

DEMOCRACY AND THE RULE OF LAW IN CLASSICAL ATHENS

This volume brings together essays on Athenian Law by Edward M. Harris, who challenges much of the recent scholarship on this topic. Presenting a balanced analysis of the legal system in ancient Athens, Harris stresses the importance of substantive issues and their contribution to our understanding of different types of legal procedures. He combines careful philological analysis with close attention to the political and social contexts of individual statutes. Collectively, the essays in this volume examine the relationship between law and politics, the nature of the economy, the position of women, and the role of the legal system in Athenian society. They also show that the Athenians were more sophisticated in their approach to legal issues than has been assumed in the modern scholarship on this topic. At the same time, several of the studies warn against importing anachronistic ideas into the analysis of Athenian Law.

Edward M. Harris is Professor of Classics and Ancient History at the University of Durham. A scholar of Athenian Law, economy, and social history, he is the author of *Aeschines and Athenian Politics* and coeditor (with Lene Rubinstein) of *The Law and the Courts in Ancient Greece*.

DEMOCRACY AND
THE RULE OF LAW
IN CLASSICAL ATHENS

ESSAYS ON LAW, SOCIETY,
AND POLITICS



EDWARD M. HARRIS
UNIVERSITY OF DURHAM



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TO ARIELLE

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PREFACE



SEVERAL YEARS AGO COREY BRENNAN SUGGESTED THAT I COLLECT A NUMBER OF my essays on Athenian Law and publish them in a single volume. With his encouragement, I submitted a proposal to Cambridge University Press, which agreed to publish this volume. I have not included every article that I have published on the subject of Athenian Law, but only those that fall into one of four general categories: Constitutional Law, Law and Economy, Law and the Family, and Aspects of Procedure. In general, these essays focus on specific laws and legal procedures and attempt to place them in their political, social, and economic contexts. They therefore pay less attention to the ways in which the Athenians interpreted, applied, and enforced the law in their courts. This topic will be the subject of another book on *The Rule of Law in Action: The Nature of Litigation in Classical Athens*. Aside from a few minor stylistic changes, I have not revised the essays. I have tried to take account of recent work on Athenian Law in the sections entitled “Afterthoughts” that follow most of the essays.

I am writing these words at the University of Durham in the United Kingdom, but the work on these essays was done while I was a member of the Department of Classics at Brooklyn College and the Graduate School of the City University of New York. I could never have done this work without the encouragement and support of my former colleagues in New York, for which I am deeply grateful. I wish to express my thanks to Dee Clayman, Roger Dunkle, Hardy Hansen, Ellen Koven, Gail Smith, Philip Thibodeau, John van Sickle, Craig Williams, Donna Wilson, Howard Wolman, and Peter Zaneteas.

Several scholars who helped me by reading over drafts of these essays and offering advice are thanked in the notes, but I would like to single out two people who were especially supportive during the past decade: Fred Naiden and Lene Rubinstein.

I have been very fortunate to work with Beatrice Rehl at Cambridge University Press, Katie Greczylo at TechBooks, and Brian Bowles. I deeply appreciate their kindness, efficiency, and patience. This volume has also benefited from the perceptive comments of the two anonymous readers for the Press.

x PREFACE

The work on this book was completed while I was an NEH Fellow at the American School of Classical Studies in Athens. I would like to thank the NEH for its support and Steven Tracy, the Director of the School, and his staff for making my stay in Athens both productive and enjoyable.

I would also like to express my gratitude to my family for their support and understanding over the past two decades.

My interest in law has been part of a family tradition: my great-grandfather and grandfather on my mother's side were lawyers, and my father was General Counsel at Pitney Bowes until his retirement in 1988. I think there was an expectation that I too would go to law school, but something seems to have gone wrong, and I ended up teaching Classics and Ancient History. But the family tradition persists: my daughter is now studying to become a lawyer. This book is dedicated to her.

Durham, November 2005

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- I.1) “Solon and the Spirit of the Law in Archaic and Classical Greece” was originally published in J. Blok and A. Lardinois, eds. *Solon of Athens: New Historical and Philological Approaches*. Leiden: Brill, 2006.
- I.2) “Pericles’ Praise of Athenian Democracy” was originally published in *Harvard Studies in Classical Philology* 94 (1992) 57–67.
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- IV.2) “How to Kill in Attic Greek: The Semantics of the Verb (ἄπο)κτείνειν and Their Implications for Athenian Homicide Law” was originally published in E. Cantarella and G. Thür, eds. *Symposion 1997: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*. Boehrlau: Cologne, Weimar, and Vienna, 2001: 75–88.
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I would like to thank the publishers of these books and journals for permission to reprint these essays in the present volume.

ABBREVIATIONS



AESCHIN.	Aeschines
AESCHYLUS	Aeschylus
<i>EUM.</i>	<i>Eumenides</i>
<i>PR.</i>	<i>Prometheus Bound</i>
<i>SUPPL.</i>	<i>Supplices</i>
AND.	Andocides
AR.	Aristophanes
<i>ACH.</i>	<i>Acharnenses</i>
<i>AV.</i>	<i>Aves</i>
<i>EC.</i>	<i>Ecclesiazousai</i>
<i>EQ.</i>	<i>Equites</i>
<i>LYS.</i>	<i>Lysistrata</i>
<i>NUB.</i>	<i>Nubes</i>
<i>PL.</i>	<i>Ploutos</i>
<i>RAN.</i>	<i>Ranae</i>
<i>TH.</i>	<i>Thesmophoriazousai</i>
<i>VESP.</i>	<i>Vespae</i>
ARIST.	Aristotle
<i>ATH. POL.</i>	<i>Constitution of the Athenians</i>
<i>NE</i>	<i>Nicomachean Ethics</i>
<i>RHET.</i>	<i>Rhetoric</i>
<i>POL.</i>	<i>Politics</i>
DEM.	Demosthenes
DIN.	Dinarchus
D. H.	Dionysius of Halicarnassus
<i>AMM.</i>	<i>Letter to Ammaeus</i>
D. S.	Diodorus Siculus
EUR.	Euripides
<i>HIPP.</i>	<i>Hippolytus</i>
<i>IT</i>	<i>Iphigenia among the Taurians</i>
HARP.	Harpocration

xiv ABBREVIATIONS

HDT.	Herodotus
HOM.	Homer
IL.	<i>Iliad</i>
OD.	<i>Odyssey</i>
HYP.	Hyperides
ATH.	<i>Against Athenogenes</i>
DEM.	<i>Against Demosthenes</i>
EUX.	<i>Against Euxenippus</i>
IS.	Isaeus
ISOCR.	Isocrates
LYCURGUS	Lycurgus
LEOCR.	<i>Against Leocrates</i>
LYS.	Lysias
MEN.	Menander
PAUS.	Pausanias
PL.	Plato
AP.	<i>Apology of Socrates</i>
LG.	<i>Laws</i>
POL.	<i>Politicus</i>
R.	<i>Republic</i>
PLB.	Polybius
PLU.	Plutarch
DEM.	<i>Demosthenes</i>
MOR.	<i>Moralia</i>
TH.	Thucydides
XEN.	Xenophon
ATH. POL.	<i>Constitution of the Athenians</i>
CYR.	<i>Cyropaedia</i>
HELL.	<i>Hellenica</i>
LAC. POL.	<i>Constitution of the Spartans</i>
MEM.	<i>Memorabilia</i>
BGU	<i>Aegyptische Urkunden aus den königlichen Museen zu Berlin. Griechische Urkunden.</i> Berlin 1895–.
FGRHIST	F. Jacoby, <i>Die Fragmente der griechischen Historiker.</i> Leiden 1957–.
ICRET	M. Guarducci, <i>Inscriptiones Creticae I–IV.</i> Rome 1935–50.

- IERYTHRAI* H. Engelmann and R. Merkelbach, *Die Inschriften von Erythrai und Klazomenai*. Bonn 1972.
- IG* $\dot{\iota}^3$ D. M. Lewis, L. Jeffery, and E. Erxleben, *Inscriptiones Atticae Euclidis anno anteriores*.³ Berlin 1981–98.
- IG* *Inscriptiones Graecae*. For bibliographical details see L-S-J p. xlii.
- LIMC* *Lexicon Iconographicum Mythologiae Classicae*, Zürich and Munich 1981–99.
- L-S-J* Liddell/Scott/Jones, *A Greek-English Lexicon*.⁹ Oxford 1940.
- P. OXY.* *Oxyrhynchus Papyri*. London 1898–.
- SEG* *Supplementum Epigraphicum Graecum*.
- SIG*³ W. Dittenberger, *Sylloge Inscriptionum Graecarum*. Leipzig 1915.

INTRODUCTION



THIS VOLUME BRINGS TOGETHER ESSAYS THAT I HAVE PUBLISHED ON ATHENIAN LAW over the past two decades. As a whole, I believe the essays contribute not only to our understanding of Athenian Law, but also to the study of the constitutional history of democratic Athens, the nature of the Athenian economy, and the position of women in Athenian society. The essays are also unified in terms of their method. In contrast to much recent work that emphasizes questions of procedure, these essays turn our attention to the substantive aspects of Athenian Law. This approach places greater stress on careful philological analysis of key terms in statutes as well as a more sophisticated awareness of legal issues. Many modern scholars give the Athenian legal system low marks and compare it unfavorably with Roman Law. These essays aim in part to show that the Athenians were more sophisticated in legal matters than many have assumed. On the other hand, one should not exaggerate the level of development attained by Athenian Law. Several of the essays therefore warn against importing anachronistic ideas (e.g., Roman ideas about real security, the notion of corporation, the concept of rape, and the modern distinction between larceny and embezzlement) into the study of Athenian Law.

But these essays do not concentrate exclusively on the minutiae of individual statutes or on narrow technical questions. Many of the essays attempt to place Athenian laws in their broader political, economic, and social context. The essays in the first section on “Law and Constitutional History” examine the laws of Athens in the light of Athenian ideas about the role of law in preventing tyranny and about the relationship between the rule of law and democracy. The essays in the second section on “Law and Economy” show how the Athenians developed the legal infrastructure needed to support the growth of formal credit relations, which formed the basis of a rudimentary market economy. As a whole, the essays of this section question assumptions held by several scholars about the “primitive” nature of the Athenian economy. Several of the essays in the third section concerning “Law and the Family” deal with the question of women’s agency in Athenian society. The first two essays examine not only the legal procedures that could be used in cases of sexual violence, but also how social attitudes about women shaped

these statutes and the way that they were enforced. Another pair of essays in this section look at the restrictions on women's financial activities and to what extent they actually limited women's role in economic decisions. The essays in the fourth section on "Aspects of Procedure" challenge a recent view that the Athenian legal system did not aim to provide a set of substantive norms but only to provide an arena for citizens (primarily rich and powerful ones) to pursue private feuds. The first two essays demonstrate the importance of analyzing the substantive aspect of Athenian laws and show how the substantive differences shape their procedural aspect. The last essay in this section shows that the Athenians had serious reservations about citizens who abused the legal system to pursue private vendettas and established severe penalties for those who did so.

I. LAW AND CONSTITUTIONAL HISTORY

Several scholars have assumed that the Greeks in general and the Athenians in particular considered popular rule incompatible with *eunomia* or "the rule of law." For instance, Ostwald (1986) and Hansen (1974) argue that the Athenians upheld the doctrine of popular sovereignty in the fifth century BCE, but after the Peloponnesian War they abandoned this ideal and upheld the sovereignty of law. Ober (1989), on the other hand, thinks that the rule of law was an oligarchic slogan promoted by conservative philosophers like Aristotle and was contrary to democratic ideology. Yet Sealey (1987) claims that the Athenians never aimed at achieving democracy, but instead tried to achieve a republic ruled by law.

Several of the essays in this section question the assumption held by these scholars that the Athenians found democracy and the rule of law antithetical. They show in part that the Athenians believed that the two ideals went hand in hand, with each supporting the aims of the other. The first two essays show how the Athenians sought to achieve the rule of law by dividing the functions of government and by creating a system of checks and balances. The essay on *Antigone* turns to the question of the sources of legitimacy and the relationship between law and religion in democratic Athens and studies the figure of the tyrant, the man who is the antithesis of the rule of law. The final essay shows how the Athenians used the laws about ownership and the distribution of public funds to balance the differing interests of the rich and the poor and promoted a democratic ideal of social harmony between classes.

The first essay on “Solon and the Spirit of the Law in Archaic and Classical Greece” analyzes the Greek conception of the rule of law found in Solon’s poetry and in the laws of Archaic and Classical Athens, and falls into two parts. The first part examines the way the Near Eastern lawgivers such as Hammurabi envisioned their role as lawgivers and their relationship to the law and contrasts it with the different approach of Solon and other Greek lawgivers. Such a comparison helps to illustrate what is distinctive and original about Solon’s view of his task. Hammurabi and other Near Eastern lawgivers were monarchs; establishing laws for their kingdoms was just one of their tasks. They did not hand down their laws to the people for them to administer. The laws they created were their laws and demonstrated their justice and right to hold power. They were accountable to the gods alone, not to other mortals. Solon, by contrast, viewed monarchy as tyranny, the very opposite of the rule of law. Solon did not impose his laws from an impregnable position as ruler, but portrayed himself as a neutral arbiter who stands between competing factions. Instead of using the law to gain power or justify his position, Solon distributed power to various parts of the community to administer his laws, then departed for exile. Other Greek lawgivers were often outsiders who did not, or could not, hold power in the *poleis* for which they created their laws.

The second part of the essay shows how an understanding of the different approach taken by the Greek lawgivers helps to explain why Greek laws took on a different shape and form from those of the Near Eastern kings. The laws of the latter do not generally indicate who has the power to punish various offenses because the laws belong to the king and are his to administer. By contrast, the laws of Solon and of other early Greek *poleis* often go into detail about which bodies or officials have the power to enforce the laws. To prevent tyranny, the laws of Solon and of other Archaic *poleis* often impose term limits or divide powers among different magistrates to prevent anyone from accumulating too much power. To curb abuses of power and the failure to uphold the law, the statutes of Greek *poleis* often contain penalties for magistrates. These two features are absent from the laws of the Near Eastern kings. Finally, several early Greek laws contain entrenchment clauses to ensure that the laws remain stable and are not overturned by those in power; such clauses are not found in the laws of Hammurabi and other Near Eastern kings. These types of clauses are found not only in laws from democratic communities, but also from aristocratic *poleis*. Despite their political differences,

therefore, the Greeks were united by a common belief in the rule of law, which is reflected in the shape of their statutes.

Modern political thought divides government into three parts: executive, legislative, and judiciary. Each part performs different tasks and to some extent operates on different principles. All three parts form a system of checks and balances, which ensures political stability. The next essay in this section, “Pericles’ Praise of Athenian Democracy,” analyzes a passage from Thucydides (2.37) to show how the Athenians also divided their government into three parts, but in a different way. According to Aristotle and other authors, these parts were the deliberative (the Council and Assembly), the magistracies, and the courts. The deliberative combined some of the functions of the modern legislative (e.g., passing laws) and executive branches: it decided all major questions regarding public administration and held elections for office. It operated on the principle that the vote of the majority was binding on the entire community. The courts dispensed justice for individuals and followed the principle that all men are equal before the law. In Athenian democracy there were two methods of appointing magistrates: election and appointment by lot. When electing officials, the Athenians did not consider social class, but the candidate’s ability. Offices filled by lot were a way of allowing less wealthy citizens to participate in public administration. This essay shows that Aristotle’s division was not a philosophical idea, but was developed by the Athenians themselves as early as the fifth century BCE. It shows in greater detail how the Athenians implemented the Solonian ideal of distributing power to parts of the community and avoiding the concentration of power, which helped to promote political stability.

The third essay in this section, “Antigone the Lawyer, or the Ambiguities of *Nomos*,” examines the problem of legitimacy (what makes a given rule a law [*nomos*]?) and the relationship between democracy and the rule of law in Classical Athens through a study of Sophocles’ *Antigone*. The essay starts with a review of the basic features of a law, then studies the sources of legitimacy in Greek thought. It shows there was no conflict between divine and human law in Classical Athens: the laws of the gods were the laws of the *polis* and vice versa. The conflict between Antigone and Creon in Sophocles’ play is therefore not between two types of law, but two conceptions of law. Antigone and her fiancé Haemon believe that a *nomos* requires the approval of the gods and the consent of the community. For them there is no conflict between the rule of law and popular sovereignty; on the contrary, the two go hand in hand. Since Creon’s order forbidding the burial

of Polynices lacks the support of both the gods and the community, it is only the order of a magistrate and does not supersede the universal law that requires burial for all free persons. Creon, on the other hand, thinks a *nomos* is whatever the ruling power decides. His view is close to that of the Near Eastern monarchs, who are discussed in the first essay. But toward the end of the play, Creon recognizes that he must follow the “established laws,” those that fulfill all the criteria of legitimacy.

The following pair of essays, “How Often Did the Athenian Assembly Meet?” and “When Did the Athenian Assembly Meet? Some New Evidence,” deal with a central issue in constitutional law, namely, the number of meetings held by the Assembly, where all major decisions were made. M. H. Hansen has argued that in the fifth century the Athenians based their constitution on the idea of popular sovereignty and made the Assembly the supreme body. In the fourth century, by contrast, they subordinated the Assembly to the law courts and upheld instead the ideal of the rule of law. One of Hansen’s main arguments for this view is that around 350 the Athenians limited the number of times the Assembly could meet to four times a prytany. Since they could not call extra meetings, they tended to save one or two meetings for late in the prytany in case an emergency arose. This reform was part of a movement to limit the power of the Assembly in comparison with that of the lawcourts. Hansen also argued that the ancient scholia that defined the term *ekklesia synkletos* as an extra, emergency meeting of the Assembly were not reliable. In his view such a meeting was one of the four regular meetings called on short notice. The first essay analyzes the evidence for the term *ekklesia synkletos* and shows that there is no reason to doubt the meaning found in the scholia. The second essay examines one of these scholia that states the Assembly normally met on the eleventh, around the twentieth, and around the thirtieth of every month. A study of all the preserved prescripts in Athenian decrees in the Classical and Hellenistic periods proves this information to be roughly correct. Taken together, these essays support the conclusion of “Antigone the Lawyer” that there was no shift from popular sovereignty to the rule of law around 400 BCE. On the contrary, the Athenians considered the two ideals to be perfectly compatible with one another. In fact, the Athenians believed that democracy was the only form of government where the rule of law could exist.

The final essay in this section, “Demosthenes and the Theoric Fund,” studies the laws about the distribution of public funds in the fourth century and the way the laws balanced the interests of the wealthy and average citizens. According to

the traditional scholarly view, there was a struggle in the middle of the fourth century BCE between the supporters of Eubulus and those of Demosthenes: whereas Eubulus allegedly advocated the distribution of public wealth through the Theoric Fund to poor citizens, Demosthenes wanted to use the money in this fund to pay for military campaigns to stop Macedonian aggression. A detailed examination of the passages from Demosthenes' speeches used to support this view shows that he did not attack the Theoric Fund, but actually defended its role in promoting social harmony and was later elected to administer the fund. What Demosthenes objected to were attempts to spend money from the Military Fund to pay for festivals and other nonmilitary expenses. The traditional view of a conflict between Eubulus and Demosthenes about the use of public funds therefore rests on no solid foundation. The final part of the essay shows how the laws of Athens played a major role in reducing social tensions by protecting private property, which provided security for the wealthy against arbitrary confiscation, and by distributing public revenues through the Theoric Fund to benefit the less affluent. This essay calls into question the view that social harmony was achieved in Classical Athens by the people's control of political discourse. On the contrary, the Athenians attempted to reduce class tensions through compromises between competing interests that were worked out through legislative procedures. What united the rich and the poor was a common belief in the rule of law, which protected the agreements contained in the laws.

II. LAW AND ECONOMY

The second section examines several aspects of the connections between law and economy in Classical Athens. The first essay, "Law and Economy in Classical Athens," serves as a general introduction to the section. It starts by sketching the basic features of the Athenian economy and discusses the level of specialization of labor and its implications for the development of markets and commerce. Because the Athenian economy grew to the point where transactions moved beyond the traditional channels of family, neighbors, friends, and patronage, it created the need for market exchange and for rules to regulate that type of exchange. The first part of the essay outlines many of the laws devised to regulate commerce, promote trade, and resolve disputes between debtors and creditors. The second part is a case study of the demosthenic speech *Against Dionysodorus*, which studies how these regulations worked in practice.

The next two essays study the rules about real security, which is crucial for the development of credit relations in a market economy. When a creditor lends money to a borrower, he needs some assurance that the borrower will repay the loan. One way of providing this assurance is for the borrower to set aside some property as security for repayment. Earlier scholars believed that the Athenians, like the Romans, had at least two forms of real security, *prasis epi lysei* (where the lender acquired ownership of the security) and *hypotheke* (where the borrower retained ownership). The second essay in this section, “When Is a Sale Not a Sale? The Riddle of Athenian Terminology for Real Security Revisited,” shows that the analogy from Roman Law is misleading. The Romans could distinguish between two or more forms of security because they possessed formal modes of conveyance and possessory interdicts. Because the Athenians did not have either of these legal mechanisms, they could not make such distinctions and therefore from a legal point of view had one basic form of security. The lack of formal modes of conveyance also made it impossible for the Athenians to answer the question “who owned the security?” during the life of a loan. But despite these drawbacks, the Athenians were still able to carry on complex transactions involving real security and thus provide an important part of the legal framework needed to develop market relations.

The third essay, “*Apotimema*: Athenian Terminology for Real Security in Leases and Dowry Agreements,” carries forward the study of Athenian terminology for real security and modifies slightly one of the conclusions of the previous essay. Scholars have believed that *apotimema* was a different form of security from the ones normally used in loans though they have not been able to agree how and why it differed. This study demonstrates that *apotimema* is a general term for real security, which could be applied to property pledged for any kind of payment whether it be in a rental, dowry, or loan agreement. This makes it possible to understand an important law about real security preserved at Demosthenes 41.7. This law recognized the rights of creditors to property taken in lieu of repayment. It therefore served to provide a legal basis for the terms of real security and helped to support economic development of credit relations. Finley believed that the Athenian economy had reached only a primitive stage of development and as a result did not have laws about real security. The findings of this essay indicate that his view requires considerable modification.

The fourth essay in this section, “The Liability of Business Partners in Athenian Law,” helps us to understand how, despite the absence of modern notions of

legal personality, the Athenians were still able to develop the legal arrangements necessary to carry on overseas trade. It has long been recognized that Athenian Law, like Roman Law, did not develop the modern notion of corporation or partnership. This meant that when one lent money or made a contract, it was always to an individual or several individuals, not to an abstract legal entity in which several individuals held shares and which was represented by officers appointed by the shareholders. This created a potential obstacle in maritime loans where the lender provided money to a merchant or shipowner who sailed from Athens to purchase goods in a foreign port. Once the borrower left Athens, the lender might not be able to track him down if he defaulted on the loan. To get around this obstacle, the Athenians devised contracts where the creditor would make the loan to a pair of borrowers. One of the borrowers would sail with the ship and cargo, while the other would remain in Athens. Since the contract specified that repayment could be demanded from either or both borrowers (joint and several liability), the creditor received the assurance that he could recover his loan from the borrower who stayed behind if the other borrower never returned.

The fifth essay, “Did Solon Abolish Debt-Bondage?,” challenges a long-held view that Solon abolished the practice of debt-bondage in Archaic Athens. Finley went so far as to argue that Solon’s measure was actually responsible for the rise of chattel slavery in democratic Athens. The first part of this essay draws a distinction between enslavement for debt, where the defaulting debtor becomes the slave of the creditor, and debt-bondage, where the debtor remains under the creditor’s control only until he pays off his debt. This distinction is then traced through the Near Eastern lawcodes down to the lawcode of Gortyn in the fifth century BCE. The second part of the essay examines the language of Solon’s law and demonstrates that it must outlaw enslavement for debt, not debt-bondage. The third part collects several passages that reveal that the practice of debt-bondage continued to exist in Classical Athens, while the fourth part studies Solon’s poetry to show that his reforms affected people who fell into slavery, not into debt-bondage. The final part of the essay ties in with the conclusion of “Demosthenes and the Theoric Fund” and shows how the laws of Athens balanced the interests of creditors and debtors to provide the legal framework necessary for the development of market relations. This balance of interests also contributed to preserving social peace and reducing class tensions in Classical Athens.

The final essay in this section, “Notes on a Lead Letter from the Athenian Agora,” draws attention to the position of slaves in the Athenian economy. A few

years ago, D. Jordan published a lead letter dating from the fourth century BCE found in the Athenian Agora. The letter was written by a man named Lesis working in a forge who complains about being mistreated and was sent to the writer's mother and a man named Xenocles, who are asked to help. Jordan believed that the writer was a free apprentice, but a careful analysis of the letter's contents shows that Lesis must be a slave entrusted by his masters to a smith. The letter thus sheds valuable light on the condition of slaves in the Athenian economy and how the law dealt with the treatment of slaves. In contrast to the protections afforded free debtors, slaves were vulnerable to exploitation and abuse. The letter thus reminds us of the limits to the rule of law and democratic ideals in Classical Athens.

III. LAW AND THE FAMILY

The essays in the third section examine how the laws of Athens regulated matters involving women and the family. The first two essays study the laws concerning rape and seduction and show that although the Athenians might punish rape with considerable severity, they tended to evaluate acts of sexual violence in terms of the intent of the aggressor and paid less attention to the consent or lack of consent of the female victim. The next essay studies the rules restricting women's ability to conduct financial transactions and how women still managed to play a role in the management of the household despite the existence of these rules. The final two essays deal with the ability of minors to give testimony and the deme registration of adopted children who returned to the household of their natural parents.

In a speech written by Lysias, a defendant states that the Athenians considered the seduction of a wife a worse crime than rape. This conclusion has startled some scholars, but none has questioned the reliability of his description of the legal remedies for these offenses. The first essay in this section, "Did the Athenians Regard Seduction as a Worse Crime than Rape?," examines the procedures and penalties for those who seduced women and for those who committed rape and shows that Lysias' account is highly misleading. First, the laws about homicide allowed the man who caught someone on top of his wife, mother, daughter, sister, or concubine to kill him without penalty – this provision applied to both rapists and seducers. Second, it was possible to bring a *graphe hybreos* (public action for outrage) against those who committed rape; the penalty on conviction for this offense might be death. The presentation of the laws by Lysias' client is therefore partial and selective, designed for the rhetorical needs of his case. This study

serves as a cautionary lesson about the interpretation of statutes found in the Attic Orators.

The next essay, “Did Rape Exist in Classical Athens? Further Reflections on the Laws about Sexual Violence,” takes up an issue neglected in the previous one: the differing attitudes toward sexual violence in Classical Athens. The sources for Athenian social life reveal a startling dichotomy: in some cases acts of sexual violence are severely punished, yet in others, men who commit rape are treated leniently, and gods who have sex with mortal women against their will incur little or no blame. This dichotomy is all the more striking when one contrasts the ancient Greek attitude with the modern punishments for rape, which treat the crime with the utmost severity in all cases. A first step toward understanding the difference between ancient and modern attitudes is to observe that when the Greeks condemn sexual violence, they call it *hybris*, a word that is not used when such acts receive lenient treatment. An understanding of this concept is therefore key to explaining ancient attitudes. The term *hybris* has two aspects: a subjective side (the mental state of the aggressor) and an objective side (the harm done to the victim). The person who commits *hybris* does so in a certain state of mind, which is the opposite of *sophrosyne*, the Greek virtue of self-control and moderation. The man acting with *hybris* displays an inability to control his passions and desires, which causes him to have contempt for other people and for the law. This behavior often results in acts that bring dishonor to the victim and lower his or her standing in the eyes of society. *Hybris* also causes the victim to feel angry and humiliated. Acts of sexual violence are condemned when they are committed with *hybris*, that is, out of a desire to indulge one’s own pleasure and to humiliate the victim. However, a man who forces a woman to have sex out of love and desire is treated more leniently provided he is willing to marry the victim and thus remove any taint to her reputation. When gods have sex with mortal women against their will, they do not do it to cause pain and dishonor, but to give them remarkable offspring or some other honor. And in some cases sexual violence is used as a justified punishment for slaves or for the women of hostile cities. Thus, the Athenians and other Greeks did not evaluate acts of sexual violence from the point of view of the woman, but according to the male’s intention. If his intention was to humiliate, he was harshly punished; if not, he was treated less severely.

The third essay, “Women and Lending in Athenian Society: A *Horos* Re-Examined,” studies the restrictions placed on women’s activities in the economic sphere and the impact they had on their ability to conduct financial transactions.

The Athenians had a law that forbade women to conduct transactions involving more than a *medimnus* of barley, a relatively small amount. Yet in several cases we find women making loans in excess of this amount. This essay studies two of these cases to show how women might take the initiative in financial transactions despite the limits placed on them by law. The evidence for the first case is found in an inscription on a *horos* recording the terms of an *eranos* loan. In this kind of loan several people made contributions to a *plerotes*, a person who collected these amounts, turned the loan over to the borrower, and then administered the terms of the loan. On the *horos* in question the person who collected the contributions of 500 drachmas and made the loan was a woman (*plerotria*), but the person who received the security from the man acting as surety for the lender was a man. The *horos* illustrates how a woman could and did handle financial transactions involving substantial amounts, but from the legal point of view it was always a man who contracted the loan and had the right to enforce its provisions. This helps us understand a loan made by a woman attested in Demosthenes 42, which has puzzled several scholars. The speech indicates that a loan of two thousand drachmas was made by the wife of Polyuctus, but a careful reading of the text also reveals that the loan was made from her husband's property and formed part of his estate at his death, not hers. These two transactions enable us to understand how the law restricting women to small transactions worked in practice: it did not stop them from participating in financial matters, but it required that they do so with the consent of men. I have also included a brief article published with Kenneth Tuite, "Notes on a *Horos* from the Athenian Agora." This article provides a new reading of one line of the *horos* (based on autopsy of the stone), which confirms one of the points in the previous essay, and a revised interpretation of one phrase in the *horos* based on some evidence I overlooked in the original publication.

The fourth essay, "The Date of Apollodorus' Speech against Timotheus and Its Implications for Athenian History and Legal Procedure," examines the rights of male minors in Athenian courts. In the past scholars have assumed that Athenian males could not testify in court until they reached the age of majority at eighteen. On the basis of this assumption, Arnold Schaefer dated Apollodorus' *Against Timotheus* ([Dem.] 49) to the year 362/61 because Apollodorus' brother Pasicles, who testified at the trial, did not become eighteen until that year. But there is no evidence that males under the age of eighteen were barred from testifying. On the other hand, Apollodorus could not have delivered his speech against Timotheus to

recover loans made from his father's bank after Pasicles became eighteen because he relinquished his interest in the bank at that time. Finally, Apollodorus could not have brought a suit against Timotheus in 362/61 because the general was away from Athens at the time. The speech must therefore have been delivered before 366/65 or earlier when Pasicles was younger than eighteen. A correct dating of the speech shows that male minors could testify in court and that there was no connection between the right to testify and citizen status. Indeed, we know that foreigners were also allowed to appear as witnesses.

The section concludes with a "A Note on Adoption and Deme Registration." The laws of Athens allowed a man without legitimate offspring to adopt a son to provide himself with an heir who could take over his property at his death. The adopted son then relinquished all rights of inheritance in the household of his natural father. If the adopted son married and left an heir in the household of his adoptive father, however, he could return to the household of his natural father and regain his rights as heir. The laws of Athens also required that a father register his son in his deme as soon as he reached the age of majority. But in what deme was an adopted son who returned to his father's household registered, that of his adoptive father or that of his natural father? This essay studies the evidence found in Demosthenes 44 to show that the adopted son was registered in the deme of his adoptive father and remained registered there even if he returned to the household of his natural father. This enables us to explain how Clearchus, the son of Nausicles (*IG* ii² 1629, lines 707–9), could become his father's heir yet be registered in a different deme from that of his father.

IV. ASPECTS OF PROCEDURE

The essays in the fourth section address various aspects of legal procedure. The first two stress the importance of examining substantive issues when trying to explain varying legal procedures for different offenses. To explain the different procedures for theft, one must first analyze the term *ep'autophoro* ("red-handed" or "obviously guilty"), which is found in the law for one of these procedures. In similar fashion, to understand how the Athenians dealt with those who plotted to commit murder, it is necessary to study the meaning of the term *apokteinein* (to kill) and its substantive implications. The final essay looks at the general intent of the procedures established to punish offenses against the community. Some recent scholars have argued that these procedures were used mainly to pursue