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ORATORS AND DEMOCRACY
Functions and Dysfunctions of Rhetoric in Classical Athens

SUMMARY
From the last part of the fifth century onwards, orators trained in rhetoric became increasingly important in the Athenian democracy, as politicians, logographers and lawyers. Because of their expertise in rhetoric as well as administration and law they are usually described as the first 'professionals' in the Athenian political system.

As such, their function in the political and judicial organs in Athens is in a sense comparable to that of their modern counterparts, and not necessarily objectionable. However, our sources from the fifth and fourth century express a mainly negative judgment of orators and rhetoric, and the unanimity of the various authors on this point is striking. This unanimity and above all the fact that even the Attic Orators themselves voice this negative judgment - from which one may infer that their audience in the ekklesia and the heliaia shared this opinion - indicates that rhetoric was generally regarded as detrimental to the working of the Athenian democracy.

How can this massive criticism of orators and rhetoric be explained? It is not probable that orators simply happened to be a collectively depraved group and that their bad reputation can be explained by their collective immorality, as the sources suggest.

In this study I suggest that the orators merely operated with a different type of values than at the time were dominant in Athens, as was also the case with the Sophists, who, because of their adherence to new values, became involved in a clash with a large part of the Athenian citizenry.

In De la division du travail social (Paris 1893) the sociologist Emile Durkheim has made a distinction between two types of morality, which he called 'mechanical solidarity' and 'organic solidarity'. According to Durkheim the morality in a society which is characterized by a low degree of division of labour is one of the 'mechanical solidarity', which can be called a collectivist morality, whereas in a society with a greater differentiation of labour there will develop a morality of the type 'organic solidarity', which is characterized by secularism and individualism.

The secularism and individualism which are central features of the Sophistic movement were for a great part responsible for the clash between the Sophists and the ordinary Athenian citizens. Did the moral values of the average Athenian citizen then bear features of Durkheim's mechanical solidarity? This is one of the main hypotheses that are tested in this book.

Further hypotheses to explain the dysfunctions of rhetoric in classical Athens were inspired to me by S.C. Humphreys' discussion of Basil Bernstein's theory in connection with the development of Greek philosophy in the sixth and fifth
Bernstein presents a more comprehensive analysis than Durkheim, whose distinction between two types of morality forms a major starting point in Bernstein’s theory (e.g. Bernstein, 1977, 239). The latter covers differences in mentality as well as different uses of language. His concepts restricted code and elaborated code express the different uses of language of the lower and the middle classes in modern society respectively, which are connected with different types of morality, analogous to Durkheim’s mechanical and organic solidarity, and differences in perception, knowledge and the prevailing types of roles. Bernstein gives a penetrating analysis of how people who are used to a restricted code can become bewildered when confronted with the behaviour and norms which characterize an elaborated code.

The principal hypothesis which is tested in this study is that the mistrust of and hostility towards orators and rhetoric on the part of the ordinary Athenian citizens have their origin in this sort of bewilderment, because the latter were confronted with a new type of role, an individualistic mentality which went hand in hand with the professional role, and a kind of knowledge which they did not understand.

To this end I first investigate whether it might legitimately be assumed that the lower classes in the Athenian democracy adhered to the values of a restricted code. In the second chapter an analysis is made of the most frequently occurring moral notions in the jurisdiction of the Athenian dikastēria. In the third chapter the central question is whether this kind of thinking also extended to the opinions of the average Athenian about democracy, as far as one can conclude from the speeches of the Attic Orators.

As regards the moral notions in the jurisdiction of the heliaia a remarkable feature emerges. It appears from the forensic speeches, that for a verdict of a jury not only the legal point of issue or offence was taken into account, but also the character and the past of the parties. A good character, which was shown by one’s merits with regard to the polis and one’s loyalty to family and friends, usually served as an argument for the bestowal of kharis, eleos or sungnómê, whereas a bad character, the lack of such merits and loyalty, might evoke orgê, misos or phthonos on the part of the judges.

In modern scholarship these arguments are often left out of account, in spite of their evident effects. This is done most markedly by the German legal historian Hans Julius Wolff and his students Meyer-Laurin and Meinecke. According to these scholars the decisions of the dikastēria were based strictly on the letter of the law and the Athenian heliasts were characterized by very legalistic thinking. In their jurisdiction there was not even room for the principle of equity, as Meyer-Laurin concludes in his study relating to this subject. In his opinion, the arguments I examine in chapter II are merely rhetorical tricks.
In my view, however, the mechanisms of kharis, eleos, orgê, misos and phthnos in the jurisdiction of the Athenian courts were not introduced by the rhetoricians, although they became indeed the subject of the rhetorical technique of arousing emotions. I believe that these notions to the Athenian dicasts represented real values, and an important part of their morality, a kind of morality which Schadewaldt characterized as "Eine Ethik der Triebe" (Schadewaldt, 1955, 137 f.). In my opinion the effects of these arguments show that the decisions of the people's court in Athens were not strictly based on the letter of the law. On the contrary, when the notion of justice, dikaion, occurs in the speeches, it is especially in connection with exhortations to bestow kharis, eleos, sungnômê, orgê, misos and phthonos. It is argued that this idea of dikaion is not a strict judicial principle, but the general notion of justice as it was used in daily life.

The application of this idea of dikaion in the jurisdiction of the people's court means that litigants were judged, not only on the legal issue, but also on their functioning in their social roles: as a son, brother, friend and as citizen. It can be shown that the principles of kharis, eleos and sungnômê function in the courts, exactly as in social life, on the basis of reciprocity, as a quid pro quo for services rendered, and that the jurors are addressed as partners in a personal relationship.

Kharis, eleos, sungnômê and their counterparts are values that bear marked features of a restricted code. One can call these values 'particularistic' as Bernstein considers characteristic of a restricted code: they relate to concrete persons in their concrete relationships, and function in a quasi-personal, face-to-face relationship between litigants and heliasts. Moreover, these values, as they function in the courts, can be called collectivistic. The litigant is not judged as an autonomous individual, free to choose his own way of life, but is judged upon his functioning in the groups of which he is a member, according to the common values of the community. Bernstein's dictum that in the case of a restricted code "the culture ... raises the 'we' above 'I' " holds perfectly for the Athenian heliasts.

Therefore it is not likely that the jurisdiction of the Athenian courts was based on the principle of individual responsibility, as Clotz (1904, 607) so optimistically assumed. S.C. Humphreys recently showed the persistence of the idea of 'la solidarité de la famille' in the functioning of witnesses. Examination of the working of kharis, eleos, etc. leads to conclusions which correspond with the results of her research.

There are even more explicit indications that the persons who were on trial were not perceived as independent individuals by the heliasts. As can be inferred from numerous examples in the forensic speeches, the character and all kinds of merits of fathers, ancestors, friends and even of advocates, or the misdeeds and misbehaviour in the past of relatives, friends and advocates could also contribute to the acquittal or conviction of the individual litigant.
In the third chapter the hypothesis is tested that the new, professional role of the rhetor was not accepted by the general public. The complaints about the orators are surveyed as well as the standards which were applied for judgment. The crucial question is whether the norms which were applied to the orators took into account their professional role. In other words, were the applied standards characteristic of Durkheim's organic solidarity or of an elaborated code, which leaves more room for the individual?

Political as well as forensic orators are found to be judged mainly by moral values which do not differ from those applied to ordinary (wealthy) citizens, and thus fail to take account of the orators' professional role. The value-pattern which emerges from the orations of the Attic Orators is very complex. An inventory of the value terms and of further behavioral norms shows that old and new values coexisted side by side. The most frequent value terms are agathos, aristos - and other terms related to the concept of aretê-, khrêstos, khrêsimos, dikaios, sôphrôn, metrios, philopolis and philodêmôs.

The persistence in the Athenian democracy of the aristocratic values around the key concept aretê is, since the work of Adkins, an established fact. However, in the orations aretê does not appear as the traditional 'competitive' aretê, in relation to which the main 'cooperative' value dikaiosunê was of minor importance, as Adkins assumes. Recent research has stressed that aretê in the Athenian democracy is a 'democratized' aretê. Moreover, in the orations the moral, 'cooperative' connotations of aretê are dominant and to be dikaios proves to be a norm of great importance in the orations, applied to political leaders especially in the sense of 'incorruptable'.

The principal behavioral norms for citizens and leaders, viz. loyalty to the polis and its constituent groups, and actual solidarity with these groups, are mainly - and more explicitly - expressed by the terms philopolis, philodêmôs, sôphrôn, metrios and kosmios. The behavioral rules which are covered by these terms bear strong features of a restricted code. The terms philopolis and philodêmôs which in the fourth-century orations are frequently used to denote the good leader and the good citizen, were, as Connor has shown, introduced in the political vocabulary by the fifth-century demagogues, as part of their 'new style of politics', by which they tried to secure the political support of the lower classes. Connor stresses that here the political relations were expressed through the language of personal relations (Connor, 1971, 98).

Hence it can be said that in the time of the radical democracy values of the pattern of a restricted code were made normative in politics.

The norms to be sôphrôn, metrios and kosmios also show the lack of distinction between public and private behaviour. As the words philopolis and philodêmôs, they suggest that the relationship between citizen and state, between the leader and the people, were 'total' relations, in which every aspect of the life of the individual was involved. Proper behaviour in private life, including a sex life...
in accordance with public standards, and good management of one's property (in order to be able to give as much as possible to the state), together with good public conduct, are important features of the sôphrôν, metrîos and kosmîos citizen.

This is clearly thinking based on a restricted code. These norms leave little room for the individual to lead a private life according to self-determined principles.

The norms which are expressed by the Attic Orators for citizens and leaders are thus in sharp contrast with the words of Thucydides' Pericles in the funeral oration, where freedom in public and in private life are proclaimed as central values in the democratic ideal. Modern scholars have often concluded from this and other passages of the same tenor that in the Athenian democracy roughly the same values applied as in modern western democracies, especially stressing the notion of individual liberty.

On the basis of the values and behavioral norms which appear in the orations I consider it unlikely that the democratic thinking of the Athenians who took the decisions in the ekklesia and heliaia in any way resembled with such modern democratic ideas. On the contrary: according to their values the individual had to submit himself and his personal interests to those of the state, and a private life in accordance with the shared values of the community represented a special interest for the state. That this last idea was common in Athenian democratic thinking can also be inferred from the provisions in the dokimasia test for Athenians taking office and the special dokimasia rētorōn.

In the fourth chapter the investigation focusses upon the professional role of the rhetor and the central question whether this role involved also a professional attitude with the marks of an elaborated code, which conflicted with the way of thinking and the values of audiences in the assembly and law courts.

The rhetorical handbook of Anaximenes of Lampsakos, which can be regarded as more or less representative of the handbooks that in the fourth century were used by most orators and logographers, serves as the main source for reconstructing the attitude and mentality of the orators who worked according to the principles of rhetorical theory.

The investigation is directed to two major aspects of an elaborated code: the individualistic mentality and the abstract knowledge, which, according to Bernstein, provides an enormous advantage over people who use only concrete knowledge, characteristic of a restricted code. Abstract knowledge is 'context-independent', as Bernstein puts it, which means that it can be generalized and used in different situations, whereas concrete, 'context-dependent' knowledge, to which people are socialized under a restricted code, has relevance only for specific situations.

Although the very mediocre handbook of Anaximenes does not in every respect
presuppose an abstract and analytical approach by orators, it does present the best-known abstract rhetorical techniques, most of which can be traced back to the fifth century, such as the techniques of auxēsis and tapeinōsis, makrologia and brakhylogia, argumentation from probability, and other rhetorical modes of demonstration: by sēmeia, teknēria, gnōmai, paradeigmata, elenkhoi and enthumēmata. These techniques are of general applicability and can be called context-independent.

The application of such techniques implies a rationalistic attitude which contrasts strongly with the moralistic attitude of the Athenian jurors. Above all, this contrast appears from the prescriptions which Anaximenes gives for the heuresis, in which the traditional values of dikaion, nomimon and kalon are treated as abstract categories for argumentation, under which the concrete material can be arranged. Thus these values, which were basic in the organs of the Athenian democracy, are to the orator merely instruments for persuading his audience.

The right of the individual to follow his own interests, even if these should conflict with those of the community and the state, was a hot item in the Sophistic discussions in the fifth century and it seems that a rational individualistic attitude then found broader adherence in intellectual circles.

The question arises whether rhetorical training and theory also were affected by this individualism. Although traces of the sophistic relativism are found in the handbooks of both Aristotle and Anaximenes in the treatment of the nomos, even the more sophistic Anaximenes reflects essentially the same, collectivistic values as are expressed in the speeches of the Attic Orators.

But what does this tell us about the mentality of the orators themselves? Again one needs to investigate how a rhetorical handbook expected orators and logographers to work.

It is argued here that the main principle of presentation of the material in the handbooks, the method of antithetical arguments, which can be traced back to Protagoras, presupposes an individualistic mentality with the orators. This method can be connected with Protagoras' homo mensura thesis, and thus implies that different points of view are equally defensible. This principle means for example that someone who has committed an offence can be defended in the same way as an innocent person. One can see how this principle of rhetorical training conflicted with the rules which prevailed for a suneγoros and hence why the Athenian public could judge this method as immoral. This is well illustrated by a statement of Lykourgos: one who takes up the defense of a guilty person is probably capable of participating in the wrongful act (c. Leocr. 138). But one can also see how this principle made the role of the orator in the court comparable to that of a modern barrister. The method of antithetical arguments leaves room for individual choices by the orators. The orators themselves are to choose from
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The alternatives that are available and, like a modern lawyer, to make a rational assessment of what is technically defensible.

The fifth chapter explains how some of the most 'context-independent' rhetorical techniques could be used to mislead juries, because the character of these arguments was not understood.

First are treated the main rhetorical modes of demonstration which were applied in the law courts. As appears from the handbook of Anaximenes and from the forensic speeches, these proofs are often only hypothetical and so 'prove' hardly anything. How could such proofs be applied successfully? Bernstein notes that logical and causal reasoning in the case of a restricted code tends to be underdeveloped. It is likely that the frequent use and success of such proofs were possible only because of the restricted code thinking of the members of the juries.

Next it is shown how the rhetorical technique of arousing emotions became a major factor by which the moral basis of the jurisdiction of the heliaia was undermined. While kharis, eleos, even values themselves? rhetorical theory treated these as context-independent emotions, which could be aroused to suit any person.

Finally the question is treated whether the complaints about the orators that they, just like the fifth-century demagogues, only spoke pros hêdonên and pros kharin and merely tried to areskein, therapeuein and kolakeuein the people, have a relationship with techniques that were taught in rhetorical education. Remarks by the rhetoricians Anaximenes, Isokrates, Alkidamas, Polos and further references made by Plato indeed point in that direction.