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CODES AND CODIFICATION. [*This entry contains six subentries, on codes and codification in ancient Greek law, in ancient Roman law, in Islamic law, in Islamic law in Africa, in medieval and post-medieval Roman law, and in United States law. For discussion of codes and codification in Chinese law, see Chinese Law, Sources of, subentries on Penal Law and Administrative Codes or Regulations.*]

Ancient Greek Law

The idea of gathering together the entire set of laws of a state, or at least its civil laws, in a single, systematically constructed law code is a relatively recent one. It is rooted in the natural-law philosophy of the seventeenth century, and is a product of the Enlightenment. In Continental Europe, this idea of a national legal codification reached its apex with the enactment of the German Bürgerliches Gesetzbuch (BGB or Civil Law Code) in 1900; but despite the BGB's approach to technical perfection, it remained an illusion that one could "codify" the entire set of civil laws exhaustively and systematically. At present, developments in the European Union go in different directions. It would be futile to seek comprehensive legal codifications according to the strict standards of the nineteenth century in the poleis, the Greek city-states of the seventh through fourth centuries B.C.E. Nor is there any parallel among the Greeks with the codification instituted by the Byzantine emperor Justinian in 630 C.E., when he had the works of the classical Roman jurists from the first three centuries of the Common Era excerpted, and promoted this edition as the generally authoritative text for the teaching and practice of law. Similar theoretical texts developed by scholars in ancient Greece were of no practical significance, and were never adapted to any legal system. Thus, legal codification has taken many different forms throughout the course of history. For Greece, scholars are restricted to seeking written documents containing large groups of legal regulations. One may also describe such documents as law codes, without necessarily wanting to measure them against Continental European or Justinianic standards (the Twelve Tables of Rome from the years 451–450 B.C.E. would certainly be comparable). Untroubled by discussion of the European codification movement of the eighteenth and nineteenth centuries, many Anglo-American scholars use the expression "law code" in just this sense. It is important to consider the actual historical context in which each set of legal records originated.

The most famous example of an ancient Greek law code is the great legal inscription at Gortyn, on Crete, from the middle of the fifth century B.C.E. Here indeed we have a broad-ranging official text, but no literary sources that might explain its background. The situation of Athens is just the opposite: there, numerous reports of "codifications" purportedly date back to the seventh century B.C.E., but no single comparable official source has come down to us even reasonably intact. The following will treat, regardless of chronological order, first Gortyn, then Athens, and finally the other Greek states.

Gortyn. In 1884 two archaeologists, Federico Halbherr and Ernst Fabricius, discovered, on a rectangular wall standing in the water of a mill canal in Gortyn, one of the largest inscriptions ever found in Greece. In twelve

columns, more than six hundred lines of legal regulations were preserved in excellent condition; the entire text is around thirty feet long. The lines were written around 450 B.C.E. in the ancient boustrophedon manner (just as the farmer "turns the oxen" when plowing, the characters run first from right to left and then from left to right, etc.). The monument had been, during Roman times—in the first century B.C.E.—carefully removed and rebuilt as a part of an *odeon* (theater); it can be seen today still in the same place. In loose, associative sequences of themes—though nonetheless in compact, juristically pregnant language and with highly developed legal technique—the following matters were regulated: conflict concerning the ownership of a slave and the process for attaining freedom; sexual assault and adultery; the division of property in case of divorce; legitimate and illegitimate children; inheritance; the sale of property; the ransom of a prisoner of war; marriage between free persons and slaves; the purchase of a slave; the treatment of an heiress; bond and monetary debts; and adoption. In all cases, substantive law, sanctions, and procedural law are closely mixed together.

The text's content and prominent place of display in the city have led most scholars, with some justification, to speak of the City Statutes or Law Code of Gortyn. All the same, the neutral denotation "Great Legal Inscription" seems to fit better. The statutes belong to a continuous tradition in Gortyn, beginning around 600 B.C.E., of high-quality recordings of laws; these have been found in the form of individual statutes on the walls of the temple of Pythian Apollo and on the north and east wall of the *agora* (marketplace), in the seven columns and other fragments of what has been called the Second Code. The particular subjects of the individual legislative acts speak against the idea that law was systematically recorded in Gortyn. Even the Great Legal Inscription might have arisen as a collection of individual situations, issued over time and in response to specific exigencies.

One may therefore certainly dismiss the idea that the aim of recording laws in Gortyn was the codification of the entire legal system. Lawmaking intervened in life only on certain points. The background of the brisk inscriptional activity in this small Cretan city remains cloudy indeed. In the literature, two opposite motives have been advanced for beginning to record laws in the Greek poleis: either the lower strata of the population (the *dēmos*) forced through reforms for their own benefit or, on the contrary, the aristocracy secured its domination through written laws. The view that the aristocracy, through the writing down of laws, limited the power of and exercised control over colleagues who held office as magistrates seems to fit better with the well-supported finding that laws were recorded in response to specific situations. Whether and to what extent the *dēmos* participated in this cannot be determined. The question that goes beyond the theme of codification—whether one may first truly speak of "law" at the stage when it has been written down in public places—is not affected by this. It should be answered with a "no." In every extensively organized human society one finds legal rules for living together, regardless of whether these are displayed in writing. In the end, it remains a question of definition whether one should designate these rules as "law" or "pre-law" (*prédroit*).

Athens. The idea that the legal systems of the Greek poleis were given them by archaic "lawgivers" stems from the great Athenian philosophers Plato and Aristotle. Such men, called *nomothetai*, were also often active as arbitrators (*aisymnetai*) in social conflicts between the general citizenry and the aristocracy. A great deal of modern scholarship can only imagine the product of this archaic lawgiving to have been codification. In Athens, Draco and Solon are well known from literary sources of the fourth century B.C.E. as lawgivers of this kind, but no direct, epigraphic evidence has survived from the time of their work. A further act, which has also been understood as a codification, took place in Athens at the end of the fifth century B.C.E.: a systematic new recording of the laws valid in the state at the time.

Draco and Solon. Draco stands in the shadow of Solon, who was—anachronistically—praised by writers of the fourth century B.C.E. as the founder of the Athenian democracy. Of Draco's legislation from the years 621 and 620 B.C.E., only the law on homicide then remained in force. That he also gave Athens a "constitution" is unlikely. The law on homicide was reinscribed on stone in the course of the revision of laws in 409–408 B.C.E. In the process, the text was transcribed from the original *axones*—rotating, vertically oriented blocks of wood. The stone inscription comes down to us in very fragmentary condition. On the basis of indications in Athenian literature of the fourth century, modern scholarship sees Draco's law as a penal code, in which the punishment of homicide, at least, was codified. This view has been contested with good reason, since codification is quite unlikely for the seventh century B.C.E. Rather, Draco put in place a number of concrete measures, to deal with a civic crisis that followed fifteen years after the wanton killing of the companions of the revolutionary Kylon. It is in this context that one should understand especially the unusual beginning of the law: Draco regulated not the most common situation of murder "with intent," but rather the very case of murder "without intent." There followed rules clarifying who from the victim's family was entitled to "pardon" the killer and who was entitled to bring a private lawsuit for murder. A killer who fled to a foreign land was to be safe from vengeance, but might be killed by anyone should he set foot again in Attica. It is probable that there were also regulations governing killing in a fight and in self-defense. Only a very small part of the fragmentary text of the inscription can be

reconstructed from citations in forensic speeches of the fourth century. One may only really speak of codification if one takes as a criterion that a fairly large number of legal regulations on a given subject were recorded. The fact that the recording took place in response to a concrete historical situation is not inconsistent with this.

Traditions about Solon are significantly richer, although they are primarily conveyed indirectly, by later authors. In 594–593 B.C.E. he was elected to the highest magistracy (as archon) and as reconciler (*diallaktes*), and instituted wide-ranging reforms in all areas of the legal system; some of his poems contain sometimes obscure references to these reforms. Although his laws were commonly viewed as a unified group by later Athenians, it is historically impossible that all of his highly divergent measures in the fields of civil, criminal, procedural, and constitutional law were brought together as a unitary codification. In addition, since the Athenians in the fourth century attributed almost all of the basic norms of their democracy to Solon, it is difficult today to determine the actual historical status of his laws. Eberhard Ruschenbusch did collect and edit the fragments of Solon's legislation that have been preserved, and the fragments are generally cited accorded to the numbering of this collection. No commentary on Ruschenbusch's collection has so far appeared, so one cannot really judge the author's reasons for including some fragments and excluding others as unhistorical. In a hypothetical ordering, Solon treated the following themes: homicide, property crimes, sexual offenses, slander; damages, treason, procedural law, family and inheritance law, the heiress, the economy (he banned the enslavement of debtors), sumptuary laws, and pederasty. In his great work of reform are included some foundational regulations, but often his statutes address minor details.

A new recording of the laws: 410–409 through 400–399 B.C.E. A very different kind of measure, generally described as "codification," was instituted in Athens around the end of the Peloponnesian War. Here there was not, as in the Archaic period, a single individual lawgiver (*nomothetes*) with full powers, rather a commission of ten citizens. They were to serve as recorders (*anagrapheis*) of the old "Solonic" laws, to systematically collect and record them anew. The political motive lay in the desire to purify the system of undemocratic statutes enacted by the politically defeated oligarchy and the Thirty Tyrants who had been expelled in a civil war. The general consensus is that this new recording of existing laws came very close to a codification. Two of the surviving legal speeches (Lysias, *Against Nicomachus*, and Andocides, *On the Mysteries*) give precise information about the technical details of the codification work, and a few fragments of stone inscriptions show the practical results of this work.

That said, the new recording of the laws was far from what is today expected from a codification. It did not produce a wall inscribed with substantive legal provisions, as at Gortyn, though it did produce a sacrificial calendar. A great number of the laws remained unwritten, as before. The individual laws that were collected were ordered according to the magistrates (the council and the new archon) responsible for administering them. This system, which is in contrast to the familiar connections of a modern legal system—civil, criminal, procedural, and public law—makes clear the deeper sense of any codification: the laws recorded are directed not at the courts—citizens acting as jurors—but at administrative authorities. The highest magistrates of the state were supposed to be bound by laws approved by the democracy, in order to prevent a new descent into oligarchy or tyranny. Only the magistrates could be held personally responsible for not complying with a law. Jurors did swear to decide according to the laws, but since they voted in secret and their decision was not subject to appeal, a member of the jury could never be sued for transgressing the law.

Among the other legislative mechanisms introduced after 403–402 B.C.E. for the protection of the democracy, one oft-misunderstood provision should be noted here: Andocides cites a law that forbids the authorities "to use an unwritten law (*agraphos nomos*)." It would, however, be wrong to draw from this the conclusion that in Athens after 403–402 only codified law was valid, and that no argument based on justice that transcended the law could be brought before the court. If one takes this statute literally and understands it in its historical context—namely, the purging from the legal system of undemocratic laws—it means only that the authorities may not use any law that has not traveled the route of being reviewed and "re-recorded" as unobjectionable. In this way, the *agraphos nomos* loses any philosophical dimension, as well as all its value as evidence of a complete codification of Athenian law around 400 B.C.E.

Other States. As the evidence from Gortyn and the newer interpretation of Draco and Solon suggest, one cannot simply assume that at the beginning of the development of the Greek city-states stood "lawgivers"—people who created a constitution and codified a legal system for their fellow citizens or for a foreign polis. Thus Lycurgus did not provide his "constitution"—which regulated not only legal relations but also all other areas of life for the Spartans—in written form; his "laws" were handed down orally as a *rhetra*. Regarding the other *nomothetai* such as Charondas of Catania, Zaleucus of Lokroi, Pittakus of Mytilene, or Demonax of Mantinea, there is not sufficient evidence to demonstrate from their works a "Panhellenic wave of codification" in the Archaic period, even if these men were important for the step from an oral to a written culture of law. In the classical era there are no known attempts at a comprehensive recording of the laws, beside that of Athens. In the Hellenistic period, various treaties

of alliance or legal aid include broad-ranging sections on civil and procedural law, which come close to codification in certain ways. In the papyri of Egypt, we find extensive parts of procedural law regulated in city statutes and in a jurisdictional edict of the Ptolemaic king.

[*See also* Ancient Greek Law, *subentries on* The Archaic Period *and* Hellenistic Law; *and* Gortyn.]

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Translated from the German by Ira Allen

Courts and Magistrates in Ancient Athens

This article deals with law courts and the magistrates who conducted the preliminaries of lawsuits and presided over courts in Athens in the fifth and fourth centuries B.C.E. There is sufficient evidence in the sources for only this period; most helpful is the *Constitution of Athens* (*Athēnaiōn politeia*) of Aristotle, written about 329–322 B.C.E. (Rhodes, pp. 51–63), chapters 43–69 of which outline this issue. From the end of the fifth century to the time of *Ath. Pol.*, speeches of the ten Attic Orators also give good insight into the way that jurisdiction worked in practice. In addition, statutes written on stone from the beginning of the fifth and in the fourth centuries B.C.E. can be consulted. For good reason, the manuals cited in the bibliography (e.g., Lipsius, Harrison, MacDowell, Hansen, and Todd) concentrate on "the period of the orators"; the historical development beginning in the Archaic period described by Bonner and Smith I is out of date. Here, only a few words about the earlier period are necessary to address the question of historical continuity.

In the fifth and fourth centuries, every Athenian lawsuit proceeded in two stages: a preliminary stage before a magistrate and a trial before a court normally presided over by the same magistrate. How old is this division? *Ath. Pol.* 3.5 indicates that in early times magistrates themselves decided cases, replacing in that function their forerunner, the king (Bonner and Smith I, pp. 84, 152; Harrison, pp. 1–3). According to *Ath. Pol.* 9.1 Solon (archon in 594/593) introduced as one of his most democratic reforms an "appeal" from the magistrates' decisions to the people, constituted as an assembly called *heliaia*. It is not clear how this right of the people to hear cases on appeal had developed into the right to hear them in the first instance in the fifth century. Perhaps as early as the seventh century, at least since the laws of Draco (621/620), magistrates did not in fact decide lawsuits on their own authority but, rather, declared a formula whereby litigants could reach a decision, by swearing oaths. In homicide cases, both the claimant and the defendant had to swear oaths specified by magistrates, and a jury had to decide which oath was the better one (Thür, 1996, p. 71; 2004, pp. 36–38). Solon may have extended this system to all kinds of lawsuits. Thus, "appeal" in *Ath. Pol.* 9.1 might be a misleading translation of the noun *ephesis* (from *ephienai*, literally "to leave to another to decide"). Procedural oaths sworn by both litigants in the preliminary stage of any lawsuit survived until the fourth century (Ant. 6.16, Is. 3.6; see Harrison, p. 99). Although oaths lost much of their social importance, one can suppose that in Athens the structure of jurisdiction did not change from monocratic to democratic decisions but rather from irrational to more rational decisions.

Whatever the historical development may have been, it is generally admitted that in classical times a lawsuit passed through these two stages. In the first, the claimant had to file his suit with the magistrate in charge, who conducted the preliminaries of the case, such as checking procedural requirements and giving the litigants the opportunity to prepare their points for the trial by questioning each other. One may call this stage "dialectical"; it normally extended to several meetings. Depending on which magistrate conducted the preliminary stage, it was called *anakrisis*, *prodikasiai*, or *diaita*. The next stage was the trial at a law court. A panel of laymen citizens always decided the issue in a session lasting at most one day; they voted immediately after the parties gave their speeches, and their decision was final. Because speeches dominated in this stage, it may be called the "rhetorical" stage. The instructing magistrate presided over the court but had no influence on the verdict, not even a vote. A peculiarity of Athenian procedure was that a large number of magistrates (*archai*, sing. *archē*) conducted lawsuits but in general only one kind of jury court gave decisions, the *dikastērion* (pl. *dikastēria*). This varied only in the number of citizens appointed as jurors (*dikastai*, sing. *dikastēs*), normally from 201 to 1501. In the few cases when other boards conducted the trial, it proceeded in the same way.

This article will first discuss the judicial magistrates, then the law courts. A short outline of arbitration and reconciliation will follow. The main references for this article are Harrison and Hansen.

Judicial Magistrates. Unlike Rome where, especially in private cases, jurisdiction was concentrated in the office of the praetor, who had no other responsibility, in Athens every magistrate held jurisdiction within his province.

Aischines (3.14, 27) characterizes the essentials of a magistrate in democratic Athens as being able to impose fines, on the one hand, and to conduct lawsuits and preside over courts, on the other. Hansen (p. 240) counts about seven hundred regular magistrates who were appointed every year; this figure does not include the irregular magistrates who had special duties. Some held their office alone, some as a member of a board. The largest board of magistrates was the Council of the Five Hundred, the *boulē*, which participated in some lawsuits (see I.5), but strictly speaking was neither a judicial magistrate nor a law court (see II.3). Normally, in his province the same magistrate handled both public and private suits.

The nine archons. The most honorable, although not the most powerful, magistrates in Athens were the nine archons (*archontes*). Beginning in Archaic times, they represented the highest executive power in the state in civil and religious matters. In the democracy, they were chosen by lot. They handled most litigation, but as individual magistrates, not as a board.

The archōn (eponymos). Ath. Pol. 56–59 records the administrative and judicial duties of the nine archons starting with the magistrate, simply called *archōn*, who was honored to give his name to the official year. His main provinces were family and inheritance matters. Among the many public and private cases mentioned in the long list of his duties in *Ath. Pol.* 56.6 are maltreatment of parents, of orphans, and of heiresses, mismanagement of orphans' estates, suits against guardians and against parents alleged to be dissipating the family property through insanity, and inheritance claims. In his administrative capacity, he had charge of certain other legal matters; for example, he had to care for widows who claimed to be pregnant by their dead husbands, he leased out the estates of orphans and heiresses till they reached the age of majority or marriage, and he handled the securities for such leases. In the religious sphere, he had to conduct dramatic and other contests that often involved jurisdiction between citizens disputing which one was better able to bear the costs of a performance in the system of "liturgies." These few details taken from Aristotle's list show how the Athenians organized their highly differentiated jurisdictions according to the executive tasks their magistrates held.

The basileus. The next of the nine archons, the "king" (*basileus*), had jurisdiction in religious matters, such as when two citizens were claiming a priesthood or in suits concerning impiety (asebeia). Beginning in Archaic times, homicide cases also were considered religious matters and were conducted by the *basileus*. These included wounding with intent to kill, arson, and poisoning. The religious implications led to some peculiarities in procedure. Beginning with the three *prodikasiai* in the preliminary stage, homicide suits were not public but private, brought by the victim's next of kin; the plaintiff and his witnesses all had to swear solemn oaths to the guilt of the defendant, and the opponents similarly swore to his innocence; and the *basileus* issued a formal proclamation that the accused had to keep away from sacred places, which meant from all public life, until he got his trial. These cases also were heard by different courts than profane lawsuits (see II.2).

The polemarch. The third archon, called the polemarch ("war magistrate"), had long ago ceded his military functions to the ten generals, who for good reason were chosen by election, not by lot. Reminiscent of his former military province, the polemarch dealt with foreigners resident in Athens, called metics. *Ath. Pol.* 58.3 reports that he stood in the same relation to metics as the archon to citizens, especially in family and inheritance cases. In the preliminary hearing (*anakrisis*) with the polemarch, a citizen claimant could demand sureties for the metic's appearance in court. Then these cases, which normally arose out of business transactions, were remitted to the Forty, who took them over to their own jurisdiction (see I.3). Family and inheritance matters, naturally between metics only, remained under the control of the polemarch. Also, when a former master sued a slave he had manumitted with conditions, the polemarch conducted the case. The only public case the polemarch administered was the *graphē aprostasiou* against a metic living without patron.

The six thesmothetai. The remaining archons, the board of the six *thesmothetai* ("givers of laws"—not "legislators"), apparently never had another function than the administration of justice. Their origin is as obscure as their name. In the time of the orators, they handled all the very complicated machinery of the court sessions from scheduling the dates for all hearings (*Ath. Pol.* 59.1) to organizing the court days: appointing the jurors by lot and distributing them to the various courts presided over by other magistrates, supplying them with personnel and equipment, and, at the end, paying the jurors (up to fifteen hundred and more) for the day's sessions (*Ath. Pol.* 63–69; see Thür, pp. 42–49). As judicial magistrates, they were principally concerned with political crimes. They supervised three special procedures of impeachment: *eisangelia* (denunciation by "announcement"), *katacheirotonia* (condemnation by show of hands) and *probolē* (denunciation by "presentation"). All three cases resulted from offenses against the state, such as treason or attempting tyranny, and the first steps were taken by the Council or the Assembly (see I.5). The *thesmothetai* were only concerned if these political bodies referred the decision to a law court (*dikastērion*). In political matters, a number of public suits also came before the *thesmothetai*, and in more private matters some *graphai*, such as violence (*graphē hybreōs*) or theft (*graphē klopēs*); however, both charges also could be filed as

private suits (*dikai*). As an executive measure *apagōgē* (summary arrest) of an exile who unlawfully returned to Attica took place before them, but they had to refer these cases to a *dikastērion* for trial. Even some private cases came to them, such as for theft (*dikē klopēs*) and some suits arising out of maritime trade and silver mining. Finally, the *thesmothetai* presided when the scrutiny (*dokimasia*) of a magistrate appointed by vote or by lot was contested and referred to a court, and when a former magistrate was accused of financial malpractice during his year of office (*euthynai*). There does not appear to be any overall concept linking these cases; rather, the *thesmothetai* seem to have steadily taken on new judicial measures that did not fall into the other archons' provinces (see Harrison, pp. 15f.).

Paredroi and grapheus. The three archons mentioned first, archon, basileus, and polemarch, were allowed to select two assistants (*paredroi*, assessors; *Ath. Pol.* 56.1). Unlike the archons, these assistants were not chosen by lot and the rule against iteration, which applied to the archons, seems not to have applied to them. Nevertheless, they had to pass a scrutiny (*dokimasia*) before taking office and an accounting (*euthynai*) at the end of their term. Thus, despite the ideal of an amateur, direct democracy, a certain degree of professionalism entered into the administration of justice. The *paredroi* also enabled the first three archons in some cases, for example in overseeing an orphan's estate, to fulfill two roles, acting as the plaintiff and presiding over the deciding court. In one of these two roles, the archon would be represented by his *paredros* (Harrison, p. 7).

The secretary (*grapheus*, *Ath. Pol.* 63.1) of the board of the six *thesmothetai* also may have become a professional, although he was a magistrate chosen by lot (*Ath. Pol.* 55.1–2; Hansen, p. 244). In addition to supplying the board with his experience, the secretary of the *thesmothetai* raised the number of the nine archons to ten when they supervised the allotment of jurors. From the ten divisions (*phylai*, "tribes") of the Athenian citizenry, these ten magistrates had to provide all the jurors for the individual courts each day.

The Eleven. This board of magistrates, chosen by lot, seems to be as old as the archons (*Ath. Pol.* 7.3). They used police power against common criminals and oversaw the selling of confiscated properties (*Ath. Pol.* 52.1). Out of both matters legal disputes could arise, which were heard at the preliminary stages by a single member of the board, who also presided at the trial. Against criminals, three measures, originally connected with self-help, took place: *apagōgē* (arrest and "conveyance" before the Eleven); *endeixis* ("naming" the arrested to the Eleven); and *ephēgēsis* ("bringing" one of the Eleven "to the place" to arrest the criminal). All three were summary measures rather than lawsuits. If the arrested confessed or was caught red-handed, the Eleven were authorized to carry out the death penalty at once. If he denied the charge, a court presided over by one of the Eleven decided on life or death (see Hansen). In dealing with confiscation, the Eleven received a document from a volunteer prosecutor (*boulomenos*) listing the property the debtor was said to own. If the debtor himself or by a third party filed a protest (*enepiskēpsis*), the Eleven referred the case to a *dikastērion*.

The Forty and the diaitētai. For private suits not in the jurisdiction of the archons, in earlier times, thirty "deme judges" acted as circuit judges administering justice in the municipalities (or demes) of Attica. After the restoration of democracy in 403/402, the number of these magistrates increased to forty, and they were officially known as The Forty. They were chosen by lot, four from each tribe, and operated in the city as boards of four, grouped by tribe. A plaintiff had to sue before the group corresponding to the defendant's tribe. If the dispute concerned a matter worth ten drachmas (a worker's wage for ten to twenty days) or less, a single member of the board decided the case; disputes concerning more ten drachmas were referred to a court. The Forty were unusual in that they never conducted preliminary hearings (*anakriseis*) by themselves as other magistrates did. Other officials (not magistrates) handled that task—the "*diaitētai* (arbitrators) chosen by lot" (*Ath. Pol.* 53.5), often called "public arbitrators."

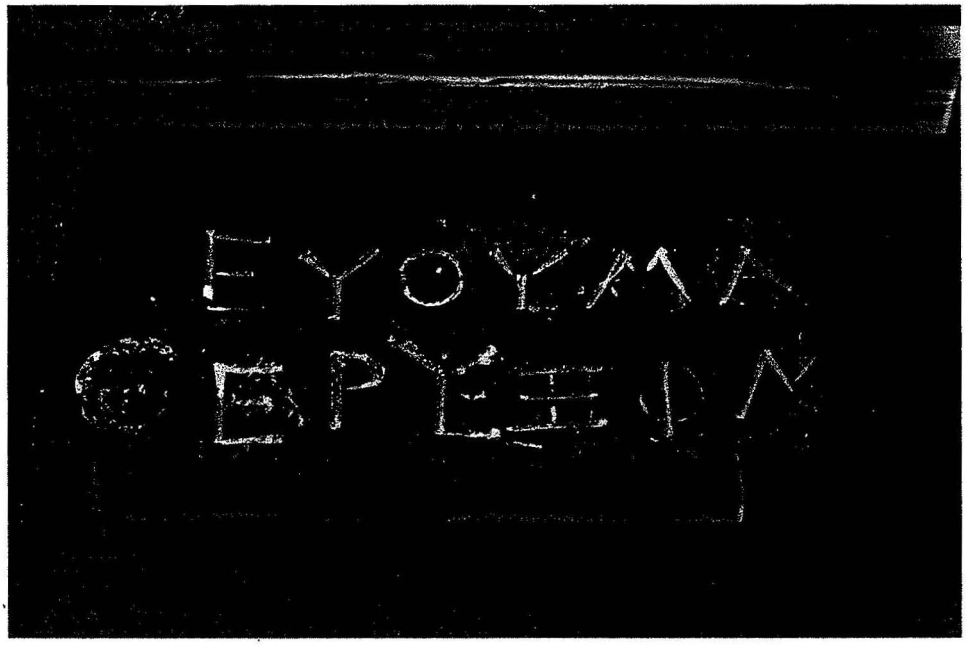
Every male citizen had to serve as a *diaitētēs* in the year he was sixty. From this group, the four members of a tribal board of the Forty chose by lot a *diaitētēs* from that tribe to conduct the preliminary hearing (*diaita*) for the case. As the name of the officer ("arbitrator") indicates, the main task of the *diaitētēs* was to reconcile the litigants. If he did not succeed with this, the procedure of *diaita* served to prepare the case for the trial presided over by one of the Forty (Thür, 2004, 40f.). Because metics did not belong to the ten tribes, it was difficult to integrate financial lawsuits against them into this system. In this case, the polemarch first distributed the lawsuits by lot to the ten tribes, and the tribal boards of the Forty allotted the respective *diaitētai*. The *diaitētai* chosen by lot were a vital means of handling everyday disputes. Without them, the relatively few magistrates, including the Forty, who were in charge of most private litigation would have been unable to keep negotiable cases out of the expensive, publicly financed courts.

Other magistrates. As seen in the account of the history of the Forty, the organization of procedural responsibilities often changed in Athens. When new situations arose, the Athenians did not hesitate to create new magistrates or revise the responsibilities of existing magistrates when it seemed necessary. The names of these magistrates were not used consistently, so that, over the years, magistrates with identical names had different competences. What remained constant was that a magistrate assigned to a

special task also had jurisdiction in this field. Here, a short summary of some additions will be sufficient (Harrison, pp. 21–36 gives full details of the historical development). First, the jurisdiction of the generals (*stratēgoi*) was extended from military discipline to the costs of furnishing a war ship due to a liturgy (*trierarchia*). Second, although the term *eisagōgeus*, "introducer" (from *eisagein*, "bring a case before a court"), applied in a general sense to every magistrate with judicial responsibility, two different boards were specifically called *eisagōgeis*. In the fourth century, they handled special decisions that had to be rendered within thirty days. Third, before the *thesmothetai* (see I.1.c) took over cases arising out of sea trade, *nautodikai* and *xenodikai* supervised these, and other cases, too. Fourth, in literary sources, officers with special jurisdiction for markets, street activity, and accounting are mentioned, and stone inscriptions, which are continuously being discovered and published, have contributed further details, for example Stroud (1974 and 1998). Finally, every board overseeing public work or in charge of public funds for more than thirty days had jurisdiction in these areas (e.g., the orator and politician Demosthenes seems to have been a member of the board for constructing the city walls; Aisch. 3.14; see also *IG* II² 244).

The boulē. Like other boards of magistrates, the Council (*boulē*) of the Five Hundred could impose fines, which it did by vote. Its limit was 500 drachmas, and this had to be confirmed by a law court if the person fined refused to pay. Although single members of the *boulē* never conducted a preliminary hearing or presided over a court, the whole council was involved in initiating an *eisangelia*. In this procedure, any citizen could denounce a magistrate for misadministration or another citizen for a political crime. An *eisangelia* against a magistrate was filed with the *boulē*, which heard the parties and voted on the verdict and the penalty (Hansen 1975; 1991, pp. 213 and 258). But despite the term *katagnosis* ("vote against"), the *boulē*'s decision technically was not a verdict; rather, the *boulē* determined the indictment (*enklēma*) to be used in the forthcoming trial between the accuser and impeached magistrate (Thür, p. 604). This lawsuit was conducted by the *thesmothetai* (see above). The second kind of *eisangelia*, against political crimes, started with the Assembly (*ekklēsia*) and could be decided by this body. Or the *ekklēsia* could refer the case to a *dikastērion*, and the *boulē* acted in the same way as with *eisangelia* of magistrates.

Courts. In this section, courts are first discussed as bodies that decide lawsuits and second as buildings where these bodies met. This distinction is important for the term *heliaia* (literally "assembly") in classical times. It is uncertain which sense is meant when Solon is reported in *Ath. Pol.* 9.1 (cf. 7.3) to have given all litigants the right of appeal to a court (*eis to dikastērion ephesis*). Generally and correctly, the *dikastērion* mentioned by Aristotle is identified with the Archaic panel called *heliaia* (see the law quoted in Dem. 23.28, cf. 43.75). For the time of Solon, it is uncertain whether *heliaia* meant the whole Assembly of the People acting as law court (Harrison, p. 3) or a smaller



Juror Identity Card. Clay fragment, fourth century B.C.E. A juror identity card listed the name of the juror, his father's name, and his area (*dēmos*). PHOTOGRAPH BY JOHN HIOS. AKG-IMAGES

panel as known from later times (Hansen, p. 30). For the fifth and fourth centuries, there is no doubt that "heliasts" were the members of the democratic *dikastēria* and a panel called *heliaia* was a large court consisting of at least one thousand *dikastai*, chosen by lot. At that time, a building called the *heliaia* was large enough to receive the panel. At least for the fourth century B.C.E., its location at the agora seems to be solved now (Boegehold, pp. 14–20 and 99–113; Stroud, pp. 99–101). The entire system of the democratic People's Courts also was called *heliaia*.

The heliastic (or popular) courts. Compared with the complex responsibilities of the magistrates, the regular courts (*dikastēria*), which judged most trials, were organized very simply. On a court day, each Athenian citizen over the age of thirty who had not lost his rights and was not in debt to the state had the right to sit as juror (*heliastēs* or *dikastēs*). On first presenting himself to be enrolled, he was given a ticket as documentary evidence (*pinakion;* see Boegehold, plates 7f). At the beginning of each year, every juror had to swear the heliastic oath to cast his vote according to the laws or, in a case not covered by a law, in accordance with his most equitable opinion. All private or public lawsuits coming before a *dikastērion* were conducted in the same way. Only the size of the courts varied: a panel of 201 *dikastai* judged private lawsuits if the matter at issue was less than 1,000 drachmas, one of 401 if it was more. The usual board in public prosecutions was of 501 but, in important political cases, after a decree by the Assembly, several panels were put together ranging from 1,001 up to 2,501. The odd numbers were fixed to avoid a tie. It is doubtful that the number of six thousand mentioned in Andoc. 1.17 is correct (this could mean "all jurors who turned up," Hansen, p. 187). For a day's session, a *dikastēs* got a payment of three obols from the state, the low wage of a simple worker. With the great number of *dikastai* to be paid over the whole year Athens spent between twenty-two and thirty-seven talents (132,000–222,000 drachmas), but it was only a fraction of the cost of a single campaign of a few months' war (Hansen, p. 189). The court buildings were located at the northeast corner of the agora (Boegehold).

Homicide courts. Rooted in sacred tradition, homicide cases were never heard in the regular courts, even in the time of the orators. For these cases, an executive board, the Council of the Areopagus, could render a verdict, and smaller panels than usual were also used—the fifty-one so-called *ephetai* (literally "men to whom it is left to decide"). The trials took place under open sky at different sanctuaries. Probably, in the democracy, the fifty-one *ephetai* turned out to be ordinary *dikastai* chosen by lot (*Ath. Pol.* 57.4, Wallace, pp. 102–105), or fifty-one members chosen from the Areopagus (Carawan, pp. 160–162). The Areopagus somehow kept its aristocratic shape being made up of former archons who became life members after having passed their *euthynai*. There is much discussion about these courts and how they developed from the time of Draco, whose law on homicide from 621/620 B.C.E. is preserved on a fragmentary stone inscription from 409/408 B.C.E. (*IG* I³ 104; Stroud; Gagarin). Although the Areopagus is not mentioned in what survives of Draco law, the *ephetai* (who are mentioned) could originally have been drawn from that council, which at that time had a fully aristocratic character. It is quite uncertain what in classical homicide law is due to Draco, to Solon, or to some later reforms (Thür, 1990). In the following paragraphs, only the time of the orators is considered.

Two sources give detailed and coherent accounts of the different homicide courts and their responsibilities, Dem. 23.65–79 and *Ath. Pol.* 57.2–4. According to the kind of homicide, the *basileus* (see I.1.b) had to introduce the particular case to one of the following five courts. First, the Areopagus tried cases in which the charge was *phonos ek pronoias*, "intentional" killing of an Athenian citizen. There is much dispute about the meaning of intention (Gagarin, 1981 and 1990; Carawan, pp. 33–83), and one may ask whether stress lay rather on *phonos* "killing with one's own hand" than on the offender's state of mind (MacDowell, pp. 115–117). Intention may have been considered only for the death penalty (Thür, 1991). The meeting place was the small rocky hill to the west of the Acropolis. In the next three courts, the *ephetai* heard cases. For *bouleusis* ("planning" or "instigating," that is, killing not with one's own hand), unintentional killing, or killing an alien or slave (a rather illogical composition), the trial was at the Palladion, a temple of Pallas Athene outside the city. If the accused maintained that the killing was lawful, as in self-defense, the case was tried at the Delphinion, a temple of Delphic Apollo in southwest Athens. The penalty in these two courts was exile. In the fourth court, located at a place at the seashore called Phreatto, the *ephetai* tried an accused who was exiled from Attica and who therefore made his defense from a boat offshore. A fifth court met at the Prytaneion, the sacred hearth of the state, on the northern side of the Acropolis. Here only the *basileus* and the four *phylobasileis*, religious officers of the four ancient tribes, heard cases of "homicide" by an animal or an inanimate object and, as Aristotle writes, by an unknown person. These trials ended with only formal verdicts. The reasons for the traditional locations are not always obvious; maybe the procedural oaths called *diōmosiai* needed to be sworn at the different sanctuaries.

Political assemblies. In Athens, in the same way as the large law courts, political bodies—the Assembly of the People (*ekklēsia*), the Council of the Five Hundred (*boulē*), and the Council of the Areopagus (within the modest remnants of its political functions)—occasionally voted on the guilt of a person. When rendering verdicts they acted as

law courts, to be distinguished from preliminary stages of an inquiry. As discussed earlier in this article, the *ekklēsia* had authority to render sentences in some cases of *eisangeliai*. In the "principal session" held once under each of the ten tribes' presidency during the year (*prytaneia*), it was a fixed item on the agenda to ask for entering *eisangeliai*. A denunciation, when accepted, could lead to a decree to summon a special session for rendering sentence. In the first half of the fourth century the *ekklēsia* often decided to try such cases in that way instead of passing them to the courts. A reform between 362 and 355 B.C.E. probably required all *eisangeliai* to be judged by the heliastic courts, maybe out of economic considerations. A jury panel of 501 was much cheaper than an assembly of six thousand (Hansen, pp. 159, 214f.).

In contrast to the *ekklēsia* the councils, the *boulē* and the Areopagus, did not have such authority. When preparing an *eisangelia* for a *dikastērion* (see I.5) the *boulē* heard the parties and voted secretly just as a law court did; nevertheless, this only determined the wording of an accusation and the proposed penalty. Only a court could render the definitive sentence. Parallel to *eisangelia* in the second half of the fourth century a new type of public prosecution was created, *apophasis* ("report"), in which the Areopagus, the *ekklēsia*, and the *dikastēria* were all involved. By decree, the *ekklēsia* called upon the Areopagus to investigate a case. The Areopagus summoned witnesses, questioned slaves under torture, and voted on guilty or not. Their report was sent to the *ekklēsia* who could confirm it by show of hands, choose a number of public accusers, and refer the case to a court for definitive judgement. For the most famous case with Harpalos, see Wallace (pp. 198–2001), Hansen (pp. 234f.), and Eder (pp. 201–218).

Arbitration and Reconciliation. To conclude this survey of the legal framework of judicial litigation—the courts and the magistrates who supervised them—it seems useful to consider a social phenomenon. Speakers at court often say that they had done everything to settle the dispute amicably by a *diaita* or a *dialysis* ("settlement"); it was the opponent's fault that the case came to trial. This indicates that there was strong pressure to avoid trial during the hearing before the *diaitētēs* chosen by lot (see I.3) and probably during the *anakrisis* as well; even during the trial, a compromise was possible right up to the counting of the votes (Scafuro, pp. 131–141, with references 393). The term *diaita* was used of either arbitration in the strict sense or of reconciliation (Steinwenter). In either case, third persons not involved in the case assisted the litigants. The difference is that arbitrators, authorized by the litigants, decided the case by award, whereas mediators suggested a compromise to be accepted or not. Normally, each litigant nominated one or more persons in whom he trusted. This arrangement was enough for mediation. For arbitration, the even number of persons thus selected then chose an additional, impartial person to enable majority decision and a special agreement was necessary that either litigant would abide by (*emmenein*) the decision. Usually the arbitrators had to give the award under oath.

The legally binding nature of compromises and arbitration awards has been disputed. It has been held that they were just as binding as the decision by a court (Harrison, p. 65), but another interpretation is to see these both as formalized procedures which carried only ethical weight (Scafuro, p. 140). Neither enforcement nor a bar from raising the same issue before a court seems to be backed by the sources. Only when combined with a release and discharge (*aphesis kai apallagē*), that is, after mutually satisfying all the claims, could the same issue be barred from being tried in court (by a special plea, *paragraphē*; see Wolff).

[*See also* Procedure, *subentries on* Athens: An Overview *and* Trial Procedure in Ancient Athens.]

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