

BMCR 2019.10.10

Use and Abuse of Law in the Athenian Courts. Mnemosyne supplements. History and archaeology of classical antiquity, 419

Christopher Carey, Ifigeneia Giannadaki, Brenda Griffith-Williams, *Use and Abuse of Law in the Athenian Courts. Mnemosyne supplements. History and archaeology of classical antiquity, 419*. Leiden; Boston: Brill, 2018. xv, 385. ISBN 9789004377875 €110,00.

Review by

Christine Plastow, The Open University. christine.plastow@open.ac.uk

Preview

[Authors and titles are listed at the end of the review.]

This volume collects together a selection of papers from a 2013 conference at UCL of the same name discussing uses of law in Athenian legal cases, particularly those uses that might be considered to be abusive. ‘Abuse’ is interpreted in a variety of ways, from stretching the meaning of laws and employing legal procedures for purposes other than the pursuit of justice to the question of whether Athenian law could in fact be subject to abuse. After Chris Carey’s introduction, the book is split into four parts. In Part 1, ‘Conceptualising the System’, Michael Gagarin considers whether it is possible to distinguish between use and abuse of Athenian law. He argues that the lack of authoritative meanings of laws in the Athenian system means that interpretation was down to the orator and thus that no interpretation can definitively be called ‘abusive’; even the setting of precedents does not preclude the use of new legal interpretations in future cases. Robin Osborne discusses the elasticity of law in Athens, arguing that inelastic laws using technical terminology were of no use to Athenians and that even laws which appeared to be more defined could be ‘stretched’ in rhetorical argumentation. This elasticity was checked, Osborne asserts, by the choice of legal procedures available with different levels of risk and reward and by the pre-trial procedures that offered the chance to bring the charge to an early conclusion. Edward M. Harris takes a survey of references to previous trials in the orators alongside a study of the role of the plaintiff to argue that the primary goal of Athenian courts was to make a determination with regard to the legal charge, that the dikasts knew the law and voted in accordance with it, and that their vote reflected an Athenian belief in the rule of law. Chris Carey addresses the established view of the division between public and private in

Athenian law with a study of charges, particularly the *dikē exoulēs*, that straddle that boundary by being procedurally private but allowing for penalties that had some public aspect, such as a fine paid to the city.

In Part 2, 'Procedural Manoeuvres', Brenda Griffith-Williams examines the use of the blocking *diamartyria* procedure in Isaios 6 and the speaker's claims of abuse to argue that the speaker was indeed unfairly disadvantaged by his opponent's use of the procedure and that this kind of disadvantaging of the opposing litigant can be identified as a form of procedural abuse on a case-by-case basis. Christos Kremmydas takes up the subject of the little-known *anakrasis*, a pre-trial procedure, distinguishing it from other pre-trial procedures such as arbitration, identifying its purpose in deciding the admissibility of the charge, and then discussing its potential effect on argumentation; the *anakrasis* allowed litigants on both sides of a case to anticipate their opponents' arguments and pre-emptively address them. László Horváth addresses the potential for the postponement of the trial in cases of *graphē paranomōn* and suggests that many cases were postponed indefinitely and never came to trial, noting that this postponement could allow individuals to be involved in a large number of cases at one time. Noboru Sato continues the discussion of pre-trial activity with a survey of the use of procedures including arbitration, *paragraphē*, and *hypōmosia* to impede the process of the trial and of the reasons for using these procedures; he draws attention to the fact that these procedures required negotiation and mutual agreement between the litigants.

Part 3, 'The Rhetoric of Law', opens with Lene Rubinstein's discussion of the use of partial citation of laws, examining the effect when the laws were read out officially or simply paraphrased by the litigant; she argues that the paraphrases could be less readily anticipated by opponents as they would not need to be mentioned in pre-trial stages, and she suggests that there must have been a level of tolerance of these creative interpretations of the law. Ilias Arnaoutoglou surveys uses of law in the surviving speeches to illustrate where legal malleability could be exploited by litigants and to argue that, ultimately, the decisions of the *dikasts* were the only way to establish which uses of law were acceptable. Ifigeneia Giannadaki takes a broader view, examining how the orators make rhetorical arguments about the whole Athenian legal system and exploring their simplification of the system as well as their use of arguments about the intent of the lawgiver in order to make the system appear unified and coherent. Kostas Apostolakis examines the rhetoric of law in the one surviving speech from a case of *antidosis*, noting that the speaker is particularly subtle in his commentary on laws and in using laws susceptible to varied interpretations. Victoria Wohl takes a spatial reading of the rhetoric of law in Demosthenes 23, arguing that the orator establishes a bounded view of Athenian legal jurisdiction that is tied to the space of Athens and then rhetorically brings Thrace within this Athenian space in order to extend the city's jurisdiction over it. S.C. Todd explores the metaphor of 'theft' for abuse of Athenian legal process, examining how the status of theft in the Athenian legal system as both a public and a private crime allows a litigant to adjust the level of seriousness of his opponent's transgression, often without clearly specifying a 'victim' of the alleged 'theft'.

In the final section, Part 4, 'Specific Areas of Law', Mirko Canevaro argues against the prevailing view that the Athenian ideology of legislation was conservative and anti-change to suggest that Athens was in fact in favour of new laws, as long as they were passed using the proper procedures; these procedures sought to avoid haste and contradictions with existing statutes and to promote alignment with the pre-existing *ēthos* of the Athenian legal system. Eleni Volonaki focuses on the *eisangelia* procedure, and particularly the use of the procedure in a greater range of ways in the later 4th century, arguing that the procedure was extended not by legislation but by interpretation; she also outlines the limits of such interpretation. David D. Phillips uses categories of culpability from the US Model Penal Code to read intent in Athenian homicide law, making useful distinctions and drawing attention to problems of complex liability for which the system did not seem to allow. Rosalia Hatzilambrou responds to the traditional view that Isaios abused the law more than any other orator to argue that, in fact, Isaios's use of the law involved interpreting vague statutes in ways that were expected and acceptable to his audiences and that favoured his argumentation, just as any other orator would.

The volume as a whole offers a very successful examination of the ways in which law could be used in Athenian legal cases and outlines the room that was available for interpretations, manipulations, extensions, and contractions of law that might be understood as 'abuse', depending on one's reading of the legal system. It is certainly useful to begin the volume with several papers taking broad and contradictory views of the subject, allowing the reader to get a sense of the breadth of debate. But overviews are only useful up to a point in a field where the evidence is distributed so unevenly across areas of law, and it is appropriate that the majority of the volume is given over to papers that take a closer look at individual aspects of the Athenian legal system. All of the papers have something to offer, and many offer innovative and succinct readings that contribute greatly to the field. It is especially gratifying to see a section on rhetoric in the volume, acknowledging that all information on law taken from the Attic orators must be read through a rhetorical lens. The papers in the collection draw primarily on the forensic speeches of the Attic orators for their subject matter, as is to be expected, since it is in these texts that we are able to discern the actual application of law most easily. A few papers did, however, also usefully consider other sources, such as the theoretical texts of Aristotle and Anaximenes (Giannadaki) and the hypothetical *Tetralogies* (Phillips), which help to offer a somewhat broader perspective. The inclusion of 18 substantial contributions adds richness and variety to the volume.

Perhaps the most successful section of the book is Part 2. In this part, the four papers work particularly well together to give an overview and analysis of the legal procedures that took place before or apart from the trial. These areas are less studied than others in Athenian law because of the lack of evidence about the operation of such procedures. The angle of use and abuse allows the authors in this section to draw on the strength of the evidence for the ways these procedures are discussed by litigants in the surviving speeches. Naturally such discussions often focus on the ways that a litigant's opponent has exploited, or indeed abused, these processes. Thus the papers of Griffith-Williams, Horváth, and Sato employ this evidence persuasively to demonstrate the ways in which a knowledgeable litigant could use legitimate legal procedures to his own advantage, whether the case eventually came to trial or not. Kremmydas's discussion of the

potential role of the *anakrasis* is particularly useful in adding to our understanding of how rhetorical strategies were shaped by factors outside of the courtroom context itself: a litigant's entire strategy was not necessarily contained or represented in a surviving speech.

One other contribution that stands out is that of Victoria Wohl. Her spatial reading offers an innovative approach to forensic oratory which acknowledges both the performed nature of speeches as sources and the complex cognitive functions of the audience that have important implications for the effects of persuasion. She also illustrates the value of paying attention to the rhetorical nature of our sources and to how the sources can affect the perception of law, both from our modern perspective and from that of the Athenian audience—an aspect that appears to be overlooked in some discussions of the subject. This volume, and Wohl's paper in particular, demonstrates that there is still plenty of room for innovation in the fields of Athenian law and oratory.

Authors and titles

Chris Carey, Introduction

Michael Gagarin, Abuse Is in the Eye of the Beholder

Robin Osborne, The Elasticity of Athenian Law

Edward M. Harris, The Athenian View of an Athenian Trial

Chris Carey, Bridging the Divide between Public and Private: *dikē exoulēs* and Other Hybrids

Brenda Griffith-Williams, Isaios 6: a Case of Procedural Abuse (and Scholarly Misunderstandings)

Christos Kremmydas, *Anakrasis* and the Framing of Strategies of Argumentation in Athenian Public Trials

László Horváth, The Postponement of the Trial by Jury in Athens: the Timing of the *graphē paranomōn*

Noboru Sato, Use and Abuse of Legal Procedures to Impede the Legal Process

Lene Rubinstein, Clauses out of Context: Partial Citation of Statutes in Attic Forensic Oratory

Ilias Arnaoutoglou, Twisting the Law in Ancient Athens

Ifigeneia Giannadaki, (Re)constructing the Athenian Legal System

Kostas Apostolakis, Liturgies and the Rhetoric of Law in Fourth-Century Athens: a Case Study on an *antidosis* ([Dem.] 42)

Victoria Wohl, Jurisdiction and Jurisprudence: the Topography of Law in Demosthenes 23 *Against Aristokrates*

S.C. Todd, 'Theft' as a Metaphor for the Abuse of Legal Process at Athens

Mirko Canevaro, Laws Against Laws: the Athenian Ideology of Legislation

Eleni Volonaki, Abuse of the *eisangelia* in the Latter Half of the Fourth Century BC

David D. Phillips, Athenian Homicide Law and the Model Penal Code

Rosalia Hatzilambrou, Abuse of Inheritance Law in Isaios?