

The Rhetoric of the Death Penalty in the Classical Athenian Orators

The death penalty was frequently exercised in ancient Athens. Hansen (1975, 11) notices the remarkably high number of trials by *εισαγγελία* “often... resulting in a sentence of death”. And yet, the lack of specificity in the contemporary accounts of executions have often frustrated the attempts of scholars to interpret the how, when and where of the death penalty. Indeed, Todd (2000, 36-37) expresses vexation with the orators whose “terminology is surprisingly unimaginative” and who might have displayed “an unwillingness verbally to go into too much detail in the face of death.”

In this paper, however, I analyze the arguments the orators used for the death penalty, rather than the information about the executions themselves. More narrowly, I explore whether there was a discernible “rhetoric of the death penalty”, a dedicated pool of patterns of argumentation used by the orators to secure not merely a conviction, but the death penalty specifically. I base my research on a wide array of 4th century speeches, most importantly Lycurgus, Dinarchus and Hypereides.

I outline three distinct avenues through which Athenian orators advocated capital punishment. Here I offer a brief summary with illustrative examples:

First, I examine how orators employed vocabulary that would be likely to move the jurors to vote for the death penalty. Lycurgus, for example, frequently uses *κολάζειν* for the penalty that he proposes for Leocrates. Since Plato uses *κολάζειν* to refer to the more positive “reformatory punishment”, and reserves *τιμωρεῖσθαι* for the grimmer “retributive punishment” (cf. Ladikos 2005, 52), some scholars believe that Lycurgus, like Plato, “wanted to replace anger as a justification for punishment with truth in order that all punishment could be directed at reforming ... the wrongdoer’s soul” (Allen 2000, 21). However, Lycurgus is in fact

using κολάζειν to refer to the death penalty (certainly a retributive punishment) – constructions such as ταῖς ἐσχάταις τιμωρίαις κολάζειν (51) leave no room for doubt about that. The prominence of the verb in Lycurgus is better explained by his eagerness to convince the jurors that a death penalty for Leocrates would, by serving as an *exemplum*, have a reformatory or didactic influence upon citizens other than Leocrates himself.

Secondly, I examine how orators tried to persuade jurors that letting the defendant survive the trial would in fact be dangerous for the *polis*. This purpose is made explicit by Dinarchus when he claims that only enemies of Athens would wish Demosthenes *alive*, given that he is a συμφορά to the city, while friends of the city would wish him *dead*. The danger is then grotesquely exaggerated when Dinarchus prays to the gods for the safety of the city's women and children, reputation and all honorable things, all of which are presumably threatened by the possibility of Demosthenes' survival (1. 65).

Thirdly, I look at how orators manipulate historic *exempla* in order to strengthen their case for capital punishment. Especially curious is the case of one Autolycus, accused of having evacuated his family in the aftermath of the battle of Chaeronea, and “punished” by the *demos*, according to Lycurgus (53 ἐτιμωρήσασθε). Modern scholarship has all too often assumed that Autolycus' punishment was death. Hansen (1975, 104) infers this “from the fact that the trial of Autolycus is referred to as a precedent for the trial of Leocrates who, if found guilty, would have been sentenced to death,” while Roisman (2019 *ad loc*) warns against suspecting “Lycurgus' strong indications.” Sullivan (2002 *ad loc*), on the other hand, rightly points out that the execution of Autolycus is never explicitly mentioned and, moreover, that he is conspicuously left out by Aeschines (3.252) in a passage where the mention of his execution would greatly improve Aeschines' case. The matter becomes even more suspect if we take into

consideration other examples where the Athenian orators base their requests for the death penalty on lighter sentences from the past. I argue, based on this and other examples, that historical precedents were both used and manipulated by orators to achieve the desired outcome.

In conclusion, this paper elucidates an important and understudied facet of the ancient Athenian prosecutorial speeches and aims to contribute to a better understanding of their punitive rhetoric and its studied artfulness.

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