eisangelia* against Philocrates' friends. They might have bribed Philocrates into indicting him for homicide again. This was a clever move on their part, because as a suspect of homicide he would be banned from the Agora and would thus not be able to plead his cases. What might the intentions of the opponents have been in rendering the *chorêgos* silent through a trial for homicide? The speaker insinuates that his political adversaries cooperated with Philocrates so as to frame him for homicide through negligence. The actual death occurred in public,¹⁵⁴ which means that the opponents benefitted from the publicity of the accident. Since it happened in front of many people, the weakness of the *chorêgos* became blatantly clear. He was not able to protect the boys who trained on his behalf in order to embellish his *chorêgeia*. His lack of power was fully revealed and his whole social standing and political status were thus undermined. If he could not take care of young boys, he was even less suited to serve as *chorêgos* for the city. The death of the boy in public dramatized the *chorêgos*' lack of power. The ensuing dramatization of the case in court may have had long-term effects by severely damaging the reputation of the *chorêgos*, even in the event of his acquittal.¹⁵⁵

In the realm of choregic competition, there were other, far less harmful, but still effective means of knocking out your competitor. In front of the assembled citizenry and foreigners attending the Great Dionysia, Alcibiades punched Taureas, a rival *chorêgos* and/or one of his chorus boys in the face and drove them out of the theater of Dionysus while the performance was under way.¹⁵⁶ Such disrespect for the religious character of the festival was prohibited under any circumstances: concerns about the

Heitsch 1984, 95–98 and below 94, nn. 320, 322, and 95, n. 324. On the Palladion, cf. Carawan 1998, 391; Todd 1993, 274, n. 17; Osborne 1985, 57; MacDowell 1978, 116; ²1966, 63–64.

154 Antiphon 6.19.

155 Wilson 2000, 116–120 places the incident within the whole context of choregic competition at Athens.

156 Ps.-And. 4.20–21; D. 21.147; Plu. *Alc.* 16.5–8; cf. Th. 6.15–16 (indirectly); Wilson 2000, 148–155.

citizenship status of chorus participants had to be voiced before the performance. This incident shows once more that Alcibiades deliberately and self-indulgently trampled on democratic rules. The audience was well aware of this. They were shocked at the outrageous act, felt pity for Taur-eas, and sided with his chorus by not wanting to listen to Alcibiades' chorus. Are we to imagine a tumultuous scene here? Did the audience render an informal verdict on the *chorêgos*' social behavior by hissing, shouting, gesticulating, and not listening? It is equally telling that the judges, influenced and intimidated by Alcibiades' social and political power, wealth, and personal charisma, awarded the prize to Alcibiades despite the unanimously hostile reaction of the public toward Alcibiades' flagrant transgressions. Did Meidias imitate Alcibiades around sixty years later?

Taur-eas was, indeed, not the only *chorêgos* to suffer from his opponents' mischief. During the long-term conflict between Demosthenes and Meidias, the latter saw his chance coming when Demosthenes became *chorêgos* and was responsible for a chorus and its performance at the Great Dionysia in 348 BCE.¹⁵⁷ Meidias wanted to undermine Demosthenes' commitment in any way he could, so he bribed the teachers of the chorus to prevent the chorus boys from completing their training.¹⁵⁸ The result would have been a bad performance and Demosthenes' complete embarrassment in the theater of Dionysus. It is clear that Meidias aimed at the loss of face for the chorus and its *chorêgos*.¹⁵⁹ When these attempts failed, Meidias broke into a goldsmith's factory in order to destroy Demosthenes' crown and robe so as to hinder him from actually performing in public. It was only because the shop owner arrived at the scene that Meidias' plot failed.¹⁶⁰ He now planned a direct, physical attack upon his opponent as a last resort, in and through which the conflict between the two rivals should culminate. Like Alcibiades, Meidias had a good feel for the semantics of violence at Athens and intentionally sought the most public frame imaginable for punching Demosthenes: the stage

157 Dillon 2004, 87–94 provides a good overview of the case. On the problematic nature of *hubris* in this case, cf. Fisher 1992, 44–49.

158 This means that Meidias tried to disturb the rehearsals. To Schechner (1985, 18–21; 1977, 132–136), rehearsals as well as the cooling-off and aftermath phase after the performance of a play are integral parts of theatrical production. From this perspective, Meidias' attack on the rehearsals of Demosthenes' chorus can be equated with an attack on the actual performance of the chorus.

159 D. 21.15–17. Cf. Versnel 1999, 137–155 on malicious joy (*Schadenfreude*).

160 D. 21.22.

of the theater of Dionysus.¹⁶¹ With citizens and foreign visitors assembled there to celebrate the Great Dionysia, the choreographic staging was perfect with the theater as an ideal setting for the showdown. In this festive context, Meidias wanted to make it clear to everyone that Demosthenes deserved to be punched in the open. Why did Meidias not want to attack Demosthenes behind closed doors? Had he done so, he could not have transmitted the symbolic message he wanted to send to the *dêmos*. Instead, Meidias preferred to stage his corporal insult within the Dionysiac frame, within the theater, so that everyone could see and experience what he dared to do. Meidias counted on Demosthenes' not striking back. Thus, he could portray him as a coward, a weakling who could not defend his honor in public and would therefore lose face. Since every dramatization is open to interpretation, Demosthenes could charge this act, which was so humiliating to him, with a completely different meaning. In his speech against Meidias, one of his masterpieces, he was at ease portraying himself as the innocent victim living up to the democratic ideal of appealing to the courts, whereas his opponent had resorted to barbaric, tyrannical, and anti-democratic bullying. Meidias' physical attack within a sacred sphere—this is how Demosthenes characterizes the theater of Dionysus—was unheard of.¹⁶² Previous *chorêgoi* were also in competition with each other, but always refrained from direct violence (apart from Alcibiades).¹⁶³ Meidias was brazen enough to break the laws and disrespect the religious feelings of the Athenians. Demosthenes here speaks the new democratic *polis*-discourse of self-restraint and peaceful conflict resolution. It cannot have constituted the whole truth. Meidias must have felt he was in the right and therefore justified to exert violence openly. Given the highly symbolic setting of the showdown, it is very unlikely that Meidias did not plan this coup carefully in advance. If it had not been a strategic move, Meidias would not have enjoyed Eubulus' backing. Why Meidias thought he was in the right, we do not know. Demosthenes may have previously violated crucial rules of the upper-class game of competition and thus provoked Meidias in a way that warranted the high risk of challenging a *chorêgos* in public. It lies in the nature of things that we do not hear anything about Demosthenes' transgressions in his

161 Cf. Wilson 2000, 156–168 on the whole incident from a theatrical and performative point of view.

162 D. 21.74.

163 D. 21.61.

own speech.¹⁶⁴ How difficult it was for both contenders to gauge public opinion is obvious from the aftermath of the incident. First of all, the people supported Demosthenes' version in a *probolê*, a preliminary verdict against Meidias, who, with his punch, had disturbed the peace of a religious festival. Nevertheless, it is uncertain whether Demosthenes actually went to court at all. He might have written the speech without intending to deliver it, bribed by Meidias not to bring charges against him.¹⁶⁵ If this is true, Meidias was afraid of a court sentence and Demosthenes might have welcomed this deal, because he could not predict the opinion of the judges either, and might have run the risk of losing face once again in public, had the judges voted against him. From this perspective, acquiescence might have been beneficial for both sides. But another scenario is also conceivable. If the trial took place, Demosthenes may have won the case. Since this lawsuit was an *agôn timêtos*, the judges decided upon the penalty and may have condemned Meidias to pay a small fine.¹⁶⁶ At any rate, he must have come out of these troubles almost unharmed. Notwithstanding public opinion as expressed in the *probolê*, the judges (if the trial took place) did not come to a sweeping agreement on how to assess this incident.¹⁶⁷ Whatever scenario one might prefer, one thing is certain: there was uneasiness on all sides about how to deal with open violence.

On a less official level, we see that the public aspect of violence was also paramount in daily-life situations. Conon's son Ctesias gathered his father and his drinking mates to attack Ariston in the Agora.¹⁶⁸ Although the incident happened at night, there were still many people in the Agora and its vicinity. Ctesias acted on the spur of the moment. He probably did

164 MacDowell 1990, 8.

165 Aeschin. 3.52; Plu. *Dem.* 12. Most recently, Harris (1992, 75; 1989) has argued in favor of the speech's delivery. Lehmann 2004, 120–125, Dreyer 2000, Wilson 1991/92, 187, and Fisher 1990, 136, however, adduce good reasons why Demosthenes did not deliver the speech. MacDowell 1990, 24–27 is careful and rather assumes that Demosthenes did not deliver the speech, at least not in the form we have it preserved today. Even more agnostic is MacDowell 2009, 246. The question remains irresolvable.

166 Harris 1989. MacDowell 1990, 28 thinks that Meidias paid 30 *mnai* either to the fisc or privately to Demosthenes.

167 Herman 2006, 173 is right in saying that a *Corse* in pre-modern times would have found Demosthenes' dodging behavior dishonorable. Many Athenian *dikastai* must have felt similar, hence Demosthenes' uncertainty.

168 D. 54.7–8. We must keep in mind that a lot of what Ariston tells us is character assassination. On Demosthenes' strategy in detail, cf. MacDowell 2009, 242–245.

not think about potential witnesses he might need in court to defend himself. Ctesias called on his friends to help him in beating Ariston to a pulp and to constitute a witnessing public. They were eager to teach Ariston a lesson in plain view of other citizens. Other arguments and frictions had preceded this incident and we can be sure that Ariston does not tell us his responsibility for the escalation of the conflict. The ensuing paragraphs of the speech show that the thugs desired to have an audience and deliberately created one. Conon abused the seriously injured Ariston verbally and danced like a rooster over the victim as he lay on the ground.¹⁶⁹ This ritual of humiliation served the purpose of enacting *hubris* and brutally mocking Ariston. This performative sort of taunting was supposed to be visible and almost tangible to the bystanders. Ariston's loss of face was complete. All that could be done was for the onlookers to carry him home. There, the neighbors showed deep concern and wanted to know what had happened.¹⁷⁰ It was important to Ariston and his family that the neighbors fully saw the state he was in. Suffering had to be visible to arouse sympathy for the victim. Injuring an Athenian citizen like this was beyond the acceptable threshold of violence. The outrage caused to Ariston's family and friends would be highly useful in the ongoing conflict with the other party.

After the detention and whipping that Archippus suffered from Teisis and his friends, Archippus' brothers laid him, unable to walk by himself, on a litter, carried him to the samples market, and showed him to many Athenians.¹⁷¹ One might suppose that, similar to Ariston's fate, this public demonstration of Archippus' terrible state contributed to his loss of face, but instead it highlighted the injustice and *hubris* of the perpetrators. Seeing what an innocent Athenian from the higher echelons of society had endured during his entrapment should stir up emotions and mobilize the public against Teisis and his reckless friends. The place of the samples market was certainly chosen deliberately. Archippus was just an example

169 Cf. Hoffmann 1974 on the iconography of the rooster in Athenian culture. Fisher 2004, esp. 71; 1998a, 69 and Csapo 1993, esp. 13, 15, 124 have worked out the symbolic significance of the rooster in Greek society, embodying the ideal of a "real man" and an agonistic, almost martial mentality. Csapo does not mention the Conon episode. Cf. in a similar vein, Winkler 1990, 49. Herman 2006, 282–287 tries to belittle the symbolic value of cockfights and offers no explanation of the phenomenon.

170 D. 54.20.

171 Lys. fr. CXXIX 279.6.

of Teisis' hybriistic attitude and wanton insolence.¹⁷² The performative aspect of suffering fulfilled a strategic function in the next spat against the opponent.

Although the victims of violence clearly suffered under its public aspect—they must have felt the humiliation even more painfully under the gaze of curious onlookers—they might have preferred the exchange of blows taking place in public to violence committed out of the public lime-light. Violence committed in the dark of night or in a closed room was not accessible to public scrutiny and assessment, and was likely apt to be considered excessive and illegitimate. Someone who resorted to violence without granting a sufficient level of observability was suspect in the eyes of the victim and the public. The notion was that he had something to hide or had a bad conscience for using violence at all. For this reason, many users of violence preferred striking in public. Not dramatizing one's own violence had another drawback. In the absence of an audience, one could not convey a symbolic message to the citizenry, a serious defect when it became necessary to defend one's actions in court.

Athenian citizens would readily resort to violence in the dark or behind closed doors, however, when they simply wanted to avoid detection or when there was no symbolic message to be transmitted. In the first case, things were more complex than it seems. If someone deliberately used violence outside the public gaze, he removed it from the controllable sphere. Since the public insisted, however, on the assessment of violence against Athenian citizens, this breach of the rules was charged with a negative symbolism and deemed outrageous and illegitimate. In the second case, the violence was directed against subordinates, like slaves¹⁷³ and wives. This kind of coercive power was understood in paternalistic terms and taken for granted. It did not have to be adjudicated by fellow citizens, because it was unproblematic in their eyes.

Thus, violence against another citizen was ideologically not permitted inside the house or outside the city. Archippus' neighbors and the people in the samples market were outraged when they learned what he had endured at the hands of Teisis and his friends. Since the body of an Athenian citizen was inviolable and could not be bound except under special cir-

172 Todd 2000, 348.

173 Klees 1998, 176–217 on the punishments that slaves had to fear. On the ideology of the sacrosanct body of the citizen and its implications for penalties meted out to slaves, cf. Hunter 1992.

cumstances,¹⁷⁴ Archippus' detention for a whole night within Teisis' house and his whipping by a slave during a festival constituted multiple transgressions of socially accepted boundaries. Whereas Teisis did not want to convey any symbolic message and therefore wanted to hide this maltreatment of an Athenian citizen, the public immediately charged this incident with a high level of negative meaning. Archippus and all good citizens now regarded Teisis as a *hubristês*. Even his friend Antimachus was shocked to see what had happened and demanded the immediate release of Archippus.

We also know the judges' reaction when Apollodorus told them about Nicostratus' attempt to kill him outside the city by throwing him into a quarry late at night.¹⁷⁵ Nicostratus was keen to avoid any witnesses. Since homicide was almost always beyond the acceptable level of violence, any adjudication would have resulted in a negative outcome and was therefore to be avoided outright. All that Nicostratus was striving for was the silent disappearance of Apollodorus. If his corpse had been found in the quarry, it might have looked like an accident. To the judges, Nicostratus' treatment of Apollodorus was a shocking act that required the death sentence.

In Antiphon 1, the stepmother did not want to be caught in her plot to poison her husband (if this was her intention). Therefore, the fatal act was not dramatized like the probable poisoning of the chorus boy in Antiphon 6. But it was precisely this hidden homicide that was deemed highly offensive and led to her prosecution years later by her stepson.

However fictional Antiphon's tetralogies may be, they are valuable documents for the Athenian canon of values. In Antiphon 2.1 we learn

174 A classical formulation is found in Isoc. 20.1: ἐπισταμένους ὅτι τοῦτο (σῶμα) πᾶσιν ἀνθρώποις οἰκειότατόν ἐστι, καὶ τοὺς τε νόμους ἐθέμεθα καὶ περὶ τῆς ἐλευθερίας μαχόμεθα καὶ τῆς δημοκρατίας ἐπιθυμοῦμεν καὶ ἅλλα πάντα τὰ περὶ τὸν βίον ἕνεκα τούτου πράττομεν, 'You know that the body is the greatest concern for all people: we have established laws and we do battle over its freedom; we desire democracy and we do everything else in life for its sake.' Even a killer could not be detained in a private home, and no one was allowed to do him any harm. Instead, one had to inform the state authorities (D. 23.28). For exceptions in the *apagôgê* procedure, cf. Riess 2008; Volonaki 2000; Hansen 1976. On the inviolability of the Athenian citizen's body, cf. Ruiz 1994, 16–20. Illuminating on the Athenians' obsessiveness with the male body is Fisher 2005, 77–78, including aspects such as military value, nudity, aesthetics, and morals. On D. 22.55–56 (Androtrion treated free men like slaves), cf. Cohen 2005b, 170. Cf. below 126, n. 461.

175 Ps.-D. 53.17–18.

about a rich man who was killed in the street at night together with two slaves. We do not hear much about the relationship between the victim and his killer, only that the two were long-time enemies and had fought against each other in court multiple times. On these occasions, the victim had always carried the victory. Finally, the defeated man was so frustrated that he was ready to transgress the ultimate boundary and kill his opponent. The killer again had no symbolic message to convey, but probably sought to satisfy his lust for revenge by getting rid of his opponent physically: from his side, then, publicity was neither required nor desired. Going to court multiple times did not prevent this killing. On the contrary, the various defeats that the man who later turned murderer had suffered accumulated to such a degree of frustration and helplessness that he saw no other way out than to kill his archenemy under the protection of darkness. In this case, the court system was not able to settle a long-term conflict for good, but even contributed to its fatal escalation.

It is important to note that committing violence in public could sometimes be judged negatively when it meant the transgression of a threshold. Religious festivals were not to be disturbed, and violence committed in this context was regarded as disruptive, at least by the victim. Demosthenes is outraged at the punch he suffered in open daylight in fulfilling his religious duty as a *chorêgos*.¹⁷⁶ He initiated a *probolê* against Meidias, a public suit for having committed a crime during a religious festival. The Assembly of the People held a preliminary hearing and voted against Meidias. This verdict of guilt, however, was only a recommendation and did not bind the dicastic court, in front of which the case was to be tried later. The fact that Meidias certainly interpreted the incident differently shows once more that the boundary between legitimate and illegitimate violence was flexible and could shift continuously around its “defining” semantic markers according to the viewpoint of the speakers.

Beside these serious aspects, elements of play must not be overlooked in the discussion of the public side of violence. The skirmishes of the upper classes must have been entertaining for the lower ranks of society.¹⁷⁷ One gains the impression that passers-by sometimes engaged in brawls just for the fun of it. Lysias 3 is one of our best sources for repetitive brawls in public. They seem to have been frequent and to have followed specific conventions. One indispensable part of the social norms in

¹⁷⁶ D. 21.217.

¹⁷⁷ Cf. below 286 on Philocleon's lawcourt addiction in Aristophanes' *Wasps*.

place were the many people rushing to the scene, providing comments, and even engaging in the *mêlée* by lending a helping hand to one party. Perhaps we can explain the active participation of onlookers in these scuffles by a certain lust for violent rivalry. Some of this entertainment aspect is clearly preserved on the level of representing violence in court as well. In order for a speech to be successful, it had not only to persuade the judges, but also to entertain them. The speaker of Lysias 3 gives an ironic cast to his description of the fisticuffs;¹⁷⁸ in a similar vein, Euphiletus plays the naive and gullible simpleton easily duped by his wife;¹⁷⁹ the handicapped man in Lysias 24 (*For the Disabled Man*) aptly parodies upper-class discourses. Earnestness and ironic play, seriousness and cheerful entertainment pervaded daily life and its discursive representations.¹⁸⁰

To summarize. Most conflicts attested in the forensic speeches concern male Athenian citizens, mostly from the upper echelons of society,¹⁸¹ worrying about their honor and public status. This may be one of the reasons why the parties involved in a conflict nearly always called for witnesses. Violence should ideally take place in the open, so that everyone could see what was going on. As long as violence took place in public, it remained subject to observation and checking. A “felicitous” act of violence depended on its performative aspect. Violent clashes for which the contestants sought the public limelight were understood as performances. The publicity of the violent act was crucial in channeling violence, restricting its degree, and conveying symbolic messages. Only the existence of a symbolic meaning, a certain intersubjective significance, ensured that a violent act made sense. From this perspective, Alcibiades was subjectively right in dragging his wife across the Agora in broad daylight. Meidias was subjectively right in punching Demosthenes in plain view of all. Danger was imminent, however, when violence was committed in a secret place, hidden behind closed doors, or at night. Such an act signaled to the citizenry that there was something wrong, that the norms of committing violence had not been observed, that the perpetrator had something to hide, had a bad conscience, and did not want to expose his violent behav-

178 Lys. 3.15–18.

179 Porter 1997 and Perotti 1989/90 even go so far as to doubt the historicity of the speech. Opposed to this view are Wolpert 2001, 420, n. 15 and Gagarin 2003b, 2, who argue that the employment of literary elements does not necessarily mean that speeches were mere literary exercises.

180 Cf. Bonner 1922.

181 Fisher 1998b, 61 emphasizes the contrast between upper-class trials of strength and lower-class petty crime.

ior to public scrutiny. As a result, this kind of hidden violence was outside the boundary of acceptable violence: it was problematic in its anti-democratic character and was thus tyrannical (cf. the charts below). After all, the tyranny of the Thirty (as well as the blasphemous mutilation of the Herms) was based on secret conspiracies at night. Also with regard to violence, Athenian culture was bound to publicity. The staging of social interactions took place in every domain of life, so that one can speak of a culture of public display.¹⁸² The upshot of this theatricality of life was that some political figures, who were exposed to publicity more than other citizens, voluntarily subjected themselves to constant public screening by living in the open and giving up most of their private sphere. Demosthenes and Agesilaus, for example, lived through a permanent *dokimasia*, so to speak, thus making the social control of their lives all-pervasive. Thriving in this pressure-cooker atmosphere, they were proud of their accomplishments, which were immediately open to the gaze and admiration of all.¹⁸³

Day versus Night

Like the dichotomy between the public and the non-public aspects of violence, the time of its commitment, either day or night, could also be used to advantage *post factum* by the litigants.¹⁸⁴ Murdering a man and his two slaves in the open street by night was judged as the ultimate withdrawal of the atrocious deed from public gaze and assessment.¹⁸⁵ Apollodorus barely escaped from attempted homicide near the quarries late at night,¹⁸⁶ but even before this most heinous attack, Nicostratus had invaded Apollodorus' property at night, cut down the vines and fruit-trees, and destroyed olive groves,¹⁸⁷ the worst sort of vandalism. Since bystanders would not have condoned this level of destruction, Nicostratus chose to avoid the public gaze.

A certain Simon had invaded the house of the accused by night, beat him up, and insulted the women inside by his sheer presence. To the ac-

182 Cf. above 52, n. 142.

183 D. 18.10.

184 Cf. Phillips 2000, 197–198.

185 Antiphon 2.1.

186 Ps.-D. 53.17.

187 Ps.-D. 53.15.

cused this behavior was the utmost *hubris*.¹⁸⁸ A similar fate, if not worse, befell the public slave Pittalacus. In the wake of his quarrel with Hegesander about the young male prostitute Timarchus, Hegesander and Timarchus broke into Pittalacus' house late at night, destroyed his furniture, killed his fighting cocks, bound him to a pillar, and flogged him severely. All this happened only because Pittalacus had become jealous after Timarchus' leaving him for Hegesander and continued pestering the new couple.¹⁸⁹ Teisis invited Archippus to come to his party after dinner and thus lured him into his house. Just after his arrival, Teisis seized his guest and fastened him to a pillar, where his ordeal would continue throughout the night. Meidias had broken into the goldsmith's den at night to destroy Demosthenes' crown and robe.¹⁹⁰ And we should not forget that one was allowed to kill a thief at night, however small the sum of money was which he was going to steal, if one could catch him in the act.¹⁹¹ Committing a crime at night created aggravating circumstances. It was for this reason that Euphiletus took friends and neighbors with him to confront the *moichos* Eratosthenes at night.

Nevertheless, a victim could also instrumentalize the daytime in his favor by making the violent act committed during the day appear worse and more brazen than one committed at night. Teisis' second maltreatment of Archippus with the whip took place during the day.¹⁹² Archippus' friend, who pleads for him in court, mentions this detail because it is supposed to shock the judges. Demosthenes is more explicit about the seriousness of a daytime attack. He was outraged to have been assaulted by Meidias in the theater of Dionysus early in the day. According to him, it was bad enough to suffer bodily harm at night from a drunken rascal, but it was even worse when the assailant did not shun the bright sunlight and was sober, implying a special audacity on his part and the deliberate breach of boundaries.¹⁹³

188 Lys. 3.23.

189 Aeschin. 1.58–59.

190 D. 21.16.

191 D. 24.113–114 (law on theft). Cf. Cohen 1983, 58, 92. Cf. the similar regulation on the Roman Twelve Tables 8.12–13; cf. Dig. 4.2.7.1 (Ulpian); 9.2.4.1 (Gaius); 47.17.1 (Ulpian).

192 Lys. fr. CXXIX 279.4.

193 D. 21.74.

Inebriation versus Sobriety

Just as in the rhetorical treatment of the daytime-versus-nighttime dichotomy, we observe a similarly contradictory evaluation when it comes to the influence of alcohol in violent interactions.¹⁹⁴ According to the circumstances and the viewpoint of the speaker, the use of alcohol could be judged negatively or positively and thus manipulated to serve one's own purpose in court. The defendant often used drunkenness as a kind of excuse to justify a certain reckless behavior. In most cases, however, the consumption of alcohol was criticized when it led to the outbreak of violence. The relevant passages in the orators are numerous and clearly show that violence often had its roots in drunkenness.¹⁹⁵ At times, drunkenness and anger were almost equated as blurring the perpetrators' states of mind and leading to violence.¹⁹⁶ Rhetorically, it was also effective to build up the opponent as an intoxicated transgressor of multiple boundaries and to construct one's self-image in contrast to this foil. Conon's sons were constantly drunk, whereas their victim, Ariston, was always sober.¹⁹⁷ The consumption of alcohol, however, is not consistently seen negatively. The question is not only whether or not drunkenness is a morally reprehensible state, but also if, under certain circumstances, soberness is not even worse than drunkenness. From Antiphon's Third Tetralogy (Antiphon 4), we can deduce that drunken brawls were quite normal events. A young man had killed an old man in a fistfight. Both were drunk. In order to accuse the young man effectively, the prosecutor passes over in silence the inebriation of the killed victim and makes use of a stereotype: young men are more prone to violence because they are strong, proud of their noble birth, and not used to alcohol, while at the same time they drink more than old men, who are more self-restrained.¹⁹⁸ There may have been an ideological age limit for drunkenness. It was inappropriate for an old man to become drunk and get carried away to such

194 Cf. Phillips 2000, 199–201.

195 E.g., Lys. 3.11–12, 18–19; Aeschin. 1.58; D. 21.38–40, 180; D. 22.63. A connection between drinking and brawls is also drawn, for example, by a fragment of Middle Comedy, preserved from Alexis' play *Trophonius*: Alexis F 239 (K.–A.). The close connection between violence and alcohol is culturally determined and variable. In Japanese culture, for example, alcohol is associated with leisure, relaxation, and peacefulness. Cf. Riches 1986, 16.

196 E.g., D. 54.25.

197 D. 54.3–4, 7–8, 16.

198 Antiphon 4.3.2.

a degree that he engaged in a fistfight with a youngster.¹⁹⁹ The accused, however, tears apart this ideological construct. According to him, ‘many young men act with restraint, and many of the elderly become violent when drunk.’²⁰⁰ Since the prosecutor’s argument cuts both ways, it is more important, according to the accused, to ask who actually started the fight. In this scenario, the reproach of drunkenness does not work and the defense takes full advantage of the prosecutor’s logical inconsistency. Since both men were drunk, guilt could not be assessed along these lines. The negative power of alcohol is thus neutralized in this case. Drinking was not an inappropriate activity for the young man, nor should it be held against him in the evaluation of his deed. An almost positive evaluation of drunkenness is given by the accused in *Lysias* 3; when drunk, he argues, one cannot wound in premeditation. After all, one regrets one’s deed after recovering from the effects of alcohol.²⁰¹ The accused in *Lysias* 4 takes exactly the same line of argumentation: ‘We admit we were going after boys and flute girls, and that we had been drinking; so how can this be premeditation? I certainly do not think it can.’²⁰² It is fascinating to see that one and the same defendant can give two opposite interpretations of the almost stereotypical consumption of alcohol within only a few lines of his defense speech. Applied to one’s own violent behavior, drunkenness serves as an excuse and even justification.²⁰³ Turned against one’s opponent, it fulfills the purpose of character denigration: ‘He has been aroused by the slave girl, he is prone to drunken violence and too quick with his fists, and one has to defend oneself.’²⁰⁴

Demosthenes is able to phrase the dialectic between drunkenness and sobriety even more sharply. In his speech against *Meidias*, the latter’s so-

199 But cf. Philocleon’s rowdy misbehavior in *Ar. V.* 1322–1449. If this ideological construct existed, the defendant could also have argued that the old man should not have been drunk, that in fact, he had violated a rule of social interaction, whereas it was normal for the young man to drink. This line of argumentation, however, seemed too bold to the defendant, especially in light of the old man’s death.

200 *Antiphon* 4.4.2: νῦν δὲ πολλοὶ μὲν νέοι σωφρονούντες, πολλοὶ δὲ πρεσβῦται παροινούντες.

201 *Lys.* 3.43.

202 *Lys.* 4.7: νῦν δὲ ὁμολογούμεθα πρὸς παῖδας καὶ αὐλητρίδας καὶ μετ’ οἴνου ἐλθόντες. ὥστε πῶς ταῦτ’ ἐστὶ πρόνοια; ἐγὼ μὲν γὰρ οἶμαι οὐδαμῶς.

203 In a fragment of New Comedy, a father does not accept the drunkenness of his son (?) as an excuse: *Philippides* F 27 (K.–A.).

204 *Lys.* 4.8: εἴτα ὑπὸ τῆς ἀνθρώπου παρωζυμμένος δόζυχει λίαν καὶ πάροιός ἐστιν, ἀνάγκη δὲ ἀμύνασθαι.

berness is characterized as being worse than any state of drunkenness, because it testifies to his deliberate *hubris*. In comparing the deadly conflict between Euaeon and Boeotus, the latter of whom was drunk when he struck Euaeon and was in turn killed by him, with the insult Demosthenes suffered by the hands of Meidias, alcohol is represented as something negative,²⁰⁵ but soberness on the part of the *hubristês* is something far worse: ‘I, on the other hand, was the victim of outrage at the hands of an enemy who was sober, in the morning, acting to humiliate me not under the influence of wine.’²⁰⁶ The masterful manipulation of the dichotomy of drunkenness versus soberness was staged successfully, working to the detriment of the opponent and to Demosthenes’ favor. It is equally striking that Demosthenes makes full use of the culturally entrenched, double-edged sense of the drunkenness-versus-soberness metaphor to create the palpable discrepancy between the devastating portrayal of his opponent and his own self-representation. The ideological construct of the drunkenness-versus-soberness dichotomy unfolds in only two consecutive sentences. This condensation is typical of Demosthenes’ supreme rhetorical skills and highlights the degree to which this pair of opposites was open to interpretation.

As if Demosthenes’ negative characterization of soberness were not enough, Antiphon, two generations earlier, employed the reproach of soberness as a powerful weapon to indict someone for homicide in his First Tetralogy (Antiphon 2). It is not clear who the fictional prosecutor is, but he claims that the victim was neither killed by a drunken man nor in a quarrel on the spur of the moment.²⁰⁷ This murder was carefully prepared and therefore deliberate. In this argumentation, soberness serves as a thoroughly negative quality, to be equated with intent and even premeditation. To conclude, the topic of drunkenness and soberness could be exculpatory or condemnatory, depending on the viewpoint and the argumentative strategy of the speaker.²⁰⁸

205 D. 21.73. In the same passage (D. 21.71), Demosthenes gives a second example and relates the story of Euthynus the wrestler, who engaged in a fistfight with the prizefighter Sophilus at a private party. The passage is so vexed that it is unclear who actually killed whom.

206 D. 21.74: ἐγὼ δ’ ὑπ’ ἐχθροῦ, νήφοντος, ἔωθεν, ὕβρει καὶ οὐκ οἶνω τοῦτο ποιοῦντος.

207 Antiphon 2.1.4.

208 Menander takes this dichotomy to an ethical level in one of his comedies: οὐ γὰρ τὸ πλῆθος, ἀν σκοπῇ τις, τοῦ ποτοῦ ποιεῖ παροινεῖν, τοῦ πίνοντος δ’ ἡ φύσις, ‘It’s not the number of glasses, if you’ll think, accounts for brawls, but what they’re like who drink,’ transl. in Menander F 627 (Edmonds).

Old Age versus Young Age

Prosecutors and defendants could also instrumentalize their ages in favor of their own causes and to the detriment of their opponents. Like the day-time–nighttime and the drunkenness–sobriety dichotomies, age-related arguments, too, could cut both ways, and the litigants were apt to manipulate and thus instrumentalize their own ages and those of their opponents. The prosecutor in Antiphon's Third Tetralogy, who accuses a young man of having killed an old man, plays this game in close connection with the drunk-sober dichotomy and does so in a manner that is not altogether convincing. Young men are by nature bolder and more aggressive, because they can rely on their physical strength when it comes to fights with older men. Old men, in contrast, are weaker and better at self-control.²⁰⁹ Very clearly, old age is a positive argument in this setting, but it is easily refuted by the young murderer's friend who speaks on his behalf.²¹⁰ He implies that it was inappropriate for the old man to become drunk at all, whereas it was quite normal for the young man to indulge in alcoholic excesses from time to time. The more advanced maturity of the elderly man should have prevented him from breaking this rule of interaction. It was irresponsible of him to pick a fight with the young man, who was superior in strength. Because of his recklessness, the old man had in fact deserved to die.²¹¹

In his speech of prosecution, Ariston argues along similar lines when he states that, whereas the abuse committed by young men is somehow understandable, but should still be punished, violence on the part of an elderly man—Ariston defines “elderly” as being above the age of fifty—is inexcusable. Conon should have checked his sons' behavior and stopped their abusive actions. Instead, he not only condoned their maltreatment of Ariston, but even took an active part in it. According to Ariston, an old man's inclination toward violence and, even more so, actual misbehavior is socially unacceptable. Therefore, Conon actually deserved death.²¹² Given these age-related rules of interaction, one wonders how elderly men reacted when facing charges of battery or even at-

209 Antiphon 4.3.2.

210 Antiphon 4.4.2.

211 On the concept of old age in antiquity, cf. the contributions to Gutsfeld – Schmitz 2003, esp. Baltrusch's disillusioning piece on Athens (“An den Rand gedrängt. Altersbilder im Klassischen Athen,” 57–86) and Brandt 2002, 41–85 on old age in Classical Greece in general.

212 D. 54.21–22.

tempted homicide. How would they defend their problematic behavior, which was supposedly inappropriate at their age? A prime example is the mature speaker in Lysias 3, who has to refute a *graphê traumatōs ek pronoias* brought by the younger Simon against him. From the outset of the speech, the older man admits his foolishness with regard to the boy Theodotus, given his age, and thus undermines the most serious attacks of the prosecutor. He coyly tries to win the sympathy of the judges by portraying himself as having succumbed to the charms of the young boy. Spellbound by Theodotus' beauty, he acted irrationally.²¹³ This admission of his own weaknesses creates subtle irony and is supposed to excuse his ensuing violent actions as being committed under the influence of erotic passion. But the accused is clever enough not to rely solely on the judges' goodwill and understanding for his *amour*. Self-confidently, he also puts his old age to strategic use by emphasizing the responsible role he plays in the city.²¹⁴ Without saying so explicitly, he is latching onto the discourse on liturgies that were expected from the rich on behalf of the city. Speaking about his accomplishments in this field implies the positive side of his advanced age: self-restraint and civic commitment. The older you are, the more you can have done for Athens. The judges are thus called upon to weigh his considerable merits against his slight misbehavior in a trifling love affair. In the context of liturgies, it is interesting to note that the civic contribution of a community member was measured by the largesse of his donations in relation to his age. In his speech against Meidias, Demosthenes renders himself younger in order to make his liturgies appear even more generous, especially when compared to Meidias' stinginess in this respect.²¹⁵

Youth could also be instrumentalized as an excuse not to speak for oneself in court, thereby stressing one's innocence and naiveté in matters of law and the court system. The young and seriously injured Archippus does not assume the role of the prosecutor. A friend is pleading the case in court on his behalf, suing Teisis for battery.²¹⁶ This strategy of non-performance is supposed to emphasize Archippus' youth and inexperience, thus calling for additional sympathy from the judges.

213 Lys. 3.4.

214 Lys. 3.9.

215 Demosthenes must have been thirty-seven or thirty-eight years old in 347/6, not thirty-two, as he claims (MacDowell 1990, 370–371).

216 Lys. fr. CXXIX 279.

Thresholds

(invasion of homes versus protection of *oikos*)

The violation of the threshold of someone's home was always charged with a highly negative symbolism by the victim and defended by the perpetrator. Most recently, Schmitz has offered a compelling interpretation of this intrusive behavior from an anthropological perspective.²¹⁷ In a society where a tight social control held people firmly in its grip,²¹⁸ the performance of abusive songs in front of a house, accompanied by hissing, drumming, and banging of metal implements ("rough music," *charivari*), the battering of doors, the partial destruction of the house owner's belongings,²¹⁹ and beating him up outside the house can be understood as a ritual form of social coercion and popular justice (*Rügebrauch*).²²⁰

Two basic settings are to be distinguished. The first involves the community's stance on the illicit sexual relationship of a house owner. If an elderly man was living together with too young a woman or a prostitute or even a young boy, this relationship was deemed inappropriate. Young revelers would come to the house in a carnivalesque procession after a symposion (*kômos*).²²¹ In most cases, they were drunk, noisy, and deliberately challenged the *kurios* to come out of the house to be taught a lesson. If he refused, they would smash the door (*θυροκοπεῖν*) and drag him out onto the street.²²² Normally it was the rule that the *komasts* would not

217 Schmitz 2004, 287–300. Cohen 1991b, 70–97 differentiates between the public sphere of the Agora and the "private" sphere of the *oikos*. These spheres were gendered and fraught with social expectations and norms. Similar is Dover 1974, 95–98.

218 On neighbors as agents of social control, cf. Schmitz 2004, 464. A fragment of New Comedy, preserved in Stobaeus' *Physical Extracts*, neatly expresses the all-pervasiveness of social control: οὐδὲν καλύπτει νύξ κακῶς εἰργασμένον, ὃ τι δ' ἂν ποιῆς ἀεὶ νόμιζ' ὄραν τινα, 'No crime's concealed by night; take it for true, someone will see whatever you may do,' transl. in F 148 (Edmonds). Cf. also the anonymous New Comedy fragment on neighbors' eyes being as sharp as those of foxes: F 435 (Edmonds).

219 An extreme form was the razing of the whole house (Connor 1985).

220 Forsdyke 2008 convincingly shows that collective rituals of humiliating offenders, especially in the context of festivals, were inextricably linked to the more formal aspects of bringing about justice.

221 On violent *kômoi* with partial destruction of the furniture or house and its function as *charivari*, cf. Schmitz 2004, 280–287.

222 This is what happened to Pittalacus (Aeschin. 1.59): he was penalized for pestering the new couple Hegesander and Timarchus. He was not only beaten, but his

enter the house,²²³ but sometimes it was unavoidable to do so, and in the ensuing *mêlée*, furniture would be broken and the women present at the scene verbally insulted. The goal of this social coercion was to shatter the honor of the victim and his household.²²⁴ The public humiliation was supposed to work as a social corrective and force the attacked to better his mores by either marrying the woman in question, if she was an Athenian, giving up the improper relationship, or even leaving the country. An excellent example for this *Rügebrauch* is Lysias 3.²²⁵ The mature speaker, suffering from the constant protests by the younger Simon against his relationship with Theodotus—Simon wanted the boy for himself—left Athens temporarily after the first charivari.²²⁶

The second setting was not associated with illicit erotic affairs, but with a legal relationship, the exaction of money or equipment that a debtor owed to a creditor.²²⁷ The conflict could be economically or politically motivated, such as the choregic *agôn* between Meidias and Demosthenes. Unlike in the first setting, there were neither youngsters nor alcohol involved, and most intrusions were committed during the daytime.²²⁸ In this second, more official context, the transgression of the door can be re-

furniture was dragged out into the street, and his fighting cocks and quails were killed. For more sources concerning the battering of doors, cf. Schmitz 2004, 297.

223 It was equally forbidden to detain a *komast* within the house. What happened to Archippus at the hands of Teisis was serious misconduct and did not correspond at all to the unwritten but stringent rules of the *Rügebrauch* (cf. Schmitz 2004, 295). Teisis, who is familiar with the semantics of housebreaking, accuses Archippus in turn of having intruded violently and having verbally abused the women present (Lys. fr. CXXIX 279.4–6). Thus, Teisis aptly plays with threshold arguments to cover his own misdeed.

224 Huizinga ⁴1964, 86 puts the *Haferfeldtreiben*, a Bavarian form of charivari, into the context of play, thus adding a comic note to the serious meaning of measures of popular justice. We certainly sense a comic undertone in Lysias 3 and 4.

225 According to Schmitz 2004, 290, the *Rügebrauch* comes close to personal revenge in this case as in many others.

226 Lys. 3.10. Cf. Schmitz 2004, 291–293, 300. Cf. also Lys. 4; Is. 3 and Schmitz 2004, 294–296.

227 D. 37: Pantaenetus owed Euergus 105 *mnai*; the payment of his installments was in arrears. Therefore Euergus invaded Pantaenetus' home and threatened his mother and daughters. As punishment, Euergus had to pay two talents. Encouraged by this success, Pantaenetus now also indicted Nicobulus, his co-creditor, and accused him of having violated his door threshold. Cf. Schmitz 2004, 298–299. The most famous case is Ps.-D. 47; cf. Schmitz 2004, 299.

228 Schmitz 2004, 300. The speaker in Ps.-D. 47.19 neatly draws the line between his task of securing the naval equipment from his predecessor and the motivations of other house intruders, i.e., drunken revel (*kômos*) and amorous passion.

garded even more as a kind of self-help than in the first setting. Christ has worked out the conflicting claims in these cases of trespass against the backdrop of relatively inefficient law-enforcement agencies in pre-modern societies.²²⁹

On the one hand, private individuals normally could not rely on the state's help in confiscating property, the value of which they could legally claim. With the help of friends²³⁰ or, only under very special circumstances, a magistrate from the city,²³¹ they could invade private property, violate thresholds, and seize what they thought was owed them. They felt they were in the right and normally claimed that state authorities backed them.²³² The state had to condone this aggressive behavior, because it did not have the means to intervene; it had to enable individual citizens to lay hands on private property in its stead, to prevent or stop the abuse of the owner.²³³

On the other hand, it was the prerogative of the *kurios* to defend his *oikos* from any intrusion from outside.²³⁴ The *polis* was only allowed to violate the seclusion of the *oikos* under very special circumstances.²³⁵ These exceptions were hotly contested, and so it comes as no surprise

229 Christ 1998b.

230 On the help of friends one could enlist, cf. Christ 1998b, 531.

231 For example, if the creditor thought himself too weak, he could apply for officials appointed by the state to help him or carry out the confiscation of property for him (*dikê exoulês*): Christ 1998b, 531–533; MacDowell 1990, 261; 1978, 153–154; Harrison 1971, 186–189. Wolff 1961, 36 aptly characterizes the *dikê exoulês* as “Schutz der berechtigten Selbsthilfe.” Similar is Wolff 1961, 5, 38.

232 Ps.-D. 53.15: Nicostratus had registered a fine of 610 drachmas against Apollodorus. Since he did not pay, Nicostratus invaded Apollodorus' property and carried off all his furniture, worth more than 20 *mnai*, according to Apollodorus' report. The trierarchic speaker in Ps.-D. 47.19–48 explains that he was authorized by an official decree either to confiscate the naval equipment owed to him or to seize some of Theophemus' property in compensation.

233 Because of a lack of law enforcement agencies, the self-regulating society of Athens was dependent to a large degree on self-help (Riess 2008, 1–4; Allen 2000, e.g., 202; Hunter 1994, 120–153). Rhodes 1998, 149–150, 160 hits the nail on the head in pointing out that private prosecution and law enforcement had their share in continuing and aggravating quarrels. Similar is Todd 1998. This is important for a balanced assessment of the functions of Athenian courts, which will be treated in more detail below.

234 Christ 1998b, esp. 541 works out this tension between defensive self-help and state control most persuasively.

235 Even agents of the state should not enter private homes without a decree: D. 18.132–133 (reporting and refuting a slanderous comment by Aeschines).

that the tension between state control and the private sphere remained strong throughout the fourth century and was also symbolically expressed through threshold violations. In the heated atmosphere of these hostile encounters charged with aggressive feelings, the conflicting claims often found their outlet in the use of violence. The moral and judicial assessment of these expected outbreaks of violence was as ambivalent as the reasons that had led to the violent showdowns in the first place. Therefore, both parties could feel offended and file, for example, a *dikê aikeias*, a *dikê biaïôn*, a *dikê blabês*, or a *graphê hubreôs* in the wake of such an incident. Schmitz rightly interprets these legal procedures as the refinement of popular justice by the lawgiver.²³⁶ These measures actually protected the house owner from private self-help and state intervention in the form of individual self-help. Schmitz regards the threshold transgressions attested for the classical era as later differentiations of the original popular ritual of humiliation.²³⁷ They had partly lost their original, communal function and had rather degenerated into serving the purpose of private vengeance.²³⁸ We will have to come back in more detail to the symbolic implications of threshold breaches in the context of exacting money or equipment.

In the ensuing analysis, I am less concerned with the historical development of this custom than with its actual phenomenology and functions during the fourth century. In spite of their differences, both contexts in which threshold violations were exercised have many features in common. In fact, a law that prohibits the exaction of debts during religious holidays links the two spheres.²³⁹ Apparently, creditors had taken advantage of the licentious atmosphere during festivals and had demanded the money owed to them by posing as reveling komasts. In the carnivalesque

236 Schmitz 2004, 306–307.

237 Schmitz 2004, 467–492.

238 Schmitz 2004, 402–403, 409, 483 offers an evolutionary model that is convincing, owing to its rooting in anthropology: rituals of popular justice supplanted personal revenge as taken during the archaic times. These *Rügebräuche* finally became sanctioned by the community and regarded as law (humiliating punishments like the *rhapnoidôsis*, humiliating parades, *apagôgê*). Finally these *Schandstrafen* gave way to more rational, lawful, and sophisticated procedures, such as fines. Social control had itself become the subject of control (Schmitz 2004, 491). Forsdyke 2008 shows the simultaneity of extra-legal forms of ritualized popular justice and more formal modes of law enforcement in classical Greece. Both forms were inextricably intertwined.

239 D. 21.10.

atmosphere of drinking and consequent violence, the use of force was supposed to appear excusable, if not legitimate.

Sexual and monetary or political motives in trespassing were similar, in so far as they always involved public bystanders.²⁴⁰ An attack on an opponent's private sphere was designed to reveal his misbehavior to an audience.²⁴¹ On a physical as well as metaphorical level, the overstepping of boundaries (*parabainein*) was deliberately and visibly performed. The aggressor was conscious of the fact that what he performed was an intrusion, an encroachment upon his opponent, which, in his view, was fully justified because of his rival's misconduct. The culture of public display lured the supposedly stronger party into enacting a controversy over a *hetaira*, a boy, or a sum of money around an opponent's doorstep. If one was victorious, one would gain the respect of the bystanders and the defeated rival would be humiliated even more in the ongoing contest for honor and power.

At the same time, penetration into a house always had a sexual connotation,²⁴² even if women were not present and the struggle was not about a woman or boy. Why were women who were present at the scene verbally abused, even if they had nothing to do with the men's quarrels? In Athenian ideology, the act of entering a house by force was equated with sexual intercourse and, as such, a display of masculine prowess (*thumos*).²⁴³ From this perspective, the adultery described in Lysias 1, as well as Lycurgus' speech against Lycophron and his defense by Hyperides, encapsulate the most extreme level of violating an *oikos*. The gendering of the threshold metaphor glorified the victory of the intruder and lasting-

240 On the publicity of popular justice, cf. Schmitz 2004, 403.

241 The house owner accepted the violation more easily when he realized that his behavior was not beyond reproach. Cf. Is. 3.13–14; Schmitz 2004, 295–296.

242 According to Christ 1998b, 525 violating the threshold of a door was symbolically equated with rape. Perotti 1989/90, 47–48 gives a political interpretation of the sexual metaphor of Lysias 1: Euphiletus embodies the democracy. He is married to the *polis*. Eratosthenes, one of the Thirty Tyrants, besmirches the honor of the *polis* by penetrating her and duping democracy. Even though the equation of the Eratosthenes of Lys. 1 with the tyrant of the same name is highly problematic, this interpretation is compelling. Regardless of the identity of the man Euphiletus killed, the speech charges the action with political connotations.

243 Cf. Viano 2003, 93–94 on *thumos* in Aristotle; Winkler 1990, 78 on self-control and the need to suppress *thumos*; Faraone 2003, esp. 162 on *thumos* in curse tablets and its later equation with *orgê*, which in this and similar contexts may also denote what we mean by “machismo”; more general is Cohen 1995, 83. On masculinity, cf. Rosen – Sluiter 2003; Foxhall – Salmon 1998.

ly devastated the reputation of a *kurios*, whose lack of protective power had been “visualized.” The sexualization of the transgressive act catered to the heightened lust of the aggressor precisely because it meant the extreme humiliation of the male house owner. Heaping insults on women who ideally led a secluded life within the *oikos*, hidden away from the gaze of men who were not family members, intrinsically belonged to the stock of motifs of sexual humiliation.²⁴⁴ Since the abuse was uttered within a concrete, pragmatic context, the insults had the power of valid illocutionary speech acts, meaning that if the intruder called the opponent’s wife a ‘whore,’ for example, she may have been a whore in the eyes of some of the people involved.²⁴⁵ The *kurios* had to take immediate action to refute this statement, often by striking back physically. How easily emotions got out of control and the situation of conflict could escalate, is attested by the fact that intrusions into homes often exacerbated conflicts considerably because of the sexual implications involved.

There was one ideological figure who, by wielding extreme power, could take possession of every woman he desired: the tyrant.²⁴⁶ The tyrant derived satisfaction not only from the opportunity to have sex whenever, wherever, and with whomever he wanted, but also from the joy of humiliating the *kurioi* of his sexual partners. The tyrant was the embodiment of the *hubristês*.²⁴⁷ He was not necessarily driven by sexual passion, which would mitigate the impression of *hubris*, but by his desire to humiliate his subjects.²⁴⁸ In Athenian and Greek mentality in general, the tyrant became an ambivalent cipher standing for complete abhorrence and hidden dreams.²⁴⁹ It comes as no surprise that the victims of door-threshold transgressions would often establish a link between the intruders whose attacks they suffered and the Thirty Tyrants, thus modeling their enemies after the most extreme *hubristai* Athenian history had ever seen.²⁵⁰ The

244 D. 21.78–79: Meidias had burst into Demosthenes’ house and insulted his mother and sister, who was still a virgin, in such a way that Demosthenes felt he could not repeat the words in court.

245 For a definition of an illocutionary speech act, cf. below 184, n. 94.

246 On the tyrant taking every liberty to rape free women, cf. Wohl 2002, 221–222; Doblhofer 1994, 34–40. Against this backdrop, self-control in all matters sexual was of prime importance for the upkeep of the *polis* (Isoc. 3.39).

247 On this complex, cf. below 126–127.

248 Cohen 1995, 145–146; 1993, 9; 1991a, 174 based on Arist. *Pol.* 1311b18–1315a28.

249 Lewis 2009; 2006; Wohl 2002, 215–269; McGlew 1993, 183–212.

250 D. 24.164, 197 portrays Timocrates and his companions as worse than the Thirty Tyrants. To substantiate this reproach, Demosthenes even goes so far as to bend

tyrant metaphor of *hubris* was the appropriate, retaliatory answer to the sexual metaphor of intrusion.²⁵¹ In Lycurgus' prosecution speech against Lycophron, the actual and the metaphoric, sexual meaning of house-breaking are blended. Lycophron is said to have undermined the walls of a house to penetrate inside and commit adultery with another man's wife. It lies in the logic of this accusation that Lycurgus may have compared Lycophron to the tyrant Hipparchus, the son of Peisistratus, who also violated a woman's honor.²⁵²

Our best example of the second context (intrusion into homes on grounds of reclaiming debts) is Ps.-D. 47. The conflict between the incoming trierarch and the ex-trierarch Theophemus materializes a supra-personal tension that must have occupied Athenians throughout the history of their democracy. How much individual self-help was acceptable on both sides—that of the intruder and that of the *kurios*—in a state that, according to Demosthenes, officially claimed the monopoly on violence and the rational rule of law?²⁵³ A highly inconsistent policy testifies to the wavering of the state in this question. Whereas the law protected the house owner by granting him the possibility to file various lawsuits against any intrusion he suffered from outside,²⁵⁴ it also encouraged the creditor, sometimes even authorized him with decrees to gather some friends, and, in rare cases, had him even accompanied (and thus supported) by a magistrate, to go to his debtor's home and demand what was due to him. This is exactly what happened in the case of the trierarch.²⁵⁵ Although backed by the presence of a state official, the speaker was beaten by Theophemus, who would neither hand over the equipment nor pay for

historical facts. According to the speech, the Thirty Tyrants arrested people only in the Agora and led them away to jail, whereas Timocrates and his friends invaded private homes by bringing magistrates into *oikoi*. Timocrates, in contrast, certainly interpreted the presence of officials as necessary to preclude all tyrannical presumptions.

251 In D. 54.37 Conon, his sons, and their friends are said to have broken into houses without good reason. Thus, they are closely associated with tyrants.

252 Lycurg. fr. 10–11.6 (*Against Lycophron*). Hyp. Lyc. Speech B, fr. 1.1 argues that the reproach of Lycophron digging through the wall of a house is completely absurd. Cf., however, the many instances of undermining walls in Egypt, attested in papyri, e.g., P. Ryl. II 127; P. Oxy. IL 3467; P. Mich. Inv. no. 3267 = SB XX 14679; P. Abinn. 45 = P. Lond. II 245. Cf. Meidias' nocturnal raid on the goldsmith's house (D. 21.16).

253 D. 21.45, 76; 23.69; 54.18–19. On this tension, cf. Cohen 2005c, 226.

254 Schmitz 2004, 406.

255 Ps.-D. 47.19–48.

it. The speaker complained to the Boulê, and the *bouleutai* were outraged at the fact that an incoming trierarch was insulted like this while on official duty. Theophemus' punch was considered a violation of the Boulê itself, the laws, and thus the whole Athenian *dêmos*, because the speaker's action had been commissioned by the council of the city. But all the speaker could do was file charges for battery against Theophemus. The latter delayed the action by going abroad, and sued the speaker in turn after his arrival back home. Euergus and Mnesibulus, Theophemus' friends, gave false evidence, and so the speaker was convicted to pay a fine of eleven hundred drachmas. The preserved speech is the action for false testimony against Euergus and Mnesibulus. Since the prosecutor could not pay the full sum right away, Euergus and Mnesibulus went to his farm and plundered it in his absence.²⁵⁶ They took fifty sheep, a shepherd, a serving boy with a bronze pitcher, some slaves, and furniture. They had no qualms whatsoever about doing all this in the presence of the prosecutor's wife, his children, and an old nurse, who later died as a result of the blows she received on this occasion. The worth of the goods seized surpassed the sum owed by far, so the prosecutor's wife protested vehemently against the perpetrators. In addition, she claimed some of the seized property as her dowry.²⁵⁷ Even after the prosecutor had paid the sum he owed, the friends came back one more time for a second pillaging. There was no motive any more; this second raid was an act of pure revenge and further intimidation.²⁵⁸

The semantics of breaking into houses had exacerbated the conflict. Finally, the situation got out of hand and escalated to a degree that cost one woman's life. Both the prosecutor and the accused could trace back their actions to original legal claims. Both parties argued that their actions were validated by state authorities. The judges must have found it difficult to disentangle the complex adversarial relationships between the litigants. The fundamental question posed above also arose for the judges: How much self-help did the Athenian state condone, although it badly needed it? Any Athenian would have been at a loss to give a logical answer. The boundary ritual of violent doorstep transgression dynam-

256 The speaker claims to have deposited the sum owed to Theophemus at a bank in the Piraeus. Hence, the seizures at his farm were of questionable legality.

257 Ps.-D. 47.52–57. Cohen 1998 draws attention to the relative importance of women in legal transactions. Gagarin 1998, 50 contrasts the “physical invisibility” of women in the courtroom with their “forensic presence ... in the public discourse of the litigants.”

258 Ps.-D. 47.63–64. Cf. Schmitz 2004, 299 on this episode.

ically expressed this ambivalent state and performatively negotiated this crucial question again and again on a symbolic level. Moreover, this tension between necessary and even partly institutionalized self-help and the claim to power that every state makes was visually enacted in the court proceedings dealing with this case. The corporeal performance of this clash on the two levels of interaction and representation made it tangible to the participants in the game so that they could start playing with the ambiguous discourse on trespass. Threshold rituals thus fulfilled a highly communicative function that allowed Athenian citizens to stage, often subconsciously, a supra-personal conflict on a personal level.

In most cases, we only hear the voice of the humiliated house owner. How would a transgressor justify his intrusion? The following strategies were supposed to render a doorstep transgression acceptable. A trespasser could be sent by someone else, a weak argument that the speaker in Lys. 4 glosses over quickly, because he cannot deny his raid on the house, but insists that his opponent struck the first blow.²⁵⁹ Normally, the entrance into a house was only deemed legitimate, and the intruder considered authorized, with a decree issued by the Boulê.²⁶⁰ In addition, it was recommended to take witnesses to the scene, as in any other situation that might arouse violent conflict. A circumspect intruder would not enter a house, if women were present. Thus, he showed his respect for old age and women and conveyed the impression that he was not out to seek the sexual humiliation of the household's women and their *kurios*. His intentions were restricted to the money or equipment due to him; they did not include damaging his rival's reputation. Disinterested in his opponent's honor, he wanted neither to involve him in a troublesome zero-sum game for social prestige and power nor to contribute to his loss of face.²⁶¹ His strategy was one of cooling off the conflict rather than escalating it by avoiding the metaphorical undertones of sexual abuse. In order to be in full compliance with socially accepted rules, the intruder had to make sure that the *kurios* was present before he entered his house to

259 Lys. 4.15.

260 Ps.-D. 47.19–21. Aeschines reproaches Demosthenes for violating (without proper decree) the home of Antiphon, who wanted to burn down the Piraeus. Demosthenes thinks that Aeschines should be put on the rack, like the traitor himself, for this terrible slander (D. 18.132–133).

261 Dover 1974, 231 on the zero-sum game in classical diction. The precautions that were taken neatly demonstrate the strict rules according to which the game for social reputation had to be played. Burckhardt 1999 emphasizes the channeling of the *agôn* and thus relativizes it.

seize some of his property or money.²⁶² Only under these strictly defined circumstances was a non-family member allowed to enter an *oikos* with the intention of exacting money or other goods. Were these circumstances not given, the breach of actual and metaphoric boundaries was clearly expressed.²⁶³ If these circumstances were given, the victim could still try to interpret them away. These strict regulations led to Callicles' house not being searched in the wake of the Harpalus scandal, because Callicles was recently married and his wife was inside the house.²⁶⁴

The transgression of door thresholds was by far the most conspicuous breach of boundaries. There are many more that, in their sum, formed the dividing line between unacceptable violence and acceptable force, which Athenian citizens did not necessarily perceive as violence at all. It lies in the nature of forensic dispute that the perpetrators did not acknowledge their own violation of thresholds, but claimed that their actions were within the range of accepted norms. They reached this goal by manipulating the line and expanding the realm of accepted violence to their benefit. When they admitted to breaking interactionist rules, they claimed to have had good reasons for doing so (cf. the chart below).

Trespassing was, as we have seen, bad enough, but sometimes the aggressors chose to overstep even more limits, what could be called aggravated trespassing. After a first invasion of Apollodorus' estate, marked by the habitual battering of doors and carrying away of furniture, Nicostratus came back at night and cut down fruit trees and vines and damaged olive groves.²⁶⁵ With this action Nicostratus deliberately evoked the symbolism of siege warfare, a powerful message aimed at Apollodorus with the goal of intimidating him.²⁶⁶ Given the private nature of the dispute and the 610 drachmas that were at stake, this was a severe transgression. Since the showdown took place among citizens, this disproportionate

262 Ps.-D. 47.79–80: The unknown pleader against Euergus and Mnesibulus had allegedly even called for the *kurios* before he entered his house.

263 D. 21.16 refers to Meidias' breaking into the goldsmithy as *ὑπερβολή*. At various instances (D. 21.30, 92, 147), Meidias' breaking the law is expressed by *παραβαίνειν τοὺς νόμους*, 'overstepping the laws,' which associates Meidias with the loathsome figure of a tyrant. Cf. Lys. 1.26 and *passim*, where Euphiletus pursues a similar strategy by representing Eratosthenes as a potential tyrant.

264 Plu. *Dem.* 25.7–8.

265 Ps.-D. 53.15.

266 Apollodorus is explicit about it (Ps.-D. 53.15–16): οὕτω δεινῶς ὥς οὐδ' ἂν οἱ πολέμοι διαθείεν, 'they acted with a ferocity worse than enemies in wartime would have done.'

measure was reminiscent of civil war, an image that was supposed to arouse the judges' wrath against Nicostratus. The traumatic experience of the Thirty was constantly looming in the background and could be instrumentalized at any time by a forensic speaker. In the ensuing paragraphs, we will concentrate on the most significant breaches of norms and focus on their underlying messages.

Disturbance of Public Duty versus Maintenance of Public Order

Victims reacted vehemently to violence when they were assaulted during the performance of public duty. Demosthenes was less shocked about the punch he received by Meidias, than about the fact that Meidias attacked him while he was serving as *chorêgos*. In this position, Demosthenes fulfilled high religious, cultural, and civic functions.²⁶⁷ Meidias' punch not only dishonored him, but was also a blow to the citizenry as a whole and a shameful act in front of all the allies and foreigners who visited Athens at this time to participate in the Great Dionysia. With a physical attack on a *chorêgos*, Meidias treated the most important festival of Dionysus with utter disrespect by disturbing its solemn atmosphere. The prosecutor in Ps.-D. 47 uses a similar argument. When he tried to exact the naval equipment from his predecessor Theophemus, he acted as incoming trierarch on behalf of the city. He was even authorized by a decree from the Boulê. In his opinion, Theophemus' punch not only compromised the honor of one private individual, but also constituted an attack on the authority of the laws themselves and thus the state.²⁶⁸ The speaker corroborated his actions by giving examples from the past. He was not the only one to demand naval equipment from a predecessor; previous trierarchs also exacted what was due them in the same manner, backed by a decree.²⁶⁹ This argumentation should make us suspicious. Was this a kind of excuse? Was it unusual for a trierarch to invade another trierarch's home to confiscate some of his property? We do not know.

267 D. 21.189.

268 Ps.-D. 47.41–42, 48.

269 Ps.-D. 47.48.

Perversion of Religious Customs

Another major transgression was the breach or perversion of religious customs, rituals, and institutions. Alcibiades' punching of his choregic rival Taureas²⁷⁰ and Meidias' punching of Demosthenes disrupted the Great Dionysia. To emphasize the audacity of the physical attack, Demosthenes portrayed the theater of Dionysus as a temple.²⁷¹ Any crime committed in a holy precinct was a sacrilege and therefore worse than an ordinary offense. We can glean Conon's contempt for religious matters from the fact that he and his friends allegedly violated holy rituals that were of highly symbolic value for the community. This means they treated the community itself with scorn and endangered its wellbeing by perverting religious rites. The passage deserves to be quoted in full:²⁷²

These men would regularly gather offerings to Hecate and also pig testicles, the ones used for purification when there is going to be a public meeting, and dine on them every time they got together, and they swore oaths and perjured themselves as casually as can be.

These men's willingness to pervert religious rites affected values that were holy to the community. This reproach harks back indirectly to the profanation of the Mysteries and the mutilation of the Herms in 415 BCE, a powerful and decidedly effective way of slandering Conon and his friends.

In Antiphon's first speech, the prosecutor accuses his stepmother of having plotted his father's and his friend's deaths by poison. He characterizes her as having no respect for gods, heroes, and men.²⁷³ The speaker represents the homicide itself as the perversion of a libation ritual.²⁷⁴ The prosecutor's father sacrificed to Zeus Ctesius after dinner. Both he and his friend Philoneus poured out libations and prayed to the gods for the former to have a safe sailing trip to Naxos. In the middle of these libations and prayers, Philoneus' mistress poured libations too, and added the deadly poison to both cups. Philoneus died on the spot after drinking, the prosecutor's father some twenty days later. The pur-

270 Ps.-And. 4.20.

271 D. 21.74.

272 D. 54.39: τούτους τά θ' Ἑκαταῖα κατεσθίειν, καὶ τοὺς ὄρχεις τοὺς ἐκ τῶν χοίρων, οἷς καθαίρουσιν ὅταν εἰσιέναι μέλλωσιν, συλλέγοντας ἐκάστοτε συνδειπνεῖν ἀλλήλοις, καὶ ῥῆγον ὀμνύναι καὶ ἐπιорκεῖν ἢ ὀτιοῦν.

273 Antiphon 1.27.

274 Antiphon 1.17–19.

pose of this passage is to show how these cunning women perverted a religious sacrifice in order to kill two innocent men: a context of sacrifice was turned into the context for homicide. The holy act was blatantly perverted, according to the prosecutor.²⁷⁵

Within the religious sphere, violating the bonds of hospitality was an impious act and a horrible crime. Aeschines accused Demosthenes of having his host, Anaxinus of Oreus, tortured and executed.²⁷⁶ Demosthenes felt compelled to reply to this reproach by claiming that Anaxinus had been a spy and Aeschines was involved in the affair.²⁷⁷ Teisis lured Archippus inside his house to celebrate a party with him and his friends on the occasion of a horse race, in a festive, perhaps even religious context. Once trapped, his ensuing detention, binding, and whipping was a patent violation of hospitality that would have been even more offensive, had it in fact happened in a religious context.

Perversion of Gender, Citizenship Status, Social Rank and Role

Violence was a serious matter when it happened among male Athenian citizens. Where the boundaries of gender, however, were transgressed or the gender relationship even reversed—men could maltreat women but not the other way round—the adversarial situation was deemed more serious and the male victim felt even more humiliated.²⁷⁸ In the Greek imagination, the victorious soldier could justifiably drag a woman away by her hair after the fall of a city. In doing so, he displayed his status as superior warrior and his undisputed right to take possession of the defeated enemy's wife, sister, mother, or daughter, and lead her away into captivity.²⁷⁹ In the archetypal representation of the Amazono-

275 We do not know the outcome of this trial, which, as a case of poisoning, was to be held before the Areopagos (D. 23.22, 24; Arist. *Ath.* 57.3). Arist. *MM* 1188b31–37 may or may not allude to this case, but shows that such a trial could also result in an acquittal. The woman Aristotle refers to was not found guilty because she meant to give her husband a love potion and thus acted unintentionally. On homicide through poisoning, cf. also Voutiras 1998, 55–56.

276 Aeschin. 3.224.

277 D. 18.137.

278 Tragedy is obsessed with female violence against men. Ruiz 1994 offers a collection of sources, including instances from outside Athens.

279 In ancient belief, someone who pulled his opponent by the hair exerted power over him (B. Kötting, s.v. "Haar," *RAC* XIII, Stuttgart 1986, col. 177–203, col. 179).

machy, male dominance and female submissiveness are visibly expressed.²⁸⁰ Greek men or heroes like Theseus or Heracles kill Amazons.²⁸¹ If an Athenian man applied the same treatment to a citizen woman, as in the case of Alcibiades' wife, bystanders might have frowned upon the extreme action the *kurios* had taken, but in the end, his authority over his wife was not questioned.²⁸² If, however, this ritual of submission, normally reserved for women only,²⁸³ was used to humiliate a male citizen, the lim-

280 On Amazons and their iconographic representation, cf. Fornasier 2007. On the construction of hierarchies in the Amazonomachy and Centauromachy, cf. Du-Bois 1982, 129–152.

281 Cf. P. Devamblez – A. Kauffmann-Samaras, s.v. “Amazones,” *LIMC* I 2, 1981, e.g., no. 101 (p. 454), 104a (p. 455), 104 f (p. 456). The pictorial representations of hair-pulling preserved in vase paintings, sculptures, reliefs, sarcophagi, and mosaics all stem from mythological contexts.

282 Cf. above 44, nn. 101 and 102. D. 25.1.56–57 relates a similar incident: Aristogeiton had lived together with the metic woman Zenobia, who had supported him financially after his escape from prison. When she demanded recompense, he cast her out of his house. As she complained, he dragged her by force to the auction house of the metics' registry. If her metic tax had not been paid, she would have been sold as a slave. Even though the woman was a metic, the act was deemed morally questionable. That is why Demosthenes uses it to denigrate Aristogeiton.

283 Normally, only men drag women by their hair. Exceptions confirm the rule and deserve an analysis in their own right. The *Gigantes* are godlike men whom gods or goddesses pull by their hair as a sign of their defeat (F. Vian – M. Moore, s.v. “Gigantes,” *LIMC* IV 2, 1988, e.g., no. 24 [p. 112], 60 [p. 115], 322 [p. 144]). In the Gigantomachy as presented on the Pergamon altar, Nereus, Doris, and Oceanus fight against a giant by pulling his hair. The *moirai* strike the giants Agrius and Thoas by grabbing their hair first. In the Centauromachy, only centaurs are pulled by their hair. They are thus represented as the defeated party. Theseus grabs a fleeing centaur by his hair (C. Weber-Lehmann, s.v. “Kentauroi et Kentaurides,” *LIMC* VIII 2, 1997, e.g., no. 181 [p. 427; L. Palaiokrassa], 212 [p. 434; I. Petrocheilos]). Heracles pulls a centaur by his hair and drags him down (C. Weber-Lehmann, s.v. “Kentauroi et Kentaurides,” *LIMC* VIII 2, 1997, e.g., no. 271 [p. 449; S. Drogou], 285 [p. 450; I. Touratsoglou]). In the Trojan cycle, Achilles' dragging of Troilus by his hair before killing him is among the most famous representations of hair pulling (A. Kossatz-Deissmann, s.v. “Achilleus,” *LIMC* I 2, 1981, e.g., no. 344 [p. 91], 349a [p. 91], 354 [p. 92], 355 [p. 92], 356 [p. 92], 372 [p. 95], 373 [p. 95], 374 [p. 95]). Similarly important is the depiction of Neoptolemus' pulling of Priam by his hair before brutally killing the old king (J. Neils, s.v. “Priamos,” *LIMC* VII 2, 1994, e.g., no. 99 [p. 407], 100 [p. 407], 102 [p. 407], 104 [p. 408]). The Ilioupersis represents more Trojans defenselessly exposed to the furious rage of the Greek victors, who grab their victims by their hair before they slaughter them (M. Pipili, s.v. “Ilioupersis,” *LIMC* VIII 2, 1997, e.g., no. 7 [p. 400], 11 [p. 401], 16 [p. 404], 30a [p. 405], 31 [p. 406]).

its of good taste were definitely overstepped. To suffer this ritual of humiliation was regarded as weak, cowardly behavior and stigmatized the victim as effeminate. This breach of gender rules is attested in a fragment attributed to Hyperides, in which Dorotheus was indicted for battery or *hubris* (*dikê aikeias* or *graphê hubreôs*). The context is difficult to reconstruct, but it seems that several citizens were quarreling over a plot of land. The contestants insulted and hit each other, and spat in each other's faces. The speaker complains that a man dragged him by the hair and hit him in the face.²⁸⁴ The aggressor thus wanted to express his superior power over his opponent. From Isaeus' ninth speech (*On the Estate of Asityphilus*), we know that these quarrels could escalate and even lead to a man's death.

The ultimate reversal of gender roles was achieved when a woman killed a man. The fact that a stepmother had her husband poisoned turned the established hierarchies in the *oikos* upside down.²⁸⁵ Instead of enduring maltreatment by her husband,²⁸⁶ this woman took action against him. This idea of a woman becoming active against her *kurios* was highly worrisome for Athenian men. The mythological example of Clytemnestra and her murder of Agamemnon is well chosen by the prosecutor,²⁸⁷ because it evoked deep-rooted fears in the judges, who were all men, most of them married. The mythological dimension revealed the atrocity of this homicide and the enormous degree of pollution caused by it. The ultimate limit, the attack on the life of a citizen, had been violated. In addition, the transgression had happened within the *oikos* itself. The wife, whose role had always been to pamper her husband with loving care, had acted against him. If the judges did not punish this crime accordingly, husbands would no longer be safe in their own *oikoi*. This, at least, is the message that the prosecutor wants to convey to the judges.

284 Hyp. fr. 21 (97–99) (*Against Dorotheus*). It is interesting that the speaker obviously wore his hair long in contrast to the short haircut fashion (*Athletenfrisur*) that had prevailed with democracy by the middle of the fifth century. Did he have oligarchical leanings that gave a political note to the quarrel? On haircut fashions, cf. W. Bremer, s.v. "Haartracht und Haarschmuck, Griechenland," *RE* VII 2, Stuttgart 1912, col. 2109–2135, esp. col. 2112; R. Hirschmann, s.v. "Haartracht. Griechenland. Etrurien. Rom," *Der Neue Pauly* V, Stuttgart – Weimar 1998, col. 39–45, esp. col. 41 (with older literature).

285 Antiphon 1.17.

286 The prosecutor passes over in almost complete silence the wrongdoings of his father in relation to his stepmother (Antiphon 1.15).

287 Antiphon 1.17.

Citizenship status, social rank and role. Since the notion of violence was based on the idea of multiple transgressions, we need to take a closer look at the Athenian social system to discern more dichotomies, semantic markers “defining” violence. Many breaches of interactionist rules were closely tied to social factors, such as citizenship status and social rank and role. A citizen’s body was inviolable, because he represented the democracy on a micro-level. Any physical assault on a citizen was equated with an attack on the state and its constitution. A free citizen, even if he were a murderer, could not be detained by anyone (unless the *apagôgê* procedure was employed or a *moichos* was detained in the act),²⁸⁸ let alone be slapped in the face or beaten. Archippus’ suffering was deemed so outrageous because, as a citizen, he was not supposed to suffer any harm at all. The whip was reserved for slaves only.²⁸⁹ As Flaig states, citizens also defined their status negatively by knowing that they were exempt from corporal punishment. The lashes of the whip made the slave victims who were tortured near the Hephaisteion in the Agora cry out loudly. Their screams acoustically categorized the attendees of the Agora by separating slaves from free citizens.²⁹⁰ In violation of his citizenship status, Archippus was detained and whipped like a slave.²⁹¹ Ironically and for the sake of further humiliation, Teisis had a slave carry out the actual whipping of Archippus, a blatant reversal of social roles. The fact that a slave turned the established order upside down under the orders of his own master must have struck the judges as shocking.

As far as the detention of slaves is concerned, Apollodorus reports a valuable anecdote. His neighbor and enemy Nicostratus sent a free Athenian boy to his estate to pluck the blossoms off his rose bush. The strategy was designed to entice Apollodorus into laying hands on the boy, to either strike or detain him, on the assumption that the boy was a slave. Apollodorus’ opponents could then have brought a *graphê hubreôs* against him.²⁹² By contrast, it was perfectly fine to carry away a slave when one

288 D. 23.28. Cf. above 62, n. 174.

289 Hunter 1994, 181–184.

290 Flaig 2006, 32–33.

291 Note the close parallel to Aeschin. 1.59, where Pittalacus is whipped by Hegesander and Timarchus. It is unclear whether Pittalacus was a slave. It almost seems as if his enemies used this kind of violence deliberately to make it clear that Pittalacus was indeed a slave.

292 Ps.-D. 53.16. This is what happened to Diocles in Isaeus’ eighth speech. He had locked up his half-sister’s husband, an Athenian citizen, to prevent him from fulfilling public duties. The man lost his citizenship, but Diocles was indicted via a

was about to confiscate an opponent's property. Euergus and Mnesibulus snatched away a shepherd and a servant boy from the prosecutor's farm when they plundered it,²⁹³ and if the incoming trierarch's neighbors had not intervened, they would have abducted the estate owner's son like a slave.²⁹⁴ The fact that they refrained from doing so shows that they did not want to transgress this boundary. These incidents alone—the examples could be multiplied—show that free citizens could strike or detain a slave as long as they did not inflict longer-lasting injuries on him or her and thus permanently damage another citizen's property.²⁹⁵

This policy stands in stark contrast to statements by Aeschines, the Old Oligarch, and Demosthenes, according to whom even slaves could not be beaten in Athens, and were further protected from any kind of *hubris*.²⁹⁶ In light of evidence for slave torture,²⁹⁷ this legal protection of slaves is hard to explain.²⁹⁸ Flaig has found a solution to resolve this ap-

graphê hubreôs. We do not know the verdict, however (Is. 8.41; fr. 5). Cf. Ps.-D. 59.66, where Stephanus unjustly detains Epaenetus for having illicit sex with Neaera's daughter. In order to be released he paid 30 *mnai*. As soon as he was free and realized that the woman he had had sex with was not a citizen woman, he brought an action against Stephanus for having unduly restrained him as a seducer (*graphê adikôs eirchthênai hôs moichos*; Ps.-D. 59.66) Cf. below 125, n. 459.

293 Ps.-D. 47.52.

294 Ps.-D. 47.61.

295 Other instances of violence committed by masters against their slaves are collected in Ruiz 1994, 113.

296 Aeschin. 1.15–16 and D. 21.47–48 mentioning the law of *hubris* that also protects slaves; Ps.-X. *Ath.* 1.10 (indirectly). Cf. also Antiphon 5.47–48, but contrary Ps.-D. 53.16. Cf. below 124, n. 450.

297 E.g., in Ps.-D. 48.14–19. Sternberg 2006, 146–173 paints a dark picture of slave torture with the slaves not having deserved the pity of free persons, when the court case was about an Athenian citizen (p. 148 contains a list of instances of torture of free persons and slaves in classical Athens). Cf. Mirhady 1996 and the response of Thür 1996; DuBois 1991; Carey 1988; Bushala 1968. Foreigners and metics were also subject to torture: Ruiz 1994, 223–224; DuBois 1991, 50–62, 125–1265; Bushala 1968; contra Carey 1988. Gagarin 1996, esp. 1, 17 regards the *basanos* as a rhetorical strategy rather than a real social practice. Herman 2006, 301 thinks that slave torture never occurred in practice. This is false. Slaves were tortured and executed, e.g., in the case *Against the Stepmother* (Antiphon 1.20) and *On the Murder of Herodes* (Antiphon 5.29–56).

298 The Old Oligarch, of course, regards the protection of slaves as another negative feature of Athenian democracy. Ruiz 1994, 109–110 calls the theoretical protection of slaves from blows a principle of Athenian law that was not consistently

parent contradiction: it was not humanistic ideals that lay at the ground of pro-slave regulations, but the protection of the slave-owner's interests.²⁹⁹ Slaves were protected in their capacity as a citizen's property. Nonetheless, some slaves had to endure considerable hardships, as the text of a sensational private letter, written on lead and found in the Agora, has recently confirmed. In this letter, the slave boy Lesis writes to his mother, who is either a slave or a freedwoman, and her owner or *prostatês*, Xenocles, and implores them to free him from a smithy, where his master (*despotês*) brutally hits him every day. He cannot stand the blows any more. Full of emphasis, he depicts his sufferings: 'I am perishing from being whipped; I am tied up; I am treated like dirt—more and more!'³⁰⁰ This is the first extant example of the voice of a slave from classical Athens. He was defenselessly exposed to utter abuse at the hands of his master, an Athenian citizen.

With citizenship status came the privilege of being exempt from the infliction of bodily harm. This prerogative also extended to freeborn citizen women. The exception was the woman's subordination to the coercive power of her *kurios*. But although women and slaves stood under the authority of a man, citizen women were far better off than slaves. They were highly respected as mothers, sisters, and daughters, and, after all, citizen women were responsible for the procreation of legitimate children, future Athenian citizens. A telling anecdote, rendered by Demosthenes to heap slander on Aeschines, makes this difference abundantly clear. After the fall of Olynthus, many Olynthian women fell into Macedonian captivity. Being prisoners of war, they were formally regarded as slaves at the mercy of their masters. A certain Xenophron, not by accident the son of one of the Thirty Tyrants, celebrated a party in Macedon with Aeschines in attendance. When the symposiasts were drunk, they brought in an Olynthian girl and asked her to sing for them. When she replied that she did not know how to sing, Aeschines became outraged and demanded a whip to castigate the girl for her insolence. And indeed, a slave brought a whip, tore off the girl's garment, and gave her some lashes on the back. She cried and rushed to one of the guests to protect

put into practice. Morrow 1937, 227 is more optimistic and claims that the Athenians treated their slaves as subjects and not as mere property.

299 Flaig 2006, 34–35, n. 16.

300 Line 4: *μαστιγόμενος ἀπόλλυμαι δέδεμαι προπηλακίζομαι μάλλον μᾶλλον*, transl. Jordan 2000, 95 in his edition of the text. Cf. Harris 2006, 271–279 with corrections regarding the family relationships.

her, which he did. Otherwise, she would have been killed by the drunken rascals, according to Demosthenes. The news of this incident spread like a wildfire all across Greece.³⁰¹ Aeschines took this reproach so seriously that he felt he had to come back to it twice to refute it.³⁰² Obviously, female prisoners of war enjoyed some minimal protection, if they had been freeborn. Aeschines seems to have violated this Greek norm blatantly. Otherwise, the widespread outcry would not make any sense.

Although Athenian society was politically egalitarian, Athenians were class-conscious and took any violation of social or legal status seriously. As is typical of any hierarchical society, violence that social or legal superiors inflicted on lower-ranking people, especially slaves, was deemed insignificant, if not normal. Violence among social equals was frowned upon.³⁰³ Violence that people of lesser status exerted on members of the upper classes was labeled perverse. The perpetrators were considered outrageous and were liable to severe punishment. It comes as no surprise that litigants instrumentalized social ranks in court for their own sake and played with the respective notions attached to them. A few instances exemplifying each scenario shall suffice in this context.

The violent conflict between the two trierarchs as described in Ps.-D. 47 was significant, because it symbolized the tension between state control and the private sphere. The Boulê did not condone Theophemus' use of violence, but government authorities did not do anything to prevent the conflict from escalating. When the old nurse died at Euergus' and Mnesibulus' hands, the *exêgêtai*, referring to the homicide law of Draco, advised the trierarch not to go to court, but to find another way of taking revenge within the framework of accepted social rules. One may read this as an encouragement to exercise self-help within the structures of Athenian law, or to ask for financial compensation. At any rate, it is hard to imagine what steps the offended party should have taken. It seems as though the majority of Athenian citizens (in accordance with the sense of the law) valued the nurse's life less than her *prostatês* did. Her death was not worth major turmoil among citizens, not even court proceedings, which might have heated up the atmosphere between the enemies even more. The community seems to have waited for the conflict between the trierarchs to subside on its own. It is also imaginable that

301 D. 19.196–198.

302 Aeschin. 2.4, 153–155.

303 E.g., Arist. *EN* 1160a3–8.

Theophemus backed off after the deadly incident and finally gave the naval equipment to the prosecutor.

In Lysias' fragment *Against Teisis*, the opposing parties enjoy the same social status. We get a glimpse into the world of rich young men and their leisure-time activities. They exercise in the *palaistra* and celebrate symposia, where they drink,³⁰⁴ mock, and taunt each other. In these social circles, *hubris* was frequent as a way of demonstrating one's own power and entering into a long-term *agôn* with a social equal to measure strength. Although the violence inflicted upon Archipus by Teisis was excessive and not at all condoned by relatives, friends, and bystanders, the common notion was that outbreaks of violence were to be expected in these contexts, especially among rich and daring youngsters of the same social class.

Things became more complicated when the litigants belonged to two different social classes. If skillful enough, they could take advantage of their own social rank and denigrate their opponent by ascribing negative attributes to his social status.

If the rival was socially inferior, one emphasized his social and economic weakness, moral baseness, and civic uselessness.³⁰⁵ In Lysias' third speech, the accused speaker is rich and mature, whereas the prosecutor, Simon, is poorer and young. The speaker treats his opponent with utmost scorn. While he stresses time and again the prosecutor's audacity, arrogance, and insolence in having physically attacked him,³⁰⁶ a member of the elite circles, he emphasizes his own benefactions to the city.³⁰⁷ Clearly, the under-class attacker had transgressed a boundary in assaulting an upper-class citizen. Conon and his sons, likewise, may have been of low birth—at least Ariston compares his and his father's status of trierarch to their alleged uselessness—but nevertheless they laid hands on Ar-

304 On the connection between drinking and *hubris*, cf. in detail Fisher 1992, 99–101.

305 If the social imbalance between the two contestants was too noticeable, however, the social superior had to be careful not to overdo his attacks. Nothing could be gained by crushing someone who was far from being socially equal. A fragment of New Comedy puts it succinctly: ὁ γὰρ εἰς τὸν ἀσθενῆ βία τι, Πάμφιλε, ποιῶν ὑβρίζειν, οὐχ ἁμαρτάνειν, δοκεῖ, 'To treat an invalid with violence thus is an outrage not an error, Pamphilus' (Philippides F 27 [K.–A.]; transl. in Philippides F 26 [Edmonds]).

306 E.g., Lys. 3.1, 5, 7, 9, 25–26, 45.

307 Lys. 3.9.

iston.³⁰⁸ Belonging to the upper echelons of Athenian society, Ariston and his family had earned merits for their services to the city, whereas Conon and his sons had done nothing for Athens. Ariston, in his argumentation, suggests the perversity of a social nobody attacking a high-ranking civic benefactor. In this quarrel between Conon and his sons on the one side, and Ariston on the other side, the gulf between different social strata is clearly expressed. It is for this reason that Ariston feels especially humiliated, because he was beaten up by lesser men. The social hierarchy was thus turned upside down, when Conon and his sons had blatantly broken social thresholds and codes. Since most of the judges were rather poor themselves, however, especially rich litigants had to be careful not to offend the *dikastai* with biting and derogatory remarks against the lower classes in general.³⁰⁹

If the opponent was socially superior, one emphasized one's own weakness and moderation and stressed the bullying *hubris* of the upper-class enemy. Our best examples come from Demosthenes' speech against Meidias, in which he characterizes his long-term rival as a *hubristês* par excellence.³¹⁰ Through his wealth and social connections, Meidias wielded a great deal of power and could intimidate many people. His whole *habitus* contributed to his superior position, which also allowed him to influence court decisions in his favor. Without saying so directly, Demosthenes insinuates that judges can be bribed,³¹¹ because money can accomplish anything. But instead of blaming the judges, Demosthenes, in a rhetorically brilliant stroke, takes the poor citizens' side and establishes a front against Meidias' anti-democratic potential:³¹²

in comparison to the wealthy, the rest of us do not share equal rights and access to the laws, men of Athens; we do not share them, no. These men are given the dates to stand trial that they want, and their crimes come before you stale and cold, but if anything happens to the rest of us, each has his case served up fresh.

308 D. 54.44.

309 On the dialectical negotiation of class differences in Athenian rhetoric, cf. in great detail Ober 1989.

310 E.g., D. 21.20, 69, 96.

311 D. 21.98.

312 D. 21.112: οὐ μέτεστι τῶν ἴσων οὐδὲ τῶν ὁμοίων, ὦ ἄνδρες Ἀθηναῖοι, πρὸς τοὺς πλουσίους τοῖς λοιποῖς ἡμῖν, οὐ μέτεστιν, οὐ· ἀλλὰ καὶ χρόνοι τοῦτοις τοῦ τὴν δίκην ὑποσχεῖν, οἷς ἂν αὐτοὶ βούλωνται, δίδονται, καὶ τὰδικήμαθ' ἔωλα τὰ τούτων ὥς ἡμᾶς καὶ ψύχρ' ἀφικνεῖται, τῶν δ' ἄλλων ἡμῶν ἕκαστος, ἅν τι συμβῇ, πρόσφατος κρίνεται.

In spite of all the state's efforts to guarantee the same rights to everyone, Athenians did not manage to close the gap between rich and poor. The shortcomings of the Athenian social structure had concrete repercussions on the political and judicial systems. The weak and poor, according to Demosthenes, were endangered by tyrannical types like Meidias.³¹³ Demosthenes drives his message home successfully: if the judges do not punish Meidias for his constant transgressions and thus stop him from further hybriistic misconduct, even democracy will not be able to provide the poor with protection against the rich.³¹⁴

In Isocrates' speech against Lochites, the prosecutor is allegedly a poor man who suffered *hubris* from a young and rich citizen. The situation could not be more archetypal. In fact, we will see that this speech almost works like a school speech, containing all semantic markers that "define" violence. The speaker condenses the notion of class justice, obviously not unknown to Athenians, in one powerful sentence: 'It is unjust ... to think that the impoverished are worse than those who have much.'³¹⁵

Closely connected to social rank was the social role of all parties involved. The reversal and hence perversion of social roles through an act of violence was considered reprehensible behavior, as long as it did not take place within a festive context, in which the carnivalesque questioning of the existing social order was part of the religious ritual and provided an outlet for potential societal tensions.³¹⁶ It was a wife's function to look after her husband, not to kill him. It was the citizen's prerogative to whip a slave, not the other way around.³¹⁷ Simon even went so far as to strike his military commander, an extreme form of military disobedi-

313 D. 21.123–124.

314 D. 21.138, 143, 183, 207. Cf. Plu. *Dem.* 12.2–6. We find similar complaints in the papyri from Roman Egypt, where widows and orphans especially feel threatened and overpowered by local strongmen: E.g., P. Mich. IX 525; PSI VIII 883; P. Oxy. VIII 1120; P. Oxy. XVI 1837; P. Sakaon 36; P. Ryl. II 114; SB XIV 11904; BGU II 522. On the deplorable status of widows, cf. Krause 1994, 220–255.

315 Isoc. 20.19: Οὐ γὰρ δίκαιον ... χείρους ἡγεῖσθαι τοὺς πενομένους ἢ τοὺς πολλὰ κεκτημένους. On class justice in Athens, cf., e.g., Cohen 2005c, 233–234; 1995, 64; Ruiz 1994, 111.

316 E.g., the City Dionysia.

317 Breaches of this rule were considered scandalous; cf., e.g., Antiphon 1 (wife kills husband) and Lys. fr. CXXIX 279 (Teisis' slave whips Archippus).

ence.³¹⁸ In Athenian eyes, all these reversals of social roles endangered the public order and could not be tolerated.

Mediated (Sanctioned) versus Direct Violence

Another major factor in the assessment of violence was its direct or mediated character. Direct violence, especially against citizens, was considered unacceptable. Mediated violence, especially aiming for an opponent's death, was only acceptable if sanctioned by a collective of judging authorities and carried out by state officials. The following examples will show that, in cases of homicide, having someone killed through a third party (without obtaining a majority verdict) did not excuse the instigator.

Nicodemus' killing was mediated, but of course not considered acceptable. Demosthenes' opponents tried to implicate him in hiring the hit men.³¹⁹ We are informed that the Areopagos sent the father of a priestess at Brauron into exile for having encouraged an assailant to strike another man, who died as a consequence of the blows.³²⁰

Although, according to Athenian law, the instigator of a homicide was as guilty as the killer himself,³²¹ the stepmother in Antiphon's first speech had, for a long time, gotten away with putting the blame for her husband's death on her slave maiden, who had given the poisonous potion to the two drinking men. The slave woman was tortured and executed shortly after the incident. Whereas the sons of the accused woman probably insisted on their mother's complete innocence, the prosecutor, the dead man's son, stressed the *bouleusis*, the intent to kill, of his stepmother, which can be interpreted in different ways, but was always seen negatively by contemporaries.³²² We do not know the outcome of Antiphon's first speech.

318 Lys. 3.45.

319 Aeschin. 1.171–172; 2.148, 166 with scholia. Cf. above 25, n. 16.

320 D. 54.25. It is unclear whether the trial was held on charges of *bouleusis* ('planning') of homicide, homicide proper (*dikê phonou*), attempted homicide, or intentional wounding (*graphê traumatōs ek pronoias*). Cf. Bers 2003, 74, n. 22; Osborne 1985, 57.

321 Harris 2006, 396; Gagarin 2002, 140; 1990, 98; Loomis 1972, 94.

322 Harris 2006, 398–399 and Gagarin 1990, 94–95 make a strong case for the charge being a *dikê phonou* for intentional homicide (*phonos ek pronoias*). The latter emphasizes the non-technical meaning of the term *bouleusis*. In contrast, Carawan 1998, 390, Thür 1991, 65, Wallace 1989, 101, Heitsch 1984, 32, and

We are likewise uninformed about the result of Antiphon's sixth speech on the accidental death of a chorus boy. A rich and politically active Athenian assumed the liturgy of equipping and training a chorus of young boys. In his absence, one of the boys, Diodotus, was given a potion and died on the spot. The boy's brother, Philocrates, brought a *dikê phonou* on grounds of unintentional homicide³²³ or a *dikê phonou* for *bouleusis* of unintentional homicide against the *chorêgos*. In this case, the alleged violence was so mediated that the *chorêgos* could hardly be held liable for what had happened. Since his opponents, however, wanted to sue him anyway, probably for political reasons, as he himself claims, the prosecution, according to Heitsch, extended the meaning of *bouleuein* ('planning') and used *bouleusis* in a new sense ('negligent homicide' or 'involuntary manslaughter' through failure to do something).³²⁴ If this is true, the high degree of mediation in this case might have led to a subtler category of homicide. Given the conservative nature of Athenian homicide law,³²⁵ this new interpretation would have been a remarkable innovation.

From Isaeus' speech on the estate of Ciron, we learn that Diocles had his half-sister's husband killed by one of his slaves. He smuggled the slave out of the country and put the blame for the murder on his sister, a severe approach, because she would then have been liable for killing her own husband. We do not know what happened to her, but Diocles was not convicted for homicide.³²⁶ This report need not be more than framing an opponent for murder, but the essential facts remain valid. Diocles' brother-in-law was killed by one of Diocles' slaves, who absconded abroad. Since Diocles was eager to appropriate his brother-in-law's fortune, rumors connected Diocles to this homicide, regardless of the fact that he was not indicted.

In sum: aiming for one's opponent's death was only acceptable if approved of by a community of authorized agents (judges). If we take the idea of mediated and sanctioned violence to a higher level and regard

MacDowell 1978, 115–116; 1963, 62–63 assume a charge of *bouleusis* of intentional homicide.

323 Antiphon 6.16. Harris 2006, 399–400; Gagarin 1990, 95–96.

324 Heitsch 1984, 95–97; similarly, Gagarin 2002, 140; Carawan 1998, 391; Loomis 1972, 94. Nevertheless, Gagarin 2002, 140; 1990, 95–96 and Harris 2006, 399–400 think that the charge was not *bouleusis*, but one of unintentional homicide (*phonos akousios*). MacDowell (1978, 116; 1963, 62–64), however, assumes a charge of *bouleusis* ('plotting') of unintentional homicide. Cf. above 55, n. 153.

325 Hansen 1976, 118–119.

326 Is. 8.41 and fr. 5.

court sentences, especially capital punishments, as acts of mediated violence, we could regard court verdicts as accepted, because sanctioned, violence carried out by state officials instead of private individuals.³²⁷ We will encounter the same idea when analyzing the curse tablets. Committing violence, including death via the courts or magical curses, was permissible because it was sanctioned by a community verdict, in court by the judges, in the realm of magic by the gods of the underworld.

Escalation versus De-escalation

Athenian society viewed any form of escalation negatively, because escalation broke the rules of democratic self-restraint and moderation. Any speaker would always claim to have done his utmost to avoid escalation. The prosecutor in Isocrates' speech *Against Lochites*, for example, uses different grades of escalation in order to demonstrate to the judges how dangerous even blows are, for 'because of those who dared to strike blows in the past, some people have become so angry that they have resorted to assaults, killings, exiles, and the greatest misfortunes.'³²⁸ The

327 On courts as instruments of "vengeance" and violence sanctioned by the state, cf. e.g., D. 21.182; in general, Gehrke 1987. Borg 2006, 234–235 speaks of a new kind of revenge, legitimized by the collectivity of the *polis* from the Peisistratids on. On Din. 2.4 and 2.20, where the speaker pleads for the death penalty against Aristogeiton without further ado, cf. Cohen 2005b, 179, who speaks of the "confusion of judicial retribution and private revenge." Courts were used, for example, as a tool of punitive violence against *stratēgoi* (X. *HG* 1.7.22–23). Revenge and law should not be pitched against each other (Scheid 2005, 402–403; Fisher 1998a, 81, 92). McHardy 2008 presents the most refined view on vengeance in the Greek world so far. Instead of speaking of revenge in absolute terms as research has done so far, she demonstrates that individuals, in the case of being wronged, carefully considered the options they had and made their decision on which kind of redress to seek dependent on the specific situation and circumstances. Surprisingly enough, the killing of a relative called for revenge the least (9–44). The violation of female honor (45–64), however, as well as the encroachment upon one's property (65–84) and damage to one's reputation (85–102), were far more likely to trigger an act of revenge in the ancient Greek world. Cf. above 48, n. 123 and below 137, n. 526.

328 Isoc. 20.8: καὶ διότι διὰ τοὺς τύπτειν τολμῶντας εἰς τοῦτ' ἤδη τινὲς ὀργῆς προήχθησαν ὥστ' εἰς τραύματα καὶ θανάτους καὶ φυγὰς καὶ τὰς μεγίστας συμφορὰς ἐλθεῖν. A similar escalation scheme is rendered by Hyp. fr. 21 (97–99). Rivals fight over a piece of land. They insult and spit, and finally they hit each other in the face. As we know from Isaeus, such violent showdowns could even lead to homicide

enumeration of blows, physical attacks, killings, and exiles in one sentence is meaningful. In the contemporary view, there was a direct connection between blows and homicide. Once struck, the rules of honor and shame required the victim to strike back, which, in turn, further inflamed the conflict. As Forsdyke has shown, exile through ostracism served the purpose of replacing the blood feud with more peaceful means of fighting against each other.³²⁹ By the fourth century, ostracism had fallen out of use. Its role was taken over by court verdicts that could sentence people to death or exile. Thus, going to court and pleading for an opponent's death or exile was understood as the continuation of a vendetta by different means, a process that had already begun in archaic times.³³⁰ In other words, the archaic-looking and at least ideologically obsolete exchange of blows,³³¹ which, however, was often resorted to in practice, could aggravate and prolong a situation of conflict that was still perceived as a kind of "feud" by contemporaries. "Feuding" was all right in the Athenian perception of agonistic behavior as long as it was carried out according to "modern" standards, which means by appealing to the courts. Ariston uses the escalation brought about by Conon's sons to cause his own self-control and the de-escalating measures he took to stand out in sharp relief.³³² Conon's sons started out by insulting Ariston in the military camp. Then they hit him and caused so much turmoil that other men came to his rescue. This was good, because he was so angry that he might have retaliated in a similar fashion, had he not been restrained by the *taxiarchai* and other men. Back in Athens, he did not sue his opponents, but instead kept

(Is. 9.16–19). Arist. *Pol.* 1302b5–21 widens the focus even more and claims that revolutions (*staseis*) can stem from petty causes. Slander and verbal abuse can lead to blows (D. 40.32). Blows can easily lead to revenge. On the close connection between revenge and *stasis* and the Athenians' obsessiveness with civil war, cf. Flaig 2006, 50. On the close connection between *hubris* and *stasis*, cf. Fisher 2000, esp. 112, who emphasizes the important role personal motives and hatred played in engendering civil unrest. On *stasis* in the Greek world of the fifth and fourth centuries in detail, cf. Gehrke 1985.

329 Forsdyke 2005, esp. 143, 204, 278–280.

330 Cf. above 48, n. 123 and 96, n. 327; below 137, n. 526.

331 Conon and his sons did not think that they acted according to an outdated *modus operandi*. To them, the notion of carrying out quarrels physically was very well alive. We have to keep in mind that we extrapolate the discourse on moderation and self-restraint from a couple of speeches only, mainly D. 21 and 54 as well as Isoc. 20.

332 Herman 2006, 123–124, 132, 156–159, 166, 199, 213, 283–285, 286. On the rhetoric of self-control in general, cf. Bers 2009 *passim*; Roisman 2005, 176–185.

away from them to avoid any trouble in the future.³³³ The prosecutor in Isocrates' *Against Lochites* argues along the same lines. Only because of his self-restraint and moderation did the situation not get out of hand.³³⁴ Ideally, however, it was only the laws that could prevent a conflict from escalating. For every stage of the showdown, the lawgiver had taken precautions by giving the assaulted party the right to sue its malefactor. Demosthenes' passage on behalf of Ariston is clear enough:³³⁵

there is provision for the least important of these acts, verbal abuse, to avoid the final and worst, homicide, from happening and to prevent the escalation by small steps from verbal abuse to blows, from blows to wounds, and from wounds to death; instead, the laws provide a legal action for each of these, instead of letting these actions be decided by the individual's anger or desire.

This passage is to convince the judges that they have to crack down on Conon and his sons because they trample on the laws and the constitution of the city.³³⁶ It is worth defending these very laws of the city, since they are the only bulwark against hybriistic rascals like Conon and his sons, and are thus the mainstay of democracy.

All of the semantic markers mentioned above were grouped in dichotomies and instrumentalized by the perpetrators and the victims of violence (first blow vs. self-defense; murder vs. lawful homicide; public vs. hidden violence; day vs. night; inebriation vs. sobriety; old vs. young age; invasion of homes vs. protection of *oikos*; disturbance of public duty vs. maintenance of public order; perversion of religious customs; perversion of gender, citizenship status, social rank and role; sanctioned vs. direct violence; escalation vs. de-escalation). Taken together, these semantic markers constitute the flexible line between unacceptable (victim's viewpoint) and acceptable violence (perpetrator's viewpoint).

The most famous speeches today are those that tell us about high-profile citizens who broke many social norms simultaneously. Ps.-Andocides'

333 D. 54.5–6.

334 Isoc. 20.8.

335 D. 54.19: τὸ φαυλότατον, οἶμαι, τὸ τῆς λοιδορίας, πρὸ τοῦ τελευταίου καὶ δεινοτάτου προεώραται, τοῦ μὴ φόνον γίνεσθαι, μηδὲ κατὰ μικρὸν ὑπάγεσθαι ἐκ μὲν λοιδορίας εἰς πληγὰς, ἐκ δὲ πληγῶν εἰς τραύματα, ἐκ δὲ τραυμάτων εἰς θάνατον, ἀλλ' ἐν τοῖς νόμοις εἶναι τούτων ἐκάστου τὴν δίκην, μὴ τῇ τοῦ προστυχόντος ὀργῇ μηδὲ βουλῇσει ταῦτα κρίνεσθαι (emphasis added).

336 A similar list ranging from calling another man names to backtalk, assault, and brawls is preserved in a fragment of Middle Comedy, taken from Alexis' *Odyseus at the Loom* (Alexis F 160 [K.–A.]).

speech *Against Alcibiades* (Ps.-And. 4), Lysias' speech *Against Simon* (Lys. 3), Lysias' fragment *Against Teisis* (Lys. fr. CXXIX 279), Isocrates' plea *Against Callimachus* (Isoc. 18), his speech *Against Lochites* (Isoc. 20), and Demosthenes' speeches *Against Meidias* (D. 21) and *Against Conon* (D. 54) have the character of school speeches, because they call on almost all semantic units of violent interaction and thus "define" paradigmatically what Athenians meant by "violence."

To single out only two examples. At least four semantic markers "defining" violence are to be found in *Against Teisis*. Archippus was a free citizen, but detained during the night. The abuse of his body took place within Teisis' house and not in public.³³⁷ A slave lashed him with a whip, an instrument reserved for slave torture, thus reversing the social roles attributed to certain social classes. Since there was no control by an audience, the violence was regarded as excessive, even by Teisis' friend Antimachus. The multitude of norms broken increased the victim's shame. Archippus' brothers established an audience only after the fact by presenting their badly injured brother on a litter in the marketplace. In this way, they dramatized Archippus' atrocious mistreatment and displayed its significance to bystanders.

Allegedly, Andocides delivered a speech against Alcibiades on the occasion of the last ostracism at Athens (417–415 BCE) in order to sue him for multiple breaches of the democratic order. This oration is almost certainly not authentic. Andocides cannot be the author, nor can the speech be dated to this time period.³³⁸ These reservations do not detract from our argument, however. Whoever the author was, he had a very good understanding of the Athenian semantics of violence. The speech was preserved because it appeared plausible and convincing to its readers. If it is a rhetorical exercise, it is even more valuable as a source for us, because we can extract from it the general notion of violence. Alcibiades, as portrayed in this literary piece, is thoroughly familiar with the way violence works in his hometown. As a staunch oligarch, he deliberately lives in accordance with old aristocratic ideals and discourses. His flamboyant lifestyle makes him break democratic rules of interaction in a self-indulgent and tyrannical way. He does so ostentatiously and with great relish. When his wife initiated her divorce from him with the *archôn basileus*, an action to which she was fully entitled, Alcibiades dragged her

337 It is true that some friends were present to witness the abuse, but not a broader public.

338 Heftner 2001 (with older literature).

home by force, thus reasserting his authority as her *kurios* and trampling on the democratic order of Athens. Alcibiades literally dramatized the physical attack on his rival *chorêgos*, Taureas, by punching him in the face in the theater of Dionysus. By establishing publicity for his breaches of democratic ideals, norms, and rules, he performed his contempt for Athenian democracy. There was no better way of flaunting his emotional and mental detachment from Athens' constitution than staging these violent violations of democratic expectations.

We should always bear in mind that the players attested in the sources are all male citizens, whose actions and words were taken seriously, for they could appeal to an audience of peers. If a slave beat up another slave, the incident was not reported and did not leave any trace in our records. In most cases, violence committed by male citizens against metics,³³⁹ or their own wives and slaves, is not reflected in our sources either.³⁴⁰ To the male agents, this behavior was normal, not even worth discussion. This does not mean that these persons were not protected by any laws. A metic could enlist legal support from his *prostatês*, the killing of a metic was brought before the Palladion, women abused by their husbands could ask for help from their kin or file a divorce, and slaves could seek asylum at the altar of the Mother of the Gods as Pittalacus did.³⁴¹ Nevertheless, all these groups were less well protected than male citizens.

The situation was entirely different when citizens were affected by violence. In that case, a boundary had been violated, and the act was significant enough to be debated. If committed publicly, the incident would unfold in front of an audience, whose members could then determine its appropriateness. Even if a societally relevant form of violence was not committed in public, people could still hear about it in court.

Citizens played their games of violence not only with their fists on the streets of Athens, but also with their bodies, gestures, and voices on the stage of the courts. There, ideology and rhetoric allowed them to shift the line between unacceptable and acceptable violence according to

339 Exceptions are, of course, large-scale crimes against metics as conducted by the Thirty (X. *HG* 2.3.21; D.S. 14.5.6; Lys. 12). According to Ruiz 1994, 205, metics were better off than women and slaves. Cf. her chart on p. 231 visualizing in descending order citizens, metics, women, and slaves and their opportunities to protect themselves against encroachments upon their bodies.

340 The archaeological evidence, too, points in this direction. As Morris 1998, 218–220 points out, women and slaves are hard to find in Athenian material culture. They remain invisible, because Athenian men wanted it that way.

341 Aeschin. 1.60.

Summary of Semantic Markers in Table Form
(Dichotomies constituting flexible line; cf. table below 139):

	Unacceptable Violence (outside accepted norms, always relevant, committed by opponent, as characterized by speaker)	Acceptable "Violence" (inside accepted norms, sometimes relevant, committed by speaker, as characterized by him)
Discursive Level of Interaction	First blow Serious wounds (Attempted) homicide Non-public, hidden Night Day Drunk Sober Young Old Unauthorized transgression of door threshold Victim on public duty Perversion of religious customs Perversion of gender, citizenship status, social rank and role Direct Escalating Disruptive	Self-defense No wounds/light wounds Lawful homicide Public Day Night Sober Drunk Old Young Authorized transgression of door threshold (decree, no women inside, owner home, witnesses); justified enforcement of governmental or personal claims Victim not on public duty Following religious customs Respecting gender, citizenship status, social rank and role Sanctioned by community of judging authorities De-escalating Integrative (under certain circumstances)

their needs. The law courts would then, through their verdicts, transform unacceptable and acceptable violence into illegitimate and legitimate violence. Most of the above mentioned dichotomies structuring daily-life violence (see chart above) were interpreted, manipulated, and instrumentalized on the level of representation.

Images of Violence: Discursive Rules of Violence II (Mental and Cultural Representation)

Violence was verbally represented in three settings: courtroom proceedings, magic, and theater. All three media were characterized by a high degree of performance. What we grasp in forensic oratory is the discourse on the observable breaches of socially coded norms as mentioned above. Since the *dikastêria* were ritual communities, a courtroom trial was ritual theater that narratively staged an ongoing conflict between two parties. Since, on this level of discourse, the discussion about violence was ritually staged, we can also speak of the ritualistic representation of the violence discourse. Not only was the setting of the trial highly ritualistic on the macro-level, but the speeches themselves also show a high degree of ritualization on the micro-level of language. They are less bound by poetic diction and formulas than magical spells and less poetic than tragedies and comedies, but we do find standard motifs and stereotypical patterns in rhetorical language.³⁴² These repetitive elements—for example, the rhetoric of character denigration—allow us to speak of ritualized language. The skillful orator would lend his voice, body, and gestures to the effective performance of the speech. Therefore, it is legitimate in this case to equate the process of narration with that of ritualization and theatricalization. In other words, ritualization and theatricalization engendered narrativity, and vice versa.³⁴³ The litigants transformed everyday occurrences into partly fictional tales (and not just because they presented themselves in a favorable light and demeaned their opponents). That is the reason why speeches cannot be faithful mirrors of reality. The frequent allusion in secondary literature to the “rhetorical distortion” of many facts does not render sufficient justice to the vexed problem. But even though speeches do fictionalize events, they at the same

342 Cf. Gänszle 2000, 37 on the different degrees of formalized or ritualized speaking. Harth 2004, 108–109 enumerates the appropriate figures of speech that create the ritual frame that marks this speaking as distinct from ordinary, daily-life speech: e.g., repetitions, anaphoras, transmutations, doublets, inversions, parallelisms, and formulas. This ritualized language is situated within the liminal sphere of the courtroom, and thus contributes to its creativity and ceremoniousness.

343 According to Davis 1987, 121 the creativity of the ritual transforms the purely empirical coexistence of occurrences into stories. Cf. Gagarin 2003b, 4 on the narrative aspect of oratory.

time reflect the cultural perception of violence and the way it was represented.

Since we know that human beings construct meaning via rituals,³⁴⁴ the best way for us to extract the symbolic significance of violence from court speeches is to regard their narrative structure as ritualistic and performative. It is in the liminal phase of the courtroom speech that the significance of a violent act emerged. The orators not only spoke about breaches of social norms, but also implicitly and explicitly invested these transgressions with symbolism by embedding them in larger discursive horizons and thus interpreting and evaluating them. The process of narration charged individual actions with meaning.³⁴⁵ If some violent acts already were highly symbolic, such as instances of charivari, threshold transgressions, and Conon's rooster dance over Ariston, they acquired even more meaning through being told and narrated to an audience. The meaningful construction of a violent event happened, to a large degree, *post factum* on the narrative level, which gave explanations for and interpretations of it from the speaker's point of view. Through this process of narration within a ritual and theatrical context, future actions in daily life also gained symbolic significance. Since these actions were mainly charged with meaning in the courts, and the courtroom drama had repercussions on reality, the violent interactions of real life began to adopt a symbolic meaning.³⁴⁶

A discourse analysis taking into consideration the ritual and performative quality of the speeches will help us decipher the symbolic meaning of violence further. This technique will necessarily go far beyond the traditional examination of rhetorical structures. Rules of representation constructed the symbolic meaning of a violent act even more explicitly than rules of violent interaction. On the ritual macro- and micro-level of the speeches, the representation of violence enabled contemporaries to interpret a specific violent act. On this level of discourse, the moral, judicial, and socio-political assessment of violence was easier than on the level of daily interaction. If we gain access to these parameters of interpretation, we will be able to give answers to the questions raised above.

344 De Coppet 1992, 4, 14, e.g., insists that rituals not only express messages, but also do something and have effects on the world.

345 It was only the law court that turned the conflicting parties into litigants (Johnstone 2003, 6; 1999, 127, 131–132).

346 Schechner's braid model (cf. above 16, n. 77) is again of high heuristic value.

How did Athenians perceive violence? How was an act of violence verbally represented and commented upon in the ritual framework of a court speech? Prosecutor and accused ascribed sense to violence from their respective perspectives and interpreted it. What does this mean on a larger scale? How did the public negotiation of what violence signified help create an Athenian identity? What consequences, finally, did the construction of community have for the victim and the perpetrator of violence? The far-ranging dialogue on violence did not take place in a societal vacuum. It was never abstract, but was concrete in the sense that real people committed and suffered violence, and that their narrations were inextricably intertwined with many other discourses. This semantic polyvalence of the violence discourse explains its flexibility and paramount importance to Athenian society. Before we can tackle these questions, however, we have to understand how, in general, Athenians verbalized violence in court.

The Depiction of Violence

As a rule of thumb, we can say that the speaker rarely depicted his own violence.³⁴⁷ I am speaking here of the rhetorical zero-performance of the violence committed by the speaker. One might suppose that he represented his opponent's violence graphically, but this is not the case. Although any speaker had to exaggerate his rival's misconduct to a degree, he refrained from detailed descriptions of his opponent's violence. Instead, he talked about it in relatively vague terms, sometimes only hinting at the violence proper. We will come back to this strategy, the underlying reasons for and the consequences of it shortly. So the speaker also mitigated the violence committed by his opponent.

The most blatant example of toning down one's own violence is Euphiletus' rendering of his "execution" of Eratosthenes. To Euphiletus, this homicide was justifiable; therefore he could talk about his own extreme form of violence. But it takes him only one sentence, expressed with a euphemism, to circumscribe his killing: 'So it was, gentlemen, that this man met the fate which the laws prescribe for those who behave like that.'³⁴⁸ The whole killing is presented as a rational act on behalf of the *polis*. Eu-

347 Gagarin 2005, 366, 371.

348 Lys. 1.27: οὕτως, ὃ ἄνδρες, ἐκεῖνος τούτων ἔτυχεν ὥνπερ οἱ νόμοι κελεύουσι τοὺς τὰ τοιαῦτα πράττοντας. On the blatant omission of the actual killing, cf. Todd 2007, *ad loc.*

philetus plays down his emotions for precisely this purpose. Not talking about one's own violence was essential in portraying oneself as innocent. In Isocrates' speech *Against Lochites*, the speaker does not spell out his own violence at all, whereas he characterizes his opponent's actions as prime examples of *hubris*. The rich *chorêgos* who was accused of having caused the death of Diodotus, one of his chorus boys, through neglect, did not articulate the boy's actual death so as not to arouse negative emotions against himself.³⁴⁹

In general, speakers hardly ever talk about their own problematic behavior with which they have contributed to exacerbating a conflict. Oftentimes, they deliberately pass over in silence the whole background that has led to the outburst of violence. The prosecutor suing his step-mother for the homicide of his own father only hints at the bad marriage his parents had and from which the wife, especially, suffered.³⁵⁰ Knowing these circumstances, however, would be crucial to understanding the woman's motives for killing her husband. Apollodorus does not speak a single word about the reason for Nicostratus' change of mind, how and why he turned from neighbor and friend to fierce enemy.³⁵¹ Demosthenes does not tell us why Meidias punched him in the face. The punch was charged with too great a degree of semantics and was too significant for it to have been "unpremeditated," as MacDowell thinks.³⁵² Demosthenes does illuminate the background of this lingering conflict,³⁵³ but with an exclusive focus on Meidias' misdeeds. What was the motivation for Meidias' risky step? There must have been a recent incident that finally induced Meidias to weigh all risks, go ahead, and hit Demosthenes in public. It should also make us suspicious that Eubulus supported Meidias in this case. Similarly to Demosthenes, the defendant against Simon in Lysias' third speech omits his part in the story. He does not explain why Simon and his friends behaved so outrageously; they employed charivari rituals against him, which the speaker talks about in detail. His strategy is easy to discern. He only represents his opponent's violence in court to conceal his own. We should wonder whether Simon exaggerated the de-

349 Antiphon 6.

350 Antiphon 1.15.

351 Ps.-D. 53.

352 MacDowell 1990, 8. J. Vince's characterization of the event as a "trivial occasion of the action" (introduction to Loeb volume Demosthenes III, Cambridge/MA 1956, p. 4) and Ober's "relative slightness of the offence" (1994, 93) miss the dramatic setting, which Demosthenes understood full well.

353 On the longevity of this conflict, cf. Yunis 2005, 206.

fendant's violent behavior, and the answer is probably yes, but the speaker had nonetheless been aggressive enough for Simon to indict him.³⁵⁴ The defendant, who is the speaker in Lysias' fourth speech, relentlessly plays down his own violence,³⁵⁵ although the reader gains the impression that he was the actual aggressor. Concomitantly, he enhances his claim to innocence by effectively appealing for pity,³⁵⁶ for, according to ancient belief, only the innocent man deserved pity.³⁵⁷ The best way to arouse pity and visualize the rival's unheard of degree of violence was to stage one's suffering. Pittalacus sought the public gaze and thus a performative aspect and demonstratively sat down as a suppliant at the altar of the Mother of the Gods after Timarchus and his new sexual partner, Hegesander, had killed his fighting cocks³⁵⁸ and severely whipped him.³⁵⁹ In order to make his wounds visible to the public, Pittalacus did not wear a garment. This highly performative kind of self-exposure drove home a powerful message, which the bystanders and the perpetrators fully understood. Pittalacus' citizenship status was in doubt,³⁶⁰ but his whipping in the middle of the night was certainly beyond the threshold of acceptable behavior. A crowd gathered immediately around Pittalacus, curious to find out what had happened. Timarchus and Hegesander were panic-stricken and implored Pittalacus to leave the altar.³⁶¹ They were afraid of formal and informal social control. The performance of suffering put heavy blame on the aggressors. In a similar vein, Archippus' brothers achieved the same goal by going public and carrying their seriously injured brother around the samples market.³⁶²

Too open a display of the victim's suffering, however, could also have negative side effects. This brings us to the ambivalent requirements for representing the opponent's violence. How could the perpetrator's guilt be aggravated? How could he be demonized without at the same time

354 Another strategy to cope with the accusation of violent behavior was to ironize it (Lys. 3.15–18).

355 Lys. 4.9–10.

356 Lys. 4.18. On the effective enactment of pity as spectacle, cf. Johnstone 1999, 110, 125.

357 Konstan 2006, 201–218; 2000 *passim*. Since one could not trust pity, it was not a virtue (Sternberg 2005, 40–43).

358 On the Pittalacus story and the geographical location of the cock fights and dicing games, cf. Fisher 2004, 71–76.

359 Aeschin. 1.59–60.

360 Fisher 2004, 67; Carey 2000, 43, n. 62.

361 Aeschin. 1.60–61.

362 Lys. fr. CXXIX 279.

damaging the reputation of the victim? If the victim came across as defenseless, having to endure the opponent's bullying behavior without reacting to it, the assaulted person could lose face for a second time, appearing as a cowardly weakling in court. The protection of the powerless victim's honor is one of the main reasons for also representing an opponent's violence only in a mitigated form. In this process it made no difference whether the speaker himself or another person was the victim. The prosecutor, for whom it would have made a lot of sense to plead for pity on his status as a victim by highlighting his opponent's abuse, sought instead to prevent his further humiliation.

Exceptions confirm the rule. In Ps.-D. 47, the speaker renders the maltreatment of the old nurse and her death graphically and in great detail. This is one of the most vivid representations of violence we have from classical oratory:³⁶³

then the men—Theophemus and Evergus his brother—caught sight of her and treated her so brutally as they were wrenching the small cup away from her that her arms and wrists were all bloodied from having her hands twisted and pulled this way and that by them as they wrenched the cup away, and she had bruises on her throat from being strangled by them, and her chest was black and blue. Indeed, their meanness was such that they didn't stop throttling and striking the old woman until they had yanked the cup free from her bosom.

The concrete elaboration of a violent scene always depended on the temperament of the individual speaker. Whereas the grand orators thought to achieve more by restraint, the speaker in Ps.-D. 47 chose a different strategy by displaying the excessive degree of his opponents' violence. The victim was already dead and, as such, was not in need of being protected further. Her under-class status might have helped the speaker in not observing the rules of decency in the representation of violence. A definite answer, however, is difficult to give. In the speech *Against Conon*, Ariston is explicit about the wounds he received at the hands of Conon and his sons.³⁶⁴ Why did he go to such detail in describing his own utter humiliation? Was he not afraid of losing face a second time, in court? Demos-

363 Ps.-D. 47.58–59: κατιδόντες αὐτὴν οὕτω διέθεσαν ἀφαιρούμενοι τὸ κυμβίον Θεόφημος καὶ Εὐεργὸς ἀδελφὸς αὐτοῦ οὕτοσί, ὥστε ὕφαιμοι μὲν οἱ βραχίονες καὶ οἱ καρποὶ τῶν χειρῶν αὐτῆς ἐγένοντο ἀποστρεφομένης τῷ χεῖρι καὶ ἐλκομένης ὑπὸ τούτων ἀφαιρουμένων τὸ κυμβίον, ἀμυχὰς δ' ἐν τῷ τραχήλῳ εἶχεν ἀγχομένη, πελιδὸν δὲ τὸ στήθος. εἰς τοῦτο δ' ἦλθον πονηρίας ὥστε, ἕως ἀφείλοντο τὸ κυμβίον ἐκ τοῦ κόλπου αὐτῆς, οὐκ ἐπαύσαντο ἄγχοντες καὶ τύπτοντες τὴν γράυν.

364 D. 54.7–8.

thenes, it seems, deliberately deviated from the standard norm and charged the performative situation with special significance. The speaker was the victim himself and a young aristocrat. Since he was outnumbered, his inability to defend himself was excusable. He had to persuade the judges that what he suffered was more than the habitual wrestling among youths eager to test their strength. Ariston and his logographer were prepared to break the convention in order to drive home a powerful message.

More typical was the case of Demosthenes. It is revealing that he did not explicitly mention in his speech *Against Meidias* the punch he had received.³⁶⁵ This low-key reaction on the discursive level can only be understood against the backdrop of the performative court culture. Meidias had displayed his social, economic, and political superiority by demonstratively punching Demosthenes in the face. Demosthenes did not want to grant him another, indirect stage performance by verbally re-enacting this humiliating incident. Once was enough. The people knew well what had happened and did not need a reminder. To elaborate on the punch again might have seemed obsessive to many and would only have shown hurt feelings. Talking about the actual occurrence in detail might even have appeared ridiculous and shaken Demosthenes' position to its foundations,³⁶⁶ at least in the eyes of those audience members who favored the archaic ideology of an "eye for an eye." Similarly, the speaker against Lochites does not dwell on the violence he received from the latter. Although he insists that Lochites did strike the first blow and does not mention his own violence, he describes Lochites' *hubris* only mildly. We do not hear more than the weak 'Lochites did indeed strike me.'³⁶⁷

On a more serious note, even killings are not represented in detail. The prosecutor in Antiphon's First Tetralogy does not directly describe the killing of the victim, whose posthumous honor remains protected in all decency.³⁶⁸ In Isaeus 9, two brothers, Thudippus and Euthykrates, could not come to an agreement concerning the ownership of a piece

365 D. 21.13–18; cf. MacDowell 1990, 32.

366 Meidias might have played down the violence he had exerted like the defendant in Lys. 4.9, who claims that the prosecutor is so brazen as to call a black eye a wound.

367 Isoc. 20.1: *ἐτυπτέ με Λοχίτης*. Herman 2006 takes these attenuated reports as evidence for the mild temperament of the Athenians. He is right in stating (21–22) that appeals for under-reaction pervade the whole corpus of Attic oratory, but this is a reflection of ideology rather than social practice.

368 Antiphon 2.1.4.

of land. An ensuing fistfight resulted in Thudippus' killing of Euthyrates. From then on, the families of the two brothers would not talk to each other. Euthyrates, dying, had given an order that no one of Thudippus' family should ever come near his tomb.³⁶⁹ The speaker, who is the half-brother of Astyphilus, the son of Euthyrates, questions the authenticity of Astyphilus' will, in which he allegedly named Cleon, Thudippus' grandson, as heir. Although the graphic description of Euthyrates' violent death would have made a lot of sense in the context of this speech, it is presented in weak, almost neutral terms, probably to protect the honor of Euthyrates. Many people had witnessed the fratricide, among them Hierocles, Euthyrates' brother-in-law. The speaker even insists that a number of Araphenians, who had been tilling the land at the time, would testify for him. The presence of so many witnesses would have facilitated the prosecution of Thudippus for homicide and would have made it even more unlikely that Astyphilus would have adopted the grandson of his father's killer. Nevertheless, the speaker does not take advantage of this opportunity to depict the killing graphically. Likewise, the cruel murder of Nicodemus of Aphidna, presumably committed by Aristarchus, a friend of Demosthenes', is represented only in mitigated form, although it is well attested in the sources.³⁷⁰ Only once does Aeschines become more explicit: 'with both his eyes gouged out, poor wretch, and the tongue cut out.'³⁷¹ The mitigation of even the opponent's violence is in stark contrast to the broad spectrum of violent language the Greeks had at their disposal.

This does not mean that the omission of details is not used to good effect. At times, a lacuna in the narrative emphasizes the unspeakable. The aposiopesis—everyone knew what the gap stood for—was ritually staged in front of the judges. I speak of the performance of a semantically

369 A low-level reaction, indeed, as Herman 2006, 161–162 points out, but only at first glance. Phillips 2008, 91–96 explains the implications of this mitigated dying injunction. First of all, Euthyrates might not have wished to trigger a *dikê phonou* against his own brother. Secondly, his own son was too young to prosecute Thudippus. At the same time, barring Thudippus and his direct descendants from participating in the funeral rites, Euthyrates severed all kinship ties with this branch of the family. In an act of piety, Euthyrates' direct descendants followed the dying injunction and thus carried the enmity between the two branches of the family into the next generation. On other, more aggressive dying injunctions, cf. Phillips 2008, 64–68, 77–78, 205–207, 221–222.

370 Cf. above 40, n. 84.

371 Aeschin. 1.172: ἐκκοπεῖς ὁ δειλαιοὺς ἀμφοτέρους τοὺς ὀφθαλμοὺς καὶ τὴν γλῶτταν ἀποτμηθεῖς.

highly charged narrative vacancy, or simply of the performance of aposiopesis. In accusing Timarchus, Aeschines conceals his lack of proof by claiming that he cannot verbally render Timarchus' moral debasement.³⁷² Conon insulted the severely beaten Ariston, who was lying in the mud, with such foul language that Ariston felt he could not repeat it in court.³⁷³ A verbal rendering would be another humiliation for Ariston because of the speech-act qualities of these abusive remarks. Because the power of an illocutionary speech act constituted verbal violence, Demosthenes does not want to repeat Meidias' and his brothers' vulgar talk in the presence of Demosthenes' womenfolk that led to a *dikê kakêgorias* against Meidias.³⁷⁴ Ps.-Demosthenes uses a similar rhetorical trick for the sake of character denigration. Nicostratus' and his friends' misdeeds are so numerous that even twice the time of a court session would not be enough to inform the judges about them.³⁷⁵ Through this performance of aposiopesis, the vile character of the perpetrators' actions and words could be stressed without doing the victim further harm.

The best orators went one step further. If possible, they enacted aposiopesis in a corporeal performance. Meidias had Straton disenfranchised because, in his capacity as arbitrator, he had rendered a verdict against Meidias. As a result of his disenfranchisement, Straton had become *atimos* and was no longer allowed to speak in court or in the Assembly. Demosthenes wanted to visualize Meidias' meanness by narrating its most horrible consequence. An innocent Athenian citizen had lost his citizen rights merely because he had rightly intervened against the strongman Meidias. The crowd should see this unheard of crime and be emotionally roused. Demosthenes here had a stroke of genius. He called upon Straton as a witness. It was clear that he would not be able to speak up. He came forward to the stage and stood there, silent, in front of the judges, and displayed what Meidias had done to him.³⁷⁶ Straton's muteness in public embodied Meidias' outrageous transgression, the undeserved exclusion of an Athenian citizen from the citizen body. The theatrical performance of this aposiopesis could not have been more symbolically charged. In his first

372 Aeschin. 1.38.

373 D. 54.9.

374 D. 21.79. MacDowell 1990, 3.

375 Ps.-D. 53.3; similarly, D. 21.129.

376 D. 21.87–94. Cf. scholion on 21.95 (321 Dिल्s): βούλεται εἰσάγειν ὡς ἐπὶ σκηνῆς τὸ πρόσωπον τοῦ παθόντος, 'he wants to lead the role of a suffering person like onto a stage.' Ober 1994, 97–98 and MacDowell 1990, 35–36 hint at the stage character of this incidence.

speech against Aristogeiton, Demosthenes employed the same dramaturgical technique. Imprisoned for a long time, Aristogeiton had bitten off the nose of an inmate from Tanagra. To display this atrocity in public, Demosthenes had the mutilated man enter the dicastic stage.³⁷⁷ Like the arbitrator Straton, he was a silent witness testifying to the cruelty of the accused.³⁷⁸

To conclude: The fact that the verbal representation, even of the opponent's violence, did not stand in the foreground does not mean that his violence was not expressed adequately. Other means, in line with the amnesty and medial conventions, may have been even more effective. Not speaking about a violent act in court could work like an aposiopesis, which could even be performed onstage in brilliant strokes by the best orators. It put the questionable behavior into relief; emphasis was achieved by not mentioning the misconduct. It was the power of omission that stressed the outrageousness of a physical attack. Hence, mitigating the opponent's violence did not just protect the honor of the victim; it could, especially through the performance of an aposiopesis, be part of the attack strategy. The performative lacunae must have had immense repercussions similar to those of classical tragedy, where the act of killing was not displayed onstage,³⁷⁹ but was even more impressive and horrifying precisely because it was not openly demonstrated,³⁸⁰ but only brought to the spectators' minds through a messenger's report or an *ecce*-scene, for example.³⁸¹

377 D. 25.60–62.

378 Another famous incident of bodily representation is the anecdote according to which Hyperides uncovered Phryne's breasts in public so as to display her beauty (Hyp. fr. 60; Ath. 13.590d–591f). Naked truths told more than a thousand words, and Phryne was released from the politically motivated accusation of *asebeia*. Not only did Phryne's beauty save her, but it also exposed the adversaries' foolish plan to condemn both her person and her beauty. Cooper 1995 doubts the historicity of this incidence. Cf. Schuller 2008, 64–66 on her alleged relationships with Hyperides, Praxiteles, and Apelles, as well as her statuary representations.

379 Seidensticker 2006, 105 adduces causes of reception and production for the non-representation of fatal violence on the tragic stage. There are notable exceptions, to which Herman 2006, 290, n. 78 draws our attention: Ajax commits suicide on stage in Sophocles' *Ajax*, Agave brandishes her son's head in Euripides' *Bacchae*. These shocking scenes deserve special treatment.

380 Goldhill 2006, 164, 168; Seidensticker 2006, 122.

381 For the methods of representing violence in tragedy, cf. Seidensticker 2006, 106–121. Brutal violence was graphically depicted in tragedy (and epic). Tragedy was

The verbal and performative representation of violence in court was a complicated matter. The speaker not only did not represent his own violence, but also mitigated the violence he had suffered at his opponent's hands. Exceptions confirm the rule, as we have seen. In addition to the reasons mentioned above, socially coded rules of decency regarding the medial representation of violence also account for the mitigated portrayal of the opponent's violence. While Athenians espoused a culture of public display, Athenian society did not appreciate the open display of negative affections. The graphic rendering of real-life violence (and other troublesome behavior and emotions such as mourning and grief) did no longer correspond to the code of behavior of fifth- and fourth-century Athenians.³⁸² The temperate citizen was now the ideal. Against this ideological backdrop, it seems unlikely that all punches and slaps in public were spontaneous outbursts of violence. Rather, they may often have been calculated, carefully planned, and staged spectacles with symbolic significance attached to them.³⁸³ Although archaic discourses persisted and were often enough put into practice during the classical era, they were, as far as one's own person was concerned, negated in court, where the official, democratic set of values was constantly being enacted. Many bits of information that are not verbally preserved in the speeches must have been represented by the speaker through the medium of performance. The texts we have are only the skeletons of the original performances. It was the act of performance itself that was the lifeblood of the speech, and endowed a text with vividness by filling its semantic gaps. The spectators understood how violent an act really had been, even in the absence of a precise textual rendering.

able to re-enact the violence for the audience via verbal description, because, unlike in forensic speeches, which had consequences for the real litigants involved, the social status of the speakers was not at stake in fictional genres.

- 382 The archaeologist Bergemann 1997, 67, 151–156 has discovered that death and mourning are almost completely suppressed on grave reliefs. According to Bergemann 1997, 67, only a few gestures show emotions on Athenian grave reliefs of the classical period: "Dieser Befund findet seine Erklärung in den aus den Textquellen erschlossenen Vorbehalten der athenischen Gesellschaft gegen offen zur Schau getragene Emotionen. Die Äußerung von Emotionen in der Öffentlichkeit entsprach im 5. und 4. Jh. ganz und gar nicht gutem Benehmen." Cf. below 162, n. 592.
- 383 Also from this perspective, I think it a likely hypothesis that Meidias was not carried away when punching Demosthenes in the face, but that he acted deliberately and with premeditation. Cf. above 105, n. 352.

Neglecting the performance aspect and the conventions of how to portray, or rather not to portray, violence in the media has misled generations of modern researchers into fabricating an all too rosy Athenian reality. As will become clear, these idealizing assumptions are skewed and have resulted in the scholarly fantasy of a highly pacified Athens.³⁸⁴

The rules of representing violence are structured in dichotomies that are based on the dichotomic, semantic markers of violent interaction. Like the latter, the rules guiding the representation of violence are dependent on the speaker's viewpoint. What we have observed in our treatment of interactionist rules is also valid for the principles of representation. One and the same occurrence could be interpreted very differently, if not in completely contradictory ways. Thus the evidence from ancient Athens calls for a constructivist approach. A specific action was not automatically considered "violence"; only its interpretation as such rendered an act "violent." What constituted "violence" was not determined by the deed itself, as violent as it may have been, but by the ensuing discursive treatment of it. This holds true even for homicide. Under certain circumstances and with the appropriate reasoning, homicide could be considered lawful. The perpetrator would insist that he did not break any rules of interaction, but, on the contrary, that his measures, all of which lay within the sphere of acceptable behavior, were legitimate, if not required by the *polis* to help maintain law and order. In contrast, any speaker would claim that his opponent had violated certain rules of interaction and that his deeds, therefore, deviated strikingly from socially accepted norms. This strategy of legitimizing one's own behavior and delegitimizing the opponent's behavior entailed downplaying one's own violence and exaggerating the rival's violence, albeit indirectly. Almost no bounds were set for the negative construction of the opposed party. Whether the opponent was finally stigmatized as a danger to the *polis* who had to be done away with lay in the logic of exaggerating the charges. The constructions of a positive and harmless self-image and of a negative and highly detrimental view of "the other" reinforced each other.

384 Herman 2006 *passim*; Harris 2005; to a lesser extent also Gagarin 2005, 366, who deduces from the low number of incidences of violence found in the orators a relatively peaceful society. Cf. Faraone (especially 1991a and b; 1988), with regard to the malicious intent of curse tablets. We should consider Schmitt Pantel's observation (1998, 45) that ancient historians in general have forgotten about Greek violence or have played it down. Exceptions confirm the rule, as, e.g., Bernand 1999, who offers an anthropological view of Greek violence without idealizing historical reality.

Selfless Motives versus Selfishness

Whereas a speaker typically portrays himself as driven by selfless motives—in the end, his actions help uphold the *polis*³⁸⁵—he often presents his opponent as motivated by personal greed and selfishness.³⁸⁶ In such cases, the opponent is often portrayed as even supported by foreign powers such as Persia or Macedon,³⁸⁷ which constitutes an inappropriate interference with Athenian affairs. Euphiletus, for example, portrayed himself as good-natured, naïve, and gullible. For a long time he had no clue as to what was going on in his house. The self-image of a simpleton stands in stark contrast to the cunning of the notorious adulterer Eratosthenes.

Through verbal representation and its enactment on the stage of the courts, the viciousness of the opponent was performed and thus exposed to the judges and the bystanders in court. The convention of not fully representing violence, not even that exerted by the opponent, led to extreme character denigration instead, serving as a contrasting foil against which one could positively present oneself. The negative characterizations of Timarchus and Meidias, as well as Conon and his sons, belong to the most famous examples in Attic oratory. At the same time, these reproaches had to engage the audience emotionally. This goal was achieved by various means; for example, through a performative act,³⁸⁸ by stirring up the feelings of the audience through exuberant rhetoric, or by heaping ridicule on the opponent so as to fulfill the entertainment aspect that was required of a good speaker. In this context, this last point deserves further treatment. In his accusation of Timarchus, Aeschines has preserved a supreme example of situational humor at the expense of his opponent.³⁸⁹ Autolycus, a member of the Areopagos, spoke in front of the *Ekklēsia* to discuss and reject a proposal by Timarchus. In doing so, Autolycus unknowingly played with sexual metaphors. The audience found the double meanings so amusing that they could not control themselves and burst into laughter. In retelling the story, Aeschines re-enacted the comic situation and exposed Timarchus to ridicule for a second time. This was no harmless thing. According to Versnel, it was only rarely that laughing had purely positive connotations in the Greek world. Mockery and laughter, on

385 E.g., Lys. 1.4, 34, 36, 47–49.

386 E.g., Din. 1.

387 Aeschin. 2 and 3.

388 Cf. above 110, n. 376 on Straton and 111, n. 378 on Phryne.

389 Aeschin. 1.81–84.

the contrary, excluded the persons laughed at by alienating them from their communities. Derision, especially if performed in public, could lead to the victim's losing face.³⁹⁰ A few examples may suffice. Demosthenes scolded the people for taking delight in seeing orators taunted.³⁹¹ In his speech against Meidias, Demosthenes amuses his audience by graphically describing Meidias' lack of qualifications for serving as a cavalry commander. The allegation that Meidias cannot even sit on a horse is biting slander that comes across as a joke.³⁹² Demosthenes further arouses hatred against Meidias by insinuating that Meidias had offered him more money in compensation for the blow than he would ordinarily have paid to the city in the form of liturgies. In doing so, Meidias would have made Demosthenes a laughingstock in the society of onlookers. Hence, Demosthenes' indignation is understandable.³⁹³ To what extent derision could come close to *hubris*, or could even be regarded as *hubris*, can be deduced from Ariston's speech against Conon, whose sons maltreated Ariston's slaves first and thereby displayed their contempt for him. Conon's sons topped this deliberate provocation of Ariston by mocking him and his messmates.³⁹⁴ These insults finally resulted in the beating of Ariston and Conon's hybriatic rooster dance above Ariston's seriously injured body.

In order to come to terms with the broad concept of *hubris*, an analysis of two complexes that are closely related to it—anger and the transgression of boundaries—shall serve as a means of approaching the performative character of *hubris*. The two complexes help explain how outbursts of emotion, especially fits of anger, were treated and how transgressions of norms were perceived.

Anger

The notion of anger (*orgê*) had become problematic by the 450 s BCE.³⁹⁵ In Herodotus, anger became the attribute of the "other," mainly the bar-

390 Versnel 1999, 137–155.

391 D. 18.138.

392 D. 21.171. Cf. Harding 1994, 210, who demonstrates that Demosthenes comes closest to Old Comedy in his choice of "techniques, themes, and vocabulary."

393 D. 21.151.

394 D. 54.4.

395 W. Harris 2001, 164.

barian.³⁹⁶ Thucydides sharply criticizes decisions that the fickle masses had made in anger.³⁹⁷ By the end of the fifth century, the leading circles regarded *orgê* as jeopardizing the agonistic culture of the *polis*.³⁹⁸ Isocrates argued that anger should be strictly controlled.³⁹⁹ To Plato, anger had become separate from reason.⁴⁰⁰ *Orgê*, *cholos*, and *thumos*⁴⁰¹ were now often linked to *mania*, madness.⁴⁰² *Orgê* found its negative expression in an excessive fit of anger, which stemmed from a lack of self-control,⁴⁰³ and characterized the transgressive nature of the perpetrator. The Areopagos sent the father of a priestess of Brauron into exile because he had enticed an assailant to strike another man, who died as a consequence.⁴⁰⁴ In his accusation of Meidias, Demosthenes adduces a highly interesting case. During a symposion, Euaeon suffered a slight from his drinking mate Boeotus.⁴⁰⁵ He felt so offended that he could not restrain himself and killed the offender. Thus, he exercised exaggerated revenge and was condemned by a single vote. Demosthenes even explains what the almost-split vote meant. While almost half of the judges felt Euaeon was right in retaliating even at the risk of killing the aggressor, a minimal ma-

396 E.g., Hdt. 3.1, 25, 32–36; Hdt. 7.11, 39; Hdt. 9.111; W. Harris 2001, 171–176.

397 E.g., Th. 2.21.3–22.2; 3.36–49; W. Harris 2001, 179.

398 W. Harris 2001, 181, 187, 200.

399 E.g., Isoc. 1.21. On the containment and channeling of anger in classical Athens, cf. Borg 2006, 237.

400 Allen 2000, 255–257.

401 *Orgê* is closely related to *thumos*. According to Viano 2003, 93–94, the originally broad semantic range of the term *thumos* was narrowed down by Aristotle in particular, who sees *thumos* as “source of anger and courage,” “impulsive desire,” and the “irrational faculty or passion of the soul.” Faraone 2003 discerns the same semantic development of the term in magical spells. It came to denote a kind of masculine *orgê* in later curses that comes close to the Mediterranean “machismo.” Winkler 1990, 78 works out well the official ideology requiring one to restrain one’s *thumos*. On the representation of these emotions in Old and New Comedy, cf. below 254–260; 319–331.

402 Borg 2006, 253.

403 Konstan 2006, 58.

404 D. 54.25. This means that the courts decided on the question of how much anger was acceptable (Allen 2003, 77).

405 D. 21.71–75. Konstan 2006, 45 translates the Greek word *oligôria* (‘lessening,’ ‘belittlement’) as ‘slight.’ Demosthenes does not speak about *oligôria* in this passage, but about the *atimia* that Euaeon suffered. *Atimia* is the stronger word and explains even better Euaeon’s entitlement to *orgê*. The passage fits into the larger context of showing that Demosthenes had even better reasons to be angry at Meidias, but that he chose to go to court rather than strike back personally. Thus, Demosthenes demonstrates his exemplary ability to control anger.

jority of judges did not have qualms about the revenge, but about its extreme form of killing the assailant.⁴⁰⁶

Orgê as the “desire for revenge”⁴⁰⁷ became problematic at the time when physical revenge fell out of use and was supplanted by court proceedings. With lawsuits becoming acceptable means of revenge, going to court did not do away with anger, but kept it under control.⁴⁰⁸

If the anger remained within certain limits, it could be regarded as justified and even righteous.⁴⁰⁹ In a world where a person’s social status depended on his honor and good reputation, any insult necessarily aroused the anger of the offended party.⁴¹⁰ Aristotle even goes so far as to characterize a man as stupid and servile if he does not grow angry at the abuse of his person.⁴¹¹ This positive assessment of anger explains the orators’ frequent use of the concept in their own behalf⁴¹² and shows that a fit of anger was as open to interpretation as any other semantic marker of violence.

Dwelling on one’s anger in a speech was not only a convenient rhetorical device to stir up the feelings of the audience,⁴¹³ but also a way to justify one’s own problematic behavior. In the eyes of the speaker

406 Demosthenes thus presents the underlying assumption that anger should be proportionate to the offense. Cf. Konstan 2006, 67 and above 35, n. 67. The search for the right measure of violence (as of erotics) also becomes a motif in vase painting: Borg 2006, 242–243, 257.

407 Konstan 2006, 56.

408 Konstan 2006, 69. The orators often play with the concept of *orgê*, a phenomenon that warrants a more in-depth study than can be accomplished here.

409 Konstan 2006, 70–72 on anger as a legitimate response to wrongdoing, also in foreign politics.

410 Konstan 2006, 58, 75–76 regards anger as obligatory in the Athenian social system.

411 Arist. *EN* 1126a4–8.

412 Allen 2003, 76.

413 It is important to note, however, that recourse to anger is mainly reserved to *graphai*, where the *polis* as a political entity was at stake, not just money, as in the *dikai*. In *dikai*, the suing parties generally avoided the language of anger and punishment. Since *dikai* were often brought between kin and aimed for viable dispute settlements, an excessive use of the *orgê* motif could even be counterproductive (Rubinstein 2005b, 129–134). Especially in inheritance and maritime cases, cooperative values counted more than intransigence. On the strict focus on relevance and the high level of consistency reached in the *dikai emporikai*, cf. now Lanni 2006, 149–174. Kurihara 2003 shows that, on the level of ideology at least, personal enmity should only motivate private, but not public, suits. On the close connection between *orgê* and law and its treatment in tragedy, cf. Allen 2005, 385–392.

who instrumentalized *orgê* for his own sake, anger was a passion and, unlike in cases of *hubris*, his spontaneous outburst of violence happened only in response to an insult received.⁴¹⁴ According to Demosthenes, Meidias could not argue that he was carried away by a fit of anger, because he was enmeshed in a long history of transgressions.⁴¹⁵

What kind of pretext, what human or reasonable excuse will emerge clearly from his actions? Anger, by Zeus: yes, perhaps this is what he will say. When someone is carried away and acts on the spur of the moment before having a chance to think, one would say that his actions, even if performed in an insulting manner, have been done because of anger. On the other hand, if someone is detected doing something for a long time, repeatedly over many days, and in violation of the laws, his actions are certainly far removed from those done in anger, but it is clear that such a person is deliberately committing outrage.

Hence, Meidias' misconduct was worse than *orgê*, because it was not a spontaneous fit of anger, but a deliberate and planned attack on Demosthenes' honor. Demosthenes does not talk about his provocation of Meidias, but implies that Meidias did not suffer a slight from his part. Demosthenes argues that he was innocent and therefore all the more entitled to justifiable anger.⁴¹⁶ And because Meidias had insulted him in his capacity as an Athenian citizen and in his function as a *chorêgos*, Meidias deserved the anger of the whole citizenry.⁴¹⁷

Euphiletus could have argued that he was driven by passion when he killed Eratosthenes. And indeed, he does speak about the outrage he suffered and his entitlement to revenge.⁴¹⁸ But, since his careful planning and staging of Eratosthenes' "execution" was incompatible with a fit of anger, he had to think about another motivation for his deed, which he found in the fulfillment of a civic duty.⁴¹⁹ This strategy explains his emotionally detached description of the murder, which seems strange to a modern read-

414 Faraone 2003, 161 works out how closely linked masculine, righteous anger and passion (proper male behavior) were.

415 D. 21.41: ποία γὰρ πρόφασις, τίς ἀνθρωπίνη καὶ μετρία σκῆψις φανεῖται τῶν πεπραγμένων αὐτῷ; ὀργὴ νῆ Δία· καὶ γὰρ τοῦτο τυχὸν λέξει. ἀλλ' ἂ μὲν ἄν τις ἄφνω τὸν λογισμὸν φθάσας ἐξαχθῇ πράξαι, κἂν ὕβριστικῶς ποιήσῃ, δι' ὀργὴν γ' ἔνι φῆσαι πεποιηκέναι· ἂ δ' ἂν ἐκ πολλοῦ συνεχῶς ἐπὶ πολλὰς ἡμέρας παρὰ τοὺς νόμους πράττων τις φωρᾶται, οὐ μόνον δήπου τοῦ μὴ μετ' ὀργῆς ἀπέχει, ἀλλὰ καὶ βεβουλευμένως ὁ τοιοῦτος ὑβρίζων ἐστὶν ἥδη φανερός.

416 On anger being justified under particular circumstances, cf. W. Harris 2001, 185.

417 D. 21.73, 123, 127, 175, 196, 215, 226.

418 Lys. 1.2.

419 Lys. 1.45–50.

er. In the end, the decision about whether or not a fit of anger was appropriate involved the assessment of its transgressive nature. An angry response to an insult suffered should ideally be in proportion to the abuse. But even retaliating on a harsher note was acceptable as long as the action taken did not entail homicide.

Transgression of Boundaries

Understanding the implications of threshold transgressions, in a literal and metaphoric sense, is a further prerequisite for the analysis of *hubris*. When Isocrates, for example, expresses the idea of breaking the law, he uses the standard formula ‘they transgressed the law.’⁴²⁰ In this and similar contexts,⁴²¹ the orators also speak of *hubris*, indicating that there is more at stake than just the violation of a law. The negative symbolism of the violent act increased with the number of boundaries transgressed. If, in this process, violence took on symbolic significance, the threshold metaphor can even be expanded in its spatial dimensions. The best example, again, is probably Meidias’ striking of Demosthenes. Meidias’ punch deeply hurt Demosthenes’ personal honor, not only as a private citizen, but also as *chorêgos* failing to fulfill his religious, cultural, and political functions. Since multiple threshold transgressions occurred in public, communication with the spectators took place on a symbolic level. The audience had in mind the social rules that *chorêgoi* had to observe in interactions with each other at high religious festivals. They understood well Meidias’ multiple deviations from the model in their symbolic implications.

A perpetrator would argue along different lines. Either he would downplay the violence he had exerted or he would ascribe a positive value to it, if he could not deny the transgression of laws and social conventions. In the first case, he would claim that he had violated only a few thresholds, if any at all. His violence was justified because it was either self-defense or directed against a non-citizen or someone who could no longer be regarded as a citizen. From this perspective, his action was irrelevant and did not carry a special symbolic meaning. In the latter case, his argumentation was similar, but he would go on the offensive by charging his actions with positive meaning. In both cases, he would portray his own

420 Isoc. 20.7: τὸν νόμον παρέβησαν (transl. Riess).

421 E.g., Isoc. 20.4; Lys. 3.5–8, 37.

violence as being in the interest of the Athenian state and the upkeep of its social and political order.

The ambivalent notion of anger and, above all, the threshold metaphor, help us to understand better the notion of *hubris*. The more thresholds that were violated, the more the victim suffered from *hubris* and felt *orgê* at the outrageous act. While the victim would characterize his opponent with *hubris*-words,⁴²² he would emphasize his own self-restraint and insist that his actions were all located within the boundary of acceptable behavior. Far from exercising *hubris* himself, he was provoked by his hybriistic opponent to resort to legitimate counter-measures to fend off aggressions.

Hubris

For generations, scholars have tried to pin down the definition of *hubris*, but so far they have not come to an agreement.⁴²³ Demosthenes and Aeschines do cite the law of *hubris*,⁴²⁴ but the underlying meaning is taken for granted by the Athenian lawgiver, who saw no need for spelling it out. Hundreds of passages scattered all across Greek literature mention *hubris* in manifold contexts. Aristotle analyzes the phenomenon of *hubris* in detail and strives for consistency,⁴²⁵ and yet the exact meaning of *hubris*

422 Good examples: Lys. 3; Isoc. 20; D. 21; 54. Cf. also Antiphon 4.1.6.

423 Todd 1993, 270–271; Garner 1987, 34. A good summary of the discussion is MacDowell 1990, 17–21.

424 D. 21.47–48; Aeschin. 1.15–16. I quote Aeschines' paraphrase (1.15), not the spurious inserted document: τὸν τῆς ὕβρεως, ὃς ἐνὶ κεφαλαίῳ ἅπαντα τὰ τοιαῦτα συλλαβὸν ἔχει· ἐν ᾧ διαρρήδην γέγραπται, ἐάν τις ὕβριζῃ εἰς παῖδα (ὕβριζει δὲ δὴ πού ὁ μισθοῦμενος) ἢ ἄνδρα ἢ γυναῖκα, ἢ τῶν ἐλευθέρων τινὰ ἢ τῶν δούλων, ἢ ἐὰν παράνομόν τι ποιῇ εἰς τούτων τινά, γραφὰς ὕβρεως εἶναι πεποίηκεν καὶ τίμημα ἐπέθηκεν, ὃ τι χρὴ παθεῖν ἢ ἀποτεῖσαι, 'The law of outrage (*hybris*), which sums up in a single statement all such acts. In this law is written explicitly that if anyone commits outrage against a boy (and anyone who hires him commits outrage, I imagine) or man or woman, whether free or slave, or if he does anything contrary to law to any of these, it has allowed for an indictment (*graphê*) for outrage and prescribed assessment of the penalty he is to suffer or pay.' On this law as issued by Solon, cf. Fisher 1992, 81–82.

425 Arist. *Rh.* 1373a35; 1373b38–1374a15; 1378a31–33; 1378b13–30; 1379a30, 32; 1380a29; 1380b5; 1382b35–1383a3; 1384a16–19; 1385b19–24, 31; 1389b7, 12; 1390a19; 1390b32–34; 1391a14–19; 1395a1; 1398a25; 1402a1–2; 1408a16. Phillips 2000, 276–278 provides an English translation of some of these passages.

remains elusive and has given rise to various scholarly debates.⁴²⁶ While no one would question Cohen's catch-all definition encompassing physical violence, verbal insult, and sexual outrage including rape, adultery, and seduction,⁴²⁷ the term has even wider implications and the discussion has centered upon the question of whether the commitment of *hubris* always required a victim, or if excessive self-assertion ("thinking big") was already enough to account for *hubris*. The first position is vehemently represented by Fisher, who has provided a seminal study of all instances of *hubris* in Greek literature.⁴²⁸ According to him, *hubris* is "the committing of acts of intentional insult, of acts which deliberately inflict shame and dishonor on others."⁴²⁹ Thus, *hubris* is unthinkable without an object. Cantarella and Gagarin have basically followed Fisher.⁴³⁰ This view is disputed by Cairns,⁴³¹ Dickie,⁴³² Michelini,⁴³³ MacDowell,⁴³⁴ and Hooker.⁴³⁵ They all emphasize the importance of dispositional factors on the side of the *hubristês*. *Hubris* is an over-confident state of mind and excess energy, based mainly on youth⁴³⁶ and wealth, which drives a man to use his abundant power self-indulgently. Cairns even goes so far as to equate *hubris* with "thinking big,"⁴³⁷ suggesting that this kind of arrogant attitude alone constituted *hubris* and did not necessarily involve the infliction of dishonor upon a victim. It can, however, find its outlet in different actions, for example, in beatings and killings.⁴³⁸ Thus, an insult is recognizable in most cases, "but the insult consists not in an act or an intention to act, but

426 MacDowell 1990, 18–23 provides a good overview of the history of research. The debate on the time of origin of the *hubris* law is irrelevant in the context of this book.

427 Cohen 1991a, 185. Cf. his detailed observations in Cohen 1995, 121–126, 143–162.

428 Fisher 1992.

429 Fisher 1992, 148; similar Fisher 1992, 1, 25, 56, 493 et al. Cf. Fisher 1990, 126 and 1976, 185–187, where he even goes so far as to claim that his definition fits all occurrences of *hubris* in Greek literature; cf. also 1979, 44–45, where he manages also to fit problematic passages into his concept.

430 Cantarella 1983; Gagarin 1979a, 230.

431 Cairns 1996, 1; 1994 (review of Fisher 1992).

432 Dickie 1984.

433 Michelini 1978.

434 MacDowell 1990, 18–23 (most explicitly); 1978, 129–132; 1976, 23.

435 Hooker 1975.

436 On the connection between youth and *hubris*, cf. in detail Fisher 1992, 97–99.

437 Cairns 1994, 78.

438 MacDowell 1990, 19, 21–22; 1978, 129. Cairns 1996, 1 summarizes the debate.

in the impression created by a disposition of excessive self-assertion.”⁴³⁹ Although Cairns has indeed managed to bridge the divergent opinions as much as possible with this and similarly subtle formulations,⁴⁴⁰ and although there is much common ground among scholars today concerning our understanding of *hubris*, a fundamental uncertainty remains in the absence of any contemporary definition.

A performative interpretation of the phenomenon of *hubris* can further reconcile the different views. The Athenians deliberately avoided precise definitions. On the contrary, on the basis of cultural preconceptions, they insisted on “defining” the meaning of *hubris* every day afresh in the law courts. This is common knowledge,⁴⁴¹ but needs to be expanded. The Athenians were able to do so because they saw and sensed what *hubris* was. Whether or not there was a victim involved, hybriistic behavior had to be displayed on the interactionist level and was coined as such on the representational level, where litigants and judges ascribed the sense of *hubris* to certain transgressive acts. Research has taken the famous passage in D. 21.72 as one of the best descriptions of dispositional factors, here with a victim involved.⁴⁴²

It was not the blow that aroused his anger, but the humiliation. Being beaten is not what is terrible for free men (although it is terrible), but being beaten with the intent to insult. A man who strikes may do many things, men of Athens, but the victim may not be able to describe to someone else even one of these things: the way he stands, the way he looks, his

439 Cairns 1994, 78.

440 Cairns 1996, 32: “Self-aggrandisement constitutes an incursion into the sphere of others’ honour, because the concept of honour is necessarily comparative. Thus the reason why MacDowell, Dickie, and others ought to recognize that their accounts of *hybris* should be firmly located within the concept of honour is also the reason why Fisher should accept that the essential relationship between *hybris* and dishonour can accommodate purely dispositional, apparently victimless forms of self-assertion.” Harris 1992, 74 also thinks that the different standpoints are not irreconcilable.

441 E.g., Cohen 1995, 152–153; MacDowell 1990, 22.

442 D. 21.72: οὐ γὰρ ἡ πληγὴ παρέστησε τὴν ὀργήν, ἀλλ’ ἡ ἀτιμία· οὐδὲ τὸ τύπτεσθαι τοῖς ἐλευθέροις ἐστὶ δεινόν, καίπερ ὃν δεινόν, ἀλλὰ τὸ ἐρ’ ὕβρει. πολλὰ γὰρ ἂν ποιήσειεν ὁ τύπων, ὃ ἄνδρες Ἀθηναῖοι, ὃν ὁ παθὼν ἐνὶ οὐδ’ ἂν ἀπαγγέλλαι δύναιθ’ ἐτέρω, τῷ σχήματι, τῷ βλέμματι, τῇ φωνῇ, ὅταν ὡς ὕβριζων, ὅταν ὡς ἐχθρὸς ὑπάρχων, ὅταν κονδύλοις, ὅταν ἐπὶ κόρρηι. ταῦτα κινεῖ, ταῦτ’ ἐξίστησιν ἄνθρωποις αὐτῶν, ἀήθεις ὄντας τοῦ προπηλακίζεσθαι. οὐδεὶς ἂν, ὃ ἄνδρες Ἀθηναῖοι, ταῦτ’ ἀπαγγέλλων δύναιτο τὸ δεινὸν παραστήσαι τοῖς ἀκούουσιν οὕτως, ὡς ἐπὶ τῆς ἀληθείας καὶ τοῦ πράγματος τῷ πάσχοντι καὶ τοῖς ὁρώσιν ἐναργεῆς ἡ ὕβρις φαίνεται (emphasis added).

tone of voice, when he strikes to insult, when he acts like an enemy, when he punches, when he strikes him in the face. When men are not used to being insulted, this is what stirs them up, this is what drives them to distraction. No one, men of Athens, could by reporting these actions convey to his audience the terrible effect of outrage in the exact way that it really and truly appears to the victim and those who witness it.

While I do not want to deny the presence of dispositional factors in this passage, I would like to emphasize rather the performative side of this presumptuous state of mind. The ‘humiliation’ and ‘intent to insult’ must be seen or felt to count as *hubris*; otherwise it is not tangible. In most cases, as in the above-quoted example, and here Fisher is right, the contemptuous behavior has a target. Conon’s rooster dance above Ariston as he lay on the ground,⁴⁴³ and the maltreatment of Pittalacus, the demolition of his furniture, and the killing of his fighting cocks⁴⁴⁴ are further prime examples, to name just a few. In other cases, and here MacDowell and his supporters are right, hybristic behavior can do without a concrete victim.⁴⁴⁵

Will you be the only person in the world who has the greatest reputation for being stuffed with so much arrogance toward everyone that even those who have nothing to do with you get irritated when they see your pushiness, your shouting, the way you strut around with your entourage, your wealth, and your abuse—and then find yourself pitied the minute that you are on trial?

What both quoted passages have in common is that the *hubristês* displays his self-indulgent state of mind, with or without a victim. A tone, a look, a gesture, a deed is symbolically charged with the notion of *hubris*, because it is performed in front of an audience. Thus, a performative analysis of *hubris* cases can help us understand better the complex phenomenon and bridge gaps in research.⁴⁴⁶

Besides its performative nature, the second major component of *hubris* is its transgressive nature.⁴⁴⁷ Since the body of an Athenian citizen

443 D. 54.9.

444 Aeschin. 1.53–62. Cf. Fisher 2004.

445 D. 21.195: σὺ μόνος τῶν ὄντων ἀνθρώπων ἐπὶ μὲν τοῦ βίου τοσαύτης ὑπερφηφάνιας πλήρης ὢν [πάντων ἀνθρώπων] ἔσει φανερώτατος, ὥστε καὶ πρὸς οὐδὲν μηδὲν ἐστί σοι πρᾶγμα, λυπεῖσθαι τὴν σὴν θρασύτητα καὶ φωνὴν καὶ [τὸ] σχῆμα καὶ τοὺς σοὺς ἀκολουθοὺς καὶ πλοῦτον καὶ ὕβριν θεωροῦντας, ἐν δὲ τῷ κρίνεσθαι παραχρῆμ’ ἐλεηθήσει; (emphasis added).

446 Cf. the very similar passage at Isoc. 20.5–6.

447 Fisher 1979, 44–45 stresses the transgressive nature of *hubris*.

was inviolable,⁴⁴⁸ any infringement upon a citizen's body could be regarded as *hubris*. Nicostratus sent a free Athenian boy onto Apollodorus' property to pluck some of his rose blossoms, in hopes that Apollodorus would assume the boy was a slave, tie him up, and beat him. Nicostratus could then have indicted him for *hubris*. The passage implies, contrary to the above-mentioned law of *hubris*,⁴⁴⁹ that tying up and hitting a slave was not *hubris*.⁴⁵⁰ Themistius of Aphidna raped a Rhodian lyre player at the Eleusinia and was executed as a consequence.⁴⁵¹ We may hypothesize that she was a free woman; otherwise her rape would not have warranted the death penalty for the rapist. That freeborn Greek women enjoyed a minimal protection of their bodies, even as prisoners of war, is shown by the incident of Aeschines' maltreatment of an Olynthian captive woman at a banquet in Macedon.⁴⁵² Euthymachus, too, suffered the death penalty, because he had put an Olynthian girl, presumably a prisoner of war, in his brothel.⁴⁵³ In this last case, we see that the detention of a free man or woman was a serious crime and was considered *hubris*, because a citizen's body had been violated. We have more and ample evidence. Teisis' binding of Archippus to a pillar and his whipping throughout the night is a prime example of outrageous, hybriistic behavior.⁴⁵⁴ Menon, the miller, was executed because he had retained a free boy from Pallene in his mill.⁴⁵⁵ Pancleon claimed to hail from Plataea and therefore to be an Athenian citizen, but Nicomedes and the speaker of Lysias 23 contested this allegation. The former even tried to seize Pancleon by claiming that he was his slave. After a brawl, Pancleon was car-

448 According to Demosthenes, the laws protected the Athenian citizen's body and encouraged disputants to handle conflicts in a noncorporal manner: D. 21.178–181; D. 22.53–56. There is also epigraphic evidence, mainly honorary decrees that protect the foreign honoree like an Athenian citizen, e.g., IG II² 72, 73 = IG I³ 179; IG I³ 164, 228; AG XVI 20; SEG XXXIII 96; StV II 268 = SEG XXXI 67 = SEG XLV 47 (Second Athenian League); IG II² 46 = StV II 235 = AG XVI 35 (agreement between Athens and Troizen).

449 Cf. above 120, n. 424.

450 Ps.-D. 53.16. Cf. on this passage Bers 2003, 62, n. 30 and above 88, n. 296.

451 Din. 1.23: τὴν Ῥοδίαν κιθαρίστριαν ὕβρισεν Ἐλευσινίοις, 'he assaulted the Rhodian lyre player at the Eleusinia.'

452 D. 19.196–198; Aeschin. 2.4, 153–155. Cf. above 89–90.

453 Din. 1.23.

454 Lys. fr. CXXIX 279.

455 Din. 1.23. Cf. Phillips 2000, 205 on slave labor. Lesis' master, however, can subject his apprentice boy to any kind of torments because of his slave status. Cf. above 89, n. 300.

ried off by force, which caused turmoil in light of his unclear citizenship status.⁴⁵⁶ In Lysias 3, the citizenship status of Theodotus, a male prostitute, was unclear, although he undoubtedly came from Plataea. He was an object of desire for both Simon and the speaker. Whereas Simon felt entitled to drag him off by force several times because he regarded him as a slave, the speaker rather treats these raids as hybriatic abductions of a free citizen.⁴⁵⁷ In one instance, the detention of an Athenian citizen definitely led to a *graphê hubreôs*. This is the only securely attested case of this legal procedure.⁴⁵⁸ Diocles had locked up his brother-in-law and prevented him from fulfilling some civic duties, as a result of which he lost his civic rights (*atimia*). This outrage caused someone to file a *graphê hubreôs* against Diocles, but we do not know the verdict. It is telling that Alcibiades' detention of the painter Agatharchus in his house for three months caused considerable ill feelings, but did not have legal consequences.⁴⁵⁹

In brief, *hubris* was the open and performative display of an excessive attitude that transgressed the flexibly defined domain of good behavior. The way in which this arrogance was performed, with or without a victim, was secondary to the definition. It comes as no surprise that the rich and young were especially prone to *hubris*, because they were eager to show off their superiority (cf. Arist. *Rh.* 1389a).

456 Lys. 23.

457 Lys. 3.11–12, 15, 37. Cf. the similar anecdote about Phrynion, Stephanus, and Neaera (Ps.-D. 59.40).

458 Is. 8.41 and fr. 5. Other cases: The *graphê hubreôs* brought by Apollodorus against Phormio was dropped (Ps.-D. 45.3–5). Further possible cases are Arist. *Rh.* 1374b35–1375a2; D. 21.36–40, 71–76, 175–181 (possibly *probolê* cases); Lys. fr. CXXIX 279 (maybe *dikê aikeias*) and more dubious cases, historical and fictional (Ps.-D. 53.16; Din. 1.23; Ar. V. 1417–49; Nu. 1297–1302; Av. 1035–57; Pl. 886–936). Cf. Fisher 1990, 125–126; Osborne 1985, 56. Five more *graphai hubreôs* that are only attested by speech title are listed at Fisher 1990, 133, n. 29.

459 Ps.-And. 4.17 relates that Alcibiades treated Agatharchus like a slave. D. 21.147 claims that Alcibiades caught Agatharchus in an act of trespass and was therefore entitled to detain him for a while. The scholiast explains the trespass: allegedly, Alcibiades had found the painter having intercourse with his concubine (506 Dils). Plu. *Alc.* 16.4 reports that Alcibiades released the painter with a nice gift after he had embellished his house with paintings. Unlike in all other cases, where it was strictly forbidden to detain a citizen, it was obviously permissible to do so with a *moichos* (Christ 1998b, 523). Cf. above 87, n. 292.

Tyrants

Laying hold of an Athenian citizen's body illegally links the notion of *hubris* to that of tyranny.⁴⁶⁰ In his character denigration of Androtion, Demosthenes had recourse to the Thirty Tyrants and their illegal arrests of citizens in the Agora. Androtion was worse than the tyrants, Demosthenes contends, because he sent the Eleven into citizens' homes.⁴⁶¹ With this biting remark, Demosthenes makes the metaphorical threshold transgression, so typical of *hubris*, literal and concrete. In 22.68 he widens the reproach of binding and arresting aliens and citizens alike to the more general portrait of a hybriistic man, who yells in the Ekklēsia because of his lack of self-control and calls free men slaves and slave-born.

Isocrates, in his speech *Against Lochites*, has the speaker equate his opponent, Lochites, with one of the Thirty Tyrants just because of his *hubris*.⁴⁶² Given the young age of the accused, this reproach was absurd. The offense at stake was a blow. The speaker, however, trumps up the charge and connects Lochites' *hubris* to the one exercised by the Thirty Tyrants, who 'betrayed our empire to the enemy, razed the walls of our homeland, and executed fifteen hundred of our citizens without trial.'⁴⁶³ Once more we see that the tyranny of the Thirty casts a long shadow over fourth-century discourses on violence. The arch-*hubristēs* was a tyrant, and vice versa. *Hubris* and tyranny became interchangeable constructs, mainly designed and represented in court.⁴⁶⁴

The tyrant is the embodiment of *hubris*.⁴⁶⁵ The founding myth of Athenian democracy was based on the elimination of tyrannical *hubris*

460 On the semantic development of the word, originally having the positive sense of "king," to the later negative meaning of "tyrant," cf. Parker 1998. According to Parker, the sharp semantic distinction between tyranny and kingship is Attic (170–172). Cf. above 75–78 on *hubris* and tyranny in the context of threshold violations.

461 D. 22.52 and D. 24.164 seem to be a doublet. But the Thirty, too, violated the protected sphere of the *oikos*; cf., e.g., Lys. 12.8; X. *HG* 2.4.14.

462 Isoc. 20.10–11.

463 Isoc. 20.11: αἱ παραδοῦσαι μὲν τὴν δύναμιν τὴν ἡμετέραν τοῖς πολέμοις, κατασκάψασαι δὲ τὰ τεῖχη τῆς πατρίδος, πεντακοσίους δὲ καὶ χιλίους ἀκρίτους ἀποκτεῖναι τῶν πολιτῶν.

464 The first equation is to be found in S. *OT* 873; cf. Parker 1998, 161.

465 The tyrant remains a highly ambiguous figure in the imagination of the Greeks. Cf. above 77–78. When Athenians spoke about violence, they barely attributed positive traits to a tyrant-like figure, unless the perpetrator himself played with the image of an omnipotent tyrant and thought he could get away unpunished

by Harmodius and Aristogeiton.⁴⁶⁶ In Girard's terminology, their killing of Hipparchus was an act of founding violence,⁴⁶⁷ which created something new: democracy. Tyrants operate outside the norms, transgress thresholds, violate *oikoi*,⁴⁶⁸ disrespect the inviolability of the Athenian citizen's body by executing citizens without trial, and appropriate the laws of the city. Thus, they trample on the democratic constitution and overthrow the public order of the *polis* in order to seize power illegally. Through these hybristic actions, they incur pollution and need to be driven out of the city like the Peisistratids and the Thirty Tyrants.⁴⁶⁹ When Aeschines demands that Demosthenes be cast beyond the borders of Attica,⁴⁷⁰ he widens the notion of the polluted scapegoat in the religious sense, charges it with political meaning, and applies it as a strong metaphor to his political opponent in order to crush him.⁴⁷¹ It is designed to evoke negative connotations by characterizing Demosthenes as an outsider and associating him with tyranny. Aeschines, in his speech, heaps the sins of the city upon Demosthenes. Only the driving out of the tyrant as a founding victim would enable a fresh start of democracy. In the speech against Timarchus, Demosthenes is likewise represented as a ty-

after committing violence in brazen self-confidence. D.Chr. 47.24 characterizes the tyrant as a breacher of taboos. On the characteristics of the hybristic tyrant, cf. Borg 2006, 233; with particular emphasis on Athens, cf. Rosivach 1988. On the traditional tyrant as painted by Aristotle in the fifth book of his *Politics*, cf. Blomqvist 1998, esp. 15–24.

466 Wohl 2002, 266.

467 Girard 1972.

468 Ariston and Lycurgus, in his function as logographer and *sunēgoros* for Ariston, brought an *eisangelia* against the adulterer Lycophron (Lycurg. fr. 10–11), who allegedly had undermined a house to seduce a married woman (Hyp. *Lyc.* Speech B, fr. 1.1). Cf. above 78, n. 252. Lycurgus compares him to a pirate, a robber, and maybe to Hipparchus, who also compromised the honor of a woman. With this possible reference to Hipparchus, Lycurgus directly represents Lycophron as a tyrant. Cf. Hyp. 1 in Lycophron's defense. On the procedure of *eisangelia*, cf. in detail Hansen 1975, 106–107, no. 119 (on this particular case) and Phillips 2006 *passim*.

469 On the exclusion of polluting elements, cf. Nijhawan 2005, 273.

470 Aeschin. 3.131.

471 The notion of driving out the scapegoat is deeply ingrained in Greek thought and is of tenacious longevity in terms of the exclusion of a malefactor from the community: e.g., Pl. *Lg.* 853d–855a; 862d–e; 871d; 873a–b; 874a–b; 877a–b; 880e–882c; 936c; Arist. *EN* 1180a5–14; 1 Cor. 5:11–13. Lys. 6.50–53 regards Andocides as a scapegoat who must be driven out of the community. On the concept, cf. Bremmer 1983; Burkert 1982. Cf. below 221, n. 268 on the concept of the scapegoat in malign magic.

rant for considering himself above the law.⁴⁷² It is only through stigmatizing him as a tyrant that one can commit violence against him without a guilty conscience.⁴⁷³

The atrocities committed by the Thirty Tyrants provided a foil against which illegitimate violence was “defined” during the fourth century. Hence, a litigant could always put the violence of his opponent, however trivial it was (cf. Isocrates’ allegations against Lochites), into the context of the Thirty by alluding to some of their measures, using *hubris*-words,⁴⁷⁴ or making direct allusions to tyrannical behavior. Thus, he would aggravate his charges by claiming that his opponent’s actions not only hurt him, but also endangered the existence of the *polis* as a whole. Aeschines indirectly constructs Timarchus as a tyrant-like figure through the attribution of multiple instances of *hubris*.⁴⁷⁵ Ps.-Andocides and Plutarch in his rendering of Alcibiades’ life pointedly describe Alcibiades as not caring about democracy and flaunting tyrannical traits.⁴⁷⁶

The prime example of a constructed tyrant, however, is Meidias,⁴⁷⁷ whom Demosthenes models after Alcibiades.⁴⁷⁸ Demosthenes charges Meidias’ punch, his previous actions, and his whole *habitus* with a great deal of symbolism. The threshold metaphor is used vividly: Meidias ‘oversteps the laws’ (παραβᾶς τοὺς νόμους) or, referring to the disenfranchised Straton, wreaks havoc on them.⁴⁷⁹ In order to gain control over the state, he tries to bribe state officials and intimidates them.⁴⁸⁰ But Demosthenes aligns Meidias with tyranny even more directly. Philippides, Mnesarchides, Diotimus, and Neoptolemus, all rich trierarchs, supported him and

472 Aeschin. 1.173.

473 Cf. Davis 1975, 181–182.

474 In his speech *Against Simon*, the unknown speaker in Lys. 3 makes almost excessive use of *hubris*-words. He also characterizes Simon as a sycophant and thus as anti-democratic (Lys. 3.44).

475 E.g., Aeschin. 1.62, 107–108 (including excessive lust for married women), 137, 141.

476 On Alcibiades the tyrant, cf. Jordović 2005, 131–168.

477 Wilson 1991/92 comes closest to my argumentation.

478 Demosthenes 21.66–67 alludes to Alcibiades; in 21.143–150 he names Alcibiades and directly compares Meidias to him. The similar contexts in which Alcibiades’ and Meidias’ attacks took place almost imposed this comparison. Cf. MacDowell 1990, 36.

479 D. 21.91, 96. Cf. also D. 21.26.

480 D. 21.85–86.

aimed at getting control of the state, according to Demosthenes.⁴⁸¹ Painting Meidias as an arch-*hubristês* throughout the speech further bolstered Demosthenes' claim that Meidias was a ruthless would-be tyrant bullying the whole citizenry.⁴⁸² Meidias also threatens the population, especially the weak and poor, with his unrestrained arrogance.⁴⁸³ D. 21.193–195 provides a perfect characterization of the tyrant through a textbook description of *hubris*.⁴⁸⁴ Other passages give the impression of an Athenian mafia,⁴⁸⁵ within which Meidias, according to Demosthenes, seems to have been a major player.⁴⁸⁶ All these reproaches culminate in a universal accusation: by attacking the laws, Meidias assaults the city of Athens and the gods.⁴⁸⁷

The commitment of violence and the discourse on it were shaped by the image of the tyrant. When opponents were slandered as *hubristai* in court, they came close to being portrayed as tyrants and thus demonized. In this way, the conflict was exacerbated and dramatized onstage, in front of the people's courts. Gross exaggerations were the result. Neither Simon nor Lochites, neither Conon nor Meidias, neither Timarchus nor the adulterer Eratosthenes were tyrants. But *hubris* pointed to tyranny. When reading the orators we have to keep these semantics in mind. The conversation on violence followed the conversation on tyrants. The performance of the courtroom ritual created identity through the exclusion of the "other," in this case the tyrant.⁴⁸⁸ What other concept of an enemy was more readily at hand than the haunting specter of the tyrant who had to be repelled or cast out like the Peisistratids or the Thirty? Or-

481 D. 21.209. If this Philippides is identical to the one Hyperides accused, we know that he was an oligarch (MacDowell 1990, 12), so that Demosthenes' insinuation makes sense. On the convergence of personal and political enmity, cf. Rhodes 1996.

482 On the characterization of Meidias as the archenemy of the citizenry, cf. Ober 1994, 93–94; on Meidias as the archetypal tyrant and barbarian, cf. Wilson 1991/92.

483 D. 21.123–124, 131, 135, 204.

484 Cf. the characteristics of a tyrant as described by Hdt. 3.80.5.

485 Cf. Fisher's (1998b) nuanced answer to the question whether or not we can speak of organized crime in Athens. There were organized gangs of muggers and thieves (Fisher 1998b, 54, 59, 83), but they were not a common phenomenon.

486 D. 21.201, 207, 209, 213. On Meidias' aspiring to tyranny, cf. the scholion on D. 21.200 (666 Dilts), cited by Phillips 2000, 230.

487 D. 21.127.

488 Johnstone 1999, 132 claims that litigation in general "created, reinforced, and reproduced" group identities. Cf. Farenga 2006, 6–7.

ators took delight in mobilizing this motif and instrumentalizing it. In dramatic form, they appealed to their fellow citizens to stand together in solidarity so as to fend off the imminent threat posed by a hybristic tyrant. The performance of a court speech enacted the community-creating function of the tyrant/*hubris* discourse.⁴⁸⁹

Violence was assessed within political parameters, abhorrence expressed in political terminology. Violence involved the *polis* on a fundamental level, because the physical attack on a citizen's body was an assault on the community as a whole. Democracy could only be upheld if the inviolability of every individual citizen was guaranteed. The violence discourse was inextricably linked to the discourse on democracy. As a consequence, the violence discourse was extremely politicized. Any speaker would adhere to these discursive patterns by also representing his own violence in political vocabulary. He was driven by democratic virtues. His measures were lawful, anti-tyrannical, and amounted to civic duty. From this perspective, his violence could even be called democratic. The fending off or expulsion of the would-be tyrant was a personal duty as well as a political necessity.⁴⁹⁰

Barbarians

If the politicization of the perception of violence is expressed in an ethno-cultural fashion, the *hubristês* becomes a barbarian.⁴⁹¹ All of the above-

489 It is telling that Plato constructs the tyrant along the same line of dichotomies as the orators. Excessive democracy ultimately generates its opposite, tyranny (Pl. *R.* 564a). Famous is Plato's description of the tyrant and its soul at the beginning of *R.* 9. He cannot check his excessive passions, mainly his mad desires for drinking and sex (*R.* 573c). He does not even refrain from beating his mother and father (*R.* 574b–c). Cf. below 273–274; 305–306 on father-beating committed by the comic type of the hybristic tyrant.

490 This connection helps explain the *graphê hubreôs* as a public suit. Anyone who was concerned (*ho boulomenos*) about the state could bring this serious charge, also to knock out a potential tyrant and save the city. A *dikê aikeias* did not carry these associations. When the prosecutor brought a *dikê aikeias*, he would not imply the reproach of tyrannical *hubris*. In some cases (e.g., D. 54.1. explicitly; Isoc. 20.5. implicitly), the speaker would claim that he was entitled to a *graphê hubreôs*, but that, for reasons of self-restraint, he had chosen the milder procedure of the *dikê aikeias*.

491 Cf. Fisher 1992, 500–504. On the Greek perception of barbarians in general, cf. Mitchell 2007; Harrison 2002, especially the contributions by Lissarague and

mentioned semantic markers “defining” the *hubristês* and the tyrant also apply to the barbarian, albeit with slightly different undertones.⁴⁹² The barbarian comes from outside and is oblivious to Greek cultural values and norms; he self-indulgently breaks rules and violates not only Athenian citizens’ bodies, but also those of his own subjects. Barbarians transgress boundaries in general. Meidias is a barbarian because he cannot comply with Athenian law and hates religion.⁴⁹³ Against the contrasting foil of the barbarian, speakers build up positive self-images as cultivated Athenians. By rendering Aristogeiton ‘tactless’ and ‘un-Greek,’⁴⁹⁴ the speaker implies that Greeks are tactful. This passage bears witness to Athenian self-awareness and the strategy of litigants to represent their own violence as civilized because squarely located within the established norms of democratic behavior.

Insight into the politicization of the expression of violence sheds light on the scholarly debate between Hansen and Ober, who stand, respectively, for a political and social historical approach to ancient Athens. The Athenians could not but express social issues, among them violence, in political terms. Thus, Hansen’s insistence on political history and the history of institutions and Ober’s plea for a social and ideological history of Athens are two sides of the same coin and supplement each other.⁴⁹⁵

Old versus New Discourse Strategies

The overall strategy of each speaker was to portray his own actions in a positive light and make them appear in conformity with the new, pacifying discourse of the democratic *polis* that emphasized moderation and self-restraint, cooperative virtues that were broadly discussed in philosophy, where they figure as *enkrateia* (‘self-control’) and *sôphrosunê*

Nippel. Cf. also Nippel 2001. On the barbarian as constructed on the Athenian dramatic stage, cf. Hall 2006, 184–224. On the Greek-barbarian dichotomy and its contribution to the formation of Athenian self-identity, especially in tragedy, cf. Hall 1989a.

492 Since barbarians (foreigners) could ideologically be equated with slaves, they were also subject to torture: DuBois 1991, 125–126. Cf. above 88, n. 297.

493 D. 21.150.

494 D. 26.17: οὗτω σκαίος ἐστὶ καὶ βάρβαρος.

495 E.g., Hansen 2002; 1989a; 1989b; Ober 2005; 1996; 1989, 35, 42. Hunter 1994, 185–189 is succinct on this debate. Similar to Hansen is Herman 2006, 228, who sees the statehood of Athens as beyond doubt.

(‘soundness of mind,’ ‘temperance’).⁴⁹⁶ The orators instead use the word *praotês* (‘mildness,’ ‘gentleness’) to express the new set of values.⁴⁹⁷ The reasons for this fundamental shift from the archaic and aristocratic discourse on revenge and violent self-assertion to much more peaceful forms of conflict resolution are still unclear,⁴⁹⁸ but by the fourth century, the new concepts had prevailed, at least on the discursive level. That is why some litigants strove hard to appear to be in line with these “modern” expectations. Euphiletus, who had so blatantly violated them, re-interpreted his murder of Eratosthenes as a civic duty to protect his *oikos* and, in so doing, to maintain the order of the state. The elderly speaker in Lysias 3 withdrew from the city together with the male prostitute Theo-

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- 496 It has to be noted that *enkrateia* and *sôphrosunê* were originally aristocratic concepts that people appropriated for themselves more and more under the democracy. By the fourth century, these values had become thoroughly “democratized.” *Enkrateia* is an important topic in Plato, who often links the term to *sôphrosunê*. Aristotle frequently contrasts *enkrateia* to *akrasia* (‘want of self-control,’ ‘incontinence’), which also figures prominently in Plato. On *akrasia*, cf. now Bobonich – Destrée 2007, esp. 119–138 (on *enkrateia* in Plato) and Pakaluk 2005, 233–256. Plato emphasizes the closeness between *sôphrosunê* and *dikaïosunê* (‘righteousness,’ ‘justice’). On *sôphrosunê* in Plato, cf. Rademaker 2005, 1–7, 251–356. *Sôphrosunê* is often contrasted with *orgê* (Borg 2006, 253–254). Aristotle also contrasts *sôphrosunê* and *akolasia* (‘licentiousness,’ ‘intemperance’). It is interesting to note that the Old Oligarch ascribes social connotations to this negative term. According to him, slaves and metics, above all, indulge in *akolasia* (Ps.-X. *Ath.* 1.5.). Aristotle equates *akolasia* with *huperbolê* (‘superiority,’ ‘excess’). In Arist. *EN* 1145a15–1152a36, esp. 1146b27–1147a18 and 1151b32–1152a6 *enkrateia* and *sôphrosunê* are opposed to *akrasia* and *akolasia*. Cf. Rademaker 2005; Roisman 2005, 176–185; North 1966 on *sôphrosunê*.
- 497 Especially Demosthenes and Isocrates. Cf. Arist. *EN* 1125b26–1126a1 on *praotês*. On *sôphrosunê* in the orators, cf. Rademaker 2005, 233–247. While Isocrates aligns himself with philosophical discourses by using *praotês*, Demosthenes charges the term with a distinct political meaning by putting it in the context of democracy, philanthropy, and the laws. He constructs a strict opposition between this term and *aselgeia* (‘licentiousness,’ ‘wanton violence’), which he attributes to his archenemy Meidias.
- 498 Herman 2006, 266, who attributes the utmost importance to the shift from statelessness to statehood, regards “the driving force behind the transition itself” as an “enigma.” Ideally, one could speak of a civilizing process, as paradigmatically described by Elias ⁵1978. Cf., however, the sharp criticism of Elias by Dinges 1998, 187. Sofsky 1996, 209–226 is reminiscent of Elias, but he stresses the self-regulating capacities of the individual more. Culture is based on the repression of violence. The domestication of instincts and passions is the precondition for every kind of culture. This comes close to Plato’s and Aristotle’s understanding, as pointed out above.

dotus, probably because he could no longer endure Simon's *Rügebrauch* harassments, but he represents his dodging as a conciliatory contribution to the cooling off of the conflict.⁴⁹⁹ According to Demosthenes, Meidias has no 'human or reasonable excuse' for his misdeeds.⁵⁰⁰ And, what is more, Meidias never exerted self-control, so demanding his execution is justified.⁵⁰¹ In a grand *captatio benevolentiae*, Demosthenes hails his audience as responsible citizens who abstain from violence and verbal abuse. Other *chorêgoi*, though competing against each other, did refrain from physical attacks.⁵⁰² The contrast between the judges' role as ideal representatives of democratic values and Meidias' outrageous behavior highlights his outsider position as an evildoer opposing mainstream attitudes. Ariston characterizes himself as peaceful and inoffensive, always eager to de-escalate the conflict with Conon and his sons.⁵⁰³ Since they were *hubristai* and clothes-snatchers (*lôpodutai*), Ariston could have brought a *graphê hubreôs* against them or led them away as *kakourgoi* in an *apagôgê* procedure. The fact that he did not resort to these public suits, which could have resulted in their execution, underscores his low-key reaction and self-restraint.⁵⁰⁴ The whole demeanor of a speaker should comply with and exude the democratic virtues of moderation and decency. Aeschines contrasts Timarchus' inappropriate behavior in the Assembly with Solon's elegance as enshrined in the statue of Solon on Salamis.⁵⁰⁵ Demosthenes exposes Androtion's misconduct in the Ekklêsia in similar terms.⁵⁰⁶

In stark contrast to Euphiletus' action and argumentation, Demosthenes persuasively invokes the concept of a monopoly on violence held by the state and finds powerful words to formulate a political understanding of state control that sounds surprisingly modern to us. It is not the victim's prerogative to strike back when wronged, he says, but the task of the state to seek redress for the victim.⁵⁰⁷ In this way, retaliation is immensely curtailed. Notwithstanding Demosthenes' argumentation in his own favor, Athens did go further than any other ancient community

499 Lys. 3.10.

500 D. 21.41: τίς ἀνθρώπινη καὶ μετρία σκῆψις.

501 D. 21.70.

502 D. 21.10, 58–61.

503 D. 54.24.

504 D. 54.1, 8, 24.

505 Aeschin. 1.25–26. Cf. 3.257.

506 D. 22.68.

507 Cf. above 78, n. 253.

we know of in its endeavor to restrain the private use of violence. But whether or not it was successful is an entirely different matter. In the absence of a functioning police apparatus in our sense, of state prosecutors, and of a consistent substantive law, the state had to rely on a considerable amount of self-help. Paradoxically, it was only the citizens' commitment and their willingness to engage directly in a quarrel that guaranteed the observance of the laws. The laws in themselves were powerless.⁵⁰⁸ Here lies the problem of the pre-modern state, even of a community as politically and philosophically advanced and refined as that of classical Athens. If the citizens fall short of the high expectations the lawgiver has vested in them, the validity of the laws is at stake, the monopoly on violence being nothing more than a theoretical postulate based on wishful thinking. In practice, the state's claim to the monopoly on power was always doubtful. Not even the elites cared about state representatives when they wanted to push through their own claims or avert state interference. The trierarch Theophemus immediately struck the incoming trierarch who demanded the return of some naval equipment. Theophemus paid no regard to the presence of a servant of the magistrates who backed the repossession of the equipment.⁵⁰⁹ This lack of law enforcement and the individual's need to exert self-help brings us to the longevity of the Homeric violence discourse, which continued to advocate retaliation and the infliction of shame upon a rival in the never-ending game for power and wealth, as channeled and regulated as it may have been.

Many instances show that archaic values had a long afterlife. Three examples shall suffice in this context. In quoting the lawful homicide statute, Demosthenes presents the killing even of one's friends as still permitted in his own time, if the honor of one's womenfolk was at stake.⁵¹⁰ Isocrates' famous description of how escalation works makes sense only if we accept that one aggressive act responds to a previous one.⁵¹¹ The fact that this cycle of revenge actions, including homicide, existed demonstrates that the fighting parties did not always go to court, but sometimes took personal revenge for the harm they had suffered. The second pillaging of the speaker's farm in Ps.-D. 47.63–66, for example, was an act of pure revenge.⁵¹²

508 D. 21.224–225.

509 Ps.-D. 47.35–38.

510 D. 23.56.

511 Isoc. 20.8–9.

512 Another *locus classicus* for the escalation of violence is D. 54.17–19.

Prosecutors went to great lengths to ascribe unfashionable, because outdated, behavior to their opponents. Antiphon's tetralogies often breathe *pre-polis* discourses.⁵¹³ In the First Tetralogy, the prosecutor accuses the defendant of defying the new canon of values and taking pride in sticking to the old concept, even at the cost of his life: for the killer, it was apparently better to kill his enemy and be executed than to be a coward.⁵¹⁴ In this formulation, the friction between the old and new ethics is neatly expressed. Because the killer had suffered multiple defeats in court by his long-term enemy, he finally decided to kill him. As fictional as this speech may be, it shows that the apparent settlement of a conflict in court did not preclude further violence, but, in this case, generated even more violence on an increased scale.

Meidias is the prime example of a man who allegedly lacked every kind of self-control.⁵¹⁵ At first glance, Demosthenes sympathizes with people who act in accordance with the old violence discourse and take revenge after being insulted. But Demosthenes pretends to approve of such problematic behavior only to show how much more reason he had to strike back after Meidias' blow and to highlight instead his temperance in going to court.⁵¹⁶ The contrast between the obsolete aristocratic discourse on honor and shame and the new, moderate *polis*-discourse aptly characterizes the opponent and the speaker.⁵¹⁷ Meidias and Euphiletus deliberately chose archaic practices to damage or knock out opponents, although more peaceful means stood at their disposal. Their cases are particularly interesting because of the clash between discourse and practice. In Euphiletus' case, at least, we see that it was possible to argue in blatant contradiction to the facts.⁵¹⁸

It is true that the new democratic discourse problematized the old one, but it never supplanted it. As has become clear from the discussion above, both coexisted side by side in uneasy tension, overlapping and at times clashing.⁵¹⁹ To the extent that a speaker would portray himself as

513 According to Gagarin 2005, 367–368 they are steeped in Homeric values and seek the proximity to tragedy and myth.

514 Antiphon 2.1.8.

515 Cf. also the negative characterization of Aristogeiton at, e.g., D. 25.32.

516 D. 21.71–74.

517 Cf. Roisman 2003, 136–141 on the two diametrically opposed ideologies in the Meidias speech that nonetheless do not preclude each other.

518 Cf. above 53–55.

519 As powerfully described, e.g., by Cohen 2005c, 220; 1995, 66–68; Roisman 2005, 76; Scheid 2005, 410; Adkins 1972, 112–119 (new cooperative values as *aretê*).

adhering to the new concept of moderation, he would ascribe unrestrained, brutal, and anti-democratic behavior to his opponent. The enemy would embrace the old discourse of revenge and would cling to a completely outdated model of social interaction. Instead of appealing to the law courts, the hybriatic rival believed in his bodily strength and felt entitled to strike citizens at whim. These reproaches evoked highly negative associations: the Thirty Tyrants had killed 1,500 citizens without proper trial.⁵²⁰ In the face of a powerful bully, the weak were defenseless,⁵²¹ and the courts turned a blind eye to his misdeeds.⁵²² In fact, the fear of the judges to convict such a rascal left considerable scope of action for all those who thought themselves superior to others. If one was rich and powerful enough, one could afford to exact private vengeance, because some were more equal than others—so the rhetorical argumentation went. In contrast to his tyrannical opponent, the speaker would endorse the state monopoly on violence. In relying on the laws, he would appeal to the law courts and renounce the exertion of private violence.

What almost all speakers, however, pass over in silence while claiming to espouse the new violence discourse is their use of the court system as a means of “vengeance.” Through its thrust, the performance of verbal abuse constituted character assassination. In this domain, the implications of speech-act theory still need to be exploited in full.⁵²³ Trials continued violence by different means, and time and again we see that going to court was just a phase in an ongoing long-term conflict. Two examples shall suffice here. Theomnestus and Apollodorus brought the *graphê xenias* against Neaera to attack Stephanus for private and political reasons that dated back a number of years.⁵²⁴ The quarrel between Apollodorus and Nicostratus preceding the court case continued after the trial.⁵²⁵ In addition, many speakers, especially in political trials, were eager to get rid of their rivals permanently and made a plea for the death sentence. The fact that “vengeance” was often carried out by the courts and no lon-

Flaig 2006, 39 differentiates the Homeric agonistic discourse from the discourse of justice.

520 E.g., Aeschin. 3.235.

521 D. 21.20, 30, 66, 85–86, 91, 96–98, 112–113, 123–124, 131–132, 135, 138, 143, 183, 193–195, 201, 207–213; Ps.-And. 4.36.

522 Ps.-And. 4.23.

523 A start has been made by Butler 1998 and Kelly 1994. Cf. below 152, n. 569.

524 Ps.-D. 59.

525 Ps.-D. 53.

ger by the individual does not mean that the spirit of vengeance had disappeared.⁵²⁶

Weighing all this evidence, we can say that there was a wide gap between discourse and practice. While the ideology of democratic moderation was widely accepted and proclaimed in court, people continued archaic practices, which had theoretically fallen out of use.⁵²⁷ We have to keep in mind that for every Ariston there was a Conon and for every Demosthenes there was a Meidias. Even though they may have done so less than in previous centuries,⁵²⁸ and the courts may have mediated violence that had been perpetrated in earlier times, people still engaged in brawls, fought against each other, and exerted private “vengeance,” albeit often in ways different from before. This is not to deny the qualitative jump

526 Gehrke 1987, 143. On enmity and revenge as motivations for prosecution, cf. Rubinstein 2005b, 138, n. 20 (listing all passages in the orators); Cohen 1995, 83; Hunter 1994, 128–129. On litigation as a form of feuding behavior, cf. Phillips 2008 *passim*, with 13–32 esp.; Cohen 1995, 104, 138–139. Cohen (1991a; 1990) uses, among other cases, the Meidias case in anticipation of the theses of his 1995 book. In light of this evidence, one can speak of a non-militant ideology, as Herman 1994 does, but one has to differentiate between this civil discourse and the brutal practice. Herman 1998, 610–611 vehemently argues against the allegedly inappropriate extension of the term “feud” by Cohen that also encompasses litigant behavior. Cohen 1995, e.g., 20, however, makes it clear that feud is more than merely blood feud: “feuding behavior should not be identified solely with blood feud, but should be seen as an enduring long-term relationship of conflict following a retaliatory logic.” Black-Michaud 1975, 27–28 offers a broad and minimalistic definition of “feud” that comes close to Cohen’s understanding and can also be applied to ancient Athens. In light of this broad definition of “feud,” taking vengeance and going to court do not exclude each other, as Herman, e.g., 1996, 22 thinks. Cf. above 48, n. 123 and 96, n. 327.

527 One of the best examples is Ps.-D. 47, where we gain insight into archaic practices and the official, democratically minded, and peaceful discourse that is spoken in court.

528 It is an idle undertaking to try to measure the amount of violence. The scant evidence does not lend itself to quantifying. Commissioned murders and dangerous brawls, especially related to lovers’ quarrels, seem to have been relatively frequent (Lys. 1.44; 3.39, 42). Demosthenes speaks explicitly about the frequency of physical assaults at D. 21.37: τίς γὰρ οὐκ οἶδεν ὑμῶν τοῦ μὲν πολλὰ τοιαῦτα γίγνεσθαι τὸ μὴ κολάζεσθαι τοὺς ἐξαμαρτάνοντας αἴτιον ὄν, ‘Who among you does not realize that the reason why many crimes of this sort occur is the failure to punish offenders?’ (emphasis added). Although these statements may be dismissed as stemming from the rhetorical strategy of downplaying one’s own violence, they have to be taken somewhat seriously. In order for them to be effective, they had to be plausible for the audience.

in the development of Athenian civilization from archaic to classical times, partly brought about by the emergence of the lawcourt system. But we have to bear in mind that even mediated violence is still violence and that the irrationality of the Athenian legal system, the unpredictability of the trial's outcome,⁵²⁹ as well as the understanding of court proceedings as another form of revenge,⁵³⁰ make Athenian trials fundamentally different from those of modern Western courts. In addition, the courts could only punish exemplarily, so that their function was highly symbolic. Concomitantly, law enforcement was highly selective and socially biased. All these factors contribute to the impression that the law courts were far from being perfect means of conflict resolution.⁵³¹

529 As can be seen, e.g., from the trials against Socrates, Phocion, the admirals of the battle of Arginusae, as well as the Harpalus scandal, there was almost no legal certainty.

530 Here I am leaning toward Cohen's view, which is vehemently rejected, e.g., by Herman 1998, 614. Steering a middle way between the disputants, my emphasis lies on "another form of." In contrast to Calhoun 1927, who idealizes the development of Athenian law, Hansen 1976, 121 paints a pessimistic picture of the Athenian system of law: "To the modern reader it seems striking that the driving forces behind private prosecution in public actions ostensibly were personal hatred or desire to get rid of a political opponent rather than public spirit and good citizenship. Severe penalties combined with accidental prosecution must have created a very unstable administration of justice where petty offenders were sometimes sentenced to death and executed as a deterrent whereas criminals might go unpunished if nobody would take it upon himself to initiate proceedings."

531 Harris and Herman overstate the pacifying functions of the law courts; e.g., Harris 2005; Herman 1994, 116. Cohen 2005c, 234–235 summarizes the opposing standpoints succinctly, trying to give justice to both views: "As we have seen, on the one hand, prosecutions for public offenses in Athens were informed by ideas about crime, punishment, and the rule of law that are clearly familiar to modern readers in their adherence to notions of impartial judgments dispensed in the name of the law to vindicate and prevent harms to the community as a whole. On the other hand, the incorporation of elements of self-help, summary procedures, execution without trial, and judgments based on the character, wealth, political clout, and public benefactions of the parties challenges us to understand why the understanding of crime and punishment in democratic Athens could differ so sharply from that of today. And differ not because their legal system was corrupt, primitive, or incompetent, but because the Athenian understanding of concepts of justice, democracy, and the rule of law in important ways differed fundamentally from our own." W. Harris 1997, esp. 365–366 attacks Herman for presenting a one-sided, black-and-white picture and pleads for a more nuanced view of things, situating Athens midway between a civilized society and archaic societies that indeed countenanced the blood feud for a long

Since the new discourse came to be an integral part of the democratic value system, the violence discourse was closely linked to the discourse on democracy. A violence monger was a tyrannical and barbarian *hubristês* who endangered the cosmos of the city.⁵³² The democratic *polis* could only exist if conflicts were settled by peaceful means. The courtroom ritual transmitted the new ideology to the citizenry and thus contributed to stabilizing Athens' social and political systems.

The rules of representation have shown once more that one and the same occurrence could be interpreted differently, that the line between acceptable and unacceptable behavior was dependent on the speaker's perspective and was therefore shiftable. As in the case of the rules of in-

Summary of Rules of Representing Violence in Table Form
(Dichotomies constituting flexible line; cf. table above 101):

	Unacceptable Violence (outside accepted norms, always relevant, committed by opponent, as characterized by speaker)	Acceptable "Violence" (inside accepted norms, sometimes relevant, committed by speaker, as characterized by him)
Discursive Level of Representation	problematic excessive, escalating impermissible unacceptable, transgressive tyrannical barbarian hybristic dysfunctional senseless or negative sense symbolic message/significance, not accepted by victim always relevant illegitimate anti-democratic	unproblematic restrained permissible accepted anti-tyrannical anti-barbarian anti-hybristic functional sensible, meaningful, positive sometimes symbolic message/ significance relevant vs. irrelevant = dramatization vs. normalcy legitimate democratic

time, like that of the Pentateuch or of traditional Albania. Cohen's view is also supported by Fisher 1998a, 80.

532 It is telling that Conon, in his younger years, belonged to a group of young people who engaged in deviant religious behavior. They were nicknamed "Triballoi" after a Thracian tribe (D. 54.39).

teraction, semantic units grouped in opposites make up the representation of a violent act. We can also talk about *semes* of violence structured in dichotomies on the interactionist and representational levels, the latter morally assessing and interpreting the first.

Functions of Ritualization

Most Athenians did not regard the recourse to violence as something negative *per se*. Some deemed the use of violence indispensable in certain situations simply in order to construct and represent a web of social hierarchies and power relationships. But Athenians were wary of excesses. To avoid them, Athenians gave themselves rules, normative codes of behavior that regulated the game. It is in the nature of a vibrant political community characterized by a culture of public display that these regulations were subject to discussion and manipulation. We distinguish two kinds of norms.

Semantic markers constituted rules of violent interaction that structured and limited the actual use of violence. They helped the actors to orient themselves in confused situations of conflict.⁵³³ Rules of representing violence imposed a certain order on the assessment and interpretation of violence. Both sets of rules can be understood as forms of social control and exertion of power.⁵³⁴ At the same time, both fulfilled functions on two different levels. The first level concerns the relationship between contemporaries. I refer here to the direct function of interactionist and representational rules of violence, which allowed the perpetrators to convey a certain message to the victim and the audience. The second level concerns supra-individual, societal functions. Contemporaries may not have been fully aware of these indirect functions that rules of violence also fulfilled.

Rules of violent interaction play their immediate role in transmitting a symbolic meaning to all people involved in a brawl. By following or violating a pattern, the perpetrator more or less consciously ascribed sense and significance to a violent act, thus expressing a view that the victim normally did not share. The aggressor either reasserted his social status or challenged existing hierarchies. In the first case, we can speak of affirmative violence that secured the status quo in society. In the second case, the aggressor strove to alter social positions. This violent behavior was

533 Cf. Schomburg-Scherff 1986.

534 Cf. Bell 1992, 8.

potentially innovative. This breach of thresholds visualized the opponents' vying for power. Although violence could always lead to escalation, most of the time rules of interaction helped restrain violence by making it controllable. In their pacifying function, rules of violent interaction supplemented the stabilizing functions of the courts.

This inherent quality of interactionist rules takes us to their supra-individual, societal function. In Ps.-D. 47, for example, the trierarchs perform their struggle for status and reputation in a ritual way by mutually violating the thresholds of their homes. Speaking of the societal function of these skirmishes, we could say that this showdown between two members of the elite negotiated and symbolically represented the conflict between personal autonomy and the state's prerogative to intervene.

Rules of interaction charged violent actions with a certain sense and made violence possible within strict limits. Thus, the exertion of meaningful violence helped negotiate and sometimes overcome the tensions underlying the political, social, economic, and cultural conditions of fourth-century Athens. From this perspective, most outbreaks of violence "made sense" in the Athenian system. This is not the sense perpetrators ascribed to their actions and by no means the viewpoint of the victim, but the function of violence on the societal level. In this regard, violence is functional or productive if there is a concrete outcome, if we can grasp the alteration or further advancement of social conflicts. Violence becomes societally dysfunctional and unproductive if there are no tangible consequences and/or the perpetrator acts far outside the accepted norms. In the latter case, violence was also senseless to contemporaries, because it took place beyond the boundary of accepted norms. According to Hyperides, fear and shame prevented people from committing crimes,⁵³⁵ but clearly not always and not everywhere. Only if the offense was performed within a certain frame of accepted norms was the violence reined in and potentially legitimized. Contemporaries could understand and make sense of this particular act of violence, because it followed established rules and catered to routine patterns of perception. The structures underlying the violent act were clear to all players of the game and made its specific unfolding more or less expected. The creation and transmission of sense through these rules of violent interaction greatly facilitated communication about violence.⁵³⁶

535 Hyp. fr. 210.

536 With regard to sacrificial violence, Henrichs 2006, 87 quotes Blome 1998, 94–95: "Dichter wie Künstler, aber vor allem eben auch die zuhörenden bzw. betrach-

Rituals of representing violence shaped and performed the violence discourse within the ritual frameworks of court sessions, depositions of curse tablets, and theater performances. If a trial resolved a conflict for good, if the performance of a play led to catharsis, we can speak of the immediate pacifying function of representational rituals. In the open society of Athens, the notion of violence was negotiable and citizens were actively involved in discussing ideologemes, “defining” the meaning of violence, searching for the right measure to exert it, and issuing laws. The citizens even determined the contents of the ongoing dialogue.

The direct functions of representational rituals are best described by their performative character. The outcome of a trial had a very concrete effect on the ensuing life of the litigants. One defeated the other by successfully selling his own interpretation of events to the judges. Furthermore, the open performance of the violence discourse in public meant that elite circles could not monopolize the use of violence for themselves, as they could in other pre-modern societies. What is more, the ritual frame for representing violence had strong repercussions on violent occurrences in daily life by providing interactionist rules for “properly” conducting conflicts. The ritualized form of communication in court and theater disseminated the pacifying violence discourse to the whole citizenry.

As in the case of the interactionist rules, the overarching societal function of rituals of representation lies in the containment of violence, and we might put forward the hypothesis that Athens’ rhetorical culture made it more peaceful and stable than other Greek societies, which lacked this very culture of carrying on a dynamic dialogue on violence and its excesses.⁵³⁷ Athenians talked intensively about violence, discussed values, and performed their violence discourse in courtroom trials. At the same time, the holding of a trial can itself be regarded as a ritual process. The speeches of prosecution and defense were conducted between rites of separation and rites of reaggregation. The performance of the orations themselves constituted the liminal phase of this specific ritual process. As is typical of a liminal phase, the courtroom session could temporarily reverse social hierarchies, which redefined and, in fact, enhanced them.

tenden Konsumenten können offenbar gar nicht anders, als sich das Schreckliche sakralisiert und ritualisiert zu denken. Sie lenken es damit in eine vertraute, weil fast stereotyp genormte Bahn und schieben so zwischen sich und das Geschehen wie einen Filter das Opferritual.” The same can be said of violent actions, which evolved, in many cases, into a ritualized form.

537 Cf. Riess 2006 *passim*.

Anti-structural elements are clearly discernible in courtroom performances. In court, ordinary people held supreme power over the powerful. The mighty humbled themselves and their quarrels before the judges and vied for the favor of the common people, an almost carnivalesque situation in Bakhtin's sense. Anything was possible. At the Delphinion, Euphiletus, the murderer, for example, constructed himself as a victim.

To appreciate fully the function of the law courts, a new understanding of them as ritual, symbolic communities is quite helpful. They did not necessarily operate rationally,⁵³⁸ but fulfilled the functions of ritual performances. The dialectic communication between masses and elites and the enormous scope for reflexivity and creativity provided by the theatrical framework of the courts allowed for the discussion of old and new concepts and values. In correspondence with the flexibility of rule-breaking in daily life, everything in court was a matter of interpretation and standpoint. The judicial assessment of an offense by the court happened on the basis of laws that were often vague, ideological constructions. Given the absence of legal experts, it could not have been otherwise.

This observation also holds true for the "definition" of violence. Athenians negotiated its notion anew every day in the courts. We can only aim at the "fair market value" of the "definition" in cases where we know the verdict, but, unfortunately, in most cases we do not know the outcome of a court case. That is why it is so hard, for example, to reconstruct the meaning of *hubris* or to decide whether seduction was worse than rape.⁵³⁹ Legal historians have spilled much ink on these topics without fully taking into account the possibility that Athenians might also have found these questions to be unanswerable. There was not and

538 Cf. above 138, n. 529.

539 Seduction worse than rape: Manthe 2000, 222; Carey 1995a; MacDowell 1978, 124–126. Rape worse than seduction: Brown 1991, on the basis of Menander; Harris 1990 (with older literature). No difference between seduction and rape: Cantarella 2005, 240–244; Omitowoju 2002, 131; Ogden 1997, 32–33; Cohen 1993, 7 (on the basis of D. 23.53–57). Schmitz 2004, 476–477 offers an intriguing explanation that accounts for the confusion in the classical authors as well as in modern research: originally, the abduction of a woman was deemed less problematic than seduction or adultery, if her father agreed on a subsequent marriage (abduction marriage). So Draco penalized it less severely than seduction/adultery. Later, with the custom of abduction marriage having fallen out of use, this law was re-interpreted as the law on rape. On sanctions against sexual assault in general, cf. Cole 1984. Whether or not a prosecutor regarded seduction as worse than rape was also signaled to the community by the choice of legal procedure; cf. on this topic above 53, n. 145.

could not be a stable definition of concepts like violence, *hubris*, and rape. As a result, there was no such thing as legal certainty in Athens.⁵⁴⁰ The judges were juridical laymen who were drawn by lot every day. People believed in daily dialogue and negotiation on these topics via performance. The whole culture did not only rely on rationality in our terms, but also ascribed the utmost importance to the magic of rhetoric, playful theatricality, and the public stage, in having disputes decided by the people of Athens in a simple majority vote. Everyone knew that the people could err. There were, therefore, strict laws to punish anyone who deliberately swayed the people to their disadvantage.⁵⁴¹ The deep-rooted distrust of any kind of rhetorical professionalism stemmed from this problem. Athenians were not naive and did perceive the pitfalls of the democratic system, but to them these drawbacks did not outweigh the obvious advantages of democracy. These observations not only corroborate Cohen's view of the Attic law courts as being fundamentally different from modern Western courts,⁵⁴² but go even further: the dynamic of the Athenian law of violent offenses in general was not only based on the ritual form of lawgiving and rendering verdict by fickle masses, but was even the precondition for the smooth running of democracy in Athenian eyes. The judges, who understood themselves as a representative sample of the *dêmos*, reserved for themselves the prerogative to "define" the semantics of each and every criminal offense. Therefore, the introduction of the *nomothesia* at the end of the fifth century did not change anything about the fluidity of Athenian substantive law.⁵⁴³

Without referring to the specific case of Athens, Huizinga insists on the irrationality of pre-modern systems of justice and postulates their similarity to magic. The data from ancient Athens fully corroborates his theo-

540 Cf. Lanni 2006, esp. 115–148 on the whole complex of the highly discretionary decision-making process in Athenian courts. In two realms only, homicide (75–114) and, above all, maritime cases (149–174), the Athenians preferred consistency and predictability to flexibility.

541 Harris 1999, 126–129, 138 shows that litigants who did not get one-fifth of the votes or were unsuccessful in carrying through a *graphê* not only had to pay a fine of one thousand drachmas, but were also always subject to *atimia*.

542 Herman 2006, e.g., 196 overemphasizes their likeness to modern courts.

543 Exempt from this fluidity are homicide and maritime cases, as mentioned above n. 540. But in general Gordon 1999b, 248 is correct: "a law had today whatever meaning a speaker at a trial could successfully convince the judges that it had – and tomorrow perhaps something different. Indeed none of the words used in Athenian laws had legal definitions: for the most part, law was simply the written form of custom."

ry. Resorting to trials and magic was meant to have the same result. The outcome of a trial was always unpredictable, similar to the result of enlisting the help of a sorcerer. In going to court or depositing a curse tablet, one had to rely on fickle fortune. In Athenian belief, a lot was determined by fate. A litigant could prepare himself by hiring a logographer and a professional magician, but he had no guarantee of success. The courts were not about deciding who was right or wrong; the whole *agôn* was about winning. The winner determined the acceptable contexts for violence, which became the “definition” of violence for that particular day. This notion, which is so fundamentally different from our understanding of how a legal system should work, also explains the completely different function of witnesses, which has been often observed in recent years.⁵⁴⁴

The *dikastêria* rendered the use of violence legitimate or illegitimate. This fact is fundamental, because it means that the laws had to be flexible enough to allow this desired discursive negotiability of legitimacy in court. The laws were not even permitted to interfere with the great discretion the judges enjoyed. The lay judges insisted that they themselves create the boundary circumscribing what constituted violence.⁵⁴⁵ This was only possible if this line could shift and was flexible enough to be open to interpretation.

It was this openness of the free ritual play in the courtroom that ensured the “open texture”⁵⁴⁶ of Athenian law and the staging of manifold discourses to resolve problems. The multiple possibilities for “defining” concepts and constructing meanings in a lively atmosphere enormously contributed to the stability of the system by containing violence.

By the end of a court session, the courtroom ritual had reconstituted the social order, but on a different level. Changes of status had been put to debate and were decided upon. Social hierarchies were overthrown or the status quo upheld. The litigants were transformed into winners and

544 Cf. above 46–47.

545 Rubinstein 2005b, 143 speaks of the judges’ “shaping the behavioral norms of the community as a whole.” Of course Athenians also valued continuity, legal principles, and precedents. But within this framework, they were free to decide on an *ad hoc* basis.

546 Both in Osborne’s sense of procedural flexibility (Osborne 1985, 43–44; now Carey 2004, esp. 112 with 132, n. 2) and in Harris’ sense of the flexible application of generally acknowledged substantive law (Harris 2000, 30, n. 8). Cohen 1991a, 179 speaks of the “institutionalized ambiguity of concepts.”

losers.⁵⁴⁷ The participants in the ritual had wielded power for the short moment of rendering justice.⁵⁴⁸ The courtroom ritual confirmed once more the definitory power of the *dêmos* and enacted its supremacy almost every day. The highly political function of this mass ritual revealed political hierarchies and power structures.⁵⁴⁹

The ritual character of the courtroom system helps us now to understand better the prime role the law courts played. To Aristotle, they were the cornerstone of democracy and upheld the state.⁵⁵⁰ One might ask why this was the case. J. Assmann distinguishes between book religions and cult or ritual religions. In the latter, the proper performance of rituals, not the adherence to dogmas borrowed from books, ensures the continuity of the cosmos.⁵⁵¹ Athenian democracy was characterized not only by a ritual religion, but also by the secular ritual of the law courts. The speeches performed in this context were as vital to the maintenance of the Athenian cosmos as the exact performance of the appropriate religious rituals. Without law courts, there was tyranny, anarchy, chaos. With this ritual understanding of the law courts one comes closer to the importance that Athenians ascribed to their courts. From the courts' ritual functions stems the trauma caused by the Thirty Tyrants, who, for a short time (404/03 BCE), had circumvented the law courts and thus breached fundamental rituals of the Athenian state.

It is not enough to trust the courts' legal function as recipients and arbitrators of pleas from victims who were afflicted by violence. Only a minority of cases reached the courts, and when they did there was no guarantee that the offended party would be compensated. It is true that the courtroom system had replaced the blood feud by giving the injured family the right to indict a culprit in court, but the court system was not effective enough to deal with all cases and to resolve them to the full sat-

547 Even before the actual court proceedings, the decision to litigate had transformed the disputants into "specifically defined legal roles": Johnstone 2003, 6; 1999, 131–132.

548 There are only rare glimpses into the judges' behavior. On the occasion of Demosthenes' *probolê* to the people with the goal of achieving a preliminary verdict against Meidias, we learn that the people booed Meidias for his offense at the Great Dionysia (D. 21.226).

549 As Allen 2000, 9 rightly points out, punishment is an act of power.

550 Arist. *Ath.* 41.1–2; *Pol.* 1275a22–33; 1275b13–21. In Aristotle's eyes the *dêmos* ruled everything through decrees and courts.

551 J. Assmann 2000, 148, 162. He speaks of the "In-Gang-Haltungs-Bedürftigkeit der Welt" (152–153). Cf. above 28, n. 35.

isfaction of the aggrieved parties. Our evidence is clear enough. Too many quarrels lingered on after a trial had taken place, or were even exacerbated through a verdict reached in court.⁵⁵² In the long-term conflict between the trierarch and his opponents we see that going to court was only one way of carrying on rivalry.⁵⁵³ As in many other cases, the court session was situated within a continuum of more or less violent actions and counter-actions.⁵⁵⁴ One could appeal to the court any time, but was not obliged to do so. By no means did a court verdict necessarily mark the end of a struggle. Since a conflict could be pursued by many different means, the courts were only an optional and transient phase in the continuation of the conflict that could sometimes continue to smolder for generations.⁵⁵⁵ These few examples show that the pacifying function of the courts did not lie in the final settlement of conflicts.

Given these shortcomings of the Athenian legal system, one wonders wherein the pacifying functions of the courts lay. And, related to this first question, we may ask why they were so dear to the Athenians. The answer to the first question is to be found in yet another ritual function of the lawcourt system—its capacity to negotiate contradictory social demands. The second answer is to be found on a purely practical level, the perception of the courts as still another opportunity to exert legitimate violence against an opponent.

By fulfilling ritual functions, the court system met indirect, societal needs that had nothing, or not much to do, with settling cases. This indirect purpose of the courts contributed crucially to the containment of violence and the coherence of the citizenry. The courtroom provided a forum for discussing the clash between the old, pre-*polis*, Homeric, aris-

552 E.g., Antiphon 2.1.6–7: a man killed an opponent out of revenge for having lost against him in several trials. Cf. Bernand 1999, 424, fully endorsing Cohen's view.

553 Ps.-D. 47.

554 The same is true, e.g., for Ps.-D. 53, Apollodorus' speech against Nicostratus. The trial allows us to catch a glimpse of an ongoing argument among neighbors. The private fight between Theomnestus and Apollodorus on the one side and Stephanus and Neaera on the other side is connected to questions of citizenship policy and thus elevated to a political level that is put to discussion before the people's court (Ps.-D. 59). In Isocrates' eighteenth speech (*Against Callimachus*) we also gain insight into a long-term conflict. The speaker's opponent had brought a countersuit with charges of (faked) homicide, aimed at stopping the legal settlement of a former violent conflict.

555 E.g., D. 57; Ps.-D. 58; Is. 9.20; Lys. 13.42; 14.2; 32.22. The quarrel about the estate of Hagnias lasted for more than thirty years (cf. Is. 11; Ps.-D. 43). The examples could be multiplied.

tocratic violence discourse, characterized by the values of honor and shame, and the modern, *polis*-, egalitarian discourse on self-control and moderation.⁵⁵⁶ The overlap of these two discourses with their contradictory claims neatly reflects the remarkable discrepancy between actual behavior and the ideology voiced in the courtroom speeches. According to the old set of values, an offended man had to strike back immediately so as not to lose face. It was only by sticking to this “eye-for-an-eye” ideal that a man could live up to the expectations of his family and friends. Masculine prowess was acquired and displayed on the battlefield, by hunting, and by defending one’s honor and *oikos*. The embodiment of these ideals was the Homeric heroes. These epic warriors did not need courts, for they were able to seek redress by themselves. They were not bound by communitarian codes of behavior, but were, rather, spurred on by the community’s expectations to excel in all the aforementioned domains.⁵⁵⁷ This ideology had slowly faded away with the development of the *polis* and the hoplite phalanx, but had never been completely lost. The hoplite citizen had to comply with new standards of living together. The *politês* could not do without his fellow citizens. New models of cooperation and conflict resolution were found. Court procedures had replaced the earlier blood feud. The violence threshold was higher than before. Retaliation was not a thoroughly positive value any more, but was problematized. The good citizen was now the temperate citizen who could keep his emotions under control. Modern research has described all these developments in detail. But it is wrong to assume that one ideology completely replaced the other. Rather, values shifted gradually, and competing if not conflicting ideologemes coexisted in a fairly uneasy tension with each other. During the fourth century these contradictory values clashed, more so than in the fifth century. The fourth century was an era of turmoil, strife, and uncertainties. The democracy had been restored internally, but how were the allies to be treated in the Second Naval Alliance? What was the Athenian stance toward the old powers of Sparta and Persia, let alone the rising state of Macedon? How were social, economic, and educational gaps to be reconciled with an egalitarian understanding of politics? What were the individual’s position and leeway with regard to the community of citizens? How could the ideal *patrios politeia*, installed by Solon according to Athenian belief, be pre-

⁵⁵⁶ Cf. above 135.

⁵⁵⁷ Roisman 2005, 106–109 and Van Wees 2004, 37–40 masterfully describe the warrior ideal.

served under the modern circumstances? All these questions, among many others, vexed fourth-century Athenians, and there were no clear-cut answers. All Athenians could do was find discursive strategies to come to terms with these conflicting demands and challenges. Breaks and inconsistencies in the discourses are the logical consequence of this difficult situation. The perpetration and representation of violence is but one major field of controversy during the fourth century. In no other domain is the overlap between an old and a new discourse so tangible as in the case of violence. And this overlap also found its echo in concrete, everyday behavior.

On the one hand, our evidence indicates that brawls must have been quite common in Athens. Because of the bias of the sources and their concentration on elite members of society, upper-class people are over-represented among the violence mongers. Trierarchs and *chorêgoi* beat one another, landowners and rich youths fought over *hetairai* and young boys. These were no outlaws, but honorable citizens.⁵⁵⁸ Although Athenians no longer practiced blood feud and people walked around unarmed, they must have been always ready to resort to violence.⁵⁵⁹ Otherwise, the fear of escalation would not be comprehensible. In light of the outbreaks of violence we know of, the violence threshold must have been lower than in today's Western societies. Members of the lower classes were probably even more prone to violence, given the absence of sophisticated means of conflict resolution and a restricted code of expressing themselves in these social strata.⁵⁶⁰ All these deliberations suggest that the cases of violence we find attested are only the tip of the iceberg. What we know about the authors of our sources, male citizens from the upper echelons of society, further corroborates the impression that the majority of violence was not reported in our sources.⁵⁶¹

On the other hand, many if not most people deliberately refrained from violence. Aristides kept a tight control over his emotions, especially anger and hatred.⁵⁶² Pericles did not react to the constant insults he suffered from a humble citizen for a whole day, but even had men escort

558 Many Athenian men flaunted their male assertiveness in forms of military prowess, physical aggression, and hiring prostitutes. Keuls 1993 *passim* subsumes these behavioral patterns under the term "reign of the phallus."

559 Cf. above 49.

560 Schmitz 2005, 103, 126.

561 Scant evidence, like Lys. 3.42, points in the same direction.

562 Plu. *Arist.* 4.1.

the fellow back home after sunset.⁵⁶³ Taureas and Demosthenes did not strike back when publicly assaulted in the theater of Dionysus. Demosthenes especially is the prime representative of the new discourse on self-control and the state monopoly on violence. Divergent interpretations, however, remained possible, and are discernible for us. Alcibiades and Meidias deliberately sought the public limelight to attack their opponents physically. They acted in line with the old discourse on violence, honor, and shame. If Taureas and Demosthenes would not strike back in public, they would lose face, whereas Alcibiades and Meidias would reassert their superior positions in the zero-sum game for power and social prestige. If Demosthenes did not deliver his speech in court, he might have been afraid that the judges could interpret the case the way Meidias did. It might have been beneficial for him to speak the new discourse in court, but it was by no means beyond question which view would prevail. It was the courts' extraordinary prerogative to negotiate daily between these two different sets of values, represent this ongoing discussion, and transmit the new ideology more or less with success by communicating it to the common people. Since the violence discourse, with its anti-tyrannical character, was an integral part of the discourse on democracy, the court system, in providing the parameters and preconditions for the public staging and dissemination of this dialogue, decisively contributed to the stabilization of the Athenian political, social, and economic systems.

Our best example of the overlap and clash between archaic and modern notions of violence is Euphiletus' murder of Eratosthenes and his speech in self-defense, which vividly illustrates how wide the gulf could be between conservative practice and progressive discourse. The sharp tension between the preceding deed and the ensuing narration in court perverted the courtroom ritual. The man who was prosecuted for homicide starred in the role of the victim: his *oikos* had been intruded, his wife corrupted, his honor besmirched. In light of what had happened, Lysias chose a bold strategy for his client. Through acting in full accordance with the old violence discourse and retaliating on the harshest note possible by killing the seducer of his wife, Euphiletus had blatantly violated the new *polis*-discourse of non-retaliation. In complete contradiction to the facts, Lysias had Euphiletus reinterpret and distort the self-help killing as execution and speak the modern discourse perfectly well. This is thoroughly sophistic argumentation. The speaker even took full advantage of this clash of values by manipulating them in his favor. In his

563 Plu. *Per.* 5.1–3; cf. also 7.5.

speech, Euphiletus completely negated the Homeric ideal, according to which he had in fact acted. The argumentation is so brilliant that even modern scholars have been swayed by it.⁵⁶⁴ If we heed Kertzer's famous *dictum* that we are what we do, not what we think or say,⁵⁶⁵ it is the social practice that counts, not Euphiletus' denials and claims in court. Euphiletus was a conservative Attic farmer, who, enraged and deeply offended by his wife's infidelity, took the law into his own hands and killed the *moichos* in accordance with the law of Draco, thus reasserting his authority as a *kurios*.⁵⁶⁶ At the scene of the killing, he was already confronted with the new realities of *polis*-life. Eratosthenes offered him money in compensation. What is more, Euphiletus had many more options of seeking redress at his disposal, granted by the legal system of the *polis*.⁵⁶⁷ But he chose none of them. It seems he did not care about democratic ideals. In court, however, he was well advised by Lysias to speak the new *polis*-discourse of moderation; how reluctantly he did so, we do not know. We do not know, either, whether he got away with it. If Euphiletus was released, we learn once more about the power of discourse, but also about the tenacity of traditions, customs, and old-fashioned laws, which still sanctioned acts of brutal violence.

On a more practical level, beyond all ritual functions, courts were popular precisely because they were regarded as a suitable mechanism for fighting against opponents. Verbal insults uttered in court as slander were a powerful weapon. According to speech-act theory, the impact of the character denigration performed in court was enormous, and ultimately constituted reality. This means that trials not only depicted past violence (Schechner's famous "there and then"), but also exerted mediated violence in and through their actual performances ("here and now" in Schechner's terminology).⁵⁶⁸ Because of the implications of speech-act

564 Most recently Herman 2006, 175–183, who overemphasizes the discourse spoken in court and neglects the actual deed, the murder of Eratosthenes. Better is Herman 1993, where he admits that Euphiletus spoke in blatant contradiction to the facts, which he, as a consequence, radically distorted in his favor.

565 Cf. above 54, n. 147.

566 In addition to the diachronic overlap between the archaic and the *polis*-centered violence discourse, we should also investigate the synchronic, i.e., spatial differentiation between the two contradictory sets of values. Behavioral norms in the countryside may have differed considerably from those in the city: Schmitz 2004, 466 speaks of a "Stadt-Land-Gefälle." Cf. also Dover 1974, 112–114 on the dichotomy between town and countryside.

567 Cf. above 53, n. 145.

568 Schechner 1977, 87.

theory, these instances of verbal violence deserve a study in their own right.⁵⁶⁹ The courts were understood as the continuation of violence through different means. The death sentence was common,⁵⁷⁰ and even if the prosecutors did not plead for the death penalty, they often emphasized their entitlement to do so.

The violence exercised by the courts was acceptable because it was mediated, state-sanctioned violence. The prosecutor used *peithô* to persuade the judges of his innocence and the opponent's guilt. He did not himself kill, but implored the judges to mete out the death penalty to his rival. The judges did not kill the guilty man themselves either, but gave orders to the Eleven to execute the condemned. In cases of execution by hemlock, the condemned man actually executed himself, yet another level of mediation. Hence, the court's rendering judgment mediated violence on several levels. Violence mediated this way was checked violence, because its degree and application were subject to a social control that took place in court. This mediated form of violence is a great cultural achievement. It did away with the blood feud and lifted Athenian culture up to a higher level of civilization. At the same time, this mediation of

569 Butler 1998, 14, 21–23 explains the concrete somatic dimensions of hate speech. Cf. also Kelly 1994 with an attempt to transfer the results of speech-act theory to Athenian hate speech as performed in the trials. Significantly enough, Arist. *EN* 1131a9 and *Pol.* 1262a27 include defamation and abuse in a list of acts of violence, together with assault, murder, and robbery. The delivery of a courtroom speech was as performative as the deposition of a curse tablet. Lindenberger 1993, 6 claims that physical violence in early modern Europe was not necessarily the aggravation of verbal injuries. Rather, verbal and corporeal abuse were interchangeable and equally damaging and harmful to the victims. Cf. above 136, n. 523.

570 Todd 1993, 302–303; Hansen 1976, 118–121; Barkan 1936, 1. People do not seem to have taken offense at the cruel punishments and the high number of executions (Fisher 1998b, 83). On the contrary, Leontius could not get enough of staring at the corpses of the executed near the city gates (Pl. *R.* 439e–440a). Demosthenes even achieved the execution of a priestess, who had allegedly taught slaves how to deceive (Plu. *Dem.* 14.6). Gernet 1981, 241–247 emphasizes the public and hence highly symbolic character of all forms of executions at Athens. On the different forms of execution, still useful are Gernet 1981, 265–267; Cantarella 1991a, 41–46 (*apotumpanismos*), 73–87 (stoning), 96–105 (*barathron*), 106–116 (hemlock); Barkan 1936, 41–53 (stoning), 54–62 (*barathron*), 63–72 (*apotumpanismos*), 73–78 (hemlock). Rosivach 1987 has shown that stoning was hardly ever used in Athens. It was reserved for treason and perceived as brutal and barbaric.

violence, as we will see, stands in striking analogy to the way curse tablets were believed to work.

But let us not forget that mediated violence was still violence. Numerous passages in Antiphon show that this fact was never forgotten. He talks, for example, about having one's opponent killed by the courts,⁵⁷¹ and mentions that litigants sought revenge in court.⁵⁷² Accordingly, it seems that people appealed to the courts not because they appreciated the mediation of violence, but the possibility of exerting violence at all. Combing the whole corpus of Attic oratory, one does gain the impression that there is, nonetheless, a shift away from the focus on revenge in Antiphon. It is true that fourth-century orators emphasize the law as the basis for any action against opponents, which could testify to a growing problematization of violence after the tyranny of the Thirty.⁵⁷³ Mediated forms of violence indeed gained importance, but the violence remained, disguised by intermediary agents and hidden underneath ambiguous vocabulary.

These various strategies of covering up violence have had serious consequences for modern scholarship. Athenian cultural practices of hiding violence, or at least not expressing it openly, led to the misconception of a peaceful Athens. This idea catered to the desires of eighteenth- and nineteenth-century scholars and poets who wished to design an idealized portrait of "classical" Athenian culture, one that excelled in democracy, freedom of speech, domestic peace, and the production of unsurpassed works of art in literature, philosophy, architecture, sculpture, and vase painting. Any blemishes that might taint this picture were deliberately passed over in silence or explained away. The endurance of this all too flattering model into the present time deserves to be the subject of further study.

Festivals,⁵⁷⁴ theater, wars,⁵⁷⁵ and court systems⁵⁷⁶ created communities by ritual means. These ritual activities constructed solidarity and identity

571 E.g., Antiphon 1.25, 27; 2.4.11.

572 Antiphon 1.3, 21, 24; 2.2.2; 3.3.9; 4.3.1. On killing one's opponent via the court system, cf., e.g., Cohen 1995, 104.

573 This finding is in line with the great shift from Aristophanes to Menander concerning the dramatic treatment of violence, and can also explain the popularity of curse tablets during the fourth century.

574 Burkert 1987, esp. 28.

575 On ritual wars in archaic times, cf. Connor 1988a.

576 From a ritualistic perspective, trials can also be understood as a kind of festival, as the celebration of carnivalesque anti-structures.

by sometimes excluding or even eliminating “the other,” who was defined as “evil.”⁵⁷⁷ In the imaginary world of the ancient Athenians, the Amazons were their mythical enemies. Very soon, “real” threats were found: Persians (barbarians), Spartans, Macedonians, and other enemies of democracy. These discursive patterns, which were derived from the foreign realm, had an enormous impact on the domestic violence discourse. Political witch-hunts could also be conducted against fellow Athenians suspected of collaboration with the enemy.⁵⁷⁸ If the opponent who had resorted to violence lacked this negative quality, he could still be labeled as a hybriistic tyrant and barbarian against whom the community of good citizens should take action. As a “tyrant” or “barbarian,” he had practically lost his citizenship and all privileges derived from it. Accusations, trials, imprisonment,⁵⁷⁹ ostracism, exile, and various forms of execution were strategies of exclusion that eventually strengthened the community,⁵⁸⁰ because the community had decided upon them. This ritual creation and representation of community and the sense of belonging together was a consequential factor in containing violence and ensuring the stability of the system. Athenian citizens were status conscious, and became so accustomed to drawing lines between themselves and other human beings that they not only excluded foreigners and political opponents from the community of citizens, but also, to a lesser degree, people of a lower status. The ritual performance of the violence discourse in the law courts, during the deposition of curse tablets, and in the theater defined social, gender, and political status, as well as the question of whether or not any given violent act was actually problematic and, as such, constituted “violence.” Perpetration of violence within the norms set up for it, and the verbal insistence on interactionist rules as well as their representation and reinforcement through repetition in the courts and theater, helped create and maintain the Athenian social structure to the detriment of the under-

577 On the integrative effect of violence, cf. Dinges 1998, 174–175.

578 Cf. Nijhawan 2005, 273 on the exclusion of polluting elements; Bergesen 1977.

579 Cf. Allen 1997 on the development of imprisonment as a punishment, arguing against the mainstream of research, which does not believe in the retributive, penal function of prison in ancient Athens.

580 Let us not forget that not the violence itself strengthened the community and reinforced a particular identity, but the ensuing discursive treatment that charged the violent act with a symbolic sense. Chaniotis 2006, 214, 228–229 emphasizes the role of “rituals as emotional experiences of togetherness.” Cf. Forsdyke 2005, esp. 143, 204, 278–279 on ostracism as a ritual that re-enacted the origins of Athenian democracy and symbolized the power of the people.

privileged. The flexible line concerning violence that Athenian citizens drew for themselves was even more flexible, or should we rather say selective, regarding those groups that Athenian men felt were within their right of coercion. Since these dependents were not regarded as independent citizen agents, their bodies were only more or less included in the hedged-in sphere that protected the bodies of Athenian men. In descending order, the violation of the bodies of metics, women, and slaves was less and less perceived as violence by the male offenders.⁵⁸¹ Only the violation of the *oikos* was perceived by *kurioi* as undue intrusion into their private sphere. It was only in this context that rape was taken seriously at all. It was not the sufferings of the victim that stood in the foreground, but the offended honor of her *kurios*.⁵⁸² This focus on the man's condition brought it about that rape and seduction amounted to almost the same thing in the eyes of Athenian men.⁵⁸³

A ritual understanding of violence can also help us understand the selection process underlying the sources we have. Only the transgression of boundaries, the deviation from norms of violent behavior, was relevant, and charged a violent act with meaning. The infringement upon a citizen's body, especially if it happened in public, was worth being talked and written about. Its dramatization sometimes left a record in our evidence. There can be no doubt that these incidences constituted only a fraction of the cases of violence actually committed. If a violent act took place behind closed doors, especially if a *kurios* used his authority to exert paternalistic coercion against his dependents, neither he nor the almost defenseless victims talked about it in public.⁵⁸⁴ The *kurios'* action was

581 Cf. above 100, n. 339 on the findings of Ruiz on the rights of these underprivileged people.

582 Omitowoju 2002, esp. 5, 27–28, 39, 47–48, 65, 93–95.

583 Omitowoju 2002 *passim*.

584 Bänninger 1991, 458 depicts from a sociological point of view defenseless victims and the fact that the perpetrators do not perceive their own actions as violence. From this perspective, Lesis' letter to his mother and her *prostatēs* is sensational (cf. above 89, n. 300). Note, however, that Lesis did not go public, but turned to his mother to find some relief from his torments. In Aristophanes' play *Lysistrata*, Myrrhine asks Lysistrata what the women should do in case their husbands force them to have sex (160–161): ἐὰν λαβόντες δ' εἰς τὸ δωμάτιον βίῃ / ἔλκωσιν ἡμᾶς; 'And what if they grab us and drag us into the bedroom by force?'; 162: ἐὰν δὲ τύπωσιν; 'And what if they beat us?' Cf. also Ar. *Lys.* 225–227. Concerning the beating of wives in comedy, cf. also Aristophanes F 9 (K.–A.) = F 10 (Edmonds) and below 275, nn. 124 and 125. These passages give us a rare insight into domestic violence. Exact figures are shrouded in darkness. Cf. Alcibiades'

deemed normal, and consequently did not find its expression in the sources. We could say that the fewer the thresholds that were violated—beating slaves, for example, did not constitute the transgression of a boundary, because their bodies were outside the sphere that protected male citizens' bodies—the more normal an action was deemed, and the less it was perceived as violence and reported in the sources. Even the violence that found its entrance into the historical record was either not described at all or only represented in a mitigated form according to the cultural convention of not displaying violence and emotions too openly. Victims barely had a forum to turn to and complain about their sufferings. Athenian citizens, in contrast, appropriated for themselves the right to “define” the notion of violence, exert violence as they pleased against “lesser” people, and not call it by name, whereas they protected themselves from any encroachment upon their bodies and lives.

In a politically egalitarian and, at the same time, highly competitive society, violence was one indispensable tool with which to construct social boundaries and superiority. Some people were more equal than others, and the publicly legitimized use of violence against an opponent made it abundantly clear to everyone which people enjoyed a superior position, from which they could commit physical and verbal violence without being punished. This is true for many similarly structured societies across history. Typical of Athens was the discursive representation of violence by oppositional pairs. This highly stylized, discursive treatment of violence deserves further scrutiny in rhetorical, literary, and media studies. One fundamental question poses itself: Why did the Athenians need such a high degree of ritualization for the negotiation of violence? One possible answer may lie in the fact that every society needs to define the difference between acceptable and unacceptable violence, but in a democratic culture of public display, the theatricality of life required this ongoing and dynamic dialogue to be carried out in public venues as well.⁵⁸⁵ In the absence of a written constitution, in a society where the line between politics and law was not clear-cut, where people from various social strata

violent treatment of his wife (cf. above 44, nn. 101 and 102) and Dicaeopolis' raping of his Thracian slave girl as a punishment (*Ar. Ach.* 271–275).

585 With regard to religion, J. Assmann 2000, 166 ties the phenomena of de-ritualization (*Entritualisierung*) and de-theatricalization (*Enttheatralisierung*) closely to the process of writing. If we want to apply this concept to the explanation of the high degree of ritualization and theatricalization of violence in Athens, we could postulate a semi-oral society in which the culture of public display had to make up for a lack of literalization in many areas of life.

Direct and Indirect Functions of Interactionist and Representational Rules of Violence in Table Form

	Interactionist Rules of Violence	Representational Rules of Violence
Level of contemporary individuals, Direct Functions	Construction or challenging of social hierarchies and power relationships Structuring and limiting of actual violence (pacifying function) Making violence expectable, controllable Creation and transmission of symbolic message / significance / sense Facilitating communication about violence CONTAINMENT OF VIOLENCE	Representation of social hierarchies and power relationships Replacement of blood feud by court system (pacifying function, if conflict resolved for good, catharsis in drama) Imposing order onto the assessment and interpretation of violence Keeping violence negotiable, democratization of discourse Performing and Shaping of violence discourse, dissemination of pacifying discourse Providing interactionist rules CONTAINMENT OF VIOLENCE
Supra-individual, Societal Functions, Indirect Functions	Negotiation and overcoming of societal and political tensions Functional/productive if tangible outcome: alteration, improvement, or advancement of social conflict Dysfunctional/unproductive if no tangible outcome or violence far outside accepted norms CONTAINMENT OF VIOLENCE	Symbolic representation of societal tensions Open forum, full of reflexivity, creativity, entertainment, staging of sophisticated dialogue on: (1) dialectic communication between masses and elite, (2) drawing the flexible line between illegitimate and legitimate violence (daily negotiation and "definition" of violence), (3) creation and representation of community solidarity and identity through exclusion of "the other" (= evil): Persians, barbarians, Macedonians, tyrants, <i>hubristai</i>, underprivileged people (metics, women, slaves) = maintenance of Athenian social and political structure, (4) overlapping and contradictory discourses on violence, (5) dissemination of new <i>polis</i>-ideology Pacifying function by mediating violence CONTAINMENT OF VIOLENCE

actively participated in the process of opinion- and decision-making, this communication had to take place on a symbolic level.⁵⁸⁶ This was best achieved through rituals. That is why we can speak of a highly flexible “definition” of violence through the ritualistic representation of every single defining factor. These semantic units were structured in dichotomies along the ritually constructed line between acceptable and unacceptable violence. Majority votes in rituals constructed the legitimacy of a violent act in Athens, not the law. The consequences are far-ranging.

How to Plead in Court – A Conclusion

During the liminal phase of the court session, litigants and, indirectly, judges formulated the violence discourse according to the dichotomies as fleshed out above. It is now possible to reconstruct the argumentation of the accuser, the victim of violence, as well as of the defendant, the perpetrator. While the victim claimed the illegitimacy of the act suffered, the perpetrator postulated its legitimacy. Since both concepts were elusive, because they were open to interpretation, it was the success of the litigants’ performances alone that decided this thorny question.⁵⁸⁷ In order to be successful, however, the orator had to be an actor, an artist to help his audience make many logical jumps, to disguise his own violence as democratic, and emphasize that of his opponent by indirect means.⁵⁸⁸ The ritual staging of the forensic speech constructed the innocent and guilty parties, and thus revealed the transformative power of the courtroom ritual.

586 Schwedler 2005, 171–174 finds felicitous formulations concerning early modern rituals. These observations also hold true for ancient Athens. Complex relationships between persons, like social boundaries and hierarchies, are visualized best in a three-dimensional space via rituals. The paramount importance of space for rituals is also attested in Athens. The law courts, the theatrical stage in the theater of Dionysus, and tombs at which cursers could perform their magical rites provided spatial settings for enacting the violence discourse.

587 MacDowell 1990, 13–22 hits the nail on the head by saying that offenses like *asebeia* and *hubris* are not clearly defined by the law. Instead, the definition is left to the discretion of the judges.

588 Occasionally, we get hints at the power of rhetoric and performance. Demosthenes was visibly irritated at Aeschines’ forceful voice and formidable declamatory skills, so much so that he implored his audience toward the end of his speech not to heed Aeschines’ opinions and advice (D. 19.337–338). Cf. Easterling 1999.

Narrativity especially engendered the ritualization of violence on the discursive level. This discursive ritualization, in turn, charged the violent act itself with symbolic meanings that were transmitted by the performance of the violent act and its ensuing representation in court. Hence, violence was in most cases not a senseless act, but a meaningful social practice. Not only did the perpetrator regard his violent action as positive, productive, functional, and meaningful, but we can also discern these qualities on a higher, supra-individual level, as long as the violence committed remained within strict limits. When the violence challenged the status quo, expressed underlying societal tensions, led to a tangible outcome or improvement of the situation, or caused social forces to develop further, we can also discern some positive, productive, innovative, or functional traits for this kind of violence.⁵⁸⁹ This is not, of course, the perspective of the victim. If the violence took place outside the accepted sphere of action, if it only affirmed the status quo, if the perpetrator was reintegrated into society, and if the violence had no consequences, we can regard it as dysfunctional and unproductive.

Trials were all about de-legitimizing the behavior of one's opponent. A speaker would always label his rival's actions as having taken place far outside the constructed boundaries of accepted interaction. The speaker would either deprive his enemy's actions of all sense or charge them with negative symbolism by highlighting the breach of multiple rules of interaction or taboos. Only a barbarian or anti-democratic tyrant would behave that way, full of *hubris* and wanton insolence, appropriating the laws of the *polis* and using them for his own interests. This aggression was not justified, but unlawful in the extreme. The opponent was driven by a disproportionate fit of anger to transgress massively socially coded thresholds. Full of bloodthirstiness, he sought archaic revenge and committed excessive violence outside the parameters of democracy. From the speaker's point of view, the publicity of the violent act was problematic. The symbolic message transmitted by the opponent was put in doubt or negated outright; the speaker emphasized the transgressive and negative symbolism of the public act, because, for him, the staging of the vio-

589 That conflicts can have positive sides and integrative effects is a well-established fact in the sociology of conflict. Simmel 1908 exerted great influence, e.g., on Dahrendorf 1973; Coser 1967; ²1966; 1964; Rex 1961. Coser discerns realistic from unrealistic conflicts. Whereas the first unleashes productive forces by furthering social change, the latter form of conflict is not intended to solve the problem, but only aims at annihilating the opponent.

lence he had suffered was always unseemly. If the incident took place outside the public gaze, it was even more outrageous. The lack of witnesses who could have adjudicated what was going on and prevented the worst was scandalous. The opponent's conduct was always disruptive, dysfunctional, unproductive, highly problematic, and therefore illegitimate. In a word, it was blind violence. This stigmatization of the opponent's violence aptly latched onto the discourses concerning tyrants and barbarians.

The perpetrator, in contrast, used various strategies to portray his own behavior as legitimate. He either did not talk about his violence at all or else played it down as far as possible. In order to convince the judges of the legitimacy of his actions, the perpetrator claimed that they had taken place inside the rhetorically delineated boundary of acceptable interaction. To prove this claim, he did not shrink from manipulating this line and shifting it to his favor, and to the detriment of his opponent. A convenient reproach was that the latter had practically lost his citizenship status because of his hybristic behavior, which had assimilated him to a tyrant or barbarian. The stigmatization along these lines was a popular strategy of exclusion from the protected sphere of citizens. It allowed the perpetrator to treat his rival like an outcast or foreign enemy. In addition, the aggressor emphasized his authorization by the government in the form of decrees, if any were relevant, and the meticulous observance of social codes, like waiting for the absence of a homeowner's father, wife, other female relatives, and children before entering a house. Thus, the incident made sense and was positive because it was not only justified, but lawful, non-excessive behavior.

If boundaries were transgressed, the perpetrator claimed that it had been unavoidable to do so and that he had met with the consent of the bystanders. He would then give a rationale for his behavior. Reconciling the conscious violation of normative rules with the simultaneous presentation of it as neither hybristic nor tyrannical behavior, but on the contrary as goodwill and even naivety, was a bold high-wire act that only members of the elite could dare to try. Only strongmen like Meidias or Alcibiades who enjoyed enough symbolic capital consisting of high social status, economic wealth, powerful relationships, and a good reputation were in a position to afford such a risky undertaking. The speaker would then admit that he had indeed been driven by a fit of anger, but rightly so, in order to exert self-help or legitimate revenge within the parameters of democracy. Yes, he committed violence deliberately, but for the sake of the city, driven by selfless motives and full of self-restraint. In this sense, his actions were civilized, anti-barbarian, anti-tyrannical, and democratic in

the sense that the act was even required by democracy. As such, they were excusable. Thus, his measures were replete with positive sense and actually helped maintain the *polis*. From this perspective, violence appeared as a sensible, meaningful social action, which only failed to make sense at first glance. One's own conduct was always functional, productive, unproblematic, and therefore legitimate. In a word, it was self-defense that actually did not call for a trial at all.

On his side, the mostly upper-class perpetrator differentiated further between societally relevant and irrelevant violent behavior. He was rich, powerful, and daring enough to stage relevant violent behavior before the eyes of all citizens in order to unmask the wrongful twists and turns of the opponent and to protect himself. Quite often, some entertainment value was even attached to such an action. In this situation, the perpetrator was eager to convey a message to an audience, who should judge his action as legitimate. Only the violation of social codes charged an act semantically and made it memorable, thus increasing its chance of being recorded. Here we can speak of dramatization. It is mostly dramatized acts of violence that are reflected in the forensic speeches. The more influential and bolder the violence monger was, the more breaches he could afford. For the elites, these violent showdowns with their peers in public and their ensuing negotiation in court were part of their performative self-representation. Full of youthful self-confidence—their rivals would have spoken of arrogance and *hubris*—they wanted to test their bodily, societal, and institutional strength and see how far they could go in intimidating their rivals. The courts provided the appropriate stage for the legal continuation of the physical trial of strength.

Whenever the perpetrator found his violent behavior irrelevant, because it was not necessary for the citizens to assess it, or he did not want the citizens to know about it at all, he committed it behind closed doors or hid it under a cloak of silence. If he coerced the people in his power, it was unproblematic for him and his fellow citizens. When a *kurios* committed violence against them, he broke no taboos and he did not need onlookers to serve as corrective forces. In fact, he did not consider his conduct as “violence” at all. These acts hardly found an echo in the sources. Here we can speak of “normalcy.”⁵⁹⁰

The zero-performance of the speaker's violence and the mitigated representation of the opponent's violence in the speeches, as well as

590 Applied to modern nation states, especially the USA, in a different sense, cf. Von Trotha 1997, 34–35.

the omission of fatal violence on vases,⁵⁹¹ show that Athenians were highly conscious of the destructive potential of violence. Athenians, especially from the upper echelons of society, problematized violence more and more, at least on the discursive level. Yet violence, at the same time, was ubiquitous in daily life, for the potential of violence was probably as high or low as during the archaic or Hellenistic periods. But the changed political circumstances of the fourth-century democracy necessitated the institutional and ritual containment of violence to enable Athenians to remain in line with the stringent rules of the amnesty. The avoidance of violence and, most of all, the avoidance of its open expression were more and more defined as cultural goals of prime importance, however unrealistic these goals were. All media, even grave stelai,⁵⁹² omitted or glossed over negative emotions and conduct, such as violence or grief. How can we account for the suppression of violence in all media in the face of violence that pervaded all social strata? Brutality lay under the surface of relatively tame discourses that were spoken in forensic oratory,⁵⁹³ curse tablets,⁵⁹⁴ and partly also in stage drama.⁵⁹⁵ The tragedians, Aristophanes, and Menander are most explicit about the disruptive force of violence and the need to contain it as much as possible to ensure the maintenance of the state. The ideology of a violence-free space and society was obviously dear to Athenians, and many modern researchers have mistaken the ancients' ideal as reality. As will have to be shown in another study, the suppression of internal violence and "problematic" emotions (such as anger and excessive grief) rendered Athens a pressure cooker, at least for the elites. This pressure-cooker atmosphere was in need of a

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- 591 Borg 2006, 248 on the disappearance of violent motifs from vase paintings after 480 BCE. It is interesting to note which scenes of violence are still depicted, i.e., sacrileges and the punishment of *hubris* (250). Muth 2006, 270 remarks that the violence that is depicted after 470 BCE is always indirect; cf. also Kunze 2005; Muth 2005; Stähli 2005; Von den Hoff 2005. Henrichs 2006, 82–83 stresses that only three vase paintings directly depict the slaughter of a sacrificial animal.
- 592 With the change of values accompanying the introduction of oligarchy, many democratic features broke away around 320 BCE. Grave stelai, for example, so typical of democracy, disappeared. This phenomenon is to be seen against the backdrop of Demetrius of Phaleron's burial laws, which were supposed to curb funeral luxury. Cf. O'Sullivan 2009, 47–66; Engels 1998, 121–154, esp. 153. Cf. above 112, n. 382.
- 593 Herman 2006 *passim*; Gagarin 2005.
- 594 Cf. chapter III on the curse tablets.
- 595 Bohrer 2006; Goldhill 2006; Seidensticker 2006; Ercolani 2005.

safety valve: suppressed violence in the domestic realm contributed to unleashing fatal forces in an aggressive and imperialistic foreign policy.

In the following chapter, we will see that the forensic speeches are not alone in their ultimate goal of damaging or even eliminating an opponent, who is to be understood as a tyrant or barbarian and is therefore to be excluded from the community of Athenian citizens. By the fourth century, the court system, with the curse tablets as its corollary, had taken over the function of fifth-century ostracism. It thus comes as no surprise that some of the persons mentioned in the forensic speeches also show up on curse tablets.⁵⁹⁶ The courtroom speeches, with their insistence on slander and character assassination, had an enormous performative force and can be regarded as a kind of public cursing. How private cursing worked in a ritualized context will be the subject of the next chapter.

596 D. 21.59 mentions Theozotides, an ancestor of whom is cursed in Gager no. 41 = Trumpf 1958, 94–102 = BE 1963, 125, no. 32 = SGD 9 = Jordan 1988, 275–276 = López 9 = Guarducci 1978, 244–245, fig. 68.69 = SEG XXI 1093 = SEG XXXVIII 31. Cf. also Lysias' mention of a certain Theozotides in fr. LXIV 129–130; LXV 151. In D. 21.62, we encounter Diocles, who may be cursed in DTA 94 and López 55 = Willemsen 1990, 142–143, no. 1 = López 1992, 201–202 = SEG XLII 217 = NGCT 1. Most spectacular is a curse against Andocides and some of his followers who were involved with him in sea trading: Costabile 2004/5, 137–169. On another tablet, found in 1964 and dating to about 400 BCE, Menecles, Telestes, and Pythodorus are cursed; on the other side of the tablet, among other names, appears Leptines (Costabile 2004/5, 182–192), for whom Lysias may have written a speech (Lys. fr. XLVII 103 [Carey prefers “El-pinês” over “Leptines” and thinks “Leptines” got into some manuscripts because of the influence of D. 20]; cf. Carey 2007, 430). Cf. Jordan 1988 on the connections between curse tablets and the Lysianic corpus.