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LAWLESS POPULISM OR LEGAL PRINCIPLE? DEMOCRACY AND THE RULE LAW IN CLASSICAL ATHENS

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Abstract

This paper complements two of my earlier papers published in the *Occasional Papers* series, one on Aristotle's *Politics* (in French), the other on tyranny and kingship. Both of those papers discussed the authority of law in relation to non-democratic typologies of government, notably oligarchy and kinship. The present paper extends the discussion to democracy and addresses the question whether Athenian democracy, the most famous and best documented political system of its kind in the ancient world, observed the rule of law. Whereas many modern Classical scholars have taken the view that popular sovereignty and legal principle in ancient Greece were conceptual polarities, others have argued to the contrary, that democracy could not have functioned without the rule of law. This essay argues strongly for the second view. Though the ancient concept of law and its authority was different from the modern concept in certain important ways, most notably in the absence of any formulated doctrine of inalienable human rights, law and democracy were nevertheless two sides of the same coin. The rule of law was not unique to democracy and can be documented in other, non-democratic states in Greece, the best example being Sparta, but the example of Athens illustrates that without a proper legal foundation, democracy as a political institution would have been impossible. This paper examines that claim in the light of recent Classical scholarship on ancient contract law, homicide jurisdiction, judicial procedure, and the role of the litigant in the Athenian court. The Athenian legal system was less about feuding and much more about peaceful justice.

In two earlier papers in this series, I examined ancient Greek attitudes to monarchical rule and the opinions of the greatest political theorist of all time, Aristotle, concerning the relationship between the various constitutional systems and typologies on offer. The first of the two showed that in contrast to modern theory, which attaches a judgment of positive value to democracy, ancient political theorists did not always speak of democratic government in the same tone of

approval. Aristotle saw lawful democracy as the least offensive form of popular self-rule, but likened lawless democracy to tyranny. For Aristotle, even lawful democracy chalked up a low second in order of preference to what he saw as the more 'virtuous' systems of monarchical or aristocratic government, to which he gave sturdier approbation. In the second, I looked at the relationship between kingship and tyranny, which Aristotle distinguished on the criterion of adherence to lawful principle, but which earlier Greek literature did not differentiate nearly so readily. Until the second half of the fourth century BC, the concepts of tyranny and kingship were generally interchangeable, and though the former was associated with something lawless even as early as the seventh century BC, it was not until Aristotle three centuries later that a definitive distinction emerged between the two.[1] The purpose of this essay is to examine how far the ancient world associated democracy as an institution with rule of law. Among English-speaking Classical scholars, it has been fashionable to claim, in contrast with the modern idea that democracy should enshrine rule of law, that ancient democracy was less about legal, and more about popular, sovereignty. My aim here is to challenge that assumption by looking closely at how ancient Greeks, most especially the Athenians, understood democracy as an institution. A careful re-examination of the evidence will show that far from being lawless, democracy was associated at a foundational level with rule of law and legal principle.

In various ways the claim that ancient democracy did not serve an ulterior purpose or principle beyond itself goes back to Alexis de Tocqueville in the first half of the nineteenth century, who in an influential tract entitled *Democracy in America* claimed that unlike modern democracy, predicated on human rights theories which arose in the Enlightenment, the ancient concept of democracy knew nothing of justice, freedom and human dignity.[2] That idea has won favour in some recent Classical scholarship which has associated the Athenian democracy with what it calls 'democracy before liberalism'. The most vocal advocate is Josiah Ober, who in a controversial monograph entitled *Demopolis: Democracy Before Liberalism in Theory and Practice* argues that democracy in the ancient world adhered to few of the preconditions of a liberal society set out by the twentieth-century political philosopher, J. Rawls, in *A Theory of Justice*, which include personal autonomy, religious freedom, human rights, and distributive justice.[3] There is nothing new about those claims. Some modern historians have held that unlike modern legal systems, which depend upon a court judge or panel of trained legal experts to interpret and define the law, the Athenian approach to justice was dependent much more upon non-specialist litigants, who interpreted the law in their own rhetorical and non-expert capacities.[4] That approach goes hand-in-hand with other modern preconceptions, such as the claim that Athenian law was less about substantive issue than judicial procedure,[5] that the main task of law enforcement rested with private citizens,[6] that Athenians litigated not because there was a genuine legal principle at stake, but because of personal feuds with political opponents,[7] and that Athenian courts were interested less in justice than with *ad*

[1] Joyce 2019a and 2019b.
[2] de Tocqueville 1835-9.
[3] Ober 2017; Rawls 1971. For variants of Ober's position, see most recently Simonton 2018 and Carugati 2019.
[4] See, for example, Johnstone 1999; Wohl 2010, 2-4 and passim; Humphreys 2007, 156; Lanni 2016.
[5] See Hansen 1991; Gagarin 1986 and 2008; Osborne 1985 and 1990; Todd 1990 and 1993.
[6] Hunter 1994; Cohen 1995; Christ 1998a and 1998b.
[7] Cohen 1995.

hoc judgments which ignored the stipulations of the law.[8] From a different angle, the school of New Institutionalism has emphasised the importance of legal rules and principles in shaping political institutions, such as democracy, claiming that ancient democracy followed patterns not wholly different from modern. Most notable among the New Institutionalists are James March and Johan Olsen, who understand the operation of politics in the framework of political institutions which shape it.[9] From an historical perspective, the recent and brilliant analysis by Edward Harris, entitled *The Rule of Law in Action in Democratic Athens*, of democracy and its legal context has thrown much needed light on the relationship between ancient democracy and rule of law arguing, in opposition to a long-standing countertrend in Anglo-American scholarship, that democracy and rule of law at Athens were conceptually and categorically inseparable.[10]

Care must be taken not to over-depict the ancient concept of the rule of law. There was nothing in antiquity comparable to a modern Bill of Rights, and though the ancients developed a very refined understanding of citizen rights, the idea of intrinsic human rights common to all humanity was lacking. At Athens, rule of law guaranteed rights for citizens, not non-citizens, as the fourth-century orator Demosthenes attests (D. 23.86). The laws of Athens protected the rights of women against sexual violence, for which the legal term was *hybris* (Aeschin. 1.15; Din. 1.23), but women could not bring charges against assailants in their own capacity and could only access justice *via* husbands. Citizens and resident aliens, or 'metics', were protected from enslavement (Arist. *Ath. Pol*. 52.1), but there was no movement in antiquity which aimed to banish slavery as an institution, where the right of enslavement belonged to a conqueror (Pl. *R.* 5.468a-b; Arist. *Pol*. 1.6.1255^{a}6-7; X. *Cyr*. 7.5.73). Athenians allowed use of torture when extracting information to be used in court, a practice which in any modern democratic system would be held a moral outrage.[11] In all these important respects, the Athenian understanding of the rule of law was very different from ours. But there were also some important similarities. The modern legal theorist, the Rt. Hon. Lord Bingham, specifies some important criteria of what makes for a political system which respects the rule of law as an institution. The first is that the law should apply to all citizens equally, except where objective differences justify differentiation, such as mental incapacity or other extenuating circumstances when a crime has been committed. Another is that all public officials should be held accountable for their actions. A third requirement is that the law should be openly and universally accessible, and a fourth that there should be no punishment outside the law for offences committed against private individuals or the state.[12] Legal theorists distinguish between 'thick' and 'thin' definitions, the former incorporating universal human rights, the latter omitting that requirement. To assert that Athenians respected the rule of law could only amount to a 'thin' definition insofar as they lacked a Bill of Rights comparable to the American Declaration of

[8] Christ 1998a; Allen 2000; Lanni 2016.
[9] March and Olsen 1989.
[10] Harris 2013. On the relationship between rule of law and democracy and the importance of legal principle in effecting the political reconciliation of 403 BC, see Joyce 2008, 2014, 2015, 2018a and my forthcoming monograph entitled *Reconciling Division: The Athenian Reconciliation Agreement of 403 BC*, especially chapters 4-6.
[11] On the torture of slaves, see Thür 1977; Gagarin 1996; Mirhady 2000. For the abolition of torture as a necessary precondition in the modern conception of the rule of law, see Bingham 2010, 14-7.
[12] Bingham 2010; see also Dicey 1885.

Independence or the *Déclaration des droits de l'homme* of 1789, which precipitated the French Revolution.

Athenian democracy enshrined rights of citizens to justice, freedom, property, free speech, political participation, and legal protection, but did not extend those principles to all peoples. However, there is the further problem of what was meant by a citizen. Traditionally, Athenian citizenship has been defined in terms of birth right to participate in the decision-making process, but herein lies the difficulty that citizenship on such a definition is limited to males.[13] The semantic point that ancient Greek had several words for 'citizen' and that the two most common, *astos* and *politês*, had feminine equivalents (*astê* and *politis*), is not to be taken lightly. More recent revisionist approaches have argued that the traditional definition is too narrow and male-oriented and overlooks the crucial societal role played by Athenian women, especially in the religious aspects of city life which were much more venerable than democracy itself. In recent times, Josine Blok and Sviatoslav Dmitriev have in their different ways sought to incorporate women in a more 'symmetrical' definition of citizenship at Athens, thereby downplaying the Aristotelian tradition, which understands citizenship in terms of relationship to government (*politeia*).[14] As I argue in a forthcoming volume of essays on ancient citizenship, the danger with the revisionist approach is that it tends to regard the male focus of Aristotle as conflicting with other more reliable ancient evidence, but a careful study of the literary and epigraphical record from the fifth and fourth centuries BC illustrates the common points of similarity between Aristotle's definitions and those of his contemporaries.[15] That is not to deny that the concept of citizenship in antiquity evolved over time. As Jean-Paul Gauthier observed, one of the key differences between the Greek and Roman conceptions of what it meant to be a citizen was that whereas, in the Greek sense, to be a citizen meant to exercise the right to political participation, the Romans understood citizenship in terms of access to specified rights, privileges, and protections, which after AD 212 was extended universally through the Empire.[16]

The orators of fourth-century Athens illustrate that the Athenian democracy, in most of its important aspects, met the 'thin definition' of the rule of law outlined above. Demosthenes states that Athenians were equal because of their laws (D. 21.188). In 403 BC, at the time of the Athenian reconciliation following the expulsion of an oligarchic junta, the principle was affirmed that no law could be directed against an individual unless it applied to all citizens universally (And. 1.87).[17] The laws of Athens often began with the formula 'If anyone should do *x*…' without specifying social or economic status (D. 23.24, 38, 45, 60; *IG* i^{3}104 lines 10 and 27).[18] A famous drinking song dating from the early fifth century BC praises the slayers of Hipparchus son of the tyrant Peisistratus for having made Athens equal before the law (Ath.15.695a-b). In the Funeral Oration of Pericles, preserved in the narrative of the historian Thucydides, the same idea is in evidence, that Athenians were equal before the law (Th. 2.37.1; [Arist.] *Rhet. ad Alex.* 2.31.1424^{b}15-6). In the *Suppliant Women* by Euripides, Theseus is made to say that

[13] See, for example, Loraux 1986, 1993; Detienne 1986; Hansen 1991, 1998, 2000, 2007; Manville 1990; Sealey 1995; Rhodes 2009, 61-3; Fröhlich 2016.
[14] Blok 2017; Dmitriev 2018.
[15] Joyce, 'Could Athenian women be considered citizens of Athens?' (forthcoming).
[16] Gauthier 1972.
[17] For a more precise formulation of this law, and the likelihood that its representation in the text of Andocides is corrupt, see Canevaro and Harris 2012, 117-8.
[18] For examples of this in fourth-century legal texts, see Harris 2006, 46-7.

'when laws are written, both the powerless and wealthy have equal justice'. The sense here is that *if you were a citizen* you had access to justice regardless of whether you were rich or poor, but as modern studies have shown, the same principle applied at Athens to resident aliens (metics) and foreigners.[19] Athenian democracy prided itself on the principle that officials were held accountable at the conclusion of their terms of office ([Arist.] *Ath. Pol*. 48.4-5; Th. 2.65), but the rule of accountability was not exclusive to Athens and is witnessed in other Greek city-states, some of them indeed not democratic.[20] Laws and decrees were displayed in public locations, and by the fourth century BC, if not considerably earlier, Athens possessed a central archive called the Metroön which housed papyrus copies of all the official business of state.[21]

There were other points of similarity between ancient and modern conceptions of the rule of law. At Athens, it was required that all public documents needed to be legible.[22] From 403 BC, Athenians instituted a special process of 'lawgiving' (*nomothesia*), designed to iron out discrepancies in the law and to ensure that any new addition was consistent with the existing body of law. The older view was that this process was handled by a board of legal experts operating independently from the citizenry *in toto*, but as Mirko Canevaro has now shown, the process was democratic and accountable.[23] The orators illustrate that all legislative proposals were displayed on whitened boards near the statues of the Eponymous Heroes in the centre of the Athenian Agora (D. 20.94; 24.18), and laws and decrees known to us from inscriptions regularly contain a prescript enjoining that the statute in question be published in a place that was accessible to anyone who wished to see.[24] Every year, the Athenians swore the Judicial Oath, which guaranteed adherence to the laws, as well as strict application of the law in judicial trials, and the judges who presided over the trials were chosen at random to ensure impartiality.[25] The modern principle that no law should be applied retroactively for offences which predated the passage of that law was recognised in Athenian justice (D. 24.43), and a number of new laws passed explicitly recognised that it was applicable only for the future. No unwritten law could be used (And. 1.87), which meant, in practice, that offences were only actionable if they violated the written laws of Athens. Some scholars have claimed that the rule of law was a relatively late development in the history of the Athenian democracy, and that it was not until 403 BC and later that democracy was fully anchored in law. Nowhere has that tendency been exemplified better than in the influential study of Martin Ostwald entitled *From Popular Sovereignty to the Sovereignty of Law*, which posited an antithesis between the two concepts and claims that democracy in its earliest form was more about the former and less about the latter.[26] But to argue in that way is to ignore two crucial facts. The first is that in terms of historical development, rule of

[19] Whitehead 1977; Gauthier 1972.
[20] Harris 2006, 18-21; Fröhlich 2004.
[21] On the antiquity of archival record keeping at Athens, see Sickinger 1999 (*contra* Thomas 1989, who holds that written record was something quite new in the age of the orators).
[22] Thus, Sickinger 2004; *contra* Todd 1993.
[23] The most up-to-date discussion of this process is Canevaro 2018, which refutes much of the older misconception as to how the procedure worked. For older treatments, see Hansen 1978; Rhodes 1984.
[24] For an excellent study of these prescripts, see Liddel 2003.
[25] For a reconstruction of the text of the Judicial Oath, see Harris 2013, 102. Athenian trials were presided over by five hundred *dikastai*, often mistranslated as 'jurors'. These were not jurors in the modern sense, because a modern juror in a criminal court decides the matter of innocence or guilt and nothing more, whereas an ancient dicast interpreted the law and inflicted penalties as well as determine responsibility, which situated him closer to a modern judge.
[26] Ostwald 1986.

law antedated the development of democracy by at least a couple of centuries. The earliest body of written law at Athens dated from the second half of the seventh century BC, long before Athens was a democracy, and the institution of written law was known in other parts of Greece, most notably Sparta, where democracy (at least as understood in the Athenian sense) never fully developed. The archaic laws of Draco and Solon were written on monuments called *axones* and *kyrbeis*, which had vanished by the time Plutarch was writing in the second century AD, but which are referred to abundantly in the Attic orators as well as in later antiquarian treatises in the Hellenistic period.[27] Secondly, the Aristotelian school understood the mature democracy of the fourth century BC as the most democratic stage in the development of Athens' political constitution, and so it would be futile to assert that by perfecting the rule of law after 403 BC, Athens became less democratic.[28]

The Judicial Oath at Athens entailed four main pledges: (1) to vote in accordance with the laws and decrees of the Athenian people (Aeschin. 3.6; Antiphon 5.8; D. 20.118); (2) to listen to both the accuser(s) and the defendant(s) equally (Aeschin. 2.1; D. 18.2; Isoc. 15.21); (3) to adjudicate a case (δικάζειν) with one's best judgment about matters for which there were no laws and to do so impartially (D. 23.96; 57.63); and (4) to adjudicate according to the content of the plaint, nothing besides (Aeschin. 1.154; D. 45.50).[29] Whether Athenians always lived up to that pledge is a secondary matter. Important to note is that principles of fairness, relevance and impartiality were enshrined in law and religious oath. Previous discussions of the sanctity of the Athenian amnesty agreement of 403 BC have suggested that Athenians were only ever half-hearted in their legal commitments, and that the judicial trials of notorious criminals in the wake of the overthrow of the Thirty Tyrants in the same year were driven by malice and could only be described as political show trials.[30] In my forthcoming book on the Athenian amnesty, I argue staunchly against that approach, showing that the legal trials of Agoratus, Eratosthenes, Callimachus, Socrates, Andocides and Nicomachus all kept rigorously to the legal principle of the amnesty and, while in some cases giving the appearance of springing from personal enmity, nevertheless framed themselves in legal, rather than political or factional, terms.[31] The Judicial Oath finds parallels in other parts of the Greek world, not always from the Classical period. The Gymnasiarchal Law from Beroia dating from the second century BC preserved on stone compels the man elected gymnasiarch to observe the laws, apply no unwritten law, adjudicating as far as possible in accordance with rules of justice and morality, and remaining impartial.[32] Another parallel presents itself from Eresos dated to the reign of Alexander the Great.[33] The judges swear to adjudicate in accordance with the written laws as well and as justly as possible. The same principle often applied in interstate treaties, a good example being the pact between

[27] The best study to date of the evidence for these monuments is Stroud 1978. The two most influential modern studies of Solon's laws are Ruschenbusch 1966 and Leão and Rhodes 2015, both of which argue that the laws of the archaic lawgivers were available in the fifth and fourth centuries BC for consultation.
[28] See [Arist.] *Ath. Pol*. 41.3. For a recent refutation of earlier scholarship which saw fourth-century democracy as less democratic than what had gone before, see now Harris 2016.
[29] On the ancient importance of keeping to the point in forensic and deliberative oratory, see Rhodes 2004.
[30] See especially Todd 1996 and Lanni 2010, but the idea of 'exemplary punishment' is evident in some other influential surveys of the period, notably Loraux 1996 and Wolpert 2002.
[31] See Joyce, *Reconciling Division*, cited at n. 10. My monograph is a challenge to Carawan 2013 and develops the main thread of arguments already expressed in published articles to date: see Joyce 2008, 2014, 2015, and 2018a.
[32] For the text of this law, see Gauthier and Hatzopoulos 1993, 18.
[33] Rhodes and Osborne 2003, no. 83 iii lines 9-17.

Temnos and Clazomenai in the early second century BC, where the judges swore to adjudicate in accordance with the written covenants of the treaty and to apply their best judgment to issues which arose outside the written terms.[34] The principle of justice and rule of law was recognised in both democratic and non-democratic societies, but democracy enshrined the principle so that all of its citizens could benefit, not just a select few with special political privileges.

It has often been asserted that Athenian justice was less about rule of law than about feuding, and that the lawcourts were venues in which political rivalries could play out. To be sure, there was a period in Athenian history when this was broadly true. After the death of Pericles in 429 BC down to the overthrow of democracy in 404 BC, Athens fell into the clutches of demagogues who abused the judicial institutions of the city for their own selfish political advantage. The leading figure in that movement was Cleon, lambasted by his chief opponent, the historian Thucydides, as a rabble-rouser and a sycophant. Greek had a special word for frivolous or vexatious litigation (συκοφάντειν), which implies that Greeks could distinguish in their minds between appropriate and inappropriate uses of the lawcourts. Yet in the mad years of the late fifth century BC, when Athens lay under siege from the combined forces of Sparta and the Peloponnesian League, it appears that a welter of judicial cases was initiated against the generals. Examples are Pericles in 430/39, who was tried and removed from office (Th. 2.65.3; D.S. 12.45.4; Plu. *Per.* 32.3-4; 35.2), Phormio in 429/8 (*FGrHist* 324 F 8), Paches (Plu. *Arist.* 26.3; *Nic.* 6.1), Sophocles, Pythodorus and Eurymedon (Th. 4.65.4), and Laches (Ar. *V.* 894-1008). What is especially notable about this new development is the contrast it strikes with the near total absence of political trials in the preceding period, where the more normal method of ridding Athens of troublesome personalities was the older practice of ostracism.[35] When democracy was re-established in 403 BC following the interval of the Thirty Tyrants, one of the chief objectives of the democratic commissioners was to outlaw sycophancy and ensure that the lawcourts were used for legal rather than political purposes. When bringing to trial the oligarch Eratosthenes in or shortly after 403 BC, the orator Lysias states that though he feels aggrieved for the murder of his brother Polemarchus, the issue at trial is not his personal grudge but the fact that the defendant had served on the board of the Thirty and had issued the legal injunction to have Polemarchus and other leading democrats arrested, resulting in their death (Lys. 12.1-3). The reference to private enmity in the speech has been interpreted by some to imply that private enmity was a force to be reckoned with in the courts even after 403 BC, but there are plenty of instances in Greek literature where retaliatory justice is seen to be an ignoble motive (e.g. D. 23.122; S. *Aj*. 678-82; D.L. 1.87).[36] Lysias refers to private grudge only to show that he is aware of the allegations of sycophancy which the defendant might cast against him.

There is abundant evidence from the fifth and fourth centuries BC that Athenians saw feuding in the courts as an abuse of justice. The orator Lycurgus states in the opening sections of the denunciation of Leocrates on a charge of bringing an illegal proposal before the people that the duty of a just citizen is not to prosecute from private enmity those who have done the city no wrong, but to regard

[34] *SEG* 29 1130*bis* lines 28-30 (= Hermann *MDA[I]* 29 [1979] 249-71.
[35] For a general discussion of this change of method, see Harris 2013, 309-313.
[36] For the claim that vengeance and retaliation were regarded as noble qualities in the ancient world, see Chaniotis 2013; *contra* Joyce 2018a. For a collection of maxims from Greek antiquity which denounced vengeance, see Tziatzi-Papagianni 1994, 404-5.

public criminals as the enemy of all (Lyc. *Leocr.* 6). The point is just that private grudge must not be the basis of a legal prosecution. The same theme is borne out in other *causes célèbres* of the period (Din. 1.100-101; Hyp. *Eux.* 28-30; D. 23.1). However, there is also evidence from Aristotle's philosophical treatises, most notably the *Rhetoric* and *Nicomachean Ethics*, that vengeance might have been regarded by some with favour. In one place, Aristotle states that it is more honourable to take vengeance on enemies and not to be reconciled than to come to terms; for to retaliate is just, and the just is honourable, and not to be defeated is the quality of a good man (Arist. *Rh*. 1.9.24.1367^{a}24-5). In another place, the philosopher extols the pleasures of vengeance (Arist. *Rh.* 1.11.13.1370^{b}13). In another, he states that putting up with being the target of abuse and not fighting back is slavish (Arist. *EN* 4.5.1126^{a}8-9). David Cohen has argued from these and other passages that the courts did not act to enforce the law but acted as an arena for honour and status.[37] But it is equally important to understand these passages in the full context in which they are cited. Aristotle's aim is not to endorse the vengeful tendencies which he describes but to recognise that they are there in human nature. The passages in question are descriptive rather than prescriptive. Vengeance is, of course, an extremely complex moral concept, and it is worth noting in this connection that the Greek verb τιμώρειν carried the sense of 'to punish' as well as 'to avenge', which might lead some to conclude that there was an absence of any such conceptual distinction in Greek. Yet it is clear from other passages in the *Rhetoric* and *Ethics* that Aristotle did not endorse vengeance but saw pugnacious and retaliatory instincts to be fundamentally destabilising to the flourishing of society (Arist. *Rh.* 2.4.12.1381b; 2.4.27-18 1281b; *EN* 5.10.1138^{a}1-3). If the Greeks had reified vengeance as a legitimate motive, as some recently have argued, the great moral dilemmas of tragedy, such as those found in Aeschylus' *Eumenides* and the *Electra* of Sophocles and Euripides, where vengeance and justice are separated though with a messy and problematic overlap, would be meaningless. The point of justice is that an equilibrium can be reached without resort to vigilantism, but if the courts are abused in such a way that justice only masquerades as a vent for underlying feuds, the legal system will inevitably break down.

The rules governing vexatious litigation at Athens were sophisticated and elaborate. As in modern legal systems, the rule of *res iudicata* was enshrined in Athenian judicial practice. This states that once a court judgment has been delivered, it cannot be overturned in a re-trial. This was true at Athens in both private and public litigation (see D. 20.147; D. 38.16; D. 40.39-43) and was applied rigorously in cases of homicide (Antiphon 5.87; 6.3). Special pleas were allowed at the preliminary hearing to prevent re-visitation of settled cases. In the fifth century, this was known as the *diamartyria*, where the magistrate would not allow a trial to proceed if the objection was valid (see Isoc. 18.11-12; Lys. 23.13-14).[38] After 403 BC, this was elaborated in a new law moved by Archinus, which established the procedure known as *paragraphê*. This gave the defendant a chance to turn the tables on the prosecutor so that the defendant became the prosecutor and the prosecutor the defendant, in the event the plaint was inadmissible. The orator Isocrates informs us (18.1-4) that this new process was enacted after 403 BC in the wake of the amnesty settlement, so that prosecutors who violated the terms of the amnesty, which barred litigation for offences dating from the period of the oligarchy, could not proceed. The precise details of how this process worked have been disputed.

[37] Cohen 1995, 70-82.
[38] For further discussion of this process, see Harrison 1971, 124-5.

The great legal historian Ugo Paoli argued that in a trial of *paragraphê* the merits of the case were considered, but this was challenged subsequently by Hans Julius Wolff, who held to the contrary that only a processual question was considered.[39] The process continued down into the fourth century and is attested in some important cases involving maritime contracts (D. 36.25; 37.1; 38.1). Athenians had a statute of limitations which required that all private suits be brought within five years of the offence being committed (D. 36.25-27; 38.17).[40] Frivolous litigation was prevented in private suits by the requirement that both sides pay a court fee known as the *prytaneia*, where the loser would have to reimburse the winner at the end of the trial (Poll. 8.38). Furthermore, if a prosecutor failed to secure one fifth of the votes of the judges, who numbered five hundred, he would have to pay a fine of 1,000 drachmas.[41] In private suits, the fine for frivolous litigation was known as the *epôbelia*, reckoned at one sixth of the total damages (Isoc. 18.2-3; D.27.67' [D.] 47.64; D. 45.6). Legal historians have debated whether there was a general statute which enforced this rule in all vexatious cases, but the evidence tends in the direction that there was (see An. *Bekk.* 255.29f; *Et. Magn*. 368.48ff; Sud. s.v. *epobolia*).[42] The complex legal machinery which enforced and upheld court judgments shows that the rule of law was taken seriously.

Athens had a sophisticated network of state officials who enforced the law. The literary sources mention a group called *astynomoi* ('city supervisors'), numbering ten, who kept law and order throughout the urban districts ([Arist.] *Ath. Pol.* 50.2).[43] An important inscription dating from 320 BC (*IG* ii^2 380) bears a decree of the people instructing the *agoranomoi*, a sub-panel of law enforcers, to maintain cleanliness and good order in the public streets during religious processions. Weights and measures were enforced by five *metronomoi* in the Piraeus ([Arist.] *Ath. Pol.* 51.2), and we know from a later inscription dating from the end of the second century BC that weight standards were adhered to with strictness (*IG* ii^2 1013). Activities in the marketplace were overseen by grain-wardens known as *sitophylakes* charged with the duty of overseeing fair trade in the sale of grain and bread ([Arist.] *Ath. Pol*. 51.3). Law and order at religious festivals was maintained by four overseers called *epimeletai* who were directly elected by the people ([Arist.] *Ath. Pol*. 57.1; Lys. 6.4) and were empowered to levy fines for disorderly conduct, as we know from inscriptions which refer to their activities in the regulation of the Eleusinian Mysteries.[44] Enforcement of public sanctuaries was assigned to city officials, rather than private citizens, as we know from an inscribed decree from the early fifth century concerning the Acropolis (*IG* i^3 4B). Orphans, heiresses and pregnant widows were placed under the care of the eponymous archon, the chief presiding magistrate chosen on a yearly basis ([Arist.] *Ath. Pol*. 56.7). There were even rules regulating school attendance.[45] Each local deme, or parish, of which there were 139 throughout Attica, had a presiding official known as the demarch who was empowered to collect debts owed to the deme (D. 57.63).[46] Many modern scholars have claimed that there was no official police force in

[39] Paoli 1933, 75-174; *contra* Wolff 1966. For more recent treatments of the problem, see Carawan 2011 and Harris 2015, 34.
[40] On the statute of limitations, see Charles 1938; Wolff 1963; Harrison 1971, 116-20.
[41] For a discussion of the figure, see Harris 2006, 405-21; Wallace 2006; MacDowell 2009, 295.
[42] See MacDowell 2008, 94; *contra* Wallace 2008, 97.
[43] For a further discussion of their duties, see Rhodes 1981, 575-76.
[44] Clinton 2005, no. 138, lines 29-38.
[45] See Gauthier and Hatzopoulos 1993.
[46] For general discussion of their numbers and duties, see Whitehead 1986, 139-48, 115-6.

Athens, but the evidence for the role of public officials presented above clashes with that assertion.[47] There is evidence that a public official could intervene to protect a private individual threatened with physical violence, a role which fell to a panel of six magistrates called *thesomothetai* (see D. 21.36; 23.31). The comic playwright Aristophanes refers to whip-bearers who kept order in the Agora (Ar. *Ach.* 723-6; 824-5). A group of officials called *pentakostologoi* enforced duties on goods entering Attica by sea and imposed fines upon those who ignored tariffs (D. 21.133).

While Athens placed a priority on law enforcement, it is also clear that law enforcers could not act without restraint. A famous case of maltreatment was brought by Theophemus in the middle of the fourth century against a trierarch who had assaulted him when trying to recover naval equipment ([D.] 47. 34-48). This reinforces what Demothenes elsewhere states about democracy as an institution which protected the freedom of individuals (D. 22.55). When officials overstepped their authority, this was held to be a violation of an important democratic principle (D. 22.51-3). Any kind of official misconduct was reported to the Council of Five Hundred by a process of impeachment known as *eisangelia* (Antiphon 6.35, 38; [Arist.] *Ath. Pol*. 48.1). The officials known as *epistatai* in the fifth century who were expected to report to the Council regulated the finances of the sanctuary of Eleusis, as we know from an inscription bearing a decree which ordered their accountability (*IG* i^3 32 lines 14-17). The Council of Five Hundred sometimes assumed extraordinary powers of investigation (see And. 44-5; D. 21.116). The Council of the Areopagus, a panel comprising all the ex-archons of the city, conducted reports known as *apophaseis*, of crimes which it reported to the Assembly for further scrutiny (Din. 1.50). The process was democratic in that it operated under the control of the people. The Areopagus is often caricatured as an undemocratic institution, but the evidence of the orators in the fourth century shows to the contrary, that the Areopagus was regarded as essential to the democratic running of the city, and there was never any perception that its role was a slight to the principle of popular sovereignty.[48] The delicts which the Areopagus investigated need not have been matters of major importance, and not infrequently we hear of minor infractions being reported (Din. 1.56; [D.] 59.79-81). The exact extent of its powers in the fourth century is unknown, but it would appear from anecdotal evidence that the Areopagus could investigate matters of private morality and conduct (Ath. 4. 168a-b). We know of a law against idleness which went back in some form to the sixth-century lawgiver Solon, which the Areopagus was empowered to enforce (D. 57.32). The evidence suggests that in addition to officials charged with specific duties, the Councils of the Five Hundred and Areopagus were empowered to keep law and order throughout the city, so that Athenians could live without fear (Th. 3.37.2).

Athenian citizens were permitted to bear weapons in self-defence, but there were strict limits imposed on their use. The power to execute criminals lay with the Eleven, who ran the public prison ([Arist.] *Ath. Pol*. 52.1). Only in a very limited number of rare cases were private individuals allowed to use deadly force. One was when a man found another man in bed with his wife, mother, sister, daughter, or

[47] For the view that Athens was unregulated, see Badian 1970, 851; Finley 1983, 18-30; Ober 1989, 300; Christ 1998, 521; Fisher 1998, 77; Berent 2000, 260-61; Lanni 2006, 31. The aforementioned are committed to the view that ancient Athens operated according to law enforcement principles entirely different from ours, where the principle of self-help came much more to the fore. As argued here, that approach has been wildly overstated.
[48] Thus, Harris 2019, against a long tradition of scholarship which has argued, disingenuously, that the Areopagus was perceived at Athens as an anti-democratic body.

concubine ([Arist.] *Ath. Pol*. 57.3; D. 23.53; Lys. 1.30). If one was ambushed, physical force in self-defence was allowed (D. 23.53). It was permitted to kill a robber but only in the heat of the moment (D. 23.60; *IG* i^3 104 lines 37-8). It was permitted to kill a man exiled for homicide who entered Attica contrary to the ban (D. 23.28; *IG* i^3 105 lines 30-31). It was permitted to kill a tyrant or someone aiming at tyranny (And. 1.95; Lyc. *Leocr.* 127). These were all exceptional cases. Otherwise, there were clear stipulations against the use of physical violence. The lawless community which many historians have described Athens as having been would not have imposed these restraints and spelled out the exceptions. Even with the exceptions, such as killing a thief, there were further nuances which made it less easy to carry out violence with impunity. A thief could only be killed or wounded if the crime took place at night and the item was worth at least fifty drachmas (D. 24.113). If a thief was suspected but there was not clear proof of theft, search of property was allowed, but not use of arbitrary violence (Ar. *Nub*. 498-99; *Ran*. 1362-3; Is. 6.42). The rules which governed this type of search were spelled out carefully: A man had to enter the house either naked or wearing a small tunic; the suspect had to be given time to reveal both sealed and unsealed items; if he did not wish to be searched, he had the opportunity to settle (Pl. *Leg*. 954a). As strange as these customs may seem to us, the inference to be drawn is that Athens was far from being lawless. Some modern democracies today permit the bearing of firearms, which remains an extremely controversial topic in those countries where the right to bear arms is enshrined in constitution and law, but any system which permits such practices lays down heavy-handed stipulations of the circumstances under which arms may be used, along with stringent penalties for misuse.

One of the trends in modern scholarship which has sought to downplay the rule of law has been the fashion for orality, very popular in the 1960s, 1970s, and 1980s, which stated that even down as late as the fourth century BC, written laws did not carry the same authority at Athens as unwritten rules and customs. Two major exponents of that view were William Harris and Rosalind Thomas, the first of whom argued that the law of sale in Athens was conducted orally without reference to written documents, the second of whom argued that the emphasis placed by the orator Aeschines on written texts in the 330s (Aeschin. 2.89; 3.75) represents an innovation in a culture which was predominantly illiterate.[49] Those assertions proceed from prior assumptions about orality and literacy in the ancient world and point to little evidence to support them. More recently, James Sickinger in an important re-assessment pointed to a range of evidence dating back to the archaic period for the widespread use of written materials and media, and against the orality trend argued that writing was a vital component in the running of Athenian democracy.[50] The references in fifth-century inscribed documents to secretaries (*grammateis*) of the Council must indicate that the art of writing was taken very seriously long before the age of the orators, and the evidence that the archaic lawgivers wrote their laws on monuments to be displayed in the Agora is incontrovertible. The seminal study of literacy in ancient Greece was that of Jack Goody and Ian Watt, which showed that the development of alphabetic writing in the seventh century BC in place of the more traditional syllabaries marked a crucial turning-point in the evolution of democracy and Greek civilisation.[51] Though the number of inscribed laws and decrees at Athens does not begin to pick up until

[49] W.V. Harris 1989, 72; Thomas 1989, 69-70. See also Gagarin 2008, 196, 197.
[50] Sickinger 1999 and 2004; for a more recent statement of that view, see Faraguna 2017.
[51] Goody and Watt 1963.

considerably later, it is important to remember, as Sickinger and Faraguna both observe, that the inscribed record represents only a fraction of the total number of written documents which were recorded and archived. Writing was an integral component of legal settlement at Athens, as Christophe Pébarthe has more recently shown.[52] Many private cases were first sent to a public arbitrator who tried to settle the matter out of court. If a private settlement was not reached, all written documents relating to the case, including witness statements, were deposited in a jar to be used as supporting evidence at the trial ([Arist.] *Ath. Pol*. 53.2-3). The orator Aeschines claimed that written documents were essential in keeping politicians accountable and protecting the legal rights of individuals (Aeschin. 2.89; 3.75). The claim that the use of writing for legal purposes was new in the fourth century is suppositional and can point to little supporting evidence.

A very contentious issue among modern discussions of Greek law is how and why law developed in Greece. In his influential study entitled *Early Greek Law*, Michael Gagarin traced three phases in the evolution of Greek law. The first he termed 'pre-legal', when communities relied on unwritten customs, the second 'proto-legal', when there are recognisable procedures for settling disputes, the third 'legal', where the use of writing is essential.[53] The problem with that approach is that it overlooks the fact that as early as the Homeric poems, legal norms are attested without reference to written statutes.[54] Others have argued that the early laws of Greece were aimed at limiting feudal rivalries among the oligarchic elites but were not universally applicable across the citizen communities.[55] Yet it is clear that in many observable cases, laws would have applied to more than just a narrow segment of the citizen population. Solon's law against surety for debt would have applied to the most vulnerable elements of society, and the law of the East Locrians covering land of all citizens would not have been limited to the elite.[56] The difficulty faced by modern scholars in assessing early Greek law is that they look at the question through the lens of much later representation. Many of those early lawgivers acquired a semi-mythical status, such as Solon, Lycurgus and Charondas, but a common thread in these early traditions is that lawgivers were called in to settle local disputes, often faction rivalry that foreshadowed the outbreak of *stasis* and civil war.[57] In the case of Sparta, though the literary tradition ascribes the codification of Spartan law to one lawgiver, Lycurgus, modern scholars have come to recognise that Spartan law evolved gradually over a considerable period of time.[58] Two compendious modern editions and compilations of early Greek inscribed legal texts, one entitled *Nomima: Recueil d' inscriptions politiques et juridiques de l' archaisme grec*, the other *Inschriftliche Gesetztexte der frühen griechischen Polis*, have thrown invaluable light on the nature of early Greek law. Among the inscribed record of laws across the archaic Greek world, we find laws on civic identity, foreign relations, powers of the state, legal procedure, rights of persons, property, criminal law, rules about funerals, about the environment, and about roads.[59] What is clear from the epigraphical record is that there was more to early Greek law than a few regulations limiting the contest among the elites. Law,

[52] Pébarthe 2006.
[53] Gagarin 1986, 9-10.
[54] Thus, Cantarella 1987; Burchfiel 1994; Pelloso 2013.
[55] Papakonstantinou 2008; Forsdyke 2006.
[56] Harris 2006, 249-70; Hölkeskamp 1992, 1999.
[57] Szegedy-Maszak 1978.
[58] MacDowell 1986; Hodkinson 1997 and 2000.
[59] van Effenterre and Ruzé 1994-5; Koerner 1993.

as an institution, antedated the evolution of democracy and, in an important sense, democracy was the outgrowth of legal principle.

Modern formulations of the rule of law include religious freedom, a vital outgrowth of the Enlightenment which followed the appalling religious conflicts of Early Modern Europe. In this important respect, the ancient world could not have been more different. In the ancient Greek cities, there was no distinction between 'Church' and 'State' in the way democratic systems recognise today. Religion was integral to the functioning of society, as is evident from the fact that as late as the fourth century and beyond, citizens belonged to cultic organisations, such as phratries, through which a sense of kinship and inheritance entitlements could be celebrated.[60] The importance of sacred law has been rightly emphasised in the compendious volumes of inscribed sacred laws by F. Sokolowski and Eran Lupu, termed *leges sacrae*.[61] The modern expert on Greek religion, Robert Parker, has criticised the use of the term 'sacred law' on the basis that laws on what we would call 'religious' matters, in ancient times, were laws of the state, and very many so-called 'civic' laws have sacred components, and vice versa.[62] But even with that *caveat*, it is possible for convenience to classify laws by what we would refer to as laws of religious concern, which fall into four main descriptive categories: those which govern federal leagues, such as the Delphic Amphictyony and other Panhellenic sanctuaries; others affect individual city-states; others affect sub-divisions of the city, such as tribes and phratries; and others still affect private cultic associations.[63]

The close intertwining between the sacred and civic spheres in the ancient world cannot permit a clear separation between what we would like to call the 'secular' and the 'spiritual' realms. To be a member of the ancient polity, observance of the gods was required as a civic duty, where failure to be part of the religious life of the city was classed as impiety, which was regarded as a crime.[64] Attic inscriptions from the fifth century often pertained to what we would term a 'religious' matter, such as the First-Fruits decree, which demanded that a sixtieth of the proceeds from the allied tribute should be dedicated to the patron goddess Athene (*IG* i^3 78a = ML 73). Profanation of the gods was deemed an offence not only against heaven but against the state. The most notorious example was the Profanation of the Eleusinian Mysteries in 415 BC, when the general Alcibiades was denounced for acts of impiety (*asebeia*) in his the privacy of his house and was recalled from Sicily, where Athens had just launched a naval expedition (Th. 6.28-9, 53, 60-1; And. 1 *pass*.). The scandal of the Profanation coincided with another religious scandal of the same year, when the city Herms (statutes of the god Hermes bearing a family dedication) were violated in what is known as the Mutilation, in Greek, *hermokopeia*. To modern sensibilities, the scandal appears almost laughable, because we happily distinguish between the civic law, which all must obey, and religious observance, which is a private matter. Yet it is important to recognise that this delineation is very recent in historical terms and, to a significant degree, does not antedate the eighteenth century. In classical antiquity, by contrast, if one was seen to have violated the gods, this was perceived as an invitation for divine wrath

[60] For the view that all citizens of the Classical period needed to belong to phratries, see Lambert 1998; *contra* Joyce 2019b.
[61] Sokolowski 1969; Lupu 2005.
[62] Parker 2004, 58.
[63] Harris 2015b.
[64] The best discussion of civic duty and obligation to date is Liddel 2007. For other attempts to ground a sense of citizenship in cultic membership, see Sourvinou-Inwood 1990 and Blok 2017.

to rain down on the community and was therefore punishable by the maximum penalties.

Another area in which it has been alleged in modern times that ancient and modern concepts of law were dissimilar is legal contracts. Our modern term 'contract' derives from the Latin *contractus*, meaning an agreement that has been drawn up in writing. There is no exact Greek equivalent, though the two terms which most often equate to the modern notion of a contract are *homologia* and *synthêkê*, the first of which could refer to any written or oral statement, the second to treaties between the states, as well as agreements between private citizens. There was another word, *symbolaion*, which referred to contractual relations.[65] Some have argued that contracts were not taken seriously in primitive communities.[66] But there are plenty of examples to which one could point, where the sanctity of contracts was held to be of utmost importance. Demosthenes states that all agreements legally contracted were binding (D. 56.2). The crucial ingredient of a legally binding contract was whether it had been formulated willingly by both parties. Wolff argued that the Greeks did not develop the notion of *consensus in idem*, which invokes the meeting of minds between the two contracting parties, but the exchange of guarantee in the form of physical objects (*Zweckfügung*), and that the violation of a contract was therefore understood in delictual terms where the object had suffered damage.[67] This understanding might apply for certain types of exchange, such as loans, rentals, or real security, but it did not apply to all, such as personal security (*engyê*) or partnership (*koinônia*). The orators refer to examples where consent has been violated but no transfer of physical assets has been made (see [D.] 49). Often, legal suits for damages invoke the idea that the defendant had failed to carry out what had been promised (*e.g.* D. 37), where there is no mention of an exchange of a physical object. To be sure, Athenians did not classify contracts in the same way as modern legal systems do, but the essential principle was the same. To enter a contractual relationship with someone meant that an agreement was drawn up, and that if one side of that agreement failed to live up to the terms of the agreement, the contract was violated.

The most serious offence of all, for which the punishment was death or exile, was that of homicide. As in modern societies, homicide was understood to be a flagrant violation of the civic right to life and person and was viewed with extreme seriousness. However, there is one very important distinction to be drawn, which is that in the Athenian legal system, homicide fell within the domain of private law and was therefore actionable by way of a civil suit (*dikê*). This reflects a crucial difference between the way in which ancient and modern societies have understood the right to life, and indeed the role of the state in upholding that right. In a modern society, homicide falls within the domain of criminal law and is the responsibility of the Crown or State to prosecute. That is because in modern criminal justice systems, the state is charged with the safeguarding of the inalienable human rights of its citizens. In Athens, by contrast, the crime of homicide was understood to be a private liability which lay within the domain of civil plaint. This was not always the case. Public actions for homicide were also permissible as and when the matter was conceived as a liability to the city, such as the case against Agoratus for homicide shortly after 403 BC, when the defendant was prosecuted by a public process called *endeixis* for a partisan crime against the democracy in the days of the

[65] For the semantic ranges of these terms, with reference to earlier scholarship, see Harris 2016, 8-12.
[66] See, for example, Millett 1991.
[67] Wolff 1957. A more recent defence of that view can be found at Carawan 2006.

oligarchic regime by denouncing leading citizens to the Thirty Tyrants and bringing about their deaths (Lys. 13). Under ordinary circumstances, however, homicide was a private delict, and it lay with the kin of the deceased to bring the killer to justice in the courts. The earliest law on record dates from the second half of the seventh century BC, the Draconian law on homicide, re-inscribed on stone in the last decade of the fifth century at a time when the laws of Athens were collectively being republished (*IG* i^3 104 = ML 86). The stone copy of the law was rediscovered in the first half of the nineteenth century and survives only in partial legibility. As a document, it is one of the most important and fascinating of its kind and has resulted in endless discussion.

Most significantly, the law of Draco clarifies that responsibility for the prosecution of the killer lay with the family of the deceased. We know more about homicide procedure from a wealth of homicide litigation which survives from the fifth and fourth centuries. One of our best sources for the process is the speech of Demosthenes *Against Aristocrates*, which lays out the basic process for homicide trials (D. 23.22-84). Homicide fell into several legal categories. The first and most important was homicide by premeditation (*phonos ek pronoias*), which could include planned as well as intentional homicide, and was tried before the Areopagus.[68] If the defendant left Athens before the conclusion of the trial, he was condemned *in absentia* to permanent exile and his property was confiscated (D. 21. 43). Athenian homicide law drew a distinction between premeditated homicide and homicide without premeditation. If the killing was unintentional but a man nevertheless was held responsible for the death of another, he was tried before a special homicide tribunal called the Palladion ([Arist.] *Ath. Pol*. 57.3; D. 23.71-3) and would go into exile until pardoned by the relatives of the deceased (D. 21.43). A man could plead that he had killed but had done so justly, in which case a separate trial would be heard at the Delphinion ([Arist. *Ath. Pol*. 57.3; D. 23.74-5). Other special cases of homicide were heard at separate courts called the Phreatto and Prytaneion. Despite the differences with modern homicide law, one of the striking similarities is that Athenian law was ready to make careful nuanced distinctions between different categories of homicide based on the question of intentionality and justice. Though by modern standards the process of homicide at Athens looks primitive, in various ways the corpus of homicide law at Athens was remarkably advanced.

Modern treatments of Athenian homicide law have toyed with the idea that homicide justice was predicated in ancient times on the principle less of justice than of vengeance. That assumption was enshrined in the seminal study of Douglas MacDowell, entitled *Athenian Homicide Law*, which argued that the restraint on homicide was less about justice than about vendetta, deterrent and pollution.[69] Since MacDowell, six major studies of Athenian homicide law have been published, which have in different ways re-assessed some of the claims made by MacDowell.[70] Most significantly, MacDowell assumed that cases of homicide could be brought by plaintiffs other than the relatives of the deceased, a view which since has rightly been rejected. As Harris has shown more recently, the claim that homicide incurred pollution in a religious sense wins little support in the ancient evidence going back as far as the Homeric poems, and so the idea that religion itself provided a deterrent against unlawful killing outside the framework of legal justice has become more

[68] Harris 2013, 182-9; *contra* Stroud 1968 and Wallace 1989, 125.
[69] MacDowell 1963, 1-8, 141-50.
[70] Tulin 1996; Carawan 1998; Phillips 2008; Eck 2012; Pepe 2013.

and more difficult to defend.[71] Nevertheless, it is also true that ancient communities did associate blood on the hands with defilement, and this belief seems to have grown stronger as time went on, as a recently published inscription from Thyateira in Asia Minor illustrates.[72] But unlike MacDowell, who understood religious purification as a central component of legal procedure for homicide in the archaic and classical periods, recent scholarship has begun to marginalise the religious element in homicide law. The emphasis of Athenian law to keep all citizens safe from homicide is clear from a reference in Demosthenes' speech *Against Leptines*, which states that the most important goal of the law was to prevent people from killing one another (D. 20.157). Though vengeance is still seen by many to have been a prime motive for homicide litigation, the principle of justice ruled that a distinction was to be drawn between lawful and unlawful killing (see, for example, Lys.1.1), a distinction which was specified in most Greek communities, democratic or otherwise.

There is still much work to be done on Athenian homicide law, where our knowledge remains incomplete and inconclusive. Modern discussion has been bedevilled by misleading anthropological assumptions about ancient law and justice, as well as by questionable readings of the law on stone, edited by Ulrich Köhler in 1867, whose reading of line 11 was problematic and has recently been held up to question.[73] Athenian notions of the rule of law, and what it meant to live in a community governed by the law, were different from ours in various important respects but, as argued here, it is crucial not to overstate those differences. Law and democracy were two sides of the same coin. As Aristotle recognised in the *Politics*, once the rule of law breaks down in a community, the survival chances of that community are slim. Democracy at Athens was possible only because the law reigned supreme. If Athens had been lawless, as some modern historians have claimed, it would rapidly have slid into political chaos and anarchy, as the disastrous interlude of the Thirty Tyrants in 404/3 BC indicates, when the authority of the courts was suspended and the state officials acted without reference to legal principle (X. *HG* 2.3.11; see Chapter 2 in my book forthcoming on the Athenian amnesty). The main objective of the legislators of 403 BC, when democracy was restored, was to re-enshrine the rule of law at Athens. A broader commitment to universal human rights was lacking, and in that sense, it might be said that the ancient polity did not match modern democratic systems in terms of liberal norms and values. But Athenian democracy was the cornerstone of civic freedom and dignity. Its contribution to the evolution of the modern democratic principle must be acknowledged and recognised, even if there remain key differences with modern systems.

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[71] Harris 2015. On the use of *atimia* in early Greek law, see Joyce 2018b.

[72] Malay and Petzel 2017.

[73] Köhler 1867, followed by Stroud 1968 and Gagarin 1981, both of whom argued that the seventh-century law on homicide began with the adverbial connective καί, which they understood to been 'even'. Harris (2016b; 2018, 219) has recently objected against the epigraphical reading which is insubstantially grounded.

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