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Jury Justice from the Classic Greeks

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Trial by jury is a constitutionally guaranteed right, and the concept of being judged by one's peers is a foundational principle in Western society. It is assumed that criminal cases are best and most equitably decided by juries and general consensus is that a judicial case decided by a jury is inherently more acceptable than any alternative. With that said, the foundations for the modern Western judicial practice, like most other essential practices, rests in the Golden Age of Athens and Greece. While the chain of descent is long and varied, in Greece, one can find the first trace of legitimized trial by jury in keeping with the Western tradition. As such, in order to fully grasp the complexities of the system including its shortcomings and its successes, one must first consider its origins. To that end, a contrast of the trial of Socrates and the trial of Orestes can be considered. While the trial of Orestes is entirely fictional and intended foremost to entertain, it is nonetheless an accurate telling of the myth upon which Greek jury trials were founded. Conversely, the trial of Socrates as presented in Plato's *Apology* is considered almost entirely factual and is the subject of considerable scholarly research. Yet in both of these cases one can see the full gamut of both esteemed and undesirable attributes inherent to jury trials. They are excellent illustrations of how jury trials originated and also provide considerable commentary on the mechanisms of the court proceeding itself. Beyond their value as examples of a foundational principle's development, the trials have literary and political weight in and of themselves that are particularly noticeable when they are contrasted against each other.

A detailed understanding of the content of both trials is essential to considering their larger impact and the value of their contrast. While the mechanisms and facets of the jury system will be examined more closely, the content of these two works are of foundational importance. As is the case with any ancient historical account, the details of the backgrounds of each case are somewhat speculative and almost never complete. That said, the first trial to be considered, that of Socrates, is arguably the most written about judicial proceeding in ancient history. Plato regarded this historical event as a turning point in his own life (West, 16) and as such the philosophical implications of the case cannot be overstated. *The Apology* is broken down into three speeches by Socrates, the longest of which is his defense against the accusations of impiety and corrupting the youth. Interestingly, Socrates opens his defense with a refutation of one of the most prominent shortcomings of trial by jury: the lack of impartiality. He contrasts his own poor and unattractive nature with the

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flowery, refined presentation of his accusers and says his reputation among the Athenian citizens who compose the jury precludes the possibility of an unbiased jury. His argument extends to include the questioning of his accusers' motives, the refutation of the charge of corrupting the youth, and the challenging of civic dogmatism. His defense speech concludes with his portraying himself as a stalwart of civic engagement whose philosophy is a service to the city as a whole.

After his defense fails to win a majority of jurors and a guilty verdict is rendered, Socrates begins his second speech. This speech is perhaps the most interesting aspect of the trial from a procedural perspective because in it he proposes an option for his own punishment. While his initial proposal is a patently hubristic protest to the initial verdict and the second proposal a final effort for something other than the death penalty, the speech nonetheless illustrates the mechanism of sentencing counterproposals. The sentencing in ancient Athenian trials varied by circumstance; however, in this case there is a series of arguments and proposals made by the opposing sides. This process of counterproposals based on precedent was roughly equivalent to haggling over a proper punishment. Socrates utilizes this mechanism in a way consistent with his philosophical approach to life in that it is an all-or-nothing proposition. Ultimately the jury condemns Socrates to die by hemlock, a particularly merciful ruling according to Dr. Brian McCannon, a professor of economics at Wake Forest University, who presents an argument that "Hemlock may have been a privilege and rarely used." (McCannon, 48) In the final speech of *Apology*, Socrates chastises those who voted for condemnation and praises those who sided with him. This section of the trial is unique to Athenian jury trials and is un-replicated in the modern system. Ultimately the entire Platonic dialogue is more famous for the content of the arguments than the process itself. However, the content hinges on the process of the trial and much like the trial of Orestes, the order in which the trial precedes drastically affects the argumentation employed.

Unlike *The Apology*, in which the only voice heard is that of Socrates, *The Eumenides* is the third tragedy in a trilogy by Aeschylus and, as such, has multiple players, a detailed back story, and a fully developed plot. The trial serves as the denouement of the trilogy and the facts of the case are relatively simple. Orestes is haunted by the Furies, three netherworld deities whose task is to avenge crimes against the natural order, specifically unjustified homicide. Orestes' mother summoned the Furies, who serve as the chorus of the play, after she was murdered by her son in retaliation for her own killing of Orestes' father, Agamemnon. This self-perpetuating cycle of retaliatory killings is a

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central theme of the trilogy and the trial serves to provide a civilized alternative to reactionary violence. After being assailed by the Furies, and at the behest of Apollo, Orestes flees to the temple of Athena and summons her in an effort to placate his tormenters.

Athena appears and the Furies defer to her the power to decide Orestes' fate saying, "Examine him then yourself. Decide it and be fair... By all means your father's degree and yours deserve as much." (Aeschylus, 150, 433) In this way, the Furies enable the creation of a system by which reciprocated violence can be ended in a just fashion. Athena accepts the obligation of deciding Orestes' fate and determines that a trial will be the proper mechanism. Athena explains the method of the trial, saying, "I shall select judges of manslaughter, and swear them in, establish a court into all time to come. Litigants call your witnesses; have ready your proofs as evidence under bond to keep this case secure. I will pick the finest of my citizens, and come back. They shall swear to make no judgment that is not just and make clear where in this action the truth lies." (Aeschylus, 152, 483-489) The process outline in her declaration is rather reminiscent of the modern system for jury trials and, indeed, this is one of the first occurrences of trial by jury in Greek antiquity. After a long statement by the Furies, the trial proceeds with Orestes defending himself against the deities from Hades. Interestingly, Apollo intervenes and acts as Orestes' legal counsel and his utilization of representation is the first time in Greek lore that an individual not directly involved with an incident defends someone else's behavior. This facet of the trial also contrasts sharply with Socrates self-defense. Ultimately, a vote is held which results in a hung jury. Athena then breaks the tie by casting a vote for Orestes' innocence.

Both works pertain to the general themes of faith, justice, and the rule of law. While the stories do pertain to central commonalities, they are no less distinct from one another. *The Apology* serves as a historical account of a societal crime relating to religious piety contrasted against Orestes' very pious plea for resolution of his alleged crime. Indeed the contrast between being accused of disbelief in the gods and actually being defended by one is glaring. In addition to the distinction between each defendants' piety there is the difference in each one's attempted defense. While Socrates presents a rational argument to the jury for why the charges of impiety and corrupting the youth could not be true, Orestes appeals to divine providence, asserting his actions were entirely justified because of their sanctioning by Apollo. Further, the two works most sharply contrast in that the opposition's argument is only presented thoroughly in *The Eumenides*. By not including the accusers' speeches, Plato ensures that only one side of the issue is well represented. Conversely, Aeschylus presents the argument for Orestes' guilt very thoroughly and it could be easily asserted that the arguments of the Furies are more persuasive. Yet these contrasts and

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commonalities of content are secondary to the contrast of mechanisms. The court proceedings themselves bear striking differences and the variances seem to account for the difference in verdicts.

First, consider who is presenting the accusations and the manner in which they do so. For Socrates, the accusations originated from wealthy, conservative Athenians who attacked the philosopher on the grounds that he challenged the status quo. In the first part of his defense Socrates addresses the long history of attacks by his accusers and the preconceived notions of the jurors who hear the case saying, “They got a hold of many of you from childhood, and they accused me and persuaded you. . . . That there is a certain Socrates, a wise man, a thinker on the thing aloft, who has investigated all things under the earth, and who makes the weaker speech the stronger.” (Plato, 64, 18b) The long history between Socrates and his accusers, and the resulting taint of his jury, contrasts sharply with Orestes’ relationship to his accusers. The Furies are a divine entity without personal enmity for Orestes beyond that which resulted from his killing his mother. They present their case in a direct way, asking simple questions without other motive than the accomplishment of justice. Additionally, while the prosecution in Socrates’ case simply gave a speech, the Furies employ the Socratic method of questioning the defendant and witnesses directly. This latter example is much more akin to the modern jurisprudence in which a combination of both styles of proceedings has been implemented.

Secondly, consider the employment of counsel by Orestes and the traditional self-defense enacted by Socrates. Most research suggests that Athenian citizens accused of capital crimes and placed on trial defended themselves, and the utilization of an attorney to speak on one’s behalf was not a common occurrence. Further, witnesses to a crime or to a citizen’s innocence were not questioned as they are today, but rather individuals were simply cited as being on one side of the case or the other. (McCannon, 42) Socrates does not employ counsel or call witnesses in his own defense but rather quotes friendly witnesses within his own defense. Conversely, in the Aeschylean drama, Apollo is portrayed as a hybrid of legal counsel in the modern connotation and a witness as they are commonly considered in modern trials. Specifically, Orestes says, “Bear witness now, Apollo, and expound the case for me, if I was right to cut her down. . . . As you answer, shall state my case.” (Aeschylus, 157, 609-610) In so doing, Orestes asks Apollo to act as both witness and lawyer.

While the presentations of the prosecutions vary and the mechanisms of counsel and witnesses are conspicuously absent from the trial of Socrates, the most interesting contrast of the two trials lies in the juries. The compositions and size vary widely, while the basic premise and goal of each remains consistent. For Socrates, the jury was composed of more than 500 citizens, all of whom had most likely heard of him prior to the trial if they had not in fact met him. His is a

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case roughly akin to a celebrity trial in which the jurors were all familiar with the players involved. Conversely, the jurors in Orestes' trial numbered only eight, and Aeschylus makes no indication that they had any prior knowledge of Orestes or his circumstances. Indeed Athena refers to them as "her finest citizens" (Aeschylus, 152, 487), and the premise of their ruling within the drama is that they are entirely unbiased. A small number of unbiased jurors compared to hundreds of jurors steeped with pre-trial knowledge of Socrates and his accusers is a major point of contrast.

It is within this contrast of juries that the question of justice can be considered. It can be considered not only whether justice is served in these two specific cases, but rather if the system as a whole is more apt at rendering just verdicts than any alternative. First, one must consider if the size of the jury is an important factor in rendering just verdicts. Secondly, the rulings in these cases are considered legitimate in the eyes of observers because the juries' consensus is a natural foundation for what most consider justice. Specifically, are jury trials considered just because they serve as a microcosm of society in general, which in the absence of an absolute standard for conduct defines justice? This question correlates well with the third level of analysis in which one must consider the fallibility of jury trials. While the question of what justice looks like cannot be definitively answered, all aspects of a jury, specifically size and composition, relate to the rulings it renders and the correlating amount of justice contained in that ruling.

The assertion that bigger is better in relation to juries is a prevalent notion. The size of the standard American jury has expanded gradually throughout American history to one numbering half of the 500 jurors of Orestes' jury. Further, the Supreme Court, though not technically a jury, operates in a similar way and has been enlarged to nearly double its original composition. To analyze why an enlarged jury is preferable to an alternative, one needs only to consider the argument against the expansion of the Supreme Court during the Roosevelt administration of the 1930s. While attempting to receive judicial approval for his New Deal programs, Roosevelt threatened to pack the court and add new members to it. This would dilute the vote of the current justices and make their individual voices less relevant. Extrapolating that principle and applying it to the trials at hand, one can see that a larger jury is less likely to be swung or led by a small minority opinion. Specifically, in Socrates' trial, his argument could not have been effective had it only been catered to a select group or minority. The requirement with a larger jury is that consensus must be reached with a larger group of people, a much more difficult task with a sizable group as compared to a small one. Conversely, Orestes needed only to convince five individuals in order to ensure a verdict he desired. By percentage the jury size is irrelevant in terms of how many people a defendant must convince.

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However, a pragmatic review of the realities of achieving consensus in a group reveals a decided advantage to having larger juries. With more minds analyzing a situation, the outliers, or those whose opinion would strongly deviate from the mainstream consensus of society, are by percentage discounted more greatly than if the jury was of a small number. This results in the rulings being more likely to align with what society in general perceives to be best. If operating on the premise that popular consensus determines justice, then a verdict more apt to coincide with societal norms is consequently more likely to be a just verdict.

The logical reality of a large jury being better than a small one correlates well with the concept of a court proceeding attaining legitimacy in the eyes of the entire society. In the modern context jurors are randomly selected and are proportionally representative of a local population. As such, optimally the jury's decisions are reflective of the population's values and ideals. Within a democracy, the jury system insists to a fault that what society desires is popular justice; that is, "the conscience of a community." In so doing, the democratic society, ancient Greek or modern American, sanctions the substitution of the rule of law for the popular rule of the people. This principle is seen plainly in Aeschylus' drama. The Furies are a manifestation of the rigidity of the rule of law and say specifically, "We hold we are straight and just... As witnesses of the truth we show clear in the end." (Aeschylus, 146, 312,318) Yet their inflexible exacting of perfect justice on Orestes is challenged within the myth and Athena gives legitimacy to the notion that societal consensus on the topic may carry more weight than divine implementation. This trial by jury, and the Furies' acquiescence to its ruling, cements the democratic reality that justice is not defined universally, but rather by the consensus of a group of individuals who are a proper societal representation.

The concept of juries being more apposite for the dispensation of justice than any other judicial system is not entirely conclusive. However, there does seem to be a high level of agreement that jury trials are an integral part of democratic societies. Thomas Jefferson enumerated in his first inaugural address the foundational principles of American government, saying, "Equal and exact justice to all men... freedom of religion, freedom of the press, freedom of the person under the protection of habeas corpus; and trial by juries impartially selected – these principles form the bright constellation that has gone before us." (Jefferson, 43) It is apparent then that trial by jury is an absolute underpinning of American democracy as well as Western philosophy in general. It is perhaps ironic, then, that the democratic nature of juries and their variable definitions of justice has provoked a crisis of confidence in the quality and accuracy of jury verdicts. As such, it is imperative that the weaknesses of the system be examined and these two specific cases be especially scrutinized as they serve as forerunners to the Western judicial system as a whole. The causation of

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skepticism of jury trials is readily apparent in both the trial of Socrates and Orestes and it seems all too similar to the reasons for doubt in modern jury justice.

First, consider the question of how influenced juries are by their emotional disposition as compared to their consideration of veritable facts. Socrates was the victim of a jury comprised of predisposed men within an emotionally charged atmosphere. His rationale and defense would, by all scholarly accounts, have been more than enough to earn an acquittal had the jurors not already been aligned against him. Indeed, after his conviction, while arguing for exile as opposed to death, Socrates disclaims the jurors' emotional decision making by saying, "I would certainly be possessed by much love of soul, Men of Athens, if I were so unreasonable that I were not able to reason that you who are my fellow citizens were not able to bear ways of spending time and my speeches, but that instead they have become grave and hateful to you, so that you are now seeking to be released from them." (Plato, 91, 37d) The philosopher is commenting on the impact the jurors' emotional swing is having on their capacity to dispense a reasonable ruling. The claim here is that their distaste for the speeches and philosophy they once admired has negatively impacted their capacity to objectively consider his case. This notion is telling and provides a link to the modern juror in that the problem Socrates notes is still prevalent today. Opponents of the jury justice system are quick to point out that juries decide cases according to emotion, prejudice, and sympathy more than according to law and evidence. They have the ability to turn trials into travesties in that they are apt to judge based on race, gender, or a defendant's manner of dress. Jeffery Abramson, a legal scholar from Harvard Law, says poignantly, "The jury signifies the rule of emotion over reason, prejudice over principle, whim over written law." (Abramson, 6)

The non-objective and variable nature of juries is just one cause for criticism of the jury justice system. A more pressing reason to be critical of juries is their capacity to act tyrannically and without fear of repercussion. Plainly put, a jury is a microcosm of the legislative process in that they are in fact charged with enacting and implementing law. A jury, moved to ignore plain evidence, convinced to feel compassion when there is room for none before the law, or acting in a contra-precedential manner is essentially acting in a tyrannical way. This issue is particularly problematic in democratic societies. Elected legislatures are charged constitutionally with the implementation of laws. However, the jury system operates in only a pseudo-democratic way. Abramson comments, "It [the jury justice system] invites or at least permits an anonymous group of unelected people to spurn laws passed by a democratically elected legislature." (Abramson, 44) This occurrence forms the jury into an essentially lawless institution, rendering decisions for which the jurors will never be held

accountable.

The resultant spurning of established laws and traditions is an issue specifically addressed in *The Eumenides*. The Furies, the embodiment of justice and the established traditions thereof, repeat a mantra of decrying the jury's capacity to overrule the long-standing institution of reciprocated violence as the only acceptable manifestation of justice. Prior to the trial, the chorus begins an extended monologue by saying, "Here is the overthrow of all the law, if the claim of this matricide shall stand good, his crime be sustained. Should this be, everyman will find a way to act at his own caprice; over and over again in time to come." (Aeschylus, 152, 490-498) The prophetic statement has indeed been realized in the era of modern juries.

While setting new precedent is not necessarily bad, it is the contemporary inconsistency of juries that critics point to as unacceptable. Contradictory jury results separated by less than a generation have been seen throughout American history. Juries in the Deep South acquitted white men accused of lynching while their northern counterparts ruled to shelter fugitive slaves and the abolitionists who harbored them. A jury trying an obscenity case ruled that Hair was intolerably offensive (*SOUTHEASTERN PROMOTIONS, LTD., Petitioner, v. Steve CONRAD et al.* 1975), just a few years before another jury ruled Robert Mapplethorpe's pornographic photography of naked men was in fact art (*Cincinnati v. Cincinnati Contemporary Arts Center 566 N.E.2d 214 1990*). These are examples of numerous similar swings in jury opinions in a relatively short amount of time. The capacity of a jury to unilaterally dismiss time-honored precedent without ramification is what the Furies object to most vehemently. At the conclusion of the trial the Furies attack the ruling and make it clear they feel as though the verdict has made a mockery of justice, saying, "What shall I do? Afflicted. I am mocked by these people [the jury]. I have now borne what cannot be borne. Great the sorrows and the dishonor upon the daughters of [justice]". (Aeschylus, 163, 787-791)

Inevitably there will be opponents to a ruling one way or the other. It stands to reason that had Athena and her jury ruled against Orestes it would have been Apollo decrying the decision. Yet the issue of unpredictable variance and inconsistency is no less prevalent. By entrusting legally binding authority to a randomly selected lot of citizens, a society is certainly taking on an assumption of risk. By allowing for alternate outcomes to very similar cases, the society employing a jury trial system concurrently allows for a variable definition of justice. The case could be soundly made that variable justice is not justice at all, and the Furies are unequivocal in their defamation of the jury trial, saying, "Now the House of Justice has collapsed." (Aeschylus 153, 515)

In addition to juries' propensity to render verdicts based on emotion and their capacity to act tyrannically and without fear of repercussion, but

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relating closely to both, is the issue of complexity of subject matter within legal proceedings. In his book *The Jury*, Stephen Adler phrases it plainly by asking, “What good is a judicial system in which jurors reach their verdicts through prejudice or guesswork simply because they do not or cannot understand the issues?” (Adler, 118) Similarly, Abramson asserts, “The gap between the complexity of modern litigation and the qualifications of jurors has widened to frightening proportions.” (Abramson, 3) The analysis of jury competence forces the consideration that perhaps juries have outlived their usefulness in light of increasingly complex civil cases. It seems the qualifications of the average juror fall short. A jury rarely if ever understands the expert testimony in an antitrust suit or a medical malpractice case and this, in many instances, means a trial by jury is a trial by ignorance.

The alternative is to have standard jurors replaced by professional judges or business experts. Opponents of the jury system are quick to point out that understanding an issue is key to its resolution and that average jurors are simply incapable of understanding. This issue has led to many Western nations such as England, France, and Spain to give judges power to forego standard juries and refer particularly complicated cases to “special juries.” In his text *A History of Criminal Justice in England and Wales*, John Hostetler describes the need for special juries. “Special Juries, employed from thirteenth century onwards, were judges of cases requiring knowledge of some special non-legal field.” (Hostetler, 140) He goes on to explain that because peer jury trials are not a guaranteed right in England, the judicial system has adapted a hybrid plan in which jurors can be selected based on their specialized knowledge of subject matter.

Without the adaptation of specialized juries and handcuffed by the constitutional guarantee of trial by a jury of one’s peers, the American judicial system has seen innumerable cases misruled or ruled a mistrial purely on account of the jury’s inability to cope with complexity. One particular antitrust case, *Memorex Corp., MRX Sales and Services Corp. v. IBM corp.*, gained notoriety in this subject because of the public statement of a juror after the judge granted a mistrial over a hung jury. When asked if a jury could ever be qualified to hear such a complex case the foreman replied, “If you could find a jury that’s both a computer technician, a lawyer, an economist, knows all about that stuff, yes, I think you could have a qualified jury. But we don’t know anything about that.” (Adler, 120) As if responding to that quote directly, Chief Justice Warren Burger, while giving a speech at Loyola University said, “Even Jefferson himself would be appalled at the prospect of a dozen of his stout yeomen or artisans trying to cope with some of today’s complex litigation.” (Burger)

While more pronounced in the modern era, the problem of ill-equipped jurors is not exclusively a recent phenomenon. The trial of Socrates again serves

as an illustration of the dilemmas inherent in jury justice. While not explicitly discussed in *Apology*, another Platonic dialogue, *Euthyphro*, highlights the topic succinctly. In the dialogue, Euthyphro and Socrates share their thoughts on concurrent cases pertaining to piety. Socrates questions him at great length about the definition and applicability of piety within Athenian society. It quickly becomes apparent that Euthyphro has a very limited understanding of what it means to be pious even within the context of the Greek religious tradition. This ignorance, applied to Socrates's jury, could explain their ruling. The assumption here is that Euthyphro exemplified the standard juror's lack of knowledge about piety and that their lack of understanding of the topic at hand obviously impacted their decision. While not as fluid as the religious definition of piety, antitrust laws are no less murky and are in no less need of expert elucidation. Ultimately, the jurors in Socrates' trial were probably no better off in their understanding of an argument about the nature of piety than the jurors in IBM's case were in attempting to understand demand substitutability.

The quandaries of the jury justice system are numerous and cases exemplifying its problems abound. Emotionally charged issues are abundant, and despite the mechanisms put in place to prevent juror bias, they will continue to be decided by jurors with preconceived notions of how the verdict should turn out. Likewise, the tyrannical variance of jury conclusions, and the built in dilemma of ill-equipped jurors has descended with the system from its formation and implementation by the Greeks. Yet there are reasons why the jury system has withstood the test of time and is still utilized throughout most democratic nations. These positives far outweigh the negatives and the disappointment in juries felt by many is counterbalanced by the hope that the system is still quite capable of being the best conceivable judicial practice in the vast majority of cases.

One important positive aspect of a jury justice system is the requirement of civic engagement. While the extent to which some people are willing to go in an effort to "dodge" jury duty are far indeed, the fact remains that a jury system requires a certain level of political participation. This participation requirement, though not necessarily jury duty specifically, is essential to a representative democracy. Further, there is perhaps no greater example of entrusting citizens at large with the power of government. While jury selection is random and not always completely representative of the society, it is nonetheless the best and most realistic opportunity to participate in actual governance. The civic engagement element of a jury justice system contributes to a rationale for the system's desirability in the face of any detractors.

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Beyond the boon of civic engagement, one may consider the fact that no judicial system escapes the problems outlined here. The problems inherent to jury trials are not unique to them. It seems that the issue of biased judges is just as real as predisposed jurors and perhaps even more so in that a single person is far easier to corrupt. Organized crime in the 1920s is a prime example of this in that many, charged with felonies relating to organized crime, refused jury trials in favor of bench trials. While it could be argued that gangsters wanted to avoid the wrath of an angry public, it is more likely that they were simply more confident in their ability to sway the personal dispositions of individual judges. Judges' personal temperaments on certain issues are easy to see in their past rulings and pre-trial behavior. When and where a judge grants search warrants or his tolerance for certain lines of questioning within a court room provide insight into his inclinations. These insights and the historical likeliness of a certain ruling affect plaintiffs and defendants in the same way research of demographic trends affect jury selection. More exactly, assuming judges do not have patterns of behavior or personal ideology they apply to judgments is simply foolish. And while no one would assert that all judges possess a personal bent that affects their decisions universally, it would be naïve to conclude that judges are unaffected by emotional arguments or knowledge of a defendant prior to his or her trial.

In much the same fashion, it is unfair to assert that juries are the only judicial entities that are prone to overturning precedent. To the contrary, judges delight in the concept of setting judicial precedent and redefining law in spite of legislative authorities. This trend is most observable on the federal circuit courts of appeal where laws, created in a constitutional way by elected officials, are frequently overturned. Yet somehow the criticism of juries for the same action is considered legitimate because of the layman's knowledge possessed by the jurors themselves. This conclusion is in keeping with the fallibility of a ruling being closely related to the legal fallibility of the individual or group making the ruling. This argument does, however, neglect the reality that justice and proper law are determined by consensus, hence majority vote requirements for the creation of new law.

This contrast of juries overturning precedent or legislation as opposed to appointed judges or panels of judges is simplistic at best. And while this skirts the nebulous concept of judicial review, that political reality can be, and frequently is, compared to an unconstitutional way for judges to create legislation. Juries, while acting in a similar way, challenge laws on a much more specific level in individual cases as opposed to courts of appeal that intentionally challenge legislation. It stands to reason then that the attack against jury justice on account of juries' microcosmic tyranny could be just as aptly applied to bench trials. The practical defense of jury trials is one that asserts that specific attacks

on juries can quite easily be made on other forms of judicial proceedings in a more acute way.

The most significant defense of trial by jury and the reason why it has survived since the days of Athenian democracy is not a matter of it being the least of many evils. Nor would any legal scholar make the assertion that its best defense is found in claiming juries always make the right ruling. Rather, the cause for the creation and preservation of trial by jury within Greek society in particular and Western society in general is the system's foundation within the liberal notion of equality. In modern America, jury trials account for less than five percent of total trials. (Simon, 3) This fact gives credence to the assertion that jury trials retain primarily symbolic value. Yet, the limited number of jury trials is due in large part to plea bargains and legislation reducing the total number of trials in general. As such, the low number of jury trials belies their significance as a foundational institution upon which Western society rests. The concept of being judged not by members of a separate socioeconomic stratum, as is the case in most judicial alternatives, but rather by common citizens endeavoring to utilize common sense as much as legal knowledge, is quintessentially egalitarian. While the specifics of equality do vary by era and society, the concept is essentially the same. It is in this indwelt notion of equality that citizens put their faith and why, accordingly, they trust juries.

Democratic societies founded on the liberal ideals of freedom and equality have embraced jury justice despite its shortcomings. While some Western nations have provided alternatives to trials by jury or have not established then as a guaranteed right in the American tradition, they all nonetheless maintain the system as a vital facet of their own unique jurisprudence. Simply put, to greater or lesser degrees, Western cultures believe a mechanism should be in place wherein, if justice is better served, laws can be ignored if equal citizens deem it appropriate. The jury system promotes the adherence to law while allowing for exceptions should the sample of society deem it appropriate. Socrates concludes his defense speech by essentially summing up this defense of juries: "For I believe men of Athens... And I turn it over to you and to the gods to judge me in whatever way it is going to be best..." (Plato, 89, 35d).

The trials of Orestes and Socrates encapsulate the full spectrum of issues, emotions, and practicalities relating to trials by jury. The tribulations common to almost all juries are apparent within both cases, as are the positive aspects. They provide particular insight into the question of why and how democratic societies have embraced the system based on equality and civic engagement in spite of the inherent limitations. This embrace is uniquely democratic and as such based on certain ideals not shared with much of the world. In *Politics*, Aristotle suggests that democracy's primary virtue is its capacity to

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permit regular citizens gathered from different backgrounds to achieve a “collective wisdom” that no one person could achieve autonomously. At its finest, the jury is the last, best refuge of this connection among democracy, equality, and the achievement of justice by ordinary people.

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