

I Introduction

Certain ideas or conceptions seem common to all races. Rude notions of honesty, fidelity, justice have been found in greater or less degree among even the most savage tribes. Ideas of justice, however, vary greatly, being influenced by peculiarities of the race, the climate, or the location of the different peoples. Among savages, some forms of traditional procedure, similar to the old Mosaic code are perhaps the commonest.

All circumstances and conditions, physical and moral, which bear on the life of any people, necessarily affect that people's idea of justice. Generally speaking if we know the exact conception of justice which prevails in a nation, we can determine, approximately, what degree of civilization has been attained.

Abstract ideas, theories,

are useless if not put in practice. So we ^(should) must know both the conception of justice, and the methods of its administration. (First) Rude tribunals arise to decide quarrels and settle disputes; in time, they try all suspected or accused persons, decide (decide) their guilt or innocence, and suggest or impose suitable penalties. Probably such tribunals originated in gatherings of neighbors or tribesmen, met in order to settle disputes, (adjust differences) then judges were appointed, and caused to remain in office, and listen to pleaders at stated times and places.

These primitive courts were naturally composed of old men, supposed always to be wiser than the younger ones. At first they heard and judged all cases, exercising a general jurisdiction; afterward, (later) they were restricted as to territorial limits, and different cases went to different

courts. Thus arose courts having special functions, with procedure modified to suit the case, the people, and the surrounding circumstances or conditions. Hence among different peoples quite different courts and forms arose, based on different ideas, or adjusted to different surroundings.

The courts of great and successful nations were studied by other nations desirous of the best forms of government. Each nation usually has some supreme judicial body, which is in many ways peculiar to that state, and beyond which no appeal can be taken.

The ancient Greek states were well supplied with courts of various kinds. Not the least interesting of them was an international court of arbitration, with powers of peace and war, or of fining (or punishing) its

members, called the Amphictyonic Council. (Semi-religious in nature) Many other tribunals have been famous from the remotest antiquity, and among these none, perhaps, is more widely known than the high court of homicide and willful murder, at Athens, called from the hill on which it met, the Areopagus. Its antiquity, the traditions of its divine founding, and its great power, combine to make its history one of the most interesting.

Founding

II.

This hill is an important place in all Athenian history, second only to the Acropolis, as (for) these two were the most prominent elevations in the city. The importance of such was due to a desire for protection, but later they had an added value from the character and use of the

sacred buildings erected upon them. Mars Hill has had a popular reputation due to Paul's having preached upon it to members of the Areopagitic senate and others.

The hill itself, an elevation having an area about equal to the Acropolis, and about of a height one-third of that of the larger hill, lies west and a little north of the Acropolis, ~~from~~ of the street leading south from the Agora past the western end of the Acropolis to the Odeon Herodis.

The Pryx and the Hill of the Nymphs are southwest, while the temple of Ares is on the northwest corner of the hills. The hollow between the Acropolis and the Areopagos was only a few yards wide originally, but the street made it broader. The hill, like the Acropolis is a barren rocky height; on it the Persians

1. Col. Leake, Athens, p. 65.

2. Curtius, I p. 326.

encamped in order to attack the Acropolis before the Battle of Salamis¹.

The court of the Areopagos, as the oldest and in some sense the supreme court of Athens, with powers judicial, legislative, executive, — power also to oversee every action of every dweller in Attica — (all of) which it it seems to have used wisely always must possess great interest for all civilized peoples.

We, as a republic, nearest in form of all present governments to the democracy of Athens, should study carefully this high court, which practically directed all Athenian life from Solon to Pericles.

The beginning of this court can not be found out. It was probably called Boule till Draco founded his assembly of the Four Hundred.

1. Herodotus VIII 52.

This would explain why it is not definitely mentioned by Draco, whose silence is used to prove that Solon founded the court! There must have been judges of homicide before Draco's time, as he makes no provision for such cases. Other courts were founded, but the province of the Areopagos is regarded as occupied.²

So we may assume that a court for homicide, meeting at the Areopagos, seems to have existed before Solon's time, or 600-590 B.C.

Several legends of its origin were current at Athens, all of a more or less religious turn.

In Euripides' *Orestes*, l. 1651. Apollo tells Orestes: 'The gods arbiters of the

Note. It seems at first to have resembled Homer's Council of Elders or the Spartan council (Aristotle, *Politics* II. 7.2; Pollux, VIII 125; Cicero, *de Officiis* I 23; Plutarch, Solon, 18. 2. Note III 92.

cause, shall judge thee most sacredly on
 the hill of Ares'. Again in his Electra
Iphigenia in Tauris, Orestes says:
 'When Loxian Apollo sent me to
 Athens that I might render
 satisfaction to the deities who
 must not be named; for there is
 a sacred council instituted ^{once in five years} by
 Zeus so that Ares might cleanse
 his hands from pollution'. (Hoi)

Ares slew Halirrhothios, son of
 Poseidon, because he had disgraced
 Alcippè, daughter of Ares!
 Aeschylus, in the Eumenides uses the
 legend most believed at Athens.²
 Athene refuses to decide the
 case of the Eumenides against
 Orestes, because he came as
 an innocent whom Athene (she)
 has received into her city.
 The Eumenides demand a trial,
 and threaten to destroy the country
 if it is not held, having

¹ Pausanias I 21
 Apollodorus Mytho 142.

² Aeschylus Eumenides,
 ll 447-61; ll 651-69.

failed to gain a victory, the
venom from their hearts falling
earthward, will become an
everlasting, intolerable plague
to this land forever." Athenê
says also: Since it must be
decided, having chosen oath-bound
judges of homicide, I will
establish this court forever.

Athenê herself is present, and
the judges swear (take oath) to act
in ~~acc~~ strict accord with
justice, sworn witnesses being
summoned.

Athenê declares: This court shall
exist forever. The hill of Ares was
the stronghold of the Amazons,
built to help them fight
Theseus, and by them dedicated
to Ares whence its name. Around
this rock ~~are~~ and innate
fear shall keep the citizens from
injustice (harm) day and night, if they
preserve the laws. -- Do not
cast all fear out of the city.

for what mortal, fearing nothing
is just?

Hellanicus says that many other
trials of heroes and gods had
been held at the Areopagus before
that of Orestes.

While these legends are not
reliable history they testify
however (omit) to a well-settled
belief at Athens, (off) in the high
antiquity of the court.

This belief doubtless rested upon a
basis of (real omit) fact, latterly
known only through traditions.
Some court existed with general
power like that of the Areopagus
when Solon revised the laws.

The religious rights of the court
were retained, and all the laws
of Solon honored the Areopagus.
Thumser says: the designation of
the court of the Areopagus as a
court of willful murder, murderous

1. Aeschylus' Eumenides §§ 82 +.