

Athenian Democracy and Legal Change

MELISSA SCHWARTZBERG *The George Washington University*

The ancient Athenians regarded their ability to modify their laws as a fundamentally democratic trait; indeed, the faculty of “pragmatic innovation” was well known throughout the Greek world and was widely viewed as a key advantage that Athens had over its rival, Sparta. The Athenian commitment to legal change endured despite disastrous consequences at the end of the fifth century, a comprehensive revision of the laws, and the complication of legal procedure in the fourth century. In an apparent paradox, however, the Athenians also used “entrenchment clauses” to make certain laws immutable. Through analysis of entrenched laws and decrees, it is shown that the innovativeness that made Athens enviable also made it a difficult ally; entrenchment enabled the Athenians to make its commitments more credible. Although today entrenchment is typically used to protect crucial constitutional provisions, such as rights, in the ancient world it served a strategic purpose.

Recent work on ancient Athens has complicated, and even demythologized, our understanding of ancient democracy. We no longer view Athens as a simple “direct democracy,” but as a large society with a variety of political institutions and sophisticated legislative procedures. Yet Athens cannot be assimilated to a constitutional democracy any more than it can be reduced to a town hall meeting; because Athens defies easy categorization, though, the insights that Athens affords into the relationship between legal constraints and democratic decision making are richer and more immediately compelling than we might have anticipated.

Ancient Athenians regarded the capacity to change laws, and, generally, to confront contingency with new institutional solutions, as a defining characteristic of their democracy. The Athenians’ ability to respond to problems by modifying their laws was a source of pride, and was widely known throughout the Greek world. Although the Athenians had access to a variety of institutions by which they could have made their laws inflexible, they generally chose not to do so, even in the face of disastrous consequences at the end of the fifth century. The explanation for this choice is found in the Athenian attachment to the progressive ideology of *pragmatic innovation*, the desirability of modifying institutions in light of new information or changing circumstances, a belief that proved remarkably resilient.¹

In apparent contrast to this commitment to mutability, the Athenians occasionally used entrenchment clauses, provisions that make laws unamendable. Why would the Athenians, given their attachment to changeable law, choose to restrict themselves in such a stringent fashion, even prescribing death for those proposing modifications? Through systematic analysis of my collection of Athenian decrees and laws on this question, I demonstrate that the Athenians used entrenchment in highly restrictive contexts: in certain financial decrees and in alliances and treaties.² Although today entrenchment clauses are typically seen in the constitutional context, where they serve to make individual rights and other fundamental institutions unamendable, the Athenians used these provisions exclusively for narrow, strategic purposes in both the international and the domestic contexts, and did not extend them to laws regulating the democracy.

The flexibility of Athens’ laws generated problems for them in the international arena. Potential allies were skeptical of Athenian commitments, given its propensity to change course; indeed, international relations scholars continue to investigate the extent to which democracies are capable of credible commitments (e.g., Gartzke and Gleditsch 2003, Gaubatz 1996, Kennan 1996, and Reed 1997). As a consequence, the Athenians required a device to signal their seriousness to prospective allies and to those who might seek to exploit informational asymmetries, such as financial officers. The use of entrenchment to enhance Athens’ credibility in the eyes of potential allies, however, should be distinguished from the potential use of these devices for “precommitment” more generally (Elster 1984, 2000; Holmes 1995). The Athenians generally did not use entrenchment in the latter sense as a means of self-binding, so that a temporary passion would not

Melissa Schwartzberg is Assistant Professor, The George Washington University, Department of Political Science, 2201 G Street NW, Fungler Hall, Suite 507, Washington, DC 20052 (maschwar@gwu.edu).

I offer particular thanks to Bernard Manin for his close readings of this paper. I also gratefully acknowledge the comments and support of Nathan Brown, Ingrid Creppell, Jon Elster, John Ferejohn, Jennifer Gandhi, Jack Knight, Forrest Maltzman, John McCormick, Pasquale Pasquino, Adam Przeworski, Sebastian Saiegh, Erik Voeten, and Jeremy Waldron. Versions of this paper were presented to graduate seminars at New York University and to the faculty at The George Washington University, and I thank attendees for comments at these sessions. An early version was presented at the Northeast Political Science Association 2000 Annual Meeting, and panelists’ responses aided in the project’s development. I would also like to thank the anonymous reviewers for their insightful criticisms.

¹ The language of pragmatic innovation is not intended to suggest that the Athenians were forerunners of Peirce or Dewey—although some may find commonalities—but instead to affirm the specific and

situational nature of Athenian decision making. In Greek, *pragmata* (pl. noun) means “things,” “matters,” or “deeds” and, in the political realm, “affairs” or “interests.”

² To the best of my knowledge, the only extended treatment of the topic appears in a 1974 article by David Lewis, a late classicist, summarized in Rhodes and Lewis 1997. Rhodes and Lewis 1997 also offers a catalog of decrees of the Greek states, excluding Athens, which includes entrenchment clauses in its index. Alan Boegehold also briefly discusses the use of entrenchment clauses in “Resistance to Change in Athens,” in Ober and Hedrick 1996.

overwhelm them; the single case of such an attempt, I will demonstrate, resulted in the suspension of the entrenchment clause. Entrenchment was instead used as a sign of Athens' grave intent to retain a particular policy, given its propensity to modify other laws. The need for entrenchment in the international arena seems to have persisted into the fourth century, suggesting that Athens required this additional signal despite the presence of procedural checks designed to make legal change more difficult.

The analysis here is broken up temporally, due to the importance of distinguishing between the legal systems of the fifth and those of the fourth centuries. The account of fifth-century institutions focuses on the creation of the ideology of "pragmatic innovation" and the crucial difference between Athens and Sparta in this regard; it is followed by a discussion of the use of entrenchment in the fifth century. After a brief discussion of the revision of laws at the turn of the century, fourth-century legal institutions are addressed, paying particular attention to the philosophic conceptualization of legal change in the period, notably by Plato and Aristotle. This consideration provides the context for a discussion of entrenchment's use in the fourth century, followed by the conclusion, which highlights the importance of Athens for democratic theory and for political science in general. By reexamining Athens, I suggest, two key insights for contemporary democracy come to the fore: the distinctively democratic quality of the capacity to modify law and the limited and strategic purpose that entrenchment may serve for democracies, even in the constitutional context.

FIFTH-CENTURY INSTITUTIONS AND "PRAGMATIC INNOVATION"

Although we know significantly less about fifth-century institutions than those of the fourth century, the general institutional role of the bodies is reasonably well established (Hansen 1991, 27–52; Ostwald 1986). Legislation was purely a function of the Assembly and the Council of 500. The Council deliberated on legislation prior to the Assembly and had important agenda-setting power. Although the council could enact decrees of its own on minor matters (Rhodes and Lewis 1997, 13), the major legislative function of the Council, known as "probouleusis" by modern classicists, can be separated into two types: open and specific *probouleumata* (pl. noun). In an open *probouleuma* (sing. noun), the Council instructs the Assembly to debate a certain issue and, should it be deemed necessary by the Assembly, to pass a decree. A specific *probouleuma* was, in essence, a bill, subject to amendment, if necessary, and to ratification by the Assembly. The creation of *probouleumata* was passed by a single simple-majority decisive vote.

The 500 members were composed of 50 from each of 10 tribes, chosen by lot from those who put themselves forward within the tribe (*ho boulomenos*, or "the one who wishes"). These groups of 50 took turns serving as the prytany (*prytaneia*), the committee of the council that performed the actual function of *probouleusis*.

Each day one member of this prytany would serve as chairman (*epistates*), and a third of the prytany would remain on duty for the entire 24-hour period. From the time of Ephialtes (c. 463/2) until early in the fourth century, the prytany and the chairman would preside at meetings of the Council and of the Assembly. Both citizens and noncitizens could apply to the prytany to bring a motion before the Council, but in general the Council was independent with respect to its decision-making process (although the *stratego*i served as advisors, notably at the time of the Peloponnesian War).

The Assembly met at various points during the period of a given prytany, although the precise number of meetings is controversial (Rhodes and Lewis 1997, 13). All citizens—i.e., all free, adult males satisfying the current Athenian descent requirement—could attend the assembly, and any *probouleuma* approved by a simple majority of the Assembly, even if it contradicted an existing provision, became a *nomos-psephisma* (law-decree), a fully valid law: The hierarchical distinction between the two, crucial to fourth-century legal history, did not exist in the fifth century, and the two terms were used synonymously (Todd 1993, 57). Although the laws were publicly available on stone slabs (*stelai*), the *stelai* were scattered throughout the city in the fifth century, and the revision of prior law by enactment of new legislation was therefore virtually undetectable; to the extent that a procedure for resolving incoherence even existed conceptually, *lex posteriori* seems to have prevailed. Moreover, the absence of jurists was extremely important for the development and practice of law at Athens, especially in the fifth century: Law was exclusively the stuff of amateurs, and the reforms at the turn of the century were designed to remedy some of the incoherence that resulted from the lack of systemization (Todd 1993, 54). This aversion to professionalism in law endured, however: Even in the fourth century, litigants regularly appeal to their amateurism (as in Demosthenes 1935, 54.17).

The difficulty in ascertaining what the law actually was at a given moment was deeply problematic for litigants, and for the jury courts as a whole, naturally; the absence of a police force, and the reliance on private individuals for prosecution, lent an additional dimension of whim to adjudication (Todd 1993, 79). Pericles introduced pay for those serving in the jury courts (*dikasteria*), which Aristotle recognizes as a democratic move inasmuch as it includes those who would otherwise lose wages and would attract the impoverished more generally (Aristotle 1996, XXVII, 1998b, VI, 2); members of the Assembly were not paid in the fifth century, but magistrates and Council members were. The jury courts heard *dokimasiai*, prospective reviews of one's eligibility to hold office in the polis (but not one's competence), and *euthynai*, retrospective renderings of accounts, of magistrates.

The flexibility of the law in the fifth century had the consequence of unpredictability, because the laws were changed so frequently that it was difficult to anticipate the consequences of actions. However, this appears to have been an unintended result of regular modifications. The public placement of *stelai* with inscribed rules

would seem to have been intended to enable individuals to determine whether their behavior, or the behavior of others, complied with the law and, therefore, to anticipate the consequences, positive or negative, of their actions. Certainly, there may have been various reasons for the display of inscriptions. Through analysis of “formulae of disclosure,” statements on the inscriptions addressing the political reasons for the inscriptions, Charles Hedrick (1999) demonstrates that the erection of honorary decrees, for example, was intended to serve as an incentive for others to emulate the honorees’ actions, whereas other *stelai*, including financial documents, included a phrase indicating that the inscription was offered “so that anyone who wishes can see it” (411). Although one might suggest that publicity could have been window-dressing on the part of the Assembly, signaling publicity as it acts in a covert fashion, this explanation seems at odds both with the enormous size of the Assembly (Hansen suggests that 6,000 attended on average in the fourth century, although perhaps fewer during the Peloponnesian War) and with the Athenians’ general ideological commitment to transparency, as demonstrated by institutions such as the *euthynai*.

The charge of *graphe paranomon*, by which a proposer of a decree could be prosecuted for a proposal deemed at odds with the legal standards of Athens—even if these principles were not always transparent—also suggests that the Athenians were not interested in instability for its own sake. Although *graphe paranomon* was frequently used as a political weapon, the Athenians nevertheless had a strong enough belief in the continuity and stability of their laws over time—and that their laws ought to cohere with the legal and social order as a whole (Ostwald 1986, 135–36)—to give sense to the charge of unlawful amendment. It does seem clear that the public display of inscriptions had at least the purpose of making their contents generally accessible to the population, and given the costliness of erecting *stelai*, there is little reason to suspect that the Athenians actively preferred unpredictable rules. So if the Assembly did not wish to make its laws unpredictable, then why did it boast such a simple mechanism for legal change in the fifth century?

Especially in contrast with the conservative Spartans, Athenians took great pride in their ability to confront the unexpected with modified rules and institutional novelty: innovation, in the pragmatic sense of creating novel institutions and tools to confront new challenges.³ The dichotomy between the innovative Athenians and the conservative Spartans was widely known, and was a source of pride for Athens. Athens claimed to have invented virtually everything. “Even the method of sowing grain was supposed to have been passed on from Eleusis,” ancient historian Christian

³ Saxonhouse (1996) offers a thoughtful account of the ability to change policies as characteristic of democracy in Thucydides in *Athenian Democracy: Modern Mythmakers and Ancient Theorists* (59–86), and Meier’s recent narrative history of Athens from the seventh through the end of the fifth century, *Athens: A Portrait of the City in Its Golden Age* (1993), emphasizes the importance of innovation, both institutional and technical, for the development of Athens.

Meier (1993, 411) writes, and cites a late fifth-century song by Timotheus that highlights this boast: “I do not sing old songs; my own are much better. Young Zeus is in charge now; Cronos is dethroned” (407). The innovatory ways of Athens, however, were sometimes regarded as a liability: the selection of a Spartan, Euribiades, instead of an Athenian as commander of the Greek forces at Salamis in 480 was due to what was perceived as Athenian instability, which “generated anxiety if not outright distrust among their allies. . . . With a Spartan commander they could at least expect courage and decisiveness . . .” (21).

Thucydides highlights the Athenian attachment to innovation and the democratic nature of that commitment, contrasting it with the Spartans’ conservatism. The Mytilenian debate, for example, offers a look at the democratic character of the ability to change course. Although this is slightly distinct from innovation, part of what the Athenians understand as democracy, on Thucydides’ reading, is the freedom to be unbound by prior decisions and, given new information, to redirect. Encouraged by Cleon, the Athenians decide to punish the revolt of Mytilene by slaughtering the entire adult male population and enslaving the women and children. However, by the following day, the Athenians are struck by the cruelty of the decision, and an assembly is called to debate the motion. Cleon admonishes the Athenians to remain undeterred, arguing that the greatest weakness in a democracy is “the constant change of measures” (Thucydides 1996, 3.37.3).⁴ Instead, citizens should strive, in accordance with their rejection of expertise, to stick with good laws, which they know to be wiser than intellectuals: “[B]ad laws which are never changed are better for a city than good ones that have no authority. . . . [More gifted fellows] are always wanting to appear wiser than the laws, and to overrule very proposition brought forward, thinking that they cannot show their wit in more important matters and by such behavior too often ruin their country” (3.37.3–4).

For Cleon, decisiveness is crucial, whereas debate is both vain and ruinous; as a result, he believes that democracies are incapable of governing others (Thucydides 1996, 3.37.1). In contrast, Diodotus argues that reopening deliberation permits a better answer to be reached, assuming that debate is not hindered by charges of corruption. On substance, Diodotus claims that the decision ought to depend on expected future benefits, rather than on desire for revenge for earlier deeds; as the Mytilenean democrats did not support the decision to revolt, by killing them, the Athenians would deprive themselves of potential allies. Diodotus, and the ability to change course, narrowly carries the day, and only 1,000 members of the upper class are killed.

Similarly, the Corinthian speech at Sparta in 432, which leads to the declaration of war against Athens, contrasts the competing modes of decision making, emphasizing Athenian innovation and Spartan conservatism. The Corinthians, attempting to persuade the

⁴ Translations are from the revised Crawley edition (Thucydides 1996).

Spartans to act against Athenian aggression, portray the Spartans as excessively cautious and the Athenians as foolhardy in their daring:

The Athenians are addicted to innovation, and their designs are characterized by swiftness alike in conception and execution; you have a genius for keeping what you have got, accompanied by a total want of invention, and when forced to act you never go far enough. Again, they are adventurous beyond their power, and daring beyond their judgment, and in danger they are sanguine. (Thucydides 1996, 1.70.2–3)

The Corinthians describe the Athenians as persistent, and as remaining undeterred by even a series of defeats as they try to achieve their ends. However, they are restless and desirous; as soon as they accomplish their goal, they set another before themselves. The Spartans' reluctance to act, rooted in their desire for peace and stability, places them in jeopardy as they confront the ingenuity of the Athenians, the Corinthians maintain:

It is the law, as in the arts so in politics, that improvements ever prevail; and though fixed usages may be best for undisturbed communities, constant necessities of action must be accompanied by the constant improvement of methods. Thus it happens that the vast experience of Athens has carried her further than you on the path of innovation. (Thucydides 1996, 1.71.3)

Conservatism is the best response to stability: The Corinthians do not praise innovation for its own sake. When circumstances remain constant, the sedentary Spartans may enjoy the predictability of their lives, marked by rigid adherence to custom. But the Athenians have learned how to confront contingency with creative action. The diversity of their obstacles has proved edifying: Progress, on the Corinthians' reading, derives from encounters with the unknown and the need to develop new tools to conquer misfortunes.

The belief in Spartan stability was both well established and enduring: one of the few good sources on Spartan institutions, Plutarch's *Life of Lycurgus*, was written in the beginning of the second century of the common era, more than 500 years later (MacDowell 1986, 14–22).⁵ Although, as Plutarch ([1864] 2001) himself acknowledged, "There is so much uncertainty in the accounts which historians have left us of Lycurgus, the lawgiver of Sparta, that scarcely any thing is asserted by one of them which is not called into question or contradicted by the rest" (52), the legend of Lycurgus was undoubtedly known to the Athenians⁶ and affected

their perceptions of the Spartans. The dating of Lycurgus' creation of the Spartan institutions is uncertain, but Thucydides (1996, 1.18.1) places it at more than 400 years since the end of the Peloponnesian War. The structure of Spartan institutions is not important here, but the laws to which the Spartans, as the enemy, adhered was a matter of considerable interest to the Athenians and served as a competing conception of legislation.

Herodotus (1987), for one, believed that Lycurgus "took care" to ensure the endurance of his laws (1.65): In fact, Plutarch ([1864] 2001) reports that when Lycurgus died in Crete, his Cretan friends followed his request and scattered his ashes there for fear that "if his relics should be transported to Lacedaemon, the people might pretend to be released from their oaths, and make innovations in the government" (80). Perhaps the plan worked, because the Spartans were thought to have been profoundly law-fearing (Herodotus 1987, 7.104);⁷ in Plato's *The Laws* (1980) (written in the 350s and 340s, some hundred years later), the Athenian Stranger comments that one of the best laws of the Spartans is that "which does not allow any of the young to inquire which laws are finely made and which not" (634d–e). Archidamus, in the debate at Sparta, maintains that their steadfastness is attributable to their training: "And we are wise, because we are educated with too little learning to despise the laws, and with too severe a self-control to disobey them" (Thucydides 1996, 1.84.3). Whether these laws were unwritten is uncertain, but Plutarch ([1864] 2001) writes that there was even a *rhetra* against writing them down (63);⁸ it appears safe to say that although the bulk of Lycurgus' laws remained unwritten, some laws were codified, and later laws certainly were. But that the Spartans had an aversion to changing their institutions, and a fear of their corruption, is well documented (Plutarch [1864] 2001, 80), extending to a ban on foreign travel and to the expulsion of aliens, for fear that foreigners might have a pernicious effect on the citizens or the laws.

Whereas the Spartans wished above all to protect their institutions from change and undue influence, the Athenians prided themselves on their ability both to revisit their decisions and modify their institutions to fit their present needs and to innovate where necessary. Rather than remaining bound by custom or tradition, the Athenians viewed change as an affirmative good, not as a weakness; the Athenians' prior decisions are valuable only insofar as they help them to address new problems. Yet in this context the decision to make certain laws unamendable is surprising: Why would they inhibit their ability to modify their institutions, given the importance of this mechanism

⁵ Because of the time gap, Plutarch may not be the best source for the fifth- and fourth-century Athenian beliefs about the system, but his reliance on Thucydides, Xenophon, and Plato allow us to draw some inferences; moreover, MacDowell emphasizes, contra Gomme (1945), *A Historical Commentary on Thucydides* (1.84), that his textual evidence was rather good.

⁶ There are certainly problems with attempting to ascertain the knowledge of the average Athenian, but Herodotus, Thucydides, and Xenophon all visited Sparta, and given the context of the Peloponnesian War, it is reasonable to assume that the average Athenian knew something about the enemy (MacDowell 1986, 15).

⁷ For Aristotle (1988b), the Spartan constitution's stability is owed to its status as a mixed regime (*politeia*) (IV, 9, 1294b13–1295a1).

⁸ The "Great Rhetra," as it is known, is generally accepted as an early written law. Gagarin (1986) asserts that "Sparta appears consciously to have rejected the use of written laws and to have relied on an increasing degree of control over the educational system to achieve [...] authority over its citizens" (140).

for their self-conception? One answer may be that the Athenians were well aware of the costs associated with their innovativeness, both in the domestic context and in the international arena. Thucydides suggests that although the creativity of the Athenians served them well in war-making, the tendency toward inconstancy ultimately led to domestic strife. Moreover, he suggests that the Athenians were blind, perhaps willfully so, to the risks associated with their flexibility and were, therefore, surprised when their changes of direction led to poor consequences (Thucydides 1996, 8.1.1–4).⁹ However, the use of entrenchment indicates that the Athenians were conscious of the pitfalls of their commitment to flexibility, particularly with respect to their alliances. The Athenians used entrenchment clauses strategically, it appears, as an occasional corrective to their propensity to redirect in light of new information, and to appease allies who might view Athens as untrustworthy.

FIFTH-CENTURY ENTRENCHMENT

The beginning of Athenian democracy is marked by entrenchment and apparent attempts at self-binding, if in a time-limited form: The Athenians “bound themselves by great oaths that for ten years they would live under whatever laws Solon would enact,” and Solon left the country for 10 years so that he could not be persuaded to modify the laws (Herodotus 1987, 1.29). A closer look at entrenchment clauses in the fifth century shows that entrenchment typically served a strategic purpose, at odds with our contemporary conception of entrenchment as a device designed to protect the most salient or salutary provisions. In addition, the liberal usage of these devices today is starkly at odds with the penalties attached for introducing a proposal in contrast to these clauses, ranging from *atimia* (loss of citizen rights) to death.

Identifying the provisions that remain flexible is somewhat simpler than categorizing the entrenched.¹⁰ Neither honorary nor dedicatory decrees, which tended to recognize a particular good deed or set of good deeds to the city, were ever entrenched, perhaps because of a recognition that an honoree could commit an offense and deserve punishment severe enough to nullify the prior honors. Rules regulating offices were not entrenched, neither in Athens nor in other parts of the Greek world, although the actual case number is extremely small and therefore somewhat less reliable; the absence of entrenchment clauses attached to

“constitutional provisions,” however, might hint that these positions, and their duties, were among those institutions that the Athenians, at least, wished to keep flexible. Decrees relating to sacred matters were also not entrenched; whether or not they were actually changeable, however, is not clear.

The most commonly entrenched provisions are those relating to alliances and treaties, both in Athens and throughout the Greek world.¹¹ Non-Athenian decrees offer other forms of entrenchment; for example, an alliance between Elis and Heraea is bounded by a sunset clause, indicating that it will last for 100 years, but additionally prescribes that “if anyone does harm to this writing, whether private citizen or official or community, to the sacred penalty [a talent of silver] shall he be liable which is here written down” (Fornara 1983, 25, p. 29). The use of sunset clauses in this period is somewhat ambiguous, because all peace treaties included sunset clauses in the fifth century (Ryder 1965, 5) and because the period of 100 years is often taken by scholars to mean forever.

The explanation for the entrenchment of alliances and treaties may well be located in the belief by the Greek world that Athens could not be depended on to keep its promises. A passage from the Old Oligarch’s *Constitution of the Athenians*, perhaps written toward the end of Pericles’ career, illustrates the claim that democratic cities have a tendency to defect from alliances:

Further, for oligarchic cities it is necessary to keep to alliances and oaths. If they do not abide by agreements or if injustice is done, there are the names of the few who made the agreement. But whatever agreements the populace makes can be repudiated by referring the blame to the one who spoke or took the vote, while the others declare they were absent or did not approve of the agreement made in the full assembly. If it seems advisable for their decisions not to be effective, they invent myriad excuses for doing what they do not want to do. And if there are any bad results from the people’s plans, they charge that a few persons, working against them, ruined their plans; but if there is a good result, they take the credit for themselves. (Old Oligarch 2.17; in Xenophon 1984)

Because assessing responsibility in oligarchies is easy—the number of agents is relatively small—the incentive to fulfill obligations is high, lest one be punished personally by proalliance forces or by the wronged ally. However, in large democracies like Athens, determining who is culpable is more difficult: The composition of the assembly changes constantly, and decisions are made by simple majority, allowing a substantial minority to claim that they did not support defection and that they are therefore blameless. As a result, the Old Oligarch claims, Athens is a less reliable ally. Because a simple majority of the Council and the Assembly could revoke any decree, including those specifying relations between Athens and another state, potential allies were

⁹ I am grateful to an anonymous reviewer for drawing my attention to this point.

¹⁰ The major sources for the decrees and laws are standard reference works of inscriptions in translation, Fornara’s (1983) *Archaic Times to the End of the Peloponnesian War* and Harding’s (1985) *From the End of the Peloponnesian War to the Battle of Ipsus*; to ensure comprehensiveness and consistency of translation (the author’s Greek is not expert level), the sources were checked against Tod 1948 (vols. 1, 2) and Meiggs and Lewis 1969. The complete data set is available from the author, along with a concordance table.

¹¹ As Rhodes and Lewis (1997, 16) confirm. They argue that the only entrenched decrees in Athens are ones of alliance and treaty, which seems incorrect given the evidence here.

fearful that the Athenians might violate a treaty. Although the benefits to an ally might have made entering into a treaty worthwhile, even if the risk that the Athenians would later defect was relatively high, the Athenians may have needed to signal an intention to comply, at a minimum. This attempt at credible commitment may explain the presence of entrenchment clauses in treaty-decrees.

Which treaties were entrenched? Given the problems of epigraphic evidence (Finley 1975, *passim*, Todd 1993, 30–44), it is impossible to know for certain, but investigation of the extant decrees indicates that alliances with Rhegium and Leontini almost certainly were; although modification of the law is not subject to a penalty, the references to the alliance lasting “forever” are intended to be taken literally and ought, therefore, to be counted as entrenched (Rhodes and Lewis 1997, 524).

The decrees read as follows, as translated by Fornara.¹² Athenian Alliance with Rhegium (433/2) (Fornara 1983, 124, pp. 124–125):

[Alliance shall be made] between the Athenians and [the Rhegians. The oath] shall be sworn by the Athenians so that everything will be] trustworthy and guileless and s[traightforward on the Athenians’ part,] *forever*, in relation to the Rhegians. [They shall swear the following:] ‘As allies we shall be *trustworthy* [and just and] *steadfast* and reliable [forever to the Rhegians and] we shall provide them with aid *if* [.] [- -]’.

Athenian Alliance with Leontini (433/2) (Fornara 1983, 125, pp. 125–126):

Alliance shall be made between the Athenians and Leontinians and the oath shall be given and taken. [The oath shall be sworn] by the Athenians as follows:] ‘As allies we shall be [to the Leontinians *forever* [guileless] and reliable’. [The Leontinians likewise shall] *swear*: [‘As allies we shall forever be to the Athenians] *guileless* [and reliable.]’

Why were some treaties left without entrenchment clauses? In the first place, again, as the treaties are in generally poor condition, it is difficult to determine in several cases if they do lack entrenchment clauses. However, for example, the decree establishing a treaty between Athens and Egesta is in reasonably good condition (except for a lacuna), and does not have an entrenchment clause. The decree reads as follows (Fornara 1983, 81, p. 81):

That it [be] sworn [by everyone shall be the] *generals’ responsibility* [- -] [-14] with the oath-commissioners so that [- -] [-11] *This decree* and the [oath shall be inscribed on a marble stele on the] Akropolis by the Secretary of

the Boule. [The Poletai are to let out the contract.] The Kolakretai *are to provide* [the money. Invitation shall be offered for] hospitality to the embassy of the E[gestaeans in the Prytaneion at the] accustomed time. Euphe[mos made the motion. Let all the rest be as (resolved) by the] Boule, but in future, when [-9-] [-19-] herald shall introduce [-14-] [- - -].

If, in fact, this decree lacks an entrenchment clause (as is commonly considered) and if, in fact, the dating of the decree to 418/417 is correct, instead of an earlier alliance at 457/8 in the time of Laches,¹³ why might this be? One explanation might be that the Egestaeans were extremely eager to secure Athenian support in their war with the Selinuntines and their allies, the Syracuseans (Thucydides 1996, 6.62), and as a result, they were comparatively weak, from a bargaining perspective. The Athenians wished to conquer Sicily, “though they had also the specious design of aiding their kindred and other allies in the island” (6.6.1), and therefore were willing to ally themselves, although the need was not nearly so immediate. Since the Athenians preferred to keep their alliances flexible, as the discussion of the Athenian interest in flexibility showed, they would, in general, like to operate without the use of entrenchment clauses. When the Athenian bargaining position was weaker—a more pressing need to reach agreement, a more powerful potential ally—and they needed the allegiance of a recalcitrant state, the entrenchment clause might serve to signal Athenian commitment. But when the advantage was overwhelmingly on the side of the Athenians, as may have been the case with the Egestaeans, they could frame the treaty as they preferred and, thus, could refuse to include an entrenchment clause.

Procedures regulating tribute payment by the allies to the Athenians, additionally, were entrenched and even have a penalty attached to their modification. In the case of the decree relating to the appointment of tribute collectors (Fornara 1983, 133, pp. 149–150) (423 B.C.), the person conspiring to invalidate the decree (or to thwart the payment of tribute) is charged with treason. The decree relating to the reassessment of the tribute of the Athenian empire (136) (425/4 B.C.) prescribes the loss of citizen-rights (*atimia*) and the confiscation of property for those raising a motion to nullify the decree. Given that the allies were aware of Athenian inconsistency (based on both the simple-majority decision procedure itself and the unstable composition of the assembly), it is possible that they might have hoped to evade their tribute payments either by the nullification of the decree by a later majority or by failure to enforce the decree. On this reading, the penalty provision is perhaps best read as emphatic—pay the tribute or else—but the purpose of entrenchment itself is to signal commitment to the allies.

¹² I follow the symbol usage of the Fornara (1983) volume: [] “enclose letters or words that no longer stand in the text as it survives, but have been restored by modern scholars”; [. . .] “indicates by the number of dots the exact number of missing letters where no restoration is attempted”; [- - -] “indicates an indeterminate number of missing letters”; *vacat* “indicates that an entire line or space between entire lines were left vacant”; *lacuna* “indicates that a portion of the document is missing”; and italics “indicate that only a part of the original word is extant on the document” (xxi–xxii).

¹³ That is, as Mattingly (1996) argues against the more conservative dating of Lewis and others. Lewis, among many other classicists, is typically inclined to date decrees including a three-bar sigma earlier, but this is one of the most controversial points in epigraphy. Given the Thucydidean context, the preponderance of the evidence (with the exception of the sigma) is in favor of the later date.

Some financial decrees were also entrenched, and even prescribe the penalty within the decree itself—and the penalty for proposing a change of the law often takes the form of the death penalty. One is the famous Athenian coinage decree (Fornara 1983, 97), which bars the use of foreign coins, weights, or measures; it entrenches a section stipulating that surplus from a minting operation is to go into a special fund, and one who proposes to do otherwise is subject to the death penalty.¹⁴ This might suggest a legislative check; given that demagogues performed the bulk of detailed financial work (Hornblower 1992, 122), entrenchment here could have served to thwart efforts at siphoning from the fund. Entrenchment, then, arises in a case of informational asymmetry that may easily lead to exploitation: the demagogues have access to resources and to information that may be inaccessible to the people as a whole, and the use of entrenchment emphasizes the consequences of taking undue advantage of this position.

Another source, Kallias' second financial decree (Fornara 1983, 119), is somewhat less fraught with textual ambiguity and lends itself more readily to interpretation. The decree addresses the completion of portions of the Acropolis and specifies that no other use of Athena's money is permitted and proposals to do so will be penalized, unless an immunity vote (*adeia*) is passed. Moreover, the decree says that both the need for an immunity vote and the penalty are identical to those governing the proposal of a property tax. So it appears that matters related to the usage, and collection, of funds are governed by a delaying procedure, indicating some general concern about risks of abuse in financial matters. The argument, common in pre-commitment models, that time delays permit cooling off could explain the entrenchment in these provisions, especially given the risks associated with financial matters, as the next example, relating to the case of the 1,000 talents, demonstrates. (Note, however, that time delays may permit publicity, which may have the perverse effect of heating up debate.) The use of entrenchment to regulate matters relating to property is not restricted to Athens: In Halicarnassus (Fornara 1983, 70) and Locris (33), also, provisions relating to disputed property and to the settlement of new territory, respectively, are entrenched.

The final case of financial entrenchment is one that was actually abrogated. At the beginning of the war, around 431, the Athenians enacted a decree preserving a special fund of 1,000 talents from the money in the Acropolis and 100 superior triremes, which were to be used only in case of an enemy attack by sea on Athens. The decree prescribed the death penalty for anyone

who suggested, or put to the vote, a proposal to spend the money for any other purpose (Thucydides 1996, 2.24.1). This appears to be a reasonably straightforward case of precommitment; that is, the Athenians recognized that in the heat of war, they might be inclined to spend recklessly and, as such, decided to create an emergency fund for a genuine threat on their land, with a penalty of death for those suggesting to touch it. However, not even the threat of capital punishment could dissuade the Athenians from modifying the law in a moment of crisis, and as a consequence, the extent to which we should believe that the Athenians engaged in self-binding is in question.

After the failure of the Sicilian expedition in 413, the Athenians saw that their enemies were prepared to redouble their efforts against them and, perhaps worse, that their allies were becoming restless. When Chios, the best among the allies revolted, and it seemed clear that the other allies were likely to follow, the Athenians panicked: "In the consternation of the moment they at once canceled the penalty imposed on whoever proposed or put to the vote for using the thousand talents which they had jealousy avoided touching throughout the whole world, and voted to employ them to man a large number of ships [. . .]" (Thucydides 1996, 8.15.1). The entrenchment of this provision could, in fact, have exacerbated their fearfulness: The lack of immediate access to the funds sharpened their hysteria. Had the money been readily available, they might have engaged in a more rational, less anxious deliberative process (if they had not already spent the talents, an admitted risk). Although the threat of revolution would in any event have elicited a highly emotional response, the feeling of being constrained, perhaps even trapped, might have heightened the response.

Given the Athenian commitment to legal change, some strong motivation must have been present for entrenchment clauses to appear. Athens wanted to be capable—and to be regarded as capable—of making binding agreements with allies. The belief that democracies were incapable of committing themselves inhibited their treaty-making ability, and so the Athenians had to send a signal to potential allies that they would not abrogate their agreements, via the use of entrenchment clauses. Although Athens' allies must have known that the possibility of abrogation remained—that entrenchment was "only words," given the absence of penalties—the presence of entrenchment clauses in certain key cases suggests that they were meaningful both to Athenians and to the allies as an emphasis on their intention, given the Athenian tendency toward inconstancy. The Athenians also may have feared abuse by demagogues, and entrenching the punishment enabled them to affirm the severity of the crime. Great ease of legislation could render them vulnerable by permitting the depletion of necessary resources, especially in the face of foreign threats.

Although the Athenians believed that their strength derived in no small part from their ability to confront contingency with innovative solutions, their tendency to change law could have lethal consequences. The

¹⁴ Traditionally, the decree has been understood as stating that those who propose to use foreign coins are liable to the death penalty. However, Lewis repeatedly argued that the death penalty instead applied to proposals against the fund (most notably, in Lewis 1997, 116–30); his reading is probably to be trusted. The dating is also controversial, because of the use of the three-bar sigma, but the later dates (425/4 or before 414, instead of 450–446) seem have found adherents recently.

capacity to reverse course took a famously tragic form in 406, at the trial of the generals for the battle at Arginusae. The Athenians had amassed what remained of their resources, 10 generals and 150 ships, to rescue their fleet at Samos, which had been captured in the harbor of Mytilene. However, the rescuers, having stopped at the Arginusae islands for dinner, were met by the Peloponnesian fleet, and the Athenians were heroically victorious in the ensuing battle. Despite the victory, some ships had been lost, and so two generals and 47 ships had been left behind to collect the shipwrecked sailors, while the remaining generals and ships headed to Mytilene to rescue the fleet. A storm derailed both missions: The eight generals informed the Council and the Assembly that they had been unsuccessful, and the two generals left at Arginusae returned to Athens. The eight generals were immediately recalled to Athens for the process of *euthynai*.

A *probouleuma* was called for an immediate vote on the guilt of the generals, in violation of decrees governing due process, specifying that each accused person was to defend himself separately and that a trial before a jury court was required. Despite the presence of these laws, “the masses shouted that it was monstrous for anyone not to let the people do whatever they wanted,” which was to summarily execute the generals (Xenophon, *Hellenica*, 1.7.12; trans. in Ostwald 1986, 444). Although the Assembly was temporarily persuaded to try the generals separately, after an objection was raised by one member, they changed their minds and executed the generals. In part, it was this tension on the part of the Athenians—on the one hand, to enact whatever they wished whenever they chose and, on the other, to restrain themselves from their worst impulses—that the revision of laws at Colonus was intended to resolve.

REVISION OF THE LAWS

The series of revisions began in 411 following the decision (under compulsion) by the Assembly to turn the democracy over to oligarchs, which Aristotle (1996, 29.2) claims was intended to win the support of Persia. Despite the pressures that the Athenians were under, it is unsurprising that they might wish to stabilize the laws, given the turbulence of the late fifth century. The reason for the choice to inscribe the centuries-old laws of Dracon and Solon, rather than drafting new laws, is less obvious, although, again, both oligarchs and democrats were in agreement that their rules constituted the ancient constitution (Hansen 1991, 162). Inasmuch as there was debate between the democrats and the oligarchs over the content of these laws, for both informational and ideological reasons, it is reasonably clear that the motivation for the use of these laws was less their prescriptions than the legitimizing force that references to the “ancient constitution” provided. For the oligarchs, the ancient constitution was an explicitly conservative institution, designed to return Athens to its state before the “populism” of the late fifth century.

The 30 men,¹⁵ known as *syngrapheis*,¹⁶ were elected at least in part to draw up proposals derived from the laws of Solon—demonstrating the force of the appeal to the “ancient constitution” (*patrios politeia*)—which was perceived as the true form of Athenian government prior to its corruption by fifth-century legislation (Ostwald 1986, 371). The proposals were presented to the Assembly, which had been gathered in Colonus, about an hour and a half outside of Athens, and surrounded by armed guards. The distance from the turbulence of Athens could have served to insulate the assembly from pressure of the people as a whole or to allow secrecy; in any case, the lower classes would have been unlikely to travel this far (Meier 1993, 557; Ostwald 1986, 374). However, the presence of the guards could have served both to protect the assembly and to ensure the performance of their duties, the latter thereby constituting an implicit threat. The remote location also freed them from having to address the pragmatic concerns of an unstable city. Toward that end, perhaps, the *graphe paranomon*, the charge that one had proposed an illegal decree, was immediately suspended for the duration of the meeting at Colonus (Thucydides 1996, 8.67.2). The rationale for the suspension was a return to the ideology of innovation, or perhaps an appeal to deliberation for informational purposes, in contrast, perhaps, to the political wrangling of the late fifth century.

The Assembly ratified all of the proposals, which were generally oligarchic. They included the abolition of payment for public service, the election of archons with an appointed Council of 400, and the limitation of the franchise to 5,000 citizens (Thucydides 1996, 8.67.3). After a final proposal for the appointment of 100 *anagrapheis* (publishers of laws) (Aristotle 1996, 30.1),¹⁷ the Assembly was then dissolved. After the support of the proposals at Colonus, mercenary foreign hoplites policed the streets of Athens, and the Council of 400 needed weapons to evict the democratic Council; thus, it appears that the measures did not enjoy popular support, but whether that was a cause or an effect, or neither, of the remote location of the meeting is unknown.

After the overthrow of the oligarchy and the return of democracy in the spring of 410, the Athenians embarked upon a comprehensive restoration of the laws, conducted by appointed *anagrapheis*. Given the latitude that this board would have in determining the content of these laws, and the subsequent importance

¹⁵ Although Thucydides writes of only 10 *syngrapheis* (8.67), which Meier (1993, 557) follows. Aristotle’s account of the 30 men is considered to be more reliable, as by Ostwald (1986, 369).

¹⁶ *Syngrapheis* is derived from the verb *syngraphēin*, which means “to compose in writing.” Ostwald (1986) writes that “we should, therefore, expect a *syngrapheus* to collect facts and materials from various quarters and then weld them into a coherent whole in his written report, and what little we know of the activities of *syngrapheis* confirms this” (415–16).

¹⁷ *Anagrapheis* is derived from *anagraphein*, or “to write up for display in public,” and Ostwald (1986) suggests that their responsibility was to prepare the final texts of laws and publish them; moreover, it appears they had considerable discretion (416–18). Harrison (1955) notes that although *anagraphein* means “to publish,” it does not necessarily mean “engrave on stone” (30).

of these laws, the accountability of the *anagrapheis* was essential, and as a result, they were subject to the retrospective review of *euthyna*.¹⁸ The job of the *anagrapheis* was originally intended to take only four months, but the project quickly expanded from the republication of the Solonic laws still in force and Dracon's homicide law to a broader investigation of laws in force which were perceived as part of the "ancient constitution." As a result, the revision and the inscription of the laws on the Stoa Basileios ("the portico of the king archon" in the Agora [Hansen 1991, 163]) took until 404, when a second oligarchic interlude took them out of force.

In 403, a final revision specified that the laws were again to be in accordance with Solon and Dracon but noted that "anyone who wishes" may suggest revisions; this may remind us of the suspension of *graphe paranomon* prior to the meeting at Colonus. Both the generally oligarchic Assembly in the earlier revision and the democrats engaged in the later process feared that the institution of *graphe paranomon* quashed the ability to improve one's institutions, although even the apparently conservative institution of the *graphe paranomon* enabled the democracy—as embodied in the jury courts—to reconsider the decisions that the democracy—as embodied in the Assembly—had enacted (Ober 1996, 119). Innovation had an ambiguous position during this period, as the rhetoric of the "ancient constitution," and the desire to preserve the laws of Solon and Dracon, was conservative in the restorative sense. However, a call for "good suggestions" in the decree enabling the revision had the clear purpose of introducing new institutional alternatives into the pool of available mechanisms.

Two elected bodies were in charge of the revision; the Assembly had no role whatsoever in the creation of the law which was to be in force subsequently in Athens (Hansen 1991, 163; Ostwald 1986, 512–13). The laws were to be inscribed and an un-inscribed law had no force, as the decree cited in Andocides, *On the Mysteries*, makes clear: "A law which has not been inscribed shall not be employed by officials on any matter whatsoever" (Antiphon and Andocides 1998, I.87). But after Andocides, there are no more references to the Stoa Basileios; instead, when a source for a law is cited, it is either a *stèle* or a state archive. Hansen (1991) writes that "the explanation is no doubt that the new revised corpus of laws did not stay unchanged for many years after 400, and corrections became so extensive that the Athenians had to give up continually republishing them on stone. The original laws were, thereafter, written on papyrus and kept in the archive; some were also copied and published on stone, but the idea of a law-code stable enough to be worth engraving in marble was abandoned" (164).

Although the process became more complicated, the ability to change law was retained. Given the arduousness of the revision process that the Athenians had just undertaken, one might have expected that the

Athenians would have permanently entrenched their inscribed laws. But they did not, and the commitment to pragmatic innovation again provides the reason.

FOURTH-CENTURY INSTITUTIONS

A distinction between *nomoi* and *psephismata* shaped the fourth-century legislative process, called *nomothesia*, by which laws were both enacted and amended. Andocides reports a law separating *nomoi*, or general and time-unlimited laws, from *psephismata*, decrees that were specific, and/or of limited duration: "No decree of the Council or Assembly shall prevail over a law" (Antiphon and Andocides 1998, I.87). *Nomoi* were higher norms in hierarchical relation to decrees. A *psephisma* could never contradict an existing *nomos*, and in fact a *psephisma* was automatically repealed if it conflicted with a new *nomos* (Hansen 1978, 324); the proposer of a new *psephisma*, if it contradicted a *nomos*, would be subject to *graphe paranomon*.

The procedures for creating and changing *nomoi* were distinct from those governing *psephismata*. A potential *psephisma* was put forward by *probouleuma* by the Council (as seen in the fifth century), and the Assembly had the choice of altering, rejecting, or accepting the *psephisma*.¹⁹ *Nomoi* were subject to a more cumbersome procedure, in which the Assembly had, in essence, only an originating role. Moreover, the creation of *nomoi* always took the form of amending the existing code. The modification of a given law, then, was not considered a piecemeal adjustment, but a change to the body of legislation as a whole, with the implication that even a small amendment altered in a way the nature of the corpus.

First, a proposal was made by *ho boulomenos*, anyone who wished, to modify the code, and the Assembly decided whether a revision might be necessary. If so, five defenders of the law, who would argue that the law was adequate as written, would be selected. The institutional bias is conservative, with a strong aversion to novelty in legislation; this is reflected both in the epigraphical evidence and in the political thought of the time. However, the conservatism was tempered by the progressiveness of the mechanism; a law mandated that one who proposed amending an existing law was required to simultaneously suggest an alternative proposal (Demosthenes 1935, 24.44).²⁰ Although the preference was against change, the mechanism encouraged the introduction of competing solutions.

Once accepted by the Assembly, the proposal was posted before the statues of the heroes in the Agora, publicizing the measure and allowing *ho boulomenos* to say what he wished. The Council exercised its agenda-setting power to fix the program at the Assembly, including the submission of a *probouleuma*, at which a

¹⁸ Harrison (1995, 30) seems to imply that this is yearly, but Ostwald (1986, 417) argues that the yearly *euthyna* was suspended for *anagrapheis* and were reviewed only when their job was finished.

¹⁹ Comprehensive discussions of these procedures can be found in Sealey 1982, *passim*, and in Hansen 1991, 165–77, especially. Good primary sources include Demosthenes' (1935) *Against Timocrates* (24.21, 24.33) and Aeschines (2000) 3.38–3.39.

²⁰ In the classical literature, this is known as the "repeal law"; see Hansen 1991, 166, and MacDowell 1975, 64.

decision to set up *nomothetai* (law-makers), including their number and salary, was made. On the day of the hearing, the *nomothetai* were selected by lot from among the 6,000 who had taken the oath of jurors for that year (the “Heliastic Oath,” as it is known by classicists, in which the jurors promised to render verdicts in keeping with *nomoi* and *psephismata*, or, if none existed, with their own sense of justice) (Hansen 1991, 357; MacDowell 1978, 64). The number of *nomothetai* appears to have varied with the importance of the matter: either 501, 1,001, or 1,501, at least (Hansen 1991, 168).

At a trial-like meeting chaired by a nine-person board (*proedroi* and a foreman, known as *epistates ton proedron*), the law was interrogated. The proposer speaks first, followed by the five defenders, and the *nomothetai* vote on the measure. Thus, whereas *psephismata* begin with the phrase, “It was decided by the people” or “It was decided by the council and the people” (Hansen 1991, 167),²¹ *nomoi* have instead, “It was decided [resolved] by the *nomothetai*.”

With the new distinction between law and decree in the fourth century came a separation of the procedures for the charges of “unconstitutionality.” The *graphe paranomon* was used exclusively for proposers of decrees, in the case that a decree contradicted a law or its enactment was procedurally invalid; the *graphe nomon me epitedeion theinai* addressed proposers of laws, in the case that the law violated substantive legislative principles or its enactment violated proper procedures. Both sorts of accusations could also address concerns about the broader democratic character of the law. The punishment for *graphe paranomon* for those convicted was a fine, which could lead to *atimia*, or loss of citizen-rights. The punishment for conviction of *graphe nomon me epitedeion theinai* was even more severe; in one case from Demosthenes (1935, 24.138), the penalty was death.

The rectitude and continued validity of the laws were affirmed at regular intervals by two laws, known as the “inspection law” and the “review law.” The inspection law, cited by Aeschines 2000 (3.38–3.40) in *Against Ctesiphon* (Hansen 1991, 166) requires that the *thesmothetai*, a board of six archons, review the law annually to determine whether there are inconsistencies, duplications, or invalid laws in force and, if so, to post them for the people, who may call *nomothetai* to rectify the situation. Under the review law, at the first Assembly meeting of the year, the entire law-code was put forward for evaluation. If the people chose to reject any section, any citizen could propose a change, and the mechanism for *nomothesia*, with the appointment of *nomothetai*, operated as above. The review law, in contrast to the institution of the defenders of the law, is strikingly progressive. By opening the laws to wholesale revision on a yearly basis, and piecemeal revision as needed, the Athenians reaffirmed their commitment to legal flexibility.

MacDowell (1978) notes, “Presumably it was felt that the old method, by which a simple majority vote at one

meeting of the Boule and one meeting of the Ekklesia was enough to abolish any existing law, however fundamental, or to make a new one, however drastic, was one of the things which had made revolution easy in 404. What was needed was a more careful check on legal changes before they took effect” (48). Although too-frequent changes were certainly destabilizing, not even Plato argued that legislation ought to remain unchanged. Given the comprehensive revision of laws that had just been completed, the Athenians might well have wished to forbid their laws to be amended. The process was turbulent, begun by oligarchs and interrupted via another coup, and the Athenians must have relished its conclusion. Nevertheless, they chose to preserve the ability to modify their laws, and the commitment to flexibility in the fourth century again derives from the concern that law ought to be able to contend with changing circumstances.

The belief that law ought to be flexible on the grounds of improbability (and overgenerality) is not simply implicit institutionally but is addressed explicitly in the philosophical accounts of law in this period. Although Plato and Aristotle both reject regular modifications on “legitimacy” grounds, each defends the capacity to change law, although in general Plato is far more skeptical than Aristotle about the advantages of law. Ideally, for Plato ([1957] 1992), as argued in *Statesman*, the true statesman rules without a need for law, but given the difficulty of finding such a person, the second-best option is rule by good laws in the form of a written code or by “laws that are unwritten but embody ancestral customs” (295a, 297e). The dissatisfaction with law derives from its necessarily wide scope, and its consequent inability to properly specify what is best for each member of the community (294a–b). Moreover, the unstable nature of human existence is at odds with permanent rules (294b). This does not mean, however, that the laws should keep apace with these changes, or that anyone who wishes ought to be able to persuade the city to adopt new laws: The penalty for acts contrary to the laws, or for modification of these laws, ought to be death or other severe penalties (297e). The change of the laws weakens the force of the laws as a whole and, as such, is a step toward vice.

The Athenian Stranger offers a scathing satire of decision making under the Athenian Assembly, in which a rule is made permitting anyone who wishes to advise the Assembly on navigation and medicine, two typical Platonic examples of spheres in which expertise is crucial. The decrees that the Assembly enacts with respect to these matters are to be inscribed, “and some of the rules so resolved are ordained as unwritten ancestral customs” (Plato [1957] 1992, 298e), perhaps a jibe at the efforts by democrats and oligarchs alike to highlight certain preferred provisions as part of the ancient constitution. Further, each year magistrates are chosen by lot to navigate and tend to the ill and, at the end of the term, are subject to *euthyna*, or the obligation to render accounts (299a). Young Socrates is properly horrified at the picture before him, and as a result the Athenian Stranger suggests that instead laws against inquiring into the legislator’s laws and influencing

²¹ The formulation in Harding 1985 is “Resolved by . . .”

people against the laws ought to be established, with strict penalties.²²

This is not to say that changes may not be introduced. However, they may only be enacted by the legislator or by a similarly enlightened small group (as no large group is capable of acquiring any art) (Plato [1957] 1992, 300d–e). The laws are improvable, as the legislator takes into account new information or “changing winds” (295d), but only the enlightened will be able to discern the correct legislative response. To rule a mass of people, then, the second-best course of action is rigid law, modifiable when necessary only by a legislator; ideally, though, flexible and specific guidance by a true statesman is the preferred solution.

In *Laws*, the Athenian Stranger refines the argument, reiterating that the generality of legislation will leave certain gaps in the law, which the administrators of the law ought to repair, with the assistance of the original legislator, if he is alive (Plato 1980, 772b–c). Experience will demonstrate where these holes exist, and the administrators should settle these matters yearly, until they are satisfied. (For matters of sacrifices and dances, the Athenian Stranger suggests that this period of experimentation—the tinkering with law to ensure a good fit—might be 10 years [772b–c].) After this point, the law ought to be considered immutable, but the Athenian Stranger cannot entirely eliminate the possibility for change. If the “force of circumstances” is compelling enough, the administrators must consult the officials, the citizens, and the oracles of the gods, and if the verdict is unanimous, then amendment is permitted (772d). Thus, specification of the laws ought to take place and, in fact, is encouraged to occur by the regularity of the process, but only in the first few years. After that time, if the state of the world changes profoundly, laws may be modified, if by a cumbersome process, to keep up with circumstances.

In *Politics*, Aristotle emphasizes his concern that laws not be changed too regularly. Weighing the advantages of small improvements over the risks of habitual modification, which may lead to disobedience, he argues that small errors should probably be left alone. The strength of the law, Aristotle (1998b) argues, is in the habit of obedience supporting it; whereas a particular art, like medicine or navigation, may be improved without risks—other than a potentially harmful outcome if enacted by the unenlightened, as the Athenian Stranger claimed—regular innovation in law serves only to weaken law itself (II.8, 1269a12–a20). As Bernard Yack (1993) explains, “The acceptance of legal limitations rests more on habit than on instrumental rationality” (184).

However, Aristotle (1998a) echoes the Athenian Stranger’s concerns about the generality of law, as in the famous passage on equity in *The Nicomachean Ethics*

(V.10, 1137b12–23). The problem with law is that it is overly broad and, therefore, likely to err in its application to specific cases. This is not a default of law, nor does it imply the fallibility of the legislator, but rather a problem due to the disjunction between the particularity of practical matters and the universality of rules. As a result, where correction is needed for the sake of equity, a modification of the law is required, by reference to the legislator’s intention, if he would have known of the particular case.²³ In *Politics*, Aristotle (1998b) offers a similar point, noting that it is inadvisable to leave written laws unchanged, because whereas law is concerned with generality, “actions are concerned with particulars” (II.8, 1269a5).

In the fifth century, the Athenians ruled mostly by particular decrees, rather than general laws, which Aristotle (1998b) describes as the worst kind of democracy (IV.4, 1292a). Moreover, these decrees were in some cases entrenched and then abrogated, in what might be viewed as Aristotle’s worst-case scenario, as in the case of the 1,000 talents. Yet neither Plato nor Aristotle rules out the modification of laws; in *Statesman*, although there is a strong preference to leave laws by an enlightened legislator untouched, modifications are ultimately permitted. Although the legal institutions of the fourth century also reflect a commitment on the part of the Athenians to stable law, by permitting modifications to occur, the Athenians reaffirmed their preference for flexibility, although in a fashion distinct from the simple-majority changes of the fifth century. This point is often neglected in favor of the “sovereignty of law” conception of the fourth century. Sealey (1986), in particular, argues that *demokratia* meant “rule of law,” rather than “popular sovereignty” (146–48).²⁴ Yet as Ober argues, the concept of sovereignty is anachronistic in the ancient world, and in any case ought not to be viewed simply as the institutional locus of legal power. Instead, Ober (1996) argues, “The concept of sovereignty can usefully be applied to democracy only by replacing the idea of ‘sovereignty as located in institutions’ with ‘sovereignty as the ability to change institutions’” (121). Drawing on Ober’s insight, the logic of pragmatic innovation is able to provide a foundation for democratic agency as directed toward the modification of laws in light of new technical knowledge or circumstantial change. The Greek world’s relationship to Athens in the fourth century, as demonstrated in the use of entrenchment, reflected both the institutional changes in Athens and its enduring commitment to mutable law.

²² As noted above, in the discussion of Sparta, the Athenian Stranger in *The Laws* praised the Spartans for the laws forbidding the young from inquiring into the relative merits of the law (Plato [1957] 1992, 634d–e).

²³ This nod toward intentionalism is echoed in *Rhetoric* at 1374b10. The distinction between changes made by judges and legislative amendment is certainly contested. Judicial lawmaking is in this context read as amendment.

²⁴ Josiah Ober (1989) points out this “constitutional law trap” into which those seeking an exterior rule of law in Athens tend to fall (22). The argument here is not designed to capture the understanding of law on the part of the Athenians in the fourth century, but only to point out that the institutions of the Athenians in the fourth century, and the criticisms offered of legal institutions by elites, may have permitted more flexibility than is ordinarily believed.

ENTRENCHMENT IN THE FOURTH CENTURY

As in the fifth century, the epigraphic record is somewhat spotty, and it is somewhat difficult to make general claims as a result: Whereas there are 488 extant *psephismata*—although many are so fragmented as to make interpretation difficult—there are only eight *nomoi*. This is likely due in part to the infrequent publication of laws on stone, but Hansen (1991) argues that the creation of *nomoi* was substantially less common (176).²⁵ This does not make analysis impossible, but it does suggest that great care is needed in drawing conclusions. This is not solely a problem of nonspecialists; classicists tend to assume that fourth-century provisions included entrenchment clauses while citing very few cases in which they actually appear (Hansen 1991, 165; Lewis 1974, 88) and identify only one entrenched *nomos* at a maximum.

Alliances continued to be entrenched, in general, until the middle of the fourth century, and the cases in which they do not appear to be are decrees that are in generally poor condition (Harding 1985, 43, p. 60) and, thus, inconclusive. Again, this is a somewhat weaker form of entrenchment, a “for all time” clause, analogous to the “forever” provision seen in the fifth century. But classicists tend to take seriously both “forever” requirements and specifications that the alliance should endure for a particular period; given this, the inclusion of decrees specifying that alliances ought to endure “for all time” should count as entrenched. The fact that alliances continue to be entrenched is likely attributable to the perception that because alliances were still made by the Assembly and Council, the ability for them to commit themselves continued to be rather shaky. The most famous case of entrenchment in a fourth-century alliance is certainly that of the Second Athenian Confederacy (Harding 1985, 35, pp. 48–52.), which enabled Athens to become leader of the Greeks. The decree provides a penalty for one who proposes a contrary decree in the form of *atimia* (loss of civil rights), loss of property, death, and burial neither in Athens nor in allied lands. The remarkably severe form of entrenchment provided in this decree may emphasize the extent to which Athens was perceived as being likely to deviate.

As in the fifth century, honorary decrees remain unentrenched, but the fourth century does offer a non-Athenian case, from Iasos, of an entrenched honor (Harding 1985, 114, p. 142). Gorgos and Minnion, sons of Theodotus, apparently did good deeds for the city, not the least of which was the recovery of an inland lake, and were rewarded with an exemption from taxation and the front seat at public festivals for all time. The presence of such an entrenched honor suggests that the decision to leave honors without entrenchment clauses in Athens was intentional; by leaving the honor flexible, it recognizes that the recipient of the honors may

later injure the city, and the honor should be a special recognition at a given time (often in the form of a golden crown).

Laws, in general, do not appear to have been entrenched. A particular good example of this phenomenon is a law specifying the procedures for silver coinage (Harding 1985, 45, pp. 61–64.), roughly analogous to the coinage decree in the fifth century. Unlike the fifth-century coinage decree, which is entrenched, the coinage law is flexible. Note also that it has been elevated to the status of a *nomos* and is, therefore, not subject to the potential abuses of the Assembly. Additionally, the law provides, as in accordance with the notion of *nomoi* as hierarchically superior to *psephismata*, that “if there is any decree that has been inscribed anywhere on a stele (that is) contrary to this law, let it be destroyed by the secretary of the *Boule*” (Harding 1985, 45, p. 63). Even Eukrates’ law against tyranny of 337/6, which held that revolutionaries against the people could be murdered with impunity and prescribed disenfranchisement (*atimia*) for magistrates who deliberated during a tyranny—perhaps thereby lending legitimacy to the tyrants—refrains from entrenching the democracy.

It may be argued that Demosthenes, in *Against Aristocrates*, offers evidence of an entrenched law, because it prescribes *atimia* for modification of an aforementioned homicide statute (Hansen 1991, 165). However, Lewis (1974, 88) notes that this is actually Drakon’s homicide law (cited differently, and incompletely, in Fornara 1983) and, as such, perhaps ought not properly to be considered within the scope of fourth-century legislation per se. Moreover, Demosthenes is extremely supportive of unamendable law: Note, for example, Demosthenes’ (1935) praise for the Locrians, who heard arguments for changes of law with a noose around the proposer’s neck (which was tightened if the proposal was defeated), and who thus changed only one law in 200 years, is another indicator of his tendency to reject modification (24.139–143).²⁶

Despite the sparseness of the evidence, what can we make of the possibility that laws, in the fourth century, did not include entrenchment clauses, and, moreover, that only a single category of decrees, alliances, tended to use them? The comparatively deliberate procedure of the fourth century might well lend itself to a diminished usage of these provisions, at least for domestic matters. After all, the procedure for enactment of legislation, and for its revision, is lengthy and cumbersome, as shown above. Moreover, the enactment of *nomoi* was a relatively infrequent act. As such, if entrenchment clauses once served to flag provisions that were especially crucial, in the context of a single, simple-majority procedure covering all legislation, the need for this sort of identification could be replaced by the use of *nomoi*. The need for a cooling-off process, similarly, was diminished when a slower lawmaking process

²⁵ An eighth law has been published recently in Stroud (1998). The bulk of the evidence provided in Harding (1985) is overwhelmingly in the form of decrees, and the general claims derived from decrees are more reliable.

²⁶ For example, as seen above, Hansen (1991) argues that Demosthenes wrongly characterizes the propensity of the Athenians to enact *nomoi* and marvels at scholars’ willingness to “put uncritical trust” in Demosthenes (176).

was developed, as was any possible desire for precommitment. Externally, though, the Athenians were still perceived as untrustworthy democrats, and as such the entrenchment clause continued to serve as a means by which they could signal their commitment to potential allies.

Although the legislative procedure became more complicated in the fourth century, it is essential to keep in mind the enduring commitment to flexibility, which could easily have been jettisoned after the disasters of the late fifth century and the subsequent revision of the laws. The reason for why they did not may be found in the enduring Athenian commitment to pragmatic innovation. In the cases in which entrenchment appears, it appears to derive from the concern that the Athenian tendency to adjust its institutions in light of new information may leave both Athens and its allies vulnerable.

DEMOCRACY AND LEGAL CHANGE

The Greeks, we have seen, both envied and feared the Athenian ability to innovate. Although, as Thucydides suggests, this quality enabled Athens to succeed in the military arena, it nevertheless undermined Athens' ability to create alliances with other city-states and ensure that its choices could be sustained in even the short term. Yet by the time of the revision at Colonus, the Athenians were well aware of the pernicious potential of flexible law and, nevertheless, decided to reaffirm the use of mutable law, if with some procedural checks. Here, I have offered an account of Athens as motivated by the ideology of pragmatic innovation, which initially appeared to contradict my findings from an analysis of entrenched decrees in fifth- and fourth-century Athens. The effort at entrenchment should not be viewed generally as an attempt at precommitment, I have suggested, but as a check on a body with the potential to exploit informational asymmetries, the fifth-century demagogues, and as a sign of seriousness to prospective allies who had little confidence that Athens would be faithful.

To all this, however, some political scientists may ask, Why should the details of Athenian institutions interest us, other than mere antiquarianism? One reason is that Athens has occupied a distinctive place in political science as the exemplar of classical and "direct" democracy. The authors of the *Federalist Papers* repeatedly reflected on the "turbulent democracies of ancient Greece" (Hamilton, Madison, and Jay [1788] 1961, 14, 101); Madison famously wrote, "Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob" (55, 342). Today, we still tend to project both our aspirations and our misgivings about democracy on Athens, while simultaneously relying on our conceptions of Athens to provide us with source material for normative accounts of democratic decision making. It therefore remains important to try to get Athens right, to accurately portray its institutions and its ideologies, lest it distort our models of democracy.

A second reason, closely related to the first, is the "critical distance" that reflection on ancient cultures

affords us (Yack 1993, 18). The potential risks of legal flexibility are obviously much graver when people's rights and lives are at stake. Yet this is no reason to dismiss theoretical inquiry grounded in historical research as dangerously indulgent. Instead, Athens provides us with an opportunity to investigate a link between democratic innovation and legal flexibility with some insulation from the language and preconceptions of contemporary debates over constitutionalism. Although we cannot be insulated from the distortions of our contemporary perceptions, we can at least attempt to unpack the institutions and ideas enveloping Athens as carefully as possible and, having done so, reevaluate our assumptions in light of our findings.

Two key insights about democracy result from this analytical process. The first is the fact that although at least some institutional commitments are certainly necessary for democratic agency, the ability to modify any institutions has long been viewed as the prerogative and as even a defining characteristic of democracy. Since this capacity leaves prospective allies nervous, however, democracies may occasionally have recourse to hyperconstraining devices, such as entrenchment, to signal that they at least intend to take seriously a particular commitment. Yet the faith that allies ought to have in a democracy that views change as fundamental is, of course, limited, and as a result, a prospective ally's decision to embark on a particular alliance may be made on grounds other than trustworthiness, such as the relative power of the partner.

The concern that Athens would amend ostensibly entrenched clauses was not restricted to prospective allies: The Athenians understood that the law would be unable to restrain a determined *demos*. The Athenians' prescription of death, in certain cases, for proposing an entrenched law's amendment suggests that they knew well that an effort to change the law might succeed, so that an additional, individualized barrier to modification was necessary. Yet even this constraint could be overcome, as the discussion of the thousand talents suggests, in light of changed circumstances. As a consequence, Athens could not have reasonably anticipated that entrenchment would prove an infallible barrier to efforts at change; in fact, they could not have believed that any such barrier could possibly exist. Entrenchment constituted a concerted effort on the part of the Athenians to signal both to themselves and to others the importance of a particular norm or treaty but could not credibly have been regarded as an effective means of self-binding.

The second implication of the discussion of Athens is that the use of entrenchment in the contemporary world may be both more strategic and less effective than constitutional designers and theorists have tended to believe. The most famous use of entrenchment is the protection of the human dignity clause in the post-World War II German Basic Law. However, we should not believe that entrenchment can only be used to protect individual rights or fundamental institutional arrangements. Rather than shielding these types of laws from modification, entrenchment may serve a narrower instrumental purpose, securing instead the outcomes

of controversial bargains or even illiberal provisions. Bracketing the question of the genuine immutability of the laws, we might note that the two laws explicitly restricted from amendment in the American constitution in Article V are those regulating the slave trade (through 1808) and the equal suffrage of states in the Senate, respectively. These two matters were the most contentious of the convention, comprising the most delicate bargains and, in the case of the former, resulting in a morally heinous outcome. Although we can still believe that entrenchment has value as a “gag rule,” taking divisive issues off the table in order to enable ordinary politics to unfold (Holmes 1995, 202–35), it is difficult to argue that entrenchment exists purely as an additional protection for virtuous constitutional norms. An Athenian would view the faith contemporary constitution-makers and theorists display in entrenchment’s ability to protect key norms, such as individual rights, as poignantly naïve.

This is not to suggest that democracy rests in opposition to the rule of law, either empirically or theoretically. As Jean Hampton and many others have argued, rule of law provides a stable set of procedures through which democracies may operate and offers a predictable and egalitarian means for the resolution of disputes. Yet Athens reminds us that as crucial as these institutions may be for the functioning of the democracy, they are nevertheless the product of collective decision making by the citizens and subject to reconsideration at any time. The Athenians drew on the ideology of pragmatic innovation each time they enacted legislation, creating law without appeal to constitutionalism or revelation, and their prior decisions had little normative weight over their current judgments. Improvability and novelty, especially with respect to institutions, exemplified the democratic character of Athens, especially in contrast to the fabled conservatism of the Spartans. The inventiveness of the Athenians, indeed, is their greatest legacy: Even today, attention to the hoary example of Athens yields remarkably fresh answers to enduring questions. As the Athenians subjected their democratic institutions to ongoing scrutiny, we are rewarded with insights into democracy through perpetual reflection on Athens.

REFERENCES

- Aeschines. 2000. Trans. Chris Carey. Austin: University of Texas Press.
- Antiphon and Andocides*. 1998. Trans. Michael Gagarin and Douglas M. MacDowell. Austin: University of Texas Press.
- Aristotle. 1996. *The Politics and the Constitution of Athens*, ed. Steven Everson. Cambridge: Cambridge University Press.
- Aristotle. 1998a. *The Nicomachean Ethics*. Trans. David Ross. Oxford: Oxford University Press.
- Aristotle. 1998b. *Politics*. Trans. Ernest Barker. Oxford: Oxford University Press.
- Demosthenes. 1935. *Against Meidias, Androtion, Aristocrates, Timocrates, Aristogeiton*. Trans. J. H. Vince. Cambridge, MA: Harvard University Press.
- Elster, Jon. 1984. *Ulysses and the Sirens*. Cambridge: Cambridge University Press.
- Elster, Jon. 2000. *Ulysses Unbound*. Cambridge: Cambridge University Press.
- Finley, Moses. 1975. *The Use and Abuse of History*. New York: Viking Press.
- Fornara, Charles W. 1983. *Archaic Times to the End of the Peloponnesian War*. Cambridge: Cambridge University Press.
- Gagarin, Michael. 1986. *Early Greek Law*. Berkeley: University of California Press.
- Gaubatz, Kurt Taylor. 1996. “Democratic States and Commitment in International Relations.” *International Organization* 50 (Winter): 109–39.
- Gartzke, Erik, and Kristian Skrede Gleditch. 2003. “Regime Type and Commitment: Why Democracies Are Actually Less Reliable Allies.” Typescript.
- Gomme, A. W. 1945. *A Historical Commentary on Thucydides*. Vol. 1. Oxford: Oxford University Press.
- Hamilton, Alexander, James Madison, and John Jay. [1788] 1961. *The Federalist Papers*, ed. Clifford Rossiter. New York: Penguin Books.
- Hansen, Mogens Herman. 1978. “Nomos and Psephisma in Fourth-Century Athens,” *Greek, Roman and Byzantine Studies* 19: 315–30.
- Hansen, Mogens Herman. 1991. *The Athenian Democracy in the Age of Demosthenes*. Oxford: Blackwell.
- Harding, Phillip. 1985. *From the End of the Peloponnesian War to the Battle of Ipsus*. Cambridge: Cambridge University Press.
- Harrison, A. R. W. 1955. “Law-Making at Athens at the End of the Fifth Century B.C.” *Journal of Hellenic Studies* 75: 26–35.
- Hedrick, Charles W., Jr. 1999. “Democracy and the Athenian Epigraphic Habit.” *Hesperia* 68 (3): 387–439.
- Herodotus. 1987. *The History*. Trans. David Grene. Chicago: University of Chicago Press.
- Holmes, Stephen. 1995. *Passions and Constraint*. Chicago: University of Chicago Press.
- Hornblower, Simon. 1992. *The Greek World 479–323 B.C.* London: Routledge.
- Kennan, George F. 1996. *At a Century’s Ending: Reflections 1982–1995*. New York: Norton.
- Lewis, David M. 1974. “Entrenchment-Clauses in Attic Decrees.” In *Phoros: Tribute to Benjamin Dean Meritt*, ed. Donald William Bradeen and Malcolm Francis McGregor. Locust Valley, NY: J. J. Augustin.
- Lewis, David. 1997. “The Athenian Coinage Decree.” In *Selected Papers in Greek and Near Eastern History*, ed. P. J. Rhodes. Cambridge: Cambridge University Press.
- MacDowell, Douglas M. 1975. “Law-Making at Athens in the Fourth Century B.C.” *Journal of Hellenic Studies* 95: 62–74.
- MacDowell, Douglas M. 1978. *The Law in Classical Athens*. Ithaca, NY: Cornell University Press.
- MacDowell, Douglas M. 1986. *Spartan Law*. Edinburgh: Scottish Academic Press.
- Mattingly, Harold. 1996. *The Athenian Empire Restored*. Ann Arbor: University of Michigan Press.
- Meier, Christian. 1993. *Athens: A Portrait of the City in its Golden Age*. New York: Henry Holt.
- Meiggs, Russell, and David Lewis. 1969. *A Selection of Greek Historical Inscriptions to the End of the Fifth Century B.C.* Oxford: Clarendon Press.
- Ober, Josiah. 1989. *Mass and Elite in Democratic Athens*. Princeton: Princeton University Press.
- Ober, Josiah. 1996. *The Athenian Revolution*. Princeton: Princeton University Press.
- Ober, Josiah and Charles Hedrick, eds. 1996. *Demokratia: A Conversation on Democracies, Ancient and Modern*. Princeton: Princeton University Press.
- Ostwald, Martin. 1986. *From Popular Sovereignty to the Sovereignty of Law*. Berkeley: University of California Press.
- Plato. 1980. *The Laws*. Trans. Thomas L. Pangle. New York: Basic Books.
- Plato. [1957] 1992. *Statesman*. Trans. J. B. Skemp. Indianapolis: Hackett.
- Plutarch. [1864] 2001. *Lives*, ed. Arthur Hugh Clough. Trans. John Dryden. New York: Modern Library.
- Reed, William. 1997. “Alliance Duration and Democracy: An Extension and Cross-Validation of ‘Democratic States and Commitment in International Relations.’” *American Journal of Political Science* 41 (July): 1072–78.
- Rhodes, P. J., with David Lewis. 1997. *The Decrees of the Greek States*. Oxford: Clarendon Press.

- Ryder, T. T. B. 1965. *Koine Eirene*. London: Oxford University Press.
- Saxonhouse, Arlene W. 1996. *Athenian Democracy: Modern Myth-makers and Ancient Theorists*. Notre Dame, IN: University of Notre Dame Press.
- Sealey, Raphael. 1982. "On the Concept of Law." *Classical Journal* 77: 289-302.
- Sealey, Raphael. 1986. *The Athenian Republic: Democracy or Rule of Law?* University Park: Pennsylvania State Press.
- Stroud, Ronald S. 1998. *The Athenian Grain-Tax Law of 374/3 B.C.* Princeton: American School of Classical Studies at Athens.
- Thucydides. 1996. *The Landmark Thucydides*, ed. Robert B. Strassler, Trans. Richard Crawley. New York: Free Press, 1996.
- Tod, M. N. 1948. *A Selection of Greek Historical Inscriptions*. 2 vols. Oxford: Clarendon Press.
- Todd, S. C. 1993. *The Shape of Athenian Law*. Oxford: Clarendon Press.
- Xenophon. 1984. *Xenophon in Seven Volumes*. Trans. E. C. Marchand. Vol. 7. Cambridge, MA: Harvard University Press.
- Yack, Bernard. 1993. *The Problems of a Political Animal*. Berkeley: University of California Press.