Chapter 9

Pitiable Dramas on the Podium of the Athenian Law Courts

Kostas Apostolakis*

1 Emotional Performances in Law Courts

Pity for undeserved suffering was one of the ideals, which composed the image Athenians had of themselves and their city throughout the classical period. Emotional appeals aiming at arousing pity are amply attested in genres such as epic and tragedy, which were considered a part of civic education. On the other hand, it is worth considering whether such ideals had any influence on the Athenians' behaviour in everyday life. A field very representative of the private and public life and the relative ideology is that of the Athenian law courts. It seems worthwhile, therefore, to focus on the use and the function of pity in forensic oratory, a genre closely associated with society, law and politics.

As is well known, for a defendant, pity was the appropriate feeling to elicit in an Athenian law court, as anger was for a prosecutor the desirable emotion to arouse in judges' minds. Aristotle associates pity with the sense of vulnerability that a person feels when seeing another's misfortunes; in other words, this particular emotion derives from the consciousness that what somebody else suffers is very likely to be experienced sometime by the person who feels pity. Another crucial dimension is that people deserving of pity are those who suffer undeserved misery. Verbal appeals to pity on the podium of Athenian law courts were usually intensified by performative devices and visual effects, such as gesticulations, vocal ploys, and the appropriate attire. As Aristotle notes,

*I wish to thank the editors for their valuable comments.


3 Ar. Rh. 1385b ἔστω δὴ ἔλεος λύπη τις ἐπὶ φαινομένῳ κακῷ φθαρτικῷ ἢ λυπηρῷ τοῦ ἀναξίου τυγχάνειν, ὃ κἂν αὐτὸς προσδοκήσει εἶναι παθεῖν ἢ τῶν αὐτοῦ τινα, καὶ τότε ὅταν πλησίον φαίνῃται. *let pity be [defined as] a certain pain at an apparently destructive or painful evil happening to one who does not deserve it and which a person might expect himself or one of his own to suffer, and this when it seems close at hand* (transl. G. Kennedy).

4 Cf. Anaximen. Rh. Al. 34.5 πάντες ἔλεούσι τούτους, σὺς ... οἴονταί ἀναξίους εἶναι δυστυχεῖν. *all have compassion for those whom ... they think do not deserve to suffer misfortune*.
those who support their speech with appropriate gestures, voices and miserable dress are more pitiable, because they set the evil before our eyes (πρὸ ὀμμάτων ποιοῦντες). Aristotle actually discusses here the quality which in later textbooks is called enargeia “vividness”: “a certain power to lead the things shown under the senses”.

It has often been suggested that the podium has direct and oblique associations with the theatrical stage. On the other hand, we should stress that while oratorical performance very often exploits imagery and language relating to theatre and acting, orators were careful to dissociate themselves from theatrical delivery while simultaneously ascribing it to their opponents, because in the popular mind there was a gap between theatre and truth. These practices are well exemplified in Demosthenes’ and Aeschines’ forensic debates. However, in modern bibliography forensic performances have been briefly dealt with and, as a result, some aspects have not been adequately discussed. In what follows, I focus on a special kind of forensic performances, i.e. selected entreaties used by litigants in public trials of political interest, which aim to arouse the pity of the judges. More specifically, I discuss both the sensual and the intellectual dimensions of these entreaties in the light of contemporary social and moral values and in connection with the intended impact on the audience. I argue that this investigation could contribute to the reconstruction of certain important aspects of an Athenian trial.

The most discussed manipulation of the visual sense to generate the desired emotional reaction in the history of Attic forensic oratory was credited to

---

5 Ar. Rh. 1386a ἐπεὶ δ’ ἐγγὺς φαινόμενα τὰ πάθη ἑλεεινά ἐστιν ... ἄνάγκη τοῦς συναπεργαζομένους σχῆμασι καὶ φωναῖς καὶ ἐσθῆσι καὶ ἐσθῆσι ὑποκρίσει ἐλεεινοτέρους εἶναι (ἐγγὺς γὰρ φαινεῖσθαι τὸ κακόν, πρὸ ὀμμάτων ποιοῦντες ἢ ὡς μέλλοντα ἢ ὡς γεγονότα· καὶ τὰ γεγονότα ἄρτι ἢ μέλλοντα διὰ ταχέων ἐλεεινότερα); “and since sufferings are pitiable when they appear near at hand ... necessarily those are more pitiable who contribute to the effect by gestures and cries and display of feelings and generally in their acting; for they make the evil seem near by making it appear before our eyes either as something about to happen or as something that has happened; and things are more pitiable when just having happened or going to happen in a short space of time” (transl. G. Kennedy).

6 δύναμις τις ὑπὸ τὰς αἰσθήσεις ἄγουσα τὰ δηλούμενα (ὅπως ὑποκριταίρεται ἐλεεινερέας; Lysias 7). On enargeia see Webb (2009b) 87–106.

7 For the most recent discussions, see Hall (2006) 383–386; Duncan (2006) 58–89; Serafim (2017).

8 See below, section 2.2 and Serafim (2017).

9 Bers (2009), esp. ch. 6, offers a brief survey of the more typical cases. Hall (2006) 353–392 deals with recognisable theatrical aspects in forensic oratory but her comprehensive study is not detailed. See Serafim (2017).