

THE POPULAR COURTS IN ATHENIAN DEMOCRACY

Daniela Cammack*
University of California, Berkeley

Accounts of Athenian democracy often emphasize the composition, procedures, and functions of the assembly: openness to all citizens, the right of each citizen to speak publicly, and the power of ordinary citizens to decide policy. Yet a series of legal reforms that enhanced the powers of judges at the end of the fifth century BC suggests that the Athenians perceived their popular courts as their most “demotic” institution, that is, the institution most likely to support the interests of ordinary citizens against the political elite and thus most crucial to democracy. Key features of the courts, such as greater numbers of poorer and older citizens, random selection, restrictions on speech, the secret ballot, and the power of ordinary citizens to decide justice, were more important to the idea and practice of democracy in Athens than has been recognized, with significant implications for understanding its differences from democracy today.

As is well known to classicists, the judicial system in classical Athens was strikingly democratic.¹ There were no professional lawyers or judges: instead, virtually all adult male citizens were entitled to bring both private suits (*dikai*) and public prosecutions (*graphai*), and verdicts and penalties were decided by hundreds of randomly selected citizen-judges (*dikastai*), voting by secret ballot. Towards the end of the fifth century BC, midway through the democratic period, the Athenian assembly passed a series of legal reforms enhancing the political power of these judges at the expense of assembly-goers. In scholarship on modern liberal democracies, similar reforms are often interpreted as counter-majoritarian, possibly signalling the anti-democratic “judicialization” of politics (Bickel 1962, Hirschl 2004, Waldron 2006). What did they mean in Athens?

Despite intense debate in the 1980s and 1990s over the significance of the reforms and more recently over the reliability of some of the sources, there is wide agreement on the motivation behind them. Virtually all scholars argue that the Athenians were troubled by hasty decision-making in the assembly and wished to put a stop to it. What are disputed are the effects of the reforms. Some, such as Hansen (1974), suggested that they implied a reduction in democracy, from a “radical” to a more “moderate” system. Others, such as Ober (1996), claimed that there was no such change, since the courts were composed of ordinary citizens and thus constituted an equally plausible actualization of popular self-rule.

This article argues that the reforms aimed to make Athens more democratic, according to the Athenian conception of democracy as rule by the collective common people (*demos*) (Cammack 2019), because the courts were perceived as

* I thank Roger Brock, Paul Cammack, Edwin Carawan, Paul Cartledge, Stefan Dolgert, Bryan Garsten, David Grewal, Melissa Lane, Adriaan Lanni, Jane Mansbridge, Josiah Ober, William O’Reilly, David Riesbeck, George Scialabba, Richard Tuck, John Tully, Harvey Yunis, and several anonymous reviewers for helpful comments. This article is a revised and updated version of a paper originally intended for publication in William O’Reilly, ed., *Declinism: Decline, Decadence and Decay in History and Society* (Central European University Press). Translations are my own unless otherwise stated. This draft March 20, 2020.

¹ I focus throughout on the regular courts (*dikasteria*). For the homicide courts, see Lanni 2006.

the most “demotic” (*demotikos*, “in favour of (or in the interests of) the *demos*,” Cartledge 2009, 49) branch of the political system, that is, the branch most likely to support the interests of ordinary citizens against the political elite and thus the most crucial to democracy overall. In the aftermath of two ugly oligarchical coups spearheaded by prominent political figures in 411 and 404, both of which had been formally legitimated by the assembly, assembly-goers were newly determined to strengthen the hand of ordinary citizens against elites and enhancing the powers of judges was an obvious way to do that.

This argument may seem paradoxical. As Hansen (2010) argues, *demos* often meant “assembly,” as in the enactment formula *edoxe to demo*, “it seemed good to the assembly.” How can the courts have been perceived as more demotic than the *demos* itself? A full answer to that question requires an examination of the ways in which both bodies represented the whole community (*polis*) in general and the humbler majority (*plethos*) in particular, a topic I explore elsewhere. But with respect to the late fifth-century reforms, the paradox can be resolved by comparing the composition, procedures, and functions of the assembly and courts in this period.² I argue that in each case, the courts looked more likely to favor the interests of ordinary citizens, and in doing so I challenge some long-standing suppositions about both Athenian democracy and the political functions of judges.

This interpretation suggests that Athens’ judicial practices mark a more fundamental difference between Athenian and modern democracy than has hitherto been emphasized. Even those scholars—such as Ober, Cartledge, and Hansen—who have rightly stressed the political significance of Athens’ judges have not brought out the full implications of demotic judicial activity for the location of power in Athens and the relationships between different institutions and groups (including political leaders and ordinary voters). Of special interest to political scientists, the representative elements of Athens’ courts call into question the longstanding distinction between ancient “direct” and modern “representative” politics (Constant 1988 [1819], Dahl 1989, Hansen 1999). While judges certainly lacked constituents of the modern kind, they were representatives inasmuch as they were deliberately selected from a wider pool to make decisions on behalf of others. What was crucial was whose interests they were expected to represent, not whether representation existed at all.

The late fifth-century legal reforms

The Athenian assembly was an open-air gathering held some forty times per year on a hillside in the center of Athens. Any male citizen over 18 was eligible to attend, but the area could accommodate only 6000-8000 out of around 30,000 citizens. The agenda was prepared by a council of 500 citizens (eligible, randomly-selected volunteers from each of Athens’ 139 wards) and decisions were made by show of hands, either summarily at the preliminary vote which opened the proceedings, or, if someone wished to speak, following debate. Until the 390s, attendance at the

² In doing this, I aim to go beyond Blanshard 2004, which argues that formulations of the relationship between *demos* and judges existed on a spectrum. The gap between judges and *demos qua* assembly was indeed wide, but the gap between judges and *demos qua* common people was not. *Demotikos* implies the latter interpretation, and that is the position advanced here.

assembly was unpaid; after that, it soon reached six obols for a regular meeting and nine for the main assembly of the month, a decent sum (Hansen 1999).

Like the assembly, the courts were composed of ordinary male citizens, but unlike the assembly, they were not open to all comers. Would-be judges had to be over thirty years old and swear an oath promising, among other things, to judge in accordance with the laws and decrees of the Athenians (Fränkel 1878). Then, any day a sworn citizen wished to judge, he had to arrive at dawn at the gates of the courts and submit to the sortition process. Panels of 200 judges (or multiples thereof) heard private charges, 500 (or multiples thereof) heard public charges, and verdicts and penalties were decided by secret ballot. Trials lasted no more than a day, and from around 450, judges received three obols for their service (Hansen 1999; Markle 1985; Todd 1993).

Between 410 and 399 BC, the Athenian assembly passed a series of reforms altering the balance of power between these two institutions. First, beginning in 410 (after a short-lived oligarchical coup), paused in 404/3 (during another), and continuing in 403/2 (after the restoration of democracy), the Athenians organized the revision and reinscription of their laws and established a new public legal archive (Andoc. 1.81-89; Lys. 30.2-5; *IG* I³ 104; Ostwald 1986, 414-20, 511-20; Robertson 1990; Rhodes 1991; Sickinger 1999, 93-138; Carawan 2002; Joyce 2008). Although the reliability of some of the sources has been contested (Canevaro and Harris 2012, 2016-17; Canevaro 2015; Hansen 2015, 2016a; Carawan 2017), the import of this reform seems clear: the Athenians wished to rationalize and republicize their laws and to make inconsistencies and transgressions more patent, making it easier to bring cases to court and to secure convictions.

Next, in or just after 402/1, the Athenians established a new distinction between a law (*nomos*) and a decree (*psaphisma*), together with a new law-making procedure (*nomothesia*) (Dem. 20.89-93, 24.17-38, 149; Hansen 1983, 1985, 2016b, 2016c, 2017, 2019; Rhodes 1985, 2003; Ostwald 1986, 520-4; Piérart 2000; Canevaro 2013, 2015, 2018; Carawan 2016). In the latter half of the fifth century, the assembly had enacted all legislation and policy without differentiating between them, but from this date the power to make “laws” (*nomoi*), conceived as permanent general rules governing domestic matters, passed to a new body, the *nomothetai* or “lawmakers.” The identity of the *nomothetai* is controversial. On the conventional view, they were several hundred sworn judges who voted their decisions following what looked like a trial of the proposed law, with nominated speakers arguing for and against it (Hansen 1985; Rhodes 2003; Hansen 2019). More recently, it has been proposed that the *nomothetai* were assembly-goers acting under another name, with sworn judges playing an important role earlier in the process (Canevaro 2016; Canevaro and Esu 2018, following Piérart 2000); more recently still, that they were originally those who had sworn the judges’ oath, but over time that requirement became a lax formality (Carawan forthcoming). In my view, the *nomothetai* were most likely judges acting under another name, but that issue is not crucial for my present argument. What is agreed about the new procedure is enough: that from the end of the fifth century, the assembly, meeting in the ordinary fashion, could no longer enact laws. That power passed to a distinct body, with sworn judges playing a significant new role in the process. The assembly retained the power to approve

only decrees, which were defined as policy decisions of an explicitly lower status than laws. No decree could trump a law, and if any were found to conflict, the decree would be abolished (Plat. *Def.* 415b; Dem. 24.18, 59; Hansen 1983, 2018; Canevaro 2015).

The other reform (normally dated to 403/2, though Carawan (forthcoming) defends a later date) was the creation of an indictment against proposing an inexpedient law (*graphe nomon me epitedeion theinai*). This indictment allowed the proposer of a law to be prosecuted for making a disadvantageous proposal, even if it had already been approved. It may also have had a role in *nomothesia*, in being used to abolish contradictory laws prior to a new law being enacted (according to Canevaro 2016, this explains the reference to “sworn judges” in the evidence on *nomothesia* (Dem. 20.93)). Cases were heard by judges in the ordinary way, and conviction of the defendant abolished the law; moreover, if a case was brought within a year of the original vote, he was also liable to a penalty, not excluding the death penalty (Dem. 24.1, 68-71, 108, 138, cf. 139-141; Hansen 1974, 1985, 350-1; Wolff 1970, 30-41). This charge paralleled one established at least a decade earlier, the indictment for making an illegal proposal (*graphe paranomon*), conviction under which led to rescission of the enactment and a fine or, on the third offence, loss of citizenship (Andoc. 1.17, 22; Ostwald 1986, 125-9, 135-6; Hansen 1999, 205-12). After the introduction of the indictment against inexpedient laws, the indictment against illegal proposals was used only against decrees, thus confirming and consolidating the new distinction between (wholly or partly) judge-made laws and assembly-made decrees (Hansen 1983, 171-5).

Despite ongoing disputes over details, it seems clear that in this period, the Athenians limited the legislative powers of the assembly while enhancing both the special significance of law and the role of judges in law-making. Hansen argued that as a result, from the beginning of the fourth century, everything decided by the Athenian assembly could ultimately be reversed by a court, while nothing decided by a court could ultimately be reversed by the assembly (1974, 17). That may have been a slight overstatement: as Harris (2016, 80) has observed, the assembly habitually overrode the decisions of judges when it recalled those who had been sent into exile. Nonetheless, Hansen’s basic point stands. From the end of the fifth century, the “judicial review” of both laws and decrees was an accepted feature of the Athenian political landscape, giving judges, at least potentially, the last word on all political decisions (for the analogy to judicial review, see Maio 1983; Carawan 2007; Lanni 2010; cf. Schwartzberg 2013).

Hansen argued that this constituted a sea change in the character of Athenian democracy. The fifth-century sovereignty (later “supremacy”)³ of the assembly gave way to that of the courts (Hansen 1974, 15-18; 1990, 239-43; 1999, 150-1, 351-2), as the Athenians themselves seemed to think (Hansen 2018, 29-31); the radical democracy of post-Periclean Athens was replaced by the more moderate (later “modified”) system of the age of Demosthenes (Hansen 1974, 59-61; 1990, 226; 1999, 151, 303-4; 2018, 27-29). Similarly, Ostwald (1986, 497-524) interpreted the reforms as a shift from “popular sovereignty” to the “sovereignty of

³ Hansen was criticized for using “sovereignty” and since 1987 has used “supremacy” or the Greek *kyrios* instead, but as Ober (1996, 120-1) observed, this did not much affect his argument.

law”; Sealey (1987, 146-8), from democracy to “republicanism and the rule of law”; and Eder (1998), from unlimited popular sovereignty to a constitutional system proper to a mature democracy. To these historians, it seemed clear that the raw power of the Athenian *demos* had been reduced.

Others disagreed, advancing two strong counter-arguments. The first was that whatever the intentions of assembly-goers, the effects of the reforms were insignificant. In Ober’s opinion (1989, 22), Hansen and the rest had fallen into what Finley (1983, 56) had called the “constitutional-law trap,” namely the belief that the outward form of institutions tells us much about political practice. As Hansen himself acknowledged, the new legislative procedures were not often used (Hansen 1974, 47; cf. Finley 1983, 71; Rhodes 1980, 306). In the mid-1970s, only five stone *stelai* bearing laws enacted by *nomothetai* had been discovered; today, the figure rests at (perhaps) sixteen.⁴ By contrast, we have on stone over 500 fourth-century decrees, with some 240 more mentioned in the literary sources, which suggests that most political business continued to be done by the assembly (Hansen 1999, 156, 167).⁵ Similarly, we know of only six cases of the indictment for proposing an inexpedient law (Aeschin. 1.34, Dem. 1.102-7, 20, 24, and two mentioned at 24.138), as against 35 cases of *graphe paranomon* (Hansen 1974, 28-48; 1983, 171-5). Some historians felt the Athenians failed to observe the new distinction between laws and decrees (Atkinson 2003; Ostwald 1986, 2; Rhodes 1977, 52; Sinclair 1988, 84); others felt that even when it was respected, the assembly retained the upper hand, since (at least as conventionally reconstructed) assembly-goers remained responsible for convening the *nomothetai* and for voting their pay (MacDowell 1978, 49; Sinclair 1988, 84). Another deflationary argument was that judges proved unwilling to annul new decrees unless a formal violation of a prior law could be shown, implying that they interpreted their new powers narrowly (Sundahl 2003, 139). As for the new law-code, several scholars argued that attempts to maintain its coherence proved unsustainable (Lanni 2006, 142-7; Todd 1993, 57; cf. Canevaro 2013, 159-60).

The second counter-argument was stronger still. This was that even if the reforms had had a significant practical effect, they could not have wrought any great change in the character of Athenian democracy, because Athenian democracy was not the kind of thing that could be affected by institutional change of that sort. Most importantly, and plausibly, scholars argued that judicial panels (including the *nomothetai*, if they were indeed judges) were no less democratic than the assembly. Both represented, or were manifestations of, the people at large, so shifting tasks from one institution to the other hardly mattered (Christ 1998, 20-1; Finley 1985, 27, 80, 117-18; Harris 2006, xxi; Ober 1989, 145-7, 1996, 117-20; Ostwald 1986, 34-5, 74; Rhodes 1980, 320-1; Sinclair 1988, 70-1; Todd 1993, 299; MacDowell

⁴ *IG* II³ 1 320, *IG* II³ 1 431, *IG* II³ 1 445, *IG* II³ 1 447, *IG* II³ 1 449, *IG* II³ 1 550, OR 183A, *AIO* 819, RO 26, *IG* I³ 105, *SEG* 52.104, *AIO* 1186, *IG* I³ 237, *IG* I³ 236a. This list was generated from Attic Inscriptions Online, last accessed June 11, 2019. Further laws are known from passing references in inscriptions, scholia and Attic oratory (Harris 2013, appendix 5). Compare also Dem. 24.142, Isoc. 8.50 and Aeschin. 1.177-78, suggesting that many laws were passed.

⁵ Note, however, that this number includes a huge number of honorary decrees, which (unlike other decrees) were virtually always published: Canevaro 2015, 20; Lambert 2016.

1975, 40, 48; cf. Blanshard 2004). Like the assembly, judicial panels were composed entirely of ordinary citizens. They could be regarded as “committees” of the assembly, enjoying “delegated” powers, or even as the assembly itself “sitting in a judicial capacity” (Gomme 1962, 188; Finley 1985, 116; Forrest 1966, 19, 166; Ober 1989, 96-7; Ostwald 1986, 9-12, 28-35; Rhodes 1972, 168). Additionally, the language of “radical” and “moderate” democracy was rejected as anachronistic, reflecting nineteenth-century political groupings more than anything authentically Athenian (Strauss 1991; Boegehold 1996; Millett 2000). More recently, Canevaro and (especially) Harris have argued that the reforms cannot have marked a significant change in Athenian democracy because the Athenians never saw a contradiction between democracy and the rule of law (Harris 2016). To the contrary, it is said, the Athenians were always resistant to legal change, and all that altered with the passage of the reforms was the establishment of self-conscious “rules of change” that made their longstanding resistance to tinkering with laws compatible with the practical requirements of an evolving legal order (Canevaro 2015, 2018; for an alternative perspective, see Schwartzberg 2004). The new powers of judges, on this interpretation, only strengthened the kind of law-abiding democracy to which the Athenians had always been committed.

These disputes seemingly run deep. Yet agreement subsists on one key point: the motivation behind the reforms. Whatever their effects, it has long been supposed that the reforms represented an attempt at popular self-restraint after the trauma and instability of the last years of the fifth century. The catastrophic failure of the Athenian invasion of Sicily in 415-13, the loss of many important allies, naval disaster at Arginusae in 406 and the subsequent execution of six of Athens’ ten generals (out of eight originally deposed), final defeat in the long-running war against the Peloponnesians and perhaps most traumatic, two oligarchical takeovers, one in 411 and one in 404, both legitimated by a vote of the assembly, are said to have made the Athenians want to limit the damage they could do to themselves politically. They sought a “brake” to “slow down the machine” (Harrison 1955, 35; cf. Bauman 1990, 77; Carey 1994, 173; Farrar 2007, 176; MacDowell 1975, 48; Ostwald 1986, 509-10, 522-4; Sinclair 1988, 84; Sundahl 2003, 127-9, 137; Yunis 1988, 377-8). “Our general impression,” wrote MacDowell (1975, 74), “is that after the turmoil of 403, the Athenians... wanted to make it difficult for themselves to introduce changes in the laws.” Above all, it is said, they hoped to prevent “snap votes” and “hasty decisions” (Harrison 1955, 35; Sinclair 1988, 67, 83-4; Bauman 1990, 2, 77-8; Hansen 1999, 307-8, 351; Lanni 2006, 142; Todd 1993, 55; cf. Schwartzberg 2004, 2013). The new measures offered a “pause for thought” (Todd 1993, 55), and the “opportunity to reconsider a decision they had themselves taken” (Finley 1985, 27, cf. 118), thus counteracting “unthinking haste and passion” (Finley 1985, 72), “rabid tendencies” (Sundahl 2003, 137), or even “mass psychosis” (Hansen 1974, 50) in the assembly. In Ober’s words, the “errors” made by the assembly had “brought home to the Athenians the dangers of unrestrained exercise of the popular will,” so they “enacted constitutional measures aimed at correcting the problem” (1989, 301; cf. Hansen 1999, 303-4). Even Canevaro, who has emphasized the continuity of the Athenians’ attachment to the rule of law,

agrees that the new procedures “helped to protect [the laws] against hasty and ill-considered legal changes” at the hands of the *demos* (Canevaro 2016b).

These formulations recall contemporary discourse on the role of the judiciary in constitutional democracies. Constitutional and supreme courts are indeed meant to limit what democratically empowered legislatures can do. Just as the judicial review of legislation today is often interpreted as a check on the potential excesses of untrammelled democracy, where untrammelled democracy is identified with unrestrained rule by the legislature, so has Athenian judicial activity been interpreted as a check on untrammelled democracy, where untrammelled democracy is identified with unrestrained rule by the assembly. The division of labor implied by that schematization seems clear: the Athenian assembly represented the democratic “self,” the courts a semi-external “restraint.”

That interpretation corresponds to a longstanding tendency to portray the assembly as the heart of Athenian democracy. The assembly has been described as the “key decision-making body in the Athenian state” (Ober 1989, 7), the “prime democratic body” (Osborne 2010, 27), the “supreme power of the state” (Ehrenberg 1969, 58), “in a very real sense a sovereign body” (Jones 1957 [1980], 3), the “crown” of the political system (Finley 1985, 49-50), the embodiment of “absolute democracy” (Glottz 1930, 162). As is always rightly stressed, the assembly was not the only significant democratic body in Athens: the council, courts and offices were also democratically constituted and played important roles (Hansen 1999, 178-9, 225-6, 247; Sinclair 1988, 17-20; Forrest 1966, 16-20; Cartledge et al 1990). Yet, although it has occasionally been suggested that other institutions were more *powerful* than the assembly—the courts (Hansen 1974, 1990) or the council (Gomme 1962, 177-93; Ehrenberg 1969, 56; Rhodes 1972, 64-81, 213-23; de Laix 1973, 192-4; Sinclair 1988, 84-8)—it is not normally argued that another institution was more “demotic,” that is, more likely to favour the *demos* (*qua* mass of ordinary citizens) over the political elite and historically most integral to demotic rule. Nonetheless, some such argument seems attractive, because—as Blanshard (2004, 29) and Schwartzberg (2013, 1062) rightly spot—there is no evidence that the Athenians regarded judicial activity as a restraint on ordinary citizens. To the contrary, the popular courts were perceived as a stronghold of demotic power.

The most demotic branch?

A comprehensive review of the sources is impractical, but some items stand out. Aristotle, in the *Politics*, specifically identified Athens’ courts as the “demotic (*demotikos*) element” in Solon’s political system in the early sixth century (as compared to the “aristocratic” elected offices and “oligarchic” Areopagos council) and portrayed them as the vehicle through which the *demos* had achieved supreme power in the community overall (*Pol.* 1273b36-1274a23; cf. 1305b20-40). Similarly, the Aristotelian *Constitution of the Athenians* (9.1) argued that of the three reforms of Solon said to have most advanced the power of the *demos*, the most important was the right of appeal to a popular court, because “when the *demos* is master of the vote”—that is, the *psephos*, the voting-ballot used in the courts but not in the assembly—“it is master of the political system” (cf. 10.1, 25.2, 27.4, 29.4, 35, 45.2, 63-8). The same author (41.2) claimed that since 403 the Athenian *demos*

had been “continually increasing the power of the majority (*plethos*),” an assertion judged “mistaken” by Peter Rhodes, the foremost commentator on that text (1993, 488; 2002, 18, 85; 2010, 67), but which is defensible if the various transfers of power to judges mentioned in this text are interpreted as democratizing moves (*Ath. Pol.* 45.1, 3, 49.3, 53.1, 55.3-4; cf. 41.2 with Whitehead 1986; Wade-Gery 1958, 195; *Aeschin.* 2.177; *Lycurg.* 1.124-7).

The democratic significance of judicial activity also loomed large in fourth century oratory (as rightly emphasized by Harris 2016, though I do not share his overall interpretation). *Lycurgus* (1.4) said that the three main bulwarks of *demokratia* in Athens were the legal system, the vote of the judges, and the procedures by which wrongdoers were handed over to them; *Aeschines* (3.7) called judges democracy’s “guards”; and *Demosthenes* (21.222-5) argued that it was only the control of the laws by Athens’ judges that protected the *demos* from the depredations of the elite (cf. *Lycurg.* 1.4, 138, *Aeschin.* 1.4-5, 3.6, 23, *Dem.* 7.7, 24.2, 24.37, 152, 57.56; *Din.* 3.15). An assembly speech preserved in the Demosthenic corpus complains about certain phrases that had “passed into your common speech,” such as “in the law-courts lies your salvation” and “it is the ballot (*psēphos*) that must protect the state”—the ballot, that is, used almost exclusively in the courts (*Dem.* 13.16). A couple of generations earlier, *Thucydides* had portrayed Athenians as exceptionally litigious (1.77), while the passion for judging, especially of the relatively poor, supplied the plot of *Aristophanes’ Wasps* and formed a running joke in several other plays (e.g. *Knights* 1315, *Clouds* 206-8, *Peace* 500-5, *Birds* 36-41, 109; cf. Todd 1993, 147-9). *Aristophanes* often used judicial analogies to exemplify the power of ordinary citizens, as in “I’ll put a stop to your bellowing!/You’re not on a jury now, you know!” (*Lysistrata* 379-80, tr. Henderson; cf. *Assemblywomen* 460). The *Constitution of the Athenians* attributed to *Xenophon* devoted considerable space to the courts and insisted that their construction could not be altered without materially weakening the *demos*’s control of the political system (*Ps. Xen. Ath. Pol.* 3.2-9; cf. 1.16-18). Finally, the most striking witness to the democratic significance of the courts is *Plato*. It is very suggestive that in his work, when the judgment and capacities of “the many” (*hoi polloi*) are criticized, the institutional context is more often than not the courts (e.g. *Theaet.* 173c, *Gorg.* 452e, 454b-e, 455a, *Rep.* 553a-b, 565b-e; cf. Cammack 2015).

Some of these points may seem inconclusive. The philosophers are often deemed unreliable on the topic of democracy, since they did not support it; the same has been said of the historians and *Aristophanes* (Jones 1957 [1980], 41-2; Finley 1985, 28; Hansen 1983, 150-3; Hansen 2010, 505-7). The orators are dismissed on other grounds. Since the vast majority of extant speeches were written for trials, the suggestion that judges were especially important to *demokratia* has been interpreted as flattery (see Hansen 1974, 18; Todd 1993, 150-78). But even an anti-democrat may provide an accurate glimpse of democracy, and flattery fails if it is wholly implausible (cf. Cohen 1990, 2002). Moreover, as Hansen rightly stressed, extant assembly speeches, where one might expect to find flattery in equal measure, contain no equivalent claims (1974, 18).

Since there is no sign that the Athenians perceived judicial activity as a restraint on the *demos*, we must consider another interpretation. In enhancing the

political power of judges, Athenian assembly-goers sought not to weaken but to strengthen demotic rule (as suggested but not pursued by Rhodes 2010, 68). They hoped to render their political system neither less (with Hansen, early in his career) nor equally (with Ober and Harris) democratic, but more so, because judicial panels were both more impervious to domination by the political elite and played a greater role in disciplining them (as suggested but not pursued by Shaw 1991).

This interpretation makes especially good sense if the reforms are understood as a response to the traumas of the late fifth century, particularly the two coups. The conventional interpretation implies that Athenian democrats, fresh from victory over their oligarchical adversaries, blamed themselves for their recent loss of power (Eder 1998; Taylor 2002). But the sources do not support that position. Rather, Athenian assembly-goers seem to have been straightforwardly angry with the conspirators. That is the implication of the decree of Demophantos, passed in 410, which directed that any individual who attempted to suppress democracy might in future be killed on sight (Lycurg. 1.124-7; Andoc. 1.96-98; cf. Thuc. 8.86; Shear 2011).⁶ It is also implied by the widespread claim that the assembly, in legitimating the coups, had been forced by fear and deceit to vote against its wishes, not that it had itself erred (Andoc. 2.27; Aeschin. 2.176; Lys. 12.72-75, 90; Ps. Aristot. *Ath. Pol.* 29.1, 34.3). Anything else, indeed, would have contradicted a trope of Athenian democratic ideology: that the *demos* was always right and any fault, when things went wrong, lay not with voters but with the speakers who had misled them (Ps. Xen. *Ath. Pol.* 2.17; Thuc. 2.59 (cf. 2.60), 8.1; Xen. *Hell.* 1.7.35; Dem. 20.3-4, 23.97; Ps. Aristot. *Ath. Pol.* 28.3).

This interpretation also makes good sense of the indictments against illegal proposals and disadvantageous laws. It is hard to believe that those measures had different goals, yet why the *demos* should have been aiming at self-restraint in 416 or earlier is unclear (as noted by Sundahl 2003, 136). Canevaro (2015, 11) suggests that both indictments aimed at enhancing the consistency of the laws, but (as he acknowledges), that interpretation of the indictment against illegal proposals is not directly supported. More generative, arguably, is the connection drawn by Hansen (1999, 205) and Shaw (1991, 207) between the date of the last known ostracism, in 416, with the first known conviction of illegal proposal, in 415. Plausibly, both the indictment against illegal proposals and that against inexpedient laws were, like ostracism, aimed primarily at combatting the subversion of demotic rule by the political elite (an interpretation suggested but not pursued by Bauman 1990, 77; Christ 1998, 22-3; Farrar 2007, 177).

Why might late fifth-century assembly-goers have thought that enhancing the political power of judges would assist ordinary citizens against the elite? A comparison of the composition, procedures, and functions of the assembly and courts in this period suggests several possible answers. This material is well known, yet when juxtaposed and assessed with respect to maximizing the power of ordinary

⁶ The authenticity of this document is denied by Canevaro and Harris 2012; responses by Sommerstein 2014, Hansen 2015, 898-901; counter-response by Harris 2013-14. I am persuaded by Carawan 2017 that although this document is strictly speaking “inauthentic” (in that it is not the original decree read aloud at the trial), it nonetheless provides valuable information about the original decree, given the likely path of transmission and reconstruction by the ancient editor.

citizens, it points to a surprising conclusion: that although, as the author of the Aristotelian *Constitution of the Athenians* claimed (41.2), the fourth-century *demos* ruled through both decrees and courts, in the immediate aftermath of the coups, it looked wisest, from a democratic perspective, to give the courts the upper hand.

The Composition of the Assembly and the Courts

As noted above, all male citizens over eighteen were eligible to attend assembly meetings (*Ath. Pol.* 41.2), although in practice, in the late fifth century, only about a fifth of the citizen population could fit into the meeting-place (Hansen 1999, 90-4). But there were no other limitations on entry. Those who wished to take part simply had to arrive at dawn and find themselves a seat.

Judicial panels were much smaller. As noted, at least 500 citizens heard public cases, while private cases were heard by at least 200, though larger panels were common (Boegehold 1995, 24; Todd 1993, 99-112). Would-be judges first had to get on the judicial roll, which by the end of the fifth century comprised some six thousand people chosen annually by lot from volunteers aged thirty or above (*Andoc.* 1.17). Those selected swore the judicial oath and received an official name-plate (Kroll 1972). For most of the fifth century, judges seem to have been assigned to a particular court for the entire year, but at some point, perhaps around 409, they began to be allotted to a different court each day and to a specific seat within the court (Boegehold 1984; 1995, 22, 31-2). Whoever wished to serve henceforth had to turn up outside the courts at dawn, hand in his name-plate and wait to see if he was chosen (Hansen 1999, 186-7). The selection and case-assignment process was fully randomized and became increasingly complex, until by the late 330s, it involved nine rounds of sortition (Boegehold 1995, 21-42; Farrar 2010; Dow 1939; Bers 2000; Mirhady and Schwartz 2011; Carawan 2016).

One may assume that the greater size of the assembly automatically made it seem a better vehicle of the wishes of ordinary citizens, but it is not clear that the Athenians thought that way. Strikingly, one early fourth-century writer remarked that in ostracisms, when all citizens were entitled to vote, “those who have political associates and confederates have an advantage over the rest, because the judges are not appointed by lot as in courts of law” (*[Andoc.]* 4.4, tr. Maidment; see further Connor 1971, 82-3). On that view, the size of the decision-making body was less important than its construction, and here two points demand attention.

One is the social make-up of the assembly and courts. As far as we can tell from the limited evidence available, the assembly attracted a relatively broad mix of citizens. Among fourth-century sources (i.e. postdating the reforms), Xenophon’s Socrates mentions “fullers, shoemakers, builders, smiths, farmers, merchants, and profiteers” (*Mem.* 3.7.6), Plato’s Socrates suggests that a speaker might be “a blacksmith, shoemaker, merchant, sea-captain, rich, poor, of noble family or low-born” (*Prot.* 319d), and Theophrastus sketched an oligarch “ashamed” to find himself sitting next to a “scrawny, unwashed type” (*Char.* 26.2, tr. Rusten). In our period, Aristophanes’ assembly-goer Dikaiopolis is a farmer living in the city for the duration of the war (*Ach.* 34-7), while his “Demos of Pnyx Hill” (the location of assembly meetings) is a grumpy, half-deaf old countryman

(*Knights* 40-3; cf. *Lys.* 28.3, 29.9; *Isoc.* 8.130, 15.152; *Dem.* 24.123. Jones 1980, 36, 109; Sinclair 1988, 124-5; Hansen 1999, 126-7; Todd 1990, 170-3).

Judges skewed older (since they had to be over thirty), which may have been significant given that young men were often represented as unreliable, emotionally immature, and—most importantly—a core constituency of support for oligarchy (*Hom. Il.* 3.107-10; *Eur. Supp.* 230-7; *Thuc.* 6.28, 8.65; *Xen. Hell.* 2.3.23; *Aristot. NE* 1128b15-20; *Hyp.* 5, col. 21; Hansen 1974, 50, and 1999, 185-86; Strauss 1993). Judges were also commonly represented as skewing poorer.⁷ The poverty of judges is a running joke in Aristophanes, particularly *Wasps*, where the chorus-leader is depicted as unable to provide anything other than knucklebones as a toy for his son and claims the family will be unable to eat if he cannot judge (251-2, 290-315; cf. *Kn.* 255-7, 797-8, 804, 1089, *Plut.* 27, *Ps. Xen. Ath. Pol.* 1.18; *Isoc.* 7.54; *Dem.* 21.182, 24.123, 29.22; *Aeschin.* 1.88). No doubt Aristophanes exaggerated for comic effect, but there is a good reason to regard his portrayal as caricature rather than sheer fiction, since judges (unlike assemblygoers prior to 390) were paid. The stipend was instituted by Pericles around 450 BC, reportedly in order to strengthen his popular power base against his wealthy rival Cimon (*Ps. Aristot. Ath. Pol.* 27.3-4; *Plat. Gorg.* 515e). The initial amount was two obols, increased to three by Cleon in 425, roughly equivalent to a day's low-paid labour (Markle 1985; Todd 1990, 153-4). According to the author of the Aristotelian *Constitution of the Athenians*, some people argued that courts “deteriorated” at this point, since “any chance people” (*ton tychonton*) always thereafter “took more care to get allotted than did the better sort” (*Ps. Aristot. Ath. Pol.* 27.4). Payment for judging no doubt dishonoured the office in the eyes of the elite (cf. *Aristot. NE* 1163b5-10, *Pol.* 1297a35-40, 1300a1); certainly prominent young men such as Alcibiades or Plato's brother Glaucon did not fantasize about taking their turn as a judge or even prosecuting an important case, but about gaining a reputation as an assembly speaker (*Plat. Alc.* I, II; *Xen. Mem.* 3.6). In the period prior to the reforms, the association of the courts with the lower classes was likely widespread.

Another notable feature of the courts' composition was the difficulty of stacking or otherwise corrupting judicial panels. Though the assembly's openness may seem democracy-enhancing, it may not have been regarded that way by the least powerful. For one thing, it was possible to manipulate the outcome of votes by arriving earlier than one's opponents and with more supporters in tow. An extreme form of such manipulation was a factor in the 411 coup: the meeting had been moved to a small location outside town, near the Spartan military camp, thus discouraging anyone without his own shield and spear (i.e. the humbler majority) from attending. In addition, many poorer citizens were away with the fleet, and the result was the abolition of democracy (*Thuc.* 8.67-9, *Lys.* 12.44, 75-6; cf. Finley, *Democracy*, 53). Another example is the vote on the Arginusae fiasco, when, according to Xenophon, the ships' captains succeeded in pinning the blame on the generals in part because they recruited bereaved relatives (or those who claimed to be relatives) to turn up to the meeting, begging for retribution (*Xen. Hell.* 1.7.8; Hansen 1999, 284; Carawan 2007). Thucydides' Nicias accused Alcibiades of

⁷ Pace Jones 1980, 36-7, who suggested that they were well-to-do, and Ober 1989, 142-4, and Todd 1990, who find no significant difference between the assembly and courts on this score.

packing the assembly for the vote on Sicily (6.13.1), while a couple of generations later, Demosthenes suggested that “three hundred to do the shouting” were part of the entourage of any successful politician (2.29-30, 13.20; cf. 18.143; Connor 1971, 18-22, 75-9, 134; Finley 1983, 76-84; Rhodes 1986; Rhodes 1995). Aristophanes’ *Assemblywomen* (c. 392) provides another sign of the assembly’s vulnerability. The conspirators arrive first thing in the morning, fill the front benches, and the result is a women-only government (Aristoph. *Eccl.* 296-7, 300-1, 372-477; cf. Hansen 1983, 27-8).

Such manipulations were impossible in the courts. In 409, the well known general and political leader Anytus (later one of the prosecutors of Socrates) became notorious as the first person ever to bribe an entire judicial panel, but that was before the Athenians began to assign judges to courtrooms by lot; thereafter tampering became much more difficult (Ps. Aristot. *Ath. Pol.* 27.5; Ps. Xen. *Ath. Pol.* 3.7; Boegehold 1995, 34). The name-plate sorter (himself randomly selected) could make the choice of given individuals slightly more or less probable, and judges could be lobbied on the way to courtrooms, though later in the fourth century an enclosed complex helped to minimize harassment (Aeschin. 3.1; Dem. 19.1, 332; Boegehold 1995, 14, 22, 33, 36-7; Dow 1939, 31). But it was much harder to shape or to corrupt judicial panels than the assembly.

The Procedures of the Assembly and the Courts

Virtually all assemblygoers had the right to speak and everyone present could vote (Hdt 5.78; Eur. *Supp.* 438, 441; Ps. Xen. *Ath. Pol.* 1.2; Plat. *Gorg.* 461e, *Prot.* 319b-d, 322d-23a). Those features are often represented as paradigmatically democratic (e.g. Finley 1985, 18-19; Ober 1989, 72-3, 78-9, 296-7), but on closer inspection things look more complicated. It is estimated that in the mid-fourth century, some 2-5 percent of the citizen population proposed a motion or an amendment at least once in their lives, but that does not mean that they all spoke publicly (Hansen 1989, 93-125, esp. 97; cf. Ober 1989, 104-18; Rhodes 1995, 159-60; Osborne, 2010, 5-7). The acoustics of the Pnyx were highly challenging, especially in the fifth century, before a reorientation of the stage and construction of retaining walls provided some shelter from the wind. Reconstructions suggest that one would certainly have had to be a trained speaker in order to be heard, and even in ideal conditions, only about half the audience will regularly have been able to make out what was being said (Johnstone 1996, 122-7; cf. Aristoph. *Kn.* 42). Accordingly, first, writing played a key role in the initiation process: proposals launched in the council had to be drafted in writing and publicly displayed three days in advance of meetings (Ps. Aristot. *Ath. Pol.* 29.1, 45, with Rhodes 1972, 57-81), while amendments and any proposals made from the assembly floor were also submitted in writing and read aloud by the secretary (Aeschin. 2.64, 68, 83-4). And, second, advising the audience which way to vote fell largely to a small number of capable speakers, perhaps twenty to forty at any one time (Hansen 1989, 121-5; Hansen 1999, 144; Ober 1989, 107-9).

Accordingly, the problem for ordinary voters was how to make use of their orators without being dominated or abused by them—an appreciably difficult task (Eur. *Med.* 580-5, *Supp.* 410; Aristoph. *Ach.* 376, 625-37; Thuc. 7.8; Dem. 5.12,

9.64, 22.30-33; Aeschin. 3.170, 220; Rhodes 2016). Thucydides counted Pericles's rhetorical gifts as a major factor in the outbreak of the Peloponnesian war, while Cleon's nearly led to mass slaughter in Mytilene (Thuc. 1.29-31, 127, 145, 2.59, 65, 3.49; Aristoph. *Peace* 603-80). Alcibiades helped to restart the war with the Peloponnesians by deceiving the assembly, and the main speaker in favour of executing the Arginusae generals in 406 was alleged by Xenophon to have been bribed (Thuc. 5.43-5; Xen. *Hell.* 1.7.8). Most striking, nearly everyone involved in the coups of 411 and 404 was a well known political figure. According to Thucydides (8.68), the leading conspirators in 411 (with the exception of the shadowy Antiphon) had previously been identified as democrats (cf. Lys. 13.9-10, Ant. fr. B1, Andoc. 1.36), while in 404, the men who later became known as the Thirty Tyrants were elected by the assembly to the task of producing new laws (Ps. Aristot. *Ath. Pol.* 34-5).

The courts could not resolve the power disparity between speakers and listeners, but restrictions on speech arguably ameliorated it. Any citizen could bring a public prosecution and speakers could argue whatever they wished, though they might later be charged with slander (Osborne 1985). But only litigants and co-pleaders specified in advance were allowed to address the judges (Dem. 24.23; Hyp. 1.10, 4.11) and strict time limits were enforced (Aristoph. *Ach.* 692, *Wasps* 857; cf. Boegehold 1995, 27; Thür 2008). Still more significant, the judges did not discuss cases among themselves. As soon as both sides had been heard, voting began. As in the assembly, heckling during the speeches was common, and conversation was also possible on the way down to the voting urns (Bers 1985; Boegehold 1995, 26). But there was no formal opportunity for judges to influence each others' views, and this was deliberate: Aristotle (*Pol.* 1268b5-10) reports that most legislators explicitly prohibited "joint speaking" (*koinolegeomai*, also "coming to an agreement") among judges. Consequently, verdicts reflected as closely as possible the independent will of each judge, rather than that of the most rhetorically powerful in the group.

Most important, the independence of judges was preserved by the secret ballot. In the assembly, as noted, everyone could vote, but with thousands in attendance and numerous decisions to be taken at every meeting (Hansen 1989, 98-101, suggests a regular minimum of nine), open voting by raising hands (*cheirotomia*) was the best available mechanism (Aristoph. *Eccl.* 260-5; Hansen 1983, 103-21; Schwartzberg 2010). With this came vulnerability to influence and intimidation. Thucydides (8.65-6, 68) and Lysias (12.72-5, 20.8-9) emphasized the chilling effect on voters of the reign of terror in the city immediately prior to the 411 coup. One democratic leader had been killed and further violence and reprisals seemed likely: as Thucydides implied (8.66), it was no surprise that when the abolition of democracy was proposed, no one voted against it (cf. Thuc. 5.92 and for similar cases outside Athens, 3.70-1, 4.74, 6.51; Andoc. 2.8; Xen. *Hell.* 2.3-4; Ps. Aristot. *Ath. Pol.* 29-33, 34-40; Aristot. *Pol.* 1304b10-15; Lys. 13.33-7; see also Elster 2007 and Ober 2008 on the issue of "cascades").

By contrast, voting in court was secret. Down to at least 405, judges had a choice of two voting urns, one representing the prosecutor, the other the defendant. The urns were placed side by side with a wicker funnel covering the openings, so

that when a judge dropped his ballot onlookers could not see which he had chosen (Boegehold 1995, 27-9). Later (by 345), each judge had two ballots, a pierced one representing the prosecutor and an unpierced one representing the defendant. When held between thumb and forefinger it was impossible to tell which was which, and judges dropped the decisive one into a bronze urn and the discard into a wooden one (Boegehold 1995, 35-6). Both systems protected judges from reprisals or rewards. As Lysias emphasized to the judges when prosecuting one of the Thirty Tyrants in 403, “Nobody today is compelling you to vote against your judgment” (12.91). Demosthenes, similarly, said that the ballot ensured that “every one of the citizens, being completely free from interference, may decide for himself” (Dem. 59.90; cf. Thuc. 4.88; Dem. 19.239; Aeschin. 3.233; Ps. Aristot. *Ath. Pol.* 68).

Judges were not exactly free to decide as they pleased: the judicial oath bound them to judge in accordance with the laws and decrees of the Athenians, and may also have included clauses against oligarchy, tyranny, the subversion of democracy and accepting bribes (Dem. 24.149-51; cf. 18.217, 20.118, 24.78, 90, 188; Aeschin. 1.88, 3.8, 3.208, 233; Eur. *Supp.* 1229; Thuc. 5.21; Andoc. 1.9; Lys. 10.32; Lysurg. 1.20, 79, 146; Hyp. *Eux.* 40; Theophr. *Char.* 6.2, 13.11; Fränkel 1873; Johnstone 1999, 33-42; Mirhady 2007; Canevaro 2013, 173-80). It has also been suggested that the presence of spectators in court may have encouraged “judicial responsibility” (Lanni 1997, 189), though the carefully preserved anonymity of the ballot arguably offset that. But there is no doubt that judicial verdicts offered a better reflection of the unmanipulated will of participating voters than was possible in the assembly.

The Functions of the Assembly and the Courts

Perhaps the most powerful reason assembly-goers enhanced the powers of judges was to strengthen their traditional political function. Aristotle (*Rhet.* 1358b-59a) distinguished between two pre-eminent political tasks, namely deciding what was advantageous (*sympheron*), which he assigned to assemblies, and deciding what was just (*dikaion*), which he assigned to courts (cf. *Rhet.* 1354a, *NE* 1141b30, Ps-Xen. 1.13; Mirhady 2006). Athenian politics supported this distinction fairly well. The assembly determined policy: war, peace, foreign affairs, defence, public finance, expenditures, imports and exports, and until 403/2 legislation (Hansen 1999, 155-60). It also conferred honours, elected military officers, held monthly votes of confidence, launched impeachments and until at least 361 occasionally judged them (Hansen 1975, 51; cf. Carawan 1987, 176-7; Rhodes 1979; Sealey 1981, 131). The popular courts judged all other disputes (barring homicide), as well as the scrutinies and audits of individuals, including orators, who had special political responsibilities (Hansen 1999, 179-80, 218-24; Todd 1993, 154-63).

How significant was the demotic administration of justice to the *demos*'s rule? Deciding what was just was often portrayed as the supreme political function. In the *Iliad*, it is the activity of judges, not of a council or assembly, that is depicted as emblematic of a community at peace (18.491-509). The primary task of princes in Hesiod's *Works and Days* is to dispense justice (225-9), Herodotus attributed Deioeces' rise to power wholly to his standing as a judge (1.96-7), Aeschylus tied political stability specifically to judicial institutions (*Eum.* 433-5, 484, 490-565,

681-710), Aristotle called *dike*, “the decision of what is just,” “the backbone (*taxis*) of the political community” (*Pol.* 1253b25), and Cleanthes, the Stoic philosopher, defined *polis* as “a habitation where people seek refuge for the purposes of the administration of justice” (*Stob. Flor.* 2.7.iii).

Judicial activity was especially implicated in the rise of democracy in Athens. As we noted earlier, Aristotle, in his only sustained discussion of Athenian politics, put the *demos*’s control of the courts centre stage, especially in the comments that Solon “had given the *demos* political standing by constituting the courts from everyone” and “was said to have dissolved the power of the other bodies by making the courts, which were selected by lot, all-powerful” (*Pol.* 1273b36-74a23). Aristotle also portrayed Ephialtes’ and Pericles’ use of the courts to dock the power of the council of the Areopagos around 462 as a watershed (*Pol.* 1274a5-22; cf. *Ps. Aristot. Ath. Pol.* 9.1, 25-6, 27.2-28). Conversely, the only item on the assembly’s agenda during the 411 coup was the suspension of the rights of citizens to impeach speakers and to prosecute them for making illegal proposals. The “Thirty Tyrants,” in 404, also rescinded these powers, as did Antipater, the Macedonian regent, in 322 (*Ps. Aristot. Ath. Pol.* 29.4, 35; cf. *Aeschin.* 3.5, 191, 196, 234; *Dem.* 24.154, 58.34; Boegehold 1995, 41; Brock 1988, 136-8; Hansen 1974, 55; Hansen 1975, 17).

Why was demotic judicial power so important to democracy? The answer arguably lies in the control it gave the mass of ordinary citizens over those who performed individual political functions, whether self-selected (such as drafting motions or making speeches), elected (such as acting as an ambassador or a general), or assigned by lot (such as acting as a councillor or official). Those roles were not equally influential. Councillors and other officials had little decision-making power, although they were nonetheless carefully scrutinized pre-tenure, subject to votes of confidence and audits while in office, and given a final audit on stepping down (*Ps. Aristot. Ath. Pol.* 25-7 with Rhodes 1993, 309-22). Generals, orators and proposers of decrees had in principle equally little or even less formal decision-making power, but they had far greater influence, and that was what judicial action sought to constrain. Early in the democratic era, the principal mechanism was impeachment, used to launch prosecutions concerning (for example) treason, taking bribes or lying to the *demos*, but from the mid-fifth century audits, too, were used. Hansen (1999, 224) argues that the audit was relatively insignificant, since it seems not to have led to many prosecutions; but it is possible that office-holders behaved well because they knew that any malfeasance was virtually certain to be caught. The same logic may be seen in the indictments against illegal proposals and disadvantageous laws, which made the proposers of decrees subject to judicial control. Ostracism was another such mechanism, but as noted above, it was effectively abandoned in 417 after the invention of the indictment against illegal proposals—evidently a more effective tool against the political elite.

Aristophanes’ *Knights* suggests how the assembly and courts worked together to maintain the *demos*’s power over its leaders. Towards the end of the play, the chorus of knights (members of Athens’ second-highest socio-economic class) accuse Demos of being too easily manipulated by politicians. Demos replies: “There’s purpose in this foolishness of mine. I relish my daily pap, and I pick one

thieving political leader to fatten; I raise him up, and when he's full, I swat him down" (1124-30, tr. Henderson). What are crucial are the locations of this "raising" and "swatting." As the Knights (who do not contest Demos's claim) observe, politicians are "raised" in the assembly, and as Demos explains, they are "forced to regurgitate whatever they've got from me" in the courts, using the wicker funnel that hid judges' votes as a "probe" (1150, tr. Henderson).

What is regurgitated in the play is money, yet it may also be interpreted as power. The dominance of political leaders in the assembly, predicated on the sufferance of ordinary citizens, was reversed in the courts, where they could be humiliated at those same citizens' hands. This suggests, first, the interdependence of the assembly and courts: rule by the *demos* required both. And second, it suggests the final significance of demotic judicial power. The "fattening" process to which Demos refers would have been self-undermining without a way of recovering the goods. To that extent, the supremacy of the *demos* was predicated on its control of the judicial function.

The scale of judicial action against political leaders in Athens has often been regarded with dismay. Aristophon boasted that he had been charged with making an illegal proposal 75 times and had been acquitted every time; others were not so lucky (Aeschin. 3.194; cf. Plat. *Gorg.* 516d; Ps. Plat. *Ax.* 368d-9b; Dem. 18.251; Sinclair 1998, 162). Hansen (1975, 11, 65) called the number of politicians targeted by impeachment "a serious defect in the system," and others agree (Ahl 1984; Bauman 1990, 2; Harris 1994; Knox 1985). As Knox emphasized, nearly all known politicians were eventually convicted of something, including famous figures such as Pericles and Demosthenes. This is taken to show that either the Athenians persecuted many honest men, or they were incapable of selecting honest leaders (Hansen 1975, 11; Knox 1985, 144). Yet once honest men may become lax, and a low tolerance for dubious behaviour may be appropriate in politics.

The conventionality of judicial action against politicians supports the contention that in enhancing the powers of judges, assembly-goers were seeking to control political leaders further. The indictments against illegal proposals and disadvantageous laws brought those who advanced new policies and legislation under the purview of the courts; the review and reinscription of the laws and new legal archive made prosecuting transgressions easier; and *nomothesia* reduced the advantage held by gifted speakers and organizers in the assembly. Each reform constrained politically influential individuals, thus strengthening the the courts' and hence the *demos*'s rule.

Conclusion

This article has suggested a new interpretation of Athens' late fifth-century legal reforms, one that draws from both sides of the prior debate. Hansen was right to argue that the reforms made the popular courts formally supreme, while his critics were right that Athenian democracy was not thereby rendered more moderate. In fact, the supremacy of judges made Athens more democratic (on the Athenian conception of democracy), because the popular courts, to a greater extent than the assembly, served the interests of the humbler majority. This reinterpretation has significant implications for our interpretation of democracy in Athens. Maximizing

the number of participants in decision-making looked, in this period, less important to Athenian democrats than promoting the supremacy of poorer and older citizens. Similarly, openness to all looked less important than procedural limits on unfair influence; the right to speak publicly looked less important than the right to vote secretly; and the power to shape policy looked less important than the power to decide justice, especially with respect to the behaviour of politicians.

Demotic judicial activity is not now regarded as an essential element of democracy. No doubt many factors explain that development, but one in particular originated in democratic Athens. A key feature of modern political ideology is the belief that unlike law- and policy-making, legal disputes normally admit of a correct answer, the discovery of which requires knowledge and training and thus cannot be left to any chance comer (Mirhady 2006, 302). That position may be traced back to Athenian democracy's foremost critic, Plato. Ancient Greek democrats seem to have taken the perceptions of the community to be the only available benchmark of what is just, but Plato portrayed justice as something accessed by only a few specially trained or inspired people, and strikingly, it is Plato's conceptualization, not that of his fellow citizens, that echoes in discussions of justice today (Cammack 2015). What Athenian democrats took to be the "bulwark" of democracy, namely the control of the administration of justice by ordinary citizens, now seems thoroughly alien—and with it, the kind of accountability procedures that Athenian leaders accepted as routine. Plato would likely have supported the modern practice of partly democratizing the initial development of law while outsourcing its final approbation, interpretation, and application to small bodies of professional experts. Athenian democrats, however, would have feared that the lack of demotic control over justice invited the oligarchical capture of the entire political system.

This argument invites us to consider the implications for politics today. Of the two political functions distinguished by Aristotle, deciding what is advantageous and deciding what is just, citizens in democracies retain an indirect influence over the first, via the election of politicians, but little influence over the second. Even when juries decide cases (an increasingly infrequent practice), they are very small, vetted by each side's lawyers, authorized to decide only fact, not law or penalty, subject to instruction from a presiding judge, and potentially dominated by the most forceful members. Moreover, juries play no role in either the judicial review of legislation, since that is the prerogative of higher courts, or the routine auditing of politicians and office-holders, since that no longer occurs. Aristotle treated elections and audits together: the one seemingly implied the other (*Pol.* 1281b30-82a35). Today, the only routine method of disciplining politicians is to elect another government at the next opportunity. By Athenian standards, that falls far short of rule by the *demos*.

These limitations on demotic judicial activity constitute a far more salient difference between Athenian and modern democracy than that suggested by the familiar contrast between "direct" and "representative" politics. Athens' courts were, in fact, designed to be representative: they represented, arguably more securely than the assembly, the wishes of the humbler majority, those whom the late fifth-century legal reforms were expected to advance.

References

- Ahl, Frederick. 1984. "The Art of Safe Criticism in Greece and Rome." *American Journal of Philology* 105: 174-208.
- Atkinson, John. 2003. "Athenian Law and the Will of the People in the Fourth Century BC." *Acta Classica* 46: 21-47.
- Bauman, Richard. 1990. *Political Trials in Ancient Greece*. London: Routledge.
- Bers, Victor. 1985. "Dikastic Thorubos." In Paul Cartledge and F.D. Harvey, eds., *Crux: Essays in Greek History*. London: Imprint Academic, 1-15.
- Bers, Victor. 2000. "Just Rituals: Why the Rigmarole of Fourth-Century Athenian Lawcourts?" In Pernille Flensted-Jensen, Mogens Hansen, Thomas Nielsen and Lene Rubinstein, eds., *Polis & Politics*. Copenhagen: Museum Tusulanum Press, 553-562.
- Bickel, Alexander. 1962. *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. New Haven: Yale University Press.
- Brock, Roger. 1988. "The Courts in 411." *Liverpool Classical Monthly* 13: 136-138.
- Blanshard, Alastair. 2004. "What Counts as the *Demos*? Some Notes on the Relationship between the Jury and 'The People' in Classical Athens." *Phoenix* 58: 28-36.
- Boegehold, Alan. 1984. "Many Letters: Aristophanes *Plutus* 1166-1167." In Kent Rigsby, ed., *Studies Presented to Sterling Dow*. Durham: Duke University Press, 23-29.
- Boegehold, Alan. 1995. *The Lawcourts at Athens*. Princeton: American School of Classical Studies at Athens.
- Boegehold, Alan. 1996. "Resistance to Change in the Law at Athens." In Charles Hedrick and Josiah Ober, eds., *Demokratia: A Conversation on Democracies, Ancient and Modern*. Princeton: Princeton University Press, 203-216.
- Brock, Roger. 1988. "The Courts in 411." *Liverpool Classical Monthly* 13: 136-138.
- Cammack, Daniela. 2015. "Plato and Athenian Justice." *History of Political Thought* 36: 611-42.
- Cammack, Daniela. 2019. "The *Dēmos* in *Dēmokratia*." *Classical Quarterly* 69: 42-61.
- Canevaro, Mirko. 2013a. "*Nomothesia* in Classical Athens: What Sources Should We Believe?" *Classical Quarterly* 63: 139-160.
- Canevaro, Mirko. 2013b. *The Documents in the Attic Orators*. Cambridge: Cambridge University Press.
- Canevaro, Mirko. 2015. "Making and Changing Laws in Ancient Athens." *The Oxford Handbook of Ancient Greek Law*. Oxford: Oxford University Press (online publication).
- Canevaro, Mirko. 2016a. "The Procedure of Demosthenes' *Against Leptines*: How to Repeal (and Replace) an Existing Law." *Journal of Hellenic Studies* 136: 39-58.
- Canevaro, Mirko. 2016b. "Legislation (*nomothesia*)." *Oxford Classical Dictionary* (online publication).
- Canevaro, Mirko. 2018a. "The Authenticity of the Document at Demosth. Or. 24.20-3, the Procedures of *nomothesia* and the so-called ἐπιχειροτονία τῶν νόμων." *Klio* 100: 70-124.
- Canevaro, Mirko. 2018b. "Laws Against Laws: the Athenian Ideology of Legislation." In Christopher Carey, Ifigeneia Giannadaki and Brenda Griffith-Williams, eds., *Use and Abuse of Law in Athenian Courts*. Leiden: Brill, 271-292.
- Canevaro, Mirko, and Alberto Esu. 2018. "Extreme Democracy and Mixed Constitution in Theory and Practice: *nomophylakia* and fourth-century *nomothesia* in the Aristotelian *Athenaion Politeia*," in C. Bearzot, M. Canevaro, T. Gargiulo and E. Poddighe, eds., *Athenaion Politeiai tra storia, politica e sociologica: Aristotele e Ps-Senofonte, Quaderni di Erga-Logoi*. Milan: LED, 105-145.

- Canevaro, Mirko, and Edward Harris. 2012. "The Documents in Andocides' *On the Mysteries*." *Classical Quarterly* 62: 98-129.
- Canevaro, Mirko, and Edward Harris. 2016-17. "The Authenticity of the Documents at Andocides' *On the Mysteries* 77-79 and 83-84." *Dike*: 9-49.
- Carawan, Edwin. 1987. "Eisangelia and Euthyna." *Greek, Roman and Byzantine Studies* 28: 167-208.
- Carawan, Edwin. 2002. "The Athenian Amnesty and the 'Scrutiny of the Laws'." *Journal of Hellenic Studies* 122: 1-23.
- Carawan, Edwin. 2007. "The Trial of the Arginousai Generals and the Dawn of 'Judicial Review'." *Dike* 10: 19-56.
- Carawan, Edwin. 2016. "Documents in the Case: Demosthenes 23-24." *Transactions of the American Philological Society* 146: 37-60.
- Carawan, Edwin. 2016. "Court Reform, Kleroteria and Comic Testimony." *Classical Journal* 111: 385-416.
- Carawan, Edwin. 2017. "Decrees in Andocides' *On the Mysteries* and 'Latent Fragments' from Craterus." *Classical Quarterly* 67: 400-421.
- Carawan, Edwin. Forthcoming. *Control of the Laws in the Ancient Democracy at Athens*. Baltimore: Johns Hopkins University Press.
- Carey, Christopher. 1994. "Legal Space in Classical Athens." *Greece & Rome* 41: 172-186.
- Cartledge, Paul. 2009. *Ancient Greek Political Thought in Practice*. Cambridge: Cambridge University Press.
- Cartledge, Paul, Paul Millett, and Stephen Todd. 1990. *Nomos: Essays in Athenian Law, Politics and Society*. Cambridge: Cambridge University Press.
- Christ, Matthew. 1998. *The Litigious Athenian*. Baltimore: Johns Hopkins University Press.
- Cohen, Edward. 1990. "Commercial Lending by Athenian Banks: Cliometric Fallacies and Forensic Methodology." *Classical Philology* 85: 177-190.
- Cohen, Edward. 2002. *The Athenian Nation*. Princeton: Princeton University Press.
- Connor, W.R. 1971. *The New Politicians of Fifth-Century Athens*. Princeton: Princeton University Press.
- Constant, Benjamin. 1988 [1819]. "The Liberty of the Ancients Compared to the Moderns." In Biancamaria Fontana, ed. and trans., *Constant: Political Writings*. Cambridge: Cambridge University Press.
- Dahl, Robert. 1989. *Democracy and its Critics*. New Haven: Yale University Press.
- De Laix, Roger. 1973. *Probouleusis at Athens: A Study of Political Decision-Making*. Berkeley: University of California Press.
- Dow, Sterling. 1939. "Aristotle, the Kleroteria, and the Courts." *Harvard Studies in Classical Philology* 1: 1-34.
- Eder, Walter. 1998. "Aristocracy and the Coming of Athenian Democracy." In Ian Morris and Kurt Raaflaub, eds., *Democracy 2500? Questions and Challenges*. Dubuque: Kendall Hunt, 105-40.
- Ehrenberg, Victor. 1969. *The Greek State*. London: Methuen.
- Elster, Jon. 2007. "The Night of August 4, 1789: A Study of Social Interactions in Collective Decision-Making." *Revue Européenne des Sciences Sociales* 45: 71-94.
- Farrar, Cynthia. 2007. "Power to the People." In Kurt Raaflaub, Josiah Ober, Robert Wallace eds., *Origins of Democracy in Ancient Greece*. Berkeley: University of California Press, 170-195.

- Farrar, Cynthia. 2010. "Taking Our Chances with the Ancient Athenians." In Mogens Hansen, ed., *Démocratie Athénienne—Démocratie Moderne: Tradition et Influences*. Geneva: Fondation Hardt, 167-234.
- Finley, Moses. 1983. *Politics in the Ancient World*. Cambridge: Cambridge University Press.
- Finley, Moses. 1985. *Democracy Ancient and Modern*. New Brunswick: Rutgers University Press.
- Forrest, W.G. 1966. *The Emergence of Greek Democracy*. New York: McGraw Hill.
- Fränkel, Max. 1878. "Der Attische Heliasteneid." *Hermes* 13: 452-466.
- Gomme, A.W. 1962. *More Essays in Greek History and Literature*. Oxford: Oxford University Press.
- Glötz, Gustave. 1930. *The Greek City and its Institutions*. London: Routledge.
- Hansen, Mogens. 1974. *The Sovereignty of the People's Court in Athens in the Fourth Century B.C.* Odense: Odense University Press.
- Hansen, Mogens. 1975. *Eisangelia*. Odense: Odense University Press.
- Hansen, Mogens. 1983. *The Athenian Ecclesia*. Copenhagen: Museum Tusulanum Press.
- Hansen, Mogens. 1985. "Athenian *Nomothesia*." *Greek, Roman and Byzantine Studies* 26: 345-371.
- Hansen, Mogens. 1990. "The Political Powers of the People's Court in Fourth-Century Athens." In Oswyn Murray and Simon Price, eds., *The Greek City from Homer to Alexander*. Oxford: Oxford University Press, 215-286.
- Hansen, Mogens. 1999. *Athenian Democracy in the Age of Demosthenes*. Norman: Oklahoma University Press.
- Hansen, Mogens. 2010. "The Concepts of *Demos*, *Ecclesia* and *Dikasterion* in Classical Athens." *Greek, Roman and Byzantine Studies* 50: 495-536.
- Hansen, Mogens. 2015. "Is Patrokleides' Decree (Andoc. 1.77-79) a Genuine Document?" *Greek, Roman and Byzantine Studies* 55: 884-901.
- Hansen, Mogens. 2016a. "Is Teisamenos' Decree (Andoc. 83-4) a Genuine Document?" *Greek, Roman and Byzantine Studies* 56: 34-48.
- Hansen, Mogens. 2016b. "The Authenticity of the Law about *Nomothesia* inserted in Demosthenes *Against Timokrates* 20-23." *Greek, Roman and Byzantine Studies* 56: 438-474.
- Hansen, Mogens. 2016c. "The Authenticity of the Law about *Nomothesia* inserted in Demosthenes *Against Timokrates* 33." *Greek, Roman and Byzantine Studies* 56: 594-610.
- Hansen, Mogens. 2017. "*Nomos ep' andri* in Fourth-Century Athens: On the Law Quoted at Andocides 1.87." *Greek, Roman and Byzantine Studies* 57: 268-81.
- Hansen, Mogens. 2018. *Aspects of the Athenian Democracy in the Fourth Century BC*. Copenhagen: Royal Danish Academy of Sciences and Letters.
- Hansen, Mogens. 2019. "The Inserted Document at Dem. 24.20-23. Response to Mirko Canevaro." *Klio* 101: 452-72.
- Harris, Edward. 1994. "Law and Oratory." In Ian Worthington, ed., *Persuasion: Greek Rhetoric in Action*. London: Routledge, 130-50.
- Harris, Edward. 2006. *Democracy and the Rule of Law in Classical Athens*. Cambridge: Cambridge University Press.
- Harris, Edward. 2013. *The Rule of Law in Action in Democratic Athens*. Oxford: Oxford University Press.
- Harris, Edward. 2013-14. "The Authenticity of the Document at Andocides *On the Mysteries* 95-98." *Tekmeria* 12: 121-153.
- Harris, Edward. 2016. "From Democracy to the Rule of Law? Constitutional Change in Athens During the Fifth and Fourth Centuries BCE." In Claudia Tiersch, ed., *Die*

- Athenische Demokratie im 4. Jahrhundert. Zwischen Modernisierung und Tradition.* Stuttgart: Franz Steiner Verlag, 73-87.
- Harrison, A.R.W. 1955. "Law-Making at the End of the Fifth Century BC." *Journal of Hellenic Studies* 75: 26-35.
- Hirschl, Ran. 2004. *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism.* Cambridge: Harvard University Press.
- Johnstone, Christopher Lyle. 1996. "Greek Oratorical Settings and the Problem of the Pnyx." In Christopher Lyle Johnstone, ed., *Theory, Text, Context.* Albany: State University of New York Press, 97-127.
- Johnstone, Steven. 1999. *Disputes and Democracy: The Consequences of Litigation in Ancient Athens.* Austin: University of Texas Press.
- Joyce, Christopher. 2008. "The Athenian Amnesty and Scrutiny of 403." *Classical Quarterly* 58: 507-18.
- Knox, Ronald. 1985. "'So Mischievous a Beaste'? The Athenian 'Demos' and its Treatment of Its Politicians." *Greece & Rome* 32: 132-61.
- Kroll, John. 1972. *Athenian Bronze Allotment-Plates.* Harvard: Harvard University Press.
- Lambert, Stephen. 2016. "The Selective Inscribing of Laws and Decrees in Late Classical Athens." *Hyperboreus* 22: 217-239.
- Lanni, Adriaan. 1997. "Spectator Sport or Serious Politics? οί περιεστηρότες and the Athenian Lawcourts," *Journal of Hellenic Studies* 117: 183-189.
- Lanni, Adriaan. 2006. *Law and Justice in the Courts of Classical Athens.* Cambridge: Cambridge University Press.
- Lanni, Adriaan. 2010. "Judicial Review and the Athenian 'Constitution'." In Mogens Hansen, ed., *Démocratie Athénienne—Démocratie Moderne: Tradition et Influences.* Geneva : Fondation Hardt, 235-76.
- MacDowell, Douglas. 1975. "Law-Making at Athens in the Fourth Century BC." *Journal of Hellenic Studies* 95: 62-74.
- MacDowell, Douglas. 1978. *The Law in Classical Athens.* Ithaca: Cornell University Press.
- Maio, Dennis. 1983. "*Politeia* and Adjudication in Fourth-Century Athens." *American Journal of Jurisprudence* 28: 16-45.
- Markle, M.M. 1985. "Jury Pay and Assembly Pay at Athens." In Paul Cartledge and F.D. Harvey, eds., *Crux: Essays in Greek History.* London: Imprint Academic, 265-97.
- Millett, Paul. 2000. "Mogens Hansen and the Labelling of Athenian Democracy." In Pernille Flensted-Jensen, Mogens Hansen, Thomas Nielsen and Lene Rubinstein, eds., *Polis & Politics.* Copenhagen: Museum Tusculanum Press, 339-60.
- Mirhady, David. 2006. "Aristotle and the Law Courts." *Polis* 23: 302-18.
- Mirhady, David, and C. Schwarz. 2011. "Dikastic Participation." *Classical Quarterly* 61: 744-8.
- Ober, Josiah. 1989. *Mass and Elite in Democratic Athens.* Princeton: Princeton University Press.
- Ober, Josiah. 1996. *The Athenian Revolution.* Princeton: Princeton University Press.
- Ober, Josiah. 2008. *Democracy and Knowledge.* Princeton: Princeton University Press.
- Ober, Josiah. 2015. *The Rise and Fall of Classical Greece.* Princeton: Princeton University Press.
- Osborne, Robin. 1985. "Law in Action in Classical Athens." *Journal of Hellenic Studies* 105: 40-58.
- Osborne, Robin. 2010. *Athens and Athenian Democracy.* Cambridge: Cambridge University Press.
- Ostwald, Martin. 1986. *From Popular Sovereignty to the Sovereignty of Law.* Berkeley: University of California Press.

- Piérart, Marcel. 2000. "Qui étaient les nomothètes à Athènes à l'époque de Démosthène?" In Edouard Lévy, ed., *La Codification des lois dans l'antiquité*. Paris, De Boccard, 229-56.
- Robertson, Neil. 1990. "The Laws of Athens, 410-399 BC." *Journal of Hellenic Studies* 110: 43-75.
- Rhodes, Peter. 1972. *The Athenian Boule*. Oxford: Oxford University Press.
- Rhodes, Peter. 1979. "Eisangelia in Athens," *Journal of Hellenic Studies* 99: 103-114.
- Rhodes, Peter. 1980. "Athenian Democracy after 403 BC." *Classical Journal* 75: 305-323.
- Rhodes, Peter. 1985. "Nomothesia in Fourth Century Athens." *Classical Quarterly* 35: 55-60.
- Rhodes, Peter. 1986. "Political Activity in Classical Athens." *Journal of Hellenic Studies* 106: 132-144.
- Rhodes, Peter. 1991. "The Athenian Code of Laws, 410-399 BC." *Journal of Hellenic Studies* 111: 87-100.
- Rhodes, Peter. 1993. *A Commentary on the Aristotelian Athenaion Politeia*. 2nd ed. Oxford: Oxford University Press.
- Rhodes, Peter. 1995. "The 'Acephalous' Polis?" *Historia* 44: 153-67.
- Rhodes, Peter. 2002. "Introduction" to Aristotle, *The Athenian Constitution*. Rev. ed. Harmondsworth: Penguin.
- Rhodes, Peter. 2003. "Sessions of *Nomothetai* in Fourth-Century Athens." *Classical Quarterly* 53: 124-129.
- Rhodes, Peter. 2010. "Stability in the Athenian Democracy after 403 BC." In Bernhard Linke, Mischa Meier and Meret Strothmann, eds., *Zwischen Monarchie und Republik*. Stuttgart: Franz Steiner Verlag, 67-75.
- Rhodes, Peter. 2016. "Demagogues and *Demos* in Athens." *Polis* 33: 243-264.
- Schwartzberg, Melissa. 2004. "Athenian Democracy and Legal Change." *American Political Science Review* 98 (2): 311-325.
- Schwartzberg, Melissa. 2010. "Shouts, Murmurs and Votes." *Journal of Political Philosophy* 18: 448-468.
- Schwartzberg, Melissa. 2013. "Was the *Grappe Paranomon* a Form of Judicial Review?" *Cardozo Law Review* 34: 1049-1062.
- Sealey, Raphael. 1981. "Ephialtes, *Eisangelia*, and the Council." In Gordon Shrimpton and David McCargar eds., *Classical Contributions*. Locust Valley: J.J. Agustin, 125-134.
- Sealey, Raphael. 1987. *The Athenian Republic*. University Park: Pennsylvania State University.
- Shaw, Brent. 1991. "The Paradoxes of People Power." *Helios* 18: 194-214.
- Shear, Julia. 2011. *Polis and Revolution*. Cambridge: Cambridge University Press.
- Sickinger, James. 1999. *Public Records and Archives in Classical Athens*. Chapel Hill: University of North Carolina Press.
- Sinclair, R.K. 1988. *Democracy and Participation in Athens*. Cambridge: Cambridge University Press.
- Sommerstein, Alan. 2014. "The Authenticity of the Demophantus Decree." *Classical Quarterly* 64: 49-57.
- Sundahl, Mark. 2003. "The Rule of Law and the Nature of the Fourth Century Athenian Democracy." *Classica & Mediaevalia* 54: 127-156.
- Strauss, Barry. 1991. "On Aristotle's Critique of Athenian Democracy." In Carnes Lord and David O'Connor, eds., *Essays on the Foundations of Aristotelian Political Science*. Berkeley: University of California Press, 212-33.
- Strauss, Barry. 1993. *Fathers and Sons in Athens*. London: Routledge.
- Tacon, Judith. 2001. "Ekklesiastic 'Thorubos'." *Greece & Rome* 48: 173-192.

- Taylor, Martha. 2002. "Implicating the Demos: A Reading of Thucydides on the Rise of the Four Hundred." *Journal of Hellenic Studies* 122: 91-108.
- Thür, Gerhardt. 2008. "The Principle of Fairness in Athenian Legal Procedure." *Dike* 11: 51-73.
- Todd, Stephen. 1993. *The Shape of Athenian Law*. Oxford: Oxford University Press.
- Todd, Stephen. 1990. "Lady Chatterley's Lover and the Attic Orators." *Journal of Hellenic Studies* 110: 146-173.
- Villacèque, Noémie. 2012. "Chahut et délibération." *Participations* 3: 49-69.
- Wade-Gery, Henry. 1958. *Essays on Greek History*. Oxford: Oxford University Press.
- Waldron, Jeremy. 2006. "The Core of the Case Against Judicial Review." *Yale Law Journal* 115: 1346-1406.
- Whitehead, David. 1986. *The Demes of Attica 508/7-c.250 BC*. Princeton: Princeton University Press.
- Wolff, Hans. 1970. *'Normenkontrolle' und Gesetzesbegriff in der attischen Demokratie*. Heidelberg: C. Winter.
- Yunis, Harvey. 1988. "Law, Politics and the *Graphe Paranomon* in Fourth-Century Athens." *Greek, Roman and Byzantine Studies* 29: 361-382.