

ANCIENT AND MODERN DEMOCRACY

TWO CONCEPTS OF LIBERTY?

WILFRIED NIPPEL



Ancient and Modern Democracy

Ancient and Modern Democracy is a comprehensive account of Athenian democracy as a subject of criticism, admiration and scholarly debate for 2,500 years, covering the features of Athenian democracy, its importance for the English, American and French Revolutions and for the debates on democracy and political liberty from the nineteenth century to the present. Discussions were always in the context of contemporary constitutional problems. Time and again they made a connection with a long-established tradition, involving both dialogue with ancient sources and with earlier phases of the reception of Antiquity. They refer either to a common cultural legacy or to specific national traditions; they often involve a mixture of political and scholarly arguments. This book elucidates the complexity of considering and constructing systems of popular self-rule.

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Translated by KEITH TRIBE



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Abbreviations

Fornara	Charles W. Fornara (ed.), <i>Archaic Times to the End of the Peloponnesian War</i> (Translated Documents of Greece and Rome, 1), Cambridge 1983.
GKG	Jacob Burckhardt, <i>Griechische Kulturgeschichte</i> , reprinted Munich 1977.
Harding	Philipp Harding (ed.), <i>From the End of the Peloponnesian War to the Battle of Ipsos</i> (Translated Documents of Greece and Rome, 2), Cambridge 1985.
MECW	Karl Marx, Frederick Engels, <i>Collected Works</i> , Moscow 1975ff.
MEGA ²	Karl Marx, Friedrich Engels, <i>Gesamtausgabe</i> , Berlin 1985ff.
MEW	Karl Marx, Friedrich Engels, <i>Werke</i> , Berlin 1955ff.
Mill, <i>Collected Works</i>	John Stuart Mill, <i>Collected Works</i> , ed. John M. Robson et al., Toronto 1963ff.
Mill, <i>Dissertations</i>	John Stuart Mill, <i>Dissertations and Discussions</i> , vols. 1–2 (1859), reprinted New York 1973.
MWG	<i>Max Weber Gesamtausgabe</i> , Tübingen 1986ff.
Rhodes / Osborne	Peter J. Rhodes and Robin Osborne (Hgg.), <i>Greek Historical Inscriptions 404–323 BC</i> , Oxford 2003.

Introduction

Athenian democracy lasted less than two centuries. No date is available to trace its beginning. Athenians liked to think of the great legislator Solon (594 BC) as their founding father, but since the nineteenth century scholars have primarily regarded the reforms of Cleisthenes (508/507 BC) as the prime impulse for a process that led to the development of democracy around the middle of the fifth century BC. This was sustained until 322 BC, with brief periods of oligarchic rule intervening in 411 BC and 404/403 BC. Then, under Macedonian supremacy, an oligarchic constitution was introduced. In the decades to follow there were various régime changes which were repeatedly declared to be a 'restoration of democracy'. This did permit self-government by the citizenry, but actually by a select few of those citizens who were able to spend time and money on the assumption of political functions. The characteristic feature of democracy up until then, the extended participation of the entire citizenry, offices being filled by lot and daily allowances being paid for their performance, were ended.

Although by modern standards this political system was always that of a small state, it has retained its fascination right up to the present, whether as a shocking example of 'mob rule', or as a model of collective self-determination, against which all modern forms of indirect, representative democracy fall short. Centuries of debate over antiquity have been interwoven with the question of how, under the quite different conditions of modernity, it might be possible to establish a society of free citizens under an appropriate constitutional order.

There are in antiquity other Greek political forms that have been called 'democracies', but they are not relevant here – either because they only bore a limited resemblance to the Athenian model, or because little is known about their internal structure and they barely left a trace in later European history. This is even more true for the possibility that similar orders existed outside the Greek world, in, for instance, Mesopotamian or Phoenician city-states. The

extension of our knowledge about political structures existing outside Athens and Greece, achieved by the systematic scholarly analysis of inscriptions, has not altered this fixation upon the Athenian model in the Western world's conception of history.

Nonetheless, we need to remember that the discussion of Athenian democracy is only one part of much broader reflections on the political legacy of antiquity. (There is no space here for any treatment of the wider legacy, represented in literature, painting, architecture, philosophy and mathematics.) Depending on period, context and author, at issue might be the general political conditions of antiquity, or the distinctions between Greece and Rome, or the contrast between Sparta and Athens within the context of Greek antiquity. In each case, a different assessment of individual phases of a given history could be made. Usually, one early period – Sparta at the time of Lycurgus, Athens at the time of Solon, Rome in the early days of the republic – has been contrasted with a later phase thought to represent a period of political and moral decline.

Evaluations of the philosophical and artistic achievements of the Greeks, and assessment of their political culture, can diverge, sometimes quite markedly. In the late nineteenth century Jacob Burckhardt wrote that 'during the intervening millennia it has not been Athens as a state, but as a cultural potential, that has remained the source of inspiration'.¹ Some decades later Ulrich von Wilamowitz wrote that 'we are only interested in the ephemeral features of Athenian politics in order to understand the eternal works of Attic artists'.²

In 1798, Friedrich Schlegel had summed up the way in which antiquity had been used: 'Everyone has found in the ancients what they needed, what they wanted; for the most part, themselves.'³ It was, according to Otto von Gierke, 'less a matter of what the Greeks and Romans thought about state and law, than what survived in the reception process, and what they were thought to have believed'.⁴

Discussions were always in the context of contemporary problems; time and again they made a connection with a long-established tradition, involving dialogue both with ancient sources and with earlier phases of the reception of antiquity. Until the later eighteenth century this also reflected the fact that no specific distinction was thought to separate antiquity from a given present, so that 'classical' texts could be applied directly to one's own times.

Apart from specialised scholars, the 'antiquarians', who were eager to collect all possible evidence, knowledge of antiquity depended on a schoolbook canon of literary sources; and attention to Greek sources was often contingent upon

¹ GKG I, 224.

² Ulrich von Wilamowitz-Moellendorff, 'Staat und Gesellschaft der Griechen', in idem and Benedictus Niese, *Staat und Gesellschaft der Griechen und Römer*, Leipzig 1910, 134.

³ Friedrich Schlegel, *Prosaische Jugendschriften*, ed. Jakob Minor, Vol. 2, Vienna 1906, 225.

⁴ Otto von Gierke, *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien*, Breslau 1902, 327.

the existence of Latin translations or translations into vernacular languages. The texts were taken at face value, even when they dealt with imaginative accounts of the supposed origins of social order. Even when it was clear that they could not be regarded as entirely factual or reliable, they were assessed according to the criteria of plausibility, or one's own values. There was no questioning of the sources behind these sources – considering how these texts had come into being by drawing on older oral or literary traditions, and so determining how their reliability might be judged. This kind of *Quellenforschung* was first developed by scholars in the nineteenth century, especially in Germany, but not necessarily adopted in classical education. A gap emerged between what scholars knew and the image of antiquity shared by a broader, cultivated public.

The early modern constitutional state – this being an ideal-typical term for quite varied political systems of the past two and a half centuries, all of which were subject to many transformations – developed out of a variety of medieval traditions involving self-administration and political participation in communal, corporative and ecclesiastical bodies; it had no institutional continuity with antiquity. The idea, first developed in Canon Law and then transferred to civil bodies that appointed representatives were entitled to make binding decisions on behalf of those who had selected them,⁵ was unknown in antiquity. This is also true of the idea that certain decisions can be made only with a qualified, rather than a simple majority.⁶

The introduction of representative constitutions was not necessarily associated with universal (male) suffrage, in the form first established in many countries during the later nineteenth and twentieth centuries.⁷ From the very first the modern constitutional state limited the majority principle, the protection

⁵ One root of the principle of representation can be found in a tenet which had been part of Canon Law since the twelfth century: that all those persons who would be affected by a decision must discuss it and express their agreement – *quod omnes tangit ab omnibus tractari et approbari debet*. The formula derives from Roman Private Law, but was transferred to Public Law during the medieval revival of Roman Law. It was understood in the sense that the agreement of all had to be given by elected representatives, who had at their disposal a free mandate. See Bernard Manin, *The Principles of Representative Government*, Cambridge 1997, 87f. (with further references).

⁶ The two-thirds majority principle comes from the rules governing papal elections, and has been in force since 1179 – Léo Moulin, 'Les origines religieuses des techniques électorales et délibératives modernes', *Revue internationale d'histoire politique et constitutionnelle* n.s. 3, 1953, 106–148; Léo Moulin, 'Origines des techniques électorales', *Le Contrat Social. Revue historique et critique des faits et des idées* 4, 1960, 172–178; Josep M. Colomer and Iain McLean, 'Electing Popes: Approval Balloting and Qualified-Majority Rule', *Journal of Interdisciplinary History* 29, 1998, 1–22; Peter Herde, 'Die Entwicklung der Papstwahl im dreizehnten Jahrhundert. Praxis und kanonistische Grundlage', in his *Gesammelte Aufsätze und Abhandlungen*, Vol. 2.1, Stuttgart 2002, 153–180.

⁷ Nor is the provision of such an electoral law a sufficient condition for democracy, as is demonstrated by the constitutions of the North German Confederation (1867) and the German Empire (1871), which despite the introduction of universal male suffrage were based on a compromise between monarchical and popular sovereignty.

of individual rights being effected in one way or another through the division of powers. Moreover, this could be emphasised by the invocation of inalienable human rights, a conception unknown in antiquity.

There was certainly an intellectual tradition within which ancient ideas continued to hold sway and merged into particular practices and conceptions. This was less true of the model of equal political participation for all citizens, largely rejected for many centuries, than for a form of republicanism compatible with forms of rule by ‘notables’, so long as this represented a safeguard against a descent into arbitrary rule, as the Roman concept of citizenship had done.⁸

The modern model of creating a constitution that comprehensively regulates the competences of the organs of the state and lays them down in a constitutional document does not presuppose the existence of any democratic principle, as demonstrated by the written constitutions of the English seventeenth-century Interregnum, or the Danish *lex regia* of 1665, which consolidated monarchical absolutism (and which was only dissolved by the new constitution of 1849).

Differing histories have to be reconstructed for all of these, and they do not run in synchrony; and in each case there is the problem of whether particular conditions in antiquity, the Middle Ages or early modernity are treated as simple conditions of later possibilities, or rather already as their realisations.

This is true, for example, of the question of continuity, or lack of it, between representation by estates and parliaments, especially in the English case, for which popular history assumes that there is a more than 700-year history for parliament. And even more so for human rights – what was here of decisive importance: specific Stoic and early Christian roots (although the later Catholic Church rejected human rights until well into the twentieth century); the demands of seventeenth-century English Dissenters for freedom of belief and conscience; codification during the American and French Revolutions; or their inclusion as part of international law by the United Nations, the Council of Europe or the European Union, however effective or ineffective this might be?

⁸ Quentin Skinner, *Liberty before Liberalism*, Cambridge 1997, opposed with his conception of ‘neo-Roman liberty’ an overemphasis upon the participatory tradition in John G. A. Pocock, *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition*, Princeton 1975. In each case there is a tendency to overestimate the importance of ancient influences. The variety of Republican forms in Europe – see *Republicanism. A Shared European Heritage*, Martin van Gelderen and Quentin Skinner (eds.), 2 Vols., Cambridge 2002 – cannot be treated as an example of ‘classical republicanism’. That is especially true for Dutch republicanism, whose great importance has been emphasised by Ernst H. Kossmann, ‘Dutch Republicanism’, in *L’età dei lumi. Studi storici sul settecento europeo in onore di Franco Venturi*, Naples 1985, 453–486, this being most recently repeated by Jonathan I. Israel in, for example, ‘The Intellectual Origins of Modern Democratic Republicanism (1660–1720)’, *European Journal of Political Theory* 3, 2004, 7–36; and his *Democratic Enlightenment. Philosophy, Revolution, and Human Rights, 1750–1790*, Oxford 2011. It would be more appropriate to talk of ‘protodemocracy’, since it did not yet involve a conception of political rights which drew in the great majority of citizens.

During the nineteenth century, the application of the concept of democracy to orders that had a quite different institutional and legitimating foundation than that of the ancient model had particularly serious effects.⁹ This completely rules out the possibility of writing a ‘history of democracy’, since one would either have to elevate one tradition or era into the standard for all others in world history, or alternatively assume that democracy is an ideal that has never ever been realised, such that all previous endeavours in this direction were either failures or conscious misrepresentations. World history might be the world’s tribunal (Friedrich Schiller), but in my opinion historians lack the qualifications to sit as judges.

This book will seek to reconstruct, using original sources as far as is possible,¹⁰ the role played in modern discussion by an intellectual demarcation from, or identification with, Athenian democracy. A detailed though not exhaustive presentation of the Athenian constitution makes clear just how selectively later writers have employed this tradition, depending on the particular argumentative stance adopted. Positions developed in the modern study of ancient history demonstrate the reciprocity between specialised historico-philological research and ‘Grand Theories’ regarding social development and the course of human history.

Tracing the history of debates over freedom and democracy, ancient and modern, that have lasted centuries necessarily involves selection. The account presented here makes no claim to comprehensiveness, but locates important points at which it can be shown how close the connection was between thoughts about a current order and that of antiquity. Here statements involving a direct invocation of the (presumed) reality of Athenian democracy are placed in the foreground. The processes of reception always involve a selection being made from a broad and available ‘stock’ of particular elements suited to whatever argument is being made at the time. As Leopold von Ranke put it: ‘Speculation has its own history, which reaches from one era into another; what has been established in the first serves as a basis for the following; but further development, and the degree of its validity, is always very closely related to the events

⁹ ‘Modern representative democracy has changed the idea of democracy beyond recognition. But, in doing so, it has shifted it from one of history’s hopeless losers to one of its more insistent winners’ – John Dunn, *Setting the People Free. The Story of Democracy*, London 2005, 20. Egon Flaig has here spoken of ‘the most grandiose conceptual misappropriation in modernity’ in his ‘Menschenrechte ohne Gleichheit? Die athenische Demokratie im neoliberalen Gegenlicht’, *Rechtshistorisches Journal* 16, 1997, 62–113, here at 81.

¹⁰ Of course this cannot happen without having examined in detail the relevant scholarly literature. Even to cite a small selection of the literature relating to Athens, the English, American and French Revolutions, and the many classical political thinkers, the noteworthy historians, social scientists and lawyers would overwhelm the account given here. Consequently, references to secondary works are here included only where a direct citation is made, or as an indication of other sources for matters that cannot be discussed in detail. In those sections on the history of nineteenth- and twentieth-century scholarship, works representing differing positions in discourse about democracy, ancient and modern, are treated as ‘sources’.

of the time. The great crises of history lend an impulse to new conceptions, ideals and systems'.¹¹

It is always necessary to discuss how referencing back to Athens relates to discussion of ancient 'alternatives' in the shape of Sparta and Rome (whether it is the republic, Caesar's personal rule or the Principate). Sparta and Rome can be introduced here only at certain points. They play a very limited role in modern democratic discourse. Of course, in retrospect they seem to share many common features – their military orientation, the role of slavery and the absence of a representative system – and these similarities of political system seem to be greater than their differences.¹² But whenever democracy itself was a matter for discussion, and this was not understood as a limited degree of civic participation in a system otherwise dominated by an aristocracy and/or a monarchy, then Athens was always treated as the ancient democracy *par excellence*.

Moreover, it is necessary to discuss the given current constitutional political situation in which the reception of antiquity is embedded. This is especially true for the American and French Revolutions and the subsequent European constitutional conflicts, within which political actors actually developed their conceptions through the medium of the ancient tradition, or at least were thought to have done so.

This present-centredness remained true of later periods, especially for writers who combined the roles of scholar and politician, whether in the higher levels of state administration, or whether as a member of a parliament composed of notables. Such scholars were not limited to particular disciplines or epochal interests. That was not only true of polymaths such as John Stuart Mill or Max Weber, but also for lawyers and political economists for whom reference to antiquity in their studies was taken for granted, at least up until the beginning of the twentieth century. Historians (in Germany and elsewhere) taught and published across the entire domain of history far into the nineteenth century, or, once medieval studies had developed as an independent discipline, they were both ancient and modern historian in one person. This made reference from antiquity to modernity a quite natural matter even if there was no particular political message attached. Correspondence between scholars, in which they often formulated their (political) intentions more clearly than in

¹¹ Leopold von Ranke, 'Zur Geschichte der Doctrin von den drei Staatsgewalten', in his *Sämmtliche Werke*, Vol. 24, Leipzig 1872, 237–266, here at 237f.

¹² The points made by Fergus Millar, *The Crowd in Rome in the Late Republic*, Ann Arbor 1998, regarding the quasi-democratic character of the Roman Republic have given rise to controversy, since this does not correspond to the way that Romans understood themselves, and furthermore evens out the great differences with Athens. Millar has responded by pointing to accounts of Rome as a democracy in Renaissance and early modern political theory: *The Roman Republic in Political Thought*, Hanover, NH, 2002. That is only partially convincing, since Rome was mainly thought to have a mixed constitution. What here becomes evident is the problem that even in antiquity the concept of democracy was a very broad one, which in turn had to be reflected in the history of reception.

their writings, has for the most part not been introduced here, since such private expression was as a rule unknown to the relevant contemporary public. Biographical references to these authors are given briefly wherever it appears necessary for the understanding of the cited text.

Since the late nineteenth century, and really only starting in the twentieth century, references to antiquity in general constitutional argument seem to have diminished, while the study of antiquity itself has become more strictly a scholarly matter. This naturally does not mean that the perceived relevance of antiquity to such discussion just disappeared. The link with Athens was always made whenever the question of the proper form of democracy was raised. Scholars in the humanities and social sciences on the one hand draw upon contemporary problems for their questions; on the other they are often pressured to demonstrate the utility of their discipline, or at least sense such a pressure, quite apart from cases where an official version of history is required, or where there is a consciously self-serving relationship to ruling powers and ideologies.

Discussion about Athens can just as little be clearly separated from debate over other political models in antiquity as they can be neatly divided into 'scholarly' and 'political' dimensions. Moreover, given the continuity of individual motives and the many stages of a reception process presented, a chronological order can be maintained only in the shape of a crude framework, requiring a great deal of back and forth.

Why certain issues and ideas came together and were suddenly the object of particular attention can be explained by linking each case to contemporary political problems and discussions. Things are much more difficult where there seems to have been an absence of such interest. It may be that there are in fact relevant texts, but these have been forgotten, or have been overlooked only by the present author. All in all, any explanation why certain discussions did not take place must necessarily remain hypothetical.

In various national cultures one used to refer to a cultural legacy common to all Europeans, conditioned however by questions that derived from specific social conditions and scholarly traditions;¹³ or alternatively, similar debates arose, but they did so at different times and so were not linked together. I here seek to make plain the common European basis of discussion about Athens that has gone on for centuries, necessarily including North America as both giving and taking in transatlantic debate.¹⁴

¹³ Oswyn Murray has put this well in 'Cities of Reason', *Archives européennes de sociologie* 28, 1987, 325–346, here at 326: 'The German *polis* can only be described in a handbook of constitutional law; the French *polis* is a form of Holy Communion; the English *polis* is a historical accident; while the American *polis* combines the practices of a Mafia convention with the principles of justice and individual freedom'.

¹⁴ The limitation to 'The West' is not intended as a denial that, in other cultures, at different times, there have been structures that could be called democratic. John Keane's *The Life and Death of Democracy*, London 2009, provides a great deal of material from different periods.

If there seems to be an emphasis upon German discussion in the treatment of the nineteenth and twentieth centuries, this can to some extent be explained by the unavoidable limitations in my knowledge of the literature. But there are also substantive reasons for this – the leading international position occupied by German scholarship in the nineteenth century, and the consequences of National Socialism, not only with regard to the future course of history, but also for all consideration of how a political order guaranteeing freedom and human dignity can be established and maintained.

The History and Structure of Athenian Democracy

In this chapter the conspicuous features of Athenian democracy will be outlined.¹ Classical scholarship has advanced since the nineteenth century, drawing upon all literary and inscriptional sources and becoming increasingly refined. One Aristotelian text, *The Athenian Constitution*, whose first historical part provides a critical outline of the development of democracy and the second systematic part, on the contrary, a detailed and neutral account of the complex procedural rules in force during the later fourth century BC,² was rediscovered on papyrus only in the late nineteenth century and published in the 1890s. Despite the advances in understanding made by modern scholarship, the general public's comprehension of Athenian democracy remained heavily marked by stereotypical ideas developed over many centuries. The emphases in this chapter are placed on those aspects of Athenian democracy that have been a constant source of controversy and misunderstanding.

ATHENS – A SPECIAL CASE IN THE GREEK WORLD

From the eighth century onwards, the Greek world stretched beyond the mainland and the Aegean islands to the coast of Asia Minor, Sicily and southern Italy. It was formed for the most part of city-states (*poleis*) populated by autonomous groups of citizens. There were around 700 such *poleis* in the Greek mainland and islands alone. Each had a territory of between twenty and thirty-eight square miles, with 500–1,500 adult male citizens. A *polis* was a single jurisdiction, combining both the urban centre (with a place of assembly, magistrates' and administrative buildings and temples) and a surrounding

¹ References are given to a representative selection of sources only. Attic orators are quoted without distinguishing between authentic speeches and those that are found only in collections of their speeches (e.g., Demosthenes); this does not have any consequences for the account given here.

² All dates in this chapter relate to the pre-Christian era.

hinterland. *Poleis* were therefore distinct from the city-states and republics of medieval Europe, where the status of a citizen was linked to his residence in the city – as a necessary, but not sufficient, condition of citizenship. The city-state of Athens itself extended over the whole of Attica, covering 985 square miles, or an area similar to that of present-day Luxembourg, but less than that of the smallest American state, Rhode Island.

We do not know the precise number of citizens, nor of the wider population. Estimates can be made only indirectly, using, for example, the size of military units; but these only included men capable of arming themselves as hoplites for the infantry. More recently, population estimates have been made using figures for Athens' grain consumption. At its height (shortly before the outbreak of the Peloponnesian War in 431), the number of politically qualified adult males could have reached 60,000; the total number of inhabitants, including the wives and children of the citizens, resident aliens (*metoikoi*; metics) and slaves of both gender, is much harder to judge, but the most generous estimate comes out at something between 300,000 and 400,000. The immense losses during the Peloponnesian War would have played a major role in reducing that number in the fourth century.

The political unification of Attica was completed quite early on, probably during the tenth century; Athenian tradition ascribes this to King Theseus. This created a political centre, but not the rule of a city over a surrounding area and its inhabitants. One example of such a development is that of Sparta, where rule was extended first of all to the surrounding territory and then to the greater part of the Peloponnese. Its governmental and social order, in retrospect treated as the sole work of the great legislator Lycurgus, was in fact the outcome of a long-term and complicated process which turned on the fact that Spartans were professional warriors capable of maintaining rule over subject territories, and of keeping their populations in a condition of collective slavery as helots. Besides these there were also *perioikoi*, free men living in communities enjoying limited rights of self-administration, who were obliged to perform military service for Sparta.

SOLON, THE LEGISLATOR

During the seventh and sixth centuries Athens showed signs of crisis similar to those of many other *poleis*. Tensions rose between a leading stratum of nobles and the great mass of farmers who, suffering from legal insecurity and indebtedness, faced the possible legal consequences of the latter in debt-bondage and sale into slavery. This had brought even Athens to the brink of civil war, with the associated danger that sole rule (*tyrannis*) would become illegitimately established. It was for this reason that Solon was appointed in 594 or thereabouts as an 'arbitrator', with comprehensive legislative powers. His legislative authority thus rested upon consensus, however this might have been conferred on him. Solon was supposed to have made the Athenians swear that they would

not alter his laws for a period of ten years.³ This implies that the legal order should be subject to enacted legislation. However, this would not be the case if those sources which say that the obligation not to alter the laws lasted for a century are to be believed.⁴

Apart from the consolidation and partial development of traditional law, Solon undertook a reorganisation of the constitution, dividing political rights according to four distinct classes of wealth. However, more important than these distinctions was that all citizens were included, even those without any assets. The introduction of a property qualification did not alter the political role of the upper class; it did, however, imply that membership of the highest rank of citizens was no longer heritable, but subject to economic and military capacity. Popular assemblies became more important; magistrates were elected by all citizens with the same voting rights, and the assemblies also functioned as courts in which citizens could appeal against judgements made by magistrates. It can be assumed that these popular assemblies reached decisions based on the majority of those present. Quite remarkably, this epochal breakthrough, whenever it actually happened, is not something to which ancient sources paid attention.⁵ Above all, Solon proscribed the enslavement of the domestic population. This prohibition gave the status of citizen its own specific value as a guarantee of personal freedom. In the longer term, this led to the importation of slaves to meet the need for workers. Freedom and slavery stood in a dialectical relationship.

Solon was viewed by later generations as the 'father of democracy', in particular during the fourth century. Of course, in Solon's time they still did not talk of 'democracy', but of *eunomia* (good order) which could either be achieved or lost; there was still no idea that there could be constitutional alternatives. Nonetheless, Solon expressly emphasised the principle of the responsibility of each citizen for the fate of the commonwealth, the welfare of which depended upon their own conduct, and not the will of the gods.

THE TYRANNY OF THE PEISISTRATIDS

In the long run, Solon's reforms could not prevent the rise of the tyrant Peisistratus, who ruled from 561 to 527, with some intermissions. He did not

³ Herodotus 1, 29, 2 – provided that it is historical, this would be the earliest instance of an 'entrenchment' clause (see fn. 269).

⁴ Aristotle, *Athenian Constitution* 7, 2; Plutarch, *Solon* 25, 1.

⁵ Since this did come to be regarded as self-evident, the Spartan procedure during elections (Plutarch, *Lycurgus* 26, 2f.) and voting in popular assemblies (Thucydides 1, 87, 2), namely deciding not by the number of votes, but by the volume of noise, came to be a matter of bewilderment. Aristotle regarded this simply as 'childish' (*Politics* 1270b27f.). With regard to the treatment of preferences there is some kind of rationality here (see fn. 37), even if this was open to error and manipulation during elections in which the degree of agreement for numerous candidates was to be 'measured'.

abolish the existing institutions, but filled the most important positions with his own people.⁶ During the period of his rule the political standing of the aristocracy was permanently weakened. In the sources Peisistratus has a relatively 'good press', partly because of the measures he introduced in support of small farmers, and also because of his building programme, and his promotion of pan-Athenian celebrations, such as that in honour of the city's goddess, Athena. This furthered a sense of belonging to the polis, and not just to its constituent parts.

It was only the final phase of the subsequent joint rule of his sons that was felt to be oppressive. In 514, one of them (Hipparchus) was murdered, while in 510 the second, Hippias, was driven away with the help of Sparta. Harmodius and Aristogeiton, who murdered Hipparchus in 514 and paid with their lives for so doing, were feted as heroes of liberty after the end of the tyranny. Statues of the pair were installed on the Agora,⁷ their act of liberation having been endorsed ever since, and their descendants honoured. It was because of this cult that in the later fifth century the historians Herodotus and Thucydides argued that the murder of one of the Peisistratids in no respect brought the era of tyranny to a close, and that Harmodius and Aristogeiton had really acted out only out of personal motives of revenge.⁸ Nonetheless, this did not alter their transfiguration into heroes of liberty, which had the advantage that the role of Sparta in the overthrow of tyranny was displaced by the idea that citizens had liberated themselves.⁹ This also coincided with the way that democracy always saw itself as a legal order distinct from tyranny, defined as a form of arbitrary rule lacking all control. This was expressed both at the opening of assemblies and in public ceremonies, when a potential tyrant was again and again cursed.¹⁰

THE REFORMS OF CLEISTHENES

After the overthrow of the tyranny a power struggle broke out among the aristocracy; Cleisthenes succeeded in winning over most of the citizenry to his side and implementing a comprehensive reform in 508/507. The central point was a reorganisation of the subdivisions of the citizenry according to a rational ordering.¹¹ Subdivision by *phylai* (translating this term with 'tribes' represents

⁶ The rule of the Medici in fifteenth-century Florence offers a parallel case.

⁷ The first group of statues was installed shortly after the collapse of tyranny; when the Persians seized them in 480, a new set was made.

⁸ They were represented as lovers. The relationship between a grown man (Aristogeiton) and a youth (Harmodius) was regarded as typical for the aristocracy. However, Thucydides (6, 54, 2) here emphasises that Aristogeiton came from the middle stratum.

⁹ Herodotus 6, 123; Thucydides 1, 20; 6, 54–59. Aristophanes, *Lysistrata* 1150–1156 contains a reminder that liberation from the Peisistratids was owed to the Spartans.

¹⁰ Aristophanes, *Thesmophoriazusaë* 338f.; *Birds* 1072ff.

¹¹ This new order overlaid the older form of organisation by phratries. These (fictive) kinship groupings remained in place and retained important functions in the attestation of marriage and

a stopgap solution) existed in all *poleis*, being used to organise military units and for the collection of dues related to military expenditure by the state. Moreover, a *phyle* filled the need for a sense of belonging to a group which was thought to be a clan that descended from a common ancestor.

Central to Cleisthenes' new order was the distribution of local communities, the demes, among the *phylai*. (The concept *demos* signified both these groupings and the citizenry as a whole.) According to one ancient record, there were something like 170 or 174 demes;¹² epigraphic findings from the fourth century suggest a smaller number, from 133 to 139, demes. For the most part these demes were rural settlements. New, however, was the way in which this division into local communities was extended to the city of Athens itself, so that it had no special status within the state. By joining these demes into ten new *phylai*, each being composed of demes from the urban area, the coast and the interior, each *phyle* became a regional cross-section, every region being represented in each *phyle*. The *phylai* were therefore artificial entities, not territorially linked regions.¹³

The demes took over the task of maintaining the lists of citizens, while the *phylai* organised the raising of military contingents. The newly established Council of 500 was composed of 50 councillors each from the 10 *phylai*; and within these *phylai* the individual demes were in turn represented in proportion to the number of citizens they had. Many demes put forward only one or two councillors, some more than ten: one *demos* had twenty-two councillors. These quotas remained fixed, since membership of a deme was heritable; and if people moved to another community in Attica, they stayed registered with their original deme.

Herodotus stated laconically that Cleisthenes 'gave the Athenians their tribes (*phylai*) and democracy'.¹⁴ It is not immediately obvious what the one has to do with the other. The new organisation mutually reinforced two tendencies which, under other circumstances, could have worked against each other: securing connection to a home community; and at the same time, stabilisation of political participation at the level of the state as a whole. The artificial composition of the *phylai* ensured that in the raising of military contingents and for the Council of 500, as well as in competitions during public festivities, men came together from different regions who shared in common only the fact that they were citizens. This promoted the formation of new structures of solidarity and communication at the level of the state, connections which

the recognition of legitimacy. It is not clear whether membership of a phratry was a necessary condition to be entered in the list of citizens, but it was often raised whenever the status of someone as a citizen was questioned. Detailed rules relating to the criteria for becoming a member of a phratry exist for the fourth century; Rhodes/Osborne, no. 5.

¹² Strabon 9, 16 = C396.

¹³ It does not become clear in the sources in what manner the numerous administrative questions were resolved, and how long the implementation took.

¹⁴ Herodotus 6, 131, 1.

hitherto only the aristocracy had enjoyed. At the same time, the representation of regional interests within institutions was blocked. The demes were elevated from the status of mere local settlements to political units. They acquired their own magistrates, had their own property, organised many festivities and cults, in part connected with events put on by the *polis*, in part in addition to those of the state as a whole. They were the site in which the citizen felt himself directly part of the community, and within which the work of self-administration could be exercised. In the assemblies of local communities even the humblest citizen was able to make demands and express agreement or disagreement; those who would otherwise have found the assemblies in Athens too large, too anonymous, the questions raised too complex, the dominance of practised orators too overpowering could here make themselves heard.¹⁵

The longer-term effects of Cleisthenes' reforms cannot be over-estimated. However, he enjoyed only a minor role in the collective memory of the Athenians. It was, instead, the murder of the tyrant in 514 that became regarded as the inauguration of political freedom.¹⁶

OSTRACISM

There is another tradition that involves the introduction of *ostrakismos*. In one version Cleisthenes had introduced it; but the first time it was put into practice was only in 488/487, a relative of the Peisistratids being expelled in this way.¹⁷ Another version states that this instrument was invented only by its initial use during the year in question.¹⁸ Most scholars have here turned to material probabilities, for want of an obviously 'better' source (according to the criteria of source criticism): some conclude from the given aim of preventing a new tyranny that the ordinance was part of Cleisthenes' reorganisation; others argue that it is entirely improbable that someone would invent such a decisive instrument and then leave it unused for over twenty years. All that can be said with certainty is that its first use fell during the year 488/487.

The sources are consistent in supporting the assumption that expulsion was intended to prevent a new tyranny, which was why the first resolutions involved persons suspected of being associated with the overthrown Peisistratid family,

¹⁵ Membership of the demes was heritable, but people could move to any place in Attica. Therefore, there were non-urban demes that held their assemblies in Athens during the fourth century; Demosthenes 57,10.

¹⁶ Later, Cleisthenes became sometimes associated not only with the introduction of democracy, but also with the simultaneous overthrow of tyranny – Isocrates 15, 232.

¹⁷ A fragment of a late Byzantine source found during the twentieth century in the Vatican Library suggests that ostracism was initially carried out by the council; John J. Kearney and Anthony E. Raubitschek, 'A Late Byzantine Account of Ostracism', *American Journal of Philology* 93, 1972, 87–91. It is not clear how much weight can be placed on this obscure source.

¹⁸ Aristotle, *Athenian Constitution* 22, 1 (Cleisthenes as the originator of the law) – Androtion, Fragment 6 (introduction and first use coinciding).

or with the Persians who supported their reinstatement. But these initial conditions are insufficient as explanation when the fairly long-term functions of the procedure are considered.

Ostracism meant that one man annually – and just one – could, following a popular resolution, be compelled to leave the country for ten years, without any formal judicial procedure. This was an honourable exile, and expulsion was not associated with the confiscation of property, so that it did not affect the family group. Once the ten years term was up the exile was free to return and resume full civil rights, including admission to all offices. Thus, Cimon, who was exiled on account of his opposition to the constitutional reform of 462/461,¹⁹ assumed the command of an attack on Cyprus after his return in 450.

The popular assembly (*ekklesia*) had to make a decision at a definite point in time whether an *ostrakismos* should take place. If a majority was in favour, then after about two and a half months, again at a definite time, there was a vote without any prior discussion or speeches for the prosecution or the defence.²⁰ Each participant could write on an *ostrakon*, a clay tablet, the name of the person who should be exiled.²¹ Whoever ‘gained’ the most votes in this ‘reverse election’ had to go. A precondition was that at least 6,000 votes in total would be cast, one version suggesting that this was the total number of those voting, another stating that to be exiled one had to have received at least 6,000 votes.²² Most scholars opt for the former, presuming that otherwise the threshold for the number of participants would be so high that it was almost inconceivable that a successful ostracism could occur.²³ There was always a distribution of votes because of the lack of any prior list of candidates, and someone, or even a few people, could nominate an unpopular neighbour as a prank. Even in other decisions where 6,000 votes were required, this figure related to the total number of voters.²⁴

Ostracism can be seen as an ingenious arrangement. There is no risk that proof must first be given that someone aspires to be a tyrant, so that this does take place, and it all becomes too late then. But the strict timetable blocks any hasty reaction to acute danger. The damage to someone who is the target of suspicion is limited and prevents disputes between larger groups that might well end up with forcible ejections. The annual vote whether there should be

¹⁹ See p. 20.

²⁰ (Pseudo)-Andocides 4, a speech demanding that Alcibiades should be ostracised, is a fiction.

²¹ Scholion to Aristophanes, *Knights* 855.

²² Plutarch, *Aristides* 7, 5f. (6,000 as a quorum); Philochoros, Fragment 30 (6,000 against the person to be exiled). It is not clear what happened in cases where the identification of the named person was in doubt, because of the similarity of the name with that of another, or because the father’s name or the membership of the *demos* was not given. However, this would not have been a great problem, since most votes were cast against a few prominent persons.

²³ See the following text concerning the case of Hyperbolus.

²⁴ See p. 33f.

an *ostrakismos* demonstrated the control that ordinary citizens could exercise over aristocrats who might become too powerful, even if it was decided not to continue with the procedure. As far as we know, between 488 and 416 there were about a dozen cases of actual exile.²⁵ It is striking that those affected accepted the decision and did not seek to use force in defending themselves, which could have been expected from aspiring tyrants.

Ostracism was still used in a time when there was no longer a real threat that someone would aspire to tyranny (although this does not mean that this motif fell into disuse in political rhetoric). Instead, a state of competition prevailed between men who employed authority and rhetoric to argue over informal leadership in the popular assemblies. If a majority of a popular assembly was to declare in favour of an *ostrakismos*, there had to be some kind of smear campaign in respect of potential candidates. During the period before the definitive vote, this was intensified, so that sufficient men from all over Attica might attend. Some of the *ostraka* found at archaeological sites indicate that sometimes there could have been organised campaigns. One discovery turned up many potsherds on which the name of Themistocles was written in the same hand. One should bear in mind that many people could not write properly. It could have been possible that the financial interests of professional writers played a part here, speculating on who the possible victim might be. Some potsherds have, in addition to the name, a deprecatory comment, regarding a luxurious lifestyle, adultery or sexually deviant behaviour. It is, however, difficult to say whether this procedure also demonstrates the way in which the demos controlled the social behaviour of the upper strata.

If *ostrakismos* was intended to bring about a decision between two rival politicians, then the popular choice would fall on the one currently the less powerful. A few cases after 485 indicate that the procedure represented the high point of a duel between two leading politicians. By making this decision between persons, political direction was stabilised through the confirmation of a spokesman for the people.²⁶ This made the preservation of a constant line possible, especially in foreign policy; or, if it seemed appropriate, to make a clear change of course. Attendance at popular assemblies did fluctuate, and

²⁵ For nine cases this is clear; for seven more cases the sources are so unclear that no conclusions can be drawn. It is also not established whether there were instances in which the second vote took place, but the quorum was not met. See David J. Philipps, 'Athenian Ostracism', in *Hellenika. Essays on Greek History and Politics*, ed. G. H. Horsley, North Ride, N. S. W., 1982, 21–43.

²⁶ This can be said with certainty only in the cases of Aristides' exile in 483/482, which led to the programme of naval construction urged by Themistocles (Herodotus 8, 79, 1f.; Aristotle, *Athenian Constitution* 22, 7; Plutarch, *Themistocles* 5, 5), and of Thucydides Melesiou in 443 (see p. 33f.). The ostracisation of Themistocles between 474 and 470 was ascribed to his self-praise and greed – Plutarch, *Themistocles* 22f. In the case of Cimon it was his pro-Spartan attitude and opposition to the reforms of Ephialtes (see p. 21) that were crucial. In this respect it was a decision about a fundamental political issue: Plutarch, *Cimon* 17, 2; *Pericles* 9, 4; Andocides 3, 3.

the absence of party fractions meant that it was not possible to predict voting behaviour; and so from time to time attempts were made to reverse previous decisions. On the contrary, if leading politicians were presumptive tyrants, then reinforcing the influence of the strongest would have been quite counterproductive. The last time that *ostrakismos* was implemented emphasised the functional changes the procedure had undergone during the fifth century. In 416 or 415, a vote of this kind was supposed to have resulted in a choice between Nicias, who favoured a moderate foreign policy for Athens, and Alcibiades, who advocated a more aggressive line. These two came to an arrangement and managed – unfortunately, we do not know how – to organise their respective followers so that a third party, a man called Hyperbolus, was ostracised. That would be hard to imagine if 6,000 votes against one person were needed; but the concentration of votes upon three or even four ‘strong candidates’, together with random voting, would have made 2,000 votes (or even less) against Hyperbolus sufficient.²⁷ He certainly had been a prominent figure for some time, being mentioned in Aristophanes’ plays written in 425 and 424.²⁸ Nonetheless, his exile was considered an abuse; Hyperbolus did not deserve this ‘honour’, precisely because it did not involve any change in the direction of policymaking.²⁹ Ostracism was never formally abolished. Year after year the popular assembly voted on whether such a vote should occur. After the case of Hyperbolus, however, no one else was exiled in this manner. At most, it can be presumed that the threshold for a resolution on exile was raised; but no indications have been found in the sources.

Despite the fact that this peculiar procedure³⁰ had no practical importance during the greater part of the history of Athenian democracy it was a feature that should again and again be discussed in the history of reception, mostly, though not always critical.

THE ROAD TO COMPLETE DEMOCRACY

A second date for institutional change concerns the modus by which the posts of the chief magistrates, the ten archons, were filled in 487/486. By drawing lots from pre-selected candidates, archons were appointed. It can be assumed that each *phyle* put forward ten candidates, from which one was chosen by the lot. This procedure meant that the people were more strongly involved in the

²⁷ Plutarch, *Nicias* 11; *Alcibiades* 13, 3ff.; *Aristides* 7, 3f. Plutarch mentions Phaiax as a fourth potential victim, which has been confirmed by *ostraka* that have been discovered.

²⁸ Aristophanes, *Acharnians* 846; *Knights* 1304 and 1355. There are also other references in later pieces by Aristophanes, as well as in comedies by other poets, from which only fragments have survived.

²⁹ Plutarch, *Aristides* 7, 3f.; Thucydides 8, 73, 3.

³⁰ There were, at least temporarily, certain equivalents to the Athenian procedure in Syracuse (Diodorus Siculus 11, 86f.), Argos (Aristotle, *Politics* 1302b18) and perhaps some other cities. But apart from Syracuse, where the term of exile was five years, no details are known.

election than before, when members of the traditional elite put themselves forward for election. The property qualification was possibly lowered; otherwise it would have been difficult to have had sufficient candidates. For those who put themselves forward as candidates, selection by lot quite probably reduced the chances of dispute; to be defeated in a random selection process was easier to bear than losing an election. For ambitious politicians this was, however, scant comfort, since it could not be ruled out that they would either never, or very late in life, succeed in achieving high office and associated lifelong membership of the Areopagus (more on this in the following pages). This became even more true when appointment to the magistracy was made conditional on a dual lottery (probably from 458/457) and also opened up to members of the third property class of the citizenry.

One consequence was that those who sought not only administrative responsibility and honour (the highest ranking archon gave his name to the year he held office), but who wished furthermore to actively influence policymaking would stand for membership in the board of the ten *strategoï*, generals, the commanders of military units. These functions were filled by straightforward election. By assuming the post of *strategos* both military ability and qualities of political leadership were put on trial.³¹ These two factors went increasingly hand in hand from the beginning of the fifth century, when Athens was drawn into international politics.

The substantive preconditions for the emergence of democracy were created by Cleisthenes and during the decades immediately following his reforms. There was no talk of democracy itself, however. It is likely that the concept first emerged around 470; the oldest instances of its use date from the last third of the fifth century,³² when it also served as a polemical characterisation, referring to the secondary meaning of *demos* as 'lower orders' or 'rabble', rather than 'entire citizenry'.³³

From the time of Cleisthenes, or very shortly afterwards, the term *isonomia* was used in the sense of equality before the law, perhaps also in the sense of political participation. *Isonomia* remained the idea that the developed form of

³¹ This was not applicable to the same degree for all ten *strategoï*. Some were pure military specialists, like Lamachos and Demosthenes, who were repeatedly elected to the post of *strategos* during the Peloponnesian War. The election of the tragedian Sophocles in 441/440 can be explained by his prominent public profile, not because it was thought he possessed any special military competence. Expertise in financial questions could count more than military experience; Xenophon, *Memorabilia* 3, 4, 1ff. See for comments on *strategoï* without particular military abilities Aristotle, *Athenian Constitution* 26, 1.

³² It cannot be determined whether the formulation of popular rule in the 'Great Rhetra' regarding the Spartan constitution (Plutarch, *Lycurgus* 6, 1) is authentic, deriving from archaic times, or whether it comes from the fourth century.

³³ Herodotus 6, 131, 1 (neutral); Pseudo-Xenophon, *Athenian Constitution* 1, 4 (polemically against the domination of the lower orders).

democracy claimed for itself; but this concept could also be applied to more restricted political systems, as long as they were based on the rule of law.³⁴

In the longer term, political equality grew out of the increasing significance of the popular assembly, which was itself closely related to triumphs over the Persians – at Marathon in 490, in the sea battle of Salamis in 480 – as well as the formation of an alliance in the Aegean that was originally aimed against the Persians (the ‘Delian League’ in modern terminology, or alternatively ‘Athenian Empire’). This opened new dimensions of action for the Athenians, including the entire coastal regions of the Aegean Sea and the passage into the Black Sea. The organisation of such an alliance without precedent in the Greek world, the determination and realisation of contributions from about 200 member states³⁵ (supplying naval vessels or money payment), all this required extensive administrative, diplomatic and in some cases military activity. The focus of military potential upon the fleet necessitated continual and high levels of expenditure, organised at the level of the state. Manning the ships required the mobilisation of large sections of the citizenry, including the poorer non-landowning strata (the *thetes*) unable to serve in the infantry as hoplites since they could not afford the weapons and armour that such service required. The ships were used not only as troop transports, but were themselves employed as weapons in battle, ramming other ships; so the rowers could consider themselves as fighters too.³⁶

The number and importance of decisions made in the popular assembly constantly increased, as did the mobilisation of the lower strata of the citizenry. As a consequence, the majority principle was finally adopted, presupposing the diversity of positions in a society but serving to conciliate a given minority in any one decision, since the opportunity for the creation of other majorities remained open. This in turn presupposed that there was no group in the society that found itself, or felt itself to be, in the position of a structural minority whose interests were routinely ignored by the majority.³⁷ The religious, cultural

³⁴ Herodotus 3, 80, 6 (*isonomia* as a norm for democracy); Thucydides 3, 62, 3 (isonomic oligarchy).

³⁵ The exact number is unknown. According to the ‘tribute lists’ (see fn. 86), the Athenians reckoned on about 400 members; but they never received more than 190 contributions in any year.

³⁶ It is a disputed question since when lower-rank citizens in the navy were generally recognised as full soldiers. For some time there may have been a ‘cultural lag’ in the sense that this quality was still attributed only to the hoplite force. Rowers were volunteers and a considerable part or even the majority of the crews was made up of non-citizens. But at last during the Peloponnesian War the military and political importance of the citizen-rowers was acknowledged; Pseudo-Xenophon, *Athenian Constitution* 1, 2.

³⁷ Majority decision fundamentally implies that the strength of a preference plays no role. A slim majority of tepid proponents of a plan can prevail over a strong minority of determined opponents. A democracy based on the sovereignty of the popular assembly provides no possibility of dealing with this problem by the brokering of compromises. It would be dangerous if a particular group in society was under the impression that its views and interests were constantly disregarded.

and ethnic homogeneity of Athenian society minimised this danger, and the symbolic integration of the entire citizenry was again and again secured by public festivals and rituals.

Changes of institutional organisation strengthened the role of the popular assembly. In 462/461 the Areopagus (the council with its meeting place on the 'Hill of Ares', northwest of the Acropolis) was stripped of its political competences, retaining only its function as a court to try cases of homicide and some religious delicts.³⁸ The former archons were members of this, joining for life once their year in office was completed. The membership is estimated between 150 and 200, while the average age was considerably higher than that prevailing in other institutions. Until 462/461, this venerable council seems to have exercised considerable influence, whether informally, or through the control it assumed over magistrates (possibly including the conduct of treason trials); and considering the numerous new tasks created for Athenian politics since the formation of the Delian League, this influence would have increased. The drastic curtailment of its competences in favour of the popular assembly, the Council of 500 and the people's courts³⁹ led to the elimination of a body from decision making whose members enjoyed the advantage of experience, authority and perhaps also social power over other institutions that represented a cross-section of citizens. Simultaneously, the archons lost their leading position in the popular assembly and council. Henceforth, their most important task was as the formal chairpersons of jury courts (for more on this see further in the chapter).

The transfer of control over the magistrates to the popular assembly, courts and council made those in leading positions dependent upon popular will in a new manner, while it also increased the activity of these institutions. The change of political culture is also apparent from the initiation of inscriptional documentation of decisions made by assembly and council dating from precisely this time. Whatever the (minor) practical significance of this might have been for the citizenry of the time, this is symbolic proof of the transparency and binding character of decisions made by these institutions. The fact that in the fifth century decisions regarding the Delian League and financial affairs (and not the statutes governing the modification of the constitution and other internal legislation) were written on stone indicates the supreme importance of external, military and financial policy; and hence the relationship between hegemonic politics and the development of democracy. During the first two decades following the 'overthrow of the Areopagus', a time associated with

³⁸ This appears to have been justified with the argument that the Areopagus had usurped competences not originally assigned to it: Aristotle, *Athenian Constitution* 25, 2.

³⁹ The trial of Cimon (Plutarch, *Cimon* 14, 3f.) could indicate that even before the Areopagus' powers had been transferred to the courts, so that the events of 462/461 represent the conclusion of a developmental phase.

major internal disputes,⁴⁰ the decisive breakthrough for democracy took place in Athens. It coincided with the rise of Pericles, who was the leading political figure from the 440s to his death in 429. During the reforms of 462/461 he played a somewhat marginal role although some accounts presume that the public impact of the great man began very early; here the driving force was Ephialtes, who was subsequently assassinated.⁴¹

The introduction of political payment, especially in connection with participation in the popular courts, is directly associated with Pericles.⁴² This could have happened shortly after the Areopagus was stripped of its powers, with further tasks being assigned to the popular courts. The possibility of making such payments was opened up by the revenue that Athens drew from the members of the Delian League.⁴³ A substantive motive for the payment for attendance would have been that, with the large number of cases and the size of the courts (see the following pages), it would not otherwise have been possible to secure sufficient men as judges.

Unfortunately, we do not know exactly when remunerations for council members, and possibly for some magistrates, were introduced. The limitation of our sources is shown by the way that we have definite evidence for the payment of a daily allowance first in 411 – when as a result of the oligarchic transformation it was being abolished.⁴⁴ But it can plausibly be assumed that this payment originated during the Periclean era. The introduction of daily allowances was a very significant step, since it created the material conditions for the right of a citizen's involvement in decision-making instances to be translated into a real chance of so participating.⁴⁵ The payments made were between 50 and 100 per cent of an unspecialised worker's daily wage. While this was not especially tempting for the well-off, for a man of modest background it was not at all insignificant. We really do not know how the different social strata would have struck a balance between the demands made by public functions on one's time (particularly for council members) and the financial compensation available. We do know, however, that receipt of payments from the state involved no diminution of honour, unlike activity involving a surrender of independence;⁴⁶ for the lower orders it was a real alternative to working for a daily wage.

⁴⁰ The murder of Ephialtes (Antiphon 5, 68; Diodorus Siculus 11, 77, 6; Aristotle, *Athenian Constitution* 25, 4) remained the great exception until the events of 411.

⁴¹ Plutarch, *Pericles* 7, 8; 9, 5ff. (Ephialtes as assisting Pericles); Plutarch, *Cimon* 15, 2 (Ephialtes as the leading figure); Aristotle, *Athenian Constitution* 25, 3ff. (Ephialtes as the driving force and victim of assassination).

⁴² Aristotle, *Politics* 1274a7–9; *Athenian Constitution* 27, 3f.; Plutarch, *Pericles* 9, 2.

⁴³ However, when in the fourth century this revenue no longer flowed into Athens, the system was not only retained, but developed.

⁴⁴ Thucydides 8, 67, 3.

⁴⁵ There was no obligation to assume official functions; except for arbitrators, see p. 52.

⁴⁶ Xenophon, *Memorabilia* 2, 8, 4f.; Demosthenes 57, 45.

The role of juror could have been especially attractive, since one was not here subject to the supervision and accountability associated with other functions. Aristophanes' play *The Wasps* (performed in 422) can give the impression that older men had a particular liking for the work of a judge; apart from its entertainment value they could meet the greater part of their living costs from state disbursements. However, 'old' is a relative term. When campaigns were being prosecuted it was likely that men over sixty who no longer had any military obligations were over-represented in Athens. All the same, given the age structure of the population, this group could not have supplied the majority of the 6,000 jurors required annually. Moreover, one could rely only conditionally on these payments, since a juror who turned up for service on any day could not be sure of being selected.

Related to such payments is appointment by lot, positions being filled through random selection from among those citizens fulfilling the formal conditions and who had put themselves forward as candidates. This procedure implied that no specific knowledge was needed for the exercise of most public functions – apart from the *strategoí*, other military commanders and some of the higher posts in the administration of public finances, where proper election was the rule. Beyond this, some of the highest posts in the treasury were reserved for members of the top property-owning class, being possibly a relic of an older rule.

Of course, the random allocation of functions can be associated with a restriction to an exclusive group; it is only when this is extended to all citizens (and supported by pay for political functions) that it becomes a specifically democratic instrument. This is emphasised by the later doctrine – somewhat irritating from the modern perspective – that a lottery was typically democratic, while, on the contrary, election was typically oligarchic.⁴⁷ But there is nothing in the sources that provides an explanation for the adoption of random selection, nor how it was justified. Instead, one has to rely for the underlying intentions on a reconstruction of the impact upon council and magistracy on the one hand, and courts on the other. Certainly, one effect of selection by lot was the prevention of corruption. We also know very little about the timing

⁴⁷ Plato, *Republic* 557a; Aristotle, *Politics* 1294b8ff.; 1317b20ff.; 1318a1ff. That applies only for a sharp contrast between democracy and oligarchy. Aristotle, *Politics*, passim gives also a number of examples for elections in democracies. On selection by lot in oligarchies as a way of avoiding disputes: Aristotle, *Politics* 1300b1; 1303a14ff.; [Aristotle], *Rhetoric to Alexander* 1424a38 (referring also to secret vote); Diogenes Laertius 8, 34. The leaders of the 411 putsch in Athens constituted a new council of 400 by co-optation; when this board was installed they appointed their presiding officers by lot; Thucydides 8, 67, 3; 8, 70, 1. – Appointment by lot is treated as a purposively rational procedure; there are no religious connotations. See p. 230f. on the discussions in nineteenth-century scholarship. – The Romans made use of sortition in a number of political contexts, for example to select the first voting unit in the popular assembly or to assign provinces to members of a board of magistrates, but they did not appoint magistrates by lot.

and circumstances of its introduction (apart from information about the mode of appointing the archons, mentioned earlier). Here again, we have solid evidence only from the abolition of selection by lot by the oligarchs in 411.⁴⁸ It is, however, clear that the selection of council members and many magistrates by lot was an established procedure in the second half of the fifth century.⁴⁹

Each year 500 councillors and around 700 other magistrates were appointed, together with a few hundred more for functions in connection with the Delian League.⁵⁰ One was allowed to hold a particular office only once in a lifetime, or twice in the case of council members. The property qualification for council members and the majority of magistrates was set so low that they were open to all who met the standard for hoplites, which was itself relatively modest. The extent to which truly poor citizens assumed such positions also depended upon whether an office was associated with expenditure that could exceed any reimbursements. This applied probably to the archons, so that in their case a degree of social exclusivity must have remained. The rule excluding the very lowest class of property owners was never abolished, but it was supposed to have become practically meaningless by the fourth century, either because no check was made on qualification, or because economic development had rendered the thresholds established by Solon irrelevant.⁵¹ This does not necessarily mean that men from the lowest strata did actually enter the rank of archons.

CITIZENS, METICS AND SLAVES

A measure that can definitely be associated with Pericles is the passing in 451/450 of a law on the status of citizens. Henceforth to be an Athenian citizen required that both parents were Athenians. Whether this necessarily meant that a child had to be born into a legitimate marriage is the subject of debate. The crucial difference with regard to previous conditions, based more on practice than legislation, was that it was no longer sufficient for the father to be an Athenian; now the mother had to be an Athenian too; and also that non-Athenians could not assume citizenship rights by virtue of a decision made by an individual deme. Denial of citizenship right did not only mean that

⁴⁸ Thucydides 8, 67, 3. Appointment to the council by sortition was a hallmark of the restoration of democracy in 410; see the law quoted in Andocides 1, 96.

⁴⁹ The imposition by the Athenians of a constitution on Erythrae (on the western coast of Asia Minor), which can be dated with relative certainty to around 453, prescribed a council appointed by lot. Consequently, it can be deduced that by this time this procedure was regarded in Athens as an unambiguous criterion for a democratic order; Fornara, no. 71.

⁵⁰ Aristotle, *Athenian Constitution* 24, 3 gives 700 positions for both categories. This is realistic for the magistracies in Athens, but giving the same number for the Delian League is most probably an error on the part of a scribe. It is not possible to determine their number; the inscriptions recording those magistrates responsible for raising payments of tribute seem to involve both Athenians and locals.

⁵¹ Aristotle, *Athenian Constitution* 7, 4.

non-citizens had no political rights, but that they could not either inherit or buy land in Attica. The law was not retrospective,⁵² but it had very significant implications for the future.⁵³ Marriages between Athenians and non-Athenians consequently became extremely unattractive. During the fourth century there is thought to have been a general prohibition on such marriages.⁵⁴

These new rules, adopted in the mid-fifth century, seem to have especially affected the traditional aristocracy, whose family connections tended to run far beyond their own polis. Also, the metics, resident aliens, were concerned, since their daughters would no longer be attractive partners for Athenians of all strata.

The motivation of the new ruling, be it a reaction to actual conflicts or representing a grand design for the future, cannot be reconstructed, apart from observing that the commitment to Athens was supposed to be strengthened compared with other allegiances. The connection to the development of democracy lay in the fact that a system in which individuals enjoyed real rights of political participation, and also derived material gratification from the status of citizen (payments, occasional allotments of corn, the allocation of land in towns within the area ruled over by Athens,⁵⁵ support for the disabled and war orphans), now needed precise rules for the membership of the citizenry,⁵⁶ the criterion for which became 'participation in the polis'.⁵⁷ These rules became more restrictive than was usually the case with aristocracies.

Associated with the restriction of citizenship was a clear demarcation with regard to the allies of the Athenians. Athens saw no need for a policy of partial integration by granting citizenship to entire communities or their

⁵² There was a problem for sons with a non-Athenian mother born before the new law came into force, but who could only be registered as citizens at the age of eighteen. Retrospective application would have affected those born from 469; in the other case, sons from such unions would have been registered until 433. There is no consensus on this among scholars; this is also true of the status of illegitimate children, both of whose parents were Athenian.

⁵³ Sons born from a union with a non-Athenian mother after the law took effect were affected. The son of Pericles and Aspasia received citizenship only by a popular resolution in 429 (Plutarch, *Pericles* 37, 5). It seems that the terms of the law on citizenship were relaxed during the Peloponnesian War, but resumed their restrictive nature in 403.

⁵⁴ Demosthenes 59, 16.

⁵⁵ Athenian colonists (*klerouchoi*) retained their citizenship. In some cases they resettled, in others they leased land that had been allocated to them to locals.

⁵⁶ There was also probably the intention of ensuring that all phratries and demes operated according to the same criteria; whether this actually happened is another question.

⁵⁷ Aristotle, *Athenian Constitution* 26, 4; scholion to Aeschines 1, 39. The gift of grain from Egypt in 445/444 is supposed to have prompted a review of the citizen list, with the result that around 5,000 persons were excluded; Philochoros, Fragment 119; Plutarch, *Pericles* 37, 4. For many reasons this information is suspect; simply in terms of chronology the Egyptian delivery could not have provided an impulse for the Periclean law. If the story is basically authentic (regardless of the chronological puzzle), then it does demonstrate the material implications of citizenship status.

leadership – something that the Romans later successfully practised.⁵⁸ The principle of descent lent the lower orders of the Athenian citizenry a secure status, since other possible criteria – descent from a privileged family, land ownership and military ability, limitation to a definite maximum number, the exclusion of particular groups by trade or profession, or even the whim of those in office – were excluded. Moreover, all of these restrictive criteria would have involved the prospect of the loss of civil rights in the event of downward social mobility. It was for this reason that with the reconstitution of democracy in 403 this principle was restored, since the criterion of land ownership then proposed would have excluded 5,000 citizens.⁵⁹ However, related to this was the rather shabby treatment of metics and slaves who had fought the oligarchic regime under the leadership of Thrasybulus; their status was improved, but they did not receive the civil rights that had been promised to them, or at any rate, not to the extent originally envisaged.⁶⁰ This conformed to the way in which the end of the ‘Thirty’ was later understood as more of a self-liberation, and there was a desire to play down the role of fighters returning from exile; and this was also reflected in the argument that the 3,000 full citizens were more or less the victims of the small clique of leaders.⁶¹

The myth of the autochthony of the Athenians as a people who had, since time immemorial, formed a closed and culturally homogeneous group⁶² lent emphasis, on the one hand, to this claim of belonging independently of social position and, on the other hand, created a clear external demarcation.

In some respects the legislation on civil rights must have enhanced the status of Athenian women, since they now became significant as the mothers of citizens. Their connection to the civil community eludes categorical definition. There were no official lists of female citizens – we come across the feminine gender in texts written in the fourth century⁶³ – instead mechanisms of social control came into force. It is plain that women were excluded from participation in political institutions. This is hardly surprising, unless one supposes that history began about 1900 AD. It is an open question whether the women’s assembly represented by Aristophanes is anything more than a comic inversion of reality. Even if it is read as some indication of the intellectual discussion of

⁵⁸ Philip V of Macedon around 215 in his letter to the city of Larissa; Stanley M. Burstein, *The Hellenistic Age from the Battle of Ipsos to the Death of Cleopatra VII* (Translated Documents of Greece & Rome, 3), Cambridge 1985, no. 65.

⁵⁹ Dionysius of Halicarnassus, *Lysias* 34.

⁶⁰ Aristotle, *Athenian Constitution* 40, 2; Plutarch, *Moralia* 835f–836a; Rhodes/Osborne, no. 4. *Lysias* 12, 9off.

⁶² For example, Plato, *Menexenus* 237b–c; Isocrates 4, 24; materially also in Thucydides 1, 2, 5; 2, 36, 1.

⁶³ Aristotle, *Politics* 1275b32; Plato, *Laws* 814c; Isocrates 14, 51; Demosthenes 57, 30; 59, 107; Isaeus 8, 43.

gender roles, this was not a matter that concerned the political business of the time.⁶⁴

By contrast, the wives and daughters of citizens were integrated as priestesses and assistants into the cults of both the polis of Athens and the demes, although the sources do not indicate whether they were able to attend theatrical events as members of the audience.

Female citizens enjoyed the same protection of the law as did men in the case of abuse, enslavement and murder. In everyday legal practice they were represented by a guardian, either their father or their husband. They possessed no right of inheritance themselves. It was easier for a man to divorce than it was for a woman, but it was in principle possible for a woman to do so. If there was a separation, the husband had to return the dowry. What all this meant for the position of women in everyday life is hard to say. However, the idea that Athenian women were strictly excluded from public life is a myth that modern scholarship has rebutted.

The tightening of citizenship qualifications was linked to a clear demarcation of the status of metics, aliens who had permanently settled in Athens.⁶⁵ Athens had an interest in attracting them, needing the labour for manufacturing, building temples, harbours and so forth, as well as more ship crews besides those recruited from the lower social orders and as mercenaries. Metics were not regarded as unwelcome competition. During the second half of the fifth century the Athenian fleet had around 200–300 ships, each ship needing a crew of 200. Even if all the ships were not in use all of the time, they could not be crewed only with citizens.⁶⁶

The metics had an ambivalent status; on the one hand, they suffered legal discrimination as compared with citizens; on the other hand, they enjoyed a far better status than other aliens. It seems as though no other polis created a status for permanent residents similar to that for the Athenian metic. The distinction of the metics from the citizens was evident in the poll tax (*metoikion*) that the metics had to pay, quite probably monthly, hence their differentiation being emphasised by this regular payment. Failure to pay the tax was met with the threat of sale into slavery. The financial burden for individual metics – the monthly equivalent of one day's pay of a handyman (the half for single women) – would not have been oppressive. Nonetheless, the revenue created from this poll tax was considerable. During the fourth century the chief attraction of metics for the Athenians appears to have been fiscal.⁶⁷

⁶⁴ The same is true for the equality of men and women in Plato's ideal state, which is linked to the abolition of the family group.

⁶⁵ It is not clear whether there had previously been a defined metic status, as distinct from other aliens, or from when it might have existed. Aeschylus, *Hiketides* (*The Suppliants*) 609–614, indicates that this status was relatively novel when this tragedy was performed in 463.

⁶⁶ Thucydides I, 143, 1f.

⁶⁷ Xenophon, *Poroi* 2, 1f.