

# *Demos, Ecclesia and Dicasterion* in Classical Athens

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## I

THE PURPOSE of this paper is to challenge a widely held opinion about the relationship between the *ecclesia* and the *dicasterion* in classical Athens. The traditional view, which is endorsed by e.g. G. Glotz, A. W. Gomme, V. Ehrenberg, E. Meyer, E. Will, P. J. Rhodes and M. I. Finley,<sup>1</sup> can be summed up in the following five statements: (1) In Athens sovereignty belonged to the *demos*. (2) The *demos* exercised its powers directly in the *ecclesia*. (3) So the *ecclesia* was the sovereign body of government in classical Athens. (4) The sovereignty of the *ecclesia*, however, was in practice considerably limited by the *dicasterion*. Most of the judicial power was invested in the people's court, and a decree passed by the *ecclesia* could be challenged through a *γραφὴ παρανόμων* and rescinded by a *dicasterion*. (5) The theory of the sovereignty of the *ecclesia*, however, is not impaired by this apparent separation of powers between the *ecclesia* and the *dicasterion*, since the *demos* was identical not only with the *ecclesia* but also with the *dicasterion*. The people's court was in fact the *demos* sitting in judgement.

The inference to be made from (5) ought to be that sovereignty rested with the *demos* and was embodied both in the *ecclesia* and in the *dicasterion*. But the conclusion usually drawn is that since the *dicasterion* was manned by the *demos* and since the *demos* was identical with the *ecclesia*, there is no opposition between the sovereignty of the assembly and the judicial powers exercised by the people's court. The

<sup>1</sup> G. Glotz, *The Greek City* (London 1929) 162, 166, 250. A. W. Gomme, "The Working of the Athenian Democracy" in *More Essays in Greek History and Literature* (Oxford 1962) 188. V. Ehrenberg, *The Greek State* (Oxford 1960) 52–53, 57–58. E. Meyer, *Einführung in die antike Staatskunde* (Darmstadt 1968) 88, 96. E. Will, *Le monde grec et l'orient, Peuples et civilisations* II.1 (Paris 1972) 456–58. P. J. Rhodes, *The Athenian Boule* (Oxford 1972) 198. M. I. Finley, *Democracy Ancient and Modern* (London 1973) 18, 26–27. The identification of the *demos* both with the *ecclesia* and with the *dicasterion* is made also by Ph. Gauthier in *Un commentaire historique des Poroi de Xénophon* (Paris 1976) 24 and 29–30.

*dicasterion* is either identified with the *ecclesia* or brushed away as a committee of the *ecclesia* with an authority held only by delegation from the *demos* = the *ecclesia*.

This theory of the relationship between the assembly and the people's court is based on the assumption that the *demos* was embodied both in the *ecclesia* and in the *dicasterion*, but in my opinion this assumption is not only unfounded but even contradicted by the evidence. An inspection of all the sources seems rather to substantiate the following four statements: (1) The *demos* is frequently identified with the *ecclesia*. (2) The *demos* is never identified with the *dicasterion*. (3) The *demos* (= the *ecclesia*) is often opposed to the *dicasterion*. (4) Like the Council of Five Hundred the *dicasterion* is a democratic body of government which cannot, however, be identified with the *demos*.

My review of the sources is divided into two parts, of which the first comprises the inscriptions and the speeches and the second the poets, the philosophers and the historians. Whereas the inscriptions and the speeches held in the *ecclesia* or before the *dicasterion* provide us with direct information about the constitutional meaning and use of the word *demos*, the remaining literary evidence at most reflects or discusses this usage, and for this reason the speeches must be grouped with the epigraphical evidence and separated from the secondary evidence which can be discussed under one heading.

## II

In the decrees preserved on stone it is abundantly attested that *demos* when referring to a body of government invariably denotes the *ecclesia* and never the *dicasterion*. It is sufficient to mention that a decision made by the assembly is introduced with the enactment-formula ἔδοξε τῷ δήμῳ or ἔδοξε τῇ βουλῇ καὶ τῷ δήμῳ<sup>2</sup> and that one of the honours frequently bestowed on foreigners is πρόκοδος πρὸς τὴν βουλήν καὶ τὸν δῆμον (= the *ecclesia*).<sup>3</sup> Only one inscription has been adduced in support of the identification of the *demos* with the *dicasterion* as well as with the *ecclesia*, viz. IG I<sup>2</sup> 114.37: ἄνευ τοῦ δήμου τοῦ Ἀθηναίου πλε]θύοντος μὲ ἐναι θαν[α]τοῦ[ν, which is interpreted as follows by Rhodes:<sup>4</sup> the right to pass the death sentence is reserved for the

<sup>2</sup> Rhodes, *op.cit.* (*supra* n.1) 64ff.

<sup>3</sup> Rhodes, *op.cit.* (*supra* n.1) 43.

<sup>4</sup> *op.cit.* (*supra* n.1) 169 n.5, 197–200.

entire *demos*. Since we know that the *Heliaia* was empowered to inflict capital punishment, the conclusion is that the *Heliaia* is representative of the entire *demos*. This conclusion is weakened, however, by the fact that in the fifth and the fourth centuries the council of the Areopagus, which in no circumstances can be identified with the *demos*, passed innumerable sentences of death. Since IG I<sup>2</sup> 114 deals with the powers of the Council of Five Hundred, the correct interpretation is probably that the *council* must not pass any sentence of death without the approval of the people. In that case the *δημος πληθύων* only denotes the assembly, not the assembly and the court.<sup>5</sup>

The documents transmitted to us, however, contain only casual references to the *dicasterion*, and so it is impossible on the basis of the epigraphical evidence to disprove the assumption that *demos* may designate the *dicasterion* as well as the *ecclesia*. To elucidate the meaning of the word *demos* we must turn to the speeches<sup>6</sup> and examine which body of government an orator may have in mind when he refers to the *demos* in a speech delivered either in the assembly or before the people's court.

In the preserved speeches (covering the period *ca* 420 to *ca* 320 B.C.) *demos* occurs some six hundred times<sup>7</sup> and in so many different contexts that its range of meaning can be sufficiently determined. The word frequently denotes the whole of the people = all Athenian citizens,<sup>8</sup> whereas we have hardly any example of *demos* denoting the

<sup>5</sup> M. H. Hansen, *Eisangelia. The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Impeachment of Generals and Politicians* (Odense 1975) 52. *Idem*, "How Many Athenians Attended the *Ecclesia*?" GRBS 17 (1976) 122; I should like to point out that the words "*pace Rhodes*" in n.41 must not be taken to mean that Rhodes believes in plenary assemblies. We disagree only about the relationship between the *ecclesia* and the *dicasterion*, not about the types of meeting of the *ecclesia*.

<sup>6</sup> By Ant., Andoc., Lys., Isoc., Isae., Dem., Aeschin., Hyp., Lycurg. and Din., plus genuine forensic speeches wrongly attributed to one of these orators (e.g., Apollodorus' speeches in the *Corpus Demosthenicum*). I exclude Andoc. 4 *Against Alcibiades* and Lys. 15 *Against Alcibiades*. Andoc. 4 is probably a literary exercise written much later, and the authenticity of Lys. 15 has frequently been questioned. On the other hand I include Dem. 13 and 25. I have classified Isocrates with the orators and not with the philosophers. Of the relevant speeches 16 (*On the Biga*) and 18 (*Against Callimachus*) are genuine courtroom speeches. 7 (*Areopagiticus*) and 8 (*On the Peace*) pretend to be *demegoriai* and 15 (*Antidosis*) to be delivered before the jurors (cf. 15.13).

<sup>7</sup> I do not discuss *demos* in the sense 'deme', and I omit a couple of passages where *demos* refers to the people of a state other than Athens.

<sup>8</sup> Ant. 5.70; Andoc. 1.36, 98; 2.16; 3.1, 7, 33; Lys. 13.51, 91; 18.5, 11; 20.17, 25.11; 26.4, 20; 31.29; Isoc. 7.63; 8.75, 121, 125; 10.36; 12.139, 141, 147; 15.232; 16.20, 26, 41, 46; 18.62; Ep. 2.15; Isae. 5.38; Dem. 3.30, 15.22; 18.57, 112, 130, 278; 19.8, 136, 300; 20.2, 3, 12, 36, 39, 42, 44,

common people in opposition to the upper and middle classes.<sup>9</sup> This meaning of *demos*, so prominent in philosophy (see *infra* p.139), is almost unattested in the speeches. When discussing constitutional matters an orator may use *demos* synonymously with *democratia*,<sup>10</sup> and similarly, in descriptions of the civil wars in 411–403, he can speak of *demos* meaning ‘the democrats’.<sup>11</sup> A further use of *demos* can be found in the phrase *ὁ δῆμος ὁ Ἀθηναίων*, where the reference is to the (democratic) Athenian state, in opposition to e.g. Lacedaimon or Thebes.<sup>12</sup>

In about half of the six hundred instances, however, *demos* means ‘the people in assembly’ or ‘the assembly’ itself.<sup>13</sup> The phrase *ἐν τῷ δήμῳ* is invariably used synonymously with *ἐν τῇ ἐκκλησίᾳ*,<sup>14</sup> and

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57, 96, 103, 106, 107, 109, 111, 122, 124, 133, 135, 149, 150; 21.69, 143, 227; 22.12, 16, 76; 23.23, 209; 24.34, 110, 111, 119, 133; 25.32, 40, 66; 26.6, 14, 21; 34.38, 39; 46.15, 50.58, 58.63; 59.13, 76, 89, 92, 93, 104; *Prooim.* 53.4, 55.1; *Ep.* 1.1; 3.2, 3, 4, 15, 23, 27, 31, 34; Aeschin. 1.112; 2.36, 46, 76, 138, 174, 176, 177; 3.47, 50, 55, 61, 75, 81, 101, 120, 154, 166, 169, 170, 172, 182, 189, 221, 230, 231, 237, 254, 258; *Hyp.* 1.8, 13, 21, 30; 4.3, 6, 7, 10; 6.27, 39; *Lycurg.* 1.2, 39, 42, 43, 45, 112, 116, 120, 123, 145; *Din.* 1.8, 9, 17, 33, 37, 54, 70, 71, 93, 94, 97, 99, 100, 101, 102, 107, 112; 2.17, 25.

<sup>9</sup> *Isoc.* 7.26, 27; Aeschin. 1.141.

<sup>10</sup> *Andoc.* 3.12; *Lys.* 6.30; *Isoc.* 12.148, 15.70, 16.36; *Dem.* 15.19, 19.314, 20.108; 21.144, 145; *Lycurg.* 1.121, 124, 150; *καταλύειν τὸν δῆμον, κατάλυσις τοῦ δήμου*: *Andoc.* 1.36, 101; 3.4, 6, 10, 12; *Lys.* 13.17, 20, 51; 16.5, 20.13; 30.9, 12, 14, 15, 30; *Isoc.* 7.58, 12.148; 16.16, 37; *Dem.* 13.14, 15.14; 19.175, 294; 22.32; 24.146, 152, 154, 206; 58.34; *Prooim.* 42.2; Aeschin. 1.173, 191; 2.174, 177; 3.191, 234, 235; *Hyp.* 2.12; 3.7, 8; *Lycurg.* 1.125, 126, 147; *Din.* 1.76, 94. Frequently it is impossible to draw a clear line between the meaning ‘people’ and the meaning ‘democracy’. Accordingly, some of the references in n.8 might be placed in this note as well and *vice versa*.

<sup>11</sup> *Lys.* 26.16, 34.5; *Isoc.* 18.49; *Dem.* 19.277, 280; 20.48, 68; 24.135, 58.67; Aeschin. 2.78, 147, 176; 3.181, 187, 190, 191, 208; *Din.* 1.25. Referring to the democrats who overthrew the tyranny in the sixth century: *Andoc.* 1.106, 2.26; *Isoc.* 7.16, 15.232, 16.26.

<sup>12</sup> *Andoc.* 3.2, 5, 7; *Lys.* 13.16, 51, 60, 75, 84; *Isoc.* 14.15; *Dem.* 9.42, 18.72; 19.49, 271; 22.72, 24.180, 50.45; 59.92, 105; *Ep.* 3.11; Aeschin. 2.60, 73; 3.46, 48, 49, 90, 116, 117, 155, 156, 209, 258; *Hyp.* 3.20, 33.

<sup>13</sup> It is often difficult to decide whether *demos* means ‘the people’ or ‘the assembly’. About 300 examples is a low estimate since I have excluded all doubtful instances. ‘Honours bestowed by the people’ (*δωρεαὶ παρὰ τοῦ δήμου*), for example, must refer to honorary decrees passed by the *ecclesia*, but I have included only those passages where the *ecclesia* is mentioned or referred to in the context. Similarly the phrase *δήμου προστάτης* is only interpreted as a politician addressing the assembly if there is no doubt that the speaker has the *ecclesia* in mind.

<sup>14</sup> *Andoc.* 1.11, 14, 75; *Lys.* 13.32, 16.20, 21.21, 29.12, fr.6.81 (Gernet/Bizos); *Isoc.* 15.314, *Isae.* 5.37, 11.48; *Dem.* 7.18, 22; 18.141; 19.40, 114, 135, 234, 257, 292; 21.16, 18, 68, 227; 22.10, 59, 61; 23.172; 24.80, 134; 34.50; 49.10, 13, 66, 67; 50.5, 6; 58.28, 45, 62; 59.27; Aeschin. 1.20, 27, 28, 64, 80; 2.17, 25, 47, 90; 3.34, 38, 250; *Hyp.* 1.10, 24, 31; 2.3; *Lycurg.* 1.19, 117; *Din.* 1.8, 86, 89, 104; 2.12, 16, 17; 3.1.

*demos* is frequently found as the subject of verbs such as *χειροτονεῖν*, *ψηφίζεσθαι*, *αἰρεῖσθαι* etc.<sup>15</sup> A decree of the assembly is called *δήμου ψήφισμα*,<sup>16</sup> and in several instances a distinction is made between the *demos* and the *boule*.<sup>17</sup> It is the *demos* that issues orders, bestows honours, listens to reports, debates on war and peace and sometimes passes a sentence on a politician without referring the case to a *dicasterion*.<sup>18</sup>

Whereas *demos* in the sense *ecclesia* is abundantly attested, I have found only three passages where the word *demos* is applied to the *dicastai* manning the people's court:

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 ὑπερφρονούντες ἱστορίᾳ τὸν δῆμον, ἵν' εἰδῆτε ὅτι καὶ ἡμεῖς τι ἤδη ἠκούσαμεν καὶ ἐμάθομεν, λέξομέν τι καὶ ἡμεῖς περὶ τούτων.

Hyp. 1.29: . . . ἀγώνων ἡμῖν ὕστερον πολλῶν γεγενημένων . . . οὐδε- [πώποτε ἢ] μ[ῶ]ν οὐτοὶ [κατε]ψηφίσαντο. ἀλλ' ἐκ πάντων ἔσωσαν, [ὅπερ μ]έγιστον καὶ [ἀξιοπι]στότατον τῆς [τοῦ δήμ]ου [δια]νοία[ς] σημεῖον].

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

Aeschin. 1.141, however, is one of the few passages where the meaning of *demos* is rather 'the common people' than the people acting as a body of government. But in the other two sources there is

<sup>15</sup> *χειροτονεῖν*: Dem. 18.248, 285, 288; 20.152, 24.79, 53.5, 59.75; Aeschin. 2.95; 3.13, 14, 28, 30; Din. 1.51, 114. *προχειροτονεῖν*: Dem. 24.11. *ἀποχειροτονεῖν*: Dem. 21.214; Din. 3.15. *καταχειροτονεῖν*: Dem. 19.31; 21.2, 6, 175, 180, 206, 217; Aeschin. 3.52; Din. 2.20. *διαχειροτονεῖν*: Dem. 22.5, 59.4. *ψηφίζεσθαι*: Andoc. 1.77 (in decree); Lys. 13.35, 30.19; Dem. 47.41, 59.2; Aeschin. 2.86; 3.36, 47, 48; Hyp. 1.1, 4.5; Din. 1.4. *αἰρεῖσθαι*: Isoc. 7.23; Dem. 18.288, 24.112.

<sup>16</sup> Andoc. 1.87–89; Lys. 13.33, 50; Dem. 19.161, 179; 47.19, 21; 50.3, 13; Aeschin. 2.104; Hyp. 1.1; Lycurg. 1.146; Din. 1.84, 101; 2.23, 3.21.

<sup>17</sup> Andoc. 1.87 (law), 89; Lys. 13.33; Dem. 18.121; 19.126, 154, 179, 190, 279; 20.4; 22.5, 8, 10; 24.45 (law), 47, 48, 101; Ep. 1.2; Aeschin. 1.20; 2.17, 58; 3.9, 32, 45, 250; Din. 1.47.

<sup>18</sup> Andoc. 1.79, 83, 96 (in decrees); Lys. 7.4; 13.32, 55, 70, 91; 14.31, 26.20, 30.30; Isoc. 7.68, 12.170, 16.7; Isae. 5.38; Dem. 3.31, 18.169; 19.35, 236; 21.193, 194, 196, 197, 227; 22.32; 23.14, 18; 25.95, 49.9; 50.12, 13; 51.1; 59.4, 89, 90, 91, 92, 107; Ep. 3.30; Aeschin. 1.81, 84, 85, 120, 188; 2.12, 13, 19, 30, 43, 49, 57, 60, 67, 79, 90, 95, 102, 104, 109, 110, 121, 122, 169; 3.10, 25, 33, 34, 41, 42–45, 67, 71, 91, 125, 142, 183, 186, 204, 211, 220, 224, 226, 238, 239, 251; Hyp. 1.2, 5, 8, 28, 38; 3.1, 4, 8, 14, 15, 16, 18, 29, 30, 39; Lycurg. 1.37; Din. 1.6, 10, 31, 50, 58, 61, 86, 90; 2.25, 3.14.

a connection between *demos* and *dicasterion*. Dinarchus exhorts the jurors to show the world that the Athenian people are not corrupted by their politicians, and Hyperides interprets the frequent acquittals of the politicians by the *dicastai* as a proof of the people's confidence.

Comparing the ca 300 clear occurrences of *demos* in the sense *ecclesia* with the three possible cases of *demos* referring to the *dicasterion*, I conclude that the orators deliberately avoided the word *demos* when speaking about the people's court. And this inference is further strengthened by the fact that most of the preserved speeches were delivered before the *dicastai*, whereas only seventeen were held in the *ecclesia*.<sup>19</sup> In the court-room speeches the orator frequently emphasizes that the *dicasterion* is a democratic body of government and the true guardian of democracy.<sup>20</sup> So the jurors are addressed with phrases like ὦ ἄνδρες Ἀθηναῖοι (as the people in the assembly) or ὑμεῖς οἱ πολλοί or ὑμεῖς ἡ πόλις<sup>21</sup> but never with the phrase ὑμεῖς ὁ δῆμος. This expression can be found only in speeches delivered in the assembly on the Pnyx or in letters addressed to the assembly.<sup>22</sup>

More important, however, than this argument from silence is the use of the word *demos* in passages where the orator makes a clear distinction or even indicates a direct opposition between the *demos* and the *dicasterion*.

(a) First we have several examples of *demos* (= *ecclesia*), *boule* and *dicasterion* being juxtaposed and mentioned as three different bodies of government.

Dem. 20.100: ἔστι δὲ δήπου νόμος ὑμῖν, εἴαν τις ὑποσχόμενός τι τὸν δῆμον ἢ τὴν βουλὴν ἢ δικαστήριον ἐξαπατήσῃ, τὰ ἔσχατα πάσχειν.

Dem. 23.97: διόπερ καταρᾶται καθ' ἐκάστην ἐκκλησίαν ὁ κῆρυξ, οὐκ εἴ τινες ἐξηπατήθησαν, ἀλλ' εἴ τις ἐξαπατᾷ λέγων ἢ βουλὴν ἢ δῆμον ἢ τὴν ἡλιαίαν.

Dem. 24.9: . . . ἀλλὰ πρῶτον μὲν τῆς βουλῆς κατεγνωκυίας, εἶτα τοῦ δήμου μίαν ἡμέραν ὄλην ἐπὶ τούτοις αὐτοῖς ἀναλώσαντος, πρὸς δὲ τούτοις δικαστηρίον δυοῖν εἰς ἓνα καὶ χιλίους ἐψηφισμένων . . . Τιμοκράτης

<sup>19</sup> Andoc. 3 (391); Lys. 28 (389); Dem. 14 (354/3); Dem. 13 (353/2); Dem. 16 (353/2); Dem. 4 (352/1); Dem. 15 (351/0); Dem. 1–3 (349/8); Dem. 5 (346/5); Dem. 6 (344/3); Dem. 7 (343/2); Dem. 8 (342/1); Dem. 9 (342/1); Dem. 10 (342/1); Dem. 17 (331).

<sup>20</sup> e.g., Dem. 13.16, 24.2; Aeschin. 3.6; Din. 3.16, etc.

<sup>21</sup> ὦ ἄνδρες Ἀθηναῖοι e.g. Dem. 18.1, 19.1, 20.1, 21.2, 22.4, 23.1, 24.6, 25.8, 26.1. ὑμεῖς οἱ πολλοί e.g. Dem. 24.37, 193. . . ὑμῶν πόλεως τηλικαυτησί κατεφρόνησαν Dem. 43.72.

<sup>22</sup> ὑμεῖς ὁ δῆμος e.g. Dem. 3.31; Ep. 3.30.

. . . ἄκυρα . . . τὰ γνωσθένθ' ὑπὸ τῆς βουλῆς καὶ τοῦ δήμου καὶ τοῦ δικαστηρίου καθίστησιν, . . .

Dem. 24.50: ΝΟΜΟΣ. ἐὰν δέ τις ἰκετεύῃ ἐν τῇ βουλῇ ἢ ἐν τῷ δήμῳ περὶ ὧν δικαστήριον ἢ ἡ βουλή ἢ ὁ δῆμος κατέγνω . . .

Dem. 24.99: καὶ πῶς οὐ δεινόν, εἰ διὰ τὸν νόμον, ὃν σὺ τέθηκας μισθὸν λαβῶν, ἄμισθος ὁ δῆμος καὶ ἡ βουλή καὶ τὰ δικαστήρι' ἔσται;

Dem. 25.20: εἰ γὰρ τις ὑμῶν ἐξετάσαι βούλεται τί ποτ' ἐστὶ τὸ αἴτιον καὶ τὸ ποιοῦν τὴν βουλήν συλλέγεσθαι, τὸν δῆμον εἰς τὴν ἐκκλησίαν ἀναβαίνειν, τὰ δικαστήρια πληροῦσθαι . . .

Dem. 57.56: ὁρῶ γάρ, ὦ ἄνδρες Ἀθηναῖοι, οὐ μόνον τῶν ἀποψηφισαμένων Ἀλιμουσίων ἐμοῦ κυριώτερ' ὄντα τὰ δικαστήρια, ἀλλὰ καὶ τῆς βουλῆς καὶ τοῦ δήμου, δικαίως· κατὰ γὰρ πάνθ' αἰ παρ' ὑμῖν εἰσι κρίσεις δικαιοτάται.

Admittedly, all the examples are from Demosthenes, but in 23.97 he refers to the curse read out to the people in assembly, in 20.100 he paraphrases a law, and 24.50 is a *verbatim* quotation of a law. This document alone is sufficient proof that the orators follow the official usage when they distinguish between the *demos* and the *dicasterion*.

(b) In other passages a simple distinction is made between the *dicasterion* (or the *dicastai*) and the *demos* (= the *ecclesia*) without any mention of the *boule*:

Andoc. 1.28: ἔδοξεν οὖν τῷ δήμῳ ἐν τῷ τῶν θεσμοθετῶν δικαστηρίῳ τοὺς μεμνημένους . . . διαδικάσαι.

Lys. 13.65: συλλήβδην γὰρ ὑμεῖς ἅπαντες καὶ ἐν τῷ δήμῳ καὶ ἐν τῷ δικαστηρίῳ συκοφαντίας αὐτοῦ κατέγνωτε . . .

Dem. 18.250: τί προσῆκεν ἢ τί δίκαιον ἦν τοῖς ὑπ' ἐμοῦ πεπραγμένοις θέσθαι τὸν Κτησιφῶντ' ὄνομα; οὐχ ὁ τὸν δῆμον ἐώρα τιθέμενον, οὐχ ὁ τοὺς ὁμωμοκότας δικαστάς;

Dem. 19.132: πῶς γὰρ οὐκ αἰσχρόν, ὦ ἄνδρες Ἀθηναῖοι, δημοσίᾳ μὲν ἅπαντας ὑμᾶς καὶ ὅλον τὸν δῆμον πᾶσι τοῖς πεπραγμένοις ἐκ τῆς εἰρήνης ἐπιτιμᾶν, . . . εἰς δὲ τὸ δικαστήριον εἰσελθόντας τὰς ὑπὲρ τούτων εὐθύνας δικάσοντας, ὄρκον ὑπὲρ τῆς πόλεως ὁμωμοκότας . . . τοῦτον ἀφεῖναι;

Dem. 59.27: . . . ἀντιπῶν ἐν τῷ δήμῳ τῇ βοηθείᾳ . . . καὶ . . . γραφεῖς ὑπὸ Στεφάνου τουτουὶ ἀστρατείας καὶ διαβληθεῖς τῷ λόγῳ ἐν τῷ δικαστηρίῳ ἐάλω καὶ ἠτιμώθη.

Aeschin. 3.10: ἤσχύοντο γὰρ οἶμαι οἱ δικασταί, εἰ φανήσεται ὁ αὐτὸς ἀνὴρ . . . πρῶν μὲν ποτε ἀναγορευόμενος ἐν τοῖς ἀγῶσιν ὅτι στεφανοῦται ἀρετῆς ἕνεκα καὶ δικαιοσύνης ὑπὸ τοῦ δήμου χρυσῶ στεφάνῳ, ὁ δὲ αὐτὸς ἀνὴρ μικρὸν ἐπισχῶν ἕξειεν ἐκ τοῦ δικαστηρίου κλοπῆς ἕνεκα τὰς εὐθύναις ὠφληκῶς· ὥστε ἠναγκάζοντο τὴν ψήφον φέρειν οἱ δικασταὶ οὐ περὶ τοῦ παρόντος ἀδικήματος, ἀλλ' ὑπὲρ τῆς αἰσχύνης τοῦ δήμου.

Hyp. 3.24: . . . ὡς ἐγὼ δις ἤδη ἐν τῷ δήμῳ ἐναντίον ὑμῶν καὶ τῶν ἄλλων Ἀθηναίων πρὸς τοὺς ἤκοντας παρ' αὐτῆς (Olympias) ἐξήλεγξα . . .

Lycurg. 1.54: ἃ δὴ κατέγνωσται μὲν παρὰ τῷ δικαιοτάτῳ συνεδρίῳ (the Areopagus), κατεψήφισται δ' ὑφ' ὑμῶν τῶν δικάζειν λαχόντων, ὁμολογεῖται δὲ παρὰ τῷ δήμῳ τῆς μεγίστης ἄξια εἶναι τιμωρίας, τούτοις ὑμεῖς ἐναντία ψηφιεῖσθε;

Din. 1.40: ἐκεῖνοι ἦσαν ἐκεῖνοι ὧ Ἀθηναῖοι ἄξιοι σύμβουλοι καὶ ἡγεμόνες ὑμῶν καὶ τοῦ δήμου, . . .

Din. 1.64: μαρτύρομαι . . . ὅτι τοῦ δήμου παραδεδωκότος ὑμῖν τιμωρήσασθαι τὸν εἰληφότα τι τῶν . . . κατὰ τῆς πατρίδος . . .

Din. 1.84: ἐπειδὴ δὲ εἰς τὰς ὑμετέρας ἦκει χεῖρας, τῶν ὑπὲρ τοῦ δήμου συνειλεγμένων καὶ τῶν ὁμωμοκότων πείσεσθαι τοῖς νόμοις καὶ τοῖς τοῦ δήμου ψηφίμασι, τί ποιήσετε;

Din. 1.104: . . . ὥσθ' ὁ μὲν προειρηκῶς ἐν τῷ δήμῳ τὸν ἑαυτοῦ τρόπον καὶ τὴν ἀπόνοιαν . . . ὁμῶς οὐ τετόλμηκε τούτοις δεῖξαι τὸ πρόσωπον, . . . 105: ὁρᾶτ' ὧ Ἀθηναῖοι, τί μέλλετε ποιεῖν. παρελήφατε παρὰ τοῦ δήμου τὸ πρᾶγμα, . . . 106: πότερ' . . . 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. 2.20: . . . τούτου καταχειροτονήσας ὁ δῆμος παραδέδωκεν ὑμῖν τιμωρήσασθαι, . . .

Din. 3.14: . . . ὅθ' οἱ θεοὶ φανεροὺς ὑμῖν ποιήσαντες παρέδωκαν τιμωρήσασθαι, ἑορακότες τὸν δῆμον ἅπαντα κατήγορον τούτου γεγενημένον καὶ προκεχειρικότα πρῶτον τῶν ἄλλων ἐπὶ τὸ τὴν τιμωρίαν ἐν ὑμῖν δοῦναι.

(c) Most significant are five instances where the orator emphasizes a direct opposition between the *demos* and the *dicasterion*:

Dem. 19.297: ἔτι τοίνυν πολλοὶ παρ' ὑμῖν ἐπὶ καιρῶν γεγόνασιν ἰσχυροί, Καλλίστρατος, αὐθις Ἀριστοφῶν, Διόφαντος, τούτων ἕτεροι πρότερον.

ἀλλὰ ποῦ τούτων ἕκαστος ἐπρώτευσεν; ἐν τῷ δήμῳ· ἐν δὲ τοῖς δικαστηρίοις οὐδεὶς πω μέχρι τῆς τήμερον ἡμέρας ὑμῶν οὐδὲ τῶν νόμων οὐδὲ τῶν ὄρκων κρείττων γέγονεν.

Dem. 24.55: ὁ δ' ἔγραψεν, καὶ εἴ τιμι προστετίμηται κατὰ νόμον ἢ κατὰ ψήφισμα, τὸν δῆμον τούτῳ χρηματίζειν, ὅπως ἂ μὲν ἔγνω τὸ δικαστήριον λυθήσεται, . . .

Dem. 24.80: ἐνθυμείσθ' ἀπὸ τοῦ δικαστηρίου καὶ τῆς καταγνώσεως οἱ διεπήδησεν· ἐπὶ τὸν δῆμον, ἐκκλέπτων τὸν ἡδίκηκότα καὶ τὴν παράδοσιν αὐτοῦ τὴν τοῖς ἔνδεκα.

Dem. 59.91: καὶ ἤδη τιεὶ τοῦ δήμου δόντος τὴν δωρεάν, λόγῳ ἑξαπατηθέντος ὑπὸ τῶν αἰτούντων, παρανόμων γραφῆς γενομένης καὶ εἰσελεύσεως εἰς τὸ δικαστήριον, ἐξελεγχθῆναι συνέβη τὸν εἰληφότα τὴν δωρεάν μὴ ἄξιον εἶναι αὐτῆς, καὶ ἀφείλετο τὸ δικαστήριον· . . . Πειθόλαν τε τὸν Θετταλὸν καὶ Ἀπολλωνίδην τὸν Ὀλύμπιον πολίτας ὑπὸ τοῦ δήμου γενομένους ἀφείλετο τὸ δικαστήριον·

Din. 3.15–6: καὶ ὁ μὲν δῆμος ἅπας . . . ἀπεχειροτόνησεν αὐτὸν ἀπὸ τῆς τῶν ἐφήβων ἐπιμελείας· ὑμεῖς δ' οἱ τῆς δημοκρατίας καὶ τῶν νόμων φύλακες, οὐς ἡ τύχη καὶ ὁ κλῆρος ὑπὲρ τοῦ δήμου δικάσοντας . . . ἐπέτρεψεν, φείσεσθε τοῦ τοιαῦτα διαπεπραγμένου, . . .

We have other sources indicating an opposition between the assembly and the court. In connection with the *graphe paranomon*, for example, we often hear that a decision made by the assembly is rescinded by the court.<sup>23</sup> But the passages quoted above are particularly important because a distinction is made not between the *ecclesia* and the *dicasterion* but between the *demos* and the *dicasterion*. In my opinion these passages finally disprove the assumption that the *dicasterion* can be considered a body of government identical with the *demos*. On the contrary, the sources represent the *dicastai* as only a fraction of the *demos* acting on behalf of the *demos*.

But this investigation cannot be limited to an examination of the word *demos*. In the forensic speeches the jurors are frequently styled *ὦ ἄνδρες Ἀθηναῖοι*, which is the proper form of address to the people in assembly (cf. n.21); and an orator often applies a pronoun or a verb in the second person plural in addresses to the jurors even when he refers to a decision actually made by the *ecclesia*. In the speech *Against*

<sup>23</sup> M. H. Hansen, *The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Public Action against Unconstitutional Proposals* (Odense 1974) 49 and Catalogue nos. 1, 4, 10, 15, 16, 18, 19, 20, 23, 29, 35, 38.

*Aristocrates*, for example, Demosthenes (23.167) tells the jurors that, some years earlier, they were so angry with the general Cephisodotus ὥστ' ἀπεχειροτονήσατε μὲν τὸν στρατηγόν, πέντε ταλάντοις δ' ἐζημιώσατε, τρεῖς δὲ μόναι ψήφοι διήνεγκαν τὸ μὴ θανάτου τιμῆσαι. Strictly speaking the *dicasterion* was responsible only for the sentence (passed by *psephophoria*) whereas the deposition (by *apochheirotonia*) was a decision made by the assembly.<sup>24</sup> Is this usage not an indication that the Athenians must have regarded a session of the *dicasterion* as a meeting of the *demos* like a session of the *ecclesia*? Certainly not; for this line of argument would by necessity lead to the identification of the *demos* not only with the *dicasterion* but also with the *boule*. Of the preserved speeches most are written for delivery either in the assembly or in the court, but we have a few examples of speeches held before the Council of Five Hundred, e.g. the fifty-first oration in the *Corpus Demosthenicum*. In this speech the councillors are addressed not only with the phrase ὦ βουλή but also with the phrase ὦ ἄνδρες Ἀθηναῖοι (Dem. 51.3, 8, 12, 22), and the speaker uses the second person plural even when he refers to a *psephisma* actually passed by the assembly.<sup>25</sup> But, to the best of my knowledge, no historian has ventured, on the basis of this evidence, to suggest that it would be misapplied formalism to emphasize that the *demos* (= the *ecclesia*) and the *boule* were different bodies of government. On the contrary Rhodes has recently published an excellent monograph in which he distinguishes between the *boule* and the *ecclesia* and discusses to what extent the *boule* may have controlled the *demos*.<sup>26</sup>

In conclusion, the *boule* and the *dicasterion* were certainly democratic institutions, and many councillors and dicasts must have attended the meetings of the assembly as well as the sessions of the council or the court. There was an enormous overlap in personnel. But nevertheless the *ecclesia*, the *boule* and the *dicasterion* were three different agencies, and the sources demonstrate that only the *ecclesia* was regarded as the *demos*.

<sup>24</sup> Cf. Dem. 19.19, 21.153, 50.4, etc.

<sup>25</sup> νῦν δὲ τῷ πρώτῳ παρασκευάσαντι τὴν τριήρη τὸν ταμίαν προσέταξεν ὁ δῆμος δοῦναι (Dem. 51.1). ψήφισμα γὰρ ὑμῶν ποιησαμένων, . . . καὶ ταῦτα κυρωσάντων, ἐγὼ μὲν περιώρμικα καὶ στέφανον διὰ ταῦτα παρ' ὑμῶν ἔλαβον (Dem. 51.4). Cf. Lys. 16, a speech delivered before the *boule* (ὦ βουλή, 1 *et passim*), in which the councillors are addressed as if they had concluded the alliance with Boiotia in 395, ὅτε τὴν συμμαχίαν ἐποιήσαθε πρὸς Βοιωτοῦς (Lys. 16.13); IG II<sup>2</sup> 14 = Tod 101. Cf. furthermore Lys. 16.6, 20–21; 24.22, 31.29.

<sup>26</sup> *op.cit.* (*supra* n.1) 213–23, esp. 215 and 223.

## III

In a short monograph about the *graphe paranomon* published in 1974 I stated this view briefly without any detailed discussion of the sources;<sup>27</sup> and my reviewer in the *JHS* 96 (1976), Mr B. Caven, replied with the following comment: "...he confuses rather than elucidates the argument... by suggesting that, since the Heliaea was not *identical* with the Ecclesia—which is regularly styled 'the Demos'—the court was *not* regarded as the Demos sitting in judgment. Yet the language of (for instance) Aristophanes (*Equit.* 50f, 797ff), Aristotle (*Pol.* 1274a) and the orators (*passim*) suggests precisely the reverse."

This uncompromising protest is in my opinion the best introduction to a discussion of the other sources, *viz.* Aristophanes, the philosophers and the historians. With the expression "the orators *passim*" Caven must refer to the phrase ὁ ἄνδρες Ἀθηναῖοι and to the use of the second person plural in addresses to the dicasts about decisions made by the assembly. In the preceding section I have explained how this usage is to be interpreted, and I have no more to add.

(a) The two passages in Aristophanes' *Knights* seem to support Caven's statement, but only on the most idiosyncratic interpretation of the play. Admittedly, Aristophanes must have the *dicasterion* in mind when he describes Demos as a juror receiving his fee of three obols. The problem is that we have to spell Demos with a capital D. Aristophanes speaks about Mr Demos and not directly about the Athenian people. Demos is a character in the play. He symbolizes of course the Athenian people, but the symbolism must not be pressed too far. His two slaves, for example, who address the audience in the opening scene, are the generals Nicias and Demosthenes, and if we apply Caven's method of interpretation to them we would be forced to conclude that slaves were allowed to parade as citizens and even to be elected *strategoí*.<sup>28</sup>

So the identification of *demos* with the *dicasterion* is not warranted by the two references adduced by Caven, and in other passages of the play Aristophanes shows that he is aware of the difference between Mr Demos and the *dicasterion*. In lines 746ff, for example, the Paphlagonian asks for a trial before the *ecclesia*. The sausagemonger replies

<sup>27</sup> *op.cit.* (*supra* n.23).

<sup>28</sup> Cf. V. Ehrenberg's warning against such an interpretation in *The People of Aristophanes* (Oxford 1951) 183.

that he submits to a trial but not on the Pnyx, and Demos settles the question by stating that he will sit in judgement nowhere but on the Pnyx. Instead of illustrating that *demos* is identical with the *dicasterion*, this passage indicates that the Pnyx (= the *ecclesia*) is the only proper place where the *demos* can sit in judgement.

Similarly in other plays where no Mr Demos appears on the scene. In *Wasps* Philocleon argues that the *demos* and the *boule* refer all the problematical cases to the *dicastai* and that a politician can carry a decree in the *demos* only if he promises to adjourn the *dicasterion* after the first case but with a full day's salary (Ar. *Vesp.* 589–90, 594–95):

ἔτι δ' ἡ βουλή χῶ δῆμος ὅταν κρῖναι μέγα πρᾶγμα ἀπορήσει  
ἐψήφισται τοὺς ἀδικοῦντας τοῖσι δικασταῖς παραδοῦναι

κἂν τῷ δήμῳ γνώμην οὐδεὶς πώποτ' ἐνίκησεν, ἐὰν μὴ  
εἴπη τὰ δικαστήρι' ἀφεῖναι πρώτιστα μίαν δικάσαντας.

(b) In Arist. *Pol.* 1274a the word *demos* occurs five times:

2–3: ἔοικε δὲ Σόλων . . . τὸν δὲ δῆμον καταστῆσαι τὰ δικαστήρια  
ποιήσας ἐκ πάντων.

5–7: ἐπεὶ γὰρ τοῦτ' (the *dicasterion*) ἔχουσεν, ὥσπερ τυράννῳ τῷ δήμῳ  
χαριζόμενοι τὴν πολιτείαν εἰς τὴν νῦν δημοκρατίαν κατέστησαν·

12–14: τῆς ναυαρχίας γὰρ ἐν τοῖς Μηδικοῖς ὁ δῆμος αἴτιος γενόμενος  
ἐφρονηματίσθη . . .

15–19: ἐπεὶ Σόλων γε ἔοικε τὴν ἀναγκαιοτάτην ἀποδιδόναι τῷ δήμῳ  
δύναμιν, τὸ τὰς ἀρχὰς αἰρεῖσθαι καὶ εὐθύνειν, μηδὲ γὰρ τούτου κύριος ὢν  
ὁ δῆμος δοῦλος ἂν εἴη καὶ πολέμιος, τὰς δ' ἀρχὰς ἐκ τῶν γνωρίμων  
καὶ τῶν εὐπόρων κατέστησε πάσας, . . .

In 2–3 *demos* means 'democracy' in opposition to oligarchy; in the other four instances the meaning is 'the common people' in opposition to the wealthy class (οἱ γνώριμοι καὶ οἱ εὐποροὶ in lines 18–19). But there is no example of *demos* meaning 'the Athenian people' and denoting the *dicasterion*. Caven seems not to have noticed that *demos* (like the English word 'people') has more than one meaning. It may connote either 'the whole of the people' or 'the common people', and it may denote either a body of government (viz., the *ecclesia*) or a class (viz., οἱ ἄποροι in opposition to οἱ εὐποροὶ). The orators (who favour the democratic constitution) tend to identify the *demos* with the whole

of the people embodied in the *ecclesia*, whereas the philosophers (who criticize democracy as mob rule) argue that both the *ecclesia* and the *dicasterion* are dominated by the *demos* = the poor, and in that sense it is of course perfectly possible to speak of the *demos* in the *dicasterion* or to say that the *demos* dominates the *dicasterion*. But this usage is markedly different from the phrase ἔδοξε τῷ δήμῳ in the enactment-formula of the decrees or the phrase ἐν τῷ δήμῳ λέγειν frequently found in the speeches.

If we examine the use of *demos* in Plato, Aristotle (*Pol.* and *Ath.Pol.*) and in Xenophon's philosophical writings (including the *Ps.Xen. Ath. Pol.*), we learn that *demos* often denotes the *ecclesia*,<sup>29</sup> and, in conformity with the usage found in the documents and in the speeches, we have several examples of *demos* = *ecclesia* being opposed to the *dicasterion*.

Plat. *Ep.* 8, 356D: πολέμου δὲ καὶ εἰρήνης ἄρχοντας νομοφύλακας ποιήσασθαι ἀριθμὸν τριάκοντα καὶ πέντε μετὰ τε δήμου καὶ βουλῆς. δικαστήρια δὲ ἄλλα μὲν ἄλλων . . .

Arist. *Pol.* 1282a34–37: οὐ γὰρ ὁ δικαστῆς οὐδ' ὁ βουλευτῆς οὐδ' ὁ ἐκκλησιαστῆς ἄρχων ἐστίν, ἀλλὰ τὸ δικαστήριον καὶ ἡ βουλή καὶ ὁ δῆμος· τῶν δὲ ῥηθέντων ἕκαστος μῦθόν ἐστι τούτων (λέγω δὲ [μῦθον] τὸν βουλευτὴν καὶ τὸν ἐκκλησιαστὴν καὶ τὸν δικαστήν).

Arist. *Ath.Pol.* 25.2: ἔπειτα τῆς βουλῆς . . . περιείλετο τὰ ἐπίθετα (Ephialtes) . . . καὶ τὰ μὲν τοῖς πεντακοσίοις τὰ δὲ τῷ δήμῳ καὶ τοῖς δικαστηρίοις ἀπέδωκεν.

Arist. *Ath.Pol.* 46.2: ἐξετάζει δὲ (the council of five hundred) καὶ τὰ οἰκοδομήματα τὰ δημόσια πάντα, κἄν τις ἀδικεῖν αὐτῇ δόξῃ, τῷ τε δήμῳ τοῦτον ἀποφαίνει καὶ καταγνοῦσα παραδίδωσι δικαστηρίῳ.

On the other hand, *demos* usually connotes a class and refers to the common people, οἱ ἄποροι,<sup>30</sup> and in addition to Arist. *Pol.* 1274a I can adduce four more passages where it is explicitly stated that the *dicasterion* is manned by the *demos* or even dominated by the *demos*.

<sup>29</sup> Xen. *Mem.* 1.1.18, 1.2.59, 4.4.2; Pl. *Euthyd.* 284B; *Grg.* 451B, 481D–E, 500C, 515D; *Resp.* 565B; *Pol.* 298C; *Alc.* 105A, 114B, 114D; *Ax.* 368D. Arist. *Pol.* 1268a12, 1275b7; 1282a28, 35; 1294b30; *Ath.Pol.* 14.1, 25.4, 29.2; 34.1, 3; 42.2, 4; 43.3, 44.2, 45.4, 46.1, 54.5, 56.4, 57.1, 59.2.

<sup>30</sup> Xen. *Mem.* 4.2.37; *Cyr.* 1.1.1; Pl. *Resp.* 565A–C, 566B,E; *Leg.* 759B; *Ax.* 369A. Arist. *Pol.* 1270b18, 25; 1272a32, 1278b12, 1289b32ff; 1291b17ff, 37; 1293b15, 17; 1296a25, 28, b27; 1297a10, 13; 1298b21, 1304b1, 1305a19; 1310a7, b9; 1317a24ff, 1318b9; 1319a6, 20; *Ath.Pol.* 6.1, 11.2, 20.1, 21.1, 26.1, 28.1–3. (Xen. *Vect.* 6.1, *pace* Gauthier, *op.cit.* [*supra* n.1] 29–30. I shall discuss this passage in a forthcoming article about *misthos* to Athenian *archai*.)

Ps.-Xen. Ath.Pol. 1.18: . . . ὅτι δεῖ ἀφικόμενον Ἀθήναζε δίκην δοῦναι καὶ λαβεῖν οὐκ ἐν ἄλλοις τισὶν ἀλλ' ἐν τῷ δήμῳ, ὅς ἐστιν δὴ νόμος Ἀθήνησι· καὶ ἀντιβολῆσαι ἀναγκάζεται ἐν τοῖς δικαστηρίοις καὶ εἰσιόντος του ἐπιλαμβάνεσθαι τῆς χειρός.

Plat. Resp. 565E: ἄρ' οὖν οὕτω καὶ ὅς ἂν δήμου προεστώς, λαβὼν σφόδρα πειθόμενον ὄχλον, μὴ ἀπόσχηται ἐμφυλίου αἵματος, ἀλλ' ἀδίκως ἐπαιτιώμενος, οἷα δὴ φιλοῦσιν, εἰς δικαστήρια ἄγων μαιφονῆ. . .

Arist. Ath.Pol. 9.1: τρίτον δέ, <ᾧ> μάλιστα φασι ἰσχυρέναι τὸ πλῆθος, ἢ εἰς τὸ δικαστήριον ἔφεσις· κύριος γὰρ ὢν ὁ δῆμος τῆς ψήφου κύριος γίγνεται τῆς πολιτείας.

Arist. Ath.Pol. 41.2: ἀπάντων γὰρ αὐτὸς αὐτὸν πεποίηκεν ὁ δῆμος κύριον, καὶ πάντα διοικεῖται ψηφίσμασι καὶ δικαστηρίοις, ἐν οἷς ὁ δῆμος ἐστὶν ὁ κρατῶν. καὶ γὰρ αἱ τῆς βουλῆς κρίσεις εἰς τὸν δῆμον ἐληλύθασιν.<sup>31</sup>

To conclude from these passages that the Athenians identified *demos* both with *ecclesia* and with *dicasterion* would in my opinion be a misinterpretation of the sources. First, the philosophers object to democracy by maintaining that the democratic institutions are dominated by the *demos* = οἱ ἄποροι, but when they speak of the *demos* as an institution they have invariably the *ecclesia* in mind. Second, these passages illustrate only the philosophers' criticism of democracy and cannot be adduced as evidence for the democrats' own view of their institutions, which is reflected in the documents and in the speeches.

(c) Since the historians take more interest in politics than in constitutional matters, passages elucidating the meaning of *demos* are not frequent, but so far as the evidence goes the conclusions stated above are supported by Herodotus, Thucydides and Xenophon's historical writings. When *demos* denotes an institution, the reference is always to the *ecclesia*,<sup>32</sup> and we have at least three instances of *demos* being opposed to *dicasterion*, one in Herodotus' account of the trial of Miltiades in 493, one in Thucydides' portrait of Antiphon and one in Xenophon's description of the trial of the generals in 406.

Hdt. 6.104.2: τὸ ἐνθευτέν μιν οἱ ἐχθροὶ ὑποδεξάμενοι καὶ ὑπὸ δικαστήριον [αὐτὸν] ἀγαγόντες ἐδίωξαν τυραννίδος τῆς ἐν Χερσονήσῳ.

<sup>31</sup> εἰς τὸν δῆμον means 'to the *ecclesia*', cf. IG I<sup>2</sup> 114 and *supra* p.129.

<sup>32</sup> Hdt. 1.59.4-5, 5.97.1, 6.136.1, 7.142.1, 9.5.1; Thuc. 4.46.2; 4.118.11, 14; 5.45.1-4; 6.60.1, 4; 8.53.1; 8.54.1, 3; 8.66.1, 8.67.1, 8.68.1; Xen. Hell. 1.7.3, 4, 11, 12, 26.

ἀποφυγῶν δὲ καὶ τούτους στρατηγὸς οὕτως Ἀθηναίων ἀπεδέχθη,  
αἰρεθεὶς ὑπὸ τοῦ δήμου.

Thuc. 8.68.1: Ἀντιφῶν ἦν . . . τοὺς . . . ἀγωνιζομένους καὶ ἐν δικαστηρίῳ  
καὶ ἐν δήμῳ πλείεστα εἰς ἀνῆρ, ὅστις συμβουλευσάιτό τι, δυνάμενος  
ὠφελεῖν.

Xen. Hell. 1.7.12: τὸν δὲ Καλλίξενον προσεκαλέσαντο παράνομα φά-  
σκοντες συγγεγραφέναι Εὐρυπτόλεμός τε ὁ Πεισιάνακτος καὶ ἄλλοι  
τινές. τοῦ δὲ δήμου ἔνιοι ταῦτα ἐπήγουν, τὸ δὲ πλῆθος ἐβόα δεινὸν εἶναι  
εἰ μὴ τις ἐάσει τὸν δῆμον πράττειν ὃ ἂν βούληται.

The usage in Herodotus and Thucydides needs no further comment, but the passage in Xenophon is crucial: when Euryptolemus and others venture to lodge a *ὑπωμοσία* against Callixenus' *προβούλευμα*, their opponents counter with the argument that it would be outrageous to prevent the *demos* from doing whatever they wished. So an appeal from the *ecclesia* to the *dicasterion* is regarded as an attack on the sovereignty of the *demos*. The argument does not make sense if we assume that the *dicasterion* was the *demos* sitting in judgement. We must conclude that the Athenians identified the *demos* meaning 'the Athenian people' with the *ecclesia* but not with the *dicasterion*.

#### IV

So far I have discussed the relationship between the *ecclesia* and the *dicasterion* in the period *ca* 420–*ca* 320, for which we possess direct evidence. But the *dicasterion* was introduced by Solon, and I will round off the argument with an account of *demos*, *ecclesia* and *dicasterion* from the beginning of the sixth to the end of the fifth century.

It is commonly argued, most recently by Rhodes,<sup>33</sup> that the Solonian *Heliaia* was identical with the *ecclesia* and that a session of this court of appeal was a meeting of the entire people acting as jurors. The *Heliaia* (=the *ecclesia*) was divided into *dicasteria* only after Ephialtes' reform, and, according to Rhodes, Cleinias' tribute decree of 447 (?) contains the last (restored) occurrence of the word *Heliaia* in its original sense.

In my *Eisangelia*<sup>34</sup> I objected to this reconstruction by referring to Arist. *Pol.* 1274a: κύριον ποιήσαντα (Solon) τὸ δικαστήριον πάντων,

<sup>33</sup> *op.cit.* (*supra* n.1) 169 n.5, 197–200.

<sup>34</sup> *op.cit.* (*supra* n.5) 52.

κληρωτὸν ὄν (4–5). If the jurors introduced by Solon were chosen by lot, the existence of separate *dicasteria* can be traced back to the beginning of the sixth century. Rhodes, however, in an article to be published in *JHS* 99 (1979),<sup>35</sup> assumes that this passage in the *Politics*, in which Aristotle paraphrases and rejects the view of some unnamed authorities, is evidence only of the fourth-century controversy about Solon, whereas we have more reliable evidence of Solon's reforms in the *Ath.Pol.*, which I suspect of being anachronistic.

According to Rhodes it is most unlikely that there was a plurality of jury courts as early as the time of Solon, and he suggests that the information in the *Politics* about τὰ δικαστήρια in the plural and about jurors chosen by lot is unreliable and must be rejected as proof "that the Solonian court of appeal was manned by sworn jurors chosen by lot."<sup>36</sup>

Rhodes may be right in his assumption that *Pol.* 1274a reflects the fourth-century debate of the *patrios politeia* and that *Ath.Pol.* is a more reliable source. But this is of no consequence for this particular problem, since the distinction between the *ecclesia* and the *dicasterion* is emphasized by Aristotle not only in the *Pol.* but also in the *Ath.Pol.*, viz., in the account of the Solonian property classes at 7.3: τοῖς δὲ τὸ θητικὸν τελοῦσιν ἐκκλησίας καὶ δικαστηρίων μετέδωκε μόνον. In this passage we have (a) a clear distinction between the assembly and the people's court and (b) *dicasteria* in the plural. The singular in ἔφεσις εἰς τὸ δικαστήριον (*Ath.Pol.* 9.1), mentioned by Rhodes, does not support the theory of an undivided *Heliaia* when compared with the plural τῶν δικαστηρίων in *Ath.Pol.* 7.3, and so I conclude with reference both to the *Politics* and to the *Ath.Pol.* that the *ecclesia* and the *dicasterion* were different bodies of government already in the sixth century and that a plurality of *dicasteria* existed as early as Solon.

Furthermore, if we follow Rhodes in accepting the account of Solon in the *Ath.Pol.*, we must infer that κλήρωσις was an archaic procedure applied to the selection of most officials as early as the beginning of the sixth century.<sup>37</sup> But if the *officials* were chosen by lot there is *a fortiori* nothing anachronistic in assuming that the *jurors* were appointed in the same way, and consequently Rhodes' suspicion of

<sup>35</sup> "ΕΙΣΑΓΓΕΛΙΑ in Athens." I should like to thank Dr Rhodes for the discussion we have had about this topic and for sending me a copy of his typescript.

<sup>36</sup> Quotation from *Eisangelia* (*supra* n.5) 52.

<sup>37</sup> Arist. *Ath.Pol.* 8.1.

κληρωτὸν ὄν in Arist. *Pol.* 1274a5 is considerably weakened. His rejection of this piece of information would be more appropriate if he were highly sceptical towards *Ath.Pol.* 7–13 and believed that κλήρωσις was a democratic procedure and therefore unknown before Cleisthenes.

But let us assume, for the sake of argument, that the *dicasterion* created by Solon was identical with the *ecclesia*. In this case every appeal against a magistrate's decision even in a petty dispute would by the ἔφεσις εἰς τὸ δικαστήριον be referred to the *ecclesia*. Now the Athenians were undoubtedly less litigious before the introduction of radical democracy in the second half of the fifth century; but if the *ecclesia* in addition to the political meetings had to hear all appeal cases, the result must have been a very high number of sessions. Rhodes, however, suggests himself that the number of ordinary meetings was raised from ten to forty only towards the end of the fifth century. I find this view of the development of the *ecclesia* plausible, but it is in my opinion incompatible with the theory that the *dicasterion* was not separated from the *ecclesia* until after Ephialtes.

In sum, the Solonian court, as far as the evidence goes, seems to have been a separate body of government composed of several *dicasteria*, each of them manned with sworn jurors chosen by lot. Relevant evidence covering the period between Solon and Pericles is astonishingly scarce, but I can adduce two sources which in my opinion support this conclusion. Herodotus relates that Miltiades in 493 was acquitted by a *dicasterion* and shortly afterwards elected *strategos* by the *demos* (Hdt. 6.104.2, quoted on p.140). And Aristotle states in the *Ath.Pol.* that Ephialtes deprived the Areopagus of its powers and gave some of them to the *boule*, some to the *demos* and some to the *dicasteria* (Arist. *Ath.Pol.* 25.2 quoted on p.139). These sources indicate (a) that the people's court was different from the *ecclesia*, (b) that the *demos* was identical only with the *ecclesia* and not with the *dicasterion*, and (c) that the people's court was divided into *dicasteria* before Ephialtes.

## V

By this inspection of the sources I hope to have demonstrated that the identification of the *dicasterion* with the *demos* and so with the *ecclesia* is unfounded and contradicted by the evidence. But instead of maintaining that the *dicasterion* was the *demos* sitting in judgement

some scholars assume that the *dicasteria* were judicial *committees* of the assembly and that the authority invested in the people's court was held only by delegation from the assembly.<sup>38</sup> This theory is compatible with my observation that the *dicasterion* is never identified with the *demos* (= the *ecclesia*). It is only natural to make a clear distinction between the subordinate committee and the superior agency delegating some of its powers to the committee. But other considerations demonstrate that the *dicasterion* cannot be described as a committee of the assembly.

'Delegation of powers' and 'committee' are modern concepts, and I am not quite happy about applying them to ancient Greek institutions, especially since they are never defined or discussed by the historians who invoke them in their description of the relationship between the *dicasterion* and the *ecclesia*. The word 'committee' usually denotes a subordinate body appointed by a larger and superior body for some special purpose but without any independent authority since its proposals or decisions are subject to ratification by the appointing body. Delegation of powers, on the other hand, normally implies that a superior body has transferred some of its powers to another body, that it is empowered to revoke the delegated authority, but that the subordinate body in the meantime is entitled to make decisions which are valid without any ratification by the superior body.

So the *dicasterion* can only be described as a committee of the *ecclesia* or as a body with delegated powers if at least some of the following statements are true: (a) the *dicastai* were appointed by the *ecclesia*. (b) The verdicts brought by the *dicastai* were subject to ratification by the *ecclesia*. (c) Any decision made by the *dicasterion* could be overruled by the *ecclesia*, whereas no decision made by the *ecclesia* could be rescinded by the *dicasterion*. (d) The powers invested in the *dicasterion* were based on an act of the *ecclesia*. (e) The *ecclesia* was entitled to revoke the powers invested in the *dicasterion*.

Of these statements, (c), (d) and (e) may be valid in a description of Periclean democracy, but if we concentrate on the period best covered by the sources, the fourth century, all five statements are demonstrably false. As to (a), the *dicastai* were never appointed by the *ecclesia*. As to (b), we have no example of the ratification by the *ecclesia* of a decision made by the *dicasterion*. As to (c), in the fourth

<sup>38</sup> Cf. Glotz and Gomme (*supra* n.1).

century any *psephisma* passed by the *ecclesia* could be overruled by the *nomothetai* through a *nomos*<sup>39</sup> or rescinded by the *dicastai* through a *graphe paranomon*.<sup>40</sup> On the other hand, no decision made by the *nomothetai* or by the *dicastai* could be ultimately reversed by the *ecclesia*.<sup>41</sup> As to (d), after the restoration of the democracy in 403/2 the extended powers of the *dicasterion* must have been based on the revised lawcode. But according to Tisamenus' decree (Andoc. 1.83–84), this revision was carried out not by the *ecclesia* but by the *boule* and a board of 500 *nomothetai*, and nothing is said in Tisamenus' decree about any ratification by the assembly.<sup>42</sup> As to (e), the revised lawcode included a law establishing a distinction between *nomoi* and *psephismata* (Andoc. 1.87). According to this law any general standing rule would

<sup>39</sup> Cf. the law on silver coinage, *Hesperia* 43 (1974) 159, lines 55–56: εἰ δέ τι ψήφισμα γέγραπται πο ἐστὴν παρὰ τὸν νόμον, καθελέτω ὁ γραμματεὺς τῆς βουλῆς. Cf. Dem. 20.44.

<sup>40</sup> Cf. Hansen (*supra* n.23) 49ff. In his review of my book (CR 26 [1976] 231–32) D. M. MacDowell made the following criticism: “the existence of the *graphe paranomon* does not seem to me to show that the ultimate sovereignty rested with the courts, because this procedure could not be used against all laws and decrees but only against those contrary to existing *nomoi* (even if that word was sometimes widely interpreted), and because it was the assembly which made the law instituting the procedure and could have appointed *nomothetai* . . . to repeal it.” Against this I have the following objections: (a) In the fourth century the *graphe paranomon* was never brought against laws but only against decrees, cf. H. J. Wolff, ‘Normenkontrolle’ und Gesetzesbegriff in der attischen Demokratie (Sitz Heidelberg 1970) 38ff. (b) In Dem. 59.89–91 it is expressly stated that a citizenship decree—even though it had been passed constitutionally by the *ecclesia*—could be indicted as *paranomon* on the grounds that the person honoured was unworthy of the honours. Consequently it was sufficient reason for bringing a *graphe paranomon* that the decree was contrary to the interests of the Athenian people, and so the *graphe paranomon* could be brought against any decree. (c) There is no evidence that it was the assembly which made the law instituting the *graphe paranomon*. The *graphe paranomon* was recast in connection with the revision of the lawcode in 403/2 (cf. Wolff, *op.cit.* 41ff) and, according to MacDowell (cf. *infra* n.42), there is no evidence that the revised lawcode was ratified by the assembly. MacDowell's belief that the *graphe paranomon* could be brought only against decrees contrary to existing *nomoi* leads him, in the same review, to make the following comment on the *graphe paranomon* in 415 between Leogoras and Speusippos (Andoc. 1.17, 22): “(Hansen) says that Leogoras attacked the decree for containing incorrect information; but there is no evidence that this was the ground of attack.” MacDowell believes that Leogoras must have charged Speusippos with some kind of technical infringement (cf. CR 23 [1973] 228). On the contrary, there is no evidence for MacDowell's technical infringement, whereas it is expressly stated in Andoc. 1.22 that Leogoras attacked Speusippos' decree for containing incorrect information and offered a *βάσανος* on the question.

<sup>41</sup> Cf. Hansen, *op.cit.* (*supra* n.23) 17–18.

<sup>42</sup> Cf. D. M. MacDowell, *Andocides, On the Mysteries* (Oxford 1962) 195. In Andoc. 1.84 *πρότερον* was wrongly interpreted by J. H. Lipsius (BPW [1917] 906) as a reference to a ratification by the *ecclesia*. A much better interpretation is offered by A. R. W. Harrison in *JHS* 75 (1955) 32 n.49.

have to take the form of a *nomos* and could not be passed as a *psephisma*. In the fourth century, however, *nomoi* were not passed by the *ecclesia* but by a board of *nomothetai* without any ratification by the people.<sup>43</sup> Since any change in the powers invested in the *dicasterion* would require a *nomos*,<sup>44</sup> the *ecclesia* was no longer empowered to deprive the *dicasterion* of any of its authority.

The conclusion seems to be that the concepts 'committee' and 'delegated powers' must be avoided in any description of the relationship between the *ecclesia* and the *dicasterion* in fourth-century Athens. The *dicasterion* was a separate body of government independent of the *ecclesia*, and the assumption that its powers were held by delegation from the *ecclesia* has nothing to recommend it.

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<sup>43</sup> Cf. D. M. MacDowell, "Law-making at Athens in the Fourth Century B.C.," *JHS* 95 (1975) 70.

<sup>44</sup> The importance of this constitutional reform has often been questioned by the (unproved) assumption that the Athenians disregarded the distinction between *nomoi* and *psephismata* and frequently allowed the *ecclesia* to pass general standing rules as *psephismata* (e.g. Rhodes, *op.cit.* [*supra* n.1] 52). I hope later this year to publish an article on the subject based on an inventory of the ca 700 preserved *psephismata* of the period 403–322 (ca 475 preserved on stone, ca 220 referred to in the literary sources). The conclusion is that the distinction between *nomos* and *psephisma* was in fact respected, and, with the exception of a short period of crisis in 338, there is no example of the *ecclesia* having legislated in the proper sense of the word.