

DEMOCRACY AND DECAY

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Is modern democracy inferior to ancient? Arguably, yes. Ancient Greek *dēmokratia* was direct democracy: mass assemblies of ordinary citizens decided all policy and legislation. Modern democracy is representative: a small number of specially chosen individuals decide policy and legislation on our behalf. This, it may be argued, is a form of weakening; likewise the move from random selection to election as a way of choosing office-holders. The Greeks actually called government by election 'aristocratic', since its alleged purpose was to choose *hoi aristoi*, 'the best'. The only truly democratic mode of selection was the lot.

'Decay' suggests the breakdown of something into its component parts and the loss of one or more of those parts over time. That is precisely what we find if we look at the extent of the power enjoyed by voters in Greek democracies. The *dēmos*, the collective body of ordinary citizens, had judicial as well as legislative power; modern citizens typically influence legislation alone (and that at one—often distant—remove). This one-sidedness renders modern democracy a strikingly reduced version of its ancient forerunner.

In Book One of *Rhetoric*, Aristotle implies that ancient Greek politics had two elements: deciding what was advantageous for the whole community and deciding what was just within it. Deciding what was advantageous was the task of the assembly; deciding what was just was the task of the courts. In the ancient Greek democracies, ordinary citizens had control over both elements: the classical Greek democratic assembly was an open meeting at which all citizens in good standing were entitled to speak and to vote. The courts operated similarly. Mass panels of ordinary citizens, often running into the thousands, had full responsibility for verdicts, which were decided by simple majority vote with no possibility of appeal. The courts may have had an even greater role in the preservation of democracy than the assembly, especially in Athens (where we have the most evidence). The power of the *dēmos* in the courts allowed it to control Athens' politicians, which in turn secured its rule over the community as a whole.

Ancient Greek democracies, like modern ones, had dedicated political leaders. Just because all citizens were entitled to take part in assemblies and courts did not mean there was no political differentiation among the citizen body. Few citizens spoke in the assembly; few advanced proposals; few took the lead as ambassadors or generals. Those who devoted themselves to political life formed an elite, even if they came from relatively humble beginnings. The mere act of standing up to speak before the assembly marked one out as beyond the common run.

Such a division of labour between ordinary voters and influential politicians is familiar enough to us. But the power of politicians in the ancient Greek world was seriously constrained compared with today, and that constraint was effected by ordinary citizens in the courts. In Athens, politicians and officeholders were vulnerable to a range of legal actions, any of which could be brought by any citizen. Possible charges included treason, accepting or offering bribes, embezzlement, lying to the *dēmos*, attempting to subvert democracy, proposing an illegal policy

or a disadvantageous law, or failing an audit of one's actions in office on either ethical or financial grounds. Standard penalties included fines, loss of citizenship, exile, and even death.

Great gains—and glory—were certainly available to political leaders in Athens, but those who put their heads above the parapet had to watch out. A politician's rivals were always ready to try to bring him down, while ordinary voters, in their role as judges, retained power over both sides. The *dêmos* held the reins on its leaders in a way scarcely credible today.

The Debate over Athenian Legal Reform

Typically, whoever ruled in a Greek *polis* controlled the administration of justice, but the judicial powers of the *dêmos* in fourth-century Athens were particularly notable. Thirty years ago these powers gave rise to a major academic dispute, one that itself suggests something interesting about decay in this context.

The crux of the issue is as follows. At the very end of the fifth century (about halfway through the classical democratic era), the Athenians passed a series of reforms that, at least on paper, significantly expanded the political power of the courts at the expense of the assembly. Between 410 and 399 BCE Athens' entire body of law was revised, recodified, and reinscribed, and a new public legal archive was established, making it easier to bring cases to court. In 403/2 a new distinction between a law (*nomos*) and a decree (*psêphisma*) was laid down, along with a new law-making procedure. Previously, the assembly had enacted all legislation; now the power to make law was given to a new body, the *nomothetai* or 'legislators', 500 sworn judges who made their decision following what looked like a trial of the proposed law, with nominated speakers arguing for and against. The assembly retained responsibility for convening the *nomothetai*, but from this point on was only able to approve decrees, which were defined as policy decisions of an explicitly lower status than laws. Laws automatically trumped decrees, and if any were found to conflict, the decree would be abolished. Also in 403/2, the 'indictment for proposing an inexpedient law' was introduced. This gave any citizen the right to take the proposer of a law to court for having made a disadvantageous proposal, even if the law in question had already been approved by the *nomothetai*. Conviction abolished the law, and if the case was brought within a year of the original vote, the proposer was also liable to a personal penalty, not excluding the death penalty. This charge paralleled one established at least twenty years earlier, the 'indictment for making an illegal proposal', which from 403/2 on would apply only to decrees.

The result of these changes was striking. As of the beginning of the fourth century, everything decided by the Athenian assembly was open to being reversed by a court, though the opposite was not the case: nothing decided by a court could be reversed by the assembly.

Modern scholarly interpretations of these changes have fallen into two camps. The first camp, headed by the magisterial Mogens Hansen, suggested that the reforms constituted a sea change in the character of Athenian democracy. The supremacy of the assembly gave way to the supremacy of the courts; the radical democracy of the fifth century was replaced by the moderate democracy of the fourth. Others saw a shift from popular sovereignty to the sovereignty of law, from democracy to republicanism and the rule of law, or from unlimited democracy to the

recognition of the necessity of constitutional limits on sovereignty.¹ But everyone in this camp agreed the level of democracy in Athens had been reduced.

The second camp—which included almost everyone else but most prominently Moses Finley and Josiah Ober—saw no such reduction. For one thing, it was argued, the reforms had little effect on political practice. We have examples of only nine laws passed using the new legislative procedure, and even fewer of the indictment for proposing an inexpedient law. By contrast, we have over 500 decrees passed by the assembly during the fourth century, showing that it continued to be the major site of political activity. For another, the reforms could not have changed the basic character of Athenian democracy. Since both the assembly and the courts were staffed by the *dêmos*, shifting tasks from one institution to the other could hardly have made a great difference. Moreover, the language of radical and moderate democracy was deemed anachronistic, reflecting nineteenth-century political groupings more than anything authentically Athenian.

The dispute seemingly ran deep, but there was consensus on one key point: whatever the effects of the reforms, the motivation behind them was agreed. Both sets of scholars saw the reforms as a response to the trauma and instability of the last years of the fifth century. The catastrophic failure of the Athenian invasion of Sicily, the loss of numerous allies, naval disaster at Arginousai and the subsequent execution of nine of Athens' ten generals, final defeat in the long-running war against the Peloponnesians, and perhaps most painful of all, two nasty oligarchical coups, one in 411 and the other in 404, both actually legitimated by a vote of the assembly—the list of reversals was long and the conclusion to which they pointed apparently clear. The reforms, it was agreed, were an attempt by the Athenians to limit the damage they could do to themselves politically. Voters wanted a 'brake' to 'slow down the machine'; they hoped to avoid 'snap votes', 'hasty decisions', 'unthinking haste and passion', even 'mass psychosis' in the assembly.² In Ober's words, the recent 'errors' committed by the assembly had 'brought home to the Athenians the dangers of the unrestrained exercise of the popular will.' Accordingly, they 'enacted constitutional measures aimed at correcting the problem.'³

In other words, both scholarly camps had a conception of the Athenian courts as at least a potential check on the worst excesses of untrammelled democracy, where untrammelled democracy was identified with the unlimited power of the assembly. That conception parallels the way modern constitutional and supreme courts are conceived in relation to legislatures today—modern judicial review is supposed to perform a similar 'checking' function. Viewed in this light, the reforms were an attempt at self-restraint, with the assembly representing democracy's 'self' and the courts an externally imposed 'restraint'.

¹ Martin Ostwald, Raphael Sealey and Walter Eder, respectively.

² A.R.W. Harrison, 'Law-Making at Athens at the End of the Fifth Century', *Journal of Hellenic Studies* 75 (1955), 35; R. K. Sinclair, *Democracy and Participation in Athens* (Cambridge: Cambridge University Press, 1988), 67, 83-4; Moses Finley, *Democracy Ancient and Modern* (New Brunswick: Rutgers University Press, 1985), 72; Mogens Hansen, *The Sovereignty of the People's Court in Athens in the Fourth Century BC*, (Odense: Odense University Press, 1974), 50.

³ Josiah Ober, *Mass and Elite in Democratic Athens* (Princeton: Princeton University Press, 1989), 301.

The identification of the assembly with Athens' democratic 'self' is not in itself surprising. For most of the last two hundred years, the assembly has been regarded as the apogee of the Athenian political system, supported as necessary by the courts and council but nonetheless the dominant institution. But the implication that Athens' courts were expected to function as a restraint on the *dêmos* is another matter, for the available evidence does not support this interpretation at all. In fact, our sources consistently suggest that the Athenians saw their courts as the single most 'demotic' element in the political system, the institution most reliably on the side of the *dêmos* and most integral to its rule.

In the *Politics*, Aristotle identified Athens' courts as the 'demotic element' in the sixth-century political system of Solon (as compared to the 'aristocratic' elected offices and 'oligarchic' council of the Areopagos). He also stated explicitly that Solon 'appears to have established *dêmokratia* by constituting the courts from all the citizens.' The *Constitution of the Athenians*, a guide to the Athenian political system probably written by a student of Aristotle, took a similar view. Of the three reforms of Solon said to have most advanced the power of the *dêmos*, the one reported to have 'contributed most to the power of the masses' was the right of appeal to a demotic court, for the specific reason that 'when the *dêmos* is master of the vote'—that is, the *psêphos*, the voting-ballot used in the courts though not in the assembly—'it is master of the state.' The same author asserted that since 403 the Athenian *dêmos* had been 'continually increasing the power of the masses', and though he did not immediately explain how, it seems likely that the increased power of the *dêmos* in the courts had something to do with it, since in his discussion of the political system after 403 the transfer of power to judicial panels forms an ongoing theme.

The speeches and pamphlets that have survived from this era also suggest that the courts were perceived as a major bulwark of democracy. One speaker Lykourgos argued that the three things that most upheld Athenian democracy were its system of law, the vote of the judges, and the method of prosecution by which crimes were handed over to them. Another orator complained about certain phrases which had, he said, 'passed into your common speech', including 'in the law-courts lies your salvation' and 'it is the ballot box that must save the state'—the ballot box, that is, used exclusively in the courts. Finally, our most striking witness to the democratic significance of the Athenian courts is Plato. He was a notorious anti-democrat, of course, but his opinion is no less useful for that. It is very suggestive that throughout his work, when he criticizes the judgment and capacities of 'the many' (*hoi polloi*), the institutional context he has in mind is more often than not the courts.

This evidence suggests another answer to the question of why the Athenians transferred significant political power from the assembly to judicial panels at the end of the fifth century: not to limit the authority of the *dêmos* but to extend it.

This answer certainly makes better sense of the reforms as a response to the traumas of the late fifth century, particularly the oligarchical coups. On the usual interpretation, we are asked to suppose that pro-democracy Athenians, fresh from victory over their oligarchical opponents, actually blamed themselves for the loss of power and eventual civil war they had suffered, because they had endorsed the coups in the assembly. But our evidence shows no sign of self-blame. Rather, ordinary Athenian voters seem to have been straightforwardly angry with the conspirators. That is the message of the decree of Demophantos, passed in 410 after the first

coup had been put down, which directed that any individual who attempted to suppress democracy in future might be killed on sight. It is also suggested by the claim, found in several extant speeches, that the assembly, in legitimating the coups, had been forced by fear and deceit to vote against its wishes, not that it had itself ‘erred’.

Nevertheless, interpreting the reforms as a step towards more radical rather than more moderate democracy raises an important question. Why should the Athenians have believed that giving panels of sworn judges greater political powers would strengthen the rule of the *dêmos* overall? An examination of the composition, procedures, and functions of the courts as compared with those of the assembly suggests several possible answers. Taking these answers together, it seems quite plausible that Athens’ judiciary could have been regarded as the leading vehicle of demotic rule—an interpretation that not only runs counter to the usual conception of Athenian democracy, but also invites serious consideration of some of the weaknesses of democracy today.

The Athenian Courts and Assembly Compared

The Athenian assembly, as is well known, was open to all adult male citizens. Of course, that did not mean all those eligible could actually attend. At the beginning of the fourth century, the assembly’s usual meeting-place on the Pnyx could fit from six to eight thousand people, meaning that only about a fifth of eligible citizens were able to attend any given meeting. But there were no other limitations on entry. Any citizen who wished to take part could simply arrive at dawn and find himself a seat.

The courts were significantly smaller. A minimum of 500 citizens heard public cases (which included all political ones), while private cases were heard by a minimum of 200, though larger panels were also common. Entry was tightly controlled. The annual judicial roll comprised some 6000 people, chosen by lot from volunteers over the age of thirty. Upon being selected, each citizen swore the judicial oath and received an official nameplate. The courts sat most days, and no trial lasted longer than a day. Those who wished to judge simply turned up at dawn, handed in their nameplate, and waited to see if they were chosen. The selection and case-assignment process was random and increasingly complicated, reaching as many as nine rounds of sortition by the last third of the fourth century.

Why might the composition of the courts have seemed especially likely to help the *dêmos*? There are two main possibilities. The first is their social make-up. The assembly, as far as we know, attracted a reasonable mix of rich and poor. Those who lived closest to the city may have been overrepresented, given the Pnyx’s location in the centre of town, but comments from Plato, Xenophon and Theophrastus suggest a relatively diverse crowd. The courts, by comparison, seem to have featured a relatively greater proportion of poorer citizens. The crucial factor here is the provision of payment for judging, which was instituted by Pericles in the mid fifth century, apparently as a way to strengthen his popular power base against that of a wealthy rival. Payment for assembly-going was not introduced for another fifty years; hence early on in Athenian democratic history, acting as a judge became an easy way to supplement one’s income, a prospect naturally more appealing to a poor man than to a rich one. The stipend was not huge—by the fourth century, it was equivalent to about a day’s low-paid manual labour—but the evidence we have suggests that it worked to attract the poor. The poverty of judges forms a running joke in Aristophanes, particularly *Wasps*, where the chorus is depicted as being unable to

eat if it cannot judge. Accordingly, it seems plausible that the courts may have been regarded as more likely than the assembly to favour ordinary voters rather than the elite.

The second notable feature of the courts' composition is the difficulty of stacking or corrupting judicial panels. Nowadays the openness of the assembly is usually seen as a pro-democratic feature, but it was not an unmixed blessing from the point of view of the least powerful. Given the limited capacity of the venue, the outcome of votes could be manipulated simply by arriving earlier than one's opponents and with a larger number of supporters in tow. That was one factor in the success of the 411 coup: the meeting was held in small location outside town with an audience stacked in favour of the conspirators, and the result was the abolition of democracy. Aristophanes' *Assemblywomen* dramatizes a similar takeover: all the women have to do is arrive first thing in the morning and fill the front benches, and the result is women-only government. Such shenanigans were almost impossible in the courts. There was one notorious case of an entire judicial panel being bribed in 409, when it was still known in advance which judges would be hearing which cases. But the Athenians soon switched to assigning cases on the day of trial, and that seems to have worked well. Random selection shielded judicial panels from manipulation or outside interference, and as such protected the *dêmos*'s rule.

Judicial procedures probably also boosted the power of ordinary voters relative to professional politicians. In the assembly, anyone who wanted to could speak, and everyone present could vote. These features are normally regarded as democracy enhancing, but on closer inspection things look more complicated. Though all citizens had the right to speak, in practice the vast majority of attendees had no wish to visit the stage, nor would there have been time for many to do so. Accordingly, a relatively small group of political leaders dominated the scene. Hansen estimates that there were about twenty to forty regular speakers at any one time; others go higher, but the implication is the same. Most influence over decisions was limited to a very small proportion of assembly-goers. The problem for ordinary citizens was how to make use of those speechmakers without being ruled or abused by them—a difficult task. Nearly everyone involved in the two coups was a prominent politician. The leading conspirators in 411 had previously been considered committed democrats, while the men who became known as the Thirty Tyrants had initially been entrusted with the task of producing new laws.

The courts could not resolve the power disparity between speakers and listeners altogether, but restrictions on speech arguably ameliorated it. In the courts, only litigants and co-pleaders were allowed to speak, strict time limits were enforced, and, perhaps most importantly, the judges did not discuss cases among themselves. Once both sides had been heard, they simply moved to a vote. There was thus no formal opportunity for judges to influence each other's opinions. Each judge made up his mind independently of the others, so the outcomes reflected the will of all voters equally, rather than the views of the most dominant in the group.

The independence of thought of Athens' judges was also supported by the secret ballot. This was one more respect in which judicial procedures supported the political role of ordinary voters, and it was crucial. In the assembly, as noted, everyone could vote; but with thousands in attendance and numerous decisions to be taken at every meeting, that meant open voting, i.e. raising hands—and with that openness came vulnerability to intimidation. Thucydides emphasized the chilling effect on voters of the reign of terror outside the assembly immediately prior to the 411 coup. One democratic leader had been killed, and further violence and reprisals

seemed likely. Accordingly, as Thucydides observed, it was no great surprise that when the abolition of democracy was proposed, no one dared come out against it.

In the courts, however, citizens were free to vote as they pleased. All votes were cast secretly, and the process became increasingly sophisticated as time went by. In the fifth century, judges had a choice of two voting urns, one representing the prosecutor, the other the defendant. The urns were placed side by side with a wicker funnel covering the openings, so when a judge dropped his ballot in it was hard for an onlooker to see which he had chosen. By the mid fourth century the method had been refined. Each judge was given two ballots, a pierced one representing the prosecutor and an unpierced one representing the defendant. When held between thumb and forefinger it was impossible to tell which was which, and judges simply dropped the one they wished to count into a bronze urn, the discard into a wooden one. There was no longer any need for the wicker funnel. The fact that the piercings were completely hidden protected judges from either reprisals or the promise of rewards, making judicial decisions a better reflection of the will of those involved.

Certain other features of the courts may also have boosted their democratic credibility. Judges had to be over thirty—perhaps because young men were widely perceived as unreliable, emotionally immature, and more likely than the average citizen to support oligarchy. The fact that judges swore the judicial oath, which included clauses against oligarchy and tyranny, must also have played a role. But perhaps the most powerful reason for democrats to extend the powers of judges has to do with the traditional political functions of the courts.

As Aristotle suggests, deciding what was just was not only one of the two essential components of Greek politics: historically, it seems to have been perceived as the supreme political task. Our earliest depiction of a Greek trial scene, engraved on the shield of Achilles in the *Iliad*, is famous for several reasons, but one especially interesting feature is its context. The shield depicts two scenes, one in wartime, one in peacetime, and judicial activity is evidently taken to be emblematic of a peaceful civil society. The political significance of judging is reinforced in Herodotus's *History* in the account of Deioke, who becomes king exclusively because of his success as a judge. Aeschylus, in the *Oresteia*, also ties political stability to judicial activity, while Aristotle, in the *Politics*, described *dikê*, the determination of what is just, as the 'backbone of the political community'. Kleanthes, the Stoic philosopher, went further, defining the *polis* as 'a habitation where people seek refuge for the purposes of the administration of justice.'

Judicial activity was especially strongly implicated in the rise of democracy in Athens. Aristotle's only extant discussion of Athenian politics put the *dêmos*'s control of the courts centre stage, while in the fifth century, Ephialtes' and Pericles' use of the courts to dock the power of the council of the Areopagos was considered a major watershed. The history of democratic reversals in Athens is also suggestive. The only thing on the agenda at the 411 meeting at which the coup was launched was the suspension of the rights of citizens to impeach speakers or to prosecute them for making illegal proposals. One of the first moves of the Thirty Tyrants in 404 was also to rescind these powers.

Why were such political charges so important? The answer, I would argue, lies in the control they gave ordinary citizens *en masse* over those who took prominent individual political roles. Athenian politics suggests important distinctions among what we may call governing, leading,

and ruling. Governing was the task of hundreds of low-level magistrates (*archai*) and councillors chosen by lot, who individually enjoyed little power and who were regularly held to account by a system of pre-tenure scrutinies and post-tenure audits. More significant power was enjoyed both by individual leaders (*dêmagogoi*), i.e. politicians, and by voters acting collectively in the assembly and the courts. But there was a crucial difference between politicians, who influenced decisions by arguing for them publicly, and ordinary voters, who actually made those decisions. It was the latter that constituted ruling (holding *kratos*), and more than anything, what prevented the *dêmos*'s political leaders from usurping that rule was the *dêmos*'s power over them in the courts.

A passage from Aristophanes' *Knights* (424) suggests how the Athenian assembly and courts together facilitated the delicate balance of power between the *dêmos* and its leaders. Towards the end of the play, the Knights (members of Athens' second-highest socio-economic class) accuse Demos, the play's leading character, of being too easily manipulated by politicians. Demos replies: 'There's purpose in this foolishness of mine. I relish my daily pap, and I pick one thieving political leader to fatten; I raise him up, and when he's full, I swat him down.' What is crucial to note are the locations of this 'raising' and 'swatting' respectively. As the knights (who apparently accept Demos's claim) observe, politicians are 'raised' in the assembly. And as Demos explains, they are 'forced to regurgitate whatever they've got from me' in the courts, using the funnel used to conceal judges' votes as a 'probe'.

What is regurgitated in the play is money. Yet it may equally be considered power. The dominance of political leaders in the assembly, predicated on the *dêmos*'s sufferance, is reversed in the courts, where they may be humiliated at the *dêmos*'s hands. This suggests two points: first, the interdependence of the assembly and courts—demotic rule requires both—and second, the courts' *final* significance. The 'fattening' process to which Demos refers would be self-undermining without some way of recovering the goods, and to that extent the entire system depends on the *dêmos*'s judicial function.

If so, a new explanation of the late fifth-century reforms presents itself. In extending the power of judges at the end of the fifth century BCE, Athens' voters were not seeking to restrain *themselves*. Rather, they were—as usual—using their courts to limit the influence of their political class. They were bolstering the strength of that branch of government in which their own greatest strength—and their leaders' greatest weakness—lay.

Conclusion

The significance of demotic judicial activity in the ancient world raises an obvious question: what has changed? Obviously, such popular judicial power does not exist today. Even when juries play a role in decision-making, they lack the ultimate authority enjoyed by Greek judicial panels, since they judge only 'fact' rather than 'law' and are subject to instruction by the presiding judge. Still more striking, judicial processes are no longer standardly used to hold politicians and office-holders to account. Criminal actions may of course be prosecuted in the ordinary way, but the special political charges, scrutinies, and audits that were commonplace in the ancient Greek world are no longer with us. Aristotle treated elections and audits as two sides of the same coin; today, the only regular mechanism available to us to discipline our politicians

is to un-elect them at the next available opportunity. By Athenian standards, this represents a huge loss of accountability. Yet it is a loss of which most modern citizens are not aware.

How did control of the administration of justice cease to seem a fundamental element of democratic politics? One part of the answer may well lie in the work of Athenian democracy's most celebrated critic, Plato. A remarkably large proportion of Plato's oeuvre—enough, perhaps, to suggest the motivation for his entire philosophical project—is devoted to producing an account of justice that shows it to be unamenable to being decided by the votes of large numbers of ordinary people. Plato's justice is a transcendent form, something that only a small number of specially trained or inspired people can access: according to Plato, the philosophers.

The key idea that emerges in Plato's account is that there is an independently existing right answer 'out there' to questions of justice that judges (among others) must try to reach. This idea does not seem to have been part of the Greek conception of justice prior to Plato. Rather, most Greeks seem to have taken the perceptions of the community to be the only available benchmark of what is just. But Plato's seemingly novel conceptualization had a major influence on the development of the Western political tradition and arguably continues to influence our thinking about justice to this day. One result of that is that what the Athenians took to be a foundational pillar of democracy, the control of the administration of justice by ordinary people, now appears far-fetched, even dangerous. Rather, expert, highly trained judges—the modern analogue of Plato's philosophers—are expected to deliver appropriate results for the rest of us, results that get as close as possible to the 'right answer' suggested by the laws themselves.

This is not the occasion to delve further into the details of Plato's intervention, or the alternative conceptualization of justice that underpinned Athenian democratic practice.⁴ I will close, instead, by addressing three things my account of this difference between ancient and modern democracy suggests about the concept of decay.

First, if I'm right about Plato's contribution—and perhaps even if I'm not—it would seem that decay, understood here as systemic breakdown and loss over time, is not always a 'natural' phenomenon but is sometimes willed, innovated, and intentional. At least in politics, human intervention and choice may lie at the bottom of what may later appear to be a natural or expected state of affairs.

Second, it is easy for the 'post-decay' state of affairs to come to seem natural, so observers do not recognize that decay has occurred—or if they do, they don't fully realize its significance. If what's lost has truly been lost, it can be difficult or impossible to see the void where it used to be.

Here I am thinking of the difference between the interpretation of the late fifth-century reforms I have presented and the view held over the past thirty years. The late fifth-century extension of the powers of Athenian judges has been conceived as a more or less significant restraint on democracy in the absence of any primary evidence suggesting that the Athenians perceived their courts along those lines, even by the very best scholars of Athenian democracy in the world, and even though all those scholars also know perfectly well that the courts in Athens were highly democratic and politically powerful institutions. On my interpretation, one scholarly

⁴ A full account appears in D. Cammack, 'Plato and Athenian Justice', *History of Political Thought* 36:4 (2015), pp. 611-642.

camp, rightly recognizing that judges gained significant powers, wrongly assumed that that must have entailed a reduction in the level of democracy. The other, rightly detecting no such reduction, wrongly assumed that that meant the extension of judicial power must have been insignificant. In fact, the extension of judicial power was both significant and actually boosted the level of democracy in Athens. Athenian democracy was more radical in the fourth century than in the fifth, precisely because of the additional powers afforded to ordinary citizens in the courts. But the ideological context of the late twentieth century, in which judicial action is standardly deployed to check the alleged democratic excesses of legislative assemblies, perhaps did not allow that interpretation to be formulated clearly.

Thus an obvious interpretative possibility was missed, precisely because modern democracy so conspicuously lacks the kind of democratic judicial activity the ancients took for granted. This reveals yet another feature of decay: that it is a human conception, not a natural fact; it requires an agent capable of comprehending two states, pre- and post-decay. Without an observer conscious of both, decay may be invisible. And if it's invisible, it cannot be remedied. I think it follows that the mere *diagnosis* of decay is surprisingly difficult. When it comes to our most important institutions, diagnosing decay is something we have to work at constantly. I hope this volume will contribute to that indispensable effort.