

Enmity and Probability in the Attic Orators

David Cohen (1995: 191-2) argues that jurors did not vote on a strictly legal basis, but rather considered the “totality of the transaction,” taking into account whether the litigants had acted in conformity with their normative expectations. In a similar vein, many scholars (e.g., Christ 1998, Allen 2000, Herman 2006) have represented the Attic orators as making use of the rhetoric of enmity solely to win favor with the jury by demonstrating that they have the proper motives for litigating and that they have conducted themselves in accordance with communal norms. According to this approach, enmity serves the rhetorical function of legitimizing or delegitimizing the prosecutor’s appearance in court. In other words, when a prosecutor affirms or denies preexisting hostility with his opponent, he attempts to make the jury believe that he has the right motivation for bringing suit, regardless of the facts of the case.

This approach, however, is quite problematic, since the rhetoric of enmity, far from legitimizing a litigant’s claim in itself, is closely intertwined with the entirety of a speech’s contentions and functions to support other types of arguments, especially character and probability arguments. The Attic orators use the rhetoric of enmity in the same ways in which they employ other *topoi*. Litigants shape the way they present their relationships with their opponents to support the claims of their case and undermine the claims of their opponent. For instance, a prosecutor in a case entailing monetary reward sometimes claims that the defendant had long been his enemy to provide a motive for his prosecution other than desire for pecuniary gain. This preempts his opponent from accusing him of bringing trumped up charges out of mere greed (e.g., [Dem.] 53, 59). Similarly, a defendant often affirms enmity to paint the prosecutor as maliciously bringing a false charge in pursuit of a vendetta (Lys. 9; And. 1; Isoc. 16; Dem. 18; [Dem.] 57).

Since enmity is part of each speaker's legal argument and can be manipulated according to the needs of the case, one cannot conclude from the many affirmations of hatred for an opponent that Athenians viewed such feuding behavior as normal and legitimate. Neither can one conclude from the many denials of previous hostile relationship existed that Athenians viewed such relationships as morally repugnant. Litigants do not craft their presentation of enmity to meet those expectations; they shape it to meet the exigencies of their individual cases and to support their legal contentions by means of arguments from probability.

Works Cited

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