



You have downloaded a document from
RE-BUŚ
repository of the University of Silesia in Katowice

Title: The rhetoric of Simon's adversary (Lysias 3)

Author: Jan Kucharski

Citation style: Kucharski Jan. (2009). The rhetoric of Simon's adversary (Lysias 3). "Scripta Classica" (Vol. 6 (2009), s. 35-50).



Uznanie autorstwa - Użycie niekomercyjne - Bez utworów zależnych Polska - Licencja ta zezwala na rozpowszechnianie, przedstawianie i wykonywanie utworu jedynie w celach niekomercyjnych oraz pod warunkiem zachowania go w oryginalnej postaci (nie tworzenia utworów zależnych).



UNIwersYTET ŚLĄSKI
W KATOWICACH



Biblioteka
Uniwersytetu Śląskiego



Ministerstwo Nauki
i Szkolnictwa Wyższego

Jan Kucharski
University of Silesia, Katowice

The Rhetoric of Simon's Adversary (Lysias 3)

Abstract: Negation and trivialization — these two chief objectives of the defense in Lys. 3, and, in fact, chief objectives of any defense whatsoever, are achieved in the speech firstly and foremostly through contrasting *ethopoiiai*. The speaker rebuts the claims of the plaintiff, arguing from probability, that unlike his adversary, he is not mad, and only a madman would be capable of doing the deeds he is being accused of. The speaker trivializes the incident under trial as unworthy of prosecution, unless of course, the prosecutor is a sycophant — like Simon. Underlying these is yet another tendency, conveyed through Simon's hubristic *ethopoiia*. This tendency is voiced out in a theoretical treatise on composing successful speeches, claiming the authorship of Aristotle himself. Its argument is: “[...] it seems to me that it comes close to no injustice at all, whenever one is subject to the mistreatment by which he himself abused others, as for example, if someone batters (αἰκίσαιτο) one who is accustomed to assault others with *hybris* (ὕβρις) (Rhet. 1373a). Whatever befell Simon, he certainly had it coming.

Key words: Greek literature, rhetoric, Lysias

The third speech preserved in the Corpus Lysiacum (henceforth Lys. 3) enjoys deserved interest the students of Greek rhetoric and history, and that not only because of the unique insights it offers into the some aspects of everyday life in ancient Athens, including those not always taught about in grade schools, but also because of the air of the sensational surrounding the events under trial: there is an almost clandestine love affair, fierce erotic rivalry, abduction, violence fuelled by wine and above all there are the characters, even if somewhat too one-sided for the modern taste, vivid and captivating nonetheless.

The case under trial is legally defined as *trauma ek pronoias*, literally signifying “intentional wounding”, though, as some have argued on the very basis of Lys. 3 (3.28, 41), embracing the meaning of “wounding with intent to kill”. The

latter interpretation is sometimes doubted, considered rather a biased interpretation of a defendant attempting to escape this charge¹, there is no doubt however that an accusation of a *trauma ek pronoias*, just like other homicide cases, fell within the jurisdiction of the Areopagus, followed similar procedures² and was generally classified among the *phonikoi nomoi*³. Despite the procedural similarity, there are reasons to believe that cases of *trauma ek pronoias* were, unlike homicides, open to both private (δίκη τραύματος ἐκ προνοίας) and public (γραφή τραύματος ἐκ προνοίας) prosecution, with the former available only to the victim, and the latter to ‘any Athenian who wishes so and has the right to it’ (ὁ βουλόμενος Ἀθηναίων οἷς ἔξεστιν). Attempts have been made to represent Lys. 3 as belonging to either one, though without decisive results⁴. The speech was written for an unnamed defendant⁵, accused of *trauma ek pronoias* by an otherwise obscure Simon. Whatever the procedural status of the case (were it a *graphe*, any Athenian citizen would be entitled to prosecute), it is the victim himself, i.e. Simon, who brings in the case before the court.

There is a basic pattern underlying all conflicts mediated by a third party, be it arbitration among the transhumant pastoralists of the Greek-Albanian frontier, or the Nomads of Cyrenaica on the one hand, and complex judicial litigation in modern nation-states on the other. In terms of ethnology this pattern is most clearly articulated by Black-Michaud on the example of Cyrenaican Bedouins⁶:

If the creditors [i.e. the injured party] think it to their advantage to seek composition rather than revenge, they will attempt by all every means in their

¹ Thus D.M. MacDowell: *The Law in Classical Athens*. London 1978: 123f; contra M.H. Hansen: “The Prosecution of Homicide in Athens: A. Reply”. *GRBS* 1981, Vol. 22 (1), p. 15; C. Carey: *Lysias. Selected Speeches w. Introduction and Commentary*. Cambridge 1989, p. 109 (ad. 3.42); S.C. Todd: *The Shape of Athenian Law*. Oxford 1993, pp. 105, 272.

² Cf. C. Carey: *Lysias...*, p. 92f (ad 3.1); S.C. Todd: *Lysias. Speeches I—II w. Introduction and Commentary*. Oxford 2007, p. 281f; quite certainly among these were solemn oaths (δωμοσία), mentioned in Lys. 3.1, sworn by both litigating parties at the beginning of the hearing-in-chief (for a detailed discussion see M.D. MacDowell: *Athenian Homicide Law*. Manchester 1963, pp. 90—100), cf. also M.D. MacDowell: *The Law...*, p. 119; S.C. Todd: *The Shape...*, p. 273; E. Carawan: *Rhetoric and the Law of Draco*. Oxford 1998, pp. 138—147), and regulations against irrelevance alluded to in 3.45f (cf. M.D. MacDowell: *Athenian Homicide...*, p. 43f).

³ Cf. M.D. MacDowell: *Athenian Homicide...*; M.H. Hansen: *The Prosecution...*, p. 14f; S.C. Todd: *Lysias...*, p. 281ff.

⁴ C. Carey: *Lysias...*, p. 109 — γραφή; S.C. Todd: *Lysias...*, p. 284 — δίκη (‘tentatively’); Idem: *The Skape...*, p. 269 (γραφή — ‘generally’).

⁵ Cf. S.C. Todd: *Lysias...*, p. 276; C. Carey: *Lysias...*, p. 86.

⁶ J. Black-Michaud: *Cohesive Force*. London 1975, p. 101. Cf. the strategies meant ‘to manipulate the moral context’ in one’s favour in arbitrated disputes among XIX-century Montenegrins (C. Boehm: *Blood Revenge*. Philadelphia 1987, p. 131).

power to pressure the mediator into awarding them the maximum compensation, whilst the killer's group will resist and, by skilful manipulation of the mediator, try to make minimal concessions in conditions least prejudicial to their prestige.

In a case tried before a court the offender becomes, of course, the defendant, and the strategies of "skilful manipulation" available to him in order to make "minimal concessions" are threefold: downright negation, justification or trivialization. To put it more bluntly, if you can't get out of it, either prove that you have done the right thing, or do your best to make it look like an insignificant trifle, unduly inflated by the adversary, and unworthy of the court's attention. Lys. 3 is a defense-argument ingeniously woven out of all these three patterns. There is blatant trivialization of the incident under trial; there is also denial, and finally there is a distinct, though, understandably, less explicit attempt at justification. It should be noted in the first place that the Athenian law-courts were a *locus* convenient for such manipulations. The speakers generally were not constrained by requirements of truthfulness⁷, and with the exception of particular cases — of which, incidentally, Lys. 3 is an example (see n. 2) — neither they nor their witnesses swore any kind of oath on a regular basis, and even when they did, perjury had no legal consequences whatsoever. False testimonies, accusations, not to mention abusive and frequently irrelevant slander⁸, were therefore constant features of everyday court-reality, and to an extent unthinkable in modern legal practice.

To lie however, is one thing; to lie persuasively — something quite different. We do not know (and probably never will), how much of what the speaker of Lys. 3 claims is true; we can however assess, to a limited degree, how persuasive his arguments might have been. This, of course, requires more than our purely personal appreciation of their credibility. The speaker's argumentation should be appraised in the light of its proper context, its "background", which in this case is the Athenian legal and ethical discourse, the discourse of which Lys. 3 otherwise forms part itself.

Let us begin by hearing it for Simon, whose arguments, unfortunately, are preserved only in his opponent's speech, and hence fragmentary, and above all most likely distorted. In the prehistory of the case Simon has arranged a sexual contract

⁷ A witness bringing in false testimony could have been subsequently sued by the opposing litigant through a *δίκη ψευδομαρτυριών*, the penalties here are not known; cf. A.R.W. Harrison: *The Law of Athens*. Vol. 2. London 1998, pp. 192—197ff; M.D. MacDowell: *The Law...*, p. 244; M. Christ: *The Litigious Athenian*. Baltimore 1998, p. 30f.

⁸ Slandorous accusations — at least in some specific cases (e.g. accusation of parricide) — could have been prosecuted through a *δίκη κακηγορίας* cf. M.D. MacDowell: *The Law...*, pp. 126—129; S.C. Todd: *The Shape...*, p. 103; M. Christ: *The Litigious Athenian...*, p. 39f; on slander (*diabole*) in the rhetoric of forensic oratory see C. Carey: "Rhetorical Means of Persuasion". In: *Persuasion, Greek Rhetoric in Action*. Ed. J. Worthington. London 1994, p. 31f.

with a Plataean boy by the name Theodotus⁹, to whom he gave 300 drachmas for his favours. The speaker then enters into the story, seducing Theodotus and causing him to abandon Simon. After some time the speaker and Theodotus quite unexpectedly pay Simon a “visit”, upon which the very incident under trial took place (3.29):

He says that we came to his house carrying pottery, and that I threatened to kill him — and that this constitutes “premeditation”¹⁰.

The ‘pottery’ (ᾠστρακόν) allegedly carried by the speaker is, of course, the weapon with which he was to threaten his — alleged — victim. An incriminating detail, and quite probably a pivotal element of the subsequent charge — *trauma ek pro-noias* — itself¹¹.

Negation

The speaker’s version of events is, understandably, quite different. Having suffered harassments by the jealous Simon — who lost Theodotus’ favours not due to the speaker’s scheming, but due to his harsh and hubristic treatment of the boy — the speaker, accompanied by his young lover, decides to quit the country for some time. Upon his return he installed Theodotus at the house of his friend, Lysimachus, who lived near Simon’s place (3.11). The boy’s presence did not go unnoticed, and Simon along with some companions arranged to abduct him. As he and Theodotus were leaving Lysimachus’ house, Simon with his friends rushed at them, and attempted to seize the boy (3.12). Theodotus managed to escape, leaving

⁹ Theodotus’ social status has been subject to controversy; in 3.33 we are told of the possibility of extracting depositions from him under torture (μηνῦσαι δὲ ἱκανὸν ἦν βασανιζόμενον), which strongly suggests that he was a slave; on the other hand we hear nothing of Theodotus’ master, whose intervention one would naturally expect in the course of the affairs recounted; the majority view (accepted by C. Carey: *Lysias...*, p. 87) balances nonetheless towards the slave-hypothesis, some however find it more plausible to view Theodotus as a free non-citizen (including S.C. Todd: *Lysias...*, p. 281, where (279ff) an overview of the discussion so far is given.

¹⁰ Translation by S.C. Todd in: Idem: *Lysias. Speeches 1–11 w. Introduction, Translation and Commentary*. Oxford 2007. Unless indicated otherwise, all translations of Lysias are taken from this edition.

¹¹ A tentative and brief reconstruction of Simon’s case is presented by C. Carey: *Lysias...*, p. 90f: upon being denied the favours of Theodotus, for which he payed 300 drachmas, Simon ‘repeatedly demanded that the boy repay the money or return to him’, to which the speaker responded in paying Simon a visit and warning him ‘to keep away’ — apparently in a manner not quite friendly nor polite.

his cloak in the hands of his would-be kidnappers, and sought refuge in the fuller's shop owned by a Molon (3.15). In the meantime the speaker (3.13), believing that the boy managed to escape, 'walked away' (ὑχώμην ἀπιών). The attackers however did not give up their pursuit: they barged into Molon's place and dragged out Theodotus screaming and calling for witnesses (3.16). Trying to help the boy, Molon, the unfortunate fuller, also received his share of the beating, as did some other concerned bystanders (3.17). As Simon and his consorts lead the unwilling youngster home, they run again into the speaker, who attempts to pull their victim away, and demands explanation. Quite predictably, he is attacked: 'a brawl' (μάχη, θόρυβος) ensues in which both sides get their heads cracked (3.18).

As for the incident under trial, the *diegesis* makes it clear that: 1) the *trauma ek pronoias* described by Simon in his accusation never took place; 2) both the speaker and Simon were slightly injured in a brawl initiated by the latter; this contention is supported in a sequence of "proofs" (21—45), aimed at discrediting the case itself along with the credibility of plaintiff/prosecutor on the one hand, and specifically at rebutting the charge of *pronoia* along with.

The *pistis* aimed at rebutting the charges of *pronoia* is a simple argument from probability¹². It is highly unlikely that the speaker, accompanied only by Theodotus, would arrive with the intention of killing (or at least threatening to do so) at the house of Simon, where his would-be victim entertained a large group of men¹³, who would be more than eager to give the intruder a severe and humiliating beating (29). It might be conceivable that the speaker indeed attempted such a reckless attack, acting out of passion, on the condition that the young Theodotus were entertained at that time by Simon. The very fact that the boy was keeping his, not Simon's, company however, strips the latter's accusations of any *logos* (31). In doing what he is being accused of the speaker would not be right in the head; such behaviour would be a symptom of *mania* (29) and *amathia* (34) on his part.

Trivialization

Thus the speaker attempts to prove that the event described by Simon never took place. At the same time however he is far from denying the fight altogether, nor is he disclaiming any responsibility whatsoever for hurting Simon. The circumstances of this wounding, however, present the whole incident in a very differ-

¹² On *pisteis* derived from character see in general C. Carey: "Rhetorical Means..." pp. 34—43 (with 40f on Lysias' mastery in characterization).

¹³ C. Carey: (*Lysias...*, p. 106, ad loc.) rightly observes that "Simon could reply to this that the speaker did not know this in advance".

ent light. There was indeed a street brawl, initiated by Simon and his companions, in which both sides got their heads knocked a little. The relevant passage deserves full quotation:

μάχης δὲ γενομένης, ὦ βουλή, καὶ τοῦ μαιρακίου βάλλοντος αὐτοὺς κάμοῦ περὶ τοῦ σώματος ἀμυνομένου καὶ τούτων ἡμᾶς βαλλόντων, ἔτι δὲ τυπτόντων αὐτὸν ὑπὸ τῆς μέθης κάκεινου ἀμυνομένου, καὶ τῶν παραγενομένων ὡς ἀδικουμένοις ἡμῖν ἀπάντων ἐπικουρούντων, ἐν τούτῳ τῷ θορύβῳ συντριβόμεθα τὰς κεφαλὰς ἅπαντες. (3.18)

A battle developed, members of the council. The young man was pelting them. He was defending his own life. They were pelting us. They were still hitting him, because they were drunk. I was defending myself. The passers-by were all helping us, because we were the ones who were being wronged. And in the course of this melée, we all got our heads broken.

The description of the *thorybos* is in itself a *thorybos* of words with a wild run of absolute genitives both in content and in form signifying the rapid exchange of blows. The picture of an *ostrakon*-wielding Nemesis, deliberately wounding (27) and hurling deadly threats at his victim, is thus replaced by that of a cluttered street-brawl resulting in minor and, by implication, accidental (cf. ἔτυχον, 41) injuries on both sides¹⁴. There was no sinister malice but a trivial erotic rivalry. And it would be, the argument follows, a dreadful (δεινόν) thing to bring exile upon anyone on account of such trifles (43).

Simon's Ethopoia I: The "Mental" Simon

As already noted, the refutation of the charge of *pronoia* is an argument from probability: the speaker could not behave the way Simon described it, unless he suffered from madness (*mania*). Madness however is explicitly given as a character trait of Simon himself (7). His behaviour, leading to the first incident, almost exactly mirrors that refuted by the speaker himself. Enraged by the fact that Theodotus was entertained by the speaker, Simon seeks him out. Despite the fact that the speaker is in the company of friends (and the boy, apparently) 'dining' (ἐδειπνοῦμεν), he calls him out from the street, and upon meeting him face to face attacks him. We do not know, whether or not Simon was at that point alone, though

¹⁴ C. Carey: (*Trials from Classical Athens*. London 1997, p. 82) takes the fight to be represented 'as a confused and slightly comic affair' and 'a petty squabble unworthy of the attention of the Areopagos'.

no mention is made here of his cronies, who accompanied him in his intrusion into the speaker's *gynaikonitis*. The fact that he was easily repelled (and forced to resort to "ranged attack"), and that his friends did not approve of his previous actions (δεινὰ ἡγοῦμενοι ποιεῖν), may suggest that by that time he was alone.

Accusing one's adversary of madness may seem to us a questionable strategy: in modern jurisprudence such claim would be far more likely exploited to his advantage than detriment. In the Athenian public discourse (encompassing not only all forms of oratory, but also other public *logoi*, such as drama) however, words denoting insanity were freely used in vilifications, and commonly associated with moral reproach; to quote K. Dover (p. 127): "Morally shameless behaviour, carried to an abnormal point, could be treated as evidence of insanity"¹⁵. Such is the treatment of this issue in the rhetoric of Simon's adversary. His "mad" behaviour is condemned as most unnatural (ἀτοπώτατον) and unbelievable (ἀπιστότατον); such evaluation points not only to its recklessness and foolishness but to the fact that it is presented as yet another step in an offense subject to far more serious charges both from the moral and from the legal standpoint. For if Simon's attack on the speaker when he enjoyed a *deipnon* with his friends was a symptom of *mania*, his previous intrusion into his house, and most importantly into the seclusion of his *gynaikonitis*, is explicitly condemned as an act of *hybris* (7). Evaluated thus are also Simon's physical assaults on the speaker (23, 40) and his mistreatment of the young Theodotus, both during the incident under trial (17, 26) and in its prehistory (5).

Simon's Ethopoiia II: The *Hybristes*

In classical Athens *hybris* and its cognates denoted not only moral censure (let alone a metaphysical pride — a meaning ascribed to it by later misreadings of Greek tragedy) but also a serious offence liable even to capital punishment. What exactly constituted an act of *hybris*? The relevant law, cited by Demosthenes, is typically vague when it comes to defining its categories (D. 21.47):

If anyone treats with *hybris* (ὕβριζή) any person, either child or woman or man, free or slave, or does anything unlawful (παράνομόν τι ποιήση) against any of these, let anyone who wishes, of those Athenians who are entitled (ὁ βουλόμενος Ἀθηναίων οἷς ἔξεστιν), submit a *graphe* to the *thesmothetai*¹⁶.

¹⁵ On the issue of mental health in moral evaluation in Greek see K. Dover: *Greek Popular Morality in the Time of Plato and Aristotle*. London 1974, p. 126—129; cf. S.C. Todd: *Lysias...*, p. 315 who notes that 'insanity is in no sense a defense in Athenian law'.

¹⁶ D.M. MacDowell: *Demosthenes. Against Meidias*. Oxford 1990.

While it specifies clearly who can be the victim of *hybris* and what procedures are to be undertaken against the offender (voluntary prosecution), the offense itself is given no attention, as if the meaning of ὑβρίζειν was too obvious to merit explanation¹⁷. Significant, however not decisive, information as to what sort of behaviour was liable to the procedures prescribed by the law, can be gathered from rhetorical practice (extant speeches) and theory (Aristotle's *Rhetoric*). The most conspicuous feature of *hybris* is its association with physical violence. These two however should not be equated, for not every wanton use of force was and could have been considered an act of *hybris*, but only that aimed at dishonouring (ἀτιμάσαι; ἀτιμία) the victim (Ar., *Rh.* 1374a, 1378b; D. 21.72). Aristotle however, makes it clear that physical violence need not be a necessary factor here (ἔστι γὰρ ὑβρις τὸ πράττειν καὶ λέγειν ἐφ' οἷς αἰσχύνῃ ἔστι τῷ πάσχοντι, 1378b)¹⁸, and there is evidence suggesting that such actions may have also been subject to prosecution through *graphe hybreos*. A more specific aspect of *hybris* was its relation to various forms of sexual misconduct. The obvious delicts encompassed by this notion were acts of sexual violence; *hybris* and its cognates however, were also applied in forensic oratory to illegal relations based on consent: the speaker of Lys. 1 speaks of adultery as δεινοτάτη ὑβρις (1.3), though Athenian law provided other, by far harsher than *graphe hybreos*, means of dealing with this issue¹⁹.

Simon's behaviour is not only evaluated as *hybris*; more than once the speaker asserts that he ought to have been brought into court for his misdeeds (1, 9, 44). In the *peroratio* the speaker slips in what can be interpreted as an allusion to such prosecution, stating "that it would be far more just for him to be on trial for his life than for him to put other people in danger of exile" (44, tr. Todd). This is usually taken as a generic insult, an unspecified accusation of crimes liable to capital punishment²⁰; it may well be so, however of the numerous misdeeds imputed to Simon in the speech, only *hybris* could have resulted in a prosecution of this kind.

The most obvious aspect of Simon's behaviour considered as *hybris* is, of course, violence. Its only hubristic feature lies however in that it is wanton, unprovoked. Unlike Ariston, the speaker of D. 54, and Demosthenes himself, in his famous speech against Meidias, who, while accusing their adversaries of *hybris*²¹,

¹⁷ For a discussion on the text of the law see D.M. MacDowell: *Demosthenes...*, ad loc.; N. Fisher: *Hybris*. Warminster 1992, p. 36f.

¹⁸ Cf. N. Fisher: *Hybris...*, 42; 92ff (verbal insults); D. Cohen: *Law, Violence, and Community*. Cambridge 1995, pp. 146—149.

¹⁹ On *hybris* in illicit sexual relations based on consent see N. Fisher: *Hybris...*, p. 41, 104f; D. Cohen: *Law, Violence...*, 154f; on the relation of women's sexual purity to the question of masculine honour / dishonour see D. Cohen: *Law, Sexuality and Society*. Cambridge 1991, pp. 133—170.

²⁰ C.C. Carey: *Lysias...*, p. 111 (ad loc.); S.C. Todd: *Lysias...*, p. 340 (ad loc.).

²¹ Neither of them however actually brought in a *graphe hybreos*. Ariston's case is a δίκη αἰκείας, a private lawsuit for violent attack: according to the speaker (54.1) he was persuaded by his friends to resort to this less serious charge, instead of the grave γραφή ὑβρεως, for the latter might

devote considerable effort to describe the humiliation suffered at their hands, the speaker does not care to make any mention of being dishonoured by Simon's assaults. Furthermore, both attacks were met with successful defense — or, in fact, retaliation, since the verb ἀμύνεσθαι encompasses both meanings, and in some contexts unambiguously invites the latter interpretation. During the first incident the speaker managed thus to repel Simon, and force him to “ranged attack”, while during their second clash it was obviously Simon, who got the worse of it.

Simon's mistreatment of Theodotus and his intrusion into the speaker's *oikos* may seem a far more serious matter. As for the prehistory of the incident under trial, we are told that “through *hybris* (ὕβριζων) and lawlessness (παρανομιῶν) he decided to force him [scil. Theodotus — J.K.] to do whatever he wanted” (5)²², which clearly points to sexual violence, perhaps even rape. The same sinister overtones are present in the description of the boy's abduction (17), where the speaker witnessed him ‘subjected to violent and lawless *hybris*’ (ἀνόμως καὶ βιαιῶς ὕβρισθέντα). The law quoted above provided support for anyone, regardless of age, sex and social status, who fell victim to *hybris*. Judging therefore from the version of events presented in the speech, Simon's conduct here could have been liable to prosecution through *graphe hybreos*. Finally the intrusion into the speaker's house, twice in the text referred to as *hybris*. The only act of violence actually associated with it is Simon knocking the door down (6). Though such a display of komastic behaviour, along with Simon's liking for a drink (during both incidents he is said to have been inebriated) are common narrative motifs in the representation of *hybris*, the most offensive aspect appears to be his entering into the *gynaikonitis*²³. In Lys. 1 such violation of the seclusion of one's *oikos* is twice explicitly referred to as *hybris* (1.4; 1.25); by contrast, the speaker of D. 47 is careful to demonstrate that upon entering his (then) adversary's house he knew that he was not married — and that, by chance, the door was open (47.38)²⁴.

Simon's Ethopoiia III: The Sycophant

Violence is the dominant theme of Simon's *ethopoiia*, but not the only one. Apart from being a bully, he is also a liar and a sycophant, and these two traits

have been more than could cope with. Demosthenes' on the other hand, a *προβολή*, formally dealing with misconduct in relation to a festival (ἀδικεῖν περὶ τὴν ἑορτήν).

²² On the relation of sexual (especially homosexual) violence with *hybris* see C. Cohen: *Law, Violence...*, pp. 149—161; N. Fisher: *Hybris*. Warminster 1992, p. 108ff.

²³ Cf. C. Cohen: *Law, Violence...*, p. 149.

²⁴ Cf. 47.50: εἰς μὲν τὴν οἰκίαν οὐκ εἰσῆλθεν (οὐ γὰρ ἠγγεῖτο δίκαιον εἶναι μὴ παρόντος γε τοῦ κυρίου).

are, quite understandably, closely intertwined. A lie is the founding principle of Simon's case against the speaker: this is stated explicitly by means of the *elenchos*, and implied through the whole *diegesis*, which presents an account of the incident radically different from that given in the accusation. As already noted lying in Athenian courts, even when under oath, did not in itself entail liability to punishment (with the exception of witnesses). Sycophancy however, apart from the indirect checks against it prescribed by the law, was considered a "public" crime, and therefore was itself liable to prosecution by οἱ βουλόμενοι by means of diverse procedures.

In the defense against Simon, however, sycophancy may seem at first glance a strained, if not downright misguided accusation. According to the traditional appraisal of this phenomenon, sycophants were a quasi-professional group of Athenian citizens, who made their living from abusing the principle of public accusation, whereby prosecution was made available to οἱ βουλόμενοι²⁵. Their main interest consequently lied in the possibility of financial gains from bringing in such a prosecution. These included out-of-court settlements on the one hand (with the would-be accused paying the sycophant off to drop the case)²⁶, and monetary rewards for conducting a successful prosecution on the other. Hence, it has been argued, among the procedures most favoured by sycophants were not only those available to anyone "who wishes to do so", but most importantly those among them promising the greatest profit for their sycophantic efforts²⁷. The case brought in by Simon may well have been neither (if it was a δίκη τραύματος ἐκ προνοίας), and certainly not the latter (even as a γραφή it would not bring any financial gain to the successful prosecutor). Furthermore, according to the traditional interpretation, the sycophants, as a rule, were not the injured party: their motivation was pecuniary, not vindictive. This appears to make the case for the speaker's claim even worse, for it was precisely Simon himself, the prosecutor, who fell victim to the alleged wounding with intent to kill.

According to the traditional interpretation, the cases where allegations of sycophancy are most likely to be found, would be defenses in public prosecutions, especially those in φάσεις, ἀπογραφαὶ and γραφαὶ ξενίας. Strangely enough however, the defense *contra Simonem* is by no means the only one where such — apparently misguided — allegations are found. According to Osborne, in private cases "defendants [...] almost invariably alleged that the prosecution was sycophantic,

²⁵ J.O. Lofberg: *Sycophancy in Athens*. Chicago 1917 *passim*; cf. MacDowell's 'Sycophancy' in OCD³, where, however, gaining 'political or oratorical reputation' is also mentioned among the motives for sycophantic prosecutions.

²⁶ Such was the predicament of Crito, who, according to Xenophon (Mem. 2.9.2), complained of being harrassed by sycophants who believed he would find it more advantageous to pay them of instead of πράγματα ἔχειν.

²⁷ That is φάσεις, ἀπογραφαὶ and γραφαὶ ξενίας (J.O. Lofberg: *Sycophancy...*, pp. 26—32).

and they did so both in bringing injunctions and in making their main defence²⁸. In doing so they could not seriously base their allegations on the traditional (modern) view of sycophancy. Hence the attempt to redefine this term in relation to Classical Athens, whereby sycophancy was “a conceptual rather than sociological phenomenon”²⁹. As such it does share some characteristics of the social-class view of sycophancy, most notably the money-grubbing attitude³⁰, many other however, though inextricably linked with the traditional appraisal, are far from being the core-traits of this phenomenon. The emerging picture of a sycophant from various rhetorical accusations is that of a person, who, apart from being motivated by financial gains³¹, (1) brings in false charges, in which he resorts to (2) sophistical quibbling and (3) slanderous attacks (διαβολή); a sycophant furthermore is a (4) litigious person, frequently filing in lawsuits, and finally often (5) “acts after the event and rakes up old charges”³².

With these traits of the “conceptual” sycophant we are on more familiar ground to assess the validity, or rather persuasiveness, of the accusations in Lys. 3. Simon has brought a false charge against the speaker, which is derived from the already discussed argument from probability. Simon’s claim that the speaker disregarded his financial agreement with Theodotus is slander, for, according to the *elenchos*, no such thing ever took place. Simon didn’t have the courage (οὐκ ἐτόλμησε, 39) to bring in his suit directly after being beaten and robbed of his lover; instead he waited four years, fearing for himself (20), and proceeded with his accusation only after the speaker fared ill in his own court dealings (20). This, of course, conforms with the last of the sycophantic traits discussed above.

In case these particular accusations of *hybris* and *sycophancy*, firmly rooted in the *diegesis* of the speech, weren’t enough to dispose the judges adequately towards his adversary, the speaker is not sparing on a generic evaluative language either. Quite unsurprisingly Simon’s previous misdeeds, are referred to as ἀμαρτήματα (9), and, as they are made to constitute serious breaches of law, consequently censured as παράνομα (37)³³; a description of his disorderly violence is predictably followed by derogatory adjectives ἀκοσμότατος and πονηρότατος, with the latter’s substantive cognate, πονηρία given as a permanent trait of his ethos (9, 30, 44), manifesting itself in his unruly behaviour. In the semantic sphere, however, the

²⁸ R. Osborne: “Vexatious Litigation in Classical Athens”. In: *Nomos. Essays in Athenian Law, Politics and Society*. Eds. P. Cartledge, P. Millet, S.C. Todd. Cambridge 1990, p. 92.

²⁹ M. Christ: *The Litigious Athenian...*, p. 64f, drawing from the arguments of Osborne and Harvey, though the latter argues plausibly (114ff) that ‘professional sycophants’ may well have existed in Classical Athens.

³⁰ Discussed by D. Harvey: „The Sycophant and Sycophancy”. In: *Nomos...*, p. 110ff.

³¹ Ibidem, p. 112ff; corroborated by M. Christ: *The Litigious Athenian...*

³² D. Harvey: “The Sycophant...”, p. 113.

³³ It should be noted that the notion παράνομον is closely associated with the law of *hybris* quoted above (D. 21.47): ἐάν τις ὑβρίζῃ εἰς τινα [...] ἢ παράνομόν τι ποιήσῃ.

most prominent themes or keywords of Simon's vilification are: δεινόν and τόλμα. δεινόν is an ambivalent notion and has no fixed ethical meaning. When applied to wrongs committed or suffered, it provides however convenient and conventional means of rhetorical amplification. As such, δεινόν becomes the one of the keywords in Simon's vilification, and its significance is marked from the very beginning of the speech: πολλά καὶ δεινὰ συνειδῶς Σίμωνι (3.1). His misdeeds thus represented are no 'ordinary' ἀμαρτήματα or παράνομα, but acts of 'unbelievable' (ἄπιστον) and 'unnatural' (ἄτοπον) gravity — indeed acts of a madman. Their contrast with the trivial συντριβόμεθα τὰς κεφαλὰς ἅπαντες could not be more evident.

To do anything δεινόν — regardless of its moral and legal quality — is always a daring attempt, and as such requires an adequate, "daring" disposition. Both these aspects of appraising one's behaviour are conveyed by the word τόλμα along with its verbal and adjectival derivatives. A "daring" ἀμαρτήματα or παράνομόν τι is, again, something much "bigger" than an ordinary misdemeanor. Just like the epithet δεινόν, τόλμα (and its derivatives) hyperbolizes the deed, shifting it from the realm of the 'ordinary' to the 'unnatural' and 'unbelievable'. The semantics of δεινόν and τόλμα provide also an evaluative bridge linking the present and the past: the series of unnatural crimes committed by Simon both in the prehistory and the history of the incident under trial is concluded with his final, ultimate act of τόλμα: bringing in a sycophantic lawsuit against the speaker (1, 20).

The Positive Paradigm

Simon's negative *ethopoiia* would not be complete without a positive ethical paradigm, bringing out even further its alleged depravity. As observed by Carey: "[...] the case for the defence relies heavily on a tapestry of contrasting characterization"³⁴. Unsurprisingly the contrasting exemplar is provided by the persona of the speaker himself. His character traits diametrically oppose those of Simon in all three respects, where the latter is represented as failing so badly: mental sanity, violence (*hybris*) and litigiousness (*sycophancy*). Yet again, as in the negative *ethopoiia* of his adversary, they are closely tied with each-other.

As already noted, the speaker draws his refutation of Simon's version of events from probability, founding it upon the simple premise that only a madman would be capable of such actions (29, 34). Barging into his enemies house, even if he had reasons to believe that Theodotus is there, would be something "more stupid than is probable" (ἀνοητότερόν τι τῶν εἰκότων, 31, tr. Todd). Elsewhere the speaker is

³⁴ C. Carey: *Trials...*, p. 82; cf. S. Usher: *Greek Oratory. Tradition and Originality*. Oxford 1999, p. 91.

at pains to persuade the jury that throughout his involvement with Theodotus (and harassment by Simon) he was always careful not to appear ‘foolish’ (ἀνόητος) and hence notorious (περιβόητος) to his fellow-citizens. For this very reason he decided not to bring in any lawsuit, despite the frequent acts of *hybris* to which he was — allegedly — subjected (7, 23, 40). The issue of mental sanity and notoriety becomes thus intertwined with the other two prominent features of speaker’s positive *ethopoia*: his non-litigiousness and non-aggressive disposition. This is poignantly summed up in the rhetorical question binding these two patterns of his rebuttal (3.31)

I sought to keep the peace so as not to become notorious, in the belief that his wickedness was my own misfortune. Can I really (as he claims) have developed a passion, after a time, to be notorious again?

The speaker’s non-aggressive and non-litigious *ethopoia* has recently been subject to a controversy spawning some extreme and equally misguided interpretations. It has been argued, that the speaker casts himself into the role of a cowering wimp, who avoiding violence at all costs and puts up with repeated insults. In doing this, the argument follows, he attempts to win the sympathy of the judges, by appealing to sentiments allegedly common to the Athenian morality, that is non-vindictiveness, moderation and under-reaction to provocation³⁵.

Let us start our scrutiny of these traits from the narrative in which they are rooted. The only passages obliquely admitting the claim to cowardice on the part of the speaker are those related to the episode in which Simon and his cronies ambushed him and Theodotus:

It was at this moment that I arrived from Peiraieus, and because I was passing I called at Lysimakhos’ house. We spent a short time inside, and then came out. These men, who were by now drunk, jumped out on us. Some of those who were present with him refused to join in this criminal behaviour, but Simon here, together with Theophilos, Protarkhos, and Autokles, began dragging away the young man. He, however, threw off his cloak and ran away. (3.12)

No mention whatsoever is made of any form of any physical assault upon the speaker here. Assuming that Theodotus will have escaped the speaker himself

³⁵ “The speaker is deliberately casting himself in the role of what we would now call a wimp, a man who under-reacts to provocations [...] instead of demanding satisfaction for all these far from trifling humiliations, he claims to have put up with them” (G. Herman: *Morality and Behaviour in Democratic Athens*. Cambridge 2006, p. 167, reiterating the arguments from Idem: “Honour, Revenge and the State in Fourth-Century Athens”. In: *Die Athenische Demokratie*. Hrsg. W. Eder. Stuttgart 1995, p. 46 and G. Herman: “Athenian Beliefs About Revenge”. *PCPS* 2000, No 46, p. 23f); a persuasive refutation of Herman’s views is offered by Harris 364f; without lapsing into Herman’s extreme interpretations S.C. Todd: (*Lysias...*, p. 284f) nonetheless considers the speaker’s cowardice as a ‘venial flaw’ serving to ‘render his character more credible’

takes off choosing a different route (3.13). Later on he builds an argument from probability upon this very incident:

Which group ought you to consider responsible for what happened: those who ran away (φεύγοντας), or those who tried to catch them? For my part, I think it is clear to everybody that the people who flee (φεύγουσι) are those who are afraid for themselves, whereas the ones who pursue are those who want to do something unpleasant. (3.36)

The referentially oblique φεύγοντας and φεύγουσι³⁶ is as close as it comes to any admission of cowardice on the part of the speaker. The *diegesis* makes it clear though that the only one whom the attackers tried to catch was Theodotus. Furthermore, in both descriptions of this incident, there is a marked contrast between the speaker's behaviour, referred to with the phrases *ἐτέραν ὁδὸν ᾠχόμεν ἀπιών* (3.13) and *ἐτέραν ὁδὸν ἀπελθὼν ᾠχόμεν* (3.36) and those of the young Theodotus, who in the very same passages is said to *ᾤχετο φεύγων* (3.13), *ἐκφεύξεσθαι* (3.13) and *φεύγον ᾤχετο* (3.36). The slave-boy is indeed depicted as hastily and perhaps cowardly, fleeing the scene; the speaker himself calmly 'walks away'. Whatever he may be hinting at, he obviously shrinks from explicitly describing his behaviour as anything beneath a dignified recession.

As for Simon's physical assaults upon the speaker two incidents are related in the *diegesis*: the first (3.8), an unprovoked attack, and the second (3.17), a violent response to the speaker's indignant reprimands ('why are you treating the boy so lawlessly'), where it is clearly stated that Simon managed to deliver some blows at him; during the first assault, however, he was repelled by the speaker and forced to "ranged attack", whereas during the second himself injured badly enough to bring in the trial at hand on this very basis (with significantly differing circumstances though). Neither of these accounts of violent incidents allows an interpretation of the speaker's behavior as that of a cowering wimp. Instead he consistently presents himself as firmly holding his ground when attacked; furthermore, his actions in both incidents are described with the verb *ἀμύνεσθαι*, which apart from denoting 'defense' also encompassed the meaning of 'avenging'. In fact, these two concepts were closely related to each-other in the legal and ethical discourse of Classical Athens³⁷, not mutually exclusive, as one might expect judging from modern standards. Thus the speaker of *Lys. 3* can even be considered as both defending himself and retaliating on the spot at once, though, as the circumstances both then (violent assault) and now (pleading 'not guilty' when accused of premeditated

³⁶ Todd (ad. loc.) notices a verbal play on the double meaning of φεύγων: running away — defendant.

³⁷ On the meaning of ἀμύνομαι see LSJ s.v. B; the most instructive rhetorical example in this respect is *Ant. 4 (Third Tetralogy)*, where the defendant's case of mortal ἀμύνασθαι is founded on the fact that the victim had started the fight (*ἄρχων χειρῶν ἀδικῶν*); more on this case see M. Gagarin: *Antiphon. The Speeches*. Cambridge 1997, p. 160ff; E. Carawan: *Rhetoric...*, pp. 301—308.

wounding) may suggest, with a greater emphasis upon the ‘defense’ element. Quite the same, though with far less serious outcomes, as a certain Euthynus, mentioned by Demosthenes (21.71), who upon being subjected to *hybris* by an equally obscure Sophilus (αὐτὸν ὑβρίζειν ᾤετο), defended himself / retaliated so vigorously that his attacker ended up dead (ἀμυνάμενον οὕτως ὥστε καὶ ἀποκτεῖναι)³⁸.

To sum up, the speaker’s characterization in respect to the issue of violence, produces an *ethos* no doubt antithetical to that of a hubristic bully, that is — to that of Simon. Unlike his adversary, the speaker is not prone to violence, and ready to avoid it. This however to a certain degree, for when attacked he stands his ground and does not hesitate to respond with force to *hybris*. Thus in his *ethopoia*, while persuasively lending credibility to the refutation of Simon’s charges (wounding with malicious intent), the speaker manages nonetheless to steer clear of the ethical Charybdis of a cowardly wimp.

The speaker, having suffered many indignities from Simon, not only refrained from extralegal, violent retaliation — with the exception, that is, of the act of ἀμύνεσθαι upon being attacked — but also chose not to bring in any lawsuit against his enemy. This course of action marks a strong contrast with Simon’s sycophantic behaviour. It has been argued however, that the speaker’s non-litigious attitude is yet another appeal to the non-vindictive sentiments, allegedly pervading the Athenian popular morality, and ruling over the minds of the jury. A good Athenian, the argument follows, was expected not only to forego violent retaliation, but also to refrain from attempting to right his wrongs through the courts: these were to be approached only in the utmost necessity, while lesser wrongs — endured patiently by the humane Athenian folk. There are, however, less imagination-straining explanations for the speaker’s non-litigious attitude. The first is given in the text of the speech itself (3.9):

I chose not to bring an action over these offences, rather than to appear foolish (ἀνόητος) to my fellow-citizens. I knew that what had happened would be seen as appropriate for a criminal like him (τούτου τῆ πονηρίᾳ πρέποντα ἔσται τὰ πεπραγμένα), but that I would be laughed at for my misfortunes. (Todd)

Why exactly would the speaker appear foolish (ἀνόητος) to his fellow-citizens? Surely not for attempting to punish Simon’s *poneria*!³⁹ The problem was the con-

³⁸ It has been argued that Euthynus may have been tried at the Delphinium upon pleading justified in the homicide for the very reason of defending / avenging an insult. According to D. 21.75 he was condemned, but only by one vote and that without resorting to excessive pleading; cf. the discussion in D.M. MacDowell: *Demosthenes...*, p. 292 (ad loc.); E. Carawan: *Rhetoric...*, p. 308ff and D.M. MacDowell: *Athenian Homicide...*, p. 75f (general).

³⁹ A claim made by G. Herman: (*Honour...*, p. 46; Idem: *Athenian Beliefs...*, p. 23f), refuted by V.W. Harris: (“Lysias III and the Athenian Beliefs about Revenge”. *CQ* 1997, No 47, p. 364f); Herman’s misinterpretation is followed by A. Lanni: *Law and Justice in the Courts of Classical Athens*. Cambridge 2006, p. 30.

text of his misfortunes, that of an erotic rivalry, and most of all (3.4) his own, too foolish for his age engagement in a homosexual affair with Theodotus (παρὰ τὴν ἡλικίαν τὴν ἑαυτοῦ ἀνοητότερον πρὸς τὸ μαιρακίον διατιθείς). The repetition of the very same epithet (ἀνόητος, ἀνοητότερον) is no coincidence.

It should also be noted that the speaker's non-litigious attitude provides convenient means to validate his *diegesis*: it gives a persuasive (since in itself it is an embarrassing — to a limited degree — confession) reason to explain the speaker's idleness in the face of Simon's offenses, his *poneria*, his *paranoma*, his *hybris*. The speaker thus shields himself from the obvious suspicion his *diegesis* might arouse in the minds of the jury: 'if indeed you have been subject to all these heinous indignities, why haven't you undertaken any legal action'.

Conclusion

Negation and trivialization — these two chief objectives of the defense in Lys. 3, and, in fact, chief objectives of any defense whatsoever, are achieved in the speech firstly and foremostly through contrasting *ethopoiiai*. The speaker rebuts the claims of the plaintiff, arguing from probability, that unlike his adversary, he is not mad, and only a madman would be capable of doing the deeds he is being accused of. The speaker trivializes the incident under trial as unworthy of prosecution, unless of course, the prosecutor is a sycophant — like Simon. Underlying these is yet another tendency, conveyed through Simon's hubristic *ethopoiia*. This tendency is voiced out in a theoretical treatise on composing successful speeches, claiming the authorship of Aristotle himself. Its argument is: "[...] it seems to me that it comes close to no injustice at all, whenever one is subject to the mistreatment by which he himself abused others, as for example, if someone batters (αἰκίσαστο) one who is accustomed to assault others with *hybris* (ὑβρίζειν)" (*Rhet.* 1373a). Whatever befell Simon, he certainly had it coming.