

appears to be some sort of a pre-Ciceronian grouping of the paradoxes which influenced the choices of Varro and the verse satirists.

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NEW EVIDENCE FOR THE KLEISTHENIC *BOULE*

In 1972, J. J. Keaney and A. E. Raubitschek¹ republished an account of ostracism that is found on folio 222 of the Byzantine manuscript, Vaticanus Graecus 1144, a parchment codex of the fifteenth century which contains on folios 215^v–225^v a collection of *apophthegmata*, *gnomai*, and historical material. This manuscript was first published by Leo Sternbach in 1894,² but its description of ostracism went unnoticed until recently. The account reads as follows:

- (1) Κλεισθένης τὸν ἐξοστρακισμοῦ νόμον ἐς Ἀθήνας εἰσήνεγκεν.
- (2) ἦν δὲ τοιοῦτος·
- (3) τὴν βουλὴν τινῶν ἡμερῶν σκεψαμένων (σκεψαμένην Sternbach)
- (4) ἐπιγράφειν ἕθος (ἦν suppl. Sternbach) εἰς δστρακα
- (5) ὅντινα δέοι τῶν πολιτῶν φυγαδευθῆναι
- (6) καὶ ταῦτα ρίπτειν εἰς τὸ τοῦ βουλευτηρίου περίφραγμα.
- (7) ὅτῳ δὲ ἂν ὑπὲρ διακósια γένηται τὰ δστρακα
- (8) φεύγειν ἔτη δέκα,
- (9) τὰ ἐκείνου καρπούμενον.
- (10) ὅσπερον δὲ τὸν δῆμον (τῷ δήμῳ Sternbach) ἔδοξε νομοθετῆσαι
- (11) ὑπὲρ ἑξακισχίλια γίνεσθαι τὰ δστρακα τοῦ φυγαδευθῆναι μέλλοντος.

Keaney notes (p. 89) that the account occurs as part of a group of items which has no organization and, thus, that its context provides no indication of origin; as to the content, he observes (p. 90) that, whatever the textual difficulties and problems of interpretation, the account has an internal consistency and the appearance of being drawn from a single source. Raubitschek (p. 91) suggests that Theophrastos may be the source, and that the statement here is part of a larger account on ostracism in his *Nomoi*;³ as well, he thinks that this new information about the first law of ostracism would belong at the beginning of a systematic account given by Philochoros fragment 30.⁴ At best, then, this account comes from the researches and scholarship of Theophrastos, and may well be derived from documentary evidence of the highest order, the *nomoi* of Kleisthenes.⁵

This discussion is a revised version of part of a paper that I delivered at the June, 1973 meetings of the Classical Association of Canada in Kingston, Ontario.

1. "A Late Byzantine Account of Ostracism," *AJP* 93 (1972): 87–91. The article is divided into two parts; the first has been written by Keaney (pp. 87–90), the second by Raubitschek (pp. 90–91).

2. "Gnomologium Parisinum ineditum, Appendix Vaticana," *Rozprawy Umiejtnosci Wydział Filologiczny*, 2nd ser., 5 (1894): 135–218.

3. Raubitschek is a leading authority on Theophrastos and his statements on ostracism; see, e.g., his exceptional paper, "Theophrastos on Ostracism," *C & M* 19 (1958): 73–109. Until he prepares a thorough study of this manuscript account, I am prepared to accept his preliminary judgment as to source.

4. The nonsensical τὰ ἐκείνου καρπούμενον ([9] of the manuscript account) appears to be a perversion of καρπούμενον τὰ αὐτοῦ found in Philochoros frag. 30.

5. Kleisthenes' *nomos* on ostracism is singled out in the *AthPol.* at 22. 1, but no details of its substance are provided.

Of great interest are the following details of ostracism that are not found elsewhere (listed by Keaney, p. 89): (1) initially ostracism was conducted entirely by the *boule*; (2) *ostraka* (of the councillors) were thrown into an enclosure of the *bouleuterion*; (3) more than 200 votes were initially required for ostracism; (4) later the *demos* increased to 6000 the number of votes required to ostracize. On the assumption that this information is sound and that Theophrastos may be the source, Raubitschek (pp. 90–91) conjectures that the 200 are one-half of those voting and concludes, not only that we now have evidence of the Solonian Council of Four Hundred, but also that this law of Kleisthenes precedes the enactment of his constitution. However, *given the same assumptions*, a different and, I think, better explanation is possible.

With mention of the *bouleuterion*, a *terminus post quem* is provided for the practice described in Kleisthenes' law, as well as a means of identifying the *boule* in question. Excavation in the Athenian Agora has revealed, in the area at the southeastern foot of Kolonos, the remains of a square hall that has been identified as the *bouleuterion* and called by the excavators the Old Bouleuterion, to distinguish it from a new council house built a century later. The earlier chamber was constructed about the end of the sixth century, apparently for the Council of Five Hundred;⁶ its existence is attested in both epigraphic and literary references of the fifth century.⁷ It may be objected that there was at Athens an even earlier building called a *bouleuterion*, but no evidence points conclusively in such a direction. Thucydides (2. 15) credits Theseus with instituting a single *bouleuterion* after he abolished the *bouleuteria* of other cities; but Thucydides, here at least, seems to mean council or councils rather than the chamber where council meetings were held. In any event this archaic council and its place of assembly are otherwise unknown, unless the reference is to the Council of the Areopagus, about which, in a prehistoric setting, Aeschylus writes. *Eumenides* 570, *πληρουμένου γὰρ τοῦδε βουλευτηρίου*, apparently means "as the council was assembling," though "as the council chamber was filling up" is equally possible;⁸ at *Eumenides* 684 the phrase *δικαστῶν τοῦτο βουλευτήριον* appears, meaning "council of jurors" or perhaps "council chamber of jurors." In light of the dual meaning of *bouleuterion*, certainty is not possible. But, even if one concedes that these references in Aeschylus are to a building,⁹ the building in question was a chamber of the Areopagus, a council to

6. The latest account of the Old Bouleuterion and other structures in the area can be found, with full reference to earlier reports, in H. A. Thompson and R. E. Wycherley, *The Athenian Agora*, vol. 14: *The Agora of Athens* (Princeton, 1972), pp. 25–46.

7. Conveniently collected by R. E. Wycherley, *The Athenian Agora*, vol. 3: *Literary and Epigraphical Testimonia* (Princeton, 1957), pp. 128–37.

8. LSJ⁹, s.v. *πληρῶω*, III. 3 (passive use): "to be full or filling up," but note III. 7 (passive use): "to assemble," and the example given, *πληρουμένης τῆς ἐκκλησίας* (Ar. *Ecl.* 89).

9. Aeschines 1. 92 (345 B.C.) attests what apparently is a building of the Areopagus called a *bouleuterion*. So, too, does the anti-tyranny decree of 337/336 B.C., which is discussed by Wycherley, *Testimonia*, p. 127: the decree was to be inscribed on two *stelai*, one of which was to be set up at the entrance of the Areopagus for a person going into the *bouleuterion*, *ἐπὶ τῆς εἰσόδου τῆς εἰς Ἀρεῖον Πάγον τῆς εἰς τὸ βουλευτήριον εἰσιόντι*. (Difficulties of translation have been resolved by H. A. Thompson, "Excavations in the Athenian Agora: 1952," *Hesperia* 22 [1953]: 53, n. 52a, and R. E. Wycherley, "Two Notes on Athenian Topography," *JHS* 75 [1955]: 119–20.) I find most attractive the proposal of Eugene Vanderpool that the site where the Council of the Areopagus met should be located on the terrace just below the summit on the north side of the Areopagus, beneath the ruins of the Byzantine Church of St. Dionysios the Areopagite (see "The Apostle Paul at Athens," *Archaeology* 3 [1950]: 34–37), though the council sometimes held meetings

which Kleisthenes is not likely to have entrusted the conducting of ostracism. Archaeologically, none of the predecessors of the Old Bouleuterion in the area of the southeastern foot of Kolonos lends itself to the designation *bouleuterion*. The earliest, building "C," dates from the first quarter of the sixth century, is quite small (6.7×15 meters) and consists of two rooms; its function is not known, though it would clearly have been unsuitable for a large council such as the phantom Council of Four Hundred.¹⁰ Later structures, "D" and "F," are a development of the Peisistratid regime, being dated to the third quarter of the sixth century.¹¹ Possibly these were buildings for administration of the tyranny: neither is appropriate for a large council.¹² On balance, it seems most economical to believe that the *bouleuterion* mentioned in the manuscript account is the so-called Old Bouleuterion built for the Council of Five Hundred.

But what of the figure 200, used here with reference to the *boule*? Perhaps it will be understandable in light of the 6000, a number that appears in the surviving accounts of ostracism either as a quorum or as the minimum number of votes needed against an individual in order that he might "win." While this problem cannot be resolved satisfactorily,¹³ let it suffice to make two points. First, in Plutarch's account (*Aristeides* 7), where 6000 is a quorum, the "winner" of an *ostrakophoria* does not appear to require half of the votes or more.¹⁴ Alternatively, if the tradition attested by Philochoros (frag. 30) is accepted, and one believes, as is indicated in this manuscript version, that there had to be over 6000 votes

at the Stoa Basileios (Thompson and Wycherley, *The Agora of Athens*, p. 87), which is the more probable location for the trial of Paul (C. J. Hemer, "Paul at Athens: A Topographical Note," *NTS* 20 [1974]: 350–56).

10. This is not the place to discuss the so-called Solonian Council of Four Hundred; in my view, no one has successfully refuted the arguments against its existence that were given by C. Hignett, *A History of the Athenian Constitution to the End of the Fifth Century B.C.* (Oxford, 1952), pp. 92–96. (For recent opinion favorable to the Solonian *boule*, see R. A. de Laix, *Probouleusis at Athens* [Berkeley, 1973], pp. 13–17, and P. J. Rhodes, *The Athenian Boule* [Oxford, 1972], pp. 208–9 and n. 2, where there is reference to others who concur.) Certainly no *bouleuterion* is attested for this council.

11. See Thompson and Wycherley, *The Agora of Athens*, for a plan (p. 30) and discussion (pp. 28–29) of buildings "C," "D," and "F" (I do not mention "I" and "J," both of which appear to be modifications of "F").

12. In his review of Thompson and Wycherley's *Agora of Athens* in *AJA* 77 (1973): 444–46, O. Broneer gives his assessment of the remains at the southeastern foot of Kolonos (p. 445): "The earliest unit in this area that appears solid enough for a public building is the early Council House, which is dated in the time of Kleisthenes." Of the structures under the Tholos, or at least leveled for its construction, he observes (loc. cit.): "Structurally they seem more suited to serve the early industrial establishments that flourished in the vicinity."

13. I am inclined to favor the view that the winner of an ostracism needed over 6000 votes. A. R. Hands, in his study, "Ostraka and the Law of Ostracism—Some Possibilities and Assumptions," *JHS* 79 (1959): 72, draws attention to the impact of the preliminary vote that determined whether to hold an *ostrakophoria*, and notes that the interval of time between a positive vote and the *ostrakophoria* itself would enable as many as possible of the citizen body to attend. Since an ostracism was no routine matter, it is reasonable to expect a high voter turnout. If 6000 was a quorum for such an important matter, idealized concepts about participation in Athens' "direct" democracy ought to be re-examined (see n. 15, for citizen population statistics at Athens in the fifth century).

14. This point of view is followed by Hignett, *Athenian Constitution*, p. 166; Hands, "Ostraka," p. 72; and E. Vanderpool, *Ostracism at Athens* (Cincinnati, 1970), p. 4; vs. F. Jacoby (*FGH*, Teil IIIb [Suppl.], vol. 1, p. 316), who writes of "the majority of the votes (i.e. at least 3001)" with reference to Plutarch's account. *πλεῖστα*, however, means simply "most"; given the large scatter vote attested by finds of *ostraka*, there were probably more than two candidates in an ostracism, so that the "most" could have been a "plurality." For lists of known *ostraka*, see R. Meiggs and D. Lewis, *Greek Historical Inscriptions to the End of the Fifth Century B.C.* (Oxford, 1969), pp. 45–47, supplemented by F. Willemssen, "Die Ausgrabungen im Kerameikos," *DeIton* 23 (1968): *Chronica* 28–29.

against one of the candidates to effect an ostracism, it should be noted that 6000 was not half the citizen body of Athens during the fifth century!¹⁵ Clearly neither interpretation of the 6000 requires belief that *half* or a *majority of the votes* in an ostracism had to be cast against one man. Why, then, must 200, the figure of this account, be thought of at once as *half* of a larger group? Circumstances of the last decade of the sixth century are relevant. Kleisthenes apparently won over the *demos* with a promise of political control and power in the aftermath of several decades of tyranny. If the return of tyranny was considered a distinct possibility (Isagoras is alleged to have had such aspirations [Hdt. 5. 72]; an exiled Hippias, backed by Persia, was certainly a threat), Kleisthenes may have been quite satisfied that two-fifths of the Council of Five Hundred were sufficient to determine that a citizen be ostracized. Democratic propaganda of the fifth and fourth centuries did not totally seduce: the era of the Peisistratid tyranny was recalled as a Golden Age by the author of the *Athenaion Politeia* (16. 7); Thucydides (6. 54) as well gives a favorable impression. That the re-establishment of tyranny should have been desired by many Athenians at the end of the sixth century is not so remote a possibility;¹⁶ indeed, a *demos* which was largely Peisistratid in sympathy, but which subsequently gave its support to Kleisthenes, could easily have been seen to possess the potential for reversion to tyranny, and thus the capacity for relapse, had experimentation with Kleisthenes' new form of government resulted in failure.

The attraction of Kleisthenes' appeal, if we infer correctly from his reforms, was a promise to the *demos* of political power. However, a very difficult question arises when an attempt is made to determine whether Kleisthenes intended the exercise of this power to be exclusively by the people in assembly,¹⁷ or wished that the power be shared, with the *boule* dominant, thus giving Athens virtually "representative government" with the new Council of Five Hundred.¹⁸ While it is clear that the net effect of Kleisthenes' artificial and complex division of the people was not felt in the composition of the Assembly but rather in the composition of the Council of Five Hundred, so little is known of the Council in the late sixth

15. While it is quite impossible to ascertain with complete confidence the citizen population of Athens in the fifth century, the figures worked out by A. W. Gomme, *The Population of Athens in the Fifth and Fourth Centuries B.C.* (Oxford, 1933), p. 26, suggest that 6000 was a rather small percentage. His figures for total citizen population are as follows: 140,000 in 480; 172,000 in 431; 116,000 in 425; 90,000 in 400. His comment in a note on these figures is worthy of mention (p. 25): "The total citizen population in 500 must have been large to make Cleisthenes' constitution workable (Wilamowitz, *Arist. u. Athen.* ii 207-8), and perhaps nearer to that of 430 than is suggested in this table." Further, there is no evidence that eligibility to vote in an *ostrakophoria* was restricted once it was the preserve of the *demos* (Hands, "Ostraka," p. 72).

16. D. Kagan, "The Origin and Purposes of Ostracism," *Hesperia* 30 (1961): 396-97. For the possibility that ostracism was intended against the tyrants, see the excellent discussion of J. J. Keaney, "The Text of Androtion F6 and the Origin of Ostracism," *Historia* 19 (1970): 1-11, esp. p. 6 and n. 11.

17. Rhodes, *Athenian Boule*, esp. pp. 144-220, advances the thesis that the Council of Five Hundred was at first solely probouleutic, and that its powers were subsequently increased as a result of Ephialtes' reforms.

18. J. A. O. Larsen, "Cleisthenes and the Development of the Theory of Democracy at Athens," in *Essays in Political Theory Presented to George Sabine* (Ithaca, N.Y., 1948), pp. 1-16, and *Representative Government in Greek and Roman History* (Berkeley, 1956), pp. 1-21, with notes on pp. 191-200; a more recent proponent is A. G. Woodhead, "Ἰσθμοῦ πλῆθος and the Council of 500," *Historia* 16 (1967): 135-36.

and early fifth centuries that its function continues to be a mystery and the subject of much debate. Hence the importance of this manuscript account, for it reveals that the Athenian *demos* was *not* charged initially with conducting ostracism. Rather, Kleisthenes' intention apparently was that ostracism be the prerogative of the Council—the Council of Five Hundred, if my suggestions are correct. We thus may find here evidence of this Council's strength at the time of its creation: the argument of those who envisage a powerful Kleisthenic *boule* will gain new support.

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HESIODIC ΦΡΟΝΗΣΙΣ

When preparing the OCT edition of the *Opera et Dies*,¹ I did not find it easy to depart from the generally accepted, much-quoted, and widely familiar text of v. 293: οὗτος μὲν πανάριστος δς αὐτὸς πάντα νοήσει. However, the *recensio* definitely favored αὐτῷ rather than αὐτός; a better illustration of a *lectio difficilior* holding its ground against the *facilior* was hard to imagine; and after all αὐτῷ νοήσει makes sense provided αὐτῷ is understood as reflexive (= εαυτῷ) and suggests someone thinking, grasping, realizing everything “for himself,” i.e., with reference to his own interests. Surely, for the man who in v. 295 is recommended as second best (ἐσθλὸς δ' αὖ κακέϊνος δς εὖ εἰπόντι πίθηται), someone who realizes everything “himself” would provide a stylistically more elegant and logically more satisfactory contrast than someone who realizes everything “for himself” and his interests. This explains why αὐτός made its way into the text and why in v. 296, where the two kinds of men stand side by side (δς δέ κε μήτ' αὐτῷ νόηῃ μήτ' ἄλλου ἀκούων . . .), the reading αὐτός has made additional conquests, including one of the important manuscripts (D), a papyrus of the first or second century (Π 33 = *PMich.* 5138, which in v. 293 has αὐτός only *pc*), and some authors of the imperial age.² For Hesiod himself, stylistic and logical considerations carry little weight. Once more, the question *ultrum in ultrum abire potuit* admits of only one answer.³

I should have hesitated even less if I had at the time remembered a passage in Aristotle's discussion of φρόνησις (*EN* 6. 8. 1141b33 f.): εἶδος μὲν οὖν τι ἂν εἴη γνώσεως τὸ αὐτῷ εἰδέναι. It matters little that the statement appears at the end of a disquisition in which Aristotle has set forth his views about φρόνησις; for, although these are controversial and he has to reject misunderstandings, the concept of

1. Hesiodi “*Theogonia*,” “*Opera et Dies*,” “*Scutum*” edidit Friedrich Solmsen; “*Fragmenta selecta*” ediderunt R. Merkelbach et M. L. West (Oxford, 1971). Fuller information about *testimonia* may be found in the edition of *Opera et Dies* by A. Colonna (Milan, 1959) and in the *editio maior* of A. Rzsch (Leipzig, 1902), whose account of the MSS is rather too full by present-day standards.

2. For a very different assessment of the two readings, see Wilamowitz, *Hesiodos “Erga”* (Berlin, 1928; repr. 1962), ad loc. Like him I do not consider v. 294 as authentic, but I fail to see why αὐτῷ should have originated in connection with this line and why this difficult reading should have spread from there to other lines.

3. M. L. West in his recent paper (*CQ* 24 [1974]: 161 ff.) infers the presence of αὐτός in v. 293 for a manuscript “not later than the tenth century” (p. 163) which was used by the *Etymologica*. I gather that in the newly constituted “ψ family” (pp. 168 ff.) αὐτῷ prevails. The family is close to D. That ψ₁₂, the only manuscript cited for αὐτός, has this reading also in v. 296 (p. 172) conforms to the pattern.