PERSONAL ENMITY AS A MOTIVATION IN FORENSIC SPEECHES*

So it seems, men of Athens, that what is commonly said of public trials is indeed the case: private enmities do very often correct public affairs. (Aeschines 1.2; Fisher trans.)

INTRODUCTION: PROCEDURAL DIFFERENCES AND STATED MOTIVATION

As has often been pointed out, Athenian political and judicial activities were largely influenced by personal concerns such as obligations to families and friends.[1] The words of Aeschines quoted above show that this practical interplay of public and private was recognized by the Athenians themselves as a social reality. This private aspect of Athenian litigation has been highlighted in recent arguments on the social order, in which the self-help aspect of Athenian policing in the fifth to fourth centuries B.C. is re-evaluated as an inevitable component of the litigation.[2]

However, reality can be different from the ideology expressed in the people's court. It is also possible to consider the shared ideology that regulated the relationship between private and public by studying how the motivation of suits is represented in the people's court—where the private world of the citizens intersected with the public sphere of the *polis*,[3] and where the emotions of the individual citizens were expressed and considered in relation to the *polis*.[4]

Lawsuit procedures in Athens were divided into two major categories: private and public. In the wake of Osborne,[5] who showed how the different procedures of prosecution were used flexibly, it seems to be generally accepted that, despite the difference in the supposed nature of the public and private procedures, Athenians chose the one that was strategically most convenient to them on each occasion.

* Unless otherwise cited, the translations used in this paper are based on S. C. Todd (trans.), *Lysias* (Austin, 2000) for Lysias, and for other orators on the Loeb edition.

[1] G. M. Calhoun, *Athenian Clubs in Politics and Litigation* (Austin, 1913); L. G. Mitchell and P. J. Rhodes, 'Friends and enemies in Athenian politics', *G&R* 43 (1996), 11–30; L.G. Mitchell, *Greeks Bearing Gifts: The Public Use of Private Relationships in the Greek World 435–323 B.C.* (Cambridge, 1997); W. R. Connor, *The New Politicians of Fifth-century Athens* (Princeton, 1971); B. S. Strauss, *Athens after the Peloponnesian War: Class, Faction and Polis 403–386 B.C.* (Ithaca, 1986).

[2] D. Cohen, *Law, Violence, and Community in Classical Athens* (Cambridge, 1995); id., *Law, Sexuality, and Society: The Enforcement of Morals in Classical Athens* (Cambridge, 1991); V. J. Hunter, *Policing Athens: Social control in the Attic Lawsuits, 420–320 B.C.* (Princeton, 1994). However, for an opposing view, see G. Herman, 'Tribal and civic codes of behaviour in Lysias', *CQ* 43 (1993), 406–19.

[3] For the tension between private and public in litigation, S. C. Humphreys, 'Oikos and polis', in id., *Family, Women, and Death* (London and Boston, 1983), 5; K. J. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Oxford, 1974), 187–90; Matthew R. Christ, *The Litigious Athenian* (Baltimore and London, 1998), 160–92.

[4] Dover (n. 3), 195–295; Danielle S. Allen, *The World of Prometheus: the Politics of Punishing in Democratic Athens* (Princeton, 2000); D. Konstan, *Friendship in the Classical World* (Cambridge, 1997); id., *Pity Transformed* (London, 2001), 27–48.

[5] R. G. Osborne, ' Law in action in classical Athens', *JHS* 105 (1985), 40–58. See also E. Ruschenbusch, '*ΔΙΚΑΣΤΗΡΙΟΝ ΠΑΝΤΩΝ ΚΥΡΙΟΝ*', *Historia* 6 (1957), 257–74, which is a pioneering work on the flexibility of Athenian law.

https://doi.org/10.1093/cq/53.2.464 Published online by Cambridge University Press

Following this, Rhodes was indifferent to the procedural distinction when he wrote 'litigants are not ashamed to state that they are supporting their friends, and that they are prosecuting their enemies in the hope of obtaining revenge'.[6] Nor did Cohen pay attention to the procedural difference in his 'case studies', when he argued that the lawcourt was the arena where social norms were formed during the endless ἀγών between élite citizens.[7] It now seems to be accepted that personal enmities were welcomed by Athenian jurors as an acceptable motive for any prosecution.[8]

The flexibility in the use of legal procedures demonstrated by Osborne cannot, however, be applied to the rhetoric of enmity in the lawcourt. What Osborne has shown is that the choice between the available procedures was made strategically, being influenced by multiple factors outside the court. The reason for the choice might not necessarily be welcomed by the jurors, and could be criticized by the opposing party if once revealed. Strategy in the use of a legal procedure is a completely different matter from what was expressed in front of citizen-jurors, in public. It should be remembered that every game has its rules. Athenians played the lawcourt game following rules, rules of rhetoric, which could be formed only within a shared ideology concerning the use of legal institutions.

In this respect, knowledge of what was expressed in the public sphere is almost equally important in order to see how Athenians viewed the sphere of the *polis*, and then manipulated it. If the public realm of the *polis* was regarded as a sphere distinct from the private sphere,[9] the distinction should be reflected in discussion in the public sphere, for example in the representation of motivations of suits in the people's court. Surprisingly, the possibility that there might be a difference in the way the motivation of the prosecution was represented in front of the jurors has not been fully investigated, perhaps because of the prevalent emphasis on the self-help orientation of Athenian litigation.[10]

In this paper, after briefly analysing the enmity in private suits, I will examine all the

[6] Mitchell and Rhodes (n. 1), 160–1; P. J. Rhodes, 'Enmity in fourth-century Athens', in P. Cartledge, P. Millett, and S. von Reden (edd.), *KOSMOS: Essays in Order, Conflict and Community in Classical Athens* (Cambridge, 1998). S. Todd, 'The rhetoric of enmity in the Attic orators' in the same volume (*KOSMOS*, 162–9) also deals with enmity, but gives a description of the distance between fellow members of local communities based on the rhetoric of the absence of enmity.

[7] Cohen (n. 2). This tendency to dismiss the procedural difference is, more recently, found in the work of Allen, who applies Cohen's framework to her own analysis of the social regulation of 'anger'. Allen (n. 4), especially 39–40.

[8] To cite two examples, N. Fisher, *Aischines Against Timarchos* (Oxford, 2001), 119–20, 'There was a serious danger of being labelled a "sykophant" for launching a prosecution for the wrong motives, such as money, or serving the aims of other, more influential politicians. This led most prosecutors to emphasize the much more acceptable motives of personal revenge and the punishment of those who were wronging the city . . .'; M. Gagarin, *Antiphon, The Speeches* (Cambridge, 1997), 11, ' It was considered legitimate, even honorable, to prosecute one's personal enemies for public crimes, the idea being that everyone would keep an eye on his enemies.' However, Lene Rubinstein briefly remarks that enmities exposed in public suits are mostly political, L. Rubinstein, *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens* (*Historia Einzelschriften* 147 [2000], 179–80).

[9] Humphreys (n. 3); Ch. Meier, *The Greek Discovery of Politics* (Cambridge, 1990).

[10] Thus Matthew R. Christ rightly pays attention to the difference between discussion in the lawcourt and the reality of Athenian agonistic society. Nevertheless, his argument on the topos of enmity presupposes that private enmity provided an acceptable motivation for volunteer prosecutors in the milieu of the social acceptance of enmity: M. R. Christ, Review of D. Cohen (n. 2), *BMCR,* 7–5 (1995), 379–84; id. (n. 3), 143–59, esp. 154 with nn. 132, 133.

https://doi.org/10.1093/cq/53.2.464 Published online by Cambridge University Press

public forensic speeches in the corpus of the ten Attic orators,[11] and I will present an alternative view on the topos of enmity. Despite Aeschines' assertion quoted at the start of this paper, it will be shown that discussions on enmity in Athenian forensic speeches were to a large extent based on the normative expectation that public suits should not be motivated by private enmity. I will also consider the exceptional cases which, at first glance, do not fit the norm, in order finally to return to Aeschines' assertion.

I. ENMITY IN PRIVATE SUITS

In private actions, personal relationships are inseparable from the issue central to the legal cases, whether these relate to financial concerns, or inheritance, or personal violence. It is not surprising that speakers refer to private enmities, regardless of which legal position they held in the trial. However, litigants had to persuade the jurors that their enmity was an inevitable and proper motivation for the cases.

First, not all enmity was socially acceptable. In certain private cases concerning assault, the enmities on the opposing side could be attacked as too trivial for litigation.[12] Secondly, because the state of enmity could affect the case, the participants in the legal quarrel had to prove their own story about the history of their enmity (Dem. 43.1–2).[13]

This appears most clearly in *Against Diogeiton* (Lys. 32), which is a supporting speech for orphans in their suit against their guardian. The speaker is the brother-in-law of the orphans. First, the speaker tries to show that the expected good relationship between kinsmen does not apply to Diogeiton any more in so far as the orphans suffered the dreadful deed at the hand of 'the last person from whom they should suffer it' (1). He then illustrates the process by which the orphans succeeded in enlarging the circle of their supporters among their kin and friends, then in entangling these surrounding people in the hostile relationship with their opponent.[14] Through description of the processes leading to the trial in court, the speakers could show their enmity as a recognized fact and justify their litigation.

Private suits are nothing more than the *ἀγών* between two participants (or two parties) which took place on the legal stage. Accordingly, personal enmities that have caused the cases are admitted either implicitly or explicitly as a proper motivation for the litigation.[15]

[11] Sixteen public defence speeches (Ant. 5; Lys. 5, 9, 16, 18, 19, 20, 21, 24, 25; And. 1; Isae. 11; Dem. 18; Aeschin. 2; Hyp. 2, 3) and prosecution speeches with any reference to motivation (Lys. 12, 13, 14, 15, 22, 26, 31; Aeschin. 1, 3; Dem. 19, 20, 21, 22, 23, 24, 53, 58, 59; Lycurg. 1).

[12] For example, Dem. 54.13–21. For other examples, see D. Cohen (n. 2), 130–7.

[13] Hunter (n. 2), 127–38.

[14] Similar accounts of the process by which the speakers have secured positive responses from other persons involved in their claims are also found in Isae. 1 and 7. On enmity as a social status, Cohen (n. 2), 70–1. On the representation of kinship in lawsuits, S. C. Humphreys, 'Social relations on stage: witnesses in classical Athens', *History and Anthropology* 1 (1985), 313–69. Also, A. Kurihara (in Japanese), 'Kinship as acquired relationship: on the application of Solonian inheritance law in the fifth to fourth century B.C.', in *A History of the Mediterranean World*, 5: *Kinship and Social Relationship* (Tokyo, 1998), 32–63.

[15] On the other hand, the younger Alcibiades could maintain, 'But it is my opinion that charges involving the public interest have nothing to do with private suits . . .' (Isoc. 16.3). Commenting on this passage, Christ (n. 3, 41) writes, 'How much the city's interests should be taken into account in a particular trial was thus open to debate.' However, I will show that the available range of the debate was determined by whether the prosecution was private or public.

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II. MOTIVATION OF PUBLIC SUITS IN THE CORPUS OF LYSIAS

The speeches in the corpus of Lysias show that the speakers' stances on the motivation of suits were not the same in private and in public suits.

In a defence speech *On the Olive Stump* (Lys. 7.20–21), the speaker lists the plausible motivations for the action: enmity, public benefit, and blackmail.

> It was at that point, Nicomachus [prosecutor], that you ought to have called the bystanders as witnesses and exposed the whole affair. You would have left me no defence. Assuming I was your enemy, in this way you would have punished me. If you were acting for the sake of the city, by convincing me in this way you would not have looked like a sykophant. If you wanted to make a profit, it was then that you would have received the most money; for the case would have been clear, and I would have had no hope of safety other than to settle with you. But you did none of those things . . . (20–21)

This cannot be taken as a comment condoning private enmity in so far as it appears alongside 'sycophancy'.[16] Personal enmity could cause suspicions of falsehood (Lys. 16.1–11, 19.1–3), and is regarded as inadequate motivation together with *συκοφαντία* (Lys. 25.3, also Lys. 20.17) and envy (Lys. 24), while public concerns are sought after (Lys. 20, 25, 30.10–13).

In *For the Soldier* (Lys. 9), the excessive 'anger' and 'enmity' (15) of Ctesicles and his fellow generals is criticized as the cause of the present trial on confiscation. First, the speaker was enrolled on the military list soon after he had returned from an expedition out of enmity. Then he was fined for verbal abuse, which was inappropriate because, in the words of the *ταμίαι*, 'it was not reasonable that any of our citizens should be registered as public debtors out of personal enmity' (7). And finally they were prosecuting him by *ἀπογραφή* for the subsequent non-payment of the fine. This chain of incidents, through which enmity had led to the present litigation, might be a good example of the 'agonistic' aspect of Athenian litigation. The speaker himself admits that he was not seriously distressed by the prosecution because 'the injustice of these men only caused me a moderate annoyance, as I considered it ordained that one should harm one's enemies and serve one's friends'. However, it should be noticed that this use of litigation in order to satisfy the personal enmity of the generals is severely criticized in the speech.

On the prosecutor's side, in *Against the Retailers of Grain* (Lys. 22), the speaker explains his motives in the following way.

> When the Prytaneis referred their case to the Council, there was such anger against them that some speakers said we ought to hand them over without trial to the Eleven to put to death. I believed that it was dangerous for the Council to get into the habit of doing this, so I stood up and said that in my view we ought to try the grain retailers according to the law. I took the view that if they had committed actions that deserved death, you would dispense justice no less than the Council, but if they were doing nothing wrong, it was not appropriate to kill them without trial. After the Council agreed to do this, some people tried to slander me, saying I had made this speech with the aim of saving the grain retailers. I defended myself by my actions in the Council, when their preliminary hearing took place. Whereas other people stayed silent, I stood up and accused them, and made clear to everybody that I was not speaking on behalf of these men but was supporting the established laws. This was why I began my involvement in the prosecution, because I feared the allegations. However, I considered it shameful to withdraw before you have the chance to vote about their case. (2–4)

The speaker gives two reasons for his commitment to the public suit. First, he

[16] *Pace* Allen (n. 4), ch. 7, n. 22.

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wanted to block the charge that he colluded with the retailers of grain and to make clear that he was supporting the established laws; second, he thought it shameful to abandon the matter before it reached court. He had said in the Council that the retailers should be tried according to the established law, and he did not think it honourable to abandon the matter. His prosecution was, after all, the result of his position in the *boul*e. In *Against Philon* (Lys. 31), it is stated that the prosecution was made as the duty of a member of the *boule* who had to expose any person appointed by lot whom they knew to be unsuitable for service on the Council. He continues, 'I am not pursuing any private hatred, nor have I been stirred by speaking ability and the habit of addressing you. Instead, I put my confidence in the scale of his crimes and in the oaths that I have sworn and intend to keep.'

Another example from the prosecutors' speeches is *On the Scrutiny of Euandros* (Lys. 26). In the election to the archonship in 382/381, Thrasyboulos, a supporter of Euandros, secured the rejection of Leodamas at a δοκιμασία, and instead Euandros was chosen as the archon of that year. The speaker, a friend of Leodamas, is now speaking against Euandros at his δοκιμασία in turn. However, against the predictable objection that the motive for his opposition is vengeance for his friend, the speaker affirms in the προοίμιον, 'None of you should think that I am accusing Euandros as a favour towards Leodamas, simply because he happens to be my friend. Instead, I am doing it out of consideration for you and for the city.'

While the defendants deny the facts and criticize the accusers for συκοφαντία (malicious prosecution) and/or private enmity, prosecutors prefer to explain that they are acting for the sake of the *polis*. Private enmities are normally seen in a negative light.

In a few public prosecutions, however, private motivation accompanies public motivation. Two such cases are public suits concerning homicide: *Against Eratosthenes* (Lys. 12) and *Against Agoratos* (Lys. 13). I will return to these public suits later in part V.

Another two examples are the supporting speeches against Alcibiades on a charge of military desertion.[17] In Lys. 14, the speaker cites his personal enmity for Alcibiades,

> There was in the past, gentlemen of the jury, a longstanding enmity between our fathers, and since I have long considered this man a criminal, and have now been badly treated by him, for all these reasons I shall attempt with your help to punish him (τιμωρήσασθαι) for all his actions. (2)

In Lys. 15, the speaker is a friend of the main speaker and seeking vengeance on Alcibiades (12).

III. DEMOSTHENES AND OTHER ATTIC ORATORS

In *Against Leocrates* (Lycurg. 1) Lycurgus claims:

> I decided to bring this case not for any personal feud nor out of personal ambition or any other such motive but because I thought it shameful to allow this man to burst into the Agora and share in our public sacrifices when he is a disgrace to his country and to all of you. It is the duty of the just citizen therefore not to bring to public trial for the sake of private quarrels people who have done the city no wrong but to regard those who have broken the law as his own

[17] Rubinstein (n. 8), cat. 10. On the legal procedure, C. Carey, *Lysias Selected Speeches* (Cambridge, 1989), 143–4. They might have put their names on the indictment.

https://doi.org/10.1093/cq/53.2.464 Published online by Cambridge University Press

enemies and to view crimes that affect the commonwealth as providing public grounds for his enmity against them. (5–6; Harris trans.)[18]

Lycurgus says that public suits should be pursued on the public ground that criminals must suffer the effects of the law if they harm the state. Enmity without this public ground is private enmity, and it is not suitable to bring a public suit because of private enmity.

In *On the Mysteries* (And. 1), Andocides calls the prosecutors his 'enemies'. He claims that an opponent, Callias, forged the charge against him because of a quarrel concerning marriage with an *ἐπίκληρος* (117–123), and explains that he had incurred the enmity of the other prosecutors because he had prevented their plot to secure money from public funds.

In the corpus of Demosthenes, it is still possible to see that Demosthenes is conscious of the public/private distinction when he argues about the motivation of suits.[19] In *Against Aristocrates* (Dem. 23), the speaker says to the jury,

Men of Athens, I beg that none of you will imagine that I have come here to arraign the defendant Aristocrates from any motive of private malice, or that I am thrusting myself so eagerly into a quarrel because I have detected some small and trivial blunder . . . (1)

The speaker stresses that he is neither an annoying busybody nor a trusted statesman (4), and presents himself as an inexperienced private citizen who, nevertheless, is partaking in the political action.[20]

In *Against Leptines* (Dem. 20),[21] Demosthenes appears as a *συνήγορος*. His motives are explained as follows:

It is mainly because I think the state will benefit from the repeal of this law, gentlemen of the jury, and secondly out of sympathy for the son of Chabrias, that I have agreed to support the prosecutors. (1; Usher trans.)

It is possible to see Demosthenes' tendency to stress the public motivation.[22] However, equally important is the fact that Demosthenes honestly shows his personal sympathy with the son of Chabrias, with whom he had a friendship dating from the previous generation. It is doubtful whether sympathy for the son of Chabrias could have been even mentioned if Demosthenes had been the main prosecutor.

It remains to be considered how far the attested distinction between public suits and

[18] I. Worthington, C. R. Cooper, and E. M. Harris (trans.), *Dinarchus, Hyperides, and Lycurgus* (Austin, 2001).

[19] On separating the works by Apollodorus from the rest of the corpus, L. Pearson, 'Apollodorus, the eleventh Attic orator', in L. Wallach (ed.), *The Classical Tradition* (Ithaca, 1966), 347–59; J. Trevett, *Apollodoros the Son of Pasion* (Oxford, 1992). I omit Dem. 58, the legal procedure of which is an open question.

[20] The speaker could be Demosthenes himself. R. Sealey, *Demosthenes and his Time* (Oxford, 1993), 131–2. Sealey points out that the speaker uses the first pronoun plural when he refers to the fleet led by Cephisodotus in 360/59, in which year Demosthenes was one of the ten trierarchs accompanying the fleet. On the one hand, Sealey's suggestion is not conclusive because it does not exclude the possibility that Euthycles might have been a colleague of Demosthenes as trierarch in that year, as Rhodes mentions that Euthycles had had Demosthenes as *συνήγορος* in the earlier case (Rhodes [n. 6], 156). On the other hand, the way the speaker describes himself in the speech fits Demosthenes as well.

[21] Sealey (n. 20), 126–7. On the legal form of this trial, M. Hansen, 'Athenian nomothesia', *GRBS* 26 (1985), 345–71, 350–1.

[22] S. Usher, *Greek Oratory: Tradition and Originality* (Oxford, 1999), 193.

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private suits could govern the strategic choice made by litigants despite practical restrictions.[23]

Manifest enmity

We have seen that two *συνήγοροι* collected in the corpus of Lysias for public suits break the norm of the public/private distinction, revealing private enmity towards the opponent. *Against Androtion* (Dem. 22), a supporting speech written for one Diodotus, shows the same tendency.

Diodotus and the main speaker Euctemon were the victims of Androtion's lawcourt activity. Diodotus does not hesitate to admit that his motivation was the hostile personal relationship he had with Androtion as much as public benefit. Let me quote his explanation:

> Gentlemen of the jury, Euctemon finding himself wronged by Androtion, thinks it his duty to obtain satisfaction for himself and at the same time to uphold the constitution; and that is what I also shall essay to do, if I am equal to the task. As a matter of fact the outrages that Euctemon has endured, many and serious and utterly illegal as they were, are slighter than the trouble that Androtion has caused me. Euctemon was the object of a plot to get money out of him and to eject him unfairly from an office of your appointment; but if the charges that Androtion trumped up against me had been accepted in your courts, not a single living man would have opened his door to me, for he accused me of things that anyone would have shrunk from mentioning, unless he were a man of the same stamp as himself, saying that I had killed my own father. He also conducted a public indictment for impiety, not against me directly, but against my uncle, whom he brought to trial, charging him with impiety for associating with me, as though I had committed the alleged acts, and if it had ended in my uncle's conviction, who would have suffered more grievously at the defendant's hand than I? (1–2)

The straightforward way in which Diodotus presents his hostility has the same ethos as Lys. 14 and 15. Their relatively free position as *συνήγοροι* might have led speakers to expose their private enmity. Nevertheless, in Lys. 14, the enmity was presented as a hereditary one inherited from the speaker's father. Again in the present speech, the cause of the original accusation of the speaker by Androtion was the supposed parricide. The speakers justify their enmity by treating it as a son's inviolable duty to his father.

Two years after the trial against Androtion, Demosthenes wrote another speech for Diodotus. The same two, Diodotus and Euctemon, impeached Timotheus in a public suit for the proposal of an illegal decree (*γραφὴ παρανόμων*). According to Diodotus, Timotheus was bribed to propose an illegal decree for Androtion. This case was one in a sequence of legal affairs since the previous trial. However, this time, it was Diodotus who opened the case.

Diodotus, in contrast to the last speech where he spoke as a *συνήγορος*, starts this speech from the public point of view: first, he accuses his opponents in that their legal activity does not aim at helping the *polis* in public affairs but seeks financial reward; then, he maintains that his indictment aims at what is just for the community, which is more difficult but without reward (3). However, it should be noted that the state of enmity between Diodotus and the opposing party had been so openly exposed in the former speech that Diodotus could not pretend to be indifferent to personal matters.

[23] I will deal separately with public suits for the injured person in the next section. I omit Ant. fr. 5.1 (Gernet) because it lacks a general context. It mentions personal damage alongside public in the *proemium*.

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So it is not surprising that he feels it necessary to explain what has caused him, who has enjoyed a quiet life, nevertheless to be engaged in the trial.

> But to forestall any surprise you may feel that I, who can claim to have hitherto lived a quiet life, should now be making my appearance in actions at law and public prosecutions, I desire to offer a brief explanation, which will not be irrelevant to the issue. Men of Athens, I once fell out with a worthless, quarrelsome, unprincipled fellow, which whom in the end the whole city also fell out,—I mean Androtion. By this man I was far more grievously wronged than Euctemon, in as much as Euctemon suffered the loss of some money, but I, if he had made good his attack upon me, should have lost my life as well as my property; indeed, even the common privilege of an easy exit from life would have been denied me.

After this introduction, Diodotus repeats the same explanation on the origin of the hostile personal relationship between himself and Androtion. Demosthenes, in fact, recycles the same sentences. Nevertheless, it should be noted that the ongoing hostility is presented as if it were a secondary reason. The change of Diodotus' position from *συνήγορος* to main speaker might be the reason for this different attitude.

Aeschines and Demosthenes

In the course of Demosthenes' legal duel with Aeschines, juries must have become well aware of the enmity between them. However, Demosthenes constantly sought to deny the personal aspect of the suit. In *On the False Embassy* (Dem. 19), Demosthenes appeals to the jurors not to be influenced by private entreaties and personal influence (1). In *On the Crown* (Dem. 18), Demosthenes prefers to deny the private enmity on his side as far as possible, and attacks Aeschines' transgression of the public and private distinction in the series of legal battles between them.

In *On the Crown*, Demosthenes first attacks the discrepancy between the stated charges against his political career and the way in which Aeschines has chosen to conduct his case (12–16). According to Demosthenes, the discrepancy shows that the present prosecution is not based on the proper public spirit but on a malicious private enmity. To start with, he points out,

> Many are the charges that have been made, and for some of them the laws prescribe heavy penalties—indeed the most severe. But the chosen line of the present trial contains the spite of personal enmity, insult, slander and mud-slinging in equal measure with all other things of that kind. (12; Usher trans.)[24]

Demosthenes argues that Aeschines should have taken other measures like *εἰσαγγελία* or *γραφὴ παρανόμων* as soon as they were committed 'against the wrongs which he saw me doing to the city, if they were as great as he made them out to be in his tragic outpourings just now' (13). If the charges against his political career were true, in order for the *polis* to achieve the appropriate punishment (*τιμωρία*), Aeschines should have prosecuted Demosthenes immediately and directly. He thus reveals that the real motivation of Aeschines' prosecution is not public benefit, but malicious enmity against Demosthenes.

Furthermore, on the premise that the present prosecution is actually a feud between

[24] See S. Usher, *Demosthenes. On the Crown* (Warminster, 1993). H. Yunis, *Demosthenes On the Crown* (Cambridge, 2001), 114–15 comments, 'but in itself the choice of the present legal action bears an enemy's malice . . . Dem. is arguing that, although many specific allegations are being made against him, their combined force is weakened by the knowledge that Aischines' main motive in making them is personal spite rather than a desire to see justice done.'

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Aeschines and Demosthenes, Demosthenes claims from a completely different point of view that Aeschines should not attack Ctesiphon, but should fight the duel directly:

> Then his charges are against me, but he is prosecuting the defendant; and the primary motive of the whole trial is his enmity towards me, but nowhere has he confronted me for that purpose, but appears to seek to deprive another man of his privileges. And yet, in addition to everything else one could say in Ctesiphon's favour, this point could very reasonably be made, I think, that we ought in justice to conduct our review of our own enmity by ourselves, not to sidestep a confrontation and seek a third party on whom we can inflict injury: that would be the height of injustice. (15–16)

Thus Demosthenes first criticizes Aeschines for his private use of public prosecution, which he pretends to be bringing for the sake of the *polis* but which is, in fact, in order to pursue a personal feud with Demosthenes. Then, turning to the reality that they are in the middle of a feud, he aims one more blow at Aeschines with the claim that the feud itself is not being fairly conducted.

Aeschines seems to have adopted the opposite strategy in the prosecution against Timarchus. Aeschines, calling Demosthenes 'an enemy', explains the reason he has brought the public suit for the first time in his life:

> Hence when I saw that the city was being greatly damaged by the defendant Timarchos who was speaking before the people contrary to the laws, and when I was myself in person being made a victim of a sykophantic prosecution . . . just how I shall reveal as my speech proceeds—I concluded that it would be one of the most shameful things for me not to come to the aid of the whole city, the laws, your yourselves, and me. Knowing that he was guilty of the charges which you heard read by the Clerk of the Court a little time ago, I have brought this case of scrutiny against him. So it seems, men of Athens, that what is commonly said of public trials is indeed the case: private enmities do very often correct public affairs. (1.1–2; Fisher)

I have now returned to the beginning of this paper, to Aeschines' declaration on the role of private motivation in public. He dares to admit the enmity between them as the motivation of his prosecution. Will it be possible to see the reason why Aischines exposed his personal enmity in this particular suit? In order to answer the question, and to understand Aeschines' strategy, the citation should be put in the context of the legal struggle between Demosthenes and Aeschines.

Aeschines and Demosthenes struggled in the lawcourt on two occasions. The first stage was the trial on the false embassy. The political enmity between them must have been a known fact to the jurors, and the enmity between the two must have been too manifest to dissemble. Aeschines was nominally prosecutor in *Against Timarchus*. However, the whole legal feud began when he was a defendant prosecuted by Demosthenes. It was Demosthenes who opened the legal feud and who could be reproached for private enmity. Thus Aeschines was relatively safe in admitting the personal aspect of the suits. In a situation where his real motivation was too obvious to be dismissed, Aeschines fully exploited his position as the *de facto* defendant.

Later in the prosecution of Ctesiphon, Aeschines again prosecuted Demosthenes' supporter. This time, it was Aeschines who reopened the old feud. Demosthenes, this time as a defendant *de facto*, could make use of the manifest enmity between them in turn to attack Aeschines for his malicious enmity. In contrast, Aeschines avoided alluding to the enmity.

Aeschines says, '(previously in the days of Cephalus) indictments for illegality were brought not just by active politicians against each other, but by friends against friends, if they committed any offence against the city' (Aeschin. 3.194; Carey trans.). The implication is that, in present times, one helps one's friends and harms enemies. Of

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course, this passage cannot be taken literally, and must be read as a somewhat exaggerated statement of the ideal indictment. Aeschines was not ignorant of the jurors' expectation that one should not use public suits for private feuds. The opposite strategies taken by both orators in the first stage of the legal battle were chosen by them on the basis of strategic calculations of what their situation permitted them to say.

Therefore, in the passage quoted as epigraph to this paper, Aeschines is not denying the normative expectation of a public/private distinction. Aeschines does not fail to clarify that he is aware of this distinction, and he makes use of it to reveal the reality behind certain suits. He plays with the gap between the norm and the reality; he enjoys puncturing the formal presence of Demosthenes, and revealing what has gone on behind the scenes. At any rate, he could argue that it was Demosthenes who was to be blamed for introducing private enmity into public suits. The words of Aeschines about private enmity in public suits are an intentional transgression of the norm, which itself shows the existence of the norm.

To conclude: in the cases we have examined up to now, Demosthenes and later orators were generally aware of the difference between public and private motivation. Secondly, some of the cases which do not fit the general norm belong to the same category as the exceptional ones in Lysias: *συνηγορία* and public suits brought by the injured party. Thirdly, Demosthenes' legal struggles with Aeschines show that the range of strategies available to the speaker in each case was determined by practical consideration of the surrounding circumstances. If the actual case did not enable the writer of the speech to make the best use of the norms, he had to prefer the second best from the range of the norms. However, whenever the speeches transgress the public/private distinction, the reason for their doing so can usually be explained.

IV. APOLLODORUS AND THE AUTHOR OF *AGAINST THEOCRINES*

There are, however, two exceptions. Apollodorus and the author of Dem. 58 seem to ignore the distinction between public and private motivation.

In *Against Nicostratus* (Dem. 53), which is an *ἀπογραφή*, Apollodorus declares that his motive for the suit is to take vengeance for the damage and *ὕβρις* caused by his neighbour Nicostratus. This suit is dated to *c.* 366/365.[25]

Another speech which breaks the general rule that one should omit private motivation in public suits is *Against Neaira* (Dem. 59), which was delivered in the period between 343 and 340. This speech consists of two separate parts: the part spoken by the main speaker Theomnestus (1–15), and the second and longer part spoken by Apollodorus (16–126). The legal form of the suit is *γραφὴ ξενίας*, aimed at prosecuting the illegal marriage of an Athenian citizen Stephanus to the foreign prostitute Neaira. However, the text shows that there had been severe enmity between Stephanus and Apollodorus. It is generally admitted that the litigants *de facto* of the suit are these two persons, and that this suit can be situated in the ongoing feuding relationship between the two. However, Apollodorus did not reveal his intention of planned revenge as main speaker, but let Theomnestus act as main speaker.

Theomnestus expresses his personal hostility toward Stephanus, which is exceptional for a main speaker.

> There were many reasons which induced me, men of Athens, to bring this indictment against Neaira, and to come before you. We have been grievously wronged by Stephanus, and we were

[25] On the date, Trevett (n. 19), 16–17.

https://doi.org/10.1093/cq/53.2.464 Published online by Cambridge University Press

placed by him in the most serious danger, my father-in-law, myself, my sister and my wife, so that I shall present this case not as an aggressor but in retaliation; for it was this man who first started to quarrel, though he had never suffered any harm from us either in word or deed. I wish first of all to give you an account of what we have suffered from him, so that you will feel more sympathy for me as I seek to defend myself, and to show how we were placed in the most serious danger of losing both homeland and citizen rights. (1; Carey trans.)[26]

It has been questioned why Apollodorus preferred to appear in the court as a supporting speaker. One explanation, which was presented by Thür and followed by Rubinstein, is that Apollodorus had been barred from bringing the prosecution because of the counter-prosecution on Stephanus' side accusing Apollodorus of murder.[27] After Theomnestus had initiated the prosecution for him, and by the time the trial was actually held, he had been released and was able to speak in public. However, this hypothesis does not explain why Apollodorus did not wait until he was acquitted of the suspected murder instead of exposing his brother-in-law Theomnestus to danger. Even if Apollodorus was initially forced by circumstances to engage in the prosecution as a mere *συνήγορος*, the possibility should not be dismissed that Apollodorus made good use of his limited position as a *συνήγορος* in constructing his speech.

Another example of indifference to the public/private distinction is *Against Theocrines* (Dem. 58). The writer of this speech is not known, and it is generally admitted that it is not the work of Demosthenes. The straightforward way in which the speaker admits that his present prosecution is motivated by desire for vengeance for his father is different from Demosthenes' authentic speeches. The speaker is prosecuting Theocrines on the charge that Theocrines brought an indictment although he was a state-debtor. However, he explains the reason for his commitment by his need to take vengeance on Theocrines for his father. Thus he asks the jurors' help 'to revenge (*τιμωρεῖσθαι*)' (1).

It is difficult to tell where this peculiar and arrogant attitude of Apollodorus and the rather innocent attitude of the speaker of Dem. 58 towards motivation originate.[28] It cannot be lack of education as an orator. Trevett concludes that Apollodorus' father could afford a good education for him. Neither can his attitude be explained from the period when he was active, nor be attributed to his foreign origin, because we have Lysias, another non-citizen, who none the less observed the proper norms, before him. So it seems safer to leave the question open.

However, it can be pointed out that all three main speakers in Dem. 53, 58, and 59 seem to be private citizens. The speaker of Dem. 58 presents himself as a young and inexperienced citizen. The main speaker of *Against Neaira* is a young nephew of Apollodorus, who is inexperienced in speaking in public. The same is still true of Apollodorus at the time he prosecuted Nicostratus. By the time of the suit against Neaira, however, Apollodorus had started his political career,[29] and could not pretend to be a private citizen. If the normative expectation on the private/public distinction in

[26] C. Carey, *Apollodoros Against Neaira [Demosthenes]59* (Warminster, 1992).

[27] G. Thür, *Beweisführung vor den Schwurgerichtshöfen Athens. Die Proklesis zur Banasos* (Vienna, 1977), 219, n. 21.

[28] Concerning Apollodorus' stance towards public suits, he admits plainly that he brought a public suit in order to satisfy his private feud with Phormion (Dem. 45). The speech itself is likely to be Demosthenes'. But this manifest utilization of public suits for private profit was Apollodorus' habitual way. Accordingly, I think that this episode reflects Apollodorus' litigious attitude rather than Demosthenes' thought.

[29] On Apollodorus' political career, Trevett (n. 19), 124–54.

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legal activity applied less decisively to the ἰδιώτης but more strictly to the active politician who spoke as a main speaker, we can understand why Apollodorus preferred to speak as a συνήγορος in *Against Neaira* after he started to become involved in political matters.

One possible explanation is that a change in the distinction between private citizens and politicians is reflected here.[30] We do not have enough cases to trace chronological developments.

V. MOTIVATION OF PUBLIC SUITS FOR THE INJURED

Against Meidias (Dem. 21) is a speech intended to be delivered by Demosthenes himself in his prosecution of his enemy Meidias by προβολή. The charge was wrongdoing concerning the festival. The προβολή was a form of public prosecution, by which the offender was put under the immediate judgement of the people's assembly before the final γραφή was initiated. Once an affirmative judgment by the people's assembly was acquired, the prosecutor could proceed to the people's court in order to seek punishment by legal force. It is for this second προβολή that the speech was presumably written.[31]

Cohen highlighted the enmity between Meidias and Demosthenes as the central example of the use of legal procedure as a tool to conduct the ἀγών in front of the general public. However, it should be recalled that Cohen's argument concerns the level of practical use of the lawcourt. This paper deals with the level of ideology that is represented in the forensic speeches, and the following pages will concentrate on the way this notorious private enmity is presented before the jury court.

This particular speech has been chosen, partly because, as one of the public suits initiated by the injured party itself, the form of this suit itself inevitably requires some consideration of the relationship between private and public. Besides, this speech is notable for the author's effort to justify his prosecution with reference to the public/private relationship in the Athenian *polis*. Demosthenes is well aware of the need to explain why he chose a γραφή instead of other, more moderate ways of prosecution. It is interesting to follow his argument about the relationship between private and public.

In the προοίμιον, Demosthenes begins by justifying his prosecution in the following way. First, he chooses to define Meidias' offence towards him as ὕβρις, and endeavours to portray his case as having the same basis as the response of victims in general (1). Then, returning to the particular ὕβρις against himself, Demosthenes reminds the present jurors that, at the first προβολή, the *demos* became angry and irritated to hear the injury Demosthenes suffered, and 'supported' him. Moreover, many of the *demos* approached him and recommended that he should bring the προβολή into the jurors' court because 'they thought I had been shockingly treated, and they wished at the same time to punish him for other cases in which they had observed that he was audacious, disgusting, and out of control' (2). Demosthenes accepted their wish, thinking that 'in these circumstances I have duly preserved all your rights which it was my function to protect, and now that the case is being brought into court, I'm here to prosecute, as you see' (3). Demosthenes makes clear that he is the injured party. Then,

[30] On ἰδιώτης, see M. Hansen, 'The Athenian politicians, 402–322 B.C.', in id., *The Athenian Ecclesia II* (Copenhagen, 1989), 1–55; L. Rubinstein, ' The Athenian political perception of the *idiotes*', in *KOSMOS* (n. 6), 125–43; C. Mossé, 'politeuomenoi et idiotai: l'affirmation d' une classe politique à Athènes au IVe siècle', *REA* 86 (1984), 193–200.

[31] On the legal procedures, D. MacDowell, *Against Meidias* (Oxford, 1990), 13–23.

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by situating his damage in the midst of a shared public feeling of anger and desire to help, he adds a further public dimension to the prosecution.[32]

In this way, Demosthenes has provided twofold justification for his prosecution. First, he asserts that the ὕβρις to himself aroused common anger. Second, he also explains that he is prosecuting not only from private motivation but also as a sort of representative of the other weak victims, presenting himself as the guardian of 'all your rights'.

His case, he continues, is different from other public suits such as a γραφὴ παρανόμων or γραφὴ παραπρεσβείας because, in this case, he is himself a victim of the ὕβρις. Therefore, he asks the jury 'to support both me and you yourselves', on the condition that 'I (Demosthenes) prove that this man Meidias has treated insolently not only me but also you and the laws and everyone else' (7). He continues,

> Therefore, if any of you did suppose previously that this case arose from a private motive, you should now bear in mind that it's not beneficial to any member of the public for such an act to be permitted. Consider that the question is one that affects everyone. (7–8)

Arguing that the judgement on Meidias can be exemplary for the treatment of similar ὕβρις in the future, he enlarges the united front to include future victims of ὕβρις. In counting the beneficiaries of this trial against Meidias, Demosthenes enumerates 'you [citizen-jurors]', 'laws', 'any one of you', and 'everyone' simultaneously besides 'me' and 'my person', which is 'private'. Demosthenes associates the vengeance for private damage and the public aspect in a smooth continuity.

There had been a long-standing enmity between Demosthenes and Meidias going back to Demosthenes' trial against his guardians. But it is only after he has finished the main justification for his prosecution that he refers to this previous hostility between them (77–127). Reproaching Meidias about the feud, arguing that this previous hostility itself was caused by Meidias' ὕβρις, he treats Meidias' ὕβρις towards him as one of uncountable offences against other persons, which deserve the common anger (123).

Thus, in *Against Meidias*, Demosthenes follows the general tendency that public motivations should be explicit in public suits. Private motivations are carefully absorbed in the more general mutual assistance among citizens so that private motivation cannot be criticized as entailing the abuse of public suits for private purposes. Meidias' case is not exceptional in regard to the public/private distinction of the motivation of suits.

The same sort of understanding between public and private can be found in other speeches, particularly in *Against Eratosthenes* (Lys. 12) and *Against Agoratus* (Lys. 13). The characteristic feature is that the very injuries which aroused the anger of the victims and their intimates have caused public anger and justify the suits.

In these speeches by the injured party, private motivations are situated as the core of concentric circles, which are extended gradually to the *polis*, and still further. The way personal concerns and public concerns are related is in itself suggestive for a consideration of the public/private relationship in Athenian society. However, what is

[32] Christ (n. 3), 133 rightly mentions that 'in such cases—and they appear to have been common—the volunteer prosecutor could maintain that he was simultaneously serving the city and justify avenging himself on a personal enmity'. However, he neglects the difference between cases in which the personal enmity concerns the charge of the case directly and in which the prosecutor himself is the victim, and cases which concerns a personal enemy where the charge of the case is a mere excuse.

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important for this paper is the difference of these instances from other public suits, in which private motivation is given a negative connotation. On the one hand, in cases for the injured party, personal injury is related to public injury, and as such incorporated in the shared vengeance of the community. In this way, personal injury is inseparable from the public dimension of the prosecution. On the other hand, in the other public suits analysed in the previous sections, enmity did not constitute the *raison d'être* for the charges on the basis of which cases were brought.

CONCLUSION

At the level of ideology, there was a strict distinction between public suits and private suits in Athens. Despite a certain flexibility in the use of legal measures and the agonistic background of the litigation, Athenians were keen to separate public suits from private interests. Each citizen who wished to engage in a legal process was required to be well aware of the public sphere, and to partake in it. The ideology of public suits took on flesh and blood in the practice of Attic legal suits, even in the fourth century B.C.[33]

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[33] I am grateful to Dr L. Rubinstein, Professor P. J. Rhodes, and Professor S. C. Humphreys for commenting on drafts of this article. I am also indebted to Professor R. Parker for encouraging me to persist with my investigations.

https://doi.org/10.1093/cq/53.2.464 Published online by Cambridge University Press