In 422 BCE Aristophanes put on one of his funniest comedies, the *Wasps*. The whole play is about the legal system in democratic Athens, and in particular the part played in politics by the way that prominent men in public life laid charges against one another as they jostled for supremacy within the political hierarchy.

At the time, the most popular and controversial politician was the demagogue Cleon, notorious for using the courts to neutralise opposition. His chief support lay amongst the mass of poorer free citizens of Attica, who were also the men who dominate the juries at the time. Aristophanes’ comic hero is one of them, Philocleon, ‘Cleon-Lover’, who is suffering, his slaves tell us, from a mental illness—an addiction to and obsession with sitting on juries. The chorus consists of men similar to him, who, at the outset of the play at least, share his passion. They are therefore presented as Wasps, buzzing about the city in swarms and stinging as many statesmen as possible by convicting them in courts of law run by magistrates such as the archon. But they are older, more decrepit and much more impoverished than Philocleon: Aristophanes takes care to emphasise that if they do not do jury service, for which they are paid, they and their families may go hungry (291-311).

The chorus are given an interesting passage where they explore the wasp-juror analogy (112-21):

If you inspect us closely, you’ll will find in all respects
That in way of life and habit we are very much like wasps.
In the first place, there’s no creature, after it’s been provoked,
more sharp-spirited than we are, nor more cantankerous.
We manage just as wasps do all the rest of our affairs.
Gathering together as if in swarms, as if in hives,

some of us sit with the archon, some where the Eleven sit,

some in the Odeion, judging, packed in tightly just like this,

we can hardly move a muscle, like larvae in their cells.

And to make a living we are also well equipped,

for we just sting everyone and procure our livelihood!

At the heart of the play is the enactment of an actual legal trial, which, for all its comic circumstances and absurdist colouring, represents our best source from democratic Athens for the actual procedure in one of its many law-courts. Later in this paper I will consider the episode in detail. But first we need to ask how it is possible for Aristophanes to have conceived of enthusiasm for jury service as a mania. This seems inexplicable for those of us in 21st-century legal systems. We may only be required to serve on a jury perhaps one or twice in our lives, and we may positively resent the time out of our regular lives that a call to jury service may demand.

We need to see Aristophanes’ idea in the context of the way the law-courts were organised. The Athenians’ system, whatever its drawbacks, was revolutionary. The democratic system had produced the whole idea of trial by large citizen juries, instead of adjudication by expert individuals or panels. This trial-by-jury system was without parallel or precedent. At the beginning of the civic year, volunteers were invited to present themselves and a list of 6,000 potential jurors drawn up. They had to be overt thirty years of age and full citizens. For each trial, jurors were selected from this list, but they were allocated for the whole year to a particular court trying particular types of case. The first major difference between ancient and modern juries becomes apparent in the sheer size of the juries: they were enormous. There were
between 200 and 500 jurors for most types of trial, and in some serious cases there might be a thousand or more.

The trials were held in different locations, some purpose built, and many in the open air. Each was presided over by a democratically selected magistrate or board of officials. These men were neither legal specialists nor judges. Their role was to chair the meetings and make sure that the proper order of proceedings was followed. The second major difference between ancient and modern jury trials was that the litigants were not represented by barristers, but had to speak for themselves and summon their own witnesses. They were allowed to get their speeches written for them by professional speech-writers, but we know that the obligation to present one’s own case presented problems to less educated or articulate speakers.

The accuser spoke first, and the defendant second. The third major difference between our trials and theirs was that there was no public prosecutor: individual citizens arraigned others for all types of charge, including civic crimes as well as offences committed in private or commercial life. Their witnesses and individuals delivering other kinds of supporting statement were produced during the time allotted to each litigant; defendants often produced their families, especially appealing children, to attempt to win the favour of the jury over to them. The time limit was strictly observed. A water-clock, clepsydra, ensured they each side had exactly the same number of minutes.

The fourth major ancient/modern difference was that the jury voted immediately after the speeches. There was no judge’s summation, no sequestered deliberation, and, officially at least, no communication between jurors. The principle was that each individual juror exercised his judgement independently of the others, and by using such a big jury, the opinion of the people on a particular case measured, appropriately enough for wasps, by a form of hive mind.

The voting was done by placing a pebble or a seashell in one of two urns, one for conviction and one for acquittal. If the result was a tie, the result was acquittal. This is the result
in the only trial enacted in any Greek tragedy, the trial at the Court of the Areopagus of Orestes for the murder of his mother in Aeschylus’ *Eumenides*. The first homicide jury, according to this play, was split fifty-fifty: Athena intervenes and pronounces Orestes as acquitted, thus giving the split-vote acquittal a mythic precedent and aetiology.

If there was no fixed penalty, in the case of conviction the jurors might be asked to take another vote, on the degree of punishment—another difference between ancient and modern practice. In modernity, historically it has been the judge who usually decides the sentence. But in Athens, the victorious plaintiff would propose a penalty or amount of compensation. The convict would plead for a more lenient one. When the penalty was heavy, in the extant legal speeches litigants often adopt the personae of tragic heroes, stressing the danger in which they find themselves (Dem. 57.1), and their emotions of fear and anger (Demad. 1.5); supporters are asked to speak to save the defendant’s life (Aesch. 2.142). Apollodorus says that it brings him pleasure to relate to a sympathetic audience the terrible wrongs he has suffered at the hands of Phormio, in language modelled on the tortured hero’s words to the chorus of *Prometheus Bound* (Dem. 45.1, PV 637-9). Trials are sometimes turned into contests between two types of tragic plot. Defendants beg the jury to save them, to turn the trial’s drama into an escape plot (Dem. 57.1, Demad. 1.5). Plaintiffs may characterise the jury as avengers, and try to turn it into a revenge tragedy (Lys. 13.1). After these rhetorical displays, the jurors then voted again, this time using small wax tablets inscribed by a fingernail with a long line to support the prosecutor and a short line for the convict.

There might be several cases tried in a single day. At the end of it, each juror was paid three obols, which was certainly a living wage. For low-income citizens, especially elderly ones, serving on a jury thus did present a way to earn a living while exercising a degree of power and, as often as not, being entertained and stimulated in company with their peers. There may indeed have been men like Philocleon who liked to ensure that they were selected for jury
service every year. Philocleon’s slave Xanthias describes his state of mind (Wasps 87-93, 106-10):

I’ll tell you what our master’s illness is.
It’s the world’s worst case of Jurophilia!
He loves this judging business. It upsets him
if he’s not sitting on the court’s front bench.
He doesn’t get a wink of sleep at night;
or if he does drop off, then all night long
his mind goes fluttering round the water-clock/…/
He’s so grumpy, he awards them all
long lines. and like a bee or bumblebee
comes in with his nails stuffed with wax.
And just in case he might run out of pebbles,
for judging with, he keeps a whole beach at home!

And Philocleon himself describes, in a pseudo-legal speech where he is defending jury attendance, the entertaining performances he can witness in court (562-70): ‘I can listen to the defendants putting on every manner of voice in order to get acquitted... Some bewail their poverty and greatly exaggerate their plight... Others tell us stories or a funny Aesopic fable; others crack jokes to make me laugh and put me in a good mood. And if these means don't persuade me, they straightaway drag in their little children, girls and boys, by the hand, and they cower together and wail in chorus...’. Even more outlandish forensic presentations than these are subsequently envisaged by Philocleon: recitations from tragedy, musical recitals, and competitions in rhetorical entreaty by rival suitors for the hand of a rich heiress (579-86).
Now this is a comic, biased, and exaggerated account of the proceedings in the Athenian dikastērion. But Aristophanes’ audience would not have found it amusing had it borne no relation to reality. It isolates three kinds of social performance—pathetic lamentation, humorous joke-telling, and verbal contest—which are reminiscent of other kinds of public performance in Athens: tragedy, comedy, and the rhetorical debate (agôn) common to both theatrical genres. In classical Athens an isomorphism characterised dramatic festivals, athletics competitions, meetings of the assembly, and court cases. They had all developed out of the tradition of the aristocratic competition, but they all involved a small number of elite individuals competing in front of an audience, often a very large audience, of citizens: Demosthenes compares the assessment of an orator’s skill with the judgements passed on playwrights, choruses, and athletics (18.318-19). The analogy between athletics and the law is occasionally reflected in the metaphors used by the speech-writers (e.g. wrestling and boxing, Aesch. 3.205-6), but the analogy between drama and litigation is far closer. Dramatic contests shared with legal trials not only formal aspects—the performance before an audience, and the judgement by a democratically selected jury—but subject-matter as well. Crime, and the problem of what to do with the criminal, were the topics which had to be addressed by both the dramatist and the writer of legal speeches. The main difference is that for the law-courts two people (usually) wrote the script instead of one.

It is not surprising, therefore, that the legal practices of the Athenians influenced their drama: from some of the earliest extant tragedies there survive examples of set-piece trial scenes. The lost plays of Aeschylus’ tetralogy Danaids included the trial of Hypermestra, apparently for treason because she did not follow the order of her father, the new tyrant of Argos, Danaos, to murder her husband on their wedding night. She seems to have summoned the goddess Aphrodite herself to testify to the importance of love between husbands and wives. The Oresteia concludes with Orestes’ acquittal at the court of the Areopagus. Scholars have
long recognised the impact on drama made by the development under the democracy of legal language, concepts, and procedure, and by the advent of the teachers of rhetoric. But the relationship between the dramatic and legal practices of the Athenians was dialectical: the development and experience of drama had an impact on the direction taken by legal oratory.

Unfortunately we know little about the appearance of a classical Athenian court; if more evidence were available it might be that the parallels between the physical contexts in which plays and trials were performed would be even clearer. The fourth-century Palladion remains do indicate that railings (druphaktoi) were required to keep out the crowd. Jurors seem to have sat, as they did in the theatre, in rows at varying distances from the rostra; in one Demosthenic oration the speaker says he has decided not to write a family tree on a board because those sitting at a greater distance would be at a visual disadvantage (Dem. 43.18). There is manifold testimony to the influence that the shouts and other noises made by jurors and bystanders might have on the outcome of a trial. In Plato it is said that these noises, collectively designated as ‘din’ (thorubos, Legg. 9.876b 1-6), arise in assemblies, theatres, military encampments and law-courts (Resp. 6.492b 5-c 1). From this it can be inferred that the well-documented noises used by theatrical audiences were also customary in the dikastēria. This means ancient courts were probably much noisier than modern ones. The noises including whistling or hissing, the uncouth shouts of the mob, handclapping to signify approval (Legg. 3.700c 1-4), an abusive sound denoted by the verb klōzein (Dem. 21.226), and heel-drumming (Pollux 4.122). To manage thorubos a speaker, whether a politician or a litigant (or both), needed to be able to think on his feet and adapt his argument around unforeseen developments; this was perceived by Alcidamas, the brilliant advocate of the art of extemporisation (autoschediasmos). In the trial scene in Wasps the plaintiff is interrupted by the juror Philocleon.

So let’s now return to that comedy and see how an actual trial proceeds in practice. It is of course different from a trial in a real court because it takes place in Philocleon’s house.
His son, who hates Cleon the demagogue and wants to cure his father of jury mania, locks him up at home. But the old man is so traumatised that his son organises a domestic court so that he can carry on judging at home. Philocleon sits down to adjudicate, and asks his son to act as magistrate by summoning the case: Philocleon does not even know who the litigants are, but tells us that he has already decided on his verdict—a comment on the apparent fondness for decisions in favour of the plaintiff. He tells his son Bdelycleon to fetch the necessary papyrus rolls and wax tablets. Then he realises that they have forgotten the voting urns and improvises with cooking pots (855). Instead of a clepsydra they use a chamber-pot (807). Philocleon settles down to eat a dish of lentils while he hears the trial, and at times seems keener on his gastronomic pleasure than the details of the case.

The defendant is a household dog called Labes who has been accused of stealing a hunk of Sicilian cheese by a dog from the urban deme of Cydathenaeum. The two dogs are easily recognisable to the audience as the generals Laches and Cleon, who came (like Aristophanes) from Cydathenaeum. The trial represents the rivalry and hostility between them, especially after Laches’ naval operations in Sicily. The penalty requested is the imposition of a collar made of wood. Philocleon says, quite improperly given his status as juror, that he would prefer the death penalty.

Philocleon’s prejudice against defendants and tendency to prejudge on the basis of appearance is expressed when he sees Labes (900): ‘Oh, what a wretched brute! How entirely he looks the rogue! He thinks to deceive me by keeping his jaws closed.’ The Dog of Cydathenaeum, who will have been played by an actor with a Cleon-mask affixed to a dog costume, just howls at first. But in his accusation speech, he states the indictment, graphe. The other dog ‘has committed the blackest of crimes, against both me and the navy boys (910). He sought refuge in a dark corner to glutton on a big Sicilian cheese, with which he sated his hunger.’
Philocleon says that he can smell cheese on the dog Labes’ breath. This is evidence of guilt. His son begs him not to reach a hasty verdict before hearing the other side (919-20). But the prosecuting dog keeps winding Philocleon up against Labes. Philocleon needs to urinate, which creates comic play with the chamber-pot/clepsydra, but Bdelycleon persists with the trial. Since the dog Labes seems incapable of defending himself, the younger man takes the unusual step of speaking on his behalf. He summons witnesses from the kitchen where the theft was allegedly committed: a plate, a pestle, a cheese-grater, a brazier, a casserole dish and other utensils. Bdelycleon asks the cheese-grater to ascend the rostrum for questioning (964-6):

Since you were in charge of accounts at the time, answer clearly. Did you grate out to the soldiers the cheese that was given to you? The defendant says that you did.

Unfortunately, the cheese-grater’s answer is either non-existent or inaudible. The other witnesses do not speak, but presumably much comic effect was derived from their costumes.

Bdelycleon’s speech in defence of Labes, like the Cleon-dog’s, uses the actual formulaic phrases of the lawcourts, including the formal address to the ‘Gentlemen of the Jury’ (andres dikastai). He tries to elicit pity for Labes and arouse dislike of his accuser by saying that he never gets to eat anything more than fish bones because the Cleon-dog devours everything brought into the house (968-71). To stop Philocleon voting for the death penalty, he summons Labes’ children—puppies of course—who are told to sit up, beg and whine. But although Philocleon’s resolve to convict Labes seems to wobble for a minute, it seems that his apparent tearfulness through pity for Labes and his soon-to-be-orphaned puppies is the result of having eaten his lentils with too much spicy seasoning. He resolves to vote for conviction.

So, what does this extraordinary and hilarious scene tell us about what Aristophanes and his audience really thought about their system of democratic trial by large citizen juries? Many
scholars have thought that he was totally opposed to Cleon and to the conduct of his large lower-class faction in the civic debate and legal process. But I’m not so sure about this. Cleon was still alive, and a man of high repute in the state if disliked intensely by the historian Thucydides. I have argued elsewhere, in a Festschrift for Professor Cartledge, that the portrait of Cleon in Aristophanes’ earlier comedy *Knights* is far less condemnatory than most other scholars have inferred.

To me, the most revealing element of this trial is not Philocleon’s undeniable lack of objectivity. It is the overwhelming weakness of the defence speech for the dog Labes which Bdelycleon delivers. No evidence whatsoever is used to disprove that he stole the cheese; indeed, Bdelycleon admits that he did. No case is made that there were, for example, very special mitigating circumstances surrounding the crime and that, in the interests of equity, Labes he should therefore not be punished harshly even though technically he broke the law. Instead, Bdelycleon vaguely speaks about Labes’ good character and competence as a household servant, uses his children to elicit pity in order to suggest the death penalty would orphan them, and appeals to the class identity of the jurors. He does this by playing the class card. He implies that Labes is, like most of them, not a member of the elite. This somehow, it is implied, makes the theft acceptable (950-9), but no reason for this is offered.

Labes, he says, chases away wolves, looks after sheep, fights for his household, and is a good guard-dog. So what, asks Bdelycleon, if he stole something? He never learned to play the lyre. Lyre-playing was associated with elite, upper-class education. Perhaps the implication is that theft was more forgivable when committed by lower-class individuals, and that Philocleon should understand that. But this possible mitigating circumstance—perhaps despair brought on by poverty and desperate hunger—is not spelled out.

Bdelycleon actually tricks his father into acquitting Labes by swapping the two voting pots. But what needs to be focussed on is this. Despite all Cleon’s prejudices, excessive
swiftness to judgement, inclination to believe Cleon, and lack of full concentration on the
details of the case, he reaches the correct decision in the actual adjudication.

This scene has two implications in terms of how we assess the democratic Athenian
mass juries and the paid jury system. First, although the play is ostensibly a satirical critique
of the system, Philocleon, for all his faults, comes to a correct and just decision if the trial is
judged purely on the evidence and arguments presented. It was not actually in his gift to
demand the death sentence, however: this is gross interference and may or may not reflect
actual practice. It was up to the prosecutor to suggest a penalty, as the Cleon-dog does, with
the request for the imposition of a wooden collar.

Yet the weakness of Bdelycleon’s arguments must have been obvious to most of the
members of Aristophanes’ audience, many of whom were supporters of Cleon themselves. By
the late 420s, the citizen men of the Athenian democracy had been trained for decades to
analyse argumentation and assess the legitimacy of evidence: they had been trained not only
through jury service but through the complex moral dilemmas in tragedy, the parodies of civic
rhetoric in comedy, the speeches delivered in army camps and at public funerals, and
participation in magistracies, committees, boards, the Assembly and the Council.

Ultimately, the Cleon-dog may be harsh, and vindictive, and acquisitive, and even
corrupt. But if Aristophanes had wanted to imply that the actual jurors of classical Athens were
completely incompetent, then he would have done so. Philocleon is prejudiced, insufficiently
attentive, and too inclined to convict, but in this case he is correct in doing so. It is interesting
that in Eumenides, Apollo, who gives Orestes’ defence speech whereas the Erinyes articulate
their own prosecution, is also given conspicuously specious arguments. We cannot use Wasps,
any more than Eumenides, to argue that the jury system was fundamentally flawed. What they
do both show, however, is that Athenian, jury-trained audiences were actually more than
capable of spotting a weak legal argument when they saw it. Edith Hall