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The Shape of Athenian Laws Revisited

All laws contain both a substantive and a procedural aspect. The substantive aspect lays down rights and duties. It prescribes what one can or must do, or what one is prohibited from doing. The substantive aspect of a law about theft prohibits one from taking another's property. The procedural aspect of law provides remedies, especially legal procedures. Law about theft provides means for the legal retrieval of property, the punishment of the thief, or the resolution of disputes over ownership.

Hansen (1975), Gagarin (1986) and Todd (1993) argue that Athenian laws were concerned with getting disputes into court—that is, procedural matters—rather than describing substantive rights and duties. Carey (1998) has challenged this position. Carey studies quotations of laws by the orators and laws inserted into their speeches. His conclusion is that Athenian law was indeed concerned with substance.

Carey is right to question the *communis opinio*. The laws studied by Carey are, however, problematic. We do not know how representative quotations of laws by orators are. Drerup (1898) argued that most of the laws inserted into the speeches are forgeries. For example, Carey cites Dem. 21.8 in support of his argument; Harris (*Classical Philology* 87[1992], 75-78) showed that this law is a forgery.

I expand Carey's critique while avoiding these problems by examining inscriptions of Athenian laws (*SEG* XXVI 72, XII 87, XVIII 13, *IG* II2 140, 244 and *Hesperia Supplement* 29 [1998]). The inscriptions are superior sources for Athenian laws. Inscriptions preserve a random sample of legal texts, not a selection made by litigants. They also preserve nearly complete texts of laws, not excerpts.

I will examine the *Grain Tax Law* of 374/3 (*Hesperia Supplement* 29 [1998]). Sixty-one lines of the law preserved virtually entirely contain numerous references to the substance of the rights and duties of a tax-farmer and those involved in tax-farming. The *Lex de Tyrannide* of 336 (*SEG* XII, 87) is also concerned with substance. It describes the offense—setting up a tyranny/overthrowing the democracy. It states that one may kill an offender and prohibits meetings of the Areopagus if a tyranny is established.

The other inscribed laws confirm my conclusion that Athenian laws were concerned with substance. The *Law on Silver Coinage* of 375/4 (*SEG* 26, 72) provides procedures for punishing various infractions involving coinage and trade, but also contains substantive provisions. The law *De Panathenais* (*SEG* XVIII, 13) describes the duties of various magistrates and governmental bodies regarding the production of the festival. The *Lex de Primitiis Frumenti Eleusina Consecrandis* (*IG* II2 140), also describes rights and duties. The *Lex de Reficiendis Muris Eetioneae et Munichiae Subiectus Syngraphis* (*IG* II2 #244) lays down the rights and obligations of those hired by the city.

I will provide Greek texts and translations of the three primary examples of inscribed laws and summaries of the other five (two of which are very fragmentary and therefore not mentioned above).