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## On Secrecy in Voting in the Athenian Law-Courts in the Fifth Century, B.C

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and mistaken for the ordinary present participle and a transition took place from the original predicative use of 'daz buoch ist ze vindende (vindenne)' to the attributive: das zu findende Buch "the book to be found." In Latin confusion of the two verbals would be inevitable, seeing that they were now practically undistinguishable both in meaning and form.

This explanation lacks, it is true, the attractive simplicity of my earlier conjecture; but it makes the early fusion of the two verbals in the popular consciousness easier to understand. For it does not postulate any interval of time for the development of the participle out of the declinable infinitive.

I may be permitted to end with a brief résumé of conclusions.

In pre-historic Latin the future infinitive active was, like the other infinitives, indeclinable. It was a composite formation resembling future indicatives in Latin and other Indo-European languages. It differed in outward form from the periphrastic future

participle, as *captūsom* would differ from *captūrōs, ā, om.* When rhotacism attacked the Latin language, the future infinitive became identical in form with the acc. masculine and neuter of the participle. From this identity of form coupled with similarity of meaning grew up the idea that they were identical formations, and by consequence that the infinitive was an accusative of the participle, agreeing with its neuter or masculine subject. When this view was once firmly established, the infinitive was made declinable throughout, being conformed first to a feminine subject and later (probably) to a plural subject; and *esse* began to creep in. As this process, which naturally took some time to complete, went on, the old indeclinable future gradually fell out of use but lasted on in rare or isolated usage till the beginning, or the middle of the first century B.C., when it practically became extinct, though clear traces of the old usage remained in the constructions of the now declinable infinitive.

J. P. POSTGATE.

#### ON SECRECY IN VOTING IN THE ATHENIAN LAW-COURTS IN THE FIFTH CENTURY, B.C.

DURING the fourth century B.C. voting in the Athenian courts was regularly secret, the secrecy being secured by the use of two balloting urns (ὁ κύριος ἀμφορεύς, ὁ ἄκυρος ἀμφ.) and two slightly differing ballots. The character of the ballot determined the result of the vote. But in the fifth century this was indicated by the urn in which the ballot was deposited. For two urns were used as in the following century, but one was the urn of acquittal, the other the urn of condemnation; and they were distinguished from one another apparently simply by position. The urn of acquittal stood in front of the other. And instead of two ballots each juror received but one.<sup>1</sup>

But how under these circumstances could a juror cast his ballot in secret? This, we are told, 'has not yet been ascertained.'<sup>2</sup>

<sup>1</sup> For the method in vogue in the fourth century see Aristotle, *Ἀθ. Πολ.* cols. 35, 36; Pollux viii. 123; Harpoer. *τετραπημένη*; etc.

The evidence for the fifth century consists chiefly of the following literary references: Phrynichus, *Muses*, frg. 2 (Mein.); Arist. *Wasps*, 987 ff.; Aesch. *Agam.* 813 ff. (Weil), *Eum.* 674-753; Xen. *Hell.* I. vii. 9; Lysias xiii. 37.

<sup>2</sup> Gardner and Jevons, *Man. of Gk. Antiq.* p. 595.

Some even suppose that voting in the law-courts in the fifth century was not secret.<sup>3</sup> It is true that in the *Wasps*, 987 ff., Philocleon does not conceal his vote, but it is essential to the burlesque that he should not. It is true also that in the *Eumenides*, 735, Athena declares her vote. But this proves nothing. That the votes of the others were secret is plainly shown by the suspense of Orestes and of the Furies, even while the ballots are being counted,<sup>4</sup> l. 744 ff.:

ΩΡ. ὦ Φοῖβ' ἄπολλον, πῶς ἄγῶν κριθήσεται;  
κ.τ.λ.

This passage in the *Eumenides*, therefore, if

The suggestion of Lipsius (Meier-Schoemann-Lips., *Der att. Proc.* S. 940; see also Müller, *Eum.* S. 161) that each juror was given two ballots as in the fourth century was wholly without support and was rightly rejected by Thumser in Hermann's *Gr. Staatsalt.*<sup>6</sup> (1888) S. 581, by Wachsmuth, *Die Stadt Athen* (1890), ii. 1, S. 371.

<sup>3</sup> 'Die Entscheidung der Richter erfolgte...in den älteren Zeiten in öffentlicher, später regelmässig in geheimer Abstimmung.' Hermann-Thumser, S. 580; see also *Anm.* 5.

<sup>4</sup> See Meier-Schoem.-Lips. S. 940, *Anm.* 497.

we admit it as evidence for the procedure in the ordinary law courts,<sup>1</sup> proves conclusively that secrecy was possible. The same is suggested by the passage in Lysias, xiii. 37, which describes the terrorizing methods of the thirty tyrants, who compelled the voters to cast their ballots not into urns, but openly (*φανερὰν*) on tables provided for this purpose; though not all scholars admit the last as valid evidence for the fifth century.

But how was this secrecy secured? The clue to the correct answer, I believe, Aeschylus himself furnishes us in the generally misunderstood passage, *Agam.* 813 ff. Agamemnon has just returned from Troy to Argos and his first words are an acknowledgment of the aid of heaven in his expedition against the city of Priam. 'For,' he continues, 'the Gods hearing the pleadings in the suit unspoken cast their death-laden ballots for Troy's undoing, with unwavering decision, in the urn of blood, while to the opposite urn mere hope of the hand drew nigh and it remained unfilled.'

δίκας γὰρ οὐκ ἀπὸ γλώσσης θεοὶ  
κλύοντες ἀνδροθνήτας Ἴλιον φθορὰς  
εἰς αἰματηρὸν τεύχος οὐ διχορρόπως  
ψήφους ἔθεντο· τῷ δ' ἐναντίῳ κύτει  
ἐλπὶς προσήει χειρὸς οὐ πληρουμένη.

<sup>1</sup> There is no evidence that the method of voting in the court of the Areopagus differed from that in vogue in the other courts in similar cases. The passage from the *Eum.* is admitted as evidence for the procedure in the other courts by Ross (*Arch. f. Philol.* Suppl. I. (1831), S. 355), Meier-Schoem.-Lips. (*Der att. Proc.*<sup>2</sup>, S. 937, 940), Hermann-Thumser (*Gr. Staatsalt.*<sup>6</sup>, S. 580), Gilbert (*Gr. Staatsalt.* i.<sup>2</sup>, S. 432), etc.

The plural *τεύχων* (l. 742) points to the use of two urns, one probably of acquittal, the other of condemnation, which was the arrangement familiar to Aesch. and his contemporaries (*Agam.* 815 f.). There is no reason, further, for doubting that each juror had but one ballot, though the Scholiast, l. 749, supposes that two ballots were used, a black one and a white one. This suggestion is adopted by Sidgwick, who adds that this was the commonest method at Athens. Black and white beans were used in drawing lots for public officials, but it is extremely doubtful if the use of black and white ballots ever obtained in Athenian courts (see Meier-Schoem.-Lips. S. 940, *Anm.* 487).

As a principle, secrecy in voting was familiar to the Athenians in the fifth century. Ostracism, established about 500 B.C., was by secret ballot. At the *διαδικασία* for admission to the phratry the Thiasotai voted secretly (*Demotionidai-inscr.* l. 77, quoted by Gilbert, *Gr. Staatsalt.*<sup>2</sup>, S. 215). At the *διαψήφισις* conducted for the detection of illegally enrolled citizens the Deme-assembly voted secretly (Suidas: *διαψήφισις*). So the *ἐκκλησία* voted secretly when performing certain judicial functions: 'nur in Fällen die das persönliche Interesse Einzelnes betrafen' (Schoemann-Lipsius, *Gr. Alterth.* i. S. 411). It is, therefore, an entirely reasonable inference that voting in the law courts was likewise secret.

The reference here to the urns of acquittal and of condemnation is universally recognized; not so the significance of the last line. To the minds of many the words *ἐλπὶς χειρὸς* are an expression 'from which no intelligible sense can be extracted'<sup>2</sup> (Paley). Blomfield suggested that *χειρὸς* be construed with *πληρουμένην*, 'suffragiis manu datis non impleto.' Casaubon and Paley, imagining a reference to Pandora's box (Hes., *Op.* 96 f.), read *χεῖλος* for *χειρὸς*, which they suppose means 'in the opposite urn hope rose up to the rim.' Equally fanciful is Keck's *ἐλπὶς προσήστ' ἀχρείος*, 'bei den andern Urne sass nur die unnütze, kranke Hoffnung.' No more acceptable is Hermann's *ἐλπὶς προσήει χρείος*, 'indiga.' *χειρὸς* is not a 'vox inutilis.' The reading of the MS., I believe, is sound, and means simply that in the fifth century, when two balloting urns were used and but one ballot, each juror, to insure the secrecy of his vote, placed his two hands simultaneously over the two urns and deposited his ballot thus in the one or the other without disclosing his vote. The suspense and the hope of the man on trial, as he observes each juror place his hand over the urn of acquittal as well as over that of condemnation, is most beautifully expressed by the poet: 'to the urn (of acquittal) hope of the hand drew near.' It calls to mind that other striking figure in the *Suppliants* of Aesch., 607 f.; when the Argive assembly voted by show of hands 'the air bristled with right hands.'

In the mysterious alembic of the poet's imagination even the commonplace act of balloting is transformed into one of marvellous beauty and significance. The poet's insight pierces to the inmost thoughts of the man whose fortune or whose life is at stake. How could his suspense and hope be more beautifully expressed? The 'hope' is not the hope or expectation of the urn for votes ('the other urn expected votes, but did not get them,' Sidgwick, Verrall, Schneidewin, first edition); nor does the 'hope' refer to the 'long postponement of the capture (of Troy) by the dissensions of Olympus' (Verrall). Neither is the choice between the reading of the MS. and the conjecture of Margoliouth, adopted by Wecklein, *ἐλπὶς προσείει χείρας*, merely 'a question of taste' (Verrall). The judges did not 'wave' their hands before the urns; and Wecklein's reference to Eur. *H.F.* 1218, *τί μοι προσείων χείρα σημαίνει*

<sup>2</sup> Cf. Warr's trans. *Orestes* (1900), p. 22, 'for her no hand but Fancy's fumbled in the void.'

φόνον; and the remainder of his note reveal a misconception of the passage. No more satisfactory is the comment of Dindorf (*Lex. Aesch.*): 'de spe loquitur tanquam de dea, ut Soph. *O.R.* 158.'

To deny a basis of fact to the words of l. 817 is to impair seriously the beauty of the metaphor. To have voted openly for condemnation would have brought only despair to the heart of the prisoner at the bar. But if the juror to conceal the nature of his vote placed a hand also over the urn of acquittal, that simple act was fraught with hope for the one on trial. His hope was centered in the hand. Grammatically, 'hope of the hand' is a periphrastic subject, like βίη Πριάμοιο, and equals 'the hope-laden hand.'

A somewhat similar interpretation was proposed many years ago by H. L. Ahrens, but it has evidently been overlooked by the writers on Greek legal antiquities, and it was unknown to me until I had prepared the entire preceding discussion. 'Sollte nun hierbei,' he wrote, 'das κρύβδην ψηφίζεσθαι . . . nicht vereitelt werden, so musste der Richter, während er in die eine Urne seinen Stimmstein wirklich warf, doch auch zu der andern treten und sich so stellen, als würde er auch in diese.'<sup>1</sup> The handbooks

<sup>1</sup> *Philologus*, Suppl. I. (1860), S. 566. The view entertained by Wilamowitz seems to be similar to that suggested by Ahrens:

'Stein auf Stein  
in die Bluturne rollte, welche Troias Sturz

on Greek legal antiquities make no mention of this interpretation of Ahrens, nor have I found any reference to it in any of the editions of the Agamemnon, except in that of Keck (pub. 1863), where it is summarily dismissed. 'Die Institution des κρύβδην ψηφίζεσθαι,' he says, 'musste durch andere Einrichtungen als wie Ahrens sie sich denkt, gewährt sein, denn durch diese hätte sich Niemand täuschen lassen.' The central weakness in Ahrens' interpretation, which Keck rightly attacks, is avoided, I believe, in my own. Each juror if he cared to vote secretly, placed his hands simultaneously over the two urns, and not over first the one and then the other. The former method would be the more apt to insure secrecy. Moreover, I believe that the urns in the fifth century were identical in material, so that the click caused by the ψήφος was the same into whichever receptacle it was dropped. The fact, too, that the urns stood one in front of the other rendered detection more difficult. Finally, it is possible that the urns were placed at the back of the βήμα in the fifth century, whereas in the fourth century they stood in front on the βήμα (see *Wasps*, 347, 990; *Demos.* xix. 311; Wachsmuth, *Die Stadt Athen*, ii. l. 371).

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bezeichnete; zur andern trat zum Scheine nur mit leerer Hand der Richter. Klar ist der Entscheid.' *Gr. Trag.* ii. (1899), S. 78.

## SOME NOTES UPON ROMAN BRITAIN.

(Continued from p. 399.)

### IV.—THE BATAVI IN BRITAIN.

We know from Tacitus that up to 70 at least the Batavian auxilia were regularly sent to Britain, and that in fact eight 'cohortes Batavorum' were attached to the Legio XIV Gemina which was there in garrison. But in view of the disappearance of the legions which had sworn allegiance to the 'Imperium Galliarum,' there can be no doubt that these more guilty cohorts were disbanded after 70. Yet the tribe retained its former status in the empire; a new levy replaced the old, and crossed to Britain with Cerialis.

In his account of the Battle of Mons

Graupius Tacitus says 'Agricola... Batavorum cohortes ac Tungrorum duas cohortatus est.' The missing number has been variously supplied: 'quinque' say Ritter and Nipperdey, 'tres' Urlichs and Cichorius. But 'quattuor' is read by the new Codex Toletanus—the best MS. of the Agricola—and is to be accepted. Which were the four cohorts?

From inscriptions we know of Cohors I Batavorum miliaria pia fidelis, Cohors II Batavorum miliaria, Cohors III Batavorum miliaria equitata, Cohors IX Batavorum miliaria equitata, and another Cohors I Batavorum which was quingenaria. All the records belong to dates later than 70.