

MENANDER'S DRAMATIC TECHNIQUE AND THE LAW OF ATHENS

'Menander has set up a confrontation between this law [the law about *epikleroi*] and love... He wants the audience to regard the law as stupid and wrong... Surely one of Menander's purposes in writing this play was to make the Athenians consider seriously whether the law ought to be changed.' Thus Professor D. M. MacDowell in the concluding paragraph of his article 'Love versus the Law: an Essay on Menander's *Aspis*'.¹ A similar view was already implicit in E. Karabelias' treatment of the play² as indicative of the general attitude to this law in Athens in Menander's day: 'A n'en point douter, l'épiclérate est ressenti, à l'époque de Ménandre, comme une anomalie intolérable pour les mœurs de la société athénienne à la fin du iv^e s. av. n. è... L'épiclérate est odieux et ridicule... L'hostilité envers l'épiclérate est donc un signe des temps'. And Professor E. G. Turner has written:³ 'it is hard to imagine that the institution of the epiclerate emerged in good standing from this derisory treatment'.

I shall argue in Section I that *Aspis* does not express Menander's hostility to the law on *epikleroi*. But Professor MacDowell's article also raises more general questions about the use of Menander's plays as evidence for the details of Athenian law, which may conveniently be introduced with a quotation from his note 1: 'when we find in Menander a legal feature not mentioned elsewhere, we should use that as new evidence, not pillory it as an error or distortion by Menander. The present article shows how I believe everything in *Aspis* can be interpreted in accordance with Athenian law'. In other words (to take these points in reverse order), MacDowell believes (i) that we do not find legal errors or distortions in the mouths of Menander's characters, (ii) that Menander's text can be treated as reliable evidence for details of the law for which we have no other evidence. I shall argue against (i) (in Section II) that at least one character in *Aspis* is inaccurate over a detail of Athenian law and that elsewhere in the play it may not be *appropriate* to interpret the characters' remarks in accordance with strict legal requirements even where it is *possible* to do so. I shall try to show (in Section III) that it is characteristic of Menander to leave vague certain details which a reflective reader might wish to be clear about and that we risk going beyond the evidence of his plays when we start to explore the legal implications of his characters' behaviour in contexts where he himself has not chosen to explore them. Where I detect error, distortion or imprecision in the words of Menander's characters, I do not at all wish to pillory it; rather I welcome it as evidence that Menander created realistic characters whose discussions of Attic law were as vague as we might expect those of many Athenian citizens (or Phrygian slaves) to have been. In Section IV I shall consider the consequences of this approach for MacDowell's belief that Menander's plays provide reliable evidence for details of Attic law ((ii) above): if the inaccuracy which I claim in Section II is accepted, then their reliability must altogether be called into question; but even if that is not accepted, I believe that the vagueness which I

¹ *Greece and Rome*, 2nd series, 29 (1982), 42–52. MacDowell gives further bibliography in his notes.

² *Revue Historique du Droit Français et Étranger* 48 (1970), 384–7.

³ *Chronique d'Égypte* 54 (1979), 120.

document in Section III should lead us to be very cautious about pressing the legal implications of what Menander's characters say and do.

I

The villain of *Aspis* is old Smikrines, an antisocial man greedy for money. He lives next door to his younger brother Khaiestratos, a man of considerable wealth. A third brother has died, leaving a son Kleostratos and a daughter. Kleostratos was so poor that he went to the wars to acquire a dowry for his sister. At the beginning of the play he is thought (wrongly) to have been killed in battle, but his slave Daos returns from the campaign with the not inconsiderable booty which Kleostratos had amassed. Since Kleostratos was the only male descendant of their father, his sister (now that he is believed to be dead) seems to be left in the position of *epikleros*,⁴ or 'heiress' to her family's property. An *epikleros* did not become the owner of the property, but she became inseparable from it and passed with it to her father's nearest male relative, who could claim her as his wife and thus acquire control of her estate (until it passed to a son born of this union on his coming of age). Her father's next-of-kin could not acquire control of the property except by marrying the *epikleros*.

When Kleostratos set off, he had left his sister in the care of their uncle Khaiestratos. At the start of the play Khaiestratos is on the point of marrying her to his stepson Khaireas (himself providing the dowry). But the arrival of Kleostratos' booty, together with the news of his supposed death, throws this plan into disarray. For Smikrines, in order to get his hands on the booty, promptly declares his intention of marrying her himself: she is believed to have become an *epikleros*, and he claims to be the nearest male relative since he is the elder of her uncles. Smikrines' plan is greeted with general horror and dismay, and there can be no doubt that we are expected to condemn him for it. It is also clear that he is proposing to act in accordance with the law.

But I do not believe that we are invited to see the law itself as 'stupid and wrong'; nor do I agree with MacDowell that Menander is implying 'that it is wrong to act in accordance with the law' and that Smikrines is the villain of the play because he tries 'to uphold the law about *epikleroi*'.⁵ MacDowell claims that such an implication would be less astonishing in a play by Aristophanes, whose heroes 'do sometimes try to evade the law'.⁶ But this is a very misleading comparison, since it suggests that Smikrines would be evading the law if he refrained from exercising his right to marry his niece. In fact the law does not *oblige* him to act as he proposes to. He could decide not to claim her hand in marriage, in which case the next nearest male relative would normally be entitled to do so. A slightly different rule obtained in the case of *epikleroi* from the lowest income-class, the *thetikon telos*: in their case the nearest male relative was (according to the law quoted at Demosthenes 43. 54) obliged to give the woman away with a dowry fixed according to his means if he decided not to marry her himself. MacDowell believes that the girl in *Aspis* belongs to the lowest income-class; I shall argue against this in Section II. But my point in this section is that, whichever class she belonged to, the law did not oblige Smikrines to marry her. If he had refrained from exercising his right to do so, his behaviour would have been neither Aristophanic nor illegal. If he had allowed someone else to claim her, or given her away with a dowry, he would still have been upholding the law; but he would not have been condemned

⁴ On which see David Schaps, *Economic Rights of Women in Ancient Greece* (Edinburgh, 1979), ch. 3.

⁵ art. cit. 50.

⁶ *ibid.*

by Menander. It is thus not at all clear that Menander is hostile to the law itself: what we are invited to object to is rather Smikrines' selfish and inhumane application of it. The goddess *Tyche* tells us at the end of her prologue to the play (144–5) that Smikrines is going to 'make it clearer to everyone what sort of man he is'; she does not say that he is going to show up the wrongness of the law. It is true that the law puts a weapon into Smikrines' hands (as Khaireas complains at 297–8); but in what survives of the play it is (as I have said) Smikrines rather than the law who is the target of attack.

II

(a) The slave Daos devises a plan to divert Smikrines from his intention to marry Kleostratos' sister (by dangling before him the prospect of a much wealthier marriage). At 353–5, confident that his plan will work, he predicts that Smikrines will give Kleostratos' sister away 'to the first person who asks for her'. This looks like a legal inaccuracy on Daos' part, unless the girl comes from the lowest income-class. If she does come from that class, it will be Smikrines' duty to find her a husband if he chooses not to marry her himself. But if she comes from a higher class, Smikrines (if he does not wish to marry her) can have no say in choosing her a husband or giving her to anyone who asks for her: he must stand aside and allow her to be claimed by the next nearest male relative who wants her. It makes no difference to Daos' plan whether Smikrines is to give the girl away or simply forgo his right to claim her; but he does clearly say that Smikrines will do the former.

Menander does not tell us anything explicit about the girl's social status, and I see no reason to suppose that he expected his audience to puzzle it out on the basis of the implications of remarks which his characters happen to make. *Tyche*'s talk of the girl's family's 'altogether moderate' resources at line 132 does not encourage us to ask precisely which class she belonged to when her brother set off for the wars. But now that Daos has brought home her brother's booty her property is worth four talents (line 351), and she has become a very attractive catch. It would be at least paradoxical if she were to be classed as a member of the *thetikon telos* and covered by the law about *epikleroi* of this class which was 'designed to protect a poor *epikleros*, whom no one wanted to claim, and who might otherwise be left unmarried and unprotected'.⁷ It seems more natural to suppose that she is not covered by this law and that Daos has been allowed a small inaccuracy.⁸

But MacDowell⁹ argues that Daos does show a scrupulous regard for the requirements of the law and that Kleostratos' sister does belong to the *thetikon telos*. 'Membership of the classes', he says, 'depended on income, not on capital. Kleostratos' booty is a capital gain, but the income-producing property which he has left is very small (131–2).' But we do not know what membership of the Solonian property-classes depended on,¹⁰ and P. J. Rhodes has recently written that 'pace Hignett the assessment

⁷ MacDowell, art. cit. 49.

⁸ It is perhaps worth noting that Smikrines does not in what survives of the play use an argument in defence of his plan to marry her which would have been available to him if she were classed among the *thetes*: it would have been quite consistent with his character for him to point out that he would have to provide her with a dowry if he did not marry her himself and to argue that it would be unreasonable to expect him to choose this alternative.

⁹ art. cit. 48–9.

¹⁰ We are promised a full study by G. E. M. de Ste Croix, *The Class Struggle in the Ancient Greek World* (London, 1981), 114 and 558 n. 1 to ch. III, i. I take it that this is the 'unpublished essay' referred to by P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford, 1981), 138, 143.

can never have been in terms of annual income'.¹¹ If membership of the classes was on a financial basis (which is not certain), I do not know of any reason why we should think that the recently acquired booty would have been irrelevant to the calculation. (I have already said that I do not believe line 132 invites us to place the girl in a particular property-class.) There is no good reason to believe that Kleostratos' sister belonged to the *thetikon telos*.

It thus seems likely that Daos at *Aspis* 353–5 is inaccurate about a detail of legal procedure. Earlier in the play (at 200–9) Daos himself pointed out that he was a Phrygian slave and refused to express a view on questions about the marriage of an *epikleros*. But his remarks at 353–5 are accepted by other characters who are Athenian citizens; and there is no sign that we are expected to notice or make anything of his legal inaccuracy. Nor is it clear whether Menander himself was aware of it. It is a small detail of no dramatic significance; but it is a detail which cannot be 'interpreted in accordance with Athenian law'.

(b) I now consider a detail which *can* be shown to be consistent with Athenian law but which it may not be appropriate to interpret in that way.

At *Aspis* 168–71 Smikrines claims to have hoped that his nephew Kleostratos (now believed dead) would ultimately inherit *all* his (Smikrines') property 'in accordance with the laws'. But the strict legal position would have been that Kleostratos and his other uncle (Khaisrestratos) became *joint* heirs if they outlived Smikrines.¹² It has been suggested that Smikrines misrepresents the legal position for his own purposes.¹³ MacDowell¹⁴ objects to this view that there is no indication in Menander's text 'to alert the audience to the possibility that Smikrines is lying', although 'I concede that Smikrines is the sort of character who might well tell a lie, and that Menander might well make him tell a lie, so as to show what a bad character he is'. But this presents us with too clear-cut a choice: either Smikrines gets the technical details right or he is a morally reprehensible liar; either he gets the details right or Menander must draw our attention to the fact that he gets them wrong. MacDowell's talk of 'telling a lie' points us in a moral direction which may not be the right one; it suggests a Smikrines (and a Menander) who is fully conscious of his legal distortion. It allows no distinction between an untruth and a partial truth, between a lie and an exaggeration.

There is a way in which Smikrines' words can be reconciled with the strict legal requirements. The possibility has already been suggested in the Gomme–Sandbach commentary:¹⁵ 'By making a will... [Smikrines] could have made Kleostratos his sole heir; and it may be that if challenged on the legal position he would have replied that that had been his intention'. This is the explanation which MacDowell prefers, and of course it is a perfectly acceptable way of showing how Smikrines could legally have achieved what he says he had hoped to achieve. But there may be a danger of reading too much legal sophistication into the text of the play. Would it have occurred to the audience to challenge Smikrines on the legal position? Would they automatically have calculated for themselves that it must have been Smikrines' intention to adopt Kleostratos as his heir? Did Menander take it for granted that his audience would perform this rapid calculation and thus did not need to have the details spelt out for them? Or did he assume that they would not be interested in reflecting on how Smikrines' words could be reconciled with the strict requirements of the law? Had he even bothered to work out for himself precisely how Smikrines could have achieved

¹¹ op. cit. (in n. 10), 142; cf. de Ste Croix, *Class. et Med.* 14 (1953), 41.

¹² MacDowell, art. cit. 44.

¹³ cf. Gomme and Sandbach, *Menander, a commentary* (Oxford, 1973), 76–7.

¹⁴ art. cit. 45. ¹⁵ p. 77.

his aim of instituting Kleostratos as his sole heir? In this case the legal calculation does not seem particularly difficult; but it may not be appropriate for us to perform it on Menander's behalf. According to MacDowell:¹⁶ 'In effect [Smikrines] is saying (though perhaps insincerely) "I intended to adopt Kleostratos as my son and heir"'. Clearly Smikrines *could* be saying this; but if we are to claim that he *is* in effect saying it we must be sure that Menander and his audience were alert to the details of Attic law and brought their alertness with them to the theatre. Professor Turner writes¹⁷ that 'Menander's audience consisted of jurymen on holiday: the menfolk will have been passionate connoisseurs of legal niceties'; but on the same page he argues (correctly, I have no doubt) that the audience would often have been uncertain about the precise legal rules.

(c) MacDowell also argues¹⁸ that Khairestratos intended to adopt his stepson Khaireas to be his own son. Similar considerations apply in this case, which I shall not discuss further.

III

If Menander has not troubled to tie up every legal loose end in *Aspis*, that is characteristic of his dramatic technique in other respects as well. This is not the place to examine other aspects of his plays in detail, but some examples will help to set this discussion of legal matters in the larger context of Menander's dramatic technique. If it is generally true that he leaves details vague and unexplained, I hope it will more readily be accepted that he has done so in the case of legal details.

Dr A. S. Gratwick has written of 'un-Menandrian obscurities' in the exposition of Terence's plays, 'for example the unexplained detective-work by which Thais... had found Chremes and identified him as the likely brother of her protégée in the *Eunuchus*'.¹⁹ But Thais' detective-work is part of the background to that play. It makes no difference to our appreciation of the play to know how she set about finding Chremes; all we need to know is that she has done so. There is no obscurity here, simply economy; and I am not convinced that it is un-Menandrian. There are questions we might like to ask about the background to *Aspis*: how long ago did Kleostratos leave home? How has it come about that he was so poor that he had to go campaigning to acquire a dowry for his sister (lines 8-9, 132), whereas his uncle Khairestratos is a man of considerable wealth (126, 350)? We cannot answer these questions, and we do not need to answer them to appreciate the play.

Similarly in *Dyskolos* we are not told how long it is since Sostratos first set eyes on Knemon's daughter. And Menander takes some short cuts in the course of that play: cf. Gomme-Sandbach on 358: 'How does Gorgias know that Knemon is not there?... The difficulty would be overlooked on the stage...'; Handley on 393: 'We should perhaps not ask too closely where Getas had been to hire the cook, since Menander leaves it conveniently vague'. When Sostratos' father Kallippides arrives (773) we are not told where he has come from or why he is late. Gorgias' entry at 821 should also be mentioned: 'Menander takes a short cut to the next stage of the action by having Gorgias overhear the whole discussion. He was "coming out"; we should perhaps not stop to wonder why...'.²⁰

¹⁶ art. cit. 45.

¹⁷ art. cit. (in n. 3), 119.

¹⁸ art. cit. 45.

¹⁹ *The Cambridge History of Classical Literature II, Latin Literature* (ed. E. J. Kenney and W. V. Clausen, Cambridge, 1982), 121.

²⁰ Handley, ad loc.; cf. W. G. Arnott, 'A note on the motif of "Eavesdropping behind the door" in comedy', *RhM* 108 (1965), 371-6. No motivation is given for Daos' entry at *Aspis* 164 (cf. Gomme-Sandbach, ad loc.).

David Bain has drawn attention to another aspect of the economy of Menander's technique:²¹ 'It is notable that the moment when Habrotonon becomes aware of Onesimus' presence... is not signalled in the text... Often the poet is inexplicit about the action on stage...'. Bain discusses other cases on pp. 147, 168, 175 f. We may add that there is no clear indication in the text of *Dyskolos* of whether Getas comes on at 487 or when he leaves after 611; nor is it clear what Sostratos does with his cloak.²² A man who writes plays like this is not likely to trouble himself over providing every detail of background information that a reflective reader might wish to ask for.

To return to legal questions, J. E. Karnezis²³ has discussed a lack of detailed clarification in the background to *Dyskolos*. (i) We are told at 14 ff. that Knemon had married a widow some years earlier: at that stage (claims Karnezis) she must have had a *kyrios* to give her in marriage to Knemon, but nothing is said about him. Karnezis does not consider seriously enough the possibility that her previous husband had himself assigned her to Knemon;²⁴ but we must at least allow that Menander has not troubled to clarify this point for us. We may also note that, in the similar situation in *Aspis*, 'We are not told why she has been married twice'.²⁵ In that case it is possible to calculate that the woman had been widowed and not divorced, as MacDowell shows; but the crucial evidence is not presented to us when we first hear about her second marriage. Menander did not think it necessary to go into such a detail about the background to the play, and it is not clear that he expected his audience to work it out for themselves. (ii) Knemon's wife eventually left him and went to live with Gorgias, her son by her previous marriage (22–3). Gorgias had been a small child at the time of her marriage to Knemon (16), but he was now old enough to be master of a separate establishment. We are not told who had been responsible for his upbringing after his father's death, nor at what age and in what circumstances he had come to acquire the property that he now owns. It would doubtless not be difficult to construct a convincing background, but Menander has preferred to say nothing about such details. We may also note Handley's comment²⁶ on Knemon's wife's departure to live with Gorgias: 'Menander, in sketching the background, does not say when this took place, or what would have happened if she had needed legal protection while Gorgias was too young to give it'.

Karnezis makes a further point, alleging that the action of *Dyskolos* is inconsistent with the law in one detail. I do not think his point is valid, but it is worth mentioning in this section. Knemon's wife (says Karnezis) has passed out of his legal control by leaving him, but he still claims the right to organise her life at 698 (where he tells Gorgias to summon her into his presence) and 739 (where, having adopted Gorgias, he tells him that he is to provide for Knemon and his ex-wife out of Knemon's property). I hope it will be agreed without discussion that the first of these passages does not imply that Knemon exercises any legal control over Gorgias' mother; the second need not suggest that Knemon is planning to live with her again or to control her life in any way.²⁷ Gorgias has already been looking after his mother, and he is to continue doing so; but now he is to look after Knemon as well. But it is not in fact clear that Knemon's wife ever did pass out of his legal control: we are not told

²¹ *Actors and Audience* (Oxford, 1977), 139, on *Epitr.* 442 ff. (Sandbach).

²² cf. W. G. Arnott, *Menander* 1 (Loeb Classical Library, 1979), 238 n. 1.

²³ *Athena* 76 (1977), 155 ff.

²⁴ cf. A. R. W. Harrison, *The Law of Athens* 1 (Oxford, 1968), 21. Dem. 46. 24, on which Karnezis bases his rejection of this possibility, does not seem relevant.

²⁵ MacDowell, art. cit. 43.

²⁶ On line 22.

²⁷ cf. Handley on 739.

that the archon had given his consent to their separation, which may have been an informal arrangement without legal consequences.²⁸ Once again nothing here is incompatible with the law; but once again Menander has not chosen to explore the legal implications of his characters' behaviour.

Karabelias notes²⁹ that the procedure of *epidikasia* is not mentioned in *Aspis* and observes that 'c'est pour les raisons de pure économie scénique. L'aspect judiciaire de l'institution, essentiel pour l'historien du droit, ne l'était pas pour Ménandre'. I believe that this observation is applicable more generally to the study of the law in Menander.

IV

MacDowell claims the following new legal information for *Aspis*:

1. '*Aspis* 127–37 shows that a man who expected to be away for a long period could transfer this power [the power to give away in marriage a woman for whom he was responsible] to someone else, making him the *kyrios* of the woman temporarily. That was not clearly known before the rediscovery of this play'.³⁰
2. More tentatively, MacDowell suggests that the distribution of Knemon's property at *Dysk.* 729–39 was an arrangement 'required by law when a man having no son adopted his stepson but also had a daughter of his own'; and that the same arrangement was envisaged by Khairestratos in *Aspis*.³¹
3. 'It was known that the nearest male relative of the deceased man had first claim to an *epikleros* if he wished to claim her, but it was not known who had first claim if there were several relatives equally near... The suggestion that in such a case the eldest had priority was no more than a guess, since there was no evidence. Now *Aspis* provides evidence showing that the guess was right'.³²
4. 'We have here, for the first time, a clear instance of a woman who is the *epikleros* of her brother's estate' (and not of her father's).³³
5. 'A relative who gave away in marriage an *epikleros* of the lowest income-class did not have the legal right to take her back again'.³⁴

I do not propose to discuss all these claims in detail. The first and third (as MacDowell acknowledges) had already been made by Karabelias, and I see no particular reason to resist them, except that *Aspis* may reflect practices which many Athenians would have found acceptable rather than behaviour which was explicitly sanctioned by the laws. The fourth and fifth seem less securely based altogether. They concern hypothetical consequences of the characters' plans, and they depend on the assumption that Menander's characters are fully conscious of the legal ramifications of their behaviour. In view of what I have already said, I should prefer to suspend judgement on these cases: we must allow for the possibility both of minor errors and of indifference to detail. The legal issues may even have been unclear to Menander and his audience themselves. I shall discuss each of these two cases in order.

(a) At 264 ff. Khairestratos offers to let Smikrines keep 'all this property' but begs him to allow the girl to marry Khaireas. Smikrines rejects this proposal on the grounds that he will be liable to prosecution at a later stage if Khaireas and the girl produce a son and he (Smikrines) is in possession of property to which the son could lay a claim. In the *epikleros* – system the estate which accompanied the woman in marriage was eventually transmitted to her male offspring. 'All this property' refers primarily

²⁸ cf. Gomme–Sandbach on 22.

³⁰ p. 44; cf. Karabelias, art. cit. 366–8.

³² p. 47; cf. Karabelias, art. cit. 375–8.

³⁴ pp. 49–50.

²⁹ art. cit. (in n. 2), 381.

³¹ p. 46.

³³ p. 48.

(perhaps exclusively) to the booty which Kleostratos had acquired; but that booty was not part of the estate which Kleostratos inherited from his father. Therefore (argues MacDowell), if the booty forms part of the estate which ought to be transmitted together with Kleostratos' sister, it must be her brother's estate of which she is *epikleros*. If the booty were not part of the estate which accompanies her, Kleostratos' sister would simply inherit it from her brother, and her son's claim to it would be less clear-cut.

But is it so clear that the booty belongs to the transmissible estate rather than to Kleostratos' sister herself? If it does, is it so clear that it could not be treated by a jury as part of her father's estate? What Smikrines says he fears (at 272–3) is prosecution. Doubtless he also fears conviction; but conviction might be secured on legally shaky grounds. It might be argued (truthfully, for all we know) that Kleostratos had allowed his father's estate to dwindle and that the booty went some way to restoring it to its original value. The legal technicalities could be made to seem as tedious and confusing to the ancient jury as they do to the modern reader, and the outcome of the case would depend on where the jury's sympathies lay. Smikrines must know that a jury would be unlikely to sympathise with him. Rather than risk losing such a case (whatever his strict legal rights), he is on safer ground if he insists on marrying his niece and assuming control of *all* her property. According to MacDowell, Smikrines points out that Khairesstratos and his niece 'have no power' to let him keep the booty. But this is not quite true: all Smikrines points out is that it is not in his own interest to agree to an arrangement which might later be challenged in a court of law. If MacDowell is right, Khairesstratos' proposal was illegal and risked defrauding his niece's eventual son of property to which he was entitled. I suspect that its legality may in fact have been quite unclear to Menander's audience.³⁵

(b) Daos plans to fool Smikrines by making him believe that he can obtain in marriage a girl much wealthier than Kleostratos' sister: Smikrines will allow Khaireas to marry the latter, but his ambition to marry the richer girl will then be thwarted. Daos' plan seems to depend on the assumption that Smikrines will not be able to reclaim Kleostratos' sister when he discovers that the other girl is not available. It has been claimed (and is stated by MacDowell)³⁶ that 'a father had the right to take his daughter away from her husband, effecting a divorce, at least if she had not yet had a child'. MacDowell concludes from *Aspis* that the case was different for a relative who gave away in marriage an *epikleros* of the lowest income-class. I have already argued that the girl in question does not come from the lowest income-class; but there are two other points that I should like to make.

(i) MacDowell's argument depends on the assumption that Daos (and Menander) has thought through the full consequences of his plan. But the audience knows that all this planning is destined to be overtaken by the discovery that Kleostratos is after all not dead and his sister is thus not an *epikleros*. The plot never develops in such a way that Smikrines could think of recovering his niece from Khaireas, even if he might in other circumstances have been entitled to do so. Should we suppose that Menander had worried about how his plot would have developed in hypothetical circumstances which he knew were not going to arise in the course of his play? Does

³⁵ cf. Gomme–Sandbach on 264: 'if Chairestratos' plan were carried through, a child born to the girl might argue that the arrangement had cheated him out of the property that was his right. I do not know that there is any evidence to show what rights, if any, the law gave him, but even if there were none, he or someone suing on his behalf might hope to win a jury's sympathy and the verdict'.

³⁶ p. 49.

the world of comedy look further ahead than the short-term thwarting of its villain's plans?

(ii) MacDowell and others believe that a father had the legal right to take his daughter away from her husband. We know of one Athenian father who did this;³⁷ his daughter's feelings are not recorded. We also know of two Greek plays³⁸ and two Roman ones³⁹ (based on Greek originals) in which fathers tried to do it against their daughters' wishes. It has been disputed whether these fathers had a basis in Greek law for their actions:⁴⁰ I myself side with those who believe the evidence to be inconclusive on this point. Turner has recently presented a strong case⁴¹ against using *Epitr.* 657–8 (Sandbach) as evidence that an Athenian father had this legal right. It is worth adding to what Turner says that the husband at *Epitr.* 929 ff. speaks as if his father-in-law could not in the last resort compel the dissolution of the marriage,⁴² and that the father-in-law himself at 1102 ff. justifies his attempt to do so on grounds not of legality but of 'necessity'. If the opposite view is correct, and fathers did have the right to dissolve their daughters' marriages even against their daughters' wishes, then *Epitrepontes* is another play in which a character with whom we sympathise protests against the inhumane application of a law. For the daughter argues at 714–15 that her father will be treating her as a slave and not as a daughter if he forces her to leave her husband without persuading her that it is the right thing to do. But it may well be that this is another case where there was room for dispute about the legality of the action proposed as well as about its morality (which was what concerned Menander).

POSTSCRIPT

I have not attempted to write a thorough account of the importance of Menander for the study of Athenian law, but rather to present a view of Menander's dramatic technique and of its consequences for that study. His plays certainly provide important evidence on legal matters, but the use we can make of any particular passage will depend on the circumstances of the case. Many details of Athenian family law which modern scholarship reconstructs with complex arguments from ambiguous evidence will have been clear without a moment's thought to Menander and his audience; but some will presumably have been very unclear. I have tried to show that Menander was sometimes indifferent to detail, and I hope that this view would seem plausible even if I could not point to a case of actual inaccuracy anywhere in his plays. But the inaccuracy at *Aspis* 353–5, while trivial in itself, increases my confidence in the picture of Menander that I have sketched. I had not noticed the inaccuracy before I read Professor MacDowell's article, and (although I have expressed disagreement with much of what he says) I must thank him for setting me off on the train of thought which here arrives at its terminus.⁴³

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³⁷ Dem. 41. 4.

³⁸ Men. *Epitrepontes* and Pap. Didot 1 (Menander, ed. Sandbach, pp. 328–30).

³⁹ Plautus, *Stichus* and Ennius, *Cresphontes*.

⁴⁰ See Harrison (cited in n. 24), 30–1; H. D. Jocelyn, *The Tragedies of Ennius* (Cambridge, 1967), 274–5; H. Petersmann on *Stichus* 17. F. Zucker, *RhM* 92 (1944), 204 seems very much to the point when he says of Plautus in the opening scenes of *Stichus*: 'Im übrigen bringt er die Rechtsfrage eben so wenig zur Geltung, wie das... im Original und in den *Epitrepontes* der Fall gewesen zu sein scheint'.

⁴¹ art. cit. (in n. 3), 120–2.

⁴² cf. W. Erdmann, *Die Ehe im alten Griechenland* (München, 1934), 274.

⁴³ I must also thank my wife Lesley Brown for pillorying some un-Menandrian obscurities in an earlier draft of this article.