

## Achieving Amnesty: The Role of Events, Institutions, and Ideas<sup>\*</sup>

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**SUMMARY:** This paper offers a causal explanation for why the democratic majority in Athens for the most part did not exploit the power it held in the People's Courts and *dokimasia* proceedings to drive former oligarchic collaborators out of public life in the years following the fall of the Thirty. A model, based on decision theory, of the decision-making process under the Athenian democracy is developed. Its predictions are assessed against the extant speeches of the period. The author argues that the success of defendants was made possible by common perceptions of recent events, by features of Athens' legal institutions, and by the ingenuity of the speechwriters.

### INTRODUCTION

THE SOURCES FOR THE YEARS during and after the short-lived oligarchic revolutions of 411 and 404 provide the political historian with valuable data for studying the dynamics of the Athenian democracy under conditions of internal stress.<sup>1</sup> The fall of the Thirty and the reestablishment of the democracy in 403/2 marked the end of overt attempts by oligarchs to abolish democracy at Athens. A peace agreement was brokered by the Spartan king Pausanias between the "men of Piraeus" (the democratic resistance under the leadership of Thrasybulus) and the "men of the city" (those who had collaborated

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<sup>1</sup> All dates are B.C. unless otherwise noted.

with the Thirty and persisted in fighting the democrats). Its terms included an amnesty for those who had fought for the Thirty. The section of the oath establishing the amnesty is quoted by Andocides: “And I will not recall grievances against any of the citizens except the Thirty and the Ten and the Eleven, and not against anyone of them who is willing to render account of the office he held” (And. 1.90).<sup>2</sup> The wording of the oath, which was sworn by all citizens, suggests two things. First, it confirms that after the reconciliation a potential rift-zone in Athenian society persisted between those who could be connected to the oligarchy either in word or deed and those who had opposed and/or been excluded from that government.<sup>3</sup> Second, it implies a situation that was undoubtedly the case, namely, that one could be very successful in prosecuting oligarchs in the People’s Courts, the *dikastêria*, if the dikasts chose to ignore the amnesty they had sworn to observe.<sup>4</sup> The very need for an amnesty suggests that the “men of Piraeus” were expected to prefer disposing of the oligarchs and that their numbers would practically guarantee success.

Nevertheless, the amnesty following the restoration of democracy was on the whole successful. “Men of the city” served as jurors, attended the assembly, and held magistracies. Yet the hostility felt towards them, as well as their legal vulnerability, is revealed by the fact that charges of oligarchic sympathies and crimes were often a key, if indirect, focus of prosecutions in the People’s Courts and challenges in scrutiny proceedings (*dokimasiai*).<sup>5</sup> Unless

<sup>2</sup> Cf. *Ath. Pol.* 39.6. Xenophon mentions the oaths of amnesty in connection with the reintegration of the exiles from Eleusis in 401/0 (X. *HG* 2.4.43). Important studies of the Amnesty include Cloché, Dorjahn, and Loening.

<sup>3</sup> For the division in Athenian society at this time see especially X. *HG* 2.4.40–2 and *Lys.* 12.92–100.

<sup>4</sup> “The *dêmos* had returned from the Piraeus and had voted to reconcile with the men in the city and not to recall past grievances, but there was fear that the majority, having recovered their old power, again might commit *hubris* against the wealthy” (D. H. *Lys.* 32). That the democrats had the upper hand under the restored democracy is also suggested by the fact that the former oligarchs were given the option of living separately in Eleusis (*Ath. Pol.* 39.1–2, X. *HG* 2.4.38) and by Archinus’ strategem to keep them in the city (*Ath. Pol.* 40.1).

<sup>5</sup> On the vulnerability of former oligarchs see Rhodes 1981: 472 and Todd 1993: 91, 289. For a review of the evidence pertaining to the success of the Amnesty and the existence of residual hostilities see Krentz 155–56 and Wolpert 48–71. [*Lys.*] 6.45 tells of an informer under the Thirty who felt compelled to leave the city out of fear in spite of the Amnesty and who may later have been murdered (see Todd 2000: 74 n. 34). Socrates’ execution (see Aesch. 1.173) and Xenophon’s exile were probably facilitated by their oligarchic connections, although they were tried for later crimes. There is no clear record of a conviction in violation of the letter of the Amnesty (Rhodes 1981: 471). See next note for more evidence.

the character of the Lysianic and early Isocratean corpora is very misleading,<sup>6</sup> such attacks were not uncommon. How do we reconcile the facts that popular hostility against collaborators existed, and that prosecutors existed who were willing to exploit this hostility, with the largely successful reintegration of the “men of the city” into public life?

Various explanations have been advanced for Athenian fidelity to the amnesty, among them fear of Sparta.<sup>7</sup> Appeals to this fear are notably rare in the speeches of the period.<sup>8</sup> Even if overt mention of the Spartan threat was

<sup>6</sup> Of the speeches dateable to the period 403–380 and delivered before a *dikastêrion*, 4 out of 5 speeches in the Isocratean corpus and 6 out of 20 speeches in the Lysianic corpus relate to cases in which accusations of oligarchic activity were made (Isocrates: 16, 18, 20, 21; 17 is the exception; Lysias: 6, 12, 13, 18, 21, 30; the exceptions are 1, 5, 8, 9, 10, 14, 15, 17, 19, 22, 23, 27, 29, 32). Of the five extant speeches (one extremely fragmentary) from *dokimasiai*, all five concern charges of collaboration with the Thirty (Lysias: 16, 25, 26, 31, *P. Ryl.* 489). This list of course does not include all of the *known* trials, e.g., the conviction and execution of Menestratus (Lys. 13.56). The speaker of Lysias 10 claims to have brought charges against the Thirty before the Areopagus (Lys. 10.31). The speaker of Lysias 25, himself on trial for complicity, seems to suggest that some of these prosecutions were successful: “While we, gentlemen of the jury, consider it just that you abide by your agreements and oaths with respect to all of the citizens, nevertheless, whenever we see those guilty of evil deeds paying the penalty, mindful of the things you experienced at that time, we excuse you . . .” (Lys. 25.34–35). Notice also the speaker of Lysias 26, who claims that *dokimasiai* were invented for the purpose of keeping oligarchs out of office (Lys. 26.9) and the speaker of Lysias 30, who responds to the defendant’s allegation that he was one of the 400 by saying, “. . . ponder the fact that according to those making such claims the members of the Four Hundred will number more than a thousand . . .” (Lys. 30.7), and then turns around and accuses the defendant of aiding those planning the regime of the Thirty (Lys. 30.9–14)!

<sup>7</sup> See Strauss 173 and, with particular reference to Andocides 1, Missiou 53–54, followed by Edwards 16. Missiou appeals to the fact that Athens’ foreign policy was determined by Sparta’s needs at this time, but this simply shows that the Athenians were abiding by the terms of the treaty of 405 (X. *HG* 2.2.20, 3.2.25), and does not necessarily imply a loss of autonomy in the courts. Missiou also suggests that there may have been fear that the oligarchs would turn for help to the Spartan harmost on Aegina, as in the Demainetos affair in 396 (*Hell. Oxy.* 1.3). The Spartan harmost certainly remained a threatening presence to the Athenians throughout the period prior to 395, but the Demainetos affair speaks only to the Spartans’ interest in Athens’ foreign policy, while their quiescence during the reintegration of Eleusis (401/0) signaled their reluctance to intervene in Athenian domestic matters.

<sup>8</sup> Phormisius’ proposal of 403 to enfranchise only the propertied citizens returning from exile was struck down in spite of the fact that it had Spartan approval (D. H. *Lys.* 32). In fact, the appeal to the Spartan threat may have been used to elicit resentment against the proposal and its supporters (see *Lys.* 34.6–11).

too tactless a strategy for a defense speech, we would at least expect to find prosecutors attempting to counter the influence of this fear if it was really expected to be significant. Yet in the sixteen surviving speeches delivered between 403 and ca. 390 in the People's Courts or *dokimasia* proceedings and involving charges of oligarchic collaboration I find only one passage suggesting that fear of Spartan intervention was expected to figure in the jurors' deliberations.<sup>9</sup>

Another explanation is proposed by Strauss, who estimates that by 394 hoplites outnumbered thetes and concludes that the thetes did not have the voting power to enforce their will in Athens at this time.<sup>10</sup> While demography probably does help to explain why the democracy was not more radical in general after the fall of the Thirty, it cannot explain why those excluded from the 3,000 enfranchised under the Thirty did not use their numbers to take revenge on the former collaborators. Strauss also argues that the common desire for a restoration of the empire united the landowning leisure class and the poor majority and that further internal strife was avoided for the sake of achieving this goal.<sup>11</sup> But even if it is true that the leisure class was not generally opposed to a renewal of Athens' imperialist endeavors,<sup>12</sup> the democratic majority still had to weigh its present desire for justice and revenge against the future benefits of *homonoia*. The shorter-term benefits of justice and revenge might have won out among the jurors in enough cases to cause the Amnesty to fail.<sup>13</sup>

If there was a general inability or unwillingness on the part of the "men of Piraeus" to take revenge against the "men of the city," it is puzzling that so many politicians, who were by all indications master readers of public opinion, wished to fill the role of prosecutor, knowing that success was unlikely.<sup>14</sup>

<sup>9</sup> The speaker of [Lys.] 6.37–38 claims that Andocides will appeal to the agreements "with the Spartans," thinking that many will vote to acquit him out of fear of breaking them. The published version of Andocides' defense does not bear out the assertion.

<sup>10</sup> By ca. 9250 to 5000–7000: Strauss 80–81, 114, 173.

<sup>11</sup> Strauss 5–6, 42–69, 173. A similar explanation is proposed by Funke (12–14), who argues that the former oligarchs and former exiles were aligned in their desire to be free of Spartan hegemony, and that the pro-Spartan attitude of the former oligarchs was determined solely by their fear of reprisals.

<sup>12</sup> *Contra*, e.g., Mossé 16, 30; Missiou 74–78, 82–84, 158–67.

<sup>13</sup> The extant speeches do show that desire for empire was a positive argument for *homonoia* (e.g., And. 1.106–9), but, as the present study will show, this was only part of the persuasive strategy used by defendants.

<sup>14</sup> It could be objected that prosecutors might have brought public suits or made challenges at *dokimasiai* without necessarily expecting to win, but hoping merely to embarrass

The implication seems to be to the contrary that the majority were both angry and expressing willingness to act on their anger. Nevertheless, the “men of the city” were not driven out of politics and/or into exile and/or into overt or covert rebellion. Clearly the former oligarchs did not try to change the constitution by violence again, nor do we hear of any mass executions of former oligarchs, such as those the Athenians had carried out against the *stratêgoi* in 406. Thus, though the evidence seems to imply that the majority was willing to hear prosecutions and that prosecutors were ready to conduct them, the prosecutions were not on the whole successful, nor did they prevent the reintegration of the “men of the city” into the polity.<sup>15</sup>

Was there something that occurred during the prosecutions themselves in the courts and councils that tended to prevent the spirit of the Amnesty from being contravened? In his recent study of the memory of the civil war in the restored democracy, Wolpert argues that “the success of the restored democracy depended upon the willingness of the Athenians to remember the past in ways that promoted reconciliation rather than fueled animosity.”<sup>16</sup> His approach makes much sense of the evidence, especially in its explication of the fictions that promoted “strategies of remembering” and “mindful forgetfulness.”<sup>17</sup> However, as Wolpert is aware, this approach cannot yield a causal explanation for the historical outcome. If the *dêmos* had a desire for revenge against the former oligarchs, why did they want to “convince themselves” to

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the defendant publicly. First, it must be noted that in every type of case defendants were given the chance to make counter-speeches. Thus any attempt to slander an opponent publicly could backfire on the prosecutor, since whichever side’s story was sanctioned by the majority of the jurors would probably become the most authoritative. Second, with respect to public suits, one should keep in mind that prosecutors who received less than one fifth of the votes were fined 1000 dr. and may have suffered *atimia* (see MacDowell 1978: 64). The example of Aeschines is instructive here (see Todd 1993: 159). Additionally, in the first meeting of the sixth prytany, charges could be brought by *probolê* in support of a *graphê sykophantias* (*Ath. Pol.* 43.5, 59.3; see Todd 1993: 109 and MacDowell 1978: 65; cf. *Lys.* 13.67; for additional procedures see Harvey 106). It may be that having a large number of unsuccessful prosecutions on one’s *c.v.* could render one vulnerable to such a charge. Thus the fact that so many prosecutors made accusations of oligarchic collaboration is reasonably good evidence that they expected jurors to vote to convict on these grounds.

<sup>15</sup> The near unanimous ancient praise of the moderation of the Athenians toward the former oligarchs is perhaps not without some historical value, despite Ober’s correct observation that the *topos* was useful to critics as well as proponents of democracy (Ober 1998: 271; for citations see Funke 25 n. 26 and Wolpert 159 n. 2).

<sup>16</sup> Wolpert 71.

<sup>17</sup> E.g., Wolpert 75–99.

alter their memories in such a way as to make reconciliation possible? What motivated them? Similarly, Ober's functionalist model of Athenian oratory as a means for smoothing over the tensions caused by inequality in an egalitarian political system emphasizes the voluntary suspension of disbelief on the part of the mass audience.<sup>18</sup> But while Ober's approach, like Wolpert's, is capable of explaining *how* the mass audience was able to reconcile the privilege of the elite with their own egalitarian beliefs, it does not answer the question *why* they would have wanted to do so. Why did the citizens feel that it was in their own best interests to tolerate inequality and elitism within a system where the majority had ultimate authority? To arrive at a satisfactory causal explanation of the success of the Amnesty it is necessary to reject Ober's functionalist assumption and construct a model capable of showing why it was in the majority's own best interests, given their beliefs, to forgo revenge and cast their votes to acquit.

In this paper I employ decision theory to construct and analyze a model in order to explain why those accused of oligarchic collaboration were generally successful in persuading their citizen judges to acquit them. The model is designed to capture the significant features, relevant to decision-making, of the key institutions for collective choice under the democracy: the *dikastèria*, in which public and private suits were heard, and the *dokimasia*, a procedure for scrutinizing potential office-holders. The drawback to formal modeling is that it requires a reductionist approach. Any model of legal procedure that attempted to incorporate all of the known facts would be intractable and therefore impossible to learn from. Conversely, models have several benefits. First, a model makes the assumptions on which it is based explicit. This makes it easier to critique the degree to which the model accurately mimics the reality reflected in the sources. Second, analysis of a model may yield non-obvious predictions about how decision-makers behave under the historical conditions being studied. These predictions can then be compared to the evidence. If the predictions are borne out by the evidence, the explanatory power of the model is supported and a deeper understanding of the logic of the behavior may result. Third, because a model uses formal logic and mathematical notation, it is possible to test the internal logic of the model's predictions with greater rigor than is possible for verbal arguments. Analysis of the model presented here suggests that litigants who were disadvantaged by prejudiced juries could nevertheless prevail in court if they were able to persuade the jurors that the stakes riding on their verdict were high.

<sup>18</sup> Ober 1989: 221–26, cf. 174–77.

In the second section of the paper I argue that, in cases concerning oligarchic collaboration, defendants were able to raise the stakes more effectively than prosecutors. I identify certain events in recent history, certain aspects of Athenian legal procedure, and certain ideas developed by logographers and orators that made this possible. These factors enabled defendants to call into question the loyalties and motivations of their prosecutors and to suggest that, by rewarding these prosecutors, the *dêmos* was being led back down the road to civil strife, constitutional change, and tyranny. In contrast, prosecutors were not able offer equally alarming predictions about the consequences of acquitting oligarchs.

#### A FORMAL MODEL OF DIKASTIC DECISION-MAKING

The basic assumption of decision theory is that the decision-maker is “rational” in a specific sense: he makes choices in such a way as to optimize the outcome or outcomes that he most desires, given his beliefs. For instance, a decision-maker who chooses to inconvenience himself in order to avoid having a black cat cross his path does not necessarily violate this assumption, provided that he believes that whatever will happen to him if the cat does cross his path will be worse than the inconvenience he has incurred in avoiding the cat. It is the job of the historian to try to understand from the sources what the beliefs of the decision-maker being modeled were. Likewise, the value that the decision-maker places on the various possible outcomes resulting from his actions is dependent on his cultural context. Again it is the job of the historian to try to understand empirically how much or how little the decision-maker valued particular outcomes.<sup>19</sup> Such interpretations of historical data for the purposes of modeling are called “stylized facts.” Stylized facts are generalizations and are therefore inevitably simplifications of reality: they are not intended to express what is true in every case, but rather what is true in a large enough number of cases to be useful for analysis.<sup>20</sup>

The following stylized facts are intended to describe the way an Athenian juror’s decision-making was structured by the institutional design of the People’s Courts (*dikastêria*) and scrutiny procedures (*dokimasiai*), which were the most important venues in which accusations were made against alleged former oligarchs. First of all, the juror’s decision was binary, to acquit or convict, to pass the subject of a scrutiny or to reject that person (see fig. 1). “D”

<sup>19</sup> Examples of the use of a rational choice framework in modeling behavior in specific historical and cultural settings: Ferejohn, Greif, Bates.

<sup>20</sup> Assumptions and generalizations are, of course, essential to all historical analyses, regardless of how free from theory those analyses claim to be. For a discussion see Finley 1971: 60–74.

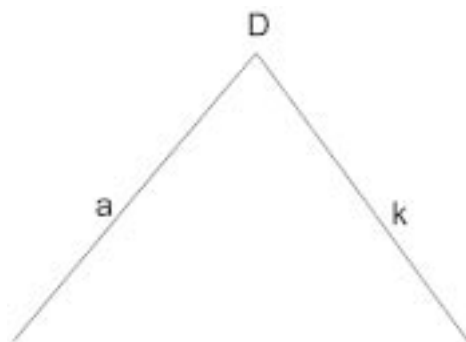


Figure 1.

denotes the decision-maker (*dikastês*) and we label the decision-maker's two possible choices "a" and "k" for *apopsêphizesthai* and *katapsêphizesthai*. Second, the voters made their decisions based primarily on the oral arguments made by or on behalf of the litigants themselves. We are here interested only in those aspects of the legal process that directly affected the decision of the jury.

Stephen Todd has called Athenian litigation an adversarial system "taken to extremes."<sup>21</sup> Prosecutors were normally citizen volunteers and therefore their integrity and impartiality was always open to question. There were no judges or legal experts to guide the jury in the interpretation of the law, no expert witnesses to make authoritative pronouncements about matters of fact. Witnesses seem to have been thought of more as a way of creating an overall impression of litigants' social standing than as a way of establishing an impartial corroboration of fact.<sup>22</sup> Moreover, even the laws were no more than a means of persuasion available to speakers: they had no binding force on the *dikasts*, who were not obligated "to discover what was the 'law' in a particular situation, but rather to reach a verdict while giving proper weight to those laws which had been cited in evidence before them."<sup>23</sup> Under these conditions, it was unlikely that any evidentiary or legal consideration would compel the juror to accept the argument of one litigant over the other. The most important elements of the procedure with respect to the juror's decision were, therefore, the oral arguments or "legal narratives" that each opposing side presented in order to influence the jurors to make the decision it desired. Each of these narratives envisioned a state of the world in which the litigant himself was worthy of reward and his opponent deserving of defeat. These narratives were,

<sup>21</sup> Todd 1993: 68.

<sup>22</sup> Todd 1990: 31, 1993: 96–97; Humphreys 351; Cohen.

<sup>23</sup> Todd 1993: 59–62; quotation from p. 60.



for the most part, mutually exclusive. If the juror accepted that one of them was true, he had necessarily to reject the other. For instance, the juror was not likely to accept both that the defendant was not guilty of the crime and that the prosecutor was telling the truth. Nor was he likely to believe both that the defendant was guilty of the crime and that the prosecutor was a mere *sykophant*. In no case that I am aware of do we find Athenian litigators saying, "My opponent means well, but has made a terrible mistake."

We capture the uncertainty that this situation produced for the juror in the following way (see fig. 2). Before the juror decides, Chance (C) determines which of the two distinct states of the world envisioned in the litigants' narratives is the true state of the world. The state of the world represented by the defendant's narrative is denoted by a capital "A," for *apologia*. The state of the world represented by the prosecutor's speech is denoted with a capital "K," for *katêgoria*. The dotted line represents the fact that when the juror makes his decision, he is unsure whether he is on the left side of the decision tree, in the state of the world envisioned in the defense narrative, or on the right hand side of the decision tree, in the state of the world envisioned in the prosecution narrative. The juror's *belief* at the time that he makes his decision about the likelihood of each of the two possible states of the world is modeled as a probability. We label the probability that the juror places on the defense narrative being true as  $\alpha$ . Assuming that the states of the world envisioned in the narratives are mutually exclusive and exhaustive of all possible states of the world, it is then clear that the belief that the juror places on the prosecution narrative being true is  $(1 - \alpha)$ .<sup>24</sup>

The third feature of Athenian litigation that the model captures is the fact that litigants were free to bring up concerns not strictly relevant to the specific charge. This was one of the aspects of the Athenian system that made the Amnesty difficult to enforce. A defendant might be brought to court for a crime post-dating the oligarchy and then be attacked during the trial for his conduct under the Thirty. In practice, the prosecution and the defense were free to bring up whatever issues of character they felt would be most likely to persuade the jurors. Thus it became a necessary strategy for the speakers to

<sup>24</sup> Again the model simplifies reality for the sake of tractability, for a juror might come to the conclusion that some third alternative state of the world had some degree of plausibility. Johnstone (2) has written that the "sharp dichotomizing of conflict [in the adversarial setting of the court] seems to have entailed a belief that one of the parties spoke the truth and the other lied." The lack of a collective deliberation before the vote in which a third narrative might have been thought up, as well as the fact that the litigants had an incentive to construct the most plausible narratives possible, would have minimized the possibility that a third plausible state of the world entered significantly into the jurors' deliberations (Johnstone 56).

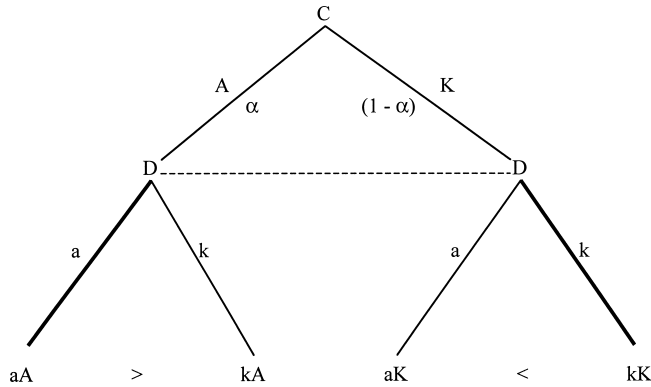


Figure 2.

construct narratives that not only revealed the character of the individuals involved in the dispute, but also sought to show that the outcome of the trial would have ramifications for the whole city and therefore for the jurors themselves. Forensic narratives were explicit about the positive outcomes that would follow from “correct” verdicts in their favor and the undesirable outcomes that would result from “incorrect” verdicts against them. In the model, we represent the desire, conceived as a specific quantity of value, that the decision-maker has for each of the four possible outcomes that could follow from his actions using the following variables (see again fig. 2):

$aA$  = the decision-maker’s desire for the outcome following from a verdict to acquit if the defendant’s narrative is true.

$aK$  = the decision-maker’s desire for the outcome following from a verdict to acquit if the prosecutor’s narrative is true.

$kA$  = the decision-maker’s desire for the outcome following from a verdict to convict if the defendant’s narrative is true.

$kK$  = the decision-maker’s desire for the outcome following from a verdict to convict if the prosecutor’s narrative is true.

Now it is clear that the defense narrative is always going to represent the outcome following from a verdict of acquittal as more desirable than the outcome following from a verdict of conviction and it is likewise clear that the prosecution narrative is always going to represent the outcome following from a verdict of conviction as more desirable than the outcome following from acquittal. So we can assume that

$$aA > kA$$

and

$$kK > aK$$

It follows from these assumptions that if the decision-maker knew for sure that he was on the left hand side of the tree, he would want to acquit. Conversely, if he knew for sure that he was on the right-hand side of the tree, he would want to convict.

The magnitude, positive or negative, of the desirability of the alternative outcomes that a speaker envisioned in his narrative as following from the jury's verdict (aA and kA for a defendant or aK and kK for a prosecutor) was limited only by his understanding of the jurors' hopes and fears and by his ability to connect those hopes and fears logically to the matter in question. However, the plausibility from the perspective of the audience that those outcomes would follow from the jury's decision in the way the speaker claimed ( $\alpha$  or  $(1 - \alpha)$ ) depended on the speaker's ability to use external evidence to support his narrative. External evidence could include anything that offered an independent check on the speaker's story, including laws, witnesses, and public opinion, as well as events from the recent or distant past that were common knowledge and difficult or impossible for the speaker to manipulate. For instance, in his defense speech Andocides claimed that the Athenians had been able to gain their empire because they had restored to citizenship the former partisans of Peisistratus, who had been exiled and disenfranchised, and he implied that if the Athenians chose now to uphold the Amnesty as their ancestors had done then, they would likewise again be able to acquire an empire (And. 1.106–9). In terms of the model, this is an example of an outcome following from a verdict to acquit if the defense narrative is true (aA). Andocides' historical facts are confused, but his interpretation may have corresponded well enough to the limited knowledge of most jurors to render his claim at least plausible ( $\alpha > 0$ ). The value that the jurors would have placed on such an outcome would have been very high indeed.

At this point we have finished constructing the decision-theory model and we can analyze it in order to see what it predicts about the behavior of an Athenian juror. Because we have assumed that the decision-maker is rational in the specific sense outlined earlier, the model predicts that he will choose whatever action he expects to yield the most value, in other words, the action he expects to yield the most desirable outcome. What this choice will be is not immediately apparent because, as we have noted, the decision-maker is uncertain about what the true state of the world is in which he is making his decision. But we can use utility theory to solve this problem.<sup>25</sup> Utility theory says that the value that a decision-maker expects to follow from a particular action is equal to the probability that an outcome will follow from that decision times the value that the decision-maker places on that particular out-

<sup>25</sup> For an accessible introduction to utility theory see Morrow ch. 2.

come, summed across all possible outcomes. Therefore, the decision-maker's expected value from voting to acquit equals the probability that he places on the defendant's narrative being true ( $\alpha$ ) times the value he receives from the outcome of acquittal if that narrative is true ( $aA$ ) plus the probability that he places on the prosecution's narrative being true ( $1 - \alpha$ ) times the value that he receives from the outcome of acquittal if the prosecution narrative is true ( $aK$ ). The value that the decision-maker expects to receive if he chooses to convict is derived in a similar fashion ( $\alpha kA + (1 - \alpha)kK$ ). The decision-maker votes to acquit only if the expected value of acquittal is greater than the expected value of conviction, i.e., only if the following equation is satisfied:<sup>26</sup>

$$\alpha aA + (1 - \alpha)aK > \alpha kA + (1 - \alpha)kK \quad \text{Equation 1}$$

By algebraically rearranging Equation 1 we get the following:

$$\alpha/(1 - \alpha) > (kK - aK)/(aA - kA) \quad \text{Equation 2}^{27}$$

We can derive some predictions about behavior from Equation 2. Notice from the left side of the equation that as the probability that the defense narrative is true ( $\alpha$ ) gets smaller with respect to the probability that the prosecution narrative is true ( $1 - \alpha$ ), it becomes more difficult to satisfy the equation, which means that the juror will be less inclined to acquit. This prediction is unsurprising. In a venue where authoritative forms of proof are non-existent, the narrative most consistent with the jurors' preconceived notion of reality would have the advantage.<sup>28</sup> A speaker could make his narrative plausible (probability  $> 0$ ) by showing that it was consistent with some form of external evidence, but the narrative that was most consistent with public opinion ( $\phi\eta\mu\eta$ ) would be the more probable (probability  $> 0.5$ ). If this is granted, it implies that some litigants would have been intrinsically advantaged or disadvantaged within the system by aspects of their own personal history. For example, since the Thirty were generally believed to have been hostile to democracy, it would have been more difficult for a citizen who had undeniably remained in the city under the Thirty to claim plausibly that he was now acting out of love for the democracy than it would be for one who was known

<sup>26</sup> The principle behind this is simple: according to utility theory, an 0.5 probability of \$10 is worth \$5. Thus, for example, if Option A yields an 0.25 probability of \$8 and an 0.75 probability of \$4 (expected value =  $(.25 \times 8) + (.75 \times 4) = 2 + 3 = 5$ ) and Option B yields an 0.2 probability of \$20 and an 0.8 probability of \$0 (expected value =  $(.2 \times 20) + (.8 \times 0) = 4 + 0 = 4$ ), it is rational to choose Option A, since  $\$5 > \$4$ .

<sup>27</sup> Analysis of this important comparative static result: Bates, de Figueiredo, Weingast.

<sup>28</sup> For citations from the orators on the validity of public opinion as a basis for decision making see Ober 1989: 150–51. Cicero considered public opinion a form of external evidence (see, e.g., *Top.* 73 and 76).

to have fought with the exiles. The fact that a citizen had remained in the city during the reign of the Thirty was powerful evidence that he belonged in the conceptual category of “oligarch.” This observation supports Ober’s conclusion that public opinion was hegemonic within the Athenian democratic system, creating its own “truth regime,” which he terms “democratic knowledge.”<sup>29</sup> In the absence of authoritative forms of external evidence, litigants who already fell into social categories approved of by the majority would have found it easier to create narratives that were both consistent with the preconceptions of the majority and favorable to their own cause than would litigants who fell into categories disapproved of or distrusted by the majority.

However, the right side of Equation 2 reveals a less intuitive dynamic. Notice that the numerator on the right side represents the stakes for the decision-maker contingent on the prosecution narrative being true.  $(kK - aK)$  is the difference in value between the good outcome that will follow if the decision-maker “correctly” chooses to convict and the bad outcome that will follow if the decision-maker “incorrectly” chooses to acquit, given that the prosecutor is telling the truth. This value could be very large or very small depending on the extent to which the prosecutor has succeeded in plausibly suggesting that far-reaching results will follow from the jury’s verdict. Likewise, the denominator on the right side represents the stakes riding on the jury’s decision given that the defense narrative is true. Notice that as the denominator gets larger relative to the numerator, that is, as the stakes contingent on the defense narrative being true become larger with respect to the stakes contingent on the prosecution narrative, the equation becomes easier to satisfy, in which case the decision-maker will choose to acquit. The important and, I would submit, non-obvious prediction here is that if the defense narrative succeeded in raising the stakes high enough relative to the prosecution narrative, it could induce the decision-maker to acquit even though the decision-maker considered the prosecution narrative more likely to be true. This prediction reveals a dynamic of democratic decision-making not captured by the notion of a democratic “truth regime.” The prediction implies that the situation was not hopeless for individuals who were for some reason marginalized by public opinion, so long as external evidence and ingenuity provided them the opportunity of creating a narrative that plausibly raised the stakes on the jurors’ decision more successfully than their opponents could do. In the next section, I turn to the surviving speeches in order to demonstrate how the predictions of the model aid in the task of interpretation and explanation.

<sup>29</sup> “Ideological hegemony of the masses”: Ober 1989: 332; “truth regime” (Foucault’s phrase) and “democratic knowledge”: Ober 1996: 89–91, 149–50; Ober 1998: 34–36.

### THE OLIGARCHIC DEFENSE NARRATIVE

In this section I argue that the behavior implied by the evidence—the hostility of the democratic majority toward the former oligarchs, the prosecutions of alleged former oligarchs, and the overall failure of popular juries to convict—is best explained through an analysis of the strategic narratives preserved in the extant forensic speeches of the period in the light of the predictions derived from the model of dikastic decision-making. I intend to show that while it is reasonable to assume that the prosecution narratives generally had probability on their side ( $(1 - \alpha) > \alpha$ ), defendants often constructed narratives that plausibly raised the stakes on the jurors' decisions more successfully than their prosecutors did. I will argue that recent history and current events, contrary to what one might expect, were more favorable for raising the stakes in defense narratives ( $aA - kA$ ) than in prosecution narratives ( $kK - aK$ ). I concentrate mainly on how legal narratives represented the negative consequences of voting “wrongly” ( $kA$  and  $aK$ ), since this is the area in which I see the greatest inequity in the strategic position of defendants and prosecutors. The more dire the consequences of voting “wrongly,” the higher the stakes became.

Defendants and prosecutors seem to have been more evenly balanced in their ability to claim positive effects from voting “correctly.” Both sides usually claimed that a decision in their favor was the “safe route,” i.e., that it would produce security and prevent the city from returning to oligarchy and civil war. Defendants usually claimed that a verdict of acquittal would preserve a loyal citizen who was a frequent and generous liturgist and a brave and capable soldier and would encourage others to act similarly, ensuring future prosperity for the city. Prosecutors usually claimed that a conviction would satisfy justice by avenging the victims and would also discourage future enemies of the *dêmos*, strengthening democracy in the city. In cases where confiscation of property was part of the punishment, the immediate gains to the Treasury would also have been a (probably implicit) selling point for the prosecution.<sup>30</sup> In general, prosecutors offered the instant gratification of revenge and confiscation while defendants offered the long-term benefits of *homonoia*. While it is difficult to judge which of these positive outcomes would have been the more attractive to the pivotal voter, it is possible to make the argument that defendants were able to send a stronger fear message than their prosecutors.

This study considers all speeches delivered in a People's Court or *dokimasia* proceeding between 410 and 380 and involving accusations of oligarchic ac-

<sup>30</sup> E.g., Lys. 20.33 and 21.19.

tivity in the period 415 to 403.<sup>31</sup> I show that, within this sample, defense and prosecution speeches strategically encoded distinct sets of propositions about the world and about the meaning of the jury's verdict. I compare the two sets of propositions and argue that, while the prosecution propositions probably seemed more likely to the majority of voters, the defense propositions raised the stakes of the jury's decision more successfully. The prosecution strategy is best exemplified by Isocrates 20 and Lysias 12, 13, 26, and 30 and to a lesser extent by Isocrates 21 and [Lysias] 6.<sup>32</sup> The particular defense strategy that I focus on (exemplified by Andocides 1,<sup>33</sup> Isocrates 16 and 18, Lysias 18, 25, and [Lysias] 20) appears to have been developed in the work of the logographers from (perhaps) Antiphon to Lysias to Isocrates and to have influenced and been influenced by the work of individuals who seem to have composed primarily for themselves, such as the speaker of [Lysias] 20 and Andocides. Lysias 16 and 21 use different defense strategies.<sup>34</sup> While these speeches may provide only a minute sample of the oratory produced for cases of this kind, the strong similarities that I will point out justify reference to prosecution and defense strategies as two generalized types. Further, the fact that the prosecution argument shows up in speeches by three different authors (Lysias, Isocrates, and the speaker of [Lysias] 6) and the defense argument shows up in speeches by four (Andocides, Lysias, Isocrates, and the speaker of [Lysias] 20) should increase our belief that, in spite of the statistical insignificance of our sample, these arguments were common in Athens at this time. In the remainder of the paper, when I refer to "the prosecution strategy" and "the defense strategy," I mean to refer to the two particular strategies represented in the speeches noted above.

<sup>31</sup> And. 1; Isoc. 16, 18, 20, 21; Lys. 6, 12, 13, 16, 18, 20, 21, 25, 26, 30, 31 (defense speeches in bold). The dates of the speeches and alleged crimes would all fall within the period 403 to 380 were it not for Andocides 1, which involves charges relating to the mutilation of the Herms and profanation of the Mysteries of 415, and [Lysias] 20, which involves a charge of complicity with the Four Hundred and was probably delivered in 410 or 409.

<sup>32</sup> Lysias 31 is an anomalous case: the defendant is accused of not taking sides in the conflicts of 404/3.

<sup>33</sup> Andocides was not under suspicion of taking part in oligarchic governments in 411 or 404, but his situation was similar to that of the alleged former oligarchs. In fact, his oligarchic credentials seem to have been so strong that, when he was prosecuted in Autumn of 400 (date: MacDowell 1962), he was happy to risk association with the former "men of the city" by making a lengthy and tenuous appeal to the amnesty of 403/2 (And. 1.71–91).

<sup>34</sup> This is to be expected, since individual defendants brought different advantages and disadvantages into court depending on their reputations and personal histories. Not all accused former oligarchs would have needed or been willing to make the arguments exhibited in the majority (6 out of 8) of the extant oligarchic defense speeches.

## COMPARISON OF PROSECUTION AND DEFENSE STRATEGIES

PP (Prosecution Proposition) 1: The former oligarchs are distinct from the *dêmos* in interests and ideology. That is to say, they hate the *dêmos* and prefer oligarchy and slavery to the Spartans, under whom the *dêmos* is powerless.

Prosecutors tended to represent their opponents and the oligarchs as innately hostile to the democratic majority and unhappy under its laws. In his speech against Eratosthenes, Lysias suggests that “now it is necessary to learn from the defendants what hatred they bore toward the city, on which account they dared to commit such wrongs against it” (Lys. 12.2). Lysias demonstrates Eratosthenes’ persistent hostility to democracy, how he set up an oligarchy in his military camp during the regime of the Four Hundred, acted against the supporters of democracy back in Athens, and conspired to overthrow the democracy after Aegospotami (Lys. 12.42–43). That Eratosthenes’ support of oligarchy was ideological and not just opportunistic is marked by the claim that the conspirators called themselves *hetairoi* and appointed five of their number as “ephors” in imitation of Spartan custom (Lys. 12.44).<sup>35</sup> The speaker of Isocrates 20 claims that, even though the defendant Lochites is too young to have held power during the reign of the Thirty, he shares the manner (*tropos*) of that constitution (*politeia*):

For we ourselves have twice now beheld the democracy destroyed and twice been stripped of freedom, not by those subject to other forms of wickedness, but on account of those despising the laws and wishing to be enslaved to the enemy and to commit *hubris* against citizens. . . . For these are the natural qualities (*physeis*) that have betrayed our empire to the enemy, razed the walls of our fatherland to the ground, and executed fifteen hundred of our citizens without trial (Isoc. 20.10–11).

In Lysias 26, the speaker who opposed Euandrus at his *dokimasia* draws a contrast between former “men of the city” who committed crimes and those who aided the opponents of the Thirty. What distinguishes the *dêmos*-friendly latter from the former, he says, is that they “chose to live as free citizens along with those returning from exile rather than to be slaves to the Spartans along with the Thirty” (Lys. 26.16–19). In Lysias 13, former oligarchs are described as “unfriendly to your *plêthos*” (Lys. 13.10), “wanting (*boulomenoi*) oligarchy” (12), and “longing especially (*epithumein malista*) for oligarchy” (20). Finally, the speaker of Lysias

<sup>35</sup> After 415 the *hetaireiai* were strongly associated with anti-democratic conspiracies, having been involved in the mutilation of the Herms in 415 and the subversion of the democracy in 411 (see McGlew 5–11).



30 demonstrates the ideological nature of the oligarchs' actions by pointing out that even the few criminals killed by the Thirty were killed "not on account of their crimes, but according to their party (*kata stasin*)" (Lys. 30.13).

Defendants directly contradicted such claims by arguing that all citizens, good and bad, were essentially similar in their political attitudes in that they were all motivated to some extent by self-interest. Thus

DP (Defense Proposition) 1: The motivation for political activity is self-interest, not partisanship or political ideology. Therefore, citizens desire revolution when they suffer under the established constitution (democratic or oligarchic) and stability when they prosper under the established constitution (democratic or oligarchic).

This proposition is most clearly set out by the speaker of Lysias 25:

So then first of all it is necessary to keep in mind that no one is by nature (*physei*) an oligarch or a democrat, but each is eager that whatever constitution is profitable to himself be established . . . (Lys. 25.8)

It is not therefore difficult to discern, gentlemen of the jury, that the disagreements among us do not concern the constitution, but rather what is profitable to each privately (Lys. 25.10).<sup>36</sup>

Similarly, in arguing that Polystratus, accused in connection with participation in the oligarchy of the Four Hundred, did not desire a revolution, the speaker of [Lysias] 20 cites as proof the fact that the defendant is too old to commit acts of *hubris* and has committed no crimes for which he might have suffered *atimia* ([Lys.] 20.3–4).<sup>37</sup> The assumption is that revolutionaries are not motivated by a desire for oligarchy per se so much as by self-interest. Neither are the prosecutors represented as acting out of a love of democracy:

Likewise, the prosecutors were manifestly not at all well-disposed to the *dêmos* [during the oligarchy], nor did they come to its aid, but now, when the *dêmos* itself is very well-disposed to itself, they are nominally coming to its aid, but in reality they are helping themselves ([Lys.] 20.17).

Like the revolutionaries, the prosecutors are motivated by self-interest, and specifically *kerdos* ([Lys.] 20.7). The notion that citizens are loyal or disloyal, friendly or hostile, to a particular constitution based on their own self-interest is also inherent in the logic of passages in Andocides 1 (104–5), Isocrates 18 (42–43), and Lysias 18 (17), which are all discussed below under DP2.

<sup>36</sup> It has been suggested by Dover (1968: 188–89) that the speech is a political pamphlet, while Murphy convincingly explains the speech as a defense of the entire "city" faction.

<sup>37</sup> See also Antiphon fr. 1a Thalheim.

Divergent theories about the political motivations of oligarchs and democrats (PP1 and DP1) also led prosecutors and defendants to make opposite claims about the effect the jury's verdict would have on the security of the citizens and the future stability of the present (democratic) regime.

PP2: Since the former oligarchs were innately hostile to and contemptuous of the power of the *dêmos*, they would continue to attempt to injure the *dêmos*. A verdict of acquittal would leave the *dêmos* exposed to hubristic behavior and internal subversion from its implacable enemies.

The speaker of Isocrates 20 warns the jury concerning citizens like the defendant Lochites:

And do not wait until they have gathered together and seized the opportunity to do wrong to the entire city, but if they are handed over to you on any pretext, use it to take vengeance on them, considering it a piece of good luck whenever you catch someone exhibiting his utter wickedness in trivial matters (Isoc. 20.13).

Similarly, the speaker of Lysias 26 predicts that, if Euandrus passes his *dokimasia*, he will continue to break the laws (Lys. 26.7), and he advises the jury that "only so long as each magistrate holds office legitimately are the constitution and the rest of your *plêthos* safe" (Lys. 26.9). Another passage from the accusation of Lochites explains how a conviction would have general effects for the well-being of the city as a whole: "For you will not only judge correctly in the present case, but you will also make the rest of the citizens more well-behaved (κοσμιωτέρους) and you will render your own manner of living more secure (ἀσφαλέστερον)" (Isoc. 20.18). Lysias had made essentially the same claim in his speech against Eratosthenes. If the jurors acquitted, would-be oligarchs would learn that there were no negative consequences arising from attempts to subvert the democracy: if they did not achieve tyranny, they would receive leniency (Lys. 12.35).

In contrast, the assertion of DP1 allowed defendants to make an opposite prediction about the results of the jury's verdict.

DP2: If the jurors showed by their verdict that the former oligarchs would remain unmolested, former oligarchs would be friendly to the current constitution, but if the jurors showed by their verdict that the former oligarchs would be victimized, former oligarchs would find the present constitution intolerable and would be forced to go into exile or to try to change the constitution.

Nicias' nephew posits it as a general rule that *stasis* arises when one group of citizens is attacked by another group who covet its property, and he asserts that this outcome is detrimental to democracy (Lys. 18.17). That both groups

act out of self-interest is assumed, and the clear implication is that those vulnerable to attack under the democracy will be forced to try to destroy the power of the *dêmos*. Andocides and the opponent of Callimachus similarly imagine the larger audience of the trial as composed of two self-interested groups, the former “men of the city,” watching to see if they will be secure under the Amnesty, and the sykophants, waiting to learn whether they will be permitted to prey on them (And. 1.104–5, Isoc. 18.42–43).

Is it not correct to fear that if the oaths are obliterated we will be placed back into the very same situation in consequence of which we were forced to make treaties? And indeed it is hardly necessary for you to learn from others what a good thing unity (*homonoia*) is and what an evil thing civil strife (*stasis*) is (Isoc. 18.44).

This is the situation then, gentlemen: the trial concerns my life, but your vote will decide for the general public whether they ought to have faith in your laws, pay off the sykophants, or flee from the city and get out as fast as possible (And. 1.105).

The speaker of Lysias 25 makes the connection between the creation of a large group of exiles and the outbreak of *stasis* explicit:

Therefore, it is largely in your power to ensure that as many people as possible desire the present government (Lys. 25.8).

You must know, gentlemen of the jury, that the exiles wish as many as possible of the other citizens to be accused and disfranchised, hoping that those being treated unjustly by you will be their allies, and they would gladly have the sykophants be well thought of and holding great power in the city, for they consider the wickedness of those men their salvation (Lys. 25.24).

Additionally, prosecutors and defendants (predictably) made diametrically opposed claims about the requirements of justice.

PP3: The crimes of the oligarchs against the *dêmos* demanded that the *dêmos* satisfy its anger by exacting revenge. A verdict of acquittal would leave the oligarchs’ crimes unpunished and the just need for revenge unsatisfied.

That this claim was a common part of the prosecution strategy is clear from passages in Lysias 12 (36, 82, 84), 13 (95–97), 26 (1, 10, 12–14), and 30 (16), as well as Isocrates 20 (20).

Defendants countered PP3 with a bold claim that often implied a fundamentally elitist view of politics.

DP3: The responsibility for the crimes committed by a particular regime, democratic or oligarchic, lay not with those who were citizens of the regime, but with

the bad politicians who held power in that regime, because these powerful few were able to deceive and manipulate the ordinary citizens, even among the oligarchic few. Thus a verdict to convict or reject a defendant on the grounds that he collaborated with the oligarchs would go against justice.

This was a necessary argument for those who could not deny the fact of their involvement in oligarchic rule.<sup>38</sup> The claim is related to the idea that all political action was self-interested (DP1), in that it essentially tried to establish empathy between those who had suffered under the oligarchy because of their loyalty to the democracy and those who were suffering under the democracy as a result of their participation in oligarchy. The speaker of Isocrates 18 asserted that many had been forced to do wrong by the Thirty, although he still denied doing wrong himself (Isoc. 18.17). It seems that Polystratus was unable to deny his participation in the regime of the Four Hundred, however, and needed to make a stronger claim:

Indeed they accuse the Four Hundred of being evil men, and yet you yourselves were persuaded by them and handed over the government to the Five Thousand, and if you, who are so many, were persuaded, could not each one of the Four Hundred have been persuaded? (Lys. 20.16).

For even if someone here advises an inferior course of action and persuades you to take it, it is not you who are to blame, but the one deceiving you (Lys. 20.20).

The nephew of Nicias similarly asserts that the responsibility for the Sicilian disaster should lie with “those who persuaded you” (Lys. 18.2). The conceit would have introduced a troubling note for those who believed democracy to be what it claimed to be: government in which the *dêmos* held the power. The idea that the *dêmos* could be persuaded to act against its own interests suggested that the real power always lay with the few, regardless of the name of the government. The claim is made most bluntly by the speaker of Lysias 25:

For you all know that in the previous democracy many of those conducting the affairs of the city were stealing public property, and some were taking bribes against your interests, and others, by acting as sykophants, caused your allies to revolt. And if the Thirty had taken vengeance on those men alone, even you would have considered them to be good men. But then when they thought it proper to do harm to the majority for wrongs done by those men, you were angry, since you considered it a terrible thing that the misdeeds of a few should be held against the entire city in common. Accordingly, it is not proper for you

<sup>38</sup> Andocides could deny involvement in the government of the Thirty, since he was by all accounts in exile at the time, and accordingly we do not find the proposition in his defense speech (And. 1).

to resort to the wrongdoings that you saw them committing, nor is it proper for you to consider the treatment that you considered unjust when it was inflicted on you to be just whenever you inflict it on others (Lys. 25.19–20).

It is not [the prosecutors] who are amazing, but you, because you think that there is a democracy, while whatever they desire comes to pass, and it is not those who are doing injustices to your majority who pay the penalty, but whoever won't hand over his own property (Lys. 25.32).<sup>39</sup>

This critique of democracy was made more specific by the final defense proposition, which also succeeded in raising the stakes of the jurors' verdict to a greater extent than the prosecution strategy could.

DP4: The actions and motivations of the democratic prosecutors were no different than those of the oligarchs. They were both forms of the bad politician. Thus, a verdict to convict or reject would confirm and augment the power of bad politicians, who would create conditions of tyranny and fear in the city similar to those experienced under oligarchy.

Although this claim was often made only implicitly, it was nevertheless a powerful theme. Throughout the speeches to be considered here, there is a strong sense of the parallel between the situation of the defendants, unjustly attacked by prosecutors acting for their own best interests, and the situation experienced by the majority of the jurors under the oligarchic regimes. If the defendant was telling the truth, then by following the advice of the prosecution the jurors were essentially collaborating with bad politicians who were committing the same crimes of unjust confiscation, exclusion, and execution that the oligarchs had committed. Although in DP3 the jurors were exonerated of real responsibility for the crimes of the bad politicians, they were also invited to empathize in their role as collaborators in crime with the former oligarchic collaborators. This would have been a very troubling idea, not only because their verdict would be unjust, but also because, if history repeated itself, they would find themselves in precisely the position of the former oligarchic collaborators, that is, under the tyrannical sway of an unjust government (DP4) and engaged in civil war with a disaffected population (DP2). Thus the nephew of Nicias, the opponent of Callimachus, and the son of Alcibiades all claim or imply that those prosecuting them now in the name of democracy were themselves enthusiastic supporters of the oligarchy (Lys. 18.19, Isoc. 18.48–49, 16.50), and that *stasis*, though a great evil to the city, is in the best interests of such politicians (Lys. 18.18, Isoc. 18.7, cf. 9–10, 16.36).

<sup>39</sup> Eratosthenes was also expected to use this tactic by claiming that he was forced by the other members of the Thirty (Lys. 12.28–29, 50).

Proposition DP4 is woven throughout the narratives of [Lysias] 20 and Andocides 1 and therefore requires a more in-depth exposition. In [Lysias] 20, the defense of Polystratus, the names of his prosecutors are not mentioned, and this is perhaps not without design, for without proper names it becomes very difficult to distinguish the leaders of the Four Hundred from the democratic prosecutors by their behavior. The prosecutors are described as acting in the following way:

The prosecutors, receiving money, are spiriting away those who have acted unjustly, but they are representing as having acted unjustly anyone from whom they do not make a profit ([Lys.] 20.7).

Do not be surprised, gentlemen of the jury, that [Polystratus] was sentenced to so great a fine. . . . For even if someone had evidence, he couldn't testify on his [Polystratus'] behalf on account of fear of the prosecutors, while people testified even falsely on behalf of the prosecutors because they were afraid ([Lys.] 20.18).

The actions of the oligarchs bear an uncanny similarity:

Of those who were speaking against [the oligarchs], some went into exile and some were put to death, with the result that, even if someone wished to oppose them on your behalf, fear and panic at the thought of their victims prevented everyone ([Lys.] 20.8).

While the oligarchs were sending some into exile and executing others, the prosecutors are allowing those willing to pay to escape into exile, while those who are unwilling are prosecuted. In both cases the result is that the citizens who remain are prevented by fear from opposing those acting unjustly. The similarity suggests that the power dynamic of tyrannical oligarchy is also a feature of democratic government. Fear is the instrument by which the few acquire power over the many.

The nature of the charges against Andocides necessitated that he recount the investigations into the mutilation of the Herms and profanation of the Mysteries in 415, which were widely interpreted as attacks on the democracy by oligarchic conspirators.<sup>40</sup> Interestingly, his account of the investigations emphasizes the role of Peisander and Charicles, "who at that time seemed to be very well-disposed to the *dêmos*" (And. 1.36), but who later became prominent oligarchs,<sup>41</sup> and downplays the prominent role of Androcles, who later

<sup>40</sup> Th. 6.27.3, 28.2, 60.1.

<sup>41</sup> Both of these politicians would have been notable to the jurors of 400 for later changing stripe and becoming oligarchs. Peisander was certainly instrumental in the revolution of

was killed for his loyalty to the *dêmos*.<sup>42</sup> This may have been intended to blur the distinction between oligarchic and democratic politicians, suggesting instead that they were all similar in their wickedness.

Andocides' narrative shows how the "democrats," Peisander and Charicles, riding high on the paranoia of the *dêmos*, with the help of informants, were able to transform the *boulê* into an instrument of terror similar in function to the government of the Thirty.

The city was in such a state (οὕτως δέκειτο) that whenever the herald announced a meeting of the *boulê* and took down the signal, at that same signal the *boulê* went to the *bouleutêrion* and those in the *agora* fled, each fearing arrest (And. 1.36).

The phrase "οὕτως δέκειτο" recalls the wording of the deliberations that Andocides imagines his opponents having in his introduction. They cannot imagine him staying for trial: "Does he not see the state of our city (4 ὥς δικάκεται)?" The allusion suggests that the prosecutors of 400, like the *zêtêtai* of 415, plan to exploit the fear and rage of the *dêmos* in order to victimize an innocent citizen.

Further, the narrative explicitly reveals how the panic promoted by self-interested politicians in 415 sent the city spiraling towards tyranny. Informants were encouraged by ever increasing rewards, while an ever increasing number of citizens, paralyzed by mutual suspicion (And. 1.51), found themselves effectively disfranchised. One informant, encouraged by the "evils of the city" (And. 1.37) and the promise of a large reward, testified before the *boulê*.<sup>43</sup> Peisander, the supposed democrat, now proposed that the decree that forbade the examination of citizens under torture should be suspended and that the forty-two men named by the informant should be sent to the "wheel" (*trochos*). "The *boulê* cried out that he spoke well" (And. 1.43) and two of those named

411 (MacDowell 1962: 80–81), while Charicles was probably a supporter of that government since he went into exile after its fall, and was later a prominent member of the Thirty (Davies 1971: 502).

<sup>42</sup> Androcles appears only once in Andocides' account, taking the part of the *boulê* in the sordid squabble over how the rewards for information would be divided (And. 1.27–28). Plutarch names Androcles as the politician responsible for producing informants to accuse Alcibiades and his friends of mutilating sacred images and profaning the Mysteries (Plu. *Alcib.* 19), and Thucydides reports that Androcles was secretly assassinated by the oligarchs of 411 both on behalf of Alcibiades and because he was "the chief leader of the People" (Th. 8.65.2 τινὰ τοῦ δήμου μάλιστα προεστῶτα).

<sup>43</sup> The *boulê* in charge of the investigations had been given leave to act on its own accord (And. 1.15).

who happened to be present had to take sanctuary at the altar in order to be allowed bail and a trial. After this, the *boulê* carried out its secret decision (ἐν ἄπορρήτῳ) to arrest and imprison Andocides and the others who had been named (And. 1.45). In the Athens that Andocides envisions, tyrannical conditions—where a few have immense power to destroy whomever they wish, to disfranchise or reduce citizens to the status of slaves (as exposure to torture did), and to decide public policy behind closed doors—are brought about by self-interested politicians who exploit the anger and fear of the *dêmos*. Andocides' narrative shows specifically how the institutions of the democracy could *produce* the conditions of tyrannical oligarchy.<sup>44</sup>

Andocides' interpretation of the events of his current trial reveals the same process at work. The prosecutors, like the informants and democratic politicians who have peopled his narrative thus far, are all depicted as preying on the city for their own power and enrichment.<sup>45</sup> Cephisius, the main prosecutor, had defrauded the city of the taxes he had collected and had gone into exile rather than pay up. Thanks to the amnesties, Cephisius "has now become, instead of an exile, a citizen, instead of a disfranchised person, a sykophant" (And. 1.93). We later learn that Cephisius was paid 1000 dr. by Callias to bring the present charges (And. 1.121). Meletus, another prosecutor, is guilty of arresting Leon at the behest of the Thirty, who put the man to death without trial (And. 1.94). Epichares was a member of the *boulê* under the Thirty and therefore also depended on the amnesties for his freedom.

... you used to make a living as a sykophant under the democracy, but, under the oligarchy you acted as a slave to the Thirty, so that you wouldn't be forced to pay back all the property you had siezed as a sykophant (And. 1.99).

Andocides closes his review of the crimes of his prosecutors with a vivid image that collapses the distinction between the *zêtêtai* who conducted the investigations in 415, the oligarchs who accused innocent citizens in 404, and the prosecutors who brought Andocides to trial in 400:

But in fact, gentlemen, as I sat and watched [Epichares] accusing me, I thought I had been arrested and brought to trial by none other than the Thirty. For if I

<sup>44</sup> What is more, when oligarchy arose out of democracy in the way Andocides described, the resulting government had not the slightest claim to being an aristocracy, but rather was best termed a kakistocracy, or government of the worst. This point would have been driven home even to the poor citizens in his audience, since four of the informants who pointed the finger were a woman, a metic, and two slaves (And. 1.12, 15, 16, 17).

<sup>45</sup> Andocides is attacked by Agyrrhius because he refuses to cooperate with Agyrrhius' cartel, which is defrauding the state by conspiring to keep bids on public contracts low and then splitting the profits (And. 1.132–36). In Callias' case, Andocides is preventing him from marrying his (Andocides') cousin and introducing her to his incestuous household.



had been tried at that time, who would have accused me? Would not this man have been ready, if I did not give him money? Yes, and here he is now. Who else would have interrogated me but Charicles . . . (And. 1.101)?

The speaker of Lysias 25 follows a similar method in communicating DP4. He demonstrates how sykophant-prosecutors profited from the fear and anger of the *dêmos* in the wake of the fall of the Four Hundred. They persuaded the *dêmos* to punish the guilty and innocent alike. “They did not cease until they had put the city into a state of civil conflict and extreme misfortune, but they went from rags to riches” (Lys. 25.26). The speaker makes explicit the consequences that follow when the *dêmos* allows itself to be led by its fear and anger to follow such leaders:

. . . for by this time it is apparent to everyone that, while democracy is born in consequence of those who govern unjustly under the oligarchy, oligarchy has twice been established in consequence of those who act as sykophants under the democracy (Lys. 25.27).

Finally, just as Andocides does, so this speaker clearly connects the character of the sykophants from his historical *exemplum* with the character of his opponents and with the character of the Thirty:

It is proper to wonder at those men, what they would have done if they had been allowed to join the Thirty, since under the democracy they are doing the same things as the Thirty did . . . (Lys. 25.30)

. . . they don’t differ at all from the Thirty, except that the Thirty under the oligarchy desired exactly the same things as they do, and they under the democracy desire the very same things as the Thirty . . . (Lys. 25.31)

#### EXPLANATION FOR THE SUCCESS OF THE DEFENSE ARGUMENT

I would argue that the preceding comparison of prosecution and defense strategies suggests two things: (1) the propositions propounded in the prosecution strategy would have seemed more likely *ex ante* than those of the defense ( $(1 - \alpha) > \alpha$ ) and (2) the propositions of the defense strategy succeeded in portraying the outcome following from an “incorrect” verdict to convict or reject as more dire than the propositions of the prosecution strategy did for the outcome following from an “incorrect” verdict to acquit or pass ( $kA < aK$ ).<sup>46</sup> Demonstration is fairly uncomplicated. The prosecution’s assertion that

<sup>46</sup> Therefore, assuming that the positive benefits of voting “correctly” according to defense and prosecution narratives are roughly equal ( $aA = kK$ ), the defense narrative more effectively raises the stakes ( $(aA - kA) > (kK - aK)$ ).

oligarchs and democrats were divided by class and ideology (PP1) was reinforced by political realities. That this conflict would have been a deeply ingrained aspect of the way the ordinary Athenian viewed the world is suggested (1) by the wealth of terms for “the few” and “the many” in the Athenian political vocabulary,<sup>47</sup> (2) by the enduring difference in the political ideologies of Athens and Sparta and the differing attitudes of the Athenian rich and poor toward the Peloponnesian War and later the Corinthian War,<sup>48</sup> and (3) by the recent civil war, which was most naturally interpreted as an attempt by the pro-Spartan, oligarchic faction to rid the city of its democratic opposition.<sup>49</sup> The remaining prosecution propositions (PP2, PP3) followed from the assumption that the city was enduringly divided between two mutually hostile groups with opposing interests. The defense propositions directly contradicted the prosecution propositions, and must be seen as the more far-fetched of the two positions.

However, the defense strategy appears to have raised the stakes on the voters’ decision more successfully. The prosecution message suggested that, if the voters acquitted or allowed the defendant to take public office, the *dêmos* would continue to be the victim of the hubris of the oligarchs, who would again attempt to subvert the democracy (PP2). Although, as I have argued, the continuing hostility to democracy of the oligarchic faction and the justice of punishing them as enemies would have seemed self-evident to the jurors, it would not have seemed likely that the oligarchs would again succeed in actually changing the constitution. After all, by 403, the oligarchs had seen two costly attempts to subvert the democracy come to naught and the democratic faction had demonstrated its military superiority in the battle for the city; it would do so again in the scare of 401/0.<sup>50</sup> Furthermore, in 399 the flower of the oligarchs’ military force was removed from the picture when the 300 knights were sent off to fight in Persia.<sup>51</sup> The very fact that the Amnesty had

<sup>47</sup> See Ober 1989: 11–17.

<sup>48</sup> See Missiou 74–78, 82–84, 158–67.

<sup>49</sup> For the philolaconism of the Athenian oligarchs see McGlew 11–13 (with reference to Lévy 197–202) and Whitehead.

<sup>50</sup> The reconciliation agreement of 403/2 had permitted the former “men of the city” to relocate to Eleusis if they felt unsafe in Athens and had forbidden traffic between the cities (*Ath. Pol.* 39). Thus, two camps had been formed, and, though the presence of the former oligarchs in the city might have caused unease in the populace, the presence of the oligarchic camp at Eleusis appears to have caused real anxiety. In 401/0, “hearing that the men in Eleusis were hiring mercenaries, they made an expedition against them with the entire army” (*X. HG* 2.4.43). After the Eleusinian generals had been killed, new oaths of reconciliation were sworn and the men in Eleusis were returned to the city.

<sup>51</sup> *X. HG* 3.1.4.

been established to protect the former oligarchs argued against the possibility that those who had been reintegrated into the city would attempt to subvert the democracy so long as the Amnesty was respected. If any large-scale suppression of one faction by the other should occur, it would be the democratic majority doing the suppressing. Therefore, what the citizens plausibly suffered by acquitting those whom they believed to be former oligarchs if the prosecution message was true was the continued hostility and arrogance of individual oligarchs in the city (PP1) and the fact that the atrocities of the oligarchic regimes would go unpunished (PP3).

The defense message countered that justice was in fact on their side (DP3), but more significantly it claimed that a decision to convict would result in a return to *stasis* as former oligarchs were forced to seek safety, along with their like-minded comrades, in exile and to attempt to change the constitution (DP2 following from DP1). *Stasis* was of course in itself a great evil and an outcome very much to be avoided in favor of peace. However, in this case, preserving peace required that the democratic majority forgo the satisfaction of revenge and tolerate individuals hostile to its own power within the community. If it was possible for the city to be purged of these individuals at the price of a modicum of *stasis*, especially considering that the democratic majority could be fairly well assured of their success in such a conflict for the reasons I have outlined above, they might well have been inclined to accept the potential costs of *stasis* in return for the benefits of a stronger and more pure democracy cleansed of dangerous enemies.

But the defense narrative argued that this would never be the outcome of a decision on the part of the democratic majority to pursue justice and revenge. The reason for this was that the so-called friends of the *dêmos* who were willing to bring about such a purge were not acting out of loyalty to the interests of the *dêmos*, but were themselves corrupt and self-interested sykophants. In fact, they were precisely the same as the Thirty Tyrants and were themselves former collaborators (DP4). They would use the power afforded to them by a conviction not to attack the enemies of the *dêmos*, but to destroy any who opposed them and to keep everyone else quiet through fear of prosecution. By empowering the sykophants, the *dêmos* would essentially re-create the conditions suffered under the oligarchs, where fear was inescapable and anyone, regardless of his innocence, could experience confiscation, exile, or execution. The paranoia created by the civil war with the oligarchs would serve to increase the hold on power enjoyed by the sykophants. In sum, the defense strategy raised the plausible possibility that a verdict that ignored the Amnesty would lead to a situation where the former “men of Piraeus” literally exchanged positions, both physically and morally, with the former “men of the city.” For this reason, it is reasonable to assert that the defense strategy

succeeded in raising the stakes more effectively than the prosecution strategy did.

#### WHAT CAUSES DOES THIS EXPLANATION SUGGEST FOR THE SUCCESS OF THE AMNESTY?

##### *1. Events*

Certain events of recent Athenian history conspired to make the defense narrative plausible, a necessary condition if the strategy was to have had the significant effect that I am suggesting it did. DP3, the idea that it was the leadership of a regime and not its citizens that were responsible for the crimes of the regime, must at some level have been an attractive idea to a people who had in recent memory collectively decided to undertake the Sicilian Expedition (415) and to execute six victorious generals (406).<sup>52</sup> Also, although the depredations of the oligarchic governments reinforced the belief among the majority that democracy was the most just form of government, certain ambiguities about the identities and behavior of the oligarchs must have introduced a note of unease about the character and motives of the sort of politicians who rose to power under the democracy. Thucydides gives an empathetic description of the coup in 411 as it was experienced by the Athenian masses. It is perhaps the best evidence we have for the way the democratic majority would have remembered the coup of 411. Although Thucydides is describing the events of 411, we can imagine that the response of the masses in 404 was similar (8.66.2–5):

... the *dêmos* kept silent and were in such consternation that, even if someone was keeping quiet, he considered it a gain if he suffered no violence. Since they thought that the conspirators were far more numerous than they actually were, they were subdued by their own perceptions, but they were unable to realize this because the size of the city and their ignorance of one another rendered them powerless . . . . For all the men of the *dêmos* were approaching one another with suspicion as though everyone was partaking in the things that were going on. *For there were also men involved whom no one would have ever thought would turn to oligarchy*, and these created the greatest distrust in relation to the majority, and were of the greatest benefit to the safety of the few, since they had firmly established the distrust of the *dêmos* toward itself.

Two aspects of this description suggest that the experience of the oligarchic revolutions would have increased the probability in the minds of voters that

<sup>52</sup> See Th. 8.1.1 and X. *HG* 1.7.34–35.

DP1 and DP4 were true. First, some of the oligarchs had previously been noted democrats. This fact suggested that citizens, or at least powerful citizens, could be and were motivated by self-interest rather than by loyalty to a political ideology or by socio-economic class per se. Second, it suggested that democratic politicians could change their stripes unexpectedly and that, in some cases, they were actually identical to the oligarchs. Such a notion was also consistent with the actions of the regime of the Thirty, which became indistinguishable from those commonly attributed to sykophants, namely, they used fear to drive into exile those who would oppose them and they unjustly arrested and executed citizens in order to confiscate their wealth.<sup>53</sup> Such predations on the rich by powerful politicians, allegedly on behalf of the treasury, was behavior more typically attributed to the demagogues and sykophants than to those ideologically committed to oligarchy. Thucydides suggests that it was this particular dimension of the citizens' uncertainty that had made it difficult for them to act decisively to protect their own power against the oligarchs. This memory would have made it seem plausible that the current prosecutors, who claimed to be acting on the behalf of the *dêmos*, were rather acting to increase their own power, without regard for justice or the interests of the *dêmos*, and that, if crypto-oligarchs were allowed to acquire a tyrannical share of power in the city, the *dêmos* would be powerless to stop them because of their debilitating uncertainty. Thus the experiences of recent political events in Athens were consistent with the key propositions of the defense argument and should be considered among the reasons why defense speeches were successful.<sup>54</sup>

## 2. Institutions

Characteristics of the Athenian legal system made it possible for such stakes-raising stories to be effective. First, the volunteer prosecutor system always made it possible for the defendant to impute a selfish and wicked motive to

<sup>53</sup> X. *HG* 2.3.14, 16; *Ath. Pol.* 35.4; Lys. 12.5–6. Of course, the Thirty's reign of terror started as a war on sykophants: X. *HG* 2.3.12 and *Ath. Pol.* 35.3.

<sup>54</sup> If my interpretation is correct, this passage of Thucydides also reveals another reason why the defense narratives under consideration here were effective. After the restorations of democracy in 410 and 403, defendants attempted, by calling into question how much the *dêmos* knew about the actual loyalties and motivations of their current leaders (DP4), to create the same paralyzing conditions of mutual suspicion that had kept the *dêmos* from acting to avert the earlier oligarchic coups. Thus some of the same psychological responses that prevented the democratic majority from resisting the oligarchic takeovers of 411 and 404 may have contributed to their compliance with the Amnesty.

the prosecution. Legal systems with state-appointed prosecutors do not entirely eradicate the ability of the defense to impugn the motives of the prosecution, but they shift the burden of proof for such claims from the prosecutor to the defendant. Second, the fact that witnesses were generally neither impartial nor expected to be impartial significantly restricted the quality of the information on which the voters could base their decision and increased voter uncertainty. As Equation 2 shows, an increase in uncertainty ( $\alpha$  approaching 0.5) increases the effect of a disparity in the stakes entailed by each narrative. An increase in the certainty of the voters with respect to the relative facts might have worked to the advantage of prosecutors or defendants, depending on the specific case. However, in the case of a defendant who was incriminated by the facts, an increase in certainty would have decreased the extent to which the defendant could benefit from a stakes-raising narrative. This is predicted by the model. If the voters are absolutely certain that the prosecutor is correct ( $\alpha = 0$ ), then stakes-raising narratives cease to have any effect at all.<sup>55</sup> Thus the limitations on the voters' information entailed by the structure of Athenian legal procedure must also be considered a second reason for the success of the oligarchic defense strategy, if my interpretation is correct.

### 3. Ideas

By "ideas" I mean the ingenuity of the rhetoricians. Things might have gone differently if the rhetoricians had not developed the expertise and skills to create a defense argument that plausibly raised the stakes. I have argued that, in defending against charges of oligarchic collaboration and sentiments, logographers such as Lysias and Isocrates, who composed for clients, and individuals such as Andocides, who composed for themselves, were faced with the classic task of making the weaker argument the stronger. Their ability to do so was both constrained and facilitated by events and institutions. They had to exploit the uncertainty of the jurors to their own advantage and appeal (explicitly or implicitly) to common knowledge of events to make arguments that were plausible. The elements of the oligarchic defense strategy were not created entirely in response to the needs of alleged former oligarchs. The practice of scapegoating prosecutors as "sykophants" goes back at least to the

<sup>55</sup> This can be verified by substituting 0 for  $\alpha$  in Equation 2 and noting that the equation is never satisfied under this condition, so long as the right side of the equation is positive, which is always the case by Assumptions 1 and 2. This means that the decision-maker always chooses  $k$ .

420s.<sup>56</sup> Whether such a class of prosecutor existed in reality is not at issue here, since the system of volunteerism (the fact that prosecutors were *hoi boulomenoi*) allowed rhetoricians to paint every prosecutor in the stereotypical colors of the sykophant.<sup>57</sup> Further, by the time of Aristophanes, the term “demagogue” had begun to take on its modern connotation of a self-serving, irresponsible, and power-hungry politician. This transformation came about through the rhetorical efforts of elite critics of democracy.<sup>58</sup> The result was that, as in the case of sykophants, all politicians claiming to represent the interests of the *dêmos* came to some extent under the suspicion of possessing this character.<sup>59</sup> Thus the project of defending those suspected of hostility to the *dêmos* by attacking democratic prosecutors and leaders can be seen as part of a developing tradition. As these *topoi* were used repeatedly with success, we can imagine that the popular perception of the reality of these stereotypes would have solidified. However, other aspects of the oligarchic defense strategy appear to have developed in the light of events from 415 on, e.g., the notion that leaders and not ordinary citizens incurred responsibility for bad government and the idea that uncontrolled sykophancy could bring about *stasis*. Thus a third dimension of causality must be recognized in the ingenuity of the tradition and practitioners of the art of rhetoric during this period.

So has anything been learned from the analytical process that I have asked the reader to follow me in undertaking? I would argue yes, if my interpretation is correct—which only the reader can decide, by judging the evidence and logic of my argument. I have identified several causes for the success of the Amnesty whose significance has not previously been fully recognized, and have explained precisely how these causes contributed to the specific outcome that occurred. The suspicion of democratic leaders engendered by the Athenians’ experience of recent events, the conditions of uncertainty concerning facts and the motivations of prosecutors entailed by Athenian legal procedure, and the ingenuity of rhetoricians in developing the particular defense strategy that exploited these opportunities to the highest degree together were sufficient and perhaps necessary conditions for the success of the Amnesty.

<sup>56</sup> The earliest dateable use of *sykophant-* is Aristophanes fr. 228 (427 B.C.). See Christ 48–71 for a recent discussion of the origins and semantics of the term.

<sup>57</sup> For both sides of the controversy around the reality behind the term “sykophant” see Osborne, with Harvey.

<sup>58</sup> *Dêmagôgos* and *prostatês tou dêmou* were not intrinsically derogatory terms, but generally appear in negative contexts, especially in comedy. The first appearance of each occurs in Aristophanes’ *Knights* (424 B.C.). For a full discussion see Connor 109–15.

<sup>59</sup> On the reality behind the term “demagogue” see Finley 1962.

Did these conditions pre-determine the outcome that occurred? Certainly not, no more than the fact that Mr. Jones always wears his seat-belt determines that he will survive a head-on collision in a particular time and place. The failure of the Amnesty remained always within the realm of possibility.<sup>60</sup>

## CONCLUSION

While it is impossible to prove that my explanation for the successful reintegration of the former “men of the city” into Athenian civic life is *the* correct explanation, it is more satisfying than previous explanations for a number of reasons. First, it accounts for the existence of attacks on alleged former oligarchs. If some factor external to the courtroom was decisive, such as fear of Spartan interference or a lack of a majority who desired revenge, we would expect very few if any prosecutions actually to be brought, since potential prosecutors would presumably be able to read public opinion ahead of time and avoid humiliating defeats. However, if my theory is correct, the decisive element would have been the strategy of the defendant, a much more difficult factor for a potential prosecutor to investigate and assess. We might imagine prosecutions continuing (perhaps with occasional success) until the oligarchic defense strategy had been used enough times that prosecutors could anticipate its success, or perhaps until the citizens internalized its propositions and ceased expressing a readiness to take revenge. Either way, if I am correct, we would expect the prosecutions to cease only over time as the advantage in court afforded by the defense strategy became clear.

Second, my argument takes steps towards explaining exactly why the alleged former oligarchs were ultimately able to prevail over their prosecutors. Other explanations appealing to the “power of oratory” have not really been able to explain *why* certain arguments successfully influenced jurors.<sup>61</sup> The decision-theory model I have presented exactly specifies the effect of the relationship between the magnitude of the potential losses following from a decision and the likelihood of those losses: the higher the potential losses, the less likely they have to be in order to affect the decision. This dynamic helps us to de-mystify and grasp fully one particular way in which representation, here a particular fear message disseminated by the arts, both verbal and physical, of the orator, could be an instrument of political power. Analysis of the model makes it possible to understand one of the coercive mechanisms that

<sup>60</sup> For an excellent discussion of the compatibility of random chance and causal explanation in historical analysis see Carr 113–43.

<sup>61</sup> See for instance Ober’s difficulty in explaining precisely how elitist rhetoric would have influenced a democratic auditor (Ober 1989: 311–14).



we are referring to, albeit vaguely, when we speak of “persuasion,” namely, the ability of speakers to use plausible stakes-raising narratives to bring about changes in the attitudes of their audience.

Additionally, my analysis reveals the limitations of Ober’s model of popular ideological hegemony for understanding the dynamics of the Athenian democracy. If it were truly the case that the ideas of the Athenian masses constituted a “truth regime,” to the propositions of which speakers had to adhere unflinchingly or suffer defeat, we would expect alleged oligarchs to have had no chance in the courts, since a former “man of Piraeus” could always have represented himself as a more loyal democrat than a former “man of the city.” While Ober’s functionalist model shows how communication between elite speakers and mass juries was made possible through democratic rhetoric, it cannot explain why the masses tolerated elites who were prevented by their own pasts as well as their political convictions from conforming properly to the democratic ideal. Yet as the former oligarchic sympathizers did on the whole successfully reenter Athenian civic life, so their elitist values became a persistent and well-integrated feature of Athenian political ideology.

The defense speeches that I have discussed not only served to protect former collaborators from reprisal, but also tended to express political views that were significantly more elitist than those expressed in prosecution speeches. One of the great benefits of the oligarchic defense narrative was the fact that it allowed the defendant to represent himself as a traditional aristocrat and for the prosecutor to be represented as a *nouveau riche* finding wealth in politics through demagoguery and sykophancy. This harmonized well with a political ideology promoting distinctions in political legitimacy on the basis of wealth, birth, education, and *aretê*,<sup>62</sup> and encoding a critical attitude toward democratic rule (at the same time as confirming loyalty to the *dêmos*). This dynamic is clearly revealed in the argument that the speaker of [Lysias] 20 uses to counter the charge that Polystratus was affiliated with the extremist oligarch, Phrynichus.

But surely he was not a friend of his even in childhood. For [Phrynichus] was poor and a shepherd in the country, but my father was educated in the city. When [my father] came of age, he became a farmer, while [Phrynichus] came to the city and became a sykophant ([Lys.] 20.11–12).

The chiastic contrast between these biographies, with the two men represented as moving in opposite directions in both spatial/moral terms and economic terms, serves not only to distance the honest Polystratus from the self-interested

<sup>62</sup> Arist. *Pol.* 1291b28.

oligarch, Phrynichus, but also to express the basic criticism of democracy made by elitists such as the Old Oligarch, i.e., that it rewarded the worse sort of citizen (4–8). In the speeches concerning charges of oligarchic collaboration, we generally find that the defendants adopt a more elitist tone, while the prosecutors adhere to a more egalitarian position.<sup>63</sup> In part this was encouraged by the strategic situation of the Athenian court. Defendants, who could claim passivity at the present juncture, represented themselves as the scions of illustrious families, boasted of their liturgies, and recounted their military exploits.<sup>64</sup> In contrast, prosecutors, who had to try to offset the anxiety caused by their own aggression, portrayed themselves as simple men, dependant on the rights of citizenship, and therefore anxious to defend the interests of the city against hubristic aristocrats. We should not assume that the manifest ideological distinction between prosecution and defense speeches necessarily reflects sincere differences in the political attitudes of the individuals who wrote and/or delivered the speeches. Nevertheless, from the point of view of the jury, the spectacle of litigation often dramatized an ideological confrontation.

Thus in trials involving charges of oligarchic sympathies the mutually contradictory “states of the world” envisioned by the opposing speeches corresponded to distinct political ideologies, encoding, e.g., distinct assumptions about the motivations for political behavior (PP1 vs. DP1). The model of dikastic decision-making identifies the precise conditions under which the jurors could be induced to act contrary to the interpretation of events and actions that best conformed to and confirmed the dominant (more democratic) political ideology and in accord with an alternate interpretation that confirmed a less commonly accepted (more elitist) political ideology. If it is granted that the verdicts of the People’s Courts and *dokimasiai* acquired a certain amount of educational and legitimizing force in Athenian society,<sup>65</sup> then the model provides a fully specified explanation for how attacks on al-

<sup>63</sup> For instance, defendants tend to judge worth on the basis of birth, wealth, and *arete* (Isoc. 16.31–34; Lys. 18.11, 20.11–12, 25.30), while prosecutors appeal to the concerns of the poor citizen and emphasize the status distinction between free citizens and slaves (Isoc. 20.6; Lys. 12.21, 13.64, 30.2, 31.5–6). Also, defendants and prosecutors distinguish themselves as respectively anti-democratic and pro-democratic by their attitudes toward democratic icons such as Cleophon (anti: And. 1.146; pro: Lys. 13.7–12, 30.10–12) and Thrasybulus (anti: Lys. 16.15; pro: Lys. 12.52).

<sup>64</sup> Johnstone 94 provides the interesting statistic that over the entire corpus of Attic oratory defendants cited their liturgies in speeches 52% of the time while prosecutors cited them only 20% of the time.

<sup>65</sup> What Ober (1989: 160–63) calls “the normative function of mass decisions.”

leged former oligarchs in the courts could have resulted in the introduction and integration of elitist ideas into the ideology of Athenian democracy in the late fifth and fourth centuries.

Several historians have asserted that the political moderation apparent in the texts of this period represents a significant break with the more radically egalitarian ideology of the period prior to the end of the Peloponnesian War.<sup>66</sup> In Lateiner's words, "the government of the oligarchy perished but their arguments and catch-words lived on."<sup>67</sup> Ian Morris has written that "the complexity of the interplay between elitism and egalitarianism in the fourth century is not the result of a steady weakening of aristocratic values, but is a relatively new feature appearing towards the end of the fifth century."<sup>68</sup> Morris points out a marked increase in the degree to which gradations in social status were being expressed in funerary monuments starting in the fourth quarter of the fifth century. "In the 420s, far more of the wealthy set up their own monuments, some even taking over the very symbols of the state." Morris sees this as part of a panhellenic phenomenon: "by 425 the elites of the Greek cities were beginning to envisage a social structure in which they had much greater prominence."<sup>69</sup> If Connor's thesis is correct, that the oligarchic *coups* of the late fifth century were the result of traditional elites trying to regain what they considered to be their rightful place within an Athens increasingly dominated by radical democratic "new politicians,"<sup>70</sup> then it may be that, along with other factors, oratory was instrumental in gaining acceptance for the new elitism in Athens after attempts to change the constitution by force had failed.

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<sup>66</sup> See L  vy 223–52, Missiou 32–40, McGlew 20–21, Rhodes 1986: 140.

<sup>67</sup> Lateiner 152.

<sup>68</sup> Morris 1993: 283.

<sup>69</sup> Morris 1992: 128–55, quotation from 155.

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