

Law and Laughter: Athenian Law in its Social Context
Kevin Crotty
Washington and Lee University
20 minutes

One of the most unforgettable scenes described in Greek oratory concerns the events of an otherwise unremarkable evening in Athens circa 350 BCE. A young man by the name of Ariston was strolling with a friend through the agora in Athens, when—as he claims-- a rowdy group of drunks attacked him. His assailants knocked him down, stripped off his clothes, and beat his face so badly that he couldn't open his eyes. Throughout this ordeal, the attackers insulted him in language Ariston says was too crude to be repeated in court. He does share one memorable detail, however. One of his tormenters, the defendant Conon, flapped his arms like a rooster, imitating the winner in a cock-fighting contest.

The scene, described in Demosthenes 54, *Against Conon*, forms part of the plaintiff's speech accusing Conon of assault. The plaintiff claims that his youth and inexperience prevented him from bringing the far more serious charge of *hubris*—a cause of action that remains somewhat mysterious, but may have concerned deliberate attempts not only to wound, but to humiliate and demean a fellow citizen. I want to explore this case, and others of its kind, to indicate the fruitfulness of Greek law as a way of thinking about ancient Greek culture, and, more generally, about law and society. Although Athenian law has not much influenced law in subsequent societies,ⁱ it remains strikingly relevant in many ways to modern jurisprudence. An anxiety haunts American law—whether law is in fact a separate domain for neutral adjudication of legal issues, or whether it is inevitably a political tool.ⁱⁱ In a recent interview, Judge Richard Posner of

the 7th Circuit observed that “some judges fool themselves into thinking there is a correct answer, generated by a [legal] precedent or other authoritative text, to every legal question.”ⁱⁱⁱ [HANDOUT #1] As Posner’s comment suggests, it is a problem for American jurisprudence whether there in fact exists a “neutral reasoning of the law” that stands above and apart from the political fray.

The ancient Athenians were not troubled by this quandary: in most kinds of lawsuits, their legal system made no pretense of being separate from the political currents running around and through it.^{iv} For this reason, Athenian law is a powerful tool for showing law students and undergraduates alike not only how law and its procedures are embedded in a particular society, but—at a more abstract, jurisprudential level--how law can be thoroughly political without ceasing to be law.

Let us return to Ariston and his charge of assault against Conon.^v Athenian law provided many remedies against different kinds or levels of aggression; the number and variety of the available causes of action suggest the seriousness with which Athenian law regarded violence between citizens. Nonetheless, Ariston feels the need to caution the jurors against dismissing the case as though it were merely funny, and not an actionable threat to public order. He warns the jurors that Conon will accuse him—Ariston—of being “unreasonable and vindictive” (HANDOUT #2); that is, as Carey and Reid comment, lacking “the spirit of give-and-take needed for such behavior.”^{vi} To put this in the vernacular, Conon will accuse Ariston of being a wimp for seeking legal redress.

A civil society—even an arguably rather safe society like ancient Athens^{vii}--nonetheless contains a good deal of violence. While the theory of society tells us that this

is undesirable, and that a society will want to reduce violence as much as possible, actual practice seems to suggest a more complex attitude, and one less easy to predict. We do not know how Ariston's case against Conon, or any of the surviving assault cases turned out. That would have been very interesting to know, of course: but the very fact that we don't know the jury's decisions—that we cannot confidently say based on the law how an Athenian jury would have voted—is in and of itself suggestive, because *it reflects the complex social attitudes toward violence that find expression even within these speeches*. In particular it reflects the potential that violence—at least, violence within certain limits—has to rouse laughter. A plaintiff wishing to hold another citizen liable for acts of violence might find himself laughed out of court.

I suggest that laughter served as a test for where the limits to acceptable violence ought to be drawn. If a defendant in an assault case got the jurors to laugh, the jurors' own laughter might have convinced them that the action complained of did not merit legal sanctions. For this reason, it is a recurring theme in the assault speeches whether laughter or outrage is the appropriate response to an act of violence. For example, the speaker in Isocrates 20.5 (*Against Lochites*)—another assault case—anticipates that the defendant “will try to make light of the issue, ridiculing the charge, and claiming that I suffered nothing from the blows, and that my arguments are more serious than the matter warrants.”

Stephen Halliwell has called this use of laughter in the courts “consequential laughter”—that is, laughter that has important consequences for the disposition of the lawsuit.^{viii} I would add only that where a case posed the question of how much

aggression is acceptable in a civil society, the jurors' laughter might actually have served to show them where the line ought to be drawn in that particular case.

What, after all, was potentially comic about what happened to Ariston? Well, Conon, flapping his arms and crowing like a rooster, is funny, sort of. Ariston certainly believed that in defending himself in court, Conon would invite the jurors, too, to join in the derisive laughter at Ariston's expense. Ariston forewarns the jurors about the way Conon will attempt to make light of the case. (See HANDOUT #2)

“He will say that there are many individuals in the city, the sons of decent men, who in the playful manner of young people have given themselves titles, and they call some “Ithyphallics,” others “Down-and-outs”; that some of them love courtesans and have often suffered and inflicted blows over a courtesan, and that this is the way of young people.” (Demosthenes 54. 14; translation by Christopher Carey)

Ariston's speech paints a vivid picture of roving gangs of youths, whose names seem to advertise their high testosterone levels—the *Ithyphallics*, who commit the sort of acts that decent people don't even mention, let alone do! (Demosthenes 54.17) Later on, he tells us that Conon once belonged to a gang known as the *Triballoi* (named for a wild Thracian tribe), who liked to steal food laid out for the nighttime goddess Hekate, and ate pigs' testicles. (Demosthenes 54. 39).

It seems that young males in Athens, as elsewhere, form one of the “cohorts” most likely to commit violent acts. Their violence, within certain limits, might be regarded with an indulgent eye. It might come as a surprise that even Plato thought so. In Book 5 of the *Republic*, Socrates predicts that in the ideal city there will be no lawsuits for violence or assault, since the founders will declare that it is fine and just for people to defend themselves—at least against others of the same age. One benefit of this rule,

Socrates says, is that street fights will keep the citizens in physical trim, and will afford a means for the high-spirited to blow off steam.^{ix}

Aggression is calculated to rouse different responses of outrage and sympathetic laughter. Consider the following scene from Terence's comedy *Brothers (Adelphoe)*—a Roman translation from a 4th century Greek original by Menander (i.e., the Greek comedy was roughly contemporary with the situations addressed in these speeches). A young man has just broken into a house where a young girl resides. (In fact, the young man has a noble reason for doing so, but neither the other characters, nor we in the audience know that yet). Two brothers—one (Demea), the boy's natural father; the other (Micio), the boy's adoptive father—discuss what the most appropriate response might be:

[HANDOUT #3]

DEMEA

He has broken down a door, and forced his way into another man's house. He has beaten the master and the entire household, and he has carried off a girl he wanted. Everyone is talking about how disgraceful it was....

MICIO

Listen to me; don't go on and on about this... Does he party, does he drink, does he smell of perfumes? —I'll pay for it. ..Has he broken down a door? It shall be replaced; Has he torn any one's clothes?—they shall be mended. Thanks be to the gods, I have the means to do this. ...

Demea sees in the boy's conduct grave signs of moral dissolution. His more lenient brother Micio is inclined to be indulgent to the young man's peccadilloes. In fact, Micio is not so calm as he lets on. Nonetheless, we see here in comedy two attitudes toward youthful aggression that also find expression in the courtroom speeches.

But violence at Athens was by no means confined to the young and frisky. Conon himself was an older man who egged on his son and his cronies to beat up on poor Ariston. Two other speeches are relevant here: Lysias 3 and 4. Both of these were assault cases involving violence between older men who are rivals in love—the plaintiff and defendant fight over a rent-boy (Lysias 3) or a courtesan (Lysias 4). In both of these cases, the charge was “*trauma ek pronoias*,” which might be roughly translated as “intentional wounding.” Such cases were tried before the august judicial body known as the Areopagus, which also, famously, served as the special court for intentional homicide cases.^x The decision-makers in Areopagus cases were the standing members of the Areopagus, and litigants were subject to special procedures, and even special evidentiary rules. The punishment for cases of *trauma ek pronoias* was severe—exile. The solemnity of the court and its procedures certainly reflected the grave importance of the cases tried there.

The speaker in Lysias 3, the defendant, had allegedly attacked the plaintiff—his rival for the affections of a boy--with a potsherd.^{xi} The defendant argues that the law cannot possibly apply to erotic quarrels that got a little out of hand. “Clearly,” he says, “our legislators did not intend, just because people happened to injure one another’s heads in a fight, to punish them with exile from their fatherland.” Lysias 3. 42. The speaker urges the Areopagites not to take the matter too seriously. [HANDOUT #4]

For it would be bizarre if, whenever people received a wound as a result of *drunken rivalry, or horseplay, or an insult, or a fight over a mistress, for incidents which everyone regrets when they come to their senses*—you are to make the penalties so severe and awful that you exile some of the citizen body from their homeland.

Lysias 3.43.

The speaker in Lysias 3 is not necessarily challenging the jurisdiction of the Areopagus court, but he is certainly arguing that the very serious charge of *trauma ek pronoias* distorts the whole tenor of what in fact happened, even if the plaintiff can fit the facts of the case within the technical terms of the law. Here, it may be relevant that the assassination of Hipparchus by Harmodius and Aristogeiton—an act of violence that was popularly understood as a tyrannicide—began as a lover’s quarrel. The implications of a romantic triangle at Athens could be very serious indeed.

Still, if the defendant could get the jurors to laugh at the spectacle of two gentlemen of a certain age fighting over the affections of much younger boy, it seems likely that he will have shown that the case hardly merited the severity that Athenian law visited on cases of “*trauma ek pronoias*.” The Areopagites’ own laughter, in other words, might have helped resolve the legal issue, whether assault with a potsherd in an erotic context counted as “*trauma ek pronoias*.” Aristotle quotes Gorgias’ recommendation to “spoil the opponent’s seriousness with laughter and their laughter with seriousness.” (Aristotle, *Rhetoric*, 3.1419b2-5). I propose that laughter might actually have helped the jurors resolve the case, by using their own visceral reaction to judge whether the kind and quantum of violence at issue was acceptable in their fair community.

The defendant in Lysias 3 suggests that his story is more a matter for comedy than law. And, in fact, comedy had treated a case rather like his, but from a distinctly comic perspective. Philocleon (an old man like the defendant in Lysias 3) gets drunk and boisterous at the end of Aristophanes’ comedy *Wasps* (422 BCE). One of his victims threatens to sue on grounds of *hubris* (*Wasps*, 1418)—the very charge that Ariston said

he could have brought against Conon. Nonetheless, Aristophanes' audience wasn't supposed to regard Philocleon's obstreperousness as a threat to the common weal. To the contrary, it was a sign that Philocleon had snapped out of it—that he would no longer be the implacable, humorless, merciless juror he had been. To a degree, the audience takes up Philocleon's perspective, and enjoys his high spirits and arrogance as their own. Comedy and the letter of the law, then, reflect diverse ways of regarding aggression in the city streets: a plaintiff had to make sure that the jurors would not be reminded too much of comic scenes.^{xii}

In order to do this, a plaintiff might dwell on the severity of the wounds he had suffered. This was the approach Ariston took in his case against Conon. But plaintiffs might also remind the jurors of the larger social and political dimensions of the case. The most emphatic statement about the gravity of the political threat posed by assault comes from Isocrates 20.8 (*Against Lochites*) [HANDOUT #5]. There, the speaker, suing on grounds of assault, presents assault as an attack on the very basis of civil society:

For you know that physical safety is of personal concern to all mankind and that it is with this end in view that we have made our laws we fight for freedom, desire democracy, and carry out all the other activities in our lives.

As this passage shows, the speaker sees a specifically democratic principle at stake here. The swaggering arrogance of assailants reflects an oligarchic temper, and suggests an anti-democratic refusal to give everyone their due respect, whatever their economic bracket. Oligarchs subject the *demos* to willful violence: the speaker insists that this is what his assailant has done. To be sure, the assailant might have been drunk, but that doesn't change anything: he may have come from a symposium—an evening's entertainment for the privileged.

The speaker in Isocrates 20 draws a contrast between laws forbidding robbery and those forbidding assault. The former benefit the rich, who are the only ones who have something to steal. But laws punishing assault exist for the benefit of the poor, who have only their own person and their self-respect. The speaker in Isocrates 20 seems to urge in the jurors a sense of class-solidarity. He wants them to see the case in legal terms as a grave offense not only against the plaintiff individually, but against the jurors and the democratic polis as a whole. He warns them against seeing the case *comically*, which would redound to the benefit of the propertied (and oligarchically prone) class at Athens. The point of the case, he claims, is to teach young people *not to despise the masses* (Isocrates 20.21).

Assault cases, then, posed questions that went to the heart of a civil society. Ultimately, they posed the question of the nature of justice in a *polis*. Plato in *Republic 2* considers the argument that justice is a compromise in which people give up the undeniable benefits of aggression in order not to suffer the terrible disadvantages of suffering violence at the hands of others. [HANDOUT #6] Of course, Plato is at pains to demonstrate that justice is not simply a compromise. But in fact, the cases we have considered here suggest that there is something to this idea after all. Aggression certainly exerts a real appeal, and defendants can be expected to make their own aggressive acts look as harmless and even attractive as possible. The victims of aggression, for their part, must remind the jurors that there are important and grave issues at stake.

These issues are still with us. Civil society offers the individual protection against harm from others. But it also affords protection *to harm others* in particular ways. As Oliver Wendell Holmes pointed out in his book *The Common Law*,^{xiii} there are certain

harms that one person may inflict on another that the law does *not* prevent—in fact, may even *encourage*. Anyone may set up as a shopkeeper, for example, even where she foresees that her business will diminish her competitor's, and may even destroy the competitor's business. Business competition, therefore, is a perfectly acceptable way that one citizen can deliberately visit harm on another. It is a question of freedom—the freedom to be safe in one's own person, but also the freedom to make a success of oneself (even at others' expense).

To sum up, I have tried to show that assault cases in the Athenian courts offer a very useful pedagogical tool. Not only are they fascinating in themselves, but they make possible excursions into such interesting questions as the nature of laughter, and the nature of justice. They help the student see, synoptically, diverse social institutions such as law, comic theater and philosophy.

Not least, these cases suggest ways of using the ancient world to illuminate our contemporary reality. For example, still to this day, a plaintiff in a tort suit might have to deal with others' ridicule. In January 2011, Congressman Dennis Kucinich filed a \$150,000 lawsuit against vendors supplying the Congressional cafeteria, alleging that "on or about" April 17, 2008 he hurt his tooth when biting into a veggie wrap he had purchased at the Congressional cafeteria. Said sandwich, the Congressman alleged in his complaint, "contained dangerous substances, namely an olive pit, that a consumer would not reasonably expect to find in the final product served." Reacting to the laughter excited by "Olivegate," Kucinich wrote a decidedly odd letter to his constituents. He noted there that the affected tooth was a "key tooth that anchored my upper bridgework."

It was a situation where attempts to dispel laughter only seemed to provoke it all the more.

ⁱ S.C. Todd, *The Shape of Athenian Law* (Oxford: Clarendon Press, 1993), pp. 3-10.

ⁱⁱ See, e.g., Philip Soper, *A Theory of Law* (Cambridge, Mass.: Harvard University Press, 1984), p. 14.

ⁱⁱⁱ See Eric J. Segall, "The Court: A Talk with Judge Richard Posner," in *New York Review of Books*, LVIII, Number 14 (September 29, 2011, p. 47, column 1).

^{iv} David Cohen, *Law, Violence and Community in Classical Athens* (Cambridge: Cambridge University Press 1995; but see Adriaan Lanni, *Law and Justice in the Courts of Classical Athens* (Cambridge: Cambridge University Press, 2006, who emphasizes the different approaches to legal decision-making in Athenian courts.

^v Stephen Halliwell, *Greek Laughter: A Study of Cultural Psychology from Homer to Early Christianity* (Cambridge: Cambridge University Press, 2008), pp. 33-38, discusses *Against Conon* and the use of laughter in the law courts. See also his earlier article, "The Uses of Laughter in Greek Culture," *CQ* 41 (1991): 279-296.

^{vi} Christopher Carey, R.A. Reid, *Demosthenes: Selected Private Speeches* (Cambridge: Cambridge University Press, 1985), p. 87.

^{vii} Gabriel Herman, "How Violent was Athenian Society?" in Robin Osborne, Simon Hornblower, edd., *Ritual, Finance, Politics: Athenian Democratic Accounts Presented to David Lewis* (Oxford: Clarendon Press, 1994), pp. 99-118.

^{viii} See Halliwell, *Greek Laughter*, pp. 36-38.

^{ix} *Rep.* 5.464e-465a. An older person will be allowed to punish any younger person who is an assailant. See also *Laws* 9.879b-880e.

^x On the special procedures of the Areopagus and other homicide courts at Athens, see Lanni, *Law and Justice in the Courts of Classical Athens*, pp. 75-114.

^{xi} Stephen Todd, *Shape of Athenian Law*, p. 269, writes, "It is less clear whether there was a substantive distinction between *trauma ek pronoia* (lit. 'wounding with intent [to kill]', and thus attempted murder) and lesser forms of assault, although several passages in the orators have been taken to imply that the defining characteristic of *trauma ek pronoias* was the use of some type of weapon, even if only a piece of broken pottery."

^{xii} On comic theater and the law courts as comparable public institutions for convincing the demos, see Jeffrey Henderson, "The Demos and the Comic Competition," in John J. Winkler, Froma I. Zeitlin, editors, *Nothing to Do with Dionysos? Athenian Drama in its Social Context* (Princeton: Princeton University Press, 1990), pp. 271-313.

^{xiii} Oliver Wendell Holmes, *The Common Law* (Boston: Little, Brown, 1881), pp. 144-145.