

WHAT TO BELIEVE IN DEMOSTHENES 57 *AGAINST EUBULIDES*

The corpus of Athenian forensic oratory, some one hundred speeches, is enormous by the standards of bodies of evidence for Greek social and political history. Its value is enhanced by both its chronological compactness and extension, its presentation of a variety of voices presenting both the idiom of individual λογόγραφοι and the generic qualities of classical rhetoric, and the supporting evidence of other texts, especially the *Athenaion Politeia*, inscriptions, and archaeology. Like others who study and teach forensic oratory, I have boasted of the rich evidence for this area of classical studies, but in the course of preparing my translation of Demosthenes 57, *Appeal against Eubulides*, for the new series edited by Michael Gagarin, *The Oratory of Classical Greece*,¹ I was struck by how many unusual features appear in this one, not very long speech. Most basically, it gives us our sole detailed description of a deme assembly.² Moreover, a recently published iconoclastic theory draws heavily on this speech. I offer here, as a small tribute to A. K. Gavrilov, preeminent Hyperborean, a few remarks on this interesting speech emphasizing – but by no means claiming to resolve – a recurrent dilemma in classical scholarship, the evidentiary value of data for which there are rare parallels or none at all. After stating an opinion on a number of what appear to be “statistical outliers” in Dem. 57, I offer a rueful acknowledgment of a general truth.

OCCASION AND PROCEDURE

The case for which the speech was written revolves around the issue of Athenian citizenship. The stakes were very high: it is no exaggeration when in the opening section the speaker, a man named Euxitheus, equates conviction with ruin, for he was to be sold into slavery if he lost the case (though at § 65 it appears that an unsuccessful appellant might be expected to escape from Attica before that happened). Euxitheus came before an Athenian court to present an appeal of the decision of his deme, Halimus, to strike

¹ *Demosthenes Speeches 50–57* (Austin, Texas 2003).

² D. Whitehead, *The Demes of Attica, 508–7 – ca. 250 B. C.* (Princeton 1986) 107. What is described, moreover, must be rare or exceptional, for instance that the deme met in the *astu* (87).

him from its official register of deme members (ληξιαρχικὸν γραμματεῖον). This case arises from a διαψήφισις that was conducted in 346/5 and mandated by a decree of the Assembly, *possibly* in the wake of an influx of Athenians (or pretend Athenians) expelled from Thrace a few years earlier by Philip II. The speech is likely to have been delivered about a year later. Most scholars believe it is an authentic speech by Demosthenes. The only other surviving speech appealing a deme's action, Isaeus 12, addresses rather different procedures than what we see here.

Although the trial arises from an appeal, the deme itself, represented by Ebulides, the current *demarch*, and four other elected deme officers, acts as prosecutor. Already in this procedural point we encounter an exception to the general rule, that prosecution in the Athenian judicial system lay in the hands of volunteers. Even in the realm of public actions (γραφαί), to which this speech may belong,³ this is very unusual.⁴ Euxitheus thus arrives in court already condemned by one official body: this disadvantage might in fact have been more grave than the preliminary, non-binding condemnations involved in προβολή and εἰσαγγελία, as votes emanating from the Council or Assembly would be understood as influenced by polis-wide political factors. And as there was no penalty for a failed prosecution, another unusual feature, Ebulides and the deme risked nothing worse than injury to their reputation. A defendant's complaint that he faces heavy odds is, of course, a nearly ubiquitous feature of defense speeches. But in several objective ways, this speaker is truly in a piteous situation. He would not be much heartened if he could have predicted the skepticism with which posterity has, for the most part, received his pleas.⁵ We can arrange targets of scholarly suspicion under a number of rubrics.

COLLISION WITH A "RULING PARADIGM"

Euxitheus portrays his poverty as the consequence of hard times shared with many other Athenian families (§§ 25, 45, 35–36). But is Euxitheus

³ See discussion in Lene Rubinstein, *Litigation and Cooperation*, *Historia Einzelschriften* 147 (Stuttgart 2000) 61 n. 99, where she points out if this speech was delivered in a public case, it would be the sole example in that category where a speaker calls for the stopping of the waterclock during the reading of testimony (§ 21).

⁴ A brief statement on public prosecutors: D. MacDowell, *The Law of Classical Athens* (Ithaca – N. Y. 1978) 61–62; for details on public prosecution in *eisangeliai* to the Council and *apophasis*, see M. H. Hansen, *Eisangelia* (Odense 1975) 29–32 and 39. The speaker's complaint (§ 5) that the prosecutor "knows the laws rather too well" exploits the pervasive sense that justice was best served by an amateur system.

⁵ Fr. Blass stands out as less incredulous than most, e. g., "Die Beweisführung der Rede ist in hohem Masse gewinnend und überzeugend" (*Die attische Beredsamkeit* [Leipzig² 1893] 3.489).

truly a poor man? Josiah Ober⁶ thinks him disingenuous, citing the speaker's mention of dedications to Athena for which he was honored by his deme (§ 64): "Obviously, the profession of poverty earlier in the speech was an exaggeration, and he deliberately shatters the illusion by discussing his dedications". This seems to me an unfair criticism, tacitly accepting an accusation Euxitheus attributes to his opponents (§ 52).⁷ The speaker's emphasis falls on his *current* poverty, in particular his mother's wretched situation selling ribbons in the marketplace.

If Euxitheus was a rich man when the speech was given, the opening sentence of § 31 would be an audacious and dangerous lie: ἡμεῖς δ' ὁμολογοῦμεν καὶ ταινίας πωλεῖν καὶ ζῆν οὐχ ὄντινα τρόπον βουλόμεθα.⁸ He certainly could not want the jury to believe that his mother sold ribbons while he lived well, for that would invite them to think either that Nicarete was not his mother, or if she truly was his mother, that he would be vulnerable to a charge of κάκωσις γονέων. Either supposition would be fatal to his pleadings.

We sometimes suspect speakers of playing to the class antagonism of a predominantly lower-class jury,⁹ and Euxitheus may indeed be doing that here; but he is in my view a credible example of a speaker who at the time of his appearance in court was not a member of Athens' elite.¹⁰ The issue is not just whether Euxitheus is an honest man, but whether his true economic status disrupts an analytic paradigm with many distinguished adherents. Insofar as he acknowledges a pre-existing enmity extending back to his own and Eubulides' father (§ 61), his story recalls other chains of litigation and nicely fits

⁶ *Mass and Elite in Democratic Athens* (Princeton 1989) 222. Similarly, Ch. Carey, "...the fact [sic] that Euxitheos is evidently rich, while his parents were, on his own admission, paupers..." (*Trials from Classical Athens* [London 1997] 231), and Louis Gernet in the Budé, "il se peut que sa prétendue mère fût Athénienne, mais alors le contraste entre sa pauvreté à elle et son aisance à lui est inquiétant" (*Plaidoyers Civils* 4 [1960] 12). Long ago, Arnold Schaefer worried whether the speaker's style, in places not unworthy of a statesman, was appropriate to a poor vendor's son, but he saw the inconcinnity as possibly bearing on the authorship, not as evidence that Euxitheus was lying (*Demosthenes* III [Leipzig 1858] 3, 266). Still, Schaefer was not unaware of holes in the presentation: he notes, for instance, "Wohin Thukritos [Euxitheus' supposed father] selber gerathen ist, wo er begraben liegt, davon hören wir kein Wort" (264).

⁷ Whitehead's survey of the evidence (*op. cit.* [n. 2] 236) leads him to conclude that "most demarchs were men neither of great personal ambition nor of high socioeconomic status".

⁸ Conceivably the speaker's plural is to be classified "sociative", rather than literal, but then it would be strange if the circumstances to which he refers were not to be understood as afflicting his own life (see: V. Bers, *Greek Poetic Syntax in the Classical Age* [New Haven 1984] 49–50).

⁹ E. g., in Dem. 21, with its repeated attacks on Meidias as a πλούσιος.

¹⁰ I hope soon to publish a demonstration that non-elite speakers were often litigants and that their amateurish speech style exhibited flaws the *logographoi* sought to avoid.

the descriptions of Attic law fundamental to the work of David Cohen and Ober,¹¹ which sees these sequences of legal action and counteraction as symptomatic of feuding within the so-called liturgical class. A litigant who has fallen out of the liturgical class is awkward to accommodate to this approach, and we are therefore entitled to a suspicion of our own, that commitment to the paradigm of the courts as the arena for feud among rich Athenians has promoted an unreasonably censorious view of Euxitheus' claim to poverty.

SIMPLY NOT ΕΙΚΟΣ

Euxitheus claims that he lacks witnesses to a hideously perverted vote in literal darkness, in which the number of ballots counted far exceeded the number of men present (§§ 9–14).¹² Scholars have thought it improbable that Euxitheus could have found himself in this predicament, e. g., Carey (*op. cit.* [n. 6] 231): “Though he claims to have been taken by surprise, the importance of the occasion should have induced him to ensure a supply of witnesses”. I think that to dismiss Euxitheus' narration is to be certain that the speaker could anticipate the timing of the vote and could command the presence of his supporters. But enemies can take each other by surprise,¹³ and one's allies are not always reliable in their attendance. We simply cannot be sure that Euxitheus is lying.

And can we be sure he is bluffing when he closes his speech with what looks like a suicide threat, unique I think in preserved oratory: πρότερον γὰρ ἢ προλιπεῖν τούτους, εἰ μὴ δυνατὸν ὑπ' αὐτῶν εἶη σωθῆναι, ἀποκτεῖναι μ' ἂν ἐμαυτὸν, ὥστ' ἐν τῇ πατρίδι γ' ὑπὸ τούτων ταφῆναι? Our instinct is to regard such a declaration as rhetorical,¹⁴ but in truth we have no way of knowing the boundaries of melodramatic exaggeration in this society.

INSIDIOUS PROPORTIONS – THROWING SAND IN THE JURORS' EYES

Euxitheus had been removed from the register in the course of a review (διαψήφισις) in which the status of each member was confirmed by the vote of all members present. He claims that he meets the requirement of citizenship – descent from an Athenian mother and father. The presentation of his family tree

¹¹ See: Ober (*op. cit.* [n. 6]) and D. Cohen, *Law, Violence and Community in Classical Athens* (Cambridge 1995).

¹² This variety of crude fraud is, as far as I know, mentioned nowhere else in our sources.

¹³ One might remember Stalin's tactical error in boycotting the UN Security Council at the outbreak of the Korean War.

¹⁴ The closest parallel known to me is Aeschines 2. 179, but there the supposed preference for death is attributed not to the speaker but to his brothers.

is so lavish that editors and commentators have felt the need to lay out the material schematically. Witnesses to his descent are produced in great profusion, and yet scholars have pointed to what they see as suspicious omissions in his presentation; in particular, they look askance at the absence of witnesses of ceremonies celebrating his birth.¹⁵ But perhaps there is an innocent explanation, for instance that no free, male witness to the small, family-centered ἄμφι-δρόμια was available to testify. Carey, who has argued that the law granted citizenship to bastard children of Athenian parents, remarks (*op. cit.* [n. 6] 232) on the special difficulty confronting bastards, whose births were not celebrated by the standard ceremonies and procedures, and so could not be attested. Aside from this problem of documentation, a speaker might well suppose that the damage to his τιμή incurred by the admission of illegitimacy was simply too great to bear. American justice is often tainted by the decision of defendants to conceal an embarrassing or dangerous truth.¹⁶ Truth may be on the speaker's side, but she can be rendered mute by considerations of this sort.

ARGUMENTUM A FORTIORI

On the face of it, the διαψήφισις of 346/5 was a transient phenomenon: the speaker describes the situation as a κοιρός (§ 2), and in fact we know of only one other systematic check of the citizen rolls in all the demes of Attic, and that one was conducted more than a century earlier. But perhaps these were moments of crisis that merely revealed a chronic fluidity in the status of citizens that in his recent book, *The Athenian Nation*,¹⁷ Edward Cohen insists was always the situation. Cohen challenges a number of tenets of orthodox opinion about Athens, among them the view of Athens as a village, “face-to-face society”. Further, he denies that there was a clear separation among (a) citizens, (b) foreigners – including metics and ξένοι, and (c) slaves. Ad-ducing the small size of Euxitheus' deme, Cohen writes as follows (111): “significantly, this tale of deceit, ignorance, and confusion concerns not one of the ‘great demes’ (μεγάλοι δῆμοι [Dem. 57. 57]) but one of the smallest, one where a majority of hereditary members still lived, a deme territory close to Athens proper... in short, precisely that kind of ‘village’ where, if anywhere in Attika, knowledge of family origin and situation would have been

¹⁵ See: Adele Scafuro, “Witnessing and False Witnessing”, in: A. L. Boegehold and Adele C. Scafuro, *Athenian Identity and Civic Ideology* (Baltimore 1994) 165–168, esp. 168 (with additional bibliography).

¹⁶ It is said that many American women, notably in drug cases, choose to endure long prison sentences rather than exonerate themselves by honest testimony against male companions.

¹⁷ Princeton 2000.

high". Is this speech a convincing demonstration a fortiori, a trump card in Cohen's hand? In principle, members of a small deme should know each other better, but I see a flaw in assuming that "facts" are always, or even generally, decisive in the actions of those who know them best. On the contrary, the most intense disputes and the most outrageous slander often occur within small groups.¹⁸ Euxitheus says (§ 6) that he places his hope in the very fact that, in anticipation of envy and enmity at the deme level, the law provides for appeals of deme expulsions. A tendentious statement, of course, and yet its implication is credible, that jurors are more distant from the disputants and consequently more objective. Perhaps the same salubrious distance from person-to-person disputes had effect in larger demes as well.¹⁹

Cohen is surely right that no society as big as classical Athens could be truly "face-to-face", but at the very least *Against Eubulides* does not *on its own* show that Athenian πολῖται could not identify fellow demesmen as genuine Athenians or imposters. It *does* give a plausible picture of "face-to-face" as – the reader is asked to excuse the crudity – you spit in my face, I spit in your face.

PROTESTING TOO MUCH

Very perplexing is this speaker's thrice repeated protest that he is sticking to the point, first at § 7: "...I will tell you in what way the deme members handled the review of citizens (διαψήφισις). I take it that this constitutes 'speaking to the specific point' (τὸ λέγειν εἰς αὐτὸ τὸ πρῶγμα), to reveal everything that happened to a man unjustly victimized by political strife, contrary to the decree..." On the one hand, this jibes nicely with a requirement reported by the *Ath. Pol.* (67. 1), perhaps adopted not long before the date of the speech, that litigants in private cases (δικαί) swear to speak to the issue when addressing the court; indeed, this very speech is the only one cited by Rhodes in his commentary on this passage.²⁰ Adriaan Lanni remarks: "Whereas speeches made before the homicide courts or referring to them make frequent mention of the relevancy rule, speeches delivered in the *dikasteria* never mention such a le-

¹⁸ If I understand him correctly, W. Wyse, *The Speeches of Isaeus* (Cambridge 1904) ad 12. 12. 9 was on the same track: "Euxitheus ... complains that he is the victim of a conspiracy of private enemies... The plausibility of such an excuse depends on the size of the deme".

¹⁹ His statement that the courts have saved *all* those who have been wronged is certainly an exaggeration meant to flatter the dicasts.

²⁰ P. J. Rhodes, *A Commentary on the Aristotelian ATHENAION POLITEIA* (Oxford 1993) 718–719.

gal requirement. In the very few allusions to speaking to the issue, most of which are found in a single speech, Dem. 57 *Against Eubulides*, nothing in the phraseology suggests a duty imposed by law to avoid straying from the issue at hand”.²¹ Read just a dozen speeches from the δικαστήρια, and you see that speakers in Attic popular courts very often strayed without apology into what a modern judge would certainly declare irrelevant material. This speaker might for reasons unknown have been exceptionally skittish about doing what, in those courts, came naturally. Perhaps these protestations were added for publication after the trial because the jury, perhaps lead on by Eubulides’ speech for the prosecution, shouted to Euxitheus that he should stick to the point – and that point might have been the allegation that he was a supposititious infant, not the natural son of the woman he claimed to be his mother.²²

A GOLDEN CHAIN – OR IS IT GILT?

If we believe Euxitheus, the evidence against him was flimsy and mean-spirited: his father’s accent – the consequence of many years away from Athens as a captive, and, as already discussed, his mother’s humble employment as a wet-nurse and later as a ribbon vendor in the agora. Curiously, both details have a direct connection to Solon (or the Solon of Athenian legend) and perhaps nothing else. Court speakers of course invoked Solon’s name to lend their pleadings the *pietas* and *auctoritas* of the Athenian constitutionalist-populist-liberator (at once George Washington, Thomas Jefferson, Abraham Lincoln, and Franklin Roosevelt); but scholars are skeptical, often too skeptical in my opinion, of fourth-century exploitation of his name. Euxitheus defends his father from the charge that his foreign accent impugned his claim to Athenian citizenship (§§ 18–19). This recalls Solon’s claim to have restored to their homeland Athenians so long in exile that they no longer spoke Attic (36. 10–12 West).²³ To my knowledge, there is no other mention of this phenomenon of dialect alteration. The law forbidding defamation of persons working in the agora (§ 30–32) is attributed to Solon, and for this the closest parallel I know is not close at all.²⁴ I conjecture that if an accident of transmis-

²¹ “Relevance and Consistency in the Classical Athenian Lawcourts” (working title), University of Michigan (in progress).

²² See: V. Bers, “Dikastic *thorubos*”, in: *Crux, essays in Greek history presented to G. E. M. de Ste. Croix* (Exeter – London 1985) 1–15.

²³ See: S. Colvin, *Dialect in Aristophanes: The Politics of Language in Ancient Greek Literature* (Oxford 1999) 52.

²⁴ A passage in Athenaeus (6. 611 d – 612 f), quoting bits of Lys. fr. 1 Baiter and Sauppe, to the effect that a law of Solon excluded males from the perfume trade.

sion had given us these two fragments with Solonian references and not much else of Dem. 57, scholars would suspect that the speech was a rhetorical exercise, much as Lys. 24 and even Lys. 1 have been suspected.²⁵

My general conclusion is merely cautionary: we are at risk of both excessive skepticism and excessive credulity when confronted by information that is unique or nearly so in the documents from which we must work. One hundred speeches and a considerable mass of ancillary evidence may seem like an abundance to historians who usually have much less at their disposal, but those speeches were written and preserved under circumstances of which we know little. The surviving corpus is built to some extent on cliché at the level of structure and argument, a characteristic that *ceteris paribus* worked against the presentation of a wider variety of material that a litigant might adduce as relevant to his particular circumstances. But most important, the speeches were written to serve men and women living lives more complex than one finite and, to be realistic, actually very small collection of texts could possibly capture with statistically reassuring plentitude.²⁶

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Речь “Против Эвбулида” (Dem. 57) отражает редкую судебную ситуацию и содержит много необычного. В статье рассматривается ряд такого рода нетипичных данных, включая описание голосования, в результате которого заказчик речи был исключен из членов своего дема, и упоминание закона, запрещающего оскорбление торговцев на Агоре. Автор приходит к выводу, что даже при сравнительном избытии данных об афинском законодательстве разнообразие и сложность реальных жизненных обстоятельств тяжущихся далеко не всегда позволяет оценить достоверность сообщений, расходящихся со среднестатистической картиной.

²⁵ J. R. Porter has argued that various aspects of Lys. 1, especially the daring behavior of the defendant's wife and her lover, mark the speech as fiction (“Adultery by the book: Lysias 1 [On the Murder of Eratosthenes] and the comic diegesis”, *EMC* N. S. 16 [1997] 421–453). On the suspicions regarding Lysias' speech for the ἄδύνατος, see the sensible remarks by S. C. Todd in the introduction to his translation of the speech (*Lysias* [Austin 2000] 253–254).

²⁶ The principle that a particular situation can overrule a strong general tendency is illustrated, with reference to yet another anomaly in Dem. 57, by David Schaps in his article “The woman least mentioned. Etiquette and women's names”, *CQ* 27 (1977) 329. The speaker transgresses the normal taboo against uttering the name of a respectable Athenian woman when he gives his mother's name at § 68, but “Euxitheus was not being disrespectful of his mother; it was just that he had at all costs to prove to the jurors that he had nothing to hide”.