The Athenian Lawcourts

Before 460BC

- Originally all decisions were probably made by the **archons** and the **Areopagus**.
- Solon introduced some courts, the **Eliaia**, probably for appeal against the archons' verdicts.
- Later a system of **dikasteria** with jurors (**dikasts**) was set up to handle the greater volume of cases.
- The role of the **Areopagus** was restricted to cases of GBH and murder after the reforms of Ephialtes 462/1BC.

- There were several different courts under different presiding magistrates, for example:

Magistrates:	Types of Cases	Court
Eponymous Archon	Family and inheritance	
Ephetai	Some homicide cases	*Areopagus*
Archon Basileus	Homicide and religion	
Polemarch (War archon)	Cases involving non-Athenian citizens.	
Thesmothetai		*Eliaia*
The Eleven	Theft	
The 10 Strategoi (Generals)	Military and naval service	

- **Public and Private actions**:
  - A **private action** is where action is taken by an individual who has allegedly been wronged. Only the person wronged can bring this type of case, although he could employ a speech-writer (**logographos**). Any fine awarded was paid to the wronged individual.

    In cases involving a woman or child, the **kurios** (responsible male) would speak.

    In the case of **homicide**, the relatives were required to prosecute on behalf of the dead person. The killer was warned to keep out of public/religious life and there were 3 pre-trials before an open air-hearing in which each side made 2 speeches.

  - A **public action** is where action is taken where the **demos** has allegedly been wronged. One of Solon's reforms meant that a public action could be brought by 'Anyone-wanting-to' (**Ho Boulomenos** *ὁ βουλόμενος*). Fines were paid to the state, but prosecutors could also receive rewards, to encourage individuals to bring cases. To deter abuse by habitual prosecutors (**sycophants)**, there were penalties for anyone who dropped a case before it came to court or failed to get 20% of the votes (a fine of 1,000 drachmas and forfeiting the right to bring future actions).

Examples of public action:	
Graphē (literally, a Written accusation)	A citizen produces a formal written accusation.
Apagōgē (literally, a Leading away)	A citizen arrests an individual and hands him over to the magistrates, usually The Eleven.
Ephegesis (literally, a Leading against)	A citizen brings a magistrate along to make the arrest.
Endeixis (literally, a Pointing out)	A citizen makes a public charge.
Phasis (literally, a spoken accusation)	A citizen informs on illegal practices like smuggling or evading tariffs and may receive half the fine/ confiscated value of the goods.
Apographē (literally, a Writing off)	The citizen lists property owed to the state but witheld.
Probolē (literally, a Throw before)	A citizen exposes malpractice before the *Ecclesia*, which may then be followed up in court.
Dokimasia and *Euthynai* (literally, All appears to be in order and Straight practice)	These may be followed up by a prosecution if the magistrate fails to satisfy the conditions before and after appointment.
Diadikasia (literally, a Judge between)	A dispute about whether someone has met their responsibilities to the state (e.g. paid their *liturgy*)

The Dikasteria

- Citizens aged over 30 could volunteer to serve as jurors (*dikasts*). A list of 6,000 was drawn up at the start of each year. The size of jury varied, but they were large (e.g. 500). At some point an extra juror was added (e.g. to make 501) to ensure a clear verdict. Before that a tied vote meant acquittal.

- Pericles introduced pay for **dikasts** of two obols/day. This was increased to 3 obols/day by Cleon by 425BC.

- Reforms introduced in the 4th Century, e.g. a complicated system of allocation by lot (Aristotle, Ath Pol 63-6). Lot machines, like the one below, can be seen in the Agora museum. These reforms were aimed at reducing the possibility of bribing or influencing the jury before the case was heard.
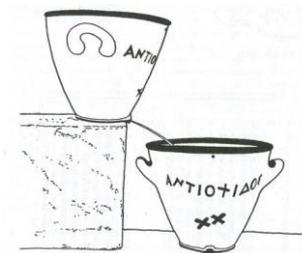

Fig 11 The *klepsydra* or waterclock (reconstruction). Inscription reads: '(Property) of (the tribe) Antiochis (contents) two choes' (=6.4 litres).

- A reform introduced by the time of Socrates' trial meant that someone bringing an unsuccessful case would pay a forfeit if he didn't win 20% of the votes.

- The stages of a trial usually involved a preliminary enquiry (anakrisis); there might then be a formal procedural challenge (paragraphē) if the case had not been correctly brought.

- **The trial:** the Prosecutor spoke before the Defendant; a specified period of time was allocated to each and measured by a water-clock (**klepsydra**). Witnesses, supporting evidence and character references by friends were allowed; non-citizens, including women and children, could be present at a trial, but were not allowed to speak; a slave's evidence had to be produced under torture. Cross-examination seems to have been allowed in the 5th century BC but discontinued in the 4th, when a written statement was produced in advance. Oaths were part of court procedure, as in British courts today.

- **The verdict:** there was no presiding judge to guide or direct members of the jury; there was no formal opportunity for the jury to discuss the case before reaching a verdict.
  - 5th century, the vote was cast by placing a pebble in one of two urns (acquittal or conviction).
  - In the 4th century the process was more complicated: jurors had two bronze discs (drilled centre for conviction; solid centre for acquittal) and two urns, a bronze valid urn and a wooden invalid urn. This was to ensure jurors had only one vote and their vote was secret.

- **The Penalty**
  If there was no fixed penalty, the prosecution would propose one penalty and the defendant would make a counter-proposal. The jury would then vote again. Penalties could include fines, disenfranchisement, exile or death. In *Wasps* a long mark in a wax tablet (plenty of wax under the nails!) meant a harsher penalty.

Strengths and Weaknesses of the Athenian Courts

- ° A good speaker could sway the jurors who received no special education, e.g. the influence of Cleon as depicted in Aristophanes' *Wasps* 422BC and, arguably, Thucydides' exile for failing to save Amphipolis, 424-404BC [5.26]. See also direct and indirect attacks on Pericles through Pheidias, Anaxagoras and Aspasia using the law-courts [Plutarch 31-36].
- o Jurors and may not have been impartial. On the difficulties of overcoming prejudice, see Plato's *Apology* and his account of the trial of Socrates, 399BC.
- o Jurors might also be unforgiving or swayed by immediate emotions – e.g. the trial of the generals after Arginusae, 406BC – a feature of the final years of the Peloponnesian war and its aftermath.

However,

- o Although expensive, payment for jurors kept people active and engaged in political life.
- o Large numbers made bribery difficult (but not impossible (see below) and gave rise to 4th century reforms such as a more complex lot system and replacing pebbles with bronze discs).

> 'After this [payment of jurors] judicial corruption began. The way was first shown by **Anytus** after he had served as a general at Pylos [409BC]: he was brought to trial for losing Pylos and escaped by bribing the jury.'
>
> Aristotle *Ath. Const.* 27.5 [**Anytus** hated Sophists [Plato, Meno 91] and was one of Socrates' prosecutors in 399BC [Plato, Apology].]

- o The courts were representative of the citizen body, even if metics, allies, women, children and slaves could be condemned by a jury but had no right to serve on one.

'The institution of popular juries was one of the Athenians' greatest democratic achievements.'

D M McDowell

Sources:

Our two key sources for the law-courts are:

- o **Plato**'s *Apology*, which is an account of the trial of Socrates in 399BC, reporting Socrates' speech of defence and (after he was found guilty by the jury) his proposal of a counter-penalty.

- o **Aristophanes**' *Wasps*, in which an old man has become utterly obsessed with serving on the jury and condemning people without a fair hearing. The chorus is made up of other like-minded old men with vicious stings. The voice of moderation comes from the old man's son, a younger and wiser man who sees the damaging impact of demagogues.
- o We also have evidence from the trial of the generals after the battle of Arginusae.

Other key sources are the speeches of The Attic Orators, e.g. **Lysias**, **Antiphon**, **Andocides, Isocrates, Aeschines** and **Demosthenes**.

Antiphon Athenian	**Aristophanes** Athenian	**Lysias** Metic	**Andocides** Athenian	**Isocrates** Athenian	**Plato** Athenian	**Demosthenes** Athenian	**Archaeological evidence**
480–411 BC Involved in the Oligarchic coup of 411.	c.460-380BC	c.445-380BC	440-390BC	436-338BC	420s – 380sBC	384-322BC	Especially 4th Century - Lot machines
Thucydides 8.68 *See below.*	*Wasps* 422BC *Lenaea 2nd prize*	Logographer	Logographer *On the Mysteries*	Teacher of rhetoric	*Apology*	Logographer	- Water clocks - Voting pebbles or bronze discs
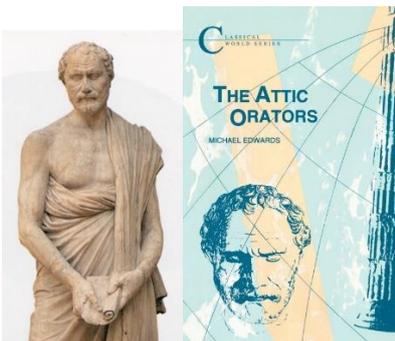
*But in fact the man who had developed the whole scheme [411 coup] to this point and worked longest for its achievement was **Antiphon**. He was a man of quality, equal to any of his contemporaries in Athens and exceptionally gifted in his powers of thought and expression. He was reluctant to come forward in the assembly or on any other public stage. This, and **a reputation for cleverness, meant that the people at large were suspicious of him**: but for individuals consulting him about a case they had to argue in the law courts or the assembly he was the one man who could give them outstanding service. And when later the regime of the Four Hundred had fallen and the people were **intent on reprisals,** and he was brought to trial for his part in setting up the regime, the speech he gave in his own defence was without doubt the finest ever made, up to my time, by any man on a capital charge.* **Thucydides** 8.68