

## PREFACE

This book draws together a number of ideas about Athenian law that I have been thinking and writing about during the last two decades. These ideas have focused on aspects of Athenian law (and in some cases of Greek law more generally) that are generally considered marginal to the law. These included most importantly the close connection between Athenian law and democracy, as well as the role of “challenges” in litigation (which I analyze in the broader categories of proposals and negotiation), law as performance, the place of rhetoric in law, the connection between law and justice, and the role in litigation of factors such as public interest that are today considered irrelevant or only marginally relevant. These features have all been noted by others and have sometimes given rise to strong criticism of the Athenian legal system (see the introduction and chapter 1). This book is an attempt to understand how these marginal features affected Athenian law in practice.<sup>1</sup>

I argue that, when properly understood, these features can be seen to be fully consistent with the rule of law, with justice, and with the democratic insistence on public benefit. I argue that although Athenian law was indeed democratic, in the sense that it was truly in the hands of the people, as the Athenians wished it to be, it nonetheless succeeded to a large degree in observing the rule of law. Athenian law is not immune from criticism, for example, that the amount of litigation was excessive, but in general most Athenians seem to have had a favorable opinion of their legal system, so that it underwent relatively little structural change between ca. 460 and 323.

Some of the issues I deal with in the following pages have been controversial. My experience is that in even the most heated debates, both sides usually have something valuable to contribute. I have tried to draw on the

---

1. I have been much influenced by law and literature approaches to modern law and follow Goodrich (1998:115) in believing that “the study of Law and Literature draws attention to certain marginal features of law and makes that marginality central to a critical understanding of law.”

contributions of these studies without getting bogged down in the controversies and disagreements. In the notes, I have tried to acknowledge my indebtedness to the many studies that have influenced me in this work, though I have undoubtedly neglected to mention some, for which I apologize. In the end, of course, the views expressed are my own.

#### DATES

All dates in this book are BCE unless the contrary is either stated or obvious.

#### TRANSLATIONS

The translations in the text are my own, but for the forensic speeches, they are usually based on the translations in the Texas series *The Oratory of Classical Greece* (Gagarin, ed., 1998–2017).

#### CITATIONS OF THE ORATORS

I refer to passages from Attic oratory by the name of the author or the standard abbreviation for it—Aes. (Aeschines), And. (Andocides), Ant. (Antiphon), Dem. (Demosthenes), Din. (Dinarchus), Hyp. (Hyperides), Is. (Isaeus), Isoc. (Isocrates), Lyc. (Lycurgus), and Lys. (Lysias)—followed by the speech’s number and section number. For Hyperides, I also add the speech’s title. For the most part, I ignore the question of authorship, since most of the speeches are evidence of fifth- and fourth-century forensic oratory, regardless of who wrote them, and thus provide evidence for how law operated in this period.

#### ABBREVIATIONS

*IG* = *Inscriptiones Graecae*

*SEG* = *Supplementum Epigraphicum Graecum*

#### MODERN LAW

Throughout the book I refer from time to time to “modern legal systems” or “our own legal system” or something similar, though the precise wording

may vary. By the former, I mean to designate in general the common-law and civil-law systems of Europe, the United States, and many other parts of the world; other current non-Western legal systems, such as Islamic law, may not fit my picture of modern law. By “our own,” I mean the common-law system as it has evolved in the United States, ignoring for the most part differences between the states.

#### ACKNOWLEDGMENTS

Many people helped bring this book into being and improve it along the way. My first and most important debt is to Ian Worthington and the History Department of the University of Missouri, who invited me to give the Fordyce Mitchel lectures there in October 2015. I am grateful to them not only for the invitation but for the abundant hospitality they accorded me during my visit. The preparation of these lectures and the discussions that followed them gave me new ideas and helped me refine, or in some cases discard, my previous ideas. The road from lectures to book has involved not just revision, but a large amount of rethinking and reorganizing. An obvious change is that the original four lectures—on democracy, performance, justice, and the rule of law—have become an introduction and nine chapters. But my main goal, a better understanding of Athens’s extraordinary, truly democratic legal system, has remained unchanged.

At a late stage, the entire work was read by Adriaan Lanni and Bob Wallace, both of whom gave me extensive comments that have greatly improved the book. I also benefited greatly from the careful criticism and advice provided by Adele Scafuro, who read the book for UT Press; her comments and criticism saved me from many errors and forced me to rethink, and in some cases alter, my views on several matters. A second, anonymous reader also had some helpful comments.

As always, it has been a pleasure to work with Jim Burr and the rest of the staff at UT Press, in particular copyeditor Nancy Warrington.

#### DEDICATION

My two children, to whom I have dedicated this book, taught me a great deal about the study of classical Athenian law. As anyone who spends time with children knows, they are regularly involved in disputes with one another. We are all familiar with the “he hit me,” “she hit me first” scenario, and with the more sophisticated rhetorical moves children often make as they get older. Anyone who tries to settle such disputes knows that they al-

ways have a history. Skillful parents and teachers take that history into account in resolving disputes, but even the most skillful cannot always succeed in satisfying both sides, and we have all experienced the inevitable complaint that “it’s not fair.” Just what is fair is rarely an easy question—an equal division may be the answer in many cases, but sometimes it is not.<sup>2</sup> The experience of working through the complexities of such situations when my children were young (and even occasionally after they were grown) has, I think, helped me better understand classical Athenian litigation as a process of dispute resolution, in which litigants in court regularly ask for and expect to receive “justice,” and appreciate that the contextualization of the dispute is essential to anyone seeking to achieve a just result.

---

2. Recent scientific research has shown that even monkeys apparently care about fairness. A group of monkeys were trained to hand over a pebble for slices of cucumber (a desirable food). Then, in sight of the others, one monkey was offered a grape (an even more desirable food) in exchange for a pebble. Other monkeys were then offered a cucumber slice for the pebble but now they wouldn’t take it. Some even threw the cucumber slice back at the researcher. It seems that they thought it was not fair (*New York Times*, Sunday Review for Sunday, June 4, 2017, p. 8).

DEMOCRATIC LAW IN CLASSICAL ATHENS

THIS PAGE INTENTIONALLY LEFT BLANK