Journal of Hellenic Studies cxiv (1994) pp 120-134

THE ORIGINAL DATE OF THE δῆμος πληθύων PROVISIONS OF *IG* I^3 105*

THOUGH published about 409 BC, *IG* i^3 105 has long been thought to contain regulations originally enacted at an earlier date. In 1873 Kirchhoff suggested a date of 411/10 or 410/9 for the inscription itself, but noted that there were *priscae dictionis vestigia*.[1] Hiller von Gaertringen went further in 1924 when he concluded that *priscus dictionis color saeculi initium decet*.[2] Although modern scholars disagree about the exact date of the original provisions, some of which include the archaic expression ἄνευ τοῦ δήμου τοῦ 'Αθηναίων πληθύοντος, there is general agreement that these older laws were passed between 501/0 and 462/1 BC. In this paper I shall argue that a Solonian date for the original enactment of the δῆμος πληθύων provisions makes the most historical sense.

H. Swoboda proposed the year of Ephialtes' reforms as the date for the original version of the inscription.[3] P. Cloché suggested the time between 508/7 and 480/79, and believed that the archonship of Hermocreon (501/0) was the most likely occasion.[4] R.J. Bonner and G. Smith settled on the archonship of Hermocreon,[5] and P.J. Rhodes proposed the first half of the fifth century.[6] J. Sencie and W. Peremans admitted the possibility of an earlier version but doubted that the extant inscription draws on an older document.[7]

The argument Cloché employed to fix his *terminus ante quem* bears repeating. One clause of the inscription assigns to the δῆμος πληθύων the right to start a war and to bring it to an end: [ἄν|ευ τô δέμο τô 'Αθεναίον πλεθ]ύο̣[ντ]ος μὲ ἕναι πόλεμον ἄρασθα̣ι̣ [μέτε καταλ]ῦ̣[σ]α[ι] (lines 34-35). (The text used by Cloché, *CIA* i 57, contained nothing after πόλεμον.) It so happens that the one mention[8] of the boule in the period between Cleisthenes and Ephialtes concerns this right. Herodotus tells us that Mardonius sent Murychides to the Athenians on Salamis in the summer of 479 BC. When Murychides tendered a peace proposal to the boule, the councilor Lycides moved that they accept the offer and submit it to the people.[9] Cloché concluded that the people in 479 possessed sovereignty in diplomatic matters, and inferred that the right to declare war was already one of their prerogatives.[10] Herodotus is most naturally interpreted as showing that the boule by 479 had to refer to the people any

* I wish to thank the two anonymous referees of the journal for helpful criticisms, and Martin Ostwald for reading and commenting on earlier drafts.

[1] *IG* i 57.

[2] *IG* i^2 114.

[3] 'Über den Process des Perikles', *Hermes* xxviii (1893) 597 n. 3.

[4] 'Le Conseil athénien des Cinq Cents et la peine de mort', *REG* xxxiii (1920) 32-34. It is usually assumed that Hermocreon was archon in 501/0 (T.J. Cadoux, 'The Athenian archons from Kreon to Hypsichides', *JHS* lxviii [1948] 115-16). In a recent contribution to the chronological discussion it is suggested that Hermocreon's year was 506/5 (C.W. Fornara and L.J. Samons II, *Athens from Cleisthenes to Pericles* [Berkeley and Los Angeles 1991] 168-70).

[5] *The administration of justice from Homer to Aristotle* (Chicago 1930-38) i 340-44.

[6] *The Athenian boule* (Oxford 1972) 113, 198.

[7] 'La jurisdiction pénale de la Boulè à Athènes au début du Ve siècle avant J.-C.', *LEC* x (1941) 333-36.

[8] Diodorus (xi 39.5, 42.5) relates two secret meetings of the boule after the Persian wars, but Rhodes (n. 6) doubts the historicity of these passages (40-41, 201 n. 3).

[9] Hdt. ix 5.1: ἐδόκεε ἄμεινον εἶναι δεξαμένους τὸν λόγον τόν σφι Μουρυχίδης προσφέρει ἐξενεῖκαι ἐς τὸν δῆμον. We do not know whether the motion was put to a vote; if it was, it did not pass.

[10] Cloché (n. 4) 32-33. Lycides was lynched by the boule and by the rest of the people.

peace proposal which it accepted, and this interpretation has met with favour.[11] It follows that the people also had to be consulted in order for war to be declared, and Cloché's coupling of these two rights was later vindicated when H.T. Wade-Gery read ἄρασθα[ι: μέτε καταλ]ῦ[σ]-α[ι] after πόλεμον in line 35.[12] Cloché assumed that all the provisions of the decree were enacted at the same time and concluded that 479 was the *terminus ante quem* for all the rights which the decree reserves to the people.

Rhodes did not object to Cloché's assertion that the boule was required to refer questions of peace and war to the ekklesia by 479, but he pointed out that the revision of the laws in the late fifth century saw the collection in a single code of previously unconnected enactments: 'In such a case, conclusive proof of the antiquity of one item would not help us to date the contents of any other part of the document'.[13] The correctness of Rhodes' view is illustrated by the different terminology used in the inscription for the assembly: δῆμος πληθύων recurs eight times,[14] δῆμος is clearly used alone three times,[15] and ἐκκλησία appears at least twice.[16] Applying his general principle to this specific case, Rhodes maintained that the other δῆμος πληθύων clauses were more recent than the one on war. Two of these clauses can be recognized. One stated that no death penalty could be inflicted: [ἄνευ τõ δέμο τõ 'Αθεναίον πλε]θύοντος μὲ ἐ̑ναι θαν[ά]τοι [ζεμι]õ[σαι] (line 36). The other declared that no θοά (fine) could be imposed on any Athenian: [ἄνευ τõ δ]έμο τõ 'Αθενα[ί]ο[ν] πλε|[θύο]ντος μὲ ἐ̑ναι θοὰν ἐπιβαλε̑ν ['Αθε]ναίον μεδὲ [*h*ενί] (lines 40-41). Rhodes argued that sovereignty over peace and war was one of the first rights gained by a popular assembly, but that 'a society which allowed the immediate killing of an adulterer caught in the act' would not regard consultation before passing a death sentence as 'one of the basic citizen rights'.[17]

Rhodes' disjunction of the clauses on war and the death penalty cannot be accepted. The reason given for the disjunction is not compelling. Since neither an individual archon nor the boule ever had the right to inflict capital punishment, the only tribunal that might have exercised final jurisdiction in capital cases is the Areopagus in those crimes against the state for which Solon had made it competent.[18] It should not surprise us that the demos would vote to remove final jurisdiction in capital cases from the most aristocratic tribunal in Athens. The act of reserving the death penalty to the people did not necessarily result from the notion that this was one of the 'basic citizen rights'; the reservation would have required only a distrust of the concentration of power in the hands of the nobles. Rhodes is guilty of an anachronism when he holds that 'Cloché must surely have been mistaken to argue from the demos' sovereignty in peace and war to a restriction of the boule's judicial powers'.[19] M. Ostwald has shown that the Athenians themselves, at the time the original legislation was enacted, did not clearly distinguish between political and judicial rights: the phrase δῆμος πληθύων is used to describe both a meeting of the demos in its political capacity (ekklesia) as well as one in its judicial capacity

[11] Bonner-Smith (n. 5) i.342; Rhodes (n. 6) 191; M. Ostwald, *From popular sovereignty to the sovereignty of law: law, society, and politics in fifth-century Athens* (Berkeley and Los Angeles 1986) 26.

[12] 'Studies in Attic inscriptions of the fifth century BC, B. the charter of the democracy, 410 BC = *IG* I² 114', *BSA* xxxiii (1932-33) 120.

[13] Rhodes (n. 6) 198.

[14] *IG* i³ 105.25, 35, 36, 37, 40-41, 42, 43, 45-46.

[15] *Ibid.* 22, 39, 51.

[16] *Ibid.* 53, 54, and probably in line 27.

[17] Rhodes (n. 6) 191.

[18] Ostwald (n. 11) 34-35, rejecting *Ath. Pol.* 45.1, which allows the boule to inflict capital punishment until the case of a certain Lysimachus.

[19] Rhodes (n. 6) 191.

(eliaia).[20] The epigraphic reasons for opposing this disjunction are no less formidable. The clauses on war and the death penalty use the same formula, ἄνευ τοῦ δήμου τοῦ 'Αθηναίων πληθύοντος; this formula occurs five times in just over eight lines (34-42). The two clauses appear in consecutive lines of our document (lines 34-35 and 36); we know that these two formed part of the same document, for they follow an enactment-formula (τάδε ἔδοχσεν) placed at the end of the preceding document (line 34). Only four blank spaces cannot be read or reliably restored between the two clauses—far too few for the enactment-formula which line 34 suggests should stand here, if these two clauses really belonged to separate documents. That the δῆμος πληθύων clauses were copied verbatim from another document cannot be doubted; this is indicated not only by the preservation of the enactment-formula in line 34, but also by the three pairs of vertical points in line 43 which represent τοι of a damaged original. The mason transcribed the original 'with such fidelity that he preferred to mark three blank spaces which he could not read rather than make what appears to us the easiest of conjectures'.[21] And if it is true that the five clauses with the same formula were all enacted at one date, then the *terminus ante quem* 479 is valid for all, and we can reject the dates suggested by Swoboda (462) and Sencie and Peremans ('les années qui suivent la révolution des oligarques en 411 avant J.-C.').[22]

We are left with the date of 501/0 and the immediately ensuing years as proposed by Cloché, Bonner and Smith, and Rhodes. All three of our remaining authors have brought the bouleutic oath into the discussion of dating. The notion that the bouleutic oath limited the powers of the boule—as did the δῆμος πληθύων clauses—led Cloché to date the decree to the archonship of Hermocreon, the year in which the bouleutic oath is commonly supposed to have been instituted.[23] Bonner and Smith noticed that *IG* i³ 105 itself contains part of an oath: ἐπιψηφίζω occurs twice in the first person singular, with οὐ for negation (lines 27-28).[24] Rhodes agreed that it is the bouleutic oath which is partially preserved in *IG* i³ 105,[25] but remained true to his own principle that the date of one part of the inscription cannot be used to date any other part. The attempt of Bonner and Smith to date the δῆμος πληθύων clauses to the archonship of Hermocreon fails on this basis; caution is especially appropriate in this instance, for the oath and the δῆμος πληθύων clauses are separated by an enactment-formula (τάδε ἔδοχσεν) in line 34.

It is indeed questionable whether *IG* i³ 105 preserves part of the bouleutic oath instituted in 501/0. The verb ἐπιψηφίζω is not otherwise known to have been part of the βουλευτικὸς ὅρκος.[26] The verb could well be part of the oath used after 501/0, for the complete oath has not been preserved. ἐπιψηφίζω would be most appropriate for presiding officers, but the literary sources do not mention that there was a special oath for them. The existence of this last oath

[20] Ostwald (n. 11) 35.

[21] D.M. Lewis, 'A Note on *IG* I² 114', *JHS* lxxxvii (1967) 132.

[22] Sencie and Peremans (n. 7) 334.

[23] Cloché (n. 4) 33-34 with *A.P.* 22.2. Aristotle's claim that the oath sworn by the bouleutai in the archonship of Hermocreon was the one ín ὃν ἔτι καὶ νῦν ὀμνύουσιν is not to be taken literally, as we know that clauses were added to the oath in the fifth century (Rhodes [n. 6] 193-94). The notion that the bouleutic oath limited the powers of the boule is itself probably wrong: W. Peremans ('La jurisdiction pénale de la boulè à Athènes au début du Vě siècle avant J.-C.', *LEC* x [1941] 193-201) maintained that the reorganization of the boule took several years and that the oath was the final act of the Cleisthenic reforms (*cf.* Rhodes [n. 6] 192-93).

[24] Bonner-Smith (n. 5) i.204.

[25] Rhodes (n. 6) 196.

[26] *Cf.* Rhodes, ibid. 194 n. 13. The bouleutai (and dikastai) were able to use the verb ἐπιψηφίζω in the oath which they swore in the settlement with Chalkis (*ML* 52.10). But this decree dates from 446/5, when bouleutai clearly presided over the boule as prytaneis; Rhodes believes that prytanies were introduced only after 462 (*op. cit.* 17-18).

would help to explain the tradition that Solon instituted the bouleutic oath[27] and this reconstruction finds some support in the availability of γραφαί which could be used against presiding officers.[28] The most that can be concluded is that the ἐπιψηφίζω provisions will have formed part of a presidential oath if they were enacted before the creation of prytanies, and will have formed part of the bouleutic oath if they were enacted after their creation. In sum, it is not at all clear that the oath of the inscription is the one first sworn in 501/0. But the essential point remains that even if it were possible to date the ἐπιψηφίζω provisions—to 594 or 501 or 462—this date would still not help us to establish the date of the δῆμος πληθύων clauses.

The phrase δῆμος πληθύων occurs nowhere else in an Athenian context, and is paralleled only in two Elean bronze inscriptions found at Olympia. One reads ἄνευς βολᾶν καὶ ζᾶμον πλαθύοντα; the other, σὺν βολᾶι (π)εντακοτίον αϝλάνεος καὶ δάμοι πλεθύοντι.[29] L.H. Jeffery dates these bronze inscriptions to '*c*. 500?' and '*c*. 475?',[30] and comments: 'Judged by the general standards of development attributed to the other Peloponnesian scripts, none of the Elean plaques should be earlier than the last quarter of the sixth century'.[31] Jeffery's work was published long after the dating 501-462 had become the *communis opinio*, but her dates for the Olympian bronzes have allowed scholars to become complacent about examining the historical reasoning behind the received view. It is therefore worth noting that the Olympian bronzes are dated on no external evidence, but only on the basis of letter forms. What is conjectural in the Olympian context cannot be regarded as certain in the Athenian context, and no phrase from Olympia can be decisive in dating a *hapax legomenon* in the Attic corpus. Occurrences of θοά outside of Attic include an inscription from Gortyn of the seventh or sixth century and one from Chios dated *c*. 575-50,[32] but these no more prove a Solonian date for the δῆμος πληθύων clauses than the Olympian bronzes prove a Cleisthenic one.

The six celebrated trials at Athens in the early fifth century have also played a role in the failure to re-examine the date based on the bouleutic oath.[33] About 493/2 the tragedian Phrynichus was fined 1,000 drachmae ὡς ἀναμνήσαντα οἰκήια κακά in his play Μιλήτου ἅλωσις.[34] Miltiades in 493 was acquitted on a charge of tyranny in the Thracian Chersonese.[35] In 489 Miltiades was fined fifty talents for ἀπάτη through the failure of his expedition against Paros.[36] Soon after 480 Hipparchus the son of Charmus was condemned to death *in absentia* on a charge of προδοσία.[37] About 471/0 Themistocles was found guilty of

[27] Dem. xxiv 148, one of many passages in which a fourth-century orator makes Solon responsible for institutions current in his own day.

[28] We hear of a γραφὴ προεδρική and ἐπιστατική (*A.P.* 59.2) and of a γραφὴ πρυτανική (Harp. s.v. 'ῥητορικὴ γραφή').

[29] E. Schwyzer, ed., *Dialectorum graecarum exempla epigraphica potiora* (Leipzig 1923) nos. 410, 412.

[30] *The local scripts of archaic Greece* (Oxford 1961) 220 nos. 5, 9.

[31] *Ibid*., 218.

[32] *IC* iv 13, ML 8C.5-7.

[33] To the modern discussions of these cases cited in Ostwald (n. 11) 28 n. 105, the following may be added: E.M. Carawan, '*Eisangelia* and *euthyna*: the trials of Miltiades, Themistocles, and Cimon', *GRBS* xxviii (1987) 167-208; R.W. Wallace, *The Areopagus council to 307 BC* (Baltimore 1989) 74-76.

[34] Hdt. vi 21.2. For the date see Ostwald (n. 11) 28 n. 106.

[35] Hdt. vi 104.2, Marcellin. *Vit. Thuc*. 13.

[36] Hdt. vi 136.

[37] The only source is of questionable accuracy: Lyc. *Leoc*. 117.

προδοσία and punished with permanent exile.[38] In 463/2 Cimon was acquitted on a charge of taking bribes from the king of Macedon.[39] What occasions surprise is that the judicial venue attested for each of these trials is a popular one. In the trials of Phrynichus and Themistocles judgment was passed by οἱ Ἀθηναῖοι; Miltiades was acquitted by a δικαστήριον at his first trial; the δῆμος gave the verdict in the second trial of Miltiades and in the trial of Hipparchus; Cimon was saved by δικασταί.

The popular role is surprising since in all of these cases the state is the injured party;[40] Solon had entrusted the trial of crimes against the state to the Areopagus, and we should therefore expect to learn that the Areopagus passed judgment in these cases.[41] Since the death penalty figures in four of the six cases,[42] it is natural to conclude that the reservation to the δῆμος πληθύων of the right to inflict capital punishment was already effective in the early fifth century.[43] That the original implementation of the δῆμος πληθύων clauses of *IG* i³ 105 preceded these six trials of 493-62 is almost certain, but it does not follow that the original cannot have been passed before 501/0. As Ostwald has noted, the formulation with the preposition ἄνευ does not require the complete exclusion of the Areopagus from these trials, but is merely a 'negative injunction' that the δῆμος πληθύων must be consulted before a capital sentence is carried out.[44] It cannot be maintained that mandatory ephesis from the Areopagus in crimes against the state arose around 501/0, since the simple truth is that we do not have record from the sixth century of any instance of crimes against the state nor of any application of ephesis. In such circumstances the argument from silence is especially dangerous; the popular jurisdiction that first appears in 493 could well have existed in 593. Though it is usually assumed that Solonian ephesis applied only to decisions rendered by magistrates, it remains a fact that 'from the time of Solon we have no indication whatever to affirm or deny that the verdict of the Areopagus was final in crimes against the state'.[45]

The received date for the presumptive original of *IG* i³ 105 has seemed confirmed by three epigraphic parallels Rhodes finds in other decrees of the early and middle fifth century.[46] One

[38] Plut. *Them.* 23; Thuc. i 135.2-3, 138.6. For the date see R.J. Lenardon, 'The chronology of Themistokles' ostracism and exile', *Hist.* viii (1959) 23-48; P.J. Rhodes, 'Thucydides on Pausanias and Themistocles', *ibid.* xix (1970) 387-400.

[39] *A.P.* 27.1; Plut. *Cim.* 14.3-4, 15.1.

[40] Ostwald (n. 11) 30.

[41] Much ink has been spilled in an attempt to determine whether eisangelia was used in any of these cases. Aristotle tells us that the Areopagus τοὺς ἐπὶ καταλύσει τοῦ δήμου συνισταμένους ἔκρινεν, Σόλωνος θέντος νόμον εἰσαγγελίας περὶ αὐτῶν (*A.P.* 8.4). The term 'eisangelia' is used only in the case of Themistocles (Craterus *FGrH* 342 F 11a). Plutarch uses the expression γραψάμενος αὐτοῦ προδοσίας (Plut. *Them.* 23.1=F 11b). If it was an eisangelia, *A.P.* 8.4 forces us to conclude that the case was heard by the Areopagus (so Rhodes [n. 6] 201). That the ekklesia was involved in the trial follows from the fact that the source of our information is the collection of popular decrees by Craterus. Ostwald (n.11) 36-37 has argued that this need only indicate that the chief prosecutor of Themistocles, Leobotes the son of Alcmaeon, made a motion in the ekklesia that an eisangelia be laid before the Areopagus; still more likely is the possibility that Craterus included Leobotes' eisangelia because the final verdict was passed by a popular court in accordance with the δῆμος πληθύων clauses of *IG* i³ 105.

[42] Xanthippus demanded the death penalty at the second trial of Miltiades and Pericles demanded the death penalty at the trial of Cimon. In the case of Hipparchus the death sentence was actually pronounced. Although we are explicitly told only that Themistocles was punished with exile, the loss of the right to burial in Attica and the attempts to arrest him abroad indicate that a capital sentence had been passed (M.H. Hansen, *Eisangelia: the sovereignty of the people's court in Athens in the fourth century* BC *and the impeachment of generals and politicians* [Odense 1975] 70).

[43] Ostwald (n. 11) 35-36.

[44] *Ibid.* 36.

[45] *Ibid.* 12.

[46] Rhodes (n. 6) 197-98.

of these parallels occurs in the oath of the bouleutai and dikastai in the Athenian settlement with Chalkis in 446/5: ἄνευ τô δέμο τô ᾿Αθεναίον.[47] Rhodes calls this a 'shorter but (I believe) equivalent formula', and uses it to establish his own *terminus ante quem* (450 BC) for the original document(s).[48] But while the phrases are highly similar in form, it is not at all clear that they are equivalent in meaning. The bouleutai and dikastai make a number of negative promises to the Chalkidians (including οὐδὲ ἀποκτενô, line 8), and these promises culminate with οὐδὲ χρέματα ἀφαιρέ|σομαι ἀκρίτο οὐδενός ἄνευ τô δέμο τô ᾿Αθ|εναίον (lines 8-10).[49] The meaning of the prepositional phrase with ἄνευ is informed by the words immediately preceding it, ἀκρίτο οὐδενός. Bonner and Smith argued that the prepositional phrase 'is doubtless explanatory of ἀκρίτου'.[50] A need for explication might have been felt since ἄκριτος seems to have meant not 'without trial' but 'without due process of law',[51] and was used by Aristotle to describe an execution in which the boule conducted the trial itself.[52] If it is right that the phrase ἄνευ τô δέμο τô ᾿Αθεναίον defines ἀκρίτο οὐδενός, then the provision will mean that the Chalkidians will not suffer the named punishments by a verdict of the boule which is not confirmed by a dikasterion. In other words, δῆμος in the Chalkis decree stands for 'dikasterion'.[53] We do not know that ἄνευ τô δέμο τô ᾿Αθεναίον was a regular phrase. If it was a regular phrase, we can only suppose that it always referred to a dikasterion, as it does here; but δῆμος πληθύων was capable of standing for either 'ekklesia' or 'eliaia'. In sum, it is not clear that the phrases are equivalent because the later phrase does not seem to have retained the ambiguity of the earlier one.

The second and third epigraphic parallels posited by Rhodes are found in the Hecatompedon inscription of 485/4. The imposition of a θοά (θοᾶν ἐπιβαλε̑ν, line 41) is reserved to the δῆμος πληθύων in *IG* i^3 105, and the verb θοᾶν occurs twice in the decree of 485/4 in the formula [ἐ]χσ[ε̑]ναι θοᾶν [μέ]χρι τριôν ὀβελô|ν.[54] θοά means 'punishment',[55] and in non-Attic decrees θοαί are often fines.[56] Objections may be offered to associating the noun and the verb, for the verb is used in connection with religious offences in the Hecatompedon inscription.[57] It is easiest to suppose that the θοά of *IG* i^3 105 was either a large fine or other severe punishment, since it appears in what looks very much like a constitutional document; it has been suggested that a θοά was any fine in excess of 500 drachmae.[58] In the Hecatompedon

[47] ML 52.9-10.

[48] Rhodes (n. 6) 198.

[49] 'I shall not take the property of anyone without due process of law, without the demos of the Athenians'.

[50] Bonner-Smith (n. 5) i 344 n. 1.

[51] *Ibid.* i 366-67.

[52] *A.P.* 40.2; *cf.* Lys. xxii 2 for a clearer instance of the application of ἄκριτος to a trial by the boule. Isoc. xii *Panath.* 66 provides another use of the term in an imperial context.

[53] This interpretation is followed by J.M. Balcer, *The Athenian regulations for Chalkis: studies in Athenian imperial law*, *Historia* Einzelsch. xxxiii (Wiesbaden 1978) 37; *cf.* E.M. Carawan, 'Akriton apokteinai: execution without trial in fourth-century Athens', *GRBS* xxv (1984) 117 n. 18. Hansen's disjunction of δῆμος and δικαστήριον has been answered by Ostwald (n. 11) 34 n. 131.

[54] *IG* i^3 4B.12-13; *cf.* 7-8.

[55] Bonner-Smith (n. 5) 203 n. 3.

[56] The relevant inscriptions are listed by Rhodes (n. 6) 198 n. 3.

[57] Ostwald (n. 11) 33.

[58] Cloché (n. 4) 29; Bonner-Smith (n. 5) i.202; Ostwald (n. 11) 33. The occurrence of the figure 500 drachmae in lines 31-32 cannot be decisive in this matter, if we follow Rhodes' general principle that one part of the document does not necessarily bear the same date as another. But we know that the boule was limited to fines of this amount in the fourth century ([Dem.] xlvii 43), and it is very likely that this restriction existed already in the fifth century (ML 73.57-59).

decree, however, the verb is used of fines up to the limit of 3 obols; it is impossible to believe that the noun θοά refers to such petty fines.[59] The δῆμος πληθύων provision on θοαί is likely to be of the same date as the one on capital punishment, which must have been in place by 493. The right to inflict a θοά, therefore, was reserved to the people before the Hecatompedon decree was passed. Yet all the fines in the Hecatompedon inscription seem to have been exacted by an otherwise unknown offical called the πρύτανις.[60] The wording of the decree implies that the fines imposed by the πρύτανις were not subject to appeal, and we can be doubly sure of this in the case of a fine of 3 obols.[61] In sum, the attempt to associate the noun θοά and the verb θοάω is not successful.

We may now summarize the conclusions reached in the negative part of our investigation. The original of *IG* i³ 105 was first assigned a date of *c.* 500 because it was thought similar to the bouleutic oath (the position of Cloché) or on the ground that it contained the bouleutic oath (the view of Bonner and Smith). We have seen that the presence of the oath in any case could be explained by the revision of the laws and would not necessarily help to date the rest of the inscription. We have suggested that the persistence of the date based on the bouleutic oath is due to the late sixth-century date of the Olympian bronzes and the early fifth-century date of the six famous trials at Athens and of formal epigraphic parallels. But neither the bronzes nor the epigraphic parallels can bear the weight that has been put upon them, and the trials yield at most a *terminus ante quem*. We leave this part of our work having discovered a *terminus ante quem* of 479 from the δῆμος πληθύων provision on peace and war and one of 493 from the provision on capital punishment.

The last parallel cited by Rhodes is τάδε ἔδοχσεν in line 34, a phrase not unlike the ταῦτ' ἔδοχσεν of the Hecatompedon inscription.[62] This enactment-formula closes the preceding document preserved in *IG* i³ 105, and so is of little use in dating the δῆμος πληθύων clauses. The full enactment-formula in the Hecatompedon decree gives the name of the archon, and for this the formula in our decree substitutes the place of enactment: τάδε ἔδοχσεν ἐλ Λυκείο τ̣ο̂ι δ̣[έμοι τôι 'Α]θ̣ε̣[να]ίον. The information ἐλ Λυκείο was not available to Cloché, but has been in the text of the decree since the publication of *IG* i² 114. Surprisingly, this information has never been used (or even noted) in the various attempts to date the original documents. In no other source are we told that this region, located to the northeast of Athens, served as a meeting place.[63] The particular site of this assembly meeting may have been the precinct of

[59] In the later fifth and fourth centuries the permission of the people was not needed for the imposition of fines up to 50 drachmae by the ἱεροποιοὶ κατ' ἐνιαυτόν (*IG* i³ 82.24-28, of 421/0), the proedroi (Aeschin. i 35), and the archon ([Dem.] xliii 75). Since the power of the magistrates to make decisions on their own responsibility decreased over time, it is unlikely that Solon made all judgments by magistrates subject to appeal (D.M. MacDowell, *The law in classical Athens* [Ithaca 1978] 30). It should therefore be accepted that it was always within the competence of a magistrate to impose on his own authority a fine of a mere three obols; at no time in Athenian history would the right to impose so small a fine have been reserved to the demos.

[60] He is mentioned just twice, *IG* i³ 4B.23, 24.

[61] See n. 58.

[62] *IG* i3 4B.26 (*cf.* 4A.14), Rhodes (n. 6) 197.

[63] It is doubtful that the gymnasium of the same name existed at the time when the original version of *IG* i³ 105 was passed. According to Theopompus, it was built by Peisistratus (*FGrH* 115 F 136), but Philochorus attributes the erection of it to Pericles (*FGrH* 328 F 37). The gymnasium is first attested by Xenophon (*Hell.* i 1.33). We never hear of an assembly being held in a gymnasium, although in the fourth century it did sit in theaters: in Boedromion a session of the assembly met in the theater of Dionysus to hold a review of the ephebes who had completed their first year of military training (*A.P.* 42.4), and the assembly occasionally met in the theater in the Peiraeus to discuss naval affairs (Dem. xix 60, 125, 209; *cf.* Lys. xiii 32-33, 55-56).

'Απόλλων Λύκειος.[64] The Cleisthenic assembly place is thought to have been either the agora or the Pnyx;[65] the agora is considered to have been the Solonian assembly place.[66] It is altogether possible that the Λύκειον was never a regular meeting place. But the fact that legislation was passed in the Lykeion certainly distances this document from Cleisthenes. There are a few inscriptions from Cleisthenic times, and these provide no parallel; furthermore, if the Lykeion had been used for major legislation as recently as the time of Cleisthenes, we might expect some memory of this to be preserved. Since the regular Cleisthenic assembly place was either the agora or the Pnyx, the crucial phrase ἐλ Λυκείο diminishes the probability (but does not preclude) that the original legislation dates to Cleisthenic times.

There is a greater *a priori* likelihood or a less demonstrable unlikelihood that an assembly held ἐλ Λυκείο occurred in the less documented times of Solon. But there are also positive reasons for believing that an assembly in Lykeion was Solonian. Although evidence of connections between Cleisthenes and Apollo is not lacking,[67] testimonia to Solon's association with Apollo are legion. Apollo is mentioned *en passant* in one of Solon's poems.[68] In addition to the strong tradition connecting Solon to the oracle of Apollo at Delphi,[69] he is said to have made laws regulating the cult of Delian Apollo.[70] A law of Solon quoted by Lysias requires a man giving security when granted bail to swear by Apollo.[71] The original version of the eliastic oath may go back to the time of Solon,[72] and this oath contained a curse in which Apollo was probably invoked.[73]

[64] We do know that in the fourth century a session of the assembly was held in the precinct of Dionysus following the Greater Dionysia (Dem. xxi 8-9).

We cannot pinpoint the precise meeting place of the assembly mentioned in our inscription. Λύκειον was a toponym as well as an epithet of Apollo, so the assembly could have been held in another precinct of Apollo in the district called Lykeion: both the Pythion (Thuc. ii 15.4, Paus. i 19.1) and the Delphinion (Paus. i 19.1) lay on the right bank of the Ilissus.

[65] H.A. Thompson lowered the date for Pnyx I to *c.* 460 ('The Pnyx in models', in *Studies in Attic epigraphy, history, and topography presented to Eugene Vanderpool, Hesperia* suppl. xix [1982] 136-37. Thompson's new date has not been widely accepted (see J.McK. Camp, review of *Studies presented to Eugene Vanderpool, AJA* lxxxvii [1983] 113-15).

[66] Plut. *Sol.* 8.2, 30.1. Solon recited a poem on Salamis for his fellow citizens in the agora (8.2), and Peisistratus went there to show off his self-inflicted wounds and ask for a bodyguard (30.1). The Athenians assembled in the agora to depose the Thirty (*A.P.* 38.1), and use of the agora for assemblies is attested by Harpocration (s.v. 'πάνδημος 'Αφροδίτη'). M.H. Hansen concluded on the basis of Plutarch's information that the agora was the assembly place in the archaic period ('How many Athenians attended the *ecclesia*?' *GRBS* xvii [1976] 117-19; *The Athenian assembly in the age of Demosthenes* [Oxford 1987] 12).

[67] He is said to have bribed the priestess at Delphi (Hdt. v 66.1), and to have let her choose ten eponymous heroes for the tribes (*A.P.* 21.6).

[68] Solon, *fr.* 13.53 West.

[69] We are told that Solon defended Delphi against the Kirrhaeans in the Sacred War (Aeschin. iii 108, Plut. *Sol.* 11.1-2, Paus. x 37.6-7, Polyaen. iii 5), that the oracle at Delphi told him the correct procedure for the capture of Salamis (Plut. *Sol.* 9.1), that the oracle assisted him when he argued before Spartan arbitrators against Megarian claims to Salamis (Plut. *Sol.* 10.4), that the oracle urged him to accept sole rule (Plut. *Mor.* 152c), that Solon sent the golden tripod to Delphi (D.L. i 28, Diod. ix 3), and that he gave Apollo at Delphi the maxim μηδὲν ἄγαν (D.L. i 63). Many of these stories are hard to credit, but the most fantastic stories about Solon's connections with Apollo must get their start somewhere—perhaps in his choice of Lykeion as an asssembly place.

[70] Athen. vi 234. The historicity of the law is accepted by K. Freeman, *The work and life of Solon* (Cardiff 1926) 114.

[71] Lys. x 17. A.R.W. Harrison (*The law of Athens* [Oxford 1968-71] i.207 n. 2, ii.177 n. 4) accepts Lysias' statement that the laws quoted in x 16-17 are Solonian.

[72] Bonner-Smith (n. 5) ii 152 n.5; Ostwald (n. 11) 12 n.30.

[73] It has long been recognized that much of the oath preserved in Dem. xxiv 149-51 is the work of later writers (J. H. Lipsius, *Das attische Recht und Rechtsverfahren* [Leipzig 1905-15] 151). The oath inserted in the text of Demosthenes has the juror swear by Zeus, Poseidon, and Demeter (xxiv 151). M. Fränkel substituted Apollo for

Solon's especial concern for Apollo is not the only reason for believing that it was he who used Lykeion as an assembly place. Harpocration tells us that all Athenians swore the eliastic oath at Ardettos,[74] but this seems to be an inference from the fact that jurors were nicknamed Ἀρδηττοι.[75] Harpocration tells us that the oath was sworn above (ὑπὲρ) the Panathenaic stadium, but Hesychius (writing three centuries later) says that the oath was sworn near (ἐγγύς) the Panathenaic stadium. Although Hesychius' own explanation of the nickname is without credibility (τοὺς ῥᾳδίως ἐπὶ τοὺς ὅρκους ἰόντας Ἀρδήττους ἐκάλουν), his explanation nevertheless shows that he had reason to believe that the oath was not sworn at Ardettos, for this explanation of the nickname is the one that would most readily come to mind. Hesychius adds that the oath was sworn in the vicinity of (περί) the Ilissus. Now Strabo recorded that the Ilissus flowed ἐκ τῶν ὑπὲρ τῆς Ἄργας καὶ τοῦ Λυκείου μερῶν.[76] Therefore, an oath which Hesychius says was sworn περὶ τὸν Ἰλισσόν could well have been sworn ἐλ Λυκείο. And if it is true that Solon convened the eliaia in Lykeion, it follows that he could also have used Lykeion as a meeting place of the ekklesia, for we know that meetings of the eliaia and ekklesia in the archaic period could be held in the same place.[77]

Our reconstruction must remain a hypothesis, because no source explicitly tells us that Solon used Lykeion for meetings of the demos. But there are no good reasons to link Cleisthenes with Lykeion,[78] and there is some positive evidence which, though not decisive, supports the thesis that it was Solon who held meetings of the demos in Lykeion. And since Lykeion is attested as a meeting place of the ekklesia only in *IG* i³ 105, Rhodes is not right in considering the enactment-formula of the Hecatompedon inscription akin to the formula employed in *IG* i³ 105.

The place to start the argument that a Solonian date for the δῆμος πληθύων provisions makes the most historical sense is with the provisions themselves. No argument will be offered here regarding the clause on θοαί; since we do not know the precise meaning of the term, any attempt to date the clause would necessarily be speculative. Fortunately, there is no ambiguity at all in the clauses on the death penalty and war. The best historical setting for the involvement of the people in capital sentences is the year of Solon's legislation. The tradition that Draco's laws were severe is strong[79] and dates back at least to the fifth century.[80] Plutarch tells us that the death penalty (ζημία θάνατος) was assigned for nearly all offenses, and lists *exempli gratia*

Poseidon on the basis of Poll. viii 122 ('Der attische Heliasteneid', *Hermes* xiii [1878] 460). The emendation of Fränkel is accepted by Lipsius (*op. cit.* 153 n. 56) and by Bonner-Smith ([n. 5] ii.153 n. 2).

[74] Harp. s.v. 'Ἀρδηττός'. Harpocration's site is accepted by Lipsius (n. 72) 151 and by U. Kahrstedt (*Untersuchungen zur Magistratur in Athen* [Stuttgart-Berlin 1936] 67), but doubted by Ostwald (n. 11) 160.

[75] Hesych. s.v. 'Ἀρδήττους'.

[76] Strab. ix 1.24. This passage of Strabo is considered to refer to 'der Bezirk' called 'Lykeion' (rather than the gymnasium) by W. Kroll, *RE* xiii (1927) 2267.

[77] The curse pronounced by the herald at the opening of the ekklesia contained a reference to the eliaia: εἴ τις ἐξαπατᾷ λέγων ἢ βουλὴν ἢ δῆμον ἢ τὴν ἡλιαίαν (Dem. xxiii 97). This passage is decisive proof that at one time the eliaia was simply the ekklesia meeting in a judicial capacity; it was necessary to mention both institutions in the curse since the eliastic oath would not yet have been taken at those meetings of the demos convened for judicial purposes.

[78] If Solon used Lykeion as the regular meeting place of the demos, the ἰσονομία of Cleisthenes may have been symbolized by a transfer of the meeting place to a site more integral to the city itself, whether agora or Pnyx.

[79] See J. Miller, *RE* v (1905) 1656 for references.

[80] *Cf.* R.S. Stroud, *Drakon's law on homicide* (Berkeley and Los Angeles 1968) 77. This is true whether we accept the MSS. readings Herodicus or Herodotus or the emendation of L. Spengel (*Artium scriptores* [Stuttgart 1828] 94), Prodicus, as the author of the pun at Arist. *Rh.* 1400b20: οὐκ ἀνθρώπου οἱ νόμοι ἀλλὰ δράκοντος. M. Gagarin, *Drakon and early Athenian homicide law* (New Haven 1981) 116 stresses that the tradition of the severity of Draco's laws is first attested in the fourth century.

idleness, the theft of fruit or vegetables, robbery of temples, and murder.[81] Plutarch's phraseology implies that the state itself undertook the execution of criminals, but there are reasons for doubting this. In two lost speeches[82] Lysias agrees with Plutarch that a law of Draco assigned the death penalty to ἀργία, but Pollux[83] maintains that Draco punished idleness with ἀτιμία. Again, the old Athenian law on tyranny at *A.P.* 16.10 may be a law of Draco,[84] and the penalty prescribed here is ἀτιμία. Similarly, Solon's amnesty law shows that those in exile for murder or homicide or attempting to establish a tyranny (ἐπὶ φόνῳ ἢ σφαγαῖσιν ἢ ἐπὶ τυραννίδι) had also been declared ἄτιμοι.[85] Gagarin is probably right to deny that Draco made use of a death penalty carried out by the state.[86] Draco's homicide law[87] sanctioned self-help by making the killing of a plunderer or kidnapper caught in the act a case of lawful homicide.[88] Self-help was employed by a victim or relative of a victim, but in Draco's time an offender declared *atimos* might be killed with impunity within Attica by anyone who wished.[89] In sum, though the state probably did not carry out capital punishment, a man who committed a crime punishable by *atimia* or regulated by self-help could be killed if he did not go into exile.[90] And though capital punishment was implemented by private citizens, capital sentences[91] were passed by state bodies: the Solonian amnesty law mentions trials on the Areopagus, in the Prytaneion, and by the ephetai.[92]

The likelihood that Draco's laws preferred lawful homicide to executions conducted by the state does not lessen the probability that the people became involved in capital cases in 594. It remains a fact that Draco's laws were harsh; from the standpoint of an unsuccessful defendant, the laws were no less harsh simply because executions were carried out by a private man instead of 'the public man'.[93] And the ignoble man who demanded more power in 594 would have noticed that these severe sentences were passed by aristocratic courts. From the severity and aristocratic hue of the system of justice before Solon, we might conclude that Solon repealed Draco's laws even if we were not explicitly told this by Aristotle: νόμους ἔθηκεν ἄλλους, τοῖς δὲ Δράκοντος θεσμοῖς ἐπαύσαντο χρώμενοι πλὴν τῶν φονικῶν.[94] Though Solon attracts stray laws, there is no ancient evidence which gainsays this statement.[95] So we know with certainty that Solon had to pass some law on the subject of capital punishment; the only

[81] Plut. *Sol.* 17.2. Draco's surviving law on homicide sets exile as the penalty for unintentional homicide (ML 86.11; Gagarin [n. 80] 30). This seems to contradict Plutarch's statement, but the preserved law may apply only to unintentional homicide, and Plutarch's word ἀνδροφόνοι signify only intentional killers (Gagarin, *ibid.* 116 and n. 17).

[82] Lys., *fr.* 10 Thalheim=35 Baiter & Sauppe, *fr.* 194 B.&S.

[83] Poll. viii 42.

[84] M. Ostwald, 'The Athenian legislation against tyranny and subversion', *TAPA* lxxxvi (1955) 106-109; a different view is offered by M. Gagarin, 'The thesmothetai and the earliest Athenian tyranny law', *TAPA* cxi (1981) 71-77.

[85] Plut. *Sol.* 19.4; *cf.* M. Gagarin (n. 80) 120 n. 26.

[86] Gagarin (n. 80) 116-21.

[87] ML 86.36-38.

[88] Gagarin (n. 80) 62-64, 118.

[89] *Cf.* Dem. ix 44.

[90] A killer who goes into exile is protected in Draco's homicide law, ML 86.26-29.

[91] Trials were not always a necessary prelude to capital punishment: Aeschin. i 91 suggests that a killer caught in the act could be executed on the spot by anyone.

[92] Plut. *Sol.* 19.4.

[93] Δήμιος was the Athenian euphemism for 'executioner' (MacDowell [n. 59] 254).

[94] *A.P.* 7.1.

[95] Stroud (n. 80) 82.

question is whether our law gives too much power to the people to fit Solonian times. The answer is no, for Aristotle tells us that ephesis to the popular court was one of the three most democratic features of the Solonian constitution.[96] And the provision on the death penalty in *IG* i^3 105 seems to deal with ephesis: the phrase with ἄνευ would be a strange way of formulating a guarantee of original jurisdiction; the preposition strongly implies an initial judgment by a tribunal other than the eliaia.[97] And acceptance of a Solonian date would explain why the archons never seem to have acquired the power to pass a capital sentence.

We may now pass to the δῆμος πληθύων provision on war. The scholarly consensus holds that the ekklesia enjoyed this right from earliest times. Busolt and Swoboda believed that Solon guaranteed to the people in law the final voice in peace and war;[98] Hignett even allows that this prerogative may have belonged to the assembly in law in the pre-Solonian state, and maintains that both Solon and *IG* i^3 105 (in 501/0) simply reaffirmed the right.[99] Rhodes himself is forced to maintain that 'what may have been stated in writing for the first time about the beginning of the fifth century must long before then have been customary'. Two pieces of ancient evidence have not been brought to bear on this question before and imply that this right was stated in writing no later than the time of Solon. The first concerns the only action of the ekklesia of which we hear before the reforms of Cleisthenes: it voted a bodyguard to Peisistratus. The two sources which give us this information agree that Peisistratus asked the assembly for the guard.[100] Herodotus makes ὁ δῆμος conduct the levy (καταλέξας). This is a matter of internal security rather than a foreign war, but the incident does show the people not only voting to raise a number of armed men, but actually taking charge of the enlistment. This is not decisive proof that the right to vote and raise troops for war was already a popular prerogative, but the inference is not hard to make. The second indication of popular power to declare war is found in the subvention of disabled veterans, a practice begun long before Cleisthenes. Heraclides of Pontus tells us that Solon passed *ad hominem* legislation to benefit a disabled veteran named Thersippus, and Plutarch adds that Peisistratus provided grants for all disabled veterans.[101] Diogenes Laertius is probably wrong to credit Solon with legislation for the maintenance of war orphans,[102] but this exaggeration reaffirms the historicity of the grant to Thersippus. The picture presented by Plutarch is probably essentially correct; Peisistratus extended a program begun on a small scale by Solon.[103] Perhaps there was also a property requirement, like the later requirement that invalids on public maintenance possess less than three minae;[104] the program would not have been begun unless some of those who were disabled veterans were also poor.

Whether or not the δῆμος πληθύων provisions on war and the death penalty seem suited

[96] *A.P.* 9.1. The passages in the Aristotelian corpus which demonstrate his belief that judicial power made the people κύριος τῆς πολιτείας (*A.P.* 9.1) are collected by E. Ruschenbusch, 'Δικαστήριον πάντων κύριον', *Hist.* vi (1957) 257-58.

[97] It is *a priori* likely that the people would demand and gain ephesis in capital cases before demanding ephesis in cases punishable by fines. If ephesis was allowed in 594 for cases judged by magistrates, which were not capital cases, then, *a fortiori*, ephesis should have been possible in capital cases as well.

[98] *Gr. Staatskunde* (Munich 1920-26) 847.

[99] C. Hignett, *A history of the Athenian constitution to the end of the fifth century* BC (Oxford 1952) 97.

[100] Arist. *A.P.* 14.1, Hdt. i 59.4-5.

[101] Plut. *Sol.* 31.3-4.

[102] D.L. i 55.

[103] Freeman (n. 70) 129. After 411 Solon was seen as a founding father of democracy, but it seems unlikely that a grant to one named individual was invented; one might expect democratic propagandists to attribute to Solon a more thoroughgoing scheme.

[104] *A.P.* 49.4.

to the times of Solon depends on our understanding of Solon's reforms. R.W. Wallace has argued convincingly that the Areopagus was simply a homicide court before Solon, but became a council of government with extensive powers in his reforms.[105] That Solon gave Athens its first boule need not be doubted,[106] and although the membership and internal organization of the eliaia is controversial, the fact that it was a new tribunal created by Solon is not in dispute. In 594, then, Solon established three new institutions of the Athenian government: the Areopagus, the boule, and the eliaia. Of necessity Solon will also have passed legislation defining the powers of these new bodies, and on this basis we can reject the notion that the authority of the people to declare war existed but was not written down until the early fifth century. Though the right of the ekklesia to declare war may not have been written down before 594, it most assuredly was in that year. The ekklesia had existed before Solon, presumably with at least a customary right to declare war. If it was necessary to define the prerogatives of the ekklesia, it was still more necessary to define those of the eliaia, a new institution: hence the clauses on the death penalty and fines. The historical circumstances of the Cleisthenic era do not fit our document well at all; Cleisthenes' main contributions were the reorganization of the boule and legislative *isonomia*. None of the δῆμος πληθύων clauses concern legislative powers. The three clauses address the competence of the ekklesia and eliaia; our sources tell us that Cleisthenes was interested in the composition of the boule alone, and we do not learn of an interest by Cleisthenes even in the boule's competence. Solon's creation of three new institutions of government necessitated a statutory definition of their respective powers, and this is one of the strongest arguments in favor of a Solonian date.[107]

The meaning of the phrase δῆμος πληθύων itself can also be used to support a Solonian date. Cloché translated it 'peuple réuni en "assemblée plénière"';[108] Sencie and Peremans rendered it 'l'ensemble des citoyens' or 'le peuple "en masse"';[109] and Rhodes took it to mean 'the people in assembly', in contradistinction to the boule.[110] Cloché's view fails; although we hear of quorate assemblies in the fourth century, we do not know that they existed before the revision of the laws, and we never hear of a quorum in connection with the substance of the δῆμος πληθύων clauses. The view of Sencie and Peremans is a reworking of Cloché's argument; the same objections apply to the mass meeting envisaged by them. Rhodes' view seems correct as far as it goes. Ostwald has stressed that the right to declare war is political and that the other two rights are judicial; nevertheless, the same phrase was used to describe both kinds of right. The phrase δῆμος πληθύων could describe the demos sitting in its political capacity as ekklesia or in its judicial capacity as eliaia. Ostwald concludes: 'The fact that the expression δῆμος πληθύων does not differentiate between those two functions suggests that the political function of the demos had not yet clearly been separated from the judicial at the time the original legislation was enacted.'[111] Solon's laws were notorious for their lack of

[105] Wallace (n. 33) 32-45.

[106] J.H. Oliver's belief in a Draconian boule, and his emendations of *A.P.* 4.3 on the basis of the number three (*The Athenian expounders of the sacred and ancestral law* [Baltimore 1950] 68-69), have been answered adequately by M.N. Tod (review of Oliver, *JHS* lxxi [1951] 270-71). The classic statement of the case for the Solonian boule is P. Cloché, 'La boulè d'Athènes en 508/7 avant J.-C.', *REG* xxxvii (1924) 1-26.

[107] The right historical circumstances for the enactment of legislation in favor of the ekklesia and eliaia obtained at one other known date: 462/1. We know that the powers of the demos were increased in that year, but it is clear that the powers the demos received in 462/1 cannot be those mentioned in our document.

[108] Cloché (n. 4) 29 with n. 1.

[109] Sencie and Peremans (n. 7) 335-37.

[110] Rhodes (n. 6) 197-98.

[111] Ostwald (n. 11) 33, 35.

clarity, and the ambiguity of the phrase would be easy to explain in the context of 594, when there was no history of judicial decisions by the demos; it might well be questioned whether an official document would be this opaque in the Cleisthenic era, when the eliaia had been in existence for 90 years.

It has been argued that Cleisthenes' settlement embodied the principle of *isonomia*.[112] Ostwald has described the original version of *IG* i³ 105 as bringing 'judicial *isonomia*' by making ephesis obligatory in the cases enumerated.[113] As two of the three clauses which can be understood concern the administration of justice, and as only two more clauses in the document used the legal phrase with ἄνευ, there are at most four judicial penalties referred to the people by our document. The preposition is a strong indication of 'judicial *isonomia*', but the enumeration of a maximum of four instances implies that '*isonomia*' operated only in these instances. After receiving a thoroughgoing *isonomia* in the legislative sphere at the hands of Cleisthenes a few years before, it would be surprising if the people were satisfied with gaining just two to four applications of 'judicial *isonomia*' in the early fifth century. Rather, the fact that our document enumerated judicial rights favors association with the father of the eliaia. And the limited employment of '*isonomia*' to no more than four kinds of punishment is not so extensive a transfer of power as to be incompatible with what the sources indicate about Solon's judicial reforms.[114]

The likelihood that death penalty cases were judged in the first instance by the Areopagus might be thought to argue against a Solonian date for our document, since modern scholars often maintain that Solon allowed ephesis only from the decisions of magistrates. Both Hignett[115] and Rhodes[116] go so far as to cite *A.P.* 9.1 in documentation of this view, but *A.P.* 9.1 merely mentions ephesis and says nothing about magistrates at all. Bonner and Smith[117] more judiciously note that Aristotle seems to say that all judicial decisions were subject to review by the people; they therefore interpret Aristotle in the light of Plutarch's statement that Solon allowed ephesis from the decisions of magistrates: τὰ γὰρ πλεῖστα τῶν διαφόρων ἐνέπιπτεν εἰς τοὺς δικαστάς· καὶ γὰρ ὅσα ταῖς ἀρχαῖς ἔταξε κρίνειν, ὁμοίως καὶ περὶ ἐκείνων εἰς τὸ δικαστήριον ἐφέσεις ἔδωκε τοῖς βουλομένοις.[118] Though Plutarch's statement does not go very far, it is probably incorrect even as far as it goes, since it is likely that magistrates had the power of final decision in crimes punishable by petty fines.[119] The ὅσα clause is a specific example illustrating the general statement that most disputed matters came to a popular court. There is no reason to suppose that cases judged by magistrates were the sum of τὰ πλεῖστα; the ὅσα clause addresses itself only to cases judged by magistrates, and does not deal with cases judged by the Areopagus. Plutarch simply stressed the radical nature of the institution of ephesis in cases judged by magistrates. This reform was radical because the competence of the magistrates was reduced in a way that the competence

[112] For the case that Cleisthenes used *isonomia* as a political slogan, see M. Ostwald, *Nomos and the beginnings of the Athenian democracy* (Oxford 1969) 149-58. Ostwald (n. 11) 27 defines *isonomia* as 'political equality between the ruling magistrates, who formulate political decisions, and the Council and Assembly, which approve or disapprove them'.

[113] Ostwald (n. 11) 39. Ostwald himself accepts an early fifth-century date for the original.

[114] Indeed, if the powers bestowed on the demos were much less, Aristotle's (*A.P.* 9.1) statement that ephesis was one of the three most democratic features of Solon's constitution would seem an exaggeration.

[115] Hignett (n. 99) 97 n. 6.

[116] Rhodes (n. 6) 203 n. 3.

[117] Bonner-Smith (n. 5) i.151-52.

[118] Plut. *Sol.* 18.3.

[119] MacDowell (n. 59) 30.

of the Areopagus was not. For homicide and for a few other cases the verdict of the Areopagus was final in all known periods of Athenian history.[120] On our thesis, the Areopagus will have retained its pre-Solonian powers intact, but the new powers of the Areopagus in crimes against the state (i.e., crimes subject to capital punishment) will have been limited from the outset by the original of *IG* i³ 105. The pre-Solonian competence of the magistrates, however, *was* reduced, and this crucial difference explains Plutarch's concentration on magistrates to the exclusion of the Areopagus.

Other explanations of Plutarch's myopic concentration on cases judged by magistrates are not lacking. Most of chapter 18 is written from the point of view of the common people; since the common man did not have the opportunity to commit crimes against the state, Plutarch's silence on the Areopagus is adequately explained. Secondly, it is almost certain that Plutarch's account suffers from deformation caused by the Roman life with which Solon's life is compared. This suspicion is confirmed by a glance at the comparison of Solon and Publicola, where we are told that the Roman took Solon as his model when he established the right of appeal to the people.[121] These are the reasons which deterred Plutarch from giving a comprehensive account of ephesis, and it is a grave error to treat his parallel biography of Solon as a constitutional handbook.

It should be remembered that the whole demos was involved in a limited way in the administration of justice even in proto-historical times: *atimia* rendered the whole demos the agency which carried out judicial sentences. Yet the times of Solon might be thought too early for a popular role in sentencing crimes against the state. Those who accept Solon's neutrality legislation will have no trouble in accepting a Solonian date for our document, but the historicity of this legislation is controversial.[122] Though we are told that the Areopagus was κυρία in euthynai,[123] we know that the demos was also involved in euthynai.[124] It is possible that the demos gained authority in euthynai under the provisions of *IG* i³ 105, whenever the penalty to be imposed on a magistrate would be death or another severe penalty (θοά). In any event, the proceedings in a euthyna would have differed little from those in crimes against the state when the penalty in question was a severe one;[125] therefore, if the demos could take part in euthynai–proceedings in which the Areopagus is called κυρία–the demos surely could have taken part in trials of crimes against the state.

The view offered here about the dating of the δῆμος πληθύων clauses is not without effect on our general view of Solon's reforms. The Solonian date will mean that ephesis from the beginning could mean 'mandatory referral', although it does not require that the meaning 'appeal' necessarily came later. In the case of the death penalty, the referral would have been from the Areopagus, but this mandatory referral presumably applied to certain cases judged by magistrates as well: it is possible that θοαί were imposed by archons. It is in any event very doubtful that the Athenians distinguished between decisions of magistrates and decisions of

[120] Ostwald (n. 11) 12.

[121] *synk.* 2.1. Rhodes (n. 6) adduces the early appearance of the Roman *provocatio* against a magistrate's verdict in support of his view that Solon gave the right of appeal only against the decision of a magistrate.

[122] The historicity of the law on sedition is rejected by E. David, 'Solon, neutrality and partisan literature of late 5th-century Athens', *MH* xli (1984) 129-38; and by A. French, 'Solon's act of mediation', *Antichthon* xviii (1984) 1-12. The legislation is accepted by V. Bers, 'Solon's law forbidding neutrality and Lysias 31', *Hist.* xxiv (1975) 507-508; P.J. Rhodes, *A commentary on the Aristotelian Athenaion Politeia* (Oxford 1981) 158; and by P.B. Manville, *The origins of citizenship in ancient Athens* (Princeton 1990) 148. An *aureum dictum* in the spirit of this law is quoted at Plut. *Sol.* 18.7.

[123] *A.P.* 8.4.

[124] Arist. *Pol.* 1274a15-17, 1281b32-34.

[125] Ostwald (n. 11) 40.

corporate bodies when they instituted ephesis. The ambiguity of δῆμος πληθύων shows that the legislator did not distinguish between political and judicial rights; if the legislator had no concept of 'judicial' power, it would be surprising if he distinguished between judicial decisions of magistrates and those of corporate bodies. In fact, there is abundant evidence that the Athenians did not think in terms of crimes when they guaranteed judicial rights to the people; whatever the explanation may be, there is every indication that the Athenians thought in terms of punishments. So, in the Chalkis decree, the Athenians promise not to deport Chalkidians, or devastate the city, or exile, imprison, deprive of rights, kill, or confiscate property.[126] The naming of the penalty rather than the nature of the offense is regarded as cunning statecraft by G.E.M. de Ste Croix,[127] but parallel documents suggest this was simply the customary way to state reservations of judicial power to the people. Aristotle's account of the restriction of the boule's powers, though unhistorical as it stands,[128] again defines the rights of the people in terms of penalties, rather than offenses. Since the same type of formulation is used in our document, it seems that the Athenians from earliest times phrased judicial guarantees in this way. This reconstruction raises the possibility that it was not so much gaps left by lack of legislation (*Rechtslücken*) or gaps in the laws themselves (*Gesetzeslücken*)[129] which rendered the popular court powerful; rather, the judicial power of the people was firmly founded on guarantees which were hard to evade since the rights were expressed in broad terms of penalties rather than in terms of specific offenses.

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[126] ML 52.4-9.

[127] 'Notes on jurisdiction in the Athenian empire', *CQ* xi (1961) 270.

[128] *A.P.* 45.1; Rhodes (n. 122) 537-40; Ostwald (n. 11) 38-39.

[129] E. Ruschenbusch (n. 96) 263-74.