

# Law, Athenian

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The most distinctive feature of the Athenian legal system was its pervasive amateurism. With few exceptions, litigants represented themselves in court before a jury of laymen who operated without the assistance of a judge or legal expert to instruct them as to the laws. Perhaps in part for this reason, Athenian law has a marked procedural orientation: the emphasis was not on articulating and developing substantive legal doctrines but on providing a means for a dispute to be heard (Todd 1993: 64–5).

In the fifth century, statutes were debated and passed in the Assembly, which was open to all adult male citizens. Law reforms at the end of the fifth century introduced a distinction between *PSEPHISMATA* (“decrees”), or temporary measures, and *NOMOI* (“laws”), which were general norms of unlimited duration. *PSEPHISMATA* continued to be passed by the Assembly; passage of a *NOMOS* required a multi-stage procedure involving both the Assembly and the *NOMOTHETAI*, a body selected by lot from the jury pool. This reform was designed to enhance the stability of the law code and to prevent reckless legislation by making it harder to pass a *nomos*.

Some laws, most notably DRACO’s law on homicide, survive in stone inscriptions, but they represent only a small percentage of Athenian statutes. The primary historical sources for Athenian law are the roughly one hundred forensic speeches that survive from the period between 420 and 323 BCE. These speeches represent not an official record of the trial proceedings, but the speech written by a speechwriter for his client (or, in a few cases, for himself) and later published. The opposing litigant’s speech survives in only a few cases, and we rarely learn the outcome. Citations of laws are generally omitted from the manuscript or, where they are included, are often regarded as inauthentic later additions. Most important, any statement in the speeches regarding the law may be a misleading characterization designed

to help the litigant’s case. But the nature of our sources presents not only challenges but opportunities: the study of Athenian law is, of necessity, a study not of law on the books but of law in action.

Athenian courts were largely, but not entirely, the province of adult male citizens. Foreigners were permitted to litigate in limited circumstances, most notably in commercial maritime suits. Resident aliens had more access to Athenian courts, though their precise legal status is unclear. With a few exceptions, slaves could serve neither as plaintiffs nor defendants. When a slave was involved in a dispute, the case was brought by or against the slave’s owner. Similarly, women and minors were forced to depend on their male legal guardians to act on their behalf in court.

There was no public prosecutor in Athens. In what the Athenians called “private cases” (*DIKAI*), the victim (or his family in the case of murder) brought suit. In “public cases” (*GRAPHAI*), any adult male citizen was permitted to initiate an action, though in our surviving *graphai* the prosecutor tends to be the affected party or at least a personal enemy of the defendant. Although no ancient source explains the distinction between *graphai* and *dikai*, *graphai* seem to have been cases regarded as affecting the community at large. This division is not quite the same as the modern criminal-civil distinction; murder, for example, was a *dike* because it was considered a crime against the family rather than the state. The provision of generalized standing in public cases brought with it the potential for abuse. To prevent vexatious litigation, the Athenians imposed penalties on volunteer prosecutors who dropped their case or failed to gain one-fifth of the jurors’ votes at trial.

Litigants were expected to deliver their own speeches to the jury. Each Athenian litigant was allotted a fixed amount of time to present his case. Some private cases were completed in less than an hour, and no trial lasted longer than a day. Although a magistrate chosen by lot presided over each popular court, he did not interrupt the speaker for any reason or permit

anyone else to raise legal objections, and did not even instruct the jury as to the relevant laws.

Laws were inscribed on stone in various public areas of Athens. Litigants were responsible for finding and quoting any laws they thought helped their case, though there was no obligation to refer to the relevant laws. Even discussions of the specific charge at issue left much to the discretion of the jury because Athenian laws were, by modern standards, shockingly vague. Athenian laws often do not define the crime or describe the essential characteristics of behavior governed by the law.

Cases in the popular courts were heard by juries (*DIKASTAI*) chosen by lot from adult male citizens and generally ranging from 201 to 501 in size. A simple majority vote of the jury, taken without deliberation, determined the outcome of the trial. No reasons for the verdict were given, and there was no provision for appeal. While the punishment for some offenses was set by statute, in many cases the jury was required to choose between the penalties suggested by each party in a second speech. Unlike modern jurors, Athenian jurors were generally made aware at the guilt phase of the statutory penalty or the penalty the prosecutor intended to propose if he won the case. For this reason, the guilt decision often incorporated considerations typically limited to sentencing in modern courts, including questions of the defendant's character and past convictions (Lanni 2006: 53–9).

Imprisonment was rarely used as a punishment; the most common types of penalties in public suits were monetary fines, loss of citizen status, exile, and execution. Fines in most public suits were paid to the city. In most private cases, damages were paid to the prosecutor, though the penalties for some *dikai* included public fines in addition to compensation.

SEE ALSO: Democracy, Athenian; Jurisprudence, Greek and Roman; Law courts, Greek and Roman; Law, sources of (Greek and Roman); Legislation, Greek and Roman; Precedent, Greek.

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