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DEMOSTHENES *AGAINST MEIDIAS*.
RESPONSE TO ANA LÚCIA CURADO

Professor Curado has done a fine job showing the role law plays in Demosthenes' speech against Meidias, and I agree with her that the speech reveals Demosthenes' "legal expertise." In my view, however, she is rather too ready to accept at face value Demosthenes' account regarding the facts of the case. In what follows I wish to raise some concerns about his account that cast doubt on the strength of his case. This in turn may lead us to reassess the reasons for his extensive discussion of the laws.

I begin with the observation that we are told remarkably little about the central event, the (alleged) assault that, Demosthenes claims, amounted to *hybris*.¹ Demosthenes recounts past disputes between himself and Meidias at some length; he also describes at length Meidias' treatment of others like Strato, the arbitrator; and he presents witnesses to confirm many of these accounts. In addition he tells us about others who violated the Dionysiac festival and were punished for it, arguing that Meidias similarly ought to be punished, and he mentions others whose crimes were serious but nonetheless pardonable, unlike those of Meidias. But about the specific act of *hybris* that lies at the center of the legal case he is bringing, he tells us almost nothing.

¹ This observation seems to have eluded recent editors (Goodwin, Humbert, MacDowell); it was brought to my attention by Myrto Aloumpi in an unpublished paper on "Storytelling and hybris in Demosthenes 21 (*Against Meidias*)" delivered at a conference in London in 2013. I am grateful to her for providing me with a copy of her paper. Despite our overall arguments being different, we make a number of similar points, and nothing I say here should detract from the originality of her work.

Here is what he does say about this act: at the beginning of the speech (21.1) Demosthenes speaks of the “blows” (*plēgous*) he received at the Dionysia.² Later he asserts that Meidias “committed *hybris* against my body” (ἐμοῦ μὲν ὕβρισεν τὸ σῶμα).³ Later in the speech we get a few peripheral details concerning the time and place of the alleged assault,⁴ but nothing further concerning the actual act of *hybris*.⁵ Years later, in referring back to the incident, Aeschines mentions knuckles (*kondylous*, 3.52), implying a blow with the fist, but Demosthenes does not specify this detail in his own speech. All he tells us is that the alleged act of *hybris* was physical; we have no further description of the act itself.⁶ The attentive reader may begin to wonder whether Meidias’ act of *hybris* was anything more than a slight push.⁷

It is also remarkable that although Demosthenes six times presents witnesses to testify concerning past crimes of Meidias,⁸ he presents no witnesses to testify to the assault for which he is bringing this case. Instead, he disguises the lack of a witness by rhetorically including the entire jury as witnesses: “for those acts that occurred in the assembly or in the theater in the presence of the judges, you are my witnesses, all of you, men of the jury.”⁹ Demosthenes implies that because everyone was a witness, there is no need now to present a witness in court to the testify to those events. Obviously, there is some exaggeration here: not every juror would have been at the theater that day. But this sort of exaggeration would not have been considered deceptive, as forensic speakers often speak of all the jurors being present at an assembly meeting or other large public event. No, the deception lies elsewhere, and the exaggeration may even help conceal it.

² Blows are also mentioned in 21.6, 7, and 12; see also the verb “strike” (*typtein*) in 21.61, 68 and 219.

³ 21.18. The same expression, committing *hybris* against the body, recurs in 21.25 and 126. Demosthenes also mentions that his body (*sōma*) was attacked in 21.7, 69, and 106.

⁴ “I was the victim of *hybris* at the hands of an enemy who was sober, early in the day, who acted out of *hybris* not influenced by wine, before many people, foreigners and citizens, in a shrine which, as a *chorēgos*, I was obliged to enter” (ἐγὼ δ’ ὑπ’ ἐχθροῦ, νήφοντος, ἔωθεν, ὕβρει καὶ οὐκ οἴνω τοῦτο ποιοῦντος, ἐναντίον πολλῶν καὶ ξένων καὶ πολιτῶν ὕβριζόμεν, καὶ ταῦτ’ ἐν ἱερῷ καὶ οἷ πολλῇ μοι ἦν ἀνάγκη βαδίζειν χορηγοῦντι, 21.74). These details reveal nothing about the assault itself.

⁵ In a discussion of possible actions anyone who strikes someone might take, Demosthenes mentions as alternatives striking “with knuckles or on the cheek” (ὅταν κονδύλοις, ὅταν ἐπὶ κόρρης, 21.72), but this comment tells us nothing about the act of *hybris* against Demosthenes himself.

⁶ All scholars assume that Meidias hit Demosthenes in the face, but there is no mention of this in the speech. The assumption may stem from Demosthenes’ general remark in 21.72 (see preceding note).

⁷ Of course, a juror, who only heard the speech once, would have had very little time to reflect on the presence or absence of details.

⁸ 21.22, 82, 107, 121, 168, 174.

⁹ ὅσα γ’ ἐν τῷ δήμῳ γέγον’ ἢ πρὸς τοῖς κριταῖς ἐν τῷ θεάτρῳ, ὑμεῖς ἐστέ μοι μάρτυρες πάντες, ἄνδρες δικασταί (21.18).

To understand this, consider the scene where the incident occurred: before the first play begins that day, Demosthenes enters the theater. Some spectators would still be outside the theater; others would already be seated; still others would be entering, finding their seats, talking with friends, etc. As *chorēgos* Demosthenes would be sitting down in front, but other dignitaries would also have been present: priests, other *chorēgoi*, various officials, and other notable public figures. Demosthenes gives the impression that every eye in the theater was carefully watching him from the moment he entered, but this seems highly unlikely. And even if many people were looking toward him, anyone who was more than a few rows back or more than a few seats away on either side would probably not have had a good view. Thus only very few of those present that day would have seen what happened. In other words, no matter how many people were present in the theater, there were probably very few close observers of the alleged crime.

When a fight breaks out in a crowd today, only a few observers who were very close to the participants can later say exactly what happened, and even these few are likely to disagree on details. In Demosthenes' case, he was likely accompanied by a few friends, and there may also have been a few other acquaintances nearby. Presumably, at least one of these would have been willing to testify about the actual assault, but Demosthenes does not call any of these to testify. Rather he conceals the absence of a witness with the claim that "you are all witnesses." Why does he not present a witness? The most obvious explanation is that Meidias' physical assault was not nearly so serious as Demosthenes suggests, so that a witness would have to choose either to tell the truth and expose the fact that the assault was trivial, or to lie about the facts and expose himself to a suit for false witness.

A different explanation for the scarcity of detail in Demosthenes' account and the lack of a witness, however, may be suggested later in the speech, when he remarks that *hybris* is hard to describe: "One who strikes might do many things when he commits *hybris*, some of which his victim would not be able to describe to someone else: his stance, his look, his tone of voice... No one reporting these matters, men of Athens, could present this terrible deed in a way that the true effect of the *hybris* on the victim and on those observing it could be made clear to his listeners."¹⁰ Demosthenes never says that this is the reason why he presents no witnesses (in any case he would not want to admit openly that he is not presenting any); but he may be suggesting this as his reason, and some in his audience might have found such an explanation plausible.

Ariston's suit against Conon (Dem. 54.8-9), however, shows that a rather precise description of an act of *hybris* can easily be given.

¹⁰ πολλὰ γὰρ ἂν ποιήσειεν ὁ τύπτων, ὃ ἄνδρες Ἀθηναῖοι, ὃν ὁ παθὼν ἔνι' οὐδ' ἂν ἀπαγγεῖλαι δύναιθ' ἑτέρῳ, τῷ σχήματι, τῷ βλέμματι, τῇ φωνῇ . . . οὐδεὶς ἄν, ὃ ἄνδρες Ἀθηναῖοι, ταῦτ' ἀπαγγέλλων δύναιτο τὸ δεινὸν παραστήσαι τοῖς ἀκούουσιν οὕτως ὡς ἐπὶ τῆς ἀληθείας καὶ τοῦ πράγματος τῷ πάσχοντι καὶ τοῖς ὀρώσιν ἐναργῆς ἢ ὕβρις φαίνεται (21.72).

Conon here and his son and the son of Andromenes fell upon me. First they striped me, then they tripped me, threw me in the mud, jumped on me and hit me so hard that my lip was split and my eyes were swollen shut. They left me unable to get up or say a word, but I heard them saying many terrible things, among which some were so awful that I would hesitate to say them in your presence. I will, however, tell you one thing that is evidence of the *hybris* of this man and an indication that the whole affair was his doing: he sang out like a victorious fighting cock, and the others urged him to flap his elbows against his sides like wings.¹¹

This detailed description belies the argument that *hybris* is such a subtle offense that it cannot be described in words to those who were not present. Thus, we are left with the conclusion that Meidias' offense, whatever it was, was most likely physically trivial.

One other possible reason for Demosthenes' avoidance of detail, however, might be that, in the agonistic culture of the Athenian aristocracy, he did not want to acknowledge having been treated in such a shameful fashion. Any extended discussion of the details of the assault might, on this view, lead the jurors to judge him as someone unwilling to respond to an attack on his honor and therefore undeserving of their sympathy.¹² Even without providing details, however, by suing Meidias and implying that the attack was a serious one, Demosthenes has already made clear that he was shamefully treated. And he includes a forceful defense of his refusal to respond physically to the assault and his reliance on the jury and the rule of law to obtain redress for his sufferings.¹³ Thus, it seems likely that the addition of more details to his account would not have made Demosthenes appear more shameful; but if they helped prove the seriousness of the assault, they surely would have increased his chance of securing a conviction. It thus seems unlikely that Demosthenes avoided giving details of the assault because this would have decreased his standing in the eyes of the jurors. Thus, once again we are left with only one possible explanation: the assault was physically trivial.

If this assessment is correct, then one line of argument Meidias would almost certainly have taken in response to the charge of *hybris*, is that any physical contact was trivial and that Demosthenes is trying to make a major crime out of what he

¹¹ Κόνων δ' οὔτοσι καὶ ὁ υἱὸς αὐτοῦ καὶ ὁ Ἀνδρομένους υἱὸς ἐμοὶ προσπεσόντες τὸ μὲν πρῶτον ἐξέδυσαν, εἶθ' ὑποσκελίσαντες καὶ ῥάξαντες εἰς τὸν βόρβορον οὕτω διέθηκαν ἐναλλόμενοι καὶ ὑβρίζοντες, ὥστε τὸ μὲν χεῖλος διακόψαι, τοὺς δ' ὀφθαλμοὺς συγκλείσαι οὕτω δὲ κακῶς ἔχοντα κατέλιπον, ὥστε μήτ' ἀναστῆναι μήτε φθέγξασθαι δύνασθαι. κείμενος δ' αὐτῶν ἤκουον πολλὰ καὶ δεινὰ λεγόντων. καὶ τὰ μὲν ἄλλα καὶ βλασφημίαν ἔχει τινὰ καὶ ὀνομάζειν ὀκνήσαιμ' ἂν ἐν ὑμῖν ἔνια, ὃ δὲ τῆς ὑβρεώς ἐστὶ τῆς τούτου σημεῖον καὶ τεκμήριον τοῦ πᾶν τὸ πρᾶγμ' ὑπὸ τούτου γεγενῆσθαι, τοῦθ' ὑμῖν ἐρώ· ἦδε γὰρ τοὺς ἀλεκτρυόνας μιμούμενος τοὺς νενικηκότας, οἱ δὲ κροτεῖν τοῖς ἀγκῶσιν αὐτὸν ἤξιον ἀντι πτερύγων τὰς πλευράς.

¹² See Cohen 1990.

¹³ "I think it was out of good sense, or rather good luck, that on that occasion I decided to hold back and not get carried away and take irremediable action. But I completely sympathize with Euaion [who struck back and killed his assailant]" (καὶ ἐμαυτὸν μὲν γ', ὧ ἄνδρες Ἀθηναῖοι, σωφρόνως, μᾶλλον δ' εὐτυχῶς οἶμαι βεβουλεῦσθαι, ἀνασχόμενον τότε καὶ οὐδὲν ἀνήκεστον ἐξαχθέντα πράξαι: τῷ δ' Εὐαίῳ . . . πολλὴν συγγνώμην ἔχω, 21.74; see also 21.76).

thought was an unfriendly look. This could have been a strong argument, especially if Meidias presented witnesses who testified that there was little or no contact or that whatever happened was initiated by Demosthenes. Interestingly, Demosthenes says nothing that might anticipate or refute this argument, even though he anticipates many other arguments that (he says) Meidias will make.

Anticipation of one's opponent's arguments is a common strategy in forensic pleading, and is especially frequent in Demosthenes' pleading.¹⁴ In Dem. 21 he anticipates many arguments Meidias will allegedly make. Early in the speech he anticipates that Meidias will argue that he has used the wrong procedure (25-28), that the dispute is a private matter between him and Demosthenes, not a public concern (29-35), and that many others have been the victims of similar crimes without being punished (36-41). Later he anticipates that Meidias will argue that other alleged victims of his have not brought suit against him (141-42), and that, like Alcibiades, he should not be harshly punished because of his public service (143-74). And at the end he anticipates that Meidias' supporters will ask the jury to ignore the law (205-18). It seems to me unlikely that Meidias will make all these arguments (or any of them), and I even doubt Demosthenes truly thinks Meidias will argue in this way, but the anticipation of these arguments provides an opening for him to stress (e.g.) that factors like the public setting of the alleged assault make this a public crime of concern to the whole city, or that far from ignoring the law the jury must adhere to the rule of law, which is fundamental to the democracy.

In addition, the anticipation of arguments here serves another rhetorical purpose, to distract the audience into thinking about some of arguments Meidias might (or might not) make, and thus not thinking about others that he would be more likely to make. Demosthenes is happy to direct the audience's attention to the possibility that Meidias will introduce his public service in a plea for leniency because this allows him to present his own negative account of that service before Meidias has a chance to give his own more favorable account. At the same time, the audience is distracted from noticing a point Meidias would almost certainly raise, the paucity of detail in Demosthenes' account of the act of *hybris* itself. Meidias may try to provide more detail in his own speech, but he will be at a disadvantage from the beginning, as the audience will have in mind that the assault was an especially serious one and will not be thinking about the possibility that it was trivial.

We may conclude from all this that Demosthenes employed all the rhetorical skill he had to convince the jury that Meidias' physical assault was much more severe than it actually was. His strategy is not to manufacture false details about the assault, but rather by using vague but suggestive language about the assault itself, together

¹⁴ Anticipation, of course, is a rhetorical strategy and usually involves misrepresenting whatever arguments the opponent will actually make. To my knowledge, the rhetorical use of anticipation in forensic pleadings has never been studied. The standard treatment of anticipation (Dorjahn 1935) is only concerned with how speakers might have learned of the arguments their opponents would or might make.

with extensive descriptions of Meidias' other offenses, both against Demosthenes and against others, to create the strong impression that this was one more in a long series of serious acts of aggression on the part of Meidias. At the same time, by bringing up several arguments that Meidias might make in response, he conceals the weakest part of his case which was much more likely to be attacked by Meidias, namely that the alleged assault was, in fact, physically trivial.

Seen against this background, Demosthenes' extensive explanation of the law against *hybris* and other laws and his emphasis on the importance of the laws and the necessity that everyone obey them become part of his overall rhetorical strategy, which is to draw attention away from the facts of the alleged assault and to focus the jurors' attention on Meidias' generally despicable character and his many past offenses against Demosthenes and others, both of which require that he be punished in order that the rule of law continue to be honored in the city. It is a strong rhetorical performance. Whether Demosthenes' rhetoric succeeded in persuading the jury, if in fact it was ever heard by a jury, is unknown.¹⁵ But he has succeeded in persuading scholars ever since that he suffered a serious physical assault at the hands of his enemy Meidias.

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¹⁵ Aeschines tells us (3.52) that Demosthenes sold his case against Meidias for thirty minas. Scholars dispute whether this means that he settled the case out of court and avoided a trial; see, e.g., MacDowell 1990: 23-28, Harris 2008: 84-86.