Popular Attitudes to Judicial Activity in the Age of Aristophanes

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Abstract

The aim of the thesis is to understand popular attitudes in Athens to judicial activity in the late fifth and early fourth centuries, the period in which Aristophanes wrote and performed his plays. Within the Aristophanic world, characters are frequently portrayed as engaging in litigation and jury service. Moreover, this portrayal of judicial activity is decidedly ambivalent, with the comic hero often fleeing from judicial activity into a fantastical paradise within which judicial activity is consciously banished. And yet as the play continues, judicial activity often resurfaces within the fantastical paradise. These on-stage images of judicial activity are compared with portraits which litigants paint of themselves and their opponents in the Attic Orators. Litigants characteristically present themselves as inexperienced and reluctant to engage in judicial activity, while portraying their opponents as experienced to the point of sycophancy. Yet the same litigant who professes judicial reticence may in reality be a seasoned veteran of the jury courts. On the basis of evidence from the theatre and the court room, I argue that the pursuit of judicial activity is governed by an ideology of judicial reticence. On the other hand, most Athenians were in reality engaged in judicial activity on account of the democratic judicial system, which required citizens to serve as jurors and act as voluntary prosecutors. A hypothesis is advanced to explain this tension between the ideology of judicial reticence and the reality of judicial practice and its implications for our understanding of Athenian law.

This tension is exacerbated by four factors specific to the late fifth century. Firstly, the central role given to the democratic judicial system in the administration of the democracy and the Athenian empire was a relative novelty in the late fifth century. Secondly it was perceived that those with access to rhetorical resources could utilise rhetoric to manipulate justice in the jury courts. Thirdly, it is possible to identify a debate on the democratic judicial system both on-stage and beyond the theatre. Fourthly, in the period 415-403, the jury courts were utilised by parties on both sides of the ideological divide to destroy their opponents. These concerns about judicial activity finally overflowed into specific programmes of judicial reform in the last decade of the fifth century. These four factors fuelled and intensified concerns about judicial activity in the age of Aristophanes.
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Introduction

This research grew out of a straightforward question that occurred to me when I started to read Aristophanes’ plays about seven years ago: why was the Athenian judicial system subject to the repeated attentions of the comic poet? Within our own culture, there are at least three reasons why judicial activity is the subject of dramatic interest. Firstly, the court room contest which lies at the heart of an adversarial judicial system is a dramatic event in itself and so has given rise to any number of ‘courtroom dramas’. Secondly judicial activity provides a backdrop for observations on and interaction of the participants in the judicial process, be they lawyers, judges, witnesses, defendants or jurors, essentially a ‘soap opera’ with a judicial flavour. Thirdly the spotlight may be focused on the judicial system itself, as the effectiveness or flaws of the contemporary system are examined through the dramatic medium. But I can think of hardly any instances where judicial activity is the sustained focus of a comic medium, outside the spate of the jokes hostile to lawyers that circulated during the 1980s. On the other hand, even the most cursory reading of Aristophanes’ extant plays reveals a repeated focus on the Athenian judicial system. Not only is an entire play, the Wasps, devoted to the judicial system, but judicial activity features in practically every other surviving play. This judicial interest may be seen in one-line, throw-away comments and satirical jibes at contemporary individuals, but it may also form the central theme of a play, driving its dramatic momentum. Consequently, the chapters

1 Films such as Oliver Stone’s JFK (1991) or Rob Reiner’s A Few Good Men (1992) possess riveting court room scenes. In the former Kevin Costner, as the attorney Jim Garrison, not only demolishes the findings of the Warren Commission, but makes an impassioned plea for democracy and open government in the face of the tyrannical machinations of the security services. In the latter, Tom Cruise, as a young military attorney, puts Jack Nicholson’s older, more senior Army Officer onto the witness stand and succeeds in tricking Nicholson into giving evidence against himself in the actual court room.

2 The television series Murder One and LA Law are not only heavily dependent on court room drama, but focus on the lives of their legal protagonists. Many of John Grisham’s novels, several of which have been transferred to the big screen, have a similar focus in relation to judicial activity.

3 For example David Hare’s play, Murmuring Judges, first performed at the National Theatre in 1991, examines the state of the British judiciary, police and prison service. Jim Sheridan’s film In the Name of the Father (1993) portrayed the prosecution, conviction and release of ‘the Guildford Four’.

4 These jokes focused on the rapaciousness of lawyers and originated in the United States, where litigation is more prevalent. Perhaps the only example of comic drama with a legal theme that I can think of is the television series Rumpole of the Bailey, which is essentially a comedy of manners in a judicial setting.

5 For further details, see Chapter 3.
that follow were born out of an attempt to comprehend the straightforward observation that Aristophanic audiences were apparently entertained by a comic treatment of their judicial system. Secondly this research arose from a desire to respond to interpretations of Aristophanes that construct an impenetrable obfuscation between the on-stage and off-stage worlds. There is a marked tendency within modern literary criticism to downplay both authorial intention to communicate ideas through a text and the ability of the reader or audience to comprehend those ideas. Alan Sommerstein has made the following shrewd observation:

> Now Aristophanes may have sat down to write his comedies with an empty head, or with one filled only with mutually de(con)structive ideas; but it is not an extravagant assumption that he probably had some strongly felt convictions about matters of importance to himself and his fellow-citizens, and that had those convictions been different, some things about his plays would have been different as well.

A central contention of this thesis will be to suggest that, although Aristophanes rarely promotes a particular viewpoint in a sustained fashion throughout a play, his repeated focusing on issues, for example judicial activity, is a reflection of his audience’s concerns and preoccupations. In making such a statement, I am fully aware how difficult it is to develop connections between on-stage images and the audience’s attitudes, and that these connections are by their nature provisional. Although it may be impossible to arrive at any absolute reconstruction of an audience’s engagement with an Aristophanic play, this does not mean that it is impossible to recover something of the significance of a particular topic being presented in a particular way within the particular medium of the comic stage.

If the genesis of this research lay in a curiosity with the comic appeal of judicial activity and a frustration with some trends in Aristophanic interpretation, then its final shape and form is summarised in its title. Below, I have divided the title ‘Popular Attitudes to Judicial Activity in the Age of Aristophanes’ into three sections, and examined the ideas contained within each section.

**Popular Attitudes:** My aim has been to work towards understanding the attitudes which Athenians held, or thought they ought to hold, in relation to judicial activity. It is harder

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6 If the prizes awarded give us some indication of the audience’s engagement with the comedy and its subject matter, then it would appear that Aristophanes certainly touched on something with the *Wasps*. The play came either first or second, depending on which reading of the Hypothesis is followed (see MacDowell (1971a) 20).

7 See pp.30-1 below for further details.

8 Sommerstein (1994a) 189. This is a review of Bowie (1993), within which Sommerstein makes some shrewd observations on contemporary literary theory.

9 See Chapter 2 for the interpretative keys which have been developed for reading from on-stage image to off-stage attitude, which are then used in Chapters 3, 5 and 6.

10 I have found Carson (1996) 93-131 very helpful in thinking about absolute, relative and provisional truth.
to ascertain the extent to which these attitudes then influenced actions. In the concluding chapter, I will suggest that the popular attitude of judicial reticence had some bearing on the strategies adopted by two disputing parties. But I will also emphasise that the nature of our evidence prevents us from reaching any concrete or quantitative conclusions about the extent of this influence.\textsuperscript{11} As I am focusing on popular attitudes rather than popular actions, I will occasionally resort to a sleight of hand and argue that although we may not know of specific incidents where attitudes are expressed in actions, we still possess sufficient evidence to suggest that a certain attitude was widely held.\textsuperscript{12} In drawing upon the plays of Aristophanes and the speeches of the Attic Orators to construct attitudes to judicial activity, I am assuming that to some extent these attitudes were popular: i.e. were the normative assumptions held by a significant proportion of the Athenian citizen population. Although both the plays and the speeches were produced either for or by members of the elite, both were performed before a mass audience, and so to some extent must reflect popular attitudes.\textsuperscript{13} It is certainly the case that both sources are embedded in and have been moulded by a set of preconceptions which are specific to either the theatre or the jury court. In the methodologies I have adopted when interpreting these sources, I have attempted to take into account these preconceptions.\textsuperscript{14} In working with at least two bodies of source material, it is also possible to use the attitudes to judicial activity in the Attic Orators as a control over those gleaned from the fantastical world of Aristophanes and vice-versa.\textsuperscript{15} In the concluding chapter, I will advance a hypothesis to explain why the popular attitudes uncovered in the previous chapters characterised the Athenian approach to judicial activity. Given that our sources advance few reasons for the attitudes to judicial activity which they project, I have found it illuminating to consider attitudes to dispute in societies from different cultures and periods, in an attempt to

\textsuperscript{11} This is particularly the case with family disputes, where we have sufficient evidence to demonstrate both that family disputes were disapproved of and that they took place in practice. We do not possess sufficient evidence to demonstrate whether the latter were the exception or the rule (see p.169). See Dover (1974) 4 on the relationship between attitudes and actions.

\textsuperscript{12} For example in Chapter 5.3-5.4 I argue that although we do not know of specific incident where rhetorical ability distorted a judicial outcome, we do possess sufficient evidence to suggest that it was widely perceived that this could happen.

\textsuperscript{13} In this area, I am very much following in the footsteps of Kenneth Dover, in his study of Greek popular morality (Dover (1974), see particularly his opening section, \textit{ibid.}1-45, in which he defines 'popular morality' and discusses oratory, tragedy and comedy as sources for popular morality). There are a number of points in the following chapters where I have drawn heavily on his insights. A similar approach is adopted by Ober and Hunter in their studies of Athenian socio-political attitudes, see Ober (1989) 43-9 and Hunter (1994) 5-6.

\textsuperscript{14} See Chapters 2 and 4.3.

\textsuperscript{15} Perhaps the fundamental methodological principle advanced in Chapter 2 is that images from the on-stage world must be compared with evidence from beyond the theatre, which is then applied in Chapters 3 to 6.
understand why the attitudes uncovered characterise the Athenian engagement with their judicial system.\(^{16}\)

**To Judicial Activity:** I decided to focus primarily upon judicial activity in this research, rather than popular attitudes to Athenian Law in the wider sense, including legislative activity. This division between law as *nomos* and law as judicial activity is certainly artificial and at times difficult to sustain.\(^{17}\) On the other hand, this decision is based upon a number of reasons. Firstly, Athenian popular attitudes to *nomos* is a substantial and complex topic and is almost certainly worth an entire research project in itself.\(^{18}\) Secondly, such a research project has to some extent already been addressed in recent scholarship, most notably by Martin Ostwald, while attitudes to judicial activity have received less attention.\(^{19}\) Thirdly and most significantly, I believe this focus on judicial activity rather than on *nomos* is justified by the plays of Aristophanes themselves: it is judicial rather than legislative activity which is the recurrent preoccupation of the Aristophanic world.\(^{20}\) On these grounds, I decided to focus primarily on attitudes to judicial activity, while acknowledging the limitations inherent within this decision.

**In the Age of Aristophanes:** I have taken the age of Aristophanes as approximating to the period from 445 to 370.\(^{21}\) There has been a recent tendency in studies of the

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\(^{17}\) The clearest instance of this comes in Chapter 7.3, a discussion of the democratic legal reforms at the end of the fifth century. It is clear that these reforms contained both legislative and judicial elements, but I have focused primarily on the judicial, although an account of ‘the Codification of the Laws’ has been attached as Appendix 2.

\(^{18}\) I began this research by looking at popular attitudes to both judicial and legislative activity. Consequently I carried out a detailed study of ‘the Codification of the Laws’, the results of which have been incorporated in summary form in Chapter 7.3 and Appendix 2. But it became apparent that there would be neither the time nor the space adequately to examine attitudes to both judicial activity and *nomos* within the same thesis, hence I took the decision to focus solely on judicial activity.

\(^{19}\) For attitudes to *nomos* in the fifth century, see Ostwald (1986). There is very little recent scholarship on attitudes to judicial activity in Aristophanes, Todd (1993) 147-54 makes some interesting points. On attitudes to judicial activity in the orators, see the studies referred to in Chapter 4.2.

\(^{20}\) Within the Aristophanic world, the most significant discussions in relation to the fifth century concerns about *nomos* occur in the *Clouds* (see p.94). Interestingly the Old Women in the *Ecclesiastae* show a complete disregard for the new terminology defining *nomos* and *psephisma* introduced in 403/2 when they describe the legislation passed in the Assembly that inaugurated Praxagora’s new world order (*a nomos:* Eccl.944, 1041, 1049, 1077; *a psephisma:* 705-6; compare with Andoc.1.87 and p.162n.63). Otherwise there is little significant discussion of *nomos* in Aristophanes’ plays. Using the quantitative analysis introduced in Chapter 2 and described in detail in Appendix 1, 3% of off-stage, named individuals are satirised for their association with legislative activity, whereas 9% are satirised for their association with judicial activity.

\(^{21}\) Our first extant play by Aristophanes, the *Acharnians*, was produced in 425, while the last, the *Plutes*, was produced in 388 (see Dover (1972) 12-14 for a chronology of Aristophanes’ plays. No further references will be made to support the date of plays from this point on, unless the date is controversial). The period 445-370 for the age of Aristophanes has been arrived at by taking the period 425-388 and expanding it approximately twenty years on either side to incorporate the start of the generation which watched the *Acharnians* and end of the generation which watched the *Plutes*. The period 445-370 has implications for the inclusion or exclusion of other sources. This period enables the ‘Old Oligarch’ to be included, whether one accepts an early or late date of composition (see p.59n.4). The ‘Old Oligarch is a key source in Chapters 2, 4.1, and 6. With regard to the Attic Orators, I have focused primarily upon
Athenian democracy to focus on the fourth century in general and in the second half of the fourth century in particular, because of the wealth of evidence in this period. On the other hand, by using the plays of Aristophanes, I hope to push our understanding of attitudes to judicial activity back into the second half of the fifth century. In my opinion, this is an important step, because an understanding of attitudes to judicial activity in this period provides a context for the programmes of judicial reform which were initiated by both oligarchs and democrats in the last decade of the fifth century. Indeed I think it is only possible to comprehend these judicial reforms in the light of the concerns about judicial activity and the debate on the judicial institutions from the preceding decades. An analysis of the attitudes to judicial activity at the start of the fourth century will enable us to gauge the effectiveness of these reforms in addressing these fifth-century concerns.

Therefore the chapters that follow will endeavour to explore the widely held, popular attitudes to judicial activity among the Athenian citizen population and suggest reasons behind these attitudes in the age of Aristophanes (445-370). The direction of the argument within these chapters can be briefly summarised as follows. The opening chapter draws on evidence from a wide range of sources to demonstrate the importance of judicial activity in the construction of Athenian civic ideology. Chapter 2 examines the contradictory nature of Aristophanic comedy, its representation of the city to itself and its festival licence, and suggests a methodology of interpreting Aristophanes' plays which accommodates both aspects of Aristophanic comedy. Chapters 3 and 4 examine attitudes to judicial activity firstly in selected plays of Aristophanes and secondly in selected jury court speeches from the Attic Orators. Taking these two chapters together, it is suggested that popular attitudes to judicial activity in the Age of Aristophanes can be characterised as distinctly ambivalent. Within the Aristophanic world judicial activity is to be escaped from and yet is inescapable; within the jury court it is to be shunned and yet is practised. Chapters 4 through to 7 examine four factors, specific to the late fifth century, which intensified these concerns about judicial activity. Firstly,

Antiphon, Andocides, Lysias, Isocrates and Isaeus, but not the orators from the second half of the fourth century.

22 For example, see Ober (1989), whose second premise upon which his study is grounded is: 'a synchronic approach can be valid when attempting a social historical analysis; and the period ca.403-322 B.C. can be treated as a chronological unit for the purposes of analyzing mass-elite relations' (ibid.36). The greater part of Hansen (1991) is a 'synchronic description of democracy in the age of Demosthenes' (ibid.22). As both scholars state, they limit their focus to the fourth century because of the wealth of evidence from that period, particularly the speeches of the Attic Orators (Ober (1989) 42-9, Hansen (1991) 19-26). In his study of Greek popular morality, Dover (1974) interestingly sets his chronological parameters between 'the birth of Plato in 428/7 and the death of Aristotle in 322' (ibid.2). Dover, as well as utilising the Attic Orators, draws upon Old Comedy to a greater extent than the previous two scholars, seeing a close correlation between the attitudes expressed in both sources (ibid.23-33).

23 See Chapter 7.2-7.3 for an analysis of the judicial reforms at the end of the fifth century and Chapter 7.4 for their effectiveness.
the central role of the jury courts in the democracy was a relatively novel development in the late fifth century (Chapter 4.1). Secondly, the provision of rhetorical education generated popular anxieties that the elite were able to deploy rhetorical resources in the jury court to evade justice (Chapter 5). Thirdly, in response to these contradictions and tensions, both justifications and criticisms collected around the democratic judicial institutions. (Chapter 6). Fourthly, in the period from 415 to 403, the judicial system was extensively used by parties on both side of the ideological divide to eliminate opponents in a series of trials noted for their emotive nature and illegal procedure (Chapter 7.1). These concerns about judicial activity produced concrete programmes of judicial reform launched by both oligarchs and democrats in the last decade of the fifth century (Chapter 7.2-7.3). Although the programmes of judicial reform attempted to address these concerns, it would appear that these concerns continue in the first two decades of the fourth century (Chapter 7.4). Chapter 8 draws together the findings of the above chapters, advances a hypothesis to explain why popular attitudes to judicial activity are characterised by ambivalence and considers the impact of these findings on our understanding of the Athenian dispute-process.

It remains for me to add a few introductory comments of a more standard nature. All translations are my own, unless otherwise stated; in them I have preferred on literal accuracy to elegance. All dates, unless otherwise stated are Before Christ. In the footnotes I have attempted to refer to relevant material published up to the end of 1996.

24 I am grateful to John North and Jason Davies for assistance with translating passages. The Bibliography gives details of the editions of Greek texts which I have used in the thesis.
Judicial Activity and Civic Ideology

At the endpoint of his schematic analysis of the development of Athenian democracy, the writer of the *Athenaion Politeia* summarised the democratic constitution of the late fourth century as follows: 'for the *demos* has made itself master of everything, and controls all things by decrees and by the jury courts, in which the *demos* is the sovereign.'¹ This centrality of the jury courts in the democratic constitution has been extensively analysed by Hansen.² I would like to approach the position of the jury courts in Athens from an alternative perspective, focusing less on their constitutional position and more on the role of judicial activity in the world of the Athenian citizen. In this respect, I have been influenced by a recent collection of studies on Athenian citizenship.³ Manville, one of the contributors, describes a 'paradigm shift' in approaches to Athenian citizenship.⁴ In contrast to a constitutional and legally defined view of citizenship, he proposes a new paradigm:

This paradigm is a habit of thought that sees Athenian citizenship spanning both politics and society; it is grounded in a world in which the private sphere is often difficult to distinguish from and frequently overlaps with, the public. ....there is no abstract “state”; citizenship and *polis* are one and the same, growing out of a dynamic and constantly evolving association of families and kinship groups. Although the "true citizens" are adult Athenian males, their political life is constantly shadowed by their networks of social relations.⁵ Manville goes on to note that the 'new paradigm is less rational, as well as looser for its greater tolerance of inconsistency.'⁶ This looseness is certainly true of what follows below. It has necessitated citing side by side sources as disparate as archaeological finds, comic humour and the spatial location of the jury courts. The result could be

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¹ ἡ πάντων γὰρ αὐτὸς αὐτὸν πεποίηκεν ὁ δῆμος κύριον, καὶ πάντα διοικεῖται ὑποίκισει καὶ δικαστηρίον, ἐν οἷς ὁ δῆμος ἐστὶν ὁ κρατῶν (Ath.Pol.41.2). This conclusion is supported by details on the development of the jury courts in the historical section (Ath.Pol.9.1, 25.2 with Rhodes (1981) 159-62, 313-19) and the operation of the courts in the second half of the fourth century (Ath.Pol.63-9).
³ Boegehold and Scafuro (1994).
⁴ Manville (1994). I have also found the articles by Scafiuo (1994) and Connor (1994) helpful.
⁵ Manville (1994) 24-5.
likened to a series of 'snapshots' of Athenian judicial experience, taken from different
perspectives. I hope the cumulative effect demonstrates the importance of judicial
activity in the construction of civic ideology. I will begin with the extent of citizen
participation in judicial activity, and then move on to examine the expression of this
participation in the democracy, mass entertainment and citizen identity.

Perhaps the most distinctive feature of the democratic judicial system was its
dependence on mass, citizen involvement. The system required six thousand Athenian
citizens each year to register as jurors and to swear the dikastic oath. Jurors were
allocated to juries, which ranged in size from 200 to possibly 6,000. The jurors
possessed immense powers: combining the modern functions of both judge and juror,
they reached a verdict and, where appropriate, passed sentence. There was no appeal
against the jurors' decision. The democratic judicial system was also dependent on
private individuals to prosecute malefactors, relying on either the wronged individual or
a third party to volunteer. As individuals were required to conduct their own litigation,
Athens was practically devoid of legal professionals. Other individuals were drawn
into the conflict between the two protagonists, adopting the supporting roles of
sunegoroi or witnesses. The hallmarks of the democratic judicial system, mass
participation, voluntary prosecution and non-professionalization, necessitated its
citizens to be involved in judicial activity, if the system was to operate at all. The
requirement for 6,000 citizens to serve as jurors necessitated 15% of the citizen
population to be sworn in as jurors each year. This voluntary and non-professional
nature of the democratic judicial system is reflected in the identity and values attributed
to jurors by litigants. Orators did not distinguish between the jurors in the jury court and
the citizens in the Assembly, they considered the former a representative selection of
the later. Todd has analysed the values with which orators appeal to jurors,
concluding that they were 'middle class values...a matter of consensus throughout
Athenian citizen society.' Even though the jury may have contained disparities of class, age
and wealth, orators were able to appeal to unified value system, that of the Athenian
citizen. In other words, a trial before a mass, citizen jury was truly a trial before a

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7 See Todd (1993) 82-91 on Athenian juries.
8 On the role of ho boulomenos to prosecute, see p.128-9, 141.
9 Logographers are perhaps the only group who could be regarded as legal professionals. On logography,
11 See Crichton (1991-3) 64 for these calculations. Harris (1994) 135, using figures for the fourth
century, calculates that each juror heard approximately 20 cases per year of jury service and served once
every five years.
13 Todd (1990a) 165.
representative selection of the Athenian citizenry, articulated within the framework of Athenian citizen values. In conclusion, most Athenian citizens will have been involved in judicial activity at some point in their lives, either seated upon the jury benches, making a stand on the bema, or supporting one of the protagonists in a trial. Judicial activity penetrated 'normal life' and vice versa to a greater extent in Athenian society than we are accustomed to allow in western democracies raised on the doctrine of the separation of powers. The prominence of judicial activity in Athenian society is expressed in the resources and energy devoted by the democracy to judicial activity, in the extent of legal knowledge displayed by mass entertainment and in the role of law in the construction of Athenian citizen identity.

Firstly, the democracy's commitment to its judicial system can be seen in the spatial centrality of the jury courts, in the institution of jury pay and the increasing sophistication of the jury selection process. Although the exact location of the jury courts in Athens is debated, it is almost certain that judicial activity centred around the Agora. Euboulus includes judicial 'wares' such as summonses, witnesses, dikai, kleroteria, klepsudrai, nomoi and graphai in his list of merchandise that can be purchased in the Agora, an impression which is confirmed by the concentration of archaeological finds associated with judicial activity found within the Agora. Buildings in the north-west and south-west corner of the Agora have been provisionally identified as jury courts (see Figure 1). The jury courts also convened in other buildings outside the Agora, for instance in the Odeon of Pericles or in locations scattered across the city for homicide cases. In the Acharnians, a defining feature of Dicaeopolis' fantasy agora is the absence of judicial activity, personified in Ctesias' sycophancy and Hyperbolus' infectious lawsuits. When setting up his agora of self-aggrandisement and self-fulfilment, Dicaeopolis banishes all sources of judicial activity apart from his own violent whim. In other words, Dicaeopolis' agora is an inversion

15 See Todd and Millett (1990), Carey (1994b), Foxhall and Lewis (1996b) on the position of law in Athenian society and more generally Roberts (1979) 17-29 especially 22-3.
19 See Ar.Ach.839-41, 845-7. The striking verb αὐγνωμονεται is used to describe the infectious nature of Hyperbolus' judicial activity, also used by Aristophanes to describe the moral infection that comes either from allowing one's reputation to be besmirched (Nub.990-5) or from the unnatural lusts of Antimachus (Nub.1022-3); and by Thucydides to describe the physical infection that came from nursing those stricken by the plague (Thuc.2.51.4, see Starkie (1909) 174). This infectious image of judicial activity underpins its banishment from Dicaeopolis' fantasy agora.
20 Dicaeopolis sets up his market within a pseudo-legal framework. He appoints leather straps as market commissioners to protect his market (Ar.Ach.723-4), marks out the market's boundary (719), sets up a stele in the market inscribed with the terms of his treaty (725-8) and establishes a market-tax (896). In reality, it is Dicaeopolis' arbitrary authority, rather than these legal mechanisms, which enforces the
of the Athenian Agora, within which judicial activity is the norm. The democracy placed the jury courts at the heart of the city, within the Agora, an area marked off by boundary posts for political and commercial activity. This spatial centrality must be a reflection of the importance of the jury courts in Athenian life. In the late 450s Pericles introduced pay for jury service, Cleon raised the rate from 2 to 3 obols and, apart from the oligarchic revolutions, jury pay was maintained throughout the classical democracy. This commitment to jury pay is again testimony to the significance of judicial activity in Athenian society. Finally, the process of allocating jurors to courts was refined over a hundred year period, ultimately producing an immensely sophisticated system which randomly allocated individual jurors to the courts each day. In the fifth century it appears jurors were selected to sit on the same jury of a particular court for the whole year. By 392, from the evidence in Aristophanes’ Ecclesiazusae, it appears panels of jurors were allocated randomly to a court each day. In the late fourth century the democracy had refined the system still further, devising an allotment machine (kleroterion) which randomly allocated individual jurors to the jury of a particular court each day. This system necessitated each juror being issued an allotment token (pinakion) at the beginning of his year’s jury service, inscribed with his name, demotic and a collection of symbols (Figure 2). This incredibly elaborate and sophisticated system was the endpoint of over a century’s adjustment and refining of the procedure to allocate jurors. It is testimony to the significance Athenians attached to judicial activity, the kleroterion was the ultimate answer to jury-nobbling, producing a randomly empanelled jury for each sitting. These three areas, the spatial centrality of the courts, the continuance of jury pay, and the honing of the juror allocation system are all testimony to the energy and resources devoted by the democracy to judicial activity.

Secondly, legal knowledge appears to have been a mass phenomenon. The humour of some Aristophanic jokes and even whole scenes are dependent on the audience possessing a working knowledge of judicial procedure. In the Acharnians, regulations of the market. He orders the convenient conversion of the Theban’s copaic eels into the market tax that the Theban owes (895-6) and protects his market from invaders by threatening one informer (827-8) and beating up the other with impunity, packing him up as merchandise in exchange for the Theban’s gastronomic wares (904-5, 926-8).

22 Ath.Pol.27.3-5, Ar.Eq.51 with Todd (1993) 88 and Chapter 7.2.
23 Harrison (1968-71) 2.239-41, Todd (1993) 84.
25 The kleroterion system is described by Ath.Pol.63.5. For a reconstruction from the archaeological remains, see Dow (1939). It is usually presumed these changes were introduced to prevent the bribing of jurors, on which see Isoc. 18.11, Lys.29.12-13, Ath.Pol.27.5 and on bribery in general, see Harvey (1985), particularly ibid.88-9 on jurors.
26 Cartledge (1990a) 40. Harris (1994) 133-7 argues for a high degree of legal knowledge among the Athenian citizenry on the basis of regular jury service and the legal knowledge presumed by the Attic Orators.
foreign traders to Dicaeopolis’ fantasy agora are plagued by two sycophants, who threaten the traders and their wares with phasis, a type of denunciation by which the prosecutor obtained half the value of the confiscated goods if he won the case. Aristophanes’ choice of the procedure phasis not only allows him to make a series of linguistic puns around phasis and it cognates, but also exposes the sycophants’ accusations as self-serving and venal, provided his audience are familiar with the content of the procedure for phasis. In the Ecclesiazusae, the Young Man attempts to resist the amorous advances of the First Old Woman by introducing a series of legal impediments. She is able to cap each of his legal objections with a legal rebuttal, with the humour of the exchange dependent on his audience possessing sufficient legal knowledge to appreciate the quick-fire legal exchange. The following chapters will examine in more detail the location of judicial activity within the Aristophanic world. Tragedy displays a similar familiarity with the jury court, both in its use of legal terminology and in the adversarial nature of the tragic agon. Given that 15% of the citizen population over thirty served as jurors each year, it is hardly surprising to find such a wide diffusion of legal knowledge.

Not only did the democracy devote resources to, and mass audiences show an awareness of, judicial activity, but judicial activity had an important role in the construction of Athenian citizen identity. Individual citizens not only sat on juries, but were actively involved in the case before them: the clinical detachment of the modern courtroom was less characteristic of Athens. In the course of their speeches, litigants refer to thorubos, to interjections from the jurors. A litigant may urge the jurors to challenge the opposing speaker or to share information among themselves or even to ask their opinion on how he ought to proceed with his speech. For example, at several points in his defence, Andocides asks the jurors to confirm with one another the veracity of his account, or to indicate to him if they are satisfied with his account of the

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29 Ar.Eccl.1006-26. For instance the Young Lover claims a demesman will come and bail him out (1023-4), but the Old Woman shrewdly replies that men no longer possess legal capacity in contracts over 1 medimnos (1024-5). In the inverted fantasy of Praxagora’s new state, women now possess the legal and political status of men and vice versa, hence the restrictions in male legal capacity (see Ussher (1973) 217). The humour of the exchange requires the audience to possess a working knowledge of women’s legal capacity (on which see Just (1989) 26-39). The Young Lover then claims he is a merchant in order to escape the Old Woman’s attentions (1027). Again the humour of this line works only if the audience know that merchants were answerable only before the nautodikai (see Lys. 17.5-6 and Harrison (1968-71) 2.23-5). In other words, the Young Lover is claiming the Old Woman’s case is invalid because she has not brought him before the nautodikai (see Ussher (1973) 218).
Judicial Activity and Civic Ideology

Profanation of the Mysteries. Spectators gathered beyond the court railings to watch the proceedings and it was not unheard of for them to add their voices to the dikastic thorobos. It is hard to imagine that a case with such notorious opponents and subject matter as Callias contra Andocides on the sacrileges of 415 would not have drawn a large, participating crowd beyond the railings. This sense of an Athenian’s active involvement with the judicial system is also apparent in the practice of burying a deceased juror with his pinakion. Kroll has described this practice as follows:

Like a child’s knuckle bones or a doll, a young man’s strigil, a lady’s mirror, and other common furnishings in Greek burials, pinakia were valued possessions and - what is perhaps of greater importance - symbolic of their owner’s way of life. Even today it is hard to think of a more appropriate symbol of an Athenian’s nearly professional involvement in democratic government.

This conclusion is supported by two pieces of evidence. Firstly, burying the pinakion with its deceased owner was against the practice of issuing pinakia: pinakia were reinscribed and reissued to the following year’s jurors. Secondly, the burial of the deceased with grave goods is uncommon in this period. The evidence suggests that the burial of a citizen with his token of jury service was a significant and conscious act, testimony to the importance of jury service in the life of the Athenian citizen.

Moving from the individual to the corporate, judicial activity has an important role in the construction of Athenian communal identity. This can be seen in the way that myths about the heroic past are reshaped by contemporary judicial practice to express Athenian civic ideology. We possess some eleven vases depicting the contest

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32 Confirmation to each other: Andoc.1.46, communication to Andocides: §33. On Andocides’ defence, see p.198n.18.
33 See Ant.6.14, Dem.20.165 with Bers (1985) 8.
34 See p.198n.18 on the continuing fascination with the sacrileges of 415; p.197n.16 on Callias’ status; and on Andocides, see MacDowell (1962) 1-6 and APF 27-32. On the jury courts as ‘soap-opera’, see Humphreys (1983b) 7, Cartledge (1990b) 41.
35 See Kroll (1972) 9: ‘With only five or six exceptions, complete pinakia with known circumstances of discovery have been recovered from the graves of their last owners.’
36 Kroll (1972) 9.
37 Kroll (1972) 72-75. The system of issuing bronze pinakia to jurors was introduced in perhaps 378/7 and lasted until wood replaced bronze as the material of manufacture in about 350, after which our record of jurors’ pinakia obviously ceases (see Kroll (1972) 89-90). Kroll (1972) 2-5, 51-6 also describes how non-dikastic bronze pinakia, marked with a gorgoneion seal, were issued to all citizens over 30 and used to allocate citizens to other magistracies.
38 On Athenian burial practices, see Kurtz and Boardman (1971) 91-141 generally and ibid.100-5 on grave offerings; Morris (1992) 103-55, (1994). Morris (1992) 139 has a useful graph showing that the mean for fourth-century grave goods was less than one for metal objects and between two and three for pottery. He describes how this restraint in grave goods decreased during the fourth century, initiated by the elite and gradually imitated by other sections of society (Morris (1992) 145-9). Unfortunately of the hundreds of known pinakia, only two pinakia have been excavated with enough care to recover the other grave goods. In both cases, the owners of the pinakia were buried with a single piece of pottery, in line with Morris’ figures. See Kroll (1972) catalogue nos. 113 and 119.
39 On the remoulding of myth in the light of contemporary concerns by vase painters, see Shapiro (1994); by tragedians, see Euben (1986), Raaflaub (1990) 49-54.
for the arms of Achilles between Odysseus and Ajax, dated to the early fifth century.\textsuperscript{40} According to the epic narratives, the arms were awarded to Odysseus either on the advice of Trojan captives or according to the opinions of women within Troy, whose conversation was overheard by Greek spies.\textsuperscript{41} On the other hand, the eleven vases depict the dispute between Odysseus and Ajax being settled by a vote among the Greeks. Indeed one cup by Douris appears to contrast violence with voting as methods of dispute settlement (Figure 3). On one side of the cup friends restrain an Ajax intent on attacking Odysseus, who himself is drawing his weapon; while on the other side, violence has given way to voting, with Ajax hanging his head in shame as the verdict goes against him.\textsuperscript{42} These representations of the voting scene are sufficiently varied to suggest the painters were drawing on a common tradition rather than copying a common visual source.\textsuperscript{43} It is probable Aeschylus drew on the same tradition for his \textit{Award of the Arms}, a fragment from which preserves a debate between Odysseus and Ajax.\textsuperscript{44} The epic dispute between Ajax and Odysseus has been remoulded by current concerns: the democratic practice of voting is exemplified as the method of dispute settlement, displacing third-party arbitration or violence. The remoulding of the heroic past in the light of democratic judicial practice is testimony to the importance of judicial activity in the construction of Athenian self-identity.

Moving to the opposite end of the fifth century, a similar trend is detectable in the exchange between Theseus and the Theban Herald in Euripides' \textit{Supplices}, dated to the mid 420s.\textsuperscript{45} In his portrayal of Athens, Theseus not only praises Athenian freedom and sovereignty of her people, but sees this freedom expressed in equality before written law for both rich and poor.\textsuperscript{46} Such freedom is absent under tyranny, where the tyrant, unrestrained by law, destroys noble rivals and rapes women.\textsuperscript{47} There are close parallels between the sentiments expressed by Theseus contrasting democracy and tyranny and those by Otanes in Herodotus' debate on the constitutions. Otanes similarly draws attention to a tyrant's disregard for law, manifested in the rape of women and

\begin{footnotesize}
\textsuperscript{40} Williams (1980) lists eight vases in the period 500-480, Spivey (1994) 41-7 increases the list to eleven and dates them to 490-70.
\textsuperscript{41} See Jebb (1896) xv-xvi, Williams (1980) 142, Spivey (1994) 40.
\textsuperscript{42} Williams (1980) 138-9 for a description, Spivey (1994) 48-51 on the contrast between violence and voting and on the vases as expressions of democratic ideology.
\textsuperscript{43} Williams (1980) 142.
\textsuperscript{44} Aesch. fr.90 (Lloyd-Jones) with Williams (1980) 142-3 and Shapiro (1994) 153-5. See Spivey (1994) 49 for a late sixth-century pelike depicting the debate between Odysseus and Ajax.
\textsuperscript{45} Eur.\textit{Suppl.}399-584. On the dating, see Collard (1975) 1.8-14 with references to previous studies and Zuntz (1955) 89.
\textsuperscript{46} Freedom: Eur.\textit{Suppl.}438-443 (also 352-3); sovereignty of the people: 404-8 (also 352-3); equal access to law: 433-37.
\textsuperscript{47} Eur.\textit{Suppl.}428-32, 444-55.
\end{footnotesize}
destruction of citizens, and praises democratic *isonomia*. Again myth has been moulded by contemporary concerns to give expression to Athenian identity. The suppliant myths were prominent vehicles of Athenian civic ideology, as demonstrated by their reoccurrence in the Funeral Orations. Euripides’ insertion of the exchange between the Herald and Theseus appears to have been a conscious adaptation of the myth: suppliant dramas often placed a violent exchange between a herald and the suppliants first, from which the suppliants were rescued by the entry of a monarch. In this scene, Euripides has projected onto Theseus arguments in support of democratic justice which are informed by the late fifth-century debate on the democratic administration of justice (Chapter 6). But this is no polemical aside, the issues raised in the Herald scene correspond with the broader issues of the play. Euripides, in his adaptation of the suppliant myth, makes democratic justice a defining feature of Athenian self-identity.

In conclusion, it is possible to demonstrate that judicial activity penetrated the experience of Athenian citizens to a significant degree. The democratic judicial system demanded large scale citizen participation and initiative if it was to function. The democracy’s commitment to this system can be seen in the spatial centrality of the courts, the continuance of jury pay and the successive refinements of and resources devoted to the system of jury selection. Audiences of comedy and tragedy were presumed to be familiar with legal terminology and procedure. Both individually and corporately, judicial activity was considered an important constituent of Athenian identity and civic ideology. It is hardly surprising that Strepsiades could exclaim that a map which did not show the Athenian courts in session was no map at all (see opening quotation).

Against the above evidence for the positive role of judicial activity in Athenian life arises a vociferous voice of dissent, that of Aristophanes. From the *Acharnians* in 425 to the *Plutus* in 388, Aristophanes repeatedly focused upon the democratic judicial system (see Chapters 2 and 3). The attitudes to judicial activity which emerge from the Aristophanic world, attitudes which are confirmed by those expressed in the Attic Orators (Chapter 4), are more ambivalent than the positive images that have been presented above. The positive role of judicial activity in the construction of Athenian civic ideology was but one aspect of Athenian judicial experience, with more

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51 This accusation has been made of the play in the past, but has been refuted in a series of more recent studies, see Zuntz (1955) 6-8, Collard (1975) 1.24-31, 2.207-9, Burian (1985a) 139-45.
ambivalent images contradicting and coexisting with this apparent monolithic certainty. Before turning to examine the portrayal of judicial activity in the plays of Aristophanes, I will focus on the Aristophanic world itself. In the following chapter, I will argue that the plays of Aristophanes open a window onto the popular attitudes of the Athenian citizenry on account of their performance medium. This statement can also be challenged precisely on account of the performance medium which created the Aristophanic world. Therefore I will consider the wider question of interpreting Aristophanes (Chapter 2) before moving on to examine the attitudes to judicial activity within the plays (Chapter 3).
There are many things we do not know (Ar. Pax 618).

When Dionysus, the tyrant of Syracuse, wrote to Plato, asking for his assistance with studying the Athenian constitution, Plato sent him the complete works of Aristophanes. The anecdote is probably apocryphal, but Plato’s confidence in Aristophanes as the ambassador of Athenian identity is something many of us would like to share. In his plays, Aristophanes focuses on key, contemporary issues: the desire for peace amid unremitting war, the moral impact of the sophistic movement, the role of tragedy in society and the functioning of the democracy. Unfortunately interpreting Aristophanes’ analysis of these issues has proved to be more problematic than picking up the plays, as Plato suggested. The problem lies in the contradictory nature of Aristophanic comedy. On the one hand comedy deals with contemporary issues before the assembled citizens. On the other hand, comedy exhibits a pronounced disregard for social, political and physical realities, expressing sentiments which would be unthinkable beyond the theatre. I would like to examine the contradictory nature of Aristophanic comedy in more detail, before going on to see how scholars have approached Aristophanes and finally offer my own approach to interpreting Aristophanes.

The evidence for the festival context into which Aristophanes’ plays were enacted suggests that the dramatic festivals were an important vehicle for the city’s construction of itself. Within the dramatic festivals, the assembled citizens observed and interacted with constructions of current concerns. Firstly, the plays were mass events, performed before a sizeable proportion of the citizen population. The fifth-century Theatre of Dionysus held approximately 15,000 spectators. Therefore approximately a third of the adult, male, citizen population attended the City Dionysia.

1 Aristophanes, Life 42-45 K-A.
3 DFA 263 gives 14-17,000 as the capacity of the reconstructed Lycurgan theatre. One presumes the fifth-century theatre would have had a smaller capacity, Taplin (1978) 10 gives the figure of 15,000 spectators for this period.
4 This is calculated taking the total citizen population in 431 as 40,000, according to Patterson (1981) 66-8 (see Sinclair (1988) 223-4 for full bibliography on estimates for the population of Athens). Some allowance must be made for the presence of non-Athenians and possibly women and children. Non-Athenians were allowed to attend performances at the City Dionysia, but not at the Lenaia (Ar. Ach. 504-8). On the vexed question as to whether women and children could attend dramatic performances, see for: DFA 263-5, Podlecki (1990), Henderson (1991b), Rehm (1992) 16; against: Goldhill (1994).
Secondly, in his analysis of the rituals which preceded the dramatic performances, Goldhill has drawn attention to the civic ideology which is expressed through these rituals:

The four moments of ceremony preceding the dramatic festival were deeply involved with the city’s sense of itself. The libations of the ten generals, the display of tribute, the announcement of the city’s benefactors, the parade of state-educated boys, now men, in full military uniform, all stressed the power of the polis, the duties of an individual to the polis. The festival of the Great Dionysia is in the full sense of the expression a civic occasion, a city festival.\(^5\)

The content of these rituals strongly suggests that the dramatic festivals projected representations of the democratic city before its mass audience.

This impression is confirmed, thirdly, by the competitive ethos of the dramatic festivals. A single comedy was never performed in isolation, for aesthetic appreciation, but competed against the entries of two other comic playwrights for the comic prize.\(^6\)

Driven by the engine of comic competition, the poet’s choice and treatment of his subject matter must have been moulded by the interests of the mass, citizen audience. To be allowed to present a play at the festivals, the playwright submitted his entry to the scrutiny of the Eponymous Archon. Presumably this magistrate’s selection was governed by a play’s potential to amuse the audience with its originality and topicality, as well as other factors, such as the playwright’s reputation.\(^7\) Similarly, the judges’ choice of the victor will have been influenced by the popular response to each play. Athenian audiences were not slow in making their opinions known, and the ten judges, by being selected by lot from each of the Cleisthenic tribes, judged as representatives of the entire demos.\(^8\) As a result of this competitive context, comedy is littered with metatheatrical references, slandering the opposition and petitioning the judges for a favourable verdict.\(^9\)

The playwrights were not the only people to have a vested interest in the success of their comedies. Choregoi, didaskaloi (if appointed), actors, chorus and aulos players were almost certainly caught up with the playwright in the fierce competition to win; particularly actors, when a prize was introduced for acting from 449 onwards.\(^10\) Given the almost certain oral instruction of the play’s lines by the playwright to the ‘company’, they would have had a chance to make suggestions and improvements so as to give the finished dramatic product its cutting edge before the

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\(^5\) Goldhill (1990) 114.

\(^6\) DFA 82-3. Before the Peloponnesian War, five playwrights competed for the comic prize, see DFA 83.

\(^7\) PL.Laws 7.817d indicates that each competing playwright read a section of his play to the archon. See DFA 84 on the selection of playwrights.

\(^8\) On audience behaviour in general, see DFA 272-8; in relation to judging, see DFA 97-8. On the judging of the dramatic competitions, see DFA 95-9, Pope (1986).


\(^10\) On choregoi, see DFA 86-90; on didaskaloi, see DFA 84-6; on selection and competition for actors, see DFA 93-5.
audience and judges. Demosthenes' potential prosecution of Meidias on account of the later's disruption of the dithyrambic chorus which Demosthenes funded, demonstrates the intensity of emotions and actions generated by dramatic productions. A victory brought the great honour of being crowned before the assembled demos and opened up possibilities for a tour with the successful play to the rural festivals. Aristophanes was performing his plays within a vital, competitive theatrical tradition, striving with his 'company' to win. Consequently each entry, to some extent, must have reflected the current concerns of the audience. It would be impossible for a poet who failed to engage with his audience's concerns to survive in such a competitive atmosphere.

The public, interactive nature of Athenian drama can also be seen fourthly, in its didactic aspect, evidenced both in the performance conventions of the Athenian theatre and in the explicit educational claims made in the plays. In his analysis of performance conventions - acting area, entrances, masking - Rehm notes that the ancient theatre was constantly thrusting the audience into direct participation and interaction with the performers, unlike the more restrained, passive relationship encouraged by modern staging conventions:

The central question about any performance space is how it engages the audience. The theatre of Dionysus was irressibly three-dimensional, large, out of doors, a far cry from the indoor venues to which modern audiences are accustomed. Epitomised by the frame of the proscenium-arch, the modern theatre supports the central assumption of theatrical realism, namely that the spectator is a hidden observer looking in on a specified location through an invisible fourth wall. The Greek theatre aims at precisely the opposite effect, a sense that the audience has gathered in a public place to be addressed, and confronted, by the play.

Rehm's analysis of performance conventions is confirmed by the explicit educational and instructive stance taken by characters and chorus in comedy. For example, in the Acharnians, Dicaeopolis appears to assume the personality of the playwright and lectures the audience on the origins of the Peloponnesian War. The convention of the parabasis adopts a similar didactic pose, where the chorus partially set aside their dramatic identity and come forward to address the audience on behalf of the

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11 See Rehm (1992) 20-30 on the production of plays and Thomas (1989) 48-9 on the predominantly oral transmission of dramatic texts, even when using the late fourth-century canonical tragic texts. Sommerstein (1994c) 2 notes that the references in the Thesmophoriazusae which reflect the current tense political situation in Athens (see p.26n.28) may well have been inserted into a completed script.
12 See MacDowell (1990) 7-8 for a summary of Meidias' alleged hostility towards Demosthenes when he was choregos.
13 Sommerstein (1994c) 2 notes that the references in the Thesmophoriazusae which reflect the current tense political situation in Athens (see p.26n.28) may well have been inserted into a completed script.
15 Rehm (1992) 36-37 and generally 36-42.
The significance and interpretation of this educational advice are disputed, but it suggests that comedy possessed a strong didactic role: audiences came to the theatre expecting to interact with comic constructions of the polis, even if they understood these constructions contained hyperbole, exaggeration or farce.

In conclusion, the above evidence suggests that Aristophanes' plays were products of the city's representation of itself and thus open a window onto citizen mentalities. The plays were watched by a mass, citizen audience, within a festival context which reflected the civic ideology of its audience. The competitive nature of the dramatic festivals required playwrights and their 'companies' to select and present plots that were relevant to their audience's concerns; while the didactic conventions of the Athenian theatre expected the audience to interact with these representations. This conclusion is strengthened by several tangible incidents, which confirm there was a dialogue between on-stage and off-stage worlds.

In his Babylonians of 426, it appears that Aristophanes launched the first of many salvos against Cleon. In response, it seems Cleon brought Aristophanes before the boule, probably using the procedure of eisangelia, claiming that Aristophanes had slandered the city before foreigners. Aristophanes was not prosecuted, so presumably the boule threw the charge out and didn’t refer it on to the ecclesia or the jury courts. Although this evidence is based on no more than comic asides, it would appear that the slander of Cleon within the theatre caused Cleon to take action against either the playwright or his didaskalos outside the theatre. Similarly Plato identifies Aristophanes' portrayal of Socrates in the Clouds as contributing to the popular misunderstanding of Socrates, misunderstandings which were utilised by his prosecutors in their case against him. The parabasis of the Frogs reflected current concerns about divisions within Athenian society to such an extent that Aristophanes was crowned by the demos and the play was re-performed the following year. The

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18 Ar.Ach.377-82, 502-3, 515-6, 659-64 with Sommerstein (1980) 2-3, 32-33. See also Ar.Vesp.1284-91 with MacDowell (1971a) 299, Sommerstein (1980) 2-3, (1983) 233-4, which may hint at Cleon's second prosecution of Aristophanes. It has been suggested that Callistratus, the didaskalos for both the Babylonians and Acharnians, was prosecuted by Cleon (see MacDowell (1995) 42-5, who takes this position and summaries other interpretations of Cleon's prosecution). Bowie (1988) 184 has argued that both Aristophanes and Eupolis were attacked by Cleon, but this has been rejected by Parker (1991) and Storey (1993) 388-92.
20 See Chapter 7.1.ii below.
‘Old Oligarch’ claimed the *demos* recognised comedy’s impact beyond the theatre. Working within his overall framework of describing the success of the democracy in suppressing the few and elevating the many, he notes that comedy slanders the rich, well-born or powerful, while ‘they (i.e. the many) forbid the ridicule and abuse of the *demos*.’ He maintains this is the case ‘lest they might be spoken ill of’; while noting that the exception to the rule, the slander of a few poor and low upstarts, does not annoy the many. For the Old Oligarch, comedy enforced the democratic ethos, slandering (*komodein*) the elite and upstarts, while forbidding the slander of the *demos*. It seems that at certain crisis points, comedy’s licence to slander was limited, either by external decree or by internal self-regulation. In 440/39 and again in 415/4 decrees were passed limiting the slander of individuals for a limited period, probably in response to the tensions generated by the Samian War and the sacrileges of 415. Using the quantitative methods outlined in Appendix 1, it is possible to show that the number of individuals satirised in the *Lysistrata* and the *Thesmophoriazusae*, both produced in 411, dropped markedly in comparison to other years. Graph 1 below illustrates the frequency with which individuals are satirised in Aristophanes’ plays: the lower the figure, the more often jokes are made about individuals in a play.

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22 *κωμοδέειν δ’ αὐτ’ κακός λέγειν τῶν μὲν δῆμων σὺν ἐνδόν, ἵνα μὴ αὕτωι ἀκοῦσαι κακώς* ([Xen.] *Ath.Pol.* 2.18).

23 Pronouncements by the ‘Old Oligarch’ are notoriously difficult to interpret. For the view that satire has an impact beyond the theatre, see Henderson (1990), (1993), contra Halliwell (1984a), (1993).

24 See Sommerstein (1986) on the decree of 415-4 and more cautiously Halliwell (1991b), who reviews all the evidence for decrees limiting comic satire. The evidence for these decrees is tentative, as Halliwell makes very clear.


26 These figures are obtained by taking the total number of lines in each play and dividing it by the total number of associations in the play. This gives a measurement for the frequency of jokes that allows comparison across the plays, i.e. on average how many line numbers go by before a joke is made. The idea came from a similar analysis by Todd (1990b) 39 on the frequency with which witnesses are called in different categories of legal speech. The total line numbers are based on the Oxford Classical Text.
The mean for all the plays is 39; i.e. on average once in every thirty nine lines in any play of Aristophanes, a joke will be made about an individual using any one of the seven satirical subjects (see Appendix 1). Most of the plays have frequencies close to the mean. But in the *Lysistrata* and the *Thesmophoriazusae* the element of personal invective has noticeably decreased; a temporary aberration, rather than a continuing trend. The chorus in both plays comment on the dearth of personal invective. This eschewal of satire in the plays of 411 is understandable in the light of surrounding events. The *Lysistrata* and the *Thesmophoriazusae* were produced in the prelude to the oligarchic coup of the Four Hundred. To varying degrees, both plays show an awareness of the forthcoming revolution. Once the plans to alter the constitution were placed on the agenda, the Athenian citizenship fragmented into a number of opposing factions, spawning vicious cycles of recrimination, expulsion, and at worst bloody purges of perceived members of one faction by the opposing faction. Aristophanes himself seems to have survived the events of 411, escaping either attack or exile. Aristophanes’ survival and his ability to produce plays in the tense prelude to the oligarchic coup must in part be due to his avoidance of controversial politico-legal subject matter (see Graph 2.A and B below).

![Graph A: The Frequency of Jokes (§) in Lysistrata](image)

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28 Although there seems to be no awareness of a plan to change the constitution in the *Lysistrata*, there are at least two references to internal tensions and factional strife (*Ar. Lysist.* 489-92, 574-86, with Henderson (1987) xxi-xxv, Sommerstein (1990) 2-3, *HCT* 5.188-90). In the *Thesmophoriazusae*, Aristophanes still was able to depict a democratic assembly on stage, but veiled references in the play indicate that by the Dionysia it was widely known that the democratic constitution was under attack (*Thesm.* 336-9, 361-6, 1143-4 with Dover (1972) 168-72, *HCT* 5. 190-3, Sommerstein (1994c) 2-3).
29 On political purges by oligarchs and democrats, see Chapter 7.1.ii-iii.
30 At least Aristophanes makes no subsequent references to such misfortunes in his surviving works, see Dover (1993) 4.
If Aristophanes did want to satirise a prominent individual, a joke about sexual deviance or artistic awfulness was more appropriate than a political or legal jibe. Two out of his fourteen satirical targets in the *Thesmophoriazusae* were dead in 411, one was exiled, and a further two were notorious women.\(^{31}\) The extreme caution of satirical subject matter and the diminished frequency of satirical attack in the *Thesmophoriazusae* and to a slightly lesser extent in the *Lysistrata* must be a reaction to the impending political chaos in the off-stage world.

Although each of the above pieces of evidence is open to more than one interpretation, cumulatively they confirm the suggestion that the dramatic festivals were an important vehicle for the city’s construction of itself. In the light of this evidence, I would question any interpretative model of Old Comedy that erects impenetrable barriers between the off-stage and on-stage worlds. To a significant degree, the frequency of, choice of and subject matter for satirical attacks are moulded by events external to the Aristophanic world. This suggests Aristophanes sailed close to the wind, exploring areas of tension in contemporary society, an activity he abandoned if the external temperature rose too high. Although his approach was always comic, the subjects he considered may have been real concerns beyond the theatre. Modern mother-in-law jokes are made, not only for their potential to amuse, but also because they diffuse a common source of tension in family relationships. Philocleon’s loss of his citizen-juror status may be presented as comic, a burlesque of the tragic hero, but the subject matter itself is tragic, touching such tensions as the diminishing status of the

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elderly.\textsuperscript{32} The reoccurrence of a topic on-stage is a barometer of collective anxieties off-stage.

On the other hand, this evidence, particularly the quantitative analysis, shows that the mentality governing this inter-penetration of fictive and factual is elusive. Although through internal self-regulation or through external decree, the satirical element in comedy was suspended in response to specific external events, Graph 1 (above p.25) demonstrates that this was the exception rather than the rule. The norm in Old Comedy was unbridled and vicious slander of contemporary figures. In a society obsessed with \textit{time} and with specific laws against slander,\textsuperscript{33} comedy's disregard for these sensibilities highlights the contradictory aspect of Old Comedy to the above: its complete disregard of social, political and physical realities.

This disregard is attested in many other areas of Old Comedy apart from the slander of contemporary individuals. For example, most comic plots disregard the normal limitations experienced in real life. Dicaeopolis is able to return to the countryside and celebrate the Rural Dionysia while the rest of Athens remains at war with Sparta.\textsuperscript{34} At the beginning of \textit{Peace}, Trygaeus flies to heaven on a dung beetle, later to be joined by the chorus who arrive by some unspecified means and finally he returns to earth on foot after a lengthy march.\textsuperscript{35} The entire plot of the \textit{Birds} revolves around the almost instant construction of a fully fortified city suspended in mid-air, through which the gods are starved into submission and men recognise the sovereignty of the Birds (see Chapter 3). Comedy is never constrained by practical realities and will draw attention to its own fictivness.\textsuperscript{36} The displays of sexual and scatological humour which characterise Old Comedy would have been taboo beyond the theatre if indulged in to such overt excess.\textsuperscript{37} Aristophanic heroes freely assault other characters; attacks which are often labelled as hubristic, yet are carried out with impunity.\textsuperscript{38} Again, there existed beyond the theatre, strong moral and legal sanctions against such wanton indulgence in hubristic behaviour.\textsuperscript{39} This evidence has led scholars to argue that comedy was granted a licence to transgress within the theatre the norms of society

\begin{itemize}
    \item \textsuperscript{32} See p.134 and Crichton (1991-93) 68-70.
    \item \textsuperscript{34} E.g. \textit{Ar.Ach}.201-2.
    \item \textsuperscript{35} \textit{Ar.Pax} 102-4, 177-8, 292ff, 720-6, 819-23 with Dover (1972) 132-3.
    \item \textsuperscript{36} For instance, Peisetaerus' response to a speech describing the building of \textit{Nephekokkugia}, a city with walls and gates suspended in mid air, is to acknowledge that the account is totally false (\textit{Ar.Av}.1166-7)
    \item \textsuperscript{37} Henderson (1991a) 1-107.
\end{itemize}
beyond the theatre. For instance, Halliwell, in his article on laughter in Greek culture, highlights comedy’s licence:

What matters for festivity is above all the creation of a sharp contrast between what is permissible or even called for within the bounds of the festival, and the norms which are commonly adhered to outside this special ‘space’: this is the essential structural factor common to both the strong humour of Old Comedy and the αἰσχρολογία indulged during certain fertility cults. Without this exceptional festive status, which carries determinate and recognised conventions with it, neither of these sets of practices would have been possible, let alone supported by the polis-organisation, for the simple reason that they flouted otherwise prevailing standards of social behaviour.40

Comedy’s mass, citizen audience were made aware of this licence in at least two ways: through theatrical conventions and through the suspension of civic time and space. The theatrical conventions of comedy not only confronted the audience with the comic representation of the city but also drew their attention to the artificial and fictitious nature of the theatrical experience: for instance the mask, the marked out acting area of the orchestra and deliberate extra-theatrical asides which break the theatrical ‘illusion’.41 Pat Easterling has described drama as make-believe, commenting: ‘it is a basic fact of the way make-believe functions that the audience know that in some sense what they are watching is not ‘for real.’”42 Secondly, although the Great Dionysia expressed the democratic, civic ideology of the polis, it was a time when that ideology was also suspended. Civic time was suspended during the dramatic festivals: the jury courts and assembly were closed; Pericles described the ‘contests and sacrifices (including dramatic festivals)’ as ‘many relaxations from work.’43 Citizens entered into sacred space and time of Dionysus: the plays were enacted within the sanctuary of Dionysus, sacrifices and prayers were offered to the god throughout the festival and his image may have been present in the theatre.44 The theatrical and festival conventions of the ancient theatre encouraged the audience to view the comedy before them as both a representation of the city to itself and as a suspension of reality, a time of relaxation, when the norms of the off-stage world could be transgressed with impunity.

Hence we have arrived at the crux of interpreting Aristophanes: Aristophanes set before the city representations of itself, but the comic licence he enjoyed allowed these representations to be as much distortions or inversions as accurate representations of off-stage reality. Scholars have struggled to maintain the tension between the

43 [Xen.]Ath.Pol.3.8, Ar.Eq.1316-8, Thuc.2.38: ‘Furthermore, we have provided many relaxations from work for the spirit, we are accustomed to contests and sacrifices throughout the year...καὶ μὴν καὶ τῶν πάνων πλείστος ἀναπάυσας τῇ γυνώμῃ ἐπορίσαμεθα, ἀγώσιμεν γε καὶ θυσίας διετησίας νομίζωντες...’
contradictory aspects of Aristophanic comedy. Scholarly opinion can be grouped into approximately three different approaches. Firstly, in his book on Athenian society, Victor Ehrenberg privileged Old Comedy above other sources because he argued it provided a ‘fairly full and satisfactory picture’ of Athenian mentalities, ‘a mirror reflecting real life.’

Although fully aware of comedy’s tendency to distort reality, Ehrenberg argued that by isolating the ‘background’ information used to create a realistic ‘atmosphere’ against which the fantastical exploits of comic heroes are set, it was possible to recreate a picture of Attic society from Old Comedy. Ehrenberg’s approach has been criticised, particularly by Kenneth Dover, for failing to recognise the extent to which even ‘background’ information is subject to comic distortion.

A second approach has been put forward by Geoffrey de Ste. Croix, who argued it was essential to identify Aristophanes’ political opinions, where he was coming from, if we wanted to use him as a historical source. He particularly focused on passages that in and of themselves were not funny as expressions of the poet’s view. He saw Aristophanes as a Cimonian conservative, suspicious of the democracy, hostile to the new men of politics and opposed to the war with Sparta. De Ste. Croix’s position has recently been restated by Paul Cartledge, who similarly saw Aristophanes as a crypto-oligarch, hiding his anti-democratic opinions beneath a cloak of comic subterfuge. De Ste. Croix’s approach has triggered a long running debate on the political opinions of Aristophanes. For instance Malcolm Heath has argued, on the basis of internal and external evidence, that Aristophanes never promoted a consistent political line in his plays, although he utilised contemporary politics as his starting point. The third approach highlights comedy’s festival licence and the suspension of off-stage norms within the theatre of Dionysus. Proponents of this approach are reticent to make pronouncements about the off-stage world on the basis of on-stage evidence. The function of Old Comedy is either to offer the audience a series of comic stereotypes and situations, from which general moral conclusions can be drawn, or to explore the

45 Ehrenberg (1951) 7.
46 Ibid. 8, 37-42.
47 Dover (1987) 196-8, 280-82.
49 Ibid. 234, 357
50 Ibid. 357-8 for a summary.
51 Cartledge (1990a) 46-53.
52 Heath (1987) 41-2 for his conclusions. Heath has taken every ‘opinion’ attributed to Aristophanes by de Ste. Croix and has suggested that in fact Aristophanes does not offer a consistent polemical view on these topics throughout his plays. Bowie (1993) 9-17 also rejects the search for Aristophanes’ political opinions
53 Gomme (1962), Dover (1996) 369: ‘the essential spirit of Old Comedy is the ordinary man’s protest - using his inalienable weapons, humour and fantasy - against all who are in some way stronger or better than he: gods, politicians, generals, artists, and intellectuals.’
audience’s reaction to the comic (mis)representations of reality placed before it and the acceptable boundaries of comic licence.  

As these scholarly approaches demonstrate, interpreting Aristophanes is bedevilled with disagreement and a lack of consensus. Aristophanic comedy’s contradictory aspects, the representation of the city to itself and its festival licence, lie at the root of this disagreement, with scholars often emphasising one aspect at the expense of the other. Like Ehrenberg and de Ste. Croix, I want to use Aristophanes as a historical source, in this instance, for attitudes to judicial activity. I struggle with the third approach, which is content to focus on ‘negotiating the licence and limits of comedy’ and rejects the ‘traditional wish...‘to find some kind of external control, evidence independent of our reading of the plays that would help us calibrate our estimation of their tone or mood.”  

The evidence presented above (pp.24-7) suggests a demonstrable interaction between on and off-stage worlds. When Plato reminds his audience of the satirical portrayal of Socrates which they had watched in the Clouds, he describes the individual portrayed ‘spinning around about, asserting that he walks on air and babbling much other nonsense’ as ‘a certain Socrates (Σωκράτης τιμώδης)’; a caricature of Socrates distinguishable from the real Socrates. In other words, Athenian audiences were able interpret comic images set before them, making connections between on-stage image and off-stage reality. Our problem is to construct a methodology which allows us to read from on-stage to off-stage, as Athenian audiences did, while still taking into account comedy’s festival licence. I have side-stepped the vexed question of Aristophanes’ ‘political opinions’ in this regard. This is not to deny that Aristophanes would have had opinions of his own, clearly he must have. But I think Aristophanes’ opinions are probably irrecoverable at this distance, 2,500 years further on. Moreover I do not think that Aristophanes’ primary aim was to instruct or influence opinion, rather it was to entertain. The competitive ethos of the dramatic festivals required him to select subjects of contemporary interest, the festival licence allowed him to present even disturbing topics, but his treatment of them was primarily comic: setting up a viewpoint, only to demolish it at a later point. Below I have set out three interpretative keys which I have used to analyse the plays in the following 

56 ταύτα γὰρ ἔωρατε καὶ αὐτοί ἐν τῇ Ἀριστοφάνους κωμωδίᾳ, Σωκράτης τιμώδης ἐκῄ Περιπεραθῶν, φάσκοντα τε ἀφασθεῖν καὶ ἄλλην πολλήν φλυαρίαν φλυαροῦντα (PlAp.19c).  
57 This analysis of PLAp.19b-c is indebted to Keith Sidwell. I am very grateful to him for allowing me to see his unpublished work and for several fruitful discussions on interpreting Aristophanes.  
58 See Sommerstein’s judicious comments (Sommerstein (1994a) 189, quoted in part on p.7) in response to Bowie’s wish to liberate Aristophanic scholarship from the question of Aristophanes’ opinions (Bowie (1993) 9-17).  
59 I will argue this point in more detail on p.55 and p.137 in relation to Aristophanes’ non-polemical position in relation to the democratic judicial system.
chapters. Given the turbulent waters of Aristophanic scholarship and the complexity of the comic construct, these 'keys' are provisional and simply my own attempts to 'read' the plays. My approach has also been governed by my overall aim, that of arriving at a better understanding of popular attitudes to judicial activity. So I have focused on the presentation of judicial activity in Aristophanes' plays: the frequency with which Aristophanes examined judicial activity; the function of judicial activity within the Aristophanic world; the control of comic images by evidence from the off-stage world.

The first interpretative key is that the frequency with which Aristophanes focuses on a topic is a barometer of his audience's concern about that issue. If Aristophanes and his 'company' are producing plays to entertain a mass, citizen audience and so wrestle comic victory from their rivals, then his choice of subject matter must have been influenced by contemporary concerns and tensions (see pp.21-4 above). In order to obtain a sharper picture of comic interest, I have quantitatively analysed the frequency and choice of subject matter in Aristophanic satire. I chose seven satirical topics, including involvement in legal activity, and counted how often each topic was associated with a named, contemporary individual in Aristophanes' eleven extant plays. Having carried out some simple statistics, it is possible to compare legal satire with other satirical topics, and so gauge the audience's interest in legal matters. Graph 3.A below quantifies the degree to which individuals are attacked for being associated with the legal activity, in comparison to involvement in politics, physical characteristics and artistic endeavour (Graphs 3.B-D below).

60 The theoretical justification and methodology for this quantitative approach are outlined in Appendix 1. I carried out this quantitative analysis before I decided to focus this research solely on judicial activity (see p.9). Consequently the legal satire referred to here includes both judicial and legislative activity.

61 These graphs express in graphical form the information complied in Tables 12-16 of the Statistical Appendix. The absolute total values for each variable in each data set has been turned into a percentage of the total values of each variable. This then allows values to be compared across the data sets.
Firstly, individuals are perceived to be involved in legal activity in all the plays bar one. There are some variations, but given that the nature of the statistics being dealt with here, it is unwise to place too great a significance on these variations. Nevertheless some suggestions can be offered. The relatively high value (29%) in the *Wasps* is hardly surprising, given that this play explores the role and function of the jury courts. A similar trend can be seen in other plays, where the category of satirical attack with the highest value corresponds with the theme that dominates the play. Similarly the relatively high value in the *Acharnians* is probably the result of the distorting influence of Aristophanes’ legal battle with Cleon. The failure of any individual to be satirised for legal involvement in the *Thesmophoriazusae* has been commented on above. On the basis of Graph 3.A (p.33 above), it is possible to suggest that the ridicule of individuals on stage for their involvement in legal activity had comic potential and therefore was a consistent subject of interest to Aristophanes’ audience throughout the late and fifth and early fourth centuries. Secondly, those with a legal bent appear to be no more or no less a subject of ridicule than individuals that are satirised for any other reason. Graph 4

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62 See Table 13 in the Statistical Appendix. For instance in the *Acharnians* I have arrived at a total value of 12 for the legal variable, in the *Knights*, 8, which, when expressed as percentages, give the figures 24% and 19%. In other words, the percentages are derived from small absolute total values. See Floud (1979) 42-51 on the advantages and problems in turning absolute totals into percentage totals.

63 In the *Birds*, where many individuals are likened to Birds (see especially Av.1292-1299), the physical variable has the highest total value (46%); in the *Knights*, where politics is a key theme, the political variable (30%); in the *Frogs*, concerned with tragedy, the artistic variable (32%). See Tables 12, 15 and 16 in the Statistical Appendix.

64 See p.24.
below shows that, on average, when all the plays are taken together, audiences were just as likely to find legal satire funny as they were political, physical, sexual, military or artistic satire.

\[
\begin{array}{cccccccc}
\text{Matter} & \text{Polit.} & \text{Law} & \text{Milt.} & \text{Physic.} & \text{Art.} & \text{Sexual} & \text{W./P.} \\
\hline
\text{Mean} & 14 & 14 & 14 & 14 & 14 & 14 & 14
\end{array}
\]

Graph 4: Average Total Number of Jokes in the Plays of Aristophanes

It seems that portraying Hyperbolus as a habitual litigant was just as likely to raise a laugh as cracking jokes about Cleonymus’ size, his shield abandoning tendencies or his questionable sexual preferences.\(^{65}\)

It is one thing to conclude that mass, citizen audiences found legal jokes amusing and, by extrapolation, were interested in legal matters; it is quite another to attempt to locate the nature and significance of that interest. The second interpretative key seeks to locate the significance of judicial activity within the Aristophanic world. Given that Aristophanes refracts Athenian society through a prism of distortion, exaggeration, fantasy and inversion, it is impossible to read directly from the on-stage to the off-stage world.\(^{66}\) On the other hand, the Aristophanic world possesses its own internal consistency or ‘comic logic.’\(^{67}\) I think the political cartoons of Steve Bell, who draws for *the Guardian*, offer an interesting analogy. Ever since John Major became Prime Minister, Steve Bell has represented John Major as wearing his underpants on the outside of his suit trousers (see Figure 4). It would be disastrous to read directly from the satirical fantasy of the cartoon into political reality: the cartoons are not a reliable source of information on the Prime Minister’s sartorial style. On the other hand, Steve Bell’s cartoons possess an internal consistency: John Major is always depicted as wearing his underwear outside his trousers. I have attempted to locate the significance of judicial activity within the Aristophanic world in Chapter 3. The plays must be read first and foremost as plays, possessing their own internal dramatic momentum and


\(^{66}\) See pp.28-9 on the festival licence of comedy and pp.30-1 on the third approach to analysing Aristophanes.

\(^{67}\) I have borrowed the phrase ‘comic logic’ from Pat Easterling.
'logic.' In Chapter 3, attention will be paid to the dramatic momentum of the whole play, to the position of judicial activity within that dramatic momentum and to the associations that are coupled with judicial activity. I believe it is possible to identify a consistent representation of judicial activity within the Aristophanic world and there is evidence that other playwrights similarly focused on judicial activity.

The third interpretative key is to bring off-stage evidence from the period to bear on comic society, to provide an alternative picture of agreement or dissent. If comic society is distinct from the off-stage world, with its own internal 'logic,' then it is possible to translate impressions from on-stage to off-stage only by interpreting and verifying on-stage images in the light of off-stage evidence. Again taking Steve Bell’s portrayal of John Major, we are able to interpret this comic image when we remember that super-heroes, from Superman onwards, are depicted as wearing their underpants on outside their trousers and that the Y-front is the epitome of male tastelessness in attire. The juxtaposition of super-hero dress sense and the Y-front instantly undermines John Major’s credibility as a politician and as an individual. We can interpret the comic image only by utilising information from beyond the comic-strip, which the cartoonist presupposes that his readers posses. This necessity of using off-stage evidence to interpret on-stage images was also emphasised to me when I watched the reaction of a group of Kenyan students to the play Betrayal in the City by the Kenyan playwright Francis Imbuga. As an outsider to Kenyan culture, I found it was possible to comprehend why on-stage images were funny to the Kenyan audience only by utilising evidence from beyond the theatre. The play centres around the activities of the character Boss, the president of Kafira, a fictitious post-colonial, African state and his cousin and henchman Mulili. At one point Mulili comes to Boss to discuss with him the workings of a government committee:

Mulili  Boss, you are cousin and I tells you this. Things have spoil. Don’t trust anybody, not even me.
Boss  You talk straight or go back to the meeting. I put you on committee for obvious reasons and I expect you to report directly to me if something should seem to be going wrong. What is the matter?
Mulili I can’t believe it even now. It is a big ugly matter I tells you. Do you know Kabito? He be like Jere.
Boss I know many Kabitos.
Mulili I am saying the one on the entertain committee.
Boss What about him?
Mulili That one, he be a green grass in the snake.

Mulili’s italicised line produced an explosion of laughter from the Kenyan audience, while to us this line may appear as little more than poor English. Imbuga has made such

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68 See Crichton (1991-3), in which I attempted to compare on-stage images for the age of Attic jurors with off-stage evidence.
malapropisms a consistent feature in his portrayal of Mulili, which indicates he intended his audience to read off and construct an attribute of Mulili’s character from these linguistic *faux pas*. We, on the other hand draw a total blank, because we do not share the same cultural framework as the writer and his audience. But it is possible for us to understand the joke if we bring evidence from the off-stage world to bear on the comic construct. The humour revolves around Imbuga’s manipulation of his audience’s knowledge of English. On the one hand they can congratulate themselves that they have spotted the incorrect English idiom, and thus can construct the character of Mulili, the typical politician of post-colonial, sub-Saharan Africa, who owes his appointment to family and tribal connections rather than ability. On the other hand, the joke is dangerously close to home, the command of English possessed by members of the audience is may be little better than that of Mulili. But as they are only listening to the play, there is no danger that this inadequacy will be exposed.

The comic images within the Aristophanic world are as alien to us as Imbuga’s from post-colonial Kenya. Therefore it is essential we bring extra-theatrical evidence to bear on these images when considering possible ways in which the audience interpreted and interacted with the drama of the on-stage world. Consequently Chapter 4 examines attitudes to judicial activity in the Attic Orators and then compares and contrasts the these images with those from the stage. In Chapters 5 and 6, the comic analysis of the impact of rhetorical education in the jury courts and the debate on the democratic judicial system is again subjected to the control of evidence from beyond the theatre. I do not pretend these interpretative keys offer a definitive model for interpreting Aristophanes. They are an attempt to utilise the plays of Aristophanes as a source for Athenian popular attitudes to judicial activity, while recognising the contradictory aspects of Aristophanic comedy.

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70 All Kenyan school children are taught in a somewhat mechanical fashion the use of English idioms as part of their education.
71 For an example of this tendency, see Harden (1990) 68-69, where he links the 160% increase in public sector employment by post-colonial, sub-Saharan governments since independence with the ties of family loyalties and gives the following example from Ghana: ‘Ghana’s Cocoa Marketing Board employed 105,000 persons to handle a crop half as large as that which 50,000 people handled more efficiently in 1965. Jobs have been parcelled out, by and large, along kinship networks.’
72 I quote an example of the written English of an audience member: ‘please if you succeed try to your level best to get a sponsor for me as its somewhat tough to rise air ticket from my family.’
Judicial Activity in the Plays of Aristophanes

The Athens of the Aristophanic imagination is a city so characterised by judicial activity that the two have virtually become synonymous: an Aristophanic Athenian must be engaged in judicial activity, the man engaged in judicial activity must be an Athenian. At the beginning of the *Birds*, Peisetaerus contrasts the seasonal chirping of cicadas with the perpetual judicial duelling of the Athenians: ‘for as the cicadas sing on the branches for a month or two, so the Athenians always sing at *dikai* for all their lives.’ In the *Ecclesiazusae*, Praxagora expounds the benefits of her proposed egalitarian society by negating the characteristics of contemporary Athens such as crime, hardship and judicial activity:

For it will not be possible in future for bold men to do shameful things to her (the city): nowhere to witness, nor to be sycophantic...nor to steal clothes, nor to be envious of those near, nor to be naked, nor for anyone to be poor, nor to rail at one another, nor to have one’s goods taken as security.2

The Athens of the Aristophanic imagination is characterised by its judicial activity, which takes the form of both litigation and jury-service. Fictitious characters are portrayed as fully conversant with the persona of the litigant. Dicaeopolis, Bdelycleon and Peisetaerus all assume the role of litigant in on-stage disputes,3 while many other

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1 οί μὲν γὰρ σὺν τέττιγες ἐνα μὴν ἥδη ἐπὶ τῶν κραδῶν ζῆσον, ἀθησιαίοι δὲ ἀεὶ ἐπὶ τῶν δίκων ζῶσοι πάντα τῶν βίων. (Ar.Av.39-41). See pp.40-1 for the two heroes’ flight from Athenian litigiousness in the *Birds*.
2 Ar.Eccl.560-2, 565-7. See also 439-40 and 452-3, for contemporary Athens characterised by judicial activity. For on-stage characters’ frequent jury service, see p.46n.61. See pp.46-7 on the absence of judicial activity in Praxagora’s egalitarian society.
3 See Dicaeopolis before the chorus of Acharnians (Ar.Ach.364-5, where his encounter before the Acharnians is called a *dike* and 374-5, where Dicaeopolis talks about the vindictiveness of old jurors);
fictitious characters refer to judicial procedures with which they are associated. The very epitome of a litigant, the sycophant, is presumed to be a peculiarly Athenian phenomenon. It is an assumed norm of the Aristophanic world that any group of Athenians will also be jurors. In the Peace, the Athenian delegation within the panhellenic chorus is rebuked by Hermes for their failure to help in the rescue of the goddess Peace because: 'you do nothing else except judge.' In the Clouds, Strepsiades doubts that the map which he is shown accurately represents Athens 'since I don't see seated jurors,' while Tereus in the Birds presumes that Peisetaerus and Euphides must be jurors because they are Athenians. This connection between Athenian citizenship and jury service receives its most colourful and sustained treatment in the Wasps, whose plot revolves around the mania for jury service which grips Philocleon and his choral colleagues. When the focus shifts from fictitious characters to the on-stage representations of off-stage individuals, judicial activity features predominantly in their presentation. For example, a variety of court cases which are purported to have taken place in the off-stage law court are referred to on-stage, while off-stage individuals are satirised on-stage for their involvement in judicial activity.

In whatever direction one looks in the world of Aristophanes, Athens is a city where judicial activity is prevalent. In Chapter 2, I advanced, as a second key for interpreting Aristophanes, the importance of understanding the position of judicial activity within the on-stage world, given the distinct and separate nature of the on-stage

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Bdeleyleon speaking on behalf of Labes in the Trial of the Dog (Vesp.949-81) and Peisetaerus debating with Poseidon about inheritance law (see pp.51-2).

4 For example, see each of the on-stage sycophants (see p.48), the Sausage-seller and Paphlagon (see p.43n.42, 43), Strepsiades (on his legal battles with his creditors, see p.91, for his readiness to take an assailant to court, see Nub.494-96), the Young Man and the three Old Women (see p.16n.29) and the threats by on-stage characters to bring a graphe hubreos, see p.28n.38.

5 Ar.AcA.829, 900-4: the Theban wants to import a uniquely Athenian product to Athens, so Dicaeopolis suggests a sycophant; Av.1694-1705: the fantastic and distant race of 'Tongue-to Belly race (γγυλωπαγασταρυν γένος)' living 'in Accusatia, near Clepsydra (ἐν Φαυναι Προς τη Κλεψύδρα)', transpire to sycophants who make a living in the Athenian courts, the location been given away by the references to klepsudra and Attica. See Dunbar (1995) 740-44 for further details.


7 'ἐπεὶ δικαίας ὅρα ὅρων καθημένως' (Ar.Nub.206-8).

8 Ar.Av.107-9.

9 See Chapter 6.

10 See Cleon's prosecution of Aristophanes (see p.24); Alcibiades' prosecution of Thucydides son of Melesias (Ar.Ach.703-12, Vesp.946-8); Phaeax's escape from the death penalty (Eq.1377-80); the prosecution of Dracontides, Laches, a Samian resident and Philippus (Vesp.157, 240-1, 287-9, 894-994, 281-3, 421); potential or actual prosecutions of Pericles and Pheidias (Pax 605-8); Callias' sufferings at the hands of sycophants (Av.284-6); prosecutions of Cleophon, Theramenes and the Arginusae generals (Ran 684-5, 968-70, 1195-6); the prosecution of Aristoxenus and Pamphilus (Plut.174-5, with p.67n.127).

11 See Graph 3.A on p.33 for the total number of legal jokes made about named, off-stage individuals in the plays of Aristophanes; and Tables 1-11 in the Statistical Appendix for lists of individuals who are satirised for their involvement in legal activity in each play by Aristophanes.
world in relation to off-stage reality. Therefore the focus of this chapter is to understand the position of these prevalent images of judicial activity within the on-stage world of three plays, the *Birds*, *Knights* and the *Ecclesiazusae*. These plays have been selected because they were performed at the beginning, middle and end of Aristophanes' career and so offer a representative sample from the age of Aristophanes. Secondly the position of judicial activity within the on-stage world of other comic writers contemporary with Aristophanes will be contrasted with images derived from the Aristophanic world. Having understood the position of judicial activity within the on-stage world, Chapter 4 moves beyond the theatre and compares on-stage image with off-stage reality.

It is possible to produce a generalised Aristophanic plot structure on the basis of Aristophanes' eleven extant plays. The hero of an Aristophanic play is frequently an archetypal 'ordinary man': an aged, Athenian citizen from the countryside. He is oppressed by a contemporary aspect of Athenian life and so conceives of a brilliant idea to liberate himself from this oppression which he realises through fantastical wish-fulfilment. Often his brilliant idea is opposed, for instance by the chorus or another character, who must be won over to the hero's side before his brilliant idea can be realised. The remainder of the play is then devoted to the working out of the hero's idea. The hero enters into a fantastical paradise of vigorous self-assertion, culinary delights, revelry, bibulous bounty and sexual gratification. He is able to beat up and banish with impunity any quacks and charlatans who should attempt to muscle in on his

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12 See pp.34-5 on the second interpretative key.
13 The *Knights* was produced in 424, the *Birds* in 414, the *Ecclesiazusae* in 392.
14 On a generalised plot structure, see Dover (1972) 30-48, Ussher (1979) 6-12, Handley (1985) 356, Sifakis (1992). There are obvious dangers in talking about 'a generalised Aristophanic plot structure', since it is impossible to produce an account which will fully encompass the plot of each play. The statements in the account which follows will be supported by references from the *Peace*, while an almost identical account, with reference to the *Clouds* and the *Acharnians*, can be found on p.103.
15 Trygaeus introduces himself to Hermes as a vine-grower from the rural deme of Athmonum (*Ar.Pax* 190) and is described as both *presbutes* and *geron* (856, 860). On the phrase 'ordinary man' see Dover (1996) 369, quoted on p.30n.53.
16 Trygaeus is sickened by the war and so conceives of the brilliant idea of flying to heaven on a dung-beetle to interrogate Zeus about the fate of the Greeks (*Ar.Pax* 54-179). When he arrives, he finds the goddess Peace in a pit and so determines to rescue her (221-6, 289-361, 426-7).
17 Trygaeus firstly has to avoid War and his minions (*Ar.Pax* 236-288), then win Hermes over to his side (362-425) and finally unite the Panhellenic Chorus to pull Peace out of the pit (459-519).
18 Almost two thirds of the play (839 lines out of a total of 1359) is devoted to Trygaeus' enjoyment of Peace. Trygaeus, and then the chorus with him, welcome Peace, Fullfruit and Showtime with a lavish description of the good things which are associated with Peace (*Ar.Pax* 520-600). Trygaeus and all the Greeks then enjoy these blessings (e.g. feasting, sex, the countryside, vintage, social harmony), cumulating in Trygaeus' marriage to Fullfruit and his return to the country (1316-59). See Reckford (1987) 3-13 for further details.
fantastical paradise.\(^{19}\) From the above analysis, one can suggest that the Aristophanic world consists of two opposing domains: a representation of contemporary Athens and the comic hero’s fantastical paradise; and that the dramatic momentum of the play consists of the hero’s progress out of the former into the latter. Utilising this structuralist framework, it is possible to construct a series of polar associations which characterise these two opposing domains. Common polar associations include urbanity and rusticity, intellectualism and innate wisdom, deprivation and culinary delights, old age and rejuvenation, political activity and manual labour, novel faddishness and traditional culture, sexual deviance and sexual exuberance with the former characterising contemporary Athens and the later the fantastical paradise.\(^{20}\) Therefore, to understand the position of judicial activity within the on-stage world, it is necessary to identify within which domain judicial activity is located, oppressive contemporary Athens or the fantastical paradise and to comprehend any reasons for this position. In this latter regard, it will be particularly helpful to look at modes of judicial behaviour rather than judicial practice per se, with particular reference to the presentation of the sycophant. In this way, we will hopefully arrive at a closer understanding of the resonances and impressions which were attached to judicial activity in the minds of Aristophanes’ audience.

Within the Aristophanic world, and within the three plays under investigation in particular, judicial activity is consistently located within the oppressive domain of contemporary Athens. Indeed, in the *Birds*, judicial activity is the oppressive aspect of contemporary Athens from which the comic hero escapes into a fantastical paradise from which judicial activity is absent.\(^{21}\) The two heroes of the *Birds*, Peisetaerus and Euelpides, are two full blooded Athenian citizens, correctly registered with their *genos* and *phule* and loyal to their city.\(^{22}\) But they are fleeing from Athens because they are wearied by the Athenians’ constant engagement in judicial activity, indeed they go as far as to state that they are jurorphobics.\(^{23}\) They are looking for a *polis* which is

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\(^{19}\) Hierocles is stripped and beaten (*Ar.Pax* 1119-26), the Arms-Dealer, Helmet-Maker and Spear-Maker are soundly mocked (1210-64), and Lamachus’ son, on account of his militaristic choral repertoire, is banished from Trygaeus’ marriage feast (1265-97).

\(^{20}\) On polar associations in Aristophanes, in this instance with regard to the *Clouds*, see Whitman (1964) 126-7, Dover (1968a) lix-lxxiii, Segal (1996b) 164-5. Dover and Whitman point out that these polarities are by no means rigidly fixed.

\(^{21}\) I have begun with an analysis of the *Birds* because it is clearly stated that judicial activity was the oppressive element in society from which the heroes were fleeing. Furthermore, given that judicial activity is not the central focus of the playwright’s attention in the *Birds*, his treatment of the subject may communicate subtle nuances which otherwise would have been lost in the vehemence of a full-frontal Aristophanic offensive, such as in the *Wasps*.

\(^{22}\) *Ar.Av.* 33-7, 123-6.

\(^{23}\) Flight from Athens: *Ar.Av.* 27-48; disgust at judicial activity: p.37 above; jurorphobics: *Av.* 110-11. They are afraid of settling anywhere near the sea, lest the long arm of the Athenian law reaches them there, in the form of a summons-witness on board the *Salaminia* (145-7). On the two heroes’ flight from litigiousness within the plot of the *Birds*, see Dunbar (1995) 1-2.
apragnmon, ‘like a woolly blanket, soft to curl up in’.\(^{24}\) In their idyll, the only pragmata that Peisetaerus wishes to face is a neighbour demanding he turn up to the man’s wedding feast, or for Euelpides, receiving complaints from the father of a beautiful boy who he failed to seduce.\(^{25}\) The two characters are weary of Athenian litigiousness and are in search of a city where judicial activity does not intrude into the good things of life.

Peisetaerus then conceives of his brilliant idea to construct a city in the clouds, the realisation of which launches him into a fantastical paradise.\(^{26}\) Within Nephelokokkugia, Peisetaerus receives the gratification of every wish, cumulating in his marriage to Basileia and his apotheosis.\(^{27}\) The absence of judicial activity characterises Peisetaerus’ new foundation. So Peisetaerus is able violently to banish all quacks and charlatans who come to Nephelokokkugia,\(^{28}\) impervious to their threats of legal action.\(^{29}\) His expulsion of the sycophant, the personification of judicial activity, from Nephelokokkugia is particularly significant in this regard.\(^{30}\) In an alternative vision to Peisetaerus’ Nephelokokkugia, life among the Birds is characterised as an archaic idyll, a life which is non-polupragmata.\(^{31}\) The Birds live a scattered existence rather than centralised in a polis.\(^{32}\) They are unfamiliar with speech and so are easily persuaded by

\(^{24}\) ὄσπερ σισύφων ἐγκατακλυνημαί μαλθακῶν (Ar.Av.120-22, see also 42-5). In Aristophanes, ta pragmata and their absence, apragnmon, often denote the presence or absence of political activity, particularly judicial. See Ehrenberg (1947) 54-55, Carter (1986) 82-87, Dunbar (1995) 151.


\(^{26}\) Peisetaerus has his brilliant idea to build Nephelokokkugia (Ar.Av.162-93), is opposed by the Birds (305-405) but wins them over (466-635) and initiates the building of the city (837-45, 1122-63).

\(^{27}\) Peisetaerus’ power and pre-eminence increases as the play progresses. He begins as an adviser to the Birds, enamoured with their way of life (324, 412-414), but later on is described as archon (1123) and even tyrannos (1708) over the Birds, as well as being awarded exceptional honours and a crown by men (1274-5). Peisetaerus is finally able to outwit the gods themselves (1565ff), gains sovereignty from Zeus (1631) and access to Zeus’ store of thunderbolts through his marriage to Basileia (1706-19), thus becoming ‘O highest of gods’ (ὤ δαίμονοι ὑπέρτατε 1765). On the theological implications of Peisetaerus’ apotheosis, see Dunbar (1995) 12-14.

\(^{28}\) Ar.Av.989-91, 1017-20, 1029-34, 1043-57, 1464-9. On the arrival of these charlatans, see Dunbar (1995) 520.

\(^{29}\) Following Sommerstein’s line attributions (Sommerstein (1987), the Inspector appeals for witnesses when he is beaten (Ar.Av.1031) and subsequently serves a summons on Peisetaerus for a graphe hubreos, for which he is thrashed afresh by Peisetaerus (1046-53). Dunbar (1995) 566 and 572 suggests that lines 1046-7, the graphe hubreos summons, should be attributed to the decree-seller and that lines 1049-50, an Athenian decree describing the penalty for driving out an Athenian archon, should be attributed to the Inspector.

\(^{30}\) Ar.Av.1410-69 and pp.48-51 for further details

\(^{31}\) Ar.Av.471 with Dunbar (1995) 325. The archaic nature of life among the Birds can be seen the description of their laws as ἑσμοὶ ἀρχαῖοι’, rather than nomoi (331 with Ael.V.H.8.10 and Dunbar (1995) 264), their preference for the more archaic medium of the Theogony (685-736 with Dunbar (1995) 428-58 for details of its archaic vocabulary), their lack of settled existence and unfamiliarity with speech (see next two notes).

\(^{32}\) Ar.Av.227-62, 1088-1101
They offer the audience an alternative paradise to Peisetaerus’ *Nephelokokkugia*, in which fundamental socio-political norms can be transgressed and basic desires gratified. Therefore the dramatic momentum of the *Birds* propels the two heroes out of contemporary Athens, a domain riddled with oppressive judicial activity; and into *Nephelokokkugia* and life among the Birds, domains which are characterised by the absence of judicial activity, an abundance of pleasures and archaic simplicity.

The position of judicial activity within the on-stage world of the *Knights* is similar to that of the *Birds*. The Aristophanic world of the *Knights* is polarised between the domain of contemporary Athens, characterised by corrupt politicians and a gullible Demos; and a fantastical paradise, in which corrupt politicians are reformed or banished and Demos is rejuvenated. In the former domain, political life is dominated by Paphlagon, whom the audience is encouraged from an early point to recognise as a satirical portrayal of Cleon. Paphlagon is depicted as a flattering, cowardly, thieving politician, who terrorises his opponents into submission with his shouting, screaming style of oratory, slanderous attacks and naked violence. The comic conflict in the play revolves around the successful bid by the Sausage-seller to vanquish Paphlagon. The Sausage-seller achieves his victory, not by introducing a more upright brand of political behaviour, but by using the same political tricks, shamelessly trumping Paphlagon at every turn. The object of these two rival politicians’ affections is Demos, the

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33 The Birds have learnt to speak only because Tereus has taught them (Ar.Av.199-200), in the past they have never opposed Tereus (385) and by 539ff are persuaded by Peisetaerus’ rhetoric. For Peisetaerus as a skilful speaker, see his donning of a speaker’s garland (463-4 with Dunbar (1995) 320), praise for his speaking (421-30, compare with Nub.260 and see Dunbar (1995) 298-9) and the many references to *logoi* in the *agon* (in 415-33 λόγος and λέγειν are mentioned some nine times, including four times in the last three lines, see Sommerstein (1987) 222. See also 437, 462, 465, 539).

34 Life among the Birds encourages acts which are ‘shameful according to (human) custom’ (αἰσχρὰ τῷ ψῷ), such as father-beating, harbouring of runaway slaves, enfranchisement of slaves and foreigners and a license for treason (Ar.Av.753-69), while the possession of wings permits the effortless gratification of basic desires for food, defecation and illicit sex (785-800).

35 The relationship between litigious Athens, Peisetaerus’ *Nephelokokkugia* and life among the Birds is in fact more complex than has been suggested here. These complexities will be examined further on pp.51-2.

36 Paphlagon is coupled with the tanning of leather right at the start of the play, see Ar.Eq.44. See Edmunds (1987), Dover (1972) 89, Sommerstein (1981) 2-3, Reckford (1987) 113ff on the satire of Cleon in the *Knights*.

37 Flattery: Ar.Eq.266ff, 654ff, 725ff; cowardice: 389-90, 1054-6; thieving: 77ff, 103, 249, 258f, 296, 311-12, 326, 391ff, 716-8; political monopoly: 50ff, 351-2; style of oratory: 274, 286, 304ff, 351-2, 487, 626; slander: 288, 490-1; violence: 363 (to boule) 365ff (to Sausage-seller).

38 Paphlagon repeatedly draws attention to this fact, even he cannot believe that he is being outstripped at his own game, while the chorus are similarly amazed (Ar.Eq.300ff, 300, 409-10, 683ff, 1206). For the Sausage-seller’s shameless assimilation of Paphlagon’s methods, see the following references: low birth and upbringing: 180ff, 333-334; oratory: 285-7, 468ff, 641-2; flattery: 642ff, 658, and in the wooing of Demos from 725 onwards; violence: 356-8, 365ff, 451ff; robbery: 298-99, 417ff, 778, 1199.
personification of the Athenian citizen body. Under Paphlagon's influence, Demos has been denied the countryside and the good things of life. In terms of political decision making, Demos is depicted as the gullible victim of the outrageous flattery that both Paphlagon and the Sausage-seller foist upon him. In the *Knights*, political corruption, poor decision-making and privation pervade the domain of contemporary Athens.

Judicial activity is not only a part of the domain of contemporary Athens, but litigation is portrayed as a key weapon in the arsenal of the corrupt politician. Paphlagon is depicted bringing or threatening to bring endless legal actions against his enemies (e.g. the Sausage-seller, Demosthenes, the Knights) or against unsuspecting individuals (e.g. outgoing officials, apragmon citizens). The Sausage-seller is similarly prepared to use litigation as a weapon against Paphlagon. The politicians are able to utilise the courts for political ends because their provision of jury-pay buys influence in the law courts. Paphlagon constantly reminds Demos that it is he, Paphlagon, who provides him with his three obols daily payment for jury service, which he prophesies could rise to five obols according to the oracles. When Paphlagon is set upon by the Knights, he calls on the aged jurors to rescue him, stating that both he and they belong to the same phratria, implying that their interests are linked. Having been rejuvenated, Demos rejects with horror a characteristic scenario from his pre-rejuvenation days: an advocate who requests a conviction in return for jury-pay. Judicial activity, in the form of litigation and jury service, is clearly portrayed as part of the corrupt political establishment which characterises contemporary Athenian politics before Demos’ rejuvenation.

39 The audience is told about Demos at *Ar.Eg.* 40-3 but he does not appear on stage until 725, when Paphlagon and the Sausage-seller engage in a contest of flattery before Demos (725-1252).
40 He has been shut up in the city, his diet has been so poor that the news of anchovies is greeted with ecstasy by the boule and every peace overture is dismissed (*Ar.Eg.* 792-76, 642-7).
41 Although Demos is described as being 'as open-mouthed as a man chewing figs' when he steps onto the Pnyx (*έχνην άσπερ έμποδίων όαχόβας* (*Ar.Eg.* 755 tr. Sommerstein) and see Neil (1901) 107 and Sommerstein (1981) 182-3 on translating this passage), Demos himself declares that he wears his imbecility like a mask, allowing politicians to ride the gravy train for a while, only to then knock them off (1121-30).
42 Paphlagon makes the following accusations and charges: conspiracy against the state: *Ar.Eg.* 255, 475-77, 626ff (attacking the Knights), 862; endexis: 278-9; phasis: 300-303; sacrilege: 445-6; theft: 828-30; bribery: 442; dokimasia: 259ff, 824-6; against apragmon citizens: 264. The legitimacy of these cases are often undermined by the farcical nature of the charge (278-9, 300-303) and by Paphlagon's own admission that notions of right and wrong are irrelevant (256, 800).
43 The Sausage-seller makes the following charges against Paphlagon: endexis: *Ar.Eq.* 280-81; cowardice: 368; evading military service: 443; theft: 443; tyrannical descent: 447. Again the seriousness of these charges are often undermined by their farcical content (443, 447).
44 *Ar.Eq.* 50, 796-800, 1019. On jury pay and judicial theory, see Chapter 6.
45 *Ar.Eq.* 255-7 with Sommerstein (1981) 156 for ties between members of *a phratria*. Paphlagon states that he 'feeds (βορρευει)' the jurors, suggesting they are in some sense dependent on him (Neil (1901) 40).
46 *Ar.Eq.* 1338-62 (quoted on p.45).
Aristophanes does not leave his audience with such a deeply depressing analysis, but radically reverses the direction of the drama with the rejuvenation of Demos in the last scene of the play. The Sausage-seller’s action of boiling down Demos showers the on-stage world with blessing. Demos is rejuvenated back to the period of the early fifth century, re-creating the aura of a blessed golden age. Harmony is restored at all levels: strife within the internal political body of Athens is banished, the panhellenic benevolent supremacy of Athens is proclaimed, and the political leadership now guarantees security within the Athenian Empire. There is a radical shift in the political agenda, elevating traditional virtues in opposition to the new intellectual teaching, ensuring the rowers are paid and guaranteeing fairness in the call-up procedure. Demos is presented with a surfeit of good things. Against the backdrop of a lavish religious festival, he is granted peace, a return to the country, an abundance of sexual delights and feasting in the Prytaneum, while the streets are filled with the savour of sacrificial meat. The concluding lines of the Knights drip with the honey of sensual gratification, internal and external stability and the return of sanity.

Within the fantastical world of Demos’ rejuvenation, judicial activity is banished or absent. It is implied that in some sense judicial activity pollutes the religious festival that the Sausage-seller proclaims. The Sausage-seller announces the normal procedure of closing the jury courts for the duration of the festival. But he also heralds the arrival of Demos, who is described as smelling not of mussel-shells, which were used as voting counters in the law courts, but of peace-libations and myrrh. The implication appears to be that judicial activity pollutes the festival.

47 From Ar.Eq.1316 onwards.
48 For rejuvenation see Ar.Eq.1321 with Crichton (1991-3) 67-70. Demos’ early fifth century identity is stressed by his dress (1331-2), behaviour (1375-87) and companions (1325). On the golden age, the phrases ‘violet-crowned’ (1323) and ‘gleaming’ (1329), applied to Demos, were first attributed to Athens by Findar (fr.76) and were one of the Athenians’ favourite eulogies for their city (see Neil (1901) 172, Sommerstein (1981) 215).
49 The Sausage-seller’s influence is seen as totally benevolent (Ar.Eq.1319, 1322) while the malignant Paphlagon is banished to the city gates to trade sausages (1395-1409).
50 Athens/Demos is described as monarchos and basileus of the Hellenes (Ar.Eq.1330, 1333).
51 The Sausage-seller is hailed as ‘defender of the islands’ (τὰς νήσους ἑπικύρως. Ar.Eq.1319).
52 Ar.Eq.1367-1383.
53 Religious festival: next note; peace in the form of libations/peace treaties and as two young girls: 1331, 1388ff; return to the country: 1394-5; sexual delights: homosexual (1384-7), heterosexual (1390-1); feasting: in the Prytaneum (1404-6) and in the streets (1320).
54 See Ar.Eq.1316-18 (quoted at the beginning of this chapter). The expressions ‘speak fair’ and ‘sing the paean’ were used at the beginning of a religious rite (see Ar. Ach.237, 241; Nub. 263; Vesp. 868 and Sommerstein (1981) 215).
55 For closing the courts during a religious festival see [Xen.]Ath.Pol.3.8 and Ar.Nub.620.
celebrating Demos’ rejuvenation. The Sausage-seller enlightens Demos as to the errors of his former ways, including the corruption within the judicial system arising from the self-serving attitude of the advocates and the greed of the jurors:

ΑΛ. Νῦν δὴ φράσον:
Έαν τις εἴτη βομμάλοχος ξυνήγορος:
"Οὐκ ἑστιν ὑμῖν τοῖς δικασταῖς ἀλφίτα,
ei μὴ καταγνώσασθε ταύτην τὴν δίκην",
τούτον τί δράσεις, εἰπέ, τὸν ξυνήγορον;
ΔΗ. "Ἀρας μετέωρον εἰς τὸ βάραθρον ἐμβαλῶ,
ἐκ τοῦ λόρυγγος ἐκκρεμάσας ὑπέρβολον.
ΑΛ. Τοτεί μὲν ἄρθως καὶ φρονίμως ἢδη λέγεις:

SAUSAGE-SELLER: Now tell me, if a certain low-down sunegoros says: ‘there are no barley-groats for you jury-men, if you will not condemn in this dike.’ Tell me, what will you do with this sunegoros?

DEMOS: Lifting him up in mid-air, I will throw him into the Barathron, hanging Hyperbolus round his neck.

SAUSAGE-SELLER: Now you are speaking rightly and sensibly.

In the minds of both Demos and the Sausage-seller, corrupt modes of judicial behaviour from the domain of contemporary Athens have no place in the fantastical paradise of Demos’ rejuvenation. In the polarised on-stage world of the Knights, judicial activity is located within the domain of contemporary Athens, characterised by political corruption and privations, and is absent from the fantastical paradise of Demos’ rejuvenation, a domain dripping with sensual delights, stability and the return of political sanity.

In her mock-assembly speech at the start of the Ecclesiazusae, Praxagora paints a damning picture of Athenian public life. She describes in depressing terms a city where endless debate produces policy which is rapidly reneged on, where the demos consistently chooses corrupt leaders, where political participation is motivated by pay and where economic hardship pervades the polis. Judicial activity is presented as but one of these woes under which Athens labours and from which Praxagora wishes to save the city, while her ‘ordinary’ citizens, such as Blepyrus and Chremes, are regulars.

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57 See Neil (1901) 171 and Sommerstein (1981) 214
58 Ar.Eq.1337-64.
59 Ar.Eq.1357-64.
60 For Praxagora’s speech, see Ar.Ecl.173-240, in which she criticises the demos’ appointment of poneroi to positions of political leadership, inability to follow policy, and their dependence on pay. See 136-43 for rowdy assemblies and 408-26, 815-29 (with Ussher (1973) 188-9 on the recent currency and taxation measures referred to here) for references to current economic problems. See Ussher (1973) xxi-xxx, Reckford (1987) 345-7 and Said (1996) 284-9 for further details. On the economic situation in Athens after the Peloponnesian War, see Mossé (1973) 12-17, Strauss (1986) 42-69, Taaffe (1993) 130-1.
upon the jury-benches. Once control of the city has passed to the Women, Praxagora outlines to her husband and Chremes the wonders which will be bestowed upon them under the 'new world order'. Praxagora’s scheme guarantees the end of poverty and hardship through the communisation of economic resources, which are then redistributed in the form of free food and possessions, while agricultural labour becomes the preserve of slaves. Similarly personal relationships will be communised: every individual possesses the right to have sexual intercourse with any other, regardless of age or beauty, and all children are to be held in communal trust. Praxagora concludes her presentation of the new world order with a description of citizens returning from the communal feast, being seduced in accordance with the new laws of sexual interaction. Praxagora’s vision sees its realisation in Chremes’ ready subscription to the communisation of economic resources and in the heraldess’ summons to the lavish communal banquet, to which Blepyrus is urged at the close of the play. The dramatic momentum of the play impels Praxagora and her family out of the political chaos and economic hardship of contemporary Athens and into a new world order of communal property and relationships, producing a fantastical paradise of leisured ease, culinary delights and sexual licence. Judicial processes are clearly banished from this new world order. Blepyrus wonders with what one will pay fines from dikai if all property is now communal, only to be informed by Praxagora that: ‘but to begin with, there will not even be dikai’. Alarmed as ever, Blepyrus enquires how the repayment of debts will be enforced or how the assailant and thief will be brought to justice. Praxagora enlightens him that there will be no private property to either lend or steal, while malefactors will be punished by a period of privation from the communal feasts. The clearest statement on the absence of judicial activity from the new world order comes in the transformation of function undergone by the now

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62 Ar.Eccl.590-610, 650-54. See Ar.Eccl.730-833, 834-52, 1112-82. Note the lavish descriptions of food and dining in the last two references.

63 Ar.Eccl.590-610, 650-54. See Ar.Eccl.730-833, 834-52, 1112-82. Note the lavish descriptions of food and dining in the last two references.

64 The presentation of the new world order is in fact more ambivalent than this, with the interjections of the Citizen (Ar.Eccl.746-835, 853-76) and the bizarre scene with the three Old Women (877-1111). See pp.53-4 for further details.

65 Ar.Eccl.590-610, 650-54. See Ar.Eccl.730-833, 834-52, 1112-82. Note the lavish descriptions of food and dining in the last two references.

66 Debts: Ar.Eccl.658-9; assault (aikeia) and hubris: 662-4, with p.23n.39; thief (both κλέπτης and παπαδούς): 667-8.

redundant paraphernalia of justice. The Stoas and the law courts are to become the communal mess-halls; the *bema* is to be a sideboard for pots and pans and a dais from which a youth will recount the exploits of the brave and the shameful acts of the cowardly; and the *kleroteria* will be used to empanel the citizens to their dinners. In the new world order of female rule, judicial activity is superfluous to such an extent that the former fora of judicial conflict can be transformed into mess-halls for the feted and feasted citizenry.

On the basis of the above analyses of the *Birds*, *Knights* and *Ecclesiazusae*, it is possible to argue that judicial activity occupies a consistent position within the Aristophanic world. Judicial activity is located within the domain of contemporary Athens, a domain characterised by such negative associations as war, political corruption, economic hardship and the loss of the good life. Not only is judicial activity located within this oppressive domain, but it is seen as one of these negative associations (*Knights* and *Ecclesiazusae*) or may even be the defining negative association of contemporary Athens (*Birds*). It is from this oppressive domain, including the oppression of judicial activity, that the comic hero desires liberation. The dramatic momentum of the Aristophanic world propels the hero into a fantastical paradise, within which he is elevated to an unparalleled position of pre-eminence to enjoy the blessings of peace, regained youth, unbridled sexuality, alcoholic and culinary delights. Judicial activity is often consciously absent and intentionally banished from this fantastical paradise which the hero creates, enters into and enjoys. This consistent presentation of judicial activity is discernible in at least a further four of Aristophanes' extant plays. In the *Acharnians* of 425 and the *Plutus* of 388, sycophants are expelled from the hero's fantastical paradise. In the *Wasps* (422), the hero and his choral colleagues are gripped by a mania for jury-service which is described as a sickness (vocos) and from which he must be cured. In the *Peace* of 421 jury service and corrupt litigation characterise the time of war and are categorically absent the time of peace. Therefore, in the schema of polarities advanced above, judicial activity must be added to the list of negative associations characterising the domain of contemporary

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71 Ar.Ecle.675-87 with Ussher (1973) 170-74 and Chapter 1 for details on the places and objects referred to.
72 See p.48-51 below.
73 See Chapter 6.1.
74 See Ar.Pax 632-44 for a description of corrupt judicial activity while the *demos* is shut up in the city during the time of war. This behaviour is stated as one of the reasons why the goddess Peace has been absent from the city (see Hermes' explanation for Peace's absence: 601-705). When peace comes, the chorus renounce their war-time character of the 'acid (δριμως), discontented (δυσκολος) and hard (σκληρος)' juror to become 'gentle (τηλαλος) and much younger (παλυ νεωτερος)' during the time of peace (346-54). Therefore judicial activity is clearly associated with the deprivations and hardship of the time of war, while the chorus' transformation from embittered juror to gentle youthfulness is located within the time of peace, which is characterised by a return of the good life (see p.39n.18, p.40.n.19).
Athens and the absence of judicial activity to the list of the positive associations characterising the hero’s fantastical paradise.

A closer examination of the presentation of the sycophant within the Aristophanic world, the practitioner of judicial activity *par excellence*, offers further insights into why judicial activity is a negative association.\(^{75}\) Firstly, the sycophant is presented as one who is familiar with the judicial system and possesses the appropriate rhetorical skills to speak as a litigant.\(^{76}\) Nicarchus, when challenged by the Theban as to why he is being prosecuted, can not help reverting to the characteristic patois of a litigant in his reply: ‘I will tell you for the sake of those standing around’, even though he is addressing a seated theatre audience in this case, rather than those standing by the court railings.\(^{77}\) Secondly, the sycophant possesses an unnatural willingness to use these abilities to bring prosecutions against others.\(^{78}\) In striking metaphors, the sycophant is described as ‘a mortar of *dikai* (τρίπτηρ δικόν)’ or one who ‘stitches together lawsuits (δικαραφεῖν)’, highlighting his willingness to generate oppressive litigation.\(^{79}\) Thirdly, these prosecutions are often of a trumped-up nature,\(^{80}\) although

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\(^{75}\) On sycophants in general, see Bonner (1927) 59-61, MacDowell (1978) 62-6, Harvey (1990), Osborne (1985b), (1990), Todd (1993) 92-5. Osborne and Harvey hold opposed opinions on the role of sycophants in the Athenian judicial system. See Chapter 6.3 on arguments both for and against *ho boulomenosi* the sycophant.

\(^{76}\) Sycophants are familiar with legal procedures such as *phasis* (p.16, Ar.Av.1694), *hubris* (Ar.Plut.886), torture of slaves (874-6), accusations of conspiracy (948-50). In the *Birds*, the sycophant is fully conversant with how to utilise summons-serving for his own ends (1453-61), note his use of the legal term *γυμναλκος* at 1455 with Dunbar (1995) 684-5. On oratory, see the attribution of the epithet *κακοφων* to Nicarchus (Ach.933), and Av.1694-1705, where much play is made on rhetorical skill in the description of the sycophantic ‘tongue to belly race (ἐγγαμματευσατορῶν γένος’).

\(^{77}\) ἐγὼ φησίν σοι τῶν περιστάτων χάριν’ (Ar.Ach.915 with Rennie (1909) 227, Sommerstein (1980) 202, who cite Dem. 18.196 and 54.41 as examples from the Orators. See p.17 on those standing by the court railings).

\(^{78}\) In the *Acharnians*, both sycophants pounce on the foreigners and denounce them and their wares by *phasis* (Ar.Ach.819, 827, 911-2). In the *Birds*, the sycophant makes his living by harassing Athenian allies (Ar.Av.1422, 1425) and openly states he is ‘a sycophant and a poker into troubles (πυκοφωντης...και πραγματέιτες’). 1423-4, with Dunbar (1995) 674, 8 on the shocking nature of his admission). In the *Plutus*, the sycophant immediately pounces on Carion as a potential suspect for his missing wealth, threatening to break him on the wheel (Ar.Plut.870-6, 886-95) and then turns on the Good Man, accusing him of a being co-conspirator with Carion on account of his transformation from sartorial rags to riches (880-2). Finally the sycophant threatens to bring a charge against the god Wealth for overthrowing the democracy (καταλύει τὴν δημοκρατίαν) and for not obtaining the consent (ὤτε πιθανόν) of the *boule* and assembly (945-50).

\(^{79}\) Ar.Ach.937 (the vessel metaphor in keeping with Nicarchus’ export to Thebes as a pot), Av.1435 with Dunbar (1995) 680-1 and see also Nub.1483 for the use of the same term (p.118).

\(^{80}\) In *Acharnians*, Nicarchus’ accusation that the Theban is importing wicks to set fire to the boat-sheds is exposed as utterly ridiculous by Dicaeopolis (Ar.Ach.915-25). In the *Birds*, the sycophant comes to *Nepholokkugia* seeking wings (e.g. Ar.Av.1418, 1420) so he can travel to and from the islands faster than his legal opponents and thus win his cases against them by default (1433-61). In the *Plutus*, the Sycophant accuses the Good Man of being a co-conspirator with Carion by making the tenuous connection between the Good Man’s sartorial elevation and his own impoverishment (Ar.Plut.880-2).
they may be hidden behind a smoke-screen of democratic rhetoric. So Carion, having listened to the accusations which he and the Good Man have been subjected to from the sycophant, replies that the sycophant and his witness are in reality 'quite full of nothing'. Fourthly the goal of these prosecutions is personal gain, usually pecuniary, rather than a passion for justice. For example, Dicaeopolis persuades the Theban to pack up and export the sycophant Nicarchus back to Thebes on account of the huge profits the Theban stands to make through Nicarchus' sycophancy. Therefore the heart of the sycophant's offence appears to be a cynical utilisation of the judicial system to interfere in the affairs of others for personal gain. This is brought out clearly by the Good Man in the *Plutus*, as he interrogates the sycophant in response to his claim that he is a lover of the city (φιλόπολις).

81 When his actions are challenged, the sycophant tells Dicaeopolis: 'should I not expose the enemy' (ού γάρ φανώ τούς πολεμίους. *Ar.Ach.*827). In the *Plutus*, the sycophant claims that he is *philopolis* and *euergetes* of the city, skilfully arguing that the functioning of the democratic judicial system is dependent on his activities (see below).

82 'μηδενός γ' εμπλήμενος' (*Ar.Plat.*892).

83 *Ar.Ach.*905-7, 947, 957-8. See generally Harvey (1990) 110-12. Sycophants attacked Callias in the courts for financial gain (*Ar.Av.*284-6 with Dunbar (1995) 235-7). The Sycophant in the *Birds* hopes to become rich (he is at present poor (1410, 1416-7)) from the charges he brings against allies (1459-60). The description of sycophants as a 'race of tongue-to-belly men' implies they live off the sweat of their tongues in the courts (1695, 1702-3 with Dunbar (1995) 740-1). In the *Plutus*, sycophants had become very rich while Wealth was blind (Ar.Plut.30-1), but have subsequently been impoverished by the restoration of Wealth's sight (850-9). Sycophants are frequently associated with *phasis*, a choice of procedure through which the successful prosecutor gained one half of the denounced goods (p.16).
ΣΥ. ἄλλα προβατίου βίου λέγεις, εἰ μὴ φανεῖται διατριβή τις τῷ βίῳ.

SYCOPHANT: I am the overseer of the affairs of the city and all the private ones as well.

GOOD MAN: You, how come?

SYCOPHANT: I want to be.

GOOD MAN: How can you be beneficial, you burglar, if you are hated over matters that are none of your business?

SYCOPHANT: So isn’t it my business to be a benefactor to my city, you idiot, with all my strength?

GOOD MAN: So is being a busy-body the same as being a benefactor?

SYCOPHANT: Well, you mean coming to the help of the established laws and not turning aside if someone breaks them.

GOOD MAN: Hasn’t the city deliberately set up jurors to rule?

SYCOPHANT: So who will prosecute?

GOOD MAN: The man who wishes (ho boulomenos)

SYCOPHANT: So am I not that man? And so the affairs of the city do return to me.

GOOD MAN: Then the city has a worthless champion (prostates), by Zeus. Would you not wish for this, to have peace, a relaxed life?

SYCOPHANT: But you are talking about the life of a lamb, that will not seem like a life’s work. 84

The Good Man’s questioning exposes the sycophant’s offence: the utilisation of the judicial system to interfere in affairs which are of no concern of his, his polupragmon nature and his refusal to accept a quiet life. It is important to observe that modes of judicial behaviour are operating within a broader framework of values concerning interpersonal relationships. It is considered inappropriate behaviour to interfere in the affairs of others, and so the sycophant’s behaviour is a violation of this principle. 85 Furthermore, it is possible to identify this framework as moral, on the basis of the strong moral sanctions which are advanced against practitioners of this variety of judicial activity. The sycophant is described using such morally negative epithets as πονηρός, κακός, πανώργος and the source of πραγμάτα. 86 He is derided because of his spurning of valid forms of work (that which is σώφρον, δικαίον, νόμιμον, e.g.

84 Ar.Plut.907-23. For the sycophant as philopolis, see 900, 901. For other aspects of this passage, particularly its statements about ho boulomenos and democratic judicial theory, see Chapter 6.1.
85 This principle will be discussed in Chapter 8.
86 πονηρός: Ar.Plut.862, 869, 920, 939, 956; κακός: Ach.820-1, 829, 909, 924, 937, 952, Av.1467, Plut.861, 879; πανώργος: Av.1468, 1695; and the source of πραγμάτα: Ach.939, Av.1424. See Harvey (1990) 107-109 for a full analysis of the moral vocabulary used to describe sycophants across all forms of literature.
farming or even trading) for living off the fruits of his prosecutions. The sycophant is considered to be worthy of destruction, and god-forsaken to such an extent that it is suggested that Zeus should destroy sycophants and so gain the universal praise from all Greece. The ultimate consequence of such behaviour within the Aristophanic world is to be beaten and subsequently banished from the fantastical paradise.

Therefore it is not so much the sycophant’s involvement in judicial activity per se that generates this condemnation, as the manner in which he operates within the judicial sphere. He is portrayed as an individual who utilises his legal and rhetorical skills to meddle in the affairs of others by bringing prosecutions, often on dubious grounds, for personal gain. This behaviour transgresses a wider moral framework of interpersonal relationships, generating strong moral censure and ultimately expulsion from the fantastical paradise. Similarly it is not so much Philocleon’s involvement in jury-service which is problematic, but the manner in which he conducts himself as a juror, characterised by his obsession with litigation and unnatural vindictiveness (see Chapter 6.1). It is the unceasing, never-ending nature of Athenian litigation rather than litigation per se, which locates judicial activity firmly within the list of negative associations from which the comic hero seeks liberation. In the Aristophanic world, meddlesome, overzealous, unceasing judicial behaviour is presented as problematic, rather than the administration of justice in and of itself. This conclusion is strengthened by the observation that, although inappropriate judicial behaviour is banished from the fantastical paradise, judicial activity may subsequently resurface in the fantastical world. In the Birds, Knights and Ecclesiazusae, it is possible to observe this resurfacing of judicial activity in the comic hero’s fantastical paradise.

As Peisetaerus realises his brilliant idea of a city in the sky, he recreates rather than escapes the very way of life in Athens that he abhorred and fled from. The city he founds begins to resemble the city he has escaped. Nephelokokkugia it transpires has a similar patron deity, similar religious and civic rituals, buildings and fortifications to those of Athens. Above all, the one aspect which Peisetaerus most vehemently objected to in contemporary Athens, judicial activity, resurfaces in Nephelokokkugia. This can be seen most clearly in the judicial battle which Peisetaerus undertakes against

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87 See Ar.Av.1430-52, Plut.902-5. On attitudes to work in general, see Balme (1984), Burford (1993).
88 Ar.Ach.934, 952, Av.1467, Plut.877-9, 896.
89 Ar.Ach.827-8, 924-8, Av.1464-9 (with Dunbar (1995) 673, 686-7 on the greater violence which is visited on the sycophant in comparison to other intruders) and Plut.926-58.
Poseidon towards the end of the play. Peisetaerus exhibits an astonishing grasp of litigation, worthy of any experienced speaker in the jury courts. His adversary is none other than the god Poseidon, the senior member of the embassy appointed by the divine democracy. Peisetaerus exhibits an dazzling grasp of legal terminology, sharp argument and even the citation of the appropriate Solonic law on intestate inheritance and the position of bastards. Finally though, it is the appeal to the comic gluttony of Hercules rather than sharp litigation that carries the day. Peisetaerus the exile, appalled by Athenian litigiousness, has become the litigant par excellence. In its banishment of judicial practitioners and the invincibility of its founder to prosecution, Nephelokokkugia can act as a foil to litigious Athens; or it can act as a similitude, with the judicial skill of its leading citizen mirroring the judicial duelling of the Athenians.

Similarly in the Knights, judicial activity is never totally banished from the fantastical paradise of Demos’ rejuvenation. The courts are closed for the duration of the festival but there is no indication that they are dismantled completely. The Sausage-seller presumes that the rejuvenated Demos will be listening to advocates. It is Demos’ discernment and his response to the corrupt advocate that will have been transformed. In his vision that foreshadows Demos’ rejuvenation, the Sausage-seller envisages that Demos, having been regenerated by the blessings of peace, the countryside and good food, will return from his rural idyll ‘seeking a voting-token against you (Paphlagon),’ indicating that Paphlagon will be brought to account through the courts. Although the rejuvenated Demos clearly rejects the judicial corruption of his former existence, this does not entail an abandoning or overthrowing of justice.

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91 See Ar.Av.1580-1693. The return of judicial activity is also witnessed in Peisetaerus’ threatening of Iris with the death sentence (1220-4); the executing and roasting of some Birds for conspiring against Nephelokokkugia (1583-5 with Dunbar (1995) 719-20); Peisetaerus’ acquisition of Basileia, who brings with her power which is in part described as judicial (1541 with Dunbar (1995) 706).
92 Ar.Av.1565-74.
94 Poseidon argues that Heracles stands to lose his inheritance from Zeus if Zeus hands over sovereignty to the Birds (Ar.Av.1641-45). Peisetaerus’ case rests on proving that Hercules cannot inherit because he is a bastard, while his argument overlooks Ares, the legitimate male heir (1654 with Sommerstein (1987) 306, Dunbar (1971) 731) and the fact that Athena cannot be an epikleros because Zeus is still alive (1653 with Sommerstein (1987) 305).
97 See p.29n.43 on the closing of the courts for festivals and Sommerstein (1981) 216 on the courts not being permanently closed.
98 Ar.Eq. 1358-1364, quoted above.
99 See p.29n.43 on the closing of the courts for festivals and Sommerstein (1981) 216 on the courts not being permanently closed.
In the *Ecclesiazusae*, the exchanges between Chremes and the Citizen and the scene with the Young Man and the three Old Women, raise questions about Praxagora’s new world order, particularly concerning its implementation and consequences. In the former, the Citizen, a typically wily and rhetorically skilful Athenian, looks on in amazement as Chremes brings out his possessions to take to the Agora in accordance with new laws passed by the Women. He himself is waiting to see what will happen, as, given the Assembly’s previous track record, he is fairly certain this new legislation will be overturned. On the other hand, as soon as the Citizen hears the Heraldess’ summons to the communal feast, his scepticism towards the new laws evaporates and he enthusiastically embraces his participation in communal dining as a demonstration of his loyalty to the city. The scene ends with Chremes and the Citizen leaving for the mess-halls, with the latter pondering the following dilemma:

By Zeus, I need some device so that I can hang on to my present possessions but somehow get a share of the public benefits (lit. the prepared things for the public). This is the best plan I think: I must go to the same place (i.e. to the banquet which Chremes is heading) to dine and not stay here.

The scene between Chremes and the Citizen questions Praxagora’s new world order by exploring the implementation of the new laws on communal ownership in the face of human selfishness and acquisitiveness. The scene between the Young Man and the three Old Women not only examines the consequences of the new world order, but chronicles the resurfacing of judicial activity in the fantastical paradise. The Young
Man, at the very door of his lover, is apprehended by a succession of increasingly ugly Old Women. Each of the Old Women argues that, on the basis of the new legislation passed by the Women, he must have sexual intercourse with her before fulfilling his assignation with his youthful lover. The First Old Woman goes as far as to cite the text of the decree which the Assembly of Women has recently passed with regard to sexual practice. In response, the Young Man tries a number of legal manoeuvres to escape the claims of Old Women. For example he argues that he is able to ‘pass’ on the law, that the First Old Woman has not paid the appropriate taxes, that a demesman will bail him out, that he is a merchant and so not subject to usual judicial procedures, or that two sureties will stand for him. In a quick-fire exchange of legal arguments, the Old Women meet and overturn each of his objections with counter-arguments. The Young Man’s loss of his case before such sharp ‘litigants’ results in his eventual submission to their demands. Therefore the exchanges between Chremes and the Citizen and the scene with the Young Man and the three Old Women, when taken together, raise questions about Praxagora’s new world order, both in its implementation and in its consequences. These questions dissolve in the typically Aristophanic laughter of the final scene, in which Blepyrus is summoned to a sumptuous banquet, accompanied by sensuous dancing girls. Within the litigation-free paradise of the new world order, judicial activity resurfaces in the guise of the Old Women’s rigorous enforcing of the new legislation on sexual practice, regardless of the Young Man’s legal manoeuvres and evasions. As in the Birds and the Knights, judicial activity resurfaces in the fantastical paradise of the Ecclesiazusae from which it has been banished.

In conclusion, it is possible to identify a range of images with regard to judicial activity in Aristophanic world. Firstly judicial activity is firmly located within

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105 *Ar.Ecc*l.877-1111.
106 First Old Woman: *Ar.Ecc*l.1013-22; Second Old Woman: 1055-6, 1077; Third Old Woman: 1078.
107 *Ar.Ecc*l.1015-1020.
108 In reply to the Fist Woman’s demand that she must be ‘introduced’ (see *Ar.Ecc*l.986 with Ussher (1973) 213 on the judicial terminology in 982-8), the Young man replies at 987 ‘only for anyone who wishes, according to the law on pettoi (a type of draughts or dicing (*τῷ θουλομένῳ γε κατὰ τόν ἐν πεττοῖς φύλον*))’. Ussher (1973) 213 interprets this difficult line by suggesting that there was a rule in pettoi which allowed a player to refuse if he wished. In 1006-7, the Young Man argues that the First Old Woman has not paid the relevant tax, see Ussher (1973) 216 on this puzzling passage. For 1006-26, see p.16n.29 for an analysis of the humour and legal terminology. At 1064-5, the young man offers δύο ἐγγυητάι instead of himself. Todd (1993) 374 defines an engutes as ‘the person who pledges or commits himself as a pledge’ for security. See Ant.5.17, Dem.59.66 for examples.
109 At *Ar.Ecc*l.988, the First Old Woman points out to the Young Man that he did not dine according to law on pettoi. See p.16n.29 for the counter-arguments advanced at 1006-26. At 1065, the Second Old Woman simply states she is not interested in the Young Man’s offer of egguetai.
110 *Ar.Ecc*l.1098-1111 with Ussher (1973) 224-227.
111 *Ar.Ecc*l.1112-82 with Ussher (1973) xxxiv-v and Reckford (1987) 353. For the dissolving of unsettling tensions at the end of a play, see Crichton (1991-3) 67 and references cited in n.82.
contemporary Athens, a domain characterised by a plethora of negative associations. Not only is judicial activity taken to be one of these negative associations, but it may be the negative characteristic of contemporary Athens, from which the comic hero is seeking liberation. Secondly the comic hero escapes into a fantastical paradise, a domain characterised by an over-abundance of positive associations. Consequently judicial activity is absent from the fantastical paradise and its practitioners banished. This hostility is not so much based on judicial activity *per se*, but judicial behaviour which is meddlesome and self-serving. Such judicial behaviour transgresses a wider moral framework pertaining to interpersonal relationships and so provokes strong moral censure and condemnation. Thirdly it turns out that this absence of judicial activity is illusory, judicial activity subsequently resurfaces in the fantastical paradise. Absolute anarchy and an abandonment of justice are never advocated within the Aristophanic world. On the grounds that the Aristophanic world refracts judicial activity in a multifaceted manner, instead of projecting a monolithic manifesto, I do not think it is possible to argue that Aristophanes offers his audience either a sustained critique of or a programme of reform for the democratic judicial system.\footnote{See Chapter 6.2 on Aristophanes within the current debate on judicial theory and p.31 on Aristophanes' focus on entertainment rather than instruction.} Aristophanes sets up a particular viewpoint before his audience, only to subvert and challenge that position as he moves his audience on from one comic idea to the next. But the playwright's sustained focus on a topic, the location of that topic within the on-stage world and the tools which he uses to demolish a viewpoint offer valuable insights into the popular attitudes of his audience. I would like to suggest that the Aristophanic world's sustained focus on judicial activity, the consistent location of that activity within the domain of oppressive contemporary Athens and its absence from the fantastical paradise, and the demolition of judicial behaviour which is meddlesome and self-serving reflect the concerns and preoccupations that his audience held towards the democratic judicial system. Before considering the relationship between on-stage image and off-stage reality, I would like to step out of the Aristophanic world and into the on-stage, comic world of his contemporaries to ascertain whether this preoccupation with judicial activity is simply an Aristophanic concern.

There is evidence to suggest that an interest in judicial activity, expressed through the comic medium, was not exclusively an Aristophanic concern. Our evidence for Old Comedy is very limited and fragmentary outside Aristophanes. Consequently it is notoriously difficult to draw any definite conclusions from the few surviving, unconnected, fragments, each floating free of its context and often owing its survival to
the linguistic requirements of the lexicographers. Aristophanes' contemporaries, Thugenides and Cratinus wrote plays whose titles suggest they were based on a legal theme. Thugenides' play, the *Jurors*, can be dated at best to the mid to late fifth century, of which we possess a reference and a fragment, from which we can reconstruct nothing of any relevance. Cratinus wrote his play, entitled the *Laws*, in the second half of the fifth century, perhaps in the 430s. We possess some fourteen or so fragments, from which it is possible to construct something of the content. We know the play contained a chorus of old men, which Meineke suggested could have been a chorus of aged Laws, and at least two characters who refer to laws they have made. The choice of an enfeebled and decrepit elderly chorus to possibly depict the Laws is interesting in the light of Aristophanic couplings of old age with litigiousness and the general unease about, and the desire to escape from, the debilitations of old age. It has been suggested that the two lawgivers could be Dracon and Solon, which is partly supported by the use of *thesmoi* rather than *nomoi* to describe the laws they have enacted and the parodying of a Solonian saying. Moreover it is possible tentatively to suggest that this exploration of law was situated to some extent in the jury court and examined some of the conflicts in this arena. The play contained references to the Lycambean Archon, the Archon responsible for overseeing cases of heiresses and the relations between *metoicoi* and their patrons, and the *kemos* or voting funnel, down which jurors dropped their votes. There is one reference to individuals who readily accept bribes and two possible references to conflict. References are made

113 See Dover (1972) 210 on the ravages wrought by the transmission process on Old Comedy which has produced the large body of comic fragments and Heath (1990) on the problems of using the comic fragments.

114 An inscription of the mid-fifth century can be tentatively restored to state that Thugenides won a single comic victory at the City Dionysia (Edmonds (1957) 1. 197). There is no evidence to supports Edmonds' date of around 425, which he gives on the grounds that Cleon raised the jury pay at that time (Edmonds *ibid*. n.b).


116 It is virtually impossible to date these fragments. The first recorded victory of Cratinus was in 453, which questions Bergk's suggestion that the play was written in response to the Ephialtic reforms (see Edmonds (1957) 1.61 n.b). Edmonds, following Gleissler, suggests a date in the 430s, because Cratinus fr.139 K-A mentions Tyrrhenian or four toed sandals, which Pollux states were the style of footwear used by Pheidias on the statue of Athena Parthenos, completed in 438 (Edmonds (1957) 1.61 n.b, 65 n.e).


118 Cratinus fr.133 K-A. Meineke's suggestion is accepted by Norwood (1931) 136-7 and Edmonds (1957) 1.63 n.b.

119 'ναρα μεν θειαί τῶν ἵματέρων' (Cratinus fr.134 K-A); or the speakers may be referring to the laws they live under.

120 On litigiousness, old age and rejuvenation, see Crichton (1991-93).

121 See Norwood (1931) 136-7, Edmonds (1951) 1.63 n.c. On *thesmoi* see p.41n.31. On the parody of Solon see n.124 below.


123 Cratinus fr.140 K-A.

124 Cratinus fr.135 K-A, the Suidas states that the expression 'taking the fox's bribe' refers to those who readily accepted bribes and is a parody of Solon (see Suid.sv Χρῆθ...ΧρΗς, *El.and lam*.1.124).

125 Cratinus fr.129, 134 K-A.
to the corrupt activities of sycophants in several plays from Old Comedy.\(^{126}\) A character in Plato Comicus' *the Women from Worship* (*Αι ἄφιερον*), dated to perhaps 387, comments on the politico-judicial activity of Pamphilus, a contemporary politician: 'and by Zeus, if indeed you said that Pamphilus stole from public funds and at the same time was a sycophant.'\(^{127}\) Although it is difficult to give much weight to these isolated fragments in terms of a play's content, it is important to note that other comic poets, apart from Aristophanes, produced plays which focused on judicial activity and may have included such topics as the laws, sycophancy, jury-service and courtroom activity. This evidence strongly suggests that a focusing on judicial activity was not merely an Aristophanic preserve.

According to the course of action proposed in Chapter 2, having identified the position of judicial activity within the on-stage world, it is now necessary to examine these images from the on-stage world in the light of off-stage evidence. Given the important position that judicial involvement occupied in the construction of Athenian civic ideology (Chapter 1), it is unsurprising to observe that the total abandonment of judicial activity and justice is never seriously advanced as a proposal in the Aristophanic world and that judicial activity resurfaces in the fantastical paradise. Nor is it surprising to see Athenian citizens portrayed on-stage as engaging in litigation and jury-service, given the voluntary and non-professional nature of the democratic judicial system (see Chapter 1). The surprising and interesting on-stage image is the consistent manner in which inappropriate judicial behaviour is to be fled from, is condemned in moral tones and is banished or is absent from the fantastical paradise. Therefore the following chapter will compare these on-stage images of judicial activity and behaviour with off-stage evidence from the Attic Orators about behaviour in the courtroom (Chapter 4). Furthermore, given the sustained focusing by Aristophanes and his contemporaries on judicial activity and behaviour, succeeding chapters will consider whether there were factors specific to the age of Aristophanes which intensified this concern with judicial activity (Chapters 4.1, 5-6, 7.1).

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\(^{126}\) See Cratinus fr.70 K-A; Eupolis fr.245 (referring to the plenitude of scorpions and sycophants in Tenos), 259.36 K-A; Plato Comicus 14 K-A (see next note); Telecleides fr.44 K-A (Charicles and Nicias paying a sycophant hush money).

\(^{127}\) 'καὶ νῦν δὲ ἔν πάμφιλον γε φαίνει κλέπτειν τὸ κοίνον ἀμα τὲ ᾠκοφαντεῖν' (*Plato Comicus fr.14 K-A*). On Pamphilus's career, see *APF* 365 generally and on his downfall and trial probably referred to here, see *Xen.Hell.5.1.5, Ar.Plut.*174.
Judicial Activity in the Attic Orators

In the final scene of the *Wasps*, the images of *phileliastic* sickness, corrupt advocates and tyrannical jurors that have dominated the play are dissolved as Philocleon embarks on a dancing competition against Carcinus and his sons, with the chorus of wasp-jurors becoming the chorus line for these dancing protagonists. In the concluding lines, the chorus deliberately reminds the audience that they are but a chorus who for the first time have been sent off dancing by their playwright, rather than the caustic, aged wasp-jurors of the preceding scenes. By abandoning judicial critique for joyous cavorting and by making deliberate extra-theatrical asides, it may be that Aristophanes is reminding his audience that the depiction of judicial activity on-stage is a fiction which can not be translated into the courtroom of the off-stage world. Again we return to the question of interpreting Aristophanes: although we may have been able to locate the position of judicial activity within the on-stage world (Chapter 3), we have yet to comprehend how Aristophanes’ audiences read and interpreted these on-stage images. Did they yearn to join Peisetaerus and Euepides in their flight from judicial activity or were they horrified by the two heroes’ rejection of a judicial system in which they participated as jurors, litigants or witnesses? In order to answer such questions, it is essential to contrast on-stage images of judicial activity from the Aristophanic world with evidence from beyond the theatre. The primary focus of this chapter will be the presentation of judicial activity in the Attic Orators (Chapter 4.2-4). Before turning to the Attic Orators, I would like to consider whether the image of Athens as a society characterised by its judicial activity receives any confirmation beyond the theatre or is a product of the Aristophanic mind alone (Chapter 4.1).

4.1 The Perceived Prevalence of Judicial Activity in Athenian Society

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1 *Ar.* *Vesp.* 1474-1537. See Crichton (1991-3) 67 on this passage and Chapter 6.1 on the image of the wasp-juror in the *Wasps*.
2 *Ar.* *Vesp.* 1535-7.
3 See the third interpretative key in Chapter 2 (pp.35-6).
Aristophanes was not the only chronicler of Athenian mores to comment on the prevalence of judicial activity in Athenian society. Sources from beyond the theatre also remark on this prevalence and connect it with the role of the jury courts in the administration of the democracy and the empire. The 'Old Oligarch' comments on the volume of business transacted by the democracy in general and the jury courts in particular, stating: 'they pass judgement in dikai, graphai and euthynai to a greater extent than all other men do.' He lists some of the areas of democratic administration and crimes which were adjudicated by the jury courts. He then advances a number of suggestions to combat the problem of an overburdened judiciary, but concludes it would be impossible to reform the democratic judicial system without seriously weakening the democracy. The 'Old Oligarch' communicates a picture of a judicial system that is in almost perpetual session, with a backlog of business building up on account of the central role that it has been given in the administration of the democracy. This connection between judicial activity and the administration of the democracy is also made within the Aristophanic world, where the scrutiny of magistrates at their euthynai is one of the most frequently mentioned procedures.

In his account of the debate held at Sparta before the Peloponnesian War, Thucydides has the Athenian ambassadors comment on perceptions of Athenian imperial judicial policy:

For though allowing ourselves to remain at a disadvantage in dikai with our allies deriving from agreements, and providing laws that are equal for all in trials that we have transferred to Athens, we are thought to be litigious.

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5 Democratic administration: trierarchies, choregia, building on public land, dokimasiai of archai and orphans, appointment of the guards of prisoners; crimes: military desertion (ἀπερρητεῖα), hubris and asebeta (Xen.[Ath.Pol]3.4-5). His list is certainly partial and does not clearly distinguish between responsibilities of the jury courts, boule and Assembly (see Moore (1983) 56-8).


7 See Ar.Ach.936-9, Eq.259-60, 824-6, Vesp.100-2, 568-71, Pax 1186-7 with MacDowell (1971a) 145, Todd (1993) 113. It is interesting to note that the references to euthynai occur in the plays from the 420s. It may be that in subsequent decades, as the scrutiny of officials in the jury courts became a more familiar aspect of democratic political life, it became less worthy of comic comment.

8 On the context of this passage, see de Ste. Croix (1961) 97, Meiggs (1972) 228. Thuc.1.177.1 (based on the translation given by Meiggs (1972) 229). See HCT 1.236-43, Hornblower (1991) 122-3 for the alternative translation, which can be summarised as follows: the disadvantage in
The interpretation of this passage is notoriously difficult, but it would appear that under *sumbolai* that Athens made with other states, an Athenian still had to follow normal procedure and pursue a grievance against an ally through the latter's judicial system.\(^10\) Therefore the ambassadors cite cases arising from *sumbolai* as an example of Athenian non-litigiousness, to counter the charge that they are litigious by transferring other categories of cases to Athens, also adding that even in the later instance, these cases are tried under laws equal to all.\(^11\) Therefore it would appear some aspects of Athenian imperial jurisdiction (with the exception of cases arising from *sumbolai*) gave rise to the charge that the Athenians were too attached to *to philodikein*. In the Age of Aristophanes, it is likely that cases relating to imperial administration, cases requiring severe penalties and the prosecution of or attack upon an Athenian *proxenos* could be transferred from the allied courts to the jury courts in Athens.\(^12\) The Old Oligarch draws attention to the sycophantic prosecutions of the allied elite and on the political and economic advantages that Athens gains in compelling the allies to bring cases to Athens.\(^13\) Aristophanes often refers to allied prosecutions by leading Athenian politicians,\(^14\) while the defendant for whom Lysias wrote *Defence on a Charge of Subverting the Democracy* pointedly observes that: 'in the previous democracy (i.e. pre 404/3)', some 'by their sycophancy, moved the allies to revolt'.\(^15\) Therefore it would appear that the judicial administration of the Athenian Empire was perceived to generate a significant volume of business for the jury courts in Athens.

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\(^{11}\) I am following the interpretation of Thuc.1.77 advanced by de Ste Croix (1961) 95-100, Meiggs (1972) 232-3. The interpretation of Thuc.1.77 is linked to that of the Phaselis decree (ML 31 especially II.6-14). de Ste Croix (1961) 100-8 interprets the decree as a privilege, transferring cases involving Phaselites from the court of the thesmothetai to the less crowded court of Polemarch. Fornara (1979) interprets the decree as oppressive, requiring all cases deriving from *sumbolai* to be transferred to Athens. Meiggs (1972) 231-2, while agreeing that cases were transferred to Athens, interprets this as a privilege, on account of the use of the Polemarch’s court and the encouragement it gives Athenians to trade with Phaselites, confident that they could obtain justice in Athens rather than travelling to Phaselis on the coast of Lycia.


\(^{13}\) [Xen.] *Jath.Pol.* 1.14-8, discussed in further detail on pp.139-40 below.

\(^{14}\) The Sycophant in the *Birds* devotes his time to serving summonses on allies (see p.48n.76). Prosecutions of allies are mentioned at Ar.Eg.326-7, 801-2, 839-40, 1408, Vesp.281-3, Pax 639-47. On Aristophanes and the empire, see Forrest (1975b).

\(^{15}\) ἐν τῇ πολιτείᾳ δημοκρατίᾳ...οἱ δὲ συκοφαντιώτης τοὺς συμμάχους ἀφίστασαν’ (Lys.25.19). On ἀφισίστασαι=to move to revolt, see LSJ s.v. ὀφίστημι A.1 2. See Chapter 4.4.1 for further details on this speech.
In conclusion, the Athenian penchant for judicial activity is highlighted not just by Aristophanes, but also by other fifth century commentators. These attribute this prevalence of judicial activity to the central role of the jury courts in the administration of the democracy and the empire. Furthermore, it would appear that this prevalence of judicial activity was a relatively recent phenomenon. The function of the jury courts in the administration of the democracy developed in a piecemeal fashion, culminating in the reforms of Ephialtes in 462. For instance, it is probably only at this point that the jury courts assumed a major role in the accountability of magistrates. Similarly the transference of litigation from allied to Athenian courts develops only in the second half of the fifth century. Although judicial activity may pervade the Age of Aristophanes, this was a relatively recent phenomenon. Therefore, I would like to suggest that the Aristophanic preoccupation with judicial activity may in part be a reflection of and response to the relatively recent increase in judicial activity in Athenian society, generated by the increased responsibilities given to the jury courts in the administration of the democracy and empire. On the other hand, this does not explain why the comic hero desires to escape from this pervasive litigation into a fantastical paradise from which judicial activity is banished. It is necessary to turn to the Attic Orators in order to understand this response to judicial activity.

4.2 Approaches to Judicial Activity in the Attic Orators

A cursory browse through the Attic Orators uncovers an abundance of comments on acceptable and unacceptable modes of judicial activity. These comments are often made as the litigant introduces his case. The unnamed speaker, at the beginning of his prosecution of Theomnestus, explains to the jurors why he was impelled to bring a *dike kakegorias* against the defendant:

\[\text{ἐν ἐκείνῳ γὰρ τῷ ἀγώνι τὸν πατέρα μὲ ἔφασκεν ἀπεκτονέαν τὸν ἐμαυτοῦ. Ἐγὼ δ', εἰ μὲν τὸν ἐαυτοῦ μὲ ἀπεκτονέαν ἦτιάτο, συγγνώμην ἀν εἶχον αὐτῷ τῶν εἰρημένων (φαύλον γὰρ <ἀν> αὐτὸ καὶ οὐδένας ᾧ ξιον ἡγούμην): οὔτε εἰ τῷ ἄλλο τῶν ἀπορρήτων ἥκουσα, σὺκ ἃν ἐπεξῆλθον αὐτῷ (ἀνελευθέρων γὰρ καὶ λίαν φιλοδίκων εἶναι νομίζω κακηγορίας δικάζεσθαι): νυνὶ δὲ αἰσχρόν μοι ἐναὶ δοκεῖ περὶ τοῦ πατρὸς, οὕτω πολλοὶ ἄξιον γεγενημένου καὶ ἡμῖν καὶ τῇ πόλει...}\]

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16 On Ephialtes' Reforms and the accountability of magistrates, see Rhodes (1972) 201-5, Ostwald (1986) 66-7 and generally on accountability, see Roberts (1982) 14-29. See p.124 below on the development of the democratic judicial system.
17 The bulk of evidence upon which the studies on p.60n.12 are based comes from the 450s onwards, for example the Coinage Decree (ML 45 (4), dated to c.450-446); the Chalcis decree (ML 52 II.71-6, dated to 446-5); or Acheloi's *proxenos* decree (IG I 3 19, dated to c.450/49).
18 This argument is advanced by Todd (1993) 152-3.
It was during that trial that he alleged that I had killed my own father. Now if he had accused me of killing his own father I should have found his statement excusable, since I regarded him as a sorry and worthless individual. Nor if I had been called any of the other forbidden names should I have prosecuted him, for I consider legal action for slander to be a mean and excessively litigious business. But in the present case I see it as shameful not to exact revenge from the man who has said these things about my father, who has deserved such esteem from both you and the city.\textsuperscript{20}

The prosecutor is at pains to stress his extreme reticence in engaging in judicial activity, especially with regard to a \textit{dike kakegorias}, were it not for the affront to his father's renown. A similar reticence is evinced by defendants, for whom the initiation of litigation is located within the heinous nature of the prosecutor’s character, instead of the heinous nature of the crime. The unnamed defendant, whom Nicomachus prosecuted for allegedly uprooting an olive-stump, bewails sycophantic prosecution that has befallen him, in spite of his commitment to the quiet life:

\textit{Прóтероν μέν, ὦ βουλή, ἐνόμιζον ἐξεῖναι τῷ βουλομένῳ, ἡσυχίαν ἀγοντι, μήτε δίκας ἐξεῖν μήτε πράγματα: νυνὶ δὲ ὀὕτως ἀπροσδοκήτοις αἰτίαις καὶ πονηρώς συκοφάντας περιπέτειας, ὡστ' εἴ πως οἶδον τέ, δοκεῖ μοι δεῖν καὶ τοὺς μὴ γεγονότας ἡδὴ δεδιέναι περὶ τῶν μελλόντων ἔσεσθαι: διὰ γὰρ τοὺς τοιούτους οἳ κίνδυνοι [οἱ] κοινοὶ γίγνονται καὶ τοῖς μηδὲν ἀδικουσί καὶ τοῖς πολλὰ ἡμαρτηκόσιν.}

Previously, gentlemen of the Council, I thought it was possible for a person who so desired to avoid both \textit{dikai} and troubles by leading a quiet life; but now I find myself unexpectedly embarrassed with vile and sycophantic accusations so that, if such a thing could be, I conceive that even those who are yet unborn ought now to be feeling alarmed for what is in store for them, since the conduct of these men brings as great a danger upon those who have done no wrong as those who are guilty of many offences.\textsuperscript{21}

This judicial reticence, which the above speakers display, has been commented on by a number of scholars. But there is a lack of consensus among their accounts when it comes to interpreting these statements of judicial reticence: it is possible to detect approximately three different approaches.

The first approach could be labelled ‘realistic’: the pronouncements of judicial reticence in the orators are a reflection of real reticence to engage in judicial activity in Athenian society.\textsuperscript{22} For example, Lateiner states that the censure of political and legal involvement within the Lysianic corpus is a reflection of the traditional elite’s dissatisfaction with and desertion of contemporary politics in the early fourth century:

\textsuperscript{20} Lys.10.1-3 (tr.Edwards and Usher).
\textsuperscript{21} Lys.7.1 (tr.Lamb, adapted).
\textsuperscript{22} See Lateiner (1982) and Carter (1986) 99-130.
As the men of traditional status were deprived of their monopoly of political power, they came to devalue political participation, and what had been for Pericles an insulting epithet became a term of approbation for Lysias, his clients and others of their social status. One's own affairs kept one busy enough.\footnote{Lateiner (1982) 11. Carter (1986) similarly sees the traditional elite as distancing themselves from judicial activity. He argues that the repeated claim to shun judicial activity in the orators suggests that the topos carried weight with the jurors and, as orators usually incorporated truthful material into their speeches, 'the claims to apragmosyne must have some basis in truth' (Carter (1986) 111 and generally 110-113).}

The second approach could be described as 'moral': the censure of litigiousness and projection of judicial reticence have their roots in an accepted moral code which governs interpersonal relationships.\footnote{See Ehrenberg (1947) 56, 58-9, Dover (1974) 187-190, Adkins (1976). Harvey (1990) 107-9 has compiled a list of morally pejorative epithets which are associated with sycophancy.} The active pursuit of a legal suit, particularly one in which the prosecutor had no direct interest, went beyond the bounds of the individual's legitimate sphere of concern, his oikos, and so was subject to strong moral censure.\footnote{See Adkins (1976) 309-10, 316-18.}

This approach accepts that there is a divergence between morals espoused and actions practised.\footnote{Adkins (1976) 317: 'so we are to believe that in Athens prosecutors who avail themselves of "the boulomenos" accusations never prosecute the guilty, and always prosecute for unworthy motives....It strains credulity.'} The third approach could be described as 'ideological': the judicial reticence of the orators is not so much a reflection of a reality but an ideological construct, which articulates the relationship between elite litigants and their mass audience.\footnote{See Ober (1989), Osborne (1990) 90-4, Cohen (1995) 103-5.}

Josiah Ober labels the protestations of inexperience and reticence by educated and experienced elite speakers before their mass, citizen-juror audience as 'dramatic fictions' and describes why both parties entered into these 'dramatic fictions':

The dramatic fictions created a modus vivendi between elite rhetor and mass audience. By helping to mediate power inequities that differing levels of speaking ability inevitably introduced into a society politically dependent on oral discourse, the fictions helped to maintain the ideological equilibrium necessary for the maintenance of direct democracy at Athens. When they addressed the demos, or a fraction of it, the members of the educated elite participated in a drama in which they were required to play the roles of common men and to voice their solidarity with egalitarian ideals.\footnote{Ober (1989) 190-91.}

Consequently, statements of judicial reticence and inexperience in the orators are part of a complex ideological construct, in which members of the elite present themselves in a manner that is in accordance with the democratic ideal of equality and so avoid alienating their mass audience.

Therefore the key issue becomes not so much cataloguing the attitudes to judicial activity in the Attic Orators, but attempting to locate the significance of these statements of judicial reticence: are they a reflection of reality, moral rhetoric or an ideological construct? The Attic Orators are products of a particular and distinct
context, the Athenian jury court, a medium which poses its own particular set of interpretative challenges when it comes to understanding statements made by litigants about attitudes to judicial activity. Consequently it is necessary to consider how to interpret the orators, before moving on to look at a number of jury court speeches.

4.3 Interpreting the Attic Orators

When we read an orator's speech that was delivered in the jury court, it is almost certain that the orator's construction of events within the speech diverges from the reality of events beyond the courtroom. The overriding aim of every speech is to achieve either acquittal or condemnation and everything else, whether it be the retelling of events, the presentation of opinion or the attribution of motivation, is subservient to this aim. And yet our appreciation of this fact is hindered by the sources and by the nature of the Athenian judicial system. Firstly, we nearly always possess only one of the two speeches that were delivered in relation to a particular dispute, leaving us without an opposing counter-construction of reality against which to test the version of events presented in the surviving speech. In one of the speeches analysed in detail below, it is very difficult to ascertain whether the defendant was guilty of the offence for which he is on trial. Secondly, in an Athenian jury court, all forms of evidence were admissible during a trial, facilitating opposing constructions of events. Orators could utilise a wide range of material, from the texts of laws to personal slander and invective, and upon this material the jurors reached their verdict with no judge to rule evidence as inadmissible or guide their thinking. The orator is committed to a construction of events which will enable him to win his case over and above a commitment to reality. Often it is impossible for us to test the version of reality an orator offers us, a version which has been constructed from an eclectic range of sources. If this is the case, it is very dangerous to take an orator's construction of events as reality. For example, Andocides' description of 'the codification of the laws' at his defence owes more to his desire to escape the death penalty than to his commitment to reality (see Appendix 2). William Wyse, perhaps the most rigorous critic of the orator's construction of events, made the following comment on Isaeus and his audience:

The leading purpose of this edition is to show by analysis of the extant speeches that ancient scholars had a juster appreciation of the orator's art than is shown by modern writers on Greek Law, for some of whom his unsupported statements appear to carry the authority of decisions of a Supreme Court, and that to extract

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29 See Todd (1990c) 164 and (1993) 36. On issues of fact and fiction in the orators, see Todd (1990c) 171-75. On the extent to which logographers wrote speeches up for publication, subsequent to their delivery, see Dover (1968b) 168-70 and Todd (1990c) 167. The methodological points which follow are heavily indebted to Stephen Todd's reading of the Attic Orators.
31 See Chapter 4.4.i.
truth from arguments of an advocate bent on winning a verdict from an ignorant tribunal is a more delicate operation than many people seem to suppose.33

On the other hand, the manner in which the orator constructs events in his speech gives us an insight into the opinions and mentalities of his audience. The jurors were the one group who, above all others, the orator could not afford to alienate. Consequently the orator has to construct his version of events within the ideological parameters of his audience, the citizen-jurors.34 In this regard, the difficulties of the sources and the nature of the Athenian judicial system become less problematic. Although we may possess a single version of the dispute, the orator will utilise his audience’s ideological commitments in his construction of events, however fictitious that construction may be. The admissibility of a wide range of evidence permits the orator to paint a more vivid scenario, utilising a wider range of his audience’s ideological commitments. As a historical source, the Attic Orators are problematic with regard to events, but invaluable with regard to their audiences’ attitudes and mentalities.

The studies below attempt to reconstruct the citizen-juror’s attitude to judicial activity in three jury court speeches. I have adopted the following methodological approach when interpreting the individual speeches. Firstly, each speech is examined within its judicial context, investigating the litigants, the history of the dispute, the procedure adopted, the date and contemporary climate into which he delivered the speech.35 Particular attention has been paid to the challenges facing the litigant and the strategies he deployed to counter these problems. This is because the manner in which judicial activity is portrayed may be dependent on the issues at stake in the courtroom contest. As we often possess only one side of the argument, the reconstruction of the case contains an element of uncertainty. But it is possible to gain an impression of the issues that were problematic for the speaker by carefully analysing the speech, paying particular attention to its structure and comments made about the opponent’s tactics.36 Secondly, I have examined the orator’s construction of his own and his opponent’s judicial activity in his speech and considered how these constructions contribute towards the overall argument of the case. Thirdly I have highlighted anything in the orator’s construction of judicial activity that appears unusual from a modern perspective.

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33 Wyse (1904) Preface. His verdict on the Athenian jurors as ‘an ignorant tribunal’ is perhaps more a comment on Wyse and his era than on the Athenian juror.
34 See Todd (1990b) 158-67 on the ideology of the citizen-juror.
35 See Todd (1990c) 168-9, 175 for these principles, which he puts into practice in his analysis of Lys.30 (see Todd (1996)).
36 The position of information within the speech, particularly towards its conclusion, and the relative time apportioned are useful indicators of the weight an orator intended material to have in his argument (see Carey (1994a) 102).
and yet from an Athenian perspective is normative and unjustified. Throughout, I have resisted a piecemeal approach of lifting and combining statements from a variety of speeches, and instead have analysed a few speeches in their entirety. Although this produces a certain degree of repetition, I think this produces a sharper analysis because the portrayal of judicial activity is understood within the judicial context which generated this portrayal.

4.4.1 Judicial Activity in Lysias 25: Defence on a Charge of Subverting the Democracy

In spite of the manuscript title of Lysias 25, it is usually accepted that this speech was written to be delivered at the defendant's dokimasia. In his speech, the defendant gives no details of the arche he has been appointed to or the technical reason why his appointment has been challenged. But it is obvious from the content of the speech that the prosecution challenged his appointment because they thought he was associated with the Thirty on account of his presence in the city during their regime. Consequently their prosecution is probably invalid under the terms of the Amnesty.

Given his generalising tone and aloofness of argument, it is possible that the defendant was a member of the political elite, who, having been tainted with oligarchic associations, retired from the political limelight but was now recommencing his political career. His attackers could well be political rivals, intent on blocking this resurgence. The trial probably took place in or around 399, at a time when commitment to the Amnesty was severely strained. The defendant employs two major tactics in his defence. The first is to argue that, although he was present in Athens under the Thirty, he was not involved in the oligarchic government. To prove this, he lays down a litmus test of political intent: judge people by their actions, not their location. He presents

37 See Cartledge (1990b) 42 and n.6, Todd (1993) 68-70 and Carey (1994b) on the 'otherness' of Athenian law and Todd (1990c) 174-5 on the significance of unjustified statements in the orators.
38 I chose the three speeches analysed in Chapter 4.4.1-iii because each speech focuses on modes of judicial behaviour and the speeches fall within the Age of Aristophanes. I also wanted variety in the sample, so selected speeches written by a different authors for different situations. Lys.25 and Isoc.18 are also important sources for the judicial reforms at the end of the fifth century (see Chapter 7.2-4).
39 See Todd (1990c) 164, 168 on the dangers of a piecemeal approach.
41 In the years after the democratic restoration, individuals with oligarchic associations were challenged at their dokimasia not on technical grounds but simply on their oligarchic links (see Section E5 of the Catalogue in Todd (1985)).
42 E.g. Lys.25.1-2.
43 Only those who had held certain archai under the Thirty were not covered by the Amnesty (see Chapter 7.3.i).
44 On the tone of the speech, see Dover (1968b) 188-9. For the defendant as a member of the political elite, see Edwards and Usher (1985) 269.
46 Lys.25.7-11, 13, 15.
the jurors with his actions both under democracy and oligarchy. Under the democracy he was a loyal democrat, who performed liturgies and suffered no harm, so possessed no desire to overthrow the democracy. Under both oligarchic regimes he held no office and resisted all opportunities for self-advancement, for the settling old scores and for the unscrupulous acquisition of wealth. Therefore he urges the jurors not to tar him with the same brush as the oligarchs just because he remained in the city, but rather to judge him on his actions.

Secondly, the defendant draws a sharp contrast between his own judicial activity and that of his prosecutors. As one would expect of any defendant, he repeatedly stresses that he has ‘done nothing wrong’, in spite of the prosecution’s allegations. He emphasises this innocence by stating he has committed no private crimes (iδία ἀδίκοιοντα), let alone a public offence, and invested in liturgical charis as a safeguard against misfortunes before the jurors. When presented with the unparalleled opportunity for wrongdoing under the Thirty, the defendant emphasises his eschewal of any such behaviour that could be described as sycophantic:

'Ὑπ' ἐμοῦ γὰρ ἐν τῇ ἀληγορχίᾳ οὐτε ἁπαθείᾳ οὐδεὶς φανήσεται, οὔτε τῶν ἐχθρῶν οὐδεὶς τετιμωριμένος, οὔτε τῶν φίλων εὔ πεπονθύς (καὶ τοῦτο μὲν οὐκ ἔξιον θαμάζειν· εὔ μὲν γὰρ ποιεῖν ἐν ἐκείνῳ τῷ χρόνῳ χαλεπῶν ἦν, ἔξαιραμέναις δὲ τῷ βουλομένῳ ρᾴδιον). Οὐ τοῖνυν οὐδ' εἰς τὸν κατάλογον Ἀθηναίων καταλέξας οὐδένα φανήσομαι, οὔδε διάταν καταδιαπαθόμενος οὐδενός, οὔδε πλουσιώτερος ἐκ τῶν ὑμετέρων γεγονός συμφορῶν.

For it will come to light that during the oligarchy neither was anyone arrested by ἀπαγογή by me, nor were anyone of my enemies visited with vengeance, nor were benefits received by anyone of my friends (and this should not be surprising, for it was difficult to do good at that time, while it was easy for those who wanted to do evil). Moreover it will become clear that I neither enrolled anyone onto the list of Athenians, nor was the cause of an arbitration being given against anyone, nor became richer out of your misfortunes.

The defendant emphasises this renouncing of judicial activity by depicting himself as a man who refused to use the jury courts even for the legitimate activity of harming his
enemies, although though he had the opportunity. It is the nature and distance of the relationship between individuals which determines the perceived legitimacy of engaging in judicial activity. Thus the defendant emerges as the classic *idiotes*, the private citizen who lives at peace with his fellow men, carries out his civic duties, avoids dabbling in judicial matters and guards against unwarranted prosecutions. As the speech progresses, the speaker expands his focus, emphasising the restored democracy’s renouncing of sycophantic activity through its commitment to *homononia* and the maintenance of the oaths and agreements (ἐμμένειν ταῖς ὁρκοῖς καὶ ταῖς συνθήκαις). In other words, there is concurrence between the defendant’s approach to judicial activity and that of the restored democracy’s.

His prosecutors, in contrast to the defendant and the mood within Athens, are depicted as sycophants, in the tradition of the Thirty. They are repeatedly labelled as sycophants and the defendant attributes to them the hallmarks of sycophancy: their prosecution is slanderous and false, they are motivated by financial gain, their target is an innocent man and they interfere in the affairs of others. The defendant skilfully deploys this last charge so it cuts in two directions at once. He suggests both that his prosecutors are unnaturally involved in the affairs of others while neglecting their own households and also that they do not know how to utilise correctly the information they have trawled from the lives of others:

τῶν δὲ κατηγόρων θαμμάζω, εἰ ἁμελούντες τῶν οἰκείων τῶν ἀλλοτρίων ἐπιμελοῦνται, καὶ σαφῶς εἰδότες τοὺς μηδὲν ἀδίκοιντας καὶ τοὺς πολλὰ ἕξημαρτηκότας ζητοῦσι [κερδαίνειν ἡ] υμᾶς πείθειν περὶ ἀπάντων ἡμῶν τὴν αὐτὴν γνώμην ἐχείν.

I am surprised at my accusers, men who, neglecting their household affairs to busy themselves with the affairs of others, and so clearly know those who do nothing wrong and those who commit many crimes, they then aim to persuade you to take the same view of all of us.

Underlying this statement is the assumption that one should be committed to the affairs of one’s own household, but that it is unnatural to be concerned about the affairs of

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54 Xenophon’s Socrates defines being useful to one’s friends and defeating one’s enemies as one of life’s greatest pleasures (Xen.Mem.4.5.10). See Adkins (1972) 52, 131-2; Dover (1974) 180-84, Blundell (1989) 26-59.
55 The defendant’s identify as an *idiotes* is inconsistent with other information within the speech. For instance his analysis of individuals’ loyalties to oligarchy and democracy (Lys.25.7-11) demonstrates a shrewd grasp of political realities. This may explain the generalising tone of the speech (see p.66), with the defendant keeping to the ideological generalities of *idiotes* and sycophants in order to obscure the realities of his involved political past. See Ober (1989) 108-112 on *idiota*.
56 Lys.25.23-4, 27, 28-9.
57 Sycophantic: Lys.25.3, 24, 27 (implied), 29; slanderous charges (διαβολή): §§5, 6, 11, 24; false charges (μεμονένοι): §§2, 14; financial gain: §§3, 30, 32; target an innocent man: see p.67n.50; interfere in others’ affairs: §1.
58 Lys.25.1.
others. Again it is the nature of the relationship which is seen to govern involvement and interference in the lives of others. The defendant employs strong moral censure against his prosecutors' sycophantic activity: they are practitioners of πονηρία, πονηρία which they delight to display openly; they are the authors of 'many bad things (πολλά κακά)'.\(^9\) Towards the end of the speech, he draws a parallel between the extra-judicial chaos under the Thirty and the current activities of his prosecutors. He notes that the destruction of homonoia through sycophantic prosecutions will be welcomed by the oligarchic exiles because it will drive those so attacked into the arms of the oligarchs.\(^6^0\) He reminds the jurors of how sycophancy under the previous democratic constitution fuelled the rise of oligarchy and so concludes that the jurors must reject his opponents as advisers (συμβούλοι).\(^6^1\) He ends his speech with a damning portrayal of his prosecutors as professional sycophants, rising from rags to riches, refusing to submit to euthynai, opposed to homonoia and peace, bent on generating enmity and war.\(^6^2\) In short, these men behave as the Thirty did, with the added crime of pursuing such activity under the democracy.\(^6^3\) In this concluding analysis, the speaker both turns his opponents' charge against them and reinforces his own litmus test of political intent by which he proclaims his own innocence. It is not where you were but what you did that counts: so although his prosecutors may have returned from the Piraeus, their sycophantic activity reveals them to be cast in the same mould as the Thirty. Throughout, the speaker invites the jurors to adopt the two opposing constructions of judicial activity as they deliver their verdict: to vote for him because he is an innocent man and to steal themselves against the slanderous lies of his sycophantic opponents.\(^6^4\)

In his defence, the speaker not only argues that he played no part in the oligarchic regimes, and so can not be barred from office, but also projects himself as an idiotes, innocent of wrongdoing and of judicial abuses, in accord with the spirit of the restored democracy. His prosecutors on the other hand are portrayed as unscrupulous sycophants, the significance of whose actions extend beyond harming an innocent man to an assault on the democracy in the mould of the Thirty. The topoi of judicial innocence and sycophancy are no mere mechanical glosses, but are central to the speaker's argument. These topoi find their leverage in the moral sphere: the speaker is so committed to judicial non-involvement that he shuns opportunities to harm his

\(^{59}\) πονηρία: Lys.25.24, 34; κακά: §31.
\(^{60}\) Lys.25.24. This hypothetical scenario is supported by his analysis of political loyalties (§§7-11): those harmed under one type of constitution will become opponents of that constitution.
\(^{61}\) Lys.25.25-27. See also §19.
\(^{62}\) Lys.25.29-30.
\(^{63}\) Lys.25.31.
\(^{64}\) Appeals to the jurors to support defendant: Lys.25.3, 4, 7, 11, 13, 16, 18, 20, 34-5; appeals to the jurors to oppose the prosecution: §§3, 13, 27, 32, 34.
enemies; the prosecution are so bent on judicial involvement that they neglect their oikoi so as to interfere in the oikoi of others.

The speech also contains evidence about the audience’s attitude to judicial activity in the years after the democratic restoration. The speaker may have been able to make such effective and frequent use of allegations of sycophancy, not only because his legal tactics required him to, but also because these allegations had particular pertinence for his audience. Lateiner has suggested that the speaker is ‘obsessed with “sycophants”, his word for democratic politicians.’ Alternatively, I think this ‘obsession’ is a reflection of the Athenian mood in 399. Firstly, the speaker not only comments on extra-judicial activities under the Thirty, but also proposes that sycophancy under the democracy contributed to the rise of oligarchy. We know that the Thirty’s programme of judicial reform, particularly their moves against sycophants, was greeted with approval and initially lent credibility to their rule. If the speaker was able to associate sycophancy under the democracy with the rise of oligarchy, this idea still must have appeared plausible to the jurors in 399. Secondly, it appears that concerns about sycophancy were not restricted to the democracy of pre-404/3. We know of a number of cases that were brought against those tainted with oligarchy in the years after the restoration, exposing the gap between the ideal of homonoia and the reality of judicial activity under the restored democracy. The defendant skilfully juxtaposes the ideal of the restored democracy’s commitment to homonoia with his portrayal of the his prosecutors’ sycophancy at the end of his speech, indicating that he wanted the image to linger in his audience’s mind and therefore that it must have carried weight with them. So it is probable that the defendant is utilising the reality of these trials which contravened the Amnesty and the fears they engendered for his own ends. The defendant’s portrayal of his opponents’ sycophancy is a powerful weapon because anxieties about democratic judicial activity, litigiousness and sycophancy were still strong in 399 (see Chapter 7.4 for further details).

4.4.ii Judicial Activity in Isocrates 18: Against Callimachus

The presentation of judicial activity in Against Callimachus exercised the rhetorical talents of the young Isocrates to the full. He wrote the speech for an anonymous speaker in his prosecution of Callimachus by paragraphe. The nature of a paragraphe suit, where the defendant in the previous judicial dispute becomes the current prosecutor, contains the potential for both parties in the dispute to be depicted

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65 Quoted by Edwards and Usher (1985) 271.  
67 See Chapter 7.2.  
68 See Chapter 7.4.  
69 Lys.25.28-35.
as initiating litigation, in short to be portrayed as litigious. Consequently the *Against Callimachus* contains substantial material on the presentation of judicial activity, material which is incidental to the legal argument of the *paragraphe* suit. This can be illustrated by firstly looking at the structure of the speech and secondly by considering the nature of the conflict between the speaker and Callimachus.

The structure of the *Against Callimachus* can be broken down into sections as follows:

- §§1-3 Introduction: the novel procedure of *paragraphe* and its applicability to this dispute.
- §4 Speaker's statement of intent: Legal Arguments 1-3 which he will produce against Callimachus.
- §§5-12 The history of the dispute between the speaker and Callimachus up to the present case, including:
  - §§8 Legal Argument 2: Callimachus' original charges against the speaker are false (witnesses produced);
  - §§10-12 Legal Argument 3: The dispute has previously been settled by arbitration and so can not be reopened (witnesses produced).
- §§13-15 Callimachus' tactics: to disallow the previous arbitration agreement between the two parties, including:
  - Legal Argument 3: The dispute has previously been settled by arbitration and so can not be reopened.
- §§16-18 The speaker's motivation: the innocent man.
- §§19-34 Legal Argument 1: the speaker is protected by Amnesty (agreements and oaths of Amnesty are produced).
- §§35-41 Callimachus' tactics: to focus on the hardships he has suffered and could again if he loses the case.
- §§42-47 Legal Argument 1: will the Athenians uphold their commitment to the Amnesty?
- §§47-57 A character assassination of Callimachus, including his sycophantic reputation (witnesses produced).
- §§58-65 The speaker's services to the polis.
- §§66-68 Conclusion.

As is suggested by the above structure, although much of the speech is devoted to the three legal arguments, there are substantial sections, in italics, which have no direct bearing on these arguments. The italicised sections occupy nearly half of the speech and, moreover, the speaker concludes with this material, allowing its content to linger
in the jurors' minds as he walks away from the bema.70 This incidental material offers interesting insights into the presentation of judicial activity. But it is essential to comprehend the details of the case and the legal arguments advanced before this material can be examined (see Chapter 4.3).

The conflict between the two men began in 403, during the rule of the Ten, who were briefly in power after the fall of the Thirty and before the restoration of the democracy.71 The speaker, a friend of Patrocles (ὁ ντός μοι ἐπιτηδείου) the Archon Basileus in 404/3, witnessed a dispute between the latter and Callimachus over a sum of money. Patrocles denounced Callimachus by phasis before the boule, claiming that the sum involved had become state property and the boule found in Patrocles' favour.72 The sum involved could have been as much as 5,000 drachmae, and therefore Patrocles may have received 2,500 drachmae as a result of his successful prosecution.73 The substantial sums involved explains the persistent and protracted nature of the subsequent legal conflict between Callimachus and the party of Patrocles.74 After the restoration of the democracy, Callimachus took the opportunity to move against the individuals who he felt were responsible for his loss, initially Patrocles, then one Lysimachus and finally the speaker.75 Callimachus initially suggested the speaker was a co-conspirator, but then moved to claim that the speaker was responsible for all his problems, an accusation which he began to circulate widely.76 The speaker was finally persuaded by some of Callimachus' friends to settle out of court, which he proceeded to do, but with the safeguard that both parties submitted the settlement to private arbitration before Nicomachus of Bate.77 For a while, Callimachus was content to let the dispute drop, but then, with the assistance of one Xenotimus, he brought a dike blabes against the speaker, fixing the penalty against the speaker by timesis at 10,000

70 The italicised sections amount to 28§§ out of a total of 68§§, 41% of the speech.
71 See Isoc.18.5 and on the Ten, see Ath.Pol.38.1, Xen.Hell.2.4.23-4, D.S.14.33.5. There are occasions when the speaker is deliberately vague about whether the clash between Callimachus and Patrocles took place under the oligarchy (see §35) or the democracy (see §17).
72 Isoc.18.5-6. On phasis, see p.16n.27.
73 Callimachus brought a dike blabes against the speaker for the sum of 10,000 drachmae (Isoc.18.11). In a dike blabes, the penalty is fixed by timesis at twice that of the damage done (see Dem.21.43 and MacDowell (1978) 149-3, Tod (1993) 279-82), so Callimachus probably lost some 5,000 drachmae in the initial phasis. In cases proceeding by phasis, a successful prosecutor gained half the sum seized (see p.16), hence Patrocles would have gained some 2,500 drachmae.
74 The sum of 5,000 drachmae would almost be enough to put a man in the leisured classes, see APF xx-xxiv.
75 See Isoc.18.7. Callimachus brought a dike against Patrocles and extracted 1,000 drachmae from him. Secondly, he brought a 'sycophantic' prosecution against one Lysimachus, and obtained 200 drachmae from him. Presumably Callimachus was able to associate Lysimachus with his original loss.
76 See Isoc.18.7, 9. When he moved against the speaker, it appears Callimachus subjected him to a period of widely circulated accusations, without bringing a specific charge, with the aim of extracting an out of court settlement from him.
77 Isoc.18.9-10.
drachmae.\textsuperscript{78} But at the \textit{anakrisis} before the \textit{arche}, the speaker produced a witness to the arbitration, using the procedure of \textit{diamarturia}.\textsuperscript{79} Consequently Callimachus either had to prosecute the witness using a \textit{dike pseudomarturio} or drop the \textit{dike blabes} against the speaker.\textsuperscript{80} Callimachus initially opted for the later, but subsequently reintroduced the \textit{dike blabes} against the speaker and persuaded the \textit{arche} to allow the case to proceed to the jury court. So the speaker faced a court appearance as the defendant in a \textit{dike blabes} with the risk of a 10,000 drachmae fine which he claimed would have impoverished him.\textsuperscript{81} At this point the speaker brought the current \textit{paragraphe} against Callimachus, transforming Callimachus into the defendant and himself into the prosecutor.\textsuperscript{82} The present case can probably be dated to 400.\textsuperscript{83}

In §4, the speaker outlines the legal arguments he will advance to demonstrate that Callimachus’ \textit{dike blabes} is illegal:

\begin{quote}
\textcolor{red}{\textquote{Αποδείξω δὲ Καλλίμαχον οὐ μόνον παρὰ τὰς συνθήκας δικαζόμενον ἄλλα καὶ περὶ τῶν ἐγκλημάτων ψευδόμενον, καὶ προσέτι δίαταν ἡμῖν γεγενημένην περὶ αὐτῶν.}}
\end{quote}

I will prove that Callimachus not only brought a \textit{dike} against the agreements (i.e. the Amnesty), but he also spoke falsely about the written complaints and moreover an arbitration has taken place between us regarding this issue.\textsuperscript{84} As the outline of the speech above demonstrates, the speaker devotes just over half his time to the three arguments (Legal Arguments 1-3 in the structure above). Firstly, in §§19-34 the speaker argues that Callimachus’ \textit{dike blabes} contravenes the Amnesty and thus allows him to bring the current \textit{paragraphe}. Under the terms of the Amnesty, which he cites at §19, public prosecutions which had been settled before the restoration of the democracy could not be reopened.\textsuperscript{85} So even if the speaker was responsible for Callimachus’ loss, Callimachus could not bring a \textit{dike blabes} against him because the initial \textit{phasis} predates the restoration of the democracy. This first argument is supported

\textsuperscript{78} Isoc. 18.11.
\textsuperscript{79} The outcome of a private arbitration was binding on both parties (Todd (1993) 123-5), therefore legally Callimachus was not allowed to reopen the case. The procedure of \textit{diamarturia} allowed the speaker to produce a witness to the arbitration before the \textit{arche} and so demonstrate that Callimachus’ \textit{dike blabes} was illegal (see Harrison (1968-71) 2.124-5, Todd (1993) 135-6).
\textsuperscript{80} See Isoc. 18.12 and Harrison (1968-71) 2.192-7, Todd \textit{ibid.} and (1990b) 36-8 on \textit{diamarturia} and \textit{dike pseudomarturio}.
\textsuperscript{81} See Isoc. 18.3, 64 for his claims that Callimachus’ \textit{dike blabes} threatened his remaining property.
\textsuperscript{82} On \textit{paragraphe} and its introduction, see Chapter 7.3.i-ii.
\textsuperscript{83} Mathieu and Brémond (1928-62) 2.15, MacDowell (1971b) 269.
\textsuperscript{84} Isoc. 18.4.
\textsuperscript{85} On the Amnesty, see Chapter 7.3.i. The speaker cites the Amnesty at §19 and then adds his own commentary, that: ‘but does not the agreements expressly acquit the ones who brought \textit{endexis} or \textit{phasis} or have done any of other such things (ἄλλα ὁδό τῶν μὲν συνθηκῶν διαρρήκθην ἀφειείαν τοὺς ἐνδείκηται ἡ φήματα ἡ τῶν ἄλλων τι τῶν τοιούτων πράξεως (§20)).’ In other words he makes sure that \textit{phasis} is listed as one of the public prosecutions which can not be reopened. A similar sentiment is expressed in the bouleutic oath, see Andoc.1.91.
by ponderous rhetoric on the solemnity of agreements in Greece, the restraint exhibited
by Thrasybulus and Anytus, the worthy renown that the Amnesty has brought to Athens
(articulated in sentiments reminiscent of the Funeral Orations) and the blessings of
*homonoia* in comparison to the horrors of *stasis*. Secondly, he argues that
Callimachus has lied in the charges made in the *dike blabes*, as he consistently
maintains that it was Patrocles and not himself who was responsible for denouncing
Callimachus at the initial *phasis* and at §8 produces three sets of witnesses to support
this claim. Thirdly, he stresses that the arbitration before Nicomachus was binding and
so Callimachus is acting illegally by reopening the case. It appears Callimachus
intended to subvert this objection by arguing that the arbitration never took place,
arguments which the speaker counters both by supposition and by producing witnesses
to the arbitration.\(^8^7\)

The speaker has painted a triptych of detailed legal argument to demonstrate the
illegality of Callimachus’ *dike blabes*. One of panels of the triptych represents the
Amnesty and the protection afforded under it by using the novel procedure of
*paragraphe*. The remaining two panels of the triptych represent the falsity and illegality
of Callimachus’ *dike blabes* in its own right, regardless of the Amnesty: in other words
the arguments that the speaker would have used in his defence in the *dike blabes*. As
was often the case in *paragraphe* suits, litigants advanced arguments using material
specific to the actual *paragraphe* suit and to the preceding case that had given rise to
the *paragraphe* suit.\(^8^8\) In each of the three panels, the speaker has adopted a duo-
chromatic scheme: factual arguments, supported by the production of witnesses of
documents and secondly arguments from supposition. But the triptych of legal
argument represents a little more than half the content of the speech. The remaining
material, which is incidental to the legal argumentation, is used to paint two portraits,
that of the speaker as the judicial reticent and that of Callimachus as the venal
sycophant. The portraits are rendered almost totally in monochrome, evidence is offered
in the form of inference and innuendo, with little supporting factual information. Given
the structure of the speech (see above), these two portraits are obviously essential to the
speaker’s presentation of his case. I will firstly examine the two portraits in more detail
and secondly consider why he painted them.

The speaker, as the defendant in the *dike blabes* which underlies the current suit,
is desirous to impress his innocence upon the jurors.\(^8^9\) As has been noted above, these
protestations are supported by witnesses, who testify that the speaker had no connection

\(^8^6\) See Isoc. 18.19-34, 42-7, 66-8.
\(^8^7\) Isoc. 18.10-13.
\(^8^9\) Isoc. 18.4, 9, 16, 19, 20, 22, 40-1, 57, 67.
with Callimachus' initial loss. Consequently he claims that his suit is just (δίκαιος) and appeals to the jurors to vote with justice in his favour. These statements of innocence are hardly surprising from a man facing a 10,000 drachmae fine. But the speaker's portrayal of his judicial reticence transcends the commonplace to that of elevated moral character. The speaker states he resisted all opportunities for wrongdoing under the Thirty, even though the Thirty pressurised many to behave in this way. The speaker then argues by inference that it is highly improbable he should have harmed Callimachus after the restoration of the democracy, having resisted all opportunities for wrongdoing under the Thirty. Incidentally, this contention is almost certainly false, as it seems that Callimachus originally lost his sum of money before the restoration. Concluding, the speaker claims he is the kind of man who resisted opportunities to seek vengeance on his enemies, so would not harm a man with whom he never had a contract. The speaker presents himself as an individual of elevated moral integrity: he renounces the legitimate moral activity of harming his enemies even when he was presented with ample opportunity, consequently the thought of harming a complete stranger, with whom he did not even have a contract, is preposterous. As in Lysias' speech Defence on a Charge of Subverting the Democracy, it is the nature and distance of the relationship between two individuals which determine the perceived legitimacy of engaging in judicial activity. The speaker buttresses the presentation of his moral character in the concluding section of his speech by reminding the jurors of his trierarchic services to the polis and the resulting crown that was awarded to him. The speaker emerges as the classic idiotes, a man who is not only innocent of the charge that he has been arraigned on, but one who would not even harm his enemies and who was 'responsible for many good things' for the city.

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90 For the justice of his case, see Isoc.18.20, 37; for appeals for the jurors to vote justly, see §§ 16, 26, 34, 35, 65, 67, 42, 68.
91 Isoc.18.16.
92 Isoc.18.18.
93 See Isoc.18.5 and p.72n.71.
94 Isoc.18.18. On harming one's enemies, see p.68n.54. Callimachus is presented as claiming that he has been injured by the speaker, although there was not even a business contract (symbolaion) between the two of them. Millett (1991) 27-44 distinguishes between essentially two types of loans in Athens: informal eranos-loans between kin, friends, demesmen and formalised loans between strangers, with the later being characterised by witnesses, interest and agreements (symbolaia). In other words, Callimachus is portrayed as making the preposterous claim that he has been harmed by a man with whom he did not even make a symbolaion, the characteristic of loan-arrangements between those whose relationship is so distant it is non-existent.
95 These protestations of innocence under the Thirty are also disclaimers against Callimachus' claims that the speaker was responsible for bringing the initial phasis (p.72) and that he was associated with the oligarchic regime (p.77).
96 Isoc.18.58-65.
97 Isoc.18.61.
Callimachus, on the other hand, is painted in colours of the opposite hue, those of the venal sycophant. This portrayal emerges forcefully towards the end of the speech, when the speaker launches into a vicious assassination of Callimachus’ character, culminating in an account of his judicial activities:

\[\text{Νῦν δὲ περὶ μὲν τῶν ἁλῶν ὀσοὶς ἐπιβεβούλευκε, καὶ δίκαιος οὐς δεδίκασται καὶ γραφὰς ἀδίκα καὶ μεθὲ ὄν συνέστηκε καὶ καθ' ὁν τὰ πειθή μεμαρτύρηκεν, οὔθ' ἂν δίς τοσοῦτον ὕδωρ ἱκανὸν δηγησασθαι γένοιτο.}\]

Even twice as much water as I have would not be enough for me to go through the tale of the others against whom he has plotted, of the dikai in which he has been involved, of the graphai which he has introduced and of those with whom he has joined together and of those against whom he has given false witness.98

The speaker then illustrates Callimachus’ predilection for judicial activity by recounting the details of a dike phonou he brought against one Cratinus, a charge which rested on false evidence.99 Callimachus’ propensity to falsify evidence is relevant to the current dispute, a contention the speaker exploits to the full. Given this material’s position in the speech, the speaker must have wanted the impression generated to linger in the jurors’ minds as he concludes. But the portrayal of Callimachus as the venal sycophant dominates the entire speech. The speaker frequently calls Callimachus a sycophant, labels his prosecutions as daring and false, and one who is motivated by financial gain.100 As a result, he is one who transgressed the nomoi, particularly the nomoi ordaining the Amnesty, in order to realise his corrupt aims.101 He trusts in persuasive words to win over the jurors.102 The speaker reserves such moral epithets as πονηρός, κακός and ἀδικός for a man whose judicial behaviour is characterised as false, self-serving and lawless.103 The speaker deftly creates this impression right at the beginning of his speech, when he outlines the history of the dispute. The speaker describes Callimachus as one who caused him ‘troubles’ (πράγματα); whose ‘daring’ (τολμᾶν) and ‘shamelessness’ (ἀναιδεία) lead him to make accusations against the speaker.104 Callimachus’ financial greed is emphasised by describing Callimachus’ cases against Patrocles and Lysimachus in terms of the money he extracted from them, by highlighting how Callimachus’ friends came to the speaker, demanding ‘hush money’

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98 Isoc.18.51. For the more general slander against Callimachus, see §§47-50.
99 Isoc.18.52-7. The account of Cratinus’ dispute with Callimachus and his brother-in-law is supported by the testimony of witnesses.
100 Sycophant: Isoc.18.3, 7, 10, 14, 22, 24, 37, 55, 64; τολμᾶν: §§7, 22, 26, 38, 47, 56, 57; πειθή-ής, -ομαι: §§4, 13, 51, 56-7. On financial gain, see p.77n.105.
101 Isoc.18.21, 25, 26, 47, 64. At §11, Xenotimus, Callimachus’ associate in the dike blabes, is described as ‘the corrupter/ destroyer of the laws (ὁ τούς νόμους διαφανεῦρων).’
102 Isoc.18.12, 21, 65.
103 πονηρό-ία, -άς: Isoc.18.52, 55, 56; κακός: §§38, 47 (at §11, the same verdict is passed on Xenotimus); ἀδικ-ος, -έω: §§14, 55.
104 Isoc.18.7.
and by Callimachus’ pecuniary motivation in not bringing a *dike pseudomarturion* against the speaker’s witness.\(^{105}\) This last statement is almost certainly a fiction, and is inserted to strengthen the suggestion that he has already planted in the jurors’ minds: Callimachus is a man motivated by profit from sycophantic litigation.\(^{106}\) The speaker generates a hostile impression of Callimachus by deploying a powerful moral arsenal against his opponent.

These two portraits of the speaker and Callimachus have an import beyond encouraging the jurors to identify with the former as an innocent man wrongly accused and to vote against the later as a venal sycophant.\(^{107}\) Buried within the speaker’s confident assertions are hints which suggest he faced two major obstacles in bringing this *paragraphe* suit, namely that he was almost certainly implicated in the rule of the Thirty and that he was himself vulnerable to accusations of sycophancy. The speaker was closely associated with Patrocles, who held office under the Thirty (see p.72 above). The speaker gives the jurors this damaging piece of information himself, suggesting that this must have been too widely known for him to cover up. At several points, he urges the jurors to be wary of attempts to deflect them away from the central issue of the case towards allegations of oligarchic involvement.\(^{108}\) He also endeavours to forestall these allegations by claiming that Callimachus himself ‘longed more than any of the others to participate in that polity (the rule of the Thirty)’ and so remained in Athens at that time.\(^{109}\) Therefore it is highly probable that Callimachus intended to launch a sustained attack on the speaker’s record under the Thirty. The fact that in 400 Callimachus was able to reopen a concluded case by attacking his opponent’s record under the oligarchy is hardly surprising: this case was one of several in the period 400-399 which investigated the opponent’s record under the oligarchy.\(^{110}\)

\(^{105}\) See Isoc. 18. 7, 9-10 and 12 respectively.

\(^{106}\) The speaker claims Callimachus was reluctant to bring a *dike pseudomarturion* against the speaker’s witness who had testified by *diamarturia* to the arbitration before Nicomachus because he did want to risk a fine of one sixth of the 10,000 drachmae claimed if he failed to obtain a fifth of the jurors’ votes. Instead he opted for the cheaper option of persuading the *arche* to reintroduce his *dike blabes*, for which he risked only losing his deposit of thirty drachmae. This statement is almost certainly false, as the prosecutor risked a fine of one sixth of the sum claimed only if he failed to obtain one fifth of the votes in public cases, but never in private cases such as a *dike pseudomarturion* (see Dem.22.26 with Harrison (1968-71) 2.83, Osborne (1985b) 43 and Todd (1993) 109). The speaker was almost certainly able to get away with this fiction because he inserted it in a section that is littered with legal technicalities (see p.196n.12 below for Andocides using the same tactic).

\(^{107}\) See Isoc.18.64-65, where the speaker invites the jurors to feel remorse if they see Callimachus, as a sycophant and one who is opposed to the *nomoi* and the Amnesty, enriched and the speaker, as one who has served as a trierarch, is found guilty of evil on account of Callimachus’ persuasive words.

\(^{108}\) See Isoc.18.36, 40.

\(^{109}\) ἐπεθύμει ἐκείνης τῆς πολιτείας’ (Isoc.18.48).

\(^{110}\) See Chapter 7.4
Secondly, it appears that Callimachus intended to recapture the moral high ground in his reply by claiming that the speaker was responsible for introducing the current suit, with the aim of destroying him:

οἵμα δ' αὐτῶν ὁδυρείσθαι τὴν παρούσαν πενίαν καὶ τὴν γεγενημένην αὐτῷ συμφοράν καὶ λέξειν ὡς δεινὰ καὶ σχέτλια πείσεται, εἰ τῶν χρημάτων ὧν ἐπὶ τῆς ὀλιγαρχίας ἀφηρέθη, τούτων ἐν δημοκρατίᾳ τὴν ἐπιωβελίαν ἀφήλεσε, καὶ εἰ τότε μὲν διὰ τὴν οὐσίαν τὴν αὐτοὺ φυγεῖν ἀναγκάσθη, νυνί δ' ἐν ὕφρονῳ προσήκεν αὐτὸν δίκην λαβεῖν, ἀτίμος γενήσεται...Περὶ δὲ τῆς ἐπιωβελίας, εἰ μὲν ἐγὼ τούτων τῶν πραγμάτων αἵτιος ἦν, εἰκότως ἃν αὐτῷ μέλλοντι ζημιώσεθαι συνήχεσθε: νῦν δ' οὕτως ἐστίν ὁ συκοφαντῶν, ὥστε οὐδὲν ἃν δικαίως αὐτοῦ λέγοντος ἀποδέχοισθε.

I think he will bewail his present poverty and the misfortune that has happened to him and he will claim that he will suffer terrible and cruel things if the money, which under the oligarchy he was deprived of, now under the democracy he will be liable to pay epobelia from; and if then he was forced to flee on account of his property, while now, at a time when he has come close to exacting punishment, he will become atimos...And with regard to the epobelia, if I was responsible for these troubles, you would naturally sympathise with him as one who is about to be to be fined; but as it is, this man is one who brings sycophantic prosecutions, so you can accept as just nothing that he says.111

Reading between the lines of these predicted counter-arguments, it is not difficult to see how Callimachus would be able construct such a defence. The procedure of paragraphe was a novelty in 400, which placed the speaker at a disadvantage, given the Athenian suspicion of legal innovation.112 Furthermore, paragraphe exacerbated the dispute process by introducing an additional judicial hearing and involved arguments about technical legal issues.113 The successful prosecutor in a paragraphe suit received one sixth of the sum under dispute. Therefore, the very structure of paragraphe, its novelty, technical nature, and potential for enrichment provided Callimachus with material that could be utilised to depict the speaker as sycophantic and Callimachus himself as suffering under the onslaught of unnecessary litigation and impending impoverishment.

I would like to suggest that the speaker, fearing that Callimachus will accuse him of oligarchic involvement and sycophancy, painted the two portraits of judicial motivation in order to preempt Callimachus’ accusations. He deflects attention from his own oligarchic associations by scandalising the jurors with his portrayal of Callimachus

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111 Isoc.18.35, 37 and generally §§35-41.
112 This explains why the speaker carefully introduces the procedure to the jurors at the beginning of the speech. On Athenian suspicion of legal innovation, see p.201n.32.
113 On the Athenian distrust of legal technicalities, see Dover (1974) 189-90, Todd (1996) 115-6, 131. Strepsiades’ very negative description of the seasoned litigant in the Clouds includes kurbis as one of descriptive epithets which can be applied to the litigant (Ar.Nub.448 and p.106), suggesting that a detailed knowledge of legal statues is highly suspect.
the sycophant while highlighting his own services to the *polis* and his innocence. He turns the tables on Callimachus’ accusations of sycophancy by depicting Callimachus as the one bent on unscrupulous, self-serving, lawless judicial activity. The speech *Against Callimachus* demonstrates the very real efficacy of sycophantic allegations. It appears both parties in the dispute were intent on portraying each other as sycophants and themselves as victims of oppressive litigation. The speaker is fully aware of the danger of this accusation, and so constructs a sustained and detailed pre-emptive strike against his opponent. The speech also reveals something of the power-base of sycophantic allegations. To exhibit the sycophantic traits of false accusation, daring, busyness, disregard for *nomos* and financial acquisitiveness is to be πονηρός, κακός and ὀδικος. In other words, to engage in sycophancy transgresses moral norms and invokes deep moral censure.

4.4.iii Judicial Activity in Isaeus 5: *On the Estate of Dicaeogenes*

The trial for which Isaeus wrote *On the Estate of Dicaeogenes* had its origins in the distribution of the estate of one Dicaeogenes (II), who had been killed some twenty-two years previously. Dicaeogenes (II) had killed in a naval engagement off Cnidus at either the end of 412 or the beginning of 411. He left no son as a direct heir and was survived by four sisters (see Figure 5 for stemma). But his uncle by marriage, Proxenus, produced a will, in which Dicaeogenes (II) adopted Proxenus’ son, Dicaeogenes (III), and bequeathed him one third of the estate. The estate was adjudicated by *epidikasia* before a court: Dicaeogenes (III) received one third of the estate and the remaining two thirds was divided equally between the four sisters. But in 400/399 Dicaeogenes (III) produced a second will, which entitled him to the entire estate. The second will was challenged by relatives of the sisters at a *diadikasia*, but the jurors found in Dicaeogenes (III)’s favour. On gaining control of the entire estate, he evicted the sisters. Several attempts were then made by relatives of the sisters to win back their share of the estate. The present trial revolves around a disputed agreement made between Menexenus (III), Menexenus (IV) and Cephisodotus on the one hand and Dicaeogenes (III) and Leochares on the other. The cousins had cornered Dicaeogenes (III) and Leochares by bringing a successful *dike pseudomarturion* against Leochares. From this position of strength, they had extracted an agreement from

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114 For a description of this complicated and protracted legal dispute, see Wyse (1904) 402-5, Forster (1927) 153-7.
115 On the date of Dicaeogenes’ (II) death, see Jebb (1876) 2.349-50, Wyse (1904) 412-13.
116 See Isae.5.6 for events of 412-11. See p.52n.93 on Athenian inheritance law.
117 See Isae.5.7-11 for the events of 400/399.
118 Menexenus (III), Menexenus (IV) and Cephisodotus are sons of Dicaeogenes’ (II) sisters and cousins of Dicaeogenes (III). See Figure 5 for stemma. Hereafter they are referred to as ‘the cousins’ for ease of reference.
119 See p.86n.153 for an outline of the entire dispute. The cousins decided that both the wills favouring Dicaeogenes (III) were invalid so proceeded to claim the entire estate on behalf of their mothers on the
their opponents in return for waiving the sentence of *atimia* which they could have extracted from the convicted Leochares. But each side subsequently interpreted the agreement in a different way. The cousins stated that Dicaeogenes (III) had agreed renounce his claim (*ἀφίστασθαι*) and to hand over unencumbered (*παραδιδόναι ἀναμψεβήτητο*) two-thirds of the estate to the sisters and that Leochares and Mnæsiptolemus had agreed to stand surety. On the other hand, Dicaeogenes (III) and Leochares maintained that Dicaeogenes (III) had agreed to simply renounce his claim (*ἀφίστασθαι μόνον*) to two-thirds of the estate.

Having done this, both individuals claimed they had fulfilled their responsibilities under the agreement. The cousins took a different view and so brought a *dike eggues* against Leochares on the basis that he had not fulfilled his responsibility as a surety: to ensure Dicaeogenes (III) returned, unencumbered two thirds of the estate he had received when Dicaeogenes (II) died over twenty years ago. Isaæus wrote *On the Estate of Dicaeogenes* for Menexenus (IV) who delivered it as one of the prosecutors in this trial, the other being Cephisodotus. The trial can be dated to around about 389.

The prosecution faced at least two challenges in bringing a *dike eggues* against Leochares. The first concerned the probable weakness of their case, which can be detected in the nature of the arguments advanced and their position in the structure of the speech. These arguments are strong on inference and weak on fact. The prosecution's key item of factual evidence, the document recording the details of the agreement, did not state that Dicaeogenes (III) had agreed to hand over two-thirds of the estate on the basis of *ankhisteia* (*Isae.5.13-6*). In return, Dicaeogenes (III) brought a *diamarturia*, at which Leochares testified that the estate was not adjudicable (§16). Therefore the cousins brought a *dike pseudomarturion* against him (§§17-9, see p.73n.80 for references on *dike pseudomarturion* and *diamarturia*).

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120 See *Isae.5.1, 18, 20, 21* with Wyse (1904) 404 for the prosecution's version of the agreement and §19 for the sureties.

121 See *Isae.5. 3, 19, 21, 25* with Wyse (1904) 404, where Menexenus (IV) preempts the defence's arguments.

122 On the sale and/or mortgage of the estate, see *Isae.5.22-4* and on maintenance and liturgies, see §§28-9. Dicaeogenes handed over 2 small buildings outside the walls and 60 plethra of land (§22), while the cousins' attempts to extract property from Dicaeogenes' (III) creditors/vendees resulted in a disastrous legal action and a fine of 40 minae (§§22-4). On whether the terminology in the speech implies the estate was sold or mortgaged, see Wyse (1904) 429-32 and Todd (1993) 252-5.

123 On suretyship, see Harrison (1968-71) 2.79 n.3.

124 For Cephisodotus, see *Isae.5.2*. It is unclear whether Menexenus (III) joined his cousins in this prosecution, given the hostile reference at §13, perhaps not. See Wyse (1904) 408 on the other prosecutors.

125 See Wyse (1904) 405, Forster (1927) 157.

126 Menexenus (IV) attacks Leochares' suretyship in detail at *Isae.5.19-34*, having briefly made reference to it in the introduction (§§1-5).
the estate unencumbered. Consequently the prosecution resorted to arguments based on inference. For example, they argue that they would not have been so foolish as to agree to Dicaeogenes (III) simply renouncing his claim without also requiring him to hand over the two-thirds share, but this is an argument based solely on supposition. It is difficult to see how the cited incidents of Micion and the bath house and Protarchides and his wife's dowry support the prosecution's version of the agreement. Furthermore Isaeus has written the speech so less than a third of time is devoted to this central issue while flanking it on either side with extensive vilification of Dicaeogenes (III), suggesting that Isaeus wished to bury a weak section in the more sensational, surrounding material. The economic circumstances in Attica between 412-11, when Dicaeogenes (III) inherited the estate, and 389, the time of the trial, lend credence to the defence's claim that the value of the estate had been eroded over the years. The last years of the Peloponnesian War, the proscriptions during the rule of the Thirty and the years which followed were austere times for Athens. Dicaeogenes (III) may have inherited a substantial estate with an annual income of 80 minae, but it is probable that sales, mortgages, liturgies and upkeep in a period of economic hardship had eaten into the capital value of the estate, as Dicaeogenes (III) argued. If this is the case, then it is unlikely that Dicaeogenes (III) and Leochares made an agreement that required them to hand over two-thirds of the estate unencumbered if a substantial portion of the estate was no longer in Dicaeogenes' (III) possession. This suggestion is reinforced by the weakness of the arguments advanced by the prosecution and their masked position within the structure of the speech.

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127 See Isae.5.25, where the prosecution state that the crucial requirement of handing over unencumbered two-thirds of the estate was recorded orally as there was not time to have this information recorded in the written document. Wyse (1904) 404, 439-441 subjects this statement by the prosecution to the most withering criticism, emphasising the efficacy of a written rather than oral record of the agreement. But Thomas (1989) 40-44 notes that attitudes to written documents in the early fourth century were ambivalent and that oral records were still considered valid. She cites this incident as evidence of confusion about the validity of written verses oral records.

128 Isae.5.21.

129 See Isae.5.22-4, 26-7 with Wyse (1904) 437, 442.

130 The speech can be divided into approximately four sections:

§§1-5 Introduction: laying out the charges.

§§6-18 History of the dispute: invective against Dicaeogenes (III).

§§19-34 Attempts by the cousins to make Dicaeogenes (III) and Leochares honour the agreement.

§§35-47 Invective against Dicaeogenes (III) for his failure in responsibilities to polis and friends.

§§19-34 are devoted to the central issue, 15 §§ out of a total of 47 §§ in the Loeb text, 32% of the entire speech. See Wyse (1904) 404-5 for a similar observation on the structure and positioning of material in the speech. See below pp.82-5 on invective against Dicaeogenes (III).

131 Decelean War: Hell.Oxyr.12.4 with Hanson (1983) 127-43, who emphasises the plunder and destruction of property rather than lasting damage to agriculture; the Thirty: see Chapter 7.1.iii; Post 403: see p.45n.60.

132 On the annual income from the estate, see Isae.5.11, 35; on the drain of sales, mortgages, liturgies and upkeep, see §§21-4, 28-9, 36-8.
The second challenge facing the prosecution was that in bringing a prosecution which involved Dicaeogenes (III), they laid themselves open to litigious accusations of the very worst kind, practising law against members of one’s oikos.\textsuperscript{133} The defence could point to the fact that the cousins were no strangers to judicial proceedings: previously they had made a claim for the whole estate by ankhisteia, brought a successful dike pseudomarturion against Leochares and lost a dike exoules that Micion brought against them.\textsuperscript{134} Menexenus (IV) himself had been involved in series of dikai concerning sumbolaia against Diopethes, one of the arbitrators and Leochares’ brother-in-law.\textsuperscript{135} As the cousins were initiating the judicial proceedings, this would enable the defence to depict them as trouble makers, stirring up an issue that had been settled by agreement, possibly some years previously, motivated by financial greed, an allegation which Menexenus (IV) refutes twice.\textsuperscript{136} Above all the defence will be able to claim that the prosecution have wilfully chosen to enter into a dispute with members of their oikos by making this prosecution.

The speech that Isaeus wrote for Menexenus (IV) combats both these challenges through its portrayal of judicial activity that is attributed to the cousins and Dicaeogenes (III). The problematic material on Leochares’ suretyship is masked by two flanking sections; in which the defence’s version of events and the character of Dicaeogenes (III) are discredited, while exonerating those of the prosecution.\textsuperscript{137} Indeed the vilification of Dicaeogenes (III) is so intense that the jurors could be forgiven for believing that Dicaeogenes (III) was the defendant in the trial and not Leochares. So for example, Menexenus (IV) ascribes to the cousins and Dicaeogenes (III) very different motivations when each make a claim on the estate. He describes Dicaeogenes’ (III) launching of his claim to the entire estate as follows:

\begin{verbatim}
καὶ ἐν τοσούτῳ χρόνῳ οὐσῶν δικῶν ὀúdeις αὐτῶν ἡξίωσε τὰ πεπραγμένα εἰπεῖν ἃδικος πεπράξθαι, πρὶν διατυχούσαι τῆς πόλεως καὶ στάσεως γενομένης δικαιογένης οὔτοι, πεισθεῖς ὑπὸ Μέλανος τοῦ Αἰγυπτίου, ὃ περ καὶ τάλλα ἐπείθετο, ἡμιενεβήτηι ἡμῖν ἀπαντος τοῦ κλήρου, φάσκων ἐφ’ ὅλῳ ποιηθήτων ὑὸς ὑπὸ τοῦ θείου τοῦ ἡμετέρου. Ἦμεις μὲν οὖν μαίνεσθαι αὐτὸν ἡγούμεθα τῷ λήξει...
\end{verbatim}

\textsuperscript{134} See Isae.5.14-19, 22-4. If Menexenus (III) is a prosecutor for this trial (see p.80n.124), he had also prosecuted witnesses to the second will and had been involved in a spectacular piece of wheeling and dealing, see Isae.5.12-14.
\textsuperscript{135} Isae.5.33.
\textsuperscript{136} Isae.5.30, 34. Isaeus is does not state how many years after the award of the entire estate to Dicaeogenes (III) the cousins challenged this award. If it was a considerable period, this may well be deliberate on Isaeus’ part, to obscure the fact that the cousins had delayed in launching their challenge.
\textsuperscript{137} See p.81n.130 on the structure of the speech and Wyse (1904) 404-5 on the prosecution’s tactics.
And in all this time when there were dikai, not one of them thought to say that what had taken place was done unjustly (i.e. the first settlement in 412/11); until, when the city suffered misfortunes and stasis arose, this man here, having been persuaded by Melas the Egyptian, whose advice he obeyed in every other matter, laid claim to all the estate from us, asserting that he had been adopted heir of the whole estate by our uncle. So we thought he was insane to launch a claim before the archon. The cousins have portrayed Dicaeogenes (III) as a cynical opportunist, who has launched his claim during a time of civic turmoil under the influence of his Egyptian adviser, thus tapping into racial stereotypes of Egyptian craft and guile. In contrast, the cousins describe their decision to claim the whole estate by ankhisteia as ‘right (ὁρθός)’, since they considered that ‘it was no longer fitting that Dicaeogenes (III) possessed any share of the things out of the estate.’ Throughout, the prosecution unleash the standard volleys of moral opprobrium against the defence. Everything that Dicaeogenes (III) and his colleagues say about events is characterised as lies, deceit and false testimony, while Menexenus (IV) and his cousins are committed to telling the jurors the truth. Moral terms such as πονηρός, κακός, ἀδικία, μιαρία, αἰσχρῶς and ὑβρις are utilised by the prosecution to describe the defence. The relative merits of the two parties’ interpretation of the terms of Leochares’ suretyship are lost in the barrage of vilification and slanderous motivation which accompanies every move that Dicaeogenes (III) makes in Menexenus’ (IV) narrative.

Dicaeogenes (III) is singled out particularly for vilification because he initiated disputes against members of his own oikos. He is repeatedly described as one who has ‘robbed (ἀφαίρειν)’ his family members of what is rightfully theirs. Menexenus (IV) elaborates for the jurors how Dicaeogenes (III) evicted the sisters of Dicaeogenes (II) from their share of the estate on the same day as the diadikasia which upheld the second will. He is particularly scandalised that Dicaeogenes (III) treated the family of the deceased Theopompus (married to one of the sisters) so brutally, ‘for he was both trustee, kurios and legal adversary for these people.’ On the other hand, the cousins are portrayed as the model of judicial restraint particularly in relation to members of

138 Isae.5.7-8.
139 Dicaeogenes (III) launched his claim in 400/399, on this as a period of stasis with problems in the justice system, see Chapter 7.4. See Wyse (1904) 415, Hall (1989) 103, 113 on stereotyping of Egyptians.
140 ὅδεν ἔτι προσήκει Δικαιογένει τοῦ κλήρου’ (Isae.5.14).
141 For the falsehood and deception of Dicaeogenes (III) and his party, see Isae.5.3, 8, 12, 17, 20 (ὑευδής, ἐθαν): §§13, 15, 17 (ὑευδομαρτυρία); §§5, 14, 19, 38 (ἐε-αποτάιν). For the cousins’ commitment to ἔταληλη, see §§2, 5, 26.
143 ἀφαίρειν: Isae.5.9, 10, 11, 39.
144 Isae.5.9-11.
145 'καὶ γὰρ τοῦτων [τε] ἰμα καὶ ἐπίτροπος καὶ κύριος καὶ ἀντιδικός ἦν' (Isae.5.10).
their own oikos. For example, Menexenus (IV) underlines the cousins’ clemency towards the convicted Leochares in waiving the punishment of atimia in return for the agreement. This clemency is immediately contrasted to the deviousness of Leochares and Dicaeogenes in not handing over two-thirds of the estate. He also highlights the cousins’ preparedness to delay the dike eggues, submit the dispute to private arbitration and to accept the outcome, ‘as if we had suffered small injustices.’ Menexenus (IV) summarises the contrasting attitudes of the two parties to disputes within the oikos:

And we gave Dicaeogenes the town house, not on account of Dicaeogenes’ uprightness, gentlemen, but to show that we do not care more for money than for our relatives, not even if they are exceedingly vile. For previously, when we were in a position to exact vengeance from Dicaeogenes and to take away what he had, we did not want to get hold of anything of his, but only to take away our own belongings. But he, when he had power over us, robbed us of what he could and destroyed us like enemies, instead of treating us like relatives.

Dicaeogenes’ (III) greatest crime is not that he has cynically utilised the judicial system to satisfy his own greed, but that he has engaged in a judicial dispute with members of his own oikos. In comparison, the cousins are portrayed as judicially reticent, committed to settlement and arbitration rather than litigation. Perhaps more clearly than in the other two speeches examined (see Chapter 4.4.i-ii), we can see that the nature and distance of the relationship between disputing parties not only determines the legitimacy of engaging in judicial activity but also the appropriate method of dispute-settlement.

This vilification of Dicaeogenes (III) reaches its crescendo in the final section of the speech, in which Menexenus (IV) promises the jurors: ‘I will show him being both rich and the most vile of men towards the city and towards his relatives and towards his
friends. He goes on to describe how Dicaeogenes (III) failed to perform liturgies for the polis in a manner befitting his wealth, and that he has shared only harm with his relatives and friends. Menexenus (IV) ends with a stinging denunciation:

Τὸν μὲν τούτου οἶκον σὺ, ὁ Δικαίογενες, παραλαβὼν κακῶς καὶ αἰσχρῶς διοικῶσκας, καὶ ἐξαργυριόμενος πενίαν ὀδύρη, ποὶ ἀναλώσας; Οὔτε γὰρ εἰς τὴν πόλιν οὔτε εἰς τοὺς φίλους φανερὸς εἰ δαπανηθεὶς οὐδέν.

After receiving this man's oikos, Dicaeogenes, you have destroyed it in a shameful and vile manner by converting it into cash, and now you bewail your poverty. How did you spend it? For you have not, to all appearances, spent anything either on the city or on your friends.

This is the logical conclusion towards which Isaeus has been pushing his portrayal of Dicaeogenes (III): if he has received an estate that produces 80 minae a year and has spent nothing on his friends, family or the polis, and now pleads poverty, then he must have liquidated the estate. This single image stings Dicaeogenes (III) in several places: he has hidden his wealth to escape his civic responsibilities and to avoid handing over the two-thirds share of the estate to his own family and he has violated the Athenian ideological commitment to inherited landed wealth in liquidating his capital. Although there is no secure evidence to support this allegation, its potency lies in offering the jurors an underlying motivation which supports and is supported by the portrayal of Dicaeogenes (III) in the rest of the speech.

Isaeus has created two contrasting portrayals of judicial activity which he lays before the jurors: Dicaeogenes (III), a man who wilfully engages in litigation against members of his own oikos, for which he receives the strongest moral censure; and the cousins, who are characterised by truthfulness and restraint in all matters judicial, particularly with regard to family members. In conclusion, I would like to make a number of points based on the above analysis of Isaeus’ speech On the Estate of Dicaeogenes. Firstly, topoi of litigiousness versus judicial reticence must have carried weight with the jurors. As in the other speeches, the portrayal of judicial activity is a central plank in the construction of the prosecution’s case, enabling them to circumvent the serious challenges they faced in bringing the case to court. The two contrasting portrayals enable them to obscure the weakness of their case against Leochares’ suretyship, discredit Leochares through his association with the vilified Dicaeogenes (III) and launch a pre-emptive strike against any allegations of litigiousness that could

149 ἡμι δὲ καὶ πλούσιον καὶ πονηρότατον αὐτὸν ὄντα ἀνθρώπων ἀποδέιξε καὶ εἰς τὴν πόλιν καὶ εἰς τοὺς προσήκουσας καὶ εἰς τοὺς φίλους’ (Isae.5.35).
150 Isae.5.35-42.
151 Isae.5.43.
be made against them. Secondly, the power of these two topoi operates in the area of morality: a man who is litigious is open to moral condemnation. Thirdly, this moral condemnation is particularly focused on those who initiate judicial proceedings against members of their own oikos, instead of seeking dispute settlement through alternative means, for example arbitration or agreement. Fourthly, this hostility to litigiousness is capable of operating at an ideological level, independent of factual reality. A close reading of the speech suggests that Menexenus (IV) was an experienced litigant vulnerable to allegations of litigiousness himself (above p.82). The current prosecution was the eighth legal hearing over a twenty-two year period relating to the estate of Dicaeogenes (II). It is virtually impossible to pretend that either party was a judicial innocent, and yet the judicial reticence of the cousins is fundamental to the strategy of Menexenus' (IV) speech.

4.5 Conclusion: On-stage and Off-stage Images of Judicial Activity

The purpose of this chapter has been to analyse the off-stage images of judicial activity in the Attic Orators, thus giving us a control to the on-stage images from the Aristophanic world. The prevalence of judicial activity in Athens is highlighted both within and beyond the theatre, and in the later case is connected with the central role that the jury courts held in the administration of the democracy and empire. It is possible that the focus on judicial activity within the theatre may be a reaction and response to the relative novelty of the increased profile of the jury courts in the off-stage world (Chapter 4.1). Indeed I would like to suggest that this relative novelty was one of the four factors specific to the late fifth century which exacerbated the Athenian concern with judicial activity. On the basis of the above analysis of three jury court speeches, it is possible to draw some conclusions on the presentation of judicial activity in the Attic Orators, which can then be compared and contrasted with the images from the Aristophanic world.

Firstly, a litigant is careful to present himself before the jurors within a set of clearly defined and widely used parameters: he is reticent to engage in judicial activity and unfamiliar with the intricacies of the jury court; while his opponent is experienced

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153 The eight judicial hearings can be listed as follows:
§6 412/11: Epidikasia of 1st Will.
§§7-11 400/399: Diadikasia of 2nd Will.
§§12-13 post 400/399: Menexenus (III) v Lycon: dike pseudomarturion. Menexenus wins.
§16 post 400/399: Dicaeogenes (III) v Cousins: diamarturia. Leochares testifies.
§§17-19 post 400/399: Cousins v Leochares: dike pseudomarturion. Cousins win but waive penalty of atimia.
§§1-2 389: Cousins v Leochares: dike eggues. Outcome unknown.
in judicial activity to the point of sycophancy. These parameters can be observed in the three speeches analysed above (Chapter 4.4). Furthermore, I think it is difficult to dismiss the images of judicial reticence and experience as rhetorical glosses, figures of speech that are devoid of power and persuasion. In each of the three speeches analysed above, the speakers utilise the presentation of judicial activity to circumvent legal challenges that they have been presented with in bringing the case to court. This strategy can only have been worth developing and pursing if the garb of judicial reticence and inexperience found favour in the eyes of the jurors, while that of sycophantic rapaciousness besmirched the standing of one’s opponent before the jurors. The espousal of judicial reticence in the Attic Orators closely parallels the comic hero’s flight from Athenian litigiousness, while the allegations of sycophancy levelled at the opposition closely parallel the comic hero’s conscious banishment of sycophants from the fantastical paradise.

Secondly, the perceived legitimacy of engaging in judicial activity is determined by the relationship between the two litigants, the closer the relationship, the greater the degree of moral censure that is attached to the pursuit of judicial activity. Figure 6 is an attempt to represent this principle in diagrammatic form. The distance between the litigant at the centre and his opponent in one of the surrounding circles determines the legitimacy of engaging in judicial activity. It is shocking to be involved in litigation with one’s family and friends, understandable with one’s enemies and incomprehensible with a stranger, because there is no relationship. Negotiation and arbitration, in apposition to litigation, are the appropriate methods of settling a dispute with members of one’s oikos. Strong moral censure and condemnation can be deployed against those who engage in judicial activity which transgresses this relational framework. If a speaker is able to present the opposition as engaging in such inappropriate judicial activity, then his opponent can be morally tarnished with terms like vile, base, lying, unjust. The speaker, in comparison, is ready to apply to himself such morally favourable epithets as just, truthful and one who is loyal and generous to the polis. Again there is a close parallel with images from the Aristophanic world, within which the sycophant is pilloried and morally censured because his interfering and meddlesome prosecutions transgress a wider framework of interpersonal

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154 Cohen (1995) 103-5 comments on litigants’ manipulation of this topos, but does not consider the implications of litigants’ willingness to present themselves as judicially reticent in relation to wider attitudes to judicial activity in Athenian society. It is interesting to note that there is no entry for Aristophanes or Comedy in the index. Thomas (1994) 124, commenting on litigants’ frequent recourse to the figure of the archaic lawgiver, notes that: ‘the prestige of the ancient lawgiver is exploited for all it is worth and in a way which was presumably thought acceptable, indeed highly appealing, to the jurors.’ This connection between a litigant’s presentation of his case and the mentality of the citizen-juror has been a fundamental principle in this chapter (see Chapter 4.3).
relationships. In Chapter 8, I will advance an explanation for this connection between a relational framework and the perceived legitimacy of engaging in judicial activity.

Thirdly, there may be a gap between the images of judicial reticence and the reality of judicial practice. Although a litigant clothes himself in the garb of judicial reticence before the jurors, in reality he may have been involved in a long running, complicated judicial dispute with his opponents. Just as judicial activity turns out to be inescapable within the comic hero's fantastical paradise, so judicial activity may in reality be inherent within the lives of those who espouse judicial reticence. And yet, given that speakers utilise these claims of judicial innocence to circumvent legal challenges they faced, the image of the judicially reticent man must have carried some weight with the jurors.

With regard to the different interpretations advanced by scholars (see Chapter 4.2), one could argue that elements can be adopted from each position adequately to explain why litigants present themselves as judicially reticent. With regard to the 'realistic' approach, although I would not argue that Athenians in practice were reluctant to engage in litigation, I will suggest in Chapter 8 that the ideology of judicial reticence generated a social pressure to explore alternative means of dispute-settlement either in addition to or instead of litigation. With regard to the 'moral' and 'ideological' approaches, I broadly agree with these positions, particularly the moral censure associated with interfering behaviour and the fictitious nature of claims to judicial and rhetorical inexperience. Although Ober's account of mass-elite relations is fundamental to an understanding of the workings and stability of the Athenian democracy, I would question its use in helping us to reconstruct the reasons behind this ideology of judicial reticence, particularly in enabling us to articulate these reasons within a frame of reference that would have been recognisable to a member of Aristophanes' audience. In Chapter 8, I will advance reasons behind the ideology of judicial reticence which adopt an alternative perspective to that of Ober's.

Therefore it is possible to conclude that there is a strong correlation between the on-stage, Aristophanic images of judicial activity and the off-stage images from the Attic Orators. Within both media, popular attitudes to judicial activity in the age of Aristophanes could be described as distinctly ambivalent. On the one hand, judicial activity is to be fled from in the comic world and renounced in the court room. On the other hand, judicial activity turns out to be inescapable within the fantastical paradise and an inherent feature in the lives of some litigants. This ambivalence is characteristic of popular attitudes throughout the age of Aristophanes: it is exhibited in the plays and speeches which have been examined from across the period. I think it is relatively
straightforward to understand why judicial activity should be conceived of as an inescapable part of the Athenian experience. As described in Chapter 1, the democratic judicial system demanded widespread citizen participation to function. A citizen’s participation in judicial activity became an important part in the construction of Athenian civic ideology. On the other hand, it is harder to comprehend the ideology of judicial reticence, a problem which will be discussed in Chapter 8. If the above analysis is accepted, then Aristophanes’ repeated focusing upon judicial activity in plays performed before the demos may well be borne out of a society wrestling with the tension between its ideology of judicial reticence and the reality of its judicial practice. This tension and concern with regard to judicial activity were fuelled by four factors specific to the late fifth century. The first, the relatively recent appearance of the jury court’s high profile on the Athenian horizon, has already been commented on (Chapter 4.1). The second factor originates from beyond the western horizon, with the teachers of rhetoric in Sicily. In the next chapter, I will examine the impact that their rhetorical techniques were perceived to have upon the administration of justice.
The dramatic momentum of the *Clouds* is driven by the hero Strepsiades' quest to evade payment of his debts in the jury court through the acquisition of rhetorical skills, as he states in the opening quotation. Todd has noted: 'even the *Clouds*, which on one level is concerned with Sokrates as representative of the new-style intellectuals conventionally described as 'sophists', has nevertheless a strong legal flavour: Strepsiades' whole aim in becoming a pupil of Sokrates is to win his lawsuits and get out of paying his debts.'

This observation about the dramatic momentum of the *Clouds* suggests the posing of further questions, the most central being: what is the significance of a clear connection being drawn between judicial practice and rhetoric within the context of the dramatic festival in the late-fifth century Athens?

There has been much recent scholarly interest in rhetoric, but little work on attitudes to the impact of the late fifth-century developments in rhetoric upon judicial practice, the very issue which 1

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1 Todd (1993) 149. The connection between the jury courts and rhetoric is examined in detail in Chapter 5.1 below. Todd does not take this observation much further, which given the scope of his book, is understandable.

2 The production of the first version of the *Clouds* can be dated to 423/4 at the City Dionysia (see *Nub.*, p.2 with Dover (1968a) Ixxx). Aristophanes subsequently revised the *Clouds* and it is the revised version that we possess, usually dated to between 420 and 417 (see Dover (1968a) lxxx-xciii and pp.103-5 on the relationship between the revision and the dramatic momentum of the play). It is difficult to draw conclusions about the reception of the play's subject matter from its third place (Cardledge (1990a) 22-4 posits a variety of reasons apart from the subject matter which could have resulted in third place), but it is interesting that Aristophanes thought the subject-matter sufficiently important to warrant a revision.

3 On rhetoric, see Kennedy (1963), Ober (1989) 43-49, 104-191, Cole (1991), Worthington (1994), Yunis (1996). I have not had an opportunity to look at Wardy (1996). I have used the term 'rhetoric' throughout to refer to skill in speaking, although this is in fact anachronistic use of the word. Cole (1991) 2 observes that the term rhetoric is first used by the Platonic Gorgias (Pl.*Gorg.*449a) and is restricted in the classical period to philosophical texts. In the *Clouds*, rhetoric is usually described as 'to win at speaking' (νικῶν λέγειν) (see p.93n.16).

4 For example, the recent work by Harvey Yunis (Yunis (1996)) is entitled *Taming Democracy: Models of Political Rhetoric in Classical Athens* and is almost totally concerned with the political applications of rhetoric: i.e. in the assembly. I could find hardly any index entry to the judicial sphere, similarly with Cole (1991). Harris (1994) is mainly confined to emphasising the importance of *nomos* rather than rhetoric in verdicts reached by the jurors. The recent works by Carey examine the rhetorical strategies employed by orators (see Carey (1994a) on the use of evidence; Carey (1994c) on evoking emotions in the jurors and characterisation; Carey (1996) on the use of *nomos*). Kennedy (1963) is the standard work on the rhetorical techniques developed by the Orators. There appears to have been little work on the issue
propels the plot of the *Clouds*. Naturally the *Clouds* examines a host of other issues apart from the use of rhetoric in the jury courts. For example, the person and activities of Socrates, the broad range of intellectual and educational developments of the late fifth century in addition to rhetoric, the social impact of this new education and the relationship between the generations are but some of the issues which are presented to the audience on the stage. Given the scope of my research project, this chapter will be concerned primarily with the impact that the rhetorical developments and educative opportunities pioneered by the sophists had upon democratic judicial practice and particularly with popular perceptions of this interaction. The chapter will endeavour to begin with the more secure avenues of enquiry and move towards those which are tentative. Chapter 5.1 explores the relationship between off-stage reality and the on-stage connection between rhetorical skill and judicial practice. Chapter 5.2 examines the on-stage concerns and anxieties about the use of rhetoric in the jury courts, particularly in the area of justice, and explores off-stage reflections of these concerns. Chapter 5.3, the most tentative, suggests the group in Athenian society from which these concerns may have been emanating.

5.1 The Practice: The Impact of Rhetorical Education on Democratic Judicial Activity

The dramatic momentum of the *Clouds* presupposes and is driven by the equation between rhetorical skill and judicial advantage. In the opening scene of the play, the hero Strepsiades tells the audience about the problems he faces. Strepsiades’ son, Pheidippides, has developed a taste for the aristocratic and extremely expensive pastime of chariot racing. His son’s equine addiction has necessitated the borrowing of funds and now Strepsiades’ creditors are pressing him to settle his debts. He has lost *dikai* that some creditors have brought against him, while others are threatening to seize goods given as surety for the interest owing. The spectre of his debts and impending litigation haunts Strepsiades throughout the play. Therefore he has the brilliant idea of

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7 Ar. Nub. 11-40.
9 Strepsiades enrols in the Phrontisterion on account of his creditors and the threat of legal action (Ar. Nub. 239-41, 433-4); his mind immediately turns to courtroom conundrums when he is asked for a topic of intellectual inquiry (746-83); and he is haunted by the imminent arrival of the Old-and-New Day, upon which debts are settled (1131-41). Strepsiades’ problems are given physical embodiment by the
sending his son to the *Phrontisterion* run by Socrates and Chaerephon to be taught by them how: 'to win in speaking, both just matters and unjust matters.' The engine which propels Strepsiades for two-thirds of the play is the connection between rhetorical ability and judicial advantage, as the following examples demonstrate. When Strepsiades suggests to Pheidippides that he enter the *Phrontisterion*, he observes:

εἶναι παρ᾿ αύτοῖς ψαίνω ἀμφῶς τῷ λόγῳ, τὸν κρείττον, ὡστίς ἐστί, καὶ τὸν ἥττονα. τούτοις τὸν ἔτερον τοῖν λόγοιν, τῶν ἥττονα, νυκὰν λέγοντα ψαι τάδικότερα. ἦν οὖν μάθης μοι τὸν ἄδικον τούτον λόγον, ὃ νῦν ὀρείλῳ διὰ σέ, τούτων τῶν χρεών οὐκ ἀν ἀποδοθείν οὐδ᾿ ἂν ὀβολὸν οὐδενί.

They say that there are in their house both arguments, the Better, whatever that is, and the Worse; and that one of these two arguments, the Worse, wins at speaking, saying the more unjust matters. So if you learn for me this unjust argument, then of these debts that I owe now on account of you, I wouldn't have to pay back even an obol to anyone. Strepsiades envisages that Pheidippides' mastery of the 'unjust argument (ἄδικος λόγος)' will guarantee non-payment of the debts he has incurred on behalf of his son. Strepsiades asks the chorus of Clouds to make him 'by one hundred stades the best speaker of all the Greeks...to twist *dike* for myself and to give my creditors the slip,' to which they reply that he will attain the highest rhetorical renown, that of the logographer levelling lucrative fees in return for legal advice: 'many people will always be sitting at your doors, wanting to communicate and to come to speak, to consult with you concerning matters and *antigraphai* of many talents, worthy of your intelligence.' Again the connection is made between the acquisition of rhetorical skills and judicial success. When Strepsiades receives Pheidippides back from the *Phrontisterion*, Socrates assures him that: 'you will be able to defend successfully any *dike* now that Pheidippides has learnt the Worse Argument, even if the prosecution produces one

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10 ἐλέγοντα νικάν καὶ δίκαια κυδίκα (Ar.Nub.99)
11 Ar.Nub.112-18. See Dover (1968a) lii-liii on the names attributed to the two logoi in the manuscripts. I have adopted the translation of Sommerstein (1982) 21 for the two logoi: ὁ κρείττων λόγος = the Better Argument; ὁ ἥττων λόγος = the Worse Argument.
12 τῶν ἐκλήμων ἐνναὶ με λέγειν ἐκατόν σταθοῦσιν ἀρίστων...οἵ εἰμιτῷ στρεψομελήσαι καὶ τοὺς χρήστας διοικήσειν (Ar.Nub.430, 434).
13 ὅστε γε σου πολλοὺς ἐπὶ ταῦτα θύρας ἀεί καθῆσαι, έκαθομένους ἀνάκοινουσα τε καὶ εἰς λόγουν ἐλθείν πράγματα κάντιγρασες πολλῶν ταλάντων, ἄεις σῷ φρενὶ συμβουλευσομενοὺς μετὰ σοῦ (Ar.Nub.467-75). πράγματα in this instance, as often is the case in Aristophanes (see Ehrenberg (1947) 54-5) has judicial connotations. An *antigraphe* was probably a form of *paragraphe* (Todd (1993) 168). On *paragraphe*, see Chapter 7.3.1
thousand witnesses. The dramatic momentum of the *Clouds* is dependent upon Strepsiades’ desire to acquire rhetorical skills which will guarantee judicial success and thus non-payment of his debts. This presentation of rhetoric’s use to ensure judicial success raises important questions, particularly with regard to justice. These issues will be discussed in Chapter 5.2 below.

The play also presents a consistent picture as to how rhetorical skill guarantees judicial success. In the *Clouds*, rhetorical skill is often referred to as the ability ‘to win at speaking (νικᾶν λέγων)’ and is portrayed as a superstructure of verbal and argumentative skill resting upon a substructure of intellectual relativism. Words and phrases that relate to verbal and argumentative skill abound throughout the play. For example, Aristophanes makes frequent references to the tongue: Strepsiades will be blessed before the Athenians and the Greeks if: ‘you think this is best, as a clever man should: victory in action and deliberation and in the warfare of the tongue;’ he will become ‘glib-tongued’; he will be lost if he does not become ‘a tongue-twister’; the two logoi debate on the relative merits of the use and disuse of the tongue; Pheidippides emerges from the *Phrontisterion* with ‘a two-edged tongue’. Aristophanes uses a number of specialist terms from the nascent rhetorical technical vocabulary which was popular with intellectuals in the late fifth century. For example, Socrates hails the chorus of Clouds as his deities because they bestow: ‘intelligence, argument, perception, talking of marvels, circumlocution, incisive and repressive powers.’ The young men of the day, following the Worse Argument, are depicted as engaged in ‘idle talk (λαλία)’, ‘babbling about thorny, outlandish subjects in the Agora (στωικύλλων κατὰ τὴν ἀγορᾶν τριβολεκτράπελα)’ and are able to talk their way out of compromising situations. Those skilled in rhetoric are able to ‘speak against (ἀντι-λέγειν, -λαγία)’ an opposing position. The arguments advanced by graduates from

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15 For other references to the connection between rhetorical skill and judicial success, see Ar.Nub.167-8, 239, 447, 655-7, 870-88, 1105-11, 1210-11, 1227-31, 1316-18.


17 Ἐλείστενος τούτο νοοίεις, ὅπερ εἰκός δείξαν ἄνδρα, νικᾶν πράττων καὶ βουλεύων καὶ τὴ γλῶττα πολεμίζων’ (Ar.Nub.418-9). Aristophanes has taken the traditional defining feature of the clever man, ‘action and deliberation’ (e.g. Hom.II.2.202, 18.105-6 with Sommerstein (1982) 183) and has added ‘warfare of the tongue’; i.e. the wise man is now defined by his rhetorical ability as well as by traditional qualities.

18 Ar.Nub.445 (εὐγλῶττος), 792 (γλῶττοστροφεία), 1013 verses 1017 and 1058-9, 1160 (ἀμφοήκης γλῶττα). See also 423-6.

19 ἂν περι γνώμην καὶ διάλεξιν καὶ νοοὺ ἡμῖν παρέχουσι καὶ τερατεύει καὶ περίλεξει καὶ κροὺς καὶ κατάληψιν’ (Ar.Nub.317-8, tr. Sommerstein, adapted). On Aristophanes’ use of these technical terms, especially those ending in -ικός, -ικός, see also at 1172-3 and Eq.1377-80 with Peppler (1910), Hanley (1953), Dover (1968a) 142-3.

20 Ar.Nub.931, 1003, 1075-82.

21 Ar.Nub.321, 888, 901, 938, 1040, 1173, 1339,
the *Phrontisterion* often operate by utilising inference and supposition. For example, Pheidippides argues that if Strepsiades beat him as a child out of benevolence, then his own act of father-beating is an expression of his own benevolence towards his father.\(^{22}\)

In the *Clouds*, if one has attended the *Phrontisterion* then one is equipped to do verbal and argumentative battle. But rhetoric is depicted as more than the ability to speak well, it is the ability to ‘win at speaking’ even if one’s case is ‘unjust (ō dikōk)s’. The rhetorical edifice rests upon a substructure of intellectual relativism. References to new ideas and thought-forms feature alongside references to verbal skill. So the chorus of *Clouds* not only bestows upon Socrates ‘talking of marvels, circumlocution, incisive and repressive powers’ but also ‘intelligence (γνώμη)’ and ‘perception (νοος)’.\(^{23}\) The substance of this ‘intelligence and perception’ is expounded most fully by the Worse Argument in the agon between the two *logoi*. The Worse Argument admits that he is indeed ‘worse (ἵππων)’ than his opponent but is confident that he will win against him on the basis of ‘new ideas (γνώμαι καινάι)’. These ‘new ideas’ are to argue what is contrary to traditional values, for example to claim that justice (δίκη) does not exist in the exchange which follows.\(^{24}\) The Worse Argument presents the heart of these new ideas at the start of his reply to the Better Argument in the agon.

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καὶ μὴν πάλαι τ’γάρ ἐπιγόμην τὰ σπλάγχνα κάπεθύμουν ἀπαντάντα ταύτ’ ἐναντίαις γνώμαις συνταράξαι. ἔγω γὰρ ἢττων μὲν λόγος δι’ αὐτὸ τοῦτ’ ἐκλήθην ἐν τοῖς φροντισταίσιν, ὅτι πρῶτος ἐπενόησα τοῖσιν νόμαις καὶ ταῖς δίκαις τάναντι άντιλέξαι. καὶ τούτο γελθεῖν ἢ μυρίων ἔστ’ ἄξιον στατήρων, αἱροῦμεν τοὺς ἢττονάς λόγους ἐπέιτα νικάν.
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And I have truly been choking for a long time on my intestines with eagerness to throw into confusion all these opposing ideas. For I am, on account of this, called the Worse Argument by the deep thinkers, because I was the first of all to work at arguing against the opposite things to the customary values and justified pleas. And this is worth more than ten thousand staters, choosing the inferior argument and subsequently winning.\(^{25}\)

The Worse Argument then demonstrates his mastery of this intellectual approach by overthrowing the Better Argument’s standpoints on bathing, attendance in the Agora, training of the tongue, *sophrosune* and by defending a shameful and *phusis*-indulging lifestyle. In the agon between the *logoi*, the audience learns that the intellectual relativism which Strepsiades wishes to utilise in relation to his debts can be applied to

\(^{22}\) See *Ar.Nub.*1409-14. Similarly the Worse Argument argues that if Nestor was called ‘agoretes’, then objections to frequenting the Agora are unfounded (1055-7).

\(^{23}\) See p.93n.19. References to γνώμη frequently occur, see *Ar.Nub.*157, 169, 321, 730, 744, 747, 761, 896 (see below), 924, 948, 1037, 1045, 1084, 1314, 1404, 1440.

\(^{24}\) *Ar.Nub.*889-907.

\(^{25}\) *Ar.Nub.*1036-42.
any area of life. This revelation is of crucial significance in the remaining scenes of the play, when Pheidippides applies his rhetorical training to his relationship with his father (see Chapter 5.2 for further details). Rhetorical skill in the *Clouds* is presented as verbal and argumentative skill constructed upon a foundation of intellectual relativism, which guarantees ‘winning in speaking’ regardless of the justice of the opponent’s case. Again this depiction of rhetoric’s relativistic foundations raises serious questions, which will be explored in Chapter 5.2 below.

Finally, in the *Clouds*, rhetoric is presented as a skill which can be learnt from professional teachers who are engaged in intellectual research. Socrates, his colleague Chaerephon and their pet, personified Worse Argument are depicted as the purveyors of this rhetorical education. Rhetoric is depicted as but one of the areas that Socrates and his colleagues subject to intellectual investigation and instruction. They are clearly presented as intellectual thinkers, albeit in a heavily satirised and farcical form. Secondly they are presented as professional teachers. Strepsiades knows the *Phrontisterion* as a place of instruction, its inmates are shown to be students, Socrates accepts Strepsiades and then his son as pupils and the audience observes Socrates’ attempts to educate the former. As a professional teacher, Socrates is represented as charging fees for instruction. Access to this rhetorical education will be discussed in Chapter 5.3 below. Therefore rhetoric is presented as a subset of a more catholic programme of intellectual investigation that is being undertaken by Socrates and his colleagues and in which instruction can be obtained by the payment of a fee.

Within the on-stage world of the *Clouds*, the intellectual revolution of the late fifth century is portrayed as having a major impact on democratic judicial practice through the medium of rhetoric. The dramatic momentum of the play operates on the assumption that the acquisition of rhetorical skill guarantees judicial success. Rhetoric is depicted as the art of ‘victory in speaking’, an edifice of verbal dexterity constructed upon a relativistic intellectual foundation. It is possible to acquire this rhetorical ability by applying to Socrates and his colleagues, who are portrayed as the professional
purveyors of rhetoric for payment. It is now necessary to compare the on-stage images from the *Clouds* with off-stage evidence to arrive at a sharper understanding of the interaction between rhetorical instruction and democratic judicial practice.

Even the briefest of stroll beyond the confines of the *Clouds* demonstrates that rhetoric was utilised in the Athenian jury courts of Aristophanes' day. I will take the on-stage ideas outlined above and compare them in reverse order with off-stage evidence, beginning with the teaching of rhetoric by Socrates and his colleagues and moving through the nature of rhetoric to the application of these skills in the jury court. The second half of the fifth century witnessed the arrival in Athens from across the Greek speaking world of a group of intellectuals and teachers, collectively known as the sophists. The range of their intellectual investigations was dazzlingly wide and included not only rhetoric, but also political and social theory, linguistics, mathematics, natural sciences, religious studies and epistemology. De Romilly has described the leitmotif of their intellectual endeavours as follows:

> In the Sophists' intellectual world, where nothing was accepted *a priori* any more, the only sure criterion was immediate, concrete human experience. Gods, traditions and mythical memories no longer counted for anything. Our own judgements, our own feelings and interests now constituted the sole criteria. 'Man is the measure of all things,' Protagoras used to say.

These thinkers made the results of their inquiries available to others through their writings, public lectures and paid courses of instruction. In the arena of rhetorical instruction, the surviving titles of works by individual sophists suggest a rhetorical focus. Plato depicts the sophists as teaching rhetoric for a fee. At the beginning of the *Protagoras*, when Socrates asks the enthusiastic Hippocrates what subject Protagoras is a master of as they walk to Callias' house, he replies: 'he is master of the art of making clever speakers.' In the *Gorgias*, Gorgias, in response to Socrates questions, defines rhetoric as: 'I, for my part, say that it is persuasion alone by words, both of the jurors in the jury court, and the *bouleutai* in the *boule*, and the assemblymen in the assembly and in all other public meetings which happen concerning political matters', an art-form

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34 Such titles include: Thrasymachus' *Art of Rhetoric* and a collection of deliberative speeches (DK A1); Gorgias' two fictitious legal speeches *Encomium of Helen* and *Palamedes* (DK 11 with MacDowell (1982)); Protagoras' *Contradictory Arguments* (DK B5) and *Art of Debating* (DK 6, 6a, 6b); on Antiphon, see pp.98-100. For discussions on the sophists' contribution to the study of rhetoric, see Guthrie (1971) 176-225, de Romilly (1992) 57-92, Cole (1991) 71-112.
35 'ἐπιστάτην τοῦ ποιήσεως διψών λέγειν' (Pl. *Protag*.312d). See also *ibid*.318d-319a, where Protagoras himself states that he teaches the *techne* of politics, the ability to manage personal and state affairs. For Protagoras charging fees for his teaching, see Pl.*Hipp.*.Mat.282b8-3b3, *Meno* 91d and for sums see DK 80A1 (100 minae) and DK 84A11 (0.5 minae and 1 drachma). On the sums charged by other sophists and interpreting these figures, see Vlastos (1975) 159-61, Kerferd (1981) 26-8.
which he claims to teach.\textsuperscript{36} Therefore there is ample evidence from the off-stage world to support the on-stage representation of intellectuals teaching rhetoric for a fee. It is the identity of these teachers which is more problematic: in the \textit{Clouds}, Socrates, assisted by Chaerephon, is presented as teaching rhetoric for a fee; while in the works of Plato and Xenophon, Socrates is distinguished from the other intellectuals precisely because he does not teach rhetoric for a fee.\textsuperscript{37} This problem has been examined in depth by Dover, who concludes that: 'Aristophanes attaches to Socrates the characteristics which belonged to the sophists in general but did not belong to Socrates.'\textsuperscript{38} The Socrates of the \textit{Clouds} is probably closer to an identikit picture of a late fifth century sophistic intellectual than to the off-stage named individual: a sophistic Socrates.

Secondly, there are connections between the on-stage presentation of rhetorical ability and sophists' investigations in the subject. De Romilly has described the new developments in rhetoric ushered in by the sophists as follows:

> An examination of the contributions of the two greatest Sophists, Gorgias and Protagoras, reveals two new avenues of approach. The one discovers the magic inherent in speech and the potential power of style. The other establishes a method of argument and reveals the dialectic bases of all types of argumentation.\textsuperscript{39}

Gorgias was renowned in antiquity for a skilful and polished prose style and his two surviving fictitious defence speeches are models of argumentation based upon inference and supposition.\textsuperscript{40} These developments parallel the presentation of rhetoric in the \textit{Clouds}: rhetorical ability is similarly presented as verbal skill and the utilisation of arguments based upon inference and supposition. At one point there is an exact matching of argumentative strategy: Zeus’ inability to resist the powers of love is cited as a justification for immorality by both the Worse Argument in the \textit{Clouds} and by Gorgias in his \textit{Encomium of Helen}.\textsuperscript{41} Protagoras is widely credited with the following

\begin{quote}
\textsuperscript{36} 'Τὸ πεῖθεω ἐγὼν' ὅδε τε εἶναι τοῖς λόγοις καὶ ἐν δικαστηρίῳ δικασταὶ καὶ ἐν βουλευτηρίῳ 

\textsuperscript{37} This problem is well laid out by Dover (1968a) xxxii-xlv, particularly xlv.

\textsuperscript{38} Dover (1968a) xlix. Dover's conclusion has been widely accepted. For example, MacDowell (1995) 130-33 and Brickhouse and Smith (1989) 69-70 are recent works from an Aristophanic and Socratic perspective which support Dover’s conclusions. But see Nussbaum (1980) 71-74 for reservations, which MacDowell (1995) 132-3 incorporates into a revised version of Dover’s analysis.

\textsuperscript{39} De Romilly (1992) 60.

\textsuperscript{40} For example in his \textit{Encomium of Helen}, Gorgias argues Helen is innocent of blame by supposing four forces which compelled her to go with Paris: it was either ordained by the gods (§6), she was carried off by force (§7), she was persuaded by the irresistible force of words (§§8-14) or she was overpowered by the force of love (§§15-19). See de Romilly (1975) 9-11, (1992) 60-73 and MacDowell (1982) 12-19 on Gorgias’ contribution to the study of rhetoric.

\textsuperscript{41} Compare Ar.Nub.1080-2 with Gorg.\textit{Hel}.19 and see also Eur.\textit{Hel}.948-50.
observation: ‘he was the first to say that there are two *logoi* about every matter opposed to each other. With these, he used to propound arguments involving a series of stages, being the first to do this’\(^{42}\) This fundamental observation occurs in other contemporary sources. For instance, in a fragment of Euripides’ *Antiope*, a character states: ‘in all things, one could set up a contest of twofold arguments, if one is wise at speaking’;\(^{43}\) while the overarching aim of the treatise *Dissoi Logoi* is to demonstrate that it is equally possible to argue for either a relative or an absolute position on a series of moral issues.\(^{44}\) Protagoras is not only credited with the observation that there are two opposing *logoi* on any issue, but also that it is possible to adopt either *logos* and win, even if one *logos* is weaker than the other, and that he taught this skill to his pupils.\(^{45}\) Protagoras’ thinking on *logos* has long been recognised as the model for the agon between the two *logoi* in the *Clouds*.\(^{46}\) Gorgias’ focus on style and argumentation parallels the superstructure of verbal and argumentative skill which characterises rhetorical training in the *Clouds*; while Protagoras’ observations on the nature of *logos* inform the substructure of intellectual relativism which characterises the Worse Argument’s thought.

Thirdly and most significantly, evidence from the off-stage world confirms the on-stage image that the sophists’ rhetorical instruction influenced judicial practice in the late fifth century. This phenomenon can be seen in the career and works of the orator Antiphon.\(^{47}\) Thucydides makes the following summary of Antiphon’s career in his account of the Four Hundred:

\[\text{ο μέντοι ἀπαν τὸ πράγμα ἔνθεις ὑπὶ τρόπῳ κατέστη ἐς τοῦτο καὶ ἐκ πλείστου ἐπιμεληθεὶς Ἀντιφών ἦν ἀνήρ Ἀθηναίων τῶν καθ' ἐαυτὸν ἀρετῇ τε οὐδενὸς ὑστέρος καὶ κράτιστος ἐνθυμηθεὶ τε γενόμενος καὶ ἡ γνώσις εἶπεν, καὶ ἐς μὲν δήμον οὗ παριών οὖς ἐς ἄλλον ἀγώνα ἐκούσιος}\]


\(^{43}\) ‘ἐκ παντὸς ἄν τις πράγματος διασώ ἀγώνοι ἀγώνα θείτ’ ἄν, ἐλέγειν εἰτ’ σοφός’ (*Eur.fr.* 189 N). The play is usually dated after 411.

\(^{44}\) *Dissoi Logoi* is mainly concerned with the moral issues of good and evil, the beautiful and the ugly, the just and unjust, truth and falsehood. The treatise can be dated to just after the Peloponnesian War (see §1.8 and Guthrie (1971) 316-9).


\(^{46}\) This fact has long been recognised by commentators on the *Clouds* (e.g. Sommerstein (1982) 165-6) and scholars writing about the sophists (e.g. DK C2, Kerferd (1981) 101, de Romilly (1992) 78).

\(^{47}\) On the vexed question of the relationship between Antiphon the sophist and Antiphon the Rhamnusian orator, see Guthrie (1971) 292-4, Morrison (1961) 49-58, Kerferd (1981) 49-51, *HCT* 5.170-1 and de Romilly (1992) 129-131. For the purposes of the present discussion, this is not a fundamental issue. Even if the orator is taken a separate individual from the sophist, the orator is still clearly influenced by and aware of the developments in rhetoric during the sophistic period.
The real author and master of the whole scheme, who had been the longest interested in it, was Antiphon, a man inferior to none of his contemporaries, and possessed of remarkable powers of thought and gifts of speech. He did not come forward in the assembly, or in any public arena. To the multitude, who were suspicious of his reputation for cleverness, he was an object of dislike; but there was no man who could do more for any who consulted him, whether in the courts of justice or in the assembly. And when the government of the Four Hundred was overthrown and became exposed to the vengeance of the people, and he being accused of taking part in the plot had to speak in his own case, his defence was undoubtedly the best ever made by any man tried on a capital charge down to my time. Antiphon is depicted as a man of great intelligence and rhetorical skill who made these abilities available to others in the jury courts and the Assembly while never appearing in person, except in the case of his own brilliant defence. This depiction is borne out by his extant speeches and the fragmentary remains of his lost works that were written for litigants to then deliver themselves in court. It is this role of logographer that the Clouds promise Strepsiades once he has acquired rhetorical skill (see above p.92). Not only did Antiphon write speeches for litigants, but he almost certainly taught rhetoric to students. In his own works, Antiphon is aware of the recent developments in rhetoric, firstly in his comments about plaintiffs who are skilled in speech and secondly in his utilisation of the rhetorical developments pioneered by Gorgias and Protagoras.

Firstly, Antiphon portrays his litigants as clearly aware of the impact that rhetoric is having on judicial practice as they appear before the jurors. The defendant in Antiphon’s Second Tetralogy is portrayed as being a skilled speaker. He himself admits that his speech is ‘subtle and precise (λεπτά καὶ ἀκριβῆ)’ while his opponent prefers to brand such ability as ‘wicked and precise speech (πονηρὰι λόγων ἀκριβεία).’ Similarly Euxitheus, the Mytilenean defendant for whom Antiphon wrote On the
*Murder of Herodes*, forewarns the jury that he may say ‘something skilfully (τι ὄρθως)’ during the course of his defence.\(^5^2\) The vocabulary used here by Antiphon to describe rhetoric in the jury court closely corresponds with Strepsiades’ description of his rhetorical training. Strepsiades is determined to enter the *Phrontisterion* because he wants to learn ‘splinter-like exactitudes of skilful words (λόγων ἀκριβῶν σκινδαλάμων)\(^5^3\) and when he hears the chorus of Clouds approaching, he longs ‘to speak subtly (λεπτολογεῖν)’.\(^5^4\) Secondly the argumentation that Antiphon utilises in his speeches has clear parallels with the developments in rhetoric pioneered by Gorgias and Protagoras. This can be seen most clearly in the *Tetralogies*, a collection of speeches written for the both the prosecution and the defence in three fictitious homicide trials.\(^5^5\) The very nature of the exercise, a single author arguing both sides of the same case, is in the mould of Protagoras’ work on *logoi*. Much of the argumentation in the *Tetralogies* proceeds on the basis of inference and supposition, as in Gorgias’ *Encomium of Helen* and *Defence of Palamedes*.\(^5^6\) Both Gorgias and Antiphon juxtapose opinion (δόξα) with truth (ἀλήθεια) and comment on the power of speech (λόγος) to work on opinion.\(^5^7\) Antiphon in his work as a logographer, as teacher of rhetoric and in his own jury court speeches confirms the on-stage image that the innovations in rhetoric pioneered by the sophists had a significant impact on judicial practice in late fifth century Athens.

In conclusion, the equation between rhetorical skill and judicial advantage in the *Clouds* is a reflection of the impact that rhetorical instruction was having on judicial practice in the off-stage world. The notable exception in this regard is the erroneous attribution to Socrates of the role of a teacher of rhetoric. Therefore the crucial issue becomes the significance of this reflection of off-stage developments in the on-stage world. The clear articulation of the off-stage impact of rhetoric on judicial practice in the on-stage world of the dramatic festival suggests a widespread awareness of these developments among the citizen body. This conclusion is supported by the repeated reflection of these off-stage developments in the on-stage world. In his first play, the *Banqueters* of 427, Aristophanes depicted an old man again coming into conflict with his younger son, who is presented as being versed in the latest rhetorical and judicial

\(^{52}\) Ant.5.5.  
\(^{53}\) Ar.Nub.130 with Dover (1968a) 110 on the interpretation of the metaphor σκινδαλάμων.  
\(^{54}\) Ar.Nub.320. On the use of λεπτός, see also 359, 1404, 1496 and Dover (1968a) 114.  
\(^{55}\) On the *Tetralogies*, see p.110.n.118.  
\(^{56}\) For arguments based on supposition, compare Ant.2.1.4 verses 2.2.5-6 (both sides utilise *a priori* assumptions to argue whether the murder could or could not premeditated) with the *Defence of Palamedes* (§§20-1: as no motivation can be found for Palamedes’ treachery, he must be innocent). For arguments based on psychological probabilities, compare Ant.4.3.2 verses Ant.4.4.2 (opposing constructions as to whether young or old men are more violent) with Gorg.Pal.13-19 (six hypothetical reasons which could have motivated Palamedes to betray the Greeks).  
\(^{57}\) Compare Ant.3.2.2 with Gorg.Hel.10-14, Pal.24 and see Kerferd (1981) 78-82.
5: The Clouds, Rhetoric and Judicial Practice

In the parabasis of the Acharnians, Aristophanes paints the pathetic picture of an old Marathon-fighter defending himself against a young orator (νεανικός ῥήτωρ) in a graphe:

'Ο δὲ νεανίας έαυτῷ σπουδάσας ξυνηγορεῖν
eίς τάχος παίει ξυνάπτων στραγγύλως τοῖς ῥήμασιν·
κατ' ἀνελκύσας ἐρωτᾷ σκανδάληθρ' ἱστάς ἐπών
ἀνδρα Τιθώνου σπαράττων καὶ ταράττων καὶ κυκών.
'Ο δὲ ὑπὸ γήρως μασταρύζει, κατ' ὀφλών ἀπέρχεται.

Then the young man, having ensured he became the advocate against him (the elderly defendant), rapidly joins battle, strikes him with round, pithy words; and then having dragged him up, he questions him, setting word-traps, ripping apart the man Tithonus, and troubling and agitating him. And the defendant mumbles on account of old-age and then, convicted, goes away.

As in the Clouds, rhetorical skill is portrayed as a novel weapon which carries all before it, but in the Acharnians it is utilised by young politicians on the make rather than an old man to escape his debts. In the Knights and the Wasps, those who are skilled at rhetoric are portrayed as having an undue influence in the jury courts. The repeated reflection of the off-stage impact of rhetoric on judicial practice in the Aristophanic world strongly suggests a widespread and continued awareness of these developments among the Athenian citizen body.

5.2 The Problem: Rhetoric, Democratic Judicial Practice and Justice

It is my contention that the Clouds is reflecting more than an awareness among the Athenian citizen population that they were increasingly listening to rhetorically polished speeches as they sat on the jury-benches. Within the Clouds, an analysis is advanced of the consequences of utilising rhetoric in the judicial sphere. Through the activities of Strepsiades, the Worse Argument and Pheidippides, the utilisation of rhetoric is presented as ultimately leading to the negation of justice. Furthermore, this outcome is strongly censured and condemned through the dramatic momentum of the final third of the play and the moral epithets and associations that are attached to the practitioners of rhetoric.

58 See Ar.fr.205, 233 K-A. At Ar.Nub.528-9, the chorus presume that the earlier success of the Babylonians would have guaranteed the success of the first version of the Clouds, given their similarity of themes (see Dover (1968a) 166, Sommerstein (1982) 187).
59 Ar.Ac/i.685-89.
60 The parabasis goes on to recount the prosecution of the elderly Thucydides son of Melesias by the young Euathlus and also refers to youthful Alcibiades as a contemporary young prosecutor (Ar.Ach.705-18 with Sommerstein (1980) 191-3). Euathlus and Alcibiades are described as λάλος (705, 716), Alcibiades as εὐνάρπωκτος (716 cf. Ar.Nub.1089-90) and young prosecutors generally as ἄνδρες πανηροί (700). On the relationship between Ach.665-718 and the wider context of the play, see Bowie (1982) 35-7, Hubbard (1991) 53-6.
61 On the Knights, see p.42 above and pp.121-2 below. On the Wasps, see pp.129-30. See pp.41-2 on Peisetaurus’ rhetorical abilities, which he uses to persuade the Birds to build Nephelokokkugia.
Strepsiades is presented throughout as fully cognisant that his brilliant idea to use rhetoric in the jury court entails the negation of justice. He admits at several points that he is not only desiring to learn an argument which is 'worse (ἡττων)' but which is actually an 'unjust argument (ὁ ἄδικος λόγος)'. He longs to 'twist justice (στρεψοδικεῖν)' and to argue against 'all the just things (πάντα τὰ δίκαια)' He has no compunction about his non-payment to his creditors of legitimately acquired debts. Indeed, the comic hero's name and the series of puns generated around it underscore Strepsiades' commitment to evade his debts: Strepsiades 'the twister' is bent on 'twisting' his way out of the debts he owes his creditors. From Strepsiades' perspective, the consequence of deploying rhetorical ability in the jury court is to negate justice, in this case, to his own advantage. Secondly, as has been described above (see Chapter 5.1), the Worse Argument's rhetorical ability rests on a substructure of intellectual relativism. At the heart of this relativism is a rejection of 'the customary values and justified pleas (αἱ νόμοι καὶ αἱ δίκαιοι)' in favour of the demands of 'nature (φύσεως)'. With this intellectual framework in place, the Worse Argument can reason that adultery is not an unjust course of action because the satisfaction of nature has become the paramount arbiter of actions. The audience now sees that rhetorical ability, founded upon intellectual relativism, results not only in the negation of justice in the jury court, but in the wider moral arena. Thirdly in the agon between Strepsiades and Pheidippides, the later uses his recently acquired rhetorical skills to invert traditional norms of justice. Pheidippides repeatedly maintains that father-abuse is just, much to Strepsiades' incredulity. Pheidippides then embarks on a series of verbally skilful and relativistic arguments to demonstrate to Strepsiades and the chorus that

62 On three occasions, Strepsiades admits that learning the Worse Argument is actually an 'ἄδικος λόγος' (Ar.Nub.116, 657, 884-5). Sommerstein comments on the use of this term as follows: 'by using it, he admits that is plan for avoiding payment of his debts is immoral and fraudulent (Sommerstein (1982) 166).
63 See Ar.Nub.434 and 888, Strepsiades tells Socrates that Pheidippides must be able to speak against 'πάντα τὰ δίκαια'.
64 Ar.Nub.117-8, 244-5, 434, 738-9, 1154-66, 1250-52 (rebuttal to First Creditor), 1283-4 & 1292-97 (rebuttal to Second Creditor).
65 See the references to the verb στρέφειν and its cognates which is applied in reference to Strepsiades at Ar.Nub.36, 88, 434, 450, 776, 792, 1455 together with Dover (1968a) xxv and Sommerstein (1982) 161.
66 See Ar.Nub.1038-40 and p.94. This relativism can also be seen in the Worse Argument's claim that justice does not exist (see 902-6). In contrast, the Better Argument espouses 'τὰ δίκαια λέγων' (900) and remembers with fondness the days when such arguments flourished (961-2).
67 Ar.Nub.1075-82. For the Worse argument's reputation that his pupils learn an 'ἄδικος λόγος', see p.92.
68 For Pheidippides' statements that father-beating is just (ἐν δίκη, δίκαιος), see Ar.Nub.1332, 1377-9, 1405; for Strepsiades' indignant response, see 1333, 1338-41, 1380.
father-abuse is indeed a just course of action. By the end of the agon, Strepsiades is forced to concede that: 'It seems to me, my contemporaries, that he (i.e. Pheidippides) speaks just things, and I think we should concede what is reasonable to these people. For it is fair that we (i.e. the older generation) weep if we do not do just things.' The theme of justice and its relation to rhetoric resurfaces repeatedly throughout the Clouds. The utilisation of rhetoric by Strepsiades, the Worse Argument and Pheidippides ultimately leads to a negation of justice. This outcome is strongly censured and condemned, firstly in the dramatic momentum of the remaining third of the play and secondly in the moral vocabulary and associations which are consistently attached to the practitioners of rhetoric.

The sharp contrast in dramatic momentum of the final third of the Clouds with the preceding two-thirds provides a means to censure this outcome of deploying rhetoric. The dramatic structure of the preceding two-thirds of the play could be labelled as a typical comic escapist fantasy, similar to that of the Acharnians, Peace or Birds. The hero is oppressed by an aspect of contemporary society: in this case by his creditors and the debts that his son’s equine affliction have generated. The hero conceives of a brilliant idea: here, the acquisition of rhetorical skills which guarantee judicial success and thus liberation from his oppressive creditors. The hero pursues his brilliant idea, in spite of opposition: in this case, Pheidippides’ unwillingness to pursue and his own inability to grasp rhetorical training. The realisation of his brilliant idea heralds a new era of gratification and self-assertion for the hero, in this instance by feasting and by the total disregard and abuse of his creditors when they threaten or serve summonses. If the Clouds were to finish at this point while the chorus exited dancing, then one might conclude that such a dramatic structure presents

69 See Ar. Nub.1408-35 with specific references to δίκαιος at 1411 and 1419. For the chorus’ demand that Pheidippides proves to them that father-abuse is δίκαιος, see 1397-8.
70 έμοι μέν, δόρισας ἡλίκες, δοκεί λέγειν δίκαια, κύαιγε συγχωρεῖν δοκεί τούτοις τάπεικαί-κλάδειν γάρ ἡμᾶς εἰκός εστί, ἤν μὴ δίκαια δρόμειν’ (Ar.Nub.1437-9 tr. Sommerstein, adapted). Note the play on δίκαιος in this passage.
71 On a generalised Aristophanic plot structure and the plot of the Peace, see pp.39-40.
72 Compare p.91 with Ar.Ach.1-39 for example.
73 See pp.91-3 and compare with Ar.Ach.174-203.
74 Initially Pheidippides refuses to enter the Phrontisterion (Ar.Nub.75-131), so Strepsiades enrols himself, but fails to comprehend the course of instruction (783-790) and so finally Pheidippides is persuaded to enter (814-88). Dicaeopolis is opposed by the chorus of Acharnians from realising his brilliant idea of a private peace with Sparta (see Ar.Ach.204-627).
75 Feasting: Ar.Nub.1212-3; abuse of creditors: 1214-1302. In response to Strepsiades’ physical abuse, the second creditor cries ‘witness’ (1297) and describes Strepsiades’ actions as habris (1299), suggesting that he is considering bringing a graphe hubreos against Strepsiades (see Sommerstein (1982) 223). Strepsiades is of course now totally oblivious to the threat of such legal actions (1299-1303). See p.28n.39 on graphe hubreos. In comparison, see Dicaeopolis’ entry into a fantastical paradise of feasting (Ar.Ach.1085-1142) and the banishment of his adversaries (910-28, 1014-68).
Strepsiades’ utilisation of rhetoric to guarantee judicial success remains uncensored. However, the Clouds ends not on Strepsiades’ triumph, but veers sharply towards tragedy as the comic hero’s brilliant idea rebounds on him with an overwhelming violence.

The reversal of Strepsiades’ fortunes is sudden and severe in the final third of the play. He suffers the outrage and humiliation of being beaten by his own son, who then proceeds to transgress further by openly discussing his father’s death and by contemplating violence against his own mother. Strepsiades is left nursing his bruises and wishing a state-criminal’s death upon the son who was to have been his salvation. Fundamental social norms are transgressed, not in the hero’s favour, as in the scene with his creditors, but to his detriment. Furthermore, Strepsiades is not only subjected to filial violence but is forced to concede by Pheidippides that father-beating is just (see p.103 above). It is made very clear that Pheidippides’ violence towards his father and its justification is a direct result of the education he received at the Phrontisterion. Pheidippides comments that: ‘for I, when I used to devote my attention only to chariot-racing, I was not able to say three words before making an error. Now, since this man himself stopped all that and I am familiar with subtle ideas, arguments and thoughts, I think that I can prove that it is just to beat your father’; while Strepsiades adds that: ‘I certainly have had you taught, by Zeus my good man, to argue against the just things, if indeed you intend to convince us of this, that it is just and right for the father to be beaten by his sons.’ This connection can also be seen in the extent to which the structure of agon between Strepsiades and Pheidippides mirrors the agon between the two logoi, and in Pheidippides’ adoption of the Worse Argument’s delight in morally negative epithets and his relativistic intellectual framework. It is almost impossible

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76 See p90n.2 on the two versions of the Clouds and MacDowell (1995) 145 for the suggestion that the first version ended at this point. Such a lack of censure is quite normal at the end of a comedy. For example Dicaeopolis retains his ‘selfish’ monopoly of peace (see previous note), Philocleon is left to his cavorting exploits (Ar. Vesp.1474-1537) and Peisetaerus’ wanton self-aggrandisement is praised at the end of the Birds (Ar.Av.1706-65).

77 Ar.Nub.1353-76.


79 Ar.Nub.1447-51. Strepsiades suggests that Pheidippides might as well throw himself into the Barathon together with Socrates and the Worse Argument, the Barathon being a gully into which condemned state-criminals were thrown (see Hdt.7.133, Pl.Gorg.516d-c, Xen.Hell.1.7.20).

80 ‘ἐγώ γαρ οὗτας μὲν ἡπείκη τόν νοῦν μόνη προσῆχον, οὐδὲν τούτως εἶπεν ἥμαθ᾽ αὐτὸς τ' ἦν πρὸς ἐξαραμτεῖν· νυνὶ δ’ ἐπειδὴ μ’ ὀντόσι τούτων ἐπάσωσιν αὐτός, γνώμαις δὲ λεπτοῖς καὶ λόγοις ἔνειμι καὶ μερίμναις, οἵμα διδάσκειν ὡς δίκαιον τὸν πατέρα κολαῦσει’ (Ar.Nub.1401-05).

81 ‘ἐδιδαξέμεν μέντοι σε ὧν ἄν, δ’ καὶ μέλε, τούτων δίκαιοις ἀντιλέγειν, εἰ τούτω γα μέλλας ἀναθέομεν, ὡς δίκαιοι καὶ καλὸν τὸν πατέρα τύπτεσθ' ἐστιν ὑπὸ τῶν νοεμ’ (Ar.Nub.1338-41).

82 See Dover (1968a) 247-8.

not to conclude that Strepsiades' tragedy is a direct consequence of his own desire to escape his debts by pursuing a rhetorical education. Any doubts that the audience may have in this regard are dispelled by the pronouncements of the chorus in the closing scenes of the play.

Enlightenment comes to Strepsiades himself through the chorus, who inform him that his pursuit of rhetoric to evade the payment of his debts is the cause of his tragedy. In an unprecedented move, the comic chorus are transformed into *dei ex machina*, giving their pronouncements a unique authority. Just before the agon between Strepsiades and Pheidippides, the chorus foreshadows Strepsiades' tragedy, proclaiming that he has 'fallen in love with wicked things (ἐράν πραγμάτων φλάσφρον)', that his attempt to evade his debts is 'evil (κάκος)' and that he may soon regret the training he has orchestrated for his son. When Strepsiades appeals to the Clouds, having been beaten by his son, they inform him that he is responsible for his own tragedy because: 'you yourself turned to evil things'. They reveal to him that it is they themselves who encouraged him along this disastrous pathway so he might learn to fear the gods. Strepsiades accepts these pronouncements of the Clouds as 'difficult (πονηρά)' but 'just (δίκαιο)' and admits that he should not have tried to evade his debts, sentiments which are converted into action as he sets fire to the *Phrontisterion* (see Chapter 5.3 below). Thus we arrive at the heart of Strepsiades' transgression: Strepsiades is censured not for his pursuit of rhetorical training, nor for his involvement in judicial activity, but for his utilisation of rhetorical skill in the judicial sphere to evade the legitimate payment of debts. To a greater extent than any other play, the dramatic momentum of the final third of the *Clouds* communicates a sustained message: the use of rhetoric in the jury courts to negate justice is condemned.

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84 The chorus of Clouds possesses a nebulous, chameleon-like identity throughout the drama, which enables Aristophanes to transform them into *dei ex machina* at the end of the play (see Dover (1968a) lxvi-lxx, Hubbard (1991) 106-11 and Segal (1996b) 168-81).
85 *Ar. Nub.* 1303-20. At 1113-14, as Pheidippides enters the *Phrontisterion*, the chorus comment that 'I think you will repent of these things (οἴδαι δὲ σεὶ ταῦτα μεταμελήσειν)', which is almost certainly a reference to Strepsiades' forthcoming tragedy (see Dover (1968a) 229). See Segal (1996b) 168-77 for details of not only the words but also the imagery which foreshadow the Clouds' verdict on Strepsiades' activities.
86 ἀστέρως σεαυτὸν εἰς πονηρὰ πράγματα' (*Ar. Nub.* 1455).
87 *Ar. Nub.* 1452-61, where the chorus describe Strepsiades following πραγμάτα πονηρά. This equation between the failure to fear the gods and employment of unjust means in the court room is underscored by Strepsiades' repeated references to agnosticism of Socrates and his colleagues as he burns down the *Phrontisterion* (see 1472-74, 1476-80, 1506-9 and Chapter 5.3 below).
88 See *Ar. Nub.* 1462-5.
89 De Romilly (1992) 83 makes precisely the same point: 'Aristophanes' entire attack is thus directed against a rhetoric which serves solely as an acrobatic intellectual feat designed to promote the worst ends.'
This censure of rhetoric's impact in the jury court can also be seen in the application firstly of morally negative vocabulary and secondly of negative associations to the practitioners of rhetoric. The former can be seen for example in Strepsiades' description of himself as a smart-talking advocate and in the presentation of the Worse Argument. Strepsiades, in submitting himself to the Clouds' ministers (Socrates and his colleagues), hopes to escape his debts and to be publicly known for a number of qualities, most of which are morally negative. Some of these qualities relate to rhetorical skill in the jury court, for instance to be 'glib of tongue (εὐγλαττός), inventive with words (εὐρημαινόμενος), worn smooth with dikai (περίτριμμα δικών) and a legal inscription (κύρβις). On the other hand, the greater part of this list is an exaltation of corruption and moral degeneracy. Strepsiades desires to be known as: 'brazen (τολμηρός), loathsome (βδελυγμένος), a sticky customer (γλοιός), fraudulent (ἀλαζών), corrupt (μιαρός)' to mention but a few. The utilisation of rhetorical skills to evade paying legitimate debts is tainted with moral odium. In a similar way, morally negative vocabulary is used to portray the Worse Argument. The Worse Argument delights in the series of morally negative epithets which are showered upon him at the start of the agon between the two logos: 'shamelessly immoral (καταπύγων ἀῤῥηξυντος), a low-down trickster (βωμολόχος), a father-beater (πατραλοίας), impudent (δρασύς). In the agon itself, their approach to what is shameful (ἀφαίρετοι) characterises their respective programmes of instruction. The Better Argument promises to instruct Pheidippides 'to be ashamed of shameful things,' while the Worse Argument is presented as persuading his pupils 'to hold that everything shameful is beautiful and the beautiful is shameful. In the on-stage world of the Clouds, those who utilise rhetoric to negate justice are censured by the application of morally negative epithets.

Secondly, practitioners of rhetoric such as Socrates and his colleagues, the Worse Argument or re-educated Pheidippides are coupled with negative associations. The initiates of the Phrontisterion are characterised by their pallid complexion resulting

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90 Ar.Nub.437-456. Strepsiades gives an interesting list of some 21 qualities that he would like to be known for once he has acquired rhetorical skills, the majority of which have morally negative connotations. See Dover (1968a) 157-8 on this passage.

91 Ar.Nub.909-15. On the meaning of καταπύγων here, see Sommerstein (1982) 205, Henderson (1991a) 210. However it becomes clear later that the Worse Argument is prepared to adopt a passive role in a homosexual relationship (see 1022-3, 1083-1104). δρασύς is also used of the Wrong Argument at 890.

92 'καὶ τῶς ἀἰσχρῶς ἀἰσχύνεθαι' (Ar.Nub.992). See also 995.

93 'τὸ μὲν ἀἰσχρὸν ἅπαν καλὸν ἥγεσάθαι, τὸ καλὸν δ' ἀἰσχρὸν' (Ar.Nub.1020-21). See also 1077-8.

94 See above p.105 for the morally negative terms which the chorus of Clouds, in their role of dei ex machina, apply to Strepsiades' attempts to evade is debts.

95 See p.40 for the use of associations to explore on-stage loyalties.
from the interior life, ragged dress, unwashed state and hunger. The yet-to-be-educated Pheidippides is naturally horrified by such associations, while his father is forced to stifle his disgust beneath his desire to learn rhetoric. The negative associations which are coupled with Worse Argument are contrasted to those of the Better Argument. The Worse Argument’s physical indolence and indifference to fitness is contrasted with the Better Argument’s delight in physical prowess and training. The Worse Argument is a man of the Agora and the jury court, while the Better Argument advocates the gymnasium and the outdoor life. The Better Argument is a devotee of music from the Marathon generation while the Worse Argument favours skill at speaking. As has been described above, the Worse Argument is prepared to subvert traditional belief or morality while the Better Argument rigorously upholds the traditional belief system. This moral degradation culminates in the Worse Argument’s open espousal of a passive role in a homosexual relationship (ἐὐρυπρωκτία), a practice associated with such comic charlatans as advocates, tragedians and politicians. The re-educated Pheidippides not only displays a taste for contemporary poets such as Euripides and a marked disgust for old-timers such as Aeschylus, but also advocates parental abuse, practises father-beating and openly discusses his father’s death. Within the on-stage world of the Clouds, those who practice rhetoric are censured by being consistently located within a nexus of negative associations.

In conclusion, the Clouds suggests an outcome of the use of rhetoric in the jury court and passes verdict on that outcome. On-stage characters are used to demonstrate that the practice of rhetoric ultimately leads to a negation of justice. This outcome is strongly censured and condemned, particularly in Strepsiades’ tragedy which dominates the dramatic momentum of the final third of the play. Strepsiades is censured not for his attempts to learn rhetoric or for his involvement in the judicial sphere per se, but for his

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98 See Dover (1968a) lix, MacDowell (1995) 136-42 for a detailed analysis of the contrasting educative programmes advanced by the two logos.


102 See p.94.


104 On contrasting poetical tastes, see Ar.Nub.1354-75. Aristophanes returned to the merits of Aeschylus versus Euripides in the Frogs (see Ran.830-1481 with Dover (1993) 10-43), where Aeschylus is finally chosen over Euripides (1471). On generational conflict, see p.91.
utilisation of the former in the later to guarantee non-payment of legitimately incurred debts. This use of rhetoric is further censured by the morally negative vocabulary and associations which are consistently applied to the practitioners of rhetoric. It is important to note that this censure achieves its purchase in the moral sphere and is startlingly intense: the ability of rhetoric to negate justice is depicted as challenging the entire moral order. This is not to say that the play is a monolithic, committed statement against the intellectual developments of the late-fifth century in general and the rise of rhetoric in particular.\(^{105}\) Aristophanes may set up a particular viewpoint before his audience, only to then subvert and undermine the same viewpoint.\(^{106}\) It is now necessary to see if this verdict on the use of rhetoric in the jury courts is present in the world beyond the *Clouds*.

It was certainly the case that the developments in rhetoric pioneered by Protagoras and Gorgias (see pp.97-8 above) raised serious questions with regard to justice and truth. The very nature of the Protagorean programme, successfully to defend the weaker thesis, automatically raises doubts about the attainability or even the relevance of justice and truth.\(^{107}\) In his *Encomium of Helen*, Gorgias argues that ‘words (λόγοι)’ have an irresistible power to persuade: ‘speech is a powerful ruler’.\(^{108}\) In support of his argument, he states that in the jury court, rhetorical skill can count for more than the truth: ‘in compulsory contests, conducted by means of speeches, one speech pleases and persuades the multitude written with skill and not spoken with

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\(^{105}\) Scholarly opinion on Aristophanes’ intentions in the *Clouds* encompasses the entire spectrum, ranging from a commitment solely to entertain (see Fisher (1984) 233-51) to a manifesto of anti-intellectualism (see Nussbaum (1980) and to a lesser extent Segal (1996b) 164-8). Dover (1968a) is cautious as to the play’s overall intentions. Reckford (1987) ix, 388-402 possesses a passion ‘to defend against its detractors and to explain to the world how it was a great, funny and very beautiful comedy’ (ibid. 393), which he hopes to do fully in a forthcoming book. O’Regan (1992) sets the play within its political and intellectual background. I have not looked at O’Regan in detail on the basis of Sommerstein’s review (Sommerstein (1994b)).

\(^{106}\) The presentation of the Better Argument is particularly revealing in this regard. As the opponent of the Worse Argument, and therefore of rhetorical instruction, one might expect the Better Argument seriously to engage the programme advanced by Worse Argument and to be presented in a positive light if the *Clouds* were truly an anti-intellectual manifesto. Instead we find the Better Argument losing the agon because he is unable to seriously encounter any of the Worse Argument’s sophistic arguments and thus is reduced to ineffectual bluster and bombast (At.Nub.905-6, 1052-4, 1061-70, 1085-1104 with Dover (1968a) lxiv and MacDowell (1995) 141). He is also presented as possessing an unnatural interest in the genitals of young men under his instruction (966, 973-80, 989, 1014 with Dover (1968a) lxiv-vi. But see MacDowell (1995) 139, who questions Dover’s thesis). At the point where one would expect a sustained rebuttal to rhetorical instruction if the play was a deeply committed work, one finds bombast and a predilection for genitalia.

\(^{107}\) See de Romilly (1992) 80-5, she comments: ‘if it was a matter of defending opposite points of view equally well, justice was left with no role to play’ (ibid. 80). Aristotle, in his description of Protagorean programme, stating that men were ‘justly disgusted’ and labelling it ‘false and not true but an apparent probability’ (see Arist.Rhet.22.24.11 1402a23)

\(^{108}\) ‘λόγος δυσάστης μέγας ἔστιν’ (Gorg.Hel.8 tr. MacDowell).
truth. Thrasydamus, Antiphon and Callicles explored the issue of justice from the angle of juxtaposing human order (nomos) with natural order (phusis), with each pushing the consequences of this antithesis to differing degrees. In their researches they arrived at conclusions such as that justice, as expressed in human customs, operates against our natural interests, or taken further, that human customs must be thrown off and a new order of ‘natural law’ and ‘natural justice’ established, where the strongest triumphs. It is important to note that there were distinctions in the thought of individual sophists. Although Callicles may have pushed the custom/nature antithesis to its amoral conclusion, others such as Antiphon were content to draw attention to the antithesis and the conflict of interest between the two. At other points, Thrasydamus and Antiphon make statements in the surviving fragments which suggest an attempt to reconstruct justice on the basis of the collective good. Therefore it is important to examine the sophists’ theories with regard to justice in their entirety. Not only did they vary in the degree to which they challenged traditional notions of justice, but they also made differing attempts to reconstruct justice on the basis of the collective good.

The above subtleties in the sophistic investigations on justice are overlooked in the portrayal of the negation of justice in the Clouds. The Worse Argument’s disregard for justice, his espousal of nature and amoralism in contrast to custom and justice or

109 ‘τούς ἀναγκαίος διὰ λόγων ἀγώνας, ἐν οἷς εἱς λόγος πολὺν ὀχλον ἔτερψε καὶ ἕπεισε τέχνη γραφές, οὐκ ἀληθείας λέξεις’ (Gorg.Hel.13 tr. MacDowell (adapted)). MacDowell (1982) 39-40 sees ‘οἱ ἀναγκαίοι ἀγώνες’ as referring to verbal contests in the jury court, and a mass audience is suggested by the description of the ones persuaded as ‘πολὺς ὀχλος’.

108 The origins of this juxtaposition most probably lie in the observation that human customs (nomoi) cover a bewilderingly wide range, introducing a relative dimension to the human customs upon which justice is based (see Hdt.3.38. and Dissoi Logoi 2.18). Scepticism in the religious sphere will have probably fuelled this trend as well. If we can no longer be sure of the gods, then the nomoi which they have ordained (e.g. Xen.Mem.4.4.19) lose their authoritative status. See de Romilly (1992) 103-113 for the connection between religious scepticism and the relativism of nomos.

110 Thrasydamus, as portrayed by Plato in Book 1 of the Republic, argues that justice, as defined by nomoi, operates in the interest of the stronger in society, because the stronger make nomoi and decisions. Justice becomes merely an extension of the stronger’s self-interest and therefore operates against the interests of the rest of society (see Pl.Repub.338a-348b with Kerferd (1981) 120-123, de Romilly (1992) 116-121). Antiphon, in the fragments of On Truth, rigorously argues that nomos is not only distinct from phusis, but that nomos opposes interests of phusis (DK B44 and Kerferd (1981) 115-17, de Romilly (1992) 121-131).

111 This is the position which Plato attributes to Callicles in Gorg.482c-484c. Scholars have debated the historical reality of Plato’s Callicles, primarily because there are no references to him outside Plato. See Dodds (1956) 12-5, Kerferd (1981) 117-120, de Romilly (1992) 155-161.

112 This point is strongly made by de Romilly (1992) 127-31, 156-61.

113 For Thrasydamus, see DK B1, 8 with de Romilly (1992) 178-80, where Thrasydamus talks about the blessing of justice and role of the patres politeia in creating homonoia; for Antiphon, see the fragments of On Concord (DK B61-2 with de Romilly (1992) 182-50, where Antiphon comments on the importance of education and discipline of the young in maintaining the social order. It is possible to gain a clearer picture of the attempts to reconstruct justice on the basis of the collective good from the more substantial fragments of other writers such as Protagoras and the Anonymus Iamblichus (see Kerferd (1981) 139-162, de Romilly (1992) 162-188).
Pheidippides' relativising of man-made laws and customs with regard to father-abuse obviously reflects the sophistic discussions on justice. On the other hand there is no attempt to reflect the different nuances and constructive elements of sophistic thought. Given this unbalanced portrayal of the sophistic debate on justice in the Clouds, it is important to consider whether off-stage sources reflect the censure and concern of the Clouds, or whether this is an unrepresentative over-reaction of the comic imagination. Other sources mention the contemporary mania for rhetorical display coupled with a frightening lack of discernment. Characters in tragedy are depicted utilising rhetoric to manipulate others and disregarding justice for self-interest. On the other hand, given the focus of this chapter, it is necessary to turn again to the Attic Orators to see if the on-stage analysis and censure of rhetoric's use in the jury court is echoed in late-fifth and early-fourth century judicial practice.

As has been described above (see pp.98-100), Antiphon, as a logographer and in the products of his logography, shows a full awareness of the developments in rhetoric. He also makes a number of statements about the associations that are coupled with the use of rhetoric. These statements are particularly useful because they possess a somewhat stylised and formal tone, making it easier to locate the underlying assumptions, and also are the chronologically closest material in the corpus of the Attic Orators to the production of the Clouds. He makes the following comments in the opening remarks he wrote for Euxitheus in On the Murder of Herodes:

\[\text{On the Worse Argument, see p.102. On Pheidippides, see pp.102-3. On his relativising of man-made laws, see Ar.Nub.1421-29 and Guthrie (1971) 135-47.}\]

\[\text{See Thuc.3.38.4-7, where Cleon berates the Assembly for their susceptibility to rhetorical persuasion; DK A4 on the democracy's enthusiastic response to Gorgias' embassy on behalf of his native Leontini; Pl.Euth.303b, where the audience are portrayed by Plato as wildly applauding some particularly insecure argumentation. Gorgias in his Encomium of Helen, is so convinced of the power of rhetoric that he labels it a magic art (see p.120).}\]

\[\text{For example in the Philoctetes, Odysseus repeatedly uses skilful speech to achieve his goals (e.g. 55-135 to persuade Neoptolemus to trick Philoctetes) and states: 'Now when I go forth to the test, I see that everywhere among the race of men it is the tongue that wins and not the deed (νυν δ' εἰς ἔλεγχαν ἐξιόν ὁμώ βροτοῖς τὴν γλῶσσαν, οὖχι γάργα, πάνθε ήγομένην' (Soph.Phil.98-99, tr.Grene)). In the Phoenissae, Eteocles openly admits before his brother and mother that he desires power and so will not relinquish the throne of Thebes to Polynices (Eur.Phoen.499-525) in spite of his brother's just claim (469-96). See Craik (1988) 154, 188, Mastronarde (1994) 288 on the justice of Polynices' claim and Eteocles' sophistic response.}\]

\[\text{The Tetralogies by their very nature as rhetorical exercises possess a stylised tone (see Cole (1991) 75, 77-8). The statements on rhetoric in On the Murder of Herod is come in the introductory section of the speech. It is quite probable that Antiphon constructed this introductory material using a rhetorical handbook (see p.99n.50 on handbooks). The style of this material has been described as 'polished' (see Edwards and Usher (1985) 68) and some of this material is also used in On the Choreutes (compare Ant.5.5.14, 87-9 with Ant.6.2.4 and see Edwards and Usher (1985) 76, Cole (1991) 117). The issues on the authorship, date and context for which the Tetralogies were written are very complex, see Gernet (1923) 6-16, Maidment (1941) 34-47, Dover (1950) 56-9, de Romilly (1992) 79-80. If the Tetralogies are by Antiphon, Dover dates them to early in Antiphon's career, prior to 422. On the Murder of Herod has been dated either to c. 420 (Edwards and Usher (1985) 24) or to the following decade (Dover (1950) 55: 416/5-414/3; Gernet (1923) 107: 417-414).}\]
οὕ δὲ μὲν δεῖ σωθῆναι μετὰ τῆς ἀληθείας εἰπόντα τὰ γενόμενα, ἐν τούτῳ μὲν βλάπτει ἤ τοῦ λέγειν ἀδυναμία. Πολλοὶ μὲν γὰρ ἢ δὲ τῶν οὐ δυναμένων λέγειν, ἀπιστοὶ γενόμενοι τοῖς ἀληθείαιν, αὐτοῖς τούτοις ἀπόλοντο, οὐ δυνάμενοι δηλώσας αὐτὰ: πολλοὶ δὲ τῶν δυναμένων λέγειν πιστοὶ γενόμενοι τῷ ψεύδεσθαι, τούτῳ ἔσωθησαν, διότι ἐψευδοῦσαν. Ἀνάγκη οὖν, ὅταν τις ἀπειρὸς ἤ τοῦ ἀγωνίζεσθαι, ἔπι τοῖς τῶν κατηγόρων λόγοις εἶναι μᾶλλον ἢ ἐπ’ αὐτοῖς τοῖς ἔργοις καὶ τῇ ἀληθείᾳ τῶν πραγμάτων....τάδε δὲ δέομαι ὑμῖν, τούτῳ μὲν εὰν τι τῇ γλώσσῃ ἀμάρτω, συγγνώμην ἔχειν μοι, καὶ ἱγεῖσθαι ἀπειρίᾳ αὐτὸ μᾶλλον ἢ ἄδικῳ ἡμαρτήσασθαι, τούτῳ δὲ ἐάν τι ὀρθῶς εἴπω, ἀληθείᾳ μᾶλλον ἢ δεινότητι εἰρθῆσαι. Οὐ γὰρ δίκαιον οὔτ’ ἔργῳ ἀμαρτόντα διὰ ρήματα σωθῆναι, οὔτ’ ἔργῳ ὀρθῶς πράξαντα διὰ ρήματα ἀπολέσασθαι: τὸ μὲν γὰρ [ῥῆμα] τῆς γλώσσης ἀμαρτημάτι ἔστι, τὸ δὲ [ἐργον] τῆς γνώμης.

On the other hand, when it is necessary for me to be saved by telling the events with truth, in this it hinders me to be unable to speak. For on the one hand many of those not able at speaking, already have not been believed speaking truth, which is ruined by these men, being unable to prove it. On the other hand many of those able at speaking have been believed speaking falsehood, which saved them, because they were speaking falsely. So whenever someone unacquainted with litigation, he is dependent upon the words of the opponents rather than upon his own deeds and the truth of the matters....! ask this of you, that on the one hand, if I make a fault of the tongue, you will have forgiveness for me and will think that inexperience rather than injustice is at fault. On the other hand, if I say something skilfully, you will say that it is due to truth rather than to cleverness. For it is not just either that the man transgressing in deed is saved by words, or that the one acting righteously in deed is destroyed by words: for while the word is the fault of the tongue, the act is the fault of the will.119

In a carefully articulated series of polarities, Euxitheus is being presented as being aware of the power of rhetoric to damage his defence on two accounts. Firstly, having deplored his own inability at speaking, he contrasts such inability with rhetorical skill: the former causes the truth to be ignored, while the latter enables lies to be believed.120 Secondly, Euxitheus is concerned that he might express a section of his defence well, and thus entreats the jurors to receive this as truth rather than an exhibition of suspicious cleverness.121 Euxitheus’ concerns in this area were quite justified, given his use of a logographer to guarantee a polished defence.122 These statements reveal the suspicion and opprobrium surrounding the use of rhetoric in the jury court: although

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119 Ant.5.2-3, 5.
120 The prosecutor in the Second Tetralogy is similarly concerned that the jury will be swayed by the defendant’s skilful speech, see Ant.3.3.3-4.
121 Similar special pleading is evoked by the skilled defendant of the Second Tetralogy, see Ant.3.2.2, 3.4.2.
122 For example, having related the events surrounding Herodes’ disappearance (Ant.5.20-4), Antiphon then proceeds to attack the prosecution’s version of these events by advancing arguments based on probability (25-8). In antiquity, On the Murder of Herodes was considered one of Antiphon’s best speeches, see [Plut.]Mor.833d.
litigants utilised rhetorically polished speeches written by a logographer, it was a practice they felt they must deny or offer mitigating circumstances. It is possible to trace a series of polarities throughout Antiphon’s speeches: between on the one hand ability at speaking (δύναμαι λέγειν), speech (λόγος), falsehood (ψευδής), and opinion (δόξα) and on the other, inability at speaking (οὐ δύναμαι λέγειν), action (ἔργον), truth (ἀλήθεια), and justice (δίκαιος). These polarities point to an underlying assumption that unadorned, plain speaking is normative and pertains to truth and justice, while rhetorical skill is deviant, pertaining to falsehood and injustice. There are obvious parallels here with the on-stage world of Aristophanes’ Clouds: both on-stage and off-stage, rhetoric in the jury court is portrayed as possessing the ability seriously to distort the truth, oppose justice and so is viewed with deep suspicion and opprobrium. In both mediums, the purchase of this censure is primarily in the moral sphere. Although Antiphon’s pronouncements on rhetoric possess a somewhat stylised and formal tone, it is possible to identify similar ideas and assumptions in speeches by Lysias and Isaeus, albeit of a more implicit nature.

One of the key challenges facing Lysias as he embarked on the prosecution of Eratosthenes was the protective circle of influence that was afforded Eratosthenes through his friends and connections. Therefore a significant portion of the speech is devoted not to the charge in hand, Eratosthenes’ responsibility for the death of Polemarchus, Lysias’ brother, but to a wide-ranging character assassination of Eratosthenes and his friends. Towards the end of the speech, Lysias endeavours to counteract the influence of the sunegoroi who will speak on behalf of Eratosthenes. In an ingenious section, Lysias plays fast and loose with the identity of Eratosthenes’ sunegoroi through a cunning series of associations and innuendoes: the friends of Eratosthenes assisting him at his trial are implicitly linked with his friends from the past, i.e. the Thirty; these sunegoroi, in supporting Eratosthenes, and even the jurors themselves, if they vote for Eratosthenes, are condoning Eratosthenes’ actions and thus condemning themselves. In the central portion of this slippery section, Lysias

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123 Ant.5.3: δύναμαι λέγειν versus οὐ δύναμαι λέγειν; Ant.3.3.3, 5.3: λόγος versus ἔργον; Ant.3.3.3, 5.3: ψευδής versus ἀλήθεια; Ant.3.2.2: δόξα versus ἀλήθεια; Ant.3.2.2: δύναμαι λέγειν versus δίκαιος.


125 Only 36% of the speech (§§4-40 out of a total of §§100) is devoted to connecting Eratosthenes with Polemarchus’ murder, while 50% of the speech (§§41-91) attempts to implicate Eratosthenes in the crimes of the Thirty and to destroy the reputation of his friends, particularly the recently martyred Theramenes with whom Eratosthenes was closely associated (see §§65-78 for Lysias’ pre-emptive strike against Theramenes’ reputation).

126 Lys.12.81-91.

127 Lys.12.85, 87-91.
ponders hypothetically what approach the *sunegoroi* will take in their support of Eratosthenes:

> Ἄλλα καὶ τῶν συνεργῶντων αὐτοῖς ἄξιον θαυμάζειν, πότερον ὡς καλοὶ κἀγαθοὶ αἰτήσονται, τὴν αὐτῶν ἀρετὴν πλείονος ἄξιαν ἀποφαίνοντες τῆς τοῦτος ποινῆς· ἐβουλόμην μὲντ' ὅ αὐτοὺς ὦτῳ προθύμους εἶναι σφέτειν τὴν πόλιν, ὡσπερ οὕτοι ἀπολλύναι· ἦ ὡς δεινοὶ λέγειν ἀπολογήσονται καὶ τὰ τοῦτων ἔργα πολλοῦ ἄξια ἀποφανοῦσιν; ἀλλ' οὑχ ὑπὲρ ὑμῶν οὐδεὶς αὐτῶν οὐδὲ τὰ δίκαια πώποτε ἐπεχείρησεν εἰπεῖν.

But it is also necessary to consider their supporting speakers, whether they will present themselves as the good and worthy, declaring their nobility is of more value than the evil of these men (I should wish however that they were as eager to save the city as these men were to destroy it), or whether they will present a skilful defence and declare the deeds of these men have more value. But none of them have ever yet attempted to speak words of justice on your behalf.  

Lysias offers the jurors a hypothetical version of the testimony of the *sunegoroi*: they will either draw attention to their own moral excellence or present Eratosthenes and his colleagues as men whose deeds were worthy. Throughout his speech, Lysias has been impressing upon the jurors that Eratosthenes is hopelessly implicated in the crimes of the Thirty. Therefore a portrayal of Eratosthenes which presents ‘wickedness (ποινή)’ as ‘merit (δέξια)’ can only be the product of rhetorical skill ‘(δεινός λέγειν)’.

Lysias concludes with the enigmatic statement that ‘they (αὐτοὶ)’ have never spoken ‘words of justice (τὰ δίκαια)’ before the jurors, where ‘αὐτοὶ’ probably refers back to the *sunegoroi*. This statement creates the impression that what the *sunegoroi* say about Eratosthenes is identical to all their preceding testimonies before the jurors: it is devoid of ‘words of justice’. In this way, Lysias aims to undermine the reputation of Eratosthenes’ *sunegoroi* before they have an opportunity to speak on his behalf. Underlying Lysias’ presentation of the testimony of the *sunegoroi* is again the assumption that rhetorical skill is deviant, pertaining to falsehood and injustice, in this instance presenting wickedness as merit.

Isaen composed a speech for the unnamed prosecutor in his bid to secure the estate of his relative Astyphilus. The speaker’s opponent, Cleon, had taken

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128 Lys. 12.86
129 E.g. he talks of ‘their crimes’ (Lys. 12.1), although Eratosthenes is being accused of the single crime of murdering Polemarchus; in his summing up of the case against Eratosthenes, he slides from Eratosthenes’ crime to those of the Thirty (37-40, see also 81-4); and in his final appeal to the jury, Lysias speaks on behalf of the Thirty’s victims, urging the jury to condemn ‘these men’ (100). In comparison, only at §§16-17 does Lysias first mention Eratosthenes’ crime against Polemarchus.
130 The ability of rhetoric to present bad as good is precisely the allegation that the Better Argument levels at the Worse Argument, see p.94.
131 See Isae. 9. with Wyse (1904) 625-8 and Forster (1927) 323-5. The speech is dated to a few years post 371.
possession of the estate on Astyphilus’ death, claiming that Astyphilus made a will, in which he adopted Cleon’s son to be his heir.\textsuperscript{132} The speaker argues that the will is a forgery and thus, as the closest surviving relative, he is the rightful heir to Astyphilus’ estate.\textsuperscript{133} The greatest challenge facing the speaker is the very probable fact that Astyphilus did indeed make a \textit{bona fide} will, adopting Cleon’s son as his heir, before he set sail for Mytilene.\textsuperscript{134} Isaeus adopts two tactics to overcome this serious challenge. Firstly, he establishes the speaker’s moral right to inherit Astyphilus’ estate in comparison to Cleon: the ties between the speaker’s family and Astyphilus were close while those with Cleon’s family were characterised by hostility and enmity.\textsuperscript{135} Secondly, Isaeus counteracts the existence of the will by firstly, arguing that the will is fake on the basis of supposition, and secondly by presenting Cleon and his associates as fraudulent, audacious and rapacious throughout the speech.\textsuperscript{136} In the concluding section, Isaeus warns the jurors against Cleon’s rhetorical ability:

So assist me, and if Cleon is more able at speaking than me, let this ability not count in his favour without the law and justice, but make yourselves arbitrators of everything. You have been brought together for this reason, so that those behaving shamelessly should extract nothing more, while those less able should dare to advance their claim about justice, knowing full well that you are intent upon nothing else. So everyone, gentlemen, side with me: if you vote otherwise, being persuaded by Cleon, consider how much you will be responsible for. Firstly...\textsuperscript{137}


\textsuperscript{133}Isae.9.1-2 (in the first sentence of the speech the speaker states he is Astyphilus’ half brother) and 32-3 (where he deals with the opposition’s additional claim to the estate, that Cleon was Astyphilus’ cousin on his father’s side). See Figure 7 for stemma. On inheritance and \textit{ankhisteia}, see Harrison (1968-71) 1.143-9, MacDowell (1978) 98-99, Todd (1993) 217-9.

\textsuperscript{134}In §§7-13, the speaker is unable to produce evidence or witnesses to directly attack the validity of the will. Instead he resorts to an argument based on supposition, that if Astyphilus had made a will before sailing, he would have called as many relatives and friends as possible. See Wyse (1904) 626, 631. The relative absence of witnesses (one set are called in 6§§) and the fact that this material is positioned earlier in the speech, suggests its weakness.

\textsuperscript{135}Ties with Cleon’s family: Isae.9.16-26; ties with speaker’s family: §§27-31.

\textsuperscript{136}On the will, see n.132 above. On the negative portrayal of Cleon and his colleagues, see Isae.9.2, 6, 16, 19, 22-26, 31, 35. Isaeus artfully casts Hierocles, rather than Cleon (who will be speaking in reply and so have a chance to defend himself) as the ultimate villain (see §§22-26 and Wyse (1904) 640 on the creative elements in Isaeus’ portrayal of Hierocles).

\textsuperscript{137}Isae.9.35-6
Again, it is possible to detect here the same suspicion towards the use of rhetoric in the jury court as in the *Clouds*, Antiphon and Lysias. The injunction to the jurors to discount Cleon’s ‘ability at speaking (δύνασθαι λέγειν)’ and to focus on issues of ‘law and justice (ὁ νόμος καὶ τὸ δίκαιον)’ implies that rhetorical ability is at best immaterial to, and at worst impedes, law and justice. In contrasting those that are ‘less able (οἱ ἄννυματότεροι)’ at advancing claims ‘about justice (περὶ τῶν δικαίων)’ with ‘the shameless (οἱ ἀναισχυντοῦντες)’, Isaeus is by implication equating shamelessness with rhetorical skill. Again the same set of assumptions are at work here. Rhetorical skill is deviant, pertaining to shamelessness and impeding law and justice, while plain speech pertains to justice. The jurors are naturally portrayed as being firmly located on the side of justice and in opposition to rhetorical shamelessness. Furthermore, the portrayal of Cleon as a skilful speaker and thus shameless and opposed to justice, dovetails with the overall portrayal of Cleon and his colleagues in the rest of the speech: men who have shamelessly conspired to produce a fraudulent will.\(^{138}\)

To conclude, the analysis of the use of rhetoric that is presented in the *Clouds* can also be found in the speeches of Antiphon, Lysias and Isaeus.\(^{139}\) Rhetoric is presented as pertaining to falsehood and is thus detrimental to justice and truth. Consequently orators are quick to attach the censure and odium of rhetorical ability to their opponents, while being careful to guard themselves against such accusations. In both media, the purchase of this censure is primarily in the moral sphere. While it is probable that few of the sophists would have advocated the consequences of the use of rhetoric that is presented in the *Clouds* or inveighed against in the Orators, their intellectual investigations provided the starting point. To my knowledge, our sources do not record a concrete instance of an individual who used his rhetorical skill to evade justice in the jury courts.\(^{140}\) But I do not think this is the issue when focusing on popular perceptions. The issue is that it is perceived that rhetoric can be used in the jury court to evade justice. The reflection of this on-stage image in the Orators demonstrates that this perception is not a product of the fictive world of Aristophanes alone, while the reflection of off-stage concerns in the fictive on-stage world is a statement of

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\(^{138}\) See p.114n.133.

\(^{139}\) For other examples, see Lys.13.95, where the speaker warns the jurors be swayed by ‘neither skill nor trickery (μὴ ἀρνεῖτε μὴ μιχαλήμεν); Lys.17.1, where the speaker is careful to state that he is not able at speaking (δύνασθαι λέγειν), even though he is a person of worth; Lys.18.2, where the defendant laments the ‘preparation and eagerness (παρασκευὴ καὶ προθυμία)’ of his opponents; Lys.27.4-6, where the jurors are challenged not to condemn those who are unable to speak (οἱ μὴ δυναλένοι λέγειν) but those who are able; and Isae.10.1, where the opposition is concerned about the opposition’s ability to speak skilfully (λέγειν δεικτά) and his own inexperience speaking before the jurors. See p.120n.164 below on negative comments about the use of logographers in the jury courts.

\(^{140}\) For example we have no statement such as at Ath.Pol.27.5, where Anytus is described as being brought to trial after Pylos (410-09) and escaping by bribing the jurors.
widespread and powerful nature of these concerns. It is my contention that in the late-
fifth century, large sections of the Athenian citizen population were deeply suspicious
and concerned that rhetoric could be utilised in the jury courts to distort truth and so
negate justice. The *Clouds* finally offers clues, albeit tentative, as to the section of
society which was perceived as having access to rhetorical resources and thus the
distortion of justice in their favour.

5.3 The Practitioners: the Inequality of Access to Rhetorical Resources

In the on-stage world of the *Clouds*, not only is the use of rhetoric censured (see
Chapter 5.2), but access to rhetorical resources is presented as alien to the experience of
the ‘ordinary man’. This notion is communicated through the comic hero’s
engagement with the phenomenon of the *Phrontisterion*. On the one hand, the
*Phrontisterion* is presented as marginal to the point of outlandishness, the preserve of a
wealthy, youthful, privileged few. On the other hand, although Strepsiades aspires to a
debt-free life through rhetorical means, he ultimately rejects this path for the fantasy of
the ‘ordinary man’s’ self-assertion over the educated elite by comic means. Indeed the
comic hero’s deflation of intellectual pomposity is a major vehicle of humour
throughout the play (see below). The presentation of the *Phrontisterion* as marginal will
be examined first, followed by Strepsiades’ self-assertion over the educated elite and
finally some suggested implications concerning off-stage reality will be drawn from
this on-stage juxtaposition.

The *Phrontisterion* is consistently presented as a phenomenon that is marginal
to the point of outlandishness. The *Phrontisterion* is described as a house, which is
located on-stage behind the *skene*. As an interior space, the *Phrontisterion* is separate
and delineated from all other spheres of activity in the play. This marginality is
emphasised by the mystical aura that surrounds the *Phrontisterion*. The activity within
its walls is likened to a mystery, and so is the exclusive preserve of the initiated.
Consequently Strepsiades can enter the *Phrontisterion* only having undergone the
appropriate initiation rites. The students of the *Phrontisterion* exhibit marginal forms
of dress, diet, and behaviour. The research carried out within the *Phrontisterion* is

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141 I have borrowed the epithet ‘ordinary man’ from Dover’s description of Old Comedy’s perspective,
that of the ordinary/non-elite Athenian’s protest against those stronger than him, see p. 119 and Dover
(1972) 314-1 on the ‘ordinary man’s’ self-assertion.
142 For the *Phrontisterion* as a house, see *Ar.Nub.* 91-2. For characters going into and coming out of this
house, see 133, 184, 199, 509, 627-33, 804, 866-7, 889, 1113, 1144, 1165-69. For Strepsiades’ viewing
of the students within the *Phrontisterion* at 184-199 and the possible production options, see Dover
(1968a) lxxiv-vi
144 *Ar.Nub.* 250-74.
145 See pp. 106-7 on the marginal depiction of the *Phrontesterion’s* staff and students.
invariably esoteric to the point of irrelevance, the example par excellence being Socrates’ research into flea strides. Similarly, the beneficiaries of the Clouds’ wisdom are the classic quacks and charlatans of Old Comedy: diviners, doctors, poets, ‘men of ethereal quackery, they (i.e. the Clouds) nourish the idlers who do nothing because they make poetry about them.’ Admission to this marginalised existence is possible only by payment of a fee, thus guaranteeing its elite status. It is also presented as the pursuit and preserve of the younger generation. Consequently a man such as Strepsiades, an old simple rustic, is terrified of entering into the Phrontisterion. This polarisation between youthful, elite, marginal intellectualism and aged, ‘comic’, rustic simplicity underpins the comic and dramatic structure of the play. Therefore the acquisition of rhetorical skills, as a subset of a more catholic programme of intellectual investigation and instruction, is presented as a marginal and outlandish activity, the preserve of the youthful, wealthy, privileged few and beyond the experience of the ‘ordinary man’.

Through Strepsiades’ experiences, the audience is presented with a shifting series of engagements with the phenomenon of the Phrontisterion. Initially, as Strepsiades pursues his rhetorical education at the Phrontisterion, they are offered the desirable fantasy of a debt-free life. As the play progresses, this engagement with the Phrontisterion transpires to be both unattainable and to have disastrous consequences for ‘the ordinary man’. Once Strepsiades comes to his senses, the audience is offered a final fantasy, that of the ‘ordinary man’s’ self-assertion over the educated elite by comic rather than rhetorical means. Strepsiades is cast from the archetypal mould of Old Comedy heroes: the simple old man from the countryside, with whom many members of the audience probably could identify. The oppression he suffers from his

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146 Ar.Nub.144-53. See p.95 for further references to research.
147 ἐνδρας μετεωρωφένας, οὐδὲν δρῶντας βῶσκουσ’ ἄργος, ἤτι τὰῦτας μουσοποούσιν’ (Ar.Nub.331-4).
148 On fees, see p.95n.30. In a classic series of comic non-sequiturs, Strepsiades, the man oppressed by his debts, is willing to pay Socrates and does give him something. Strepsiades’ alienation from the Phrontisterion is based upon the ‘ordinary man’s’ suspicion and distrust of intellectual activity rather than economic disenfranchisement. On further aspects of Strepsiades’ inconsistent social position, see n.152 below.
149 Pheidippides’ youth (Ar.Nub.86-118, 794-6) is preferred over Strepsiades’ old age (p.118n.154). The Worse Argument’s devotees are depicted as being young (916-19, 926-8, 1015, 1052-4, 1059).
150 See Ar.Nub.126-132.
151 For example the humour in the scenes between Strepsiades and Socrates is dependent on this polarisation (e.g. 291-96, 323-328, 385-94, 638-57 and below), while Strepsiades’ inability to grasp the wider implications of intellectual relativism contributes to his tragic downfall (see Chapter 5.2 above).
152 Ar.Nub.41-5. See Dover (1968a) xxv-xxix for a profile of Strepsiades and his family. Strepsiades’ situation has been complicated and made extraordinary by his marriage to a niece from the sophisticated, aristocratic, urbanite family of Megacles (see 41-55. See APF 368-85 on the family of Megacles). This scenario then provides the reason for Strepsiades’ financial problems (on Pheidippides’ chariot racing, see p.91n.6) and the humour of juxtaposing the rustic with the sophisticated urbanite (e.g. 41-55, 60-74).
debts and the relief he seeks must have created resonances with those watching. But it is a fantasy which is exposed first to be impossible to obtain for the ‘ordinary man’ on account of his old-age, forgetfulness and stupidity and, secondly, to have disastrous consequences. As the play progresses, the fantasy of the debt-free life is transposed into the fantasy of the ‘ordinary man’ s self assertion over the educated elite by comic rather than rhetorical means. For example, during Strepsiades’ sojourn in the Phrontisterion, although he tries to take on board the new intellectualism, underneath he remains the archetypal ‘ordinary man’ of Old Comedy: committed to self-assertion, buffoonery, and gratification of the senses. He constantly deflates Socrates’ grandiose intellectual statements with comic interjections and produces solutions drawn from the realm of fantasy rather than rhetoric for each of Socrates’ judicial problems. Similarly, Strepsiades triumphs over his creditors, not by employing Pheidippides’ rhetorical skills but by comic, brazen self-assertion. In the final scene of the play, Strepsiades consciously rejects the judicial and rhetorical and embraces the comic. He contemplates judicial means of punishment against Socrates and Chaerophon, asking Hermes whether he ought to bring a graphe against them. But he then reports Hermes advising him that he should not ‘get up lawsuits (OśLoppacpeîv)’ but embrace the classic comic methods of the ordinary man’s self-assertion against his enemies: the fire-torch and the stick. Although Strepsiades uses the language of the jury court to describe this course of action, ‘to extract justice (OśOvQL Oś L K fiv)’, it is obvious from the method of punishment and his contemptuous

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153 On the fear and prevalence of debt in the peasant economy, see Millett (1984) 95-99 and (1991) 36-8 and Osborne (1987) 93-4. This reality may lie behind Aristophanes’ choice of the scenario of Strepsiades’ debts. Peisetaenis, also an ageing rustic, is presented as oppressed by debts and desires to escape them by joining the Birds (Ar.Av. 114-22) and debts will not feature in Praxagora’s new state, to Chremes’ delight (Ar.Eccl.568-69, 660-62).

154 On Strepsiades’ forgetfulness and stupidity as a result of his background and age, see Ar.Nub.129-30, 398, 492, 627-31, 646, 655, 783-790. For the disastrous consequences of this fantasy, see Chapter 5.2.

155 At best he acquires a veneer of education, reproducing garbled snippets of what he has learnt from Socrates, see Ar.Nub.785-89, 814-55, 1247-51, 1279-95.

156 Strepsiades and Socrates: Ar.Nub.267-8, 293-6, 388-91, 408-11, 491, 643-5, 652-4, 675-7, 734; judicial problems: Ar.Nub.746-83. Strepsiades and Socrates come up with three scenarios between them: 1) Strepsiades suggests shutting up the moon with the aid of a Thessalian woman so the day appointed for the collection of interest (calculated using a lunar calendar) will never arrive; 2) In response to the threat of a 5 talent dike, Strepsiades suggests he burns the dikes entry off the grammateus’ list using a magnifying glass and the sun’s rays; 3) If he were facing dike which would go against him and in which he had no witness support, Strepsiades suggests that he hangs himself before the trial as his means of defence.

157 For Strepsiades and the creditors, see p.91.

158 Ar.Nub.1481-85.

159 See Ar.Nub.1483-1519 and also 539-43, where the chorus in the parabasis identify elderly comic heroes, the use of torches and cries for help as classic comic material.
references to Socrates and his colleagues as the peddlers of rhetoric, that he has totally renounced the judicial and rhetorical sphere.160

On the one hand, the phenomenon of the Phrontisterion is presented as marginal to the point of outlandishness, the preserve of a privileged, wealthy, youthful few. On the other hand, as the ‘ordinary man’ of Old Comedy engages with the phenomenon of the Phrontisterion, we witness the powerful motivation of escaping his debts through rhetorical means frustrated by his own lack of ability and by the disastrous consequences which ensue. Therefore the comic hero rounds on the inhabitants of the Phrontisterion and asserts himself over them by comic rather than intellectual means. Rhetorical ability is presented as a seductive but ultimately an unattainable and alien phenomenon which is rejected for comic means of self-assertion. As ever, the question is then how to interpret this on-stage image in relation to the off-stage world. Dover’s formulation on the nature of Old Comedy may be apt in this regard: ‘the essential spirit of Old Comedy is the ordinary man’s protest - using his inalienable weapons, humour, and fantasy - against all who are in some way stronger or better than he: gods, politicians, generals, artists and intellectuals.’161 The drama of the Clouds may not only comment on and censure the use of rhetoric in the jury courts, but may also be the ‘ordinary man’s’ voice of protest against his restricted access to rhetorical resources. Beyond the theatre, there is some evidence that the elite had greater access to rhetorical resources, but regrettably no off-stage evidence from the perspective of the ‘ordinary man’ objecting to this inequality in access.

The elitist associations of the instruction offered by the sophists have been most vividly captured in Plato’s description of the individuals gathered around Protagoras, Hippias and Prodicus at the start of the Protagoras. The three sophists are depicted teaching in the house of Callias to youthful, wealthy and elite members of Athenian society, men such as the two sons of Pericles, Andron, Critias, Alcibiades and others.162

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160 For δούναι δίκην see Ar.Nub.1491-2 and for its legal usage, see LSJ s.v. δίκη IV 3. Strepsiades labels Socrates and his colleagues as ‘prattlers (δοσιλέγων-αί, -ία’ 1480. 1485), ‘braggarts (άλαμβώνες’ 1492) and puns on a compound of λειτολογεῖν (see 320) and διαλέγομαι to describe his destruction of the Phrontisterion’s rafters (1497).
162 See Pl.Protag.314a-316a. Callias (PA 7826) was one of the wealthiest Athenians of his generation (see APF 263-5). Protagoras is surrounded by Paralus (PA 11612) and Xanthippus (PA 11170), sons of Pericles and wealthy (APF 457-9); Charmides (PA 15512, implicated in sacrileges of 415 (Andoc.1.16), one of the Ten in Piraeus (Xen.Hell.2.4.19), wealthy (APF 330-1)); Philippides (PA 14360, wealthy (APF 548-9)) and the non-Athenian Antimoerus from Mende. Hippias is attended by Eryximachus (PA 5187, implicated in the Sacrileges of 415 (Andoc.1.35)); Phaedrus (PA 13960, wealthy (APF 201), implicated in the Sacrileges of 415 (Andoc.1.15)); Andron (PA 916, wealthy (APF 33-4), a member of the Four Hundred (Ostwald (1986) 402n.223)) and other non-Athenians. Prodicus is surrounded by Pausanias (PA 11717); Agathon (PA 83, the tragedian whose good birth is commented on); Adimantus, son of Cepis (PA 194); Adimantus, son of Leucolophides (PA 202, implicated in sacrileges of 415 (Andoc.1.16),
Given the high fees that the sophists charged, it is hardly surprising that rhetorical education is presented in the *Clouds* and the *Protagoras* as the preserve of the privileged. Members of the elite who had not undergone a rhetorical education were able to deploy their financial resources to purchase a rhetorically polished speech from a logographer. The mystical aura that surrounds the activities in the *Phrontisterion* is paralleled in the almost magical power that is attributed to rhetoric by Gorgias in his *Encomium of Helen*. Gorgias compares the power that drugs have over the body with the almost magical power that words has over the mind, commenting that: 'some speeches cause sorrow, some cause pleasure, some cause fear, some give the hearers confidence, some drug and bewitch the mind with an evil persuasion.' The *Encomium of Helen* and the *Clouds* share the common perspective of rhetoric operating in a sphere which is beyond the normative. In drawing a distinction between the elite who had access to rhetorical resources and the majority of Athenian citizens who did not, I am not suggesting that the elite alone spoke in public forums, including the jury courts. There must have been non-elite individuals who possessed an innate rhetorical ability, while the repeated exposure to rhetorical performance that ordinary Athenians received in public fora would have had an educative effect. But it is inevitable that if
access to rhetorical resources, via education or a logographer, was the preserve of the elite, then this group had an automatic advantage in any forum which required oratorical skills, including the jury court. Regrettably we have no text written from the perspective of an ordinary citizen engaged in a judicial dispute with anyone, let alone commenting on the inequalities of facing a rhetorically skilled, elite opponent.\textsuperscript{167} Consequently we have no control from the off-stage world to verify whether Strepsiades' enthrallment and subsequent disenchantment with the \textit{Phrontisterion} is a reflection of non-elite concerns about the inequality of access to rhetorical resources in the judicial sphere. This inequality may very likely explain why elite litigants appearing before mass juries are careful to issue disclaimers about their rhetorically polished pleadings, the product of the logographer's pen.\textsuperscript{168} A certain degree of confirmation can be found in the description of an inexperienced litigant in the \textit{Knights}, with the obvious qualification that this too is an image from the on-stage world. Paphlagon is practically fit to burst because an alliance of the Sausage-seller, Demosthenes and the Chorus have talked over him and prevented him from giving vent to his outrage at their opposition.\textsuperscript{169} He then makes the following observations about the Sausage-seller's rhetorical ability:

\begin{verbatim}
ΠΑ. Τῷ καὶ πεποιθῶς ἄξιοῖς ἐμοῦ λέγειν ἐναντια;
ΑΛ. ὅτη λέγειν οῖς τε κάγω καὶ καρυκοποιεῖν.
ΠΑ. ἵδου λέγειν. Καλῶς γ' ἂν οὖν σὺ πράγμα προσπεσῶν σοι ὄμοστάρακτον παραλαβόν μεταχειρίσαιο κρηστῶς.
'Αλλ' οἶσθ' ὃ μοι πεποιθέναι δοκεῖς; ὅπερ τὸ πλῆθος. Ἐά που δικίδιον εἰπάς εὐ κατὰ ξένου μετοίκου, τὴν νύκτα θρυλῶν καὶ λαλῶν ἐν ταῖς ὀδοῖς σειωτῷ, ὑδρὼ τε πίνων κάποιειν ς τοὺς φίλους τ' ἀνών, ὄμω δυνατὸς εἶναι λέγειν. Ἡ εἰ μύρε τῆς ἀνοίας.
\end{verbatim}

PAPHLAGON: And what are you trusting in, that you think you able to speak in opposition to me?
SAUSAGE-SELLER: Because I am as capable both to speak and to stir things up.
PAPHLAGON: What, to speak!! So you would indeed do a good job on a case which fell to you, and you took it torn to pieces and raw. Excellent! But do you know the thing which you seem to be experiencing to me? Like the multitude. If you somehow spoke well in a little \textit{dike} against a resident foreigner, babbling it over all through the night, prattling to yourself in the streets, drinking water and

the grounds that rhetoric induces belief, which may or may not be true, rather than knowledge of right and wrong (454e)).

\textsuperscript{167} Ober (1989) 113 comments: 'we do not know how common it was for the average Athenian to find himself involved in a lawsuit.' On the elite nature of the majority of our legal texts, see Ober (1989) 43-9, Todd (1990c) 168, Hunter (1994) 5-6.

\textsuperscript{168} See p.111 and Ober (1989) 170-77.

\textsuperscript{169} \textit{Ar.Eg.}304-50.
displaying your powers to your friends and distressing them, you thought you were able to speak. You idiot, what folly.\textsuperscript{170}

Paphlagon suggests that the Sausage-seller’s speaking ability is akin to that of ‘the multitude (τὸ πλῆθος),’\textsuperscript{171} which is described, not as the absence of rhetorical ability - he is able win a \textit{dike} against a \textit{metic} - but as decidedly second class rhetorical ability - the result of laboured practice which produces a shabby end-result that is unequal to a verbal joust with the experienced Paphlagon.\textsuperscript{172}

In conclusion, I would like to suggest that Strepsiades’ engagement with the phenomenon of the \textit{Phrontisterion} is a reflection of non-elite concerns about the inequality of access to rhetorical resources. The phenomenon of the \textit{Phrontisterion} is presented as alien to the experience of the ‘ordinary man’, a fantasy which Strepsiades aspires to, but is unable to attain and eventually rejects. In the world beyond the theatre, rhetorical resources, either in terms of rhetorical education or the utilisation of a logographer, were almost certainly heavily biased towards the elite. It is inevitable that the disparity in rhetorical resources between elite and the majority of Athenians must have created, or at least were perceived to create, inequalities on the playing-field of the jury courts. The absence of non-elite texts from the judicial sphere means that we have no evidence from beyond the theatre which object to these disparities. On the other hand, Strepsiades’ engagement with and rejection of the \textit{Phrontisterion}, together with Paphlagon’s sneering description of the multitude’s second rate rhetorical skills, may be reflections of the inequalities in access to justice generated by the inequalities in access to rhetorical resources.

5.4 Conclusion

In the late fifth century, the developments in rhetoric pioneered by the sophists had an impact on democratic judicial practice. The \textit{Clouds} of Aristophanes comments on this impact, with many of its on-stage images being confirmed by off-stage evidence, particularly from the Attic Orators. Conversely, the reflection of off-stage developments in judicial practice within the on-stage world of the dramatic festival is

\textsuperscript{170} \textit{Ar.Eq.} 342-50.
\textsuperscript{171} In \textit{Aristophanes}, τὸ πλῆθος can refer either to a group of persons on stage (\textit{Ar.Vesp.} 267, 1513) or to the Athenian citizen-mass (\textit{Ach.}317, \textit{Vesp.} 593, 667, \textit{Ran.} 774, \textit{Eccl.} 432, 440, 770, 1133, \textit{Plut.} 570). Given that Paphlagon, an experienced speaker, is seeking to portray the Sausage-seller as an inexperienced orator, I have taken τὸ πλῆθος in the later sense here: the Sausage-seller’s rhetorical skills are limited, like that of most Athenians.

\textsuperscript{172} On Paphlagon’s rhetorical experience and particularly his style, see \textit{Ar.Eq.} 274-76, 285-6, 304-12, 351-52, 486-87, 625-29. Plato’s Callicles, when contrasting the quietist philosopher with the political man (\textit{Pl.Gorg.} 484c-486-d), notes among other things that the philosopher ‘can not add a word of value to discussions on legal matters (οὔτ’ ἐν δίκαις μουλαίαι προσθέτῃ ἐν ὀρθῆς λόγον’ (486a)). Consequently, should Socrates be charged by \textit{apagoge}, he would be overwhelmed by the experience and once in court, convicted and sentenced to death, if his prosecutor requested the death penalty (486a-b).
testimony to a widespread awareness of these developments among the citizen population. I would like to suggest that the following attitudes concerning rhetoric and judicial practice were widely held in the age of Aristophanes. Firstly, it was perceived that rhetoric could be learnt from professional teachers to then be utilised in the jury courts to gain judicial advantage (Chapter 5.1). Secondly, if rhetoric was used in this way, it was feared that justice and truth would be the ultimate casualties, a scenario which generates strong moral censure and condemnation (Chapter 5.2). Thirdly, it is possible that these concerns about the use of rhetoric in the jury courts emanate from the mass, citizen population, who possessed limited access to rhetorical resources, unlike the elite (Chapter 5.3). Undoubtedly there is an element of over-reaction in these attitudes to a novel and partially comprehended phenomenon. This can be seen in the misrepresentation of Socrates as a professional teacher of rhetoric and in the partial representation of the sophists' theories on justice. We do not know if these attitudes and concerns were rooted in a series of concrete cases in which individuals employed rhetorical resources to pervert the course of justice. But in the world of popular attitudes, it was perceived that those with access to rhetorical resources could employ rhetoric to distort justice in their favour.

The above concerns about the use of rhetoric in the jury court feed into the broader picture of popular attitudes to judicial activity in the age of Aristophanes. On the basis of Chapters 3 and 4, I have suggested that popular attitudes to judicial activity were distinctly ambivalent in the age of Aristophanes: judicial activity was to be escaped from and yet was inescapable. Consequently the late-fifth century developments in rhetoric can only have exacerbated this tension between the ideology of judicial reticence and the reality of judicial practice. The rhetorical resources which became available in the late fifth century were perceived to equip individuals not only to engage in judicial activity, but to succeed, regardless of the justice of their cause. This tension between ideology and practice, fuelled by the increased prominence of the jury courts and by rhetorical developments, encouraged some in Athens to question the legitimacy of the democratic judicial system itself. If the democratic jury courts appeared to be overwhelmed with business (Chapter 4.1) and offered the rhetorically resourced a forum within which to overthrow justice, then perhaps the democratic jury courts themselves should to be re-thought in theory (Chapter 6), if not in practice (Chapter 7).
Dicaeopolis knowingly comments on the propensity of Athenian jurors to ‘eagerly expect nothing other than to bite with their ballots,’ as he contemplates his defence before the Acharnians.¹ Dicaeopolis’ observations were made towards the beginning of the age of Aristophanes, an era in which the ballots of Athenian, adult, male citizens determined most adjudicatory decisions in Athens.² The transfer of adjudicatory power from elite magistrates to the demos commenced in the early sixth century and proceeded in a piece-meal fashion, reaching its completion with the introduction of jury-pay under Pericles in the late 450s.³ Consequently Dicaeopolis’ observations on the behaviour of jurors are made before an audience who had experienced the power of the juror’s psephos for a generation. As has been discussed in Chapter 4.1, the focus on judicial activity that characterises the age of Aristophanes may partially have been the inevitable response and adjustment to the relatively novel phenomenon of democratic justice. On the other hand, it appears that this concern about the democratic judicial institutions had deeper causes than simply the arrival of a novel phenomenon on the Athenian horizon. As the democratic judicial institutions developed in this piecemeal manner, theories either to justify or to challenge the democratic ideal evolved and emerged in a similar fashion. This fragmentary nature of democratic political theory in tandem with the piecemeal evolution of the democratic institutions has led scholars such as Jones and Finley to state that there was no such thing as ‘democratic political theory’.⁴ This position has recently been challenged by Kurt Raaflaub, who has argued that although there may have been, in Finley’s words, no ‘articulated and systematic’ democratic theory, the novel phenomenon of Athenian democracy was commented on by many fifth-century writers.⁵ The aim of this chapter

¹ ‘οὐδὲν βλέπουσιν ἄλλο πλὴν ψυφηδακεῖν’ (Ar.Ach.376).
⁴ Jones (1957) 41, Finley (1962) 9.
⁵ Finley (1962) 9, Raaflaub (1983) 517-8, (1990) 34. I have also looked at Farrar (1988), but have struggled to comprehend this book. See also Yunis (1996) 36-116 on late fifth century texts which focus on democratic deliberation. As his title suggests, Jones (1956) examines ‘legal theory’, but focuses on the
is to identify observations that were made either for or against the judicial institutions of the democracy. This investigation will focus on Aristophanes' *Wasps*, produced in 422. In the agon of the play, Philocleon advances arguments in favour of the democratic judicial system, while his son Bdelycleon criticises the democracy's administration of justice. I hope to demonstrate that the arguments advanced in the agon and elsewhere in the *Wasps* reflect and are informed by an ongoing debate beyond the theatre on the democratic judicial system. If this is the case, then the debate on the democratic judicial system and concerns about the use of rhetoric in the jury courts (Chapter 5), can only have intensified the tension between the ideology of judicial reticence and the reality of judicial practice (Chapters 3-4).

On the other hand, the relationship between the *Wasps* and the democratic judicial system is far from straightforward, as the absence of scholarly consensus demonstrates. At one end of the spectrum, it has been suggested that the *Wasps* reveals Aristophanes' hostility to 'the very democratic jury-system as such;' while at the other, it is stated that Aristophanes' argument is 'directed not towards structural change [of the law courts] but upon human attitudes and patterns of behaviour.' I think it is possible to arrive at conflicting interpretations of the same play because Aristophanes projects contradictory images of the democratic judicial system within the same play. For example, Philocleon's passion for jury service is presented as unnatural, a sickness, from which Bdelycleon tries to cure Philocleon. On the other hand, although Philocleon is transformed from vindictive juror to elegant symposiast, the wisdom of this 'cure' is severely undermined in the concluding scenes of the play. The agon is central to this contradictory portrayal, in which Philocleon and Bdelycleon advance arguments for and against the democratic judicial system. The *Wasps* also contains the sustained and disturbing image of the democratic jury benches swarming with vindictive, aged, wasp-like jurors. The arguments for and against the democratic judicial system in the *Wasps* will be analysed first, with occasional references to other plays by Aristophanes (Chapter 6.1). Secondly these arguments will be located within the wider dramatic momentum of the *Wasps*, which I hope will illuminate the contradictory portrayal of the democratic judicial system within the play (Chapter 6.2). Thirdly these on-stage arguments will be compared with evidence from beyond the theatre which focuses on reactions to the democratic judicial institutions (Chapter 6.3).

6.1 The Debate on the Democratic Judicial System within the Aristophanic World

works of the fourth-century philosophers rather than popular attitudes to the democratic judicial system. See the comments by Todd and Millett (1990) 12-13 on this approach to Athenian Law.

6 Cartledge (1990a) 52 contra Dover (1972) 130-1. For other opinions, see MacDowell (1971a) 4, Bowie (1993) 96-101.

7 See p.134 on Philocleon's sickness and its cure.
In the agon of the *Wasps*, arguments are advanced for and against the democratic judicial system, with Philocleon speaking for and Bdelycleon against the democratic judicial system. Philocleon argues that the democratic judicial system enabled ordinary Athenian citizens such as himself to wield immense power through the role of juror. He opens his speech with the following statement: ‘Yes, right from the start I’m going to prove as far as our power is concerned that it’s equal to any king.’

He supports this statement by firstly demonstrating the power he has over others, particularly in relation to the elite, and secondly through the observations he makes about the role of the courts within the democratic constitution. Repeatedly Philocleon revels in his juristic position which gives him power over great men (*ἀνδρεῖς μεγάλοι*). He paints a vivid picture of a member of the elite, six feet tall, putting his soft hand that is unaccustomed to manual labour into Philocleon’s and asking him for mercy as he is being charged with theft from public funds. Although these big men may use every trick in the book to gain their acquittal, proclaiming their poverty, plying pathetic humour or parading piteous offspring, Philocleon is at liberty to forget any promises of leniency he has made on the way to court, ignore their pleas and rejoice in his ‘mighty power that allows us to mock at wealth.’

He delights in the attentions paid to him by such mighty men as Euathlus, Cleonymus, Cleon and Theorus, who pamper the jurors while attacking everyone else. When Philocleon, as a Jove-like juror, makes lightning in the jury courts, the rich and the very grand (οἱ πλουτούντες καὶ πάνυ σεμνοί) are reduced to quivering wrecks. This power of Philocleon’s over the great and good is articulated in contrast to his own insignificance in other areas of life. He compares the fear he engenders as a juror with the diminished status of old age. He notes that the elite supplicant who deferentially hails him as ‘father’ at the court railings knows of Philocleon’s existence only because Philocleon sat on the jury that acquitted him in his previous case. Philocleon, the aged, ‘ordinary man’ of Old Comedy is elevated to a position of power over the great and the good through his jury service and only through his jury service.

8 ἐπί τῆς ἀρχῆς ἀποδείξα τῆς ἑκτέρας ὡς ὕδειμικός ἢττων ἐστὶν βασιλείας’ (*Ar.Vesp.*548-9 (tr. Sommerstein)). See also 517, 575, 619 where Philocleon states that his ἀρχής μεγάλη.
9 *Ar.Vesp.*552-8. On the *graphe klopes*, for a summary, see Todd (1993) 283-4 and exhaustively, Cohen (1983). Alternatively, the elite member is being prosecuted at his euthynai for theft from public funds for which he was responsible during his term of office (Sommerstein (1983) 191).
10 ἀρχὴν καὶ τοῦ πλουτοῦ καταχάμη (Ar.Vesp.*575 (tr. Sommerstein)) and 560-575 generally.
11 *Ar.Vesp.* 590-600.
12 *Ar.Vesp.* 625-7.
13 *Ar.Vesp.* 551. Here and throughout the play, Philocleon is a γέρων. On the image of the elderly juror and his diminished status, see Crichton (1991-3).
14 *Ar.Vesp.* 551-8. See MacDowell (1971a) 207, Sommerstein (1983) 191 on the terms of address used by the member of the elite. Heath (1987) 31 comments: ‘it is the deference of anyone to whom he (Philocleon) might normally have to defer that he relishes.’
Secondly, Philocleon makes two significant observations about the power entrusted to the jury courts within the democratic constitution. He notes that when the boule and demos are at a loss to decide an important matter (μέγα πράγμα), they vote to hand the criminals over to the jury court.\(^\text{15}\) Philocleon here is describing the procedure of eisangelia and is aware that the decision by the boule or the ecclesia to hand a case over to the jury courts is an expression of the courts’ importance in the democratic constitution.\(^\text{16}\) Furthermore, Philocleon adds this telling statement to his description of the power which allows the jurors to disregard the terms of a will: ‘and we do these things without being liable to euthynai, like no other arche.'\(^\text{17}\) The language used by Philocleon is unusual and striking. It seems that in a strict sense, jury-service was not regarded as an arche, although both here and in the Plutus, Aristophanes applies this term to jurors.\(^\text{18}\) Moreover he deliberately compares them to other archai, commenting that jurors, unlike any other arche of the Athenian democracy, do not have to submit to euthynai at the end of their term of office.\(^\text{19}\) This statement by Philocleon reflects the powerful position of the jury courts in the democratic constitution. The jury courts, together with the assembly of citizens, were the only organs of government which did not have to give an account of their actions. Embedded within Philocleon’s scandalous exaltation of his unlimited power are two statements that convey the power entrusted to the jury courts by the democratic constitution.

Although Philocleon does not specifically associate the jury courts with the democracy in the agon, this connection is repeatedly made in the preceding exchanges between Bdelycleon, Philocleon and the chorus. Since Bdelycleon is preventing his father from being a juror, as he is introducing the theory (logos) that jurors should not judge dikai, because he is seeking to shut the jurors off from the nomoi of the polis, the chorus brand him a conspirator, misopolis, misodemos, intent on introducing tyranny, a

\(^{15}\) Ar.Vesp.590-1.

\(^{16}\) See Sommerstein (1983) 193 on Philocleon’s misguided arrogance in claiming that the boule and demos are incapable of action over certain matters. If an eisangelia was brought before the boule, the boule made a preliminary judgement and passed it on to the jury court, whereas if it came before the Assembly, the Assembly could either refer the case onto the jury court or try the case itself (see Hansen (1975) 12-28). There is some controversy on the nature of eisangelia, see Rhodes (1979) and Hansen (1980c). The relationship between the Assembly and the jury courts has been extensively explored by Hansen, see p.12n.2.

\(^{17}\) ‘καὶ ταῦτα ἀνυπεθυμοὶ δρῶμεν τῶν δὲ ἀλλών ὑδεμιῷ ἀρχῇ’ (Ar.Vesp.587).


\(^{19}\) Hansen (1980b) 153 states that ‘liable to audit on the expiration of his office (eυθυναὶ)’ was one of the defining features of an arche.
pro-spartan sympathiser, a lover of monarchy. Bdelycleon ridicules this bandying about of slogans like ‘conspiracy’ and ‘tyranny,’ dismissing it as an overused contemporary trend, applied even to transactions in the Agora. Even though Bdelycleon may dismiss the integrity of the chorus’ stance, they make it very clear that the jury courts are integral to the democracy: closing the courts amounts to overthrowing the democracy.

If the democratic juries bestowed upon ‘ordinary’ citizens adjudicatory authority over the entire polis, then the provision for ho boulomenos to prosecute enlisted the ordinary citizen as voluntary prosecutor to protect the polis. Within the Aristophanic world, the importance of ho boulomenos within the democratic judicial system receives its fullest treatment in the Plutus of 388. In the exchange between the Good Man and the sycophant, the Good Man exposes the sycophant’s use of the judicial system to interfere in the affairs of others. The sycophant, in his answers to the Good Man’s accusations, argues that his willingness to prosecute is in fact beneficial to the polis. The sycophant claims that he benefits the polis by coming ‘to the help of the established laws and not turning aside if someone breaks them’, to which the Good Man retorts that the polis has established the jurors in this role. The sycophant then shrewdly asks the Good Man who will prosecute, to which the Good Man replies ‘the man who wishes (ho boulomenos),’ enabling the sycophant to triumphantly cry ‘so am I not that man’. In other words, the sycophant demonstrates that the democratic judicial system is dependent on the willingness of ho boulomenos voluntarily to come forward and prosecute in graphai or other public prosecution. The Good Man’s response to the logic of sycophant’s argument is weak, as he responds that the city has chosen ‘a worthless champion (πανηρός προστάτης)’, and non-existent, when he resorts to

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20 For Bdelycleon’s supposed hostility to the jury courts, see Ar.Vesp.340, 412-14, 467. For the different accusations made against him, see the following references: conspirator (ξυνωμότης): 345, 482-3 with MacDowell (1971a) 180 and Sommerstein (1983) 178; misopolis: 411; misodemos: 474; tyranny (τυραννίς): 417, 463-5, 487 with MacDowell (1971a) 180 and Sommerstein (1983) 182; pro-spartan: 466-7, 475-6; monarchic: 470, 474.
21 Ar.Vesp.488-507 with MacDowell (1971a) 199-200 for a good analysis of Bdelycleon’s argument.
22 Ar.Plut.907-23. This aspect of the passage is discussed on pp.49-50, where the greek text and a translation is given.
23 The sycophant argues that he is a philopolis and euergetes (Ar.Plut.900, 910).
24 Ar.Plut.914-6.
26 For a discussion of the role of ho boulomenos within the democratic judicial system, see Harrison (1968-71) 2.76-8, Adkins (1976) 308-11, 316-18 (with particular reference to the Plutus passage), MacDowell (1978) 53-4, Humphreys (1983a) 238-9, Osborne (1985b) 40-42 and (1990), Todd (1993) 98-122. The provision of ho boulomenos contrasts with judicial systems of a more oligarchic hue, where the right to prosecute is restricted to either the injured parties or magistrates. For example, see MacDowell (1986) 134-40 on Sparta: in private cases, the injured party prosecutes; in public cases, a private individual may bring a matter to the attention of the ephors who then prosecute, or the ephors themselves initiate a prosecution.
beating and banishing the sycophant.27 Aristophanes’ creation of a comic exchange around the concept of ho boulomenos and generation of puns from ἑοὐλομαι and its cognates presupposes that his audience was fully conversant with the democratic concept that ‘any man who wishes’ may come forward to prosecute in certain procedures.28 The line of argument adopted by the sycophant in the Plutus highlights the important role of the citizen as voluntary prosecutor (ho boulomenos), as well as juror, within the democratic judicial system.

From within Philocleon’s speech in the agon, the exchanges that precede it and the dialogue between the Good Man and the sycophant in the Plutus, a coherent argument emerges in support of the democratic judicial system. Democratic jury service placed adjudicatory power in the hands of ‘ordinary’ citizens like Philocleon which could be exercised over even ‘the great and the good’, and which was reflected in the role of the courts within the democratic constitution. The courts are considered so central to the democracy that to close the courts is likened to overthrowing the democracy. The democratic judicial system not only enlisted citizens to exercise adjudicatory power as jurors but also entrusted to them the responsibility of prosecuting malefactors in certain cases. But these expositions on the benefits of democratic justice are not the only viewpoint on the democratic judicial system expressed within the Aristophanic world. In reply to his father, Bdelycleon offers a very different evaluation of the democratic judicial system in the second half of the agon in the Wasps.

Bdelycleon inverts Philocleon’s argument and maintains that Philocleon, rather than ruling like a king, is actually a mere slave.29 He states that Philocleon and his fellow jurors are enslaved to the contemporary politicians by economic and rhetorical yokes. Bdelycleon paints the pathetic portrait of the jurors content with their three obols worth of pay in contrast to the politicians who cream off more than nine-tenths of the city’s annual income, supplemented by big, fat bribes extorted from the allies.30 Since the jurors are so intent on watching where the next three obols are coming from, they are blind to the deception that is being practised on them.31 So when their paymasters order, the jurors jump on those the politicians want condemned in the courts.32 In the Knights, Demos is similarly rendered submissive by the subversive influence of jury

27 Ar.Plut.920, 926-58.
28 Puns are generated from λομαι at Ar.Vesp.908, 918 and subsequently at 929, when Carion claims he is ho boulomenos, the one who wishes to strip and beat the sycophant.
30 Ar.Vesp.655-79.
31 Ar.Vesp.695.
32 Ar.Vesp.704-5.
pay.33 The politicians are able further to obscure the reality of the situation by their subtle and misleading rhetoric. Bdelycleon bluntly points out to his father the subterfuge which is been practised on the jurors: ‘for you, father, choose them (the politicians) to rule over you, bamboozled by phraselets.’34 The expression ‘phraselets (τὰ ἰματία)’ was often used to refer to the latest developments in rhetorical skill, of which the politicians were past masters.35 This perception that rhetorical skill can be utilised to subvert justice in the court room dominates the Clouds and has been explored in Chapter 5.

In a series of vivid metaphors, Bdelycleon emphasises the full extent of the slavery of his father and the other jurors under these economic and rhetorical yokes. They are fed a starvation diet by the politicians.36 Their slavery is so great that they allow themselves to be ordered around by an effeminate young man like the prosecutor Chaereas, even though they are a collection of tough, old Persian War veterans.37 Bdelycleon likens the jurors to a servile dog which sets upon someone when ordered, or to olive-pickers, hired hands with minimal social and economic status.38 He argues that pay for jury service, rather than empowering the people against its leaders, actually enslaves them and allows the elite to rule (αὐχεῖν) over them.39 As he concludes, Bdelycleon paints an alternative picture of citizen ease, where twenty thousand poor citizens are feasted by the allies in a lavish style worthy of Marathon.40 It has been often noted that Bdelycleon’s statistics, both of the income coming into Athens from the Empire and the number of allies, probably are grossly inflated.41 But his argumentation is sharp, he picks up on Philocleon’s central point - the power of jurors - inverts it, stating that jurors are slaves and supports this with impressive if misleading statistics, vivid contrasts between poor jurors and rich politicians and sharp metaphors.42

33 See p.43. In the Ecclesiazusae, assembly pay is portrayed as similarly having a degrading effect on political debate (Ar.Ecl.183-88).
34 ὅπερ, δέ πατέρ, αὐτοὺς ἀρχεῖν αἱρεῖ σαυτοῦ τούτος τοῖς ἰματίαις περιπεφθεὶς’ (Ar.Vesp.667-8). See also Ar.Vesp.720-1 with MacDowell (1971a) 232.
35 On τὰ ἰματία, see Ar.Ach.444, 447, Eq.216, Nub.943, Pax 534 and MacDowell (1971a) 223.
36 Ar.Vesp.673-4, 701-2.
40 Ar.Vesp.706-11.
41 See MacDowell (1971a) 222, 228-9, Sommerstein (1983) 197-8, 201, HCT 3.503-4 contra ATL 3.344-5. For other examples of arguments based on a grasp of Athenian finances, see [Xen.]Ath.Pol.1.16-17 (financial advantages of imperial jurisdiction), Thuc.2.13 (Athenian resources at the beginning of the Peloponnesian War), Lys.30.17-23 (the cost to the state of the excess sacrifices which Nicomachus wrote up). For further details, see Kallet-Marx (1994), especially 246-7.
42 See MacDowell (1971a) 219-9 and Reckford (1987) 247-8 on the rhetorical and argumentative qualities of Bdelycleon’s speech.
Moving beyond the agon to the rest of the *Wasps*, and indeed to other plays, the on-stage portrayal of the jurors adds to the criticisms which Bdelycleon has raised about the democratic judicial system. Philocleon is afflicted with a sickness: ‘he is a *phileliast*, like no other man, he is in love with this, this judging business’; a malady which has also struck his choral colleagues. As the play progresses, the audience learn that Philocleon is addicted to jury-service partly because it enables him to express his nature. This is clearly stated in Bdelycleon’s prayer to Apollo, in which he asks the god to deliver Philocleon from his nature through the purificatory rite of the domestic jury court:

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\text{ὁ δέσποτ’ ἀναξ γείτων Ἄγγειος, τοῦ μοῦ προθύρου προπύλαιε, δέξαι τελετήν καίνην, ὃ ναξ, ἢν τῷ πατρὶ καινοτομοῦμεν.}
\]

\[
\text{παῦσών τ’ αὐτοῦ τοῦ τὸ λίαν στρωμνόν και πρίνυν ήθος, ἀντί αἰράσων μέλιτὸς σμικρόν τῷ θυμιδίῳ παραμείζας.}
\]

\[
\text{ηῆδη δ’ εἶναι τοῖς ἀνθρώποις ἠπιον αὐτῶν, τοὺς φεύγωντάς τ’ ἔλεεειν μᾶλλον τῶν γραμμαμένων, κάπιδακρύειν ἀντιβολούντων, καὶ παυάσαμενον τῆς δυσκολίας ἀπὸ τῆς ὀργῆς τὴν ἀκαλήφην ἀφελέσθαι.}
\]

O Lord, King and neighbour Agyieus, the god standing before my door, accept a new rite, O King, which we are instituting anew for my father. Stop this excessively harsh and tough-as-holm-oak nature of his, intermingling a little honey into his little soul, just like in condensed wine. May he from now on be gentle with men, may he take pity on the defendants rather than the prosecutors and may he weep when they supplicate him and may his discontentedness cease and may the nettle be taken out of his anger.

In his prayer, Bdelycleon asks Apollo to use the purificatory rite of the domestic jury court to transform Philocleon’s harsh and vindictive nature into one which shows mercy to defendants in court. In other passages, Philocleon’s nature is described using phrases

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44 ‘φιλιπλαστῆς ἐστιν ὃς οὔδεις ἀνυπ’ ἐρῶ τοὺ τοῦ δικαίειν’ (Ar. Vesp. 88-9). The audience rapidly learn that the chorus share Philocleon’s passion in their opening speech (240-4, 258, 266-70, 277-89).
45 In the agon, Philocleon gives further reasons why he is passionate about jury-service: the power it gives to an ordinary man such as himself (see above), the entertainment he receives (Ar. Vesp. 579-82, 566-7) and the economic importance and self-sufficiency his jury pay wins for him in his own home (605-18).
46 On Philocleon’s *phileliastic* sickness (*nosos*) and the purificatory rite (*telete*) of the domestic jury court, see Chapter 6.2 for further details.
47 Ar. Vesp. 875-84 (tr. Sommerstein, adapted).
such as ‘discontented (δύσκολος), the most stinging (δριμύτατος),
harsh (χαλεπός)’, one who bites (δάκνων) defendants and is characterised by ‘anger
(όργη)’.\(^{48}\) Similarly the chorus are described as ‘quick to anger (δέξθυμος) and
discontented (δύσκολος)’, they ‘look as sharp as mustard (βλεπόντων κάρδαμο)’
and have a ‘sharp spirit (δέξινης), bile (κολῇ), passion (μένος) and anger (όργη)’.\(^{49}\)
The chorus’ caustic character is epitomised in their wasp-like persona, which is
foreshadowed before their entry, unveiled when Bdelycleon refuses to release
Philocleon and expounded in detail during the parabasis.\(^{50}\) Within the judicial context,
Philocleon and the chorus’ caustic, wasp-like nature manifests itself in a predilection to
convict defendants.\(^{51}\) Philocleon possesses a pathological horror of acquitting a
defendant on account of a Delphic oracle which promised instant retribution should he
ever display leniency in the court room.\(^{52}\) Throughout the domestic jury court,
Philocleon persistently prejudices the hound Labes as guilty, regardless of his son’s
admonitions to the contrary.\(^{53}\) Although overcome by emotion at Labes’ yelping
puppies, Philocleon refuses to acquit Labes and therefore must be tricked into voting
against his natural instincts, an action which precipitates a total collapse.\(^{54}\)
Philocleon’s caustic nature not only manifests itself in a predilection to convict, but also a delight in
assessing the convicted defendant for the severest penalty.\(^{55}\) When reading the
summons against Labes, Bdelycleon announces the penalty proposed by timesis as a
fig-wood collar. Philocleon immediately demands a dog’s death in its stead.\(^{56}\)
Throughout the Wasps, Philocleon and the juror-chorus are presented as possessing a
caucustic, wasp-like temperament, which, in the jury court, produces in them a passion for
convicting defendants and assessing them for the harshest penalty. In a further three
plays by Aristophanes, Athenian jurors are similarly characterised as ‘most vexatious
(άργυλευτάτος), acrid (δριμύς), discontented (δύσκολος), and hard (σκληρός)’,
and so ‘bite (δάκνων)’ with their ballots and readily savage those whom the politicians

\(^{48}\) δύσκολος: \(\text{Ar.Vesp.106}, 883, 942; \delta\text{μύτατος: 146, 277; χαλεπός: 942; δάκνων: 778; ορνή: 574, 884.}\)
\(^{50}\) \(\text{Ar.Vesp.223-7, 403-59, 1071-1121. At Plut.561-2, Poverty describes her followers as ‘lean, wasp-like and destroying their enemies (σχενοι και σφηκώδεις και τοις ἔχθροις ἄνιθροι’), where the wasp metaphor is used to describe a harsh disposition without any reference to jury-service.}\)
\(^{51}\) Philocleon: \(\text{Ar.Vesp.155-60, 278-80, 278-85, 340, 389-93, 880-82; Chorus: 240-4, 421, 1113.}\)
\(^{52}\) \(\text{Ar.Vesp.158-60.}\)
\(^{53}\) Philocleon prejudices Labes: \(\text{Ar.Vesp.893, 900-1, 912-4, 920-1, 933, 941, 953, 960-1, 966; Bdelycleon’s admonitions: 919-20, 943.}\)
\(^{54}\) \(\text{Ar.Vesp.982-1002.}\)
\(^{55}\) \(\text{Ar.Vesp.106-8, 847, 850. On the fifth century procedure for timesis, referred to in these passages, see MacDowell (1971a) 146, (1972) 254. On the fourth century procedure, see Ath.Pol.69.2 with Harrison (1968-71) 2.166, Rhodes (1981) 734.}\)
\(^{56}\) \(\text{Ar.Vesp.897-8 with MacDowell (1971a) 251 and Sommerstein (1983) 210 on the puns intended from these references.}\)
order them to attack. Within the Aristophanic world, Athenian democratic juries are presented as possessing an excessively caustic nature which results in the frequent conviction and vicious sentencing of defendants.

The final on-stage criticism which is levelled against the democratic judicial system is its nurturing of sycophantic activity. As has been described above, the sycophant is universally condemned and censured for his use of the democratic judicial system. Given that the sycophant is presented as a predominately Athenian phenomenon whose natural habitat is the democratic jury court, it is strongly implied that the sycophant is a product of the democratic judicial system. Indeed the sycophant in the *Plutus* goes as far as to argue that the democratic judicial system is dependent on his professional activities, to which the Good Man observes that the *polis* itself is at fault for choosing such a 'worthless champion (πονηρός προστάτης)' By implication, the democratic judicial system is criticised for providing a breeding and feeding ground for the pestilent sycophant.

In conclusion, a number of criticisms are lodged against the democratic judicial system within the Aristophanic world. In the agon of the *Wasps*, Bdelycleon argues that the jury system actually enslaves rather than empowers his father, as the politicians manipulate the jurors with economic and rhetorical tools while they themselves ride the gravy train of the empire. In the *Wasps* and in other plays, the democratic juries are presented as possessing an unnatural disposition towards convicting defendants and passing unduly harsh sentences. Finally the democratic judicial system is seen as the breeding and feeding ground for the meddlesome and interfering sycophant. By the end of the agon in the *Wasps*, the chorus have been won over by Bdelycleon's sharp argumentation and his father admits defeat while attempting to fall on his sword in a mock heroic manner. Although Bdelycleon is the victor of the agon with his view that democratic jury service is equivalent to slavery and the somewhat caustic image of wasp-like jurors predominates throughout the play, it is more problematic to interpret the implications of both this victory and image firstly in the wider context of the play (Chapter 6.2) and secondly beyond the theatre in the off-stage world of debate and discussion (Chapter 6.3).

6.2 The Debate on the Democratic Judicial System and Dramatic Context

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57 In the *Acharnians*, see p.124n.1, in the *Knights*, see Eq.974-84 and in the *Peace*, see Pax 606-7, 635-47 and p.47n.74.
58 See pp.48-51.
59 See p.38.
60 See pp.49-50.
61 Ar.Vesp.725-59.
Although it is possible to identify arguments both for and against the democratic judicial system in the Aristophanic world, it is essential to locate these arguments within the dramatic momentum of the play in order to assess the significance of these arguments. On the basis of the agon’s function within the dramatic momentum of the *Wasps*, I would like to suggest three reasons why the agon cannot be interpreted as a committed statement either for or against the democratic judicial system. Firstly, the dramatic momentum of the play demands that Bdelycleon should win the contest, as the agon is one of the two ‘cures’ that Bdelycleon uses to wean his father off jury-service. The dramatic momentum of the *Wasps* is provided by Bdelycleon’s attempts to heal his father from his jury service mania. In the opening scene of the play, the two slaves inform the audience about the phileliastic ‘illness (νόος)’ which has afflicted Philocleon. In the past, Bdelycleon has administered a variety of ‘purificatory rites (τελετή)’ to Philocleon, including persuasion, Corybantic rituals and a trip to the sanctuary of Asclepius, each of which has been singularly unsuccessful. Consequently he has resorted to force, incarcerating his recalcitrant father in the house, from which Philocleon launches a number of abortive escape attempts. As the agon starts, the dramatic momentum enters its critical phase: Bdelycleon applies two new ‘rites’ to his father. The first ‘rite’ is the agon, within which Bdelycleon destroys his father’s arguments in favour of the democratic judicial system. The second ‘rite’ is the creation of the domestic jury court, within which Philocleon can try cases in the comfort of his home. In this court, Bdelycleon tricks his father into the unimaginable activity of acquitting a defendant. At the beginning of this scene, Bdelycleon openly prays to Apollo that this new, purificatory rite (τελετή) will cure his father of his juror’s vicious temper, thus linking the teletai of the agon and the domestic jury court with his previous, unsuccessful teletai of persuasion, Corybantic rites, etc. Although Philocleon laments at the end of the agon and the domestic jury court scene his impending loss of jury-service, these two ‘rites’ cure Philocleon of his ‘sickness’. The healed Philocleon spurns and scoffs at the pursuit of judicial activity, stating that such activity is more suited to his thirty-going-on-sixty son. Therefore it is primarily the

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62 See Chapter 2 for a detailed discussion of this methodology.
63 This point is frequently made by commentators, see MacDowell (1971a) 4-7, Reckford (1987) 224-5, Cartledge (1990a) 52. Bowie (1993) 78-101 analyses the play in ritual terms, commenting on the transition rituals that Philocleon undergoes in the course of the play.
64 Ar.Vesp.69-135 and see p.131. On the use of νόος, see 71, 76, 80, 87, 114, 651.
65 These unsuccessful ‘cures’ are described as teletai by Xanthias at Ar.Vesp.121. See Bowie (1993) 88-93, Sidwell (1989) and (1990) on the teletai.
66 Ar.Vesp.136-511.
68 Ar.Vesp.764-1008.
69 Ar.Vesp.875-90. For the text see p.131.
71 Ar.Vesp.1332-41, 1406-41. On Bdelycleon as a litigant, see 1367.
dramatic momentum of the *Wasps* rather than the relative merits of the arguments advanced for and against the democratic judicial system that determines the outcome of the agon. Consequently, it is difficult to place great significance on the fact that the viewpoint which is hostile to the democratic judicial system is victorious by the end of the agon.

Secondly, Bdelycleon’s success in the agon is not sustained to the end of the play but is undercut by subsequent developments in the plot. Having persuaded his father to abandon his devotion to the court room through these two ‘rites’, Bdelycleon educates his father in symposium etiquette and leads him off to dine at Philoctemon’s. But Philocleon’s introduction to high culture ends in disaster as he overthrows the elegant culture of the symposium with base coarseness and abuse. The play ends with Philocleon rejuvenated, enjoying a celebration of food, wine and sex, while he violently insults his detractors with impunity and leaves the stage in an exuberant dance. Although Bdelycleon succeeds in weaning Philocleon off jury service, it is a questionable victory, as the old man rebels against his education in gentrification to revel in a classically comic indulgence of the senses. Reckford and Hubbard have commented on the connections that are established in the play between Bdelycleon’s attempts to cure of his father and the comic poet’s attempts to cure the city of its judicial mania. As Bdelycleon begins his speech in the agon, through which he hopes to cure Philocleon of his illness (νόσος), he observes that this illness (νόσος) is a polis-wide problem: ‘it is a hard task, calling for formidable intelligence above the level found in comedians, to cure a long-standing malady (νόσος) that is innate in this city.’ However if Bdelycleon’s attempt to cure his father is subsequently exposed as flawed, this undermines the comic playwright’s claims that his play will have a healing effect on his fellow-citizens’ judicial mania.

Thirdly, the arguments advanced by both Philocleon and Bdelycleon within the agon itself are never fully developed or sustained. They either escape into the exuberant atmosphere of Aristophanic fantasy or hide behind democratic platitudes if they come close to directly criticising the democratic judicial system. Philocleon’s vigorous picture of juristic power carries the jurors’ self-assertion to fantastical limits: it grants them the thrill of looking at young men’s genitals at their *dokimasia*, it entitles them to

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72 Ar.Vesp.1122-1294.
73 Ar.Vesp.1299-1325.
76 ‘χαλεπόν μὲν καὶ δειπνής γνώμης καὶ μείζονος ἡ τι τρυγωδίας ἱδόσσωσι νόσον ἀρχαίαν ἐν τῇ πόλει ἐντετοκυῖαν’ (Ar.Vesp.650-1 (tr. Sommerstein)).
recitations on demand from tragedians and flautists and allows them to completely disregard the terms of a will.\(^{77}\) Bdelycleon’s alternative balance sheet of the Athenian Empire contemplates the culinary consumption if the Empire was run for the benefit of the poor citizens: ‘twenty thousand of the common folk would be living in abundance of hare’s meat, of crowns of all kinds, of beestings fresh and boiled, enjoying a life worthy of this land and the trophy at Marathon.’\(^{78}\) It is a typically Aristophanic fantasy of food, reminiscent of Dicaeopolis’ preparation for the Priest of Dionysus’ party or Trygaeus’ description of the cuisine of peace.\(^{79}\) In his sustained attack on the democratic judicial system, Bdelycleon never attacks either the system itself or the demos, the blame is laid at the door of the politicians. This is in line with democratic rhetoric, which often attributed miscarriages of justice to the litigant who advised the jurors, rather than to the jurors themselves.\(^{80}\) Given that Aristophanes is performing at a festival sponsored by the demos for the demos, this is hardly surprising. Although arguments against the democratic judicial system triumph in the agon, the location of the agon within the dramatic momentum of the play makes it difficult read the Wasps as a sustained polemic against the democratic judicial system.

The image of the Athenian juror-as-wasp is a consistent feature of the Aristophanic world and carries with it a certain ‘comic logic’: the caustic nature of the wasp-juror manifests itself in a readiness to condemn and to pass harsh sentence.\(^{81}\) But even within the on-stage world, it is difficult to read this image as a sustained critique of democratic juries. In the parabasis of the Wasps, the connections between a caustic nature, military activity, jury-service, old age, youth, wasp-like and drone-like identities are controlled by the verbal and visual inventiveness which the coupling of these associations offers rather than by a serious critique of the democratic judicial system.\(^{82}\) For example, the chorus are presented as wasp-like both in youth and old age. In the days of their youth, when the Mede invaded, their ‘sharp anger (\(\thetaυμός \ θέμυτος\))’ stirred them up to attack the invading Persians, stinging them through their baggy trousers.\(^{83}\) In their old age, the same caustic nature is now expressed in the jury courts, where ‘we

\(^{77}\) Ar.Vesp.578-86.

\(^{78}\) \(\Delta\chiο\ ιμοιοθεί: \ ού\ τῶν δημοτικῶν ἔξων ἐν πάσι λαγῶς καὶ στεφάνωσιν παντοδαποῖσιν καὶ πυὸ καὶ πυρότε, ἀξιὰ τῆς γῆς ἀπελαύνοτες καὶ τοῦ ναραθῶν τροπαίου’ (Ar.Vesp.709-11 (tr. Sommerstein)).

\(^{79}\) Ar.Ach.1085-1142, Pax 999-1007.


\(^{81}\) See pp.131-3.


\(^{83}\) Ar.Vesp.1071-1101. See Austin (1973) 134 for the blending of different military campaigns, particularly Marathon, into this one account of the conflict between the Athenian wasps and the Mede. During the period of their martial youth, it is made clear that the chorus displayed no interest in jury service (1094-6).
sting all men, and so provide for ourselves a livelihood'. The chorus are consistently presented as possessing a wasp-like nature in the parabasis, stinging Persians in their youth and defendants in their old age. These comic associations are not developed into a reasoned model, where old age and enfeeblement generates an embittered, wasp-like nature, which then kindles a passion for the jury-service. Upon the jury benches are to be found not only aged, wasp-like veterans who fought the Mede and built the empire, but young, sting-less ‘drones (κνηφείς)’, who made no military contribution to the creation of the empire. Therefore they are considered to be undeserving of the jury-pay which is derived from imperial tribute. Again the comic images of wasp-like, veteran, old jurors and drone-like, non-military young men, are not developed into a sustained critique of democratic juries. There is a certain ‘comic logic’ to the Aristophanic image of the Athenian juror as an aged, veteran from the early days of the Empire with a vindictive personality who delights in punishing defendants. On the other hand, this portrayal of the wasp-juror is primarily controlled by the verbal and visual images that can be generated from it, rather than a reasoned analysis of the democratic judicial system. If it is not possible to understand the image of wasp-juror as a sustained critique of the democratic judicial system, we are still left with the issue as to why Aristophanes chose consistently to present Athenian jurors as a collection of caustic men who enjoyed nothing better than a day on the jury benches, convicting every defendant that appeared before them.

From the position of the agon within the dramatic momentum of the play and the nature of wasp-juror image, I do not think it is possible to interpret the Wasps as a sustained critique of the democratic judicial system. Aristophanes deftly serves up before his audience one comic image after another, where the content of these images is primarily controlled by their comic potential, rather than by the development of a reasoned analysis of the democratic judicial system. As I have suggested before, Aristophanes is committed to the entertainment rather than the education of his audience. On the other hand, the playwright’s repeated focusing on these images may reflect something of his audience’s preoccupations and concerns. Reckford has noted that the formalised structure of the agon facilitated the discussion of serious issues in a safe and contained manner.

84 ‘πάντα γὰρ κεντούμεν ἀνδρὰ κάκται τοίχεοι βίον’ (Ar.Vesp.1113 and generally 1102-13).
85 Dover (1972) 130 envisages this kind of reasoned model: ‘the ferocity of the old men and their unwillingness to forgo the pleasure of convicting a defendant are the nasty kind of compensation for the inferior status that necessarily follows physical enfeeblement.’ On the problems of accepting the Aristophanic image of all jurors as old, see Crichton (1991-3).
86 Ar.Vesp.114-21. They are young because they are described as gulping down pay, the characteristic of the young at 1100-1. Reckford (1991) 125 similarly draws a connection between the young and the drones.
87 I have made some suggestions in answer to this question in Chapter 6.3.
subject matter may be primarily comic, the topics themselves are some of the most important issues in the age of Aristophanes. This suggests that the debate about the democratic judicial system may have been of more than comic interest in the late fifth century. Secondly, although some elements of the agon are fictitious, others are factual. For example, we have several other references to litigants supplicating jurors as they enter court and the ploy of introducing the defendant's blubbering children into the courtroom is so commonplace that it is mocked. On the basis of evidence from beyond the theatre, it is my contention that the contradictory arguments on-stage reflect and are informed by an off-stage debate about the democratic judicial system.

6.3 The Debate on the Democratic Judicial System Beyond the Theatre

The nature of the discussion on democracy, let alone on the democratic judicial system, in the off-stage sources is at best fragmentary, as has been commented on above. Given that the majority of these contemporary discussions occur within a literary context, the resultant analysis of democracy is of a broad nature. At no point are the authors engaging in an ordered and systematic analysis of democracy along the lines of the Athenaion Politeia. Consequently observations about the democratic justice are of a somewhat scattered and piecemeal nature. This being the case, there are still marked similarities between the analysis of democracy in late fifth-century literary sources and the arguments that are advanced for and against the democratic judicial system in the Wasps. I will begin by focusing on the arguments that were advanced in favour of democracy in general and its judicial system in particular, before moving onto the responses that democracy provoked from its critics.

In his analysis of the fifth-century debate on democracy, Raaflaub suggests that two questions were of central importance: 'that of the quality of the leaders and that of the competence of the masses.' With regard to this second question, the central tenet of democratic thought was the intrinsic right of the demos to be sovereign, bringing freedom to each citizen. With regard to leadership, its proponents argued that the democracy selected men with the appropriate skills to fill positions requiring specialist

89 See Ussher (1979) 8 for a list of agons in Aristophanes. In the Knights Aristophanes tackles the power and influence of politicians, in the Clouds the impact of rhetorical education, in the Lysistrata divisions within the city, in the Frogs the role of tragedy in society, in the Ecclesiazusae, the lack of clear policy and direction in the post-Peloponnesian War era.


91 See p.124.

92 See particularly Raaflaub’s discussion of the constitutional debates in Herodotus and Euripides’ Supplices (Raaflaub 1990) 41-46.

93 Raaflaub (1990) 69-70.

94 For the democratic theory of the sovereignty of the demos, see Eur. Suppl. 352, 406, 443; Thuc. 6.39.1; Hdt. 3.80.6; [Xen.] Ath. Pol. 1.2.8.
knowledge, while entrusting overall decision making to the judgement of the *demos*, which cumulatively made competent decisions. In the constitutional debate between Theseus and the Theban Herald in Euripides’ *Supplices*, the intrinsic right of the *demos* to rule is celebrated. Theseus remembers how he ‘set the *demos* in sole rule (monarchia), setting free the city with equal franchise.’ The sovereignty of the *demos* which Theseus proclaims finds echoes in Philocleon’s exaltation of his power as a juror: ‘I am ruling over all.’ The ‘Old Oligarch’ makes a stronger connection between the sovereignty of the *demos* and the democratic jury courts in his account of the judicial relationship between Athens and her allies.

The *demos* of the Athenians seems also to have decided badly in this, that they compel their allies to sail to Athens for trials. Yet they argue in response that this is a good thing for the *demos* of the Athenians: firstly, that from the judicial deposits they receive pay through the year. By judging at home without sailing out in ships, they control the allied cities and save those of the *demos*, while

See Xen.*[Ath.Pol.]* 1.3, Pl.*Prot.*319b-d, 322d-23a, Thuc.6.39.1, Hdt.3.80.6 with Raafaub (1990) 65 and Yunis (1996) 42-3, 48-50. The popular myth about *dusboulia* in Athens recounts that when Athens was founded, Poseidon cursed the city to make bad decisions, but Athena added that the Athenians would always be successful in spite of this (Ar.*Nub.*587, EcclA73-5 and the scholia on the *Clouds* with Sommerstein (1982) 192).

95 ‘καί γάρ κατέστη· αὐτῶν ἐς μοναρχίαν ἔλευσερόσος τήν· ἱσώσφην πόλιν’ (Eur.*Suppl.*352) with Collard (1975) 1.29, 2.198-9 on contemporary political thought in the archaic world of tragedy and also pp.18-9 above. See also Eur.*Suppl.*406: ‘the *demos* is lord (δήμος δ' ἀνάσας)’; Eur.*Suppl.*443: ‘indeed, where the *demos* is master of the land...’(καὶ μήν ἔστω γε δήμος αὐθεντης χειρὸς...)’


97 On the ‘Old Oligarch’ see p.59n.4.
destroying those opposed to them in the courts. If each of the allies had trials at
home, on the grounds of their annoyance with the Athenians, they would destroy
these of them who were above all friends of the Athenian demos.
(A section then follows on the economic advantages that Athenian citizens
receive when allies come to Athens for trial e.g. the renting of rooms and animals.)
In addition to these things, if the allies were not going for trials, they would only
honour those Athenians who sail out - the generals, the trierarchs and
ambassadors. But as it is now, each one of the allies is compelled to flatter the
demos of the Athenians, knowing that the person coming to Athens must submit
to a trial and receive punishment from no others but from the demos, which is the
law at Athens. And he is compelled to supplicate in the jury courts and seize the
hand of one of the jurors who is entering the court. So through this, the allies
have become increasingly slaves to the demos of the Athenians.\textsuperscript{99}

In support of the demos' decision to compel the allies to sail to Athens for trials, the
'Old Oligarch' argues that this policy enabled the Athenian demos to control its allies.
This could only be the case because, as the allies come to realise, they 'must submit to a
trial and receive punishment from no others but from the demos, which is the law at
Athens.' Furthermore, the 'Old Oligarch' argues that the Athenian masses used imperial
judicial policy to exert their power over the allied elites as well as protecting their allied
friends. In the preceding section, which is discussed below, he makes this point with a
greater clarity and with a more pronounced anti-democratic ideological spin.\textsuperscript{100} There is
a striking similarity between the above analysis by the 'Old Oligarch' and the argument
advanced by Philocleon in the agon of the Wasps. In both accounts, the jury courts are
presented as vehicles through which the Athenian demos exercises sovereignty.
Furthermore both Philocleon and the 'Old Oligarch' focus on the power of mass,
Athenian juries over members of the elite. Interestingly both use the same image of the
suppliant defendant pleading with the jurors and taking them by the hand to
demonstrate the power of the demos exercised in the jury court. Finally, the 'Old
Oligarch' notes that it is the large size of the democratic juries which makes bribery less
easy and facilitates justice.\textsuperscript{101} This connection between the sovereignty of the demos
and the jury courts is commented on in a more oblique manner in the constitutional
debates. The democratic equality of access to law (isonomia) is contrasted to tyranny,
which is characterised by the tyrant's arbitrary execution of justice according to his own
whim and insecurities.\textsuperscript{102}

\textsuperscript{99} [Xen.] \textit{Ath.Pol.} 1.16, 18.
\textsuperscript{100} See p.144.
\textsuperscript{101} [Xen.] \textit{Ath.Pol.} 3.7.
\textsuperscript{102} Hdt. 3.80, \textit{Eur.Supp.} 430-55. On democratic isonomia, see Vlastos (1953) particularly 347-66, who
defines isonomia as 'political equality maintained through the law and promoted by the law.' See also
pp. 18-9 on the constitutional debates in the construction of Athenian civic ideology.
Philocleon’s observation regarding the unaccountability of the jury courts is a constitutional reality which litigants acknowledge in their pleading before the jurors.\(^{103}\) For example a litigant states: ‘all will know that...it is necessary to fear your (the jurors’) vote, for this is the greatest authority over all things in the city.’\(^{104}\) The fourth century tradition on Solon’s reforms emphasises the importance of the provision for *ho boulomenos* to prosecute in the democratisation of the judicial system, but we do not know how far back this tradition goes.\(^{105}\) However, the speaker for whom Lysias *Against the Corn Dealers* adopts the identical phrase to that of the sycophant in the *Plutus*. The speaker uses this phrase to justify his bringing a prosecution which potentially could be considered sycophantic.\(^{106}\) In a meeting of the *boule*, the speaker had been accused of supporting the highly unpopular corn dealers because he recommended that their case be passed to the jury court, rather than be transferred to the Eleven for summary execution. In order to quash these allegations, he himself accused the corn dealers when their case subsequently came before the *boule* and concludes: ‘I made it clear to all that I had not spoken on behalf these men (i.e. to assist the corn dealers), but that I had come to the help of the established laws’.\(^{107}\) Both Lysias’ client and the sycophant in the *Plutus* are aware of the role of *ho boulomenos* in ‘coming to the help of the established laws’, i.e. to prosecute. In conclusion, Philocleon’s central thesis, that jury service makes an old man lord of all, is echoed in the broad ideological statements of the *demos’ sovereignty in the Supplices* and is closely mirrored in the more focused analysis of the democratic judicial system in the ‘Old Oligarch’. Similarly, arguments from the *Wasps* about the unaccountability of the jury courts and the role of *ho boulomenos* are paralleled by comments made by litigants in the early fourth-century.


\(^{104}\) ‘πόντες γὰρ εἴσοαται ὅτι οὐδὲν γὰρ αὐτή ἡ πάντων τῶν ἐν τῇ πόλει κυριώτατη’ (Lys.1.36). For other examples from Lysias, see 6.13: (συγκράτορός ὁντες), 14.4 (the jurors’ verdict on this case is so significant that they will be acting as nomothetai - in fact a rhetorical exaggeration). In the speeches that Antiphon wrote for homicide trials, speakers understandably show an even greater awareness of the lack of appeal, although these cases were written for delivery before the Areopagus and not the jury courts (Ant.2.2.13, 5.91, 94).


\(^{106}\) The speech can be dated to 386 (Gernet and Bizos (1974-89) 2.83-4). For the suggestion that the prosecution is considered sycophantic, see Lys.22.1, with Seager (1966) 180 (metics as easy targets to prosecute), Edwards and Usher (1985) 258-9. The legal complexities of this speech are analysed by Todd (1993) 316-20, where he summarises previous studies.

\(^{107}\) ‘καὶ τοῖς νόμοις τοῖς κειμένοις ἐμοί, καὶ τοῖς γραμματείας τοῖς δικαστέων ἐμοί, ἀλλὰ τοῖς νόμοις τοῖς κειμένοις ἐμοί, καὶ τοῖς γραμματείας τοῖς δικαστέων ἐμοί’ (Lys.22.3). A slightly different twist is put on this phrase by the prosecutor in the *Against Theomnestus*. In his concluding words, he appeals to the jurors to: ‘come to the help of both me and my father and the established laws which you have sworn (καὶ ἐμοί καὶ τῷ πατρὶ βοηθήσατε καὶ τοῖς νόμοις τοῖς κειμένοις καὶ τοῖς ὥρκοις σε ὁμωμολογεῖσθε’ (Lys.10.32)). The *Against Theomnestus* can be dated to 384/3 (Gernet and Bizos (1974-89) 1.142), on the speech, see Edwards and Usher (1985) 229-30, Todd (1993) 258-62.
If the novel phenomenon of the democracy won praise from some quarters, it also attracted criticism from others, particularly from those with an oligarchic perspective. Again working with Raaflaub’s observation that the debate on democracy focused on ‘the quality of the leaders...and the competence of the masses’, oligarchic thinkers were horrified that the *demos* was entrusted with power, given that they looked on the *demos* as nothing more than an uneducated mob. They were particularly contemptuous of entrusting power to the masses because they considered their weak and uneducated minds were easily manipulated by clever and rhetorically skilful speakers. It is immediately possible to see connections between these sentiments and the arguments advanced by Bdelycleon in the agon of the *Wasps*. Chapter 5 has examined in detail the perception that rhetorical resources could be utilised in the democratic jury courts to pervert the course of justice. The corrupting and demeaning influence of pay is commented on in passing by the ‘Old Oligarch,’ and finds its fullest expression in the prejudices of fourth century writers.

For example Plato’s Socrates in the *Gorgias* observes that: ‘For I, for my part, hear this, that Pericles made the Athenians idle and cowardly and babbling and avaricious, by first establishing pay.’ The speaker for whom Lysias wrote the supplementary prosecution speech *Against Epicrates and his Fellow Envoys* attributes an interesting observation to his opponent on the relationship between jury pay and conviction. He begins his speech with the following comment about Epicrates’ previous behaviour as a prosecutor:

> Κατηγορηται μὲν, ὃ ἄνδρες Ἀθηναῖοι, ἔπικράτους ἱκανά [καὶ τῶν συμπρεσβευτῶν ἐνθυμεῖσθαι δὲ χρῆ ὅτι πολλάκις ἥκουσατε τούτων λεγόντων, ὅποτε Βούλησιν τίνα ἀδίκας ἀπολέσαι, ὅτι, εἰ μὴ καταψηφιεῖσθε ὃς αὐτοὶ κελεύοντο, ἐπιλείψει ὑμᾶς ἢ μισθοφορά.

Sufficient accusations have been made, men of Athens, against Epicrates and his fellow ambassadors. Furthermore, it is necessary for you to take to heart that you often heard these men say, whenever they wanted to destroy someone unjustly, that if you did not convict as they ordered, pay would not be forthcoming to you.

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108 See p.138 for Raaflaub’s observation. For oligarchic horror and disgust at the sovereignty of the *demos*, see Eur.Suppl.417-25; Hdt.3.81.2; Xen.[*Ath.Pol.]*1.5, 9. See Raaflaub (1990) and Yunis (1996) 36-50 for a more detailed discussion of these sources.

109 See Eur.Suppl.411-16, Thuc.3.37.4, 38, 40.2-3 with Raaflaub (1990) 64-7. Yunis (1996) 39-57 analyses the criticisms that the *demos* neither possessed sufficient understanding nor leisure to make good decisions and so consequently was little more than a mob to be manipulated by skilful speakers.

110 [Xen.][*Ath.Pol.]*1.3, 13; *Dissoi Logoi* (DK 83.7); Isoc.7.54, 8.130 (see further Chapter 7.4); *Ath.Pol.*27.4.

111 ‘ταύτα γάρ ἔγγυε ἅγια, περικλῆς πεποιηκέναι Ἀθηναίοις ἀργοὺς καὶ δειλοὺς καὶ λάλους καὶ φιλαδύρους, εἰς μισθοφορίαν πρῶτον καταστήματα’ (*Pl.Gorg.*515ε). It is almost certain that the pay referred to here is jury pay, which was first introduced by Pericles. See [*Ath.Pol.*27.3-4 and Dodds (1959) 356-7.

112 Lys.27.1. The speech can be dated to 395-86 (Gernet and Bizos (1974-89) 2.138).
Although this statement about the connection between conviction and jury pay closely mirrors arguments advanced both by Bdelycleon in the *Wasps* and the Sausage-Seller in the *Knights*, the judicial context of the speech must be taken into consideration. In the remainder of his speech, the speaker paints Epicrates as an utterly corrupt public figure bent on his own self aggrandisement at the expense of the city. Therefore the speaker's attribution of the above statement to Epicrates must be seen as the opening brush stroke, complete with sycophantic undertones, which is then developed in his subsequent destructive portrait of Epicrates' venality. In a number of sources from beyond the theatre, the democratic provision of jury pay was criticised on the grounds that it encouraged jurors to convict wealthy defendants and so line the state coffers from which their pay was drawn. The clearest off-stage evidence for the opinion that the democratic judicial system spawned sycophants comes from the judicial reforms introduced by the oligarchs in 403. The Thirty commenced their regime by initiating measures against sycophants, which were greeted with widespread popular support. Again it has been possible to trace the arguments advanced on-stage against the democratic judicial system in the world beyond the theatre. The critics of the democracy questioned the *demos'* ability to make judicial decisions on the grounds that it could be manipulated by rhetorically skilful politicians and convict defendants in order to secure jury-pay, while the system itself provided a forum for sycophantic prosecutions.

Finally I would like to explore the associations that the on-stage image of the wasp-like juror may have conjured up within the minds of Aristophanes' audience. As has been described above, it is difficult to push this image beyond its comic logic to the level of a sustained critique of the democratic judicial system. Furthermore, there is no evidence from the Attic Orators that litigants either appealed to or protested about a consistently vindictive spirit within democratic juries which delighted in the convicting and harsh sentencing of defendants. It is possible that this somewhat negative image

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113 For similar sentiments in the *Knights*, see *Ar.Eq.*1357-60, quoted on p.45.
114 See Lys.27 *passim*, particularly the central section of §§9-11 describing the corrupt enrichment practised by Epicrates and his colleagues during the Corinthian War.
115 E.g. §2, where the speaker maintains that Epicrates brought prosecutions to extort money, which then flows into his central allegation of §§3-7, that Epicrates has accepted bribes while in office.
116 A very similar connection between financial motivations and prosecutions (in the *boule* in this instance) is made by the prosecutor of Nicomachus (Lys.30.22).
117 These reforms will be discussed further in Chapter 7.2.
118 See pp.136-7.
119 Given the adversarial and adjudicatory context within which the Attic Orators operated, the nature of a litigant's appeal to the jurors is nearly always predetermined by the requirements of the case he is arguing (see Chapter 4.3 above on this point). Consequently defendants will usually appeal to the jurors' sense of pity (see Dover (1974) 195-201, Carey (1994c) 26-7, 33 for examples), while prosecutors will endeavour to stir up the jurors' anger against their opponent (see Lys.19.11, 29.6, 32.19 and 1.28 for defendants stirring up the jurors' anger against the prosecution as an evasive tactic. See Carey (1994c) 29-30 for further details). For two completely opposite characterisations of Athenian jurors, see Isocrates'
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of democratic juries populated by embittered and vindictive old men could be read as an implicit oligarchic critique of the democratic judicial system: if the democracy will insist on giving judicial power to all in sundry, then this is the quality of justice that the democracy both deserves and gets. The 'Old Oligarch' makes a similar connection between the identity of the jurors and the judicial outcome. He observes, in the context of sycophantic prosecutions which are brought against the allies, that: 'they (the Athenian demos) on the one hand disenfranchise, take away the funds of, exile and kill the respectable (chrestoi), while they strengthen the worthless (poneroi). It appears that the oligarchically inclined orator Antiphon may have concurred with the 'Old Oligarch's' analysis and so specialised in defending the cause of the allies both in the Assembly and the courts. He certainly wrote On the Murder of Herodes for a Mytilenean member of the elite for his trial in Athens. Therefore it is possible that the Aristophanic image of the wasp-like juror echoes the oligarchic resentment expressed by the 'Old Oligarch' and Antiphon: that of elite litigants forced to plead their case before a mass audience sitting in judgement on them. In my opinion, it is virtually impossible to identify Aristophanes' own opinions on the democratic judicial system on the basis of the Wasps. It is possible to envisage a 'democratic' member of the audience leaving the Wasps affirming the right of the demos to sit in judgement on all citizens, including members of the elite who were guilty of embezzlement, as Philocleon celebrates. On the other hand, a more 'oligarchically' inclined individual sitting next to him might have left muttering under his breath that the sort of senseless, vindictive judicial decisions that he had just witnessed on-stage was the inevitable outcome of entrusting judicial decision-making to the ochlos.

I would like to suggest two alternative reasons why Aristophanes may have fixed on the image of the wasp-like juror, which move us away from the turbulent and treacherous waters of Aristophanes' political opinions. Firstly the clothing of the chorus in a wasp-like costume and character generates vast comic potential and contributes to the dramatic momentum of the play. When the audience first encounter the chorus, their wasp-like costumes are hidden beneath their cloaks and their wasp-like characters

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120 This approach is suggested by Cartledge (1990a) 52-3 and Todd (1993) 152-3.
122 On Antiphon generally see pp.98-9. We have fragments from speeches which he wrote for the allied states of Lindus and Samothrace with regard to their tribute to be delivered in the assembly (Frag.A.1-2 (Maidment) with Meiggs (1972) 240-1).
123 See Chapter 7.4 for similar sentiments expressed by Isocrates in the 350s
beneath the guise of old age. Their waspishness is foreshadowed in a few references but is suddenly revealed as the chorus remove their cloaks and launch a ferocious attack against Bdelycleon and the slaves. The chorus’s wasp-like identity is utilised within the agon to provide a hostile audience who must be won over to Bdelycleon’s position. The content of the second half of the parabasis is totally dependent on the chorus’ wasp-like character and costume. It is important not to overlook the imperative upon Aristophanes to entertain his audience with the creation of a verbally and visually brilliant chorus of wasps, frogs, birds or clouds and thus wrest victory from his rivals. Secondly, it may be that the wasp-juror does not so much reflect an ‘ordinary’ Athenian’s experience before a democratic jury but his perceived anxieties in coming before such a jury. When two parties are engaged in a dispute, there is substantial shift to be made in the transition from third party mediation to third party adjudication. Within a mediatory context, the disputing parties retain control over the outcome of the dispute, where as in adjudication, a third party is in a position to impose a solution upon them over which they have no control. Within the Athenian judicial system, it must have been inevitable that such a transition generated anxieties. The penalties that Athenian juries were bound to impose by statute, let alone those which the litigants could propose by timesis, were severe, including crippling fines, exile or death, and against which there was no appeal. Perhaps some of this anxiety can be detected among the friends of the speaker of Against Callimachus, who suggest he settle with Callimachus out of court because: ‘many things turned out contrary to expectations in the jury courts and that these matters were judged by you according to chance rather than according to justice.’ It is interesting to note that Aristophanes dissolves the image of the wasp-like juror in the last scene of the play, where he reminds the audience that the wasp-like jurors are but the dancing chorus in the hands of the comic playwright. The audience leave the theatre reassured that they will not be

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125 Ar.Vesp.230-316 with MacDowell (1971a) 10-11, 162.
126 Hints as to their wasp-like identity: Ar.Vesp.223-7, 240-4, 373-78, 383-4; revelation of wasp-like character and attack: 403-59 with MacDowell (1971a) 11, 188.
127 For chorus’ role in the agon, see Ar.Vesp.521-47, 631-49, 725-49.
128 For the chorus’ waspishness in the parabasis, see pp.136-7.
130 In Figure 8, this transition is represented by the move from Phase 2 to Phase 3 (see Chapter 8 for further details) Shapiro (1981) 7 describes the transitions in the different phases of the dispute settlement: ‘Nevertheless, in general, judges may impose a final solution independent of the consent of the (disputing) parties...The go-between has little or no enforcement power. The mediator may do somewhat better by bringing to bear general social sentiment in favour of resolution. We often distinguish the arbitrator from the mediator on the basis that the mediator’s decisions are subsequently enforceable by court action. Judges are furthest along the spectrum toward complete enforcement, typically having means to tap the organised forces of coercion in the society to enforce their solution.’ Roberts (1983) 12-3 makes a very similar point.
131 On the sentences that could be imposed on disputing parties by the third party adjudication in Athens, see Todd (1993) 133-5, 139-45, Debrunner Hall (1996). On inappellability, see p.141n.103.
132 'πολλά παρά γνωμίν εν τοῖς δικαστηρίοις ἀπαθαίνει, καὶ ὅτι τύχη μᾶλλον ἢ τοῦ δικαίω κρίνεται τα παρ' ὑμῖν' (Isoc.18.9). On this case, see Chapter 4.4.ii above.
facing the on-stage wasp-like jurors in the off-stage court the following day. Therefore I would like to suggest that the on-stage image of the wasp-like juror may rather engage with the audience's anxieties about submitting to third-party adjudication than communicate to them any implicit critique of the democratic judicial system. This image also provides Aristophanes with a comic and creative well from which he draws with abundance to fashion the chorus of wasp-jurors.

6.4 Conclusion

Within the Aristophanic world, it is possible to identify arguments both in support and in opposition to the Athenian demos' sovereignty in the judicial arena. On the one hand, the right of the demos to sit in judgement on all men, including the elite, is celebrated and the importance of ho boulomenos in the prosecution of malefactors is promoted. On the other hand, it is argued that judicial decisions are actually manipulated by leading politicians, utilising the tools of rhetoric and jury pay. With regards to the practitioners of democratic judicial activity, the sycophantic ho boulomenos is presented as a particularly unpleasant consequence of the system, while the jurors are possessed by a malevolent spirit which produces nothing but convictions and savage sentencing. When the arguments of the agon and the image of the wasp-juror are analysed within the dramatic framework of the Wasps, it emerges that the content and shape of these concepts is primarily controlled by the dramatic requirements of the play rather than by the intent of presenting the audience with a sustained critique of their judicial system. On the other hand, when these on-stage arguments and images are set alongside sources from beyond the theatre which analyse the democratic justice system, there is a marked level of uniformity and overlap between on-stage concept and off-stage evidence. Beyond the theatre, democracy's proponents championed the right of the demos to sit in judgement upon all Athenian citizens, while oligarchic opponents bemoaned the paucity of democratic decision making, the demeaning effect of jury pay and the manipulation of justice by the rhetorically resourced. The image of the wasp-like Athenian juror may have impacted on the audience less in the realm of judicial debate and more in the arena of anxieties about submitting to third-party adjudication. The reflection of on-stage image in off-stage evidence strongly suggests that the debate on the democratic judicial system is not a product of the fictive world of Aristophanes alone. The reflection of this off-stage debate in the on-stage world testifies to the widespread interest in and concern about the administration of justice under the democracy. The Aristophanic world opens a window onto the debate about democratic judicial institutions which preoccupied Athenian citizens towards the end of the fifth century. In the last decade of the fifth century, this

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133 See p.58.
debate was to overflow beyond the bounds of theory and into the concrete programmes of judicial reform advanced by both oligarchs and democrats (Chapter 7).
In the last decade of the fifth century, there is a sudden transformation in the nature of our evidence for popular attitudes to judicial activity. Concerns about the administration of justice, which were previously discernible in the evidentiary shadowlands of the Aristophanic world, litigants’ character construction, rhetorical asides and fragmentary political theory, crystallise out into concrete programmes of judicial reform. These concerns were almost certainly intensified in the period from 415 to 403 by the use of the judicial system by parties on both sides of the ideological divide to eliminate opponents (Chapter 7.1). On the basis of these concerns, the oligarchic regime of the Thirty initiated a programme of judicial reform, enabling them to gain popular support for their administration and simultaneously to tighten their grip on the city (Chapter 7.2). Between 403 and 399, the restored democracy introduced at least three tiers of judicial reform in response to the above issues (Chapter 7.3). By examining attitudes to judicial activity at the beginning of the fourth century, it will be possible to ascertain the success of the democratic reforms in resolving concerns about judicial activity (Chapter 7.4). It is my contention that these programmes of judicial reform at the end of the fifth century are more intelligible when set within the context of popular attitudes to judicial activity in the preceding decades (Chapters 3-6). Similarly the crystallising of these popular attitudes into concrete programmes of judicial reform is testimony to the significance and seriousness of the concerns about judicial activity which preoccupied the Athenian consciousness in the age of Aristophanes.

7.1 Intensifying Concerns: The Judicial System and Political Purges (415-403)

1 It is almost impossible to avoid the subject of legislative reform when examining the political events of 411-403. For reasons that have been outlined in the Introduction, I have decided that popular attitudes to nomos and consequently the legislative reforms of 411-403, are essentially outside the scope of this thesis. There are points where it difficult to separate the two, which I will indicate below. This is particularly the case with the proposed interpretation of the law on agraphe nomos, consequently I have included my opinion of the ‘codification of the laws’ in Appendix 2.
From around the 460s onwards, the democratic judicial system had been awarded a central role in the administration of the democratic political machinery. Consequently the modern criticism that the democratic judicial system was ‘too political’ is a somewhat moot point. For example, Paphlagon in the *Knights* is portrayed as operating with equal effectiveness against his political opponents in the jury courts as he does in the *boule* or the assembly. On the other hand, I would like to suggest that in the period from 415 to 403, there was a sharp rise in the volume of ‘political’ cases which were introduced into the jury courts. Although one can provide only a little quantitative evidence to support this statement, it would appear that on at least three occasions purges were executed against political opponents using the judicial system. Furthermore, in the light of tensions tearing Athens apart at this time, this judicial activity has a particularly emotive and intense quality.

7.1.1 The Sacrileges of 415

In 415, Athens was scandalised by the simultaneous discovery of two sacrilegious events, the Profanation of the Mysteries and the Mutilation of the *Hermai*. Firstly, these religious scandals generated a substantial volume of judicial activity. A commission was immediately established to investigate the sacrileges, with the offers of rewards for forwarding information and immunity for offenders giving evidence. There followed a spate of witnesses, informers, accusations and counter-accusations, with much of the proceedings being tinged with personal animosities and grudges. The trials of those denounced followed, resulting in the execution of those in Athens; those who had fled were condemned in absence and a reward offered to anyone who killed them. The numbers involved in the affair are quite staggering. While it was claimed that well over three hundred were associated with the sacrileges, we know of sixty-eight named individuals who were prosecuted, and given that there are known gaps in the

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2 See Chapter 4.1 and Philocleon’s observations on p.127.
3 For a summary of modern criticisms that the democratic judicial system was ‘too political’, see Powell (1988) 299-300. On the mootness of this criticism, see Todd and Millett (1990) 15, 16, Todd (1993) 154-63, Carey (1994b) 172-3.
4 See p.43 above for Paphlagon’s political use of the judicial system. For his appearances before the *boule*, see Ar.Eg.475-97, 615-82, and before the Assembly (personified as Demos), see ibid.725 onwards.
5 There is a further surge in ‘political’ cases brought in contravention of the Amnesty from 403 into the 390s (see Chapter 7.4).
7 Commission of inquiry: Andoc.1.14, 40; MacDowell (1962) 73. Offer of rewards: Thuc.6.27.2; Andoc.1.27, 40. Offer of immunity: Thuc.6.27.2; Andoc. 1.11ff.
8 Informers and witnesses: Thuc.6.28.1, 32; Andoc.1.11-17, 37ff. Personal animosities: see Andocides’ comments on the false evidence of Diocleides, Andoc.1.47, 60 and for the attacks on Alcibiades, see Thuc.6.28-9.
9 Thuc.6.60.4, Andoc.1.13-18, 34, 59.
10 Over three hundred were implicated in the mutilation of the *Hermai* (Andoc.1.37, 51, 58) and an indeterminate number with regard to the profanation of the Mysteries. On the 68 named individuals, see
evidence, the total prosecuted could be as high as one hundred.\textsuperscript{11} Many of these individuals were prominent members of the elite.\textsuperscript{12} The volume of judicial activity generated by the Mutilation of the *Hermai* and the Profanation of the Mysteries must have been both substantial and complex.

Secondly, the sacrileges generated judicial activity of a highly emotive and charged kind. As Robin Osborne has demonstrated, the mutilation of the *Hermai* was a violent attack on the Athenian identity.\textsuperscript{13} Furthermore, as the attack came in the prelude to the Sicilian expedition, it was a serious threat to the success of this enterprise.\textsuperscript{14} Consequently, the reaction among the Athenian population could be described as close to hysteria, as is observed by both Thucydides and Andocides.\textsuperscript{15} Diocleides' denunciation of forty-two individuals connected with the mutilation of the *Hermai* produced a frenzied response from the Athenian leadership. Peisander proposed that the decree forbidding the torture of Athenian citizens should be repealed so that those denounced could be tortured to produce further evidence.\textsuperscript{16} The *boule* then called the citizens in the Piraeus and Athens and the knights to remain under arms for the whole night, while they occupied the Acropolis.\textsuperscript{17} The vehemence and excess of these actions reflect the insecurities and intense passions that the two acts of sacrilege generated. Over the next twenty years, the sacrileges of 415 were to remain subjects of continuing Athenian concern.\textsuperscript{18} Therefore it is possible to conclude that the events of 415

\begin{itemize}
\item \textsuperscript{11} Beyond the 68 known individuals, a further 28 unnamed individuals were denounced by Diocleides (Andoc.1.43) and an unspecified number of unnamed individuals were denounced by Lydos (Andoc.1.17). An estimate of near one hundred is given by Kagan (1981) 202 n.46.
\item \textsuperscript{12} Lewis (1966), Ostwald (1986) 329-30, 537-50.
\item \textsuperscript{13} See Osborne (1985a) 45-64 on the significance of *Hermai* and the destructive impact of the mutilation on the Athenian identity.
\item \textsuperscript{14} See Osborne (1985a) 64-7 on the impact of the mutilations on the journey to Sicily, the authority of the magistrates, the Athenian Empire, the debate that launched the expedition and the peace of 421. Other viewpoints have ranged from seeing the sacrileges as the pranks of drunken youths, through an attempt to halt the Sicilian expedition, to a full blown conspiracy against the democracy (see MacDowell (1962) 190-93, \textit{HCT}, 4.284-6, Ostwald (1986) 550, Bauman (1990) 66-7).
\item \textsuperscript{15} Thucydides comments that the people 'took the matter seriously (το Πράγμα Μετίκυσις Ἐλάμβανον)' and on their being 'angry (χαλεπόν)' (6.27.3, 60.1); Andocides twice describes the situation in Athens as 'terrible (ἐν κακοῖς τοῖς μεγίστοι)' (1.51, 59).
\item \textsuperscript{16} Andoc.1.43 with MacDowell (1962) 92-3.
\item \textsuperscript{17} Andoc.1.45, Thuc.6.61.2. Although these military manoeuvres were also a response to a potential Boeotian and Spartan threat on the boarders, both accounts indicate that they were also a direct response to the crisis precipitated by Diocleides' denunciations.
\item \textsuperscript{18} In 415, under the decree of Isotimides, those guilty of sacrilege were banned from public places (see p.198n.18). In 407, Alcibiades spent the best part of a campaigning season making elaborate displays of piety towards the Two Goddesses, in an attempt to expunge the stain of impious accusation (Xen. *Hell.*, 1.4.20, D.S. 13.69.2, Plut. *Alcib.* 33.3, 34.3-6 with Lewis (1966) 177-8). In 403 or shortly after, Andocides prosecuted Archippus for mutilating a herm (Lys.6.11-2). The prosecution of Andocides suggests that the issue was still alive in 400 (see p.198n.18). In both 397 and 395, the prosecutors of
generated a substantial volume of judicial activity that was characterised by its intense and emotive nature. Our sources paint a dark picture of mass accusations, corrupt testimony, and sweeping judgement as the citizen body attempted to expunge its guilt through the democratic judicial system. Perhaps Peisetaerus’ and Euelpides’ desire to escape from Athenian judicial activity in the *Birds* of 414 becomes more intelligible in the light of these judicial purges.19

7.1.ii The Democracy between 410 and 404.

In the aftermath of the Four Hundred’s overthrow, the tensions and divisions within Athenian society again surfaced in the judicial system. In a number of known cases, those heavily associated with the rule of the Four Hundred were prosecuted, convicted and sentenced to the harshest of penalties: death, confiscation of property, burial outside Attica and their descendants being declared *atimoi*. In a number of other instances, prosecutions were brought against an unknown number of unnamed former oligarchs, with mixed outcomes. In Andocides’ catalogue of the *atimoi* in the years prior to 405, several groups had been declared *atimos* because they had been prosecuted and convicted of oligarchic involvement. In 406, the democracy condemned and sentenced to death its own generals who were held responsible for failing to rescue the survivors after the Battle of Arginusae. The ‘trial’ in the Assembly was characterised by a flagrant disregard for judicial procedure and for the emotive manipulation of the Assembly by its leaders which turned it into a baying ‘mob (*δυζλος*)’. It would appear that the tensions within Athens were of such a prominent
and persistent nature that in 405, the chorus in the Frogs, with uncharacteristic seriousness, advised the audience to reverse the *atimia* of those implicated in the rule of the Four Hundred, a request which was subsequently granted. In the years after the overthrow of the Four Hundred, as in 415, the intense divisions of Athenian society were expressed through the democratic judicial system.

7.1.iii The Rule of the Thirty (404/3)

The writer of the *Athenaion Politeia* provides the following summary of the Thirty’s use of the judicial system:

> ἔπει δὲ τὴν πόλιν ἐγκρατέστερον ἔσχον, οὐδενὸς ἀπείχοντο τῶν πολιτῶν, ἄλλ' ἀπέκτειναν τοὺς καὶ ταῖς οὐσίαις καὶ τῶι γένει καὶ ταῖς ἀξιώμασι προέχοντας, ὑπεξαιροῦμενοι τε τὸν φόβον καὶ βουλὐμενοι τὰς οὐσίας διαρπάζειν. καὶ χρόνου διαπεσάντος βραχέος, οὐκ ἐλάττους ἀνηρήκεσαν ἢ χιλίους πεντακοσίους.

But when they had a firmer grip on the city, they kept away from none of the citizens, but condemned to death those excelling in property and birth and worth, removing those they feared and those whose property they wanted to plunder. And within a short space of time, they did away with no fewer than fifteen hundred.

In some instances, our sources provide us with the names of those the Thirty condemned and the nature of the judicial proceedings used against them. In some of these cases, for example in the cases against Theramenes and Polystratus, the Thirty appear to have proceeded with scant regard for judicial procedure. Not only did the Thirty manipulate the judicial system to eliminate political opponents, but they targeted wealthy defendants, particularly metics, for financial gain. It could be said that the

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25 Ar. *Ran.* 686-705 with Hubbard (1991) 205-19, Dover (1993) 73-5 and Sommerstein (1996) 21-3, 215-8. On the basis of this advice in the parabasis, Aristophanes was crowned and the play re-performed at the Lenaia of 404 (Sommerstein (1993b)). Under the decree of Patrocleides in 405, many of the *atimoi* were re-enfranchised (see Andoc. 1.73-80 with MacDowell (1962) 106-19).

26 *Ath.Pol.35.4*. *Ath.Pol.*’s figure of 1,500 is confirmed by Isoc. 7.67, 20.11, Aesch. 3.235, while Æ. Aesch. 1.39 gives the figure of 2,500 (utilising a lost Lysianic speech). See also Xen. *Hell.* 2.3.13-15, 17, 21; D.S.14.4.2-4, 5.5-7; Just. 5.8.12, 9.1-2; who, unlike *Ath.Pol.*, associate the start of the Thirty’s proscriptions with the arrival of the Spartan garrison. See Rhodes (1981) 420, 422, 454 and Ostwald (1986) 481-4 on the difference between *Ath.Pol.* and the other sources.

27 See Rhodes (1981) for a list of individuals and the relevant sources. See Ostwald (1986) 484-9 for the suggestion that these executions and expulsions were part of the Thirty’s overall design to model Athens on Sparta.

28 In the case of Theramenes, the Thirty introduced two new laws, which effectively allowed them firstly to remove Theramenes from the list of the three thousand and then to execute him (Xen. *Hell.* 2.3.51, *Ath.Pol.* 37.1). Lysias repeatedly focuses on the illegal execution of his brother in his prosecution of Eratosthenes (Lys. 12.17, 23, 34, and on the illegal judicial acts of the Thirty in general: §§21-22, 29, 32, 36, 41-2, 52, 81-2, 88, 90, 96). See p. 155n.36 on the Thirty’s manipulation of the judicial system to eliminate enemies.

29 *Xen.Hell.* 2.3.21-2, D.S.14.4.4, 5.4-6. See Lysias’ comments in Lys. 12 on: the Thirty’s greed motivating their prosecutions (§§6-7); Peison’s greed in accepting a ransom from Lysias (§§8-12);
judicial administration of the Thirty epitomised the anxieties of the previous decades: the corrupt manipulation of the judicial system for financial gain; or as summarised by Lysias: 'the Thirty were worthless men and sycophants.' In the decades following the overthrow of the Thirty, litigants frequently refer back to the abuses perpetrated by the Thirty through the judicial system.

7.1.iv Conclusion

On the basis of the above evidence, it would appear that between 414 and 403 the volume of judicial activity increased in Athens, and that this judicial activity was characterised by its intense and emotive nature and, during the final outburst in 404/3, by its disregard for judicial procedure. Although it is difficult to assess the reliability and significance of the figures we possess, there is evidence for the prosecution of over sixteen hundred individuals during the period 415 to 403, an alarmingly high total.

Using Hansen’s catalogue of known cases of eisangelia, the frequency of cases jumps sharply in the period 415 to 403, in comparison both to the preceding and to the following periods. Some of those prosecuted were from among the political and financial elite of Athenian society and were implicated in perhaps the most pressing and intense issues of the period: the sacrileges committed against Athenian cults, the establishment of oligarchy, the progress of the war against Sparta. The penalties inflicted are striking in their severity: the execution of all asebountes in 415, the execution and denial of burial in Attica for the convicted oligarchs in 410, the widespread use of the death penalty in 404/3. The judicial penalties inflicted upon Athenian citizens by the democracy were so widespread that the re-enfranchisement of atimoi was first promoted and then implemented. In the last two decades of the fifth century, Athens was riven with internal tensions and strife; the judicial system became a critical forum within which these tensions were expressed. In the decades preceding these events, it has been possible to identity an ideology of judicial reticence within Athenian society and a hostility towards those who manipulated the judicial system for

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30 'οι τριάκονται πονυροί [μεν] καὶ σύμφωνοι ὀντες' (Lys.12.5). See also Chapter 4.4.i, where the defendant draws a strong parallel between his sycophantic prosecutors and the Thirty.

31 For example in Lysias, there are innumerable references to the 'crimes' of the Thirty, see Lys.12 passim; 13 passim; 18.5-6, 12, 25; 25.15-18, 31; 26.13, 18; 30.10-12, 14. See Lys.20.8-9 for abuses under the Four Hundred.

32 The figure of over 1,600 prosecutions is based on the approximate figures for prosecutions in 415 and 404/3 (see p.150n.11 and p.152n.26). It is important to remember that the prosecution of political leaders was a normal feature of Athenian political life (see Sinclair (1988) 146-161). I am suggesting that the volume of prosecutions is high during this period in comparison to other periods.

33 Between 493-416 the frequency of known eisangelia cases is 0.2 cases per annum, in the period 415-403 it jumps to 4.7 cases per annum and in 402-322 drops to 0.8 cases per annum. These statistics are based on Hansen (1975) 66-120, a catalogue of known eisangelia cases in fifth and fourth-century Athens.
7: Intensifying, Responding to and Resolving Judicial Concerns

The phenomenon of political purges executed through the judicial system in the period 415 to 403 can only have intensified and brought into sharper focus these pre-existing concerns about judicial activity. The judicial administration of the Thirty probably appeared to many as 'the age of the sycophant'. Although the worst judicial excesses may have been perpetrated under the Thirty, the democracy was not without its outbursts of emotive, politicised trials, outbursts which must have confirmed the criticisms that oligarchic thinkers had been levelling against democratic justice (Chapter 6). For example, oligarchs such as Antiphan and members of the elite such as those prosecuted in 415 were forced to submit to the judgement of the *demos* and receive from it the harshest of penalties. The trial of the generals after Arginusae can only have provided further confirmation for those who considered democratic justice to be little more than the baying of a manipulated mob. Consequently when the Thirty first came to power, they utilised the widespread concerns about judicial activity to institute a coherent programme of judicial reform which was informed by the oligarchic analysis of democratic justice.

(Chapter 7.2).

7.2 Responding to Concerns (I): The Oligarchic Reforms to the Judicial System (404/3)

Although we know very little about the administration of justice under the Four Hundred, the writer of the *Athenasion Politeia* provides the following account of the judicial reforms which the Thirty initiated, and the response they provoked, when they first came to power.

Although we know very little about the administration of justice under the Four Hundred, the writer of the *Athenasion Politeia* provides the following account of the judicial reforms which the Thirty initiated, and the response they provoked, when they first came to power.

The Four Hundred assumed adjudicatory authority in a number of politicised trials (Andoc.2.13-15, Thuc.80.70.2, Lys.20.8-9 with Bonner (1926) 211) and they may have gained extensive judicial powers if the *anagrapheis* (immediate) constitution was implemented (see Ath.Pol31.1 where the Four Hundred administer *euthynai* with Bonner ibid., HCT.5.229 and Rhodes (1981) 400-1) See HCT.5.243-6 and Rhodes (1981) 385-9 for different views on the status of the 'immediate' constitution.
At first, they were moderate to the citizens and they pretended to pursue the ancestral constitution, and they took down from the Areopagus the laws of Ephialtes and Archestratus concerning the Areopagus and those of the ordinances of Solon which caused disputes and they overthrew the authority of the jury courts in order to amend the constitution and banish dispute. For instance, concerning a man giving his property to whoever he wishes, giving him absolute authority, they took away the attached difficulties (“if not being insane, nor senile, nor under the influence of a woman”), so that there was no opportunity for sycophants; and they did likewise in other matters. So at the beginning they did these things. They removed the sycophants and those who flattered the demos against the best course of action and were evil-doers and worthless. The city was pleased with these events, thinking that they were acting from the best motives. It would appear that the Thirty’s judicial reforms had at least three interconnected foci: restrictions to the authority of the jury courts; the repealing of laws which generated judicial disputes; and the removal of sycophants who exploited dispute. Although it is very difficult to establish exactly to what extent the Thirty ‘overthrew the authority of the jury courts’, it would appear that the Thirty redistributed many of the jury courts’ key functions to other sections of the constitution over which they could exert greater control. The Thirty justified their judicial reforms by drawing attention to and moving against the elements in the democratic judicial system which generated disputes. They repealed those of Solon’s laws which are not written ‘simply and clearly’, as the lack of clarity in these laws gave sycophants opportunities to bring prosecutions before the democratic jury courts. The laws on inheritance are singled out as an example where...


36 It is far from clear what were the accreted powers which Ephialtes in 462 removed from the Areopagus and gave to the Assembly, boule and jury courts (see Ath.Pol.25.2 with Rhodes (1981) 314-19, Wallace (1985) 83-7, Ostwald (1986) 47-77). The Thirty’s abolishing of these reforms (by taking down the Ephialtic laws) restored the Areopagus to its former authority while curbing the powers of the jury courts (see Bonner (1926) 213-4, Wallace (1985) 140-44, Cawkwell (1988) 3, 7-8 contra Hall (1990)). Under the Thirty and the Ten adjudication is exercised by: the Thirty (Ath.Pol.37.1), boule (under the Thirty: Xen.Hell.2.3.12, Lys.13.35; under the Ten: Isoc.18.5), the Three Thousand and the Knights (Xen.Hell.2.4.9-10) and arbitrators (Lys.25.16). In all these instances, the Thirty use bodies over which they could exert control in cases that were politically crucial (see their transfer of Strombichides’ and his colleagues’ case from the jury courts to the boule (Lys.13.35-38), the condemnation of Theramenes (Ath.Pol.37.1, Xen.Hell.2.3.50-1) and of the Eleusinians (Xen.Hell.2.4.9-10)). Bonner (1926) 213-17 can find no reference to a case being tried before the jury courts under the Thirty, but presumes that the jury courts still operated. The curtailment of jury pay would certainly have reduced the ability of poorer Athenians to serve (jury pay was certainly curtailed under the Four Hundred, (Thuc.8.67.3, Ath.Pol.29.5), so it is presumed this must have been the case under the more extreme Thirty (see Gabrielsen (1981) 34-5).

37 Ath.Pol.35.2 is almost certainly picking up and building on an earlier passage on Solon’s legislative reforms: ‘furthermore, on account of his not writing the laws simply and clearly, but like the law concerning inheritance and heiresses, it was inevitable that many disputes should happen and the jury court should decide on all public and private matters’ (έτι δὲ καὶ διὰ τὸ μὴ γεγράφθαι τοῦτος νόμος ἀπλῶς μηδὲ σαφὸς, ἀλλ' ἔσπερ ὡς πεί τῶν κλήρων καὶ ἐπικλήρων, ἀνάγκη [πο]λλάς ἀμφισβητήσεως γίνεσθαι, καὶ πάντα βραβεύειν καὶ τὰ κοινὰ καὶ τὰ ἑαυτὸ τὸ δικαστήριον) (Ath.Pol.9.2)). Both passages focus on the authority (κύριος) of the jury courts, the nomoi of Solon generating judicial disputes (ἀμφισβητῆς- and its cognates are repeated in both passages, see Rhodes (1981) 103 for its meaning of ‘dispute’ in the Aristotelian corpus) and the singling out of the laws on inheritance (see Lewis (1993)). Judicial disputes may also have been generated by the archaic
the addition of qualifications to the law on will-making gave rise to sycophantic prosecutions, although the same principle appears to have been applied in other areas. It is possible that the Thirty introduced a law against the teaching of rhetoric, which is interesting given the concerns about the use of rhetoric in the jury courts. The writer of the *Athenaion Politeia* notes that these reforms to reduce judicial disputes and the activities of sycophants were greeted with widespread approval by the *polis*, an opinion which is confirmed by the other sources.

In 399, the defendant in *On the Charge of Subverting the Democracy* made a very definite connection between the activities of sycophants and the legitimation and establishment of the Thirty’s rule:

τελευτώντες δὲ ἢδιον ἄν τοὺς ἐν τῇ δημοκρατίᾳ συκοφαντοῦντας ἐτιμωρήσασθε ἡ τοὺς ἀρέσαντας ἐν τῇ ὀλιγαρχίᾳ. Καὶ εἰκότως, ὃ ἀνάρες δικασταὶ πᾶσι γὰρ ἡδο φαινόν ἕστιν ὅτι διὰ τοὺς μὲν ἀδίκως

terminology in the laws of Solon (see Lewis 209 and Lys.10.15-21 with Edwards and Usher (1985) 233-4, Todd (1996) 121-2). The democratic source utilised by Σ. Aesch. 1.39 similarly notes that the Thirty ‘violated the laws of Solon and Dracon (ἐλεύμαντο τοὺς δράκοντες καὶ ἃδολοντος νόμους)’. See p.195-6n.8 below for the relationship between the legislative review of the Thirty and an erasure on the epigraphic remains of the sacrificial calendar.

In instances of testamentary adoption and probably in practice in cases of adoption *inter vivos*, the will and thus the adoption and inheritance could be challenged in the jury court if the testator was ‘mad, senile or under the influence of a woman’ (see Harrison (1968-71) 1.152-3, Thompson (1981), Todd (1993) 221-5, especially 225 and n.26). Humphreys (1983b) 8 has commented on the disputes which wills generated: ‘many inheritance cases turn on the opposition between the next-of-kin as defined by law and the use of a will (with or without adoption) to transmit property to an heir who was closer to de cuitis in loyalty and affections.’ The provision for a will to be challenged in the jury court enabled kin to oppose an adoption which they considered had contravened their claim to the deceased’s estate. These tensions were compounded by the fact that Athenian jurors have a ‘reputation in such cases for supporting claims based on relationship rather than those based on wills’ (Todd (1993) 225 on the basis of Ar. Vesp. 583-7). Therefore in their annulment of the ‘attached difficulties’, the Thirty were targeting an aspect of democratic judicial procedure which generated judicial disputes in relation to inheritance. We do not know in what other areas the Thirty revised the laws to reduce judicial disputes and sycophantic opportunity.

Xenophon asserts that when Critias and Charicles were acting as nomothetai, Critias ‘wrote in the laws that one must not teach the art of words’ (ἐν τοῖς νόμοις ἔγραψε λόγων τέχνην μὴ διδάσκειν (Xen. Mem. 1.2.31)). It is difficult to assess the validity of this claim, given its context. Xenophon is arguing that Socrates cannot be blamed for the overthrow of the democracy on the grounds that Critias and Alcibiades were his associates (§§12-13) because firstly their attachment to Socrates was self serving (§§14-6); secondly he taught them virtue which they practised while under his instruction (§§17-28); and thirdly he was prepared to criticise them (§§29-47). Xenophon claims that Critias added the law banning rhetorical instruction in response to Socrates’ pointed comment about Critias’ attraction to Euthydemus (§§29-31). Ostwald (1986) 487n.108 connects the law with the Thirty’s removal of sycophants, ‘since many sophists were foreigners.’

Xenophon comments on the reaction to the boule’s condemnation of the sycophants: ‘the others, who knew that they themselves were not like them (the sycophants), were displeased in no way’ (οἱ τε άλλοι ὁσιοι συνζηκέσαν εαυτοίς μη ὀντες τοιοτοι ουδεν χασαντο (Hell. 2.3.12)). Diodorus does not mention the condemnation of sycophants but, with a stronger ideological slant, comments that the trial and condemnation of ‘the worst of those in the city...was pleasing to the best of the citizens’ (τοὺς ποιητάτους τῶν ἐν τῇ πόλει...μέχρι τούτου τοῖς ἐπεικεστάτοις τῶν πολιτῶν ευαρέστει τὰ γινόμενα (14.4.2)). Lys. 25.19 admits some approval for the Thirty’s removal of sycophants.
In the end you would have more gladly sought vengeance against the sycophants in the democracy than against those ruling in the oligarchy. And reasonably so, gentlemen of the jury, for it is clear by now that on account of those governing unjustly in the oligarchy, democracy is established and on account of those practising sycophancy, oligarchy has been established twice.  

The defendant makes a direct connection between the activities of sycophants under the democracy and the establishment of oligarchy.

The Thirty's reforms to limit the authority of the jury courts were crucial in enabling them to increase their control of the city, but by presenting these reforms as a programme to reduce judicial disputes and sycophantic litigation, they generated widespread support for their reforms and thus legitimation for their rule. Therefore it would appear that the Thirty were fully aware of the concerns about judicial activity that had characterised the decades preceding their rule. It is particularly interesting to notice how they drew upon the ideology of judicial reticence (with familial disputes being cited as the example), the hostility to sycophants (Chapters 3-4) and concerns about the impact of rhetorical education on judicial practice (Chapter 5). They took the oligarchic critique of democratic justice (Chapter 6), particularly the unsuitability of the demos to administer justice, and transformed these criticisms into a concrete programme of judicial reform, within which the judicial authority of the demos was severely curtailed.

7.3 Responding to Concerns (II): the Democratic Reforms to the Judicial System (403-399)

Concerns about appropriate modes of judicial behaviour loomed large in the Athenian consciousness in the decades preceding the oligarchic revolutions. Utilising these concerns, the Thirty legitimated their rule by initiating judicial reform, a policy which initially won them widespread support (Chapter 7.2). Subsequently the Thirty employed the courts as a weapon against opponents with a flagrant disregard for judicial procedure, intensifying pre-existing concerns about judicial activity (Chapter 7.1.iii). In the light of these prolonged and intense concerns about judicial activity, the restored democracy responded with three tiers of judicial reform. Firstly, an amnesty

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41 Lys.25.27. See Chapter 4.4.i gives details of the judicial argument and the portrayal of sycophants in this speech. Lys.12.5 links presence of 'wrongdoers (οἱ ἀδίκοι)' under the democracy with the establishment of the Thirty.

42 D. M. Lewis has produced an almost identical analysis of the Thirty's judicial reform, see Lewis (1993). Ostwald (1986) 475-80 does not bring out the significance of the Thirty's judicial reforms as clearly. Bonner (1926) gives a clear description of legislative and judicial administration under the Four Hundred and the Thirty.
was proclaimed after the overthrow of the Thirty and given teeth through legislative and judicial safeguards (Chapter 7.3.i), secondly two procedural changes were introduced to prevent procedurally illegal cases coming before the jurors (Chapter 7.3.ii) and thirdly measures were introduced to facilitate the resolution of disputes before they reached the jury courts (Chapter 7.3.iii)

7.3.i Reforms to Counter Political Purges through the Judicial System

The writer of the *Athenaion Politeia* records the terms of the reconciliation (αι διαλύσεις κατά τὰς συνθήκας) agreed in 403/2 after the fall of the Ten, through which an autonomous state was established within Attica at Eleusis for the supporters of the oligarchic regime. With regard to crimes committed before 403/2, the restored democracy proclaimed an Amnesty, stating that: 'no one was to remember the past events of anyone, except those of the Thirty, the Ten, the Eleven and the Governors of the Piraeus, and not even theirs’ if they submitted to euthynai. The Amnesty was given firstly legislative definition in a law on judgements and crimes before the restoration and secondly judicial reinforcement by the introduction of the novel procedure *paragraphe*. In his defence speech, Andocides cites the following law, ratified in 403/2:

<Νόμος.> Τὰς δὲ δίκας καὶ τὰς διαίτας κυρίας εἶναι, ὅπως ἐν δημοκρατουμένῃ τῇ πόλει ἐγένοντο. Τοῖς δὲ νόμοις χρήσθαι ἀπ' Ἐὐκλείδου ἄρχοντας.

LAW: that the dikai and the arbitrations shall be valid which happened in the democratic city; that the laws during and since the archonship of Eucleides (403/2) shall be used.

The first half of this law is relatively unproblematic, it is cited again by Demosthenes in a slightly different form which qualifies ‘the dikai and arbitrations’ of ‘the democratic city’ as being those given ‘under the laws in the democratic city.’ This first half probably states that, where dikai or arbitrations had been made while Athens was still a democracy, these rulings are to remain valid. Demosthenes then goes on to cite a parallel law, almost certainly passed at the same time, which annulled the public and

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44 ‘τῶν δὲ παρελθυσάτων μηδενὶ πρὸς μηδένα μηνσικακεῖν ἔεχειν, πλὴν πρὸς τοὺς τρικόντα καὶ τοὺς δέκα καὶ τοὺς ένδεκα καὶ τοὺς τοῦ πεπραξάς ἄρεστας, μηδὲ πρὸς τούτους, ἐὰν διδώσων εὐθύνον’ (*Ath.Pol.39.6* with Rhodes 468-72). See also *Andoc.1*.90-1, *Isoc.18*.20. The only category of crime exempted from the Amnesty was homicide, where the individual himself had committed the crime (*Ath.Pol.39.5*). On p.159n.48, as Meletus himself did not commit the murder of Leon, he was protected by the Amnesty.

45 *Andoc.1*.87. On the decree of Teisamenus and the ratification of the *nomoi* cited at *Andoc.1*.87, see p.197n.13, p.199n.22.

46 ΝΟΜΟΣ, τὰς δίκας καὶ τὰς διαίτας, ὅσα ἐγένοντο ἐπὶ τοὺς νόμοις ἐν δημοκρατουμένῃ τῇ πόλει, κυρίας εἶναι’ (*Dem.24*.56).
private dikai and arbitrations of the Thirty. The contrast between the treatment of dikai and arbitrations under the democracy with the treatment of those under the Thirty suggests that the two laws together legitimated all prior democratic judicial decisions and invalidated those of the Thirty. The second half of the law cited by Andocides is harder to interpret. The interpretation offered by Douglas MacDowell seems the most likely, that this law forbids the prosecution of offences perpetrated before the archonship of Eucleides [403/2], rather than the use of laws ratified before the archonship of Eucleides. MacDowell states the two sections of the law cited by Andocides “are complementary” and summarises their overall impact in relation to the Amnesty as follows:

Together they state the legal position with regard to any offence against the laws that was committed before 403/2. If the trial has already been held (under the democracy), the judgement given at that trial remains valid; if a trial had not taken place (under the democracy), no legal action may now be taken.

In addition, the restored democracy introduced the procedure of paragraphe, enabling a defendant to bring a counter-action against his prosecutor if he thought that the charge against him contravened the Amnesty. It appears that paragraphe was first introduced in 400, but within a few months its scope was expanded to cover other categories of illegal prosecution. Therefore in 403/2, the restored democracy sought to prevent a surfeit of prosecutions against former oligarchs by proclaiming an Amnesty, buttressed by legislative and judicial safeguards. Firstly the restored democracy legitimated all previous democratic judicial decisions and banned the prosecution of crimes committed before 403/2. Secondly the democracy introduced paragraphe, which gave defendants in cases which contravened the Amnesty a judicial procedure to use against their prosecutor. The success of these safeguards in preventing a wave of litigation against individuals who had been implicated in the oligarchic revolutions will be explored in Chapter 7.4.

47 Dem.24.56.
48 The latter is of course what Andocides wants the jury to believe (see Andoc.1.88-9). MacDowell bases his interpretation on Andocides’ account of the murder of Leon under the Thirty (Andoc.1.94 with MacDowell (1962) 128-9, 133). Meletus and three others had arrested Leon but did not commit the murder. However, in the procedure of bouleusis, the relatives of the deceased could prosecute the individual who had planned the murder even though he did not commit the crime (see MacDowell (1963) 60-69). So Leon’s kin are legally entitled to bring a prosecution against Meletus. But, as the crime was committed before the archonship of Eucleides, Andocides states that Leon’s sons were unable to prosecute even though the law on bouleusis was still valid in 400 (Ant.6.16 (dated by Dover (1950) 44 to 419/8) records the use of bouleusis before 403/2 and the reference to bouleusis in Ath.Pol.57.3 confirms that the procedure was still used in the fourth century). MacDowell’s interpretation is supported by Diocles’ law (Dem.24.42), which validated all previous laws of the democracy (see p.199 below on Diocles’ law).
49 MacDowell (1962) 129.
Reforms to Block Procedurally Illegal Cases

In the second tier of judicial reform, the restored democracy introduced two procedural innovations to prevent procedurally illegal cases coming before the jurors. Firstly the scope of *paragraphe* was expanded beyond prosecutions contravening the Amnesty to any prosecution which was illegal. Secondly it is my opinion that magistrates presiding over the preliminary hearing and the *anakritis* were given the responsibility of challenging actions which did not follow the procedures defined in written statutes. Again in his defence speech, Andocides cites another law ratified in 403/2:

<ΛΑΩΜΣ> ἀγράφω δὲ νόμω τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περὶ ἐνόσ.

LAW: And the magistrates shall not use an unwritten law, no, not concerning any single matter.

In his comments both before and after he cites this law, Andocides interprets it to mean that any law which is not written up (*anagraphein*) in the Stoa is invalid. Andocides' account is highly suspect at this point and at a later point I shall suggest reasons why Andocides' interpretation of both this law and the decree of Teisamenus should be rejected. Once the text of the law is given preference over Andocides' interpretation, the defining feature of this law with regard to *agraphos nomos* is that the magistrates, *hai archai*, are singled out as the group banned from its use. Hansen has pointed out that this prohibition did not apply to the jurors, who, while swearing to uphold the *nomoi* and *psephismata* of the Assembly and *boule*, also swore that: 'if there is no law [on a point] I will give judgement in consonance with my sense of what is most right.' In other words, the wording of the jurors' oath presupposes 'a right to use unwritten law and custom if there is no written law on a matter.' Within the judicial sphere, the key role of the magistrate was to preside over the preliminary hearing, the *anakritis* and the hearing-in-chief. Although it is very hard to reconstruct what happened during the former two, part of the magistrate's function appears to have been to ensure that both sides followed the procedures defined by the written statute. In passing a law which

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51 See previous note.
52 The concept *agraphos nomos* has been the subject of several studies, see Ostwald (1973), Craik (1993) and Thomas (1996). Thomas (1996) 16-9 has questioned Ostwald's conclusion that there was no real concept of *agraphos nomos* in classical Greek literature (Ostwald (1973) 101).
53 Andoc.1.85. I have followed Rhodes (1991) 96 on the translation of "ἵνα οὐ περὶ ἐνὸσ". On the decree of Teisamenus and the ratification of the *nomoi* cited at Andoc.1.87, see p.197n.13, p.199n.22.
54 See Appendix 2.
58 Preliminary hearing: see Lys.13.86, where the Eleven order the plaintiff to rephrase an *apagoge* at the preliminary hearing; Ant.6.42, where the basileus refused to hear a murder charge because it was too late.
banned magistrates from using *agraphos nomos*, the restored democracy laid upon the magistrates the responsibility of ensuring that only cases proceeding according to written statute came before the jurors. If, at the preliminary hearing or the *anakrisis*, the magistrate was presented with a case which contravened procedure (as defined by written statute), he was now bound to challenge the plaintiff or break the law banning his use of *agraphos nomos*. If he choose the later option, he ran the risk of prosecution either during his magistracy or at his *euthynai*. This safeguard immediately becomes intelligible within the context of the proscriptions under the Thirty and the trial of the generals after Arginusae, in which individuals were sentenced to death and their property seized with a flagrant disregard for the written laws and judicial procedure. Therefore in the procedure of *paragraphe* and in the law banning magistrates' use of *agraphos nomos*, the restored democracy sought to prevent cases being brought before the jurors which did not follow established procedures and the written laws. In legislating that cases must proceed according to written *nomoi*, the

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59 This description of the function of written statutes in Athenian law is heavily indebted to Stephen Todd's work. Todd (1993:59 describes the function of written statutes in an Athenian trial as follows: 'The function of a modern judges, whether in civil- or in common-law jurisdictions, is to apply legal rules to a concrete case; an Athenian trial is instead a dispute,...which it is the court's function to resolve: statute law in Athens does not supply the rules according to which the *dikastai* must proceed, but rather the limits within which they must resolve the dispute.' He goes on to observe (ibid.6-7) that written statutes defined the type of procedure to follow when confronted with a given offence, rather than defining the offence itself. Whatever the law on *agraphos nomos* may precisely have meant, it cannot mean that litigants were banned from referring to *agraphoi nomoi* before the jurors. We have examples of litigants citing either laws which are *agraphoi* (i.e. from an oral source) or from locations other than a centralised collection of laws in the Stoa Basileios in the years after 403/2 (see Appendix 2).

60 See Todd (1993:126: 'Improper acceptance of a legally invalid indictment is something that could presumably be charged against an official at his *euthynai*.' On the variety of procedures which could be brought against magistrates who defaulted in their responsibilities, see Hansen (1975:11).

61 See Chapter 7.1.i-ii. This interpretation is strengthened by the fact that the other laws in the series cited at Andoc.1.87 can similarly be seen as attempts by the restored democracy to meet legislative and judicial criticisms arising out of the oligarchic revolutions (see pp.158-9 and the next two notes below).

62 The restored democracy also passed in 403/2 a law banning the enacting of a *nomos* 'with reference to a single individual (ἐπὶ ἕνοπλοι) unless it is also enacted 'with reference to all Athenians (ἐπὶ πᾶσιν Ἀθηναίοιοι)' (Andoc.1.87). It is possible this law was introduced to ban the type of selectively applied legislation passed by the Thirty, which gave them power to execute those outside the Three Thousand, including Theramenes (see p.152n.28). This interpretation would fit with the other laws in the series, all of which tackle legal issues raised at the end of the fifth century (see previous note). The function of this law and its procedural details are by no means clear; for different interpretations, see Hansen (1979:29 contra Rhodes (1984a) 59, (1987) 15, (1991) 97-8.
restored democracy gave further support to its initiatives elevating nomos above psephisma.\(^{63}\)

7.3.iii Reforms to Facilitate the Resolution of Disputes Prior to a Judicial Hearing

In the third tier of judicial reform, the restored democracy facilitated the resolution of disputes before they reached the jury courts.\(^{64}\) In 403/2 or shortly after, the system of deme judges was reorganised: the number of deme judges was raised, they were given responsibility for most dikai and, if the sum involved amounted to less than ten drachmae, they were authorised to give a binding adjudication.\(^{65}\) In 399, a new system of public arbitration was created, whereby a dike that had been referred on by the deme judges, went to public arbitration and only if either party refused to accept the arbitrator’s ruling, was the case then forwarded to the jury courts.\(^{66}\) The restructuring of the deme judges and the introduction of public arbitration must have reduced the number of dikai that reached the jury courts.\(^{67}\) Again the rationale behind these reforms was probably an attempt to counter the oligarchic criticism that the democratic judicial system generated a burdensome volume of litigation and spawned litigiousness.\(^{68}\) The introduction of arbitration before an adversarial hearing in the jury court promoted a less confrontational means of dispute settlement and thus reflected a more acceptable approach to settling disputes.\(^{69}\)

7.4 Resolving Concerns: The Democratic Judicial System at the Beginning of the Fourth Century

In the first two decades of the fourth century, judicial activity features as prominently within the Aristophanic world as it did in last three decades of the fifth century. Using the quantitative methods outlined in Chapter 2, it would appear that Aristophanes’ audiences in the fourth century were still enjoying satirical jibes directed

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\(^{63}\) For the distinction made between nomos and psephisma and the appropriate safeguards to enforce this distinction, see Andoc.1.87 with Hansen (1974) and (1978). On nomothesia, the novel procedure for creating nomoi, see Dem.20.89-99, 24.20-3, 33, Aesch.3.38-9 and the three different viewpoints of MacDowell (1975); Hansen (for a summary, see Hansen (1991) 165-70, based on the articles in Hansen (1979), (1980a), (1983) 161-205, (1985); and Rhodes (for a summary, see Rhodes (1987) 15-20, based on the detailed study in Rhodes (1984a)).

\(^{64}\) The role of public arbitration and the deme judges in the dispute-process is expressed in diagrammatic form in Figure 8. MacDowell (1971b) 267 has also proposed that dikai were suspended under the restored democracy until 401/0 on the basis of Isoc.21.7, Lys.17.3. But Todd (1985) 13n.15 and Loening (1987) 120-1 have argued that this can not be the case because we know of dikai which must have been heard before 401/0 (see p.86n.153 on the series of dikai which preceded Isoc.18).


\(^{68}\) See Chapter 4.1, Chapter 6 and Chapter 7.2.

\(^{69}\) See Chapter 8 for further details.
at off-stage individuals associated with legal activity. Judicial activity has a role within the dramatic momentum of both the *Ecclesiazusae* of 392 and the *Plutus* of 388. Within the on-stage world of the *Ecclesiazusae*, judicial activity is located within the domain of contemporary Athens and is consciously banished from Praxagora’s fantastical new world order. As the play progresses, judicial activity then resurfaces in the three Old Women’s austere application of the law on sexual relationships, against which the Young Man utilises every evasive tactic in the litigant’s handbook. In the *Plutus*, the undesirable activities of the sycophant are not only described and derided, but are taken as a representative feature of ‘the bad old days’ when Wealth was blind. Consequently when Wealth’s sight is restored, the sycophant is impoverished, humiliated and driven from the fantastical paradise which Wealth creates when he comes to live with Chremylus. In the two Aristophanic plays which succeed the democratic judicial reforms, judicial activity is still firmly located within the oppressive domain of contemporary Athens, from which the comic hero escapes into a fantastical paradise which is characterised by an absence (all be it illusory) of judicial activity.

The on-stage focus on judicial activity in the first two decades of the fourth century is reflected in the off-stage constructions of judicial behaviour by litigants in the court room and in comments made by those writing about the fourth-century democracy. Within each of the law court speeches analysed in Chapter 4, delivered between 400 and 389, the litigants are consistently at pains to present themselves as judicially naive, while their opponent is presented as court room veterans, whose motivations and actions are tainted with sycophancy. The defendant in the Lysianic *Defence on a Charge of Subverting the Democracy* skilfully utilises sycophantic allegations against his opponents, suggesting that in 399 his audience were still concerned about appropriate modes of judicial behaviour (Chapter 4.4.i). In the late fifth century, Bdelycleon in the *Wasps*, supported by writers such as the Old Oligarch, highlighted the connection between the conviction of defendants and the provision of jury pay, suggesting that the democratic provision of jury pay demeaned and devalued justice. Writing in the mid 350s, Isocrates contrasts the *hesuchia* of a crypto-oligarchic past under the rule of the Areopagus, with the contemporary prevalence under the democracy for *dikai* and written complaints (*ôlkql kýlêmatTa*). He makes a connection between the sycophantic prosecutions of wealthy individuals and the dependency of poor jurors on jury pay which was funded by the confiscations

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70 See pp.32-4 above and Graph 3.A on p.33.
71 See pp.45-7, 53-4 above on the *Ecclesiazusae*.
72 See p.49-50 above for an analysis of the sycophant’s role within the *Plutus*.
73 See pp.129-30, 142-3 above.
7: Intensifying, Responding to and Resolving Judicial Concerns

arising from these prosecutions. The cluster of cases brought in contravention of the Amnesty at the beginning of the fourth century can only have sustained or even heightened concerns about the democratic administration of justice. The writer of the *Athenaión Politeíta* boldly states that: '...no one afterwards ever broke the amnesty. On this occasion, it seems, the Athenian reacted to their previous misfortunes, both individually and together, better and more public-spiritedly than anyone else at any other time', a viewpoint which is reiterated by other narrative sources for the period. In comparison, evidence from the non-narrative sources and the Attic Orators strongly suggest that repeated attempts were made to breach the Amnesty, some of which were successful. Although the Amnesty and its safeguards may have prevented a judicial pogrom against former oligarchs, it did not prevent the jury courts from continuing to be locations of significant tension and conflict, just as they had been in the period from 415 to 403. With regard to further programmes of judicial reform, concerns about judicial activity never again manifest themselves in the form of an oligarchic programme, as at the end of the fifth century. On the other hand, the democracy itself

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74 See Isoc.7.54, 8.129-30. These speeches are usually dated to the mid 350s (see Norlin (1928-9) 2.5, 100, Mathieu and Brémond (1928-62) 3.5-6, 55-6). See Todd (1993) 150-1 for an analysis of Isocrates' essentially oligarchic ideas on the administration of justice.

75 οὔδεις πάοτε ὑπεραν ἐμνησικάκησεν, ἀλλὰ δοκοὺσιν κάλλιστα δὴ καὶ πολιτικῶτα ἀνάτυ νων καὶ ίδια καὶ κοινὴ χρήσασθα ταῖς προγεγενμέναις συμφοράϊς (Ath.Pol.40.2.-3 tr.Rhodes). See also Xen.Hell.2.4.43, Lys.2.61-6, PI.Menex.243d, Epist.7.325a-b, Isoc.7.62.70. For further details, see Rhodes (1981) 471-2, Todd (1985) 15-17, Loening (1987) 99-100.

76 Todd (1985) 67-154 has produced a detailed catalogue of either potential or successful breaches of the Amnesty. He concludes (ibid. 154): 'Although we can rarely pinpoint a trial which resulted in a conviction in clear defiance of the Amnesty (Trial of Adeimantus (Dem.19.191)), there is plenty of evidence for illegal prosecutions (Trials of Agoratus (Lys.13), Nicias' brother (Lys.18) are blatant examples) - and defendants did not dare rely on the courts to uphold the Amnesty. The great criminal trials clearly all have some relevance to the Amnesty (Trials of Andocides, Socrates, Nicomachus and Agoratus). Moreover, there was frequent use, both at the dokimasia (Lys.16, 25, 26, 31, Ar.Rhet.1400a.30-6) and elsewhere, of evidence which should not have been permitted in court: and hardly a speaker failed to harp on the events of the Civil War. Finally, in the wider context, state actions performed by the demos are at least high handed (confiscation of Thirty's property, the democracy's relationship with Eleusis), and at most suggest a vendetta.' I have added the comments in parentheses, replacing Todd's numerical references to his catalogue of cases with the actual speeches that he refers to in the Catalogue.

77 Todd (1985) 196 summarises the success of the Amnesty as follows: 'the Amnesty was never formally denounced, and the witch-hunt was not incessant: to that extent the Amnesty enjoyed moderate success....Clearly however, the Amnesty was repeatedly challenged, evaded and broken, indeed it was not only un-enforced, but by the nature of the Athenian legal system, unenforceable.' Loening (1987) 147-9 is more positive: 'the testimony of ancient sources that there were only occasional attempts to violate the amnesty is borne out by the comprehensive survey of the evidence.'

78 An important reason for this must have been the violence committed by the Thirty, which subsequently discredited oligarchy as a viable alternative to democracy (see Rhodes (1980) 322, Sinclair (1988) 43). Isocrates' strategy for discussing constitutional change demonstrates this tendency: he will describe what is an essentially moderately oligarchic constitution using democratic vocabulary. In the *Areopagiticus*, Isocrates calls for a return to what he calls the 'democratic' constitution of Cleisthenes and Solon (Isoc.7.16-19, 22), which in reality means the rule of the Areopagus (37-45, 84), whose membership is restricted to the wealthy (26).
continued to reform its judicial institutions in the fourth century.\footnote{79} The procedure for empanelling jurors was developed to an immensely sophisticated degree in the first third of the fourth century, with the aim of generating a randomly selected jury for each court on every day the courts sat. The rationale behind these reforms was almost certainly to combat the bribing of jurors.\footnote{80} In the 370s the submission of pleas by litigants and evidence by witnesses was transferred from an oral to a written medium, probably reflecting the growth of literacy in Athenian society.\footnote{81} In conclusion, although the democratic judicial reforms at the end of the fifth century attempted to address the concerns and criticisms that had been raised about the democratic administration of justice, these concerns did not cease in the fourth century. Within the early fourth-century Aristophanic world, judicial activity remains a focus and a concern; an image which is confirmed by litigants’ eschewal of judicial activity, by the comments of fourth century political commentators, by the tension and conflict generated by prosecutions brought in contravention of the Amnesty, and by additional judicial reforms instigated by the democracy. It appears that the pursuit of judicial activity was perceived to be as problematic in the fourth century as it had been in the fifth.

7.5 Conclusion

Within the political events of the years 415 to 399, it is possible to identify popular attitudes to judicial activity crystallising out into concrete programmes of judicial reform. For example, the ideology of judicial reticence manifests itself in the programmes of judicial reform at the end of the fifth century. The Thirty attempt to clarify the laws which generate judicial disputes and move against sycophants. The restored democracy introduces and Amnesty and facilitates the resolution of disputes prior to a judicial hearing. On the basis that judicial disputes with one’s family were considered particularly undesirable, it is striking that the area of familial disputes is cited as the example of the Thirty’s attempts to curb judicial disputes through the clarification of laws. The Thirty transform the moral condemnation of the sycophants’ inappropriate judicial behaviour into the concrete condemnation of sycophants from Athens, an action which receives widespread popular support. Ironically, the Thirty’s subsequent manipulation of the judicial system for political and financial gain bears all the hallmarks of sycophancy. Concerns about the use of rhetoric in the jury court may be reflected in the Thirty’s law banning rhetorical instruction. The performance of the democracy in administering justice between 410 and 404 can only have confirmed oligarchic suspicions that the \textit{demos} was incapable of this task and unworthy of sitting

\footnote{79} The democratic reforms to the judicial system in the fourth century have been conveniently summarised by Rhodes (1980) 315-320.
\footnote{80} On the development of \textit{kleroteria} and the bribing of jurors, see p.15 above.
\footnote{81} See Calhoun (1919) with Rhodes (1980) 315 questioning Calhoun’s dating of these changes to 378/7. See Thomas (1989) 40-44 on these reforms and the development of literacy in Athenian society.
in judgement over the elite. Finally, the use of the judicial system to eliminate opponents by parties on both sides of the ideological divide in the late fifth and early fourth centuries can only have intensified pre-existing concerns about judicial activity. Many of the strands of popular attitudes to judicial activity become knotted together in the judicial reforms at the end of the fifth century. Furthermore, many of the above concerns about judicial activity from the late fifth century are also discernible in the first two decades of the fourth century. Therefore, it would appear that the democratic response resolved these concerns only to a limited extent. In the final chapter, I will make some suggestions as to why unease and concern characterised popular attitudes to judicial activity throughout the Age of Aristophanes.
The Ideology of Judicial Reticence and the Reality of Judicial Practice

Within the Age of Aristophanes, from the *Acharnians* of 425 to the *Plutus* of 388, the audiences of Aristophanes' plays watched a procession of characters on-stage who spurned, engaged with, enthused, criticised and satirised others for their involvement in judicial activity. The phenomenon of judicial activity is presented as problematic within, and yet an inescapable facet of, the Aristophanic world. Judicial activity is firmly located within the domain of contemporary Athens, a domain which is populated by negative associations such as war, political corruption, economic hardship and loss of the good life. The comic hero escapes from this oppressive domain into a fantastical world: a world characterised by both the blessings of peace, rejuvenation, and sensuous delights; and the conscious absence or banishment of judicial activity. Yet this absence turns out to be illusory, for some aspect of judicial activity resurfaces in the fantastical paradise. Consequently the portrayal of judicial activity within the Aristophanic world can be described as ambivalent: judicial activity is both to be escaped from and yet is inescapable.1 A similar ambivalence pervades the portraits litigants paint of both their opponents and themselves as they present themselves before the jurors. Litigants not only repeatedly portray themselves as judicially naive and their opponents as experienced to the point of sycophancy, but these portrayals play a significant role within their judicial strategy. Given the significance that litigants place on the topos of judicial reticence, it must in some sense correspond to values which are held by the jurors and so can not be dismissed as mere rhetorical gloss. On the other hand, the very same litigants who present themselves before the jurors as judicially reticent and inexperienced are in reality seasoned veterans of the jury courts, at times embroiled in long-running and complex judicial disputes. Therefore the topos of judicial reticence must in some instances operate primarily on an ideological level: litigants were expected to present themselves as inexperienced in all matters judicial even if in reality the jury court was their habitual habitat.2 I suggest that in the Age of Aristophanes, ambivalence characterises popular attitudes to judicial activity: it is an accepted social norm to display a reticence to engage in judicial activity and yet

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1 The above summarises Chapter 3.
2 The above summarises Chapter 4.
involvement in judicial activity is an inescapable part of the Athenian experience. Indeed, participation in the democratic judicial administration became an important plank in the construction of Athenian civic ideology.\textsuperscript{3} I will return to this contradiction between the ideology of judicial reticence and the reality of judicial practice later (pp. 176-8 below).

I think it is possible to push these ideas further and offer some suggestions as to why it was a social norm to present oneself as reluctant to engage in judicial activity. On the basis of the Aristophanic portrayal of the sycophant and comments made by litigants, I would like to suggest that it is the nature and distance of the relationship between two opponents which determines the perceived legitimacy of engaging in judicial activity. The sycophant is censured as a meddlesome pest who interferes in the affairs of others on judicially spurious grounds for personal gain. Sycophancy is condemned because it transgresses against a perceived code of social interaction: modes of behaviour, be they judicial or otherwise, which interfere in the affairs of others, are disapproved of and attract moral censure, particularly if motivated by personal gain.\textsuperscript{4} This model can be sharpened by observing that as the significance of the relationship increases, the perceived legitimacy of engaging in a judicial dispute decreases (see Figure 6). Consequently it is particularly horrific to be engaged in a judicial dispute with the members of one's \textit{oikos}, whereas it is perceived as legitimate and indeed right to obtain vengeance against one's enemy through judicial, as by any other means.\textsuperscript{5} In the former instance, it is considered appropriate to seek more private, less confrontational forms of dispute-settlement such as negotiation and arbitration, which preserve relationships, rather than the public and adversarial setting of the jury court, which threatens significant relationships.\textsuperscript{6} Within the on-stage world and beyond the theatre, the strongest moral censure is for reserved the individual who transgresses this relational framework through the pursuit of inappropriate judicial activity: he is labelled as \textit{πονηρός, κακός, ἀδικίος, μιαρός, αἰχμάς} or \textit{ὑβριστός}. This relational framework can be identified in the closing scenes of the \textit{Clouds}, both in the relationships which are the basis of Strepsiades' world and in the sentiments expressed about actions that threaten these relationships. When Strepsiades receives back his rhetorically re-educated son from the \textit{Phrontisterion}, he envisages the envy that will

\textsuperscript{3} See Chapter 1.
\textsuperscript{4} The sycophant is often taken to be the epitome of \textit{polupragmosyne}, which has been defined as the inability to 'either keep quiet themselves or to leave others in quiet' (Ehrenberg (1947) 47 commenting on HCT 1.232). See also Adkins (1976) 307-11, 316-8.
\textsuperscript{5} See Dover (1974) 180-195, 273-78. Cohen (1995) understands Athenian law primarily in terms of enmity and feud, as he summarises in his conclusion: 'the legal relations embodied in a lawsuit or prosecution, it is argued, are seen as being to a significant degree merely an extension of long-term competitive and feuding relations between parties' (ibid. 183).
\textsuperscript{6} See Chapter 4.4.iii on disputes within the \textit{oikos}. 
consume his 'friends and demesmen (οἱ φίλοι καὶ δημόται)' when they witness his victory at dikai through his deployment of Pheidippides' rhetorical training. In the following scene, Strepsiades' first creditor enters with his witness to serve a summons on Strepsiades, which he is reluctant to carry out because 'I will make myself an enemy of a fellow-demesman.' When Pheidippides assaults Strepsiades after their divergence of dramatic taste, Strepsiades calls upon his 'neighbours, kinsmen and fellow-demesmen (γείτονες καὶ ξυγγενεῖς καὶ δημόται)' to witness the blows he is suffering at the hands of his son. In other words, Strepsiades' relational world is characterised by his ties with his kin, friends, neighbours and fellow-demesmen. Actions which threaten these relationships, whether they be a judicial dispute or physical violence, are to be avoided and if perpetrated, warrant moral censure. Therefore I suggest that there is a connection between the perceived legitimacy of engaging in judicial activity and the relationship between the disputing parties: as the significance of their relational ties increase, so the perceived legitimacy of their engaging in judicial activity decreases.

On the other hand, the relational ties and the patterns of judicial activity in Athenian society are not as straightforward as those envisaged by Strepsiades. Even in the area of family relationships, we possess a number of family disputes which are noted not only for their emphasis on dispute-settlement, but even for dispute-perpetuation. For example, the case for which Isaeus wrote On the Estate of Dicaeogenes was the eighth in a series of judicial hearings stretching back over a twenty-two year period. Although the cousins present themselves as reluctant to engage in judicial activity with their own kin in contrast to the venal Dicaeogenes (III), in practice it transpires that they are as familiar as Dicaeogenes with the experience of facing their kin across the court room. It is my contention that, at an ideological level, Athenians in the age of Aristophanes may have retained a reticence to engage in judicial activity characteristic of a face-to-face society, but in reality the picture is more complex then their protestations might have led us to expect. Therefore I shall look at

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8 'γενθσοιμι ἐξαιρο ἐτι πρὸς τούτοιοσι ωνδρο δημότη' (Ar.Nub.1218-9). The First Creditor employs morally negative vocabulary to describe Strepsiades' willingness to perjure himself rather than repay a demesman ("ἀναδίεια" 1236).
10 Similarly, when Strepsiades is looking at the map of Attica, he asks the Student: 'where are the men of Cicynna, my demesmen (καὶ ποι κικυννής εἰσιν, οὐμοὶ δημόται (Ar.Nub.210))'.
11 See Chapter 4.4.iii. See also Todd (1993) 217 on the dispute over Hagnias' estate which ran for several generations. For other examples of dispute-perpetuation in a non-family situation, see the string of legal actions which Callimachus brings (Chapter 4.4.ii) and Todd (1993) 153-4 on the disputes outlined in Lys.10.
12 See p.82 above.
attitudes to dispute in face-to-face societies and at the relational ties upon which these attitudes are founded and then use these findings to arrive at a clearer understanding of attitudes to judicial activity in the age of Aristophanes.

Paul Millett has drawn attention to the almost unique qualities of Hesiod’s *Works and Days* as a source of information on face-to-face societies in Ancient Greece. I shall discuss first the socio-economic structure of Ascra, the community described by Hesiod, and then the relationship between this structure and attitudes to dispute. Millett has described the community in the *Works and Days* as ‘a collection of independent oikoi or households.’ He characterises the economic relationships between these oikoi on the one hand as fiercely self-sufficient and on the other as mutually reciprocating. Millett notes that this apparent contradiction between self-sufficiency and reciprocity is characteristic of many face-to-face communities. These economic relationships are mirrored in social relationships. Relationships within the oikos which facilitate its self-sufficiency are promoted. Relationships with neighbours and friends that are characterised by mutual acts of reciprocity are similarly valued. For example, Hesiod praises the benefits of a good neighbour:

πήμα κακῶς γείτων, ὃσον τ' ἀγαθός μέγ' ὄνειρα· ἔμορφε ταὶ τιμῆς ὡς τ' ἐμορφε γείτονος ἐσθλοῦ· οὐδ' ἂν βούς ἀπόλαυτ', εἰ μὴ γείτων κακῶς εἶν. εὖ μὲν μετείσθαι παρὰ γείτονος, εὖ δ' ἀποδοῦναι, αὐτῷ τῷ μέτρῳ, καὶ λάιον αἴ ἑ κ δύνηα, ώς ἂν χρηίζων καὶ ἐς ὑπερὸν ἀρκίου εὔρης.

A bad neighbour is as big a bane as a good one is a boon: he has got good value who has got a good neighbour. Nor would a cow be lost, but for a bad neighbour. Get good measure from your neighbour, and give good measure back, with the measure itself and better if you can, so that when in need another time you may find something to rely on.¹⁸

¹³ Millett (1984) 84-5, 106-7, where he prefers the *Works and Days* as a source over and above either Aristophanes or the Attic Orators. Knox (1982) 331 takes a similar approach. In his article, Millett describes Hesiod’s world as ‘a peasant society’ (ibid.85), and goes on to describe some of the problems in applying the definition of a peasant from contemporary studies to Hesiod’s world (ibid.90-3). Millett’s aim is rather to ‘argue that there are certain features of the world of the *Works & Days* that are comprehensible only when compared with institutions that anthropologists identify as being characteristic of other peasant societies’ (ibid.92). I have used the term ‘face-to-face’ rather than peasant because I wish to draw parallels between a wider range of communities, including Ascra, Andalusian Alcalá, 18th century Languedoc and the Classical Athenian deme. The *Works and Days* is usually dated to either the end of the eighth century or the beginning of the seventh (see West (1978) 30-3).


¹⁷ Hes.WD.373-80, 405-6, 695-705.

¹⁸ Hes.WD.346-51 (tr.West). See also p.171n.23 on the importance of the friend.
The community of Hesiodic Ascra consists of a collection of independent oikoi, striving for self-sufficiency but connected to each other through a series of mutually reciprocating economic and social ties.

Secondly, disputes which threaten these socio-economic ties are inadvisable. The clearest instance in the poem is the dispute between Hesiod and his brother Perses over the division of their patrimony. At the start of the poem, Hesiod appeals to Perses: ‘let us settle our dispute with straight judgements, the best Zeus sends.’ He goes on to lament the inequitable division of the patrimony which he received on account of Perses’ appealing to the basileis. The verdict handed down by the basileis overthrew the previous mutually agreed settlement between the two brothers. Perses’ actions aside, Hesiod regards recourse to dispute settlement at the centre (polis) before the basileis as peripheral to his world of hard work in his village community (kome). He urges Perses to turn from ‘disputes and debates (νείκεα τ’ ἁγορέαν’) to agricultural work and envisages that divine judgement will fall on the basileis and their poleis, rather than on his village community. Hesiod regards a dispute within the oikos as regrettable and an appeal to third party adjudication as an inappropriate method of resolving familial disputes. Similarly, Hesiod counsels Perses against entering into a dispute with a friend:

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\text{μηδὲ κασιγνήτω ἵσαι πολείσθαι ἐταίρων;
εἰ δὲ κε ποίησα, μὴ μιν πρότερος κακὸν ἔρξεις,
μηδὲ χειροδεθαὶ γλῶσσας χάριν: εἰ δὲ σὲ γ᾽ ἄρχῃ
η τι ἔπος εἰπὼν ἀποθύμιον ἥ καὶ ἔρξας,
δῖς τάσα τείνυσθαι μεμνημένος;}
\]

Do not make a friend on a par with a brother; but if you make one, do not do him ill unprovoked, or offer false tongue-favour. But if he is the one who gives you a disagreeable word or deed, make sure he pays for it double.

Therefore it would appear that within the face-to-face society of Ascra, it is considered inappropriate to engage in disputes with either members of one’s oikos or with one’s

19 ἀλλ᾽ οὖθε διακρινώμεθα νείκος ἰδεῖσαι δίκης, αἳ τ᾽ ἐκ διὸς εἰσιν ἀρισταί (Hes.WD.35-6 tr.West) and see West (1978) 149-50.
20 Hes.WD.37-9 with West (1978) 33-40, Millett (1984) 105. Gagarin (1974) offers a different interpretation, stating that after the estate was divided, Perses entered into unsuccessful litigation to increase his share of the inheritance and has impoverished himself through the payment of gifts to the basileis. Whichever interpretation is preferred, I think it is still clear that disputes within the oikos and recourse to adjudication are disapproved of.
21 The polis is referred to on five occasions in the poem (Hes.WD.189, 222, 227, 240, 269) and is distinct from Hesiod’s own village community, the κόμη of Ascra (639). See Knox (1982) 329, Millett (1984) 90-1.
22 On avoiding ‘disputes and debates’, see Hes.WD.27-34, on judgement falling on the poleis of the Basileis, 222-4, 238-47.
23 Hes.WD.707-11 (tr.West).
friends and neighbours on the grounds that the economic security of the oikos is dependent on the maintenance of these relationships.

The connection between a reticence to engage in disputes within a community and the socio-economic ties upon which the community is based has been observed in both contemporary and past face-to-face societies by anthropologists and historians. For example Julian Pitt-Rivers describes, in the small village of Alcalá in Andalusia, a dispute between the wealthy and well connected Fernando and his neighbour, the poorer Curio over water-rights.24 Although it would appear that Curio had the stronger moral claim in the dispute, he fails for two reasons. Firstly he refuses to accept Fernando’s offer of compensation in return for settlement, which is considered ‘unneighbourly’ and indicative that Curio is motivated by a ‘vindictive spirit’ in his dispute with Fernando. Secondly, Curio’s supporters soon abandon him on the strength of their socio-economic ties with Fernando:

When Fernando reassured them that they would gain and not lose water, and when Curio refused to consider compensation, they were glad to reaffirm their solidarity with Fernando, even though they disprove of the violation of the tradition upon which they depend for the security of their water. Not only is Fernando their spokesman, but they are all tied to him by obligations of friendship. “Fernando is a good friend, a good neighbour. He gives much. He has everybody in his debt.” In view of his past kindness it would be shameless of them to go against him, moreover it would be impolitic.25

The community of Alcalá is based upon a complex set of reciprocating socio-economic relationships between neighbours and friends.26 Consequently a course of action which threatens these relationships, for example siding with the opponent of one’s friend in a dispute, or the unwarranted perpetuation of a dispute, is to be avoided. Nicole Castan, in her study of disputes in Languedoc during the second half of the eighteenth century, has traced the developments in mediation and arbitration as the state-sponsored adjudication developed.27 She comments on the traditional reticence about going to law, particularly between family or community members, and gives the following reason for this tendency:

By means of compromise, resting on principles considered just or at least acceptable, people hoped to resolder the breach in the social contract: duly sealed by a meal eaten together, its repair restored friendship and reknitted broken bonds. In this way the two parties and their descendants avoided the long and painful quarrels, the almost obligatory vengeances which a legal battle provoked.

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24 Pitt-Rivers (1971) 141-54. Alcalá consists of some 2,045 inhabitants and is described by Pitt-Rivers as a ‘compact community’ (ibid.4-12).
25 Pitt-Rivers (1971) 153
26 See Pitt-Rivers (1971) 137-41 on the relational framework of Alcalá.
27 Castan (1983). Sharpe (1983) 186 in the same volume makes the following comment about litigation in Elizabethan and Stuart England: ‘the widespread recourse of arbitration would seem to support the contention that contemporaries were anxious to maintain some sort of harmony in their communities, and saw a bitterly contested lawsuit as a threat to that harmony.’
by the dramas which it added to the affair and by the rancour and humiliation which it frequently left in the defeated party.\textsuperscript{28}

Again, it is the preservation of the relational ties within this face-to-face community which generates a reluctance to pursue community disputes by means of state-sponsored adjudication.

Therefore it would appear that face-to-face communities share a number of attitudes with regard to disputes. Significance and value are often attached to relationships with kin, neighbours and friends in face-to-face societies on account of economic and social structures within these communities. These relational ties generate a reluctance to engage in disputes within the community, and when disputes do arise, a pressure to settle disputes by negotiation or arbitration rather than adjudication before a central authority. With regard to the classical Athenian \textit{polis}, I will look first at disputes within sub-sections of Athenian society which can be described as ‘face-to-face’, particularly the deme, and then I will examine disputes at a \textit{polis-wide} level.\textsuperscript{29} With the deme, there may well be a connection between the face-to-face nature of deme society and the reluctance to engage in intra-deme judicial conflict. Robin Osborne has described the deme as a nucleated settlement of between approximately 130 to 1500 people.\textsuperscript{30} A man looked to his fellow demesmen for the validation of his citizen status and thus his potential entry into the local and central political administration; for their support alongside his kin at rites of passage; for the mutually beneficial pooling of labour resources during intensive periods of agricultural activity; and for a community of experience during local religious festivals.\textsuperscript{31} This complex web of relationships generates a reluctance to engage in judicial activity against fellow-demesmen: witness the comments made by the First Creditor in the \textit{Clouds}. Similarly a litigant for whom Isaeus wrote a prosecution speech makes the following observation:

\begin{quote}
Μάλιστα μὲν ἔβουλάμην, ὃ ἀνδρεὶς δικασταὶ, μηδὲ ύπρ' ἐνὸς ἀδικεῖσθαι τῶν πολιτῶν, εἰ δὲ μη, τοιοῦτων ἀντιδίκως τυχεῖν, πρὸς οὗς οὐδὲν ἂν ἐφρόντιζον διαφερόμενος. Νῦν δὲ μοι πάντων πραγμάτων λυπηρότατον συμβέβηκεν· ἀδικοῦμαι γὰρ ὑπὸ τῶν δημοτῶν, οὗς περιορᾶν μὲν
\end{quote}

\textsuperscript{28} Castan (1983) 226.
\textsuperscript{29} Obviously it is more problematic to describe the classical Athenian \textit{polis}, with a citizen population of approximately 40,000 (see p.21n.4) as a face-to-face society such as Hesiodic Ascra or Andalusian Alcalá. On Athens as a face-to-face society, see Finley (1983) 28-9, 82-3, (1985) 17-8. Osborne (1985c) 64-5, Ober (1989) 31-33 have criticised Finley’s model, arguing that at a \textit{polis-wide} level, Athens was simply too large to be a face-to-face society.
\textsuperscript{30} Osborne (1985c) 15-46. This is smaller than the population of Alcalá (p.172n.24). Osborne (1985c) 89 likens the deme to a face-to-face society.
\textsuperscript{31} See Osborne (1985c) 64-92 for political ties, 127-53 for social and economic ties and 178-182 for religious ties.
I would greatly wish, gentlemen of the jury, never to suffer injustice from any one of the citizens, or if not, to happen upon such adversaries with whom I do not have to worry about quarrelling. However, the most distressing state of affairs possible has happened to me, for I am the victim of an injustice perpetrated by my demesmen, whose robbery is not easily to overlook, and yet to incur their hatred is unpleasant, of those with whom I am obliged to participate in both sacrifices and common gatherings. It is interesting to note that the speaker, if he does find himself in a dispute, hopes it will be with an adversary with whom a dispute is of little significance. Yet in his current situation precisely the reverse has happened, he is in a dispute with his fellow demesmen, to whom he is bound through ties of shared social and religious experience. In a similar way, the significance of the relational ties between kin generates a reticence to engage in judicial activity with family members. It is very difficult to ascertain the extent to which this ideology of judicial reticence impacted on the reality of judicial activity between demesmen and kin.

On the other hand, many other judicial disputes are taking place on a polis-wide scale between two litigants whose relational ties amount to little more than shared Athenian citizenship. Indeed their relationship may well be characterised by a well-publicised and strong hostility, the satisfaction of which through judicial or other means is strongly sanctioned and encouraged. Yet even in these instances, litigants still present themselves as reluctant to engage in judicial activity. Whatever may have been the legal challenges of prosecuting Eratosthenes at his euthynai, few must have

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32 Isae.fr.5.1 (Roussel).
34 See p.169 and Chapter 4.4.iii on disputes between kin. On the ties between kin generally, see Humphreys and Momigliano (1978) 197-202, Osborne (1985c) 139 and for the responsibilities of kin with regard to murder, see MacDowell (1963) 8-32, Todd (1993) 271-6, and with regard to burial and inheritance see p.52n.93. Humphreys (1986) 87-88, in her detailed study of kinship patterns in the Athenian courts, concludes that 'the range of kin explicitly and precisely identified as such in Athenian courts was narrow; frequency of attested interaction falls off rapidly outside the limits of trust based on co-residence at some stage in the nuclear family.' This suggests that the relational ties between kin and therefore patterns of dispute are likely to be more complex than a straightforward ideological commitment not to engage in judicial activity with kin. For example the weakness of relational ties between more distant kin may have permitted disputes to occur in practice, while the ideology of judicial reticence demanded the disputants present themselves as reluctant to engage in judicial activity with these kin.

35 Strepsiades' Creditor and the speaker in Isae.fr.6, although protesting reluctance to prosecute fellow demesmen, are doing precisely that. Similarly litigants claim they are reluctant to engage in judicial activity with kin in long-running, complex judicial disputes (see p.169 above). It is crucial to remember that nearly all our evidence is restricted to the jury courts, we have no idea what percentage of intra-deme and familial disputes were settled before they ever reached the jury courts, an observation which is made by Todd (1993) 227, Hunter (1994) 58, 205n.13. See Dover (1974) 3-5 on the inevitable contradictions in any system of 'popular morality' and the extreme difficulty of gauging the extent to which 'popular morality' influenced actual behaviour in the Greek world.

36 See p.168n.5 above.
questioned the legitimacy of Lysias prosecuting the man who had arrested his brother and seized his family’s wealth. And yet Lysias informs the jurors at the start of his prosecution speech:

έγώ μεν οὖν, ὦ ἄνδρες δικασταί, οὔτε ἐμαυτοῦ πώποτε οὔτε ἄλλοτρια πράγματα πράξας νῦν ἰνάγκασαι ὑπὸ τῶν γεγενημένων τούτου κατηγορεῖν, ὡστε πολλάκις εἰς πολλὰν ἀθυμίαν κατέστην, μὴ διὰ τὴν ἀπειρίαν ἀναξίως καὶ ἀδυνάτως ὑπὲρ τοῦ ἀδελφοῦ καὶ ἐμαυτοῦ τὴν κατηγορίαν ποιήσωμαι:

So I, gentlemen of the Jury, never yet being involved in litigation on my account nor on account of another, now have been forced by events to prosecute this man. Consequently I am often filled with a great despondency, lest, on account of my inexperience, I make a worthless and incompetent prosecution on behalf of my brother and myself.

In cases such as this, I have two suggestions as to why litigants proclaim their judicial reticence even though there are no significant relational ties between them. The first suggestion is that attitudes to dispute have been retained from either an actual or imagined past when the active pursuit of a intra-community dispute threatened the socio-economic relationships within that community. In other words, although Lysias’ prosecution of Eratosthenes is a polis-wide dispute, the attitudes which Lysias projects about engaging in judicial activity have their origins in the period when Attica consisted of a collection of actual or imagined autonomous, face-to-face societies. My second suggestion is that Athenian citizens considered their polis to be an idealised face-to-face society, irrespective of its actual size, within which they were bound to one

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37 See p.112 on the legal challenges that Lysias faced. On Eratosthenes’ treatment of Lysias’ family, see Lys.12.17-20 and see §§2-3,23-6 for personal statements of enmity against Eratosthenes.
38 Lys.12.3.
39 This retention of attitudes from the past has also been discerned in the use of witnesses in the jury court. Humphreys (1985) 350 makes the following observation in the conclusion to her study of witnesses in the Attic Orators: ‘we can see that Athenians still expected to be able to rely on face-to-face knowledge of person in judging situations. Speakers quite often appeal to the jurors’ personal knowledge of the parties and their doings; even when jurors did not know litigants personally they knew by sight or reputation the public figures who appeared in court...and they were expected to perceive other witnesses as representing the social networks in which litigants were personally known. The support and good opinion of such social networks was very important for the litigant; an Athenian could not even imagine relying on official registration procedures, written documents and the interpretation by legal experts of an unambiguous body of written rules to define his status and secure his rights....They are trying to retain some of the qualities of village dispute-settlement procedures in an urban setting...’ Although a trial in the Athenian jury court was not a village dispute-settlement, the litigants’ utilisation of witnesses suggests they have retained attitudes from the latter context. Humphreys similarly argues for the retention of ‘the adjustable praxis of community-dispute settlement’ within ‘the egalitarian law of the city’ in her account of the development of the jury courts (Humphreys (1983a) 248-9).
40 Manville (1990) 57-69 paints a portrait of Attic society from the 10th-7th centuries as: ‘fundamentally regionalistic and decentralised: a world of villages, local cults and kinship groups, and independent neighborhoods.’ (ibid.58). On the unification or synoikismos in Attica, see ibid.55-7 for a summary of recent treatments of the literary and archaeological evidence. Manville notes that the event is dated from anywhere between 13th to 6th centuries. I am grateful to John-Paul Wilson for this reference.
Josiah Ober has described the concept of *homonoia*, which was perceived to characterise relationships between citizens of the *polis*, in the following way:

The term *homonoia*, as it was used by the political orators, generally implied a condition in which all citizens think the same thing, in which their social and political differences are submerged in a unified community of interest. Hence, the state becomes an organism with a single mind and a single will.\(^41\)

Consequently, the pursuit of judicial activity within the *polis*, for example Lysias’ prosecution of Eratosthenes, threatens the idealised relational ties which are perceived to exist between the citizens of the *polis*.\(^42\) In conclusion, it would appear that in some cases a reticence to engage in judicial activity is built upon the desire to preserve real and significant relationships, for example in the case of judicial disputes between demesmen or kin. In many other instances, litigants project themselves as judicially reticent to preserve an idealised relational framework, which may not exist in reality, but either has been retained from the past, or was perceived to exist between all citizens of the Athenian *polis*.

If Athenian society retained, at an ideological level at least, a reticence to engage in judicial activity, then there is an obvious contradiction between the ideology of judicial reticence and the realities of judicial practice in the fifth century. Rather than encouraging restraint towards judicial activity, the democratic judicial system facilitated involvement in judicial administration. If the democratic judicial system was to function, it was imperative that citizens came forward to serve as jurors, to prosecute as *ho boulomenos* or to give testimony as witnesses. Indeed participation in judicial activity became an element in the construction of Athenian civic ideology during the classical period.\(^43\) Rather than encouraging negotiation and resolution of disputes within the family, the democratic judicial system enabled familial disputes to be conducted in a public arena before third party adjudicators.\(^44\) I would like to suggest that this contradiction between the ideology of judicial reticence and the realities of judicial practice lies at the heart of the ambiguous attitude to judicial activity in both the plays of Aristophanes and the Attic Orators. The pursuit of judicial activity is spurned by both the comic hero and by the litigant on the basis of attitudes to dispute-settlement have either been retained from the archaic past or which perceive the *polis* as an

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\(^41\) Ober (1989) 297.

\(^42\) I am grateful to Riet van Bremen for this suggestion.

\(^43\) See Chapter 1.

\(^44\) Humphreys (1983b) 5 has similarly observed: ‘thus a contradiction is immediately apparent between the ideology of the *oikos*, which stresses the need for amicable regulation of the affairs of the *oikos* and kindred inside the private sphere, and the provision by the city of mechanisms for settling their disputes in the public sphere.’ Strauss (1990) 116 lists the following as one on the ‘genuine shocks’ the *oikos* faced in the late fifth century: ‘the growth of wealth and increased access to the courts may have led to increased tension over patrimonies.’ It would appear that the Thirty picked up on these concerns in their judicial reforms (Chapter 7.2).
The ideology of judicial reticence and the reality of judicial practice were intensified by at least four factors specific to the late-fifth century. First, the central role of the jury courts in the democracy was a relatively novel development in the late fifth century, a development which it would have been difficult to overlook on account of the volume of business processed by the courts in the administration of the democracy and of the empire (Chapter 4.1). Secondly, the provision of rhetorical education and the recourse to a logographer generated popular anxieties that the elite were able to deploy rhetorical resources in the jury courts to evade justice (Chapter 5). Thirdly, in response to these contradictions and tensions, justifications and criticisms collected around the democratic judicial institutions. To some, the democratic jury courts epitomised the sovereignty of the demos to administer justice over all, including the elite. Others argued that the demos was prey to manipulation by skilful speakers, while the provision of jury pay encouraged the infliction of harsh penalties on wealthy defendants (Chapter 6). Fourthly, in the period from 415 into the fourth century, the judicial system was extensively used by parties on both side of the ideological divide to eliminate opponents in a series of trials noted for their emotive nature and illegal procedure (Chapter 7.1). The degree of concern about judicial activity and the widespread nature of the debate on the democratic judicial system is confirmed by the programmes of judicial reform launched by both oligarchs and democrats in the last decade of the fifth century. These programmes certainly pick up on the above concerns and arguments about judicial activity and attempt to address them (Chapter 7.2-3). Although the programmes of judicial reform attempted to address these concerns about judicial activity, it would appear that these concerns continued in the first two decades of the fourth century (Chapter 7.4). It is very probable that the cumulative impact of these four factors intensified the contradiction between the ideology of judicial reticence and fifth century judicial practice. Even in the fourth century, when some of these factors are no longer significant, judicial activity continues to prey upon the Athenian

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45 By the fourth century one presumes that the Athenians had grown accustomed to the role of the jury courts in the administration of the democracy. The rule of the Thirty had invalidated any serious programme of oligarchic judicial reform (see p.164).
If it is accepted that Athenian popular attitudes were governed by both an ideology of judicial reticence and the realities of judicial practice, then I believe this has implications for our understanding of the dispute-process in Athens. Given the realities of judicial practice described above (for example, p.169), it would simply be naive to claim that an ideology of judicial reticence produced a society characterised by its absence of litigation: it clearly didn't. On the other hand, in both Aristophanes and the Attic Orators, repeated reference is made to a social norm which discourages involvement in judicial activity. This social norm is drawing upon an accepted relational framework, however idealised, the transgression of which provokes strong moral censure. Consequently I suggest that the ideology of judicial reticence must at least have encouraged disputants to pursue alternative means of dispute-settlement to adjudication in a jury court. Unfortunately our evidence for the dispute-process is limited almost completely to the latter medium, whereas evidence for alternative means of dispute-settlement, such as negotiation or arbitration, is shadowy at best. Although our evidence for these alternative mediums of dispute-settlement is limited, I think it is important to give them due emphasis in an account of Athenian dispute-process on the basis of the ideology of judicial reticence.

The diagram in Figure 8 is a step towards evolving such an account of the Athenian dispute-process. In reaching an outcome to a dispute, a disputant may employ a variety of strategies. He may decide to pursue several strategies simultaneously. Any one of these strategies may either precipitate an outcome to the dispute or its perpetuation and thus the utilisation of alternative strategies. It is probable, but not essential, that the disputant may begin with the less confrontational strategies in Phase 1 and gradually move towards those in Phase 4, as the former are less likely to transgress either idealised or actual relational ties. In order to illustrate this account of the Athenian dispute-process, I have created an imaginary dispute, the type of which must have been immensely common in Classical Athens, but which has disappeared from our sources. Let us imagine that Xanthias and Sosias are neighbours and fellow-demandsmen. Xanthias has been a victim of cattle-rustling and suspects that Sosias may be implicated in the crime. Under Athenian Law, Xanthias could summon

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47 This account of the Athenian dispute-process is heavily indebted to the taxonomy of disputes advanced by Simon Roberts and Michael Palmer in their LL.M course on Alternative Dispute Resolution which they kindly permitted me to participate in. On the taxonomy of disputes, see Gulliver (1979) 74-80, Roberts (1979) 69-79, (1983) 11-5, Felstiner et al. (1980-1), Shapiro (1981) 1-17.
Sosias to appear before the thesmothetai on a *dike klopes.* However, as these men are demesmen and neighbours, there exists between them significant political, social, economic and religious ties. Reluctant to damage these ties and to be perceived in the deme as a man who readily prosecutes his fellow-demesmen, Xanthias may pursue a variety of strategies against Sosias. He may choose to put pressure on Sosias through the religious and social sphere by letting it be known in the community that he has placed a curse on those who have stolen his cattle. This social pressure could be increased by Xanthias' circulating a rumour that Sosias is known to be associated with the cattle rustling. Alternatively, Xanthias may choose a more confrontational approach by summoning his kin and friends and going with them to meet with Sosias. In the negotiations which follow, Xanthias may challenge Sosias to take an oath, again placing leverage on Sosias through the religious sphere. It is possible that the two disputants decide to submit the dispute to arbitration and chose a mutual friend who has been present at the negotiations and who has already been acting in a mediatory role. On the other hand, the negotiations may deteriorate into a heated exchange of accusations and insults, which culminate in Sosias attacking Xanthias. Sosias' action has severely damaged relational tie between the two disputants. Consequently Xanthias could now bring a *dike klopes* or more likely a *dike kakegorias,* a *dike aikeias* or even a *graphe hubreos* against Sosias with the full backing and sanction of the community. Furthermore, he is now in a strong position to pursue a court-case against Sosias. Firstly he can present himself as judicially reticent in a dispute with his demesman through his offer of a negotiated settlement; secondly he possesses more than ample negative

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48 Rosivach (1994) 71n.11 gives 100 drachmae as 'the highest reliable amount found in our sources for a single ox.' If this is the case, then Xanthias' loss of his cattle represents a serious economic loss, way beyond the 10 drachmae limit which the deme judges adjudicated upon (see Chapter 7.3.iii).

49 It is very difficult to know where to locate cursing in this taxonomy of disputes. In terms of the face-to-face interaction between the disputants, it should be placed in Phase 1, together with gossip. In terms of the severity of punishment which it inflicts and the presumed inevitability of divine justice, it should be placed in Phase 4, together with self-help. I have placed it in Phase 4, mainly from a desire to escape from the assumption that a recourse to divine justice is not 'real justice'. In Gager (1992), two categories of curse tablet are particularly relevant to disputes. The first category are curse tablets commissioned by the victim of an injustice. The injustice is described, sometimes in great detail and appeal is made to the gods for both justice and revenge. In the case of stolen property, ownership of the object is transferred to the deity, so the theft becomes an impious act. The act of cursing appears to have been in some sense a public affair (ibid.175-99). The second category are primarily commissioned by defendants before a trial, listing opponents and requesting that their physical and mental abilities will be afflicted (ibid.116-50). See Jordan (1995) for specifically Athenian examples.

50 For an example, see the rumours that Callimachus started to circulate to put pressure on the speaker of Isoc.18 (Isoc.18.7. 9 and Chapter 4.4.ii). On rumour, see Ober (1989) 148-51, Hunter (1994) 96-119, Lewis (1996) 9-23.

51 On the challenge to take an oath, see Plescya (1970) 40-7, Mirhady (1991), who comments during his discussion of Arist.Rhet.1.15.1377a8-b11: 'it is hard to avoid the conclusion that the oath was meant to end litigation, to be an alternative to the contest before the dikasterion' (ibid.80).

52 On negotiation and mediation in family disputes, see Hunter (1994) 205-6n.14. On private arbitration, see p.84n.147 and p.72 for private arbitration in Isoc.18. Although private arbitration was binding, in reality on of the parties may decide to reject the arbitrator's award and pursue the dispute by other means, as Callimachus chose to. I have represented this reality by a dotted line in Figure 8.
material with which to assassinate Sosias' character; and thirdly he has suitable 
witnesses from among his kin and friends to produce in court in support of his case. 
Although this scenario is fictional, it must have characterised innumerable disputes in 
classical Athens. I think it is likely that many disputants, like Xanthias, pursued a 
variety of dispute-settlement strategies, exploring the less confrontational strategies first 
(Phases 1 and 2), before considering more confrontational strategies such as 
adjudication in a jury court (Phase 3).

Although it may appear an unusual to end a thesis on attitudes to judicial 
activity with a fictional story about cows, perhaps it is less bizarre in a thesis with a 
strongly Aristophanic slant. Although the Aristophanic world may be populated with 
fictional tales of cavorting animal choruses, it has been my contention throughout that 
these plays also open a window onto the popular attitudes of Athenian citizens, albeit a 
distorted one. I hope the validity of this assertion has been demonstrated by the 
abundant evidence from beyond the theatre which supports and elucidates the on-stage 
images of judicial activity. Similarly I take the repeated appearance of judicial activity 
on the comic stage as testimony that these issues concerned and preoccupied Athenian 
citizens in the age of Aristophanes. Although one may have to resort to fictive tales 
about cows, the plays of Aristophanes bring us closer to comprehending the attitudes of 
men such as Xanthias and Sosias to judicial activity.
Appendix 1

Quantitative Analysis of Personal Jokes in Aristophanes

In Chapter 2, I advanced three interpretative keys which I have subsequently used in reading the plays of Aristophanes. The first of these was that the frequency with which Aristophanes focuses on a topic is a barometer of his audience's concern about that issue. I presented the results from a quantitative analysis of the frequency and subject-matter of Aristophanic satire. I suggested that the frequency of legal satire indicated that Aristophanes' audience was interested in and concerned about legal matters. The fundamental idea underlying this first interpretative key is that Aristophanes' choice of a particular individual and his decision to highlight one association from the assortment of associations that cluster about that individual is significant. This hypothesis is discussed in detail below (Section A 1.1). In Section A 1.2, I have described the quantitative methods I used to extract numerical values from Aristophanic personal jokes. It must be stressed that this analysis is neither a detailed prosopographical study of satirised individuals nor an examination of personal jokes in Aristophanes. Therefore the results obtained possess an impressionistic rather than definitive nature. The categorisation of some jokes and the identification of individuals are open to challenge. But by analysing the overall patterns of satire, I suggest it is possible to gain a sharper understanding of the issues which made Aristophanes' audiences laugh and extrapolate from this laughter their interests and concerns.

A 1.1 Some Observations on Personal Jokes in Aristophanes

The relationship between the on-stage satirical portrait and the off-stage individual is problematic. Consequently the connection I wish to draw between frequency and choice of satirical subject-matter and the concerns of the audience can be challenged in several different ways. It is possible that Aristophanes has cited an individual in an unexpected context with surprising associations; such a novel juxtaposition between on-stage inventiveness and off-stage reality has comic potential.

1 I am indebted to Dr Julian Hoppitt for the introduction to and tuition in quantitative methods. I have tried to limit statistical details to the footnotes and Section A 1.2. I have used some basic statistical terms, as defined by Floud (1979) 17-27; the data set: the coherent selection of data that is to be used in a particular analysis project (in this study: each play by Aristophanes); the case: the individual pieces of information that make up the data set (in this study: each named Athenian citizen in a play by Aristophanes); the variable: the pieces of information that together constitute the case (in this study: the associations that Aristophanes attaches to contemporary individuals). The statistical methods used are simple: absolute totals, percentage totals, mean and frequency. In the relevant footnotes to Chapter 2, I have explained the statistics I used to transform the absolute totals into percentage totals and frequencies, allowing for comparisons to be made across the plays. My calculations are presented in Tables 12-18 of the Statistical Appendix.

2 I. C. Storey is apparently compiling the former and S. Halliwell the latter.
Appendix 1: Quantitative Analysis of Personal Jokes in Aristophanes

The above statement could be accused of placing too reactive an interpretation on comedy, ignoring the possibility that comic writers created associations around individuals, rather than commenting on existing ones. It could be argued that this approach denies the festive and counterfactual nature of the on-stage world which permitted the expression of sentiments within the theatre which would have been unthinkable off-stage. In order to understand what could be the significance of Aristophanes' choice and frequency of satirical subject-matter, I carried out an analysis of the satirical presentation of Hyperbolus within the Aristophanic world. There are fourteen references to Hyperbolus in seven of Aristophanes' plays, stretching from the Acharnians of 425 to the Frogs of 405, six years after Hyperbolus' death. On the basis of this analysis, I will make four general observations on the relationship between the on-stage satirical portrait and the off-stage individual.

My first observation is that Aristophanes frequently satirises contemporary individuals who were well known to his audience. As Table 19 in the Statistical Appendix shows, 71% of the individuals that have been analysed in the Statistical Appendix are known to us from other sources as well as from Aristophanes. Therefore many of these individuals were well known to Aristophanes' audience, if only from their treatment on the comic stage. Evidence from beyond the theatre demonstrates that the Aristophanic image of Hyperbolus utilises details from the life of the off-stage individual. Hyperbolus is presented on-stage as politically prominent and involved with religious matters, a portrait which is confirmed by off-stage evidence. Other details of this portrayal, for example his proposal to send a fleet to Carthage or his involvement

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3 In this analysis, I examined the associations that have become encrusted around Hyperbolus in the Aristophanic imagination, paying as much attention to the context of the satire as to the satire itself. These images were then compared with alternative portrayals of Hyperbolus, both from other comic writers and from the off-stage world. I have not included this analysis in the thesis, primarily due to a lack of space. But I have presented the conclusions drawn from this analysis in the four general observations which follow.

4 See individual entries under Hyperbolus in Tables 1-6, 8-9 in the Statistical Appendix.

5 Halliwell (1993) 329 adds a further important statistic: 'of the approximately 170 individual butts who occur in Aristophanes, around 100 are recorded as having also been ridiculed in other poets; of the remaining seventy, more than half are mentioned only once in Aristophanes himself.'

6 Hyperbolus is depicted proposing that 100 triremes sail to Carthage (Ar. Eq. 1300-15); elected by lot to the post of hieromnemon (Nub. 623-6 with Develin (1989) 133 on whether he took up this post or not in 424/3, Develin thinks he did); and as ruling (kratei) on the Pnyx, the prostates and epitropos of the demos, replacing Cleon (Pax 680, 683-4, 686, and see pp. 185-7 for further details). Other comic sources similarly depict Hyperbolus involved in politics (see Cratinus fr.283 K-A, Eupolis fr.252 K-A, Plato Com. fr. 182 K-A, Comica Adespota fr.2 K).

7 Beyond the theatre, he is recorded proposing probouleuma (IG 3 82 1.5, IG 3 84 1.6); was ostracised (Thuc. 8. 73.3; Plut. Arist. 7.3-4, Nic. 11, Alc. 13, on the date see HCT 5.257-64, Rhodes (1994)); and was murdered by the Four Hundred on account of his democratic credentials (Thuc 8.73.3). With regard to his involvement in religious matters, the epigraphic evidence lends credence to this Aristophanic portrait. Hyperbolus was probably the proposer of a probouleuma to reorder the cult of Hephaestus (see IG 3 82 with commentary) corresponding to Aristophanic depiction of his religious involvement with the calendar regulations and at Delphi as a hieromnemon.
with adjusting the calendar, although impossible to categorically confirm from off-stage evidence, are comprehensible in the light of Athenian military expectations in the west⁸ and the contemporary problems in the administration of the calendar.⁹ In the face of these discernible elements of off-stage reality in the on-stage portrayal of individuals, it is important not to underestimate the sting of satire, even though the comic play was enacted into the context of the wider festival event which allowed the temporary suspension of the legal sanctions against defamation of character.¹⁰ In his fascinating book on satire and its links with magic and ritual, R. C. Elliot in his conclusion, comments on how primitive views on satire still exist in our thinking today:

...satire, we say, may be cutting, blistering, biting, killing, stinging, stabbing, scorching, searing, burning, withering, flaying, annihilating; satires are sharp, barbed, poisonous, malignant, deadly, vitriolic, and so on. The list could be indefinitely extended, the metaphors all expressing our latent sense of satire’s destructive powers. On the conscious level these are metaphors. As Addison writes in Spectator No. 23, the wounds satire gives are imaginary: "a lampoon or satire do not carry in them robbery or murder"; but yet, he asks, how many would not rather lose their lives than be exposed to the injury they do? We inevitably think of injury as bodily harm. I believe that no matter how conscious we may be of the metaphoric quality of our terminology, we retain, unconsciously, some sense of the truth to which the metaphors point: the truth of the Ashanti and Tlingit experience,...or the truth of the ancient legend. In obscure ways we "know" that satire kills.¹¹

In classical Athens, a society that was even more conscious of the effects of shame and the loss of public honour than ours, the fear and horror of public ridicule was correspondingly greater. Halliwell, in his article on attitudes to laughter in Greek culture, draws attention to the difference between playful and consequential laughter.¹² He highlights some of the problems generated by this polarity: laughter that starts as

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⁸ Ar.Eg.1300-15. Although we have no evidence from beyond comedy on Hyperbolus’ proposal to send 100 triremes against Carthage, it is a proposal that is in keeping with contemporary Athenian military expectations. Athens had been campaigning in Sicily since 427 (Thuc. 3. 86, 88, 90, 99, 103, 115; 4. 1, 24-25) and in 425 had increased the size of her naval force in the west (Thuc. 3.115; 4. 5, 49.6). Thucydides notes that the peace treaty signed in Sicily in 424 certainly ran contrary the bellicose and confident mood back in Athens (Thuc.4.65.3 and Thuc.4.58-63 on the Peace at Gela). When Athens next looked westwards in 415, either an alliance with or campaign against Carthage was on the agenda (Thuc.6.15.2, 88.6 with HCT 4.241).

⁹ See Ar.Nub. 623-6. It is very unclear what Hyperbolus’ role was. There were problems with the calendar at this time (see Pax 414f, Thuc.4.118.13, 119.1 where 14 Elaphbolion at Athens = 12 Geraistios at Sparta), hence the Athenians are judging rather than sacrificing, and feasting while the gods fast for Memon {Nub.620-22). But we do not know whether he was opposed to the calendar corrections in his role as hieromnemon (HCT 3.715), or whether he had proposed in the assembly that the archons either add or suppress days in or out of the calendar (see Pritchett (1963) 330-54, Sommerstein (1982) 193-4).

¹⁰ See p.28.

¹¹ Elliot (1960) 281-2.

¹² Halliwell (1991a) 280-3. Playful laughter carries with it associations of ‘lightness of tone; autonomous enjoyment; psychological relaxation; and a shared acceptance of the self-sufficient presuppositions or conventions of such laughter by all who participate in it’ (Halliwell ibid. 283). Consequential laughter on the other hand carries with it associations of ‘causing embarrassment or shame, signalling hostility, damaging a reputation, contributing to the defeat of an opponent, delivering public chastisement’ (Halliwell ibid.).
playful can degenerate into consequential laughter; or laughter which one party considers playful may not be perceived as such by the other party.\(^{13}\) Although Halliwell stresses that the festival context of the satirical attacks in comedy ensured the laughter was contained within the festival world and was essentially playful,\(^{14}\) there are instances where the laughter may move from playfulness to consequence. I have listed some of these instances in Chapter 2, for example Cleon’s prosecution of Aristophanes, the influence of the *Clouds* on popular perceptions of Socrates and the reduction of satire in the Aristophanic plays of 411.\(^ {15}\) We must also be aware of arguments from silence. It is difficult to assess the impact of comedy on the off-stage world simply from lack of evidence, the comic world is sometimes our only source of detailed information for many of the individuals that it satirises.\(^ {16}\) In the case of Hyperbolus, some of the comic sneers at Hyperbolus’ origins and occupation\(^ {17} \) resurface in sources beyond the theatre.\(^ {18}\) Satirical attacks in comedy are launched against contemporary individuals whom the audience are familiar with, utilising details from their off-stage lives. The impact of these attacks are difficult to gauge, much of the time they must have been minimal; due to comedy’s recognised festive licence. On occasion, it would appear that the satirical shaft transfixed its target not just on the comic stage, but in the world outside.

My second observation is that satirical attacks on individuals took place within the context of the dramatic festival. The comic poets were permitted to speak about individuals in way that would have been totally unacceptable in the off-stage world. For example, Aristophanes slandered Hyperbolus when he has dead and while he was serving as a general (if it is accepted that he served as general in 425/4), accusations that were prohibited under the Athenian laws of slander.\(^ {19} \) It appears that satirical

\(^{13}\) Halliwell (1991a) 284-9.


\(^{15}\) pp.24-7.

\(^{16}\) See Table 19 in the Statistical Appendix and Halliwell’s statement on p.182n.5.

\(^ {17}\) On Hyperbolus’ barbarian origins in comedy, see Eupolis’ *Maricas*: Eupolis caricatured Hyperbolus as Maricas (Quint.Instit.Orat.1.10.18, the name implying Persian origins (see Cassio (1985) and Morgan (1986)); Hermippus fr.10 K-A: the peculiar pronunciation by Hyperbolus’ mother may be a dig at her foreign or low-born origins; Plato Com.fr.182 K-A: xenos; fr.183 K-A: barbarian pronunciation; fr.185 K-A: Lydian; Polyzelus fr.5 K-A: Phrygian; ΣAr. Pax 692: Syrian.


\(^ {18}\) Andocides attacks Hyperbolus on account of his parentage, ethnic origin and occupation (fr.3.5 (Dalmeyda)); Thucydides is dismissive of Hyperbolus’ moral worth (8.73.3).

\(^ {19}\) Dead: Ar.Ran.570; general: Zeph. 846, ΣPax 1319, probably based upon Eq. 1313. Develin (1989) accepts Hyperbolus was probably *strategos* in 425/4. For a summary of the laws of slander and their relation to comedy, see Halliwell (1991b) 49-54.
attacks in comedy not only went beyond not only the bounds of law but also the bounds of reality. The counterfactual nature of the on-stage world allowed the comic poets to create and attach associations to individuals that can be proven to be blatantly false. Again the comic poets' treatment of Hyperbolus is a case in point: Eupolis, Hermippus, Plato Comicus and Polyzelus attacked him for being of barbarian origin. These allegations of barbarian origin can be definitely disproved, at least on his father's side, by three ostraca, used at Hyperbolus' ostracism, which record that his father was Antiphanes, a good Attic name, from the deme of Perithoidai. It must be stressed that the satirical shaft at times transfixed targets of its author's own creation and imagination, rather than those of off-stage reality.

My third observation is that this blend of the real and the imaginary, the fictive and factual, produced a form of satirical attack that leant towards caricature rather than portraiture. Details from the off-stage world have been combined with elements from the poet's imagination and manipulated to present a caricature, whose function and form is often dependent on the surrounding dramatic context. This process can be observed in the Aristophanic portrayal of Hyperbolus as prostates tou demou in 421, a depiction which is not without its problems. He was probably a bouleutes in 421, but to describe him as the foremost in the democracy contradicts Thucydides, who noted that Nicias was held in honour at this time, coming to the fore after the death of Cleon. Aristophanes' attestation of Hyperbolus as prostates tou demou in the Peace becomes more intelligible by examining this portrayal within its immediate and wider dramatic contexts. In the immediate context, the goddess Peace deliberates whether she will return to Athens or not. Using Hermes as her mouthpiece, she enquires 'who was most hostile to her here, and who was her friend and was eager for there not to be any battles.' The answer to the second question will obviously be Cleonymus, presenting Aristophanes with plenty of humour at the expense of his favourite non-militaristic target. She then wants to know who now rules the Pnyx, given that Cleon, its ruler...
par excellence, is dead. Trygaeus replies that it is Hyperbolus, much to the annoyance of Peace. But Trygaeus justifies the Athenian position in two ways. First, he stresses that Hyperbolus' position is temporary and, secondly, the Athenians will be better judges of policy, as Hyperbolus' lamps have scattered the darkness that surrounded previous deliberations. Peace then goes on to enquire after Sophocles, generating a virtually unintelligible set of jokes about his avariciousness; and after Cratinus, giving rise to the comic rendition of his demise, the humour focusing on his bibulousness. In other words, Hyperbolus is cited as much for his political prominence as for the jokes that can be generated from his supposed occupation as a maker of lamps; just as Cleonymus is cited for his legendary cowardice, Sophocles for his avariciousness and Cratinus for his bibulousness. In the wider context of the entire play, it may be that Hyperbolus is portrayed as prostates tou demou because he epitomises Athenian political behaviour during the time of war. When his name is mentioned, Peace turns away in annoyance; he must be one of her enemies that Hermes has been ordered to locate. Hyperbolus is mentioned in passing on two other occasions in the play, and on both occasions it is made clear that the people are only able to return to the country to enjoy the time of peace and escape the hardships of war because Hyperbolus has been stopped or driven out. Hyperbolus' temporary position as prostates tou demou and his subsequent expulsion becomes a symbol that the war is over and the reign of peace has begun. Therefore Hyperbolus' elevation to a position of political supremacy may be based less on historical reality and more on comic logic. According to this logic, Hyperbolus, the obvious litigious and disruptive successor to Cleon, becomes a symbol of political life during the time of war and hence prostates tou demou, only to be banished to herald in the time of peace, an era of non-litigiousness and universal

28 Trygaeus and Hermes have just made much of Cleon's demise in their discussion of Athens' problems in the time of war which immediately precedes this scene with the goddess Peace (Pax 632-56).
29 For the temporary nature of Hyperbolus' supremacy, see Pax 685-7 especially τέως in 687, in spite of the future tenses used to describe his effect on the city in 688-62 (see Sommerstein (1985) 164-5). For the jokes hung on Hyperbolus as a lamp-maker, see Pax 690-2.
30 Sophocles: Pax 695-9. It seems virtually impossible to recover the significance of the jokes here, see the attempts by Plautner (1964) 127, Halliwell (1982) 153, Sommerstein (1985) 165. The comparison to Simonides (who was reputed to be avaricious) and that it is 'for profit's sake he'd go to sea upon a mat (κέδους ἐκατι κάν ἐπί ὑπὸς πλέω tr.Sommerstein' suggest that the joke has some pecuniary allusions. Cratinus: Pax 700-3. Heath (1990) 151 thinks this joke is not to be taken as evidence that Cratinus was dead, but an attempt by Aristophanes to discredit his still active elder rival by depicting him as a burnt out drunk (see Eq. 531-4 for a further example).
31 Pax 683, 671.
32 Pax 909-22: Trygaeus is hailed as σωτήρ, a little lower than the gods, having rescued ὁ δημότης καὶ ὁ γεωργικός λέως from δεινοί πάνοι and having put a stop to Hyperbolus. Pax 1310-28: Trygaeus and Fullfruit are about to return to the countryside, after dancing, pouring libations and driving out (ἐξελάσαντος Hyperbolus.
33 For internal politics in the time of war, see Hermes' description of the city under Cleon's influence at Pax 632-56, where the misuse of the jury courts by the politicians is a central focus. Hyperbolus in comedy is frequently satirised for his involvement in judicial activity (see p.34n.65 for references).
Appendix 1: Quantitative Analysis of Personal Jokes in Aristophanes

Aristophanes’ choice of Hyperbolus as Προστάτης τοῦ δῆμου, while partly commenting on Hyperbolus’ political prominence in the off-stage world, may also be based on the immediate opportunities for jokes centred on his supposed occupation (like the jokes on Cleonymus, Sophocles and Cratinus) and on the wider comic logic that the plot of the Peace is built around.

My fourth observation is that the mould into which off-stage fact and on-stage fiction are poured and from which the composite caricature emerges is the set of social and cultural presuppositions shared by the audience and author. The choice of associations that surround an individual on the comic stage, the fact that this target, rather than any other, is considered worthy of transfixed by the satirist’s shaft, is a commentary on the values operating in that society. Again R. C. Elliot, in his perspicuous summary of satire as a genre, highlighted the link between satire and utopian fiction, with the following comment on Thomas More’s Utopia:

More drew heavily on the satire of Horace, Juvenal and Lucian in composing his great work. For example, like a poem by Horace, Utopia is framed by a dialogue between “Thomas More” (the historical man a character in his own fiction) and a seafaring philosopher named Raphael Hythloday. The two talk through a long and memorable day in a garden in Antwerp. “More’s” function is to draw Hythloday out to oppose him on certain issues, notably his defence of communism he found in the land of Utopia. “More” is the adversary. Hythloday’s role is to expound on the institutions of Utopia but also to expose the corruption of contemporary society. Thus he functions as a satirist.35

Within the Aristophanic world, the satirising of an individual’s ethnic origins and citizen status mirrors the democratic ideal of citizenship, granted only to those descended from citizen parents.36 Even if the attribution of Hyperbolus as Προστάτης τοῦ δῆμου is totally fictitious, the satirical caricature of the popular politician courting the demos juxtaposed against the utopian ideal of a city at peace purged of such parasites is a commentary on contemporary political trends.37 The utopian vision and its antithesis, the satirical caricature, have their roots in and are the expression of mentalities that abound in the society surrounding the play.

In the four observations on satire in Old Comedy above, I have endeavoured to establish the relationship between on-stage satirical portrait and the off-stage individual. In the case of Hyperbolus, Aristophanes’ satirical portrait is neither an accurate

34 Non-litigiousness: see Pax 346-53 where the chorus shed their role as aged, embittered jurors and become youthful and gentle again under the influence of peace. Harmony: see Pax 538-40, 934-6, 987ff, 1080-2.
36 See Dover (1974) 32-33 on the slander of individuals on the basis of their ethnic origins in sources other than comedy. For the importance of citizenship, see Pericles’ citizenship law (Ath.Pol. 26.4, with Rhodes (1981) 331-5, Patterson (1981)) and on citizenship and descent, see Davies (1977)).
37 See the use of the term in Ar. Eq. 1128, Ran. 569, Eccl. 176; Eur. Orestes 911, Supp. 243; Thuc. 3.75.2, 3.82.1, 4.66.3, 6.35.2, 8.89.4, discussed by Connor (1971) 110-15.
reflection of the historical Hyperbolus or a totally fictitious invention, but a blending of the two to create a comic caricature. But the poet’s choice to create and transfix this caricature with his satirical shaft, and the audience’s decision join with the poet and push the shaft further in as they laugh, unveil insights into fifth-century preoccupations and concerns. On the basis of these four observations, I suggest that the frequency and subject-matter of Aristophanic satire can be used as a barometer of his audience’s concerns.

A1.2 Counting Personal Jokes in Aristophanes

Whenever quantitative methods are applied to historical research, it is helpful to state the presuppositions that are at work in the collection and manipulation of the raw data into a data set and the data set’s subsequent analysis. The theoretical raw data in question here is the entire corpus of plays of the genre ‘Old Comedy,’ produced at the Lenaia and Great Dionysia in Athens. Traditionally the period is dated from 488/7 or 487/6 for the Great Dionysia, from just before 440 for the Lenaea until the end of the fifth century, or until 388, to take in Aristophanes’ last two extant plays. The theoretical raw data has been manipulated, both by the transmission of texts from antiquity and by a deliberate selection of cases and variables, in order to create a series of data sets which were analysed and the results presented in Chapter 2.

A1.2.i The Selection of Cases

This theoretical raw data, the output of Old Comedy, consisted probably of some six to seven hundred comedies by more than fifty playwrights. The ravages wrought by the transmission process, both in antiquity and in subsequent periods, have left us with eleven extant comedies by Aristophanes and some four thousand words, phrases, lines or passages cited by other ancient writers and the fragmentary remains of ancient copies. These comic fragments do contain examples of personal satire. But the comic fragments are notoriously difficult to interpret; the text is often corrupt and without the surrounding context, it is sometimes difficult to reconstruct the humour and focus of the satire. The fragments are hard to date, militating against their use in any analysis that is looking for patterns over time. Above all, the sample of individuals and their associations preserved in the comic fragments is un-representative of the genre as a whole. From the Hellenistic period onwards, scholars have been interested in the satirical attacks on individuals in Old Comedy. Many of the comic fragments were preserved as a result of this interest, as ancient scholars compiled lists of satirised

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38 See p.183n.1 for definitions of these statistical terms.
41 See Heath (1990) on the problems of using comic fragments.
individuals. Consequently the sample is skewed towards selecting individuals who were prominent and reoccur frequently in Old Comedy and other sources. On these grounds, I have rejected the comic fragments from the data set. The transmission process has manipulated the theoretical raw data further, by preserving a sample of eleven plays by Aristophanes from a potential total of about forty plays. The preservation process appears to have been random. The first preserved, the *Acharnians* of 425, was produced two years after Aristophanes began his career, and the last preserved, the *Plutus* of 388, was followed by only another two plays. The surviving plays were produced at scattered intervals between 425 and 388, with nearly half dating from the second half of the 420s. So it appears that the transmission process has sampled the plays of Aristophanes on a random basis. From a statistical perspective, independent random sampling is an appropriate method of selecting data. In the analysis below, I have treated each play as a separate data set but have applied the same criteria in the selection of cases and variables for each play, allowing comparisons to be made across the plays.

As a result of the transmission processes, the individuals and their associations in the eleven surviving plays of Aristophanes have been selected from the theoretical raw data to form eleven data sets. But even some of this data will be irrelevant or inappropriate to the questions under consideration. As has been outlined in Section A.1.1, the playwright's choice and treatment of satirical subject are significant. On the basis of this methodological model, there is little point in analysing the associations that collect around individuals from mythology, of non-Athenian extraction, from previous generations or of on-stage characters in the eleven plays of Aristophanes. Therefore each named Athenian citizen in a play of Aristophanes represents a case in the data set for that play. Given I am attempting to count not just the variety of associations, but the quantity of those associations, the inclusion of on-stage characters, whether fictive or purporting to be contemporary historical figures, would seriously distort the figures. To summarise, the following categories of named individual have been excluded from the data sets:

- individuals referred to in the text that also appear on the stage of the same play, thus systematically excluding on-stage fictitious characters and off-stage individuals who appear on stage, whose inclusion will seriously distort the results:

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43 See Dover (1972) 1-14.
44 The *Banqueters* (427) and the *Babylonians* (426) predated the *Acharnians*, and the *Plutus* was followed by the *Aeolosicon* and the *Cocalus*, both produced at unspecified dates after 388 (Dover (1972) 13-14).
45 Floud (1979) 169-86.
e.g. Cleisthenes, Theorus (Ach. 118ff, 134ff); or Cleisthenes, mentioned at Thesm. 235, and appearing on stage (Thesm. 574ff).

- individuals who do not appear on-stage who are known to be fictitious and a product of Aristophanes' imagination: e.g. Thratta, a common name for a slave girl in Aristophanes (Ach. 273); Sostrate, the stock name for a married citizen woman in comedy (Vesp. 1397, Thesm. 375, Eccl. 375).

- individuals from mythology: e.g. the list of mythological characters from Euripides' plays that Dicaeopolis runs through (Ach. 418ff); Memnon, the mythological king of the Ethiopians (Nub. 623).

- non-Athenians: e.g. Sitalces, king of Odrysae in Thrace (Ach. 134); Lais, the Corinthian hetaira (Plat. 179).

- individuals who died on or before 466/5. This date has been chosen because it represents the time when the older members of the audience (sixty plus) of the Acharnians would have come of age and so began to come into contact with prominent individuals on a regular basis. This date also corresponds to the start of Generation E in APF: e.g. Phayllus, a runner from the Persian War period (Ach. 214); Hippias, the last of the Peisistratid tyrants (Vesp. 503); and the tragic poet Phrynichus who lived in the early fifth century (Vesp. 220, 269, 1490).

This set of criteria for inclusion or exclusion of cases presumes that it is possible to distinguish between a named individual who exists only in the on-stage world and a named individual who exists in the off-stage world. As Table 19 in the Statistical Appendix shows, on average, 29% of the individuals in a data set are only known to us from Aristophanes. Of the 71% who are known from sources other than Aristophanes, it is often very hard to securely identify this individual with an individual of the same name in other sources. Inevitably, there are times when it is unclear whether a named individual in Aristophanes should be included as a case in the data set or not. I have tried to indicate where the inclusion of a case is questionable, and if a case is very questionable, it has been excluded. This study has never pretended to be a detailed prosopographical analysis of individuals in Aristophanes. Consequently many of the identifications in the tables below follow those offered in the commentaries.

46 APF xxvii. I chose this cut-off point of 466/5 before I made the decision to describe the 'age of Aristophanes' as starting in approximately 445 (see p.9), so there is an obvious discrepancy.

47 For instance in the Ecclesiazusae, the inclusion of Geron at Eccl. 846 is questionable. The name is attested in the fourth century (see Ussher (1973) 192), but also fits the character of the individual in the play, that of a rejuvenated old man. I have included Geron as a case, with a footnote expressing my reservations. Glyce at Eccl. 43, appears not to be included among the other members of the chorus whose names are mentioned as they enter (Eccl. 41-53) and so is not excluded on the grounds of being an on-stage character. But her name is a typical for a woman (PA 3038-41, 3038a, b) and Aristophanes has used the name before (Ran. 1344, 1362). See Rogers (1917) 10-11 and Ussher (1973) 79 for different opinions. Consequently Glyce has been rejected as a case from the data set.

48 I have relied particularly on the massive prosopographical research of Kirchner in PA and Davies in APF. I have consulted a range of commentaries, cited in the notes to each of the tables in the Statistical Appendix. I have found the series of commentaries by Sommerstein (1980 onwards) particularly helpful.
A1.2.ii The Selection of Variables

As soon as I started to categorise and count the variables that cluster around each case in the data sets, it rapidly became obvious that the number of variables was huge. For instance, in the *Acharnians*, Aristophanes pins a plethora of associations on the individuals he has chosen to satirise: all those listed in Table 1 in the Statistical Appendix plus scatological, culinary, medical, criminal and boasting associations. As the primary aim of this quantitative analysis is to examine attitudes to the legal activity, rather than produce an analysis of the satire of individuals in Aristophanes, I felt there was no need to categorise and count every incident of every variable. It is legitimate to exclude variables on a number of occasions, including when the variable is considered irrelevant to the questions that are being asked of the material or when the variable does not add any extra information that already has been gained from other variables. Therefore I chose six other variables, in addition to the legal variable, which were well represented in the plays. As can be seen from the tables, most of the cases in the data sets have a value in one or more variables. Cases that do not have a value in any of the variables have not been excluded from the data sets. This selection of variables has provided enough data on each case for an analysis to be carried out between the different variables over time, while preventing the analysis from becoming swamped by the plethora of variables that exist in the plays.

a) The description of variables (excluding *APF* and Source).

The parameters of each variable are quite broad, in an attempt to accommodate the tangential and nebulous nature of Aristophanic satire. They can be summarised as follows:

*Political*: Any reference to an individual’s political activity, speaking in the assembly, membership of the *boule*, holding political office, political wheeling and dealing.

*Law*: Legal variables have been broken down into three sub-sections:

  *Legislation*: The proposal or attempted proposal of legislation in the assembly or *boule*. It is often difficult to know if Aristophanes actually envisaged an individual proposing the legislation. For instance, see Hyperbolus’ suggestion that 100 triremes sail to Carthage or Demostratus speaking in the assembly on the Sicilian Expedition.

  *Litigation-prosecution*: Any activity as a plaintiff in the jury courts.

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50 See Floud (1979) 165-9.
51 *Eq.* 1300-15.
52 *Lysist.* 386-98. The historical interpretation of this passage is riddled with problems. It appears that Demostratus did propose a decree at the assembly that is described in the *Lysistrata*. See Henderson (1987) 119-20, Sommerstein (1990) 173.
**Appendix I: Quantitative Analysis of Personal Jokes in Aristophanes**

**Litigation-defence**: Any activity as a defendant in the jury courts.

**Military**: Any reference to military or naval activity.

**Physical**: Any reference to physical appearance or attributes, including dress,\(^{53}\) mannerisms\(^{54}\) or the effects of old age.\(^{55}\)

**Artistic**: Any reference to artistic activity, including comedy, tragedy, dancing, music the visual arts. If an Aristophanes comments on an individual's treatment in the arts, I have also recorded a value in this variable.\(^{56}\)

**Sexual**: Any reference to sexual activity.

**Wealth/Poverty**: Any reference to either an individual's wealth or poverty.

b) Assigning Values to the Cases for each Variable (excluding APF and Source).

The system of analysis adopted attempts not only to list the variety of associations, but to count the number of associations in each play. Information unrelated to an individual must separate one set of associations from the next. The associations (variables) that are coupled with Hyperbolus (the case) in the Clouds (the data set) will serve as an example. The political and legislation variables each have a value of one, from Hyperbolus' appointment as heirmomnemon and his possible involvement in legislation altering the calendar (Nub.623-6). The litigation-prosecution variable has a value of two from Hyperbolus' learning of forensic oratory (Nub. 874-6) and his ability to make many talents from wickedness (Nub. 1065-6). The artistic variable has a value of one from the discussion of his treatment by the comic poets (Nub. 551-9). The wealth/poverty variable has a value of two from the observation that Hyperbolus had to pay over the odds for his oratorical training (Nub. 874-6) and that he had made many talents from his wickedness (Nub. 1065-5). Even with the quite broad parameters that have been adopted for the variables, it is sometimes difficult to fit the associations that surround an individual into this system of variables. The focus and punch of Aristophanes' satirical jokes are notoriously difficult to interpret. Again I am heavily dependent on the commentaries and have tried to indicate where there are discrepancies and problems of interpretation in the footnotes to the tables in the Statistical Appendix.

c) The Variables of APF and Source.

The source variable simply records whether we know of an individual in sources other than Aristophanes or not. The APF variable records whether an individual is entered in John Davies' register of the liturgical class.\(^{57}\) Occasionally an individual is depicted as

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\(^{53}\) At Av. 1569, the dress sense of the Triballian is likened to Laespodias'.

\(^{54}\) Alcibiades is satirised for his lisp at Vesp. 44.

\(^{55}\) E.g. Eq. 534.

\(^{56}\) E.g. at Nub. 549-62, where Aristophanes comments on his own treatment of Cleon in comparison to the treatment of Hyperbolus and his mother by other comic poets.

\(^{57}\) See APF. It transpired that the total number of individuals who were satirised for involvement in legal activity and who were also listed in APF was lower than those who were not (6% versus 9%, see Table
having great wealth and performing liturgies in the comic world, even though there is no direct attestation to his being in the liturgical class in the off-stage world. In these cases, I have indicated that these individuals are entered in the register, but in parenthesis, with a footnote explaining my reasoning.\(^\text{58}\)

\(^{13}\) in the Statistical Appendix). As it would appear that the butts of legal satire were not predominantly drawn from among the liturgical class, I have not discussed these results in the Chapters of the thesis.\(^\text{58}\) For example, see Leogoras at \textit{Nub}. 108-9, \textit{Vesp}. 1268; or Antimachus at \textit{Ach}. 1150ff.
Appendix 2

‘The Codification of the Laws’ in Late Fifth-Century Athens

In both 411 and 404, the oligarchic regimes appealed to the Athenian constitutional and legislative past as a means of legitimating their seizure of power. In 411, at the meeting of the assembly which appointed the thirty *syngrapheis* to draft proposals for the future safety of the city, it was also proposed that the *syngrapheis* ‘should also search out the traditional laws which Cleisthenes had enacted when he established the democracy.’ In response, the democrats on Samos declared that the oligarchs ‘had erred in overthrowing the traditional laws, while they (the democrats) were saving them.’ Again in 404/3, it would appear that the different political groups competing for power in the aftermath of the Athenian defeat legitimated their position by laying claim to Athens’ constitutional heritage. The sophist Thrasymachus makes the following observation about the contemporary politicians and others: ‘firstly, the ancestral constitution causes trouble for them although it is easy to understand and is held in common by all citizens’. At the end of the fifth century, the oligarchic regimes challenged the democracy’s ownership of the Athenian constitutional and legislative past as a means to legitimate their own seizure of power.

I would like to suggest that the restored democracy countered this oligarchic claim to Athens’ constitutional heritage by appointing the *anagrapheis ton nomon*. The

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1 *προσαναςηθαί δε τούς αιρεθέντας πρασαθεν τούς πατρίους νόμους, ούς Κλεισθένης ἔθηκεν ὅτε καθότη τήν δημοκρατίαν* (Ath.Pol.29.3). *Ath.Pol.* adds the explanatory comment that Cleitophon was able to make this proposal because the Cleisthenic constitution was not considered democratic but close to that of Solon. See *HCT* 5.214-6, Rhodes (1981) 375-77, Ostwald (1986) 367-72, Finley (1990) 34-59, especially 35-40.

2 ‘ἄλλα καὶ ἐν τούτοις τούς μὲν ἡμορρηκέναι τοὺς πατρίους νόμους καταλύσαντας, αὐτοὶ δὲ σώζειν’ (Thuc.8.76.6).

3 The sources are highly problematic as to the exact role of the *patrios politeia/patrioi nomoi* and as to the groups which lay claim to it/them. Firstly, it is unclear whether a clause about protecting the *patrios politeia* was inserted into the treaty negotiated with Sparta or not (no reference: Xen.Hell.2.2.20, D.S.13.107.5, And.3.11-12, Plut.Lys.14.8; inserted: *Ath.Pol.*34.3, D.S.14.3.2, 6, Just.5.8.5). Secondly, it is unclear whether one particular group or all groups laid claim to the *patrios politeia*. *Ath.Pol.* has a tripartite division of the Athenian body politic, with the moderate oligarchs, led by Theramenes, particularly championing the *patrios politeia* (34.3). Diodorus has a two fold division between oligarchs and democrats, with the latter championing the *patrios politeia* (14.3.3). Xenophon, in a passage widely regarded to be an interpolation, states that the Thirty were appointed to draw up the *patrioi nomoi* (Hell.2.3.2) and *Ath.Pol.* adds that at first the Thirty pretended to pursue the *patrios politeia* (35.2). The Thirty appear to have been appointed with a legislative remit in mind, which they subsequently failed to fulfil (see *Ath.Pol.*35.1, Xen.Hell.2.3.11, D.S.14.4.1-2). See Rhodes (1981) 427-437 and Ostwald (1986) 458, 460-80 for detailed discussions of these issues.

4 Regarding οἱ ἀλλοι καὶ οἱ ὅποιες, Thrasymachus states: ‘πρῶτον μὲν ἡ πάτριος πολιτεία ταραχὴν αὐτοῖς παρέχει ὡστε ἡγομένης καὶ κοινότητι τοῖς πολίταις óοσα πάσιν’ (DK 85 B1 with Finley (1990) 36-7).
Appendix 2: ‘The Codification of the Laws’ in Late Fifth-Century Athens

work undertaken by the *anagrapheis*, let alone the rationale behind it, is a subject of extensive and voluminous scholarly debate and disagreement. This controversy can be attributed to the sources, consisting of two jury court speeches, a couple of inscribed stelai and thirteen epigraphic fragments from a series of opisthographic walls. This is not promising material from which to reconstruct the details of a major constitutional and legislative reform. I will begin by firstly presenting a possible summary of the *anagrapheis’ work, and secondly suggest a rationale for their appointment.⁵

In the last decade of the fifth century, the Athenian democracy, on two occasions, elected an unspecified number of citizens to a board of magistrates, entitled the *anagrapheis ton nomon*.⁶ The *anagrapheis* were probably first appointed in 410 after the restoration of the full democracy until the rise of the Thirty halted their work in 404. After the restoration of the democracy in 403/2, the *anagrapheis* were re-appointed and laid down their responsibilities in 399.⁷ It appears that the board of *anagrapheis* was granted a broad remit to locate a wide variety of laws from different periods, copy or collate the texts onto stelai or walls, which were then set up at the Stoa Basileios.⁸ With regard to the rationale for the appointment of the *anagrapheis* and the

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⁵ The two jury court speeches are Andoc.1 and Lys.30. See n.8 below for the relevant epigraphic material. The conclusions I have reached below summarise a detailed study that I carried out on the ‘codification’ in 1993/94. This study took each of the jury court speeches and set them in their judicial contexts and examined the epigraphic material in its physical and functional contexts, before attempting to draw conclusions about the ‘codification’. Given the nature of the evidence, many of the following statements must be taken as probabilities. The bibliography on this subject is extensive, I have referred to the relevant studies at the appropriate points below. Given that I question the idea of a codification of Athenian *nomoi* at the end of the late century, I have placed any term which suggests this conclusion to the *anagrapheis’ work in inverted commas throughout.

⁶ Title: *IG i³* 104 II.5-6 (*anagrapheis ton nomon*); Lys.30.2, 25 (*anagrapheus*); Lys.30..2, 4, 19, 20, 21, 29; (*anagraphein*); Lys.30.17 (*anagrapheis*). Magistracy: Lys.30.4-5 with Todd (1996) 104. Board: Lys.30.25, 28, 30 (Nicomachus is described as not acting alone and reference is made to his colleague Teisamenus) and *IG i³* 104 II.5-6 (*anagrapheis ton nomon are in the plural, see Rhodes (1991) 88, Todd (1996) 106).

⁷ There are slight disagreements between scholars over the exact start and finish of Nicomachus’ magistracy. The *anagrapheis* must have been appointed by 409/8 when they republished Dracon’s law on homicide (*IG i³* 104 I.2). Given the *anagrapheis* were appointed by the democracy, it is likely their appointment came to an end with the rise of the Thirty. Nicomachus himself was absent from Athens during the Thirty (Lys.30.15-6), and so could have been re-appointed by the restored democracy in 403. Therefore Lysias’ six and four years (Lys.30.2-6) do not seem too unlikely, giving Nicomachus’ first term from 410/9 to 405/4 and his second term from 403 to 400/399. See Dow (1960) 271-7, Rhodes (1991) 88 n.7, Todd (1996) 102-3.

⁸ Lysias states that Nicomachus was appointed to write up (*anagraphein*) the *nomoi* of Solon (Lys.30.2), a phrase which by the late fifth century could be applied to laws other than those of the sixth-century lawgiver (see Rhodes (1991) 90) and that Nicomachus worked on secular and sacred law, including sacrificial regulations (Lys.30.12-20, 25). The epigraphic remains considered to be the work of the *anagrapheis* can be divided on the basis of their epigraphic medium: Free standing stelai: the text of Dracon’s law on homicide (*IG i³* 104 and Stroud (1968)) and a compilation of laws governing the activities of the *boule* (*IG i³* 105. See Wade-Gery (1930), (1932-3) and Rhodes (1972) 183, 195-9). The prescript of Dracon’s law on homicide clearly states that the reinscription was to be carried out by the *anagrapheis* and that the stele is to be set up in front of the Stoa Basileios (I.I-9).
function of the inscribed texts they produced, it is usually presumed that they were appointed to produce a centralised collection of authoritative legislative texts, on the basis of Andocides' account. The two central planks in Andocides' thesis are that firstly, the decree of Teisamenus authorised a scrutiny and ratification of all the laws and the writing up (anagraphein) of the ratified laws in the Stoa; and that secondly, a further law on the use of agrapheis nomos banned the use of any law that had not been written up (anagraphein) in the Stoa. There is a sharp divergence between the text of the laws Andocides cites and his commentary surrounding the text. Although it is not

A series of opisthographic walls erected within a building: a trierarchic law, regulations concerning taxation and a collection of sacrificial calendars. See Figure 9 and Oliver (1935), Dow (1959), (1960), (1961). Dow's studies are fundamental in reconstructing both the physical structure of the inscribed walls and the content and presentation of the sacrificial calendar inscribed upon them. These epigraphic fragments are usually taken to be the work of the anagrapheis on the basis of the correlation between the two scripts used in the inscriptions (see Figure 9: Attic (pre 403/2) and Ionic (403/2 onwards)) and the anagrapheis' two terms of office, but there is no concrete evidence to connect the fragments with the anagrapheis. A massive erasure preceded the inscription of the systematic calendar (Dow (1961) 70-2 and Figure 9). Finagrette (1971) attributed the erasure to the Thirty, Clinton (1982) 32, 35 and Rhodes (1991) 95 to the restored democracy of 403, Robertson (1990) 65-75 to a reaction against the anagrapheis after Nicomachus' trial.

On the transcriptional nature of their work, see Stroud (1968) 60-4 on IG i 104 and Rhodes (1972) 196-9 and Lewis (1967) 132 on IG i 105. The compilation of a systematic calendar of sacrifices must have required collation of sacrificial information from previous calendars (see Dow (1959) 24-39), but it appears the anagrapheis were careful to state in their work from where they had obtained their information (see Dow (1959) 15-21 on the 'source rubrics'). Apart from the reinscribed law of Draco, there is no firm evidence as to where the anagrapheis set up the fruits of their labours. Andocides states that reinscribed laws were set in 'in the Stoa' (Andoc.1.82, 85), but see Clinton (1982) 32-33 and Robertson (1990) 46-9, 62-5 on the problems with Andocides' account. Excavations of the Stoa Basilieos reveal substantial adaptation at the end of the fifth century to accommodate what appears to be a row of free standing stelai and stelai fastened to the back wall (see Shear (1971), (1975), Thompson and Wycherley (1973) 88-89, Camp (1986) 102-4, Agora Guide 82-3). Therefore it is probable that the inscribed fruits of the anagrapheis' labours were set up in the Stoa Basilieos.

In his commentary that precedes the decree of Teisamenus, Andocides states that: 'having called an assembly, you discussed concerning them (the nomoi of Solon and Dracon) and you voted to subject all the laws to a dokimasia, then to write up in the Stoa those of the laws which were examined and approved (ἐκκλησίαν παῖσάντες ἐρυθέωσαν περὶ σύντων, καὶ ἐμφοίνασάς, δικαιούσας ταύτα τῆς νόμους, ἔτι άναγράφαι ἐν τῇ στοά τούτῳ τῶν νόμων αἱ ἀνάφει δοκιμασθώσαι (Andoc1.82))', an assertion which he repeats immediately after he has cited the decree and in the summary of his account of 'the codification' (Andoc1.85, 89).

Andocides cites the law (see p. 160 above) but then provides his own commentary: 'indeed is there here any way remaining concerning this matter that either a magistrate can bring a prosecution or one of you introduce, except under the laws that have been written up (ἄρα γε έστιν ἐντασθεί τὸ τι περιεξεπεῖτο περὶ οὗ τούτου τῶν νόμων ἀναγράφαι εἰς κεκοιμημένους νόμους (Andoc1.86))'.

A pseudo-legal manner of presentation characterises Andocides' style from §§73-109: legal technicalities and texts are introduced as much to confuse the jury as to inform them. This paves the way for Andocides to instruct the jury on the meaning of the cited laws, allowing Andocides to slip in his own interpretation and emphasis on the cited texts. Andocides' manner of presentation calls into question the reliability of his legal commentary.
easy to unravel the nature and scope of the legislative process in the decree of Teisamenus, it seems that the decree authorised the passing of a number of additional laws in 403/2 according to a novel procedure. It is unlikely that the decree ordered a global scrutiny and reinscription of all the laws of Athens. Secondly, the law which Andocides claims bans the use of unwritten-up law in fact prohibits the use of unwritten (agraphos) law by magistrates. The prosecution, in their case against Andocides, appeal to laws which were unwritten (agraphos), directly contradicting Andocides’ interpretation of the law on agraphos nomos. Furthermore advocates after 403/2 cite laws which were not written up (anagraphein) in the Stoa Basileios in the course of their pleading, including Andocides himself. In the years after 403/2 there appears to

13 The decree of Teisamenus (Andoc.1.83-4) has two foci: 1) Athens will be governed in accordance with the patria, the nomoi of Solon and the thesmoi of Draco (see pp.198-9 below); 2) the decree introduced a new process for the ratification of additional nomoi (‘as many laws that are still needed (oπισουν δ’ ου προσδεπ’), a selection of which have been preserved at Andoc.1.87. On fourth-century ratification of nomoi, see p.162n.63 above.

14 A similarly cautious approach to the scope of the anagrapheis’ work is also taken by Clinton (1982), Robertson (1990) 60-5, Thomas (1994) 120, (1996) 19 n.18 and Todd (1996) 120-131. Although Hansen (1990a) 64-68 sees the anagrapheis as essentially producing a ‘law code’ to be ratified by the nomothetai under the decree of Teisamenus, he observes at ibid.90-91 that the texts they produced rapidly fell into disuse.

15 See Chapter 7.3 ii.

16 The speaker of Lysias 6, a subsidiary prosecution speech against Andocides (see Jacoby (1949) 245-6, Gernet and Bizos (1974-89) 1.89-93, MacDowell (1962) 14-5, Ostwald (1986) 166-7), urges the jurors to remember the advice of Pericles: ‘And indeed they say that once Pericles advised you about the asebountes, to use not only the written laws about them, but even the unwritten (agraphoi) ones, from which the Eumolpidae expound, which no one up to this time had the authority to rescind, nor had the daring to speak against, nor knew the one who established them (καίτοι Περικλέα ποτέ φασι παραινέασαι υπὶν περὶ τῶν ἁρεμοῦτων μὴ μόνον χρησάσαι τοῖς γεγραμμένοις νόμοις περὶ αὐτῶν, ἀλλὰ καὶ τῶς ἀγράφως, καθ’ οὓς ἐμφασίζα δεξήγοιται, οὕς οὐδεὶς ποι κύριος ἐγένετο καθὲλεν οὐδὲ ἐτύλμησεν ἀυτεῖθεν, οὐδὲ αὐτὸν τὸν δεύτα ἵσσαιν’ (Lys.6.9-10)). Andocides in his defence recounts Callias’ use of a patrios nomos to suggest that Andocides should be put to death for the alleged crime of putting a suppliant branch in the Eleusinium: ‘Callias once more stood up and said that there was an ancestral law (patrios nomos), that if anyone placed a suppliant branch in the Eleusinium, he was to be put to death without trial, and once his father, Hipponicus, expounded these things to the Athenians; and he said that he had heard that I placed the suppliant branch (πάλιν ὁ καλλίας ἀνασκατάς ἔληγεν ὅτι εἶναν νόμος πάτριος, εἰς τις ἱκετηρίαν θείας ισμηρίας ἐν τῷ Ἐλευσίνῳ, ἀκριτον ἀπόκαλυτον, καὶ ὁ πάτερ ποι’ αὐτοῦ ἰππόνικος ἐξήγησαί ταῦτα ἱππόταις, ἀκόμουες δὲ ὅτι ἐγὼ θείην τῇ ἱκετηρίᾳ’ (Andoc.1.115)). On the oral nature of the patrioi nomoi expounded by the Eumolpidae, see Oliver (1950) 18-23, Clinton (1974) 90-2. The prosecution’s strategy was essentially to demonstrate that Andocides was guilty of asebeia in 415 and consequently is atimos under the decree of Isotimides (see n.18 for further details). Therefore the prosecution advances a range of evidence to surround him with impious associations (e.g. Lys.6.19-32, Andoc.1.110-116 with Parker (1983) 144-190, Cohen (1991) 203-17 on asebeia generally), including that Andocides has broken the unwritten patrioi nomoi of the gods (on divine law, see Xen.Mem.4.4.19, Dover (1974) 255-61, Parker (1983) 176-9). I can not believe that a man of Callias’ elite status (see MacDowell (1962) 10-11, APF 254-70) would risk standing up in the boule, dressed in his ceremonial robes, and accuse Andocides on the basis of an unwritten patrios nomos, if the use of agraphoi nomoi had been banned by the democracy three years earlier, as Andocides would have the jurors believe.

17 Andocides maintained that one of his accusers, Epichares, was guilty of subverting the democracy by his involvement with the Thirty. To prove this point, he cited what he called a nomos of Solon (which was in effect a psephisma passed in 410/9), which he described as being set up on a stele in front of the
be no authoritative collection of written laws which orators refer to, instead they obtain the texts of laws from a variety of sources. Therefore the creation of an authoritative, centralised ‘law code’ is a product of Andocidean deft argument and sleight of hand, necessitated by the legal argument of his defence rather than a desire to accurately represent the work of the anagrapheis.\(^{18}\)

If the production of a ‘law code’ is no more than an Andocidean construct, we are still left with both the reality of and the rationale behind the anagrapheis’ appointment and labours. As with the reforms to the judicial system (see Chapter 7.3), the work of the anagrapheis can be understood only in the context of the late fifth-century ideological debate about the legal institutions. The oligarchic regimes had attempted to legitimate their seizure of power by laying claim to the archaic lawgivers, Dracon, Solon and Cleisthenes, and reinventing them as closet oligarchs, whose legislation supported their seizure of power.\(^{19}\) The restored democracy responded to this oligarchic appropriation of Athens’ constitutional past by passing legislation and by appointing the anagrapheis ton nomon. The opening sentence of the decree of Teisamenus can be read as a statement of the restored democracy’s commitment to its constitutional past:

<Ψήφισσα>. “Εδοξε τῷ δήμῳ, Τεισαμενός εἶπε, πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια, νόμως δὲ χρῆσατι τοὺς Σόλωνος, καὶ μέτρως καὶ σταθμοῖς, χρῆσατι δὲ καὶ τοῖς Δράκοντος θεσμοῖς, οἴσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ.

Bouleuterion (Andoc.1.95), rather than at the Stoa Basileios. The axones and kurbeis of Dracon and Solon, rather than being dismantled after the anagrapheis had transcribed some or all of their contents, were left standing and were still in existence in the Imperial period (axones were seen in the Prytaneum by Pausanias (1.18.3) and Plutarch (Sol.25.1)). In the fourth century, when orators occasionally mention the location of law they cite, they refer to other sites than the Stoa Basileios (the Areopagus: Lys.1.30, Dem.23.22 with Todd (1996) 129-30; the temple of Dionysus in the Marshes: Dem.59.75-6, where Apollodorus refers to an ancient law, predating 403; the Metroon: Dem.25.99, Lycurg.1.67. See also Hansen (1990a) 70). Athens appears to have been as much a forest of stelai in the fourth century as in the fifth, with individuals consulting the written laws at different locations, rather than referring a single centralised ‘law code’ at the Stoa Basileios. Furthermore, it would appear that the practice of consulting written legal texts develops only in the mid-fourth century (Thomas (1989) 60-93).

\(^{18}\) Andocides’ aim (see Andoc.1.70-2) is to demonstrate to the jurors that the decree of Isotimides is invalid by 400 (on the trial date, see MacDowell (1962) 204-5). The decree of Isotimides forbade those convicted of asebeia as a result of the sacrileges in 415 from appearing in the sanctuaries and Agora (see Andoc.1.71, Lys.6.9, 24). The prosecution had brought an endeixis against Andocides (Andoc.1.8, 10, 29, 33, 71, 103, 111, 121, Lys.6.30) and recommended the death penalty (Andoc.1.132, 146, Lys.6.55) because, as an asebountes, he had entered public places (Andoc.1.133, Lys.6.33) and so broken the injunction of the decree of Isotimides. See MacDowell (1962) 3-4, 14-5 and Hansen (1976) 129 for further details. Consequently, it is imperative Andocides proves that the decree of Isotimides is invalid by 400, and thus produces for the jurors his highly distorted account of the anagrapheis’ work to demonstrate that the decree of Isotimides is invalid by 400 because it was not included in the ‘codification’ of 403/2.

\(^{19}\) See p.194 above.
DECREE: Approved by the demos, Teisamenus proposed that the Athenians be governed according to the traditional ways, that they use the laws of Solon and his weights and measures and the ordinances of Dracon, which we used in former time.\textsuperscript{20}

In the opening sentence of the decree, the democracy laid claim to the Athenian constitutional past, appropriating for itself the patria, the nomoi of Solon and the thesmoi of Dracon, in contradiction of rival oligarchic claims.\textsuperscript{21} Similarly the law of Diocles stressed that all the previous laws enacted under the democracy and those written up in 403/2 (probably the additional laws ratified by the nomothetai in the decree of Teisamenus) were valid (kurios), reasserting the democracy's ownership of its legislative past.\textsuperscript{22} This commitment to the constitutional past was given physical expression in the inscribed stelai and walls in the Stoa Basileios produced by the anagrapheis. This hypothesis is strengthened by considering the physical and emotive impact of setting up the anagrapheis' work in the Stoa Basileios.\textsuperscript{23} The anagrapheis produced a series of monumental stelai and walls, inscribed in a regular and distinctive manner, which were then set up between the columns of the two porches, along the back wall and in front of the Stoa Basileios.\textsuperscript{24} For those passing by the Stoa Basileios on their way into the Agora, the overall visual effect must have been commanding. The first in a row of public monuments lining the west side of the Agora, presented the onlooker with a facade punctuated with monumental stelai, regularly inscribed with the laws of Athens (for a reconstruction, see Figure 10, see Figure 1 for a plan of the Agora). This image would have been further enhanced by the emotional resonances and associations attached to the Stoa Basileios: it was the location where Solon's laws had been deposited;\textsuperscript{25} where some magistrates at the beginning of their term in office swore on a large lithos to uphold the laws before them;\textsuperscript{26} and where the Archon Basileus administered preliminary hearings and the ancestral sacrifices surrounded by legal and sacrificial texts.\textsuperscript{27} The democracy, shortly after its restoration in both 410 and 403/2,
appointed a board of magistrates to transcribe and set up copies of laws and sacred texts in a location that resonated with references to the archaic legal institutions of Athens. The transcriptional rather than editorial nature of their work and the attention given to citing sources is understandable if their aim was to replicate the texts of Athenian legal history rather than to produce an ordered codification. It is my contention that the anagrapheis were appointed to produce a monumental, physical statement of the restored democracy’s commitment to its own legislative and constitutional past. This primarily monumental and symbolic function, rather than that of centralisation and consultation, is characteristic of the few other known examples of ancient ‘codifications.’

If the anagrapheis were commissioned to produce symbolic statement of the restored democracy’s commitment to its constitutional and legislative past, then it empowered the democracy in the late fifth-century debate about legal institutions. As has been emphasised, the anagrapheis’ work allowed the democracy to claim a continuum with Dracon, Solon and the patria, while any further attempts to champion oligarchy by recourse to archaic laws could be countered with the visually impressive parade of stelai at the Stoa Basileios. Secondly this monument also gave visual expression to the restored democracy’s elevation of nomos. Thirdly, in the aftermath of the oligarchic coups, it reminded an Athens riven with division of the legislative and religious heritage which united them and defined them as Athenian. Finally, by championing its legislative past in such a demonstrative fashion, the restored democracy was able to appear as conservative in relation to the laws, while at the same time

28 See pp.195-6n.8. Moreover, the anagrapheis were appointed to start their work some seven years before the restored democracy introduced the legislative and judicial structures that granted nomos its elevated status (see p.162n.63) which would have then encouraged the production of a ‘law code’. 29 On the Babylonian Law Codes, see Finkelstein (1961); on the XII Tables in Archaic Rome, see Eder (1986); and on the inscribed texts on the wall of the Temple to Athena Poloi at Priene, see Sherwin-White (1985) 74-80. On the Gortyn Law Code, see Davies (1996), especially 53-56 on the blend of ‘codification’ and case-law in the code and whether the code could have been used as a working document to guide the courts. See Thomas (1996) on the oral approach to law in archaic societies. 30 See p.162n.63. 31 Xenophon has Cleocritus stating: ‘we shared with you both the most holy rites and sacrifices (μετεσχικάμεν δὲ ύμνον καὶ ιερὰ τῶν σεμιοτάτων καὶ θυσίαν)’ as one of the reasons that should unify the opposing factions at the fall of the Thirty (Xen.Hell.2.4.20). On the importance of religious festivals as a self-defining feature of the polis, see Thuc.2.38.1 on Athens; and on each polis following its own sacrificial calendar, see Aristoxenus Harmonica 3.37. The inscribing of a sacrificial calendar that ran the length of at least two walls was a dramatic and visual statement of the democracy’s commitment to its past self-identity. The careful listing of deities to be honoured, the appropriate sacrificial victim to be offered and the potential cost incurred by the polis are all visual and concrete expressions of the democracy’s commitment to the gods. On the problems of using the sacrificial calendars as either ritual texts, see Dow (1959) 13, Jameson (1965) 155-6; or as consultation documents for the date and details of sacrifices, see Jameson (1965) 155-6; or as financial balance sheets for the cost of sacrifices, see Oliver (1935) 27, Dow (1959) 14-5.
time introducing significant legal change and innovation. The transfer of the power to ratify nomoi from the ecclesia to the nomothetai was a serious and dramatic break with previous democratic practice. The Athenian democracy appears to have been conservative with regard to legal change, looking on all changes to the laws with deep suspicion.\textsuperscript{32} The restored democracy's pronounced looking back to its legal and constitutional roots through the monument established by anagrapheis attempted to counterbalance the forward-looking redefinition of nomos. The appointment of the anagrapheis can be set alongside the reforms to the judicial system (Chapter 7.3) and the redefinition of nomos, and taken together represent the restored democracy's answer to the oligarchic critique of democratic legal practice.

\textsuperscript{32} The most frequently cited example of this mentality is Demosthenes' glowing account of the Locrian custom whereby any citizen proposing a change to the laws did so with his neck in a nose. If the proposer's law was rejected, the nose was drawn tight (Dem.14.139-41). This legislative conservatism certainly lies behind Lysias' damning portrayal of Nicomachus, see Todd (1996) 130-1, with other references to this mentality and also Sealey (1987) 1-4.
Figures
Figure 1: Restored Plan of the Classical Agora in about 400 B.C.

Figure 2: A Bronze Pinakion.
Figure 3: Kylix signed by Douris (early fifth century).
Figure 4: Steve Bell’s Characterisation of John Major from the Guardian.
Figure 5: Stemma of the Family of Dicaeogenes (II) (Isae.5)

Dicaeogenes (I)
Killed at Eleusis (457)

Menexenus (I)
Killed at Spartolus (429)

dau. = Polyaratus
dau. = Democles
dau. = Theopompus
dau. = Démocles
dau. = Cephisophon

dau. = Proxenus

Dicaeogenes (II)
Killed at Cnidus (412-411)

Harmodius

Dicaeogenes (III)
(opponent)

Menexenus (IV) *(speaker)*

Menexenus (III)
dau. Cephsodotus
Figure 6: The Perceived Legitimacy of Engaging in a Judicial Dispute on the Basis of Relational Ties

**Key**
- Dispute censured - close relational ties (Isae.5.30, fr.6)
- Dispute permitted - broken relational ties (Lys.25.15-16, Isoc.18.18)
- Dispute unlikely - no relational ties (Isoc.18.18)
Figure 7: Stemma of the Family of Astyphilus (Isae.9)

- **X**
  - **Thudippus** (dau.)
    - **Cleon** (opponent)
    - **Anaxippus**
  - **Euthycrates = sister of Hierocles = (2) Theophrastus**
  - **Astyphilus** (dau.)
    - **son (speaker)**
    - **son (alleged to have been adopted by Astyphilus)**
Figure 8: Diagrammatic Representation of the Dispute-Process in Athens

Key: A, B = Disputants  C = Community  M = Mediator  U = Umpire  D = Divinity
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**KEY**

*Fragments labelled with a Greek letter are those which have been identified as part of 'the codification' walls subsequent to Dow's 1961 study.

- A: Attic Script.
- E: Presence of an erasure onto which existing text was inscribed. See Dow (1961).
- I: Ionic Script.
- Lines: Total number of lines on the fragment.
- IG1²: Line number.
- IG3²: Page number.
- IG6²: Plate number.
Figure 10: Reconstruction of the Stoa Basileios (c. 300).
The Statue of Themis in front of the building was erected in c.330.
Sources for Figures

Figure 1: Reproduced from Camp (1986) 89, Fig.66.
Figure 2: Reproduced from Todd (1993) 85, Fig.6.1.
Figure 3: Reproduced from F. Eichler, *Corpus Vasorum Antiquorum. Österreich: Wein, Kunsthistorisches Museum (Band 1).* Vienna, 1951. Plate 12.
Figure 4: Reproduced from Bell (1992) 64.
Figure 5: Based on the Stemma at Wyse (1904) 403, Forster (1927) 153.
Figure 7: Based on the Stemma at Forster (1927) 323.
Figure 8: Based on Simon Roberts’ diagram of the taxonomy of disputes, presented during his lectures.
Figure 10: Reproduced from Camp (1986) 112, Fig.76.
Editions of cited Greek texts


Antiphon
Speeches  Gernet (1923).
Fragments  Maidment (1941).

Aristophanes
*Clouds*  Dover (1968a).
*Wasps*  MacDowell (1971a).


Euripides
*Supplices*  Collard (1975).

Hesiod  
*Works and Days*  West (1978).


Lysias  Gernet and Bizos (1974-89).


Sophocles  


### Works cited by abbreviation

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<td>F. Jacoby, <em>Die Fragmente der Griechischen Historiker.</em></td>
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### Works cited by author’s name and year of publication


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Bibliography

Statistical Appendix
Table 1: The distribution of associations among named individuals in Aristophanes' *Acharnians*

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**KEY**

Reference: Line number in the Acharnians.

PA: Kirchner, J. (1901-3) Prosopographia Attica. Berlin.


Source: Y = individual appears in other sources than Aristophanes.

N = individual appears only in Aristophanes.

S/ = son of
Table 1 The distribution of associations among named individuals in Aristophanes’ Acharnians

NOTES
1 Antimarchus is described as a ἴπτομενος, meaning either a prose writer (which does not fit with ἰπτός in the following line) or a commissioner appointed to draft legislation (for this later use, see Thuc.8.67.1, IG 2 22.3, 76.3-4 with Starkie (1909) 225, Sommerstein (1980) 211). Above, I have adopted the second meaning. This is not to say that Antimarchus proposed a decree limiting comic freedom of speech, as suggested in the scholia (see Halliwell (1984) 87).
2 Antimarchus is attributed with the funding of a chorus at the Lenaia, so within the comic world, he can be considered to be in the liturgical class. See APF xxi-xxii for the grounds for inclusion within the liturgical class.
3 It is unclear if this refers to an actual prosecution that Cleon underwent or not. See Sommerstein (1980) 158 for the options.
4 Reference (cont.): 502, 660.
5 In the text, the two names are run together: Γερμανέωθεος. Rogers (1910a) 91 and Sommerstein (1980) 187 interpret this as a reference to two separate individuals, as listed above. Starkie (1909) 127 sees this as a reference to Procles, son of Theodorus (PA 12214 APF = N)
6 The name Marpsias otherwise is unattested at Athens, so may be a nickname, playing on μαρπσς, which can mean to condemn (e.g. Aesch. Eum. 597 see Starkie (1909) 148). It is possible Marpsias had a reputation as a prosecutor. Eupolis attacks him for being the fawning hanger-on of Callias (fr.179 K-A).
7 The identity and activity of this individual is unclear. Starkie (1909) 227-8 and Sommerstein (1980) 221 argue that this is a nickname of an individual with whom clothes stealing has become associated. He may be the same Orestes in Eupolis fr. 179 K-A, an associate of Callias.
8 Rogers (1910a) 91, Sommerstein (1980) 186 take Τιμομενοφαινομενος to be two separate individuals, Teismenius and Phaeippus. The former Sommerstein states is unknown, refusing to follow the identification in the scholia with PA 13443 APF = N. The later he identifies with PA 13979, secretary to the council in 423 (Thuc.4.118.11, IG 2 57.2, 70.5). Starkie (1909) 126 identifies this compound name with one individual Hipponicus (PA 7658 APF = Y), reading the compound as ‘men like Scythian son of Phaeippus.’
9 Αλομελαξόν: a braggart from Diomela. Sommerstein (1980) 187 takes this as a reference to Philoxenus (as followed above), who came from Diomela (Eupolis fr. 249 K-A). Starkie (1909) 127 takes this to refer to a group of boastful individuals, Rogers (1910a) 91 to a group of boastful individuals who frequented the Temple of Heracles in Diomela.
10 The identification of this individual is debated. Sommerstein (1980) 198 identifies the Prepis here with PA 12184 because the name is very rare in Athens. Starkie (1909) 174 offers no identification.
11 son of Melesias.
Table 2: The distribution of associations among named individuals in Aristophanes' *Knights*

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Table 2: The distribution of associations among named individuals in Aristophanes' Knights

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**Total number of individuals** 33

**KEY**

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<tr>
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<td>Y = individual appears in other sources than Aristophanes.</td>
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<td>S/</td>
<td>son of</td>
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**NOTES**

1 There is little information on the two brothers outside Aristophanes. Anecdotal evidence records that Arithradas was a disciple of Anaxagoras, and in passing confirms that his brother was Arignotus a lyre player (Athen. 5.220 b-c).

2 It is very unclear what is the incident referred to. Neil (1901) 39-40 lists a number of alternatives, including the possibility that Eucrates had recently escaped prosecution. Rogers (1910b) 35 sees this as a reference to his flight from popular anger due to his dealings in hemp and bran.

3 Practically all our evidence on Eucrates comes from Aristophanes (Eq. 129, 254, fr. 149, 716 K-A), revolving around his association with hemp or bran. Consequently Cratinus fr. 339 K-A, with its reference to bran, may provide testimony to him outside Aristophanes.

4 The mss. have Grythus. This ancient variant gives the individual the plausible nickname of ‘hook-nose’, rather than a name that is unattested elsewhere (see Dover (1972) 24, Sommerstein (1961) 191). Neil (1901) 126 suggests Gryllus (PA 10842, APF = N) the father of Xenophon, which seems improbable.

5 mss. have Ouliou, but it is easier to read Oulion, giving us an attested person of the right age (APF307, Sommerstein (1961) 165). Ulius was the son of Cimon and, although he is not listed among the liturgical class, came from a family of exceptional status and wealth APF 304-7, 311-12). This tentative reference is the only detail we possess of his public life and APF concludes that Cimon may have substantially reduced the fortunes of his family in the struggle to maintain power in the 460's.
Table 3: The distribution of associations among named individuals in Aristophanes' *Clouds*

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Table 3: The distribution of associations among named individuals in Aristophanes' *Clouds*
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Total number of individuals 26

Total Law 5

**KEY**

Reference  Line number in the *Clouds*.

*PA*  Kirchner, J. (1901-3) *Prosopographia Attica*. Berlin.

*APF*  


Source  

Y = individual appears in other sources than Aristophanes.

N = individual appears only in Aristophanes.

S/  son of
Table 3 The distribution of associations among named individuals in Aristophanes' Clouds

NOTES

1 This Amyrihas may be the son of Pronapes (PA 12250 APF = Y). Pronapes was hippocarch around 450-440 (APF 471). Amyrihas is described by Aristophanes as a ponistes second to none (Vesp. 1274), perhaps because his father's horse racing activities have dissipated the family fortune. But we do not know what is the connection between this individual and the person of the same name in Wasps (Dover (1968a) 185).

2 The scholia claim that this individual is not the same Antimachus as at Ach. 150-73, a statement that is impossible to verify. See Halliwell (1984b) 87-88 on the other identifications suggested by the scholia.

3 There is some uncertainty about the spelling of this individual's name, given the number of variants in the mss. But an inscription of the late fifth century (IG 2 770), celebrating the success of Cedeides as the trainer of a tribal chorus has determined the above reading.

4 There is some debate about the historicity of this individual. APF 380-1 thinks she did exist, Dover (1968a) 99-100 is more cautious.

5 The three sons of Hippocrates were renowned for their stupidity, see Eupolis fr. 112 K-A. For the interpretation of βλεπομαμωνε, see Dover (1968a) 221.

6 Reference (cont): 1065.

7 Although Leogoras is not attested as being in the liturgical class, the evidence from within the Clouds (the ownership of pheasants, luxury birds (Dover (1968a) 108, Sommerstein (1982) 165) and from outside Aristophanes, suggests that he was considered wealthy. See APF 30-1.

8 It is possible that this individual can be identified with Melesias son of Thucydides (PA 9813, APF = N). Starkie (1911) 163, Dover (1968a) 185, Sommerstein (1982) 197 discount this identification.

9 The joke at 1261-5 can be understood in two ways. Either it is a reference to a tragedy that Carcinus (PA 8254 APF = Y) produced, in which a god is portrayed lamenting (Rogers (1916) 155-6). Or the joke refers to his son Xenocles, who also composed tragedies (Starkie (1911) 272, Dover (1968a) 243, Sommerstein (1982) 221).
<table>
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<th>NAME</th>
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Table 4: The distribution of associations among named individuals in Aristophanes’ *Wasps*

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*Footnotes:*

¹³ Eurycles: A character from *Eurycles*.

¹⁴ Laches: A character from *Laches*.

¹⁵ Leogoras: A character from *Leogoras*.

¹⁶ Lycon: A character from *Lycon*.

¹⁷ Morychus: A character from *Morychus*.

¹⁸ Nicostratus: A character from *Nicostratus*.

¹⁹ Oeagrus: A character from *Oeagrus*.

² Phanus: A character from *Phanus*.

²² Phereadesipnus: A character from *Phereadesipnus*.

²³ Philippus: A character from *Philippus*.

²⁴ Philocles: A character from *Philocles*.

²⁵ Philoctemon: A character from *Philoctemon*.

²⁶ Philoxenus: A character from *Philoxenus*.

²⁷ Phrynichus: A character from *Phrynichus*.

²⁸ Pittalus: A character from *Pittalus*.

²⁹ Proxenides: A character from *Proxenides*.

³⁰ S/ Automenes: A character from *S/ Automenes*.
Table 4: The distribution of associations among named individuals in Aristophanes' *Wasps*

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Total number of individuals: 51

Total Law: 25

**KEY**

Reference: Line number in the *Wasps*.

PA: Kirchner, J. (1901-3) *Prosopographia Attica*. Berlin.


Source: Y = individual appears in other sources than Aristophanes.

N = individual appears only in Aristophanes.

S/ = son of
Table 4: The distribution of associations among named individuals in Aristophanes' *Wasps*

NOTES

1 It is unclear whether the first foreigner at the symposium is Ancestor (Rogers (1915) 190, Sommerstein (1983) 228) or his son (Starkie (1968) 345-6, MacDowell (1971a) 289-30). MacDowell does not give an identification for the son, Starkie suggests Tisamenus (PA 13443 APF = N). The context suggests that the first foreigner was Ancestor. We know from Eupolis that he entertained at symposia (fr.159.11-16), and as he appears to be the only individual without political associations among the symposiasts, it seems more likely that Aristophanes was referring to Ancestor in his role as entertainer than to his son (see Sommerstein *ibid.*).

2 Aeschines may have been one of the Hellenotamiae in 418/7 (see IG II 287.5 with Sommerstein (1983) 185).

3 MacDowell (1971a) 178, Sommerstein (1983) 176 take Vesp. 325 as referring to Amynias. See MacDowell *ibid.* for the different interpretations of ψηφυδακμόμενον.

4 Reference (cont.): 1267. The series of jokes at Vesp. 1265-74 can be interpreted in two ways; either Amynias is clever (Sommerstein (1983) 231-2) or that he is stupid (MacDowell (1971a) 296-7).

5 See Table 3 n.1.

6 See Sommerstein (1983) 232 for the two ways this joke can be understood.

7 See Table 2 n.1.

8 This identification of the anonymous defendant at Vesp. 283 comes from the scholia. Apparently Carystion informed the Athenians of the Samians’ plans during the Samian revolt and was later rewarded with Athenian citizenship (MacDowell (1971a) 172, Sommerstein (1983) 174).

9 This name is unattested and so is probably a comic creation, with the meaning of either ‘needy’ from χρητη or ‘money-man’ from χρηματικη (MacDowell (1971a) 187-8, Sommerstein (1983) 182). Sommerstein suggests that this may be an elusion to Chromon, the proposer of a decree in 430 (IG II 3 145.2 with Sommerstein *ibid.*).

10 It is unclear in what way Cleon has recently made himself shine. MacDowell (1971a) 137-8 is undecided, Sommerstein (1983) 157-8 suggests this is a reference to Cleon’s dealings with Scione, including legislative activity. I have followed Sommerstein’s suggestion.

11 Reference (cont.): 242, 343, 409, 596, 759, 1030, 1221, 1285.

12 It is impossible to securely identify Dracontides from the three of four contemporary individuals of the same name. See MacDowell (1971a) 153 and Sommerstein (1983) 166 for the possibilities.

13 It is unclear whether the Eurycles referred to here is a human prophet (MacDowell (1971a) 264) or a spirit (Sommerstein (1983) 216).

14 Given the similar characteristics that the anonymous defendant at Vesp. 288 shares with Laches at Vesp. 288, it is possible to identify the former with the later (Sommerstein (1983) 174-5).

15 Within the comic imagination, Laches is considered wealthy.

16 See Table 3 n.7.

17 MacDowell (1971a) 238 argues that the individual in the *Wasps* is the same Lysistratus at Ant.6.36 and one of the mutilators of the *Hermai* (Andoc. 1.52-3, 67-8). Sommerstein (1983) 206 on the other hand sees them as two separate men. I have followed Sommerstein.

18 This name is unattested and so is probably a comic creation, with the meaning of ‘dinner-getter’ from φαγετω and δελευνον (MacDowell (1971a) 187-8, Sommerstein (1983) 182).
19 Philoctemon may be an imaginary name, meaning 'lover of possessions', and thus is an appropriate name for the host of the lavish symposium that Philocleon and Bdelycleon attend (see MacDowell (1971a) 302-3 for the social composition of the individuals present at the symposium in Philoctemon's house). Or he may be a real person, the possible grandfather (PA 14637) of Philoctemon in Isae.6 (PA 14641 APF = Y). If this is the case, then Philoctemon the grandfather was probably considered wealthy, at least in the comic imagination. He is depicted to be a suitable host for a lavish symposium, and his son Euktemon (PA 5798 APF = Y) and grandson are attested in the liturgical class, suggesting wealth has been passed down through the generations.

20 As this name is very rare, the Smicythion in the Wasps can be identified with Smicythion of Halae (PA 12769). See Sommerstein (1983) 181-2.

21 The choice of this name in a line spoken by a character of the same name is strange. He was probably an important official sitting in the front seats of the theatre. He can be identified possibly with Sosias in Ant 5.70, one of the 10 Hellenotamiae (PA 13176 APF = N). Or it is possible the text is corrupt at this point, and the name Sosias has got into the text at this point from the margin, supplanting the name of an important official. MacDowell (1971a) 140 suggests Nicias (PA 10808 APF = Y) as a possibility.

22 Reference (cont.): 1220.

23 son of Melesias.
### Table 5: The distribution of associations among named individuals in Aristophanes' *Peace*

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*Statistical Appendix*
Table 5: The distribution of associations among named individuals in Aristophanes' *Peace*

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Table 5: The distribution of associations among named individuals in Aristophanes' *Peace*

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Total number of individuals: 24

**KEY**

Reference: Line number in the *Peace*.

PA: Kirchner, J. (1901-3) *Prosopographia Attica*. Berlin.


Source: Y = individual appears in other sources than Aristophanes. N = individual appears only in Aristophanes.

S/ son of

**NOTES**

1. See Table 2 n.1.
2. Reference (cont.): 752
3. From 473-4 it appears that one of the chorus is given the identity of Lamachus and so, given the criteria for the selection of cases (see Appendix 1), Lamachus should be removed from the data matrix. But this seems to be a passing identification which is not developed in the rest of the play. The chorus as a whole in the *Peace* has a fluid identity (see Dover (1972) 137-8), so probably a member of the chorus could briefly become Lamachus for the sake of a joke about Lamachus. Alternatively, Trygaeus could have directed his comment in Lamachus' direction in the audience.
4. From 807-8, it seems likely that Morsimus was the brother of Melanthius, rather than presuming an anonymous brother is referred to three lines later (see Platnauer (1964) 137-8, Sommerstein (1985) 172). Therefore the colourful insults of 808-17 can be applied to the former as well.
5. Pericles is depicted as being at least frightened of prosecution like Pheidias (606-7), although he did not undergo prosecution on this charge.
6. The joke here has alluded interpretation. I presume there is an artistic and wealth reference, given the coupling of Sophocles with Simonides and fragments of Euripides. For various interpretations, see Platnauer (1964) 127, Halliwell (1982) 153, Sommerstein (1985) 165.
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Table 6: The distribution of associations among named individuals in Aristophanes’ *Birds*

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Statistical Appendix
Table 6: The distribution of associations among named individuals in Aristophanes' *Birds*

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Total number of individuals 41

**KEY**

Reference: Line number in the *Birds*.

**PA**
Kirchner, J. (1901-3) *Prosopographia Attica*. Berlin.

**APF**

Source: Y = individual appears in other sources than Aristophanes.
N = individual appears only in Aristophanes.

S/ son of
Table 6 The distribution of associations among named individuals in Aristophanes’ Birds

NOTES
1 See Table 4 n.3.
2 The name is very rare in the late fifth century and the individual mentioned here could be identified with either one or both of them (Sommerstein 1987 257).
3 Diotrephes is depicted as encouraging a young man to engage in chariot racing. We have no idea whether Diotrephes himself was involved in the sport. The Scholia at 798 claim he was portrayed as a nouveau riche in comedy, perhaps having made a fortune as a maker of wicker flasks (see Av. 798).
4 Rogers (1906) 187-8 thinks that Leotophides is portrayed as a choregos for the Birds because of his light and bird-like appearance (see Hermippus fr. 36 K-A).
5 Davies (1981) 161-2 identifies the Leotophides mentioned in the Birds with the general and admits he be included in APF.
6 It is unclear why Menippus should be likened to a swallow. Sommerstein (1987) 284-5 follows the scholia, claiming the identification was derived from the brand he used on his horses. Rogers (1906) 171 prefers to see this as a reference to his treatment of the χυλωσκόν, part of a horse’s hoof. Casevitz (1978) 86 sees it as a simple allusion to his barbarian origins.
7 See Table 1 n.7.
8 Sommerstein (1987) 248 identifies this individual with the politician of the same name who moved two late fifth-century decrees (IG i3 63 Andoc.1.77-9).
9 The scholia claim that Philomen was satirised as a Phrygian, but the text implies that he is mentioned because of his association with the phrugilos bird. Perhaps ‘phrugilos’ was a nickname (see Sommerstein (1987) 246-7). Rogers (1906) 104 and Merry (1928) 43 follow the scholia.
10 The interpretation of this passage is difficult. Rogers (1906) 36, Merry (1928) 20 and Casevitz (1978) 40 read the line as: ‘the son of Philocles’ hoopoe’, and so take this as an attack on Philocles by comparing the hoopoe in his Pandionis with the Tereus of Sophocles. This opens the way for the comments about Greek nomenclature and the attack on Callias. Sommerstein (1987) 215-6 offers the above interpretation, but also offers a second, based on reading the line as: ‘the son of Philocles the hoopoe,’ in other words an attack on Philocles’ appearance (see Av. 1295).
11 The identification of both Peisias and his son is problematic. Merry (1928) and Casevitz (1978) identify the son as Meles (PA 9802 APF = N), whose father we know was Peisias (PA 11777 APF = N). This identification is questioned by Rogers (1906) 105 and Sommerstein (1987) 247, who can find no references of betrayal associated with Meles. Sommerstein prefers to put the emphasis on the associations that come from nicknames. He thinks that Peisias was nicknamed partridge, so is probably the lame tavern keeper at Av.1292-3. Therefore his son was similarly considered partridge-like, a nickname which was also appropriate for a possible traitor (the partridge was renowned for its craftiness).
12 We have no idea who the son of Tharreleides was. The scholia identify him with Asopodorus, for which there is no evidence. The comparison with a jackdaw may have been based on physical or temperamental similarities. (see Rogers (1906 5, Sommerstein (1987) 202-3).
13 Reference (cont.): 1295. The identification of Spintharus with the father of Eubulus is by no means secure. It has been put forward by Storey (see Sommerstein (1987) 246).
14 It is unclear why Theogenes is likened to a χυλωσκόν, commonly identified with the ruddy shellduck. Merry (1928) and Sommerstein (1987) 285 suggest this may be a reference to his loud mouthedness and deviousness, Rogers (1906) 172 to his nonexistent wealth and Casevitz (1978) 86 to his cunning.
### Table 7: The distribution of associations among named individuals in Aristophanes' *Lysistrata*

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Table 7: The distribution of associations among named individuals in Aristophanes' Lysistrata

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Total number of individuals: 16

**KEY**
- Reference: Line number in the Lysistrata.
- **PA**: Kirchner, J. (1901-3) Prosopographia Attica. Berlin.

**NOTES**
1. The identification of Eucrates is problematic. The above identification follows Sommerstein (1990) 160. Henderson (1987) 79-80 is more cautious, arguing that he must have been the commander in the Thraceward region who was replaced by Dietophes is the summer of 411 (Thuc.8.64.2). The joke here may imply that Eucrates was facing a charge of corruption (APF 404, or mores simply reflect the typical comic view that ordinary soldiers had to keep an eye on their half-wit superiors (see Sommerstein ibid.)
2. Although the joke essentially revolves around the confusion between Lysistrata and Lysistratus, this could also be an attack on Lysistratus son of Macareus, who according to S Vesp. 787, was a passive homosexual, and so a suitable mediator with Sparta (See Lys. 621, Henderson (1987) 195, Sommerstein (1990) 211).
3. It is probable that although the joke is made with reference to Theogenes' wife, the real subject of the attack is Theogenes himself (Henderson (1987) 74, Sommerstein (1990) 158). The mss. can be amended in two ways, giving either a reference to consulting the shrine of Hecate (Rogers (1911) 11) or more probably: 'hoisting her/ the herakateion (small sail). The joke can be interpreted in a number of ways. 1. As a reference to Theogenes' shipping activities (Eupolis fr. 99.5-7 K-A). Perhaps he had recently lost a large ship and was now having to make do with a akatos (small boat, see Henderson (1987) 75, Sommerstein (1990) 188). 2. As a reference to Theogenes' alleged boasting. The akatos of Theogenes looks pathetic next to the keleites of Lys. 60 (Henderson ibid.). 3. A reference to bibulousness. akatos can also mean a drinking cup, making the joke turn on the stock comic allegation of drunken wives (Henderson ibid., but rejected by Sommerstein ibid.)
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Table 8: The distribution of associations among named individuals in Aristophanes’ *Thesmophoriazusae*

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**KEY**

Reference: Line number in the *Thesmophoriazusae*.

PA: Kirchner, J. (1901-3) *Prosopographia Attica*. Berlin.


NOTES

1. It is debated whether the woman’s husband, referred to as Cleonymus, is the same Cleonymus that Aristophanes has attacked so readily before. Halliwell (1982) 153 thinks that it is the same Cleonymus, given the name is very rare in Athens. In that case, she may well have been well padded, alluding to her husband’s obesity. See also Storey (1969) 254.

2. The mother of Hyperbolus may have been a regular subject of comedy (see Ar. Nub.551-9, Eupolis Maricas, Hermippus Artopolides), but this is the only reference to Lamachus’ mother. It is probable that the identities of the two mothers are derived more from their sons than from historical reality.

3. There is no way of definitely identifying the deceased individual at *Thesm*. 876, 883, but it seems likely that this could be the deceased general mentioned at Thuc. 1.45.1, 2.23.1 (Rogers (1904) 94).
### Table 9: The distribution of associations among named individuals in Aristophanes’ *Frogs*

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Table 9: The distribution of associations among named individuals in Aristophanes' Frogs

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Total number of individuals 42

Total Law 6

KEY

Reference  Line number in the Frogs.
PA  Kirchner, J. (1901-3) Prosopographia Attica. Berlin.
Source  Y = individual appears in other sources than Aristophanes.
S/  = individual appears only in Aristophanes.
Table 9 The distribution of associations among named individuals in Aristophanes' Frogs

NOTES

1 Dover (1993) 201 stresses the 'friends', understanding an allusion to Cleisthenes' effeminacy.
2 The tradition about Cephasphon has become confused. In the Frogs, he is portrayed as Euripides' poetic collaborator (Dover (1993) 53-4). For the later distortions, which transformed him into Euripides' slave and the lover of his wife, see Dover ibid. 53-54, 54 n.6, 323.
3 We have no idea who Cleidemides was or what his relationship with Sophocles was. The Scholia make contradictory statements, that he was either the son of Sophocles or a Sophoclean actor. The lines themselves can be read in two ways, depending on the punctuation; either that Cleidemides was waiting in reserve, or to some occasion when he used the expression. For a variety of interpretations, see Rogers (1919) 119, Stanford (1958) 139, Dover (1993) 289. I have not attempted to assign a variable to this case.
4 Cleigenes is virtually unknown. There is an individual of the same name, who was secretary to the boule in 410/9 (IG i3 375.1) and in Andoc.1.96. The reference to his warmongering at Ran. 714 may be a political jibe, affiliating him with Cleophon (Rogers (1919) 106-7, Stanford (1958) 133-4, Dover (1993) 280-1).
5 Cleisthenes' trierarchy is probably imaginary, allowing the usual sexual puns and innuendoes (see Dover (1993) 195-6). But under the criterion laid out above (p.000), he can be placed in the liturgical class of the comic imagination.
6 We have no idea who Eryxis was or why he was compared to a tawny horse-cock. See Stanford (1958) 155, Dover (1993) 309.
7 A Αυξι won first victory some years after Aristophanes' first victory (IG ii 2325. 65. His work did not survive into the Hellenistic period (Dover 1993) 192).
8 Dover (1993) 313 argues that the nickname Manes, applied here to Megaenetus, is not a slur on his origins, but is a joke about his lack of luck at gambling. The word is used of the lowest throw of the dice.
9 Dover (1993) 350 argues that there may be two individuals of this name, a composer of symposiastic songs and a tragic poet. Aristophanes may be being deliberately ambiguous here, allowing both to be referred to, depending on where the punctuation is placed.
10 This may be a reference to the individual of the same name in Dem.19.246, the famous tragic actor (Rogers (1919) 10-11, Dover (1993) 197).
11 We have no idea whether the clumsy member of the military procession is the same individual as in Eupolis fr.318 or Ant.4.11 (PA 11584 APF= N). See Dover (1993) 322.
12 For the interpretation of Ran. 970, probably a sneer at Theramenes' origins, see Stanford (1958) 159, Dover (1993) 314.
Table 10: The distribution of associations among named individuals in Aristophanes' *Ecclesiazusae*

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Total number of individuals: 31

**Key**
- **Reference**: Line number in the *Ecclesiazusae*.
- **PA**: Kirchner, J. (1901-3) *Prosopographia Attica*. Berlin.
- **Source**: Y = individual appears in other sources than Aristophanes.
  N = individual appears only in Aristophanes.
- **S/**: son of
Table 10 The distribution of associations among named individuals in Aristophanes' Ecclesiazusae

NOTES

1 Aesimus is clearly considered to be a symbol of unsteadiness at Eccl. 206, which the scholia attribute to either lameness or that he was αμαθ and ατιμος. The later two do not fit with the Aesimus described in Lys.13.80-2. Consequently it is difficult to securely identify the individual and understand the basis of the joke (Rogers (1917) 36, Ussher (1973) 103-4).

2 The only reason to identify the Antisthenes here with the successful choregos of PA 1194 is chronological. The dates given by APF38-9 would put Antisthenes in his twenties in the 390's. Ussher (1973) 127 is suitably cautious. See APF ibid. for the rationalisation of the stemma of Antisthenes (PA 1194).

3 The mss. read Ἀργειος. Ussher (1973) 103 xxiii-iv suggests that Ἀργειος, the Argives, should be read instead of a proper name, as does Barrett (1978) 229. Rogers (1917) 33-34, although making the above amendment, prefers to read a proper name, understanding a light-hearted joke that rounds off the otherwise grim catalogue of Athenian perversity and misjudgements.

4 We have no idea if this is the same Ariphrades who was attacked for his sexual corruption at Eq. 1281, Vesp. 1280 and Pax 883. The Scholia and PA think so, but Rogers (1917) 22-23 and Ussher (1973) 93 have strong reservations.

5 See Table 2 n.1.

6 We can not identify this individual with any certainty. Ussher (1973) 187-8 suggests PA 7996 (APF= N)

7 It is unclear whether this individual is a historical individual or not. The name is attested in the early fourth century, but the name also fits the characterisation. See Rogers (1917) 132, Ussher (1973) 192.

8 Although PA identifies the Hieronymus here with Conon's admiral (D.S. 14.81.4), both Rogers (1917) 34 and Ussher (1973) xxiv n.2 discount this identification.

9 The jokes surrounding Lamius are complex. There is an obvious sexual allusion in the comments on the size of the stolen στρομπαλαν. The name Lamius may have been chosen to recall the Lamia, who according to Crates fr. 18, broke wind with a staff in his hand. The references to his Argus-like dress may be an allusion to Lamius' lack of vigilance. Finally there is a joke about the δραμος or public executioner, whom Lamius watches over, given the size of his στρομπαλαν and once he has acquired the vigilance of Argus. See Rogers (1917) 15-6, Ussher (1973) 85-6. Although the name may have been chosen with reference to the Lamia, the obscurity of the jokes suggests this was a historical individual.

10 PA identifies him with the individual of the same name who was satirised for bribe taking at Av. 513. This is questioned by Ussher (1973) 163.

11 Although Nicias belonged to a phenomenally wealthy family, he is not directly attested in the liturgical class APF 403-7).

12 Ussher (1973) 74 takes this to a reference to an actor of this name who was mocked for his mispronunciation.

13 This individual may be a historical individual, Ussher (1973) 80 suggests PA 12769. The joke can be explained in two ways: either Smicythion is a peevish old man, unwilling to let his wife go out; or he is impotent (Ussher ibid.).

14 A double entendre is intended on the activities of Smoius, see Ussher (1973) 192.
Table 11: The distribution of associations among named individuals in Aristophanes' *Plutus*

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Table 11: The distribution of associations among named individuals in Aristophanes’ *Plutus*

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**Total number of individuals** 13

**Total Law** 3

**KEY**

- Reference: Line number in the *Plutus*.
- PA: Kirchner, J. (1901-3) *Prosopographia Attica*. Berlin.
- Source: Y = individual appears in other sources than Aristophanes.
- N = individual appears only in Aristophanes.
- S/ = son of

**NOTES**

1. According to the scholia, Aristoxenus and Pamphilus were convicted of embezzling public funds. See Rogers (1907) 20, APF 365.
2. The scholia have no idea who Dexinicus was, but they thought he might have been a rapacious politician. Or he may have been a poor man.
3. The reading and interpretation of τῶν ἀρχαιῶν at *Plut.* 725 is unclear. Rogers (1907) 80-2 interprets the word to mean some kind of filibustering technique which interfered with the passing of legislation (see Xen. *Hell.* 1.7.34).
4. Pamphilus the painter and Pamphilus the politician were two different individuals. Pamphilus the painter (PA 11561, *Plut.* 385) is excluded from the data set because he was not an Athenian citizen.
5. Although Philonides was not directly attested in the liturgical class, his son and grandson were (APF 422-3). In the comic imagination he was wealthy enough to retain the affections of Lais, in spite of his ugliness.
Table 12: Calculations for the Political Variable in the Plays of Aristophanes

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Statistical Appendix

270
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Table 17: Calculations for the Sexual Variable in the Plays of Aristophanes

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Table 18: Calculations for the Wealth/poverty Variable in the Plays of Aristophanes

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<th>total no. of associations</th>
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Table 19: Percentage of individuals that appear in other sources than Aristophanes (Source = Y) in comparison to those who appear only in Aristophanes (Source = N)

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