

雅典民主與法治如何相輔相成？ 以埃斯奇尼斯與德摩特尼斯的 法庭演說為例

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本文的目的在於，從古雅典社會的角度，理解直接民主與法治的關係。本文指出，雅典法庭透過精巧制度，維持開放與理性的審議空間。其次，法庭考量三個無法根本解決的難題：訟棍、人民利益的界定，以及命運操弄。本文結論，雅典法治意指：在開放與理性審議的法庭中，陪審員綜合考量法條、法律精神、輿論與個別案件背景，回應前述三個根本難題，盡力做出符合人民利益的判決。雅典民主與法治相輔相成的意義在於：法治強化人民主權，而人民保護法律，排除非理性因素的干擾。本文僅挑選埃斯奇尼斯與德摩特尼斯兩位雅典政治領袖的作品為代表。

關鍵字：雅典民主、法治、埃斯奇尼斯、德摩特尼斯、訟棍、人民利益、命運、性格證據

How Were Athenian Democracy and the Rule of Law Complementary to Each Other? A Case Study of the Law Court Speeches of Aeschines and Demosthenes

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ABSTRACT

This paper examines the relationship between democracy and law from an Athenian perspective. This paper argues that the Athenian law court maintained an open space of deliberation through institutional arrangements. Besides, the law court considered three dilemmas: sycophancy, conflict of public interests and the manipulation of fortune. This paper concludes that the Athenian rule of law means the jurors' thoughtful responses to these dilemmas. The law court provided the space for deliberation where the jurors, in their search for the highest public interest, took into account factors such as the relevant statutes, the spirit of law, public opinions and the background of individual cases. Athenian democracy and law complemented each other, for the laws made the people sovereign while the people protected the laws against irrational interference. To limit the scope of this paper, the court speeches of Aeschines and Demosthenes are chosen as the focus of discussion.

Key Words: Athenian democracy, the rule of law, Aeschines, Demosthenes, *sykophantai*, popular interest, fortune, evidence of character