

The Court in the Homeric Epos

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ABSTRACT

The research investigates the court system in Homeric Greece. This period was characterized by a declining culture and scarce works that described those times. Hence, the court procedures of those times remains understudied; therefore, the purpose of this research is to reconstruct theoretically the court procedure in Homeric Greece. Homer's and Hesiod's literature, as well as modern studies on this subject, were analyzed to reconstruct the court procedure. This research distinguishes two types of courts, the first one being Mycenaean royal courts and the second one being the courts of commons. After the downfall of the Mycenaean civilization, Greek communities preserved their courts, while the Mycenaean royal courts remained only as elements of epos and mythology. In the days of Homer, the Greek court of commons was based on oaths of the procedure participants.

The research describes the main flaws in the court system in the days of Homer, such as corruption, prejudice, and elitist control. However, despite these problems, it was during this period that the court became the only place for settling disputes.

KEYWORDS

Homeric epos, court of commons, Mycenaean Greece, royal court, works of Hesiod

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Introduction

Ancient Greece is rightly considered the cradle of civilizations. The heritage of the Ancient Greek civilization includes numerous architectural and literary works of art (Burckhardt, 2013). Many historical chronicles that describe the society of Ancient Greece have stood the test of time (Sacks, Murray & Brody, 2014). The history of Ancient Greece spans more than three millennia (Osborne, 2014). The Greek founded various sciences (Akhsanul, 2016). The law in Ancient Greece was well developed; part of the Ancient Greek law transitioned into the laws of the Roman Empire (Harris et al., 2013; Kofanov, 2006). Greek law had a long path of development; the courts of Ancient Greece formed the basic principles of modern legal proceedings.

However, despite a large number of sources, the court system of the Mycenaean period and the Greek Dark Age remains understudied. This is explained by the fact that in the Greek Dark Age (eleventh – ninth centuries

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BCE), Greek culture experienced a considerable decline due to the attacks of Dorians (Ridgeway, 2014). Virtually all cultural centers of the Mycenaean period fell into decay. The main historical source for that period is Homer (Hadas, 2013).

Hence, studying the courts of Homeric Greece is a complicated process. Nevertheless, several attempts were made to reconstruct the court system of Homeric Greece, but none of them managed to achieve any specific result.

The first viewpoint of Homeric courts is presented in the studies of R. Westbrook (1992), van Thiel, H. (2009, 2010) and M. L. West (1978), who argue that legal action at that time was a voluntary matter of the conflicting parties and that the court rulings did not have a binding effect. According to L. A. Paltseva (2002) and F. Bessone (2014), the court in the days of Homer was also an arbitrary court; however, the parties agreed to recognize the obligatory nature of the court ruling before taking legal action. G. Tür (2014) set forth entirely different opinion regarding Homeric courts. He argued that legal proceedings in the days of Homer were based on oaths. The accused had to swear to his innocence on pain of the gods' punishment (Grundy, 2014). The task of the court was to formulate this oath. M. U. Lapteva (2010) highlighted the main features of legal proceedings in the days of Homer: such proceedings implied oaths of litigators and usage of bail, while the scope of court proceedings was limited to property disputes. The third approach to studying Homeric courts is presented in the research of C. Pelloso (2013). According to Pelloso, legal proceedings in the days of Homer took place in the form of a conversation between the conflicting parties in the presence of a statue of a deity and elders, during which the parties had to come to a compromise that would satisfy both parties.

These discrepancies between the opinions regarding Homeric courts are a valid reason for investigating this problem. This research sets forth the following hypothesis: two types of courts existed in Mycenaean times. The first type was a social institution of the Greek community. The second type was a body of royal power. After the downfall of the Mycenaean civilization, the royal court ceased to exist, which is why the Homeric epos mainly describes the courts of commons. However, this epos does mention the royal courts of Mycenaean times. Legal proceedings in the court of commons was heavily affected by religion and mostly based on oaths.

Aim of the Study

The aim of the study is to reconstruct theoretically the legal proceedings in the days of Homer.

Research questions

How was the court procedure organized?

What was the difference between the court of commons and the Mycenaean royal court?

Method

The methodological and theoretical framework of this research included a set of historical and philosophical principles, namely historicism, objectivism, dialectic unity of the historical and the logical; the research also used the comparative historical and historical-analytical methods. Historicism is one of the most important methods of this research, since it enables studying the problem based on the works of scholars of those times, as well as on the works of modern scholars. The objectivism principle enabled studying and analyzing comprehensively the court procedure in Homeric Greece. The logical and theoretical method enabled reconstructing theoretically the court procedure of that time.

Data, Analysis, and Results

The court of commons is best represented in the famous scene on Achilles' shield, which reads "But the folk were gathered in the place of assembly; for there a strife had arisen, and two men were striving about the blood-price of a man slain; the one avowed that he had paid all, declaring his cause to the people, but the other refused to accept aught; and each was fain to win the issue on the word of a daysman. Moreover, the folk were cheering both, shewing favor to this side and to that. And heralds held back the folk, and the elders were sitting upon polished stones in the sacred circle, holding in their hands the staves of the loud-voiced heralds. Therewith then would they spring up and give judgment, each in turn. And in the midst lay two talents of gold, to be given to him whoso among them should utter the most righteous judgment (Il. 18. 497-508). In this text, it is worth emphasizing that the described court did not deal with the retribution of private persons – blood feuds or the payment of a bloodwite had to happen without the participation of court. Therefore, the court of commons only heard cases related to property, payments, etc.

This scene shows that the elders acted as judges. The functions of "ἵτωρ" are unclear. In Il. 23.486, this word means "an umpire": Idomeneus and Ajax called upon Agamemnon to act as the judge in a dispute – whose chariot would ride first in the chariot competition. In Hesiod's works, this word means "wise" (Erga, 792). According to the interpretation of this word in Hesiod's works and later literature, in the scene on Achilles' shield, "ἵτωρ" can be a "wise man" whose advice is important for the conflicting parties and the elders.

The court procedure should be compared with the archaic Roman procedure "legis actio sacramento".

Similar to the scene on Achilles' shield, in "legis actio sacramento" the parties offer a bail, which the losing party has to pay not to the opponent, but to third parties. In Rome, the bail was paid to the pontifex's treasury and later to the Erarium (Zaykov, 2012). In the scene on Achilles' shield, the bail is paid to the elder whose verdict was the fairest.

Another common feature of "legis actio sacramento" and the court procedure on Achilles' shield is that the court hears property disputes.

Perhaps, another aspect is in common. In "legis actio sacramento", the procedure was based on oaths. The assumption was that the guilty person was incapable of swearing he was innocent for fear of the wrath of gods. In the scene on Achilles' shield, the court procedure could also include the oaths of the parties. In this case, the task of the elders was to formulate the oath that had to be taken by the participants of the proceedings. The party that refused to take the oath lost. In Rome, the centumviri court of the second-third centuries CE also used "legis actio sacramento" (Kofanov, 2006). The centumviri collegium originally comprised of "father"-senators (Kofanov, 2006), who once were elders in a community and heads of Roman families. This feature also allows comparing the centumviri court collegium in Rome, which, by the way, gathered at forums in the times of the republic (Wlassak, 1888, 1891), and the collegium of elders in the scene on Achilles' shield, who gathered at the agora.

Hesiod mentions that the court procedure implied swearing oaths.

In the Works and Days, Hesiod predicts the following: "There will be no favor for the man who keeps his oath or for the just or for the good; but rather men will praise the evil-doer and his violent dealing. Strength will be right and reverence will cease to be; and the wicked will hurt the worthy man, speaking false words against him, and will swear an oath upon them" (Erga, 190-195).

In this fragment, Hesiod's description of the court procedure that is based on oaths is typologically similar to the Roman process "legis actio sacramento". The participant of such a process has the possibility to swear a false oath that would help him win the case. It is also worth emphasizing the role of the advocates of the participants – the "helpers" from the scene on Achilles' shield. Apparently, their job was to force the court collegium to make the right decision through shouts or sometimes brute force.

Hesiod also mentions that immediately after an unfair sentence is given, Orcus – the god of oaths – appears: "for right after unfair sentences comes Orcus" (Erga, 219). The god Orcus apparently is the god of oaths and, consequently, the power that punishes for false oaths. This means that an unfair court ruling will be punishable by the god of oaths, which is only possible if the outcome of the court hearing depends on an oath.

Hesiod also claims that a person who lies in court would have bad offspring: "For whoever knows the right and is ready to speak it, far-seeing Zeus gives him prosperity; but whoever deliberately lies in his witness and forswears himself, and so hurts Justice and sins beyond repair, that man's generation is left obscure thereafter. But the generation of the man who swears truly is better thenceforward" (Erga, 280-284).

Hesiod's basileis can be compared with the elders from the scene on Achilles' shield and the centumviri senators in archaic Rome. All three cases deal with an elite group, the members whereof constituted the court collegiums in both archaic Rome and Dark Age Greece. Therefore, courts in both archaic Rome and archaic Greece were means of enrichment and enhancement of influence for this social stratum. The very title of a judge became the mark of an influential person and an aristocrat. In the Iliad, Achilles says the following

words about his scepter: "...and now the sons of the Achaeans carry it in their hands when they act as judges, those who guard the ordinances that come from Zeus" (Il. 1. 237-239).

The word "basileum" also appears in the *Odyssey*, which says the following about Telemachus: "Telemachus holds thy demesne unharassed, and feasts at equal banquets, such as it is fitting that one who deals judgment should share, for all men invite him" (Od. 11. 185-186).

The banquets, at which the judge feasts, apparently mean the banquet that comes after the court proceedings. The court proceedings were originally based on oaths that consisted of two parts: assertion that the person who swore the oath was right and the promise to make a propitiatory sacrifice to the gods if he was wrong. Hence, after the court hearing, the party that lost had to make a sacrifice to the gods. The sacrifice was followed by a banquet, to which the judges were invited.

A similar banquet was probably mentioned in Od. 12. 439-440: "At the hour when a man rises from the assembly for his supper, one that decides the many quarrels of young men that seek judgment".

This banquet was held by the party that lost as a payment to the judges for their work. At that, the two talents of gold mentioned in the scene on Achilles' shield were intended for the judge who made the fairest decision. These two talents of gold are not a sacramentum. An analogue of sacramentum would be the cattle, which the party that lost sacrificed.

As mentioned above, the courts of commons did not deal with issues related to the retribution against the offender. These courts originated from a wager of two parties, which had a religious form. A wager cannot be agreed upon when it comes to retribution against the offender, since retribution for a serious offense is a human duty, while waiver of retribution would be a blow to the honor of the person and his or her family. Therefore, people should not have the slightest doubt that the retribution will take place. However, the wager puts into question the inevitability of retribution. The court proceedings, as in the scene of Achilles' shield, can only be devoted to a dispute regarding the payment of bail.

The Homeric epos features episodes that show the original nature of the court of commons. The *Iliad* describes the dispute between Menelaus and Antilochus over the second reward for a chariot competition (Antilochus won through deception). Menelaus appeals to the Achaean chiefs for fair judgment: "Come now, ye leaders and rulers of the Argives, judge ye aright betwixt us twain, neither have regard unto either" (Il. 23. 573-574).

It worth noting that Menelaus offers the Achaean authorities to judge them – when opponents in court to not resort to the help of their followers (as in the scene on Achilles' shield), i.e. Menelaus wishes to make the process as fair and just as possible.

In order to find out who is right, Menelaus offers Antilochus to swear the following oath: "I will myself declare the right, and I deem that none other of the Danaans shall reproach me, for my judgment shall be just. Antilochus, fostered of Zeus, up, come thou hither and, as is the appointed way, stand thou before thy

horses and chariot, and take in hand the slender lash with which aforetimethou wast wont to drive, and laying thy hand on thy horses swear by him that holdeth and shaketh the earth that not of thine own will didst thou hinder my chariot by guile" (Il. 23. 579-585).

Antilochus refused to swear this oath and declared Menelaus the winner.

This scene depicts the court procedure in its simplest form. The peculiarity, however, is the fact that Menelaus formulated the oath, rather than the Achaean authorities.

Another peculiarity is that in the scene on Achilles' shield, the parties provided the reward for the judge that would make the fairest decision beforehand. In the above scene, this was not the case, since Menelaus formulated the decision himself.

If Antilochus did swear, Menelaus would have been forced to declare himself a loser or swear an oath himself. In the latter case, the judges had to formulate a second oath for Antilochus. The parties would continue swearing oaths until one declared itself a loser or a compromise was found.

It is worth noting that refereeing at sports competitions barely differed in form from the court proceedings regarding property disputes. In the scene depicting the dispute between Menelaus and Antilochus, Achaean authorities were called upon to referee a sports competition. In the *Odyssey*, Odysseus says that the competition for Achilles' armor was judged by Athena and the Trojans: "and the judges were the sons of the Trojans and Pallas Athena" (Od. 11. 547). The Trojans and Athena apparently played a role that was similar to that of Achaean authorities in the dispute between Menelaus and Antilochus.

The Homeric epos features a description of a court where the king was the main active participant. The *Odyssey* says the following about Minos: "There then I saw Minos, the glorious son of Zeus, golden scepter in hand, giving judgment to the dead from his seat, while they sat and stood about the king through the wide-gated house of Hades, and asked of him judgment" (Od. 11. 568-571).

It is worth noting that in this case, the court resides in the palace (κατ' εὐρυπυλῆς Ἄϊδος δῶ), not in the place of assembly, like, for instance, in the scene on Achilles' shield. This fragment apparently presents memories of a Mycenaean royal court. Considering the level of development of the state machine in Mycenaean Greece, it seems likely that Mycenaean states also had a royal court. One can only guess how the competences of the royal court and the court of commons were distributed. Perhaps the royal court was authority of appeal and cassation with respect to the court of commons. However, while the courts of commons in the days of Homer dealt with property disputes, the royal courts in Mycenaean Greece could hear cases related to retribution against an offender. The level of development of the state could allow royal power to interfere in the retribution of private persons.

There is probably no succession between the royal Mycenaean courts and Homeric courts. Courts of commons probably existed before the emergence of Mycenaean states. Such courts belonged to the society that was devoid of strong

political power. After the emergence of Mycenaean state, these courts could coexist with royal courts, be subject to them, and feel the influence of royal judicial proceedings. However, the courts of commons relied on community organizations of the Mycenaean society, rather than on the state machine. After the downfall of Mycenaean states, the communities remained and preserved their courts.

Based on the analysis of the works of Ancient Greek authors, it is possible to reconstruct the court procedure as follows. The conflicting parties agreed to settle the dispute in court. The most authoritative members of the community – elders and *basileis* – were invited to act as judges. The court procedure itself took place in a place of assembly with active participation of the followers of the conflicting parties. The parties bring a reward for the judge who would formulate the fairest ruling. The task of the judges is to offer a solution to the conflict one by one. The solution was an offer to swear a certain oath. When the collegium delivered its judgment, one of or both participants of the process would swear the oath that was formulated in the sentence. This oath affirmed the rectitude of the swearing person and promised a propitiatory sacrifice to a deity of the person swore a false oath. If any party refused to swear the oath, it lost. If both parties agreed to swear the oath, the judges had to make a new decision and formulate a new oath for the parties. The parties would continue swearing oaths until one refused to do so. This party was declared the loser and had to make the propitiatory sacrifice to the deity. After the sacrifice, a banquet was held, to which the judges were invited.

Discussion and Conclusion

This research agrees with L. A. Paltseva (2002) in that legal action in the days of Homer was a voluntary matter of the conflicting parties. However, this study does not that the opinion of other researchers who argue that the court in the days of Homer was an arbitrary court. The idea of G. Tür (2014), who argues that the court procedure was based on oaths, is considered true. However, it is worth stressing that the court in the days of Homer did not deal with cases related to retribution against the offender. It is also important to differentiate between two types of courts that were depicted in the Homeric epos: the Mycenaean royal court and the court of commons, which existed both in the times of Mycenaean Greece and thereafter. It is difficult to agree with conception of the Homeric court set forth by C. Pelloso (2013), considering the information in Hesiod's poems about the role of oaths in the court proceedings and evidences from the history of Roman law (the "legis actio sacramento" process). The research of M. U. Lapteva (2010) lacks a description of how the court proceeding actually took place in the days of Homer. However, this research agrees with all of M. U. Lapteva's (2010) ideas regarding the main features of the court procedure in the days of Homer with the exception of one: the Homeric and Hesiod's epos does not mention the involvement of witnesses in the court procedure. It is also worth stressing that the features of court proceedings in the days of Homer, which were distinguished by L. A. Paltseva (2002), apply only to the courts of commons.

The court procedure in the days of Homer included rituals, such as oath swearing and sacrifices. The court was not subject to the state machine – it was managed by communities. The community elders acted as judges. Since the court procedure consisted of swearing oaths to gods, material evidence could be ignored, which shows the religiousness of Ancient Greeks. Therefore, the source of judgment was the oath, rather than the law.

Such a court procedure is prone to subjective factors: the judges can be exposed to pressure or bribed; the parties can swear false oaths; the oaths can be formulated incorrectly; the party that lost could ignore the court ruling. Furthermore, the court itself was a tool in the hands of the elite. However, it is worth noting that at that time, the court became an integral part of the society in terms of dispute settlement.

The role of Mycenaean royal courts is undetermined due to the scarcity of sources that mention them. Royal courts were no longer required after the end of the Mycenaean age and monarchy; on the contrary, the courts of commons became stronger due to the emergence of the polis structure that was administrated by elders.

The common features of both courts include: religiousness; the court was not part of the state machine; the system was based on traditions rather than on the law; the court protected the elite class; corruption. These problems were the reason behind the subsequent reorganization of the court system in Ancient Greece.

Implications and Recommendations

The Homeric society had a developed system of private retribution against the offender. However, even despite the flawed court procedure, the court of commons interfered in matters related to retribution against the offender. This sphere, even a court whose judgments are not always fair is more progressive a phenomenon than private retribution.

The flawed court system was an important destabilizing factor in archaic Greek poleis. Therefore, matters related to court proceedings were one of the centerpieces of Ancient Greek monuments of law.

The theoretical reconstruction of the court procedure in Homeric Greece, which is offered in this research, can help to investigate the court procedure in the archaic period of Ancient Greece.

Disclosure statement

No potential conflict of interest was reported by the authors.

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