

WAYNE STATE  
UNIVERSITY  
LAW SCHOOL

INTRODUCTION TO THE ATHENIAN DEMOCRACY OF  
THE FIFTH AND FOURTH CENTURIES BCE

John A. Rothchild

**Wayne State University Law School Legal Studies Research Paper Series**  
**No. 07-32**

October 9, 2007

Papers posted in the The Wayne State University Law School Legal Studies Research  
Paper Series can be downloaded at the following url:  
<http://www.ssrn.com/link/Wayne-State-U-LEG.html>

and

The Social Science Research Network Electronic Paper Collection:  
<http://ssrn.com/abstract=1020397>

## **Introduction to Athenian Democracy of the Fifth and Fourth Centuries BCE**

John A. Rothchild

*Abstract:* This essay serves to introduce students to the institutions of the democratic constitution of ancient Athens, during its flowering in the fifth and fourth centuries BCE. Its principal purpose is to enable students to compare the Athenian democracy with the system established by the U.S. Constitution. It will serve equally well to meet the needs of anyone who is interested in the Athenian democracy for its own sake. The essay assumes no prior background knowledge about the Athenian system.

The Athenian democracy is worthy of study if for no other reason than that it was the inspiration for modern democratic systems. The ancient system takes on added interest from the standpoint of comparative constitutional law. Many of the institutions of the Athenian democracy seem quite peculiar to us moderns, and some of them strike us as downright bizarre. Yet the goals of those who designed that system were very similar to the goals of the designers of modern constitutional democracies: establishment of a system in which political power resided with the people, in which government officials had enough power to be able to discharge their functions, and in which official power was effectively constrained so that it did not devolve into tyranny.

The essay has several features that enhance its pedagogical mission. The expository portion is followed by a set of review questions that help the student test her comprehension, and a set of discussion questions meant to facilitate classroom discussion. A glossary of Greek terms used in the essay is also included.

# **Introduction to the Athenian Democracy of the Fifth and Fourth Centuries BCE**

**John A. Rothchild\***

**Associate Professor of Law  
Wayne State University  
Detroit, Michigan**

Acknowledgements.....	3
I. Introduction.....	4
II. Time period and cultural context.....	4
III. Geography and demographics .....	5
IV. Just enough history .....	6
A. History on the ground .....	6
B. Constitutional history .....	9
V. Structure of the Athenian democracy .....	13
A. Citizenship and the franchise.....	13
B. The Council of 500.....	15
1. Membership and pay.....	15
2. Administration of Council meetings.....	15
3. Functions of the Council .....	16
C. The Assembly .....	17
1. Membership, attendance, and pay.....	17
2. Frequency of meetings .....	17
3. Procedure .....	18

---

\* ©2007 John A. Rothchild.

4. Laws and decrees.....	19
5. Making and changing the laws: <i>nomothesia</i> .....	19
6. “Judicial review” via <i>graphē paranomōn</i> .....	21
D. The jury courts.....	22
1. Selection of jurors .....	23
2. Jurors’ pay.....	24
3. Appeals.....	25
4. Initiating a lawsuit.....	25
5. Conduct of trials .....	26
6. Nonjudicial functions of the jury courts.....	28
E. The Areopagos .....	28
1. Membership.....	28
2. Functions .....	29
F. Magistrates .....	29
1. The nine archons .....	30
2. The Eleven .....	31
3. <i>Astynomoi</i> .....	31
4. <i>Agoranomoi</i> .....	32
5. <i>Logistai</i> and <i>euthynoi</i> .....	32
6. The ten <i>strategoi</i> .....	32
VI. Methods of constraining the power of public officials	33
A. <i>Dokimasia</i> .....	34
B. <i>Eisangelia</i> .....	34
C. <i>Epikheirotonia</i> .....	35
D. <i>Euthyna</i> .....	35
E. <i>Apophasis</i> .....	36
VII. Review questions .....	37

VIII. Discussion questions .....	38
IX. Glossary .....	41

### **ACKNOWLEDGEMENTS**

The image of the Monument of the Eponymous Heroes at p. 20 is by W.B. Dinsmoor Jr., and appears in Mabel Lang, *Socrates in the Agora* (Am. Sch. of Class. Studies at Athens 1978). The image of the voting tokens at p. 27 appears in Mabel Lang, *The Athenian Citizen* (Am. Sch. of Class. Studies at Athens 1987). Both images are used with permission of the American School of Classical Studies at Athens, <http://www.ascsa.edu.gr>.

The image of the kleroteria at p. 23 is from Sterling Dow, *Aristotle, the Kleroteria, and the Courts*, Harv. Stud. in Class. Phil., vol. 50 (1939), pp. 1-34. It is used with permission of the Department of the Classics, Harvard University.

## I. INTRODUCTION

This essay provides background information about the democratic constitution of Athens in the fifth and fourth centuries BCE, with the aim of facilitating a comparison of that system with the government established by the U.S. Constitution.

The Athenian democracy is the world's oldest well-documented democratic polity, and as such has served as an inspiration, and cautionary tale, for the designers of all subsequent democracies. It is inspirational because it empowered citizens to an extent that is virtually unique among systems of government that the world has known. It is a cautionary tale because, in the view of many observers, its radically direct form of democracy led to excesses and is in any event not scalable to the large populations and geographical extent of modern nations.

The text above refers to the Athenian "constitution." The term is used here in the older sense, meaning the way that a government is constituted. There was in Athens no written constitution along the lines of the U.S. Constitution. The Athenian constitution, like the unwritten constitution of modern England, was a collection of customs, laws, institutions, and understandings, which were never reduced to a single document.

## II. TIME PERIOD AND CULTURAL CONTEXT

Our focus is principally on what is usually called the classical period in Athenian history. This period runs from 490 BCE, the year of the first Persian invasion of Greece, until 323 BCE, when Alexander the Great died.

The classical period was the era of the Athenians' greatest accomplishments. During this period, in the view of many, the Athenians single-handedly invented western philosophy, drama, and the writing of history. In philosophy, there were Socrates (469-399 BCE), Plato (428-348 BCE), and Aristotle

(384-322 BCE). The great Athenian dramatists flourished during this time: Aeschylus (525-456 BCE), Sophocles (495-406 BCE), Euripides (480-406 BCE), and Aristophanes (446-388 BCE). Herodotus (~490 - ~425 BCE)<sup>1</sup> wrote a history of the Persian Wars, and Thucydides (~460/455 - ~399 BCE) a history of the Peloponnesian War.

### **III. GEOGRAPHY AND DEMOGRAPHICS**

For all of its influence, Athens was a surprisingly small place. The city walls enclosed an area that extended less than a mile from one end to the other. Athens and its environs, called Attica, covered an area of about 640 square miles, somewhat larger than the area of Houston, Texas.

The population of Athens varied considerably during the classical period, with significant losses due to war (and accompanying plague) and emigration. We must distinguish between the population of adult males, who alone had the right to participate in government, and the entire population, including women, children, foreigners, and slaves. There may have been about 60,000 adult male citizens in the fifth century, before the Peloponnesian War, and about 30,000 in the fourth century. The entire citizen population, including women and children, might have been 160,000 in the fourth century. To this must be added about 25,000 resident aliens, and at least 200,000 slaves.

The basic political unit of Greek-speaking people during this time was the *polis* (pl. *poleis*). This term is usually translated as “city-state.” A *polis* had characteristics of both a city and a country: it was the size of a city, in most cases what we would consider a small city; but it had an autonomous political system, like a country. There were 700 *poleis* that we know of, and Athens was the largest.

---

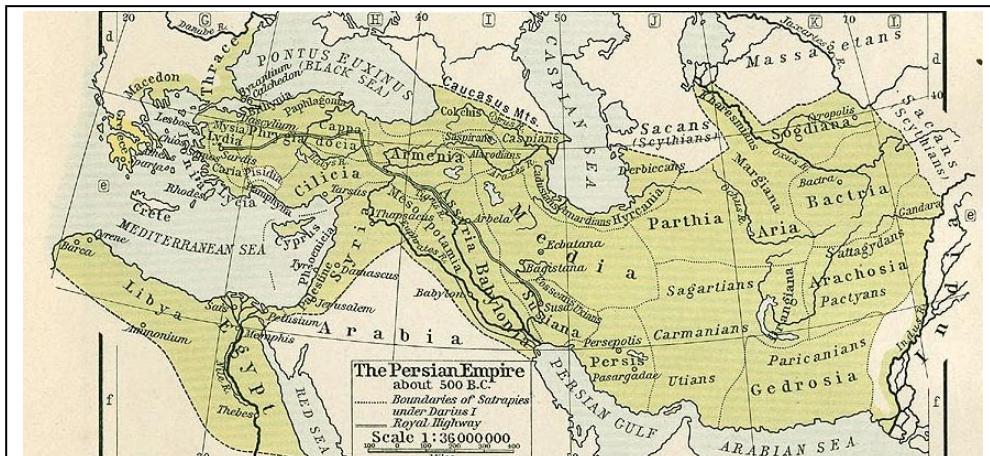
<sup>1</sup> Although not an Athenian, Herodotus spent time in Athens and was acquainted with some of its leading citizens.

## IV. JUST ENOUGH HISTORY

The Athenian democracy developed in and was conditioned by a particular historical context. The most salient features of this context are a series of wars: wars between the Greeks and the Persians, and wars among the Greeks themselves. For a time, Athens established itself at the head of a mini-empire, with other Greek *poleis* as its subjects. The democracy ultimately came to an end after conquest of the Greeks by the Macedonians.

### **A. HISTORY ON THE GROUND**

*The Persian Wars.* During the classical period, the Greeks found themselves intermittently in conflict with the Persian Empire. The Persians controlled a vast territory, many times the size of Greece, including all or most of modern Iran, Iraq,



**The Persian empire in 500 BCE. Greece is the small peninsula in the upper left.**

Afghanistan, Pakistan, and Turkey, extending through the Mideast to include parts of Egypt and Libya, and into the Balkans. In 490 BCE under King Darius, and again in 480 under King Xerxes, the Persians invaded mainland Greece

with huge land and sea forces, and attempted to subjugate it.<sup>2</sup> The Athenians played a leading role in defeating the Persians, with decisive victories on the plain of Marathon and in the waters around the island of Salamis.

*The Athenian empire.* After the defeat of Xerxes in 479 BCE, the Athenians formed a coalition of Greek *poleis*, called



**The Spartan and Athenian alliances in the Peloponnesian War.**

<sup>2</sup> The Persians were bent on revenge against the Athenians who, in the 490s BCE, had supported a revolt by Greek cities in Asia Minor against their Persian overlords. The revolt included the burning of Sardis, a Persian provincial capital.

the Delian League, for the ostensible purpose of serving as a defensive and offensive alliance against the Persians. Within a decade, the League devolved into an empire controlled by Athens. Member states were assessed an annual payment towards the League's expenses. The contributions were managed by Athens, which later converted the League's treasury to its own uses. Members that sought to withdraw from the alliance were ruthlessly suppressed by Athenian military force.

*The Peloponnesian War.* After sporadic low-level fighting over three decades, war between the Athenians and the Spartans,<sup>3</sup> supported by their respective allies, commenced in 431 BCE. The war lasted, with some interruptions, until 404 BCE, when the Spartans starved Athens into submission by cutting off its supply of food from the Black Sea. The Spartans thereupon installed a pro-Spartan oligarchy in Athens, referred to as the Thirty Tyrants.

*Fourth century BCE.* The Athenian democracy was soon restored. The fourth century was a tumultuous period characterized by shifting alliances among the *poleis* and sporadic wars.

*Conquest by Macedonia.* In the 350s BCE, Philip II, king of Macedon (a territory just to the north of the Greek mainland), began an expansion of his kingdom through a step-by-step conquest of areas in the northern part of Greece, gradually extending his control southwards towards Athens. By 338, Athens was effectively under the control of Philip. In 322, Antipater, who controlled Greece after the death of Philip's son Alexander the Great, put down an attempted revolt by the Greeks and imposed an oligarchic regime on Athens, ending the Athenian democracy.

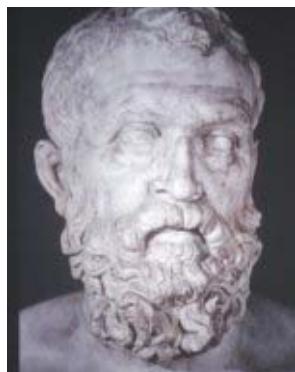
---

<sup>3</sup> Sparta was a militarily powerful *polis* that was a longstanding rival of Athens for leadership of the Greeks. It was located in and dominated a peninsular region of Greece called the Peloponnese.

## **B. CONSTITUTIONAL HISTORY**

The Athenian system of government went through several stages on the way to the mature form of democracy it reached in the fifth century BCE.

*Monarchy.* According to legend, Athens was governed by a series of kings from the earliest times, starting with King Cecrops (half man, half snake) in the sixteenth century BCE. At some early date, possibly in the eleventh century BCE, the functions that had previously been exercised by a single king were divided among three officials: the Archon, the King Archon, and the Polemarch. At some later time, perhaps in the mid-seventh century, six *thesmophetai* were added to the other three, so that there were nine archons altogether. These nine officials were the forerunners of the officials holding the same titles under the later democratic system.<sup>4</sup>



**Solon**

*The reforms of Solon.* Solon was appointed by the Athenians in 594 BCE to reform the laws so as to moderate the strife between the wealthy and the poorer classes. He instituted some political and legal changes that were a step towards democracy. He created a Council of 400, with 100 members from each of the four tribes. The Council acted as a counterweight against the Areopagos,<sup>5</sup> an aristocratic body with origins predating Solon, and the archons. Solon gave citizens a right to appeal from a decision of a magistrate to the law court, which meant that the aristocratic magistrates were for the first time accountable to the

---

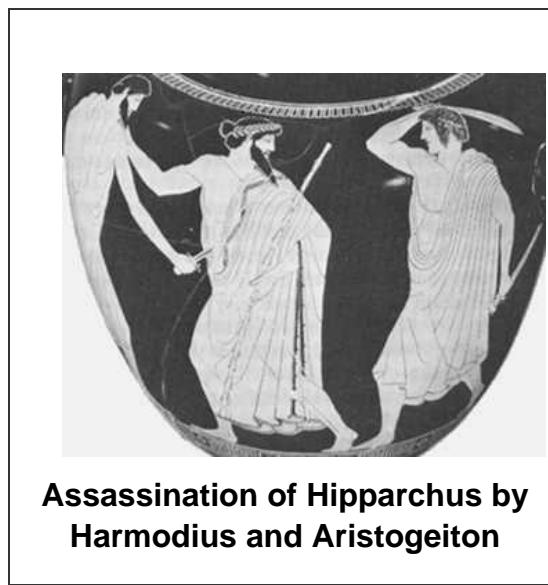
<sup>4</sup> On the role of the archons during the democracy, see below at p. 30.

<sup>5</sup> On the role of the Areopagos during the democracy, see below at p. 28.

people. An Assembly consisting of all citizens,<sup>6</sup> also predating Solon, was also part of the Solonian system.

*Tyranny of the Peisistratids.* Solon's reforms did not end the societal strife, and struggles for political power continued. In 546 BCE, Peisistratos seized power in Athens, and established himself as *tyrannos*. (He had seized power twice previously, in 561 and 555, but had been ejected each time.) Peisistratos ruled from 546 until his death in 527.

The term *tyrannos* is usually translated as “tyrant,” but at the time the word did not hold its modern connotations: it denoted one who had seized power in an unconstitutional way, but a *tyrannos* did not necessarily rule harshly or arbitrarily. Peisistratos pursued a moderate policy, and was said to be popular both with the notables and with the ordinary people.<sup>7</sup> Probably Peisistratos did not disturb the operation of Solon's institutions: the Areopagos, the Assembly, and the Council of 400.



**Assassination of Hipparchus by Harmodius and Aristogeiton**

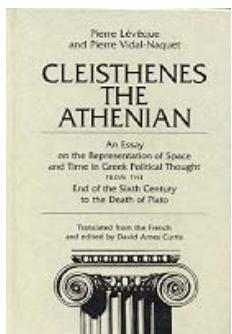
---

<sup>6</sup> On the role of the Assembly during the democracy, see below at p. 17.

<sup>7</sup> “For both the notables and the men of the people were most of them willing for him to govern, since he won over the former by his hospitality and the latter by his assistance in their private affairs, and was good-natured to both.” Aristotle, Ath. Pol. 16. This work, whose title is usually translated as “The Constitution of the Athenians,” is attributed to Aristotle, but may have been written by his students. It is a principal source of information about the Athenian democracy.

Peisistratus was succeeded by his sons Hippias and Hipparchus. Their reign was mild at first, but later became harsher. Hipparchus was assassinated, and in 511/10 BCE Hippias was expelled.

*The reforms of Cleisthenes.* In 507 BCE, after a further power struggle, Cleisthenes, who like Solon before him came from an aristocratic family, instituted a series of reforms that are viewed as first establishing the Athenian democracy. One of his principal goals was to diminish the political power of the aristocratic families, by eliminating the political functions of the four tribes. These tribes had their origins in pre-history and were dominated by aristocratic clans.



Cleisthenes removed all political functions from the tribes, and established the deme as the main local political institution. Demes were geographically based political units. There were 139 demes throughout Attica, of which the leadership was democratically elected, rather than hereditary as with the tribes.

Cleisthenes reallocated the people into ten tribes, each containing demes from the coast of Attica, from the interior around Athens, and from the polis of Athens. This served to dilute the power of the aristocratic clans. The tribes were the basis for many of the allocations of political power in the democracy. Cleisthenes also created a Council of 500,<sup>8</sup> which replaced Solon's Council of 400. Its functions were similar to those of Solon's Council, but the 500 had more authority and prestige.

*The reforms of Ephialtes.* After the defeat of Xerxes in 479 BCE, there was a struggle in Athens between a faction that favored a more radical democracy and another that was more inclined toward aristocratic rule. In 462 BCE, Ephial-

---

<sup>8</sup> On the role of the Council during the democracy, see below at p. 15.

tes, then the leader of the pro-democratic faction, gained ascendancy, and instituted a series of reforms that led to the mature form of the democracy.

His most significant reforms consisted of depriving the aristocratic Areopagos of most of its political powers; increasing the powers of the Assembly; and restructuring the law court into panels that sat as courts of first instance, rather than being limited to hearing appeals from decisions of magistrates. After the assassination of Ephialtes, leadership passed to Pericles, who in the 450s introduced pay for service on the Council and on juries, which had the effect of further democratizing these institutions.

*Oligarchies of 411 and 404 BCE.* Twice during the fifth century the Athenian democracy was suspended for brief periods in favor of rule by an oligarchy. In 411 BCE, with the Peloponnesian War going badly for the Athenians, a cabal of aristocrats persuaded the Assembly to modify the constitution so that control would be exercised by a group of 400 men. The modification was sold with the promise that it would bring the Persians into the war on the side of the Athenians. The oligarchy lasted less than a year, being replaced by a restored democracy.

The Athenians also suffered under oligarchic rule in 404 BCE, when the Spartans, after defeating them in the Peloponnesian War, installed a pro-Spartan regime called the Thirty Tyrants. The Thirty eliminated the democratic constitution by repealing the laws of Ephialtes, restoring powers to the Areopagos, and taking the government into their own hands. The rule of the Thirty was characterized by mass executions and banishment of political opponents. Democratic exiles assembled an army, marched against Athens, and won some victories. Negotiations led to the resumption of the democracy in 403 BCE.

This experience with oligarchic rule had a lasting effect on the Athenians, strongly disposing them against any weakening of the democracy.

## **V. STRUCTURE OF THE ATHENIAN DEMOCRACY**

The Athenian democracy, in its structures, institutions, and procedures, was radically different from our own system of representative democracy. To list some of the most striking features: most public officials were selected by lot; most could serve a single, one-year term, or two such terms non-consecutively; juries sat in panels that usually ranged from 200 to 500 in size; and final legislative authority lay in a body consisting of the entire citizen population, rather than a representative body.

However, if we step back from the particular institutions of the two systems, and look at the underlying themes motivating the creation of those institutions, we can see some commonalities. Both systems aimed to vest ultimate power in the citizens; to prevent overreaching by public officials and subversion of the democracy; to give public officials an incentive to perform for the benefit of the community; to create a stable constitutional structure; and to implement the rule of law. What is fascinating, and what the following discussion will illustrate, is how differently the two systems went about implementing similar sets of goals through constitutional structures.

### **A. CITIZENSHIP AND THE FRANCHISE**

In Athens the right to participate in the political<sup>19</sup> life of the *polis* was limited to what we would consider a narrow segment of the population. Participation was restricted to free adult (18 or older) male citizens, thus excluding women,

---

<sup>19</sup> The word “political” derives from the Greek “*politēs*,” meaning “citizen,” or literally “one who is a member of the *polis*.” The root meaning of “political” is therefore that which concerns the affairs of the *polis*.

resident aliens, and slaves. In practice, this limited participation to perhaps 10-20 percent of the population. In 451 BCE, Pericles introduced a law further limiting participation, by providing that one was an Athenian citizen only if both of one's parents were citizens; previously it was enough if one's father was a citizen. A person's citizenship was determined by reference to the Assembly List of his deme.

A citizen could lose the right to political participation as a punishment for certain offenses, such as owing a debt to the public treasury, prostitution, beating or failing to support his father or mother, throwing away his shield in battle, or squandering his inheritance.

In view of how limited was the franchise, one might legitimately question whether the Athenian system is appropriately characterized as a democratic one: would a system in which all political power is held by one-tenth of those subject to that power not be more accurately described as an oligarchy (since this was rule by a few), or aristocracy (since citizenship was hereditary, and was rarely conferred on outsiders)? The accusation has some bite; but before dismissing the Athenian democracy as a sham, we should consider that a similar objection could be brought against our own constitutional system at the time of its founding. In 1790, the total population of the United States was 3.9 million, of which about 700,000 were slaves, not entitled to vote. Nor were women allowed to vote at that time.<sup>10</sup> Most states also imposed minimum property qualifications on white males, with the result that only 60-70 percent of them could vote. Thus, the franchise was limited to perhaps 25 percent of the adult population—not as extreme as in Athens, but still far short of universal suffrage.

---

<sup>10</sup> New Jersey was a temporary exception: its 1776 constitution gave women the right to vote, but an 1807 amendment took away that right.

## **B. THE COUNCIL OF 500**

### **1. MEMBERSHIP AND PAY**

The Council (sometimes called the Council of 500, to distinguish it from the Council of the Areopagos), consisted of 500 citizens, at least thirty years old, who were appointed by lot, fifty from each of the ten tribes. Council members served a one-year term. A person could serve only twice in his lifetime, and not in two successive years. The size of the Council, combined with the term limitation, meant that a large proportion of the citizen population served on the Council at some point—perhaps one-third of all citizens over 18, and two-thirds of those over 40. Council members were paid for their service, receiving five obols a day by the middle of the fourth century.<sup>11</sup> Incoming members were subject to an examination for fitness (called *dokimasia*<sup>12</sup>) by the outgoing Council.

### **2. ADMINISTRATION OF COUNCIL MEETINGS**

The year was divided into ten time periods, each consisting of 35 or 36 days, called prytanies. During each prytany, the fifty Councilors from one of the ten tribes took their turn serving as the Council's steering committee. These individuals were known as the *prytaneis* (sing. *prytanis*; often translated as “president” in the sense of “one who presides”). The duties of the *prytaneis* included convening meetings of the Council each day (excepting public holidays) and setting the agenda for each meeting.<sup>13</sup> Each day one of the *prytaneis* was chosen by lot to be *epistatēs* (plur. *epistatai*; sometimes translated as “chairman”). This is a position that one could hold only once in a lifetime. The *epistatēs* would preside over the Council's meetings.

---

<sup>11</sup> On comparative levels of pay, see below at p. 17, n.15.

<sup>12</sup> On *dokimasia*, see below at p. 34.

<sup>13</sup> The *prytaneis* also had the job of convening the Assembly, as required. On the Assembly, see below at p. 17.

### **3. FUNCTIONS OF THE COUNCIL**

The most significant of the Council's functions was in connection with legislation. The Council served as the initial forum for discussion of proposed legislation. Legislation might be proposed by a member of the Council, by an individual citizen, or by the Assembly. The Council would discuss such proposals, and decide which ones to place on the agenda of the Assembly, in the form of preliminary motions called *probouleumata*. It was not lawful for the Assembly to enact a piece of legislation that had not first been considered by the Council.

A range of executive and administrative duties were performed by subcommittees of the Council. The subcommittees usually consisted of ten citizens chosen by lot. Among these were the ten *euthynoi* (sometimes translated as “public auditors”), who reviewed each public official’s handling of his office at the end of his term, and the ten *logistai* (“public accountants”), who checked the accounts of all officials who handled public money each prytany.

The Council handled diplomatic relations between Athens and other states. The *epistatēs* of the day, and the *prytaneis* (probably each serving an eight-hour shift), had to be present and on duty each day at a building called the Tholos, ready to deal with any emergent issues. Envoys from other states, and messengers bearing official letters, would present themselves to these officials at the Tholos. The Council was also responsible for collecting the payments that Athens extracted from its subject *poleis* during its imperial period.

The Council had a limited judicial role, hearing *eisangelia* (a type of impeachment) prosecutions.<sup>14</sup>

---

<sup>14</sup> On *eisangelia*, see below at p. 34.

## **C. THE ASSEMBLY**

The Assembly was the ultimate repository of legislative authority.

### **1. MEMBERSHIP, ATTENDANCE, AND PAY**

The membership of the Assembly consisted of all adult male citizens who were not subject to disfranchisement. The Assembly met on the Pnyx, a hill near the Acropolis, in the open air. The number of citizens attending the meetings is uncertain, but some say it was usually about 6,000. Starting in the 390s BCE, citizens were paid for their attendance.<sup>15</sup>

### **2. FREQUENCY OF MEETINGS**

The Assembly normally met about forty times a year, four times in each prytany. During each prytany there would be one general session, called the Principal Assembly, and three other meetings. Particular topics of discussion were assigned to particular meetings. For example, according to Aristotle, in the Principal Assembly

the people have to ratify the continuance of the magistrates in office, if they are performing their duties properly, and to consider the supply of corn and the defense of the country. On this day, too, impeachments are introduced by those who wish to do so, the lists of property confiscated by the state are read, and also applications for inheritances and wards of state, so that nothing may pass unclaimed without the cognizance of any person concerned.<sup>16</sup>

Additional meetings could be scheduled as required. For example, in 427 BCE, during the Peloponnesian War, the As-

---

<sup>15</sup> The pay was originally one obol per day, which rose to three obols by 393 BCE, and 1 or 1½ drachmas by the 320s (there were six obols in a drachma). By comparison, at the end of the fifth century a laborer earned one drachma a day, and in the fourth century 1½ drachmas. By the end of the fourth century, a skilled laborer could earn 2½ drachmas. The level of pay for attending meetings of the Assembly was thus not munificent—something like working at Wal-Mart for minimum wage today.

<sup>16</sup> Aristotle, *Ath. Pol.* 45.4.

sembly voted to punish the Mytileneans, who had revolted against Athenian authority, by killing the adult males and enslaving the women and children. As Thucydides records:

The morrow brought repentance with it and reflection on the horrid cruelty of a decree, which condemned a whole city to the fate merited only by the guilty. [The Mytilenean ambassadors at Athens] moved the authorities to put the question again to the vote; which they the more easily consented to do, as they themselves plainly saw that most of the citizens wished some one to give them an opportunity for reconsidering the matter. An assembly was therefore at once called . . .  
<sup>17</sup>

### **3. PROCEDURE**

Assembly meetings were presided over by a group of ten officials, which changed each day, and were selected by lot so that there would be a representative from each of the ten tribes.

The agenda of each meeting was published in advance by the Council of 500. The agenda consisted of the motions that would be introduced at the meeting. The motions were of two types. There were specific motions, which consisted of bills that were proposed for enactment, and open motions, which were issues for discussion but not including a recommendation. A specific motion would be read out to the Assembly, and then immediately voted upon. If the vote was unanimous, it would be enacted. If there was at least one vote opposed, there would be discussion, during which participants could offer amendments or alternatives, followed by a final vote. The open motions would likewise be read, and would be discussed and voted upon.

---

<sup>17</sup> Thuc. 3.36. In a close vote, the second Assembly decided to rescind the order. A galley was dispatched with all speed, attempting to overtake the ship that had been sent the day before to deliver the order containing the death sentence. The rowers ate their meals while rowing to save time, and, spurred on by the promise of rewards from the ambassadors if they arrived in time, reached Mytilene just after the death sentence had been proclaimed but before it was carried out. Thuc. 3.49.

All those attending an Assembly meeting enjoyed an equal right to speak, with no differentiation based on social status. But any speaker ran the risk of being shouted down if his speech did not please the audience. This seems not to have been an uncommon occurrence, as many of the preserved speeches include a request that the audience not interrupt the speaker.<sup>18</sup>

Voting was generally by a show of hands, but some votes were conducted by secret ballot.

#### **4. LAWS AND DECREES**

Starting in the late fifth century, the enactments of the Assembly were of two types: laws (*nomoī*) and decrees (*psēphismata*). Laws were those enactments which established a general rule, while decrees were those which called for a specific action to be taken in a particular case. For example, one forensic oration refers to a law that permitted the Assembly to enact a decree honoring a citizen with a crown.<sup>19</sup>

#### **5. MAKING AND CHANGING THE LAWS: NOMOTHEΣΙΑ**

Decrees could be made and amended by the Assembly through the ordinary procedures described above. But, starting in 403 BCE, with restoration of the democracy after the regime of the Thirty Tyrants, laws could be added or

---

<sup>18</sup> Plato has Socrates make such a request in his own defense speech before a jury court: “And I must beg of you to grant me one favor, which is this—if you hear me using the same words in my defense which I have been in the habit of using, and which most of you may have heard in the agora, and at the tables of the money-changers, or anywhere else, I would ask you not to be surprised at this, and not to interrupt me.” Plat., Apol. 17c-17d.

<sup>19</sup> Aeschin. 3.36. A forensic oration is a speech written for delivery by a litigant before a jury court. The citation refers to a speech written by Aeschines, one of the ten Athenian writers of forensic orations whose works have been preserved. The law speeches (and many other classical works) can be found at Perseus, <http://www.perseus.tufts.edu>.

amended only by following a special procedure, called *nomothesia*.

*Nomothesia* worked as follows. A new law might be proposed by any citizen. Any proposal to modify an existing law had to be accompanied by a proposed replacement law. The citizen making the proposal had to publish it advance: publication consisted of writing the proposal on a whitened board located next to the statues of the Eponymous Heroes<sup>20</sup> in the

*agora*. The proposal would be considered by the Council, and would be placed on the agenda of the Assembly in the form of a motion. If the Assembly voted in favor of the proposed change, the proposal would be referred for further consideration by a group of citizens called *nomothetai* (literally “establishers of the law”).

**Reconstruction of statutes of the Eponymous heroes**



The *nomothetai* were selected by lot from among that year's pool of 6,000 jurors.<sup>21</sup> The number of *nomothetai* selected varied, and could be large: on one occasion a group of 1,001 was said to have been selected. The proceeding before the *nomothetai* was conducted like a trial. Five citizens (previously selected by the Assembly) would speak in defense of the existing laws, while others would speak for the proposed

---

<sup>20</sup> The Eponymous Heroes were those legendary heroes of Athens after whom the ten Athenian tribes were named.

<sup>21</sup> On the jury pool, see below at p. 23.

amendment. The *nomothetai* voted by a show of hands, and if the amendment was approved it became law.

There were two other routes to initiating a modification of the laws. The Assembly, at its first meeting of the year, conducted a review of the laws. If a majority voted to change any of the laws, the proposal was referred for a hearing before the *nomothetai* as described above. Similarly, beginning in the mid-fourth century the *thesmothetai* were required to review the laws each year, and to refer any proposed changes to the *nomothetai*.

The procedure of *nomothesia*, in combination with the distinction between laws and decrees, might be thought of as an implementation of the concept of constitutional law as a higher, and more stable, law than ordinary legislation. Laws were like constitutional rules, and decrees were like ordinary legislation, in that (1) it was impermissible for a decree to contradict a law, and (2) the procedure for making or amending a law was deliberately more cumbersome than that for revising a decree.

#### **6. “JUDICIAL REVIEW” VIA *GRAPHĒ PARANOMŌN***

The Athenian constitution included rules that made the proposal of a law illegal in certain circumstances. One such set of circumstances derives from the procedure of *nomothesia* described above. It was unconstitutional to propose a new law contradicting an existing one without publishing the proposal in advance, or to propose a law before the Assembly without first passing it through the Council. It was likewise unconstitutional to propose a decree that conflicted with an existing law. A decree was also deemed unconstitutional if it was proposed by a person who had been deprived of his citizenship rights.

The procedure used to challenge a law or decree as unconstitutional was called *graphē paranomōn*, which means

“prosecution for being against the law.” A *graphē paranomōn* could be initiated, by any citizen,<sup>22</sup> either after the law or decree was enacted or while it was under consideration. In the latter case, the prosecutor’s sworn statement that he intended to initiate a *graphē paranomōn* would bring the Assembly’s consideration of a proposed law or decree to a halt. The challenge consisted of a trial before an ordinary jury court, consisting of 500 jurors or more.

If the court decided that the measure was unconstitutional, it was declared invalid, and the proposer of the measure was fined. A man who was convicted three times of proposing an unconstitutional law or decree was punished with loss of his citizen rights—an indication of how serious a violation it was considered.

If the court decided that the measure was constitutional, it gained the status of an enactment, even if the Assembly had never approved it. This is a striking example of what we would consider a violation of the principle of separation of powers: the court, whose job it is to *interpret* the laws, was in this circumstance responsible for *enacting* a law. For the Athenians, however, this posed no problem, since the courts were conceived of as representing the entire *demos* (“the people” or “the community”) and therefore could legitimately exercise ultimate power in all spheres.

During the oligarchies of 411 and 404 BCE, the *graphē paranomōn* was suspended, confirming its status as a bulwark of the rule of law and of the democracy.

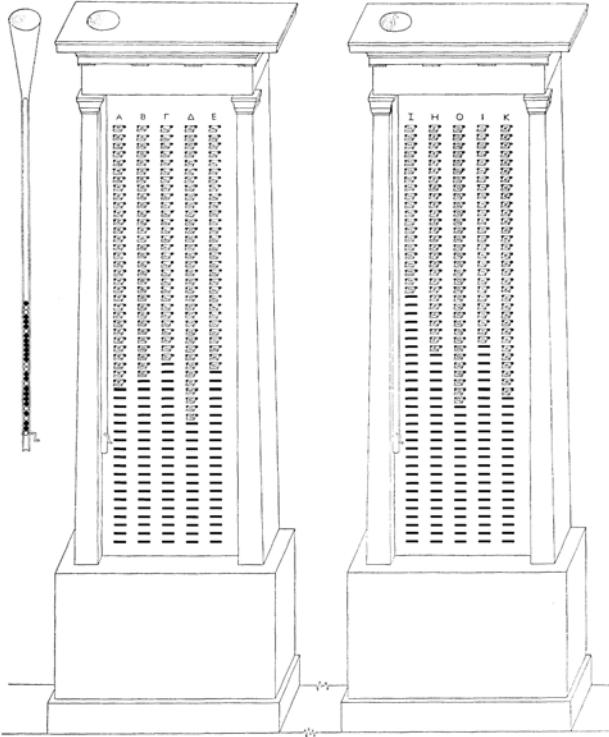
#### **D. THE JURY COURTS**

The third principal institution of the Athenian democracy was the jury court. Before the reforms of Ephialtes in the mid-fifth century, the court consisted of the entire Assembly, sitting as a court to hear appeals from decisions by magis-

---

<sup>22</sup> On initiation of prosecutions by private citizens, see below at p. 25.

trates, and was called the Heliaeae. After those reforms, when the court became open to many types of lawsuits, the Heliaeae was reconstituted as a group of jury courts, each of which sat to hear individual cases. There may have been up to ten jury courts in session on any given day.



Reconstruction of a pair of kleroteria

### 1. SELECTION OF JURORS

At the beginning of each year 6,000 jurors were enrolled from among those who volunteered, probably 600 from each tribe.<sup>23</sup> Jurors had to be male citizens at least 30 years old, not subject to disfranchisement, and not in debt to the state.

---

<sup>23</sup> The Greek term translated as “jurors,” *dikastai*, could with equal accuracy be rendered as “judges.” *Dikastai* shared some of the characteristics of our jurors (they were laypeople who sat in judgment at a particu-

Each day, jurors were selected from among those in the jury pool who presented themselves for service, as many as were needed to man whatever courts were in session. The size of jury panels was very large by our standards, ranging from 200 up to 500 or more; one particularly significant *graphe paranomōn* is recorded as being judged by 6,000 jurors!

Jurors were picked through a random selection process designed to make it difficult to bribe jurors. During the course of the democracy the juror-selection process went through several iterations, becoming progressively more insulated against tampering. Starting early in the fourth century, jurors were selected through a complex procedure that made use of a juror-selection machine called a *kleroterion*, which involved arranging tokens representing each of the prospective jurors in an array of rows and columns, and using a random method of selecting some rows of tokens for that day's juries. The jurors thus selected were allocated randomly among the courts in session that day.

## **2. JURORS' PAY**

Pay for jurors was introduced around 450 BCE upon the motion of Pericles. Initially set at two obols per day, in the 420s the pay was raised to three obols, at which level it remained through the end of the democracy. Payment at this level would not have been very attractive to those with other employment opportunities.<sup>24</sup> Aristophanes' comedy *The Wasps* (written 422 BCE), which centers around an elderly Athenian who is addicted to jury service, suggests that jurors were drawn exclusively from the ranks of the indigent elderly. Other evidence suggests that the jury pool also included men who were well-off (and so did not care about the

---

lar trial), and some of judges (they were the ultimate authority as to the law).

<sup>24</sup> On comparative levels of pay, see p. 17, n.15, above.

pay), as well as farmers in the off season, but that those engaged in trade or in the crafts were underrepresented.

### **3. APPEALS**

There was no appeal from the judgment of a jury court. The jury, like the Assembly, was considered to represent the entire *demos*: this is indicated by the fact that litigants addressing a jury routinely use the second person plural, “you,” when referring to an action taken by the Assembly. Thus in one case, a defendant charged with homicide for killing a man he caught *in flagrante delicto* with his wife defended on the ground that the law permitted, and even required, extrajudicial execution in such a circumstance. The defendant explained to the court that the man had offered to pay him compensation in lieu of suffering death, but the defendant declined the offer:

But I would not agree to his proposed penalty, as I held that our city's law should have higher authority; and I obtained that satisfaction which *you* deemed most just when *you* imposed it on those who adopt such courses.<sup>25</sup>

Since the jury represented the *demos*, there was no higher authority to which to appeal.

### **4. INITIATING A LAWSUIT**

Almost all cases were initiated by private parties, not by a public prosecutor, including those involving serious crimes like murder. Some types of cases could be brought only by the victim; others, by any citizen.

Litigation was initiated when the plaintiff served a summons on the defendant, before witnesses. The summons called upon the defendant to appear before a magistrate on a specified date. At this initial meeting, the plaintiff would present his charge. If the magistrate accepted the charge, he would set a date for a preliminary hearing, called *anakrisis*.

---

<sup>25</sup> Lysias 1.29 (emphasis added).

Not much is known about what occurred at the *anakrisis*. It may have served to clarify the issues through the magistrate's questioning of the witnesses. At the end of the *anakrisis*, a date was set for trial.

### **5. CONDUCT OF TRIALS**

The Athenian trial consisted primarily of the speeches given by the litigants and witness statements read by the court clerk. The plaintiff spoke first, and then the defendant. Speeches were nearly always delivered by the litigants themselves. There was no possibility of having one's speech presented by a professional, though in some circumstances, such as if the litigant were young or inexperienced, a close friend or relative could deliver a supporting speech.

Although litigants generally delivered their own speeches, the speech could be written by somebody else. Professional speech writers, called "logographers," were skilled in writing trial speeches and knew what rhetorical strategies were most likely to persuade an Athenian jury. Nevertheless, speeches were delivered in the first person, and a litigant never made reference to the fact that he had not written the speech. It is not known whether speeches were read out in court, or were recited from memory.

Prior to about 380 BCE witness testimony was presented orally. After that time, witnesses no longer gave live testimony in court. Instead, a litigant prepared a written witness statement in advance of the trial. The court clerk read the statement at the point in the litigant's speech when it was called for, and the witness affirmed that the testimony was truthful.

Adult male citizens, resident aliens, and freedmen could be witnesses. It appears, however, that women and children could not offer testimony. Slaves were permitted to testify, but only if the testimony were taken under torture. The (rather dubious) rationale for this rule was that a slave belonging to the litigant was unlikely to testify against his mas-

ter, unless the punishment for lying was greater than the punishment that he would expect from his master.

Trials in ancient Athens had to be completed within one day. The litigants' speeches were limited to a certain length of time, the same for each side, and were timed using a water clock called a *klepsudra*.

The presiding magistrate was not like a modern-day judge. First, the magistrates were laymen, selected by lot to serve in the position for a single year, without any specific training or legal knowledge. Second, the magistrate could not dismiss a case on legal grounds or set out the issues to be decided by the jury. Also, a magistrate did not hear objections or stop litigants from introducing irrelevant material at trial.

In the fourth century BCE, jurors delivered their votes by dropping bronze voting tokens into voting urns. Each juror had two voting tokens, one with a hollow tube through the



Bronze voting tokens

middle, the other with a solid tube. A hollow tube meant a vote for the plaintiff, a solid one a vote for the defendant. There were two voting urns: one for tokens that would be counted, the other for discarded tokens. Each juror would walk past the two urns, dropping one token in one urn and one in the other. By holding his fingers over the ends of the tubes, he could keep his vote secret. Ballot counters would count the tokens in the urn for valid votes. The majority of votes decided the verdict, and an equal number of votes meant acquittal.

Jurors voted immediately after completion of the speeches. There was no instruction by a judge, and no deliberation among the jurors.

## **6. NONJUDICIAL FUNCTIONS OF THE JURY COURTS**

In addition to their judicial function of hearing trials, the jury courts had some other important functions in the democracy.

It was the courts that conducted the *dokimasia* (scrutiny for fitness for office) of most magistrates, and that made the final determination in *dokimasiai* of archons and Council members.<sup>26</sup>

The courts also heard prosecutions resulting from *eisangelia* (impeachment) and *apophasis* (investigatory report) procedures.<sup>27</sup> While these were formally trials, they were often invoked against politically active individuals. Since the courts represented the entire *demos*,<sup>28</sup> a trial of this sort might be considered more a political than a judicial act.

A *graphē paranomōn*<sup>29</sup> was also formally a trial, but cast the court in a legislative role. This is because if the challenged law was found to be constitutional, it was deemed to be enacted even if the Assembly had not voted on it.

## **E. THE AREOPAGOS**

### **1. MEMBERSHIP**

The Council of the Areopagos—the name means “Hill of Mars,” and designates the location where it met—consisted of all archons who had completed their term of office. In contrast to all other officeholders, who were limited to a one-

---

<sup>26</sup> On *dokimasia*, see below at p. 34.

<sup>27</sup> On *eisangelia*, see below at p. 34; on *apophasis*, p. 36.

<sup>28</sup> See p. 25, above.

<sup>29</sup> On *graphē paranomōn*, see above at p. 21.

year term, membership on the Areopagos was for life—a holdover from pre-democratic times. The membership consisted probably of 100-200 men.

## **2. FUNCTIONS**

In pre-democratic times, the Areopagos had broad-ranging authority in Athens. According to Aristotle, the Areopagos was then “guardian of the laws, and kept watch over the magistrates to see that they executed their offices in accordance with the laws.”<sup>30</sup>

After the reforms of Ephialtes in the mid-fifth century, which stripped the (undemocratic) Areopagos of most of its authorities, the principal duty of the Areopagos was to try cases of intentional homicide. This body also heard cases of assault and wounding, and those involving certain types of sacrilege.

In addition to holding trials, the Areopagos could be called upon, by either the Council or the Assembly, to conduct an investigation into a possible offense and make a report (called *apophasis*<sup>31</sup>) of its findings. Based on the report, the Assembly might decide that the subject of the investigation should be prosecuted. If so, it passed a decree setting out the details of the trial. The *apophasis* procedure was most often used to investigate the conduct of public officials.

## **F. MAGISTRATES**

“Magistrate” is the usual translation of the term that is used to designate a range of public officials. All magistrates held some sort of judicial function, such as introducing cases into court, and presiding over trials. Magistrates could also impose fines of up to 50 drachmas for violation of laws within their jurisdiction. For example, the Eponymous Archon, a magistrate who was responsible for organizing the

---

<sup>30</sup> Aristotle, Ath. Pol. 4.4.

<sup>31</sup> On *apophasis*, see below at p. 36.

annual Dionysia festival, could impose fines on those who behaved improperly at the festival.

All magistrates, other than the *strategoi* and other military officers, were chosen by lot. All held office for a one-year term.

### **1. THE NINE ARCHONS**

The nine archons<sup>32</sup> consisted of the Eponymous Archon, the King Archon, the Polemarch,<sup>33</sup> and six *thesmoothetai*.<sup>34</sup> Starting in the first half of the fifth century, they were selected by lot, and held office for one year. A man could serve as archon only once in his life. Incoming archons were subject to *dokimasia* by the Council.

The archons handled the pretrial phase of legal cases, each category of archon being responsible for cases of a particular subject matter, and presided over the trials within their jurisdiction. For example, the Eponymous Archon handled cases having to do with property and family matters, such as inheritance, guardianship of orphans, and division of common property.

The archons also had certain executive responsibilities. For example, the King Archon handled most of the religious functions of the former kings, including management of the Mysteries, supervising the Lenaian Dionysia and other ancestral festivals, and overseeing land dedicated to the gods. The Eponymous Archon exercised general oversight over or-

---

<sup>32</sup> “*Arkhōn*” means “leader” or “ruler.”

<sup>33</sup> “*Polemarchos*” means “leader in war.”

<sup>34</sup> “*Thesmoothetai*” means “those who establish the laws.”

The terminology is confusing. All nine of these officials were called archons. The head archon was called the Archon, or the Eponymous Archon (because the year in which he served was referred to by his name). The other archon who was not a *thesmoothetes* and not the Polemarch was called the King Archon.

phans, heiresses,<sup>35</sup> and widows who claimed to be pregnant by their dead husbands. He also managed dramatic contests and the allotment of liturgies.<sup>36</sup>

After their year of service, the nine archons became members of the Areopagos, on which they served for life.

## **2. THE ELEVEN**

The board of magistrates called The Eleven were primarily executive officers, in charge of the prisons and executions. They also had some judicial functions. If a person was caught in the act of engaging in certain types of crimes, including theft, kidnapping, burglary, and pickpocketing, he could be brought before the Eleven; and if he admitted his guilt, the Eleven could summarily execute him, without a trial. (This seems like an excellent occasion on which to take the Fifth.) If he claimed innocence, he was entitled to a trial before a jury court, with the Eleven presiding.

## **3. ASTYNOMOI**

There were five *astynomoi* for Athens, and five for Piraeus (the port of Athens). They were responsible for cleanliness and order in the streets. They enforced miscellaneous regulations, such as the rules that flute girls may not be hired for more than two drachmas, that dung collectors may not deposit dung within ten *stades* of the city wall, and that a householder may not build over the street. They also collected dead bodies from the streets.

---

<sup>35</sup> “Heiress” is the conventional translation of a term that refers to an brotherless woman whose father has died and who has no male issue. An heiress could be “claimed” in marriage by a male relative, as a means of keeping property in the family.

<sup>36</sup> A “liturgy” was a service performed by a wealthy individual, at his own expense, for the benefit of the public. Each year a number of individuals (perhaps one hundred each year) would be appointed to perform such services. Common types of liturgies were funding a dramatic performance, and outfitting a warship.

#### **4. AGORANOMOI**

The *agoranomoi* (five for Athens, and five for Piraeus) supervised commercial activity in the marketplace (the *agora*). They dealt with false advertising, sale of adulterated goods, public order in the *agora*, and possibly price regulation. Other more specialized officials regulated the retail grain trade, the wholesale grain trade, and weights and measures in the marketplace.



**The Athenian agora, in its prime**

#### **5. LOGISTAI AND EUTHYN NOI**

The *logistai* and the *euthynoi* were magistrates with various auditing functions, described more fully below.

#### **6. THE TEN STRATEGOI**

The *strategoi* ("generals") were the military commanders. Ten were elected each year, one from each of the tribes—an exception to the general rule that public officials were selected by lot. Unlike the archons and Council members, they could be reelected any number of times: Pericles in his heyday held the office for fifteen years continuously.

The *strategoi* had command over military forces in the field. At one time this included the authority to sentence a

soldier to death summarily, but by the mid-fourth century they could only remand an errant soldier into custody or impose a fine. The *strategoi* also had military responsibilities within the *polis*, including enrolment of soldiers, designation of wealthy citizens required to outfit warships for the navy, and presiding over trials of those accused of desertion and evasion of military service. Several categories of subordinate military officers were also elected, including ten *taxisarchs*, who commanded the tribal contingents of hoplites, and two *hipparachs*, who commanded the cavalry.

The *strategoi* are considered to have been the most influential of the magistrates. Their enhanced status derived from the facts that they alone among the magistrates were elected, and they could be reelected any number of times.



**Pericles**

## **VI. METHODS OF CONSTRAINING THE POWER OF PUBLIC OFFICIALS**

A perennial difficulty for democratic constitutions is the need to assign public officials sufficient power to accomplish the objectives of government, while at the same time preventing them from exceeding their assigned powers in a way that would detrimentally affect the liberties of the people. The fear of tyranny permeated the debates over ratification of the U.S. Constitution in 1787-88, and was the principal concern of the antifederalists. Our Constitution employs several structural devices designed to prevent overreaching by public officials, chief among them being democratic accountability, confinement of the federal government to enumerated powers, federalism, protection of individual rights, and separation of powers.

The Athenians, having experienced the tyranny of the Peisistratids in the late sixth century, and having seen their

democracy twice subverted (albeit briefly) at the end of the fifth century, were likewise concerned to constrain the power of public officials. When reading the following, consider to what extent the Athenian constitution resembled ours in this respect, and to what extent it differed.

### **A. DOKIMASIA**

Any citizen selected by lot or election to a public office had to undergo *dokimasia* (“examination” or “scrutiny”) before taking office. This was an examination for the formal qualifications for office, such as citizenship, age, and whether the candidate had held the office previously so as to be ineligible.

For most magistrates, *dokimasia* was conducted by a jury court, presided over by one of the *thesmoothetai*. Those selected as archons and Councilors had first to undergo *dokimasia* by the Council. Aristotle’s reconstruction of the questions asked in a *dokimasia* is as follows:

When they are examined, they are asked, first, “Who is your father, and of what deme? who is your father’s father? who is your mother? who is your mother’s father, and of what deme?” Then the candidate is asked whether he possesses an ancestral Apollo and a household Zeus, and where their sanctuaries are; next if he possesses a family tomb, and where; then if he treats his parents well, and pays his taxes, and has served on the required military expeditions.<sup>37</sup>

Anybody who wished could make an accusation against the candidate, who could speak in his own defense. The jury or Council then voted to accept or reject him. If the candidate was rejected, he did not incur any punishment, but was merely excluded from the office.

### **B. EISANGELIA**

*Eisangelia* was a sort of impeachment procedure, which was used principally against public officials.<sup>38</sup> It could be

---

<sup>37</sup> Ath. Pol. 55.3.

<sup>38</sup> It could also be used against orators who were bribed to mislead the

brought at any time rather than, as with *euthyna*,<sup>39</sup> only at the end of the official's term of office. An *eisangelia* could be initiated in either of two ways. First, it could be presented to the Council, which would render a preliminary verdict and could refer the matter to a court for trial. Second, an *eisangelia* could be brought directly before the Assembly, which would decide whether to hear the case itself, or to refer it to a court.

As an indication of the importance that the *eisangelia* procedure occupied in the democracy, the normal rule that the prosecutor of a public case (who was a private citizen) was subject to a fine of 1,000 drachmas if he failed to win the votes of at least one-fifth of the jurors was not applied to cases brought via *eisangelia*.

### **C. EPIKHEIROTONIA**

At the first (Principal) meeting of the Assembly each prytany, there was a vote on whether public officials were performing their duties well, in a procedure called *epikheirotonia* ("voting by a show of hands"). If the vote went against an official, he was provisionally deposed from office, and he would be tried before a jury court. If convicted, he would be removed from the position, and might be fined, as was Pericles in 430 BCE. If acquitted, the official would return to his office.

### **D. EUTHYNA**

*Euthyna* was an examination of a public official that occurred after he completed his term of office. It was applied to all magistrates and the Council members, but not to jurors.

The examination consisted of two stages. First, there was a review of the official's handling of public money, to uncover crimes such as embezzlement, accepting bribes, or causing

---

*demos*, and against any citizen who tried to overthrow the democracy.

<sup>39</sup> On *euthyna*, see below on this page.

loss to the *demos* through neglect. The examination was conducted by ten *logistai*, who were selected from the citizens by lot.<sup>40</sup> The *logistai* then brought the official before a jury court, and invited anybody who wished to bring a charge against him.

The second stage of *euthyna* was aimed at uncovering any other sort of misconduct, such as neglect of duty or misuse of power. It was conducted by the ten *euthynoi*, who were members of the Council, one chosen by lot from each of the ten tribes. The *euthynoi* sat in the *agora*, each next to the statue of the Eponymous Hero corresponding to his tribe, and accepted written charges against the official. If the *euthynoi* thought any charge well founded, they passed it along to the appropriate magistrate for trial.

### **E. APOPHASIS**

In the mid-fourth century, the *apophasis* procedure was introduced to allow the Areopagos to investigate possible offenses. The Assembly could refer a matter to the Areopagos for investigation, or the Areopagos could commence an investigation on its own initiative. The Areopagos made a report (*apophasis*) of its findings to the Assembly, which would decide whether a person should be prosecuted. If so, the Assembly passed a decree setting out the details of the trial.

The *apophasis* procedure could be used against both private citizens and public officials. The best known example of the use of this procedure was in the Harpalos affair, when it led to the trial and conviction of the orator Demosthenes for accepting a bribe from the treasurer of Alexander the Great.

---

<sup>40</sup> These were distinct from the *logistai* selected from the Council members, discussed above at p. 16, who had a different function.

## **VII. REVIEW QUESTIONS**

- What political systems prevailed in Athens before the democracy? What were the stages of progress towards democracy?
- What were the qualifications for political participation in the democracy?
- Who were the members of the Council of 500? What were the Council's legislative, executive, and judicial functions?
- Who were the members of the Assembly? How often did the Assembly meet? What were the Assembly's legislative, executive, and judicial functions?
- What was the procedure by which laws were enacted?
- What was the difference between a law and a decree? What special procedure had to be followed to make a new law?
- What procedure was available to challenge the constitutionality of a law or decree?
- How were the jury courts constituted? What were the judicial and the nonjudicial functions of the jury courts?
- By whom were lawsuits initiated and conducted?
- Who were the members of the Areopagos, and what were its functions?
- What were the various categories of magistrates? How were they selected? What were their powers?
- What were the judicial functions of the archons? What were their executive functions?
- Which class of magistrates were popularly elected, and were not subject to term limitations?
- What mechanisms did the Athenian system employ to constrain the powers of public officials?

- Who were the *prytaneis* and *epistatai*, and what were their duties?

### VIII. DISCUSSION QUESTIONS

*[Institutions of the democracy]*

? To what institution in our system does each of the Athenian institutions most closely correspond? How does each differ from its modern analogue?

? Are there any elements of the Athenian system that seem to you bizarre or inexplicable?

? Many of the institutions of the Athenian government served some combination of executive, legislative, and judicial functions. Is this inconsistent with the concept of separation of powers? Are there comparable overlaps in the current U.S. system of government?

? Do you agree with the proposition that the jury courts had an inherently political role, even when they were engaged in hearing ordinary trials, inasmuch as (1) they consisted of large numbers of jurors, so that they resembled the political community as a whole more than a jury of one's peers; and (2) the jurors were not instructed by any judge, and voted immediately after the conclusion of the trial, without deliberating? Was the jury's decision more an exercise of political "will" than of "judgment."<sup>41</sup>

*[How democratic was the democracy?]*

? All of the magistrates, other than the *strategoi*, were selected by lot, and were limited to serving a single one-year term. Council members could serve no more than two one-year terms, nonconsecutively. In what respects was this more democratic than our system of popular election of high

---

<sup>41</sup> "The judiciary . . . may truly be said to have neither FORCE nor WILL, but merely judgment . . ." Federalist No. 78 (Hamilton).

government officials? In what respects less democratic? What definition of “democratic” are you using?

? In what respects was the Council a democratic institution? In what respects undemocratic? What definition of “democratic” are you using?

? In what respects was the Assembly more democratic than our Congress? In what respects less? What definition of “democratic” are you using?

? Was the Areopagos an antidemocratic institution? Did it belong under a democratic constitution?

? Do you think the Athenians would have objected to any elements of the contemporary U.S. constitutional system as undemocratic? Consider: (1) the electoral college; (2) selection of Senators by the state legislatures prior to adoption of the 17th Amendment; (3) equal representation of the states in the Senate; (4) the supermajority requirements for amending the Constitution; and (5) the Bill of Rights.

*[Controlling government officials]*

? What sorts of checks and balances did the Athenian system incorporate?

? What aspects of federalism were present in the Athenian system?

? What purposes do you think the Athenians hoped to serve by their random selection of government officials, and the accompanying term limitations?

? Why do you think the *strategoi* were elected, rather than chosen by lot? Why was there no term limit for *strategoi*?

? Except as to *strategoi*, who were elected, the Athenian system lacked the sort of democratic accountability that exists in our system through popular election of high political officeholders. Was that lack of democratic accountability a

major flaw of the Athenian system? What mechanisms filled the gap, and how effective do you suppose they were?

*[Ancient Athens and modern conditions]*

? Contemporary U.S. society is very different from classical Athens. Are there any elements of the Athenian system of government that you think could profitably be adopted into our own system?

? Which elements of the Athenian system of government are completely unsuited to modern conditions? Could elements of the Athenian model more plausibly have been applied to the United States as it was in 1787, than as it is now?

? Internet communications technology makes it feasible to institute a system of direct democracy, in which legislation would be enacted by the entire citizen body rather than by representatives. Would this be an improvement over the current system?

? Our system is a representative democracy; Athens was a direct democracy. Does representative democracy result in more competent decisionmaking? Recall Madison's contention, in Federalist 10:

The effect of [introducing a representative system is] to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country . . . Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose.

*[Sources of political power]*

? How did a citizen gain political power in the Athenian system? How does one gain political power in our system?

? Under the Athenian system was there more danger of manipulation of political decisionmaking by demagogues than under our system?

## IX. GLOSSARY

**Agora** — The heart of Athens, the *agora* was a sort of market square that provided a location where goods could be bought and sold as well as a place for political and philosophical debates.

**Agoranomoi** — A group of magistrates who were responsible for supervising commercial activity in the *agora*.

**Apophasis** (“report”) — A procedure under which the Areopagos conducted an investigation of a public matter, and delivered a report that might lead to a prosecution.

**Archon** (“leader” or “ruler”) — One of The Nine Archons, magistrates who exercised certain judicial and executive duties under the democracy. They consisted of the Eponymous Archon (aka the Archon), the King Archon, the Polemarch, and six *thesmothetai*.

**Areopagos** (“Hill of Mars”) — A body consisting of all archons who had completed their term of office. Members served for life. The Areopagos had limited functions under the democracy, but exercised much greater powers under the pre-democratic systems.

**Assembly** — The Athenian legislative body, consisting of all adult male citizens who were not subject to disfranchisement.

**Astyynomoi** — A group of magistrates who were responsible for cleanliness and order in the streets.

**Attica** — The territory within which Athens was situated.

**Classical period** — The period of Athenian history that ran from 490 BCE (the first Persian invasion of Greece) until 323 BCE (death of Alexander the Great). During this period the Athenian democracy flourished, and Athens was at the height of its accomplishments.

**Cleisthenes** — An Athenian reformer who, in 507 BCE, took a major step toward establishment of the democracy by reorganizing the political structure so as to reduce the power of aristocratic elements of society.

**Council of 400** — The Council created by Solon.

**Council of 500** — The Council created by Cleisthenes, which replaced Solon’s Council of 400. It functioned throughout the pe-

riod of the Athenian democracy, and beyond.

**Councilor** — A member of the Council of 500.

**Deme** — A geographically based political unit, of which there were 139 throughout Attica.

**Demos** (“the people” or “the community”) — The political community as a whole.

**Dokimasia** (“examination” or “scrutiny”) — Examination of a person selected for public office, to determine whether he met the formal qualifications of office.

**Eisangelia** — A sort of impeachment procedure, used principally against public officials.

**Eleven, The** — A board of magistrates who were in charge of the prisons and executions.

**Ephialtes** — An Athenian reformer who, in 462 BCE, initiated a series of reforms that led to the mature form of the democracy.

**Epikheirotonia** (“voting by a show of hands”) — A vote on whether public officials were performing their duties well. A negative vote would result in deposition and trial of the disapproved official.

**Epistatēs** (plur. *epistatai*) (“chairman”) — A man selected by lot from among the *prytaneis* to serve, for one day, as presiding officer at Council meetings and to be on 24-hour call in case of emergency.

**Eponymous Archon** — One of the Nine Archons.

**Euthyna** — An examination of a public official that occurred after he completed his term of office. It consisted of two stages: examination by the *logistai*, followed by examination by the *euthynoi*.

**Euthynoi** (“public auditors”) — A ten-member subcommittee of the Council, selected by lot, who reviewed each public official’s handling of his office at the end of his term.

**Graphē paranomōn** (“prosecution for being against the law”) — The procedure used to challenge a law or decree as unconstitutional.

**King Archon** — One of the Nine Archons.

**Logistai** (“public accountants”) — (1) A ten-member subcommittee of the Council, selected by lot, who checked the accounts of all officials who handled public money each prytany. (2) Citizens,

selected by lot, who reviewed the accounts of public officials at the end of their term as part of the *euthyna* procedure.

**Magistrate** — Any of a range of public officials, including the nine archons, the Eleven, *astynomoi*, *agoranomoi*, *logistai*, *euthynoi*, and *strategoi*. All except the *strategoi* were selected by lot, and served a single one-year term.

**Nomothesia** — The procedure for making or amending a law (an enactment that established a general rule), more cumbersome than the ordinary procedure for making or changing a decree (an enactment that called for a specific action to be taken in a particular case).

**Nomothetai** (“establishers of the law”) — The group of citizens selected by lot to determine whether a proposed law should be accepted.

**Obol** — A unit of money. There were six obols in a drachma.

**Oligarchies of 411 and 404 BCE** — Brief periods, each lasting less than a year, during which the Athenian democracy was replaced by an oligarchic regime (rule by a narrow segment of society).

**Peisistratids** — Peisistratos and his sons Hippias and Hipparchus, who seized power in Athens and ruled from 546 - 510 BCE.

**Peloponnesian War** — War between Athens and Sparta, 431 - 404 BCE. The Spartans won.

**Persian Wars** — Invasions of Greece by the Persian empire in 490 and 480 BCE, aimed at conquest. The Greeks, thanks largely to Athenian leadership, repulsed the Persians on both occasions.

**Polemarch** (“leader in war”) — One of the Nine Archons.

**Polis** (pl. *poleis*) — The basic political unit of Greek-speaking people during the classical period. This term is usually translated as “city-state.” A *polis* had characteristics of both a city and a country: it was the size of a city, in most cases what we would consider a small city; but it had an autonomous political system, like a country.

**Prytaneis** (sing. *prytanis*) (“president” in the sense of “one who presides”) — The group of fifty Councilors from one of the ten tribes who took their turn serving as the Council’s steering committee during a particular prytany.

**Prytany** — A time period consisting of one-tenth of the year, ei-

ther 35 or 36 days.

**Solon** — An upper-class Athenian, appointed by the Athenians in 594 BCE to reform the laws so as to moderate the strife between the wealthy and the poorer classes.

**Strategoi** (“generals”) — The chief military commanders of Athens. Ten were elected each year, one from each of the tribes.

**Thesmotetai** (“those who establish the laws”) — The six officials who, together with the Eponymous Archon, the King Archon, and the Polemarch, made up the Nine Archons.

**Thirty Tyrants** — The brutal oligarchy that Sparta installed in Athens in 404 BCE after Sparta’s victory in the Peloponnesian War. The oligarchy gave way to a restored democracy within a year.

**Tribes, ten** — The ten subdivisions of the Athenian population, established by Cleisthenes in 507 BCE, and serving as political units for various purposes under the democracy.