

## ATTITUDES TO THE LAW IN MENANDER: PAROCHIAL PANHELLENISM AND RADICAL CONSERVATISM\*

### ABSTRACT

*This article examines attitudes to the law in Menander. It argues that the law is given a specifically Athenian context and that it can give us an insight into the concerns and values of the playwright and his society. By analysing the ways in which characters perceive issues of legality, the article stresses the importance of humanity and personal character in the plays' dramatization of the interface between private lives and public institutions in early Hellenistic Athens. The article highlights how the ambivalence and the multivocality which are inherent in Menander's dramatic technique allow for varying responses and for the presentation of radical views.*

**Keywords:** Menander; law; Athens; Hellenistic; New Comedy; women; personal character; ambivalence

### INTRODUCTION<sup>1</sup>

ᾧμην δὲ μακάριός τις εἶναι τῷ βίῳ,  
... οὐδ' ἰδεῖν δυνήσομαι  
τὸ λοιπόν· ἕτερον κύριον δ' αὐτῆς ποιῆ  
**ὁ νόμος** ὁ τοῦμὸν οὐδαμοῦ κρίνων ἔτι. (294–8)

I thought that I was someone blessed in my life,  
... but I won't even be able to see her  
in the future; **the law**, which now rejects my  
claim, makes another her guardian.<sup>2</sup>

Here, in a quotation from *Aspis*, we can see the power of the law in determining the fate of one of Menander's young lovers. In Menander's plays the law can alter the trajectory of the plot, threaten heartbreak and enable happy endings. Recent treatments of Menander have obscured the nature of the law in his plays. Konstan stresses the 'gauzy nature of social arrangements in New Comedy', masking the connection between institutions such as the law and historical Athens, while Lape, with her firmly political

\* I am grateful to Peter Thonemann and Guy Westwood for helpful comments and advice, and to *CQ*'s reader for suggestions. This work was supported by the Arts and Humanities Research Council through the Open–Oxford–Cambridge DTP [ref. AH/R012709/1].

<sup>1</sup> The following works are cited repeatedly: E. Fantham, 'Sex, status, and survival in Hellenistic Athens: a study of women in New Comedy', *Phoenix* 29 (1975), 44–74; A.W. Gomme and F.H. Sandbach, *Menander: A Commentary* (Oxford, 1973); A.R.W. Harrison, *The Law of Athens*, 2 vols. (Oxford, 1968–71); S. Lape, *Reproducing Athens: Menander's Comedy, Democratic Culture, and the Hellenistic City* (Princeton and Oxford, 2004); D.M. MacDowell, *The Law in Classical Athens* (London, 1978); A.C. Scafuro, *The Forensic Stage: Settling Disputes in Graeco-Roman New Comedy* (Cambridge, 1997); A.H. Sommerstein, *Menander: Samia (The Woman from Samos)* (Cambridge, 2013); S.C. Todd, *The Shape of Athenian Law* (Oxford, 1993).

<sup>2</sup> The text of Menander follows W.G. Arnott, *Menander* (Cambridge, MA, 1979–2000). All translations are mine.

interpretation of Menander, argues that his plays perpetuate Athenian democratic values through the production of citizen offspring according to Athenian laws.<sup>3</sup> In fact, the laws in Menander will be shown to be particularized to the city of Athens and to invite ambivalent responses.

The laws are specific, situating us in place and time, and act as an important interface between the private lives of citizens and the public institutions of the state.<sup>4</sup> They allow Menander to stage social dilemmas and to invite the audience to question the boundaries of legality and morality. This article will use the law as a lens through which to analyse attitudes towards the *polis* and the tensions between institutions and personal motivations. It aims to add to an understanding of what kind of poet Menander is—conservative, humane, radical, misogynistic?—and the social values of his audiences.<sup>5</sup> The political upheaval in Athens in the late fourth and early third centuries B.C. may have led to several periods in which the activities of the courts were curtailed. There is enough evidence for the activity of the courts during this period, however, to suggest that the machinery of the law was still an active being to the audience of Menander, even if it had not been operating freely at all times in their lifetimes.<sup>6</sup> The plays therefore reflect on issues pertinent to the audience's experience and may reveal anxieties, values and tensions concerning the legal mechanisms portrayed in Menander's plays. The stakes surrounding such issues may be even higher in the context of disruption to legal processes.

While others have used New Comedy as evidence to contribute to the legal history of Athens, this article aims to reverse this priority.<sup>7</sup> Rather than asking what his plays can tell us about the law, the article will ask what his portrayals of the law can tell us about Menander and his society, unravelling the ideologies and values presented in his plays. It builds on works which discuss individual plays or individual legal issues in Menander and aims to draw together different dramatizations of legal dilemmas.<sup>8</sup>

<sup>3</sup> D. Konstan, 'Comedy and the Athenian ideal', in M. Canevaro and B. Gray (edd.), *The Hellenistic Reception of Classical Athenian Democracy and Political Thought* (Oxford, 2018), 109–19, at 114. Konstan's view is shared by others: see N.W. Slater, 'Transformations of space in New Comedy', in J. Redmond (ed.), *The Theatrical Space* (Cambridge, 1987), 1–10, at 1 for the view that New Comedy is 'both physically and imaginatively detached from the city which gave it birth', and M. Wright, 'Poets and poetry in later Greek comedy', *CQ* 63 (2013), 603–22, at 618 for a statement of the 'context-free world' of Menander's plays which only 'superficially resembles contemporary Athens'. Cf. also W.G. Arnott, 'From Aristophanes to Menander', *G&R* 19 (1972), 65–80, at 67 and P. Rau, *Menander: Komödien*, 2 vols. (Darmstadt, 2013), I.x. Lape (n. 1), *passim*, e.g. 14.

<sup>4</sup> Scafuro (n. 1), 9–10, 30–1 and C. Préaux, 'Les fonctions du droit dans la comédie nouvelle. À propos du *Dyscolos* de Ménandre', *CE* 35 (1960), 222–39. In contrast with the approach here, E.J. Buis, 'Law and Greek comedy', in M. Fontaine and A.C. Scafuro (edd.), *The Oxford Handbook of Greek and Roman Comedy* (Oxford, 2014), 321–39 does not connect the private legal struggles in Menander with the public sphere.

<sup>5</sup> For the ways in which the plays of Menander can tell us about their audiences, see C. Préaux, 'Ménandre et la société athénienne', *CE* 32 (1957), 84–100, at 89, 100; P.G.McC. Brown, 'Love and marriage in Greek New Comedy', *CQ* 43 (1993), 189–205, at 204; and D. Konstan, 'Menander and cultural studies', in A.K. Petrides and S. Papaioannou (edd.), *New Perspectives on Postclassical Comedy* (Newcastle upon Tyne, 2010), 31–50, at 34–5.

<sup>6</sup> Scafuro (n. 1), 14–15; A.L. Boegehold, *The Lawcourts at Athens: Sites, Buildings, Equipment, Procedure, and Testimonia* (Princeton, 1995), 41–2: e.g. *IG* II<sup>2</sup> 1.867.27–30 (286/5 B.C.), *IG* II<sup>2</sup> 1163.8–10 (284/3 B.C.), and material evidence summarized by Boegehold (this note).

<sup>7</sup> See e.g. R. Taubenschlag, 'Das attische Recht in der Komödie Menanders *Epitrepontes*', *ZRG* 46 (1926), 68–82; E. Karabelias, 'Une nouvelle source pour l'étude du droit attique: le "bouclier" de Ménandre (*P. Bodmer* XXVI)', *RD* 48 (1970), 357–89; Scafuro (n. 1).

<sup>8</sup> Isolated assessments of the law in Menander include Préaux (n. 4); D.M. MacDowell, 'Love versus the law: an essay on Menander's *Aspis*', *G&R* 29 (1982), 42–52; P.G.McC. Brown, 'Menander's

The article will focus on plays in which the state of the text allows us to see the nature of legal attitudes in their full dramatic context and in which issues of legality are at the heart of the action. This will lead to a concentration on *Aspis*, *Samia*, *Epitrepontes* and, to a lesser extent, *Sikyoniot*.<sup>9</sup> These are all plays set in Athens.<sup>10</sup> They mostly concern laws which govern marriage, adultery, rape and other aspects of gender relations, though *Epitrepontes* also allows us to see how legal structures could be used in dispute-resolution. The study of these plays will be divided into two sections. Section 1 will address the question of how Athenian the law in Menander is. How closely connected are these issues with a specific context? Section 2 will then analyse the attitudes to the law which Menander dramatizes. His depictions of litigious individuals and legal knots involved in Athenian marriages will reveal an ambivalent approach towards the law and suggest the importance of personal character in judging whether ‘legal’ equates to ‘the right thing’.

### SECTION 1: HOW ATHENIAN IS THE LAW IN MENANDER?

Konstan sees Menander’s plays as anticipating and aiding the ‘great convergence’ of civic practice and institutions after the conquests of Alexander the Great and presenting a ‘homogeneous image of Greek society’.<sup>11</sup> How far is this applicable in the case of the law? In this section we will assess how far the legal institutions are tied to Athens and painted with local colour.

The legal contexts of some of Menander’s plays contain elements which feature a specifically Athenian background rather than a more generic ‘Greek’ conception of legal practices. For example, *Aspis* concerns the transfer of property through the female line through the institution of the epiclerate. In Athens the brotherless daughter of a man who died became an heiress (ἐπίκληρος) who did not own the property she inherited but was inseparable from it. Her closest relation, and of them the eldest, would have the right to marry her and the ability to dissolve an existing marriage if no son had been born. The property would be under the control of the husband of the ἐπίκληρος until they had a son and he came of age.<sup>12</sup> If the heiress was poor, the nearest kin was in fact compelled to either marry her or give her a dowry.<sup>13</sup>

Beroutsos argues that this legal plotline should lead us to place the play in Athens; he also floats the idea that this process may have been used in other cities.<sup>14</sup> There are similarities to this system in other *poleis*. In Gortyn’s law code a fatherless and

dramatic technique and the law of Athens’, *CQ* 33 (1983), 412–20; P.G.McC. Brown, ‘Athenian attitudes to rape and seduction: the evidence of Menander, *Dyskolos* 289–293’, *CQ* 41 (1991), 533–4.

<sup>9</sup> The article will not explore Roman adaptations. While legal plot structures and themes may have been carried across, it is too precarious to suggest that legal details as well as, more importantly, opinions and attitudes to the law will have been translated without significant changes.

<sup>10</sup> There is some room for debate in the case of *Aspis* (see Section 1).

<sup>11</sup> Konstan (n. 3), 109–10, 118. For similar views on the relationship between Menander’s plays and Athens, see n. 3 above. For the ‘great convergence’, see J. Ma, *Polis: A New History of the Ancient Greek City-State from the Early Iron Age to the End of Antiquity* (Princeton, 2024), 203–28.

<sup>12</sup> Harrison (n. 1), 1.9–12, 132–3; MacDowell (n. 1), 95–8; Todd (n. 1), 228–31; Scafuro (n. 1), 71 n. 1, 284 with n. 10; Brown (n. 8 [1983]), 413; Gomme and Sandbach (n. 1), 78; D.C. Beroutsos, *A Commentary on the Aspis of Menander. Part One: Lines 1–298* (Göttingen, 2005), 56.

<sup>13</sup> Harrison (n. 1), 1.135–6; Scafuro (n. 1), 298 n. 45; Fantham (n. 1), 48 with n. 12 (see [Dem.] 43.54; Ter. *Phorm.* 295–7, 407–10).

<sup>14</sup> Beroutsos (n. 12), 21.

brotherless girl is termed a *πατροῦκος* and on her father's death is to be married to his oldest brother in the first instance, which is very similar to the Athenian arrangement.<sup>15</sup> However, there is limited evidence for the term and institution of the epiclerate outside Athens.<sup>16</sup> Even in Gortyn there are significant differences from the Athenian epiclerate. For example, the *πατροῦκος* at Gortyn inherits the property (as opposed to just transmitting it to her son[s]) and can refuse marriage with claimants and instead marry someone from her tribe, keeping the house and half the property in this instance (G72 7.52–8.8).<sup>17</sup> This suggests that the terminology and exact structure of the epiclerate may have been received as an issue of specifically Athenian law. It was a popular subject for fourth-century and for Hellenistic comic plays. The playwrights who wrote plays entitled *Epikleros* either were Athenian or had spent a considerable part of their career in Athens. This seems to increase the likelihood that the epiclerate was a legal issue associated with Athens.<sup>18</sup> Karabelias argues for the decline and disappearance of the institution in the Hellenistic period, linking this with the disapproval for it which he sees in the plays of New Comedy.<sup>19</sup> The lack of forensic speeches from this period, however, means that the argument for decline is precariously based on absence of evidence. The *Athenaion Politeia* suggests healthy functioning of the system in late fourth-century Athens, and an Attic inscription from c.300–250 B.C. shows its continuing operation.<sup>20</sup> It thus seems to be an institution that would have been part of the legal experience of Menander's Athenian audiences.

In most cases in Menander's plays, the Athenian nature of the law does not make it inaccessible to non-Athenians. For example, in Menander's *Epitrepontes* there is a private arbitration scene after which the play is named. Private arbitration was an institution intended to settle disputes before they reached court.<sup>21</sup> It seems to have become legally recognized as authoritative in Athens in the fifth century and involved two parties agreeing to one or more arbitrators with the conditions for the decision-making agreed beforehand and the verdict delivered (often under oath) by the arbitrator(s).<sup>22</sup> It was a common practice with which an Athenian audience would have been familiar, as the speeches of the orators show. Menander therefore focusses on an institution that is important to Athenian legal experience and discourse. Private arbitration was not entirely restricted to Athens, though. There are a few examples elsewhere in the Greek world, for example in Samos (243 B.C.) and in Ptolemaic Egypt

<sup>15</sup> G72 7.15–8.36 (cf. G44) in M. Gagarin and P. Perlman, *The Laws of Ancient Crete c.650–400 BCE* (Oxford, 2020); C. Patterson, *The Family in Greek History* (Cambridge, MA and London, 1998), 93; E. Karabelias, 'L'épiclérat dans la Comédie Nouvelle et dans les sources latines', in H.J. Wolff (ed.), *Symposion 1971* (Cologne, 1975), 215–54, at 232–3. For the small number of other possible instances of the institution elsewhere, see E. Karabelias, 'La situation successorale de la fille unique du défunt dans la *koiné* juridique hellénistique', in J. Modrzejewski and D. Liebs (edd.), *Symposion 1977* (Cologne, 1982), 223–34, at 230–3.

<sup>16</sup> Karabelias (n. 15 [1982]), 226, 232; Karabelias (n. 15 [1975]), 254 n. 138.

<sup>17</sup> Gagarin and Perlman (n. 15), 391–4; Todd (n. 1), 221.

<sup>18</sup> See n. 47 below.

<sup>19</sup> Karabelias (n. 7), 384–8; Karabelias (n. 15 [1975]), 241–2, 253. His argument in Karabelias (n. 15 [1982]) that this decline is signalled by the absence of the epiclerate in inscriptions and papyri does not take into account that the institution may have been particularly Athenian.

<sup>20</sup> Scafuro (n. 1), 281–3; [Arist.] *Ath. Pol.* 42.5; *IG II<sup>2</sup>* 1165.30–8.

<sup>21</sup> See Scafuro (n. 1), 117–41 and Appendix 2; MacDowell (n. 1), 203–6; Todd (n. 1), 123–5; and D. Roebuck, *Ancient Greek Arbitration* (Oxford, 2001), 45–6.

<sup>22</sup> Scafuro (n. 1), 117–27.

from the end of the fourth century B.C.<sup>23</sup> Therefore, although the language and the practice of Athenian private arbitration provide Menander's model (see Section 2a below), a non-Athenian audience too may have been familiar with this legal practice, depending on where they were from.

Many of the twists and turns in the marriage-plots of Menander's plays are caused by the need for adherence to Pericles' citizenship law (451/0 B.C.), which limited citizenship to those with both an Athenian father and an Athenian mother (*Ath. Pol.* 26.3; Plut. *Vit. Per.* 37.3). Menander's plays reflect the anxieties and tensions, specifically in Athens, concerning adherence to this rule.<sup>24</sup> Once again, however, there may have been non-Athenians for whom these concerns were relatable. Ogden records evidence for states which imposed or did not impose 'double civic ascendance' as a requirement for citizenship. He notes that it is harder to find the latter in the Classical period, though there was widespread relaxation of the law throughout the Hellenistic period.<sup>25</sup> Therefore, this Athenian law would have been accessible, and perhaps similar, to the experience of some non-Athenian Greeks.

In these legal institutions there is a spectrum between what would be viewed as a common Greek experience and what would be seen as a particularly Athenian experience. The Athenian elements seem to be more than 'gauzy', and the law in these plays may have been perceived as Athenian albeit accessible to other Greeks. This has implications for the kind of poet Menander is: he is not a purely Panhellenic poet, and Athenian institutions are central to depictions of interactions between individuals and the law even when they are comprehensible or familiar to other Greeks. The portrayal of the law is therefore located in a specific place and time. In light of this we can more confidently ask what the dramatizations of attitudes to legal issues can tell us about the concerns and values of this playwright and his society.

## SECTION 2: ATTITUDES TO THE LAW IN MENANDER

### a) *Litigiousness*

The overall impression Menander gives of individuals who are heavily involved in, or easily inclined to invoke, the law is that they are flawed characters. This aligns with the *topos* which appears in oratory of the virtue of avoiding litigiousness.<sup>26</sup> Sometimes this is

<sup>23</sup> Roebuck (n. 21), 274 (*SEG* 1.366), 307–19 (e.g. *P.Eleph.* 1; *BGU* 1465). For private arbitration in Egypt, see also J. Modrzejewski, 'Private arbitration in the law of Greco-Roman Egypt', *JJP* 6 (1952), 239–56.

<sup>24</sup> C. Patterson, *Pericles' Citizenship Law of 451–50 B.C.* (Salem, NH, 1981); C. Patterson, 'Athenian citizenship law', in M. Gagarin and D. Cohen (edd.), *The Cambridge Companion to Ancient Greek Law* (Cambridge, 2005), 267–89; J. Blok, 'Perikles' citizenship law: a new perspective', *Historia* 58 (2009), 141–70; Todd (n. 1), 170–84; Lape (n. 1), 6–7. For the Athenian anxiety that the children of unions with non-citizens could infiltrate the citizen body, see N. Fisher, 'Citizenship anxieties: the Athenian *diapsēphisis* of 346/345 B.C.E.', in J. Filonik, C. Plastow and R. Zelnick-Abramovitz (edd.), *Citizenship in Antiquity: Civic Communities in the Ancient Mediterranean* (London and New York, 2023), 369–86.

<sup>25</sup> D. Ogden, *Greek Bastardy in the Classical and Hellenistic Periods* (Oxford, 1996), 277–88 and 289–317; S. Carlsson, 'Citizenship in the Hellenistic period', in J. Filonik, C. Plastow and R. Zelnick-Abramovitz (edd.), *Citizenship in Antiquity: Civic Communities in the Ancient Mediterranean* (London and New York, 2023), 429–42, at 433–4.

<sup>26</sup> See Scafuoro (n. 1), 25 with n. 1, 37 n. 8. See Dion. Hal. *Lys.* 24; [Arist.] *Rhet. Al.* 1442b3–9 and 1444a30–4; Herod. *Mim.* 2; Theophr. *Char.* 6.8.

light-hearted, but it can also be a serious indictment of characters and an indication of the moral orientation of the play.

Legal action is presented negatively by the protagonist of *Dyskolos*, Cnemon—an antisocial but hard-working Attic farmer. He states (743–5):

εἰ τοιοῦτοι πάντες ἦσαν, οὔτε τὰ δικαστήρια  
ἦν ἄν, οἷθ' αὐτοὺς ἀπήγον εἰς τὰ δεσμοπήρια,  
οὔτε πόλεμος ἦν, ἔχων δ' ἄν μέτρι' ἕκαστος ἡγάπα.

If all were like me there would not be lawcourts,  
nor would they lead each other to prison,  
nor would there be war, but each man would be happy with a moderate amount.

This positions litigiousness alongside war and suggests that it is motivated by greed (rather than justice). The wistful tone presents an ideal society as empty of lawcourts. In the context of Cnemon's isolation in the Attic countryside, legal action is also depicted as an activity of the urban dwellers which is at odds with his traditional values.

In *Epitrepontes*, the arbitration scene after which the play is named acts as a light-hearted pastiche of litigiousness. It shows how forensic apparatus was not limited to the courts for Athenians but was pervasive in their lives.<sup>27</sup> Smicrines arbitrates between the slaves Davus and Syrus. The language reinforces the institution which is being mobilized. Syrus declares ἐπιτρεπτέον τινί | ἐστὶ περὶ τούτων ('this matter must be submitted to someone for arbitration', 219–20) and Smicrines' question ἐμμενεῖτ' οὖν, εἰπέ μοι, | οἷς ἄν δικάσω; ('tell me, will you stand by my judgment?', 237–8) recalls accounts we have in forensic oratory of the failure of private arbitration (for example οὐχ οἷος ἦν ἐμμένειν οἷς ἐκείνοι γνοῖεν ['he could not stand by what they decided'], Dem. 41.14).<sup>28</sup> So too the arbitration ends by displaying the difficulty of ensuring that all parties abide by, and are content with, the judgment in arbitration (370–2).<sup>29</sup> Davus quickly realizes with frustration that Syrus is a much better speaker than him (μετρίω γε συμπέπλεγμαι ῥήτορι: ['I'm grappling with a decent orator'], 236), using a wrestling metaphor which Aeschines also deploys for Demosthenes (2.153).<sup>30</sup> A rhetorical peak of Syrus' speech is his presentation of the child itself (301–3), a classic technique used by defendants to rouse pity.<sup>31</sup> Also highly rhetorical are his appeals to the importance of recognition tokens in tragedy (325–33).<sup>32</sup> Syrus' argument, focussed on law and fairness, triumphs over the basic sentiment of finders-keepers which Davus tries to pursue.<sup>33</sup>

Syrus is on a litigious high after his victory and vows, following Onesimus' challenge concerning Charisius' ring among the tokens (ἄραρε, δικάσομαι | ἅπασι, κ[α]θ' ἓνα ['it's decided, I'll go to court with everyone, one by one'], 402–3), using language popular with Demosthenes for ignominious concessions in his refusal to give way

<sup>27</sup> For the importance of private arbitration as an institution, see Scafuro (n. 1), 42.

<sup>28</sup> W.D. Furley, *Menander: Epitrepontes* (London, 2009), 146; A. Martina, *Menandrea: elementi di struttura della commedia di Menandro*, 3 vols. (Pisa, 2016), 1.77–8.

<sup>29</sup> Scafuro (n. 1), 37.

<sup>30</sup> Gomme and Sandbach (n. 1), 306. The text here follows the edition of Kassel–Schröder, *PCG*, rather than Arnott (n. 2), who prints συμπέπληγμα.

<sup>31</sup> J.W. Cohoon, 'Rhetorical studies in the arbitration scene of Menander's *Epitrepontes*', *TAPhA* 45 (1914), 141–230, at 201: cf. Isoc. 15.321.

<sup>32</sup> Scafuro (n. 1), 158 with n. 10: cf. Aeschin. 1.128, 1.151, 1.152, 1.190; Dem. 18.180, 18.242, 18.267, 19.245–7; Lycurg. 1.92, 1.100.

<sup>33</sup> Scafuro (n. 1), 156–7.

(καθοφείμην [‘give way’], 402).<sup>34</sup> Similarly, he is confident at the prospect of another challenge and states (417–18):

πάντων δ’ ἄμελήσανθ’, ὡς ἔοικε, δεῖ δίκας  
μελετᾶν· διὰ τοῦτι πάντα νυνὶ σῶζεται.

Careless of all else, it seems I must practise  
lawsuits. For nowadays it’s through this that all is kept safe.

The use of this pre-court institution by slaves heightens the parody of Athenian litigiousness.<sup>35</sup> The combination of realism and slave-characters would highlight the humour of this social comedy.<sup>36</sup> This can be sensed in Smicrines’ somewhat snobbish response to their request for him to arbitrate (228–30):

ὦ κάκιστ’ ἀπολούμενοι,  
δίκας λέγοντες περιπατεῖτε, διφθέρας  
ἔχοντες;

You scoundrels!  
Are you wandering around pleading cases  
with goatskin jerkins on?

The contrast between their clothing, which indicates their rusticity and social status, and their rhetorical flair (at least in the case of Syrus) is at the heart of the parody.<sup>37</sup>

In addition to this light-hearted parody of litigiousness there are more serious indictments of individuals involved in the law in Menander’s plays. In *Samia*, Niceratus pushes the boundaries of the law and tries to justify illegal action. He claims that in Demeas’ position he would sell off his concubine on the next day along with his son (507–10). Chrysis is a free woman and therefore Niceratus’ proposal is doubly illegal through the crime of ἀνδραποδιμός (‘selling into slavery’).<sup>38</sup> He also incorrectly labels Moschion’s supposed sexual betrayal of his father as murder, arguing that to do so is just (513–14). When he finds out that his unmarried daughter has had a child, his extremity reaches new heights. He threatens to set fire to the baby (553–5) and to murder Chrysis (560–1), and wishes that he could have caught Moschion in the act of adultery—meaning that he would have been able to legally kill or physically abuse him (612).<sup>39</sup> He later incorrectly calls Moschion a μοιχὸν ... εἰλημμένον (‘caught ... adulterer’) and threatens to tie him up (717–18).<sup>40</sup> His extremity is characterized by paratragedy in both his behaviour and his language.<sup>41</sup> He strays, incongruously, into a more violent and elevated genre, and reveals his lack of moderation in social relations. When Demeas defends Chrysis and Plangon’s child from Niceratus, he technically strikes the first blow, as Niceratus asserts: πρότερος ἄπτει μοι σὺ νυνὶ· ταῦτ’ ἐγὼ μαρτύρομαι (‘you struck me first just now; I call you to witness that’, 576).<sup>42</sup> In cases of assault this would make him

<sup>34</sup> Gomme and Sandbach (n. 1), 323.

<sup>35</sup> For a contrasting view, see Martina (n. 28) who does not view the scene as comedic.

<sup>36</sup> Scafuro (n. 1), 154, 190; Préaux (n. 5), 93; Cohoon (n. 31), 157; Gomme and Sandbach (n. 1), 325.

<sup>37</sup> Furley (n. 28), 145 compares the contrast between animal skins and lawsuits in Theognis (53–6).

<sup>38</sup> Sommerstein (n. 1), 259–60.

<sup>39</sup> Harrison (n. 1), 1.32–3; MacDowell (n. 1), 124–5; Scafuro (n. 1), 195–201.

<sup>40</sup> Sommerstein (n. 1), 313.

<sup>41</sup> Sommerstein (n. 1), 232–3, 259, 272, 287.

<sup>42</sup> Cf. D. Spatharas, ‘ταῦτ’ ἐγὼ μαρτύρομαι: bystanders as witnesses in Aristophanes’, *Mnemosyne* 61 (2008), 177–91: this phrase occurs nine times in Aristophanes’ extant comedies. It is used against

the guilty party.<sup>43</sup> In the current scenario it is clear that Niceratus is the one who has turned to violence, and the technicality that Demeas struck him first fails to reflect the spirit of the encounter.

Legal threats and unattractive character are also combined in the figure of Moschion in *Sikyonioides*. Stratophanes successfully persuades an assembly at Eleusis to ensure that Philoumene should remain unmarried until he can claim her. Moschion, displeased with the outcome since he himself desires Philoumene, addresses Stratophanes: τοὺς ἀνδραποδιστὰς ἀπαγαγεῖν ὑμᾶς θέλω ('I wish to arrest you as kidnappers', 272). Summary arrest was possible if a kidnapper was caught red-handed, but this was not the case and Stratophanes is not behaving illegally.<sup>44</sup> Moschion's readiness to turn to drastic legal action (which in itself was in the circumstances illegal) is set alongside other distasteful aspects of his character: he is presented as sexually deviant and oligarchic.<sup>45</sup> While negative characterization and invocation of the law are not always connected, this does seem to be a dominant feature of Menander's presentation of the law.<sup>46</sup> The law in Athens can be dangerous and distasteful in the hands of litigious individuals.

### b) *The epiclerate*

The institution of the epiclerate featured in several comedies in the Hellenistic period.<sup>47</sup> The issue dominates Menander's *Aspis* and is presented as the main drama, pushing more action-packed events to the background of the play, such as the fact that Cleostratus has been captured during a night raid in Lycia (110–12). The impact of the law on private lives is given centre stage, while other, 'bigger', events and themes are on the sidelines.

Menander's play presents a situation in which the letter of the law is felt to be cruelly and even disgustingly applied by Smicrines, a greedy older uncle who should allow his niece to marry her stepcousin Chaereas instead of pushing his own claims. MacDowell goes as far as seeing the play as a revolutionary call by Menander for a change in the law—Smicrines is wholly bad, but all he does is in accordance with the law which therefore itself must be bad.<sup>48</sup> Brown tempers this and argues that it is the application of the law in these circumstances which Menander portrays as inhumane and against which he expects the audience to react.<sup>49</sup> The difference here is important: do we see in *Aspis* a criticism of the law itself or of its application? In fact, Menander skirts this issue

the heroes of the plays or against their supporters, and seems a marker of negatively characterized litigiousness.

<sup>43</sup> MacDowell (n. 1), 123.

<sup>44</sup> Harrison (n. 1), 2.222–9; MacDowell (n. 1), 148–9; Todd (n. 1), 117–18, 187; E.M. Harris, *Democracy and the Rule of Law in Classical Athens: Essays on Law, Society, and Politics* (Cambridge, 2006), 373; Gomme and Sandbach (n. 1), 659.

<sup>45</sup> Lape (n. 1), 206; Men. *Sik.* 200–10, 258, 264–6.

<sup>46</sup> For positive or neutral presentation of the use of the law, see Men. *Sik.* 133–40.

<sup>47</sup> Karabelias (n. 15 [1975]), 225–7; Scafuro (n. 1), 293–4; Beroutsos (n. 12), 56: comedies entitled *Epikleros* were written by Euetes (fr. 1 K.–A.), Antiphanes (fr. 94), Heniochus (test. 1), Alexis (fr. 78–80), Diphilus (fr. 40), Menander (fr. 129–36) and Diodorus (fr. 2). Roman plays under this title were written by Caecilius and Turpilius. Plays entitled *Epidikazomenos* were written by Diphilus (fr. 39), Philemon (fr. 23–4), Anaxippus (fr. 2) and Apollodorus of Carystus (fr. 16–28—a play which provided the model for Terence's *Phormio*). In Menander's *Plokion* there is an emphasis on the power this institution gives the epiclerate wife, who can rule over her husband (fr. 296–7; see also Karabelias (n. 15 [1975]), 245, 248 and Arist. *Eth. Nic.* 1161a1–3 (ἐνίοτε δὲ ἄρχουσιν αἱ γυναῖκες ἐπικληροῦσά ... ['sometimes women who are *epikleroi* rule ...']).

<sup>48</sup> MacDowell (n. 8), 50–1.

<sup>49</sup> Brown (n. 8 [1983]), 412–14. Scafuro (n. 1), 304–5 argues that the characters of Chaerestratus and Smicrines are the focus of the play.

elegantly and allows for multiple interpretations while maintaining a clear moral orientation on the character level.

On the face of it, *Aspis* has a clear and simplistic moral orientation. Smicrines quickly unmask himself as greedy and unscrupulous and we are directed to feel negatively towards him through the prologue of Τύχη (Fortune) (116–21):

πονηρία δὲ πάντα ἀνθρώπους ὅλως  
 ὑπερπέπαικεν· οὗτος οὔτε συγγενῆ  
 οὔτε φίλον οἶδεν οὐδὲ τῶν ἐν τῷ βίῳ  
 αἰσχρῶν πεφρόντικ' οὐδέν, ἀλλὰ βούλεται  
 ἔχειν ἅπαντα· τοῦτο γινώσκει μόνον,  
 καὶ ζῆ μονότροπος, γράδῳ ἔχων διάκονον.

In wickedness he completely surpasses all men. He does not recognize relative or friend, nor has he taken thought for the shameful behaviour in his life, but he wishes to possess everything; this alone he knows, and lives all alone with an old woman as a servant.

Τύχη highlights his greed but also his antisocial tendencies.<sup>50</sup> This kind of antisocial behaviour is often a bad sign in Menander.<sup>51</sup> She further labels him as τοῦδε τοῦ φιλαργύρου ('this mercenary man', 123) and contrasts Smicrines with his younger brother Chaerestratus (χρηστός δὲ τῷ τρόπῳ πάνυ ['altogether good in character'], 125).

Another red flag in Smicrines' behaviour is that he sometimes uses the terminology of the law inaccurately. This makes us suspect him and his language in this regard. In response to Cleostratus' death, Smicrines claims (168–71):

ᾧφελε μὲν οὖν ἐκεῖνος, ὃν δίκαιον ἦν,  
 ζῆν καὶ διοικεῖν ταῦτα καὶ τεθηκότος  
 ἐμοῦ γενέσθαι τῶν ἐμῶν κατὰ τοὺς νόμους  
 κύριος ἁπάντων.

He ought to have lived and managed this, as was just, and when I died to have been in charge of all my possessions according to the law.

It is disputed whether Smicrines is misinterpreting the law and making a false statement, since his property would legally be divided between Chaerestratus and Cleostratus, or whether he intended to adopt Cleostratus.<sup>52</sup> Either way Smicrines' sentiments are obviously fake—he is trying to emphasize his relationship with Cleostratus because of the legal claims he will make on Cleostratus' sister.<sup>53</sup> Suspicion over intention and exactitude coincide with the phrase κατὰ τοὺς νόμους ('according to the law'). The audience feel a wariness over his application of the law before he even begins to assert his legal claims. He then complains about Chaerestratus' behaviour towards him in not consulting him about the marriage to Chaereas, but he does so disingenuously stating

<sup>50</sup> Scafuro (n. 1), 296 with n. 41 compares this to character tropes in oratory; cf. P. Ingrosso, *Menandro*: Lo scudo (Lecce, 2010), 194.

<sup>51</sup> Ingrosso (n. 50), 198–9. Compare the portrayal of Cnemon in *Dyskolos*. He has positive traits, but his negative behaviour is attached to antisocial tendencies. See also the portrayal of the title character of Phrynichus' *Monotropos* (fr. 19–20 K.–A.), which is how Smicrines is described here (121).

<sup>52</sup> Beroutsos (n. 12), 63 vs MacDowell (n. 8), 45.

<sup>53</sup> Karabelias (n. 7), 369–70.

νυνὶ γάμους | ἐπόει διδοῦς οὐκ οἶδ' ὅτῳ τὴν παρθένον ('he was just now going about giving the girl in marriage to goodness knows whom', 176–7). The planned husband is not a stranger—he is Chaerestratus' stepson. Smicrines' complaint that he has the same rights as Chaerestratus (179–80) also does not hold, since Chaerestratus is the one ᾧ κατέλιπεν ... τὴν ἀδελφὴν ('to whom [Cleostratus] left his sister', 127–8) and so Chaerestratus was entitled to arrange her marriage without consultation of Smicrines. Smicrines asserts the support of the law for his case (καὶ γὰρ ὁ νόμος μοι δοκεῖ | οὕτω λέγειν πως ['for the law seems, I think, to say this'], 186–7); however, although he speaks accurately here, his motivations and his previous manipulation of legal language make us suspicious and unsympathetic to his legal claims.

In the discussions about the application of the law Chaerestratus appeals above all to Smicrines' age (258–9) and to μετριότης ('moderation', 257), which stands out as a rare word in poetry. He asks Smicrines ἀνθρωπίνως | τὸ πρᾶγμα ἔνεγκε (<to> 'bear the situation humanly', 260–1). The idea of humanity is opposed to that of strict obedience to the law.<sup>54</sup> It is emphasized that Chaereas and Cleostratus' sister should marry because of their similar age (267) and their familiarity with one another (262–3). The impression the audience is given is that Smicrines is acting excessively by pursuing his legal claims in the situation of the disparity in age and of the prearranged wedding.

The audience's sympathies, however, may be strained by Chaerestratus' behaviour. In two contexts he appears to attempt to manipulate the law. He offers Smicrines the property without marrying Cleostratus' sister, for whom he himself will provide a dowry (264–9). Smicrines objects (270–3):

ἐγὼ λάβω  
τὴν οὐσίαν, τοῦτ' αὖ δὲ τὴν κόρην ἀφῶ  
ἴν', ἂν γένηται παιδίον, φεύγω δίκην  
ἔχων τὰ τοῦτου;

Am I to take  
the property, and let him have the girl  
so that, if they have a child, I'll be a defendant in a trial  
on the grounds that I have his possessions?

Evidence from the orators suggests that this is certainly a scenario which could have occurred.<sup>55</sup> It is a somewhat naive deal which does not promote the inheritance rights of the parties Chaerestratus is trying to support. How far is the audience willing to be led in viewing sentiment as more important than legal behaviour? Would they have supported Chaerestratus' bargain? It seems harder to swallow than the attempts to merely dissuade Smicrines from marrying the girl.

Similarly, Davus and Chaerestratus' plan to fake Chaerestratus' death and lure Smicrines with his wealthier daughter, allowing Chaereas and Cleostratus' sister to marry, seems to have legal holes. Chaerestratus must come back to life before Smicrines actually marries Chaerestratus' daughter, and Smicrines would then have been able to revert to his previous plan in spite of the wedding.<sup>56</sup> Brown suggests that we should not be concerned with the consequences of a plot which was never destined to be carried

<sup>54</sup> Beroutsos (n. 12), 88; B. Zimmermann, *Die griechische Komödie* (Frankfurt, 2006), 191.

<sup>55</sup> Scafuro (n. 1), 297–8 (Isae. 3, 10).

<sup>56</sup> Scafuro (n. 1), 340–50; U.E. Paoli, 'La legittima afèresi dell' ἐπίκληρος nel diritto attico', *Miscellanea Giovanni Mercati* 5 (1946), 524–38 (reprinted in U.E. Paoli, *Altri studi di diritto greco e romano* [Milan, 1976], 363–76).

through.<sup>57</sup> However, this does add to the sense of legal manipulation by Chaerestratus. Is the character portrayal of him and Smicrines enough to carry the audience with him in his legally dodgy plan?

When analysing the attitude of the playwright towards this law we should work with the audience's knowledge rather than with the characters' knowledge. Smicrines' actions are not legally sanctioned because Cleostratus' sister is not, in the reality of the play, a true *ἐπίκληρος*. Similarly, the dubious elements of the plan of Chaerestratus and Davus are not an issue because the plan does not challenge the legal reality in the play. By occupying a space which the audience knows is not the reality, Menander does not have to decide on (or present) one clear view of the level of flexibility with which individuals should approach the law.

We can see a similar cultivation of ambiguity when we assess whether Menander presents a questioning of the law itself, rather than just its application. Chaereas laments the fact that *ἕτερον κύριον δ' αὐτῆς ποιεῖ | ὁ νόμος ὁ τοῦμὸν οὐδοαμοῦ κρίνων ἔτι* ('the law, which rejects my claim, makes another her guardian', 297–8). The law is the subject of this clause which lends an accusatory tone to Chaereas' complaint—it is the law which is the active agent in bringing about his tragic situation.<sup>58</sup> He does not explicitly criticize the law, but his frustration with it is clear. The only critique of the system itself comes from Davus, a Phrygian slave. Smicrines asks Davus, in the context of his plan to marry Cleostratus' sister, *δοκῶ δέ σοί τι ... ἀμαρτάνειν;* ('do I seem to you to be acting wrongly?' 205). Davus responds (206–8):

Φρύξ εἰμι· πολλὰ τῶν παρ' ὑμῖν φαίνεται  
καλῶν ἐμοὶ πάνδεινα καὶ τούναντίον  
τούτων. τί προσέχειν δεῖ σ' ἐμοί;

I am Phrygian; many of the things which seem  
fine to you, appear completely awful to me and  
vice versa. Why should you pay attention to me?

This heavily implies that Davus finds the custom of the epiclerate itself to be bad, but recuses himself on account of cultural differences.<sup>59</sup> The only critique of the system comes from a Phrygian, a person of whom the Greeks were proverbially contemptuous. This is even dramatized in this play when the Thracian waiter calls Davus *οὐδὲν ἱερὸν ἀνδρόγυνος* ('nothing special; a womanish man', 242) upon discovering that he is Phrygian.<sup>60</sup> This is typical of Menander's ambiguity; he uses this focalization to admit a criticism of the law without having to vouch for it by putting it in the mouth of a positively portrayed Athenian character.

### c) *Legitimate heirs*

The late fourth and early third centuries B.C., during which Menander was writing his comedies, were a period of disruption for the franchise in Athens. After Athens' defeat in 322 B.C. Antipater forced the city to adopt a constitution which restricted the franchise such that the state and the elections were controlled by those who possessed more than

<sup>57</sup> Brown (n. 8 [1983]), 49.

<sup>58</sup> See MacDowell (n. 8), 42 for the conflict between love and the law in this speech, and Gomme and Sandbach (n. 1), 97 for the tragic metre.

<sup>59</sup> For comparisons, see S.M. Goldberg, *The Making of Menander's Comedy* (London, 1980), 35; Beroutsos (n. 12), 71.

<sup>60</sup> See Gomme and Sandbach (n. 1), 79–80 for Greek contempt of Phrygians.

two thousand drachmas.<sup>61</sup> Again from 317–307, when Cassander controlled the city through Demetrius of Phalerum, the franchise was restricted with the state administered by those who possessed at least ten minae.<sup>62</sup> In the context of this playing around with the franchise and of the changes in who could participate politically, Menander focusses on the legal, rather than on the political or economic, aspect of the definition of citizenship, which was concerned with legitimacy and inheritance. His plays therefore reflect, from a different point of view, on the tensions concerning who did and who did not belong to the *polis*.

Lape argues that Menander's obsessive replaying of the values of Athenian citizenry, even by chance through rape, 'naturalizes' the city's democratic identity.<sup>63</sup> In his plays no young female Athenian citizen is left unmarried, the rape of female citizens is hyperfertile and all legitimate children survive.<sup>64</sup> There is also a striking absence of homosexual relationships between men in Menander's plays. In several plays a rape at a night-time festival is followed by the marriage of the parents of the resulting child.<sup>65</sup> Alternatively, plays can involve the revelation of the previously unknown Athenian status of a woman or man to enable a marriage in line with the Periclean citizenship law (for example *Sik.* 196–7, 249–54). There is an idealization of legitimate marriage, based on (the man's) love and characterized by loyalty and mutual happiness; men's extra-marital affairs are concomitantly not presented positively in the plays.<sup>66</sup>

We should not go as far as Lape, however, in seeing all Menander's plays as a promotion of a democratic agenda. Instead, they present an exposition of ideologies about social organization in the context of citizenship law which are not always fully resolved or aligned.<sup>67</sup> Konstan's description in 2010 of the multivocality of New Comedy is a useful model: literary works highlight the contradiction of societal values and attempt to resolve them but, in doing so, 'betray the strain involved in forging such refractory materials into a unified composition'.<sup>68</sup> The dominant narrative in Menander is aligned with the legal requirements, but he heavily hints at other avenues for social arrangement, introducing radical and legally fishy alternatives to the audience's minds without having to follow through on these, as will be shown through his treatment of (i) concubines and (ii) rape and adultery.

### *i) Wives vs concubines*

Menander's plays dramatize the production of legitimate children according to the Periclean citizenship law of 451/0 B.C., which began a legal marginalization of unions between citizen men and foreign women. This was further solidified by the fact that children from these unions could not inherit from 403/2 B.C. and marriage was illegal by

<sup>61</sup> Diod. Sic. 18.18.4–5; Plut. *Vit. Phoc.* 27.3, 28.4.

<sup>62</sup> G.J. Oliver, *War, Food, and Politics in Early Hellenistic Athens* (Oxford, 2007), 52; Diod. Sic. 18.74.3. For Demetrius of Phalerum, see L. O'Sullivan, *The Regime of Demetrius of Phalerum in Athens, 317–307 B.C.E.: A Philosopher in Politics* (Leiden and Boston, 2009).

<sup>63</sup> Lape (n. 1), 61. For the contrasting view that Menander was oligarchic and a supporter of Demetrius of Phalerum, see W.E. Major, 'Menander in a Macedonian world', *GRBS* 38 (1997), 41–73, at 59–60; W.M. Owens, 'The political topicality of Menander's *Dyskolos*', *AJPh* 132 (2011), 349–78; and S. Nervegna, *Menander in Antiquity: The Contexts of Reception* (Cambridge, 2013), 17.

<sup>64</sup> Lape (n. 1), 27, 102.

<sup>65</sup> Sommerstein (n. 1), 112; e.g. in *Epitrepontes* (451–3, 474–5: the Tauropolia), *Phasma* (194–9: the Brauronia) and *Samia* (38–50: the Adonia).

<sup>66</sup> Brown (n. 5); Fantham (n. 1), 71; Scafuro (n. 1), 237–8.

<sup>67</sup> Cf. Brown (n. 5), 191 on the complex and varied attitudes which are likely to have existed.

<sup>68</sup> Konstan (n. 5), 34–5.

the middle of the fourth century.<sup>69</sup> However, in *Samia*, Demeas lives with his *παλλακή* (concubine) Chrysis, the Samian woman after whom the play is named. Demeas calls her his *γυνή* ('wife'/'woman', 561), which suggests that he views her in this light despite the absence of the support of a legal framework for their union. Her presence within the house is irregular and a potential cause of shame.<sup>70</sup> Moschion describes how the arrangement came about (21–8):

Σαμίας ἐταίρας εἰς ἐ<πι>θυμίαν τινὸς  
ἐλθεῖν ἐκεῖνον, πρᾶγμα ἴσως ἀνθρώπινον.  
ἔκρυπτε τοῦτ', ἡσχύνετ' ἡσθόμην ἐγὼ  
ἄκοντος αὐτοῦ, διελογιζόμεν θ' ὄτι,  
ἂν μὴ γένηται τῆς ἐταίρας ἐγκρατῆς,  
ὑ[π'] ἀντεραστῶν μειρακίων ἐνοχλήσεται  
τοῦτο <δὲ> ποιῆσαι δι' ἔμ' ἴσως αἰσχύνεται  
λέγ]ω λαβεῖν ταύτην·

He desired a certain Samian *hetaira*,  
a human occurrence perhaps.  
He hid this, he felt shame. I found out  
despite his wishes and argued that  
if he did not have her under his control  
he would be bothered by young love-rivals.  
He was ashamed to do this, perhaps on my account.  
[I told him?] to take her.

Moschion describes Demeas' desire for the Samian *hetaira* as ἀνθρώπινον ('human') and emphasizes Demeas' shame and hesitation to enter into a formal relationship with her.<sup>71</sup> Moschion's support of his father and Demeas' awareness of the social stigma give a positive impression of their characters and encourage us to sympathize with them and view their behaviour with leniency and as a human deviation from legal strictures.

The situation is strained by (the pretence of) Chrysis' decision to keep a child she has given birth to. Other characters express concern or surprise about this decision. Niceratus calls it ἐμβροντησία ('madness', 411) and Moschion expects his father's anger (80). Indeed, Demeas at first appears to be furious despite Chrysis' assurance that Demeas will accept the child because of his love for her (81). Demeas states γ]αμετὴν ἐταίραν, ὡς ἔουκ', ἐλάθονον | ἔχ]ων ('without realizing it, I seem to have a lawfully wedded *hetaira*', 130–1). He feels he is obscuring the distinction between a married citizen woman and a *hetaira* by fathering children with her, a function of the former rather than of the latter.<sup>72</sup> Before Moschion's confession that the child is his rather than his father Demeas', he attempts to persuade his father to keep the baby (135–43a):

Δη. ἄλλ' ἢ μ[ε θ]ρέψειν ἔνδον ὑὸν προσδοκᾶς  
νόθον; [μιαρὸν] κοῦ τοῦ τρόπου τοῦμοῦ λέγεις.  
Μο. τίς δ' [ἐ]στὶν ἡμῶν γνήσιος, πρὸς τῶν θεῶν,  
ἢ τίς νόθος, γενόμενος ἄνθρωπος;  
Δη. σὺ μὲν  
παίζεις.

<sup>69</sup> Scafuro (n. 1), 74, 197 with n. 16; Patterson (n. 24 [2005]), 282–3; Todd (n. 1), 177–8: [Dem.] 43.51; Isae. 6.47; [Dem.] 59.16, 59.52.

<sup>70</sup> Ogden (n. 25), 101–2.

<sup>71</sup> Cf. Plut. *Quaest. conv.* 712c on the φιλόνηρον ('humane') attitude towards relationships with positively portrayed *hetairai*: A. Traill, *Women and the Comic Plot in Menander* (Cambridge, 2008), 4.

<sup>72</sup> See [Dem.] 59.118, 59.122; Sommerstein (n. 1), 146. For the anxiety that the children of such unions could infiltrate the citizen body, see Fisher (n. 24).

- Mo.                    μὰ τὸν Διόνυσον, <ἀλλ'> ἐσπούδακα.  
οὐθὲν γένος γένους γὰρ οἶμαι διαφέρειν,  
ἀλλ' εἰ δικαίως ἐξετάσαι τις, γνήσιος  
ὁ χρηστός ἐστίν, ὁ δὲ πονηρὸς καὶ νόθος  
καὶ δοῦλος [—]
- De.                    Do you actually expect me to rear a bastard son in the  
house? You propose something [vile?] and against my nature.
- Mo.                    By the gods, which of us, born a man, is legitimate  
or which a bastard?
- De.                    You are  
joking.
- Mo.                    No, by Dionysus, I'm in earnest.  
For I do not think that birth differs from birth,  
but if someone were to examine justly, the good man  
is legitimate, and the wicked man a bastard  
and a slave ...

The idea of bringing up a bastard inside his home is extremely distasteful to Demeas. Moschion's argument has roots in tragedy, for example the statements in Sophocles' *Alceadae*, ἅπαν τὸ χρηστὸν γνησίαν ἔχει φύσιν ('all that is good has a legitimate nature'), and in Euripides' *Antigone/Antiope*, ὀνόματι μεμπτὸν τὸ νόθον, ἢ φύσις δ' ἴση ('bastardy is contemptible in name, but its nature is equal').<sup>73</sup> Moschion's language is also reminiscent of Euripides' sophistic style, as parodied by Aristophanes (for example Eur. *Polydus* fr. 638; Ar. *Ran.* 1477–8). Perhaps this is humorously signposted by the fact that the oath is to the god of theatre (μὰ τὸν Διόνυσον, 139). After all, Moschion is here giving a performance rather than arguing based on the 'facts'. It is humorous that Moschion, pushed into a corner, has to resort to tragic parallels and Euripidean sophistic reasoning. Moreover, the performative aspects and the extrageneric references in Moschion's argumentation provide an opportunity for exploring radical approaches to societal norms and regulations. It is striking that Demeas is persuaded, though it is unclear exactly how this happens, since the text is lacunose after line 143. Even though the child is Moschion's rather than Demeas', the successful persuasion presents a view of forms of relationships and child-bearing outside the constraints of the Periclean citizenship law.<sup>74</sup> Konstan suggests that it might reflect the reality of Athenian contemporary life and that there had been a relaxation of the Periclean citizenship law.<sup>75</sup> Whether or not this was the case, *Samia* dramatizes the tensions between the traditional legal requirements of belonging to the *polis* and personal relationships.

<sup>73</sup> Ogden (n. 25), 204; Sommerstein (n. 1), 147; Soph. fr. 87.2 Radt, Eur. fr. 168 Kannicht, and cf. Men. fr. 835.11–12 K.–A. On Sophocles' *Alceadae* and illegitimacy, see M. Delucchi, *Imagining Telephus: A Greek Myth across Cultures in the Ancient Mediterranean* (Berlin and Boston, 2025), 78–9.

<sup>74</sup> Lape (n. 1), 103, 140 argues that the subversion is negated by Demeas' shame and the lack of a child in 'reality'.

<sup>75</sup> Konstan (n. 5), 42–3. Cf. C. Müller, 'The making of the citizen in Hellenistic *poleis*', in J. Filonik, C. Plastow and R. Zelnick-Abramovitz (edd.), *Citizenship in Antiquity: Civic Communities in the Ancient Mediterranean* (London and New York, 2023), 487–502, at 496; G. Oliver, 'Foreign names, inter-marriage and citizenship in Hellenistic Athens', in R.W.V. Catling and F. Marchland (edd.), *Onomatologos: Studies in Greek Personal Names Presented to Elaine Matthews* (Oxford, 2010), 158–67; Ogden (n. 25), 81–2.

Demeas uses similar argumentation to that of Moschion when he decides to forgive him, in the mistaken belief that his son had a child with his concubine. He refuses to believe that Moschion would have betrayed him willingly (346–7):

οὐδ' εἰ δεκάκις ποιητός ἐστι, μὴ γόνῳ  
ἐμὸς ὑός· οὐ γὰρ τοῦτο, τὸν τρόπον δ', ὀρώ.

Not even if he were ten times adopted, not my  
son by birth; for I don't consider this but his character.

The mention of Moschion's status as Demeas' adopted rather than biological son and the exclusion of this as a consideration in favour of character interweaves with Moschion's own emphasis on character rather than birth, when he persuades Demeas to keep the child. The importance of character in the play extends to the Samian woman herself. Menander integrates Chrysis into the community he presents and creates sympathy for her through positive characterization.<sup>76</sup> She is protective of Moschion's baby, not allowing it to be fed by a nursemaid (84–5) and rescuing it from Niceratus at the risk of her own safety (558–61, 568–9). She is also valued by her neighbours who have enjoyed social relations with her (35–8) and attempt to protect her from Demeas' anger (416–21).

Overall, we are not encouraged to look down upon her or Demeas. Menander admits human departures from the spirit of the law. What emerges in his presentation and in the audience's expected response is the importance of personal character over circumstances of birth or legality. This can be seen through the presentation of Niceratus who is far less appealing than Demeas, even though he has a lawful wife rather than a live-in concubine.

## ii) Rape and adultery

Rape and adultery also threatened the legitimate status of children. Character emerges as a similarly crucial factor for attitudes towards these crimes in Menander's plays.<sup>77</sup> Rape was a serious crime in Athens and there are signs of this in Menander's plays—Gorgias in *Dyskolos* thinks that it is a crime θανάτων ἄξιον πολλῶν ('meriting many deaths', 292).<sup>78</sup> A rapist could be prosecuted via the γραφή ὕβρεως ('public prosecution for outrage'), for which the penalty could be death or a fine paid to the state, or via the δίκη βιαιῶν ('private action for assault'), for which the penalty was a fine, paid to the victim

<sup>76</sup> Sommerstein (n. 1), 13, 21.

<sup>77</sup> For the portrayal of rape in Menander, see Brown (n. 8 [1991]); D. Konstan, 'Premarital sex, illegitimacy, and male anxiety in Menander and Athens', in A.L. Boegehold and A.C. Scafuro (edd.), *Athenian Identity and Civic Ideology* (Baltimore and London, 1994), 217–35; Fantham (n. 1); K.F. Pierce, 'The portrayal of rape in New Comedy', in S. Deacy and K.F. Pierce (edd.), *Rape in Antiquity: Sexual Violence in the Greek and Roman Worlds* (London, 1997), 163–84; Scafuro (n. 1), 232–78; V.J. Rosivach, *When a Young Man Falls in Love: The Sexual Exploitation of Women in New Comedy* (London and New York, 1998), 13–50; A.H. Sommerstein, 'Rape and young manhood in Athenian comedy', in L. Foxhall and J. Salmon (edd.), *Thinking Men: Masculinity and its Self-Representation in the Classical Tradition* (London and New York, 1998), 100–14; S. Lape, 'Democratic ideology and the poetics of rape in Menandrian comedy', *CIA* 20 (2001), 79–119; R. Omitowaju, *Rape and the Politics of Consent in Classical Athens* (Cambridge, 2002), 169–229; and S.L. James, 'Reconsidering rape in Menander's comedy and Athenian life: modern comparative evidence', in A.H. Sommerstein (ed.), *Menander in Contexts* (London and New York, 2014), 24–39.

<sup>78</sup> Pierce (n. 77), 170; Sommerstein (n. 1), 33; Brown (n. 8 [1991]).

(or to their κύριος [‘legal guardian’]).<sup>79</sup> However, these punishments do not feature in Menander. In New Comedy the predominant attitude towards rape is that it is atoned for by an offer of (or by pre-existing) marriage.<sup>80</sup> If the result is legitimate offspring according to the Periclean citizenship law, other considerations are set aside.

Yet in *Samia* Moschion’s rape of Plangon is problematized despite his intention to marry her.<sup>81</sup> Does this provide us with a contrasting attitude towards the crime of rape which decentres the production of legitimate offspring? Character seems to be key for understanding the disapproval Moschion is portrayed as deserving in the play. The slave Parmenon has to insist upon Moschion doing right by Plangon, something in which he is likely to have had the audience’s agreement. While Moschion uses the term ἡμάρτηκα (‘I made a mistake’, 3), Parmenon insists on him taking greater responsibility by telling him ἡδίκηκας (‘you have done wrong’, 68) and suggests that Moschion should fear Plangon and her mother rather than his father (67–9).<sup>82</sup> Parmenon tells Moschion ἀλλ’ ὅπως ἔσει | ἀνδρεῖος, εὐθύς τ’ ἐμβαλεῖς περὶ τοῦ γάμου | λόγον (‘you must be manly and immediately address the subject of marriage’, 63–5) and calls him ἀνδρόγυνε (‘womanish man’) when he hesitates (69). It is his hesitation to confess and to right his wrongs that leads to the misunderstandings in the play which nearly cause physical violence and death. Moschion’s crime is serious, but he is presented as dislikeable not because of his rape of Plangon but because he failed to face his responsibilities in relation to his crime, and this very nearly ended in utter disaster. His lack of ‘manliness’ in response to his ‘mistakes’, like Niceratus’ excessive resentment when things have turned out ‘well’, is what guides the audience’s response to the legal issue of rape.

Radical views surface in *Epitrepontes* when Charisius considers forgiving his wife for giving birth to another man’s child. He does so because of her loyal behaviour towards him and because he has found out that he too has an illegitimate child. When Charisius overhears Pamphile stand up for him to her father, he calls himself ἀλιτήριος (‘the sinner’, 894) for fathering a νόθος (bastard) and rebukes himself for not giving a συγγνώμης μέρος (‘share of forgiveness’, 897) towards his wife who was ‘enduring the same misfortune’ (ἀτυχοῦση ταῦτ’, 898, cf. 915). His main self-criticism is lack of understanding for his wife’s predicament which he has only gained now through empathy (though his ‘empathetic’ understanding of his act of rape and of Pamphile’s experience of rape as a victim as the same thing appears rightly repugnant to modern audiences).

Charisius reflects on his own mistakes: ἐνταῦθ’ ἔδειξ’ ἄνθρωπος ὢν (‘here I showed that I am human’, 912). Just as in *Samia*, Demeas’ situation with a live-in concubine is the result of human fallibility, so too Charisius is presented as having revealed his own human nature in his transgression of rape. He contrasts his and Pamphile’s behaviour regarding the other’s ‘transgression’ and is clearly deeply ashamed, while praising her (914–22). He also describes Pamphile’s misfortune as ἀκούσιον (‘unwilling’, 914) and thereby seems to acknowledge that the act of rape gives her reduced responsibility for her diminished acceptability as an Athenian wife and mother. While, unlike the husband of a

<sup>79</sup> See Harrison (n. 1), 1.34; Scafuro (n. 1), 206–11, 228–31; Harris (n. 44), 283–95 and 297–332; Sommerstein (n. 1), 34 with n. 100; Dem. 21.47; Aeschin. 1.15; Din. 1.23.

<sup>80</sup> Scafuro (n. 1), 216, 239–40, 246–51; Omitowoju (n. 77), 184–5; Sommerstein (n. 1), 34–6, 115; Men. *Epit.* 568–71, *Kith.* fr. 3, *Sam.* 485–7, 526–7, 586 and 599–600.

<sup>81</sup> Whether Moschion raped or seduced Plangon is not explicit (49–50), but it would be highly irregular for a citizen woman in New Comedy to be seduced (Sommerstein [n. 1], 33 n. 97). In both cases Moschion would be committing a crime.

<sup>82</sup> For the language of wrongdoing surrounding rape, see Sommerstein (n. 1), 99–100 with Arist. *Eth. Nic.* 1135b16–25.

seduced wife, an Athenian man may not have been legally obligated to divorce his raped wife, no grounds needed to be given for divorce in Athens, and rape may have been a cause for divorce.<sup>83</sup> The fact that Pamphile had been raped and had given birth to a bastard certainly damages her status as a producer of legitimate heirs.<sup>84</sup> Yet Charisius resolves to stand by her, radically pushing against the feeling of pollution which surrounded his wife's production of a bastard. His destigmatization of Pamphile is motivated by love and appreciation of her character, elevating other considerations above the secure legitimacy of any future offspring. This rather radical view is not pressed since the child Pamphile gave birth to turns out to be his own child. However, his self-reproach and his praise of Pamphile in this speech suggest an alternative hierarchy of values where a woman's personal loyalty and character are placed more highly than her status as a producer of legitimate heirs.<sup>85</sup>

### CONCLUSION

Attitudes expressed towards the law in Menander's plays provide insights into the concerns and values of the playwright and his audiences. In the plays where law takes centre-stage and we have enough text preserved to evaluate its presentation, Athens stands out as an important and specified context. The city's fondness for litigation is itself a theme and is problematized on a spectrum between light-hearted pastiche and the extreme, and sometimes illegal, consequences of a tendency to mobilize and manipulate the law.

Early Hellenistic Athens emerges as a society grappling with the tensions between legal and personal considerations, particularly in the area of citizenship. In the context of the political disruptions and shifts in the definition of the Athenian citizenry in the early Hellenistic period, Menander opposes traditional legal requirements for 'belonging' to the *polis* and adhering to its rules with the more stable claims of personal character and humanity. Humanity is presented as central for responses to legal and illegal actions. It should lead us towards an understanding acceptance that people do not behave perfectly, and we should therefore excuse certain lapses in the right contexts. There are limits to how far the law can stretch to allow for human mistakes and judgement, but these are frequently left open to the audience to negotiate. Crucial to Menander's presentation of social dilemmas is personal character. It is someone's *τῆροπος* ('character') that is responsible for their actions, for their fortune and for how others evaluate them.<sup>86</sup> This plays a guiding role in the approach to the law in Menander and directs the audience's sympathy and attitudes to the involvement of state institutions in the private lives of his characters.

<sup>83</sup> For the law on seduced wives, see [Dem.] 59.86–7 (Scafuro [n. 1], 202–3, 229). Harrison argues it was the same for raped wives ([n. 1], 1.36). Ogden ([n. 25], 143) argues against this. Scafuro ([n. 1], 211 and 230) suggests it was a private matter decided by husband and wife. She outlines how the husband of a raped woman may leave his wife who may then suffer from rumours of adultery. For divorce, see Scafuro (n. 1), 306–9.

<sup>84</sup> Fantham (n. 1), 47, 70; Ogden (n. 25), 145–6; Konstan (n. 77), 226–7.

<sup>85</sup> For the ethical importance of this remorse in spite of the generic close of the play, see Préaux (n. 5), 99; Fantham (n. 1), 68; Konstan (n. 77), 229–30.

<sup>86</sup> Zimmermann (n. 54), 201.

Menander's dramatic technique allows for multivocality. The values we have seen appear flexible, and often contradictory views can be held or displayed in conflict without a clear guideline presented as to how they should be resolved. Views about the law itself are focalized in such a way that they cannot be put forward as the guiding principle of the play, and Menander often places challenges to the law in scenarios which the audience knows are not the reality of the situation. This allows for greater opposition to the system but also for varying responses to radical approaches which turn out to be happily unnecessary. Ambivalence, therefore, is central to Menander's portrayal of the law.

*New College, Oxford*

ARIADNE PAGONI  
[ariadne.pagoni@classics.ox.ac.uk](mailto:ariadne.pagoni@classics.ox.ac.uk)