

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

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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 *dikasteria*² and a decree passed by the assembly could be challenged by a *graphe paranomon* 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

¹ The orthodox view is set out in detail 520–521 *infra*. The following will be cited by author's name and date: M. H. Hansen, "Demos, Ecclesia and Dikasterion in Classical Athens," in *The Athenian Ecclesia. A Collection of Articles 1976–83* (Copenhagen 1983) 139–160, an updated version of *GRBS* 19 (1978) 127–146; *The Athenian Assembly* (Oxford 1987); "The Political Powers of the People's Court in Fourth-Century Athens," in O. Murray and S. Price (eds.), *The Greek City from Homer to Alexander* (Oxford 1990) 215–244; *The Athenian Democracy in the Age of Demosthenes* (Oxford 1991, ²London 1999); J. Ober, "The Nature of Athenian Democracy," in *The Athenian Revolution* (Princeton 1996) 107–122, review of Hansen (1987), originally *CP* 84 (1989) 322–334.

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-*

³ Thuc. 3.36, 3.38.1. Cf. K. J. Dover, "Anapsephisis in Fifth-Century Athens," *JHS* 75 (1955) 17–20, and Hansen (1987) 87 with n.537.

⁴ M. H. Hansen, *The Sovereignty of the People's Court in Athens* (Odense 1974) 19–21; (1983); (1987) 101–107; "Demos, Ekklesia and Dikasterion. A Reply to Martin Ostwald and Josiah Ober," in *The Athenian Ecclesia II A Collection of Articles 1983–9* (Copenhagen 1989) 213–218; (1990); (1991) 154–155, 303.

⁵ Like other historians I did use the term "sovereignty" and discussed the concept of sovereignty in *Sovereignty of the People's Court and Eisangelia* (Odense 1975), but in (1987) 105–107 and later publications I preferred the Greek phrase *κύριος πάντων*, cf. *Athenian Democracy* (1991) 303 and *Polis and City-State. An Ancient Concept and its Modern Equivalent* (Copenhagen 1998) 78.

kasterion has been disputed by several historians.⁶ Others have accepted my analysis,⁷ and others again parts of it.⁸ It is impossible in this article to respond to all my critics.⁹ 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.”¹⁰ 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*.¹¹

⁶ In particular by Peter Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford 1981); Martin Ostwald, *From Popular Sovereignty to the Sovereignty of Law* (Berkeley 1986); Jochen Bleicken, “Die Einheit der athenischen Demokratie in klassischer Zeit,” *Hermes* 115 (1987) 257–283; Josiah Ober, *Mass and Elite in Democratic Athens* (Princeton 1989), and (1996); Gerhard Thür, “Die athenischen Geschworengerichte – eine Sackgasse?” in W. Eder (ed.), *Die athenische Demokratie im 4. Jahrhundert v. Chr.* (Stuttgart 1995) 321–331; and Greg Anderson, “The Personality of the Greek State,” *JHS* 129 (2009) 1–21.

⁷ E.g. David Lewis in the lecture he gave at the Norman Baynes Annual Meeting of British Ancient Historians in 1986, “M. H. Hansen on the Athenian Ecclesia” (unpublished). See also the contributions by Adriaan Lanni, Oswyn Murray, and Pasquale Pasquino in M. H. Hansen (ed.), *Démocratie athénienne – démocratie moderne: tradition et influences* (Entr.Hardt 56 [2010]).

⁸ E.g. Detlef Lotze, “Die Teilhabe des Bürgers an Regierung und Rechtsprechung in den Organen der direkten Demokratie des klassischen Athen,” in *Bürger und Unfreie im vorhellenistischen Griechenland* (Stuttgart 2000) 239–271; Alastair Blanshard, “What Counts as the *Demos*? Some Notes on the Relationship between the Jury and ‘the People’ in Classical Athens,” *Phoenix* 58 (2004) 28–48.

⁹ 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.

¹⁰ S. C. Todd, *The Shape of Athenian Law* (Oxford 1993) 299.

¹¹ 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, ἐπειδὴ ἀνὴρ ἀγαθὸς ἐστὶν π[ε]ρὶ τὸν δῆμον τὸν Ἀθηναίων, cf. I³ 110.6–9, ἐπειδὴ ἀνὴρ ἐστὶ ἀγαθὸς Οἰνιάδης ὁ Παλαισκιάθιος περὶ τὴν πόλιν τὴν Ἀθηναίων. IG II² 97.6–8, εἴαν τις ἐπὶ τὸν δῆμον τὸν Ἀθηναίων ἢ ἐπὶ τὴν χώραν τὴν Ἀθηναίων ἐπὶ πολέμῳ ἴη, cf. 116.27–28, εἴαν τις ἴ[η] ἐπὶ τὴν πόλιν τὴν Ἀθ[η]ναίων ἐπὶ πολέμῳ. Dem. 24.180, οἱ σύμμαχοι τὸν δῆμον ἀνδραγαθίας ἔνεκ' ἐστεφάνωσαν καὶ δικαιοσύνης, cf. 18.89, λέγε δ' αὐτοῖς καὶ τοὺς τῶν Βυζαντίων στεφάνους καὶ τοὺς τῶν Περινθίων, οἷς ἐστεφάνουν ... τὴν πόλιν. Ps.-Xen. Ath.Pol. 1.18, διὰ τοῦτο οὖν οἱ σύμμαχοι δοῦλοι τοῦ δήμου τῶν Ἀθηναίων καθεστᾶσι μᾶλλον.

2. *Demos* signifies the democratic constitution and is used synonymously with *demokratia*: Arist. Pol. 1301b39–40, διὸ καὶ μάλιστα δύο γίνονται πολιτεῖαι, δῆμος καὶ ὀλιγαρχία. Thuc. 6.39.1, ἐγὼ δέ φημι πρῶτα μὲν δῆμον ξύμπαν ὀνομάσθαι, ὀλιγαρχίαν δέ μέρος. Hyr. 2.12, καὶ ἐμὲ μὲν αἰτιᾶ ἐν τῇ εἰσαγγελίᾳ καταλύειν τὸν δῆμον παραβαίνοντα τοὺς νόμους. Rhodes-Osborne, GHI 79.7–11, εἴαν τις ἐπαναστῆ τῷ δήμῳ ἐπὶ τυραννίδι ἢ τὴν τυραννίδα συνκαταστήσῃ ἢ τὸν δῆμον τὸν Ἀθηναίων ἢ τὴν δημοκρατίαν τὴν Ἀθήνησιν καταλύσῃ, ὃς ἂν τὸν τούτων τι ποιήσαντα ἀποκ<τ>εῖνῃ ὅσιος ἔστω.

3. *Demos* signifies the people's assembly and is used synonymously with *ekklesia*. IG II² 1.5, ἔδοξεν τῇ βουλῇ καὶ τῷ δήμῳ. Aeschin. 2.17, καὶ ταῦτ' οὐκ ἐν τῇ βουλῇ μόνον εἶπεν ἀλλὰ καὶ ἐν τῷ δήμῳ. Dem. 18.248, αἰρούμενος σιτώνην ἐκ πάντων ἐμὲ ἐχειροτόνησεν ὁ δῆμος. 24.9, Τιμοκράτης ... ἄκυρα ... τὰ γνωσθένθ' ὑπὸ τῆς βουλῆς καὶ τοῦ δήμου καὶ τοῦ δικαστηρίου καθίστησιν. Cf. Xen. Hell. 1.4.20, ἐν δὲ τῇ βουλῇ καὶ τῇ ἐκκλησίᾳ ἀπολογησάμενος ὡς οὐκ ἀσεβῆκει. Aeschin. 3.34, ὁ μὲν νομοθέτης κελεύει ἐν τῷ δήμῳ ἐν Πυκνὶ τῇ ἐκκλησίᾳ ἀνακηρύττειν τὸν ὑπὸ τοῦ δήμου στεφανούμενον.

4. *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 πολῖται or

πάντες Ἀθηναῖοι. Dem. 20.106, ἄλλαι δέ τινες παρ' ἐκείνους (the Lakedaimonians) εἰσὶ τιμαί, ἃς ἀπεύξαιτ' ἂν ἅπας ὁ δῆμος ἐνταυθοῖ γενέσθαι. Din. 1.99, ὅταν ... ὑμεῖς μὲν καὶ ὁ δῆμος ἅπας κινδυνεύη περὶ τοῦ ἐδάφους τοῦ τῆς πόλεως καὶ τῶν ἱερῶν τῶν πατρῶων καὶ παίδων καὶ γυναικῶν. Lys. 29.12, οὗτοι γάρ, ὅτε Ἐργοκλῆς ἐκρίνετο, ἐν τῷ δήμῳ περιμόντες ἔλεγον ὡς πεντακόσιοι μὲν αὐτοῖς εἶψαν ἐκ τοῦ Πειραιῶς δεδεκασμένοι, ἑξακόσιοι δὲ καὶ χίλιοι ἐκ τοῦ ἄσπεως (see Bizos ad loc., Budé ed.). Cf. Andoc. 1.98, ταῦτα δὲ ὁμοσάντων Ἀθηναῖοι πάντες καθ' ἱερῶν τελείων. Lycurg. 1.76, ὑμῖν γὰρ ἔστιν ὄρκος, ὃν ὁμνύουσι πάντες οἱ πολῖται, ἐπειδὴν εἰς τὸ ληξιαρχικὸν γραμματεῖον ἐγγραφῶσιν καὶ ἔφηβοι γένωνται.

5. *Demos* signifies “the common people” and is used synonymously with e.g. *ochlos* or *aporoi* or *plethos*, antonyms being *gnorimoi* or *euroi* or *oligoi*. Thuc. 3.47.1, νῦν μὲν γὰρ ὑμῖν ὁ δῆμος ἐν πάσαις ταῖς πόλεσιν εὖνους ἐστί, καὶ ἢ οὐ ξυναφίσταται τοῖς ὀλίγοις ἢ, ἐὰν βιασθῆ, ὑπάρχει τοῖς ἀποστήσασι πολέμιος. Ps.-Xen. *Ath. Pol.* 2.20, ὅστις δὲ μὴ ὢν τοῦ δήμου εἶλετο ἐν δημοκρατουμένη πόλει οἰκεῖν μᾶλλον ἢ ἐν ὀλιγαρχουμένη, ἀδικεῖν παρεσκευάσατο καὶ ἔγνω ὅτι μᾶλλον οἷόν τε διαλαθεῖν κακῶ ὄντι ἐν δημοκρατουμένη πόλει μᾶλλον ἢ ἐν ὀλιγαρχουμένη. Pl. *Resp.* 565E, ὃς ἂν δήμου προεστῶς, λαβὼν σφόδρα πειθόμενον ὄχλον, μὴ ἀπόσχηται ἐμφυλίου αἵματος, ἀλλ' ἀδίκως ἐπαιτιώμενος, οἷα δὴ φιλοῦσιν, εἰς δικαστήρια ἄγων μαιφονῆ. Arist. *Pol.* 1302a9–13, ἐν μὲν γὰρ ταῖς ὀλιγαρχίαις ἐγγίνονται δύο, ἢ τε πρὸς ἀλλήλους στάσις καὶ ἔτι ἢ πρὸς τὸν δῆμον, ἐν δὲ ταῖς δημοκρατίαις ἢ πρὸς τὴν ὀλιγαρχίαν μόνον, αὐτῷ δὲ πρὸς αὐτόν, ὅ τι καὶ ἄξιον εἰπεῖν, οὐκ ἐγγίνεται τῷ δήμῳ στάσις.

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, ὁ δῆμος αὐτῶν (the Epidamnians) ἐξεδίωξε τοὺς δυνατοὺς. Arist. *Pol.* 1302a 10–11 (quoted *supra*). Lys. 26.16, ὁ δῆμος οὐ τὴν αὐτὴν γνώμην ἔχει περὶ πάντων τῶν ἐν ἄσπει μεινάντων. *IG I³* 127.3–4, Σαμίους ὅσοι μετὰ τῷ δέμο τῷ Ἀθηναίων ἐγένοντο.

6. Finally, *demos* signifies one of the 139 Attic demes, denoting a civic subdivision which we would call a district or municipality, cf. *IG I³* 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 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 I³ 127.3–5, Σαμίσις ὅσοι μετὰ τῷ δέμο τῷ Ἀθηναίων ἐγένοντο. ἔδοξεν τῇ βολῇ καὶ τῷ δήμῳ (1 the democratic faction, 2 the assembly).

Arist. Pol. 1296a23–27, διὰ γὰρ τὸ ἐν ταύταις πολλάκις ὀλίγον εἶναι τὸ μέσον, αἰεὶ ὀπότεροι ἂν ὑπερέχωσιν, εἴθ' οἱ τὰς οὐσίας ἔχοντες εἴθ' ὁ δῆμος, οἱ τὸ μέσον ἐκβαίνοντες καθ' αὐτοὺς ἄγουσι τὴν πολιτείαν, ὥστε ἢ δῆμος γίγνεται ἢ ὀλιγαρχία (1 the common people, 2 democracy).

Lys. 30.30, καὶ ὃν ἔδει ὑπὸ τοῦ δήμου κρίνεσθαι, οὗτος τὸν δῆμον συγκαταλύσας φαίνεται (1 the assembly, 2 democracy).¹²

Lys. 13.51, οὐ γὰρ δήπου, εἴ τι κακὸν τὸν δῆμον τὸν Ἀθηναίων ἠργάσαντο, οἱ τριάκοντα, δεδιότες μὴ καταλυθείη ὁ δῆμος, τιμωροῦντες

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 δήμου ἂν αὐτοὺς ἀπέκτειναν, ἀλλ' οἶμαι πολὺ τοῦναντίον τούτου (1 and 3 the Athenian people at large, 2 democracy).

*Demos signifying “the common people” versus “the whole of the people”*¹³

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 *Athenaion Politeia*, Plato, Aristotle, and the Aristotelian *Athenaion 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,¹⁴ 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.”¹⁵ 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

¹³ This section elaborates the view I set out in Hansen (1983) 150–152; (1987) 8, 10, 86, 96–97, 106; *Athenian Ecclesia* II 214; and (1991) 125–127.

¹⁴ Survivals: Hansen (1991) 9–10; documents: “What is a Document?” *ClMed* 52 (2001) 317–343.

¹⁵ Ober (1996) 119.

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 Πειραιεῖ and οἱ ἐξ ἄστεως (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).¹⁶

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:

ἐπειδὴ δὲ Ἀχιλλέως καὶ Πατρόκλου μέμνησθε καὶ Ὀμήρου καὶ ἑτέρων ποιητῶν, ὡς τῶν μὲν δικαστῶν ἀνηκόων παιδείας ὄντων, ὑμεῖς δὲ εὐσχήμονές τινες προσποιεῖσθε εἶναι καὶ ὑπερφρονούντες ἱστορία τὸν δῆμον, ἵν' εἰδῆτε ὅτι καὶ ἡμεῖς τι ἤδη ἠκούσαμεν καὶ ἐμάθομεν, λέξομέν τι καὶ ἡμεῖς περὶ τούτων.

But this is a view which Aeschines 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.¹⁷ Both in the assembly and in the people's court they could outnumber and outvote the minority of countrymen and major property owners.¹⁸ It is this view of democracy that permeates Plato and Aristotle as well as the Aristotelian and the Ps.-Xenophontian accounts of the

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.

¹⁸ Pl. *Resp.* 565A; Arist. *Pol.* 1317b4–10, 1319a25–32; *Rh. Al.* 1446b21–24. Cf. Hansen (1987) 8 with n.58.

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 *δημος* 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,¹⁹ in the plural about a number of such meetings,²⁰ or about the location of the meeting,²¹ but only very exceptionally of the assembly itself as an institution in the abstract sense.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 II² 44.7–9, *περὶ ὧν λέγουσιν* οἱ Χαλκιδῆς, *προσαγ[α]γῆν αὐτὸς π[ρὸς τὸν δ]ῆμον ἐς τὴν πρώτην ἐκκλησίαν*. 330.49, *ἐκκλησία*. Dem. 19.19, *ἐπειδὴ δ' ἦκεν ἡ ἐκκλησία*. Lys. 19.50, *αὐτοὶ γὰρ ἔναγχος ἀκούετε ἐν τῇ ἐκκλησίᾳ*.

²⁰ Dem. 8.32, *ἐν μὲν ταῖς ἐκκλησίαις*.

²¹ Aeschin. 3.32, *ὁ γὰρ νόμος διαρρήδην κελεύει, εἴαν μὲν τινα ἢ βουλή στεφανοῖ, ἐν τῷ βουλευτηρίῳ ἀνακηρύττεσθαι, εἴαν δὲ ὁ δῆμος, ἐν τῇ ἐκκλησίᾳ*. Dem. 18.169, *ὑμεῖς δὲ εἰς τὴν ἐκκλησίαν ἐπορεύεσθε*.

²² Aeschin. 1.86, *οἷ ἄρα ἐνεχείρουν συνδεκάζειν τὴν ἐκκλησίαν καὶ τὰλλα δικαστήρια*, cf. 2.63, 3.44.

about something *vel sim.* Such an idiom is occasionally attested in Plato or Aristotle²³ 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: ἔστι δὲ δήπου νόμος ὑμῖν, εἴαν τις ὑποσχόμενός τι τὸν δῆμον ἢ τὴν βουλὴν ἢ δικαστήριον ἐξαπατήσῃ, τὰ ἔσχατα 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 ἅπαντες καὶ ἐν τῷ δήμῳ καὶ ἐν τῷ δικαστηρίῳ 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-

²³ Pl. *I Alc.* 114B, ἀλλ', ὠγαθέ, ἐμὲ ἐκκλησίαν νόμισσον καὶ δῆμον. Arist. *Pol.* 1282a28–29, ἢ γὰρ ἐκκλησία κυρία πάντων τῶν τοιούτων ἐστίν.

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

²⁵ E.g. Arist. *Pol.* 1282a34–36, οὐ γὰρ ὁ δικαστὴς οὐδ' ὁ βουλευτὴς οὐδ' ὁ ἐκκλησιαστής ἄρχων ἐστίν, ἀλλὰ τὸ δικαστήριον καὶ ἡ βουλὴ καὶ ὁ δῆμος. Cf. 1275a26, 31, 1275b14, 1282a34, 37; Pl. *Ap.* 25A, *Grg.* 452E, *Pol.* 290A.

²⁶ Other examples quoted in Hansen (1983) 144–145.

²⁷ Other examples Hansen (1983) 145–146.

ered in the assembly, in the council, or in the courts.²⁸ 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:²⁹

Aeschin. 1.141, ἐπειδὴ δὲ Ἀχιλλέως καὶ Πατρόκλου μέμνησθε καὶ Ὀμήρου καὶ ἐτέρων ποιητῶν, ὡς τῶν μὲν δικαστῶν ἀνηκόων παιδείας ὄντων, ὑμεῖς δὲ εὐσχήμονές τινες προσποιεῖσθε εἶναι καὶ ὑπερφρονοῦντες ἱστορίᾳ τὸν δῆμον, ἔν' εἰδῆτε ὅτι καὶ ἡμεῖς τι ἥδη ἠκούσαμεν καὶ ἐμάθομεν, λέξομέν τι καὶ ἡμεῖς περὶ τούτων.³⁰

Hyp. 1.28–29, καὶ πρὸς τούτοις ἀγώνων ἡμῖν ὕστερον πολλῶν γεγεννημένων ... οὐδε[πώποτε ἡ]μ[ῶ]ν οὗτοι [κατε]ψηφίσαντο, ἀλλ' ἐκ πάντων ἔσωσαν, [ὅπερ μ]έγιστον καὶ [ἀξιοπι]στότατον τῆς [τοῦ δῆμ]ου [δια]νοία[ς σημεῖον].

Din. 3.19, ἃ χρῆ λογισαμένους ὑμᾶς πάντας ὧ Ἀθηναῖοι ... δεῖξαι πᾶσιν ἀνθρώποις, ὅτι οὐ συνδιέφθαρται τὸ τοῦ δῆμου πλῆθος τῶν ῥητόρων καὶ τῶν στρατηγῶν τισιν.

My critics have made the most of these three passages,³¹ 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.³² 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 *δῆμος* is

²⁸ Full documentation in Hansen (1983) 143 nn.14–18.

²⁹ Quoted also in Hansen (1983) 143.

³⁰ Quoted 506 *supra*, but for clarity I repeat the passage.

³¹ Ostwald, *From Popular Sovereignty* 34–35, countered in Hansen, *Athenian Ecclesia* II 213–215; Blanshard, *Phoenix* 58 (2004) 37 with n.43; Anderson, *JHS* 129 (2009) 12 with n.65.

³² See also Ober, *Mass and Elite* 179.

“the common people.”³³ 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] [εὐ]νοία[ς σημειῶν], and in the Teubner Jensen has dotted letters: [δῆμ]ου and [εὐ]νοία[ς]. I agree that it is a fine restoration and Whitehead is right that “an alternative is not easy to find,”³⁴ 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.

³⁴ D. Whitehead, *Hypereides. The Forensic Speeches* (Oxford 2000) 451.

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 *ἔδοξε τῷ δήμῳ* the reference is not to the *Demos*, the Athenian people as such, but to the *demos*, the people in assembly.

It is certainly true that “no one had ever seen Demos; it was too big to gather in one place.” During the period of Pnyx 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 *ekklesia* was attended by all citizens and that a decision of the assembly was a decision of the entire *demos*. In their opinion it was the *demos* in *ekklesia* 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 *ekklesia* is seen as a meeting of the entire people (ἅπας ὁ δῆμος)³⁷ or all Athenians (πάντες Ἀθηναῖοι)³⁸ or all citizens (πάντες πολῖται).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 *demos* only. But in such cases the purpose is often to cast doubt on the

³⁵ M. H. Hansen, “Reflections on the Number of Citizens Accommodated in the Assembly Place on the Pnyx,” in B. Forsén and G. Stanton (eds.), *The Pnyx in the History of Athens* (Helsinki 1996) 23–33, at 27.

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. 58.45; Din. 1.4.

⁴⁰ Lys. 13.32, 86; Din. 3.1; Aeschin. 3.224, ἐν ἅπασιν Ἀθηναίοις; Isae. 1.11, πάντων τῶν πολιτῶν ἐναντίον, cf. W. Wyse, *The Speeches of Isaeus* (Cambridge 1904) *ad loc.*

⁴¹ *IG I³* 105, cf. P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 191–192, 196–198.

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 *δημος* 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.

⁴⁴ Ober (1996) 118–119, cf. *Mass and Elite* 147.

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,⁴⁶ 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 ἔδοξε 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 honorary 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.⁴⁷ 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 ΒΟΛΗ, and in another case standing next to *Demos*.⁴⁸ 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,⁴⁹ and the jurors are never referred to as πάντες Ἀθηναῖοι or πάντες πολῖται 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

⁴⁶ Attestations collected in Hansen (1983) 142 n.14.

⁴⁷ *IG II²* 160 = C. L. Lawton, *Attic Document Reliefs* (Oxford 1995) no. 117, cf. nos. 23, 38, 45, 49, 54, 126, 149, 167, 172.

⁴⁸ *IG II²* 367 (Lawton no. 67); Athens *NM* 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.⁵⁰ 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 337/6.⁵¹

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*."

⁵⁰ Hansen (1983) 151–153, attestations in n.30.

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 Ἀθηναίων, as indicated by the invocation in lines 5–6, ἀγαθῆ τύχῃ τοῦ δήμου τοῦ Ἀθηναίων, and also a representation of the Athenian democracy, cf. the three occurrences of ὁ δῆμος ἢ ἡ δημοκρατία ἢ Ἀθήνησιν (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 agent*⁵²

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.”⁵³ 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 *πολιται* shows that the *polis* is conceived as an abstract entity over and

⁵³ Arist. *Pol.* 1276a8–11, ἀποροῦσι γὰρ τινες πόθ' ἢ πόλις ἔπραξε καὶ πότε οὐκ ἢ πόλις, οἷον ὅταν ἐξ ὀλιγαρχίας ἢ τυραννίδος γένηται δημοκρατία (τότε γὰρ οὔτε τὰ συμβόλαια ἔνιοι βούλονται διαλύειν, ὡς οὐ τῆς πόλεως ἀλλὰ τοῦ τυράννου λαβόντος, οὔτ' ἄλλα πολλὰ τῶν τοιούτων); cf. 1274b33–36 and Isoc. 7.68.

above its members.⁵⁴

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*.”⁵⁵

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. *Cri.* 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 I4.20–21; 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. *Symp.* 4.47);⁵⁶ buries the citizens killed in war (Dem.

⁵⁴ Cf. Hansen (1998) 27–28.

⁵⁵ Dem. 21.32–33. Transl. D. M. MacDowell, *Demosthenes. Against Meidias* (Oxford 1990), but keeping *polis* instead of rendering it “city.”

⁵⁶ Xenophon does not single out Athens but refers to *πάσαι 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 *ekklesia*, 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 ἄνδρες 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 ἄνδρες δικασταί. Thus, in *On the Crown* Demosthenes uses ὦ ἄνδρες Ἀθηναῖοι throughout,

πάντα τὰ ἔθνη.

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 προειρουμένης εὐσεβεῖν ... ἐπειδὴ ἐκ τοῦ φανεροῦ τὴν πόλιν ἄνθρωπος οὐκ ἐδύνατο σφῆλαι, εἰσελθὼν εἰς τὸ βουλευτήριον.

⁵⁹ Dem. 43.72, ὑμῶν πόλεως τηλικαυτησὶ κατεφρόνησαν.

and ὧ ἄνδρες δικασταί 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 Heliiaia was regarded as a cross-section of the Demos at large or virtually the same as

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 Ἀθηναῖοι.”

⁶¹ Andoc. 1.66; Lys. 13.10, 65, 19.14, 50; Isae. 5.38; Aeschin. 1.176, 2.84, 3.15; Dem. 19.19, 21.4, 153, 215, 22.10, 23.167, 50.4; Hyp. 2.17; Din. 3.1. Many of these passages are cited by Ober (1996) at 117 n.17. Cf. K. J. Dover, *Popular Morality in the Time of Plato and Aristotle* (Oxford 1974) 292.

⁶² A. W. Gomme, “The Working of the Athenian Democracy,” in *More Essays in Greek History and Literature* (Oxford 1962) 177–193, at 188.

⁶³ Dover, *Popular Morality* 292.

⁶⁴ V. Ehrenberg, *The Greek State*² (London 1969) 58.

⁶⁵ D. M. MacDowell, *The Law in Classical Athens* (London 1978) 40.

⁶⁶ M. I. Finley, *Democracy Ancient and Modern* (London 1973) 27.

the Demos”;⁶⁷ Meyer had the following comment about the relation between *ekklesia* and *dikasterion*: “Es bestanden besondere Volksgerichte, die aber nichts anders waren als eine andere form der Volksversammlung.”⁶⁸ Bleicken writes: “Die Richter eines Dikasterion sind in einem ideellen Sinne der demos wie die Bürger, die jeweils eine Ekklesie bilden.”⁶⁹ The same is expressed by Welwei: “Jeder Gerichtshof repräsentierte wie die Heliastai in ihrer Gesamtheit den Demos bzw. die Bürger über dreissig Jahre, die als Richter (Dikastai, Heliastai) zugelassen waren.”⁷⁰ 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.”⁷¹ 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 ὁ βουλῆ but also as ὁ ἄνδρες Ἀθηναῖου (3, 8, 12, 22), and the speaker

⁶⁷ R. K. Sinclair, *Democracy and Participation in Athens* (Cambridge 1988) 70–71.

⁶⁸ E. Meyer, *Einführung in die antike Staatskunde* (Darmstadt 1968) 96.

⁶⁹ Bleicken, *Hermes* 115 (1987) 273.

⁷⁰ K.-W. Welwei, *Die griechische Polis*² (Stuttgart 1998) 189

⁷¹ E. Will, *Le monde grec et l’Orient I Le V^e siècle* (Paris 1972) 457.

uses the second-person plural even when he refers to a *psephisma* actually passed by the assembly (1 and 4). Similarly, Lysias' speech *For Mantitheos* 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

⁷² See also Isac. 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.⁷⁴ As far as we know this court was manned with fifty-one so-called *ephetai*,⁷⁵ and there is no compelling reason to assume that they were *dikastai* 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).⁷⁶ 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 symbouletic 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

⁷⁴ Dem. 23.74; Arist. *Ath.Pol.* 57.4. S. C. Todd, *A Commentary on Lysias. Speeches 1–11* (Oxford 2007) 44.

⁷⁵ Rhodes, *Commentary* 647–648; E. M. Carawan, *Rhetoric and the Law of Draco* (Oxford 1998) 154–167; Todd, *Commentary* 45–46.

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 αὐτὸς αὐτὸν πεποιήκεν ὁ δῆμος κύριον, καὶ πάντα διοικεῖται ψηφίσμασιν καὶ δικαστηρίοις, ἐν οἷς ὁ δῆμός ἐστιν 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 I³ 40.3–10, κατὰ τάδε τὸν ἕρκον ὁμόσαι Ἀθηναίων τὴν βολὴν καὶ τοὺς δικαστάς· οὐκ ἔχσελὸ Χαλκιδέας ἐχ Χαλκίδος οὐδὲ τὴν πόλιν ἀνάστατον ποέσο οὐδὲ ἰδιότεν οὐδένα ἀτιμόσο οὐδὲ φυγεῖ ζεμιόσο οὐδὲ χυλλέσσομαι οὐδὲ ἀποκτενῶ οὐδὲ χρέματα ἀφαιρέσομαι ἀκρίτο οὐδενὸς ἄνευ τοῦ δέμο τοῦ Ἀθηναίου.

Xen. *Hell.* 1.7.12, τὸν δὲ Καλλίξενον προσεκαλέσαντο παράνομα φάσκοντες συγγεγραφέναι Εὐρυπτόλεμος τε ὁ Πεισιάνακτος καὶ ἄλλοι τινές. τοῦ δὲ δήμου ἔνιοι ταῦτα ἐπήνουν, τὸ δὲ πλῆθος ἐβόα δεινὸν εἶναι εἰ μὴ τις ἐάσει τὸν δῆμον πράττειν ὃ ἂν βούληται.⁷⁹

Dem. 19.297, πολλοὶ παρ' ὑμῖν ἐπὶ καιρῶν γενόμενα ἰσχυροί, Καλλίστρατος, αὐθις Ἀριστοφῶν, Διόφαντος, τούτων ἕτεροι πρότερον. ἀλλὰ ποῦ τούτων ἕκαστος ἐπρώτευν; ἐν τῷ δήμῳ ἐν δὲ τοῖς δικαστηρίοις οὐδεὶς πω μέχρι τῆς τήμερον ἡμέρας ὑμῶν οὐδὲ τῶν νόμων οὐδὲ τῶν ὄρκων κρείττων γέγονεν.

⁷⁷ For the same juxtaposition of a type of decision (*psphismata* passed by the assembly) and a body of government (*dikasteria* pronouncing verdicts), cf. Aeschin. 2.178.

⁷⁸ For other sources and a full discussion of the issue, see Hansen (1983) 146–147 and (1990) 240–242. I have added *IG* I³ 40 and Xen. *Hell.*, both relating to the fifth century.

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 *ClMed* 52 (2001) 317–343.

Dem. 24.78, ἄρ' οὖν τῷ δοκεῖ συμφέρειν τῇ πόλει τοιοῦτος νόμος ὃς δικαστηρίου γνώσεως αὐτὸς κυριώτερος ἔσται, καὶ τὰς ὑπὸ τῶν ὁμομοκότων γνώσεις τοῖς ἀνωμότοις (the assembly, cf. 24.80) προστάξει λύειν; In this passage τοῖς ἀνωμότοις is a reference to the *demos* in the *ekklesia*, as stated in 80: ἐνθυμείσθ' ἀπὸ τοῦ δικαστηρίου καὶ τῆς καταγνώσεως οἱ διεπήδησεν· ἐπὶ τὸν δῆμον.

Dem. 59.91 on citizenship decrees, καὶ ἤδη τισὶ τοῦ δήμου δόντος τὴν δωρεάν, λόγῳ ἐξαπατηθέντος ὑπὸ τῶν αἰτούντων, παρανόμων γραφῆς γενομένης καὶ εἰσελθούσης εἰς τὸ δικαστήριον, ἐξελεγχθῆναι συνέβη τὸν εἰληφότα τὴν δωρεάν μὴ ἄξιον εἶναι αὐτῆς, καὶ ἀφείλετο τὸ δικαστήριον.

Dem. 57.56, οὐ μόνον τῶν ἀποψηφισαμένων Ἀλιμουσίων ἐμοῦ κυριώτερον ὄντα τὰ δικαστήρια, ἀλλὰ καὶ τῆς βουλῆς καὶ τοῦ δήμου, δικαίως. κατὰ γὰρ πάνθ' αἱ παρ' ὑμῖν εἰσι κρίσεις δικαιοτάται.

Din. 3.15–16, καὶ ὁ μὲν δῆμος ἅπας ... ἀπεχειροτόνησεν αὐτὸν ἀπὸ τῆς τῶν ἐφήβων ἐπιμελείας· ὑμεῖς δ' οἱ τῆς δημοκρατίας καὶ τῶν νόμων φύλακες, οὓς ἡ τύχη καὶ ὁ κλήρος ὑπὲρ τοῦ δήμου δικάσοντας ... ἐπέτρεψεν, φείσεσθε τοῦ τοιαῦτα διαπεπραγμένου.

Aeschin. 3.4–5, when the *ekklesia* is paralysed by corruption, democracy is protected only by the *graphe paranomon* brought before a *dikasterion*, τῆς δὲ τῶν ῥητόρων ἀκοσμίας οὐκέτι κρατεῖν δύνανται οὐθ' οἱ νόμοι οὐθ' οἱ πρυτάνεις οὐθ' οἱ πρόεδροι, οὐθ' ἡ προεδρεύουσα φυλή, τὸ δέκατον μέρος τῆς πόλεως. τούτων δ' ἐχόντων οὕτως ... ἐν ὑπολείπεται μέρος τῆς πολιτείας, εἴ τι καὶ γὰρ τυγχάνω γιγνώσκων, 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

⁸⁰ Cited in Hansen (1983) 144–148.

⁸¹ Hansen (1987) 106–107, (1991) 303.

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 Eurypolemos 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 publications⁸⁷ 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

⁸² Blanshard, *Phoenix* 58 (2004) 32.

⁸³ Blanshard, *Phoenix* 58 (2004) 34.

⁸⁴ Hansen (1983) 153.

⁸⁵ Dem. 21.223–224, 24.118, 148, 57.56, 58.55; Aeschin. 1.187, 2.180, 3.20; Din. 1.106; Lycurg. 1.56. Hansen (1987) 107 with n.687.

⁸⁶ Aeschin. 3.3–8. Hansen (1991) 210–211.

⁸⁷ *Eisangelia*: M. H. Hansen, *Eisangelia* (Odense 1975); (1990) 237–238; (1991) 212–218. *Graphe paranomon: Sovereignty of the People’s Court*; (1991) 205–212.

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.⁸⁸ 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.⁸⁹ Ober is also right that the jurors are often warned that they will be held responsible by the people for the verdict they pass,⁹⁰ 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’ ἐξέληλεγκται, καὶ προκατέγνωκεν ὁ δῆμος τούτου εἰς ἱερὸν καθεζόμενος ... καὶ δικάσοντες εἰλήχατε, καὶ πάντ’ ἐστὶν ἐν ὑμῖν μιᾷ ψήφῳ διαπράξασθαι, νῦν ὀκνήσετ’ ἐμοὶ βοηθῆσαι, τῷ δήμῳ χαρίσασθαι; ...

⁸⁸ For a discussion of the issue see Hansen (1990) 242–243, to which I want to add that there are in fact quite a few passages in forensic speeches in which the speaker criticises the jurors for having been deceived and passed unjust verdicts, see Dover, *Popular Morality* 23–25.

⁸⁹ Dem. 13.16–17. Note that often Demosthenes cannot suppress his irritation with the democratic political institutions which cause unnecessary delays and are an obstacle to the conduct of an efficient foreign policy: 2.23, 3.14, 4.45, 8.32–34, 18.132, 235, 19.136, 185–186. In all these passages it is the assembly that is the object of criticism.

⁹⁰ Passages showing that the jurors were monitored by the *demos* include Lys. 12.91, 22.19; Din. 1.3, 2.19.

Din. 3.15–16, ὁ μὲν δῆμος ἅπας ... ἀπεχειροτόνησεν αὐτὸν ἀπὸ τῆς τῶν ἐφήβων ἐπιμελείας· ὑμεῖς δ' οἱ τῆς δημοκρατίας καὶ τῶν νόμων φύλακες, οὓς ἡ τύχη καὶ ὁ κλῆρος ὑπὲρ τοῦ δήμου δικάσοντας ... ἐπέτρεψεν, φείσεσθε τοῦ τοιαῦτα διαπεπραγμένου;

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 *ekklesia* 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 *proboule* 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.

⁹³ Din. 1.54–8, 2.20. See R. W. Wallace, *The Areopagos Council to 307* (Baltimore 1985) 113–119; Hansen (1991) 292–293.

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.

⁹⁶ Hansen, *Eisangelia* 44; (1991) 214–215.

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.⁹⁷ Conversely, if the hearing before the court was warranted by the assembly's *katacheirotomia* in a *proboule* 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 *katacheirotomia* 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 *katacheirotomia* 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 *katacheirotomia* 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 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 honorary 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 honorary decree for Demosthenes passed by the assembly (137^v–136^r).

affair, Deinarchos insists that the jurors confirm the *apophasis* submitted by the council of the Areopagos and confirmed by the assembly's *katacheirotomia* (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 θέλοιτε σκοπεῖν καὶ ζητεῖν, τῷ ποτ' εἰσὶν ὑμῶν οἱ αἰεὶ δικάζοντες ἰσχυροὶ καὶ κύριοι τῶν ἐν τῇ πόλει πάντων, ἔάν τε διακοσίους ἔάν τε χιλίους ἔάν θ' ὀποσσοῦν ἢ πόλις καθίσῃ ... εὖροιτ' ἂν ... τῷ τοὺς νόμους ἰσχύειν* (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: *ὄρατ', ὦ Ἀθηναῖοι, τί μέλλετε ποιεῖν. παρειλήφατε παρὰ τοῦ δήμου τὸ πρᾶγμα ... Δημοσθένης εἰσάγεται πρῶτος ... πότερ' ἀμελήσαντες τῶν γεγεννημένων ἀπάντων ἀφήσετε τὸν πρῶτον εἰσεληλυθότα πρὸς ὑμᾶς, καὶ τὰ δίκαια [τὰ] παρὰ τῷ δήμῳ καὶ τῇ βουλῇ τῇ ἐξ Ἀρείου πάγου δόξαντ' εἶναι καὶ τοῖς ἄλλοις ἅπασιν ἀνθρώποις, ταῦθ' ὑμεῖς 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 *δικασταί* rather than the *δῆμος* 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

⁹⁸ This section summarises the views stated in Hansen (1990) 222–226, 243, and (1991) 209–210, 307–308.

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

⁹⁹ M. H. Hansen, *Demography and Democracy* (Herning 1985) 9–13, cf. Hansen (1990) 222–224.

difficult to guess.

Almost all Greeks held the view that wisdom and rationality grow in man with the advance of age.¹⁰¹ 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 courts¹⁰² or considered it to be of no importance.¹⁰³

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

¹⁰⁰ But see now the new speech by Hypereides against Diondas, *ΣΠΕ* 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^v), *viz.* in no less than fifty (145^r, 174^v). 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. *Av.* 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.

¹⁰³ Ehrenberg, *The Greek State* 58; Ober (1996) 118; Welwei, *Die griechische Polis* 189.

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.

¹⁰⁵ Hansen (1990) 224–225.

¹⁰⁶ Aeschin. 3.2–8; Dem. 19.297, quoted 524 above. Cf. Hansen (1990) 225.

Kallixenos' unconstitutional *probouleuma* 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 *ekklesiai* 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 *κύρια πάντων* and *κύρια 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

¹⁰⁷ Xen. *Hell.* 1.7.34, see Hansen (1983) 113.

¹⁰⁸ Hansen (1987) 119–120; (1990) 226.

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, ἐπειδὴ δ' εἰς τὰς ὑμετέρας ἤκει χεῖρας, τῶν ὑπὲρ τοῦ δήμου συνειλεγμένων καὶ τῶν ὁμωμοκότων πείσεσθαι τοῖς νόμοις καὶ τοῖς τοῦ δήμου ψηφίσμασιν, τί ποιήσετε;

Din. 3.15–16, ὁ μὲν δῆμος ἅπας ... ἀπεχειροτόνησεν αὐτὸν ἀπὸ τῆς τῶν ἐφήβων ἐπιμελείας· ὑμεῖς δ' οἱ τῆς δημοκρατίας καὶ τῶν νόμων φύλακες, οὓς ἡ τύχη καὶ ὁ κλῆρος ὑπὲρ τοῦ δήμου δικάσοντας ... ἐπέτρεψεν, φείσεσθε τοῦ τοιαῦτα διαπεπραγμένου;¹¹¹

Aeschin. 3.8, κάκεῖνο δὲ χρῆ διαμνημονεύειν, ὅτι νυνὶ πάντες οἱ πολῖται παρακαταθέμενοι τὴν πόλιν ὑμῖν καὶ τὴν πολιτείαν διαπιστεύσαντες, οἱ μὲν πάρεσι καὶ ἐπακούουσι τῆσδε τῆς κρίσεως, οἱ δὲ ἄπεισιν ἐπὶ τῶν ἰδίων ἔργων.

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 παρακαταθέμενοι 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 Clas-

¹¹⁰ Hansen (1987) 124; (1990) 243; (1991) 151–153.

¹¹¹ Quoted 535 *supra*, but for clarity I repeat the passage here.

sical period there are altogether 28 attestations of the prepositional group ὑπὲρ τοῦ δήμου, 23 in the orators, 4 in inscriptions, 1 in Aristotle.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 ἄλλη θυσία γίγνηται ὑπὲρ τῷ δήμῳ τῷ Ἀθηναίων (*IG II²* 47.25–28), αὐτὸς ὑπὲρ τοῦ δήμου θέμενος τὰ ὄπλα (Dem. 21.145), ὁ τοῦ ἐμοῦ πατρὸς Πάππος Λεωγόρας στασιάσας πρὸς τοὺς τυράννους 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).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 πολῖται, 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,¹¹⁴ but I note too that it was rejected by Ober (1996: 118).¹¹⁵

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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; fr.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.

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.

¹¹⁴ Rhodes, *Commentary* 545; Ostwald, *From Popular Sovereignty* 34–35 n.131.

¹¹⁵ I would like to thank Lene Rubinstein for her perspicacious comments on this article.