The Concepts of Demos, Ekklesia, and Dikasterion in Classical Athens

Mogens Herman Hansen

Until a generation ago it was generally believed by students of Athenian democracy that throughout the Classical period the sovereign body of government in Athens was the people’s assembly, called demos or ekklesia.1 Admittedly, the powers of the assembly were considerably restricted by the people’s court. Most of the judicial powers rested with the jurors sitting in the dikasteria2 and a decree passed by the assembly could be challenged by a graphe paranomos and quashed if a majority of the jurors voted for the prosecution. There was, however, no proper separation of powers between assembly and court since the demos was identical not only with the assembly but also with the court. The people’s court was a committee of the assembly or, simply, the demos sitting in judgment. To allow the people’s court to quash


2 Most sources speak about dikasteria in the plural, but reveal at the same time that the Athenians regarded their dikasteria as a system of jury courts which could also be referred to in the singular, see Hansen (1990) 217.
a decree passed by the people’s assembly was not essentially different from allowing a session of the assembly to quash a decree passed in a previous meeting of the assembly, as is attested in connection with the Mytileneans’ defection from the Delian League in 428 B.C. The Athenians decided in one meeting of the assembly to order the execution of all Mytilenean citizens but in the subsequent meeting to spare all but those responsible for the defection.3

In a number of publications I have challenged this view and argued that the dikasterion was not the demos sitting in judgment.4 While demos is the proper term used about the people’s assembly it is never used by the Athenian democrats themselves about the people’s court. The dikastai at the dikasteria are only described as the demos by philosophers and historians who were hostile to the democracy and preferred to use demos in the sense of “the common people,” not in the sense of the whole of the people. Like the council of five hundred, the people’s court was a separate institution and in the fourth century it was the people’s court rather than the assembly that was considered to be the “sovereign” political institution. Since sovereignty is a controversial term to use in descriptions of ancient societies I prefer to stick to the Athenian democrats’ own way of describing the relation between the two institutions: it was the dikasterion and not the ekklesia that was considered to be kyrion panton.5

My analysis of the relation between demos, ekklesia, and di-


kasterion has been disputed by several historians. Others have accepted my analysis, and others again parts of it. It is impossible in this article to respond to all my critics. Commenting on my view about demos, ekklesia, and dikasterion Stephen Todd noted perceptively “that practically every subsequent scholar working in the field has rejected Hansen’s conclusions, but that hardly any of them have agreed over the reasons for this rejection.” This article is first of all a reply to the longest and most important criticism of my views, that of Josiah Ober in Mass and Elite and in particular in his review of my The Athenian Assembly.


I defended my views in Athenian Ecclesia II 213–218. Very few, however, seem to have taken notice of my rejoinder and many seem not to know about it. For my reply to Thür see “One Hundred and Sixty Theses about Athenian Democracy,” ClMed 48 (1997) 205–265, at 250–254.


I would like to thank Ober for his pertinent and penetrating criticism of my views which has forced me to rethink the issue and defend my position with new arguments.
The meanings and uses of the term demos

The relation between demos, ekklesia, and dikasterion has become one of the controversial issues in the study of Athenian democracy, and one reason for the disagreement is that demos is a term with several different meanings but also with overlaps between some of the meanings. Therefore, by way of introduction, I present a survey of the meanings and how they overlap.

1. Demos signifies the Athenian state and is used synonymously with polis. IG II² 26.8–9, ἐπείδη ἀνὴρ ἀγαθὸς ἦστιν π[ε]ρὶ τῶν δήμων τῶν Ἀθηναίων, cf. Π 110.6–9, ἐπείδη ἀνὴρ ἦστι ἀγαθὸς Οἰνάδης ο Παλαικιάθιος περὶ τὴν πόλιν τὴν Ἀθηναίων. IG II² 97.6–8, ἐὰν τις ἔπι τῶν δήμων τῶν Ἀθηναίων ἦ ἐπὶ τὴν χώραν τὴν Ἀθηναίων ἐπὶ πολέμως ἐπὶ, cf. 116.27–28, ἐὰν τις ἔπι τὴν πόλιν τὴν Ἀθηναίων ἐπὶ πολέμως. Dem. 24.180, οἱ σύμμαχοι τῶν δήμων ἀνδραγαθίας ἐνεκ’ ἐστεφάνων καὶ δικαιοσύνης, cf. 18.89, λέγε δ’ αὐτοὺς καὶ τοὺς Βοιαντίους στεφάνους καὶ τοὺς τῶν Περινθίων, οἰς ἐστεφάνους … τὴν πόλιν. Ps.-Xen. Ath. Pol. 1.18, διὰ τούτο οὐν οἱ σύμμαχοι δοῦλοι τοῦ δήμου τῶν Ἀθηναίων καθεστάσας μᾶλλον.

2. Demos signifies the democratic constitution and is used synonymously with demokratia; Arist. Pol. 1301b39–40, διὸ καὶ μᾶλλα δύο γίνονται πολιτείαι, δήμος καὶ ὀλιγαρχία. Thuc. 6.39.1, ἦς δὲ φήμη πρώτα μὲν δήμων ξύμπαν ἄνωμασθαι, ὀλιγαρχίαν δὲ μέρος. Hyl. 2.12, καὶ ἐμὲ μὲν αὐτὰ ἐν τῇ εἰσαγελείᾳ καταλύει τὸν δήμου παραβαινόντα τοὺς νόμους. Rhodes-Osborne, GHI 79.7–11, ἐὰν τις ἐπαναστήρῃ τῶν δήμων ἐπὶ τυραννίδα ἢ τὴν τυραννίδα συνκαταστήσῃ ἢ τὸν δήμου τῶν Ἀθηναίων ἢ τὴν δημοκρατίαν τὴν Ἀθηναίων καταλύσῃ, ὅπως ἄν τῶν τοιτῶν τι ποιήσητε ἀποκτείνη ὅπως ἦστο.

3. Demos signifies the people’s assembly and is used synonymously with ekklesia. IG II² 1.5, ἔδοξεν τῇ βουλῇ καὶ τῷ δήμῳ. Aesch. 2.17, καὶ ταῦτ’ οὐκ ἐν τῇ βουλῇ μόνον εἶπεν ἄλλα καὶ ἐν τῷ δήμῳ. Dem. 18.248, ἄφεσάν μεν οὖν ἐκ πάντων ἐμέ ἔχετο, ὅτι τῶν δήμων. 24.9, Τιμοκράτης … ἐκεῖ γενομένη ὑπὸ τῆς βουλῆς καὶ τοῦ δήμου καὶ τοῦ δικαστηρίου καθίσας. Cf. Xen. Hell. 1.4.20, ἐν δὲ τῇ βουλῇ καὶ τῇ ἐκκλησίᾳ ἀποδοχήσεις οὐκ ἀποδέχεται. Aesch. 3.34, ο μὲν νομοθέτης κελεύει ἐν τῷ δήμῳ ἐν Ποικί τῇ ἐκκλησίᾳ ἀνακηρύσσειν τὸν ὑπὸ τοῦ τῷ δήμῳ ἐστεφανοῦμεν. Demos signifies the people at large, and there is no explicit reference to the Assembly or to any other political institution. In such contexts the term demos is used synonymously with πάντες πολίται or
ἐγγραφῇ, γὰρ εν τῷ δτῇ πρὸς τε Αριστ. ἐπαίτησίν, ἐξάκοσίοι δὲ καὶ χίλιοι έκ τοῦ ἁπτείος (see Bizos ad loc., Budé ed.). Cf. Andoc. 1.98, ταῦτα δὲ ὁμοιάζουν Αρισταῖα πάντες καθ' ιερῶν τελείων. Λυκυργ. 1.76, ὑμῖν γάρ ἦσθιν ὅρκος, ὃν ὠμνίουσι πάντες οἱ πολίται, ἐπειδὰν εἰς τὸ λῃσταρχίκον γραμματείον ἐγγραφόμενα καὶ ἐφήβοι γένονται.

5. Demos signifies “the common people” and is used synonymously with e.g., οχλος or ἀφορίς or πληθος, antonyms being φοινίμοι or ευπορις or ὀλιγοί. Thuc. 3.47.1, τὸν μὲν γὰρ ὑμῖν ὁ δῆμος ἐν πάσαις ταῖς πόλεσιν ἑνώσεις ἔστι, καὶ ἦν οὐκ ὥσπερ οὐκ ὄντας ἀλλὰ ἔλεγεν ἑνώσεις. Ρς.-Χερ. Αἴθ.Πολ. 2.20, ὁσιος δὲ μὴ ὡς τοῦ δημοῦ εἴλατο ἐν δημοκρατουμένῃ πόλει οἰκεῖν μᾶλλον ἴῃ εἰς ὁλιγαρχομενήν, ἀδίκειν παρασκευασαι καὶ ἔγνω ὁπό οἵ πολέων ὀιόντες διαλαθεῖν κακῶν ὁτι ἐν δημοκρατουμένῃ πόλει μᾶλλον ἴῃ εἰς ὁλιγαρχομενήν. Pl. Resp. 565E, ὅσ ταῦτα προς ἐσόντος, λαβὼν σφόδρα προεθύμενον ὅρκον, μὴ ἀπόφηγεν ἐμφυλίων αἵματος, ἀλλ' ἀδίκους ἐπαιτιομενος, ὡς δὴ ψυχίζουσιν, εἰς δικαιστήρα ὑμῶν μισοῦντοι.

Αριστ. Πολ. 1302a9–13, εν μὲν γάρ ταῖς ὁλιγαρχίας ἐγγίνονται δύο, ἡ τε πρὸς ἀλλήλοιοι στάσεις καὶ ἔτι ἡ πρὸς τὸν δημοῦ, εν δὲ ταῖς δημοκρατίαις ἡ πρὸς τὴν ὁλιγαρχίαν μόνον, αὐτῷ δὲ πρὸς αὐτῶν, ἐτι καὶ ἀξίον εἰπεῖν, οὐκ ἐνέλειν τῷ δῆμῳ στάσεις.

A special case of this meaning is demos signifying the democratic faction, in particular in connection with a civil war (stasis). Thuc. 1.24.5, ο δῆμος αὐτῶν (the Epidamnians) ἐξεδίωξε τοὺς δυνατοὺς. Αριστ. Πολ. 1302a 10–11 (quoted supra). Lys. 26.16, ο δήμος οὗ τὴν αὐτὴν γνώμην ἔχει περὶ πάντων τῶν ἐν ἀστεί μειωτῶν. IG I' 127.3–4, Σαμίους ὁσοι μετὰ τὸ δέμο τοῦ Αρισταῖον εγένοντο.

6. Finally, demos signifies one of the 139 Attic demes, denoting a civic subdivision which we would call a district or municipality, cf. IG I' 78.9, ἐκλέγειν τοὺς δημάρχους κατὰ τοὺς δήμους. This meaning of the term is irrelevant in this context and will not be further discussed.

As our sources show, we can distinguish between the six meanings listed above, and the differences are manifest from the context:
One can “overthrow” (καταλύειν) the demokratia or the demos in the sense of “rule of the people”; but one cannot “overthrow” the demos in the sense of “all the citizens” or “the common people.” In the sociological sense there will still be a demos after the revolution, viz., a demos ruled by a tyrant who might even summon meetings of the demos in the sense of assembly.

A hostile army can attack the Athenian state or the Athenian people or expel the common people, if the intention is to set up an oligarchy or a tyranny, but a hostile army cannot attack the Athenian democracy or the Athenian assembly.

One can walk around among all the people and bribe some of them, but one cannot bribe the state or the democracy, except in a metaphorical sense.

One can address the demos in the sense of an assembly or the whole people or the common people, but not in the abstract sense of state or democracy. A decision can be made by all citizens or by the common people during a stasis, or by the assembly or by the state in an abstract sense but not by the democracy.

Yet, the Athenians used the term demos to cover all the meanings, and how close they are to one another can be illustrated by passages in which δῆμος occurs twice, first in one sense and then in a different one:

IG I 127.3–5, Σαμίων ὁς μετὰ τὸ δῆμο τὸ Ἀθηναίων ἐγένοντο. ἔδοξεν τὴν βολὴν καὶ τῶι δημοὶ (1 the democratic faction, 2 the assembly).

Arist. Pol. 1296a23–27, διὰ γὰρ τὸ ἐν ταύταις πολλακις ὀλιγον εἶναι τὸ μέσον, αἰεὶ ὁ πόλεμος ἐν ὑπερέχωσιν, ἐϊδοί τις οὐσίας ἔχοντες εἰδοὶ οὐ δῆμος, οἱ τὸ μέσον ἐκβαίνοντες καθ’ αὐτοὺς ἀγονεῖ τὴν πολιτείαν, ὡστε ἡ δῆμος γίγνεται ἡ ὀλιγαρχία (1 the common people, 2 democracy).

Lys. 30.30, καὶ ὅν ἐδεί υπὸ τοῦ δήμου κρίνεσθαι, οὗτος τοῦ δῆμον συγκαταλύσας φαίνεται (1 the assembly, 2 democracy).

Lys. 13.51, οὐ γὰρ δῆμος, εἰ τι κακὸν τὸν δήμον τὸν Ἀθηναίων ἡργάσατο, οἱ τρίκοντα, δεδιότες μὴ καταλυθεῖν ὁ δῆμος, τιμουροῦντες

12 S. C. Todd, Lysias (Austin 2000) 306, renders the passage: “a man who deserves to be judged by the People can be seen conspiring to overthrow the People,” and adds the following note: “Demos (the People of Athens) can denote both ‘the assembly’ and ‘the democracy.’”
ὑπὲρ τοῦ δῆμου ἃν αὐτῶς ἀπέκτειναν, ἀλλ’ οἵμα τοῦναυτίον τούτων (1 and 3 the Athenian people at large, 2 democracy).

Demos signifying “the common people” versus “the whole of the people”

The use of demos in the sense of “the common people” differs from the other senses in one important respect. While the senses of “state,” “democracy,” “Assembly,” and “people at large” are attested in all types of source, the sense of “the common people” is restricted to philosophers, historians, and polemical pamphlets. It is a common meaning in Thucydides, Xenophon, Ps.-Xenophon Athenaios Politeia, Plato, Aristotle, and the Aristotelian Athenaios Politeia. On the other hand, apart from sources which describe the civil war of 404/3, it is unattested in Attic inscriptions and in all the speeches delivered before the assembly, the council, and the courts, i.e. the sources which I have called “survivals” or the “documents” of Athenian democracy, and I agree with Ober that “close reading of speeches by fourth-century orators, which Nicole Loraux has described as ‘the only [Athenian] texts genuinely inspired by democratic thinking’, reveals the importance of symbolic reference in the public realm.” My only modification is that I want to add the inscriptions to the speeches. It is in these “documents” that we find the Athenian democrats’ view of their democracy.

When an Athenian democrat used the term demos about a group of persons (and not in the more abstract sense of the Athenian state or democracy) he thought of the whole body of citizens, the demos which could manifest itself in a meeting of the assembly (see 512 below). He did not conceive of the demos as a social class, i.e. the common people, the poor, the democratically minded majority, as opposed to the wealthy, the


upper-class minority who could be suspected of preferring oligarchy to democracy. In the Athenian orators and in Attic inscriptions such a meaning of *demos* occurs only when the reference is to the *stasis* of 404/3 and the civil war between οἱ ἐν Πειραιᾷ and οἱ ἐξ ἀστεώς (Lys. 12.56). In this context δῆμος occasionally denotes the democratic faction, cf. Lys. 26.16 and *IG II²* 1.3–4, quoted above (503 no. 3).  

In all the preserved speeches delivered before the assembly, the council of five hundred, or the courts I have found only one instance of δῆμος used in the sense of the common people to denote a social class, Aeschin. 1.141:

επειδή δὲ Ἀχιλλέως καὶ Πατρόκλου μέμνησθε καὶ Ὄμηρον καὶ ἐτέρων ποιητῶν, ὡς τῶν μὲν δικαστῶν ἄνθρωποι παιδείας ὄντων, ἕμεις δὲ εὐσχήμονες τίνες προσποιεῖσθε εἶναι καὶ ὑπερφρονοῦντες ἱστορία τῶν δήμων, ἵνα εἰδήτε ὅτι καὶ ἕμεις τῇ ἴδῃ ἱκουσάμενοι καὶ ἐμάθομεν, λέξομεν τι καὶ ἕμεις περὶ τούτων.

But this is a view which Aischines imputes to his opponents, not a view he shares himself; quite the contrary, see 509 below. So this passage only corroborates the rule that an Athenian democrat avoided speaking of the *demos* in the sense of “the common people.”

Critics of democracy, on the other hand, and in particular the philosophers, tended to regard the *demos* as the ordinary people dominated by the city poor, the artisans, the traders, the day-labourers, and the idlers who together constituted the majority of the citizens. But in the assembly and in the people’s court they could outnumber and outvote the minority of countrymen and major property owners. It is this view of democracy that permeates Plato and Aristotle as well as the Aristotelian and the Ps.-Xenophontian accounts of the

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16 Cf. also Lys. 18.5, 11; Isoc. 18.17, 49, 62; Aeschin. 2.90.

17 Two score of selected references to Xenophon, Plato, and Aristotle cited in Hansen (1983) 151 n.30; add e.g. Hdt. 5.66.2, Ps.-Xen. *Ath. Pol.* 1.2, Thuc. 2.65.2.

Athenian democracy. In the Aristotelian treatise it is critical, in Ps.-Xenophon it is outright hostile. All these sources are essential in a study of the critics of Athenian democracy. In a study of how the Athenian democrats perceived their own constitution we must disregard the sources in which demos is used in the sense of the poor, the mob, the uneducated. The sources for the Athenian democratic ideology must be the documents, i.e. primarily inscriptions and the speeches delivered before the assembly, the courts, or the council.

Demos signifying a political institution

For the present investigation a key issue is how the Athenians used the term δῆµος about their political institutions, and first of all about the people’s assembly. As noted above (no. 3), demos signifies the people’s assembly and is used synonymously with ekklesia. However, the two terms are not perfect synonyms. In documents (inscriptions and speeches) ἐκκλησία is used either of a specific meeting of the assembly,\(^\text{19}\) in the plural about a number of such meetings,\(^\text{20}\) or about the location of the meeting,\(^\text{21}\) but only very exceptionally of the assembly itself as an institution in the abstract sense.\(^\text{22}\) Furthermore, the ekklesia is never attested as an acting subject. It is always the demos that passes a decree or votes by a show of hands, never the ekklesia. I conclude that ekklesia signifies a meeting of the assembly or the place where it meets, but the assembly itself was not the ekklesia, it was the demos. Modern historians (including myself) often write, e.g., that the ekklesia was empowered to make decisions

\(^{19}\) IG II 44.7–9, περι ὧν Χαλκιδῆς, προσαγ[α ἤν αὐτὸς πρὸς τὸν δῆµον ἐς τὴν πρώτην ἐκκλησίαν. 330.49, ἐκκλησία. Dem. 19.19, ἐπειδὴ ἦκεν ἡ ἐκκλησία. Lys. 19.50, αὐτοὶ γὰρ ἐν ἐκκλησίᾳ ἐκχείρουν ἀκούετε ἐν τῇ ἐκκλησίᾳ.

\(^{20}\) Dem. 8.32, ἐν μὲν ταῖς ἐκκλησίαις.

\(^{21}\) Aeschin. 3.32, ὁ γὰρ νόµος διαρρήδην κελεύει, ἐὰν μὲν τινα ἡ βουλή στεφάνων, ἐν τῷ βούλευσθαι ἀνακρίνεται, ἐὰν δὲ ὁ δῆµος, ἐν τῷ ἐκκλησία. Dem. 18.169, ἐν ἐκκλησίᾳ ἐπορεύεσθε.

\(^{22}\) Aeschin. 1.86, οἳ ἀρα ἐνεχείρουν συνδεκάζειν τὴν ἐκκλησίαν καὶ τάλαι δικαστήρια, cf. 2.63, 3.44.
about something *vel sim*. Such an idiom is occasionally attested in Plato or Aristotle\(^{23}\) but is not found in the documents. Again, *demos* is a collective term and cannot be used about individuals who attend a meeting of the assembly, so in this case the proper term is *ἐκκλησιαστής*, plural *ἐκκλησιασταί*. The transliterated form *ekklesiasts* is used by modern historians.\(^{24}\) But the word *ἐκκλησιαστής* is not attested in any Athenian document, either an inscription or a speech. It is found exclusively in Plato and Aristotle.\(^{25}\)

So the proper name for the assembly was *demos*, and that becomes particularly clear when the assembly is mentioned alongside the other major democratic institutions. First we have several examples of *demos*, *boule*, and *dikasterion* being juxtaposed and mentioned as three different bodies of government, e.g. the law quoted at Dem. 20.100: ἐστι δὲ δήμου νόμος ὡμι, εὰν τις ὑποσχέμενος τι τῶν δήμων ἢ τὴν βουλὴν ἢ δικαστήριον ἐξαιπαστήτη, τὰ ἐσχάτα πάσχειν.\(^{26}\) In other passages a simple distinction is made between the *dikasterion* and the *demos* without any mention of the *boule*, e.g. Lys. 13.65, συλλήβδην γὰρ ὑμεῖς ἀπαντες καὶ ἐν τῷ δήμῳ καὶ ἐν τῷ δικαστήρῳ αὐτοῦ κατέγνωτε.\(^{27}\) Finally, the *demos* appears together with the *boule*, e.g. in the enactment formula of all the probouleumatic decrees, ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ.

It is always the *demos* and not the *ekklesia* which is juxtaposed with *boule* or *dikasterion*. The proper term for the assembly is *demos*, and the word is officially used in this sense in hundreds of decrees and in hundreds of passages in the speeches deliv-


\(^{24}\) E.g. by D. Hamel, Athenian Generals. Military Authority in the Classical Period (Leiden 1998) 1.


\(^{26}\) Other examples quoted in Hansen (1983) 144–145.

\(^{27}\) Other examples Hansen (1983) 145–146.
ere in the assembly, in the council, or in the courts. Furthermore, the term *demos* is so closely linked with the assembly that in inscriptions and speeches it is avoided in references to the jurors in the *dikasterion*. In all the documents we have preserved I have found only three passages in which the word *δῆµος* seems to be applied to the *dikastai* manning the people’s court.


My critics have made the most of these three passages, but, in my opinion, it is only the passage from Deinarchos’ speech Against Demosthenes that testifies to a connection between *demos* and *dikasterion*.

In the Timarchos passage Aischines wants to represent his opponents as arrogant upper-class citizens who think of the jurors as an ill-mannered lot and thereby reveal themselves as critics of democracy. The reference is to the people as a social class, not to the people acting as a body of government or the embodiment of the Athenian state. The meaning of *δήµος* is

29 Quoted also in Hansen (1983) 143.
30 Quoted 506 supra, but for clarity I repeat the passage.
32 See also Ober, Mass and Elite 179.
“the common people.” It is a usage we find in Plato, Aristotle, and the Old Oligarch, and Aischines dissociates himself from such a view.

In the Hypereides papyrus almost everything after τῆς is restored. I have printed Kenyon’s text. In the Budé edition Colin has τῆς [τοῦ δήμου οὐ [ἐνοίας σημεύον]], and in the Teubner Jensen has dotted letters: δήμου and ἐνοίας. I agree that it is a fine restoration and Whitehead is right that “an alternative is not easy to find,” but are we entitled to base a view on a heavily restored text?

The central theme in the speech against Philokles is corruption, and addressing the jurors Deinarchos emphasises the opposition between the majority of the people (τὸ τοῦ δήμου πλῆθος) who are honest and some of their leaders (τῶν ῥητόρων καὶ τῶν στρατηγῶν τισιν) who have been corrupted.

I conclude that in all the documents we have preserved there is one attestation of a connection between the jurors in a dikasterion and δῆμος in the sense of “the Athenian people” or “the Athenian state,” viz. the passage from Deinarchos’ speech against Philokles. In the passage from Aischines’ speech against Timarchos demos signifies the “common people.” The passage from Hypereides is heavily restored, and not even this provides us with a straightforward identification of demos and dikasterion as we find in the many hundred passages in which demos is used about the people’s assembly.

Demos in the sense of the Athenian people at large

No one disputes that the most common use of the term demos is to signify the people in assembly. But those who criticise my understanding of the relation between demos, ekklesia, and dikasterion argue that demos is also used in an abstract sense about the Athenian people at large, and that it is in this symbolic sense that both the council, the assembly, and the courts can be

33 N. Fisher, Aeschines, Against Timarchos (Oxford 2001) 104, translates “the ordinary people,” cf. his note ad loc. at 287.

identified with the *demos*. “The people” in this wider sense is the fundamental concept that lies behind all the democratic institutions.

It is in particular Ober who has developed this line of thought (1996: 117–118):

The primary meaning of *demos* to the Athenians was not “Assemblymen,” but “the whole of the Athenian citizen body.” This latter meaning, which we might characterize as “capital-D Demos,” was an ideological construct. This Demos was real, in that there were indeed some 20,000 or 30,000 individuals living in fourth-century Athens who enjoyed full citizen rights; but Demos could not be perceived by the senses. No one had ever seen Demos; it was too big ever to gather in any one place … This imagined Demos was, however, a fundamental and vivid political concept: Demos could be personified (as a mature bearded man). An antidemocratic coup would result in Demos being overthrown; *kataluein ton demon* was the commonest periphrasis for counterrevolution. This imagined Demos was the demos assumed in the word *demokratia*—the entity that held power in the state. A meeting of the assembly was open to all citizens, and decisions made by those who attended—“the *demos* in the narrower institutional sense” (Hansen [1987] 97)—certainly symbolized the will of Demos. But the participants at a given assembly were not identical to Demos. Nor, certainly, were juries or boards of *nomothetai*, bodies that were limited in size and that excluded citizens under age thirty. These added restrictions may be responsible for the convention of addressing jurors as *Athenaioi* rather than as *demos*, but decisions of *nomothetai* and *dikastai*, like decisions of the Assemblies, symbolized the will of Demos.

Ober wants to establish a distinction between *demos* in the institutional sense, denoting the fraction of the citizens who attend a meeting of the *ekklesia*, and *Demos* in a fictional and symbolic sense, denoting the Athenian people at large. Thus, according to Ober, when something takes place *ἐν τῷ δήμῳ* and when a *psephisma* is introduced with the formula *ζήδοξε τῷ δήμῳ* the reference is not to the *Demos*, the Athenian people as such, but to the *demos*, the people in assembly.

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It is certainly true that “no one had ever seen Demos; it was too big to gather in one place.” During the period of Πυξ II (ca. 403 to 345) the assembly place could accommodate a maximum of ca. 8000 out of the ca. 30,000 adult male citizens.\(^{35}\) But the Athenians imagined that a meeting of the εκκλησία was attended by all citizens and that a decision of the assembly was a decision of the entire δῆμος. In their opinion it was the δῆμος in εκκλησία that was an ideological construct,\(^{36}\) or, to adopt Ober’s way of putting it: it was the people in assembly that was the Demos with capital D, as is apparent from our sources and first of all from the orators.

An εκκλησία is seen as a meeting of the entire people (ἀπὸ ὁ δῆμος)\(^{37}\) or all Athenians (πάντες Ἀθηναῖοι)\(^{38}\) or all citizens (πάντες πολίται).\(^{39}\) The debate is supposed to take place in the presence of all Athenians (ἐναντίον Ἀθηναίων ἀπάντων)\(^{40}\) and, allegedly, the decisions are made by the entire people, all Athenians or all citizens. In one important inscription the assembly is contrasted with the council of five hundred and referred to as the δῆμος πληθύων.\(^{41}\) And two literary sources assume that a meeting of the assembly was attended by 30,000 Athenians.\(^{42}\) Admittedly, an orator might emphasise that a meeting of the assembly was attended by a fraction of the δῆμος only. But in such cases the purpose is often to cast doubt on the


\(^{36}\) Hansen (1987) 6 with n.40.

\(^{37}\) Dem. 18.169, 21.2, 180, 194, 25.95; Aeschin. 2.13; Din. 3.1, 14, 15.

\(^{38}\) Xen. *Hell.* 1.7.9; Lys. 19.50; Dem. 24.48.

\(^{39}\) Dem. 38.45; Din. 1.4.

\(^{40}\) Lys. 13.32, 86; Din. 3.1; Aeschin. 3.224, ἐν ἀπασὶν Ἀθηναίως; Isaac. 1.11, πάντων τῶν πολίτων ἐναντίον, cf. W. Wyse, *The Speeches of Isaeus* (Cambridge 1904) ad loc.


\(^{42}\) Hdt. 5.97.2; Pl. *Axioch.* 369A.
constitutionality of the meeting in question and to suggest manipulation or fraud.43

Following up on his view that those who attended a meeting of the assembly were only a part of the Demos in the symbolic sense, Ober argues that the rhetorical figure synecdoche is the best way of understanding the relation between demos and Demos;44

I would suggest, as an alternative [to representation or embodiment or manifestation], the concept of “synecdoche,” a figure of speech in which a part stands for and refers to a whole, or vice versa. Each of the various institutional “parts” of the citizen body (ekklesia, dikasteria, nomothetai, boule) could stand for and refer to the whole citizen body. Orators could speak of jurors as having made decisions in the Assembly because both a jury and an Assembly were parts of the whole. The words demos and Athenaioi (whose primary meanings denoted the whole of the citizen body) could be used to refer, respectively,45 to the “part” of the citizen body that attended a given Assembly or sat on a given jury.

This is a seminal but not unproblematical way of explaining the relation between the assembly and the other political institutions. Ober holds that when δῆµος is used about the citizens in assembly the reference is to those who attend a given ekklesia, the demos with a small d, but by synecdoche the part stands for the whole, i.e. the Demos in the sense of all Athenian citizens. But all the sources that state that an ekklesia was a meeting of the entire demos suggest the reverse: that ideologically a meeting of the ekklesia was a meeting of the entire people, i.e. what Ober calls the Demos with capital D. Thus, applying the synecdoche figure to the Demos in assembly, it is the whole, viz. the fiction that the entire people is gathered on the Pnyx, that stands for

43 Thuc. 8.72; Lys. 12.75; Aeschin. 3.125–126; Dem. 21.193.
45 The word “respectively” suggests that demos denotes those citizens who attended a meeting of the assembly, whereas it is Athenaioi that is used to denote the jurors in a court. Apparently, Ober agrees with my observation that demos is not used to denote the jurors in a dikasterion.
the part, viz. the part of the citizens who actually attended a meeting. Whenever we hear about a debate ἐν τῷ δήμῳ, it is a debate which in Athenian democratic ideology was supposed to take place among all Athenians, and when a psephisma is opened with the formula ἐδόξε τῷ δήμῳ, it is conceived as a decision made by all Athenians.

This interpretation is supported by the archaeological evidence, the document reliefs that in some cases crown the inscriptions. A number of stelae inscribed with honourary decrees passed by the assembly are decorated with a relief that shows a smaller male person (the honorand) and a somewhat larger person, a personification of the demos: so for example where the name [AN]ΔΡΩΝ is inscribed beneath the smaller honorand and the name ΔΗΜΟΣ beneath the larger figure. Does this demos symbolise the assembly or the Athenian people at large? I believe this question can be settled by referring to reliefs that depict a larger female figure, in one case identified as ΒΟΑΗ, and in another case standing next to Demos. Since the female figure represents the council of five hundred, the male figure must by analogy represent the demos in assembly, rather than the demos at large to be distinguished from the assembly.

By contrast a dikasterion is often described as a part of the whole and in this case without any pejorative connotation, and the jurors are never referred to as πάντες Ἀθηναῖοι or πάντες πολίται as the assemblymen often are. As argued above, in inscriptions and in the orators there is not a single unquestionable attestation of demos in the sense of the entire people used about the jurors in a dikasterion. When the concept of demos is associated with the dikastai, it is in the sense of “the common people” and the source is a person who is critical of

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48 IG II² 367 (Lawton no. 67); Athens ΑΜ 1473 (Lawton no. 142).
49 Dem. 18.249, 21.223, 39.10–11; Aeschin. 3.8; Din. 3.16.
democracy, either a philosopher or a pamphleteer or a historian. Here *demos* is used in a social sense about a part of the people, *viz.* the poor, but in this case there is no intention to use synecdoche and imply that the part stands for the whole. In my opinion, no source can be adduced in support of Ober’s contention (1996: 119) that “The *graphe paranomon* procedure gave Demos a chance to consider at a remove decisions made in assembly.”

*A link between *demos* and *nomothetai*?

So much about the link between *demos* and *dikasterion*. In the fourth century, however, it was not only the *dikastai* at the courts who were selected by lot from among the panel of 6000 jurors but also the *nomothetai* who were entrusted with the passing of *nomoi*. Did the Athenians believe that in some sense the *nomothetai* were the *demos* acting as legislators? That is, I believe, what Ober suggests interpreting the documentary relief that crowns the anti-tyranny laws passed by the *nomothetai* in 337/6.

The relief shows a standing female who crowns a bearded long-haired man seated on a chair. Interpreting the relief in the light of the law we can infer that the female is the goddess of *demokratia* who crowns the Athenian *demos* in the sense of the Athenian democracy. There is no doubt that the two figures represent *demokratia* and *demos*, but who is *demos* in this context? Ober interprets the relation between law and relief as follows: “Demos could be personified (as a mature bearded man). An antidemocratic coup would result in Demos being overthrown; *kataluein ton demon* was the commonest periphrasis for counter-revolution. This imagined Demos was the *demos* assumed in the word *demokratia*—the entity that held power in the state.” In two notes he elaborates (nn.19, 21): “Since the law was passed and the stele authorized by *nomothetai*, not by an Assembly, the figure must represent ‘capital-D Demos’, not *demos qua ekklesia*.

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51 Rhodes-Osborne, *GHI* 79 = Lawton no. 38.
Cf. also Aristophanes’ *Knights*; “That Demos’ will was symbolized by the decisions of *nomothetai* is demonstrated by the stele relief.”

I agree with Ober that in this case the bearded *demos* is not *demos qua ekklesia*, but neither is it *demos qua nomothetai*, nor the *demos* in the sense of all Athenian citizens. The male figure in the relief is a representation of the Athenian state, ὁ δῆμος ὁ Ἀθηναῖον, as indicated by the invocation in lines 5–6, ἀγαθὴ τύχη τοῦ δήμου τοῦ Ἀθηναίων, and also a representation of the Athenian democracy, cf. the three occurrences of ὁ δῆμος ἡ δημοκρατία ἡ Ἀθηνής (8–9, 12–13, 16–17), cf. 502 above re (1) and (2). There is no indication that it is a symbolic representation of the board of *nomothetai* who passed the law or of all Athenian citizens at large. How can one know that *demos* here designates the Athenian democracy rather than the Athenian people at large? In my opinion the clue is the verb *καταλύειν* which has both δῆμον and δημοκρατίαν as objects. As explained above, one can “dissolve” or “overthrow” or “put down” the democracy but not the people in the sense of all citizens. In this sense there will still be a δῆμος Ἀθηναίων after a revolution, but no longer a democracy in the sense of rule by the people.

On *polis* as an abstract agent52

Concluding his reflections on Demos with capital D, Ober adds some thoughts on the relation between the concept of *demos* and the concept of *polis* (1996: 120):

The imagined community, Demos, provides the missing subject that would allow Hansen’s many passive clauses to be recast in the active voice: “Legislation was conferred on the *nomothetai* … the *ekklesia* was entitled to hear … the *ekklesia* was deprived of jurisdiction … the people were restricted to the passing of decrees and the election of officials … the power of officials was maintained … the people were entrusted with the *ad hoc* election of envoys.” Without the concept of Demos, there is no agent for

52 On this issue see Hansen, *Polis and City-State* 67–73.
these passives, other than the unsatisfactory (in this context) term polis (cf. 178 n.664: “It is not the demos, but the polis which appoints the dikasteria,” citing Dem. 21.223). Polis cannot be characterized as a political agent distinct from “the will of the citizen body.”

Again, I disagree. In my opinion scores of sources substantiate the view that the Athenians often saw the polis as an abstract public power above the citizens, and polis appears as an agent in all the cases in which Ober holds that demos must be the missing subject.

In Plato’s Crito (50A) the polis, identified with the laws of the polis, addresses Sokrates and has him cross-examined about political obligations in general and Sokrates’ duties towards the polis in particular.

Discussing the identity of a polis Aristotle considers the following problem: “Some people are in doubt when a given act can, and when it cannot, be considered an act of the polis. One example is when an oligarchy or a tyranny changes into a democracy. In such cases some people are reluctant to fulfil public contracts [e.g. about loans] on the ground that the recipient [of the loan] was not the polis but the tyrant, and they are unwilling to meet other obligations of the same nature.”

Aristotle adds (a13–16) that the acts done under a democracy must be the acts of the polis just as much as the acts of an oligarchy or tyranny.

In 411 the Athenian oligarchs sent ten men to Samos to reassure the navy and tell them that the oligarchy had not been introduced to the detriment of the polis or the citizens (Thuc. 8.72.1). The distinction made between πόλις and πολίται shows that the polis is conceived as an abstract entity over and

53 Arist. Pol. 1276a8–11, ἀποροῦσι γὰρ τινες πόλις ἢ πόλις ἐπραξε καὶ πότε οὐκ ἢ πόλεις, οἷον ὅταν ἐξ ἀληθείᾳ τυράννιδος γένηται δημοκρατία (τότε γὰρ ὡστε τὰ συμβόλαια ἐνιοῦ βούλονται διαλέγειν, ὡς οὐ τῆς πόλεως ἀλλὰ τοῦ τυράννου λαβόντος, οὐτ' ἀλλα πολλὰ τῶν ταυτών); cf. 1274b33–36 and Isoc. 7.68.

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above its members.  

Again, in his speech against Meidias Demosthenes considers the consequences of violence against an official: “You know of course that none of the thesmothetai here has the name Thesmothetes, but whatever name each one has. Well then, if one treats insolently or slanders any one of them as a private individual, one will be prosecuted in a graphe for hybris or a private case for slander; if as a thesmothetes, one will be permanently disfranchised. Why? Because the man who does that is using insolence also against the laws, and against the crown that belongs to you all, and against the name of the polis; for the name Thesmothetes does not belong to any person, but to the polis.”

In conformity with such a view the polis in an abstract sense appears as a agent in all possible contexts—just like the term “state” in a modern democracy. Thus the polis: passes a law (Dem. 18.120); prosecutes a person (Thuc. 6.53.1); condemns a person (Pl. Crt. 50c); arrests a person (Thuc. 6.53.1); appoints a panel of jurors (Dem. 23.223, 39.11); elects an official (Xen. Hell. 6.3.4); sends out envoys (Thuc. 1.73.1); takes an oath (IG II² 44.14); goes to war (Aeschin. 3.122); makes peace (Xen. Mem. 4.4.14); enters into an alliance (IG II² 43.32); defects from a league or a ruler (Aeschin. 3.142); founds a colony (Thuc. 1.24.6); collects a revenue (IG II² 411); defrays expenses (Agora XIX L4.20–21); takes up a loan (Arist. Pol. 1276a8–16); enters into a contract (IG II² 411.12, 24); owes money (IG II² 111.6); strikes coins (Dem. 24.212–214); repairs the walls (Xen. Hell. 6.5.5); sends out an army (Xen. Hell. 6.1.19); provides crews for the triremes (Dem. 21.155); organises a festival (Dem. 21.26, 34); makes sacrifices to a god (Ps.-Xen. Ath.Pol. 2.9); dedicates something to a god (IG II² 1388.36–37); consults an oracle (Xen. Symph. 4.47); buries the citizens killed in war (Dem.


56 Xenophon does not single out Athens but refers to πᾶσαι αἱ πόλεις καὶ
18.208); bestows a crown on a benefactor (Aeschin. 3.47–8; IG II² 7393); naturalises a foreigner (Dem. 23.201); shelters a refugee (IG II² 222.33–35).

The polis which appears as an agent in all these sources is an imagined political community, i.e. an abstract public power. Returning to the synecdoche figure, I would argue that in this case it is the whole, viz. the polis, that stands for the part: the assembly or the courts. Whenever the action in question was within the power of the ekklēsia, the term demos can be found as an alternative. It is either the polis or the demos that, e.g., elects an official, naturalises a foreigner, condemns a person, or sends out envoys.\(^57\)

Moreover, the demos can be equated with “the entire polis.”\(^58\) But similarly the jurors hearing a case can be referred to as the polis.\(^59\) The connecting concept behind assembly and courts seems to have been polis rather than demos. But we have to admit that there are not many attestations of polis used about the courts in this sense.

**Forms of address**

So the sources do not provide us with an obvious generic concept that covers both assembly and courts, but the way a speaker addresses his audience indicates a close connection between the two institutions.

First, the citizens in the assembly are addressed ὦ ἀνδρές Ἀθηναῖοι and in speeches held before the people’s court the same form of address occurs frequently as an alternative to the more specific form of address: ὦ ἀνδρές δικασταί. Thus, in On the Crown Demosthenes uses ὦ ἀνδρές Ἀθηναῖοι throughout,

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\(^{57}\) The demos, e.g., elects an official (Dem. 18.248), naturalises a foreigner (Lys. 13.70), condemns a person (Aeschin. 2.30), sends out envoys (IG II² 141).

\(^{58}\) Aeschin. 3.125, τοῦ δήμου καὶ τῆς πόλεως ἀπάσης προειρωμένης εἰσέθεσέν ... ἐπειδὴ ἐκ τοῦ φαινομένου τὴν πόλιν ἀνθρωπος οὐκ ἔδυνατο σφιδήναι, εἰσέθεσθαι εἰς τὸ βουλευτήριον.

\(^{59}\) Dem. 43.72, ὑμῶν πόλεως τηλικαυτησὶ κατεβάζουσι.
and ὦ ἄνδρες δικασταὶ occurs only once, in 196 where he has to distinguish between the jurors and the spectators, cf. Aeschin. 3.56.\(^60\)

Second, in the forensic speeches a pronoun or a verb in the second-person plural denotes the jurors hearing the case in question, but the reference can be to an event that took place in the assembly.\(^61\)

The inference commonly drawn from these two observations has been to emphasise an essential identity between jury and people. Gomme preferred to see the courts as “judicial committees, as it were, of the assembly”;\(^62\) Dover took the same view and wrote that “An Athenian jury was in some ways like a committee of the assembly”;\(^63\) Ehrenberg argued that “It was the same people that sat in the Ecclesia and the courts of law.”\(^64\) MacDowell concluded that “An Athenian jury was the Athenian people”;\(^65\) according to Finley, a successful prosecution in a graphe paranomon was a verdict “of the demos through the agency of a large popular jury-court selected by lot.”\(^66\) Sinclair argued that “in many senses the Heliaia was regarded as a cross-section of the Demos at large or virtually the same as

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\(^60\) Noted by H. Wankel, Demosthenes Rede für Ktesiphon über den Kranz (Heidelberg 1976) 920. Harvey Yunis, Demosthenes On the Crown (Cambridge 2001) 106, has the following important observation: “As D. makes clear in §196, his defense is directed at both the court proper and the spectators, i.e. the Athenian public as a whole, who are most conveniently addressed as ἄνδρες Ἀθηναίοι.”


\(^63\) Dover, Popular Morality 292.


\(^66\) M. I. Finley, Democracy Ancient and Modern (London 1973) 27.
the Demos”; Meyer had the following comment about the relation between ekklesia and dikasterion: “Es bestanden besonders Volksgerichte, die aber nichts anders waren als eine andere Form der Volksversammlung.” Bleicken writes: “Die Richter eines Dikasterion sind in einem ideellen Sinne der demos wie die Bürger, die jeweils eine Ekklesia bilden.” The same is expressed by Welwei: “Jeder Gerichtshof repräsentierte wie die Heliaia in ihrer Gesamtheit den Demos bzw. die Bürger über dreissig Jahre, die als Richter (Dikastai, Heliastai) zugelassen waren.” According to Will, “Athènes avait développé un appareil judiciaire distinct de son appareil politique: mais cette distinction avait été effacée par le fait que les hommes qui peuplaient les deux appareils étaient les mêmes, ou du moins les semblables.” This view is echoed by Ober (1996: 119): “The graphe paranomon procedure gave Demos a chance to consider at a remove decisions made in assembly.”

The old orthodoxy can be summed up as follows: although ekklesia and dikasteria were separate bodies of government they were both manifestations of the demos, but the ekklesia was the superior institution and a dikasterion was essentially a judicial session of the demos and thus of the ekklesia.

In my 1978 article (supra n.1) I objected to such an interpretation of the relation between assembly and courts by pointing out that this line of argument would of necessity lead to the identification of the demos not only with the dikasterion but also with the boule. The fifty-first speech in the Corpus Demosthenicum, for example, was held before the council of five hundred. In this speech the councillors are addressed not only as οἱ βουλῆς but also as ὦ ἄνδρες Ἀθηναῖοι (3, 8, 12, 22), and the speaker

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68 E. Meyer, Einführung in die antike Staatskunde (Darmstadt 1968) 96.
70 K.-W. Welwei, Die griechische Polis² (Stuttgart 1998) 189

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uses the second-person plural even when he refers to a *psephisma* actually passed by the assembly (1 and 4). Similarly, Lysias’ speech *For Mantisheus* was delivered before the *boule* and here the councillors are addressed as if they had concluded the alliance with Boiotia in 395 (Lys. 16.13). Other sources indicate a similar identification of jurors and councillors. Thus, in *On the Mysteries* 37 Andokides presumes that the jurors hearing the case against him in 400 are the same as the councillors who in 415 heard Diokleides’ report to the *boule*.

In connection with the *nomothetai* a particularly interesting passage is Dem. 20.94 where the second-person plural refers to citizens who act both as members of a *dikasterion* (hearing the Leptines case), as participants in an *ekklesia* (listening to a bill read out to the assembly) and as members of a board of *nomothetai* (voting on the proposed bill).72

Nevertheless, historians have never discussed *nomothetai* in this context, and in the case of the council they have not inferred that the *boule* was an embodiment of the *demos* itself.73 The reaction to my observation has in some cases been to accept the argument and admit that, like the assembly, not only the courts but also the *boule* and the *nomothetai* must have been institutions which the Athenians conceived of as the *demos*. In Ober’s opinion (1996: 118) “each of the various institutional ‘parts’ of the citizen body (*ekklesia*, *dikasteria*, *nomothetai*, *boule*) could stand for and refer to the whole citizen body.” But this extension of the field of reference covered by *demos* does not settle all problems.

Lysias 1 is a speech delivered by the defendant in a homicide trial. The defendant has pleaded that the person he killed was an adulterer caught in the act, and the case is accordingly brought before the Delphinion, the court that heard cases of

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72 See also Isae. 4.17 and Aeschin. 1.176.

73 Only D. M. MacDowell, *Andokides. On the Mysteries* (Oxford 1962) 88, envisages the possibility that both the council and the assembly “were representatives of the whole people.”
justifiable homicide. As far as we know this court was manned with fifty-one so-called ephetai, and there is no compelling reason to assume that they were dikaios selected by lot from the panel of jurors. In the speech they are never addressed ὦ ἄνδρες δικασταί, the formula almost always used by Lysias in speeches delivered before the people’s court, but either ἄνδρες (24 times) or Ἀθηναῖοι (twice). Are we to assume that the ephetai too were a manifestation of the Athenian demos with capital D? or is it better to believe that the address ὦ (ἄνδρες) Ἀθηναῖοι could probably be used in an address to any political institution manned with Athenian citizens and that from the form of address we cannot infer anything about both the assembly and the people’s court being a manifestation of or a symbolic reference to the Athenian Demos with capital D? I prefer the second alternative.

The difference between demos and dikasterion

I hold that from the form of address and the use of the second-person plural in forensic speeches no inference can be made about the symbolic meaning of Demos with capital D as referring to the dikasterion as well as to the ekklesia. Nevertheless ὦ ἄνδρες Ἀθηναῖοι as the common form of address in both symbouleutic and forensic speeches as well as the use of the second-person plural in forensic speeches reflects the important fact that there was an enormous overlap in personnel between the different democratic political institutions. Is this overlap not an indication that it is misguided to emphasise the distinction between the different institutions and, in particular, between the assembly and the courts?

Plato and Aristotle would agree. In their opinion a crucial aspect of Athenian democracy was that both assembly and

76 Todd, Commentary 88.
courts were dominated by the common people, i.e. the *demos* in the sociological sense: e.g., Arist. *Ath.Pol.* 41.2, ἀπάντων γὰρ αὐτῶς αὐτὸν πεποίηκεν ὁ δήμος κύριον, καὶ πάντα διοίκεται ψυφίσμασιν καὶ δικαιστηρίως, ἐν οἷς ὁ δήμος ἐστὶν ὁ κρατῶν.\(^{77}\)

The Athenian democrats, however, took a different view. Whenever they discussed the relation between *demos* and *dikasterion* they took it for granted that there was an important distinction which often led to a direct opposition between the two institutions. Consider for example the following passages:\(^{78}\)

IG I 40.3–10, κατὰ τάδε τὸν ἡρώκον ὁμόσα Ἀθηναίον τέν βολέν καὶ τὸς δικαστᾶς: οὐκ ἔχασεν Ὑλίκιδας ἐχ Ὑλίκιδος οὐδὲ τὸν πόλιν ἀνάστατον ποίσο οὐδὲ ἰδιότεν οὐδένα ἀτιμόσο οὐδὲ φυγεῖ ξεμόσο οὐδὲ χαυλλέσθομαι οὐδὲ ἀποκενοῦ οὐδὲ χρέματα ἀφαίρεσομαι ἀκρίτο οὐδένος ἀνευ τὸ δεμο τὸ Ἀθηναίον.

Xen. *Hell.* 1.7.12, τὸν δὲ Καλλίξενον προσεκαλέσαντο παράνομα φάσκοντες συγγεγράφεναι Ἐυρυπτόλεμος πε τὸ Πεισάνακτος καὶ ἄλλοι τινές, τοῦ δὲ δήμου ἐνοι ταῦτα ἐπήγγον, τὸ δὲ πλῆθος ἐβάσα δειον εἰναι εἰ μή τις ἔσαι τὸν δήμον πράττειν ὅ ὁν βουλήται.\(^{79}\)

Dem. 19.297, παλλοὶ παρ’ ὁμίν ἐπὶ καιρὸν γενόναι ιόχροι, Καλλιστατος, αὐθις Αριστοφόν, Διοφαντος, τοῦτον ἐτερο πρότερον, ἀλλὰ ποι τούτων ἐκαστος ἐπρότερον: ἐν τῷ δήμῳ ἐν δὲ τοῖς δικαστηρίοις οὐδείς ποι μέχρι τῆς τιμερον ἡμέρας ὁμίν οὐδὲ τῶν νόμων οὐδὲ τῶν ὁρκῶν κρείττων γέγονεν.

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\(^{77}\) For the same juxtaposition of a type of decision (*psephismata* passed by the assembly) and a body of government (*dikasteria* pronouncing verdicts), cf. Aesch. 2.178.


\(^{79}\) In treating the relation between *demos*, *ekklesia*, and *dikasterion* I have distinguished between attestations in literature (historians, philosophers, and poets) and attestations in documents (inscriptions and speeches held before the *ekklesia*, the *boule*, or the *dikasterion*), see Hansen (1983) 140. Here I allow the quote from Xenophon’s *Hellenica* to appear among the documents on the assumption that in this case Xenophon quotes what the majority of the people actually shouted when Euryptolemos had announced that he would bring a *graphe paranomon* against Kallixenos’ decree. For my definition of what a document is, see Hansen *CIMed* 52 (2001) 317–343.
Dem. 24.78, ἀρ’ οὖν τῷ δοκεὶ συμφέρειν τῇ πόλει τοιούτους νόμους ὡς δικαστηρίου γνώσεως αὐτῶν κυριώτερος ἔσται, καὶ τάς ὑπὸ τῶν ὄμω-μοκόστων γνώσεις τοῖς ἀνωμότοις (the assembly, cf. 24.80) προστάξει λύειν: In this passage τοῖς ἀνωμότοις is a reference to the demos in the ekklēsia, as stated in 80: ἐνθυμεῖτο ἀπὸ τοῦ δικαστηρίου καὶ τῆς καταγγέλεις οἰ διεξάγοντεν ἐπὶ τῶν δήμων.

Dem. 59.91 on citizenship decrees, καὶ ἢ ἡ τοῦ τῶν δήμων δόντος τὴν δωρεὰν, λόγῳ ἐξαπατηθέντος ὑπὸ τῶν αὐτῶν, παρανόμων γραφῆς γενομένης καὶ εἰσελθοῦσης εἰς τό δικαστήριον, ἐξελεγχθῆ-ναι συνεβῇ τῶν εἰληφότα τῆς δωρεάν μή ἂξιον εἶναι αὐτῆς, καὶ ἀφεῖλετο τό δικαστήριον.

Dem. 57.56, οὗ μόνων τῶν ἀποφημισμένων Ἀλμυσαίων ἐμὸν κυριώτερ' ὑντα τὰ δικαστήρια, ἀλλὰ καὶ τῆς βουλῆς καὶ τοῦ δήμου, δικαίως, κατὰ γὰρ πάντα' οἱ παρ' εἰς κρίσεις δικαίωται.

Din. 3.15–16, καὶ ο μὲν δήμος ἀπας ... ἀπεχειρηκόνησαν αὐτὸν ἀπὸ τῆς τῶν ἐφήβων ἐπιμελείας. ἤμεις δ’ οἱ τῆς δημοκρατίας καὶ τῶν νόμων φύλακες, οὐς ἡ τῆς καὶ ὁ κλήρος ὑπὸ τῶν δήμου δικάσονται ... ἐπέτρεψεν, φείσασθε τοῦ τοιαύτα διαπεραγμένου.

Aeschin. 3.4–5, when the ekklēsia is paralysed by corruption, democracy is protected only by the graphe paranomon brought before a dikastēron, τῆς δὲ τῶν ῥήτωρ̣ων ἀκομψίας οὐκέτι κρατεῖν δύνανται οὐθ’ οἱ νόμοι οὐθ’ οἱ πρωταίεις οὐθ’ οἱ πρόθροι, οὐθ’ ἡ προεδρεύουσα φυλή, τὸ δέκατο μέρος τῆς πόλεως. τούτων δ’ ἐχόντων οὕτως ... ἐν ὑπολείπεται μέρος τῆς πολιτείας, εἰ τι κάγῳ τυχήνων γεγονόσκων, αἱ τῶν παρανόμων γραφαί.

In my opinion these sources and many others80 testify to a distinction and in most of the cases an opposition between the assembly and the courts. As to the relative powers of the two institutions, however, there is an important development from the fifth-century to the fourth-century evidence.

In the first two passages quoted above the demos is the superior body of government and the dikastai are subordinate to the assembly.81 In the decree of 446/5 regulating the relations between Athens and Chalkis the oath taken by the boule and the dikastai "clearly envisages a separation between the jury and the

people. The *demos* is the larger concept to whom the jury must defer.\(^82\) The *dikastai* are placed on the same level with the *boule* and both institutions are subordinate to ὁ δῆµος ὁ Ἀθηναίων, viz. the people in assembly.\(^83\) Whereas the decree of 446/5 testifies to a distinction between *demos* and *dikasterion*, the trial of the generals as described by Xenophon provides us with an example of an opposition between the two institutions. When Eurypylemos and others stated a protest against Kallixenos’ *probouleuma* and proposed instead to refer the matter to the courts, the majority of the assemblymen cried out that it would be outrageous to prevent the *demos* from doing whatever they wished. So the transfer of a case from the *ekklesia* to the *dikasterion* was regarded as an attack on the supreme power of the *demos*.\(^84\)

In all the fourth-century sources quoted above the relative powers of assembly and courts has been reversed. Now it is the *dikastai* who repeatedly are described as κύριοι or κύριοι πάντων,\(^85\) and as the bulwark of the democracy.\(^86\) It was in particular their monopoly after ca. 355 to hear *eisangeliai* and the frequent use of the *graphe paranomon* that placed the *dikasterion* above the *demos*. I have treated this issue in several publications\(^87\) and intend to take it up again in a future study. In this article my focus is to explain the conceptual relation between *demos*, *ekklesia*, and *dikasterion* and to respond to the criticism of my views.

Objecting to my interpretation of the fourth-century sources, Ober (1996: 117) hypothesizes “that the speakers deliberately

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flattered their audience” and that “the passages that emphasize separateness and superiority of dikasteria (versus demos or ekklesia) should be read in conjunction with other passages that assume a congruity between decisions made by jurymen and those made by assemblymen. Litigants sometimes warned jurors that their decisions would be closely monitored by the demos and suggested that jurors should make a decision that would please the demos.”

Ober is right that the citizens who addressed the jurors wanted to flatter their audience. But the view that the dikasteria are kyria and the bulwark of the constitution is also mentioned by Demosthenes in a speech delivered to the assembly as a view held by some of the speakers. He does not deny the importance of the courts for upholding the judicial system but he argues that what matters in war is weapons and not voting ballots. Ober is also right that the jurors are often warned that they will be held responsible by the people for the verdict they pass, and that in a number of passages the speaker urges the jurors to uphold the decision made by the people in assembly. Obvious examples are found in Demosthenes’ speech against Meidias and in Deinarchos’ speech for the prosecution in the Harpalos affair:

Dem. 21.227, ἐπειδὴ δ’ ἐξελήλεγκται, καὶ προκατέγνωκεν ὁ δήμος τούτον εἰς ἱερὸν καθέδριμενος ... καὶ δικάσσοντες εἰλήφατε, καὶ πάντ’ ἔστιν ἐν ὑμῖν μία ψήφο διαιτράξασθαι, νῦν ὀκνήσετ’ ἐμοὶ βοηθήσαι, τῷ δήμῳ χαρίσσωμαι; ...
Din. 3.15–16, ὁ μὲν δῆμος ἄπας ... ἀπεχειρηθηκεν αὐτὸν ἀπὸ τῆς τῶν ἐφύβων ἐπιμελείας· ὑμεῖς δὲ ὁ τῆς δημοκρατίας καὶ τῶν νόμων φίλακες, οὓς ἡ τύχη καὶ ὁ κλήρος ὑπὲρ τοῦ δήμου δικάσαστας ... ἐπέτρεψαν, φεύγεσθε τοῖς τουαύτα διαπεπραγμένους;

But the fact that speakers before the court sometimes criticise and sometimes support the decision made by the assembly does not invalidate my view of the relation between the two institutions which must be seen in a wider context.

The relative powers of the assembly and the people’s court became an issue whenever a decision made by the eklesia was referred to a dikasterion. That happened when the people had deposed an official by an apocheirotonia,91 or by a katacheirotonia had voted for a probole raised against a citizen suspected of being a sykophantes or having committed a crime during a religious festival.92 It also happened when the assembly by a katacheirotonia had confirmed an apophasis by the council of the Areopagos and referred the matter to the people’s court.93 It could become an issue when a magistrate elected by a show of hands in the assembly had to undergo the obligatory dokimasia by the court and his candidature was questioned by one or more speakers.94 First of all, it became inevitably a major issue in a graphe paranomon in which the dikastai had either to quash or to uphold a psephisma passed by the people in assembly.95 On the other hand, it would not be an issue in an eisangelia to the assembly because in this case the demos referred the case to a dikasterion without itself passing a preliminary verdict of guilty.96

91 Arist. Ath.Pol. 43.4, 61.2. See Rhodes, Commentary 682–683.
92 Arist. Ath.Pol. 43.5; Dem. 21.1–2. See MacDowell, Demosthenes. Against Meidias 13–16.
94 In our sources there is only one example of a dokimasia which resulted in the rejection of an elected candidate, the dokimasia of Theramenes who had been elected strategos for 406/5 (Lys. 13.10).
95 Hansen, Sovereignty of the People’s Court; (1991) 205–212.
In all cases the hearing before the court was conducted in accordance with the adversarial system: there would be one or more speeches for the prosecution pitted against one or more for the defence, and the two sides would of course take opposed views of the decision made by the assembly. In a graphe paranomon the prosecutor would urge the jurors to quash the psephisma, whereas the defendant would argue that the psephisma passed by the demos ought to be upheld. Conversely, if the hearing before the court was warranted by the assembly’s katacheirotonia in a probole or an apophasis the prosecutor would ask the jurors to confirm the people’s decision whereas the defendant would hold that the people had been misled by his opponent or, as Meidias did, that the ekklesia that passed the katacheirotonia had been dominated by foreigners and citizens who were in Athens because they had failed to fulfil their military duties abroad or in the fortresses in Attica (Dem. 21.193). In our sources we have attestations of both forms of katacheirotonia followed by a trial before the people’s court.

In his speech against Meidias Demosthenes exhorts the jurors to return a verdict of guilty and thus to confirm the katacheirotonia against Meidias passed by the demos in the assembly (21.2, 227). Conversely, Demosthenes anticipates that Meidias will throw suspicion on those who had attended the ekklesia and found him guilty of assault on an official during the Dionysia (193). In the speech against Demosthenes in the Harpalos 97

97 Until recently the only preserved speech for the defence in a graphe paranomon was Demosthenes’ On the Crown; and in this case the indictment was brought by Aischines before the honourary decree had been put to the vote in the assembly (Dem. 18.9, 53, 118–119, see Hansen, “Graphe Paranomon against Psephismata not yet passed by the Ekklesia,” in Athenian Ecclesia II 272–274). Accordingly there was no risk of conflict between the demos and the dikasterion. On the contrary, Demosthenes demonstrates a basic agreement between assembly and courts in the period after the defeat at Chaironeia (249–250). With Hypereides’ speech against Diondas we have now another example of a speech for the defence in a graphe paranomon (ZPE 165 [2008] 1–19), and here, of course, Hypereides exhorts the jurors to uphold the honourary decree for Demosthenes passed by the assembly (137–136).
affair, Deinarchos insists that the jurors confirm the *apophasis* submitted by the council of the Areopagos and confirmed by the assembly’s *katachteironia* (1.114). Again, Deinarchos presumes that Demosthenes will try to persuade the jurors that he had not been bribed and that in his case the *apophasis* was misguided (104).

However, both in Demosthenes’ speech against Meidias and in Deinarchos’ against Demosthenes, the suggestion that the jurors should make a decision that would please the *demos* is combined with the view that it is the jurors who are kyrioi panton, i.e. in possession of supreme powers:

In the speech against Meidias this view is most clearly stated in Demosthenes’ conclusion: καὶ γὰρ αὐτὸ τοῦτ’ εἰ θέλωτε σκοπεῖν καὶ ζητεῖν, τῷ ποτ’ εἰσίν ὑμῶν οἱ ἀεὶ δικαίωτες ἱσχυροὶ καὶ κύριοι τῶν ἐν τῇ πόλει πάντων, ἐὰν τε διακριόσαντες ἐὰν τε χείλισαν ἐὰν θ’ ὁποιοσοῦν ἡ πόλις καθίσῃ ... εὔροιν ἀν ... τῷ τοὺς νόμους ἱσχύειν (Dem. 21.223).

Similarly, in Deinarchos’ speech against Demosthenes the view is stated in the beginning of the epilogue where the prosecutor reminds the jurors of their duties: ὃ ῥατ’ ὦ Ἀθηναῖοι, τί μέλλετε ποιεῖν. παρειλήφατε παρὰ τοῦ δήμου τὸ πράγμα ... Ἀθηναῖοι εἰσέρχεται πρότος ... πότερ’ ἀμελήσαντες τῶν γεγενημένων ἀπάντων ἀφήσατε τὸν πρῶτον εἰσεληλυθότα πρὸς ὑμᾶς, καὶ τὰ δίκαια [τὰ] παρὰ τῷ δήμῳ καὶ τῇ βουλῇ τῇ ἔξ Ἀρείου πάγου δοξάζετ’ εἰναι καὶ τοῖς ἄλλοις ἀπασιν ἀνθρώποις, ταῦτ’ ἵματε οἱ κύριοι πάντων λύσετε; (Din. 1.105–106).

I conclude that these two passages, which both recommend upholding a decision made by the *demos* in the assembly, ought to be added to the others quoted above in support of the view that in the fourth century it was the δικασταὶ rather than the δήμος who were considered to be κύριοι πάντων.

*Reasons for distinguishing between demos and dikasterion*98

Why did the Athenians distinguish between *demos* and *dikasterion*? and why did they allow a fraction of the citizens

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selected by lot to hear and quite often to quash a decision made by the whole of the people in the assembly? The double consideration of a proposal allowed the possibility of coming to a better decision (Thuc. 3.42.1). Presumably many of the jurors in a graphe paranomon will have been present at the assembly meeting where the proposal had been discussed, and the decree had doubtless been the subject of public argument between the assembly’s decision and the meeting of the court (Dem. 22.59). Dealing with the matter twice gave them a breathing-space to overcome the effects of mass-hysteria such as a skilful orator could whip up in a highly-charged situation. But a double treatment could be achieved by having an issue debated and voted on in two successive meetings of the demos, as happened in 428 in connection with the secession of Mytilene from the Delian League. What was the reason for having the second session in a dikasterion and not in the demos? The sources provide us with several answers to these questions: (1) the higher age of jurors, (2) the heliastic oath taken by the jurors, (3) the form of debate practised in a dikasterion, (4) the way the vote was taken, and (5) a reduction in the cost of having an issue debated twice. (1) All citizens over twenty were admitted to the ekklesia. But the dikastai in the people’s court were selected by lot from a panel of 6000 jurors aged thirty or more. The presumption is that in ancient Athens men in their twenties constituted no less than a third of all adult males above twenty. Thus, if some 30,000 adult male citizens were entitled to attend the ekklesia on the Pnyx, the number of Athenians eligible for membership of the panel of 6000 did not exceed 20,000.99 In other words, every third citizen old enough to attend the ekklesia was not old enough to become a juror or to serve as a magistrate either in the council of five hundred or in one of the numerous boards of ten. The reason for the higher age limit for jurors and magistrates is not explicitly stated in any source,100 but it is not

difficult to guess.

Almost all Greeks held the view that wisdom and rationality grow in man with the advance of age. Conversely, young men are rash and keen on war and revolution. It is symptomatic that neoterizein and neoterismos are idiomatic Attic terms for "making revolution" and "revolution." Young persons' inclination to war is an argument adduced by Nikias and the other speakers who in 415 warned against the Sicilian campaign. To balance the youthful spirit of the ekklesia, it was only wise to have more mature men sitting both in the boule, which prepared all business for the ekklesia, and in the dikasteria, which were empowered to reconsider and, if necessary, to overrule rash decisions. The historians who hold that it was the same people who sat in the assembly and in the courts have in this context either ignored the different age composition of assembly and courts or considered it to be of no importance.

(2) Every year all the 6000 jurors selected by lot had to take

100 But see now the new speech by Hypereides against Diondas, ZPE 165 (2008) 1–19. Hypereides claims that, although the law forbids anyone to appear in court before the age of thirty, Diondas, being only twenty-five, has already acted as prosecutor in twice as many public actions (176), viz. in no less than fifty (145, 174). Hypereides cunningly mixes up the age required for being a juror (thirty) with the age required for appearing in court for the prosecution or for the defence. Hypereides provides us with the first explicit piece of evidence that it was constitutional to speak in court in public actions before the age of thirty, previously indicated by, e.g., Dem. 54.1, 58.2. But Hypereides expects that his audience will agree with him that it is outrageous to act like Diondas, and that the hearing of public actions ought to be left to mature citizens above thirty. Cf. Ar. Ar. 1431; Arist. Rh.Al. 1437b32.5; and L. Rubinstein, Litigation and Cooperation. Supporting Speakers in the Courts of Classical Athens (Stuttgart 2000) 226–227.

101 See now the important contribution by J. Timmer, Altersgrenzen politischer Partizipation in antiken Gesellschaften (Berlin 2008).

102 Meyer, Einführung 96; Finley, Democracy 27; Dover, Popular Morality 292; MacDowell, Law 40; Rhodes, Commentary 318, 489, 525, 545; Ostwald, From Popular Sovereignty 34–35 n.131; Sinclair, Democracy and Participation 70–71.

the heliastic oath, whereas no oath was ever taken by the citizens who attended the ekklesia. The importance of the heliastic oath is often emphasised in addresses to the jurors; and in one passage it is explicitly stated that it would be outrageous if a decision made by the sworn dikastai in the people’s court could be rescinded by the citizens in the ekklesia who had not taken any oath.\(^{104}\) Today we can sneer at an oath but in ancient Athens the taking of a solemn oath mattered and the heliastic oath constituted an important difference between the demos and the dikasterion.\(^{105}\)

(3) In the assembly the decree subject to attack had been only a single item on the agenda, and the fact that every citizen could speak may sometimes have led to chaotic debates: in the court there was a whole day set for dealing with the proposal, and the debate was between two parties only, and both sides had prepared their cases fully. Aischines criticises the chaotic debates which often took place in the ekklesia, and Demosthenes tells his audience that clever political leaders, like Kallistratos and Aristophon, had been able to control the demos in the ekklesia, but never succeeded in being masters of the laws and of the sworn dikastai.\(^{106}\)

(4) In the assembly the vote was by show of hands; in the court it was by ballot. Consequently, in the assembly there was always the possibility of group-pressure on voters or corrupt misstatement of the result; in the court, by contrast, the method of voting protected the individual citizen and limited the chances of corruption. Thucydides explains that many opponents of the great Sicilian expedition in 415 were quite simply frightened of voting against the popular proposal in a show of hands (6.24.3–4); the trial of the generals in 406 provides us with a notorious example of how the demos in a repeated show of hands gave in to group pressure and ratified

\(^{104}\) Dem. 24.78, quoted 525 above.


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Kallixenos’ unconstitutional *prohouleuma* in the second show of hands;\(^{107}\) Aischines (3.3) insinuates that those in charge of the assembly had often let themselves be bribed to make a false estimate of the vote, and the charge comes in a passage where Aischines is criticising the assembly and insisting on the courts as a bulwark of democracy.

(5) A fifth difference between *demos* and *dikasterion* relates to public finances. In the 330s a citizen received one drachma for attending a session of the *demos* whereas the jurors obtained only 3 obols per session. Assuming that assembly-pay was the same in the mid-fourth century and that an *ekklesia* was normally attended by 6000 citizens, a session of the *ekklesia* cost the Athenians one talent, whereas a session of the *dikasterion* manned with 500 or 1000 jurors could be heard for 500–1000 drachmas. Retrenchment, especially in 355 after Athens’ defeat in the Social War, inevitably entailed transfer of powers from the *ekklesia* to the *dikasteria*. In the first half of the fourth century, for example, the *demos* had sometimes transformed itself into a law court and heard public actions brought against political leaders. From the 350s onwards, all political trials were referred to the *dikasteria*, and the *ekklesia* was deprived of its judicial powers.\(^{108}\) The Athenian treasury saved money and, at the same time, it adopted one of the reforms recommended by Aristotle in order to change a radical democracy into a more moderate one: to reduce the number of *ekklesiæ* and transfer business to the popular courts.\(^{109}\)

I would like to end with a caveat. The fact that the *dikasteria* often took precedence over the *ekklesia* and were called *kúra· πάντων* and *kúra· τῆς πολιτείας* must not lead to the erroneous belief that the *dikasteria* now mattered more than the *ekklesia*. Admittedly, in the fourth century it was the *dikasteria* that were considered the bulwark of the democracy, but when the Athenians made decisions about war, peace, and foreign

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\(^{109}\) Arist. *Pol.* 1320a22 ff., *Rh.* 1411a28 (with Wartelle’s note in the Budé ed.).
policy as well as important individual decisions concerning domestic policy, it was still the *demos* in the *ekklesia* that was the crucial body of government, and it was only a small number of all the *psephismata* passed by the *demos* that were exposed to a *graphe paranomon* and referred to the *dikasterion*. I have emphasised this caveat in several of my publications,¹¹⁰ but it has often been overlooked by my critics. Therefore I intend to take it up in a future article about the relative powers of the *demos* and the *dikasterion*.

**APPENDIX: THE IDEA OF REPRESENTATION**

Interpreting the relation between *demos* and *dikasterion* I have to retract a view I held in earlier treatments of the issue. In 1974 I argued that the Athenians did not see a *dikasterion* as a judicial session of the *demos*, but rather conceived of the people’s court as an institution that acted on behalf of the *demos* and in some way represented the *demos*. I stuck to this view in later articles, pointing out that “representation,” acting on behalf of another, implies distinction and not identity” (1983: 159). The sources I adduced (147, 159) were:

*Din.* 1.84, ἐπείδη δ’ εἰς τὰς ὡμετέρας ἥκει χειρᾶς, τῶν ὑπὲρ τοῦ δήμου συνελεγμένων καὶ τῶν ὁμοφωκότων πείσεσθαι τοῖς νόμοις καὶ τοῖς τοῦ δήμου ψηφίσασιν, τί πούστε:  
*Din.* 3.15–16, ὃ μὲν δήμος ἄπας … ἀπεχείρησεν αὐτὸν ἀπὸ τῆς τῶν ἐφήβων ἐπιμελείας· ἤμεισ δ’ ὑπὲρ τῆς δημοκρατίας καὶ τῶν νόμων φύλακες, ὡς ἡ τύχη καὶ ὁ κλήρος ὑπὲρ τοῦ δήμου δικάσσοντας … ἐπέτρεψεν, φείσεσθε τοῦ τοιαύτα διαπεπραγμένου;¹¹¹  
*Aeschin.* 3.8, κάκειον δὲ χρή διαμνημονεύειν, ὅτι νυνὶ πάντες ὑπὲρ τοῦ δήμου παρακαταθέμενοι τὴν πόλιν ὑμῖν καὶ τὴν πολιτείαν διαπίστευσαντες, ὁμ μὲν πάρειας καὶ ἐπακούσας τήδει τῆς κρίσεως, ὃ ὢν ἄπεισιν ἐπὶ τῶν ἱδίων ἑργῶν.

In the two passages from Deinarchos I took ὑπὲρ τοῦ δήμου to mean “on behalf of the *demos*” in the sense of representing the *demos* and I adduced παρακαταθέμενος at Aeschin. 3.8 as further evidence of the idea of representation. A thorough inspection of the evidence suggests a different interpretation. In Athenian sources of the Class-

¹¹¹ Quoted 535 supra, but for clarity I repeat the passage here.
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The Classical period there are altogether 28 attestations of the prepositional group ὑπὲρ τοῦ δήμου, 23 in the orators, 4 in inscriptions, 1 in Aristotle.\(^\text{112}\) Setting aside the two passages in Deinarchos, the meaning of ὑπὲρ τοῦ δήμου is not “on behalf of” in the sense of “acting on behalf of another” but “for the benefit of / in favour of,” cf. e.g. ὅπως ἂν ... ἡ ἁλήθια γέννηται ὑπὲρ τοῦ δήμου τὸ Ἀθηναῖων (IG II² 47.25–28), αὐτὸς ὑπὲρ τοῦ δήμου θέμενος τὰ ὀπλα (Dem. 21.145), ὁ τοῦ ἐμοῦ πατρὸς πάππος Λεωγόρας στασιάσας πρὸς τῶν τυράννων ὑπὲρ τοῦ δήμου (Andoc. 2.26). The presumption is that the meaning is the same in the two passages from Deinarchos, i.e. that the jurors had been gathered for the benefit of the demos (1.84) and that the jurors had been selected by the lot in order to pass judgement in favour of the demos (3.16).\(^\text{113}\) So in neither case is there any idea of representation. At Aeschin. 3.8 the verb παρακαταθέμενοι does suggest some form of representation but in this case the subject is not δῆμος but πάντες οἱ πολίται, who in this passage are not all citizens but all the other citizens apart from the jurors.

So the idea of the jurors representing the δῆμος is unattested in the sources we possess. I note that some scholars have shared the view that the relation between dikastai and demos involved representation,\(^\text{114}\) but I note too that is was rejected by Ober (1996: 118).\(^\text{115}\)

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SAXO-instituttet

Njalsgade 80
2300 Copenhagen S
Denmark

mhh@hum.ku.dk

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\(^\text{112}\) Andoc. 2.26; Lys. 13.51, 26.21; Isoc. 15.70; Dem. 21.144, 145, 22.12, 24.34, 111, 119, 34.39; Ep. 3.3, 15; 6.11.2; Aeschin. 3.120, 209; Hyp. 1.17 (restored); Din. 1.33, 84, 97, 98, 3.16; Arist. Pol. 1310a7; IG II² 47.27, 235.10 (restored), 334.4, 456b.6–7.

\(^\text{113}\) In both cases the Budé edition has what I now think is the correct interpretation: “défendre les intérêts du peuple” at 1.84 and “défendre le peuple” at 3.16.

\(^\text{114}\) Rhodes, Commentary 545; Ostwald, From Popular Sovereignty 34–35 n.131.

\(^\text{115}\) I would like to thank Lene Rubinstein for her perspicacious comments on this article.