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*The principles
of representative government*

BERNARD MANIN

New York University and CNRS, Paris



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Contents

<i>Acknowledgments</i>	page ix
Introduction	1
1 Direct democracy and representation: selection of officials in Athens	8
2 The triumph of election	42
Lot and election in the republican tradition: the lessons of history	44
The political theory of election and lot in the seventeenth and eighteenth centuries	67
The triumph of election: consenting to power rather than holding office	79
3 The principle of distinction	94
England	95
France	98
The United States	102
4 A democratic aristocracy	132
The aristocratic character of election: a pure theory	134
The two faces of election: the benefits of ambiguity	149
Election and the principles of modern natural right	156

Contents

5	The verdict of the people	161
	Partial independence of representatives	163
	Freedom of public opinion	167
	The repeated character of elections	175
	Trial by discussion	183
6	Metamorphoses of representative government	193
	Parliamentarianism	202
	Party democracy	206
	"Audience" democracy	218
	Conclusion	236
	Index	239

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Introduction

Contemporary democratic governments have evolved from a political system that was conceived by its founders as opposed to democracy. Current usage distinguishes between "representative" and "direct" democracy, making them varieties of one type of government. However, what today we call representative democracy has its origins in a system of institutions (established in the wake of the English, American, and French revolutions) that was in no way initially perceived as a form of democracy or of government by the people.

Rousseau condemned political representation in peremptory terms that have remained famous. He portrayed the English government of the eighteenth century as a form of slavery punctuated by moments of liberty. Rousseau saw an immense gulf between a free people making its own laws and a people electing representatives to make laws for it. However, we must remember that the adherents of representation, even if they made the opposite choice from Rousseau, saw a fundamental difference between democracy and the system they defended, a system they called "representative" or "republican." Thus, two men who played a crucial role in establishing modern political representation, Madison and Siéyès, contrasted representative government and democracy in similar terms. This similarity is striking because, in other respects, deep differences separated the chief architect of the American Constitution from the author of *Qu'est-ce que le Tiers-Etat?* in their education, in the political contexts in which they spoke and acted, and even in their constitutional thinking.

Madison often contrasted the "democracy" of the city-states of Antiquity, where "a small number of citizens ... assemble and administer the government in person," with the modern republic based on representation.¹ In fact, he expressed the contrast in particularly radical terms. Representation, he pointed out, was not wholly unknown in the republics of Antiquity. In those republics the assembled citizens did not exercise all the functions of government. Certain tasks, particularly of an executive nature, were delegated to magistrates. Alongside those magistrates, however, the popular assembly constituted an organ of government. The real difference between ancient democracies and modern republics lies, according to Madison, in "the total exclusion of the people in their collective capacity from any share in the latter, and not in the total exclusion of the representatives of the people from the administration of the former."²

Madison did not see representation as an approximation of government by the people made technically necessary by the physical impossibility of gathering together the citizens of large states. On the contrary, he saw it as an essentially different and superior political system. The effect of representation, he observed, is "to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations."³ "Under such a regulation," he went on, "it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose."⁴

Sièyès, for his part, persistently stressed the "huge difference" between democracy, in which the citizens make the laws themselves, and the representative system of government, in which they

1 Madison, "Federalist 10," in A. Hamilton, J. Madison, and J. Jay, *The Federalist Papers* [1787], ed. C. Rossiter (New York: Penguin, 1961), p. 81.

2 Madison, "Federalist 63," in *The Federalist Papers*, p. 367, Madison's emphasis.

3 Madison, "Federalist 10," in *The Federalist Papers*, p. 82. Note the dual meaning of the phrase "a chosen body of citizens." The representatives form a chosen body in the sense that they are elected but also in the sense that they are distinguished and eminent individuals.

4 *Ibid.*

entrust the exercise of their power to elected representatives.⁵ For Sièyès, however, the superiority of the representative system lay not so much in the fact that it produced less partial and less passionate decisions as in the fact that it constituted the form of government most appropriate to the condition of modern "commercial societies," in which individuals were chiefly occupied in economic production and exchange. In such societies, Sièyès noted, citizens no longer enjoy the leisure required to attend constantly to public affairs and must therefore use election to entrust government to people who are able to devote all their time to the task. Sièyès mainly saw representation as the application to the political domain of the division of labor, a principle that, in his view, constituted a key factor in social progress. "The common interest," he wrote, "the improvement of the state of society itself cries out for us to make Government a special profession."⁶ For Sièyès, then, as for Madison, representative government was not one kind of democracy; it was an essentially different and furthermore preferable form of government.

At this point we need to remind ourselves that certain institutional choices made by the founders of representative government have virtually never been questioned. Representative government has certainly seen changes over the past two hundred years: the gradual extension of voting rights and the establishment of universal suffrage being the most obvious among them.⁷ But on the other hand several arrangements have remained the same, such as those governing the way representatives are selected and public

5 *Dire de l'Abbé Sièyès sur la question du veto royal* [7 September 1789] (Versailles: Baudouin, Imprimeur de l'Assemblée Nationale, 1789), p. 12; see also Sièyès, *Quelques idées de constitution applicables à la ville de Paris* [July 1789] (Versailles: Baudouin, Imprimeur de l'Assemblée Nationale, 1789), pp. 3-4.

6 Sièyès, *Observations sur le rapport du comité de constitution concernant la nouvelle organisation de la France* [October 1789] (Versailles: Baudouin, Imprimeur de l'Assemblée Nationale, 1789), p. 35. On the link between the advocacy of representation and that of division of labor and modern "commercial society," see Pasquale Pasquino, "Emmanuel Sièyès, Benjamin Constant et le 'Gouvernement des Modernes,'" in *Revue Française de Science Politique*, Vol. 37, 2, April 1987, pp. 214-28.

7 A detailed and penetrating analysis of this change and in particular of its symbolic significance in France is given in Pierre Rosanvallon, *Le sacre du citoyen. Histoire du suffrage universel en France* (Paris: Gallimard, 1992).

decisions made. They are still in force in the systems referred to as representative democracies today.

The primary goal of this book is to identify and study those constant elements. I shall call them principles of representative government. By principles I do not mean abstract, timeless ideas or ideals, but concrete institutional arrangements that were invented at a particular point in history and that, since that point, have been observable as simultaneously present in all governments described as representative. In some countries, such as Britain and the United States, these arrangements have remained in place ever since their first appearance. In others, such as France, they have occasionally been abolished, but then were revoked all of a piece and the form of government changed completely; in other words, the regime ceased, during certain periods, to be representative. Finally, in many countries none of these arrangements was ever put in place. Thus, what was invented in the seventeenth and eighteenth centuries, and has not seriously been challenged since, was a particular combination of these institutional arrangements. The combination may or may not be present in a country at any given time, but where it is found, it is found *en bloc*.

In the late eighteenth century, then, a government organized along representative lines was seen as differing radically from democracy, whereas today it passes for a form thereof. An institutional system capable of sustaining such divergent interpretations must have an enigmatic quality about it. One might, of course, point out that the meaning of the word "democracy" has evolved since the rise of representative government.⁸ Undoubtedly it has, but that does not get rid of the difficulty. In fact, the meaning of the word has not changed entirely; what it meant then and what it means now overlap to some extent. Traditionally employed to describe the Athenian regime, it is still in use today to denote the same historical object. Beyond this concrete common referent, the modern meaning and the eighteenth-century meaning also share the notions of political equality among citizens and the power of the people. Today those notions form elements of the democratic idea, and so

⁸ On this point, see Pierre Rosanvallon, "L'histoire du mot démocratie à l'époque moderne," and John Dunn, "Démocratie: l'état des lieux," in *La Pensée politique. Situations de la démocratie* (Paris: Seuil-Gallimard, 1993).

they did then. More precisely, then, the problem appears to lie in discerning how the principles of representative government relate to these elements of the democratic idea.

But genealogy is not the only reason for looking into the relationship between representative institutions and democracy. Modern usage, which classifies representative democracy as one type of democracy, when looked at more closely reveals large areas of uncertainty regarding what constitutes the specific nature of this type. In drawing a distinction between representative and direct democracy, we implicitly define the former as the indirect form of government by the people, and make the presence of persons acting on behalf of the people the criterion separating the two varieties of democracy. However, the notions of direct and indirect government draw only an imprecise dividing line. In fact, as Madison observed, it is clear that, in the so-called "direct democracies" of the ancient world – Athens, in particular – the popular assembly was not the seat of all power. Certain important functions were performed by other institutions. Does that mean that, like Madison, we should regard Athenian democracy as having included a representative component, or ought our conclusion to be that the functions of organs other than the assembly were nevertheless "directly" exercised by the people? If the latter, what exactly do we mean by "directly"?

Furthermore, when we say that in representative government the people govern themselves *indirectly* or *through* their representatives, we are in fact using somewhat muddled notions. In everyday parlance, doing something indirectly or through someone else may refer to very different situations. For example, when a messenger carries a message from one person to another, we would say that the two persons communicate indirectly or through the messenger. On the other hand, if a customer deposits funds in a savings account, charging the bank with the task of investing his capital, we would also say that the customer, as owner of the funds, lends indirectly or through the bank to the companies or institutions that are borrowing on the market. There is obviously, however, a major difference between the two situations and the relationships they engender. The messenger has no control over either the contents or the destination of the message he bears. The banker, by contrast, has

the task of choosing what in his judgment is the best investment possible, and the customer controls only the return on his capital. Which of these two types of indirectness – or indeed what other type – best represents the role of political representatives and the power the people have over them? The modern view of representative democracy as indirect government by the people tells us nothing here. In reality, the information provided by the usual distinction between direct and representative democracy is meager.

The uncertainty and poverty of our modern terminology, like the contrast that it presents with the perception of the eighteenth century, show that we do not know either what makes representative government resemble democracy or what distinguishes it therefrom. Representative institutions may be more enigmatic than their place in our familiar environment would lead us to believe. This book does not aspire to discern the ultimate essence or significance of political representation; it merely sets out to shed light on the unobvious properties and effects of a set of institutions invented two centuries ago.⁹ In general, we refer to governments in which those institutions are present as “representative.” In the final analysis, though, it is not the term “representation” that is important here. It will simply be a question of analysing the elements and consequences of the combination of arrangements, whatever name we give it.

Four principles have invariably been observed in representative regimes, ever since this form of government was invented:

- 1 Those who govern are appointed by election at regular intervals.
- 2 The decision-making of those who govern retains a degree of independence from the wishes of the electorate.
- 3 Those who are governed may give expression to their opinions and political wishes without these being subject to the control of those who govern.
- 4 Public decisions undergo the trial of debate.

The central institution of representative government is election,

⁹ In this the present work differs from two books that particularly stand out among the many studies of representation: G. Leibold, *Das Wesen der Repräsentation* [1929] (Berlin: Walter de Gruyter, 1966) and H. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967).

and a large part of this book will be devoted to it. We shall also be analysing the principles that shape the policies pursued by those who govern and the content of public decisions. A final chapter will look at the different forms assumed by the principles of representative government from the time of its invention to the present day.

I

*Direct democracy and representation:
selection of officials in Athens*

Representative government gives no institutional role to the assembled people. That is what most obviously distinguishes it from the democracy of the ancient city-states. However, an analysis of the Athenian regime, the best-known example of classical democracy, shows that a further feature (one less often commented on) also separates representative democracy from so-called direct democracy. In the Athenian democracy, many important powers were not in the hands of the assembled people. Certain functions were performed by elected magistrates. But what is particularly remarkable is that most of the tasks not done by the Assembly were entrusted to citizens selected by a drawing of lots. By contrast, none of the representative governments set up in the last two centuries has ever used lot to assign even one modicum of political power, whether sovereign or executive, central or local. Representation has only been associated with the system of election, sometimes in combination with heredity (as in constitutional monarchies), but never with lot. So consistent and universal a phenomenon ought to invite attention and indeed scrutiny.

It cannot be accounted for, as can the absence of the popular assembly, by material constraints alone. To explain why representative governments grant no role to the assembly of citizens, authors usually talk about the size of modern states. It is simply not possible, in political entities so much larger and more populous than the city-states of Antiquity, to bring all the citizens together in one place to deliberate and make decisions as a body. Inevitably, therefore, the function of government is performed by a number of individuals

smaller than the totality of citizens. As we have seen, the practical impossibility of gathering the whole people together was not the prime consideration motivating such founders of representative institutions as Madison or Sieyès. The fact remains that the sheer size of modern states had the effect of making it materially impracticable for the assembled people to play a part in government. Moreover, this is likely to have counted for something in the establishment of purely representative systems. On the other hand, it cannot have been the size of modern states that prompted the rejection of the lot system. Even in large, densely populated states it is technically feasible to use lot to select a small number of individuals from a bigger body. Whatever the size of that body, lot will always make it possible to extract therefrom as small a group of individuals as is required. As a method of selection, it is not impracticable; in fact, the judicial system still makes regular use of it today in constituting juries. So this exclusive recourse to election rather than lot cannot stem from purely practical constraints.

The political use of lot is virtually never thought about today.¹ For a long time lot has had no place in the political culture of modern societies, and today we tend to regard it as a somewhat bizarre custom. We know, of course, that it was used in ancient Athens, and this fact is occasionally remarked upon, though chiefly in tones of amazement. In fact, that the Athenians could have adopted such a procedure seems to be the major puzzle. However, we may benefit from an inversion of the usual point of view whereby the culture of the present constitutes the center of the world. It might be better to ask: "Why do not we practice lot, and nonetheless call ourselves democrats?"

It might, of course, be objected that there is not a great deal to be learned from such a question and that the answer is obvious. Lot, it can be argued, selects anyone, no matter whom, including those with no particular aptitude for governing. It is therefore a manifestly

¹ Recently, a few works have helped revive interest in the political use of lot. See in particular Jon Elster, *Solomonic Judgments: Studies in the Limitations of Rationality* (Cambridge: Cambridge University Press, 1989), pp. 78-92. It has also been suggested that a citizen selected at random might elect the candidate of his choice to represent a constituency (see A. Amar, "Choosing representatives by lottery voting," in *Yale Law Journal*, Vol. 93, 1984). However, this suggestion gives lot only a limited role: it is used to select a voter, not a representative.

defective method of selection, and its disappearance requires no further explanation. This is an argument, however, in which the obviousness of the premise ought to cast doubt on the soundness of the conclusion. The Athenians, not generally regarded as unsophisticated in political matters, must have been aware that lot appointed people indiscriminately, yet they continued to use the system for two hundred years. The fact that selection by lot risks elevating unqualified citizens to public office is not a modern discovery. Incompetence in office was as much a danger in Athens as it is in present-day politics. Moreover, if Xenophon is to be believed, Socrates himself ridiculed the appointment of magistrates by lot on the grounds that no one chose ships' pilots, architects, or flute-players by this method.² That means, however, that the question we should be asking is whether the Athenian democrats really did have no answer when faced with this objection. Possibly they saw advantages in lot that, all things considered, they felt outweighed this major disadvantage. Possibly, too, they had found a way of guarding against the risk of incompetence through supplementary institutional arrangements. Concerning lot, it is by no means clear that the danger of incompetence is the last word. We cannot pronounce this selection method defective and destined to disappear before we have carefully analysed how it was used in Athens and how democrats justified it.

In any case, whatever the reason lot disappeared, the crucial fact remains that Athenian democracy employed it to fill certain posts, whereas representative regimes give it no place whatsoever. The difference can hardly be without consequence on the exercise of power, the way it is distributed, and the characteristics of those who govern. The problem is identifying the consequences with any precision. So if we wish to throw light on one of the major differences between representative government and "direct" democracy, we need to compare the effects of election with those of lot.

Analyses of representative government typically contrast election with heredity. In part, such a viewpoint is justified: elected governments directly replaced hereditary governments, and there is no doubt that, in making election the chief basis of political legitimacy,

² Xenophon, *Memorabilia*, 1, 2, 9.

the founders of our modern representative republics were above all rejecting the hereditary principle. Modern representative systems are certainly characterized by the fact that in them power is not inherited (not in essence, anyway). But what also distinguishes them, even if it receives less attention, is the complete absence of the use of lot in the assignment of political functions exercised by a restricted number of citizens. The contrast between election and lot might reveal an aspect of representative government that remains hidden so long as the hereditary system constitutes the sole point of contrast.

A study of the use of lot in Athens is in order: not only because lot is one of the distinguishing features of "direct" democracy, but also because the Athenians employed it side by side with election, which makes their institutions particularly well suited for a comparison of the two methods. Moreover, the recent publication of a superb study of Athenian democracy, remarkable in both its breadth and precision, has thrown fresh light on these points.³

The Athenian democracy entrusted to citizens drawn by lot most of the functions not performed by the Popular Assembly (*ekklesia*).⁴ This principle applied mainly to the magistracies (*archai*). Of the approximately 700 magistrate posts that made up the Athenian

³ I refer to M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes* (Oxford: Basil Blackwell, 1991). This is a condensed version, translated into English, of the very much larger work that Hansen originally published in Danish (*Det Athenske Demokrati i 4 årh. f. Kr.*, 6 vols., Copenhagen, 1977-81). Hansen deals primarily with the Athenian institutions of the fourth century BC (from the second restoration of democracy in 403-402 to its final collapse in 322). Indeed, he points out that the sources are very much more plentiful and detailed for this period than for the fifth century, and he stresses that we do not really know much about how the Athenian democracy functioned in the age of Pericles. The institutional histories that focus on the fifth century (on the grounds that it was then that Athens reached the zenith of its power and artistic brilliance), as well as those that deal with the period from the reform of Ephialtes (462) to the final disappearance of democracy (322) as a single entity, are thus obliged to extrapolate on the basis of data that actually relate to the fourth century. Through his choice of period, Hansen avoids such extrapolation, which he regards as unjustified (*The Athenian Democracy*, pp. 19-23). This does not prevent him, however, from touching on certain features of the institutions of the fifth century.

⁴ On lot and election in Athens, see also, in addition to Hansen's book: James Wycliffe Headlam, *Election by Lot at Athens* [1891] (Cambridge: Cambridge University Press, 1933); E.S. Stavaley, *Greek and Roman Voting* (Ithaca, NY: Cornell University Press, 1972); Moses I. Finley, *Democracy Ancient and Modern* (New Brunswick, NJ: Rutgers University Press, 1973), and *Politics in the Ancient World* (Cambridge: Cambridge University Press, 1983).

administration, some 600 were filled by lot.⁵ The magistracies assigned by lot (*klēros*) were usually collegial.⁶ The term of office was one year. A citizen was not permitted to hold a given magistracy more than once, and while he might be appointed to a number of different magistracies during his lifetime, the timetable for rendering account (no one might accede to a fresh post before having rendered account for the previous one) meant that a person could not in practice serve as a magistrate two consecutive years. All citizens thirty years of age or older (about 20,000 persons in the fourth century) who were not under penalty of *atimia* (deprivation of civil rights) might accede to these magistracies.⁷ Those whose names had been drawn by lot had to undergo examination (*dokimasia*) before they could take up office. This test examined whether they were legally qualified to be magistrates; it also checked whether their conduct towards their parents had been satisfactory and whether they had paid their taxes and had performed their military service. The test had a political side to it, too: an individual known for his oligarchical sympathies might be rejected. In no way, however, did *dokimasia* seek to weed out incompetents, and usually it was a mere formality.⁸

Nevertheless, the Athenian system did offer certain safeguards against magistrates whom the people decided were bad or incompetent. In the first place, magistrates were subject to constant monitoring by the Assembly and the courts. Not only did they have to render account (*euthynai*) on leaving office, but during their term of office any citizen could at any time lay a charge against them and demand their suspension. At Principal Assemblies (*ekklesiāi kyriai*)

⁵ These figures do not include the Council (*boulē*), although it was a board of magistrates. In fact, the powers of the Council were significantly different from those of other magistracies, so it is preferable to consider it separately (see below).
⁶ The word *klēros* is a noun, the corresponding verb being *klēroun* (to draw lots). The fact of obtaining a post by lot is indicated by the verb *lanthano*, used in the aorist tense and occasionally qualified by a determiner: *tō kuanō lathēin* (to have been appointed by lot using a bean) or, in an earlier period, *palō lathēin* (to have been appointed by lot drawn from a helmet).

⁷ Fourth-century Athens had around 30,000 citizens who had reached their majority (i.e. were 20 or over). In the fifth century, the number was probably 60,000 (see Hansen, *The Athenian Democracy*, pp. 55, 93, 232, 313). These figures do not, of course, include women, children, metics (aliens with some civic privileges), or slaves. There is a tendency today to exaggerate the smallness of Athens. Granted, the city was not large, compared with modern states, but neither was it a village.
⁸ Hansen, *The Athenian Democracy*, pp. 218–20, 239.

voting on the magistracies was a compulsory agenda item. Any citizen might then propose a vote of no confidence against a magistrate (whether appointed by lot or by election). If the magistrate lost the vote, he was immediately suspended and his case was referred to the courts, which then had the responsibility of either acquitting him (whereupon he would resume his functions) or condemning him.⁹

Since these arrangements were common knowledge, every citizen was aware in advance that, if he were to become a magistrate, he would have to render account, face the constant possibility of impeachment, and undergo punishment if the case went against him. But – and this deserves particular attention – only the names of those who wished to be considered were inserted into the lottery machines, the *klēroteria*. Lots were drawn not among all citizens thirty and over, but only among those who had offered themselves as candidates.¹⁰ In other words, when the selection of magistrates by lot is placed in its institutional context it looks far less rudimentary than is commonly supposed today. The combination of the voluntary nature of such service and this advance knowledge of the risks incurred must in fact have led to self-selection among potential magistrates. Those who did not feel up to filling a post successfully could easily avoid being selected; indeed, they had strong incentives to do so. The whole arrangement thus had the effect of giving every citizen who *deemed himself fit* for office an opportunity of acceding to the magistracies. Anyone taking up that opportunity exposed himself to the virtually constant judgment of others, but that judgment took effect only *a posteriori* – after the candidate had begun to act in office. Chance apart, access to office was determined only by the assessment each candidate made of himself and his own abilities. In the case of elective magistracies, on the other hand, it was the judgment of others that opened the way to public office. It follows that such judgment was exercised not only *a posteriori*, as in the case of magistracies assigned by lot, but also *a priori* – that is,

⁹ The Assembly met ten times a year as *ekklesiā kyria* (once in each prytany, or five-week period), out of a total of forty meetings annually.

¹⁰ Hansen, *The Athenian Democracy*, pp. 97, 230–1, 239. Note that there was even a verb (*klēroushian*) meaning “to present oneself for selection by lot”, see Aristotle, *Constitution of Athens*, IV, 3; VII, 4; XXVII, 4.

before the candidates had had a chance to prove themselves (at least for candidates who had not held office previously).

Like magistracies assigned by lot, elective offices were also constantly monitored by the Assembly. Any citizen aged thirty or over might stand for an elective post. However, there were several differences between elective magistracies and those assigned by lot. In the first place, while the elective offices were annual, like the others, a person might be re-elected to the same office several times in succession; there were no term limits. In the fifth century, Pericles was re-elected general (*stratēgos*) for more than twenty years. The most famous of fourth-century generals, Phocion, held office for forty-five years. Moreover, the Athenians reserved appointment by election for magistracies for which competence was judged vital. These included the generals and top military administrators from the fifth century onwards and the chief financial officials created or reformed in the fourth century (particularly the Treasurer of the Military Fund, the administrators of the Theoric Fund, and the Financial Comptroller).¹¹ The elective posts were also the most important ones: the conduct of war and the management of finance affected what happened to the city more than any other function. (Athens in fact spent most of the fifth century at war; periods of peace were the exception.) Lastly, it was in the elective offices, rather than among the magistracies filled by lot, that persons of eminence would be found.

In the fifth century, the most influential politicians were elected as generals (Themistocles, Aristides, Cimon, Pericles). The practice was to speak of orators and generals (*rhētores kai stratēgoi*) in the same breath. Although orators were not public officials, it was they who carried most weight in the Assembly. The bracketing together of orators and generals thus suggests that in certain respects they were seen as belonging to the same group, what might today be termed "political leaders." In the fourth century, the link between orators and generals loosened, and orators as a category came to be associated more with the financial magistrates, who were also elected. Also, a social change took place around the time of the

¹¹ The Theoric Fund was originally set up to distribute payments to citizens enabling them to buy theater tickets for public festivals. In the fourth century, the fund was gradually extended to cover the financing of public works and the navy.

Peloponnesian War: whereas the generals and politicians of influence in the fifth century belonged to the old families of the landed aristocracy (Cimon, for instance, came from the famous Lakiad family, while Pericles was related to the Alcmaeonid clan), in the fourth century political leaders tended to be recruited from wealthy families of good standing, whose fortunes were of more recent date and derived from slave-managed workshops.¹² Throughout the history of the Athenian democracy, there was thus a certain correlation between the exercise of political office and membership in political and social elites.

In general, the magistrates (whether elected or selected by lot) did not exercise major political power; they were above all administrators and executives.¹³ They prepared the agenda for the Assembly (*probouleuein*), conducted preliminary investigations prior to lawsuits (*anakrithein*), summoned and presided over courts, and carried out the decisions made by the Assembly and the courts (*prostattein, epilattein*). But they did not hold what was regarded as decisive power (*ho kyrion einai*): they did not make the crucial political choices. That power belonged to the Assembly and the courts. In this respect, the contrast with modern political representatives is manifest. Moreover, even if in their capacity as chairmen the magistrates drew up the agendas of decision-making bodies, they acted at the request of ordinary citizens and put down for discussion motions that those citizens proposed.

The power to make proposals and take initiative was not the privilege of any office but belonged in principle to any citizen wishing to exercise it. The Athenians had a special expression to denote one who took political initiative. A person who submitted a proposal to the Assembly or initiated proceedings before the courts was called *ton Athēniōn ho boulomenos hois exestin* (any Athenian who wishes from amongst those who may) or *ho boulomenos* (anyone who wishes) for short. The term could be translated as "the first comer," though it had no pejorative connotation in the mouths of democrats. Indeed, *ho boulomenos* was a key figure in the Athenian democracy.¹⁴ He could in fact be anyone, at least in principle, but that was precisely what democrats prided themselves on. "You

¹² Hansen, *The Athenian Democracy*, pp. 39, 268–74.

¹³ *Ibid.*, pp. 266–7.

¹⁴ *Ibid.*, pp. 228–9.

blame me," Aeschines replied to one of his opponents, "for not always coming before the people; and you imagine that your hearers will fail to detect that your criticism is based on principles foreign to democracy? In oligarchies, it is not anyone who wishes that may speak but only those who have authority *len men tais oligarchiais ouch ho boulomenos, all'ho dynasteuon demegorei*; in democracies, anyone who wishes may speak, whenever he wishes *len demokratiais ho boulomenos kai olan auto doker!*"¹⁵ Probably it was only a small minority that dared come forward to address the Assembly, with the vast majority confining themselves to listening and voting.¹⁶ In practice, a process of self-selection limited the numbers of those taking initiative. But the principle that anyone wishing to do so was equally able to submit a proposal to his fellow-citizens and, more generally, to address them (*isegoria*) constituted one of the highest ideals of democracy.¹⁷

At any rate, the magistrates had no monopoly of political initiative, and their power was, generally speaking, strictly limited. Evidently, then, as Hansen observes, there is an element of deliberate ignorance or even sophistry in the remarks that Xenophon attributes to Socrates. In ridiculing the practice of selecting magistrates by lot on the grounds that no one would choose a ship's pilot, an architect, or a flute-player by that method, Socrates was deliberately missing the crucial point that, in a democracy, magistrates were not supposed to be pilots.¹⁸ That is not the end of the matter, however, because the magistracies, in the strict sense, were not the only offices assigned by lot. Most historical studies choose to discuss the implications of the use of lot in the Athenian democracy only in connection with the appointment of magistrates.¹⁹ However, given that the magistrates wielded only limited power and that the

responsibilities of those magistracies filled by lot were less than those filled by election, such a choice has the effect of downplaying the importance of lot in Athens. Functions much more important than those of the magistrates were also assigned by lot.

Members of the Council (*boule*) were appointed by lot for a period of one year, and no citizen could be a member of the Council more than twice in his lifetime. The Council comprised 500 members, who were thirty years or older. Each of the 139 districts of Attica (the demes) was entitled to a certain number of seats in the Council (the number was in proportion to the population of the deme). Each deme nominated more candidates than it had seats to fill (it is not clear whether lot was used at this initial stage of the selection process). Lots were then drawn among the candidates for each deme to obtain the requisite number of councilors. On days when the Council sat, its members were paid by the city. Aristotle regarded payment for such political activities as participation in the Assembly, the courts, and the magistracies as one of the essential principles of democracy. In Athens, that principle also applied to the Council.²⁰

Legally, Council membership was a magistracy (*arche*), and like most magistracies was collegial. However, certain features set it apart. In the first place, only the Council could indict its own members: once indicted, a councilor was tried in the courts, but the Council first had to vote on arraigning him before the courts.²¹ More important, the *boule* constituted the most decisive magistracy (*malista kyrin*), as Aristotle wrote, because it prepared for the agenda for the Assembly and carried out its decisions.²² Whereas the

¹⁵ Aeschines, *Against Ctesiphon*, III, 220.

¹⁶ Hansen, *The Athenian Democracy*, pp. 143-5.

¹⁷ Here the distinction between ideal (one might also say ideology) and practice is only a blunt albeit convenient instrument. The process of self-selection that in practice limited the number of speakers actually received explicit recognition, at least in part, in the ideology of the first comer; *ho boulomenos* denoted anyone wishing to come forward to make a proposal, not simply anyone.

¹⁸ Hansen, *The Athenian Democracy*, p. 236.

¹⁹ Hansen is no exception here: the main discussion of the relationship between lot and democracy occurs in the chapter about magistrates (see Hansen, *The Athenian Democracy*, pp. 235-7).

²⁰ Aristotle, *Politics*, VI, 2, 1317b 35-8. The object of such payment was to enable people to take part who would otherwise have been put off political activity by the prospect of losing working time or more generally to attract citizens of modest means. In the fifth century, Athens paid its magistrates; members of the Council, and judges or jurors (citizens who sat in the courts). Judges received three obols (half a drachma) per day they sat. On the other hand, participation in the Assembly was at that time unpaid. In the fourth century, payment of magistrates was probably abolished, but that of councilors and judges was retained, and payment (likewise of three obols) was also introduced for attendance at the Assembly (see Hansen, *The Athenian Democracy*, pp. 240-2). Note, by way of comparison, that at the end of the fifth century the average wage for a day's work stood at one drachma. The allowance for participating in the courts and subsequently in the Assembly was thus equivalent to half a day's pay (see *ibid.*, pp. 150, 188-9).

²¹ *Ibid.*, p. 258.

²² Aristotle, *Politics*, VI, 8, 1322b, 12-17.

activity of the other magistracies was connected with the courts, the Council was linked directly to the *ekklesiā*. The Council deliberated about which proposals were to be considered by the Assembly (*probouleumata*). Some proposals would be formulated in detail; others would be more open, inviting motions from the floor on a particular problem. About half the decrees voted on by the Assembly seem in fact to have been ratifications of precise measures put forward by the Council; the other half stemmed from proposals made directly in the Assembly.²³ The Council had further major responsibilities in the field of external affairs. It received all ambassadors and decided whether or not to bring them before the Assembly, first negotiating with them before submitting the results of such talks to the people in the form of a *probouleuma*. The Council also performed important military functions, being responsible in particular for the navy and for maritime administration. Finally, it had a role of general supervision of public administration, including, very importantly, finance; and in this respect it exercised a degree of control over the other magistrates. Thus the *boulē*, which was appointed by lot, occupied a central position in the government of Athens. Its role may not have been that of a pilot, but neither was it a subordinate one.

However, to assess the full importance of lot in the Athenian democracy we must look at yet another body: the *hēlistai*. Each year, 6,000 persons were chosen by lot from a pool of *volunteers* thirty years or older. The citizens whose names were drawn took the heliastic oath, pledging to vote in accordance with the laws and decrees of the Assembly and the Council, to decide in accordance with their own sense of what is just in cases not covered by law, and to give both defense and prosecution an impartial hearing.²⁴ From then on, for the space of a year those citizens formed the body of the *hēlistai*. Their being older than the citizens who made up the Assembly, and hence putatively wiser and more experienced, meant that they enjoyed special status.²⁵ It was from among the *hēlistai* that the members of the people's courts (*dikasteria*) and, in the fourth century, the *nomothetai* were recruited.

Every day that the courts were in session, any of the *hēlistai* who so desired might present themselves outside the courtroom in the morning. The judges or jurors (*dikastai*) needed for that day were then chosen by lot from among them. Note again the voluntary nature of such participation. Since a number of courts sat simultaneously, another lottery then determined (at least in the fourth century) in which court each judge should sit.²⁶ A court might comprise 501, 1,001, 1,501, or even more *dikastai*, depending on the seriousness of the matters before it.²⁷ *Dikastai* received an allowance of three obols per day (which as we have seen was approximately equivalent to half a day's pay). For the most part, it was the poor and the elderly who sat in the courts.²⁸

The term "courts" is potentially misleading as regards the nature of the functions thus assigned by lot, and we need to go into more detail here. The fact is, the courts performed important political functions. Disputes between individuals were often settled by arbitration, the courts becoming involved only if one of the parties appealed the decision. Many criminal cases, too, were dealt with outside the people's courts (murders, for example, were judged by the Areopagus). Thus, political trials accounted for most of the activity of the people's courts.²⁹ Such trials were in no way exceptional. In fact, they were an important element in everyday government.

This was above all the case with the criminal action for illegality (*graphē paranomōn*). Any citizen could bring an action for illegality against a proposal (whether for a law or for a decree) submitted to the Assembly.³⁰ The charge was against a named person: the individual who had made the offending proposal. Only the initiator was subject to prosecution; a citizen could not be prosecuted for a vote he had cast (which again highlights the special status of the act

²³ Hansen, *The Athenian Democracy*, pp. 181–3.

²⁷ Note, by way of comparison, that on average around 6,000 persons took part in the Assembly (see *ibid.*, pp. 130–2).

²⁸ *Ibid.*, pp. 183–6.

²⁹ *Ibid.*, pp. 178–80.

³⁰ Actually, it was only in the fifth century that the Assembly voted on both laws (*nomoi*) and decrees (*psēphismata*); in the fourth century, voting on laws was the exclusive province of the *nomothetai*. In the fifth century, then, the *graphē paranomōn* could target either laws or decrees, while in the fourth century it applied only to decrees, a rather different procedure (the *graphē nomon nē epitēdeion theinai*) being used to challenge laws.

²⁴ Hansen, *The Athenian Democracy*, pp. 138–40.

²⁵ *Ibid.*, p. 182.

²⁶ Citizens had merely to have reached their majority (probably twenty years of age) to take part in the Assembly.

of initiating in the Athenian democracy). More importantly, it should be noted that an action for illegality could still be brought against the proposer of a decree or a law that had already been adopted by the Assembly, even unanimously. When a decree or a law that the Assembly had already passed was challenged as illegal, it was immediately suspended until the courts delivered their verdict. The action for illegality thus had the effect of placing the decisions of the Assembly under the control of the courts: every measure passed by the *ekklesia* might be re-examined by the courts and possibly overturned, if someone so requested. Furthermore, an action for illegality could be brought not only for technical reasons (for instance, if the proposer had been under penalty of *atimia*), but also for substantive reasons (if the law or decree at issue contravened existing legislation). In the fourth century, substantive reasons included any conflict with the basic democratic principles underlying the laws. This meant that proposals might be challenged purely on the grounds that they were detrimental to the public interest. To that extent, the *graphē paramonōn* quite simply gave the courts political control over the actions of the Assembly.³¹ It appears to have been in frequent use: the sources suggest that the courts may have considered as many as one a month.³²

When a proposal that had already been put to the Assembly was re-examined by the courts through such an action for illegality, the second examination presented certain specific features differentiating it from the first, and accounting for its greater authority. To start with, there were fewer *dikastai* than there were members of the Assembly. They were older, and they had taken an oath. But in addition to this the procedure followed by the courts differed from that of the Assembly. A whole day was set aside for examining a decision that had been challenged as illegal, whereas during an *ekklesia* session (half a day), it was customary for a number of decisions to be taken. Court procedure was necessarily adversarial, with the person who had proposed the suspect measure being required to defend it and the plaintiff to attack it. Moreover, the two parties had had time to prepare their cases. The Assembly, on the other hand, might make a decision without debate and on the spot,

provided that no one objected to the proposal concerned. Finally, voting in the Assembly was by show of hands in all but exceptional cases. No precise vote count was taken: with 6,000 people attending, on average, a count would have taken a very long time. In the courts, by contrast, secret ballot was the rule (making nobbling and corruption more difficult there), and votes were counted exactly.³³ So even when they were performing what was properly speaking a political role, the courts constituted an organ that differed substantially from the Assembly in terms of size, composition, and method of operation.

At the end of an action for illegality, if the *dikastai* handed down a verdict in favor of the prosecution, the Assembly's decision was quashed and the assemblyman who had initiated it fined. In some instances the fine was minimal, but it could amount to a substantial sum, making someone a debtor to the city for the rest of his days, thus stripping him of his civil rights (*atimia*). The possibility of incurring this penalty had one important consequence: while, as we have seen, anyone (*ho boulomenos*) could make a proposal in the Assembly, all members were aware that, in doing so, they ran a considerable risk. On the other hand, the system was also designed to discourage frivolous accusations: if an accuser withdrew his complaint before the courts had pronounced on it, he was sentenced to a fine of 1,000 drachmas and banned from ever again bringing an action for illegality. Also, apparently, as with other public accusations (*graphai*), the plaintiff incurred a 1,000 drachma fine and partial *atimia* if his complaint secured fewer than one-fifth of the votes.³⁴

The courts also considered denunciations (*eisangeliai*). These were of various kinds. They might be directed either at magistrates accused of maladministration, in which case they were put to the Council before being dealt with by the courts (*eisangeliai eis tēn boulēn*), or at any citizen (including magistrates) for political offenses. In the latter case, the complaint was first laid before the Assembly (*eisangeliai eis ton dēmon*). The notion of political offense

³³ Hansen, *The Athenian Democracy*, pp. 147-8, 154-5, 209-12.

³⁴ To gain some idea of the size of a 1,000 drachma fine, bear in mind that the average wage for a day's work in the late fifth century was one drachma (see n. 20 above).

covered three types of act in the main: treason, corruption (accepting money to give "bad advice to the people of Athens"), and attempted overthrow of the government (i.e. democracy). However, these categories were rather loosely interpreted and in practice permitted a wide range of behavior. The *eisangelia eis ton demon* was used mainly against generals. This was the type of legal action used to condemn to death the victors of the naval battle of the Arginussai (406/5) on the grounds that they had neither picked up survivors nor honored the dead after the victory. Several generals suffered denunciation for having lost a battle or led a fruitless campaign. Such denunciations were frequent: it would appear that one general in five would face an *eisangelia* at some point in his career. Finally, it was the courts that conducted the preliminary examination (*doximasia*) of magistrates before they took up office and their rendering of accounts (*euthymia*) on leaving it.

The people's courts, whose members were drawn by lot, thus constituted a truly political authority. In the fourth century, a further body appointed by lot was particularly important in the government of Athens, namely the *nomothetai*. When democracy was restored following the oligarchic revolutions of 411 and 404, it was decided that, in the future, the Assembly would no longer pass laws but only decrees, and that legislative decisions would be left to the *nomothetai*. It was then that the distinction between laws (*nomoi*) and decrees (*psēphismata*) was worked out in detail. In the fifth century the two terms had been used more or less interchangeably. After democracy was restored, a law meant a *written* norm (in the fifth century the word *nomos* could refer to a custom), that enjoyed *greater validity than a decree*, and was *equally applicable to all Athenians* (whereas a decree might apply to an individual). These three characteristics were explicitly set out in a law defining laws, adopted in 403/2.³⁵ Other sources show that at that time a fourth characteristic was added to the definition of a law: *validity for an*

³⁵ The fullest quotation from this law defining laws is found in Andocides's speech *On the Mysteries* (§ 87): "Law: magistrates must under no circumstances use unwritten law. No decree voted on by the Council or the people may have higher validity than a law. No law may be passed that applies only to a single individual. The same law shall apply to all Athenians, unless otherwise decided [by the Assembly] with a quorum of 6000, by secret ballot" (quoted in Hansen, *The Athenian Democracy*, p. 170).

indefinite period, with the term "decree" being reserved for norms of limited duration, which exhaust their content once their purpose has been fulfilled.³⁶ In 403/2, the existing laws were codified, and henceforth any change in the code of laws had to be decided by the *nomothetai*.

In the fourth century, then, legislative activity assumed the following forms. At the beginning of each year, the code of existing laws was submitted for the approval of the Assembly. If a law currently in force was rejected by the Assembly, anyone might propose a fresh one to take its place. The Assembly then appointed five citizens to defend the existing law, and the two parties argued their respective cases before the *nomothetai*. In addition, at any time throughout the year, a citizen might propose that a particular law be abolished and replaced by another. If he secured the backing of the Assembly, the procedure would then be the same as in the first case. Lastly, six magistrates (the *thesmothetai*) were charged with constantly keeping an eye on the laws. If they found a law invalid, or if two laws seemed to conflict,³⁷ they brought the case before the Assembly. If that body so decided, the process of revision by the *nomothetai* was then set in motion. In other words, legislative activity invariably took the form of revision, with the Assembly retaining the initiative, but the final decision being taken by the *nomothetai*, following adversarial proceedings. When the Assembly decided that there was occasion for revision, it set up a committee of *nomothetai*, fixing their number in accordance with the importance of the law (501 was the minimum, but the figure was often 1,001, 1,501, or even higher). On the morning of the day set for the review, the requisite number of *nomothetai* was drawn by lot from among the *hēlistai*. It seems that, as with the courts, lots were drawn among those *hēlistai* who had turned up on the day. So in the fourth century, legislative decisions as such were in the hands of an organ distinct from the Assembly and appointed by lot.

Today, when we distinguish between representative and "direct" democracy we usually imagine that in the latter all important political powers were exercised by the assembled people. Closer examination of the institutional system used in ancient Athens

³⁶ *Ibid.*, p. 171.

³⁷ See, Aischines, *Contra Ctesiphon*, III, 37-40.

shows this image to be false. Even apart from the magistrates, three institutions other than the Assembly, namely the Council, the courts, and the *nomothetai*, exercised a political function of the first importance. The people's courts and the Council merit particular attention. For both institutions played a key part throughout the history of the Athenian democracy. Certain powers of the courts even belonged to what was regarded as decisive power (*kyrion*), notably their ability to overturn decisions of the Assembly.

In his definition of citizenship, Aristotle actually placed participation in the courts on the same level as participation in the Assembly. He made it clear that members of the courts, like members of the Assembly, had "the most decisive power [*kyrriotatoi*]." ³⁸ At the same time, the courts, as we have seen, constituted an organ that was clearly distinct from the Assembly. What is more, in terms of beliefs and perceptions, it was the *ekklesia* that was regarded as the *dēmos*, not the courts. The latter no doubt acted on the city's behalf (particularly in their political role) and hence on behalf of the Athenian people (*ho dēmos tōn Athēnaiōn*), the city being a democracy. But they were not perceived as the people itself. There appears to be no source in which the term *dēmos* denotes the courts. When the word is applied to a political institution, it never refers to anything other than the Assembly. ³⁹

As for the Council, despite the fact that it acted on behalf of the city and the Athenian people, it too was never identified with the *dēmos*. A distinction was drawn between decrees enacted by the Council (*boulēs psēphismata*), which did indeed enjoy certain limited

³⁸ Aristotle, *Politics*, III, 1, 1275a 28. This statement is in fact part of a more complex argument. The concept of the citizen put forward in the *Politics* applies in principle to all regimes, but Aristotle adds that the citizen, as he defines him, "exists primarily under democracy" (*Politics*, III, 1, 1275b 5-6). The citizen is defined by his "participation in the power of judgement and the power of command [*metechein kritesōs kai archēs*]" (*Politics*, III, 1, 1275a 23). According to Aristotle, the power of command belongs to the magistracies as such, which may be held only for a time, but it also belongs to functions that may be performed with no time limit, namely those of assemblyman (*ekklēsiastēs*) and of judge (*dikasastēs*). For, he went on, it would be "ridiculous to deny that those who hold the most decisive power [*gelaton tous kyrriotatos aposterein archēs*]" (*Politics*, III, 1, 1275a 28-9). At first, Aristotle appears to place the power of the magistrates proper in the same category as that of the Assembly and that of the courts (which radical democrats disputed), but he later reserves the term *kyrriotatos* for members of the Assembly and the courts.

³⁹ Hansen, *The Athenian Democracy*, pp. 154-5.

powers of its own, and decrees enacted by the Assembly, only the latter being referred to as "decrees of the people" (*dēmou psēphismata*). Moreover, when the Assembly was merely ratifying a detailed proposal put to it by the Council, the decision was prefaced by the words: "It has been decided by the Council and by the people . . ." (*edoxē tē boulē kai tō dēmō*). On the other hand, when the decision taken stemmed from a proposal that had originated in the Assembly (the Council having merely placed an item on the agenda by means of an open *probouleuma*), the Assembly's decision began with the words: "It has been decided by the people . . ." (*edoxē tō dēmō*). ⁴⁰ In the Athenian democracy, then, the populace did not itself wield all power; certain important powers and even a portion of the decisive power belonged to institutions that were in fact, and were perceived to be, other than the *dēmos*.

But then what, in that case, does "direct democracy" mean? Anyone insisting that such institutions as the Council and the courts were organs of "direct" government is forced to admit that this directness consisted in the way their members were recruited, which was by lot, rather than from their being identical to or identified with the people.

For a time historians believed that in Athens, the origins and significance of lot were religious. This interpretation was first put forward by N.-D. Fustel de Coulanges and subsequently taken up, with certain variations, by G. Glotz. ⁴¹ For Fustel de Coulanges, appointment by lot was a legacy from the archaic period and the priestly quality with which rulers were then endowed. The sacerdotal royalty of the archaic period had been hereditary. When it disappeared, Fustel wrote, "one searched to replace birth with a method of election that the gods should not have to disavow. The Athenians, like many Greek peoples, put their faith in the drawing of lots. However, we must not form a false impression of a process that has been used as a subject of reproach against the Athenian

⁴⁰ Hansen, *The Athenian Democracy*, pp. 255-6, 139.

⁴¹ Nicolas-Denis Fustel de Coulanges, *La Cité antique* [1864], Book III, ch. 10 (Paris: Flammarion, 1984) pp. 210-13. See also Fustel de Coulanges, "Recherches sur le tirage au sort appliqué à la nomination des archontes athéniens," in *Nouvelle Revue Historique de droit français et étranger*, 1878, 2, pp. 613 ff.; Gustave Glotz, "Sortitio," in C. Daremberg, E. Saglio, and E. Pottier (eds.), *Dictionnaire des antiquités grecques et romaines*, Vol. IV (Paris, 1907), pp. 1401-17; G. Glotz, *La Cité grecque* [1928], II, 5 (Paris: Albin Michel, 1988), pp. 219-24.

democracy." "To the people of antiquity," he went on, "lot was not chance; lot was the revelation of divine will."⁴²

For Fustel as for Glotz, the religious interpretation of lot offered a solution to what they both saw as the principal enigma of the process, namely its bizarre, if not absurd, character in the light of modern political thinking. Glotz wrote: "Appointing rulers by lot seems so absurd to us today that we find it difficult to imagine how an intelligent people managed to conceive of and sustain such a system."⁴³ Neither Fustel nor Glotz could conceive that the Athenians practiced lot for political reasons or, to be more precise, for reasons whose political nature might still be apparent to the modern mind. Since the appointment of magistrates by lot struck them as so alien to the world of politics, they assumed that it must have belonged to a different world, that of religion. They concluded that politics for the Athenians must have been different from politics in the modern age, not merely in content and order of priorities, but also in ontological status. Politics for the Athenians, they surmised, must have been a blend of the here-and-now and the hereafter.⁴⁴

The religious explanation of the Athenian use of lot was certainly based on the interpretation of certain sources. It also rested on an argument by analogy: various cultures have in fact looked on lot as giving signs from the supernatural world. Nevertheless, the theory was challenged in a pioneering work published by J. W. Headlam in 1891,⁴⁵ and it no longer enjoys currency among today's specialists. "All in all," Hansen writes, "there is not a single good source that

⁴² Fustel de Coulanges, *La Cité antique*, pp. 212-13.

⁴³ Glotz, *La Cité grecque*, p. 223.

⁴⁴ The idea that the only way to understand the institutions of antiquity was with reference to their religious origins and dimension runs through the whole of Fustel's book. Note that the author was also pursuing an explicit objective in terms of political pedagogy: in setting out "above all to highlight the fundamental and essential differences that will forever distinguish these ancient peoples from modern societies," he hoped to help discourage imitation of the ancients, which in his eyes was an obstacle to "the progress of modern societies." Echoing Benjamin Constant's famous distinction, Fustel declared: "We have deluded ourselves about liberty among the ancients, and for that reason alone liberty among the moderns has been jeopardized" (*La Cité antique*, Introduction, pp. 1-2).

⁴⁵ Headlam, *Election by Lot at Athens*, pp. 78-87.

⁴⁶ See Savelley, *Greek and Roman Voting*, pp. 34-6; Finley, *Politics in the Ancient World*, pp. 94-5.

straightforwardly testifies to the selection of magistrates by lot as having a religious character or origin."⁴⁷

On the other hand, countless sources present lot as a typical feature of democracy.⁴⁸ What is more, lot is described as the democratic selection method, while election is seen as more oligarchic or aristocratic. "What I mean," wrote Aristotle, "is that it is regarded as democratic that magistracies should be assigned by lot, as oligarchic that they should be elective, as democratic that they should not depend on a property qualification, and as oligarchic that they should."⁴⁹ The idea of lot being democratic and election oligarchic no doubt strikes us as odd. Aristotle clearly believed otherwise, though, because he brought it into an argument relating to one of the central concepts of the *Politics*, that of the mixed constitution (*μενιγμένη πολιτεία*).

Aristotle thought that, by synthesizing democratic and oligarchic arrangements, one obtained a better constitution than regimes that were all of a piece. Various combinations of lot, election, and property qualifications allowed just this kind of synthesis. Aristotle even suggests ways of achieving the mixture. One might, for example, decide that magistracies should be elective (rather than assigned by lot) but that everyone, regardless of any property qualification, could vote or stand for election, or both. Another mixture might consist in assigning offices by lot but only within a particular class of citizens defined by a property qualification. Or again, certain posts might be filled by election and others by lot.⁵⁰ According to the philosopher, these different combinations produced constitutions that were oligarchic in some respects and democratic in others. For Aristotle, then, election was not incompat-

⁴⁷ Hansen, *The Athenian Democracy*, p. 51 (for a detailed discussion of the theory advanced by Fustel and Glotz, see *ibid.*, pp. 49-52).

⁴⁸ See, for example, Herodotus, *Histories*, III, 80, 27 (the speech of Otaeus, a supporter of democracy, in the debate about constitutions); Pseudo-Xenophon, *Constitution of Athens*, I, 2-3; Xenophon, *Memorabilia*, I, 2, 9; Plato, *Republic*, VIII, 561b, 3-5; Plato, *Lysis*, VI, 757e 1-758a 2; Isocrates, *Areopagiticus*, VII, 21-2; Aristotle, *Politics*, IV, 15, 1300a 32; VI, 2, 1317b 20-2; Aristotle, *Rhetoric*, I, 8.

⁴⁹ Aristotle, *Politics*, IV, 9, 1294b 7-9. On the aristocratic nature of election, see also Isocrates, *Panathenaiscus*, XII, 153-4: the ancestral constitution, Isocrates claimed in essence, was superior to the present constitution, since under it magistrates were appointed by election (rather than by lot) and it therefore included an aristocratic element alongside its democratic features.

⁵⁰ Aristotle, *Politics*, IV, 9, 1294b 11-14; IV, 15, 1300a 8-1300b 5.

tible with democracy, although taken in isolation it was an oligarchic or aristocratic method, whereas lot was intrinsically democratic.

To understand the link that the Athenians established between lot and democracy, we must first take a look at a key feature of Greek democratic culture: the principle of rotation in office. Democrats not only recognized the existence of a difference of role between the governors and the governed, they also recognized that, for the most part, the two functions could not be exercised by the same individuals at the same time. The cardinal principle of democracy was not that the people must both govern and be governed, but that every citizen must be able to occupy the two positions alternately. Aristotle defined one of the two forms that liberty – “the basic principle of the democratic constitution” – might take as follows: “One of the forms of liberty [*eleutheria*] is to rule and be ruled in turns [*en meri archesthai kai archein*].”⁵¹ In other words, democratic freedom consisted not in obeying only oneself but in obeying today someone in whose place one would be tomorrow.

For Aristotle, this alternation between command and obedience even constituted the virtue or excellence of the citizen.⁵² “It would appear,” he wrote, “that the excellence of a good citizen is to be capable of commanding well and obeying well [*ho dynasthai kai archein kai archesthai kalos*].”⁵³ And this dual capacity, so essential to the citizen, was learned through alternating the roles: “It is said, and quite rightly, that no one can command well who has not obeyed well [*ouch estin eu arxai me archenthai*].”⁵⁴ The phrase used by

⁵¹ Aristotle, *Politics*, VI, 2, 1317a 40–1317b 2. The same idea was expressed by Euripides when he had Theseus say that the fact of taking turns to govern was a fundamental characteristic of the Athenian democracy (*Suppliant Women*, v. 406–8). For Aristotle, the other form of democratic liberty had nothing to do with participating in political power; it was “the fact of living as one likes [*ho zēn hos bouletai tis*]” (*Politics*, VI, 2, 1317b 11–12). The fact that freedom understood as the ability to live as one wishes constituted one of the democratic ideals is also vouched for by Thucydides, both in the famous funeral oration that he has Pericles deliver (*Peloponnesian War*, II, 37) and in the remarks he attributes to Nicias (*ibid.*, VII, 69). This is not the place to discuss Benjamin Constant’s distinction between the liberty of the ancients and that of modern man or to enter into the numerous discussions, whether scholarly or ideological, raised by Pericles’s funeral oration. The Aristotelian concept of the citizen particularly applied (as Aristotle himself acknowledged) to the citizen of a democracy (see above note 38).

⁵² Aristotle, *Politics*, III, 1277a 27.

⁵³ Aristotle, *Politics*, III, 1277a 27.

⁵⁴ *Ibid.*, 1277b 12–13. Aristotle mentions the same idea several times in the *Politics*. In

Aristotle was proverbial. Its origin was attributed to Solon, which gives some indication of its importance in the political culture of Athens. The expression “to command well” should here be understood in its fundamental sense: to exercise the activity of command in conformity with its essence and perfection. Generally speaking, a task may legitimately be entrusted to someone capable of performing it to perfection. Rotation in office thus provided the basic legitimization of command. What gave a right to rule was the fact of having once been in the opposite position.

It has often been pointed out that rotation reflected a view of life according to which political activity and participation in government were among the highest forms of human excellence. But alternating command and obedience was also a device for achieving good government. It aimed to produce political decisions that accorded with a certain type of justice, namely democratic justice. Insofar as those giving orders one day had been obeying them the day before, it was possible for those in power to make allowance, in reaching their decisions, for the views of the people whom those decisions affected. They were able to visualize how their orders

another passage, he explains that alternating command and obedience and having citizens fill the two roles by turns is a just solution (if not in absolute terms the best) when all citizens are equal or deemed to be such, as is the case in democracies (*Politics*, II, 2, 1261a 31–1261b 7). In Book VII, dealing with the unconditionally best constitution, he writes: “Since every political community is made up of rulers and ruled, we must examine whether the rulers and the ruled should change or remain the same for life . . . Undoubtedly, were some to differ from others as much as we believe the gods and heroes differ from men, being endowed with great superiority, perceptible first in their bodies and subsequently in their minds, such that the superiority of the rulers over the ruled is clear and unquestionable, obviously it would be better in that case that the same people, once and for all, should govern and be governed. But since such a situation is not easily found, and since it is not the same here as among the inhabitants of India, where according to Scylax kings do differ so greatly from their subjects, clearly it is necessary, for many reasons, that all should share in the same way in ruling and in being ruled, by taking turns [*anankazon pantas homoiōs koinēthēn tou kata meros archein kai archesthai*]” (*Politics*, VII, 14, 1332b 12–27). However, when it comes to the unconditionally best constitution, Aristotle attempts to reconcile the principle of rotation and the requirement that differences of function be based on nature. One thing permits such a reconciliation: age. The same individuals need to be ruled when nature most inclines them to that role, i.e. when they are young, and to be rulers when nature makes them more capable thereof, namely in later life. Aristotle adds that this alternation based on age satisfies the principle that “he who is destined to govern well must first have been well governed” *ibid.*, 1333a 3–4). So even when Aristotle is describing the best constitution, he remains attached to the principle that command is learned through obedience.

would affect the governed, because they knew, having experienced it for themselves, what it felt like to be governed and to have to obey. Furthermore, those in office had an incentive to take the views of the governed into account: the man giving the orders one day was discouraged from lordling it over his subordinates, knowing that the next day he would be the subordinate. Admittedly, rotation was no more than a procedure; it did not dictate the content of decisions or determine what were just orders. But the procedure itself was nonetheless conducive to substantively just outcomes, creating as it did a situation in which it was both possible and prudent for the governors, when making decisions, to see the situation from the viewpoint of the governed.

In the theoretical outline that Rousseau put forward two thousand years later, justice was to be guaranteed by the universality of law: each citizen, voting on laws that would apply to himself as to everyone else, would be induced to will for others what he willed for himself. In the rotation procedure, a similar effect was produced through the medium of chronological succession: those who governed were led to decide by putting themselves in the place of their subjects, for it was a place they had known and would know again. The democrats of Athens were not content merely to preach justice, exhorting those in power to imagine themselves in the place of the governed: they gave them the means and the motivation to do so.

Rotation was of such importance to democrats that it was made a legal requirement. Not only was the power relationship reversible in principle; it was ineluctably reversed in fact. That was the purpose of the various restrictions mentioned above (e.g., the magistracies assigned by lot could not be held for more than one term, one could not be a member of the *boulē* more than twice). Because of these restrictions, several hundred new individuals had to be found each year to fill the posts of magistrate and councilor. It has been calculated that, among citizens aged thirty and over, one in two must have been a member of the *boulē* at least once in his life. Moreover, there was also a de facto rotation in attending the Assembly and the courts. The *ekklesia* never assembled more than a fraction of the citizenry (averaging 6,000, as we mentioned, from a total of 30,000 citizens in the fourth century), and it is unlikely to have been the same citizens taking part each time. The Assembly

was identified with the people not because all citizens attended, but because all of them *could* attend, and because its membership was constantly changing. As for the courts, we have clear archaeological proof to the effect that the *dikastai* changed a great deal.⁵⁵

The Athenian democracy was thus to a large extent organized, in practice as well as in theory, around the principle of rotation. This fundamental principle made selection by lot a rational solution: since a substantial number of individuals were to be in office anyway, one day or another, the order in which they acceded to those offices might be left to chance. Moreover, the number of citizens being fairly small in relation to the number of posts to be filled, the rotation requirement made lot preferable to election. Election would in fact have reduced even further the number of potential magistrates by limiting it to people who were popular with their fellow-citizens. The Athenians, it might be said, could not afford to reserve the posts of magistrates and councilors for those citizens whom their peers judged sufficiently able or gifted to elect them: that kind of restriction would have inhibited rotation.

But we need to go even further: there was a potential conflict between the elective principle and rotation. The elective principle entails that citizens be free to choose those whom they place in office. Freedom to elect, however, is also freedom to re-elect. The citizens may want the same person to occupy a particular office year after year. It must even be assumed that if a citizen has succeeded in attracting votes once, he has a good chance of attracting them again. The only way to provide an absolute guarantee of rotation in an elective system is to limit the electorate's freedom of choice by deciding that certain citizens may not be elected because they have already been elected. This can be done, of course, but it means establishing a compromise between two principles implying potentially opposite consequences. By contrast, combining compulsory rotation with selection by lot presents no such danger: the rotation requirement carries no risk of thwarting the logic of the lot. The Athenians were aware of the potential conflict between the elective principle and the principle of rotation, which is why holding the same elective magistracy several times in succession was not prohib-

⁵⁵ Hansen, *The Athenian Democracy*, p. 313.

ited. The system of prohibitions applied only to those magistracies that were filled by lot. In the Athenian democracy, then, appointment by lot reflected above all the priority given to rotation.

Second, the combination of rotation and the drawing of lots stemmed from a deep distrust of professionalism. Most magistrates as well as all councilors and judges were not professionals but just ordinary citizens. The Athenians recognized the need for specialized professional skills in certain cases, but the general presumption was to the contrary: they reckoned that every political function was performable by non-specialists unless there were compelling reasons to think otherwise. The absence of experts or, at any rate, their restricted role was designed to safeguard the political power of ordinary citizens.⁵⁶

The assumption was that if professionals intervened in government they would inevitably dominate. The Athenians probably sensed that, in collective decision-making, having knowledge and skills that others did not possess constituted by itself a source of power, giving those who possessed the skills an advantage over those who did not, no matter how their respective powers might be defined in law. A Council of professionals or professional magistrates would have a hold over the Assembly; the presence of experts in the courts would have reduced the importance of the other *dikastai*. Historians frequently assert that the chief objective of appointment by lot was to curtail the power of the magistrates.⁵⁷ However, the assertion is ambiguous and in any case applies to only one of the uses of lot, namely the selection of magistrates proper. In fact, appointment by lot did not affect the formal definition of functions or powers. The formal powers of magistrates were indeed limited, but this was because they were subject to constant monitoring by the Assembly and the courts. Selection by lot guaranteed more specifically that individuals serving as magistrates would not enjoy extra power by virtue of their expertise. Indeed, having the *dikastai* appointed by lot was not intended to reduce the formal power of the courts: they were invested with a power that was explicitly deemed decisive. That is why it is so important to look at

the courts in any analysis of how Athens utilized lot. In the courts, the use of lot to select judges and the complete absence of professionals were intended to guarantee that the voices of experts did not outweigh those of ordinary citizens.

In the final analysis, the Athenian democrats perceived a conflict between democracy and professionalism in political matters.⁵⁸ Democracy consisted in placing decisive power in the hands of amateurs, the people the Athenians called *hoi idiōtai*. Magistrates, when they came to render account, frequently pleaded lack of expertise in excuse for their mistakes.⁵⁹ That kind of rhetorical strategy obviously presupposed that those listening saw it as normal and legitimate that ordinary citizens should occupy magistracies. To gain public favor, even an orator and political leader of the stature of Demosthenes would on occasion, particularly in the early days of his career, present himself as "an ordinary person, like one of you [*idiōtēs kai pollōn hēmōn heis*]." ⁶⁰

The myth that Plato has Protagoras recount undoubtedly gives expression to a key element of democratic thinking. Plato, of course, had no sympathy for democracy and regarded Protagoras as an opponent whose ideas had to be refuted. However, he does seem to have felt a certain respect for Pericles's sophist friend. Moreover, the remarks he attributes to Protagoras accord too well with Athenian practice to have been a mere caricature designed to facilitate refutation. In the *Protagoras*, Socrates expresses surprise that the Assembly behaves very differently when dealing with buildings or ships to be constructed than when discussing the government of the city (*peritōn tēs poleōs diōkēsōn*). In the former case, the Assembly calls builders or shipwrights, and, if anyone not regarded as an expert presumes to offer his opinion, the crowd makes fun of him and shouts him down. But when general city matters are under discussion, "we see the floor being taken indiscriminately by smiths, shoemakers, merchants, and seamen, rich and poor, high-born and commoners, and nobody thinks of rebuking them, as one would in the former case, for their attempt to give advice with no training obtained anywhere, under any teacher."⁶¹ Protagoras has then

⁵⁶ Staveley, *Greek and Roman Voting*, p. 55.

⁵⁷ This is true of Staveley, *Greek and Roman Voting*, but also of Hansen, *The Athenian Democracy*, pp. 84, 235–7.

⁵⁸ Hansen, *The Athenian Democracy*, p. 308.

⁶⁰ Demosthenes, *Proemia*, 12. In some editions, this Prooemion is numbered 13.

⁶¹ Plato, *Protagoras*, 319 D.

⁵⁹ *Ibid.*, p. 308.

recourse to a myth to defend Athenian practice: Zeus granted political virtue to all men, for had it been reserved for some, as technical skills are, cities would be unable to survive; they would be torn apart by conflict, their members would be dispersed, and humanity would perish.⁶² This myth constitutes a defense of the principle of *isēgoria*: so far as government is concerned, any citizen, no matter who, is sufficiently qualified for his opinion to merit at least a hearing.

Lot was also associated with the principle of equality, but this link is more difficult to interpret. Contemporary historians disagree on the subject. Some, like M. I. Finley, see the practice of drawing lots as an expression of the equality so dear to the Athenian democrats.⁶³ Others echo Hansen in claiming that it was chiefly authors hostile to democracy (Plato, Aristotle, Isocrates) who established a link between lot and the democratic ideal of equality, rather than the democrats themselves. Hansen further points out that the view of equality that these authors attributed to democrats did not correspond to the reality of Athenian democracy.⁶⁴

Hansen's argument is hard to follow and conceptually weak. He uses the modern distinction between two conceptions of equality: equality of outcome, in which individuals have equal shares of everything, and equality of opportunity, in which everyone shares the same starting line, the final distribution being determined solely by individual merit.⁶⁵ Hansen demonstrates that the concept of equality actually championed by the Athenian democrats was not equality of outcome. Whatever Aristotle might have said, they did not claim that all must have equal shares in everything. Now the use of lot was not about equality of opportunity since it obviously did not distribute power in accordance with talent. Hansen infers that its only justification could be equality of outcome. Since this was not the view of equality held by democrats, the conclusion is that democrats did not defend lot in the name of their vision of equality.

The argument presupposes, however, that the distinction between

equality of outcome and equality of opportunity, as understood today, exhausts the possibilities so far as concepts of equality are concerned. Certainly, talent played no part in selection by lot, but it does not follow that lot could embody only the notion of equality of outcome. It may be that the use of lot reflected a concept of equality that was neither equality of outcome nor equality of opportunity in the modern sense.

In fact, as Hansen himself acknowledges, it is not only in texts that are critical of or have reservations about democracy that the egalitarian nature of lot is stressed. It also appears in Herodotus, in the famous debate about constitutions (though this is not specifically about Athens), and above all in Demosthenes, who cannot be suspected of having been either hostile to Athens or unfamiliar with the city's political culture.⁶⁶ It would appear, then, that selection by lot was regarded as a particularly egalitarian procedure. The problem is knowing to which version of the complex notion of equality it was attached.

Greek culture distinguished two types of equality: arithmetical equality on the one hand, achieved when the members of a group all receive equal shares (whether of goods, honors, or powers), and geometrical or proportional equality on the other, which was reached by giving individuals shares whose value corresponded to the value of the individuals concerned, assessed according to a particular criterion, whatever it might be. To put it another way, if two individuals, *A* and *B*, had shares *a* and *b* in a particular asset assigned to them, arithmetical equality was said to obtain if *a* equaled *b* and geometrical equality if the ratio of values between the two individuals equaled the ratio of values between the shares ($A / B = a / b$).

Plato linked the drawing of lots to the arithmetical concept of equality in a passage in the *Laws* that merits attention because, in it, lot is not purely and simply rejected. Plato's position on the subject of democracy is not reducible to the emphatic attacks expressed in the *Republic*. In the *Laws* he attempts to combine monarchy and

⁶² Plato, *Protagoras*, 322 C 1-323 A 4.
⁶³ M. I. Finley, "The freedom of the citizen in the Greek world," in *Talanta: Proceedings of the Dutch Archaeological and Historical Society*, Vol. 7, 1975, pp. 9, 13.
⁶⁴ Hansen, *The Athenian Democracy*, pp. 81-5. ⁶⁵ *Ibid.*, p. 81.

⁶⁶ In the debate about constitutions, Olanes, who argues in favor of democracy, associates the use of lot with political equality (the word used is *isonomia*): Herodotus, *Histories*, III, 80, 26. Demosthenes, for his part, speaks in one of his private orations of appointment to a post by lot as being something "shared by all equally [*κοινωνοι καὶ ἰσοὶ*]" (Demosthenes, *Against Boeotos*, I, XXXIX, 11).

democracy or rather, to be more precise, to find a middle way between those two forms of government.⁶⁷ Many analyses and commentaries have sought to account for this variation in Plato's political thinking. This is not the place to enter into such interpretative discussions, but whether the *Laws* reflects a chronological development of Plato's thought or whether that dialogue pursues a different objective than the *Republic*, the fact is that in the later work Plato is not unrelentingly critical of democracy.⁶⁸ Without showing any enthusiasm for the system, he concedes that it is probably prudent to pay a certain amount of attention to democratic views and institutions. This is particularly apparent in his remarks on lot. The Athenian Stranger starts by distinguishing two types of equality: equality of "measurement, weight, and number" and equality of "giving to each in proportion to his person." The first, he points out, is easily effected in distributions by lot. The second, which is more divine and the only real form of equality, requires the assistance of Zeus.⁶⁹ The founder of the city must aim primarily for true justice in the strict sense of the word, that is, proportional equality. "However," the Stranger adds, "the city as a whole must inevitably, on occasion, take these expressions in a somewhat altered sense as well if it wishes to avoid rebellions in any of its parts, for equity [*to epieikes*] and indulgence are always distortions of full exactness at the expense of strict justice; this makes it necessary to fall back on the equality of lot in order to avoid popular discontent [*diuskolias tôn pollōn heneka*], once again calling upon divinity and good fortune that they may steer fate in the direction of the greatest justice."⁷⁰

More amenable to democracy than Plato, Aristotle likewise associates lot with the arithmetical or numerical concept of equality.⁷¹ He

⁶⁷ See, for instance, the passage in the *Laws* where the Athenian Stranger (the author's voice) justifies his proposed method of appointment for members of the Council: "Such a system of elections seems to fall midway between monarchy and democracy, and it is always between those two forms that the constitution must hold its course" (*Laws*, VI, 756 E 8-9).

⁶⁸ For one interpretation of the place occupied by the *Laws* in the body of Plato's political thought, see Glenn R. Morrow, *Plato's Cretean City: A Historical Interpretation of the Laws* (Princeton, NJ: Princeton University Press, 1960) esp. ch. V, pp. 153-240.

⁶⁹ Plato, *Laws*, VI, 757 B.

⁷⁰ *Ibid.*, 757 D-E.

⁷¹ Aristotle, *Politics*, VI, 2, 1317b 18-1318a 10.

also, in his theory of justice, gives a more detailed philosophical elaboration of the distinction between arithmetical equality and geometrical or proportional equality. Aristotle considers that the true (most universal) definition of justice is geometrical equality, the arithmetical kind being simply one particular version of it, for individuals that are reckoned absolutely equal or equal in every respect. Indeed, if *A* and *B* are regarded as absolutely equal ($A/B = 1$), then application of proportional justice results in a distribution whereby $a/b = 1$, and hence in the arithmetical equality $a = b$.⁷² Democrats, Aristotle declares, believe that since citizens are equal in one respect (all are freeborn), they are equal in every respect. The democratic conception of justice thus comes down, according to Aristotle, to arithmetical equality: democrats, deeming citizens absolutely equal (or equal from all points of view), define justice as "the fact of each person possessing an arithmetically equal share [*ison echein apantās kat'arithmon*]."⁷³ Although this definition constitutes a particular version of the true concept of justice, Aristotle nevertheless calls it incorrect. The democrats' error, he says, is to exaggerate the implications of the actual equality: they are right to regard citizens as equal from a particular standpoint (that of free birth), but wrong to infer from this that citizens are equal in every respect.⁷⁴

Isocrates, for his part, establishes a link between the drawing of lots and arithmetical equality, then rejects that concept of equality immediately on the basis of a somewhat rudimentary argument: arithmetical equality assigns the same thing to the good as to the

⁷² Aristotle, *Politics*, III, 9, 1287a 7-25; see also *Nicomachean Ethics*, 1131a 24-8. For further discussion, see the analysis of the Aristotelian theory of justice presented by Cornelius Castoriadis in his essay: "Value, equality, justice, politics: from Marx to Aristotle and from Aristotle to ourselves," in *Les carrefours du labyrinthe*, (Paris: Seuil, 1978), pp. 249-316; English edition: *Crossroads in the Labyrinth* (Cambridge, MA: MIT Press, 1984), pp. 260-339.

⁷³ Aristotle, *Politics*, VI, 2, 1318a 5.

⁷⁴ *Ibid.*, III, 9, 1280a 7-25. According to Aristotle, oligarchs and aristocrats commit a symmetrical error: rightly considering citizens unequal on one point (wealth or virtue), they infer that the members of the city are unequal in every respect (and should therefore receive unequal shares). The conclusion that appears to flow from this argument is that, for Aristotle, citizens are equal in some respects and unequal in others, meaning that it is necessary to allow for both their equality and their inequality. This position justifies Aristotle's preference for a mixed constitution blending democratic characteristics with oligarchic or aristocratic characteristics.

wicked. In his view, geometrical equality alone constitutes true justice.⁷⁵

The problem is knowing whether the association of lot with arithmetical equality was justified or whether it was simply a means of disqualifying the use of lot by contending that it sprang from an inferior conception of equality and justice. The question particularly arises in connection with the passage in the *Laws* just cited, where Plato concedes that room must be made for an institution beloved by democrats. This is even more so for Aristotle, whose concern was not merely to establish and defend the true conception of justice, but also to analyse and account for the different views of justice reflected by existing institutions in one place or another.

Granted, in one sense the phrase "an arithmetically equal share for all" [*to ison echein apantias kat'arithmon*], taken literally, does not entirely cover the use that the Athenian democracy made of lot. However, we need only inflect the phrase somewhat or make it slightly more specific to understand how Aristotle was able to see it as a reasonably accurate description of Athenian practice. First, we must recall a point that we have already looked at but that now assumes greater importance. The names drawn by lot were those of volunteers only. A person needed to be a "candidate" or to have presented himself outside the court in the morning for his name to be placed in the lottery machine. The system, in other words, did not exactly effect a distribution among all citizens without exception, but only among those who wished to hold office. But if selection by lot is looked at in conjunction with the principle of voluntarism, a crucial point emerges: the combination of lottery with voluntarism reflected the same concept of equality as *isegoria* (the equal possibility of taking the floor in the Assembly or making a proposal), which was the key value of the political culture of democracy. In both cases, it was a question of guaranteeing anyone *who so desired* – the "first comer" – the chance to play a prominent part in politics.

Aristotle's portrayal of democratic equality, in that it omitted the voluntary element, was thus in a sense incomplete. However, there was not a huge difference between the principle of arithmetical

equality for everyone and that of arithmetical equality for everyone wishing to play a prominent political part. What is more, the Aristotelian expression usually translated as "an equal share" was actually, in Greek, a substantivized neuter adjective (*to ison*), that is, "something equal." One might, therefore, point out that there was some justification in using that "something" to mean the *possibility* of exercising power, in which case, the voluntary dimension was included in Aristotle's formula: it was quite correct to say that drawing lots made equally available to everyone the possibility of exercising power if they wished to do so.

But the notion of "arithmetically equal shares" applied to the use of lot invites even further refinement. It is clear that, when magistrates, councilors, or jurors were selected by lot, not everyone who presented himself obtained an equal share of power. Although it is true that rotation guaranteed all volunteers that one day they would fill the offices for which they stood, lot by itself (i.e. without regard to rotation), would on a given occasion elevate only some of them to office. In this respect there was a difference between lot and *isegoria*. Any citizen might address the Assembly and submit a proposal if he so wanted. Speech and initiative were thus equally shared among all who cared to have them, though not in the case of magistrates or judges, where only some people acceded to the offices they sought. What was distributed equally by lot was not power exactly, but the (mathematical) probability of achieving power.

The Athenians were of course unaware of the mathematical concept of probability, which was not identified until the seventeenth century. The idea that chance might conform to mathematical necessity and random events be susceptible of calculation was alien to the Greek mind.⁷⁶ Yet it may not be out of the question that, even in the absence of the proper conceptual tools, thinking about the political use of lot may have led the Greeks to an intuition not unlike the notion of mathematically equal chances. It was true, in any case, that lot had the effect of distributing *something* equal in terms of number (*to ison kat'arithmon*), even if its precise nature eluded rigorous theorization. Since the state of mathematics did not

⁷⁵ Isocrates, *Areopagiticus*, VII, 20–3.

⁷⁶ See for example S. Sambursky, "On the possible and the probable in Ancient Greece," in *Osiris. Commentationes de scientiarum et eruditionis rationeque*, Vol. 12, Bruges, 1965, pp. 35–48.

make it possible to distinguish clearly, within numerical equality, equality of shares actually assigned and the equal probability of obtaining a desired object, Plato as well as Aristotle was naturally led to confuse equality of lot with the equality of shares actually distributed. In that sense but in that sense only their characterizations of lot are defective.

The equality achieved by the use of lot was certainly not equality of opportunity as we understand it today, since it did not distribute offices in accordance with talent and effort. Neither was it the same as what we call equality of outcome: it did not give everyone equal shares. However, this double difference does not prove that lot had nothing to do with equality, because equality may also assume a third form, which modern theories of justice overlook, namely the equal probability of obtaining a thing.

It is harder to explain why Aristotle saw election as an expression of geometrical or proportional equality and hence of the aristocratic or oligarchic conception of equality. One can point out, of course, that in an elective process the candidates do not all have equal chances of acceding to office because their election depends on their merits in the eyes of their fellow citizens and because they do not all possess the qualities others prize. An analogy thus appears between election and the aristocratic concept of justice, which would have goods, honors, and power assigned to each according to his value, seen from a particular viewpoint. Furthermore, the actual practice of election among the Athenians resulted, as we have seen, in elective magistracies usually going to the upper classes. So the intuition that election might be linked to oligarchy or aristocracy is understandable. Aristotle's formula gave expression to that intuition.

From a different angle, though, in an elective system in which citizens are at liberty to elect whomever they like (as was the case in Athens), there is no objective, fixed, universally accepted definition of what constitutes political value or merit. Each citizen decides according to his own lights what features make one candidate better qualified than another. The probability of his acceding to office will certainly depend upon his popularity; but unlike the criteria generally invoked by oligarchs or aristocrats (wealth or virtue), popularity does not exist independently of other people's esteem. It is a quality that only the free decision of all other people can confer. There is

thus no obvious reason why the "first comer" should not be or become more popular than the other candidates, if the people so decide. It also follows that there is no obvious reason why, in a system in which elections are free, all citizens should not have equal chances of achieving that greater popularity. Establishing elections as an aristocratic procedure would have required demonstrating that, when people vote, preexistent objective criteria limit their choice and in fact prevent them from bestowing their favors on whomever they wish. Aristotle neither provided such proof, nor explained why the elective magistracies more often than not came from the higher social classes. Thus, his statement about the aristocratic or oligarchic nature of election was no more than an intuition, plausible and profound, but never explained.

Two main conclusions emerge. First, in the foremost example of "direct" democracy the assembled people did not exercise all powers. Substantial powers – sometimes greater than those of the Assembly – were assigned to separate, smaller bodies. However, their members were mainly appointed by lot. The fact that representative governments have never used lot to assign political power shows that the difference between the representative system and "direct" systems has to do with the method of selection rather than with the limited number of those selected. What makes a system representative is not the fact that a few govern in the place of the people, but that they are selected by election only.

Second, selection by lot was not (contrary to what is sometimes stated even today) a peripheral institution in the Athenian democracy. It gave expression to a number of fundamental democratic values: it fitted in unproblematically with the imperative of rotation in office; it reflected the democrats' deep distrust of political professionalism; and above all, it produced an effect similar to that paramount principle of democracy *isēgoria* – the equal right to speak in the Assembly. The latter gave anyone who so wished an equal share in the power exercised by the assembled people. Lot guaranteed anyone who sought office an equal probability of exercising the functions that were performed by a smaller number of citizens. Even though they could not explain how it was so, democrats had the intuition that elections did not guarantee the same equality.

The triumph of election

Contrary to what is often thought today, the political use of lot was not peculiar to the Athenian democracy. Prior to the invention of representative government, most political systems where power was exercised by citizens, rather than by an hereditary monarch, had used lot in varying degrees and in a variety of forms. Lot played a part (albeit a limited one) in the assemblies (*comitia*) of the Roman people. The Italian republics of the Middle Ages and the Renaissance often chose their magistrates by lot. In Florence, the intellectual center of civic humanism and republican renewal, the selection of magistrates by lot was a key institution of the republican system. Finally, Venice – the Most Serene Republic whose stability and longevity fascinated observers – continued to practice a form of lot until its fall in 1797.¹ The new representative governments might call themselves republics (as the United States did from the beginning of the revolution, or as France did from 1792); they were nevertheless breaking with the republican tradition in finding no place for lot.

Yet that republican tradition was still alive in the political culture of the seventeenth and eighteenth centuries. At the very least, it was a subject of debate.² The Venetian republic had not yet collapsed. So, at the time when representative government was invented, it

was not unknown that lot had been practiced in more places than just Athens and was in fact still in use. Political theorists reflected on the republican experiments past and present.

Harrington, a fervent admirer of Venice and an assiduous reader of Machiavelli, searched the republican tradition for models that might guide future free governments. Montesquieu concluded that republican government was a thing of the past and that the future belonged more to monarchies or to systems along the English lines. He reached this conclusion, however, only with something approaching nostalgia – he venerated Rome, in particular – and after a careful study of republican systems. Rousseau, for his part, was fond of recalling that he had been born a citizen of a republic and, his disputes with the Genevan authorities notwithstanding, retained a well-informed interest in and attachment to the institutions of his native city. He also knew Venice, having spent some time there as secretary to the French ambassador.³ Finally, he was enthusiastic about Rome and proclaimed that: “every legitimate government is republican.”⁴ All three were familiar with the republican tradition, and none saw lot as being something odd, explicable only by the distinctive features of Greek culture. To them it was an institution capable of being analysed in a general way, and with relevance for other cultures and systems of government. Lot, in their eyes, was one of the tried and tested methods of conferring power in a non-hereditary manner. It fell into the same category as election, and they compared the characteristics and effects of the two institutions.

Republican models had in general either combined the two procedures or vacillated between them. Election had predominated in ancient Rome, as it did in Venice. The Venetian republic was even seen by seventeenth- and eighteenth-century observers as the archetype of the elective republic. The Florentine republicans had for a while hesitated between lot and election, bringing about an explicit debate about the respective merits of the two methods of appointment.

In comparing and contrasting the two practices, Harrington,

¹ The first *doge* was appointed in 697.

² In a work that has since become a classic, John Pocock demonstrates the links between the republican tradition revived at the time of the Italian Renaissance and English and American political debates during the seventeenth and eighteenth centuries. See J. G. A. Pocock, *The Machiavellian Moment* (Princeton, NJ: Princeton University Press, 1975).

³ Rousseau served as secretary to Count Montaignu, the ambassador of France in Venice, from September 1743 to August 1744. In that capacity, he wrote a series of diplomatic notes. See J.-J. Rousseau, “Dépêches de Venise,” in *Oeuvres Complètes*, Vol. III (Paris: Gallimard, 1964), pp. 1045–1234.

⁴ J.-J. Rousseau, *On the Social Contract*, Book II, ch. 6.

Montesquieu, and Rousseau were thus in keeping with the republican tradition. Their thoughts on lot and election are today treated as mere curiosities. Modern commentators grant them little or no attention. However, nothing but an uncritical projection of our own viewpoint onto the past gives any reason to suppose that Harrington, Montesquieu, or Rousseau themselves regarded their thoughts on lot and election as being peripheral. More important, the presence of these considerations in the works of authors whose influence is beyond doubt shows that the contrast between the two methods of appointment retained a measure of importance in the political culture of the seventeenth and eighteenth centuries. Propositions of a general nature concerning the properties of one or the other procedure were advanced by the intellectual authorities of the period. The cultivated elites that established representative government were certainly aware of them, which no doubt sheds some light on the beliefs and aspirations that moved those elites when the decision was made that modern political representation should be based solely on election.

LOT AND ELECTION IN THE REPUBLICAN TRADITION: THE
LESSONS OF HISTORY

Rome

Rome was not a democracy, nor did anyone think it was. When an observer familiar with Greek political thought undertook to characterize the Roman system of government, he made no mention of democracy. The Greek writer Polybius, living in Rome in the second century BC, described the Roman political system not as a democracy but as a mixed constitution (*mingmenē politia*). The government of Rome, Polybius argued, was a combination of monarchical, aristocratic, and democratic features. The consuls, and magistrates in general, constituted the monarchical element, the Senate the aristocratic element, and the popular assemblies (*comitia*) the democratic element. According to Polybius, it was the balance of these three institutions that gave Rome its exceptional stability. The three powers checked and balanced each other, thus avoiding the abuses of power that afflicted all pure constitutions (monarchy, aristocracy,

or democracy) and doomed each of them to degenerate and subsequently give way to another in a recurrent cycle (*anakuklōsis tin polition*).⁵

Polybius is still one of our main sources of information about the Roman constitution. But, more important for present purposes, Polybius's work enjoyed great success in Rome and exercised enormous influence on Roman political thought. The Romans recognized themselves in the picture that this Greek had painted of their institutions. Indeed, the key political works of Cicero, *De Republica*, *De Legibus*, and *De Oratore*, bear the mark of the conceptualization put forward by Polybius.⁶

The influence of Polybius can also be observed in the way the Roman constitution was represented in the republican tradition, particularly among the political writers of the Italian Renaissance. It is striking, for example, how Machiavelli's *Discourses on Livy*, the work that did so much to revive interest in the Roman republic, echoes the Polybian interpretation of the stability of Rome almost word for word.⁷ For Machiavelli, as for Polybius, the success of the most illustrious republic owed much to the fact that it was a mixed constitution. The notion of mixed government has largely been forgotten, yet it played a major part in the formation of Western political thought. It was in opposition to it that Bodin and Hobbes developed the modern theory of indivisible sovereignty.⁸ In any case, it is surely not without significance that, in terms of constitutional theory, the Roman constitution passed into history under the heading of mixed government or mixed republic rather than under that of democracy.

Historians today characterize the Roman political system as a timocracy, that is, a system based on property qualifications. The citizens of Rome were classified according to a hierarchy of orders and classes that was revised regularly at the time of the *census*. A

⁵ Polybius, *Histories*, VI, ch. 10, 1-14 and chs. 11-18.

⁶ See Claude Nicolet, *Le métier de citoyen dans la Rome antique* (Paris: Gallimard, 1978), pp. 282-8; English edition: *The World of the Citizen in Republican Rome*, trans. P. S. Falla (Berkeley and Los Angeles: University of California Press, 1980), pp. 205-13.

⁷ Niccolò Machiavelli, *Discourses on the First Decade of Livy*, Book I, 2.

⁸ On the history of the idea of the mixed constitution, the best work is currently W. Nippel, *Mischverfassungstheorie und Verfassungsrealität in Antike und früher Neuzeit* (Stuttgart: Klett-Cotta, 1980).

citizen's wealth was not the sole criterion by which the censors gave him his place in the hierarchy. The *census* also took into consideration a person's physical (for military reasons), moral, and social qualities. But wealth played the key role: in the main, the amount of wealth a person had determined the extent of his political influence.

One way property determined power appeared in the organization of the popular vote. Even if in the late republic the poorest citizens were entitled to vote, their votes did not carry the same weight in the *comitia* as those of the rich, because of the system of voting by groups. The voting units that were counted for the final tally were not individuals but rather groups. The way individuals voted within each group determined the group vote, but the vote of each group had the same weight, regardless of its size. The voting groups consisted of centuries (military and fiscal divisions) in the case of centuriate assemblies (*comitia centuriata*)⁹ and tribes (territorial divisions) in the case of tribal assemblies (*comitia tributa*). The advantage held by the propertied classes was particularly clear in the former, since the centuries of the lower classes comprised larger numbers of citizens than those of the upper classes. *Comitia tributa*, by contrast, had a more popular character.

The predominant role of wealth was also reflected in the reservation by law of magistracies for the upper classes of the census pyramid. In order to occupy a magistracy (except possibly the position of tribunes of the plebs), one had to be a member of the equestrian order and since senators had to be ex-magistrates the Senate was likewise the preserve of the equestrian order.

Most magistracies were elective (except for the position of *dictator*). None was assigned by lot. The people, assembled in tribes, elected the lower magistrates and the tribunes of the plebs. The people also appointed the higher magistrates (consuls, praetors, censors) when assembled in centuries. So it is possible to say, simplifying a complex system that changed and developed during

⁹ Each century was seen as making an equal contribution to the life of the city: each had to supply the same number of men when an army was being raised, pay the same amount of tax, and contribute the same amount in the political assemblies (each had one vote). See C. Nicolet, *Rome et la conquête du monde méditerranéen*, 264-227 mc., Vol. I, *Les structures de l'Italie romaine* (Paris: Presses Universitaires de France, 1979), p. 342.

the republican period, that in Rome the people elected the magistrates but could not themselves be magistrates. Since the *census* was regularly revised, social and political mobility was possible from generation to generation. The descendants of citizens belonging to the lower census categories could accede to magistracies if their wealth and status had increased sufficiently. However, at any given moment, the only power enjoyed by the lower classes was that of choosing among candidates from the upper classes.

Popular assemblies were not confined to electing magistrates. They also passed laws and tried certain cases. Most laws were passed by the *comitia tributa*, which historians today see as having been the essential organ of popular power. It should be pointed out, however, that the initiative belonged solely to the magistrates. An assembly of the Roman people could be summoned only by a magistrate with that responsibility. It was always a magistrate that convened the assembly and formulated the question to be put to it. "Every decision of the people," writes Claude Nicolet, "was a response."¹⁰ The Roman constitution thus included an element of direct democracy, but the initiative was not, as in Athens, with "just anybody."

Although magistrates were appointed solely by election, lot nonetheless played a part in popular assemblies. So what could be the nature and meaning of lot in a largely oligarchic political system where wealth gave power? Lot was used to determine who should vote first in centuriate assemblies and which vote should be counted first in tribal assemblies.¹¹ In the former, the century that would vote first was drawn by lot. That century was known as the "prerogative century." It is on the significance and effects of drawing the prerogative century by lot that history provides the most information.

Centuriate assemblies comprised 193 centuries drawn from five census classes. Two factors made the propertied classes predomi-

¹⁰ Nicolet, *Le métier de citoyen dans la Rome antique*, p. 345; English edition, pp. 254-5.

¹¹ On the organization and procedure of the *comitia* of the Roman people in general, see L. Ross Taylor, *Roman Voting Assemblies from the Hannibalic War to the Dictatorship of Caesar* (Ann Arbor: University of Michigan Press, 1966). See also E. S. Shaveley, *Greek and Roman Voting* (Ithaca, NY: Cornell University Press, 1972); Nicolet, *Le métier de citoyen dans la Rome antique*, ch. 7, and *Rome et la conquête du monde méditerranéen*, ch. 9.

nant here. On the one hand, the first class, made up of the eighteen equestrian centuries and the eighty centuries of first-class infantry, commanded the majority of votes (98 out of 193) by itself. On the other, as we have seen, the centuries were not of equal sizes: the higher a century stood in the census hierarchy, the fewer citizens it contained. The centuries voted in hierarchical order, and votes were counted as they were cast. Counting stopped as soon as a majority had been obtained. So if the upper-class centuries all voted in the same way, the majority was reached and the ballot closed before the lower census classes had even been called. The latter played no part in decision-making except when there was disagreement and divergent voting among the higher categories. The lower orders could thus be said to have a power of arbitration in the event of conflict and division among the propertied elite. Clearly, the system encouraged the upper classes to maintain a certain political cohesion.

Around the end of the third century BC, centuriate assemblies underwent an important reform. The number of first-class infantry centuries dropped from eighty to seventy. Since the number of equestrian centuries remained at eighteen, this meant that from then on the votes of eight centuries of the second census class were needed to reach a majority. This was also the period in which the custom of drawing the prerogative century by lot was adopted. Prior to this reform, the eighteen equestrian centuries voted first. They may have been known collectively as the *primo vocatae*, the first called. After the reform, only one century was invited to vote first.¹² The prerogative century was determined by lot from among the first-class infantry centuries. The result of its vote was announced immediately, before the other centuries had begun voting (which they continued to do in hierarchical order, the equestrian centuries first, then the first-class infantry centuries, and so on).

The result of the lottery to select the prerogative century was taken as a sign from the gods (*omen*), and furthermore the way this century voted also assumed religious significance. This inaugural vote (so to speak) was regarded not merely as describing in advance the final outcome of the vote, but as prescribing how one should

¹² Hence its name, "prerogative century," from the Latin *praerogare*, to call first. This, of course, is the origin of the word and notion prerogative in English.

vote.¹³ The decision of the prerogative century thus had a swaying effect on subsequent votes.

Today, historians agree in regarding the prerogative century and its selection by lot as an institution that promoted unity and agreement within the *comitia*. Some of them place the emphasis on the way it contributed towards maintaining political cohesion among the centuries at the top of the census hierarchy;¹⁴ others highlight its unifying effect on the assemblies as a whole.¹⁵ Given the order in which voting took place and the respective numbers of votes of the different census classes, the unifying effect probably operated in two distinct and successive ways. First of all, for the centuries of the first class, the vote of the prerogative century constituted a focal point that enabled them to coordinate how they would vote. The existence of a rallying point made salient by religion reinforced the predominance of the propertied classes in the centuriate assembly: if the centuries of the first class (and eight centuries of the second) followed the lead of the prerogative century, the final decision remained in the hands of the upper classes, for the centuries that came after them in the hierarchy would not be called upon to vote, a majority having already been attained. Dispersed voting among the first centuries, on the other hand, would have shifted the decisive votes down the census ladder. Thus the use of lot, together with the religious value it conferred on the prerogative century's vote, averted or mitigated any dissensions or rivalries that elections might have given rise to

¹³ This point is given considerable emphasis by Christian Meier in his study entitled "Praerogativa Centuria" in *Paulys Realencyclopädie der Classischen Altertumswissenschaft*, Supplement Band VIII, (Munich: Alfred Druckemüller Verlag, 1980) pp. 568-98, on this specific point, see pp. 595-6. The religious quality of the vote of the prerogative century appears to be firmly vouched for in the sources and acknowledged by all modern historians. See, for instance, Ross-Taylor, *Roman Voting Assemblies*, pp. 70-4; Nicolet, *Le métier de citoyen dans la Rome antique*, pp. 348, 355; English edition, pp. 257, 262.

¹⁴ Examples are Meier in his "Praerogativa Centuria," pp. 583-4, and Staveley, *Greek and Roman Voting*, p. 155.

¹⁵ An example is Nicolet, who points out that the institution of the prerogative century formed the object of slightly differing interpretations among Roman authors themselves. Those interpretations agree on one thing, however, namely that the initial vote cast by the prerogative century had a unifying effect on the assemblies. See Nicolet, *Le métier de citoyen dans la Rome antique*, p. 355; English edition, p. 262.