

David D. Phillips

Avengers of Blood

Homicide in Athenian Law and Custom
from Draco to Demosthenes

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To my grandparents

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My investigation into the Athenian law of homicide began as part of a dissertation completed at the University of Michigan in 2000 and titled “Homicide, Wounding, and Battery in the Fourth-Century Attic Orators.” This book is the result of a considerable process of rethinking whereby I decided to narrow my focus to homicide and at the same time to broaden the temporal scope of my inquiry so as to comprise the period from Draco’s legislation to the end of the Classical era.

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NOTE

For the citation of sources outside the traditional Greek and Latin canon I employ the following conventions. The Icelandic sagas are cited by chapter numbers in Smiley, Kellogg, *et al.* (2000); *Grágás*, the Medieval Icelandic compilation of laws, is cited by section numbers in Dennis-Foote-Perkins (1980). The eponymous law-codes of the Anglo-Saxon kings are cited by section numbers in Eckhardt (1958); for a Modern English translation and commentary on some of these see Oliver (2002). The *Code of Hammurabi* is cited by section numbers in Richardson (2000). The Old Testament of the Bible is cited according to the Septuagint version as edited by Rahlfs (1979).

The following abbreviations are used for standard reference works in the field of classical antiquity:

APF = J. K. Davies, *Athenian Propertied Families 600–300 B.C.* (Oxford 1971)

FGrHist = F. Jacoby, ed., *Die Fragmente der griechischen Historiker* (Leiden 1957–)

IG I³, I², II² = *Inscriptiones Graecae*, vol. 1 ed. 3 fasc. 1 (D. Lewis, ed.: Berlin and New York 1981); vol. 1 ed. 2 minor (F. Hiller de Gaertringen, ed.: Berlin 1924); vol. 2 ed. 2 minor (I. Kirchner, ed.: Berlin 1913)

*LSJ*⁹ = H. G. Liddell-R. Scott, *A Greek-English Lexicon*, ed. 9 rev. H. S. Jones with the assistance of R. McKenzie, with revised supplement (Oxford 1996)

*OCD*³ = S. Hornblower-A. Spawforth, eds., *The Oxford Classical Dictionary*, ed. 3 (Oxford 1996)

PA = I. Kirchner, *Prosopographia Attica*, 2 vols. (Berlin 1901)

RE = A. Pauly-G. Wissowa-W. Kroll, eds., *Realencyclopädie der classischen Altertumswissenschaft* (Stuttgart 1893–)

To denote specific kinship relations I use the abbreviations Fa(ther), Mo(ther), Pa(rent of unknown sex), Br(other), Si(ster), So(n), Da(ughter), Hu(sband), Wi(fe). These abbreviations appear in series; so, for example, BrSo = “brother’s son.”

ὅστις δ' ἀλιτῶν ὥσπερ ὄδ' ἀνήρ
χεῖρας φονίας ἐπικρύπτει,
μάρτυρες ὄρθαι τοῖσι θανοῦσιν
παραγιγνόμεναι πράκτορες αἵματος
αὐτῷ τελέως ἐφάνημεν.

But whenever a sinner like this man here covers up his blood-stained hands,
we are present as righteous witnesses for the dead, avengers of blood,
and with full authority we appear before him.

Aeschylus, *Eumenides* 316-20

INTRODUCTION

ENMITY, VENGEANCE, AND LITIGATION

The Classical Athenian democracy, established by the reforms of Cleisthenes in 508/7 B.C., encountered its first grave internal threat less than a century after its foundation. In the spring of 411, the oligarchy of the Four Hundred assumed power, heralding the nature of the new regime by deposing the Cleisthenic Council of 500. The rule of the Four Hundred and the more moderate oligarchy of the Five Thousand that succeeded it together lasted only a little more than a year, and democracy returned to Athens in the summer of 410. Immediately thereafter, the Athenians embarked upon a project that was to be the most lasting result of this brief oligarchic upheaval. The Revolution of 411 had challenged both the stability and the fundamental nature of the Athenian constitution; the democratic response to these challenges commenced with the passage of two measures in 410/09. A law authored by Demophantus (Andoc. 1.96–98 [*lex*]) safeguarded the democracy by condemning as a public enemy anyone who thenceforth plotted or participated in its overthrow; a second decree ordered a complete review of the vast, disparate, and sometimes contradictory assemblage of Athenian laws that defined the democracy which Demophantus' law protected.

This task of systematic revision and recodification, conducted by two boards of officials called Compilers (*syngrapheis*) and Recorders (*anagrapheis*), would last until 400/399, with a significant gap during 404/3 occasioned by the brief, yet convulsive, reinstatement of oligarchy by the Thirty Tyrants. Among the first targets of scrutiny, and possibly the very first, was the law on homicide authored by Athens' original lawgiver, Draco. Enacted in the archonship of Aristaechmus, 621/0 B.C., this was the oldest piece of Athenian legislation still in force, the sole survivor of an otherwise long-obsolete lawcode whose remaining provisions had been annulled only a generation after their enactment. Very recently, in the 420's or 410's (but before the oligarchy of 411), the Athenians had begun to apply the procedure of summary arrest (*apagôgê*) against suspected killers, thus providing an alternative remedy to the traditional Draconian lawsuit for homicide, the *dikê phonou*. Yet the codifying boards, despite their charge to reconcile inconsistent statutory language, decided in 409/8 to republish Draco's original homicide law without revision or amendment. In both the priority accorded to Draco's law in the order of revision and the resulting *imprimatur* of Draco's unaltered text, the Athenians treated this law with all the veneration due to a foundational document, granting it a place of honor not in spite of, but because of, its antiquity; not as a monument simply to the origins of their polity and the values of their ancestors, but to the continuing vigor of the legal and social doctrines embodied in the dictates of their first lawgiver.

Optimistic as they may have been, the constitutional safeguards enacted in the aftermath of the oligarchy of 411 proved no match for the pressures exerted on the Athenian state following the catastrophic conclusion of the Peloponnesian War in

404. The Athenian Assembly, acting under compulsion by the victorious Spartans, installed a new and more restrictive oligarchy headed by thirty men, known to later generations as the Thirty Tyrants. The Thirty ran roughshod over Athens' democratic institutions, including the recently confirmed Draconian homicide law. They ruled Athens by the scourge for eight months in 404/3, during which they presided over the capital trials of 1,500 of their fellow citizens and the exile of over five thousand more.

After a civil war swept the oligarchs from power in 403, Draco's law once again received concerted attention. The reconciliation agreement between the victorious democrats and the former supporters of the Thirty contained a blanket amnesty whose terms included a provision that directly addressed the application of Draco's law to the events of the regime of the Thirty. A clause of the Amnesty of 403 shielded from liability for homicide all Athenians (save the leaders of the late oligarchy) who had not killed with their own hands, thus countermanding Draco's dictum that the person who conspired to kill bore the same liability as the "own-hand" killer. Yet this fundamental (albeit temporary) suspension of a key Draconian provision was pointedly overlooked very soon thereafter. In 403/2 the Athenian Assembly passed a decree, authored by Teisamenus, which confirmed the validity of Draco's law *tout court* and contained no language recognizing the effect of the Amnesty. Once again, as earlier in the decade, the actions of the restored democracy demonstrated the centrality of Draco's homicide law to Athenian civic identity. The Thirty had effectively abolished the rule of law by monopolizing the administration of justice, imposing their own will and either ignoring or perverting time-honored legal procedures; the Athenians now took the first step toward reestablishing the rule of law by proclaiming the validity of the legislation of Draco and Solon. The Teisamenus decree confirmed the laws, measures, and weights of Solon and the homicide law of Draco as the foundations of the Athenian constitution; it reactivated the legal codification that had begun in the aftermath of the first oligarchy and had been suspended by the second, but specified that any new laws drafted by the codifiers were to supplement, not replace, the work of the ancestral lawgivers.

An allied phenomenon, particularly evident in Athenian public life in the aftermath of the Revolution of 404, illustrates the connection between the law of homicide and the equally durable Athenian ethic of private revenge. Draco had drafted his laws in response to immediate concerns facing late seventh-century Athens; the foremost goal of his homicide law had been to suppress retaliatory killings by replacing the physical vengeance exacted by the relatives of homicide victims with the jurisdiction of a court of law. By the late fifth century, direct violent retaliation was a distant memory, preserved only in traces in the legal procedures and funerary customs observed in the wake of a killing. Yet the concept of private revenge was not abolished but merely redirected, with the Athenian courts serving as its primary locus. So strong was this ethic that Athenians in the aftermath of the reign of the Thirty consistently applied the model and vocabulary of personal vengeance to the oligarchy of 404/3 and to the full-scale civil war that brought it down. Numerous speeches delivered in Athenian courts in the ensuing decades, and the sections of Xenophon's *Hellenica* and of the pseudo-Aristotelian tract on the Athenian consti-

tution (*Athenaiôn Politeia*) dedicated to the oligarchy and its aftermath, attest the extent to which the language of private enmity influenced Athenian public discourse in the years following 404/3.

These and other fifth- and fourth-century sources provide abundant evidence that Classical Athenian legal and social *mores* concerning homicide and the conflicts it occasioned remained fundamentally and solidly Draconian. Draco had composed Athens' first written laws for a *polis* governed by a hereditary aristocracy and possessing only the rudiments of statecraft; his homicide law nonetheless withstood the timocratic reforms of Solon, the tyranny of the Peisistratids, the institution of democracy by Cleisthenes, and the oligarchic upheavals and significant innovations to the homicide law of the late fifth century. In the fourth century, the legislation of Draco continued to dominate Athenian legal and social doctrine concerning homicide because the concept of private vengeance, sanctioned by custom and acknowledged in the law, survived, adapted, and remained at the core of the Athenian psyche. The interaction between these two phenomena – the developing law of homicide and the formalized social institution of enmity with its attendant ethic of private vengeance – in the period from the legislation of Draco (621/0 B.C.) to the time of the orator Demosthenes (d. 322 B.C.) forms the subject of this book.

Private enmity and the Athenian courts

The Athenian (or broader Greek) ethic of private enmity and vengeance and its role in the courts of Classical Athens have been addressed in a number of recent investigations.¹ In Athens, private enmity (*ἔχθρα*) was a socially recognized state of active mutual hostility, with established norms governing its proper and expected conduct.² People in a state of *echthra* were *ἔχθροί*, a word that is usually translated “(private) enemies” and that was consistently (but not universally) distinguished from *πολέμιοι*, “public enemies, enemies of the state, the enemy (in war).”³ The

1 Prominent recent studies include Cohen (1991), (1995); Blundell (1989); Seaford (1994); Herman (1993), (1995), (1996); Mitchell (1996); Rhodes (1996), (1998); Todd (1998); Christ (1998b), (2005); Kurihara (2003); and Harris (2005). Important earlier works include Treston (1923) and Glotz (1904).

2 Whether the term “feud” can be applied to this institution is the subject of heated debate, which is complicated by the conspicuous lack of scholarly consensus on what defines a feud. I sympathize with Cohen (above, n. 1) in advocating an expansive definition of feud that allows for variation between cultures, and the characteristics of Athenian *echthra* (see below) include significant elements that also characterize the institution of the feud in paradigmatic feuding cultures (such as Medieval Iceland: cf. Byock [1982]; Miller [1990]). There is, however, the danger that an excessively expansive definition of feud may lose its analytical value: see Harris (above, n. 1), the most extreme opponent of the application of a feuding model to ancient Athens. More moderate voices in the debate include Christ (above, n. 1) and Roisman (2005). Since the label “feud” may obscure more than it clarifies, I mostly avoid it here; the main exceptions are some comparative material in subsequent notes and chapter 1, on the circumstances surrounding the Cylonian conspiracy and the provisions and goals of Draco's homicide law.

3 See, e.g., Blundell (1989) 39.

characteristics of *echthra* and the expectations of *echthroi* are abundantly attested in Athenian forensic oratory of the fifth and fourth centuries B.C. These topics will be illuminated by consideration of a few of the most informative descriptions of *echthra* in the Attic orators.⁴

Lysias composed the first speech in his corpus, *On the Killing of Eratosthenes*, for an Athenian named Euphiletus (*PA* 6049), who was charged with killing his wife's lover sometime between 403 and *ca.* 380.⁵ In his defense, Euphiletus contends that he caught Eratosthenes (*APF* 5035 [*bis*], correcting *PA* 5035) in bed with his wife and was therefore justified in killing Eratosthenes by Draco's provisions on lawful homicide (*Dem.* 23.53 [*lex*]). In order to support the credibility of his version of events, Euphiletus offers the following argument to his jury:

τῶν μὲν μαρτύρων ἀκηκόατε, ὦ ἄνδρες· σκέψασθε δὲ παρ' ὑμῖν αὐτοῖς περὶ τούτου τοῦ πράγματος, ζητοῦντες εἴ τις ἐμοὶ καὶ Ἐρατοσθένει ἔχθρα πώποτε γεγένηται πλὴν ταύτης. οὐδεμίαν γὰρ εὐρήσατε. οὔτε γὰρ συκοφαντῶν γραφάς με ἐγράψατο, οὔτε ἐκβάλλειν ἐκ τῆς πόλεως ἐπεχειρήσεν, οὔτε ἰδίας δίκας ἐδικάζετο, οὔτε συνήδει κακὸν οὐδὲν ὃ ἐγὼ δεδιώς μὴ τις πύθηται ἐπεθύμουν αὐτὸν ἀπολέσαι, οὔτε εἰ ταῦτα διαπραξαίμην, ἤλπιζόν ποθεν χρήματα λήγεσθαι· ἔνιοι γὰρ τοιούτων πραγμάτων ἔνεκα θάνατον ἀλλήλοις ἐπιβουλεύουσι. τοσούτου τοίνυν δεῖ ἢ λαιδωρία ἢ παροινία ἢ ἄλλη τις διαφορά ἡμῖν γεγονέναι ὥστε οὐδὲ ἑορακῶς ἢ τὸν ἄνθρωπον πώποτε πλὴν ἐν ἐκεῖνῃ τῇ νυκτί.

You have heard from the witnesses, gentlemen. Now consider this matter among yourselves by investigating whether there was ever any *echthra* between me and Eratosthenes except this [i. e., Eratosthenes' seduction of Euphiletus' wife]. You will find none. For he did not bring public lawsuits against me maliciously, did not attempt to exile me from the city, did not bring private lawsuits against me, and did not know anything bad about me such that I wanted to kill him lest someone find out. Nor, if I should accomplish this, did I expect to receive money from somewhere; some people, you see, plot each other's deaths for such reasons. So far were we from any verbal abuse, drunken violence, or other dispute having occurred between us that I had never seen the man except on that night. (*Lys.* 1.43–45)

To make his account credible, Euphiletus attempts to persuade the jury that there was no prior *echthra* between himself and Eratosthenes. As Cohen has noted,⁶ in doing so Euphiletus gives examples of conduct that *echthroi* might be expected to display; namely, insults, litigation, and violence, including homicide. Euphiletus' choice of these acts as typical manifestations of *echthra* indicates that the term denotes not mere passive psychological hatred but demonstrated overt enmity: *echthroi* are not people who simply hate each other but people who act on their hostility by insulting each other, taking each other to court, and engaging in physical violence.

The presence or absence of *echthra* is also at issue in Lysias 4, composed for an unnamed defendant accused of striking his prosecutor with a potsherd and accord-

4 Several of these passages are also discussed by Cohen (above, n. 1) in his treatment of *echthra*, and my debt to his analysis will be clear. However, since these passages are crucial to my own concept of *echthra*, which differs from Cohen's in some respects, I hope that some repetition may be pardoned.

5 These are the dates of the earliest and latest speeches in the Lysianic corpus; Lysias 1 contains no indication of a specific date within this range.

6 Cohen (1995) 71–72.

ingly charged with intentional wounding (*trauma ek pronoias*). The defendant addresses the contested issue of *echthra* at the very beginning of his speech:

Θαυμαστόν γε, ὦ βουλή, τὸ διαμάχεσθαι περὶ τούτου, ὡς οὐκ ἐγένετο ἡμῖν διαλλαγῆ, καὶ τὸ μὲν ζεῦγος καὶ τὰ ἀνδράποδα, καὶ ὅσα ἐξ ἀγροῦ κατὰ τὴν ἀντίδοσιν ἔλαβε, μὴ ἂν δύνασθαι ἀρνηθῆναι ὡς οὐκ ἀπέδωκε, φανερώς δὲ περὶ πάντων διαλελυμένον ἀρνεῖσθαι περὶ τῆς ἀνθρώπου, μὴ κοινῇ ἡμᾶς χρῆσθαι συγχωρήσαι. καὶ τὴν μὲν ἀντίδοσιν δι' ἐκείνην φανερός ἐστὶ ποιησάμενος, τὴν δ' αἰτίαν δι' ἣν ἀπέδωκεν ἃ ἔλαβεν, οὐκ ἂν ἄλλην ἔχοι εἰπεῖν (βουλόμενος ἀληθῆ λέγειν) ἢ ὅτι οἱ φίλοι περὶ πάντων ἡμᾶς τούτων συνήλλαξαν ... Ἄλλ' ἦν, εἰ βούλεται, ἐχθρός· δίδωμι γὰρ αὐτῷ τούτο· οὐδὲν γὰρ διαφέρει. οὐκοῦν ἦλθον αὐτὸς αὐτὸν ἀποκτενῶν, καὶ βία εἰς τὴν οἰκίαν εἰσῆλθον ...

It is amazing, Council, to fight over this issue, that there was no reconciliation (*διαλλαγῆ*) between us. And it is amazing that he could not deny that he returned everything he took from the farm according to the exchange of property (*κατὰ τὴν ἀντίδοσιν*), but, although we were clearly reconciled on all points, he denies agreeing that we would own the woman jointly. He clearly conducted the exchange of property on account of her; and as for the reason why he returned what he took, he would have nothing else to say (if he were willing to tell the truth) than that our friends reconciled us on all these points... But he was, if he likes, my enemy (*echthros*); I grant him that: it makes no difference. So I came to kill him, and I entered his house by force.... (Lys. 4.1–2, 5)

In this case, both litigants evidently stipulated that a state of *echthra* had existed between them at some point before the defendant's alleged assault; however, as is evident from the defendant's opening remarks, one of the crucial points of dispute in this lawsuit is whether, at the time of the relevant altercation, the defendant and prosecutor had been reconciled, as the defendant claims, or were still *echthroï*, as his prosecutor contends.

This passage helps to elucidate the concept of *echthra* in several ways. The defendant's representation of his prosecutor's argument corroborates the comments made by Euphiletus in Lysias 1 with regard to the behavior expected of *echthroï*. The prosecutor in this case has proposed *echthra* as the defendant's motive for breaking into his house and attempting to kill him, thereby providing a specific allegation of one type of conduct described by Euphiletus as normative for *echthroï*. Here, however, the defendant raises the additional issue of reconciliation (*διαλλαγῆ*; plural, as here, *διαλλαγῆ*): he asserts by way of rebuttal that he was invited to the prosecutor's house, an act that presupposes a prior reconciliation between the two men. The contrasting arguments made by the prosecution and defense are informative: *echthra* is a credible motive for violent assault (and even attempted homicide), but one that disappears when the *echthroï* are reconciled. This is why the defendant places such emphasis on the issue of reconciliation: if the jury believes that the litigants were still in a state of *echthra* when the alleged assault took place, the prosecutor's story gains credibility; but if the two men had been reconciled, the defendant's motive becomes unclear. Consequently, the defendant later asserts that if his prosecutor had consented to torture the slave whose disputed ownership was at the root of the whole affair, she could have stated "whether we had been reconciled or were still *echthroï*" (*εἰ διηλλαγμένοι ἢ ἔτι ἐχθροὶ ἦμεν*, Lys. 4.10); using a standard tactic of Athenian forensic oratory, he interprets his adversary's refusal to submit the slave for torture as a concession of the disputed point. Finally, Lysias

4 not only illustrates the ramifications of reconciliation but provides an example of the nature and means of reconciliation. According to the defendant, common friends reconciled him and the prosecutor on condition that the two men rescind an exchange of property (*antidosis*) and agree to joint ownership of the contested slave. As described here, then, the reconciliation (*diallagê*) that brings *echthra* to an end is not a private affair involving the principals alone but a formal agreement witnessed (and in this case prompted) by friends of the disputants. Accordingly, *echthra* should be understood as a publicly recognized state of hostility that is ended officially by reconciliation.⁷

Yet another defining characteristic of Athenian *echthra* emerges from Lysias' fragmentary speech *Against Teisis*, in which the speaker gives the following explanation of the origin of the enmity between the alleged victim Archippus (*PA* 2543) and the defendant Teisis (*PA* 13497):

Ἀρχίππος γὰρ οὐτοσί, ὃ Ἀθηναῖοι, ἀπεδύσατο μὲν εἰς τὴν αὐτὴν παλαίστραν, οὐπὲρ καὶ Τεῖσις ὁ φεύγων τὴν δίκην· ὀργῆς δὲ γενομένης εἰς σκώμματα τε αὐτοῖς καὶ ἀντιλογίαν καὶ ἔχθραν καὶ λοιδορίαν κατέστησαν...

This man Archippus here, Athenians, practiced at the same wrestling school as Teisis, the defendant in this case. A dispute arose, and they became involved in insults and argument and *echthra* and abuse.... (Lys. fr. 75 Thalheim = fr. XVII.2 Gernet-Bizos)

The speaker then goes on to describe the escalation of the quarrel between Archippus and Teisis.⁸ On the advice of his lover Pytheas, Teisis decided to reconcile with Archippus outwardly (*ἐν τῷ παρόντι διαλλαγήναι*) but to remain watchful for opportunities against him. A reconciliation was accordingly effected, but later, on the pretense of inviting him to a drinking party, Teisis got Archippus into his house, where he and his slaves tied Archippus to a column and whipped him.⁹ As well as providing an additional example of reconciliation (this time feigned), which is supposed to signal the end of hostilities but in this case is employed by Teisis to catch Archippus off his guard, the speaker's allegations demonstrate the common phenomenon of the escalation of *echthra* from verbal abuse (*skômmata*, *antilogia*, and *loidoria*) to physical violence (the vicious assault upon Archippus that precipitates the instant lawsuit).

A more explicit and detailed description of the escalation of *echthra* appears in Demosthenes 54, *Against Conon*, composed in the mid-fourth century.¹⁰ The prosecutor, a young man named Ariston (*PA* 2139) who charges Conon (*PA* 8715) with battery (*aikēia*), explains that he and Conon's family have been engaged in a quarrel of long standing:

7 Cohen (1995) 72.

8 Cf. Cohen (1995) 137–38.

9 Comparison with a similar allegation made by Aeschines (1.58–59) may suggest that such an act represented a paradigmatically extreme form of insult: see Fisher (2001) 197.

10 Commentators have long tended to favor a date of either 355 or 341: see, e.g., Dindorf (1846–51) 7.1311; Schäfer (1858–87) 4.251; Blass (1887–98) 3.1.456–57; Paley-Sandys (1886–1910) 2.lxiii; Carey-Reid (1985) 69; Bers (2003) 67.

Ἐξῆλθον ἔτος τοῦτ' τρίτον εἰς Πάνακτον φρουρᾶς ἡμῖν προγραφείσης. ἐσκήνωσαν οὖν οἱ υἱεῖς οἱ Κόνανος τοῦτοῦ ἐγγύς ἡμῶν, ὡς οὐκ ἂν ἐβουλόμην· ἡ γὰρ ἐξ ἀρχῆς ἔχθρα καὶ τὰ προσκρούματ' ἐκεῖθεν ἡμῖν συνέβη...

Two years ago I went out to Panactum when garrison duty was assigned to us. The sons of this man Conon here camped next to us, as I would not have wished: for the original *echthra* and collisions between us occurred beginning from that point.... (Dem. 54.3)

The speech then traces the course of the dispute, involving first Conon's sons and finally Conon himself and others, from Panactum to Athens. At Panactum, Conon's sons initially mistreated Ariston's slaves by beating them, emptying chamber-pots on them, and urinating on them in retaliation for pretended insults. They then progressed to harassing Ariston himself and his tentmates, who responded by lodging a complaint with their general. That night, after receiving a tongue-lashing from the general, Conon's sons came to Ariston's tent, and verbal abuse soon led to violence: "at first they insulted me, but they ended up throwing punches at me too" (*τὸ μὲν πρῶτον κακῶς ἔλεγον, τελευτῶντες δὲ καὶ πληγὰς ἐνέτειναν ἐμοί*, §5).

The brawl was broken up by various officers and soldiers, but bad blood between Ariston and Conon's family remained after the men returned from garrison duty at Panactum to their homes in Athens: "when we came back here," Ariston informs his jury, "as a result of these events there was anger and *echthra* between us, as you would expect" (*ὡς δεῦρ' ἐπανήλθομεν, ἣν ἡμῖν, οἶον εἰκόσ, ἐκ τούτων ὀργή καὶ ἔχθρα πρὸς ἀλλήλους*, §6). In other words, as Cohen observes, "[a]fter returning to Athens, Ariston and the sons of Conon were in a state of enmity."¹¹ While Ariston was content (he says) simply to avoid his new enemies, the feeling was not mutual: one night, after encountering Ariston and his friend Phanostratus in the Athenian agora, Conon's son Ctesias (*PA* 8848) gathered a posse that included his father and at least four others. The men then returned to the agora, where they gave Ariston a severe and humiliating beating and stole his cloak (§§7–9). In contrast to his adversaries, who used violence in pursuit of the enmity between them, Ariston responded by resorting to litigation. The course of the dispute between Ariston and the family of Conon thus demonstrates another defining aspect of Athenian *echthra*; namely, the interchangeability of violence and litigation as means to attack an enemy. Nor should we presume that Athenians necessarily viewed litigation as preferable to violence: Ariston's lengthy rebuttal of Conon's expected argument that brawls between young men are no matter for the courts (§§13ff.) betrays a concern that some of the jurors will agree with Conon and countenance some uses of violence in furtherance of *echthra*.¹²

The use of legal prosecution against private enemies is further exemplified by the actions of the speaker of Lysias 14, who prosecuted Alcibiades (*PA* 598; *APF* 600.VIII.A, X), the son and namesake of the prominent politician (*PA* = *APF* 600), for desertion by a *graphē lipotaxiou ca.* 395.¹³ The oration begins,

11 Cohen (1995) 124.

12 Cohen (1995) 126–27.

13 For the date see Todd (2000) 161 with n. 1.

Ἡγοῦμαι μὲν, ὦ ἄνδρες δικασταί, οὐδεμίαν ὑμᾶς ποθεῖν ἀκοῦσαι πρόφασιν παρὰ τῶν βουλομένων Ἀλκιβιάδου κατηγορεῖν· τοιοῦτον γὰρ πολίτην ἑαυτὸν ἐξ ἀρχῆς παρέσχευ, ὥστε καὶ εἰ μὴ τις ἰδίᾳ ἀδικούμενος ὑπ' αὐτοῦ τυγχάνει, οὐδὲν ἦττον προσήκει ἐκ τῶν ἄλλων ἐπιτηδευμάτων ἐχθρὸν αὐτὸν ἡγεῖσθαι.

I believe, men of the jury, that you need to hear no reason stated by those who want to prosecute Alcibiades: for from the beginning he has led his civic life in such a way that, even if one happens not to have been privately wronged by him, it is no less fitting, on the basis of his other practices, to consider him an enemy (*echthron*). (Lys. 14.1)

As this passage shows, Athenians of the classical period considered *echthra* to be not only a predictable motive for prosecution (cf. Lys. 1.43–44) but a valid motive.¹⁴ The speaker declares Alcibiades *echthros* in order to justify his prosecution, and he invites the jury to view the defendant likewise and, by implication, to convict him. In a similar vein, the speaker of Lysias 15, who also accuses the younger Alcibiades of military dereliction, informs his jury that he is prosecuting Alcibiades in order to punish a personal enemy and sees the conviction of Alcibiades as his due: “I am helping my friend Arcestratides and seeking vengeance upon Alcibiades, who is my enemy, and I ask you to render a just vote” (ἐγὼ μὲν οὖν καὶ φίλω ὄντι Ἀρχεστρατίδῃ βοηθῶν καὶ Ἀλκιβιάδην ἐχθρὸν ὄντα ἐμμαντοῦ τιμαρούμενος δέομαι τὰ δίκαια ψηφίσασθαι, Lys. 15.12). For the Athenians, therefore, the demands of *echthra* and the demands of justice were not necessarily opposed; in fact, in prosecutorial rhetoric (as here), they commonly coincided. A comparison of these statements by Alcibiades’ prosecutors with Euphiletus’ disclaimer in Lysias 1 reveals that Athenian litigants might employ the trope of *echthra* either positively (as in Lysias 14 and 15) or negatively (as in Lysias 1), arguing that *echthra* between themselves and their adversaries either did or did not provide the motive for a given act, according to the needs of the individual speaker and case.¹⁵ Both the positive arguments, which justify prosecution on the grounds of *echthra* between prosecutor and defendant, and the negative arguments, in which litigants find it advantageous to disclaim *echthra* – presumably because Athenian juries were disposed to posit it unless refuted – demonstrate that, on general principle, the Athenians recognized *echthra* as a legitimate motivation for bringing legal action; or, to put it differently, that the Athenian courts were considered a proper venue for pursuing personal hostilities.¹⁶

14 Rhodes (1996) 25, (1998) 156–57; Mitchell (1996) 13; Gagarin (1997) 11; Fisher (2001) 119–20. Kurihara (2003) argues for a distinction between private lawsuits, in which personal enmity served as acceptable grounds for litigation, and public lawsuits, where Athenian sentiment spurned the pursuit of personal enmity in the public forum. But Kurihara assembles enough evidence for the declaration of private enmity in public lawsuits (including Demosthenes 22, treated below in chapter 3, and Lysias 12 and 13, the subjects of chapters 6 and 7) to render this conclusion highly dubious. Note, too, that in Lysias 1 (above, p. 16) Euphiletus lists both private and public lawsuits as paradigmatic manifestations of *echthra*.

15 Dover (1994) 182; Cohen (1995) 72; Rhodes (1998) 156.

16 Cohen (1995) 87–118; Rhodes (1998) 156–57; cf. Christ (1998b) 162–63; Kurihara (2003) 466 (for private lawsuits only, but see n. 14 above).

From the Attic orators' use of the terms *echthra* and *echthros*, of which the foregoing citations represent only a small sample, emerge four defining elements of the Athenian institution of private enmity, which may be stated as follows:¹⁷

1. *Overt act requirement.* The commission of an overt act is necessary for a formal relationship of enmity to exist.¹⁸ A and B may hate each other intensely, may wish each other harm, may in fact plot to harm one another, but as long as the hostility remains in their minds alone and they do not act upon it, they are not recognized as *echthroï*. Hence, in Lysias 1, Euphiletus defines *echthra* in terms of actions, not thoughts. Once an overt act has been committed, however, a hostile relationship can be characterized as *echthra*.

The overt act may take a variety of forms: verbal abuse, physical violence, or litigation. So, to return to the example of Lysias 1, Euphiletus' catalogue of hostile behavior includes verbal abuse (*loidoria*), physical violence (*paroinia*, designating violence committed under the influence of alcohol), and lawsuits both private (*idiiai dikai*) and public (*graphai*). Verbal abuse can occur at any point during a conflict between enemies, and Athenians regarded insult as a natural precursor to physical violence (Dem. 54.17–19; below, pp. 24–25) as well as a standard courtroom tactic. Thus the fundamental decision confronting Athenian *echthroï* was a choice between violence and litigation; verbal abuse could attend either.

2. *Flexibility and variation.* *Echthroï* might employ violence, litigation, or both at any stage of conflict. As we see in Demosthenes 54, even after being physically assaulted by Conon and his gang, Ariston was not required by the norms of Athenian *echthra* to respond with violence; he brought Conon to court instead. Perhaps the best example of this flexibility in action is the lengthy and well-documented dispute between Demosthenes and his *bête noire* Meidias (PA = APF 9719) described in Demosthenes 21, *Against Meidias*.¹⁹ The enmity between the two men commences when Meidias and his brother break into Demosthenes' house and insult its occupants (§§78–80); Demosthenes retaliates by lodging and winning a lawsuit for slander (*dikê kakêgorias*, §§81–101) and by initiating a lawsuit for ejectment (*dikê exoulês*) that never comes to court (§81). Some fifteen years later, things come to a head when Demosthenes serves as producer (*chorêgos*) for his tribe's chorus at the Dionysia of 349/8 (§13). Meidias makes several attempts to undermine the appearance and performance of Demosthenes' chorus (§§14–18) and finally punches Demosthenes in the face during the festival itself (*hyp.* 1.2, 2.5; §§1, 18, 74; Aeschin. 3.52). In response, Demosthenes obtains a preliminary verdict against Meidias in the Assembly using the *probolê* procedure (§§1–2). Meidias retaliates by prompting a third party, Euctemon (PA 5800),²⁰ to prosecute Dem-

17 Cf. Cohen (1991), (1995) on Classical Athens, and Miller (1990) and Byock (1982), (2001) on the Medieval Icelandic feud.

18 Cf. Miller (1990) 181.

19 Goodwin (1906); MacDowell (1990); Cohen (1995) 90ff.; Herman (1995) 48–50; Rhodes (1996) 23–24, (1998) 150–52. Another detailed description of the progression of a conflict involving both litigation and violence occurs in [Demosthenes] 47, *Against Euergus and Mnesibulus* (see chapter 4).

20 On the identity of this bearer of a common Athenian name see MacDowell (1990) 325–26.

osthenes for desertion (§103). Euctemon is supported by one Nicodemus (*PA* 10868), who is subsequently killed by Demosthenes' friend Aristarchus (*PA* 1656); Demosthenes is suspected of complicity in the homicide but never charged (§104; Aeschin. 1.170–72, 2.148; Din. 1.30).²¹ Meidias then speaks against Demosthenes at Demosthenes' *dokimasia* (candidacy examination) for the Council of 500 in 347/6 (§111). Demosthenes may have delivered the *Against Meidias* soon thereafter in a prosecution stemming from the altercation at the Dionysia two years earlier.²²

Demosthenes 21 thus amply illustrates the extent to which flexibility and variation characterized Athenian *echthra*. Not only does Demosthenes' description of his ongoing battle with Meidias contain concrete examples of the paradigmatic manifestations of enmity listed by Euphiletus in *Lysias* 1, but both sides use litigation and violence interchangeably, with either weapon sufficing to commence, continue, or escalate hostilities. In pursuing an enemy, then, Athenians could choose between violence and litigation at any juncture; moreover, within each of these two broad options there existed a range of possible actions. As Robin Osborne has observed, the law of Classical Athens was characterized by its "open texture"; that is, by the diversity of legal procedures available to redress a given unlawful act.²³ This essential feature of their legal system allowed Athenians to bring lawsuits ranging in severity from those carrying no penalty upon conviction (such as Demosthenes' *probolê* against Meidias: Dem. 21.1–2) to those involving fines (Demosthenes' *dikê kakêgorias* against Meidias: Dem. 21.81–101; Ariston's *dikê aikeias* against Conon: Dem. 54), exile (the statutory penalty in a *graphê traumatōs ek pronoias*: *Lys.* 4), or death (available in the *graphê hybreōs*, and mandatory in the *apagôgê*, contemplated but rejected by Ariston: Dem. 54.1–2). Violence, too, could be employed in varying degrees: breaking and entering (Dem. 21.78–80); a punch in the face (Aeschin. 3.52); a vicious and humiliating beating (Dem. 54; *Lys. Against Teisis*); assault with a weapon (*Lys.* 4); and even homicide (Dem. 21.104; Aeschin. 1.170–72; 2.148; Din. 1.30).

Gabriel Herman has suggested that the choice to go to law displayed a restraint that Athenians, on general societal principle, found more commendable than physical retaliation.²⁴ Accordingly, on Herman's view, when Ariston responded to his near-fatal beating by Conon and his gang by taking Conon to court, and when Demosthenes retaliated for Meidias' punch not by a counterpunch but by initiating litigation, they acted in accordance with a dominant ethic of nonviolent under-reaction ("a nail for an eye") and could expect their jurors to sympathize with them against their violent aggressors. This analysis, however, unduly privileges the narratives of those Athenians who exacted (or endeavored to exact) a nail, and therefore provides prejudicial and insufficient grounds for extrapolating a doctrine common to all Athenians. Ariston naturally argues that litigation is the proper way to

21 On this incident see MacDowell (1990) 328–30; Worthington (1992) 179–80.

22 Whether Demosthenes ever delivered the *Against Meidias* in court is a matter of debate: for a summary of the evidence see MacDowell (1990) 23–28.

23 Osborne (1985b) 48; cf. Cohen (1995) 121–22. I find Osborne's observation useful despite the criticism of Harris (1994b) 150 n. 16, (2000).

24 Herman (1993), (1995), (1996).

redress an assault, because that is the course of action he has chosen. But, as we have seen, Ariston also takes great pains to anticipate and rebut Conon's *de minimis* defense that fights such as the one in question do not constitute proper grounds for litigation. If Ariston had assumed that his jurors arrived in court already sharing his opinion, he would not have needed to argue this issue at such length. Thus, rather than evidencing an overarching societal prejudice against using violence in the furtherance of private disputes, Demosthenes 54 demonstrates the complex and competing values that confronted Athenian *echthrois*: for every Ariston or Demosthenes who resorted to litigation, there was a Conon or Meidias who preferred to settle affairs with his fists.²⁵ We should note, too, in contrast to Ariston's posture of restraint in his pursuit of legal action against a physical aggressor, that the defendants who delivered Lysias 3 and 4 make the opposite argument: charged with intentional wounding (*trauma ek pronoias*) for committing acts of physical violence involving a weapon, they, like Conon, contend that their prosecutors have overreacted in bringing them to court.²⁶

The well-documented use of litigation as a standard and accepted tactic against personal enemies means, moreover, that we should not view the pursuit of *echthra* and the goal of law as opposing principles. Much of the current debate has tended to posit a radical dichotomy between private vengeance and the rule of law; this phenomenon reflects the traditional Whig position of legal scholars who posit self-help and the rule of law as irreconcilable elements involved in a zero-sum contest and contend that as legal systems increase in sophistication, the former yields to the latter as the state gradually asserts a monopoly on the licit use of force.²⁷ But over the entire course of Athenian legal history, as is commonly observed, self-help not only survived but remained an integral part of the machinery of law.²⁸ The Athenians had no permanent state prosecutors, no police force charged with the investigation and apprehension of suspects, and no comparable law enforcement authority; accordingly, arrest by the *apagôgê* procedure (see below, p. 30 and chapters 4, 5, and 7) depended entirely on individual initiative, volunteer prosecution of offenses was the rule, and in many cases (with the notable exception of homicide) execution of judgment was left to the winner of a lawsuit (as, for example, in [Demosthenes] 47: see chapter 4). In short, without self-help, the Athenian legal system could not function.

Absent the institution of *echthra*, the system could have functioned, but the amount of litigation would have decreased considerably, and certainly the Atheni-

25 See especially Roisman (2005) 71–79.

26 This is not to deny the prevalence or importance of the *topos* of prosecutorial restraint, which Herman (above, n. 24) ably demonstrates. Even Lysias, who seeks the death penalty for the former tyrant Eratosthenes, portrays himself as a self-restrained, and hence sympathetic, actor: see chapter 6.

27 E.g., Wesener (1958) 100. Even in the most developed legal systems of the modern West, however, the state does not assert an absolute monopoly; for example, the individual generally retains the right to defend himself physically (up to a certain point) against an attacker.

28 E.g., Rhodes (1998); Herman (1993) 411; Cohen (2005) 213, 226–29.

ans would not have gained their reputation as a pathologically litigious people.²⁹ As demonstrated above, Athenian litigants commonly assert or assume that an existing hostile relationship constitutes legitimate and expected grounds for legal action and openly use litigation in pursuit of personal enemies. Going to law, in short, is not an alternative to personal vengeance but a means of achieving it.³⁰ Fundamentally, therefore, the relationship between personal vengeance and law in Athens is not a conflict of opposites (personal vengeance *or* the rule of law)³¹ but a process of constant negotiation and interdependence (personal vengeance *and* the rule of law). With regard to homicide, as we shall see in the ensuing chapters, the accommodation of the norms and practices of personal vengeance to the legal process and *vice versa* occupied the Athenians from the time of Draco through the Classical period.

3. *Reciprocity and escalation.* Athenian *echthra*, as represented in the sources, includes an element of reciprocity.³² The principals in any given instance of *echthra* tend to occupy a similar socioeconomic stratum:³³ the litigants in Lysias 4 are joint owners of a slave and participants in an abortive reciprocal *antidosis*; Archippus and Teisis in Lysias' *Against Teisis* exercise at the same wrestling school; and the speaker of [Demosthenes] 47 and his enemy Theophemus served as trierarchs in successive years (see chapter 4). This rough equivalence of power and influence makes it difficult for one disputant to crush the other immediately and decisively, and the result is a series of attacks and counterattacks such as we find not only in these cases but also in the conflicts between Demosthenes and Meidias (Demosthenes 21) and between Ariston and Conon (Demosthenes 54).

These examples also demonstrate that a thin line separates reciprocity from escalation: disputes naturally tend to escalate by their own momentum as each side strives to do the other one better.³⁴ The quarrel between Archippus and Teisis begins with insults and culminates in Archippus' being tied to a column and flogged. Conon's sons start by attacking Ariston's slaves verbally and physically, then insult and assault Ariston himself, and two years later they and others beat Ariston within an inch of his life. The conflict between Demosthenes and Meidias escalates gradually but steadily from verbal insult to physical assault, punctuated by litigation.

Contemporary Athenians' awareness of the escalatory tendency of *echthra* is evidenced in a passage from Demosthenes' *Against Conon* in which Ariston posits a rationale behind the discrete legal remedies available for offenses ranging from slander to homicide:

οἱ μὲν γὰρ νόμοι... τὰς ἀναγκαίης προφάσεις, ὅπως μὴ μείζους γίγνωνται, προείδοντο, οἷον ... εἰσὶ κακηγορίας δίκαι· φάσι τοίνυν ταύτας διὰ τοῦτο γίγνεσθαι, ἵνα μὴ λοιδορούμενοι τύπτειν ἀλλήλους προάγωνται. πάλιν αἰκείας εἰσὶ· καὶ ταύτας ἀκούω διὰ τοῦτ' εἶναι τὰς δίκας, ἵνα μηδεὶς, ὅταν ἦττων ᾖ, λίθω μηδὲ τῶν τοιούτων ἀμύνηται μηδενί, ἀλλὰ τὴν ἐκ τοῦ νόμου δίκην ἀναμείνη. τραύματος πάλιν εἰσὶν γραφαὶ τοῦ μὴ τι τρωσκομένων τινῶν φόνους

29 E.g., Ar. *Nub.* 206–8; *Pax* 505; *Vesp. passim*; [Xen.] *Ath. Pol.* 3.2.

30 As also in the Icelandic sagas: Miller (1990) chs. 6–7, esp. p. 180, citing Heusler (1911) 38.

31 As, e.g., Harris (2005).

32 Cf. Miller (1990) 181ff.; Cohen (1995) 88.

33 Cf. Cohen (1995) 114.

34 Miller (1990) 182–84; Blundell (1989) 30–31; Dover (1994) 184.

γίγνεσθαι. τὸ φαυλότατον, οἶμαι, τὸ τῆς λοιδορίας, πρὸ τοῦ τελευταίου καὶ δεινοτάτου προεώραται, τοῦ μὴ φόνον γίγνεσθαι, μηδὲ κατὰ μικρὸν ὑπάγεσθαι ἐκ μὲν λοιδορίας εἰς πληγὰς, ἐκ δὲ πληγῶν εἰς τραύματα, ἐκ δὲ τραυμάτων εἰς θάνατον, ἀλλ' ἐν τοῖς νόμοις εἶναι τούτων ἐκάστου τὴν δίκην, μὴ τῇ τοῦ προστυχόντος ὀργῇ μηδὲ βουλήσει ταῦτα κρίνεσθαι.

For the laws...have made provision so that pleas of necessity do not become more serious. For example...there are lawsuits for slander (*kakêgorias dikai*). They say that these exist so that people exchanging insults are not induced to hit each other. And then there are lawsuits for battery (*aikêias*). And I hear that these lawsuits exist so that a man in a weaker position should not defend himself with a rock or the like, but instead should await the justice provided by law. And again, there are lawsuits for wounding (*traumatos graphai*) so that, when people are being wounded, homicides do not occur. As I see it, the least of these actions, the one for verbal abuse, has in view the last and most terrible, with the goal that killing not occur and that people not be led on little by little from insults to blows, from blows to wounds, and from wounds to death. The goal, rather, was that a lawsuit for each of these acts be present in the laws, and that these matters not be judged by the anger or will of a random individual. (Dem. 54.17–19)³⁵

According to Demosthenes' interpretation, the purpose of the law is not to prevent the occurrence of violence but to arrest its escalation. The assumptions evident in this passage are telling. First, people will insult, beat, and wound each other: this is stated as a given. Second, Demosthenes assumes that disputes normally progress not by strict *talio* (insult for insult, punch for punch)³⁶ but by escalation: insults will be requited not with insults but with fists, fistfights will lead to fights with weapons, and so on.³⁷ The availability of dedicated legal actions appropriate to any stage of a quarrel from insult to wounding is designed to curb the escalation of existing disputes, and ultimately to prevent homicide. Whether or not the lawgiver (or rather lawgivers) truly acted on such an intent, Demosthenes' assessment gives us critical insight into the mindset of his contemporaries. Demosthenes had his client advance an argument that he believed a fourth-century Athenian jury would find plausible; namely, that the purpose of these laws was to prevent the escalation of violence, not violence *per se*.³⁸

4. *Transitivity and heritability*. Owing to the individualistic and competitive (“agonistic”) ethic that characterized Athenian society, and in particular Athenian

35 Cf. Cohen (1995) 127.

36 Probably the best-known expression of the *lex talionis* occurs in the Biblical rule laid down in Ex. 21:22–25: if two men engaged in a fight strike a pregnant woman and her child is subsequently stillborn or deformed, the responsible party “shall pay a life for a life, an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a burn for a burn, a wound for a wound, and a bruise for a bruise” (see Barmash [2005] 158–59).

37 Note the contrast between Demosthenes' expectations and Herman's “nail for an eye” ethic (above, p. 22).

38 There is a striking parallel in the prologue to a Merovingian recension of the laws of the Salian Franks (*Pactus Legis Salicae* ‘C’ pr. 1), which states that the purpose of the present codification is to curtail the escalation (*incrementa*) – not the occurrence – of fights (*rixarum*). (Pace Drew [1991] 59, who translates *incrementa rixarum* as “increase of litigation,” *rixa* normally denotes a physical confrontation and should be interpreted as such here.) Significantly, Wormald (1999) 41 concludes that the “working assumptions” of the *lex Salica* “are...those of feud”; the same could be argued for Demosthenes' interpretation of the Athenian laws of slander, battery, wounding, and homicide.

litigation, in the Classical period, surviving forensic oratory commonly portrays Athenian *echthra* as a fundamentally individual phenomenon.³⁹ As a rule, the conflicts narrated in the orators arise between individuals rather than groups. But individuals are not actors in a vacuum. Relationships, both friendly and inimical, are inevitable, and disputes that begin between individuals almost always broaden to include partisans of the original antagonists. In Athens, accordingly, conflicts normally originate between individuals but exhibit a clear tendency to expand so as to involve the principals' *philoi*, a term which the Athenians used to encompass both unrelated friends and kinsmen.⁴⁰ To help one's friends (*philoï*) and harm one's enemies (*echthroï*) was a cardinal rule of Athenian ethics; according to the prevailing doctrine, both helping friends and harming enemies went beyond the requirements of simple obligation and were regarded as actions that brought positive satisfaction, and even joy, to the actor.⁴¹ An Athenian who obeyed this dictum avoided shame and accrued honor among his peers, thus gaining both internal satisfaction and external validation.

Examples of the transitive property of *philia* (the state of being *philoï*) and *echthra* abound in Athenian forensic oratory. In Demosthenes 54, the confrontation between Ariston and the sons of Conon expands to include Conon and a number of his friends. In the opening stages of the clash between Demosthenes and Meidias, although Meidias' brother plays an ancillary role in the first strike, the resulting hostilities consist primarily of a series of moves and counter-moves between the orator and Meidias. As the conflict progresses, however, the *philoï* of both principals become involved: Euctemon and Nicodemus join in on the side of Meidias, while Androtion supports Demosthenes. In Lysias' *Against Teisis*, Teisis receives strategic advice from his lover Pytheas.

Athenians were specifically expected to come to the aid of their *philoï* in the forensic stages of a dispute by delivering speeches (e.g., Lys. 15.12: above, p. 20) and testifying as witnesses on their behalf. Ariston gives an indication of the potency of *philia* and its potential ramifications for the value of testimony by *philoï* when he imagines the pretrial deliberations of Conon's supporters:

39 Cf. Cartledge (1990) 55; Cohen (1995) 112, 114, 118, (2005) 219; Rhodes (1998) 161. As Harris (2005) 134, 137 notes, this fact poses the most serious challenge to the characterization of Athens as a feuding society.

40 Blundell (1989) 39–49. Cf. OE *frēond* (>MnE *friend*) and its cognates OHG *frīunt* (>NHG *Freund*), Old Saxon *frīund*, and Gothic *frijonds* (which glosses *φίλος* at, e.g., Lk. 15:6), all of which mean both “friend” and “kinsman” (Green [1998] 55–59).

41 Dover (1994) 180–84; Blundell (1989) ch. 2; Rhodes (1996) 25, (1998) 156; Mitchell (1996) 11; cf. Kurihara (2003) 472. Among the numerous expressions of this rule by Classical Athenian authors see especially Lys. 9.20; Pl. *Rep.* 332a–b (where, ironically, the speaker is Polemarchus, the brother of Lysias: see chapter 6); Soph. *Ant.* 643–44; Xen. *Mem.* 2.6.35, 4.5.10. The prevalence of similar sentiments expressed by non-Athenian authors of the Archaic and Classical periods (and beyond: see Blundell [1989] 26) indicates that helping friends and harming enemies was a general Greek doctrine. Aristotle, who may be regarded as a liminal figure (since he was a native of Stageirus in Macedonia but lived and worked in Athens for much of his life), subscribed to this ethic as well (e.g., *Rhet.* 1363a20–21, 33–34).

‘οὐ γὰρ ἡμεῖς μαρτυρήσομεν ἀλλήλοις; οὐ γὰρ ταῦθ’ ἐταίρων ἐστὶ καὶ φίλων; τί δὲ καὶ δεινὸν ἐστὶν ὧν παρέξεται κατὰ σοῦ; τυπτόμενόν φασὶ τινες ὄραν; ἡμεῖς δὲ μὴδ’ ἥφθαι τὸ παράπαν μαρτυρήσομεν. ἐκδεδύσθαι θοιμάτιον; τοῦτ’ ἐκείνους προτέρους πεποιηκέναι ἡμεῖς μαρτυρήσομεν. τὸ χεῖλος ἐρράφθαι; τὴν κεφαλὴν δέ γ’ ἡμεῖς ἢ ἕτερόν τι κατεαγένα φήσομεν.’

“Will we not testify for each other? Is that not what comrades and *philoï* do? And what is so terrible in the accusations he will bring against you? Some people say they saw him being hit? Well, we’ll testify that he wasn’t touched at all. They say he was stripped of his cloak? We’ll testify that they did it first. They say he had to have his lip stitched? We’ll say we had our heads or something else broken.” (Dem. 54.35)

The frequency with which Athenian litigants accuse their adversaries’ witnesses of perjury, as Ariston does here, corroborated by statements in contemporary philosophical works that countenance support of one’s *philoï* in contravention of abstract justice,⁴² suggests that *philoï* commonly perjured themselves in support of their principals, or at least valued the obligations of *philia* over the duty to tell the truth when the two principles conflicted.⁴³ Yet we should not presume that such an attitude always prevailed, as there are instances in Attic oratory where *philoï* refuse to testify for each other (e.g., Lys. 4.4).

Among an individual’s *philoï*, the obligation to render assistance in or out of court fell especially heavily on his kin. While non-kin entered into relationships of *philia* by choice, blood kin (and, to a lesser degree, kin related by marriage) were *philoï* by default, and Athenian belief held the bonds of *philia* created by kinship, especially those arising naturally from blood kinship, to be closer, and therefore stronger, than the affinity between unrelated *philoï*.⁴⁴ We may therefore picture an Athenian’s network of *philoï* by means of a gravitational model consisting of concentric circles with the principal at the center and his *philoï* in orbit around him at varying distances corresponding to their specific respective relationships: the innermost series of orbits is occupied by members of the nuclear family (parents and siblings), the next by more remote blood kin (grandparents, parents’ siblings, and first cousins), and thereafter distant blood kin (from second cousins outward), relations by marriage, and finally unrelated friends.⁴⁵ The shorter the orbital distance

42 Pl. *Rep.* 343e4–6 (*παρὰ τὸ δίκαιον*); Arist. *Rhet.* 1372a11–21.

43 Humphreys (1985b); Blundell (1989) 50; Todd (1990a) 23–27, (1993) 96; Cohen (1995) 107–9; cf. Scafuro (1997) 44.

44 In feuding societies, the presumption that a person’s kin will support him is a commonplace: in the Icelandic sagas see, e.g., *Laxdæla saga* 19, 59; *Hrafnkels saga Freysgoða* 6. Jesus’ message to his disciples is all the more revolutionary for its travesty of the obligations of kin *philia*: “For I have come to divide man against his father, daughter against her mother, and daughter-in-law against her mother-in-law; and a man’s household shall be his enemies (*καὶ ἐχθροὶ τοῦ ἀνθρώπου οἱ οἰκιακοὶ αὐτοῦ*)” (*Mt.* 10:35–36, emphasis mine; cf. *Mt.* 10:21; *Mk.* 13:12; *Lk.* 12:52–53, 14:26, 21:16; *Micah* 7:6).

45 Blundell (1989) 39–46 cites the Stoics for the concentric-circle model of relationships; Blundell herself draws an apt comparison with “overlapping and intersecting...ripples on a pond” (p. 39 with n. 62). Blundell’s circles of *philoï*, in order of increasing distance from the principal, are (broadly speaking) family, fellow citizens, and friends; the sentiments expressed in Attic oratory, however, seem to indicate that the positions of the last two groups should be reversed. The gravitational model advanced here is admittedly simplistic, and there will have been numerous

between a given individual and the principal, the stronger the sentiment of *philia* and the concomitant pull of obligation.

In the default case, *philia* is quasi-commutative among kin (if *A* is related to *B*, then *B* is related to *A* by the same degree of remove),⁴⁶ and both *philia* and *echthra* are transitive among non-kin,⁴⁷ as concisely expressed by the globally-occurring adage “the enemy of my enemy is my friend” and its variations. That is, given three individuals *A*, *B*, and *C*, and with the operators ϕ symbolizing *philia* and ε symbolizing *echthra*, the possible transitive permutations of friendship and enmity (without regard for the strength of these emotions, which varies as a function of the individual relationships involved) can be expressed by the following group of formulae:

- If $A \phi B$ and $B \phi C$, then $A \phi C$ (the friend of my friend is my friend)
- If $A \phi B$ and $B \varepsilon C$, then $A \varepsilon C$ (the enemy of my friend is my enemy)
- If $A \varepsilon B$ and $B \phi C$, then $A \varepsilon C$ (the friend of my enemy is my enemy)
- If $A \varepsilon B$ and $B \varepsilon C$, then $A \phi C$ (the enemy of my enemy is my friend).⁴⁸

In reality, though, things are never so simple, and the natural phenomenon of constant flux in human interaction frequently challenges, and sometimes explodes, this ideal model. In Athens, as everywhere outside Utopia, friendships were formed and ended; relationships with kin improved and deteriorated. Moreover, since Athens was home to a limited population (large, to be sure, by Greek standards,⁴⁹ but not in comparison with that of modern cities), it was inevitably impossible for all individuals and groups to define their friends and enemies so neatly even at a discrete point in time with personal relationships theoretically static. The intersection of entities involved in conflict might occur by design, as with the dynastic marriages between powerful clans evidenced in the Archaic period (for example, the marriage of the would-be tyrant Peisistratus to the daughter of his rival Megacles *ca.* 556, which was a condition of the reconciliation between Peisistratus and Megacles: Hdt. 1.61). But presumably networks of friendship and enmity more frequently collided by accident. The larger an individual’s group of *philo*i, the more likely he would eventually find himself in a position of conflicting interests, as would occur if, for example, he possessed independent ties of *philia* with two men who were, or who became, enemies: that is, if *A* had preexisting separate relationships of *philia* with *B* and *C*, but *B* and *C* found themselves in a state of *echthra*. Under such circumstances, *A* would find himself in a difficult position: he would have to choose whether to side with *B* or *C*, thereby possibly incurring the enmity of the spurned *philos*, or attempt to remain neutral and risk alienating both. *A* could, however,

variations depending on the nature of an individual’s personal relationships with his kin and friends; but as a general picture, I believe that the gravitational model accurately represents the Athenian normative ideal.

46 Not perfectly commutative, since if *A* is the father of *B*, *B* is (of course) not the father of *A*.

47 Cf. Blundell (1989) 47.

48 Since, for this purpose, the identities of *A*, *B*, and *C* do not matter, there is no need to state the permutations that have *B* and *C* as the first term.

49 Osborne (1985a) 64–65, 89.