

SOLON AND THE GREEK LEGAL SYSTEM

By RALPH H. PHARR*

The word "Solon" has become a generic term used now to mean a legislator, any law-maker, whether or not he be a wise one or not. Its origin, however, dates back to the name of the individual, Solon, of Athens, the promulgator of a set of laws which was so effective that it prevented Attica from falling into a state of chaos and so dramatic in its results as to establish political and economic stability which lasted until the absorption of Greece into the Roman system about 300 A.D. Solon became a legend of wise law making.

Athens was so located that it grew up around the old Acropolis and all the landowners of Attica were its citizens. Those families with the largest quantities of land and the oldest families held the balance of power in Attica. When King Codra died they claimed that no one was good enough to succeed him and they chose an archon or Governor for life. But in 1752 B.C. they limited the Archonship to ten years and in 683 B.C. they reduced it to one year. Then the various powers of the archon were distributed among nine archons thus diluting the authority of the governing officers but the upper class continued to be a powerful factor in governing Attica for about five centuries. Athens was a stratified society and the oligarchs divided the population into groups. After the term of an archon was completed, if he had not offended the oligarchy, he was made a member of the Council of Areopagus. That council chose the archons and officially ruled the state. The people were also divided into classes economically. The Eupatrids being the oldest families and the large landowners were at the top. Next were the professional men, the traders, craftsmen and free laborers. This second class was volatile and rose in power and wealth under liberated markets and trade.

Most of the laborers were freemen and slaves were in the minority. The poorest of all were the land working peasants owning only a small bit of land and struggling against the barrenness of the soil and the greed of money lenders and baronial lords. Many of these were forced by circumstances to sell their farms and moved to towns where they became laborers or traders. Others mortgaged their land at exorbitant interest rates and being unable to pay, became serfs of their creditors or were sold as slaves. The holder of a mortgage was regarded as the owner of the property until the debt was paid. Because of these conditions small holdings became fewer and large holdings became greater.

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Foreign trade became a barter system and the whole system became increasingly oppressive to the peasants. In the towns also, manual labor became so cheap that freemen were being driven to destitution.

About 620 B.C. Draco was commissioned to devise a system of laws to restore order to Attica but Draco's code resulted in freezing the customs of feudalism and did nothing to relieve debtors from slavery nor to lessen the exploitation of the poor by the well to do or upper classes. Draco's laws were chiefly noted for the severity of punishment; even idleness was punished with as much severity as murder. He is reported to have said that the smallest transgression against the law in his opinion deserved death and that he could find no more rigorous punishment for the more atrocious crimes, hence he was compelled to prescribe an equal penalty for all. Thus Draco had failed to solve the gnawing problems of Attica and as time passed the bitterness of the helpless poor against the legally entrenched rich brought Athens to the edge of revolution. Plutarch wrote that the disparity of fortune between the rich and the poor had reached its height, causing a dangerous condition in that city with no means for freeing it from disturbances but a despotic power.

Into this critical crisis was drawn a man named Solon, who has since then been acclaimed by many as the greatest and wisest legislator of all times. With some reluctance Solon accepted the position of Archon and the task of devising a new constitution and laws which would rescue Athens from the impending chaos.

Solon was born about 638 B.C. of a man of noble stock and of wealth and power. In his young days he participated with much enthusiasm in the life of his time and engaged in writing. Due to financial improvidence of his father, Solon took to trade; as a merchant he accumulated sufficient wealth to be financially independent. He was in his early forties when he was chosen by the middle class to take up public service and accept dictatorial powers to soothe the social conflicts, establish new laws and restore stability to the state. The rich or upper class consented to his appointment because he was wealthy and the poor because they knew he was honest.

The reforms of Solon fall generally into three categories: (1) Economic, (2) Constitutional, and (3) Miscellaneous.

Solon is credited with originating many euphemistic expressions, for example calling harlots mistresses, a garrison a guard, and the jail the chamber. He called the cancelling of debts *seisactheia*, a relief or disencumbrance. This action was the cancellation of all debts owing to private persons or to the state and the removal of all mortgages on land. Persons enslaved for debt were released and those sold into slavery in other countries were reclaimed and freed and such servitude was forbidden for the future.

Among his other achievements Solon devalued the money, granted amnesty to those imprisoned for political offenses, repealed the Draconian laws,

applied laws alike to the rich and the poor and he instituted a property tax which was in effect a graduated income tax.

Solon's state was not a perfect democracy but was rather a moderate oligarchy in which political privilege was graduated by possessions and respective wealth. First were the 500 bushel men, whose annual income reached 500 measures of produce or its equivalent. Second, those whose income was 300 to 500 measures; third, those whose income was between 200 and 300 measures, and fourth, all other freemen. The same classifications were applicable to honors and taxes.

The Senate of the Areopagus was opened to all members of the top class and this was the actual governing body of Attica. However, he created a new Council of Four Hundred to which each of four old tribes elected a hundred and this Council selected, censored and prepared all business which would be brought before the Assembly, to membership in which all citizens were eligible.

Also of great importance was the heliaea — a large body of 6,000 jurors that served in the courts. All classes were eligible for selection by lot to this body from which the jurors were selected to hear and determine all appeals from decisions of the magistrates and other matters and in effect, this body of jurors exercised control over actions of the Areopagus and the other governing authorities of the state. Trial was the chief means for controlling the government. Almost any issue of politics or civic administration could be submitted to a jury trial and any citizen could, in most instances, institute such proceedings. These jury courts were in almost constant session, and trial by mass-jury was a most prominent feature of their civic life. This jury trial constituted the earmark of the legend of Athenian democracy although there was no complete democracy for the system applied only to freemen and it still placed a small property limitation upon eligibility to hold individual office.

Solon's constitution and laws provided regulations pertaining to practically every phase of Athenian life. He legalized the individualization of property, regulated the intestate disposition of property, established the right and law of wills, forbade the export of any produce except olive oil, encouraged aliens engaged in commerce to settle in Athens, compelled fathers to teach their sons some specific trade under penalty of loss of right to support in old age, legalized and taxed prostitution, and established licensed and state supervised brothels.

Solon's laws provided various punishments relating to adultery; he limited dowries, attempted to regulate gossip and evil speech, and even funerals and burials did not escape his attention. His laws, which were engraved upon tablets and hung in the Agora or market place in order that all might be informed of their rights and obligations, empowered any citizen to prosecute any person whom he considered guilty of a crime, and those who remained neutral in seditions lost their citizenship.

Following Solon's enactments, commerce flourished and banking reached a high degree of development. A standardized conveyancing system was devised and record offices were established where transfers of land were required to be entered in abstract. Various forms of commercial instruments were developed and widely used.

Solon's system of court procedure or trials was so democratic in nature as to make it vulnerable to the criticisms of Anacharsis. Its spirit, especially at the period of Pericles (B.C. 450) and of Demosthenes (B.C. 350) was essentially democratic. Perhaps it was because of this extreme democratization in Athens' system of justice that prevented the development of a legal profession such as we regard now as essential to a sound administration of justice under law. Athens had no professional judges or jurists and its advocates or speech-makers were more talented in the art of oratory than in the principles of jurisprudence. The heart of Attica's system of law enforcement lay in its jury system. Aristotle's detailed description of selection of the juries and the operation of the courts demonstrates some of the Athenian trial by jury. A condensation of this description from Aristotle's "Constitutions of Athens" is as follow.

The juries in Athens are chosen by lot from the ten tribes. Each qualified juror (a person over thirty years of age who is not a debtor, and has not lost his civil rights) possesses a ticket on which his name and one of the first ten letters of the alphabet are inscribed. All of the jurors are divided into ten sections, each section being represented by one of the same ten letters. On the day appointed for the courts to consider cases, each juror places his ticket in the chest on which is inscribed the letter corresponding to that on his ticket, the chests being situated near the entrance to the courts. After the chest has been shaken up, the tickets are removed and placed on a bar, and dice are drawn to determine which jurors will serve. (One die represents five jurors.) If a white die is drawn, the persons represented by the first five tickets serve on the jury; if a black one, they are rejected, this process continuing until the requisite number of jurors is selected. The tickets of those jurors rejected are returned to them, and the remaining ones are given to officials of each court so that they may be returned to the serving jurors as their fees are paid. The juror selected must go to the court which has been assigned the letter corresponding to that on his ticket; he then must present his letter to the presiding Archon and to the attendant at the barrier before entering the court. As he goes into the court, the juror is given a staff of a color corresponding to the color painted on the lintel of the entrance to the court to which he has been assigned. These measures are taken in part to insure that the jurors will attend the courts to which they have been assigned. The normal jury in Athens consists of 500 members, although it may consist of as many as 1000 or 1500 in important public cases.

After the jurors have entered the courts, the court officials are drawn by lot so that none will know beforehand which court he will have. A name is

drawn, and then a color, so that the first person drawn will have the court corresponding to the first color drawn, this continuing until all of the officials are selected. After the selection of the officials, the superintendent of the clock and tellers of the votes are drawn by lot in each court. The order of receiving fees and the places to receive such are assigned, and then the cases are called.

If private cases are to be tried, the court will hear four in each prescribed category allowable by law; if public cases, then only one is heard. Length of pleadings in private cases depends on the type of case involved, and is measured by the use of the water-clock. A measured day (the standard of which is the length of a day in the month of Poseidon) is used when the penalty (public cases) is imprisonment, death, exile, loss of civil rights, or confiscation of goods.

When the speeches for the opposing parties are concluded, each juror is given a solid and a pierced ballot ball, in full view of the litigants, the pierced representing a vote for the plaintiff, the solid for the defendant. He casts his ballot into a brazen urn, discarding his unused ballot into a wooden urn, and as he votes, he gives his staff to an official who in turn gives the juror a voucher. This insures that all jurors vote, for none can receive a voucher without voting, and none can receive his fee without presenting his voucher.

After the voting is completed, the ballot balls are plainly displayed and counted, and the number of votes is announced. Whichever party receives a majority is victorious, but if there is a tie, the verdict is for the defendant. If the case is one appropriate for the awarding of damages, such are voted on in the same manner as is the verdict.

When all of the cases for the day have been decided, the jurors receive their fees in the order previously assigned.

While a judge or magistrate presided and supervised the preliminary proceedings at the trials, his function was no more than a chairman of a public assembly and he had no authority to declare the law.

The number of jurors varied from a panel of 201 to as many as 2500 lay jurymen. In Socrates' trial (about B.C. 400) there were 501 jurors and Socrates was convicted by a majority of 60.

Any citizen could be prosecutor and the defendant usually handled his own defense. The citizen-jurors were the whole court; they were judges of law and fact without control. There was no jury deliberation. After hearing the evidence and the speeches, the jury cast their ballots in the jury urn. There was no appeal from their decision. Aristotle said "The democracy has made itself master of everything and administers everything by its votes in the assembly and in the law courts in which it holds the supreme power."

In criminal prosecutions such as that of Socrates the penalty for some crimes was fixed beforehand by law and for others was left to the jury to determine. The offenses charged against Socrates were impiety and the

corruption of youth. In such cases the first verdict of the jury pronounced upon the guilt or innocence and if the verdict was guilty there was a second hearing and vote taken to fix the punishment.

In the trial to determine the guilt or innocence of Socrates he demonstrated the art of cross-examination, which he had so well developed (and for which he remains famous) by cross-examining Meletus, one of Socrates accusers.

During the hearing to determine his punishment Socrates calmly and with noble nonchalance declared to the jury which had found him guilty, "The difficulty, my friends, is not in avoiding death, but in avoiding unrighteousness; for that runs faster than death."

He concluded his speech with these words. "The hour of departure has arrived and we go our ways—I to die, and you to live. Which is better, God only knows."

While in theory one would plead his own case the practice grew of having a speech writer to compose his speech for him and from that there developed a professional class of speech makers. The natural consequence of this was that it became permissible for the speech-maker to assume the roll of advocate and deliver the speech himself on behalf of his client. This system promoted the art of oratory and emotional appeal inasmuch as the large jury had to decide all the issues of law and fact in the case without any instructions from a judge.

The professional orator began his address with the familiar words "Gentlemen of the Jury."

The practice of permitting bail was allowed by a Greek enactment of about B.C. 300 and so another similarity to modern procedure had its origin in the Greek system.

Thus we may say the Greek system had:

- (1) A jury system.
- (2) Cross-examination.
- (3) Bail.
- (4) Professional advocates or orators such as Demosthenes and Pericles.
- (5) "Gentlemen of the Jury."
- (6) Government by written and permanent law instead of by expedient and changeable decree.

Following Solon's laws Athens became the commercial leader of the Mediterranean, stimulated and prepared for the achievements of the Golden Age.

As author Will Durant indicated in his book, *THE LIFE OF GREECE*, the best proof of Solon's wisdom was that he rescued Attica from instability and potential self-destruction and despite succeeding dictatorships and superficial revolutions, Cicero could say, five centuries later, that the laws of Solon were still in force at Athens.