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Plato and Aristotle on Constitutionalism

An Exposition and Reference Source

Raymond Polin

PLATO AND ARISTOTLE ON CONSTITUTIONALISM

RAYMOND POLIN, 1918--

Executed from life by his father when he observed in the studio they shared his son begin the writing of *Plato and Aristotle on Constitutionalism* on 1 January 1949. Israel Polin was born in Belarus in 1885, emigrated to the United States of America after the turn of the century, painted and drew in many media, and died in 1971.

Plato and Aristotle on Constitutionalism

An exposition and reference source

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Preface

Why another book on Plato and Aristotle?

My response is that it serves useful purposes to extract, explicate, and emphasize certain political ideas of Plato and Aristotle so that, among other reasons, we may consider whether they are relevant in this era of constitutional crisis, *dysnomia* (δυσνομία), *anomie* (ἀνομία), and *stasis* (στάσις). My finding is that, although current socio-politico-economic disorders are typical of conditions they aimed to prevent or remedy, their ideas in many areas are of limited relevance to the modern era of scientific-industrialism and the unfolding subatomic-space age that increasingly requires humanity-uniting global solutions to global problems. Nonetheless, it is well worthwhile, first of all, to present a concise exposition of the idea of constitutionalism and some of its basic principles that do have general relevance and applicability to the past, present, and future; and then to focus on the ideas of Plato and Aristotle that directly or indirectly deal with constitutionalism. Such a wide-ranging exposition of constitutionalism and examination of important roots of the Western political tradition can but increase the kind of *understanding* we should seek.

It should be convenient for instructor and student alike, therefore, to have a single work that explains basic concepts of constitutionalism, gives summary accounts of their lives and times, identifies many of their key political ideas, and provides verbatim some of the more significant passages in their major political writings: Plato's *Republic*, *Statesman*, and *Laws*; and Aristotle's *Athenian Constitution* and *Politics*. The utility of such a work, including its bibliography, should recommend its adoption as a textbook, despite presumed objections to views expressed and to included or excluded material and treatment of paradoxes.

However, although now eminently adaptable to use as a textbook, such was not my objective in pursuing this effort, nor is the resulting product, given the selection, organization, and treatment of its subject matter and themes, a typical textbook in structure or tone. Certainly its ultimately advocatory nature precludes such a rigidly narrow characterization of what was meant to be a didactic expression of personal views on a spectrum of

matters related in varying degrees to the central topic of constitutionalism that would serve both an academic and a general readership. Yet it thus provides a book students and teachers lack.

My purpose, then, has been to produce a *teaching and learning tool* focused especially on their constitutional ideas, rather than an esoteric product or one equally given over to the more encompassing gamut of political theory. But more, rather than less, of selected kinds of information has therefore been included. For example, some terminology is given in both English print and Greek script and occasionally repeated, and dates of events and lifespans are frequently provided. Numerous and often lengthy notes are furnished that bring differing views to the attention of the uninitiated reader. Indeed this book was not written for the advanced scholar of Plato and Aristotle: especially in the text its *main track* is addressed primarily to the student of modern government and constitutionalism who lacks sufficient familiarity with some of its Greek origins and, unfortunately, all too often has not been properly grounded in political concepts and ideology. Thus, the reiteration is didactically purposeful.

The accompanying notes in particular provide a parallel *second track* meant to be a helpful guide to specialized studies on the point at issue as well as to serve as an immediate source of authoritative opinions and documentary information. Consequently, some matters that appear in Plato and Aristotle's writings that deserve to be considered at length have been merely touched upon or omitted so that other points could be more fully developed, and also to make room for selected provisions of recent constitutional documents and remarks about their operation. This treatment is intended to impart to the student a stronger grasp of both important early Greek concepts of constitutionalism and its practice and of the concepts and character of modern constitutionalism. In short, this work focuses attention on a long-past, critical era from which the student may gain greater understanding of the problems and politics of our own time and of the future. (For some relevant provisions of current constitutional documents and additional sources, see, e.g., ch. X, n. 1.) It is therefore devised to serve also as a *reference tool* for all who are interested in the political writings of Plato and Aristotle and in modern government and constitutionalism.

Accordingly, citation of sources is specific with respect to book and chapter as well as to manuscript portion, so that the reader may more easily find the cited passage in any edition of these works. The varied use of upper case and lower case lettering and of spacing generally corresponds to their variations in the Jowett editions. Early Jowett translations have been used because of

their literary elegance, because they are often – although not invariably– more precise in terminology, and because they are in the public domain and have been little emended in later editions. For purposes of comparison of textual interpretation, some more recent translations have also been listed in the bibliography. The Loeb Library editions, which contain both the Greek text and opposite page English translations, are especially recommended when the reader may feel the need for clarification of Jowett's translations. The Loeb Library editions also present the descriptive subtitles appended by Diogenes Laertius as well as the main titles in Greek.

I accept responsibility for errors and controversial positions the reader may note. I regret the errors; but I hope the controversial positions, whether mine or those of others, lead to increased understanding, whether in agreement with the stand taken or not. My intention has been to avoid dogmatism and to preserve room for doubt; for doubt is the spark that sets aburning the fire of truth that frees us from received untruth.

The early roots of this project go back to undergraduate study more than half a century ago with late faculty of New York University: Marie Collins Swabey, Charles Coleman Thach, and James Burnham. Additional insights came during graduate study with Thach, the late Edward Conrad Smith, and Gisbert H. Flanz. I am indebted to Flanz especially for the terms 'curative constitutionalism' and 'inherent limitations'.

The resolve to write this book came out of a growing conviction that from my own concentration both on concepts of democratic limited government and constitutionalism and on Marxian concepts purposed to eliminate the state – as set forth in a pair of similarly apposing textbooks – I had gained certain understanding that could be applied to the political writings of Plato and Aristotle. The one who most encouraged me to act on this was the late Robert Morrison MacIver, who read the preliminary paper from which this extended effort has been developed. This book is therefore dedicated to the memory of MacIver, and this remembrance embraces as well his wife, Ethel. I have warm recollection of them both and much appreciation of his manliness and attainments. The late Eric Voegelin, who read a key portion of the preliminary manuscript, also encouraged publication.

David B. Evans and Bernard Cassidy provided expert help in checking use of Greek terminology and phrases in the draft typescript. The late John Edward Parsons Jr acted as devil's advocate in subjecting the draft to thoughtful testing and argumentation; and so objective was he in this task that when I look back I realize I came to know what he personally believed about the points of our discussion only that he was strongly persuaded the style and

content of the Seventh Letter were such that Plato was indeed its author. In John H. Herz I had available within visiting-in-slippers distance a sounding board for legal, constitutional, and political concepts and history who is a multilingual treasury of Old World erudition with acumen, particularly *auf deutsch*. Francesco Cordasco gave incalculable support with his steadfast urging about the need for this book and his enthusiastic agreement with a number of its themes. In similar fashion, John B. Morrall read the typescript and then gave useful suggestions and heartening encouragement. My greatest indebtedness to a scholar with respect to this work, however, is to Edward Conrad Smith for cultivating in me the understanding that the very essence of genuine constitutionalism is the idea and practice of *limited government*. To represent the legion of former students who afforded myriad rich rewards and helped me sharpen my views and presentation of subject matter, I single out Frank Paul Le Veness, chairman, Department of Government and Politics, St John's University.

In the editorial department, I thank especially Pat FitzGerald for expertly making a long, complicated typescript into camera-ready copy and Sarah Markham, its publisher, for her supportive direction of this project and the evident goodwill from everyone at Ashgate that reached me through her. I have similar appreciation for Anne Keirby, editorial administrator, and Barbara J. Church, international marketing manager. Sonia Hubbard, managing editor, and her colleague, Rachel Hedges, are also thanked for their responsible role at the end of the editorial process.

My last and most profound expressions of gratitude, as always, are reserved for my beloved wife, Connie, and our children and their own spouses and offspring. My wife gave not only inspiration and faith but also frequent help with library research and preparation of the manuscript; our son Ted secured many a library book and article as needed, especially from law library holdings; our son Ken also gave legal counsel; and our son Larry guided me on mathematical and scientific matters.

Special Acknowledgments

During the long course of preparation of this work, it benefited from aid that deserves special acknowledgment. This came especially from librarians at the St John's University Library, New York Public Library at 42nd Street and Annex, Concordia College, Sarah Lawrence College, and branches of the Westchester Public Library System, particularly in Scarsdale, Mount Vernon, and Yonkers, New York. The British Library also earned my gratitude.

Additional holdings and services were made available by many college and university libraries that included the following: Binghamton University (SUNY), Brooklyn College (CUNY), University of Cincinnati, Cornell University, Duquesne University, Fordham University, Iona College, Marymount College, Mercy College, College of New Rochelle, New York University, Pace University, Princeton University, Purchase College (SUNY), and the University of Rochester.

The 'networking' of American college, university, and public libraries by interlibrary loans and photocopying is a major development in sharing resources that should be recognized; and it may be hoped that wider-spread use of the Internet and faxing may soon expedite many operations of the system. I must express, however, my stronger appreciation of the librarians, who are simply too numerous, and mostly anonymous, to thank here individually. Their dedication and professional skill in the Library Science of Information Storage and Retrieval provide an increasingly critical service in the use of a burgeoning system that is indispensable if we are to cope with the 'information explosion' and the devices that can deliver the relevant and specific information we need or want.

All of us therefore have a compelling obligation to follow Platonic-Aristotelian principles that would accord today's highly skilled librarians suitable recognition in every honorific and practical way.

To the memory of
Robert Morrison MacIver
1882–1970

If we are to develop an intelligent philosophy of the state, we must seek to do justice to both sides. We must accept the individuality of the unit, we must see the individual as the bearer and inheritor of human values, and on the other hand we must see the unity as that which sustains, incorporates, and promotes all human values. We must ask what this unity is, whether there is one unity that encompasses us, or more than one. These things are matters of social analysis and social perception. Our political philosophy should not dogmatically decide them, but should instead be built on the understanding of them. So let us look at them again.

Robert Morrison MacIver
The Web of Government, 1947

I The Idea of Constitutionalism

Overview

The American system of government has been predicated upon separation of powers and mutual checks and balances. There has been such a continuing acceptance of the structure and principles of government set forth in the American federal and state constitutions, and the normative affirmation of them, that they represent almost articles of faith. To question them or consider other propositions represents something akin to political heresy. As a result, examination and appreciation of alternative approaches have been hampered in America by concentration on study of its existing political system and its rationale. Such restricted vision, however, is not limited to America but is, with allowance made for variations, usually the case in other countries as well.

What is needed, therefore, is to pay attention also to the contemporary constitutional systems of other nations and to a number of classical ideas and viewpoints that have become rather neglected. There should not be single-minded focus on the conventional approaches of one's own country and time to the fundamental problems of government and society. Thus, an introductory explanation and discussion at this point of both some familiar and unfamiliar concepts of constitutionalism is in order.

Confusion of Staticism with Stability

The need for such explanation becomes apparent when it is realized that the important principle of stability has been discussed extensively by American students of political science, but not always with precision. *Staticism* has been equated at times with stability, again largely crowding out of view other approaches that might shed considerable light on the nature and causes of popular disturbances and offer consequent suggestions as to how to deal with them.

It is therefore desirable to distinguish at the outset between the choice of a *static stability* or a *dynamic equilibrium*, two radically divergent alternatives

in attempting to bring peace and strength to a society. The need for this understanding becomes obvious when it is realized that stability and change are not antonymous terms.

On the one hand, an attempt may be made to create a condition of *static stability* wherein change and disorder are prevented by freezing the status quo. This is usually done within the form of an hierarchical structure which is justified by claims that society and the state are organic (i.e., literally living things), or at least organismic (i.e., figuratively comparable to living things), in their nature. A system predicated on an organological, hierarchical view of society and the state is intended to prevent general lawlessness (*anomie*: ἀνομία) or disorder (*dysnomia*: δυσνομία), and to cope with the condition of social and political restlessness the ancient Greeks called *stasis* (στάσις), literally a 'standing still'. In the final analysis, organological hierarchy maintains itself by a concentration of force that is sometimes used and sometimes held in reserve.[1]

On the other hand, an attempt may be made to produce a condition of *dynamic equilibrium* by meshing and harmonizing the various classes or interest groups by fitting them into a continuing process of orderly, balanced change. This is brought about by recognizing the motives that impel or restrain them individually and collectively, and by then establishing an equilibrium of power and rewards. This requires recognition of, and meaningful participation by, both the wealthy and groups who might otherwise be politically disenfranchised or economically underprivileged. Ideally, such a system functions through constantly adjusting the balance among various lawfully contending groups and individuals in a mobile society that is both free and peaceful, although not altogether quietly so. It rests less upon enforced obedience and more upon the voluntary support of those who believe they benefit in common from the established system.

Nomenclature

Need for Nomenclature

It is also desirable to provide nomenclature for, and explanation of, a number of less familiar constitutional principles that are employed by Plato and Aristotle or that are relevant to a study of their political thought. These include the following concepts which it will be useful to bear in mind while reading the later chapters that deal with a direct examination of their political writings:

constitutionalism, corrective constitutionalism, institutional arrangements, inherent limitations, and mixed, balanced government.[2]

Constitutionalism

Constitutionalism consists in the *practice* of faithful compliance with the formal provisions and spirit of a constitution that regularizes the structure, processes, powers, and limitations of a government, including the rights and duties of individuals and associations. Therefore, lip-service, mere observance of matters of form, and resort to escape clauses that avoid or pervert constitutional intent are all incompatible with genuine constitutionalism. (We may also note the following additional uses of the term constitutionalism: the *belief* that governments should operate according to constitutions, especially written constitutions; and the *movement* that advocates this.)

Corrective Constitutionalism

Corrective constitutionalism embraces the concepts of avoidance and redress of harm and injustice, and therefore deals with both preventive constitutionalism and curative constitutionalism.

Preventive Constitutionalism

Preventive constitutionalism holds that there are methods of conducting the basic operations of government and society that may anticipate, and also obviate or lessen, potential problems which would later on be difficult or impossible to correct. This includes injustices and errors which could not later be remedied, the most object example being capital punishment of an innocent person. Preventive constitutionalism recognizes that forces and individuals in society are bound to come into conflict or competition. Therefore, rather than waiting until dangerous precedents have been set, damage incurred, or animosities bred, it attempts to bring to bear pressures or machinery that can prevent the adoption or execution of unwise or unjust measures.

The principle of seniority, which helps determine the order of elevation to chairmanship of a legislative committee, is an example of preventive constitutionalism, because it tends to avoid or diminish personal and factional strife. Graduated income and inheritance taxes that militate against dangerous concentration of wealth and power are effective examples of preventive

constitutionalism. Where governmental agencies act as collective bargaining and grievance machinery to prevent labour disputes, rather than waiting until a strike has occurred, we also have a present day exercise of preventive constitutionalism. As a judicial example, a court may issue a writ of injunction restraining a government official or agency, or a private party, from performing an illegal or possibly inequitable action, especially one where irreparable damage might be done. The United States Senate, however, has permitted its 'advise and consent' role with respect to foreign affairs to become a largely *ex post facto* formula of limited significance that does not correspond with its constitutionally intended purpose. Similarly, through the holding of lively question periods where ministers – including the prime minister – may be interrogated before the British House of Commons, the power is usually there for the Commons to require wanted hearings and to maintain *prior* accountability to the legislature before action is taken by 'the government'.

Curative Constitutionalism

Curative constitutionalism represents the view that there are practices, arrangements, and undertakings which may serve to eliminate, moderate, correct, or 'heal' improper, dangerous, or mischievous situations or abuses. Although one would expect a good constitutional system to be primarily self-corrective from within the government, at times the cure operates or may be applied from outside the government.

Examples of curative constitutionalism of a negative or purgative nature that operate from within government or according to constitutional provision, may include: impeachment (followed by trial and removal upon conviction); recall; forced resignation; dismissal; and forced exile because of ostracism. Examples of a negative nature that operate against the government from outside it – and are usually justified by an appeal to the right of resistance (*ius resistendi*) – may include: refusal to pay taxes or fines; conscientious objection to military service; passive resistance; boycotting; sit-down or sit-in strikes staged inside government offices; picketing; opposition by the communications media; a strike of capital or labour against government; sabotage; tyrannicide; rioting; and in its most extreme form, revolution.

Examples of curative constitutionalism of a more positive or constructive nature that operate from within government may include: firstly, and most importantly of all, the process of constitutional amendment which may cure even a defect within the constitution itself; the right of judicial appeal; judicial review of the constitutionality of legislation or official action; and

administrative grievance machinery. Similar actions that operate from outside the government to bring corrective pressure to bear may include: freedom of speech, press, and pulpit, enhanced by the role of the communications media, the right of petition, lobbying, freedom marches, peace demonstrations, graffiti, code songs, the activities of civic improvement associations, and the manifold forms of legitimate party and pressure politics that have reform or justice as an objective or result.

Institutional Arrangements

Institutional arrangements consist in structural, procedural, and functional arrangements and habitual ways of doing things within a government and society that work to prevent too great a concentration of power, especially unchecked power, in the hands of any individual or group. They may, at the same time, promote accomplishment of the tasks of government and society. Many of these arrangements – commonly referred to as 'checks and balances' – have been formalized by their incorporation within the constitutional system. They are exemplified by the American and Canadian approach of attempting to divide functions among various branches, levels, agencies, and officials of government and then having them mutually (or in descending order) examine into the actions of one another and exercise checks against one another's power.[3] Responsibility to others is a basic principle of this approach to the dilemma of rendering government effective yet safe.

Under a unitary system, such as that of the United Kingdom, the Netherlands, or Sweden, the institutional checks are exercised by the central government over the territorial or administrative units on an hierarchical one-directional basis that may be called 'descending order'.[4] Examples of more collegial institutional arrangements that relate to a territorial division of functions, are to be found in federated and confederated systems of government, such as those of the United States of America, Canada, Australia, and the German *Staatenbund* (1815–66) that emerged from the Congress of Vienna.

There may also be a division of the population by property qualification, economic pursuit, religious affiliation, or inherited rank, with each segment accorded an allotted representation in the government; and in some cases, concurrence by some or all of these groups may be a constitutionally mandated condition for decision-making. The graduated income tax, which works to limit a concentration of economic power, and hence also limits a concentration of political power, is a most effective institutional check imposed by government (as well as a form of preventive constitutionalism). Ironically,

because it was advocated by Karl Marx and Friedrich Engels in the *Communist Manifesto* and opposed by many of the wealthy, the graduated income tax may be an important reason why Marx's dire prediction of the demise of capitalism has not come to pass.

Inherent Limitations

Inherent limitations consist in an approach rooted primarily in the habits of thought and deed by which men live. Such an approach rests largely outside of government, for it is based on the belief that single-minded attention to the structure and functioning *per se* of government is inadequate. Therefore, it is held that it is necessary to limit and control the direction of government in advance of actual operations, and that it is humanity's nature – especially its conditioned nature – that sets these limits and potentialities. Humanity's nature, of course, is rather pliable, but its level of development and conditioned behavioural pattern at any time, limit or debar certain practices or policies a government might want to follow; and thus the pursuit of alternative courses is made easier or more likely. Expressed in the vernacular, a thing may be done because 'it is the right thing to do' or, often more importantly, it is not done because 'that just is not done'.

The force of education and tradition (i.e., the workings of political socialization), and the limits of human nature, it is felt, provide a climate of opinion and array of power to which government seldom can run directly counter. Government, in short, cannot ignore either the goodness in people or their self-serving motivations and still hope to be stable, efficient, and enduring.[5]

Mixed, Balanced Government

There is a traditional classification which holds that six basic forms of government may be categorized both quantitatively and qualitatively. *Quantitatively*, they are identified by whether the ruling power is in the hands of one (monarchy), a few (oligarchy), or many (democracy). *Qualitatively*, they are identified by whether it is an uncorrupted form, which is by definition one wherein the rule of law prevails; or whether it is a corrupted form, which is by definition one wherein the will or whim of the ruler prevails and the law may be set aside.

The *good* (i.e., uncorrupted) forms of the one, the few, and the many have commonly been referred to as, respectively: kingship or royalty (or constitutional monarchy); aristocracy (rule by the able); and democracy. The

corresponding *bad* (i.e., corrupted) forms of the one, the few, and the many have commonly been referred to as, respectively: tyranny (or despotism), plutocracy (rule by the wealthy), and ochlocracy (or mob rule).

The concept of mixed or balanced government holds that various combinations of the basic six forms are theoretically and actually possible. In fact, proponents of mixed, balanced government usually regard a 'simple or unmixed' form as undesirable and may even argue that it is dangerous because it fails to include important structural factors and procedural practices that tend to produce harmony, stability, and practical results both in the functioning of government and 'out in the real world'.

Proponents of mixed constitutionalism also may relate the three basic processes of government – legislative, executive, and judicial – to each of the three quantitative categories. Thus, the chief executive role may be assigned to an individual; the judicial role to a numerical few; and the legislative role to numerically many. Ideally, these assignments would be representative, respectively, of characteristics of monarchy, aristocracy and democracy. Alternatively, the less-numerous upper house of a bicameral legislature may be viewed as representing the principle of aristocracy, while the more-numerous lower house may be viewed as representing the principle of democracy.

We may note, therefore, that it is possible for mixed, balanced government to combine the democratic practice of popular election with the aristocratic quality of ability in officeholders who are representative of the plutocratic element because they are wealthy.

Assessments

Orthodox American and Canadian approaches to constitutionalism have placed great reliance on such institutional arrangements as separation of powers, checks and balances, and territorial division, with Canada also opting for considerable fusion of legislative and executive powers.[6] There has also been a strong tendency by both to stick to the static formula of the familiar 'tried and true' as a provider of stability in government and society. In addition, there have been developed a variety of legal procedures and political processes that help to avoid or correct mistakes and injustices.

However, there are approaches to constitutionalism that are less familiar, especially to Americans, but worthy of objective examination in an age when it is desirable to reduce public tension, discord, and criminal behaviour and to

increase public harmony, efficiency, and justice. Consequently, it is advisable to pay greater attention than we do now to such approaches to constitutionalism as inherent limitations, dynamic equilibrium, integration and fusion of powers, and preventive, rather than curative, modalities.

Modern constitutionalism is not patterned upon classical Greek political structure and practice. Much of the continuing value of Plato and Aristotle's political theory, then, lies in their recognition of the nature of constitutional problems and issues they set forth and discourse upon. For every age, they address continuing great problems of society and government. Some of their political propositions are still viable; some, happily, have been discarded; and others that have been neglected may deserve consideration for possible application; but all of them still merit our attention.[7] Thus, the principles of constitutionalism that were set forth in Plato and Aristotle and subsequent times, reached a fullness and clarity of expression in the contribution of Clinton Rossiter to *The Report of the President's Commission on National Goals* that also defines democracy (Rossiter, c. 1960, pp. 61 f):

> The essence of the democratic process has been respect for the rules; the guaranty of this respect in the public arena has been the spirit and practices of constitutionalism. Constitutionalism is the generic label for all those arrangements and techniques – separation of powers, checks and balances, due process, bills of rights, the rule of law – that force our governors to think, talk, bargain, and explain before they act, and that institutionalize the procedures through which public policy is made, administered, and enforced. Although the rule of the majority is, in Jefferson's words, the 'vital principle' of the American republic, constitutionalism seeks to assure us that the majority will be clear-cut and cool-headed on all occasions, and powerless on occasions when the consciences of men are at issue. Above all, it seeks to assure us that the consent of the governed will not be given lightly to decisions of great moment. This is why Americans have always believed stoutly that, while a government can be constitutional without being democratic, it cannot be democratic without being constitutional.[8]

Notes

1 The standard reference work for Classical Greek long used by British and American scholars is *A Greek-English Lexicon*, compiled by Liddell and Scott (1985). It presents compendious definitions and lists sources in which a word appears. See for meanings of *anomie*, *dysnomia*, *stasis*, and other Greek words used throughout the present work.

It may also be pointed out that the 'standing still' which *stasis* means, is a condition resulting from a containment of conflicting forces or of an infection, but not the resolution

of the internal dissension; and therefore a 'rising up', a civil war, or the bursting of an infected spot is ultimately to be expected when the situation can no longer be controlled. In one way, Plato uses the word to mean faction in the soul, or a soul at war with itself: *Republic* (1978, tr. Shorey), Vol. I, Book IV, 440 E, pp. 402 f. In another way, Plato uses the word to mean a kind of civil war: *ibid.*, 444 B, pp. 416 f. *Astasiastos* (ἀστασίαστος), on the other hand, is used to describe a condition free from internal dissension or party strife: *ibid.*, (1979), Vol. II, Book VIII, 554 D, pp. 276 f. Shorey also suggests (footnote c, p. 276): 'For the idea 'at war with himself', cf. *supra* 440 B and E (*stasis*), *Phaedr*, 237 D–E and Arist. *Eth. Nic.* 1099 12 f'. *Stasis* is also explained by Mulgan (1977), pp. 118 f and 149, n. 4. Mulgan states (p. 118):

> Though most would have agreed that *stasis* involved taking the struggle for power beyond the limits of what was acceptable or lawful, there would often be disagreement about whether these limits had actually been crossed.

For a doctoral study devoted to *stasis* and related concepts, see in its entirety Mustacchio, 1972. See for definitions and descriptions of *stasis* especially pp. 2–31 and see for related concepts especially pp. 31–5. Plato's view of *stasis* is treated especially in ch. V, 'Plato: *Stasis* and Unity', pp. 129–62; and Aristotle's view in ch. VI, 'Aristotle: *Stasis* and *Politeia*', pp. 163–85. See also the insightful ch. VII, 'Conclusions', pp. 186–96, including the judgment (pp. 195 f) that: 'We may conclude that neither in the politics nor the political theory of the Greeks was the problem of *stasis* successfully resolved'.

For a reprinted paper that systematically poses and answers questions about the nature of *stasis* and historical developments and events that illustrate it, see Loenen, 1953. See for the meaning of the term and comparison of various definitions especially pp. 4–7. See also for additional references, sources, and discussion, the endnotes, pp. 39–48, including the inexact quotation from Lord Bolingbroke (dedication, *A Dissertation upon Parties* (1735)), p. 39, n. 3: 'National interests would be sometimes sacrificed and always made subordinate to personal interests, and that, I think, is the true characteristic of faction'.

For an historical account that provides detailed treatment of internal and external interrelationships that produced *stasis* in a number of Greek city-states, see Gehrke, 1985. For the political science view of *stasis*, Gehrke (p. 2, n. 9) notes Mustacchio.

For further discussion of Aristotle's use of *stasis*, see Burnet (ed.) (1900), pp. xlvi ff, n. 2, which refers to: *Phys.*, 192 B, 13; *Met.*, 1013 a, 29; and *Gen. An.*, 776 a, 35.

Note should also be taken of the use of *stasis* to refer to the factions or standings termed *Paraloi* (Παραλόι), *Pediakoi* (Πεδιακόι), and *Diakrioi* (Διάκριοι) – 'men from the coast, plain, and hills' – discussed in Manville (1990), pp. 159 ff. See also Manville's discussion of *eunomia* (ευνομία) and *dysnomia* (δυσνομία), respectively 'lawfulness and good order' and 'the opposite condition', pp. 51 and 154. For additional aspects of *stasis*, see also in full ch. IX, note 24.

2 For additional discussion of such concepts as stability, equilibrium, change, a standing still, status quo, fusion of powers, and constitutionalism, see Polin, 1979, especially pp. 31–4, 61–71 and 237–62.

For an academic symposium on the subject, see Pennock and Chapman, 1977.

For clarification of the meaning of most philosophical terms and examples of their use in the classical period, see Peters, 1967.

For a general study of constitutionalism, see Friedrich, 1950. For a more specialized study with more specific applications, see Franklin, 1969.

3 For an authoritative exposition and perspicacious commentary on the role of the institutional

arrangements of separation of powers and representative government in promoting the values of 'justice, liberty, equality, and the sanctity of property', see in its entirety Vile, 1967. See statement of this theme, pp. 1 f, and further declaration (p. 7) that:

> ... in some form, a division of power, and a separation of function, lie at the very heart of our systems of government. An idea that finds its roots in ancient constitutionalism, and which in the seventeenth century became a central feature of a system of limited government, has obviously to be reformulated if it is to serve as an instrument of modern political thought, but it can only be rejected altogether if we are prepared to discard also the values that called it into being.

4 As used here, 'descending order' pertains to the *exercise* of superior authority over lower authority on a descending scale, and the word 'descending' has been taken from Walter Ullmann. However, this supervisory exercise is not to be confused with the rationale treated of by Ullmann that discusses the theoretical justification for what he terms the 'descending thesis' or 'descending theme' of government, as well as the 'ascending thesis' or 'ascending theme', that relate more to the *source* of governmental authority. See, e.g., Ullmann, 1965, pp. 12 f; 1967, pp. 9 and 58; and 1975, pp. 30 f.

5 A notable illustration of the essence of 'inherent limitations' is contained in the Roman concept of *fides*. For explanation of *fides* and more specialized sources on the subject, see Adcock, 1964, pp. 13 f and 106:

> A Roman entrusted with the care of the public interest was expected to pursue it conscientiously, single-mindedly, and honourably. The concept that embodied this expectation was *fides*.[23] (23. On *fides* see esp. E. Fraenkel, 'Zur Geshichte des Wortes *fides*', *Rhein. Mus.* 71 [1916], 187 ff; R. Heinze, '*Fides*', *Hermes*, LXIV [1929], 140 ff.) When the Senate suggested that a magistrate should act, it added the phrase that he should act as seemed good to him in accordance with the national interest and his own *fides*.[24] (24. 'Uti ei e re publica fidequa sua viderateur'; cf. Meyer, *op. cit.* [Ernst Meyer, *Römischer Staat und Staatsgedanke* (Zurich: Artemis-Verlag, 1948), pp. 109 ff.], p. 241.) It was the constant reminder of that sense of duty and scruple that the community expected to find in its leaders. The same idea, it may be added, governed the relation of a powerful Roman to clients who had placed themselves under his protection.[25] (25. This relation, with its reciprocal evocation of *fides*, means loyalty also in the sphere of politics. See below, p. 20.) The clients have no claim in law, but as they trust him, so he must deserve and earn their trust.

A striking example of the workings of 'inherent limitations' is contained in the restraints and legal devices self-imposed by government in Canada prior to passage of the Canadian Bill of Rights in 1960 and more especially by the Constitution Act, 1982, that included as Schedule B, the Canadian Charter of Rights and Freedoms. See in its entirety Blaustein and Flanz (eds), 1988, by Beckton, Ritter, Matkin, and Walsh, with explanatory essays by Beckton and Ritter and bibliography by Ritter. See especially pp. 17–25, including the following comments by Ritter (pp. 24 f) that describe how 'inherent limitations' operate, although necessitated in past Canadian practice that they do so through institutional arrangements:

> Until 1982, only politics and the British tradition of 'fair-mindedness' in a law prevented the federal Parliament and the provincial legislatures from substantially limiting basic freedoms and rights of Canadian citizens. While *political* conventions were not generally enforceable in a court of law however, *legal* delineations of government spheres of

> authority were, and the courts, as evidenced in many landmark constitutional decisions, struggled to disallow unreasonable restrictions on fundamental rights based on the constitutional division of powers rather than on a codified and constitutionally-enshrined description of rights itself.

In contrast, we may note that the Commonwealth of Australia Constitution Act 1900 (which was amended by the Australia Act 1926, 'An Act to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation') contained in scattered clauses what in combination may be taken as an express 'bill of rights'. Indeed, the Australia Constitution Act is at times reminiscent of the Constitution of the United States. E.g., the U.S. Constitution, Amendment I, provides in part, 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof' and Article VI provides in part, 'no religious test shall ever be required as a qualification to any office or public trust under the United States'. The Australia Constitution Act, Chapter V, Clause 116, reads: 'The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.' See in its entirety Alex C. Castles and Kenneth R. Rush (1987), *Constitutions of the Countries of the World: Australia*, in Blaustein and Flanz, 1971–, especially p. 47, clauses 115–18.

Despite the absence of such express constitutional limitations, the principle of 'inherent limitations' was evidently applied to safeguard religious freedom in Canada before the Constitution Act, 1982 in the case of *Saumur v. Quebec and the Attorney General of Quebec* (1953) 2 SCR 299. Ritter, *loc. cit.*, p. 23, observes:

> The *de facto* result was that the right of religious expression was upheld, though it reserved to the federal government the right to legislate that right away. Political convention decreed that it would not, of course, but similarly, in cases where the federal authorities demonstrated excessive zeal in limiting fundamental rights in other areas, the courts have been just as likely to find that jurisdiction to enact such legislation rested with the provinces.

A similar set of circumstances in which an institutional arrangement (again, the process of judicial review of the constitutionality of legislative and executive action) has contributed to the wholesome influence of inherent limitations is to be found in recent judicial events in the Republic of Ireland. See Jay A. Sigler, *Constitutions of the Countries of the World: Ireland*, Constitutional Chronology to 1982 in Blaustein and Flanz, *op. cit.*; Constitutional Analysis and Bibliographia by Gerard Hogan, 1988, *ibid.* See especially pp. 18 f which report:

> The great achievement ... of the Constitution of 1937 was that it produced the environment in which a successful system of judicial review has flourished. The decision of the Supreme Court in *Buckley v. Attorney General* [1950] I.R. 67 was the landmark case which paved the way for the development of a sophisticated constitutional jurisprudence.

Also in contrast to past Canadian practice, detailed express provisions as to jurisdiction and procedure where matters of constitutionality and legality are involved are clearly set forth in the Basic Law of the Federal Republic of Germany, Chapter IX, THE

ADMINISTRATION OF JUSTICE, Articles 92–104, especially the role of the Federal Constitutional Court. See Flanz, 1985, *Constitutions of the Countries of the World: Federal Republic of Germany*, in Blaustein and Flanz, *op. cit.*, pp. 74–8; *cp.* 1994 ed.

6 Fusion of powers refers to the ministerial system that selects heads of executive departments and 'the government' from within the legislature and mingles especially legislative and executive powers within one body: e.g., the Parliament in the United Kingdom, Canada, and France. For the classic study on the development of Parliament's unchallenged supremacy in Great Britain, including relevant commentary on similar developments elsewhere, especially in the Commonwealth, and comparisons with the American constitutional system, see Dicey, 1982. Also recommended to the introductory student of constitutionalism for general background prior to World War II: McIlwain, 1939 and 1947; and Hawgood, 1939. More recently, see Bradshaw and Pring, 1981.

7 For thoughtful, probing treatment of modern constitutionalism and refutation of a number of commentators, especially on American politico-constitutional issues and events, see in its entirety Wolin, 1989. Wolin forthrightly reveals his viewpoint and purpose in observations on the socio-economic matrix of constitutionalism, global as well as American, pp. 6 f, where he states:

> These writings are intended as a contribution to a renewed democratic discourse, one that can be disentangled from the disillusions bred by recent neoconservative rhetoric and the cheap flattery of cynical demagogues of right-wing populism. That discourse must confront the meaning of the state and its cohabitation with corporate power.

Whether one be in agreement or disagreement with specific general points and analyses offered by Wolin, he provides especially for the graduate student an example of a wide-ranging frame of reference useful for consideration of issues basic to the theory, practice, and future of constitutionalism.

For consideration of aspects of the role played by inherent limitations in the emerging development of modern constitutionalism in an underdeveloped nation, see Vaughn, 1988, pp. 44–56.

8 Rossiter, ch. II.

Any system of government genuinely committed in theory and adhering in practice to constitutionalism of any form – and particularly to democracy – must invoke the principle of *responsibility* in all of its meanings, including especially: answerability; duty; obligation; oversight; accountability; trusteeship; and causality. A thinker who addressed this matter with profound perspicacity and historical knowledge was Hans Jonas (1903–93), a one-time student and later ardent opponent of Martin Heidegger (1889–1976) because of the latter's public support of Adolf Hitler and pronouncement of Nazi tenets. As Plato also seems to have done, Jonas saw his share of military combat at a comparatively advanced age: five years in the British 8th Army during World War II, thus fulfilling his own sense of responsibility. The advanced student of constitutionalism will want to read Jonas' major work on responsibility in either its English (1984) or German (1979 and 1981) versions.

I am indebted to John H. Herz for the opportunity to quote now from his typescript photocopy of the acceptance speech of Jonas in January 1993 of the Premio Nonino in Udine, Italy, in which he emphasized the common responsibility of all of humanity in the face of our endangered global environment that calls for 'moral education and unending political watchfulness': 'A new solidarity of the whole of humanity is beginning to dawn on us. A common guilt binds us, a common interest unites us, a common fate awaits us, a common responsibility calls us'.

II Athenian Constitutional Background

Overview

Plato and Aristotle were reared and lived the greater part of their lives in a period of Athenian *Sturm und Drang*, a time characterized by internal and external struggle, disorder, disunity, change, and the humiliation of conquest.

The constitutional system for the previous two centuries and during their lifetimes underwent the continuing stresses and strains imposed by a struggle between those who would widen popular participation in the government and those who would restrict the higher offices to elitist control. Thus, one may discern as the principal contenders those who inclined to a more democratic approach to the theory and practice of government and those who favoured an aristocratic-plutocratic-oligarchical approach.

The interaction and intermixing of these opposing ideas and forces produced the theoretical and actual synthesis called *politeia* (πολιτεία) or polity, whose objective was to be a constitutional, free *polis* (πόλις) or city-state that consisted mainly in a combination and balance of the principles of plutocracy and democracy. The principal plutocratic or oligarchical body was the administrative and probouleutic [pre-considering or substance-proposing] Council, the *boule* (βουλή); the principal democratic body was the popular assembly, the *ekklesia* (εκκλησία); and the Chief General or *strategos* (στρατηγός) by the time of Pericles was not only the presiding officer of the *strategia* (στρατηγία), a ten-member board of *strategoi* (στρατηγοί), but also *de facto* the chief magistrate and most important executive official of the Athenian state. The unity and loyal devotion to the state that it was anticipated would be prevalent under a *politeia*, would make this 'free, constitutional state' internally stable and externally strong, and promote the good life of justice, harmony, and accomplishment.[1]

The Passing of Athenian and Greek Supremacy

The Peloponnesian War

The Peloponnesian War (431–4 BC) destroyed the supremacy of Athens in the Aegean and ruined her as a first-rate military power. When Athens and Sparta were both powerful and allied against Persia, they bested that mighty empire. The weakening of Athens, therefore, did more than ruin Sparta's chief rival: it eliminated the power centre around which opposition to Macedonia could have been gathered and thereby assured Philip's conquest of Greece. Thus, the passing of Athenian supremacy also led to the passing of Greek supremacy; and so the years 427–322 BC, the period that covered the life-spans of Plato and Aristotle, were an unhappy century of political and military decline and humiliation for the once arrogantly proud and sometimes overly aggressive Athenians. Perhaps the personal fate of Pericles symbolizes what happened to his beloved Athens: unsuccessful in his prosecution of the war against Sparta in 430 BC, he was deposed from office, convicted on a biased charge of embezzlement, and fined, reinstated because of public revulsion over this treatment of such a heroic figure, and then himself fell victim in 429 BC to the plague that had ravaged Athens and killed a third of the population, including two of his sons.

With the death of Pericles, the leadership of the state fell to a mixed succession of demagogues, opportunitists, and statesmen, such as Cleon (d. 422 BC), the tanner; Nicias (d. 413 BC), the statesman-peacemaker and general; Alcibiades (c. 450–4 BC), the brilliant, ruthless, and controversial statesman, conqueror, and philanderer; Theramenes (d. 404 BC), the moderate, opportunistic oligarch; Critias (d. 403 BC), the Eupatrid orator, writer, and atheist; Thrasybulus (d. 388 BC), the democratic statesmen and general; Philocrates (fl. 4th cent. BC), the unfortunate peacemaker with Philip of Macedon; Demosthenes (385?–22 BC), the orator; and Lycurgus (390?–24 BC), the anti-Macedonian orator, financier, and administrator who guided the fortunes of Athens, 338–24 BC, following her crushing defeat by Philip at Chaeronea (338 BC).

Pericles had been virtually prime minister because he dominated the other generals and because he represented the general will. His successors tended to be demagogues or popular generals who held the position of *strategos* (στρατηγός) or strategus. The *demagogos* (δημαγωγός) or demagogue must be understood in terms of his contemporary meaning. He was, in effect, a popular spokesman or sponsor of the public will as he saw it and as he helped

shape it.

> A demagogue was by no means what the term implies in modern times. He was what we should call a parliamentarian of experience and standing, who had gained the ear and confidence of the Assembly, and who advocated, and sought through his influence with the Assembly to carry into effect a line of policy. He held no office, and he ruled by influence (Barker, 1960, p. 41).[2]

During the fifth century BC, the demagogue was somewhat of a representative chief executive and when ostracism was in vogue, a demagogue could eliminate a rival bloodlessly yet effectively. However, ostracism was last used in 418 or 417 BC against Hyperbolus, who nevertheless was tracked down and assassinated by the oligarchy, on Samos in 411 BC. Thereafter, Athens was often left with contending or successive rival leaders, frequently with disastrous results because she no longer had an adequate remedy to deal with them. Chagrined that ostracism had been used by the combined forces of Nicias and Alcibiades – the intended candidates for the ostracism – against a man of such personal merit as Hyperbolus, the practice became discredited and fell into disuse.

The Peloponnesian War was also responsible for attempts to form larger political units than the individual *polis*. However, perhaps even more responsible for this growing tendency were the changes in the economy, which became less self-sufficient and more dependent on imports and exports. There were a number of attempts to bring this integration about by imposing hegemonies, but none of them were more than temporary arrangements held together by force rather than a sense of common interest. Attempts in the fourth century BC to bring this about on a more equal federal basis proved futile, also.[3]

Class War

The effects of the war with Sparta polarized the classes politically as well as economically. The wealthy, particularly landowners whose estates were ravaged repeatedly during the Spartan invasions, favoured appeasement. The wealthy bitterly attacked the constitution, which had given over control to the mass of less-well-to-do citizens who provided their manpower and lives, rather than property, to preserve Athenian independence and greatness. The sense of common participation, benefits, and unity that must be felt if a society is to be strong and prevail, steadily diminished:

> The change is marked when we compare the assertion of the speakers in Herodotus and Thucydides, that democracy is government by the whole people not by any part, with the definition of democracy given a hundred years later by Aristotle, who describes it as the constitution in which the poor rule and use their power to oppress the rich. Instead of a constitution in which every one is on an equality and has an equal part in the government of the city, we find in practice that it tends more and more to a form in which the population falls into two social classes, and the larger class of the two (though it may not be necessarily very much the larger) uses its power in its own interests, and disregards the interests of the other as completely as if its members had been disfranchised. So that even in a democracy the State is no longer one in spirit. And if the democracy is overthrown and succeeded by an oligarchy of wealth, whose members in their turn consult only their own interests, the division of classes becomes more acute still. Enough has been said to show the significance of this in its effect on Plato's mind. In his boyhood and youth he saw the continued process of the break-up of an ideal unity of the State which must at one moment, shortly before his birth, have seemed almost established (Field, 1967, pp. 84 f).

As for the internal constitution of Athens in the fourth century BC, when Plato and Aristotle flourished, little need be added here. The changes that were introduced were routine adjustments of no great significance.[4]

Assessments

The internal history of Athens from the earliest days of its recorded history down to the fifth century BC was marked by the gradual assertion of the unity of the city-state and of its supreme claim as against the associations within it – 'the lesser loyalties' as they have been called – including such religious and kinship groups as the tribe, clan, phratry, and thiasus. The combination and balancing of the classes of citizens in a *politeia*, or free, constitutional state, were intended to produce a unity and loyalty to the state that, it was anticipated, would make it internally stable and externally strong, and promote the good life and justice. At this stage of the development of political theory, there was no substantial question of conflict between the rights of the individual and those of the state: the state was all-important and the individual insignificant.[5]

There developed, however, an increasing separation of the individual from the state by kinship bodies which represented themselves as more intimate and of greater influence in his life than the *polis* which embraced them all. The constant internecine conflicts which divided the whole state were an even

more pressing detriment. There existed a deep cleavage between the limited number of the noble families on the one side, who had arrogated to themselves many rights and political privileges, and on the other side the great mass of underprivileged citizens. The situation was further aggravated by the privileged class's use of their political power for purposes of aggrandisement at the expense of the rest of the community and their establishment of a harsh economic tyranny. Thus, bitter class warfare was added to the struggle for political rights. Also, there were numerous outbreaks of strife among the various families of nobles, each of which was in all probability supported by the mass of dependents of the same clan or district.

These internal divisions so weakened Athens as against other *poleis* that they contributed to her defeat by Sparta in the Peloponnesian War; and her citizens had to suffer such wartime humiliations as looking on helplessly when the island of Salamis, adjacent to and dominating entrance to the Piraeus, the port of Athens, fell under Spartan control. The conquering Spartan leader, Lysander (d. 395 BC), thereupon imposed a crushing naval blockade, set a 700-man controlling force of Laconian soldiers atop the Acropolis, and interfered in support of the temporary government of the Thirty and their execution of opponents.

Subsequently, Athens was for a time under the supremacy of Thebes. Moreover, the failure of Athens, Sparta, Thebes, and the other highly separatist Greek city-states to integrate themselves into some kind of strong federation or union, led to the conquest of all of them by Macedonia.

Thus, Plato and Aristotle were to live in a period that saw the disruption and fall from pre-eminence of Athens – and the decline of all other Greek city-states. In any event, the Greek *city*-state, or *polis*, concerning whose government they wrote most of their political and constitutional theory, was already largely obsolete. Because it is obvious that the *nation*-state (or *multinational* state, in many cases) is today in grave difficulty and experiencing *dysnomia*, *anomie*, and *stasis* internally and externally, study of the political and constitutional ideas of Plato and Aristotle may be quite timely. We may thereby gain some insight into why, even under such trying circumstances, fourth century Athens developed internal basic stability and the flowering of philosophical achievement in what Eli Sagan (1991, p. 11) has termed 'The Golden Age of the Radical Democracy, 403–322':

> It was an amazingly stable time. Though intense competition for power and honor marked political life – as in all democracies – the Athenians had learned how to combat each other without violence. No class or social brutality, from

either oligarchs or lower-class economic radicals, broke the civil peace. Many modern historians, with Periclean stars in their eyes, have downgraded the fourth century as if it were a time of moral mediocrity compared to the glorious fifth century. Such superficial political analysis does not hold. It was a remarkably vibrant democratic era. It was also the greatest age of philosophy ever, giving us Plato and Aristotle, and, therefore, the basis of 2,500 years of Western thought.[6]

Notes

1 A useful discussion of the primary sources and scholarly works dealing with subject matter of this chapter is still to be found in Hignett, 1952, ch. 1. Discussion of the sources is continued by Hignett throughout this work, but especially useful are the Appendices, pp. 209–89 and the Supplementary Notes, pp. 390–7. Finally, Hignett's Bibliography, pp. 398–401, is to be recommended. Also still useful for the general historical background is Grote, 1971. For treatment of political personages, relationships, and terminology, see especially Connor, 1970. For a work that treats more of organs, processes, and character of government, as well as the nature of law, see Ehrenberg, 1969, pp. 42–67. For a selection of literary sources, see Rhodes, 1986, ch. 5. For an illuminating study of the judicial role of the Areopagus Council, which treats in detail of its historical development, membership, structure, jurisdiction, functioning, religio-ideological orientation, political involvements, and stablizing influence, see Wallace, 1989. For a general review of the subject matter of this chapter, see in its entirety Sinclair, 1988. For a profoundly thoughtful and scholarly collection of relevant essays and introduction to them, as well as an extensive bibliography, see Finley, 1982.

See also Raaflaub, 1983. This is an especially useful introduction to the political terminology, concepts, and ideological positions of the period in a concise but comprehensive essay that presents carefully considered positions on key points relating to democracy and oligarchy and also calls attention to a number of studies in German.

Especially relevant to this chapter are a pair of companion articles. Mion, 1986, concludes:

> In light of the evidence presented it seems clear that the Athenians not only invented democracy, but went further. Although they did not develop a formal division of powers checking and balancing each other, and although for a while they did practice ostracism, they did invent procedures by which the citizen could seek a 'redress of grievances.' The Athenians saw the unavoidable flaw in democracy, which is that it cannot protect itself from itself: it needs legal institutions to balance political institutions. The Athenians and constitutionalism emerged together, one the natural counterpart of the other.

Campbell, 1986, begins with a forthright statement of intent to redress a perceived imbalance in modern studies of constitutionalism and to develop a wider and more precise perspective for the generally accepted view of the subject:

> In claiming the principle of constitutional safeguards exclusively for the secular liberal state, modern scholarship betrays a parochialism that has resulted in a distorted perception of western constitutional history (as well, perhaps, as a certain blindness in

regard to contemporary legal institutions outside the liberal orbit).

The line of development and a number of viewpoints expressed in this section depend especially on: Field, 1967, ch. VI and ch. VII; Bonner, ch. I; Myres, 1927, in its entirety; and Botsford and Robinson, 1956, *passim*. Grant, 1989b, and Develin, 1989, appeared later. Develin presents a very useful compendious and documentary treatment of Athenian political offices and bodies, their functions, and their holders in the period considered.

Additional works consulted in the preparation of this chapter include: Barker, 1960; Bonner and Smith, 1930–38; Brumbaugh, 1962; Ferguson, 1963; Fustel de Coulanges, 1956; Glotz, 1929; Glover, 1966, Larsen, 1948; Moore, 1974; Sinclair, 1968; and Voegelin, 1957. Works on relevant topics that also merit close attention include: MacDowell, 1978; Traill, 1975; and especially Wood and Wood, 1978.

Various encyclopedias and lexicons provide basic information on the Athenian state, as do especially the now classical studies by German scholars. The standard reference work in English recommended here is *The Cambridge Ancient History*, 1923–39, Vols. I–IV, especially Vols IV, V, and VI, 1927. The *CAH* second edition has begun appearing; most relevant thus far is Vol. V, 1993. See also below, chs VII and IX.

For a more recent work in German on the origins and development of the social structure and political system of the Athenian *polis* in the sixth century BC, see Stahl, 1987. Among other subjects, Stahl treats of three important factions ('standings') and their leaders ('Lykurgos, Megakles und Peisistratos') and how their feuding contributed to the strengthening of social and political institutions that made possible the emergence of Athenian democracy: Section Two, 'Stasis und Tyrannei', pp. 56–136 and Section Three, 'Die Tyrannis und Die Entstehung des Staates in Athen', pp. 138–255. Stahl also provides a wider bibliography of sources in German than usually available in works printed in English.

For the student who does not read German and wishes to examine an English translation of German scholarship, a work more focused on the succeeding fifth century BC and the *Entstehung* (rise or origin) of the Athenian democratic political process and its increasing control over even socio-economic institutions may be recommended: Meier, 1990.

If available, for a concise yet substantial history and explication of its subject, see the still admirably useful survey by Greenidge, 1896.

Wood and Wood, which appeared after the first draft of this chapter had been completed, but is often in substantial agreement, calls important attention to economic origins of many socio-political viewpoints. Their work serves as a necessary corrective to past uncritical acceptance of the pronouncements of Socrates, Plato, and Aristotle on democracy and the labouring class of citizenry of Athens. Subsequently, the contributions of free and slave farmers, artisans, and labourers to the development and character of Athenian democracy are treated of, again in persuasive, revisionist fashion, in Wood, 1988. Wood relies to an important degree on Ostwald, 1986, as she acknowledges (p. x), 'to trace the institutional development of Athenian democracy', while it is her intention here 'to explore its social foundations'. Wood forthrightly states her revisionist purpose (p. 1): 'This book represents, among other things, an attack on conventional wisdom, but it is a conventional wisdom whose logic permeates scholarly studies'. Wood's contention is that posterity has uncritically accepted Plato, Xenophon, and Aristotle's negative misrepresentations of an Athenian democracy that, she maintains, was brilliantly creative, successful, and widely supported (p. 139).

Another revisionist work that should be carefully considered and is supportive of much of Wood and Wood is the ardently pro-democratic study by the political activist Cynthia

Farrar, 1988. Farrar finds democratic concepts – as well as democratic practices, successes, and failures in real-life classical Athens – in the available fragments and works of Protagoras, Democritus, and Thucydides. She makes skilful use of Thucydides' own work, his *History of the Peloponnesian War*, and of Plato's dialogue *Protagoras*, which presents Plato's account and rebuttal of Protagoras' views. (For an appreciative, judicious review of Farrar, see Wallach, 1989.) Farrar declares (p. 1): The purpose of this book is to retrieve a distinctive and neglected form of democratic thought from behind the shadows cast by Plato, by Aristotle, and by our own preconceptions'. Farrar comments on the manner in which Plato and Aristotle 'abandoned the aims of democratic politics and democratic thinkers' (pp. 265 f) and the resultant failure she perceives (pp. 272 f):

> In the search for stability, Plato and Aristotle both, from different directions, violated the fragile equilibrium of autonomy and order at the heart of a community that risks disintegration but is also, for that very reason, capable of achieving genuine reflective stability. At bottom, Plato and Aristotle base their conceptions of order on society and on man, respectively; they are unwilling to rely on the interaction of the two.

For a work on the development of the rule of law and the courts as safeguards and dispensers of justice, see Sealey, 1987. See, e.g., the comparison made between the supremacy of modern constitutions over 'the laws' [presumably statutes] and the supremacy of 'laws' (*nomoi*) over 'decrees' (*psēphismata*), and reference to other senses of law (e.g., *ius*, *Recht*, and *droit*), pp. 32 f *et passim*.

A relevant study that includes a very lengthy, useful bibliography reached me during final stages of the present work: Manville, 1990. See in its entirety, especially pp. 53 f and Manville's appreciation of classical Athenian democracy in ch. 8, that finds (p. 218):

> With regard to a constitution, the rule of the people embodied in the fullest possible sense the unity of the state and its citizens; with regard to intangible civic spirit, the same, powerful themes seen in the Periklean funeral oration are visible (as generations of scholars have commented) throughout the drama, art and architecture, and political discourse of that 'golden age'.

See also Manville's definition of *polis*, pp. 53 f.

For a definitive study of the reputation – often quite inaccurate – of Athenian democracy, see Roberts, 1994.

For richly informative material and treatment in text, notes and bibliography, and for persuasive conclusions about the nature and functioning of the Athenian democratic system, including the disparate and common interests of the mass of citizenry and the elite and how they achieved an effective *modus operandi* and stable society, see in its entirety Ober, 1989. Ober concludes that the functioning hegemony of the Athenian mass was achieved along lines that refute (pp. 333 ff) the 'iron law of oligarchy' propounded by Robert Michels (1876–1936) and inverts (pp. 338 f) the [Marxian] principle of 'ideological hegemony' expounded by Antonio Gramsci (1891–1937). See further: Michels, 1958; and Gramsci, 1973.

For additional historical background and persuasive argumentation, buttressed by statistical analysis and functional description, that supports the viewpoint that the Athenian democracy was a successful and unifying system that was consciously formulated and effectively implemented, see also in its entirety Stockton, 1990. Stockton is challenging and illuminating throughout.