

LADY CHATTERLEY'S LOVER AND THE ATTIC ORATORS: THE SOCIAL COMPOSITION OF THE ATHENIAN JURY

How Not To Do It

THE starting-point of this paper is one of the most disastrous pieces of advocacy in modern legal history.¹ In October 1960, Penguin Books were prosecuted under Section 2 of the 1959 Obscene Publications Act for publishing an unexpurgated edition of *Lady Chatterley's Lover*. On the first day of the trial, Mr. Mervyn Griffith-Jones, Senior Treasury Counsel (i.e. Crown Prosecutor), did his best to wreck his case on the strength of one remark. He had previously tried to show that he was himself a man of the world: 'Let me emphasize this on behalf of the prosecution: do not approach this matter in any priggish, high-minded, super-correct, mid-Victorian manner'.² He now proceeded to work this out in practice: 'Would you approve of your young sons, young daughters—because girls can read as well as boys—reading this book? Is it a book that you would have lying around in your own house? Is it even a book that you would wish your wife or your servants to read?'³

We cannot of course be certain how many of the jury did or did not employ servants. The property qualification for jury-service still had another dozen years to run;⁴ and Lord Devlin in a memorable phrase had recently described the typical juror as 'male, middle-aged, middle-minded, and middle-class'.⁵ It may, however, be significant in terms of education and possibly also of class that five of the jurors had had difficulty reading the oath.⁶

It is very unlikely that every juror employed servants. It is even less likely that every juror had a wife; three of them were women.⁷ But what is more important is that most even of those who did have wives or servants regarded Griffith-Jones' paternalism as outdated.⁸ Mr. Gerald Gardiner, the Defence Counsel, capitalized on this, citing the remark twice in the course of his summing-up to suggest that not only the prosecutor but the entire prosecution was an anachronism.⁹ Griffith-Jones' remark became sufficiently notorious to earn a throw-away reference in the House of Lords debate on

¹ Successive versions of this paper were delivered to seminars at the Universities of Cambridge and of Keele. I would like to express my thanks to the chairman on each occasion (Prof. Keith Hopkins at Cambridge and Mr Richard Wallace at Keele) and to the other members of the seminars for the discussion which followed; to Dr Paul Cartledge, Dr Nick Fisher, Dr Mogens Hansen, Dr Paul Millett, Dr Robin Osborne, Prof. Peter Rhodes, Prof. Anthony Snodgrass, Prof. Gerhard Thür, and Mr Thomas Wiedemann, who sent me various additional suggestions, ideas and corrections; to Prof. Tony Bottoms, who supplied me with some very useful bibliographical advice on criminology, and who did his best to correct many of my misconceptions about the modern jury; and to the successive editors and the anonymous referees of *JHS*. None of the above, however, are to be blamed for any views or errors expressed in this paper.

The following modern works are referred to throughout this paper by author's name alone: A. H. M. Jones, *Athenian democracy* (Oxford 1957);

M. M. Markle, 'Jury pay and assembly pay at Athens', in P. A. Cartledge & F. D. Harvey, eds., *Crux: essays presented to G. E. M. de Ste. Croix on his 75th birthday* (Exeter 1985) 265–97.

² C. H. Rolph, ed., *The Trial of Lady Chatterley* (London 1961) 16: a transcript of the trial with comments by the editor. Sir Allen Lane's private edition of this work contains also a report of the debate on the book held by the House of Lords on 14 December 1960 (see n. 10 below.)

³ Rolph (n. 2) 17.

⁴ It was abolished by the Criminal Justice Act of 1972 (J. Baldwin & M. McConville, *Jury trials* [Oxford 1979] 94).

⁵ Lord Devlin, *Trial by jury* (London 1956) 20.

⁶ Rolph (n. 2) 6.

⁷ Rolph (n. 2) 6.

⁸ The remark had 'a visible—and risible—effect on the jury', Rolph (n. 2) 17. Cf. also Rolph (n. 2) 203: when Gardiner cited the remark for the second time, the editor adds, 'And the jury smiled'.

⁹ Rolph (n. 2) 195, 203.

the book held later in the year;¹⁰ and prosecutors in subsequent obscenity trials seem to have learnt their lesson: Mr. Brian Leary, prosecuting counsel in the Oz trial in 1971, was considerably more circumspect in the way that he worded an argument very similar in substance to that of Griffith-Jones.¹¹

It is a cardinal error for an advocate to profess (even implicitly) a set of social values which will alienate the jury. This is an obvious point; but in the study of the modern jury it has received surprisingly little attention. I was informed by a recently-qualified barrister that appealing to a jury had played no part in her formal training: she was expected to pick it up by observation or by intuition. One reason for this neglect may be that her teachers (themselves barristers) were unwilling to recognize the part that non-legal factors, like social acumen, play in their pleading. Moreover, appealing to a modern jury is almost entirely of negative significance: you do not notice it until a Senior Treasury Counsel gets it wrong. There are certainly no textbooks available on the subject; and the biographical and anecdotal material¹² concentrates instead on the relationship between the barrister and the witnesses.

Barristers have, however, become interested in the jury challenge (particularly, for procedural reasons, in the USA,¹³ but also in this country): for instance, it is common for the defence to try to achieve an all-male jury in cases of rape or of drunken driving.¹⁴ The emphasis of the barrister is on getting the right jury, rather than on what to do with them when you have got them.

Academic study of the modern jury is restricted, because it is illegal in this country to record and analyse a jury deliberating; and it is probably contempt to interview them afterwards in order to study the process of reaching a verdict.¹⁵ Two methods of research have therefore been attempted. One is to play the film or tape of a trial to a simulated jury. This has the advantage of experimental control: you can play the same case to a series of 'juries'; and you can include or exclude a given piece of evidence, such as the criminal record of the accused. But the unreality of the setting causes considerable distortion, because a jury may not act like a jury when nothing depends on it.¹⁶ The second method has proved more fruitful: that is, to interview the other participants in the trial and to discover what they believe most influenced the jury. Some interesting results have been obtained:¹⁷ ironically the best and most recent study, that of Baldwin

¹⁰ Viscount Gage quoted a (suspiciously unnamed) peer who, on being asked whether he objected to his young daughter reading *Lady Chatterley's Lover*, replied that he had 'no such objections, but he had the strongest objections to the book being read by his gamekeeper' (Rolph [n. 2] 264).

¹¹ For details, see G. Robertson, *Obscenity: an account of censorship laws and their enforcement in England and Wales* (London 1979) 299–300.

¹² Biographies of great advocates are common: two of the most notable are J. Campbell, *F. E. Smith, first Earl of Birkenhead* (London 1983) and H. M. Hyde, *Carson: the life of Sir Edward Carson, Lord Carson of Duncairn* (London 1953). Similarly common are memoirs or books of anecdotes by or about great barristers: see for instance E. W. Fordham, *Notable cross-examinations* (London, Toronto & Cape Town 1951) and P. Hastings, *Famous and infamous cases* (London 1956). Perhaps the most interesting study of the barrister's profession however is R. du Cann, *The art of the advocate* (London 1964): this is a book written for the newcomer and the outsider, and it does much to strip away the mystique with which the profession frequently surrounds itself. What du Cann discus-

ses (and what he fails to discuss) provides a useful index of what barristers themselves think is important about their job.

¹³ W. R. Cornish, *The jury* (London 1968) 50.

¹⁴ Cornish (n. 13) 49.

¹⁵ Cornish (n. 13) 21–5.

¹⁶ S. McCabe & R. Purves, *The shadow jury at work* (Oxford 1974) attempt to avoid this problem; instead of playing a recording to a simulated jury, they put an unofficial 'jury' in the public gallery, took them out when the jury retired, and asked them to imagine that they were the real jury. This obviously gains something—although it is hard to say how much—in immediacy; equally, it loses the advantage of the 'control' experiment.

¹⁷ The pioneering work was that of H. Kalven & H. Zeisel, *The American jury* (Boston 1966), based on interviews with Chicago judges. A more sophisticated study was undertaken by Baldwin & McConville (n. 4), who made use of questionnaires completed by judges, prosecuting and defending solicitors, and police in Birmingham and London: the Bar refused permission for its members to participate, and the Law Society severely restricted the questions which could be put to solicitors.

& McConville, concludes that jury challenging is 'an ineffective means of obtaining a noticeably sympathetic jury'.¹⁸

One of the factors raised by Baldwin & McConville¹⁹ was the 'general weakness of the prosecution [or defence] case'; but they made no attempt to discuss this further, for instance by differentiating between weakness of facts and weakness of presentation. There has been no attempt by barristers or by criminologists to examine the way in which the change from middle-class to socially mixed juries since 1972 has influenced pleading.

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Neither barristers nor criminologists, therefore, are particularly concerned with how to appeal to a jury. This is significant, because it suggests that mistakes such as that of Griffith-Jones are rare. Any advocate even of moderate ability knows instinctively what not to say.

In the study of the Athenian jury, the question has received considerably more attention, but from the opposite perspective. Instead of using the social values of the jury to examine the craft of the advocate, scholars have (of necessity) used the advocate to examine the jury. We possess approximately one hundred court-speeches, and twenty more delivered to the assembly: they span very roughly the period for which we are generally best-informed, the century or so from the start of the Peloponnesian War in 431 BC to the Macedonian conquest and the destruction of the democracy in 322. If gaffes are rare today, then *a fortiori* they will be rarer in the orators: unlike a Treasury Counsel, an ancient speech-writer was a free-lance agent who needed to display competence to win his next brief.²⁰ It ought therefore to be feasible to determine the social values on which the orator relied; and this has been the more influential of the two possible ways of discovering who made up the jury. If for instance the speeches would consistently have alienated either the tax-payers²¹ or the poor, then this implies that that group did not at least form the backbone of the jury.

The second possible approach concerns the economics of jury-pay: was this enough to attract those who had to work for their living? or conversely, was it set at a level that would interest only those incapable of more remunerative work? This paper will discuss the question on the level both of pay and of values; it is my contention that both values and pay lead to a consistent and significant series of conclusions.

¹⁸ Baldwin & McConville (n. 4) 93.

¹⁹ Baldwin & McConville (n. 4) 28.

²⁰ 'Published' versions of law-court speeches (most of our texts are of this kind) should be distinguished from literary pamphlets in speech-form (e.g. Isokrates i-xv). Both genres are intended to be read, presumably by the élite. We possess no transcripts of trials, and we cannot tell how far speeches in the first group have been revised for 'publication', which could distort the social values they profess. But Isokrates in his pamphlets puts forward reactionary political views which could hardly have been expressed in court (see n. 55 below); and it is striking that we do not find views like this expressed in the published law-court speeches: their authors are presumably more keen to retain the illusion of a law-court. Revision would of course provide every incentive to suppress any notorious gaffes like that of Griffith-

Jones, which ironically makes them more reliable for the purpose of this paper.

²¹ The two most important forms of taxation at Athens were the *eisphora* and the 'liturgy' (*leitourgia*). The former was a direct capital tax levied at irregular intervals when required (usually in time of war): the level of the *eisphora* would be set by the assembly as a percentage of the total capital assets of those required to pay. A 'liturgy' however was not a formal tax; instead, those liable were obliged to fund a particular public project ('liturgy'), such as the production of a play or the commissioning of a warship. Both forms of taxation, and especially liturgies, affected only the rich: roughly half the citizen population served as hoplites (heavy-armed soldiers, who had to supply their own armour); but the *eisphora* seems to have affected perhaps 10-15%, and less than 5% were apparently liable for liturgies.

Two words of explanation should be offered at this point. In the first place, the subject of this paper is class structure, not class struggle: when the term 'class' is used, it is to be understood in a popular rather than a technical sense, defined not in terms of 'relationship to the means of production', but to mean a group (always in this paper of citizens) with a corporate identity and common values or attitudes. Secondly, this is a paper about Athenian juries. The composition of the Athenian assembly is a parallel and closely-related issue, but one which raises a number of different problems. This paper therefore concentrates primarily on law-court speeches and on jury-pay; but evidence concerning the assembly is used where appropriate for comparative purposes, and the composition of the assembly itself is discussed briefly in an appendix.²²

JONES AND THE 'MIDDLE-CLASS' JURY

The fundamental study of the Athenian jury is that of Jones. He was not, indeed, the first scholar to be aware of the problem, but he was the first to discuss it in detail. Cornford, Pickard-Cambridge, Glotz, Bonner & Smith, Ehrenberg, and Hignett²³ had each raised the question; but they had mostly been content to make a passing reference to Aristophanes *Wasps*, in which the typical juror is satirized as old and poor. Thus Ehrenberg emphasizes both halves of this picture;²⁴ while Bonner & Smith²⁵ concentrate on the age of the jurors, and Pickard-Cambridge²⁶ and Hignett²⁷ on their poverty. At first sight, Cornford and Glotz appear to break new ground: they are interested not in poverty or age so much as in social background; but Cornford's thinking on this point is influenced by a hidden agenda,²⁸ and Glotz relies on an *a priori* assumption rather than on argument.²⁹

Jones, however, offered a far more sophisticated analysis than any of his predecessors; and it is his analysis that has dominated subsequent thinking. His argument has provoked both agreement and disagreement, in roughly equal proportions. But even for Jones' opponents, it is his analysis which has created the framework for discussing the

²² For the appendix, see pp. 170–3 below.

²³ F. M. Cornford, *Thucydides mythistoricus* (London 1907); A. W. Pickard-Cambridge, *Demosthenes and the last days of Greek freedom* (London 1914); G. Glotz, *The Greek city and its institutions* (French original, Paris 1928; cited from English translation, London 1929); R. J. Bonner & G. Smith, *The administration of justice from Homer to Aristotle* (2 vols, Chicago 1930–1938); V. Ehrenberg, *The people of Aristophanes: a sociology of Old Attic Comedy*² (Oxford 1951); C. Hignett, *A history of the Athenian constitution* (Oxford 1952).

²⁴ Ehrenberg (n. 23) 53–4 and 161, on age (Aristophanes' picture exaggerated but otherwise valid) and on poverty ('the majority... poor men') respectively. He applies the same argument on poverty to the assembly: see p. 170 and n. 208 below.

²⁵ Bonner & Smith, i (n. 23) 231–3, focus on age, and try at length to reconcile *Wasps* with occasional references in the orators to 'younger men' among the jury (e.g. Ant. v 71) and the assumed needs of military service. They later note that in the fourth century there was no longer available a pool of unemployed refugees, forced from the countryside into the City, as there had been during the Spartan occupation of Dekeleia in

413–404 (Bonner & Smith i [n. 23] 366–7); but the question of poverty does not bulk large in their thinking.

²⁶ Pickard-Cambridge, (n. 23) 89–90, describes the jurors as 'the aged and infirm, the poor and the idle'. Pickard-Cambridge is one of the few scholars to differentiate between jurors and members of the assembly see p. 170 and n. 207 below.

²⁷ Hignett (n. 23) 221, citing *Ath. Pol.* 27.4 (for which see further p. 152 below): the poorer citizens formed a majority in the court.

²⁸ Cornford (n. 23) 15–24 *passim*: the jury consisted of artisans and tradesmen, and the country farmers were hardly represented. The thesis of this book was that the outbreak of the Peloponnesian War should be read as the result of pressure by the Athenian mercantile classes (who in Cornford's opinion dominated policy-making) to break the strangle-hold of Corinth over the trade route through the Corinthian Gulf. There is no evidence for this, and the modernizing view of ancient economic history which underlies it has generally and rightly been rejected.

²⁹ Glotz, (n. 23) 241, suggests that the jury are basically middle- and lower-class town-dwellers; his unstated premise is that of physical proximity. See, however, pp. 162–3 below.

problem: later scholars may have disliked his answers, but they have felt constrained to ask his questions. This is true even of the most recent and the most thorough alternative interpretation, that of Markle,³⁰ who has recently attacked Jones by using his method but inverting his conclusions. For this reason we are justified in speaking of Jones' interpretation as 'orthodoxy', and the response of Jones' opponents and particularly of Markle as 'heterodoxy'. The burden of this paper is that the method used both by Jones and by Markle is an over-simplification, and that other factors require greater attention.

Jones' book is a collection of papers; and he therefore restates his argument several times³¹ in slightly different terms. The resulting subtlety or ambiguity, however, has generally been ignored by both his followers and his opponents; and since it does not really affect the argument of this paper, the following simplified version will suffice.³²

Jones begins where his predecessors stopped, with Aristophanes *Wasps*: he agrees that in the late fifth century the typical juror was old and poor.³³ By the mid fourth century, however, Demosthenes is taking a highly sympathetic view of the rich and particularly of the taxpayer: he appeals to his audience to 'tax yourselves' and never to 'soak the rich';³⁴ moreover, when he has to produce in court a really poor man, the arbitrator Straton, he is embarrassed.³⁵ Consequently, according to Jones, the juries by this date have become 'predominantly middle or upper class'.³⁶ He further suggests a reason for this change: jury-pay had reached 3 obols in 425, but remained static thereafter, although wages approximately doubled in the next century. Three obols is not enough for 'a working man'³⁷ to feed a family, especially when even unskilled casual labour could fetch three times as much.³⁸ Lastly, Jones uses this change from a poor to a progressively more prosperous jury to explain the change in the political temperature of Athens during this period. He rightly sees that Athens in the mid fourth century was in reality far less democratic than it had been in the late fifth century; he speaks of the 'increasingly bourgeois tone' of the democracy.³⁹ His explanation for this political change is a change in the social balance of the electorate (i.e. the jury): the poor could not afford to come and vote.

Jones' interpretation of the Athenian jury has met with a wide variety of responses; but until recently, scholars have responded more to his conclusions than to the arguments on which he based them. A number of historians have cited Jones explicitly and with unqualified approval, thus apparently accepting the full implications of his case.⁴⁰ Others have been selective, mentioning only those individual conclusions which

³⁰ For a discussion of Markle's paper, see pp. 153–8 below.

³¹ Jones 35–7, 50, 124. Much the same interpretation is applied by Jones 109 to the assembly: see p. 171 and n. 208 below.

³² For Jones' subtlety and ambiguity, see n. 38 below.

³³ Jones 124.

³⁴ Jones 35–7: the tax in question is the *eisphora* (see n. 21 above).

³⁵ Straton in Dem. xxi 95 (Jones' reference is misprinted): Jones 36 and n. 81.

³⁶ Jones 124.

³⁷ The phrase is that of Jones 37.

³⁸ The added subtlety of Jones' case is his argument that the rich were particularly dominant in public (i.e. major political) trials: he believes that this was the result of deliberate jury-packing (Jones 36–7), but this presupposes a surprising level of conscious party-organization. This argument has apparently been ignored both by Jones' followers

and by his opponents. Jones' most notable ambiguity concerns the position of those unable to earn a full day's wage: Jones 124 believes that in the late fifth century three obols would have been enough to attract them (but not the able-bodied) into jury service; in the fourth century, however, the real value of three obols dropped, but Jones 37 leaves it unclear whether three obols continued so to attract them. Jones' followers have developed his argument here in different directions: cf. n. 40 below.

³⁹ Jones 10.

⁴⁰ A. R. W. Harrison, *The law of Athens* ii (Oxford 1968–71) 49 n. 2 (the fourth-century jury consisted only of the well-off); C. Carey & R. A. Reid, *Demosthenes: selected private speeches* (Cambridge 1985) 1 and n. 2 (the jury contained the unemployable as well). Both cite Jones as authority for their views: cf. n. 38 above. Carey & Reid make a tantalising passing reference to 'those whose work was seasonal'; but this group plays no further part in their analysis.

meet with their approval.⁴¹ Other scholars have been still more tentative, and have summarized Jones' case without making their own position wholly clear.⁴² Perhaps the majority have indicated varying degrees of doubt: some of these have in effect side-stepped Jones' work, and have continued to speak of the typical juror as old and/or poor;⁴³ others have summarized Jones' case, but have expressed individual reservations;⁴⁴ a few have ignored Jones' concentration on wealth and poverty, and have attempted (though with limited success) to revert to the approaches taken by earlier scholars.⁴⁵

There has, however, been surprisingly little detailed analysis of Jones' arguments. A few of Jones' supporters have developed additional evidence to support his model: Dover for instance stresses the way that Demosthenes attacks Aiskhines for his family and upbringing, especially Demosthenes' patronizing and 'supercilious' attack on 'schoolmasters, clerks and decorators'.⁴⁶ Some of Jones' critics have sought to interpret differently the level of jury-pay, and others have outlined alternative reconstructions of the social values reflected in the speeches. Thus Rhodes⁴⁷ emphasizes the attractions of

⁴¹ J. K. Davies, 'Athenian citizenship: the descent group and the alternatives', *CJ* lxxiii (1978) 109; and N. R. E. Fisher, *Social values in classical Athens* (London & Toronto 1976) 31-2, who canvasses a number of alternative explanations, among them Dover's suggestion, that a poor jury might wish to be treated as if they were prosperous (cf. p. 160 below).

⁴² S. Perlman, 'The politicians in the Athenian democracy of the fourth century BC', *Athenaeum* xli (1963) 327, is non-committal; but in his later paper, 'Political Leadership in Athens in the fourth century BC', *Parola del Passato* xxii (1967) 165-6, Perlman more clearly aligns himself with Jones' position. M. I. Finley 'Sokrates and Athens' (cited from Finley, *Democracy ancient and modern*² [London 1985] 117-18), claims against Jones that the very poor were disproportionately represented on the jury, but contrast Finley's views expressed elsewhere on the composition of the assembly ('Athenian demagogues', *Democracy ancient and modern*, 52).

⁴³ H. J. Wolff, *Demosthenes als Advokat: Funktionen und Methoden des Prozesspraktikers im klassischen Athen* (Berlin 1968) 7 n. 13, without reference to Jones. G. E. M. de Ste. Croix, *The origins of the Peloponnesian War* (London 1972) 376, and *The class struggle in the ancient Greek world* (London 1981) 289, insists against Jones that the poor made up a substantial proportion of the jury; whereas D. M. MacDowell, *The law in classical Athens* (London 1978) 33-5, sees the jurors as predominantly elderly.

⁴⁴ S. Isager & M. H. Hansen, *Aspects of Athenian society in the fourth century BC: a historical introduction to and commentary on the paragraphê-speeches and the speech Against Dionysiodorus in the Corpus Demosthenicum* (Danish original, 1972; cited from the English translation, Odense 1975) 122, suggest that pay was intended to cover only the juror's individual needs and not those of his family. (For Hansen's later views on assembly-pay, see p. 170 and n. 207 below.) A. W. H. Adkins, *Moral values*

and political behaviour in ancient Greece (London 1972) 120, sees jury-pay as a form of poor-relief, and argues that the rich will not have wanted the stigma associated with receiving it. (Social values in law-courts and assembly form the subject also of chapter 10 of Adkins, *Merit and responsibility: a study in Greek values* [Oxford 1960], but here he concentrates on the orators' appeals to the often rival claims of justice and expediency.)

⁴⁵ A. Burford, *Craftsmen in Greek and Roman society* (London 1972) 154, claims that the assembly (and presumably also the jury) will have consisted primarily of poor craftsmen, rather than peasants, because these were the people who lived in Athens and Peiraieus (cf. the views of Cornford and Glotz, see p. 149 n. 28 and n. 29 above); P. E. Harding, 'In search of a polypragmatist', in G. S. Shrimpton and D. J. McCargar, eds., *Classical contributions... M. F. MacGregor* (New York 1981) 43 n. 20, rejects this proposition. Both arguments however are weakened by hidden assumptions: Burford is eager to find a significant rôle for her craftsmen to play in Athenian life; and Harding is trying to prove that the vaunted dichotomy between radical town-dwellers and conservative country-dwellers is a myth. Harding's argument is probably over-stated (see p. 163 below), but I suspect that his picture is closer to reality than that of Burford.

⁴⁶ K. J. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Oxford 1974) 34, on Dem. xix 237. For the suggestion (Dover 34-5) that a jury of poor men might wish to be treated as if they were prosperous, see p. 160 below.

⁴⁷ P. J. Rhodes, *A commentary on the Aristotelian Athenaiôn Politeia* (Oxford 1981) 691: he uses *Wasps*, *Ath. Pol.* 27.4 (cf. n. 54 below), and *Isok.* vii 54 (cf. n. 53 below) to support this argument. The possibility that jury-pay might have attracted the very poor was of course latent within Jones' model (see n. 38 and n. 40 above), but Rhodes develops this possibility to the extent of explicitly repudiating Jones' model.

three obols to the very poor even more than to the rich; and Mossé⁴⁸ and Strauss⁴⁹ both provide alternative explanations of Demosthenes' pleas to his hearers to 'tax yourselves' rather than to 'soak the rich'.

An original and at first sight promising approach is taken by Kroll⁵⁰ in his study of dikastic *pinakia*; he seeks to resolve the problem by means of non-literary (in this case archaeological) evidence. *Pinakia* were bronze disks, issued to every juror apparently for the purpose of identification, and retained for life. In some cases, indeed, an Athenian citizen was so devoted to his *pinakion* that it was even buried with him; and a study of these graves might be expected to provide useful statistical evidence. As Kroll admits however, the samples are at present small (a few dozen at most), and the evidence of the *pinakia* therefore inconclusive. Although he himself tends to believe that the graves in question are mainly those of the needy or of the city poor,⁵¹ he can only sustain this conclusion by marshalling afresh the fourth-century literary evidence. And here Kroll is on weaker ground: he makes no direct attempt to refute Jones' argument from the social values to which Demosthenes appeals; instead, he collects passages which refer to poor men serving as jurors. He finds two references in Demosthenes⁵² to state-debtors (by definition poor) on the jury, two passages of Isokrates⁵³ which speak of citizens serving as jurors to obtain the necessities of life; and one passage in the *Ath. Pol.*⁵⁴ criticizing the social or moral decline among the juries since the introduction of jury-pay around 450 BC. Kroll himself describes Isokrates and the *Ath. Pol.* as 'anti-democratic but probably accurate'; in other words, they can only be used to support an argument that is already accepted on other grounds. But the problems go deeper than this: the state-debtors of the two Demosthenes passages are not ordinary paupers but broken members of the élite; and although Demosthenes conjures up a tear-jerking picture of a man so destitute that he was forced to run the risk of jury-service, Pyrrhos' action may well have been as much political as economic: a state-debtor was automatically disfranchised, and for such a man to exercise civic rights is a statement of intent. Isokrates is a closet

⁴⁸ C. Mossé, *La fin de la démocratie athénienne* (Paris 1962) 266: after twenty years of war-exhaustion, the tax was unpopular with everyone. She further argues that several statements by for instance Isokrates are incomprehensible unless the jury consisted basically of the poor and the unemployed (citing Isok. vii 83; clearer perhaps would be Isok. vii 54 and viii 130: see n. 53 below).

⁴⁹ B. S. Strauss, *Division and conquest: Athens 403–386 BC* (unpublished dissertation, Yale 1979) 12 n. 18: Demosthenes was trying to create an impression of unity, and to 'soak the rich' would under-score the divisions in Athenian society. Strauss here suggests that the poor made up the largest group in the jury, even though the well-to-do formed a significant minority; in the published version of his thesis (*Athens after the Peloponnesian War: class, faction and policy 403–386 BC* [London & Sydney 1987] 171) he appears in another context to accept Jones' thesis that the poor became for demographic reasons a progressively less significant force during the fourth century, but he does not develop the implications of this for the composition of the jury.

⁵⁰ J. H. Kroll, *Athenian bronze allotment plates* (Cambridge, Mass 1972) esp. 71–83 and 261–7. In addition to the criticisms expressed here, see the perceptive comments of R. K. Sinclair, *Democracy and participation in Athens* (Cambridge 1988) 130 n. 94 and 135 n. 118.

⁵¹ There is, however, a further problem here, not faced by Kroll: the very poor man has more reason for pride in his status as a citizen of a democracy, and perhaps therefore more reason to want his *pinakion* buried with him.

⁵² Dem. xxi 182: the aristocratic Pyrrhos was executed for this; and Dem. xxiv 123: ordinary citizens who commit this offence are severely punished, but the Athenians are far too lenient towards their orators.

⁵³ Isok. vii 54: 'who can but feel aggrieved when he sees many of our citizens drawing lots [i.e., in the daily allocation of jurors to courts] in front of the court-house for the necessities of life, whether he is to have them or not'; and Isok. viii 130: 'those who live off the law-courts' (clearly in context jurors rather than prosecutors). Other passages of Isokrates could perhaps be cited to the same purpose, for instance Isok. xv 152, referring to 'those who are compelled to get their livelihood from the city' (and presumably therefore from state-pay); but Isok. vii 83 is less direct, referring simply to 'those who are destitute', without any specific mention of public pay (compare n. 48 above).

⁵⁴ *Ath. Pol.* 27.4: 'some people claim that the juries have become *kheirô* [either "lower class" or "morally degenerate" or more probably both] as a result of jury-pay.'

oligarch with an obsession: the good old days of 'real democracy' (i.e. oligarchy), contrasted with the degeneracy of the present day; he is determined to find social problems everywhere, and looks in particular for unemployment and/or mercenaries, problems which he can 'solve' by advocating an invasion of Persia. It is a grave mistake to take Isokrates seriously as evidence for Athenian social conditions.⁵⁵ As for *Ath. Pol.* 27.4, it is hardly evidence for the fourth-century jury; and its use of language is significant: 'some people say' is a form of words used by *Ath. Pol.* to introduce a statement found in his sources which is so naive or so tendentious that even he is unwilling to let it appear under his own pen.⁵⁶

MARKLE AND THE JURY OF 'POOR' MEN

The most thorough attack on Jones, however, is contained in the recent paper by Markle.⁵⁷ Perhaps, indeed, this could be described as the only full-scale attack: previous scholars had either ignored Jones' theory or rejected it in general terms or offered individual objections; but Markle has devoted an entire article to the subject, and he is the first scholar to have worked out in detail an alternative interpretation both to Jones' theory and to those of his predecessors. Moreover, his views seem likely to be more influential than those of any previous writer on the subject since Jones himself: discussions of the social composition of the Athenian jury since Markle's paper appeared in 1985 have broadly supported his conclusions.⁵⁸ His argument is that both the jury and the assembly alike were for the most part manned not by those who were rich enough not to worry about the level of pay (Jones), nor by those who were unemployed or destitute and for whom any pay was better than nothing (Jones' predecessors), but by those who had to work for their living.

After a brief introduction,⁵⁹ Markle's paper falls into three parts. Most of his fire is directed against Jones and his followers, on the level both of pay⁶⁰ (supported by an appendix)⁶¹ and of values,⁶² but he is concerned first to guard his rear against the argument advanced both by Jones' predecessors and by some of his more recent opponents that the bulk of the jurors were destitute.⁶³

It is in the first section of his paper⁶⁴ that Markle is at his strongest. There are two possible reasons for believing in a destitute jury: the impression given by Aristophanes *Wasps*, and a confusion of terms over the Greek words for poverty; Markle exposes the weakness of both arguments. It is notoriously dangerous to base broad conclusions in social history on the unsupported evidence of a comic poet like Aristophanes:⁶⁵ comedy relies on such techniques as exaggeration and fantasy, and its apparent realism can be insidious; moreover, Aristophanes like other Greek authors is a member of the élite, and he shares its prejudices. When therefore the chorus-leader declares that he has to buy

⁵⁵ It is important to note that the Isokrates passages in question (see n. 53 above) come from political pamphlets rather than from law-court speeches: he could hardly have said this in a democratic court. Compare n. 20 above.

⁵⁶ Other examples of the 'some people say' motif are to be found at *Ath. Pol.* 6.2-3 and 9.2.

⁵⁷ Markle 265-97.

⁵⁸ Sinclair (n. 50); M. H. Hansen, *The Athenian assembly in the age of Demosthenes* (Oxford 1987); C. A. Powell, *Athens and Sparta: constructing Greek political and social history from 478 BC* (London 1988): for details see n. 107 below. There is no reference to Markle's views in the brief incidental discussion by R. Garner, *Law and society in classical Athens* (London & Sydney 1987) 65.

⁵⁹ Markle 265-6.

⁶⁰ Markle 271-81.

⁶¹ Markle 293-7.

⁶² Markle 281-92.

⁶³ Markle 267-71.

⁶⁴ Markle 267-71.

⁶⁵ This point is well made by Ehrenberg (n. 23) 37-42. It would be equally dangerous to infer from the chorus-leader's rambling remark, 'the crops need rain' (*Wasps* 253-65), that the 'typical juror' is therefore a country-man rather than a town-dweller (see, rightly, D. M. MacDowell, *Aristophanes, Wasps* [Oxford 1971] 168); and I have therefore made no use of this passage in support of my argument on pp. 158-9 below.

barley and wood for his whole family out of his jury-pay, and that he faces starvation if for some reason the court does not sit today,⁶⁶ the joke may be simply an 'aristocratic sneer':⁶⁷ members of the élite like Aristophanes did not approve of the institution of jury-pay, if it enabled those who would not have been able to afford the time without compensation to sit in court; the easiest way to parody such an institution was to suggest that it filled the courts with idle and vindictive layabouts.⁶⁸ It is in this direction that Aristophanes will have tended to exaggerate the poverty of the jurors.⁶⁹

Markle's discussion of the Greek words for poverty is equally judicious. He develops in detail⁷⁰ a distinction previously outlined both by Austin & Vidal-Naquet⁷¹ and by de Ste. Croix:⁷² those who have little or no leisure (*hoi penêtes*) are different from the destitute (*hoi ptôkhoi*); Markle insists that the bulk of the jury belong to the former and not to the latter category. Various ancient authors⁷³ suggest that the 'poor' sat on the jury, but this is not evidence that these men were destitute; it means that they normally had to work for their living.

The bulk of Markle's attention, however, is directed towards Jones and his jury of the better-off. His argument here is conducted on the two planes of pay and of values; but neither is wholly satisfactory.

Markle approaches the question of pay from two directions: external literary evidence (that is, outside the speeches themselves),⁷⁴ and a statistical survey of the Athenian cost of living.⁷⁵ From the literary evidence, Markle seeks to demonstrate the 'effectiveness' of pay, which (he claims) achieved its aim of enabling the *penêtes* to serve on juries (and, from the 390s, in the assembly). There is a risk of circular argument here: it is dangerous to infer from its results the purpose of a law or of an institution.⁷⁶ According to Markle, however, the bitterness towards state-pay of reactionary authors such as Isokrates and Plato, together with the readiness of oligarchic activists to abolish it whenever possible,⁷⁷ implies that at least the opponents of democracy believed that jury-pay was effective.

Markle himself, however, admits that Isokrates and Plato are too 'tendentious' to be trustworthy evidence here;⁷⁸ and he attaches much more importance to two less partial

⁶⁶ Aristophanes *Wasps* 300-1, 303-11 respectively.

⁶⁷ Markle 267.

⁶⁸ The same attitude of distaste towards the institution of jury-pay ('it made the Athenians lazy') is found in Plato *Gorgias* 515e2-7, on which see Markle 272.

⁶⁹ Markle further argues that the archetypal juror Philokleon (the protagonist of the *Wasps*) is really a rich man who is only pretending to be poor, and that the same therefore is true of the chorus also; but it is doubtful whether this would serve any comic purpose. Admittedly Philokleon's son Bdelykleon is rich, but we should not therefore conclude (as Markle 267) that 'clearly the family had property'. Aristophanes is often more interested in the joke of the moment than in consistency of character: the extreme poverty of the jurors is the running joke throughout the first half of the play, and Philokleon's attempt to come to terms with high society throughout the second half; but the connexion between the two propositions is not emphasized.

⁷⁰ Markle 267-71. Markle's argument includes a discussion of the term *aporoi*, which is ignored in my simplified summary.

⁷¹ M. M. Austin & P. Vidal-Naquet, *Economic*

and social history of ancient Greece: an introduction (French original, Paris 1972; cited from English translation, London 1977) 16.

⁷² De Ste. Croix (n. 43: 1981) 431.

⁷³ For instance Aristotle in the *Politics* (1279b18-20, discussed by Markle 268) defines democracy as that government where the state is controlled by the *aporoi* (a term which in Aristotle's thought, according to Markle, is equivalent to the *penêtes*).

⁷⁴ Markle 271-7.

⁷⁵ Markle 277-81 and 293-7.

⁷⁶ To what extent is the introduction and especially the raising of state-pay intended to encourage participation in public life and break the hold of the rich on the juries, to distribute the wealth of the community among its members (and perhaps thereby to limit the need for aristocratic patronage: see P. C. Millett, 'Patronage and its avoidance in Classical Athens', in A. F. Wallace-Hadrill, ed., *Patronage in ancient society* [London & New York 1989] 15-47), or as a bid for popularity on the part of the politician proposing the increase? See further p. 157 below.

⁷⁷ For instance in the briefly successful oligarchic revolution of 411, Markle 271-2.

⁷⁸ Markle 272.

authors: Aristotle and Aristophanes. He regards Aristotle's *Politics* as reliable, both as political theory and as political history, because it was based on the type of careful historical research that we see in the *Ath. Pol.*: the onus therefore, according to Markle, rests on the sceptic to discredit Aristotle's authority.⁷⁹ But the extraordinary mixture of valuable information and tendentious rubbish which we find in the *Ath. Pol.* does not exactly create confidence in the work's 'careful research', whether we regard it as the work of Aristotle himself or of a pupil. The *Politics* is a vastly better work in terms both of accuracy and of analysis, but it is difficult to decode.⁸⁰ Aristotle tends to allow his political theory to determine his selection, and perhaps his interpretation, of facts; and it is often difficult to decide how far he is talking about real and how far about theoretical constitutions. In book iv of the *Politics*, he distinguishes between four types of democracy; and it is his analysis of the fourth of these, described by Aristotle himself as 'final' or 'complete' and by modern scholars as 'radical' democracy, which supplies the evidence for Markle's argument. But how far is Aristotle here discussing Athens, and how far is he hypothesizing the results of democracy taken to what in his view would be its logical conclusion? Markle appears to regard state-pay as the central characteristic of 'final' democracy, and he therefore deduces that Aristotle here is analysing contemporary Athens.⁸¹ But when Aristotle himself introduces his four-fold division, he defines 'final' democracy in terms of the sovereignty of the immediate popular will expressed in decrees without the constitutional restraint of law; the question of state-pay is introduced later, as a characteristic property rather than a necessary criterion of this form of democracy.⁸² And judged against Aristotle's own criterion (the subordination of law to the popular will), fourth-century Athens was not an example of 'final' democracy.⁸³ Aristotle's analysis therefore may contain ideas based on his observation of Athenian politics, but it is not a formal critique of contemporary Athens.⁸⁴ The point can be taken further: if Aristotle here is discussing not Athens but an 'ideally bad' democracy, then we have to allow for the results of wishful thinking, both negative and positive.⁸⁵ Aristotle, like Isokrates and Plato, is a member of the élite and shares its prejudices.

Although Markle himself doubted the inferences commonly drawn from Aristophanes *Wasps*, he is nevertheless happy to use Aristophanes *Ekklesiastousai* in his own support.⁸⁶ His argument here concerns the introduction and rapid raising of assembly-pay. Jury-pay had been introduced at 2 obols in the 450s, and raised to 3 obols in 425, remaining static thereafter until the fall of the democracy in 322. Assembly-pay was a later invention. It was introduced at some stage in the 390s at 1 obol, and raised

⁷⁹ Markle 272-4: this applies in his view to the fifth century (Markle 274) as well as to contemporary politics.

⁸⁰ When Aristotle makes an empirical statement ('in city x they do y'), this can usually be taken at face value; when however he makes a theoretical statement, frequently cast in indefinite form ('when x conditions obtain . . .' or 'when there is a democracy of x type . . .'), these have to be interpreted much more cautiously. The quotations on which Markle 273-4 bases his argument are of the theoretical rather than the empirical kind.

⁸¹ Markle 273: 'he must be describing not only the Athenian constitution but other Greek democracies which enabled the poor to participate by offering pay.'

⁸² Aristotle *Politics* 1292a4-7 (decree and law) and 1293a3-7 (cited by Markle 273: state-pay).

⁸³ In the fourth century (although not the fifth) decrees at Athens were strictly subordinated to

laws: see M. H. Hansen, *The Athenian ecclesia: a collection of articles 1976-1983* (Copenhagen 1983) 161-177 and 179-206.

⁸⁴ My reading of the *Politics* here is by no means uncontested: see e.g. Hansen (n. 58) 10.

⁸⁵ Positive wishful thinking is to be found in *Politics* 1292b25-29: Aristotle approves the type of democracy where farmers and those who possess a 'moderate' amount of property are in charge of the state, because they will be too busy farming to play an active part in politics. (Whenever Aristotle mentions the word 'moderate' [*mesos* or, as here, *metrios*], he is usually idealizing.) Presumably he is envisaging a situation without any state-pay, although given ancient conditions of farming (see p. 168 below) it is difficult to take him very seriously here.

⁸⁶ Markle 274-6. A similar argument is developed by Ehrenberg (n. 23) 84, 227, and by Hansen (n. 83) 27.

very rapidly to 2 and then 3 obols; it had recently been raised to 3 obols when the *Ekklesiázousai* was produced probably in 392/1 or 391/0. (Of the later development of assembly-pay we know nothing, except that by the time of the *Ath. Pol.*, written probably during the 320s, it had reached 6 obols for an ordinary and 9 for an extraordinary meeting.)⁸⁷ Now in the *Ekklesiázousai* there is frequent reference to the recent rises in assembly pay from 1 to 2 to 3 obols: in particular, there is a running joke that when assembly-pay was 1 obol the assembly was empty, but now that it is 3 obols the assembly is packed;⁸⁸ indeed it is now so full that unless you arrive very early you will not get paid.⁸⁹ Markle infers that three obols was the crucial level of pay: anything below this was too low, but 3 obols was just enough to attract the *penêtes* to attend the assembly in large numbers; consequently, he concludes, 3 obols will have been enough to attract them onto the juries as well.⁹⁰

Markle's use of Aristophanes invites the charge of inconsistency: he rejects the *Wasps* but is happy to use the *Ekklesiázousai*. He seeks to deflect this charge: either the joke about assembly-pay is a fantasy and the increase made no difference whatever to the numbers attending, or else it made all the difference, and Aristophanes' picture of a packed house is literally correct. But this is a false dichotomy. Any increase in pay is bound to attract at least some potential attenders. Every individual remotely interested in attending will construct his personal equation for every meeting. On the positive side: public spirit, plus intrinsic interest of the meeting, plus (perhaps) self-importance, plus level of pay. On the negative side: apathy, plus potential tedium, plus distance and trouble necessary to attend, plus loss of income.⁹¹ For some at least, the next increase in the level of pay will be just what is needed to tip the balance towards attending. But how many will fall into this category in any given situation? We do not know, and Aristophanes cannot tell us. Any increase in pay is bound to provoke some increase in attendance. Any increase in attendance would be enough to provoke Aristophanes into making the sort of jokes that he makes here.⁹² Indeed, we cannot even safely assume that assembly-pay was raised from 2 to 3 obols because numbers attending the assembly were perceived to be unacceptably low: *Ath. Pol.* 41.3 states that it was introduced by Agyrrhios, raised to 2 obols by Herakleides, and raised to 3 obols by Agyrrhios again.⁹³ It is tempting to interpret at least the final increase as an attempted bid for patronage by a political leader.⁹⁴

The rest of Markle's discussion of pay is based on a statistical study of incomes and prices. Whereas Jones had suggested that 3 obols was too low to feed a family, Markle

⁸⁷ Full documentation for the various levels of pay is given by Jones 136–7 and by Markle 265 n.1.

⁸⁸ Aristophanes *Ekk.* 300–10

⁸⁹ Aristophanes *Ekk.* 282–92, 376–82

⁹⁰ Markle assumes here that 3 obols was the standard level of assembly-pay ('at first . . . effective', Markle 274; 'I am primarily interested in the 3-obol figure', Markle 274). I am inclined (for reasons discussed on pp. 172–3 below) to believe that Markle may be correct in suggesting that the jump from 3 to 6 and 9 obols was both late and sudden; but Markle's is a dangerous use of logic, because on the one hand he does not himself put forward any real argument to support this assumption, and on the other hand the assumption is itself necessary to his case: unless 3 obols was adequate for the assembly, it will not have been enough for the jury. (For Markle's suggested 'non-economic reasons' for the rise to 6 and 9 obols (Markle 285), see p. 171 and n. 214 below.)

⁹¹ The impact of several of these factors is

thoughtfully discussed in Sinclair (n. 50) 119–135.

⁹² It is precisely jokes on the theme 'arrive early or you will not get paid' that seem most likely to be exaggeration born of fantasy; we cannot deduce from this that the change to 3 obols produced a full house. Still less can we simply compare the jokes about the red rope, used in *Akharnians* 21–2 (produced in 427) to force people in to the assembly and in *Ekk.* 378–9 (produced in the late 390s) to exclude late-comers, and deduce that patterns of attendance had changed. The two are separate jokes, directed against separate (but in Aristophanes' opinion typical) facets of the Athenian national character: their irresponsibility in the *Akharnians*, and their officiousness and willingness to do anything for money in the *Ekklesiázousai*.

⁹³ On the political rivalry of the 390s, see Strauss (n. 49: 1987).

⁹⁴ See p. 154 and n. 76 above.

argues that this is in fact incorrect, and that even a family of four could in fact be fed on $2\frac{1}{2}$ obols.⁹⁵ This is an elaborate and interesting discussion, and it contains several points of general validity: it is probable that annual wages were lower than scholars have sometimes assumed;⁹⁶ and the diet of most Athenians may have been less expensive than has often been suggested. Nevertheless, the argument has weaknesses both in method and in conclusion. There is at least one small but elementary (and therefore revealing) statistical error in Markle's calculations.⁹⁷ More significantly, because Markle believes that the 3 obols was a subsistence-allowance, his argument requires that his figures for the price of food must be accurate throughout the century during which jury-pay remained static at 3 obols; but many of his calculations are based on figures which as he admits belong to the late fifth century.⁹⁸ To defend himself, Markle states nonchalantly in his appendix that the price of basic foodstuffs such as grain remained static during the century in question 'except for temporary fluctuations in prices caused by bad harvests, wars, piracy and perhaps seasonal shortages'.⁹⁹ This is a somewhat cavalier assertion, because there is so little evidence available that any extant figures may derive from an abnormal year, and almost any pattern can be discerned or imposed at will. But it is certainly difficult *a priori* to accept that the price of foodstuffs really remained static during a century in which (as Markle admits) wages had more than doubled.

Even more important, however, is the weakness implicit in Markle's conclusion. Clearly the value of money will have changed during the period in question; but there is no evidence that the Athenians themselves were consciously aware of this change. Certainly they lacked the economic theory to sustain the concept of a retail price index; I doubt if they would even have conceptualized 'you can't buy anything with 3 obols at today's prices', because this seems to imply too conscious a view of historical change. But if Markle is correct, and the 3 obols was essentially a subsistence-payment, then the declining value of money will have been brought to their attention not theoretically but practically: it will have become increasingly difficult to fill an assembly or to man a jury.¹⁰⁰ The fact that jury-pay was never raised after 425 will therefore lead necessarily to one of two conclusions: either (following Jones) the personnel of the jury changed increasingly over the next century; or else (if Markle is right) the jurors must have progressively tightened their belts.¹⁰¹ But if so, why did the Athenians not raise the level of pay for the jury?¹⁰² Admittedly during the period 380–350 there may have been good reason for this: Athens was chronically short of cash throughout these years. But

⁹⁵ Markle 277–81, supported by his appendix (Markle 293–7).

⁹⁶ Markle 296–7: our only reliable figures concern the daily pay of artisans, and Markle sounds a proper caution against simply multiplying such figures by 350 without allowing for (e.g.) festivals and days laid off.

⁹⁷ Markle 280: but 1 is a 30% contraction not of 1.3 but of 1.43.

⁹⁸ Markle 277 'the cost of living in the late fifth-century Athens' (this phrase serves to introduce the statistical survey), and Markle 280 'the other kinds of food . . . at the end of the fifth century BC'.

⁹⁹ Markle 293.

¹⁰⁰ A minimum of 6000 volunteers was required for jury-service each year, and without this number the system of allocation to courts would have broken down. Concerning the assembly we are less well-informed, but 6000 was a necessary quorum for certain types of fairly routine business (for instance grants of citizenship). Hansen indeed has recently and I believe correctly argued that 6000

was perceived as the proper attendance for a normal assembly: Hansen (n. 83) 1–23, *cf.* n. 218 and n. 223 below; but see further p. 172 and n. 224 below.

¹⁰¹ Markle does admit in passing that even in the late fifth century jury-pay will have entailed a loss of income (Markle 281: 'at the sacrifice of about half their wages'), and jurors will therefore presumably have required considerable motivation to attend; but he nowhere mentions the ever-increasing need for tightened belts which his model implies.

¹⁰² Sinclair (n. 50) 127–133 supports Markle's model by suggesting various reasons for the continuing attractiveness of the jury as compared with the assembly; but this does not really get to the heart of the problem: if, as Markle accepts, the value of 3 obols in comparison with wages was steadily declining, he needs to establish not simply a continuing but an increasing attractiveness, in order to compensate for the decline in value.

after this period the situation changed: probably at this time, and certainly at some time in the fourth century, the Athenians were able and willing to raise assembly-pay to 6 and 9 obols.¹⁰³

If we dismiss as inconclusive the arguments from statistics and from the indirect literary material, we are left with only the evidence on which Jones relied: the tone of the speeches themselves, and the social values implicit in them. But it is here that Markle's critique of Jones is least convincing.¹⁰⁴ He begins from the same assumption as his opponent: that the crucial question is one of income, and the crucial distinction is that between those who do and those who do not have to work for their living. He then assembles every piece of evidence which had led Jones and his followers to argue for a prosperous jury; and he asserts, one by one, that these have been misrepresented. Sometimes he is successful: for instance, he rightly notes that it is not really Straton's poverty which embarrasses Demosthenes.¹⁰⁵ Sometimes his arguments are less attractive: he relies heavily on the orators' frequent use of the phrase *το πλῆθος το ἡμῶν*, used to describe the democracy (*πλῆθος* is a virtual synonym for *δῆμος*); but he translates this as 'the majority of you' or 'the mass of you',¹⁰⁶ and argues that the majority of jurors present must therefore have been members of the 'common people'. But in Athenian political thought, the court is a part of the democracy and is therefore necessarily democratic, whatever the personal opinions of individual jurors may have been; and the phrase is a commonplace in the orators to describe 'your democracy'.

On some individual points therefore Markle is probably correct; on others he is less convincing. But even though his work has in general been favourably received by subsequent scholars,¹⁰⁷ I find his overall approach here unsatisfactory. When he is unable to explain any of Jones' passages, he gets round the problem by lumping all Jones' evidence together and dismissing it collectively as 'flattery and entertainment',¹⁰⁸ intended to keep the jury interested. This is to say the least high-handed; and the problem comes to a head when Markle discusses Dover's point about Demosthenes' remarks concerning schoolmasters, clerks and decorators: he discounts these remarks by saying that Demosthenes' opponent Aiskhines started the insults.¹⁰⁹ This may be true, but it raises two further questions: first, why did Aiskhines bring up the question of family background? and secondly, why did Demosthenes choose to respond in these terms? Any schoolmasters, clerks and decorators among the jury can hardly have found it terribly flattering, let alone entertaining.

RE-INTERPRETING THE ATHENIAN JURY

Perhaps the greatest difficulty in the theories of both Jones and Markle lies in their assumptions about Athenian class-structure. In the case of Jones, who was a British scholar, the class-structure assumed is that of Britain in the 1950s: he speaks of the

¹⁰³ The other possible explanation (canvassed on pp. 167–9 below) of the failure to raise jury-pay is that it was not primarily a subsistence-allowance.

¹⁰⁴ Markle 281–92.

¹⁰⁵ Markle 287 n. 40 (anticipated by Dover [n. 46] 34 n. 1) against Jones 36: see p. 150 above.

¹⁰⁶ Markle 282 on Lys. xxviii 1, and Markle 285 on Ant. v 8 respectively.

¹⁰⁷ Powell, (n. 58) 302, calls Jones' social values 'inconclusive', and accepts Markle's arguments about the level of pay. Hansen, (n. 58) 47–8, discussing the assembly, agrees with Markle (cited with approval at 48 n. 326) that the crucial factor

determining the attractiveness of pay is its purchasing power (*sc.* as a subsistence-allowance). Sinclair, (n. 50) 124–7, focuses on the attitudes taken towards tax-payers in Lysias xxviii (delivered to the assembly) and xxix (a court-speech), in an attempt to determine their relative importance within these two bodies; this is an interesting and important discussion, but with so few assembly-speeches extant it must remain speculative. Sinclair, (n. 50) 127, does, however, make clear in passing his support for Markle.

¹⁰⁸ Markle 281.

¹⁰⁹ Markle 283.

'middle class' and of the 'working man',¹¹⁰ in terms which suggest the existence of a working class with a separate culture, and separate values and attitudes from those of the middle class; it is interesting to note that Richard Hoggart's pioneering study of British working-class culture was published in the same year as Jones' book.¹¹¹ Jones' terminology therefore invites comparisons with modern Britain which are the more inappropriate for being subconscious.

Markle on the other hand is an American scholar, and for a social historian this is to some extent an advantage: social status in the United States is defined in terms not of class but of income; and inequality of income has existed throughout history. Surely therefore it is unobjectionable when Markle speaks of 'the poor' and (by implication) 'the rich'? On further examination, however, Markle's terminology contains its own hidden assumptions, as misleading as those of his opponent; and paradoxically, it is the clarity of his analysis which has created its own problems. For his distinction between 'rich' and 'poor' to be analytically useful, Markle places a sharp division at the level of income above which a man need no longer work for his living. But the very sharpness of this division leads him into two undefended but unavoidable assumptions. In the first place, Markle's groups are internally homogeneous: that is, the only important social distinction lies between those who do and those who do not have to work for their living; and the values of for instance a poor farmer are identical to those of a poor craftsman. Secondly the groups are wholly discrete: peasant and richer farmer perceive themselves as being on opposite sides of the great divide; and there is no continuity, either in personnel or—more importantly—in attitudes, between the two groups.

The assumption that Athens can safely be analysed according to a bipartite division, whether of class or of income, has been challenged by several scholars. Finley¹¹² indeed argues that there can be no such thing as a successful class ideology, because to be successful an ideology must appeal across social divisions: he notes that every social group in antiquity approved of the acquisition of wealth. Few scholars would accept without qualification the full implications of this theoretical argument; but a number of social historians have argued on empirical grounds that there was at Athens only one social class, one set of values in which the whole citizen body concurred.

Adkins¹¹³ for instance is interested in the terminology used in Greek to describe moral values; he is struck by the conservatism which allowed the rich to set the linguistic agenda for the rest of the community to follow: terms of praise such as *agathoi* ('the good') are used by both rich and poor to refer to the rich, and the poor are described by such pejorative terms as *kakoi* or *ponëroi* ('base' or 'evil'). Adkins perhaps takes this argument too far, particularly when he argues¹¹⁴ that Athenian juries placed more emphasis on a litigant's *agatha* (previous benefactions) than on his *dikaia* (the justice of his case); if the jury were really this deferential, then we would expect the rhetorical theorists to have placed far more stress than they do on the relating of benefactions.¹¹⁵ Nevertheless, Adkins' general conclusion is important: the conservatism of this linguistic agenda meant that there was no alternative set of values to which the poor could aspire.

Similar conclusions have been reached from a different perspective by Ehrenberg.¹¹⁶ Greek has a number of terms meaning 'trader', and earlier scholars had generally assumed that the distinction between *emporos* and *kapêlos* was one of scale; they therefore spoke of separate classes of wholesale and of retail traders, with all the social distinctions

¹¹⁰ Jones 124, 37 respectively.

¹¹¹ R. Hoggart, *The uses of literacy* (London 1957).

¹¹² M. I. Finley, *The ancient economy*² (London 1985) 38.

¹¹³ For the general theory see Adkins (n. 44: 1960) esp. 195–214; the theory is applied in more

detail to political behaviour in Adkins (n. 44: 1972).

¹¹⁴ Adkins (n. 44: 1972) 119–26.

¹¹⁵ Aristotle *Rhetorika* only mentions liturgies once (ii 23.17), and they are not in context benefactions.

¹¹⁶ Ehrenberg (n. 23) 143–145.

that this would imply. Ehrenberg objected however that the terms are not used in this way: there is no real social distinction between the two types of trader; they form a single 'middle class', perhaps with a higher and a lower section, but a single social unit. He further argued that this single social unit included not just traders but craftsmen and farmers as well: all had the same political interests and social ambitions.

Dover has applied a similar argument, but only tentatively, to the question of the jury. Following Ehrenberg, he argues at one point¹¹⁷ that there may have been no Athenian working class; elsewhere¹¹⁸ he suggests as a possible explanation for the social values assumed by the orators that those members of the jury who were not prosperous may have liked to be treated as if they were. But he does not connect the two ideas; and he prefers to withdraw his second suggestion in favour of a jury which was largely composed of prosperous men.

These arguments can be extended, and applied to the jury. Traders, as Ehrenberg noted, form a single social class; the same can be said of farmers. The vast majority of Athenian citizens seem to have been farmers;¹¹⁹ and of these, the vast majority can be described as peasants or subsistence farmers. 'Peasant' here is applied in a popular rather than a technical anthropological sense;¹²⁰ and the use of 'subsistence farmer' is not intended to suggest that the Athenian peasant never bought or sold any foodstuffs: rather, that he aimed to produce all the food which he required to feed his household. If he had a surplus of any one article, he could sell it; if a shortage, he would need to buy; but the aim was *autarkeia*¹²¹ (self-sufficiency), rather than specialization in cash-crops.

The majority of Athenian citizens were peasants in this sense; but it is significant that there is no convenient Greek word for 'peasant'.¹²² An *autourgos*, 'one who works [the land] himself', appears as a major character in Euripides *Electra*, and a speech made off-stage by another is reported in his *Orestes*;¹²³ but the word is not common in Greek.¹²⁴ Normally, a peasant will have been described as a *geōrgos*, a farmer. But *geōrgos* does not mean simply 'peasant': a subsistence farmer was a *geōrgos*; but so was a rich landowner like Iskhomakhos, the hero of Xenophon's *Oikonomikos*. This is a lexical point, but it has obvious ideological significance: if you are a subsistence farmer, you will tend to see your interests as being the same as those of the gentleman farmer. Consequently the vast majority of the citizen body (and citizens, after all, were the only group entitled to sit on the jury) will have tended to share the same values and aspirations.

This conclusion is reinforced if we consider the effect of slavery on Athenian society. Many scholars have discussed the social implications of ancient slavery, but much of the

¹¹⁷ Dover (n. 46) 37–41.

¹¹⁸ Dover (n. 46) 34.

¹¹⁹ Isager & Hansen, (n. 44) 50–2, believe that more than half the population of Attica made a living as artisans or traders rather than as farmers. This estimate is in my opinion substantially exaggerated, and relies on a belief (which I would reject) that Athens had a developed market economy; but even Isager & Hansen assume that a substantial majority of Athenian citizens were farmers: most of their artisans and traders are metics (resident aliens) or slaves. See further p. 169 and n. 203 below.

¹²⁰ Anthropologists would tend to restrict the term 'peasant' to members of a sub-culture which feels itself to be economically or politically dependant on a larger society. R. G. Osborne, *Demos: the discovery of classical Attika* (Cambridge 1985) 183–9, cf. 142, rightly emphasizes that it is the absence of a sharp distinction between town and

country that makes Athens so exceptional; if 'peasant' is used in a strict sense, there were no peasants in classical Attica. See however P. C. Millett, 'Hesiod and his world', *PCPS* xxx (1984) 84–115 (esp. 90–3), who argues for a broader use of the term.

¹²¹ The Athenian literary élite appear to have retained the peasant outlook; and this may be significant as an instance of shared values: the peasant virtue of self-sufficiency or *autarkeia* forms the philosophical basis of much of Aristotle's social and economic theory.

¹²² I owe this point to Prof. Anthony Snodgrass.

¹²³ Euripides *Orestes* 917–30.

¹²⁴ L. B. Carter, *The quiet Athenian* (Oxford 1986) 76–98, translates 'the peasant farmer' back into Greek consistently as 'the *autourgos*', without recognizing the rarity of the Greek word in our sources.

attention has focused on the Roman world. There has been particular interest in the effect of slavery at the lower end of society. Did non-slave-owning citizens see themselves as natural allies of the slaves or of the slave-owners? Debate has centred on the case of Pedanius Secundus, the Prefect of the City of Rome;¹²⁵ when all his slaves were executed for failing to prevent him being murdered, the *plebs urbana*, or city poor, rioted on behalf of the slaves. Westermann¹²⁶ deduced a 'community of interest' between free poor and slaves; de Ste. Croix¹²⁷ stresses however that this is our only evidence; but Finley,¹²⁸ though hesitating to follow Westermann all the way, nevertheless accepts that 'he was looking in the right place', and he emphasizes that many of the free poor of Rome were themselves ex-slaves or their descendants.

None of these scholars distinguishes here between Roman and Athenian slavery.¹²⁹ But two important factors, one probable and one certain, should make us pause before equating the two. In the first place, it seems probable that Athenian masters were less ready to free their slaves than were their Roman counterparts. This is the type of assertion which cannot be proved, for lack of quantifiable evidence: but Augustus was certainly concerned to reduce the scale of manumission in contemporary Rome, whereas no Greek author speaks of it as an Athenian social problem.¹³⁰ The second point is more clear-cut: freed slaves at Athens became metics (resident aliens), whereas freed slaves at Rome became citizens.¹³¹ This suggests, therefore, that we should expect to find at Athens a far more rigid juridical divide between the poor citizens and slaves than is suggested for Rome by the case of Pedanius Secundus.¹³² Obviously there are exceptions to this rule, but most of these exceptions fall into a few groups, and were numerically few enough to be of little social or ideological significance. Public slaves¹³³ were in a class of their own: Pittalakos had the capacity to sue in his own name. *Khôris oikountes*¹³⁴ formed another special group; this was the term used to describe slaves permitted by their owners to work independently, paying a flat rental (*apophora*) to the master and keeping any further profits of their labour. Slaves in managerial positions seem to have been similarly privileged: it is at least possible that Lampis the ship-owner's agent was still a slave when he was allowed to witness before an arbitrator;¹³⁵ and we

¹²⁵ Tacitus *Annals* xiv 42–5.

¹²⁶ W. L. Westermann, *The slave systems of Greek and Roman antiquity* (Philadelphia 1955) 114.

¹²⁷ de Ste. Croix (n. 43: 1981) 372.

¹²⁸ M. I. Finley, *Ancient slavery and modern ideology* (London 1980) 102–3.

¹²⁹ Jones 19 suggests, on the basis of two acts of enfranchisement, that the same 'sense of fellow-feeling' existed between Athenian slaves and poor citizens; but his evidence is not convincing: it is only the *Ath. Pol.* who tells us tendentiously that Thrasyboulos' intended beneficiaries in 403/2 were 'mostly slaves'. The mass liberation and enfranchisement of the slaves who fought in the battle of Arginoussai in 406 is the exception which breaks all the rules, and serves to indicate the strength of the immediate crisis; even after the battle of Khaironeia in 338, Hypereides proposed freedom and not enfranchisement.

¹³⁰ Suetonius *Augustus* 40.3–4; for details of the laws, see Gaius *Institutes* i 38 and 42. Athenian social critics do not speak of too many slaves being freed, but of slaves being 'too free': see n. 137 and n. 138 below.

¹³¹ Admittedly the citizen rights of a *libertus* (freed slave) at Rome were restricted, but any child born to him after manumission was *ingenuus* (free

born) with the full rights of citizenship.

¹³² Dover (n. 46) 34 does suggest that the existence of slavery allowed every Athenian to feel in some sense part of an élite; but he does not acknowledge the importance of Athens' failure to manumit and enfranchise.

¹³³ Ehrenberg (n. 23) 173–5, Austin & Vidal-Naquet (n. 71) 101–3: the case of Pittalakos is described by Aiskh. i 54–62.

¹³⁴ Austin & Vidal-Naquet (n. 71) 101–3.

¹³⁵ The case of Lampis occurs in Dem. xxxiv. Lampis is permitted to witness before the arbitrator in §18. It is not clear whether he can do this because he is a particularly privileged type of slave (*khôris oikôn*), or because he is involved in a particularly flexible type of legal procedure (*dikê emporikê*), and the latter alternative was proposed by L. Gernet, 'Aspects du droit Athénien de l'esclavage', *AHDO* v (1950) 59–87, cited from Gernet, *Droit et société dans la Grèce antique* (Paris 1955) 162–3. It is indeed possible that Lampis is not really a slave: he is described as an *oiketês*, the normal term for a slave, in §5; but this may simply mean that he is an ex-slave, or that the term is being used loosely to describe a servant: it is difficult to see how a slave could be described as a *nauklêros* (ship-owner) in his own right, as at §6.

know of two slave bank-managers, Pasion and later Phormion,¹³⁶ who not only gained their freedom but became so rich that their state-benefactions won them the citizenship. But these exceptions are important precisely as exceptions.

At times, of course, it suited the Athenian self-image to claim that democracy was notable for the mild way in which it treated slaves. Opponents of the democracy make this a criticism: pseudo-Xenophon¹³⁷ complains that at Athens you cannot hit a slave (*sc.* belonging to somebody else), and explains that this is because poor citizens are so badly dressed that they would risk being struck in error; Plato¹³⁸ sarcastically claims that not only the slaves but even the domestic animals in a democracy enjoy (*sc.* excessive) liberty. But this is the viewpoint of the rich; a poor citizen might have expressed himself differently.¹³⁹ It was admittedly true—indeed notorious—that Athenian law protected slaves as well as free men against *hybris* (gross assault). The orators found this surprising,¹⁴⁰ and Demosthenes uses it to demonstrate the mildness of Athenian law; but his flamboyant argument here rapidly discredits itself.¹⁴¹ It seems more likely that this provision served to protect the owner as much as the slave: to dishonour a slave is to dishonour his master.¹⁴² Certainly the law seems to have afforded the slave little protection in practice: a story told by Apollodoros implies that tying and beating an intruder would only constitute *hybris* if he were free.¹⁴³ Most revealing perhaps is the brutal frankness of Demosthenes himself in another context: a citizen cannot be struck, but a slave is answerable in his body for any offence.¹⁴⁴ This distinction was indeed institutionalized in Athenian court-practice: a slave could not be a witness, and if his evidence was required, it could be received only if it was obtained under torture—thus emphasizing to the juror his privileged position. The juridical divide between slave and citizen suggests that in this respect it is Athens and not Rome which was most like the American South; and in the South it was the non-slave-owners who manned the slave-patrols;¹⁴⁵ to quote from a pro-slavery pamphlet, ‘African slavery . . . makes every white man in some sense a lord’.¹⁴⁶

Any society in which the entire citizen body perceives itself as a privileged class will tend to define its social values in terms of the defence of privilege; and ideology and social attitudes within the citizen body of such a society will tend to be a unifying rather than a divisive factor. That is not to say that social values will necessarily be consistent; and there are clear contradictions within the values esteemed at Athens. Carter has devoted a recent book¹⁴⁷ to a study of Athenian *apragmosunê* or ‘quietism’; and *apragmosunê*, as Carter rightly sees, is the ideological contradiction of the traditional ‘democratic’ virtue of active participation in politics. But Carter then assumes that different social values must necessarily be espoused by different social groups; and he locates three homes for *apragmosunê*: ‘noble youths’, ‘rich quietists’, and above all peasants. But this is surely a false assumption, and it is more likely that the tension

¹³⁶ For the careers of Pasion and Phormion, see J. K. Davies, *Athenian propertied families 600–300 BC* (Oxford 1971) 427–31 (Pasion) and 431–2 (Phormion).

¹³⁷ [Xen.] *Ath. Pol.* I 10–12; we may wonder why he is so disappointed at not being permitted to do this.

¹³⁸ Plato *Republic* 563b4–d1.

¹³⁹ Cf. p. 164 and n. 163 below.

¹⁴⁰ Aiskh. i 17 gives a different rationalization of the purpose of the law from that of Demosthenes (below, n. 141).

¹⁴¹ Dem. xxi 47–50: Demosthenes claims that ‘the barbarians’ will be so impressed at this that they will all queue up to register the Athenians

collectively as their protectors (*proxenoi*).

¹⁴² See the papers by N. R. E. Fisher and by O. Murray in P. A. Cartledge, P. C. Millett and S. C. Todd, eds., *NOMOS: essays in Athenian law, politics and society* (Cambridge, 1990 in press).

¹⁴³ Dem. liii 16.

¹⁴⁴ Dem. xxii 55—a statement made precisely in defence of the rights of free citizens.

¹⁴⁵ E. D. Genovese, *Roll, Jordan, roll: the world the slaves made* (New York 1974) 22.

¹⁴⁶ K. M. Stampp, *The peculiar institution: slavery in the ante-bellum South* (New York 1956) 104, quoting a (successful) appeal by slave-owners to poor whites.

¹⁴⁷ Carter (n. 124).

between political participation and *apragmosunê* will have gone on within each individual. Much of Carter's evidence for *apragmosunê* come from the speeches of litigants, where the purpose is clear: to plead *apragmosunê* is to avoid accusations that you are politically active for what you can get out of it.

There is no need here to follow Harding,¹⁴⁸ who seems ready to deny the very existence of *apragmosunê* as a political virtue; but he is surely correct to argue that it was not vested in any particular social group. Harding is attacking traditional attempts to interpret Athenian politics in terms of the so-called *nautikos okhlos* ('naval mob'): according to this model, foreign policy was dominated by a radical mob of unemployed would-be rowers from the port of Peiraius who packed out the assembly and voted for war, while the industrious peasantry stayed on their farms and suffered. By the standards of other Greek *poleis*, Attica (the sovereign territory of Athens) certainly covered a large area: inhabitants of the most distant demes,¹⁴⁹ such as Oinoê, Rhamnous and Sounion, lived some 20–25 miles from the city, and can only have visited Athens occasionally. But by no means every Athenian citizen lived so far away from power.

It is now generally agreed¹⁵⁰ that the Athenian demes, which Kleisthenes in 508/7 had made the basis of representation in the *boulê* or council, were and continued to be centres of population and not just of administration. If this is correct, then representation on the *boulê* can be used as a rough index of population-distribution, because *bouleutai* (members of the *boulê*) were returned on a regional basis, with each deme having a fixed quota in proportion to its size. Examination of the map of Attica suggests, as Hansen has observed, that roughly one-third of the citizen body lived within 6 miles of the city as the crow flies, and a further third lived within a further 6 miles.¹⁵¹ Some of the conclusions which Hansen draws from this should perhaps be treated with caution,¹⁵² but this central observation is sound. Peiraius is some 5 miles from the city, and nearly one-third of the population had better access to power than the putative 'naval mob'. The massive deme of Akharnai, home of farmers and of charcoal-burners, is only 7 miles from Athens; and it is Akharnai and not Peiraius which Aristophanes in his first extant play selects as the home of his chorus of war-mongers. Above all, there were several periods, for instance 413–404, during which the peasants were driven from their farms and immured in the city by ravaging Spartan armies. If the *nautikos okhlos* theory were correct, therefore, Athens during these periods would have had a 'quietist' foreign policy; but there is no sign of this. It might of course be objected that war-patriotism has prevailed in this instance over class-interest; but that will not salvage the theory: it is precisely Athenian foreign policy during the war that the theory was intended to explain.¹⁵³

¹⁴⁸ Harding (n. 45), *cf.* p. 151 and n. 45 above.

¹⁴⁹ Athenian demes were local communities, but unlike English villages, they had important constitutional roles. For instance, a man's citizen-rights depended on his being a member of a deme: see generally Osborne (n. 120) and D. Whitehead, *The demes of Attica 508/7–c. 250 BC: a political and social study* (Princeton 1986).

¹⁵⁰ Osborne (n. 120) 47–63; Whitehead (n. 149) 352–8, 233–4.

¹⁵¹ Hansen (n. 58) 8–12 (*cf.* his earlier paper, 'Political activity and the organization of Attica in the fourth century BC', *GRBS* xxiv [1983] 235–7). For the locations of Athenian demes, see J. S. Traill *The political organization of Attica: a study of the demes, trittyes and phylai, and their representation in the Athenian council* (*Hesperia* Suppl. 14, Princeton

1975) 14–23 and tables I–X (quota), 37–54 and map 1 (locations), and 133–4 (addenda).

¹⁵² Hansen (n. 58) 10–11 appears to confuse two senses of the term *thêtes*, as census-class and as occupation: those who are too poor to serve as hoplites (*cf.* n. 21 above) are not necessarily all hired labourers; and even though he himself notes that many city-dwellers were themselves farmers walking out to their fields (Hansen [n. 58] 11), the way that his argument is developed (Hansen [n. 58] 8–11) tends to identify city-dwellers with artisans and labourers.

¹⁵³ Most recently by Carter (n. 124) 97, 194: he believes that the peace-proposals of 429 and of 411 (both unsuccessful, although Carter does not say this) were made because the peasants held a temporary majority in the assembly.

SOCIAL VALUES, THE ORATORS AND THE ATHENIAN CLASS STRUCTURE

Apragmosunê therefore should be seen not as the distinctive ideal of a particular social class, but as one of a number of ideals held simultaneously by Athenians in general. And examination of the speeches confirms this impression that social values at Athens were a matter of consensus rather than of conflict. The speeches repeatedly display what to us would be 'middle-class values'; but none of these are values that would exclude the peasant. A brief selection will be sufficient to illustrate the most significant attitudes. Education is consistently a good thing: Aiskhines accuses Demosthenes of speaking about Homer as if the jury were uneducated; Demosthenes responds by contrasting his own (expensive) education with Aiskhines' early career as a Dickensian Smike.¹⁵⁴ It needs to be emphasized that this attitude to education is not confined to the later orators, as Jones' theory requires: already in the fifth century, a speaker claims that his father was expensively educated whereas an opponent was not.¹⁵⁵ Indeed, there is no evidence for any significant change in social values between the early and the later orators.¹⁵⁶ Lack of *paideia* (education) is shameful: Aiskhines expects the jury to approve his vituperative description of a foreign envoy as 'shameful and uneducated'.¹⁵⁷ Words such as *kosmios* and *sôphrôn*, which denote respectability, are always used in a favourable sense: Lysias attacks various opponents for their failure in this regard.¹⁵⁸ The respectability of one's female relatives is particularly important: Lysias and Demosthenes each relate at length how the opponent's behaviour has shamed or shocked their client's womenfolk, and they clearly expect this plea to arouse the anger of the jury.¹⁵⁹ Also favourable is family pedigree: Andokides' final plea to the jury is that to convict him would be to wipe out one of the oldest families in Athens;¹⁶⁰ and to marry into a good family can be better (or at least more creditable) than to marry money.¹⁶¹

It is important to remember that even a humbly-born citizen is still *autokhthôn* ('born of the soil of Attica'), unlike metics or slaves. So the frequent attacks on opponents for servile or alien birth¹⁶² will not have irritated the poor men among the jury; in fact quite the reverse. The majority of our literary sources reflect the viewpoint of the large landowner, from whose perspective the peasant is the next thing up from a slave;¹⁶³ but from the peasant's point of view, he is the next thing down from a large landowner.

On the other hand, money is a good thing, and there is no shame involved in having it—at least in moderation.¹⁶⁴ The self-made man is occasionally a figure of suspicion,¹⁶⁵ but nobody is ashamed of inherited wealth: the typical client of Isaios is a rich man who is trying to become still richer by inheritance, at times from very distant relatives indeed; and Demosthenes devotes five speeches to his own attempt to recover his patrimony.¹⁶⁶ The poorer liturgy-payer, who must presumably be reasonably well-off but can be depicted as burdened by heavy taxes, is a figure to whom Demosthenes

¹⁵⁴ Aiskh. ii 141, 166–7; Dem. xviii 127 and esp. 257–62.

¹⁵⁵ Lys. xx 11.

¹⁵⁶ There are changes in political values—for instance the charge of oligarchy has a far greater use and a far more specific meaning in 403–c.380 (being connected not with present disposition but with a single past action, behaviour during the oligarchy of 404/3)—but that is a different matter.

¹⁵⁷ Aiskh. iii 117, 130.

¹⁵⁸ Lys. xiv 41–45; xxvi 3.

¹⁵⁹ Lys. iii 6; Dem. xl 57: attitudes to women are discussed further on p. 165 below.

¹⁶⁰ Andok. i 146–150.

¹⁶¹ Lys. xix 14–15.

¹⁶² e.g. Lys. xiii 8, etc.; xxx 2, etc.; Aiskh. ii 79.

¹⁶³ The most notable, if admittedly tendentious, examples are Plato *Republic* 563b4–7 and [Xen.] *Ath. Pol.* 1.10–12, cited above (n. 137 and n. 138).

¹⁶⁴ See the remarks about Lokhites and Meidias on p. 165 below.

¹⁶⁵ Lysias xxvii 9–11 and xxx 27 attacks (politically active) opponents for their sudden rise from poverty to wealth. The implication here is that they have become rich through embezzlement or receipt of bribes; but Dem. lvii 30–1 and esp. 52 suggests that the speaker is acutely embarrassed about the fact that he is rich whereas his parents had been poor.

¹⁶⁶ Isaios, esp. speech xi; Dem. xxvii–xxxi.

expects the jury to be sympathetic rather than hostile;¹⁶⁷ and it is even claimed that an estate worth 45 *mnai*, or three-quarters of a talent, is 'not easy to live off'.¹⁶⁸ This may be economically realistic: the property is the patrimony of two brothers, and Demosthenes is (perhaps deliberately) ambiguous as to whether this means 45 *mnai* each, or 45 *mnai* shared; if the latter, an estate worth 23 *mnai* is only just sufficient to qualify its owner for service as a hoplite or heavy-infantryman.¹⁶⁹ It is nonetheless significant that the *rentier* mentality can be so safely paraded before a jury. Similarly, owning slaves (and living off the proceeds of their labour) is everyone's ambition: the crippled pensioner of Lysias xxiv is probably richer than he admits; but it is not apparently inconsistent with his *persona* of abject poverty to say, 'I am so poor that I cannot even afford a slave to take over the work for me'.¹⁷⁰ Crucially, however, there is no hostility to poor men as such. There is hostility to certain types of poor men (for instance Dover's schoolmasters, clerks and decorators), but that is another matter.

At first sight, this may not seem a particularly extensive catalogue of values; but many of the attitudes are illustrated repeatedly, and the list I have given is enough to support three important conclusions. First, the attitudes displayed are those which we would describe as 'middle-class values', and it is these that make Markle's case untenable: it is not enough to describe them as 'light relief'. But secondly, there is no sign of any change in values, and thirdly, there is no hostility to the poor; and both of these facts cast doubt on Jones' argument. The problem recedes, however, if we regard peasant and rich farmer as members of the same class: 'middle-class values' are a matter of consensus throughout citizen society.

To illustrate how this model might be developed, let us examine a famous remark about the rôle of women in Athenian society: 'we keep *hetairai* [courtesans] for pleasure, *pallakai* [mistresses] for our daily physical needs, and wives to bear us citizen children and to be the guardians of what is inside [*sc.* our households].'¹⁷¹ Now of course a peasant could not afford a *hetaira* or *pallakê*; he would have to be content with *pornai* (cheap tarts). Jones' response would be, 'a prosperous jury'; Markle would have to reply, 'light relief'. But whether you can afford a thing does not necessarily determine your attitude to it. Griffith-Jones' mistake was not that his jury did not have servants, but that they did not share his paternalistic view of the proper relationship between employer and servant. Similarly, this remark need not have alienated the Athenian peasant, provided he aspired to the same view of the rôle of women in society: 'if only I had the money, that would be what I would do'.

This leaves open the question of whether any class-divisions between citizens can be identified; and here we are on more dangerous ground. I would tentatively identify two such divisions; but I would emphasize that these divisions seem to have been subordinate to the general consensus of society. One is a gulf between 'everybody else' and 'the very rich indeed' or 'the aristocracy'. Normally this division is latent, but it is exploited several times in cases of *hybris*.¹⁷² As Jones noticed, this is what is happening in Demosthenes' attack on Meidias, where the distinction is stressed between the 'filthy rich' and 'the rest of us';¹⁷³ it is also the position adopted by Isokrates against Lokhites. But there is another, more interesting case where it seems that the same potential class-divide is being opened up. This is Aiskhines' prosecution of Timarkhos. The charge was

¹⁶⁷ Dem. xxii 65; for liturgy-payers, see n. 21 above

¹⁶⁸ Dem. xlii 22: *zên* here presumably means 'to live off (*sc.* without having to labour with one's own hands)'.
¹⁶⁹ For hoplite-service, see n. 21 above.

¹⁷⁰ Lys xxiv 6. For the speaker's financial status,

see M. Bizos *Lysias, quatre discours* (Paris 1967) 130.

¹⁷¹ Dem. lix 122.

¹⁷² On *hybris*, compare p. 162 and n. 142 above

¹⁷³ Dem. xxi, as interpreted by Jones 36, followed by Dover (n. 46) 34 and n. 1; compare also Isok. xx, esp. §§11, 15, 19.

of homosexual prostitution; and as Dover rightly remarks, it is prostitution rather than homosexuality that was legally the offence.¹⁷⁴ Dover therefore suggests that it was not homosexuality but its commercialization that was socially unacceptable. But Aiskhines' tactics seem to be more elaborate than this: as Dover points out, he deliberately confuses propensity with prostitution.¹⁷⁵ He does not attack homosexuality directly: it would be difficult for any member of the political élite wholly to repudiate a traditionally aristocratic practice;¹⁷⁶ and he is careful to admit that he has himself at least dabbled in it,¹⁷⁷ partly because his opponents are threatening to read out his (*sc.* homoerotic) love-poems in open court, but perhaps also to make clear that he is not a fanatic. But the thrust of his case is that homosexuality as allegedly committed by Timarkhos is itself prostitution; and the tone of his argument is revealing. With a titillated sense of outrage, he adopts the characteristic middle-class pose of 'Disgusted, Tunbridge Wells' against the characteristically aristocratic pattern of social behaviour in which homosexuality played such a part.¹⁷⁸ It may also be in an attempt to arouse class prejudice that Aiskhines charges Timarkhos with squandering his inheritance. It is not fully clear what Timarkhos was doing; but it seems likely that he had been converting his estates into liquid capital to facilitate tax-evasion. Tax-evasion is the characteristic behaviour of a very few extremely wealthy Athenians (such as the elder Demosthenes): behaviour to which poor and medium-rich farmers are not going to be sympathetic, and which Timarkhos therefore could not afford to admit.¹⁷⁹

The second possible class-division is to be found between those who obtain their living directly from the land and everybody else: on the one hand farmers, and on the other hand artisans, shopkeepers and traders. This is a contrast commonly drawn by Greek philosophers, and it may have been an attitude shared by society as a whole. Xenophon is very clear that farming and warfare are proper occupations for a gentleman, and that these are completely different from the *banausikai tekhnai* or 'vulgar trades' which spoil both body and soul.¹⁸⁰ The passage is analysed by Vernant,¹⁸¹ who observes that for Xenophon 'trades' depend on training and expertise, whereas success in both farming and warfare is a gift of the gods; in Xenophon's eyes farming is not really a 'trade'. This ties in closely with a common argument in the political theory of both Plato and Aristotle:¹⁸² politics is a *tekhnê* (craft or trade), but no man should have two trades, because he will not be able to do them properly, so 'tradesmen' should play no part in politics; this should be confined to gentlemen, whose expertise is in household management (*oikonomia*: not, of course, a 'trade'), and who therefore will be well qualified to run the household of the state. But is farming a 'trade' within the meaning of this argument, or is it a part of 'household management'? Plato is not fully certain: in the *Republic*, he does at times say that his guardian class (who are to govern the state) are not to be farmers, but he is far more interested in emphasizing that they are not to be artisans;¹⁸³ in the *Laws*, where there is no longer a class of guardians, his citizens are to

¹⁷⁴ K. J. Dover, *Greek homosexuality* (London 1978) 22.

¹⁷⁵ Dover (n. 174) 23–24.

¹⁷⁶ For homosexuality as an aristocratic practice see Ehrenberg (n. 23) 100–2.

¹⁷⁷ Aiskh. i 136.

¹⁷⁸ For the significance of homosexuality as it developed in the archaic period within the nexus of gymnasium, symposium, hunting and courtship that together made up aristocratic culture, see O. Murray, *Early Greece* (London 1980) 203–4.

¹⁷⁹ Aiskh. i 97–100: according to Aiskhines, the process had already been started by Timarkhos' father Arizelos (i 101). The tax here is the liturgy,

to which only the richest were liable: n. 21 above.

¹⁸⁰ Xen. *Oikonomikos* 4, *passim*.

¹⁸¹ J.-P. Vernant, *Myth and thought among the Greeks* (French original, 1965; cited from English translation, London 1983) 252–3.

¹⁸² Plato *Republic* 370b4–c6, *Laws* 846d1–847b6; Aristotle *Politics* 1252b1–5.

¹⁸³ Plato *Republic* 420e1–421a9 (implicit), 468a5–7: guardians are not to be farmers or artisans; *Republic* 406e4–407a6 (with 406e1), 434a2–b8, 434c7–10, 440e10–441a2, 456d8–10, *cf.* also 495c8–e2: guardians are distinguished only from artisans.

be farmers rather than tradesman.¹⁸⁴ For Aristotle, moreover, farming is a natural occupation, and therefore good; trade is unnatural and improper.¹⁸⁵ Certainly to ban farmers from politics completely would be difficult for a Greek to conceive, because it would rule out not simply the peasantry but the vast bulk of the land-owning aristocracy. It is of course difficult to say how far the statements of the philosophers accord with popular social theories; if anything, it is likely that the views of an amateur like Xenophon may be a more reliable index than those of Plato. This hypothesis is supported by an anecdote told twice by Plutarch about the Spartan Agesilaos, which seems to indicate that for Plutarch, at least, farming was not a trade.¹⁸⁶ This may therefore be an instance where the ambiguity of the term 'farmer' tells in favour of the peasant: if the land-owning aristocracy believe that the proper way to exercise power is not through the *tekhnê* of an artisan but through the *oikonomia* of a gentleman-farmer, then the subsistence farmer also should share this rôle. Presumably this is the explanation for Demosthenes' offensive remarks about schoolmasters, clerks and decorators: subsistence farmers do not see themselves primarily as poor men, but as farmers.

There are admittedly two passages which speak of the assembly as if it consisted largely of artisans; but in each case the speaker has an axe to grind. Plato takes it as the height of depravity that the assembly is prepared to listen to artisans and traders; and Xenophon's Sokrates attempts to encourage a nervous young aristocratic would-be politician with the argument, 'are you afraid of them?'¹⁸⁷ More significant I think is the description of the assembly in the *Ekklesiázousai*, where a crowd of people assumed on account of their pale faces to be shoe-makers is treated as unusual (they are in fact women in disguise); these pale-faced shoe-makers are opposed in debate by the men from the country, and the speaker is surprised that the latter were in a minority.¹⁸⁸

THE IMPLICATIONS OF JURY-PAY

This brings us back to the problem of pay. A full treatment of jury-pay would need to cover a large number of aspects: the rate of pay; the age of the jurors; their occupation; the extent to which work done by slaves or women created additional leisure for the would-be juror; the distance which the potential juror had to travel; the status of jurors; and the ideology of jury-service. This is not the place for a full discussion of each of these topics: some have been discussed at varying stages during this paper;¹⁸⁹ others will be ignored, because they neither confirm nor refute the model which I am

¹⁸⁴ Plato *Laws* 842e6–850d2, cf. esp. 846d2–3.

¹⁸⁵ Aristotle *Politics* 1256a40–b2, cf. 1256b40–1257a5.

¹⁸⁶ Plutarch *Agesilaos* 26.5 repeated in *Moralia* 213f–214b: to prove that only the Spartans were 'proper' soldiers, Agesilaos separated Spartans from allies and ordered all the 'potters, smiths, builders, and those who followed any other *tekhnê*' to stand; virtually all the allies stood, but none of the Spartans. If this story has any basis in reality, Agesilaos' list must surely have included 'farmers': the allied contingents would have included many peasants, whereas Spartans did not farm their land in person. But as a statement of Plutarch's views, the list is significant: farmers are not tradesmen.

¹⁸⁷ Plato *Protagoras* 319c8–d6; Xenophon *Memorabilia* iii 7.6: I owe this point to Dr. Paul Millett. Xenophon does, incidentally, include

farmers (presumably peasants) as one of his despised groups; cf. Plato's uncertainty over the status of peasants, above n. 183.

¹⁸⁸ Aristophanes *Ekklesiázousai* 385–7, and 431–4 respectively. Shoe-makers were notoriously pale (scholiast on Aristophanes *Peace* 1310: I owe this reference to Dr Mogens Hansen); but Xenophon *Oikonomikos* 4.2–3 regards pallor as the occupational hazard not merely of shoe-makers but of all artisans.

¹⁸⁹ The argument here concerns the rate of pay (for which see also pp. 150–3 above) and the occupation of the jurors; for a discussion of status and ideology see pp. 149–53 (on Jones), pp. 153–8 (on Markle), and pp. 158–63 above; for the question of distance see p. 163 above. On the work done by slaves and women, see p. 168 below.

trying to construct.¹⁹⁰ Here I wish simply to emphasize one point, because it has previously been neglected; and this neglect has seriously weakened the argument both of Jones and particularly of Markle.¹⁹¹

The point here is an obvious one, which has frequently been made about the modern jury. Cornish notes the unfairness of the system today:¹⁹² if you are paid a daily or a weekly wage, your employer will normally dock it when you are absent on jury-service; if you are paid a monthly or quarterly salary, he will not. Consequently the importance of the three obols is not simply its purchasing-power, but how it compares with what you would have got instead. Jury-pay is likely therefore to have been much more attractive to the peasant than to the wage-labourer or artisan or shop-keeper, for two reasons. First, if a shopkeeper or artisan takes a day off, he stands in theory to lose 1/365 of his potential annual income; if a peasant does so, he will (except at the busiest times of year) lose little if anything of his crop-yield. Secondly, even if a peasant's yield is reduced, he does not see that loss on a daily basis; so the 3 obols is perceived as a bonus.

Obviously the contrast is crude. It assumes that the typical shopkeeper is an artisan producing and selling his own wares—an assumption which is likely to have been broadly correct.¹⁹³ More dangerous, it assumes that the typical artisan-cum-shopkeeper could sell enough of his wares to justify full production; but to the extent that demand was inadequate for this, he could afford to leave his wife or slave in charge of the shop and take the day off for jury-service: the work performed by slaves and women must be borne in mind. It ignores the existence of other forms of seasonal work apart from farming: during the winter, for instance, when maritime traders will have been laid up, they too may have found jury-service attractive. Furthermore, it ignores the extent to which farmers may have diversified into additional wage-labour: a peasant who can get a part-time job, such as carting wood for instance, is less likely to be attracted onto the jury.

Nevertheless, the general contrast remains valid. It takes account of the different nature of the peasant economy from that of the artisan: to those living outside the cash-economy, three obols is likely to have been more attractive than it was to those who conceive their normal earnings in cash terms.¹⁹⁴ It takes account also of the different nature of production in agriculture and manufacturing: if as an artisan you put in double the effort, you stand to produce double the goods; but it is characteristic of subsistence agriculture that there is a low marginal return for additional work,¹⁹⁵ and consequently what anthropologists have called a 'leisure-preference'.¹⁹⁶ We should not be misled by

¹⁹⁰ I have not discussed in this paper the question of elderly jurors. The impression given here by Aristophanes *Wasps* (above, p. 149) may well be correct: if 3 obols was attractive to peasants because they had a low marginal return for additional work, it would have been particularly attractive to those who were past their physical prime. On the other hand, the minimum age for jury-service was thirty, whereas any adult citizen could attend the assembly. This will have had a significant effect on the age of the jury: using the model life table recommended by M. H. Hansen *Demography and democracy: the number of Athenian citizens in the fourth century B.C.* (Herning 1985) 11–13, it would mean that 37.2% of potential assembly-members were too young for jury-service. This may be part of the reason for Aristophanes' caricature of the elderly juror.

¹⁹¹ Markle's statistical argument (see p. 157 above) depends on the assumption that jury-pay is

essentially a subsistence-payment.

¹⁹² Cornish (n. 13) 58–9.

¹⁹³ Ehrenberg (n. 23) 120–1 notes that the 'demagogues', whom modern scholars usually describe as 'manufacturers', are portrayed in comedy as 'sellers'.

¹⁹⁴ I owe this point to Prof. Keith Hopkins.

¹⁹⁵ I am not wholly convinced by the arguments of M. H. Jameson, 'Agriculture and slavery in classical Athens', *CJ* lxxiii (1977) 122–45, that Athenian agriculture was labour-intensive; given the low marginal return, some farmers may have preferred to combine a slightly lower yield with more days spent earning jury-pay: see further p. 169 and n. 202 below.

¹⁹⁶ e.g. C. Clark & M. Haswell, *The economics of subsistence agriculture*⁴ (London 1970) 112 and D. Grigg, *The dynamics of agricultural change: the historical experience* (London 1982) 98–9.

the wishful thinking of Aristotle, who suggests that peasants ought to be too busy working on their farms to interfere in politics.¹⁹⁷ Clark & Haswell show that in the eighteenth century the typical French peasant worked rather less than 200 days per year on his farm, and that during the same period the average working week in rural England was four days.¹⁹⁸ Subsistence farming is highly labour-intensive at certain periods of the year; but even the workaholic Hesiod has to admit that in mid-winter nobody but himself expects to work, and that in high summer even he is prepared to relax.¹⁹⁹

The argument here, it should be emphasized, is not that no artisan or trader was ever to be found sitting on a jury: merely that jury-pay would have tended to be more attractive to the farmers; and that this confirms the impression given by our analysis of the social values which the orators appeal to. 'Farmers' in this context includes subsistence farmers. Presumably these would be the peasants and farmers living either in the city itself or within Hansen's radius of six or even twelve miles.²⁰⁰ Pay was set at a level too low to be really attractive to the artisan or shopkeeper; and this may indeed have been deliberate. It was not a subsistence-payment, but a bonus, and so it continued to attract farmers even though it stayed static at 3 obols; it could afford to stay static, because it was still attracting them in sufficient numbers.²⁰¹

One additional inference may perhaps be drawn. A peasant who is receiving regular injections of cash into his household budget can presumably afford to live on land that would otherwise be too small to sustain his family, while continuing to regard himself as a subsistence farmer. This may have demographic implications. Other things being equal, you might risk rearing an additional son, and therefore splitting your holding into smaller units. More significantly, we may need to revise our calculations of how many peasants the soil of Attica could support;²⁰² and I cannot agree with Hansen that the scale of Athenian grain imports disproves the existence of a subsistence economy.²⁰³

CONCLUSIONS

The conclusions of this paper are as follows. In the field of social history, the values and aspirations of Athenian citizens were a matter of consensus rather than of division. There may have been two separate classes, both small, set against the mass of the peasants and farmers: the very rich and the aristocracy, and the artisans and shopkeepers. In general, however, it would be impossible to write a study of Athenian working-class culture, partly because we lack the sources, but chiefly because there was no such separate culture.

In the field of political history, the bulk of the jury (and probably also of the assembly) was composed not of rich nor of poor, but of farmers (including peasants). Since these formed one class, we have no way of telling what proportion of these were very poor, fairly poor, fairly well off, or rich. These were the people who exercised passive political rights: that is not to say that they were the political leaders—a far more restricted circle; but they were the people who voted.

¹⁹⁷ Aristotle *Politics* 1292b25–29: see p. 155 and n. 85 above.

¹⁹⁸ Clark & Haswell (n. 196) 142.

¹⁹⁹ For a summary of Hesiod's farming calendar, see M. L. West, *Hesiod, Works and days* (Oxford 1978) 253.

²⁰⁰ See p. 163 n. 151 above.

²⁰¹ We therefore avoid the problem implicit in Markle's theory: see p. 157 and n. 101 above.

²⁰² Contrast the calculations of for instance Jameson (n. 195) 131.

²⁰³ Hansen (n. 58) 12 n. 88 draws on the calculations of P. D. A. Garnsey, 'Grain for Athens', in Cartledge & Harvey (n. 1) 62–75, that Athens in a good year had to import half the grain consumed by the population of Attica; he infers that 'at least half the citizens (*sic*)... had to buy their daily bread in the market'. But this is to assume that everybody buys either all or nothing, and that anybody who buys any has moved entirely from subsistence to cash economy. Compare the comments on *autarkeia* as an ideal, p. 160 above.

More difficult to tie down is the relationship between social and political history. Athens certainly was constitutionally less democratic²⁰⁴ in the mid fourth century. Jones explained this shift in terms of a change in the social balance of the electorate (i.e. the jury); but as we have seen, the evidence is against such a change. There does however seem to have been a change in the social composition of the élite; and I hope to argue elsewhere that this is the real explanation for the change in the political temperature of Athens. But that is too large a question to raise at this stage in an article.²⁰⁵

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APPENDIX: THE COMPOSITION OF THE ASSEMBLY

The subject of this paper has been the jury; but the assembly deserves separate notice, even if only in an appendix.²⁰⁶ A few scholars, such as Pickard-Cambridge and more recently Hansen and Sinclair, have drawn attention to the separate problems concerning the social composition of the assembly;²⁰⁷ many, however, have simply applied the same arguments as to the jury.²⁰⁸

The most difficult question here concerns the level of pay, and in particular the changing relationship between jury-pay and assembly-pay. Jury-pay, it will be remembered, was introduced in c. 450 at two obols, and raised to three obols in 425; it remained at three obols throughout the next century. Assembly-pay did not exist in the fifth century; it was introduced in the 390s at one obol, and raised to two and then to three obols by the end of the decade; we do not know anything about its level between 390 and c. 330, when we hear that its value was at six obols (and nine obols for a 'special' assembly).²⁰⁹ The pattern is indeed difficult to explain, and it is complicated by lack of evidence. We possess roughly one hundred court-speeches, but only twenty delivered to the assembly; these twenty speeches (all relatively short) supply insufficient material for an analysis of their implicit social values; for the assembly, therefore, arguments based on pay can receive no support from this quarter.²¹⁰ But even pay raises further problems, both of evidence and of motive. When did the change from three to six and nine obols occur? Was it a single increase, or did it take place in stages?²¹¹ Was the level of pay increased for economic or for political reasons?²¹²

²⁰⁴ Note the increasing powers (*apophysis* is only the most striking) given during the fourth century to the Areiopagos, and the movement from the middle of the century to reorganize Athenian finance towards efficiency and away from the use of the lot in appointments: for details, see P. J. Rhodes, 'Athenian democracy after 403 BC', *CJ* lxxv (1980) 319–20 and 309–15 respectively.

²⁰⁵ I hope in a forthcoming paper to argue that by the mid fourth century, what was left of the old aristocracy had combined with those who in the fifth century would have been 'demagogues' to work the system together. No one was left to supply the 'radical democrat' leadership.

²⁰⁶ As promised on p. 149 and n. 22 above.

²⁰⁷ Pickard-Cambridge (n. 23) 89–90 (see n. 26 above) disliked the popular juries, and therefore contrasted them unfavourably with the assembly. Hansen, (n. 83) 137, (n. 58) 32–4 and 47, suggests that six obols of assembly-pay provided full compensation for broken time, because the assembly sat for only part of the day (the nine obols for 'special' assemblies is therefore explained by the somewhat greater length of these meetings); there is an impli-

cit but undeveloped contrast here with Hansen's earlier views on jury-pay, which apparently provided only partial compensation (Isager & Hansen [n. 44] 122: see n. 44 above). Sinclair, (n. 50) 114–135, rightly emphasizes the difference between the assembly and the courts; but his discussion (Sinclair [n. 50] 127–135) of the relative attractiveness of the two bodies to a potential voter relies heavily on his belief that consistently different attitudes towards tax-payers are displayed in assembly- and in court-speeches (argued in Sinclair [n. 50] 119–27; cf. n. 107 above); and I am not convinced that there is enough evidence here to permit certain conclusions (cf. p. 170 and n. 210 below).

²⁰⁸ Ehrenberg (n. 23) 161 (see n. 24 above); Jones 109 (see n. 31 above); Markle 274, 285 (see pp. 155–6 above).

²⁰⁹ See p. 156 and n. 87 above.

²¹⁰ Despite the impressive attempts to make the most of this material by Sinclair (n. 50) 119–27: cf. n. 107 above.

²¹¹ See n. 90 above.

²¹² See p. 154 and n. 76, and p. 158 above.

Several patterns could be proposed to explain the relationship. Jones suggested that the assembly was a boring place, making routine decisions which the courts could be expected to overthrow; consequently the level of pay had to be higher, in order to attract a reasonable quorum.²¹³ Markle similarly looks for an explanation in the boring nature of assembly-meetings; his assumption that the economically necessary level of pay was three obols requires him to find non-economic reasons for the rise to six and nine obols.²¹⁴ It is probably true that the loss of an independent foreign policy after the defeat by Macedon in 338 had a more detrimental effect on the assembly than on the courts: the adversarial setting of a court, and its power instantly to determine the fate of even the greatest of political leaders, will have tended to sustain a sense of drama. But Hansen has shown that a typical meeting of the assembly was far shorter than the average court-sitting;²¹⁵ and it is hard to imagine that the assembly was boring enough to justify double the pay for half the work.

Other possible explanations would involve the comparative size of the two bodies or the comparative frequency of their meetings. Court-sittings were far more frequent than assembly-meetings,²¹⁶ and we might be tempted to suggest that the Athenians felt they could afford to pay more for a less frequent event; but this argument is not persuasive, because the assembly required a much greater attendance than would be needed to man a single court. At the start of each year, a jury-panel of 6,000 was sworn in; individual juries would be manned by a selection of those members of the panel who volunteered on the day of the trial. We do hear of one jury manned by the full panel of 6,000; but the normal size for a jury appears to have been 500 (occasionally more) for a public case, and either 200 or 400 for a private one.²¹⁷ For an assembly, on the other hand, an attendance of 6,000 seems to have been required.²¹⁸ Since we cannot tell how many juries will have been required on any particular day, a precise annual cost for the juries cannot be calculated; but it can be seen that even at three obols, a meeting of the assembly was already expensive.

It might, on the other hand, be suggested that assembly-pay had to be raised precisely because of the quorum: you did not need to get all 6,000 jurors to man a court, but an assembly meeting attended by only 5,000 could not perform certain essential activities. But this argument too is open to challenge. It is easier to get people to attend a meeting that is less frequent (such as the assembly); and the pool of potential jurors is already much more restricted than is that for the assembly: only members of the year's sworn panel of 6,000 could serve on a jury, and membership of this panel was restricted to those over the age of 30; the assembly was open to any adult male citizen.

Hansen himself has not proposed any formal alternative model,²¹⁹ but a possible hypothesis may be pieced together from several passages in one of his earliest books.²²⁰ Hansen suggests that in the fifth century the assembly was probably the supreme organ

²¹³ Jones, 37.

²¹⁴ Markle, 285; see n. 90 above.

²¹⁵ Hansen (n. 83) 137, (n. 58) 32–4; see n. 207 above.

²¹⁶ Hansen (n. 83) 35–72, (n. 58) 20–24, argues that after c. 355, assembly-meetings were legally restricted to forty per year; this view is disputed, but nobody would deny that the figure of forty is approximately correct. The courts however appear to have sat on 150–200 days per year: Hansen, 'How often did the Athenian *dikastêria* meet?', *GRBS* xx (1979) 243–6.

²¹⁷ Rhodes (n. 47) 728–29 gives full references.

²¹⁸ Cf. n. 100 above and n. 223 below.

²¹⁹ Hansen's most recent and broadest work on

the subject has concentrated on the cost of assembly-pay to the state (Hansen [n. 58] 48), which he does explicitly contrast with the cost of the juries (Hansen [n. 58] 119); and on the value of assembly-pay to the individual (Hansen [n. 58] 47), where he does not raise the question.

²²⁰ M. H. Hansen, *The sovereignty of the people's court in Athens in the fourth century BC and the public action against unconstitutional proposals* (Odense 1974) 12 and 59–61: it is not certain, however, that Hansen would still hold the views expressed here in quite this form; certainly in his latest work (Hansen [n. 58] 94–107) he specifically repudiates use of the term 'sovereignty', preferring to speak in terms of the Greek adjective *kyrios* ('authoritative').

of government, but that in the fourth century it lost this ultimate sovereignty to the courts; this was a move away from radical democracy, because the assembly was perceived as a radical institution, whereas the courts were a moderate and 'Solonic' safeguard; so to safeguard them from radical domination by the poor, assembly-pay was made financially more attractive than jury-service. This hypothesis however raises several problems. I am not attracted by the argument that the courts were perceived as 'moderate' institutions; even if this is correct, it seems an odd process to introduce assembly-pay (thereby in Greek eyes raising the prestige of the assembly) as a way of defending the court.

Perhaps the wisest conclusion is that of Dover, who describes the relationship between jury-pay and assembly-pay as 'obscure'.²²¹

Nevertheless, some progress may be possible. Let us take as a starting-point the size of the Pnyx, the auditorium where the assembly met. The Pnyx was re-designed on several occasions, but its size throughout the late fifth and much of the fourth century remained approximately constant.²²² Hansen has argued that this corresponds to a capacity of approximately 6,000; he points out that 6,000 was the quorum for certain types of routine business, and he argues that this was also the number who could regularly be expected to attend.²²³ I suspect that his conclusion here is probably correct; his interpretation of the literary and epigraphic evidence is persuasive, although arguments based on crowd-density are always difficult to interpret.²²⁴

At some date, however, the capacity of the Pnyx was substantially increased; Hansen calculates that it could comfortably hold 13,800.²²⁵ The date of this rebuilding is unfortunately not certain. The archaeologists have suggested a variety of dates, and it may well be that some of the work is Roman; but it is generally conceded that the project was at least begun in the third quarter of the fourth century BC: it may not have been completed then, but the increase in size is of fourth-century date.²²⁶ If this is correct, then the project may plausibly be connected with the financial administration of Euboulos or more probably of Lykourgos, who were said to have increased the revenues of Athens from 130 to 400 talents (Euboulos, between c. 355 and the mid 340s) and then from 400 to 1,200 talents (Lykourgos: from the mid 330s to the mid 320s).²²⁷ Lykourgos in particular is known to have used the newly-increased revenues to fund a massive programme of public building.²²⁸

If, however, Hansen is correct to argue that the reason why the Pnyx before 340 could accommodate 6,000 is that this was the number who could be expected to attend, then this suggests a significant corollary: if you double the size of the Pnyx, then you

²²¹ Dover (n. 46) 34–5.

²²² Pnyx I (until c. 400 BC), c. 2,400 square metres; Pnyx II (from c. 400 to [at least] c. 345), c. 2,600 square metres. The big expansion comes with Pnyx III, c. 5,500 square metres: the date of this final rebuilding is discussed immediately below. For the dimensions, see Hansen (n. 83) 16.

²²³ Hansen (n. 83) 1–23, (n. 58) 14–19: see n. 100 above.

²²⁴ The point is well made by Sinclair (n. 50) 118. It should be noted that the House of Commons can seat only some two-thirds of its 650 members; and it is easier to tell when a space looks empty than whether it is 'full' or 'over-full'.

²²⁵ Hansen (n. 83) 16–18, (n. 58) 14–19.

²²⁶ The changing views of the archaeologists are clearly summarized by Hansen (n. 83) 23, cf. Hansen (n. 58) 12 n. 96. Hansen himself now dates the

rebuilding at 'c. 340': Hansen (n. 58) 14 n. 104.

²²⁷ For the dates of Euboulos, see G. L. Cawkwell, 'Eubulus', *JHS* lxxxiii (1963) 47–9. Lykourgos is said to have been in charge of Athenian revenues for 'three periods of four years' ([Plutarch] *Moralia* 841b–c): if this means the four-year periods between successive Panathenaic festivals, it can only refer to 338–26; but it may not, and Rhodes (n. 204) 313 prefers the more cautious figure I have given. The revenue-figures derive from Dem. x 37–8 and Theopompos *fr.* 166 (Euboulos), and a combination of [Plutarch] *Moralia* 841b–c and 842f (Lykourgos).

²²⁸ For Lykourgos' building-programme, see [Plutarch] *Moralia* 841c–d, who lists a series of projects but does not mention the Pnyx. Given the nature of this text, however, such a silence is by no means indicative: cf. n. 232 below.

must be expecting to fill it with double the number of citizens.²²⁹ But as we have seen, the level of pay seems to have been determined not by conscious index-linking, but as a response to the perception of need: it was increased if the numbers coming were thought to be too low.²³⁰ Consequently the rebuilding of the Pnyx may supply a suitable context for a one-off increase in assembly-pay, perhaps even the whole increase from three to six and nine obols.

The chronological sequence within this process is unclear. Perhaps the Pnyx was rebuilt in grander fashion, but was then perceived to be empty, and pay was increased to rectify this. Perhaps pay was increased until the assembly was bursting at the seams, and this led to calls to rebuild the Pnyx. It does not matter, because the two halves of the process according to this hypothesis are logically inter-connected. Clearly, however, the process has a twofold significance. On the one hand, it reveals the Athenian attitude to public finance: because the money is now available, you look at once for ways to distribute it among the citizen-body.²³¹ On the other hand you are making an interesting ideological statement about your democracy: by raising the level of assembly-pay above jury-pay, you are hinting in no uncertain terms, 'we are an assembly-based rather than a court-based democracy'.²³²

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²²⁹ Hansen (n. 58) 19 (*cf.* Hansen, 'The construction of Pnyx II and the introduction of assembly pay', *C&M* xxxvii [1986] 93-7) suggests that admission (and therefore pay) in the period of Pnyx II was restricted to the first 6,000, but that this restriction no longer applied after the construction of Pnyx III. He does not, however, draw the corollary proposed here.

²³⁰ See pp. 155-6 above.

²³¹ Hansen's view that the institution of four

meetings of the assembly per prytany did not occur until after 355 might support this hypothesis (Hansen [n. 83] 35-72, [n. 58] 20-4, cited at n. 216 above).

²³² It is striking that we have no hint of such a conscious policy in any of the speeches of the later orators; but this may be simply a statement about the lacunose nature of our sources for this period. We have, after all, no direct literary evidence for the construction of Pnyx III: *cf.* n. 228 above.