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Literature's first jury trial  
By Abraham Meltzer

What is the greatest legal play? In 2012 the ABA Journal compiled "The Theater's 12 Greatest Courtroom Dramas." With due respect to "The Merchant of Venice," "Twelve Angry Men," and the other winners, the ABA Journal made a glaring omission. It overlooked the play that theatrically created the court and jury system, and explained its fundamental necessity - to replace endless blood vengeance with a system of legal justice - Aeschylus's 2,400-year-old tragedy, "Eumenides."

"Eumenides," first performed in 458 BCE, is the culminating play in Aeschylus's trilogy "The Oresteia" about the House of Atreus. The ruling family of Argos, the House of Atreus put to shame any plotlines from "Game of Thrones," being steeped in multiple generations of interfamilial murder, incest and cannibalism.

Aeschylus begins with "Agamemnon," when King Agamemnon returns victorious from the Trojan War. Agamemnon is greeted by his wife Clytemnestra, who is secretly plotting to kill him, and not without motive: to get favorable winds to sail the Greek fleet to Troy, Agamemnon had sacrificed their daughter Iphigenia. (Clytemnestra also has taken Agamemnon's cousin Aegisthus as a lover; years prior Agamemnon's father had killed Aegisthus's brothers and served them at a banquet to Aegisthus's unsuspecting father.) "Agamemnon" culminates with Clytemnestra stabbing Agamemnon to death and then proclaiming her unrepentance.

The next play, "Libation Bearers," introduces Orestes, Agamemnon and Clytemnestra's adult son. It also introduces the central problem of the trilogy. Under the ancient Greek system of retributive vengeance, Orestes is duty bound to kill the killer of his father. In fact, Apollo's oracle has commanded him to. But the murderer is his own mother, and if Orestes kills her then he will be pursued by the Furies, merciless goddesses who punish parricides. Under the logic of blood vengeance, his position is irreconcilable. Orestes ultimately determines to avenge his father, and so kills Clytemnestra (and Aegisthus also). The play ends with the Furies chasing Orestes.

"Eumenides" begins with the Furies and Apollo arguing over the fate of Orestes. Apollo contends he was right to avenge his father; the Furies claim he was wrong to kill his mother. Even the gods cannot agree. Desperate, Orestes flees to the temple of Athena in Athens.

The Furies tell Athena they are pursuing Orestes because "he thought it right to kill his mother" (Aeschylus, "Eumenides," P. Burian and A. Shapiro trans. (2003), line 508). Athena notes the "case has two sides; so far we've heard just one" (511). The Furies ask Athena to judge the case, and Orestes agrees he will accept her verdict.

And then, in a moment of transcendence, Athena creates the jury system:

*This case is too hard for one man to judge.*

*No, even I don't have the right to rule on a murder trial like this one ...*

*... But since the problem's up to me to solve, I'll choose a panel of judges to preside at murder trials like this, and put them under oath, and so set up a court to last forever (558-73).*

And so commences the first jury trial in literature, the murder trial of Orestes. The Furies are the prosecutors; Apollo is Orestes's defense counsel; Athena sits as judge - and Athenian citizens compose the first jury. Athena sets the ground rule that "if the votes be equal" (861) Orestes will be acquitted, thus establishing that the prosecution bears the burden of persuasion.

The Furies question Orestes, who freely admits he killed Clytemnestra. He claims he was justified because Clytemnestra "killed my father when she killed her husband" (700). The Furies believe they have proved their case, gloating "when the verdict snares you, you'll change your / tune" (695-96).

Apollo then argues that Orestes was avenging an offense against Zeus, and so was justified in killing Clytemnestra. Agamemnon was not an ordinary man; rather, he was a king who "holds / the scepter Zeus bestows" (729-30). While killing one's mother normally is punishable, in this case "it's a different thing / entirely" (728-29) because Clytemnestra had killed a king, and moreover one who was her husband. Apollo admits he is appealing to the jurors' emotions: "I've spoken as I have to whip up anger / in you who are called to set this matter right" (746-47).

Apollo additionally makes a bizarre and offensive "jurisdictional" argument. The Furies punish those who kill their parents. But Apollo claims that mothers are not blood relatives of their children, arguing that mothers are only "a sort / of nursing soil for the new-sown seed" and that fathers alone are "the true parent" (770-72). This speech stands as one of the most cringeworthy in Greek literature.

Arguments concluded, Athena instructs the jurors to "cast their votes where they think justice lies" (789). Athena charges the jurors, "who have been chosen to decide / this first trial ever for the shedding of blood" (796-97), to remember the importance of the new institution they are participating in: "if you fear and justly revere this court, / then you will have a bulwark for your land, / the city's guardian, the like of which / nobody else on earth possesses" (818-21).

The jurors cast their ballots into two urns. Orestes murmurs "It's time now - to feel the noose, or see the light!" (866). The vote is close, neither the Furies nor Apollo has been fully persuasive. Athena counts the ballots and announces the verdict: "This man's acquitted on the / charge of murder - / the number of votes for both sides is the same" (873-75).

The citizens of Athens have ended the House of Atreus's endless cycle of blood vengeance by imposing a judgment determined by the larger society. From now on all those accused of crimes will be evaluated by a jury. No one will retaliate against Orestes; and accompanied by Apollo he exits the stage a truly free man.

But what about the Furies, who personified blood retribution? They accept the legitimacy of the new court system, which channels the impulse for revenge into respect for justice. The Furies transform into respected protector goddesses of Athens called the "kindly ones" or "Eumenides." Athena admonishes the audience to "be kindly to these kindly ones, / and you will keep the land and city / on the straight path of justice" (1158-60).

"Eumenides" created the court system and presented the first jury trial. That merits top ranking.

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