

Athenian Law

Preservation of the laws crucial to democracy, major role of popular juries

Programme of re-inscribing and coordinating existing laws at end of fifth century

Distinction between 'decrees' and 'laws'

500 'legislators' (*nomothetai*)

Indictments for 'illegality' (brought against a decree) and for 'introducing an unsuitable law' (against a law)

Juries final arbiters in legislative matters:

Ps.-Demosthenes 59.88: For the civic body of Athens, although it has supreme authority over all things in the state, and it is in its power to do whatever it pleases ...

Juries

Great care taken to prevent corruption and ensure representation

Panel of 6000 each year, juries numbered from 200 to 6000

Selection methods frequently refined, and complex system of allotment tokens and machines (c. 378/7) meant selections were unpredictable (*Ath. Pol.* 63-66).

Types of suit, choice of prosecutor

Dike idia, dike demosia, dikai

Graphe, graphai, 'anyone who wished' (e.g. treason, desertion, embezzlement of public funds, maltreatment of an orphan, seduction of a free woman, certain kinds of theft and *hybris*)

Apagoge, endeixis, ephegesis, apographe (list of property retained by the accused though it ought to have been forfeited; prosecutor got three-quarters of the value), *phasis* (half), *eisangelia*

In public cases fine paid to the state

Mistrust of public officials:

Ps.-Aristotle, *Constitution of Athens* 9.1: (The most democratic features of Solon's constitution include) permission for anyone who wished to seek retribution for those who were wronged.

Choice of prosecutor 2

Public suits encouraged active participation, but prosecutors in *graphai* risked criticism

Obligations to manage one's *oikos*, help one's friends and harm one's enemies

Polypragmon, *polypragmosyne* ('apt to do much', 'fond of business') often equals busybodying:

Lysias 1.15-16: She said, 'Euphiletus, do not think it is from any meddlesomeness (*polypragmosyne*) that I have approached you; for the man who is working both your and your wife's dishonour happens to be our enemy'.

Sykophants

Prosecutors' motives suspected, led to the term *sykophantes*, one who prosecuted on false charges or for money from any source, commonly applied to politicians:

Aeschines 1.1: I have never, fellow citizens, brought indictment against any Athenian, nor vexed any man when he was rendering account of his offices; but in all such matters I have, as I believe, shown myself a quiet and modest man. But when I saw that the city was being seriously injured by the defendant, Timarchus, who, though disqualified by law, was speaking in your assemblies, and when I myself was made a victim of his blackmailing attack ...

So prosecutors claim personal reasons for prosecuting, defendants accuse them of being *sykophantai*

Dangers of sycophancy recognised:

Demosthenes 21.47: In all cases where an indictment is entered, as the law directs, if anyone fails to prosecute, or after prosecution fails to obtain one-fifth of the votes of the jury, he shall pay a thousand drachmas to the Treasury.

Graphe against *sykophantia*

Initiating procedure

Absence of public prosecutors and other officials

The Eleven and the Scythian archers

Role of individuals in legal processes

Arbitration. An example of private arbitration:

Ps.-Demosthenes 59.68: When Epaenetus had made these statements and had preferred the indictment, this Stephanus, knowing that he would be convicted of keeping a brothel and extorting blackmail, submitted his dispute with Epaenetus for arbitration to the very men who were the latter's sureties on the terms that they should be released from their engagement and that Epaenetus should withdraw the indictment.

Cases had a preliminary hearing before a magistrate

Court hearings

Litigants had normally to deliver their own speeches

Role of 'advocate', politicians and generals acting as advocates attempt to use their influence and claims for *charis* on behalf of their *philoï* (law at Dem. 46.26 provides a *graphe* if an advocate accepted money for private or public cases).

Advantages in litigation accruing to the rich:

Demosthenes 21.112: For, if I may add a word on this subject also, where the rich are concerned, Athenians, the rest of us have no share in our just and equal rights. Indeed we have not. The rich can choose their own time for facing a jury, and their crimes are stale and cold when they are dished up before you, but if any of the rest of us is in trouble, he is brought into court while all is fresh. The rich have witnesses and counsel in readiness, all primed against us; but, as you see, my witnesses are some of them unwilling even to bear testimony to the truth.

Logographoi

Help in preparing the speech provided by *logographoi*

Logographers earned a living as a full career or sideline to political career: Lysias and Isaeus (metics), Demosthenes

Public attitudes to logographers contradictory; litigants and 'good' characters in comedy present themselves as simple, honest citizens:

Isaeus 1.1: While Cleonymus lived, we were so discreetly brought up by him that we never entered a law court even as listeners; now we have come here to fight for all that we possess.

But rhetorical skill admired, to be able to seek help from one's friends when in difficulties was democratic:

Hyperides 4.11-12: You also maintain that no one should even help him or be his advocate, and you exhort the jury to refuse a hearing to those who come up to speak. And yet, of the many good institutions of the city, what is better or more democratic than our custom, when some private person is facing the danger of a trial and cannot conduct his own defence, of allowing any citizen who wishes to come forward to help him and give the jury a fair statement of the case? You will claim, no doubt, that you have never worked on such a principle. Yet when you were prosecuted by Alexander of Oeon, you asked for ten advocates from the tribe Aegeis, and I was one of them, chosen by yourself.

Penalties and their enforcement

Involvement of individuals and the advantages of wealth

Two categories of cases, according to whether the penalty was fixed or the jury could choose between a penalty suggested by the prosecutor and one suggested by the defendant

Penalties included death, imprisonment, exile, total or partial loss of civic status (*atimia*), confiscation of property and fines

Cumulation of penalties was possible (e.g. death and confiscation of property for homicide)

Death could be imposed for a variety of offences including types of theft and robbery, treason, political corruption and failure, various religious offences (uprooting sacred olives, impiety), or citing a non-existent law in court

Eleven supervised the death penalty and imprisonment

If fines not paid anyone who wished might make a denunciation (*apographe*), entitled to three-quarters

‘Self-help’ procedures in private cases, action for ‘ejectment’

Homicide Law

Dike phonou

Prosecutor normally a relative

Legal action was necessary to deter others, but also for

i) vengeance, required by the deceased

ii) purification, since killing was believed to cause pollution (*miasma*; cf. the plague in Soph. *OT*)

Law of Draco (reinscription of 409/8, Antiphon 6 , Demosthenes 23)

Relatives made proclamation in the Agora, instructing the killer 'to keep away from the things laid down by law' (e.g. temples, lawcourts, the Agora, public religious ceremonies), i.e. temporary disfranchisement (*atimia*)

Archon basileus received the charge

No anxiety that killer might evade trial: if he left Attica he underwent voluntary exile and freed the land of his pollution

For foreigner who refused to come to trial, the relatives might make a seizure (*androlepsia*) of any three citizens of the city where he was

Kinds of homicide

Lawful homicide (e.g. in an athletic contest; killing a man in war by mistake for an enemy; a doctor's patient; killing in self-defence; killing a highwayman or anyone caught stealing at night; an adulterer caught in the act; a man exiled for homicide found within Athenian territory; anyone attempting to set up a tyranny or overthrow the democracy)

Non-lawful killings, distinction between intentional and unintentional homicide, 'deliberate' (*ek pronoias*) synonym of 'intentional' (*hekon* or *hekousios*); distinction between 'planning' (*bouleusis*) and killing with one's own hand; distinction between a citizen and an alien or slave. The case was heard in a court presided over by the basileus, according to these distinctions:

- the Areopagus of ex-archons: intentional killing with one's own hand of a citizen;
- the Delphinium of *ephetae*: lawful killing;
- the Palladium: unintentional homicide, *bouleusis* of homicide, homicide of an alien or slave;
- in Phreatto: trials for intentional homicide by those already exiled for unintentional homicide;
- the Prytaneum: homicide by an unknown person, animal or inanimate object. Basileus and four phylobasileis (heads of the ancient tribes)

All these trials took place in the open air (pollution)

Procedure

Basileus held three pre-trials (*prodikasiai*) in separate months, trial in fourth month. Same basileus, so no prosecutions could be begun in the last three months of the year

Elaborate oaths sworn by the prosecutor (that the defendant had committed the homicide), the defendant (that he had not, except at the Delphinium) and the witnesses (that their evidence was true and that the accused committed the homicide or did not). Oath at end of trial

Women, children and slaves allowed to appear as witnesses?

Two speeches on each side; at end of his first speech the defendant was allowed to go into voluntary exile

Penalty for intentional homicide was death and confiscation of property; for unintentional homicide (and homicide of a foreigner) exile for life, unless pardon (*aidesis*) granted by the victim's family

Penalty for *bouleusis* of intentional or unintentional homicide same as for committing it with one's own hand

Use of *apagoge* (summary arrest) and *endeixis* (denunciation, usually followed by *apagoge*) against convicted killers and suspected killers who appeared in prohibited places