

Edwin Carawan: *Control of the Laws in the Ancient Democracy at Athens*. (Baltimore, MD: Johns Hopkins University Press, 2020. Pp. xi, 308.)

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The study of Athenian law holds several traps for the unwary. There is the paucity of evidence on crucial topics, such as the identity of the *nomothetai*—the “law-setters” who authorized new laws in the fourth century BC. There is the opprobrium recently heaped by some scholars on some sources previously deemed valuable if not perfectly reliable, namely, many of the documents inserted within the extant forensic speeches. There are the superficial similarities between the judicial review of legislation pursued in many modern constitutional states and two Athenian procedures—the *graphē paranomōn* and the *graphē nomon mē epitēdeion theinai*, translated by Carawan as the suits “against unlawful acts” and “against unfitting legislation” respectively—notwithstanding the profound differences between the mass panels of citizen-judges who decided cases in ancient Greece and the legal professionals who constitute modern constitutional courts. And there are interpretative difficulties at the level of basic terminology. To take only the terms found in Carawan’s carefully composed title: What did being *kurios*, “in control,” mean to the ancient Greeks? How similar, conceptually, were their *nomoi* to our “laws”? Or their *dēmokratia* to our “democracy”? How did these concepts relate to one another? None of these questions is easily answered.

To his immense credit, Edwin Carawan has written a book that neither shies away from nor sinks under the weight of these or other issues that bedevil this contentious field. The introduction sets his discussion of classical Athenian law-making within the context of both (a) modern (particularly American) ideas about judicial review and like constraints on popular political activity, and (b) the historiographical background, paying especially welcome attention to German scholarship that Anglophone readers may have missed, most importantly for Carawan the work of Ulrich Kahrstedt (1888–1962). Part 1 reconstructs “the framework and original aims by which the court controlled the laws at Athens” (15), introducing first Carawan’s basic account of the evolving fourth-century legislative landscape, next its key players (citizen-judges and law-makers), and then the earliest evidence pertaining to the older of the two review-suits—that “against unlawful acts.” Part 2, “The Constitutional Window,” examines four revealing cases from the 350s, and Part 3 interprets the last and most famous case in the dossier: Aischines’s 330 prosecution of Ktesiphon for proposing that the leading politician, Demosthenes, be awarded a golden crown. The concluding chapter weaves the threads into a fascinating reading of the Athenian *dēmos*’s control of *nomoi* as a practice of self-understanding entirely unlike the modern practice of judicial review. Far from aiming at self-constraint, Carawan argues that demotic *nomos* constituted a form of self-representation that served—not

exclusively but significantly—to constrain the community’s political leaders and office holders.

The necessary intricacy of some of Carawan’s arguments and his decision to move through some of the evidence supporting his analysis in reverse chronological order may present difficulties for readers not already familiar with the material. But his treatment of the speeches that form the bulk of our evidence on this topic is so penetrating, and the judgments he ventures so admirably nondogmatic, often plausible, and always stimulating, that the book should be recommended to anyone with an interest in the field, with the caveat that it is not light reading.

Of special interest for political theorists are Carawan’s discussions of the identity of the *nomothetai*, the conceptualization of *nomos*, and the relationship of each to the Athenian *dēmos*. On the first, it used to be widely supposed (by Mogens Hansen and Peter Rhodes, among others) that the *nomothetai* were citizen-judges (*dikastai*), since, among other things, they are identified in some sources as “the sworn,” which looks like a reference to the judicial oath. On that interpretation, the fourth-century *dēmos* entirely lacked legislative power, making fourth-century *dēmokratia* appear at first glance significantly more “moderate” and/or “constitutional” than its fifth-century forerunner. Recently, however, it has been argued (most notably by Mirko Canevaro and Albert Esu, drawing on earlier work by Marcel Piérart) that *nomothetai* were none other than the assembled *dēmos* under another name. Carawan attractively combines both interpretations. As he admits, there is “not much to go on” (64), but the evidence is at least compatible with the possibility that the *nomothetai* were originally a mass assembly of citizens who had taken the judicial oath, although that qualification fell into disuse over time (63–75, esp. 63–67). The uncertainty may never be finally resolved, but as well as cutting an elegant path through a vexed debate, Carawan’s reconstruction has the merit of reminding readers that things may not have gone on as they began, especially over an eighty-year period, in a community known as much for its institutional experimentation as for its respect for its own traditions.

That reminder recurs in relation to the conceptualization of *nomos*. In classical contexts, this term is almost always translated “law” and interpreted consciously or unconsciously as a written statute, but *nomos* could also indicate “custom,” “tradition,” “norm,” “rule,” and “convention.” Carawan rightly emphasizes this semantic breadth, arguing that “long after *nomos* was adopted as the proper term for general statutes of permanent validity, it retained an archaic sense of customary practice or traditional role” (85–86). His study of early cases of the *graphē paranomōn* supports that view. A person who was *paranomos*, or a thing or action that was *paranomon*, went “beyond” or “against” *nomos*. On the prevailing interpretation of this kind of lawsuit (based largely on fourth-century evidence), what was *paranomon* was a decree that contravened one or more standing laws. The suit targeted a textual contradiction, and the judges’ task was to compare the texts and rule

on the contradiction. Following Kahrstedt, Carawan argues that this interpretation fails for fifth-century cases at least, since the distinction between *nomoi* and decrees—and the concomitant rule about decrees being invalid (*akuros*) if they contradicted written *nomos*—did not come into being until later. He advances a radically different interpretation of being *paranomon* in this period: the lawsuit originally targeted not textual contradiction but office holders who went beyond the norms of their roles to the detriment of the *dēmos*. Early *graphai paranomōn* were often “a remedy against officers or citizens who overreached in some official capacity, who used the cloak of authority to infringe upon traditional rules” (78). In other words, even when written down and formally approved, *nomoi* may have been regarded and deployed by contemporaries as customs through which the *dēmos* ruled over the community, including its own office holders, rather than as statutes by which it expected to be ruled. This powerful interpretation is developed throughout the book and is ultimately compelling.

Carawan’s intervention is advanced with such modesty that its theoretical implications risk being missed. Nonetheless, this book poses a profound challenge to many specialists and ought to influence nonspecialist discussions of ancient Greek politics, law, and political philosophy, especially that of Aristotle. If Carawan is even roughly right, far from becoming a “moderate” or “constitutional” democracy, classical Athens remained a prime example of what Aristotle called “ultimate” (*teleutaia*) *dēmokratia*: a system in which the *dēmos* was in control (*kurios*) of *nomoi* rather than the opposite. Still more valuably, Carawan provides the historical resources to appreciate just how innovative and radically antidemocratic was Aristotle’s advocacy of what he called *ton nomon archein*, which we know as “the rule of law,” and how impoverished our understanding of the role of *nomos* in *dēmokratia* is likely to remain, so long as—unlike Carawan—we fail to move beyond that particular Aristotelian paradigm.

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Lisa Mitchell: *Hailing the State: Indian Democracy between Elections*. (Durham, NC: Duke University Press, 2023. Pp. xviii, 300.)

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*Hailing the State* arrives at a time when scholars are debating the meanings and practices of Indian democracy. From political scientists and economists discussing democratic backsliding and the rise of ethnic democracy in