

Pity and *Charis* in the Classical Athenian Courts¹

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Recent studies on Athenian legal practice have given increasing attention to the emotional aspects of persuasion in the popular court.² D. Cohen, depicting the popular court as a battlefield of endless feuds between enemies, explained its function not so much as a place for dispute settlement but as a public forum in which social norms were to be built and reconfirmed. D. Allen, further on, describing the anger (ὄργη) among the litigants, depicted *dikastic* judgment as common vengeance (τιμωρία) incurred by shared anger between litigants and the juror citizens. Vengeance and anger certainly played their parts in Athenian litigation.³ The role of these extra-legal *topoi* in persuasion requires investigation rather than dismissing them as irrelevant insertions extraneous to the main legal issues.

Borrowing A. Lanni's expression, extra-legal elements were relevant to the legal decisions so long as they provided a 'wider angle'⁴ to the case outside of the narrow legal facts.⁵ If litigants were expected to 'keep to the point',⁶ we must ask how far these extra-legal and emotional elements were incorporated into persuasion in the Athenian court. In this study, I specifically investigate the function of pity.

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² Rhodes (1996), Id. (1998). Konstan (1997), Id. (2001), Id. (2007). Cairns (2003). Fisher (2003). Harris (2001). Johnstone (1999). Lanni (2005), Id. (2006). Rubinstein (2000), Id. (2005). Bers (2009). See also works cited in n.3.

³ Cohen (1995). Allen (2000). Discussion between D. Cohen and G. Herman since the 1990s, together with Hunter (1994) and Christ (1998), contributed to broaden our insight into the Athenian court practice and the creation of social order. For papers by Hermann, see Hermann (2006). Cohen (2005) is more nuanced. The most recent advocacy of agonistic understanding of Athenian legal practice is Kucharski (2012), which is devoted to criticising Kurihara (2003). Normative expectations and the reality are quite different matters, however. For the author's opinion on the importance of personal friendship and associations in the creation of Athenian social order, see Kurihara-Kitamura (1998) [in Japanese].

⁴ Lanni (2006) 46.

⁵ Lanni (2006) defines extra-legal arguments as (1) the expansion of the litigant's plea beyond the strict limits of the event in question to encompass the broader background of the dispute; (2) defence appeals for the jury's pity based on the potential harmful effects of an adverse verdict and (3) arguments based on the character of the parties. (*Ibid.* 44).

⁶ The title of the paper by Rhodes (2004).

Once such an emotion was expressed in the public sphere, it was no longer a personal feeling but a social factor. For an emotional plea to receive sympathy and be accepted by juror citizens, it had to fulfil the court's expectation and be approved within the web of social and legal norms in the Athenian litigation system. What is important, then, is to determine the context in which appeals to pity were acceptable.

In the following chapters, I shall argue that the appeal to pity was far from being outside of the court's dominion but was required as an essential component of the Athenian legal system.

1. Pity in the fictional legal scenes

Aristophanes in the *Wasps* depicts the popular court as a treasury of poverty, misfortune, gossip, tales of Aesop and jokes, all of which are seasoned by cries for pity and the appearance of small children, both sons and daughters. Philocleon boasts,

And if we're not persuaded by these means (poverty, etc.), straight away he drags his little children, the girls and the boys, by the hand up to the platform, and I listen while they all hang their heads and bleat in unison, and then their father beseeches (ἀντιβολεῖ) me on their behalf, trembling as if I were a god, to acquit him on his audit (*euthyna*): 'If thou delightest in the voice of the lamb, I pray thee take pity(ἐλεήσῃς) on my son's cry' -- and on the other hand, if I enjoy pork, he asks me to heed the voice of his daughter. And then we lower the pitch of our anger (ὀργῆς) a bit for him. Isn't this a mighty power that allows us to mock at wealth? (Ar. *Wasps*, 568-74, Sommerstein translation)⁷

Aristophanes, ridiculing the pride of Athenian *dikastai*, maintains that one of the sweetest pleasures of *dikastic* power lies in the submissive entreating of pity by wealthy defendants.

Athenian popular courts consisted of jury panels comprising hundreds of citizens. The first vote was taken after each side had given two speeches in turn. If the defendant was acquitted, the court was closed. If convicted, in the case of *agones timetoi* (trials whose penalties were not fixed by laws), the second session was held to assess penalties.⁸

⁷ All the translations are based on Loeb editions unless otherwise cited.

⁸ Harrison (1968) 166-68, Todd (1993) 133-135.

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Evidence of this second session is so scarce that no actual speeches remain. It is difficult to clarify the operation of pity in this *timesis* stage. We do have two speeches from Socrates' trial, but he was far from a person who obeyed social custom. Both Xenophon's Socrates and the Platonic Socrates refrain from appealing to pity, but these cannot exemplify daily court scenes in the Athenian society.⁹

The trial scene of the dog in *Wasps* (891-1008) occurs in the first stage. This fictional scene provides a good starting point for our enquiry on the operation of pity in court.¹⁰ A dog, Labes, named after the Athenian general Laches, is prosecuted in the charge of devouring the communal cheese from Sicily. The procedure is not specified, but is most likely supposed to be an audit (*euthyna*) or the public suits (*graphe*) on the charge of embezzlement.¹¹ The Hound (Κύων) of Kydathenaion, who shadows the figure of litigious Cleon, acts as the prosecutor and demands the penalty of 'fig collar' in the charge of embezzlement.¹² Labes, the defendant, is supported by Bdelycleon (Cleon-hater), who acts as a supporting speaker (*synegoros*).

In this court scene, Bdelycleon claims that the defendant, Labes, 'is brave, and chases away the wolves (952)', praising him as 'the finest dog of today, capable of taking charge of a large flock of sheep (954-55)'. Bdelycleon then pleads with the juror Philocleon to take into consideration his lack of education. 'If he did pinch the cheese, forgive him (σύγγνωθι): he's never learnt to play the lyre (958)'.

The supplication culminates when Bdelycleon pleads (ἀντιβολῶ) accompanied by puppies, who are expected to 'implore (ἀναβαίνετε)', 'whimper (ἀντιβολεῖτε)' and 'weep (δακρύετε)' (977-78). Looking at the puppies, Philocleon, playing a role among the jurors, bursts into tears and asks them to stop pleading.¹³ Another example is the famous rejection of pity by Socrates. He maintains,

⁹ Konstan (2001) 42. In the *Apology* by Xenophon (27-28), we could see his followers weeping. But it occurred only after the final death penalty sentence was given.

¹⁰ MacDowell (1971) calls this scene 'the stock-in-trade of Athenian forensic orators'.

¹¹ MacDowell (1971), 250-251 on *graphe klopes*. On the charge of *klopes* as the process of *euthynai*, see Harrison (1968), 29, 208-209.

¹² Harrison regards this indictment clause as imitating the actual one. For indictments in the real court, see Harrison (1968) 91-92. Todd (1993) 134, however, regards this case, together with the indictment in the fragmentary speech of Dinarchus (Dion. Hal. Dein. 3), as irregular because the penalty is proposed before the first verdict.

¹³ It is not clear from the passages which part is the comic exaggeration and which reflects the reality. MacDowell (1971) regards line 956 as a comic parody. It is questionable how far defendants could admit guilt so openly, and simultaneously request forgiveness (συγγνώμη).

Perhaps someone among you may be offended when he remembers his own conduct, if he, even in a case of less importance than this, begged (ἐδεήθη) and besought (ικέτευσε) the judges with many tears (πολλῶν δακρῶν), and brought forward his children to arouse compassion (ἐλεηθείη), and many other friends and relatives; whereas I will do none of these things, though I am, apparently, in the very greatest danger. Perhaps someone with these thoughts in mind may be harshly disposed toward me and may cast his vote in anger.

(Pl. *Ap.* 34c)

Socrates disapproves the popular tactics of bringing children, relatives and friends in front of the juror citizens.¹⁴ In his opinion, such tactics dishonour those excellent in ‘manliness (ἀνδρεία) (35a)’ or in wisdom, or in any virtue. He even calls those who appeal to pity ‘inferior to women (γυναικῶν οὐδὲν διαφέρουσιν) (35b)’.¹⁵ Furthermore, he understands that his negative attitude toward pity will damage his case.

These fictional scenes have suggested that *argumentum ad misericordiam* was a daily component of the court scene. However, pity could be justified only in certain circumstances. First, pity was gender-sensitive. Socrates’ view of pity as unmanly behaviour suggests that pity in court could affect the position of the pitied in the civic male community. Second, Labes could request pity for his good contribution as a sheep dog and uneducated upbringing. The function of pity in court must be understood in view of its relationship to other social factors.

Considering these factors, I will examine how pity operated in the framework of social norms in the Athenian court. In the next section, after observing that pity was a popular *topos* in court, I will examine the logical context in which pity is either approved or denied, especially in the plaintiff speeches.

2. Pity in the Court

(1) The act of pleading

Wasps and *Apology* strongly suggest that emotional appeals to pity were daily phenomena in the Athenian popular court. However, scholars have not agreed on *who, in what context*, could request pity. At one extreme, V. Bers maintains that

¹⁴ He continues (35c), ‘I think it is not right to implore the judge or to get acquitted by begging; we ought to inform and convince him. For the judge is not here to grant favours to those he think fits, but to give judgment’.

¹⁵ Similar disapproval can be found in Pl. *Lg.* 949b. Here again, Plato connects the female nature with tears in the legal sphere, exploring negative views on supplication in contrast to justice.

emotional entreaty for pity was an improper tactic for professional speech writers.¹⁶ Such tactics were adopted, he argues, only mistakenly by amateur writers, and this misuse could incur hostile responses from the juror citizens.

We should not forget, however, that the juror citizens were no less amateurs than speakers in court. There is no good reason to believe that the juror citizens shared professional concerns about writing styles. Further, there is evidence that emotional appeals to pity were established tactics in the intellectual milieu of 4th century Athens. Thrasymachus of Chalcedon, author of the rhetorical treatise *On Pity (Eleoi)*, specialised in manipulating the tears and pity of the *dikastai*.¹⁷ Whether a professionally acceptable practice or not, the emotional pleading of pity can be reasonably assumed to have operated in Athenian court tactics.

At the other extreme, Allen, in her short discussion on pity in law courts, found no limit to the range of emotional pleading.¹⁸ However, pity was not pervasive. Johnstone, in his close readings of the popular court argumentation, has drawn attention to defendants' and prosecutors' different frequency in the use of pity.¹⁹ He observes that defendants rely more on the extra-legal argument, whereas prosecutors usually stick firmly to the main legal issues and criticize defendants' use of emotional arguments. While plaintiffs pursue *logoi*, which justify their case under the law, he also argues, defendants tend to rely on their *ergoi*, such as their past deeds and characters.²⁰ It is largely true that pity is a defendant's *topos*. Still, plaintiffs were also aware of the effective force of the defendants' extra-legal arguments. We must then investigate the context in which extra-legal arguments were applied. The logical framework shared by the plaintiffs and the defendants requires clarification.

Defendants routinely asked the juror citizens to feel pity for them.²¹ Compared with the description of emotional appeals in *Wasps* and *Apology*, though, the verbal

¹⁶ Bers (2009) 77-93.

¹⁷ Pl. *Phdr.* 267c, Arist. *Rh.* 1404a.

¹⁸ Allen (2000) 148-150.

¹⁹ Johnstone (1999) 109-125.

²⁰ *Ibid.* 87-97.

²¹ Among the speeches in the corpus of Lysias, the defendant of Lys. 1 is prosecuted for homicide but speaks as if he executed, as a prosecutor. Therefore, his speech is similar to public prosecutions as regards the expression of pity. Defendants in *dokimasia* cases are indifferent to pity (Lys. 16, 25, 26), perhaps because of the nature of *dokimasia*, in which defendants were not punished as criminals. Further, there might have been a feeling that it was not suitable for a nominee for an office to be pitied. See chapter 3 on the relationship between *andreia* and pity, and the vertical relationship between those who pity and those who are pitied.

expression found in the defendant speeches are rather formal and limited.²² The formulae appear most typically in the beginning or the very closing phrases of their speeches. For example, in Is. 2. 44, the speaker demands (δέομαι), entreats (ἀντιβολῶ) and pleads (ικετεύω) that the juror citizens pity (ἐλεῆσαι) the defendant, who testified in an inheritance case and now stands accused of false testimony. Although texts of the speeches fail to reveal in what tones and with what gestures the words were delivered, repeated use of formal phrases in the defendant speeches might suggest ritualised acts of supplication.²³

(2) Denials of pity

Plaintiffs, too, had a good reason to use the formal phrases when they represent victims of the crime.²⁴ In addition, speeches on the plaintiff's side are more informative when they routinely explore negative opinions on pity for the defendants. For example, the speaker of Lys. 27, a supporting speaker in a *graphe* of embezzlement, predicts that,

Most preposterous of all, while in private suits (τοῖς ἰδίοις) it is the wronged who weep (δακρῶσιν) and arouse pity (ἐλεῖν), in public suits (τοῖς δημοσίοις) it is the wrongdoers who arouse pity, and you, the wronged, who pity (ἐλεεῖτε) them. So now, perhaps, fellow-townsmen and friends, in their habitual way, will cry out (κλαίοντες) and implore (ἐξαιτεῖσθαι) you to spare them.

(Lys. 27. 12)

²² As formulaic pleading by the defendants for public suits, see: (*eisangelia*) Hyp. 1. 19. (*euthyna*) Lys. 21. 21, Aes. 2. 179, (*apographe*) Lys. 18. 27, (*graphe hybreos*) D. 45. 85. For private suits, see: (*paragraphe*) D. 36. 59, (*dike pseudomartyrion*) Is. 2. 44, D. 57. 70, (*antidosis*) D. 42. 31-32. Lys. 3. 48, 4. 20 are defendant speeches on *trauma ek pronoias* and were judged at the Areopagus court. Prosecutors use the formulae to describe the pleading by the defendants: (*endeixis*) Lys. 6. 55, (*eisangelia*) Lycur. 1. 148.

²³ Johnstone argues that verbal appeals to pity might have been accompanied by formal gestures of supplication. Johnstone (1999, 115-16). See also Arist., *V*. 551-55, 561-62, in which the verbal appeal is made before the opening of the court. For other visual and audial performances in court, see Bers (1985), Rubinstein (2005) 24-31.

²⁴ Plaintiffs use the formulae when they request pity. Plaintiffs in inheritance cases: (*dike pseudomartyrion*): Is. 6. 57. Against guardians: (*dike epitropes*): D. 27. 68, D. 28. 20, D. 46. 28. Plaintiff in *dike blabes*: D. 48. 57. Hyp. 3. 36 [restored]. To these, we may add *diadikasia* cases: Is. 6.57, Is. 8. 45, Is. 9. 37, [D.] 43. 83. In the public cases, except for a few cases written by Apollodorus ([D.] 58. 69, [D.] 59. 1), plaintiffs do not request pity. On Apollodorus' tendency to override the distinction between personal matters and public normative law court strategy, see Kurihara (2003).

Friends and fellow *demesmen* of the accused were expected to prepare to shed tears even before the prosecution speech ended. In D. 21, a *probole*, Demosthenes predicts that the defendant, Meidias, will hide his usual arrogance and supplicate with tears (99: κλαήσει, 186: δακρύων). These examples suggest that emotional pleading by the defendant was routine in the popular court, and this customary habit prevailed among both amateur and professional speakers.

It is noteworthy that emotional appeals to pity *per se* were not rejected by the plaintiffs.²⁵ All the more, the critical tone demonstrated in the passage implies that pity was not always deserved. The logical context underpinning this phenomenon requires examination.

(3) Demosthenes and Aeschines

The rival politicians Demosthenes and Aeschines both refer to pity in their respective manners. In D. 19, a *euthyna* on the false embassy, Demosthenes criticises the defendant, Aeschines, for his unmerciful attitude on a previous occasion. When Aeschines prosecuted Demosthenes' political associate, Timarchus, Demosthenes asserts, Aeschines persuaded the juror citizens to feel no pity for Timarchus' mother and children.

Remember what he told you himself when he prosecuted Timarchus — that there is no merit in a city that is nerveless in its dealings with malefactors or in a polity where indulgence and importunity are stronger than the laws. You must not, he said, have any pity (ἐλεεῖν) for Timarchus's mother, an aged woman, or his children, or anyone else: you must fix your mind on the thought that, if you desert the laws and the constitution, you will find no one to pity (ἐλεήσονται) you. (D. 19. 283)

Demosthenes assures the juror citizens that Aeschines will, nevertheless, start to cry, gathering his children around him (D. 19. 310).

²⁵ Denial of pity by the plaintiffs in public cases: pity (ἔλεος, ἐλεεῖν/ἐλεεῖσθαι), Lys. 6. 3, Lys. 13. 33, Lys. 22. 21, Lys. 27. 12, Lys. 28. 11, D. 19. 283, [D.] 53. 29, [D.] 54. 43, Hyp. 2. 9, Din. 2. 11, forgiveness (συγγνώμη), Lys. 15. 9, Lys. 28. 2-3, Lys. 31. 11-12, D. 21. 88, D. 51. 11, [D.] 58. 24, Lycurg. 1. 148, Din. 1. 60, Din. 2. 1, Pity and forgiveness Lys. 12. 79, Lys. 14. 40, Lys. 29. 5, D. 19. 257, 281, D. 21. 100, D. 25. 81, 84,. Denial of pity by the plaintiffs in private cases: (pity) Ant. 2.3.1, Is. 5. 35, Lys. 10. 2, D. 54. 43; (forgiveness) D. 27. 45, D. 44. 59, D. 45. 83, Hyp. 2. 7; (pity and forgiveness) Ant. 4. 1. 6, Lys. 10. 26. Of these, Ant. 2. 3. 1, 4. 1. 6 are homicide cases in the Council of Areopagus.

In fact, Aeschines brought in his three children along with other relatives during his defence speech. First, he introduced his mother, a legitimate daughter of citizen birth, frightened and worried, begging for the safety of her son (Aes. 2. 148). Next, he introduced his elder brother, Philochares, who was known for his brilliant gymnastic and military carrier. He appeared to the court ‘to ask you to save me’ (*Ibid*, 149). The younger brother, Aphobetus, an ambassador was also present. Then, he turned on to his kins-in-law. His wife’s father and two brothers were all men of worth (150). He compared the virtue of his brother-in-law, Philon, who was also present, with the opponent, Demosthenes. Next came his own children (*Ibid*. 152). After this extensive exhibition of relatives, he implores,

To plead (συνδησόμενοι) with you on my behalf are present my father, whom I beg you not to rob of the hopes of his old age; my brothers, who would have no desire for life if I should be torn from them; my connections by marriage; and these little children, who do not yet realize their danger but are to be pitied (ἐλεῖν) if disaster fall on us. For them I beg (δέομαι) and beseech (ικετεύω) you to take earnest thought, and not to give them over into the hands of our enemies (ἐχθροῖς), or of a creature who is no man — no better in spirit than a woman (ἀνάνδρω καὶ γυναικείῳ τὴν ὀργὴν ἀνθρώπων). (Aes. 2. 179)

He asks the juror citizens not to let his three children fall into the hands of the opponents ‘who lack manliness (ἀνάνδρω)’ and who are ‘womanly (γυναικείῳ)’. These speeches show that the leading political citizens and professional speech writers considered an acceptable and desirable tool. At the same time, the last citation from Aeschines demonstrates that to pity and to be pitied concerned manliness. In the next chapter, we will observe that pity is based on the mutual reciprocal relationship between male defendants and polis citizenry.

3. Manliness, Pity, and *Charis*

(1) Pity for women and children

The aforementioned exchange of opinions on pity between Demosthenes and Aeschines considered women and children particularly as actors in the scene. Men also requested pity, but the predominance of these weak members of the family is worth mentioning.

In D. 27, in a *dike* against his guardian, Aphobus, Demosthenes reproaches Aphobus for his lack of pity.

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You [*dikastai*], on your part, do not act thus even toward those who sin against you: when you give judgment against any of them, you do not take away all that they have, but in pity (ἐλεήσαντες) for their wives and children you leave something even to these. But these men are so different from you that, although they had received legacies from us to make them administer their trust faithfully, they have done us these outrageous wrongs. (D. 27. 65)

Pity for small children and old mothers was an element of moral requirement for male citizens. Dinarchus, condemning Demosthenes in the Harpus affair mentions wives and children as the recipients of pity on behalf of the country (χώραν).

So do not be concerned when he weeps and laments (κλαίοντος καὶ ὀδυρομένου). You might, with far more justice, pity (ἐλεήσαίτε) the country (χώραν), which this man is exposing to danger by behaving as he has, and which is begging (ἰκετεύει) you, who are its sons, in the names of your wives and children (τὰ ὑμέτερα τέκνα καὶ γυναῖκας), to take vengeance (παρασησαμένη) on the traitor and save it: the land which your ancestors, after facing many noble combats for it, have handed on to you free; [...]. And when Demosthenes wishes to cheat you and cunningly turns pathetic (οἰκτιρίζεται), shedding tears (δακρῦν), you must think of the city's person (τὸ τῆς πόλεως σῶμα) and the glory which it once possessed, and judge between two alternatives: which has become the more deserving of pity (ἐλεεινότερα): the city because of Demosthenes or Demosthenes because of the city?²⁶ (Din. 1. 109-110)

In *Against Meidias*, Demosthenes attempts to prevent the juror citizens from feeling pity for Meidias.

What sort of defense is possible for him? Appeal to pity (ἐλεῆσαι)? Or bringing his children together, weeping and crying (κλαήσει), asking not to convict him for the sake of his children? (D. 21. 99)

²⁶ Similarly, Aeschines proclaims that his mother deserved to be pitied partly because she shared the crisis of the democracy. Aes. 2. 148.

The prosecutor, Demosthenes, does not criticize the habit of requesting pity itself. Instead, he claims that in this particular situation, Medias is far from a deserving recipient of pity for two reasons. First, Medias had caused too grave damage. Second, Meidias' children should not be shown pity because Meidias in the past showed no pity for a certain Straton's children. The same Demosthenes, in prosecuting Aristogeiton, describes his cold temper as follows.

But his bitterness, cruelty and blood-thirstiness were displayed and proved. The sight of the children of some of the defendants and their aged mothers standing in court did not move him to pity (ἠλέει)? And do you, Aristogeiton, look for pardon (συγγνώμη)? Whence? From whom? Are your children to be pitied (ἔλεος)? Far from it. You have yourself thrown away their right to pity (ἔλεον); nay, you have destroyed it once for all. Do not then seek anchorage in harbors that you have yourself blocked up and filled with stakes; for that is unfair.
(D. 25. 84)

Underlying the words of Demosthenes is the logic that the juror citizens should not be affected by pity for children when the defendant had not paid corresponding pity for someone else's children.

When mothers and children appear in court to cry for help, they appear as the genuine recipients of pity.²⁷ It was also these people that Socrates and Aristophanes depicted as the main performers of lamentation in the trial scene. Their pleading to save their male relatives, however, could be heard only by virtue of the male citizen who speaks for them in court.

Pity could be required as a part of long-standing mutual relationship between the male defendants and the polis citizenry.²⁸

(2) Manliness and Pity

Pity represented one virtue of Athenian citizens and closely related to the virtue of 'manliness'.²⁹ The aforementioned rejection of tears in court as 'womanly' behaviour demonstrates this asymmetrical relationship between those who pity and those who are pitied. An emotional appeal to pity, whether as tactics or as a natural

²⁷ In D. 38. 27, a *paragraphe*, orphans are reproached of weeping and crying (δακρύνειν, ἐλεινούς, κλάειν), but they had become adults by the time of the suit.

²⁸ Similar reciprocal understanding of pity is expressed in the *False Embassy* (D. 19. 283, 310) mentioned above, p.74.

²⁹ Roisman (2005), 150-151. Cairns (2009), 44-45.

explosion of emotion, could jeopardise the ‘manliness’ of the pitied. The balance of *andreia* between the juror citizens and the defendants could be broken temporarily by being pitied. However, in the long run, the balance could be recovered by the defendants’ civic contributions. This situation differed from the position of women and children. Pity in court was not one sided but depended on reciprocity between equal male citizens. Accordingly, defendants maintained the mutual relationship on the basis of *charis* with the polis and fellow citizens, even when they requested pity.³⁰

When pity was rejected, in contrast, the absence of *charis* with the *polis* provided the reason. In Lys. 10, the plaintiff reminds the jurors of the previous occasion in which the defendant Theomnestus was accused but pitied (ἠλεήθη, 22) and acquitted. The speaker regards the acquittal as a gift (δωρεάν, 24) he did not deserve and asks the jurors not to pity him (ἐλεεῖτε, συγγνώμην, 26) any further and to help the speaker obtain vengeance (τιμωρήσασθαι, 3) for his father in the present suit, taking into account his father’s civic contributions during his life (27-29). Lys. 12 also argues that neither Theramenes nor Eratosthenes deserves pity (συγγνώμην καὶ ἔλεον, 79) because they have damaged the polis.

Appeals to pity by male citizens could be either accepted or rejected in view of reciprocal *charis* within the citizen body. In *Against Theomnestus*, the speaker requests pity for his old father, but the father appears not as a helpless old man but as an honourable citizen, who, in this particular circumstance, deserved pity. When perceived as future adult citizens, male children, too, could be expected to pay *charis* back on their own when they reached adulthood. Therefore, the speaker could argue that the defendant’s children are not likely to become good citizens, and thus could be undeserving of pity (Lys. 20. 34). A good citizen, in contrast, might be able to return the *charis* through public service or other measures. Pity worked only within the continuous reciprocal relationship throughout the past and future.

Friends and kinsmen also requested generous treatment of the defendants. The difference between women or children and adult male citizens lies in the ability to make supporting speeches and testimonies. When male relatives appeal in court,

³⁰ This demand for horizontal reciprocity appears most clearly in Lys. 24, a speech presented before the Council. This entire speech is devoted to proving that the speaker is in a miserable condition and deserves the pension. Although he situates himself as a social inferior by diseases, weakness, old age, and misfortune, begging for pity, the speaker could still maintain that he acted politically against the Thirty, together with other citizens. The speaker presents his relationship with the *polis* as reciprocal one, and concludes that he will feel *charis* if the *polis* acts for him. The speaker justifies the pity on the basis of reciprocity.

they could give testimony and speak as supporting speakers. In consideration of the *charis* they had built with the citizenry, they could request pity for the defendants.³¹

Lawcourt speeches more often depict women, children and older family members as the genuine recipient of pity, who could be expected to weep and cry without diminishing their status. Mothers and children pled for pity as the weak component of the society to be protected. For women, who could not speak for themselves in the popular court, weeping was the only action they could take in the law court besides oath-taking.³² Pity was a reciprocal token in the popular court, but that reciprocity applied only within the network of male citizens. Men were considered to exchange mutual pity for each other's wives and children. Their lamentation, however, could be heard only if their *kyrioi* were included in this network of mutual *charis* and thus regarded as deserving pity. *Charis* was mutual by definition. If a defendant was considered an outsider of this mutual help network, his womenfolk and children could not be pitied, either.

(3) The case of Apollodorus

The idea that *charis* is the grounds for pity appears most clearly in the case of Apollodorus, the eleventh Attic orator. His relationship with the polis was exceptional because he was not a natural born citizen but was naturalised as a result of the citizenship awarded to his father, Pasion the banker. As a naturalised citizen, he was particularly eager to fulfil the requirement of citizenship and civic obligations.

Apollodorus understood that his citizenship had been awarded as 'a gift (δωρεά)' in return for Pasion's 'good deeds (εὐεργεσία)' (D. 59. 2). After the naturalisation, Pasion performed further public service to return the *charis*. Apollodorus himself, understanding his citizenship as a gift he had to repay, engaged in public service with the utmost eagerness (D. 50. 7-9). The *polis* also expected his reaction. Apollodorus was appointed to endless public service (D. 50. 13, 56, 60-61, 63). A citizen refusing to take over the trierarchic duties of Apollodorus maintains that 'A rat tasted a pitch because he wanted to be an Athenian' (D. 50. 26). Apollodorus himself, feeling different from the natural-born citizens, proclaims,

³¹ Rubinstein called this 'transferable *charis*'. Rubinstein (2003), 212-33.

³² Just (1989) 23-27.

Contrary (to natural-born citizens), naturalised citizens (τοὺς ποιητούς) ought to show that we perform public services (λητουργοῦντας) as a payment of *charis*. (D. 45. 78)

Thus, he feels obligated to repay the *charis*. Calling the juror citizens as supporters and friends inherited from his father, Pasion, asking not to disregard his family's misfortunes, he entreats, supplicates and requests help. Then after recounting the financial and other public services of his father, he explains his opinion on the significance of public services:

I mention these matters [i.e. how beneficial (χρήσιμον) Pasion was] not in the belief that you owe me a favour (χάρις) (for it's we who are indebted to you) but that you may be aware that they are treating me undeservedly. For that would not be fair to you, either. (D. 45. 85, Scafuro translation)

Then Apollodorus maintains that he and his associates are suffering undeserved harm, insisting that,

If they wail (ὀδύρωνται), consider that the person who suffered deserves more pity (ἐλεινότερον) than the persons who must pay the penalty (δίκην). For if you do this, you will grant redress (βοηθήσετε) to me, and you will restrain the abject flattery of these men, and you yourselves will have voted true to your oath. (*Ibid.* 88)

Apollodorus explains his relationship with the polis as a reciprocal one based on *charis*, and understands that he can request pity on the basis of past and future *charis*. Apollodorus, a naturalised citizen, could here exaggerate the tie of *charis* between citizens and the polis, but other speeches also attest to the relevance between pity and *charis*.³³

4. *Charis* and the Character

The emphasis on civic contributions does not, however, mean that defendants could obtain pity and favourable verdicts in exchange for the accumulated previous

³³ Request for pity as *charis* for liturgy: Lys. 20. 30-36, Lys. 21. 21-25, D. 36. 57-59. Also, And. 1. 141, Aesch. 2. 180-183, Lys. 18. 1, 22-23.

civic contributions. Reference to civic contribution was closely related to the defendants' good characters.³⁴

In actual cases, what mattered was not so much the amount of previous contribution but the defendant's civic personality and future contribution.³⁶ Thus, in Is. 7, an inheritance case, the speaker counts the liturgies of his adopted father one by one, and promising future contribution from the estate, asks the juror citizens to render *charis* (38-42). In Lys. 21, the speaker argues that the fact that the defendant has contributed eagerly for the city implies that he is the last person to be bribed, and asks the jurors to keep good citizens like him within the *polis* network (21-25). In D. 21, also, what matters is the defendant's personality. Civic contribution is connected to the merciful, moderate lifestyle, in contrast to the defendant's lifestyle. Demosthenes asks the juror citizens not to pity Meidias because his life does not deserve pity (D. 21. 101). The record of public contribution is used as proof of the defendants' *philotimia*.³⁸ Herein, the past *charis* and that expected in the future serve as the proof of the defendant's character and are counted as the grounds for pity.

This principle appears most clearly in Isoc. 16. The defendant, the younger Alcibiades, now accused in an action for damage (*dike blabes*), mentions previous civic contributions and all the misfortunes his father had shared with the *demos* to explain his moderate character. Because of the 'goodwill (εὐνοια)' he had shown to the *demos*, he argues, he had 'the same enemies (ἐχθροί) and the same friends (φίλοι)' as the *polis* (41). In this speech, civic contributions are offered as proof of friendship with the *demos*. Goodwill in their shared misfortune consolidated the circle of friends, from which the opponent had to be expelled (42). In Isoc.18, the speaker, accusing the opponent of illegal prosecution, maintains,

In recognition of these services, you voted that we should be honoured with crowns and that in front of the statues of the eponymous heroes we should be proclaimed as the authors of great blessings. Yet surely men who should now be regarded as friends of the people (δημοτικοί) are not those who, when the

³⁴ Plaintiffs often express negative views on the display of wealth. Johnstone (1999) 93-100, especially 96. Also, Lanni (2005) 121-123. Past contribution and way of life as evidence of good character, therefore, of innocence: Lys. 6. 30-33, Lys. 19. 56, 61, Lys. 21. 21-22, Lys. 25. 11., Hyp. 1. 18. Past contribution as the proof of good character: Is. 7. 38-41, Lys. 14.40, Lys. 18. 1-7, 21-27, 29 (As the proof of future contribution) Lys. 20. 30-36, Lys. 21. 1-12, 15-25, And. 1.141-149, Aesch. 2. 180-183. Opponents' undesirable characters to weaken the reliability of their arguments: Is. 5. 12, Is. 8. 40, Lys. 9. 3, 30. 15, D. 52. 1, D. 58. 27, 63, Hyp. 1. 8-9. Future contributions in the inheritance cases, Johnstone (1999) 98-99. On *philotimia* in general, Whitehead (1983).

³⁶ Rhodes (2003) 131-141 as 'a larger story (141).'

³⁸ For other grounds for *charis*, see Johnstone (1999) 101 with footnotes.

people were in power, were eager to participate in affairs, but those who, when the state was suffering misfortune, were willing to brave the first dangers in your behalf, and gratitude (χάρις) is due, not to him who has suffered personal hardships, but to him who has conferred benefits upon you; and in the case of those who have become poor, pity should be felt (ἐλεεῖν), not for those who have lost their property, but for those who have spent their fortune for your good. (Isoc. 18. 61-62)

The passage clearly demonstrates that the request for pity and *charis* was based on the ‘helping friends/harming enemies’ dichotomy.³⁹ Both defendants and prosecutors relied on the same extra-legal framework determining which side deserved *charis* and pity.

Plaintiffs did not stop at denying *charis* and pity for the defendants. In some prosecution speeches, the denial of *charis* accompanies the demand for the jurors’ empathy for the plaintiff’s suffering.

For example, in a public prosecution of the younger Alcibiades, Lysias warns that the defendants might call for pity in return for their earlier public services. Lysias asks the juror citizens to ‘regard the opponent as a hereditary enemy (ἐχθρός) of the polis and punish him’, and ‘not to weigh pity (ἔλεος) or forgiveness (συγγνώμη) or *charis* more than the established laws and the oaths you swore’ (14.40). It is not proper for juror citizens to feel pity for the defendant because ‘the *charis* for their future public service should not be weighed above the anger (ὀργή) towards their past acts (15.9)’. The same Lysias warns that neither pity (ἔλεος) nor gain (κέρδος) should be given priority over ‘vengeance/punishment (τιμωρία)’ (28.11), and that no financial gain amount more than juror citizens’ ‘taking vengeance on the wrongdoers (τιμωρεῖσθαι τοῦς ἀδικοῦντας)’ (28.9).

In the prosecutors’ view, defendants should be placed outside the circle of mutual *charis* between good citizens and accordingly punished (Figure A). When prosecutors in public suits demand that juror citizens punish the defendants, the demand for punishment often arises together with the rejection of pity. This contrast between pity and vengeance/punishment can be found in many prosecution speeches.⁴⁰

³⁹ On ‘helping friend/harming enemy’, see Blundell (1989), Kurihara (1995)[In Japanese].

⁴⁰ For examples, Lys. 12. 2, 79, Lys. 13. 1, 33, 92, 95, Lys. 14. 3, Lys. 15. 9-10, Lys. 29. 5, 8, 9, 13, D. 25, 17, 25, 81, 83, 84, [D.] 53. 3, 29, [D.]58. 24, 69, [D.]59. Din. 2. 11. Rubinstein (forthcoming) observes that the plaintiffs in private cases do not use the verb ‘τιμωρεῖν/τιμωρεῖσθαι’ to ask jurors for a conviction, except for homicide trials and Isoc. 20. 13. Isoc. 20 is a *dike blabes*, but the plaintiff

Figure A: Prosecutor's View

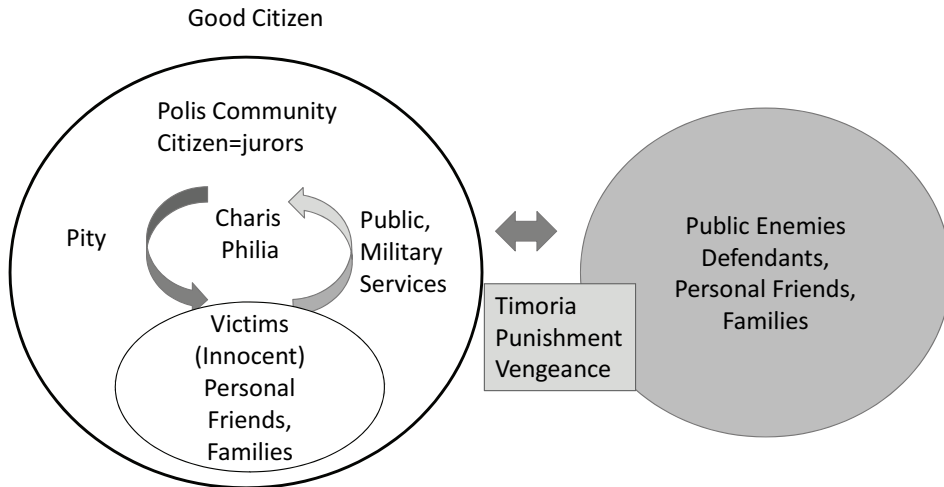
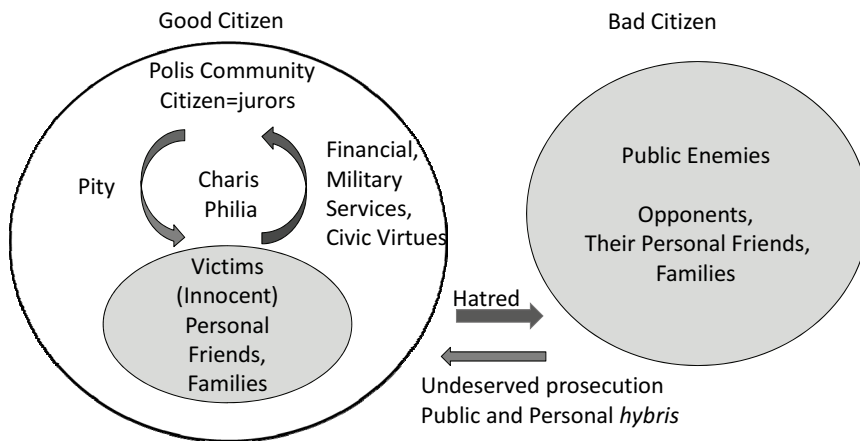


Figure B: Defendant's View



assimilates the case to *graphe hybreos*. When plaintiffs in private suits deny pity for defendants, they try to incur the emotion of anguish among the juror citizens and request punishment. Public prosecutors rejecting pity for the opponents, could act themselves as avengers for the community, inviting the juror citizens to feel angry and to take revenge. In contrast, defendants who request pity might have found it difficult to speak simultaneously as an avenger. Pity accompanied the role of supplicants, not the role of an active avenger.

A similar effort to draw a line between friends and foes can be found among private cases, as well. In a homicide case, the speaker requests pity (ἔλεος), help (βοήθεια) and vengeance/punishment (τιμωρία) from the jurors (Ant. 1.21), and maintains that the defendants are to suffer vengeance/punishment (τιμωρία) without pity (ἔλεος) or shame (Ant. 1.27).⁴¹ In Lys. 32, the plaintiff suing against the guardian, enlarges the growing circle of compassionate reactions by kinsmen surrounding the orphans, and attempts to include the jurors in the circle and asks the jurors to pity (ἐλεεῖν) and help (βοηθεῖν) the orphans and to feel angry (ὀργή) on their behalf. In Lys. 10, the plaintiff refutes pity for the defendant, Theomnestus, maintaining that the juror citizens should show no compassion (ἐλεεῖσθαι, συγγνώμη) to those who threw down the shield on the battlefield when they seek to avenge (τιμωρεῖσθαι) those who only witnessed the deed (Lys. 10. 13, 24, 30).⁴²

These cases demonstrate that, through discussions on *charis* and pity, the juror citizens were required to discern whether defendants were entitled to be pitied as public friends, or should be convicted as public enemies. That is, the winners are to remain within the circle of communal friendship of *charis*, and the losers expelled.

The emphasis on civic contributions does not necessarily mean that defendants could afford favourable verdicts against the law in exchange with the accumulated civic contributions hitherto, however. We have seen that plaintiffs seek to restrict the pity in the face of ‘law and constitution (τὰ τῶν νόμων καὶ τῆς πολιτείας)’ (D. 19. 283, cited in chapter 2, section 3). In Lys. 14. 40 above in this chapter, the speaker tries to prevent juror citizens from overriding the law and the jury’s oath from pity. In Lys. 6, the speaker argues that pity should be applied only for those who suffer death ‘unjustly (ἀδίκως)’ and not for those who are ‘justly (δικαίως)’ put under the punishment (Lys. 6. 55). Finally, Apollodorus entreats for pity ‘for the sake of justice and the laws (τοῦ δικαίου καὶ τῶν νόμων)’ ([D.]46. 28)

The relevancy of pity and innocence in the Athenian court has been clarified by Konstan and Lanni. Konstan concluded that there was no single case that Athenian defendants did ask for pity while admitting the guilt and remorse.⁴³ Modifying this, Lanni, in a more nuanced way, has clarified that the persuasion for acquittal was based on relative innocence.⁴⁴ The loose relevancy enabled the litigants to argue that the crimes committed under inevitable situations were relatively innocent (Lys.

⁴¹ Similarly, Ant. 3. 3.

⁴² The term ‘τιμωρεῖσθαι’ is also applied for previous *dike pseudemarturion*. Todd (2007) 687-688.

⁴³ Konstan (2001), 27-48.

⁴⁴ Lanni (2006), 53-59. She explains that too severe punishment cause 'tragic effect' and to justify pity.

31. 11, Ant. 4. 1. 6). Labes' uneducated upbringing in the trial scene of *Wasps* is a good example.

Plaintiffs attempted to expel the defendants out of the circle of mutual *charis* and pity on the grounds that defendants were not sufficiently innocent or not merciful on previous occasions (Figure A). Defendants, in turn, attempted to establish a friendly relationship on the basis of mutual *charis* with the citizenry (Figure B). It was in this context that records of previous public service and financial contributions were recounted. The past contributions could not compensate for defendants' guilt but could be accepted as predictive of future contributions and good civic behaviour. Pity could make the relationship between the juror citizens and the defendants unbalanced temporarily, but the debt was expected to be repaid in the future.

Conclusion

Persuasion in the Athenian court relied on the image of reciprocal *charis* and pity among good citizens, who pleaded that the jurors support their respective sides and take public vengeance upon their opponents.⁴⁶

The decisive factor in persuasion was which side deserved a friendly relationship with the polis on the basis of reciprocal *charis* and pity, and which side deserved hatred, punishment and public enmity. *Charis* and pity constituted the framework of law court persuasion.

We have seen that, in certain public cases, litigants fought around the following two axes: *charis* and vengeance/punishment. Litigants argued which side should take the position of *charis* and friendship with the Athenian citizenry, and which side should be expelled and suffer the vengeance of punishment.

The Athenian court was a place to publicly recognise the social relationship and confirm it.⁴⁷ The juror citizenry represented civic emotion, and by proclaiming a verdict based on the 'helping friends/harming enemies' (HF/HE) moral dichotomy,

⁴⁶ There is a slight but telling evidence that non-citizens were included in this realm of *charis* and pity. Although Lanni argued that *dike emporion* tends to concentrate on the fact of contract, pity is identified in D. 34 and D. 35. Among the Maritime cases (*dike emporion*) open to non-citizen merchants, D. 34 is a *paragraphe*. The plaintiffs differ between those who break contracts to be punished and those who give their property for Athens to be pleased (36-40). In D. 37, a *paragraphe* concerning a contract, the speaker excludes merchants from the realm of mutual pity (53), but Lys. 6 contrasts resident aliens who helped the polis with grain import, to Andocides, who as a merchant did not make any effort to (49).

⁴⁷ Konstan (2001) 44. Cf. Arist. 1354a16-18, 'For slander and pity and anger and such affects of the soul are not about the issue, but rather are directed at the juror.'

discerned between public enemies and public friends, and thus regulated the civic community.⁴⁸

Considered in this Athenian context, no severe discrepancy existed between the formal legal justice and extra-legal factors in the Athenian perspective. Speech writers consistently assessed pity on the basis of the socio-legal framework of *charis*. The reciprocal value of ‘helping friends/harming enemies’ regulated the Athenian court throughout the age of orators. Placement of the dividing line, however, reflected political struggle in the popular court and could vary over time.

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⁴⁸ On ‘helping friend/harming enemy,’ see Blundell (1989). Also, Kurihara (1995)[In Japanese].

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