

Persuasive *Basanos*: Torture in Aristotle and the Attic Orators

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1. Introduction

Aristotle's exclusion of testimony from torture (*basanos*) in *Rhetoric* from the art (*technē*) of rhetoric appears to be based on Athenian acceptance of torture as the extrinsic premise that validated *basanos* as "truth" in forensic courts. According to Aristotle's description of the slave (*doulos*) as a "live piece of property" (*Politics* 1253b33), slaves lacked the capacity for rational discourse and required torture to elicit truthful testimony. Thus, Aristotle's categorization of *basanos* as an atechnic means of persuasion that needs only to be "used" and not "invented" (1355b) reflects Athenian belief, explains Page duBois, that "truth [was] generated by torture from the speech of the slave" (36).

Though Aristotle makes no mention of it, however, *basanos* was the result of a challenge (*proklēsis*) to *basanos*—a formal legal procedure in Athenian litigation requiring litigants to submit interrogation questions that could be either refused or accepted by their opponents. Aristotle's omission of the challenge in his discussion of *basanos* is surprising in the context of the Attic speeches: orators only employed *basanos* in its form as a refused challenge in which the torture did not take place. Since the value of *basanos* as truth in forensic speeches has typically been understood as authorized by the physical torture of slaves, how *basanos* was persuasive within speeches in the absence of its extrinsic premises remains unacknowledged in current criticism.

Consideration of *basanos* as persuasive in the Attic speeches (420–320 BCE) requires an understanding of torture as significant not only as an expression of violence, but also, as David Mirhady specifies, a way classical Athenians "confirm[ed] their own social hierarchy and cohesion" ("Rationale" 71). For Athenians, the act of torture more broadly symbolized a citizen's dominant political status, a credibility I suggest the Attic orators exploited in their use of the challenge to *basanos* to present themselves as citizens who acted in the best interest of the community. Orators employed the refused challenge to *basanos*, I argue, in arguments that sought to win favour with jurors through demonstration of trustworthy character (*ethos*). I begin by examining Aristotle's discussion of *basanos* as an atechnic proof in *Rhetoric*, providing a detailed analysis of the role torture plays in maintaining status distinctions in Athenian society. I extend this examination of Aristotle to the use of the challenge to *basanos* by Demosthenes in *Against Onetor*, analyzing its role within the probabilistic context of the Athenian law courts. In its form as a challenge, I will show, *basanos* was used as a rhetorical strategy used by orators to exploit legal and social structures for their own persuasive purposes.

2. Atechnic *Basanos*

As it is categorized by Aristotle as an atechnic (*atechnoi*) means of persuasion (*pisteis*), testimony from the torture of slaves (*basanos*) has typically been understood as extrinsic to the

art of rhetoric. Defining rhetoric as “the faculty of discovering the possible means of persuasion in reference to any subject” (1355b), Aristotle identifies two means by which a speaker can persuade, through either atechnic or entechnic means of persuasion. Entechnic means of persuasion—appeals through reason (*logos*), character (*ethos*), and emotion (*pathos*)—are intrinsic to the speech; they are “constructed by system and by our own efforts” (1355b) and are developed through rhetorical invention, the systematized discovery of suitable arguments. Atechnic means of persuasion, on the other hand, are instances of forensic evidence that are “already in existence,” and include testimony from torture (*basanos*) witnesses, laws, contracts, and oaths (1355b). By contrast to persuasion intrinsic to argumentation, the validity of atechnic proof is established outside the argumentation of the speech so that “we have only to make use” of them, not invent them (1355b). Evidence obtained by sources outside argument did not require the orator to discover the means of persuasion, that is, the requisite arguments validating the evidence. As atechnic proof, *basanos* had the status of factual evidence that was extrinsic to the art of rhetoric since the premises for its acceptance did not need to be established by the speaker.

Later in *Rhetoric* (1376b–1376a), Aristotle instructs on how to interpret *basanos* within the narration of the speech, providing arguments both in favour and against its use. As Aristotle classifies it, *basanos* is accepted by Athenian audiences as valid forensic evidence because of the torture used to elicit it, reflected in Aristotle’s description of *basanos* as “a kind of evidence, which appears trustworthy, because a sort of compulsion is attached to it” (1376b). Page duBois analyzes the ancient connection between truth and pain arguing that, “[p]roof, and therefore truth, are constituted by the Greeks as best found in the evidence derived from torture” (68). Accordingly, Aristotle advises that speakers can use arguments that can either emphasize its veracity, that “we can exaggerate its importance by asserting that it is the only true kind of evidence”, or use arguments that downplay its truth: “we can destroy its value by telling the truth about all kinds of torture generally; for those under compulsion are as likely to give false evidence as true” (1377a).¹ By providing arguments for and against its use, Aristotle’s instructions concretize the exclusion of *basanos* from rhetorical invention by treating it as stable truth: the orator need only apply and interpret it within the narration, not persuade audiences of its reliability.

Implicit in Aristotle’s designation of *basanos* as “trustworthy” because of the torture used to elicit it are the social differences between citizen and slave that structured relations in classical Athens. One of the defining features of the Athenian city-state (*polis*) was its status as a political community exclusive to citizens (Athenian-born males): “The *polis* was a society of *citizens*,” Mogens Hansen emphasizes, and slaves (as well as women and foreigners) were excluded from participating in matters of state (62). Citizens were distinguished from slaves by their political capacity: in *Politics*, Aristotle defines the citizen as a “political animal” who, “possesses speech” and so “is designed to indicate the advantageous and the harmful, and therefore also the right and the wrong”; citizens, in other words, were uniquely capable of rationalizing desires to act in the

¹ Aristotle goes on to state that “it is necessary to say that tortures are not reliable; for many slow-witted and thick-skinned persons and those strong in soul nobly hold out under force, while cowards and those who are cautious will denounce someone before seeing the instruments of torture, so that there is nothing credible in tortures” (*Rhetoric* 163). However, George Kennedy argues that these comments were added by a later author (*Discourse* 108), and David Mirhady argues that these comments are evidence of “tampering” with the original text (“Non-Technical” 19).

best interests of the community of citizens that constituted the *polis* (1353a11–18). A slave (*doulos*), by contrast, was designated as chattel, “a live article of property” (1253b33): an “instrument of action” (1253b8) who possessed no individual capacity for reason and was compelled solely by bodily desires (1254b20–25). Since the *polis* was defined by the political capacity of citizens, slaves were excluded due to their inherent inability and facilitated democratic deliberation rather than participating in it.

Torture reinforced and maintained differences in social status between citizens and slaves through symbolic and physical demarcation. While citizens possessed the inherent capacity to act politically in all their interactions, Mirhady argues that “Athenians believed that slaves identified their best interests only with their immediate bodily welfare,” and therefore required external compulsion to obey the rule of law (“Rationale” 67). Torture therefore was the means by which citizens controlled and, by virtue of the violence of the method, oppressed slaves: torture violently differentiated citizen from slave by signifying, Virginia Hunter explains, “on the one hand, of the master’s authority and, on the other, of the slave’s degraded and cringing nature” (13). Through violent, public spectacle, torture functioned to naturalize ideological differences between citizens and slaves, positing citizens as inherent possessors of power that slaves were unable to resist or control. Torture, therefore, expressed power relations not only by torturing bodies but by differentiating bodies as torturable or not.

The formal legal rule in Athenian law that permitted the speech of a slave admissible as testimony only if it was elicited by torture was an extension of the social demarcation of slaves. Athenian courts maintained socially prescribed hierarchies by incorporating them within Athenian legal procedure (Hunter 3). Attributed with the capacity for rational discourse (*logos*), citizens could be relied upon to produce truthful testimony (and were held responsible for their speech); slaves, on the other hand, were incapable of *logos*, Hunter explains, and thus “were not competent to testify as witnesses in court” (6–7). Functioning as a “device for turning a slave’s evidence into legal testimony,” Hunter argues the challenge to *basanos* “is thus a concomitant of the slave’s incapacity to testify in court” (7). Torture was applied, David Mirhady asserts, to compensate for the slave’s lack of political competency: that is, “to ensure that no considerations affected the slave’s thoughts other than the directive to tell the truth” (“Rationale” 67). Aristotle’s exclusion of *basanos* from the art of rhetoric and his description of *basanos* as “trustworthy” because of the “compulsion” attached to it, therefore, was based on legal and socially instantiated hierarchy of differences that created the circumstances under which Athenians “applied what they thought to be an effective means of eliciting truth through violence” (Mirhady “Rationale” 57).

3. The Challenge to *Basanos*

Despite Aristotle’s instructions for the use of *basanos* and its context for acceptance by Athenians, eliciting evidence by torture and applying it as truth was not as straightforward as it appears. *Basanos* was the result of a legal procedure called the challenge (*proklēsis*) to *basanos* and was defined, Michael Gagarin outlines, by formal rules during the time period of the speeches (420–320 BCE). If an Athenian litigant required information from a slave he issued a challenge to *basanos* before the trial to the owner of the slave, usually his opponent. The challenge consisted of interrogation questions could be accepted or rejected by his opponent; either way, the questions and their answers formed the slave’s testimony, Gagarin explains: “the slave’s testimony was limited to giving yes or no answers to questions, and these answers could

apparently be cited later or read aloud in court” (4). The interrogation questions prepared by the litigant form the content of the evidence presented in court.

In its omission of mention of the challenge procedure, Aristotle’s advice gives the impression of dealing solely with evidence adduced by and validated by torture; yet, in extant Attic speeches there is no instance of a completed challenge. In the forty-two instances of *basanos* in the speeches, Stephen Todd reports, “we find the challenge, either ‘torture my slaves for evidence’ or ‘let me torture yours.’ Forty times this challenge was flatly rejected; twice...it was accepted but not carried through” (33–34). Legal historians note the inconsistencies between Aristotle’s instructions and practice, arguing that Aristotle shortens ‘challenge to *basanos*’ to ‘*basanos*’ in *Rhetoric*, and in all references to *basanos* in both Aristotle and in the Attic speeches, the term ‘*basanos*’ corresponds to the ‘challenge to *basanos*’ and not to the substantive evidence, the “truth.” According to Mirhady, Aristotle deviates from the list of formal evidence that appears in the Athenian Constitution (*Athenaion Politeia*) by “replac[ing] challenges with *basanoi*” (“Torture” 129). Gagarin similarly argues that references to *basanos* in Aristotle and the orators are to the litigant’s challenge to *basanos*, and that they use “βάσανος [*basanos*] as equivalent to ‘challenge to βάσανος’” (12).² In this view, Aristotle’s advice instructs orators on how to deal with the challenge to *basanos*, not the evidence itself.

Aristotle’s omission of the challenge from his discussion of *basanos* has significant implications concerning the persuasive role of *basanos* in rhetorical argument. Since Athenian recognition of *basanos* as truth depends on the application of torture to the slave, the absence of torture would presumably render *basanos* as no longer “trustworthy” because the premises that establish its veracity are absent. Yet, orators still used the challenge in speeches, suggesting that it had persuasive value in speeches despite the absence of torture. In fact, scholars argue that the orators intentionally employed challenges to manipulate them for their own persuasive purposes: Christopher Carey argues that orators viewed challenges opportunities to exploit formal legal procedures, and that their “real aim” was “to give the challenger a moral advantage in court” (231). Challenges were apparently so persuasive that speakers prepared the challenge with the intent of having it refused, a tactic Gerhard Thür describes as a “contrived rejection” (qtd. in Gagarin 10). Reframed according to its use as a challenge procedure, what Aristotle refers to as “trustworthy” is not the content of the evidence, but the act of issuing the challenge to *basanos*, the speaker’s formal pre-trial request to torture his opponent’s slaves. Although scholars observe that orators employed *basanos* within arguments, how *basanos* is persuasive as a challenge in the absence of the authorizing physical violence remains unacknowledged in current criticism.

Understanding how the challenge to *basanos* functioned persuasively within rhetorical speech requires a consideration of the context of Athenian law courts as an extension of the values of Athenian society. By contrast to modern courts, arguments in Athenian law courts did

² Although scholars debate its significance, Aristotle’s omission of the challenge from his discussion of *basanos* can perhaps be explained by his description of the oath-challenge: since Aristotle describes the challenge in his instructions regarding the oath, the replacement may have “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” (Mirhady, “Torture” 129). A further reason for the absence of the challenge may also perhaps be an effect of what George Kennedy describes as the “inconsistency” that is characteristic of Aristotle’s *Rhetoric*: parts appear to be partially revised, written at different times, and many key terms are not explained satisfactorily (*New* 55).

not apply proof to discover the truth of the matter; rather, David Cohen explains, arguments were presented against a “background of social values” by private citizens in front of large juries, who employed “assessments of character, reputation, and probability, cast in terms which appealed to the knowledge and values which the judges, as ordinary citizens, possessed” (61).³ Speakers won favour from juries not by applying extrinsic proof against objective rules, but by evaluating their character against the subjective values of the audience to demonstrate their trustworthy character. Orators employed the challenge to *basanos* as a rhetorical strategy in arguments that sought to establish credibility with juries, I suggest, and used it to draw on the considerable social value that the act of torture signified for Athenians. By associating themselves with torture, orators sought to align their character with the values it espoused: a trustworthy citizen acting in the best interests of the community of citizens.

4. *Basanos* as *Ethos*: Demonstrating Character

Although standard accounts of *basanos* have generally emphasized its value as “truth” for orators, argumentation in Athenian law courts proceeded from probable rather than certain premises, drawing on citizens’ own character to prove their case. Orators placed their own acts and practices on trial: their associations, behaviour, gestures, actions, and interactions with others in all areas of life, indeed, their political identity as citizens, served as the premises for argument. The use of argument from probability—argumentation that was based using the social values of character within the *polis*—was present in oratory, George Kennedy explains, because the law courts lacked powers of independent investigation: “If the facts were in doubt, as they often were, the question became one of what such a person as the defendant or prosecutor was likely to have done. His character was the key” (*New* 67). Since the *polis* was founded on the political accountability of citizens, litigants sought to win favour with juries by presenting themselves as model citizens who acted in the best interests of the community. Litigants constructed their trustworthy character (*ethos*), described by Aristotle in *Rhetoric* as “good sense, virtue, and goodwill” (1378a) within the speech, not from “any preconceived idea of the speaker’s character” (1356a). Using their actions as the means of persuasion, litigants sought to identify their values with those of their fellow citizens to win favour with their audiences.

Orators employed the challenge to *basanos* to associate themselves with the socially recognized value of torture as an act that establishes truth and expresses the citizen’s authority. As it enacted positive attributes of character, issuing a challenge to *basanos* thus functioned as demonstrative proof of trustworthy character and exemplified the characteristics of what Athenians regarded as a “good” citizen who, Joseph Roisman outlines, was “a loyal and useful citizen”; was “willing to rank public interest over personal needs”; was “guided by reason, and able to control his appetites”; and was generally moderate and careful in his dealings with others (*Manhood* 7). Proving willingness to torture presents the orator not only as possessing the traits of a good citizen, but also enacts them in the issuance of the challenge, a gesture that would have been very significant for Athenian audiences. For Athenians, Debra Hawhee observes, “identities

³ The many important differences between Athenian and modern courts are widely acknowledged in critical scholarship. See especially Stephen Todd, “The Purpose of Evidence in Athenian Courts”; Gerhard Thür, “The Role of the Witness in Athenian Law”; Christopher Carey, “‘Artless’ Proofs in Aristotle and the Orators”; and David Cohen, *Law, Violence and Community in Classical Athens*.

did not precede actions...one could not just ‘be’ manly (*andreios*) and all that entails without displaying his ‘manliness’ through manly acts of courage” (187–188). Issuing the challenge to *basanos* associates the speaker with the positive value of torture in Athens while at the same time demonstrating that he acts in accordance with the broader ideals of Athenian citizenship in the best interests of the *polis*.

More than significant than demonstrating their own character, however, orators employed the challenge to *basanos* especially to emphasize their opponents’ untrustworthy character in their refusal of the challenge. While issuing the challenge to *basanos* identified the speaker with the positive values of his audience, refusing to torture correspondingly signified the characteristics of a “bad” or “wicked” citizen who, Roisman asserts, “treated others hubristically (insolently), aggressively, and inconsiderately”; he was “self-centered”; and he acted according to his own selfish desires rather than those of the community (*Manhood* 7–8). Refusing the challenge to *basanos* presented his opponent’s character as radically separate from conventional ideals of the model citizen, thus isolating him argumentatively from the shared values that constitute the citizenry. By alienating him from the dimension of appropriate citizen action by associating him with unwillingness to torture, the opponent is represented as a citizen who refuses to enact their political identity. Since the political community is upheld by the intersubjective acts of association, a citizen who is portrayed as refusing to act like a citizen poses a deliberate threat to the entire community.

Using the challenge to *basanos* as a mechanism to present a contrast in character between litigant and opponent is consistent with the competitive context of Athenian courts. Orators routinely constructed arguments that pitted their identity in direct contest (*âgon*) with their opponents to present themselves as direct counterparts of one another, presenting themselves, as Roisman observes, as “a model of normative conduct and excellence” and their opponent as “a picture of deviancy and villainy” (*Manhood* 7). Competition was a characteristic of the law courts and also within Greek society, George Kennedy observes, who “not only tolerated but admired open contention. The Greek male orator, like the Greek male athlete, seeks to win and gains honor from defeating an opponent. Anger, retribution, and personal attacks were acceptable in public” (*Classical* 6). Employing the challenge to *basanos* to portray their opponents as “bad” citizens and themselves as “good” by comparison was a persuasive strategy that ultimately used character as the premises to appeal to the emotions (*pathos*) of the audience to persuade them not necessarily to vote for the speaker, but to incite enough anger to persuade them to vote against his opponent. Although the details differ according to each case, the argumentative structure of the orator’s application is similar in most speeches; in what follows, I show how the speaker in *Against Onetor* (attributed to Demosthenes), employs the challenge to *basanos* to portray his opponents’ character as plotting against the *polis*.

5. Demosthenes’ *Against Onetor*

Against Onetor is one of five forensic speeches presented by Demosthenes (c.384–322 BCE) to recover his inheritance from his guardians. Demosthenes’ purpose in the speech is to convince the jury that his opponents (Onetor and Aphobus) have stolen his property. Instead of gathering evidence (in the modern sense) to support this claim, Demosthenes instead portrays his opponents as scheming and self-interested, thus attempting to prove not that they committed the crime, but rather that they possess the character that was were likely to have committed the acts. Demosthenes introduces his case by depicting his opponents as duplicitous: while they may

appear to possess trustworthy character, they act in their own self interest: they are incapable of “reasonable action”; they have “concocted” their methods of proof; they acted “in the most outrageous manner”; they have “arguments craftily prepared”; and they are “without your knowing it, the basest and most unrighteous of men” (30.1–4). Using terms such as “craftily” and “concocted,” Demosthenes characterizes his opponents as devious, as citizens whose speech differs from their action, and thus presenting them as untrustworthy in the way they attempt to conceal their actions and motives from the audience.⁴

Demosthenes uses the challenge to *basanos* as proof of his opponents’ untrustworthy and devious behaviour. At the end of the oration, Demosthenes describes Onetor’s refusal to *basanos* using the same denigrating terms he used in the introduction: Onetor “refused to have recourse to this certain test”; he “in an outrageous and insulting manner refused to let me talk to [the slave]”; and asks, “Could there be a man more impossible to deal with than he, or more ready to pretend ignorance of what is right?” (30.36). By using the same terms to describe his refusal to torture as he used to describe his prior actions, Demosthenes constructs a comparison between these events. Presenting the two events as equal according to the same principles of character, Demosthenes correlates conduct he alleges is untrustworthy with conduct that the audience *knows* to be untrustworthy (refusing to torture) to persuade the audience that the same character that refused to torture also stole his property. Demosthenes uses the negative value of refusing to torture to prove that all of his opponent’s acts demonstrate untrustworthy character, and therefore, his opponent must have committed the acts of theft.

Demosthenes’ use of the challenge to *basanos* works within a larger argument in the oration to portray his opponents’ acts of self interest as offences that conspire against the whole community. Connecting past and present actions as indicative of similar character depicts his opponents as consistently plotting which, Roisman explains, against the backdrop of the instability of the *polis* that feared conspiratorial activity, was bound to raise the fear and anger of the audience: “Conspiratorial activity...maligns an opponent’s aims, methods, and character and presents him as a threat to individuals, to the state, and to the community and its values” (*Conspiracy* 5). Since it was a difficult charge to refute, orators often represented their opponent as not only acting in their own self interest but actively conspiring to undermine the state and, in doing so, depicting themselves as aiding the state by discovering a hidden threat (Roisman *Conspiracy* 5). Demosthenes’ use of the refusal to *basanos* contributed to his argumentative strategy by placing himself in contest with his opponents. He acted to further the goals of the state while his opponents actively attempted to destroy it by attempting to conceal truth, demonstrated by their refusal of the challenge to *basanos*. Here, and in the ways that it is used by other orators, *basanos* was persuasive in its context as a challenge as it formed part of the rhetorical strategy of the speaker by drawing on the contingent, social knowledge of the audience to persuade.

6. Conclusion

⁴ Athenians regarded citizens whose words paralleled their actions as model citizens: As George Kennedy argues, “Achilles, the hero of the *Iliad*, is said to have been taught by Phoenix to be “a speaker of words and a doer of deeds” (*Iliad* 9.443)...[the Homeric poems] were venerated as the bibles of the culture, [and] strongly influenced the conception of the orator” (*Classical* 6).

In the way orators used the challenge to *basanos* to draw on and exploit this broader social knowledge of the *polis*, the challenge to *basanos* serves as an indication of the innovative techniques of persuasion used by orators to gain power in the *polis*. As I have suggested in this brief analysis of Demosthenes' *Against Onetor*, the refused challenge to *basanos* functioned as a means of persuasion that drew on the established values and ideals of the community of citizens. By contrast to *basanos*, the truth adduced from the body of the slave through torture, the refused challenge operates through probabilistic premises using the significance of the citizen's actions as proof to win favour from jurors. Far from arguing that torture never took place, however, I have attempted to show that the premises under which Athenians believed torture elicited truth underlies both its violent and rhetorical expression. In this sense, viewing *basanos* as persuasive in argumentation creates an epistemological shift from understanding social structures as reflections of truth, but rather as constructed contingent social knowledge. How orators use *basanos* as persuasive, moreover, speaks to an understanding of rhetoric as productive and generative in the way the seemingly "certain truths" of society are reinforced through rhetoric, the public persuasive speech of the citizen. In this sense, undergirding either use of *basanos*—as truth or persuasive as a challenge—are social structures that subjugate slaves by reinforcing their position as inferior to citizens, an area of inquiry that requires further critical attention.

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