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Werner Riess

PERFORMING INTERPERSONAL VIOLENCE

COURT, CURSE, AND COMEDY
IN FOURTH-CENTURY BCE ATHENS

Werner Riess
Performing Interpersonal Violence

MythosEikonPoiesis

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Wissenschaftlicher Beirat
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Note to the reader

Monographs could be considered selectively through 2010. Anyone working on classical Athens knows that it is impossible to take into consideration all pertinent secondary literature, but I hope I consulted the works of major relevance for my topic. If I have failed to reach the depth of specialization in every corner of the respective fields I am treating here, and if some seemingly far-flung results offend the eyes of the specialist because of my endeavor to synthesize and take a broad look at things beyond highly specialized disciplinary compartments, I ask for indulgence and hope that the project of shedding light on domains usually treated separately has remained a worthwhile endeavor.

Apart from Athenian political and legal institutions, Greek names are Latinized unless the Greek form is common in English (so *Kerameikos*, not *Ceramicus*). Greek words are transliterated with vowel lengths marked, unless the words are common in English. Adjectives derived from Greek words are anglicized, so *komastic*, not *kômastic*, etc.

All translations from the orators are taken from the new translations in the *Oratory of Classical Greece* series by the University of Texas Press, or, where not available yet, from the Loeb editions. Translations of other literary texts are mainly taken from the Loeb series. Where I felt slight changes should be made, I have indicated them as such. Translations of curse tablets are taken from Gager, or the respective editions, or are my own.

Hamburg, September 2011

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I. Introduction

And found in Accusatia, near
the Clepsydra, is the villainous
race of Tongue-to-Belly Men,
who reap and sow
and gather vintage with their tongues –
and also figs;
they are barbarian stock,
Gorgiases and Philips.
And it is because of these
philippic Tongue-to-Belly Men
that everywhere in Attica
the tongue is cut out by itself.
(Aristophanes, *Birds* 1694–1705, transl.
A. Sommerstein 1987, p. 193.)

Notions of Violence – State of Research – Goals

At the Athenian Great Dionysia festival of 348 BCE, Demosthenes, if we want to believe him, suffered the worst humiliation of his life. He was serving as *chorêgos*, thus being responsible for the equipment and training of the chorus required for a dramatic performance at this religious festival. For any Athenian citizen, this high-ranking religious and civic function brought considerable prestige and public esteem, and constituted one of the highlights of a citizen's career. Demosthenes, however, was denied success. In the theater of Dionysus, in front of the assembled *dêmos*, Meidias, one of Demosthenes' long-time opponents, punched him in the face, a severe insult and provocation. Demosthenes did not strike back, but instead wrote what is today one of the most famous Athenian courtroom speeches (Dem. 21: *Against Meidias*). Whether or not he actually delivered the speech is open to debate and need not concern us here. What is important, however, is the way Demosthenes dealt with this outbreak of violence against his person, as well as the cultural implications that the blatant use of violence entailed in classical Athens.

Violence is an intrinsic part of every human society, its notion being culturally determined. But the highly heterogeneous forms of violence

make the phenomenon elusive and hard to define,¹ and since various disciplines in the humanities and natural sciences are preoccupied with this phenomenon, there is a multitude of divergent definitions of “violence.”² Because of these enormous difficulties of definition and despite intensive research, sociologists have not yet been able to establish a sociology of violence up to the present day.³ The broad notion of the so-called “structural violence,” as developed by Galtung,⁴ can hardly be applied to antiquity. Only the application of a narrow definition of violence enables the historian to analyze a vast body of sources under a coherent set of questions. In the context of this work, therefore, I mean by violence a physical act, a “process in which a human being inflicts harm on another human being via physical strength”⁵ or plots to do so.

This book seeks to investigate the civic, interpersonal violence in fourth-century BCE⁶ Athens perpetrated mainly upon fellow citizens.⁷

1 Cf. von Trotha 1997, 9–19.

2 With regard to the plethora of definitions, cf. Reinhold – Lamnek – Recker 2000, 231–232.

3 Cf. the stimulating volume edited by von Trotha 1997. The Marburg volumes Bonacker 2002, Imbusch – Zoll 1999, and Meyer 1997 put the phenomenon of violence into the larger context of peace and conflict research, as well as the sociology of conflict. Oberwittler – Karstedt 2003 furnish a sociology of criminality in general, but not of violence. Rapoport 1990 is a broadly cast introduction to peace and conflict research. Only a few works strive to lay the foundations for a sociology of violence. Cf., e.g., Mader – Eberwein – Vogt 2000 and Riches 1986. Sofsky 1996 is decidedly interested in the symbolic contents of violent actions.

4 Galtung 1975.

5 Fuchs-Heinritz – Lautmann – Rammstedt – Wienold³1994, 247 (my transl.). As we will see, cursing someone via malign magic was understood as indirect violence with physical consequences for the victim. Therefore, the perceived violence committed via the deposition of curse tablets will be treated in this study. An investigation of the psychological violence that was committed in Athens would exceed the scope of this book. Especially verbal abuse and character denigration, which abound in Attic forensic oratory, deserve a comprehensive, book-length study. On speech acts as violence, cf. Butler 1997. Rather than violence, character assassination is a technique of applying *peithō*, persuading judges to render a harsh judgment on one’s opponent. Similar to the narrow meaning of violence suggested here is the definition by Hillmann³1972, 264.

6 It is the wealth of evidence preserved from the fourth century that makes such an undertaking possible. For other epochs of Greek history, alas, we are in a worse situation.

7 The inquiry into how male citizens treat each other will automatically address the use of violence against people socially discriminated against. These are, in

No society is free of conflicts. One way to deal with them is resolve them violently. Hence, this study has a narrower focus than many others in the vast realm of conflict studies.⁸ This book is about violence itself.

A brief note on Greek terminology may be appropriate here. The Greeks had several terms at their disposal to express “violence,” which all held special positions in the mythological cosmos. *Bia* is the personification of physical violence. She is the daughter of Pallas and Styx and sister of Zelos, Nike, and Cratus.⁹ Cratus is strength and force, which can manifest themselves in violence. Cratus means ‘brute force,’¹⁰ including both power and rule, according to Weber’s terminology.¹¹ The Greeks were always aware that every form of dominance is ultimately based on potential violence. *Anangkê* denotes physical compulsion.¹² *Hubris* generally means aggressive arrogance that in most cases humiliates a victim by violating his or her status in society.¹³ This last term is especially hard to pin down. It will be treated in detail in chapter II of this study.

For the sake of clarity and concision, I exclude: (1) violence in the political realm, especially in the context of the Thirty Tyrants and their harsh rule over Athens in 404/03 BCE; (2) violence in myth and tragedy, which is an entirely different topic in its own right;¹⁴ (3) violence against

the first place, slaves, foreigners, metics, and women. Cf. e.g., Klees 1998, 176–217.

- 8 A thorough study of conflict in the Greek world has yet to be written. An important step in this direction is Fuks 1984.
- 9 R. Bloch, s.v. “*Bia*,” *Der Neue Pauly* 2, Stuttgart – Weimar 1997, col. 616. D’Agostino 1983 analyzes the usage of this term also in the Greek philosophers.
- 10 J. Tambornino, s.v. “*Kratos*,” *RE* 11.2, Stuttgart 1922, col. 1660.
- 11 In the terminology of Weber 1925, 122–125 governmental, that is legalized, violence is “rule” (*Herrschaft*), not the exertion of brute “force” or “power” (*Macht*). In the case of Athens we can discern the beginnings of a governmental monopoly of power. This gradual development opens up a vast area of research that would exceed the scope of this study.
- 12 P. Dräger, s.v. “*Ananke*,” *Der Neue Pauly* 1, Stuttgart – Weimar 1996, col. 653–654: “die Kraft, die hinter allen Erscheinungen mechanisch wirkt und das göttliche Urprinzip zu seiner vielfachen Ausgestaltung zwingt.”
- 13 G. Thür, s.v. “*Hybris*,” *Der Neue Pauly* 5, Stuttgart – Weimar 1998, 771–772.
- 14 Athenian tragedies are mainly based on myths, and although it is true that the classical playwrights commented upon Athenian themes with their dramas, the relationship between violence on the Athenian tragic stage and violence in daily life is only an indirect one. The high degree of violence in Athenian tragedy hardly reflects Athenian reality. This is not to say that Attic tragedy is not an important and indispensable source for the study of Athenian mentality, but the problems involved in the attempt to disentangle the connection between vi-

animals as committed on the occasion of religious sacrifices;¹⁵ and (4) violence in sports and war.¹⁶ This project concentrates on violence that is reported because it exceeds a certain accepted framework. In the eyes of the victim, the use of violence is the transgression of rules and social conventions.¹⁷

Sociologists feel a moral obligation to penetrate contemporary Western societies in search of the reasons for violence and to find remedies to improve the situation. Only a thorough understanding of the underlying causes of violence, according to public opinion, allows its efficient prevention and control. The scant evidence we have from antiquity, however, seems to prevent an adequate investigation of the causes of violence. Thus, the ancient historian is free to concentrate on the phenomenon of violence itself, its forms and symbolic meanings.

From the 1970s, historians have looked upon violence as a historical phenomenon without striving for the systematic rigor embraced by sociology. Ancient history lags behind comparable research endeavors illuminating the early modern period mainly because of a lack of evidence. For the modern period, many cities, and especially English counties, have well-established histories of crime (including violence), thanks to a wealth of serial sources, such as minutes of court proceedings and easily accessible archives.¹⁸ There is even an abundance of overarching studies of violence for this particular epoch.¹⁹ In the meantime, the beginnings

olence in myth and the contemporary audience's notions and expectations have prevented a comprehensive and in-depth analysis of violence in myth and tragedy up to the present day. Alongside the numerous works of Burkert and Henrichs, many articles and, as far as I can see, one dissertation (Eduntoulakis 1995) explicitly deal with violence in Attic tragedy, e.g., Goldhill 2006 and 1991; Seidensticker 2006; Sommerstein 2004a; De Romilly 2000, 35–78; Kaimio 1992 and 1988, 62–78. On revenge in tragedy, cf. Burnett 1998.

15 Cf., e.g., Burkert ²1997 and 1984; Hamerton-Kelly – Rosaldo – Burton 1987; Girard 1972.

16 Violence in sports and war (e.g., Bertrand 2005, 24–30; Poliakov 1987) was situated within the frame of accepted violence. In both domains, violence in our sense of the term was not only tolerable, but even expected. Both areas deserve thorough investigations.

17 Groebner 1995, 189.

18 Cf., e.g., Frank 1995; Schwerhoff 1991; Sharpe 1983.

19 Cf. Eriksson – Krug-Richter 2003; Ruff 2001; Hugger – Stadler 1995; Lindenberg 1993; Sharpe 1984; Stone 1983.

of a history of crime in the Roman world have been emerging mainly in the Anglo-American world,²⁰ but also in continental Europe.²¹

For the Greek world, this agenda seems to be more difficult to put into practice, because most sources are centered upon Athens and do not necessarily articulate issues of violence and crime.²² The focus of predominantly Anglophone research in this area is on traditional legal history. Here great progress has been made during the past fifty years, especially in the realm of the law of violent offenses.²³ Syntheses are available today that allow easy access to the subject matter.²⁴ With regard to the oscillating and therefore elusive term of *hubris*, a sub-field within legal history has emerged.²⁵ As important as these normative approaches are, especially in order to understand the highly complex Athenian procedural law, they do little to open up windows onto social and anthropological issues.²⁶ Two areas are an exception: the torture of slaves, metics, and aliens;²⁷ and rape. Since rape is a constituent element of New Comedy, works in the field of gender studies in particular have delved into this topic.²⁸ Whereas research, to date, has often addressed violence against slaves, foreigners, and women in Athens, it has largely neglected the kind of civic violence that Athenian men exerted against each other.

20 The most important recent publications are Hopwood 2002 and 1998; and the fundamental Shaw 1984.

21 E.g., Krause 2004; Wolff 2003; Riess 2001; Neri 1998; Nippel 1995.

22 Sagan 1979, 1–7 makes a fervent plea for illuminating the dark side of the Greeks, but his study stops with Thucydides, thus not making use of the richest material we have with regard to violence, the fourth-century speeches.

23 Stroud is to be credited with laying the foundation for the scholarly study of the Athenian homicide law by editing the epigraphically preserved Draconian law of unintentional homicide (Stroud 1968). Cf. MacDowell ²1966; Gagarin 1981; Tulin 1996. Cohen 2005a provides an excellent overview of the development and trends in Athenian legal history.

24 Gagarin – Cohen 2005; Harris – Rubinstein 2004; Todd 1993; MacDowell 1978; Harrison 1968/1971. Boegehold 1995 provides a useful overview of the various Attic law courts.

25 Fisher 2000; Cairns 1996; Fisher 1992; Cohen 1991a; Gagarin 1979a; Fisher 1979 and 1976; MacDowell 1976; Ruschenbusch 1965.

26 Allen 2000 is one of the few exceptions.

27 Gagarin 1996; Mirhady 1996; DuBois 1991; Carey 1988; Thür 1977; Bushala 1968.

28 Cf. Omitowoju 2002; Deacy – Pierce 1997 and Doblhofer 1994 for general matters. On specific problems cf. Traill 2008, 21, 48–49, 65, 70–72, 148–155, 178, 192, 194, 228–229, 231, 247, 257, 259; Lape 2001; Rosivach 1998; Sommerstein 1998a; Carey 1995a; Harris 1990; Cole 1984.

Only a comparative analysis of as many forms of violence as possible can provide us with more concrete information as to how the Athenians themselves perceived violence. More recent and explicit treatments of violence in Athens do offer useful overviews of some parts of the source material,²⁹ but they do not provide further-reaching analyses or thorough interpretations from the perspective of cultural history. Schmitz elucidates violence committed in the context of *kômoi*, that is, in private and public festive processions, from an anthropological point of view, and arrives at convincing conclusions,³⁰ but the general focus of his book is on neighborhood. More recent scholarly initiatives on violence have come from archaeologists, classical philologists, and ancient historians alike. Conferences held, for example, at Bonn and Paris in 2002, Santa Barbara and Munich in 2003, and Berlin in 2005, have all led to edited volumes.³¹ In particular, the interpretation of violence represented in vase paintings of the sixth, fifth, and fourth centuries BCE has made remarkable progress.³²

During the past few years, Cohen has made decisive but highly contested contributions to the research on violence.³³ He applies anthropological models derived from Mediterranean societies to ancient Athens, and argues that the dichotomy of “honor” and “shame” fundamentally informed the societies in question. Legal historians such as E. Harris and Herman, however, have rejected the application of these Mediterranean models to the context of ancient Athens.³⁴ Herman, in particular, wishes to abandon the entire model, because he believes it is far too general to provide conclusive results.³⁵ These legal historians even question the fundamental premises of the model—honor and shame also play a crucial role, for example, in old Nordic cultures—and insist on the special and unique position of Athens within pre-modern societies. The completely different notions which both sides have of the function of Athenian law courts is representative of their opposing viewpoints.

29 E.g., the dissertation by Ruiz 1994.

30 Schmitz 2004, 280–312.

31 Fischer – Moraw 2005; Bertrand 2005; Drake 2006; Zimmermann 2009; Seidensticker – Vöhler 2006.

32 Cf., e.g., Muth 2008 with a penetrating analysis of the development of an iconography of violence on Attic vases, and the contributions to the edited volumes mentioned above n. 31.

33 E.g., Cohen 1995; 1993; 1991a; 1991b; 1984.

34 E.g., Harris 2005; Herman 2000; 1998; 1996; 1995; 1994.

35 Herman 2006, 95–97, 268–269, 413; 1996.

On the one hand, legal historians using an anthropological approach claim that the Athenian lawcourt system can by no means be compared to modern Western courts and their procedures, which are rational, at least in theory.³⁶ Athenian courts provided litigants with just another means of continuing their conflicts, and often simply advanced long-term struggles to the next stage of the conflict. Thus, courts scarcely provided genuine resolution of conflict and were simply one tool of strife among many others.

On the other hand, legal historians relying exclusively on Athenian law emphasize the exceptionality of the Athenian court system in its successful containment of violence. The unusual success of the Athenian courts contributed crucially to the stabilization of the political, social, and economic system of this *polis* for over two hundred years. Turning to courts was a salient departure from “primitive” feuding.³⁷

The discussion over using anthropological models to examine legal conflicts in ancient Athens, however, is currently at an impasse. The participants have withdrawn to entrenched positions, which makes a rapprochement less than likely in the near future. Especially Herman is very much concerned with the unanswerable question of how violent Athenian society was.³⁸ Since this quantifying question is irresolvable, I raise different questions in the attempt to take a fresh and comprehensive look at all available sources. By taking this kind of integrative approach, I hope to revive the discussion and give it a new direction. Indeed, instead of struggling to gauge the irretrievable level of violence in an ancient society, we should formulate the following questions:

- (1) As a point of departure, a philological question imposes itself: what does the discursive treatment of violence look like in the various types of sources? It will be important to illuminate patterns of how Athenians talked about violence—what I call the semantic grammar of violence. Since we know that the notion of violence was culturally defined, I seek to explore how this semantics was structured and, as a consequence, how it was ideologically constructed and represented.
- (2) Closely related is the question of how this textual grammar of violence may reflect the “lived reality” of the Athenians. How did they perceive violence, react to it, and define it, in constructing the conceptual boundary between acceptable and unacceptable behavior

36 Cf., e.g., Cohen 1995; 1991b; Humphreys 1985a.

37 Herman 2006 summarizes the results of his research.

38 Herman 1995; 1994.

and between tolerable and impermissible violence? What did violence symbolize and mean to them? By suggesting possible answers, I will try to determine the place of violence in the Athenian value system and social fabric. We will see that the creation of ritual spaces, however implicitly, was necessary in order to enable reflection on the definition of violence.

- (3) Unlike other Greek cities (e.g., Corinth, Thebes, Rhodes), Athens was a relatively stable society for two hundred years, and it is remarkable how violence was checked or at least made tolerable in the absence of public prosecutors and a regular police force, in the modern sense.³⁹

These research endeavors are, in large part, informed by cultural history, as essentially shaped by the ethnologist Geertz. With his definition of culture as a “web of meanings,”⁴⁰ he triggered a paradigm shift in the humanities. “Thick descriptions”⁴¹ help to decipher the semantics of symbolic meanings. Similar to the ethnologist who investigates contemporary societies, it is the historian’s task to explore past phenomena in an interpretive mode. The renewed interest in a complex and integrative notion of culture (cultural turn)⁴² makes a cultural history of civic violence in fourth-century Athens timely and needed. This book is not only intended as a contribution to the history of violence in antiquity, but it is also meant to catch up with analogous research on early modern times.

The evidence I use to answer the questions sketched above is highly diverse, consisting of courtroom speeches and curse tablets, as well as Old and New Comedy. These genres are based on very different speech acts. Forensic speeches were performed in public, whereas curse tablets were deposited in a clandestine manner. The plots of dramas are fictional and were staged in festive contexts, and yet, all these genres, despite the different quality of their respective speech acts, lend themselves to

39 Cf. Riess 2008, 49–50, n. 1 with a list of all agents entrusted with the daunting challenge of enforcing law and order in Athens. But cf. Harris 2007 *passim* who regards these agents as fulfilling the functions of a regular police force. The Scythian archers were on duty until 404/03 BCE.

40 Geertz 1987, 9. Cf. Geertz 1973, 311–326; 1971; Dressel 1996, 167–169, 248.

41 Geertz makes a case for taking into account all concomitant circumstances framing a social action in order to elicit as much information as possible. He exemplified this method paradigmatically in his study “The Balinese Cockfight,” which has become a classic (Geertz 1971).

42 Cf., e.g., Maza 1996. With regard to cultural history in Germany, cf., e.g., Tschopp 2007; Landwehr – Stockhorst 2004; Siegenthaler 1999; Vierhaus 1995.

a comparison because they were all embedded in and shaped by performative frames, however different individual frames may be from one another. The common denominator lies in the very fact that they all exhibit, from different perspectives, the same general understanding of and attitudes toward violence, a nexus of ideas which I call the “violence discourse.” This preserved textual evidence, however, provides us with a decidedly incomplete picture of the original discourse. The actions reported within these discourses became meaningful chiefly on the level of performance, because each performance redefined the significance of discourse as well as more general values and opened them up to constant change and adaptation. Therefore, the decipherment and interpretation of the symbolic meaning of violence requires a closer look at the performative representation of the violence discourse in all genres of source material available.

Speeches and plays (and even curse tablets) share many features of theatricality. The staging of a rhetorically brilliant courtroom speech was akin to the aesthetic staging of a play in the theater of Dionysus.⁴³ There are further analogies between courts and the theater: the six thousand judges⁴⁴ in the various courts were also part of the audience in the theater. They were highly skilled at listening to oral performances and evaluated “real” events narrated in court in much the same way as they would fictive plots on stage. As we will see, these three genres were not only performative and theatrical, but they also fulfilled partly ritual functions in so far as they were all embedded within a ritual frame and conveyed symbolic messages.

43 The aesthetic staging and self-representation of a public speaker must not be underestimated. Cf. the dignified pose of the Sophocles Lateranus statue, a Roman copy of an original Greek bronze statue, erected in the theater of Dionysus during the Lycurgan era (Kneil 2000, 139–145).

44 Neither the English ‘judge’ nor ‘juror’ renders the Athenian term *dikastês* correctly. Athenian *dikastai* were juridical laymen in the people’s courts, the *dikastêria*, who were drawn by lot to serve on “jury duty,” but they actually rendered verdicts like judges. In addition, the homicide courts of the Palladion and the Delphinion were staffed with fifty-one *ephetai*. Therefore, I will speak henceforth of “judges,” a term that also encompasses the *ephetai* and the councilors on the Areopagos.

Methodology: The Performative Turn and Ritual Studies (A Brief Overview)

Within post-structural debates and various forms of discourse analysis originating in France, the “linguistic turn,” which involves the claim that all reality is exclusively constructed by language, gained importance.⁴⁵ Even if historians could not put the more radical postulates of the linguistic turn into practice, this theoretical movement has decisively sharpened the awareness of the importance of language in historical processes. Historical research, however, did not content itself with discourse analysis, but it also recognized that many preserved texts were originally staged before an audience in a particular socio-cultural context. With the introduction of the “performative turn,”⁴⁶ classical and modern philologists as well as historians have learned to direct their focus to the analysis of concrete social actions and their manner of performance. The texts we have are often derivatives, written renderings of original performances, and, as such, represent *interpretations* of original actions. Since it is the performance of discourses that has found its echo in diverse genres, we would deprive the sources of much of their original meaning by neglecting their performative dimension.⁴⁷ Many fourth-century Athenian written sources have emanated from performances and derived their original thrust through performance.⁴⁸

Performance studies have dovetailed nicely with ritual studies, which had long before been recognized in religious studies, for rituals mainly define themselves via their performative character.⁴⁹ In the wake of the performative turn in the humanities, ritual studies can provide us with the appropriate tools to write cultural history. This is not the place to trace the history of ritual studies, but some contextualization of the present book

45 Iggers 1995 offers a good overview of the theory discussion.

46 On the history of research, cf. in detail Martschukat – Patzold 2003. An important collection of essays on performance that has become “classical” is Wirth 2002.

47 A useful definition of “performance” is provided by Gänzle 2000, 41–42. Cf. also Carlson 1996; Diamond 1996; Parker – Sedgwick 1995; Benston 1992.

48 Demosthenes realized how important performance was. In a famous anecdote (Plu. *Vit. X Orat.* 845b; Cic. *De Orat.* 3.213; *Brut.* 142; *Orat.* 56), he ascribes the utmost importance to performance by only mentioning three priorities in rhetoric: delivery, delivery, delivery (*hupokrisis; actio*).

49 Turner 1988; 1984.

within the history of research is in order.⁵⁰ The heuristic value offered by the theoretical implications of ritual studies was rapidly recognized throughout the humanities and triggered a boom in ritual and performance studies in the late 1980s. It is important to note, however, that at first, ritual approaches were mainly applied to religious studies, and more precisely to the study of religious rites of passage that mark the participants' initiation into a different status.⁵¹ The potential cognitive value of ritual studies soon led to their detachment from religious studies and their application to other, secular fields in the humanities.⁵² This development can also be observed in historical studies.⁵³ As in the history of crime and violence, medieval and early modern studies energetically took the lead again. Above all, Althoff is to be credited with having uncovered the rational side of many political rituals in his works on medieval history. His studies have transmitted the pre-eminent role of rituals in pre-modern societies to a broad public, thus paving the way for the shift of paradigms in many areas of European historiography.⁵⁴ Roman historians, as well, are more interested today in the socio-political than the religious functions of rituals in Roman society.⁵⁵

The detachment of ritual from religious studies is also observable in ancient Greek studies. Religious historians of the Greek world were the first to adopt the new paradigm, especially as an approach to religious sacrifice. This branch of research is inseparably connected with the names of Burkert⁵⁶ and Graf⁵⁷ and has had a lasting impact on the study of religion in the Hellenistic period up to the present day.⁵⁸ In

50 Bierl 2009, 1–24; Belliger – Krieger 1998, 1–48; Bell 1997, 1–95; Versnel 1993, 1–14, 20–37 offer detailed overviews.

51 The basic source is still van Gennep 1909. From the very beginnings of ritual studies, however, there were also different strands. The sociologist Durkheim, for example, completely ignored van Gennep. Cf. now, nuanced on ritual studies in general, Dodd – Faraone 2005.

52 An often-quoted turning point is marked by the volume edited by Moore – Myerhoff 1977. Cf. also Fischer-Lichte 2003, 47–50.

53 Cf. the volume edited by Ambos – Hotz – Schwedler – Weinfurter 2005, which cuts across historical epochs.

54 E.g., Althoff 2003a; 2003b; 1997. From the plethora of works on the early modern epoch, cf. especially Muir 1997 and Davis 1975.

55 Representative are Flaig 2003; Jehne 2001; Jehne – Mutschler 2000.

56 Representative are Burkert ²1997; 1984.

57 Cf., e.g., Graf 1998a.

58 Cf. the numerous studies presented by Chaniotis, e.g., 2005; 2003; 2002a; 2002b; 1997.

the wake of these milestones of research, approaches to ritual studies began to be applied to various genres of Greek literature that have their origins in religious and cultic practice, especially tragedy⁵⁹ and comedy.⁶⁰ These studies are so convincing because Greek and Athenian life and social mores were steeped in religion to such an extent that one cannot look at any part of Greek daily practice from a purely secular viewpoint. There were no spaces without religion, only different gradations of the religious. This fact has allowed researchers to broaden ritual studies in their application to Greek culture and, in so doing, include the social and political dimensions of life. As a result, the penetration of every aspect of Greek daily life by rituals came to be discussed intensively, so that experts on Hellenic rituals soon turned to phenomena beyond religion. That is how the performative character of Athenian lawcourt trials, in particular, became the focus of many studies.⁶¹ Surprisingly enough, the violence discourse, which explicitly pervades all sources and was publicly staged and performed, has not yet found comprehensive treatment.

This is not the place to offer another definition of ritual, but it is crucial to delineate the broad notion of ritual as understood and employed in the context of this book. All studies on rituals agree that they are standardized, repetitive, symbolic actions embedded within a certain frame distinct from the actions of daily life. In many cases, they were performed in front of a selected audience at a certain place and time,⁶² not necessarily in connection with a religious or cultic act.⁶³ In conveying specific, so-

59 Some selective literature on Euripides' *Bacchae*: Goff 2004; Seaford 1996; Segal 1985; 1982.

60 E.g., Bierl 2009; N. Slater 2002; Lada-Richards 1999.

61 Hall 2006, 14, 353–390; 1995; Bers 2000; Burckhardt – von Ungern-Sternberg 2000; Johnstone 1999; Christ 1998a; Lanni 1997; W. Slater 1995; Ober – Strauss 1990; Humphreys 1985a. The contributions to the volumes edited by Goldhill – Osborne 1999 and Osborne – Hornblower 1994 are only partly concerned with the methods of ritual studies.

62 Köpping – Rao 2000b, 20. People also stage rituals on their own so that publicity is not an absolute requirement for a social action to be considered a ritual. No one would deny that the deposition of a curse tablet is a ritual act (see chapter III below). The message was intended for the agent of the curse, and gods were thought to be present during the magical act.

63 The literature is immense by now. Because of their introductory and paradigmatic character, cf. Bell 1997; 1992; Grimes 1982. Definitions, for example, in Wiles 2000, 27–29; Muir 1997, 1–11; Bell 1992, 16; Turner 1989b, 126; 1988, 75; Kertzer 1988, 8–12; Tambiah 1985b, 29; Grimes 1982, 19–33; Tambiah 1979, 119; Douglas 1974, IV.

cially relevant, and symbolic messages, they are flexible and dynamic and can thus be adapted to ever-changing situations and requirements of society.⁶⁴ Rituals often define the boundaries of space and thus close it to non-participants. Ritual objects increase solemnity and, in the case of Athenian law courts, conveyed the impression of fairness.⁶⁵ Ritual sound and language enhance the attendees' feelings of belonging together and having a common identity. This means that rituals also construct and represent reality, solidarity, and identity⁶⁶ by excluding others through drawing boundaries. Some of them heal through their integrative power.⁶⁷

In accordance with this definition and under the assumption that each and every ritual is performative, but not every performance is a ritual, I work from the basic premise that the enactments of forensic speeches, binding spells, and comedies were not only performative, but also worked like rituals and fulfilled the various functions of rituals. In sum: although Athenian society was imbued with religion, and religious rites permeated Athenian life, I will use a secular and broad definition of ritual in this book, as offered by anthropology. By applying methods of ritual studies to the quotidian phenomenon of violence, I hope to contribute to a further rapprochement between ancient history and the type of ritually oriented research more typically conducted in sociology, anthropology, and political science.⁶⁸

As to terminology, van Gennep's and V. Turner's theories are still fundamental. According to van Gennep, most ritual processes fall into three phases: rites of separation, rites of *limen* or margin, and finally rites of reaggregation, the reintegration of the participants into the community. We should keep in mind that, for van Gennep, all rituals were rites of passage, a view that has long become obsolete.⁶⁹ Turner intended

64 Cf. the contributions to Harth – Schenk 2004; Köpping – Rao 2000a.

65 An example is the Athenian lot machine (*klêrôtêrion*) that hundreds of men used every morning to ensure the proper functioning of the courts by making bribery impossible through the process of selecting the judges.

66 E.g., Hughes-Freeland – Crain 1998, 6–7.

67 It should not be forgotten that rituals are not just a means to achieve compromise and social equilibrium. Gluckman overcame this narrow functionalism by expanding on van Gennep. He demonstrated that rituals can also express social tensions. Cf. summarizing Bell 1997, 29, 38–39.

68 Symbolic anthropology was carried out in ancient studies with great success in the 1980s (e.g., Connor 1989; 1988a; 1988b; 1987; 1985; Strauss 1985), but its implications have not yet found sufficient resonance.

69 Originally, van Gennep referred, with these three phases, exclusively to rituals of transition in terms of space, time, and social status. But with the increasing ex-

to overcome van Gennep's static approach and integrate it into his own model of the "Social Drama,"⁷⁰ meaning the whole context of a conflict. To Turner, rituals not only lead to a new state of equilibrium and stability after a disturbance, but also initiate an endless dynamic process, in and through which society can at times redefine and reconstitute itself.

Turner regarded the liminal phase as being of utmost importance.⁷¹ In this sphere of the famous "betwixt and between,"⁷² a playful atmosphere holds sway with enormous leeway for reflection and creativity. The participants act and speak during this core phase of the ritual. We call their ritual actions *drômena* and their ritual words *legomena*, terms I will refer to in the subsequent chapters. In this ludic atmosphere, configurations of daily life can be reversed—Turner speaks of anti-structural elements—and, just as in fictional space, the participants can have experiences that their normal, daily routines would not allow. Through these experiences, the "initiates" are welded together and develop a sense of belonging, a community spirit (*communitas*) that shapes their identity and has a lasting effect on them. In the last stage of reaggregation, the "initiates" ideally undergo a change; sometimes the transformative power of rituals transposes the participants to social or cognitive levels they had not experienced before. This is especially true for van Gennep's *rites de passage*.⁷³ By no means, however, are all rituals rites of passage. Despite all the dif-

pansion of ritual studies, this model was transferred to ritual structures in general.

70 Turner recognized that all conflicts typically unfold in four distinct phases, thus showing a ritual structure. He calls this kind of regular pattern of conflict "Social Drama": (1) A *breach* of rules, laws, taboos or rituals leads to a *crisis* (2). Some culturally determined authorities try to resolve the conflict through some form of *redress* (3). The outcome is either the reconciliation of the rivaling parties (*reintegration*) or the *recognition of an irreparable schism* (4). The *redressive* phase, the phase of conflict resolution, is characterized by a multitude of possibilities; for example, political (from debate to revolution and war), legal-judicial (from arbitration within the family to mediation and formal court proceedings), or ritual processes, like the commission of oracular responses, divination, trials by ordeal, or sacrifices. Of course, social agents can also see violence as a means of phase three, the redressive phase. Turner concedes that violence can temporarily be regarded as "remedy." Turner explained this model in many publications, e.g., 1989a, 11–15, 108–139; 1984, 23–25; 1974a = 1976. Especially useful, since illustrated by a graph, is Turner 1990, 10.

71 Turner 1989a *passim*; ²1973b.

72 This term was coined by van Gennep 1909, but only found wide acceptance through Turner.

73 Van Gennep's theories have also found recent applications, e.g., Padilla 1999.

ferentiations to which theories of ritual have been subjected since the days of Turner and Schechner,⁷⁴ the lasting contribution of these early theorists can be seen in the fact that they placed special emphasis on the performative aspect of rituals and thus combined ritual and performance studies in a fruitful and far-reaching manner, forming what is today an almost inseparable unity.

Although lawcourt speeches, curse tablets, and comedies are highly heterogeneous in their character and message, they are, as stated above, united by one common factor: in their bodily enactment, they were all ritually framed and communicated symbolic messages, so that their stagings can be regarded as ritual processes.⁷⁵

These three types of rituals created, performed and represented, negotiated and commented upon a specifically Athenian violence discourse; lawcourt speeches and curse tablets even exerted violence indirectly. The ritual framing of each speech situation semantically charged the violence discourse, thus increasing its significance. In addition, the carefully prepared performance endowed this form of enacted discourse with a very special power over the audience. The participants underwent the typical phases of separation, liminality, and also, to a certain extent, reaggregation.

We can distinguish two basic types of rituals: rituals of interaction and rituals of representation.⁷⁶ The defining markers mentioned above are valid for both forms of rituals. Rituals of interaction emerge between

74 E.g., in the Heidelberg-based Collaborative Research Center “Ritual Dynamics.” Cf., e.g., Harth – Schenk 2004; Köpping – Rao 2000a.

75 From this perspective, all three genres are neglected in particular ways. Ancient historians concerned with speeches do not apply ritual theories to this immense material. Philologists have worked on ritual structures in comedy, but less so in oratory. Both philologists and historians tend to overlook the historical value of comedies, however fictional they may be. Exceptions confirm the rule; cf. Lape 2004. Curse tablets are neglected altogether from this viewpoint.

76 Based on Goffmann 1967, 19–20 (“ritual equilibrium”), Gerhardt 2004 came up with this fruitful categorization and interprets these two types in too narrow a sense, interactionist rituals being characteristic of democratic regimes, rituals of representation being typical of authoritarian regimes. In fact, these categories are much more broadly applicable. Harth 2004, 100 neatly summarizes Goffman’s thesis: “Nach Erving Goffman ist der Begriff der ‘ritual order’ geeignet, die symbolischen Kontrollmechanismen zu benennen, die gewohnheitsmäßig von den Akteuren eingesetzt werden, um die in alltäglichen Face-to-Face Situationen unvermeidlich auftretenden Risiken des Gesichts- oder Persönlichkeitsverlusts abzumildern, wenn nicht zu vermeiden.” This work attempts to reveal these symbolic mechanisms of control, which amount to a “ritual order.”

human beings on concrete, face-to-face levels of daily life. Since violent acts were by no means always ritualized in Athens, I rather speak of rules of interaction in the context of this book. They are the unwritten social norms or conventions underlying many outbreaks of violence. In this study, I seek to define these very norms by deciphering the semantic grammar of violence that constituted the line between acceptable and intolerable conduct. Rituals of representation, like forensic speeches and drama, staged discourses in public. The deposition of a curse tablet was most of all a ritual of interaction with the gods of the underworld, who were thought to be present, and the envisioned target.

The distinction of these two levels is of major relevance when dealing with societies from the past. It is correct that we only have access to discourses (level of representation) and not directly to Athenian reality (level of interaction), but discourses and social practices are nevertheless always inextricably intertwined. By suggesting a braid model,⁷⁷ the anthropologist of theater Schechner stressed the mutual penetration of socio-political life and staged public discourse.

Applied to Athens, the braid model shows that real-life actions more or less followed social norms and conveyed, more or less, a certain meaning, depending on how consciously and theatrically the perpetrators performed their actions. These events were then verbally rendered in court, more or less embellished, and structured in a more or less deliberately shaped narrative. Hence, real life influenced spoken discourse decisively, while the level of representation, in turn, had repercussions on reality. Athenian rituals of representation (trials, dramas) enacted the violence discourse in their respective performances and thereby also affected the actual perpetration of violence.

The Controlling Function of Ritualization

Athenian courtroom speeches and dramas (level of representation) were interconnected with daily life (level of interaction), which in turn shaped the cultural performances of speeches, tragedies, and comedies. Conversely, these large-scale rituals had a profound impact on how Athenians perceived and lived their lives. People learned in the courtroom and in

77 Schechner 1990, 96. Schechner (1990, 96–102; 1977, 76–77; 1976, 208) visualized this interdependence in his famous braid model (see the graph, e.g., in Turner 1990, 17).

the theater what the appropriate exertion of violence had to look like to be publicly justified and successfully defended if need be. It was only possible to utter things in the law court and in the theater that spectators could somehow recognize in daily life. The protagonists on the courtroom stage and in the theater of Dionysus were actors who performed the violence discourse in front of an audience.

The spectators, however, became actors themselves whenever they performed acts of violence in their daily interactions with other people. These acts were in many cases seen, watched, evaluated, and interpreted by other citizens, and thus gained significance. Not only words, but also deeds, especially theatrical actions, impart messages to spectators through their performative character.⁷⁸ Whenever human beings regularly perform actions within a certain frame and thereby follow culturally determined patterns of action at certain times and places, and if these patterns also convey symbolic contents, then it seems safe to conclude that these people enact rituals before an audience because rituals charge important actions with meaning.⁷⁹ From this perspective, we can assume that actual violence, as well, was sometimes ritually circumscribed and thus restrained. In these cases, we could rightly speak of the aforementioned rituals of violent interaction. While we can grasp such elaborate rituals of violence in medieval evidence,⁸⁰ and the staging and performance of rituals are of extraordinary importance in pre-modern and semi-oral societies,⁸¹ the evidence for Athenian rituals of violence, unfortunately, is scant, and I will henceforth mostly confine myself to speaking of rules of violent interaction.

The hypothesis of a ritually contained violence will help us answer a question of paramount historical importance. Why did the Athenians need to ritualize the violence discourse and perhaps even the perpetration of violence itself? That rituals play an essential role in conflict resolution is a crucial theoretical premise of this book. Mediation and arbitration, the elaborate court culture, the Boulê, the Areopagos, the Eleven,

78 Kertzer 1988, 68: "Socially and politically speaking, we are what we do, not what we think."

79 How they do it is still a matter of debate (Koziol 2002, 387). Tambiah 1985a, 84: "Thus, through ritual man imposes meaning on the world."

80 The volume edited by Sieferle – Breuninger 1998 on rituals of violence in medieval times is a model of what such research can look like today.

81 This is not to say that rituals are less important in modern societies. Cf. the contributions in Belliger – Krieger 1998 on modern rituals.

the cultural practice of gossip, social control,⁸² and religion were probably not sufficient to keep the large population of Athens under control.⁸³ Other means, hidden to the modern eye at first glance, must have played a crucial role in preventing, regulating, and restraining violence, and eventually in overcoming conflicts.

On the level of daily interaction, unwritten conventions and perhaps even rituals of violent interaction must have contributed to keeping Athens relatively peaceful. They made up for inherent administrative shortcomings and guaranteed that Athens would remain governable for the *dêmos* during the fourth century.

On the level of representation, the ritualization of the violence discourse served the purpose of symbolic communication.⁸⁴ The performances of forensic speeches and dramas instilled the prevalent values into citizens. Thus, these large-scale rituals of representation also contributed to restrain the most serious forms of violence without creating what we would consider a pacified society. At the same time, the ritually embedded narrations charged real-life acts with significance, another crucial communicative aspect of these large-scale performances.

These two vital functions—indirect containment of violence and facilitation of communication—ultimately strengthened the community's identity. Communicative rituals allowed for an inter-subjective exchange of opinions about the cases in question. The dissemination of this civic and civil violence discourse, which prevailed more and more during the fourth century, was only possible as a result of Athens' vibrant democratic structures, which were perpetuated by the democratic socialization of the citizens from childhood on.

82 In anthropology, gossip plays an important role in this context. The most detailed study on Athens in this respect is Hunter 1994. For questions regarding social control, the procedure of *dokimasia* is important as well, for only those being socially integrated could enlist witnesses for the questions to be answered during that procedure.

83 Hunter 1994, 151 raises this question poignantly, but is at a loss for an answer. Also Fisher 1998b, 71 emphasizes the stability of the Athenian social and political system without providing a sufficient explanation for this phenomenon.

84 Cf. Köpping – Rao 2000b, 7–8.

Sources – Chronological Scope

In order to make full use of the sources available and trace long-term developments, I regard the fourth century as a long century. Antiphon's earliest speeches from the 430s and Aristophanes' plays from 425 BCE on belong to it, as well as Menander's last comedies, dated to the beginning of the third century. I consider this long timeframe as a political, economic, and intellectual unity, in which, however, fundamental changes were gradually taking place, also and especially with regard to the discursive treatment of violence.⁸⁵

Hence, this book is about how Athenians reflected upon violence over time in the different performative genres they had at their disposal. The focus will lie on the axis separating tolerable from intolerable behavior around which the conversation on violence was organized. Since each genre warrants its own discussion and yields different information about the violence discourse, each will be treated in a separate chapter.

Speeches: Alongside the most famous instances (Lysias 1; Demosthenes 21 and 54), other incidents of battery and homicide shall be examined. Around thirty-five speeches altogether (out of approximately 150) mention or are concerned with some kind of violent behavior. The extant speeches are narratives and we have to adjust the "lenses" of our research tools accordingly. Ritualization on the level of representation engenders narrativity, a verbal description of a process in time. The creativity of the ritual transforms the purely empirical coexistence of experiences into stories.⁸⁶ Thus, the raw material of daily life occurrences is translated into more or less fictional tales. This is exactly what happened in the case of the forensic speeches. They are not mirrors of reality, but rather reflect how litigants perceived violence, dealt with it, and orally presented it to an audience. Narrativity, especially in a performative frame, engenders the meanings that cultural history intends to decipher.

Curse tablets: Around 270 curse tablets are preserved from fourth-century Athens, and these offer a unique insight into Athenian conflict mentality. Their violent language and perceived destructive power in the context of their ritual deposition are crucial to the questions explored in this book. Most curse tablets are judicial spells cast on adversaries before trials. Therefore, the tablets shed light on the courtroom speeches from a different angle. Elite members of society wrote or commissioned

85 Cf. Christ 1998a, 6.

86 Turner 1989b, 120–122.

most of these judicial spells. Many curse tablets, however, were written by members of the lower classes and are thus invaluable corrections to the speeches and the upper-class values expressed in them. For the underprivileged and weak, the magic explicit in the tablets was an opportunity to exert indirect violence.

Comedies: All eleven plays of Aristophanes yield a great deal of information about violence. They will serve as contrasting foils to Menander's *Samia* (314 BCE?) and the completely preserved *Dyscolus* (316 BCE). The larger fragments of New Comedy that deal with violence (*Epileptontes*, *Periceiomene*, *Misoumenos*, *Perinthia*, *Georgos*, *Heros*, *Colax*, and *Phasma*) will also be considered. The numerous fragments of the later Old, Middle, and early New Comedy will play a minor role because of the lack of context.

This study is situated at the interface between violence and ritual studies. It is the first concerted attempt at fully understanding interpersonal violence in classical Athens in its discursive and social ramifications. The ritualistic approach allows the historian to cast a wide net and combine heterogeneous sources into the context of a coherent methodological framework, so as to yield a comprehensive view of the Athenian violence discourse, its ritual framing, and cultural function.⁸⁷ It is only by trying to break up the specialization in the academic field that new windows will open up on the before-mentioned over-arching questions.⁸⁸

This study, finally, seeks to demonstrate that the symbolic meaning of violence was not defined by written laws⁸⁹—the definition of offenses being under-defined—but was rather constructed by rituals of representation. The question of definition was linked to questions of power structures, and one wonders how social norms and rituals of representation produced, reproduced, and thus perpetuated social hierarchies. The notion of violence in ancient Athens was constantly being publicly negotiat-

87 Vase paintings pose altogether different problems that can only be tackled by archaeologists and art historians. Cf. above 6, n. 32.

88 Athenians did not think in neatly separated compartments. Their violence discourse found its genre-specific echo in all sources.

89 Here lies, for example, the difficulty in defining an elusive term like *hubris*. Cf. above 3, n. 13 and 5, n. 25. According to circumstances and based on a culturally predetermined understanding, the litigants and changing court juries could ascribe a different meaning to it every day. If we understand Athenian courts as dynamic rituals, we see that the definition of terms like these must have been in constant flux according to the speakers' purposes and the audience's mood on any given day.

ed and ritually conveyed to the citizenry. It was the ritualization of violence on the level of representation (violence discourse) and, to a lesser degree, on the interpersonal level (exertion of violence according to rules of interaction) that guaranteed the continuity of Athens' social and political order. Analyzing the phenomenon of violence on various levels will reveal the fundamental differences between the Athenians' and our perception of violence.

II. Forensic Speeches

Illae omnium doctrinarum
inventrices Athenae,
in quibus summa dicendi vis et inventa
est et perfecta.
(Cicero, *De oratore* 1.13)

Ritual Framing

While Athenian trials were first and foremost legal procedures, they also fulfilled the functions of rituals. Religious rites permeated every aspect of Athenian life, including politics and jurisdiction, but even if we approached the legal sphere solely from a non-religious angle, we could still employ the broad, anthropological definition of ritual, as explicated above, and consider Athenian lawsuits as secular rituals, much as anthropologists regard today's sporting events and rock concerts as rituals. Since the litigants regularly enacted their disputes in front of an audience (judges, bystanders), we can also say that they staged their cases and, in so doing, conveyed symbolic meanings to the onlookers in and through a performative narration that worked very much like a large-scale ritual.¹ The corporeal aspect was of paramount importance and will concern us not only when dealing with the law courts as ritual communities, but also in the ensuing chapters on the magical curses and comedy.² The courtroom ritual

1 The creativity of the ritual transforms the merely empirical coexistence of experiences into narrations. Cf. Davis 1987, 120–121.

2 Turner and Schechner have frequently highlighted the close connections between real-life Social Dramas and stage dramas: Turner 1990, 17; 1989a, 161–195; 1989b, 116; 1979; Schechner 1990, 96–102; 1977, 76–94; 1976, 208. According to Schechner, “ritual dramas” such as courtroom speeches are designed to show a high degree of efficacy, whereas “stage dramas” show a high degree of entertainment. Since Athenian trials were often as entertaining (cf., e.g., Lysias 1 [*On the Death of Eratosthenes*] and 24 [*For the Disabled Man*]) as dramas may have been efficacious at reaching out into the *polis*, we have an additional criterion at hand to draw a parallel between the performance of a court session and a stage drama. Consequently, the analogies between the “ritual drama” of the courtroom and stage drama are significant. There is a reciprocal movement between ritual and theater. The ritual always tends to become theater, and vice

could only work if the actions (*drômena*) of the litigants (gesture and tone) and the words they spoke (*legomena*) were performed in a special context, a ritually marked-off place that all participants acknowledged as being distinct from the occurrences of daily life.

This ritual demarcation is better attested for the meetings of the Assembly of the People than for most courts. Considering some ritual features of the Ekklêsia first will enable us to draw cautious analogies between the Assembly of the People and the *dikastêria*. The Athenians were highly conscious of the political privileges they enjoyed through and in the general Assembly. Any citizen (*ho boulomenos*) could step forward to the *bêma* and speak on any issue of importance, as long as he did so in accordance with certain rules that the Athenians had given themselves in order to ensure the orderly conduct of the meetings. By the fourth century, Athenians differentiated between laws and decrees, but in fact a vote by the Assembly in the form of a decree carried great weight and almost had the power of a law. Given this solemn character of the occasion, every statement publicly uttered in the Assembly was a speech act that all participants in the ritual took seriously by default. Because of the prerogatives Athenian citizens enjoyed in this Assembly, it was closed to foreigners and metics. Latecomers were penalized by having to step over a dyed rope that was stretched around the Pnyx.³ The ritual event started with the drawing of a purifying boundary around the meeting place. The *peristiarch*, a priest who was responsible for the ritual purity of the meeting place, sacrificed young piglets, cut off their testicles, and carried them around the Pnyx.⁴ The periphery of this meeting area was sprinkled with their blood so as to make the confinement of the meeting place visible and cleanse it from all potential pollution, which might otherwise endanger the successful holding of this secular ritual.⁵ Before the actual session began, a herald performed prayers⁶ and cursed everyone intending to de-

versa. In other words, daily life has an impact on cultural performances (e.g., stage dramas). Conversely, the aesthetic performance of a stage drama affects ordinary life. This interdependence certainly applies to Athenian courtroom trials as well as drama.

3 Ar. *Ach.* 22; *Ec.* 378–379. The rope might also have served to gather the citizens together.

4 Moulinier 1952, 99–100.

5 D. 54.39; Aeschin. 1.23. The idea of the Pnyx as a sacred precinct characterized by purity is neatly expressed in Ar. *Ach.* 44. To ensure ritual purity, orators washed their hands in water before they spoke (Ar. *Av.* 463–465).

6 Aeschin. 1.23; Din. 2.14–16.

ceive the Athenian people, including traitors and enemies of the state.⁷ A similar procedure is also attested for meetings of the Boulê.⁸ This means that public meetings took place within a ritual and theatrical framework, like the performance of a stage drama. And indeed, Athenians frequently equated the political with the dramatic stage by using metaphors borrowed from the sphere of theater to characterize behavior in the Ekklēsia.⁹ To the Athenians, all public events were political and thus meaningful social practices. The ritual frame had a profound impact on the performers' behavior and their speeches. The speakers should display temperance in appearance and language. Speaking in too loud a voice and exaggerated gesticulating were frowned upon. Ideally, a speaker would hide one hand in his cloak.¹⁰ This ideal is visualized, for example, in the statue of Sophocles that was erected near the theater of Dionysus during the Lycurgan era.¹¹ The speeches themselves were highly ritualistic in their internal rhetorical structure,¹² a fact that we will investigate further below.

In the context of this book, however, I am less concerned with political speeches held on the occasion of an Assembly meeting than with the staging of forensic speeches, most of which were delivered in the dicastic courts. The buildings of the heliastic courts were firmly integrated into the Agora,¹³ and we can observe how carefully the Agora, as the center of Athens' political, social, and economic life, was delimited by a variety of rituals and other markers. First of all, the Agora seems to have been

7 And. 1.31; D. 19.70–71; 20.107; 23.97; Lycurg. 1.31; Din. 1.47; 2.16. The curse is parodied in Ar. *Th.* 331–371. Cf. on this curse Ziehbarth 1895, 61.

8 D. 23.97 and 19.70–71 both mention the Boulê, D. 23.97 also the courts. Cf. Kagarow 1929, 8.

9 E.g., Aeschin. 2.4. Dem. 5.7 is not a metaphor, but an explicit comparison. On the multiple analogies between theater and the Assembly of the People or the courtrooms, cf. Harris – Leão – Rhodes 2010; Hall 2006, 14, 353–390; 1995; Cohen 2005a, 22; Bers 2000; Lanni 1997; W. Slater 1995, esp. 144–147; Wilson 1991/92; Ober – Strauss 1990, esp. 238, 270; Humphreys 1988, 482.

10 D. 19.251–252 (with an idealizing reference to Solon); D. 22.68 (referring to Androtion's misbehavior in the Ekklēsia); Aeschin. 1.25–26 (referring to Timarchus' misbehavior in the Ekklēsia in contrast to Solon's ideal conduct imbued with self-restraint). In general, speakers were not supposed to burst into uncontrolled laughter (Isoc. 1.15).

11 Knell 2000, 139–145.

12 A good example of the ritual character of rhetoric is Demosthenes' speech against Meidias before a dicastic court. On its structure, cf. MacDowell 1990, 29–30.

13 Thompson – Wycherley 1972, 52.

surrounded by a “system of *horoi*,”¹⁴ boundary stones that visually and physically delineated the confines of the Agora. This was all the more necessary, because murderers and other people who had lost some or all citizens’ rights (*atimoi*) had to keep away from all public places so as not to defile them.¹⁵ This stipulation included the court buildings and demonstrates that the drawing of ritual boundaries was meant to be territorial and physical. We have ample evidence that it was especially in the courts that *atimoi* could not appear.¹⁶

The course of a standard dicastic trial was also highly ritualized. Multiple rites of separation dissociated the lay judges, in respect to time and space, from their daily routines outside court. At the beginning of the year, all Athenian citizens above the age of thirty who were willing to serve as judges took part in a lot procedure, which selected six thousand of them at random. These men swore a solemn oath that transformed them into potential judges.¹⁷ Thus, it was drummed into each layman’s head that, as a heliast, he was about to fulfill a crucial duty in the service

14 Lalonde – Langdon – Walbank 1991, 10; Thompson – Wycherley 1972, 117–119; pls. 4, 64: a, b.

15 D. 23.40–41. Even more explicit is D. 23.80, where he explains the *apagôgê phou* procedure. Athenian law distinguishes total from partial *atimia* (Hansen 1976, 61–66). Connected to these different degrees of *atimia* are serious social consequences, such as shunning persons considered to be *atimoi*. Cf. And. 1.73–79; Aeschin. 1.19–22, 28–30; Lys. 6.24–25; Arist. *Ath.* 57.4; IG I³ 104, lines 26–28 (Draco’s homicide law). On the various aspects of self-incurred and imposed *atimia*, cf. Hansen 1976, 66–67.

16 This is one of the reasons why Aeschines went into voluntary exile after Demosthenes defeated him in court. Having lost the *graphê paranomôn* against Ctesiphon—he had not received one-fifth of the votes—Aeschines suffered partial *atimia*. In his speech against Timarchus and his defense in the embassy case, Aeschines had tried hard to bring Demosthenes into some connection with the brutal murder of Nicodemus of Aphidna (Aeschin. 1.171–172; 2.148, 166 with scholia). A well-grounded suspicion that Demosthenes was a murderer would have been enough to make Demosthenes a partial *atimos* and thus bar him from public business. A similar strategy to knock out a political opponent is attested in Antiphon 6. The *chorêgos*, accused of being responsible for the accidental death of one of his chorus boys, claims that the charge against him is politically motivated. Philocrates, the brother of the dead Diodotus, only filed charges of homicide against him to prevent him from lodging an *eisangelia* against Philocrates’ friends. For this technique of framing for homicide, cf. below 46–48.

17 The oath of the heliasts is partly preserved verbatim: D. 24.149–151. Cf. Mirhady 2007, 49–50, 229 on the historicity of this passage and other sources pertaining to this particular oath.

of democracy. This oath defined and established the assembly of the *dikastai* as a ritual community and a vital organ of the democracy.¹⁸ Every court day began in the early morning with the complicated use of the allotment machine (*klêrôtêrion*), which randomly assigned every pre-selected citizen to a certain law court.¹⁹ The potential judge taking part in this elaborate ritual experienced with his own body how he was being treated as part of a larger whole, a representative sample of the citizen body rendering verdicts on that particular day. He also realized with all his senses that Athenian legal procedures were conducted in such a way as to prevent anyone from meddling with the composition of the law courts through bribery or other illegal means. “Playing” with the lot machine turned the former potential judge into an actual judge for a day. We could also speak of a twofold initiation “rite”²⁰ that a citizen had to undergo to serve as a *dikastês*, one at the beginning of the year, the other immediately before the court session itself.²¹ As with the Pnyx, the court buildings were probably also purified by the *peristiarch*.²² Before the sessions began, fire, myrtle wreaths, and incense were brought in, libations made, and Apollo invoked.²³ Courtroom trials were understood as secular rituals within a sacred sphere. The actual court proceedings were then opened by a sacrifice, the accused taking the sacrificial victim in his hand and swearing that the charge against him was not true. In doing so, he called down destruction upon himself.²⁴

Cases of intentional killings or serious woundings of citizens were not heard before dicastic courts, but before the Areopagos. There, the ritual oath of the *diômosia*, sworn only in trials for homicide (by *dikê phonou*) and wounding, was especially gory and thus charged with a high degree of significance. Standing over the entrails of a ram, a boar, and a bull, the litigants swore a horrible oath of self-execration upon themselves, their children, and their entire household. The prosecutor swore that one of his relatives had been killed, or himself or a relative wounded, by the ac-

18 On the identity-creating function of oaths, cf. Cole 1996.

19 Thür 2000, 42–45. Boegehold 1995, 32–33, 58 dates the introduction of this novel method of assigning *dikastai* to courts to ca. 410 BCE.

20 I use the word “rite” in the meaning of “religious ritual,” thus following the terminology of Ambos – Hotz – Schwedler 2005, 1.

21 Bers 2000, 557 speaks of a “civic ritual.”

22 Moulinier 1952, 101.

23 Ar. V. 859–874.

24 Aeschin. 1.114. On oath curses in courts, cf. Gagarin 2007; Faraone 1999a, 103–111.

cused; the accused swore that he was innocent. This oath ceremony had the purpose of discouraging frivolous charges for homicide and averting guilt from the judges in case they convicted the accused of intentional homicide and meted out capital punishment.²⁵ This practice did not apply to the Delphinion, where cases of lawful killing were heard.²⁶ Ritual sacrifices are attested for the Palladion, where cases of the unintentional killing of citizens and of killing non-citizens (regardless of intent) were tried.²⁷ The witnesses, too, took oaths at all court proceedings.²⁸ During the trial, the *klepsudra* habitually allotted a certain amount of time to each speaker.²⁹ This device helped stage the ritual and convey the impression of fairness to all parties involved. The speeches were interspersed with the readings of documents such as laws and decrees, private documents, statements of witnesses, evidence given by slaves under torture, oaths, and challenges.³⁰ These different genres of evidence helped structure the performance of the speeches and further enhanced the ritual character of the proceedings by drawing a line, time and again, between the daily life of the judges and their elevated, significant activity within this ritual circle. All of the evidence and instruments they saw, heard, and experienced enabled the judges to step out of the routines of their daily lives to fulfill the public duty required of them.³¹

25 I follow Loomis' argumentation (1972, 90), according to which Athenians did not differentiate between premeditated (*ek pronoias*) and intentional (*hekôn* or *hekousios*) manslaughter in the judicial context. Consequently, unpremeditated (*mê ek pronoias*) is equated with unintentional (*akôn*). Therefore, we should translate *mê ek pronoias* as "unintentionally," not as "without premeditation" (Phillips 2007 *passim* contra Wallace 1985, 98–100).

26 Antiphon 6.6, 14, 16; D. 23.67–69; 59.10; Lys. 10.11; Aeschin. 2.87 on the oath that a winner in a homicide trial had to take. Cf. Boegehold 1995, 46–47; MacDowell ²1966, 99–100.

27 Aeschin. 2.87; Ps.-D. 47.70. Our main sources for the different homicide courts are Arist. *Ath.* 57.3–4; D. 23.65–79. Phillips 2008, 59–61 gives an excellent overview of all homicide courts. Cf. also Sealey 1983, who tries to date the introduction of the different courts, and Boegehold 1995, 43–50 on their locations.

28 Carey 1995b.

29 Thür 2000, 46–47.

30 Cf. Harrison 1971, 133–153.

31 In this way, inserted documents are ritual attributes, which are supposed to underscore the rationality of the speech. Cf., e.g., the documents presented by Demosthenes against Meidias (laws, witness statements, oracles): MacDowell 1990, 43–47.

To Huizinga, the courtroom is a *hieros kuklos*, “a sacred spot cut off and hedged in from the ‘ordinary’ world” as a “veritable *temenos*.”³² The sacredness, or rather the solemn character, of the secular courtroom ritual could not be better expressed. If it is true that the Athenian courtroom circumscribed a kind of play-ground where the customary differences of rank were temporarily abolished,³³ we can speak of a liminal sphere with all its constituent parts as described by Turner and many others. And in fact, in the liminality of the Athenian courtroom trial, there was enormous scope for reflection, creativity, and the establishment of a special community spirit (*communitas*) for the judges, which promoted citizen identity through the public performance of the forensic speeches.³⁴ In ascribing certain qualities to opponents, judges, and spectators, the speakers were highly creative. The judges were required either to accept or reject a certain construction of character. By judging the case, the judges rendered a legal and moral verdict, exerted the supreme power of the *dêmos*, and represented it visually. Since the attendants of a law court constituted a public, the judges’ decision was open for all to see and carried political weight. The creative delivery of the speeches and the performative rendering of moral and legal judgment in the lawsuit ritual helped maintain the cosmos of the Athenian democracy,³⁵ for without courts Athenian democracy was inconceivable, and without courts the state would fall prey to tyrants. For fourth-century Athenians, the memory of the Thirty Tyrants remained a haunting specter. We will see to what a great extent the traumatic experience of the Thirty shaped the violence discourse.³⁶ The speeches dealing with violence clearly reflect the preoccupation with this previous rampant violence and civic strife.

In the ritual space of the courtroom, anti-structural elements were designed and put to debate: the social elites who set the tone in daily life “voluntarily” surrendered to the verdict of the masses in front of the people’s court. They humbled themselves and implored the judges, citizens of mostly low origins, to confirm them in their social status or to negotiate it anew. Mainly in the courtroom, otherwise underprivileged Athenians

32 Huizinga ⁴1964, 77.

33 Huizinga ⁴1964, 76–88 regards the staging of a lawsuit as a ritual play.

34 On citizenship as performance, cf. Farenga 2006, 6–7.

35 Cf. Köpping – Rao 2000b, 17–18, 24; J. Assmann 2000, 152–153 and below 146, n. 551.

36 On the difficulties and the politics of forgetting at Athens, cf. Wolpert 2002 *passim*; Flaig 2004a; 2004b; 1999; 1991; Loraux 2002.

held power over social superiors.³⁷ Judges and bystanders³⁸ were influenced and persuaded by arguments and learned a lot about acceptable and unacceptable behavior, which the judges had to “define” through the ritual of rendering the verdict.³⁹ The main protagonists of a lawsuit, prosecutors and accused, both of them acting on private initiative, vied for social prestige in front of an audience. The ritual of the court session turned them into winners and losers. All this was brought about by language and its performative enactment through persons. Persuasion by rhetoric (*peithô*) was regarded by many contemporaries as a magical force,⁴⁰ powerful and yet invisible. The gifted speaker who could enchant his audience with his words was a *magos* who could lead the listeners in any direction he wanted, the supreme goal of the sophists. In the realm of magic, the *goês* who wrote curses for a client was analogous to the logographer in the forensic sphere who wrote speeches for anyone who could pay his services.⁴¹ These analogies can be carried so far that it is hardly surprising that some wealthy Athenian litigants hired talented speechwriters and professional sorcerers side by side to crush their opponents.⁴² This close relationship between forensic speeches and curse tablets⁴³ will occupy us more in the next chapter, but, for our present argument, it is important to note that both forensic speeches and curse tablets amply testify to a world full of *phthonos* and *baskania*, traditionally translated as ‘envy’⁴⁴ and ‘the evil eye.’⁴⁵ It is telling that Athenian society found various ritual forms to express these problematic emotions.

37 In this sense, Philocleon’s addiction to courts in Aristophanes’ *Wasps* can be better understood. Taking an active part in the lawcourt procedures must have led to a tremendous degree of self-esteem among humble Athenians.

38 Cf. Lanni 1997, esp. 189 on the key role that bystanders played during court proceedings.

39 On the informal learning in court, cf. Rubinstein 2005b, 135–136.

40 Johnston 1999a, 118. On the close connection between magic and rhetoric, cf. below 184, n. 100.

41 On the analogies between rhetoric and magic, cf. De Romilly 1975 on the basis of Gorgias’ *Helen*.

42 Faraone 1999a, 116, 118.

43 On this relationship, cf. Bernand 1991, 234.

44 On envy, cf. below 169, n. 19. Envy was seen negatively throughout the fourth century (Walcot 1978, 67–76). Fisher 2003, 211 refines this view and differentiates between malicious *phthonos* and justified envy. The first variant dominated, however.

45 Dionisopoulos-Mass 1976 connects envy and the evil eye in a modern Greek village setting. Walcot 1978, 77–90 is still useful on the evil eye. Cf. below 169, n. 20.

The consequences of this ritual framing of the violence discourse cannot be overestimated. Whether in the Assembly of the People or in court or in the theater, the violence discourse was always enacted on the public stage within a ritually delimited precinct. If it is true that the congregation of the judges was a ritual community that was pre-eminent in constructing Athenian identity, the violence discourse must have played a key role in this dynamic process. This hypothesis will guide us in the ensuing treatment of the subject, establishing the discursive patterns of how Athenians talked about violence and thus constructed a semantic grammar of violence. The large body of orations, in which we can grasp most clearly the Athenian perception of violence and its evaluation by speakers, allows the historian to examine under what circumstances violence was regarded as legitimate or illegitimate. What we have access to in the speeches, however, are only discourses. In what follows I differentiate between discursive rules of interaction and discursive rules of representation. Sometimes the exertion of violence itself unfolded in accordance with the discursive rules of interaction. In these cases, the violence in question was characterized by some ritual traits: it followed certain behavioral patterns, occurred at a certain time and space, within a certain frame of onlookers, and displayed meaning to the audience. In these scenarios, we could say that the rules of violent interaction were ritualistic themselves and provided unwritten guidelines for committing violence.⁴⁶

Rituals circumscribing the actual perpetration of violence fulfill two major purposes: regulating violence and charging it with symbolic meanings that facilitate communication between the conflicting parties and the audience.⁴⁷ That such unwritten rules of interaction exist in every society is made clear by the disastrous consequences that failure to abide by them can entail.⁴⁸ How, then, can we extract rules of violent interaction, if the orators construct and rhetorically represent them in their speeches? We have to acknowledge that interactionist rules and their representation on the discursive level are inextricably intertwined and influence each other. This is a far more complicated problem than the conventional concept of the orators' "rhetorical distortion" of facts. Schechner's braid

46 Bell 1997, 138–169 speaks of ritual-like activities, which correspond to my concept of interactionist rules in the context of violence.

47 Köpping – Rao 2000b, 7–8 speak of rituals as a condensed and sublimated form of social communication. Bauman 1977, 9, 15 emphasizes the importance of the ritual as the communicative frame for the performance. Similar now is Stavrianopoulou 2006, 18.

48 Ambos – Hotz – Schwedler 2005, 4 with examples from the Middle Ages.

model is applicable to this context, too,⁴⁹ and provides a heuristic tool to untangle the two levels, or at least to become more acutely aware of them.

Rules of interaction and representation condition each other. Whatever one did in reality, one would represent in similar terms in court, or at least one would try to make the happenings probable and plausible.⁵⁰ Otherwise, one would not win the favor of the bystanders and the judges. Whatever one saw and learned in court, one would imitate in reality so as to make one's commitment of violence more defensible in the future. The ritualistic representation of violence influenced violence proper by partially ritualizing the actual perpetration of violence. In turn, actual violence often followed certain rules and thus facilitated its ritualistic representation in the courtroom and on the dramatic stage. Given these two distinct layers, we can postulate that rules of violent interaction and of representing violence show symbolic meanings on at least two distinct levels: in daily life, partly because the courtroom speeches endowed actual violent interactions with a certain significance, and in the forensic speeches, partly because daily-life occurrences already had some symbolic meanings and were furthermore semantically charged through the process of turning these occurrences into courtroom narrations.

The following discourse analysis will demonstrate that the speaker represents himself by characterizing his opponent as the complete opposite. The speaker's self-definition and the "otherness" of his rival create multiple dichotomies.⁵¹ Also, the notion of violence was not a stable entity, but depended heavily on the viewpoint of the speaker. What constituted violence lay in the eyes of the beholder, be it the victim of violent aggression, playing mostly the part of the prosecutor, or the perpetrator, starring mostly in the role of the accused. This creation of dichotomies, roles, and masks was an integral part of the courtroom experience and is precisely what brings forensic speeches into close proximity to theatrical performances. The audience, made up mainly of judges and bystanders, had to decide at the moment of performance which "role" was more

49 Cf. above 16, n. 77. In terms similar to Schechner's on the relationship between drama and reality, cf. Hall 2006, 1–15.

50 Cf. Pl. *Phdr.* 272d–e.

51 Cf. as well the constant negotiation between mass and elite in democratic Athens (Ober 1989).

convincing, the prosecutor's or the defendant's;⁵² this must have created an exhilarating experience of *communitas*, full of suspense.

In the eyes of the victim, violence was the breach of rules and the transgression of boundaries by a perpetrator. Spotting the manifold features that made up these boundaries, and thus contributing to the decipherment of the semantics of violence at Athens, are the primary goals of this chapter. As a first step, I focus on what the orators tell us about concrete violent actions, violent behavior that could be observed by a third party. In this way, the first part of the ensuing analysis is oriented toward discursive "facts" as far as they might have been discernible. The close reading of violent conduct in its wildly contradictory character will reveal codes of behavior which I call (ritualistic) rules of violent interaction. Overlaps with (ritualistic) rules of representation will be unavoidable, but will, it is hoped, be kept to a minimum. A second part will then concentrate on the interpretation and evaluation of these violent acts through the orators, that is, on the ritualistic representation of violence.

Constructing Violence: Discursive Rules of Violence I (Interaction)

In this section, only visible breaches, the violation of certain codes or rules of behavior, will be described. Taken all together, these actions constructed the notion of violence in the Athenian imagination. Threshold transgressions removed an action from the culturally constructed norms of proper conduct. The further the derangement from acceptable behavior, the more serious, relevant, and shocking an act was deemed. But even the breaking of rules often followed certain established patterns and was often to be expected by the involved parties. The axis around which the following presentation of all these breaches is structured is the fundamental dividing line between the defendant's and the prosecutor's points of view. The accused claimed the legitimacy of the violence he had used,

52 It must be noted that the strict dichotomy between speaker and opponent that is portrayed in this book is an idealization rather than reality, constructed by the litigants themselves. This binary system is only to be found on the discursive level. In practice, many more people and factions were involved in major lawsuits, as is evident, e.g., from judicial curse tablets, which lump many people together as adversaries. Cf. below 171, n. 29.

if he could not deny it outright or downplay it to a considerable degree. In the eyes of the prosecutor, the violence suffered was illegitimate. The following list of dichotomies will circumscribe the highly flexible line between legitimate and illegitimate violence.

Contexts

Mapping the context in which violence took place is crucial for understanding any act of violence,⁵³ for context frames the violent act and makes it comprehensible to the involved parties and bystanders. In fourth-century Athens, violence could be expected at drinking parties (symposia),⁵⁴ festive processions after public events (*kômoi*), during the training of choruses, in *gymnasia*, at games, and on the occasion of quarrels between neighbors. Violence was also foreseeable in lovers' quarrels,⁵⁵ on the occasion of the seduction of a female relative (*moicheia*),⁵⁶ when people felt offended by insults, in cases of a contested inheritance or unclear boundaries of plots of land,⁵⁷ and when goods were seized, either with or without state authorization.⁵⁸ Brawls could also erupt because of unclear citizenship status.⁵⁹ Lysias and Ps.-Demosthenes were aware of these situational hotbeds of violence and have left us telling

53 On the contexts of violence, cf. Fisher 1998a, 75.

54 Similar outbreaks of violence are frequently attested for medieval *convivia* (Kaiser 2002, 165–180). For violence in the context of Greek symposia, cf. Borg 2006, 224, n. 4 (with older literature).

55 Lys. 3 and 4; Aeschin. 1.135. In D. 54.14 Conon downplays the violence of his sons by claiming that it was not excessive and quite normal in the customary adolescents' competition to win young women as mistresses.

56 E.g., Lys. 1. Todd 2007, 43–60 provides an excellent introduction to Lysias' first speech. To Cohen 1991b, 100–101; 1984 *passim*, *moicheia* is the sexual "violation of the marital bond" only; a broader notion of *moicheia* would render Athens unique among Mediterranean societies. With this view, he is alone as far as I can see. Cf. Herman 2006, 268. Herman 1996, 33–36 argues in favor of abandoning the Mediterranean model altogether, because it is not applicable to ancient Athens. The *communis opinio* is that *moicheia* is illicit, consensual sex. Representative are Schmitz 1997, 124–140; Kapparis 1995, 122; Cantarella 1991b (with older literature). *Moicheia*, therefore, should be translated as 'seduction,' not as 'adultery.'

57 D. 37.33; Is. 8; 9; Hyp. fr. 21 (97–99).

58 Ps.-D. 47.

59 Lys. 23.

lists of the contexts in which people were particularly prone to violence.⁶⁰ Within these social frameworks, rules of violent interaction had developed and people were not surprised about outbreaks of violence. One of the most famous examples of violence outside these contexts is preserved by Demosthenes, and entails the prison neurosis from which Aristogeiton obviously suffered. After being imprisoned for a long time, he picked a fight with another inmate, a man from Tanagra, bit off his nose, and swallowed it. The other inmates were so horrified that they socially shunned him by sharing neither light nor food and drink with him. His extreme violence far beyond acceptable norms had made him an outsider in the eyes of the other prisoners.⁶¹ As we will see, speakers in court normally tried to represent the violence committed by their opponents as being deprived of all sense, or rather tried to charge it with a blatantly negative sense, while trying at the same time to cast their own violence in a positive light, as something tactful and replete with social sense.

First Blow versus Self-Defense

Concerning the origin of a fight, it was of paramount importance to demonstrate that the opponent struck the first blow and was thus the aggressor.⁶² Every speaker would portray his own share in violence as self-defense: the opponent had forced him to strike back.⁶³ At first glance, this statement sounds trivial, but there is more to it. Since in a confused *mêlée*, and especially afterward, it was hardly possible to make out who actually started the fisticuffs, the insistence on the “first-blow” rhetoric

60 Lys. 1.43–45; 3.43; Ps.-D. 47.19.

61 D. 25.60–62. A less serious incident is rendered at Plu. *Alc.* 8.1. Because of a bet with his friends and for the fun of it, Alcibiades hit the famous Hipponicus, the father of Callias. Since there was neither a genuine reason nor a customary context for this outburst of violence, people were outraged. The next day, Alcibiades repented by exposing his bare back to Hipponicus to be scourged. The latter, however, renounced his claim to revenge.

62 Striking the first blow made one liable for different offences: Hes. *Op.* 708 (general moral principle); Lys. 4.11, 15 (*trauma ek pronoias*); D. 23.50 (*aikeia*?); Ps.-D. 47.7–8, 35, 39–40, 47 (*aikeia*); D. 54.33 (*hubris*); Isoc. 20.1 (*aikeia* and *hubris*); Men. *Sam.* 576 (*hubris* indirectly); Arist. *Rh.* 1402a1–2 (*hubris*); IG I³ 104, lines 33–34 (homicide); Antiphon 4.4.2 (homicide); cf. Scheid 2005, 409; MacDowell 1978, 123.

63 E.g., Lys. 3.18.

was mainly of symbolic value.⁶⁴ It distributed guilt and innocence in the interest of the speaker. As in many pre-modern societies, retributive violence was considered socially acceptable at Athens under certain circumstances, a typical feature of a society that lacked a state monopoly on violence to a large degree, and therefore had to rely on a considerable amount of self-help,⁶⁵ including immediate self-defense, which is still permitted in modern law. Even retaliating disproportionately to the violence received was acceptable as long as the violence resorted to remained within certain limits and did not entail the killing of the opponent.⁶⁶

Murder versus Lawful Homicide

Homicide was the ultimate boundary that could not be transgressed except under very special circumstances, such as self-defense. Killing an Athenian citizen was too extreme a reaction to an insult suffered⁶⁷ and

64 Flaig 2006, 38 aptly speaks of the “mythische Qualität des ‘Anfangens.’” This holds especially true for historiography. Cf. Gould 1989, 63–65 on Herodotus’ probing into the causes of the Persian Wars and blaming Croesus for having committed the first injustices (Hdt. 1.5.3).

65 Hunter 1994, 120–153, 188 distinguishes between private initiative and self-help, the latter denoting concrete physical action against a malefactor. At the same time, self-help is a subcategory of self-regulation. This wider term describes the sum of all actions an aggrieved party had to take to compensate for the shortcomings of the state in terms of law enforcement. Schmitz 2004, 423–431 and Fisher 1998a, 88 stress the role of mutual help among neighbors. Phillips 2000, 256: “The law of classical Athens did not seek to eliminate or suppress self-help to any meaningful extent. Rather, given the ... dichotomy of a highly-developed legal system with very limited personnel, the Athenians relied on the initiative of private individuals for the administration of justice at all stages, before (the initiation of the lawsuit), during (the conduct of the prosecution and defense), and after trial (the execution of judgement).”

66 Flaig 2006, 38. This is the problematic point about the speaker’s allegation in Antiphon 4.2.2–3, where he pleads for “a head for an eye” approach. Cf. Dover 1974, 184.

67 A good example is the homicide in D. 21.71–75. In a fit of anger, Euaeon killed Boeotus with his bare hands, because he had insulted his honor during a symposium. This incident is often described as self-defense, but the trial was rather about Euaeon’s exaggerated revenge. Cf. Flaig 2006, 36–38. Flaig’s reasoning supports Gagarin’s view that cases of self-defense were heard before the Areopagos and not the Delphinion, because the question at stake was whether or not the killing had been intentional homicide (Gagarin 1978, 112, 120). It is telling that Euaeon was convicted by a single vote only, which means that many judges

was often regarded as disruptive to the citizen body because of its potential to trigger *stasis*. Exceptions stated in the Athenian homicide statute confirm the rule.⁶⁸ The Draconian law of homicide was geared toward calming down emotions after a homicide had been committed and toward removing the culprit from the community so as to prevent private vengeance. No other offense but homicide drew the line so sharply between permissible and impermissible use of violence. The Solonian regulation concerning an adulteress, for example, makes this abundantly clear. The husband had to divorce her. She was barred from all public places and was not allowed to participate in religious rites and festivals. If she did not respect these rules of social exclusion, anyone could do with her what-

must have found his deadly action legitimate. Therefore, Herman's insistence on the non-retaliatory philosophy of the *dikastai* (2006, e.g., 175) is untenable. Cf. below 59, n. 167 on Demosthenes' uncertainty how the judges would evaluate Meidias' punching him.

- 68 Draco's homicide statute is partly preserved. The epigraphic fragment from 409/8 BCE, a copy of the law issued in 621/20 BCE (IG I³ 104 = IG I² 115 = Syll. I³ 111 = M/L 86 = GHI I 87 = HGIÜ I 145), was republished by Stroud 1968. Gagarin 1981 also gives the text, provides an English translation (xiv–xvi), and a detailed interpretation of the Draconian law. In the epigraphical text, lines 33–36 refer to self-defense, lines 37–38 to lawful homicide. D. 23.60–61 is a verbatim quote from the part on self-defense. D. 24.113 mentions the justified killing of a thief at night, but ascribes this regulation to Solon. Lys. 1.30–33; Aeschin. 1.91; D. 23.53–56; Arist. *Ath.* 57.3; *Ath.* 13.569; and *Plu. Sol.* 23.1 refer to the *moichos* who can be slain in the act without punishment, and may therefore have been part of Draco's homicide statute (Stroud 1968, 81). Plutarch, however, attributes this law to Solon. Paus. 9.36.8 does link a law on *moicheia* to Draco, but not to a homicide law. Lys. 1.49, the allegation that a *moichos* can be treated by the *kurios* in whatever way he wishes, is supposed to bolster Lys. 1.30–33. Cf. Ruiz 1994, 167. Ogden 1997, 27 and Cohen 1991b, 100 think that one can also speak of the law of adultery, seduction, and rape with reference to these passages. D. 23.22 explains the competences of the Areopagos. Ps.-D. 43.57 provides us with the provisions for pardon in cases of unintentional homicide and indicates which relatives of the victim were morally obliged to take action against a murderer; in more detail, Ps.-D. 47.68–73 (down to and including the degree of descent first cousin once removed). Indirectly on Athenian homicide law Pl. *Euthphr.* 3e7–5d6. Schmitz 2001 convincingly argues that Draco only regulated the blood feud and codified this new regulation. Similar are Hölkeskamp 1999, 267–268; Ruschenbusch 1960, 152. Euphiletus, the speaker of Lys. 1, represents his killing as justified homicide, especially at 1.30 and 1.34. On the symbolic side of the *dikê phonou*, cf. Riess 2008.

ever he liked, apart from killing her.⁶⁹ The punishment for her disobedience was not only *talion*; it was almost boundless, unrestricted, absolute. Only her death was excluded as the ultimate boundary that could not be transgressed. Violating this threshold would have caused pollution and could have triggered civil strife.

Killing, except for self-defense and a very few other, qualified reasons, was taboo. This was the ideal. But reality might have been different. In a casual side-note, Lysias talks about the frequency of murders commissioned by enemies for money.⁷⁰ The speaker of Lysias 3, defending himself against Simon, interprets the law in a strange way that leads to the assumption that at least the wounding rate must have been quite high in Athens: 'Clearly our lawgivers also did not think they should prescribe exile from the fatherland for people who happen to crack each other's heads while fighting—or else they would have exiled a considerable number.'⁷¹

In the following paragraphs, I seek to explore the parameters by which homicides were morally assessed and adjudicated in court. Despite the unacceptability of homicide, it was not an objective, factual category of extremely violent misbehavior, understood by everyone alike as a serious crime. On the contrary, the relevance of a homicide hinged upon many factors, including the citizenship status of the victim, his political function, his or her legal and social rank, and sex. The number and kinds of boundaries that a violent action broke determined the societal relevance of the act. At the same time, the violation of these markers created the symbolism that was ascribed to a particular killing. Accordingly, subtle gradations in the assessment of the outrageousness of a homicide resulted. The reactions of the judges on the Areopagos or of legal interpreters (*exêgêtai*),⁷² and thus of the general public, were different on every occasion. We will concentrate first on the murderers *par excellence*, the Thirty Tyrants and to what extent they shaped—unknowingly—the

69 Ps.-D. 59.86–87; Aeschin. 1.183; cf. Arist. *Ath.* 59.3–4 (*graphê moicheias*). Cf. Omitowaju 2002, 113; Ogden 1997, 28–29. On the woman's punishment, cf. Schmitz 1997, 85–90; on the *moichos*' punishment, 91–106.

70 Lys. 1.44.

71 Lys. 3.42: ἀλλὰ δῆλον ὅτι καὶ οἱ τοὺς νόμους ἐνθάδε θέντες, οὐκ εἴ τις μαχεσάμενοι ἔτυχον ἀλλήλων κατὰξαντες τὰς κεφαλὰς, ἐπὶ τούτοις ἡξίωσαν τῆς πατρίδος φυγὴν ποιήσασθαι· ἢ πολλοὺς γ' ἂν ἐξήλασαν. Isoc. 15.252 points in the same direction: many people use the skills they have acquired in the *pankration* against their fellow citizens.

72 Even these interpreters of Athenian religious matters were no legal experts.