ÖAW ÖSTERREICHISCHE AKADEMIE DER WISSENSCHAFTEN

GERHARD THÜR

OPERA OMNIA

http://epub.oeaw.ac.at/gerhard-thuer

Nr. 282b (3 Lexikonartikel / *3 encyclopedia articles*, 2009)

Legislation: Ancient Greece (84–87), *Procedure*: Athens. An Overview (402–411), Trial Procedure in Ancient Athens (411–416)

The Oxford International Encyclopedia of Legal History, hg. v. Stanley N. Katz, IV (2009)

© Oxford University Press (Oxford) mit freundlicher Genehmigung

gerhard.thuer@oeaw.ac.at
http://www.oeaw.ac.at/antike/index.php?id=292

Dieses Dokument darf ausschließlich für wissenschaftliche Zwecke genutzt werden (Lizenz CC BY-NC-ND), gewerbliche Nutzung wird urheberrechtlich verfolgt.

This document is for scientific use only (license CC BY-NC-ND), commercial use of copyrighted material will be prosecuted.

proceedings. Some would cite Homer's epics as such a source. These do not, however, provide proof that there was a process in place in the second half of the eighth century B.C.E. for issuing generally binding norms. The necessary political establishment, the meeting place (agora), was indeed already in existence. Citizens and political authorities would later convene the Assembly there. At this time, however, law was not yet "made." Instead divine predeterminations were "discovered," as they had been for ages.

Legislative activity was first recorded at the end of the seventh century. Specific measures or a group of measures enacted by a polis were inscribed on stone or bronze. Codification was not systematic at this time, however, even though classical literary sources create this impression. Reinhard Koerner has compiled, translated into German, and commented on the surviving Archaic legal inscriptions. Henri van Effenterre and Françoise Ruzé have created a similar compilation in French, with numerous figures of Archaic stone inscriptions.

The Archaic texts seldom contain information about the process of legislation. No fixed format had yet developed, but many legal inscriptions begin with an invocation to the gods. A preface usually follows which states that the citizens of a certain city have passed the following resolution. Often, one or both of these parts are missing. At the end of the text, there is sometimes an order to record the resolution in stone. Occasionally the text states that the decision was made in the Assembly, but the decision-making process remains a mystery. Also, some specific norms have survived that were drawn up by individual legislators (*nomothetai*) appointed in times of crisis.

The Classical Polis. Athenian democracy marked a high point in the development of the legislative process.

Athens. Direct democracy was practiced in the city-state of Athens in the fifth and fourth centuries B.C.E. All citizens played a direct role in the legislative, executive, and judicial processes or could take part in them on a regular basis. The sovereign was the people, or *dēmos*. Resolutions were made by vote of the Assembly (*ekklēsia*), in which all male citizens above the age of eighteen were allowed to take part. There were probably no more than 35,000 eligible males, and an assembly of six thousand constituted a quorum.

The meeting place was eventually relocated from the marketplace (agora) to the neighboring hill, the Pnyx, and built to accommodate fifteen thousand. A chairman (*epistates*) presided, who—in the fifth and fourth centuries—was drawn by lot from the members of the Council (*boulē*). As a rule, the Assembly could only act in tandem with the Council. The Council was made up of five hundred members chosen by lot, fifty from each of ten tribes (*phylai*) that encompassed the entire citizenry. This system of numerous drawings by lot guaranteed that

LEGISLATION. [*This entry contains three subentries, on legislation in ancient Greece, in English common law, and in medieval and post-medieval Roman law. For discussion of legislation in Chinese law, see Chinese Law, Sources of. For discussion of legislation in Islamic law, for the classical period see Legal Norms in Islamic Law, Production of; for the modern period, see Codes and Codification, subentries on Islamic Law.*]

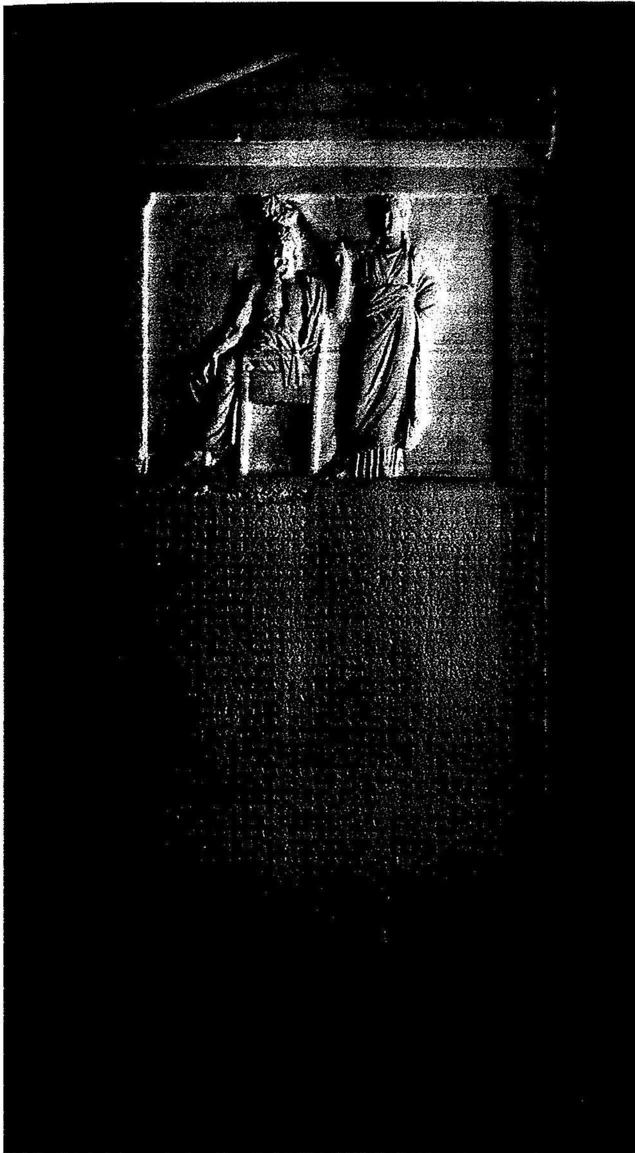
Ancient Greece

The Greek states developed legislative techniques that have served as a model for many modern democracies. The legislative process, its impetus and goals, changed significantly from the seventh to the first century B.C.E., beginning with the introduction of written sources and ending with total subjugation to Roman rule. This time span can be divided into three periods based on the states' political structure. Their systems did not develop simultaneously throughout the Greek world, but overlapped chronologically. They were the Archaic polis; the classical polis and its alternatives; and the Hellenistic states. It is important to note also that the classical legislative process outlived the Hellenistic era on a local level and lasted long into Roman times.

The Archaic Polis. The logical place to begin a history of legislation is with the first written reference to legal

no individual or group could dominate both political bodies at once.

Two main principles regulated the decision-making process: First, every citizen could bring a proposal to the Assembly; second, however, every proposal must first be discussed and agreed upon in the Council, at which time it was formulated as a preliminary resolution (*probouleuma*). So when a citizen made a proposal in the Assembly, it would not be voted on immediately but referred to the Council. Citizens and magistrates had the option of submitting proposals directly to the Council for review. Members of the Council also had the right to submit proposals.



Antityranny Law of Eucrates. Marble stele with a relief showing Democracy crowning the Demos (people) of Athens, c. 337–336 B.C.E. The inscription is an Athenian law against tyranny. PHOTOGRAPH BY JOHN HIOS. AKG-IMAGES

Sometimes proposals would be drafted into a resolution on which the Assembly could vote straightaway. Other times, drafting would be left subject to the debate in the Assembly. Once the Assembly voted on the final draft of a *probouleuma*, it would immediately carry the force of law. The preface to the resulting law reveals the process of legislation: in most cases, it reads "Resolution of the Council and the People." Only in rare cases did one of the bodies decide alone. Following these words are listed the tribe (*phylē*) in charge of Council business, the chairman of the Assembly, the magistrate after whom the year was named, the citizen who submitted the proposal, and the recording secretary.

All resolutions passed by the Assembly were enacted through this type of process. It addressed daily administrative odds and ends in the same way as fundamental policy change. In the years after 404/403 B.C.E. the year of the restoration of democracy after the Peloponnesian war, however, a new process called *nomothesia* (lit. "laying down the law") was introduced to differentiate general laws (*nomoi*) from specific decrees (*psephismata*). During the annual examination of the entire law code (or at any other time) any citizen could request that for a specific matter a body of 501 citizens be selected by lot from a list of jurymen to act as legislators (*nomothetai*). They would draft legislation through debate and could ratify it with a simple majority without the Assembly being involved again. The existing law would be defended by *syndikoi*, a group of four advocates chosen by the Assembly. The *nomothetai* thus functioned like a court.

Compared to the hundreds of surviving Athenian decrees, the number of known laws enacted by the *nomothesia* procedure—nine—seems rather modest. Curiously, this legislation is highly specialized, as detailed by Ronald Stroud, covering the following topics: silver coinage, the grain tax, public finance, Eleusinian first-fruits, rebuilding the city walls, tyranny, the Panathenaic festival, offerings, and the sanctuary of Artemis at Brauron.

The priority of a *nomos* over an ordinary *psephisma* is evident from the fact that the proposer of a *psephisma* that contradicted an existing law was subject to public prosecution by a change called *graphē paranomōn*. Even a law enacted by the *nomothesia* process could be prosecuted as "inappropriate." These checks on the legislative system stem from the protections built into the restored democracy after the events of 404/403 B.C.E.

Other poleis: democracy or oligarchy. The 1997 collection by Rhodes and Lewis is the best source for the legislation of the classical poleis. The interaction between the magistrates (including the Council) and the Assembly is typical of all Greek poleis. However, not all cities granted every citizen access to the offices and the Assembly, as democratic Athens and its allies did. Athens's allies, such as Erythrai and the other states of the first Delian League

(478–404 B.C.E.), implemented democratic constitutions in which legislation was enacted by "the Council and the People" even if not all the subtleties and checks of the Athenian system were adopted.

Oligarchy, in which just a few citizens held full political rights, was the older form of government of the Greek polis. Legislation was in the hands of a small group, and the legislative process differed from that of a democracy. Athens still had an oligarchic constitution during Solon's era (c. 600 B.C.E.). Athens's adversary, Sparta, remained an oligarchy into classical times. In Sparta, the assembly (*apella*) was originally convened by the two kings. They presented proposals that had been reviewed in advance by the council of elders (*gerousia*). Only the kings and magistrates had the right to speak in the *apella*. At the end of the debate, the people indicated agreement or disagreement by shouting. If it were not clear which group was the loudest, the chairman would divide the people into opposite sides. In older times, kings were not bound by "false resolutions" ("crooked" *rhētra*). As the heads of state, they retained sovereignty.

The other oligarchies—which for the most part allied themselves with Sparta against Athens in the fifth century—possessed basically the same legislative bodies as the democracies. The powers of the magistrates, however, were greater and the number of citizens (who were called to vote based on a census of wealth) was smaller. So there was little difference in legislative practice between a moderate democracy and a moderate oligarchy. This made it easy for some states to change sides.

States not organized as poleis. The polis as a form of political organization did not appear simultaneously throughout Greece. Vestiges of the old tribal organization survived for varying lengths of time in the vast agricultural areas of northern Greece (Thessaly, Boeotia, and Elis) and on the island of Euboea, where an aristocratic class of knights held political control.

The most is known about Boeotia. In 446–386 B.C.E. only half of the free citizenry—those in the census group of hoplites or heavily armed foot soldiers—enjoyed full political rights. Every full member belonged to one of four councils, which together made up the state. Yet only one council (in rotation) held office at a time and was empowered to pass resolutions. For larger issues, however, such as those of war and peace, all four councils met and passed resolutions based on the prior review of the current governing council.

In 379 Thebes, a democratic polis and the most prominent city of Boeotia, formed the Boeotian Confederacy, established with a democratic legislative process. It defeated Sparta in 371. Macedonia imposed an oligarchy in Thebes in 338, but Alexander the Great eventually destroyed the defiant city in 335.

The Hellenistic States. The legislative and public decision-making process that developed in classical Athens soon enjoyed high esteem throughout Greece, as seen in the example of Thebes. Even Alexander the Great, who favored oligarchy, established democracy in the Greek cities he freed from the Persians. The legislative process in these cities, however, was different from that of the classical democracy in two respects. First, wealthy citizens could gain disproportionate political influence through philanthropy and personal contacts with the Macedonian rulers. Second, in addition to this inner erosion of democracy, under the Hellenistic leaders the powers of the legislative assembly in external matters were limited. Legislation only concerned the city's internal affairs. What has survived is hundreds of inscriptions of honorary decrees awarding single persons that were formally ratified by the assembly as though they were general norms. These have been compiled, along with other material, by Luigi Moretti.

The legislative process had basically been transferred to the kings, who ruled through directives (*diagrammata*) that often took the form of a letter to the cities. The text of such a letter would be ratified by the assembly of the citizenry and inscribed in stone as law (these texts have been collected by Bradford Welles). In addition to general *diagrammata*, a king could also issue a specific decree in the form of a *prostagma*. Numerous examples from Ptolemaic times have been preserved in Egyptian papyri (and collected by Marie-Thérèse Lenger).

Even in their native Greece, the poleis lost the power to legislate in external affairs, although the legislative process itself remained more or less democratic. Following the example of the old tribal states, the poleis of various territories (Arcadia, Aetolia, and Achaia) formed *koina* or leagues. The member states as well as the league itself (which handled foreign relations and coinage) had legislative power. At first, a *koinon* had the same legislative bodies as a polis: magistrates, a council, and an assembly consisting of all the citizens of the member states. As time passed, however, legislative power shifted to the council, which was populated proportionally according to the political importance of the member states. The traditional function of the council was then taken over by a group of officers. Thus a representative democracy was formed (with regard to legislative power). Only rarely was an assembly of all citizens held. When this did happen, they voted on a single, important issue, as in a modern referendum.

[*See also* Ancient Greek Law, *subentry on* The Archaic Period; Codes and Codification, *subentry on* Ancient Greek Law; *and* Gortyn.]

BIBLIOGRAPHY

Busolt, Georg. *Griechische Staatskunde*. 3d ed. 2 vols. Munich, Germany: Beck, 1920–1926.

Effenterre, Henri van, and Françoise Ruzé. *Nomima: Recueil d'inscriptions politiques et juridiques de l'Archaïsme grec*. Rome: École Française de Rome, 1994–1995.

Habicht, Christian. *Athens from Alexander to Antony*. Translated by Deborah Lucas Schneider. Cambridge, Mass.: Harvard University Press, 1997.

Hansen, Mogens Herman. *The Athenian Democracy in the Age of Demosthenes*. Oxford and Cambridge, Mass.: Basil Blackwell, 1991.

Hölkeskamp, Karl-Joachim. *Schiedsrichter, Gesetzgeber, und Gesetzgebung im archaischen Griechenland*. Stuttgart, Germany: Steiner, 1999.

Koerner, Reinhard. *Inschriftliche Gesetzestexte der frühen griechischen Polis*. Cologne: Böhlau, 1993.

Larsen, J. A. O. *Greek Federal States*. Oxford, U.K.: Clarendon Press, 1968.

Lenger, Marie-Thérèse. *Corpus des Ordonnances des Ptolémées*. 2d ed. Brussels: E. van Balberghe, 1990.

Moretti, Luigi. *Inscrizioni storiche ellenistiche* I–II. Florence, Italy: La nuova Italia, 1967–2000.

Ostwald, Martin. *Nomos and the Beginnings of the Athenian Democracy*. Oxford, U.K.: Clarendon Press, 1969.

Rhodes, Peter J., and David M. Lewis. *The Decrees of the Greek States*. New York: Oxford University Press, 1997.

Stroud, Ronald. *The Athenian Grain-Tax Law of 374/3 B.C.* Princeton, N.J.: American School of Classical Studies at Athens, 1998. See especially pp. 15ff.

Welles, C. Bradford. *Royal Correspondence in the Hellenistic Period*. New Haven, Conn.: Yale University Press, 1934; Chicago, Ill.: Ares, 1974.

GERHARD THÜR

Translated from the German by Michelle Maczka

Athens: An Overview

Legal procedure in Athens was different from any modern system. This article describes the regulations Athenians applied in this field of their private and public lives. The Athenian concept of procedure cannot be understood by forcing it into the legal framework and ideology of jurisdiction in a modern state. After describing the legal framework, this overview will consider the modes of thought behind them. For practical reasons the article concentrates

on Athenian law, not on Greek law in general. Only for Athens and only from the end of the fifth to the fourth centuries B.C.E. are our sources sufficient to sketch the whole system of legal procedure and its social background. Because our main source is the corpus of the ten Attic orators, this period is often called "the period of the orators." In addition to these sources, contemporary Athenian literature and excerpts from court speeches now lost, but partially preserved by later lexicographers, are of supplementary help. A few statutes and verdicts inscribed on stone provide additional evidence. For other Greek poleis, scattered stone inscriptions are the only sources. Sometimes these help explain unclear Athenian texts.

This overview begins with general remarks on legal characteristics and types of procedure and then provides a more specific summary of actions. Some thoughts on the social context of procedure conclude the article. The first two sections are based mainly on Harrison (1971), MacDowell (1978), and Todd (1993); see also Thür (2000). The fundamental work of Lipsius (1905–1915) is still useful as a comprehensive collection of literary sources though out of date in its conclusions. For the third section, the main references are Cohen (1995), Scafuro (1997), and Johnstone (1999).

Legal Characteristics and Types of Procedure. In the eyes of Athenians process at law normally meant a trial before a Court of the People (*dikastērion*) comprising 201 to 2,501 citizens chosen by lot for every court day (*see* Courts, Ancient Greek, *subentry on* Courts and Magistrates in Ancient Athens; and Procedure, *subentry on* Trial Procedure in Ancient Athens).

Classification of procedures. Unlike Romans, Athenians did not trust individual private judges. Magistrates could render definitive sentences only in lawsuits for petty sums. At the *dikastērion* every lawsuit was a contest (*agōn*) fought by equal litigants according to strict formal rules (*see subentry on* Trial Procedure in Ancient Athens). Only private persons acted as plaintiffs and defendants. They had to appear and plead in person, though unpaid supporting speakers, *synēgoroi*, were allowed (Rubinstein, 2000). If magistrates were involved on either side, they had no special privileges, and there were no public prosecutors. Athenians thus had essentially only one type of procedure, a contest fought with equal weapons before an audience of hundreds or thousands of fellow citizens. Any further classification has to keep this fundamental point in mind. To avoid the problems arising from the confusion of procedural and substantive law—and in particular to avoid the mistake made by Lipsius (1905–1915), who confused substantive and formal law and viewed both in an anachronistic way—it is safer to rely on strictly formal criteria. The most obvious criterion is the formal distinction between "private" and "public" lawsuits, not in the modern sense, but as Athenians understood them (cf. Aristotle, *Constitution of the Athenians* 67.1). In Greek terms it is the distinction between *dikai* and *graphai*.

A private *dikē* (lit. action, lawsuit; verdict, punishment) could be initiated only by a person who suffered some wrong by the defendant, ranging from financial damage (*dikē blabēs*) to revenge for a murdered relative (*dikē phonou*). A *graphē* (lit. writing) was public in the sense that any person qualified to plead could sue a wrongdoer who violated a law providing for such a prosecution. Normally the offenses were against the state and public interests, but some *graphai* also protected private persons. Essential to the *graphē* was that a volunteer prosecutor or plaintiff (*boulomenos*, lit. someone willing) could initate an action. Other procedures too could be initiated by a *boulomenos* in public lawsuits, generally in cases of offenses against the state (see below). Private and public actions (*dikai* and *graphai*) had in common that claimants and defendants opposed each other, and the lawsuits were thus adversarial in nature. Separate from these procedures were others called *diadikasiai* (lit. suits among claimants), which we might call "interpleader" cases: two or more claimants claimed to have a better right or status than the opponents or to be less obliged to perform some duty (e.g., a liturgy, or compulsory public service). Here the formal distinction between private and public vanished, although in substance the cases belonged to one category or the other.

The origin or oldest conceivable shape of judicial litigation among the Greeks cannot be discussed here (*see* Ancient Greek Law, *subentry on* The Origins of Ancient Greek Law). To understand the character of procedure in classical Athens, the specific meaning of *dikē* is important. Originally, in connection with litigation *dikē* did not mean "justice" or "law," but rather "private seizure" of one's opponent in order to carry out lawful revenge. The Greek polis succeeded in legitimizing these acts of self-help by bringing them under the control of the law courts (Wolff 1946, p. 45; 1966, p. 91). In classical Athens parts of this concept survived in private cases: only the plaintiff (*diōkōn*, the one pursuing) had the right to summon the defendant (*pheugōn*, the one fleeing) privately, and after a conviction he had also to enforce the verdict by seizing the debtor's goods privately. In homicide cases, which always remained *dikai*, the state took over the execution of the death penalty, but the private plaintiff had the primitive residual right to observe it (Demosthenes 23.69).

No classical source names the inventor of the traditional concept of *dikē*, at that time understood as private action. In contrast, Aristotle (*Constitution of the Athenians* 9.1) mentions public actions by a *boulomenos* as one of the most democratic innovations of Solon (archon [chief magistrate] 594/593 B.C.E.). It seems plausible to connect this with Solon's prohibition of enslavement for debt (Harrison, 1971, p. 77). In later times *graphai* could be brought for persons who could not protect themselves

because they were unable to file a *dikē*, as for maltreated parents, orphans, and heiresses. Nevertheless an examination of this type of action in other poleis (Rubinstein, 2004) shows a tendency to use the *boulomenos* to execute sanctions against persons excluded from the civic community by a curse. *Diadikasiai* trials seem to have originated from the magistrates' executive functions; they generated no theoretical interest in contemporary Athenian literature. To sum up, through an adversarial legal procedure a private plaintiff, in his own name or that of the state, pursued a seizure of the defendant's property or person; the state was responsible only for capital executions.

Recent scholarship has shown that many kinds of *dikai* were essentially private tort actions. With regard to contracts, for example, there were no special actions for performance, nor did a general action for enforcing compliance with a contract exist. The general *dikē* was the *dikē blabēs* or suit for damages (Wolff, 1943, pp. 323ff.; 1957; Thür, 2003, pp. 237ff.). There also was no general action based on ownership, but rather several *dikai* in the form of actions for delicts including theft (Thür, 1982 and 2002). For public procedures one must keep in mind that Athenian democracy had no overall systematic concept of punishing offenses against the state. Thus, it is necessary to look closely at every procedure classified as a public action through a *boulomenos* (see below).

Two stages: dialectical and rhetorical. The most striking feature is that every lawsuit was conducted in two separate stages, one before the magistrate responsible for the individual case and one before a law court (*dikastērion*) that varied in size according to the issue (*see* Courts, Ancient Greek, *subentry on* Courts and Magistrates in Ancient Athens; and Procedure, *subentry on* Trial Procedure in Ancient Athens). The two stages had completely different functions: the first was a preliminary hearing, the second the decisive session. In the first, the magistrate checked the procedural requirements, in particular whether the case belonged to his jurisdiction, and then conducted several preliminary hearings where the litigants met to discuss the whole issue. Presided over by a fellow citizen with public authority—the judicial magistrates were citizens chosen by lot for one-year terms—these sessions may often have led to compromises. If not, litigants carefully prepared the matters at issue for addressing the court. It was required by law that the opponents answer each other's questions at these hearings (Demosthenes 46.10). These answers, given before witnesses who always accompanied the litigants, could not be contested later in court.

There were three kinds of preliminary hearings. First, the *anakrisis* (examination) was conducted by the archons. Second, the *diaita* (arbitration) was held by a *diaitētēs*, a public arbitrator chosen by lot. He had the same duties as an archon. Aristotle (*Constitution of the Athenians* 53.3) adds that, when the litigants came into court, they could as a matter of fairness use no documents (including the testimonies of witnesses) other than those presented to the opponent at the *diaita*. That is also true for *anakrisis* cases (Thür, 2007). Third, the preliminary hearings in homicide cases were called *prodikasiai*. In all three kinds of preliminary hearings litigants prepared their cases in the same way: they knew each other's witnesses and their depositions because every witness had to swear a pretrial oath. Because these hearings all involved questions and answers, this stage can be called "dialectical" (Thür, 1977, p. 313).

The next stage was the main hearing, or court trial. Here a panel of citizens (*dikastai*) always decided the issue in a session lasting no more than one day. Often a panel heard several lawsuits in one day. This required strict adherence to a schedule. The amount of time allowed for speeches was fixed by law (on the basis of the issue's importance) and measured out to the parties by a waterclock (*klepsydra*). The *dikastai* voted immediately after the parties gave their speeches, rendering the first and final decision. Because speeches occupied most of this stage it may be labeled "rhetorical."

Diamartyria and paragraphē. In inheritance cases the preliminary stage, before the archon, could become the definitive one if only one collateral relative claimed the estate. In that case, the archon did not render a verdict but issued a simple decree (*epidikasia*) approving the claim. When opposing claims were entered, preliminary hearings and a judicial decision through *diadikasia* were necessary. A legitimate male descendant of the deceased, however, was entitled to enter upon the property without legal formality by using self-help: he could protest against any *epidikasia* decree of the archon by a formal witness testimony (*diamartyria*) confirming the existence of a legitimate son. This testimony tied the archon's hands unless it was negated by a successful suit for false testimony. *Diamartyriai* could be used before magistrates other than the archon by a defendant who protested that the suit against him was not maintainable, as when the matter had been settled by arbitration. The deposition barred the magistrate from referring the case to the *dikastērion* for trial until the witness was sentenced (Wallace, 2001).

In the fourth century another form of protest prevailed, that of entering a *paragraphē* (lit. writing beside). Instead of indirectly challenging a witness's testimony the defendant could force the magistrate to bring the preliminary question, whether the case was to be referred to court or not, independently from the main issue. A short note written on the statement of claim "beside" the plaintiff's petition was sufficient. By entering a *paragraphē* the defendant had the advantage of pleading first, because this remedy was considered to open an action against the lawsuit. The *paragraphē* was introduced in 403/402 B.C.E. to support the amnesty

enacted at the restoration of democracy. Further provisions were added later, so that the *paragraphē* could be against a suit on matters already settled (by release and discharge, or by a previous *dikē*), when the wrong legal process was chosen, or because of limitation of time. *Paragraphē* cases were conducted with the utmost rhetorical shrewdness (Demosthenes 32–38; Wolff, 1966; Thür, 2002, pp. 60–77).

Trial in court. Formally, the trial was a very simple thing: after the parties each gave their pleas for a measured length of time, the *dikastai* secretly cast their votes without deliberating or giving reasons. The pebbles were counted, and a herald announced the total. Much of the rationality in modern concepts of jurisdiction is obviously missing. Where did this simple pattern originate? The irrational concept of casting secret votes on a legal issue appears to be a primitive ordeal replacing another equally primitive procedure, a decisive oath sworn by one of the litigants. This explanation is only a hypothesis based on the Archaic provisions of Draco's law and the litigants' oaths that still preceded a trial in classical times (*see* Courts, Ancient Greek, *subentry on* Courts and Magistrates in Ancient Athens). Whatever its origins, the lack of rationality is still a characteristic feature of Athenian trials at the large *dikastēria* in the time of the orators. The magistrates presiding over a court had no discretionary authority. Their only responsibility was to see that every participant—litigants, supporters, witnesses, and laymen judges—applied and observed the formal rules. The magistrate never asked questions and did not even vote. The trial was so focused on the opposing speeches that the taking of evidence was almost completely disregarded. In the following only a few characteristic features will be emphasized.

Evidence. Aristotle's famous account of the five means of proof, "laws, witness, contracts, confessions under torture, oath" (*Rhetoric* 1375a24) has prevented scholars from gaining a clear insight into the Athenian law of evidence. In fact, the philosopher gives examples only of what he calls, in a rhetorical sense, "nonartistic proofs." When the clerk read aloud to the court a document prepared by a litigant, the waterclock stopped. These documents coming from outside the speech did not belong to the "art" of rhetoric and required a different mode of argumentation.

The only relevant judicial proof to be found in court practice was witness testimony, and it was only moderately successful (relative to modern law) in meeting the goal of determining the truth. Only free males were admitted as witnesses, and in court the witness could only confirm a deposition formulated by the litigant beforehand. In the fifth century he did this orally; in the fourth he simply affirmed a written text read aloud. No questioning or cross-examination took place; if the witness was unwilling to confirm the deposition in court he could take an oath of disclaimer during the preparatory stage. At the trial the witness had to approach the speaker's platform to take legal responsibility for his testimony or moral responsibility for his oath of disclaimer (Thür, 2004b, p. 161). There were several means of compulsion against a reluctant witness, but only a witness who had positively affirmed the deposition was liable to a suit for false testimony after the main trial. The role of the Athenian witness was rather different from that of a modern witness and conveys an idea of the social background of judicial litigation in Athens (see below).

Other means of proof were employed outside court. The *dikastēria*, panels of hundreds of judges, were unable to

Counting Votes. Possible scene of the counting of votes at an *ostracism*. A man (*second from right*) holding a stylus and writing tablet tallies the votes while a boy (*right*) approaches with a bowl containing another batch. A third figure (*second from left*) holds more votes as another man takes down a writing case. Red-figure *kylix* (drinking cup) attributed to the Pan Painter, c. 470 B.C.E. ASHMOLEAN MUSEUM, UNIVERSITY OF OXFORD

examine the authenticity of a document, and there was in any case insufficient time to do so during a court session. Thus a litigant brought witnesses to confirm their authenticity or challenged his opponent beforehand to concede the issue. Likewise, a challenge (*proklēsis*), always issued before witnesses, was necessary to question slaves under torture. Slave testimony was not relevant unless given under torture; for practical reasons it was done out of court and with the opponent's agreement (*see* Torture, *subentry on* Ancient Athens). Also, oaths to be sworn out of court to affirm certain facts or to settle the whole case were only relevant after an agreement resulting from a challenge. Most challenges mentioned in court speeches were refused. Challenging one's opponent in order to gain arguments from his refusing the challenge was a common forensic tactic. In sum, Athenian law courts seem on the one hand in many ways to have relied more on formal means of evidence-gathering than on determining substantive truth. On the other hand, because the sentence was nonappealable and the voting secret, neither the court panel nor an individual judge had to account for their assessment of the evidence.

Verdict. Like other peculiar features of a trial before the large *dikastēria*, the verdict differed from what we expect today. The panel had no authority to formulate a sentence; far from deliberating, they simply voted under the formal direction of the presiding magistrate. Thus the law court's only task was to vote "yes" or "no" (i.e., "guilty" or "not guilty") on the plaintiff's claim. Nobody pronounced a judgment; the herald simply called out the result of the vote (Aristotle, *Constitution of the Athenians* 69.1; Thür, 2004a, p. 43). This rigid system could work satisfactorily only when the law mandated only one consequence (e.g., the death penalty for premeditated murder). The Athenians called these lawsuits *atimētoi* (without estimation [by the jury]).

If the law provided a range of punishments (e.g., death, exile, and a fine), the court had to decide the penalty by a second vote, again without deliberating. Each litigant proposed a penalty, and the panel then chose one of these by a simple "yes" or "no." Lawsuits of this sort were called *timētoi* (with estimation), and most private cases, especially cases of *blabē* (damage), were of this sort. Involving the litigants in the estimation led to a great psychological challenge: if the victorious plaintiff proposed too high a penalty, he risked having the judges vote for the defendant's estimation—and vice versa when the defendant proposed too low a penalty. Socrates, for example, was found guilty by 281 of 501 votes, but he refused to counter the plaintiff's estimation with another reasonable penalty, proposing instead that the city grant him public honors. Thus the court could only choose the death penalty, which had been proposed by the plaintiff (Plato, *Apology* 38b). Occasionally a third vote took place when the defendant had been convicted of theft and the penalty to be paid to the plaintiff had been fixed by *timēsis* (estimation). Through an additional penalty estimation (*prostimēsis*), probably moved by the victorious plaintiff, the court had to vote whether to confine the defendant in stocks in a public place for five days. This degrading punishment was the only penalty with any similarity to a prison sentence. Regular punishments were death, exile, confiscation of property, and financial penalties. When the verdict was assessed in private disputes, the penalty was normally a fine. Only a few texts of judgments are preserved from anywhere in Greece, mostly in inscriptions on stone; they fit the Athenian pattern. The documents contain just the charge and a note of condemnation or acquittal sometimes followed by the total votes (Thür, 1987). In both the preliminary stage and the trial proper, judgments by default were possible; two months were allowed for excuses for nonappearance (Pollux, *Onomasticon* 8.61).

Dikē pseudomartyriōn, anadikia, execution. A verdict rendered by a *dikastērion* was final. Bringing the same case again was barred by a kind of special plea, the *paragraphē*. The losing party could indirectly recover his financial loss by suing a witness by a *dikē pseudomartyriōn* (suit for false witness). If convicted, the witness had to pay a fine in the amount of the damage (*blabē*) that resulted from the false testimony. But a party who had suffered no loss or had even won his suit could also file this action, probably for injured reputation, which was always involved in cases of *blabē*. Because a witness who had been convicted three times lost his civil rights, it might have been enough for the prosecutor to bring the witness one step closer to this point. It is unclear if, and under what conditions, the trial could be reopened (in a process called *anadikia*) after the conviction of a witness. One can assume that, as a rule, the conviction of the witness did not set aside the verdict of the main trial. When money was concerned, the victorious plaintiff carried out the execution of judgments in private suits. In Athens since Solon's time, self-help against the debtor's person was forbidden. The death penalty was executed by the state; for enforcing exile and handling confiscations, there were actions through a *boulomenos*.

Court fees. Both parties had to pay a fee called the *prytaneia* in an amount depending on the value of the matter in dispute: under a hundred drachmas, there was no fee, between a hundred and a thousand, three drachmas, and above a thousand, thirty drachmas. All payments went to the state for the courts' expenses, and the losing party had to reimburse his opponent for his fee. Details are unclear. In public suits another kind of court fee, the *parastasis*, was paid by the plaintiff alone. In some public suits a deposit was required, sometimes one-fifth of the value of the claim, or under special circumstances in inheritance claims, one-tenth of the value of the estate (*parakatabolē*).

Plaintiffs could be penalized for frivolous litigation. Volunteer prosecutors (*boulomenoi*) in most public suits who abandoned their suit or failed to secure one-fifth of the votes at the trial were fined one thousand drachmas and lost their right to proceed in public actions, probably until they had paid. In some private suits, as when entering a *paragraphē*, an unsuccessful defendant had to pay to the opponent one-sixth of the value of the claim at issue (*epōbelia*). Defendants condemned through *dikē exoulēs* (for illegal self-help in a dispute about a piece of land), besides forfeiting their title, had to pay to both the plaintiff and the state the value of the property.

Summary of Actions. All *dikai* belong to one basic type of action, while public lawsuits, which have in common the fact that they were initiated by a volunteer (*boulomenos*), can be further classified on the basis of their procedural aspects.

Dikai. Todd (1993, pp. 101–105) lists alphabetically all twenty-eight names of private actions attested in the sources; some are known from court speeches as actual cases, some are known only by name. One must be cautious with these names, which derived from substantive aspects of the cases and often reflect only one remarkable external fact. Though variously named, many *dikai* were based on the principle of damage (*blabē*), and the action labeled *dikē blabēs*, in substance, represented different claims. It is only the occasional qualifying term that informs us about special rules of procedure. A *dikē* called *emporikē*, for instance, belonged to the class of private cases involving maritime traders. Foreigners could, under exceptional circumstances, enter these lawsuits, even against Athenian citizens. These cases had a special schedule: they were probably conducted only during winter when traders were ashore. They are among the group of *dikai emmēnoi* (lit. in-a-month actions), which may mean that the magistrate had to settle the case within one month or, according to another interpretation, that they could be initiated only on a certain day of each month (Todd, 1993, pp. 334–336). The filing of inheritance cases was not permitted in the last month of the archon's year in office (Demosthenes 46.22), and the *basileus* (one of the archons) did not accept suits for homicide in the last three months of his year (Antiphon 6.42). Other characteristics of single *dikai* have been given in the general overview.

Public actions. In the time of the orators several other suits, in addition to the main type, the *graphē*, could be initiated by a volunteer plaintiff (the *boulomenos*). Some of these did not differ from each other in substantive requirements but only in procedure.

Graphai. The main features of "written actions" are mentioned above under the general characteristics of Athenian procedure. In the fifth and fourth centuries, the fact that *graphai* were filed in writing had no special significance, because every claim had to be filed as a written document. Therefore a traditional *dikē* was also sometimes referred to as a *graphē*, and the defendant's plea as an *antigraphē*. Public actions generally pursued offenses against public interests. *Graphai* were brought, for example, for proposing an illegal decree (*paranomōn*) (*see* Graphe Paranomon), for impiety (*graphē asebeias*), for abusing one's right to initiate public actions (*graphē sykophantias*), for pretending to be an Athenian citizen (*graphē xenias*), or for wrongful, insulting, insolent, or excessive behavior (*graphē hybreōs*, Cohen, 1995, p. 144). The latter may be classified also with *graphai* that protect private persons unable to prosecute in their own name, such as maltreated elderly parents, orphans, heiresses (*graphē kakōseōs*, for ill-treatment), or a man seized privately under false accusation for adultery. A distinguishing feature of *graphai*, in contrast to all private *dikai* and some other public actions, was the fine of one thousand drachmas levied against the prosecutor when he abandoned the case or failed to obtain one-fifth of the votes at the trial. This provision was intended to prevent bribery and *sykophantia* (malicious prosecution). It was a common tactic to pursue a citizen active in politics with frivolous claims, blackmailing him to withdraw the action. The bribing of a sincere prosecutor to withdraw was a danger inherent in a system based on volunteer prosecution of public offenses. On the other hand, the great financial risk a *graphē* involved could deter citizens from using that procedure even when it was justified. This was true also in the private sphere, as with the maltreatment of orphans. As will be shown below, innovations attempted to solve these problems.

Todd (1993, pp. 105–109) lists twenty-five attested names of *graphai*, and Harrison (1971, p. 82) lists *graphai* with fixed penalties (*atimētoi*) and those whose penalties were assessed in court (*timētoi*).

Eisangeliai. The *eisangelia* (public announcement), a procedure open to a volunteer (*boulomenos*) by denunciation, became the most important battlefield for political struggles in fourth-century Athenian democracy. It was used mainly against treason, political corruption, and attempts to overthrow the constitution; it was initiated in the Assembly (*ekklēsia*) and decided by the *dikastērion* (*see* Courts, Ancient Greek, *subentry on* Courts and Magistrates in Ancient Athens). The denouncer was authorized by the *ekklēsia* to act as prosecutor without paying a court fee but was subject to a fine of a thousand drachmas if he abandoned the case. He was originally not required to obtain more than one-fifth of the votes, but widespread abuse of the procedure made it necessary to drop the last privilege. Exceptionally in Athenian procedure, the accused could be held under custodial arrest between denunciation and trial. The name *eisangelia* was also applied to a variety of other procedures, such as those for maladministration by magistrates decided by the Council (Hansen, 1991, p. 213), or for maltreatment of orphans (Harrison, 1968, p. 118).

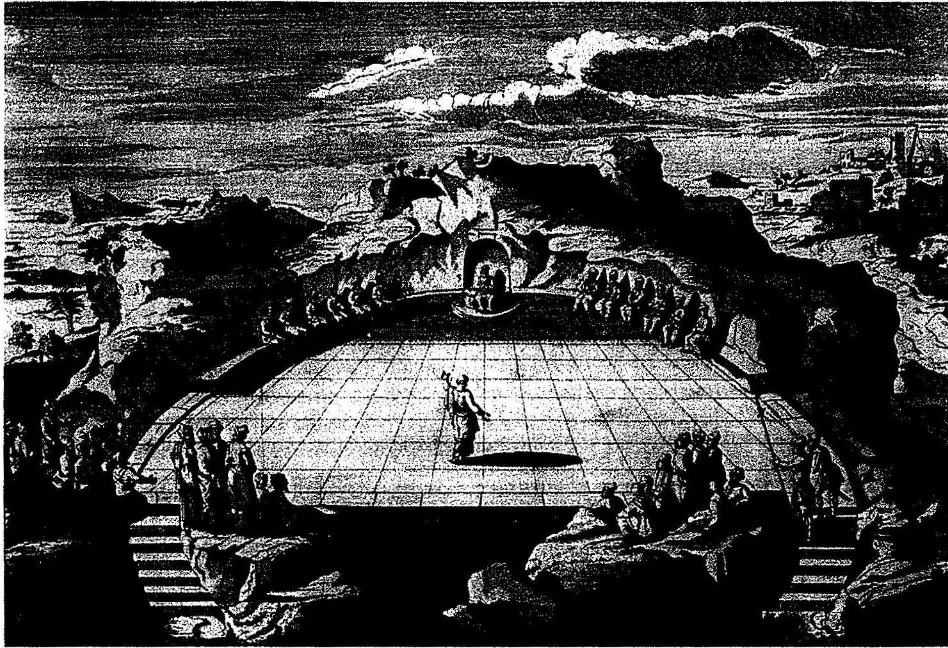
Phasis. Other actions for punishing public wrongs, especially in financial matters, were included in the category of *phasis* (Wallace, 2003). Like *eisangelia*, *phasis* (lit. making visible) was a kind of denunciation and was as a rule aimed at the offender's property. The offenses were specialized and distributed over various fields: oversea grain-trade, mining, digging up olive trees, mismanagement of an orphan's estate. The *boulomenos* was to bring his *phasis* to any magistrate who had authority in that area. Common characteristics seem to have been a fine of a thousand drachmas for abandoning the case or for failing to secure one-fifth of the votes, and a premium for the successful plaintiff in the amount of half of the sum adjudicated by the court after estimation, *timēsis* (Todd, 1993, p. 119). Actions with a similar premium are known all over the Greek world under different names. In Greek society, personal profit, as well as personal animosity, kept many public actions going.

Execution of sentences: apagōgē and apographē (diadikasiai). Volunteers were used not only to prosecute public offenses but also to execute sentences. While the death penalty was carried out by state officials—normally the condemned committed suicide in prison—exile was sanctioned by the provision that any citizen was allowed to use *apagōgē* to seize an exiled person who had returned unlawfully to Attica and bring him before the *thesmothetai* (the six junior archons). This step was a private act of self-help on behalf of the state. The *thesmothetai* then had to refer the case to a *dikastērion* for trial, with death as the penalty. Self-help through *apagōgē* was also allowed to any citizen against common criminals (*kakourgoi*). The defendants were brought before the Eleven, citizens responsible for guarding prisoners and supervising executions, who could summarily render death sentences.

Volunteers also enforced monetary sentences, such as confiscation and debts to the state. In either case the volunteer drafted a list (*apographē*) denouncing respectively all the condemned's confiscated property or part of the debtor's goods up to the value of the amount owed to the state. The term *apographē* was used also for this form of prosecution and any trial to which it gave rise. Two sorts of trials could follow. When the *apographē* was aimed at a person accused of having diverted goods from another person who had been sentenced earlier (Lysias 19 and 29), the person whose property had been listed might contest the validity of the denunciation, and a court would decide the issue. A person whose sentence was confiscation, however, never used this plea himself. The other kind of trial started with a protest (*enepiskēmma*) by one or more parties who claimed to have ownership of or mortgage on some of the goods listed in the *apographē*. In this case the court heard all the claims in *diadikasiai* conducted between the volunteer denouncer and each of the claimants, generally mortgage-holders as documented in a surviving judgment (Langdon, 1991, P3, pp. 76ff.). The denouncer risked being fined a thousand drachmas for not obtaining one-fifth of the votes, but if he won the case he was rewarded with (probably) one-third of the sum raised by selling the property at auction (Todd, 1993, p. 118). The objector who claimed property or a mortgage had to deposit one-fifth of the value of his claim, which was forfeit to the state if he lost.

Other kinds of *diadikasiai* did not involve a volunteer enforcing the payment of debts to the state. If an Athenian citizen, because of his personal wealth, was assigned a compulsory public service (liturgy), he had two ways to protest and bring the case to court. By *skepsis* (excuse) he could plead for an exemption for statutorily fixed personal reasons. (A trierarch who could not properly hand over his ship at the end of his term might claim also by *skepsis* that the loss was caused by a storm.) A court then decided through *diadikasia* on the merits of the excuse. The second way to avoid a liturgy was to designate another citizen, claim he was wealthier, and challenge him either to take over the duty or to exchange properties (*antidosis*). If he refused to do either, the issue was referred to a court, which decided in a *diadikasia* which party should be assigned the service. As in the *apographē* procedure, the term *diadikasia* in liturgy cases was used for trials that aimed neither at public punishment nor at private demands to seize the defendant's property. *Diadikasia* was always a purely declaratory action, which was in public life generally conducted between two rival claimants.

Dokimasia and euthynai. A great number of public actions rose from the many scrutiny procedures (*dokimasiai*) that Athenian democracy required every year. *Dokimasia* itself was not a trial, but rather a test of a person's qualification. Four main types of *dokimasia* existed: that of incoming magistrates, that of "orators" (citizens who addressed the Assembly), that of *ephēboi* (*ephebi*, young men to be enrolled on the citizen list), and that of new citizens (after a decree granting citizenship). The routine checks were conducted before the Council or a *dikastērion* panel. Witnesses testified that the legal requirements had been met. If anyone challenged the candidate, different types of trials followed in the various cases, and the sanctions also differed: the candidate elected or chosen by lot was not allowed to take up the office; an unqualified politician who had addressed the *ekklēsia* became disfranchised; and condemnations in matters of citizenship could result in the candidate's being sold into slavery. In the same way, the financial accounts of each magistrate—if he had public money in his hands—were audited through *euthynai* (public examinations) monthly during his term and after his term had ended. Special officers (*logistai*) and any private citizen were allowed to prosecute the magistrate for mismanagement or embezzlement. Nonfinancial *euthynai* were conducted by other officers (*euthynoi*) temporarily appointed for that job.



The Areopagus. Site of the Athenian city court, nineteenth century. MARY EVANS PICTURE LIBRARY

Legal procedure in Athenian life. Finally, one may ask how the Athenians themselves dealt with the plethora of legal procedures in their private and public lives. As the court speeches show, they did so masterfully. Out of the arsenal of available procedures, each plaintiff chose the weapons that best fit his needs. Since many procedures overlapped substantively it was hard to calculate what reasons a *dikastērion* would accept as adequate, for instance, in prosecuting for assault. Options ranged from a private *dikē aikias* before 201 judges to a *dikē* for "wounding with intent to kill" before the Areopagos, or a *graphē hybreōs* (for a dishonoring assault) heard by 501 judges; each procedure carried a different penalty. For theft and maltreatment of orphans, *dikai* and *graphai* coexisted, and in the latter case an *eisangelia* was also an option. Homicide actions and *apagōgē* also overlapped.

Today it seems nearly impossible to organize the many Athenian private and public procedures into a coherent system. Most modern authors, following the ancient sources, do not separate the law of procedure from substantive law or enforcement measures from judicial decisions. This overview concentrates on the latter. Other ways of arranging all this material, together with some terms not included here or not at their usual place, will be found in other articles (*see* Courts, Ancient Greek, *subentry on* Courts and Magistrates in Ancient Athens; *and* Procedure, *subentry on* Trial Procedure in Ancient Athens).

Litigation in Athens. Before discussing the social background of the Athenian law of procedure, it has been necessary to explain the legal framework from an internal perspective. Through its strictly democratic character the Athenian legal process differed from all other types historically known. Democracy meant formal equality and equal opportunity (within the privileged class of male citizens). A trial was a match fought with exactly timed speeches and decided by the "ordeal" of an anonymously voting mass of citizens. In the preceding sections, some peculiar legal features have been explained in this context. Athenian court speeches, however, give a deeper insight into social and mental realities. To conclude, two different sociological approaches may be mentioned. The first uses comparative anthropology and emphasizes the competitive, feuding character of Athenian society; law courts were the "arena" for litigation as a central feature of social life. The other approach has arisen out of a new interest in oratory as performance and in the interdependency between actor and audience. As in dramatic performances, litigation created civic identity on both sides of the "stage."

The main representative of the first approach is David Cohen (1995, pp. 181–211). Because Athens in the time of the orators was an agonistic society, conflict was in Cohen's view not a "pathological dysfunction" that procedural institutions could or should expunge, and the legal process did not settle litigation but perpetuated it. At the core of any

Athenian judicial *agōn* (trial) was the comparative assessment of the parties as citizens, judged not according to the statutory norms to be applied in the specific case, but according to the normative expectations of the community, considering the parties' honor and entire civic life. Consequently, witnesses in a trial were not a means of determining the truth; rather they were expected to lie in support of their party. In a continuous competition for wealth, power, and influence, Athenian elites submitted to the judgment of panels of fellow citizens with far lesser claims. Litigants often used the courts to pursue conflict, not to terminate it, and litigation provided an arena for the expression, exacerbation, and perpetuation of conflict (for new aspects of this discretionary system of justice, see Lanni, 2006). This view is not as revolutionary as it seems. In every legal system, there is to some degree a similar background to judicial litigation. Athens may have been peculiar in the profusion of political trials conducted between personal rivals. Cohen attempts to explain why, but not how, trials were conducted in Athens. It is unsatisfying to maintain that witnesses were lying (Cohen 1995, pp. 108, 186) without asking further what witness depositions looked like and how litigants handled them in practice (Thür, 2004b).

Partly in conflict with this view of feud in the "arena" is the theory of communication from the "stage" (Scafuro, 1997; Johnston, 1999). While Cohen denies the autonomy of law and the courts, Johnston (1999, pp. 126–130) concedes a semiautonomy; litigation for him is more than an extension of a social contest for honor. These more recent authors concentrate not on lifelong litigation, but rather on the methods by which litigants settled one specific issue, which nevertheless could take a considerable amount of time. Although from a legal aspect it is only transactions between the litigants that are of interest, social history envisages the dispute between them in relation to an audience. Here the two (or three) steps of every lawsuit become important. The audience of the first informal private meetings were friends and neighbors. Each litigant tried to win their backing by showing his willingness to offer extrajudicial composition. Compromise rather than litigation was of the highest social value (Scafuro, 1997, p. 141). These meetings continued during the preparatory dialectical phase of the judicial process (see above). The trial in court was completely different, a real performance on stage. In this last, "rhetorical" phase, the parties communicated with the audience on the general values of Athenian democracy, including the desirability of peaceful solutions. Both views—of litigation in the arena and of litigation as performance—are valid as far as procedure is concerned. The important distinction is that Athenian courts settled legal cases, not disputes in general. One can assume, against Cohen, that disputes were ended, not by court decisions (so Johnston, 1999, p. 140, n. 31), but by changes in social relations.

[*See also* Athens; Graphe Paranomon; *and* Homicide, *subentry on* Ancient Greek Law.]

BIBLIOGRAPHY

Cohen, David. *Law, Violence, and Community in Classical Athens.* Cambridge, U.K.: Cambridge University Press, 1995.

Hansen, Mogens Herman. *The Athenian Democracy in the Age of Demosthenes.* Translated by J. A. Cook. Oxford: Blackwell, 1991.

Harrison, A. R. W. *The Law of Athens.* Vol. 2, *Procedure.* New ed. London: Duckworth, 1998.

Johnstone, Steven. *Disputes and Democracy: The Consequences of Litigation in Ancient Athens.* Austin: University of Texas Press, 1999.

Langdon, Merle K. "Poletai Records." In *Inscriptions: Horoi, Poletai Records, Leases of Public Lands (Athenian Agora 19)*, edited by G. V. Lalonde et al., pp. 53–143. Princeton, N.J.: American School of Classical Studies at Athens, 1991.

Lanni, A. *Law and Justice in the Courts of Classical Athens.* Cambridge, U.K., and New York: Cambridge University Press, 2006.

Lipsius, Justus H. *Das Attische Recht und Rechtsverfahren.* Leipzig, Germany: O. R. Reisland, 1905–1915.

MacDowell, Douglas M. *The Law in Classical Athens.* London: Thames and Hudson, 1978.

Rubinstein, Lene. *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens.* Stuttgart, Germany: Steiner, 2000.

Rubinstein, Lene. "Volunteer Prosecutors in the Greek World." *Dike* 6 (2003): 87–113.

Scafuro, Adele C. *The Forensic Stage: Settling Disputes in Graeco-Roman New Comedy.* Cambridge, U.K.: Cambridge University Press, 1997.

Thür, Gerhard. *Beweisführung vor den Schwurgerichtshöfen Athens: Die Proklesis zur Basanos.* Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1977.

Thür, Gerhard. "Formen des Urteils." In *Akten des 26. Deutschen Rechtshistorikertages*, edited by Dieter Simon, pp. 467–484. Frankfurt am Main, Germany: Klostermann, 1987.

Thür, Gerhard. "Das Gerichtswesen Athens im 4. Jahrhundert v. Chr." In *Grosse Prozesse im antiken Athen*, edited by Leonhard Burckhardt and Jürgen von Ungern-Sternberg, pp. 30–49. Munich, Germany: C. H. Beck, 2000.

Thür, Gerhard. "Kannte das altgriechische Recht die Eigentumsdiadikasie?" In *Symposion 1977*, Germany edited by Joseph Modrzejewski and Detlef Liebs, pp. 55–69. Cologne, Germany: Böhlau, 1982.

Thür, Gerhard. "Law of Procedure in Attic Inscriptions." In *Law, Rhetoric, and Comedy in Classical Athens: Essays in Honour of Douglas M. MacDowell*, edited by D. L. Cairns and R. A. Knox, pp. 33–49. Swansea: Classical Press of Wales, 2004.

Thür, Gerhard. "Das Prinzip der Fairness im attischen Prozess." In *Symposium 2005*, edited by Eva Cantarella, pp. 131–150. Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2007.

Thür, Gerhard. "Recht im antiken Griechenland." In *Die Rechtskulturen der Antike: Vom Alten Orient bis zum Römischen Reich*, edited by Ulrich Manthe, pp. 191–238, 329–332. Munich, Germany: C. H. Beck, 2003.

Thür, Gerhard. "The Role of the Witness in Athenian Law." In *The Cambridge Companion to Ancient Greek Law*, edited by Michael Gagarin and David Cohen, pp. 146–169. Cambridge, U.K.: Cambridge University Press, 2004.

Thür, Gerhard. "Sachverfolgung und Diebstahl in den griechischen Poleis." In *Symposion 1999*, edited by Gerhard Thür and Francisco Javier Fernández Nieto, pp. 57–96. Cologne, Germany: Böhlau, 2002.

Todd, Stephen C. *The Shape of Athenian Law*. Oxford, U.K.: Clarendon Press, 1993.

Wallace, Robert W. "*Diamarturia* in Late Fourth-Century Athens." In *Symposion 1997*, edited by Eva Cantarella and Gerhard Thür, pp. 89–101. Cologne, Germany: Gesellschaft für Griechische und Hellenistische Rechtsgeschichte, 2001.

Wallace, Robert W. "*Phainein* in Athenian Laws and Legal Procedures." In *Symposion 1999*, edited by Gerhard Thür and Francisco Javier Fernández Nieto, pp. 167–181. Cologne, U.K.: Bölau, 2003. An article on *phasis*.

Wolff, Hans J. *Die attische Paragraphe*. Weimar, Germany: Böhlau, 1966.

Wolff, Hans J. "The *dike blabēs* in Demosthenes, or[ation]. LV." *American Journal of Philology* 64 (1943): 316–324.

Wolff, Hans J. "Die Grundlagen des griechischen Vertragsrechts." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung) 74 (1957): 26–72.

Wolff, Hans J. "The Origin of Judicial Litigation among the Greeks." *Traditio* 4 (1946): 31–87.

GERHARD THÜR

Trial Procedure in Ancient Athens

Considering the plethora of judicial magistrates and of actions to be filed with them, Athenian procedural law seems to have been extremely complicated. However, Athenians knew only one pattern of trial procedure, and both private and public actions were conducted in almost the same way. This article describes a typical lawsuit from the summons to the verdict. Because every lawsuit had to pass through two stages, the first two sections will describe the preparatory stage and court day. In an appendix on the audience and freedom of speech, some observations will be made on judges and the public as audience.

Preparatory Stage. When private discussions before friends and neighbors could not settle the case, a plaintiff took the first step toward trial. He made sure of a date when the magistrate responsible for the case was officiating. At least four days earlier than this, he took two witnesses with him and privately summoned the defendant to appear before the magistrate. The summons had to state the plaintiff's claim. A volunteer prosecutor in a public action followed the same procedure, although probably without any previous private meetings. Trials that followed summary measures by magistrates started without summons. These included punishment for someone brought by *apagōgē* to the Eleven, the denunciation of confiscated property (*apographē*) to the Eleven, and the allotment (*epidikasia*) of an inheritance or an heiress by the archon. Confiscation and inheritance cases were announced publicly in the People's Assembly.

After a summons, the plaintiff or prosecutor stated his claim or accusation to the magistrate and the defendant then gave his response. Alternatively, the defendant could instead file a special plea (*paragraphē*) that the case was not actionable. At least from the beginning of the fourth century B.C.E., all of these statements had to be in writing. These documents were extremely important: by voting "guilty" or "not guilty," the judges convicted or acquitted the defendant simply by endorsing one of the two statements (see below). After the magistrate had accepted the pleas, the litigants had to pay the court fees. Then the magistrate fixed a date when he would hold pretrial sessions. If several actions were brought to him on the same day, he drew lots to determine in what order the sessions would take place. If the defendant, although properly summoned, did not appear, the magistrate could refer the case directly to the *dikastērion* (people's court) for trial. Finally, the plaintiffs' pleas were written on whitened tablets and posted in the agora.

There were three kinds of pretrial sessions: *prodikasiai*, *anakrisis*, and *diaita*, the last handled by an arbitrator chosen by lot. In private cases, all three types helped to avoid trial by promoting compromise. In public lawsuits, however, the prosecutor was not allowed to abandon the case and was fined 1,000 drachmas to prevent *sykophantia* (malicious prosecution). The preliminary sessions before the magistrate and the *diaitētēs* (arbitrator) gave litigants the opportunity to prepare for the trial. This preparation consisted of questioning each other and, as a matter of fairness, disclosing all their documentary evidence to be used before the court. We have direct evidence for the latter provision only in the case of *diaita* (*Ath. Pol.* 53.3), but it is generally thought that in all kinds of preparatory sessions, sealed ceramic pots (*echinoi*) were used to keep the documents safe for the hearing (Thür, 2007). The *diaitētēs* chosen by lot had no authority to give an award. Only when both litigants agreed with his opinion was the case settled. If they did not, then the case would continue directly to trial. Because the *diaitētēs* did not render a verdict, technically there was no "appeal." Like the magistrates, the *diaitētēs* conducted preparatory sessions, in which the litigants used the techniques of "dialectic," question and answer. If these sessions did not result in a peaceful settlement, the magistrates in charge turned to the *thesmothetai*. These magistrates scheduled the sessions of the *dikastēria* and assigned their dates by lot (*Ath. Pol.* 59.1).

Court Day. What happened at the preliminary stage before the case was brought to the magistrates is, to a large extent, based on conjecture. Only by chance do the sources reveal some details. We know much more, however, about the trial before the *dikastēria*. A *dikastērion* had to render judgment in a session lasting one day at most.

On the basis of a literary source, the Aristotelian Constitution of Athens (*Ath. Pol.*), chapters 63–69, and archeological discoveries in the agora (summarized by Boegehold, 1995), a "court day" can be reconstructed in full detail. These excavations have revealed the sites, buildings, and equipment of the law courts, which makes it easier to understand the contemporary account in *Ath.*

Todd, Stephen C. *The Shape of Athenian Law*. Oxford, U.K.: Clarendon Press, 1993.
Wallace, Robert W. "*Diamarturia* in Late Fourth-Century Athens." In *Symposion 1997*, edited by Eva Cantarella and Gerhard Thür, pp. 89–101. Cologne, Germany: Gesellschaft für Griechische und Hellenistische Rechtsgeschichte, 2001.
Wallace, Robert W. "*Phainein* in Athenian Laws and Legal Procedures." In *Symposion 1999*, edited by Gerhard Thür and Francisco Javier Fernández Nieto, pp. 167–181. Cologne, U.K.: Bölau, 2003. An article on *phasis*.
Wolff, Hans J. *Die attische Paragraphe*. Weimar, Germany: Böhlau, 1966.
Wolff, Hans J. "The *dike blabēs* in Demosthenes, or[ation]. LV." *American Journal of Philology* 64 (1943): 316–324.
Wolff, Hans J. "Die Grundlagen des griechischen Vertragsrechts." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung) 74 (1957): 26–72.
Wolff, Hans J. "The Origin of Judicial Litigation among the Greeks." *Traditio* 4 (1946): 31–87.

GERHARD THÜR

Trial Procedure in Ancient Athens

Considering the plethora of judicial magistrates and of actions to be filed with them, Athenian procedural law seems to have been extremely complicated. However, Athenians knew only one pattern of trial procedure, and both private and public actions were conducted in almost the same way. This article describes a typical lawsuit from the summons to the verdict. Because every lawsuit had to pass through two stages, the first two sections will describe the preparatory stage and court day. In an appendix on the audience and freedom of speech, some observations will be made on judges and the public as audience.

Preparatory Stage. When private discussions before friends and neighbors could not settle the case, a plaintiff took the first step toward trial. He made sure of a date when the magistrate responsible for the case was officiating. At least four days earlier than this, he took two witnesses with him and privately summoned the defendant to appear before the magistrate. The summons had to state the plaintiff's claim. A volunteer prosecutor in a public action followed the same procedure, although probably without any previous private meetings. Trials that followed summary measures by magistrates started without summons. These included punishment for someone brought by *apagōgē* to the Eleven, the denunciation of confiscated property (*apographē*) to the Eleven, and the allotment (*epidikasia*) of an inheritance or an heiress by the archon. Confiscation and inheritance cases were announced publicly in the People's Assembly.

After a summons, the plaintiff or prosecutor stated his claim or accusation to the magistrate and the defendant then gave his response. Alternatively, the defendant could instead file a special plea (*paragraphē*) that the case was not actionable. At least from the beginning of the fourth century B.C.E., all of these statements had to be in writing. These documents were extremely important: by voting "guilty" or "not guilty," the judges convicted or acquitted the defendant simply by endorsing one of the two statements (see below). After the magistrate had accepted the pleas, the litigants had to pay the court fees. Then the magistrate fixed a date when he would hold pretrial sessions. If several actions were brought to him on the same day, he drew lots to determine in what order the sessions would take place. If the defendant, although properly summoned, did not appear, the magistrate could refer the case directly to the *dikastērion* (people's court) for trial. Finally, the plaintiffs' pleas were written on whitened tablets and posted in the agora.

There were three kinds of pretrial sessions: *prodikasiai*, *anakrisis*, and *diaita*, the last handled by an arbitrator chosen by lot. In private cases, all three types helped to avoid trial by promoting compromise. In public lawsuits, however, the prosecutor was not allowed to abandon the case and was fined 1,000 drachmas to prevent *sykophantia* (malicious prosecution). The preliminary sessions before the magistrate and the *diaitētēs* (arbitrator) gave litigants the opportunity to prepare for the trial. This preparation consisted of questioning each other and, as a matter of fairness, disclosing all their documentary evidence to be used before the court. We have direct evidence for the latter provision only in the case of *diaita* (*Ath. Pol.* 53.3), but it is generally thought that in all kinds of preparatory sessions, sealed ceramic pots (*echinoi*) were used to keep the documents safe for the hearing (Thür, 2007). The *diaitētēs* chosen by lot had no authority to give an award. Only when both litigants agreed with his opinion was the case settled. If they did not, then the case would continue directly to trial. Because the *diaitētēs* did not render a verdict, technically there was no "appeal." Like the magistrates, the *diaitētēs* conducted preparatory sessions, in which the litigants used the techniques of "dialectic," question and answer. If these sessions did not result in a peaceful settlement, the magistrates in charge turned to the *thesmothetai*. These magistrates scheduled the sessions of the *dikastēria* and assigned their dates by lot (*Ath. Pol.* 59.1).

Court Day. What happened at the preliminary stage before the case was brought to the magistrates is, to a large extent, based on conjecture. Only by chance do the sources reveal some details. We know much more, however, about the trial before the *dikastēria*. A *dikastērion* had to render judgment in a session lasting one day at most.

On the basis of a literary source, the Aristotelian Constitution of Athens (*Ath. Pol.*), chapters 63–69, and archeological discoveries in the agora (summarized by Boegehold, 1995), a "court day" can be reconstructed in full detail. These excavations have revealed the sites, buildings, and equipment of the law courts, which makes it easier to understand the contemporary account in *Ath.*

Pol. The *klērōtērion* (*Ath. Pol.* 63.2), for instance, was once thought to be a room for drawing lots until it was identified (Dow, 1939) as an instrument for choosing jurors by lot for a court day. As documented by the *Ath. Pol.*, Athenian democratic administration of justice reached its peak in the last third of fourth century B.C.E. Strict equality of the parties and equal opportunity were the leading principles, and in order to prevent the bribing of judges and presiding magistrates, and the formation of groups of supporters sitting together, the jurors were only allotted to courts on the day of the trial. They were chosen from all ten divisions (*phylai*, tribes) of citizens and allotted to courts equitably. In addition, jurors were allotted specific seats on the benches, and the courts were allotted at the same time to the magistrates who would preside that day. All this was done by drawing lots. For more detail, and for changes over time, see Boegehold, 1995, pp. 21–42.

Manning the courts. Activities started early in the morning. Because citizens serving as judges (*dikastai*) were paid three obols for a court day, manning the courts was done quickly to save time for the hearings. Boegehold (1995, p. 36, note 51, see also p. 109, note 17) locates the scene at a complex of three buildings northeast of the agora that was easily enclosed by a fence. Ten entrances led to the restricted area, one for the *dikastai* of each *phylē* (tribe). The candidates approached with their bronze tokens (*pinakion*) in hand to identify themselves as eligible judges. In addition to giving the candidate's name and deme name, each token was marked with one of the first ten letters of the alphabet (*alpha* to *kappa*) because each *phylē* was subdivided into ten sections. Outside each of the ten gates were two allotment machines (*kleroteria*) and ten boxes. In addition, each *phylē* needed one to four additional boxes (to match the number of *dikastēria* to be manned that day), two jugs with acorns marked with one further letter (*lamda, mu, nu,* or *xi*), and a certain number of wooden staffs of up to four different colors. The total number of acorns and, correspondingly, staffs was exactly equal to the total number of judges needed that day; the letters on the acorns, corresponding to the colors of the staffs, each designated a single *dikastērion* sitting that day, four panels at most (*Ath. Pol.* 67.1; Thür, 2000, p. 45). Four small panels, for instance, operating at the same time in private cases needed 804 *dikastai;* two small public trials needed 1,002. Before the allotment of the *dikastai* could start, the letters on the acorns were assigned by lot to the equal numbers of colors. The colors marked the entrances to the courtrooms. After drawing lots, the corresponding letters were fixed at the entrances of the courtrooms and communicated to the ten magistrates at the entrances. Thus, each *dikastēs* selected would be directed (by lot) to the entrance of a specific court.

On a court day, all nine archons were in office, and each of them had to control the allotment procedure in one *phylē*, the tenth controlled by the secretary of the *thesmothetai*. In front of the gate of his *phylē* a prospective *dikastēs*, threw his token into one of the ten boxes that was labeled with his section letter (*alpha* to *kappa*). The boxes were shaken and the magistrate picked up a single token at random out of each box. Those ten citizens of each *phylē* (called *empēktai*), in addition to being selected as judges, had to insert all tokens from their boxes into slots in the *klērōtērion*. This was, as archeology has shown, a stele of marble with five columns of slots and a tube affixed vertically at one side to insert dice. Using two machines in each *phylē*, one for the columns with the letters *alpha* to *epsilon*, the other for those with *eta* to *kappa*, the ten *empēktai* could insert the tokens very quickly. Then the magistrate shook up a cup of black and white dice and poured them into the tube. When he released them one by one, a white die meant that the candidates whose tokens were in that horizontal row of five tokens were on duty that day. Tokens in a row with a black die were not selected but were left in their slots until the whole allotment was over. A herald took the validated tokens, summoned the judges for the next allotment, and passed the tokens one after the other to the magistrate. Approaching the magistrate, each judge reached into a jug and withdrew an acorn. He showed the letter of his acorn to the magistrate who threw the token into one of the boxes corresponding to the letter on the acorn (when four panels were manned, the letters *lamda, mu, nu,* or *xi*). Thus, the *dikastēs* was appointed to one of the panels sitting that day. To make sure that the judge indeed would approach the courtroom for which he was chosen, when he was leaving, he showed his acorn to a clerk and was given a staff whose color was matching the letter on the acorn (corresponding to the color of the courtroom entrance). Arriving there, he gave up his acorn and staff, receiving in turn a bronze token marked with one of twenty-five letters, the whole Greek alphabet plus the unusual *sampi*. He was placed accordingly at one of the twenty-five benches, each for twenty *dikastai*, when *dikastēria* of 501 judges were sitting. Private cases needed only 201 or 401 *dikastai*, and tokens were given for ten or twenty benches, respectively. In this way, courts were manned equally from all *phylai*, judges properly seated, and cliques prevented. But before trials could start, further steps were necessary, by drawing lots again.

While the panels were being set up, in the first court (the *lamda* court), an allotment of courts to magistrates was performed by means of two *kleroteria*. Only at that moment did it become clear which panel had to hear which case. Thus, neither litigants nor magistrates could influence which court they were assigned to. When a magistrate arrived in his courtroom, the fence surrounding the complex was probably disassembled and litigants, supporters, witnesses, and audience could approach the courts. Before opening the sessions each magistrate had

to appoint ten *dikastai* for executive functions. For this, the boxes with the tokens of each *phylē* were brought to the magistrate from each of the ten entrances. Thus, the tokens of the ten *phylai* were always separated. In each courtroom, for the last drawing of lots the presiding magistrate shook each of the ten boxes and then took one token out of the box of each *phylē* at random. He dropped these ten tokens into one last empty box and, after shaking the box drew one token. Its owner would tend the waterclock (*klepsydra*). He then drew four more tokens to select the *dikastai* who would observe the voting ballots. The five remaining tokens designated those who would supervise the payment of the judges and the return of their tokens to them. Each of these five was responsible for two *phylai*. After the first allotment through the *kleroteria*, it made good sense to keep the tokens of each *phylē* in separate boxes from the beginning to the end of the court day.

Trial. After extensive preparation, the trial was conducted in a relatively simple way. The presiding magistrate had the secretary call the first case (if the panel was to hear several that day). When a litigant did not appear, unless he had sworn an oath of excuse, the magistrate put the case to vote and the *dikastērion* rendered a judgment by default. When both litigants appeared, the charge and denial were read out, the parties swore to direct their speech to the actual issue, and the plaintiff or prosecutor then began the pleadings. The *klepsydra* had been filled for the plaintiff with the amount of water according to the matter in issue. In private cases of up to 1,000 drachmas, five *choes* of water were allocated (each *chous* provided about three minutes of speaking time), up to 5,000 drachmas seven *choes*, and beyond that ten. The same amount of time was allowed to the defendant. Each litigant had a second speech of two to three *choes*. In important public cases, the whole day was divided into one part for the prosecutor, one for the defendant, and a third for the assessment of the penalty. The day was calculated according to the daylight of the shortest day in the month Poseideon (December). The litigants had to plead in person. Unpaid supporters were allowed to speak, but their time counted against the time of their parties. Only when

Athenian Trial Procedure. *Klepsydra* (water clock), fifth century B.C.E. The top vessel is a plaster model. ATHENIAN AGORA EXCAVATIONS

a speaker had the secretary read aloud a document (filed in his *echinos*-jug at the preliminary stage), did the judge in charge stop the flow of the water; however, if the pleas were measured according to the daylight, the water clock did not stop, since the day could not be lengthened. Stealing time for one's case by having a lot of documents read aloud, theoretically, could upset the time schedule when several trials were heard on one day, but too many documents would probably have diminished the effectiveness of a speech, and in practice, most speakers maintained a balance between speeches and documents read aloud outside of the time of speaking. Continuous speech (*logos*) rather than documents was the best means to convince the audience. Thus, the trial may be called the rhetorical stage of the case, different from the dialectical, preparatory stage before the magistrate. Because parties basically had to plead their cases in person, there were no professional attorneys or advocates. Professional help operated in the background, however, since *logographoi* (speechwriters) could prepare a court speech appropriate for the case and the speaker. *Logographoi* probably began advising their clients from the preparatory stages of the trial on.

Simply having documents read aloud was not a means of proof in a legal sense. The only enforceable means of determining truth was witness testimony, and only free adult males had the capacity to give testimony at court. No private document had any value unless it was confirmed by witnesses, and events outside court (including the opponent's responses during the preparatory stage) could only be submitted as evidence by means of witness testimony. Such testimony had value because the witness exposed himself to a suit for false testimony (*dike pseudomartyriōn*) and could be fined double the amount of damage his deposition caused. He also risked losing his civic rights (*atimia*) after a third conviction. For lack of time, witness testimony consisted purely of a confirmation to a statement formulated by the litigant himself. The witness had to be present, but he never recounted the events in his own words, nor was he subject to questioning or cross-examination in court. This primitive handling of evidence underlines the fact that an Athenian trial was a contest of speeches, in which the strict time limits provided equal opportunity to both sides.

When the litigants had finished speaking, the judges voted immediately, without any summation by the presiding magistrate (who was simply a layman chosen by lot) or any time for formal deliberation, although the hundreds of judges may have talked informally as they waited to vote. But, first, the herald made two announcements: before the voting began, a litigant could challenge the testimony of any of his opponent's witnesses. If no challenge was issued at that time, a suit for false testimony would not be allowed later. This provision, together with their knowledge of the witnesses' identities, enabled the judges to evaluate the depositions. The herald also announced which ballot counted for each speaker.

The Athenians gave much thought to the voting procedure. The ballots were a pair of bronze discs each with an axle in the middle, one axle pierced (for the first speaker, normally the plaintiff), the other full (for the second, the defendant). Holding one in each hand between thumb and index finger no person except the judge himself could know his vote. Thus, a secret vote was guaranteed. Other mechanisms guaranteed fair voting procedure. The court used two urns: one of bronze and one of wood. The former held the valid ballots. It could be disassembled to make sure that it was empty at the beginning, and had a fitting at the top that allowed only one ballot to go through at a time. The falling ballot gave a clear metallic sound. The wooden urn was for discards and gave dull sound. After the herald's call, the judges gave up the token that designated their seats and received in turn a pair of ballots. Then, after casting their votes, each judge received one final bronze token marked with the letter *gamma*, meaning "three." It represented the three obols he was due for his day's service.

But the day was not yet at an end. When all the judges had voted, the bronze urn was emptied and the ballots were placed into the holes of a counting board, the full and the pierced ballots, separately. The herald then announced the total. A simple majority determined the outcome; a tie—which theoretically could not happen—favored the defendant. No verdict or sentence was formulated or announced, but the vote automatically validated either the plaintiff's or the defendant's initial statement (Thür, 2004, p. 43).

In many cases, after a verdict of guilty, a second vote was necessary to fix ("estimate") the fine or penalty. In these cases, after the first vote each judge left the courtroom, received a colored staff, and then reentered and was seated according to his bench token. Each litigant then gave a very short speech justifying his estimate, and the judges then voted again, choosing between the plaintiff's and the defendant's estimations. The colored staffs were used again in the same way, when one or more court sessions followed on that day. Distribution of the pay tokens was always the final act of the court day. The written statements of each side, together with the count of the votes and a notice of the estimate (if any) were publicly archived. No other record was kept. Execution of the verdict was a private matter; in public cases execution could lead to further trials at court.

Audience and Freedom of Speech (Appendix). Modern readers can come away with very different impressions of an Athenian court day. Looking only at the rhetorical stage, it is easy to think that there was no control

on the pleadings, and that the litigants had complete freedom to speak about any subject they wished. By contrast, there were strict regulations, for instance, on the time limit for speaking, the reading-out of documents, and the conduct of the mass of citizens sitting as judges. In fact, in many preserved court speeches, we find passages with digressions and invectives. Some modern scholars explain these passages that for us seems to be "Irrelevant to the legal issue" as relevant for the Athenians (Cohen, 1995, pp. 92f.; Lanni, 2006); others argue irrelevancy nearly away (Rhodes, 2004). Athenians undoubtedly were concerned that the speakers at court kept to the point. Each party had to swear the oath of relevance to speak to the "actual issue" (*Ath. Pol.* 67.1), and the judges swore in the heliastic oath to cast their votes "about the matter to which the prosecution pertains" (Dem. 24.151).

When looking for criteria for relevance, one must not rely on modern legal categories but, rather, on formal ones. Everything was relevant that a plaintiff had written in his statement of claim (*enklēma*) or a prosecutor in his accusation, as two examples might demonstrate. When Pantainetos in his charge for damages in a mining case had written at the end of his statement that the defendant maltreated heiresses (Dem. 37.33), the issue was "relevant" and nobody could blame him for speaking about it. When Meletos added to his accusation of impiety that Socrates had corrupted the youth (D. L. 2.40), that fact was relevant, too, even if it was not legally connected with *asebeia* (pace Cohen, 1995, p. 189). It was not juristic logic, but simple practical considerations that constituted relevance in Athenian courts. This formal view was a safeguard for fairness for the defendant (Thür, 2007). He should be aware of the main issues in the opponent's speech. In the same way, in the preparatory stage the litigants had to reveal to each other the documents to be read aloud in court. To understand Athenian litigation, one must envisage that the two stages of trial procedure, the dialectical and the rhetorical, formed a coherent, well integrated unit.

No special legal knowledge was necessary, therefore, to know what was a relevant issue. Nevertheless, it is unclear who made sure that the speakers kept to the point or what the sanctions were if they did not. The presiding magistrate is never said to have this function, and no other person in court had authority. One can argue, however, that the anonymous mass of judges controlled the speakers' fairness. In theory, the Athenian *dikastai*, who had sworn to "listen impartially to both sides" (Dem. 24.151), played an absolutely passive role until each one secretly cast his vote. Before this, as no deliberation took place before the voting, no judge could express his individual opinion. From archaic times, however, an instrument of mass psychology survived, *thorybos* (literally, "tumult," "uproar"; Bers, 1985). Confronted with an anonymous mass of fellow citizens, in addition to presenting the actual facts and legal arguments, either party did his best to make the judges well disposed toward his case and toward himself, and hostile toward his opponent. The purpose of forensic rhetoric was to influence the audience. But during a speech, feelings run both ways, and the judges could communicate their reaction by means of *thorybos*. Good speakers made use of *thorybos* both positively and negatively. In a positive sense, they asked the audience for shouts of agreements when calling on the judges themselves to be witnesses (Bers, 1985, p. 9) or when a supporter (*synēgoros*) was to be introduced (Rubinstein, 2000, p. 57). In a negative sense, speakers attempted to incite the audience to brand their opponents as "sycophants" (malicious prosecutors [Christ, 1998, p. 63]) or to persuade them to interrupt their opponents if, for instance, they did not keep to the point (Dem. 21.130, 45.50; Bers, 1985, p. 11) or if they omitted some (allegedly) relevant argument or evidence. Even without such incitements every speaker must have known that shouts of disapproval might be raised if he went too far with a digression or personal invective. Arousing hostility could backfire, and the speaker always risked losing face. In the worst case, he could be (almost) completely shouted down (Dem. 45.6).

Thorybos as an instrument for controlling forensic rhetoric was a spontaneous expression of group sentiment. The presiding magistrate could only fine an individual member of the panel who constantly interrupted a speaker, but no examples of this are known. The judges' seats were distributed by lot precisely to prevent supporters of one party from manipulating *thorybos* deliberately. Finally, because court trials were open to the public, speakers also had to consider the reactions of the outside spectators or bystanders, the "coronal *thorybos*." Some speeches address them, too (Ant. 6.14, Lys. 27.2, Din. 1.30; Bers, 1985, p. 8).

The interaction between the litigants, on the one hand, and the audience of average Athenian citizens, on the other, had important consequences on the style and substance of pleading at court. Every court speech had to uphold the values of democracy. In many public cases, members of the political elite struggled for their honor, status, and reputation in terms of values favored by the lower class sitting at court (Cohen, 1995, p. 193), but strictly within the formal and psychological framework of legal procedure as sketched in this article. In private cases, too, plaintiffs drew a picture of their own conformity to democratic values and their opponents disregard of these. Thus, because litigants pleaded within this democratic system of values, Athenian courts reproduced and reinforced group identities in their democratic society (Johnston, 1999, p. 132).

[*See also* Courts, Ancient Greek, *subentry on* Courts and Magistrates in Ancient Athens; *and* Procedure, *subentry on* Athens: An Overview.]

BIBLIOGRAPHY

Bers, Victor. "Dikastic *Thorubos*." In *Essays Presented to G.E.M. de Ste. Croix on his 75th Birthday (History of Political Thought* VI), edited by Paul A. Cartledge and F. David Harvey, pp. 1–15. London: Duckworth, 1985.

Boegehold, Alan L. *The Law-Courts at Athens: Sites, Buildings, Equipment, Procedure, and Testimonia*. The Athenian Agora 28. Princeton, N.J.: Princeton University Press. 1995.

Christ, Matthew R. *The Litigious Athenian*. Baltimore, Md.: Johns Hopkins University Press, 1998.

Cohen, David. *Law, Violence, and Community in Classical Athens*. Cambridge, U.K.: Cambridge University Press, 1995.

Harrison, Alick R. W. *The Law of Athens II: Procedure*. Oxford, U.K.: Hackett, 1971; 2d ed., 1998.

Johnstone, Steven. *Disputes and Democracy: The Consequence of Litigation in Ancient Athens*. Austin: University of Texas Press, 1999.

Lanni, Adriaan. *Law and Justice in the Courts of Classical Athens*. Cambridge, U.K.: Cambridge University Press, 2006.

Rhodes, Peter J. "Keeping to the Point." In *The Law and the Courts in Ancient Greece*, edited by Edward M. Harris and Lene Rubinstein, pp. 137–158. London: Duckworth, 2004.

Rubinstein, Lene. *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens*. Stuttgart, Germany: Franz Steiner Verlag, 2000.

Thür, Gerhard. "Das Gerichtswesen Athens im 4. Jahrhundert v. Chr." In *Große Prozesse im antiken Athen*, edited by Leonhard Burckhardt and Jürgen von Ungern-Sternberg, pp. 30–49. Munich, Germany: C. H. Beck Verlag, 2000.

Thür, Gerhard. "Law of Procedure in Attic Inscriptions." In *Law, Rhetoric, and Comedy in Classical Athens: Essays in Honour of Douglas M. MacDowell*, edited by D. L. Cairns and R. A. Knox, pp. 33–49. London: University of Wales Press, 2004.

Thür, Gerhard. "Das Prinzip der Fairness im attischen Prozess." In *Symposion 2005*, edited by E. Cantarella, pp. 131–150. Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2007.

Todd, Stephen C. *The Shape of Athenian Law*. Oxford, U.K.: Clarendon Press, 1993.

GERHARD THÜR