The constitutional history of Athens is an increasingly popular topic among historians, at least in part because of the ground-breaking work of Mogens Herman Hansen. Since the mid-1970s H. has published an impressive series of monographs and articles that have clarified many aspects of Athenian legal and governmental practice, especially of the fourth century B.C. Furthermore, since it is possible to determine more about Athenian government in the fourth century than in any previous period, H.'s studies have contributed to reassessments of fifth-century democracy and its sixth-century antecedents. His previous work has already earned H. a place in the history of ancient constitutional studies; the publication of this book, written for both the specialist and the general reader, will bring him a wider audience and provides the opportunity to view his work in a broader perspective.

H.'s oeuvre is voluminous, and his studies are invariably closely reasoned, copiously documented, and provocatively argued. His titles, which sometimes take an interrogative form (“How often ... ?” “How many ... ?” “When did ... ?”), leave the reader in no doubt about the subject at hand, and his conclusions leave no doubt as to the author's stand. In a typical study H. begins by narrowly framing the question to be asked. He defines the terms of the question as accurately as possible, lists possible answers, and then presents all the evidence that seems to bear on the issue. In his conclusions he sums up the evidence, discards the possible answers that were not supported, and states the solution. The method is thus empirical and exclusive; it is the approach that, taken to a logical extreme, was favored by Sherlock Holmes, who claimed that "when you have eliminated the impossible, whatever remains, however improbable, must be the truth." Like a Sherlockian solution to a criminal mystery, the typical study by H. appears to be an impartial collection of all the evidence that is accessible to anyone willing and able to make careful observations. Once it has


1. On pp. 125–30 H. lists 35 theses that summarize his revisions and clarifications of the traditional picture of the Athenian constitution. I tend to agree with 16 of these (nos. 1, 3, 5, 10, 11, 14–21, 26, 34, 35). The 5 theses with which I tend to disagree in whole or in part (nos. 6, 23, 24, 29, 32) will be the main subject of this article. On the remaining 14 I suspend judgment, either because I regard them as possible but unproven or because I have not thoroughly worked through the evidence. For the significance of H.'s work for reinterpreting earlier Athenian history, see, e.g., M. Ostwald, From Popular Sovereignty to the Sovereignty of Law (Berkeley and Los Angeles, 1986); R. Sealey, The Athenian Republic (University Park, Pa., 1987).

H. 's most evident a priori position takes the form of a value judgment: he respects the Athenians and believes that Athenian democracy is an important subject with contemporary relevance (pp. 5–6). He defends the fourth-century democracy (pp. 123–24) against those who have claimed that devotion to the public good declined in the decades after the Peloponnesian War. H. denies that the democratic government was parasitically dependent upon a slave economy, and instead points to the (usually overlooked) economic contribution of Athenian women (p. 34 with n. 232, p. 123). He demonstrates that the state was not financially crippled by the provision of pay for widespread political participation, noting (p. 48) that the military budget was far larger than the civilian.

H. refuses to view Athenian government as an antiquarian relic and cautiously employs modern parallels (especially the Swiss cantonal assemblies) to elucidate Athenian practice (p. 2).

Equally fundamental, but in my view more problematic, are H. 's converging assumptions that Athenian democracy is best understood as a "constitution," and that we can best understand this constitution, and the principles on which it was based, by analyzing the relations between formal institutions of government. Students of Athenian history must come to grips with the constraints that these "constitutionalist" assumptions place upon the analysis of political life.

A good example of H. 's method is provided by his investigation of whether the ἐκκλησία or the δικαιώσεως (or both) "embodied" the δῆμος, and his understanding of how this issue bears on the locus of sovereignty in the Athenian state. H. begins by considering the definitions and interrelationships of the terms δῆμος, ἐκκλησία, and δικαιώσεως. He collects a large number of texts (mostly passages from fourth-century orations) in which citizens gathered in Assembly are addressed by speakers as δῆμος; conversely, jurors were seldom (or never) addressed by litigants as δῆμος. H. concludes that the ἐκκλησία did in fact embody the δῆμος of Athens, whereas the δικαιώσεως did not. This conclusion is then combined with the fact that the decision of jurors in a δικαιώσεως could overturn (through conviction in a γραπτή παρανόμως) a decision made in the ἐκκλησία: ergo, the Athenian δῆμος (embodied by the citizens gathered in Assembly, but not by jurors) was not sovereign, and the lawcourts were sovereign.

The validity of H. 's interpretation is contingent, of course, on the meaningfulness of the terms in which the original question was posed. Do the concepts "embodiment" and "non-embodiment" (or "representation," or "manifestation," or both two constitutional concepts H. discusses in this context) best suit the relationship between δῆμος, ἐκκλησία, and δικαιώσεως? Is political power in Athens best conceptualized as legal sovereignty? Perhaps not; but H. 's argument is likely to convince those who are used to thinking of good scholarship as objective and without ideological bias, and of "the evidence" as transparent, neutral, and authoritative. If a scholar can show that most of the texts bearing on the question he or she has posed point to a certain conclusion, the tendency of empirically-minded historians is to assume that the problem has been solved. Moreover, if a number of scholars have investigated a particular question, and if the majority of them agree about its solution, this may add to the conviction that the broader issues have been settled. The authority of the communis opinio of "objective" scholars, in conjunction with the authority of "objective" texts, validates the assumption that the questions asked and answers offered by past scholarship—and the form and terms in which those questions and answers were cast—are self-evidently meaningful. But if both the texts and the a priori assumptions employed by scholars are ideological constructs, the issues of authority and meaning become much more complex.

As H. sees it, the fourth-century Athenian democracy was based on a set of abstract principles: moderation was desirable; the law should exist separate from and superior to social and political processes; the organs of government should be distinct in their powers; and, in general, all forms and forums of public decision and action should be defined by clear boundaries and restrictions. These principles were reflected in laws and institutions, which were changed over time in order to conform more precisely to the principles. The sum of laws and institutions, which embody and conform to prior principles, is the constitution. H. acknowledges that political realities require institutions to be somewhat more flexible than their ideal forms, so that there is always a "gap between the constitution and how it works" (p. 62); but he regards these exceptions as less important than the notion of how the institutions should have worked.

The abstract principles on which the constitution was built are, for H., in some sense exterior to the social matrix and to the realm of practical politics. Because of these guiding principles, one is to assume, constitutional development was linear, teleological, and "Whiggish": changes aimed at a definite end, and that end was good; thus, fourth-century constitutional evolution proceeded inexorably toward the creation of an orderly, legalistic, and moderate democracy. These constitutional and teleological assumptions are always implicit in H. 's writing: for example, "Athenian democracy was, ideally, based on the principle of rotation . . ." (p. 61); "The debate [in Assembly] was a one-way communication from the speaker to the people. In principle there was no communication from the participants to the speakers"; "The Athenians of 403 wanted to replace the radical democracy of the fifth century with a more moderate form of democracy," and as a result "the powers of the ἐκκλησία were somewhat reduced" (p. 94).

H. emphasizes the centrality of institutions in defining the political order when he argues against the existence of a ruling political elite that used constitutional
institutions to mask its true power (pp. 85–86). H. formulates the nonconstitutionalist position as follows: "don't believe that you understand Athenian democracy by learning about the boule, the ekklesia and the dikasteria. Look instead for the real power exercised by leading politicians, influential families and political groups." H. argues that this approach is anachronistic; he outlines the constitutional decision-making process and concludes (p. 86): "Behind this constitutional framework there are no traces of informal organizations corresponding to political parties or interest groups in modern democracies." Yet this exclusionary argument is far from complete, since parties and interest groups of the sort found in modern democracies hardly exhaust the roster of extra-institutional forces that might have contributed to Athenian political life.

The Athenian elite need not have been a ruling elite, a political party, or a formally organized interest group in order to have influenced public decision-making. The distinction between elite and nonelite citizens was a matter of great concern to Athenian philosophers of all classes. As both philosophical and rhetorical texts show, Athenians knew very well that differences in birth and economic class had political significance. H. acknowledges in passing the "constant and important opposition between social groups" (p. 86); but he usually ignores the influence that social tension or conflict had on the public realm.

Although H. understands that social realities and political practice are related in important ways, he generally subordinates socio-political questions to institutional concerns. For example, when discussing how many citizens attended a typical meeting of the Assembly he does address the socio-political question whether pay for attendance was adequate to allow laboring citizens to participate (pp. 11, 47–48); yet H. (following Ath. Pol. 41. 3) assumes that the introduction of pay was motivated by the constitutional requirement of a quorum. One might argue instead that the reform occurred because the Athenian lower classes were determined to prevent the domination of the Assembly by the upper classes, who were seen (rightly or not) as likely supporters of oligarchy.

H. usually conceptualizes the Athenian citizenry as a political institution: citizens are defined in relation to the institutions of government, before which they were (for the most part, and at least in principle) equal. Political equality was clearly a chief component of an Athenian self-image, but an exclusively institutional definition of the citizen obscures an important political factor: the ways in which subgroups within the citizenry defined themselves in relation to each other. A citizen of democratic Athens lived both in a constitutional realm where political equality was the norm and in a social matrix where inequality predominated. The voters in Assembly, lawcourt, and Council were institutionally equal but socially unequal; the dissonance between the two spheres significantly influenced decision-making.

Much of H.'s work has emphasized the separation of powers that obtained among the various bodies of government. Central to The Athenian Assembly (esp. chap. 4) is the attempt to define the scope of the Assembly's powers and to show how those powers were limited by the powers of other bodies, especially the people's courts. But H.'s strong arguments (pp. 61–62, 114) for the prevalence of amateurism in Athenian government tend to weaken his thesis concerning the separation of powers. If each body within the Athenian government had been controlled by an entrenched bureaucracy concerned to maintain its own position vis-à-vis other bureaucracies, the separation of institutional powers would indeed be a key issue. But since (as H. demonstrates) government bodies were staffed by large numbers of amateurs—citizens chosen more or less at random from the whole social spectrum—the resolution of class tensions within each institution (and ultimately within the society as a whole) may be for many readers—as it may have been for the Athenians—a more consequential matter than the formal separation of powers between institutions.

Looking at the function of democracy as a social as well as a political structure illuminates the ways in which the Athenians themselves thought about and used their government. Such an approach suggests alternatives to the linear, causal relationship that H. traces between formal principles and institutional change. By concentrating on the climate of opinion, and on the ways in which opinions were formed and expressed, we can see how institutions operated and why they evolved. This is not to say that institutions were epiphenomenal; Athenian political ideology (the set of ideas about the public realm common to most citizens, sufficiently coherent to lead to action but less formally organized than theoretical principles) evolved within institutional contexts. But institutions and the relations between them are only part of the story, and not necessarily the fundamental part. If we view Athenian democracy as a socio-political (rather than a constitutional) phenomenon, and if we take the primary "domestic policy goal" of the democracy to be the resolution of tensions resulting from social inequality (rather than the achievement of an orderly, moderate government), we must ask a set of questions different from those H. poses. Consequently, we must take a different approach to rhetorical texts—an approach that calls into question some of H.'s conclusions about the meaning of the two components of the word ὑποκρίσεως.

Although H. is conversant with epigraphy and is able to marshal complex architectural arguments (e.g., pp. 17–19), his most valuable source is the corpus of Attic orations. Most extant speeches were delivered by elite private litigants or public speakers (μητροις) attempting to influence large bodies of (mostly) nonelite citizens. Rhetorical strategies and toposi can reveal much about the...
social background of Athenian politics. But even a scholar primarily interested in institutional procedure must be conscious of rhetorical context. Athenian public speeches were addressed to enthusiastic amateurs, not to judges or professional lawyers. The context demanded a rhetoric based on personalities and on appeals to class and status-group interests, to patriotic aspirations, to prejudices, hopes, and fears. The discourse of the δικαστήριον and δεκακήριον, therefore, relied primarily, not on the language of constitutional law, but on more subtle and less logically rigorous appeals to popular ideology.14

Descriptions of political and legal practice offered by the orators are seldom impartial accounts of constitutional procedure and precedent; and yet they are often treated as such by H. He is not unaware of the problem: in a discussion of a passage from Hyperides’ For Euxenippus H. notes that the speaker uses the term ἡβεβοτο in two ways, as a legal term and in the sense belonging to “common usage” (p. 62). But if the ordinary usage of key words differed from their legal definitions (as established by their use in sometimes-archaic laws), and if the orators deliberately confused common usage and legal definition to suit their own purposes, then decontextualized rhetorical passages must be handled very cautiously as clues for restoring the details of a constitutional order.

A few examples point out the dangers of divorcing rhetorical passages from their ideological context. H. states (p. 39) that the nine προσδέχονται who presided over meetings of the Assembly “seem to have had wide powers. They could refuse to put a proposal to the vote.” But if the ordinary usage of key words differed from their legal definitions (as established by their use in sometimes-archaic laws), and if the orators deliberately confused common usage and legal definition to suit their own purposes, then decontextualized rhetorical passages must be handled very cautiously as clues for restoring the details of a constitutional order.

The tendency...
one had ever seen the whole of Demos; it was too big ever to gather in any one place. Therefore, the Athenian Demos was not, as M. I. Finley supposed, a “face-to-face society,” but rather an example of what Benedict Anderson has called an “imagined community.” This imagined Demos was, however, a fundamental and vivid political concept: Demos could be personified as a mature, bearded man, an anti-democratic coup would result in Demos’ being overthrown; καταστροφή τοῦ δῆμου was the most common periphrasis for counter-revolution. This imagined Demos was the δῆμος assumed in the word δημοκρατία: the entity that held power in the state.

A meeting of the Assembly was open to all citizens, and decisions made by those who attended—the "demos in the narrower institutional sense" (p. 97)—certainly symbolized the will of Demos; but the participants at a given Assembly were not identical to Demos. Nor, certainly, were juries or boards of νομοθέτης, bodies that were limited in size and that excluded citizens under the age of thirty. These added restrictions may explain the convention of addressing jurors as Ἀθηναῖοι rather than as δῆμος, but decisions of νομοθέτης and δικασταὶ, like decisions of Assemblies, symbolized the will of Demos. H. argues that, unlike the ἐκκλησία, δικαστήριον did not manifest or embody δῆμος but were "representative of the demos" and were "assembled to act on behalf of the demos" (p. 104; H.’s emphasis). The distinction is, for H., significant, because "representation... implies distinction and not identity."

H. points out (pp. 102–4) that the concepts of "delegation of powers" and "committee" cannot easily be applied to analyses of Athenian government; but we should recognize that "representation," "embodiment," and "manifestation" may be equally troublesome. "Representation," in a constitutional sense, implies delegation of authority and formal appointment or election. Since H. argues that the authority of the lawcourts was not delegated, and since the Athenian juror was not appointed or elected to represent a larger constituency, "representation" does not seem the best way to conceptualize the relationship between lawcourts and Demos. "Embodiment" and "manifestation" identify identity, but the Athenians at least sometimes perceived a distinction between Demos and those who attended a given Assembly (e.g., Dem. 21. 193, noted above; other examples cited p. 138, n. 40).

I would suggest, as an alternative, the concept of "synecdoche," a figure of speech in which a part stands for and refers to a whole, or vice versa. Each of


19. Shown being crowned by the female deity Democratia on the stele-relief adorning the νομικός against tyranny: SEG 7. 87; cf. A. Rauhut, "Demokratia," Hesperia 31 (1962): 238. Since the law was passed and the stele authorized by νομοθέτης, not by an Assembly, the figure must represent the demos qua imaginary community, not deimos qua έκκλησία.


21. Δικαστήριον: see the passages cited above, nos. 16 and 17; that Demos’ will was symbolized by the decisions of νομοθέτης is demonstrated by the stele described in n. 19 above.

22. See Webster’s Third New International Dictionary, s.v. "representative": "... constituting the agent for another esp. through delegated authority;... of, based upon, or constituting a form of government in which the many are represented by persons chosen among them usually by election."


24. Praising the divinity of ἄρης, Aeschines (2. 145) defined it as what results "when τὸ πλῆθος τῶν πολιτῶν of their own will... say that something is the case."
in the Assembly and the courtroom were constrained to devise rhetorical forms that would be acceptable to their mass audiences. Elite citizens' involvement in these institutions entailed their acknowledgment—in both the content and the structure of their discourse—that the will of the many was the will of Demos and that Demos was the legitimate political authority. The ultimate κράτος of Demos lay in this demotic control of the public processes of signification: the power of the many to participate actively in assigning political meaning to symbols deployed in public speech.

The imagined community, Demos, provides the missing subject that would allow H.'s many passive clauses to be recast in the active voice: "legislation was conferred on the
nomos
... "; "the ekklesia was deprived of jurisdiction ... "; "the people were restricted to the passing of decrees and the election of officials ... "; "the people were entrusted with the ad hoc election of envoys. ... ".

Without the concept Demos there is no active agent for these passive verbs, other than the term "polis," which is unsatisfactory in this context (cf. p. 178, n. 664: "It is not the
demos, but the
polis which appoints the dikasteria," citing Dem. 21: 233); the polis cannot be characterized as a political agent distinct from "the will of the citizen body." Through the operations of its parts, Demos effected the various institutional changes described by H. These reforms, which H. has done much to clarify, changed the external forms in which power was deployed but never limited the collective power of the Athenian citizenry.

H. has often conceptualized political power as "sovereignty," a term he has used frequently over the years and retains in the conclusions of the present book (p. 129: "In fourth-century Athens the ekklesia was no longer 'the sovereign body of Government'"), even after he has pointed out some of the difficulties associated with its use (pp. 105–7, esp. p. 106: "Many problems are avoided if we dismiss the concept of sovereignty ... "). The reasons for this apparent ambivalence are not clear. But we must face the issue squarely: if "sovereignty," defined as unitary power with a specific institutional locus, is a concept without meaning for Athenian democracy, then the question "Was the
ekλασις
demos, or sovereignty?" is itself no longer meaningful.

The concept of sovereignty was developed in the sixteenth and seventeenth centuries by Western European political theorists writing on the institution of monarchy. Monarchical power is by definition unitary, since it is located in the person of the monarch. Absolute monarchs—those whose sphere of public action is unlimited—are therefore unitary sovereigns. The theory of sovereignty was given its classical formulation in English by Thomas Hobbes, who specifically defined sovereign power as an institution that monopolizes the legitimate use of coercive force and that is legitimately maintained by force.

Neither Hobbes nor any other early-modern political theorist considered democracy, as popular sovereignty, to be either desirable or practical; they conceived of sovereignty, properly so called, as unitary state power that resided, preferably, in the person of the monarch, or else in a representative assembly. The traditional theory of sovereignty does not encompass the idea that legitimate power could reside in an abstraction such as "the People"; consequently, it is of very limited use in explaining democracy.

The concept of sovereignty can be applied usefully to democracy only by replacing the idea of "sovereignty as located in institutions" with "sovereignty as the ability to change institutions." Adam Przeworski suggests that "people are sovereign to the extent that they can alter the existing institutions, including the state and property, and if they can allocate resources to all feasible uses." I would add: "and so long as they also control the ideological symbols through which political agents make decisions." By this extended definition the Athenian citizenry was indeed sovereign: there was no entrenched ruling elite at Athens that could successfully oppose the desire of Demos to alter institutions or allocate resources, and the people controlled the forums of public communication (especially the Assembly and the courts) in which ideological symbols were forged and deployed in open debate.

Redefining sovereignty to include power over discourse residing in the citizenry, as opposed to legal power residing in an institution, mitigates the problem raised by the concept "separation of powers." The latter concept, an offshoot of the traditional institutional theory of sovereignty, was first enunciated in the seventeenth and eighteenth centuries, when English and French aristocrats attempted to limit the powers of absolute monarchs. Since the separation of powers is predicated on a subdivision of unitary sovereignty and on the assumption that some of the sovereign's powers would pass into the hands of a ruling elite, the concept as traditionally defined is not much more useful for our purposes than the traditional theory of sovereignty. And once we dispense with separation of powers as a central issue, we can de-emphasize restriction and limitation as the operative terms in which we conceptualize the nature of Athenian democracy.

None of the preceding discussion is intended to cast doubt on the importance of H.'s overall achievement, which is well represented (if not fully embodied) by The Athenian Assembly. Individual democratic institutions certainly had distinctly defined responsibilities in Athens, and these responsibilities were redefined over time. H.'s question concerning "the extent of the sphere regulated by..."
decrees of the people” (p. 109) or by other constitutional instruments is valid, even if it does not fully define the nature of Athenian democracy. No student of classical Athenian political life (even one who has read all of H.'s other, more specialized articles and monographs) can afford to ignore this seminal book. Those who remain unconvinced by some of H.'s conclusions will learn much from the attempt to refute them. It should be obvious to readers of this article that thinking about the implications of H.’s theses has substantially aided my own attempt to understand Athenian democracy. Whether or not H.’s institutional model of political life becomes the accepted paradigm, *The Athenian Assembly* will be the standard reference manual on the ἐκκλησίαι for the foreseeable future. It should quickly establish itself as a classic in the field of ancient constitutional and legal history and deserves to find a broad audience.

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