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RESPONSE TO EDWARD M. HARRIS

My comments will focus on two issues that are raised by Ed's paper: first, the role of feuding and agonistic values in Athenian litigation; second, the interpretation of Athenian measures concerning legal excess and abuse.

In my view, Ed's challenges to David Cohen's feuding model for Athenian litigation warrant modifying this model, not rejecting it completely. The feuding model is useful for understanding how some Athenians sought repeatedly to use the legal process and courts as instruments against their enemies. Ed's case studies illustrate how conflicts could differ from one another in how much they involved the legal process over time, and that escalation was not inevitable. Nonetheless, the individuals involved in these cases appear to have used the legal process (including arbitration) with some frequency (cf. Cohen 1995: 87-118, 163-68); however they chose to package their relationships with their opponents in court, intense enmity was probably present in many cases. I am not sure that we have to characterize such conflicts as "feuds" – it may well depend on how we define the word – and yet their intensity makes the label at least broadly applicable.

I find it very credible that some Athenians hated one another with an enduring passion and sought to avenge themselves on each other in a variety of creative ways within and outside of the legal process. While this is true of some individuals in any society, it is all the more credible for a society like Athens where competition for honor, prestige, and their material concomitants was intense. Ed goes too far in questioning whether Athens was an agonistic society. It was surely agonistic, in that it generated *agones* between individuals and groups in which men sought, among other things, to defend and enhance their reputations – in athletics, on the battlefield, in dramatic competitions, in politics, and in the courts. This mindset is well documented in literary sources. It also found concrete expression in curse-tablets, legal and other; battlefield trophies; choregic monuments; and vase-paintings depicting heroic winners and losers in the many different competitions of life.

Within this agonistic setting, however, it is reasonable to ask – as Ed does – whether the maxim "Help your friends, harm your enemies" accurately reflects social values. I suspect that it accurately reflects at least one strand of social values, and that many individuals regarded their social relationships in these terms. K.J. Dover (1974: 180-84) collects dozens of passages from diverse sources illustrating this point of view. In the passages that Ed cites from Sophocles' *Ajax*, Odysseus does not so much reject the idea of doing harm to enemies as qualify it:

one should not seek to harm an enemy when he is no longer a threat, namely, when he is mad (121-26) or dead (1332-45). This leaves considerable latitude for doing harm to sane and living enemies. In general, when tragedians treat the issue of enmity, they are presumably engaging with a genuine facet of contemporary life and its problematic social implications.

When we turn to the Athenian courts and their adjudication of cases, the feuding model of litigation runs into some difficulties. While it can help explain what brought some litigants to court, it does not fully explain how the courts evaluated legal contests. The conspicuous invocation of “quiet” or “cooperative” virtues in forensic oratory suggests that Athenian courts did not condone unrestrained competition between individuals, and might even reward those who sought to reduce rather than escalate conflict. Feuding behavior outside of court had to be translated into terms more palatable to the community. Ideals of cooperation mattered and so too did the city’s laws (cf. Christ 1998: 160-92).

If the feuding model of Athenian litigation has its limitations for explaining adjudication, so too does Ed’s alternative model, advanced here and elsewhere, that makes the courts first and foremost enforcers of laws, and the jurors – bound by their oath – dutiful servants of this purpose. There is a great deal in forensic oratory that has little to do with law *per se*. It is reasonable to argue, as Ed does, that we should not exaggerate the role of character and public service in forensic oratory, but at the same time we should not be too ready to discount this considerable body of material. It is precisely such material that can help us distinguish litigation in Athens from that in other societies.

The second major point with which I would take issue is Ed’s position that Athenians strongly discouraged feuding behavior in the courts by means of legal measures. I agree with Ed that Athenians were concerned about frivolous litigation, but I do not think they acted especially forcefully to restrain it (Christ 1998: 28-32; *contra* Harris 1999). At first glance, the sheer number of Athenian measures pertaining to legal excess and abuse might appear to contradict this. Some of these measures, however, are remarkably mild, especially in comparison to the outcry against abuses in the sources. Only three citizens and three metics can be charged with sykophancy by *probolê* before the Assembly each year ([Arist.] *Ath. Pol.* 43.5; cf. Christ 1992). Only after three convictions for false witness was a man *atimos* (And. 1.74; Hyp. 2.12). Furthermore, some measures may have been very difficult to use in practice, for example, the *graphê sykphantias*. This would explain why we hear so little of this action in our sources (Christ 1998: 31-32). It was much easier to complain of an opponent’s sykophancy within the context of an action brought on another basis than to pursue a *graphê sykphantias*.

The rules governing private actions probably did little to discourage individuals – especially wealthy ones – from bringing suit. The *prytaneia*, which was a court fee required in some private actions, cannot have been much of a deterrent to plaintiffs, as it was quite small relative to the amount at stake in a suit. For example, for a mere

three drachmas a plaintiff could bring suit in a case involving between 100 and 1000 drachmas. If the plaintiff lost, he also had to cover the defendant's three-drachma fee; but if he won, the defendant had to cover his fee. Indeed, the fact that defendants were subject to the same rules concerning *prytaneia* as plaintiffs suggests that these fees were not intended primarily as a deterrent to plaintiffs. In some private actions, the loser was subject to the *epôbelia* – a sixth of the sum under dispute (cf. Hansen 1982). While this penalty might deter some individuals from bringing suit, a plaintiff might consider the size of the penalty small in comparison to what he hoped to win.

The penalties for unsuccessful prosecution of most public suits were more substantial: an individual who won less than one-fifth of the votes at trial was subject to partial *atimia* and a 1000-drachma fine. It was possible, however, for an individual who did not want to risk partial *atimia* to pay someone else to assume this risk by bringing suit in his name; the real instigator could then join in as *synêgoros* at trial (Rubinstein 2000: 202-3). Alternatively, an individual could initiate the suit in his own name – thus risking partial *atimia* – but agree in advance to share the risk of the 1000-drachma fine with other interested parties. It is also important to remember that we do not know how common it was for jurors to award less than one-fifth of their votes to a prosecutor. Many prosecutors may have been confident that they could slip by with at least one-fifth of the votes, given their opponents' unpopularity and their own litigating skills. Prosecution of a public suit was always a gamble, and risk-takers were more likely to enter this contest than less venturesome men. Individuals who were pursuing personal and political enemies may have been especially ready to risk a fine and partial *atimia* on the chance of doing significant harm to their enemies by convicting them in public suits.

The Athenians could have taken much more drastic steps to curtail legal excess and abuse. The fact that they did not is significant. It was better in their view to allow cases to come to court where popular juries could evaluate them, than to limit access to the courts in the first place by extreme measures. In these circumstances, the pursuit of enemies – personal or political – through the legal process was a real possibility and probably a common phenomenon.

BIBLIOGRAPHY

- Christ, M. R. "Ostracism, Sycophancy, and Deception of the Demos: [Arist.] *Ath. Pol.* 43.5." *CQ* 42 (1992) 336-46.
- Christ, M. R. *The Litigious Athenian*. Baltimore, 1998.
- Cohen, D. *Law, Violence and Community in Classical Athens*. Cambridge, 1995.
- Dover, K. J. *Greek Popular Morality in the Time of Plato and Aristotle*. Berkeley, 1974.

- Hansen, M. H. "Atimia in Consequence of Private Debts?" In J. Modrzejewski and D. Liebs, eds., *Symposion 1977: Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Cologne and Vienna, 1982), 113-20.
- Harris, E. M. "The Penalty for Frivolous Prosecutions in Athenian Law." *Dike* 2 (1999) 123-42.
- Rubinstein, L. *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens. Historia Einzelschriften* 147. Stuttgart, 2000.