

ATHENS AND ROME: LIFE AND CULTURE IN CLASSICAL ANTIQUITY

Lecture 31 – Law and the Law-courts - Athens

CLCS4007

Matthew Cobb

Evidence

- ▣ Literary sources:
 - *logographoi* – writers of legal speeches, e.g. Lysias,
 - constitutional studies, e.g. [Ps.]-Aristotle *The Athenian Constitution*,
 - drama, e.g. Aristophanes *Wasps*.
- ▣ Archaeological evidence, e.g. voting disks.
- ▣ Epigraphic evidence – decrees of the assembly.

“There are three points in the constitution of Solon which appear to be its most democratic features... thirdly, the institution of the appeal to the jury-courts; and it is to this last, they say, that the masses have owed their strength most of all, since, when the democracy is master of the voting-power, it is master of the constitution. Moreover, since the laws were not drawn up in simple and explicit terms (but like the one concerning inheritances and wards of state), disputes inevitably occurred, and the courts had to decide in every matter, whether public or private. Some persons in fact believe that Solon deliberately made the laws indefinite, in order that the final decision might be in the hands of the people. This, however, is not probable, and the reason no doubt was that it is impossible to attain ideal perfection when framing a law in general terms; for we must judge of his intentions, not from the actual results in the present day, but from the general tenor of the rest of his legislation.” – [Ps].-Aristotle *Athenian Constitution* 9.

Democratising the Courts

- ❑ Establishment of popular courts by Cleisthenes – courts of appeal.
- ❑ Shift of powers from the Areopagus to other areas including the *dikasteria* – c. 460s BC.
- ❑ Areopagus continues as a court of homicide.
- ❑ Introduction of pay for attendance – initially 2 obols, then later 3 (420's, due to Cleon).
- ❑ Public could and did observe trials, may be vocal about showing approval or disapproval.

Lawsuits

Prosecution

- ▣ *Dikai* – private grievances.
- ▣ *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*).

“There are three points in the constitution of Solon which appear to be its most democratic features... secondly, the right of every person who so willed to claim redress on behalf of any one to whom wrong was being done...” – [Ps.]-Aristotle *Athenian Constitution* 9.

- ▣ Homicide cases generally had to be brought forward by member of family.

- ❑ Person initiating the suit informed the accused in front of witnesses.
- ❑ Defendant and accuser appear before magistrate – place reserved in court calendar.
- ❑ Charges and denials written on a wax tablet, later public notification of the impending trial put on wooden tablet on notice board by statue of the Eponymous Heroes (may mention penalty).
- ❑ Accuser spoke first and then defendant – no final summation of points.

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:

“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 ...” - **Aeschines 1.1.**

- ▣ Risks of sycophancy:

“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.” **Demosthenes 21.47.**

Speaking and Advocates

- ▣ 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).

“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.” - **Hyperides 4.11-12.**

Emotional Appeals

“[Anti-Cleon] Have pity, father, pity, I adjure you; you would not have him dead. Where are his puppies? A *group of children costumed as puppies comes out*. Come, poor little beasties, yap, up on your haunches, beg and whine!” – **Aristophanes *Wasps* lines 975-977.**

Jurors and the Courts

Jurors (*Dikastes*)

- ▣ Each year 6,000 free adult male citizen over the age of 30 chosen by lot from those willing to stand – 600 from each tribe.
- ▣ Great care taken to prevent corruption and ensure representation.
- ▣ Panel of 6000 each year, juries numbered from 200 to 6000.
- ▣ Not accountable for their actions (no *euthynai*), though they swore a religious oath.

Attempts at Influence?

“From the moment I leave my bed, men of power, the most illustrious in the city, await me at the bar of the tribunal; the moment I am seen from the greatest distance, they come forward to offer me a gentle handy-that has pilfered the public funds; they entreat me, bowing right low and with a piteous voice, "Oh, father," they say, "pity me, I adjure you by the profit you were able to make in the public service or in the army, when dealing with the victuals." Why, the man who speaks thus would not know of my existence, had I not let him off on some former occasion.” – **Aristophanes *Wasps*.**

Selection of Jurors

- ▣ Jurors selected randomly from those who turned up for duty.
- ▣ Pinakion (juror's ticket) inserted in kleroterion (allotment machine).
- ▣ Selection methods frequently refined, and complex system of allotment tokens and machines (c. 378/7) meant selections were unpredictable (Ps. Arist. *Ath. Pol.* 63-66).



Voting

- ❑ Secret voting by psephos (pebble) or bronze disk – solid axle for defendant, hollow axle for plaintiff.
- ❑ Possible second vote to determine punishment.

“He is a merciless judge, never failing to draw the convicting line and return home with his nails full of wax like a bumble-bee. Fearing he might run short of pebbles he keeps enough at home to cover a sea-beach, so that he may have the means of recording his sentence.” – **Aristophanes *Wasps* lines 105-112.**



Judicial Officials

- ▣ No real equivalent to a judge – jurors passed sentence.
- ▣ Six archons known as *thesmothetai* “law-setters”.
- ▣ Hear the cases of the two sides and accepts any relevant documentary information.
- ▣ Arrange for a court session.
- ▣ Preside over trial, but there to ensure procedures followed rather than to direct jury or pass sentence,
 - family and inheritance matters remit of eponymous archon,
 - metics and foreigners responsibility of Polemarch.

The Courts (*Dikasteria*)

- ▣ Juries of 201 – 401 for private suits (*dikai*); 501 – 6000 for public suits (*graphai*).
- ▣ Time allowed depended on severity of case, not on quantity of evidence: max. 3 hours for a speech in public case; max. c. 40 minutes for private, plus short response.
- ▣ Clock stopped for witness statements and reading of legal documents.
- ▣ All cases must be completed in a day.

Klepsydra



Law in Drama

Aristophanes *Birds*

- ▣ Some disillusioned Athenians leave the city to get away from excessive litigation.
- ▣ They plan to set up a new city in a land without lawsuits, and ask the ex-human Hoopoe if he's seen anywhere suitable.
- ▣ At his house they get the idea to found a city in the sky (the original Cloud Cuckoo Land).



“[EUELPIDES] Cicadas chirp up in the trees a while, a month or two, but our Athenians keep chirping over lawsuits all their lives.” –
Aristophanes *Birds* lines 39-41.

“[STATUTE SELLER] I’m a statute seller – and I’ve come here to sell you brand-new laws.” (1331).

“[SYCOPHANT] . . . and I hunt around to dig up law suits. That’s why I need wings to roam around delivering summonses in allied states.” (1425-26).

Aristophanes *Wasps*

- Anti-Cleon (*Bdelycleon*), and the slaves Sosias and Xanthias, try to keep Anti-Cleon's father, Pro-Cleon (*Philocleon*), from attending the courts.
- Chorus – the wasps, cantankerous old men, who are also jurors.
- Mock trial held in the house.
- Pro-Cleon convinced in the end – acts raucously at a symposia.

Sophocles *Antigone*

- ▣ Debate over human vs. natural/divine law.
- ▣ Athenian debates about ethics - Thucydides' Melian dialogue – the strong impose what they can and the weak endure what they must (5. 89).

“[ANTIGONE] Yes. Zeus did not announce those laws to me. And Justice living with the gods below sent no such laws for men. I did not think anything which you proclaimed strong enough to let a mortal override the gods and their unwritten and unchanging laws.” (450-53).

Case Study: The Trail of Socrates

- ▣ Plato's *Apology* – Xenophon's *Apology*.
- ▣ Socrates accused of not worshipping the gods of the *polis*, of introducing new gods, and of corrupting the youth.
- ▣ “Socrates” claims to hear divine advice – mentions Delphic oracle claiming Socrates was most just and wise.
- ▣ Friends, family members, supporters, as well as general public observing the trial – crowd sometimes agitated.

- ▣ Plato's Socrates mentions allusions to Aristophanes play *The Clouds*.
- ▣ Xenophon claims Socrates refuses to name a penalty, and that it was his will to die, contra Plato (*Apology*) who mentions Socrates suggesting he be given free meals by the state, though settles on 100 drachmae fine.
- ▣ Diogenes Laertius (c. 3rd century AD) – claims more voted for his death than found him guilty.
- ▣ Socrates in prison – drinks hemlock.

Bibliography

- ▣ Boegehold et al (1995) 'The Lawcourts at Athens: Sites, Building, Equipment, Procedure and Testimonia', *The Athenian Agora* 28.
- ▣ Aristophanes *Wasps* -
<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0044%3Acard%3D1>