The Rhetorical Use of Torture in Attic Forensic Oratory

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ABSTRACT: Come 'regola', la tortura di schiavi innocenti che è stata concordata dai querelantia fini probatori (*βάσανος* probatori) fu ritenuto dagli oratori lo strumento più efficace per giungere alla verità. Questo paper, con riferimento alla psicologia dell'antica Grecia, spiega perché la menzionata regola fu di cruciale importanza per la retorica. Gli oratori, sulla base della presunta attendibilità dell'istituzione dei *βάσανος*, furono in grado di sviluppare argomenti basati sulle sfide (πρόκλησις), che possono essere comprese al meglio alla luce della concezione greca, piuttosto che moderna, di razionalità ed azione umana. Di conseguenza, a dispetto dell'incertezza che circonda l'attualità della tortura a fini probatori nell'età degli oratori, l'importanza retorica dei *πρόκλησις εἰς βάσανον* è innegabile e va esaminata attentamente.

KEYWORDS: *Basanos (βάσανος)*, Greek psychology, human motivation, practical reasoning.

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The institution of torture is highly controversial; its morality is extremely dubious and its expediency is, at minimum, questionable. A particular form of torture that seems completely indefensible from a modern perspective is the torture (*βάσανος*) of innocent slaves for evidentiary purposes in Athenian law. This has been characterised as 'wanton and purposeless barbarity'[1], yet has been explained as a way classical Athenian citizens reinforced their dominant political status and 'confirm[ed] their own social hierarchy and cohesion'[2]. The barbarity and putative irrationality of evidentiary *βάσανος*[3], in addition to the lack of evidence proving the actuality of this practice, make its existence, at least in the period of the Attic orators, doubtful[4].

The paper accepts the scholarly consensus[5] that challenges to evidentiary torture were primarily ploys that were expected (and perhaps even designed) to be rejected[6]. It goes beyond other work by examining the purpose and the effects of the argumentation for the reliability of *βάσανος* on the audience. Building on this fact, by reference to Greek psychology, this paper explains the rhetorical force of the challenge to torture (*πρόκλησις εἰς βάσανον*) by addressing how and why references to unsuccessful challenges would have persuaded Athenian jurors. In particular, the paper:

    i)   Maintaining that *βάσανος* was primarily of rhetorical significance, explains why, as a rule, the orators advocate its reliability and

    ii)   Evaluates the scalar persuasive force of the *πρόκλησις εἰς βάσανον* by reference to Greek psychology and the Greek way of reasoning.

The shape of *βάσανος* in Athenian courts

Βάσανος, even at a late date, was presented as a reliable, fair and democratic (!) way of eliciting evidence (Lyc. 1.29). Yet, despite the persistent rhetoric of litigants, the absence of an accepted challenge from the sources is striking. This inconsistency needs to be explained. It is evident from the speeches that (formally or informally) deliberation was taking place regarding *βάσανος* testimonies in cases *not* involving a formal challenge (*πρόκλησις εἰς βάσανον*). It is in such cases where the Athenian belief in the reliability of torture and the corresponding rhetoric of litigants should be traced[7]. For instance, in the Hyperides fragments, in the '*Defence of Chaerephilus on the salt fish*', following an *ἀπόφασις* (declaration, report to the Assembly) or an *εἰσαγγελία* (impeachment), the Areopagus carried out an investigation by applying *βάσανος* on slaves. Their statements were presented to the people in the assembly and were used as the basis of a further action against the accused. Such evidence from torture (not triggered by a challenge but by an independent investigation of the Areopagus) was discussed by litigants in court:

As to what the Council (of the Areopagus) reported to the people from its investigation, nowhere did it demonstrate to the people wrongdoing on the part of Chaerephilus, and though, it says, the secretary read out the names disclosed from the interrogations of slaves (*βάσανοι*), not one of those tortured accused him of any wrongdoing. As a result, at least from the charges written in the decree, he is not even liable for trial. Why, then, has this case arisen? (Hyp. Fr. 187a. Transl. Craig R. Cooper. *Dinarchus, Hyperides, and Lycurgus* (2001) University of Texas Press)

In other instances, slave testimonies were discussed in the courtroom, albeit in an informal way, being incorporated in litigants' speeches[8]. Apart from slaves, in limited circumstances, confessions of free men could be educed under torture and introduced in court[9]. In the absence of solid evidence of evidentiary *βάσανος*, the description of *βάσανος* as 'democratic' possibly suggests that in the third quarter of the fourth century BC, the main type of *βάσανος* presented in Athenian courts was the judicial (rather than the evidentiary), mainly used during investigations of 'political crimes' such as treason or subversion of the constitution, where even Athenian citizens could be subject to torture[10].

The aforementioned might explain why the rhetoric suggesting the reliability of *βάσανος* persisted in Athenian courts and why it was still relevant and listed in Aristotle's day among the artless proofs. Aristotle in the *Rhetoric* (1.2) focuses on torture (βάσανος) per se, rather than the challenge, and defines it (1.15) as testimony (μαρτυρία) under compulsion[11]. It is classified as artless proof (Aristotle, *Rhetoric* 1.2) because it pre-existed (προϋπῆρχεν), therefore it belongs to all these things that are not invented / furnished by the orator (ὅσα μὴ δι᾽ ἡμῶν πεπόρισται). Hence it seems that artless proofs for Aristotle (laws, witnesses, contracts, torture, oaths) have both a temporal and a practical aspect (Aristotle refers to the things already placed in the ἐχῖνος (deed-jar) has neither invented by the orator

nor being within his art)[12]. For Aristotle, *βάσανος* has many types (Rhet. 1.15.26: καθ᾽ ὅλου τοῦ γένους τῶν βασάνων), yet these are not defined. So when Aristotle in the *Rhetoric* treats *βάσανος* as a *πίστις* (form of proof) to be discussed in court, he could refer to any of the types of torture (judicial, punitive or evidentiary) though not to challenges. For if he intended to discuss challenges, he would have probably followed the same methodology as in his discussion of oaths in which he refers in a much nuanced way to all the different possibilities of tendering, accepting or rejecting a challenge[13]. Arguments resembling those found in the orators supporting or criticising the reason for the rejection (for example that the challenge was not fair, the slave was free etc.) are absent from the *Rhetoric*[14].

Anaximenes of Lampsacus in the *Rhetorica ad Alexandrum* (1428a 7.2) circa 340BC[15], refers to *βάσανος* as a supplementary (ἐπίθετος) proof to what people say and do and defines it (1432a 16.2) as a 'confession of complicity by someone involved / knowing under compulsion' ('Βάσανος δέ ἐστι μὲν ὁμολογία παρὰ συνειδότος, ἄκοντος δέ'). As becomes evident subsequently (1432a 16.2), Anaximenes' discussion includes cases of evidentiary torture by referring to 'cases where slaves make false statements against their masters'. He also refers to *βάσανος* as the 'most reliable evidence on which both private individuals and cities rely upon in matters of importance' (*Rhetorica ad Alexandrum* 1432a 16.1) thus denoting the statement under torture rather than the challenge[16]and the existence of different types of *βάσανος*. Anaximenes, in contrast to Aristotle, concentrating on practical advice for winning a case, discusses the introduction of slave testimonies in the courtroom as a real possibility and offers justifications for a rejected challenge[17].

However, there is no reason why these handbooks should be seen as exclusively referring to Athens or to the Athenian legal system. Aristotle and Anaximenes refer to any kind of testimony or confession under compulsion, that is to the document / copy of the statement placed in the *ἐχῖνος*[18] and therefore to the *πίστις* ('artless' or 'supplementary'[19])

which lies beyond the manipulative powers of the orator[20]. Consequently, their rhetorical treatises do not provide concrete evidence for the actual practice of evidentiary torture of innocent slaves in the Athenian courts of the fourth century.

The rhetorical use of *βάσανος* by reference to Greek psychology: The interpretive model[21]

Consideration of Greek psychology, in particular of the Greek understanding of human action and motivation, is essential for an adequate evaluation of the highly sophisticated ways in which the Athenians delivered as litigants and received as *δικασταί* (jurors/judges) arguments of *βάσανος*. Gill, in his influential work on Greek 'personality'[22], building on the work of modern thinkers, shifts away from an understanding of Greek psychology based on modern, sometimes anachronistic, suppositions. According to him, the preponderate – in modern times – Cartesian model of the human mind, whereby mental processes and actions derive from a largely isolated, single source of consciousness (a unitary 'I'), can prove misleading when applied to Greek psychology. Contemporary thinkers[23] question this modern Cartesian model as being overly 'subjective', replacing it with a more appropriate one which understands human action in 'objective' (non-subject-centred) terms[24]. Thus, while for the modern human motivation and action derive from a subjective, covert and unpredictable notion of personal will, human action for the Greeks should be traced and understood in a more objective form which resembles a mathematical equation. This can be described as the calculation of largely identifiable, objective factors, such as the agent's beliefs and desires, which eventually trigger motivation, determine the appropriate course of action and cause the agent to act[25].

This kind of practical syllogism has its roots in the 'the ability to conceptualise (to structure one's responses in terms of universal concepts), and – a capacity implied by conceptualisation – the ability to *reason*, to make inferences and draw conclusions'[26]. Inferential reasoning, as a source of human action, can be divided into two types: 'means-

end' and 'rule-case'. In both cases the agent is motivated and decides the 'end' to be attained according to his beliefs and desires. In the 'means-end' type of reasoning, the action is directed 'through the possible', by evaluating the efficacy and difficulty of the available means and courses of action for achieving the desired 'end'. In the 'rule-case' type of reasoning, the present case faced by the agent is placed into a general class. The agent deduces the appropriate course of action from a preconceived set of assumptions that form the 'rule' which according to his experiences or perceptions can produce the desired outcome. To use a Homeric example, Odysseus (without considering the available means) applies to his own case the general 'rule' that 'whoever is to be best in battle must stand his ground strongly' (Il. 11.409-10)[27]. This is the appropriate course of action which he finally follows.

Both types of reasoning, nevertheless, have significant implications for how others perceive, interpret and evaluate a person's actions but also for how people understand, infer or impute on a person his beliefs and desires. For example, a bystander applying the Greek model, observing Odysseus standing his ground strongly, would have rationally deduced that Odysseus adheres to this communal code of behaviour and the reasons causing his action are his desire to excel, to be best in battle and to act in accordance with his role in society. Therefore, this hypothetical bystander, judging from the outcome of the mathematical equation (i.e. Odysseus' act), would be able to deduce the agent's beliefs and desires which motivated him. As a result, Odysseus' psychological and intellectual world is unveiled.

As far as βάσανος is concerned, the 'rule' which was (truthfully or not) advocated by the orators is that torture provides the most trustworthy means of discovering the truth and therefore, attaining justice. Whoever rejected a challenge to βάσανος, either did not adhere to the common belief in the reliability of torture (an option which is, purposely of course, not endorsed or even acknowledged by the challengers) or, quite suspiciously, did not have the desire to test and discover the truth of a disputed point (obviously, due to his lying on that

matter)[28]. This inference formed the basis of more advanced arguments based on a 'means-end' type of reasoning, with the required default position being the acceptance of *βάσανος* as the appropriate 'means' and the attainment of truth and justice as the desired 'end'. In accordance with this equation, the orators provided arguments which involved on the one hand an analysis and examination of the fairness of the 'means' and, on the other, the questioning of the true 'ends' of the challengers or rejecters and the imputation of questionable motives.

Application of the Model to Forensic Speeches

    a.   *'Rule-case' type of reasoning*

In accordance with this model, certain presuppositions concerning the reliability of *βάσανος*, which were sometimes artfully imputed on the minds of jurors by the orators, facilitated and advanced a 'rule-case', deductive reasoning. Regardless of the truthfulness of such presuppositions[29], the orators use the power of suggestion to encourage the jurors to accept as a basis of reasoning that slave torture is the most reliable means of ascertaining the truth, whether or not this was universally accepted[30]. In other words, the orators entice the jurors to accept this 'rule' in the first place in order to subsequently build an argument to castigate the opponent's rejection of a challenge. The characterisation of *βάσανος* as the 'strongest kind of evidence' (τῆς ἰσχυροτάτης μαρτυρίας) (Demosthenes 47.8) was widely advocated (and possibly accepted?), to the extent that, as Lycurgus says:

[it] is considered by far the justest and most democratic course, when there are male or female slaves, who possess the necessary information, to examine these by torture and so have deeds to go upon instead of words.[31] (Lyc. 1.29)

Lycurgus maintains that it is 'natural' (κατὰ φύσιν) for people to tell the whole truth when tortured (Lyc. 1.32). Following this 'rule', it may be deduced that an honest litigant who was eager to prove the truth of his statements was expected (whenever possible) to resort to βάσανος. Failure to do so would (at least rhetorically) suffice to indicate an inconsistency between the rejecter's beliefs (since adherence to the 'rule' was putatively universal) and actions, with the burden of explaining this questionable behaviour falling on his shoulders[32]. To use a similar wording to that referring to Odysseus above, whoever is certain of the truth of his statements and committed to the attainment of justice, should adhere to the (allegedly) common belief in the reliability of βάσανος and accept it as the appropriate course of action.

According to this recurring idea, evidence elicited from βάσανος was superior even to the testimony of free men (Antiphon 2.4.7), despite being said for the latter that 'in contrast with slaves, free men give a faithful account for their own sakes and in the interests of justice'. As a matter of fact, the Athenians, acknowledging the incompetence of the punitive mechanisms for false witnessing in relation to free men, seem to have regarded the testimony of slaves as superior:

You Athenians hold the opinion that both in public and in private matters examination under torture is the most searching test; and so, when you have slaves and free men before you and it is necessary that some contested point should be cleared up, you do not employ the evidence of free men but seek to establish the truth about the facts by putting the slaves to torture. This is a perfectly reasonable course; for you are well aware that before now witnesses have appeared not to be giving true evidence, whereas no one who has been examined under torture has ever been convicted of giving false evidence as the result of being tortured.[33] (Isaeus 8.12)[34]

The implications of such a 'rule' are straightforward. A litigant who adhered to the 'rule' and issued a challenge for a slave to be tortured was (supposedly in the minds of the jurors) automatically proving the truth of his statement; hence he acquired an important rhetorical advantage. By the same token, a litigant who rejected such a challenge (the challenger, naturally, silencing the fact that the terms offered were unacceptable), obstructed the smooth operation of justice, was alienated from the audience, and automatically proved the falsity of his argumentation. As Apollodorus suggests: "Who is there, men of the jury, who, on a charge like that, if he were sure of his innocence, would not have accepted the torture? Then, by refusing the torture, he is convicted of the theft"[35]. ([Demosthenes] 45.62; cf. 59.122).

b. '*Means- end' type of reasoning*

Based on the 'rule' about βάσανος, a litigant who proclaims the attainment of truth (and therefore of justice) as his desirable 'end', should provide all available 'means' to reach that 'end'. In our case, the appropriate and anticipated 'means' is βάσανος. As early as Anthiphon's speech 'On the Chorister' (shortly after 419 B.C.), the defendant speaker informs the court that he had issued a challenge to the prosecutor to interrogate and cross-examine *any* of his slaves, in *any* way he seemed fit in order to obtain a reliable confession. He adds that "should the prosecutor demand any slaves that did not belong to the defendant, I agreed to obtain the consent of their owner and hand them over to him to examine as he liked"[36]. (Antiphon 6.23)

In other words, the speaker was eager to provide *all the available means* in order to facilitate the execution of justice and the discovery of truth[37]. Similar offers take place in other speeches. For example, Demosthenes (29.11; 30.27) offered to surrender for torture a

slave who could read and write and who had witnessed a material fact of the case. In the same case, Demosthenes refers to a series of challenges he made to Aphobus, offering any of his slaves who knew material facts of the case to be tortured in any way Aphobus chose. These were all rejected (Demosthenes 29.21, 25, 38, 51).

A common pattern is that in all these cases, the opponent declined. Naturally, this rejection of $\beta\acute{\alpha}\sigma\alpha\nu\sigma\varsigma$, in other words of the available 'means', was rhetorically manipulated and, as if the challenge was fair and without self-interest, it was presented as proving the rejecter's guilt or his questionable motives. This was also the case when one party did not offer his own slaves for torture, but challenged the other party to offer his and this was rejected. This rejection of the 'means' shifted the burden of proof to the rejecter. Even more than this; it putatively condemned him. In Lysias 4.10-12, a slave woman who was the common possession of the litigants allegedly knew the truth of a disputed fact. The prosecutor did not provide the 'means' for proving the truth of his allegations beyond any doubt, therefore these allegations should be rejected. Similarly, Lycurgus accuses Leocrates (Lyc. 1.34-35) for failing to submit his slaves for torture, thus evading one of the most searching tests. Antiphon 1 equally reveals the gravity of this kind of argument. The case is unwitnessed; the speaker, therefore, builds his argumentation on the opponents' rejection of his challenge, i.e. of the means for reaching the desired end. He states that

Had I refused an offer of theirs to hand over their slaves for torture, the refusal would have afforded a presumption in their favour. The presumption, then, should similarly be in my favour, if I was ready to discover the truth of the matter, while they refused to allow me to do so. In fact, it is amazing to me that they should try to persuade you not to find them guilty, after refusing to decide their case for themselves by handing over their slaves for torture.[38] (Antiphon 1.12)[39]

Shifting the focus from the opponent to himself, a prosecutor, by issuing a challenge, allegedly proved the soundness of his motives and therefore rejected any allegations of sycophancy (Dem. 53). In homicide cases, the rejecter could be even accused for oath-breaking (Antiph. 1.8) since the rejection of *βάσανος* was a putative proof that he lied. Moreover, a mere challenge could demonstrate or negate the credibility of the speaker's character and witnesses[40]. This is evident in Apollodorus' speech Against Neaera, where the prosecutor attacks the character of the defendant based on the rejection of a challenge to torture three of his women-servants:

On my tendering this challenge to Stephanus, men of the jury, he refused to accept it. Does it not, then, appear to you, men of the jury, that a verdict has been given by Stephanus here himself that Neaera is guilty under the indictment which I preferred against her, and that I have told you the truth and produced testimony which is true, whereas whatever Stephanus may say to you will be wholly false, and he will himself prove that he has no sound argument to advance, inasmuch as he has refused to deliver up for the torture the women-servants whom I demanded of him?[41] (Demosthenes 59.125)

The serious consequences of a rejected challenge are illustrated in Demosthenes 47. In that case, the unknown speaker accuses two of Theophemus' witnesses for false witnessing. These had testified that Theophemus had offered an eyewitness slave woman for torture in order to prove that he did not deliver but received the first blow which gave rise to a previous *δίκη αἰκείας* (for battery). According to these witnesses, the speaker had rejected this offer and this was the decisive factor which condemned him for battery. Hence, a whole case was decided on a rejected challenge and the subsequent *δίκη ψευδομαρτυριῶν* (prosecution concerning false witness) similarly referred to that issue.

c. *Gradation, excuses and justifications*

Although speakers often maintain a monolithic approach, there is certainly a *gradation* in the fairness and credibility of the 'means'. In other words, although the 'rule' is not directly questioned, cases should be examined in an ad hoc basis in order for the reliability of *βάσανος* to be assessed. One of the debatable points was the fairness of the procedure[42]. Lycurgus, stripping Leocrates of any excuse or justification for his rejection, maintains that he issued a fair challenge in accordance with the right procedure (Lycurgus 1.28). The examination should be conducted in the presence of both parties in accordance with their agreement[43] and, as seen in Antiphon 1.10, the importance of who conducted the torture should not be overlooked. Although Gagarin notes that: "[not] until the rhetorical works of Aristotle and Anaximenes do we find arguments against the general validity of *βάσανος*"[44] (cf. Aristotle, *Rhetoric* 1.26), as early as Antiphon 5 there is argumentation regarding the potential fallibility of this institution (not strictly related to evidentiary torture). The 'rule' may not be explicitly questioned but following a 'means-end' type of reasoning could be enlightening as to the way the Greeks deliberated on the reliability of *βάσανος*. The speaker of Antiphon 5 says:

I need not remind you, I think, that witnesses under torture are biased in favour of those who do most of the torturing; they will say anything likely to gratify them. It is their one chance of salvation, especially when the victims of their lies happen not to be present. Had I myself proceeded to give orders that the slave should be racked for not telling the truth, that step in itself would doubtless have been enough to make him stop incriminating me falsely.[45] (Antiphon 5.32)

Ownership of the slaves could also be exploited rhetorically in order to evaluate the quality of a *βάσανος* and, thus, defend or degrade a particular challenge. Lycurgus says that "the male and female slaves of Leocrates would have been far readier to deny any of the real facts than to invent lies against their master" (Lycurgus 1.30). In Isocrates 17.54-55, Pasion, the owner of the requested slave, was again deemed by the speaker to be at an advantageous position, thus the fact that he did not accept the challenge is proving his dishonesty[46]. In Lysias 7.35, the defendant who offered his slaves for torture, anticipating any argument from the rejecter that such a resort to *βάσανος* would be at his disadvantage due to his opponent's ownership of the slaves, with a pinch of irony, finds surprising the fact that when put to the torture on their own account (that is in cases of judicial torture), the slaves accuse themselves in the certain knowledge that they will be executed, but when (in cases of evidentiary torture) it is on account of their masters, to whom they naturally have most animosity, they can choose rather to endure the torture than to get release from their present ills by an incrimination. Therefore, according to him, the owner of the slaves would at last be at a disadvantage.

This picture is slightly modified in Lysias 4.16-17. Although there it is maintained that ownership may influence the slaves' testimony and thus the reliability of *βάσανος* as a means for attaining the objective truth, the challenge issued by the speaker was fair and balanced because the requested servant was possessed in common by the parties, despite the fact that the slave was emotionally attached to the rejecter[47].

The 'means-end' type of reasoning, in the light of this sliding scale of the reliability of the 'means', allowed the rejecters, without questioning the 'rule', to develop counter-arguments, excuses and justifications. Gagarin observes that, since the rhetorical gravity of a rejected challenge was extremely powerful, only four times does a speaker even mention that he rejected a challenge by his opponent[48]. In three of these (Lysias 4; Demosthenes 29; 53)

speakers explain their rejection by arguing that their opponents' challenge was inferior to the one they issued. This demonstrates the accuracy of our interpretive model. Litigants accepted the rule that βάσανος is trustworthy but, following a 'means-end' type of reasoning, they developed their rhetorical tactics in order to evaluate the reliability of the 'means' to reach that 'end'. As a result, they argued that their counter-challenge only improved the 'means'. If this was in turn rejected by the opponent it shifted the rhetorical advantage to the counter-challenger to argue that since the opponent rejected such a better 'means', his initial and true 'end' in issuing the original challenge was questionable. A good example of this is Lysias 4.15 where the speaker claims that his challenge was better-suited to shed light on the case since the slaves he suggested for torture (unlike the ones chosen by his opponent) knew the whole truth as to the material fact. The rejection of this counter-challenge meant that the rejecter's initial 'end' was questionable. Thus, disagreement as to the 'means' could be rhetorically exploited in order to question the opponent's 'ends'. Or, better, forcing the opponent to disagree on the 'means' by tendering him an unacceptable counter-challenge (Thür's 'contrived rejection') could be then rhetorically exploited in court by questioning the rejecter's motive and purpose of his original challenge[49].

This can be examined in the fourth case which Gagarin identifies (Demosthenes 54), where the speaker mentions a challenge Conon made at the last minute, allegedly for the sole purpose of delay[50]. This is a reversal of the norm suggested by the 'means-end' model, whereby the speaker does not question the 'means' and its quality but directly the 'end' itself. Indeed, the opponents tendered a challenge with a view to gaining time and preventing the boxes from being sealed. The design and the timing of the challenge, allow the speaker to suggest that it was merely aiming at the obstruction of justice. On the other hand, we may imagine that Conon, silencing any inadequacy or trickery in his challenge, would exploit the prosecutor's rejection in accordance with his strategy.

Other excuses include the argument that the slave had been set free, or (as in Isocrates 17) that the slave has disappeared. In the same case, the speaker discusses a disagreement on the procedure and the manner of torture which arose *after* the challenge had been accepted[51] (Isocrates 17.15). In Demosthenes 29 and 49, the speaker mentions another possible justification, namely that the requested slave was in truth a free man. Finally, the interplay between the 'means' and the 'end' gave rise to very interesting trickeries. One of them is evident in [Demosthenes] 53.22-25. Apollodorus, in a case of ἀπογραφή (lawsuit against a state-debtor)*,* alleged that his opponents' slaves belonged to the state. His opponents wittingly offered these same slaves for torture. If he accepted the challenge, he would have de facto accepted the ownership of the slaves by his opponents. On the other hand his rejection could be exploited by his opponents against him. A similar trickery was used regarding the co-owned slave of Lysias 4 mentioned above where it seems that the emotional attachment of the slave to her other master was mutual and the rejecter preferred to be at a rhetorical disadvantage in court than allowing the torture of the slave. The challenger certainly took advantage of this relationship for his own ends. The means of βάσανος, on the face of it a tool for the discovery of truth, was predominantly used to serve concealed rhetorical ends.

CONCLUSION

The Greek interpretive model of human action sheds light on the rhetorical strategies and tactics of Athenian orators. In the light of this, the recurring, highly sophisticated, and nuanced invocation of βάσανος by Athenian litigants demonstrates that, although in theory it was an inefficient (and cruel to modern eyes) procedure for the discovery of truth, in practice it was an artful rhetorical device for the introduction of – at times, questionable – evidence.

APPENDIX: Index of passages in the orators referring to torture:

(D: Defendant; P: Prosecutor); (Rule => Affirming / Questioning the 'rule-case' type of reasoning); (M-E: Example of 'means-end' type of reasoning); G (Discussing gradation of 'means') (J: Justification offered for the rejection)

1. Aeschin. 2.126-8: Offer by D to P and to the audience rejected by P (J: he will not rest his case on the testimony of tortured slaves) / M-E

2. Andoc. 1.64 (judicial torture): Offer by D to the Boule and the relevant commission of inquiry / M-E

3. Antiph. 1.6-12: Offer by P rejected by D / Rule / M-E

4. Antiph. 2.2.7: Rule / No offer or demand

5. Antiph. 2.3.4: Rule / No offer or demand

6. Antiph. 2.4.8: Offer by D / M-E / G (all slaves made available)

7. Antiph. 5.30-32 (judicial torture): Questioning the Rule / M-E / G

8. Antiph. 6.23: Offer by D / M-E / G (offering his slaves or another party's to be tortured in any way the prosecutors decide)

9. Antiph. 6.25: Rule

10. Dem. 29 5: Rule

11. Dem. 11-12: Offer by D rejected by P / J: Counter-challenge by P (29.14) rejected by D (29.39: reveals alleged P's trickery: asking to torture a free man) / M-E / G.

12. Dem. 29.21: Offer by D rejected by P / M-E

13. Dem. 29.25: Offer by D rejected by P / M-E

14. Dem. 29.28: Offer by D, rejected by P / M-E

15. Dem. 29.51: Offer by D, rejected by P

16. Dem. 30.27-30: Offer by P rejected by D

17. Dem. 30.35-6: Demand by P rejected by D / M-E

18. Dem. 30.37: Rule

19. Dem. 37 27 (*παραγραφή - counter-indictment*): Offer by counter-P rejected by D

20. Dem. 37.40-43 (*παραγραφή - counter-indictment*): Demand by D, accepted by counter-P / M-E unreliable / J: resting the case on the body of a slave / Questioning the Rule / Breakdown of the agreement and counter challenge by counter-P, rejected by D.

21. Dem. 45-61: Demand by P, rejected by D.

22. Dem. 45.62: Rule

23. Dem. 46.21: Demand by Prosecutor, rejected by D

24. Dem. 47.5-17: Alleged demand by P, rejected by D / M-E / G (reliable means, slave eyewitness of a material fact)

25. Dem. 47.8: Rule

26. Dem. 48.14-18 (private torture): Rule (proven in practice)

27. Dem. 49.55: Demand by P, rejected by D (J: slave was in truth a free man)

28. Dem. 52.22: Rule

29. Dem. 53.22: Offer by D / M-E / Trickery: P maintained that the slaves belonged to the state so he could not accept D's challenge)

30. Dem. 53.25: Counter-offer by P, rejected by D

31. Dem. 54.27-30: Allegedly incomplete offer by D / M-E

32. Dem. 59.120-125: Demand by P, rejected by d / M-E

33. Dem. 59.122, 125: Rule

34. Is. 6.16: Offer and demand by P rejected by D / M-E

35. Is. 8.9-13 (*διαδικασία - contested inheritance*): Demand rejected by adversary / The credibility of witnesses and the untrustworthiness of the opponent's character and witnesses is discussed (8.28-9)

36. Is. 8.12: Rule

37. Isoc. 17. 12-17: Demand by P rejected by D [J: D spirited away the slave (17.11), the slave had been bribed by the prosecutors (17.12), the slave was a free man (17.14, 49)]

38. 17.15-6: Offer by D / Disagreement as to the method of torture

39. Isoc. 17.21: Demand by another party in a relevant suit, rejected by D

40. Isoc. 17.22, 28, 54: Rule

41. Lyc. 1. 28-35: Demand by P, rejected by D / M-E

42. Lyc. 1.29, 32, 112: Rule

43. Lys. 1.16-8: Rule (in practice by threat of torture)

44. Lys. 4.10-17: Demand by D, rejected by P / J: the slave is free

45. Lys. 4.15: Offer by P, rejected by D / J: not in knowledge of material facts

46. Lys. 4.16: Rule questioned / M-E / G

47. Lys. 7.34-38 (judicial torture): Offer by D, rejected by P / J: no credit could be given to servants

48. Lys. 7.35: Rule

49. D.H. Is. (Dionysius of Halicarnassus, *De Isaeao*) Chapter 12: Rule ["πόθεν χρὴ πιστεύεσθαι τὰ εἰρημένα πρὸς θεῶν; οὐκ ἐκ τῶν μαρτύρων; οἴμαί γε. πόθεν δὲ τοὺς μάρτυρας; οὐκ ἐκ τῶν βασάνων; εἰκός γε. πόθεν δέ γε ἀπιστεῖσθαι τοὺς λόγους τοὺς τούτων; οὐκ ἐκ τοῦ φεύγειν τοὺς ἐλέγχους; ἀνάγκη μεγάλη. φαίνομαι τοίνυν ἐγὼ μὲν διώκων ταῦτα καὶ τὰ πράγματα εἰς βασάνους ἄγων, οὗτος δὲ ἐπὶ διαβολὰς καὶ λόγους καθιστάς, ὅπερ ἄν τις πλεονεκτεῖν βουλόμενος ποιήσειεν.]

[1] D. M. MacDowell, *The Law in Classical Athens*, Cornell University Press 1978, p. 246. More similar remarks can be found in M. Gagarin, 'The Torture of Slaves in Athenian Law', *Classical Philology* 91: 1 (1996), 1-18, p. 1 with n. 3.

[2] D. Mirhady, 'The Athenian Rationale for Torture', in J. Edmondson and V. Hunter, eds. *Law and Social Status in Classical Athens*, Oxford 2000, 53-74, p. 71.

[3] Gagarin, *The Torture of Slaves* (n.1), pp. 2-3 has conveniently classified the different types of torture under the following types: evidentiary (which is the main focus of this paper), judicial and penal or punitive torture.

[4] For a detailed discussion of the actual existence and the shape of evidentiary torture in Athenian courts see V. Adamidis, 'The Theory and Practice of Torture in Ancient Athenian Courts' in *ΣΧΟΛΗ* Vol. 12.2 (2018) – (*forthcoming*).

[5] See Gagarin, *The Torture of Slaves* (n.1), p. 7 n. 34.

[6] See G. Thür, *Beweisfuhrung vor den Schwurgerichtshofen Athens: die Proklesis zur Basanos*, Wien 1977, pp. 233-61; cf. Gagarin, *The Torture of Slaves* (n.1), pp. 10-12. The absence of concrete evidence for the actuality of torture in the forensic speeches has been discussed by J. Headlam, 'On the proklesis eis basanon in Attic Law' in *CR* 7 (1893), pp. 1–5 (suggesting that an actual *βάσανος* would act as a kind of ordeal and automatically settle the case out of court), with his thesis being revived and reshaped by D. Mirhady, 'Torture and Rhetoric in Athens' in *JHS* 116 (1996), 119-31, repr. in E. Carawan, *The Attic Orators*, New York OUP 2007, pp. 247-268. Headlam's thesis is discounted by scholars such as Thür, *Beweisfuhrung vor den Schwurgerichtshofen Athens* (n.6), pp. 213-14, C. Carey, 'Artless Proofs in Aristotle and the Orators' in *Bulletin of the Institute of Classical Studies* (1994), 39: 95-106 and Gagarin, *The Torture of Slaves* (n.1) and M. Gagarin, 'The Nature of Proofs in Antiphon' in Carawan, *The Attic Orators* (n.6 above), pp. 219-223 suggesting that

evidentiary *βάσανος*, by the time of the Attic orators, had become a legal fiction primarily of rhetorical value.

[7] V. Adamidis, *The Theory and Practice of Torture* (n.4), p. 15.

[8] See Antiphon 5.29-52, Antiphon 1.20, Demosthenes 48.

[9] A list of instances of torture of free persons is found in E. W. Bushala, 'Torture of Non-citizens in Homicide Investigations' in *GRBS* 9.1 [Spring 1968] 61-68, n. 10.

[10] Possible examples could include Andocides under the oligarchic regime of the Four Hundred in 411 (Andoc. 2.15; Lys. 6.27) and Aristophanes of Cholleis under the Thirty (Lys. 13.59-60). Another Athenian citizen, Antiphon, was already disfranchised when tortured and executed for treason as an agent of Philip in 344/343 B.C. (Dem. 18.132-3; Din. 1.63).

[11] The orators distinguish *βάσανοι* from *μαρτυρίαι*. See Lys. 7.37; Dem. 30.36 with A. R. W. Harrison, *The Law of Athens* – Vol. 2, Oxford Clarendon Press 1971, p. 147.

[12] M. Gagarin, *Writing Greek Law*, Cambridge University Press 2008, pp. 188-90 maintains that owing to a reform of procedural law in Athens, from ca. 375 B.C. onwards all documents of direct evidence (to which Aristotle refers as 'artless proofs') had to be presented at a preliminary hearing in written form and then be placed and sealed in a jar (the *ἐχῖνος*) to be read out during the trial by the clerk. For *βάσανος* in particular, cf. Dem. 54.27 as interpreted by G. Thür, 'Reply to D.C. Mirhady: Torture and rhetoric in Athens' in *JHS* 116 (1996), 132-4 *pace* Mirhady (2007), *Torture and Rhetoric in Athens* (n.6), p. 267.

[13] Arist. *Rhet*. 1.15.27.

[14] This triggers the question of why Aristotle discussed *basanos* per se and omitted the challenge to *βάσανος,* especially since the challenge and its rhetorical impact is so evident in the court speeches. Such a question is addressed by Carey, *Artless Proofs* (n.6), and certainly, this is not the only omission of rhetorical handbooks. Mirhady (1996), *Torture and Rhetoric in Athens* (n.6), p. 129 suggests that this omission has "resulted perhaps from the economy of

not having to deal with the challenge twice, first in terms of the *basanos* and then of the oath".

15 P. Chiron, 'Relative Dating of the *Rhetoric to Alexander* and Aristotle's *Rhetoric*: A Methodology and Hypothesis' in *Rhetorica* (2011), 29:3, 236-262, at p. 240.

16 Cf. R. H. Sternberg, *Tragedy Offstage*, Austin: University of Texas Press: 2006, p. 157.

17 This is particularly evident in *Rhet. ad Alex*. 1432a 16.3.

18 Cf. Harpocration, Valerius, *Lexicon in decem oratores Atticos*, s.v. ΒΑΣΑΝΟΣ: Ὑπερείδης δ᾽ ἐν τῷ κατ᾽ Ἀντίου τὰ ἐν ταῖς βασάνοις εἰρημένα ὑπὸ τῶν βασανιζομένων καὶ ἀναγραφέντα βασάνους ὠνόμασε'.

19 The temporal aspect of supplementary proofs in Anaximenes as pre-existing is more difficult to prove beyond any doubt. Anaximenes innovates (Chiron, *Relative Dating* (n.14), p. 257) and includes the ambiguous proof *δόξα τοῦ λέγοντος* (repute of the speaker) in them. I consider Kraus' interpretation (M. Kraus, 'How to Classify Means of Persuasion: The Rhetoric to Alexander and Aristotle on Pisteis' in *Rhetorica* (2011), 29:3, 263-79) as the most plausible (*pace* D. Mirhady, 'Aristotle and Anaximenes on Arrangement' in *Rhetorica* (2011). 29:3, 293-304)), especially when taking into account W. Benoit, 'Isocrates and Aristotle on Rhetoric', *Rhetoric Society Quarterly* (1990), 20:3, 251-9. Key to our understanding is Isocrates' (*pace* Aristotle's) discussion of the ethos of the speaker: Aristotle says that this is created *during* the speech (Arist. *Rhet*. 1356a8-10) whereas Isocrates (15 *Antidosis* 278) maintains that this *pre-exists* (as Anaximenes' *δόξα τοῦ λέγοντος*). Therefore, since Anaximenes puts '*δόξα τοῦ λέγοντος*' under the supplementary proofs whereas Aristotle retains it (in the form of ethos) under the supplementary proofs, it seems that Anaximenes' distinction of *πίστεις* indeed has a temporal aspect (cf. V. Adamidis, *Character Evidence in the Courts of Classical Athens: Rhetoric, Relevance and the Rule of Law*, Abingdon / New York Routledge 2017, p. 208).

[20] On the classification of artless proofs in Aristotle and Anaximenes, see D. Mirhady, 'Non-Technical Pisteis in Aristotle and Anaximenes' in *American Journal of Philology* (1991) 112: 5-28; Mirhady, *Torture and Rhetoric in Athens* (n.6); Carey, *Artless Proofs* (n.6).

[21] A more detailed analysis of this interpretive model in relation to Athenian law and forensic rhetoric can be found in V. Adamidis, *Character Evidence* (n. 19), pp. 168-202.

[22] C. Gill, *Personality in Greek Epic, Tragedy, and Philosophy: The Self in Dialogue*, Oxford OUP 1996.

[23] See for e.g. B. Williams, *Shame and Necessity*, Berkeley University of California Press 1993; K. Wilkes, *Real people: Personal Identity without Thought Experiments*, Oxford Clarendon Press 1993. For a detailed discussion and bibliography see Gill, *Personality in Greek Epic* (n.21), Ch. 1.1-2.

[24] For the definition of 'subjective' and 'objective' in this context see Gill, *Personality in Greek Epic* (n.21), pp. 6-7.

[25] Cf. Gill, *Personality in Greek Epic* (n.21), p. 12. Following such an approach, Greek psychology and perception of human motivation can be best understood and evaluated on their own terms, rejecting the misleading and, until recently, very influential developmental accounts which evaluated Greek examples of human action by reference to Cartesian and post-Cartesian models. Prominent developmental accounts are those of B. Snell, *The Discovery of the Mind: the Greek Origins of European Thought*, Oxford Blackwell 1953; A.W.H. Adkins, *From the many to the one: a study of personality and views of human nature in the context of ancient Greek society, values and beliefs*, London Constable 1970. For criticism of these accounts see Gill, *Personality in Greek Epic*, Ch. 1.1.

[26] Gill, *Personality in Greek Epic* (n.21), p. 52.

[27] Gill, *Personality in Greek Epic* (n.21), p. 53; for further discussion of this passage and other cases of Homeric deliberation see Gill, *Personality in Greek Epic* (n.21), Ch. 1.3-4.

[28] General adherence to the 'rule' regarding *βάσανος* allowed it to be offered as a *τεκμήριον* (a 'sure sign' according to Aristotle's *Rhetoric* 1.2, 1357b 1-16, a 'contradiction' between words and deeds according to Isocrates and Anaximenes' *Rh. Al.* 1430a 14-21) against the rejecter of a challenge. For an analysis of the different uses and meanings of *τεκμήριον* see Marrie-Pier Noël, 'Isocrates and the *Rhetoric to Alexander*: Meaning and Uses of *Tekmerion*' in *Rhetorica* (2011)*,* 29:3, pp. 319-335.

[29] Attic forensic speeches have a vested interest in concealing or distorting the truth and therefore such presuppositions facilitate the advancement of particular arguments. Therefore statements should be approached with caution and not be taken at face value. In particular, when orators use superlative adjectives, insist confidently on the truth, or claim to the jurors that 'you all know' a particular 'fact' or 'truth' they put forward, readers should be even more cautious. For a discussion of such references, see J. Ober, *Mass and Elite in Democratic Athens: Rhetoric, Ideology, and the Power of the People*, Princeton 1989, pp. 149-51; Arist. *Rhetoric* 3.7.7.

[30] Nevertheless, there are only four instances where a speaker mentions that he has rejected a challenge (and in these he justifies this rejection by saying that he issued a better challenge), compared to the much disproportionate figure of nearly forty reports of speakers mentioning challenges which were rejected by the opponent [Cf. Gagarin, *The Torture of Slaves* (n.1), pp. 9-10]. The fact that these four rejecters do not doubt the reliability of *βάσανος* demonstrates that this argument had some gravity in the minds of the jurors.

[31] περὶ τῶν ἀμφισβητουμένων πολὺ δοκεῖ δικαιότατον καὶ δημοτικώτατον εἶναι, ὅταν οἰκέται ἢ θεράπαιναι συνειδῶσιν ἃ δεῖ, τούτους ἐλέγχειν καὶ βασανίζειν, καὶ τοῖς ἔργοις μᾶλλον ἢ τοῖς λόγοις πιστεύειν.

[32] The rhetorical technique of using *βάσανος* to highlight the opponent's inconsistencies and contradictions is explained by Noël, *Isocrates and the Rhetoric to Alexander* (n.27), esp. pp. 329-30.

[33] ὑμεῖς μὲν τοίνυν καὶ ἰδίᾳ καὶ δημοσίᾳ βάσανον ἀκριβέστατον ἔλεγχον νομίζετε· καὶ ὁπόταν δοῦλοι καὶ ἐλεύθεροι παραγένωνται καὶ δέῃ εὑρεθῆναί τι τῶν ζητουμένων, οὐ χρῆσθε ταῖς τῶν ἐλευθέρων μαρτυρίαις, ἀλλὰ τοὺς δούλους βασανίζοντες, οὕτω ζητεῖτε εὑρεῖν τὴν ἀλήθειαν τῶν γεγενημένων. εἰκότως, ὦ ἄνδρες· σύνιστε γὰρ ὅτι τῶν μὲν μαρτυρησάντων ἤδη τινὲς ἔδοξαν οὐ τἀληθῆ μαρτυρῆσαι, τῶν δὲ βασανισθέντων οὐδένες πώποτε ἐξηλέγχθησαν ὡς οὐκ ἀληθῆ ἐκ τῶν βασάνων εἰπόντες.

[34] Cf. Isoc. 17.54: ὁρῶ δὲ καὶ ὑμᾶς καὶ περὶ τῶν ἰδίων καὶ περὶ τῶν δημοσίων οὐδὲν πιστότερον οὐδ᾽ ἀληθέστερον βασάνου νομίζοντας, καὶ μάρτυρας μὲν ἡγουμένους οἷόν τ᾽ εἶναι καὶ τῶν μὴ γενομένων παρασκευάσασθαι, τὰς δὲ βασάνους φανερῶς ἐπιδεικνύναι, ὁπότεροι τἀληθῆ λέγουσιν.

[35] τίς ἂν οὖν ὑπὲρ τοιαύτης αἰτίας, ὦ ἄνδρες δικασταί, εἴπερ ἐπίστευεν αὑτῷ, οὐκ ἐδέξατο τὴν βάσανον; οὐκοῦν τῷ φεύγειν τὴν βάσανον ὑφῃρημένος ἐξελέγχεται.

[36] ἕτοιμος εἴην διδόναι βασανίζειν τούς τε ἐμαυτοῦ πάντας, καὶ εἴ τινας τῶν ἀλλοτρίων κελεύοι, ὡμολόγουν πείσας τὸν δεσπότην παραδώσειν αὐτῷ βασανίζειν τρόπῳ ὁποίῳ βούλοιτο.

[37] A mocking, yet informative, similar scenario can be seen in Aristophanes, *Frogs* (605-74) in which Xanthias is offering Dionysos to Aeacus for torture.

[38] εἰ γὰρ τούτων ἐθελόντων διδόναι εἰς βάσανον ἐγὼ μὴ ἐδεξάμην, τούτοις ἂν ἦν ταῦτα τεκμήρια. τὸ αὐτὸ οὖν τοῦτο καὶ ἐμοὶ γενέσθω, εἴπερ ἐμοῦ θέλοντος ἔλεγχον λαβεῖν τοῦ πράγματος αὐτοὶ μὴ ἠθέλησαν δοῦναι. δεινὸν δ᾽ ἔμοιγε δοκεῖ εἶναι, εἰ ὑμᾶς μὲν ζητοῦσιν αἰτεῖσθαι ὅπως αὐτῶν μὴ καταψηφίσησθε, αὐτοὶ δὲ σφίσιν αὐτοῖς οὐκ ἠξίωσαν δικασταὶ γενέσθαι δόντες βασανίσαι τὰ αὑτῶν ἀνδράποδα.

[39] Cf. Antiph. 1.6: "it is not for my brother to say that he is quite sure his mother did not murder our father for when he had the chance of making sure, by torture, he refused it; he showed readiness only for those modes of inquiry which could yield no certainty. Yet he ought to have been ready to do what I in fact challenged him to do, so that an honest investigation of the facts might have been possible."

[40] Noël, *Isocrates and the Rhetoric to Alexander* (n.27), p. 326 writes in respect of Isocrates, *Trapeziticus* 12: "The possibility of having the slave tortured and, of course, the content of his confession (βάσανος) would have helped establish the cogency of the plaintiff's claim, but might equally have provided the plaintiff with an irrefutable proof (ἔλεγχον) of his own truthfulness: had he been able to find the slave, he could have claimed that the very fact that he wanted him to be tortured was incompatible with his telling lies".

[41] ταῦτα προκαλεσαμένου ἐμοῦ, ἄνδρες δικασταί, Στέφανον τουτονί, οὐκ ἠθέλησεν δέξασθαι. οὔκουν ἤδη δοκεῖ ὑμῖν δεδικάσθαι ὑπ᾽ αὐτοῦ Στεφάνου τουτουί, ὦ ἄνδρες δικασταί, ὅτι ἔνοχός ἐστι τῇ γραφῇ Νέαιρα ἣν ἐγὼ αὐτὴν ἐγραψάμην, καὶ ὅτι ἐγὼ μὲν ἀληθῆ εἴρηκα πρὸς ὑμᾶς καὶ τὰς μαρτυρίας παρεσχόμην ἀληθεῖς, οὑτοσὶ δ᾽ ὅ τι ἂν λέγῃ πάντα ψεύσεται, καὶ ἐξελέγξει αὐτὸς αὑτὸν ὅτι οὐδὲν ὑγιὲς λέγει, οὐκ ἐθελήσας παραδοῦναι εἰς βασάνους τὰς θεραπαίνας ἃς ἐγὼ ἐξῄτουν αὐτόν;

[42] Cf. Thür, *Beweisfuhrung vor den Schwurgerichtshofen Athens* (n.6), pp. 163-4; Mirhady, *The Athenian Rationale for Torture* (n.2), p. 63.

[43] Thür, *Beweisfuhrung vor den Schwurgerichtshofen Athens* (n.6), pp. 163-4 argues that, as a rule, the inquisitor is the opponent of the slave's owner, with the latter, nevertheless, maintaining a certain control in the procedure (i.e. he may stop the torture if it is not carried out in accordance with the agreement).

[44] Gagarin, *The Torture of Slaves* (n.1), p. 8.

[45] οἶμαι δ᾽ ὑμᾶς ἐπίστασθαι τοῦτο, ὅτι ἐφ᾽ οἷς ἂν τὸ πλεῖστον μέρος τῆς βασάνου, πρὸς τούτων εἰσὶν οἱ βασανιζόμενοι λέγειν ὅ τι ἂν ἐκείνοις μέλλωσι χαριεῖσθαι· ἐν τούτοις γὰρ αὐτοῖς ἐστιν ἡ ὠφέλεια, ἄλλως τε κἂν μὴ παρόντες τυγχάνωσιν ὧν ἂν καταψεύδωνται. εἰ μὲν γὰρ ἐγὼ ἐκέλευον αὐτὸν στρεβλοῦν ὡς οὐ τἀληθῆ λέγοντα, ἴσως ἂν ἐν αὐτῷ τούτῳ ἀπετρέπετο μηδὲν κατ᾽ ἐμοῦ καταψεύδεσθαι· νῦν δὲ αὐτοὶ ἦσαν καὶ βασανισταὶ καὶ ἐπιτιμηταὶ τῶν σφίσιν αὐτοῖς συμφερόντων.

[46] Cf. Noël, *Isocrates and the Rhetoric to Alexander* (n.27), pp. 329-30.

[47] Mirhady, *The Athenian Rationale for Torture* (n.2), p. 58 argues that the main factor making this offer reliable was that, unlike others, this commonly-owned slave knew the truth of the exact facts.

[48] Gagarin, *The Torture of Slaves* (n.1).

[49] G. Thür, *Beweisfuhrung vor den Schwurgerichtshofen Athens* (n.6), pp. 233-261. Also, C. Carey, '"Nomos" in Attic rhetoric and oratory', in Carawan, *The Attic Orators* (n.6), at p. 231 referring to challenges in general, describes the challengers' aim as being to get a moral advantage in court, since the challenge is issued in the confident expectation that the opponent will refuse it. The challenge 'must be so worded as to satisfy the jurors of the litigant's good faith… [but] it must never be so attractive that the opponent is tempted to accept it'.

[50] Thür, *Reply to D.C. Mirhady* (n.11), p. 134 refers to this case as the "best proof for the fact that according to the laws of procedure the *basanos* should be presented to the *dikasterion* together with all the other written documents…the *basanos* does belong in the *echinos*!".

[51] Though before the actual torture had begun; see Thür, *Beweisfuhrung vor den Schwurgerichtshofen Athens* (n.6), p. 190; cf. Thür, *Reply to D.C. Mirhady* (n.11), 133.