

In the last issue of *Labyrinth* we looked at a few of the more famous cases of murder which took place in Classical Athens. We also had a few words to say on the Athenians' attitudes towards murder and murderers. Now let's take a closer look at how they dealt with these situations when they arose.

Athenian society as a whole was organized rather differently from many modern societies, and that organization accounts in part for their outlook on the crime of murder. In ancient Athens the most important social unit was the family, and not just the immediate family, but grandparents, uncles, aunts, cousins and so on. The family was of central importance in Athenian life, and it was the family that played a central role whenever anyone was murdered. Nowadays if a murder is committed, the first response is to call in the police. Detective squads undertake the investigation and discover the criminal; they apprehend him or her, lay the charges and hand the alleged murderer over to the justice system. Nowhere in all of this is there any role for the family of the victim. In fact, we tend to think that in the interests of fair play for the accused, the family must not be involved in any way. For instance, our court system would never dream of allowing the victim's sister or brother to sit on the jury in a murder trial.

Ancient Athens took a different approach. There it was believed that the victim's family had the primary responsibility not only for discovering the murderer, but also for making that discovery public, and for pursuing the matter in court. There was nothing resembling a police detective in Classical Athens, and there were no private detectives either, no Sam Spades or Miss Marples. If you were murdered, your grieving relatives could not hand the matter over to the public prosecutors. Instead, your father, your uncles, your brothers, your sons or your cousins would have to find out who had done it (a task which in many cases was probably easier in the close-knit society of ancient Athens than it would be in the huge urban centres of today), and they would then have to institute the legal procedures necessary. In Canada today, a murderer would be arrested, kept in jail or let out on bail while awaiting trial, and then tried before a judge and jury, with a representative of the state (the crown attorney) prosecuting the case. In Athens, the victim's closest male relative was responsible (women were generally barred from public activity). He would not in fact seize the suspected murderer; instead he would go down to the marketplace, the central gathering place of Athens, and proclaim aloud "So-

and-so has murdered my son/brother/grandmother, etc. He must now keep away from the places laid down by law." The effect of this proclamation was to bar the killer from certain public places (the marketplace itself, sanctuaries and temples, the lawcourts, and any community gathering). Other than that, however, the alleged murderer was free to go about his business until the time of his trial. As long as he was an Athenian citizen he was not arrested and imprisoned, nor did he have to come up with any kind of bail. The Athenians made the assumption that any Athenian was so closely entwined with his own community that he would rather stick around, undergo a trial, and (hopefully) clear his name.

Trials for homicide, since murder was a religious crime, were largely held in religious sanctuaries. They were held in the open air, since to share a roof with a killer would bring pollution on everyone else present. There were four or five special courts for murder trials, consisting of between 50 and 200 jurors who would have heard enough of these trials to become relative experts. The court would have a presiding magistrate, but no judge with the special powers that a judge has today.

The alleged murderer would speak in his own defence. The Athenians had no respect for someone who was unable to defend himself in court, and in fact people who acted as "lawyers" (that is, people who accepted a fee from someone to speak on his behalf) were themselves liable to prosecution. So the accused would speak on his own behalf, while the prosecution would be carried out, again, by the nearest male relative of the victim. Both sides were allowed to deliver two speeches each, which were timed by a water-clock so that neither side received more time than the other. If the accused wished, he could avail himself of a special opportunity: after the first set of speeches, and before the jury had voted one way or the other, he could choose to go into voluntary exile. This would save him from getting the death penalty if he were found guilty; but if he decided to opt for exile, he almost guaranteed that the jury would find him guilty, since it would look as though he were admitting it himself.

Both sides were allowed to produce and question witnesses, and occasionally even "silent witnesses": it was not unknown for a defendant to produce his weeping children in court and hope to obtain the sympathy of the jury. The sympathy gambit often seems to have worked quite well. Of course, it would be equally easy for the prosecution to produce the victim's orphaned and weeping children as well. More logical witnesses were those who had seen the crime committed, or had some other knowledge of the events in question. But the Athenians were a very stratified society, and some kinds of people were considered more reliable witnesses than others. For example, we know of one case where a prosecution for murder was

not pursued because the only witness to the act were a woman and her children. (A woman was not considered as reliable a witness as a man.) And whereas slaves could give testimony in court, their testimony was only acceptable if it had been given under torture. Even slaves who had taken no part in a crime and were eager to cooperate were subject to torture of various kinds: the rack, flaying, whips, and vinegar up the nostrils.

This discrimination between different kinds of people holds true in other areas as well. For example, while the death penalty was automatic for someone who had killed an Athenian citizen, it seems that, in many cases, a master could kill his own slave and get away with nothing more than the need for a ritual purification. After all, Athenian homicide law made a victim's family responsible for the prosecution. How are a slave's relatives going to prosecute a free citizen? As for the status of a murderer, a free Athenian citizen had certain rights, even when accused of murder. But a slave, when accused of murdering a free man, was in a most unenviable position. Plato believed that when a slave killed his master "the relatives of the deceased should treat the killer in whatever way they like, except that under no circumstances whatever are they to allow him to go on living".

Some obvious questions arise when we realize that Athenians believed that the family of the victim was responsible for catching a killer. What if there were no eligible relatives to carry out the prosecution? In the case we talked about last time, where the victim's wife poisoned her husband, it was several years before the victim's son could prosecute his stepmother, since he had been too young at the time of his father's death. But his father, before he died, had given him specific instructions to take vengeance for the murder, and it was a sacred task the son had to carry out. Incidentally, had the father been in a more lenient mood (after all, the woman claimed the poisoning was an accident), he could have forgiven her, and that one act would have given her legal immunity; being forgiven by one's victim was all it took.

What happened when the victim had no family at all? Did murderers get off scot-free? We know of at least one instance where that happened. The victim was a resident alien, an old woman who had once been a slave. As so often with people like this, we're never even told her name. She was a free woman who was living in the house of her one-time master, whom she had nursed as an infant. When a couple of rowdies, Theophrastos and Euergos, broke into the house and started stealing various items, she tried to conceal a valuable cup from them. They caught her at it and beat her so badly that she died several days after the incident. Her one-time master went to the local legal experts to discover whether he could prosecute

Theophrastos and Euergos, and was told that he probably shouldn't even try, since he was not a relative of the woman, nor was he any longer even her master.

On the whole, the Athenians appear to have been satisfied with their system of family-centred prosecution for murder. It satisfied what they felt were sacred demands of vengeance. Yet we can see that it sometimes enabled a murderer to slip through the cracks (though perhaps no more so than at present). And in ancient Athens, as perhaps in many societies, it was chiefly the poor and the disadvantaged who were forgotten by the justice system.