

Absurd Arguments for an Absurd Prosecution: The Rhetorical Strategy in Lysias I, 47-50

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Lysias makes some outlandish claims in the concluding paragraphs of his speech *On the Murder of Eratosthenes*. He has the defendant Euphilitos tell the judges that he killed the adulterer Eratosthenes, not for his own sake, but for the sake of the whole city.¹ It is *prima facie* bizarre to claim that Eratosthenes' adultery should be of any interest to the public whatsoever, considering how intensely secretive and personal adultery is by its very nature. Moreover, should the judges convict him of this killing, Euphilitos argues, they would make adultery so difficult to deal with, that Athenians should simply erase their existing laws, and instead pass others that legalize adultery and convict husbands for trying to protect their wives' honor.² Such new laws as would, of course, be absurd: laws are the public expression of a society's norms and values,³ so changing them to legalize actions that run counter to societal values would reverse the very nature and purpose of laws. These claims, however, serve a rhetorical purpose: by framing Euphilitos' situation in absurd terms, Lysias draws attention to the ostensibly absurd situation of facing trial for defending one's home and family. Underlying this approach is an implicit understanding of hubris in Athenian society, which Lysias uses to appeal to the judges' sense of right and wrong, and thus to build empathy for Euphilitos and hostility toward Eratosthenes.

At its core, hubris is a violation of the most fundamental norms of acceptable behavior in society: it is a deliberate act that causes shame or dishonour to another person by treating him as an inferior.⁴ Violence or coercion need not be a component of hubris—the key element is the denigration of others for one's own selfish ends.⁵ The hubristic act can also denigrate by association, bringing shame

¹ Section 47: ἐγὼ μὲν οὖν, ὧ ἄνδρες, οὐκ ἰδίαν ὑπὲρ ἑμαυτοῦ νομίζω ταύτην γενέσθαι τὴν τιμωρίαν, ἀλλ' ὑπὲρ τῆς πόλεως ἀπάσης (Therefore, gentlemen, I do not consider this to be punishment on my own behalf, but on behalf of the whole city).

² Section 48: πολὺ κάλλιον τοὺς μὲν κειμένους νόμους ἐξαλεῖψαι, ἐτέρους δὲ θεῖναι, οἵτινες τοὺς μὲν φυλάττοντας τὰς ἑαυτῶν γυναῖκας ταῖς ζημίαις ζημιώσουσι, τοῖς δὲ βουλομένοις εἰς αὐτὰς ἀμαρτάνειν πολλὴν ἄδειαν ποιήσουσι.

³ Foqué, 2008, p. 220.

⁴ MacDowell, 1976, p. 23; Cohen, 1991, p. 174; Harris, 2006, p. 317.

⁵ Cohen, 1991, p. 177.

not only upon the victim but also upon the victim's relations.⁶ Thus in Lysias I, the adultery that Eratosthenes commits, even though Euphilitos' wife was a willing participant, nonetheless soils Euphilitos' reputation.⁷ Athenian society accepted violence as an appropriate response to hubris, even without violence on the part of the offender.⁸ As a legal concept in Athens, hubris had a particular significance that transcended individual insult or dishonour, because it also struck at the notion of equality between citizens that was at the core of the city's democracy.⁹ For this reason, prosecution for hubris was not restricted to the victim of the hubristic act; rather, any citizen could prosecute the offender for his hubris, because it was seen as an act that offended the entire community.¹⁰

On a personal level, the hubris that Lysias describes in this speech has two components: a violation of Euphilitos' οἰκία, and a violation of his marriage. The word οἰκία in this context does not refer simply to the physical building in which Euphilitos and his family lived; rather, it encompasses the idea of the home as well as the family, both in its nuclear sense of parents and children living under one roof, and in the sense of people directly related to each other over generations.¹¹ It would be hard to overstate the importance of family in ancient Athenian society.¹² Yet in section 4 of the speech, we learn that: Ἐρατοσθένης ... ὕβρισεν εἰς τὴν οἰκίαν τὴν ἐμὴν εἰσιών... (Eratosthenes ... committed hubris against my household by going into it...). Again in section 25, we find reference to the hubris of entering Euphilitos' home: ...ἡρώτων [Ἐρατοσθένην] διὰ τί ὕβριζει εἰς τὴν οἰκίαν τὴν ἐμὴν εἰσιών. (I asked

⁶ Cohen, 1991, p. 174.

⁷ Cohen, 1991, p. 175.

⁸ Cohen, 1991, p. 185.

⁹ Foqué, 2008, p. 217. He writes: "...in Athenian democracy the criminal relevance of *hubris* can hardly be overstated. ... Disrespect of other citizens is in direct contradiction with democratic citizenship." See also Hansesn, 1991, pp. 81-85 for discussion of the centrality of legal and political equality in Athenian democracy.

¹⁰ MacDowell, 1976, p. 29. See also Cohen, 1991, p. 173-4, who notes that hubris was strongly associated with tyrants, monarchs and the wealthy. Given such an association, it is not surprising that hubris was seen as a public offence in Athens: by behaving haughtily and denigrating others, the hubristic citizen was, in effect, behaving like a tyrant.

¹¹ Roy, 1999, p. 2.

¹² Gabriel Herman, 2006, p. 49, calls the family "the pivotal unit of Athenian life"; Alberto Maffi, 2005, p. 254, and J. Roy, 1999, p. 1 both summarizing Aristotle, call families the basic social element of the polis.

[Eratosthenes] why he committed hubris against my household by going into it). The οἰκία was the sacrosanct focus of family life, so simply by entering into his house without Euphilitos' permission, Eratosthenes had committed an act of hubris by violating the privacy expected of an Athenian home.¹³ Thus, Eratosthenes sullied the reputation of Euphilitos and his children, *and* the very name of his entire family. The transgression of entering uninvited would no doubt have been compounded by entering the women's quarters, which would not have been permitted even to Euphilitos' friends, let alone a stranger.

If simply entering Euphilitos' house was an outrage, then sex with his wife would have been immeasurably worse. As Lysias states in section 33 of the speech, adultery can divert a wife's loyalty from her husband to the adulterer, potentially giving the adulterer control of the cuckolded husband's household, and of leaving the children uncertain as to who their father is. The usurped loyalty and potential economic hardship that Lysias lists here are not just rhetorical arguments. As Jane T. Gardner argues, these are particularly important concerns in a society of arranged marriages, where husband and wife might well be strangers to each other, and a wife might feel little to no loyalty to her husband.¹⁴ Thus, a wife's romantic bond to an adulterer could pose a direct economic threat to the husband, particularly if the wife controlled the household finances (as Euphilitos' wife did).¹⁵ Paternity uncertainty would also be a concern, as only children born of a legitimate marriage had the right to inherit property and hold Athenian citizenship.¹⁶ These rights were of central importance to the orderly functioning of Athenian society, as Herman succinctly explains: "Breaking the continuity of the family

¹³ Cohen, 1989, p. 6; see also Gardner, 1989, p. 54, who writes: "Going into someone else's house uninvited was simply not done. It would be assumed that one was there for some nefarious purpose - particularly if there were free women inside."

¹⁴ Gardner, 1989, p. 54. She argues that Euphilitos only began to trust his wife when the birth of their first child caused him to assume (wrongly) that she now had a reason to "attach her loyalty to his household."

¹⁵ See section 6: "ἐπειδὴ δέ μοι παιδίον γίγνεται, ἐπίστευον ἤδη καὶ πάντα τὰ ἑμαυτοῦ ἐκείνῃ παρέδωκα, ἡγούμενος ταύτην οἰκειότητα μεγίστην εἶναι... (When our child was born, I then began to trust her, and handed over all my affairs to her, thinking there was great intimacy between us...)."

¹⁶ Maffi, 2005, p. 255.

line in terms of property ownership ... amounted to an outrage that only the most irresponsible of citizens would dream of inflicting upon the community."¹⁷ Thus, the potential for an adulterer to upset the line of citizenship and inheritance, if his bastard child is discovered, is not only an outrage against an individual family, but also undermines and offends against the basic Athenian concept of the family's role in society. Even if the child's parentage was never detected, adultery would still be a cause for anxiety, because the cuckolded husband would be paying to raise another man's offspring.¹⁸ Moreover, the participation of a bastard in a family's religious observances risked offending the family's ancestral spirits.¹⁹ Thus, on a personal level that the judges must surely have understood, the suggestion that Athenians should legalize adultery is utterly outrageous. But through this argument, Lysias highlights the absurdity of prosecuting Euphiletos for killing Eratosthenes.

As a society that valued honor and abhorred shame, Athenian men would have felt compelled to seek vengeance in requital for hubristic insults against them and their family.²⁰ Though Athenians could pursue the offender through the city's courts, litigation was only one course of action, and did not supersede or replace violent retaliation.²¹ Indeed, violent retaliation was seen as a legitimate response to hubris, particularly for acts that offended a man's wife, family or οἰκία.²² Lysias points out this acceptance of violent retribution when he has Euphiletos cite the law of the Areopagus.²³ It is also implied by the fact that Lysias never has Euphiletos deny that he killed Eratosthenes; rather he denies

¹⁷ Herman, 2006, p. 49.

¹⁸ McHardy, 2012, p. 47.

¹⁹ Carey, 1989, p. 80.

²⁰ Cohen, 1991, p. 174.

²¹ Cohen, 1991, p. 186.

²² Cohen, 2005, p. 226: In serious offences where the offender was caught in the act cases, Athenian legal procedures "...legitimized summary execution without trial, whether carried out by private citizens or public officials." See also McHardy, 2012, p. 54: "...Athenian laws allow a greater degree of violence in cases where women are threatened and the household is invaded, than in cases where a relative has been killed. ...[I]n classical Athens, violent revenge is regularly associated with threats to the household and is deemed to be the most just response to these threats."

²³ Section 30: διαρρήδην εἴρηται τούτου μὴ καταγιγνώσκειν φόνον, ὃς ἂν ἐπὶ δάμαρτι τῇ ἑαυτοῦ μοιχὸν λαβὼν ταύτην τὴν τιμωρίαν ποιήσῃται (it explicitly says that you shall not convict him for murder, who, capturing an adulterer with his wife, exacts this vengeance).

killing him in the manner presented by Eratosthenes' relatives (e.g., alleging he killed Eratosthenes for money [s.4], or sacrilegiously at the hearth [s.27], or for some quarrel unrelated to the adultery [s. 44-45], etc.), suggesting that even his accusers acknowledged that murder was a legitimate response to adultery. The insult to Euphilitos' honor demanded a response, which was, ofcourse, his killing of Eratosthenes. But Lysias not only justifies the killing on personal grounds as a just reprisal for the hubris committed against Euphilitos and his οἰκία, but also as a just killing committed on behalf of the entire city.

Lysias gives a prominence to the argument that the killing of Eratosthenes was a civic act because it serves as a deterrence to other would-be adulterers.²⁴ Obviously, this statement implies that a clear show of force tells other adulterers that their very lives are at stake if they are caught.²⁵ But crucially, Lysias implicates the judges in this part of his argument, telling them that this deterrent will only be effective if they hold the same opinion toward adulterers as Euphilitos does.²⁶ In effect, Lysias is framing the trial not as a question of Euphilitos' guilt or innocence, but rather a choice between either acquitting him and validating the use of deadly force in defence of home and family, or convicting him and tacitly supporting adultery and hubris. The trial also had wider implications beyond the verdict handed down to Euphilitos: Athenian legal cases, as much as they were a trial of the accused individual, were also a reflection of the behavioural norms and cooperative values of the Athenian community at large.²⁷ So, by framing the killing of Eratosthenes not as a personal vendetta, but as the manifestation of a civic value, Lysias puts the judges, as representatives of the community, in a position not only to judge Euphilitos, but also to demonstrate the community's support of the inviolability of the οἰκία and the importance of personal honour in Athens. In this way, Lysias can claim that the killing was done on

²⁴ Section 47: ἐγὼ μὲν οὖν, ὦ ἄνδρες, οὐκ ἰδίαν ὑπὲρ ἑμαυτοῦ νομίζω ταύτην γενέσθαι τὴν τιμωρίαν, ἀλλ' ὑπὲρ τῆς πόλεως ἀπάσης (Therefore, gentlemen, I do not consider this to be punishment on my own behalf, but on behalf of the whole city).

²⁵ McHardy, 2012, p. 48.

²⁶ Section 47: ... ἐὰν καὶ ὑμεῖς ὁρῶσι τὴν αὐτὴν γνώμην ἔχοντας (...if they also see that you have the same opinion).

²⁷ Rubinstein, 2005, p. 143.

behalf of the entire city. But he presents this argument to the judges as a tacit choice of either upholding community values or condoning adultery, thus making it harder for them to convict Euphilotos.

In addition to the deterrent effect of killing an adulterer, Lysias appeals to the judges' understanding of hubris as a public crime. As noted above, hubris was considered a public crime because it was antithetical to the principle of equality between citizens. As such, hubris had implications beyond the harm suffered by the individual, and the superordinate interest of the state in such matters required punishment on behalf of the community.²⁸ For this reason, Lysias claimed that the killing of Eratosthenes was justified in the public interest. Lysias makes a deliberate point of telling the judges that Euphilotos knew from an informant who Eratosthenes was and what deme he was from.²⁹ But upon learning this fact, Euphilotos did not rush off to confront Eratosthenes; instead he arranged for his servant to alert him next time Eratosthenes entered his house.³⁰ One of the key attributes of hubris that separated it from other offences was its subjective, mental component—the self-indulgent pleasure that accompanies the denigration of another person.³¹ It's opposite, then would κόσμιος: behaving as a moderate, orderly, and good citizen.³² Just as hubris is the haughty, indulgent antithesis of the equality that was fundamental to democratic Athens, κόσμιος is the order, moderation and respect for others as citizens that permits democratic institutions to function.³³ By arguing that Euphilotos refrained from

²⁸ Cohen, 2005, p. 214.

²⁹ Section 16: ἔφη Ἐρατοσθένης Ὁῦθεν ὁ ταῦτα πράττων, ὃς οὐ μόνον τὴν σὴν γυναῖκα διέφθαρκεν ἀλλὰ καὶ ἄλλας πολλὰς... [She said, "It is Eratosthenes of Oe doing these things, who has corrupted not only your wife but also many others...].

³⁰ Section 21: ἀξιῶ δέ σε ἐπ' αὐτοφώρῳ ταῦτά μοι ἐπιδείξαι: ἐγὼ γὰρ οὐδὲν δέομαι λόγων, ἀλλὰ τὸ ἔργον φανερόν γενέσθαι... [I think it necessary for you to show me these in the act: for I have no need of words, but the manifest deed as it is happening...].

³¹ Foqué, 2008, p. 2017; MacDowell, 1976, p. 27.

³² Euphilotos berates Eratosthenes for his failure to behave with κόσμιος (using this exact word) in section 26, just before killing him.

³³ Foqué, 2008, 217 argues that in democratic Athens (unlike a tyranny or monarchy where citizens had little to no say in how they were governed) there was a constant and implicit tension between maintaining order and slipping into chaos. The word he uses to describe "order" is *cosmos* – an English word related, of course, to κοσμία.

rushing off to restore his honour as soon as the intrigue was revealed to him, but rather obtained verifiable proof of the misdeed at the first reasonable opportunity, Lysias shows that Euphilitos acted from the moderation and self-control expected of a democratic citizen, responding to a crime as it happened. In a society with no police force, it was reasonable for him to act in this way.³⁴ Even his use of force was acceptable: as Foqué explains, the Athenian democracy did not try to completely avoid violence and vengeance, but rather sought to channel them to serve the stability of the *polis*.³⁵ For this reason, Euphilitos can tell Eratosthenes: οὐκ ἐγὼ σε ἀποκτενῶ, ἀλλ' ὁ τῆς πόλεως νόμος... [It is not I who will kill you, but the laws of the city...],³⁶ and later tell the judges that he killed Eratosthenes ὑπὲρ τῆς πόλεως ἀπάσης [on behalf of the whole city].³⁷ If the killing happened in the way Euphilitos described to the judges, then it cannot be seen as extra-judicial. Even Eratosthenes' family, in their prosecution of Euphilitos, did not (as far as we can tell) suggest that killing an adulterer was illegal: as noted above, they sought to prosecute him for the killing on other grounds. Since hubris was a public crime that anyone, not just the victim, could prosecute,³⁸ Lysias is able to present Euphilitos as both the wronged party who legally restored honour to his family, and as a citizen who legitimately channeled violence to deal with an offender against the democratic norms of the city. In this way, it would have been difficult for the judges to convict Euphilitos without tacitly condoning hubris.

Given the centrality of the family in classical Athens, Lysias' hypothetical law legalizing adultery would be an offence against Athenians' fundamental views of a key societal institution, and in effect would be tantamount to legalizing hubris. Why then would Lysias choose to write such an absurd statement in his defence of Euphilitos. From a rhetorical perspective, Lysias' argument would have appealed to the ingrained values and assumptions of the judges. Recognizing adultery as an offence to

³⁴ Herman, 1993, p. 411.

³⁵ Foqué, 2008, p. 210.

³⁶ Section 26

³⁷ Section 47.

³⁸ MacDowell, 1976, p. 29, Cohen, 1991, p. 173-4.

the integrity of the family—the fundamental unit of Athenian society—the judges could more easily see Eratosthenes as the hubristic offender rather than the victim, and Euphilitos as a victim rather than an offender. Lysias thus uses an absurdity (i.e., rewriting the laws of adultery) to contrast with an implicitly understood value (i.e., the importance of protecting the integrity of one's family) to appeal to the judges' sense of justice. Against this background, we can also better understand why Lysias has Euphilitos make the apparently outlandish claim that killing of Eratosthenes was done for the benefit of the entire city. The deterrence of killing an adulterer served not only Euphilitos on an individual level, but also the community as a whole by giving the judges, acting on behalf of the community, the opportunity to denounce such behaviour. Moreover, adultery, as an act of hubris, struck at the democratic notion of equality in Athens, and thus qualified as a public offence. Thus, Lysias can present Euphilitos not only as a wronged husband, but also as an outraged citizen acting on behalf of the *polis*. By framing Euphilitos' actions in this way, and contrasting them with Eratosthenes' hubris, Lysias built empathy for Euphilitos and hostility toward Eratosthenes.

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