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Judgment in the Fourth-Century BCE Athenian Courts as Anti-Tragedy: Demosthenes's *On the Crown*

Ella Street

Abstract: In 330 BCE, before a jury of 501 Athenian citizens, the statesman Demosthenes delivered what would become his most famous court speech, *On the Crown*. Commentators have called the speech “tragic” owing to the litigant’s unusual appropriation of tropes from Attic tragedy to make his case. I offer an alternative reading of Demosthenes’s speech that rests upon an alternative approach to theorizing democratic judgment. I argue that the rhetorical force and political significance of Demosthenes’s metaphors, linguistic expressions and ideas depend upon the institutional setting in which they were delivered. This is because within each institutional site, a specific political practice of judgment is taking place that structures the reception of and response to ideas and images. Demosthenes’s speech is in fact “anti-tragic” and reflects the democratic practice for which it was created.

Introduction

In 330 BCE, before a jury of 501 Athenian citizens, the statesman Demosthenes delivered what would become his most famous court speech, *On the Crown*.¹ Demosthenes’s speech provided a defense of his (unsuccessful) policy to resist Philip II of Macedon. It quickly gained recognition as a model of

Ella Street is a SSHRC postdoctoral fellow in the Department of Government at Cornell University, 214 White Hall, Ithaca, NY 14853, USA (ecs248@cornell.edu).

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¹Joseph Roisman and J. C. Yardley, *Ancient Greece from Homer to Alexander: The Evidence* (Hoboken, NJ: Wiley, 2011), 270.

rhetorical excellence and became a fixture of classical rhetorical education.² In the speech, which secured the defendant a resounding victory,³ Demosthenes appropriates images and ideas from Attic tragedy to make his case: he tells the jury that he “did not control fortune, but fortune controlled everything” (18.193), invoking the tragic concept of *tuchē* (chance or fortune) over twenty-five times; and he likens Athens’s enemy, Philip of Macedon, to lightning and other natural disasters that bring ruin to even the best of men (18.194). Demosthenes paints a picture of himself as a kind of tragic hero, ill-fated yet deeply admirable, and worthy of support despite his failed policy.

In certain respects, Demosthenes’s appropriation of tragic language and ideas is unsurprising. Because the very same citizens who regularly attended the theater served as jurors in the Athenian popular courts (*dikastēria*), it makes sense that orators would mine their audience’s shared cultural vocabulary to craft persuasive speeches. Indeed, litigants in the popular courts frequently borrowed from other genres to bolster their arguments, inserting a particularly lucid quotation or dramatic metaphor as a way of enhancing the aesthetic quality of their speech or lending it an air of poetic authority.⁴ Johanna Hanink has argued that an explosion of tragic references in the third quarter of the fourth century indicates Athens’s effort to assert control (and canonize) its cultural heritage in the face of Macedonian hegemony.⁵

Demosthenes’s deployment of tragic tropes, however, does persuasive work beyond aesthetic embellishment or authoritative reference. For Harvey Yunis, the presence of tragic tropes in *On the Crown* reflects Demosthenes’s unusual (and unusually effective) adoption of a “tragic way of thinking” to persuade his audience,⁶ serving as a rare instance of convergence between what Yunis and others regard as the otherwise distinct

²Lois Agnew, “Demosthenes and His Times,” in *Demosthenes’ “On the Crown”*: *Rhetorical Perspectives*, ed. James Murphy (Carbondale: Southern Illinois University Press, 2016), 9–35.

³The prosecuting litigant, Aeschines, did not receive one-fifth of the jurors’ votes, was thus fined a thousand drachmas and likely lost the right to carry out similar legal actions in the future (Christopher Carey, introduction to *Aeschines*, trans. Carey, *Oratory of Classical Greece* 3 [Austin: University of Texas Press, 2000], 12). The trial’s outcome was a serious legal, monetary, and political blow: Aeschines left Athens to teach rhetoric in Rhodes.

⁴For example, in Aeschines’s *Against Timarchus* (345 BCE), the speaker treats Euripides and Homer as poetic authorities on virtue and patriotic devotion (128, 144, 148, 151), as does Lycurgus in *Against Leocrates* (330 BCE) (111, 102); in Antiphon’s *Against the Stepmother* (419–414 BCE) the prosecutor likens the defendant (accused of poisoning) to Clytemnestra (17), and in Andocides’s *On the Mysteries* (399 BCE) the speaker likens the defendant to Oedipus (128).

⁵Johanna Hanink, *Lycurgan Athens and the Making of Classical Tragedy* (New York: Cambridge University Press, 2014).

⁶Harvey Yunis, “Politics as Literature: Demosthenes and the Burden of the Athenian Past,” *Arion* 8, no. 1 (2000): 107.

genres and “modes of thought” generated in the Athenian popular courts and the theater of Dionysos.⁷ By contrast, Danielle Allen sees in forensic oratory and Attic drama a unified “grammar” illuminating the “ideational systems” and “habits of mentality” that defined Athens as a whole. She sees ideas about anger and punishment, in particular, as circulating between different institutional contexts to consistently inform democratic judgment.⁸ Although Yunis and Allen disagree about the unity of the Athenian public sphere, a common understanding of judgment, I suggest, underpins their accounts: the democratic judgment practiced in Athens’s varying institutional contexts is best understood as a cognitive and deliberative process, directed by a set of ideas, commitments, or lessons learned. This process may be an emotional one, as it is in Allen’s account, but according to this view, the ideas in ancient texts are the best window into understanding the kind of democratic judgment taking place in a text’s respective institutional context.

In this article, I offer an alternative reading of *On the Crown* and an alternative approach to theorizing democratic judgment. I argue that the rhetorical force and political significance of Demosthenes’s metaphors, linguistic expressions, and ideas depend on the institutional setting in which they were delivered, and that within each institutional site, a specific political practice of judgment is taking place that structures the reception and response to ideas and images. In part 1, I argue that democratic judgment is shaped by what I call “institutional charge,” that is, the distinctive dynamics that inform its practice in a given context. Institutional charge includes the political and institutional pressures placed on the judge, the required outcome or telos of a given judgment, the institutional constraints on narrative, and the civic role and relationship between the judges and those judged. My reading of *On the Crown* attends to these dynamics and is motivated by questions of how jurors are likely to take up Demosthenes’s dramatic imagery and respond to it during a trial, as they endeavor to determine guilt and innocence. I ask what work tragic imagery does in the forensic context, where citizens in the audience occupy very different roles as spectators than they do in the theater.

Reading Demosthenes’s speech as a product of a particular institutional setting, intended for an audience engaged in a particular democratic practice, leads me to conclude that it is “anti-tragic.” I develop this in part 2. While Attic tragedy often questions or disrupts civic identity and emphasizes the limits of human agency and freedom, Demosthenes’s use of tragic tropes enables him to present a revised vision of democratic freedom that the jury

⁷Yunis draws on Robert Parker’s typology in his analysis of *On the Crown*. Yunis, “Politics as Literature,” 111; Robert Parker, “Gods Cruel and Kind: Tragic and Civic Theology,” in *Greek Tragedy and the Historian*, ed. Christopher Pelling (Oxford: Clarendon, 1997), 152.

⁸Danielle Allen, *The World of Prometheus: The Politics of Punishing in Democratic Athens* (Princeton, NJ: Princeton University Press, 2000), 76.

may affirm through their verdict. Democratic freedom was central to Athenian civic identity; when Demosthenes delivered *On the Crown*, the establishment of Macedonian hegemony had unsettled this identity. This historical context is significant, as Yunis and others have argued;⁹ I suggest, however, that the (re)assertion of civic identity via the judicial verdict that Demosthenes's speech enables is characteristic of the political practice of judgment in the courts before and after this unique moment. Judgment in the courts depends on certain forms of closure and democratic political action that distinguish it from judgment in the theater. Demosthenes displays his keen understanding of these institutional dynamics when he uses tragic ideas to facilitate an "anti-tragic" political practice.

1: Judgment in the Courts and Institutional Charge

Historical and Institutional Context

In 336 BCE, a prominent Athenian citizen—Ctesiphon—proposed that Athens honor Demosthenes for his service to the city by bestowing upon him a gold crown at the sacred and civic festival, the City Dionysia. Awarding crowns was a recognized practice in Athens and receiving them was the sign of a successful public career. At the same time, citizens could (and often did) impede these ceremonies via litigation.¹⁰ Such legal conflicts were occasions for agonistic political exchange outside of the Assembly, often between prominent politicians with major policy disagreements. These disputes took place in the popular courts before an audience of jurors. They were occasions for ordinary citizens to evaluate, promote, and denounce policies in retrospect, by offering judgments on the careers and policies as a whole of individual elites. As Yunis explains, "because Athenian democracy possessed little in the way of political parties or advocacy groups, policies had no viability apart from the particular politicians who advanced them. Endorsing and discarding those politicians was itself a primary means of establishing policy."¹¹

⁹Richard Enos, "Demosthenes' Style: Lexis in 'On the Crown,'" in Murphy, *Demosthenes' "On the Crown,"* 367; Arthur Wallace Pickard-Cambridge, *Demosthenes and the Last Days of Greek Freedom, 384–322 B.C.* (Piscataway, NJ: Gorgias, 2002); Yunis, "Politics as Literature."

¹⁰Carey, introduction to *Aeschines*, 12. See also Mogens Herman Hansen, *The Athenian Democracy in the Age of Demosthenes: Structure, Principles, and Ideology* (Norman: University of Oklahoma Press, 1999), 62.

¹¹Harvey Yunis, editor's introduction to *Demosthenes, Speeches 18 and 19*, trans. Yunis, *Oratory of Classical Greece* 9 (Austin: University of Texas Press, 2005), 12. See also Mogens Herman Hansen, "The Athenian 'Politicians,' 403–322 B.C.," *Greek, Roman, and Byzantine Studies* 24, no. 1 (2004): 53.

Ctesiphon's motion to crown Demosthenes was controversial: after a failed peace agreement and botched diplomacy efforts between 346 and 339, Demosthenes had encouraged the Athenians to forge an alliance with other Greek cities to oppose Philip of Macedon, whose rise to power and increasing control over the area threatened Athenian hegemony. The Athenian demos had sided with Demosthenes, and confronted Macedonian troops at Chaeronea in 338. This bloody confrontation ended in a decisive victory for Philip: after Chaeronea, Athens retained autonomy over its internal affairs but was now part of Philip's League of Corinth. Philip had secured control over Greece.¹²

On the question of how to respond to Philip's growing power, Demosthenes had repeatedly opposed another prominent Athenian politician, Aeschines, who favored pro-Macedonian policies of rapprochement. And so when, several years after Athens's defeat, Ctesiphon proposed to honor Demosthenes, Aeschines blocked the motion. Although ostensibly about legal issues directed at Ctesiphon, the ensuing trial was an opportunity for Aeschines to challenge Demosthenes and his policy towards Philip before a jury of Athenian citizens. Ctesiphon handed over his allotted speaking time to Demosthenes, who then assumed the role of defendant. For Demosthenes, the trial was an opportunity to defend his conduct and character.¹³

Demosthenes begins his defense with an account of the events leading up to the Battle of Chaeronea and his ongoing efforts to resist Macedonian expansion. At the center of his account is a condemnatory portrayal of Aeschines, whom he blames for the botched Peace of Philocrates and accuses of accepting Philip's bribes. According to Demosthenes, Aeschines misled the Athenian assembly when he endorsed the peace agreement of 346 and his "friendship" with Philip encouraged him to do so. Demosthenes also assigns responsibility to Aeschines for the delay in sending the Second Embassy to secure Philip's oath after the demos had approved the Peace; this delay provided Philip the opportunity to seize new territories (18.27, 30, 36, 42).

At times, Demosthenes's attack against his adversary appears petty, particularly to contemporary readers—a profusion of slurs intended to undermine Aeschines's claim to elite status and to ridicule his past (Aeschines's father was a slave [a lie], Aeschines is a bad actor,¹⁴ and so on [18.258, 262]). But

¹²For historical context and contested policies leading up to Chaeronea, see Agnew, "Demosthenes and His Times"; Harvey Yunis, editor's introduction to *On the Crown*, ed. and trans. Yunis (New York: Cambridge University Press, 2001), 1–11. All references to Demosthenes's *On the Crown* are to Yunis's translation unless otherwise noted.

¹³Anton-Hermann Chroust, "Legal Profession in Ancient Athens," *Notre Dame Law Review* 29, no. 3 (1954): 345; Hans Julius Wolff, "Demosthenes as Advocate: The Functions and Methods of Legal Consultants in Classical Athens," in *The Attic Orators*, ed. Edwin Carawan (Oxford: Oxford University Press, 2007), 91–115.

¹⁴This twofold insult reflects pervasive anxieties in democratic Athens about deceptive rhetoric. See Nancy Worman, "Insult and Oral Excess in the Disputes

the heart of his attack centers on the important question of what good citizenship and public service entail. This broad, civic framing of the stakes of the trial is characteristic of Athenian forensic oratory. In this case, Demosthenes focuses on the ideals of self-determination and public-spiritedness. He rejects Aeschines's self-presentation as a devoted citizen who acts always with Athens's best interest in mind, replacing this image with the claim that Aeschines is Philip's "hireling" (18.38, 49, 51, 52) and suggesting that his pro-Philip policies are proposed with an eye to private gain (18.41, 42, 45, 46). Demosthenes retorts that Aeschines's relationship to the Macedonian king was not political or in accordance with Greek hospitality, but rather commercial: "I wouldn't say that you were Philip's guest or Alexander's friend [*philos*] — I'm not that crazy! —" Demosthenes exclaims, "unless by Zeus we also have to call farm hands and other hired workers the friends and guests of those who hired them!" (18.51).

Demosthenes crafts an image of good citizenship that rests on a proper relationship between the public and private, and charges Aeschines with inverting this order, seeking private gain at the expense of the Athenian common good. He develops this public-private framework on several levels. Demosthenes constructs a parallel between Aeschines's inappropriate relationship to Philip and his use of the popular courts: he argues that Aeschines airs his private enmities against Demosthenes and seeks, via litigation, personal gain rather than justice for the city (18.14–16, 124, 226). Voicing what were, at the time, familiar anxieties about the lawcourts, Demosthenes warns his audience: "[Aeschines] thinks you intend to conduct a competition between public speakers rather than an examination of political deeds and that the decision you are about to make concerns words rather than the city's interests" (18.266). Aeschines is a two-faced sycophant,¹⁵ Demosthenes insists; he abuses political relations and institutions out of greed and disregard for Athens's fate.

Demosthenes juxtaposes Aeschines's conduct and policy proposals (allegedly based on self-interest and monetary concerns) with those oriented toward protecting Athenian freedom and honor. As Demosthenes presents it, there are two principal models of character and conduct: one committed to private gain, the other to the common good. This opposition sets the stage for Demosthenes's own self-presentation and defense, which elaborates the civic character of his conduct and his willingness (which he invites his Athenian judges to claim also as their own) to promote the common good above and even against his own private concerns (18.103, 109). When Demosthenes urged the Second Embassy to depart in haste, when he

between Aeschines and Demosthenes," *American Journal of Philology* 125, no. 1 (2004): 1–25.

¹⁵The term "sycophant" originates as an Athenian legal term. Cf. note 20 below and Allen, *World of Prometheus*, 166.

encouraged the Athenians to be wary of Philip's intentions, and when he refused to pander to Philip and instead rallied the Athenian demos to resist the barbarian tyrant, he acted always with the city's interest—including their honor and glory—in mind.

Triangulating Political Judgment: The Common Good, the Demos, the Citizen

The rhetorical choices discussed thus far are conventional: they are consistent with the broader genre of forensic oratory and reflect the institutional context of the Athenian courts. Interpreting the significance of Demosthenes's unconventional deployment of tragic tropes requires first clarifying this institutional context, including how the forensic situation directs Demosthenes's rhetoric and how the political practice of democratic judgment taking place in the courts shapes the way citizens take up and respond to Demosthenes's rhetoric.

Yunis argues that Demosthenes stages a battle between good and evil, presenting a simplified story featuring himself as protagonist and hero (alongside the Athenian demos).¹⁶ This description captures an important feature of the speech, which is its binary and oppositional construction.¹⁷ It is worth amending Yunis's description here, however, to draw out the political nature of the occasion and the kind of judgment it generates. The trial does not require an ethical determination, which the language of good vs. evil might suggest, and which Yunis emphasizes;¹⁸ rather, it requires political judgment about what constitutes the common good, and therefore what actions aim at protecting and promoting that good. As Demosthenes's speech reflects, the courts provided an opportunity for citizen-judges to reflect upon competing conceptions of the citizen ideal and visions of the common good, and to affirm one litigant's vision over another through their verdict.

One aspect of institutional context that is coming to light is what I call "triangulated" judgment. In the Athenian courts, conceptions of the citizen, the demos, and the common good were presented as inextricably linked, and a judgment about any one of these civic elements elicited consideration of all three. To be sure, any claim about the common good in any setting implies a particular conception of who constitutes the demos, as well as some idea of citizenship. When the common good is discussed in a different setting (for example, in a seminar or even an assembly speech), however, these interlocking elements may not be addressed together, and the connections between them might remain obscure.

¹⁶Yunis, introduction to *On the Crown*, 23.

¹⁷See also David Mirhady, "Ethos in 'On the Crown,'" in Murphy, *Demosthenes' "On the Crown,"* 414–46.

¹⁸Yunis, "Politics as Literature," 109.

Several elements of the Athenian popular courts' institutional charge help to explain why connections between conceptions of the citizen, the demos, and the common good are made explicit in this setting. First, the nature of the courtroom¹⁹ exchange encourages triangulation: the speeches are agonistic and oppositional, and a litigant must defend himself against his rival's allegation that he is a bad citizen. This was true for both defendants and prosecutors: although the prosecuting litigant was not technically on trial, he had to convince his audience that he pursued legal action for the right reasons. Athenian citizens had both economic and political incentives to press charges against others, because those who won their cases were rewarded with monetary compensation and public recognition. This institutional design gave rise to the problem of sycophants—individuals who took advantage of the court's accessibility by using it to gain personal prestige, win monies, or attack personal enemies by fabricating charges. By the fourth century, this had become such a nuisance that penalties were imposed to deter sycophants.²⁰ The prosecutor went to great lengths, therefore, to convince his judges that he was not a sycophant but an upright citizen. Thus in every court case, both the prosecutor and defendant were effectively on trial before a jury of fellow citizens. The character appraisals they offer, both of themselves and their opponents, overtly connect the common good to conceptions of citizenship, and criminality (including sycophancy) is cast as a dereliction of civic duty, or a failure to live up to the corresponding citizen ideal.

Second, the Athenians had a much broader view of what evidence is relevant to a given case than what we find in the Canadian or American legal system. Partly this is due to practical constraints. Because there was no forensic evidence, litigants (and their judges) often had to rely on arguments based on probability (*to eikos*), that is, what kind of character is most likely to commit a given crime.²¹ Likewise, in cases like *Against Neaera*, regarding citizenship status, the absence of birth records that might prove legal status encouraged the prosecutor to focus on demonstrating the defendant's "foreign" character. In addition to practical constraints, and as Adriaan Lanni has shown, the use of both legal and "extra-legal" evidence in the Athenian courts reflects the Athenians' belief that a "wide variety of contextual information was often necessary to reaching a just decision."²² It reflects the "pervasive amateurism" of the courts and Athens's political commitment

¹⁹I use this term loosely—trials were held in the open air.

²⁰Douglas M. MacDowell, *The Law in Classical Athens* (Ithaca, NY: Cornell University Press, 1995), 62.

²¹Michael Gagarin, "Eikos Arguments in Athenian Forensic Oratory," in *Probabilities, Hypotheticals, and Counterfactuals in Ancient Greek Thought*, ed. Victoria Wohl (Cambridge: Cambridge University Press, 2014), 15–29. See also Aristotle, *Rhetoric* 1402a2.

²²Adriaan Lanni, "'Verdict Most Just': The Modes of Classical Athenian Justice," *Yale Journal of Law and the Humanities* 16, no. 2 (2004): 282, 293.

to popular decision making, since there were no professional or supervising judges in the *dikastēria*,²³ and nonprofessional judges (both then and now) tend to comprehend social interaction “in story form.”²⁴

Finally, this occasion for judgment called upon jurors to review and reference their own self-understanding as citizens as they judged those before them. This kind of judgment is uniquely democratic in its self-reflexive and, ideally, reflective dimension: judgment of the defendant in their capacity as citizen is also a judgment about oneself as citizen, and assigning responsibility allows for a crystallization of civic self-understanding. Indeed, Athenian litigants repeatedly draw attention to this self-reflexivity, calling upon their judges to reflect upon their own self-understanding and civic expectations for themselves.²⁵

These institutional dynamics encouraged the Athenian juror to consider visions of the citizen, the common good, and the *demos* together: judgment concerning one required judgment about all three. As regular participants in the popular courts, then, Athenians were primed to take a broader, political view of the significance of an alleged crime. When we attend to what I have called the “triangulated” nature of judgment in the courts, we deepen our understanding of the work a litigant’s rhetoric might do in this setting, and gain a more complete appreciation of the significance of any particular juridical verdict. We see that democratic judgment in the courts is a political activity of citizens extending to one another a standard of conduct to which they are also accountable. When a juror casts his ballot, he makes a claim about his own civic self-understanding and asserts his authority to generate and enforce norms regulating civic conduct. The practice of judgment in this site, then, which entails regulating political membership through penal action, is always also a form of democratic self-assertion.

Civic Identity and the Common Good in On the Crown

Conceptualizing judgment along these lines and considering the popular courts’ institutional charge inform my interpretation of Demosthenes’s speech, including the defendant’s unconventional usage of tragic tropes: when Demosthenes utilizes language and ideas from Attic tragedy, I argue, he does so to facilitate the political self-assertion characteristic of the courts.

As we have seen, considerations of proper civic behavior, the character of the *demos*, and the common good were regularly recognized as

²³The vast majority of trials took place in the popular courts (*dikastēria*). There were also five additional courts devoted to homicide, wounding, and certain religious offenses. See Hansen, *Athenian Democracy*, chap. 8; MacDowell, *Law in Classical Athens*, 116–17.

²⁴Lanni, “Verdict Most Just,” 293.

²⁵E.g., Demosthenes 21: *Against Meidias* (133, 143–48, 197, 203, 204); Aeschines 1.176, 188; Lysias 12.90.

fundamentally interconnected by Athenian citizens in their capacity as jurors. This appears throughout extant forensic oratory: in both public and what we would now call private or civil trials, litigants insist that nothing less than the common good and the true meaning of Athenian citizenship are at stake.²⁶ Trials required citizens to deliberate about these interlocking concerns, weighing in on whose vision of citizenship and the common good is more convincing, or desirable.

As the Athenians approached the Macedonian forces at Chaeronea, the common good they sought to defend was their freedom. Athenian external autonomy was increasingly threatened by Philip's growing power, and it proved to be a fragile and ultimately unreliable good, as the Macedonians would crush the Athenians at Chaeronea, effectively bringing about the war's end and securing Macedonian hegemony. Demosthenes recounts these events eight years later, before an audience of citizen-jurors with stirring memories of the battle itself and living in the wake of defeat.²⁷ He continuously acknowledges and affirms the Athenian self-understanding as rooted in autonomy and a civic ideology which values political freedom above material comfort or physical security. *On the Crown* manifests Demosthenes's keen awareness that Athens's loss to the Macedonians has uprooted this self-understanding. The Athenian jurors' external conditions no longer conform to their self-image but rather threaten to undermine it.

While most commentators note that Demosthenes concentrates on Athenian freedom as the chief common good,²⁸ I draw out in my reading how Demosthenes reframes this good to render it less vulnerable to fortune or the irresistible power of enemy forces. By doing so, he enables the jurors to reestablish a coherent (and continuous) self-understanding when they vote in favor of his account. This (re)affirmation of civic identity is notably anti-tragic and characteristic of democratic judgment in the courts, even if Demosthenes employs tragic tropes to facilitate it. Demosthenes is an exemplary rhetorician precisely because he is so attuned to his institutional context, including the distinct function of forensic rhetoric to facilitate a practice of civic identity constitution.

Demosthenes uses the concept of chance or fortune (*tuchē*) to describe powers and circumstances that arguably exceeded Athenian influence or control.²⁹

²⁶For example, Dem. 59.93; 21.7, 188, 220; Aesch. 1.28; Andoc. 4.14; Lyc. 1.66.

²⁷Diodorus of Sicily estimates that one thousand Athenians were killed, while as many as two thousand were taken as slaves (See *Library of History* 16.86.5). The Athenians would have also had fresh memories of the sacking of Thebes in 335, only five years before the trial. Cf. Yunis, "Politics as Literature," 113.

²⁸E.g., Michael Kochin, "Time and Judgment in Demosthenes' *De Corona*," *Philosophy & Rhetoric* 35, no. 1 (2002): 77–89; Mirhady, "Ethos in 'On the Crown'"; Yunis, "Politics as Literature"; Pickard-Cambridge, *Last Days of Greek Freedom*.

²⁹*Tuchē* plays a central role in the speech—Demosthenes uses the term at least twenty-six times! Those who search for consistency in his usage will be disappointed (see for example 18.252–58), but this is not a philosophic investigation

What did lie within Athenian control, he insists, was their character, which he grounds in a vision (and historical record) of brave resistance to tyranny. He declares to his audience that they fought bravely for their freedom and demonstrated their true character in doing so; they chose to battle because they would never “let a politician or general” (referring in this instance to Aeschines) “[lead] them into a prosperous slavery,” but would rather die than allow their city to be enslaved (18.205).

Rather than anchor freedom to material and relational circumstances, as external autonomy does, Demosthenes foregrounds the citizens’ capacity to act honorably in pursuit of cherished political goods. The defendant’s story thus hinges on an account of Athenian character or nature (he uses the two terms interchangeably)³⁰ whose core is grounded in an uncompromising commitment to freedom. When the demos chose to follow Demosthenes’ lead and to resist Philip, the Athenians acted in a way consistent with their ancestral legacy, even if the outcome of the battle left them less externally free than before:

True, the city seems to have failed in its objectives, which is the common lot of all mankind when god so decides. But if [the city] claimed to be the leader of the rest of Greece and then abandoned that claim to Philip, it would have been guilty of betraying all Greeks. For if the city chose to surrender without a fight the position that our forefathers faced every danger to acquire, who would not have spat on—you? (18.200)

By fighting for this “noble cause,” Demosthenes tells his audience, they acted “worthily of their forebears” (18.201, 210). Yunis calls the force of this argument “the burden of the Athenian past,” which emphasizes remaining true to character rather than focusing on considerations of advantage or disadvantage.³¹ In Demosthenes’s speech, deciding to confront Macedonian forces was an extension of what it means to be a citizen of Athens. To act otherwise would have been as unwise (given what they knew at the time) as it was un-Athenian (18.199–208). Although the Athenians have lost external freedom, they may salvage and restore a

of *tuchē*. I focus on the primary way he uses the term with respect to his central argument and appeal to his audience. For further examples of this usage, see 18.194, 207, 208.

³⁰A philosophic account of responsibility would certainly distinguish the two concepts. But Demosthenes does not make a strict distinction between them: he uses “way of life” (*tropos* 18.263), “character” (*ēthos* 18.109, 204), and “nature” (*phusis*) to describe what we would colloquially (and indeed more precisely) call character. In context, all of these terms refer to values and behavior that may be the product of both nature and education but are considered sufficiently within the individual’s control to warrant praise or blame (or, in Demosthenes’s situation, indictment or acquittal).

³¹Yunis, “Politics as Literature,” 109, 114.

vital element of their self-understanding as free citizens by voting for Demosthenes's narration of their struggle with Macedon.

Demosthenes's emphasis on character and his increasing location of freedom in character is linked to the account of responsibility he lays out early in the speech and repeatedly reiterates. The citizen's or statesman's character, Demosthenes argues, is displayed through intentional actions in accordance with Athenian commitments, and is separable from the unpredictable or uncontrollable consequences of action. It is an adviser's intention (*prohairesis*),³² therefore, that should elicit praise or blame, and whereas Aeschines blames the outcome of the battle on bad policy, Demosthenes casts it as chance. Though he is careful not to explicitly credit Philip with any "godlike" power that crushed Athenian plans, Demosthenes uses the tragic motif of shipwreck to insist that uncontrollable forces were ultimately to blame for Athens's defeat. He implores his judges:

Examine my choice of policy. . . and do not use what followed to make frivolous charges, for all things end up as god determines, but the adviser's intention is clear only from his policy. . . . If the thunderbolt that struck overpowered not only us but all the rest of Greece, what is to be done? Suppose a shipowner were blamed for a shipwreck though he took every precaution and fitted the ship with every conceivable device to ensure safety, but a storm came up and the rigging strained and then snapped completely. "I was not at the helm," he would say—as indeed I was not in command in the field—and I did not control fortune, but fortune controlled everything. (18.193)

Demosthenes urges his citizen-audience to judge the prudence of his policies, not strictly in terms of outcome, but in terms of their embodiment of the Athenian character. "What should the city have done," he turns to ask Aeschines, "when it saw Philip building towards empire and tyranny over the Greeks?" (18.66). The Athenians were aware of the risk involved in resisting Philip but were, on Demosthenes's account, "ready to submit to mortal danger for the sake of glory and honor, which was the right and noble decision" (18.96).

We see here another instance of the triangulation of the citizen, the common good, and the demos that I have argued is characteristic of the genre of forensic rhetoric and exemplary in *On the Crown*. Demosthenes folds his account of responsibility, praise, and blame, into the broader vision of the good citizen that he develops in opposition to Aeschines. The courage of the adviser lies in his willingness to "disclose his view" about a future he cannot wholly predict or control; in doing so, the adviser puts himself in a position particularly vulnerable to fortune, which entails also vulnerability to the demos who

³²This could also be translated as "deliberate choice," "plan," or "advice." On Demosthenes's appeal to focus on his intention, see also Yunis, "Politics as Literature," 110.

will judge the statesman after his policies have played out.³³ Demosthenes juxtaposes the statesman's political bravery and corresponding vulnerable relationship to the demos with the sycophant (e.g., Aeschines), who is "silent when there is need for a speech and then maligns if anything unpleasant happens" (18.190). The sycophant is a coward who does not take risks but, instead, unjustly maligns those who do.

On my reading, then, Demosthenes's defense is built upon the opposition he develops between his own public, democratic orientation and his accuser's private one. In his depiction of the courageous statesman, he draws attention to the mutual vulnerability of truly democratic relationships and claims to have bravely forged this relationship as a political leader of the demos. As Demosthenes reminds his fellow citizen-jurors, when the herald in the Assembly asks "Who wishes to speak?" he does not ask "Who wishes to offer guarantees for the future [?]" (18.78). The jury should not hold Demosthenes responsible for what he could not foresee or control.

For the Athenians, freedom and nobility were cherished political goods. Attic tragedy presents them as contingent upon ineluctable forces and vulnerable to unanticipated outcomes,³⁴ but Demosthenes manages to present revised conceptions of these goods as squarely within each citizen's command. By minimizing the degree to which success on the battlefield secures one's glory, Demosthenes offers a version of courage for which he and the demos all deserve crowns: "since all men find the limits of life in death—even one who is shut himself in a closet and watches, good men must always venture all noble acts with good hope as their shield and worthily endure whatever god gives them" (18.97).

2. Interpreting Demosthenes's Victory as Anti-Tragedy

I have argued that democratic judgment in the courts is both triangulated and self-reflexive: as regular participants in the courts, jurors are primed to appreciate the connections between a given conception of the citizen, the demos, and the common good, and reaching a verdict about one of these civic elements means making a claim about all three. Foregrounding these characteristics of democratic judgment makes visible the ways in which this practice is

³³On Athens's "accountability machinery" and the demotic mechanisms for holding elites accountable, see Jennifer Tolbert Roberts, *Accountability in Athenian Government* (Madison: University of Wisconsin Press, 1982); Josiah Ober, *Mass and Elite in Democratic Athens: Rhetoric, Ideology, and the Power of the People* (Princeton, NJ: Princeton University Press, 1989).

³⁴As in Hecuba's case, for example, the former Trojan queen whose nobility is ultimately undone by her circumstances and who devolves into a "dog," or the war plays that lament reversals from freedom to slavery or destitution, or the fragility of noble principles in the face of the pressures of political expediency, as we find for example in Sophocles's *Philoctetes*.

a form of political self-assertion: when the juror casts his vote, he affirms a particular conception of Athenian citizenship, which is also to make a claim about his self-understanding as citizen.

Institutional contexts can tell us something about the general shape that the genres they produce may take, while exceptional rhetoricians tell us even more about institutional context, because they demonstrate—through their exemplary speeches—a deep understanding of what is at stake for their audience as they judge. A hermeneutics that attends to this reciprocity is most useful as we endeavor to understand texts and the democratic political practices for which they were produced. The institutional charge of the popular courts, which includes the required outcome of the judgment (i.e., a verdict, and thus the need to designate a clear winner and loser), constraints on narrative (e.g., trials featured two-sided, agonistic conflicts), and the relationship between the judges and those judged (i.e., common citizenship encouraging self-reflexive judgment), helps to explain aspects of Demosthenes's speech because it structures forensic oratory as a genre and the political practice that generates it. At the same time, Demosthenes's understanding of the juridical occasion, including the political (and psychological) significance of democratic judgment in the courts, directs his own rhetorical choices.

My reading of *On the Crown* suggests that Demosthenes's speech reflects his understanding that to judge in this context is to make a claim about "who we [the citizens] are." He knows that judicial rhetoric functions as constitutional poetics, insofar as it is received and responded to by citizen-jurors poised to exercise their power and authority to determine what vision of the people and the common good will prevail. He knows that the words and images he offers may be taken up by his audience and utilized to (re)assemble a particular self-understanding. With this juridical possibility in mind, Demosthenes effectively calls forth an image of Athenian character as stable amid great instability: "Since the beginning of time," he tells his judges, "no one has ever been able to persuade the city to side with the powerful but unjust and to find safety in servitude" (18.203). The Athenians—and Demosthenes—were free to act nobly and they did, Demosthenes suggests: it is for this that they should be praised.

The popular court was not an institutional site for producing new laws or enacting novel political identities: it is largely backward looking, and the identity constitution taking place through judgment in this site takes its bearing from preexisting laws³⁵ and the perceived stability of preexisting political identities.³⁶ The litigant's rhetorical question to his audience, "Is

³⁵On the use of precedent in Athenian law and judicial practice, see Edwin Carawan, "Arguments from Precedent in Attic Oratory," in Carawan, *The Attic Orators*; Adriaan Lanni, "Precedent and Legal Reasoning in Classical Athenian Courts: A Noble Lie?," *American Journal of Legal History* 43, no. 1 (1999): 27–51.

³⁶This lends a different layer of meaning to Aristotle's famous claim in *Rhetoric* 1.3 that judgment (vs. deliberation) is backward looking, which reflects the institutional

this who we are?" is often explicitly presented as "Is this who we have been?"³⁷ In arriving at a verdict, jurors review prior actions and events and give them meaning; they endeavor to respond to the past in a way that allows them to recover and to advance a stable civic self-understanding or self-image. Through their verdict, jurors may (re)affirm the stability and authority of their laws and political identity.

A Tragic Poet in the Courts?

If the theater was a site in which citizens watched and grieved political reversals, the court promised a kind of political restoration. We may describe the function of the popular courts, and the practice of democratic judgment unfolding within it, as "anti-tragic" in this important respect. I conclude my analysis by elaborating on the term "anti-tragic," which I use to describe the function of Demosthenes's rhetoric and the juridical occasion for which it was prepared. "Anti-tragic" is a comparative term: it refers to the alternative institutional context and rhetorical genre of the theater. As we have seen, Demosthenes repeatedly borrows from this alternative site in his defense: he points to the "will of heaven," "fate," and luck as ultimately bringing about Athenian defeat, and in place of Philip he speaks of "lightning"—a force of nature or even godlike imposition that rendered Athens helpless (18.194).

Yunis has interpreted Demosthenes's use of such language as the adoption of a "tragic way of thinking and reasoning," which was unusual for the otherwise "optimistic" genre of forensic rhetoric, but effective in this particular historical moment.³⁸ Tragedy's "pessimistic" view of the gods' protection,³⁹ alongside its "anti-utilitarian" view of action as the "chief vehicle through which character asserts its moral claims," resonated with an Athenian audience still in shock after the recent sacking of Thebes.⁴⁰ Yunis argues that in 330 BCE, the former optimism characteristic of political and legal oratory had been chastened. The demos were "thoroughly cowed" by the political situation, but nonetheless wished to make a "gesture of independence" towards Alexander without attempting an actual revolt.⁴¹ The Athenians' unique historical circumstances, then, gave rise to Demosthenes's unorthodox and genre-bending speech.

practices of the courts vs. assembly and the ordinary language used to describe these alternative practices.

³⁷E.g., Dem. 21.143–46, 148; 59.94–106; Aesch. 1.6, 138, 173, 185.

³⁸Yunis, "Politics as Literature," 111.

³⁹Cf. Parker, "Gods Cruel and Kind: Tragic and Civic Theology."

⁴⁰In 335 BCE, the Macedonians crushed a Theban revolt that Athens supported and almost joined. Alexander killed or sold into slavery all of the city's inhabitants. Yunis discusses the impact of this event on Athens in "Politics as Literature," 113.

⁴¹Ibid., 111, 109, 114.

I agree that tragic tropes are integral to the argument and effect of *On the Crown*, and that Demosthenes goes beyond poetic embellishment in his usage of these tropes. The defendant therefore does more rhetorical work with his borrowing than other orators in the tradition. He uses tragic imagery, for example, to circumscribe what he is responsible for.⁴² I disagree, however, with Yunis's account of the tragic nature of both Demosthenes's defense and the response it elicits. Whereas I argue that *On the Crown* is exemplary of the genre and enables the civic identity constitution characteristic of the courts, Yunis treats the speech as aberrant and looks to the unique historical circumstances to explain its anomalous success. He sees commonality between the rhetorical work tragic language does in Demosthenes's speech and the work it does in its original home, the theater.

In my view, reading *On the Crown* as tragedy is misguided, and a missed opportunity to foreground how institutional charge and the practice of democratic judgment in the courts shape rhetoric and its effects. Demosthenes's speech lends itself to such an inquiry precisely because he borrows from the theater, yet what he borrows does very different rhetorical work when received and responded to by jurors in the *dikastēria*. When we shift our view to focus on institutional charge, we see that the juridical practice of identity constitution in the courts is significantly anti-tragic: democratic judgment in this institutional context enables a kind of political and psychological recovery that Attic drama largely refuses.

Yunis characterizes three elements of Demosthenes's speech as "tragic." First, Demosthenes casts his policy as the only available option—he describes it as an inevitable outgrowth of Athenian heritage and a "necessary choice" when faced with the threat of despotism, which allows him to avoid discussing the specific merits of his policy.⁴³ Second, Demosthenes points to the "gap" between our most perfect plans and the forces of the world that strike against us and undermine those plans—a gap particularly pronounced in Attic drama, and therefore familiar to the court's theater-going citizen-jurors. Finally, Demosthenes's emphasis on intention as the seat of responsibility and his rejection of outcome as a measure of his record recall tragic heroes like Achilles, whose arguably "noble" pursuit of his friend's killer led to his own ruin, or Antigone, whose unwavering piety fueled her determination to bury her brother at great cost. On Yunis's reading, Demosthenes presents himself as a tragic hero in this tradition, hoping to elicit from his audience a "gut reaction" of awe and admiration akin to their experience of watching a tragedy on stage.⁴⁴

Yunis is of course right that Demosthenes, armed with poetic tropes, makes an emotional appeal to elicit his audience's recognition of an upsetting, perhaps "tragic" feature of everyday life: Isn't it true, he submits to his judges, that we often act with the best intentions, do all that is within our

⁴²E.g., 18.193, discussed in the third section of part 1 above.

⁴³Yunis, "Politics as Literature," 108.

⁴⁴Ibid., 105.

power, and are nonetheless confronted with loss and even ruin? Insofar as this is the tragic equation—that we suffer as nonsovereign actors in a world that ultimately escapes our control—then Demosthenes’s story is a tragedy, intended to elicit sympathy in the form of acquittal. But this is not where Demosthenes’s story ends. He delivers it in a courtroom that carries with it a redemptive potential. Demosthenes’s invitation to his audience to absolve him from blame, and to honor him while also honoring themselves, is significantly anti-tragic because it is an invitation to engage in an empowering act of political recovery. I argue that Demosthenes was attuned not only to the particular historical moment, as Yunis emphasizes, but also to the juridical occasion itself, including the political practice of judgment taking place among the litigant’s audience, and the power and significance of reaching a verdict as opposed to simply listening to a speech or watching a drama unfold.

The desire to restore a particular civic self-understanding is acute in 330 BCE: in a moment of political rupture and imperial subjugation, Demosthenes offers the Athenians an opportunity to affirm, through their verdict, the continuity of Athenian character and to recover their self-understanding as free. Insofar as Demosthenes offers a revised conception of courage and freedom to enable this recovery, his speech may be considered innovative, even creative. The psychological and political desires to which he is responding are essentially conservative and encouraged by the institutional setting itself: throughout fifth- and fourth-century forensic oratory, litigants present crime and criminality as disruptions to the civic and political order and threats to the *demos*’s authority as makers and protectors of the laws. The judicial response to these disruptions is presented in a corresponding way, as a practice of restoring order and reasserting authority.⁴⁵

As Demosthenes’s speech exemplifies, the popular courts provided the Athenian jurors a chance to recover and affirm their collective identity and self-understanding. The impulse to salvage and assert a stable identity can of course go in various directions, some more or less favorable to Demosthenes, as well as more or less virtuous according to an Athenian understanding of virtue. The jurors might have blamed Demosthenes for defeat at Chaeronea, for example, as they did on other occasions when condemning leaders enabled them to insulate themselves from blame for failed policies.⁴⁶ In the case against Ctesiphon, however, we know that the defendant (and Demosthenes) won.⁴⁷ Demosthenes’s success reflects his deep understanding of the institutional context in which he speaks and the democratic activity it occasions: he appeals to the Athenians’ desire to recover their self-understanding as free, and voting in favor of Demosthenes’s narration of their struggle with Philip allows them to do so.

⁴⁵E.g., Dem. 21.123; 54.79; Aesch. 1.34, 136, 177, 191,192; Lys. 1.47.

⁴⁶Cf. Roberts, *Accountability in Athenian Government*, 9.

⁴⁷Ctesiphon received an overwhelming majority and was acquitted (signifying Demosthenes’s win). See note 3 above.

Closure and Containment in the Courts

This recovery requires forms of closure that are unique to the courts and notably unavailable in the theater of Dionysos. Treating Demosthenes's speech as anti-tragedy leads me to clarify these forms of closure. First, Demosthenes promises his audience moral confidence by offering a purified view of intention and action that he diametrically opposes to that of his adversary. The court's institutional charge, including the need to arrive at a definitive verdict at the close of a two-party trial, encourages this framing. Second, the collective act of reaching a verdict signals the citizen-jurors' power and authority to determine and to broadcast an account of past events; doing so effectively contains the otherwise messy and unruly character of action. This kind of containment is integral to the political significance of judgment in the courts (and largely unavailable in tragic drama).

Yunis describes Demosthenes's account of responsibility as "tragic" and a product of Attic tragedy; he claims that tragedy offers its audience "moral confidence" within an uncontrollable world by focusing on character and intention as the relevant grounds for moral or ethical evaluation.⁴⁸ Yunis is right that Demosthenes promises his audience moral confidence, but I treat this as a distinctive provision of the juridical occasion that depends on forms of closure that Attic tragedy refuses. Demosthenes's insistence that intention should anchor determinations of guilt and innocence is in keeping with mainstream Athenian legal concepts that both extant forensic oratory and judicial institutional design reflect.⁴⁹ The Athenians had a separate court, for example, for allegations of intentional unjustified murder, nonintentional murder, and intentional justified murder, and the distinction between intention and outcome that we find in *On the Crown* would have been familiar to the jury, even if they disregarded it on other occasions.⁵⁰ Attic tragedy, by contrast, features characters who commit acts that exceed their intentions, for which they nevertheless hold themselves—in some respect if not entirely—responsible.⁵¹ Consider Sophocles's *Oedipus*, for example, and his dramatic action of ripping out his own eyes, or Euripides's *Heracles*, when he murders his wife and children while under a divine spell, and later begs to be punished for what he has done. These characters may elicit empathy from a theater

⁴⁸Yunis, "Politics as Literature," 115.

⁴⁹Cf. Aristotle's discussion in *Rhetoric* 1.13.

⁵⁰Cf. Antiphon's tetralogies, especially the *Second Tetralogy* on the issue of accidental murder. See also Lysias's *Against Simon*, on whether intention implies premeditation. For the different homicide courts, see Aristotle, *Constitution of Athens* 57. For a helpful consideration of these conflicting conceptions of intention, see Victoria Wohl, "A Tragic Case of Poisoning: Intention between Tragedy and the Law," *Transactions of the American Philological Association* 140, no. 1 (2010): 33–70.

⁵¹On intention and responsibility in tragedy and forensic oratory, see also Wohl, "Tragic Case," 36–37.

audience, but they are not simply let off the hook; there is no seat of responsibility (like intention) that constitutes a “luck free” moral core, to which a judge may exclusively refer in order to determine innocence or guilt. As Bernard Williams has shown, shame is a central emotion in these plays and it often signals responsibility that cannot be reduced to the voluntary.⁵²

In Attic tragedy we also find characters with mixed intentions—either because they suffer internal conflict and are pulled in competing directions, or because they contain a “mix” of more or less condonable desires.⁵³ The genre of the theater, I suggest, helps to explain this: through its use of monologue, dialogue, and performed action, drama is particularly adept at conveying the messiness of what leads human beings to act. By contrast, the court’s institutional charge helps to explain why Demosthenes circumscribes what he is responsible for, and why his account is well received. In the courts, a litigant will strive to present a clear account of his intentional action and lawful agency; the agonistic nature of the trial and the need to arrive at a definitive decision encourage this. If a playwright does present a character’s intentions as univocal and determined, such as we find in Sophocles’s Creon or Euripides’s Medea, this iron-willed quality is usually cast as ethically suspect. In Creon’s case, for instance, Sophocles presents us with a character hell-bent on upholding what he believes is right; and yet, however noble, Sophocles portrays Creon’s conviction as stubborn and inflexible and, in certain respects, downright tyrannical. It is not uncommon in Attic tragedy for conviction to appear insufficiently capable of responding prudently to a given situation. Iron-willed conviction may elicit our awe, but in tragic drama it is often cast as a problem.

Yunis argues that Demosthenes presents himself as a tragic hero akin to Antigone, whose “costly piety towards her brother” exemplifies what he takes to be a central, “anti-utilitarian” aspect of Attic drama: “human actions are presented and evaluated as admirable or contemptible, noble or base, good or bad, without regard for their success or failure.”⁵⁴ I read tragedy, including *Antigone*, differently. Antigone’s pious devotion does seem admirable, but Sophocles also presents as an open question whether Antigone’s action is entirely justified, and he treats seriously the political imperatives Creon (and at times, the chorus) stand for and which conflict with Antigone’s demands.⁵⁵ Whereas spectators at the theater may sit with these aporetic elements of a drama and leave the theater with troubling

⁵²See Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 2008).

⁵³For examples of mixed motivation, consider Clytemnestra in Aeschylus’s *Agamemnon*, Sophocles’s Deianira, and even Sophocles’s Antigone.

⁵⁴Yunis, “Politics as Literature,” 105.

⁵⁵Cf. Lukas van den Berge, “Sophocles’ *Antigone* and the Promise of Ethical Life: Tragic Ambiguity and the Pathologies of Reason,” *Law and Humanities* 11, no. 2 (2017): 205–27.

questions left ajar, the institutional charge of the popular courts encourages litigants to present their cases as mutually exclusive accounts for the jury to decide between and to affirm, and the juror is required to close the case at hand. Finally, and perhaps most significantly, Antigone has no access to the kind of institutionalized, popular redemption that the juridical occasion enables; indeed, her situation would not be so “tragic” if she did.

A pure, uncomplicated character—one that can be described with the kind of oppositional categories Demosthenes employs (right vs. wrong, public vs. private) and that therefore warrants unequivocal and decisive affirmation—is hard to come by in tragedy. These notable differences of genre reflect the different institutional sites and practices for which forensic oratory and Attic tragedy were created. Tragic drama, both in content and form, is intended for leisured listeners who are not required to determine strict innocence or guilt; it requires as it assumes a degree of “openness” to the messiness of responsibility, the ways in which we blame ourselves for more than we can control, and the ways in which motivations are often mixed.

By contrast, the court encourages a more simplified view, both because it requires its audience to reach a definitive decision and because of its binary, agonistic structure. On my reading, Demosthenes constructs a public-private binary to cast himself as patriotic as opposed to Aeschines’s ignoble self-interestedness. He also presents his historical account of the debates and policies leading up to Chaeronea in terms of his ongoing duel with Aeschines, though we know that Athenian policy towards Philip was not as dualistic as this account suggests.⁵⁶ His rhetorical approach is unsurprising: because trials feature two-party conflicts, the prosecutor and defendant are inclined to present starkly contrasting accounts so that the citizen-jurors have a clear picture of their manageable options and may side with one against the other. The trial itself demands a presentation of facts, law, and considerations of justice that is amenable to a relatively quick and final decision. This is particularly true in the Athenian case because there was no presumption of innocence, no opportunity for deliberation among jurors, and only a simple majority needed to acquit or condemn.

The second form of closure unique to the courts and integral to this site’s “anti-tragic” political recovery is the action of reaching a verdict. Performed collectively by the citizen-judges, this is an act and assertion of popular authority. It is an agentic moment wherein the jurors advance an authoritative determination, or “final say,” on past events and on an individual’s character and actions. I use the phrase “final say” to capture two ways in which reaching a verdict provides closure. By the fourth century, although citizens could prosecute individuals who had proposed allegedly illegal decrees in the Assembly, there was no institutional check on the courts or formal avenue

⁵⁶Cf. P. J. Rhodes, “Demagogues and Demos in Athens,” *Polis* 33, no. 2 (2016): 263.

to appeal judicial verdicts.⁵⁷ Judicial verdicts were therefore final in terms of institutional design. We might describe this form of closure as “episodic,” insofar as there were informal opportunities to contest judicial verdicts elsewhere in the Athenian public sphere, from conversation in the agora to drama to philosophic commentary. Nevertheless, court verdicts were powerful and authoritative declarations.

The phrase “final say” also indicates the narrative dimension of this act, which is an act of authorship. A series of actions are not properly events until they have been narrated, explained in their connection, and imbued with worth or significance, which entails explicit or implicit normative appraisal. In Athens’s popular courts, citizens were regularly called upon to perform this authoritative act in the judicial process of narration: judging between contrasting stories and then broadcasting one story to the wider community through their verdict, adding to it a dimension of moral and (democratic) political evaluation.⁵⁸ Conceptualizing the popular courts as a site in which citizens constitute their collective identity by giving meaning to past actions echoes Patchen Markell’s (Arendtian) theory of democratic action as “responsiveness to events.”⁵⁹ The democratic action taking place in the courts is distinctive: whereas the moral dilemmas we find in tragedy are often aporetic and unruly, arriving at a verdict signals a certain containment of the potentially interminable implications, connections, and possible ethical ambiguities of actions. The jurors’ judgment therefore “completes” as it contains actions.

Because the distinctive dynamics of each site of judgment—what I have called “institutional charge”—shape not only the production of tropes within a genre, but also the reception and response to whatever ideas or images are presented within a speech or play, identifying cross-pollination between discourses does not necessarily support the conclusion that there is unity within the public sphere or an instance of convergence, as Yunis argues, with respect to the democratic judgment unfolding in different institutional sites. Demosthenes enables the Athenians to restore their collective self-image through uniquely juridical types of closure—by offering a simplified story of right and wrong and by narrowing the view of what is ethically and politically relevant for ascribing responsibility. Yunis minimizes the

⁵⁷Hansen, *Athenian Democracy*, 205–11. Hansen argues that the reforms of 410–399 BCE, which expanded the powers of the courts and restricted those of the Assembly, made the courts the most “supreme” or sovereign institution (150–60). See also Martin Ostwald, *From Popular Sovereignty to the Sovereignty of Law: Law, Society, and Politics in Fifth-Century Athens* (Berkeley: University of California Press, 1986). For an alternative perspective, see Ober, *Mass and Elite*, 95–103, 299–304.

⁵⁸Broadcasting these verdicts to the wider citizenry was understood to have both didactic and deterrent functions. See, for example, Lys. 1.47; Dem. 54.79; Aesch. 1.34, 191.

⁵⁹Patchen Markell, “The Rule of the People: Arendt, Arché, and Democracy,” *American Political Science Review* 100, no. 1 (Feb. 2006): 19.

difference between tragedy and forensic oratory on this occasion, whereas I clarify the distinctiveness of each and the political practices of judgment they shape and reflect. Attending to the court's institutional charge and the practice of judgment taking place in this particular setting helps to make sense of the content, rhetoric, and success of Demosthenes's speech.

3. Conclusion

Reading *On the Crown* as a product of political practice requires considering the significance of ideas, images, and rhetorical strategies for a particular, active audience. The members of Demosthenes's audience are jurors, tasked with reaching a final verdict, and they exercise their democratic power and authority through this judgment practice. At one level, then, my reading has opened up a new way of understanding the work tragic material is doing in this particular speech: Demosthenes's use of tragic ideas and images enables him to present a revised vision of democratic freedom that the jury may affirm through their verdict, thereby recovering their self-understanding as free. I have called the work that tragic tropes are doing to facilitate this recovery "anti-tragic" because that work is largely unavailable in tragic drama and depends on certain forms of closure and democratic action unique to the courts. The term "anti-tragic" does not signal that Demosthenes's speech, or the practice of judgment for which it was written, is necessarily good or just, but rather that it enables those judging to maintain and to advance a coherent civic identity.

On the Crown reflects Demosthenes's firm grasp on the political and psychological dynamics animating his audience of jurors. At another level, then, this analysis points to a new way of understanding the political practice of democratic judgment taking place in the popular courts. Demosthenes's speech offers a particularly helpful entryway into reconstructing that practice precisely because he appropriates language and ideas from a different institutional context. When we contextualize Demosthenes's speech by foregrounding institutional charge, we see that the work Demosthenes's tragic vocabulary does in the judicial context signals a deep difference—rather than unity or convergence—between the judgment taking place in the courts and other sites. We should not assume that the meaning of cultural and linguistic tropes remains constant in each institutional context because we cannot assume that citizens receive and respond to ideas and images consistently in alternative settings. Democratic judgment is a situated political practice shaped by institutional charge. To judge as a citizen-juror is not the same as judging as a leisured spectator. Institutional charge plays a constitutive rather than a modificatory role in determining what judgment entails.

Despite all that separates us from fourth-century Athens, assertions of collective identity continue to transpire in contemporary and liberal democracies: from jury trials to electoral politics, citizens are asked to judge what it

means to be a citizen, who is included in the citizenry, and what goods citizens should protect or pursue in common. By describing the practice of democratic judgment in the Athenian courts as “anti-tragic,” I have sought to capture the redemptive function of judgment in the courts and its political significance as a moment of authoritative civic identity constitution. This juridical possibility is key to understanding judgment in this site, including both its promise and attendant risks.