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# Athenian Democracy: a brief overview

## SUMMARY

This article was originally written for the online discussion series “Athenian Law in its Democratic Context,” organized by Adriaan Lanni and sponsored by Harvard University’s Center for Hellenic Studies. Its purpose is to introduce, very briefly, the institutions of the Athenian democracy during the late 5th century BCE through the end of the radical democracy in the late 4th century. This is a companion-piece to “The Development of Athenian Democracy,” also written for the CHS’s discussion series.

## INTRODUCTION

The city of Athens lived under a radically democratic government from 508 until 322 BCE. Before the earlier date there was democracy to be found here and there in the government of Athens, and democratic institutions survived long after the latter date, but for those 186 years the city

of Athens was self-consciously and decidedly democratic, autonomous, aggressive, and prosperous. Democracy in Athens was not limited to giving citizens the right to vote.

Athens was not a republic, nor were the People governed by a representative body of legislators.

In a very real sense, the People governed themselves, debating and voting individually on issues great and small, from matters of war and peace to the proper qualifications for ferry-boat captains (for the latter, see Aeschin. 3.157).<sup>1</sup> The

<sup>1</sup>From time to time in this introduction, I cite ancient evidence for our knowledge of Athenian democracy and its history. In doing so, I have tried to limit myself to sources I know to be available online, in the original language and in translation.

Athenian democracy was not, of course, a free-for-all of mob rule. The Athenians understood the value of checks and balances and of enforcing time for reflection before acting. They understood that professionalism is necessary in certain jobs, that accountability was necessary of most jobs, and that some jobs required absolute job-security. The system evolved over time, suffered two complete breakdowns in the 5th century, and is certainly open to criticism at many points during its history. Nevertheless, it was coherent enough during those two centuries that we can describe it, in general terms, without being too far wrong on any point. And despite its moments of imprudence, injustice, and indecision, it was an experiment remarkable enough to deserve our attention.

The early history of Athenian Democracy and its development is the subject of another article in this series. This general description of how the Athenians governed themselves will focus on the 4th century BCE, both because the

democracy was most fully developed during that time and because the majority of our evidence either comes from that period, or describes the Athenian government during that period.

### THE DĒMOS

For the Athenians, “democracy” (*demokratia*) gave Rule (*kratos*) to the Dēmos. Dēmos (pronounced “day-moss”) has several meanings, all of them important for Athenian democracy. Dēmos is the Greek word for “village” or, as it is often translated, “deme.” The deme was the smallest administrative unit of the Athenian state, like a voting precinct or school district. Young men, who were 18 years old presented themselves to officials of their deme and, having proven that they were not slaves, that their parents were Athenian, and that they were 18 years old, were enrolled in the “Assembly List” (the *pinakon ekklesiastikon*) (see Dem. 44.35; Aristot. *Ath. Pol.* 42.1).

Another meaning of Dēmos, to the Athenians, was “People,” as in the People of Athens, the body of citizens collectively. So a young man was enrolled in his “dēmos” (deme), and thus became a member of the Dēmos (the People). As a member of the Dēmos, this young man could participate in the Assembly of Citizens that was the central institution of the democracy. The Greek word for “Assembly” is *ekklesia*, but the Athenians generally referred to it as the “Dēmos.” Decrees of the Assembly began with the phrase “It seemed best to the Dēmos...,” very much like the phrase

“We the People...” that introduces the Constitution of the United States. In this context, “Dēmos” was used to make a distinction between the Assembly of all citizens and the Council of 500 citizens, another institution of the democracy (see below). So some decrees might begin “It seemed best to the Dēmos...”, others might begin “It seemed best to the Council...”, and still others might begin, “It seemed best to the Dēmos and the Council...”

So the Athenian Dēmos was the local village, the population generally, and the assembly of citizens that governed the state.

#### ATHENIAN DEMOCRACY: AN OVERVIEW

The democratic government of Athens rested on three main institutions, and a few others of lesser importance. The three pillars of democracy were: the Assembly of the Dēmos, the Council of 500, and the People’s Court. These were supplemented by the Council of the Areopagus, the Archons, and the Generals. Actual legislation involved both the Assembly and the Council, and *ad hoc* boards of “Lawmakers.” This summary will describe the Assembly, the Council, and the process of legislation in the greatest detail, along with a shorter description of the Council of the Areopagus. The People’s Court will be covered briefly and then left for fuller treatment in other resources. While Generals and Archons will appear here and there in the descriptions of other institutions, they were really servants

of the *Dēmos* and do not require extensive discussion in this relatively brief introduction to Athenian Democracy.

#### Athenian Democracy: the Assembly

The Assembly (*Ekklesia*) was the regular gathering of male Athenian citizens (women also enjoyed a certain citizen status, but without political rights) to listen to, discuss, and vote on decrees that affected every aspect of Athenian life, both public and private, from financial matters to religious ones, from public festivals to war, from treaties with foreign powers to regulations governing ferry boats.

The Assembly (the *Ekklesia*) was the regular opportunity for all male citizens of Athens to speak their minds and exercise their votes regarding the government of their city. It was the most central and most definitive institution of the Athenian Democracy. Before 462 BCE, the Court of the Areopagus controlled legislation in Athens, but in that year Ephialtes instituted a reform that diminished the power of the Areopagus and increased the power of the Assembly of the people (Aristot. *Ath. Pol.* 25.2; Aristot. *Ath. Pol.* 27.1; Plut. *Cim.* 15.2; Plut. *Per.* 9.5). This Assembly became synonymous with democracy. When Aristotle describes how democratic government was restored, after Sparta defeated Athens in 404 BCE, he says that this restoration happened when the People (*Dēmos*) became sovereign over affairs (Aristot. *Ath. Pol.* 41.1). Under this government, he says, the People administers all business by decrees and by law-courts (Aristot. *Ath. Pol.* 41.2). When Aristotle men-

tions the People and government by decrees, he is describing the Assembly.

In the Assembly each male citizen of Athens could speak, regardless of his station. The orator Aeschines says that “the herald, acting as a sergeant-at-arms, does not exclude from the platform the man whose ancestors have not held a general’s office, nor even the man who earns his daily bread by working at a trade; nay, these men he most heartily welcomes, and for this reason he repeats again and again the invitation, ‘Who wishes to address the Assembly?’” (Aeschin. 1.27) The orator Demosthenes could scold his fellow Athenians for failing to recollect certain events, because they “were present at every Assembly, as the state proposed a discussion of policy in which every one might join” (Dem. 18.273). “Everyone,” in this context, refers to the body of citizens who were registered on the Assembly List for their local Deme (Dem. 44.35). Under the Democracy of Aristotle’s time (after 330 BCE), young men were enrolled on this list when they were 18 years old (Aristot. *Ath. Pol.* 42.1), then spent two years as military cadets, or *ephebes* (Aristot. *Ath. Pol.* 42.4), after which they were members of the citizen body (Aristot. *Ath. Pol.* 42.5).

Of course, some people might be better qualified than others to speak on certain subjects, and the citizens of Athens could be very critical when anyone tried to speak outside of his expertise. The character Socrates in Plato’s *Protagoras* says that “when the Athenian Assembly is discussing construction, the citizens call for builders to speak,

and when it is discussing the construction of ships they call for shipwrights, but if anyone else, whom the people do not regard as a craftsman, attempts to advise them, no matter how handsome and wealthy and well-born he may be, not one of these things induces them to accept him; they merely laugh him to scorn and shout him down, until either the speaker retires from his attempt, overborne by the clamor, or the Archers pull him from his place or turn him out altogether by order of the presiding officials” (Plat. *Prot.* 319b – Plat. *Prot.* 319c). But, Socrates continues, when the discussion is not about technical matters but about the governing of the city, the man who rises to advise them on this may equally well be a smith, a shoemaker, a merchant, a sea-captain, a rich man, a poor man, of good family or of none (Plat. *Prot.* 319d).

There is the question of participation by Athenians living in the countryside of Attica, outside the city of Athens. While these people were certainly citizens of Athens, it may often have been difficult for them to attend a meeting of the Assembly. This would have been especially true when emergency meetings were called on short notice, such as the occasion when news of a military disaster came to the city in the evening, and a special Assembly convened the very next morning (Dem. 18.169). This Assembly, and any others like it, must have consisted mainly of citizens living close to the city. And even when there was more warning before a meeting, we have to wonder how many Athenians living in the countryside of Attica would have made a 50 or

60 mile journey to downtown Athens and back. In the 5th century we can estimate the adult male population of Athens, and thus the number of men eligible to participate in an Assembly, to have been 40,000 – 60,000, and in the 4th century, 20,000 – 30,000. But the number of Athenians in attendance at a given meeting seems to have been considerably lower. Thucydides makes the statement that during the Peloponnesian War (331 – 404 BCE) there were usually only 5000 people at a meeting (Thuc. 8.72), although he may be exaggerating downwards; a better measure of regular attendance might be the fact that 6000 citizens were required for a valid vote conferring citizenship on a non-Athenian (the earliest evidence for this rule dates from 369 BCE) (IG II<sup>2</sup> 103; Dem. 24.45; Dem. 59.89).

When the Assembly met, the male citizens assembled to discuss the affairs of the city, and this discussion required that each citizen have freedom to speak his mind. This freedom was vital to the proper functioning of the Assembly, whether the issue at stake was some important public policy (Dem. 15.1), or the rights of a single citizen (Dem. 18.3). In an anecdote from the distant past, Demosthenes suggests that freedom of speech had a long history at Athens, and persisted despite periodic attempts to limit it. He recounts how in the 6th century BCE the island of Salamis had revolted from Athenian control, and the Athenians had forbidden anyone even to propose a war to recover the island; but Solon, a real person whose place in Athenian history became subject of legend, composed a poem on the



subject (poetry on the subject was evidently not forbidden), and through this ruse got around the law and convinced Athens to fight for Salamis (Dem. 19.252). By the 4th century BCE, discussions of motions in the Assembly were opened with a general invitation to all the male citizens, as the Herald asked, “Who wishes to speak?” (Dem. 18.191; Aeschin. 1.26; Aristoph. *Ach.* 46). We might note, here, that Demosthenes claims a certain freedom of speech to have extended even to resident foreigners and slaves (Dem. 9.3), although he is certainly not talking about participation in the Assembly, and we should wonder how much freedom these people actually enjoyed.

This freedom to speak was not absolute or without regulation. Aeschines tells us, for example, that in the early democracy (before the 5th century) citizens over 50 years of age could speak first, and only after those had their say could younger men speak (Aeschin. 1.23; Aeschin. 3.2). Other formal restrictions could apply, such as decrees limiting discussion of certain topics to certain meetings of the Assembly (Aeschin. 2.109), or even laws forbidding discussion of issues already settled in a court (Dem. 24.54). Other, less legitimate (but perhaps more effective) limits could be imposed: the crowd might raise a clamor and refuse to listen to a speaker advocate an unpopular proposal (Dem. 19.111), and this seems to have happened often enough that orators regularly asked, beforehand, not to be shouted down (Dem. 13.14).

Individual citizens could lose the right to participate in the Assembly by committing various offenses (Aeschin. 1.23). Demosthenes mentions legal penalties for people who attend a meeting of the Assembly while owing a debt to the public treasury (Dem. 24.123), or who have been stricken, for some reason or another, from their deme's register of citizens (Dem. 18.132). Also prohibited from participating were: anyone convicted of prostituting himself (Aeschin. 1.72; Aeschin. 1.21; and Aeschin. 1.32, where the orator adds, "however well he speaks"), anyone who beat his father or mother, or failed to support them, or who threw away his shield in battle, or who squandered his inheritance (Aeschin. 1.28 – Aeschin. 1.30). Any citizen who suspected another of being unqualified to participate in the Assembly could challenge him to *dokimasia*, or "scrutiny," whereupon the issue would be decided by a jury in a law-court (Aeschin. 1.32).

Citizens were paid for attending the Assembly, to ensure that even the poor could afford to take time from their work to participate in their own government. Aristotle recognized that inclusion of all citizens and freedom to speak are not the only hallmarks of a democratic constitution, but that the most democratic states pay their citizens for attending the Assembly. He claims that in the absence of payment, the Council (*Boule*) is the most democratic of magistracies (Aristot. *Pol.* 1317b), but in states that can afford to, and do, pay their citizens for attending meetings of the Assembly, all the citizens actually take part in it and

exercise their citizenship, because even the poor are enabled to be at leisure by receiving pay (Aristot. *Pol.* 1293a). A historical anecdote recorded in Aristotle's *Constitution of the Athenians* (Aristot. *Ath. Pol.*) further supports this assertion: In 411, when a group of Athenians temporarily overthrew the democracy and established an oligarchy, one of their first acts was to pass a law that no one should receive pay for political activity (Aristot. *Ath. Pol.* 29.5; and Aristot. *Ath. Pol.* 33.1, referring to the subsequent regime of 411 and 410). In the 4th century, when Timocrates had proposed that the Athenians loosen enforcement of penalties against those who owe debts to the state, Demosthenes claimed that there would be no money left in the treasury to pay for attendance at the Assembly, and he went on to equate that outcome with an end to Democracy (Dem. 24.99).

The traditional meeting-place for the Assembly was the open space on top of the hill of the Pnyx (Thuc. 8.97). The Pnyx was open to the sky, and thus meetings of the Assembly must have been influenced by the weather; the laws that mandated good weather omens before the election of military officers (Aristot. *Ath. Pol.* 44.4) might have been as interested in ensuring a comfortable day for discussion as in ascertaining divine favor.

In the 4th century, there were 40 regularly scheduled meetings of the Assembly each year, four in each "prytany" (a "prytany" was an administrative unit equal to one tenth of the year) (Aristot. *Ath. Pol.* 43.3).

One of the four meetings in each prytany was the Sovereign Assembly (*kuria ekklesia*), the agenda for which included the confirmation of magistrates currently serving, issues of the food supply and defense, announcements of private property to be confiscated, and announcements of lawsuits regarding inheritance (Aristot. *Ath. Pol.* 43.4).

In each prytany, there were three regular assemblies in addition to the Sovereign Assembly; these were simply called Assemblies (Aristot. *Ath. Pol.* 43.3). It seems likely that in the 5th century only the Sovereign Assemblies were regularly scheduled, because Thucydides mentions a period of 40 days in the year 431 in which there was no Assembly (Thuc. 2.22.1); if there were four scheduled assemblies in each prytany at that time, 40 days could not have passed without a meeting.

Apart from the Sovereign Assembly, one of the remaining three was an occasion for any citizen who wished to present a suppliant-branch and address his fellow citizens about any public or private matter that concerned him (Aristot. *Ath. Pol.* 43.6). The ability of citizens to voice complaints in this public forum may have deterred certain bad behavior, or at least made the perpetrators think twice. Aeschines recounts how on one occasion some men assaulted a man named Pittalacus. On the next day when Pittalacus was in the marketplace, his attackers came up to him and tried to assuage him; they were afraid that their crime would be published to the whole city, since there was to be an Assembly that day (Aeschin. 1.60).

The other two regularly scheduled meetings in each prytany were concerned, according to Aristotle, with other things (Aristot. *Ath. Pol.* 43.6). Some of this other business was scheduled to happen at particular assemblies during the year. At an Assembly held on the 11th day of the first prytany, the people voted on whether or not to hold a review of all the laws (Dem. 24.21). In the 6th prytany, there was discussion of whether or not to hold an ostracism, discussion of any information against people charged with being informers – in this category, no more than three citizens and three resident foreigners – and discussion of people accused of failing to perform some assigned public service (Aristot. *Ath. Pol.* 43.5). A meeting during the 6th prytany was also the occasion for election of military officers (Aristot. *Ath. Pol.* 44.4).

At least until the middle of the 4th century the Assembly occasionally met to conduct a trial, most often an impeachment (Dem. 49.10).

Assemblies do not seem to have taken place on fixed days during each prytany, but they did not happen on days when the law-courts were in session (Dem. 24.80). They seem also to have been scheduled around other important events, such as religious festivals. Aeschines is highly critical of an Assembly that was called on the 8th day of the month Elaphobolion, a day of sacrifices to Asclepius (the orator says that this was unprecedented in memory) (Aeschin. 3.67), and Demosthenes criticizes a motion to have

the Assembly meet on the 12th of the month Hecatombaion, a festival day for Cronus (Dem. 24.26).

In addition to Sovereign Assemblies (*kuriai ekklesiai*) and Assemblies (*ekklesiai*), there were Called-together Assemblies (*sunkletoi ekklesiai*); the term appears only in literary evidence (not in inscriptions) during the 4th century, and its meaning is not entirely clear. Sometimes our sources seem to use it to refer to extra meetings, in addition to the normal four that happened in each prytany. Aeschines mentions a time when Athens was in such a panic over Philip of Macedon's war against Amphipolis, that there were more Called-together Assemblies than scheduled Assemblies (Aeschin. 2.72). But at other times the term seems to indicate an Assembly called at short notice, but not necessarily an extra Assembly.

Officials of the Council called together a meeting of the Assembly, which opened with various religious rituals before the citizens were invited to speak and vote on matters of public business.

The 50 members of the Council serving as Prytaneis – the same word, *prytaneis* refers to the governmental months, ten each year, and to the members of the Council who were presiding during a given prytany – normally called meetings of the Assembly (Aristot. *Ath. Pol.* 43.3), and posted the agenda beforehand (Aristot. *Ath. Pol.* 43.4). If the Assembly was to vote on some matter by ballot, the Prytaneis distribute the ballots (Dem. 59.90).

In the 5th century, the Prytaneis actually managed the conduct of a meeting of the Assembly (Xen. *Hell.* 1.7.14), but in Aristotle's time (after the middle of the 4th century), the President of the Council appointed nine Proedroi for each Assembly; these were chosen from members of the Council who were not currently serving as Prytaneis (Aristot. *Ath. Pol.* 44.2). These Proedroi managed the conduct of the Assembly; deciding when to put a question to the vote (Aeschin. 2.84; Aeschin. 2.68), and deciding when to cut off discussion of a matter (Aeschin. 2.67).

The People did, on occasion, override the will of the officials conducting the meetings, as when, in the late 5th century, the Prytaneis were unwilling to allow a vote, the People overrode them with menacing shouts (Xen. *Hell.* 1.7.14).

The selection or appointment of Proedroi was potentially subject to corruption, which Aeschines hints at on two occasions (Aeschin. 3.73; Aeschin. 2.90). In addition to these Proedroi, the Assembly elected a clerk (*grammateus*) to read documents aloud (Aristot. *Ath. Pol.* 54.5); the orator Aeschines served as a clerk early in his career, although we do not know whether he was the clerk appointed to read in the Assembly (Dem. 19.79).

The opening of a meeting of the Assembly was marked by rituals. A sacrifice was made and carried around the area, and there was a prayer, both of these intended to purify the proceedings (Aeschin. 1.23; Aeschin. 2.158; a parody of this prayer is found at Aristoph. *Thes.* 314). The heralds

offered the prayer (Aeschin. 1.23; Dem. 24.20). The herald also called down curses (*kataratai*) on anyone who would mislead the Assembly (Dem. 19.70; Dem. 23.97; there is a parody of this at Aristoph. *Thes.* 335). After these rituals, the Herald asked “Who wishes to speak?” and the Assembly was opened (Dem. 18.191; Aeschin. 1.26; Aristoph. *Ach.* 46; cf. a possible parody of this at Aristoph. *Eccl.* 130).

Most voting in the Assembly was by a show of hands (*cheirotomia*), although some votes were conducted by secret ballot (*psephos*). Even the most serious of matters were often decided by show of hands, such as the impeachment and condemnation of generals (Aristot. *Ath. Pol.* 34.1) and the approval of formal laws (*nomoi*) (Dem. 24.20) (laws were more significant than decrees; see below). This method of voting limited the business of the Assembly to daylight hours, as this anecdote from Xenophon shows: “It was decided, however, that the matter should be postponed to another meeting of the Assembly (for by that time it was late in the day and they could not have distinguished the hands in the voting).” (Xen. *Hell.* 1.7.7). Under certain circumstances, the Assembly would vote by ballot, literally pebble (*psephos*) (Xen. *Hell.* 1.7.9). Voting by ballot was limited to issues which had to be decided by a quorum of 6000 citizens (Dem. 59.89 – Dem. 59.90).

Once the Assembly had approved something, the decree, its date, and the names of the officials who put the matter to the vote, were recorded and preserved as a public record



of the proceedings of government (Aeschin. 2.89; Aeschin. 2.58; Aeschin. 3.75).

#### ATHENIAN DEMOCRACY: THE COUNCIL

The Council of 500 represented the full-time government of Athens. It consisted of 500 citizens, 50 from each of the ten tribes, who served for one year. The Council could issue decrees on its own, regarding certain matters, but its main function was to prepare the agenda for meetings of the Assembly. The Council would meet to discuss and vote on “Preliminary decrees” (*probouleumata*), and any of these that passed the Council’s vote went on for discussion and voting in the Assembly.

Each member of the Council (*boule*) was a Councilor (*bouleutes*, in the plural, *bouleutai*) (see for example Aeschin. 1.104; Andoc. 2.14). Aristotle lists service on the Council among those offices chosen by lot (Aristot. *Ath. Pol.* 62.1). He elsewhere says that in a democratic city, the Council was the most important board of magistrates (Aristot. *Pol.* 1322b). Through most of the 5th and 4th centuries BCE, citizens were paid for their participation in the Council (Aristot. *Ath. Pol.* 62.2), and each citizen could serve on the Council twice in his lifetime (Aristot. *Ath. Pol.* 62.3).

Although participation in the Council was paid, and considered an office, it also seems to have been considered an unexceptional part of a citizen’s life, rather than a part of a political career. In Plato’s *Apology of Socrates* (an account, perhaps largely fictional, of the speech Socrates gave

when on trial for impiety), Socrates says that he served on the Council (Plat. *Apol.* 32a–b), but also says that he never participated in politics (Plat. *Apol.* 31c–d). So, in *Plato*’s account, it seems that service on the Council did not indicate political ambition, or even any special interest in politics.

Before taking their seats on the Council, newly selected Councilors had to undergo scrutiny (*dokimasia*), an audit of their fitness to serve (Aristot. *Ath. Pol.* 45.3).

Lysias makes the claim that the law of scrutiny was primarily intended to deny political office to men who had participated in one of the short-lived oligarchic coups of the 5th century BCE, or the Tyranny of the Thirty (these events are discussed above) (Lys. 26.9–10). But scrutiny was a broadly important institution in the Athenian democracy, and Lysias’ statement is probably too narrow to reflect strictly historical reality.

The Nine Archons underwent scrutiny before taking office (Aristot. *Ath. Pol.* 55.2), as did the ten generals (Lys. 15.1–2), as did priests, advocates, heralds, and ambassadors (Aeschin. 1.19–20). In fact, according to Aeschines, any citizen could call upon any other citizen to undergo scrutiny at any time, to determine whether he deserved the privilege of speaking before the Assembly (Aeschin. 1.32). Furthermore, every young Athenian man underwent a scrutiny before the members of his deme before he was enrolled in the list of citizens (Dem. 44.41; Lys. 26.21).

The scrutiny of newly selected Councilors was managed by the Thesmothetae, the lower six of the nine archons

(Aristot. *Ath. Pol.* 59.4), but it was the outgoing Council that decided whether each of the 500 new Councilors was eligible to take office (Aristot. *Ath. Pol.* 45.3).

This scrutiny took into account almost every aspect of a citizen's life, public and private, and we can learn much about the values of the Athenian democracy from the questions asked during a scrutiny, and grounds for which a candidate could fail his scrutiny. According to Aristotle, a candidate for the Council was asked, "Who is your father and to what deme does he belong, and who is your father's father, and who your mother, and who her father and what his deme? Then whether he has a Family Apollo and Homestead Zeus, and where these shrines are; then whether he has family tombs and where they are; then whether he treats his parents well, and whether he pays his taxes, and whether he has done his military service" (Aristot. *Ath. Pol.* 55.3–4). According to Xenophon, they were also asked if they honored their family graves (Xen. *Mem.* 2.2.13).

After the candidate answered the questions, and any accusers had come forward, the Council voted by show of hands (Aristot. *Ath. Pol.* 55.4). According to Aristotle, originally the vote of the Council was the last word in a scrutiny, but in his time (the middle of the 4th century BCE) "there is an appeal to the Jury-court, and with this rests the final decision as to qualification" (Aristot. *Ath. Pol.* 55.2).

A passage from a speech by Lysias confirms that a candidate who was rejected by the Council could appeal to a jury, while noting that this appeal could take time, and might result in the year beginning without a full body of magistrates in office (Lys. 26.6).

The newly appointed Councilors swore an oath, the terms of which are preserved by passing mentions in various sources. According to Xenophon, the swore “to advise according to the laws” (Xen. *Mem.* 1.1.18). According to two passages from Lysias, they swore “to advise what was best for the city” (Lys. 31.2; Lys. 30.10). Demosthenes mentions Councilors swearing “to advise what was best for the People” (Dem. 59.4), and this: “Nor will I imprison any Athenian citizen who provides three people to guarantee his debt, guarantors who are in the same tax-bracket, except anyone found guilty of conspiring to betray the city or to subvert the democracy, or anyone who has contracted to collect taxes, or his guarantor, or his collector who is in default” (Dem. 24.144). A passage from a speech attributed to Andocides claims that the “oath of the People and the Council” included a promise “not to exile, nor imprison, nor execute anyone without a trial” (Andoc. 4.3). According to Lysias, again, Councilors swore an oath, “to let it be known if he knows of anyone who has been selected by lot but is not fit to serve on the Council” (Lys. 31.2), and “to crown a man as worthy of public office only after scrutinizing him” (Lys. 26.8).

Five hundred Councilors served on the Council for the year, but practical concerns required that they be divided into smaller groups. Accordingly, the legislative year was divided into ten parts, each called a “prytany”; for each prytany, the fifty Councilors from one of the ten tribes served as “presidents,” or prytanes (Aristot. *Ath. Pol.* 43.2–3).

The order in which the Councilors from each tribe served as presidents was random, determined by lot (Aristot. *Ath. Pol.* 43.2). The random determination seems to have taken place at the end of each prytany (rather than all at once at the beginning of the year), so no one could predict which tribe would serve next. An inscription makes reference to “the presidents, whichever ones might hold that position after the tribe of Oineis” (*IG II<sup>2</sup>* 553.16–17). When the decree was written, the Councilors from the tribe of Oineis were serving as prytanes, or presidents; the decree needed to refer to the next group of presidents, but that group was clearly not known. So, we can infer from this that the selection must have happened toward the end of a prytany. Obviously, during the ninth prytany of the year, it would be obvious that whichever tribe had not yet served would hold the presidency for the final prytany.

This elaborate randomization of the presidency was probably intended to limit possibilities for corruption. No one could plan to introduce business to the Council when a particular tribe held the presidency, and no Councilor

could know in advance when he would serve as a president.

The presidents ate their meals together in the Tholos, the “Round House.” They planned and organized meetings of the Council and posted an agenda for each meeting beforehand (Aristot. *Ath. Pol.* 43.3).

Aristotle tells us that “There is a chairman of the presidents, one man, chosen by lot; this man chairs for a night and a day – no longer – and cannot become chairman a second time” (Aristot. *Ath. Pol.* 44.1). This chairman kept the keys to the treasuries and archives of Athens, as well as the state seal (Aristot. *Ath. Pol.* 44.1).

In addition to a daily meeting of all the presidents, the chairman and one third of the presidents were required to be on hand in the Tholos constantly (Aristot. *Ath. Pol.* 44.1); presumably only the chairman was on duty for a full 24 hours, and the other presidents could divide the day into 8 hour shifts. These men, on-call in the Tholos, represented the whole government of Athens in a time of crisis, at least until the full Council or Assembly could be convened. Heralds and envoys from other states came to the presidents in the Tholos first, as did messenger bearing official letters (Aristot. *Ath. Pol.* 43.6).

Demosthenes describes a dramatic scene, that shows clearly the function of the presidents and the chairman. In 339 BCE, Philip of Macedon marched his army south and captured the city of Elateia, thus threatening Thebes and the Thebans’ southern neighbor, Athens. Demosthenes

describes what happened when news of this threat came to Athens:

“Evening had already fallen when a messenger arrived bringing to the presiding councilors the news that Elateia had been taken. They were sitting at supper, but they instantly rose from table, cleared the booths in the market-place of their occupants, and unfolded the hurdles, while others summoned the commanders and ordered the attendance of the trumpeter. The commotion spread through the whole city. At daybreak on the next day the presidents summoned the Council to the Council House, and the citizens flocked to the place of assembly. Before the Council could introduce the business and prepare the agenda, the whole body of citizens had taken their places on the hill. The Council arrived, the presiding Councilors formally reported the intelligence they had received, and the courier was introduced” (Dem. 18.169–170).

So, in a crisis, the safety of Athens lay first in the hands of the presidents and the chairman. It is worth noting that because there were 354 days in the legislative year (Aristot. *Ath. Pol.* 43.2), more than two thirds of all Councilors would serve as chairman for a night and a day in a given year.

There are further implications, if we accept the estimate of two scholars that in 400 BCE there were approximately 22,000 adult male citizens – it is beyond the scope of this article to give evidence and justification for this, but the arguments are presented in Victor Ehrenberg, *The Greek*

*State*, 2nd English Edition (Methuen, 1969) 31, whose estimate is 20,000–25,000, and in A.W. Gomme, *The Population of Athens in the Fifth and Fourth Centuries BC* (Blackwell, 1933) 26, whose estimate is 22,000.

A citizen had to be 30 years old to serve as a Councilor (Xen. *Mem.* 1.2.35). For the sake of argument, we might assume that the average citizen would then have an active political life of 30 years, until he was 60. During that time, there would need to be approximately 10,000 chairmen, each controlling the state seal and the treasuries, and presiding over the presidents of the Council for a day and a night (Aristot. *Ath. Pol.* 44.1). Since no one could serve as chairman twice (Aristot. *Ath. Pol.* 44.1), this office would have to go to 10,000 different Athenians. It follows, then, that approximately one half of all Athenian citizens would, at some point during their lives, have the privilege and responsibility of holding this office, arguably the closest equivalent to a Chief Executive in the Athenian democracy.

More important than any other function of the Council was its role in preparing the agenda for meetings of the Assembly, where all Athenian citizens gathered to discuss and vote on decrees.

While any male citizen was invited to speak in an Assembly and all male citizens could vote, the topics for discussion and vote were limited by what amounted to a system of checks and balances between the Assembly and the Council.



The Council would vote on preliminary decrees (*probouleumata*, or in the singular, *probouleuma*) (Dem. 23.92). According to the 10th century CE lexicon of the Greek language, the *Suda*, a *probouleuma* was “What has been voted on by the Council before being presented to the People” (*Suda* pi,2349). A passage from the orator Demosthenes’ speech against Neaira illustrates how a *probouleuma* worked:

“You were at that time on the point of sending your entire force to Euboea and Olynthus, and Apollodorus, being one of its members, brought forward in the Council a motion, and carried it as a preliminary decree (*probouleuma*) to the Assembly, proposing that the people should decide whether the funds remaining over from the state’s expenditure should be used for military purposes or for public spectacles. For the laws prescribed that, when there was war, the funds remaining over from state expenditures should be devoted to military purposes, and Apollodorus believed that the people ought to have power to do what they pleased with their own; and he had sworn that, as member of the senate, he would act for the best interests of the Athenian people, as you all bore witness at that crisis” (Dem. 59.4).

In this case, an existing law required that any surplus funds in the treasury of Athens should be used for military purposes. But despite this law, Apollodorus wanted the Assembly to discuss how to spend the funds. So Apollodorus brought the matter to the Council, which voted to create a

preliminary decree. The council approved the preliminary decree. This preliminary decree allowed the Assembly to discuss how to spend the money. Demosthenes goes on to say that the Assembly voted, unanimously, to spend the money on the military (Dem. 59.5).

So, after this lengthy procedure, the Athenian democracy did with its money precisely what an existing law required. But the mechanism of the Council, its *probouleuma*, and the Assembly allowed all of the citizens to deliberate, in an orderly manner, on the extent to which the existing law was appropriate under these circumstances, a war in Euboea and around Olynthus.

An inscription that survives in fairly good condition illustrates vividly the course of an actual motion through the Council, to the Assembly by means of a preliminary decree, and into the body of Athenian policy as a decree of the Athenian People. This inscription dates from around 333 BCE, and has to do with a request by some merchants from the city of Citium on the island of Cyprus; these merchants came to the Athenian Council to ask for permission to build a temple to Aphrodite, Cyprus' patron goddess, where natives of Cyprus could worship while they were visiting or living in Athens (*IG II<sup>2</sup> 337*).

It is important to note that the text and translation given here omit any indication of how the inscription actually looked, and the extent to which modern editors have filled in missing sections; what appears here is considerably cleaned up. It can serve to illustrate the workings of

the Council, but should not be taken as indicative of the proper way to present and read an inscription.

Here is the inscription, *IG II<sup>2</sup> 337* [By the way, it makes reference to *Proedroi*; these were the Councilors selected to run meetings of either the Council or the Assembly]:

“Gods. When Nikokratos was archon, in the first prytany (that of the tribe Aegeis): Theophilos from the deme Phegous, one of the Proedroi, put this matter to the vote: The Council decided (after Antidotos, son of Apollodoros, from the deme Sypalettos made the motion): Concerning the things that the Citians say about the foundation of the temple to Aphrodite, it has been voted by the Council that the Proedroi, the ones to be chosen by lot to serve as Proedroi at the first Assembly, should introduce the Citians and allow them to have an audience, and to share with the People the opinion of the Council, that the People, having heard from the Citians concerning the foundation of the temple, and from any other Athenian who wants to speak, decide to do whatever seems best. When Nikokrates was archon, in the second Prytany (that of the tribe Pandionis): Phanostratos from the deme Philaidai, one of the Proedroi, put this matter to the vote: The People decided (after Lykourgos, son of Lykophron, of the deme Boutadai made the motion): Concerning the things for which the Citian merchants resolved to petition, lawfully, asking the People for the use of a plot of land on which they might build a temple of Aphrodite, it has seemed best to the People to give to the merchants of the Citians the use of a plot

of land on which they might build a temple of Aphrodite, just as also the Egyptians built the temple of Isis.”

On this one inscription we see the whole legislative process. In the first prytany of the year, Antidotos, a councilor, made a motion before the Council regarding this request by the Citians. One of the Proedroi in charge of running the meeting of the Council put the matter to a vote. The Council voted to send the matter along to the Assembly without making any recommendation to the Assembly for or against the Citians’ request. Then, in the second Prytany, Lykourgos, made a motion in the Assembly. The motion was in favor of the Citians’ request, and it was put to the vote by Phanostratos, a Councilor serving as one of the Proedroi who were in charge of running the meeting of the Assembly. The People voted on the matter, and the Citians were allowed to build their temple, just as (evidently) some Egyptians had been allowed to build a temple to Isis.

#### ATHENIAN DEMOCRACY: LEGISLATION

Athenians in the 4th century were governed by laws (*nomoi* or *nomos* in the singular) and decrees (*psephismata*, or *psephisma* in the singular). Decrees were passed by a vote of the Assembly, of the Council, or both. Laws came into being by a more complicated process. Laws took precedence over Decrees. Anyone who proposed a decree in the Assembly that contradicted an existing law was subject to prosecution on a charge of “Illegal Proposal” (*graphe paranomon*). Laws were passed through a process called

*nomothesia* or “legislation.” Each year the Assembly met to discuss the current body of laws. Any citizen could propose a change in the laws, but could only propose the repeal of a law if he suggested another law to replace the repealed law. If the Assembly decided to change the laws, a board of “Nomothetai” or “legislators” was selected to review and revise the laws. The process of legislation was like a trial, with advocates speaking in defense of the existing laws, and others speaking against the existing laws. The Nomothetai would vote on changes, and any changes that passed were published on inscriptions near the statues of the Eponymous Heroes and read aloud at the next meeting of the Assembly. The Nomothetai also undertook an annual review of all existing laws, to make sure that none contradicted others, and that none were redundant.

To understand legislation under the Athenian democracy, it is necessary to understand some terms. The Athenians of the 5th century BCE seem to have used two words interchangeably to refer to what we call a “law,” *nomos* and *psephisma*. In the 4th century these words had two distinct meanings: a *nomos* was a “law,” while a *psephisma* was a “decree.” For the 5th century usage, we have the historian Xenophon and his account of a speech that Eurypolemus gave before the Assembly in 406. The speaker tells his audience that, in a particular case, either the *psephisma* of Kannonus applies (Xen. *Hell.* 1.7.20), or the *psephisma* regarding temple-robbers and traitors (Xen. *Hell.* 1.7.21); he then refers to both of these *psephismata* as “*nomoi*” (the

plural form of “nomos”) (Xen. *Hell.* 1.7.22). So it would seem that these two terms were more-or-less equivalent. In the 4th century, however, these two terms clearly referred to two different things: *nomoi* were “laws” enacted through a special process of legislation, while *psephismata* were “decrees” passed by a vote of the Assembly. The orator Aeschines in one of his speeches asks, rhetorically, why the laws (*nomoi*) are good, but the decrees of the Assembly (*psephismata*) are bad (Aeschin. 1.177). The philosopher Aristotle makes a theoretical distinction between laws and decrees, noting that in certain kinds of democracy the laws rule, but in other kinds of democracies decrees can override laws (Aristot. *Pol.* 1292a). Athens was the former kind of democracy, according to Demosthenes, who quotes a principle of Athenian governance, that “No decree, either of the Council or the Assembly shall have more authority than a law” (Dem. 23.87).

On the other hand, the laws could determine what sorts of decrees the Assembly could pass, such as a law that allows the Assembly to pass a decree honoring a citizen, but that limits the circumstances of such an honor (Aeschin. 3.36). The courts could nullify a decree, based on the laws (Dem. 23.96). When inscribed on stone for the permanent record, decrees begin with the formula, “It was decided by the People,” or, “It was decided by the Council and the People” (*IG II<sup>2</sup>* 206 4–5, *IG II<sup>2</sup>* 206 28–30; *IG II<sup>2</sup>* 237.5; *IG II<sup>2</sup>* 237 31); a law began with the formula, “It was decided by the Lawgivers” (*SEG* 12 87.607).

The Athenians had no “constitution” such as the United States has, a body of laws that fundamentally define the state. Some laws, however, included additional clauses that made it very difficult to change or revoke the law. One such clause is quoted at Dem. 23.62: “Whosoever, whether magistrate or private citizen, shall cause this ordinance to be frustrated, or shall alter the same, shall be disfranchised with his children and his property” (Dem. 23.62).

A law included as a quotation in a speech by the orator Andocides says, “In no circumstances shall magistrates enforce a law which has not been inscribed. No decree, whether of the Council or Assembly, shall override a law. No law shall be directed against an individual without applying to all citizens alike, unless an Assembly of six thousand so resolve by secret ballot” (Andoc. 1.87). This establishes three important principles of Athenian legislation: (in order from last to first) that except under very special circumstances, the laws of Athens were to apply to all citizens equally; that the laws (*nomoi*) had more authority than the decrees (*psephismata*) of the Assembly or Council; and finally that only the written laws were valid.

According to Plutarch, when Solon revised the laws of Athens in the 6th century BCE, he wrote the new laws on wooden tablets (Plut. *Sol.* 25.1). By inscribing laws, either on wood or in stone, and setting them in a public place, knowledge of the laws was made available to all citizens, rather than to a small elite.

The procedures for making new laws or revising existing laws was complicated, and seems to have been intended to make the process as democratic as possible, and to prevent any hasty or poorly considered changes to the laws.

Demosthenes describes process of legislation in detail, in his speech prosecuting Timocrates (Dem. 24). He reminds the jurors that, “In our laws at present in force, men of Athens, every condition that must be observed when new statutes are to be enacted is laid down clearly and with precision. First of all, there is a prescribed time for legislation; but even at the proper time a man is not permitted to propose his law just as he pleases. He is directed, in the first place, to put it in writing and post it in front of the statues of the Eponymous Heroes for everyone to see. Then it is ordained that the law must be of universal application, and also that laws of contrary purpose must be repealed; and there are other directions with which I do not think I need trouble you now” (Dem. 24.17–18).

While any citizen could suggest changes to the laws, laws were not passed by the Assembly or the Council, as decrees were, but were passed by a rather prolonged process involving the “Lawgivers,” the *nomothetae* (the singular form is *nomothete*). Panels of *Nomothetae* were formed for the purposes of creating new laws and reviewing existing laws; the *Nomothetae* were drawn from Athenians who had sworn the “dikastic oath,” the oath that jurors swore before entering a courtroom (Dem. 24.27; a passage in Demosthenes, Dem. 24.149–151, purports to be the text



of that oath). So these Nomothetae were ordinary citizens assigned the task of creating and revising the laws.

These Nomothetae would get together and conduct legislation under three circumstances: if the Assembly called for revisions to the laws, if an individual Athenian proposed a change in the laws, and if the six Archons called the Thesmothetae (see Aristot. *Ath. Pol.* 55.1) undertook a scrutiny of the laws (respectively: Dem. 24.20; Dem. 24.33; Aeschin. 3.38).

At the first meeting of the Assembly for the year, in the month of Hekatombaion, the Athenians held votes on the whole body of laws (Dem. 24.20; see Dem. 24.23 where the month of Hekatombaion is specified). This is how Demosthenes describes the process:

“In the first presidency and on the eleventh day thereof, in the Assembly, the Herald having read prayers, a vote shall be taken on the laws, to wit, first upon laws respecting the Council, and secondly upon general statutes, and then upon statutes enacted for the nine Archons, and then upon laws affecting other authorities. Those who are content with the laws respecting the Council shall hold up their hands first, and then those who are not content; and in like manner in respect of general statutes. All voting upon laws shall be in accordance with laws already in force” (Dem. 24.20).

This passage tells us several things. First, it suggests that the laws of Athens were divided into several categories. There were laws concerning the Council; this presumably

included laws governing the Nomothetae and the procedure for legislation itself, since it was the Council that appointed the panels of Nomothetae (Dem. 24.27; Dem. 24.47–48). There were laws “common” to all Athenians. There were laws having to do with the nine Archons. And there were laws having to do with “other authorities.” This passage also tells us that the Assembly voted on the existing laws by a show of hands (Dem. 24.20).

Demosthenes continues his description of the annual review: “If any law already in force be rejected on show of hands, the presidents [the ‘Prytaneis’ described above in the discussion of the Council] in whose term of office the voting takes place shall appoint the last of the three meetings of the Assembly for the consideration of laws so rejected. The commissioners [the ‘Proedroi’] who preside by lot at the Assembly are required, immediately after religious observances, to put the question respecting the sessions of the Nomothetae, and respecting the fund from which their fees are to be paid. The Nomothetae shall consist of persons who have taken the judicial oath” (Dem. 24.21).

Before this meeting of the Assembly, when the Athenians voted on the existing laws, anyone who wanted to change the laws was supposed to make public specific proposals for new laws: “Before the meeting of the Assembly any Athenian citizen who wishes shall write down the laws proposed by him and exhibit the same in front of the Eponymous Heroes, to the end that the People may vote on the question of the time allowed to the Nomothetae with

due regard to the total number of laws proposed. Whosoever proposes a new statute shall write it on a white board and exhibit it in front of the statues of the Eponymous Heroes on every day until the meeting of the Assembly” (Dem. 24.23).

This must have meant that the vote on the existing laws was equivalent to a vote on the proposed changes. If the citizens liked the suggestions posted beforehand, they could vote against the existing laws, thus starting a process of legislation. If the citizens did not like the posted suggestions, they would vote in favor of the existing laws. Requiring proposed changes before the meeting would allow the Assembly to make an informed decision regarding how long the Nomothetae should take to conduct their business (see also Dem. 20.94, Dem. 24.36; Aeschin. 3.39).

Demosthenes says, elsewhere in his speech against Timocrates, that it was lawful for any citizen to propose changing an existing law, but only if he suggested a new law to take its place (Dem. 24.33).

The Assembly, at this first meeting of the year (on the 11th day of the month Hekatombaion), would also choose five citizens to “speak in defence of laws proposed for repeal before the Nomothetae” (Dem. 24.23). This suggests that the process of legislation was very much like a trial in a courtroom, with some people “prosecuting” the existing laws (and advocating new laws), and others defending the existing laws (Dem. 24.23, Dem. 24.36).

After this first meeting of the Assembly for the year, if the voting determined that the laws should be reviewed and possibly changed, there was a delay, presumably to let people consider matters. No further action happened at the next meeting of the Assembly in that month, but at the third meeting, the Assembly decided how long the Nomothetae should spend legislating, and details of their pay (Dem. 21.24).

The Nomothetae were not chosen until the actual day assigned for legislation; on the morning of that day they were chosen by lot from those who had sworn the “Helistic oath” that all jurors swore (Dem. 24.27). A board of nomothetae could be huge: Demosthenes reports that in 354/3 BCE, Timocrates passed in the Assembly a decree setting up a board of 1001 Nomothetae, and ordering the Council to assist them in their work (Dem. 24.27).

The meeting of the Nomothetae was conducted by “Proedroi” (Dem. 24.33). The meeting was conducted like a trial, with advocates speaking in favor of the existing laws (Dem. 24.23), and others speaking in favor of changing the laws (Dem. 24.36). When both parties had spoken, the Nomothetae voted by show of hands (Dem. 24.33).

Any new laws proposed by the Nomothetae were published near the statues of the Eponymous Heroes and were also read aloud to the next meeting of the Assembly (Dem. 20.94).

In addition to this regularly scheduled, annual, opportunity for legislation, there were other ways of initiation the

process of making changes to the laws of Athens. Any citizen could, at any time, propose a change in the laws (Dem. 24.33). The Archons, specifically the Thesmothetae, were also charged with making an annual review of the existing laws and, if they found contradictory laws or redundant laws, they could arrange for a board of Nomothetae to change the laws (Aeschin. 3.38).

In the case of an individual citizen who wanted to change the laws, he could not propose repealing a law without suggesting a new law to take its place (Dem. 24.33; Dem. 20.89–94; Dem. 24.21). The Assembly would decide whether or not the proposal had sufficient merit to be brought before the Nomothetae (Dem. 24.21; Dem. 3.10–13; Aeschin. 3.39).

The Council had to be involved, too, because it was the Council that set the agenda for meetings of the Assembly. So once a citizen had posted a proposal for new legislation, the Council had to put the issue on the agenda for a meeting of the Assembly; this was done by means of a Preliminary Decree, or *probouleuma* (Dem. 24.27; Dem. 24.48; Aeschin. 3.39). Dem. 24.27 contains a decree that orders “the Council to cooperate in the legislative process” in the matter of convening the Nomothetae, which may mean only that the Council was to ensure that the business appeared on the agenda for the Assembly. The Council did, however, also have a special “legislative secretary,” who made copies of all laws, and attended all meetings of the Council; this suggests that the Council discussed propos-

als for legislation before sending them on to the Assembly (Aristot. *Ath. Pol.* 54.4).

Since laws, passed by the Nomothetae, were more important than decrees of the Council or Assembly (Andoc. 1.87), what happened when a decree contradicted a law? Or, what happened when someone proposed a law in a way that violated the laws governing legislation?

A “graphe paranomon,” or “prosecution for having proposed an unlawful decree” was the means by which the Athenians ensured the sovereignty of the laws; any such charge would be tried before the People’s Court (Aristot. *Ath. Pol.* 59.2; Dem. 24.33).

Demosthenes’ speech against Timocrates focuses on just such a charge; the prosecution claims that Timocrates introduced a new law that contradicted an old law (Dem. 24.33). That doing so was illegal runs contrary to the assumption in American law that newer legislation takes precedence over older laws.

Demosthenes actually claims that Timocrates’ proposal was illegal for several reasons. First, it contradicted already existing laws (Dem. 24.33). Second, the proposal had not been published by the statues of the Eponymous Heroes (Dem. 24.18). Third, he did not allow the Council to consider the law before referring it to the Assembly (Dem. 24.26). Finally, he did not follow the lawful schedule, which would have meant proposing a new law at one meeting of the Assembly, taking no action at the next meeting, and at the third meeting voting on whether or not to convene the

Nomothetae (Dem. 24.21); Timocrates, it is alleged, proposed his law at one meeting of the Assembly and moved that it be handed over to the Nomothetae on the very next day (Dem. 24.28).

Demosthenes' speech against Leptines (Dem. 20) is another example of a *graphe paranomon*. Here, Demosthenes claims that Leptines arranged for the Nomothetae to pass a law without repealing any contrary laws (Dem. 20.89; Dem. 20.96), publishing the proposal beforehand, or allowing the Assembly to consider the matter before sending it to the Nomothetae (Dem. 20.93).

Demosthenes himself was once charged with improperly suggesting the emendation of a law governing the maintenance of warships (Dem. 18.105).

Aristotle criticizes direct democracy on the grounds that in democracy decrees have more authority than laws (Aristot. *Pol.* 1297a4–7). But this criticism does not seem to apply to the democracy of 4th century Athens.

We find a more apt criticism in Aristotle's *Constitution of the Athenians* (Aristot. *Ath. Pol.*), which says that in Athens everything is decided by "decrees and lawcourts" (Aristot. *Ath. Pol.* 41.2); since the legislators, the Nomothetae, were chosen from the same pool as potential jurors, and swore the same oaths as jurors (Dem. 24.27; Dem. 24.149–151), this comment seems fairly accurate. Whether or not we should see this fact as a bad thing is, of course, a matter of opinion.

## ATHENIAN DEMOCRACY: THE COUNCIL OF THE AREOPAGUS

The Areopagus, or Hill of Ares, in Athens was the site of council that served as an important legal institution under the Athenian democracy. This body, called the Council of the Areopagus, or simply the Areopagus, existed long before the democracy, and its powers and composition changed many times over the centuries. Originally, it was the central governing body of Athens, but under the democracy, it was primarily the court with jurisdiction over cases of homicide and certain other serious crimes. After an Athenian had served as one of the nine archons, his conduct in office was investigated, and if he passed that investigation he became a member of the Areopagus; tenure was for life.

The Areopagus (*Areios pagos*) was a hill in Athens, south of the agora, to the north-west of the Acropolis (Hdt. 8.52). The term Areopagus, however, often refers to the Council of the Areopagus, a governmental institution that met on that hill (Aeschin. 1.92). This institution was very ancient, existing long before democratic government. Its history, which recedes back into mythological pre-history, follows closely the political history of Athens, and shows the ongoing tension between democratic and anti-democratic forces (see, for example, Isoc. 15.316, in which he complains that as the city grew more democratic, the power of the older institutions, such as the Areopagus, declined).



The Council of the Areopagus functioned as a court under the democracy of 4th century Athens, and it had a very high reputation (Dem. 23.65). The orator Lycurgus tells his fellow Athenians that, you have, in the Council of the Areopagus, the finest model in Greece: a court so superior to others that even the men convicted in it admit that its judgements are just (Lyc. 1.12).

The Council of the Areopagus, as a group, and its individual members were held in high regard and considered to be worthy of respect. Aeschines reports an incident when Autolycus, a member of the Areopagus, unwittingly made a sexual pun; when the people laughed, Pyrrandrus scolded them, asking if they were not ashamed of themselves for laughing in the presence of the Council of the Areopagus (Aeschin. 1.84). Aeschines is careful to defend Autolycus, as a man whose life has been good and pious, and so worthy of that body, i.e. the Areopagus (Aeschin. 1.82).

The principle function of the Areopagus, in the 4th century BCE, was to try cases of homicide. Demosthenes describes this function and the lengths to which the court ensured that its proceedings were fair and just; this passage, addressed to the Athenians, also suggests that the Athenians saw a strong relationship between human and divine justice: “You are all of course aware that in the Areopagus, where the law both permits and enjoins the trial of homicide, first, every man who brings accusation of such a crime must make oath by invoking destruction upon

himself, his kindred, and his household; secondly, that he must not treat this oath as an ordinary oath, but as one which no man swears for any other purpose; for he stands over the entrails of a boar, a ram, and a bull, and they must have been slaughtered by the necessary officers and on the days appointed, so that in respect both of the time and of the functionaries every requirement of solemnity has been satisfied. Even then the person who has sworn this tremendous oath does not gain immediate credence; and if any falsehood is brought home to him, he will carry away with him to his children and his kindred the stain of perjury – but gain nothing. If, on the other hand, he is believed to be laying a just charge, and if he proves the accused guilty of murder, even then he has no power over the convicted criminal; only the laws and the appointed officers have power over the man for punishment.” (Dem. 23.67–69).

The Areopagus consisted of former archons (Plut. *Sol.* 19.1; Dem. 24.22; Aristot. *Ath. Pol.* 60.3). This meant that all members of the Areopagus had been thoroughly investigated by officials of the democracy. All incoming archons were subject to scrutiny (*dokimasia*) by the sitting archons – an investigation into their qualifications to serve – before they assumed their office (Lys. 26.9). At the end of their year of service, each archon was investigated by the People’s Court, the Heliaia; only those archons who passed this public audit (*euthuna*) could become members of the Areopagus (Dem. 26.5). An archon could fail this

audit (*euthuna*) by violating any of the laws governing the conduct of his office (Dem. 24.22). For example, the Eponymous Archon was responsible for collecting and holding the olive oil that was given as a prize at the Panathenaic Games; this archon was not allowed to become a member of the Areopagus until he had handed all of the oil over to the treasurers on the Acropolis (Aristot. *Ath. Pol.* 60.3).

Appointment to the Areopagus was for life (Aristot. *Ath. Pol.* 3.6; Lys. 26.11). Nevertheless, members of the Areopagus, the Areopagites, were still subject to audit (*euthuna*). Aeschines describes this to his fellow Athenians as a democratic measure: “For, first, the Council of the Areopagus is required by the law to file its accounts with the Board of Auditors and to submit to their examination; yes, even those men, who sit with solemn aspect yonder as the court of highest competence, are brought under your verdict” (Aeschin. 3.20).

Members of the Areopagus seem to have received a free portion of the meat from certain sacrifices, an added benefit of service (Din. 1.56)

The Council of the Areopagus met generally on the Areopagus, the Hill of Ares (Dem. 23.65–66; Isoc. 7.38). Demosthenes mentions the body meeting in the Stoa Basileus in the agora, which was roped off for the occasion, so the court would not be disturbed (Dem. 25.23).

The Areopagus, functioning as a court of law during the 4th century, had a reputation for following unimpeachable procedures. In his speech against Aristocrates, Demos-

thenes describes this procedure at some length, and begins his description with the claim that no convicted defendant and no defeated prosecutor has ever made good any complaint against the justice of the verdict given. (Dem. 23.66). “Anyone who brought an accusation of homicide before the court had to swear an oath invoking destruction upon himself, his kindred, and his household” (Dem. 23.67). The swearing of this oath was unique: a boar, a ram, and a bull were to be sacrificed by certain people and on certain days (Demosthenes does not say which people or which days), so that in respect both of the time and of the functionaries every requirement of solemnity has been satisfied; the accuser then stood over the entrails of the sacrificed animals and swore his oath. Demosthenes is careful to add that, even with this tremendous oath, the accuser was not automatically believed, and that if he should be proved to have lied, not only would he bear the stain of perjury himself, but his children and relatives would as well (Dem. 23.68).

In this speech and elsewhere, Demosthenes emphasizes the extent to which the rights of the accused were protected by law and procedure. “If the accuser won his case, and the accused was convicted, the accuser had no power of punishment: only the laws and the appointed officer have power over the man for punishment. The prosecutor is permitted to see him suffering the penalty awarded by law, and that is all” (Dem. 23.69). If the Areopagus found a defendant guilty in a case of homicide, the court seems to have had the authority to hand him straight over to the ex-

ecutioner (Din. 1.62; although this passage refers to powers given to the Areopagus by a particular decree in the late 4th century). In other matters, though the Areopagus' power of punishment was not unlimited. Speaking of a case of impiety, Demosthenes says that the court does not have the power to punish any of the Athenians as they see fit. (Dem. 59.80).

Defendants swore the same oath as accusers, but Demosthenes says that they had an important additional right: "it is permitted to them to depart after giving his first speech, and neither the prosecutor, nor the jurors, nor any other man is authorized to prevent it" (Dem. 23.69). We may suppose (although Demosthenes does not make this clear) that the defendant would have had to leave Athens after withdrawing from the trial.

The trial would proceed with each side giving one or more speeches (see Din. 1.1, where he says that he does not have to give all the details of the case because a fellow-prosecutor, Stratocles, has already given his speech). Aeschines, speaking in praise of the Areopagus, says that this court was different from the other courts of Athens in that Areopagites were less likely than other jurors to be swayed by skillful speaking alone: "I myself have before now seen many men convicted before this tribunal, though they spoke most eloquently, and presented witnesses; and I know that before now certain men have won their case, although they spoke most feebly, and although no witnesses testified for them. For it is not on the strength of the plead-

ing alone, nor of the testimony alone, that the members of the court give their verdict, but on the strength of their own knowledge and their own investigations. And this is the reason why that tribunal maintains its high repute in the city” (Aeschin. 1.92).

The Archon Basileus, or King Archon served as the introducing official, but it seems that he did not actually participate in deciding the case; only the actual members of the Areopagus voted (Aristot. *Ath. Pol.* 57.4). Because members of the Areopagus had all served as archons (Plut. *Sol.* 19.1; Dem. 24.22; Aristot. *Ath. Pol.* 60.3), and because, as archons, they would each have had experience presiding over the various courts of Athens (Aristot. *Ath. Pol.* 56.6–7, Aristot. *Ath. Pol.* 57.2–4, Aristot. *Ath. Pol.* 58.2, Aristot. *Ath. Pol.* 59.2–6), and because they served on the Areopagus for life (Aristot. *Ath. Pol.* 3.6; Lys. 26.11), they must have had much more experience than the juries of the other courts.

According to Aristotle, the Areopagus did not allow speakers, either defendants or prosecutors, to introduce irrelevant information into their speeches; in this, he says, the Areopagus is different from the other courts at Athens (Aristot. *Rh.* 1354a 20).

If a speaker was accused of perjury (*pseudomarturia*) before the Areopagus, he would not be prosecuted by the Areopagus itself, but by the Archons (Aristot. *Ath. Pol.* 59.6).

In the 4th century BCE, the Areopagus was responsible for trying cases of the most serious crimes. Aristotle says: “Trials for deliberate murder and wounding are held in

the Areopagus, and for causing death by poison, and for arson” (Aristot. *Ath. Pol.* 57.3; Dem. 23.22). Other kinds of murder – involuntary homicide, conspiracy to murder, murder of a slave, resident alien, or foreign – were tried at the Palladium (Aristot. *Ath. Pol.* 57.3). Still other kinds of murder – when the accused claimed that the killing was legal, as a matter of self-defense or in a case of adultery, or if someone accidentally killed a fellow citizen in war or during an athletic competition – were tried at the Delphinium (Aristot. *Ath. Pol.* 57.3). In the case of adultery, the orator Lysias says that “the Court of the Areopagus itself, to which has been assigned, in our own as in our fathers’ time, the trial of suits for murder, has expressly stated that whoever takes this vengeance on an adulterer caught in the act with his spouse shall not be convicted of murder” (Lys. 1.30).

The Areopagus also heard cases of assault and wounding (*trauma*) (Dem. 40.32; Dem. 23.22; Aeschin. 2.93; Aristot. *Ath. Pol.* 57.3). The Areopagus did not merely punish the assailants themselves, but also had the power to punish accessories. Demosthenes mentions a case of assault where the Areopagus exiled a man for encouraging the assailant; the defendant in this case was the father of the priestess of Artemis at Brauron, and therefore an important Athenian, but punished as an accessory nevertheless (Dem. 54.25).

According to Demosthenes, not only did the Areopagus permit Athenians to bring cases of homicide before it for judgement, but actually required it (Dem. 23.67). Demosthenes himself was fined by the Areopagus, according to

Aeschines, for failing to pursue a charge of assault against his cousin Demomeles (Aeschin. 2.93).

The members of the Areopagus, the Areopagites, also seem to have investigated murders and assaults personally. In a speech prosecuting Conon, Demosthenes says that it was possible for members of the Areopagus to come to the bedside of a victim of assault, because if the victim should eventually die, they would have to try the case of his murder (Dem. 54.28).

It was a very serious matter to be charged with a crime before the Areopagus. In a speech written by Demosthenes for a client the speaker describes how his enemies plotted against him: "When they have thus openly laid a plot, and got up a charge against me before the Areopagus, do you suppose there is any poisoning or any other such villainy from which they would abstain?" (Dem. 40.57). This passage compares being charged before the Areopagus with being poisoned, and gives us an idea of how serious such a charge was. Elsewhere in that same speech, the speaker explains that his enemies hoped that by charging him before the Areopagus, he would go into exile rather than risk conviction (Dem. 40.32).

According to the rules of procedure, a defendant charged before the Areopagus had the option of leaving the city rather than see the trial to its conclusion (Aristot. *Ath. Pol.* 23.69). If the defendant left, then his property was sold off by the Venders (*poletai*), after the Nine Archons gave their approval for the sale (Aristot. *Ath. Pol.* 47.2).



Among the serious crimes that fell to the Areopagus were certain kinds of sacrilege. One example we know of had to do with a woman who had served as a priestess for the festival of Anthesteria, in honor of the god Dionysus (Dem. 59.78). In this case, the woman was married to an Athenian named Theogenes, and it became known that she was not herself properly an Athenian citizen (Dem. 59.81). The matter was investigated by the Areopagus, which in other matters also is of high worth to the city in what pertains to piety (Dem. 59.80). According to Demosthenes, the Areopagus was initially inclined to impose the highest fine in its power on Theogenes for allowing his wife to serve as priestess under false pretenses (Dem. 59.81), but they relented because Theogenes convinced them that he had been deceived, and meant no harm (Theogenes immediately expelled his wife from his house) (Dem. 59.83).

The Areopagus had authority over the sacred olive trees of Attica as well. If anyone was accused of cutting down a sacred olive tree, he was tried before the Areopagus (Lys. 7.22). Aristotle explains that the city of Athens collected the fruit from the olive trees and pressed it into oil, which would then be stored on the Acropolis or sold; if anyone dug up or cut down one of the trees, he would be tried by the Areopagus, and if he were found guilty, the penalty used to be death (Aristot. *Ath. Pol.* 60.1–2). But, Aristotle continues, in his own time (the middle of the 4th century), while the law still exists, such a trial has fallen out of use (Aristot. *Ath. Pol.* 60.2). Even in the early 4th century, it

seems that the penalty was not death, but exile and confiscation of property (Lys. 7.2; Lys. 7.32; Lys. 7.41).

In the latter part of the 4th century, the Areopagus exercises other powers beyond its traditional role as a court. The Areopagus could be called on, by the Council or the Assembly, to investigate certain public matters and issue a report to the People. In one case that we hear of, Timarchus passed a motion in the Assembly to have the Areopagus investigate and report on some dwellings that had been erected on the hill of the Pnyx (Aeschin. 1.81). A member of the Areopagus, Autolycus, gave the body's report to the Assembly, and in doing so reminded the assembled people that, "We Areopagites do not, men of Athens, either accuse or defend, for that is not our tradition" (Aeschin. 1.83).

#### ATHENIAN DEMOCRACY: THE PEOPLE'S COURT

Of almost equal importance to the Assembly and Council, and probably of greater importance (if not greater prestige) than the Areopagus was the People's Court, the *Heliaea* and other courts where juries of citizens would listen to cases, would vote on the guilt or innocence of their fellow citizens, and vote on punishments for those found guilty.

Since Athenian law is the subject of this discussion series, the present introduction to Athenian democracy will not describe the lawcourts in as much detail as it has given to the Assembly and Council.

Athenians who served on juries received one-half drachma a day, or three obols, for their service (Aristot. *Ath. Pol.*

62.2). Payment for service was a democratic innovation, of course, because it allowed the poorer citizens to participate in the governance of their city. There was no property requirement for service; any citizen who did not owe any debts to the treasury, was at least thirty years old, and had not lost his citizenship through any legal action could serve as a juror (Aristot. *Ath. Pol.* 63.3).

Aristotle's description of the Athenian lawcourts and the juries that served on them focuses on the elaborate systems that seem to have existed to thwart attempts to bribe juries (this description starts at Aristot. *Ath. Pol.* 63.1). These anti-bribery measures seem to have focused on making every aspect of jury selection and allocation among the various courts as unpredictable as possible. Jurors would be selected, randomly, from the pool of people willing to serve. They would be divided into groups, one group for every active courtroom, randomly and at the last minute. The individual groups would be assigned to individual courtrooms randomly and at the last minute. And there were elaborate checks to ensure that only authorized jurors entered each courtroom.

Since the lawcourts were charged with hearing, not only cases of criminal and civil matters, but appeals on the part of citizens who were unsatisfied with rulings by the Council or Assembly, this elaborate effort to ensure that the juries were truly honest embodiments of the *Dēmos* makes sense. The courts were the ultimate guarantor of

democratic rule, and so the juries that ruled those courts had to be as democratic as possible.

Timekeeping was also important during the course of trials, to ensure that the plaintiff and the defendant had equal time to speak. Aristotle describes the water-clock (*klepsydra*) that measured the time for each side's speeches. One of the jurors, appointed by lot, poured water into a large jar from which the water ran out in a steady stream; when the jar was empty, the speaker's time was up. The amount of water poured into the clock varied according to the magnitude of issue at stake. For suits involving sums of money up to 2000 drachmas, each side got to speak for seven measures of water, for suits between 2000 and 5000 drachmas, nine measures of water, and for suits of over 5000 drachmas, ten measures. For cases in which the defendant stood to lose all of his property, his citizenship, or his life, the whole day – eleven measures of water – was given over to the trial. (See Aristot. *Ath. Pol.* 67).

Juries varied in size from 501 jurors in lesser cases, up to 1500 for the most important matters (Aristot. *Ath. Pol.* 68.1). Decisions did not have to be unanimous; after both sides in the case had given one or two speeches, the jurors voted by dropping ballots into two jars. Each juror had two ballots, one representing the plaintiff and the other

representing the defendant. One after another, the jurors inserted their ballots into two urns. The bronze urn was for the vote that counted; the wooden urn was for discarding the unused ballot. As each juror voted, he was given a token which he could redeem for his juror's fee of 3 obols (one-half a drachma). (See Aristot. *Ath. Pol.* 68). After the voting, the courtroom attendants emptied the bronze urn in full view of both parties to the suit and counted the ballots. Whichever side received the most votes one (Aristot. *Ath. Pol.* 69).

While the Archons were responsible for ensuring the proper running of the Athenian courts, they did not serve as judges. In fact, there was no one in an Athenian courtroom who was a recognized legal authority, except for the several hundred (at least) jurors chosen from the *Dēmos* generally. Plaintiffs and defendants, at least those with the laws of Athens on their side, had to rely on the citizens' knowledge of the laws. In a speech before an Athenian jury, the orator Demosthenes reminded them that, "You have sworn to give a verdict according to the laws, and to the decrees of the People and of the Council of Five Hundred" (Dem. 19.179; note that he mentions the laws before the decrees).

But with no presiding judge, plaintiffs and defendant also had to rely on the jurors' just-mindedness (or susceptibility to rhetoric), especially when the law was obscure or non-existent. During a different trial from the one just mentioned, Demosthenes reminded another Athenian

jury that, “Again, men of Athens, you must also consider well and carefully the fact that you have come into court today, sworn to give your verdict according to the laws... and where there are no statutes to guide you, you are sworn to decide according to the best of your judgement” (Dem. 20.118). So in the absence of clear laws, jurors were free to vote according to unwritten laws, or their own understanding of justice (or their own prejudices).

#### THE END OF ATHENIAN DEMOCRACY

What happened to Athenian democracy? As with the rise of democratic governance in Athens (described briefly in another article), its decline was a gradual process, marked by a few dramatic moments and several reversals of fortune.

The decline had much to do with the rise of Macedonia as a power in the Greek world, under the leadership first of Philip and then of his son, Alexander. In 338 BCE, Philip’s army defeated the allied forces of Athens and Thebes in a battle at Chaeronea. This defeat forced Athens to enter into the so-called League of Corinth, ostensibly a pan-Hellenic alliance aimed at opposing the power of Persia, but actually an organization that gave Philip unprecedented authority over Greek affairs.

Upon Philip’s death, Alexander took over leadership of this League, and used it to help launch his invasion of Asia and his war with the Persian Empire. After Alexander’s departure from Greece in 335 BCE, the Athenians spent

the next eleven years in an unsettled state. On the one hand, they were more-or-less entirely free from foreign interference in their domestic affairs; on the other hand, there was a powerful body of Macedonian soldiers under the command of Antipater waiting in northern Greece to put down any effort at resisting Macedonian will. During Alexander's life, the Macedonians did not actually use force against the Athenians at any point, but this was only because the Athenians did not openly act against Macedonian wishes. The Spartans, under king Agis III, did try to assert their independence and were thoroughly, though not easily, defeated in a battle at Megalopolis in 331 or 330 BCE.

Things changed in 324 BCE, when Alexander reappeared in western Asia after his march to India. In that year he issued the so-called "Exiles Decree" that commanded every Greek city to readmit any former citizens who had been disenfranchised. Alexander also announced, from Asia, that he intended to end Athenian rule over Samos and to return control of the island to the Samians. This was a heavy-handed and, to many Athenians, unacceptable interference in the sovereignty of Athens. Under the leadership of an Athenian named Leosthenes, Athens began collecting a mercenary army and forming plans (if vague ones) to do something toward regaining true freedom as an independent polis.

Things changed even more dramatically in 323 BCE, when news of Alexander's death reached the Greeks of Europe.

The Athenians turned on any of their fellow citizens who had spoken in favor of cooperating with Macedonia – the orator Demades, who had passed a motion in the Assembly to award divine honors to Alexander, was fined ten talents, and Aristotle, who had been tutor to the young Alexander himself, wisely moved out of Athens.

And as 323 came to a close, Leosthenes, leading Athenian and allied forces, attacked the Macedonian forces under Antipater in the north. The effort was initially successful, but Leosthenes was killed while besieging the fortress of Lamia, Macedonian reinforcements arrived during the spring of 322, and the by summer of that year the Athenians had lost both on land and sea.

The Macedonian Antipater imposed a settlement on Athens, which was in no position to resist, that brought about an end of the city's autonomy in foreign affairs and democratic self-rule at home. The revisions to the Athenian constitution limited citizenship to those whose wealth amounted to at least 2000 drachmas; there was also to be a garrison of Macedonian forces stationed in the harbor of Piraeus.

Thereafter, while many of the institutions of the Athenian democracy continued to function, and the constitution underwent further changes, sometimes toward more inclusiveness and freedom, and sometimes toward less, Athens would never again be completely free in domestic and foreign policy, and would never again be ruled by the will of the Dēmos, meeting in its Assembly.



(The story of the end of Athenian democracy, which is unfortunately missing from many general descriptions of Greek history, is well told in D.L. Schneider, trans., Christan Habicht, *Athens from Alexander to Antony* [Harvard University Press, 1997].)



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