ARISTOTLE'S ARTISTIC METHODS OF PROOF IN LYSIAS 3

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1. Introduction

1.1 Lysias' goals in the defense speech

In *Against Simon*, Lysias writes a speech for a defendant accused of so-called "premeditated wounding."[1] Cases of this sort were tried by the Areopagus, under a similar procedure to the one for murder trials (which the Areopagus also heard), [2] the idea being that people charged with premeditated wounding attempted murder (even if they were not ultimately successful), and therefore should be punished similarly to murderers.[3]

Simon, the plaintiff in the case, alleges that the unnamed defendant wounded him severely after intentional planning. Lysias' strategy in this speech is not to blatantly reject the position that the defendant wounded Simon, but to play down and explain away this fact based upon circumstantial mitigating factors.[4] Lysias crafts narratives of character for the defendant and Simon:[5] while the former is presented as law-abiding and restrained, the latter is presented as violent and lawless, hubristically trampling upon the rights of the defendant, the defendant's female relatives, Theodotus (the young lover that both men fight over), and even bystanders who intervene due to his monstrous behavior.

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[1] Lysias 4 is another speech concerning premeditated wounding.

[2] See Steven Charles Todd, *Lysias* (Austin: University of Texas Press, 2000), 42 for more background on this case, and a more thorough explanation of the trial's setting in the Areopagus.

[3] Lysias argues that this is how the lawgivers viewed it in §42: "The lawgivers thought that those who have plotted and premeditated ought to pay the penalty: even if they did not succeed, nevertheless they had done their best." Ibid, 51.

[4] Rather than present the defendant as entirely pure and blameless, Lysias centers a good bit of his argument around shifting the blame for *starting* the fight and arguing that severe consequences would be out of line for the defendant's part in the brawl. On the significance of this observation, see Andrew T. Alwine, *Enmity and feuding in Classical Athens* (Austin: University of Texas Press, 2015), 139-140.

[5] For a good overview of Lysias' use of *ethopoeia* in Lysias 3, see Jan Kucharski, "The Rhetoric of Simon's Adversary (Lysias 3)," *Scripta Classica 6* (2009): 35-50. For Lysias' use of *ethopoeia* in general (as seen through the eyes of Dionysius of Halicarnassus), see Kristine S. Bruss, "Persuasive Ethopoeia in Dionysius's Lysias," *Rhetorica: A Journal of the History of Rhetoric*, 31, no. 1 (Winter 2013): 34-57.

Using this contrast and a number of arguments from probability, Lysias argues that it was Simon who instigated the fighting rather than the defendant, and even more than this, that the defendant is the wronged party in the case. In this way, Lysias never denies the conflict and ensuing injuries, but reframes the narrative to make Simon's claims of premeditation on the part of the defendant implausible to the point of rendering the case frivolous and dishonest.

1.2. Aristotle's artistic methods of proof

Bearing the above in mind, it is most profitable to examine Aristotle's methods of proof in view of how they further Lysias overall strategy. Aristotle introduces *ethos*, *pathos*, and *logos* in *Rhetoric* 1.2, terming them ἔντεχνοι ("artistic"):[6] "Of the *pisteis* provided through speech there are three species; for some are in the character [*ethos*] of the speaker, and some in disposing the listener in some way, and some in the speech [*logos*] itself, by showing or seeming to show something."[7] Thus, just as there are three entities in the context of public speaking (the speaker, the audience, and the speech itself), so too are there three corresponding methods of proof: how the speaker appears, how the audience feels, and what the speech shows or seems to show.

Ethos is in play whenever persuasion comes through the audience accepting the speech primarily on the basis of holding the speaker to be credible: it is speaker-focused. In *Rhetoric* 2.1, Aristotle states that "There are three reasons why speakers themselves are persuasive… These are practical wisdom [*phronesis*] and virtue [*arete*] and good will [*eunoia*]."[8] Lacking one or all of these things causes the speaker to not be perceived as credible.[9]

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[6] As opposed to ἄτεχνοί – methods of proof that are entirely outside of the speaker's control (such as physical evidence and witnesses).
[7] George A. Kennedy, *On rhetoric: a theory of civic discourse* (New York: Oxford University Press, 1991), 38.
[8] Ibid., 112.
[9] See Christof Rapp, "Aristotle's Rhetoric", *The Stanford Encyclopedia of Philosophy* (Spring 2010 Edition) for a more detailed discussion of Aristotle's conclusions based on the absence of specific combinations of these three

Pathos is in play whenever persuasion comes through the audience accepting the speech primarily on the basis of their emotional state: it is audience-focused. In *Rhetoric* 2.1 Aristotle also elaborates on this concept: "[For] things do not seem the same to those who are friendly and those who are hostile… to one who is friendly, the person about whom he passes judgment seems not to do wrong, or only in a small way; to one who is hostile, the opposite."[10] The general idea is that decisions are not independent from the emotional state of those making them, and therefore that the speaker may manipulate the emotional state of their audience to achieve desirable outcomes, with multiple different emotions being useful.[11]

Finally, *logos* is in play whenever persuasion comes through the audience accepting the speech primarily on the basis of the argumentation therein: it is speech-focused. Elsewhere in his corpus, Aristotle defines two primary types of argument: induction (ἐπαγωγή), and deduction (συλλογισμός). Peculiar to rhetoric, Aristotle states in *Rhetoric* 1.2 that: "[T]he *paradeigma* ["example"] is an induction, the *enthymema* a syllogism."[12] Unlike general induction, which proceeds from many specific cases to one universal case, the example proceeds from one specific case to another specific case. The enthymeme is also not exactly like a syllogism, since it is not typically laid out quite as propositionally, and is usually formed from fewer premises (e.g., perhaps omitting premises that are obvious).[13] For the purposes of this

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things. Also see William W. Fortenbaugh, "Aristotle on Persuasion Through Character," *Rhetorica: A Journal of the History of Rhetoric* 10, no. 3 (1992): 210-211.

[10] George A. Kennedy, *On rhetoric: a theory of civic discourse*, 112.

[11] In *Rhetoric* 2.2ff. Aristotle goes on to describe these emotions useful to a speaker, such as anger (ὀργή), calmness (πραότης), and so forth. On these emotions (and particularly Aristotle's description of them in terms of the state of mind of the person to be affected, the persons/objects toward whom the emotions are to be felt, and circumstances which give rise to them) see Alan Brinton, "Pathos and the 'Appeal to Emotion': An Aristotelian Analysis." *History of Philosophy Quarterly* 5, no. 3 (1988): 208ff.

[12] George A. Kennedy, *On rhetoric: a theory of civic discourse*, 40.

[13] See Christof Rapp, "Aristotle's Rhetoric", §6: "The Enthymeme" for a more in-depth discussion of what exactly an enthymeme is and how it differs from Aristotle's συλλογισμός.

paper, I will simply discuss Lysias' arguments at a high level (primarily in terms of enthymemes phrased as questions), and gloss over some of the finer points of Aristotle's logical-dialectical theory.

These three methods of proof – *ethos*, *pathos*, and *logos* – do not contribute to Lysias' overall strategy[14] in exactly the same way, but they do all contribute in some regard. The following sections briefly examine how Lysias uses each of the three methods of proof in his argument.

2. *Ethos* in Lysias 3

At a high level, Lysias establishes the character of the defendant by means of *ethos*, and the character of Simon by means of *pathos* – he presents the speaker as credible and trustworthy, and stirs up anger and indignation against Simon based on his violent and lawless behavior. It is the combination of these things together that drive the contrast that underpins Lysias' rhetorical strategy in the defense.

Right from the beginning of the speech, Lysias presents the defendant as honest – perhaps a little too honest. Given prevailing cultural expectations about proper ages in pederastic relationships, it seems that the defendant was thought to be acting inappropriately for his age and station. On several occasions Lysias has the defendant acknowledge this openly: "Even though it is obvious that I have behaved rather foolishly towards the young man, given my age, I shall ask you to think no worse of me."[15] "I preferred not to bring legal action over these offenses [Simon's assault on the defendant at his home], rather than appear foolish to my

[14] Namely, to draw a sharp contrast in character between the speaker and Simon and to make various arguments from probability such that Simon's narrative is rendered implausible and impotent.
[15] Steven Charles Todd, *Lysias*, 45.

fellow citizens."[16] While no doubt a good part of the reason for mentioning this is so that it cannot be used as a weapon by the prosecution, the way in which Lysias brings it up also situates the defendant within the bounds of society and its expectations. While admitting the defendant's nonconformance, Lysias is at the same time presenting the defendant as a person who feels shame at his shortcomings rather than brazenly committing *hubris* without a care as to the thoughts and boundaries of society. This is in direct contrast to Simon's transgression of boundaries without showing any shame.[17] We will return to this contrast in the next section, as Simon's hubristic behavior is Lysias' strongest emotional appeal.

Lysias also takes pains to show that the defendant not only does not shamelessly flout societal expectations, but also actively pursues the course a good citizen should, respecting the laws. For example, when the defendant is presented as chancing upon Simon and his cronies dragging Theodotus away,[18] Lysias has him say: "I thought it would be a terrible disgrace just to watch this lawless and violent assault on the young man, so I grabbed him."[19] This "lawless and violent assault" (δεινὸν… καὶ αἰσχρὸν… ὑβρισθέντα)[20] is the behavior of Simon; the defendant, rather, steps in to help those being assaulted.

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[16] Ibid.

[17] To us, shame or lack thereof is of lesser import than objective guilt. To be sure, remorseless killers and rapists will probably be dealt with more harshly in our judicial system than those espousing sorrow and shame; however, the Greeks' had a much stronger expectation of shame-driven behavior and were particularly troubled by the lack of shame in those thought to be committing *hubris*. See Jan Kucharski, "The Rhetoric of Simon's Adversary (Lysias 3)," 41-43 for more thorough discussion of the Greek's views on *hubris*, and Simon's behavior as it relates to it.

[18] Whether or not the "chancing upon" aspect of this is at all realistic or probable is another matter entirely. Presenting Theodotus as a generic νεάνισκος makes the defendant's actions more archetypal as one who stands against outrageous behavior (as opposed to one who intervenes because his own lover is being dragged away).

[19] Steven Charles Todd, *Lysias*, 47.

[20] Ruth Scodel, *Lysias Orations I, III* (Bryn Mawr, Penn: Thomas Library, Bryn Mawr College, 1986). Page numbers are difficult to cite for this Greek text since they are not present; I've simply omitted them here and in other references hereafter.

Even more than this, Lysias takes pains to portray the defendant also as one who believes in the established legal system. When arguing against Simon's supposed monetary agreement with Theodotus (and the defendant's alleged seduction of Theodotus and transgression of the contract), Lysias has the defendant say that if the above things were true, "he [Simon] should have called for support from as many witnesses as possible and dealt with the matter according to the laws."[21] That is, rather than approving the opening a case based on hearsay (not to mention years after the fact),[22] Lysias shows that the defendant knows and supports the "proper" procedure for bringing things to court. Moreover, unlike Simon, who recklessly makes serious charges and advocates for serious punishments against the defendant (even though the conflict is only over the attentions of a young lover), Lysias makes it clear that the defendant knows what is and is not reasonable to turn litigious for: "although I had often been abused and assaulted by Simon, and had even had my head broken, nevertheless I did not venture to take legal action. I thought it dreadful to try to throw people out of their fatherland simply because of a quarrel over a boy."[23]

Lysias' careful presentation of these characterizations shows the defendant as a speaker who is reasonable in his behavior and judgements – admitting his own faults[24] – and as a speaker who acts virtuously in his dealings with others, taking up the cause of those he sees being wronged and not pursuing draconian punishments for those who have in turn wronged

[21] Steven Charles Todd, *Lysias*, 47.
[22] At least, this is how Lysias portrays Simon's speech within his rhetorical framework. On the significance of time passing, and in particular Lysias' purpose in describing the defendant's conflict with Simon as being long and significant – rather than downplaying it to try and act like he would have no reason for getting a brawl with him – see Andrew T. Alwine, *Enmity and feuding in Classical Athens*, 103.
[23] Steven Charles Todd, *Lysias*, 50.
[24] Or at least, what others might perceive to be faults.

him, but rather pursuing a quiet path of endurance. In this way, Lysias does not present the defendant as perfect, but does present him as one having the requisite attributes of a credible speaker.

3. *Pathos* in Lysias 3

Lysias attempts to paint Simon as villainous to an even greater degree than he attempts to paint the defendant as virtuous. After all, the defendant's wounding of Simon is not up for argument, so there is only so much that Lysias can do to rehabilitate the audience's perception of the defendant's character. However, by stirring up the audience against Simon, Lysias can widen the contrast between the defendant and Simon much further and put the council members in an emotional state much less sympathetic to Simon (and therefore, much more likely to render a judgment favorable to the defendant).

The primary vehicle for Lysias' emotional manipulation is accounts of Simon engaging in outrageous behavior. He starts by having the defendant recount Simon's invasion of the defendant's οἶκος, and in particular his entry into the γυναικωνῖτις where the defendant's sister and orphaned nieces were – even breaking down the doors (ἐκκόψας τὰς θύρας).[25] Lysias has the defendant report that even Simon's cronies thought his actions crossed the line: "Simon, however, reached such a level of arrogance (*hubris*) that he refused to leave, until the men who were present, together with those who had accompanied him, realized that by entering the rooms of young orphaned girls he was behaving unacceptably, and threw him out by force."[26]

[25] Ruth Scodel, *Lysias Orations I, III*.
[26] Steven Charles Todd, *Lysias*, 45.

This is undoubtedly the most jarring of Simon's hubristic actions – likely one of the reasons why it was brought up early in the speech and referred back to multiple times – but Lysias also sprinkles other accounts of Simon's violence and lawlessness throughout the speech. In regards to Simon's behavior towards Theodotus, "οὗτος… **ὑβρίζων** καὶ **παρανομῶν** ᾤετο ἀναγκάσειν αὐτὸν ποιεῖν ὅ τι βούλοιτο"[27] = "This man [Simon], acting outrageously and lawlessly, thought to force him [Theodotus] to do whatever he [Simon] wished."[28] This "forcing" likely included sexual violence, perhaps even rape.[29] When being abducted by Simon, Theodotus is also described as being subjected to *hubris* violently and lawlessly (ἀνόμως καὶ βιαίως ὑβρισθέντα),[30] and Simon did not only act thusly towards Theodotus, but also towards all who came to his aid: "Many people rushed up, angry at what was happening, and said that it [the forceful abduction] was disgraceful behavior. My opponents ignored what they said, but beat up Molon the fuller and several others who tried to protect Theodotus."[31]

In his single "off topic" jab at Simon, Lysias has the defendant narrate Simon's lack of character in a military context: "At Corinth, arriving *after* the battle against the enemy and the expedition to Coronea, he had a fight with Laches his commander and beat him up. When the army marched out in full force, he was judged an insubordinate criminal and was the *only* Athenian to be publicly censured by the generals."[32] Due to the pride that the Athenians took in their military service (not to mention the temporal circumstances in question – the battle of Coronea in 394 is not at all situated in a stable point in Athenian history), Simon's military

[27] Ruth Scodel, *Lysias Orations I, III*. Emphasis mine.
[28] This translation is my own.
[29] See Jan Kucharski, "The Rhetoric of Simon's Adversary (Lysias 3)," 43.
[30] Ruth Scodel, *Lysias Orations I, III*.
[31] Steven Charles Todd, *Lysias*, 46.
[32] Ibid., 51. Emphasis mine.

degeneracy would be a sure way to stir up resentment against Simon among the patriotic council members, which is no doubt why Lysias picked this particular aside (rather than any of the other possible negative things he might have been able to say about Simon's character).

The themes of Simon's compulsion, violence, and lawless hubristic behavior are what Lysias chooses to focus on in his appeals to the emotions of the council members. However, it is also important to note that Lysias takes pains to show that in virtually all instances (e.g., Simon's violation of the defendant's οἶκος, Simon's abduction of Theodotus, Simon's military degeneracy) other people present immediately and publicly condemned Simon's behavior. The inclusion of these "those present thought what Simon was doing was δεινός" observations puts subtle pressure on the council members to make the same appraisal of Simon: essentially "because so many other people hold Simon's actions to be terrible, you too should hold them to be terrible, and handle this case according." Lysias is not always this subtle in his argumentation, as we shall examine in the next section.

4. *Logos* in Lysias 3

The vast majority of the arguments Lysias uses in this defense are arguments from probability that take the form of somewhat unobvious enthymemes. Many of the arguments take the same essential underlying structure, even if it is not exactly stated in so many words:

1. X is inherently not credible/no normal person would find X credible
2. Simon's account of the events would imply X
3. Therefore, Simon's account of the events cannot be taken to be true

For example, in refuting Simon's claim to have been deprived of his payment for Theodotus' services by the defendant, Lysias has the defendant use the following argument: "How can it be plausible that at one moment we should have committed the offense of which he has accused

us… but that after winning the fight we should have given him back the money, when we had received no formal release from legal charges and were under no obligation to pay?"[33] The argument has the first proposition introduced as an impersonal question (πῶς εἰκός ἐστι…?),[34] then has a description of what ridiculous things Simon asserts, and then has the defendant directly addressing the council with the conclusion: "ἀλλὰ γάρ, ὦ βουλή, πάντα αὐτῷ ταῦτα σύγκειται καὶ μεμηχάνηται."[35]

Other examples of this form include Lysias' arguments regarding how foolish the defendant would have to be to go to Simon's house as Simon reported it: "Would anybody think it credible that in a premeditated plot I came to Simon's house in daytime with the young man, when so many people were gathered there?—unless of course I had so lost my mind that I was eager to fight alone against so many."[36] "So does any of you think it credible that I previously sailed away from the city taking the young man with me to avoid fighting with my opponent, but when I came back I took him to Simons house, where I was bound to run into trouble?"[37] Note that while the underlying argument is essentially the same, here we have the questions personalized: τῷ γὰρ ἂν δόξειε πιστὸν ὡς…?[38] for the former, and ὥστε τῷ ὑμῶν πιστὸν ὡς…?[39] for the latter. Another argument that follows the same basic form (although it is not similarly phrased as a question) is Lysias' wry observation about Simon's supposed injuries: "He alleges that I beat him up in front of his house and left him in a terrible state. But it appears

[33] Steven Charles Todd, *Lysias*, 48.
[34] Ruth Scodel, *Lysias Orations I, III*.
[35] Ibid. Perfect passives take dative of agent.
[36] Steven Charles Todd, *Lysias*, 48-49.
[37] Ibid., 49.
[38] Ruth Scodel, *Lysias Orations I, III*.
[39] Ibid.

that he pursued the young man for more than four stades from his house without any difficulty."[40]

Since Lysias' underlying rhetorical strategy is to show that Simon's version of the events (with the defendant as the aggressor) is entirely untrue, it is unsurprising that much of his argumentation revolves around doing exactly this.[41]

5. Discussion

This paper has examined how Lysias makes use of *ethos*, *pathos*, and *logos* to further his underlying rhetorical strategy of drawing a sharp contrast in character between the speaker and Simon and making various arguments from probability such that Simon's narrative is rendered implausible and impotent. The contrast between the character of the defendant and the character of Simon – established primarily by means of *ethos* and *pathos*, respectively – serves to make Lysias' arguments from probability much more convincing; the character contrast and arguments from probability fit hand in glove. After all, if the defendant was not established as decent and law-abiding and Simon was not established as violent and lawless, on what basis would it be rational for the council members to buy the arguments?

It is interesting to consider how accurately Aristotle's artistic methods of proof map onto modern legal argumentation now that we have a much better understanding of human psychology (among other things).[42] Unfortunately, this question may never be answered in any satisfying sort of way, since most judicial processes are now set up in such a way that Aristotle's

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[40] Steven Charles Todd, *Lysias*, 48.
[41] For a more detailed discussion of Lysias' argumentation in this speech than this section's brief, generalizing summary, see J. J. Bateman, "Some Aspects of Lysias' Argumentation." *Phoenix* 16, no. 3 (1962): 163-164.
[42] For a paper that examines this very topic, see M. Jimmie Killingsworth, "Rhetorical Appeals: A Revision." *Rhetoric Review* 24, no. 3 (2005): 249-63.

ἄτεχνοί – the non-artistic methods of proof – take front and center, since they are more "objective." While lawyers of course still attempt to make use of the emotions of the jury (particularly in cases likely to cause justifiable outrage, as in those related to the rape of young women), and certainly still use all sorts of logical arguments, the focus has very much shifted off of the speakers in the courtroom, and onto hard evidence.

All of this notwithstanding, one thing Athenian forensic oratory has going for it is that the "flexibility" of truth therein allows for a degree of rhetorical flourish that far surpasses the clinicality of scientific evidence, and allows for a degree of invective, specious argumentation, and character assassination that is far more entertaining than arguments that might be more fact-based. For this reason, students of rhetoric are not likely to turn from ancient writers like Lysias and Demosthenes to drier modern works any time soon!

6. Discussion

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