CHAPTER TEN

Democracy and Law

One of the difficulties in trying to understand Greek society is that words have changed their meanings. One obvious example is democracy. We all think we are democrats and that we know what the word means. Yet look at how the Greeks used it: 'In a democracy there is, first, that most splendid of virtues, equality before the law. Secondly, it has none of the vices of monarchy: for all offices are assigned by lot, all officials are subject to investigation, and all policies are debated in public.' This is Herodotus talking (III, 81) about different types of government. Most of what he says about democracy we would accept. The fact that 'all offices are assigned by lot', however, makes it sound a haphazard, even dangerous, way of running a state. Then Euripides makes one of the characters in his play *The Suppliants* say that 'this city is free and not ruled by one man. The people rule, as year by year new men succeed to office.' Year by year? Is such a frequent change of government a necessary part of democracy? The Greeks seemed to think so.

Aristotle, too, who collected the constitutions of over one hundred and fifty states and who knew more than most about Greek politics, adds to the picture:

> 'The same man is not to hold an office twice, or only rarely, with a few exceptions, notably military. Jury service on all, or most, matters is open to all, and always in the case of the most important decisions, such as the annual investigations into officials' conduct of their office, questions of citizenship, and contracts between individuals.'
>
> (*Politics*, 1317b)

An annual check of officials and only one term of office make it all very different from our sort of democracy.

Direct Democracy

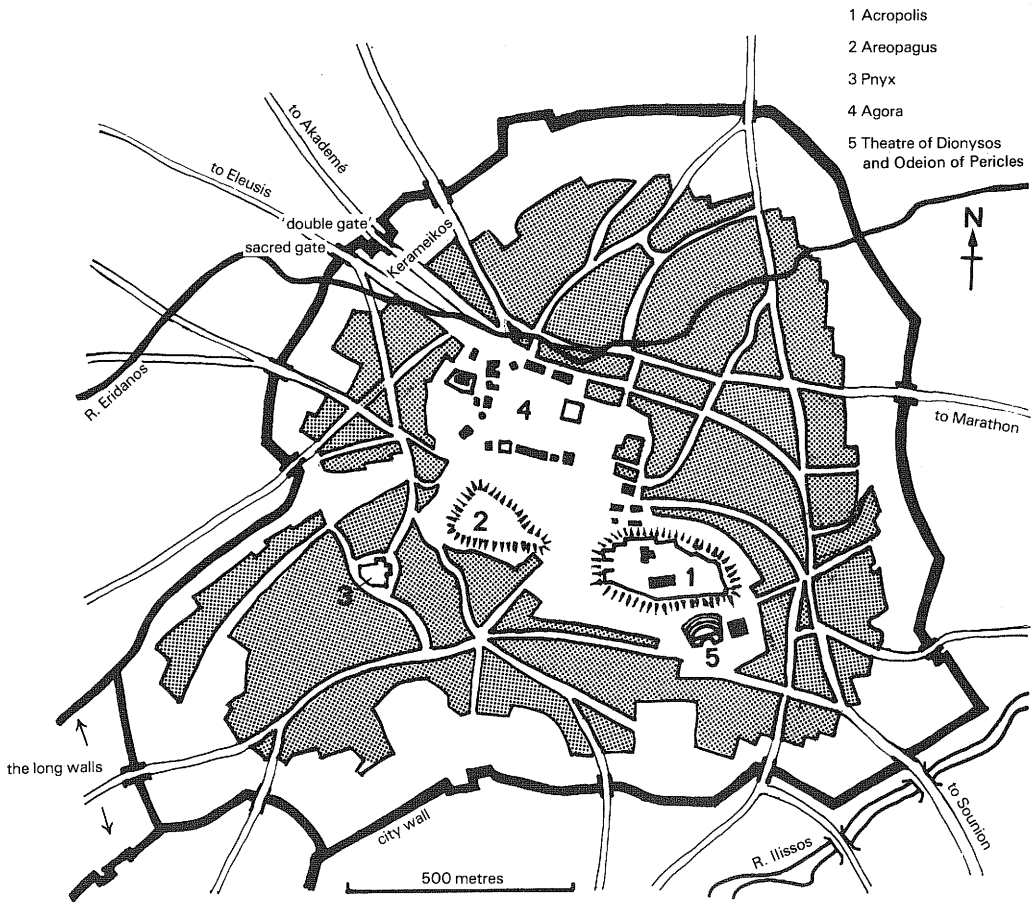
To see how Greek democracy worked in practice we must look at Athens. A contemporary writer, who did not like Athenian democracy at all, admits

> 'It is right that in Athens the poor and the common people should have more power than the nobles and the rich, because they provide the rowers for the fleet and thus give the *polis* its strength.'
>
> (*The Old Oligarch* 1, 2)

Athens was the largest democracy, the most influential and the one we know most about. The key fact about it is that everybody could take a direct part in government. We elect members of Parliament to govern the country, the Athenians governed it themselves. This could happen there because of the size of the *polis*: there were

probably about 40 000 citizens—a biggish football crowd—in Athens at the beginning of the Peloponnesian War. And so it was quite possible for them all to come to the public meetings at which the major political decisions—of peace and war, of finance, of alliances—were made. Of course, not everybody did. Some would be working, others uninterested, many lived too far away to make frequent visits to Athens a practical possibility. But the principle remained: all Athenian citizens had the right to speak and vote at the meetings of this general assembly or *ekklesia*, the body which had final and supreme power in the state.

The involvement was direct and immediate. It is early 415 B.C. The *ekklesia* is debating whether the fleet should be sent to attack Sicily. You go along, but hardly as a spectator. If you and your fellow-citizens vote in favour of it, you are voting, in all probability, to send yourself or your son or nephew as a rower or a hoplite. Voting becomes rather important in such circumstances.



10.1 Athens in the fifth century B.C.

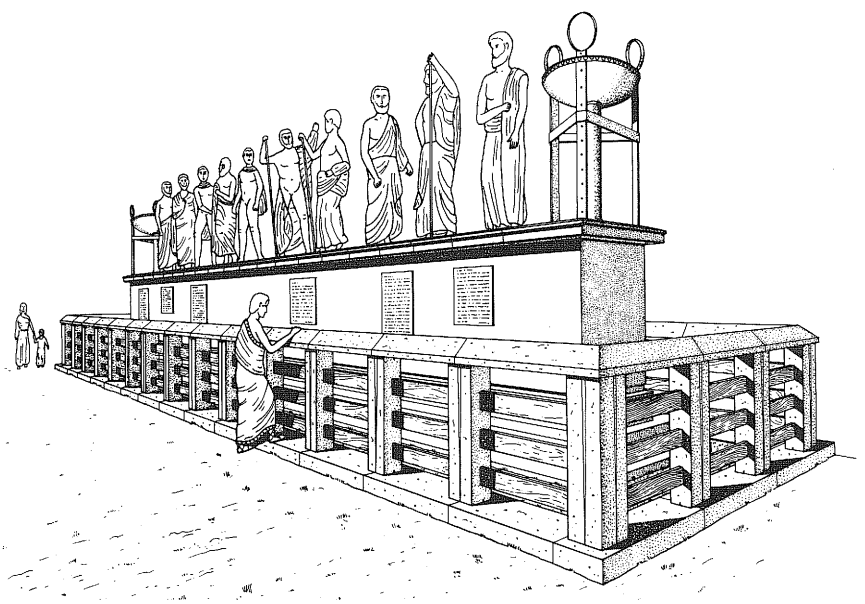
Its Leaders

Here, then was direct democracy in action. Decisions were taken by the citizens themselves, But, like most mass meetings, the *ekklesia* could be swayed by skilful speakers. So oratory was important: you became a political leader only if you were able to persuade the *ekklesia*. There was no party to make you its leader, because parties in the modern sense did not exist. Obviously various groups, the farmers, the sailors or shopkeepers, might join together to support a particular proposal. But these groupings changed from meeting to meeting. The only way to exercise political power was by convincing a majority of your fellow-citizens that your proposals were the best for the state. So to stay a leader meant that you had to continue to win the approval of the *ekklesia*, meeting after meeting. It must have been a wearing business.

There was a lot of criticism of the demagogues, as these leaders were called (p. 101). One of them in particular, Kleon, who became the leading politician in Athens after Pericles' death, always gets a bad press. Plutarch attacks him for his vulgarity:

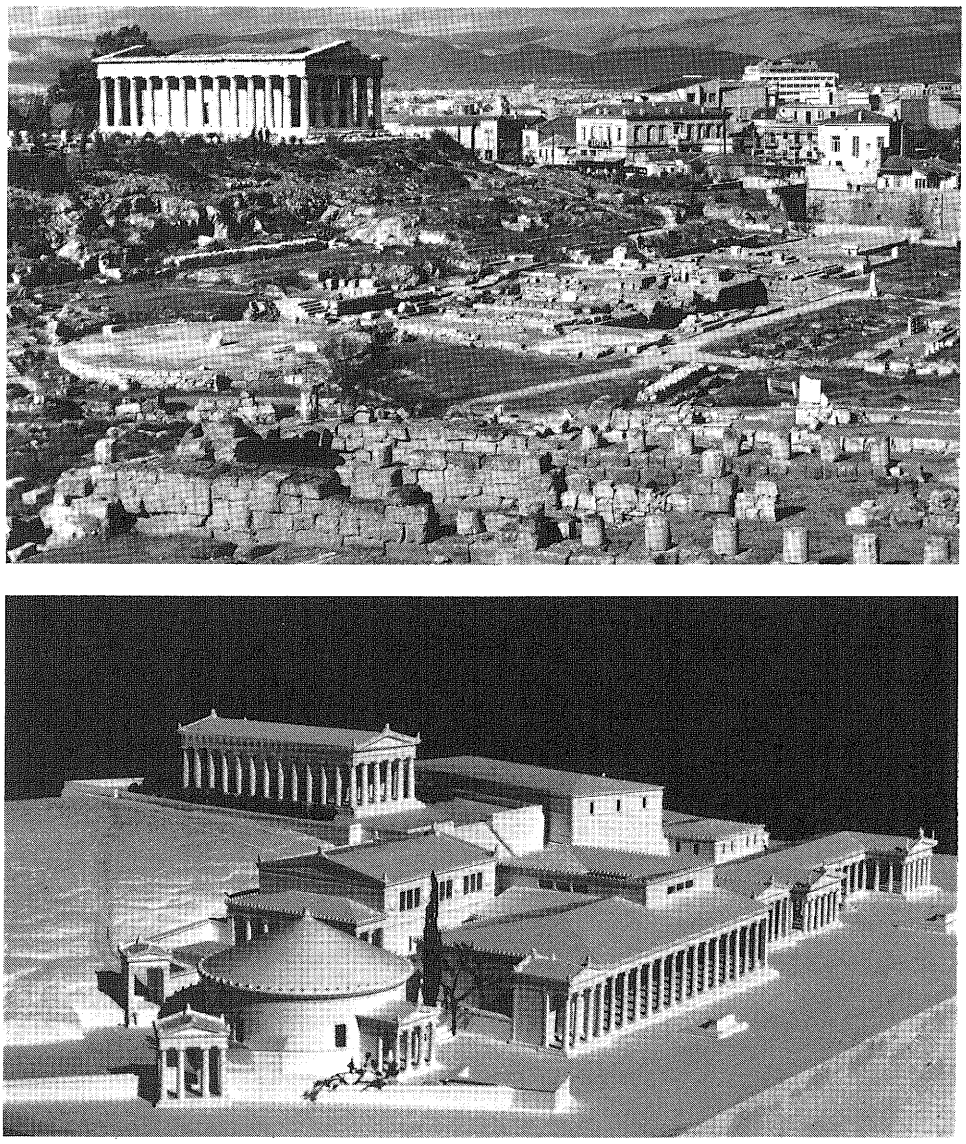
> 'He was offensive and conceited... It was thanks to him that decent behaviour was no longer seen at meetings of the *ekklesia*. For he was the first popular leader to bellow his speeches, to throw open his cloak and slap his thigh, and to stride up and down on the platform while haranguing the people.'
>
> (*Nikias* viii)

And Aristophanes' play *The Knights* is a savage ridiculing of him. He is the 'filthiest, most blatant, lowest-down liar of all time: . . . he sucks-up, smarms, and

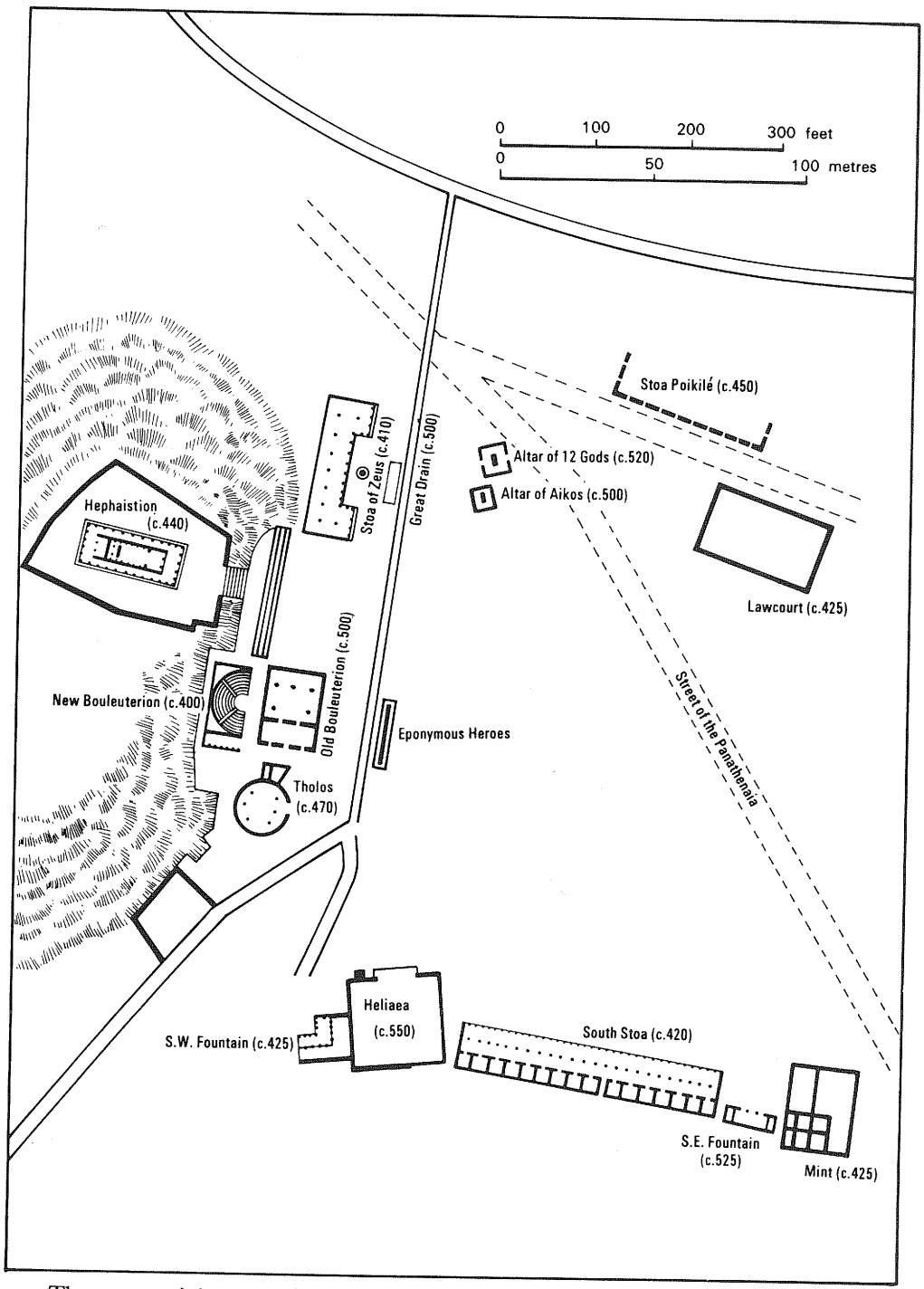


10.2 The notice-board in the *agora*, built round the shrine of the Eponymous Heroes (after whom the ten Athenian tribes were named). Here appeared notices like drafts of proposed laws and lists of men required for military service.

soft-soaps the Assembly until he has it where he wants; . . . he's the tax-extorter, the bottomless pit, the Charybdis of rapacity', who 'helps himself to public money', who 'has a squad of muscle-men, tough young leather-sellers . . .' And the rest of the demagogues are of the same sort: 'It's no use thinking decent or educated men can be leaders of the people—that's left to the illiterate and dishonest these days.' Aristophanes did not like demagogues, and in any case this is comedy. But it shows one weakness of democracy.



10.3 The *agora* at Athens: view from the south east today, and a reconstruction of the same area as it was about 400 B.C.



10.4 The *agora* at Athens, 400 B.C. The *bouleterion* was a council hall and the *heliaea* was a courthouse.

Its Officials

The *ekklesia* normally met three or four times a month. But government business required regular attention, and this continuity was provided by the *boulé* (Council). This consisted of five hundred citizens, fifty chosen by lot from each of the ten tribes. It was in office for a year, and nobody was allowed to serve on it more than twice. This meant that a large number of Athenians must have had a direct and practical experience of government. For the councillors of each tribe served as a *prytany* (standing committee) for a tenth of the year; during that period all state business came in the first place to them. To enable them to fulfil their duties, they lived in the *tholos* (see fig 10.4) and were fed at public expense. Each day one member became chairman of the *prytany* and, if there was a meeting of the whole *boulé* or of the *ekklesia* that day, he acted as chairman of that meeting, too. In his hands were the keys to the treasuries and the seal of Athens.

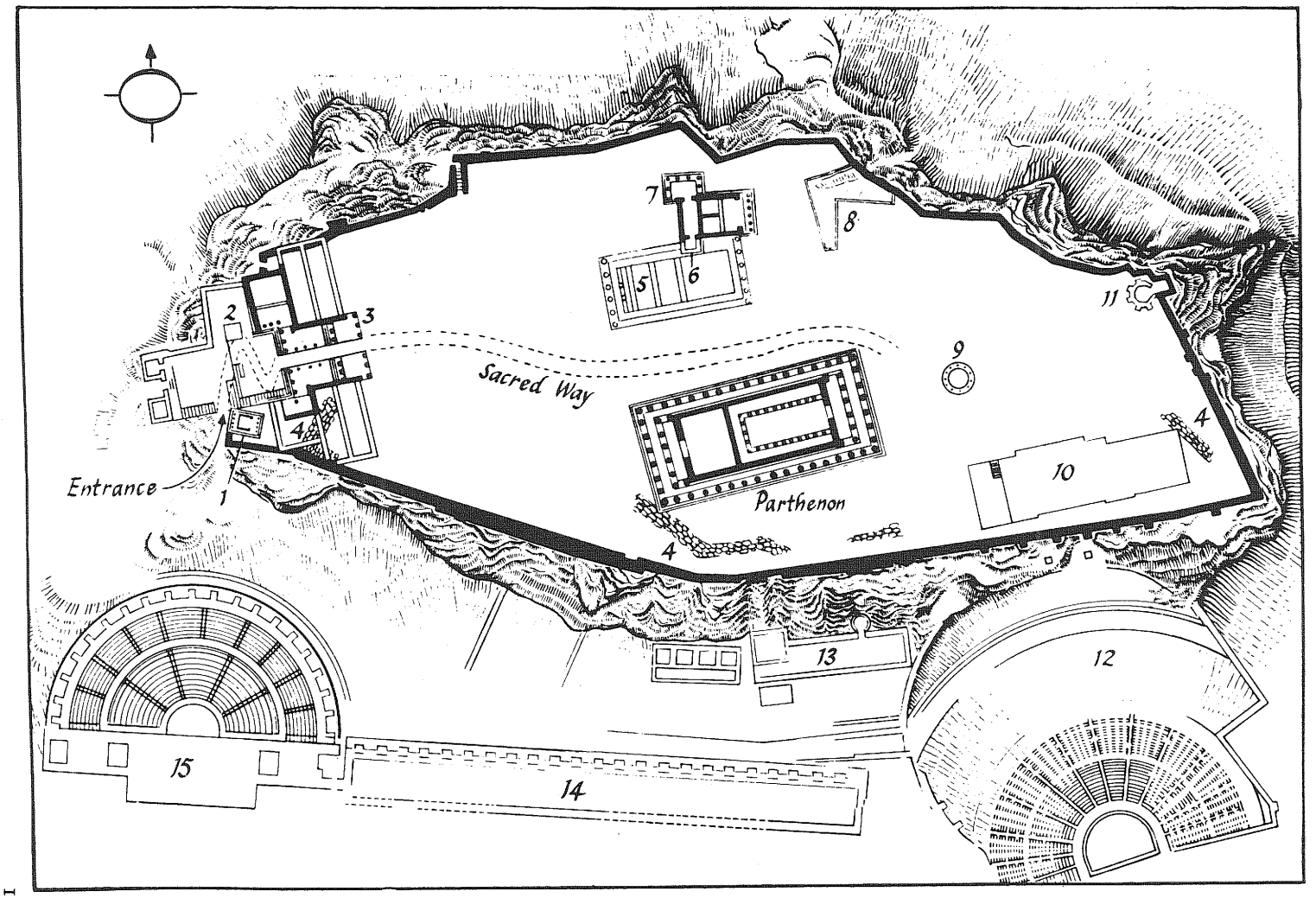
The duties of the *boulé*, which met every day that was not a holiday, were many. It received embassies and dispatches; it decided what matters should be put to the *ekklesia* and published the agenda; it was in overall charge of triremes, dockyards and cavalry horses; it supervised officials; it scrutinized the candidates for coming elections; it checked the accounts of all officials once in each *prytany*; and, in general, as Aristotle says, 'it co-operates with the other magistrates in most of what they do.' So its members must inevitably have developed a considerable understanding of the problems of running a *polis*.

In Athens, then, there were no M.P.s and no political parties; there was no permanent civil service either. Necessary administration was done by various officials, often in boards of five or ten. The *agoranomoi* looked after the markets, *metronomoi* inspected weights and measures, and the *sitophylakes* were in charge of the corn-supply. There were five *hodopoioi* 'whose duty it is to ensure that the workmen provided by the state repair the roads'; *hieropoioi* were chosen to make sacrifices and be in charge of certain religious festivals; and the duties of the ten *astynomoi* (city commissioners) included ensuring

> 'that none of the dung-collectors dump dung within two kilometres of the city-wall. They also prevent the extending of houses into, and the building of balconies over, the streets, and the constructing of pipes with outfalls over the roads and of doors opening outwards into the road. And they see to it that the girls who play the flute, the harp and the lyre are not hired for more than two drachmas.'
>
> (Aristotle, *The Constitution of Athens* 50)

All these officials were chosen by lot and usually for a single year. For, again, it was felt that it was more democratic for a large number of citizens to take part in rotation in running public affairs than that there should be long-serving experts who might use their experience and skill for their own advancement or to victimize others. All these officials had to undergo the investigation Aristotle speaks of at the end of their year of office. If they were found to have been negligent or dishonest, they were fined or even exiled. So you were encouraged to do the job as well as you could.

For only two offices was voting still retained—military leaders (*strategoi*) and those in charge of finance. And in the case of the generalship, a man could be re-elected, as Pericles was for fifteen years. Here, at least, it was recognized that skill and



10.5 The Acropolis. See also fig. 11.1.

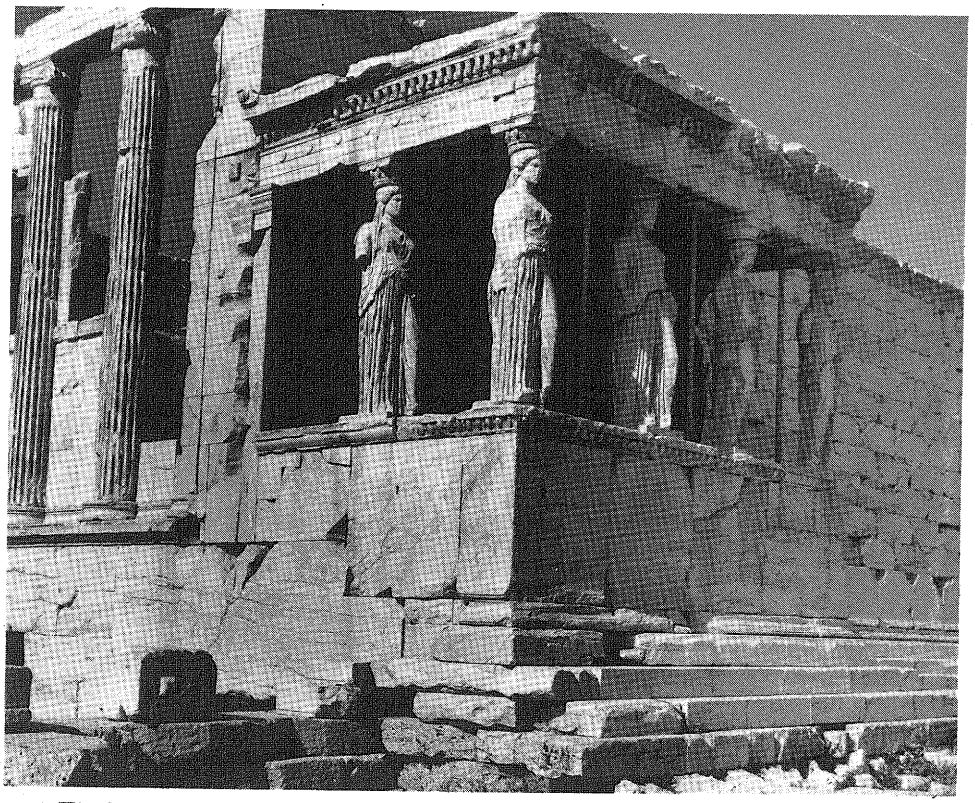
1 Temple of Victory (Niké)
2 Monument of Agrippa (Roman)
3 The Propylaia
4 Mycenaean wall
5 Early temple of Athena (destroyed)
6 Karyatid porch
7 The Erechtheion
8 Mycenaean entrance stair
9 Site of Roman temple
10 Acropolis museum
11 Modern lookout point
12 Theatre of Dionysos
13 Shrine of Asklepios
14 Portico of Eumenes (Hellenistic)
15 Odeion of Herodes Atticus (2nd c. A.D.)

experience were essential; otherwise citizens' lives could be lost. Thus the generalship became the most influential of all offices.

Its Finances

There was one other way in which the generalship was different from all other state duties: it was not paid. And this is the second of the principles the Athenians thought were essential for democracy. It was not enough to make the vast majority of public appointments open to every citizen. It had also to be possible for a man to do them without losing his earnings. Otherwise only the wealthy would be willing to undertake them. It was easy for the enemies of democracy to sneer at this 'distribution of public money' whereby the people 'became extravagant and undisciplined instead of restrained and self-sufficient.' But it was necessary if Athens was going to be a thorough-going democracy.

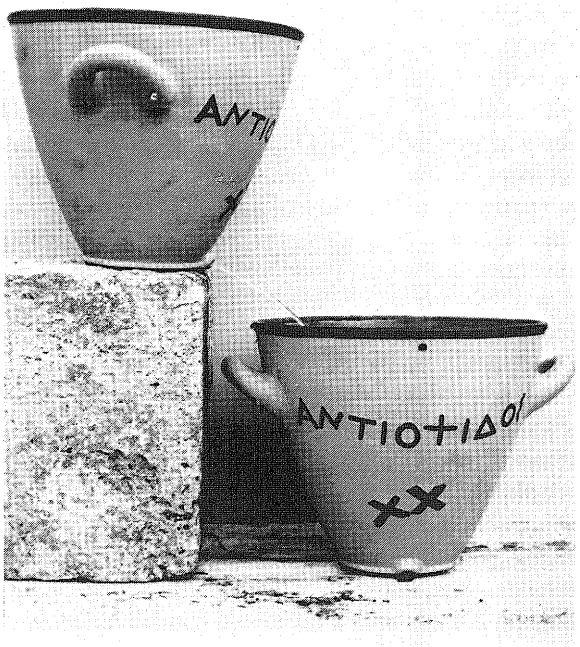
As well as this payment to officials in Athens, the state paid jurymen, citizens on most military and naval duties, and officials employed on state business abroad. But the pay was small, hardly more than a subsistence wage; it was certainly only half



10.6 The Karyatid porch on the south west corner of the Erechtheion, the temple sacred to both Athena and Erechtheus.

that which we know from a surviving inscription was paid to skilled workmen building the Erechtheion (see p. 112). There were other people helped or maintained at state expense: war casualties who were unable to work, orphans of men killed in war, victors at the major games, and, an interesting example of what a democratic *polis* gave in return for the contributions of its members, 'anyone whose property is less than three *mnai* (see p. 116) and who is incapable of working because of physical disability.'

The money for this came from the contributions paid by her allies, from taxes paid by *metoikoi* or resident foreigners, and from customs dues on exports and imports. And, since this trading was largely in the hands of non-Athenians, it will be seen that citizens did not tax themselves. There was one exception; and even that was hardly a tax. Rich citizens were required to undertake an expensive public service, called a liturgy—a word we restrict to a set form of religious worship. The two most common were the equipping of a trireme—the state provided the hull and paid the crew—and the production of a play or the training of a choir for the annual festivals. This, clearly, was a kind of super-tax. But at least it must have given rich citizens somewhat more satisfaction than their modern counterparts get from sending a cheque to the Inland Revenue. You could be proud of 'your' elegantly completed trireme or the magnificence of the costumes in 'your' play.



10.7 Water-clock: a copy of the means used to time speeches in the law-courts.

Its Legal System

The last, and perhaps most important, aspect of Athenian democracy was the law-courts. We try to separate law and politics; the Greeks and the Romans did not. The result was, as Aristotle says, that 'when the people have the right to vote in the courts, they control the constitution.' Hence this right 'contributed most to the strength of democracy.' All disputes, public and private, had to be settled in these people's courts, which were quite different from our courts. There was no judge, no prosecuting or defending counsel, no deliberation by the jury. Instead of a judge there was a chairman, whose job was simply to ensure that the proceedings were conducted in an orderly fashion. With no counsel, both the plaintiff and the defendant had to make their own speeches, although they could use professional speech-writers to write them. Indeed, most of our knowledge of Athenian law comes from surviving speeches of this sort. The jury was given no guidance about similar cases in the past, no indication of relevant laws, and no advice on how to evaluate—or reject—the evidence presented. When the two speeches, timed by a water-clock, were finished—and all cases had to be decided within a day—they decided the verdict by a simple majority vote. If the verdict was guilty and there was no fixed penalty, the plaintiff and defendant proposed two different penalties, and again the jury chose one by a simple majority vote.

Enormous trouble was taken to ensure that no influence or bribery could be used. The juries were, first, very large: juries of five hundred were normal, juries of a thousand not uncommon. Secondly, they were chosen in the morning, from the six thousand enrolled each year, for the cases to be heard that day. There was also a very elaborate system of tokens and tags, so that no one could predict which juryman would go to which court.

Two other surprising features of Athenian law arise from the fact that there were no police. Some Scythian slaves were, indeed, employed by the *polis* to keep order at meetings of the *ekklesia* and to sweep idle citizens from the *agora* (town centre) to the Pnyx by means of a rope covered with red chalk—anybody so discoloured was fined! But there were no police as we know them. There was therefore, first, no official prosecution of criminals, and so all cases had to be brought by private individuals. This was real democracy, perhaps, where the responsibility to check crime rests on everybody; but it encouraged the emergence of an unpleasant crowd of informers—people who made a profession of sniffing out breaches of the law and blackmailing those concerned. Secondly, there were no means of ensuring that victory in the courts led to your getting stolen property back or your damages paid. You could only threaten another prosecution—or use persuasion.

But it was the political use of the courts which the Greeks themselves thought most important. One critic of democracy said that 'in the law-courts, the Athenians are more concerned with self-interest than with justice. . . They use the courts to protect members of the *demos* (ordinary people) and to ruin their opponents.'

This attack could either be made directly, by bringing a specific case of illegal action against someone, or indirectly, by using any case as a chance to smear and denigrate him, since anything, relevant or not, could be said in court. So the courts were both part of radical democracy in Athens and a means of consolidating and extending that democracy.

Its Drawbacks

One vital thing remains to be said. The Athenian system may have been a thoroughgoing democracy, but participation in it was strictly limited to adult, male citizens. Here, of course, is another major difference from our society: the Athenian system, so complete and embracing in its political and administrative aspects, was exclusive in social terms. Women, slaves and *metoikoi*, that is, perhaps three-quarters of the population, were allowed no part in the running of the state. It was an oddly partial democracy.

10.8 Ostraka (see page 48); you can see the names of Aristeides and other leading Athenian politicians. ITO means 'Out with . . .'

However, there was not much opposition in Athens to it. There were aristocrats, of course, and wealthy citizens who might have preferred a different system. We hear of one leader who 'grouped the aristocrats into a single body' in the *ekklesia* so that their united voice could be heard. But there was no chance of their overthrowing the democracy. Only twice did Athens have a non-democratic government: first, after the disaster in Sicily (p. 104), and secondly, following her capture by Lysandros in 404 B.C. On the first occasion, democratic excesses were blamed for the catastrophe, and so a group of oligarchs was able to seize power for a few months. But, as soon as the fleet started to have some success off Ionia, full democracy was restored. And it was only the Spartan garrison that enabled the Thirty Tyrants, as they were called, to rule after the end of the war. But they conducted such a reign of terror that they were soon attacked by exiled democrats and removed; and even Sparta refused to help them. So Athens stayed democratic.

How successful was it? It lost the war, of course. And we know of some emotional and rash decisions it made. For example, it condemned—illegally—the generals who failed to save the crews of sinking triremes after a victory in 406 B.C.; and it executed Socrates (p. 167). But these actions were taken under the stress of war and defeat, when, too, Pericles' successors 'were so concerned with their own private intrigues to secure the leadership of the people that they allowed the affairs of the *polis* to fall into disarray.' And there is the other side. Pericles' view of Athens as an 'education to Greece' and of Athenians as 'lovers of beauty without extravagance, and cultivators of the mind without being soft' may be idealized. But it is hard to deny that the Athenian way of life attracted, encouraged, perhaps caused, a flowering of genius in literature, mathematics, philosophy and art that is probably unique.

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10.9 An Athenian four-drachma coin, with the head of Athena on the obverse, her owl and an olive sprig on the reverse.
Athenian coinage: 6 obols = 1 drachma
100 drachmas = 1 mna
60 mnai = 1 talent