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Legal Action: The Trial as Theater in Aeschylus' *Oresteia*

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Aeschylus' *Oresteia* is a key text for analyzing the relationship between law and drama both because it includes the earliest surviving instance of a trial scene in western drama and because it is explicitly concerned with the nature of trials, telling a story of repeated conflict that can only be resolved by the invention of the trial as a new form of action. First produced in Athens in 458 B.C., the *Oresteia* is a set of three connected tragedies, of which the final one, the *Eumenides*, concludes with the mythical first trial of a man for homicide, the trial of Orestes, the character who gives the trilogy its name. Orestes is tried for the murder of his mother Clytemnestra, a murder undertaken at the instigation of the god Apollo in retaliation for Clytemnestra's earlier murder of her husband Agamemnon, Orestes' father and the leader of the Greek expedition against Troy; in turn, retaliation for Agamemnon's sacrifice of their daughter Iphigenia is one of Clytemnestra's several motives for his murder. These murders take place in Argos, the city ruled by Agamemnon's family, the House of Atreus, but the trial of Orestes takes place in Athens at a court, the court of the Areopagus, which is brought into being by the goddess Athena to adjudicate cases of homicide on this occasion and in the future. The trial in the *Eumenides* is at once a conclusion—the conclusion to the story of Orestes and his family—and a beginning—the inaugural use of this new court and the inauguration of legal action rather than revenge as the appropriate consequence of an act such as Orestes' matricide.

In making a trial the concluding event of this trilogy, Aeschylus was responding to the political climate of his time, which was a period of rapid expansion of the Athenian court system and of intense, even violent controversy about the proper role of the Areopagus. But he was also drawing on the inherent affinity between drama and the trial, an affinity that is widely reflected in plays from many cultures and periods and neatly encapsulated in the phrase "courtroom drama," which can be applied both to plays and to trials.¹ As a public spectacle in which speakers appear in formal roles as litigants, witnesses, judges, and advocates before an audience of jurors and other onlookers, a trial resembles a theatrical performance. More particularly, the trial is an apt model for the specific dramatic genre in which Aeschylus was working and which he helped to invent—classical Athenian tragedy—because of the particular mode of representation—the particular type of *mimesis*—that a trial entails.

A trial by nature is a type of reenactment: a past action is re-presented and reconsidered in a privileged and highly conventional setting.² This reenactment is not only shaped by the constraints of legal procedure, which controls what can and cannot be said in a courtroom, but it is also a recreation that designedly differs in form from the event being recreated. The events recalled by trials, especially criminal trials, characteristically involve violence, transgressions of social norms, or at least conflict. They are events that inspire efforts at containment and prevention and whose recurrence is unwanted. Thus a trial is at once a version of the events it evokes and an alternative to them. The role of the trial as an alternative to what it represents is especially clear in relation to revenge. As in the scenario dramatized by the *Oresteia*, a trial forestalls a vengeful repetition of the original offense.³

More broadly, a trial offers a social response to disruptive events of the past and thereby acculturates them. It transforms those events, recalling them without performing them and presenting them through communally-generated conventions, replaying them in versions that may or may not accord with the private perceptions of the participants at the time the actions took place. In effect, the trial makes such events presentable, offering them to an audience of judges and jurors, which evaluates them, drawing conclusions both about what actually took place and about what the ongoing consequences of those events ought to be. Because of the nature of the events that call them into being, trials rely with greater urgency than do other types of representation on the modes of artifice that allow experiences to be presented allusively or indirectly. And yet the marked artificiality of a legal retelling does not cause it to be seen as less truthful. On the contrary, that retelling is

invested with a definitive authority that validates not only a particular interpretation of past events, but also the rules or principles of evaluation by which it was reached.

Like the legal trial, classical Athenian tragedy was a state-sponsored event: it was organized by city officials, paid for by rich citizens in fulfillment of a civic obligation, and enacted during an annual festival in honor of the god Dionysus that was also an occasion for patriotic display. In this respect it was presumably an expression of the city's values and a means of furthering the city's goals of order, cohesion among citizens, and unanimity in the face of external enemies. At the same time, also like a trial, tragedy was especially concerned with transgressive action. Its plots centered on episodes of violence between close relatives (as in the several murders of the *Oresteia*) which often expand beyond the bounds of the family to bring a disaster on an entire community. Thus tragedy had to contend with a conflict between its civic context and its disruptive and polluting contents. The strategies that it adopted involved the marked distinction between a representation and the event represented that are intrinsic to the legal trial. The terrible events of tragedy are placed in the distant mythical past and are typically set in a city other than Athens, most often Thebes, which has a recurrent identity in tragedy as an antitype of the properly functioning city.⁴ In addition, those terrible events are not represented directly, but usually take place offstage and are reported through a messenger's speech.

The indirection of Greek tragedy can be understood in part as a consequence of tragedy's history and of the physical circumstances of its production. Tragedy developed out of performed choral poetry that was originally narrative, moving closer to dramatic enactment through the addition of first one, then two, then finally three actors. Aeschylus was an important figure in this development, being responsible for the second actor; his younger contemporary Sophocles added the third a few years before the time when the *Oresteia* was performed. Throughout its history, tragedy was presented in an open-air theater with no curtains, trap doors, or special effects which might facilitate the direct representation of deaths and other violent events. But tragedy also employs indirection as a way to acculturate threatening and unsanctioned actions and to ward off fears that its imitation of those behaviors might cause them to recur and proliferate. The characteristic formality and stylization of tragedy remained vital constituents of the genre, even though they were in tension with a trend towards more naturalistic representation—towards more dramatic immediacy—that was part of its development out of its purely choral roots.

Ancient commentators on tragedy often worried about whether it could succeed in containing its dangerous subject matter. Their discussions reflect perennial concerns about representations of undesirable actions, which are feared because they might put dangerous ideas into the minds of audiences and because imitation is often suspected of a quasi-magical capacity to make what is imitated actually happen.⁵ It was this fear that caused Plato to banish tragedy from his projected just city in the *Republic* and that Aristotle tried to answer in his defense of the tragedy in the *Poetics*. Significantly, the solution that Aristotle adopted draws on both a legal mode of evaluating action and on the high degree of mediation intrinsic to the legal trial. Reflecting the pervasive cultural influence of the lawcourts, Aristotle's *Poetics* is filled with legal language and shaped by a series of analogies between dramatic poetry and legal discourse. One of these is an analogy between the forensic orator, who must construct a convincing argument, and the tragic poet, who must construct a convincing play (Eden 7-61). Less explicitly, Aristotle's model of the ideal tragic plot shares many of the acculturating functions of a trial. In Aristotle's view, a really well constructed tragic plot either forestalls the violence between family members that he defines as tragedy's proper subject or mitigates the horror of such violence by making it unintentional.

In his stress on intention, Aristotle draws on a central concept of Athenian law.⁶ A growing concern with intention was a hallmark of the Athenian court system as it evolved in the fifth century (and this legal development may, in turn, have had a decisive influence on the emergence of tragedy). Aristotle's interest in intention leads to his emphasis on ignorance of identity (one version at least of what he means by *hamartia*) as an important element in a well-made plot: in Sophocles' *Oedipus the King*, for example, it is crucial that Oedipus was unaware that the man he killed was his father and that the woman he married was his mother. Ideally, for Aristotle, the family members who harm one another in tragedy do so without intending to and, for this to be the case, they must not know who one another are. His preferred plot is one, such as that of the *Iphigenia in Tauris* of Euripides, in which a sister about to unwittingly kill her brother discovers their relationship in time

for this act of violence to be replaced by a scene of recognition. Second to this he places a kind of plot, like that of Sophocles' *Oedipus the King*, in which such violence does take place, but without the participants knowing that they are related, so that at the time when the action occurs there is, in effect, no relationship between them. Appealing to the legal distinction between intentional and unintentional violence, Aristotle is able to defend tragedy against fears that it repeats and perpetuates transgressive behavior. He presents a vision of tragedy in which tragic events are evoked and their horror is communicated, but they do not quite actually take place: either they are prevented altogether or they lack the status of real violations of kinship through the absence of knowledge and intention on the part of the actors. Aristotle thus prescribes for tragedy a form that shares the conflict-dissolving, violence-averting functions of a legal trial.⁷

While Aristotle, theorizing in the *Poetics*, drew on the legal concept of intention to describe tragic plots in which tragic events are evoked but never quite take place, Aeschylus, wrestling with the same issues a century earlier in his dramatic practice, drew on the legal trial as a formal means of reinterpreting—of making acceptable after the fact—a tragic event that does actually take place in the course of his drama. The *Oresteia* provides an especially clear vision of the nature of trials because the trial in the *Eumenides* is set in the context of a connected trilogy that also encompasses the events that the trial adjudicates, most immediately Orestes' killing of Clytemnestra, which occurs in the second play of the trilogy, the *Libation Bearers*, but also Clytemnestra's murder of Agamemnon, which occurs in the first play, the *Agamemnon*, and all the events leading up to it going back to the beginning of the Trojan War and to an earlier generation of the House of Atreus. The broad span of the connected trilogy was, like the second actor, an innovation of Aeschylus'; he was the only tragedian to link into an integrated whole the three tragedies with which a playwright would compete each year.

In the *Oresteia*, Aeschylus' use of the connected trilogy highlights the trial as a form of action that replaces violence and removes conflict. The progression from the first to the second play dramatizes the pressures leading to repetition—repetition from generation to generation and repetition as associated with retributive justice. The problem posed in the first two plays is that, despite significant differences in their actions, they resemble each other too closely: in the *Libation Bearers*, Orestes inherits the destructive legacy of his parents and once again a confrontation between a man and a woman leads to murder. In the third play, the *Eumenides*, as Orestes becomes liable to punishment for his murder of Clytemnestra, the possibility of yet another death looms, only to be forestalled through the invention of the trial, which is presented as a new and necessary form of action, on which the resolution of the plot and the completion of the trilogy depend. At the same time, the broader span of the trilogy highlights the nature of the trial as a form of interpretation as well as of action: it becomes possible to compare the trial to the event that it, in effect, rewrites and thus to gauge the process of reinterpretation involved. That earlier event is, of course, itself a scene in a play and thus also the product of dramatic artifice, with no greater claim to authenticity than the subsequent trial scene. At the same time, Aeschylus establishes a contrast between the perceived immediacy of experience and the artificiality of its legal retelling—a contrast with which recent discussions of the relationship between law and literature have been wrestling⁸—through a contrast in dramatic style, which reflects the tension between stylization and greater naturalism that was a feature of classical tragedy.

The brief scene in the *Libation Bearers* in which Orestes confronts his mother is unusual, even experimental, in its achievement of a kind of intensity and directness that depart from the normal stateliness of tragic presentation. While the scene does not include Orestes' actual killing of Clytemnestra, it builds to the point where that action is on the verge of occurring and, as one critic puts it comes "as near to on-stage murder as any Greek dramatist ever ventured."⁹ This directness is accompanied by a high degree of what might be called realism, meaning the kind of theatrical illusion that succeeds by obscuring its own artificiality, so that the audience easily believes that the events depicted are actually taking place. Several features of the scene contribute to this effect: one is its unusually rapid pace¹⁰; another is its suspensefulness—in the course of the scene Orestes is almost persuaded to change his mind about the matricide, and his plan is only reinstated through the surprising intervention of his companion Pylades. Pylades' intervention represents a virtuoso dramatic touch on Aeschylus' part: the use of a third speaking actor in tragedy had only recently been introduced by Sophocles, and the audience would have assumed that the man playing Pylades was

one of the mute figures who regularly populated the tragic stage.¹¹ Another important element in the scene's realism is its intimacy, which is promoted by another unusual touch, the apparent absence of the chorus from the center of the theatrical space (Taplin, *The Stagecraft of Aeschylus*, 348-49), and by constant evocation of an even more private space: the invisible interior of the house towards which Orestes forces his mother as the scene progresses.¹² The audience thus seems to witness in unmediated form an intimate, private encounter, which unfolds unpredictably before its eyes.

Among the most powerful aspects of the scene is its use of gesture. As soon as she encounters Orestes, Clytemnestra attempts to forestall his intended act of violence by baring one of her breasts.

Hold off, child. Have reverence, my son, before this
breast, at which many times, a drowsing baby,
you sucked in with your gums the nourishing milk. (896-98)

This surprising and spontaneous gesture strains the representational resources of the classical Greek theater, in which all the parts were played by men,¹³ to focus attention on a number of issues that might otherwise remain muted or obscure: the exposure of a normally hidden part of the body brings to light a series of normally hidden concerns. Foremost among these is the biological tie between mother and son. With her action, Clytemnestra forces upon Orestes a recognition of the blood relationship between them that he, as he prepares to violate that relationship, would prefer to ignore. She insists on that awareness on the part of a killer of his relationship to his victim that was later to make Aristotle so uncomfortable that he tried to banish it from tragedy. As she does so, she offers as a token of their bond a literal sign of Orestes' physical tie to her and presents that tie as nourishing and as creating obligation.

At the same time, Clytemnestra's exposure of her body brings into the scene an expression of the human susceptibility to such unruly physical sensations as erotic desire, impulses to violence, and vulnerability to pain that is identified in Greek tradition with the female body.¹⁴ The baring of Clytemnestra's breast thus also hints at a darker vision of human ties as the site of aggression and exploitation, a vision made explicit earlier in the account of Clytemnestra's dream, in which her nursing of Orestes makes her the victim of a blood-sucking snake (526-33, cf. 928-29).

While Greek tradition attempts to define human vulnerability as a feminine trait, it cannot be confined to women, but inevitably extends to men as well, so that Clytemnestra's gesture expresses Orestes' liability to suffering as well as her own. This is clear from the words with which she glosses it, recalling a time when he was defenseless and dependent and reminding him of his bodily frailty with a reference to a particular and (like her breast) particularly sensitive part of the body, his gums ("*ta oula*," a term found more often in medical treatises than in tragic poetry). Clytemnestra's gesture is thus a threat as well as a plea, appropriately for an action taken for the lack of an "*androkmes pelekus*," "a man-slaying ax" (889). She reminds her son of his own body, both in order to call forth a sense of indebtedness and to alert him to his vulnerability, specifically to revenge for her death. By insisting on the physical link between her life and his, she hints that his death will follow necessarily on hers as well.

The power of Clytemnestra's gesture is such that Orestes falters in his resolve, turning to his companion Pylades to ask, "Pylades, what should I do? Should I let shame keep me from killing my mother?" (899), acknowledging the relationship by referring to Clytemnestra as his mother for the first time in the play.¹⁵ Pylades counters Clytemnestra's appeal with a reference to Apollo and his commands and with an absolute standard of judgment that erases the special significance of Clytemnestra's maternity: "Consider anyone your enemy rather than the gods" (902). This speech restores Orestes to his resolve, and he becomes able to ignore the relationship to Clytemnestra that he has moments before acknowledged in his question to Pylades.

In responding to Pylades, Orestes not only prefers the abstract language and abstract principle that characterize legal discourse, but he actually anticipates the trial to come by putting himself in the position of a judge: "*krinō se nikan*," "I judge you to have presented the winning argument" (903). In doing so, he transforms the language that Clytemnestra has used as she called for the ax: "*eidōmen ei nikōmen e nikōmetha*," "I will find out whether I win or am defeated" (890). Clytemnestra's formulation characterizes their encounter as a physical confrontation in terms that are drawn from heroic epic: thus Hector, in a typical formulation, looks forward to the next day's battle with the words, "I will find out whether the mighty son of Tydeus, Diomedes, / will drive me

back from the ships to the wall, or whether I / cutting him down with my sword will carry off the bloody spoils" (*Iliad* 8.531-533). Orestes recasts the encounter as a trial in which he himself is not a combatant but a judge choosing between Clytemnestra's position and that of Apollo—precisely the choice that will be offered to the jurors in the actual trial to come. Thus he is able to ignore his own part in the matricide, replacing himself as Clytemnestra's opponent with the unrelated Pylades, himself in the role of Apollo's spokesman. This denial is repeated at the point when Orestes forces his mother into the house to be killed, and she once again insists on their relationship: "you seem, oh child, to be about to kill your mother" (922, one of several references to him as "teknon," "child" with which she reiterates their relationship throughout the dialogue. Cf. 896, 912, 920). He responds by disclaiming his own agency in the killing and thus his status as a matricide: "you will kill yourself, not I" (923; cf. 927). But while this interpretation may make it possible for him to carry out the act, it does not free him from the consequences of killing his mother, as his almost immediate haunting by the Erinyes, or Furies, makes clear.

Only when the trial has been invented as an institution and dictates the form of the dramatic action can the mitigating interpretation Orestes imposes on his matricide be ratified. The *Eumenides* offers a new way of representing Orestes' experience that alters its consequences, that prevents his violent act from being repeated with him as the victim. Orestes' confrontation with Clytemnestra is replayed in a new, public and Athenian setting and in a new, more stylized fashion. In contrast to the scene in the *Libation Bearers*, the trial in the *Eumenides* involves no suspense, no sense of a hidden realm to which the stage action is connected, and no feats of naturalistic illusion; it is not a simulated fragment of spontaneous experience, but a formal pageant. Even before Orestes arrives at Athens, Apollo promises him that there, gaining "judges for these matters and / enchanting words" they will find the mechanisms, the *mêchanai*, by which Orestes will be released from his troubles—a formulation that both eliminates suspense from the episode and identifies the trial as a form of linguistic artifice. Not only do significant changes in the setting and the cast of characters alter the nature of the confrontation so that it can be decisively resolved in Orestes' favor, but those changes become issues in the course of the trial, where many of the arguments advanced on Orestes' behalf serve to justify them. Legal anthropologists point out that the conditions under which disputes are aired may be as telling and consequential as the principles by which they are resolved:¹⁶ in the *Oresteia*, the two are indistinguishable.

One of the most significant ways in which the trial reshapes that earlier confrontation is through its altered cast of characters, and the arguments made in the course of it implicitly endorse that alteration. The scene in the *Libation Bearers* is a private encounter between mother and son with only Pylades, who is almost unnoticed until his one startling and momentous speech, as a witness. When, in the *Eumenides*, the scene shifts to the Areopagus, Clytemnestra is dead and cannot appear to press her claims in person, and so she is represented by the Erinyes. Orestes, on the other hand, is similarly represented by a divine supporter, the individual Olympian god Apollo, but is also himself present to speak on his own behalf. The cast of characters is further augmented by the figures who act as judges, the anonymous group of Athenian citizen jurors and the goddess Athena, who establishes the court, presides over the trial, and ultimately casts the deciding vote.

This repopulation of the stage in the present is implicitly justified by the arguments advanced to support an interpretation of the past favorable to Orestes. Clytemnestra's absence, which removes from consideration the concerns that in that earlier scene she insistently raised through the dramatic display of her body, is reinforced by arguments that deny both the particular bond between Orestes and Clytemnestra that she so graphically asserted and the significance of the female body in general.¹⁷ The relationship of mother and son is first called into question by Orestes himself when, responding to the Furies' explanation that they had not haunted Clytemnestra for her murder of Agamemnon because she had not killed a blood relative, he asks: "egô de mêtros tês emês en haimati," "Am I related to my mother by blood?" (606). The possibility raised by Orestes' question of denying a blood tie between mother and child recurs in the form of an established principle as Apollo argues that the mother makes no biological contribution to the child and so is unrelated to it.

The one who is called the mother of the child is not
its begetter, but only a nurse to the newly sown child;
The one who mounts is the begetter. She, like a stranger,
preserves a stranger's offspring, unless a god does it harm. (658-61)

This line of argument is then ratified by Athena herself when she makes the final decision in Orestes' favor on the basis of her own exclusive relationship to her father (734-41). The trial proclaims the irrelevance of the female figure who is excluded from it and retrospectively dissolves the kinship between Orestes and his victim, thereby absolving him of the consequences of killing a relative. Thus it achieves the same effect as the tragic plot of mistaken identity favored by Aristotle, in which ignorance of a relationship makes a kin murder unintentional—although, in this case, without drawing on that mitigating legal criterion.

On the other hand, Orestes' actual presence empowers him by allowing him to speak for himself in this highly privileged context. That power is derived in part from the severing of his tie to his dead mother.¹⁸ As he explains to Athena, the rituals of purification that he has undergone have restored to him a previously forfeited right to speak, so that he is no longer "*aphthoggos*," "voiceless" (448; cf. 276-279). His possession of a voice allows him not only to question his relationship to his mother as he does in the line quoted above, but also more generally to shape the version of the past and of his own connection to it that emerges in the course of the trial. Thus in the initial questioning he identifies himself to Athena as an Argive and as the son of his father, and immediately follows this self-presentation with a pointed account of Agamemnon's murder by Clytemnestra and, more briefly, of his own retaliation, which emphasizes the treachery of her act and the dutifulness of his response (455-64). Orestes' account of Agamemnon's death is echoed by Apollo later in the trial, explicitly for the purpose of inciting the jurors against Clytemnestra (631-39), so that this one event, with its reiterated details (the deceptive bath, the entangling robe), becomes canonized as the most significant occurrence of the past.

Orestes' new role as speaker in a public setting accompanies his emergence as a public figure in other ways as well. His potential role as a military ally for Athens is stressed throughout the trial, an emphasis that shifts the grounds for a decision away from the defendant's undeniable crime of the past to his possible future services to the city. As in the case of Clytemnestra's absence, this tacit strategy is reinforced by explicit arguments. Thus Apollo contends that Agamemnon's role as a military leader makes his murder a more serious offense than that of his wife: "It is not the same thing for a noble man to die, / one honored by scepters granted by the gods" (625-26). This valuation of the father paves the way for the redefinition of the son as a political leader, of more concern to Athens for his public role as a military ally than for the past problems of his family.

This revaluation of the human characters is reinforced by the presence of divinities. Those divinities represent the human characters—in Clytemnestra's case by replacing her, in Orestes' case, by seconding him—in both a legal and a poetic sense: their role as legal advocates enacts a metaphoric process by which dissimilar entities are identified.¹⁹ This process is clearly disadvantageous to Clytemnestra. In the scenes leading up to the trial, the Furies are defined by Athena as neither gods nor humans (410-12) and characterized both by Apollo's priestess and by Apollo himself as repulsive embodiments of darkness, decay, and vengeful violence (46-59, 69-73, 185-95). Thus the figure of Clytemnestra is effectively reworked through a combination of caricature²⁰ and allegory, replaced by figures who incarnate Orestes' abstract identification of her as "*patroktionon miasma kai theon stugon*," "fatherkilling pollution and what is hated by the gods" (*Libation Bearers* 1028, cf. *Eumenides* 73, 644).

Furthermore, the creatures who take Clytemnestra's place are not only allegorical but overtly malleable, undergoing a gradual transformation in the course of the play from malevolent Furies to propitious goddesses plausibly labeled "Eumenides," or "Beneficent Ones."²¹ Their difference from Clytemnestra means not only that they cannot represent her without distortion, but also that they have interests of their own that may diverge from hers. Thus much of their concern as they champion her position is explicitly for their own threatened office and its attendant honor. This is most pointedly obvious at the moment when the votes are being counted and both sides give voice to their anxiety in closely similar terms: Orestes conceives of the decision as meaning for him the difference between death by the noose and life (746), the Furies as meaning for them the difference between obliteration and even greater honor (747). This concern for their own honor eventually detaches them from Clytemnestra's cause and allows them to accept the acquittal of her killer. Indeed, as they are transformed into benign deities who safeguard the city of Athens, they come to resemble their former adversary and Athens' ally Orestes more closely than they do Clytemnestra.

On the other hand, Apollo's appearance at Orestes' side—expressed in legal terms by his assuming the role of "*martus*," "witness" and "*sundikos*," "advocate" on Orestes' behalf (576-580)—instantiates Orestes' most compelling line of defense, his claim that in killing his mother he was acting in concert with a god. The backing of Apollo, present in the earlier scene only as an allusion made by the human figure Pylades, is now visibly dramatized. Furthermore, the identification of Clytemnestra with the Furies and Orestes with Apollo aligns their arguably equal conflict with an ideologically loaded cosmic struggle between older gods and younger gods in which the certain victory of the younger gods is associated with civilization and progress. And, finally, the transposition of human issues into a divine sphere allows them to be decided without reference to the peculiar constraints of mortal existence.

Like the other transformations in the cast of characters, this substitution of gods for mortals is made an explicit issue of the trial. Although Apollo first takes the Furies to task for attempting such a transposition, he himself supports his argument with a divine example, pointing to Athena as a "*tekmêrion*," "proof" (662), and "*martus*," "witness" (664) of his claim that the child owes nothing to the mother. Orestes' liberation from the consequences of his biological tie to his mother is secured by a comparison to a motherless figure who, being a goddess, is not subject to the constraints of human biology (Zeitlin, "The Dynamics of Misogyny," 183-84). After all, even Apollo's biological argument gives the mother an important and honorable role as a "*xenê*," "stranger" but also "host," who may not actually create, but does nourish and preserve the new child. A little later in the dialogue the Furies again draw attention to this shift by comparing Apollo's projected rescue of Orestes to another occasion when he contravened the principle he has just evoked: that human life, once lost, can never be restored (his extension of the life of a mortal favorite, Admetus, past its destined limit when, as the Furies put it, "you persuaded the Fates to make mortals immortal" [724]). The Furies' language captures well the process permitted by the trial, the use of persuasion to reshape mortal experience according to an immortal model, and when they go on to specify that this episode of persuasion took the form of making the Fates drunk, they bring out the element of enchantment or guileful manipulation that is present in verbal persuasion as well.

The trial thus takes the complexly motivated and finely balanced conflict between the two figures who confronted each other in the previous play (according to Clytemnestra's vision of it, like two heroic opponents in a single combat) and "narrows" it (Mather and Yngvesson 783-97); it restages that conflict with the aid of devices that already imply a resolution in Orestes' favor. It places a new valuation on each of the characters and obliterates the relationship between them that gave Orestes' action its horrifying, irremediable character, achieving the denial of Orestes' matricide that he, in that earlier scene, could only vainly attempt. The arguments that surface in this process are not legal principles that would have applied in an actual Athenian court, where Orestes' murder of Clytemnestra could not have legally gone unpunished (Gagarin 76-77), but unusually stark statements of the biases that govern the public, political sphere in which the decision is set and whose interests it serves. These are, above all, the values of a city in a perpetual state of preparation for war, the condition of Athens and of all Greek cities in the classical period, and a condition that enforces a high estimation of martial virtues, an aversion to internal dissension, and a sharp polarization of gender roles with a marked sense of the superiority of men to women. In this exemplary representation of trial, as the need to adjudicate action calls forth rationalizations of normally unexamined behavior, those biases express themselves in such statements as the death of a military leader is more serious than the death of his wife, or a mother has no significant relationship to her child. These statements replace the arguments that would have been used in an actual trial with explicit justifications of the social configuration that actual trials reinforced through the absence of women, who had no legal standing and had to be represented by others, through litigants' stress on their service to the city as a factor that should weigh in their favor, and through speakers' appeals to a vision of themselves and the jurors as a united group of harmonious and public-spirited citizens.²²

The trial of Orestes celebrates the city of Athens by showing that its most venerable council, the Areopagus, can resolve the problems of the House of Atreus and, furthermore, that its own structuring principles are the key to that resolution. The identification of this civic institution with the elimination of conflict is strengthened by the fact that this inaugural case concerns the sexual and generational tensions of a foreign household, so that the jurors are themselves dissociated from the dispute they resolve. Enacting the legal principle that conflicts should be settled by dispassionate

outsiders, Aeschylus portrays the representative Athenian citizens who form the jury as outsiders to conflict. Like actual trials, which often promote the interests of those who adjudicate them as well as those of the actual litigants (Mather and Yngvesson 777-78, 788), the mythical trial of Orestes is as much about those jurors as it is about the litigants whose conflict brings them together. It gives those litigants a forum for expressing their antagonistic positions—it gives them their day in court—but it also serves to remove them from view. After the judgment, Orestes leaves to take up his rightful position in Argos and, once Athena has persuaded them to accept the outcome, the Furies are escorted offstage to their new, unseen place of honor. Future possession of the theatrical space is reserved for the undifferentiated and peaceful citizens represented by the jurors.

This mythical scenario portrays a situation very different from the actual conditions of Athens in the years leading up to the production of the trilogy, which involved intense and violent conflict between opposed factions of male citizens.²³ Among the issues at stake was the role of the Areopagus itself, which as a council of former magistrates was associated with oligarchic, anti-democratic interests. The murder that was on the minds of Athenians when the *Oresteia* was produced in 458 was not the murder of Clytemnestra, but the murder of Ephialtes, the pro-democratic author of controversial political reforms that included curtailing the power of the Areopagus by limiting it to the adjudication of cases of murder, wounding, and poisoning. By dramatizing the ancient and glorious origins of this one remaining function, Aeschylus avoids taking sides on the issue of the Areopagus (although other features of the *Eumenides* suggest sympathy with the foreign policy of the democratic faction) and is able to present it as the medium of social harmony rather than the source of strife. The choice of Orestes' murder of Clytemnestra as the original event to be adjudicated allows for the displacement of political conflict onto the family, where it can be reduced to sexual difference and resolved through the invocation of a supposedly natural hierarchy. The family is further presented as a foreign entity, of interest primarily for the military assistance provided by its securely established male head; for Athens, the family becomes the useful vehicle of elite international networking even in the context of a democratic city,²⁴ but not the site of internal strife. The capacity for violence that Orestes has exhibited in killing his mother is acknowledged but also reassessed in light of its possible value in military expeditions against a common external enemy. Through its progression from crime to trial, the *Oresteia*, like most tragedies, implies that it is on the threshold of the house—a private space inhabited by women as well as men—that violence and passion are to be found, and that the public arena of the city is the site of dispassionate assessment and resolution.

This opposition is reinforced by the shift in dramatic technique between the brief, intense scene in the *Libation Bearers* and the more elaborate and much more highly stylized trial scene. The stylization of the scene is evident, not only in the lack of suspense and the "surreal" (Herington, *Aeschylus* 142, 147) presence of divinities already discussed, but in the orderliness of its only significant gesture. This is the jurors' placement of the voting pebbles in the urn, a recurrent, predictable gesture whose significance is muted by Athena's announcement that she will, if necessary, cast a deciding vote in Orestes' favor. The similarity of each juror's gesture masks the function of the vote as a measure of difference, obscuring the fact that half the jurors are expressing a position sharply opposed to that of the other half. This effect contrasts markedly with Clytemnestra's display of her breast, an unmistakable marker of sexual difference.

With this increase in stylization, the distinction between the action represented and the artificial means by which it is presented—a distinction that a more naturalistic dramatic mode seeks to conceal—disappears. Once the action takes the form of a trial, there is less of a distinction to conceal. The trial is both a familiar event of contemporary life, so that the playwright no longer has to create the illusion of a remote time and distant place, and inherently like a theatrical performance. Thus in the trial scene of the *Eumenides* the conditions of the action virtually merge with the conventions of tragic form. The episode is sharply marked off by a change of scene that locates the action in the same city and in a similar space as that in which the performance is taking place. The thematically important absence from the scene of any human female figure corresponds to the lack of any actual women among the performers.

The speech through which Orestes presses the advantage of his continued presence also replicates the conditions of theatrical performance. In the context of the trial, he is able to speak with

detachment about his matricide, so that three times in the course of it he affirms without hesitation or difficulty what he found it so inhibiting to acknowledge at the time of the deed: "I killed the one who bore me, I will not deny it" (463; cf. 588, 611). In other words, he experiences a discontinuity between the event itself and its retrospective recreation in speech comparable to that between the action a drama imitates and its recreation on stage by an actor. As he employs the freedom to speak regained during his offstage purification, Orestes is uncontaminated by the action he has performed: like an actor, he testifies to the possibility of unsanctioned violence without having to bear its actual consequences. Additionally, the choral dimension of tragic performance is foregrounded as the original chorus becomes one of the main protagonists and a further collectivity is introduced to represent the jurors; those jurors serve as an internal audience that resembles the actual audience of the play.²⁵ When at the play's conclusion the exit of the chorus becomes the culminating event of the plot, as the Furies are escorted offstage to their new homes, the distinction between play and performance is virtually obliterated. With that final choral exit, the action of the play is assimilated not only to the tragic performance itself but also to the larger context of civic and religious festival in which such performances were situated. The procession in which the Furies are escorted by Athenian citizens recalls the processions that were part of many festivals, including both the Dionysia, the festival during which tragedies were performed, and the Panathenaia, the annual festival in honor of Athena at which Athenian greatness was celebrated.²⁶ Similarly, the acting out of a decision in favor of civic and military values connects the trial scene thematically to the public ceremonies that regularly preceded the dramatic performances. Those ceremonies included the parading in armor of the orphans of war heroes, which is essentially the role in which Orestes casts himself in his initial approach to Athena.²⁷

To the extent that the conclusion of the plot can be identified with resolution of the issues it raises, the *Oresteia* resolves tragedy's perennial tension between relatively direct and more highly mediated presentation of conflict and suffering in favor of the marked artificiality that is associated with the legal trial. This resolution foregrounds a vision of tragic drama as a social ritual closely continuous with the civic and religious ceremonial that surrounded its performance and analogous to other social rituals such as the trial. This vision identifies tragedy firmly with its institutional function of expressing and celebrating social harmony by exposing disruptive behavior only under conditions in which it is already under control. Through the shift in dramatic styles entailed by the trial scene, the *Eumenides* links that vision to tragedy's limited realism, implying that tragedy best fulfills its social function of making transgressive action presentable if that action is evoked allusively rather than enacted directly and if it is filtered through categories of evaluation that privilege public and political concerns. The progression of the *Oresteia's* plot toward the founding of the law court represents a return to origins in dramaturgical as well as in political terms, a retreat from the increasing naturalism in tragic presentation that Aeschylus himself pioneered and that was further developed by both Sophocles and Euripides. And yet the vision of tragedy endorsed by the *Oresteia's* conclusion is also qualified by scenes such as the one in which Clytemnestra bares her breast—especially given that many contemporary readers of the trilogy find its ending to be its least compelling part.²⁸ That episode is no less the product of artifice, and the seemingly unprogrammed behavior it depicts has its own elements of staginess: Clytemnestra, as we have seen, expresses herself in a literary language, the idiom of Homeric epic, and the compelling testimony of her breast is undercut by the appearance elsewhere in the same play of the nurse who actually fed the infant Orestes. But the playwright's designs are here aimed at creating an illusion of greater authenticity through effects of spontaneity, intimacy, and disclosure. Through its display of the female body, its expressions of open hostility, and its depiction of wavering male resolve, this episode asserts an inescapable reality for those pressures towards transgression and misrule that the trials and dramas of classical Athenian culture labored to transcend.

Notes

¹ On the relationship in general, see Milner S. Ball, "The Play's the Thing: An Unscientific Reflection on Courts under the Rubric of Theater," *Stanford Law Review* 28 (1975), 81-115; Herbert Lindenberger, *Historical Drama* (Chicago: University of Chicago Press, 1973), 21-23; W. Moelwyn Merchant, "Lawyer and Actor: Process of Law in Elizabethan Drama," *English Studies Today* 3 (1962), 107-24; Richard A. Posner,

- Law and Literature: A Misunderstood Relation* (Cambridge: Harvard University Press, 1988), 9; Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985), 297-304; John E. Simonett, "The Trial as One of the Performing Arts," *American Bar Association Journal* 52 (1966), 1145-47. On the connections between classical Athenian tragedy and the language and procedures of the courts, see Louis Gernet, *Recherches sur la développement de la pensée juridique et morale en Grèce* (Paris, 1917); H. G. Robertson, "Legal Expressions and Ideas of Justice in Aeschylus," *Classical Philology* 34 (1939) 209-19; Georgia Xanthakis-Karamanos, "The Influence of Rhetoric on Fourth-Century Tragedy," *Classical Quarterly* n.s. 29 (1979) 66-79; Jean-Pierre Vernant, "Intimations of the Will in Greek Tragedy," in Jean-Pierre Vernant and Pierre Vidal-Naquet, *Tragedy and Myth in Ancient Greece* (trans. Janet Lloyd, Atlantic Highlands, 1981), 28-62; Richard Garner, *Law and Society in Classical Athens* (London: St Martin's, 1987), 95-130; Kathy Eden, *Poetic and Legal Fiction in the Aristotelian Tradition* (Princeton: Princeton University Press, 1986), 7-23; Josiah Ober, *Mass and Elite in Democratic Athens* (Princeton: Princeton University Press, 1989); Josiah Ober and Barry Strauss, "Drama, Political Rhetoric, and the Discourse of Athenian Democracy," in Winkler and Zeitlin, ed., *Nothing to Do with Dionysos?*, 237-70; S. C. Humphreys, *The Family, Women, and Death* (2nd ed., Ann Arbor: The University of Michigan Press, 1993), 9; Edith Hall, "Lawcourt Dramas: The Power of Performance in Greek Forensic Oratory," *Bulletin of the Institute of Classical Studies* 40 (1995) 39-58.
- ² On this process, see W. Lance Bennett and Martha S. Feldman, *Reconstructing Reality in the Courtroom* (New Brunswick, 1981); Lynn Mather and Barbara Yngvesson, "Language, Audience and the Transformation of Disputes," *Law and Society Review* 15 (1980-81) 775-821. On the role of metaphor and illusion in courtroom reenactments, see Ball, "The Play's the Thing," 90-93.
- ³ That is, at least, what trials are theoretically supposed to achieve. For the argument that, in fourth century Athens, trials were not actually occasions for the resolution of conflicts but rather stages in the evolution of ongoing disputes that originated elsewhere and were continued elsewhere, see David Cohen, *Law, Violence, and Community in Ancient Athens* (Cambridge: Cambridge University Press, 1995).
- ⁴ Froma Zeitlin, "Thebes: Theater of Self and Society," *Greek Tragedy and Political Theory*, ed. J. Peter Euben (Berkeley: University of California Press, 1986), 101-41. Reprinted John J. Winkler and Froma Zeitlin, ed. *Nothing to Do with Dionysos?* (Princeton: Princeton University Press, 1990), 130-67.
- ⁵ See Jonas Barish, *The Anti-Theatrical Prejudice* (Berkeley: University of California Press, 1981), 29-31.
- ⁶ On the importance of intention in classical Athenian homicide law, see D. M. MacDowell, *Athenian Homicide Law in the Age of the Orators* (Manchester, 1963), 47; Vernant, "Intimations of the Will in Greek Tragedy."
- ⁷ This point is elaborated in Sheila Murnaghan, "Sucking the Juice Without Biting the Rind: Aristotle and Tragic Mimesis," *New Literary History* 26 (1995), 755-73.
- ⁸ The question of how meaningful this contrast actually is comes up repeatedly in the recent collection, *Law's Stories: Narrative and Rhetoric in the Law* (ed. Peter Brooks and Paul Gewirtz, New Haven: Yale University Press, 1996).
- ⁹ John Herington, *Poetry into Drama: Early Tragedy and the Greek Poetic Tradition* (Berkeley: University of California Press, 1985), 148.
- ¹⁰ Oliver Taplin, *The Stagecraft of Aeschylus* (Oxford: Oxford University Press, 1977) 349, 351-53.
- ¹¹ Bernard Knox, "Aeschylus and the Third Actor," *American Journal of Philology* 93 (1972), 104-24, reprinted *Word and Action: Essays on the Ancient Theater* (Baltimore: Johns Hopkins University Press, 1979), 39-55.
- ¹² For an evocative account of how the convention of stichomythia (dialogue exchange of single lines) is employed at 908-30 to draw the audience into the unseen space where the action will be completed, see Herington, *Poetry into Drama*, 272 n. 82.
- ¹³ The difficulty of staging the baring of a breast, especially with a male actor, leads one expert, Oliver Taplin, to doubt that it was even attempted. *Greek Tragedy in Action* (Berkeley: University of California Press, 1979), 61. Against this view, see Alan H. Sommerstein, "Notes on the *Oresteia*," *Bulletin of the Institute for Classical Studies* 27 (1980): 74 n. 32. What is important is not exactly how this was enacted (J. Michael Walton suggests simply "a gesture towards the costume." *Greek Theatre Practice* [Westport Ct., 1980], 191), but what the playwright wanted his audience to think had happened before their eyes.
- ¹⁴ For further discussion of Clytemnestra's gesture and other episodes of breast-baring in Greek literature, see Sheila Murnaghan, "Body and Voice in Greek Tragedy," *Yale Journal of Criticism* 1.2 (1988), 31-33. On the female body as the paradigmatic site of human suffering, see Nicole Loraux, "Bed and War," *The Experiences*

- of *Tiresias* (trans. Paula Wissing, Princeton: Princeton University Press, 1995) 23-43; Ruth Padel, "Women: Model for Possession by Greek Daemons," *Images of Women in Antiquity*, (ed. by Averil Cameron and Amelie Kuhrt, Detroit: Wayne State University Press, 1983), 3-19. Froma I. Zeitlin, "Playing the Other: Theater, Theatricality, and the Feminine in Greek Drama," *Representations* 11 (1985), 63-94; reprinted *Playing the Other: Gender and Society in Classical Greek Literature* (Chicago: University of Chicago Press, 1996), 341-74.
- ¹⁵ Anne Lebeck, *The Oresteia* (Washington: The Center for Hellenic Studies, 1971), 123.
- ¹⁶ Donald Brenneis, "Telling Troubles: Narrative, Conflict and Experience," *Anthropological Linguistics* 30 (1988) 279-91; John L. Comaroff and Simon Roberts, *Rules and Processes* (Chicago: University of Chicago Press, 1981), 13-15; John M. Conley and William M. O'Barr, *Rules versus Relationships: The Ethnography of Legal Discourse* (Chicago: University of Chicago Press, 1990); Mather and Yngvesson, 777, 818.
- ¹⁷ On the sexual politics of the trilogy, see Michael Gagarin, *Aeschylean Drama* (Berkeley: University of California Press, 1976), 87-105; R. P. Winnington-Ingram, *Studies in Aeschylus* (Cambridge: Cambridge University Press, 1983), 101-31; Froma I. Zeitlin, "The Dynamics of Misogyny: Myth and Mythmaking in the *Oresteia*," John Peradotto and J.P. Sullivan ed., *Women in the Ancient World: The Arethusa Papers* (Albany: State University of New York Press, 1984), 170-82; reprinted *Playing the Other*, 87-119.
- ¹⁸ For an account of how Orestes' experiences in the *Oresteia* parallel a rite of initiation which involves the separation of the son from the mother, see Zeitlin, "The Dynamics of Misogyny," 170-82.
- ¹⁹ On the connection between legal advocacy and metaphor, see Ball, "The Play's the Thing," 89-97.
- ²⁰ On literary caricature as a model for the way people are presented in legal contexts, see James Boyd White, *The Legal Imagination* (Chicago: University of Chicago Press, 1985), 144ff.
- ²¹ The name "Eumenides" does not actually occur in the play, but both the title and the information given in the summary composed in the later Alexandrian period suggest that the Furies' conversion into "Semnai," "Holy Ones," (1041) also earned them the name "Eumenides." This process of transformation is traced in detail by Lebeck, 145-49.
- ²² On the classical Athenian legal system, see Douglas MacDowell, *The Law in Classical Athens* (Ithaca: Cornell University Press, 1978); S.C. Todd, *The Shape of Athenian Law* (Oxford: Clarendon Press, 1993); Stephen Johnstone, *Disputes and Democracy: The Consequences of Litigation in Ancient Athens* (Austin: University of Texas Press, forthcoming).
- ²³ For a good summary, see Alan H. Sommerstein, *Aeschylus, Eumenides* (Cambridge: Cambridge University Press, 1989), 25-32.
- ²⁴ Mark Griffith, "Brilliant Dynasts: Power and Politics in the *Oresteia*," *Classical Antiquity* 14 (1995), 62-129.
- ²⁵ Oliver Taplin, following the nineteenth century German scholar Hermann, suggests that the jurors were played by a supplementary chorus that then became the group of citizens escorting the chorus offstage at the end. *The Stagecraft of Aeschylus*, 392-93; 410-11. He also points out that Athena's address to the jurors as "people of Attica" (681) is the place where surviving tragedy comes closest to an explicit acknowledgement of the world of the audience or of the fact that the play is a play (394-95). On the assimilation of jurors and audience, see also Griffith 77-78.
- ²⁶ For the details of that resemblance, see Walter Headlam, "The Last Scene of the *Eumenides*," *The Journal of Hellenic Studies* 26 (1906), 268-77.
- ²⁷ For an account of what is known about these ceremonies, see A. Pickard-Cambridge, *The Dramatic Festivals of Athens*, 2nd ed., rev. John Gould and D. M. Lewis (Oxford: The Clarendon Press, 1968), 57-67. On their ideological import and of the tension between that ideology and the questioning character of tragedy, see Simon Goldhill, "The Great Dionysia and Civic Ideology," *The Journal of Hellenic Studies* 107 (1987), 58-76, reprinted Winkler and Zeitlin, ed., *Nothing to Do with Dionysos?*, 97-129. For a suggestive, if speculative, case for even closer links between entrance into military service and the constitution of the tragic festival, see John J. Winkler, "The Ephebes' Song: *Tragoidia* and *Polis*," *Representations* 11 (1985), 26-62; reprinted Winkler and Zeitlin 20-62.
- ²⁸ Anne Lebeck in her pioneering and highly sympathetic study of the *Oresteia's* imagery can only make sense of the trial scene by labeling it a parody. Lebeck, *The Oresteia*, 134-36. For an argument in favor of reading and performing the trilogy in a way that gives the greater weight to that scene with Clytemnestra, see Maria Aristodemou, "The Seduction of Mimesis: Theatre as Woman and the Play of Difference and Excess in Aeschylus' *Oresteia*," forthcoming in *Cardozo Studies in Law and Literature*.