

Abuse is in the Eye of the Beholder
Michael Gagarin (16 April, 2013)

Categories of (Potential) Abuse of the Law

I. Substantive Abuse.

A. By the speaker.

1. Introduction of a Law as a Document.

2. Citation of a law in the Speech.

- a. when the document has been or is about to be introduced.
- b. when no document is introduced.

3. Mention of or allusion to law.

B. By his opponent.

1. when the opponent's speech is preserved.

[2. when the opponent's speech is not preserved.]

II. Procedural Abuse.

A. By the speaker.

B. By his opponent.

1. Dem. 26.24: "you have established death as the penalty if someone introduces a non-existent law" (θάνατον μὲν ὠρικέναι τὴν ζημίαν, εἴαν τις οὐκ ὄντα νόμον παράσχηται).

2. Dem. 58.14-15: "Read me this part of the law. [LAW] Stop." (καὶ μοι λέγε τοῦτ' αὐτὸ τοῦ νόμου. [ΝΟΜΟΣ] ἐπίσχες).

3. Draco's law (*IG I³*.104, lines 13-23): αἰδέσασθαι δ' ἑὰμ μὲν πατέρ' εἰ ἔ' ἀδελφὸς ἔ' ἡυῆς ἁπάντας, ἔ' τὸν κολύοντα κρατὲν. **ἑὰμ δὲ μὲ ἡοῦτοι ὅσι, μέχρ' ἀνεφσιότετος καὶ ἀνεφσιῶ, εἴαν ἁπάντες αἰδέσασθαι ἐθέλοσι, τὸν κολύοντα κρατὲν.** εἴαν δὲ τούτον μεδὲ ἡὲς εἰ, κτένει δὲ ἄκον, γνόσι δὲ ἡοι πεντέκοντα καὶ ἡὲς ἡοι ἐφέται ἄκοντα κτείνει, ἐσέσθον δὲ ἡοι φράτορες εἴαν ἐθέλοσι δέκα· τούτος δὲ ἡοι πεντέκοντα καὶ ἡὲς ἀριστίνδεν ἡαιρέσθον. καὶ ἡοι δὲ πρότερον κτείναντες ἐν τούτῳ τῷ θεσμῷ ἐνεχέσθον. προειπὲν δὲ τῷ κτείναντι ἐν ἀγορᾷ μέχρ' ἀνεφσιότετος καὶ ἀνεφσιῶ. συνδιόκεν δὲ κἀνεφσιὸς καὶ ἀνεφσιὸν παῖδας καὶ γαμβρὸς καὶ πενθερὸς καὶ φράτορας. **[Bold face portion is omitted in Dem. 43.57.]**

4. Dem. 43.57: προειπεῖν τῷ κτείναντι ἐν ἀγορᾷ ἐντὸς ἀνεψιότητος καὶ ἀνεψιῶ, συνδιώκειν δὲ καὶ ἀνεψιὸς καὶ ἀνεψιῶν παῖδας καὶ γαμβροὺς καὶ πενθεροὺς καὶ φράτερας. αἰδέσασθαι δέ, εἴαν μὲν πατὴρ ἢ ἢ ἀδελφὸς ἢ υἱεῖς, ἁπάντας, ἢ τὸν κολύοντα κρατεῖν. εἴαν δὲ τούτων μηδεὶς ἢ, κτείνει δὲ ἄκων, γνῶσι δὲ οἱ πεντήκοντα καὶ εἷς, οἱ ἐφέται, ἄκοντα κτείνει, ἐσέσθων οἱ φράτερες, εἴαν ἐθέλωσι, δέκα· τούτους δὲ οἱ πεντήκοντα καὶ εἷς ἀριστίνδην αἰρείσθων. καὶ οἱ πρότερον κτείναντες ἐν τῷδε τῷ θεσμῷ ἐνεχέσθων.

5. Dem. 23.53: "If someone kills a person unintentionally in an athletic contest, or seizing him on the highway, or unknowingly in battle, or after finding him on top of his wife or mother or sister or daughter or concubine kept for producing free children, he shall not be exiled as a killer on account of this." (εἴαν τις ἀποκτείνει ἐν ἄθλοις ἄκων, ἢ ἐν ὁδῷ καθελὼν ἢ ἐν πολέμῳ ἀγνοήσας, ἢ ἐπὶ δάμαρτι ἢ ἐπὶ μητρὶ ἢ ἐπ' ἀδελφῇ ἢ ἐπὶ θυγατρὶ, ἢ ἐπὶ παλλακῇ ἢν ἂν ἐπ' ἐλευθέροις παισὶν ἔχη, τούτων ἕνεκα μὴ φεύγειν κτείναντα).

6. Lys. 1.30: "A man is not to be convicted of homicide if he captures an adulterer in bed with his wife and exacts this penalty from him." (τούτου μὴ καταγιγνώσκειν φόνον, ὅς ἂν ἐπὶ δάμαρτι τῇ ἑαυτοῦ μοιχὸν λαβὼν ταύτην τὴν τιμωρίαν ποιήσῃται).

7. Dem. 23.55-56: the legislator “makes the man who kills an adulterer immune from punishment . . . he allowed people to kill even their friends if they insult and corrupt them in violation of the law” (καὶ τὸν ἐπὶ τούτων τῷ κτείναντ’ ἀθῶον ποιεῖ . . . ἐὰν παρὰ τὸν νόμον εἰς αὐτοὺς ὑβρίζωσι καὶ διαφθείρῳσιν, ἔδωκεν ἀποκτεῖναι).

8. Lys. 1.32: “you hear, gentlemen, how it provides that if anyone forcibly shames [rapes] a free man or boy, he is to pay double the damage; if (he forcibly shames) a woman -- one of those for whom it is allowed to kill -- he shall be liable to the same penalty” (ἀκούετε, ὦ ἄνδρες, ὅτι κελεύει, ἐάν τις ἄνθρωπον ἐλεύθερον ἢ παῖδα αἰσχύνῃ βία, διπλὴν τὴν βλάβην ὀφείλῃν· ἐὰν δὲ γυναῖκα, ἐφ’ αἵσπερ ἀποκτείνειν ἔξεστιν, ἐν τοῖς αὐτοῖς ἐνέχεσθαι).

9. Dem. 43.51: “if there are no relatives on the father’s side [i.e. the father of the deceased] as far as the children of cousins, those on the mother’s side are entitled to inherit in the same way.” (ἐὰν δὲ μὴ ὧσι πρὸς πατρός μέχρι ἀνεψιῶν παίδων, τοὺς πρὸς μητρός τοῦ ἀνδρός κατὰ ταῦτα κυρίους εἶναι).

10. Dem. 44.23: “Well, isn’t it contrary to the laws for a man who is himself an adopted son to leave behind adopted sons and return home?” (πῶς γὰρ οὐ παρὰ τοὺς νόμους, ὁπότε εἰσποιητὸς αὐτὸς ὢν εἰσποιητοὺς υἱοὺς ἐγκαταλείπων ἐπανήει;).

11. Dem. 44.64: “a man [sc. an adopted man] is allowed to return to his own family upon leaving behind a legitimate son.” (υἱὸν γνήσιον ἐγκαταλιπόντα ἐπανιέναι).

12. Dem. 46.14: “Everyone who has not been adopted when Solon entered on his archonship in such a way that he could neither renounce nor claim the inheritance is permitted to dispose of his own property however he wishes, provided he has no legitimate sons, unless he is mad either due to old age, etc.” (ὅσοι μὴ ἐπεποίητο, ὥστε μήτε ἀπειπεῖν μήτ’ ἐπιδικάσασθαι, ὅτε Σόλων εἰσήει τὴν ἀρχήν, τὰ ἑαυτοῦ διαθέσθαι εἶναι ὅπως ἂν ἐθέλῃ, ἂν μὴ παῖδες ὧσι γνήσιοι ἄρρενες, ἂν μὴ μανιῶν ἢ γήρωσ . . .).

13. Aes. 3.49: “because he consistently speaks and acts in the best interests of the demos.” (ὅτι διατελεῖ καὶ λέγων καὶ πράττων τὰ ἄριστα τῷ δήμῳ).

14. Dem. 18.121: “are you not ashamed . . . to rewrite laws or snip off parts of them, even though citizens sworn to render judgment according to the laws should hear them in their entirety?” (οὐδ’ αἰσχύνει φθόνου δίκην εἰσάγων, οὐκ ἀδικήματος οὐδενός, καὶ νόμους μεταποιῶν, τῶν δ’ ἀφαιρῶν μέρη, οὓς ὅλους δίκαιον ἦν ἀναγιγνώσκεισθαι τοῖς γ’ ὁμωμοκόσιν κατὰ τοὺς νόμους ψηφιεῖσθαι;).

15. Hyp. *Ath.* 13: “Athenogenes will soon be telling you that the law says, whatever one person agrees with another is binding. At least those that are just; those that are not (just), it’s the opposite: (the law) prohibits them from being binding.” (ἐρεῖ δὲ πρὸς ὑμᾶς αὐτίκα μάλα Ἀθηνογένης, ὡς ὁ νόμος λέγει, ὅσα ἂν ἕτερος ἑτέρῳ ὁμολογήσῃ, κύρια εἶναι. τὰ γε δίκαια ὧ βέλτιστε· τὰ δὲ μὴ τοῦναντίον ἀπαγορεύει μὴ κύρια εἶναι).

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