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2015

## Gender, Democracy, and the Justice of Athena's Vote to Acquit Orestes

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### Recommended Citation

Long, Jacqueline. Gender, Democracy, and the Justice of Athena's Vote to Acquit Orestes. Text & Presentation, 12, : 57-69, 2015. Retrieved from Loyola eCommons, Classical Studies: Faculty Publications and Other Works,

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# Gender, Democracy, and the Justice of Athena's Vote to Acquit Orestes

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JACQUELINE LONG

## Abstract

*This essay examines closely how Athena by chartering the Areopagus court resolves the succession of violence on which Aeschylus centered his Oresteia. Neither historical nor dramatic and poetic conventions determine whether Athena calls an odd or even number of human jurors, and does or does not vote with them to create their acquitting tie. The interaction of "Orestes', the Erinyes', and Apollo's arguments," together with Athena's reactions, demonstrates that an even-numbered human jury splits equally over whether a human child owes duty more to father or mother. Athena's birth bars her from testing this question on her own sensibility and her celibacy prevents her from testing Clytaemnestra's guilt. Instead she turns to social values. Since judgment of individuals levels out inconclusively, the democratic jury Athena institutes deflects outrage at its verdicts. Similarly, Athena's rule tied jury-votes acquit maximizes satisfaction for the human community within which a case is judged.*

Violence and justice braid together Aeschylus's *Oresteia*. The first two plays of the trilogy unfold its traditional story<sup>1</sup> in terms of retribution and familial obligation: Clytaemnestra says she killed Agamemnon in reprisal for her child (*Ag.* 1413–25), Aegisthus for his father (*Ag.* 1579–611), and Orestes avenges his father on them in turn (*Cho.* 269–305, 925; *Eum.* 455–67). Each claim links its revenge to prerogative to dwell in a homeland (*Ag.* 1419–20, 1583–90, 1605–9, *Cho.* 286–90, 299–305, *Eum.* 462–64), extending familial connotations to country, yet in mid-action the third play, *Eumenides*, transfers

the problem of redressing wrongs from the Atreides' native Argos to Athens. Aeschylus's geographical shift thus rooted a political charter in his own and his audience's city-state.<sup>2</sup> The *Eumenides* opens at Apollo's shrine at Delphi. As the oracle bade Orestes kill, his journey back to it closes a loop in time: Delphi will now see his blood-shedding purified. Yet the ritual does not free Orestes to take possession of his ancestral realm and his own future, despite the Chorus's assurance at the end of the *Choephoroe* (*Cho.* 1059–60). Primordial embodiments of retribution, Erinyes, still pursue him. Apollo is obliged to refer Orestes to Athena (*Eum.* 79–84, 224). When the action moves to Athens, Athena moves to meet it. In coming from the act of possessing land assigned her by the Achaeans as a prize of their victory at Troy (*Eum.* 397–402), she closes a larger loop in time by recapitulating the journeys in *Agamemnon* of Clytaemnestra's beacons and of Agamemnon and his entourage. Athena however goes to Athens. As she dislocates Agamemnon's return from Troy, she makes space to correct Agamemnon's disastrous homecoming: when the Athenian jury resolves Orestes' succession to Agamemnon Athena reintegrates the Greek victors' legacy at home. Athens becomes the place where conquest and retribution find stable resolution. And at Athens the decision that restores Orestes to his father's kingdom inaugurates a novel process of justice.<sup>3</sup>

Justice is reconfigured in stages across the *Oresteia*. Reactive, punitive forces drive action from long before Agamemnon's death; the Chorus characterizes the Trojan War itself as punitive (e.g., *Ag.* 40–62). Only Cassandra's prophetic image of a coping-stone makes any suggestion retribution could ever find an end (*Ag.* 1280–85). The vengeance Cassandra foretells is realized in the *Choephoroe*, then spirits of retribution swiftly beset that avenger (*Cho.* 1048–62). Yet whereas the first conspirators Clytaemnestra and Aegisthus both focus so much on their individual grievances they occlude one another as they each assert a virtually solitary revenge,<sup>4</sup> in the Great Kommos Electra and Orestes cooperate to invoke Agamemnon's spirit. They begin to repair the family Clytaemnestra and Aegisthus sundered<sup>5</sup>: more than punishment is at stake. Renewal is moved to Athens in the *Eumenides* and enlarged when Athena, reconciling the Erinyes to Orestes' acquittal, converts them to nurturers. The procession that installs them near the Areopagus and inaugurates their worship as the Semnai Theai<sup>6</sup> swells the denouement to celebration.

The pivotal action of Orestes' trial, however, is harder to trace in Aeschylus's script than the trajectory of his large themes. The jurors' vote is tied. The fact puts into action Athena's declaration that Orestes wins his case even if the votes split equally: it makes the trial a charter-myth for this judicial rule.<sup>7</sup> Within the play the tie vote is part of the truth to which the Erinyes must be reconciled. They rail that acquitting Orestes dishonors them.<sup>8</sup> Athena's first answer is that they were not defeated, but a tie vote yielded a true verdict and

did them no dishonor (*Eum.* 795–96). The nature of the tie colors Athena's assertion and the trilogy's ultimate resolution. Modern scholars disagree whether Athena's declaration of approval for Orestes' case, which she describes as "adding a vote to" him ( $\psi\eta\phi\omicron\nu\delta' \text{ } \text{O}\rho\acute{\epsilon}\sigma\tau\eta\iota \text{ } \tau\eta\nu\delta' \text{ } \acute{\epsilon}\gamma\omega \text{ } \pi\rho\omicron\sigma\theta\eta\sigma\omicron\mu\alpha\iota$ , *Eum.* 735), means that she is voting as a member of the jury or, as presiding goddess, describing her provision for an evenly divided jury-vote.<sup>9</sup> Obviously the presence in the performance of ten or eleven or twelve or fifteen or some other number of human jurors would show viewers whether Athena's vote was or was not part of the equal tally.<sup>10</sup> But the text does not say. The jurors are silent characters. No other character counts them. Axiomatically, ancient scripts deliver information that their playwrights considered important to interpretation, or else rely on audiences' contextual knowledge. The number of jurors and Athena's role in relationship to them should have been obvious.

Whereas other juries of Classical Athens were constituted with odd numbers of jurors, the Areopagus council that in Aeschylus's day judged cases of homicide *ek pronoias* had membership variably odd or even.<sup>11</sup> At least since Solon's reforms in 594 B.C., the men who held the office of *archon* joined the council after their year in office and served on it for life.<sup>12</sup> Demographic estimates put the Areopagites' total perhaps over two hundred in the fifth century.<sup>13</sup> Practical necessity must have made the jury within *Eumenides* a token number, signifying rather than reproducing such a sum. History does not limit the choice of staging for Athena's jury.<sup>14</sup>

Attested conditions of staging also fail to guarantee a specific number for the jury in *Eumenides*. There is no necessity the jury equaled the number of the chorus, for example.<sup>15</sup> Nor is it assured that the ten couplets exchanged by the Chorus and Apollo plus a final three lines by the Chorus (*Eum.* 711–33), after Athena charges the jurors and before she states her own view, correspond to the number of jurors.<sup>16</sup> The passage must be when the jurors vote. Having assembled "the best of [her] townsmen" in order herself to decide Orestes' and the Erinyes' case, Athena now identifies them as judges when she formally ordains the eternal format of trials for murder. Postponing her ordinance to the point the jurors vote marks their act as the crux of the new institution: Athena transfers authority to the court.<sup>17</sup> By holding back her own judgment while her people vote, whether she votes as the last juror or comments outside the voting, Athena keeps her preeminence as patron goddess from any risk of swaying them. The exemplary citizens' collective judgment determines the verdict. But only arbitrary assumption, not evidence, determines the ratio of jurors to lines. The final triplet changes the pace of any assumption built on couplets, but does not guarantee any more human jurors vote or only Athena: possible stagings can be envisaged for different numbers of jurors, without proving anything. Moreover the demonstrative "this" of

Athena's "add[ed] vote" in Orestes' favor (*Eum.* 735) could as easily refer to her next utterance, the rule for tie votes,<sup>18</sup> as to a voting-pebble she casts, if her "vote" is metaphorical rather than a physical prop. No mechanical formula of the text fixes the number of jurors or Athena's role.

Instead, the process Aeschylus's text leaves open for Athena's jurymen to come to their collectivized decision forms the soundest basis for understanding the number of the jury, the nature of Athena's "vote," and the principles of justice on which Aeschylus turned the *Oresteia*. The trial develops a dispute about kinship and culpability. It elucidates the Erinyes' fixed position, their steady imperative to punish Orestes, as Orestes and Apollo propose and explore bases on which to justify Orestes' action. Orestes never denies he killed Clytaemnestra. His violence, like her own and that of Aegisthus, repays a debt of violence each perpetrator feels to be a familial legacy. Against the Erinyes' prosecution Orestes defends himself by the authority of Apollo's oracle and by Agamemnon (*Eum.* 587–88, 593–94, 609–13). The Erinyes do not regard this oracular authority. They mock Orestes for calling on a corpse (*Eum.* 599), but he means his duty to avenge his father's death was greater than his duty not to cause his mother's. He avoids comparing his filial choices directly in terms of gender.<sup>19</sup> Instead he relies on addition: he contends Clytaemnestra "had the trace of two pollutions" because by killing Agamemnon she violated two relationships, hers with her husband and Orestes' with his father (δυσὶν γὰρ εἶχε προσβολὰς μiasμάτων, *Eum.* 600; 602). Only the second aspect of the crime makes it Orestes' business, but the Erinyes understand he is measuring Clytaemnestra's guilt against his own, for they object that he is alive whereas "by murder she is free" (ἡ δ' ἐλευθέρα φόνωι, *Eum.* 603). Implicitly they concede Clytaemnestra was accountable, although not for murder aggravated in the way with which they are concerned. They do not, however, go along with Orestes so far as to do sums. Their answer indicates they care only that a crime remains unanswered. Unlike Orestes or the human community at Athens Athena implicates in her decision, the Erinyes are not upset by a succession of vengeance: when one perpetrator suffers, they move on to the next violator of their rules.

Orestes invokes an abstract concept of fairness when he complains the Erinyes did not pursue Clytaemnestra for killing Agamemnon. They reply Clytaemnestra did not share blood-kinship with her victim (*Eum.* 605). Here the argument enters grounds of parentage where gender operates, although the parties recognize its operation differently. Blood ties define Erinyes' interests throughout the *Oresteia*. Clytaemnestra refers to an Erinyes for Iphigeneia (*Ag.* 1432–33). In *Choephoroe* Orestes states that Apollo's oracle threatened him with paternal Erinyes if he failed to pay back Agamemnon's murder (*Cho.* 269–84). This connection guarantees that his decision in that play is a true dilemma: he faces the identical retribution for not vindicating his father's

death as he does for punishing his mother. The chorus of Erinyes in *Eumenides* does not deny it. They declare to Apollo they “drive mother-strikers from their homes” and to Athena they “drive killers of mortals from their homes,”<sup>20</sup> the notion of eviction again referring to the perpetrators’ violations of family. And the closest bond of blood the Erinyes identify is the embodied relationship of gestation and childbirth (*Eum.* 607–8).<sup>21</sup> Kinship is their ideology, gender concomitant. It is Apollo who cherishes patriarchal values and downgrades the female. Having protested ineffectually that the Erinyes ought to punish crimes against marriage, he rails that death at home, in the bath, at a woman’s hands dishonored Agamemnon as a ruler and a warrior (*Eum.* 625–39, cf. 213–23). Since the Erinyes yield nothing Apollo finally is pushed to claim they misunderstand parentage entirely: he affirms the father is the only begetter and the mother is not kindred but container to the child, a stranger (τίκτει δ’ ὁ θρώϊσκων, ἡ δ’ ἄπερ ξένωι ξένη / ἔσωσεν ἔρνος, οἴσι μὴ βλάβῃ θεός, *Eum.* 658–66). He adduces Athena as proof. The fact Anaxagoras theorized generation this way proves the idea could be taken seriously outside of myth,<sup>22</sup> but the fact the jury splits over it, even with Athena before them, means that Aeschylus was using the theory rather than advocating for it.

For purposes of understanding the jury, the count is crucial. Either Aeschylus grafted the Athenian judicial rule about equal votes onto Orestes’ trial with patent arbitrariness or the tie should result from the circumstances and arguments. Apollo clearly expects that by adducing Athena he would carry his point with an Athenian jury voting in her presence. If her citizens were to vote against Orestes in fear of the Erinyes, they would be revealing a lack of confidence in her. Yet if the jury is odd in number and only Athena’s own vote creates the tie, a one-vote majority of the human jurors do vote against their city’s patron. And a one-vote margin, one-half juror more than one half of an odd number of jurors on the one side and one-half juror fewer on the other, is a precariously arbitrary result. It makes far better sense to understand that the jurors split in reaction to the arguments they have heard than to the confrontation of power Apollo sets up. The Erinyes reject Orestes’ arithmetical contention Clytaemnestra’s guilt was greater than his. Apollo’s image of parentage counters the Erinyes’ assignment of primacy to the mother. He and they together restate the dilemma Orestes experiences in *Choephoroe*: to which parent of two does a human child owe duty? If the human jury is even in number, each member the son of one mother and one father, they arrive at a tie perfectly naturally by choosing between two contrary theories about the parentage they experience themselves and dividing in their sympathies. It is the dispute with which the trial presents them. They have only the arguments they have heard, their own reasoning, and their own sentiments to weigh their decisions against. The matter is obscure: human childbirth lacks the clarity of gods with axes to

assist maiden gods to spring motherless from their fathers' brows.<sup>23</sup> The tie vote accurately measures human ambivalence before an impossible binary. It doubts without disrespect that Athena's unique parentage is a paradigm for Orestes.

Inevitable as the tie vote is from an even-numbered jury, it does not solve Orestes' quandary. Erinyes following their original nature will punish whatever violator of kinship remains hindermost. But although the Erinyes insist that failing to punish criminal actions will license every crime (*Eum.* 490–565), Orestes' family illustrates that retribution replicates, not ends: it is poignantly futile to wish otherwise.<sup>24</sup> Athens and Athena, however, have an interest in stable resolution of disputes. This case starts with Orestes, but it reverberates into the Athenian future. Orestes' coming as a suppliant to Athena at Athens connects her and her city to himself.<sup>25</sup> Athena recognizes the Erinyes will blight Athens if they feel their prerogative over Orestes is slighted. Therefore she institutes the jury: "the problem is too great for mortal judgment and too inflammatory to be right" to judge herself (τὸ πρᾶγμα μείζον, εἴ τις οἶεται τὸδε / βροτὸς δικάζειν· οὐδὲ μὴν ἐμοὶ θέμις / φόνου διαιρεῖν ὄξυμηνίτου δίκας, *Eum.* 470–484). A one-vote human majority against Athena's birth and Orestes' choice between filial ties would strain probability in the reasons an odd number of human jurors might vote to that total. By both voting with the jury and declaring a tie vote acquits, Athena would intervene doubly in the jury's result: she would usurp the authority she delegated to her body of respected citizens. By thus hijacking the jury, Athena would break the basis of trust on which the Erinyes accept her as arbitrator, defy them, and bring down on her city the outraged wrath she creates the jury in order to avoid.<sup>26</sup>

It is important to recognize that a jury of humans does not simply exercise individual mortal judgment, the kind Athena remarks is insufficient to the magnitude of Orestes' dilemma. By collectivizing judgment, a jury democratizes. It also very significantly changes the question being decided. As Orestes' trial illustrates, mortals cannot know absolutely the truth of parentage and familial duty, or the facts of many other murders a court could be asked to judge. Yet they can say whether they prefer to live with the prosecution's or the defense's answer, which harmonizes better with their experience, values, and reasoning. The side that gets more votes corresponds to the greater portion of the community that will be more satisfied with the collective result. The same logic of dispute-resolution also explains a rule privileging the defendant in the case of a tie vote. No one in the *Oresteia* speaks of mercy or a presumption of innocence.<sup>27</sup> It is much simpler. If a tie vote were to result in punishment, the defendant's unhappiness in being punished would be added to the sum of jury members who prefer acquittal, making a majority of the community dissatisfied. Privileging the defendant in the event of a tie ensures that the

party of the satisfied will always be greater. Athena's mechanism, the jury, is no abler at judging rightfulness than the individual jurors who man it. But by collectivizing their opinions democratically, they serve the community better.

It is wrong to associate Athena's explanation of her vote solely with Apōllo's claim about parentage: it would reduce her vote to idiosyncrasy.<sup>28</sup> It also subtracts meaning from the reservation Athena adds to her declaration of support for the male:

ἐμὸν τὸν ἔργον, λισσθίαν κρῖναι δίκην.  
 ψῆφον δ' Ὀρέστηι τήνδ' ἐγὼ προσθήσομαι·  
 μήτηρ γὰρ οὔτις ἐστὶν ἢ μ' ἐγείνατο,  
 τὸ δ' ἄρσεν αἰνῶ πάντα, πλὴν γάμου τυχεῖν,  
 ἅπαντι θυμῶι, κάρτα δ' εἰμὶ τοῦ πατρός.  
 οὔτω γυναικὸς οὐ προτιμήσω μόρον  
 ἄνδρα κτανούσης δωμάτων ἐπίσκοπον.  
 νικᾷ δ' Ὀρέστης κἂν ἰσόψηφος κριθῆι.

It is my job to render the last judgment.

I shall add this vote to Orestes.

No mother exists who gave me birth.

I approve the male in all things, except for getting married,  
 with all my heart: I am very much the father's.

Thus I shall not give priority to a woman's death  
 when she has killed her husband, the head of the household.

Orestes prevails, even if the judging yields equal votes [*Eum.* 734–41].

If Athena favors the male and rejects marriage both simply as consequences of her motherless birth, her “except” suggests the rejection has an opposite tendency from the partisanship: it reduces her birth's explanatory force for her verdict. Her choice of celibacy is not at issue in *Eumenides* except for this remark. It yokes with Athena's birth as two facts pertinent to her opinion about Orestes' act, however, as it marks her testing for herself, against her own experience, the two perspectives Orestes puts in contention at the trial and the Erinyes accept for debate: was his culpability greater, or Clytaemnesta's? The pair of observations shows Athena following the same evaluative practice as the human jurors. Although the fact she lacks a mother fits with Apollo's claims about parentage, that lack more importantly means she can find no traction when she tries to think through for herself Orestes' decision to kill. Without a mother, she cannot know what it means to respect connection to a mother or to decide to repudiate a mother as Orestes did. Her celibacy similarly blocks her from entering imaginatively into Clytaemnestra's decision and guilt in order to assess their weightiness. Without taking a husband, Athena cannot know what it means to respect a husband or repudiate him, as Clytaemnestra did. Accordingly she turns to social organization as she knows it in Athens. (That is to say, as Aeschylus and his audience knew Athens, to create and to



interpret this enacted drama.) The man's responsibility for the household, as Athena sees it, means other lives hang on his. She calculates a different factor than Orestes does, but her arithmetical principle operates similarly. Where an individual choice cannot be assessed conclusively, Athena favors the greater good of the household and the community. The orphaned isolation in which Orestes and Electra each begin the *Choephoroe* confirms Athena's expectation matches the trilogy's events: Clytaemnestra killed in vengeance for a child, yet with the killing she cast off relationship with her other children (e.g., *Cho.* 132–41). Nonetheless, Athena minimizes her intervention. Her approval of the male in this matter goes only so far as refusing to privilege the death of a husband-killer: although Athena's "last judgment" sets a coping stone on the trial, it does so negatively, by halting further action in consequence of the jury's equal vote.

The climax Athena pursues in *Eumenides* ascends from Orestes' trial to her own contest with the Erinyes. She denies they lost the verdict, which she could not do if her own vote in the jury lost it for them. Her "last judgment" in the case and "vote" for Orestes are not part of the jury's activity: if they were inserted into the jury's voting they would preempt the very purpose with which Athena creates a jury to hear murder trials, collectivizing for the community decisions in such serious matters of life and death. Her own unique birth puts her outside the relationships whose violations generate the crisis. Yet the process of decision-making Aeschylus depicts Athena taking matches the ideal process Aeschylus's Athenian audience could have recognized for their own experience of jury trials: she tests the case she has heard against her own knowledge and experience, and she finds the best solution for the community as a whole. Both her system of jury decision and her rule resolving split verdicts in the defendant's favor rest decisions democratically on the collective sensitivity of the community and majority rule. They form a charter for the justice of the Athenian state. Athena's culminating achievement is to win the Erinyes' good will to Athens, by giving their concern for justice positive as well as punitive functions for the community.<sup>29</sup> In contrast to the destructive effectiveness of Clytaemnestra in *Agamemnon* and the abortive restoration Orestes achieves momentarily in *Choephoroe*, motherless, male-favoring but female, democratically minded Athena in *Eumenides* secures a living future.

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## NOTES

1. See generally Timothy Gantz, *Early Greek Myth: a Guide to Literary and Artistic Sources* (Baltimore and London: Johns Hopkins University Press, 1993): 664–86. I thank several friends for feedback that has improved this paper: Greg Dobrov, Joe Janangelo,

Brian Lavelle, David Posner, Ann Shanahan; also *Text & Presentation's* editor and anonymous readers, the Comparative Drama Conference's Program Committee and the audience they led to valuable discussion, and my fellow speaker Thomas Faulkner for his excellent paper.

2. Alan H. Sommerstein, *Aeschylus: Eumenides* (Cambridge University Press, 1989): 1–6 concluded Athenian tradition before Aeschylus placed Orestes' trial at the Areopagus, and Aeschylus innovated by making a human jury rather than gods serve as judges; cf. Felix Jacoby, *Die Fragmente der Griechischen Historiker* III.b Suppl. I.22–25 and notes II.19–29 (Leiden: Brill 1954). Oliver Taplin, *The Stagecraft of Aeschylus: the Dramatic Use of Exits and Entrances in Greek Tragedy* (Oxford: Clarendon Press 1977, corr. 1989): 103–7 discussed Aeschylus's breaks from "unity of place" generally.

3. J. Peter Euben, *The Tragedy of Political Theory: the Road not Taken* (Princeton University Press, 1990): 67–95 insightfully connected Aeschylus's handling of gender and justice by democratic myth in the *Oresteia*, but he avoided the question of Athena's vote (80); cf. R. P. Winnington-Ingram, "Clytemnestra and the Vote of Athena," *The Journal of Hellenic Studies* 68 (1948) 130–47, reprised and extended in Winnington-Ingram, *Studies in Aeschylus* (Cambridge University Press, 1983): 73–174; Sommerstein, *Aeschylean Tragedy*, 2d ed. (London: Duckworth, 2010). Sommerstein and Delfim F. Leão each mapped Orestes' trial onto historical Athenian court-systems, respectively "Orestes' Trial and Athenian Homicide Procedure," 25–38, and "The Legal Horizon of the *Oresteia*: the Crime of Homicide and the Founding of the Areopagus," 39–60, in Edward M. Harris, Leão, and P. J. Rhodes, eds., *Law and Drama in Ancient Greece* (London: Duckworth, 2010). Historical readings of the *Oresteia* include Anthony J. Podlecki, *The Political Background of Aeschylean Tragedy* (Ann Arbor: University of Michigan Press, 1966); David Rosenbloom, "Myth, History, and Hegemony in Aeschylus," in Barbara Goff, ed., *History, Tragedy, Theory: Dialogues on Athenian Drama*, 91–130 (Austin: University of Texas Press, 1995). Martin Revermann, "Aeschylus' *Eumenides*, Chronotopes, and the 'Aetiological Mode,'" in Revermann and Peter Wilson, eds., *Performance, Iconography, Reception: Studies in Honour of Oliver Taplin*, 237–61 (Oxford University Press, 2008), discussed other ways the *Eumenides* transcends time.

4. Clytemnestra claims the act with aggressive first-person verbs, ἀπειρον ἀμφίβληστρον, ὡς περ ἰχθύων, περιστιχίζω [...] παίω δέ νιν δις [...] καὶ πεπτωκότι τρίτην ἐνευδίδωμι, τοῦ κατὰ χθονὸς Διὸς νεκρῶν σωτήρος εὐκταίαν χάριν, *Ag.* 1382–87; Aegisthus a distanced responsibility, κἀγὼ δίκαιος τοῦδε τοῦ φόνου ῥαφεύς [...] καὶ τοῦδε τάνδρὸς ἠψάμην θυραῖος ὦν, πᾶσαν ξυνάψας μηχανὴν δυσβουλίας, *Ag.* 1604, 1608–9.

5. So too by emphases on their likeness Electra's and Orestes' recognition-scene restores brother and sister to themselves as well as to one another: *Cho.* 172–78, 205–10, 220–23, 229–32, 252–54.

6. Sommerstein 1989: 6–12 argued that Aeschylus innovated identifying the Semnai with the Erinyes who pursued Orestes; cf. Pat Easterling, "Theatrical Furies: Thoughts on *Eumenides*," in Revermann and Wilson 2008: 219–36; A. L. Brown, "Eumenides in Greek Tragedy," *Classical Quarterly* 34 (1984): 260–81.

7. See Antiph. 5.51 (*Her.*), Aeschin. 3.252 (*Ctes.*), Ar. *Ath. Pol.* 69.1; A. R. W. Harrison, *The Law of Athens: Procedure* (Oxford: Clarendon, 1971): 47 n. 3. Athena charts the Areopagus court at *Eum.* 681–710 and declares, νικᾷ δ' Ὀρέστης κἄν ισόψηφος κριθῆι, 741; Sommerstein 1989: 231–32 ad 741. Douglas M. MacDowell, *Athenian Homicide Law in the Age of the Orators* (Manchester University Press 1963): 110 cited only *Eum.* 741.

8. *Eum.* 778–79, 780, ἐγὼ δ' ἄτιμος = 808–9, 810: repetition marks their refusal to accept Athena's initial answer.

9. The two positions have been reviewed and restated by Michael Gagarin, "The Vote of Athena," *American Journal of Philology* 96 (1975) 121–27 for Athena's voting as a juror, and by D. A. Hester, "The Casting Vote," *American Journal of Philology* 102 (1981) 265–74 for Athena's adding her vote conditionally, if the human jury split. See too Richard Seaford, "Historicizing Tragic Ambivalence: the Vote of Athena," in Goff 1995: 202–21.

10. Gagarin 1975: 123 n.9 denied the audience could have been expected to count the jurors, but it would be far harder to be sure nobody counted.

11. Athenian courts: see MacDowell 1963: 39–89; Harrison 1971: 36–64; Alan L. Boeghold, *The Lawcourts at Athens: Sites, Buildings, Equipment, Procedure, and Testimony*, The Athenian Agora XXVIII (Princeton: The American School of Classical Studies at Athens, 1995).

12. Robert W. Wallace, *The Areopagus Council, to 307 B.C.* (Baltimore and London: Johns Hopkins University Press 1985, 1989): 3–47 contended the pre-Solonian Areopagus was a homicide jury, not a council, and numbered 51, but his arguments cannot securely stretch across the intervening century and a half to control Aeschylus's staging; Mogens Herman Hansen, *The Athenian Democracy in the Age of Demosthenes: Structure, Principles, and Ideology*, trans. J. A. Crook (Oxford, UK, and Cambridge, MA: Blackwell, 1991): 28 cautioned the evidence suggests later Athenians did not know the Areopagus's earliest nature with certainty.

13. Wallace 1985, 1989: 96–97. Mogens Herman Hansen and Lars Pederson estimated roughly 150 for "The Size of the Council of the Areopagos and Its Social Composition in the Fourth Century BC," *Classica et Mediaevalia* 41 (1990) 73–77. Plút., *Sol.* 12.2 gives no warrant for supposing the Areopagos numbered 300. Brian Lavelle proposes in correspondence it may imply the Council was supplemented by non-member *aristoi*; I am grateful to him for discussing the passage with me.

14. Harrison 1971: 47 and Boeghold 1995: 39 n. 60 both observed that tie votes could result from odd-numbered juries if not all the jurors deposited ballots in the voting urn; but this eventuality would have been harder to stage effectively than the *Eumenides*' script supports.

15. So, rightly, Taplin 1977 corr. 1989: 392–93 *ad Eum.* 566; cf. 323 and n. 3 *ad Ag.* 1348–71 and 202–3 *ad Hik.* 234 concerning couplet-counting and the number of Aeschylean choruses, for which Taplin preferred fifteen to twelve.

16. Gagarin 1975: 122 called it the view of "most critics," without citation. He followed, although he noted for example a pair of jurors might have moved at each couplet.

17. First-person and feminine verb-forms bespeak Athena's own agency at *Eum.* 487–88, κρίνασα δ' ἀστῶν ἐμῶν τὰ βέλτατα ἤξω διαίρειν τοῦτο πράγμ' ἐτητύμως; at *Eum.* 681–84 she says the Athenians are to "judge" and to serve as a "council of jurors" for all time, πρώτας δίκας κρίνοντες αἵματος χυτοῦ [...] αἰεὶ δικαστῶν τοῦτο βουλευτήριον. I take this emphasis on Athena's transfer of authority to have been the point of Colin Macleod's gentle words to Taplin. Taplin himself admitted his arguments for massive displacement and corruption in the trial scene do not resolve neatly (Taplin 1977 corr. 1989: 395–401 *ad Eum.* 574, quoting Macleod at 399 n.1; expressing dubitation, 401; cf. Macleod, "Politics and the *Oresteia*," *The Journal of Hellenic Studies* 102 [1982] 124–44).

18. This common use of the demonstrative is exemplified in the play's first line, εὐχῆι τῆιδε, *Eum.* 1.

19. Froma I. Zeitlin, "The Dynamics of Misogyny: Myth and Mythmaking in the *Oresteia* of Aeschylus," *Arethusa* 11 (1978) 149–84; rpt. in Zeitlin, *Playing the Other: Gender and Society in Classical Greek Literature*, 87–119 (Chicago and London: University of Chicago Press, 1996) made an epochal analysis of deep structures of Athenian gendered thinking. Recent contributions include Emily Zakin, "Marrying the City: Intimate Strangers and the Fury of Democracy," in Denise Eileen McCoskey and Zakin, eds., *Bound by the City: Greek Tragedy, Sexual Difference, and the Formation of the Polis*, 177–96 (Albany: State University of New York Press, 2009).

20. τοὺς μητραλοίας ἐκ δόμων ἐλαύνομεν, *Eum.* 210; βροτοκτονούντας ἐκ δόμων ἐλαύνομεν, *Eum.* 421.

21. Clytaemnestra similarly calls Iphigeneia φιλόπαιον ἐμοὶ ὄδιν', *Ag.* 1417–18, cf. 1388–92.

22. Arist. *Gen. An.* 763b31–764a2. See David D. Leitaο, *The Pregnant Male as Myth and Metaphor in Classical Greek Literature* (Cambridge University Press, 2012: 18–57); Sommerstein 1989: 206–8 *ad loc.*

23. See Gantz 1993: 51–52, 83–84.

24. Clytaemnestra in *Agamemnon* (1567–76) and the Chorus in *Choephoroe* (1065–76) both express such vain wishes.

25. See John Gould, "Hiketeia," *The Journal of Hellenic Studies* 93 (1973) 74–103; F. S. Naiden, "Supplication and the Law," in Edward M. Harris and Lene Rubinstein, eds., *The Law and the Courts in Ancient Greece*, 71–91 (London: Duckworth, 2004), detailed how human laws of ancient Greek communities regulated supplication, with particular attention to Aeschylus's *Suppliants*.

26. Hester 1981: 270 and Seaford 1995: 211–12 indicated this connection briefly. Athena secures the Erinyes' agreement to have her settle the case, *Eum.* 434–35; at the trial Apollo and Athena use εἰσάγω of her role, in Athenian legal contexts the verb for the magistrate overseeing the case (or the prosecutor): *Eum.* 580, 582; LSJ *s.v.*

27. Gagarin 1975: 127 rightly disdained importation of modern sentiment into an argument about ancient literature and values. Ar. *Prob.* 29.13 says a false acquittal is a lesser evil than a false accusation; 13 and 15 say defendants are at a disadvantage.

28. Hester 1981: 271–72 explicitly valorized idiosyncrasy for Athena, as if it made prejudice less objectionable in her; less forthrightly Seaford 1995: 215.

29. On the resolution, see Helen Bacon, "The Furies' Homecoming," *Classical Philology* 96 (2001) 48–59.

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