

Challenges in Athenian Forensic Oratory

The challenge (*proklēsis*), a procedure in which one litigant either challenges his opponent to do something or offers to do something himself, has been the subject of much study with regard to swearing an oath (Mirhady, Gagarin) and interrogating slaves under torture (*basanos* – see Thür). But a number of other kinds of challenges are mentioned in the orators, such as the challenge to refer a dispute to arbitration, to reach a specific settlement, or to produce a document. Johnstone alone has discussed the challenge (or “dare,” as he calls it) to arbitrate, but he argues that other sorts of challenges are either unimportant or are wrongly categorized as challenges

In my paper, I want to begin by setting challenges in the context of ordinary human intercourse. For example, you cannot find your book and think X may have taken it. You confront X who denies it and adds “I swear I didn’t take it.” If you are still suspicious, He may add something like “I’ll swear on a stack of bibles.” Depending on your view of X’s religious beliefs and general truthfulness, you may accept this as sufficient proof of X’s innocence. Or you may not and say, “will you let me look in your backpack?” Or X may say, “you can look in my backpack if you want.” Again, you may feel that this is sufficient and look to someone else for your book, or you may accept his offer and look in his backpack. If you find the book there, that presumably ends the case; if you do not find it, that might end your dispute with X, or you might still suspect that X took it and hid it somewhere else. Finally, a more formal offer may be made; for instance X might say, “if I agree to let you look in my backpack, will you believe me and stop accusing me of theft?” In today’s world, if lawyers are involved in the negotiations, one party might even draw up a written version of this last offer and require both parties to sign it. And one can imagine an endless number of variations on these offers and counter-offers depending on the situation, the nature of the disputants, and their relation to or feelings about one another. The negotiations might also involve friends or family members who make offers to one or both parties.

Looking at Athenian challenges against this background, I would make two points. First,

they are a form of ordinary human interaction involving negotiation and dispute resolution; they may remain informal or become increasingly formalized up to the point of being written down and officially entered into evidence in court. Second, the use of challenges, though partially regulated by formal rules and traditions, was extremely flexible. We cannot establish clear rules, such as that if a challenge is accepted, it will necessarily end the dispute or the court case (so Johnstone, but see e.g. Dem. 37.40-42). At any stage a challenge could bring a dispute to an end, whether or not any actual evidence was produced, or it could not, and the dispute would continue.

Given the limited time for a CAMWS paper, I will first briefly summarize the current state of work on challenges and then look at a selection of Athenian challenges, beginning with completely informal challenges, such as the arbitration scene in Menander's *Epitrepontes*, where two slaves agree to let an unknown passer-by settle their dispute. I will then examine some challenges that were part of disputes that did make it to court, and finally challenges that played a formal role in the trial. I will argue that challenges are more prevalent at all levels than usually thought, and I will try to illustrate the flexibility of challenges and of the terminology used in making challenges, which cannot be restricted to a few set expressions. Certain rules did exist for certain kinds of challenges in certain situations, but that the scope of these rules are more limited than often thought. Even formal legal challenges retain many of the features of informal negotiations.

Bibliography

- Gagarin, Michael. 1996. "The Torture of Slaves in Athenian Law." *Classical Philology* 91: 1-18.
- Gagarin, Michael. 1997. "Oaths and Oath-Challenges in Greek Law." *Symposion 1995*. Akten der Gesellschaft für griechische und hellenistische Rechtsgeschichte, vol. 11, ed. Gerhard Thür and Julie Vélissaropoulos-Karakostas, 125-34. Cologne.
- Johnstone, Steven. 1999. *Disputes and Democracy: The Consequences of Litigation in Athens*. Austin TX.
- Mirhady, David C. 1991. "The Oath-Challenge in Athens." *Classical Quarterly* 41: 78-83.

Mirhady, David C. 1996. "Torture and Rhetoric in Athens." *Journal of Hellenic Studies* 116: 119-31.

Thür, Gerhard. 1977. *Beweisführung vor den Schwurgerichtshöfen Athens: die Proklesis zur Basanos* (Akad. der Wiss., Wien, Sitzungsberichte 310).