

Oratory in action

edited by

MICHAEL EDWARDS
& CHRISTOPHER REID



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- ALASTAIR BLANSHARD
is Lecturer in Classics, University of Reading
- MICHAEL EDWARDS
is Reader in Classics, Queen Mary, University of London
- AIDEEN HARTNEY
was a teaching fellow at the University of Bristol
- MALCOLM HEATH
is Professor of Greek Language and Literature, University of Leeds
- LYNETTE HUNTER
is Professor of the History of Rhetoric, University of Leeds
- CHRISTOPHER REID
is Senior Lecturer in English, Queen Mary, University of London
- PAUL ROBERTSHAW
is Senior Lecturer in Law, University of Wales Cardiff
- MICHAEL SIMPSON
is Lecturer in English, Goldsmiths College, University of London
- CHRISTOPHER SMITH
is Senior Fellow, University of East Anglia, Norwich
- STEPHEN USHER
was Senior Lecturer in Classics, Royal Holloway, University of London
- ELENI VOLONAKI
is Associate Lecturer, Open University

List of contributors



Agora: Vol. XXVII. The East Side of the Agora: The Remains beneath the Stoa of Attalos (Princeton, 1995), p. 41.

59 Pollux 8.113. For the archaeological evidence in support of such a fountain see Boegehold, *The Lawcourts at Athens*, p. 75 n. 21.

60 For example see the water-clock inscribed with the designation *Autochádos*. For a discussion of this inscription and its implications for possible non-dikastic use see S. Young, 'An Athenian clepsydra', *Hesperia*, 8 (1939), 274–84 (pp. 282–4).

61 For a description of the designation ceremony and this procession see *Ath. pol.* 63.5. For a subsequent discussion of the use of the sorting machine see J. D. Bishop, 'The cleroterium', *Journal of Hellenic Studies*, 90 (1970), 1–14; Rhodes, *Commentary*, pp. 706–9; A. L. Boegehold, 'Many letters: Aristophanes *Plutus* 1166–1167', in K. J. Rigsby (ed.), *Studies Presented to Sterling Dow on His Eightieth Birthday* (Durham: NC, 1984), pp. 23–9; Boegehold, *The Lawcourts at Athens*, pp. 230–1; E. S. Staveley, *Greek and Roman Voting and Elections* (London, 1972), pp. 62–7.

63 Significantly, the account of the selection procedure begins with an inventory of all the required equipment. See *Ath. pol.* 63.2.

64 On sortition as a fundamentally democratic procedure see R. K. Sinclair, *Democracy and Participation in Athens* (Cambridge, 1988), pp. 17–18.

65 On the meaning of these primary seals see J. H. Kroll, *Athenian Bronze Allotment Plates* (Cambridge, Mass., 1972), pp. 51–6.

66 Kroll, *Athenian Bronze Allotment Plates*, p. 9.

67 For a full description of the mechanics of the procedure see Dow, 'Aristotle, the kleroteria and the courts'.

68 Assuming the most credible reconstruction of the text. For discussion on this point see Rhodes, *Commentary*, p. 709.

69 On the redundancy of the colouring and the extra potential for confusion it caused, see Rhodes, *Commentary*, p. 711.

70 On the allotment of seating in the courtroom see Boegehold, 'Many letters'.

71 The assumption that it was these jurors who handled the return of the allotment tokens is based on Kenyon's supplement to the text at 65.4. For this addition, see Rhodes, *Commentary*, pp. 713–14.

72 See MacDowell, *Aristophanes: Wasps*, p. 226 on *Wasps* 690.

So far the setting of the Athenian legal process. We now turn to some examples of Athenian oratory and law in action, in the speeches of Lysias (possibly 459/8 to c. 380 BC). Lawsuits in Athens were of two types: private suits (*dikai idiai*), which affected only the individuals concerned, and public suits (*dikai dêmosiai*), mostly called *graphai*, which affected the State as a whole. The latter could be initiated by 'anyone who wishes' (*ho boulomenos*) among the adult male citizen body, so long as the prosecutor was not suffering from a loss of citizen rights (*atimia*). In either type of suit the litigants on both sides were expected to deliver their own cases, giving one or two set speeches depending on the procedure involved. Help was at hand for those whose rhetorical powers were limited, in the form of professional speech writers, or *logographoi*. One of the most successful logographers was Lysias,

who was born in Athens into a wealthy family (his father Cephalus was on friendly terms with Pericles and his house in Piræus is the setting of Plato's *Republic*) but of Sicilian parentage. This made him a resident alien (metic), not a citizen, a status which restricted his involvement in the legal system, but he made full use of his rhetorical powers in helping others. His career took off, however, as a result of his own prosecution of Eriosthenes, a member of the short-lived, infamous regime of the Thirty Tyrants, whom he accused of causing the death of his brother Polemarchus. The legal procedure he used to do this is unclear, but was

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Creating responsibility: assigning blame for the Thirty¹

ELENI VOLONAKI



possibly connected with the audit (*leuthunai*) that members of the Thirty were obliged to undergo after the restoration of the democracy if they wished to remain in Athens. Lysias was also involved in other cases concerning

the tyrants and those connected with them, which took place even though the Athenians had sworn an oath of amnesty to let bygones be bygones, as Eleni Volonaki demonstrates in her chapter.



INTRODUCTION: THE RHETORICAL FIGURE OF *DEINOSIS*

A common rhetorical figure with wide applicability to public and private life in every society is to exaggerate responsibility for the actions of a person or a group of people for various purposes. For example, it is used by political figures to win the people's vote, by the media to increase popularity, and by individuals to make personal profit or establish their own position against others.

Ancient rhetoricians called the rhetorical means to exaggerate responsibility *deinosis*, defining it as 'the emotional *amplificatio* which aims to "appal"'.² According to Aristotle, *deinosis* is a rhetorical *topos* common to all kinds of rhetoric, 'for all men employ extenuation or amplification whether deliberating, praising or blaming, accusing or defending'.³ As such, this rhetorical means of persuasion appears to have had a great appeal to the Athenians in the fifth and fourth centuries BC. Particularly in forensic oratory the amplification of crimes or guilt with reference to the past was often applied and effectively used for character assassination. On certain occasions, it was also employed in the presentation of the facts and arguments. This chapter examines the rhetorical technique of exaggerating the degree of individual responsibility in order to secure conviction, as an example of *deinosis* used in forensic oratory. In particular, it deals with one aspect of the exploitation of anti-oligarchic hostility in the years after the overthrow of the regime of the Thirty tyrants, as presented in the orations preserved to us from that period.

After the defeat of the Athenians in the battle at Aegospotami in 404, a peace was made between them and the Spartans on the following conditions: the return of the exiled oligarchs (participants in the oligarchic revolution

of 411 and others) to Athens, the destruction of the Long Walls and the fortifications of the Piraeus, and the surrender of Athens's maritime power. The returning exiles with Spartan support set up the regime of the Thirty (404/3).⁴ Within a short period of time, conflicts arose between their members (especially Critias, the leader of the extreme oligarchs, and Theramenes, the leader of the moderates) owing to cruelties committed against Athenian citizens and resident aliens (metics).⁵ A revolution was organised by Thrasybulus in Phyle, which led to the overthrow of the oligarchy of the Thirty and the restoration of the democracy. The reconciliation took place in 403/2, when all Athenians swore an oath never to recall the past misdeeds of anyone except the Thirty (and those involved in their regime), and not even of those if they successfully submitted to an examination.⁶ Allegedly, after the oath of the Amnesty had been sworn, the two parties henceforth lived together as fellow-citizens and all the people abided by this oath.⁷

However, as will be shown, speeches delivered in trials after the reconciliation agreement had been made down to the middle of the fourth century reveal a violation of the spirit of the Amnesty in their use of the rhetorical means to exaggerate individual responsibility for the crimes of the Thirty. This rhetorical technique is found in prosecution speeches in public cases, where the prosecution will exaggerate responsibility for crimes and disasters in order to represent defendants as 'monsters', who have purposely acted against the security of the state or the democratic constitution. Extant speeches of this kind, however, are few.⁸

The focus of this paper will be on the rhetorical technique to assign 'sole' individual responsibility not merely for the crimes of the Thirty but also for the whole oligarchic constitution. For this purpose, three prosecution speeches – the only ones preserved to us that employ this particular technique – composed by Lysias a few years after the restoration of the democracy will be examined. Firstly, however, we will briefly discuss the use of the same rhetorical technique to exploit 'partial' responsibility for the actions of the Thirty, as found in prosecution speeches dated from the first decade until the middle of the fourth century.

'PARTIAL' INDIVIDUAL RESPONSIBILITY

Arguments from comparison constitute a commonplace for character assassination. Litigants often attempt to blacken the character of their

opponent either by emphatically contrasting his misbehaviour with the integrity of well-known political figures or by drawing a parallel with the dishonesty of other notorious criminals from the past. The Thirty tyrants, their motivation and conduct, offer an example from the latter category. The representation of criminals as similar to or even potentially worse than the Thirty tyrants appears to be an effective rhetorical means to prejudice the jury against the opposing party, and thus secure their conviction. This type of rhetorical device is mainly used as an argument from *ethos* in prosecution speeches, delivered after the Amnesty agreement of 403, to portray defendants as threatening the interests of the whole Athenian people (*dêmos*).

Lysias' speech *Against Hippotherses* (P. Oxy. 1606; Frag. 1 in the Budé edition⁹), which was delivered shortly after the restoration of the democracy, involves a dispute over property confiscated from Lysias by the Thirty. Hippotherses prosecuted Lysias concerning most likely a claim over a slave girl.¹⁰ The speaker, who delivers the speech on Lysias' behalf, attacks all those who bought possessions that had been illegally confiscated by the Thirty in order to imply that Hippotherses' claim over Lysias' property is unjust (lines 118ff.):

And yet you would have every right to be angry at those who purchased your property during such misfortunes: for in the first place, the Thirty would not have sold it if purchasers had not existed.¹¹

This passage elevates the collusion of the buyers (a result of the depredations of the Thirty) almost to the level of cause or motive, and emphasises the culpability of those who bought confiscated property.

Another speech by Lysias, *Against Alcibiades* (speech 14), was delivered in a prosecution brought against Alcibiades, the son of the famous Alcibiades,¹² for dereliction of military duty,¹³ probably in 395 (at the beginning of the Corinthian War). The speaker attacks the whole family of Alcibiades for their anti-democratic *ethos*; the emphasis is placed upon the role of the father Alcibiades, who is charged with all the disasters that befell the Athenians after their defeat in the Peloponnesian War, including the establishment of the regime of the Thirty (§39):

So if any of you pities those who died in the sea battle, or feels shame for those enslaved by the enemy, or is angry about the destruction of the walls, or hates the Spartans, or detests the Thirty – for all these things you must regard the defendant's father as responsible. You must remember that your ancestors twice

ostracized both the defendant's great-grandfather Alcibiades, and Megacles his father's maternal grandfather, and that the older ones among you condemned the defendant's father to death.

The association of the elder Alcibiades with the Thirty, whose establishment was a direct result of the loss of the Peloponnesian War, is cleverly manipulated here by Lysias in order to associate the younger Alcibiades with the current enemy.¹⁴ The implication is that the defendant should be considered an enemy of the city of Athens, as his father was. Since his father had set up the regime of the Thirty with Spartan help, the defendant would share the same pro-Spartan feelings, now that Athens was involved in a war against the Spartans in Boeotia. It is obvious that the speaker draws on the hostility the Athenians still felt toward the Thirty to exaggerate the elder Alcibiades' responsibility for the whole of the regime and so prejudice the jurors against his son.¹⁵

Within the first decade of the fourth century a speech by Isocrates, *Against Lochites* (speech 20), was delivered in a suit for heavy damages against a rich young citizen, Lochites, who had allegedly struck the prosecutor.¹⁶ The speaker, being himself 'a poor man and one of the people' (20.19), appeals to the necessity of restraining and punishing violence, especially under the democracy, and thus to the conviction of the defendant. To emphasise this appeal, he identifies Lochites' insolence with the spirit and attitude of those oligarchs who twice overthrew the democracy, the Four Hundred and the Thirty (§§10–11):

For we ourselves have twice seen the democracy overthrown and twice we have been deprived of freedom, not by those who were guilty of other crimes, but by persons who contemned the laws and were willing to be slaves of the enemy while wantonly outraging their fellow-citizens. Lochites is one of these persons. For even though he was too young to have belonged to the oligarchy established at that time, yet his character at any rate is in harmony with their régime. For it was men of like disposition who betrayed our power to the enemy, razed the walls of the fatherland, and put to death without a trial fifteen hundred citizens.¹⁷

Lochites, obviously, could not have been associated with the oligarchy of the Thirty since he was very young when it was established. However, the identification of his conduct with the brutality shown by the Thirty is an effective rhetorical device used for character assassination. Isocrates excites animosity against the oligarchs to isolate the defendant from the citizen group as a monstrous criminal and an enemy of the democratic constitution.

A similar example of exaggerating a litigant's 'indirect' association with the Thirty is found in Demosthenes' speech *Against Androtion* (speech 22), delivered at a *graphê paranómōn* (prosecution for an illegal proposal) in 355. In this case Euctemon prosecutes Androtion for proposing the gift of a crown to the retiring councillors of the year 356/5 without the formality of a preliminary decree of the Council, and even though the Council could not afford such expenses. With reference to the public service of Androtion, the prosecutor strongly criticises him and charges him with responsibility for the incident of the melting of the crowns. To emphasise this accusation Demosthenes portrays the defendant as a public man more disgraceful even than the Thirty (§52):

I shall not, then, trouble to show that the defendant has proved himself more brutal than any oligarchy anywhere in the world. But here, in our own city, at what period were the most outrageous things done? You will all say, 'Under the Thirty Tyrants'. Now under the Thirty, as we are informed, no man forfeited the power to save his life who could hide himself at home; what we denounce the Thirty for is that they arrested men illegally in the market-place. This man displayed a brutality so far in excess of theirs that he, a public man under a democracy, turned every man's private house into a gaol by conducting the Eleven into your homes.¹⁸

In this passage, the speaker exploits the ultimate degree of brutality and immorality as shown by the Thirty to demonstrate how Androtion, a public figure of a democratic constitution, has even surpassed this kind of behaviour. The depiction of the defendant as 'the most dangerous enemy of the democracy' aims to contrast him with the speaker himself, who claims an honest democratic *ethos*, so that the jury may sympathise with the prosecution side. Furthermore, it effectively stimulates the hostility of the jurors toward all oligarchs, but particularly toward Androtion, whom they are enticed into convicting for personal damage.¹⁹

It has been shown that the rhetorical technique of exaggerating the opposing side's indirect association with the regime of the Thirty – their establishment with Spartan support, motivation, spirit and attitude, brutality and immorality – is a common means of persuasion; it is used mainly for character assassination in forensic speeches, delivered under the restored democracy of 403 until the middle of the fourth century. As such, the rhetorical abuse of the Thirty reflects the immense degree of hostility still felt by the Athenians toward the oligarchic constitution.

'SOLE' INDIVIDUAL RESPONSIBILITY

With reference to crimes committed in the last decade of the fifth century, Lysias' technique focuses on the connection of the opponent's action with the crimes of the Thirty, appealing thereby to the audience's prejudice against the oligarchic constitution. Even when dealing with minor figures, Lysias tends to attribute sole responsibility for the whole of the regime. He further involves the hearers personally in the sufferings of the Athenians at the hands of the tyrants to isolate the defendant from the jurors and represent him as an enemy of the democracy, and converts a politically disparate audience retrospectively into stalwart partisans of democracy. In order to illustrate the rhetorical technique Lysias employs to create sole individual responsibility for the whole of the Thirty, a few examples will be discussed selected from Lysias' speeches *Against Eratosthenes* (speech 12), *Against Agoratus* (speech 13), and *Against Nicomachus* (speech 30).

In the speech *Against Agoratus*, the speaker accuses Agoratus of being responsible for the murder of his brother-in-law, Dionysodoros. The political background of the events narrated in the speech relates to the year 404/3²⁰, when rapid changes occurred at Athens. After the defeat of the Athenian fleet at the end of the Peloponnesian War, peace was made between Sparta and Athens, which imposed unfavourable terms on the Athenians (see above). Lysias' account focuses on the activity of individual political figures during the period of the peace negotiations between Sparta and Athens, when the ground was prepared for the oligarchic revolution and the subversion of democracy. Theramenes, the Athenian ambassador in charge of peace negotiations who soon became a prominent political figure as one of the Thirty, was conspiring together with a group of oligarchs against the constitution (§§8–17). Their conspiracy had further support from the Council of the year before the Thirty. When political figures who supported the Athenian *démōs* – demagogues, generals, and taxiarchs – showed resistance to the peace terms proposed by Theramenes, the oligarchs felt threatened and planned to destroy them. Firstly, they set up a trial against Cleophon on the excuse of a military offence and condemned him to death (§§7–12). Subsequently, a conspiracy was hatched to eliminate Strombichides (a general), Dionysodoros (a taxiarch), and many other democrats. The conspirators used Theocritus and Agoratus as *ménouai* (informers) to lay information, and according to the speaker they wished to make the denunciations seem voluntary (§§18–22). The Council first interrogated Theocritus, and then decreed the arrest of Agoratus.

However, Nicias and Nicomenes presented themselves as sureties for Agoratus, and after giving bail undertook to produce him before the Council later. According to the speaker, Agoratus' sureties, being concerned with the safety of the city, attempted to persuade him to escape (§§23–8). Agoratus refused and, after a second decree of the Council, he was finally arrested at the altar of Artemis' temple in Munychia. He made two depositions, the first before the Council against the taxiarchs and generals, and the second one before the Assembly at the theatre of Munychia, where further names were given (§§30–2). The accused were arrested and the Athenian *démos* decided that they be tried in court by a jury of two thousand citizens (§35). When the Thirty came to power, they cancelled the appointed trial and replaced it by an unconstitutional procedure in the Council, where the defendants were all condemned to death, with the exception of Agoratus, who was allegedly acquitted on the ground that he had given true information.

In order to establish the charge of responsibility for murder, the prosecution needs to convince the jury that Agoratus deliberately denounced the victims. The claim that Agoratus was party to the oligarchic conspiracy against the democrats is stressed throughout the speech. In support of this argument, the speaker repeatedly points out that Agoratus rejected the chance he was given by his sureties to rescue his life and avoid giving any names. More specifically, in §§24–6, the prosecution claims the following:

The guarantors and the others decided that they should get Agoratus away as soon as possible. They brought two boats to anchor nearby, and pleaded with him to flee Athens by any means possible. They said they would sail with him, until the situation became stable, and they pointed out that if he were brought in front of the Council, he would perhaps be compelled under torture to reveal the names of such Athenians as might be suggested by people wanting to cause trouble in the city.

That was what they pleaded. They had prepared the boats and were themselves ready to sail with him, but Agoratus here refused to follow their advice. And yet, Agoratus, unless you were in the plot and knew that you would suffer no harm, why you did not leave, given that the boats had been prepared and your guarantors were ready to sail with you? You still could have done this, given that the Council had not yet got you into its power.

The implication here is that Agoratus must have been part of the oligarchic plot and, knowing that he was protected by the oligarchs, he therefore refused to leave Athens.²⁰

Lysias attempts to draw firm boundaries between the two groups of 'oligarchs' and 'democrats' in order to emphasise the conflict and convince the jurors of Agoratus' anti-democratic activity. According to the speaker, Agoratus was used as the tool of the oligarchs for being a suitable informer and was not party to the generals' and taxiarchs' activity, nor was he connected with them in any other way (§§18, 61). In view of the speaker's attempt to stimulate existing political rivalries that involved individual political leaders, Lysias' approach to the personalities of Theramenes and Cleophon, two political leaders who were controversial during their life and remained so even after their death, appears to strengthen the argument that Agoratus' conduct was consistent with the oligarchic plans. The speaker's aim is to associate Agoratus with Theramenes and the other oligarchs who plotted the death of the democrats. Therefore, Cleophon is praised as a 'martyr' whereas Theramenes is strongly attacked as a 'traitor' for establishing the oligarchy of the Thirty.

To make the homicide charge more plausible, Lysias attempts to connect Agoratus with the Thirty, who actually put the democrats to death through illegal means. The speaker illustrates in detail the suspension of democratic institutions with reference to the voting process and the presidency of the Thirty at the trial of the democrats (§§36–8). The emphasis that is placed upon the injustice practised against the defendants by the Thirty is used to put the blame on Agoratus, since he was the one who had made the deposition. The point stressed by the speaker is that Agoratus' denunciations caused the arrest of the victims, and this in turn led to the establishment of the oligarchy. It is to be noted that Agoratus was not the only one arrested; also, Hippias from Thasos and Xenophon from Courion were summoned together with Agoratus by the Council (§54). Lysias focuses solely on Agoratus and deliberately isolates him from a group of *ménutai* to charge him with the entire responsibility for the denunciations, and consequently the death of all the victims. In §34, Agoratus is further charged with all the events of the period following his denunciations:

When his victims had been arrested and imprisoned, at that moment Lysander sailed into your harbors, your ships were handed over to the Spartans, the walls were pulled down, the Thirty were appointed, and all possible evils fell on the city.

The speaker is further associating Agoratus with the Thirty by representing him as a benefactor of the oligarchic constitution for providing information

they could use for their purposes, and who in consequence was the only one released (§38).²¹ The exaggerated contrast between the conviction of all the other defendants and Agoratus' acquittal distracts the jurors' attention from the fact that the democrats were killed by the Thirty and emphasises Agoratus' responsibility for the action of the tyrants. This is further underlined by the idea that, if Agoratus had not made the denunciation, his victims would not have been subsequently put to death by the Thirty (§§35–6).

Agoratus' association with the regime of the Thirty and their crimes is strengthened by the speaker's hints at Agoratus' ulterior motives for refusing to follow his sureties' plan to escape from Athens (§§18, 52–3). Particularly in §61, the speaker explicitly states that Agoratus' motive related to his possible active participation in the oligarchic constitution:

You, on the other hand, knew nothing that would discredit your victims. You were won over by the promise that if they were destroyed, you would have a share in the constitution that was being established at the time. And so you denounced and murdered many good Athenians.

The speaker bases his refutation of the defence claim that Agoratus was granted some citizen privileges as a reward for killing Phrynichus, a prominent member of the regime of the Four Hundred, partly on the same idea that Agoratus' action was related to the oligarchic constitution. Among other points, the speaker stresses that Agoratus could not have been a killer of Phrynichus since otherwise the Thirty would have avenged Phrynichus' murder and killed him (§§74–6).²² Lysias' fallacy here is to treat the oligarchs as a single cohesive group which formed both regimes, the Four Hundred and the Thirty. Hence, the fact that Agoratus was allowed to live by the Thirty is manipulated to demonstrate that Agoratus was a person of oligarchic affiliations, who must have done great harm to the Athenian *démos*. However, Athenian political parties were not officially formed or stable,²³ and not even all the members of a single regime shared the same views.

Agoratus' guilt of homicide is rhetorically emphasised by presenting him as responsible for all the miseries which befell the city of Athens, on both a public and a personal level, during the regime of the Thirty. Firstly he is charged with the deaths of three hundred citizens of Eleusis and also three hundred citizens of Salamis at the hands of the Thirty, when they wished to establish their base at Eleusis and have these places as safe havens

(§44; cf. 12.52). Secondly he is accused of causing the deaths of many innocent Athenian citizens, owing to which old parents, unmarried sisters, and young children were left unprotected (§45). Thirdly he is presented as responsible for the unfavourable peace-terms of 404, which caused the crisis of the Athenian empire in terms of both financial power and prestige (§46). Finally he is associated with the exile of the Athenian democrats and the confiscation of their properties by the Thirty (§47). The speaker exaggerates Agoratus' responsibility for all these misfortunes, and argues that the oligarchic revolution would have been prevented if Agoratus had not denounced the democrats (§§47–8):

Those good men recognised this and refused to allow the peace to be made. But you, Agoratus, killed them, when they wanted to do something good for the city. You denounced them for plotting against the city, and you were the cause of all the disasters that happened to the city. So each of you, gentlemen, should remember both your private sufferings and those that were common to the city, and take vengeance on the man who caused them.

The personal involvement of the jurors in the misfortunes allegedly caused to each one of them by Agoratus succeeds in arousing hostility against the defendant and isolating him from the citizen group as their enemy. On account of their sufferings, the vengeance on Agoratus becomes a personal matter for the jurors, who are thus invited to convict him for his oligarchic activity. This kind of appeal is expanded further in the epilogue of the speech, where the jurors are implicated in an imaginary trial of the dead and are asked to prove their friendship toward them by convicting the defendant (§§94–6). The present trial is depicted as a retrial where the jurors are asked to acquit those whom the Thirty condemned to death and condemn to death those whom the Thirty acquitted. The outcome of these syllogisms is that Agoratus is to be convicted given that the Thirty, at the trial of the democrats, had acquitted him.

Lysias constructs Agoratus' persona to suit a murderer, and, as has become clear, he employs an oligarchic *ethos* to convince the audience of his guilt. Emphasis is placed upon Agoratus' alleged collusion with the oligarchs before the establishment of the Thirty; the accusation that Agoratus voluntarily made the deposition is solely based upon the assertion that his action was made in exchange for some profit or power to be gained within the rising oligarchic constitution. Agoratus is further associated with the oligarchic regime of the Thirty, and connected with their verdict against

his victims, as well as all the misfortunes caused by them to the Athenians. The arguments concerning Agoratus' oligarchic affiliations and compliance with the actions of the tyrants are stressed throughout the speech not only to attack the defendant's character but more importantly to establish the fundamental question of intentionality in the factual case of homicide. It is to be noted that the prosecution case appears to be a weak one since it fails to prove that Agoratus voluntarily laid the information against the democrats. Nevertheless, the establishment of the charge for murder upon the exaggerated responsibility attributed to him for the crimes of the Thirty seems an effective rhetorical means of persuasion to be used in 399, a few years after the Amnesty agreement.

In the speech *Against Nicomachus*, Lysias uses the same technique of character assassination and represents the defendant as a person of oligarchic affiliations, who complied with the regime of the Thirty. Nicomachus was appointed an *anagrapheus*²⁴ of the secular and sacred laws and was elected to this office for two periods of time, 410–404 and 403–399. He was engaged with the publication of the Athenian laws in use at the end of the fifth century. Although the case involves the alleged misconduct of the defendant during the second term, when he was working on the publication of a systematic calendar of sacrifices, the prosecutor aims to convince the jury that Nicomachus was continuously abusing his authority for a long period of time. According to the speaker, Nicomachus received bribes during both terms of office (§§2, 11, 23, 25, 27), and inscribed whichever laws he wanted or was told to, whilst he omitted others (§3).

As an example of such behaviour, Nicomachus is accused of having presented a law in court the day of Cleophon's trial that allowed the members of the Council before the Thirty to be judges together with the jurors (§§10–14). The implication is that it was a fabrication, and Nicomachus having complied with the oligarchs, who were conspiring at the time against the constitution, made a fictitious law to eliminate Cleophon. The speaker's purpose here is double, firstly to demonstrate Nicomachus' collusion with the oligarchs and secondly to establish the accusation of abusing legal authority (§11):

The Council wanted to destroy Cleophon and were afraid that they would not be able to get him executed there. So they persuaded Nicomachus to produce a law which said that the Council should judge the case together with the *dikastai* (jurors). And this fellow, the greatest of criminals, was so blatantly part of the plot that he produced this law on the day the trial was held.

The speaker as far as possible avoids making any direct reference to Cleophon's personality to arouse the sympathy of all members of the jury, and focuses on the victimisation of Cleophon by the oligarchs to make Nicomachus responsible both for judicial murder and for the overthrow of democracy. Furthermore, the representation of Nicomachus' act as agreeable to the Thirty demonstrates his willing collusion with the oligarchs and strengthens the argument on responsibility (§14):

And if he tries to defend himself against these charges, you should remember that he produced the law in question at a moment of crisis when the constitution was being overthrown, that he did this to curry favor with those who overthrew the democracy, and that he gave judicial authority to the same Council in which Satyrus and Chremon held the dominant power and under which Strombichides and Calliades and many other excellent citizens perished.

The evidence concerning Cleophon's execution is essential to the anticipation of Nicomachus' claims of democratic *ethos*, and as such is connected with another argument about Nicomachus' exile during the regime of the Thirty. Lysias correlates arguments normally used of democratic *ethos*, such as the exile under the Thirty and the execution by the Thirty, with those oligarchs who suffered this kind of misfortune. He appeals to the existence of ambiguous behaviour within the oligarchic regime and includes Nicomachus among those oligarchs who were rejected by the Thirty. In contrast to the case of Agoratus, here Lysias recognises that the oligarchs were not a cohesive group. The difference is that the factual case in speech 13 is solely based upon Agoratus' alleged collusion with the oligarchs that motivated him to make the deposition against the democrats, and therefore Lysias needs to present firmly the conflict between the groups of the democrats (victims) and the oligarchs (murderers). In the case of Nicomachus, however, his alleged conspiracy with the oligarchs is used for character assassination rather than to establish the main charge concerning the abuse of legal authority. Hence, it is adequate for the speaker to show that Nicomachus fell a victim of the oligarchs and was sent into exile, even though he had been bribed and used by them for Cleophon's execution, in order to refute any claim of democratic behaviour.

The degree of Nicomachus' responsibility is expanded to the financial crisis in the Athenian economy after the end of the Peloponnesian War, and also to all forms of internal maladministration during the oligarchic

revolution. Nicomachus is attacked for ignoring the losses of the city in favour of his own profit (§§21–2):

But this is the man who in two years has already spent twelve talents more than necessary, and has tried to defraud the city of six talents per year, even though he could see that the city needed money, that the Spartans were making threats whenever we did not send them payments, that the Boeotians were resorting to raids because we were unable to repay two talents, and that the shipsheds and the city walls were in ruins. He also knew that whenever the Council in a given year has enough money for its administration, it does no harm, but whenever it is reduced to desperation, it is forced to accept impeachments (*eisangeliai*), to confiscate the property of the citizens, and to allow itself to be persuaded by those of the orators whose advice is most corrupt.

According to the speaker, the city of Athens was drained of its money because of Nicomachus' maladministration, and was consequently prevented from repaying its debts and improving its fortifications for defence. Nicomachus is also depicted as forcing the Council to practise the illegal activity of using law-courts as a source of revenue for the city. By implication, Nicomachus appears to have supported the authoritative role of the Council before the Thirty in conspiring against the constitution. Moreover, the depiction of the jurors as representing all the Athenians who had suffered from the disasters allegedly caused by Nicomachus is effectively used to urge them to take revenge.

It has become clear that Nicomachus is attacked not only as a corrupt official but also as an enemy of democracy, who was responsible for the execution of Cleophon and many other democrats, such as Sirombichides and Calliades, and subsequently for the establishment of the oligarchic constitution. The character assassination is further based on his responsibility for the crisis of the city of Athens and the illegal activity of the Council at the time of the oligarchic revolution. In effect, his alleged collusion with the oligarchs strengthens the charge against Nicomachus that he abused his authority as *anagrapheus* of the Athenian laws, aiming not at the interests of the city and the democratic institutions but at his own benefit.

Lysias' speeches 13 and 30 are chronologically close; on the basis of internal evidence of the speeches, 30 was delivered late in 399 — the last year of Nicomachus' second term of office⁵ — and 13 a few months later in 399/8.²⁶ What is interesting about these two speeches is that, while memories of the terror are so fresh, the attribution of exaggerated responsibility can be made even against minor figures. Both Nicomachus and

Agoratus are attacked for their servile origin and are therefore isolated from the citizen group by Lysias in order to arouse the contempt and prejudice of the jurors. Agoratus was in fact a privileged metic with the right of owning land and a house in Attica (see above), granted to him as an award by the Athenian *démos* for the killing of Phrynichus.²⁷ Nicomachus evidently was more important than Agoratus; despite his servile background, he was an Athenian citizen, appointed to the public office of *anagrapheus* for a long period of ten years. He must have had important links with the political figures after the restoration of the democracy, since, according to the speaker, he was supported at the trial not only by his friends but also by men of political power. But even though he played a prominent role in the process of publication of the Athenian laws in the last decade of the fifth century, he nevertheless was not a major political figure but simply an expert in legal matters.

In contrast to the cases of Agoratus and Nicomachus, Eratosthenes who is accused of being responsible for the murder of Polemarchus, Lysias' brother, was a major political figure, as one of the Thirty. In the speech *Against Eratosthenes* Lysias applies the same device concerning the opponent's responsibility to establish his charge. He dissociates Eratosthenes' action from the crimes committed by the rest of the Thirty and presents him as solely responsible for the murder. He manipulates the power of Eratosthenes and depicts his act as independent from the decisions of the Thirty.

On the basis of the defence claim that Eratosthenes had opposed the decision of the Thirty to kill Polemarchus as unjust, Lysias argues that he should not subsequently have arrested him (§26):

That you spoke against those who wanted to kill us when the majority of your colleagues were in control of our fate, but that when it was in your hands alone to rescue Polemarchus or not, you summarily dragged him off to prison?²⁸

Furthermore, Lysias expands the degree of Eratosthenes' responsibility by exaggerating rhetorically the possibilities he had to avoid arresting Polemarchus (§§30–1):

What is more, Eratosthenes seized and arrested him not at home but in the street, where he could have left both Polemarchus and the Thirty's instructions unviolated. You are angry against all the Thirty, because they invaded your houses and carried out searches for you or any of your families. But if you must pardon those who killed others to save themselves, then it would be more

legitimate to pardon those who conducted house arrests, for it was dangerous for them not to go or to deny it once they had carried out the arrest. Eratosthenes, on the other hand, could have said he did not meet Polemarchus or that he never saw him: there was no means of verifying this, and so it could not be disproved if his enemies had wanted to.²⁹

In order to strengthen the accusation about Eratosthenes' responsibility for Polemarchus' murder and refute the defence claim that his action was dictated by the orders of the Thirty, Lysias portrays Eratosthenes as one of the most powerful members of the tyranny, who caused all the miseries following the defeat of Athens at the battle of Aegospotami. Eratosthenes and Critias together are described as the initiators of the oligarchic conspiracy during the period of peace negotiations between Athens and Sparta (§§43–4). Eratosthenes is accused of putting to death three hundred citizens in Salamis and in Eleusis, during the oligarchy of the Thirty (§52). It is worth noting that the same accusation is used against Agoratus, and apparently the death of those people was such a great loss that it can be used by Lysias to appeal to the Athenians' sympathy for the victims. Eratosthenes is also charged with the crisis in the city of Athens at the time of reconciliation between the party from Piraeus and the party from the city, when Eratosthenes borrowed a hundred talents from Sparta and asked Lysander to hire auxiliaries with a view to the city's destruction (§§53–61). Finally the strong attack on Theramenes is meant to disprove Eratosthenes' claim to have supported a moderate policy as a Theramenist, while amplifying the degree of his own responsibility for sharing in Theramenes' betrayal of the Athenian demos (§§62–78).

On balance, Lysias creates here exaggerated responsibility in two opposite forms for the same rhetorical purpose, to prove that Eratosthenes was responsible for Polemarchus' murder; firstly he isolates Eratosthenes' crime from those committed by the rest of the tyrants to demonstrate his guilt, and secondly he associates him with the most prominent members of the Thirty to show that he had the power to prevent the killing. By these means the charge of intentionality is rhetorically established and appears persuasive.

CONCLUSION

Most of the speeches presented in this chapter were delivered a few years after the restoration of the democracy in 403. The rhetorical exaggeration

of the opponent's responsibility for the actions attributed to the Thirty is effectively used by orators to persuade the audience in this manner to convict the defendant.

The attempt to arouse the anger of the jurors against the defendants as enemies of democracy is based upon the common belief in the superiority of the democratic institutions, despite the fact that, especially at a time when the political situation might not yet have been stabilised, not all the members of the jury necessarily shared the values of the democratic constitution. It has been shown that in particular Lysias applies emphatically and extensively the rhetorical *topos* of pro-oligarchic conduct in relation to the regime of the Thirty, not only to attack the character of the opponents but also to establish the main charges as presented in the last three speeches. With reference to the Athenians' attitude toward the reconciliation agreement as formulated in 403, it can be assumed that, even though they were legally bound by the oath of the Amnesty not to take revenge on the past deeds of the tyrants, in practice they were willing to break the spirit of the Amnesty and exact revenge upon crimes allegedly relating to any kind of oligarchic activity.

NOTES

- 1 This chapter develops ideas originally presented at a conference on 'Oratory in Action' in the School of English and Drama, Queen Mary, University of London. I would like to express my appreciation to the editors, Michael Edwards and Christopher Reid, for their invitation to contribute to the present volume.
- 2 H. Lausberg, *Handbook of Literary Rhetoric: A Foundation for Literary Study*, ed. D. E. Orton and R. D. Anderson (Leiden, 1998), §257.3.c; cf. §438: *deinosis* is 'the inflaming of the audience's emotions in order to bring them to take sides against the opposing party'.
- 3 Aristotle, *Rhetoric* 2.18.4.
- 4 Xenophon, *Hellenica* 2.3.11–14; *Ath. pol.* 34.2–35; see P. Krentz, *The Thirty at Athens* (Ithaca, 1982).
- 5 Xen. *Hell.* 2.3.15–56; *Ath. pol.* 36.
- 6 *Ath. pol.* 39.6; see T. C. Loening, *The Reconciliation Agreement of 403/402 BC in Athens: Its Content and Application* (Hermes Einzelschriften 53, Stuttgart, 1987).
- 7 Xen. *Hell.* 2.4.43.
- 8 For the purposes of the present chapter, defence speeches which include refutations of one's connection with the Thirty are not included. For an example of such a defence speech see Lysias, *On Overthrowing the Democracy* (speech 25), where the speaker attempts to reject any collusion with the Thirty, even though he had remained in the city under their oligarchy.
- 9 L. Gernet and M. Bizos, *Lysias: Discours*, 2 vols (Paris, 1924–26).

- 10 Further on the charges in this speech see S. C. Todd, *Lysias* (Austin, 2000), pp. 367–8.
- 11 The translations of all texts by Lysias cited in this chapter are from Todd, *Lysias*.
- 12 For the career of Alcibiades the general see J. K. Davies, *Athenian Propertied Families* (Oxford, 1971), pp. 17–21, and for the son, the defendant here, pp. 21–2.
- 13 Further on the charge see C. Carey, *Lysias: Selected Speeches* (Cambridge, 1989), pp. 144–6; Todd, *Lysias*, pp. 161–2.
- 14 See Carey, *Lysias*, p. 175.
- 15 It is to be noted that the speaker misrepresents the role of the elder Alcibiades who was a threat to the Thirty rather than their associate; see Carey, *Lysias*, pp. 165–70.
- 16 The date of the speech is not certain but from internal evidence it can be assumed that it was delivered several years after the oligarchy of the Thirty and before the walls of Athens were rebuilt in 393 (cf. §11).
- 17 Trans. L. Van Hook, *Isocrates III* (Cambridge, Mass., 1945).
- 18 Trans. J. H. Vince, *Demosthenes III* (Cambridge, Mass., 1935).
- 19 For the same line of argumentation (with the same phrasing) see Demosthenes, *Against Timocrates* (24.164).
- 20 The details of the incident that occurred at the altar of Artemis' temple at Munychia are plausibly presented but not substantiated. That no proof is offered raises some doubts over the reliability of the speaker's allegations concerning the intention of the sureties to accompany Agoratus and the preparation of two vessels for the expedition. Further, Lysias may be deliberately distorting the facts in his assertion that, if Agoratus fled from Athens, he would suffer no loss or harm on the ground that he was not an Athenian citizen. In fact, Agoratus may have had good reasons for not wishing to escape from Athens; he was a privileged metic granted the right of *enktesis* (to own land and property in Attica) and he may have had a family, run a business, or owned property. Moreover, it is not certain whether Agoratus' safety was guaranteed by the democrats, and it is possible that he put faith in the oligarchs who were at the time rising in power. It is even possible that he actually accepted bribes to act in accordance with the oligarchic plans. Nevertheless, his refusal to leave, if true, does not prove that he voluntarily made the deposition.
- 21 The speaker suppresses the point that Agoratus was tried together with his victims as a defendant and also that before the Thirty he had laid the information under compulsion which he did not resist, in contrast to other persons such as Aristophanes of Chollediai, who preferred to die rather than give names (§§60–1).
- 22 The argument from probability that the Thirty could be expected to avenge Phrynichus' murder since it marked the fall of the oligarchy of the Four Hundred with the exile of most of its members is logically plausible but weak in practice. Not all the enemies of the Four Hundred would necessarily be punished by the Thirty; Thetramenes, for example, was accepted by the Thirty and was executed only when he quarrelled with Critias.
- 23 Cf. Lysias 25.9: 'Consider how often the supporters of each of the two types of constitution changed their allegiances, gentlemen of the jury. Did not Phrynichus, Peisander, and their friends the demagogues establish the first oligarchy because they were afraid of punishment for the many crimes they had committed against you? Did not many of the Four Hundred return from exile together with those from Piraeus?

Did not some of those who had driven the Four Hundred into exile subsequently become members of the Thirty? Among those who had registered their names for Eleusis, there were some who marched out with you and besieged those on their own side.'

24 The title of the commissioners appointed to codify and publish the Athenian laws in the last decade of the fifth century.

25 According to the speaker, Nicomachus retained the second office for four years (§4). The speaker's statement in §29, 'you have elected Nicomachus for the publication of our ancestral rites', suggests that the Athenian Assembly appointed Nicomachus as *anagrapheus* of the sacred laws, and such an action can by implication be dated only after the restoration of the democracy in 403. Thus, Nicomachus' second office lasted from 403 until 399.

26 From the speaker's arguments concerning the *topos* of time in 13.83, it can be inferred that the period elapsed from the time of Agoratus' alleged crime until the date of trial is five years; given that Agoratus' alleged victims were put to death under the oligarchy of the Thirty (404/3), the trial must have taken place in 399/8.

27 From the evidence of the inscription (second rider: *Inscriptiones Graecae* 1² 110: 14–38), it is clear that the Council decided to record on the Acropolis the name of Agoratus and other conspirators as benefactors of the Athenians, and give them the right of *enktesis*, the privilege of being placed under the protection of the Council and the *πρυτανεις* (i.e. 'presidents', the fifty members of a tribe who directed the Council for one-tenth of the year, each of the ten tribes serving in turn), and the option of further benefits in the future if the Council so decided. The possibility that Agoratus was granted Athenian citizenship at a later stage than the other benefactors cannot be excluded, but it remains conjectural owing to the corrupt text of the preserved inscription.

28 Lysias here implies that Eratosthenes was in a position of authority. But the question is whether Eratosthenes was unaccompanied or not. As S. Usher, *Greek Orators I: Anuphion and Lysias* (Warminster, 1985), p. 241 states, 'even if the Thirty had ordered only a house-search, his companions would be witnesses to an escape, wherever it took place'.

29 Again here the problem is that Eratosthenes might have been not alone but accompanied by his companions (see note 28).