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LYSIAS, THE LAWYER

RALPH S. BAUER*

LYSIAS, the great Athenian lawyer, was born in Athens at some time between the beginning of 459 and the end of 457 B.C., according to some of the earlier authorities, or, according to modern critics, between 444 and 436 B.C.\(^1\) Cephalus, father of Lysias, and friend of Socrates and Pericles\(^2\), came from Syracuse to Athens about 475 or 473 B.C. He was very wealthy. That Cephalus was a man of considerable importance is evident from the fact that he came to Athens at the invitation of Pericles. Hölscher says: "Whether he was in fact a metic or a tax-payer-like-a-citizen [a favored class of metic or resident alien paying only the same taxes as citizens] is uncertain; for from Plato it is not clear whether the house in which he lived was that of Cephalus."\(^3\) According to Plato, Cephalus was admired by Socrates for his cheerfulness and intellectuality.

It should be noticed that Lysias was for 40 years a contemporary of Socrates,\(^4\) friend and admirer of Cephalus, the father of Lysias. What an opportunity Lysias must have had to converse intimately with that real father of philosophy! Perhaps Lysias was greatly aided in his march upward to human service and to a greatness as an advocate that has probably never been surpassed, by frequent contact and communion with that same mind of Socrates which inspired Xenophon, the soldier and historian and philosopher, which went so far toward making Plato the greatest of Athenian philosophers, which through Plato made Aristotle a great philosopher with profound influence through the ages, and which aided even in making Aristophanes the greatest of all

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1 See Shuckburgh's Lysiae Orationes XVI, Introduction, pp. xxiii-xxxv.

2 Pericles was probably the greatest of Athenian statesmen. He was born in Athens about 496 B.C., and died in 429 B.C. He democratized the Athenian state. He was the most influential person in Athens for about forty years, ruling with others for twenty-five years and alone for fifteen years.

3 "Utrum vero μέτοχος fuerit aut ισοτελής, incertum est; nam ex Platone non elucet, num aedes quas habitat fuerint Cephali."

4 Socrates was born in Athens in 469 B.C., and died 399 B.C. Through mere oral instruction and conversation, he laid the foundations of philosophy as it has since been known.
comic writers by inspiring that fun-maker to write his Νερελατ, the "Clouds," his most famous comedy, regarded by Aristophanes himself as his most successful drama, as a bit of ridicule of the philosophy of the time, particularly the philosophy of Socrates. But, when one looks at the personnel of intellectual Athens around the close of the fifth century B.C., one must probably regard Lysias as a product, not so much of contact with one or two great minds as a product of the addition of many contacts with many great men to a naturally great mind, well endowed by heredity and given those special advantages which often come to children of the very wealthy.

Hölscher says: 5 "Lysias was born in Athens and deserves by the highest right to be called an Athenian. But he is called a Syracusan by Timaeus of Tauromenium, 6 by Justin, 7 by Crosius, 8 by Photius, 9 and by Suidas. 10 Therefore, since the country of Lysias seemed uncertain, writers of the history of Sicily and Italy have been zealous to claim the orator for their own country."

A part of the Great Hellas or Magna Graecia of that period was southern Italy. There, at Thurii, on the Gulf of Tarentum, Lysias is said by Jebb 11 to have studied under Tisias, a teacher of public speaking. In that portion of Italy, there came an anti-Athenian disturbance in 413 B.C., causing Lysias and his brother, Polemarchus, to be thrown out, after Lysias had been there for thirty-two years. They returned to Athens, where they had the status of ἱσοτελεῖς. They had a shield factory in Piraeus, where they worked one hundred

5 "Lysias natus est Athenis et Atheniensis vocari summo jure meretur. Sed Syracusanus nominatur a Timeaeo Tauromenita, Justino, Orosio, Photio, Suida. Lysiae patria igitur cum iam incerta esse videretur, scriptores historiae Siciliae Italiæque oratorem suæ patriæ vindicare studuerent."
6 Son of a tyrant of Sicily, banished to Athens, where, in the fourth and third centuries B.C., he wrote a history of Sicily.
7 A Roman historian, who wrote late in the first century or early in the second century A.D.
8 A Spanish writer of the fifth century A.D.
9 A Greek biographer of the ninth century A.D.
10 A Greek biographer of the ninth century A.D., and not regarded as accurate in his statements.
11 Sir Richard C. Jebb, Professor of Greek in Cambridge University, born 1841, died 1905. All references to Jebb herein contained are to his article on Lysias, in recent editions of the Encyclopedia Britannica.
and twenty slaves. Peck\textsuperscript{12} says: "Their wealth excited the cupidity of the Thirty Tyrants;\textsuperscript{13} their house was attacked one evening by an armed force while Lysias was entertaining a few friends at supper; their property was seized, and Polemarchus was taken to prison, where he was shortly afterward executed (B.C. 404). Lysias, by bribing some of the soldiers [and exercising his wits to the utmost], escaped to the Piraeus, and sailed thence to Megara. He has given us a graphic account of his escape in his oration against Eratosthenes, who had been one of the Thirty Tyrants. Lysias actively assisted Thrasybulus in his enterprise against the Thirty; he supplied him with a large sum of money from his own resources and those of his friends, and hired a considerable body of soldiers at his own expense. In return for these services Thrasybulus proposed a decree by which the rights of citizenship should be conferred upon Lysias; but, in consequence of some informality, this decree was never carried into effect."

The really strong and justifiably strong feeling of Lysias against the Thirty Tyrants is well exhibited in the beginning of his speech against Eratosthenes: "It does not seem to me difficult to begin the accusation, men of the jury, but rather it is difficult to cease speaking. Things such in importance, and so many in number have been done by them, that neither by deceiving could I make the accusation worse than it really is, nor, if I were willing, would I be able to tell the whole truth; but it is necessary either for the accuser to grow weary, or for time to fail."

After his misfortunes growing directly or indirectly out of the persecutions of the Thirty Tyrants, Lysias seems to have been reduced to comparative poverty. As in other instances of great men, he did not permit his misfortunes to break his spirit. His misfortunes seem to have had as their principal result the release of his vast intellectual powers

\textsuperscript{12} Harry Thurston Peck, Professor of Latin at Columbia University, born 1856, died 1914. All references herein to Peck are to his "Harper's Classical Dictionary."

\textsuperscript{13} The Thirty Tyrants were well-to-do Athenians, who seized the power in Athens in 404 B.C., after the Peloponnesian War. Exiled Athenians later returned and overthrew them.

\textsuperscript{14} «Ωκι ἁρξασθαί μοι δοξηὶ ἀπορον εἶναι, ὥ ἀνδρες δυσκασταὶ τῆς κατηγορίας ἀλλὰ παύσασθαι λέγοντες: τοιαῦτα αὐτοῖς τὸ μέγεθος καὶ τοιαῦτα τὸ πλῆθος εἰργασται, ὥστε μὴ ἐν ψευδόμενον δεινότερα τῶν ὑπαρχόντων κατηγορήσαι, μήτε τάληθη διοικήσεων ἐπείν ἡπαντα δύνασθαι, ἀλλὰ ἀνάγκη ἢ τὸν κατήγορον ἀπειρεῖν ἢ τὸν χρόνον ἐπιλείπειν.»
LYSIAS, THE LAWYER

into what is probably the greatest series of orations composed for delivery by others that the world has ever known. He appears to have written three or four hundred of such speeches, of which thirty-four are extant. In these speeches, he enters the law courts, almost always in the persons of his clients, who deliver the speeches, becoming probably the most successful lawyer of his time, though he begins the practice of law after he has attained the age of forty years.

According to Peck, "Lysias is said to have delivered only one of the orations which he wrote—that against Eratosthenes." One can readily understand with what earnest effort and genuine enthusiasm Lysias could appear personally in the prosecution of such a person as Eratosthenes, and especially when the culprit had been among those who had stolen the fortune of Lysias, driven him into exile, and murdered his brother Polemarchus, from whose wife's ears they took her valuable ear-rings.

Peck says: "The author of the Life of Lysias, attributed to Plutarch, mentions 425 orations of his, 230 of which were considered to be genuine. There remain only 34, which are all forensic, and remarkable for the method which reigns in them. The purity, the perspicuity, the grace and simplicity which characterize the orations of Lysias, would have raised him to the highest rank in the art, had they been coupled with the force and energy of Demosthenes. His style is elegant without being overornate, and is regarded as a model of the 'plain' style."

As Jebb says, "He owes his distinctive place to the power of concealing his art. It was obviously desirable that a speech written for delivery by a client should be suitable to his age, station and circumstances. Lysias was the first to make this adaptation really artistic...Translated into terms of ancient criticism, he became the model of the 'plain style.' Greek rhetoric began in the 'grand' style; then Lysias set an exquisite pattern of the 'plain'; and Demosthenes might be considered as having effected an almost ideal compromise."

Jebb says: "His disposition of his subject-matter is always simple. The speech has usually four parts—introduc-

15 ἴθινος καρακήν, genus tenue.
tion, narrative of facts, proofs, and conclusion. It is in the introduction and the narrative that Lysias is seen at his best. Let us glance at the structure of a few of the orations of Lysias.

First we shall consider the oration against Eratosthenes, which has already been mentioned and quoted. Lysias introduces the subject by indicating, in the words already quoted, his own enthusiasm in making and supporting the accusation. Then he goes vigorously into his narration of the innocent lives of his father and family and of the wrongs done by the Thirty Tyrants to his family. He calls them villains and syco-phants and tells of their attacks on metics for the real purpose of getting their money, though for the pretended purpose of putting down the supposed opposition of metics to the government. In the narrative portion of this oration, Lysias even admits that he gave a bribe of a large sum, a talent, to Piso, a soldier, to save him, though he knew that Piso had no regard for either gods or men. Yet he says that he compelled Piso to swear, imprecating destruction upon himself and his children, that he would save Lysias. He further says that, when Piso saw how much was in Lysias’s chest, three talents of silver and a lot of other things of value, Piso took all, not even allowing Lysias his traveling expenses. Doubtless Lysias fully engaged the attention of all his hearers when he dramatically related the story of the Thirty’s disarming and banishing citizens, dragging them to slaughter in the market-place and temple, compelling their suicide, and leaving their bodies unburied; while he painted a picture of others escaping death by flight, with wives and children in foreign countries or in an Athens more hostile to them than any foreign country. As Lysias passes into the third portion of his speech, that of legal proof, which, in this case, seems to have been very easy, because of the very open, bold-faced, and brazen conduct of the Thirty, he shows how the Thirty have tried to throw the blame upon one

16 προοίμιον 17 δήγησις 18 πίστεις 19 έπιλογος
20 πονηροί καὶ συκοφάνται
21 How much this reminds one of the tyrants of another country, who have, in recent years, confiscated the money and property of a class of people and have driven them into exile, under the pretense that such persons were opposing the government.
22 Approximately one thousand dollars.
another, and this gave Lysias a fine opportunity to discredit their testimony in defense. Finally, Lysias comes to what was probably one of the most dramatic endings ever given to an argument before a judicial body, a termination rich and striking in the rhythm of the original Greek: "παύσομαι κατηγοροῦν. ἁμρώατε, ἑωράκατε, πεπόνθατε, ἔχετε. δυνάζετε." (I shall cease accusing. You have heard, seen, suffered, and have the evidence. Decide.)

Very naturally, Lysias could frame well a speech in prosecution of any of the Thirty Tyrants and their sycophants. One vigorous speech against a tool of the Thirty is that against Agoratus. In opening the speech in prosecution of Agoratus, Lysias calls attention to the fitness of taking vengeance in behalf of Dionosodorus, the speaker's brother-in-law and cousin, one of those men well disposed to the state, who had died by reason of the testimony of Agoratus, which was probably false. He continues: "By doing this, he did harm to me and to all who are here present, and, as I believe, did no small damage to the entire State, when depriving it of such men. So then, judges, I deem it to be right, by the law of gods and men, for each to take such revenge as he can." In a strong conclusion, the speaker tells the judges that, if they vote against the Thirty, they will not be their accomplices, and that they will have avenged their friends, and that they will seem to have voted justice to all men, according to both human and divine ordinances.

The oration against Diogeiton, now extant in a fragmentary condition, was delivered in an action for maladministration of the property of the defendant's wards. The speaker, a brother-in-law of the wards, is made to stress the fact that plaintiffs have not desired to bring into court their family affairs, but that it became necessary to start this litigation by reason of the fact that the defendant was of so litigious a nature that he was willing to resist suit rather than to render a proper accounting and to pay what was due to his wards. Toward the end of the narrative portion, attention is focused upon acts of the defendant in breach of trust, in a convincing argument, of which the following is a translation:

"But judges, what is most illegal of all of defendant's do-
ings, he, upon being appointed trierarch with Alexis, son of Aristodicus, asserting that he had contributed forty-eight minae, charged half to these who were orphans, whom the state exempted not only while they were minors, but even after they have passed their examinations as citizens, the state exempted them from all official duties for a year. But he, though their grandfather, illegally exacts half of his contribution as trierarch from the children of his own daughter; and, having sent away a merchant vessel of two talents to the Adriatic, he said to the children's mother, at the time he sent them, that the risk would be the children's. But, when it had returned safely and had doubled itself, he said that the goods were his."

Very interesting is the structure of his oration against Theomnestus in a slander case, in 384 or 383 B.C. Probably there is no better example of the great ability of Lysias to place himself in the exact position of the man delivering the speech, as to age, thought, and inclination. He introduces his speech by saying that the defendant has accused the present speaker, who happened to have been a witness against Theomnestus in a previous proceeding, of killing the speaker's own father. In his introduction, he pours vitriolic contempt upon Theomnestus by saying that he would have granted Theomnestus pardon if he had said that the speaker had killed Theomnestus's father, for he would have considered him a commonplace and insignificant man; but that he regarded the charge of having killed his own father, whose conduct toward the city had been meritorious, as being so serious that the maker of such a charge should be punished. Naturally, the narrative portion of this speech is brief and to the point, and Lysias launches quickly into the matter of legal proof, exposing the sophistry of the defense. The termination of this oration is firm, but ordinary: "Remember this, aid me and my father, and support the established laws and your oaths." 25

23 See Bogert, Trusts and Trustees, §41; Scott on Trusts, §203.
24 It is interesting to note that the speaker against Theomnestus says that his father was put to death by the Thirty Tyrants, the same tyrants who had murdered Polemarchus, brother of Lysias. It seems very likely that this fact added vim to the work of Lysias in preparing the address.
25 For the speech of Lysias against Theomnestus, translated and annotated by the present writer, see 22 Ill. L. Rev. 792.
Again, in the speech against Alcibiades, son of the better-known man of the same name, which Schuckburgh places as "after 95 B.C.," and which was a prosecution for cowardly acts in war, he launches his introduction with general accusations of unworthiness, which would hardly be regarded by a skilled modern prosecutor, under our legal system, as being relevant to the issue, and which would be stricken from the record on motion of opposing counsel. He makes an appeal to the jurors to make themselves law-givers by establishing a precedent to deter others from similar wrongdoing. The charge here was that the young Alcibiades had abandoned the infantry, in which he was enlisted, and had illegally joined the calvary because of the supposedly greater safety in that branch of the service. The story is well and briefly told. Again the portion dealing with legal proof seems to present no difficulty to Lysias, and is therefore not extended. He ends the speech with the strong appeal: "All the more condemn him, considering that he is liable to be punished according to the writ, and that it is a circumstance most highly fortunate that the state gets rid of such citizens." Then follows a reading of the oaths and the writ.26

Some of the characteristics of Lysias are among those which we value most in modern trial lawyers. He combines charm and clarity with an elegant simplicity. Shuckburgh says: "We may notice, then, that he conspicuously tells a story well. His facts are well arranged, their connection

26 Perhaps modern psychologists and psychiatrists would apologize for this younger Alcibiades and strongly urge that such a man should be acquitted on the ground of his mental irresponsibility and allowed to remain at large or that he be committed to an institution. It was unfortunate enough for a boy to be a son of such a creature as the elder Alcibiades, without having to go through the excruciating experiences of this defendant's youth.

Shuckburgh says: "As for the son, if we may trust the account here given of him, he had all the vices of his father, without his power; and led a roving, almost piratical, life, without any compensation in the way of public or private magnificence. Nor has he shared with his father the honour of being remembered. Hardly any particulars of his life are attainable. He tells us (Isocrates, xvi. 645-6) that when he was quite an infant his mother died, and his father was banished (B.C. 415); that before he was four years old he was in danger of being put to death, being held as a hostage for his father, who failed to appear to answer the charges against him; that he was banished by the Thirty when he was still a child (nidā) B.C. 404-403; that on the restoration of the Demus he did not get the grant of land which others did, in compensation for his property confiscated by the Thirty; and was, moreover, defendant in a suit, the damages in which were laid at five talents. He seems to have inherited the personal peculiarities of his father." Shuckburgh's Lysiae Orationes, p. 272.
clearly shown, and their significance not left doubtful. The language in which he tells it is simple without being vulgar, and clear without being bald or inartistic. The meaning is generally caught at a glance. Very rarely in him are found long or involved sentences, words used in a recondite sense, or words employed at all not in common use among all educated persons of his time. And though his object is nearly always to tell a simple story simply, he is saved from being dull,—first by his dramatic faculty, by which he managed to adapt the speech which he wrote to the character of the person who delivered it, of which the speeches 'for Manti-theus' and 'for the Cripple' are good instances; and secondly, by his power of occasionally rising above the placid stream of his narrative or argument to real passion.”

Lysias has both clarity and subtlety.27

Dionysius of Halicarnassus, who flourished about 18 A.D., speaks in elaborate praise of Lysias.

Shuckburgh places the death of Lysias in B.C. 378, making him eighty years old. Jebb says: "The latest speech we can date (For Pherenicus) belongs to 381 or 380. Lysias probably died in or soon after 380 B.C."

If we accept it as a fact that Lysias died in 378 B.C., he has been dead for 2318 years. It seems that there have been admirers of Lysias in all the centuries since his rise to prominence as a lawyer early in the fourth century B.C. In the entire history of the world, there is probably not another instance of a lawyer that has been remembered for so long a time. Why is he so long remembered? Doubtless several reasons have contributed to the prolonging of the memory of Lysias. One reason is his conspicuous and almost infallibly certain success in the courts. Another is the fact that he seems to have represented worthy causes, in many of which there was and is great public interest. Another is his close approach to literary perfection. We may add to this another reason, which many believe to be of most importance, that Lysias was a contemporary of so many great men, living in the golden age of Athens, when so much of writing

27 "Cicero calls him disertissimus, and selects as his distinctive merit subtilitas. He is subtilis, elegans, prope orator perfectus, Demosthenes being the standard of absolute perfection.” Shuckburgh's Lysiae Orationes, Introduction, p. xxxix.
was being done both by and about great men. Possibly an important reason for the enduring fame of Lysias is the fact that he has generally appealed to readers as being a good man, whose goodness is reflected in his addresses, and whose efforts seem to have been put forth in genuine endeavor to promote what seems to have been the right.