

## Chapter 5: What is *eikos*? The Argument from Likelihood.

### *Introduction:*

In Plato's *Phaedrus*, Socrates and Phaedrus discuss what advice should be offered to students of speechmaking. The speeches they have been considering are noteworthy for the way they collect and divide certain kinds and parts, and those who do this correctly are identified as "dialecticians" (266c). Here we have Plato's own interest in the organization of ideas within discourses. But then the contrast is marked with the "masters of speechmaking," "Thrasymachus and the rest of them," who are purveyors of rhetoric rather than dialectic. Still, Phaedrus suggests, and Socrates agrees, there may be something of value in what is written up in books on the art of speaking:

Socrates: You were quite right to remind me. First, I believe, there is the preamble with which a speech must begin. This is what you mean, isn't it—the fine points of the art?

Phaedrus: Yes.

Socrates: Second come the narrative of facts and the testimony of witnesses; third, the evidence (*tekmêria*); fourth, the probabilities (*eikota*). And I believe that that excellent Byzantine word-crafter adds proof (*pistôsis*) and counter-proof (*epipistôsis*).

Phaedrus: You mean the worthy Theodorus? (266d-e)

The itemizing of details continues, drawing in the contributions of other major Sophists, like Gorgias, Prodicus, Hippias and Protagoras. But our primary interest here is the attention given to probabilities or likelihoods (*eikota*). This, at least, is the key idea that they set in opposition to truth later in the dialogue (273a). Here, the attribution is to Tisias who, along with Corax, is credited with the first handbook on rhetoric. The nature of such a handbook and the degree to

which it would deserve the title “rhetoric” is a matter of some dispute, as we saw in the Introduction to Part II. But Plato here has a clear message he wants to communicate on how “likely” should be understood:

Socrates: Then let Tisias tell us this also: By “the likely” (*eikos*) does he mean anything but what is accepted by the crowd?

Phaedrus: What else?

Socrates: And it’s likely it was when he discovered this clever and artful technique that Tisias wrote that if a weak but spunky man is taken to court because he beat up a strong but cowardly one and stole his cloak or something else, neither one should tell the truth. The coward must say that the spunky man didn’t beat him up all by himself, while the latter must rebut this by saying that only the two of them were there, and fall back on that well-worn plea: “How could a man like me attack a man like him?” The strong man, naturally, will not admit his cowardice, but will try to invent some other lie, and may thus give his opponent the chance to refute him. And in other cases, speaking as the art dictates will take similar forms. Isn’t that so Phaedrus? (273a-c).

The example that Plato uses here is the same one that in Chapter 2 we saw Aristotle employ when attacking the probabilities or likelihoods of Protagoras, and accusing him of making the weak argument strong (*Rhetoric* II, 24).<sup>1</sup> Like Aristotle, who sets the Sophistic probabilities against “real” probabilities, Plato here opposes likelihood to what is true. Moreover, Plato specifically has what is *eikos* defined as what the crowd believes, suggesting it is a matter of opinion. On such terms, part of Plato’s disdain for the Sophist’s ability to persuade an audience

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<sup>1</sup> Aristotle attributes the example to Corax rather than Tisias, but it seems the two are so closely linked that what holds for one may be transferred to the other. In fact, Socrates continues in the *Phaedrus* passage to suggest that the art that disguises may also disguise the author (“whatever name he pleases to use for himself”—273c).

becomes clear: if opinion has no firmer foundation than verbal persuasion, then what is likely becomes a mere topic for manipulation. After all, should we believe Plato's suggestion that Tisias' discovery of the technique led him to the example of the weak and strong men, when we are told no more than that it is "likely"? Certainly, though, for Plato, *eikos* is a pale shadow when set beside the truth. But as we saw in our exploration of these questions in Chapter 2, there is reason not to equate what is likely with the "opinion" of the crowd, nor to see such issues in terms of an opposition between false and real probabilities or between what is likely and what is true.

Again, in his version of the example Aristotle sets what is probable *generally* against what is probable *in the circumstances*.<sup>2</sup> It is only the former that seems to be judged "real," presumably because of its wider applicability. Thus, Aristotle's understanding of what is *eikos*, in the Sophistic sense, seems different from Plato's and to involve the specificities of particular cases. If what is likely is restricted to the uniqueness of a case, then it has less interest for the kind of system that Aristotle is building. What is not at stake in the *eikota* of Sophistic arguments is the more rigorous sense of probability that we now associate with induction (but which Aristotle's interest in the "general" seems to point toward).<sup>3</sup> There is some distance between deciding the probability that an eclipse will appear in the next month and in deciding the probability that a gaily-dressed man abroad after dark is an adulterer.<sup>4</sup>

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<sup>2</sup> "Both alternatives seem probable, but one really is probable, the other so not generally, only in the circumstances mentioned" (*Rhetoric* 2.24.11: Kennedy translation).

<sup>3</sup> Whatever *eikos* is taken to mean, it would be misleading to give it the sense of mathematical probability (Gagarin, 2002:29fn57.) Solmsen (1968:317) calls *eikos* one of the "traditional" types of evidence that will receive a more logical foundation when reinterpreted by Aristotle. The sense of that tradition can be witnessed in the apparent presence of *eikos* arguments in Sophocles' *Oedipus the King* (Kennedy, 1963:30). To avoid possible confusion as much as possible, I will use "likelihood" for *eikos*, rather than "probability."

<sup>4</sup> For a discussion of the senses of *eikos* in relation to the origins of rhetoric, see Schiappa 2003:50-51.

On the terms plausibly drawn from the ideas of Protagoras and Antiphon, what is likely is a case-by-case determination, and is accepted by the crowd on the grounds not of their opinion alone, but their *experience*. That is, while they may indeed have formed an opinion about what is likely to be the case in a situation, the source of that opinion is not simply a Sophist's discourse but their own experience of such situations. Hence, their own understanding of their humanity is the standard by which they judge what is the case. In the same way, what is false or real assumes a perspective that is foreign to the thinking of figures like Protagoras or Antiphon who do not believe such things can be decided. In situations where we cannot recover the "facts" or know what happened, we must decide what probably happened using less than first-hand experience. This is not to deny the value of direct experience; Antiphon's pedagogic speeches make the point that direct evidence has greater value. But in certain circumstances, likelihood is not simply a poor substitute for truth, it is the only resource available. Hence, the importance of setting out the probabilities of a case. These points will become clearer as we explore some examples from Antiphon.

*Examples from Antiphon:*<sup>5</sup>

Antiphon's *Tetralogies*, parts of which we explored in Chapter 2, are generally recognized to be models of argumentation devised for the instruction of students.<sup>6</sup> We will return to them several times during Part II of this book, because they are wonderful examples of the range of arguments that could be employed and the relative merits of each. Within the course of three set pieces,

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<sup>5</sup> A debate from the ancient tradition through to contemporary commentators concerns the number and identity of Antiphons involved, with the two principal candidates being Antiphon the Sophist and Antiphon of Rhamnus (see Gagarin, 2002:Chapter 2; Pendrick, 2002:Introduction). While current considerations favour a single author, the resolution of this debate is not really crucial to the present study of the strategies of argumentation employed in the texts.

<sup>6</sup> For positive comment on Antiphon's general place in the development of forensic argument see Enos (1980).

each comprising opposing arguments between litigants, Antiphon rolls out arguments of direct and indirect evidence, arguments based on the testimony of witnesses, strategies of turning the tables and opposing arguments, ethotic appeals to character and conduct, counter-factuals or hypothetical antitheses, and above all the arguments based on likelihood (or, in some cases, unlikelihood). Nowhere else can we find such a concentrated study of their nature and value.

Tetralogy I is the most accomplished in this regard. The circumstances involve a dispute between two enemies, one of which is about to be taken to court by the other. Before this can occur, the one who was pressing charges is murdered. The only witness is his dying slave, but he identifies the other man as the murderer. There would seem, then, to be a very strong case against the defendant, who is being prosecuted by the deceased man's friends. Each side offers two speeches, or arguments, the second of which aims to rebut the other's first attempt in each case. The primary strategy of each side is to establish what is most *eikos*, and so win the jury over to their side. Accordingly, this is a useful text for considering how arguments from likelihood were to be evaluated and which decided the stronger.

The prosecutors in their first speech set the tone by indicating how difficult it is to detect and expose crimes that have been carried out by natural criminals who plan their acts carefully with strict attention to not getting caught. Because of this, the jury "must give the utmost weight to any indication whatever of likelihood (*eikos*) that is presented" (II.1.2). They then issue a series of *eikota*, or in the initial move, reverse *eikota*:

It is not likely that professional criminals killed this man, as no one would give up an obvious and achieved advantage for which he had risked his life, and the victims were found still wearing their cloaks. Nor again did anyone who was drunk kill him, since the murderer then would be identified by his fellow guests. Nor would the victim be killed

because of a quarrel, since people would not quarrel in the dead of night and in a deserted spot. Nor was it a case of a man aiming to kill someone else and killing the victim, because then his attendant would not have been also killed (II.1.4).

Each unlikelihood is accompanied by one or more supporting reason, none of which, of course, is immune to challenge, but the sum of which shifts the weight of proof in the prosecution's favour. Clearly, people *could* quarrel in the dead of night and at a deserted spot; the arguers do not deny this. But given the jurors' experience of how people behave, how likely is this particular action?

Following these negative suggestions, attention shifts to what *is* likely, in the prosecution's opinion: "Who is more likely to have attacked him than an individual who had already suffered great injuries at his hands and could expect to suffer greater ones still?" (5). Details of the past history between the two are then given to support this likelihood. Included in this is that, since the defendant was an old enemy of the murdered man and had brought several unsuccessful cases against him, and since he had been indicted by the dead man on several cases, all of which he lost at the cost of much property, and since he bore a grudge for this, then it "was natural for him to plot against him, and it was natural for him to seek protection from his enmity by killing his opponent" (6-7). Here, the likelihood is supported by claims about what a man of this nature would do.

The prosecutors then refer to the absence of direct witnesses, beyond the slave who subsequently died. But they will produce these indirect witnesses who heard the slave's testimony. They then sum up by insisting the jury cannot acquit the defendant because "conclusions from likelihood (*eikota*) and from eye-witnesses have alike proved" his guilt (10).

In his own opening speech, the defendant matches the likelihoods that have been brought against him:

...they assume me to be a fool. For if now, because of the magnitude of my enmity, you find me guilty on the grounds of likelihood (*eikotôds*), it was still more natural for me to foresee before committing the crime that suspicion would devolve upon me as it has done, and, if I knew of anyone else who was plotting the murder, I was likely to go as far as to stop them, rather than to deliberately fall under obvious suspicion (II.2.3).

The strategy here is to rebut one likelihood by advancing another that is more likely, given the same claims of enmity between the two men.<sup>7</sup> And he continues: it is not unlikely but likely that a man wandering about in the night would be murdered for his clothes (that he still had them, simply indicates the murderers were frightened off); and others who hated him (though less than the defendant) are more likely to have murdered him, knowing suspicion would fall on the defendant. Then he turns to the evidence of the dead slave: since he would be terrified by the situation “it is not likely (*ouk eikos*) that he would recognize the murderers, it is likely (*eikos*) rather that at the instigation of those who were his masters, he would assent to what they suggested” (7). Moreover, he argues, if likelihoods are to be treated like facts, then they should consider it more likely that he would stay out of sight so as to avoid recognition. Later, after an appeal to his own *ethos*,<sup>8</sup> the defendant again opposes likelihood to fact or actuality (10), this time using a figure of concession (Usher, 1999:8) to insist that if the likelihoods condemn him, then he must have been provoked and acted in self-defense, otherwise he would not have seemed a likely murderer.

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<sup>7</sup> And we might note here that the logic used is a variant of the strong man’s logic in the case discussed earlier from the *Phaedrus* and the *Rhetoric*: the likelihood that he would be a suspect favours the likelihood that he did not do it, because he would have known he would be a suspect.

<sup>8</sup> Another strategy that we shall explore elsewhere.

The subsequent second speeches of the prosecution and defense continue the pattern of rebutting likelihoods previously argued and advancing alternatives one. The prosecution, for example, rebuts the suggestion that it was more likely he would stay out of sight, because he would run the same risks of then having accomplices accuse him as the originator of the plot if they were caught (II.3.5); and the defense rebuts the suggestion that people coming across the victims being attacked would be more likely to recognize the murderers and report them (rather than running off as the defendant had argued), by insisting that it is only *natural*, and therefore more likely that someone coming across the scene of an attack would run away rather than put themselves in danger by looking for the attackers (II.4.4-5).

But they also set these *eikos* arguments in the context of other types of argumentation. The prosecution concedes that those who actually (in fact) committed the murder are unknown. But given this, proof must be based on what is *eikos*, since crimes of this kind are not committed in the presence of witnesses. This suggests that Antiphon recognizes the relative value of *eikos* arguments. Matters of fact, were they established, would carry greater weight. And a better way to establish such facts would be on the testimony of witnesses (II.3.8). But some cases, like the present one, cannot have recourse to such evidence and must therefore be decided on the probabilities. Likewise, the defendant attempts just such a shift in strategy by proposing that he will not rely on likelihood to prove he was not present (as the prosecution has done), but on fact—he is prepared to surrender all the slaves in his household for torture in order to show that he was at home in bed that night (II.4.8). In fact, Gagarin (2002:116) suggests that the reason Antiphon introduces such a startling piece of evidence so late in the exchange (that is, that the defendant had been home that night) is because he has the secondary interest of demonstrating how different kinds of argument or proof (*pisteis*) can be weighed against each other. Arguments

from likelihood are necessary in cases where no better evidence is available, but first-hand factual evidence (*pragmata*) and the testimony of witnesses (even slaves, after torture) would be stronger. Gagarin goes so far as to propose that Antiphon is both showing the value of *eikos* arguments and challenging them in general, because the defendant argues that likelihood does not have the status of facts against him (II.2.8). But, given what we see Antiphon arguing elsewhere about facts, it is not clear that he would make this second, more general, point, except perhaps to teach students to exploit the beliefs that others have about reality. After all, how would one establish “the facts” of a case. Even the opposition between indirect evidence (*eikota*) and direct evidence in the form of the testimony of witnesses is a matter of competing discourses. Gagarin himself acknowledges something of this in his analysis of Tetralogy 2:

Tetralogy 2 thus moves the discourse about the relationship of language and reality to another level compared to the discussion in Tetralogy I, where the issue was one important types of *logos*, the argument from likelihood, and its relation to factual evidence. There *logos* and *pragma* are opposed, but Tetralogy 2 presents a complex symbiosis of the two in which facts control words, but words also control facts, since the truth of these facts depends on the words that represent them. Language corresponds to reality, but since reality is complex, that correspondence does not necessarily involve a single *logos* and a single reality (2002:126).

In fact, it seems to overstate the case for Antiphon to suggest that language corresponds to reality. Our discussion of Antiphon’s *Truth* in Chapter 2 suggested that for him, as for Protagoras, reality was beyond the direct grasp of humanity and could only be conveyed in as series of *logoi*, the merits of which need to be tested against the standard of human experience rather than against reality as it “actually” is. Likewise, the *pragma* of the case being examined in

Tetralogy I are subject to the *logoi* that express them. There *is* a murdered man (the case would not exist otherwise), but who the identity of the murderer or murderers (which is the fact that the defendant insists must be established) is simply not accessible.<sup>9</sup> *Eikos* arguments, then, have merit alongside other types of evidence that might be used to decide a case (rather than establish the “truth” about it), and here the exercise of Tetralogy I amply demonstrates that merit.

*The range of eikos arguments.*

The examples from Tetralogy I represent only one speech in which Antiphon employs *eikos* arguments, although they are particularly fine illustrations of what is involved. The third and last Tetralogy also makes extensive use of this argumentative strategy, as indeed Antiphon does elsewhere. In his own defense trial in Athens, Antiphon resorted to at least one *eikos* argument, thus perhaps indicating the value of this strategy to him.<sup>10</sup> A member of the oligarchic government of the Four Hundred who were overthrown in 411, Antiphon was one of the few who did not go into exile and was executed by the Thirty. In one of the remaining fragments of his speech, he seemingly argues that he wanted only the best for Athens by asking “What likelihood (*eikos*) is there that I should want an oligarchy?” (Fr.1. 1a15). Since, as the prosecution claimed, he composed defenses for other people, he was not likely to be of any importance under an oligarchy compared to a democracy. This is the only speech of Antiphon’s

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<sup>9</sup> Outside of a reliable confession, which would undermine the point of the exercise and still be no more than one *logos* to be weighed against others.

<sup>10</sup> I say at least one because, in spite of the high reputation that this speech seems to have held among Antiphon’s contemporaries and in the subsequent tradition, we have only three short fragments of it left (much of this only discovered on papyri in 1907). Among these, only the one *eikos* argument is evident.

of which we do know the outcome—like at least one other famous Athenian defendant,<sup>11</sup> he was not successful in persuading the jury.

Another particularly strong illustration of Antiphon's use of *eikos* arguments arises in his court speech "On the Murder of Herodes." Usher (1999:40) judges this speech responsible for Antiphon's reputation as a pioneer of *eikos* arguments. The defendant, Euxitheus, (a citizen of Mytilene) has been charged in a questionable way with the murder of an Athenian, Herodes. The two men had been together with others on a boat bound for Thrace. After a night of drinking while in harbour, Herodes goes missing. Euxitheus helps in the search, but in the end continues on the way to Thrace. After he has left, he is accused of the murder (although no body is ever found), supposedly on the testimony of a slave who the prosecuting parties subsequently executed before he could be questioned.<sup>12</sup>

The bulk of Euxitheus's case involves the likelihoods (*ta eikota*), and they are considerable (5:25-63): that he was not accused immediately is likely because the prosecutors needed time to fabricate their evidence; if he had left the vessel (contrary to his insistence), it is likely that some evidence or clue of the murder would be found around the harbor; if a boat was used, it is likely that some sign would be present on that boat; it is likely that the slave was promised his freedom if he accused Euxitheus (the jury should be aware that this happens); if the defense had had access to the slave to torture him (as was the accepted custom), then it is likely he would have retracted his accusation, as indeed he did when he realized he was going to die; it

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<sup>11</sup> Gagarin (1997:249) sees parallels between this speech and the one Plato attributes to Socrates in the *Apology*. But this is not the only instance of such parallelism, and we will consider this as an argumentative strategy in a later chapter.

<sup>12</sup> The unorthodoxies of the case, of which Antiphon makes much in the speech, include the fact that Euxitheus was accused of murder, but arrested by a procedure intended for common criminals. The latter did not involve open-air trials, solemn oaths and the fixing of a fixed penalty for conviction. Also, after his arrest he was kept in custody until the trial, in spite of his being willing to provide the usual sureties. Moreover, the slave whose testimony seems pivotal in the charges against him was executed before the defense had access to him.

is also judged unlikely that the murderer would have used an accomplice (as the slave was deemed to be); it is likely that such a crime could not have been committed without attracting attention, nor without leaving tangible evidence. In sum, Euxitheus asks: “men of the jury, how can these things be likely?” (45). To emphasize the import of this, Euxitheus indulges in repetition of the slave’s treatment and the likelihoods to be drawn from the prosecution’s behaviour with regard to it.

Euxitheus uses other argumentative strategies, indulging in a pathetic appeal for the jury’s pity (73) and defending his father’s character in an ethotic argument (74-79), and, as we have seen, arguing that the normal rules of procedure in such cases had been violated. The latter may well give strong support to the likelihood that the prosecutors have fabricated evidence and, as Gagarin suggests (1999:160) the reputation of the speech in antiquity makes it likely that the strategy of juxtaposing these points was successful.<sup>13</sup>

While an undoubted master of the strategy, Antiphon was not alone in his use of *eikos* arguments, and a balanced consideration of their import requires the examination of a few additional cases. An interesting example is suggested in one of Gorgias’ extant speeches, “A Defense on behalf of Palamedes.” Plato in the *Phaedrus* attributes the origin of likelihood arguments not only to Tisias but also to Gorgias (267a). Of the works available to us, the Palamedes speech is the best candidate. Although Gorgias hardly uses *eikos* here, he clearly is weighing likelihoods in an effort to show that it was unlikely that Palamedes committed the treason of which he was accused.<sup>14</sup>

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<sup>13</sup> Although the judgment on this is far from unanimous. Due (1980:50) finds the evidence against the defendant to be strong and suggests further that since he is a Mytilinean accused of murdering an Athenian, his chances of acquittal would have been slim.

<sup>14</sup> This fictional speech, drawing on the myth of Odysseus and Palamedes, is another exercise in argumentation. At the siege of Troy, Palamedes has exposed Odysseus’ feigned madness for what it was thus forcing him to join the

Gorgias has Palamedes offer a range of arguments to show that it was not likely that he did what Odysseus alleged. The treason must have begun in some way, and that would have involved a discussion. But a discussion requires a meeting, and how could there be a meeting unless either party sent a messenger to the other? (B11a.6) But if a meeting takes place, how will they communicate? How can each understand the other's language? If they use an interpreter, that would require a third person for something that needs to be secret (B11a.7). But suppose, contrary to the facts, that a meeting did take place. Why would Palamedes, a traitor, be trusted? His word would be worth little. Perhaps they could have exchanged hostages (a brother for a son) as a surety, but such an action would be evident to the jury (B11a.8). But suppose it is alleged that the contract was made for money. It is not likely (*ouk eikos*) that a man would take a small sum for such a service. But how would a large sum be carried? If a number of people carried it, there would be witnesses; and if only one, then it could not be a large sum (B11a.9). The argumentation continues in this vein, with one unlikelihood building upon another to give the weight to Palamedes' claim that he was not capable of that of which he was accused. Then he marshals a similar set of likelihoods to show that he also lacked the motive for the crime. Again, Gorgias' extensive use of likelihood argumentation does not exhaust the case he makes, he also employs ethotic argument, appealing to Palamedes' own credibility and against that of his accuser,<sup>15</sup> and a pathetic appeal to the jury's emotions (even as he claims he will not—B11a.33).<sup>16</sup> But it is the core of what is effectively *eikos* argumentation that should interest us.

Matched to the details of the context, Gorgias' reasoning sifts through the claims and counter-

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expedition. In revenge, Odysseus frames Palamedes by forging a letter to him from Priam, in which he was to betray the Greeks, and hiding gold in his tent. On the basis of this evidence, Palamedes was found guilty and executed.

<sup>15</sup> Again, there are interesting parallels between the details of this speech and that employed by Plato's Socrates in the *Apology*. These are discussed elsewhere.

<sup>16</sup> McComiskey (2002:47-52) provides an analysis of the Palamedes speech which argues for parallels between Gorgias' interest in a triad of argumentative procedures—*logos*, *ethos*, and *pathos*—and the same triad, with the same measure of importance accorded to each, that will appear in Aristotle's *Rhetoric* decades later.

claims to “prove” that the weight of likelihoods, as they would be measured against the standard of the jurors’ experience, favours the innocence of the defendant.

The last example we will consider moves us into the wider range of texts that might be considered “Sophistic”<sup>17</sup> by nature or influence. It comes from one of Isocrates’ speeches, “Against Euthynus, Without Witnesses.” The title is significant; it is on account of the absence of witnesses that the speech relies so heavily on likelihood arguments. And while Isocrates uses them freely elsewhere, the circumstances of this case brings them to the forefront.

The speech was written for a man named Nicias, who had attempted to hide his assets from the tyranny of the Thirty. He gave part of his money to a relative Euthynus, who allegedly failed to return a third of it when requested. The lawsuit was an attempt to recover the sum that was allegedly owed Nicias. Since no one, free or slave, witnessed the deposit or return of the money (21.4), other means than testimony must be used to argue the case.

Every one knows that those who are clever at speaking but lack money often try to bring malicious prosecutions against those who cannot speak for themselves and who have money. Nicias, however, is a poor speaker and has more money than Euthynus, so it is not likely that he is attacking Euthynus unjustly. Rather, it is more likely that Euthynus took the money and is denying it than that Nicias is false in his claim to have given it. It is not surprising that Euthynus would deny having stolen the money when even those who gave money in front of witnesses have trouble getting it back. Whereas it is not likely that Nicias would think he could get something through a false accusation when not even those who are rightly owed money can recover it. The greatest evidence (*tekmēron*), however, is that Nicias first told people that

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<sup>17</sup> As O’Sullivan (1996) argues, the break of the first Sophistic around the introduction of Socrates is arbitrary and unwarranted. It has the unfortunate consequence of excluding figures like Alcidas and Isocrates, for whom we have much more in the way of representative works.

Euthynus owed him the money when the oligarchy had been established, and the jury should know this was a time when it was more dangerous to be wealthy than to do wrong. The city was run by those who did not punish wrongdoing but took money from the wealthy. In another case known to Euthynus, Nicias had had money extorted from him simply through a threat to take him to court. So it is not likely that he would bring a malicious prosecution when he was in danger. A series of questions then follow, each inviting the answer that Nicias would not have acted if the money was not really owed to him. While Euthynus might argue that if he wanted to do wrong he would not have returned two-thirds of the money, Isocrates uses this very argument against him, insisting that he only took the one-third because he knew this defense would be available to him. In summary, Isocrates shows that the weight of argument indicates there is no reason for Nicias to make a false accusation, but every reason for Euthynus to act unjustly (21.5-21).

*Evaluating eikos arguments:*

The popularity of *eikos* arguments among the Sophists and their contemporaries is a testimony to their utility and power. The cases we have considered show them appearing in both artificial cases, like the Tetralogies and the ‘Palamedes’, apparently intended for the instruction of students or as exploratory demonstrations of argumentation, and real cases like those of the “Herodes” and “Nicias” speeches, as well as Antiphon’s own trial speech. This suggests we are not dealing with a haphazard type of reasoning, but one that was reflected on, taught, and recognized as having better or worse instances. But this raises the question of evaluation and how such better cases were recognized. One obvious measure of quality might be the success of the case—good arguments are the ones that win the day. But this tells us little, and helps even

less when the outcome of these cases is rarely known. Besides, where success does seem to have ensued, we cannot be sure that it was due to the *eikos* arguments used. As Gagarin hints, the apparent success of the “Herodes” case may have been due as much to the illegality of the procedures employed by the prosecution as the likelihoods advanced by the defendant (although the illegalities are drawn into the likelihoods.) As we saw in the Introduction to Part II, adherence by an audience is too often taken as the only measure of rhetorical argumentation, and criticized because of it. Yet audiences are persuaded by some arguments and not by others, and that is the difference that interests us.

One thing clear from the cases examined is that *eikos* arguments are not arguments for all seasons. They stand in many cases as contributory arguments, working with others to strengthen a case in the way that we might today judge authority arguments to be contributory. And their power is judged relative to other types of direct evidence. It is not incidental to the detailed cases we have examined that first-hand witnesses are absent.<sup>18</sup> Both Tetralogy I and “Herodes” rely on the testimony of a deceased slave, and the “Palamedes” and “Nicias” cases are such that their very nature precludes the presence of witnesses. Athenian law strove to have the testimony of witnesses available. Hence, in the cases we have looked at, the testimony of witnesses must be rendered suspect in some way or removed altogether to allow the *eikos* arguments to reveal their power. Likewise, the Tetralogy I exercise suggests that facts, where they can be ascertained, will constitute stronger evidence than likelihoods. But, again, where these facts are being related to a jury, they are subject to the interpretation of the speakers, and jurors will always need to judge between competing *logoi* in deciding responsibility and punishment.<sup>19</sup>

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<sup>18</sup> The exception being the trial speech of Antiphon.

<sup>19</sup> Tetralogy 2 makes this clear, since the facts of that case are not in question. One boy who was collecting javelins on the field fails to realize they are still being thrown and is killed by the javelin of another boy. We know who has

One conclusion we might draw from this is that it would be a mistake to use *eikos* arguments when stronger types of evidence is available or expected. But this would be an error in the employment of the strategy itself, not a way to determine weak from strong *eikos* arguments. For this we need to look more closely at the arguments themselves and how they seem to have been understood.

From the cases we have examined, it is difficult to find corroboration of Socrates' and Phaedrus' suggestion that *eikos* meant what was accepted by the crowd (*Phaedrus* 273c). Granted, successful *eikos* arguments would have had this character, but this would have been no more than an incidental feature about them, and would also be the case with all arguments that gained adherence. Nor, unless we reduce all matters of dispute to a black-and-white opposition of truth and opinion, can we learn much by calling them arguments that reflected the opinion of the crowd. The careful working of details and weighing of likelihoods against each other indicates that there was much more involved than simply triggering preexistent opinions.

More appropriate seems Aristotle's judgment in which he favoured what was probable (or likely) in *general* over the Sophists' interest in what was probable given a particular set of circumstances involving the specificities of particular cases. On these terms, good *eikos* arguments would be those that made best use of the details of the case and the circumstances involved. The goodness or badness of an argument of this nature could not be determined in advance but depended entirely on how it was worked out and interacted with the opposing likelihoods. Thus, the authors of the exercise cases, Antiphon and Gorgias, took pains to demonstrate such interactions, along with the relative merits of *eikos* arguments against other

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died and who threw the instrument that killed. But the issue under dispute is the responsibility and subsequent punishment. The prosecution and defense present the facts in different ways that favour their interests in deciding responsibility.

available evidence. This evokes some of the ideas on Sophistic logic presented by Poulakos in Chapter 1, particularly on the importance of the specific time and place of an argument (Poulakos, 1997:13) and the circumstances in general. Crucial to this is the central idea of *kairos*. For Poulakos, this involves speakers responding to the fleeting situations marked by their unique features (18). Kennedy (1963:66), who connects the idea closely to Gorgias, refers to it specifically as the concept of the opportune.<sup>20</sup> Any given dispute involving opposing positions can only be resolved through consideration of time, place and circumstance. This accords with Aristotle's appreciation of what was at stake in the Sophists' practice.

Any *eikos* argument must be judged on how well it adjusts to the circumstances of the case and makes use of the materials presented. It cannot be transferred between cases, since each is unique.<sup>21</sup> So students can only learn the principles involved in identifying likelihoods and general rules, like not to oppose *eikos* to direct testimony. Their facility at employing the arguments will come only through practice as skill is developed. Aristotle, later in the *Rhetoric* (I.2.1355<sup>b</sup>35) will distinguish between two types of proof (*pisteis*), non-artistic (atechnic) and artistic (entechnic). The inartificial or non-artistic proofs are matters of direct evidence, like laws, and the testimony of free men or slaves. These are non-artistic because the arguer has little control over them. Although we have seen Antiphon using indirect evidence to attack direct evidence; he is not free to construct that evidence as he chooses. Artistic proofs, by contrast, rely on the arguer's skill and are freely chosen to suit the circumstances. Here Aristotle will divide the proofs among those related to *ethos*, *pathos*, and *logos*. But we can already see the germ of

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<sup>20</sup> Diogenes Laertius claims Protagoras was the first to stress the importance of *kairos* (D-K 80 A1).

<sup>21</sup> I think Gagarin (1997:123) overstates the case when he suggests that the *eikos* arguments in Tetralogy I could be transferred with only slight modification to any case where the issue was "who did it?" Perhaps he has in mind the parallel with the Corax/Tisias example. But most of the *eikos* arguments used by the prosecution and defense relate directly to the details of the case (the untouched clothing, the history between victim and defendant, and so on); any transference would involve far more than "slight" modification. Rather, "who did it?" disputes were naturally suited to argumentation based on likelihood.

such categorizing alive in the thinking of arguers like Antiphon. And, of course, the artistic *logos* here is *eikos* argumentation.

*Contemporary appearances: Walton and the Plausibility argument.*

We no longer speak generally about *eikos* arguments,<sup>22</sup> but their evolved forms still have impact on the ways we reason and show up in modern argumentation theory. In several of his works, Douglas Walton (1992:3; 1998:16; 2001:104; 2002:Chapter 4)) stresses how such reasoning fell out of favour in the history of logic, failing to have the rigor that was expected of good argumentation. On his terms, *eikos* arguments are now to be understood as plausible argumentation, traditionally “ignored, and even denounced, as belonging to the realm of sophists and slick persuaders” (1992:3). Plato’s denunciation of the Sophists, he judges, has created a strong prejudice against plausible reasoning that continues to be felt. Again, plausible reasoning, as expressed by the Sophists, has become unintelligible as part of logic, along with a general shift on the part of logicians away from both dialectic and rhetoric (Walton, 1998:16).<sup>23</sup> By a plausible argument here he means one that “proceeds from premises that are more plausible to a conclusion that was less plausible before the plausible argument was brought to bear on it” (242).<sup>24</sup> If these are to be the modern instantiations of *eikos* arguments, then this definition does

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<sup>22</sup> A health care research and teaching web site with the name ‘Evidence and Eikos’, draws part of its name from the Greek: “Most arguments in health care employ evidence, usually statistical in nature, derived from empirical research. The results of these studies are usually provisional in nature, and reasoning from them implies provisional inference and plausible belief, hence *eikos*”:  
[http://individual.utoronto.ca/ecolak/EBM/evidence\\_and\\_eikos/index.htm](http://individual.utoronto.ca/ecolak/EBM/evidence_and_eikos/index.htm) (visited, July 29, 2007)

<sup>23</sup> Walton (2002: Chapter 4) gives more credit to the Sophists in the history of plausibility arguments, a history that he still traces principally through Carneades of the later Academy, to Cicero, Locke (whose famous case of the Dutch ambassador and the King of Siam uses ‘probability’ in the sense that the ancients used ‘plausibility’) and Bentham. But when he establishes his new theory of plausibility in Chapter 5, it is a skeptical theory that has its acknowledged origins in the sayings of Carneades rather than earlier Sophists.

<sup>24</sup> Another contemporary engagement with plausibility theory is that of Rescher (1976), although his treatment is far

not exactly accord with what we learned from the study of ancient *eikos* arguments. But elsewhere, Walton (2001; 2002) clearly equates plausible reasoning with *eikos* arguments in a way that conforms to our understanding. *Eikos* involves a kind of common knowledge, which on investigation is more a matter of plausibility than actual knowledge. “Eikotic arguments are arguments based on defeasible inferences or generalization” (2001:98), the latter understood as “everyday human experiences of the way things can be generally expected to go” (100). In using plausibility to explain some traditional problems with enthymemes, Walton notes again that this “concept of the way things can be normally expected to go in familiar situations was lost sight of in logic for two thousand years” (104). For him, importantly, *eikos* arguments (or plausibility arguments) allow us to fill in the hidden premises in enthymematic arguments, because arguers implicitly expect audiences to fill in details of their common experience. This does fit with the practice of the ancient Sophists and orators who employed this strategy to connect with the common experience of their audiences (jurors). A reference to the *Ad Alexandrum* (1428a25), suggests that something can be found plausible when hearers have examples in their own minds of what is being said (Walton, 2002:135). But Walton also attributes the historical neglect of *eikos* arguments to their being based on a person’s *subjective* understanding of how something can normally be expected to go in familiar situations. Hence, we have a clearer explanation for why such argumentation has lost favour: modern thinking finds the strategy too subjective and so not reliable for logical reasoning. But if this is so, it is a misunderstanding of the intent behind *eikos* arguments. To stress a person’s subjective understanding in this way—an interpretation

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more rigorous. Tracing the *theoretical* or systematic interest in plausibility back to Aristotle’s *Topics*, Rescher proposes a theory that will effect a transition from the reliability of sources to the plausibility of their utterances. We can agree with his originary point for the theory since Antiphon’s treatment, while deemed foundational (Enos: 1980:182) is hardly systematic.

Interestingly, Rescher marks a sharp distinction between plausibility and probability. The former is concerned with the reputation of the sources of claims, and thus is external; probability is by contrast internal, involving the content of the claims (28).

that invokes some interpretations of Protagoras' measure maxim—is to overlook the very commonality that is at stake in such reasoning (and that Walton wishes to draw from it). Walton's final adoption of a model of plausible reasoning (2002:200) stresses that certain propositions are plausible in themselves (in a context), and hence not dependent on a hearer's subjective view. Such propositions are plausible because they appear to be true because there is no over-riding reason to think them false, and so they are acceptable to a rational person as plausibly true, although this acceptance is conditional and tentative.

What made, and makes, *eikos* arguments so persuasive in court settings is the appeal to what was customary in the experience of people generally. Innes (1991) suggests that the reason Antiphon (and Gorgias) consistently used anonymous, stock characters was to stress character types that could be generalized. To ask whether a particular action is the kind of thing that a man with a certain kind of character is likely to do in a certain situation is not to ask for the hearer's arbitrary opinion on the matter; it is to tap into their general fund of knowledge concerning the customs of their society, their community, and how they know people to generally behave.<sup>25</sup> Indeed, the fact that people do sometimes behave out of character or in unexpected ways renders such reasoning always no more than plausible and vulnerable to counter argument. But in the kinds of situations we have seen the strategy used, it is a powerful tool of persuasive argument and, correctly employed, it will be the best available strategy in the circumstances. That it requires the arguer to know well the cognitive environment of his or her audience and use that in constructing the argumentation speaks more generally to the rhetorical nature of the activity involved.

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<sup>25</sup> Consequently, Gagarin (2002:132) associates *eikos* arguments with the *nomos* (custom) side of the *nomos/physis* debate.