

Edwin Carawan (editor):

*The Attic Orators*

(Oxford Readings in Classical Studies)

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This volume brings together 14 papers, originally published between 1964 and 2000, on the intersection of rhetoric and law in Athenian forensic oratory of the fifth and fourth centuries BC. The editor's intention is that it "should prove useful to scholars and students in a range of disciplines". In the Introduction ("The Speechwriter's Art and the Imagined Community", pp. xi-xxiv), Edwin Carawan explains his policy of selecting from "the most influential work of the last half century", sometimes including one side of a debate because it is particularly well reasoned rather than giving both sides. He then reviews the collection as a whole, locating each item in its scholarly context.

The chapters are grouped thematically into three parts. Part I, "The Lost Art and the First Written Speeches", deals with the early history of rhetoric as applied in the forensic context, opening with two contributions on the relationship between the professional speechwriter (logographer) and his client. First, Marius Lavency's "The Written Plea of the Logographer" (pp. 3-26)<sup>1</sup> defines the logographer's task as the production of a complete and "carefully polished" speech for delivery in court by his client. Lavency explores the implications of this technique, criticized by the fourth-century rhetorician Alcidamas as "tedious" and "incapable of responding to the needs of debate" (p. 5). As Lavency points out, it was in fact well suited to the format of an Athenian trial, where each litigant presented his case in a single speech. Litigants would have some knowledge of their opponent's case from the preliminary procedure, and failure to reply to an opponent's detailed argument would pass unnoticed as the speech went on" (p. 21), the logographer's skill making up for the lack of opportunity to improvise in response to an unexpected point.

Stephen Usher's "Lysias and His Clients" (pp. 27-36)<sup>2</sup> responds to Kenneth Dover's hypothesis that some of Lysias' speeches were written collaboratively by the logographer and his client.<sup>3</sup> Pointing out that there is no ancient authority for Dover's designation of Lysias as *sumboulos* ('consultant'), Usher reviews the evidence (omitted by Dover) for the traditional view that Athenian forensic speeches were independent compositions by the speechwriter. He pre-

<sup>1</sup> Translated from "Le plaidoyer écrit du logographe" in *Aspects de la logographie judiciaire attique* (1964).

<sup>2</sup> Originally published in *Greek, Roman and Byzantine Studies* (1976).

<sup>3</sup> K. J. Dover, *Lysias and the Corpus Lysiacum* (1968).

fers to see what Dover thought were “stylistic inconsistencies” as evidence of Lysias’ versatility, concluding that “Dover’s hypothesis would have surprised Dionysius and Plutarch and astounded Plato” (p. 36).

Thomas Cole’s “Who Was Corax?” (pp. 37-59)<sup>4</sup> re-examines the ‘foundation myth’ of Greek rhetoric, according to which rhetoric was invented in Sicily by Corax, who taught it to his fellow Sicilian Tisias, and their work was later taken to Athens by Gorgias of Leontini. Cole suggests that some inherently improbable aspects of the myth were invented in late antiquity and concludes with the plausible hypothesis that Tisias and Corax were in fact one and the same person, Corax (‘the crow’) being a derisory nickname acquired by Tisias after he had established himself as a teacher of rhetoric.

John Porter’s “Adultery by the Book: Lysias 1 (*On the Murder of Eratosthenes*) and Comic *Diēgēsis*” (pp. 60-88)<sup>5</sup> focuses on “the subtle fashion in which the speech exploits the motifs of the stereotypical adultery tale in achieving both its charm as a narrative and its effectiveness as a rhetorical appeal” (p. 61). Previous writers had seen parallels between Lysias’ characterization and figures from the comic stage; but, rather than exploring what that might tell us about the influence of comedy on forensic oratory, Porter concludes that the speech was not written for delivery in court but as a ‘display piece’ (p. 82). This, he suggests, accounts for several unusual aspects of the speech: its brevity, generic treatment of character and lack of specific detail; the “ironically appropriate” names of the protagonists; the focus on narrative (*diēgēsis*) and neglect of rhetorical *topoi*; and the “wildly improbable daring” (p. 88) of the adulterous couple. But there are other explanations of all these factors, and, so far as I know, Porter’s thesis has not found much support.

The six chapters in Part II, “The Tools of Argument: Procedure and Proof”, all show how Athenian logographers could use their *rhetorical* skills to enhance the strength or (perhaps more often) conceal the weakness of a client’s *legal* case, demonstrating that an understanding of the legal context is indispensable to the study of Athenian forensic rhetoric (as is an understanding of the speakers’ rhetorical strategies to the study of Athenian law).

Part II opens with two contributions from German scholars to a long-running scholarly debate, both emphatically rejecting the idea that Athenian litigants appealed to a sense of ‘justice’ or ‘equity’ among the jurors, inviting them to ignore the strict provisions of the law. In “Demosthenes as Advocate: the Functions and Methods of Legal Consultants in Classical Athens” (pp. 91-115),<sup>6</sup> Hans Julius Wolff argues that the pleading in Demosthenes’ forensic speeches “*never* aims to entice the jurors toward an open disregard of the law. To the Athenians [...] it would appear to be a perversion of justice to treat fairness as a corrective to the all-too-rigid rule of law” (p. 107). Rather, Wolff suggests, the logographer uses rhetorical ‘tricks’ to distract the jurors from the real issues, disguising the absence of hard evidence with psychological influence and arguments from probability. Some of these tactics would violate the ethical code of a modern advocate, but what he and the Athenian logographer have in common is that both would “leave no stone unturned if it would help his client win” (p. 113).

<sup>4</sup> Originally published in *Illinois Classical Studies* (1991).

<sup>5</sup> Originally published in *Echos du Monde Classique* (1997).

<sup>6</sup> Translated from *Demosthenes als Advokat: Funktionen und Methoden des Prozesspraktikers im klassischen Athen* (1969).

Harald Meyer-Laurin, in “Law and Equity in the Attic Trial” (pp. 116-139),<sup>7</sup> reviews the forensic speeches regarded by earlier scholars as appeals to ‘equity’ rather than ‘strict law’. He finds no evidence to support that interpretation, concluding that “Arguments that have the appearance of general appeals to equity actually involve provability and are connected with the principle of the free evaluation of evidence” (p. 139).

Sally Humphreys’s “Social Relations on Stage: Witnesses in Classical Athens” (pp. 140-213)<sup>8</sup> makes the point that the functions and activities of witnesses may vary from culture to culture. Athenian witnesses were, on her analysis, actors in a courtroom drama, bringing “the inside knowledge of the local community” (p. 145) to the urban court and functioning more as supporters of a litigant than impartial observers of events (as in modern Anglo-American jurisdictions). Family and friends were the most reliable supporters, and often the most readily available, but might be suspected of lying out of family loyalty. Humphreys’s review of the testimony in the extant forensic speeches may suggest that the distinction between ‘who they were’ and ‘what they said’ was not always clear cut, but her grouping of witnesses is useful, ranging from the more independent to the less independent as an Athenian would have perceived them: officials; ‘professionals’ and business associates; bystanders; fellow voyagers and fellow soldiers; politicians; the opponent’s enemies; neighbours, cult associates and clansmen; kin; and friends.

The following two chapters are concerned with the two categories of ‘proofs’ or ‘means of persuasion’ (*pisteis*) identified in Aristotle’s *Rhetoric* and Anaximenes’ *Rhetorica ad Alexandrum*. First, the ‘artistic’ proofs are integral parts of the speech, produced by the art of the logographer: argument, moral character and emotion. Second, the ‘non-artistic’, ‘artless’, or (in the terminology of Anaximenes) ‘supplementary’ proofs include testimony, laws, oaths, and other documentary evidence extraneous to the speech itself.

Thus, in “The Nature of Proofs in Antiphon” (pp. 214-228),<sup>9</sup> Michael Gagarin takes issue with the German scholar Friedrich Solmsen, who saw the forensic speeches of the late fifth-century logographer Antiphon as marking a transition from archaic Athenian legal procedure, where non-artistic proofs were automatically decisive, to the fourth century system, which placed greater reliance on argumentation. Gagarin finds no evidence for the existence of ‘automatic’ or ‘irrational’ dispute-resolution procedures in early Greece, although the introduction of rhetorical theories to mid-fifth century Athens led to more use of logical argument and other rhetorical techniques. He concludes that the achievement of Antiphon, the first Athenian to use the new techniques extensively in real cases, is ‘diminished’ by Solmsen’s analysis of his speeches as dominated by an archaic tradition. Rather, “the construction of [Antiphon’s] arguments was determined by the facts of the case (in a broad sense) and by his own rhetorical ability” (p. 215).

Further, in “‘Artless Proofs’ in Aristotle and the Orators” (pp. 229-246),<sup>10</sup> Christopher Carey finds that, in their rhetorical theories, Aristotle and Anaximenes underestimated the importance to the logographer of what they called ‘artless’ or ‘supplementary’ proofs. A speechwriter, as Carey points out, would take account of the amount and scope of the documentary evidence available to him, using his skill and ingenuity in the selection of appropriate laws and the draft-

<sup>7</sup> Translated from *Gesetz und Billigkeit im attischen Prozess* (1965).

<sup>8</sup> Originally published in S. Humphreys (ed.), *The Discourse of Law* (1985).

<sup>9</sup> Originally published in *Classical Philology* (1990).

<sup>10</sup> Originally published in *Bulletin of the Institute of Classical Studies* (1994).

ing of testimony. (Carey, in my view rightly, implies that what witnesses said *did* matter in the Athenian courts at least as much as who they were.) The *deployment* of documentary evidence, in particular, “impinges directly upon the art of rhetoric”, because it contributes to the structure of the speech (p. 239).

In “Torture and Rhetoric in Athens” (pp. 247-268),<sup>11</sup> David Mirhady addresses an obscure feature of Athenian legal procedure. Slaves were not allowed to appear as witnesses in court, but their evidence could, with the agreement of both parties to a case, be extracted under torture. A litigant could either challenge his opponent to produce his slaves for torture, or offer to produce his own. While many surviving speeches refer to challenges that were refused, there is no extant case where torture was actually carried out. Scholars have struggled to find an explanation for this apparent anomaly. Mirhady’s solution is to revive, with some modification, a theory proposed by J. W. Headlam in 1893: that the evidence of slaves under torture was never intended for use in court proceedings but as a means of achieving an out-of-court settlement. In his review of the sources, and of the modern scholarly debate, Mirhady pays attention both to the theories of ancient rhetoricians and to the rhetorical strategies deployed by Athenian speechwriters, acknowledging that “rhetoric is an integral part of ancient legal discourse and [...] an appreciation of it can be extremely helpful, even essential, for dealing with legal questions” (p. 261). He concludes that Headlam’s theory remains “the most economical way of dealing with the evidence, and there are no texts that cannot be adequately explained through it” (p. 259). As his epilogue to the paper shows, however, the debate continues.

Part III, “Casting the Jury”, begins with Josiah Ober’s “Ability and Education: the Power of Persuasion” (pp. 271-311),<sup>12</sup> an exploration of the tensions between the rhetorical sophistication of trained orators and the egalitarian ethos of their mass audiences in the decision-making processes of the Athenian democracy. The Athenians’ belief in the superiority of collective judgment was constantly threatened by the “very real possibility that the jurors or assemblymen would be taken in by the more clever speaker and reject the less clever, even if the latter was in the right” (p. 283). Stressing the performative aspect of both forensic and political oratory, Ober suggests that Athenian jurors must have “suspended their disbelief” (p. 294) when confronted by a litigant who protested his lack of rhetorical expertise while delivering an elaborate speech that he had purchased from a logographer. Similarly, in the political arena, educated speakers “were required to play the roles of common men and to voice their solidarity with egalitarian ideals” (p. 311). Such “dramatic fictions”, Ober concludes, “helped to maintain the ideological equilibrium necessary to the continued existence of direct democracy at Athens” (p. 311): Athenians enjoyed the advantages of having educated political advisers, without allowing the elite to become a ruling oligarchy.

In “*Lady Chatterley’s Lover* and the Attic Orators” (pp. 312-358),<sup>13</sup> Stephen Todd reviews the evidence and the earlier scholarly debate on the social composition of Athenian juries. (The title refers to the criminal trial of Penguin Books, in 1960, for publishing an allegedly obscene novel. Prosecuting counsel alienated the jury by asking whether the book was one that they would want their wives and servants to read – a question which, regardless of whether any of the

<sup>11</sup> Originally published in *Journal of Hellenic studies* (1996).

<sup>12</sup> From *Mass and Elite in Democratic Athens: Rhetoric, Ideology and the Power of the People* (1989).

<sup>13</sup> Originally published in *Journal of Hellenic Studies* (1990).

jurors actually had servants (or wives), came across as paternalistic and outdated.) Todd argues that there was no separate 'working-class culture' in Athens, but rich and poor citizens shared aspirations and values that set them apart from metics (resident aliens) and slaves. On the implications of payment to jurors, he suggests that the rate of three obols per day was not intended as a subsistence allowance or compensation for lost income, but a bonus. He concludes that the majority of Athenian jurors were neither the very rich nor the very poor, but farmers (including peasants), whose regular livelihood, unlike that of artisans and traders, would not be seriously affected by their court duties.

In "Arguments from Precedent in Attic Oratory" (pp. 359-371),<sup>14</sup> Lene Rubinstein points out that a principle of legal precedent, in the modern sense, would have been impossible in the Athenian system, where there were no reasoned judgments or courts of record. She finds, nevertheless, that the idea was "not entirely alien to the Athenians" (p. 368), who frequently argued that the court's decision in a particular case would set a precedent for future behaviour, or, less often, exhorted the jury to follow a precedent set by an earlier case. This *topos*, "arguably based upon a fiction" (p. 360), occurs predominantly in speeches for the prosecution in public cases, and in a smaller number of private speeches (most of which deal with matters of genuine public concern), but never in inheritance disputes or other litigation about purely domestic matters. This, as Rubinstein argues, reflects the more limited role of the jurors in private cases, where their main function was to make an appropriate decision in the dispute and compensate the injured party. She concludes that "the *topos* on precedent reflects the political function of the Athenian courts in public actions, where the judges in effect act as the mouthpiece of the entire Athenian *dēmos*, much more than it reflects a genuinely jurisprudential principle" (p. 371).

Harvey Yunis, in "Politics as Literature: Demosthenes and the Burden of the Athenian Past" (pp. 372-390),<sup>15</sup> reassesses Demosthenes' "On the Crown", a speech acclaimed as a literary masterpiece in late antiquity, and still admired by students of rhetoric, but regarded by ancient historians as an unreliable source. The case in which it was delivered was formally a prosecution of Ctesiphon for proposing an allegedly illegal decree that Athens should honour Demosthenes with a golden crown. The real issue was whether Demosthenes deserved the honour, given that his policy of resistance towards Philip of Macedon had led to the catastrophic defeat of Athens at Chaeronea in 338. How did Demosthenes manage to win the case? Was it, as the historian George Cawkwell has maintained,<sup>16</sup> simply that the jurors were dazzled by the orator's rhetoric and too stupid to see through his lies, flattery, and distortion? Yunis's answer is that he persuaded them by deliberately eschewing the normal mode of Athenian public discourse, "a success-oriented model of politics in which incompetence is criminal" (p. 378), presenting himself instead as a tragic hero: driven by the need to confront Philip in order to stay true to the Athenian heritage, but thwarted by the gods or inscrutable chance. In constructing this defence he went beyond the custom of merely quoting poetry in a speech; his method was "the borrowing of a way of thinking and reasoning that is typical of one genre and adapting it for use in the other genre" (p. 386).

<sup>14</sup> Translated from "Praecedensargumenter i de attiske retstaler", in C. G. Tortzen and T. H. Nielsen, *Gammel Dansk, studier et alia til ære for Mogens Herman Hansen* (1995).

<sup>15</sup> Originally published in *Arion* (2000).

<sup>16</sup> G. Cawkwell, "The Crowning of Demosthenes", *Classical Quarterly* 1969.

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Each of the items in this collection is a significant contribution to the study of Athenian law and oratory in the fifth and fourth centuries BC, and most of them will already be familiar to specialists in the field. But their collocation in a single volume gives them an added value, with several themes recurring in two or more chapters whose subject matter is otherwise disparate: the performative aspect of forensic oratory and its links with the dramatic genres (Porter, Humphreys, Ober, Yunis); the divergence between rhetorical theory and forensic practice (Lavency, Carey, Gagarin); the potential of rhetoric to deceive as well as enlighten (Wolff, Humphreys, Yunis, Ober).

Non-specialist readers will benefit from the glossary of Greek and Latin terms, as well as from the editorial practice of transliteration or translation of Greek words and quotations, and of reducing the original number of footnotes. They will, in particular, need to be aware that some of the essays are controversial, and that the editor's selection does not cover the whole range of opinion, so they will find the Introduction indispensable. Those who want to learn more will find what they need in the comprehensive bibliography (pp. 400-430), but those who want a basic introduction to the Attic orators will need to look elsewhere.

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