

**Spectator Sport or Serious Politics? oi periesthkotes and the Athenian  
Lawcourts**



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*The Journal of Hellenic Studies*, Vol. 117 (1997), 183-189.

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However, rather than dissolving into blissful admiration, Agave's 'ritual' gaze dramatised in the scenic space of the theatre of Athens, breeds excruciating emotional torment:

Αγ. ὀρώ μέγιστον ἄλγος ἢ τάλαιν' ἐγώ  
(1282; cf. 1260: ἀλγήσειτ' ἄλγος δεινόν).

To conclude, then: I hope that, using as an example the theatrical display of the *toxon* in the Sophoclean *Philoctetes*, this note has drawn attention to some of the ways in which classical Greek drama 'theatricalises' its ritual subject-matter. For the revelation of the bow to the 'internalised' spectator's sight, as well as the solemnity of its transmission to the boy's hands, is one among the many illustrations of drama self-consciously turning its ritual component<sup>30</sup> into theatre, that is, transmuting the ritual forms it integrates and the ritual emotions it appropriates into civic spectacle.<sup>31</sup>

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### Spectator sport or serious politics? οἱ περιεστηκότες and the Athenian lawcourts

In his tract *A Rationale of Judicial Evidence*, Jeremy Bentham repeatedly refers to the courtroom as the 'theatre of justice'. Bentham's description has been borne out by recent scholarship on Athenian law. As a form of civic space, the Athenian lawcourts were similar to the Theatre of Dionysos in many respects:<sup>1</sup> litigants faced each other in a competitive *agon*, delivering lines written for them by logographers<sup>2</sup> to a mass audience which would range, ordinarily, from 200 to 1500 jurors. Moreover, modern scholars have drawn on the notion of 'social drama' introduced by the anthropologist Victor Turner to describe the Athenian lawcourts as an arena for socially constructive feuding behaviour,<sup>3</sup> as a public stage for the social élite to compete for prestige,<sup>4</sup> or as a forum for ongoing communication between élite litigants and mass jurors 'in a context which made explicit the power of the masses to judge the actions and behavior of élite individuals'.<sup>5</sup>

Scholars writing about the Athenian lawcourts have rarely mentioned and have never discussed in detail a key element in the court's cast of characters: οἱ περιεστηκότες, the spectators who stand at the edges of the courtroom watching and listening to the cases. This phenomenon, referred to by the Romans as the *corona*,<sup>6</sup> may at first seem marginal, both literally and figuratively, but this paper will argue that the spectators played a crucial role in the social dynamic of the courts and had an important effect both on the litigants' arguments and on the jurors' decisions. Further, evidence drawn from both lawcourt speeches<sup>7</sup> and philosophical texts indicates that the *corona* helped to rectify one of the perceived institutional weaknesses of the Athenian democracy, the immunity of its mass juries from formal accountability.

<sup>1</sup> J. Ober and B.S. Strauss, 'Drama, political rhetoric, and the discourse of Athenian Democracy' in *Nothing to do with Dionysos? Athenian drama in its social context*, edited by J.J. Winkler and F.I. Zeitlin (Princeton 1990) 238; E. Hall, 'Lawcourt dramas: the power of performance in Greek forensic oratory' *BICS* xl (1995) 39-52.

<sup>2</sup> It is of course possible that some spoke with no 'professional' assistance.

<sup>3</sup> D. Cohen, *Law, violence, and community in classical Athens* (Cambridge 1995).

<sup>4</sup> R.G. Osborne, 'Law in action in classical Athens' *JHS* cv (1985) 52.

<sup>5</sup> J. Ober, *Mass and elite in democratic Athens: rhetoric, ideology, and the power of the people* (Princeton 1989) 145. However, C. Carey has pointed out the dangers of overemphasising the alien elements in Athenian law and of oversimplifying the Athenian system: 'Legal space in classical Athens' *G&R* xli (1994) 172-86.

<sup>6</sup> E.g., Cic. *Flac.* 69; *Brut.* 289-90; *Caecin.* 28. For discussion of the Roman *corona* see B.W. Frier, *The rise of the Roman jurists* (Princeton 1985) 235 ff.

<sup>7</sup> A word should be said about the evidentiary value of the speeches. We can very seldom adduce any external evidence to verify or falsify a speaker's claims, including any description he offers of the circumstances of a trial. Given this limitation, my method is to assume that anything a speaker says about the bystanders would, at the very least, fall within the range of credibility.

<sup>29</sup> See Richardson (n. 7) 306-7.

<sup>30</sup> The fusion of ephebic and mystic frameworks implied throughout this note need not surprise. Rather than being inflexible, dramatically recast initiation frames can freely interact with one another, since a fictive creation, whether literary or pictorial, is not a sacred document: drawing on a common cluster of cultural assumptions with his addressees, the artist combines his building blocks at will, without being haunted by the fear of inconsistency or inaccuracy. Perhaps the most well-known example of such a cross-institutional fusion of data is the Aeschylean *Oresteia*: although it dramatises an archetypal scenario of ephebic initiation, i.e. Orestes' transition to manhood, it is also a storehouse of Eleusinian language and imagery, as was argued in detail by Tierney and Thomson as early as the first decades of our century. See G. Thomson, *JHS* lv (1935) 20 ff.; M. Tierney, *JHS* lvii (1937) 11 ff.; W.G. Headlam and G. Thomson, *The Oresteia of Aeschylus*<sup>2</sup> (Amsterdam 1966; first publ. Cambridge 1938).

<sup>31</sup> Warmest thanks to Richard Hunter, who has kindly read and commented on earlier versions of this note, and especially to Pat Easterling for having patiently discussed my work on *Philoctetes*, provided innumerable suggestions, and saved me from many errors.

## II. Did every case and court draw a crowd?

The bystanders were a fixture in Athenian courts. At least nineteen of our surviving real and imaginary speeches include explicit references to spectators,<sup>8</sup> and several texts include ambiguous addresses to the audience which might have been meant for the bystanders as well as the jurors.<sup>9</sup> Moreover, it seems possible that some references to spectators would be dropped from speeches in the process of publication and preservation. Readers were more interested in the Attic speeches as models for rhetorical imitation than as historical or legal texts; and what looked like minor court *Realien* were probably vulnerable to omission, as were witness testimony and the reading of laws.<sup>10</sup>

Presumably the Athenian public would be especially eager to attend cases involving prominent citizens. It is not surprising that just over one-half of the references to bystanders come from speeches delivered by famous politicians *in propria persona* and that all but one of the surviving speeches of Dinarchus and Aeschines mention the *corona*.<sup>11</sup> In his *Life of Demosthenes* (5.1), Plutarch describes the excitement aroused by the impending trial: 'expectations concerning the case were running high because of the skill of the orator [Callistratus], who was then at the height of his powers, and because the matter was well-known'. The famous trial of Ctesiphon in the dispute over Demosthenes' crown was attended, Aeschines claims, by an unprecedented throng of Athenian and other Greek spectators, 'in numbers greater than anyone remembers ever attending a public trial [ἀγῶνα δημόσιον]'.<sup>12</sup> *Graphai* were given extra notoriety by virtue of being advertised on the notice boards mounted at the Altar of the Eponymous Heroes.<sup>13</sup>

Though the *corona* was undoubtedly larger at notorious cases than at ordinary suits, the possibility of casual spectators stopping to listen to cases at random as they went about their business in the agora should not be overlooked. A fragment from the comic poet Eubulus conveys the extent to which the lawcourts and market stalls were intermingled in the Athenian agora: '[A.] In

one and the same spot in Athens everything will be for sale: figs [B.] summoners [A.] grapes, turnips, pears, apples [B.] witnesses [A.] roses, medlars, haggis, honeycombs, chickpeas [B.] *dikai* [A.] beestings, pudding, myrtle [B.] jury-panel allotment machines [A.] hyacinth, lambs [B.] waterclocks, laws, *graphai*' (fr. 74 K-A).<sup>14</sup> It is not difficult to imagine foreigners and Athenians from the countryside stopping to watch a trial while they were visiting the city. For the casual spectators, private suits involving small sums of money might be more attractive than public cases, since it would be possible to follow an entire trial in less than half a day, and in some cases in less than an hour.<sup>15</sup> The courts were in session every day except those devoted to an annual public festival or a meeting of the Assembly,<sup>16</sup> and a visitor looking for entertainment would probably attend whichever of these three forms of public spectacle was scheduled for that day.<sup>17</sup> Even in the world of Hesiod's *Works and Days* it was difficult to resist observing trials in the agora; Hesiod instructs Perses (*Op.* 28-9), 'do not let Strife that rejoices in troubles keep you from work, gaping and listening to the disputes in the meeting place'. Visitors to classical Athens would likely be particularly curious to see a case, since Athens was well-known throughout the Greek world for its litigiousness: Thucydides (i 77) says that the Athenians are known to love litigation, the Old Oligarch claims that the Athenians try more cases than all other city-states together (3.2), and Athenian litigiousness is the subject of Aristophanes' *Wasps* and a common source of humour in many of his plays.<sup>18</sup> In the *Epistles* II 3.11, Alkiphron recreates the wonder of a fourth-century visitor to Athens: 'Where in Egypt will I observe the Assembly and the vote being given out? Where will I see the democratic mob exercising such freedom? Or the *thesmothetai* adorned with ivy at the sacred festivals?... The Kerameikos, the agora, the courts, the beautiful Akropolis....' Early frontier America provides a striking parallel: the criminal trial has been called 'the theater and spectaculum of old rural America'.<sup>19</sup> In one case the metaphor was, so to speak, actualized: a trial was moved from the courthouse to the local theatre to accommodate all the spectators.<sup>20</sup>

<sup>8</sup> Ant. vi 14, 24; Pl. *Apol.* 24e-25b, 35b; Andoc. i 105; Aesch. i 77, 117, 173; ii 5; iii 8, 56, 207; Dem. xviii 196; xix 309; xx 165; xxv 98; xxx 32; liv 41; lvi 48; Is. v 20; Din. i 30, 46, 66; ii 19; Hyp. v 22; Lys. xii 35; xxvii 7. Ant. vi 24 refers to the *corona* of previous trials rather than spectators present at the time.

<sup>9</sup> E.g., Din. i 10. V. Bers, 'Dikastic *thorubos*' in *Crux: essays in Greek history presented to G.E.M. de Ste. Croix*, edited by P.A. Cartledge and F.D. Harvey (Exeter and London 1985) 10.

<sup>10</sup> For the problematic relationship between the speeches which were delivered and our surviving texts, see K.J. Dover, *Lysias and the 'Corpus Lysiacum'* (Berkeley and Los Angeles 1968) 160 ff; S. Usher, 'Lysias and his clients' *GRBS* xvii (1976) 31-40; S.C. Humphreys, 'Social relations on stage: Witnesses in classical Athens' *History and anthropology* i (1985) 320.

<sup>11</sup> Admittedly, it is possible that the celebrity of certain trials would insulate them from the tendency to omit references to the *corona* in the process of publication.

<sup>12</sup> Aesch. iii 56. cf. Aesch. ii 5; Lys. xii 35.

<sup>13</sup> E.g. Dem. xxi 103; xlv 8. For the inherently greater public interest in *graphai* see R.G. Osborne (n.4) 53.

<sup>14</sup> Plutarch (*Mor.* 580d-f) relates a story in which a group of Athenian youths is knocked down by a herd of pigs while walking δὲ τῶν ἐρμολύδων παρὰ τὰ δικάστηρια.

<sup>15</sup> While public prosecutions took a whole day, private suits involving claims worth more than 5000 drachmas lasted a few hours, and cases worth less than 1000 drachmas may sometimes have been completed in less than an hour; see M.H. Hansen, *The Athenian democracy in the age of Demosthenes* (Oxford 1991) 187-8.

<sup>16</sup> M.H. Hansen (n.15) 186.

<sup>17</sup> E.g., Theophrastus' citizen *agroikos* (*Char.* 6) attends the Assembly while he is in the city running errands.

<sup>18</sup> E.g., Ar. *Ach.* 375; *Eq.* 798; *Lys.* 380. For discussion see S.C. Todd, *The shape of Athenian law* (Oxford 1993) 147-54.

<sup>19</sup> G. Mueller, 'Problems posed by publicity to crime and criminal proceedings', *University of Pennsylvania Law Review* cx (1961) 6.

<sup>20</sup> At the end of this case the bailiff announced from the stage, 'The regular show will be tomorrow; matinee in the afternoon and another performance at 8:30. Court is now adjourned until 7:30' (quoted in M. Ball, 'The play's the thing: an unscientific reflection on courts under the rubric of theater' *Stanford Law Review* xxviii [1976] 84).

The location of the Athenian courthouses and their internal arrangements would naturally affect the size of the *corona*. Most of the courts were in the agora, but some, notably the homicide courts, were in different parts of Athens. There was no standard plan for the lawcourts, and in fact cases could at times be heard in non-judicial buildings like the Stoa Poikile<sup>21</sup> or the Odeion of Perikles,<sup>22</sup> hence the arrangement of bystanders would differ widely in different courts. Some types of cases might have special requirements affecting public access to the courts. In cases concerning the Mysteries, for example, it seems as though only initiates were permitted to judge or observe trials. Andocides' speech *On the Mysteries* indicates that there were bystanders at this famous trial (i 25, 105) and that all the jurors were initiates (i 31-2), and Pollux viii 123-4 tells us that in cases concerning the Mysteries, spectators were kept at a distance: 'the ropes [περισχοίνισμα] were placed at a distance of fifty feet. Officers kept guard to prevent any of the uninitiated from approaching'. The requirement that homicide trials be conducted under the open sky<sup>23</sup> may have made it easier for bystanders to hear the litigants. Because Athenian courts were often not monumental buildings, the archaeological evidence is very limited and the conclusions drawn from it often conjectural.<sup>24</sup> Still, it is possible to make a few tentative suggestions about the arrangement of the *corona* in some of the courts.

The archaeological evidence for the courts suggests that the presence of bystanders at trials was extremely common. The stone benches preserved on the west side of the agora in front of the temple of Hephaestus may have functioned as a lawcourt. Boegehold has proposed that these four benches, together with a fifth bench which is not preserved, served as seats for a jury of 501 citizens and that this area may have been one of the regular lawcourts for public trials.<sup>25</sup> He argues that there was probably a temporary barrier to hold back crowds, and he points out that the lack of physical evidence for *druphaktoi* (fences or railing)<sup>26</sup> on this site is not surprising, since the barriers which defined boundaries in Athenian public spaces were often more symbolic than physical.<sup>27</sup> If Boegehold's identification is correct, it is

likely that large crowds of casual spectators would form at cases tried in this location, as it was located in one of the busiest areas in the agora, not far from the Eponymous Heroes.<sup>28</sup> In addition, the absence of permanent walls would insure that large numbers of people could have an unobstructed view of the courtroom action.

In c. 340 BC, the Athenian lawcourts were reorganized into a single complex of buildings which has been associated with the remains of five structures on the east side of the agora beneath the Stoa of Attalos.<sup>29</sup> *Ath. Pol.* 63-65 states that there were ten entrances to the complex and describes how a selected juror would show his marked acorn to the attendant in order to be admitted through the *kinchlis* and into the courtroom area. It seems likely that a light barrier of rope or wicker surrounded the complex and that bystanders were not permitted to approach the courts until the jurors were seated.<sup>30</sup> *Druphaktoi* at the edge of each courtroom held back the spectators. Enough remains of the structure in this complex known as building C<sup>31</sup> to permit us to describe the arrangement of bystanders in this court. The south side of the building is enclosed by a colonnade with a screen wall of mud brick between the columns.<sup>32</sup> A row of postholes, evidently meant to support *druphaktoi* running parallel to the colonnade at a distance of about 3 m, is preserved. Thus spectators at this court could stand behind ropes or insubstantial barriers 3 m away from the edge of the colonnade and peer over the screen wall between the columns to see the action.

Travlos has argued that a classical site to the south of the Acropolis at No. 8 Makri Street represents the remains of the homicide court known as the Palladion.<sup>33</sup> In the colonnade of this building we find a row of rectangular sockets which presumably supported either a series of poles connected with rope or light wooden barriers which would separate the bystanders from the jury but would not prevent them from seeing and hearing the litigants.<sup>34</sup> Antiphon vi, which was probably delivered in the Palladion, explicitly refers to bystanders (vi 14). The archaeological and literary evidence for a *corona* at the Palladion indicates that spectators regularly attended private trials at courts outside the city centre, as well as important trials in the agora.

The presence of spectators at civic meetings in Athens was not limited to the lawcourts. Aeschines (iii 224) reports that 'foreigners stood around [περιέστῳσαν] the Assembly'. Dinarchus ii 15 and iii 1 carry similar reports.

<sup>21</sup> IG II<sup>2</sup> 1641, 1670. H.A. Thompson and R.E. Wycherley, *The Athenian agora*, Vol. 14. *The agora of Athens* (Princeton 1972) 71.

<sup>22</sup> Ar. V 1109; [Dem.] lix 52; Pollux viii 33. A.L. Boegehold et al., *The Athenian agora*, Vol. 28. *The Athenian law courts* (Princeton 1995) 6.

<sup>23</sup> Ant. v 11. For discussion, see R.C.T. Parker, *Miasma: pollution and purification in early Greek religion* (Oxford 1983) 122.

<sup>24</sup> H.A. Thompson and R.E. Wycherley (n.21); A.L. Boegehold 1995 (n.22); R.F. Townsend, *The Athenian agora*, Vol. 27. *The east side of the agora: The remains beneath the stoa of Attalos* (Princeton 1995); J. Travlos, 'The law court ΕΠΙ ΠΑΛΛΑΔΙΩΝ' *Hesperia* xliii (1974) 500-11; A.L. Boegehold, 'Philokleon's court' *Hesperia* xxxvi (1967) 111-20.

<sup>25</sup> A.L. Boegehold 1967 (n.24); A.L. Boegehold 1995 (n.22) 95-6.

<sup>26</sup> For the testimonia for *druphaktoi*, see A.L. Boegehold 1995 (n.22) 195-201.

<sup>27</sup> A.L. Boegehold 1967 (n.24) 119.

<sup>28</sup> Trials held in the Stoa Poikile would similarly draw crowds because it served as a central meeting place: R.E. Wycherley, *The Athenian agora*, Vol. 3. *Literary and epigraphical testimonia* (Princeton 1957) 31.

<sup>29</sup> R.F. Townsend (n.24) 41 ff; A.L. Boegehold 1995 (n.22) 10-15.

<sup>30</sup> A.L. Boegehold, 'Three court days' in *Symposion 1990: Papers on Greek and Hellenistic legal history*, edited by M. Gagarin (Pacific Grove 1991) 178.

<sup>31</sup> R.F. Townsend (n.24) 30-34.

<sup>32</sup> It is impossible to determine the height of this screen wall, but it certainly did not extend to the entablature: R.F. Townsend (n.24) 31.

<sup>33</sup> J. Travlos (n.24) cf. A. L. Boegehold 1995 (n.22) 47-8. Boegehold suggests that the Palladion was near Phaleron.

<sup>34</sup> J. Travlos (n.24) 508.

In Aristophanes' *Ecclesiazusae* (vv. 245-6) Praxagora claims to have overheard the speakers in the assembly when she took refuge on the Pnyx.<sup>35</sup> Apparently, wicker barriers (*gerra*) were erected to prevent non-citizens from entering the assembly area. Once the crowd was seated, however, these fences would be removed and the spectators could then congregate in the area above the southern scarps and look out over the backs of the speakers into the crowded auditorium.<sup>36</sup> [Demosthenes] lix 90 attests an exception: spectators were not permitted to observe votes involving the ratification of citizenship lest they intimidate the demos: 'The law orders the *prytaneis* to set out the voting urns and to give ballots to the citizens, who enter before foreigners come in, and the barriers [τῶ γέρορα] are taken away to insure that each citizen may be free to make an independent judgement concerning the man on whom he is about to confer citizenship'. The Boule<sup>37</sup> also often drew a crowd: Demosthenes xix 17 mentions that on one occasion 'the Bouleuterion was filled with spectators [ιδιωτῶν]'; the Sausage-seller in the *Knights* (641) listens just outside the *kinchlis* of the Council; and in the dialogue of Plato that bears his name, Menexenus (234a-b) plans to attend a meeting because the Councillors were going to designate the speaker of the Funeral Oration.<sup>38</sup> When sensitive issues of foreign policy were on the agenda, however, the Boule could hold private sessions and used *kinchlid-es* to keep the public at a safe distance.<sup>39</sup> While pleading with the Athenians in the Assembly to allow him to return to Athens, Andocides (ii 19) alludes to promises which he made in a secret session of the Boule, and Aeschines (iii 125) describes how Demosthenes once cleared the Boule of spectators before proposing a secret motion. Even meetings of the Areopagos Council, Athens' most traditional body, were observed by bystanders. On the basis of Demosthenes xxv.23, scholars often assume that this highly traditional and conservative institution would exclude spectators at its meetings.<sup>40</sup> But the speaker refers only to sessions in the King's Stoa: 'The Areopagos, whenever it is fenced off while in session in the Stoa Basileios, is left entirely at peace to itself and all keep their distance'. Moreover, Lysias x 11 seems to indicate that attendance at the court sessions of the Areopagos was not only common but strongly encouraged. The speaker, horrified at Theomnestos' ignorance of the laws, states with disgust: 'it seems to me that out of laziness and weakness this man has not even bothered to attend the Areopagos'.<sup>41</sup>

<sup>35</sup> See also Alk. *Epist.* II 3.11 (discussed above) and Ar. *Rhet.* II 1385a10-13.

<sup>36</sup> M.H. Hansen, 'Two notes on the pnyx' *GRBS* xxvi (1985) 129-35. On *perischoinisma* and barriers in public meeting places generally see B.M. Lavelle, 'A note on perischoinisma' *Rivista di filologia* cx (1982) 129-39 and R.E. Wycherley (n.28) 163-4.

<sup>37</sup> For discussion see P.J. Rhodes, *The Athenian boule* (Oxford 1972) 30-49.

<sup>38</sup> See also Dem viii 4; Xen. *Hell.* II 3.55.

<sup>39</sup> Dem xxv 23.

<sup>40</sup> B.M. Lavelle (n.36) 37. For the more formal atmosphere required by Areopagites, see Aesch. i 84 and Isoc. vii 38, discussed in V. Bers (n.9) 15.

<sup>41</sup> The verb ἀναβεβηκέναι could refer to visiting the Areopagos merely to read laws inscribed on *stelai*, but the run of the passages strongly suggests attendance at sessions of the Council.

Most significantly, the same passage shows that the speaker assumes that the jury is well-informed about the workings of the Areopagos. Spectators were clearly entrenched in every realm of Athenian political culture,<sup>42</sup> and it is not surprising that the *corona* played a vital role in the functioning of the lawcourts.

### III. Composition of the *Corona*

The bystanders seem to have been a very heterogeneous group. It is reasonable to assume that some members of the jury pool who reported to the courts but were not selected to judge on a given day remained to watch cases. Hansen estimates that between 1500 and 2000 of the 6000 member pool were empanelled on an average day,<sup>43</sup> but it is impossible to know how many prospective jurors normally reported for service.<sup>44</sup> Beside prospective jurors, Athenians who were in the agora for other reasons, and in particular citizens who were under thirty years of age and thus were not yet eligible to serve as jurors, might entertain themselves by observing some of the trials. As a result, most Athenians could be quite familiar with the workings of the lawcourts, the method of argument, and some of the city's laws by the time they served as jurors.<sup>45</sup> The speaker in Lysias x berates Theomnestos for his failure to attend the Areopagos to learn about the city's laws (quoted above) and goes on to state: 'I would like, drawing on other laws, to instruct this man on these matters in the hope that he be taught at least now, while at the podium, and that he not cause us trouble in the future' (x 15). The implication is that citizens should learn the ways of Athenian political life as bystanders at meetings of legal tribunals like the Areopagos or the *dikasteria* before undertaking jury service or venturing to the *bema*.<sup>46</sup> Since jurors were not instructed as to the laws and were not allowed to deliberate formally, the *corona* may have served an important role in educating potential jurors.

Seven of the speeches which refer to the *corona* mention that foreigners as well as Athenians were among the bystanders.<sup>47</sup> Just as at the dramatic festivals, foreigners were more likely to be in Athens and on hand to watch cases at certain times of year according to the shipping season. Courtroom dramas represented Athenian democracy in action, and visitors' opinions of Athens would certainly be affected by what they witnessed at the lawcourts.<sup>48</sup> In Plato's *Apology*, Socrates

<sup>42</sup> See C.P. Segal, 'Spectator and listener' in J.-P. Vernant (ed.), *The Greeks* (Chicago 1995) 184-217.

<sup>43</sup> M.H. Hansen (n.15) 187.

<sup>44</sup> Aristophanes' *Wasps* (103, 690, 774) indicates that prospective jurors who arrived late were turned away.

<sup>45</sup> The speaker in Isaeus i 1 notes that it is unusual that οὐδ' ἄκροασόμενοι οὐδέποτε ἤλθομεν ἐπὶ δικαστήριον.

<sup>46</sup> Throughout the speech, the speaker contrasts the ignorance of Theomnestos with the jury's knowledge of the functioning of the lawcourts.

<sup>47</sup> Aesch. i 117; iii 56; Lys. xii 35; Dem. xxv 98; Din. i 46; Hyp. v 22; Pl. *Apol.* 35a-b. See also Alkiphron *Epist.* II 3.11 (quoted above).

<sup>48</sup> Foreigners observing the lawcourts might also bring knowledge about Athenian political institutions to their own polis. In the *Rhetoric* (1360a), Aristotle notes that travellers can provide Athenian legislators with useful information about the laws of foreign states.

scolds litigants who weep and plead with the jury and parade their children in court to arouse sympathy. Prominent Athenians who do so disgrace the city in the eyes of foreigners: 'they seem to me to bring shame on the city, so that any foreigner might suppose that Athens' most virtuous men, to whom they give offices and other honours, are no better than women' (35 a-b). The *corona* provided an opportunity not only for foreign Greeks to observe the Athenian democracy, but also for the Athenian polis to define itself and to reinforce and legitimize by ritual the exclusivity of the citizen body. In a discussion of the Assembly, Strauss has argued that 'in symbolic terms, one might say...that political assemblies not only *do*, they *are*; simply by meeting, a session of the Assembly (by such criteria as who is and is not permitted to attend...) constructs a sense of community and an image of the polity'.<sup>49</sup> Similarly, the presence of non-voting bystanders in the lawcourts, some of whom as foreigners or citizens under thirty were not eligible to judge, highlighted the fact that the mass juries were not just passive spectators but active voting participants in this social drama. A detail in Aristophanes' *Wasps* is revealing: when setting up a makeshift court, Philokleon demands most vehemently the *druphaktoi* which defined the boundary between the jurors and the spectators: 'Stop! You've almost killed me. Were you really going to call a case without a railing [δρυφάκτου], the most important of our sacred items?' (vv. 829-31).<sup>50</sup>

Finally, professional rhetors, politicians, and students of oratory seem to have attended trials regularly.<sup>51</sup> Aeschines remarks that he listens to cases to observe which types of arguments and rhetorical strategies work best (i 77): 'whenever I go to the court and hear the litigants, I notice that you always find the same argument persuasive'; and the speaker in Lysias xxvii 7 says that all the politicians [οἱ τὰ τῆς πόλεως πρᾶττοντες] are present at the trial. Aeschines (i 173) states that Demosthenes invited his pupils to hear him argue in court, and according to Plutarch (*Dem.* 5.2) Demosthenes decided to become an orator after his tutor took him to hear a famous court case.<sup>52</sup> These passages are significant in that they seem to indicate that at least some of the spectators were members of the rich élite, a situation not accommodated by the current model, which envisages lawcourt speeches as intended exclusively for

a mass audience.<sup>53</sup> Speakers, particularly in well-publicized cases, addressed their rhetoric to the *corona* as well as to the mass jury. In fact, Demosthenes says just that in his speech *On the Crown* (xviii 196): 'All of this is intended for you, the jurors, and for those who are standing around outside listening [τοὺς περιεστηκότας ἐξῶθεν κᾶκροωμένους]'.<sup>54</sup>

#### IV. The effect of the bystanders on litigants and jurors

The presence of élite bystanders may have affected the litigants' arguments in a number of quite different ways. Clearly a speaker who overemphasised the distinction between the mass jury and the professional politicians, teachers, and students among the bystanders could risk alienating the jury.<sup>55</sup> Nevertheless, two passages hint at what must have been a common attitude among speakers, that the élite members of the *corona* would demand a higher standard of proof than the jury, which could be more easily swayed by rhetorical tricks. The speaker in Antiphon vi states, 'Many of the bystanders [τῶν περιεστώτων] know all these things quite precisely; they hear the oath; and they are paying attention to my defence. I would like them to think that I respect your oath and that by telling the truth I persuade you to acquit me' (vi 14). Aeschines ii 5 also seems to imply that convincing the spectators is a task separate from that of persuading the jury: 'if anyone of those standing around outside the court [τῶν ἐξῶθεν περιεστηκότων]—and nearly all the citizens are present—or if any of you, the judges, are persuaded that I committed such an act... I consider my life to be no longer worth living'. Thus the litigants were not always content with a favourable verdict from the jury, and may have constructed their speeches to win prestige from their peers in the *corona* as well.

The presence of bystanders may also have inhibited the litigants by giving them reason to avoid wild exaggerations and lies. Since the jury received no instructions, it was up to the speakers to cite and explain the relevant laws. Litigants often ask the jury to shout down their opponent if he misrepresents the laws or facts of the case.<sup>56</sup> In many passages, the speaker explicitly relies on the bystanders to know certain facts or to participate in *thorubos*. Antiphon vi 14 (quoted above) furnishes one example. Dinarchus (i 30) asks 'Can any of you or of the spectators [τῶν περιεστηκότων] name any public or private matter in which he [Demosthenes] has been involved which he has not ruined?'<sup>57</sup> Litigants might try to pack the *corona* with their supporters (family and close friends normally sat near the litigant in the court.)<sup>58</sup> We have seen that professional politicians, teachers,

<sup>49</sup> B.S. Strauss, 'Ritual, social drama, and politics in classical Athens' *AJAH* x (1985) 73. In a similar vein, S.D. Goldhill compares the way in which 'the polis represents itself to itself' (368) in the Assembly, lawcourts, Dionysia, and Panathenaia, and in particular how each of these civic spaces was gendered in order to map the 'civic topography' (351) of the Athenian democracy: 'Representing democracy: women at the Great Dionysia', in *Ritual, finance, politics: Athenian democratic accounts presented to David Lewis*, edited by R.G. Osborne and S. Hornblower (Oxford 1994).

<sup>50</sup> Indeed, Philokleon asks to be buried under the *druphaktoi* (385-6).

<sup>51</sup> The *corona* of Roman courts included aspiring orators (Cic. *de Or.* i 173), *cognitores*, and jurists: B.W. Frier (n.6) 235n2.

<sup>52</sup> As Plutarch tells the story, the tutor sneaked the boy past the *druphaktoi* and into the courtroom itself.

<sup>53</sup> See J. Ober (n.4) *passim*.

<sup>54</sup> Dem. liv 41 includes a similar formulation.

<sup>55</sup> To be sure, in some circumstances, a speaker might exploit the antagonism between the mass and the elite by reference to the *corona*: see Lys. xxvii 7 and Aesch. i 173.

<sup>56</sup> See V. Bers (n.9).

<sup>57</sup> See also Dem. xix 309; Andoc. i 35; Din. i 42; Aesch. i 113; Is. vii 13.

<sup>58</sup> Supporters: Dem. xix 1; xlix 10. Children: Lys. xx 34; Dem. xxi 99, 186; Pl. *Apol.* 34c; Ar. V. 568ff, 976 ff. For discussion see A.R.W. Harrison, *The law of Athens* Vol. II *Procedure* (Oxford 1972) 163-4; E. Hall (n.1).

and students often observed trials, and it seems likely that there was a small group of regular court-watchers among the bystanders who could be counted on to know a great deal about the laws and previous cases and, by heckling, to keep the litigants in line when their speeches were grossly misleading. In speaking of 'the men who frequent the lawcourts' (xv 30) Isocrates appears to refer to a well-known group.<sup>59</sup> Discussing an earlier case, the speaker in Demosthenes xxx appeals to the knowledge not only of men who sat on that jury, but also spectators at that trial: 'these facts are widely acknowledged, as those who served as jurors at that time and many of those who were present outside the court know well' (32). Litigants aware of these knowledgeable bystanders would probably be more careful not to misrepresent the laws and facts.<sup>60</sup>

The spectators' reactions most likely influenced the jury as well. At the very least, the surviving speeches indicate that the litigants seemed to think so: speakers sometimes ask the jury how they will defend their verdict when questioned by the *corona* as they leave the courtroom.<sup>61</sup> Demosthenes xxv 98 is the most elaborate example of the type: 'You will soon leave the court, and the spectators [οἱ περιεστηκότες], both foreigners and citizens, will be watching, and looking at each man as he passes to detect by their look which ones have voted to acquit. What will you say, gentlemen of the jury, if you walk out having betrayed the laws? With what expression will you face them?' The spectators do not necessarily have to be physically present to exert an influence on the jury. Aeschines (iii 247) reminds the jurors that their fellow citizens will hear about their decision: 'vote in this way, not only as judges but as men being watched, anticipating the judgement of citizens, who though not now present, will ask you what verdict you have given'.<sup>62</sup> [Demosthenes] lix 109 asks the jurors to consider the opinions of the female members of their families, and Lycurgus i 141 argues that jurors' families should be brought into the court: 'Even if in no other matter it is customary for the jurors to do their work seated beside their children and wives, it would be right to do so when treason is at issue, deeming it a pious procedure, so that those who shared in the danger, by being seen ... make the judgements against the criminal harsher'. In high profile cases, speakers emphasise the publicity surrounding the trial and claim that the reputation of individual jurors is at stake,<sup>63</sup> for example, Dinarchus warns that 'all men will hear the judgement made by you today, Athenians; they will watch how you who judge deal with a man who has committed such acts' (i 22), and the speaker in Demos-

thenes xx 165 promises that each juror will receive individual recognition for a just verdict: 'each of you will individually get credit for judgements made collectively'.<sup>64</sup> Lysias xii 91 is an example of a special case of this sort of pressure on the jury. The defendant in this trial was a member of the Thirty, and the speaker implies that voting to acquit is tantamount to admitting to harbouring oligarchic sympathies. Finally, speakers assert that the community will be aware of the verdict; they warn jurors not only of the potential damage to their reputations, but also that their verdict may encourage criminals.<sup>65</sup>

#### V. An Informal *Euthyna*?

The *corona* may have served to rectify a perceived weakness in the Athenian democracy. In Herodotus' Persian debate, Otanes alludes unmistakably to the three fundamental features of Athenian democracy: selection by lot, accountability of officials, and communal decision-making (iii 80). Aristotle calls jury duty an *arche* (*Pol.* 1275a22-30), and because the distinction between law and politics was blurred in Athens the courts there did wield considerable political power; yet the decisions of a jury could not be appealed and jurors were the only state officials not subject to an *euthyna*.<sup>66</sup> Some regarded the unaccountability of jurors as a flaw in the democracy.<sup>67</sup> Aristophanes has Philokleon exult in this feature (*Wasps* 587), and the clear implication is that unaccountability can be mischievous. The only thing which bound the jurors to decide fairly was the oath they took to vote according to the laws and decrees of the people (*Dem.* xxiv 149).<sup>68</sup> Speakers often remind the jury of their oaths and, in the hope that religious piety will induce them to carry out their duty responsibly, speakers warn the jurors that the gods will be aware of their verdict.<sup>69</sup> The *Ath. Pol.* (63ff) describes the allotment of jurors to courts in the later fourth century as an elaborate and lengthy process involving twenty allotment machines, a number of marked tickets, ballot balls and staves used to assign jurors at random to different cases. Bers argues that the spectacle surrounding the selection and allotment of jurors not only made it harder to bribe

<sup>64</sup> Also *Dem.* xxii 64; xxiii 139-40; xxv 6.

<sup>65</sup> E.g., *Andoc.* i 105; *Din.* i 46; *Lys.* i 36; v 5; xii 35; xxx 23; *Dem.* lvi 48. On precedent generally, see C. Carey and R.A. Reid, *Demosthenes: Selected private speeches* (Cambridge 1985) 10-11; L. Rubinstein, 'Persuasive precedent in the people's court', paper read at the annual meeting of the American Philological Association, Washington, D.C., December, 1993; and A.M. Lanni, 'Waiting for jurisprudence: Consistency and legal reasoning in the Athenian lawcourts', unpublished M.Phil. thesis, Cambridge University 1996.

<sup>66</sup> See J. Roberts, *Accountability in Athenian government* (Madison 1982) and M.H. Hansen (n.15) 178ff.

<sup>67</sup> V. Bers, 'The Athenian jury in rhetoric, theory, and spectacle', paper read at the annual meeting of the American Philological Association, San Diego, December, 1995 and at Royal Holloway College, University of London, March 1996.

<sup>68</sup> For the controversy surrounding the precise wording of the oath see M.H. Hansen (n.15) 182-3.

<sup>69</sup> E.g. *Lyc.* i 146; *Dem.* lix 126. *Lys.* xii 99 warns that the dead are watching to see whether they will be avenged by the jury.

<sup>59</sup> In this passage this group is associated with those who practise philosophy, which suggests that the court enthusiasts were members of the educated élite. See also *Pl. Theaet.* 172c and cf. [*And.*] iv 22.

<sup>60</sup> The punishment for citing a non-existent law was death according to *Dem.* xxvi 24.

<sup>61</sup> *Din.* i 66; *Dem.* lix 109; xxv 98 ff. Theophrastos' *Obnoxious man* (11.6) confronts losing *litigants* as they leave the court.

<sup>62</sup> Also *Aesch.* iii 8.

<sup>63</sup> E.g., *Lyc.* i 14; *Din.* i 27; iii 22; *Andoc.* i 140; *Lys.* xxii 19-21; *Isoc.* xviii 42.

jurors but, more importantly, was also intended as a ritual to impress the jurors with the solemnity of the occasion, especially since the lot was sometimes associated with the will of the gods.<sup>70</sup> In addition to this use of religion and ritual to compensate for the lack of dikastic *euthynai*, the *corona* of the lawcourts may have helped to encourage juror responsibility.

The presence of bystanders may have served as an informal *euthyna* for jurors, since it insured that the jurors could not make collective judgements without the immediate knowledge of a section of the community. For example, Dinarchus tells the jury that they are on trial before the spectators: 'while you are about to render judgement concerning the defendant, the bystanders [οἱ περιεστηκότες] and all the others are judging you' (ii 19). In a similar vein, Aeschines indicates that the bystanders are more interested in the jurors than in the litigants: 'I see many younger and older men standing in front of the lawcourt [προσεστηκότας πρὸς τῷ δικαστηρίῳ], and also not a few from the rest of Greece gathered to listen' (i 117).<sup>71</sup> Plato appears to have understood that the *corona* fulfilled an important function in regulating the jurors. In the *Laws* he has the Athenian prescribe: 'let all the citizens, as many as are at leisure, be an attentive audience at such [*sc.* capital] cases' (ix 855d 6-8). In connection with certain other trials, he makes attendance compulsory for the members of the Boule and the magistrates who appointed them, and permissible for all others (vi 767e 1). Unlike classical Athens, Plato's imaginary Magnesia had no secret ballot and the bystanders could prosecute the jurors (vi 767e 3-4). Even without legal enforcement, though, we should not underestimate how powerful a deterrent the prospect of embarrassment before the spectators might be. Virginia Hunter has recently investigated the power of gossip as a form of social control.<sup>72</sup> She points out that in Athens it was left to individual citizens to police each other either through formal prosecutions brought by *ho boulomenos*, or through more informal means like gossip. Both methods played a vital role in the working of the Athenian democracy, and the role of the bystanders in the courts can be interpreted as exercising this sort of informal social control, a compensation for the legal unaccountability of the jurors. Seen in this light, the spectators were far from marginal elements in the courtroom scenery, but should be considered a central part of the practice of the lawcourts and of the democracy in general.

The bystanders fulfilled a number of requirements unique to the institutions of the Athenian direct democracy: the *corona* served as a training ground for future jurors and speakers, as a check on the veracity of speakers' claims, and as an informal *euthyna* for the jury. However, the general notion that a trial should be open to the public has a much broader appeal. Spectators are a fixture in judicial proceedings in many parts

of the world.<sup>73</sup> Indeed, courthouses in Ghana<sup>74</sup> and Zambia<sup>75</sup> have permanent openings in their walls to allow crowds to observe the action from outside. In American law, while a litigant may waive the right to a jury, he or she may not waive the right to a public trial enshrined in the Sixth Amendment. Open proceedings are generally thought to help to insure fairness and to prevent abuses which might go unchecked if courts operated behind closed doors. Mueller explains the crowds at frontier trials: 'It was felt to be the business of everyone in the county to be present when in their name justice was dispensed. The public wanted to be directly and personally convinced that justice was done'.<sup>76</sup> Scholars studying the settlement of disputes in early Greek literature, such as the famous scene depicted on the shield of Achilles, have often noted that a public forum like the agora or the assembly seems to have been an essential element in the early judicial process.<sup>77</sup> It is often assumed that the spectators at Homeric and Hesiodic dispute settlements were the precursors of the classical Athenian juries. MacDowell, for instance, writes that the 'speakers haranguing the crowd on the shield of Achilles ...are forerunners of the orators who addressed the Athenian juries',<sup>78</sup> and Humphreys examines Hesiod and Homer in an attempt to map 'the transformation of the crowd into a jury'<sup>79</sup> in Attica. It seems likely that the function of the crowd in these early disputes was considerably more complex; we have seen that the spectators retained an important role throughout the classical period. We cannot trace the precise connection between those early bystanders and οἱ περιεστηκότες of the fifth and fourth centuries, but it seems undeniable that observers at the physical periphery were never without an effect on the judicial event at the centre.<sup>80</sup>

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<sup>73</sup> E.g. among the Tiv (see P. Bohannon, *Justice and judgement among the Tiv* [London 1968] 13) and the Sunni of Lebanon (see L. Nader and H.F. Todd, *The disputing process-Law in ten societies* [New York 1978] 164).

<sup>74</sup> L. Nader and H.F. Todd (n.73) 188.

<sup>75</sup> L. Nader and H.F. Todd (n.73) 267.

<sup>76</sup> G. Mueller (n.19) 7.

<sup>77</sup> E.g., M. Gagarin, *Early Greek law* (Berkeley 1986) 43, 108; E.A. Havelock, *The Greek concept of justice* (Cambridge 1978) 133 ff; H.J. Wolff, 'The origin of judicial litigation among the Greeks' *Traditio* iv (1946) 41.

<sup>78</sup> D.M. MacDowell, *The law in classical Athens* (London and Ithaca 1978) 21.

<sup>79</sup> S.C. Humphreys, 'The evolution of the legal process in ancient Attica' in *Tria corda: Scritti in onore di Arnaldo Momigliano*, edited by E. Gabba (Como 1983) 231.

<sup>80</sup> An earlier version of this note was written at Cambridge University under the supervision of Paul Millett. I wish to thank Alan Boegehold, Paul Cartledge, Dorothy Thompson, the anonymous readers for *JHS*, and especially Victor Bers for their help.

<sup>70</sup> V. Bers (n.67).

<sup>71</sup> Also Lys. xxvii 7; Din. i 3.

<sup>72</sup> V.J. Hunter, *Policing Athens: Social control in the Attic lawsuits, 420-320 B.C.* (Princeton 1994).