

# Objection

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November 13, 2006

Whether watching a law drama on television or attending a trial in person, we have all become accustomed to hearing lawyers announce “Objection!” A lawyer raises an objection in order to limit the testimony of witnesses and conduct of those in the courtroom to facts relevant to the case. In modern courts, the perception of relevance differs from that of the Athenians, in that we try to examine the facts of the case without considering excessively the defendants contribution to society or any kind of emotional appeal. The Athenians sometimes conceded that the defendant had committed a crime, but would then argue the morality of the law, appeal to the emotions of the jurors, or point out the value of the defendant to society. Using any of these arguments in a modern court would certainly be deemed irrelevant, due to the fact that they have no bearing on the actual guilt of the defendant. Conversely, relevant seeming evidence could be introduced in Athenian courts, when it would almost certainly be excluded from a modern trial. For example, the Athenians permitted essentially all testimony, whereas nowadays issues such as hearsay, privilege, accountability, and veracity would be raised. Across the surviving body of documented Athenian legal cases, these kinds of arguments are used, often successfully, to bolster the case of either the defense or the prosecution. The Classicist Danielle Allen describes the Athenian trial, writing, “Each contender had to use his speech to define the pitiable and that which was worthy of anger in order to make a claim on his jurors votes.” [All00, 149] All procedures of modern courts—such as burden of proof, habeas corpus, and jury deliberation—are designed to force the jury to make a decision *beyond reasonable doubt*, a fact based, objective decision. In contrast, Athenian procedure—two primary speeches, witness by affidavit, and the mob mentality of the jury—was most conducive for an emotionally based decision. Anger can be seen as the centerpiece of Athenian law in the acute commentary of Aristotle, Aristophanes, and several other thinkers, in the procedure of the courtroom, and in documented arguments.

In his *Rhetoric*, Aristotle discusses different aspects of how a case should be presented; he describes what it takes to win over a jury and contrasts that with what he considers the proper way should be. Very early in *Rhetoric*, Aristotle makes his view clear, writing,

All men either think that all the laws ought so to prescribe, or in fact carry out the principle and forbid speaking outside the subject, as in the court of Areopagus, and in this they are right. For it is wrong to warp the dicast’s feelings, to arouse him to anger, jealousy or compassion, which would be like making the rule crooked which one intended to use. [Ari26, 1.1.5]

Aristotle goes on to discuss how this ideal was certainly not the case, that each litigant in a trial must do his best to arouse emotion in the jury, and that it is the jurys responsibility to sort out what they are told and to remain restrained and unemotional. [Ari26, 1.1.6] In *Rhetoric* Book II, Aristotle explains how to use emotional appeal to sway peoples opinions, writing, “The emotions are all those affections which cause men to change their opinion in regard to their judgments.” [Ari26, 2.1.8] He describes how anger, calmness, friendship and enmity, fear, shame, kindness,

pity, indignation, envy, and emulation all function to sway the opinion of an audience. For the purposes of this topic, the most interesting are anger and pity. Aristotle defines anger as an intense, almost painful emotion that is always pointed at a certain individual, felt because one feels slighted in some way. Most importantly, Aristotle asserts that a primary feature of anger is pleasure associated with an empowering feeling of expected revenge. [Ari26, 2.2.1-2] As an orator, one must make the jurors feel as if they have been slighted in some way, so that they actually experience pleasure upon issuing a verdict. Aristotle describes pity as the opposite of anger; whereas anger is associated with feeling slighted, pity is felt when one empathizes with the victim of a crime. [Ari26, 2.8.2] Pity is inextricably connected to Aristotles conceptions of both fear and friendship. Pity is primarily felt when witnessing the plight of another and fearing the same experience; [Ari26, 2.5.11] furthermore, a feeling of friendship is requisite, so that instead of enjoying the pain of another, it is easy to empathize with it. [Ari26, 2.4.31] Aristotle ascribes a method for Athenian oratory: each litigant must make the jury feel affection for him, then portray himself as slighted in such a way that the jurors feel as if they could suffer similarly, then point a finger and hope the jury votes according to their emotions. It is these emotions, not the facts of the case, that make the decision for the jury.

In *The Wasps*, Aristophanes satirizes the Athenian legal system by pointing out that it is indeed true that anger and power are the primary deciders of juries. *The Wasps* follows the conflict between a man, Phobocleon, and his father, Philocleon. Phobocleon becomes convinced that his father is addicted to jury duty and should be locked up indoors. [Rod04, Aristophanes, quoted] Aristophanes depicts Philocleon as an impulsive juror, always making decisions out of anger and then assigning the toughest punishment offered. In exploring this phenomenon, Aristophanes has the characters discuss whether an emotional jury is beneficial to the Democracy. Philocleon and the wasps maintain that anger can be a constructive force, whether on a jury or not. Danielle Allen summarizes their argument as such: “while their *orge* helps them to secure their city against external enemies in wartime, in the peaceful city it allows them to equalize the citys internal power structure by engendering fear in the wealthy and aristocratic.” She then goes on to explain how anger can be seen as a force to protect Democracy, safeguarding both citizens and the state.<sup>1</sup> [All00, 129] This argument is clearly not the view taken by Aristophanes, but it is interesting to consider, as it likely reflects a common Athenian mindset. Phobocleon, on the other hand, takes the position that the Athenian court system is simply a control structure for providing an outlet for anger in a seemingly productive way. He points out that jurors are compensated minimally while the demagogues live excessively. [All00, 130] Phobocleon considers his fathers problem to be like a drug addiction—Philocleon not only gets extreme pleasure and excitement from issuing damning votes, but he also makes farfetched arguments to try to prove his legitimacy. The commentary provided by Aristophanes in *The Wasps* is valuable because it points out clearly that it was at least sometimes the case that jurors saw their duty as a recreation rather than a duty to justice.

Aristophanes also provides some insight into what actual juries may have looked like. While a large amount of the male Athenian population was eligible for jury duty, we actually have no direct data depicting what the composition of juries was. Around 462 BC, Pericles instituted a small juror compensation to entice people to take the time to serve on a jury. [Rod04, 154] Aristophanes makes the point that the juror compensation of just three obols was so small that jury duty was only attractive to those who had nothing better to do. [Rod04, 152] In his description of the Athenian legal system, Adriaan Lanni writes, “it seems likely that the poor, the elderly, and the city-dwellers were strongly represented [on Athenian juries].” [Lan99, 31] Aristophanes first complaint with this system of compensation was that the members of juries were dependent upon the state for their livelihood, thus making them “slaves” to the demagogues.

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<sup>1</sup> *Orge*, Greek for *anger*.

[Rod04, 152-153] There are a number of other reasons why having a set of career jurors taints the ability of the jury to make decisions purely based on facts. First they may be cantankerous or even vengeful against other, more fortunate members of the population, and thus quick to cast votes. Also, these jurors are not what we would consider peers of the litigants; they are essentially their own caste in society, removed from the problems and lifestyle of the general populous. Therefore, even if a jury had not made an emotional decision, its decision may still have strayed from the facts alone, as the jury was tainted with a skewed perspective.

Aristotle and Aristophanes were not the only thinkers to comment on the disjointedness between the facts of the case and the thought process of the jury. Pliny discusses a work of Parrhasios, an Athenian painter, depicting the Athenian *demos*.<sup>2</sup> [All00, 148] In this picture, the *demos* is depicted as a collection of emotions, notably anger, pity, and a “susceptibility to being swayed by an argument”. [All00, 148] This painting serves to confirm the criticisms put forth by Aristotle and Aristophanes and indicates further that these were widely accepted criticisms, at least among the intelligentsia of Athens. The use of emotional appeal is additionally corroborated by a slew of references from Demosthenes, Lysias, and Antiphon put forth by Danielle Allen describing litigants telling the jury either, “I deserve to be pitied”, or, “[my opponent] deserved anger appropriately.” [All00, 148] All these reference corroborate the fact that many Athenians saw their courts as dispensing not justice but emotion.

The Athenian legal procedure was not conducive to highly deliberated, fact based verdicts. A trial usually lasted an hour and never longer than a day. [Lan99, 30] By nature such a short amount of time would neither allow emotions to calm nor let jurors mull over the facts and make an informed decision. To make matters more difficult, the veracity of testimony was often unclear. While there was a magistrate, his role was more logistical than judicial; Adriaan Lanni writes, [the magistrate] did not interrupt the speaker for introducing irrelevant material or permit anyone else to raise other legal objections. [Lan99, 30] Essentially, anyone could say anything he wanted, and it was a task for the jurors to discern truth in any way they saw fit. Further complicating the procedure was that either litigant could portray the laws in any way he saw fit, without interference from the magistrate or opposing litigant. [Lan99, 30] Juries were given the aid of witness testimony, usually in the form of affidavit, to corroborate the testimony of the litigants themselves. David Mirhady discusses the form of testimony, writing, The litigants own statement incorporates both his account of the events and his application of the law. Witness testimony has the rhetorical power to turn that statement into fact. [Mir02, 257] It is also worthy of note that children, women, and slaves could not bare witness in court, so witness testimony could sometimes be difficult to find. Compared to modern standards, these trials would seem chaotic, constantly raising irrelevant or unverifiable evidence and testimony. The facts of the case certainly lie somewhere inside the testimony and evidence, but jurors had neither the time nor the resources necessary to probe deeply enough to make a decision purely based on truth.

The rules of the court pertaining to the jury, with respect both to procedure and to etiquette did not encourage a well informed, thought out decision. The Athenians courts were marked by what would be deemed in modern courts indecorous behavior; the jurors would sometimes make their objections known, encouraging a mob mentality in the jury. Lanni writes, knowledgeable members of the jury and the crowd could heckle orators whose speeches were misleading. [Lan99, 30-31] It is possible that such heckling by certain members of the jury or crowd tainted the jury as a whole against one litigant. The size of the jury also played a role in limiting its efficacy; juries with no less than 201 people were far to large to deliberate, so each juror essentially made his decision and was in no way accountable for it. In modern courts, juries deliberate for an extended time, forcing each juror to argue whatever position he takes. Modern juries can also ask litigants for more testimony, write statements about the foundations of their decisions, and

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<sup>2</sup> *Demos*, the Athenian citizenry.

take as much time as they would like to reach a verdict. Athenian juries had none of these luxuries, so the decision reached would not be a body speaking as a whole, but hundreds of individual votes. This lack of accountability gives jurors the ability to cast a vote based on the facts of the case, the weather, or any other criteria, relevant or not. The inability of the jury to make its own choices is also worth note. In modern courts, juries are usually able to refuse to deliver a verdict; in Athenian courts, however, with the lack of a deliberative stage, the jury was incapable of hanging, and a majority could always be reached. Also, when asked to decide a punishment for a crime, Athenian juries were only given two choices one offered by each litigant, they could not choose an intermediate punishment. Lanni describes this phenomenon in reference to the Socrates trial:

Socrates virtually signed his own death warrant. After suggesting that the state reward him with free maintenance, he finally agreed to propose a very small fine as a penalty, inducing the jury, which only narrowly voted for conviction, no choice but to vote overwhelmingly for the prosecutors proposal of execution. [Lan99, 31]

This inability to pick middle ground, between guilt and not guilty, or between a small fine and an execution, is yet another symptom of the large jury. These are examples of how the jury's decision can stray from the facts due simply to logistical concerns.

The various rhetoric phenomena that have been previously mentioned are apparent in most, if not all, surviving Athenian legal speeches. In Lysias *On the Murder of Eratosthenes*, we can see the classic form of an Athenian legal case. It begins immediately with Euphiletos establishing common ground with the jury, saying that if they were in his position they would have acted similarly. [Lys30, *On the Murder of Eratosthenes*, 1.1] He discusses the context of the crime for which he is accused, saying that the whole of Greece would agree with his conduct. [Lys30, *On the Murder of Eratosthenes*, 1.2] Working to garner pity for Euphiletos, Lysias portrays Euphiletos as sympathetic, a man who acted justly, not out of greed. [Lys30, *On the Murder of Eratosthenes*, 1.4] He renders Euphiletos' situation as one that anyone could find himself in—a man who works hard, whose wife has been wickedly seduced by another man—so that the all male jury can empathize with his situation. [Lys30, *On the Murder of Eratosthenes*, 1.6-20] The tale is told in such a way that Euphiletos' anger is pointed at a single target, one that the jury could identify as being worthy of punishment. The tale ends with the murder of Eratosthenes, with Euphiletos saying, It is not I who am going to kill you, but our city's law. [Lys30, *On the Murder of Eratosthenes*, 1.26] In this single phrase, Lysias has Euphiletos confess to the crime, inform the jury of a law, and make it seem like all of Athens carried out the crime. This case is a perfect example of how creative use of obscure laws, combined with forcing the jury to identify with and pity the defendant and instilling anger for victim can lead to an acquittal. This specific case also shows how it was possible to change the focus of the trial, as Euphiletos' testimony is essentially a post-mortem trail of Eratosthenes.

The fundamental difference between Athenian trials and modern trials is that every participant in an Athenian court was a layman, with no formal training in law. In a court with no legalese, no technical procedure, and no quantification of what either side needs to show, the verdict is more authentic and, in a sense, more popular. However, in such a system, abuse and misuse is far easier and more common. After this discussion of juries' consideration of fact versus emotion, a number of questions arise. The first being as to what exactly the benefits of the Athenian system were over most modern systems. In many ways, the Athenian jury was more honest, in that it did not claim its decision decided only on the facts of the case. Lawyers sometimes make emotional appeals nowadays, and using fear, anger, and pity in the jury is still a common practice. Also, modern juries are still made up of laypeople, who, while briefed about the law, still have very little facility to understand anything but the human aspect of the case. The

Athenian law system was monumental; it brought the government into the hands of the people of Athens. It was also run incredibly smoothly, considering it was administrated by people with very little experience or training in law.

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