

Sex and the Law of Ancient Athens

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Abstract

This paper will explore the legal implications of social norms and taboos surrounding both biological sex distinctions and sexuality in Ancient Athens. I believe that the legal speeches used in Ancient Athenian court cases reflect a unique gateway into understand these social norms, because these speeches are arguments made in an attempt to appeal to a jury of Athenian citizens. From these arguments, we can infer what would likely be honorable versus condemnable, and from the logical structure of the arguments we can further understand their legal reasoning. From what I have researched on biological sex and sexuality norms of Ancient Athens, I have found that men were given more freedom than women, but with the expectation that they would maintain self-control. Same-sex relations between men of differing ages were likely looked at negatively as a loss of moral control, but were legal as long as the younger was not a citizen. Prostitution was also legal, but also frowned upon if sought in excess. Citizen women were important primarily in their ability to produce more Athenian citizens. If a man were to harm a woman's purity, it was seen as a heinous crime in that it would obstruct the production of legitimate citizens. Most laws concerning sexual offenses of citizen women related back to this idea. Citizen status' standards of control and purity are echoed in their laws and legal speeches where I was able to detect how much pride Athenians had for their city.

Preface

These speeches are actually scripts prepared for courtroom speeches, so we cannot assume that they are an exact copy of what was said in trial. They may not be polls of public opinion at that time, but they are arguments intended to be court speeches given before an Athenian jury. These speeches, which I will refer to them as throughout my report, are unique primary sources in that they were meant specifically to sway the opinions of Athenians at that time. Their use as tools for influencing others allows us to gain information for expected social norms, even if the speaker may not be as trustworthy as we would like or if he would have strayed from this script in the actual hearing. To clarify, the truth-value and the question of whether this was the exact speech performed will not affect my research. These speeches are still primary sources written by people in Athens to convince a jury of Athenians. It is due to this relationship between these papers and their intended use that I believe they reflect accounts of opinion that many Athenians were expected to hold at that time.

When speaking of “sex” I am referring to biological sex, not gender, researching social differentiation between expectations for males and for female. My use of “sexuality” refers to the sexual orientation, namely heterosexual relationships and relationships between same-sex males. Other terms that are key to the points of my research are my use of “status” and “character”. “Status” can refer to civil status, as many punishments in these cases change the civil status of the individual. More broadly, “status” refers to the social status of the individual. However, these are deeply intertwined as usually the civil status of a man or woman directly affects their social status. A loss in civil status or civil liberties would be reflected by a loss in social status.

For women, punishment could include loss of rights to attend religious ceremonies. This would accordingly be noted as a fall in social status. When I speak on “character” I am referring to the person’s moral code, or rather the jury’s opinion of what the person’s moral code was. Segments of speeches on character are arguments intended to influence the jury’s opinion of that person’s morals.

Status relates back to our understanding of their norms for sex and sexuality in several ways. Status differences between men and women are vast, illustrating the social and cultural differences between men and women’s places in society. Status changes due to sexual offenses reflect how seriously offensive they regarded breaking certain sexual social norms. The Character segments of speeches illustrate what actions may be morally offensive to the jury, even if they are legal. Some actions and stories may not have a legal punishment, but will still be brought before the jury in an attempt to taint the jury’s opinion of the person being spoken of. In addition, some speeches focused on character attempt to make a person appear to be more morally righteous. These segments speeches are helpful to researchers in that they show what actions the speaker thought would be considered acceptable or unacceptable by the Athenian jury.

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Abbreviations

Aesch.1	Aeschines 1, <i>Against Timarchos</i>
Ant.1	Antiphon 1, <i>Against the Stepmother</i>
<i>Ath. Pol.</i>	<i>Arthenaion Politeia</i> (“The Athenian Constitution”)
Dem.36	Demosthenes 36, <i>For Phormion</i>
Dem.41	Demosthenes 41, <i>Against Spudias</i>
[Dem.]59	[Demosthenes] 59, <i>Against Neaira</i>
Hyp.1	Hyperides 1, <i>In Defense of Lycophron</i>
Hyp.3	Hyperides 3, <i>Against Athenogenes</i>
Lys.1	Lysias 1, <i>On the Killing of Eratosthenes</i>
Lys.3	Lysias 3, <i>Reply to Simon</i>
Lys.4	Lysias 4, <i>On a Premeditated Wounding</i>

Part I: Legal Theory

The Courtroom speeches we have here are a special kind of artifact. They allow us to see a different, everyday side of Athens. While mythical stories can be fun to read, and histories often record the society's proudest moments, legal texts reflect the expectations of a culture and the punishments for not meeting these standards. When reading the legal speeches of everyday citizens speaking on their own behalf, not trained lawyers, researchers get a glimpse into texts that were written for the people of their time, in an effort to appeal to their fellow citizens. While these stories may have exaggerations, they were not meant to be outside of these Athenians' understood realm of reason. These were pleadings for rights and reputation, not lore or records of accolades. I believe that the legal setting differentiates these documents from others, illustrating a better notion of their ancient reality to modern researchers. I do not claim that the truth was always spoken, or that all social groups of Athens were well represented by legal speeches, because neither of these claims would be true. However, I do believe that looking into these legal speeches can shed light on much more realistic daily standards than other historic documents. In order to take the most that we can from these laws and speeches, there are several things that must first be understood about their system.

While the Athenian legal system does largely reflect many aspects still seen in modern systems of law, there are important concepts within the system that reflect its differences. The Athenian legal system had some idea of precedent, but not in the way it is used in modern American courts. Athenians often used past examples as a guide for

future use, but did not use these examples as standards to be upheld in order to sustain common treatment across cases, as precedent is used today. Also, today's American legal system uses judicial guidance that the Athenian legal system lacked. This guidance by the judge teaches the jury about the relevant laws at hand, and keeps lawyers from citing irrelevant laws. This lack of what is fundamental to our legal tradition allowed speechwriters and speakers to get away with speaking outside of the issues, citing unrelated laws, asking the jury to make an exception in their case, and other tactics. The Athenian system aimed to restrict these tactics, but was largely unsuccessful in comparison to the standards of modern legal procedure. The Athenian law system was at a natural disadvantage as they attempted to shape and define a democratic system without formal lawyers or judges. Yet, their procedure does show some influence that their conception of democracy has on modern systems.

In early Greece, the king and elders were known to pass judgments, but even in this time it can be seen that public opinion was a concern in many disputes. In Athens, power transitioned at an unknown pace between the seventh and fourth centuries. The king, or basileus, ruled over the people and their disputes until the office of arkhon was created to alleviate his workload. Then, when there was too much for the basileus and arkhon, the office of polemarch was created. As the need grew further, the six thesmothetai were added as officers. As called for, even more officers were created until the power given to these men dwindled by the call for democratic rule. Before 487 BCE, these magistrates were elected. However, after this date, the magistrates were selected by lot from a number of proposed candidates until some later date where they were selected

by lot entirely.¹ Only military-related positions, not counting the polemarch, were elected. While term length is debated before 682 BCE, it is known that after this date they served in office for one year. Many magistrates were in offices that had duties including the bringing of charges. The Eleven, those that controlled the prison of Athens, took on cases including those where one was arrested and held until trial, as the prison was more of a holding tank than a prison of modern day. Cases could be brought to trial either through a magistrate or by a private citizen.

Most charges were brought personally by someone other than a magistrate. Someone could personally bring a charge against another by issuing an oral summons with a witness, bringing his opponent before the appropriate magistrate on an appropriate day, and making his claim or accusation.² There were exceptions to this, such as detaining and delivering your opponent to the Eleven, or following procedure to bring a private case to the tribe judges. A woman would likely have to have her *kyrios*, a male much like a guardian, issue a summons on her behalf. This summons, by man or woman, had to be witnessed and the Prosecution would be expected to pay a fee upon making their claim or accusation. The magistrate would then hold a hearing much like a preliminary trial, called an *anakrasis*, that could help clarify the details of the case brought. On the day of the trial the appropriate magistrate would manage only the procedure, as he could not be comparable to the modern role of judge. The jury would take their seats, and the public was allowed to stand and watch the trial.

The jury was selected randomly by lot. Any man with full citizen rights, over the age of thirty was allowed to volunteer as a juror, needing no other qualifications. Each

¹ MacDowell 1986, 25

² MacDowell 1986, 237-38

year, 6,000 of these volunteers were randomly drawn by lot to serve as jurors. This random allotment of individuals brought together to represent the indications of the rest greatly defines Athens' sense of true democracy. For each case the jurors were further decided by lot for the given number needed for that jury, and numbers for each jury differs from case to case, usually a multiple of either 200 or 500, plus one. The jurors only got paid for the days that they actually served on a jury, and the pay was a low rate of two to three obols a day. Due to this, there were probably about 100 expected absentees each day, but the records are vague.³ Also due to the low pay, the jury was likely full of older men who either did not need the money or were in no state to make money in another way.

While the jury was only made up of men over 30, the Athenians did attempt to make it inclusive by requiring each tribe to send a certain amount of men. There were likely not as many poor citizens present, or those who could earn more doing another job. However, they still tried to boost inclusivity by inviting people from different levels of wealth to volunteer to be randomly allotted. Following from earlier times when kings or elders may serve as the primary source of judgment,⁴ the jury had an even larger role in terms of judgments. Though I refer to them as jurors for the sake of clarity, by translation the term *dikastai* for these people is actually translated sometimes as jurors and sometimes as judges, illustrating the dual role they undertook. The judge as it is known today does not have a fair match to the Athenian aspect of the judge. The juries of Athens would go straight from hearing the speeches to casting their decisions. The jurors would also either know the penalty by law or would decide the penalty. Today, an American

³ See MacDowell 1986, 35-40 for further discussion on possible jury size, etc.

⁴ See MacDowell 1986, 10-18 for further

judge is able to instruct the jury about the legal concepts in questions, and the jury discusses the issues. If guilty, an American judge when then have the job of assigning punishment.

The given magistrate of that trial would randomly allot jobs to a few of the jurors. One would be in charge of the water-clock, four jurors would supervise voting, and five would oversee the payment for the jurors at the end of the day (*Ath. Pol.* 66.2-3). The water-clock is a pot with a plugged hole at the bottom. At the beginning of each litigant's speech, the selected juror would unplug the hole, and the speaker could speak for only as long as his water ran. The opposing litigator would have the same amount of time, as decided either by how many times the water-clock was refilled, or switched, as often two water-clocks were used in succession. For more serious crimes or fines, the water-clock would be refilled or switched more times than in lesser trials, allowing the speakers the appropriate time. In some cases, each person had the opportunity to speak twice.⁵ If the clerk was reading documents, such as laws or witness statements, the water-clock would be plugged. However, in the apparently uncommon case that the speaker questions his opponent, there is no indication that the water-clock was plugged while asking the questions or receiving the answer. Many speakers did not write their own speeches, but had speechwriters. These writers did not speak in court, as being paid to do so was illegal, but could be hired to compose the speaker's speech.

Usually each litigant had to speak for himself. However, it was occasionally allowable for to speaker to speak for some of his time and then give his remaining time to

⁵ See MacDowell 1986, 249 for further reading on water-clock differences dependent upon case type

a supporting speaker,⁶ or allow a supporting speaker to take on the speech in its entirety on his behalf.⁷ Women were not allowed to speak in court and would be required to have someone speak for them. A supporting speaker was to be someone close to the litigant and to the case, likely a family member. It is unclear whether these speeches were performed from memory or from script, but it is likely that they were memorized.⁸ Once the speakers had both spoken their part, the jury went straight into voting. Before the fourth century BCE, the jurors would walk past two urns, one for condemnation and one for acquittal, and drop a pebble or shell that they brought from home into their urn of choice. The urns had a wicker funnel around them that obscured the view of the juror's choice, ensuring its secrecy. In the fourth century and later, the jurors were each given two bronze disks with poles through their centers. The disk representing the prosecution had a hollow tube, and the disk representing the defense had a solid tube. With their fingers over the ends of each tube, and a disk in each hand, the jurors would then pass a bronze and a wood urn simultaneously. The votes in the bronze urn would be counted, and if the majority voted with the defense, or if there was an equal vote, the defendant would be acquitted. If the majority sided with the prosecution, then they were prosecuted.

The Athenians categorized their cases, private or public, largely by the procedure by which they were undertaken. A private case is called a *dike idia*, but I will refer to a private case only as *dike*, as they are often called, or the plural *dikai* for clarity. A public case is formally a *dike demosia*, but since the usual public case is a *graphe*,⁹ I will refer to a public case as *graphe*, or the plural *graphai*. A *dike* is a case between citizens that is

⁶ E.g. Demosthenes 59, *Against Neaira*

⁷ E.g. Demosthenes 36, *For Phormion*

⁸ MacDowell 1986, 250

⁹ Cf. the modern use of indictment

believed to not affect the community as a whole. A *graphe* is a charge that is believed to affect the community as a whole. However, a comparison of *dikai* and *graphai* to modern civil and criminal cases is far from accurate. For example, murder, theft, assault, and perjury were *dikai*, while cases such as male prostitution, adultery, debts to the state, and impiety were *graphai*. Their distinction between what affects the community differs from modern notions as their cultural ideals followed separate logic and reasoning from our modern legal understanding. The usual number of a jury is commonly believed to be 500, but more important cases, usually *graphai* could have far more jurors of 1000 or more. Both case types would have much of the same basic procedures, such as both requiring written summons, juries, and speeches.

However, if the Prosecution brought a public case, and lost without receiving at least one-fifth of the votes, he had to pay a fine of 1,000 drachmas and was no longer able to bring a case of that type to court,¹⁰ with the exception of being able to bring *eisangelia*, a charge outside of usual cases, such as impeachment, which were of greater importance. If the Prosecution lost after bringing a private case, they were required to pay their opponent one-sixth of the amount that they had claimed in the case. In *graphai*, some penalties were sometimes fixed by law, but others had to be decided by the jury. Each litigant would propose a punishment, and the jury could chose that with which they align. A harsh penalty of death, outlawry, or exile could also be supplemented by additional punishments such as loss of property or loss of burial rights. Enslavement was a harsh penalty for an alien that practiced citizen rights. *Dikai* had somewhat different penalties, as many cases had outcomes that were unique to the case at hand such as in decided

¹⁰ MacDowell 1986, 252

estate or ownership. Other *dikai* charges required the penalty of compensation or damages.

Athenian legal reasoning differs from modern legal reasoning, but basic knowledge of Athenian laws can help modern researchers piece together Athenian legal reasoning in order to better understand their approach to law. Status was a central concern in Athens, as it defined rights as well as expectations that came with each status. For example, it was legal for a man to make his slave women a prostitute, but if a man made a citizen woman a prostitute he could be put to death. Citizenship status was arguably the most important thing defended by Athenian law. Sexual offenses have varying punishments, illustrating their ancient reasoning toward the individual offense. Of course, as seen in the example above, status often has an effect on the definitions and punishments of sexual offences.

Before 451/0 BCE a person only needed to have an Athenian father to be considered an Athenian citizen, but the records focused primarily on the men. However, after this date any man or woman had to have both an Athenians father and an Athenian mother to be considered an Athenian citizen. From before 508/7 BCE every citizen belonged to a deme, but after this date Cleisthenes put the 139 demes into ten tribes to define civic identity. These tribes were made up of different numbers of combined demes, allowing the socioeconomic makeup of each tribe to vary and breaking old political networks. Each man took the deme of his father. While women were also citizens, the demes only kept record of the men of their deme, since boys had to pass the deme's approval when or possibly after they turned eighteen.¹¹ A citizen could also

¹¹ See MacDowell 1986, 69 for more information on deme approval

belong to a phratry, or more traditional, religious grouping. Though it did not hold any actual difference legally, the phratry was a membership of pride for many and was considered much like a brotherhood that only citizens by birth could share. These phratries were old like the demes, but were not changed by the civic redesigning of tribal membership brought by Cleisthenes.

As an old and thriving trading port, Athens had an important, strong presence of foreigners and resident aliens. Foreigners could not own land or a house in Athens and had to pay a tax in order to trade in the Agora. They could technically speak as a Prosecution, defendant, or witness in the court of Athens but could not bring certain cases. Foreigners were also required to pay sureties if they were bringing a prosecution. This could have come from them, or from friends, but if they failed to pay these sureties they would be imprisoned until the date of their trial. Also, their cases would go initially before a magistrate, the polemarch, instead of going before the magistrate that would oversee the same charge if brought by two citizens. While some foreigners were just called aliens, some earned the title of resident alien, or metic, with the help of an Athenian sponsor. They may not have different rights than other aliens, as both groups lacked citizenship, but this status changed their social standing greatly. They were considered part of the community, and would be required to pay taxes and serve in the Athenian army if called upon. Some aliens and metics, were able to be rewarded privileges. These included being allowed to own land or a house, paying lower taxes equal to that of citizens, possessing immunity while abroad, and having the same penalty

thrust upon their murderer as a citizen would receive.¹² A foreigner could also be rewarded citizenship, though it was not very common and considered an exceptional honor. In cases where it is mentioned that someone was able to be rewarded citizenship, this should stand out as it would have stood out to the jurors as well.

Most Athenian slaves were non-Greeks and slaves' children. While it is clear that one would be a slave if both of their parents were slaves, it is commonly believed that slave status was dependent upon the status of their mother.¹³ A slave owner was allowed to beat but not kill their slave. If someone other than the owner beat a slave, the owner could bring action against the abuser, but slaves were not allowed to bring any kind of legal action. If the owner wished, they could free their slave without any legal procedure needed. The slave would then either return to their foreign homeland or pass into the status of metic with their owner serving as their sponsor. An owner, for whatever reason, could refuse to serve as their sponsor, and no other citizen could sponsor them. We can assume that this would only happen if the owner placed conditions upon the slave's freedom, and the slave failed to meet them. The slave could then be forced back into slavery, presumably of the slave's past owner. Metics could hold and free slaves, but it is unclear what happened to the slave after this, since the metic, as a non-citizen, could not be a sponsor. Alternatively, a slave could be freed through wills of their owner or as a reward for turning in their owner for certain crimes, such as sacrilege. Certain crimes could also hold the penalty of enslavement, but this was an extremely rare punishment.

¹² See MacDowell 1986, 75-79 for more information on aliens, metics, and privileged aliens

¹³ MacDowell 1986, 80

Athenian citizens could be punished with loss of citizen rights for certain, serious crimes. It seems that disfranchisement had a varying range, as the specifics of the punishment could change with time and changing legal procedure. One such punishment, *atimia*, may have also been coupled with the punishment echoing public shaming and possible abuse to ultimately encourage self-exile from Attika. Aliens could also receive this punishment, but it would include only the public shaming and expulsion from Attika, as they could not lose citizen rights that they never were in possession of. At different times there are different names for punishments that included loss of citizen rights. While not all included exile, all took away rights to bring cases in Athenian law courts, and many kept them from temples and the Agora of Athens. Disfranchisement could also be partial, with the accused only stripped of a few rights. While we know that crimes with loss of citizen rights as a punishment are serious, it can be hard to define what crimes commonly resulted in this charge, especially since the crimes that may call for this punishment often left the decision of punishment to be defined by the jurors on a case-by-case basis.

Another realm of Athenian law that one must have awareness of is the concept of *kyrios*, a status much like a guardian. A *kyrios* is a man who had control over others in his house, or *oikos*. Each citizen woman and child would have a *kyrios*. A *kyrios* would have control over his unmarried daughters, sons that have not yet come of age, wife, and then possibly a widowed mother and unmarried sisters if his father was no longer living. In certain circumstances, a woman may have an uncle, cousin, or other close male relative serve as her *kyrios*. The *kyrios* would be in charge of relations with suitors of those unmarried women under his control. Citizen marriage would be done through the legal

process of giving away, *engye*. Her husband would then be her *kyrios*, unless she got a divorce. Also, it was legal for a man to have a concubine, though she could not be considered part of his *oikos*, or legitimate household. She would usually live in the same house as he, and was allowed to have children by him. It is likely that this was only done for alien women, or illegitimate daughters. While a citizen man and a concubine, citizen or not, could have children, the children were not legitimate in the eyes of the Athenian legal system. However, if a man seduced a concubine, legally the charge was as grave as if the man had seduced a legal wife.

If a man had been caught in the act of seducing a wife or concubine, it was legally acceptable for the husband to kill the man when he caught him; or the husband could choose either to charge a monetary fine, or to maltreat the man, which commonly meant “to push radishes up his anus or to pull out his pubic hair”.¹⁴ While the man was much more harshly punished, the woman would meet punishment as well. However, her punishment was much more social-based. The husband would be required by law to divorce his seduced wife, or to give up his citizenship. If divorced because of adultery, she would then be forbidden from attending public religious ceremonies, and from wearing any kind of adornment, a rule by which she could be punished by being stripped and slapped. It is unknown whether the same punishment was brought on the man if the seducer was not caught in the act, but the same punishments would stand for the woman. If a woman was raped, there was a lesser charge brought by her *kyrios* on behalf of the woman, and the punishment was only a fine paid both to the *kyrios* and to the state.

¹⁴ MacDowell 1986, 124.

While it was illegal for a man or a woman to procure a free woman for seduction, or accept payment for bringing a man and woman together,¹⁵ prostitution was not illegal, as long as the woman did indeed belong to a brothel or admittedly work as a street-walker, as this was not viewed as seduction. Legally, men were also allowed have sexual intercourse with slaves. Homosexuality was legal as well, and seduction or rape of a free male was not treated differently than that of a free female.¹⁶ If a woman worked as a prostitute, it is unlikely that her children would be accepted as a citizen legally, even if she were a citizen. It was illegal, however, for a male to continue as an Athenian citizen if he were also a prostitute. If it was found that a male citizen prostituted himself, he could be disfranchised, and possibly killed if he broke the terms of his disfranchisement. Prostitution, and apparently being the child of a prostitute, was not in congruence with citizenship. Among further laws to protect against sexual offenses were those to protect children from being taken advantage of by adult males, by keeping them from being alone before daylight hours, especially with adult males under 40.

The jury members were likely to have known these principles and many of these specific laws, but neither they nor the litigants were formally trained in law in any way. The jurors would have known the difference between a private and public case and its insinuations. They would have known the implications of biological sex, and of legal differences between statuses. Jurors would be familiar with the law surrounding these sexual offenses, the role of the *kyrios*, and how actions could change your legal status. They were all citizen males who understood the rights of being a citizen, and how degrading it would be to have their rights stripped away. They did not, however, know

¹⁵ MacDowell 1986, 125

¹⁶ MacDowell 1986, 125

correct procedure to the extent that they could critique it. They may not have noticed when the speaker began to introduce extraneous laws and events that do not actually pertain to the point at hand, or if the speaker was lying. Without a judge to keep the trial on track accordingly, the speaker was able to take advantage of what the jurors may not know or what may not have actually been allowed in court, creating several problems.

Recognizing that the litigants may take advantage of these issues, it is known today that the *dikastai*, or jurors, took an oath to uphold certain principles while serving. However, there is some argument over the number of elements to this oath, and what these elements may have actually meant. This oath is referred to ambiguously in speeches, likely leading to the different citations and parts of the oath. Harris believes that he has found mention of the oath in as many as fifty-seven (57) speeches.¹⁷ However, none of these passages claim to include the oath in its entirety. By his belief in each of the mentions he has found, Harris claims that the oath has four parts:

- “1) To vote in accordance with the laws and decrees of the Athenian people...
- 2) To listen to both the accuser(s) and defendant(s) equally...
- 3) To vote or judge (*dikasein*) with one’s most just judgment (*dikaiotate gnome*) about matters for which there are no laws and without favor or hostility...
- 4) To vote about matters pertaining to the charge”¹⁸

This collection is very inclusive, and widely held by many modern researchers. However, Mirhady would disagree. He agrees with the first clause on Harris’s list, and stands by a clause much like the third on Harris’ list. Mirhady believes that the *dikastai* swore to use their “most just understanding”, but that this was not in response to areas where the law

¹⁷ Harris 2013, Appendix 3 for collection of references

¹⁸ Harris 2013, 102, includes speech citation

was lacking. They would use this “most just understanding where there is a question of fact, not a question of law. It is possible that Harris was influenced by a reconstruction of the oath by Max Fränkel¹⁹ that includes six elements, and has been widely accepted. Mirhady supports that only the two clauses that he cites, the first of Harris’ clauses and a clause much like Harris’ third clause, are sufficiently backed by enough allusion as evidence,²⁰ and that Fränkel’s research only really supports the first element.

Sickinger agrees with Mirhady, stating that Harris’ first and third clauses are the only two elements of the oath that are not usually questioned by researchers.²¹ However, the fourth clause that states that jurors would vote only about the pertinent issue brings up a key issue. It could be that the fourth clause, that some do not believe to actually be part of the oath, is actually a clarification of the first clause. This idea could be further supported by Mirhady’s take on “most just understanding” being used by the jurors.²² Evidence supporting this clause comes from Demosthenes and Aeschines, Athenians prominent in the 350’s to 320’s,²³ and not from earlier texts, which lead some to believe that this clause could have been added later than the original formulation of the oath.²⁴ Many Athenians may have been able to assume from the first element that it was by the law and decrees of the city to only base their judgments off the charge at hand. If so, the fourth clause is redundant and needless. But if this fourth clause caused some confusion or question of intention, it may be that Athenians chose to clarify the message by adding this element at a later date.

¹⁹ Fränkel 1878, 464; or see Mirhady 2007, 49

²⁰ Mirhady 2007, 49-51

²¹ Sickinger 2007, 286 (Worthington?)

²² Mirhady 2007, 59

²³ Carey 2012, 21-22, for more explanation on speechwriters’ careers

²⁴ Mirhady 2007, 50

Whether this relevance issue was an agreed aspect of the dikasts', or jurors, oath may remain a subject of debate indefinitely. It is known that "the opposing litigants swear to keep to the point at issue" (*Ath. Pol.*, 67.1), at least in *dikai*, or private suits, and before the Areopagus. While they swore to do so, and frequently bring up this promise, most speeches appear to fail to speak only about the issue at hand. The speakers use their time to give their own or their opponent's background story, to bring up other charges that their opponent has committed, to discuss family members, or anything else that could have helped their case. They will use stories to outline the immoral past of their opponent, explaining how terrible and worthy of punishment the person they bring to court truly is, or they may use the time to display how amazing they, the speaker, are as a citizen of Athens. Sometimes, they even combine the two, giving examples of other past crimes done by the opponent that the speaker was nice enough to not bring to court.²⁵ If this does not go far enough, they may narrate the life of a family member to either support or tear down someone's character. With a lack of a leadership and legal structure in the courtroom, the speakers were able to do this quite easily without repercussion.

While these kinds of arguments are unacceptable now, some scholars believe that this practice of diverting from the main charge could be considered related to the issue in the eyes of an Athenian juror. Some find this extra information vital to the argument, theorizing that: "extralegal arguments provided information about the context of the dispute to assist the popular court jury in reaching a just verdict that took into account the particular circumstances of the individual case".²⁶ Some scholars may see information

²⁵ E.g. Lysias 3

²⁶ Lanni 2005, 113; in accord with those views of Humphreys (1983, 248), Scafuro (1997, 50-66) and Christ (1998, 195-6)

outside of the central actions as breaking this oath to stay on point, but perhaps this is a misunderstanding based on what is allowed in modern court. It could be that Athenians considered the details constructing the context of the crime as pertinent to the case. Most surviving cases contain both legal and non-legal arguments, which may represent that this was the expected norm and if so it may have fallen to the jurors to weigh the given evidence and make their decision on the argumentation that they felt most valid.²⁷ The jurors took on much of the responsibility now left to the judge and were trusted with the decision of how they would choose to judge the case.

While it could be that the jurors each made arguments upon what they found most valid, I doubt that this was what happened in reality. I believe that presentation of evidence was allowed more range but not that this was because the jurors believed that it was legally just. These men strayed from arguments of legality, employing the tactic that they thought would work best. I believe that they knew they could do so without the jurors objecting or otherwise stopping them from doing so. While in *Lysias 3, Against Simon*, a case surrounding a physical altercation, the speaker stays on issue for the majority of his defense, he explicitly takes some time near the end to tarnish Simon's reputation by mentioning his misdeeds while serving the Athenian army (Lys. 3.45). He then claims he "could tell you many other things about [Simon]," but does not "since it is unlawful to mention irrelevant material in your court" (Lys. 3.46). This is not the only speech that both alludes to the oath and breaks the oath. The speakers, and their speechwriters, would illustrate that they knew that speaking outside the issue was not allowed, but spoke as so nonetheless. This illustrates that they felt confident that they

²⁷ Lanni 2005, 115

would not be held accountable for this act, or at least that they felt it was worth it, as it would appeal to the jury.

Many arguments in the legal speech of Athens have little to do with any legal issue or evidence of crime. Assuming that the patterns of argumentation are indications of arguments that would most appeal to the men of the jury, there are three areas in particular where this extralegal information would help sway the jury.²⁸ The first is an argument or explanation that extends past the primary incident, and gives background information surrounding the dispute. Second, the speaker may make an appeal for pity, due to the severity of the punishment or other adverse effect caused by the judgment. Also, the extra information may just serve to taint the opponent's character, or to polish the speaker's. This repetition of strategy from experienced writers can help researchers presume what may have worked for the jury. Unfortunately, usually only one of the litigant's speeches is found, without its opponent's counterpart or information as to whether it was the winning side.

An important point surrounds the second strategy, the appeal to pity. This strategy could be especially successful in public suits where the punishments for the crimes were much harsher. Unlike the American judge who can decide the penalty after the arguments, the jurors of Athens usually knew the penalty before they decided guilt. In some cases, the jury had to choose between the two penalties proposed by the opponents in case of guilt, but in private cases damages were usually paid to the successful Prosecution, sometimes along with an additional fine. However, in these public suits, the

²⁸ Lanni 2005, 114

penalties were usually monetary fines, loss of citizen status, exile, or execution.²⁹ Due to the serious natures of certain crimes, and the jury's knowledge of these penalties prior to deciding guilt, appeals to pity could have easily made a large impact on the jury's verdict. This also ties into extralegal background information. Several speeches include the speaker sharing stories where they were wronged, but chose to show mercy by not bringing action.

Background stories and other attempts to harm their opponent's character all appeal to the juror's sense of moral goodness and standards in order to get the jurors to agree with their side. While they made it apparent that they were appealing to morals, this does not mean that the speaker was holding up the same morals. Another issue attached to the Athenian legal system was the ease of lying. While perjury was a crime just as it is today, today's lawyers are much better supplied with resources by which to hold the liars accountable. Facts were not checked or expectedly backed by evidence as they are in many modern systems. Some scholars believe that information was regularly distorted in order to misrepresent the facts in any way that may help the litigant achieve his purpose.³⁰ Without trained judges to hold order or sharing of evidence between opposing parties, it was much easier to get away with including false claims in stories. "What litigants could get away with in a courtroom was defined not by rulings from the bench but by the response of the jurors themselves, from supportive murmurs to heckling to questions shouted from the floor to the final verdict".³¹ We therefore cannot trust that the events that are depicted by speakers are true. We must instead look at these speeches for

²⁹ Lanni 2016, 12

³⁰ Hamel 2003, xii

³¹ Hamel 2003, xii

what they are: arguments serving as attempts to sway a jury. Instead of believing in their accounts for truth, it is more important to look at these stories as situations that were intended to receive a certain reaction from the jurors.

Another odd aspect of Athenian legal speeches is their tendency to use laws as part of an argument, not always as legal standards. They will have a law read out in order to give examples of good standards or evidence of how people should live, even if the standard has little to do with the charge at hand. While the Athenians had written laws and often alluded to them in court, the laws were sometimes just to set a tone. For example, one speech begins with readings of laws including one on protections for children, even though the case did not concern children. The law just brought up distasteful feelings upon which the speaker could build his case for distasteful conduct. Laws were only one factor of each man's argument, used as a different avenue than character issues or other items to support their claim.³² Inappropriately applied laws may have not been noticed by jurors. The speaker could have known that upon hearing a given law, the jurors would know how to feel and would react accordingly to what he had said.

While a part of the juror's sworn oath is to judge with their best judgment, we cannot claim that the jurors would have considered the law to be the standard to which to hold the defendant. The laws were just part of the speech as a kind of evidence. We do not know how they weighed the law's importance in comparison to character testimony, witnesses, or other kinds of evidence. Speakers commonly cited the laws in ways that best helped their case or sometimes just cited laws that may not have actually been applicable to their case, in order to make their argument sound better. For example, one

³² de Brauw 2002, 161

speaker cited laws considering city ordinances in the Agora in order to prove that he was correct in his suit, even though he was just suing for damages. Speakers did not treat the laws as if they were the key point that could illustrate the guilt of their opponent, but as tools to appeal to the jury. Speakers even sometimes spoke of laws in terms of their creators, invoking the judgment of these men through the laws in order to make them stronger as evidence.

The many differences in how the Athenians formed their democratic legal system can allow modern scholars to see how their cultural norms and legal reasoning shaped their system. Modern Americans may read a speech and focus largely on the unfair nature of status or the laws that seem odd by today's standards, but looking at the differences that are present is not the only mode to study these speeches in order to better understand the Athenian people. Yes, these cultural changes concerning status and sexual offenses are important keys to understanding the people, but it is more important to look for the reasoning behind their formation of these distinctions. Their legal reasoning will differ from ours, no doubt. Yet, studying the differences in legal reasoning can help us further understand their way of ethics. The speeches below will give examples of different cases that help illustrate their cultural understanding of legal standards for citizens versus metics and slaves, men versus women, and other dichotomies.

Part II: Case Study

This section examines ten Athenian law cases in detail, both describing the cases themselves and looking into the laws either surrounding the case or mentioned within the speech. Each case has different components and features that can show diverse aspects of Athenian law, which help scholars better understand Athenian social norms as dictated by these legal standards. Socially, it is important to keep in mind that these were speeches written specifically to try to sway a jury of other male Athenian citizens. From these arguments certain assumptions can be made concerning the speech and how the speech forms the speaker's strategy. These speeches use appeals and follow lines of reasoning that the speaker believed would appeal to the jury and that the jury would understand. Looking into the structure of these speeches in this way can help people today construct what the commonly held beliefs of the jurors may have been, what would appeal to them or what might be accompanied with negative feelings.

I will move through this list by the charge brought and by how well the contents of the cases link to the next. I will first cover three cases in which the prosecution is seeking money or damages in some way, referred to as *dike blabes*. These cases each contain aspects of how sexuality or biological sex distinctions were perceived in Athens. The following three cases cover a range of ways by which Athenians may go about changing someone's status or position. The first is a question of citizenship, the second a scrutiny of a man as a public speaker, and the third an impeachment case. The first two cases seek to change the person's status and the third seeks to remove him from office.

Each of these illustrates different aspects of shameful behavior that may call for these rare and harsh punishments. The next two cases are for intentional wounding, or *trauma ek pronoias*, and are especially helpful in their comparison to one another. The final two cases are for murder. The first of the two attempts to make a case for justifiable murder and the second is a case for murder by proxy. Moving through these cases, several themes shall be repeated and further examined to best determine what this collection can tell us about the social norms of Athens. The speeches will be listed by the writer of the speech, the numbering used by modern scholars, and the ancient titles.

Hyperides 3, *Against Athenogenes*

In Hyperides 3, *Against Athenogenes*, the Prosecution is Epicrates, an Athenian citizen and young farmer. The Defendant is Athenogenes a resident alien, or metic, from Egypt. The Prosecution is bringing a suit for damages, a case of *dike blabes*, against the Defendant. The Prosecution claims that the Defendant, with help from a *hetaira* Antigone, fooled him into making a bad business deal by not including debts of the slaves he bought in the contract. In this kind of case for damages, the punishment would likely just be financial. It is also likely that the jurors, as Athenian citizens, would choose to side with their fellow citizen instead of a foreigner.

The Defendant owned a perfume shop, which was worked by his three slaves. The Prosecution liked one of the slaves, one of the sons, and thus wished to buy the slave boy's freedom from the Defendant. Allegedly with a plan in mind, the Defendant instructed this slave boy to refuse the Prosecution unless the Prosecution also bought the freedom of the other two slaves belonging to the Defendant, the slave boy's brother and

father. The Defendant used his former mistress and famous *hetaira* Antigone to persuade the Prosecution to accept the slave boy's conditions, and purchase the freedom of the rest of his family. Working with the Defendant without the Prosecution knowing, the *hetaira* made the business deal look like a personal favor on behalf of the Prosecution. The Prosecution even gave the *hetaira* money afterwards to thank her and help her buy a girl. The Prosecution is fooled further, for when one buys slaves, he agrees to take on debts that the slaves had gathered, and the slaves had apparently been lent friendly loans. Acting as if to help the Prosecution cover these debts, the Defendant gave the Prosecution his perfume business. The eager Prosecution signed the deal without reading the contract. While some small debts were included in the agreement, many large debts were not. The Prosecution then confronted the Defendant, who did not budge. So, the Prosecution was responsible for the debt and sued for damages.

The Prosecution complains of how badly he was fooled by, presumably, the *hetaira*. This can only be presumed, as the speech is fragmentary. The Prosecution explains how he fell for the woman's trickery, due to passion unbalancing a man's nature (Hyp. 3.2). This is another example of how stereotyping women as treacherous or devious could apparently be justifiably used in a court setting. The Prosecution goes as far as to claim that he should not be held responsible for a contract while he was under the influence of a *hetaira* (Hyp. 3.18). Also, the speech casually talks about buying the slave boy for sexual companionship. The Prosecution did not appear to find this to be a fact that needed covering up or further explanation, or such explanation may have possibly been in a lost fragment. This open discussion of buying male companion is especially interesting when juxtaposed with the passage attempting to bring down the

Defendant's character by claiming that the Defendant spent money on his *hetaira* (Hyp. 3.34). It appears that spending money on a *hetaira* is more shameful than buying a youthful slave boy companion. This is additionally significant in comparison to the narrative surrounding same-sex relations in Aesch.1. Also, the Prosecution uses laws to explain why he may not have to stand by the contract, using the laws more as evidence than as a standard to uphold. However, few of his examples seem to really match up to his position in such a way to be a good prosecution, as he brings up laws surrounding status in relation to marriage and to wills.

Demosthenes 36, *For Phormion*

Apollodorus had recently initiated a lawsuit against Phormion, who is counter-suing Apollodorus on the grounds "that it was illegal to reopen the matter after Apollodorus had, many years before, released Phormion by a formal declaration that all his obligations" had been fulfilled.³³ This speech, Demosthenes 36, *For Phormion* is the counter-indictment, or *paragraphe*, brought by Phormion, the Prosecution, to block this prosecution brought by Apollodorus, the Defendant. This case has an important backstory that may be confusing and thus requires some clarification.

The Defendant's father is Pasion, his brother Pasicles, and his mother Archippe. Pasion was a former slave who earned his freedom, gained citizenship, and took over the bank in which he worked. The Prosecution was formerly the slave of the Defendant's father, Pasion. He too earned his freedom, and later his citizenship. At the father's death, his will instructed that he wished to pass guardianship of his youngest son, Pasicles to his

³³ MacDowell 2004, 151

former slave, the Prosecution, and another man named Nicocles instead of his son, the Defendant. In his will, he also included that one of the boy's guardians would marry his wife, the Defendant's mother, Archippe. Appointing the Prosecution instead of the Defendant as the guardian of his son in his will indicated that the Defendant's father thought that the Defendant was unreliable as a caregiver for his son, the Defendant's younger brother.³⁴ As guardian, the Prosecution looked over all of the Defendant's father's property, including his bank and his remaining sums. Apollodorus, the defendant here, took great issue with this arrangement left by his father, and brought prosecution against Phormion, the Prosecution in this case.

After the death of his father, the Defendant was to wait for his younger brother to come of age before he split his share of the estate. The Prosecution held control of this estate, but the Defendant did not wait to spend his share of the inheritance. In addition to financial issues between them, the Defendant was apparently not happy that the Prosecution was married to his mother even though it was by instruction of his father's will. This formed a feud between the two men. It is important to note that in order to be named guardian, one of the men in charge of the estate, the Prosecution or Nicoles, had to marry the late father's wife. After the passing of the Defendant's mother, the Prosecution's wife, the feud between the two worsened. The Defendant Apollodorus attempted to sue the Prosecution, Phormion, claiming that the Prosecution owed him financially. This brings us to the time of the case. This case is a counter-indictment brought by Phormion to block the suit brought by Apollodorus.

³⁴ MacDowell 2004, 151

Phormion, being an old man by now and not having the best Greek it seems, had a supporter speak for him. I will still refer to this speaker as the Prosecution, even if he is not Phormion, for clarity of narrative. The Prosecution uses the speech to illustrate how Apollodorus was reckless and greedy. He claims the Defendant started spending recklessly to the point that there would be no estate left to split when the Defendant's brother came of age, so the guardians "decided to carry out the division of the property to safeguard the boy" (Dem. 36.8). The Defendant never made complaint while his mother, the Prosecution's late wife, was still living, but only brought charges for money, property, and a slave after her death (Dem. 36.14). In response to this, the Prosecution gifted the Defendant "to be friends with Apollodorus rather than become his enemy", but did not recognize any legal claim by the Defendant (Dem. 36.15).

The Prosecution addresses that the Defendant's mother had been aligned for marriage to a former slave of her husband's, the Prosecution, by will. He references other well-known cases reflecting this practice, making it seem like a somewhat acceptable practice, and says that the Defendant could not be justified in being humiliated by this, as it was the only way for his father to insure the safety of his business (Dem 36.28-31). The Prosecution goes on tearing down the Defendant's character with examples of his recklessness. Towards the end of the speech, the Prosecution then uses his time to outline all the good that the Prosecution has done for Athens. While much of the speech does stay on point of the charges at hand, there is constant testimony on how the Defendant is acting like a spoiled and irresponsible son and the Prosecution as a kind and giving man who earned his citizenship and has served Athens well.

Demosthenes 36 is an excellent example of a case where the speaker argues points outside of the legal issue in an effort to damage the jury's perception of the opposition's character. From this speech, the Prosecution seems to be hardworking and careful, while the Defendant is naïve, petty, and far worse of a man than the Prosecution. Especially important in defining social norms, this speech supplies evidence of how women are commonly treated and regarded in legal matters. The marriage of the Prosecution to Archippe, the wife of the late father, was an agreement set within her husband's will, as he required that a guardian should marry his widow (Dem. 36.8). The Prosecution intends to make the jurors realize their knowledge of this practice, using examples of favorable men (Dem. 36.28-30). While we must note the Defendant's apparent opposition to the arrangement, the appearance and possible common use of this practice helps define how women could be grouped essentially as part of an estate. In addition, in this case, as with almost all others, it is important to notice that Archippe and other women are only mentioned as a wife, mother, sister, or other title relating to men, not her name (Archippe's name never appears in the text and is only recorded in an ancient summary of the speech). Referring to women by their name would be considered a great insult, as this would only be done for women with terrible reputations, as we will see further down.

Demosthenes 41, *Against Spudias*

Demosthenes 41 is a case for damages. The unnamed speaker is the Prosecution, and Spudias is the Defendant. The two men are related by marriage, as their wives are sisters. Some time after the death of their mother-in-law, the Prosecution brought this

case suing the Defendant, who is somehow in control of the estate, for a portion of the dowry that the Prosecution never received. The Prosecution claims that 1,000 drachmas are due to him from his late father-in-law's estate. He also demands of the Defendant other sums of money for related things, namely a portion borrowed from his late mother-in-law, a few items, and a contribution to the cost of celebrating the feast of the dead for the deceased father-in-law. However, neither of these men are heirs of their father-in-law's estate. The men's wives are *epikleroi*, or heiresses of their father's estate, about which I will say more below. Both men are husbands of *epikleroi*, which indicates that they may control certain aspects of the estate but they do not have any ownership of it. This case also has a confusing narrative, which I will clarify.

The Prosecution's wife is the older sister of the Defendant's wife. Polyuctus is the father-in-law of both men. Leocrates is their mother-in-law's brother. The father-in-law, Polyuctus, believing he was near death, adopted Leocrates in order to have a male heir. Polyuctus also gave his younger daughter to Leocrates in marriage. Polyuctus did not die, and later had a falling out with his adopted son, Leocrates. Polyuctus dissolved the adoption of Leocrates and Leocrates' marriage to his daughter. Thus, with Leocrates no longer being a son or heir to the state, Polyuctus was again without an heir. At some later date, Polyuctus gave his younger daughter in marriage to Spudias, the Defendant. The father-in-law died some years later, and his wife, the unnamed mother-in-law, who died some time after her husband, seems to have somehow maintained control of the estate. The Defendant is married to the younger daughter that had first been married to Leocrates, but this does not give him any different control over the estate than the Prosecution. It is unclear why the father-in-law, upon the nullification of the adoption of

his younger daughter's first husband, did not adopt any other male relative or son-in-law in order to avoid this confusion of inheritance.

While much of this case is ordinary for estate disputes, this case is set apart by several uncommon aspects. Under the witness of her brothers, the mother-in-law was allowed to lend the Defendant 1,800 drachmas (Dem. 41.8), and possibly another 200 drachmas (Dem. 41.22), which is a much higher sum than the lawful limit of a woman's financial transactions.³⁵ While she supposedly still had to be under the supervision of a male relative, these loans show some freedom that women had in financial matters. Also, the Prosecution claims that his wife gave a contribution of 1,000 drachmas of silver to the celebration honoring her father's death (Dem. 41.11). This was a sizeable amount, especially under the control of a woman. Another issue, while far from unheard of, is the unusual case that this man may have left his daughters as *epikleroi* without a clear plan for the inheritance of his estate. The husband of an *epikleros* did not own her inherited estate; he merely had the ability to control it until the woman had a male child.

It is possible that the father-in-law was expecting at least one of his daughters to soon produce a male heir that could then take ownership of the estate. The law reflects that husbands of heiresses were expected to be active in getting their wife to produce a male heir. Husbands of *epikleroi* were required by law to have sexual intercourse with their wife three times a month, and if the husband failed or was unable to do so the *epikleros* was to be claimed by her closest male kin.³⁶ A husband was expected to try to produce a male heir so that it would not appear that they were simply trying to keep

³⁵ A woman could contract no more than a *medimnos* of wheat, which was equivalent to a range of 6-16 or 18 drachmas (Scafuro 2011, 86)

³⁶ MacDowell 1986, 96-97

control of their wife's estate. Even if an *epikleros* was married at the time of her father's death, "her father's nearest relative could still claim her in marriage, so that she was divorced from her previous husband".³⁷ This was usually done so that a close male kin may have control of the estate instead of a man who could not inherit, in order to keep the estate under control of the family. It was also possible that the father had left a posthumous adoption, as part of his will, to be rewarded to the first grandson born by either of his daughters. This was done by many men but would of course spark a kind of race between the *epikleroi* to have a son that could be adopted and claim the estate.

[Demosthenes] 59, *Against Neaira*

[Demosthenes] 59 is a case questioning the citizenship of a woman named Neaira. This speech may have been written by Demosthenes, but many believe that Apollodorus was the actual author. This speech surrounds an extremely long narrative with many elements that require further explanations and introductions. To first clarify the people involved, Theomnestos is the formal Prosecution, however the majority of the speech is performed by his father-in-law Apollodorus. This is the same Apollodorus as the Defendant of Dem.36. Neaira is the formal Defendant, but it is likely that Neaira's male companion Stephanos spoke on her behalf. Their relationship is unclear since marriage was only allowed between citizens. The issue in question is whether Neaira and Stephanos are acting as if both are citizens and living in citizen marriage illegally. Much is also said of a girl named Phano. Phano is their daughter, allegedly mothered by Neaira, but possibly parented by Stephanos and his late citizen wife. While this case was

³⁷ MacDowell 1986, 96

formerly brought by Theomnestos against Neaira, the true feud was between Apollodorus, who speaks for the majority of the prosecution, and Stephanos, Neaira's male companion. They had a long-standing feud, and this was an attack on Neaira with the intention of hurting the reputation and credibility of Stephanos.

The Prosecution uses Neaira's past against her, speaking of it at length. I will thus supply a short summary of her life before the case and clarify what is important to know about her story as it pertains to the case. This story is all contained in the Prosecution's speech. The Defendant, Neaira, had grown up in a brothel in Corinth, however this does not mean she was of Greek extraction as Corinth was full of commerce and people passing through from all over the Mediterranean.³⁸ The Defendant was purchased by Nikarete, a freed slave and brothel owner. Nikarete's prostitutes were known for their high quality, especially since she referred to them as daughters. It is said that she did this in order to charge a higher price, since use of free girls could be charged at a higher price than slave girls. These were not girls that simply got paid for service but built relationships, in a way, with their clients. This type of prostitute is called a *hetaira*, which is often translated as companion, distinguishing them from lower-class prostitutes called *porne*. Later, she was sold by Nikarete to former clients Timanoridas and Eukrates for 3,000 drachmas, and worked for them until they offered to let her buy her freedom for 2,000 drachmas. This was quite a lot of money. 1,000 drachmas was the amount cited for many generous dowries, as well as being the amount that Stephanos could be punished if Neaira was found guilty of living as a citizen wife with him. Neaira was able to get this money from old clients, especially an Athenian citizen, Phrynion who brought her to

³⁸ Hamel 2003, x

Athens. After dealing with his mistreatment for a time, she took clothes and jewelry he had given her, her two slaves, and some of his things, and moved to Megara. She stayed for two years in Megara, and eventually met Stephanos, her current male companion.

Demosthenes 59, *Against Neaira*, is a speech by the Defense, Theomnestos and Apollodorus, for *graphe xenias*, or questioning whether she was acting falsely as if she held citizenship. The Prosecution uses these stories from the Defendant's past as evidence to prove that she was not a citizen and to ruin her character. After telling the Defendant's past, the Prosecution adds to his accusations by claiming that Stephanos was making money from his relationship with Neaira, charging for her services and then blackmailing her lovers. Though the Prosecution claims that he is trying to prove that she is a foreigner, he goes further, questioning whether the Defendant was actually a slave. Slave status was much further beneath foreigner status of any kind. The Prosecution brings up arbitration between Stephanos and another man by the name of Phrynion mentioned above, through which the Prosecution alleges that the men agreed to share the Defendant like a *hetaira*, thereby calling into question her freedom during this episode. A foreigner claiming citizenship was already a terrible crime and insult to citizenship, but the accusation that she may have been an even lower status, one that could be bought and sold, would likely affect the jurors by angering them further.

In a second narrative episode of the case, the Prosecution refocuses his case on Stephanos' daughter, Phano, who is said to have a disputed parentage. Phano and the other two children named Proxenus and Ariston were brought with the Defendant and Stephanos from Megara. The daughter was given in marriage to an Athenian citizen with the claim of her also being an Athenian citizen. According to the Prosecution, when the

daughter was given away, her father claimed “she was a daughter whom Stephanos had with an Athenian woman before he lived with Neaira” ([Dem.] 59.51). However, the Prosecution believed that she was truly the Defendant’s daughter. If this was true, then the daughter would not have been a citizen and Stephanos could be punished for falsely giving away a foreign girl in marriage, claiming that she was an Athenian citizen. Phano’s husband divorces her, allegedly due to his believe that she was not truly a citizen. The Prosecution taints the daughter’s reputation much like he did with the Defendant, accusing the daughter of being a prostitute.

Some time after this divorce, a man seized by Stephanos confesses to having sexual intercourse with Phano. As her father, Stephanos could bring punishment to the man caught in bed with his daughter outside of marriage including a monetary fine. The man, however, claims that he did not commit adultery since she was the Defendant’s daughter. He claims that Stephanos’ house was a brothel where one could not be guilty of such a charge. It was legal to have sexual intercourse with a prostitute, thus this charge would not have been applicable. The matter was settled in private arbitration with the man supplying a dowry for Phano. This illustrates an interesting aspect of Athenian legal reasoning. He admits to the act, but claims that he did not commit *moicheia*, commonly translated as adultery or seduction. This was allegedly because he believed that she was the Defendant’s daughter, not the daughter to Stephanos. This made a difference legally, as if she was the daughter of Stephanos, the man could be punished in any way without a weapon ([Dem.] 59.66). However, if she was the Defendant’s daughter he believes that it would not count as seduction, apparently under the assumption that she was a prostitute.

Further, Stephanos helped a man named Theogenes after he was selected to serve as Basileus, a religious magistrate. Since Stephanos had helped the man, Theogenes agreed to marry Phano. Theogenes was under the understanding that Phano was not the Defendant's daughter, but the daughter of Stephanos. Since the daughter married a man allotted as Basileus, she was given as a bride to Dionysus, a duty that included swearing in priestesses and performing secret rituals for the Gods ([Dem.] 59.73; [Dem.] 59.78). This was illegal if the daughter was truly a foreigner and not a citizen, but more importantly this was an inappropriate office for her since she was not a virgin. So, upon allegedly learning that his wife was given to him under false circumstances, Theogenes does what he must to avoid punishment. He begged the Areopagus Council for forgiveness, claiming that he had been tricked by Stephanos into the marriage.

However, even if Theogenes had not proven that she was a prostitute, the man mentioned before had admitted to having sexual relations with her while unmarried, and she had been married before. Thus, it was obvious that she was not a virgin, and thus not a suitable wife to be married to the Basileus. Yet, this is not mentioned as a lapse of his logic. If this were true, it is important to point out that her actions would keep her from being able to attend any sacred rituals of the city as all, due to beliefs surrounding affects that her sexual pollution may have on the religious ceremonies and rituals. It is important to remember that all of these events and accusations are being brought up as part of a case concerning the question of Neaira's citizenship. Both women are described at great length with detailed narration of their respective pasts. The speech just of their stories may have taken hours. There were not quick side notes of characterization, but long explanations of how these women allegedly lived their lives.

The Prosecution is trying to deny the Defendant's citizenship, for if the Defendant is found to be a non-citizen living in marriage with a citizen and claiming to be a citizen falsely, she and her property are to be sold, with one third going to the successful Prosecution. Also, Stephanos would be fined 1,000 drachmas. Regarding the supposed daughter Phano, Stephanos could also be charged with falsely giving away a foreign girl as a citizen in marriage. If found guilty of this charge, Stephanos could lose his rights as a citizen, his property would be confiscated, and one third of this property could be claimed by the successful prosecution. As mentioned before, loss of citizenship was only a penalty for very serious offenses. This reflects how seriously Athenians regarded their citizenship. Being married to a foreign woman was illegal but came with much harsher punishment on the woman than the man. However, lying about the status of your daughter could strip you of your rights and property. From the narrative, it seems that at this point, a number of earlier cases had legally recognized Phano as the daughter of the Defendant, not as the daughter of Stephanos and his late citizen wife. By extension, it also seems that it was pretty understood that the Defendant was a foreigner and that Stephanos was not making any effort to refute that.

At first glance, this case seems to reflect a simple attempt to ruin a man by ruining the man's companion's reputation. However, the way by which the Prosecution does so reveals many aspects of Athenian law, and social customs of that time. This case and Antiphon I, *Against the Stepmother* are our only surviving examples of a woman being the defendant. These women would have to have a man speak for them, as women could not speak in court. Also, Apollodorus refers to Neaira and Phano by name throughout the speech. As noted earlier in the discussion surrounding Dem.36, respectable women were

not identified by name in Athenian law cases usually. They were spoken of in terms of their male relatives, as doing otherwise was an obvious show of serious distaste and disrespect for the woman. Giving examples of Neaira's inappropriate behavior Apollodorus claims that in Athens, Neaira "drank and ate in the company of many men, as a hetaira would," much unlike a respectable Athenian woman ([Dem.] 59.24). He does, however, point out a time where Neaira was "working as a prostitute though she was not fully grown," which gives us a hint that it could possibly be considered wrong to prostitute younger girls ([Dem. 59].22). The prosecution makes much of his case by the claim that most people would have known to be true. He argues by appealing to customs. This reasoning is helpful to scholars in piecing together what Athenians may have expected to be culturally normal.

Aeschines 1, *Against Timarchos*

This is a case for scrutiny of public speakers, *dokimasia thetoron*. Aeschines is the Prosecution and Timarchos is the Defendant. Before this case, Timarchos, the Defendant in this case, and Demosthenes brought a charge against Aeschines for *parapresbeia*, or misconduct on an embassy. Before this case is able to get to court, Aeschines as the Prosecution brings this case, a *dokimasia rhetoron*, or scrutiny of public speakers, against Timarchos as Defendant. If the Prosecution were to be successful in proving that the Defendant was not fit to be speaking regularly in the Athenian Assembly, the penalty was forfeiture of citizen rights. A *dokimasia rhetoron* is not a *graphe* or *dike*, but more like a hearing. This is not to be confused with another kind of *dokimasia*, which was a routine procedure done to check those entering office. This is a

similar action but is initiated at the call of another citizen. The Prosecution, sought to prove that the Defendant was living a disgraceful life in one or more of four areas: mistreating his parents, failing to perform military service when required, acting as a prostitute, and consuming his inherited estate (Aesch. 1.28-29). Proving his guilt in any one of these areas would be enough for the Prosecution's victory, and any would be considered by Athenians a heinous offense by someone active in the Assembly.

Aeschines makes a point to mention that Timarchos was shameful for the way he treated elders whom he should have valued and for throwing away his shield, but he does not spend much of his speech on these topics. According to the Prosecution, the Defendant had been a prostitute and got paid to go live with a man named Misgolas. Since the Defendant had plenty of money, the Defendant partook in a variety of shameful deeds simply for the pleasure gained from these activities that no well-born, free man should enjoy (Aesch. 1.42). The Prosecution shares several exploits of the Defendant with other supposed male partners. In one story the Prosecution uses the narrative to make fun of the Defendant for taking on a more subservient position in an embezzlement scheme, calling him a woman (Aesch. 1.111). The Prosecution rarely includes any details in these stories, as they would be inappropriate to repeat to the gentlemen of the jury. He does note that the Defendant stayed with men, but enjoyed female prostitutes as well. While bringing up affairs and parties, the Prosecution ties in innuendos concerning male prostitution to further stereotype and degrade the Defendant's reputation. This case is also very lengthy, with there possibly being hours dedicated to outlining these stories and shameful stories.

The Prosecution also seeks to prove that the Defendant behaved disgracefully by misusing his inherited estate. According to the Prosecution, the Defendant had been left plenty by his father but the Defendant was too impatient and impractical to use it responsibly. The Defendant consumed, and drank, his estate until he had completely squandered it away (Aesch. 1.95-105). The Defendant's father had several pieces of land, two workshops in silver-mining areas, slaves, homes, and money. Though the narrative seems to indicate that the Defendant's father may have been questionable as well, it is known that plenty was left to the Defendant, and that the Defendant was so quick to profit from its sale that he failed to even seek out the best prices. The Defendant is apparently so financially irresponsible that he owes others money at this point. By their legal reasoning, being so financially irresponsible was a loss of control that good citizens would not give into. While most verdicts are not known to us in modern times, we know that the Prosecution, Aeschines, was successful in his case against Timarchos, the Defendant, who was thus disfranchised.

A person could be declared unworthy of speaking before the law for any of the four charges of mistreating his parents, failing to perform military service when required, prostituting oneself, or wasting inherited property. The Prosecution here claims that the Defendant is guilty of each of these four charges, which without a doubt would have had quite an overwhelming affect on the jury. This overwhelming affect could have been a strategy. Even if the jury did not believe that the Defendant was guilty of each charge, the speaker only had to convince them that he was guilty of one. After being bombarded with allegations of all four charges, one may assume that at least one allegation was true. The speech focuses mainly on the last two charges, which could be because the last two were

more interesting socially or may have been considered more distasteful before the jury. However, it is more likely that this emphasis is placed where the Prosecution could find evidence, and that there was a lack of evidence for the first two offenses.

The Prosecution cites laws where they are of advantage to his case. At the opening, the Prosecution explores ways by which the law is designed to keep children safe, not just for their protection, but to show Athenians what good behavior consists of. He brings up laws surrounding school and wrestling teachers, how they were not permitted to open or close doors when the sun was down, or other actions that may protect children from being taken advantage of by adult men under 40 (Aesch. 1.9-12). He then calls for the laws that surround committing *hybris*, or in this context prostituting, against a free or slave boy (Aesch. 1.13-16). The punishment for either offense is death, but only against the adult and not the boy, as the boy could not be held responsible at this age. Neither of these laws directly correlates with the charge at hand. However, citing these laws could be effective towards the jurors, even if they were applied incorrectly. Citing the law can make the speaker appear as if he understands the law well. Also, citing laws concerning foul actions could place his argument in a similarly distasteful setting. The jury was to reflect their feelings toward these laws upon their opinion of the Defendant. It does not matter that these crimes are not alleged to have happened, because the Prosecution just wanted to set the tone by which to convince the jury that his opponent lived in a shameful way.

The next law that the Prosecution cites is the law stating that any adult Athenian prostituting himself would be punished by loss of several rights, and potentially could be punished with death. In another area, though not law, the Prosecution shares a Spartan

story of lore in which a father finds out that his daughter has lost her chastity, and kills her by shutting her inside a house with a horse to show how seriously people have reacted to loss of shame in the past (Aesch. 1.182). He follows this with a reference to Solon's law stating that a woman whom has been taken in an affair must not adorn herself, nor attend public cult ceremonies, lest they corrupt the innocent women present, and if she does so she is to be stripped and beaten, so that her life is no longer worth living (Aesch. 1.183). The Prosecution uses Solon as a man with a good reputation to further show how the law is meant to shape a good Athenian way of life. Neither of these has any direct correlation to the charges at hand but would likely spread a shared feeling of righteousness toward the laws in hand and upholding standards.

Regardless of whether the accusations are true, this case does bring up plenty for study concerning what was thought to have been acceptable and what was disgraceful for a male Athenian citizen, including the view of homosexual relationships in light of the law. Also, the Prosecution's narrative directly gives some of his thoughts on homosexuality as a social norm. There are certain, specific details in his narrative that reflect how easily circumstances could be regarded differently before the jury with slight changes to specific characteristics. For example, the importance that "Misoglas was a few years older than Timarchos, and thus in a position to have been his lover (*erastes*) and to have 'kept' him in a homosexual relationship"³⁹ shows how age affected relationship boundaries (Aesch. 1.42). Homosexual relationships were only somewhat acceptable when the men were of unequal ages. Some believe that Aeschines lies about Timarchos' age here, making it seem like his relationship with Misoglas was impure. Those that

³⁹ Fisher 2001, 11

believe Aeschines told a lie claim that Timarchos and Misoglas may have both been older men, and thus would their relationship was more likely just a friendship.⁴⁰

Is this were to have happened before Timarchos' turned 18, the Prosecution claims that the Defendant could not have been held accountable, due to his young age. The Prosecution does, however, distinctly clarify his feelings towards homosexual relationships. The Prosecution references and discusses Achilles and Patroklos, how their erotic love "had not long been celebrated as a blessed thing," but only since it had been coupled with self-control (Aesch. 1.133). This aspect seems believably applicable, as he feels free to share this distinction before the jury at such an important trial. The Prosecution also notes that a slave must not pursue a free man, but a free man is allowed to pursue a slave, though it serves as a test of his self-control (Aesch. 1.139). Once a man has given into pleasure to the point that they are not keeping self-control, they should be ashamed and are not worthy of being Athenian citizens, he argues.

Hyperides 1, *In Defense of Lycophron*

In Hyperides 1, *In Defense of Lycophron*, Ariston and Lycurgus brought a suit together, and are the Prosecutions. Lycophron, an Athenian horse breeder and cavalry commander on the island of Lemnos is the Defendant and speaker. The Prosecutions are accusing the Defendant of adultery with a widow who has been married a second time. However, they are not bringing a charge for adultery, or *graphe moikheias*, but an *eisangelia*, or impeachment. This accusation of adultery was initially brought up by the widow's late husband's family. The widow had a son with her late husband, but if the

⁴⁰ Fisher 2001, 11

Prosecutions can prove that the Defendant committed adultery as far back as during that marriage, the family has grounds to question whom the father of the child is, and possibly lay claim to what the child would inherit.

At least three years before, the Defendant allegedly seduced a widow betrothed to another man, Charippus. Charippus was to become her second husband, but the Defendant, having been in an affair with the widow since she was still married to her late first husband, told her to not consummate her marriage to Charripus, her second husband. While the Defendant of course challenges the truth of these accusations, he also uses his speech to question whether adultery was just grounds for impeachment. The speech is fragmentary, but from the preserved pieces it appears that the Defendant compares adultery to more heinous crimes like betraying the dockyards, burning public buildings, or seizing the Acropolis. We must presume from his comparison that these were likely crimes that could be considered grounds for impeachment (Hyp. 1.Fr3). In his effort to challenge the truth of these allegations, the Defendant appeals to likelihood. The Defendant claims that a man like the second husband was not likely going to marry a woman that was known to be in an affair. Also, the widow's brother is apparently known as the strongest man in Greece. As the man giving her in marriage, it is unlikely that her brother would allow for the Defendant to approach the widow on the day of her second wedding, the time when the Prosecutions claim that the Defendant instructed the widow not to consummate her second marriage.

The relatives of the widow's late husband were looking for proof of illegitimacy of a child and thus joined the Prosecutions in their suit, both trying to benefit from this rumor. One of the Prosecutions, Ariston, according to the speaker, "makes his living as a

sycophant, prosecuting and blackmailing others and has been employed by the relatives”.⁴¹ The Prosecutions seem not to have any ulterior motive against the Defendant or the widow. This was a business for them. Also, mentioned in the speech are other legal implications surrounding adultery. The Defense possibly points out that it was illegal for a man to be married to a woman that committed adultery (Hyp. 1.12). If a man knew his wife to be unfaithful, it is known that he was to either divorce her, or surrender his rights as a citizen. However, the law does not clearly indicate that a man would not be allowed to marry a woman following this divorce. The relatives of the late husband just wanted to find a way to declare the child illegitimate so that all that he was intended to inherit could be taken by them.

It is important to remember that in Athenian law, adultery was a *graphe*, or public offense. This means that they viewed adultery as a crime that hurt the community as a whole. Thus, if they were successful in impeaching on grounds of adultery, it could indicate that the jury found it justifiable due to the protection it would extend to other men and their marriages. Either they could send a message that adultery was not as harsh a crime against Athens, or they could find that it was that serious, and legally show protection towards the threat of seduction. It appears that the Defendant attempts to separate this crime from those that are more heinous, but if he was found guilty, it could indicate how seriously the crime was taken. Also of note, it seems that the woman’s late husband left her a talent (6,000 drachmas) of silver for her dowry (Hyp. 1.13), to be given when she was remarried. He gave her a gift to help with her future marriage. Compare this to the case in which a husband put instructions for his widow’s next marriage in his

⁴¹ Worthington, Harris, and Cooper 2001, 73

will. This is an example of how a husband may have made consideration instead of instructions for his surviving widow following his death.

Lysias 3, *Against Simon*

In Lysias 3, *Against Simon*, Simon is the Prosecution in this case. The Defendant is not named, but is also the speaker. The Prosecution is accusing the Defendant of premeditated wounding, or *pronoia*, which is a private suit. If found guilty, the Defendant would be exiled and have his property confiscated. The episode in question apparently happened four years before this, when the feud between the two men began. Four years before this, both men had fallen in love with Theodotos, the young slave boy. The Defendant claims that he treated him well, but the Prosecution was violent and treated him terribly. However, the Defendant does not actually list any examples of mistreatment done to the youth by the Prosecution. This shows that the speaker believed that the jury may sympathize with someone who treated their partner better than another, even in this kind of relationship.

At one point the Prosecution drunkenly broke into the Defendant's house, was forced out by the people that accompanied the Prosecution, and then tried to hit the Defendant. While in the house, the Prosecution entered the women's quarters, where the Defendant's sister and nieces were, where even male relatives did not go. The Defendant left Athens with the youth, and returned some time later in hopes that the feud had cooled down. Soon after the Defendant returned with the youth, the Prosecution and his friends waited for the youth to come outside in order to drag him off. The youth and the Defendant ran in opposite directions. At this time over 200 witnesses report that there

was no injury to anyone. The attackers, the Prosecution and his friends, found the youth. They then beat anyone who tried to protect the youth, including the Defendant once he caught them. The attackers then beat both the Defendant and the youth. Afterwards, apparently those with the Prosecution apologized, and four years passed without incident, until the Prosecution brought this case.

Apparently, the Prosecution claims that he bought the youth as a sexual companion for 300 drachmas, which is allegedly more than the Prosecution even owns. The Prosecution also claims that the Defendant tried to separate him and the youth. The Prosecution's story is that the Defendant came to his house with the youth and threatened him with shards of pottery in the middle of the day. The Defendant then turns to plausibility, pointing to all the issues in the narrative and all the ways by which this premeditated crime would have been a foolish one. One characteristic cited by the Defendant as to how the crime would seem implausible is that it would be foolish to commit a crime along with someone who could be tortured, implying that the youth could have been tortured. As the Defendant veers off topic to tarnish the Prosecution's character, he portrays his opponent as too hateful to hold this kind of love. The Defendant then reminds the jury of Prosecution's dismissal from the military, as it was due to an attack on Laches the taxiarch. This is an attempt by the Defendant to characterize his opponent as one known to start a fight, using time in his defense speech to cast a negative view of his opponent. Ironically, the Defendant then says that he cannot say any other things about the Prosecution, because he is not allowed to speak off of the main issue. Bringing up a past crime of his opponent could seem to already be off topic.

The Defendant describes his ongoing feud with the Prosecution over the youth, but asks the jury that if his “feelings for the lad display a folly inappropriate to [his] age,” not to think any worse of him (Lys. 3.4). He goes on to speak of the differing treatment that the boy received from the men, which we can assume is a way for trying to draw the jurors to his side. Filling his time with these remarks on their respective treatment of the boy points toward the idea that he had an idea what the jurors may find distasteful. This implies that the Defendant therefore believed that his age might be an inappropriate aspect of their relationship, but that the Prosecution’s mistreatment would also be considered offensive by the jurors. The Defendant openly calls the boy an object of desire and follows a narrative where the friends of the Prosecution were willing to fight with him so that he could win back the youth. It is probable that the somewhat public knowledge of the nature of these relationships illustrate that others held at least some level of acceptance for this kind relationship. Though the age of the youth is not clear, the Defendant mentions that he was too small to fight. Also, the Defendant mentions that the Prosecution claimed to have bought the boy, and in passing mentions that the youth could be tortured, which would indicate that the youth was a slave (Lys. 3.33). If the boy were of a different social standing, or of a different age, the social implications of these relationships could have been much different.

Lysias 4, *On a Premeditated Wounding*

In Lysias 4, *On a Premeditated Wounding*, the Prosecution as well and the Defendant are unknown. This is a speech by the Defendant. Just like in the last case, Prosecution is accusing the Defendant of premeditated wounding, or *trauma ek pronoias*,

which is a private suit. This assault was due to a female slave that the Prosecution and Defendant are in a dispute over. Apparently, the Prosecution claims to have full ownership of the female slave. However, the Defendant claims that he and the Prosecution had entered into an agreement to share the slave. Just like the last case, if found guilty, the Defendant would be exiled and have his property confiscated.

According to the Prosecution, the Defendant entered the Prosecution's home with premeditated intent to kill him, bringing with him a potshard. The Defendant allegedly struck the Prosecution with this potsherd and took the slave from him. The Defendant admits to going after boys and flute girls but denies premeditation, as they were drunk, thus not in a state to premeditate their actions (Lys. 4.7). The Defendant also claims that he only gave the Prosecution a black eye. Another contradiction of facts comes solely from the Defendant, as he says at one point that the slave went back and forth between loving the Prosecution or the Defendant more but then later claims that the slave preferred the Prosecution. The Defendant mentions that her preference of the Prosecution created a risk that he would be willing to take in torturing her, as she may lie to protect the man she prefers (Lys. 4.8; Lys. 4.17). Unlike most cases, much of this speech focuses on the possibility of giving the slave to be tortured. The Defendant also mentions that the Prosecution claims to have freed the girl. The Prosecution believes that he could do this as he defends that he had full ownership of the girl. The defendant saw this as a way for the Prosecution to ensure that she would not be giving testimony under torture. If she was freed, she could no longer be tortured in order to give testimony.

In most cases, it seems that the request to torture one's slave in order to get testimony was rejected by the owner. Here the Defendant describes in considerable detail

how this rejection may be of use to him. The Defendant's focus on the slave's statement puts great weight on the testimony. He seems to indicate that using the slave as a witness could be the defining factor of this case. In addition to not having much of the narrative or names of those involved, the lack of knowledge surrounding this speech goes further. The date of this speech is unknown, there is a question as to whether Lysias actually wrote it, and some believe that this is not the complete speech. From what we do have, it is easy to compare Lysias 4, *On a Premeditated Wounding* to Lysias 3, *Against Simon*, but the presence of these differences allows scholars to draw conclusions from their comparison.

Lysias 1, *On the Killing of Eratosthenes*

In Lysias 1, *On the Killing of Eratosthenes*, Euphiletos is the Defendant and speaker, but the Prosecution is not named, though it must be the family members of the deceased. Eratosthenes cannot be the Prosecution, since he was murdered by the Defendant. Euphiletos' wife was allegedly having an affair with the deceased. However, this is not a trial about adultery per se. This is a murder case, *dike phomou*, to decide whether the Defendant was justified in his murder of the deceased. Since murder was a private case, it required someone to bring the case, almost certainly a family member, in order for Euphiletos to be called to trial. Cases of justifiable homicide included catching a thief, fighting in war, self-defense, athletic competition, working as a doctor, trying to overthrow the government, and catching someone in bed with your mother, wife, sister, daughter, or concubine.

The Defendant admits to murdering the deceased but attempts to prove that he was justified in doing so. If he failed, he would be put do death. The Defendant claims that the deceased seduced his wife and shamed his family. According to the Defendant, by entering his house the deceased shamed the home itself, the legitimacy of the Defendant's sons, and the Defendant himself, while corrupting the Defendant's wife. Due to this, the Defendant did not want the deceased man's money or any other benefit outside of gaining reparation through the actions he chose, which are legal. The defendant mentions that he did not trust his wife until after they had their first child. After that the Defendant trusted her with everything. The house had two stories; the Defendant had upstairs and his wife had the downstairs, so that she could care for their baby there. Allowing the wife to have the lower story and the husband the upper story was a reversal of the usual arrangement of a house. The wife had locked the defendant upstairs before, and once he caught his wife wearing makeup while sneaking out, supposedly to get a lamp. The Defendant did not place significance on these incidents until an old, overworked slave approached him and informed the Defendant of the deceased man's seduction of the Defendant's wife. One of the household slaves verifies this narrative when threatened with torture. When the Defendant caught the man with his wife in bed, the deceased asked the Defendant to accept money and not to kill him, but the Defendant took no interest in this option. Now, the Defendant calls for the courts to side with him, as he feels he was protecting Athens with his actions and wants the jurors to do the same. He claims that they should not just do this to benefit him, but to protect Athens.

His claim to be protecting Athens coincides with the legal characterization of adultery as a public issue in Athens. While murder is a private offense, the Defendant

was acting on behalf of a crime that is considered public by the legal theory of Athens. An adulterer is a threat to their society thus he was protecting his community as a whole. This is why the law would allow this homicide to be justifiable. Also of note, the Defendant's description of his wife changes through his narrative. Before the affair, he describes his wife as being the best of women. This description tells only of her greatness of housekeeping. After the affair begins, his wife is suddenly able to trick him and come up with quick responses to all of his questions (Lys. 1.7). However, the Defendant never claims that his wife has insulted him, but that the deceased has insulted the both of them. It is important to keep in mind that he would be legally required to either divorce her or give up his citizenship after catching her in adultery.

The Defendant's speech contains a narrative that makes the wife seem to have a passive role in this affair. Her mind was simply tainted by this man, so as her husband, the Defendant had to punish the man. The Defendant also points that death would be a just punishment for the deceased before the law even if she were just his concubine, while adding the point that if the deceased had shamed a free man or boy, he would have to just pay a heavy fine (Lys. 1.31). According to the Defendant this is because if sexual shaming is done to a man, it is done by force, but if to a woman, it is corrupting a woman's mind to the point that they are more loyal to themselves than their husband. According to the speaker, this can lead a woman into thinking that she has power over the household (Lys. 1.33). Apparently, if a woman has control of the household, the children could have any father and this cannot be allowed. The defense's narrative tells a story of a once wonderful woman and how she was ruined by this seducer.

Antiphon 1, *Against the Stepmother*

Antiphon 1, *Against the Stepmother*, is a murder case referred to as *bouleusis*, which signifies that the person brought before court was the planner of an intentional murder carried out by someone else. A man is bringing this against his stepmother. However, since the Defendant is a woman and therefore not allowed to speak in court, her son is speaking for her, the Prosecution's half-brother. The Prosecution and the half-brother are both fathered by the unnamed father, who has died some years before. The Prosecution is accusing his stepmother, the Defendant, of killing his father when he was a boy by planning the murder and having a slave girl carry it out. It can be assumed that the Prosecution is still young, either just having come of age or having come of age in recent years. If the jury found her guilty, the stepmother would have been put to death. At the time of the case, the slave girl who carried it out had already been put to death.

The Prosecution claims that when he was a boy and his father was on his deathbed, his father informed him that he suspected he had been poisoned by the Defendant. The Prosecution does not have much actual evidence for this, as his evidence is mostly his own statement of what was told to him by his dying father. The father told the Prosecution that he once caught the Defendant trying to poison him. Allegedly, the Defendant admitted to poisoning the father but claimed that it was a love potion (Ant. 1.9). Some time later, the father's friend, Philoneus, visited the father. The friend brought along his mistress, "whom he was going to set up as a prostitute" (Ant. 1.14). The Defendant befriended the mistress, and told her the plan that Philoneus had for her. Knowing that the mistress would not want this to happen, the Defendant shared her worries of diminishing love between her and her husband. The Defendant then gave the

mistress a potion, claiming it was love potion, and instructed the mistress to give it to the men to renew the love between both couples. The mistress gave more of the potion to Philoneus than the father, causing Philoneus to drop dead immediately and for their father to die slowly, 20 days later. Under torture, the mistress admits to administering the drug and is put to death.

This speech has little to no evidence, but is an example of how much of a legal argument could be based upon characterization. The speech is mostly narrative and accusation toward the Defendant. Note that the father's friend, Philoneus, supposedly intended to turn his mistress into a prostitute and that this is mentioned in passing as a normal procedure. This implies that having a slave as a mistress and then turning her into a prostitute was not an odd practice. More importantly, this testimony is a rare example of how women could be characterized in court. The Prosecution speaks of the Defendant as planning, contriving, and carrying out this plan with intention. It is important that the stepmother is described as an active, not passive role in this murder. "The appeal to stereotypical behavior of women as a continual threat to men—plotting, using drugs, concerned primarily with love—may have been more effective with the male jurors than the defense's presumed response that she acted out of love".⁴² The Prosecution calls the Defendant Clytemnestra, the legendary woman known for her treacherous ways and for killing her husband Agamemnon. As ordered by the god Apollo, Clytemnestra was killed by her son. This could be a suggestion that the speaker hopes his half-brother will parallel, as justice was a determination of the gods. This speech illustrates how

⁴² Gagarin and MacDowell 1998, 9

stereotypes could apparently be used as a attack. This manipulative labeling was allowed before the jury and implies that these were commonly held beliefs about women.

It may seem unfair, but it is important to keep in mind that the Defendant was not even allowed to speak for herself. She only had her son to defend her. She was likely present for the trial but was expected to stay there without saying anything in response to the accusations. She had to have a male representative, and was not even expected to be referred to by name by the Prosecution. Also, the treatment of the mistress shows expectations for women of slave status. She may have been called his mistress, or concubine but as a slave the woman could be turned into a prostitute to become something for her owner to profit from. The friend, Philoneus, brought her on trips with him, but was willing to change her role. The speech implies that this was not an odd practice, illustrating how these women could be treated.

Part III: Topical Analysis

Studying legal arguments of a culture helps us gain a much more accurate depiction of how that culture existed at a given time in comparison to other historical documents. These speeches reveal more about their everyday social structure, specifically with regard to biological sex distinctions and sexuality in ancient Athens that histories may avoid or describe in a way reflective of a particular author rather than of the broader society. These arguments can depict people's standards and how they distinguished different social groups. Their logic of argumentation and their punishments tell us how past citizens related to one another through appeals and through consequences. Issues with a lack of legal standard can reflect a lack a concern, just as the highest penalties reflect what were considered the worst crimes. Whether we are piecing together these arguments or tearing them apart, we are able to see today what these men wanted to share with their peers. These arguments are what these men thought the jury would want to hear in order to prove their innocence. These men did not write these speeches intending to save them for people thousands of years later. Theses speeches were a way to benefit their current conditions or defend their reputations.

However, there are a variety of issues for a modern reader to keep in mind with these speeches. The litigants often strayed off topic from the issue at hand, even though this was not supposedly allowed for some cases. Sometimes the use of their time to attack the reputation of their opponent had little legal application in general. Even if the juror swore to sentence according only to the relevant issues, these seeming digressions by the

speaker would almost definitely affect opinions of their opponent. The citation of laws that were inapplicable to the case may reflect the speaker's understanding of the power held by the laws, but their inappropriate use indicates that they were treated more like evidence than standards. Unless a litigant directly challenged an opponent's claims, there were no fact-checkers of any kind. While these problems do largely diminish the historical integrity of these legal speeches, I do not believe that they adversely affect my research of the Athenian people.

These arguments may go off-topic to change the juror's opinions and contain false information concerning the people involved, but that does not change the assumptions behind the arguments. These are still arguments made to appeal to citizen jurors. While it may have mattered in the sentencing whether the jurors kept their promise to only vote according to the matter at hand, we do not even have the outcomes for the majority of these cases. Whether the defendant was guilty, or the speaker followed the rules of court does not change the way that I am examining these documents. These speeches tell us what people in Athenian court wanted Athenian citizen to know in order to determine guilt or innocence. In regards to appeals to the juror's morals, I can use prosecution speeches to see what is meant to invoke outrage, or defense speeches to see what was to rouse pity. My research is positioned in such a way that I can look at what is legal and compare that to what people were willing to claim to benefit their own lives. It could even be that any questionable claims and inappropriately cited laws may help my research. If laws are stated out of context, I still gain the knowledge of a law in Athens depicting a moral code that Athenians were to follow. Though it may not have been legal, I can see what the speakers thought the citizen jurors would be receptive to. While

important to note, I do not believe that these issues adversely affect but actually support my attempt to study Athenian social norms from the legal speeches.

The speeches I have outlined in Part II cover various aspects of Athenian law and cover a range of social issues in ancient Athens. From each of these speeches, researchers are able to obtain unique look inside the Athenian legal system as well as into the daily lives of ancient Athenians. The focus of my work is to extract what I can concerning the customs surrounding both biological sex and sexuality distinctions in Athens. While ancient laws may reflect a large aspect of what is acceptable, these speeches give further information into what may have been considered improper and proper socially. While often not bringing any weight to a legal offense, the character narratives include what the speaker found worthwhile to tell the jury. Therefore, in looking at all that we can extract on this topic from the speeches, we must look both at the legal standard as well as at claims, explicit and implicit, to the social standard. Two aspects of these courtroom speeches appear to me most promising in shedding light on ancient Athenian social structure, namely the speakers' presentation of legal distinctions about status, both civic and according to biological sex, and of character attacks intended to change the jury's opinions of someone through the speaker's narratives.

Laws and Legal Distinctions of Status

The laws are of course a central part of these courtroom speeches. These laws and distinctions of status are also important to my research as the laws and punishments given by the courts can illustrate standards that those in Athens were expected to uphold. The way the laws distinguished standards so differently between the sexes illustrate the

differing expected social norms of men and women. The laws and punishments relating to sexual offenses especially can be telling of how Athenians logically viewed sexuality. As seen in the laws surrounding adultery, these punishments for sexual offenses can also distinguish vastly between men and women in their logical understanding of responsibility and passive females. Status was extremely important to the Athenians, and many punishments with changes to status or liberties can reflect how their crimes were considered with echoing importance of their due punishments. As seen in Part II, many punishments that took away liberties or demoted status are tied to sexual offenses. This is important to note, as the morally offensive is used for grounds for these severe offenses. It is also important to note that with changes in status, there was change of what was seen as socially normal sexual behavior.

The laws invoked and charges brought in these cases display social standards that inhabitants of Athens were meant to uphold. The legal system itself is an important source into the understanding of Athenian logic of social standards. Even the distinctions between public and private cases reflect ways that they thought of legal offenses. Private cases usually had smaller juries and lesser punishments as many of these cases were settled with fines, compensation, or property. Dem.36, Dem.41, and Hyp.3 were each cases in which the defendant, if found guilty, would face punishments that would just be financial. Public cases were those following offenses that were thought to affect the community as a whole. These usually had larger juries and harsher punishments. There were exceptions, however, that distinguish their legal logic from what may be expected by a modern reader. It is important to note how punishments relate to sexual offenses,

especially if it is a punishment that affects civil status is related to sexual offenses or sexually offensive narratives.

The classification of a case as private or public can reflect how Athenians viewed the charge, such as how adultery was considered a public case as it affected the community as a whole. Murder and wounding were considered private cases, but were heard before the Areopagus, a jury of men over 50. The penalties for these crimes were closer to the level usually only seen in public cases. Through their legal reasoning these offenses did not directly affect the community, but their classification of adultery as a public case illustrates that adultery was an offense that they believed did affect the community. Cases involving homicide and intentional wounding were to be brought by the people involved or a loved one if the person assaulted was unable, as the issue was viewed as being just between the individuals. Adultery was brought by an individual, but was a public issue as it tainted the mind of a citizen woman. If a citizen woman could have sexual relations with multiple men, there was a potential threat to the status of children born from her, if she had a legal marriage. It is by this logic that unfaithfulness can be considered an issue of Athens as a whole, as a threat to citizen status was a concern.

The treatment of murder and of adultery in Athens is different than a modern case, as murder could be considered justifiable for many reasons and adultery treated the males and females far differently as far as punishment. Lys.1 is a murder case, but largely addresses the issues of adultery. Though it is a private case, murders such as in Lys.1 and Ant.1 are punishable by death. However, as in Lys.1, murder could be considered justifiable in several cases such as in the case of killing a man if found in bed with a

female relative, wife, or concubine. In addition to the possibility of the adulterer being murdered justifiably, only if the man who caught them was one of appropriate relation as outlined, the man who caught them could also choose to either harm them in any way his captor saw fit or to fine them. It is important here to note how differently men and women were treated before the law in the case of adultery. If there was adultery involving the wife, she was nearly considered as playing a passive role in the act. It was a crime on behalf of the man who “corrupted her” (Lys. 1.4) even though both parties were punished. The man would be dealt with as seen above, but the women would have a punishment in terms of her social standing.

The husband of an adulteress was legally required to divorce his wife or to give up his citizenship. The woman was then considered tainted by the society, and largely cast out from the public eye as she was not allowed to attend religious ceremonies or rituals, and if she was out for another reason she was not allowed to adorn herself. Athenians took this crime seriously, changing the status of the woman as she had threatened Athenian citizenship by potentially giving birth to an illegitimate child, by the assumption that the public would believe it to be the adulterer’s and not the husband’s child. Even a woman who was previously married could be banned from marrying men of certain religious position. This illustrates how sexual actions could directly affect a woman’s status. However, it was commonly accepted for men to have a concubine and men could legally hire prostitutes. In addition, if the concubine had a lover, the legal reaction would be the same as the response to the wife. A husband was legally able to be unfaithful in several ways, but a woman doing so was in effect, considered a crime against citizenship in Athens, and so her own civic status could be altered.

The harshest punishments given by Athens were disfranchisement, exile, and death. Disfranchisement did often endorse the man going into self-exile, but the sentencing as given by the jury was differentiated. Citizen status was extremely important in Athens, and Athenian law reflects this importance with laws serving to uphold standards to be met by its citizens. As seen through the distinct differences between citizen status and metic status citizenship was a privilege only given to those naturally born by Athenians or to a very small number of people who were specially rewarded the honor. Each of these three punishments in their own way casts a citizen from full citizenship, suggesting that those punished are unworthy of living as a full Athenian citizen. The Athenians distinguished intentional wounding “with a weapon” from murder, as speeches Lys. 3 and Lys.4 illustrate. This charge in intentional wounding with a weapon could be punished by exile with the added punishment of confiscation of property. Though these men did not kill anyone, the law found those who injured someone in such a way unworthy of living in Athens.

Disfranchisement was applied through a range, with different amounts of liberties taken in different cases. Aesch.1 allows us to know of four ways by which a public speaker could lose citizen rights: one could mistreat their parents, fail to perform military duty when called upon, act as a prostitute, or consume their inherited estate. In [Dem.]59 Neaira’s male companion Stephanos could apparently lose citizen rights, as well as have his property confiscated, if it were to be true that he had falsely given Neaira’s daughter in marriage stating that she was a citizen. By law, giving a non-citizen female in marriage falsely appears to have the harshest punishment, but being found guilty of any of these charges would be a sufficient reason to take away the citizen rights of a man. The

majority of the issues brought up in Aesch.1 demonstrate that Athens held their citizens to a high standard as far as duties and responsibilities. However, the criminalization of male prostitution illustrates that a man could be deemed unworthy of their citizenship strictly for a sexual offense.

Oddly, a woman could technically be both an Athenian citizen and prostitute, but it was unlikely that her children would be granted citizenship. However, if a woman was not a citizen and was given away in marriage with her father claiming that she was a citizen, her father would be disenfranchised and have further punishment in losing all of his possessions. In [Dem.]59 this punishment of the father was a point of concern secondary to the actual charge at hand of questioning Neaira's citizenship. Neaira's alleged past occupation as a prostitute was used as evidence of her lack of citizen status, as she had been bought and sold repeatedly. If she had claimed to live in citizen marriage with Stephanos, she would be sold along with her property and Stephanos would be fined 1,000 drachmas. This punishment reflects the idea that any non-citizen who claimed to be in a citizen marriage was deserving of being sold much like property. Legally, prostitution is not the legal issue, but the claim of a non-citizen to Athenian citizenship.

Citizen women in Athens lacked power over many aspects of their lives, including marriage. In Dem.36 a man contains the next marriage of his wife Archippe in his will, almost grouping her like inherited property. She is basically placed along with the estate as a stipulation that must be included if a man wants to serve as a guardian. If Archippe had no remaining male relatives, she would be unable to return to a kyrios within her family. Her husband as her kyrios would then be required to find another kyrios for her following his death, which is why this would be an aspect of his will.

According to the speech, this was not a unique occurrence. The speech could indicate that this may not have been normal, but it was indeed done. While the passage suggests that she was placed in the will along with a dowry, and that her late husband may have had some fondness for the men he selected,⁴³ there is not a question to the legal acceptability of this. Based on the importance that Athens placed on their laws concerning marriage, as displayed in issues above, this may seem like a relaxed approach to marriage. Yet, in these above issues all that mattered for the women involved were their status and sexual decency. This practice concerning the will could further show how little women meant in Athenian society outside of their ability to act respectably while producing more citizens and to channel assets to male offspring.

Further, Epikleroi or heiresses could be forcibly divorced from a current husband so that they may get married to a relative. This was a common practice in order to keep property in control of the family. An epikleros had no rights to their family's property. She was simply a way by which to pass control of the family's property, either through marriage or her giving birth to a male heir. The law was even able to stipulate that her husband was required to have sexual intercourse with her three times a month or else marry her to another family member who was able to do so. Additionally, a law disallowed women from making loans larger than the price of a bushel and a half of barley. This law is complicated by other evidence, such as the claims of the speaker in Dem. 41, where the late mother-in-law apparently lent out 1,800 or possibly 2,000 drachmas. While she did this under the watch of her brothers, this could indicate that this law was not commonly followed. If laws such as these restricting the rights of women

⁴³ Either Phormion or Nicocles could have married her in order to serve as guardian to Pasicles

were not commonly followed, it could have been that citizen men allowed more freedom to women in their daily lives than could be inferred by the laws alone. We unfortunately lack sufficient information concerning the everyday application of most laws.

Slave status was much lower than citizen or metic status, as they lacked many rights. It was legal for owners to hit their slaves, as well as use them for sexual companionship. From many speeches above, we can see that the buying and selling of slaves for sexual reasons was a normal practice, and that some people may even own a slave jointly. Lys.3 and Lys.4 both involve suits arising from physical altercations over slaves who are sought for sex. Many speeches also mention the use of slave testimony in trial. Testimony from slaves could only be used if taken from a slave who had been tortured. In Ant.1 a slave was killed after admitting under torture that she had helped kill the two men involved. This speech also notes that her owner was about to make her a prostitute, which is mentioned without any negative connotation from the speaker. The facts above as well as the comments in Lys.4 reflect how little regard could be given to the well being of slaves by Athenian citizens. When slave owners deny requests by their opponents to have their slave tortured under testimony, it is almost always brought with suspicion that the owner does not want the slave to give information. It is not automatically thought that the owner would not want harm to come to their slave. This can reflect how commonly it was believed that it was acceptable to torture slaves.

Differences in relationships and slave status are also shown through the comparison of Lys.3 and Lys.4. Theodotos, the slave of Lysias 3 was male, and though torture is brought up as a possibility, it is likely that he was free.⁴⁴ The slave and object of

⁴⁴ Todd 2000, 53

desire in Lys.4 is female, and while there is some disagreement over whether she is a slave or has been freed, it appears that she is almost certainly a slave. While a large part of the Defendant's defense in Lys.4 is proof that the wounding was not premeditated, the bulk of his defense surrounds the potential testimony by torture of the slave girl. In other cases, denial to torture slaves is often pointed out as suspicious, but not pushed much further. The Defendant in Lys.4 talks at length of the various connotations of the rejections and is upset "at being placed at risk on such important charges because of a girl who is a prostitute and a slave", yet this seems odd (Lys. 4.19). He sees her as unimportant due to her status, as shown through his avid willingness to have her tortured for his benefit, but he also considers her testimony to be significant enough to be the deciding factor in the case. The slave girl is not viewed as a person but as a tool by which he can gain his freedom by any means. He does not show any kind of remorse for the possibility of her torture, even though the case reflects that he had some sort of personal relationship with her, even if purely sexual. This illustrates the placement of slaves in relation to citizens as they could often be treated more like objects than people.

These laws were standards by which Athenian citizens were expected to behave. It is difficult to assume whether these laws were an accurate depiction of everyday life. While it may seem hard to determine which laws were followed as prescribed, we should assume that the life echoed the laws and that examples of people doing otherwise are exceptions, not accurate depictions of the norm. The laws were cited before citizens to remind them of the standard, not because they were unaware but because they should agree with the law as stated. In Aesch.1, Aeschines cites laws protecting young boys from being alone with adult men under 40 before sunrise, implying the threat that

younger adult men may take advantage of young boys. He also speaks on the moral understanding that if Timarchos were too young, he would be able to hold him responsible for his sexual exploits. In Lys.3 Simon implores the jurors not to think that his relationship with the boy, the boy that he notes was too small to fight, was inappropriate.

From these cases I can draw some findings, but I do not consider them to be supported by strong evidence. Assuming that the boy in Lys. 3 was free but not a citizen, the law seems to protect younger boys from this sexual threat if they are citizens. In the case that the boy are not a citizen, it appears that the relationship would still be frowned upon in a legal context. Despite what I can gather, I believe that these implications are inconclusive evidence to the common ethical beliefs surrounding relationships between males of differing ages. Outside of legal context, many scholars cite evidence supporting the belief that older males took sexual advantage of younger boys. However, through my research into the legal speeches I cannot find that this was supported or accepted, as others may think In addition, Aesch. 1 illustrates that these relationships were not acceptable, since they showed that the citizen man could not control his desires. I still do not believe that my research provides sufficient evidence to the conclusion that these relationships were considered unacceptable, but I certainly do not think that these relationships were accepted as a social norm.

This example involving male relationships of differing ages illustrates how the legal body of evidence can often produce inconclusive or conflicting findings if it is not blustered by further details, such as narrative and clarifications such as that given by Aeschines. If looking just at the laws themselves, there are unfortunately few conclusions

to draw. Legal standard may not reflect reality, but this does not make the laws useless. Looking at legal distinctions between cases or between statuses can help describe their logic and understanding of issues. Crimes reflect what is unacceptable and the punishments given for the respective crimes create a hierarchy in a way of terribly Athenians consider that given crime in respect to others. If combined with an appeal to pity, we may see where the citizens may consider a penalty too harsh. We can make other assumptions, such as that the laws cited in trial are often laws that the speaker thought the jury would be receptive to. Further, repetition of these appeals to pity or citing of law can indicate what may be reused due to successful cases of its use before it. The laws may not give us all of the conclusions that we seek, but they do tell plenty of the society that created them. In conjunction with other elements in the speeches, the laws become even more helpful in allowing us to understand Athens as a society. I argue that these laws in conjunction with areas of the speeches outlining character are the best combination for finding out about social norms in Athens.

Character

While not every speech from Part II cites laws, each speech did tell a story. Many went into backstories or made claims that may not have been true, but from each of these stories we can gain a better idea of what the speaker thought would help move the jurors to side with him. One of the main ways that the speakers attempted to sway the jurors was by illustrating the character of himself and of his opponent. Usually these speeches paint the opponent with negative aspects and the speaker with positive aspects. With this in mind, we can look at each narrative of these speeches and gain understanding of what

the jurors were expected to identify as good or bad components of each man. While we cannot know for certain how successful these accounts were at changing the opinion of the jurors, we should assume from the use of these speeches in court that they are intended to appeal to the beliefs of Athenian citizens.

The speeches I refer to as character speeches are those that the speaker uses to sway the opinion of the jury either positively or negatively. These character segments include examples of commendable actions and people, but are mostly filled with stories and accounts that make their opponent seem to lack morals and decency. Luckily for the purpose of my research, these passages of characterization sometimes include examples of sexual actions intended to make the person they are speaking of seem morally improper. This allows us to see what sexual actions may have been frowned upon by Athenian citizens, even if they were legal actions. There are often times where the sexually offensive stories are not related directly to the offense, but are used to bolster their argument with the idea that the person in question is immoral. The narratives also very much illustrate the different characterization of men versus women. The expectations of men and of women are clear, so deviations from these expectations are commonly noted and criticized. In addition, it is important to note how women in many of these narratives are portrayed to be witch-like and conniving.

The use of speech time for characterization was not always constrained to characterizing the opposing defendant or prosecution. Many speeches tried to also bring insult to relatives of their opponent. In contrast to this, sometimes the speeches would invoke the good character of someone in order to reflect this good character on aspects of their case. This was often done with lawmakers, namely Solon. Solon is cited many

times in Hyp.3, including the claim that “the greatest democrat of all, Solon” was the actual arbitrator of their case (Hyp. 3.21) Similarly he is used as standard for citizen men in Aesch. 1.25-26 and is elsewhere referred to in the speech as well surrounding the righteousness of the laws he created. When bringing up laws as evidence towards their argument, the speaker would sometimes also call attention to the justness and good nature of the given lawmaker in order to make the law look even more important. In Aesch.1 Aeschines uses multiple pages of his argument just to bring up laws and the good men that were their makers. He invokes the good standards that were set by these men, and then compare this positive image to the shamefulness of his opponent. These laws did not even match the charges he brought, but this would not matter as long as he was able to portray a clear image of positive versus negative aspects, where the law was positive and Timarchos was negative. This use of opinion invoking characterization of law is not unique and reflects the importance of the use of characterization in their arguments.

Two cases above, Dem.36 and [Dem.]59, involve the same man named Apollodorus. Apollodorus’ father, Pasion, was a metic who earned his way to Athenian citizenship. This is a rare and important reward, which both speeches use to support their claim. In Dem.36, the speaker claims that the Apollodorus’ opponent may be more like Pasion than Apollodorus. He does this to cast Apollodorus negatively and Phormion, Apollodorus’ opponent, positively. In [Dem.]59, Theomnestos introduces Apollodorus to take over the majority of the speech for the case he is bringing. When introducing him, he brought up Apollodorus’ father and how he had earned his Athenian citizenship, in order to characterize Apollodorus with the good his father had done. This is also used to create a contrast between the parties. Apollodorus will speak carrying this positive feature of his

father's justly earned change in status that contrasts with the juxtaposing charge he brings of questioning his opponent's citizenship claims. This comparison does not actually pertain to the legal issues of the case, but it would set the tone for how the jurors should perceive the parties. They also show how examples of good men can be invoked to cast the same moral aptitude upon another man.

The segments of testimony used to characterize opponents may seem to go much further into detail of the events than needed. However, the quantity of time spent on characterization instead of legal reasoning can also seem excessive. [Dem.]59 and Aesch.1 are the longest speeches used in this essay and demonstrate how lengthy argumentation based on character could be. [Dem.]59 uses much of its opening to characterize the primary speaker, Apollodorus ([Dem.] 59.3–9). Then, Apollodorus uses nearly one third of his speech to outline Neaira's past exploits and actions in such a way to make her seem like an improper woman ([Dem.] 59.18–49). He follows this by using another large portion of his speech dedicated to describing the poor behavior of her alleged daughter Phano ([Dem.] 59.50–84). Combined, he uses nearly half of his time outlining the lives of these two women, and then uses much of the rest of his speech to attack Stephanos or to explain to the jury that acquitting Neaira would be a poor reflection on their morals. This speech likely took hours, and by the end of the speech the jury would have heard mostly stories depicting bad behavior, followed by the argument that their failure to find her guilty would be an insult to citizenship of Athenians, and especially Athenian women.

Even longer than [Dem.]59's length of time spent of characterization is the extraordinary length of the attack on Timarchos' character in Aesch.1. Aeschines

intended to find Timarchos guilty on four fronts but dedicated much of his speech to outlining his history of possible prostitution and spending his inherited estate. This speech is over 50% longer than [Dem.]⁵⁹. Aeschines uses his opening to invoke laws brought by good lawmakers, and then uses about half of his speech to characterize Timarchos. However, he does so by outlining a great number of sexual relationships he may have had, and tells the jury that Timarchos' motive was enjoyment for this prostitution, not money. He delineates with great detail each offense he claims his opponent has committed, and takes something like an hour to do so. Supplying the jurors with numerous stories and exploits of his opponent likely had the effect of both keeping the jurors entertained by the gossip and leading them into believing the narrative due to the abundance of examples. It would not matter if there was little legal relevance, and even less actual evidence, the overwhelming flow of characterization could be a compelling argument in itself.

From these representations in courtroom speeches, researchers can piece together plausible expectations for culture norms. While much of the information concerns what was not acceptable, often these narratives can also give examples of what was acceptable. Homosexuality was not illegal, but the speeches help to clarify the social acceptability of certain same-sex relationships for men. Hyp.3 depicts a case brought following events surrounding a man's desire to buy a slave boy's freedom. The man does not seem to hide the fact that this boy was bought for sexual companionship, which implies that he did not feel the need to. Speaking before a jury of citizens like himself, he did not attempt to make up some other narrative that would hide this relationship. While this does not give any indication that this kind of relationship with a younger boy would be commonly

practiced, it does reflect that the practice of buying a slave boy for companionship was something that someone felt they did not need to conceal before fellow citizens.

Lys. 3 presented a conflict between two men over a boy who was likely free but not a citizen. The fact that it is a same-sex relationship is openly known both in the court and in the narrative. The speaker highlights their contrasting behavior toward the boy in his argument, indicating that he believed the jury would care if one party mistreated the boy and the other treated him well. Also, in the physical altercation that is the central issue of the case, the opponent's friends were willing to assist him in his attacks in search of the boy on more than one occasion. We can presume from this that the friends were accepting, if not supportive, of this man fighting for his boy companion. The only area where the speaker claims the jury may find the relationship inappropriate is in the boy's age, not his sex. With the understanding that this was a speech intended to align the jury to the speaker's reasoning, we can see that this man felt that he could make his defense while being open about the relationship being same-sex and could even use his characterization of how he was a better partner to the boy to gain favor with the jury.

Aesch.1 gives further information on how citizens may have commonly viewed same-sex relationships. In bringing down his opponent's reputation, he uses allegations of same-sex prostitution and homosexual innuendos. This is one of the few cases where we know the outcome, and know that Aeschines was successful in his prosecution of Timarchos. Aeschines uses these allegations of promiscuous same-sex relationships to make his opponent look ineligible to hold Athenian citizenship. He makes jokes about his opponent's actions while claiming that he shall spare the jurors the details due to their unrepeatable content. He does this in length, using these improper behaviors to

characterize Timarchos extremely negatively. This use of behaviors in order to project a negative impression of Timarchos might suggest that being involved in same-sex relationships was not so widely accepted. Aeschines felt that accusing Timarchos of prostituting himself to men and ridiculing him for these actions would be a successful strategy for convincing the jury.

However, Aeschines does go on to differentiate this kind of sexually distasteful behavior from same-sex relations that could be considered acceptable. The mythically famous relationship between Achilles and Patroklos, he claims, can only be considered blessed due to its combination with moral self control. He explains that it is natural for men to sometimes realize that they feel erotic passion. It is just something that one must fight in order to keep control of oneself. However, Timarchos' true crime was not in his loss of control at a young age, but in his prostitution of himself and continuing these relationships even after he came of age. This prostitution of oneself was unacceptable and illegal for a male Athenian no matter what (e.g., Aesch. 1.41). Timarchos crime was not his erotic desire, as this was not abnormal among Athenian men. His crime was in lacking moral control over himself even after he came of age, doing so for money, and then still feeling that it was suitable for him to speak before the Assembly. This helps explain why having same-sex relationships was not a fact worth hiding in court. This aspect of the relationship is not the criminal component.

In cases Hyp.3 and Lys.3, the men were Athenian citizens who sought out a same-sex companion who was not of citizen status. It was likely considered as acceptable as it was due to this obvious difference between the statuses of the partners. Timarchos was made fun of for his same-sex relationships, but his crime was in his prostitution as a

citizen. It seems that Athenian law again concentrates its focus on status and the standards of citizenship. Same-sex relationships were not illegal, but being a man who gave into same-sex relationships could still be looked down on. However, men in this situation still did not feel the need to hide this aspect of their sexuality. Lys.3 insinuates that friends may even be willing to help their friend fight for this kind of relationship. I believe that this indicates that same-sex relationships between citizen men and non-citizen boys were common enough to be considered acceptable. However, men could still be mocked for these relationships, as they reflected weakness of the man's self-control.

These speeches also illustrate various ways that women could be characterized. Some characterization of women, however, can be conveyed by the lack of attention to women in narratives, or by the passive roles that the women are supposed to take in daily life. Based on surviving texts it seems that women are not to be referred to by name in courtroom speeches. Women are described through their relation to some man, such as a father, husband, or brother. The only woman referred to by name is Neaira and Phano. This is supposed to show great disrespect, as no respectful name should be mentioned by name in the court. Even Ant.1 does not refer to the Defendant, his supposedly murderous stepmother, by name. Women were mothers, wives, and sisters, not people of action as men were. This nearly passive element to women's roles can be seen in other ways. The only women spoken of as thinkers or actors are done so in a negative sense, which is usually linked to the woman's sexual activity.

Epikleroi were heiresses of their father's estate, but only in a capacity that they were a gateway between their late father and another man to take it over. They had no power over the estate. Their importance was only held in the procedures of inheritance, as

they were the ones who could pass the estate either onto another relative through marriage or by producing a male heir. In a complicated variant on this channeling of money through a woman or through a will Hyp.1 is an impeachment speech but has the motive of declaring a woman's child illegitimate. The woman's late husband's family saw her merely as someone blocking them from reclaiming the deceased husband's property. Yet, is this speech accusing the woman and the supposed seducer, Lycophron, of adultery there is little concerning the woman. The impeachment of the man is due to this supposed affair, but she is hardly mentioned. This illustrates both how little the family thought of her as a relative, and how unimportant it was within the court to attack both parties. The woman was seen by the family as something obstructing their way to the estate and was seen by the court as a nearly passive participant in a crime.

This passiveness in an affair can also be seen in Lys.1 where a husband of an adulteress gives his defense for killing her lover. After the married couple had a child together, the husband claims that he trusted his wife completely and that she was the greatest of homemakers. Then when the affair began, the woman became tainted. She is suddenly capable of trickery and finds ways to sneak her lover in or sneak out at night. Yet, this is not because of wrongs that she has done. The lover had tainted her mind and made her like this. It is due to this change that the lover brought over the man's wife that the husband could kill the lover. This man was guilty of tainting good citizen women. The husband must then divorce his wife, because she has been corrupted. In both of these affairs, here and above, the women are not actors as much as victims of evil men who have spoiled them mentally through sexual means.

Women who expressed their sexuality outside of marriage are illustrated as being more mentally cunning. Some are also much more active in their lives than the good women who are described through passive roles. The *hetaira* Neaira goes out with, drinks with, and sleeps with many men. This pegs her as somehow dangerous. She is able to convince men to give her money even if they do not get anything out of it, and helps Stephanos with his plans to blackmail other men. She is much more active in the crimes she is accused of. When her exploits are recounted by the prosecutor, she “lets men” do things instead of the men forcing her to do things. She, as a sexually active woman, is a danger to Athenian society and good Athenian women. The *hetaira* Antigone in Hyp.3 tricks and convinces the speaker into making a foolish deal. He claims that he should not be held responsible for this action, as he did so under her influence. In this case, he acts as if she was controlling him in a way and he was the passive role.

In these cases, the women are capable of much more than men feel they should be. The speeches characterize them as conniving and devious, which is usually understood to go in conjunction with their sexual generosity. Women who have these characteristics are depicted as a threat due to how they can trick men, but also in terms of the affects they may have on other women. The stepmother in Ant.1 is not spoken of as sexually frivolous, but she is characterized in much the same way. She is compared to Clytemnestra, as cunning and planning. These examples portray the idea that women often were thought of as nearly witch-like if they were to carry out a crime, and that men should fear these women. The stepmother allegedly tricked a slave girl into killing two men for her. This was a fear for men, as allowing for this kind of woman could taint or trick women around them.

Conclusions

Through the various elements within these arguments, I was able to gain a better grasp of what the social and cultural norms surrounding biological sex distinctions and sexuality in Ancient Athens. The laws and legal arguments within these speeches illustrate standards and expectations that Athenians were required to adhere to. The laws help define boundaries between statuses, whether they are civil statuses or statuses defined by biological sex, and explain their distinctions. I have learned to notice how biological sex differences are often defined by laws themselves, but also are defined through other segments of speeches that outline societal expectations that may not be legally imposed. This is a patterns echoed in my study of sexual expectation as much is defined by law, but much else is said within the speech to describe some actions as unacceptable even if they are legal. These speeches also allowed me to better understand their legal reasoning that works in accordance with their cultural norms.

Their arguments use a combination of laws, appeals to emotion, and narrative to make other Athenian citizens agree with their side. These records of speeches given only with the intention of being heard by Athenian citizens allow scholars to see how citizens interacted and explained themselves to one another. These speeches only held the use of benefitting someone at that time, and I think this helps give a more everyday view of how Athenian society truly ran. While the laws may not have always been upheld or enforced, we can assume that these laws were still the expectation of these people. The distinctions between civil statuses illustrates the importance of rights help be each different standing, especially the importance of citizenship. After grasping this importance, I was able to

understand just how seriously the courts held both their distinctions between sexes and their beliefs in upholding certain sexual norms.

Social distinctions between males and females reflect the very different gender roles that each given sex was given. Females' freedom and power were held by important men in the female's life and most of the laws involving citizen women are directed toward their expectation to stay sexually chaste so that they may produce more citizens. Men were allowed much freedom, but were harshly punished if they in some way got in the way of a citizen woman producing legitimate citizens. Men had control over women, but were also expected to keep control over their own urges. If a man was unable to maintain self-control, sexually or by giving himself too deeply into vices, he could lose his rights as a citizen. It is important to note how these expectations for men and women I just described are for citizens. If their civic status was not of Athenians citizenship, the sexual expectations change drastically.

To illustrate my points with an example from the cases above, Lys.1 outlines the killing of a man for adultery. The laws in this case outline the belief that the man could be killed justifiably by the woman's husband for corrupting the woman and for threatening the citizenship of the couple's children. The woman is divorced and endures a social punishment, since she was passively corrupted and the man was the only active role in the affair. The man can suffer a great punishment for the sex crime, but the crime is truly that he tainted a woman who could produce more citizens, which is an offense Athens as a whole. Thus, the woman takes punishment from the society by being marked by a different social status of adulterer who is barred from religious ceremonies and

adornment. By threatening the citizenship of her children, she has diminished her only worth to society.

The areas of the speech that contain characterization allow scholars to see what may have been the social expectations of Athenians, even if the action is technically legal. A man having a sexual relationship with another man was not uncommon, and was not illegal. However, the speeches reflect the belief that this was a practice that was not celebrated. Men could be mocked for acting on homosexual feelings, like the Defendant in Aesch.1, as well as for spending too much money on a prostitute, like the Defendant in Hyp.3. While both homosexuality and prostitution were legal, the speeches illustrate the aversion towards doing so in excess. Men were expected to maintain control. For women, these speeches reflect how closely their reputations were guarded. Women were referred to by their relation to a man, as referring to them by name would be an insult to their decency. Women had no power over their marriage, as seen through the woman whose marriage was instructed through a will in Dem. 36, and were kept out of reach of any possible threat to their sexual purity, lest her children's citizen status be of question. Speeches on character illustrate strict expectations for citizens and the social consequences of not keeping to expectation.

Many of these cases were spurred through political or other social feuding between men. Often these segments on negative characterization serve both to find the defendant guilty of whatever charge is brought and to humiliate the defendant, along with anyone else related to them or the scandalous narrative. These cases were platforms for the speaker to humiliate their enemy, but this allowed me to see what actions the speaker thought the jury would find unacceptable. I also believe it is telling that on this platform,

men such as the speaker in Hyp.3 or Lys.3 would feel the need to show some sign of embarrassment of their sexual relationships with younger boys, but would feel free to talk about it openly in front of Athenian citizens. I believe that these relationships, and other homosexual relationships, were not socially acceptable but also not uncommon. By my collective study, I have found these sexual relationships to be both humiliating to be accused of and commonly known to happen.

These speeches demonstrate how citizens portrayed expectations for biological sex and sexuality in Ancient Athens. Many elements of the narratives may very well be false or otherwise incorrect, but they were arguments given by citizens for citizens. While they may not reflect true events, we can still see what kinds of social connotations would accompany these events if they were true. These arguments show modern scholars the lack of control that women had on their lives and what was thought of women who acted outside of these social expectations. For men, we can see what amount of control they were expected to maintain over their morals legally as well as to keep a good reputation. With each appeal to the jury, we get closer to understanding the beliefs of the common citizen man. These were not speeches that these men intended to be saved and read centuries later. These men were making their case, explaining how Athenians distinguished what was wrong from what was right and through this I have gained a better grasp for their everyday norms towards sex and sexuality.

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