

USE AND ABUSE OF LAW IN THE ATHENIAN COURTS
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Mocking Justice: Aristophanes and the Literary (Ab)use of Law in Old Comedy

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I. The manipulation of law in Aristophanes: literary strategies

► A] Para-legality as a *modus comicus*

1] V. 894-897

ἀκούετ' ἤδη τῆς γραφῆς. "ἐγράψατο
Κύων Κυδαθηναίεὺς Λάβητ' Αἰξωνέα
τὸν τυρὸν ἀδικεῖν ὅτι μόνος κατήσθιεν
τὸν Σικελικόν. τίμημα κλωὸς σύκινος."

2] D. L. 2.40.3-7

τάδε ἐγράψατο καὶ ἀντωμόσατο Μέλητος
Μελήτου Πιτθεὺς Σωκράτει Σωφρονίσκου
'Αλωπεκῆθεν· ἀδικεῖ Σωκράτης, οὐς μὲν ἡ
πόλις νομίζει θεοὺς οὐ νομίζων, ἕτερα δὲ
καινὰ δαιμόνια εἰσηγούμενος· ἀδικεῖ δὲ καὶ
τοὺς νέους διαφθείρων. τίμημα θάνατος.

Now hear the indictment [*Reading*]: "The Hound of Cydathenaeum indicts Labes of Aexone for the crime of having eaten up the Sicilian cheese all by himself. Proposed penalty: a figwood collar.

3] Th. 372-379

Cf. IG II² 330.ii (cf. RHODES [1972: 82-4]):

ἀκούετ' ἅσ'· ἔδοξε τῇ βουλῇ τάδε
τῇ τῶν γυναικῶν· Τιμόκλει· ἐπεστάτει
Λύσιλλ' ἐγραμμάτευεν, εἶπε Σωστράτη·
ἐκκλησίαν ποεῖν ἔωθεν τῇ μέσῃ
τῶν Θεσμοφορίων, ἥ μάλισθ' ἡμῖν σχολή,
καὶ χρηματίζειν πρῶτα περὶ Εὐριπίδου,
ὅτι χορὴ παθεῖν ἐκείνων· ἀδικεῖν γὰρ δοκεῖ
ἡμῖν ἀπάσαις. τίς ἀγορεύειν βούλεται;

ἔδοξε τῇ βουλῇ...

Hear ye all! [*Reading*] "The following was resolved by the Council of the women, chairwoman, Timocleia; secretary, Lysilla; proposer of motion, Sostrate: to hold an assembly at sunrise on the middle day of the Thesmophoria, being the day on which we have most free time, and to consider as first business the subject of Euripides, namely

what penalty he shall suffer, since we are unanimously of opinion that he committed unjust acts." Who wishes to speak?

4] *Ec.* 1014-1020

καὶ δὴ σοὶ λέγω.

"ἔδοξε ταῖς γυναιξίν, ἣν ἀνὴρ νέος
νέας ἐπιθυμῇ, μὴ σποδεῖν αὐτὴν πρὶν ἂν
τὴν γραῦν προκρούσῃ πρῶτον. ἣν δὲ μὴ 'θέλῃ
πρότερον προκρούειν, ἀλλ' ἐπιθυμῇ τῆς νέας,
ταῖς πρεσβυτέραις γυναιξίν ἔστω τὸν νέον
ἔλκειν ἀνατεῖ λαβομένας τοῦ παττάλου."

All right, I'm reading it to you. [Reads] "Resolved by the women: if a young man desires a young woman, he shall not shag her until he has first screwed her elderly neighbour; and if he refuses to perform such pre-screwing and continues to lust after the young woman, the older woman shall be permitted, without penalty, to drag the young man away, taking hold of him by the peg."

5] *Ach.* 713-718 [cf. *IG* I³ 32, 18-20; 28-30]

ἀλλ' ἐπειδὴ τοὺς γέροντας οὐκ ἐᾶθ' ὕπνου τυχεῖν,
ψηφίσασθε χωρὶς εἶναι τὰς γραφάς, ὅπως ἂν ἡ
τῷ γέροντι μὲν γέρων καὶ νωδὸς ὁ ξυνήγορος,
τοῖς νέοισι δ' εὐρύπρωκτος καὶ λάλος χῶ Κλεινίου.
κάξελαύνειν χρὴ τὸ λοιπόν, —κἂν φύγῃ τις, ζημιούῃ—
τὸν γέροντα τῷ γέροντι, τὸν νέον δὲ τῷ νέῳ.

But since you refuse to let the old get any sleep, at least decree that the indictments should be segregated, so that an old defendant can have an old and toothless prosecutor, and the young can have a wide-arsed fast talker, the son of Cleinias. In future (τὸ λοιπόν) you should banish and fine the old, only if they're charged by the old, and the young, only if by the young.

6] *Nu.* 1424-1426

οὐκ οὐν ἀνὴρ ὁ τὸν νόμον θεῖς τοῦτον ἦν τὸ πρῶτον
ὥσπερ σὺ κάγῳ, καὶ λέγων ἔπειθε τοὺς παλαιούς;
ἦττόν τι δῆτ' ἔξεστι κάμοι καινὸν αὖ τὸ λοιπόν
θεῖναι νόμον τοῖς υἱέσιν, τοὺς πατέρας ἀντιτύπτειν;
ὅσας δὲ πληγὰς εἴχομεν πρὶν τὸν νόμον τεθῆναι,
ἀφίεμεν, καὶ δίδομεν αὐτοῖς προῖκα συγκεκόφθαι.

Is it then any less open to me in my turn to make a new law for sons in the future (τὸ λοιπόν), that they should beat their parents in return? All the blows we received before the law was made we wipe from the record, and we make it a concession to them that our having been thrashed hitherto shall remain without compensation.

► B] Trans-contextualization as a *modus comicus*

7] *Ra.* 761-765, 766-767

νόμος τις ἐνθάδ' ἐστὶ κείμενος
ἀπὸ τῶν τεχνῶν ὅσαι μεγάλαι καὶ δεξιαί,
τὸν ἄριστον ὄντα τῶν ἑαυτοῦ συντέχνων
σίτησιν αὐτὸν ἐν πρυτανείῳ λαμβάνειν
θρόνον τε τοῦ Πλούτωνος ἐξῆς—
(...)
ἕως ἀφίκοιτο τὴν τέχνην σοφώτερος
ἑτέρος τις αὐτοῦ· τότε δὲ παραχωρεῖν ἔδει.

There's a law in force here that from each of the professions, those of them that are lofty and intellectual, the person who is the best among all his fellow-professionals, that he should have official maintenance in the Prytaneum and a chair next to Pluto — (...) until someone else should come here more expert in the craft than he is, and then he was supposed to give place.

8] *V.* 1406-1408

... προσκαλοῦμαι σ' ὅστις εἴ
πρὸς τοὺς ἀγορανόμους βλάβης τῶν φορτίων,
κλητῆρ' ἔχουσα Χαιρεφῶντα τουτονί.

... I summon you, whoever you are, before the market inspectors [in a suit] for damage to my stock. I have Chaerephon here as a witness.

9] *Nu.* 844-846

οἴμοι τί δράσω παραφρονοῦντος τοῦ πατρός;
πότερον παρανοίας αὐτὸν εἰσαγαγὼν ἔλω,
ἢ τοῖς σοροπηγοῖς τὴν μανίαν αὐτοῦ φράσω;

Heavens, what am I to do—for my father is out of his mind! Shall I take him to court and get him adjudged insane or shall I tell the coffin-makers of his affliction?

► C] Exaggeration as a *modus comicus*

10] *Nu.* 206-208

Μαθ.] αὕτη δέ σοι γῆς περίοδος πάσης.
ὄρα; αἶδε μὲν Ἀθηναί.
Στρ.] τί σὺ λέγεις; οὐ πείθομαι,
ἐπεὶ δικαστὰς οὐχ ὁρῶ καθημένους.

—And this is a map of the whole world. Do you see? Here's Athens.

—What do you mean? I don't believe you; I don't see any jurors on their benches.

11] V. 550-551

τί γὰρ εὐδαιμον καὶ μακαριστὸν μᾶλλον νῦν ἐστὶ δικαστοῦ,
ἢ τρυφερώτερον ἢ δεινότερον ζῶον, καὶ ταῦτα γέροντος;

What creature is there today more happy and enviable, or more pampered, or more to be feared, than a juror, and that though he's an old man?

12] Eq. 442-445

ΚΛ.] φεύξει γραφὰς ...
ἐκατονταλάντους τέτταρας.
ἈΛΛ.] σὺ δ' ἀστρατείας γ' εἴκοσιν,
κλοπῆς δὲ πλεῖν ἢ χιλίας.

— You'll face charges of <...>, four of them at a hundred talents each.

— And you'll face twenty for draft-dodging, and more than a thousand for embezzlement.

13] Pax 191

οὐ συκοφάντης οὐδ' ἐραστής πραγμάτων.
Not a bringer of malicious accusations and not a lover of disputes.

14] Pl. 970-971

Χρ.] τί δ' ἔστιν; ἢ που καὶ σὺ συκοφάντρια
ἐν ταῖς γυναιξίν ἦσθα;
Γρ.] μὰ Δί' ἐγὼ μὲν οὐ.

— What's it all about? Were you too, perhaps, an informeress among the women?

— I most certainly was not!

II. <i>Birds</i> as a case study: interaction of <i>modi comici</i> and a comic poetics of justice
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15] Av. 39-45

οἱ μὲν γὰρ οὖν τέττιγες ἓνα μῆν' ἢ δύο
ἐπὶ τῶν κραδῶν ἄδουσ', Ἀθηναῖοι δ' ἀεὶ
ἐπὶ τῶν δικῶν ἄδουσι πάντα τὸν βίον.
διὰ ταῦτα τόνδε τὸν βάδον βαδίζομεν,
κανοῦν δ' ἔχοντε καὶ χύτραν καὶ μυρρίνας
πλανώμεθα ζητοῦντε τόπον ἀπράγμονα,
ὅποι καθιδρυθέντε διαγενοίμεθ' ἄν.

That's the thing: the cicadas chirp on the branches for a month or two, the Athenians chirp away at lawsuits continually all their lives long. That's why we're trekking this trek; with basket, a pot, and some myrtle-wreaths, we are wondering in search of a trouble-free place, where we can settle and pass our lives.

16] Av. 1035-1040

Ψηφ.] ἐὰν δ' ὁ Νεφελοκοκκυγιεὺς τὸν Ἀθηναῖον ἀδικῇ –
Πεισ.] τουτὶ τί ἔστιν αὖ κακὸν τὸ βιβλίον;
Ψηφ.] ψηφισματοπώλης εἰμὶ καὶ νόμους νέους
ἤκω παρ' ὑμᾶς δεῦρο πωλήσων.
Πεισ.] τὸ τί;
Ψηφ.] χοῖσθαι Νεφελοκοκκυγιάς τοῖσδε τοῖς μέτροις
καὶ σταθμοῖσι καὶ ψηφίσμασι καθάπερ Ολοφύξιοι.

Decree-Seller [reading]: "And if the Cloudcuckoovillian be guilty of an offence against the Athenian –" - Peisetaerus: What sort of nuisance is this now, this scroll? - Decree-Seller: I'm a decree-seller, and I've come here to you to sell you some brand-new laws. - Peisetaerus: Like what? -Decree-Seller: "The Cloudcuckoovillians shall use <Athenian> measures, weights and decrees, in like manner as the Olophyxians."

a) Cf. IG I³ 19 (l. 2-7): ἐὰν δέ ὑπό τινον [ἀδικεῖ]ται Ἀχελαιῖον; IG I³ 34, ll. 31-32: ἐὰν δέ τις Ἀθ[εναῖος] ἔχσῃ μάχος ἀδικεῖ περὶ τὸν φόρον; (IG I³ 40, ll. 29-31): καὶ τοῖ δέμοι τοῖ Ἀθ[εναῖον] βοεθέσ-|ο καὶ ἀμυνῶ, ἐὰν τις ἀδικεῖ τὸν δέμον τὸν | Ἀθ[εναῖον].

b) Cf. ἐὰν τις κόπτηι νόμισ[μα] ἀργυρίου ἐν τῇσι πό-| [λεσι καὶ / μ]ῇ χοῖται νομ[ίσμασιν] τοῖς Ἀθηνα[ί]ων ἢ σταθμοῖς ἢ / μέ-|τροις, ἀλλὰ ξενικοῖς | νομίσμασι]ν καὶ μέτροις καὶ / σταθμοῖς, [τὴν | τιμωρίαν εἶναι κατὰ τὸ πρότε]ρον ψήφισ-/μα, ὃ Κλέαρχ[ος] εἶπεν (IG I³.1453, MEIGGS & LEWIS [1988], n. 45).

c) Cf. IG I³ 40, ll. 70-1: τὰ μὲν ἄλλα καθάπερ Ἀ-|ντικλῆς; ll. 72-3: ἐν Χαλκίδι καθάπερ Ἀθ-|ένεσιν (ll.72-3). See also: IG I³ 46 (ll. 38-40), IG I³ 127 (ll. 17-18)

17] Av. 1434-1435

ἀφ' ὧν διαζῆν ἄνδρα χοῖν τοσουτονὶ
ἐκ τοῦ δικαίου μάλλον ἢ δικοροραφεῖν.

But surely there are other occupations, from which a big chap like you could make a living honestly, rather than cobbling up lawsuits.

18] Av. 757-758

εἰ γὰρ ἐνθάδ' ἔστιν αἰσχρὸν τὸν πατέρα τύπτειν νόμῳ,
τοῦτ' ἐκεῖ καλὸν παρ' ἡμῖν ἔστιν...

If here customs considers it disgraceful to strike one's father, away there with us it's creditable...

19] *Av.* 1353-1357

ἀλλ' ἔστιν ἡμῖν τοῖσιν ὄρνισιν νόμος
παλαιός ἐν ταῖς τῶν πελαργῶν κύρβεσιν·
ἐπὶν ὁ πατήρ ὁ πελαργὸς ἐκπετησίμους
πάντας ποιήσῃ τοὺς πελαργιδέας τρέφων,
δεῖ τοὺς νεοττοὺς τὸν πατέρα πάλιν τρέφειν.

Ah, but we birds have an ancient law written on the Pillars of the the Storks: "When the father stork has reared all his young storks and made them ready to leave the nest, then the young birds must in their turn maintain their father".

20] *Av.* 1660-1666

ἐρῶ δὲ δὴ καὶ τὸν Σόλωνός σοι νόμον·
'νόθῳ δὲ μὴ εἶναι ἀγχιστεῖαν παίδων ὄντων
γνησίων. ἐὰν δὲ παῖδες μὴ ᾧσι γνήσιοι τοῖς
ἐγγυτάτῳ γένους μετεῖναι τῶν χρημάτων'.

Indeed I'll actually quote you the law of Solon: "A bastard shall not have the rights of a near kinsman, if there are legitimate children. Should there be no legitimate children, the next of kin shall share in the estate."

21] *Av.* 1652-1654

ἢ πῶς ἂν ποτε
ἐπὶ κληρὸν εἶναι τὴν Ἀθηναίαν δοκεῖς,
οὔσαν θυγατέρ', ὄντων ἀδελφῶν γνησίων;

Or how do you imagine that Athena as a daughter could be the Heiress, if she had legitimate brothers?

22] *Av.* 1537-1539 (cf. Aesch. *Eum.* 827-828).

καλλίστη κόρη,
ἥπερ ταμιεύει τὸν κεραυνὸν τοῦ Διὸς
καὶ τᾶλλ' ἀπαξάπαντα...

She's a most beautiful maiden, who is custodian of the thunderbolt of Zeus and of absolutely everything else...

23] *Av.* 1543

ἦν γ' ἦν σὺ παρ' ἐκείνου παραλάβῃς, πάντ' ἔχεις
If you receive her from his hands, you've got everything.

24] *Av.* 1352

ἄγχειν ἐπιθυμῶ τὸν πατέρα καὶ πάντ' ἔχειν
I'm eager (...) to throttle my father and have the lot.

25] V. 583-586

κὰν ἀποθνήσκων ὁ πατήρ τῳ δῶ καταλείπων παῖδ' ἐπὶ κληρον,
κλάειν ἡμεῖς μακρὰ τὴν κεφαλὴν εἰπόντες τῇ διαθήκῃ
καὶ τῇ κόγχῃ τῇ πάνυ σεμνῶς τοῖς σημείοισιν ἐπούσῃ,
ἔδομεν ταύτην ὅστις ἂν ἡμᾶς ἀντιβολήσας ἀναπείσῃ.

A father on his death-bed names some husband for his daughter, who is his sole heir; but we care little for his will or for the shell so solemnly placed over the seal; we give the young maiden to him who has best known how to secure our favour.

26] Av. 1644-1645

σοῦ γὰρ ἅπαντα γίγνεται
τὰ χορήμαθ', ὅσ' ἂν ὁ Ζεὺς ἀποθνήσκων καταλίπῃ

Because you've got all the property coming to you that Zeus leaves behind at his death.
