BOOK REVIEW

Law and Justice in the Courts of Classical Athens. By ADRIAAN LANNI. Cambridge and New York: Cambridge University Press, 2006. Pp. x + 210. ISBN 0–521–85759–7.

The rule of law is perhaps the most vital legacy of ancient Hellas, but the record of actual cases at Athens does not inspire much reverence. The rules distinguishing one procedure from another were vague; verdicts were sometimes outrageous, sometimes meaningless. The entire arrangement seems designed to frustrate experts and empower layman juries (*Ath. Pol.* 9.2). Modern readers, especially since the 1980s, have often concluded that rules and principles counted for little, and that social ties and agonistic values prevailed. Perhaps most provocative is David Cohen's model[1] describing litigation as feuding by other means. Now, in defense of a rule-based rationale, comes Adriaan Lanni's (L.) thoughtful study. L. makes two major corrections to the agonistic paradigm: (a) The Athenians made conscious and reasonably consistent distinctions between the rules that applied in one jurisdiction and those that applied in another; and (b) in order to grasp the Athenian attitude toward those rules, we must also recognize the artificiality of our own "received view" of how jury trials work. L. is a law professor as well as an historian, and her aim is "to uncover the values and concerns that seem to underlie the practices and procedures" (p. 5). In this way, "[t]he Athenian courts can tell us something about the 'Athenian mind'…: the product of many generations and many hands may bear the imprint of the collective more deeply than that of any individual's work; that a group's traditions may be arbitrary in origin does not make them less valuable in assessing the group's peculiar understanding of the world."

The central issue is relevance: Why is it that the Athenians admitted so much that strikes us as irrelevant or immaterial? The difference between their approach and ours may not be so great. Recent studies of the modern trial reveal a broader scale of justice, weighing social values and cultural norms against legalistic criteria.[2] With this perspective, L. introduces the Athenian problem (Ch. 1) and gives a succinct introduction to democratic justice at Athens and the values that guided its juries (Ch. 2). Then (with Ch. 3) she turns to the problem of relevance in more detail: at Athens ordinary juries seem broadly tolerant of "extra-legal" arguments about the background to the dispute, and about compassion and character. They saw these contextual considerations as integral to the issue before them.

The two clearest exceptions are homicide trials and maritime suits, *dikai phonou* and *dikai emporikai* (treated in Chs. 4 and 6, respectively). In cases of homicide before the Areopagus or the

[1] *Law, Violence and Community in Classical Athens* (Cambridge, 1995).
[2] Especially R.P. Burns, *A Theory of the Trial* (Princeton, 1999).

ephetai we find that pleas for sympathy and arguments based on past history seem to be restricted (or cast as a challenge to the evidence: How can you trust plaintiff's case, given his past machinations?). The homicide courts were respected as much for ancient tradition as for their effectiveness, but the evolving democracy could and did devise alternatives; thus the fact that Athenians retained *dikai phonou* in something like the original form indicates broad respect for the rule-based ideal.

In the mid-4th century the Athenians established a special procedure for contract disputes involving trade to and from Athens. (Such were the cases in D. 32–5 and 56.) This adaptation responded to the demands of the marketplace—foreign merchants needed assurance that their cases would be decided expeditiously and without prejudice. The rules seem designed to offset "legal insecurity"—the fear of arbitrary verdicts. Of course the maritime suits are not devoid of extraneous pleas, but litigants doggedly insist upon the wording of the written contract and what specifically was done in compliance. There is some question of how this focus was achieved; L. concludes that it was not the province of special personnel, as in the Areopagus, but a situation where ordinary jurors were called upon to apply a special standard. That stricter standard owes much to the framing of the statute: if the suit did not meet the special conditions for this expedited process, the defendant could challenge the suit (*paragraphê*). The legislation was debated before a panel of *nomothetai* and was subject to some deliberation in the assembly (on the decree to convene *nomothetai*). This was a rule-based adaptation, not an accident of historical development.

Even outside the special courts there was some concern for "legal consistency," to ensure that similar cases were similarly decided (Ch. 5). If litigants cannot predict how or whether the judges will apply the rules, laws cease to be effective instruments for social control. This concern is reflected in "arguments from precedent": occasionally we meet with a plea that the jury should take an earlier verdict as its guide, and litigants often urge the jury to weigh their verdict against the example it will set.[3]

L. writes with precision, largely undistracted by needless quarrels. Her objections to the agonistic model, however, might be put more constructively. She insists that Cohen's view of litigation as a zero-sum competition for honor is inconsistent with prevailing values of reciprocity and fair dealing (p. 53); the "primary aim" of extra-legal argumentation was to assist the jury in reaching a just resolution of the dispute, not to further the feud (p. 44). But it sometimes seems a fine line between Cohen's honor-based calculus and the contextual considerations (weigh-

[3] Cf. L.'s study in E.M. Harris and L. Rubinstein, eds., *The Law and the Courts in Ancient Greece* (London, 2004) 159–71; see also Rubinstein's "Arguments from Precedent," in E. Carawan, ed., *The Attic Orators* (Oxford, 2007) 359–71.

ing past history, disproportionate penalties, etc.) that Athenians found essential to a just resolution. In many disputes, as L. herself observes (p. 9), "how 'the case' should be framed was precisely what was at issue." Even in our system, as Burns (n. 2, above) puts it (esp. pp. 183–201), "meta-issues"—issues that emerge from the tension among separate spheres of norms and loyalties—often trump the merits. So too, it is reasonable to suppose, Athenian juries sometimes regarded their task as a dilemma of just this sort: balance the scale of honor or decide by the rules. This is not to diminish L.'s contribution. Rather, it is to her credit that other perspectives can be adapted to her paradigm, for she captures something essential in Athenian legal thinking with a vital connection to its legacy.

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