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THE PERMEABLE SPACES OF THE ATHENIAN LAW-COURT

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The Peculiarity of "Forensic Space"

Rhetoric is a genre that desires the general but can never forget the specific. On the one hand, it attempts to generate a set of rules, methodologies, and aesthetics that can be applied irrespective of time and place. It aims to offer a speech for each and every occasion. On the other hand, it is a genre that constantly reminds its practitioners to be responsive to the peculiarities of circumstance, personnel, and audience.[1] Every speech is different and needs to be tailored accordingly.

One of the by-products of this tension between the general and the specific is that it is easy to lose sight of the role of space in the practice of rhetoric. At best, rhetoric seems reactive to environment rather than a proactive shaper of it. Against this position, I want to illustrate some of the ways in which rhetoric impacted on the physical environment through the construction of purposefully created spaces that were designed to facilitate its functions. In particular, I propose to examine the role and function of the spaces that were carved out for the performance of forensic rhetoric.

1 See, for example, *Rhet. Ad Alex.* 1426b35–40, 1437a-b; Arist. *Rhet.* 1356a5–16, 1359b27–38.

The Athenian law-court occupies a privileged space in the politics of the city. The writer of the *Athenaion Politeia* spoke for many when he declared the rise of the jury-courts as one of the most significant steps in the democratization of the state.[2] Meeting between 175 and 225 days a year and involving large citizen juries of regularly hundreds of citizens and occasionally thousands, the law-court has no rival in the city for the volume and importance of its rhetorical output.[3] A study of the physical environment for the performance of Athenian forensic rhetoric provides a useful test case for examining the role of place in the creation of rhetorical space in the classical city as well as supplying a template for the study of space and other genres of rhetoric.

Rhetorical performances did not occur in a vacuum. Instead, they played out in a performance space that was deliberately created to operate outside the normal sphere of civic space and according to its own particular rules and protocols. We can see the effects of this peculiarity of space in Aeschines' speech, *Against Timarchus*, where Aeschines highlights that there is something special about the language required to be spoken in court.

At the start of his discussion of the illicit activities of the alleged male prostitute Timarchus, Aeschines purports to run into a problem. It turns out that it is impossible to describe the activities of Timarchus without using inappropriate language.[4] Aeschines' words threaten to prove to be as bad as Timarchus' deeds. Talking about Timarchus is a real problem and the speaker's reticence proves to be a recurrent theme throughout the speech as Aeschines battles to be explicit about the nature of Timarchus' crimes.[5] What makes Aeschines' inability to speak so extraordinary is that his case is based on the fact that he doesn't need to prove his allegations because Timarchus' crimes are apparently so notorious that they have become a

2 *Ath. Pol.* 9.1.
3 On the frequency of law-court meetings, see Hansen 1979.
4 Aeschin. 1.37–38.
5 For other examples, see Aeschin. 1.55, 70.

regular point of discussion. Time and again, Aeschines asks the jury to just remember the gossip that they have heard.[6] Aeschines portrays himself not so much as a prosecutor, but as a prompter. "It is no great matter to prosecute when affairs are commonly known (ὁμολογουμένων) – all one needs to do is engage the memory of the listeners," he declares.[7] Indeed, Timarchus' activities are so well known that Timarchus cannot even say words such as "wall" or "tower" in public without people sniggering and attributing to them obscene connotations.[8] In an extended section in praise of the power of rumor, Aeschines declares Rumor to be one of the greatest gods in the city and the ultimate purveyor of truth.[9] The gossip that the city has been sharing here takes on the mantle of divine fiat. It seems that everybody, everywhere, all-the-time is speaking about Timarchus' crimes in graphic detail.

Aeschines' professed squeamishness comes across as odd particularly when we consider that other genres had no problem discussing the activities that Timarchus was alleged to have performed. The greedy politician who submits to anal penetration is practically a stock figure of Attic comedy.[10] We see him invoked time and time again. Yet despite this prominence on the dramatic stage, Aeschines can't bring himself to speak about Timarchus' crimes. The problem seems to be the location of his speech. There is something about the propriety expected of the speaker in the law-court that silences him. In Aeschines' prudishness, we see the discursive effects of the translation of the discussion of Timarchus' activities to "forensic space." Here the rules of language do not operate quite as they do elsewhere. It might be fine in the Agora or the symposium or the comic theatre to talk openly and freely about Timarchus' crimes, but here in the *dikasterion* ("law-court"), it is another matter. Here the conventions are different.

6 See especially, Aeschin. 1.89–93, 129.
7 Aeschin. 1.44.
8 Aeschin. 1.80.
9 For the section in praise of rumour, see Aeschin. 1.127–30.
10 See, for example, Ar. *Knights* 876–80, *Clouds* 1093, *Eccl.* 110–13.

Of course, it is tempting to dismiss Aeschines' protestations as just rhetorical posturing, an all-too-convenient excuse by Aeschines to cover up his lack of evidence while attempting to make himself look like an upstanding moral citizen. Yet if we treat his statements as rhetorical gambits – and on some level we must – we shouldn't also downplay the ritualistic effect of such utterances. They operate to create a sense of space and occasion. There are elements of the meta-rhetorical in Aeschines' text. They signal to the audience that there is something peculiar about the place they inhabit.

As a number of other commentators have observed, the law-court is a strange place.[11] As Johnstone put it, following the work of legal anthropologist Sally Falk Moore, legal rhetoric in Athens existed in a "semi-autonomous field."[12] It both participated in the value systems and patterns of thought that occurred within wider society and, at the same time, reserved for itself particular modes of operation that were particular to itself.

The law-court constructed particular regimes of truth in which, through the application of certain rules and practices, justice could be delivered. It operated with its own particular logic. Wohl, for example, has focused on the apparent "kettle logic" of a number of legal speeches in which implicitly incompatible arguments are thrown together.[13] As a result, it was possible for a litigant who was charged with being a member of the cavalry during the oppressive regime of the Thirty to argue,

> virtually in a single breath, that he was not in the cavalry nor was his name on the registry, but even if he was on

11 For a discussion of the "discursive specificity of the law-court," see Wohl 2010: 21–37 with bibliography.
12 Johnstone 1999: 121. For the work of Moore, the key text is Moore 1973.
13 The phrase, borrowed from Freud, refers to the joke that "A. borrowed a copper kettle from B. and after he had returned it was sued by B. because the kettle now had a big hole in it which made it unusable. His defense was, 'First, I never borrowed a kettle from B. at all; secondly, the kettle had a hole in it already when I got it from him; and thirdly, I gave him back his kettle undamaged.'" Wohl 2010: 8–9.

> the registry, you can't trust that because the list can be forged; if he had been in the cavalry he would admit it and be proud of his service (which he would prove was spotless); anyway, many other people who were in the cavalry now serve on the Council, and he wouldn't even bother to defend himself on this score if his opponents weren't telling bare-faced lies about him.[14]

The list of peculiarities of forensic rhetoric could be extended. Other examples include its fetishization of arguments based on probability, the preeminence it accorded to evidence of good character, its complicated rules regarding witness statements, or its seemingly paradoxical stance on slave evidence.[15] The logic of this last aspect is particularly telling. According to Athenian legal practice, evidence from slaves was not admissible unless it had been first obtained by torture. However, when it was so obtained, the purifying nature of torture made the words of the slave into the "best evidence possible."[16] Here a belief in the transformative power of pain and the appetitive nature of the slave body gave rise to a particular regime for the production of truth.[17] Moreover, this regime seems to have been exclusively the province of the legal procedure. Elsewhere authors seem all too conscious of the fact that the tortured say just what the inquisitor wants to hear.[18] Indeed, in one case where a slave is tortured outside the law-court, his statements are subsequently rendered inadmissible because they had been contaminated by improper procedure. In such circumstances, torture does not seem to work – "they will say

[14] Wohl 2010: 9 paraphrasing Lysias 16.6–8.

[15] For the importance of arguments based on probability, see Arist., *Rhet.* 1402a1 and *Rhet ad Alex.* 1442a23–37 and 1443b35–40. For the importance of character, see Arist., *Rhet.* 1377b20–1378a3 and *Rhet ad Alex.* 1441b35–1442a5. For an example in action, see Lys. 21 in which a large portion of the defence simply consists of a recitation of civic benefactions.

[16] Dem. 30.37. Cf. Dubois 1991: 49–50.

[17] DuBois 1991. Cf. Gagarin 1996 and Mirhardy 1996.

[18] See Arist. *Rhet.* 1377a1–5.

anything to gratify their torturers," complains the litigant.[19] Only within the confines of court proceedings will torture work its "magic."

While the peculiarity of the law-court has been observed, much less attention has been placed on the way in which this peculiarity was established within public space. Forensic space didn't just happen; it was made. A lot of effort was required to create an atmosphere in which these particular rules of language, argument, and thought felt acceptable and natural. The rituals and physical environment of the law-court helped to locate it as a space that functioned "in the city" and "as the city." Its physical environment both stressed its separateness from the world and its intimate connection with that world. When one entered the law-court as either juror, litigant, or spectator one knew that certain special rules of physics would apply, but that those rules were not entirely alien.

PERFORMING THE *DIKASTERION* INTO BEING

In a passage preserved in Athenaeus, the fourth-century comic poet Euboulos offers an overblown description of the *kleroterion*, the allotment machine that determined eligibility for jury service and assigned jurors to law-courts. Part joke, part surrealist-fantasy, the description presents us with a challenging idea of what it means to be a juror in Athens:

> ἔστιν ἄγαλμα βεβηκὸς ἄνω, τὰ κάτω δὲ κεχηνός,
> εἰς πόδας ἐκ κεφαλῆς τετρημένον, ὀξὺ διαπρό,
> ἀνθρώπους τίκτον κατὰ τὴν πυγὴν ἕν' ἕκαστον·
> ὧν οἱ μὲν μοίρας ἔλαχον βίου, οἱ δὲ πλανῶνται ...
>
> There is a sculpture that is closed on top but wide open at the bottom, drilled sharply from head to foot. It gives birth to men from its bottom, one by one, and some gain the right to live while others are left to wander away ... (Ath. 10.450b4–8=Euboulos [*PCG* V] F106.21–25)

[19] Antiphon 5.31–32.

Here Euboulos reformulates the allotment machine into a quasi-mystical object, the language elevates a routine administrative practice into a form of religious rite. Central to this riddling description is the idea that being selected to serve as a juror constitutes a form of rebirth. One only really "comes to life" when one is participating in the civic life of the city; if you are not selected to be a juror, you wander away unborn.[20] Furthermore, as the phrase "giving birth from its bottom" (τίκτον κατὰ τὴν πυγὴν) signals, there is something slightly unnatural about this rebirth. It is an artificial experience.

Prior to the identification of the marble *kleroteria* in the Agora in 1937, few people understood this passage in Athenaeus.[21] Earlier scholars imagined the *kleroteria* as physical sorting rooms, part of a large complex of buildings. At their most elaborate, they imagined dozens of sorting rooms (two per tribe) providing an entranceway to courtrooms beyond.[22] Given that the -τήριον ending can indicate a structure as well as an instrument, such a misconception is understandable. Certainly the term confused a couple of later antique commentators who made exactly the same mistake.[23]

Yet the misunderstanding about the *kleroteria* is symptomatic of a much wider misconception about the Athenian law-

[20] The image is intensified if we include the subsequent line from Athenaeus, often rejected by editors as spurious, which envisages the rejected juror wandering away like a murdered spirit calling out a warning to all it encounters – cf. Dow 1939: 12. There is also another level of allusion. In imagining the allotment procedure giving "life" to the juryman, Euboulos also plays with the idea of the jury pay as providing a "livelihood" to the juror.

[21] Although fragments of *kleroteria* had been published as early as 1861 by Stephanos Koumanoudes (*Ἀρχαιολογικὴ Ἐφημερίς* 1862: 25), it was not until Dow 1937: 198–215 that the purpose of these machines was correctly identified. Subsequent discussion of the machines and their use is provided by Dow 1939.

[22] See, for example, the schema offered in Hommel 1927: 141. Cf. Sandys' 1893 commentary on allotment procedure in his notes on *Ath. Pol.* 64.1–5. The same arrangement informs Rackham's 1935 Loeb translation of *Ath. Pol.* 64.1–5.

[23] Phrynichos s.v. "κληρωτήρια" (Bekker, *Anecdota* 47.13) and Pollux 9.44.

court. Underlying most of the attempts to locate the Athenian law-court during the late nineteenth and most of the twentieth century was the assumption that the *dikasterion* was an impressive single-use structure, a structure not unlike the law-courts that dominated the civic spaces of the hometowns of most of the excavators and topographers.[24] Given the importance that the law-court played in the democratic life of the city, it was felt that only a suitably monumental structure could serve as the city's law-court. It was for this reason that the impressive square structure in the Agora by the South Stoa was identified for a long time as a potential law-court. For the excavators, both the position ("exceedingly prominent") and the quality of the building work ("outstandingly fine") seemed to confirm the location of the "largest and most famous" law-court in Athens, the Heliaia.[25] Neither the complete absence of any dikastic material found in excavation within the building nor its impracticality as a meeting place for the requisite number of jurors seem to have dissuaded them from the identification.[26]

The subsequent reasonably secure identification of the so-called "Heliaia" as the "Aiakeion," a fourth-century granary, confirms the proposition that monumentality is a poor criterion for the identification of forensic space.[27] Law-courts did not need to be housed in large, purpose-built structures. As we shall see, law-courts occupied multipurpose structures. They could be grand, impressive buildings, but they could also be

[24] For a discussion of the impact of the rise of the nineteenth-century monumental law-court on preconceptions about the Athenian law-court, see Blanshard 2004a: 13–17.

[25] Thompson and Wycherley 1972: 62–65.

[26] For distribution of dikastic material in Agora excavations, see Boegehold et al. 1995: fig. 4. For criticisms of the identification of the building as a law-court on practical grounds, see Hansen 1981–82, 1989: 232–35.

[27] For the identification of the Aiakeion, see Stroud 1998: 85–104, esp. 94–95. Complicating the story of the identification is the allegation made by A. N. Oikonomides that Wycherley and others involved in the Agora excavation deliberately suppressed evidence (such as POxy 2087) that challenged their own identifications, cf. Oikonomides 1990 with Stroud 1994: 1 n.2.

marginal and poorly built. In this, the pattern of use replicates early modern legal proceedings where law-courts could be constituted in meeting halls, dining rooms, theatres, schools, and public houses.[28] Courts were often makeshift, temporary structures.

A survey of the names for law-courts supports this idea of a shifting, variously constituted legal landscape. At least eighteen different names for the various courts in Athens survive. While in some cases we may have multiple names for the same court, the lack of consistent nomenclature supports the idea of the law-courts being constituted in a variety of locations and taking a variety of forms. We have courts named after people (Kallion, Metiocheion), places (Odeion, Painted Stoa, "against the walls," "greater," "triangular"), colours ("the red court," "the frog-green"), officials ("of the Eleven," "of the Archon"), and age ("new").[29]

Literature helps identify a number of known sites as locations for law-courts. The reference to the law-court at the Odeion in Aristophanes' *Wasps* 1109 must refer to the Odeion of Pericles.[30] There is some evidence in the later commentators that this site was particularly associated with lawsuits administered by the Eponymous Archon.[31] However, this may just be supposition on the part of the commentators based on the fact that the only surviving reference in the Attic orators relates to one such suit.[32] Similarly, inscriptional evidence relating to the activities of the Delphian Amphiktyones helps identify the Stoa Poikile as the site of arbitrations and legal proceedings in the fourth century.[33] The relatively large jury number recorded

[28] For discussion of the early modern legal landscape in Europe and the UK, see Graham 2003: esp. 9–34. For similar arrangements obtaining in the US, see Johnson and Andrist 1977 and Waddell 1981 with Blanshard 2004a: 17–19.

[29] For a survey of the terms, see Boegehold et al. 1995: 91–98.

[30] Boegehold et al. 1995: 185–86 for testimonia.

[31] Photios and repeated in the Suda *s.v.* Ὠδεῖον.

[32] [Dem.] 59.52, 54.

[33] *IG* II² 1641.25–33. Boegehold et al. 1995: 161–62 provides discussion of the testimonia. For arbitration procedures occurring in the stoa, see Dem. 45.17.

in the inscription helps support the idea that the Stoa Poikile was a suitable site for both private actions and more important public actions with their consequently larger juries.[34]

Less conclusive, but nevertheless persuasive, evidence has been adduced for the benches set on the east slope of Kolonos Agoraios (the "poros benches") as the location of a law-court.[35] The argument turns on a pun in Aristophanes *Wasps* where there is an allusion to a law-court and the name "Lykos" seems to be substituted for the epithet "Lykeios."[36] The pun works most effectively if the audience were expecting a reference to a law-court near a shrine to Apollo (Lykeios). Given their proximity to the temenos of Apollo Patroos and their suitability as a venue, the poros benches would seem to be the most likely candidate for the intended law-court.

Archaeological evidence also helps secure the location of law-courts in some buildings. The most famous example is the "ballot deposit" found in Building A underneath the Stoa of Attalos. Here the use of the structure as a law-court was confirmed by the discovery in 1953 of a collection of small finds relating to the law-court (five bronze voting ballots, a bronze token, and a bronze ball).[37] Surrounding the building there was also a high density of other dikastic material including another three voting ballots and thirteen more tokens. To judge from the small finds, Building A, which was constructed at either the end of the fifth century or the first decade of the fourth century, seems to be part of a complex of buildings (so-called Buildings B-D) which served diakastic functions.[38] At some point towards the end of the fourth century, this complex was demolished and plans were made to replace them with a much

[34] *IG* II² 1641 records a jury size of 499. For discussion of the size, see Boegehold 1984: 28–29 and Stumpf 1987: 211–13. On Athenian jury size varying according to the type of legal procedure and importance of the case, see Harrison 1998: ii.47.

[35] Boegehold 1967.

[36] *Wasps* 389. For discussion, see Boegehold et al. 1995: 95, 188.

[37] Thompson 1954: 58–61. Further discussion is provided in Thompson and Wycherley 1972: 56–57 and Boegehold et al. 1995: 53–54, 68.

[38] Boegehold et al. 1995: 11–15.

larger single structure, the so-called Square Peristyle. The design of the building and the presence of letters on a number of blocks indicate that the building was intended to be used as a law-court in a manner consistent with the procedure outlined in the *Athenaion Politeia*.[39]

We can also locate a number of courts geographically even if we can't associate them with particular structures. This is particularly the case with a number of homicide courts. For example, the court of the Areopagus, which dealt with cases of premeditated homicide as well as other religious cases such as violation of sacred property met on the Areopagus, but the complicated archaeology of the site precludes us from identifying with certainty any particular structure as the location of the law-court.[40] The location of the other homicide courts, the Delphinion (for cases of justified homicide) and Palladion (for cases of accidental homicide), is even less precise, although in both cases the general area is known.[41]

A survey of the sites that we can identify either archaeologically or through literary evidence demonstrates the difficulty of generalizing about the physical nature of the law-court. Indeed, this lack of consistency is perhaps the most striking feature of the Athenian law-court. The law-courts vary enormously in size, shape, and floor plan. Some buildings, such as those under the Stoa of Attalos, the Odeion of Pericles, and the Stoa Poikile, were roofed. Others, such as the homicide courts, the square peristyle, and the *poros* benches, were open to the air.[42] To judge from the architectural remains, some buildings were elaborate, highly decorated structures. Others used shoddy,

39 Boegehold et al. 1995: 108–11.

40 For the legal competency of the Areopagus, see MacDowell 1963 and Sealey 1983. Of the surviving forensic orations, Lysias 7 is the only certain speech to have been delivered before the Areopagus.

41 For the location of the Delphinion, see Travlos 1971: 83. A site near Phaleron rather than near the Ardettos hill is probably to be preferred as the location of the Palladion, see discussion in Boegehold et al. 1995: 47–48.

42 For the homicide courts being open to the air, see Antiphon 5.10–11.

secondhand materials. As one report on Athenian civic architecture concludes, "the architectural setting of the Athenian *dikasteria* was indeed inconspicuous and as far removed from monumental architecture as anything can be."[43]

The peculiarity of forensic space is brought into relief when one contrasts the performance space of forensic rhetoric with the two other standard genres of civic rhetoric, the symboleutic and the epitaphic. Rather than a diversity of locations, both are tied to singular locations, the Pnyx and the demosion sema. Both are impressive sites. Prior to the reversal of the Pnyx, the speaker had a spectacular civic vista dominated by the Acropolis as his backdrop.[44] When rhetors spoke about the benefits for and dangers to the city, their audience could see precisely what was at stake. Similarly, the preliminary archaeological excavations of the site of the demosion sema seem to support a suitably impressive site for the delivery of orations for the war dead.

Forensic space, in sharp contrast, relies less on specific architectural forms than on the demarcation of space through procedure. As the fragment of Euboulus that began this discussion suggests, a consideration of the life of the juror must begin with the strange procedure that "gives birth" to him. Picking up on the imagery of mystery cult with its idea of souls waiting to be incarnated, Euboulus' riddle locates the creation of the jury within the overdetermined rituals that accompanied the installation of law-courts and the transformative power of the paraphernalia that signified its presence. Great emphasis was placed on the presence of court paraphernalia. These are the props underpinning the performances that allowed the stoa, Odeion, square peristyle or open-air bench to become a *dikasterion*. It was the temporary and movable fences (*druphaktoi*) and lattice-work gates (*kinklides*) that helped make a law-court.[45]

43 Hansen and Fischer-Hansen 1994: 77.

44 Hansen 1982 and 1985 provide a discussion of the topography of the Pnyx and the history of its phases. For the rhetorical use of this vista, see Aeschin. 2.74.

45 For the light, temporary railings and swinging gates used to mark out the limits of the law-court and control the movement of

Another work by Euboulos picks up on this aspect. In a fragment of his *Olbia*, Euboulos has two characters present differing perceptions of the nature of Athens:

ἐν τῷ γὰρ αὐτῷ πάνθ' ὁμοῦ πωλήσεται ἐν ταῖς Ἀθήναις·
A: σῦκα
B.: κλητῆρες
A.: βότρυς, γογγυλίδες, ἄπιοι, μῆλα
B.: μάρτυρες
A.: ῥόδα, μέσπιλα, χόρια, σχαδόνες, ἐρέβινθοι
B.: δίκαι
A.: πυός, πυριάτη, μύρτα
B.: κληρωτήρια
A.: ὑάκινθος, ἄρνες
B.: κλεψύδραι, νόμοι, γραφαί

You will find everything sold together in the same place in Athens:
A: Figs.
B: Issuers of summons.
A: Grapes, turnips, pears, apples
B: Witnesses
A: Roses, medlars, caul, honeycombs, chickpeas
B: Private legal actions
A: Colostrum, cholostrum cheese, myrtle
B: Allotment machines
A: Hyacinth, lambs
B: Water-clocks, laws, and public indictments (Ath. 14.640b = Euboulus [*PCG* V] F74)[46]

From the beginning of the fragment, we know that the topic for discussion is going to be location. The fragment grounds its humour in the juxtaposition of two different worlds – the *emporion* and the *dikasterion*. However, the fragment is not overly concerned with these worlds, rather its primary focus

people entering and exiting forensic space, see Boegehold et al. 1995: 195–201.

[46] The decision to split the fragment between two voices followed by Kassel-Austin was first suggested by Toeppel in 1851.

is another place – Athens. The city provides the matrix that structures the relationship between these two *topoi*.

This focus on location is also highlighted by the context of this quotation. The fragment occurs in a discussion on edible delicacies and is introduced with the phrase ὡς Εὔβουλος δ' ἐν Ὀλβίᾳ ἔφη ("As Euboulos says in *Olbia*"). Immediately, we are confronted with a question – How are we to read ἐν Ὀλβίᾳ? Three possibilities present themselves.

Firstly, it could refer to a play about an imaginary location. It "recalls the tradition of the comic *Schlaraffenland* as it is found in a number of passages from Old Comedy preserved by Athenaeus."[47] In such a scenario, the poet's literary construction of Athens takes on vestiges of reality through comparison with an unattainable ideal. Secondly, Olbia might not be a place, but a literary *persona*. The context of the fragment might be a *hetaira* play.[48] However, even here place is never far from the surface. For the *hetaira* play is a genre driven and structured by the fact (anxiety/relief) that the *hetaira* must always be outside the *polis*.[49] Thirdly, it could refer to a physical location; Olbia on the northern shore of the Black Sea. On this reading, we should envisage only one voice – the poet's.[50] Our fragment is the comic's explanation of his home to a foreign audience. This is how Athens presents itself to (admiring/threatening/indifferent . . .) others. Wherever we turn, this fragment confronts us with the concepts of place, boundaries, and division.

This concern with boundaries is brought out in the content of the fragment. The fragment plays with the transparency of the law-court. The additions of "κλητῆρες . . . μάρτυρες . . . δίκαι . . . κληρωτήρια . . . κλεψύδραι, νόμοι, γραφαί!" is both a continuation (metrical and conceptual) of the dialogue and a sharp, discontinuous interjection. Although part of the

[47] Hunter 1983: 164.

[48] Kaibel *RE* VI 1 1907: 878 followed by Edmonds 1957–61: ii.115.

[49] For the complexities of place, topography, and the Athenian discourse of the courtesan, see Gilhuly's essay (Chapter 5) in this volume.

[50] See Hunter 1983: 164.

humour of this passage depends on the fact that the majority of law-courts were located either in or near the Agora, this interchange is not just about physical proximity. The dialogue asks us to theorize the relationship between the marketplace and the law-court. What does it mean to have the marketplace by the law-court? How great is the distance (physical, ideological) between them? To what extent is the law-court like the marketplace? To what extent is it so unlike the marketplace that its presence in the Agora inevitably colors the marketplace, and marks it as unusual (i.e., Athenian)?[51]

The poet raises these concerns by defining the law-court in terms of commodities. The *dikasterion* is delimited by a series of movable or unfixed objects. Like the marketplace, the law-court is expressed through the objects that it displays. The target is well-chosen. The law-court was particularly susceptible to such techniques of representation. Law-courts were signified by a large amount of specialist equipment. For example, in his lexicon of rhetorical terms, Pollux lists over 18 separate items that are found in *dikasteria* (e.g., *klepsydrai*, hoppers, urns, trays, staves, painted boards).[52]

The "court scene" in Aristophanes *Wasps* attests to the semiotic effect of court paraphernalia.[53] Through its comic substitution of domestic goods for various features of the law-court, culminating with Philocleon turning his chamber pot into a water clock, this scene plays on the ease with which domestic space can be translated into forensic space. This scene plays humorously with the idea of the collapse of public and private spaces.[54] The joke here is double-pronged. It is not just that the

51 Such collocations, for example, were particularly troubling to Aristotle, who advocated the establishment of two *agorai* – one free (*agora eleuthera*) and one necessary (*anagkaia agora*) -Arist. *Pol.* 1331a30-b14. cf. Millett 1998: 218–20.

52 Poll. 8.16–18. For the collection of testimonia relating to the minor movable court equipment, see Boegehold et al. 1995: 208–41.

53 *Wasps* 805–1008.

54 On public and private space as one of the central themes in the *Wasps* (e.g., from public *dikasterion* to private *symposium*), see Crane 1997.

court shouldn't easily/readily be in a private house, it is also that it *can* easily/readily be in a house.[55]

It was through the ritualized use of such paraphernalia that a sense of space and occasion was created. Indeed, there was so much focus on procedure and equipment that Athenian court-life seems, at times, remarkably overdetermined.[56] For example, it was not just sufficient that there be a special water clock to time the length of legal speeches, the water for the clock needed to be collected from a special lion-fountain and the bung administered by a ceremonial bronze hammer.[57]

Just as forensic rhetoric grows in importance throughout the course of the fourth century BC, so too does the ritual attending to the creation of forensic space.[58] What begins in the fifth century as a relatively simple method of jury selection and voting procedure turns into an elaborate performance by the final quarter of the fourth century, which involves dozens of officials, elaborate allotment procedures governing every aspect of decision-making, and great processions of jurors passing through the Agora carrying colored staffs and acorns as a sign of their office. At one point, Demosthenes reminds jurors about the symbolic importance attached to their staves.[59] He is right to do so; the existence of the law-court depends on them.[60]

STAGING THE ACTORS AND THE AUDIENCE

Given the intense investment involved in creating forensic space, it is worthwhile investigating what effect this spatial construction had on participants in legal actions. The nature of

55 Blanshard 2004a: 23.

56 "Why the rigmarole?" Bers 2000 asks in the title of an article on allotment procedure. For discussion of the overelaborate nature of proceedings, see Bers 2000: 554–56.

57 Pollux 8.113 (lion-fountain) and 10.61 (hammer).

58 On the increasing power and politicization of the law-court throughout the fourth century, see Hansen 1974 and Todd 1993: 156–63.

59 Dem. 18.210.

60 For the importance of how one moves into, out of, and through interior spaces, see Purves' essay (Chapter 3) in this volume.

space inevitably conditions how people feel, react, and behave. For example, much research has been conducted into understanding how modern litigants experience the courtroom environment and recent studies have shown how the environment influences subjects' patterns of thought and speech.[61] Following the implications of such studies, it is profitable to examine what aspects the court environment stressed and how this affected the role of the various participants in that environment. Following trends in the phenomenological analysis of archaeological space, this analysis opens with an analysis of dikastic experience before moving to a treatment of programmatic aspects of law-court architecture.[62]

For the jury, the creation of forensic space was both potentially empowering and troubling. Ever since Ober (1989), the courtroom has regularly been constructed as a place where the *demos* (as embodied by the jury) and democratic processes are praised and validated.[63] Even when the equation of the *demos* with the jury has been questioned, the implicit democratic nature of the courtroom has remained unassailed.[64]

Such endorsement of democratic values certainly occurred, but it does not follow from this that jury service was an unproblematic pleasure. Aristophanes' *Wasps* portrays the life of the jury as one of jovial bonhomie. They know and support each other. As befits a chorus, they often move and speak as one. Yet, it would be a mistake to translate such solidarity to the world outside of the comic stage.

61 The literature on the topic is voluminous, although predominately dominated by studies examining the effect of courtroom design on vulnerable participants (e.g., children, the mentally ill). See for example, Karras et al. 2006: esp. chapter 5; and Kennedy and Tait 1999.

62 For an introduction to the issue of archaeology and the phenomenology of space, see Tilley 2010: esp. chapter 1.

63 For bibliography, see Wohl 2010: 32 n. 28. For criticisms of this position and the presentation of a modified version, see Wohl 2010: 32–37.

64 For debates about the relationship between the demos and the jury, see Blanshard 2004b with bibliography. The most recent contribution to this ongoing debate is Hansen 2010.

Whatever value Aristophanes' depiction has for the fifth century, a very different situation obtains for most of the fourth century.[65] The fourth-century juror may have arrived with friends to undertake jury service, but he was soon parted from them. The city did not accept every juror who appeared for service. Instead, as we have seen above, they had to pass a random selection procedure. Firstly, at some point before he began his service, a juror's allotment ticket was randomly marked with a letter between A and K. This performed an initial separation amongst the jury pool as jurors with tickets marked A and E were allocated separately from jurors whose tickets were marked with a letter between I and K. Even if it were the case that the juror's associates were allocated to the same half of the alphabetic division, their chances of being allocated to the same court were slim. Jurors were not allowed to load the allotment machine themselves, this duty was performed by a member of the tribe chosen by sortition precisely to prevent the possibility that jurors could get themselves allocated to the same potential pool.[66] In addition, the member charged with loading the machine inserted the tickets into the machine randomly so that even if he was familiar with the other jury members it was impossible for him to allocate friends and associates together. Finally, the operation of the machine itself randomly selected and rejected panels of jurors according to whether a white or black ball was drawn at the point at which the panel was being considered for jury duty.

As one can see, the chances of being successfully selected to serve as a juror with one's friends were slim. However, even if it were the case that you knew people within the pool of successful jurors, the city undertook two further forms of sortition in order to break up such social groups. Firstly, each juror was not allowed to select which court they sat in. This was determined by sortition.[67] Secondly, within the courtroom,

65 For changes in the procedure for the allotment of jurors between the fifth and fourth centuries, see Harrison 1998: ii.239–41.

66 *Ath. Pol.* 64.2.

67 *Ath. Pol.* 64.4.

jurors were not allowed to choose their seating; this also was randomly determined.[68]

It is worth stressing the spatial isolation of the juryman in the law-court because it marks an almost unique occurrence in the city – a moment when a citizen is forced to make a decision not surrounded by family and friends.[69] Every other major life decision – whether it involved marriage, business, family, or politics – was always done in the company of associates.[70] No such procedures for isolating citizens occurred in the *ekklesia*. Indeed, all available evidence supports the contrary view, namely that people sat in blocks in the Assembly. In the law-court, for perhaps the first time, the juror found himself alone.

In such a circumstance, little comfort was provided by the orators who continually warned jurors about the deceptive power of rhetoric.[71] Speakers further ratcheted up the stakes by reminding jurors that not only did their decisions have consequences for the security of the state, but that also their verdicts were subject to close scrutiny. The voting procedure may have been anonymous, but the orators refuse to allow this to be any comfort to jurors. In *Against Aristogeiton*, the speaker reminds each juror how the goddesses Eunomia and Dike "who sits beside the throne of Zeus" watch over the juror as he casts his vote making sure that he doesn't dishonour the Gods.[72]

68 *Ath. Pol.* 65.2 with Boegehold 1984: 23–29.

69 The allocation of random seating in the Bouleuterion provides a parallel (see Philochoros *FGrHist* 328 F140) although here the sense of isolation was presumably lessened by the continuity of service among a stable group.

70 See, for example, Lysias 32.12–18 (family gathered to discuss inheritance and commencement of legal proceedings), Dem. 54.1 (on consultation with friends and relatives over legal action), Isaeus 2 (on the discussion with friends over issues of marriage and adoption). The *hetairiai* of Thucydides (8.48 and 54) provide perhaps the most famous example of friendship groups influencing political decisions, see Calhoun 1913 and Sartori 1967.

71 On rhetoric as a form of magic (*goeteia*) see Din. 1.66, Aeschin. 3.137, 207. Cf. de Romilly 1975.

72 [Dem.] 25.10–11.

Apollodorus, on the other hand, relies not on supernatural forces, but on more prosaic domestic arrangements to remind the juror that there are consequences if he gets his decision wrong:

> τί δὲ καὶ φήσειεν ἂν ὑμῶν ἕκαστος εἰσιὼν πρὸς τὴν ἑαυτοῦ γυναῖκ' ἢ θυγατέρα ἢ μητέρα, ἀποψηφισάμενος ταύτης, ἐπειδὰν ἔρηται ὑμᾶς 'ποῦ ἦτε;' καὶ εἴπητε ὅτι 'ἐδικάζομεν;' 'τῷ;' ἐρήσεται εὐθύς. 'Νεαίρᾳ' δῆλον ὅτι φήσετε (οὐ γάρ;) 'ὅτι ξένη οὖσα ἀστῷ συνοικεῖ παρὰ τὸν νόμον, καὶ ὅτι τὴν θυγατέρα μεμοιχευμένην ἐξέδωκεν Θεογένει τῷ βασιλεύσαντι, καὶ αὕτη ἔθυσε τὰ ἱερὰ τὰ ἄρρητα ὑπὲρ τῆς πόλεως καὶ τῷ Διονύσῳ γυνὴ ἐδόθη', καὶ τἆλλα διηγούμενοι τὴν κατηγορίαν αὐτῆς, ὡς καὶ μνημονικῶς καὶ ἐπιμελῶς περὶ ἑκάστου κατηγορήθη. αἱ δὲ ἀκούσασαι ἐρήσονται 'τί οὖν ἐποιήσατε;' ὑμεῖς δὲ φήσετε 'ἀπεψηφίσμεθα.' οὐκοῦν ἤδη αἱ μὲν σωφρονέσταται τῶν γυναικῶν ὀργισθήσονται ὑμῖν, διότι ὁμοίως αὐταῖς ταύτην κατηξιοῦτε μετέχειν τῶν τῆς πόλεως καὶ τῶν ἱερῶν.

> And so what are you going to say when you get home, having acquitted this woman, when your wife or daughter or mother asks, "so where were you?" and you answer "doing jury service." "Judging whom?" will immediately be the reply. "Neaira," you will say (won't you?) "that woman who although a foreigner has been living with a citizen against the laws and who gave her slatternly daughter in marriage to Theogenes, the Basileus Archon, and whose daughter performed solemn rites on behalf of the city and was given as a symbolic bride to Dionysus." And you give a full account of all the charges against her, showing how each charge was well made out. And so hearing this, the women will ask "What did you do?" and you will reply "We acquitted." At this the most chaste of the women will rise up in anger against you because you have judged this woman to have a share with them in the affairs and rites of the city. ([Dem.] 59.110–11)

The passage begins with an injunction to the jurors that they will be called to account for their decision of acquittal. This injunction, with a slight anacoluthon, transforms into a

hypothetical dialogue between a juror and a disembodied (Is it wife, daughter, mother, or other?) interrogator. The passage asks the jurors to envisage a domestic scene – but what type of domestic scene? This passage has often been taken by scholars to exemplify a typical interchange between a man and a woman (often taken as a man and wife).[73] However, such a reading ignores the hypothetical and literary nature of this dialogue. This is not a dialogue from real life, but one from anxieties and fears. This is the stuff of nightmare. It is a world where women are the interrogators and, in a dramatic reversal, men are found accountable to them. It is a place where those who were deemed ideologically, legally, and physiognomically incapable of being jurors are now judging those who are above them. It is a world where the juror cannot avoid the questions or fudge the issues but is forced to condemn himself through his litany of Neaira's crimes. He is allowed no cloak of rhetorical tricks to justify his decision. He knows that he has reached the wrong verdict and yet is forced to confess to the one constituency that he knows will take most offence. Like all nightmares, time runs askew and the scene fades out to women in riot. The righteous are zealously fired up by justified anger while the foolish cavort in their reckless decadence.

The jurors found themselves in a far from enviable position. Validation of democratic procedures certainly occurred, but not without effort and anxiety on the part of those involved. The ritualized construction of space served to alienate the juror from the world in which he was most comfortable. The juror never forgot that he was in the city, but that city – its networks of familial and social relations – certainly seemed distant from him as he made his decision. It watched and judged him, but was unable to help him. Forensic space turned out to be a lot more dangerous than first envisaged. Confronted by a version of the "Cretan liars" paradox in which it was impossible to tell who was lying and who was telling the truth, the only

[73] It is perhaps significant, for example, that this passage never seems to be cited for descriptions of father-daughter relations.

certainty that the juror faced was that his reentry from the "forensic" to the "real" world could well be bumpy.

In addition to a phenomenological reading of forensic space, we might also examine how the physical environment of the law-court acted as a generative space. In this respect, it is worth considering which issues the court environment foregrounds and the potential for thematic synergy between word and place. Orators were certainly aware of the potential of architectural exegesis. We get a sense of the potential richness of the interaction between word and place in Aeschines, *Against Ctesiphon*. As part of his attack on the proposal to award honours to Demosthenes, Aeschines draws inspiration from the monuments of Athens. They do not support the notion of the awarding of conspicuous honours to individuals:

> Προέλθετε δὴ τῇ διανοίᾳ καὶ εἰς τὴν στοὰν τὴν ποικίλην· ἁπάντων γὰρ ὑμῖν τῶν καλῶν ἔργων τὰ ὑπομνήματα ἐν τῇ ἀγορᾷ ἀνάκειται. Τί οὖν ἐστιν, ὦ ἄνδρες Ἀθηναῖοι, ὃ ἐγὼ λέγω; ἐνταῦθα ἡ ἐν Μαραθῶνι μάχη γέγραπται. Τίς οὖν ἦν ὁ στρατηγός; οὑτωσὶ μὲν ἐρωτηθέντες ἅπαντες ἀποκρίναισθε ἂν ὅτι Μιλτιάδης, ἐκεῖ δὲ οὐκ ἐπιγέγραπται. Πῶς; οὐκ ᾔτησε ταύτην τὴν δωρεάν; ᾔτησεν, ἀλλ' ὁ δῆμος οὐκ ἔδωκεν, ἀλλ' ἀντὶ τοῦ ὀνόματος συνεχώρησεν αὐτῷ πρώτῳ γραφῆναι παρακαλοῦντι τοὺς στρατιώτας.
>
> Contemplate then the Stoa Poikile – for the memorials of all our finest moments are set up in the Agora. What then am I speaking about, Citizens? The battle of Marathon painted there. Who is the general? Asked this, you would all respond "Miltiades." Any yet, this is not written there. Why? Did he not ask for this boon? He asked, but the people did not give it, but instead of his name, they proposed that he should be painted at the front, urging on his men. (Aeschin. 3.186)

The monument teaches the jury a moral lesson about status, individuals, and the collective.[74] It is made to dramatize the

[74] It is not only Aeschines who uses the Painted Stoa for ethical instruction. Similarly, Demosthenes draws a moral lesson from the painting

tension between mass and elite. Aeschines takes the jury to the Stoa Poikile in their imagination. What is striking is that, as we have seen, for some juries having the battle of Marathon before them wasn't just a rhetorical fiction, but a physical reality.

The juries who sat in the Stoa Poikile found themselves confronted by a collection of images whose associations provided a dense background for forensic rhetoric. In addition to the painting of Marathon, there were also painted panels depicting the battle between Athenian and Spartan at Oinoe, the repulsion of the Amazons by Theseus, and the capture of Troy.[75] The Stoa may also have contained a depiction of the supplication of the Heraclidae.[76] These images were complemented by an altar, as well as a display of a number of enemy shields captured by Athenian forces.[77] Such a collocation of material must certainly have complicated the rhetoric that the jury experienced. Speakers' claims to masculinity, patriotism, and self-worth were measured before the massed ranks of the heroes of Marathon. Generals and politicians had their claims weighed against the defeat of Troy and the Amazons. Speakers reminded juries of the importance of justice as they contemplated the rape of Cassandra and its consequences. Litigants begged for mercy before the image of the supplicating Heracleidae.

Time and again, we are presented with such collocations. Trials for justified homicide occurred in a court near the sanctuary of Delphinian Apollo – the meaning of each spoken word triangulated between the intimate proximity of the cult statue of Apollo, the Acropolis visible through the open roof, and

about the eagerness and dependability of the Plateans in assisting their allies (Dem. 59.94). On the influence of the Painted Stoa in Athenian ideology, see Harrison 1972; Wycherley 1953: 29; Francis and Vickers 1985.

75 Following Pausanias 1.15.1–16.1, the problem of the "Oinoe" painting is longstanding. For discussion of the issue, see Taylor 1998: esp. 223–25.

76 Scholiast on Ar. *Pl.* 385. This suggestion was received favourably by Wycherley 1953: 26 who noted the presence of the nearby Altar of Pity, another monument associated with the Heraclidae.

77 D.L. 7.1.14. (altar), Pausanias, 1.15.1 (shields).

the temple of Olympian Zeus nearby.[78] On high the cult center of Athena watched over her institution, the homicide courts. Below litigants find themselves in the hands of Apollo – a god who as the *sunegeros* of the vengeful Orestes is familiar with the courts and their intrigues. He watches approvingly as litigants defend their right to kill the adulterous.[79] He is there always ready to step in for any whose words might falter; ready to offer absolution so that justice might be done.[80] His actions are backed up by Zeus, the deity for whom justice was a special concern.[81]

Alternatively, consider the trials concerning sacred olive trees that occurred on the Areopagus. Here the location and its symbolic importance insured that the question of the oil from the olives could never be treated as just a matter of taxation.[82] Perched on the "Hill of Ares," who could forget what was at stake in these trials. Topography speaks history. Above them towered the Acropolis, whose Erectheion reminded those who sat below that it was the olive tree that bound Athens and Athena together. The olive was a prize worth fighting for. The Acropolis still bore the scars of Poseidon's wrath at his inability to produce anything to rival it. Not even the might of the Persians could destroy it.[83] Symbolic of Athens, it would only flourish stronger and hardier. Athens' destiny and prosperity were entwined in the boughs of its olive trees. In the Areopagus, discussions of olive trees could never just be about guaranteeing an oil-supply.

78 For the open roof of homicide courts, see Ant. 5.11. Indeed, there is some suggestion that the sanctuary may have been unroofed – the open roof seeming to have been associated with Theseus disturbing the workman before they could finish it. A version is preserved in Pausanias 1.19.1.

79 For an example of precisely this collocation, see Lysias 1.

80 On the role of Apollo in the *Eumenides*, see Sidwell 1996.

81 On the justice of Zeus, the classic text is Lloyd-Jones 1971. For the way in which the Persian Wars infused Athenian topography with meaning, see Dougherty's essay (Chapter 4) in this volume.

82 Compare, for example, the prosaic discussion of the issue in *Ath. Pol.* 60.2 with the rhetoric of Lysias 7.

83 Hdt 8.55. Cf. Virgil, Georgics 2.30–31; Pliny, N.H. 17.241.

Sadly, matching specific locations with specific speeches is, in most cases, an impossible task. Such information did not interest the compilers and publishers of the law-court speeches, who predominantly valued them as examples of rhetoric rather than as historical documents. However, that does not mean that we cannot generalize about the themes that dominate the architecture of the sites of the law-courts and the range of associations that they set up.

One of the striking features of the known law-court sites is their strong association with Athenian military (and consequently imperial) power. We have already seen this martial ideology in the paintings that decorated the Stoa Poikile. We find a similar architectural rhetoric in the Odeion of Pericles.[84] Of particular significance is its supposed mimicry of Persian forms (esp. its roof, many columned hall, and lofty south facade). This imitation was a reference to the Odeion's prototype, the tent of Xerxes captured during the Persian wars.[85] The Odeion was an "elaborate victory monument, built of captured booty and using the architectural forms of the defeated enemy for special effect."[86] Even its woodwork was associated with the Athenian victory. Later tradition records that its roof was constructed from the masts and spars of the Persian ships captured after Salamis.[87] Like the Parthenon and Propylaia, this was a building that could be used as a justification for hegemony.[88]

84 The following is indebted to the recent important reading of the Odeion's architecture by Miller 1997: 239–42.

85 Plu. *Per.* 13.9. On the capture of the tent of Xerxes at Plataea, see Hdt. 9.70, 82.1 cf. Paus. 1.20.4.

86 Miller 1997: 239 citing Von Gall 1979: 446.

87 Vitr. 5.9.1. On the structural impossibility of these spars as main beams for such a structure, see Izenour 1992: 30. However, had the wood been maintained, it could have been used as rafters, purlins or battens. For secondary timbers in Greek roofs, see Hodge 1960: 60–75. cf. Meiggs 1982: 474.

88 Isoc. 15.234. See the remarks of Nouhaud 1982: 225: "Les monuments construits au Ve siècle, à l'époque de la splendeur athénienne, encore visibles par les contemporains des orateurs du IVe, offraient à ces derniers des symboles commodes qu'ils n'ont pas manqué d'exploiter ... Symboles du rayonnement d'Athènes, les monuments sont ... considérés comme le signe d'une bonne politique."

Its function as a place for the storage of imperial tribute and the arms and armour of the children of the Athenian war dead seems particularly appropriate.

The power and majesty of the city would not have been lost on the audience perched on the poros benches either. The speaker who addressed them found an unrivalled civic panorama for his backdrop. The audience, overlooked by the imposing facade of the Hephaisteion, gazed out over a tree-lined square.[89] In front of them was the Panathenaic Way, a reminder of that most important of civic festivals. The benches were prime vantage spots for another great civic display, the elaborate, ceremonial ride of the cavalry from the Stoa of the Herms to the Eleusinion diagonally opposite.[90] On the far right, stood the Acropolis. At their feet were the stoas and public buildings that housed the organs of government necessary to civic life. On their left was the Altar of the Twelve Gods, the topographical centre of Athens.[91] The use and effect to which such structures could be put is exemplified by Aeschines, who recalls the time that during political debate the speakers put aside questions of caution and safety and just asked the audience "to gaze at the Propylaea of the Acropolis and remember the battle of Salamis and the tombs and trophies of the ancestors."[92]

FORENSIC SPACE AND GENERIC AFFILIATION

Speakers in the law-court not only brushed up against imperialistic building programs, they also ran into other genres of performance. Again, a consideration of the Odeion of Pericles is illustrative. The Odeion of Pericles not only functioned as a

89 Thompson and Wycherley 1972: 21. However, as Millett 1998: 213 notes, this picture ignores the "hundreds (if not thousands) of inscribed *stelai* standing in front of the monuments and buildings."

90 Xen. *Eq. Mag.* 3.2. Cf. Spence 1993: 186.

91 On distances measured from the altar, see Hdt. 2.7; *IG* ii^2. 2640. On the importance of this monument, see Thompson and Wycherley 1972; 129–36; Camp 1986: 40–42; Millett 1998: 211.

92 Aeschin. 2.74.

law-court, it was also intimately connected with the theater. Its physical proximity made it an important feature in the dramatic landscape, and it was home to the *proagon* as well.[93]

The similarity between the *proagon* and a trial creates a nexus of interpretative possibilities. Not only did it involve the selection of judge by lot, but like a trial, the *proagon* was an opportunity of assessing a person's character (in this case the poet) in front of the gaze of the Athenian public. Socrates says he recognized Agathon's *andreia* and *megalophrosune* because of the way in which he conducted himself during his *proagon*.[94] Moreover, given that poets seem to have offered a prose summary of their play, the *proagon* provided an occasion where two otherwise distinct performances took on a similarity of form.[95] In the Odeion, we are confronted with the very real possibility of citizens turning up twice to hear tales of jealousy, love, betrayal, adultery, murder, and families torn apart; one time as theater-goers, the other as jurors.

The relationship between drama and the law-court has been the subject of much scholarship.[96] As Hall concludes:

> Athenian legal speeches reveal affinities with drama in terms of the context in which they were performed, the relationship between speakers and audiences, the enactment of fictive identities even extending to the attention paid to appearance, costume, use of the eyes, gait, and demeanour; and the exploitation of the courtroom, witnesses and other individuals .... Successful performance at a trial required identical skills to those required by

93 For the Odeion as an important spatial referent in drama, see Wiles 1997: 54–56.

94 Pl. *Smp.* 194 a-b.

95 See Scholiast on Aeschin. *Ag. Ctes.* 67.

96 Although one of the earliest studies concluded that "this study ... has, in the matter of comparison, proved less fruitful than I had anticipated, and ... the conclusions are frequently of a negative rather than a positive nature character" (Thomson 1898: vi), subsequent studies have been more successful in establishing the connection between the two genres. For example, see Dorjahn 1927; Perlman 1964; Hall 1995.

> the dramatic actor – stamina, exciting delivery, vocal virtuosity, memorisation, extemporisation, and the abilities to control the audience, hold its attention, and arose its emotion.[97]

Here "context" refers to the idea of aristocratic *agon* conducted in civic space.[98] As we have seen, however, there was also an overlap in physical context. The relationship with drama flowed both ways. Forensic rhetoric was happy to borrow from drama, whether it was to characterize a murdering mother as Clytemnestra or an unwelcome oligarch as Orestes.[99] Similarly, drama was happy to borrow the language and philosophy of the law-court. Both tragedy (*Eumenides*) and comedy (*Wasps*) stage dramas around law-courts, but the relationship goes deeper. The reasoning of the law-court provides the background against which tragedy could explore issues of anger.[100] The entire genre of new comedy would not function without the legal framework that motivates so many plots and character developments.[101] One sees the tension of the intensity of the relationship in the never-quite-comfortable equation of the rhetor with the actor.[102]

Whichever law-court we examine, we encounter similar conflations between genres and spaces. The jurors who sat in the Agora (whether the poros benches, the Stoa Poikile or in Building A-C) adjudicated debates on the meanings of truth, justice, and the limits of knowledge – debates which mimicked

97 Hall 1995: 57.

98 On the isomorphism of the aristocratic *agon* that united dramatic festivals, athletics competitions, meetings of the assembly, and court cases, see Hall 1995: 39 following Garner 1987: 3.

99 Antiphon 1.17 (Clytemnestra); Lys. 13.79 (Orestes) w. Allen 2005: 378–79. Cf. Porter 1997.

100 Allen 2005: 380–86.

101 On the intimate relationship between new comedy and law, see Scafuro 1997; Wallace 2005: 369–72; Lape 2001. For humour in law-court speeches, see Bonner 1922; Cox 1989.

102 The tension gets its most concrete realization in the rhetoric surrounding Aeschines. For discussion of some of the tensions, see Easterling 1999: 159–60.

those conducted by the sophists just outside, who only days before had "held court" in almost exactly the same place as the one where the orator now stood. The lessons that the jury received in history were conducted in the very monuments that stood as evidence to that history.[103] When an orator mentions the atrocities of the Thirty, how must it have affected the jury to know that at that very same spot that regime stationed its cavalry or condemned people to death?[104] What must it have meant to discuss Pericles, Miltiades, or Themistocles in the shadow of the Parthenon, or flanked by the paintings of Marathon or sitting beneath a roof composed of the masts of ships defeated at Salamis?[105]

It seems too much of a coincidence that Attic oratory – this most intertextual of genres, which combines allusions, metaphors, and quotations from history, poetry, mythology, and sculpture – should be located in structures that often combined and housed elements of these various discourses.[106] The multifunction architecture served to conflate generic associations. Rhetoric is a genre that constantly seeks to mask itself and prefers every other name to its own.[107] In the intertextual environment of the law-court, rhetoric may have found itself a place to hide.

Conclusion

ξυλλεγέντες γὰρ καθ' ἑσμοὺς ὥσπερ εἰς ἀνθρήνια,
οἱ μὲν ἡμῶν οὗπερ ἄρχων, οἱ δὲ παρὰ τοὺς ἕνδεκα,

[103] On the use of history in forensic oratory, see Perlman 1961; Pearson 1941; Nouhaud 1982; Ober 1989: 177–82; Worthington 1992: 18–20.

[104] For references to the Thirty, see Nouhaud 1982: 307–16. For example, it is conceivable that the 1,500 killed by the Thirty mentioned by Aeschines (2.77) are the same as the 1,400 sentenced to death in the Stoa Poikile (D.L. 7.1.5).

[105] On references in the orators to these individuals, see Nouhaud 1982: 166–69 (Themistocles), 169–77 (Miltiades), and 221–23 (Pericles).

[106] On the intertextuality of rhetoric, see, for example, Ford 1999.

[107] Hesk 1999 and Wohl 2010: 37–50.

οἱ δ' ἐν ᾠδείῳ δικάζουσ', οἱ δὲ πρὸς τοῖς τειχίοις
ξυμβεβυσμένοι πυκνόν, νεύοντες εἰς τὴν γῆν, μόλις
ὥσπερ οἱ σκώληκες ἐν τοῖς κυττάροις κινούμενοι.

For we gather together in swarms as if in hives, some of us judging in the Archon's court, some before the Eleven, some in the Odeion, some against the walls, bunched close together, stooping towards the ground and hardly moving like grubs in their cells. (Ar. *Wasps* 1107–11)

In 1897, an Athenian law-court vanished from the Attic landscape. Unlike other acts of archaeological vandalism, this act of wanton destruction was not that of an invading army or overzealous collector of antiquities, but the textual critic's pen. In line 1109 of Aristophanes' *Wasps*, Starkie proposed, contrary to the manuscript tradition, that ὧδε be read for οἱ δὲ in the second clause.[108] He thereby eleminated from our record the presence of the court "against the walls."

This emendation occurs in the context of a metaphor verging out of control. The metaphor comes from the second half of the parabasis. The chorus of jurors had already explained their main point of similarity with wasps; like them, they too have a vicious sting. In this passage, they decide to extend the simile and compare themselves to wasps in terms of lifestyle and habits. They describe themselves as being like wasps with respect to the way in which they cluster together. It is the location of this clustering that is the focus of Starkie's emendation to the text.

Starkie was adamant in his belief that the text was corrupt at this point ("It may, I think, be dogmatically stated that this line cannot allude to a court 'situated near the walls'"). He based his certainty on the fact that there was "no evidence for the existence of such a court." This immediately raises the question, "What sort of additional evidence did Starkie require to confirm the court's existence?" Clearly, Starkie envisages a

[108] Starkie 1897: 421. The emendation has been followed in the editions of Henderson 1998 and Wilson 2007.

law-court as a structure that must inevitably leave some sort of trace in either the literary or the archaeological record. He operates under a delusion we have seen disproved above. He imagines the law-court as a structure that has some degree of permanence, exclusivity of use, and specificity of place – in short, a monument.

The significance of Starkie's emendation is that its validity depends almost entirely on our conception of the law-court. Extant manuscripts of the *Wasps* do not exist prior to the eleventh century. There have been no discoveries of text or papyrus applicable to this section. Nor do the normal rules of paleography offer much assistance. The mistranscription of οι for ω (and vice versa) is a relatively common and understandable scribal error. The emendation is not inelegant. It may even be right. However, it is worth unpacking what is at stake in the editorial choice. Our tolerance for a court "hard against the walls" is dependent on the extent to which we are prepared to accept a model of the Athenian court as transient, non-topographically specific, and without consistent structure and form – a court of such (little?) moment that it might be captured for our record only in the verse of a comic poet. A dikasterion that is constituted not as a *topos*, but as a *praxis*.

Starkie's emendation is illustrative of how preconceptions about the physical nature of the courts have an impact on our textual understanding. This chapter has attempted to demonstrate that a fuller appreciation of the materiality of law-court design not only helps us achieve a better understanding of Athenian civic topography, but that it has important consequences for our understanding of forensic rhetoric.

The law-court was the nexus where a number of civic discourses met and where important ideas about citizen identity and the nature of truth could be contested. As such, it proved useful to construct the law-court as a space that stood apart from the rest of civic space. Through the use of ritual and the deployment of specialised paraphernalia it was possible to construct a space with its own idiosyncrasies of language, reasoning, and meaning. Yet, while the space for rhetorical performance stood

apart from the city, it never quite severed its attachment to its origins. Place bled into space. The city marshalled the audience and framed the rhetoric. Imperial aspirations, historical contingencies, ideological positions, and the echoes of other literary genres were all present in the places where rhetorical space was formed and they coloured the resultant field of performance. As such, they gave fuel to more expansive readings and complicated the notion of the genre of rhetoric.

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