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The Athenian Court System

There are three important facets of the Athenian court system that modern reader's must consider. The organization and protocol of the Athenian courts were fundamentally different from modern American court systems. Also one should understand that in many cases litigants tried to portray their opponents as generally bad people instead of focusing on the set accusations. One must also understand that the content citizens of the city-state were normally predisposed to following the judgements of the jury. A basic understanding of the Ancient Athenian court systems helps to further a modern readers understanding of the court proceedings and Socrates' actions in Plato's The Apology and Crito. The Apology is set during the actual trial of Socrates, and in Crito; Socrates interacts with his personification of the Laws.

Ancient Athenian courts normally consisted of 500 members; however, in certain circumstances two or three courts assembled together to hear cases. Jurors voted in full view of the litigants. To vote jurors were given "two ballot balls, one pierced and one solid." The pierced ball represented the prosecutor and the solid represented the defendant. The jurors vote by placing the ball representing their decision in a brazen urn and disposing of the other in a wooden urn. After voting jurors were paid a sum of three obols. If damages were to be awarded the vote was handled in a similar way (Aristotle 68-69).

The process of voting in an Athenian court was very different from the method of private deliberation among jurors used in American courts. With the large

number of jurors, one wonders how order was kept. Christopher Carey addresses this in his article Legal Space in Ancient Athens: “One speaker in the fourth century complains that at a previous trial his opponent prejudiced the jurors so effectively against him that they would not listen to a word he said. He may be lying, but presumably on occasion it was very difficult for a litigant to make himself heard above the noise” (177).

It was common practice for litigants to poison the jurors against their opponent. This practice is referred to as *diabole*. Aristotle wrote, “the orator’s role is to use rhetorical proof (specifically argument) to maximize the impact of his own artless proofs and to minimize the impact of his opponents” (qtd. in Carey, “Nomos” 35). Aristotle wrote that artless proofs “have been provided through us but were already in existence” (qtd. in Carey, Nomos 33). *Diabole* is one type of artful proof. In cases such as the fourth century orator mentioned above *diabole* was used effectively. Most orators worked in three areas to influence juries: (1.) litigants placed themselves on the side of the law, (2.) litigants tried to show that their opponents despised the law, and (3.) litigants appealed to the jurors that the future of the law was in their hands—if they made a wrong decision the law would become invalid and by supporting the litigant they were also supporting the law (Carey, “Nomos” 45). Litigants also used emotion to appeal to the jurors; Carey states, “it was common in fact for defendants to produce their children in court, weeping or begging for mercy” (Carey, Legal Space 179). Aristotle believed that the real power of a case came from argument (“artful proof”) and not evidence (or the so-called “artless proofs”) (Carey, “Nomos” 33). In the *Apology* Socrates’ utilizes the artful proof. On page 54 in The Last Days of Socrates, Socrates states that he is an asset to that city and that he is not pleading on his own behalf, that is pleading on behalf of the jurors “to save [them] from misusing the gift from God by condemning [him]” (Plato 54).

Another important aspect of Athenian court was the vagueness of law. Aristotle refers to law as an artless proof. Aristotle also places witnesses, tortures, and contracts on this level. There were no Athenian law books for reference. The law referring to the specific accusation was presented at a case along with depositions, and each litigant must provide his own excerpts to prove his case (Carey, "Nomos" 33). One might think it easy to abuse this system; however, the "penalty for introducing a non-existent law was death" (Carey, Nomos 33). Many times there were now laws governing an accusation. In these cases Carey states that, "the jurors' oath in Athens bound the jurors to vote according to the laws, but where the laws gave no guidance (literally 'concerning matters on which there are no laws') to vote according to conscience (literally 'according to [my] most just opinion')" (Carey, "Legal Space" 179). The jurors own belief system was as important as the actual laws in Ancient Athens.

The modern America court system is set apart from everyday life. The legal process is treated as a distinct activity. "The Athenians [saw] the courts as part of a larger picture. They are part of the political life of the city; part of the life of the individual litigants, so that a litigant's whole life is relevant to the trial; they are subject to the ordinary rules of decency and the ordinary rules of law." Ancient Athens also lacked legal terminology. "The laws were passed by an assembly of ordinary citizens." In Athens there was less of a difference between a courtroom and the life of citizens (Carey, "Legal Space" 178).

In Plato's Crito, Socrates refuses to go against the decision of the jurors. Personifying the Laws, Socrates states, "Now, Socrates, what are you planning to do? Can you deny that by this act which you are contemplating you intend, so far as you have the power, to destroy us, the Laws, and the whole State as well? Do you imagine that a city can continue to exist and not be turned upside down, if the legal judgements which are

pronounced in it have no force but are nullified and destroyed by private persons” (Plato 86)? In Athens there was a great belief in *nomos*. *Nomos* is the respect for and honor of the Laws of the city and the judgements made from these laws. To go against *nomos* would be viewed as a like of morality and would be an attack against all of the jurors who made the decision and an attack against the entire State (Carey, “Nomos” 36). Most of Socrates’ contemporaries would have been as hesitant to go against a judgement, “although few Athenians would go as far as Socrates in Plato’s Crito in obedience to the laws, the rhetorical force of the Crito as part of Plato’s continuing apologia for Socrates derives in small part from the ideology of obedience to *nomos*” (Carey, “Nomos” 36).

The Athenian court system of Plato’s time was very different from courts of today: there were more jurors, there were few rules governing evidence, character was as important as law, and Athenians felt much more connect to their courts. Readers who understand these differences will better understand Socrates’ actions in the dialogues of Plato.

Works Cited

Aristotle. The Athenian Constitution. Trans. Sir Francis G. Kenyon. Ca. 350 BCE.

<http://webatomics.com/Classics/Aristotle/athenian_const.mb.txt> (14

Nov. 1997).

Carey, Christopher. "Legal Space in Classical Athens." Greece & Rome October 1994: 172-87.

--- "Nomos in Attic Rhetoric and Oration." Journal of Hellenic Studies 116 (1996): 33-46.

Plato. The Last Days of Socrates. Ca. 400 BCE. Trans. H. Tredennick and H. Tarrant. New York: Penguin, 1993.