

Ethical Arguments in Athenian Homicide Courts  
Andrew O. Wolpert (University of Florida)

Rhetorical strategies of persuasion varied in Athenian courts, depending on whether the speaker was the prosecutor or the defendant (Johnstone 1999), whether the suit was public or private (Rubinstein 2004, 2005) and whether the dispute was heard before the popular or homicide courts (Lanni 2005, 2006). Statistical analysis shows that defendants were more likely to cite their liturgies than prosecutors (Johnstone 1999: 94). From further analysis of the data, I show that performance of liturgies was only one way for even defendants to establish their character. In fact, such appeals were more frequent in certain types of suits and less frequent in others. Litigants did not generally depend or rely primarily on this rhetorical strategy.

These conclusions have important consequences for our understanding of the homicide courts. The ancient testimony is universal in its praise of the Areopagus for applying a strict standard of relevance to the cases it heard (Ant. 5.11–12; Lyc. 1.11–13; Lys. 3.46). So it is sometimes suggested that appeals to liturgies and use of ethical arguments were infrequent because the Areopagus refused to entertain such arguments (see, for example, Lanni 2005: 124–25). References to liturgies, however, are not significantly less frequent in homicide courts. Moreover, ethical arguments can be shown to be an essential component in speeches delivered to homicide courts. They are simply articulated differently because of the nature of the infraction that the homicide courts judge. And while the Areopagus was composed of ex-archons and probably consisted disproportionately of wealthier Athenians, it was, by the fourth century, no longer a stronghold of the political elite. Its members certainly had significant legal experience, but so too did the dicasts, especially those who served on the courts for multiple years.

We, therefore, do not have sufficient reason to accept the claims from the ancient testimony on the superiority of the homicide courts. Such sentiment does not explain how the Areopagus and the popular courts actually operated nor is it the product of some widespread disdain for the popular courts. Rather, Athenians lavished such praise on the Areopagus, even when speaking before dicastic courts, because of its mythical pasts and its legendary status as the original court of law for Athens. It was thus regarded as the pinnacle of the Athenian legal system, even if the modes of persuasion before it were not substantively different.

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